

List of 63 results for Rule 2.1 Exceptional Cases

1. Plaintiff's Response to Defendants' Objection to Plaintiff's Designation of this Matter as a Mandatory Complex Business Case

James R. TALLEY, Plaintiff, v. EARTH FARE 2020, INC. and Dennis Hulsing, Defendants. | Superior Court of North Carolina, Superior Court Division. | December 09, 2022 | No. 22 CVS 3924. | 2022 WL 18457465

Pursuant to Business Court **Rule 2.2**, Plaintiff James R. Talley, by and through undersigned counsel, submits this Response to Defendant Earth Fare 2020, Inc.'s and Dennis Hulsing's Objection...

...Moreover, "Defendants have no objection to the Chief Justice . . . designating this **case** as an **exceptional case** under **Rule 2. 1** of the General Rules of Practice" (Objection at 6.) Therefore, even if designation under Section 7A-45.4(a)(2) was not proper, this action may still proceed, alternatively, in the Business Court pursuant to **Rule**...

...(See Objection at 6.) Notably, Defendants do not object to this **case** being designated as an **exceptional case** under **Rule 2. 1**....

...In his NOD, Plaintiff requested, in the alternative to designation under Section 7A-45.4(a)(2), that this action be designated as a complex business **case** under **Rules 2. 1** and 2.2....

...Although this action was properly designated under Section 7A-45.4(a)(2), Plaintiff re-asserts his alternative **Rule 2. 1/2.2** request in the event that the Court determines that this **case** does not qualify for designation as a mandatory complex business **case**....

2. Amended Motion of Defendant North Carolina Department of Transportation Pursuant to Rule 2.1 of the North Carolina Rules of Superior and District Courts for Designation of Cases as Exceptional

WONDER DAY PARTNERSHIP, et al., v. NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, et al. | Superior Court of North Carolina. | June 07, 2022 | No. 19CVS003464. | 2022 WL 19075928

Note: This document was obtained from the above titled **case**. (PDF information below.) Court: Superior Court of North Carolina, Superior Court Division, Wake County. Title: Patricia L....

...5)The **cases** specified for designation herein meet the definition for an **exceptional case** under **Rule 2. 1** in that there are now many other lawsuits pending in Wake County Superior Court relating to the Map Act....

...7)As seen in the attached Joint Motion Pursuant to **Rule 2. 1** of the North Carolina Rules of Superior and District Courts for Designation of **Cases** as **Exceptional** (Exhibit A), filed on November 25, 2019, Counsel for Plaintiff and Counsel for Defendant agreed that the assignment of the **cases** specified for designation herein would promote significant efficiencies in the administration and adjudication of these claims....

...Now come the undersigned Counsel for Defendant, North Carolina Department of Transportation, in the above-captioned matters and move the Court pursuant to **Rule 2. 1** of the North Carolina Rules of Superior and District Courts for designation of these **cases** as **exceptional**....

...11)Given that a large number of Wake County Map Act **cases** have been assigned to the Honorable G. Bryan Collins, similarity of the subject matter, need for similar discovery, expert testimony, and other factual issues between this action and the other **cases** and **cases** to be filed, Counsel for Defendant request that Judge Collins be appointed to hear these **cases**....

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3. Amended Motion of Defendant North Carolina Department of Transportation Pursuant to Rule 2.1 of the North Carolina Rules of Superior and District Courts for Designation of Cases as Exceptional

Patricia L. JOHNSON, individually and as Executrix of the estate of Myrtle Burns Johnson; and Lavinnia P. Johnson, Elizabeth A. Mata and the Mata Family, LLC, Raymond Leonard Rhodes, Estate of Sylvia Anne Davis Sams; Estate of Terry L. Sams; and Cheryl Russell Byler, individually as sole heir and as Executrix of the Estate of Sylvia Anne Davis Sams and the Estate of Terry L. Sams, Wonder Day Partnership, a North Carolina general partnership, Mary T. Ball Properties, LLC, a North Carolina limited liability company, R. Markham Stewart and wife, Ruth B. Stewart; and Anthony K. Woodell, and wife, Melissa S. Woodell, R. Markham Stewart and wife, Ruth B. Stewart; and Anthony K. Woodell, and wife, Melissa S. Woodell, Plaintiffs, v. NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, Defendant. | Superior Court of North Carolina, Superior Court Division. | June 07, 2022 | Nos. 19 CVS 5996, 19 CVS 6234, 19 CVS 2633, 19 CVS 2631, 19 CVS 3464, 19 CVS 10468, 19 CVS 17126, 19 CVS 17127. | 2022 WL 19075930

Now come the undersigned Counsel for Defendant, North Carolina Department of Transportation, in the above-captioned matters and move the Court pursuant to **Rule 2.1** of the North Carolina...

