

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Mary Geiger Lewis (formerly Mary Geiger Foster; Mary Wallis Geiger)

2. **Position:** State the position for which you have been nominated.

United States District Judge for the District of South Carolina

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Lewis & Babcock, L.L.P.
1513 Hampton Street
Columbia, South Carolina 29201

4. **Birthplace:** State year and place of birth.

1958; Columbia, South Carolina

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1981 – 1984, University of South Carolina School of Law; J.D., 1984

1977 – 1980, Clemson University; B.A., *cum laude*, 1980

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

1985 – Present
Lewis & Babcock, L.L.P.
1513 Hampton Street
Columbia, South Carolina 29201
Associate (1985 – 1987)
Partner (1987 – Present)

1984 – 1985
South Carolina Judicial Department
1015 Sumter Street
Columbia, South Carolina 29201
Law Clerk to The Honorable Owens Taylor Cobb, Jr.

1982 – 1984
South Carolina Legislature
Senate Judiciary Committee
101 Gressette Building
1101 Pendleton Street
Columbia, South Carolina 29201
Law Clerk

Summer 1982
University of South Carolina School of Law
701 Main Street
Columbia, South Carolina 29208
Research Assistant to Professor Randall M. Chastain

1981
Richland County Solicitor's Office
1701 Main Street
Columbia, South Carolina 29201
Law Clerk

Other affiliations (uncompensated):

2004 – 2005
Columbia Garden Club Foundation
Columbia Garden Club
P.O. Box 5925
Columbia, South Carolina 29250
Chairman

2003 – 2004
Columbia Garden Club
P.O. Box 5925
Columbia, South Carolina 29250
President

2000 – 2004
Heathwood Hall Episcopal School
3000 South Beltline Boulevard
Columbia, South Carolina 29201
Member, Board of Trustees

2001 – 2003
South Carolina Educational Television Commission
1101 George Rogers Boulevard
Columbia, South Carolina 29201
Commissioner

2001 – 2002
Capital City Club
1201 Main Street, Suite 2500
Columbia, South Carolina 29201
Board member

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I was not required to register for Selective Service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Order of the Coif, University of South Carolina School of Law (1984)

American Jurisprudence Award for Domestic Relations, University of South Carolina School of Law (1983)

American Jurisprudence Award for Contracts, University of South Carolina School of Law (1982)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Association for Justice (1997 – Present)

American Bar Association (1985 – Present)

Federal Bar Association (2010 – Present)

Richland County Bar Association (1986 – Present)

South Carolina Association for Justice (1988 – Present)

South Carolina Bar Association (1984 – Present)

South Carolina Trial Lawyers/South Carolina Association for Justice (1997 – Present)

South Carolina Women Lawyers Association (2001 – 2002)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

South Carolina, 1984.

There has been no lapse in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 1990

United States Court of Appeals for the Second Circuit, 1995

United States Court of Appeals for the Fourth Circuit, 1993

United States Court of Appeals for the Eleventh Circuit, 1997

United States District Court for the District of South Carolina, 1987

South Carolina, 1984

There have been no lapses in any memberships.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held.

Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Capital City Club (1987 – Present)
Board member (2001 – 2002)

Columbia Garden Club (1996 – Present)
President (2003 – 2004)

Columbia Garden Club Foundation
Chairman (2004 – 2005)

Daughters of the American Revolution (2009 – Present)

Heathwood Hall Episcopal School
Board of Trustees (2000 – 2004)

Humanities Advancement Board, College of Architecture, Arts and Humanities,
Clemson University (2003 – Present)

South Carolina Educational Television Commission
Commissioner (2001 – 2003)

South Carolina Film Industry Task Force (2000 – 2001)

Spring Valley Country Club (2002 – Present)
Membership Subcommittee (2006)

Transition Team for South Carolina Governor-Elect James Hodges
Subcommittee on Law Enforcement (1998)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

I became a member of Spring Valley Country Club in 2002. At the time of its founding, it did practice racial and religious exclusion. However, these discriminatory practices were ended prior to my becoming a member. Otherwise, none of these organizations currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Letter to the Editor published in The State newspaper on April 23, 2006. Copy supplied.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Report of Subcommittee of Transition Team for South Carolina Governor-Elect James Hodges on Law Enforcement, December 4, 1998. Copy supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials

None that I can recall or have been able to identify.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

None that I can recall or have been able to identify.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

James Rosen, *S.C. Attorney Tapped for Federal Bench*, The State, Mar. 17, 2011. Copy supplied.

