



**QUICK GROUP, LLC**

Investigative Solutions  
Forensic Accounting  
Security Consulting

# Forensic Accounting Report

Supplemental Report Re: 2017 POA Payments to Johnson & Davis PA

Prepared for:

Bull Point Plantation Property Owners Association, Inc.  
114 Barnaby Bluff  
Seabrook, SC 22940

**January 22, 2018**

Prepared by:

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## I. Executive Summary

In September 2017, the Quick Group, LLC conducted an administrative and financial forensic examination for the Bull Point Plantation Property Owners Association, Inc. (POA). Subsequently, on January 11, 2018, the Quick Group was again contacted by the POA to further analyze additional documents which the POA only recently had discovered and which were not previously reviewed in the September examination. The documents related to monies paid out of the Contingency Fund to Barry Johnson, Esq., of Johnson & Davis, PA.

Upon examination and analysis of the additional documents, Quick Group has determined that there appears to be sufficient evidence to conclude that the POA's Director of Operations, Pete Marzluff, and Contingency Fund members Ron Lambe and Gary Okey, and possibly others, acted outside their POA authorities. The newly discovered documents show that in 2017 these individuals formed a committee, called the "Bull Point Operations Committee," and used that committee to retain and issue \$10, 758 in Contingency Fund payments to Mr. Johnson. The newly discovered documents further show that these individuals did not have authorization from the POA's Board of Directors to form such a committee and issue payments to Johnson.

## II. Background

On September 29, 2017, Quick Group, LLC was engaged by the Bull Point Plantation Property Owners Association, Inc. (POA), to conduct a forensic accounting review and examination of the POA's financial statements and accounting records for the years ending December 31, 2015, and 2016 and for the nine-month period ending September 30, 2017.

The purpose of the forensic account review and examination was to determine whether the POA's financial statements and accounting records, contained any misstatements of fraud or any illegal activity, to include but not limited to, asset misappropriations, misrepresentations, theft, fraudulent receipts or disbursements.

Quick Group, LLC procedures included the examination and analysis of POA records, to include accounting and financial data (provided by the POA), interviews of employees, bank records, and information publicly available from outside sources.

On October 21, 2017 Quick Group issued a report to the POA stating it had found no indications of fraudulent or illegal activities in the POA's financial statements, accounting system and/or records. In regard to the POA's 2017 expenditures of contingency funds, the report stated:

*"2017 expenditures -of the 12 expenditures during the year, seven had no documentation showing approval signatures of the three-committee members and 10 expenditures had no documentation of committee meeting minutes approving the expenditures. All of these expenditures appeared to be for legitimate POA/contingency fund purposes and did not appear to be otherwise suspect."*

Also, the report stated:

*"No authorization was found within the CCR (Covenants, Conditions and Restrictions) and/or amendments that allowed contingency funds to be used to pay professional (attorney) fees to*

*collect on outstanding member dues.” Although, “since 2014,<sup>1</sup> it appears to be a standing practice of the contingency committee to authorize the payment of professional fees for the collection of outstanding member dues.”*

At the time of the examination, Quick Group was under the impression that all legal fees paid by the contingency fund were related to the collection of outstanding members’ dues and other ancillary activities of collections requiring legal assistance or advice.

Since the initial report, additional records, consisting of emails, and related attachments, and other documents previously not provided or seen by the Quick Group at the time of their initial examination, were provided. The review and examination of these emails and documents raise suspicions that the legal fees paid to Attorney Barry Johnson of the Johnson & Davis PA law firm were not authorized by the POA in that there is no record of the expenditures having been submitted to the Board for authorization and/or the Board actually authorizing the expenditures. It also appears that POA Director of Operations, Pete Marzluff, and Contingency Fund committee members Gary Okey, and Ron Lambe, and possibly others, acted outside the authority granted to them by the POA when they hired and expended POA funds for the services of Barry Johnson, not least of which because the expenditures to Mr. Johnson appear to be more of a personal nature for the benefit of Marzluff, Okey and Lambe, and possibly others in the POA, rather than the POA as a whole.

### **III. Investigation & Analysis Completed**

On January 11, 2018, Mr. Gavigan, acting in his capacity as the President of the POA , contacted Chris J. Quick of Quick Group and requested him to investigate the POA’s retention and expenditure of funds to Attorney Barry Johnson of Johnson & Davis PA in 2017.