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...7)As seen in the attached Joint Motion Pursuant to **Rule 2.1** of the North Carolina Rules of Superior and District Courts for Designation of **Cases** as **Exceptional** (Exhibit A), filed on November 25, 2019, Counsel for Plaintiff and Counsel for Defendant agreed that the assignment of the **cases** specified for designation herein would promote significant efficiencies in the administration and adjudication of these claims....

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4. Amended Motion of Defendant North Carolina Department of Transportation Pursuant to Rule 2.1 of the North Carolina Rules of Superior and District Courts for Designation of Cases as Exceptional

Patricia L. JOHNSON, individually and as Executrix of the estate of Myrtle Burns Johnson; and Lavinnia P. Johnson, Elizabeth A. Mata and the Mata Family, LLC, Raymond Leonard Rhodes, Estate of Sylvia Anne Davis Sams; Estate of Terry L. Sams; and Cheryl Russell Byler, individually as sole heir and as Executrix of the Estate of Sylvia Anne Davis Sams and the Estate of Terry L. Sams, Wonder Day Partnership, a North Carolina general partnership, Mary T. Ball Properties, LLC, a North Carolina limited liability company, R. Markham Stewart and wife, Ruth B. Stewart; and Anthony K. Woodell, and wife, Melissa S. Woodell, R. Markham Stewart and wife, Ruth B. Stewart; and Anthony K. Woodell, and wife, Melissa S. Woodell, Plaintiffs, v. NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, Defendant. | Superior Court of North Carolina, Superior Court Division. | June 07, 2022 | Nos. 19 CVS 6234, 19 CVS 2633, 19 CVS 5996, 19 CVS 2631, 19 CVS 3464, 19 CVS 10468, 19 CVS 17126, 19 CVS 17127. | 2022 WL 19075929

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...7)As seen in the attached Joint Motion Pursuant to **Rule 2.1** of the North Carolina Rules of Superior and District Courts for Designation of **Cases** as **Exceptional** (Exhibit A), filed on November 25, 2019, Counsel for Plaintiff and Counsel for Defendant agreed that the assignment of the **cases** specified for designation herein would promote significant efficiencies in the administration and adjudication of these claims....

...Now come the undersigned Counsel for Defendant, North Carolina Department of Transportation, in the above-captioned matters and move the Court pursuant to **Rule 2.1** of the North Carolina Rules of Superior and District Courts for designation of these **cases** as **exceptional**....

...11)Given that a large number of Wake County Map Act **cases** have been assigned to the Honorable G. Bryan Collins, similarity of the subject matter, need for similar discovery, expert testimony, and other factual issues between this action and the other **cases** and **cases** to be filed, Counsel for Defendant request that Judge Collins be appointed to hear these **cases**....

5. Defendants' Earth Fare 2020, Inc. and Dennis Hulsing Objection to Plaintiff's Designation of this Matter as a Mandatory Complex Business Case

James TALLEY, Plaintiff, v. EARTH FARE 2020, INC. and Dennis Hulsing, Defendants. | Superior Court of North Carolina, Superior Court Division. | November 28, 2022 | No. 22CVS03924. | 2022 WL 18457460

NOW COME defendants Earth Fare 2020, Inc. and Dennis Hulsing (hereinafter "Defendants"), and, pursuant to N.C.G.S. § 7A-45.4(e), hereby submit their Objection to Plaintiff's Designation of...

...However, these answering Defendants have no objection to the Chief Justice of the North Carolina Supreme Court designating this **case** as an **exceptional case** under **Rule 2.1** of the General Rules of Practice if the Chief Justice upon recommendation of the Resident Superior Court Judge recommends same to the Chief Justice....

...This is not the **case** here where Plaintiff's claims are center around an alleged Agreement between Plaintiff and Defendants....