Condon Asks Budget and Control Board to Reconsider Settlement, Associated Press State & Local Wire, May 18, 2001. Copy supplied.

Condon Calls for Sales Tax Review, The State, May 16, 2001, at B3. Copy supplied.

Attorney General Says Hodges Funneling Money to Democratic Party Chairman, Associated Press State & Local Wire, May 15, 2001. Copy supplied.

Danny C. Flanders, *Law and Order Attorneys' Design Home Fit for Hectic Lifestyles*, The State, Jan. 21, 1996. Copy supplied.

Clifford Glickman, *Plumber's License Revoked; Tega Cay Decides against Joe Newton*, York Observer, Dec. 6, 1988. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held any judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____
- i. Of these, approximately what percent were:
- | | |
|-----------------------|---------------------|
| jury trials: | _____% |
| bench trials: | _____% [total 100%] |
| civil proceedings: | _____% |
| criminal proceedings: | _____% [total 100%] |
- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

I have not served as a judge.

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed

you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

In November of 1998, I was appointed by South Carolina Governor-Elect James H. Hodges to serve as a member of his transition team. I worked on the team's Subcommittee on Law Enforcement and participated in the preparation of its report to the Governor-Elect, which is provided in response to Question 12b.

South Carolina Film Industry Task Force; Member (2000 – 2001); appointed by Governor James H. Hodges.

South Carolina Educational Television; Commissioner (2001 – 2003); appointed by Governor James H. Hodges.

I have never held any elective office. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held any position in nor have I ever been a member or officer of any election committee or political campaign. I was, however, a member of Young Democrats while I attended Clemson University from 1977 to 1980. My membership in that organization entailed completing errands and providing minor logistical support for events held in the area.

In November of 1998, I was appointed by South Carolina Governor-Elect James H. Hodges to serve as a member of his transition team. I worked on the team's Subcommittee on Law Enforcement and participated in the preparation of its report to the Governor-Elect, which is provided in response to Question 12b.

In addition, in October of 2007, my husband and I hosted a fundraiser for then-presidential candidate Joe Biden.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

From 1984 to 1985, I served as law clerk to The Honorable Owens Taylor Cobb, Jr., South Carolina State Court.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1985 – Present
Lewis & Babcock, L.L.P.
1513 Hampton Street
Columbia, South Carolina 29201
Associate (1985 – 1987)
Partner (1987 – present)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as a mediator or an arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

After completing my judicial clerkship in 1985, I joined my current firm (which at that time was known as Lewis, Babcock, Gregory & Pleicones) as an associate and became a partner in 1987.

I have actively practiced law with Lewis & Babcock, L.L.P., as it is now known, for more than 25 years. The small size of our firm required me, even as a new associate, to become quickly involved in all aspects of the civil litigation process. As a young attorney, I drafted pleadings, deposed witnesses, prepared and responded to discovery requests, drafted motions and supporting memoranda, prepared cases for trial, tried cases, wrote appellate briefs, and presented oral arguments to appellate courts. One of the first matters I ever worked on went to the Supreme Court of the United States.

As I continued to gain knowledge and experience in litigation, I assumed responsibility for increasingly complex matters, such as product liability cases, class action cases, and healthcare litigation.

My experience is not only varied in the types of cases I have litigated, but also the clients I have represented. I represent plaintiffs and defendants. I have represented individuals in suits against large corporations and have defended multi-national corporations against such suits. In addition, although civil litigation is our focus, my firm is also frequently called upon to provide guidance to other lawyers and judges in a host of other matters, including attorney and judicial grievance procedures.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

My typical client includes individuals, victims of professional negligence, lawyers and others in need of defense against negligence claims, building owners, landowners, businesses with contractual disputes, *qui tam* defendants, class action plaintiffs, class action defendants, lawyers, and members of our state judiciary.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

The matters I have handled during my nearly 25 years of practice have been almost entirely litigation related, and virtually all required me to appear in court. Some matters required me to appear occasionally and others required me to appear frequently. Many of the matters I have handled included numerous motions, which required my appearance at their hearings. Also, the cases that have gone to trial have required my appearance for several days or weeks. Last year, my cases required me to appear in court approximately 30 days, which is fairly typical.

