IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

THOMAS DAAKE and
ADELE DAAKE,

CASE NO.: 16-CA-006491

Plaintiffs,

vs.

PHELPS DUNBAR, L.L.P and
MICHAEL BRUNDAGE, individually,

Defendants.
_____/

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, THOMAS DAAKE and ADELE DAAKE, sue Defendants, PHELPS DUNBAR, L.L.P. and MICHAEL P. BRUNDAGE, individually, and state as follows:

JURISDICTION, PARTIES, AND VENUE

1. This is an action for damages in excess of $15,000.00, exclusive of costs, interest and attorneys' fees.

2. Plaintiffs, Thomas O. Daake, Sr. and Adele Z. Daake (the "Daakes"), are individual residents of Walton County, Florida.

3. Defendant, Phelps Dunbar, L.L.P. ("Phelps"), operates in Florida as both a general partnership and limited liability partnership engaged in the practice of law with its principal place of business in Hillsborough County, Florida.

4. Defendant, Michael Brundage ("Brundage"), is an attorney, licensed to practice law in the State of Florida, and is a resident of Pinellas County, Florida. Brundage is a partner at Phelps and resident in Phelps' Tampa office.

5. Jurisdiction and venue are proper in Hillsborough County, Florida pursuant to section 47.011, Florida Statutes, as Brundage and Phelps are located in Hillsborough County.

FACTUAL BACKGROUND

A. THE FLORIDA JUDGMENT AND RETENTION OF PHELPS AND BRUNDAGE

6. In October of 2004, the Daakes commenced an action in Walton County, Florida against their home builder, C-D Jones & Company, Inc. ("CD Jones"), for the improper and incomplete construction of the Daakes' home (the "Florida Case").[1]

7. Until 2006, CD Jones was owned by Dennis Jones and Cynthia Jones ("Dennis and Cynthia Jones").

8. Upon information and belief, and in anticipation of a judgment in the Florida Case, CD Jones made substantial fraudulent transfers to various transferees.

9. In July of 2009, a jury verdict was entered in favor of the Daakes in the Florida Case.

10. As a result of the jury verdict, on July 30, 2009, CD Jones filed a voluntary petition for Chapter 7 bankruptcy in the Northern District of Florida (the "Bankruptcy Case").[2]

11. On October 1, 2009, a *Final Judgment* was entered in favor of the Daakes and against CD Jones in the Florida Case for the total amount of $5,196,707.67 (the "Final Judgment"). A copy of the Final Judgment in the Florida Case is attached as **Exhibit "A."**

12. In August of 2010, the Daakes retained Brundage to represent them in connection with the Bankruptcy Case and to pursue alleged fraudulent transfers made by CD Jones to various transferees.

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[1] *Thomas and Adele Daake v. CD-Jones and Company, Inc. and A.F.A.B. Contractors, Inc*., 1st Cir. Ct. for Walton County, Florida, Case No. 2004-CA-00438.

[2] *In re: C.D. Jones & Company, Inc.*, Bankruptcy Court, Bankr. N.D. Fla., Case No.: 09-31595-KKS.

13. At all times, Brundage advised that the fraudulent transfer claims against the CD Jones transferees were meritorious and of his abilities to recover a significant amount of fraudulent transfers from certain transferees.

B. THE GEORGIA CASE

14. One of the many alleged fraudulent transfers at issue was a $750,000.00 wire transfer from CD Jones to Dennis and Cynthia Jones for the purpose of hindering, delaying, and defrauding the Daakes.

15. Upon information and belief, the fraudulent transfer was sent to a bank in Rabun County, Georgia, and the funds were used by Dennis and Cynthia Jones to acquire and construct a luxury mountain home worth more than $1.5 million in Dillard, Georgia (the "Jones Mansion").[3]

16. In pursuit of this transfer and others, on February 22, 2012, Brundage filed a complaint on behalf of the Daakes against Dennis and Cynthia Jones in the Superior Court of Rabun County, Georgia (the "Georgia Case").[4]

17. At the time Brundage filed the complaint in the Georgia Case, Brundage was not licensed in Georgia, had not applied for an order granting *pro hac vice* admission and did not have the requisite level of skill or competence to undertake such representation on his own.

18. Under Georgia law, causes of action with respect to a fraudulent transfer are extinguished unless the action is brought "within one year after the transfer or obligation was or could have reasonably have been discovered by the claimant[.]" O.C.G.A. § 18-2-79.

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[3] The following Zillow link provides information on the Jones Mansion as well as 36 color photos of the recently constructed 5 bed, 7 baths, 9,015 sq. ft. home: http://www.zillow.com/homedetails/300-Upper-Scenic-Dr-Dillard-GA-30537/93124086_zpid/.

[4] *Thomas and Adele Daake v. Dennis and Cynthia Jones*, Super. Ct. of Rabun County, Georgia, Case No. 2012-CV-0073C. The Georgia Case sought avoidance of the fraudulent transfers (Count I); the imposition of a resulting trust (Count II); and an equitable lien on the Jones' Property (Count III).

19. The fraudulent transfers were not and could not have reasonably been discovered by the Daakes until late 2011. Thus, the Georgia Case had been timely commenced within one year—on February 22, 2012.

20. On February 23, 2012, Brundage recorded a *lis pendens* against the Jones Mansion.

21. Within days of filing the Georgia Case, Brundage left the law firm of Hill Ward Henderson, P.A. and began his employment at Phelps. The Daakes made the transition from Hill Ward Henderson to Phelps with Brundage.

22. Shortly after the filing of the Georgia Case, Phelps retained the law firm of Hulsey, Oliver & Mahar, LLP ("HO&M"), ostensibly to act as local counsel for Phelps in the Georgia Case because Brundage was not licensed in Georgia and could not handle the case alone.

23. Several months after its retention, HO&M sent a letter formally terminating its relationship with Brundage, Phelps, and the Daakes. The HO&M termination letter is attached as **Exhibit "B."**

24. HO&M detailed Brundage and Phelps' indifference for the Daakes and the basis for termination as follows:

> Over the course of our representation, despite numerous requests by phone and by email, you [Brundage] have failed to respond with the information necessary for either of us to complete the contracted tasks. Accordingly, despite our best efforts, we have been unable to file entries of appearance in the [Georgia Case], to file an amended complaint, or to secure your admission to the Rabun County Superior Court *pro hac vice.*

25. As HO&M severed its relationship with Brundage and Phelps for their failure to communicate with HO&M, it further cautioned Brundage about the sufficiency of the complaint and the statute of limitations in the Georgia Case:

> At our initial discussion in this case in May, and several times since then, we have advised you that in our opinion, the Complaint filed in this case is inadequate, not only because it has been filed by attorneys not licensed to practice law in Georgia, but also because it lacks sufficient allegations to support the many claims for relief that the Daakes may have available to them. We also have concerns about the statute of limitations in the case, which will expire soon, one year from the date after the fraudulent transfer in question was or could reasonably have been discovered by the Daakes.

26. After the termination by HO&M, Brundage assured the Daakes that a Phelps' attorney, who was licensed in Georgia, would appear in the Georgia Case.

27. On October 15, 2012, Brundage,[5] Lara Keahey[6] and Phelps filed an amended complaint in the Georgia Case.[7]

28. Three days later, on October 18, 2012, the Rabun County Superior Court served a *Notice to Attorneys of Record in Cases Ready for Trial*, which was mailed to Brundage at his address of record (the "Notice"). A copy of the Notice is attached as **Exhibit "C."**

29. The Notice directed Brundage and Phelps to take specific actions, including: (i) submitting a Pretrial Information Form to the court by November 12, 2012; (ii) appearing for a Calendar Call and Pretrial Conference on November 27, 2012; and (iii) filing a Consolidated Proposed Pretrial Order by January 2, 2013.

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[5] At the time of filing the amended complaint, Brundage was still not licensed or otherwise admitted to practice law in Georgia.

[6] It appears that Ms. Keahey was an associate in Phelps' Mobile office and is no longer with the firm. Ms. Keahey is currently an inactive member in good standing with the Georgia Bar. It is unknown whether Ms. Keahey was an active member of the Georgia Bar at the time she filed the complaint.

[7] The amended complaint stated claims for avoidance of the fraudulent transfers (Count I); attachment and levy against the Jones' Property (Count II); injunctive relief (Count III); the imposition of a resulting trust (Count IV); an equitable lien on the Jones' Property (Count V); and attorney's fees and costs (Count VI).

30. The Notice stated that **"if plaintiff fails to timely file a pretrial information form, the Court will dismiss the complaint without prejudice at the calendar call."**

31. Despite clear instructions from the court, Brundage, Ms. Keahey and Phelps failed to file the Pretrial Information Form and failed to appear on behalf of the Daakes at the Calendar Call and Pretrial Conference.

32. On November 28, 2012, the Rabun County Superior Court entered an Order involuntarily dismissing the Georgia Case for want of prosecution for failure to "file a pretrial information form or answer ready at the call of the calendar[.]" A copy of the Order of Dismissal is attached as **Exhibit "D."**

33. On January 21, 2013, after the dismissal of the Georgia Case and dissolution of the *lis pendens*, Dennis Jones filed a quitclaim deed transferring the Jones Mansion to DAJ Asset Management Limited Partnership (an Arizona partnership of which Dennis Jones is the sole member).

34. On or about April 23, 2014—**almost a year and half after the dismissal**—the Daakes received an e-mail communication from Brundage and Phelps notifying them for the first time that the Georgia Case had been dismissed.

35. Prior to April 23, 2014, the Daakes were unaware that the Georgia Case had been dismissed because Brundage and Phelps never advised the Daakes of the dismissal.

36. By the time Brundage and Phelps notified the Daakes' of the dismissal of the Georgia Case, the Daakes' claims had long been extinguished under Georgia's statute of limitations.

37. Brundage's and Phelps' duties of care included a reasonable duty to comply with the Notice entered in the Georgia Case by filing the Pretrial Information Form and appearing at

the Calendar Call and Pretrial Conference, and a duty to reasonably communicate with and notify the Daakes of the dismissal and expiration of the statute of limitations.

38. Brundage and Phelps failed to file the Pretrial Information Form, failed to appear at the Calendar Call and Pretrial Conference, failed to file a Consolidated Proposed Pretrial Order by January 2, 2013 and failed to tell the Daakes for years what had occurred.

39. Brundage's and Phelps' negligence and failure to comply with the Notice resulted in the involuntary dismissal of the Georgia Case and the expiration of the *lis pendens*.

C. THE ESCAMBIA CASE

40. On June 13, 2012, during the pendency of the Georgia Case, Brundage and Phelps commenced an action in Escambia County against certain transferees who allegedly received transfers from CD Jones (the "Escambia Case").[8]

41. The Escambia Case remained dormant for nearly two years and was dismissed with prejudice on September 10, 2014.

42. **The Daakes have never been advised by Phelps or Brundage why the Escambia Case was dismissed**.

43. Brundage's and Phelps' duties of care included a reasonable duty to explain to the Daakes the reasons for the dismissal of the Escambia Case with prejudice.

44. Upon information and belief, Brundage's and Phelps' negligence resulted in the dismissal of the Escambia Case with prejudice.

D. THE BANKRUPTCY CASE AND RELATED ADVERSARY CASE

45. Brundage and Phelps concurrently represented the Daakes in CD Jones' Bankruptcy Case and three related adversary proceedings (the "Adversary Cases").[9]

[8] *Thomas O. Daake and Adele Z. Daake v. Dennis Jones, et al.,* 1st Cir. Ct. for Escambia County, Florida, Case No.: 12-CA-001425.

46. Two of the Adversary Cases were filed by Brundage and Phelps in an attempt to recover additional fraudulent transfers by CD Jones and the other was commenced by purported transferees of CD Jones against the Daakes.

47. As a result of Brundage's and Phelps' failure to comply with discovery requests, the Daakes have been sanctioned by the Court on several occasions in certain of the Adversary Cases.[10]

48. These sanctions, without question, harmed the Court's perception of the propriety of the Daakes' claims in the Adversary Cases.

49. Additionally, the Daakes were assured by Brundage and Phelps that in exchange for funding fraudulent transfer litigation on behalf of the CD Jones' bankruptcy estate, the Daakes would be entitled to recover attorneys' fees paid to Phelps out of any recovery in the bankruptcy as a result of their "substantial contribution" to the Bankruptcy Case.

50. A "substantial contribution" recovery is never a certainty in bankruptcy, particularly in cases with few unsecured creditors and *de minimis* recoveries.

51. Brundage and Phelps advised that the Daakes would be entitled to a "substantial contribution" recovery in order to induce the Daakes to retain Brundage and Phelps and to pay Brundage and Phelps substantial and unnecessary attorneys' fees.

52. Further, the Daakes were never advised that, rather than shouldering litigation on behalf of the bankruptcy estate, they could simply purchase the bankruptcy estate's claims and pursued them independently against the CD Jones transferees.

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[9] *Thomas Daake & Adele Daake v. Christopher Jones*, Bankr. N.D. Fla., Adv. Pro. No.: 11-03045-KKS; *Christopher Jones v. Thomas Daake & Adele Daake*, Bankr. N.D. Fla., Adv. Pro. No.: 15-03007-KKS; and *Thomas O. Daake, Sr. & Adele Z. Daake v. C.D. Jones & Company, Inc., et al.*, Bankr. N.D. Fla., Adv. Pro. No.: 15-03002-KKS.

[10] In Adversary Case No: 11-03045-KKS, the Court sanctioned the Daakes for discovery violations on May 28, 2014 [Doc. 354] and August 26, 2014 [Doc. 403].

53. Purchasing the bankruptcy estate's claims would not only have allowed the Daakes to pursue the claims independently of the bankruptcy estate and the trustee, but would also have entitled the Daakes to 100% of any recovery on the claims.

54. By pursuing the claims on behalf of the estate in the bankruptcy, any recovery would be reduced *pro-rata* by other creditors' claims as well as priority administrative expense claims, including the trustee's fees and costs.

55. The Daakes were never advised to purchase the bankruptcy estate's claims.

56. By not advising the Daakes to purchase the claims, Brundage and Phelps were able to charge significantly more attorneys' fees to the Daakes, as well as foreclose the likelihood that Brundage and Phelps would not be retained for any post-purchase litigation because Brundage and Phelps do not maintain offices in Northern Florida or Georgia where the post-purchase litigation would have been venued.

57. Ultimately, certain of the CD Jones transferees were able to purchase a release from any of the estate's claims for $250,000 from the bankruptcy estate, while Brundage and Phelps objected, they did not advise the Daakes to simply purchase the claims. Instead, Phelps and Brundage continued contentious, costly and unnecessary litigation in the Bankruptcy Case.

58. Had Brundage and Phelps properly advised the Daakes, the Daakes would have purchased the claims and not incurred significant fees to Brundage and Phelps.

59. Brundage and Phelps' duties of care included a reasonable duty to comply with discovery requests in the Adversary Case, to advise the Daakes that a "substantial contribution" recovery was not guaranteed in the Bankruptcy Case, and to advise the Daakes they could have purchased the estate's claims and pursued them independently.

E. FAILURE TO ADVISE AT MEDIATION

60. On November 30, 2012, the Daakes mediated their dispute with certain of the alleged transferees of the CD Jones' transfers.

61. During the mediation, Phelps was not aware or did not advise the Daakes that two days before the mediation conference, the Georgia Case had been dismissed for Brundage's and Phelps' failure to appear at the pre-trial conference.

62. Phelps had a duty to utilize ordinary skill, competence and knowledge in advising the Daakes at mediation.

63. As a result of Brundage's and Phelps' lack of knowledge of the dismissal or failure to disclose the dismissal to the Daakes and general lack of knowledge of the issues in the Bankruptcy Case, Brundage and Phelps failed to exercise ordinary skill and care during the mediation.

64. Had Brundage and Phelps appropriately advised the Daakes, the Daakes would have acted differently at mediation.

F. FAILURE TO ADVISE THE DAAKES OF $500,000 SANCTIONS

65. On September 22, 2015, while actively representing the Daakes, counsel for the defendant-transferee in the Bankruptcy Case and Adversary Cases sent a demand letter to Brundage and Phelps demanding sanctions "in excess of $500,000 in compensatory damages, as well as punitive damages" against not only the Daakes, but also Brundage and Phelps for their actions in the Bankruptcy Case and Adversary Cases (the "Demand Letter"). A copy of the Demand Letter is attached as **Exhibit "E."**

66. The Demand Letter also demanded a copy of any insurance policies covering the Daakes, Brundage and Phelps.

67. The Demand Letter was never transmitted to the Daakes by Brundage or Phelps and was only recently discovered by the Daakes on June 23, 2016, more than eight months after it was sent to Phelps and after the Daakes retained substitute bankruptcy counsel for Phelps.

68. Upon information and belief, Brundage and Phelps actively concealed the Demand Letter from the Daakes so they would not become aware of Brundage's and Phelps' failures and negligence in representing the Daakes in the Bankruptcy and the Adversary Cases.

69. Upon information and belief, Brundage never made firm leadership at Phelps aware of the Demand Letter and Phelps' leadership first became aware of the Demand letter when undersigned counsel sent the Demand Letter to internal counsel at Phelps.

G. PENDING SANCTIONS MOTIONS

70. On May 26, 2016, the bankruptcy trustee and the defendant-transferee in the Adversary Cases filed **three** *Joint Motions for Sanctions for Bad Faith Conduct* (the "Joint Sanctions Motions").[11]

71. Prior to the filing of the Joint Sanctions Motions, in early April of 2016, the Daakes replaced Phelps with substitute counsel in the Bankruptcy and Adversary Cases.

72. The hiring of substitute counsel has resulted in significant and unnecessary attorneys' fees to the Daakes.

73. For its part, Brundage and Phelps have decided not to respond to the Joint Sanctions Motions themselves, and have, instead hired outside counsel to respond to the Joint Sanctions Motions and defend against any sanctions.

74. All conditions precedent to the maintenance to this action have been performed, excused or waived.

[11] Copies of the *Joint Sanctions Motions* are attached as **Exhibits "F," "G" and "H."**

75. The Daakes have retained the law firm of Morgan & Morgan, P.A. to prosecute their interests in this matter, and are obligated to pay said attorneys a reasonable attorneys' fee for its services.

COUNT I
PROFESSIONAL MALPRACTICE
(Phelps Dunbar, L.L.P.)

76. The Daakes reallege the allegations set forth above in Paragraphs 1 through 75 as if fully set forth herein.

77. This is an action for professional malpractice brought by the Daakes against Phelps.

78. At all times material, Phelps was in the business of providing professional legal services for compensation to the general public.

79. As set forth above, the Daakes employed Phelps to represent them in pursuing CD Jones' fraudulent transfers in the Georgia Case, the Escambia Case, the Bankruptcy Case, and the Adversary Case.

80. As a professional law firm, Phelps owed the Daakes a duty to use reasonable care and to render services with that degree of skill, care, knowledge, and judgment possessed and exercised by other members of the legal profession.

81. Phelps negligently and carelessly performed its legal services and otherwise violated its professional duty of care through the actions or inactions described herein.

82. Specifically, Phelps breached the duty it owed to the Daakes to exercise that degree of care that would be exercised by other reasonably skilled legal professionals practicing under the same circumstances by: (i) failing to file the Pretrial Information Form and appear at the Calendar Call and Pretrial Conference in the Georgia Case; (ii) failing to explain to the

Daakes the reasons for the dismissal of the Escambia Case with prejudice; (iii) failing to comply with discovery requests in the Adversary Cases; (iv) failing to advise the Daakes that a "substantial contribution" recovery was not guaranteed in the Bankruptcy Case; (v) failing to advise the Daakes in the Bankruptcy Case that they could have purchased the estate's fraudulent transfer claims and pursued them independently; (vi) lacking knowledge of the dismissal of the Georgia Case or failing to disclose the dismissal to the Daakes during mediation; (vii) failing to advise the Daakes of the Demand Letter and request for $500,000 in sanctions and any insurance policies; and (viii) otherwise failing to advise, counsel and perform throughout the representation of the Daakes in all cases.

83. As set forth above, the Daakes have suffered significant damages as a direct and proximate result of Phelps' failure to provide professional legal services at a level expected of reasonably competent legal professionals.

WHEREFORE, the Daakes demand judgment for damages against Phelps, including costs, interest, and any further relief the Court deems appropriate.

COUNT II
PROFESSIONAL MALPRACTICE
(Michael Brundage Individually)

84. The Daakes reallege the allegations set forth above in Paragraphs 1 through 75 as if fully set forth herein.

85. This is an action brought by the Daakes against Brundage, individually, for professional malpractice.

86. Upon information and belief, at all material times, Brundage was employed by Phelps, a member in good standing with the Florida Bar, and was a licensed professional within the meaning of section 95.11, Florida Statutes.

87. As set forth above, the Daakes retained Brundage as their representative to pursue CD Jones' fraudulent transfers in the Georgia Case, the Escambia Case, the Bankruptcy Case, and the Related Adversary Proceeding.

88. As a licensed legal professional, Brundage owed the Daakes a duty to use reasonable care and to render services with that degree of skill, care, knowledge, and judgment possessed and exercised by other members of the legal profession.

89. Brundage negligently and carelessly performed legal services and otherwise violated her professional duty of care through the actions or inactions described herein.

90. Specifically, Brundage breached the duty he owed to the Daakes to exercise that degree of care that would be exercised by other reasonably skilled legal professionals practicing under the same circumstances by: (i) failing to file the Pretrial Information Form and appear at the Calendar Call and Pretrial Conference in the Georgia Case; (ii) failing to explain to the Daakes the reasons for the dismissal of the Escambia Case with prejudice; (iii) failing to comply with discovery requests in the Adversary Case; (iv) failing to advise the Daakes that a "substantial contribution" recovery was not guaranteed in the Bankruptcy Cases; (v) failing to advise the Daakes in the Bankruptcy Case that they could have purchased the estate's fraudulent transfer claims and pursued them independently; (vi) lacking knowledge of the dismissal of the Georgia Case or failing to disclose the dismissal to the Daakes during mediation; (vii) failing to advise the Daakes of the Demand Letter and request for $500,000 in sanctions and any insurance policies; and (viii) otherwise failing to advise, counsel and perform throughout the representation of the Daakes in all cases.

91. As set forth above, the Daakes have suffered significant damages as a direct and proximate result of Brundage's failure to provide professional legal services at a level expected of reasonably competent attorneys.

WHEREFORE, the Daakes demand judgment for damages against Brundage, including costs, interest, and any further relief the Court deems appropriate.

COUNT III
NEGLIGENCE
(Phelps Dunbar, L.L.P.)

92. The Daakes reallege the allegations set forth above in Paragraphs 1 through 75 as if fully set forth herein.

93. This is an action brought by the Daakes against Phelps for negligence.

94. At all material times, Phelps owed a duty of care to the Daakes to act in the Daakes' best interests and to exercise reasonable care in connection with its provision of professional legal services to the Daakes.

95. Through the actions or inactions described herein, Phelps breached its duty of care to the Daakes.

96. As a direct, foreseeable, and proximate result of the negligence of Phelps, the Daakes have been damaged.

WHEREFORE, the Daakes demand judgment for damages against Phelps, including costs, interest, and any further relief the Court deems appropriate.

COUNT IV
NEGLIGENCE
(Michael Brundage Individually)

97. The Daakes reallege the allegations set forth above in Paragraphs 1 through 75 as if fully set forth herein.

98. This is an action brought by the Daakes against Brundage, individually, for negligence.

99. At all material times, Brundage owed a duty of care to the Daakes to act in the Daakes' best interests and to exercise reasonable care in connection with its provision of professional legal services to the Daakes.

100. Through the actions or inactions described herein, Brundage breached his duty of care to the Daakes.

101. As a direct, foreseeable, and proximate result of the negligence of Brundage, the Daakes have been damaged.

WHEREFORE, the Daakes demand judgment for damages against Brundage, including costs, interest, and any further relief the Court deems appropriate.

COUNT V
BREACH OF FIDUCIARY DUTY
(Phelps Dunbar, L.L.P.)

102. The Daakes reallege the allegations set forth above in Paragraphs 1 through 75 as if fully set forth herein.

103. This is an action by the Daakes against Phelps for breach of fiduciary duty.

104. The Daakes reposed their trust and confidence in Phelps, and Phelps undertook that trust and assumed the duty to advise, counsel, and protect the Daakes' interests.

105. Phelps owed the Daakes a fiduciary duty of care in providing its professional legal services, including an obligation to act in good faith, to act with undivided loyalty, and to provide full and fair disclosure of all material facts.

106. Through the actions or inactions set forth above, Phelps breached its fiduciary duty owed to the Daakes.

107. As a direct and proximate result of Phelps' breach of fiduciary duty, the Daakes have suffered damages.

WHEREFORE, the Daakes demand judgment for damages against Phelps, including costs, interest and any further relief the Court deems appropriate.