Since this date, Quick Group has been provided and reviewed the following documents and information:

<b>EXHIBIT LIST</b>		
<b>Exhibit #</b>	<b>Date</b>	<b>Document or Item <sup>2</sup></b>
1.	01/17/2017 - 08/14/2017	Detailed billing records from Barry Johnson, of Johnson & Davis PA.
2.	03/20/2017-08/15/2017	Checks to Johnson & Davis, PA
3.	01/04/2016	Email from Ron Lambe to Anette Goodell, RE: Proposed Draft of the 17 <sup>th</sup> Amendment to the Covenants.
4.	08/24/2016	Email from Robert Wolfson to Property Owners.
5.	09/01/2016	Email from Robert Wolfson to Property Owners, Subject: Decadency
	09/01/2016	Email from Peter Marzluff to Ron Lambe and Gary Okey, response to above email by Wolfson.
6.	11/30/2016	Email exchange between Peter Marzluff, Gary Okey and Ron Lambe, Subject: Meeting with Bob Wolfson.
7.	01/04/2017	Email exchange between Peter Marzluff, Gary Okey, Ron Lambe and Barry

<sup>1</sup> Per Contingency Committee minutes, September 26, 2014.

<sup>2</sup> Although reviewed and examined, and attached at the end of this report, not all exhibits are referenced within the body of the report.

		Johnson, Subject: Bull Point POA Preliminary Meeting.
8.	04/29/2017	Email from James Goodwin, Jr. to various POA member, Subject: Informational Meeting for Homeowners on Thursday, May 3 <sup>rd</sup> at 6 pm. with attachment titled, Current Situation, Concerned Bull Point Property Owners, 4/27/2017.
9.	06/15/2017	Email from Tom Imperato to Annett Goodall, Ron Lambe, Gary Okey, Pete Marzluff, Annette Goodall, Joseph Steinheiser and Janelle Iturbe, Subject: Bull Point Committees.
10.	06/15/2017	Email from Ron Lambe response and forwarding above email to Gary Okey, Peter Marzluff and Annette Goodell.
	06/22/2017	Email from Peter Marzluff, response to Annette Goodell of above email.
11.	07/17/2017	Email from Peter Marzluff to Jeffery Tibbals, Annette Goodell and Joseph Steinheiser, Subject GSI, LLC v DB Aster, LLC et al.
12.	10/18/2017	Email exchange between Annette Goodell and Ron Lambe and Gary Okey. RE: Contingency fund write up.
13.	09/25/2017	Email from Gay Reed of Johnson & Davis, PA to Peter Marzluff enclosing three invoices from Johnson & Davis, PA to the Bull Point Operations Committee.
14.	09/27-28/ 2017	Email Exchange between Annett Goodell and Barry Johnson, Subject: RE Bull Point Plantation POA.
15.	04/24/2017	SC Secretary of State records show the effective (forming) date of Huspah Properties, LLC to be 04/28/2017.
16.	01/04/2018	Letter to Attorney Barry Johnson from Bull Point POA requesting client work product. (1 <sup>st</sup> request letter)
17.	01/10/2018	Letter to Attorney Barry Johnson from Bull Point POA requesting client work product. (2 <sup>nd</sup> request letter)
18.	01/10/2018	Letter from Attorney Barry Johnson to Attorney Darrell Johnson, Jr. RE; William (Billy) Gavigan – Bull Point, requesting release from Bull Point Operations Committee members, Peter Marzluff, Ron Lambe and Gary Okey to obtain client records.
19.	01/12/2018	Letter from Billy Gavigan, President of Bull Point POA to Peter Marzluff, Ron Lambe and Gary Okey, requesting release of all files produced in connection with the services provided by Barry Johnson, Esq., of Johnson & Davis, PA.
20.	01/14/2018	Letter from Billy Gavigan, President of Bull Point POA, to Peter Marzluff, Ron Lambe and Gary Okey, requesting preservation and request of emails, documents and communications with Attorney Barry Johnson relating to his representation of the POA Operations Committee.
21.	01/14/2018	Letter from Billy Gavigan, President of Bull Point POA, to Attorney Barry Johnson requesting preservation and renewed request of emails, documents and communications (client records) relating to his representation of the POA Operations Committee.
22.	1/17/2018	Email response from Marzluff, Lambe and Okey regarding Billy Gavigan's preservation and request of emails, documents and communications with Attorney Barry Johnson relating to his representation of the POA Operations Committee.
23.	03/29/2017	Email from Ron Lambe and Gary Okey to Anette Goodell, RE: Status of