- i. Indicate the percentage of your practice in:

- 1. federal courts: 40%
- 2. state courts of record: 50%
- 3. other courts: 10%
- 4. administrative agencies: 0%

- ii. Indicate the percentage of your practice in:

- 1. civil proceedings: 100%
- 2. criminal proceedings: 0%

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment, or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I estimate the number of cases I have tried to verdict, judgment or final decision to be 15. I believe in most I was either sole counsel or associate counsel.

- i. What percentage of these trials were:
 - 1. jury: 70%
 - 2. non-jury: 30%

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

My firm has handled three matters before the Supreme Court of the United States in which I had varying degrees of involvement. I did not present the oral argument in any of these appeals, but I was a member of the appellate team and did contribute to the briefs and preparations for oral argument.

- 1. City of Columbia v. Omni Outdoor Advertising, Inc., 499 U.S. 365 (1991). I contributed to the Opposition to the City's Petition for Certiorari, the Appellee's brief on the merits, and the preparations for the oral argument. Copies of the briefs supplied.
- 2. Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992). I contributed to the Petition for Certiorari and the Petitioner's Brief and Reply Brief on the merits, and prepared my senior partner for the oral argument. Copies of the briefs supplied.
- 3. Hammond v. Butler, Means, Evins & Brown, 300 S.C. 458, 388 S.E.2d 796 (1990), *cert. denied*, 498 U.S. 952 (1990). I was the principal author of the brief opposing the Petition for Writ of Certiorari. I have been unable to locate a copy of this brief.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Florida Evergreen Foliage v. E.I. duPont de Nemours & Co., 165 F. Supp. 2d 1345 (S.D. Fla. 2001).

This case was one of a group of cases litigated in federal courts in Florida and Hawaii in which I participated as a member of the litigation team on behalf of the plaintiffs. These cases centered on claims against DuPont alleging that it fraudulently withheld scientific data and information in discovery in order to induce the plaintiffs to sign settlement agreements. Certified questions to both the Delaware Supreme Court and the Hawaii Supreme Court were involved. E.I. du Pont de Nemours & Co. v. Florida Evergreen Foliage, 744 A.2d 457 (Del. 1999); Matsuura v. E.I. du Pont de Nemours & Co., 73 P.3d 687 (Haw. 2003). Both State Supreme Courts allowed a cause of action for fraudulent concealment to proceed in spite of the existence of releases.

The Hawaii cases were allowed to proceed to a jury. Living Designs, Inc. v. E.I. du Pont de Nemours & Co., 431 F.3d 353 (9th Cir. 2005); Matsuura v. Alston & Bird, 166 F.3d 1006 (9th Cir. 1999); Matsuura v. E.I. du Pont de Nemours & Co., 330 F. Supp. 2d 1101 (D. Haw. 2004). These cases were settled satisfactorily on the eve of trial. The Florida cases were dismissed upon the pleadings based, *inter alia*, on a very broad grant of immunity in civil damage suits for the conduct of the parties, witnesses, and lawyers. Green Leaf Nursery v. E.I. du Pont de Nemours & Co., 341 F.3d 1292 (11th Cir. 2003).

I participated in every facet of discovery, discovery motions, pretrial motions, and dispositive motions. Among other things, I addressed conflict of laws and was involved with the application of countless rules of federal procedure.

- a. My representation began in 2001 and ended in 2007.
- b. Florida Evergreen Foliage v. E.I. DuPont de Nemours & Co., 165 F. Supp. 2d 1345 (S.D. Fla. 2001); District Court Judge Alan S. Gold

E.I. du Pont de Nemours & Co. v. Florida Evergreen Foliage, 744 A.2d 457 (Del. 1999); Delaware Supreme Court Justices Randy J. Holland, Joseph T. Walsh, and Carolyn Berger

Matsuura v. E.I. du Pont de Nemours & Co., 73 P.3d 687 (Haw. 2003); Hawaii Supreme Court Justices Ronald T. Moon, Steven H. Levinson, Paula A. Nakayama, Mario R. Ramil, and Siemon R. Acoba, Jr.