COUNT VI
BREACH OF FIDUCIARY DUTY
(Michael Brundage Individually)

108. The Daakes reallege the allegations set forth above in Paragraphs 1 through 75 as if fully set forth herein.

109. This is an action by the Daakes against Brundage for breach of fiduciary duty.

110. The Daakes reposed their trust and confidence in Brundage, and Brundage undertook that trust and assumed the duty to advise, counsel, and protect the Daakes' interests.

111. Brundage owed the Daakes a fiduciary duty of care in providing professional legal services, including an obligation to act in good faith, to act with undivided loyalty, and to provide full and fair disclosure of all material facts.

112. Through the actions or inactions set forth above, Brundage breached the fiduciary duties he owed to the Daakes.

113. As a direct and proximate result of Brundage's breach of his fiduciary duties, the Daakes have suffered damages.

WHEREFORE, the Daakes demand judgment for damages against Brundage, including costs, interest and any further relief the Court deems appropriate.

DEMAND FOR TRIAL BY JURY

The Daakes demand trial by jury on all issues so triable.

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DATED: July 12, 2016

CFN # 1094766, OR BK 2827 Page 545, Recorded 10/02/2009 at 01;22 PM, MARTHA INGLE, WALTON COUNTY CLERK OF COURT Deputy Clerk S HALL

IN THE CIRCUIT COURT IN AND FOR WALTON COUNTY, FLORÿJÿ' M

THOMAS O, DAAKE, SR. and ADELE Z. DAAKE,

2009 OCT ~I P I* 52

Plaintiffs,

vs.

CASE NOi 2004-CA-000438
Consolidated with: 05-CA-000212

C-D JONES AND COMPANY, INC, and A.F.A.B. CONTRACTORS, INC.,

Defendants.

FINAL JUDGMENT IN FAVOR OF THOMAS O. DAAICE, SR. AND ADELE Z. DAAKE AND AGAINST C-D JONES AND COMPANY. INC.

This cause came before the Court for a trial by jury from June 22, 2009, through July 2, 2009. Pursuant to the Verdict rendered in this action on July 2, 2009, and the orders and rulings of the Court made during the trial it Is ORDERED and ADJUDGED that:

1. On the claim of the Plaintiffs, Thomas O. Ddake, Sr. and Adele Z. Daake, ("Daakes") for Breach of Contract against C-D Jones and Company, Inc. ("C-D Jones"), the findings of the Jury as contained within the Verdict are Incorporated herein by reference, and, accordingly, the Daakes are entitled to and hereby granted judgment against C-D Jones as follows;

a,	Principal:	$3,073,464.75
b.	Prejudgment Interest;	$1,672,891.07 (as of July 2, 2009)
c*	Total:	$4,746,355.82

2. In addition to the foregoing, the Daakes are entitled to recover liquidated damages pursuant to the terms of the parties' contract for the 802 days of delay determined by the jury, plus Interest thereon from January 12, 2004 to July 2, 2009, as follows:

a.	802 Days at $100 per day;	$80,200.00

EXHIBIT "A"

b.	Construction Loan Interest during delay perlodt	$406,331.24
c.	Total Liquidated Damages!	$486,531.24
d.	Prejudgment Interesfi (as of July 2, 2009)	$237,320.61
e.	Total:	$723,851.85

3. On the claim of the Daakes against C-D Jones for Breach of Implied Warranties, the oral ruling by the Court granting C-D Jones a directed verdict on this issue Is Incorporated herein by reference and reaffirmed. Specifically, the legal basis of the Court's ruling Is that no Implied warranties arise until construction Is completed.

4. On the claim of the Daakes against C-D Jones under § 553.84, Fla. Stat., for violations of the building code, the Court, by separate order, has granted C-D Jones's renewed motion for directed verdict.

5. On the Daakes' claim against C-D Jones for a Fraudulent Lien, the findings of the jury as contained within the Verdict are incorporated herein by reference, and, accordingly, the Daakes are entitled to and hereby granted judgment against C-D Jones as follows:

a. Based upon the jury's findings that C-D Jones's lien was fraudulent on al! three bases provided In § 713.31(2), Fla. Stat., the Hen of C-D Jones Is unenforceable, void, and C-D Jones has forfeited its lien on the Daakes' property. Accordingly, the Claim of Lien recorded by C-D Jones on June 25, 2004, In Official Records Book 2617, at pages 3338 – 3339 in the Public Records of Walton County shall be and is hereby discharged and of no force and effect, together with any Notice of Us Pendens ever recorded by C-D Jones relating to such Claim of Lien.

b. The Daakes are entitled to punitive damages in the amount set by the jury of $100,000, for which judgment shall be and is hereby entered.

c. The Daakes are also entitled to recover, pursuant to § 713.31(2)(c), Fla. Stat., their attorneys' fees and costs from C-D Jones, the amount of which shall be determined subsequently by the Court upon further motion and hearing.

6. On the claim of C-D Jones against the Daakes for foreclosure of its construction lien, in light of the findings by the jury that such lien was fraudulent as set forth in paragraph 5 hereof, C-D Jones shall take nothing on such claim and the Daakes shall go hence without day as to such claim. Further, pursuant to § 713.29, Fla. Stat., the Daakes are entitled, as the prevailing party on such claim, to recover their attorney's fees and costs from C-D Jones, the amount of which shall be determined subsequently by the Court upon further motion and hearing. In addition, all claims against any other party defendant to such count, including, without limitation, A.F.A.B. Contractors, Inc., Decks N Such Marine, Inc., and Bank of America, N.A., shall be and are hereby dismissed with prejudice, and such parties are also entitled to the recovery of their respective attorney's fees and costs from C-D Jones which shall be determined subsequently by the Court upon further motion and hearing.

7. On the claim of C-D Jones against the Daakes for Breach of Contract, the findings of the jury as contained within the Verdict are incorporated herein by reference, and, accordingly, C-D Jones shall take nothing on such claim, and the Daakes shall go hence without day as to such claim.

8. On the claim of C-D Jones against the Daakes for Quantum Meruit, C-D Jones voluntarily dismissed such claim at trial, which dismissal is hereby ratified and

confirmed. Accordingly, C-D Jones shall take nothing on such claim, and the Daakes shall go hence without day as to such claim.

9. On the claim of C-D Jones against the Daakes for an Equitable Claim of Lien, C-D Jones voluntarily dismissed such claim at trial, which dismissal is hereby ratified and confirmed. Accordingly, C-D Jones shall take nothing on such claim, and the Daakes shall go hence without day as to such claim.

10. On the claim of C-D Jones against the Daakes for "Breach of Implied Obligation of Good Faith and Fair Dealing," C-D Jones voluntarily dismissed such claim at trial, which dismissal is hereby ratified and confirmed. Accordingly, C-D Jones shall take nothing on such claim, and the Daakes shall go hence without day as to such claim.

11. The Daakes have received in settlement from other parties who were subcontractors to C-D Jones and previously parties to this case sums totaling $373,500.00, which amount is to be applied to the amounts adjudged herein against C-D Jones for breach of contract, liquidated damages, and the interest thereon (the items set forth in paragraphs 12.a and 12.b, below).

12. Accordingly, judgment is hereby entered in favor of the Daakes and against C-D Jones in the total sum calculated as follows:

a. Daakes' Breach of Contract Claim:	$4,746,355.82
b. Daakes' Liquidated Damages Claim:	$723,851.85
c. Punitive Damages:	$100,000.00
d. Subtotal:	$5,570,207.67
e. Settlement Funds Credit:	($373,500.00)
f. *TOTAL JUDGMENT:*	*$5,196,707.67*

WHICH AMOUNT SHALL BEAR INTEREST FROM JULY 2, 2009, AT THE STATUTORY RATE OF 8%, FOR ALL OF WHICH LET EXCUTION ISSUE

13. The Daakes are the prevailing parties in this action, and accordingly are entitled to recover their taxable costs from C-D Jones, pursuant to Rule 1.525, Fla. R. Civ. P., and Chapter 57, Fla. Stat., the amount of which shall be determined subsequently by the Court upon further motion and hearing.[1]

14. Jurisdiction of this case is also retained to enter further orders that are proper, to consider motions for attorneys' fees and costs, or to enter such further orders as required or permitted by law.

DONE AND ORDERED this 1st day of Oct 2009, In Chambers, DeFuniak Springs, Walton County, Florida.

W. Howard LaPorte
Circuit Judge

Name and Address of Judgment Creditor:	Name and Address of Judgment Debtors:
Thomas O. Daake, Sr. and Adele Z. Daake 26 Portland Place St. Louis, MO 63108	C-D Jones & Company, Inc. 10859 Emerald Coast Pkwy W. #4-430 Destin, FL, 32550

[1] The Court makes no ruling herein as to the interrelationship between the claims on which attorneys' fees are recoverable and those on which on which they are not recoverable.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following by regular United States mail on this 2 day of Oct., 2009.

Attorney for the Daakes:
Bruce D. Partington
Clark Partington Hart
P.O. Box 13010
Pensacola, FL 32591-3010

Attorney for C-D Jones:
John A. Unzicker, Jr.
Vernis & Bowling
315 S. Palafox Street
Pensacola, FL 32502

Attorney for Decks N Such:
H. Wesley Reeder
Emmanuel, Sheppard & Condon
30 South Spring Street
Pensacola, FL 32502

Attorney for C-D Jones:
Jennifer Hanson Copus
Copus & Copus, P.A.
1817 Lewis Turner Blvd., Ste. E
Ft. Walton Beach, FL 32547

Attorney for AFAB:
Samuel B. Taylor
P.O. Box 1474
Destin, FL 32540-1474

Martha Ingle
Clerk of Court

By: Sharla Law
Deputy Clerk

CLERK OF COURTS * ESCAMBIA COUNTY, FLORIDA *

LAW OFFICES
HULSEY, OLIVER & MAHAR, LLP
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THOMAS L. FITZGERALD
THOMAS D. CALKINS
ABBOTT S. HAYES, JR.
PAUL B. SMART
JASON A. DEAN
T. WESLEY ROBINSON
JASON E. VOYLES
JESSICA M. LUND
VANESSA E. SYKES

E. D. KENYON
(1890-1981)
SAMUEL L. OLIVER
(1942-2011)

OF COUNSEL
JAMES E. MAHAR, JR.
(Practice Limited to Mediation and Arbitration)
JANE A. RANGE

September 11, 2012

Via Certified Mail, Return Receipt Requested
and Via E-Mail to brundagm@phelps.com

Michael P. Brundage
Phelps Dunbar, LLP
1000 South Ashley Drive
Suite 1900
Tampa, Florida 33602

Re: Termination of Contract for Legal Services
Thomas and Adele Daake v. Dennis and Cynthia Jones
Superior Court of Rabun County, Georgia; Civil Action File No. 2012-CV-0073C

Dear Mr. Brundage:

Please accept this correspondence as a follow-up to my phone messages and email to you and Ms. Skillman on August 29, 2012. We are hereby terminating our relationship with you and Thomas and Adele Daake, established pursuant to the engagement letter dated May 14, 2012 and signed by you on June 15, 2012.

Over the course of our representation, despite numerous requests by phone and by email, you have failed to respond with the information necessary for either of us to complete the contracted tasks. Accordingly, despite our best efforts, we have been unable to file entries of appearance in the above-styled case, to file an amended complaint, or to secure your admission to the Rabun County Superior Court *pro hac vice*.

At our initial discussion in this case in May, and several times since then, we have advised you that in our opinion, the Complaint filed in this case is inadequate, not only because it has been filed by attorneys not licensed to practice law in Georgia, but also because it lacks sufficient allegations to support the many claims for relief that the Daakes may have available to them. We also have been very concerned about the statute of limitations in this case, which will expire soon, one year from the date after the fraudulent transfer in question was or could reasonably have been discovered by the Daakes. *See* O.C.G.A. § 18-2-74(a)(1) and § 18-2-79. We are uncertain of the exact expiration date of the statute of limitation, since you have not ever provided to us the exact date the Daakes discovered or could have discovered the fraudulent transfer; however, you have stated that the discovery was in late 2011, which means that the one-

year time frame is fast approaching. Since your Complaint is insufficient and may also be deemed to be invalid, as the case currently stands, the Daakes will be exposed to a valid statute of limitation defense if the amended Complaint is filed and served after the expiration of the statute of limitation.

Additionally, we have discussed with you our significant concerns about service in this case, which as you know, has not been perfected either *in rem* or *in personam*. While you do not believe that personal jurisdiction over the Joneses is necessary to achieve the relief you seek in this case, we believe that all attempts should be made to achieve personal jurisdiction by personal service of an amended Complaint upon Mr. and Mrs. Jones *before* the expiration of the statute of limitation. Additionally, achieving *in rem* jurisdiction, such as by publication, takes many weeks, and the window of time for such service is fast closing.

Despite our addressing these concerns numerous times by phone and email, in which we clearly advised you that responses to specific questions are necessary for us to proceed, you have failed to respond at all. This lack of communication has negatively impacted our ability to effectively represent Mr. and Mrs. Daake, and so we cannot allow this relationship to continue.

Accordingly, as of this date, our agreement is terminated, and the law firm of Hulsey, Oliver & Mahar, LLP no longer represents you, your firm or Thomas and Adele Daake. You will be responsible for all matters relating to your admission *pro hac vice* and the litigation of the above-referenced Rabun County Superior Court matter. I remind you that the pressing issues of the expiration of the statute of limitation later this year, as well as your admission *pro hac vice* must be handled promptly, or your clients' ability to pursue these claims may be lost, permanently.

Enclosed, please find an invoice, detailing all work performed on this case since the date of the last invoice mailed to you and noting that such work has been paid for from your retainer fee. Pursuant to the invoice, the Daakes have a balance of $91.25 remaining on their retainer fee, and so we are including with their copy of this letter a firm check for $91.25, as a refund of that remaining amount. Accordingly, all matters concerning our representation and the termination thereof are resolved at this time.

We wish you and the Daakes the best in your pursuit of this case.

Yours very truly,

Vanessa E. Sykes
Attorney at Law

Jessica M. Lund
Attorney at Law

Enclosure

C: Thomas and Adele Daake (with enclosure and check)

VES/9290W145134

IN THE SUPERIOR COURT OF RABUN COUNTY
STATE OF GEORGIA

NOTICE TO ATTORNEYS OF RECORD IN
CASES READY FOR TRIAL

A list of all pending cases assigned to me filed through 30 June 2012, have been filed with the Clerk of the Superior Court and constitutes the ready list for the up-coming term of Court. You may access the cases listed on the calendar at the web site for the Mountain Judicial Circuit at georgiacourts.org/courts/superior/mountaincourt. Cases are placed on the ready list if an answer has been filed for six months or longer. A case on the ready list will be called for trial absent a continuance being granted by the Court.

Attached is a form titled "Pretrial Information." You should complete this form (please use this format) for each pending case and return it to me *within 15 days of the date of this notice.* It is not necessary to file this form with the Clerk. If either side desires a comprehensive pretrial hearing, so indicate on the pretrial information form. Pretrials will be held immediately following the calendar call. If plaintiff fails to timely file a pretrial information form, the Court will dismiss the complaint without prejudice at calendar call. Failure of defendant to submit a completed pretrial information form as required may result in the dismissal of defendant's defensive pleadings. See OCGA Sec. 9-11-16; *Weeks v. Weeks,* 243 Ga. 416.

Calendar call will be held on the date indicated below for the purpose of establishing a trial calendar. A CONSOLIDATED proposed pretrial order must be filed with the Court by the due date below. You will receive a copy of the trial calendar at least 20 days prior to the beginning of trials. *If a pretrial conference is NOT desired by either party, and the pretrial information form has been completed and returned within the prescribed time, your presence at the calendar call is NOT required. However, a CONSOLIDATED proposed pretrial order must be filed by the due date as written above.*

Please notify opposing counsel of the calendar call and ensure that opposing counsel is aware of the requirement of filing the pretrial information form and *CONSOLIDATED* proposed pretrial order.

Effective as of the date the consolidated pretrial is due, no amendments or further discovery shall be allowed except by order of the Court.

The Court's schedule for the up-coming term of Court is as follows:

Pretrial Information form due	12 November 2012
Calendar Call and Pretrial Conference - 9 AM	27 November 2012
Consolidated Proposed Pretrial Order due	02 January 2013
Civil Trials (B. Chan Caudell, Judge)	14 January 2013

AND IT IS SO ORDERED, this 18th day of October, 2012.

B. Chan Caudell

B. Chan Caudell, Judge
Superior Courts
Mountain Judicial Circuit

NOTE: Please comply with Uniform Rule 4.6 "To Notify of Representation."

#23

DO NOT FAX OR EMAIL PRETRIAL INFORMATION FORMS OR PROPOSED CONSOLIDATED PRETRIAL ORDERS.

EXHIBIT "C"

Please use this format

RABUN SUPERIOR COURT
STATE OF GEORGIA

_____	:	
_____	:	CIVIL ACTION
Plaintiff(s)	:	FILE NO. _____
- V -	:	PRETRIAL INFORMATION
_____	:	
_____	:	
Defendant(s)	:	

1. Date case filed _____
   Date answer filed _____
   Date discovery commenced _____

2. Jury _____ Non Jury _____
   (If the case is non jury counsel should schedule a final hearing prior to calendar call if the case has been pending more than six months and discovery is complete.)

3. Jury qualifications and contentions must be attached as Exhibit ".

4. The issues for the Court or jury must be attached as Exhibit B.

5. Is a comprehensive pretrial conference with the Court requested? _____
   If so, it will be held immediately following calendar call.

You must complete and return to Judge B. Chan Caudell, Post Office Box 485, Clarkesville, GA 30523 to be received no later than *12 NOVEMBER 2012*, a separate form for each (jury or non-jury) case you have on the ready list. Although you may have previously furnished a pretrial sheet on a particular case for a previous term, you are required to furnish it for this term likewise. If your case has been resolved you should contact the Clerk of Court concerning why it remains on the active calendar. The completion of this document does not obviate the filing of a consolidated pretrial.

_____	_____
Opposing Counsel	Lead Counsel for _____ (Client)
_____	_____
_____	_____
Mailing Address	Your Mailing Address

DO NOT FAX PRETRIAL INFORMATION FORMS OR PROPOSED CONSOLIDATED PRETRIAL ORDERS.

RABUN COUNTY SUPERIOR COURT

B. CHAN CAUDELL

Case Number	Style of Case	November 27, 2012 - 09:00AM

1.) 2010-CV-0400 REDDY SOLUTIONS, INC. VS INMED GROUP INC.,PROFESSIONAL RESOURCE MGMT INC.,PROFESSIONAL RESOURCES MGMT OF RABUN;OF CRENSHAW AND CRENSHAW CO HEALTHCARE

Filing: 07/13/2010 Cause: COMPLAINT ON CONTRACT

Plaintiff: REDDY SOLUTIONS, INC.

Defendant: INMED GROUP, INC. - Answer: 03/27/2009

PROFESSIONAL RESOURCE MANAGMENT, INC. - Answer: 09/03/2010

PROFESSIONAL RESOURCES MANAGMENT OF RABUN, LLC - Answer: 09/03/2010

PROFESSIONAL RESOURCE MANAGMENT OF CRENSHAW,LLC

THE CRENSHAW COUNTY HEALTHCARE AUTHORITY - Answer: 12/18/2009

Attorney: FRANK G GOLDMAN , for Plaintiff REDDY SOLUTIONS, INC.

MITCHELL L BAKER JR, for Defendant INMED GROUP, INC.

MITCHELL L BAKER JR, for Defendant PROFESSIONAL RESOURCE MANAGMENT, INC.

MITCHELL L BAKER JR, for Defendant PROFESSIONAL RESOURCES MANAGMENT OF RABUN, LLC

MITCHELL L BAKER JR, for Defendant PROFESSIONAL RESOURCE MANAGMENT OF CRENSHAW,LLC

RYAN K. MCLEMORE , for Defendant THE CRENSHAW COUNTY HEALTHCARE AUTHORITY

NOTES: PL ATTY: P.O. BOX 8115, ATLANTA, GA 31106
DF ATTY: P.O. BOX 1609, CLAYTON, GA 30525
DF CRENSHAW CO ATTY: 191 PEACHTREE ST, STE 4500
ATLANTA, GA 30303

2.) 2011-CV-0316 RICHARDS, SHERYL WEBSTER VS JOHNSTON, JENNIFER NELL DUTTON ET AL

Filing: 06/28/2011 Cause: APPEAL FROM PROBATE COURT

Plaintiff: SHERYL WEBSTER RICHARDS

Defendant: JENNIFER NELL DUTTON JOHNSTON

EILEEN DUTTON BULL

MARY FRANCES DUTTON JANIC

JAMES JOSEPH DUTTON JR

DEIDRE ANN SUTTON ZOOK

Attorney: R BRUCE RUSSELL SR, for Plaintiff RICHARDS, SHERYL WEBSTER

NICHOLE CARSWELL , for Defendant JOHNSTON, JENNIFER NELL DUTTON

NICHOLE CARSWELL , for Defendant BULL, EILEEN DUTTON

NICHOLE CARSWELL , for Defendant JANIC, MARY FRANCES DUTTON

NICHOLE CARSWELL , for Defendant DUTTON, JAMES JOSEPH

NICHOLE CARSWELL , for Defendant ZOOK, DEIDRE ANN SUTTON

NOTES: PL ATTY: P.O. BOX 1202, CLAYTON, GA 30525
DF ATTY: P.O. DRAWER 1408, TOCCOA, GA 30577

3.) 2011-CV-0330 HARDMAN, MARY ANN VS HARDMAN III, WILLIAM JACKSON

Filing: 07/06/2011 Cause: COMPLAINT FOR DIVORCE

Plaintiff: MARY ANN HARDMAN

Defendant: WILLIAM JACKSON HARDMAN III Service: 02/03/2012

Attorney: C. WILBUR WARNER JR, for Plaintiff HARDMAN, MARY ANN

KEVIN SWEAT , for Defendant HARDMAN, WILLIAM JACKSON

NOTES: PL ATTY: 3350 RIVERWOOD PKWY STE 2300, ATLANTA, GA 30339
DF ATTY: 304 E WASHINGTON ST, ATHENS, GA 30601

4.) 2011-CV-0349 FRANCK, BRIAN, CROWNE, ELLEN & KEITH, LOFTY HEIGHTS HOME OWNERS ASSOC. VS LIVINGSTON, GEORGE

Filing: 07/20/2011 Cause: COMPLAINT INTERLOCUTORY/INJUNCTION

Plaintiff: BRIAN FRANCK

KEITH COWNE

ELLEN COWNE

LOFTY HEIGHTS HOMEOWNER'S ASSOCIATION, INC.

Defendant: GEORGE LIVINGSTON Service: 07/22/2011

Attorney: ALLAN R RAMSAY , for Plaintiff FRANCK, BRIAN

ALLAN R RAMSAY , for Plaintiff LOFTY HEIGHTS HOMEOWNER'S ASSOCIATION, INC.

E. ALAN MILLER , for Plaintiff COWNE, KEITH

E. ALAN MILLER , for Plaintiff COWNE, ELLEN

MICHAEL H CUMMINGS II, for Defendant LIVINGSTON, GEORGE

NOTES: SEE ATTACHED EXHIBIT "A"

5.) 2011-CV-0404 BAUER, VICKI & IVAN VS TALLULAH RIVER RESORT CLUB, INC.

Filing: 08/19/2011 Cause: COMPLAINT FOR DEC RELIEF AND OTHER EQUIT RELIEF

Plaintiff: VICKI BAUER

IVAN BAUER

Defendant: TALLULAH RIVER RESORT CLUB, INC. Service: 08/27/2011

Attorney: ADAM CAIN , for Plaintiff BAUER, VICKI

ADAM CAIN , for Plaintiff BAUER, IVAN

MITCHELL L BAKER JR, for Defendant TALLULAH RIVER RESORT CLUB, INC.