		Billy Gavigan vs. DB Aster Lawsuit.
24.	03/29/2017	Email from Janelle Iturbe to Anette Goodell, Ron Lambe and Gary Okey.
25.	05/22/2017	Declaration of A. Janelle Iturbe.
26.	05/19/2017	Affidavit of Barry L. Johnson.
27.	11/16/2016	Minutes Of Annual Meeting, Wednesday, November 16, 2016.
28.		List of communications, emails, memos and other documents listed or referenced in Barry Johnson, Esquire, Johnson & Davis PA, billing statements.
29.		South Carolina Code of Laws, Section 33-31-101, South Carolina Nonprofit Corporation Act of 1994.
30.	01/16/2018	Janelle Iturbe email to Billy Gavigan, Re: Declarant Corp. Council On Legal Expenditures Fwd: POA Bill GSI V DB -Nexsen Pruet 2017-12-22 and Barry Johnson.

A review of the detailed billing statements provided by the Johnson & Davis PA law firm billed to the Bull Point "Operations Committee" from January 17, 2017 through August 14, 2017, showed total services billed at \$10,757.66 (Exhibit 1). A total of five checks totaling \$10,757.66 were paid to the Johnson & Davis PA from the Bull Point POA contingency fund account (Exhibit 2). All checks were signed by Ron Lambe, a member of the Contingency Fund Committee. According to the billing statement, a draft engagement agreement from the law firm was sent to G. Okey on January 17, 2017. There were approximately three follow up emails between attorney Barry Johnson and Okey. A signed engagement agreement was received by Johnson on February 2, 2017. The last service provided by Johnson was on August 14, 2017 when he made a six minute telephone call to the Operations Committee. The billing records show that during this seven month period Johnson had approximately 63 various communications to include email and telephone calls with Okey, Marzluff, Lambe and others, allegedly related to his client the Bull Point Operations Committee. A listing of all communications and documents, based on the details in the billing statements made by Johnson with Okey, Marzluff, Lambe and others, is detailed by date in Exhibit 28.

**Findings:**

Based on the evidence reviewed to date, there are no POA records to support a finding other than (1) that the engagement of Attorney Barry Johnson and the payment of POA funds to him was not duly authorized by the POA, and (2) that Marzluff, Okey and Lambe had no authority to engage the services or authorize the payments to Johnson on behalf of the POA. As such, it appears that these individuals did not abide by the POA's, Conditions, Covenants and Restrictions (CCRs) or its amendments. In addition, they did not follow the South Carolina Code of Laws, Nonprofit Corporation Act of 1994, Section 33-31-101, which governs nonprofit entities such as the Bull Point POA.

The evidence that support these findings includes the following:

- No POA records appear to exist, including Annual Meeting minutes, POA Resolutions, and Board of Director meeting notes, which show, either before or after Mr. Johnson was retained, that a committee named the "Bull Point POA Operations Committee" ever existed and/or was ever authorized by the Board of Directors.

According to the South Carolina Nonprofit Corporation Act of 1994, Section 33-31-825., titled Committees (Exhibit 29):

(a) Unless prohibited or limited by the articles or bylaws<sup>3</sup>, a board of directors may create one or more committees of the board and appoint members of the board to serve on them. Each committee shall have two or more directors who serve at the pleasure of the board.

(b) The creation of a committee and appointment of members to it must be approved by the greater of:

(1) a majority of all the directors in office when the action is taken; or

(2) the number of directors required by the articles or bylaws to take action under Section 33-31-824. (which requires a quorum of the directors).

Unless records exist elsewhere that have not yet been produced thus far, it appears the alleged formation of POA's Operation Committee did not conform to South Carolina law, as well the CCRs of the POA.

- Approximately one-month after signing an engagement agreement, presumably with Gary Okey of the Operations Committee on March 15, 2017, Attorney Johnson drafted and prepared an email memo to Okey "regarding their committee name." (Exhibit 1). On March 16, 2017, Johnson sent another email memo to Gary Okey about "naming his committee." It is difficult to conceive how the POA can engage the services of an attorney on behalf of a committee that had yet been properly named or approved by the POA's Board of Directors one-month after engaging the services of an attorney.
- No documentation in the POA records could be found in the Board of Director meeting minutes showing the approval of hiring or expenditures to Attorney Barry Johnson.
- Although, it appears all three members of the Contingency Fund Committee approved the expenditures to Attorney Johnson, it appears they did not have the authority to do so, because the expenditures to Johnson appears to be for services that are not specified in the POA's CCRs. According to the 15<sup>th</sup> Amendment to the CCR's, the use of contingency funds are to be used for the following:
  - (a) ***to provide for maintenance, repair, and replacement of those portions of the Common Areas*** which are the responsibility of the Association and which must be maintained, repaired, or replaced on a periodic basis,
  - (b) ***to cover emergencies and repairs*** required as a result of casualties which are not funded by insurance proceeds,

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<sup>3</sup> Since there appears to be no reference regarding the formation of committees in the Bull Point POA CCRs, South Carolina Law applies.