...The Defendants for the reasons stated above object to this action being designated as a Rule 2.2 complex business **case** as provided by the General Rules of Practice....

...For these reasons, Defendants object to Plaintiff's designation of this matter as a Complex Business **Case** under N.C.G.S. § 7A-45.4(a) and request that this matter be treated as any other civil action....

6. Defendant's Reply Brief in Support of its Motion to Stay or Dismiss Action

IQVIA, INC., Plaintiff, v. CIRCUIT CLINICAL SOLUTIONS, INC., Defendant. | Superior Court of North Carolina. | August 29, 2022 | No. 22 CVS 7425. | 2022 WL 4589381

FN1. Pl. Br. at 3. FN2. IQVIA stridently explains that its election to separately prosecute these substantially interrelated **cases** in separate North Carolina courts having the same...

...Alternatively, could this Court ex mero motu use its Rule 42(a) power to consolidate the non-designated prior-pending action with this designated one without IQVIA's **Rule 2.1** consent?...

...FN2. IQVIA stridently explains that its election to separately prosecute these substantially interrelated **cases** in separate North Carolina courts having the same jurisdiction is a "right" valued by North

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Carolina's "litigation system" enabling plaintiffs to "structure" their **cases** and "control" the interrelated litigations....

...Where two complaints exist simultaneously, "to give effect to the purpose of Rule 13(a) once its applicability to a second independent action has been determined, this second action must on motion be either (1) dismissed with leave to file it in the former **case** or (2) stayed until the former **case** has been finally determined."...

...IQVIA argues that because its two factually and legally interrelated pending North Carolina actions name different defendants, the prior pending action doctrine ("PPAD") is inapplicable and leaves this Court a single option to address and avoid the myriad of conflicts of interrelated concurrent **cases** pending in different North Carolina courts having the same jurisdiction: "appropriate **case** management." [FN1]...

7. Defendants' Brief in Support of Motion to Dismiss Notice of Appeal

MIRIAM EQUITIES, LLC, a New Jersey Limited Liability Company, Plaintiff, v. LB-UBS 2007-C2 MILLSTREAM ROAD, LLC, a North Carolina Limited Liability Company, Defendant. | Superior Court of North Carolina. | March 22, 2022 | No. 19 CVS 8523. | 2022 WL 2990824

Pursuant to Business Court **Rule** 7.2., Defendant LB-UBS 2007-C2 Millstream Road, LLC ("Defendant" or "LB-UBS") respectfully submits this brief in support of its Motion to Dismiss the Notice...

...N.C. Gen. Stat. §§ 7A-27(a) provides: "Appeal lies of right directly to the Supreme Court in any of the following **cases**: ... (2) From any final judgment in a **case** designated as a mandatory complex business **case** pursuant to G.S. 7A-45.4 or designated as a discretionary complex business **case** pursuant to **Rule** 2.1 of the General Rules of Practice for the Superior and District Courts."...

...Sections 7A-27(a)(2) and 7A-27(a)(3) require that an appeal from a final judgment or an interlocutory order that discontinues an action in a **case** designated as a mandatory complex business **case** after October 1, 2014 must be filed with the Supreme Court of North Carolina....

...Thus, it is clear that any final judgments entered in **cases** before the Business Court lie directly to the Supreme Court of North Carolina....

...See, e.g., Zloop, Inc. v. Parker Poe Adams & Bernstein, LLP, 2018 NCBC LEXIS 40 at *2 (N.C. Super. Ct. Apr. 30, 2018) (noting that the North Carolina Court of Appeals "does not have jurisdiction over final orders in **cases** designated to this Court on or after October 1, 2014" (citing Christenbury Eye Center, P.A. v. Medflow, Inc., 246 N.C. App. 237, 783 S.E.2d 264, 266 (N.C. App. 2016), aff'd 370 N.C. 1, 802 S.E.2d 888 (2017)); Intersal, Inc. v. Hamilton, 373 N.C. 89, 97, 834 S.E.2d 404, 411 (2019) (noting dismissal of appeal from a Business Court Order where the notice of appeal incorrectly identified the Court of Appeals instead of the Supreme Court); ALC Mfg., Inc. v. J. Streicher, 2020 WL 4391380, (N.C. Super. Ct. July 30, 2020)...