NOTES: PL ATTY:244E WASHINGTON ST, ATHENS, GA 30601
DF ATTY:P.O. BOX 1609, CLAYTON, GA 30525

6.) 2011-CV-0461 NESMITH, DENNIS WAYNE VS NESMITH, CATHERINE BROWN

Filing: 09/27/2011 Cause: COMPLAINT FOR DIVORCE

Plaintiff: DENNIS WAYNE NESMITH

Defendant: CATHERINE BROWN NESMITH

Attorney: MICHAEL H CUMMINGS II, for Plaintiff NESMITH, DENNIS WAYNE

NINA SVOREN , for Defendant NESMITH, CATHERINE BROWN

NOTES: PL ATTY:P.O. BOX 1568, CLAYTON, GA 30525
DF ATTY:211 N BROAD ST., TOCCOA, GA 30577

7.) 2011-CV-0465 HERALD, DEBORAH VS TRADITIONAL WOODWORKING, LLC AND CARDEN, LEWIS, INDIVIDUALLY AND D/B/A LMC DESIGNS

Filing: 10/03/2011 Cause: COMPLAINT FOR SPECIFIC PERFORMANCE AND DAMAGES

Plaintiff: DEBORAH HERALD

Defendant: TRADITIONAL WOODWORKING, LLC Service: 10/05/2011 - Pro Se Filing

LEWIS CARDEN Service: 10/05/2011 - Pro Se Filing

LMC DESIGNS - Pro Se Filing

Attorney: MITCHELL L BAKER JR, for Plaintiff HERALD, DEBORAH

NOTES: PL ATTY:P.O. BOX 1609, CLAYTON, GA 30525
DF PRO SE:8985 OLD HWY 441S, LAKEMONT, GA 30552

8.) 2011-CV-0558 REAGAN, RICHARD VS REAGAN, KATIE SOPHIA

Filing: 11/30/2011 Cause: COMPLAINT

Plaintiff: RICHARD REAGAN

Defendant: KATIE SOPHIA REAGAN - Pro Se Filing

Attorney: R BRUCE RUSSELL SR, for Plaintiff REAGAN, RICHARD

NOTES: PL ATTY:P.O. BOX 1202, CLAYTON, GA 30525
DF PRO SE:136 MUFFIN LANE, RABUN GAP, GA 30568

9.) 2011-CV-0581 TISON, STEPHEN D. VS TISON, BETTY J.

Filing: 12/19/2011 Cause: PETITION FOR MODIFICATION OF CHILD SUPPORT

Plaintiff: STEPHEN D. TISON

Defendant: BETTY J. TISON Service: 01/05/2012

Attorney: D ERIK KENNEDY , for Plaintiff TISON, STEPHEN D.

L ALLYN STOCKTON JR, for Defendant TISON, BETTY J.

NOTES: PL ATTY:P.O. BOX 465, CLAYTON, GA 30525
DF ATTY:P.O. BOX 1550, CLAYTON, GA 30525

10.) 2011-CV-0599 BENSON, DANNY VS RABUN COUNTY BOARD OF EDUCATION, CHARLES BLACK CONSTRUCTION CO., SIMPSON TRUCKING & GRADING

Filing: 12/28/2011 Cause: COMPLAINT FOR REQUEST FOR EMERGENCY INJUNCTION

Plaintiff: DANNY BENSON

Defendant: RABUN COUNTY BOARD OF EDUCATION Service: 01/03/2012

CHARLES BLACK CONSTRUCTION COMPANY Service: 01/03/2012

SIMPSON TRUCKING AND GRADING Service: 01/12/2012

Attorney: MICHAEL H CUMMINGS II, for Plaintiff BENSON, DANNY

ERNEST H WOODS III, for Defendant SIMPSON TRUCKING AND GRADING

J. DOUGLAS STEWART , for Defendant CHARLES BLACK CONSTRUCTION COMPANY

PHILLIP HARTLEY , for Defendant RABUN COUNTY BOARD OF EDUCATION

JOHN H. SMITH , for Defendant SIMPSON TRUCKING AND GRADING

NOTES: SEE ATTACHED EXHIBIT "B"

11.) 2012-CV-0011 HOLCOMB, KAREN VS HOLCOMB, GARY

Filing: 01/04/2012 Cause: MOTION FOR A PERM FAMILY VIOLENCE PROTECTIVE ORDER

Plaintiff: KAREN HOLCOMB

Defendant: GARY HOLCOMB Service: 01/06/2012 - Pro Se Filing

Attorney: F.A.I.T.H., for Plaintiff HOLCOMB, KAREN

NOTES: PL ATTY: P.O. BOX 1964, CLAYTON, GA 30525
DF PRO SE: 1365 OLD HWY 441, CLAYTON, GA 30526

12.) 2012-CV-0013 ROOT, MALCOLM ROLAND VS ROOT, BRANDI L.

Filing: 01/09/2012 Cause: COMPLAINT FOR DIVORCE

Plaintiff: MALCOLM ROLAND ROOT

Defendant: BRANDI L. ROOT

Attorney: WINSLOW H. VERDERY Jr, for Plaintiff ROOT, MALCOLM ROLAND

NOTES: PL ATTY: P.O. BOX 1556, CORNELIA, GA 30531
DF PRO SE: NO ADDRESS ON FILE

13.) 2012-CV-0027 ADNA INVESTMENTS, LLC ETAL VS SHOOK, MARK A.(G)-STEPHENS FEDERAL BANK
Filing: 01/17/2012 Cause: POST JUDGMENT GARNISHMENT
Plaintiff: ADNA INVESTMENTS, LLC
AAO GEMINI CAPITAL GROUP, LLC
AAO FORWARD PROPERTIES INTERNATIONAL, INC.
AAO SIVLE INVESTMENTS, LLC
AAO CHASE BANK USA, N.A.
Defendant: MARK A. SHOOK - Pro Se Filing
STEPHENS FEDERAL BANK Service: 01/20/2012
Attorney: SARA G ROBIN , for Plaintiff ADNA INVESTMENTS, LLC
BRIAN C RANCK , for Defendant STEPHENS FEDERAL BANK
NOTES: PL ATTY: P.O. BOX 9541, SAVANNAH, GA 31412
DF PRO SE: P.O. BOX 1070 HIAWASSEE, GA 30546
G ATTY: P.O. BOX 1005, TOCCOA GA 30577

14.) 2012-CV-0039 NESMITH, WAYNE VS NESMITH, KEITH
Filing: 01/25/2012 Cause: COMPLAINT AND REQUEST FOR INJUNCTION
Plaintiff: WAYNE NESMITH
Defendant: KEITH NESMITH
Attorney: MICHAEL H CUMMINGS II, for Plaintiff NESMITH, WAYNE
CADMAN ROBB KIKER Jr, for Defendant NESMITH, KEITH
NOTES: PL ATTY: P.O. BOX 1568, CLAYTON, GA 30525
DF ATTY: P.O. BOX 999, CLARKESVILLE, GA 30523

15.) 2012-CV-0049 PRIDE ACQUISITIONS, LLC AS ASSIGNEE OF CHASE BANK USA, N.A. VS TOBIAS, NANCY R.
Filing: 01/31/2012 Cause: COMPLAINT ON ACCOUNT
Plaintiff: PRIDE ACQUISITIONS, LLC
Defendant: NANCY R. TOBIAS - Pro Se Filing
Attorney: KYLE A COOPER , for Plaintiff PRIDE ACUISITIONS, LLC
NOTES: PL ATTY: 615 COLONIAL PARK DR,STE 104, ROSWELL, GA 30075
DF PRO SE: 5093 WOLFFORK RD, RABUN GAP, GA 30568

16.) 2012-CV-0052 DICKERSON, PATRICIA VS DICKERSON, BRIAN
Filing: 02/02/2012 Cause: PETITION FOR MODIFICATION
Plaintiff: PATRICIA DICKERSON
Defendant: BRIAN DICKERSON
Attorney: SUSAN CAMPBELL , for Plaintiff DICKERSON, PATRICIA
RICHARD TUNKLE , for Defendant DICKERSON, BRIAN
NOTES: PL ATTY: P.O. BOX 489, CORNELIA, GA 30531
DF ATTY: 17 CHECHERO ST, CLAYTON, GA 30525

17.) 2012-CV-0053 RICHARD TUNKLE, LLC VS CHAMBLEY, ASHLEE (G)-COMMUNITY BANK & TRUST
Filing: 02/03/2012 Cause: POST JUDGMENT GARNISHMENT
Plaintiff: RICHARD TUNKLE, LLC
Defendant: ASHLEE CHAMBLEY Service: 02/09/2012 - Pro Se Filing
COMMUNITY BANK & TRUST Service: 02/06/2012 - Pro Se Filing
Attorney: RICHARD TUNKLE , for Plaintiff RICHARD TUNKLE, LLC
NOTES: PL ATTY: 17 CHECHERO ST., CLAYTON, GA 30525
DF PRO SE: NO ADDRESS ON FILE
G: 174 N. HWY 441, CLAYTON, GA 30525

18.) 2012-CV-0057 BERGBREITER, DEE DEE VS RABUN COUNTY BOARD OF EDUCATION
Filing: 02/08/2012 Cause: NOTICE OF APPEAL
Plaintiff: DEE DEE BERGBREITER
Defendant: RABUN COUNTY BOARD OF EDUCATION
Attorney: MICHAEL H CUMMINGS II, for Plaintiff BERGBREITER, DEE DEE
BRIAN SMITH , for Defendant RABUN COUNTY BOARD OF EDUCATION
NOTES: PL ATTY: P.O. BOX 1568, CLAYTON, GA 30525
DF ATTY: 340 JESSE JEWELL PKWY STE 750, GAINESVILLE, GA 30501

19.) 2012-CV-0063 FLORY, REBECKA S. & SMITH, ERNEST L. VS HOUSTON, MICHAEL & KYLIE
Filing: 02/14/2012 Cause: COMPLAINT FOR EASMENT
Plaintiff: REBECKA S. FLORY - Pro Se Filing
ERNEST L. SMITH - Pro Se Filing
Defendant: MICHAEL HOUSTON
KYLIE HOUSTON
Attorney: MITCHELL L BAKER JR, for Defendant HOUSTON, MICHAEL
MITCHELL L BAKER JR, for Defendant HOUSTON, KYLIE
NOTES: PL PRO SE: P.O. BOX 212, WILEY, GA 30581
DF ATTY: P.O. BOX 1609, CLAYTON, GA 30525

20.) 2012-CV-0066 CIOCHETTI, ASHLEY VS LONG, KEVIN BROCK
Filing: 02/20/2012 Cause: PETITION FOR CHANGE OF CUSTODY & CONTEMPT
Plaintiff: ASHLEY CIOCHETTI
Defendant: KEVIN BROCK LONG
Attorney: TIMOTHY P HEALY , for Plaintiff CIOCHETTI, ASHLEY
KEN KLIMASEWSKI , for Defendant LONG, KEVIN BROCK
NOTES: PL ATTY: P.O. BOX 1004, TOCCOA, GA 30577
DF ATTY: P.O. BOX 1151, CLAYTON, GA 30525

21.) 2012-CV-0071 RICKS, JAMES VS RICKS, CARMEN

Filing: 02/22/2012 Cause: MOTION FOR CONTEMPT

Plaintiff: JAMES RICKS

Defendant: CARMEN RICKS

Attorney: L ALLYN STOCKTON JR, for Plaintiff RICKS, JAMES

NOTES: PL ATTY: P.O. BOX 1550, CLAYTON, GA 30525
DF PRO SE: NO ADDRESS ON FILE

22.) 2012-CV-0072 RAZOR CAPITAL, LLC ASSIGNEE OF HSBC BANK NEVADA, N.A. VS WEINSTIN, MITCHELL

Filing: 02/22/2012 Cause: COMPLAINT ON CREDIT CARD ACCOUNT

Plaintiff: RAZOR CAPITAL, LLC

Defendant: MITCHELL WEINSTIN Service: 09/11/2012 - Pro Se Filing

Attorney: CLAYTON D MOSELEY , for Plaintiff RAZOR CAPITAL, LLC

NOTES: PL ATTY: 1427 ROSWELL RD., MARIETTA, GA 30062
DF PRO SE: 832 ROUNDTOP ROAD, CLAYTON, GA 30525

23.) 2012-CV-0073 DAAKE SR., THOMAS O. & ADELE Z. VS JONES, DENNIS A. & CYNTHIA L.

Filing: 02/23/2012 Cause: COMPLAINT

Plaintiff: THOMAS O. DAAKE SR

ADELE Z. DAKKE

Defendant: DENNIS A. JONES Service: 03/05/2012 - Pro Se Filing

CYNTHIA L. JONES Service: 03/05/2012 - Pro Se Filing

Attorney: MICHAEL P. BRUNDAGE , for Plaintiff DAAKE, THOMAS O.

MICHAEL P. BRUNDAGE , for Plaintiff DAKKE, ADELE Z.

NOTES: PL ATTY: P.O. BOX 2231, TAMPA, FL 33601
DF PRO SE: 300 UPPER SCENIC DR #1004, DILLARD, GA 30537

24.) 2012-CV-0084 RICKS, JAMES VS RICKS, CARMEN

Filing: 02/27/2012 Cause: COMPLAINT FOR CHANGE OF CUSTODY

Plaintiff: JAMES RICKS

Defendant: CARMEN RICKS Service: 09/07/2012

Attorney: L ALLYN STOCKTON JR, for Plaintiff RICKS, JAMES

ALAN G. PAULK JR, for Defendant RICKS, CARMEN

NOTES: PL ATTY: P.O. BOX 1550, CLAYTON, GA 30525
DF ATTY:STE C-2000, 2900 PACES FERRY RD., ATLANTA, GA 30339

25.) 2012-CV-0092 HOLCOMB, LATOYA VS HOLCOMB, LANDON

Filing: 03/02/2012 Cause: COMPLAINT FOR DIVORCE

Plaintiff: LATOYA HOLCOMB

Defendant: LANDON HOLCOMB Service: 03/04/2012

Attorney: RICHARD TUNKLE , for Plaintiff HOLCOMB, LATOYA

JAMES E CORNWELL JR, for Defendant HOLCOMB, LANDON

NOTES: PL ATTY: 17 CHECHERO STREET, CLAYTON, GA 30525
DF ATTY: 268 N BROAD ST., CLAYTON, GA 30525

26.) 2012-CV-0100 RAMEY, TIMOTHY SCOTT VS RAMEY, GERTHA J.

Filing: 03/06/2012 Cause: COMPLAINT FOR MOD OF CHILD CUST,VISIT, & CHILD SUP

Plaintiff: TIMOTHY SCOTT RAMEY

Defendant: GERTHA J. RAMEY

Attorney: MATTHEW SKILLING , for Plaintiff RAMEY, TIMOTHY SCOTT

L ALLYN STOCKTON JR, for Defendant RAMEY, GERTHA J.

NOTES: PL ATTY: P.O. BOX 1005, TOCCOA, GA 30577
DF ATTY: P.O. BOX 1150, CLAYTON, GA 30525

27.) 2012-CV-0106 RAMEY, AMANDA JEAN F/K/A PALMER, AMANDA JEAN VS NORRY, ELLIOT C.

Filing: 03/08/2012 Cause: COMPLAINT FOR DAMAGES

Plaintiff: AMANDA JEAN RAMEY

Defendant: ELLIOT C. NORRY Service: 03/21/2012

Attorney: DOUGLAS R. POWELL , for Plaintiff RAMEY, AMANDA JEAN

GEORGE E. DUNCAN Jr, for Defendant NORRY, ELLIOT C.

NOTES: PL ATTY: 2901 PIEDMONT ROAD NE STE A , ATLANTA, GA 30305
DF ATTY: 7000 CENTRAL PKWY STE 220, ATLANTA, GA 30328

28.) 2012-CV-0117 THE H.T. HACKNEY CO. VS JH CONVENIENCE, INCORPORATED & YEARWOOD, JOHN H.(G)-RABUN COUNTY BANK

Filing: 03/19/2012 Cause: POST JUDGMENT GARNISHMENT

Plaintiff: THE H.T. HACKNEY CO.

Defendant: JH CONVENIENCE, INCORPORATED - Pro Se Filing

JOHN H. YEARWOOD - Pro Se Filing

RABUN COUNTY BANK Service: 03/21/2012

Attorney: VIVIAN HUDSON UCHITEL , for Plaintiff THE H.T. HACKNEY CO.

NOTES: SEE ATTACHED EXHIBIT "C"

29.) 2012-CV-0128 STEWART, KIM CLARK F/K/A CLARK, KIM VS CLARK, CHAD

Filing: 03/28/2012 Cause: COMPLAINT FOR MOD CHILD CUST, VISITITATION,SUPPORT

Plaintiff: KIM CLARK STEWART

Defendant: CHAD CLARK Service: 04/11/2012

Attorney: MATTHEW SKILLING , for Plaintiff STEWART, KIM CLARK

RICHARD E HOPKINS JR, for Defendant CLARK, CHAD

NOTES: PL ATTY: P.O. BOX 1005, TOCCOA, GA 30577
DF ATTY: P.O. BOX 1049, CLAYTON, GA 30525

30.) 2012-CV-0132 PORTFOLIO RECOVERY ASSOCIATES, ASSIGNEE OF HSBC BANK NEVADA, N.A. VS FARR, BERTRAND W.

Filing: 04/02/2012 Cause: COMPLAINT ON CREDIT CARD ACCOUNT

Plaintiff: PORTFOLIO RECOVERY ASSOCIATES

Defendant: BERTRAND W. FARR Service: 04/10/2012 - Pro Se Filing

Attorney: CLAYTON D MOSELEY , for Plaintiff PORTFOLIO RECOVERY ASSOCIATES

NOTES: PL ATTY: 1427 ROSWELL ROAD, MARIETTA, GA 30062
DF PRO SE: 49 TURTLE HILL LANE, CLAYTON, GA 30525

31.) 2012-CV-0133 BENEFICIAL MORTGAGE CO OF GEORGIA VS UPCHURCH, MISTY G. (G)-MOUNTAIN HERITAGE BANK

Filing: 04/02/2012 Cause: POST JUDGMENT GARNISHMENT

Plaintiff: BENEFICIAL MORTGAGE CO OF GEORGIA

Defendant: MISTY G. UPCHURCH - Pro Se Filing

MOUNTAIN HERITAGE BANK - Pro Se Filing

Attorney: SCOTT M PESKIN , for Plaintiff BENEFICIAL MORTGAGE CO OF GEORGIA

NOTES: PL ATTY: 1427 ROSWELL RD., MARIETTA, GA 30062
DF PRO SE: P.O. BOX 484, TIGER, GA 30576
G: 550 HWY 441 S, CLAYTON, GA 30525

32.) 2012-CV-0141 BROOKS, JERRY VS BROCK, KELLY

Filing: 04/05/2012 Cause: COMPLAINT FOR TERM OF VISIT & EMERGENCY PROT ORDER

Plaintiff: JERRY BROOKS - Pro Se Filing

Defendant: KELLY BROCK Service: 04/07/2012 - Pro Se Filing

NOTES: PL PRO SE: 1109 LAKE SEED ROAD, LAKEMONT, GA 30552
DF PRO SE: 92 DUD CREEK ROAD, CLAYTON, GA 30525

33.) 2012-CV-0156 PORTFOLIO RECOVERY ASSOCIATES, ASSIGNEE OF GE MONEY BANK VS BARTOLOMEY, JOHNATHAN

Filing: 04/18/2012 Cause: COMPLAINT ON CREDIT CARD ACCOUNT

Plaintiff: PORTFOLIO RECOVERY ASSOCIATES

Defendant: JOHNATHAN BARTOLOMEY Service: 04/25/2012 - Pro Se Filing

Attorney: CLAYTON D MOSELEY , for Plaintiff PORTFOLIO RECOVERY ASSOCIATES

NOTES: PL ATTY: 1427 ROSWELL RD., MARIETTA, GA 30062
DF PRO SE: 1174 CRUSHER RUN RD., RABUN GP, GA 30568

34.) 2012-CV-0174 LONG, KEVIN BROCK VS CIOCHETTI, ASHLEY
Filing: 05/02/2012 Cause: COMPLAINT FOR CHANGE OF CUSTODY
Plaintiff: KEVIN BROCK LONG
Defendant: ASHLEY CIOCHETTI
Attorney: KEN KLIMASEWSKI , for Plaintiff LONG, KEVIN BROCK
TIMOTHY P HEALY , for Defendant CIOCHETTI, ASHLEY
NOTES: PL ATTY: P.O. BOX 1151, CLAYTON, GA 30525
DF ATTY: P.O. BOX 1004, TOCCOA, GA 30577

35.) 2012-CV-0176 BARCENAS, OLGA VS BARCENAS, OSCAR
Filing: 05/03/2012 Cause: COMPLAINT FOR DIVORCE
Plaintiff: OLGA BARCENAS
Defendant: OSCAR BARCENAS Service: 05/22/2012
Attorney: MIKE WEAVER , for Plaintiff BARCENAS, OLGA
RICHARD TUNKLE , for Defendant BARCENAS, OSCAR
NOTES: PL ATTY: P.O. BOX 414, GAINESVILLE, GA 30503
DF ATTY: 17 CHECHERO ST., CLAYTON, GA 30525

36.) 2012-CV-0177 ROBERTS, PATRICIA VS ROBERTS, LARRY
Filing: 05/03/2012 Cause: MOTION FOR CONTEMPT
Plaintiff: PATRICIA ROBERTS
Defendant: LARRY ROBERTS Service: 05/05/2012 - Pro Se Filing
Attorney: D ERIK KENNEDY , for Plaintiff ROBERTS, PATRICIA
NOTES: PL ATTY: P.O. BOX 465, CLAYTON, GA 30525
DF PRO SE: P.O. BOX 252, TIGER, GA 30576

37.) 2012-CV-0181 BARCLAYS BANK DELAWARE VS GRAGG, JENNIFER L.
Filing: 05/04/2012 Cause: COMPLAINT ON CREDIT CARD ACCOUNT
Defendant: BARCLAYS BANK DELAWARE
JENNIFER L. GRAGG Service: 05/31/2012 - Pro Se Filing
Attorney: S LOUIS SCHIAPPA , for Plaintiff BARCLAYS BANK DELAWARE
NOTES: PL ATTY: 1427 ROSWELL RD., MARIETTA, GA 30062
DF PRO SE: 122 GORDON GRAGG LN., LAKEMONT, GA 30552

38.) 2012-CV-0187 LANDRESS, CHRISTOPHER VS SKELTON, JUSTIN, JEFFREY & RITA
Filing: 05/07/2012 Cause: COMPLAINT FOR PERSONAL INJURIES
Plaintiff: CHRISTOPHER LANDRESS
Defendant: JUSTIN SKELTON
JEFFREY SKELTON
RITA SKELTON
Attorney: JARROD OXENDINE , for Plaintiff LANDRESS, CHRISTOPHER
PAUL GROTH , for Defendant SKELTON, JUSTIN
PAUL GROTH , for Defendant SKELTON, JEFFREY
PAUL GROTH , for Defendant SKELTON, RITA
NOTES: PL ATTY: 1815 SATELLITE BLVD, STE 304, DULUTH, GA 30097
DF ATTY:4485 TENCH RD. BLDG 1500 STE 1510, SUWANEE, GA 30024

39.) 2012-CV-0189 CANNON, JENNIFER VS CANNON, KEVIN
Filing: 05/08/2012 Cause: COMPLAINT FOR DIVORCE
Plaintiff: JENNIFER CANNON
Defendant: KEVIN CANNON
Attorney: DEBORAH R. WHITLOCK , for Plaintiff CANNON, JENNIFER
BRIAN C RANCK , for Defendant CANNON, KEVIN
NOTES: PL ATTY: P.O. BOX 310, TOCCOA, GA 30577
DF ATTY: P.O. BOX 1005, TOCCOA, GA 30577

40.) 2012-CV-0191 PITTARD, DANA C. VS PITTARD, PATRICK S.
Filing: 05/10/2012 Cause: PETITION FOR DIVORCE
Plaintiff: DANA C. PITTARD
Defendant: PATRICK S. PITTARD
Attorney: C. WILBUR WARNER JR, for Plaintiff PITTARD, DANA C.
EMILY S. BAIR , for Defendant PITTARD, PATRICK S.
NOTES: PL ATTY: 3360 RIVERWOOD PKWY, STE 2300, ATLANTA, GA 30339
DF ATTY:STE 480 6100 LAKE FORREST DR, ATLANTA,GA 30328

41.) 2012-CV-0207 BOBCAT OF ATLANTA, LLC VS ANDERSON, THOR D/B/A OPERATIONS TREE & CRANE SERVICES
Filing: 05/18/2012 Cause: COMPLAINT ON ACCOUNT
Plaintiff: BOBCAT OF ATLANTA, LLC
Defendant: THOR ANDERSON Service: 05/22/2012 - Pro Se Filing
Attorney: DAN D WRIGHT JR, for Plaintiff BOBCAT OF ATLANTA, LLC
NOTES: PL ATTY: 3520 PIEDMONT RD NE STE 415, ATLANTA, GA 30305
DF PRO SE: P.O. BOX 303, LAKEMONT, GA 30552

42.) 2012-CV-0208 HABERSHAM COUNTY MEDICAL CENTER VS ENGLISH, CHARITY
Filing: 05/18/2012 Cause: COMPLAINT ON ACCOUNT
Plaintiff: HABERSHAM COUNTY MEDICAL CENTER
Defendant: CHARITY ENGLISH Service: 05/31/2012 - Pro Se Filing
Attorney: THOMAS H SHAFER , for Plaintiff HABERSHAM COUNTY MEDICAL CENTER
NOTES: PL ATTY: 3525 PIEDMONT RD BLDG 6 STE 302, ATLANTA, GA 30305
DF PRO SE: P.O. BOX 176, TIGER, GA 30576