- (c) **to cover unforeseen operating contingencies or deficiencies** arising from unpaid assessments or liens, as well as from emergency expenditures and other matters,
- (d) **to acquire additional Common Areas and/or other amenities** for the enjoyment of the Members, all as may be authorized from time to time by the Board of Directors and approved by the elected representative.

Upon review of his billing statements (Exhibits 1 & 26), it appears Attorney Johnson was advising the “Operations Committee” on the following items:

- POA rules-making process
- DB Aster negotiations
- POA rules and regulations
- Progression of the Gavigan/DB Aster lawsuit
- Discussions with DB Aster counsel
- Status of the Gavigan/DB Aster litigation
- Memo regarding an (unnamed/or unidentified) 153 acre parcel<sup>4</sup>
- Conservation easement tax consultant
- POA Operating Committee regarding conservancy
- Edited draft of proposed Barry Johnson affidavit regarding Iturbe communications
- Finalized Barry Johnson affidavit per J. Tibbals' regarding DB Aster Counsel
- Regarding DB Aster counsel
- Memo with attachments via (attorney) Mary Sharp, regarding proposed new declarant

All of the above items which Johnson seems to be advising the “Operations Committee” on appear to be unrelated to the delineated purposes for which the Contingency Fund was established.

Absent the production of client documents<sup>5</sup> or other information, it appears based on his billing statements, that Mr. Johnson was advising the alleged “Operations Committee” on the ongoing GSI, LLC v. DB Aster, LLC federal lawsuit that was pending at the time. The lawsuit related to GSI, 'LC's attempted purchase of certain real property in Bull Point in 2016 from DB Aster. The case was settled on August 18, 2017, resulting in GSI acquiring the contracted for real property and DB Aster assigning its declarant rights to GSI.<sup>6</sup>

- Based on emails and other documents reviewed, thus far, there is evidence to indicate that POA Director of Operations Marzluff and Contingency Fund members Okey and Lambe unduly formed the Operations Committee, retained the services of Attorney Johnson and authorized

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<sup>4</sup> Although unnamed and unidentified in Johnson’s billing statement, 153 undeveloped acres are specifically mentioned in the DB Aster and GSI June 3, 2016 Second Amended to Purchase and Sale Agreement and the pending GSI v. DB Aster Federal lawsuit.

<sup>5</sup> A written request to obtain this memo and the other client emails and documents related to Attorney Johnson representation of the Operations Committee has been made of Johnson, Pete Marzluff, Gary Okey and Ron Lambe. As of the date of this report, they not yet produced such client emails and documents.

<sup>6</sup> On August 21, 2017 GSI assigned its declarant rights to Bull Point SC, LLC.

payments to him from the Contingency Fund. The purpose appears to be for them and/or persons to acquire all or parts of Bull Point Plantation from DB Aster that, at the time, was in dispute in the litigation between GSI and DB Aster. The use of POA funds by certain POA members or homeowners for such a purpose would be considered a personal expenditure by those considering acquiring the property, and not the POA as a whole. At the time the GSI v. DB Aster lawsuit was pending, DB Aster, who was also the Declarant of the POA, was represented by Jeffery L. Tibbals of the Nexsen Pruet LLC law firm. The POA was not a named party to the litigation, and did not require legal representation. If the POA required legal representation, a special meeting of the Board of Directors or the POA members should have been called and voted upon as prescribed in the CCR's to approve the hiring of an attorney. There are no POA records which show any such meetings or votes occurred, or that an action by unanimous written consent was executed.