Matsuura v. Alston & Bird, 166 F.3d 1006 (9th Cir. 1999); Circuit Judges James R. Browning, Alfred Goodwin, and Mary M. Schroeder

Matsuura v. E.I. du Pont de Nemours & Co., 330 F. Supp. 2d 1101 (D. Haw. 2004); District Judge Manuel L. Real

Living Designs, Inc. v. E.I. du Pont de Nemours & Co., 431 F.3d 353 (9th Cir. 2005); Circuit Judges Sidney Runyan Thomas, Barry G. Silverman, and Richard R. Clifton

Green Leaf Nursery v. E.I. du Pont de Nemours & Co., 341 F.3d 1292 (11th Cir. 2003); Circuit Judges Stanley F. Birch, Joel F. Dubina, and Phyllis A. Kravitch

c. Co-counsel:

Stephen Cox, Esq.
Cox & Moyer
1000 Marina Village Parkway, Suite 120
Alameda, CA 94501
(510) 978-4426

Primary Opposing Counsel:

A. Stephens Clay, Esq.
Kilpatrick Stockton, LLP
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309
(404) 815-6514

2. Hammond v. Butler, Means, Evins & Brown, 300 S.C. 458, 388 S.E.2d 796 (1990), *cert. denied*, Kramer v. Hammond, 498 U.S. 952 (1990).

Our firm brought this malpractice action on behalf of the plaintiff, a urologist, against his former South Carolina law firm and a New York attorney (Kramer). The plaintiff controlled over 70% of the stock in a company he formed that owned the patent rights to a medical device known as a lithotripter. The Complaint essentially alleged that plaintiff's interest was diminished to less than 10% as a result of the improper actions of the defendant lawyers. It contained several causes of action, including fraud, negligence, conspiracy, and breach of fiduciary duty. Defendant Kramer moved to dismiss the Complaint for lack of personal jurisdiction. The trial judge denied the motion, holding there was jurisdiction over Kramer under the South Carolina long-arm statute. Kramer appealed, and the South Carolina Supreme Court affirmed. His Petition to the Supreme Court of the United States for a Writ of Certiorari was denied. I was the principal author of the brief opposing the Petition for Writ of Certiorari.

I personally handled the vast majority of the discovery involved in this case. Through the depositions of several of the defendant lawyers and the use of requests for documents and interrogatories, I developed the facts that ultimately allowed for a very satisfactory resolution of the case.

- a. My representation of the plaintiff began in 1986 and ended in approximately 1992.
- b. The case was brought in South Carolina State Court in the Spartanburg County Court of Common Pleas. The Honorable William H. Ballenger denied the Motion to Dismiss for lack of personal jurisdiction. The Honorable Thomas L. Hughston also heard motions in the case.
- c. Opposing Counsel:

O. Doyle Martin, Esq.
213 Whitseth Street
Greenville, SC 29601
(864) 235-9090

Ellis M. Johnston, Esq.
Haynsworth Sinkler Boyd, P.A.
Post Office Box 2048
Greenville, SC 29602
(864) 240-3217

- 3. University of South Carolina v. U.S. Gypsum, Richland County, Court of Common Pleas, Civil Action No. 85-CP-40-3789.

My firm served as co-counsel in this product liability action commenced by the University of South Carolina against several manufacturers of asbestos-containing construction materials. Recovery was sought for the cost of removing those materials from over 100 buildings on the University's campus. As formulas were available that allowed for the specific identification of the manufacturer and approximate date of application of the construction material, liability was not the focus of the discovery. Rather, the focus was on the amount of asbestos material that would be removed and the cost of its removal, as well as the primary defense raised by the manufacturers – the statute of limitations. I focused on the facts and law relating to this defense and personally handled the discovery, including the control and production of over two million documents, and the numerous depositions that developed the facts that allowed us to defeat the defendants' Motion for Summary Judgment and ultimately allowed for an extremely satisfactory settlement of the litigation.

- a. Our representation of the Plaintiff began in 1985 and ended in 1990.
- b. This action was filed in South Carolina State Court in the Richland County Court of Common Pleas. The Honorable John Hamilton Smith, Sr. (now retired) presided over the litigation.

c. Co-counsel:

Joseph B. Cox, Jr., Esq.
100 Midland Road
Pinehurst, NC 28374
(910) 215-0151

Terry E. Richardson, Jr., Esq.
Richardson, Patrick, Westbrook & Brickman, LLC
Post Office Box 1368
Barnwell, SC 29812
(803) 541-7850

Opposing Counsel:

The Honorable P. Michael Duffy
Post Office Box 835
Charleston, SC 29402
(843) 579-1460

Steven W. Ouzts, Esq.
Turner Padgett Graham & Laney, P.A.
1901 Main Street, 17th Floor
Columbia, SC 29201
(803) 227-4255

William S. Davies, Jr., Esq.
1641 Tanglewood Road
Columbia, SC 29204
(803) 606-6334

Donald A. Cockrill, Esq.
Gray L. Geddie, Esq.
Phillip A. Kilgore, Esq.
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
300 North Main Street
Greenville, SC 29601
(864) 271-1300

4. Kingdom of Lesotho v. Planning Research Corp., United States District Court for the District of Columbia, Case No. 1:86-cv-00839-TFH.