43.) 2012-CV-0209 JARRARD, ANGELA BRANCH VS JARRARD, STEPHEN WARD
Filing: 05/18/2012 Cause: COMPLAINT FOR SEPARATE MAINTENENCE
Plaintiff: ANGELA BRANCH JARRARD
Defendant: STEPHEN WARD JARRARD
Attorney: SUSAN CAMPBELL , for Plaintiff JARRARD, ANGELA BRANCH
NOTES: PL ATTY: P.O. BOX 489, CORNELIA, GA 30531
DF PRO SE: NO ADDRESS ON FILE

44.) 2012-CV-0212 RAZOR CAPITAL II, LLC ASSIGNEE OF CREDIT ONE BANK, N.A. VS FUTCH, GEORGE
Filing: 05/21/2012 Cause: COMPLAINT ON CREDIT CARD ACCOUNT
Plaintiff: RAZOR CAPITAL II, LLC
Defendant: GEORGE FUTCH Service: 05/24/2012 - Pro Se Filing
Attorney: JAMES T FREANEY , for Plaintiff RAZOR CAPITAL II, LLC
NOTES: PL ATTY: 1427 ROSWELL RD., MARIETTA, GA 30062
DF PRO SE: 161 TALLULAH RIVER RD., CLAYTON, GA 30525

45.) 2012-CV-0213 MIDLAND FUNDING LLC, ASSIGNEE OF CHASE BANK USA, N.A. VS FARR, BERTRAND
Filing: 05/21/2012 Cause: COMPLAINT ON CREDIT CARD ACCOUNT
Plaintiff: MIDLAND FUNDING, LLC
Defendant: BERTRAND FARR Service: 05/24/2012 - Pro Se Filing
Attorney: SCOTT M PESKIN , for Plaintiff MIDLAND FUNDING, LLC
NOTES: PL ATTY: 1427 ROSWELL RD., MARIETTA, GA 30062
DF PRO SE: 49 TURTLE HILL LANE, CLAYTON, GA 30525

46.) 2012-CV-0220 HENRY, NANCY & JAMES P. VS THE TIGER SHIPPING CENTER, LLC & SCADUTO, JOHN
Filing: 05/29/2012 Cause: COMPLAINT FOR DAMAGES
Plaintiff: NANCY HENRY
JAMES P. HENRY
Defendant: THE TIGER SHIPPING CENTER, LLC Service: 06/04/2012 - Pro Se Filing
JOHN SCADUTO Service: 05/31/2012 - Pro Se Filing
Attorney: MITCHELL L BAKER JR, for Plaintiff HENRY, NANCY
MITCHELL L BAKER JR, for Plaintiff HENRY, JAMES P.
NOTES: PL ATTY: P.O. BOX 1609, CLAYTON, GA 30525
DF PRO SE: 45 BUZZ SAW LANE, TIGER, GA 30576
DF TIGER SHIP PRO SE: 329 GLASSY ORCHARD, TIGER, GA 30576

47.) 2012-CV-0241 BRANCH BANKING & TRUST COMPANY VS ADAMS, BRENDA
Filing: 06/12/2012 Cause: COMPLAINT ON A CONTRACT
Plaintiff: BRANCH BANKING & TRUST COMPANY
Defendant: BRENDA ADAMS Service: 06/19/2012 - Pro Se Filing
Attorney: JANET L WOMACK , for Plaintiff BRANCH BANKING & TRUST COMPANY
NOTES: PL ATTY: 230 PEACHTREE ST NW, ATLANTA, GA 30303
DF PRO SE: 53 FAWN LANE, CLARKESVILLE, GA 30523

48.) 2012-CV-0242 RUIZ, AMY Y. VS MALDONADO, CHRISTIAN V.
Filing: 06/13/2012 Cause: COMPLAINT FOR DIVORCE
Plaintiff: AMY Y. RUIZ
Defendant: CHRISTIAN V. MALDONADO - Pro Se Filing
Attorney: T. STANLEY SUNDERLAND , for Plaintiff RUIZ, AMY Y.
NOTES: PL ATTY: 326 WEST MAIN ST, BUFORD, GA 30518
DF PRO SE: NO ADDRESS ON FILE

49.) 2012-CV-0243 BELFOR USA GROUP, INC VS JOHNSON, ANONA
Filing: 06/13/2012 Cause: COMPLAINT FOR DAMAGES
Plaintiff: BELFOR USA GROUP, INC.
Defendant: ANONA JOHNSON - Pro Se Filing
Attorney: THOMAS S. FISHER , for Plaintiff BELFOR USA GROUP, INC.
NOTES: PL ATTY: 160 CLAIREMONT AVE STE 200, DECATUR, GA 30030
DF PRO SE: 204 MOCKINGBIRD RD, NASHVILLE, TN 37205

50.) 2012-CV-0249 HUNNICUTT, CHARLES EDWARD VS GEORGIA FARM BUREAU MUTUAL INSURANCE COMPANY AND GEORGIA FARM BUREAU CASUALTY INSURANCE COMPANY

Filing: 06/18/2012 Cause: COMPLAINT ON CONTRACT

Plaintiff: CHARLES EDWARD HUNNICUTT

Defendant: GEORGIA FARM BUREAU MUTUAL INSURANCE COMPANY Service: 06/22/2012

GEORGIA FARM BUREAU CASUALTY INSURANCE COMPANY Service: 06/22/2012

Attorney: L ALLYN STOCKTON JR, for Plaintiff HUNNICUTT, CHARLES EDWARD

CHRISTOPHER J WALKER III, for Defendant GEORGIA FARM BUREAU MUTUAL INSURANCE COMPANY

CHRISTOPHER J WALKER III, for Defendant GEORGIA FARM BUREAU CASUALTY INSURANCE COMPANY

NOTES: PL ATTY: P.O. BOX 1550, CLAYTON, GA 30525
DF ATTY: P.O. BOX ONE, GAINESVILLE, GA 30503

51.) 2012-CV-0254 JONES, SHERRY VS JONES, JEFF

Filing: 06/19/2012 Cause: COMPLAINT FOR DIVORCE

Plaintiff: SHERRY JONES

Defendant: JEFF JONES Service: 06/22/2012 - Pro Se Filing

Attorney: BRUCE RUSSELL Jr, for Plaintiff JONES, SHERRY

W THOMAS SLOWEN , for Defendant JONES, JEFF

NOTES: PL ATTY: P.O. BOX 1202, CLAYTON, GA 30525
DF ATTY: P.O. BOX 892, CLAYTON, GA 30525

52.) 2012-CV-0255 FIRST AMERICAN BANK & TRUST VS MCCLURE, JIMMY

Filing: 06/19/2012 Cause: SUIT ON NOTE

Plaintiff: FIRST AMERICAN BANK & TRUST

Defendant: JIMMY MCCLURE - Pro Se Filing

Attorney: BRUCE RUSSELL Jr, for Plaintiff FIRST AMERICAN BANK & TRUST

NOTES: PL ATTY: P.O. BOX 1202, CLAYTON, GA 30525
DF PRO SE: 2577 ADDINGTON BRIDGE RD, FRANKLIN, NC 28734

53.) 2012-CV-0256 FIRST AMERICAN BANK & TRUST VS MCCLURE, BARBARA

Filing: 06/19/2012 Cause: SUIT ON NOTE

Plaintiff: FIRST AMERICAN BANK & TRUST

Defendant: BARBARA MCCLURE - Pro Se Filing

Attorney: BRUCE RUSSELL Jr, for Plaintiff FIRST AMERICAN BANK & TRUST

NOTES: PL ATTY: P.O. BOX 1202, CLAYTON, GA 30525
DF PRO SE: 2577 ADDINGTON BRIDGE RD, FRANKLIN, NC 28734

54.) 2012-CV-0257 FIRST AMERICAN BANK & TRUST VS MCCLURE, DAVID
Filing: 06/19/2012 Cause: SUIT ON NOTE
Plaintiff: FIRST AMERICAN BANK & TRUST
Defendant: DAVID MCCLURE - Pro Se Filing
Attorney: BRUCE RUSSELL Jr, for Plaintiff FIRST AMERICAN BANK & TRUST
NOTES: PL ATTY: P.O. BOX 1202, CLAYTON, GA 30525
DF PRO SE: 2577 ADDINGTON BRIDGE RD, FRANKLIN, NC 28734

55.) 2012-CV-0258 FIRST AMERICAN BANK & TRUST VS RAMEY, CLIFTON
Filing: 06/19/2012 Cause: SUIT ON NOTE
Plaintiff: FIRST AMERICAN BANK & TRUST
Defendant: CLIFTON RAMEY Service: 06/27/2012
Attorney: BRUCE RUSSELL Jr, for Plaintiff FIRST AMERICAN BANK & TRUST
T ANDREW DOWDY , for Defendant RAMEY, CLIFTON
NOTES: PL ATTY: P.O. BOX 1202, CLAYTON, GA 30525
DF ATTY: P.O. BOX 886, CORNELIA, GA 30531

56.) 2012-CV-0266 DUNN, TERESIA GRAVLEY VS DUNN, MICHAEL
Filing: 06/26/2012 Cause: COMPLAINT FOR DIVORCE
Plaintiff: TERESIA GRAVLEY DUNN
Defendant: MICHAEL DUNN - Pro Se Filing
Attorney: TRICIA L HISE , for Plaintiff DUNN, TERESIA GRAVLEY
NOTES: PL ATTY: P.O. BOX 2018, CLARKESVILLE, GA 30523
DF PRO SE: P.O. BOX 15783, ASHEVILLE, NC 28813

57.) 2012-CV-0272 HERB, AMELIA GRACE VS HERB, JEFFREY COLE
Filing: 06/28/2012 Cause: COMPLAINT FOR DIVORCE
Plaintiff: AMELIA GRACE HERB
Defendant: JEFFREY COLE HERB
Attorney: L ALLYN STOCKTON JR, for Plaintiff HERB, AMELIA GRACE
RICHARD TUNKLE , for Defendant HERB, JEFFREY COLE
NOTES: PL ATTY: P.O. BOX 1550, CLAYTON, GA 30525
DF ATTY: 17 CHECHERO ST., CLAYTON, GA 30525

58.) 2012-CV-0273 PHILLIPS, BETSY L. VS STANEK, CHRISTA ANN & PHILLIPS, JARED
Filing: 06/29/2012 Cause: COMPLAINT FOR GRANDPARENT CUSTODY
Plaintiff: BETSY L. PHILLIPS
Defendant: CHRISTA ANN STANEK
JARED PHILLIPS
Attorney: L ALLYN STOCKTON JR, for Plaintiff PHILLIPS, BETSY L.
DOUGLAS W. MCDONALD Sr, for Defendant STANEK, CHRISTA ANN
NOTES: PL ATTY: P.O. BOX 1550, CLAYTON, GA 30525
DF STANEK ATTY: P.O. BOX 396, CORNELIA, GA 30531
DF PHILLIPS PRO SE: NO ADDRESS ON FILE

59.) 2012-CV-0274 DISCOVER BANK VS SHELDON, FRANK J.
Filing: 06/29/2012 Cause: COMPLAINT ON CREDIT CARD ACCOUNT
Plaintiff: DISCOVER BANK
Defendant: FRANK J. SHELDON Service: 07/03/2012 - Pro Se Filing
Attorney: SPENCER F. FREEMAN , for Plaintiff DISCOVER BANK
NOTES: PL ATTY: 1427 ROSWELL RD, MARIETTA, GA 30062
DF PRO SE: 22 FIELD STONE LN, LAKEMONT, GA 30552

60.) 2012-CV-0275 FIRST AMERICAN BANK & TRUST VS BALSTER, JIMMY W.
Filing: 06/29/2012 Cause: COMPLAINT FOR CONFIRMATION OF SALE UNDER POWER
Plaintiff: FIRST AMERICAN BANK & TRUST
Defendant: JIMMY W BALSTER Service: 07/10/2012
Attorney: BRUCE RUSSELL Jr, for Plaintiff FIRST AMERICAN BANK & TRUST
NEWSOM C. CUMMINGS , for Defendant BALSTER, JIMMY W
NOTES: PL ATTY: P.O. BOX 1202, CLAYTON, GA 30525
DF ATTY: P.O. BOX 2758, GAINESVILLE, GA 30503

61.) 2012-CV-0276 FIRST AMERICAN BANK & TRUST VS CONNER EXCAVATING, LLC, CONNER, DAVID & MELANIE
Filing: 06/29/2012 Cause: SUIT ON NOTE
Plaintiff: FIRST AMERICAN BANK & TRUST
Defendant: CONNER EXCAVATING, LLC Service: 07/03/2012 - Pro Se Filing
DAVID CONNER Service: 07/03/2012 - Pro Se Filing
MELANIE CONNER Service: 07/03/2012 - Pro Se Filing
Attorney: BRUCE RUSSELL Jr, for Plaintiff FIRST AMERICAN BANK & TRUST
NOTES: PL ATTY: P.O. BOX 1202, CLAYTON, GA 30525
DF PRO SE: 6 BOB JUSTICE LN, RABUN GAP, GA 30568

EXHIBIT "A"

PL ATTY B.FRANK, LOFTY HEIGHTS: P.O. DRAWER 1408, TOCCOA, GA 30577

PL ATTY KEITH & ELLEN CROWNE: 3379 PEACHTREE RD NE STE 400, ATLANTA, GA 30326

DF ATTY: P.O. BOX 1568, CLAYTON, GA 30525

EXHIBIT "B"

PL ATTY: P.O. BOX 1568, CLAYTON, GA 30525

DF ATTY SIMPSON TRUCKING & GRADING: P.O. BOX 2017, CLARKESVILLE, GA 30523, P.O. BOX 1098, GAINESVILLE, GA 30503

DF ATTY CHARLES BLACK CONST.: P.O. BOX 3280, GAINESVILLE, GA 30503

DF ATTY: RABUN CO BOARD OF ED: WELLS FARGO BLDG 750, GAINESVILLE, GA 30501

EXHIBIT "C"

PL ATTY: P.O. BOX 550105, ATLANTA, GA 30355

DF YEARWOOD PRO SE:7392 CAMP CREEK RD., MOUNT AIRY, GA 30563

DF JH CONVIENIENCE PRO SE: 310 TOCCOA HWY, MOUNT AIRY, GA 30563

G: P.O. BOX 845, CLAYTON, GA 30525

IN THE SUPERIOR COURT FOR THE COUNTY OF RABUN

STATE OF GEORGIA

THOMAS O. DAAKE, SR. AND ADELE Z. DAAKE,	:	
Plaintiffs,	:	CIVIL ACTION
VS.	:	FILE NO. 2012-CV-0073
DENNIS A. JONES AND CYNTHIA L. JONES, Defendants.	:	DISMISSAL ORDER

ORDER

The above matter being duly called on 27 November 2012, after publication of the calendar,

☐ and it appearing to the Court that the defendant has not been timely served; the case is hereby DISMISSED without prejudice.

x and the parties having failed to file a pretrial information form or answer ready at the call of the calendar, said case is hereby DISMISSED for want of prosecution.

☐ and the above matter being a garnishment and more than 195 days having passed since the answer was due by the garnishee and the original affidavit no longer forming the basis of a continuing garnishment as provided by law, said case is hereby ordered stricken from the active calendar and said case is ordered dismissed subject to the rights of the parties accrued as of the date of this Order.

☐ and the defendant having filed proof of the bankruptcy discharge under Section 727 of Title 11, United States Bankruptcy Code, the case is hereby DISMISSED.

IT IS SO ORDERED this 25th day of November, 2012.

B. Chan Caudell

HONORABLE B. CHAN CAUDELL
Judge, Superior Court
Mountain Judicial Circuit

FILED IN OFFICE OF CLERK SUPERIOR COURT
RABUN COUNTY, GEORGIA, THIS 3rd DAY OF
December, 2012
HOLLY B. HENRY-PERRY CLERK

EXHIBIT "D"

GT GreenbergTraurig

September 22, 2015

VIA EMAIL

Thomas & Adele Daake
c/o Phelps Dunbar, LLP
Attn: Michael P. Brundage, Esq.
100 S Ashley Street
Suite 1900
Tampa, FL 33602
813-472-7550
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Michael P. Brundage
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John R. Dowd, Jr.
Dowd Law Firm P.A.
25 Beal Parkway NE
Suite 230
Fort Walton Beach, FL 32548
850-650-2202
Fax : 850-650-5808
Email: john@dowdlawfirm.com

Re: Demand for Policy Limits and Notification to All Insurers, in the matter of *Christopher Jones v. Thomas and Adele Daake* (Case No. 2015-AP-03007-KKS) pending in the United States Bankruptcy Court for the Northern District of Florida.

Mr. and Mrs. Daake, Mr. Brundage, and Mr. Dowd,

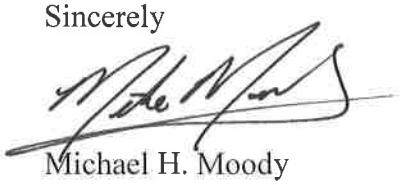
Our firm represents Christopher R. Jones in the above-referenced matter. As you are aware, Mr. Jones is seeking from you in excess of $500,000 in compensatory damages, as well as punitive damages, arising from willful violations of the automatic stay, the Court's 2012 Memorandum Opinion and Order, the Order dismissing the Escambia Action with prejudice, and the Order Approving Compromise and Settlement.

EXHIBIT "E"

Demand is hereby made for each of you to place your insurance carriers on notice of this lawsuit pursuant to Section 627.4137, Florida Statutes, and immediately demand payment of policy limits to Christopher R. Jones. Demand is hereby also made for a copy of all policies of insurance each of you may have (Thomas Daake, Adele Daake, Michael Brundage, and John Dowd) which does or may provide coverage to pay all or a portion of any claim arising from this controversy.

If you have any questions or concerns regarding this matter, please feel free to contact me.

Sincerely



Michael H. Moody

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

In re:	Chapter 7
C.D. JONES & COMPANY, INC.	Case No. 09-bk-31595-KKS
Debtor.	

_____/

TRUSTEE AND JONES' JOINT MOTION FOR SANCTIONS AGAINST THOMAS AND ADELE DAAKE FOR BAD FAITH CONDUCT

Chapter 7 Trustee Sherry F. Chancellor and Christopher Jones jointly file this motion for sanctions for bad faith conduct against Thomas and Adele Daake and Thomas and Adele Daake's counsel, Michael Brundage of Phelps Dunbar, LLP, and John Dowd, of the Dowd Law Firm, P.A., pursuant to the inherent power of the Court and 11 U.S.C. § 105(a), and respectfully state as follows:

PRELIMINARY STATEMENT

This motion seeks an award of sanctions arising from the Daakes' bad faith conduct during this bankruptcy case in violation Federal Rules of Bankruptcy Procedure and Orders of this Court. Without prior approval of this Court, and well after the filing of this bankruptcy case, the Daakes filed a number of causes of action owned by the estate in various forums against Jones, against his fiancé, and against his late father, after the Daakes had sought and obtained relief to pursue *only one specific* claim on behalf of the estate. When the existence of these unauthorized claims was brought to the attention of the Trustee, the Trustee filed a motion seeking a determination that all such claims and causes of action were owned by the estate. After entry of an 18-page written opinion in 2012 determining that the claims and causes of action were owned by the estate, and further action by the Trustee to assert all rights to the

claims and causes of action, the Daakes did not heed the Court but instead *continued* pursuit of the claims, necessitating further litigation in other forums by Jones, his fiancé, and his late father. Even after these claims were dismissed, in part, *with prejudice*, the Daakes continued forward, filing post-petition judgment lien certificates in the Florida UCC register, to obtain rights to commence proceedings supplementary to improperly collect upon the Daakes' judgment in priority to other unsecured creditors of this bankruptcy estate. All of the same claims, including the claims dismissed *with prejudice*, were reasserted against Jones, his fiancé, and his late father vis-a-vis the Daakes' Motion for Proceedings Supplementary. Finally, *after* the Trustee settled *all* existing or potential estate claims or causes of action against Jones, his fiancé, and his late father, the Daakes again continued forward in violation of the releases granted in conjunction with the settlement agreement. All of these improper actions have resulted in substantial expenditures of fees, costs, and damages the Trustee and Jones now seek via this Motion for Sanctions.

PARTIES

1. Movant, Sherry F. Chancellor, is the Chapter 7 Trustee of the bankruptcy estate of C.D. Jones and Company, Inc.

2. Movant, Christopher Jones, is one of the "Settling Parties" who received a full global release of all of the estate's past, present, or future claims and causes of action against him in exchange for a settlement payment that was timely made, as required by the Court's March 3, 2015 Order Granting Trustee's Amended Joint Motion to Approve Compromise and Settlement (the "Settlement Order") (Case No. 09-31595, D.E. 374). Jones was also named in two actions filed by the Daakes during the pendency of this bankruptcy case, which were resolved by the Settlement Order: (i) the so-called "Christopher Jones Adversary Proceeding" (Case No. 11-

03045-KKS); and (ii) the so-called "Motion for Proceedings Supplementary" to the Daakes' post-petition judgment against the Debtor (Case No. 15-03002-KKS).

3. The Daakes are general unsecured creditors of the Debtor by virtue of a construction defect claim for work performed no later than the year 2004.

4. The Defendants reside at 11 Village Beach Road West, Santa Rosa Beach, Florida 32459.

BACKGROUND

5. This bankruptcy case was commenced on July 30, 2009 by the filing of a voluntary Chapter 7 petition for relief by the Debtor, C.D. Jones & Company, Inc. At the time the bankruptcy case was filed, the Daakes were unsecured creditors of the Debtor who did not hold a judgment.

6. After the filing of this bankruptcy case, the Daakes obtained relief from the stay for purportedly innocuous purposes involving two state court cases that were pending on the petition date: the first, *C.D. Jones & Company Inc. v. Thomas & Adele Daake, et al.*, Case No. 2004-CA-000438, pending in the Circuit Court for the First Judicial Circuit in and for Walton County, Florida, and the second, *Thomas O. Daake & Adele Z. Daake v. C.D. Jones & Company, et al.*, Case No. 2005-CA-000212, pending in the Circuit Court for the First Judicial Circuit in and for Walton County Florida (the foregoing, collectively, the "Construction Defect Litigation").

7. The Daakes sought and received relief from the automatic stay on September 10, 2009 for the limited purpose of liquidating the amount of their general unsecured claim and non-contingent claim for attorneys' fees and costs (and to obtain a final order "so *the Debtor* [C.D. Jones & Company Inc.] could, if it chose, pursue an appeal" in the Construction Defect

Litigation), petitioning the state court to address other matters that were not related to claims against the Debtor, and pursuing remedies against insurance carriers on policies that were "not property of the bankruptcy estate and have no value to the bankruptcy estate, but [would] upon payment and satisfaction, substantially reduce the Creditors' claims against the estate." *See* Motion for Relief from Stay ¶ 5 (D.E. 14) (italics added); Affidavit (D.E. 22); Order Granting Relief from Stay (D.E. 44).

8. The Daakes were *not* afforded relief from the automatic stay to obtain and enforce a post-petition judgment and prosecute estate claims in competition with, and to the exclusion of, the Trustee and the estate. Had they sought relief for this purpose, the Daakes would have expressly said so, instead of seeking relief only for expressly limited and purportedly innocuous purposes. *But this is exactly what they did*, to the detriment of the Trustee, the Settling Parties, and the creditors of the estate.

9. Utilizing the discovery tools supplied by the bankruptcy code and rules, the Daakes expansively sought discovery of the Debtor's conduct and financial affairs, by: (1) seeking and obtaining approval to conduct eleven Rule 2004 examinations; (ii) obtaining at least 45,000 pages of the Debtor's business and financial records; and (iii) acquiring, at auction, all of the Debtor's computers. The Daakes also conducted numerous depositions in the Construction Defect Litigation and in the bankruptcy case of 331 Partners, each of which involved substantial questioning regarding the Debtor's financial affairs.

10. The Daakes thereafter sought and obtained Court approval to prosecute only one claim on behalf of the estate. In their Motion for Leave to Pursue Avoidance Actions, the Daakes identified the only potential avoidance claim as "a fraudulent transfer made by the Debtor to its then-shareholder Chris Jones valued at $1,750,000." (D.E. 152 at ¶ 10). The Court

permitted their counsel, Mr. Brundage, to bring on behalf of the estate only the *one* "fraudulent conveyance action on behalf of the estate for $1,750,000." (D.E. 154). (The foregoing action is commonly referred to as the "Christopher Jones Adversary Proceeding.")