Further evidence to support that the hiring of Mr. Johnson was of a personal nature and not for the benefit of all POA members, making it fall outside the authority of the POA, include the following;

- In what appears to be his initial email to Mr. Johnson on January 3, 2017 (Exhibit 7) (cc: Marzluff and Lambe), Gary Okey writes:

*"...we would be available to meet with you next Wednesday, January 11... There are two main issues we would like to explore, at least in a general way:*

*1. What are our legal options should Billy Gavigan, or some similar entity, seek to change our architectural guidelines and Board to allow for the construction of cheap/small/non-custom homes at Bull Point?*

*2. Are there ways that individual homeowners and/or our POA could acquire the Declarancy from DB Astor after the lawsuit between DB Astor and Billy Gavigan is resolved?"*

- On April 28, 2017, POA member and homeowner, James Goodwin, Jr., sent an email to a limited number of POA members; specifically, 32, announcing an Informational Meeting for Homeowners on Thursday, May 3, 2017. In the email (Exhibit 8) he states:

*"... A group of your neighbors are developing a strategy to take property owner control of Bull Point to promote and ensure continued quality of the development and homes built here. Please join us on May 3<sup>rd</sup> to hear the details of this plan and how you can become involved. Multiple meetings with small groups of homeowners are being held to ensure that all questions are able to be addressed. Meetings are being held the Week of May 1 because time is of the essence and we need to act quickly."*

In a 10-page attachment to the mail titled, "Current Situation – Concerned Bull Point Property Owners," (Exhibit 8) are various strategies or options of obtaining the property and Declarancy from DB Aster. Such strategies outlined included raising capital, purchasing shares into an entity called Huspah Properties, LLC,<sup>7</sup> (an entity unrelated to the POA), payback to shareholders with potential profit and tax write-offs, profit to investors and ROIs (Rates of Returns). This email was not emailed to all POA members and appears to be of an investment nature, possibly falling outside the nature of a nonprofit entity, such as the POA.

- In a declaration filed in the above litigation, sworn to by Attorney A. Janelle Iturbe on May 22, 2017, (Exhibit 26) Iturbe stated in the beginning of paragraph 4 that:

*"Prior to the mediation, I received a telephone call from Barry Johnson, who stated he had been retained by a group of Bull Point homeowners interested in purchasing DB Aster's interest in the real property owned by DB Aster at Bull Point (the "Property"). I informed Mr. Johnson that a lawsuit was pending between DB Aster and GSI, LLC and that mediation had been scheduled for March 2, 2017."*

- On May 19, 2017, Barry Johnson also provided a sworn affidavit in the above litigation (Exhibit 25). In paragraph 3 of his affidavit he stated:

*"My firm and I were retained by the Bull Point Planation Property Owners Association, Inc. Operations Committee to be its counsel."*

- As part of the Quick Group forensic accounting review in September 2017, POA Office Manager Annette Goodall requested via email of Johnson to provide copies of his legal contracts or schedule of fees (Exhibit 14). Johnson asked her to "define all legal contracts or scheduled of fees." Goodall replied, "a copy of any contact you may have with the POA..." Johnson then asked why she needed this and she stated, "The new Board (of Directors) is auditing, the audit includes all contacts legal and other." Johnson then replied, "I have never been employed by the POA."

Johnson's statement that he has never been employed by the POA is contradictory, in light of his sworn affidavit statement that he was retained by the Bull Point Planation POA Operations Committee. Additionally, the client listed on his billing statements reads "Bull Point Operations Committee" with the POA's correct address of 114 Barnaby Bluff, Seabrook, SC 29940 (Exhibit 1). Furthermore, payment for his services came from checks clearly drawn from the Bull Point Owners Association Contingency Fund (Exhibit 2). His fees were clearly paid by the POA's Contingency Fund which is considered a part of the POA. It should also be noted, that Johnson provided further contradictory language to Attorney

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<sup>7</sup> According to the records from the South Carolina Secretary of State Office, Huspah Properties, LLC was formed on April 28, 2017. The registered agent for the entity appears to be POA member and homeowner Michael S. Powers, 101 Bull Point Rd, Seabrook, SC, 29940

Iturbe when he advised her that he had been retained *"by a group of Bull Point homeowners" interested in purchasing DB Aster's interest in the real property..."*

- Further indication that the Bull Point "Operations Committee," and individuals acting on its behalf, were acting outside their authority, is based on an email sent by Tom Imperato of Gibraltar Capital Asset Management (a representative of DB Aster) to Annette Goodall, the POA's Office Manager Manger, dated June 15, 2017, with the subject line, "Bull Point Committees," (Exhibit 9) In the email he states:

*"The only recognized or "official" committees of the Bull Point Plantation POA are the ARB and Beautification Committees. Please remove any other committees from the website as soon as possible. Please notify us if any residents have requested or make new requests to form committees as those requests need to be discussed and approved by the Board before any formal or informal action can be take on behalf of BPPOA or that proposed committee."*

- Further evidence to support that the Operations and Contingency Fund Committee operated outside the bounds of the POA include an email sent on July 17, 2017 by Pete Marzluff to Jeffery S. Tabbal's, the attorney representing DB Aster in the pending lawsuit. In this email (Exhibit 11), Marzluff provides Tibbals with various Contingency Fund meeting minutes from 2014-2016; however, he did not provide minutes for 2017. Marzluff admitted that:

*"...There were no minutes recorded for 2017 as we changed the manner in which we allocated funds out of that account..."*

Because the POA, or another committee of the POA, changes the allocation of funds to an account, does not excuse the committee from recording or documenting minutes of those meetings. Contingency Fund meetings should still be recorded and documented.

#### **Document Response from POA Members Pete Marzluff, Ron Lambe and Gary Okey**

On January 14, 2018, the POA President wrote to Messrs. Marzluff, Lambe and Okey to request they preserve and produce all documents relating to their involvement in the alleged Operations Committee. In response, these members wrote:

*"Dear Mr. Gavigan,*

*We are in receipt of your January 14, 2018 email with its numerous requests. At this point we haven't decided what position to take regarding those requests. We have turned your email over to other parties for review. Please be assured that in regard to our actions which you have referenced, we were acting pursuant to the prior Declarant's recommendation and authorization. They advised that given the uncertainty regarding their continuing status as Declarant, we should obtain local counsel. Our intention to use the Contingency Fund for legal expenses was thoroughly discussed at the 2016 Annual Meeting. Pursuant to the authority granted in Amendment 15 to the Covenants and our discussion with the membership and Declarant representative at the 2016 Annual Meeting, we utilized the Contingency Fund, with*

*approval of the Contingency Fund Committee, to cover the legal expenses associated with the advice given to us as summarized in detail in the legal bills from Mr. Johnson's office which you have had in your possession for some time.*

*As you have told the entire community at the 2017 Annual Meeting, and the three of us on numerous occasions, the retention of counsel and the expenditure of approximately \$10,000 for legal fees was determined by the very comprehensive "Forensic Audit" (your term) to be both a reasonable "judgment call" and a very minor expense within the overall scope of POA expenditures and therefore not subject to further question. You have insisted on raising these issues time and again over the last few months despite your own repeated statements to the community and the three of us that you were satisfied with the conclusions of the Audit. We feel your continuing to raise these issues is divisive and harmful to the community.*

*We will be in touch with our answer after we get more information from appropriate sources.*

*Sincerely,*

*Pete Marzluff, former Director of Operations  
Ron Lambe, former POA Board of Director member  
Gary Okey, former POA Board of Director member"*

The various assertions and responses made by Marzluff, Lambe and Okey, above, appear to be inaccurate or incorrect and are addressed with the following facts and evidence, some of which has been previously presented in this report:

**Assertion - *"We were acting pursuant to the prior Declarant's recommendation and authorization."***

No documents were provided for review to show the Board of Directors or the Declarant recommending or authorizing the formation of an Operations Committee, or the expenditure of POA funds to obtain legal advice so certain POA members could purchase property from the Declarant while the said property was in unsettled litigation involving a third-party (GSI). In fact, when the Declarant became aware of a potential confidential mediation disclosure between DB Aster and GSI made by Lambe and Okey (Exhibit 23), DB Aster sent an email to Annette Goodell, Ron Lambe and Gary Okey on March 29, 2017 (Exhibit 24) advising them and the POA that:

*"DB Aster remains in active litigation; and we are highly sensitive to any communications on behalf of DB Aster or the Bull Point POA regarding the litigation and its status. Any inquires, status requests, or statements regarding the litigation, DB Aster, or DB Aster's role as declarant or board members of the Bull Point POA need to be directed to or come from our attorney: Jeffrey L. Tibbals, Esq... We kindly ask no future communications or discussions regarding the litigation or DB Aster be made by the Bull Point POA without specific written authorization by DB Aster as declarant or Joe Steinheiser, as Vice President of the POA Board. Otherwise, no communications are authorized by DB Aster to be made on its behalf or on behalf of the Bull Point POA."*

Additionally, on June 15, 2017, when the Declarant's representative apparently heard of an operations committee, he sent another email to Goodell and Lambe that stated (Exhibit 9):

*"The only recognized or "official" committees of the Bull Point Plantation POA are the ARB and Beautification Committees. Please remove any other committees from the website as soon as possible. Please notify us if any residents have requested or make new requests to form committees as those requests need to be discussed and approved by the Board before any formal or informal action can be take on behalf of BPPOA or that proposed committee."*

It is highly improbable, based on the above emails, that the Declarant knew that a group of POA members had formed a committee and were attempting to purchase the property which would have undermined or jeopardized DB Aster's standing in the lawsuit and mediations.