8. Plaintiffs' Brief in Support of Motion to Consolidate

Kelly C. HOWARD and Fifth Third Bank National Association, as Co-Trustees of the Ronald E. Howard Revocable Trust U/A Dated February 9, 2016, as Amended and Restated, Plaintiffs, v. IOMAXIS, LLC, Brad C. Boor a/k/a Brad C. Buhr, John Spade, Jr., William P. Griffin, III, Nicholas Hurysh, Jr., and Robert A. Burleson, Defendants. Maxisiq, LLC, f/k/a Iomaxis, LLC and d/b/a Iomaxis, Plaintiff, v. Kelly C. Howard and Fifth Third Bank, as Co-Trustees of the Ronald E. Howard Revocable Trust; Kelly C. Howard; Fifth Third Bank; and Jane Does 1-9, Defendants. | Superior Court of North Carolina, Superior Court Division. | February 18, 2022 | Nos. 18-CVS-11679, 22-CVS-2113. | 2022 WL 3701121

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NOW COME Plaintiffs Kelly C. Howard and Fifth Third Bank, National Association (hereinafter "Plaintiffs" and/or "Co-Trustees"), as Co-Trustees of the Ronald E. Howard Revocable Trust u/a...

...The Court is already aware of IOMAXIS's arguments concerning the MOS, meaning that another Court does not have to get up to speed on the issues (particularly if the other Court is not a **Rule 2. 1** judge that would preside over the entirety of the New Action)....

...Finally, IOMAXIS seeks to use an Order entered by the Court in this **case**, a **case** that obviously remains pending, to support a new action it filed which would be heard by a different court absent consolidation....

...The timing to get to trial is likely the same in both **cases**, given that the Fifth Amended CMO was entered three business days prior to the filing of the New Action....

...Instead, IOMAXIS has skipped the step of determining the validity of the Initial Payment provision - which has already generally been presented to this Court - and filed two tort actions in a new **case**....

9. Response Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction

Thomas M. ANDERSON, Perry Polsinelli, Richard F. Hunter, Andrew Juby, Thomas T. Schreiber, and Fred R. Yates, in the Right of the Mystic Lands Property Owners Association, Inc., a North Carolina Non-Profit Corporation, Plaintiffs, v. Michael BERESNI; Louis John Brown; Kevin Burke; Ramon (Ray) De La Cabada; Scott Lyden; Jim Moore; Robert Wunderle; Greg Gilroy; Randy Mills; Ami Shinitzky; Mystic Lands, Inc. and the Mystic Lands Property Owners Association, Inc., a Nominal Party, Defendants. | Superior Court of North Carolina, Superior Court Division.
| October 13, 2022 | No. 22 CVS 178. | 2022 WL 17175674

Mystic Lands Property Owners Association, Inc., (hereinafter referred to as "The POA") and its current Board of Directors Michael Beresni, John Brown, Ray De La Cabada, Kevin Burke, Scott...

...Pursuant to BCR 11, all mandatory complex business **cases** assigned to a Business Court judge pursuant to **Rule 2. 1** of the General Rules of Practice are subject to the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions....

...In either **case**, Plaintiffs have the burden of proving that they have standing to bring their claims....

...Why would the Court prohibit the Board from doing exactly what the Plaintiff's seek as their ultimate relief in this **case**?...

...This is exactly the kind of deliberative process Plaintiff's claim to seek in this **case**, with the only difference being the duly elected and statutorily authorized Board making the decisions, not Plaintiffs....

10. Plaintiffs' Motion for Attorneys' Fees and Costs

VANGUARD PAI LUNG, LLC, a North Carolina limited liability company; and Pai Lung Machinery Mill Co. Ltd., a Taiwanese limited company, Plaintiffs, v. William MOODY, et al., Defendants. | Superior Court of North Carolina, Superior Court Division. | April 22, 2022 | No. 18-CVS-13891. | 2022 WL 4463787

* Admitted Pro Hac Vice. Plaintiffs Vanguard Pai Lung, LLC ("Vanguard") and Pai Lung Machinery Mill Co. LTD. ("Pai Lung") (collectively "Plaintiffs") hereby move for recovery of their...

...The legal issues presented in this **case**, too, were **exceptionally** complex....