11. During the course of the Christopher Jones Adversary Proceeding, it was determined that $1,500,000 of the alleged $1,750,000 was not an asset of the estate that could be avoided and recovered. *See* Order on Motion for Partial Summary Judgment (D.E. 468).

12. Further, during the course of the Christopher Jones Adversary Proceeding, sanctions against the Daakes were awarded in favor of Jones, but the amount of attorneys' fees the Daakes must pay has yet to be liquidated.[1]

The Daakes' Pursuit of Additional Actions to Seek Satisfaction of their Post-Petition Judgment against the Debtor in Violation of the Automatic Stay

13. Without Court authorization or other authority, and in violation of the automatic stay and the Court's Order of limited relief from the automatic stay, the Daakes filed two lawsuits in 2012 to attempt to collect on the Daake's post-petition judgment for the Daakes' exclusive benefit, to the exclusion of the estate. These two causes of action consisted of the so-called "Escambia Action," styled *Thomas O. Daake and Adele Z. Daake v. Dennis A. Jones, et al.,* Case No. 2012-CA-001425, in the Circuit Court in and for Escambia County, Florida, and the so-called "Rabun Action," styled *Thomas O. Daake & Adele Z. Daake v. Dennis A. Jones, et*

[1] *See*, *e.g.*, Order Granting Christopher Jones Motion for Sanctions for Plaintiffs' Failure to Answer First Set of Interrogatories (for two years) (D.E. 403); Order Granting in Part Defendant's Motion for Sanctions for Plaintiffs' Serving Unsigned and Unsworn Third-Amended Answers to Defendant's First Set of Interrogatories (D.E. 354); Order Granting Defendant's Motion for Sanctions for Plaintiffs' Failure to Fully and Completely Answer Defendant's First set of Interrogatories for Two Years (D.E. 359); Order Granting Defendant's Motion for Compel Plaintiffs to Produce Documents and Other Things Pursuant to Defendant's Second Requests for Production (D.E. 404); Order Granting Defendant's Request for Attorneys' Fees and Costs for Plaintiffs' Failure to Answer Defendant's Second Set of Interrogatories (D.E. 405); Order Granting Defendant's Motion to Compel Plaintiffs to File Sworn Statement of Factual Matters (D.E. 278).

al., Case No. 2012-CV-0073C, in the Superior Court in and for Rabun County, Georgia. *See* Unsworn Disclosure of Causes of Action (D.E. 200). In each of the complaints the Daakes asserted the bankruptcy estate had abandoned the claims, or otherwise had no interest in the recoveries. For example, the Daakes represented in the Escambia Action that "the Chapter 7 Trustee in the C.D. Jones Bankruptcy chose not to pursue any avoidance actions or to seek recovery of any assets of C.D. Jones in the hands of third parties and, therefore, any such actions, claims or causes of action are deemed abandoned and may be pursued by the Plaintiffs." Escambia Action Complaint at ¶¶ 6, 7. These statements were untrue and made in bad faith.

14. The Trustee, upon learning of the Escambia Action, expeditiously filed: (i) a Motion to Compel (D.E. 163) the Daakes and their counsel to make a full and complete disclosure, under penalty of perjury, regarding any knowledge they may have of any pending litigation involving the Debtor; and (2) a Motion for a Determination (D.E. 164) that the Escambia Action was property of the estate.

15. On November 5, 2012, the Court granted the Trustee's Motion to Compel Disclosure and compelled the Daakes and their counsel to file a "full and complete disclosure, under penalty of perjury, regarding *any knowledge they may have of any pending litigation* that involves the Debtor *in any way shape or form*." Order Compelling Disclosure (D.E. 190, ¶ 2) (emphasis added). On the same date, the Court granted the Motion for Determination and entered an 18-page Memorandum Opinion and Order (D.E. 189) finding that regardless of issues of standing, the Escambia Action and any other similar actions the Daakes were attempting to pursue, along with any right to recovery under such claims, were property of the bankruptcy estate. The Court specifically held that state court fraudulent transfer claims are property of the estate. "In ruling that it is [property of the estate], this Court concurs with the result in *Zwirn* and

the reasoning in *In re Moore*, 608 F.3d 253 (5th Cir. 2010), which held that fraudulent transfer claims 'become estate property once bankruptcy is under way by virtue of the trustee's successor rights under §544(b)." Memorandum Opinion p. 10 (citations omitted).

16. The Daakes failed to comply with the Motion to Compel Disclosure, because they filed an unsworn document that only revealed the existence of the Escambia Action and the Rabun Action. Despite the Court's order for the Daakes to reveal *any knowledge they may have of any pending litigation* that involves the Debtor *in any way shape or form*, the Daakes failed to inform the Trustee or the Court of the existence of the Debtor's insurance claim litigation *Mid-Continent Casualty Company, et al. v. C.D. Jones & Company, Inc.*, Case No. 3:09-cv-00565-MCR-CJK, United States District Court for the Northern District of Florida (the "Insurance Litigation"), *from which the Daakes ultimately settled and kept the proceeds, in an amount believed to be in excess of $1,600,000.00.*

17. The Insurance Litigation was filed in December 2009 by C.D. Jones' insurance carriers against the Debtor and the Daakes, seeking a declaratory judgment that the insurers did not have to indemnify the Debtor with respect to the Daakes' post-petition judgment against the Debtor. The Daakes hotly litigated the Insurance Litigation claims for years, but yet failed to mention the existence of the bankruptcy case to the District Court, or the existence of the Insurance Litigation to this Court in response to this Court's Order (D.E. 190) compelling them to disclose *any* pending litigation that involves the Debtor in any way shape or form. Despite the existence of this bankruptcy case, a Clerk's default was entered against the Debtor in the Insurance Litigation on October 11, 2011, and default final judgment entered against the Debtor on February 13, 2014, which, upon information and belief, included language at the Daakes' request "preclud[ing] [the Debtor] from asserting in any legal action that the state court jury

verdict included covered damages." Order (D.E. 271, p. 2). On the same day the final judgment was entered against the Debtor in the Insurance Litigation, the Insurance Litigation was dismissed due to a settlement reached by the Daakes with the Debtor's insurance carriers, without the involvement of the Trustee. Through the settlement, the Daakes obtained well in excess of $1,000,000.00 and reimbursement for $600,000.00 or more in attorneys' fees and costs incurred in the Construction Defect Litigation. All of these funds should have been, but were not, reflected in a timely-filed amended proof of claim by the Daakes. The amended proof of claim should have reflected a substantial credit against the Daakes' claim in this bankruptcy case. Instead, the Daakes did not amend their proof of claim for years after this collection from the Insurance Litigation – not until they were found out and the Court suggested they file an amended claim – all-the-while maintaining that the full amount of their claim remained valid and owing in numerous hearings, motions, and other papers filed before this Court.

18. Following the Daakes' disclosure of the Rabun Action and the Escambia Action, the Trustee assumed all interests in both actions. *See* Trustee's Notice of Intention (D.E. 203). Neither action was abandoned by the estate at any time. Both the Rabun Action and Escambia Action were subsequently dismissed: the Rabun Action was dismissed in 2012, and the Escambia Action was dismissed for failure to state a claim with leave to amend in 2012, and thereafter dismissed with prejudice in 2014. The Escambia Action was only dismissed after counsel for Jones and his fiancé attended hearings in Pensacola, Florida, which the Daakes' counsel appeared at and attended.

The Daakes' Filing of Post-Petition Judgment Liens in 2014

19. Over a year and a half after this Court entered its 18-page Memorandum Opinion and Order finding that the Escambia Action and Rabun Action were causes of action owned by

the estate that the Daakes could not pursue, the Daakes took meticulous and calculated steps to obtain a post-petition judgment lien against the Debtor that would place their claim in priority to other unsecured creditors and enable them to pursue remedies only judgment lien holders may pursue, in competition with the bankruptcy estate.

20. On May 5, 2014, the Daakes executed and filed two Judgment Lien Certificates with the Florida Secretary of State, in plain violation of the automatic stay.

21. The first Judgment Lien Certificate (File No. J14000558758) was filed in the full amount stated on their final judgment $5,196,707.67, *despite the fact they had settled and obtained partial satisfaction of the judgment in the Insurance Litigation months before in 2014*.

22. The second Judgment Lien Certificate (File No. J1400558774) was filed in the full amount of attorneys' fees and costs ($600,000.00 collectively) they were awarded by the state court in 2013, *despite the fact that the full amount of their claim for attorneys' fees and costs was collected in the Insurance Litigation*.

23. Pursuant to Section 55.202(2)(a), the filing of the judgment lien certificates with the Department of State transformed the unsecured judgment to a judgment lien on the Debtor's interest in all personal property in this state subject to execution. These judgment lien certificates were filed with the Secretary of State specifically so the Daakes could usurp the estate's claims and causes of action via a lien on all of the Debtor's choses in action.

The Daakes' Continued Filing of Actions to Collect Upon Their Post-Petition Judgment Against the Debtor in Violation of the Automatic Stay and the 2012 Memorandum Opinion

24. In August 2014, the Daakes re-pled the Escambia Action and the Rabun Action, along with various other claims, in the Motion to Implead and Motion for Proceedings Supplementary that they filed in the Construction Defect Litigation, to collect upon their post-

petition judgment against the Debtor. The Daakes filed these claims without notice to the Trustee or this Court and without obtaining relief from the automatic stay, even though they had full knowledge of the Court's 2012 Memorandum Opinion and Orders requiring disclosure.

25. Jones removed the Motion for Proceedings Supplementary to this Court in January 2015, in the case styled *Thomas O. Daake and Adele Z. Daake v. C.D. Jones & Company, Inc.*, Case No. 15-03002-KKS.

26. The Daakes did not serve the Motion for Proceedings Supplementary on the Trustee, Jones, or any of his family members who were named therein until December 2015. All of the claims set forth in the Motion for Proceedings Supplementary were assertions that the Debtor improperly transferred assets to Jones or his family members many years pre-petition, and as such were estate claims and potential recoveries pursuant to the Court's 2012 Memorandum Opinion.

The Approval of the Compromise and Settlement and Entry of the Settlement Order

27. On October 30, 2014, the Trustee, Jones (along with his fiancé and his late father), and 331 Partners filed a Joint Motion to Approve Compromise and Settlement (the "Initial Joint Motion to Approve Compromise and Settlement") (D.E. 352) of all past, present, or future claims and causes of action against Jones, his fiancé, and his late father.

28. Shortly before the hearing on approval of the Initial Motion to Approve Compromise and Settlement on December 17, 2014, it was brought to the undersigned's attention that the Motion for Proceedings Supplementary had been filed in August 2014, and that the Daakes had sought issuance of alias summonses in December 2014 for Jones, his fiancé, and his father.

29. At the December 17, 2014 hearing, the Daakes were confronted and forced to admit the claims set forth in the Motion for Proceedings Supplementary were property of the estate that would be settled by virtue of the Motion to Approve Compromise and Settlement. The Court properly found it had the jurisdiction to settle all claims and causes of action against the Released Parties.

30. The Court did not approve the Joint Motion to Approve Compromise and Settlement at the December 17, 2014 hearing, instructing the Trustee to include additional data for all creditors to consider, and granting leave for the filing of an Amended Motion to Approve Compromise and Settlement.

31. The Amended Motion to Approve Compromise and Settlement (D.E. 374) evaluated the merits of each of the claims the Daakes sought to pursue vis-à-vis the Motion for Proceedings Supplementary, and even cited to specific paragraphs of the Motion for Proceedings Supplementary. *See* D.E. 374, pp. 5-6.

32. The Amended Joint Motion to Approve Compromise and Settlement was set for hearing on February 25, 2015 after notice to all creditors and parties in interest. At the hearing, the Daakes' counsel again admitted that approval of the Settlement would bar all estate claims, including those sought to be pursued vis-à-vis the Motion for Proceedings Supplementary. The Court granted the Amended Joint Motion to Approve Compromise and Settlement, awarding Jones (and all Settling Parties) a full release of all of the estate's past, present, and future claims upon consummation of the settlement by a collective payment of $250,000.00. More particularly, in exchange for the settlement payment, the Settling Parties received a full global release as follows:

> …[A]ll of the estate's potential causes of action (all claims or causes of actions in which the Debtor could have otherwise recovered or are

> potentially assertable or that have been asserted by or on behalf of the Trustee, the Debtor, or the estate), against Christopher Jones, Dennis Jones, and/or April White, entities owned by, related to, or affiliated with each or any of them (or in which they have any interest of any type whatsoever), and each of their subsidiaries, affiliates, parents, shareholders, directors, officers, representatives, employees, attorneys, agents, insurers, partners, heirs, successors and assigns, and any other person associated with them (the "Settling Parties") are forever waived, satisfied, and settled. For the avoidance of doubt, the parties declare their intent that this Agreement operate as a general release of the estate's claims, releasing all claims of any type whatsoever, including all demands, agreements, contracts, covenants, actions, suits, causes of action, choses in action, obligations, controversies, debts, costs, attorneys' fees, expenses, accounts, damages, judgments, losses or liabilities of whatever kind, in law or in equity, asserted or unasserted, patent or latent, known or unknown, which the estate has ever had, now has, or may have against the Settling Parties, by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of these presents, to the maximum extent of Florida law, and that any presumptions or operations of law to the contrary not be effective to limit this general release in any way.

Settlement Order at ¶ 4.

33. In accordance with the terms of the Settlement Order, the Released Parties received a full global release of all past, present, and future claims and causes of action related to the estate in exchange for making the timely settlement payment of $250,000.00. The settlement payment was duly made, and the releases effective, no later than March 5, 2015. *See* Trustee's Report of Funds Collected (D.E. 428, ¶¶ 1-3) (acknowledging receipt of the full $250,000.00, and noting that the funds had been received via wire transfers in the following amounts: $200,000.00 on March 4, 2015 and $20,000.00 on March 4, 2015; $17,600.00 on March 5, 2015 and $12,400.00 on March 5, 2015).

The Daakes' Violations of the Settlement Order, the Automatic Stay, and the 2012 Memorandum Opinion to Further Collect Upon Their Post-Petition Judgment Against the Debtor

34. Consistent with past practice, the Daakes did not take the Settlement Order seriously. In direct contravention of the Settlement Order, the Daakes: (i) filed the new appeal[2] in the Christopher Jones Adversary Proceeding on March 13, 2015; and (ii) sought to remand the claims set forth in the Motion for Proceedings Supplementary to the state court in the Construction Defect Litigation, to proceed with their collection efforts against Jones, his fiancé, and his late father.

35. In the Motion to Remand, the Daakes represented to the Bankruptcy Court that the Settlement Order *did not* eliminate the claims set forth in the Motion for Proceedings Supplementary. But at the same time, in an appeal of the Settlement Order before the United States District Court for the Northern District of Florida, the Daakes alleged that the Settlement Order *did eliminate* the claims set forth in the Motion for Proceedings Supplementary, but challenged the Settlement Order by arguing that the Bankruptcy Court had not properly considered the merits of each claim set forth in the Motion for Proceedings Supplementary. The Daakes literally told the Bankruptcy Court one thing, and the District Court another, to suit the Daakes' desires.

36. Specifically, in spite of their previous admissions on the record at both hearings for consideration of the Trustee's Motion to Approve Compromise and Settlement, the Daakes' argument for remand of the Motion for Proceedings Supplementary averred repeatedly that the Settlement Order "did not dispose of" the claims set forth in the Motion for Proceedings Supplementary, and that the Settlement Order only resolved the Christopher Jones Adversary Proceeding. *See*, *e.g.*, March 23, 2015 Memorandum of Law (D.E. 21), Case No. 15-03002-KKS.

[2] By filing the post-Settlement Order appeal in the Christopher Jones Adversary Proceeding in reaction to the Settlement Order, the Daakes argued that the Settlement Order had made all claims final, but ignored the releases of the Plaintiff in the Order.

37. In the appeal of the Settlement Order (Case No. 15-00109-LC-CJK) before the United States District Court, Defendant's took the polar opposite position (consistent with their position at the hearings), acknowledging that the Settlement Order fully and completely settled both the Christopher Jones Adversary Proceeding and each of the claims the Daakes sought to pursue vis-à-vis their Motion for Proceedings Supplementary. *See* Appellant's Brief (D.E. 5, *passim*) (arguing extensively and repeatedly that the Court erred in entering the Settlement Order, by not including sufficient analysis of each of these claims which were settled by the Order of the Court).

38. Because of the Daakes' refusal to cease collection efforts and their patent willingness to violate the automatic stay, the Court's Orders, and the Settlement Order, Jones was forced to expend substantial resources filing a separate litigation matter (Case No. 15-03007) to obtain a reprieve from the Daakes' scorched-earth litigation tactics. The commencement of this action, necessitated by the Daakes' bad faith litigation conduct, further cost Jones substantial sums which should never have had to be incurred after payment of the Settlement Payment. The Daakes responded, affirming that they were unapologetic for their actions and further evicing the bad-faith nature in which they have conducted themselves throughout this bankruptcy case.

39. Finally, even after filing the Appellate brief admitting the Daakes' claims and causes of action asserted vis-a-vis the Motion for Proceedings Supplementary were settled via the Settlement Order, and commencement of the action to obtain injunctive relief and damages from the Daakes (Case No. 15-03007), the Daakes sought to conduct further discovery through the Motion for Proceedings Supplementary in the form of depositions of Ellis Funk, P.C., Hayes Financial Services Inc., Larry W. Hayes, and Robert Goldberg. *See* D.E. 36, 37, 38, 39 (Case

No. 15-03002-KKS). Only after Jones filed a Motion to Quash and for Protective Order did the Daakes cease further discovery efforts in the Motion for Proceedings Supplementary action. *See* D.E. 40; Order (D.E. 43).

The Daakes' Failure to File Any Amendments to Their Proof of Claim to Reflect the Substantial Recoveries Obtained During this Bankruptcy Case

40. In addition to the foregoing, the Daakes concealed their collection of amounts from the Trustee and the Court by delaying amendment of their unsecured proof of claim for years, Claim No. 41, to reflect: (i) a credit of far in excess of $1,000,000.00 from the Daakes' direct collections from the Debtor's insurance carriers (despite their early admission that such collections or recovery would "substantially reduce the [Daakes'] claims against the estate." (D.E. 14)); (ii) a credit for the reduced liquidated amount of attorneys' fees and costs adjudicated to be due and owing in the Construction Defect Litigation in 2013 (the Daakes' proof of claim included a request for $697,119.00 in attorneys' fees and $201,550.48 in costs; on September 10, 2013, the Daakes liquidated the claim for attorneys' fees and costs in a lesser amount of $400,000.00 in attorney's fees and $200,000.00 in costs); or (iii) any credits for subsequent collections from sub-contractors of C.D. Jones (Defendant's post-petition judgment reflected the Daakes had received $373,500.00 "in settlement from other parties who were sub-contractors to C-D Jones" without revealing who these collections were from and whether these amounts were collected within the preference period of 90 days prior to the bankruptcy filing or at some point after the bankruptcy filing). All the while the Daakes delayed amendment of their proof of claim, they stated before this Court in numerous hearings, motions, and other papers, that they were the largest creditor of the estate without reference to the amounts collected outside of the purview of this Court. The Daakes' unreasonable delay in amendment of their proof of claim, while consistently maintaining before the Court that the size of their claim was important, is

further indicative of the bad faith conduct of the Daakes during the course of this bankruptcy case.

ARGUMENT

"The court has the power to sanction willful and intentional violations of its orders when the violations are made in bad faith." *In re Lickman*, 282 B.R. 709, 721 (Bankr. M.D. Fla. 2002) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); *Glatter v. Mroz (In re Mroz)*, 65 F.3d 1567, 1575 (11th Cir. 1995); *Lawrence v. Goldberg (In re Lawrence)*, 279 F.3d 1294 (11th Cir. 2002); *In re Graffy*, 233 B.R. 894, 898 (Bankr. M.D. Fla. 1999). The Daakes and their counsel each had knowledge of the order granting them authority to pursue only one cause of action owned by the estate, automatic stay, the 2012 Memorandum Opinion, the Order dismissing the Escambia Action with prejudice, and the Order Approving Compromise and Settlement. Further, the Daakes' Appellant's Brief in the appeal of the Settlement Order repeatedly indicated a complete understanding that the Order Approving Compromise and Settlement broadly released the released parties from all estate claims, including the Proceedings Supplementary claims.[3] The Daakes therefore have acted with knowledge of, and in utter disregard for, the

[3] *See*, *e.g.*, Brief of Appellant (D.E. 22, Case No. 15-00109-LC-CJK) p. 7, ¶ 2 (admitting that "In the Appealed Order, the Bankruptcy Court purported to release Chris Jones, Dennis Jones, April White and essentially any entity or person related in any way with each of them"); p. 7, ¶ 3 ("The Appealed Order was entered without the Bankruptcy Court taking into account…the value of any claims, other than those raised in the Fraudulent Transfer Case, that were pending or that could be raised against the Purported Released Parties, including especially the Proceeding Supplementary Claims (defined below)"); p. 14, ¶ 2 (arguing that the Motion to Approve Compromise and Settlement contained discussion of the Motion for Proceedings supplementary claims that was not adequate); p. 17, ¶ 1 (summarizing how the merits of the Motion for Proceedings Supplementary were argued on the record at the hearing on approval of compromise and settlement, but asserting the same was not adequate); p. 19, ¶ 1 (arguing the court did not adequately into account the value of the Motion for Proceedings Supplementary Claims); p. 19, ¶2 (admitting the settlement Order released the Jones Related Parties and virtually any person or entity related to each of them, in exchange for the payment of $250,000); p. 25, ¶ 4 (arguing the Proceedings Supplementary claims were inadequately considered); p. 27, ¶2 (arguing the court improperly found Proceedings Supplementary claims likely barred by statute of limitations); p. 28, ¶ 1 (arguing court didn't adequately consider probability of success for Proceedings Supplementary claims); p. 29, ¶ 2 (arguing again about settlement of Proceedings Supplementary claims); p. 37, ¶ 2 (admitting that release encompassed Proceedings Supplementary claims).

Order granting them authority to pursue *only one* cause of action owned by the estate, the automatic stay, the 2012 Memorandum Opinion, the Order dismissing the Escambia Action with prejudice, and the releases contained the Order Approving Compromise and Settlement.

Further, the Daakes' conduct, whether viewed in isolated incidents or as a whole, establishes that they acted willfully and in bad faith, and substantiates the need for sanctions. *See Lickman*, 282 B.R. at 720 ("In determining willfulness the court can consider the entire history of the case).[4] The Daakes had full knowledge that the Court granted authority for the Daakes to pursue only non-estate insurance claims and one cause of action: the Christopher Jones' Adversary Proceeding. The Daakes commenced two state court actions in 2012, the Escambia Action and Rabun Action, asserting to the state court that the causes of action had been "abandoned" by this bankruptcy estate. Upon learning of the existence of these causes of action, the Trustee filed an Emergency Motion to Compel Disclosure (D.E. 163) and an Emergency Motion for Determination of Cause of Action as an Asset of the Estate (D.E. 164). The Court ultimately entered an 18-page Memorandum Opinion (D.E. 189) finding that neither the Rabun Action nor the Escambia Action were abandoned by the bankruptcy estate, and that both claims constituted property of the bankruptcy estate, as they were (i) claims that existed in favor of the Debtor pre-petition which constitute property of the estate pursuant to Section 541(a)

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[4] *See*, *e.g.*, Order Granting Christopher Jones Motion for Sanctions for Plaintiffs' Failure to Answer First Set of Interrogatories (for two years) (D.E. 403); Order Granting in Part Defendant's Motion for Sanctions for Plaintiffs' Serving Unsigned and Unsworn Third-Amended Answers to Defendant's First Set of Interrogatories (D.E. 354); Order Granting Defendant's Motion for Sanctions for Plaintiffs' Failure to Fully and Completely Answer Defendant's First set of Interrogatories for Two Years (D.E. 359); Order Granting Defendant's Motion for Compel Plaintiffs to Produce Documents and Other Things Pursuant to Defendant's Second Requests for Production (D.E. 404); Order Granting Defendant's Request for Attorneys' Fees and Costs for Plaintiffs' Failure to Answer Defendant's Second Set of Interrogatories (D.E. 405); Order Granting Defendant's Motion to Compel Plaintiffs to File Sworn Statement of Factual Matters (D.E. 278).

of the Bankruptcy Code, or (2) fraudulent transfer claims that constitute property of the estate as of the petition date by virtue of Section 544(b) of the Bankruptcy Code.