The above email, alone, is evidence enough to show that Marzluff, Lambe and Okey were put on notice that any committee other than the ARB or Beautification Committees were not authorized by the Board of Directors. Even after the foregoing email, Marzluff, Lambe and Okey continued engaging the services of attorney Johnson under the guise of the Operations Committee.

**Assertion - "They advised that given the uncertainty regarding their continuing status as Declarant, we should obtain local counsel."**

This appears to be false based on the previous presented facts and evidence. Again, there is no documented evidence to show that the Declarant provided such advice; however, if this is to be taken as truth, it is unlikely that the declarant would have advised the POA to use POA funds for the potential benefit of a limited number of POA members. There was nothing that would have precluded the limited number of POA members from using their own personal fund for the potential purchase of the real estate.

**Assertion - "Our intention to use the Contingency Fund for legal expenses was thoroughly discussed at the 2016 Annual Meeting."**

The only references to the use of Contingency Fund in 2016 Annual Meeting minutes (Exhibit 27) for legal expense were as follows:

*"He (Lambe) also explained that legal expenses for dues collections were such that it was impossible to properly budget for those expenses and since the monies received from these legal actions went directly into the contingency account, we would instead of budgeting for these expenses simply pay for them out of the contingency account as they occurred. We will continue to budget for other legal expenses accordingly."*

*"Gary (Okey) answered questions regarding contingency fund usage. Possible uses are: replacement and repair of infrastructure, e.g. roads, storm expenses, future amenity repair or expansion, and lastly legal defense fund against a possible new declarant. DB Aster has been fair with POA someone new may want to change rules and guidelines."*

The meeting only referred to a possible “defense fund against a possible new declarant.” The POA was not a party to any litigation at the time and was not a party in the DB Aster v. GSI lawsuit. Additionally, the meeting notes do not indicate a thorough discussion of using funds for legal advice to acquire additional common areas or amenities. The language is vague. The notes do not state a defense fund to obtain legal advice to/or consider “acquiring additional common areas/and or other amenities for the enjoyment of the Members, all as may be authorized from time to time by the Board of Directors and approved by the elected representative(s).”<sup>8</sup> Although, Marzluff, Lamb and Okey believe the expenditures were authorized by the Contingency Fund members, it appears they did not have the authorization of the Board of Directors which is required, per the language, above, of the 15<sup>th</sup> Amendment.

***Assertion - “Pursuant to the authority granted in Amendment 15 to the Covenants and our discussion with the membership and Declarant representative at the 2016 Annual Meeting, We utilized the Contingency Fund, with approval of the Contingency Fund Committee, to cover the legal expenses associated with the advice given to us as summarized in detail in the legal bills from Mr. Johnson’s office.”***

This assertion is not accurate based on the evidence and documents discussed in the proceeding paragraphs and, further, as the usage of the funds were outside that authorized by the Fifteenth Amendment to the CCR's.

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<sup>8</sup> Specific language of the 15<sup>th</sup> Amendment establishing the Contingency Fund and uses of it. Representative(s) refers to the three Contingency Fund members