My firm was hired by the African Kingdom of Lesotho to bring a claim for cost overruns against Planning Research Corporation (an American engineering firm) and the construction firm involved in the construction of a road through the country's mountainous terrain. Before construction of the road, it was impossible

to cross from one side of Lesotho to the other without entering South Africa. The road was finally completed, but because of the engineering firm's reliance on faulty topographical data, the cost overruns were enormous. As venue was appropriate in the United States District Court for the District of Columbia, we associated local counsel in Washington, D.C. to assist us. I handled much of the discovery, pretrial matters, and trial preparation the case involved. The case was settled shortly before jury selection.

- a. My representation of the plaintiff began in 1985 and ended in 1988.
- b. This action was brought in United States District Court for the District of Columbia and assigned to The Honorable Thomas F. Hogan.
- c. Co-counsel:
Mitchell R. Berger, Esq.
Patton Boggs, LLP
2550 M Street, N.W.
Washington, DC 20037
(202) 456-5601

Opposing Counsel:

Wesley G. Howell, Esq.
Gibson, Dunn & Crutcher
200 Park Avenue
New York, NY 10166
(212) 351-4000

5. Johnson v. Collins Entm't, Inc., United States District Court for the District of South Carolina, Civil Action Nos. 98-2225, 99-1601, 99-1709; 204 F.3d 573 (4th Cir. 2000).

In this multi-party suit, plaintiffs sought certification of a plaintiff class on one side, comprising every person who had played video poker in South Carolina, and a defendant class on the other, comprising every person who had owned and operated video poker machines in the state. Plaintiffs' complaint, as amended, asserted civil RICO claims and claims for declaratory and injunctive relief, among others. My law firm and Nelson Mullins Riley & Scarborough, LLP, were co-counsel to a group of approximately 30 corporate and individual defendants named in the action. I worked on all aspects of this complex case, including discovery, legal strategy, and motions during the approximately five years in which our clients were involved in the litigation. Discovery was expansive and complex, including many parties' and experts' depositions as well as written and document discovery. Marked by a very active motions practice, the case produced over 150 orders and one reported decision from the federal district court, an appeal to the Fourth Circuit (including a petition for rehearing *en banc*),

and two instances in which the district court certified questions to the South Carolina Supreme Court. Reported decisions in the case include: Johnson v. Collins Entm't Co., Inc., 88 F. Supp. 2d 499 (D.S.C. 1999) (granting partial summary judgment to plaintiffs on their claims for declaratory and injunctive relief); Johnson v. Collins Entm't Co., Inc., 199 F.3d 710 (4th Cir. 1999) (reversing district court order granting partial summary judgment to plaintiffs); Johnson v. Collins Entm't Co., Inc., 204 F.3d 573 (4th Cir. 2000) (denying petition for rehearing *en banc*); Johnson v. Collins Entm't Co., Inc., 333 S.C. 96, 508 S.E.2d 575 (1998) (answering in the negative certified questions related to whether video gaming machines fell within the definition of a lottery under state law); Johnson v. Collins Entm't Co., Inc., 349 S.C. 613, 564 S.E.2d 653 (2002) (answering seven certified questions of state law).

- a. Our representation of the Defendants began in 1997 and ended in 2002.
- b. The case was litigated in the United States District Court for the District of South Carolina before The Honorable Joseph F. Anderson and was appealed to the United States Court of Appeals for the Fourth Circuit.
- c. Co-Counsel:

Dwight F. Drake, Esq.
B. Rush Smith, III, Esq.
Nelson Mullins Riley & Scarborough, LLP
Post Office Box 11070
Columbia, SC 29211
(803) 799-2000

Richard A. Harpootlian, Esq.
Richard A. Harpootlian, P.A.
1410 Laurel Street
Post Office Box 1090
Columbia, SC 29202
(803) 252-4848

James W. Bannister, Esq.
Bannister & Wyatt, LLC
401 Pettigru Street
Greenville, SC 29601
(864) 298-0084

Opposing Counsel:

The Honorable Richard M. Gergel
Judge, United States District Court
Post Office Box 835
Charleston, SC 29402
(843) 579-2610

Carl L. Solomon, Esq.
The Solomon Law Group
1519 Richland Street
Columbia, SC 29201
(803) 391-3120

6. United States ex rel. Drakeford v. Tuomey Healthcare Sys., Inc., United States District Court for the District of South Carolina, Civil Action No. 3:05-cv-2858-MJP.