...Recoverable costs under § 7A-305(d) that Plaintiffs seek include "[f]ees of...mediators agreed upon by the parties;" "[f]ees of interpreters;" "[r]easonable and necessary expenses for stenographic and videographic assistance directly related to the taking of depositions and for the cost of deposition

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transcripts;" "[r]easonable and necessary fees of expert witnesses solely for actual time spent providing testimony at trial, deposition, or other proceedings;" and "[t]he fee assessed...upon assignment of a **case** to a special superior court judge as a complex business **case**."...

...the kind of **case** for which the fees are sought; and...

...Moody admitted the very same when he pursued advancement of his own attorney fees in this **case** in 2019....

11. Response in Opposition to Defendants' Motions for Summary Judgment

Keith LEE and Young Kwon (Individually and Derivatively on Behalf of rFactr, Inc.), Plaintiffs, v. Chris MCDOWELL, Chris Lau, and Robert Dunn, Defendants, and rFactr, Inc., Nominal Defendant. Chris MCDOWELL, Third-Party Plaintiff, v. Richard BRASSER and Greg Gentner, Third-Party Defendants, Chris LAU and Robert Dunn, Third-Party Plaintiffs, v. Richard BRASSER and Greg Gentner, Third-Party Defendants. | Superior Court of North Carolina, General Court of Justice., Superior Court Division. | January 18, 2022 | No. 2019CVS17741. | 2022 WL 2345915

FN1. ECF No. 107, Defendant/Third-Party Plaintiff Chris McDowell's Brief in Support of his Motion for Summary Judgement, at p. 7. FN2. Dep. Ex. 18. Deposition Exhibits referenced herein can...

...[FN131] "[I]t is only in **exceptional cases**, in which reasonable minds cannot differ as to foreseeability of injury, that a court should decide proximate cause as a matter of law." [FN132]...

...Here, there are no facts suggesting that the **case** at bar is "**exceptional**," and genuine issues of material fact remain regarding proximate cause....

...Here, Defendants cannot meet their burden to show that the business judgment **rule** protects their decision to approve executive compensation....

...Defendants attempt to excuse their liability for rFactr's financial state and corporate malfeasance by relying on the business judgment **rule**....

12. Plaintiff's Brief in Opposition to Defendants' Motion to Dismiss

Jesse H. SHAVER, Plaintiff, v. Aaron L. WALKER and Vadum, Inc., Defendants. | Superior Court of North Carolina. | December 21, 2022 | No. 22 CVS 11080. | 2022 WL 19571958

Plaintiff Jesse H. Shaver ("Shaver" or "Plaintiff") filed a Verified Complaint (the "Complaint"), ECF No. 4, against Defendants Aaron C. Walker ("Walker") and Vadum, Inc. ("Vadum," and...

...**Rule** 9(b), N.C.R. Civ. Proc.[FN9] Moreover, the **cases** cited by Defendants provide no support for their argument, as most involve situations in which a fraud claim was simply a re-packaged breach of contract claim, and therefore not an independent tort.[FN10]...

...In R owan County Bd. of Educ. v. U. S. Gypsum Co., 332 N.C. 1, 17-18 (1992) (an appeal from a jury verdict), the Supreme Court found that the plaintiff had presented evidence of specific factual representations made by the defendant about a product, i.e., that it had "**exceptional** bonding ability," "**exceptional** adhesive qualities," and was "ideal for ceilings in schools," and accordingly affirmed the trial court's denial of the defendant's motions for directed verdict and JNOV, 332 N.C. at 17....

...The **cases** cited by Defendants prove this point....

...The **cases** cited by Defendants confirm that the statements at issue were factual....

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13. Harper Plaintiffs' Submission Regarding Proposed Remedial Plans for Court Review

NORTH CAROLINA LEAGUE OF CONSERVATION VOTERS, INC., et al., Plaintiffs, Common Cause, Plaintiff-Intervenor, v. REPRESENTATIVE DESTIN HALL, in his official capacity as Chair of the House Standing Committee on Redistricting, et al., Defendants. State of North Carolina County of Wake Rebecca Harper, et al., Plaintiffs, v. Representative Destin Hall, in his official capacity as Chair of the House Standing Committee on Redistricting, et al., Defendants. | Superior Court of North Carolina, Superior Court Division. | February 18, 2022 | Nos. 21 CVS 015426, 21 CVS 500085. | 2022 WL 16757551

* Admitted Pro Hac Vice Pursuant to this Court's February 8, 2022 Order regarding the submission of remedial maps and its February 17 Order appointing special masters, Harper Plaintiffs...