**IV. Appendices-Exhibits**  
**(Exhibits named are attached following this list)**

<b>EXHIBIT LIST</b>		
<b>Exhibit #</b>	<b>Date</b>	<b>Document or Item</b>
1.	01/17/2017 - 08/14/2017	Detailed billing records from Barry Johnson, of Johnson & Davis PA.
2.	03/20/2017- 08/15/2017	Checks to Johnson & Davis, PA
3.	01/04/2016	Email from Ron Lambe to Anette Goodell, RE: Proposed Draft of the 17 <sup>th</sup> Amendment to the Covenants.
4.	08/24/2016	Email from Robert Wolfson to Property Owners.
5.	09/01/2016	Email from Robert Wolfson to Property Owners, Subject: Decadency
	09/01/2016	Email from Peter Marzluff to Ron Lambe and Gary Okey, response to above email by Wolfson.
6.	11/30/2016	Email exchange between Peter Marzluff, Gary Okey and Ron Lambe, Subject: Meeting with Bob Wolfson.
7.	01/04/2017	Email exchange between Peter Marzluff, Gary Okey, Ron Lambe and Barry Johnson, Subject: Bull Point POA Preliminary Meeting.
8.	04/29/2017	Email from James Goodwin, Jr. to various POA member, Subject: Informational Meeting for Homeowners on Thursday, May 3 <sup>rd</sup> at 6 pm. with attachment titled, Current Situation, Concerned Bull Point Property Owners, 4/27/2017.
9.	06/15/2017	Email from Tom Imperato to Annett Goodall, Ron Lambe, Gary Okey, Pete Marzluff, Annette Goodall, Joseph Steinheiser and Janelle Iturbe, Subject: Bull Point Committees.
10.	06/15/2017	Email from Ron Lambe response and forwarding above email to Gary Okey, Peter Marzluff and Annette Goodell.
	06/22/2017	Email from Peter Marzluff, response to Annette Goodell of above email.
11.	07/17/2017	Email from Peter Marzluff to Jeffery Tibbals, Annette Goodell and Joseph Steinheiser, Subject GSI, LLC v DB Aster, LLC et al.
12.	10/18/2017	Email exchange between Annette Goodell and Ron Lambe and Gary Okey. RE: Contingency fund write up.
13.	09/25/2017	Email from Gay Reed of Johnson & Davis, PA to Peter Marzluff enclosing three invoices from Johnson & Davis, PA to the Bull Point Operations Committee.
14.	09/27-28/ 2017	Email Exchange between Annett Goodell and Barry Johnson, Subject: RE Bull Point Plantation POA.
15.	04/24/2017	SC Secretary of State records show the effective (forming) date of Huspah Properties, LLC to be 04/28/2017.
16.	01/04/2018	Letter to Attorney Barry Johnson from Bull Point POA requesting client work product. (1 <sup>st</sup> request letter)
17.	01/10/2018	Letter to Attorney Barry Johnson from Bull Point POA requesting client work product. (2 <sup>nd</sup> request letter)
18.	01/10/2018	Letter from Attorney Barry Johnson to Attorney Darrell Johnson, Jr. RE; William (Billy) Gavigan – Bull Point, requesting release from Bull Point

		Operations Committee members, Peter Marzluff, Ron Lambe and Gary Okey to obtain client records.
19.	01/12/2018	Letter from Billy Gavigan, President of Bull Point POA to Peter Marzluff, Ron Lambe and Gary Okey, requesting release of all files produced in connection with the services provided by Barry Johnson, Esq., of Johnson & Davis, PA.
20.	01/14/2018	Letter from Billy Gavigan, President of Bull Point POA, to Peter Marzluff, Ron Lambe and Gary Okey, requesting preservation and request of emails, documents and communications with Attorney Barry Johnson relating to his representation of the POA Operations Committee.
21.	01/14/2018	Letter from Billy Gavigan, President of Bull Point POA, to Attorney Barry Johnson requesting preservation and renewed request of emails, documents and communications (client records) relating to his representation of the POA Operations Committee.
22.	1/17/2018	Email response from Marzluff, Lambe and Okey regarding Billy Gavigan's preservation and request of, emails, documents and communications with Attorney Barry Johnson relating to his representation of the POA Operations Committee.
23.	03/29/2017	Email from Ron Lambe and Gary Okey to Anette Goodell, RE: Status of Billy Gavigan vs. DB Aster Lawsuit.
24.	03/29/2017	Email from Janelle Iturbe to Anette Goodell, Ron Lambe and Gary Okey.
25.	05/22/2017	Declaration of A. Janelle Iturbe.
26.	05/19/2017	Affidavit of Barry L. Johnson.
27.	11/16/2016	Minutes Of Annual Meeting, Wednesday, November 16, 2016.
28.		List of communications, emails, memos and other documents listed or referenced in Barry Johnson, Esquire, Johnson & Davis PA, billing statements.
29.		South Carolina Code of Laws, Section 33-31-101, South Carolina Nonprofit Corporation Act of 1994.
30.	01/16/2018	Janelle Iturbe email to Billy Gavigan, Re: Declarant Corp. Council On Legal Expenditures Fwd: POA Bill GSI V DB -Nexsen Pruet 2017-12-22 and Barry Johnson.