This *qui tam* action, in which the United States intervened, is significant in a number of respects. It is the first case where the Government proceeded against a hospital under the False Claims Act (“FCA”) based solely on the theory that employment contracts between the hospital’s subsidiaries and physicians on its medical staff violated the Ethics in Patient referrals law, 42 U.S.C. § 1395nn, also known as the “Stark Law.” It is also one of the few FCA cases against a hospital – and the only one based on the Stark Law – that was fully tried before a jury. After a nearly four-week trial, the jury reached a verdict that our client, Tuomey, did not violate the FCA, but the trial judge subsequently entered judgment in favor of the Government on its equitable claims. That judgment is currently on appeal to the Fourth Circuit Court of Appeals, and presents a number of interesting procedural issues, such as the scope of the Stark Law and the extent to which the Government can pursue equitable claims when it has an adequate remedy at law under the FCA. My co-counsel and I were responsible for defending countless depositions; drafting numerous discovery requests and responses, dispositive and pretrial motions, responses and supporting memoranda; preparing for and arguing motions; participating in every strategy decision; and significantly participating in an elaborate, albeit unsuccessful, mediation process. I was also a member of the trial team that presented the witnesses and evidence in a nearly month-long trial that resulted in a defense verdict by the jury.

- a. My representation of Tuomey Healthcare Systems, Inc., began in 2007 and continues today.
- b. The case was brought in the United States District Court for the District of South Carolina. The Honorable Matthew J. Perry, Jr. presided over the litigation.

c. Co-Counsel:

Daniel M. Mulholland, III, Esq.
Horty, Springer & Mattern, P.C.
4614 Fifth Avenue
Pittsburgh, PA 15213
(412) 687-7677

E. Bart Daniel, Esq.
Post Office Box 856
Charleston, SC 29402
(843) 722-2000

Joseph P. Griffith, Jr., Esq.
Joe Griffith Law Firm, LLC
7 State Street
Charleston, SC 29401
(843) 225-5563

Matthew R. Hubbell, Esq.
7 Sate Street
Charleston, SC 29401
(843) 720-3184

William W. Wilkins, Esq.
Kirsten E. Small, Esq.
Nexsen Pruet, LLC
Post Office Box 10648
Greenville, SC 29603
(864) 370-2211

Opposing Counsel:

G. Norman Acker, III, Esq.
Assistant United States Attorney
Civil Division
310 New Bern Avenue, Suite 800
Raleigh, NC 27601
(919) 856-4315

Tracy L. Hilmer, Esq.
U.S. Department of Justice
Civil Division
Post Office Box 261
Ben Franklin Station
Washington, DC 20044
(202) 307-0474

Kevin M. Barth, Esq.
Ballenger, Barth & Hoefler
Post Office Box 107
Florence, SC 29503
(843) 662-6301

7. Norwest Fin. Res., Inc., v. Policy Fin. Co., Richland County Court of Common Pleas, Civil Action No. 97-CP-40-4111.

I was lead counsel for two of the defendants in this case, Policy Finance Company and Seibels Bruce & Company. The suit included claims for breach of an asset purchase agreement, rescission, restitution, and unjust enrichment. In addition to standard denials, my answer contained a counterclaim for breach of contract and a cross-claim for indemnification against the other defendants.

My clients had been in the insurance business in South Carolina for over a hundred years. The company has operated through various structures and through several wholly-owned subsidiaries, one being Premium Service Corporation (PSC), which offered premium financing for certain commercial policies and operated successfully for several years. PSC entered into an agreement to sell virtually all of its assets, including its accounts receivables, to the Plaintiff Norwest Financial Resources, Inc. (Norwest). Approximately three years after the purchase, Norwest employees discovered that an agent for Defendant Security of Hartford (with whom PSC had conducted business before the sale and with whom Norwest continued to conduct business for several years after the sale) had engaged in a fraudulent scheme in which he applied for and obtained premium financing from PSC/Norwest on behalf of insureds that either did not exist or who existed but had not been issued policies.