The Court detailed compelling policy reasons against allowing parties to pursue their own causes of action during bankruptcy, cautioning the Daakes against further pursuit of estate-owned actions:

> This result also does the most to further the fundamental bankruptcy policy of equitable distribution among creditors. *See In re Conley*, 159 B.R. 323 (Bankr. D. Idaho 1993) ("These avoidance powers are for the benefit of the estate…."); *see also*, *United Jersey Bank v. Morgan Guranty Trust Co. (In re Prime Motor Inns, Inc.)*, 135 B.R. 917, 920 (Bankr. S.D. Fla. 1992) ("To grant individual creditors …the right to prosecute avoidance actions…would unfairly enable individual creditors to pursue their own parochial and insular interests, to the detriment of other creditors."). An additional policy concern is the orderly administration of the bankruptcy estate. *In re Harrold*, 296 B.R. 868, 873 (Bankr. M.D. Fla. 1999).

Memorandum Opinion p. 12 (citing *In re Zwirn*, 362 B.R. 536, 540-41 (Bankr. S.D. Fla. 2007)). The Court also observed, "Allowing individual creditors to pursue their own causes of action under state [or federal] law 'would interfere with this estate and with the equitable distribution scheme dependent upon it…Any other result would produce nearly anarchy where the only discernible organizing principle would be first-come-first-served.'" *Id*. (citing *In re Pearlman*, 472 B.R. 115, 122 (Bankr. M.D. Fla. 2012)). The Daakes were ordered to divulge all knowledge of similar claims to the Trustee, and the Trustee filed a notice taking all interests in the actions disclosed. *See* Order Compelling Disclosure (D.E. 190); Statement of Intention (D.E. 203). At this point (as well as earlier), the Daakes should have gotten the message and ceased and desisted from pursuit of estate claims.

But the Daakes already knew the message, and did not care. They continued their unilateral, unauthorized, and interfering collection efforts. The Daakes filed liens against the Debtor in 2014 in violation of the automatic stay. Thereafter, the Daakes filed the Proceedings

Supplementary to Execution on their post-petition liens, setting forth exclusively estate-owned claims, re-pleading the Escambia Action and Rabun Action. Both the Escambia Action and Rabun Action had been dismissed, the Escambia Action dismissed *with prejudice* at a hearing attended by the Daakes' counsel on August 25, 2014, ***one (1) day before*** the filing of the Motion for Proceedings Supplementary on August 26, 2014. The Daakes neither sought relief from the automatic stay nor abandonment by the bankruptcy estate prior to this further re-pursuit of these estate-owned claims. The Daakes were unwilling to cease pursuit of the Proceedings Supplementary claims despite: (i) entry of an Order of Compromise and Settlement broadly releasing the Jones, his fiancé, and late father from all estate claims and causes of action; (ii) denial of the Daakes' request for a stay of the Order of Compromise and Settlement pending appeal; and (iii) repeated representations by the Daakes to the District Court that the Order of Compromise and Settlement released Jones, his fiancé, and his late father from the Proceeding Supplementary claims.

CONCLUSION

The Daakes and their counsels' actions were taken in bad faith during the course of this bankruptcy case and have unreasonably increased the cost of litigation for all parties, vexed the proceedings, and impaired the Trustee's ability to administer this estate for the benefit of all creditors. For all of the foregoing reasons, the Trustee and Jones request the Court impose appropriate sanction against the Daakes and their counsel, Michael P. Brundage, the Law firm of Phelps Dunbar, LLP, John Dowd, and the Dowd Law Firm, to the maximum extent allowable under the bankruptcy code and rules.

WHEREFORE, the Chapter 7 Trustee, Sherry F. Chancellor, and Christopher Jones respectfully request entry of an Order granting appropriate sanctions against Thomas and Adele Daake, and their counsel Michael P. Brundage, the Law firm of Phelps Dunbar, LLP, and John Dowd, the Dowd Law Firm, and grant any and all such other and further relief as is just and equitable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via CM/ECF and/or U.S. Mail upon all parties in interest on this 26th day of May, 2016:

Specifically, service was made via CM/ECF and/or Electronic Mail on each of the following parties who are currently on the list to receive email notice/service for this case:

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/s/ Michael H. Moody
Michael H. Moody

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

In re:

C.D. JONES & COMPANY, INC.,

Debtor.
_____/

Case No. 09-bk-31595-KKS
Chapter 7

CHRISTOPHER JONES,

Plaintiff,
v.

THOMAS DAAKE and ADELE DAAKE,

Defendants.
_____/

Adv. No.: 15-03007-KKS

TRUSTEE AND JONES' JOINT MOTION FOR SANCTIONS AGAINST THOMAS AND ADELE DAAKE FOR BAD FAITH CONDUCT

Chapter 7 Trustee Sherry F. Chancellor and Christopher Jones jointly file this motion for sanctions for bad faith conduct against Thomas and Adele Daake and Thomas and Adele Daake's counsel, Michael Brundage of Phelps Dunbar, LLP, and John Dowd, of the Dowd Law Firm, P.A., pursuant to the inherent power of the Court and 11 U.S.C. § 105(a), and respectfully state as follows:

PRELIMINARY STATEMENT

This motion seeks an award of sanctions arising from the Daakes' bad faith conduct during this bankruptcy case in violation Federal Rules of Bankruptcy Procedure and Orders of this Court. Without prior approval of this Court, and well after the filing of this bankruptcy case, the Daakes filed a number of causes of action owned by the estate in various forums against Jones, against his fiancé, and against his late father, after the Daakes had sought and obtained

relief to pursue *only one specific* claim on behalf of the estate. When the existence of these unauthorized claims was brought to the attention of the Trustee, the Trustee filed a motion seeking a determination that all such claims and causes of action were owned by the estate. After entry of an 18-page written opinion in 2012 determining that the claims and causes of action were owned by the estate, and further action by the Trustee to assert all rights to the claims and causes of action, the Daakes did not heed the Court but instead *continued* pursuit of the claims, necessitating further litigation in other forums by Jones, his fiancé, and his late father. Even after these claims were dismissed, in part, *with prejudice*, the Daakes continued forward, filing post-petition judgment lien certificates in the Florida UCC register, to obtain rights to commence proceedings supplementary to improperly collect upon the Daakes' judgment in priority to other unsecured creditors of this bankruptcy estate. All of the same claims, including the claims dismissed *with prejudice*, were reasserted against Jones, his fiancé, and his late father vis-a-vis the Daakes' Motion for Proceedings Supplementary. Finally, *after* the Trustee settled *all* existing or potential estate claims or causes of action against Jones, his fiancé, and his late father, the Daakes again continued forward in violation of the releases granted in conjunction with the settlement agreement. All of these improper actions have resulted in substantial expenditures of fees, costs, and damages the Trustee and Jones now seek via this Motion for Sanctions.

PARTIES

1. Movant, Sherry F. Chancellor, is the Chapter 7 Trustee of the bankruptcy estate of C.D. Jones and Company, Inc.

2. Movant, Christopher Jones, is one of the "Settling Parties" who received a full global release of all of the estate's past, present, or future claims and causes of action against him

in exchange for a settlement payment that was timely made, as required by the Court's March 3, 2015 Order Granting Trustee's Amended Joint Motion to Approve Compromise and Settlement (the "Settlement Order") (Case No. 09-31595, D.E. 374). Jones was also named in two actions filed by the Daakes during the pendency of this bankruptcy case, which were resolved by the Settlement Order: (i) the so-called "Christopher Jones Adversary Proceeding" (Case No. 11-03045-KKS); and (ii) the so-called "Motion for Proceedings Supplementary" to the Daakes' post-petition judgment against the Debtor (Case No. 15-03002-KKS).

3. The Daakes are general unsecured creditors of the Debtor by virtue of a construction defect claim for work performed no later than the year 2004.

4. The Defendants reside at 11 Village Beach Road West, Santa Rosa Beach, Florida 32459.

BACKGROUND

5. This bankruptcy case was commenced on July 30, 2009 by the filing of a voluntary Chapter 7 petition for relief by the Debtor, C.D. Jones & Company, Inc. At the time the bankruptcy case was filed, the Daakes were unsecured creditors of the Debtor who did not hold a judgment.

6. After the filing of this bankruptcy case, the Daakes obtained relief from the stay for purportedly innocuous purposes involving two state court cases that were pending on the petition date: the first, *C.D. Jones & Company Inc. v. Thomas & Adele Daake, et al.*, Case No. 2004-CA-000438, pending in the Circuit Court for the First Judicial Circuit in and for Walton County, Florida, and the second, *Thomas O. Daake & Adele Z. Daake v. C.D. Jones & Company, et al.*, Case No. 2005-CA-000212, pending in the Circuit Court for the First Judicial Circuit in

and for Walton County Florida (the foregoing, collectively, the "Construction Defect Litigation").

7. The Daakes sought and received relief from the automatic stay on September 10, 2009 for the limited purpose of liquidating the amount of their general unsecured claim and non-contingent claim for attorneys' fees and costs (and to obtain a final order "so *the Debtor* [C.D. Jones & Company Inc.] could, if it chose, pursue an appeal" in the Construction Defect Litigation), petitioning the state court to address other matters that were not related to claims against the Debtor, and pursuing remedies against insurance carriers on policies that were "not property of the bankruptcy estate and have no value to the bankruptcy estate, but [would] upon payment and satisfaction, substantially reduce the Creditors' claims against the estate." *See* Motion for Relief from Stay ¶ 5 (D.E. 14) (italics added); Affidavit (D.E. 22); Order Granting Relief from Stay (D.E. 44).

8. The Daakes were *not* afforded relief from the automatic stay to obtain and enforce a post-petition judgment and prosecute estate claims in competition with, and to the exclusion of, the Trustee and the estate. Had they sought relief for this purpose, the Daakes would have expressly said so, instead of seeking relief only for expressly limited and purportedly innocuous purposes. *But this is exactly what they did*, to the detriment of the Trustee, the Settling Parties, and the creditors of the estate.

9. Utilizing the discovery tools supplied by the bankruptcy code and rules, the Daakes expansively sought discovery of the Debtor's conduct and financial affairs, by: (1) seeking and obtaining approval to conduct eleven Rule 2004 examinations; (ii) obtaining at least 45,000 pages of the Debtor's business and financial records; and (iii) acquiring, at auction, all of the Debtor's computers. The Daakes also conducted numerous depositions in the Construction

Defect Litigation and in the bankruptcy case of 331 Partners, each of which involved substantial questioning regarding the Debtor's financial affairs.

10. The Daakes thereafter sought and obtained Court approval to prosecute only one claim on behalf of the estate. In their Motion for Leave to Pursue Avoidance Actions, the Daakes identified the only potential avoidance claim as "a fraudulent transfer made by the Debtor to its then-shareholder Chris Jones valued at $1,750,000." (D.E. 152 at ¶ 10). The Court permitted their counsel, Mr. Brundage, to bring on behalf of the estate only the *one* "fraudulent conveyance action on behalf of the estate for $1,750,000." (D.E. 154). (The foregoing action is commonly referred to as the "Christopher Jones Adversary Proceeding.")

11. During the course of the Christopher Jones Adversary Proceeding, it was determined that $1,500,000 of the alleged $1,750,000 was not an asset of the estate that could be avoided and recovered. *See* Order on Motion for Partial Summary Judgment (D.E. 468).

12. Further, during the course of the Christopher Jones Adversary Proceeding, sanctions against the Daakes were awarded in favor of Jones, but the amount of attorneys' fees the Daakes must pay has yet to be liquidated.[1]

The Daakes' Pursuit of Additional Actions to Seek Satisfaction of their Post-Petition Judgment against the Debtor in Violation of the Automatic Stay

[1] *See*, *e.g.*, Order Granting Christopher Jones Motion for Sanctions for Plaintiffs' Failure to Answer First Set of Interrogatories (for two years) (D.E. 403); Order Granting in Part Defendant's Motion for Sanctions for Plaintiffs' Serving Unsigned and Unsworn Third-Amended Answers to Defendant's First Set of Interrogatories (D.E. 354); Order Granting Defendant's Motion for Sanctions for Plaintiffs' Failure to Fully and Completely Answer Defendant's First set of Interrogatories for Two Years (D.E. 359); Order Granting Defendant's Motion for Compel Plaintiffs to Produce Documents and Other Things Pursuant to Defendant's Second Requests for Production (D.E. 404); Order Granting Defendant's Request for Attorneys' Fees and Costs for Plaintiffs' Failure to Answer Defendant's Second Set of Interrogatories (D.E. 405); Order Granting Defendant's Motion to Compel Plaintiffs to File Sworn Statement of Factual Matters (D.E. 278).

13. Without Court authorization or other authority, and in violation of the automatic stay and the Court's Order of limited relief from the automatic stay, the Daakes filed two lawsuits in 2012 to attempt to collect on the Daake's post-petition judgment for the Daakes' exclusive benefit, to the exclusion of the estate. These two causes of action consisted of the so-called "Escambia Action," styled *Thomas O. Daake and Adele Z. Daake v. Dennis A. Jones, et al.,* Case No. 2012-CA-001425, in the Circuit Court in and for Escambia County, Florida, and the so-called "Rabun Action," styled *Thomas O. Daake & Adele Z. Daake v. Dennis A. Jones, et al.,* Case No. 2012-CV-0073C, in the Superior Court in and for Rabun County, Georgia. *See* Unsworn Disclosure of Causes of Action (D.E. 200). In each of the complaints the Daakes asserted the bankruptcy estate had abandoned the claims, or otherwise had no interest in the recoveries. For example, the Daakes represented in the Escambia Action that "the Chapter 7 Trustee in the C.D. Jones Bankruptcy chose not to pursue any avoidance actions or to seek recovery of any assets of C.D. Jones in the hands of third parties and, therefore, any such actions, claims or causes of action are deemed abandoned and may be pursued by the Plaintiffs." Escambia Action Complaint at ¶¶ 6, 7. These statements were untrue and made in bad faith.

14. The Trustee, upon learning of the Escambia Action, expeditiously filed: (i) a Motion to Compel (D.E. 163) the Daakes and their counsel to make a full and complete disclosure, under penalty of perjury, regarding any knowledge they may have of any pending litigation involving the Debtor; and (2) a Motion for a Determination (D.E. 164) that the Escambia Action was property of the estate.

15. On November 5, 2012, the Court granted the Trustee's Motion to Compel Disclosure and compelled the Daakes and their counsel to file a "full and complete disclosure, under penalty of perjury, regarding *any knowledge they may have of any pending litigation* that

involves the Debtor *in any way shape or form*." Order Compelling Disclosure (D.E. 190, ¶ 2) (emphasis added). On the same date, the Court granted the Motion for Determination and entered an 18-page Memorandum Opinion and Order (D.E. 189) finding that regardless of issues of standing, the Escambia Action and any other similar actions the Daakes were attempting to pursue, along with any right to recovery under such claims, were property of the bankruptcy estate. The Court specifically held that state court fraudulent transfer claims are property of the estate. "In ruling that it is [property of the estate], this Court concurs with the result in *Zwirn* and the reasoning in *In re Moore*, 608 F.3d 253 (5th Cir. 2010), which held that fraudulent transfer claims 'become estate property once bankruptcy is under way by virtue of the trustee's successor rights under §544(b)." Memorandum Opinion p. 10 (citations omitted).

16. The Daakes failed to comply with the Motion to Compel Disclosure, because they filed an unsworn document that only revealed the existence of the Escambia Action and the Rabun Action. Despite the Court's order for the Daakes to reveal *any knowledge they may have of any pending litigation* that involves the Debtor *in any way shape or form*, the Daakes failed to inform the Trustee or the Court of the existence of the Debtor's insurance claim litigation *Mid-Continent Casualty Company, et al. v. C.D. Jones & Company, Inc.*, Case No. 3:09-cv-00565-MCR-CJK, United States District Court for the Northern District of Florida (the "Insurance Litigation"), *from which the Daakes ultimately settled and kept the proceeds, in an amount believed to be in excess of $1,600,000.00.*

17. The Insurance Litigation was filed in December 2009 by C.D. Jones' insurance carriers against the Debtor and the Daakes, seeking a declaratory judgment that the insurers did not have to indemnify the Debtor with respect to the Daakes' post-petition judgment against the Debtor. The Daakes hotly litigated the Insurance Litigation claims for years, but yet failed to

mention the existence of the bankruptcy case to the District Court, or the existence of the Insurance Litigation to this Court in response to this Court's Order (D.E. 190) compelling them to disclose *any* pending litigation that involves the Debtor in any way shape or form. Despite the existence of this bankruptcy case, a Clerk's default was entered against the Debtor in the Insurance Litigation on October 11, 2011, and default final judgment entered against the Debtor on February 13, 2014, which, upon information and belief, included language at the Daakes' request "preclud[ing] [the Debtor] from asserting in any legal action that the state court jury verdict included covered damages." Order (D.E. 271, p. 2). On the same day the final judgment was entered against the Debtor in the Insurance Litigation, the Insurance Litigation was dismissed due to a settlement reached by the Daakes with the Debtor's insurance carriers, without the involvement of the Trustee. Through the settlement, the Daakes obtained well in excess of $1,000,000.00 and reimbursement for $600,000.00 or more in attorneys' fees and costs incurred in the Construction Defect Litigation. All of these funds should have been, but were not, reflected in a timely-filed amended proof of claim by the Daakes. The amended proof of claim should have reflected a substantial credit against the Daakes' claim in this bankruptcy case. Instead, the Daakes did not amend their proof of claim for years after this collection from the Insurance Litigation – not until they were found out and the Court suggested they file an amended claim – all-the-while maintaining that the full amount of their claim remained valid and owing in numerous hearings, motions, and other papers filed before this Court.

18. Following the Daakes' disclosure of the Rabun Action and the Escambia Action, the Trustee assumed all interests in both actions. *See* Trustee's Notice of Intention (D.E. 203). Neither action was abandoned by the estate at any time. Both the Rabun Action and Escambia Action were subsequently dismissed: the Rabun Action was dismissed in 2012, and the Escambia

Action was dismissed for failure to state a claim with leave to amend in 2012, and thereafter dismissed with prejudice in 2014. The Escambia Action was only dismissed after counsel for Jones and his fiancé attended hearings in Pensacola, Florida, which the Daakes' counsel appeared at and attended.

The Daakes' Filing of Post-Petition Judgment Liens in 2014

19. Over a year and a half after this Court entered its 18-page Memorandum Opinion and Order finding that the Escambia Action and Rabun Action were causes of action owned by the estate that the Daakes could not pursue, the Daakes took meticulous and calculated steps to obtain a post-petition judgment lien against the Debtor that would place their claim in priority to other unsecured creditors and enable them to pursue remedies only judgment lien holders may pursue, in competition with the bankruptcy estate.

20. On May 5, 2014, the Daakes executed and filed two Judgment Lien Certificates with the Florida Secretary of State, in plain violation of the automatic stay.

21. The first Judgment Lien Certificate (File No. J14000558758) was filed in the full amount stated on their final judgment $5,196,707.67, *despite the fact they had settled and obtained partial satisfaction of the judgment in the Insurance Litigation months before in 2014*.

22. The second Judgment Lien Certificate (File No. J1400558774) was filed in the full amount of attorneys' fees and costs ($600,000.00 collectively) they were awarded by the state court in 2013, *despite the fact that the full amount of their claim for attorneys' fees and costs was collected in the Insurance Litigation*.

23. Pursuant to Section 55.202(2)(a), the filing of the judgment lien certificates with the Department of State transformed the unsecured judgment to a judgment lien on the Debtor's interest in all personal property in this state subject to execution. These judgment lien certificates

were filed with the Secretary of State specifically so the Daakes could usurp the estate's claims and causes of action via a lien on all of the Debtor's choses in action.

The Daakes' Continued Filing of Actions to Collect Upon Their Post-Petition Judgment Against the Debtor in Violation of the Automatic Stay and the 2012 Memorandum Opinion

24. In August 2014, the Daakes re-pled the Escambia Action and the Rabun Action, along with various other claims, in the Motion to Implead and Motion for Proceedings Supplementary that they filed in the Construction Defect Litigation, to collect upon their post-petition judgment against the Debtor. The Daakes filed these claims without notice to the Trustee or this Court and without obtaining relief from the automatic stay, even though they had full knowledge of the Court's 2012 Memorandum Opinion and Orders requiring disclosure.

25. Jones removed the Motion for Proceedings Supplementary to this Court in January 2015, in the case styled *Thomas O. Daake and Adele Z. Daake v. C.D. Jones & Company, Inc.*, Case No. 15-03002-KKS.

26. The Daakes did not serve the Motion for Proceedings Supplementary on the Trustee, Jones, or any of his family members who were named therein until December 2015. All of the claims set forth in the Motion for Proceedings Supplementary were assertions that the Debtor improperly transferred assets to Jones or his family members many years pre-petition, and as such were estate claims and potential recoveries pursuant to the Court's 2012 Memorandum Opinion.

The Approval of the Compromise and Settlement and Entry of the Settlement Order

27. On October 30, 2014, the Trustee, Jones (along with his fiancé and his late father), and 331 Partners filed a Joint Motion to Approve Compromise and Settlement (the

"Initial Joint Motion to Approve Compromise and Settlement") (D.E. 352) of all past, present, or future claims and causes of action against Jones, his fiancé, and his late father.

28. Shortly before the hearing on approval of the Initial Motion to Approve Compromise and Settlement on December 17, 2014, it was brought to the undersigned's attention that the Motion for Proceedings Supplementary had been filed in August 2014, and that the Daakes had sought issuance of alias summonses in December 2014 for Jones, his fiancé, and his father.

29. At the December 17, 2014 hearing, the Daakes were confronted and forced to admit the claims set forth in the Motion for Proceedings Supplementary were property of the estate that would be settled by virtue of the Motion to Approve Compromise and Settlement. The Court properly found it had the jurisdiction to settle all claims and causes of action against the Released Parties.

30. The Court did not approve the Joint Motion to Approve Compromise and Settlement at the December 17, 2014 hearing, instructing the Trustee to include additional data for all creditors to consider, and granting leave for the filing of an Amended Motion to Approve Compromise and Settlement.

31. The Amended Motion to Approve Compromise and Settlement (D.E. 374) evaluated the merits of each of the claims the Daakes sought to pursue vis-à-vis the Motion for Proceedings Supplementary, and even cited to specific paragraphs of the Motion for Proceedings Supplementary. *See* D.E. 374, pp. 5-6.

32. The Amended Joint Motion to Approve Compromise and Settlement was set for hearing on February 25, 2015 after notice to all creditors and parties in interest. At the hearing, the Daakes' counsel again admitted that approval of the Settlement would bar all estate claims,

including those sought to be pursued vis-à-vis the Motion for Proceedings Supplementary. The Court granted the Amended Joint Motion to Approve Compromise and Settlement, awarding Jones (and all Settling Parties) a full release of all of the estate's past, present, and future claims upon consummation of the settlement by a collective payment of $250,000.00. More particularly, in exchange for the settlement payment, the Settling Parties received a full global release as follows:

> …[A]ll of the estate's potential causes of action (all claims or causes of actions in which the Debtor could have otherwise recovered or are potentially assertable or that have been asserted by or on behalf of the Trustee, the Debtor, or the estate), against Christopher Jones, Dennis Jones, and/or April White, entities owned by, related to, or affiliated with each or any of them (or in which they have any interest of any type whatsoever), and each of their subsidiaries, affiliates, parents, shareholders, directors, officers, representatives, employees, attorneys, agents, insurers, partners, heirs, successors and assigns, and any other person associated with them (the "Settling Parties") are forever waived, satisfied, and settled. For the avoidance of doubt, the parties declare their intent that this Agreement operate as a general release of the estate's claims, releasing all claims of any type whatsoever, including all demands, agreements, contracts, covenants, actions, suits, causes of action, choses in action, obligations, controversies, debts, costs, attorneys' fees, expenses, accounts, damages, judgments, losses or liabilities of whatever kind, in law or in equity, asserted or unasserted, patent or latent, known or unknown, which the estate has ever had, now has, or may have against the Settling Parties, by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of these presents, to the maximum extent of Florida law, and that any presumptions or operations of law to the contrary not be effective to limit this general release in any way.

Settlement Order at ¶ 4.

33. In accordance with the terms of the Settlement Order, the Released Parties received a full global release of all past, present, and future claims and causes of action related to the estate in exchange for making the timely settlement payment of $250,000.00. The settlement payment was duly made, and the releases effective, no later than March 5, 2015. *See* Trustee's Report of Funds Collected (D.E. 428, ¶¶ 1-3) (acknowledging receipt of the full

$250,000.00, and noting that the funds had been received via wire transfers in the following amounts: $200,000.00 on March 4, 2015 and $20,000.00 on March 4, 2015; $17,600.00 on March 5, 2015 and $12,400.00 on March 5, 2015).

The Daakes' Violations of the Settlement Order, the Automatic Stay, and the 2012 Memorandum Opinion to Further Collect Upon Their Post-Petition Judgment Against the Debtor

34. Consistent with past practice, the Daakes did not take the Settlement Order seriously. In direct contravention of the Settlement Order, the Daakes: (i) filed the new appeal[2] in the Christopher Jones Adversary Proceeding on March 13, 2015; and (ii) sought to remand the claims set forth in the Motion for Proceedings Supplementary to the state court in the Construction Defect Litigation, to proceed with their collection efforts against Jones, his fiancé, and his late father.