...This score reflects an **exceptionally** high degree of partisan symmetry....

...As noted above, this is an **exceptionally** high degree of partisan symmetry....

...These spreadsheets confirm that the plan complies with the Whole County **Rule** and the equal population requirements....

...Rather, the computer-generated plans in the ensemble could use any county groupings that comply with the Whole County **Rule** and Stephenson....

14. Memorandum in Opposition to Defendant's Motion for Reconsideration of Summary Judgment and Motion for Leave to Amend Answer to Plaintiff's Requests for Admission

Christopher B. VENTERS, Plaintiff, v. Phillip Russell LANIER, Defendant. | Superior Court of North Carolina, Superior Court Division. | April 25, 2022 | No. 21-CVS-1307. | 2022 WL 20637210

NOW COME the Plaintiff, CHRISTOPHER B. VENTERS, by and through undersigned counsel of record, and submits this Memorandum in Opposition to Defendant's Motion for Reconsideration of Summary...

...Most importantly, the excusable neglect argument can not be asserted as a basis for Defendant's **Rule** 60(b)(6) as a way to circumvent the black letter **case** law of **Rule** 60(b)(3)....

...While **Rule** 60(b)(6) has been described as 'a grand reservoir of equitable power to do justice in a particular **case**,' # it should not be a 'catch-all' **rule**."...

...In this **case**, Defendant does not seek to set aside the finding of liability in the **case**....

...**Rule** 36(a) of N.C. **Rules** of Civil Procedure provides that, when a written request for admissions is served:...

15. Defendants' Supplemental Brief Regarding Scope of Expert Testimony

GLOVER CONSTRUCTION COMPANY, INC., Plaintiff, v. SEQUOIA SERVICES LLC, John Michael Glover, J. Mark Glover, and Christopher James Colangelo, Defendants. | Superior Court of North Carolina, Superior Court Division. | July 19, 2022 | No. 18 CVS 1900. | 2022 WL 17222950

Defendants submit this Brief pursuant to the Court's Notice to Provide Supplemental Briefing (the "Notice") (ECF 191). FN1. In addition to direct testimony as to "causation," Dauphin's use...

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...“The precise nature of the reliability inquiry will vary from **case** to **case** depending on the nature of the proposed testimony.”...

...(Id.) Rather, Dauphin's background consists principally of serving as an expert witness in litigated matters - as reflected by her testimony in fifteen (15) different **cases** in the four (4) years prior to issuing her report in this **case**....

...If the expert testimony is relevant and not outweighed by **Rule** 403 considerations, it must also then meet the three-part test in **Rule** of Evidence 702(a) - that is, (1) the testimony must be based on specialized knowledge; (2) the expert must be qualified; and (3) the testimony must be reliable....

...Expert testimony “must go beyond meeting the minimum standard for logical relevance established by **Rule** 401; it must ‘assist the trier of fact’ by providing ‘insight beyond the conclusions that jurors can readily draw from their own experiences,’ and ‘do more than invite the jury to ‘substitute] [the expert’s] judgment of the meaning of the facts of the **case**’ for its own.’...

16. Plaintiff's Brief in Opposition to Defendants' Motion to Stay Proceedings

Veronica Jane DILLREE, By and through her General Guardian, Emily A. Tobias, Plaintiff, v. Harry DILLREE and His Attorney-in-Fact, Lisa Wilcox, The Harry Dillree Trust, and The Veronica Jane Dillree Trust, Defendants. | District Court of North Carolina. | March 11, 2022 | No. 21 CVD 108. | 2022 WL 20401592

Plaintiff submits this brief in opposition to Defendants' Motion to Stay Proceedings: On March 26, 2021, Defendants filed a Motion to Dismiss based on N.C. Gen. Stat. § 1A-1, **Rules** 12(b)(1)...

...See Embler v. Embler, 143 N.C. App. 162, 166, 545 S.E.2d 259, 262 (2001), In determining whether an appeal affects a substantial right, “there are no hard and fast **rules**,” but rather, “such decisions usually require consideration of the facts of the particular **case**” and usually depends; on the facts; circumstances and procedural context of each **case**....