I personally handled the ensuing litigation for more than three years. The case involved numerous depositions and several motions over discovery issues. The parties agreed to mediate, and they reached a fair settlement of the case.

- a. My representation of Seibels Bruce & Company and Policy Finance Company in this matter began in 1997 and ended in 2000.

b. The action was brought in the South Carolina State Court in the Richland County Court of Common Pleas. It was given complex case designation and assigned to The Honorable Alison R. Lee.

c. Opposing Counsel:

William Narwold, Esq.
Motley Rice, LLC
20 Church Street, 17th Floor
Hartford, CT 06103
(860) 882-1676

Co-Defense Counsel:

S. Keith Hutto, Esq.
Kevin A. Hall, Esq.
Nelson Mullins Riley & Scarborough, L.L.P.
Post Office Box 11070
Columbia, SC 29211
(803) 799-2000

8. Constant v. Spartanburg Steel Prods., Inc., 316 S.C. 86, 447 S.E.2d 194 (1994).

I was asked by trial counsel for the plaintiff to handle the defendant's appeal of the plaintiff's jury verdict for defamation. My client was an employee of Spartanburg Steel who was accused of theft by his employer. He sued his employer for defamation after learning that a machine that he was accused of stealing was not missing. The jury awarded the plaintiff \$400,000 in actual damages and \$100,000 in punitive damages. The defendant appealed, raising the excessiveness of the verdict as well as several evidentiary errors, including the admission of statements it asserted were protected by a qualified privilege. I was the primary author of the respondent's brief. The verdict was affirmed by the South Carolina Supreme Court.

a. My representation of the plaintiff/respondent began in 1993 and ended in 1994.

b. The appeal was filed in the South Carolina Supreme Court. The Justices that heard the appeal were Chief Justice David Harwell, Justice Lee Chandler, Justice Ernest Finney, Justice Jean Toal, and Justice James Moore.

c. Co-Counsel:

Edwin C. Haskell, III, Esq.
Smith & Haskell Law Firm, LLP
218 East Henry Street
Spartanburg, SC 29306
(864) 582-6727

Opposing Counsel:

Charles E. Carpenter, Jr., Esq.
Carpenter Appeals & Trial Support, LLC
1201 Main Street
Columbia, SC 29201
(803) 758-2886

David H. Wilkins, Esq.
Nelson Mullins Riley & Scarborough, LLP
Post Office Box 10084
Greenville, SC 29603

9. Southern Bell Telephone & Telegraph Co. v. W.R. Grace & Co.-Conn., United States District Court for the District of South Carolina, Civil Action No. 3:91-1285-21.

I was principal counsel for the plaintiff, Southern Bell, in this product liability action. The case was brought against W. R. Grace & Co.-Conn., the manufacturer of the asbestos-containing fireproofing material that was used in the construction of the Southern Bell's headquarters in Columbia, South Carolina. The action sought recovery for the removal of this material.

It involved years of very extensive and aggressive discovery, which I personally handled. The case required control and production of an enormous amount of documents and included a long list of witnesses, virtually all of whom were deposed. At the close of discovery, the defendant moved for summary judgment. After the motion was denied, the case was settled.

- a. My representation of Southern Bell in this matter began in approximately 1990 and ended in 1992.
- b. The action was litigated in the United States District Court for the District of South Carolina before The Honorable William B. Traxler, Jr.

c. Co-counsel:

Fred A. Walters, Esq.
Law Offices of Fred A. Walters, LLC
Post Office Box 12534
Columbia, SC 29211
(803) 206-0402

Opposing Counsel:

Donald A. Cockrell, Esq.
L. Gray Geddie, Jr.
Ogletree, Deakins, Nash, Smoak and Stewart, P.C.
300 North Main Street
Greenville, SC 29601
(864) 271-1300

10. Collins Entertainment Corp. v. Drews Distributing, Inc., United States District Court for the District of South Carolina, Civil Action No. 6:96-3398-13.

I represented the defendant Drews Distributing, Inc., a distributor of video poker machines, in a breach of contract action against Collins Entertainment. The damages claimed were substantial, and there was an aggressive prosecution of claims for breach of contract and tortious interference with contract. Discovery was extensive, and it included the production of documents and deposition of witnesses, both lay and expert. I personally handled all of the discovery and tried the case with my senior partner. The court directed a verdict in favor of our client. That verdict was appealed to the Fourth Circuit Court of Appeals, and we handled the appeal. The Fourth Circuit affirmed in an unpublished decision at 173 F.3d 849 (4th Cir. 1999).