35. In the Motion to Remand, the Daakes represented to the Bankruptcy Court that the Settlement Order *did not* eliminate the claims set forth in the Motion for Proceedings Supplementary. But at the same time, in an appeal of the Settlement Order before the United States District Court for the Northern District of Florida, the Daakes alleged that the Settlement Order *did eliminate* the claims set forth in the Motion for Proceedings Supplementary, but challenged the Settlement Order by arguing that the Bankruptcy Court had not properly considered the merits of each claim set forth in the Motion for Proceedings Supplementary. The Daakes literally told the Bankruptcy Court one thing, and the District Court another, to suit the Daakes' desires.

36. Specifically, in spite of their previous admissions on the record at both hearings for consideration of the Trustee's Motion to Approve Compromise and Settlement, the Daakes'

[2] By filing the post-Settlement Order appeal in the Christopher Jones Adversary Proceeding in reaction to the Settlement Order, the Daakes argued that the Settlement Order had made all claims final, but ignored the releases of the Plaintiff in the Order.

argument for remand of the Motion for Proceedings Supplementary averred repeatedly that the Settlement Order "did not dispose of" the claims set forth in the Motion for Proceedings Supplementary, and that the Settlement Order only resolved the Christopher Jones Adversary Proceeding. *See*, *e.g.*, March 23, 2015 Memorandum of Law (D.E. 21), Case No. 15-03002-KKS.

37. In the appeal of the Settlement Order (Case No. 15-00109-LC-CJK) before the United States District Court, Defendant's took the polar opposite position (consistent with their position at the hearings), acknowledging that the Settlement Order fully and completely settled both the Christopher Jones Adversary Proceeding and each of the claims the Daakes sought to pursue vis-à-vis their Motion for Proceedings Supplementary. *See* Appellant's Brief (D.E. 5, *passim*) (arguing extensively and repeatedly that the Court erred in entering the Settlement Order, by not including sufficient analysis of each of these claims which were settled by the Order of the Court).

38. Because of the Daakes' refusal to cease collection efforts and their patent willingness to violate the automatic stay, the Court's Orders, and the Settlement Order, Jones was forced to expend substantial resources filing a separate litigation matter (Case No. 15-03007) to obtain a reprieve from the Daakes' scorched-earth litigation tactics. The commencement of this action, necessitated by the Daakes' bad faith litigation conduct, further cost Jones substantial sums which should never have had to be incurred after payment of the Settlement Payment. The Daakes responded, affirming that they were unapologetic for their actions and further evicing the bad-faith nature in which they have conducted themselves throughout this bankruptcy case.

39. Finally, even after filing the Appellate brief admitting the Daakes' claims and causes of action asserted vis-a-vis the Motion for Proceedings Supplementary were settled via the Settlement Order, and commencement of the action to obtain injunctive relief and damages from the Daakes (Case No. 15-03007), the Daakes sought to conduct further discovery through the Motion for Proceedings Supplementary in the form of depositions of Ellis Funk, P.C., Hayes Financial Services Inc., Larry W. Hayes, and Robert Goldberg. *See* D.E. 36, 37, 38, 39 (Case No. 15-03002-KKS). Only after Jones filed a Motion to Quash and for Protective Order did the Daakes cease further discovery efforts in the Motion for Proceedings Supplementary action. *See* D.E. 40; Order (D.E. 43).

The Daakes' Failure to File Any Amendments to Their Proof of Claim to Reflect the Substantial Recoveries Obtained During this Bankruptcy Case

40. In addition to the foregoing, the Daakes concealed their collection of amounts from the Trustee and the Court by delaying amendment of their unsecured proof of claim for years, Claim No. 41, to reflect: (i) a credit of far in excess of $1,000,000.00 from the Daakes' direct collections from the Debtor's insurance carriers (despite their early admission that such collections or recovery would "substantially reduce the [Daakes'] claims against the estate." (D.E. 14)); (ii) a credit for the reduced liquidated amount of attorneys' fees and costs adjudicated to be due and owing in the Construction Defect Litigation in 2013 (the Daakes' proof of claim included a request for $697,119.00 in attorneys' fees and $201,550.48 in costs; on September 10, 2013, the Daakes liquidated the claim for attorneys' fees and costs in a lesser amount of $400,000.00 in attorney's fees and $200,000.00 in costs); or (iii) any credits for subsequent collections from sub-contractors of C.D. Jones (Defendant's post-petition judgment reflected the Daakes had received $373,500.00 "in settlement from other parties who were sub-contractors to C-D Jones" without revealing who these collections were from and whether these amounts were

collected within the preference period of 90 days prior to the bankruptcy filing or at some point after the bankruptcy filing). All the while the Daakes delayed amendment of their proof of claim, they stated before this Court in numerous hearings, motions, and other papers, that they were the largest creditor of the estate without reference to the amounts collected outside of the purview of this Court. The Daakes' unreasonable delay in amendment of their proof of claim, while consistently maintaining before the Court that the size of their claim was important, is further indicative of the bad faith conduct of the Daakes during the course of this bankruptcy case.

ARGUMENT

"The court has the power to sanction willful and intentional violations of its orders when the violations are made in bad faith." *In re Lickman*, 282 B.R. 709, 721 (Bankr. M.D. Fla. 2002) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); *Glatter v. Mroz (In re Mroz)*, 65 F.3d 1567, 1575 (11th Cir. 1995); *Lawrence v. Goldberg (In re Lawrence)*, 279 F.3d 1294 (11th Cir. 2002); *In re Graffy*, 233 B.R. 894, 898 (Bankr. M.D. Fla. 1999). The Daakes and their counsel each had knowledge of the order granting them authority to pursue only one cause of action owned by the estate, automatic stay, the 2012 Memorandum Opinion, the Order dismissing the Escambia Action with prejudice, and the Order Approving Compromise and Settlement. Further, the Daakes' Appellant's Brief in the appeal of the Settlement Order repeatedly indicated a complete understanding that the Order Approving Compromise and Settlement broadly released the released parties from all estate claims, including the Proceedings Supplementary claims.[3] The Daakes therefore have acted with knowledge of, and in utter disregard for, the

[3] *See*, *e.g.*, Brief of Appellant (D.E. 22, Case No. 15-00109-LC-CJK) p. 7, ¶ 2 (admitting that "In the Appealed Order, the Bankruptcy Court purported to release Chris Jones, Dennis Jones, April White and essentially any entity

Order granting them authority to pursue *only one* cause of action owned by the estate, the automatic stay, the 2012 Memorandum Opinion, the Order dismissing the Escambia Action with prejudice, and the releases contained the Order Approving Compromise and Settlement.

Further, the Daakes' conduct, whether viewed in isolated incidents or as a whole, establishes that they acted willfully and in bad faith, and substantiates the need for sanctions. *See Lickman*, 282 B.R. at 720 ("In determining willfulness the court can consider the entire history of the case).[4] The Daakes had full knowledge that the Court granted authority for the Daakes to pursue only non-estate insurance claims and one cause of action: the Christopher Jones' Adversary Proceeding. The Daakes commenced two state court actions in 2012, the Escambia Action and Rabun Action, asserting to the state court that the causes of action had been "abandoned" by this bankruptcy estate. Upon learning of the existence of these causes of action, the Trustee filed an Emergency Motion to Compel Disclosure (D.E. 163) and an

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or person related in any way with each of them"); p. 7, ¶ 3 ("The Appealed Order was entered without the Bankruptcy Court taking into account…the value of any claims, other than those raised in the Fraudulent Transfer Case, that were pending or that could be raised against the Purported Released Parties, including especially the Proceeding Supplementary Claims (defined below)"); p. 14, ¶ 2 (arguing that the Motion to Approve Compromise and Settlement contained discussion of the Motion for Proceedings supplementary claims that was not adequate); p. 17, ¶ 1 (summarizing how the merits of the Motion for Proceedings Supplementary were argued on the record at the hearing on approval of compromise and settlement, but asserting the same was not adequate); p. 19, ¶ 1 (arguing the court did not adequately into account the value of the Motion for Proceedings Supplementary Claims); p. 19, ¶2 (admitting the settlement Order released the Jones Related Parties and virtually any person or entity related to each of them, in exchange for the payment of $250,000); p. 25, ¶ 4 (arguing the Proceedings Supplementary claims were inadequately considered); p. 27, ¶2 (arguing the court improperly found Proceedings Supplementary claims likely barred by statute of limitations); p. 28, ¶ 1 (arguing court didn't adequately consider probability of success for Proceedings Supplementary claims); p. 29, ¶ 2 (arguing again about settlement of Proceedings Supplementary claims); p. 37, ¶ 2 (admitting that release encompassed Proceedings Supplementary claims).

[4] *See*, *e.g.*, Order Granting Christopher Jones Motion for Sanctions for Plaintiffs' Failure to Answer First Set of Interrogatories (for two years) (D.E. 403); Order Granting in Part Defendant's Motion for Sanctions for Plaintiffs' Serving Unsigned and Unsworn Third-Amended Answers to Defendant's First Set of Interrogatories (D.E. 354); Order Granting Defendant's Motion for Sanctions for Plaintiffs' Failure to Fully and Completely Answer Defendant's First set of Interrogatories for Two Years (D.E. 359); Order Granting Defendant's Motion for Compel Plaintiffs to Produce Documents and Other Things Pursuant to Defendant's Second Requests for Production (D.E. 404); Order Granting Defendant's Request for Attorneys' Fees and Costs for Plaintiffs' Failure to Answer Defendant's Second Set of Interrogatories (D.E. 405); Order Granting Defendant's Motion to Compel Plaintiffs to File Sworn Statement of Factual Matters (D.E. 278).

Emergency Motion for Determination of Cause of Action as an Asset of the Estate (D.E. 164). The Court ultimately entered an 18-page Memorandum Opinion (D.E. 189) finding that neither the Rabun Action nor the Escambia Action were abandoned by the bankruptcy estate, and that both claims constituted property of the bankruptcy estate, as they were (i) claims that existed in favor of the Debtor pre-petition which constitute property of the estate pursuant to Section 541(a) of the Bankruptcy Code, or (2) fraudulent transfer claims that constitute property of the estate as of the petition date by virtue of Section 544(b) of the Bankruptcy Code.

The Court detailed compelling policy reasons against allowing parties to pursue their own causes of action during bankruptcy, cautioning the Daakes against further pursuit of estate-owned actions:

> This result also does the most to further the fundamental bankruptcy policy of equitable distribution among creditors. *See In re Conley*, 159 B.R. 323 (Bankr. D. Idaho 1993) ("These avoidance powers are for the benefit of the estate…."); *see also*, *United Jersey Bank v. Morgan Guranty Trust Co. (In re Prime Motor Inns, Inc.)*, 135 B.R. 917, 920 (Bankr. S.D. Fla. 1992) ("To grant individual creditors …the right to prosecute avoidance actions…would unfairly enable individual creditors to pursue their own parochial and insular interests, to the detriment of other creditors."). An additional policy concern is the orderly administration of the bankruptcy estate. *In re Harrold*, 296 B.R. 868, 873 (Bankr. M.D. Fla. 1999).

Memorandum Opinion p. 12 (citing *In re Zwirn*, 362 B.R. 536, 540-41 (Bankr. S.D. Fla. 2007)). The Court also observed, "Allowing individual creditors to pursue their own causes of action under state [or federal] law 'would interfere with this estate and with the equitable distribution scheme dependent upon it…Any other result would produce nearly anarchy where the only discernible organizing principle would be first-come-first-served.'" *Id*. (citing *In re Pearlman*, 472 B.R. 115, 122 (Bankr. M.D. Fla. 2012)). The Daakes were ordered to divulge all knowledge of similar claims to the Trustee, and the Trustee filed a notice taking all interests in the actions disclosed. *See* Order Compelling Disclosure (D.E. 190); Statement of Intention (D.E. 203). At

this point (as well as earlier), the Daakes should have gotten the message and ceased and desisted from pursuit of estate claims.

But the Daakes already knew the message, and did not care. They continued their unilateral, unauthorized, and interfering collection efforts. The Daakes filed liens against the Debtor in 2014 in violation of the automatic stay. Thereafter, the Daakes filed the Proceedings Supplementary to Execution on their post-petition liens, setting forth exclusively estate-owned claims, re-pleading the Escambia Action and Rabun Action. Both the Escambia Action and Rabun Action had been dismissed, the Escambia Action dismissed *with prejudice* at a hearing attended by the Daakes' counsel on August 25, 2014, ***one (1) day before*** the filing of the Motion for Proceedings Supplementary on August 26, 2014. The Daakes neither sought relief from the automatic stay nor abandonment by the bankruptcy estate prior to this further re-pursuit of these estate-owned claims. The Daakes were unwilling to cease pursuit of the Proceedings Supplementary claims despite: (i) entry of an Order of Compromise and Settlement broadly releasing the Jones, his fiancé, and late father from all estate claims and causes of action; (ii) denial of the Daakes' request for a stay of the Order of Compromise and Settlement pending appeal; and (iii) repeated representations by the Daakes to the District Court that the Order of Compromise and Settlement released Jones, his fiancé, and his late father from the Proceeding Supplementary claims.

CONCLUSION

The Daakes and their counsels' actions were taken in bad faith during the course of this bankruptcy case and have unreasonably increased the cost of litigation for all parties, vexed the proceedings, and impaired the Trustee's ability to administer this estate for the benefit of all

creditors. For all of the foregoing reasons, the Trustee and Jones request the Court impose appropriate sanction against the Daakes and their counsel, Michael P. Brundage, the Law firm of Phelps Dunbar, LLP, John Dowd, and the Dowd Law Firm, to the maximum extent allowable under the bankruptcy code and rules.

WHEREFORE, the Chapter 7 Trustee, Sherry F. Chancellor, and Christopher Jones respectfully request entry of an Order granting appropriate sanctions against Thomas and Adele Daake, and their counsel Michael P. Brundage, the Law firm of Phelps Dunbar, LLP, and John Dowd, the Dowd Law Firm, and grant any and all such other and further relief as is just and equitable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via CM/ECF and/or Electronic Mail upon the following on this 26th day of May, 2016:

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

In re:

C.D. JONES & COMPANY, INC., Case No. 09-bk-31595-KKS
Chapter 7

Debtor.
_____/

THOMAS DAAKE and ADELE DAAKE,

Plaintiffs,
v. Adv. No.: 11-03045-KKS

CHRISTOPHER JONES,

Defendant.
_____/

TRUSTEE AND JONES' JOINT MOTION FOR SANCTIONS AGAINST THOMAS AND ADELE DAAKE FOR BAD FAITH CONDUCT

Chapter 7 Trustee Sherry F. Chancellor and Christopher Jones jointly file this motion for sanctions for bad faith conduct against Thomas and Adele Daake and Thomas and Adele Daake's counsel, Michael Brundage of Phelps Dunbar, LLP, and John Dowd, of the Dowd Law Firm, P.A., pursuant to the inherent power of the Court and 11 U.S.C. § 105(a), and respectfully state as follows:

PRELIMINARY STATEMENT

This motion seeks an award of sanctions arising from the Daakes' bad faith conduct during this bankruptcy case in violation Federal Rules of Bankruptcy Procedure and Orders of this Court. Without prior approval of this Court, and well after the filing of this bankruptcy case, the Daakes filed a number of causes of action owned by the estate in various forums against Jones, against his fiancé, and against his late father, after the Daakes had sought and obtained

relief to pursue *only one specific* claim on behalf of the estate. When the existence of these unauthorized claims was brought to the attention of the Trustee, the Trustee filed a motion seeking a determination that all such claims and causes of action were owned by the estate. After entry of an 18-page written opinion in 2012 determining that the claims and causes of action were owned by the estate, and further action by the Trustee to assert all rights to the claims and causes of action, the Daakes did not heed the Court but instead *continued* pursuit of the claims, necessitating further litigation in other forums by Jones, his fiancé, and his late father. Even after these claims were dismissed, in part, *with prejudice*, the Daakes continued forward, filing post-petition judgment lien certificates in the Florida UCC register, to obtain rights to commence proceedings supplementary to improperly collect upon the Daakes' judgment in priority to other unsecured creditors of this bankruptcy estate. All of the same claims, including the claims dismissed *with prejudice*, were reasserted against Jones, his fiancé, and his late father vis-a-vis the Daakes' Motion for Proceedings Supplementary. Finally, *after* the Trustee settled *all* existing or potential estate claims or causes of action against Jones, his fiancé, and his late father, the Daakes again continued forward in violation of the releases granted in conjunction with the settlement agreement. All of these improper actions have resulted in substantial expenditures of fees, costs, and damages the Trustee and Jones now seek via this Motion for Sanctions.

PARTIES

1. Movant, Sherry F. Chancellor, is the Chapter 7 Trustee of the bankruptcy estate of C.D. Jones and Company, Inc.

2. Movant, Christopher Jones, is one of the "Settling Parties" who received a full global release of all of the estate's past, present, or future claims and causes of action against him

in exchange for a settlement payment that was timely made, as required by the Court's March 3, 2015 Order Granting Trustee's Amended Joint Motion to Approve Compromise and Settlement (the "Settlement Order") (Case No. 09-31595, D.E. 374). Jones was also named in two actions filed by the Daakes during the pendency of this bankruptcy case, which were resolved by the Settlement Order: (i) the so-called "Christopher Jones Adversary Proceeding" (Case No. 11-03045-KKS); and (ii) the so-called "Motion for Proceedings Supplementary" to the Daakes' post-petition judgment against the Debtor (Case No. 15-03002-KKS).

3. The Daakes are general unsecured creditors of the Debtor by virtue of a construction defect claim for work performed no later than the year 2004.

4. The Defendants reside at 11 Village Beach Road West, Santa Rosa Beach, Florida 32459.

BACKGROUND

5. This bankruptcy case was commenced on July 30, 2009 by the filing of a voluntary Chapter 7 petition for relief by the Debtor, C.D. Jones & Company, Inc. At the time the bankruptcy case was filed, the Daakes were unsecured creditors of the Debtor who did not hold a judgment.

6. After the filing of this bankruptcy case, the Daakes obtained relief from the stay for purportedly innocuous purposes involving two state court cases that were pending on the petition date: the first, *C.D. Jones & Company Inc. v. Thomas & Adele Daake, et al.*, Case No. 2004-CA-000438, pending in the Circuit Court for the First Judicial Circuit in and for Walton County, Florida, and the second, *Thomas O. Daake & Adele Z. Daake v. C.D. Jones & Company, et al.*, Case No. 2005-CA-000212, pending in the Circuit Court for the First Judicial Circuit in

and for Walton County Florida (the foregoing, collectively, the "Construction Defect Litigation").

7. The Daakes sought and received relief from the automatic stay on September 10, 2009 for the limited purpose of liquidating the amount of their general unsecured claim and non-contingent claim for attorneys' fees and costs (and to obtain a final order "so *the Debtor* [C.D. Jones & Company Inc.] could, if it chose, pursue an appeal" in the Construction Defect Litigation), petitioning the state court to address other matters that were not related to claims against the Debtor, and pursuing remedies against insurance carriers on policies that were "not property of the bankruptcy estate and have no value to the bankruptcy estate, but [would] upon payment and satisfaction, substantially reduce the Creditors' claims against the estate." *See* Motion for Relief from Stay ¶ 5 (D.E. 14) (italics added); Affidavit (D.E. 22); Order Granting Relief from Stay (D.E. 44).

8. The Daakes were *not* afforded relief from the automatic stay to obtain and enforce a post-petition judgment and prosecute estate claims in competition with, and to the exclusion of, the Trustee and the estate. Had they sought relief for this purpose, the Daakes would have expressly said so, instead of seeking relief only for expressly limited and purportedly innocuous purposes. *But this is exactly what they did*, to the detriment of the Trustee, the Settling Parties, and the creditors of the estate.

9. Utilizing the discovery tools supplied by the bankruptcy code and rules, the Daakes expansively sought discovery of the Debtor's conduct and financial affairs, by: (1) seeking and obtaining approval to conduct eleven Rule 2004 examinations; (ii) obtaining at least 45,000 pages of the Debtor's business and financial records; and (iii) acquiring, at auction, all of the Debtor's computers. The Daakes also conducted numerous depositions in the Construction

Defect Litigation and in the bankruptcy case of 331 Partners, each of which involved substantial questioning regarding the Debtor's financial affairs.

10. The Daakes thereafter sought and obtained Court approval to prosecute only one claim on behalf of the estate. In their Motion for Leave to Pursue Avoidance Actions, the Daakes identified the only potential avoidance claim as "a fraudulent transfer made by the Debtor to its then-shareholder Chris Jones valued at $1,750,000." (D.E. 152 at ¶ 10). The Court permitted their counsel, Mr. Brundage, to bring on behalf of the estate only the *one* "fraudulent conveyance action on behalf of the estate for $1,750,000." (D.E. 154). (The foregoing action is commonly referred to as the "Christopher Jones Adversary Proceeding.")

11. During the course of the Christopher Jones Adversary Proceeding, it was determined that $1,500,000 of the alleged $1,750,000 was not an asset of the estate that could be avoided and recovered. *See* Order on Motion for Partial Summary Judgment (D.E. 468).

12. Further, during the course of the Christopher Jones Adversary Proceeding, sanctions against the Daakes were awarded in favor of Jones, but the amount of attorneys' fees the Daakes must pay has yet to be liquidated.[1]

The Daakes' Pursuit of Additional Actions to Seek Satisfaction of their Post-Petition Judgment against the Debtor in Violation of the Automatic Stay

[1] *See*, *e.g.*, Order Granting Christopher Jones Motion for Sanctions for Plaintiffs' Failure to Answer First Set of Interrogatories (for two years) (D.E. 403); Order Granting in Part Defendant's Motion for Sanctions for Plaintiffs' Serving Unsigned and Unsworn Third-Amended Answers to Defendant's First Set of Interrogatories (D.E. 354); Order Granting Defendant's Motion for Sanctions for Plaintiffs' Failure to Fully and Completely Answer Defendant's First set of Interrogatories for Two Years (D.E. 359); Order Granting Defendant's Motion for Compel Plaintiffs to Produce Documents and Other Things Pursuant to Defendant's Second Requests for Production (D.E. 404); Order Granting Defendant's Request for Attorneys' Fees and Costs for Plaintiffs' Failure to Answer Defendant's Second Set of Interrogatories (D.E. 405); Order Granting Defendant's Motion to Compel Plaintiffs to File Sworn Statement of Factual Matters (D.E. 278).

13. Without Court authorization or other authority, and in violation of the automatic stay and the Court's Order of limited relief from the automatic stay, the Daakes filed two lawsuits in 2012 to attempt to collect on the Daake's post-petition judgment for the Daakes' exclusive benefit, to the exclusion of the estate. These two causes of action consisted of the so-called "Escambia Action," styled *Thomas O. Daake and Adele Z. Daake v. Dennis A. Jones, et al.,* Case No. 2012-CA-001425, in the Circuit Court in and for Escambia County, Florida, and the so-called "Rabun Action," styled *Thomas O. Daake & Adele Z. Daake v. Dennis A. Jones, et al.,* Case No. 2012-CV-0073C, in the Superior Court in and for Rabun County, Georgia. *See* Unsworn Disclosure of Causes of Action (D.E. 200). In each of the complaints the Daakes asserted the bankruptcy estate had abandoned the claims, or otherwise had no interest in the recoveries. For example, the Daakes represented in the Escambia Action that "the Chapter 7 Trustee in the C.D. Jones Bankruptcy chose not to pursue any avoidance actions or to seek recovery of any assets of C.D. Jones in the hands of third parties and, therefore, any such actions, claims or causes of action are deemed abandoned and may be pursued by the Plaintiffs." Escambia Action Complaint at ¶¶ 6, 7. These statements were untrue and made in bad faith.

14. The Trustee, upon learning of the Escambia Action, expeditiously filed: (i) a Motion to Compel (D.E. 163) the Daakes and their counsel to make a full and complete disclosure, under penalty of perjury, regarding any knowledge they may have of any pending litigation involving the Debtor; and (2) a Motion for a Determination (D.E. 164) that the Escambia Action was property of the estate.