...Id. (internal quotation marks omitted), Hamilton v. Mortg. Info. Servs., Inc., 212 N.C. App. 73, 77, 711 S.E.2d 185, 188 (2011), The Supreme Court in Veazey reasoned that the “**rule** against interlocutory appeals seeks to prevent fragmentary, premature and unnecessary appeals by allowing the trial court to bring a **case** to final judgment before its presentation to the appellate courts;” Id. (internal quotation marks omitted) Turnery....

...In Veazey v. City of Durham, the Supreme Court defined “[a]n interlocutory order [as] one made during the pendency of an action, which does not dispose of the **case**, but leaves it for further action by the trial court in order to settle and determine the entire controversy.” 131 N.C. 357, 362, 57 S.E.2d 377, 381 (1950), The Supreme Court in Veazey, quoting Hamilton v. Mortg. Info. Servs., Inc., added that “as a general proposition, only final judgments, as opposed to interlocutory orders, may be appealed to the appellate Courts” and appeals of interlocutory orders are only available in **exceptional** circumstances....

...Similar to RPR Assoes., in Wields v. City of Goldsboro the Court of Appeals held in an unpublished opinion that the defendant City's motion to dismiss based on sovereign immunity was a proper interlocutory appeal, but also held that the trial court was reasonable to proceed with the **case** and did not err in continuing to exercise jurisdiction after the entry of the defendant City's notice of appeal since the City never perfected its appeal, did not seek a stay from the appeal court, moved for summary judgment in the trial court, requested the **case** be calendared, and failed to mention its appeal at the summary judgment hearing. 2012 N.C. App. LEXIS 1189, 223 N.C. App. 210 (2012)...

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17. Respondent-Intervenors WBRP, LLC., Thomas G. Conley, and Timothy R. Conley's Response to Petitioner Henry Fonvielle's Memorandum of Law in Support of His Petition for Judicial Review

Henry FONVIELLE, Petitioner, v. NORTH CAROLINA COASTAL RESOURCES COMMISSION, Respondent, Thomas G. Conley, Timothy R. Conley, and WBRP, LLC, Respondent-Intervenors. | Superior Court of North Carolina, Superior Court Division. | February 28, 2022 | No. 21-CVS-3584. | 2022 WL 20400579

NOW COMES WBRP, LLC., Thomas G. Conley, and Timothy R. Conley as respondent-intervenors (collectively, "WBRP"), by and through undersigned counsel, who submit the following response to...

...These protections apply where an individual is "exceptionally affected, in each case upon individual grounds."...

...Pursuant to N.C. Gen. Stat. § 113A-121.1(b), before a contested case hearing may be granted, (1) Petitioner must file his petition for a contested case hearing within 20 days of issuance of the Disputed Permit and (2) Petitioner must allege that the decision is contrary to statute or rule; Petitioner is directly affected by the decision; and Petitioner has alleged facts or made legal arguments that demonstrate that the request for a hearing is not frivolous....

...B-F. These cases highlight the fact that Petitioner's entire case is an attempt to place more notice requirements on WBRP than is required by CAMA and its accompanying regulations....

...Property interests "are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law-- rules or understandings that secure certain benefits and that support claims of entitlement to those benefits."...

18. Defendants' Motion for Reconsideration

BRAKEBUSH BROTHERS, INC. and House of Raeford Farms, Plaintiffs, v. CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON - NOVAE 2007 SYNDICATE SUBSCRIBING TO POLICY WITH NUMBER 93PRX17F157, Hallmark Specialty Insurance Co., Evanston Insurance Co., Maxum Indemnity Co., Hudson Specialty Insurance Co., Liberty Surplus Insurance Corporation, Ironshore Specialty Insurance Co., and Certain Underwriters at Lloyd's of London - Brit Syndicate 2987 Subscribing to Policy With Number PD-10972-00, Defendants. | Superior Court of North Carolina, Superior Court Division. | November 16, 2022 | No. 20 CVS 367. | 2022 WL 17902664

NOW COME defendants, by and through counsel and pursuant to Rule 54(b) of the North Carolina Rules of Civil Procedure, and respectfully move the Court to reconsider its Order on Defendants'...

...NOW COME defendants, by and through counsel and pursuant to Rule 54(b) of the North Carolina Rules of Civil Procedure, and respectfully move the Court to reconsider its Order on Defendants' Motion to Modify Case Management Order to Extend Discovery Deadline (ECF No. 178) (the "Order"), solely with regard to the request for deposition of Steve Mixon....