We also tried a related case, Drews Distributing, Inc. v. Leisure Time Technologies, Inc., Civil Action No. 7:96-3307-13 (D.S.C. 1997), in which our client received an award of damages in excess of \$3,000,000. We handled the appeal of that award, and I was the primary author of the appellee's brief. The Fourth Circuit affirmed the award. Drews Distrib., Inc. v. Leisure Time Techs., Inc., 175 F.3d 1014 (4th Cir. 1999) (unpublished).

- a. My representation of the Drews Distributing, Inc. began in approximately 1997 and ended in 1999.
- b. The case was litigated in the United States District Court for the District of South Carolina. The Honorable G. Ross Anderson, Jr., presided over all matters.

c. Opposing counsel:

Eric S. Bland, Esq.
Bland Richter, LLP
Post Office Box 72
Columbia, SC 29202
(803) 256-9664

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Virtually all of my legal activities have been litigation related; however, most cases do not progress to actual trial. Some of the more significant matters that I have pursued that fall into this category include class actions on behalf of consumers and taxpayers, insurance coverage litigation, medical negligence litigation, legal and accounting negligence litigation, construction litigation, and commercial contract litigation. A considerable amount of my time is spent counseling clients about solutions to the problems they face and whether the facts and laws applicable to their situations make litigation appropriate. Often the decision is to forego litigation altogether. These decisions require the ability to identify the real matters at issue, provide solutions to those issues, and conduct the cost/benefit analysis associated with this process. For a period of several years I served as the initial evaluator of potential lawsuits that our firm was asked to consider handling. I reviewed the facts and performed a legal analysis upon which the firm's decision to accept or reject a case was based.

When the decision is made to proceed with litigation, or when defending a client in litigation, my objective evaluation of the merits of each side in a case more often than not allows the parties to reach a reasonable settlement of the case. Often with the assistance of a professional mediator, I have been able to resolve many very complex multi-party cases before trial.

I have also served as a commissioner of South Carolina Educational Television, as a member of the South Carolina Film Industry Task Force, and as a member of the Transition Team for newly-elected South Carolina Governor, James H. Hodges, where I served on the Subcommittee on Law Enforcement.

I have not participated in any lobbying activities.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe

briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I do not have any plans, commitments, or agreements to pursue outside employment with or without compensation during my service with the court.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement..

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

The only potential conflict of interest that I anticipate at this point would be any matter involving one or more of my law partners. I will handle all matters involving actual or potential conflicts of interest through the careful and diligent application of the Code of Conduct for United States Judges as well as other relevant canons and statutory provisions. Whenever necessary to ensure

impartiality or to avoid the appearance of partiality, I would disclose ties to litigants and recuse myself as appropriate.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will handle all matters involving actual or potential conflicts of interest through the careful and diligent application of the Code of Conduct for United States Judges as well as other relevant canons and statutory provisions. Whenever necessary to ensure impartiality or to avoid the appearance of partiality, I would disclose ties to litigants and recuse myself as appropriate.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Throughout my more than 25 years of legal practice, I have devoted significant time and effort providing legal advice and representation to individuals who were unable to pay for my services.

Over the years, I have been appointed numerous times by our State Courts to represent parents, children, guardians ad litem, and others in actions brought by our State Department of Social Services. These actions included those for termination of parental rights, child support and custody. With only one exception, I have never sought compensation for my services and have willingly devoted countless hours counseling these clients, preparing for and making court appearances on their behalf.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

There is no selection commission in my jurisdiction. In December of 2008, I traveled to Washington, D.C. and met briefly with Congressmen James E. Clyburn and John M. Spratt, Jr. At the time there were several vacancies on our federal district court bench. I expressed my interest in the vacancies to each of them in separate meetings.

I received a letter dated June 8, 2009, from Representatives Clyburn and Spratt informing me that they had provided my name, along with others, to the White House for consideration.

Since November 8, 2010, I have been in contact with pre-nomination officials at the Department of Justice. On December 22, 2010, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On March 16, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AFFIDAVIT

I, Mary G Lewis, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

3-14-11
(DATE)

Mary G. Lewis
(NAME)

Melanie B. Blease
(NOTARY)

Notary Public for South Carolina
My Commission Expires 8/1/16