15. On November 5, 2012, the Court granted the Trustee's Motion to Compel Disclosure and compelled the Daakes and their counsel to file a "full and complete disclosure, under penalty of perjury, regarding *any knowledge they may have of any pending litigation* that

involves the Debtor *in any way shape or form*." Order Compelling Disclosure (D.E. 190, ¶ 2) (emphasis added). On the same date, the Court granted the Motion for Determination and entered an 18-page Memorandum Opinion and Order (D.E. 189) finding that regardless of issues of standing, the Escambia Action and any other similar actions the Daakes were attempting to pursue, along with any right to recovery under such claims, were property of the bankruptcy estate. The Court specifically held that state court fraudulent transfer claims are property of the estate. "In ruling that it is [property of the estate], this Court concurs with the result in *Zwirn* and the reasoning in *In re Moore*, 608 F.3d 253 (5th Cir. 2010), which held that fraudulent transfer claims 'become estate property once bankruptcy is under way by virtue of the trustee's successor rights under §544(b)." Memorandum Opinion p. 10 (citations omitted).

16. The Daakes failed to comply with the Motion to Compel Disclosure, because they filed an unsworn document that only revealed the existence of the Escambia Action and the Rabun Action. Despite the Court's order for the Daakes to reveal *any knowledge they may have of any pending litigation* that involves the Debtor *in any way shape or form*, the Daakes failed to inform the Trustee or the Court of the existence of the Debtor's insurance claim litigation *Mid-Continent Casualty Company, et al. v. C.D. Jones & Company, Inc.*, Case No. 3:09-cv-00565-MCR-CJK, United States District Court for the Northern District of Florida (the "Insurance Litigation"), *from which the Daakes ultimately settled and kept the proceeds, in an amount believed to be in excess of $1,600,000.00.*

17. The Insurance Litigation was filed in December 2009 by C.D. Jones' insurance carriers against the Debtor and the Daakes, seeking a declaratory judgment that the insurers did not have to indemnify the Debtor with respect to the Daakes' post-petition judgment against the Debtor. The Daakes hotly litigated the Insurance Litigation claims for years, but yet failed to

mention the existence of the bankruptcy case to the District Court, or the existence of the Insurance Litigation to this Court in response to this Court's Order (D.E. 190) compelling them to disclose *any* pending litigation that involves the Debtor in any way shape or form. Despite the existence of this bankruptcy case, a Clerk's default was entered against the Debtor in the Insurance Litigation on October 11, 2011, and default final judgment entered against the Debtor on February 13, 2014, which, upon information and belief, included language at the Daakes' request "preclud[ing] [the Debtor] from asserting in any legal action that the state court jury verdict included covered damages." Order (D.E. 271, p. 2). On the same day the final judgment was entered against the Debtor in the Insurance Litigation, the Insurance Litigation was dismissed due to a settlement reached by the Daakes with the Debtor's insurance carriers, without the involvement of the Trustee. Through the settlement, the Daakes obtained well in excess of $1,000,000.00 and reimbursement for $600,000.00 or more in attorneys' fees and costs incurred in the Construction Defect Litigation. All of these funds should have been, but were not, reflected in a timely-filed amended proof of claim by the Daakes. The amended proof of claim should have reflected a substantial credit against the Daakes' claim in this bankruptcy case. Instead, the Daakes did not amend their proof of claim for years after this collection from the Insurance Litigation – not until they were found out and the Court suggested they file an amended claim – all-the-while maintaining that the full amount of their claim remained valid and owing in numerous hearings, motions, and other papers filed before this Court.

18. Following the Daakes' disclosure of the Rabun Action and the Escambia Action, the Trustee assumed all interests in both actions. *See* Trustee's Notice of Intention (D.E. 203). Neither action was abandoned by the estate at any time. Both the Rabun Action and Escambia Action were subsequently dismissed: the Rabun Action was dismissed in 2012, and the Escambia

Action was dismissed for failure to state a claim with leave to amend in 2012, and thereafter dismissed with prejudice in 2014. The Escambia Action was only dismissed after counsel for Jones and his fiancé attended hearings in Pensacola, Florida, which the Daakes' counsel appeared at and attended.

The Daakes' Filing of Post-Petition Judgment Liens in 2014

19. Over a year and a half after this Court entered its 18-page Memorandum Opinion and Order finding that the Escambia Action and Rabun Action were causes of action owned by the estate that the Daakes could not pursue, the Daakes took meticulous and calculated steps to obtain a post-petition judgment lien against the Debtor that would place their claim in priority to other unsecured creditors and enable them to pursue remedies only judgment lien holders may pursue, in competition with the bankruptcy estate.

20. On May 5, 2014, the Daakes executed and filed two Judgment Lien Certificates with the Florida Secretary of State, in plain violation of the automatic stay.

21. The first Judgment Lien Certificate (File No. J14000558758) was filed in the full amount stated on their final judgment $5,196,707.67, *despite the fact they had settled and obtained partial satisfaction of the judgment in the Insurance Litigation months before in 2014*.

22. The second Judgment Lien Certificate (File No. J1400558774) was filed in the full amount of attorneys' fees and costs ($600,000.00 collectively) they were awarded by the state court in 2013, *despite the fact that the full amount of their claim for attorneys' fees and costs was collected in the Insurance Litigation*.

23. Pursuant to Section 55.202(2)(a), the filing of the judgment lien certificates with the Department of State transformed the unsecured judgment to a judgment lien on the Debtor's interest in all personal property in this state subject to execution. These judgment lien certificates

were filed with the Secretary of State specifically so the Daakes could usurp the estate's claims and causes of action via a lien on all of the Debtor's choses in action.

The Daakes' Continued Filing of Actions to Collect Upon Their Post-Petition Judgment Against the Debtor in Violation of the Automatic Stay and the 2012 Memorandum Opinion

24. In August 2014, the Daakes re-pled the Escambia Action and the Rabun Action, along with various other claims, in the Motion to Implead and Motion for Proceedings Supplementary that they filed in the Construction Defect Litigation, to collect upon their post-petition judgment against the Debtor. The Daakes filed these claims without notice to the Trustee or this Court and without obtaining relief from the automatic stay, even though they had full knowledge of the Court's 2012 Memorandum Opinion and Orders requiring disclosure.

25. Jones removed the Motion for Proceedings Supplementary to this Court in January 2015, in the case styled *Thomas O. Daake and Adele Z. Daake v. C.D. Jones & Company, Inc.*, Case No. 15-03002-KKS.

26. The Daakes did not serve the Motion for Proceedings Supplementary on the Trustee, Jones, or any of his family members who were named therein until December 2015. All of the claims set forth in the Motion for Proceedings Supplementary were assertions that the Debtor improperly transferred assets to Jones or his family members many years pre-petition, and as such were estate claims and potential recoveries pursuant to the Court's 2012 Memorandum Opinion.

The Approval of the Compromise and Settlement and Entry of the Settlement Order

27. On October 30, 2014, the Trustee, Jones (along with his fiancé and his late father), and 331 Partners filed a Joint Motion to Approve Compromise and Settlement (the

"Initial Joint Motion to Approve Compromise and Settlement") (D.E. 352) of all past, present, or future claims and causes of action against Jones, his fiancé, and his late father.

28. Shortly before the hearing on approval of the Initial Motion to Approve Compromise and Settlement on December 17, 2014, it was brought to the undersigned's attention that the Motion for Proceedings Supplementary had been filed in August 2014, and that the Daakes had sought issuance of alias summonses in December 2014 for Jones, his fiancé, and his father.

29. At the December 17, 2014 hearing, the Daakes were confronted and forced to admit the claims set forth in the Motion for Proceedings Supplementary were property of the estate that would be settled by virtue of the Motion to Approve Compromise and Settlement. The Court properly found it had the jurisdiction to settle all claims and causes of action against the Released Parties.

30. The Court did not approve the Joint Motion to Approve Compromise and Settlement at the December 17, 2014 hearing, instructing the Trustee to include additional data for all creditors to consider, and granting leave for the filing of an Amended Motion to Approve Compromise and Settlement.

31. The Amended Motion to Approve Compromise and Settlement (D.E. 374) evaluated the merits of each of the claims the Daakes sought to pursue vis-à-vis the Motion for Proceedings Supplementary, and even cited to specific paragraphs of the Motion for Proceedings Supplementary. *See* D.E. 374, pp. 5-6.

32. The Amended Joint Motion to Approve Compromise and Settlement was set for hearing on February 25, 2015 after notice to all creditors and parties in interest. At the hearing, the Daakes' counsel again admitted that approval of the Settlement would bar all estate claims,

including those sought to be pursued vis-à-vis the Motion for Proceedings Supplementary. The Court granted the Amended Joint Motion to Approve Compromise and Settlement, awarding Jones (and all Settling Parties) a full release of all of the estate's past, present, and future claims upon consummation of the settlement by a collective payment of $250,000.00. More particularly, in exchange for the settlement payment, the Settling Parties received a full global release as follows:

> …[A]ll of the estate's potential causes of action (all claims or causes of actions in which the Debtor could have otherwise recovered or are potentially assertable or that have been asserted by or on behalf of the Trustee, the Debtor, or the estate), against Christopher Jones, Dennis Jones, and/or April White, entities owned by, related to, or affiliated with each or any of them (or in which they have any interest of any type whatsoever), and each of their subsidiaries, affiliates, parents, shareholders, directors, officers, representatives, employees, attorneys, agents, insurers, partners, heirs, successors and assigns, and any other person associated with them (the "Settling Parties") are forever waived, satisfied, and settled. For the avoidance of doubt, the parties declare their intent that this Agreement operate as a general release of the estate's claims, releasing all claims of any type whatsoever, including all demands, agreements, contracts, covenants, actions, suits, causes of action, choses in action, obligations, controversies, debts, costs, attorneys' fees, expenses, accounts, damages, judgments, losses or liabilities of whatever kind, in law or in equity, asserted or unasserted, patent or latent, known or unknown, which the estate has ever had, now has, or may have against the Settling Parties, by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of these presents, to the maximum extent of Florida law, and that any presumptions or operations of law to the contrary not be effective to limit this general release in any way.

Settlement Order at ¶ 4.

33. In accordance with the terms of the Settlement Order, the Released Parties received a full global release of all past, present, and future claims and causes of action related to the estate in exchange for making the timely settlement payment of $250,000.00. The settlement payment was duly made, and the releases effective, no later than March 5, 2015. *See* Trustee's Report of Funds Collected (D.E. 428, ¶¶ 1-3) (acknowledging receipt of the full

$250,000.00, and noting that the funds had been received via wire transfers in the following amounts: $200,000.00 on March 4, 2015 and $20,000.00 on March 4, 2015; $17,600.00 on March 5, 2015 and $12,400.00 on March 5, 2015).

The Daakes' Violations of the Settlement Order, the Automatic Stay, and the 2012 Memorandum Opinion to Further Collect Upon Their Post-Petition Judgment Against the Debtor

34. Consistent with past practice, the Daakes did not take the Settlement Order seriously. In direct contravention of the Settlement Order, the Daakes: (i) filed the new appeal[2] in the Christopher Jones Adversary Proceeding on March 13, 2015; and (ii) sought to remand the claims set forth in the Motion for Proceedings Supplementary to the state court in the Construction Defect Litigation, to proceed with their collection efforts against Jones, his fiancé, and his late father.

35. In the Motion to Remand, the Daakes represented to the Bankruptcy Court that the Settlement Order *did not* eliminate the claims set forth in the Motion for Proceedings Supplementary. But at the same time, in an appeal of the Settlement Order before the United States District Court for the Northern District of Florida, the Daakes alleged that the Settlement Order *did eliminate* the claims set forth in the Motion for Proceedings Supplementary, but challenged the Settlement Order by arguing that the Bankruptcy Court had not properly considered the merits of each claim set forth in the Motion for Proceedings Supplementary. The Daakes literally told the Bankruptcy Court one thing, and the District Court another, to suit the Daakes' desires.

36. Specifically, in spite of their previous admissions on the record at both hearings for consideration of the Trustee's Motion to Approve Compromise and Settlement, the Daakes'

[2] By filing the post-Settlement Order appeal in the Christopher Jones Adversary Proceeding in reaction to the Settlement Order, the Daakes argued that the Settlement Order had made all claims final, but ignored the releases of the Plaintiff in the Order.

argument for remand of the Motion for Proceedings Supplementary averred repeatedly that the Settlement Order "did not dispose of" the claims set forth in the Motion for Proceedings Supplementary, and that the Settlement Order only resolved the Christopher Jones Adversary Proceeding. *See*, *e.g.*, March 23, 2015 Memorandum of Law (D.E. 21), Case No. 15-03002-KKS.

37. In the appeal of the Settlement Order (Case No. 15-00109-LC-CJK) before the United States District Court, Defendant's took the polar opposite position (consistent with their position at the hearings), acknowledging that the Settlement Order fully and completely settled both the Christopher Jones Adversary Proceeding and each of the claims the Daakes sought to pursue vis-à-vis their Motion for Proceedings Supplementary. *See* Appellant's Brief (D.E. 5, *passim*) (arguing extensively and repeatedly that the Court erred in entering the Settlement Order, by not including sufficient analysis of each of these claims which were settled by the Order of the Court).

38. Because of the Daakes' refusal to cease collection efforts and their patent willingness to violate the automatic stay, the Court's Orders, and the Settlement Order, Jones was forced to expend substantial resources filing a separate litigation matter (Case No. 15-03007) to obtain a reprieve from the Daakes' scorched-earth litigation tactics. The commencement of this action, necessitated by the Daakes' bad faith litigation conduct, further cost Jones substantial sums which should never have had to be incurred after payment of the Settlement Payment. The Daakes responded, affirming that they were unapologetic for their actions and further evicing the bad-faith nature in which they have conducted themselves throughout this bankruptcy case.

39. Finally, even after filing the Appellate brief admitting the Daakes' claims and causes of action asserted vis-a-vis the Motion for Proceedings Supplementary were settled via the Settlement Order, and commencement of the action to obtain injunctive relief and damages from the Daakes (Case No. 15-03007), the Daakes sought to conduct further discovery through the Motion for Proceedings Supplementary in the form of depositions of Ellis Funk, P.C., Hayes Financial Services Inc., Larry W. Hayes, and Robert Goldberg. *See* D.E. 36, 37, 38, 39 (Case No. 15-03002-KKS). Only after Jones filed a Motion to Quash and for Protective Order did the Daakes cease further discovery efforts in the Motion for Proceedings Supplementary action. *See* D.E. 40; Order (D.E. 43).

The Daakes' Failure to File Any Amendments to Their Proof of Claim to Reflect the Substantial Recoveries Obtained During this Bankruptcy Case

40. In addition to the foregoing, the Daakes concealed their collection of amounts from the Trustee and the Court by delaying amendment of their unsecured proof of claim for years, Claim No. 41, to reflect: (i) a credit of far in excess of $1,000,000.00 from the Daakes' direct collections from the Debtor's insurance carriers (despite their early admission that such collections or recovery would "substantially reduce the [Daakes'] claims against the estate." (D.E. 14)); (ii) a credit for the reduced liquidated amount of attorneys' fees and costs adjudicated to be due and owing in the Construction Defect Litigation in 2013 (the Daakes' proof of claim included a request for $697,119.00 in attorneys' fees and $201,550.48 in costs; on September 10, 2013, the Daakes liquidated the claim for attorneys' fees and costs in a lesser amount of $400,000.00 in attorney's fees and $200,000.00 in costs); or (iii) any credits for subsequent collections from sub-contractors of C.D. Jones (Defendant's post-petition judgment reflected the Daakes had received $373,500.00 "in settlement from other parties who were sub-contractors to C-D Jones" without revealing who these collections were from and whether these amounts were

collected within the preference period of 90 days prior to the bankruptcy filing or at some point after the bankruptcy filing). All the while the Daakes delayed amendment of their proof of claim, they stated before this Court in numerous hearings, motions, and other papers, that they were the largest creditor of the estate without reference to the amounts collected outside of the purview of this Court. The Daakes' unreasonable delay in amendment of their proof of claim, while consistently maintaining before the Court that the size of their claim was important, is further indicative of the bad faith conduct of the Daakes during the course of this bankruptcy case.

ARGUMENT

"The court has the power to sanction willful and intentional violations of its orders when the violations are made in bad faith." *In re Lickman*, 282 B.R. 709, 721 (Bankr. M.D. Fla. 2002) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); *Glatter v. Mroz (In re Mroz)*, 65 F.3d 1567, 1575 (11th Cir. 1995); *Lawrence v. Goldberg (In re Lawrence)*, 279 F.3d 1294 (11th Cir. 2002); *In re Graffy*, 233 B.R. 894, 898 (Bankr. M.D. Fla. 1999). The Daakes and their counsel each had knowledge of the order granting them authority to pursue only one cause of action owned by the estate, automatic stay, the 2012 Memorandum Opinion, the Order dismissing the Escambia Action with prejudice, and the Order Approving Compromise and Settlement. Further, the Daakes' Appellant's Brief in the appeal of the Settlement Order repeatedly indicated a complete understanding that the Order Approving Compromise and Settlement broadly released the released parties from all estate claims, including the Proceedings Supplementary claims.[3] The Daakes therefore have acted with knowledge of, and in utter disregard for, the

[3] *See*, *e.g.*, Brief of Appellant (D.E. 22, Case No. 15-00109-LC-CJK) p. 7, ¶ 2 (admitting that "In the Appealed Order, the Bankruptcy Court purported to release Chris Jones, Dennis Jones, April White and essentially any entity

Order granting them authority to pursue *only one* cause of action owned by the estate, the automatic stay, the 2012 Memorandum Opinion, the Order dismissing the Escambia Action with prejudice, and the releases contained the Order Approving Compromise and Settlement.

Further, the Daakes' conduct, whether viewed in isolated incidents or as a whole, establishes that they acted willfully and in bad faith, and substantiates the need for sanctions. *See Lickman*, 282 B.R. at 720 ("In determining willfulness the court can consider the entire history of the case).[4] The Daakes had full knowledge that the Court granted authority for the Daakes to pursue only non-estate insurance claims and one cause of action: the Christopher Jones' Adversary Proceeding. The Daakes commenced two state court actions in 2012, the Escambia Action and Rabun Action, asserting to the state court that the causes of action had been "abandoned" by this bankruptcy estate. Upon learning of the existence of these causes of action, the Trustee filed an Emergency Motion to Compel Disclosure (D.E. 163) and an

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or person related in any way with each of them"); p. 7, ¶ 3 ("The Appealed Order was entered without the Bankruptcy Court taking into account…the value of any claims, other than those raised in the Fraudulent Transfer Case, that were pending or that could be raised against the Purported Released Parties, including especially the Proceeding Supplementary Claims (defined below)"); p. 14, ¶ 2 (arguing that the Motion to Approve Compromise and Settlement contained discussion of the Motion for Proceedings supplementary claims that was not adequate); p. 17, ¶ 1 (summarizing how the merits of the Motion for Proceedings Supplementary were argued on the record at the hearing on approval of compromise and settlement, but asserting the same was not adequate); p. 19, ¶ 1 (arguing the court did not adequately into account the value of the Motion for Proceedings Supplementary Claims); p. 19, ¶2 (admitting the settlement Order released the Jones Related Parties and virtually any person or entity related to each of them, in exchange for the payment of $250,000); p. 25, ¶ 4 (arguing the Proceedings Supplementary claims were inadequately considered); p. 27, ¶2 (arguing the court improperly found Proceedings Supplementary claims likely barred by statute of limitations); p. 28, ¶ 1 (arguing court didn't adequately consider probability of success for Proceedings Supplementary claims); p. 29, ¶ 2 (arguing again about settlement of Proceedings Supplementary claims); p. 37, ¶ 2 (admitting that release encompassed Proceedings Supplementary claims).

[4] *See*, *e.g.*, Order Granting Christopher Jones Motion for Sanctions for Plaintiffs' Failure to Answer First Set of Interrogatories (for two years) (D.E. 403); Order Granting in Part Defendant's Motion for Sanctions for Plaintiffs' Serving Unsigned and Unsworn Third-Amended Answers to Defendant's First Set of Interrogatories (D.E. 354); Order Granting Defendant's Motion for Sanctions for Plaintiffs' Failure to Fully and Completely Answer Defendant's First set of Interrogatories for Two Years (D.E. 359); Order Granting Defendant's Motion for Compel Plaintiffs to Produce Documents and Other Things Pursuant to Defendant's Second Requests for Production (D.E. 404); Order Granting Defendant's Request for Attorneys' Fees and Costs for Plaintiffs' Failure to Answer Defendant's Second Set of Interrogatories (D.E. 405); Order Granting Defendant's Motion to Compel Plaintiffs to File Sworn Statement of Factual Matters (D.E. 278).

Emergency Motion for Determination of Cause of Action as an Asset of the Estate (D.E. 164). The Court ultimately entered an 18-page Memorandum Opinion (D.E. 189) finding that neither the Rabun Action nor the Escambia Action were abandoned by the bankruptcy estate, and that both claims constituted property of the bankruptcy estate, as they were (i) claims that existed in favor of the Debtor pre-petition which constitute property of the estate pursuant to Section 541(a) of the Bankruptcy Code, or (2) fraudulent transfer claims that constitute property of the estate as of the petition date by virtue of Section 544(b) of the Bankruptcy Code.

The Court detailed compelling policy reasons against allowing parties to pursue their own causes of action during bankruptcy, cautioning the Daakes against further pursuit of estate-owned actions:

> This result also does the most to further the fundamental bankruptcy policy of equitable distribution among creditors. *See In re Conley*, 159 B.R. 323 (Bankr. D. Idaho 1993) ("These avoidance powers are for the benefit of the estate…."); *see also*, *United Jersey Bank v. Morgan Guranty Trust Co. (In re Prime Motor Inns, Inc.)*, 135 B.R. 917, 920 (Bankr. S.D. Fla. 1992) ("To grant individual creditors …the right to prosecute avoidance actions…would unfairly enable individual creditors to pursue their own parochial and insular interests, to the detriment of other creditors."). An additional policy concern is the orderly administration of the bankruptcy estate. *In re Harrold*, 296 B.R. 868, 873 (Bankr. M.D. Fla. 1999).

Memorandum Opinion p. 12 (citing *In re Zwirn*, 362 B.R. 536, 540-41 (Bankr. S.D. Fla. 2007)). The Court also observed, "Allowing individual creditors to pursue their own causes of action under state [or federal] law 'would interfere with this estate and with the equitable distribution scheme dependent upon it…Any other result would produce nearly anarchy where the only discernible organizing principle would be first-come-first-served.'" *Id*. (citing *In re Pearlman*, 472 B.R. 115, 122 (Bankr. M.D. Fla. 2012)). The Daakes were ordered to divulge all knowledge of similar claims to the Trustee, and the Trustee filed a notice taking all interests in the actions disclosed. *See* Order Compelling Disclosure (D.E. 190); Statement of Intention (D.E. 203). At

this point (as well as earlier), the Daakes should have gotten the message and ceased and desisted from pursuit of estate claims.

But the Daakes already knew the message, and did not care. They continued their unilateral, unauthorized, and interfering collection efforts. The Daakes filed liens against the Debtor in 2014 in violation of the automatic stay. Thereafter, the Daakes filed the Proceedings Supplementary to Execution on their post-petition liens, setting forth exclusively estate-owned claims, re-pleading the Escambia Action and Rabun Action. Both the Escambia Action and Rabun Action had been dismissed, the Escambia Action dismissed *with prejudice* at a hearing attended by the Daakes' counsel on August 25, 2014, ***one (1) day before*** the filing of the Motion for Proceedings Supplementary on August 26, 2014. The Daakes neither sought relief from the automatic stay nor abandonment by the bankruptcy estate prior to this further re-pursuit of these estate-owned claims. The Daakes were unwilling to cease pursuit of the Proceedings Supplementary claims despite: (i) entry of an Order of Compromise and Settlement broadly releasing the Jones, his fiancé, and late father from all estate claims and causes of action; (ii) denial of the Daakes' request for a stay of the Order of Compromise and Settlement pending appeal; and (iii) repeated representations by the Daakes to the District Court that the Order of Compromise and Settlement released Jones, his fiancé, and his late father from the Proceeding Supplementary claims.

CONCLUSION

The Daakes and their counsels' actions were taken in bad faith during the course of this bankruptcy case and have unreasonably increased the cost of litigation for all parties, vexed the proceedings, and impaired the Trustee's ability to administer this estate for the benefit of all

creditors. For all of the foregoing reasons, the Trustee and Jones request the Court impose appropriate sanction against the Daakes and their counsel, Michael P. Brundage, the Law firm of Phelps Dunbar, LLP, John Dowd, and the Dowd Law Firm, to the maximum extent allowable under the bankruptcy code and rules.

WHEREFORE, the Chapter 7 Trustee, Sherry F. Chancellor, and Christopher Jones respectfully request entry of an Order granting appropriate sanctions against Thomas and Adele Daake, and their counsel Michael P. Brundage, the Law firm of Phelps Dunbar, LLP, and John Dowd, the Dowd Law Firm, and grant any and all such other and further relief as is just and equitable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via CM/ECF and/or Electronic Mail upon the following on this 26th day of May, 2016:

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