...It is respectfully submitted that this reason alone constitutes exceptional circumstances requiring the deposition of Mr. Mixon on an expedited basis....

...1. In Defendants' Motion to Modify Case Management Order to Extend Discovery Deadline, defendants stated that "Mr. Mixon is ill, and his deposition is needed promptly for the further purpose of preserving his testimony for trial."...

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19. Response Brief of Respondent to Petitioner's Petitions for Judicial Review

Kienus Perez BOULWARE, Petitioner, v. THE UNIVERSITY OF NORTH CAROLINA BOARD OF GOVERNORS, ex rel. Winston-Salem State Univ. Board of Trustees, Respondent. | Superior Court of North Carolina, Superior Court Division. | January 10, 2022 | No. 21 CVS 2973. | 2022 WL 20637218

FN1. Petitioner's First Petition is attached hereto as Exhibit V. His Second Petition is attached as Exhibit W. Judge Gottlieb's relevant Orders are attached as Exhibit X. FN2. While the...

...The Court **ruled** as such after finding that the plain language of the policy involved in that **case** (a policy that applied at the time to tenured professors and does not apply in this **case**) was ambiguous and appeared, as worded at the time, to allow payment until the time that a final decision was made by the Board of Governors....

...Respondent is aware of no **cases** stating that these sections prohibit an employer from disciplining an employee under the facts of this **case**....

...A comparison of the policy in Semelka and the policies in this **case** is instructive and reveals that further pay is not allowed in this **case**....

...No such waiver exists in this **case**....

20. Memorandum of Law in Support of Defendants Ten Oaks Management, LLC, ECO Digital Holdings, LLC, and SSE Services Holdings, LLC's Partial Motion to Dismiss Amended Complaint

Jordan HARRIS, Plaintiff, v. TEN OAKS MANAGEMENT, LLC; ECO Digital Holdings, LLC; and SSE Services Holdings, LLC, Defendants. | Superior Court of North Carolina, General Court of Justice. | January 18, 2022 | No. 2021-CVS-13907. | 2022 WL 593984

Plaintiff's Amended Complaint alleges the following facts. Ten Oaks Management is a firm in North Carolina "which specializes in investing in corporate divestitures and targets businesses...

..."North Carolina courts have not **ruled** definitively" on the choice of law for veil piercing....

...Plaintiff's allegations are a far cry from allegations in other **cases** permitting a reverse piercing claim to proceed....

...Importantly, "piercing the corporate veil, is a remedy that 'should be invoked only in an extreme **case** where necessary to serve the ends of justice.'...

..."Only in **cases** alleging egregious facts, coupled with the lack of real and substantial prejudice to third parties, should the court even consider utilizing the reverse veil piercing doctrine."...

21. Brief of Amicus Curiae Committee of Interns and Residents in Support of Plaintiff Michael C. Hoaglin, M.D.

Michael C. HOAGLIN, M.D., Plaintiff, v. DUKE UNIVERSITY HEALTH SYSTEM, INC., d/b/a "Duke University Hospital," and Joshua Seth Broder, M.D., Defendants. | Superior Court of North Carolina, Superior Court Division. | October 25, 2022 | No. 18-CVS-003093. | 2022 WL 19520546

The Accreditation Council for Graduate Medical Education (ACGME) is the accrediting body for approximately 12,420 residency and fellowship programs throughout the United States, including...

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...Their status as “trainees” makes them **exceptionally** vulnerable....

...Resident physicians are also employees subject to the **rules** and procedures of their employer....

...If a **rule** or procedure is not perfectly followed, it is understood that they must be given the opportunity to correct their behavior....

...Arbitration is typically faster, cheaper, and allows a non-biased party to review the **case** more accessible to residents and allows for faster and much less expensive resolutions....

22. Consolidated Supplemental Memorandum in Support of Motions for Summary Judgment

NORTH CAROLINA CEMETERY COMMISSION, Plaintiff, Counterclaim Defendant, v. SMOKY MOUNTAIN MEMORIAL PARKS, INC. and Sheila Diane Gahagan, Defendants, Counterclaim Plaintiffs. NORTH CAROLINA CEMETERY COMMISSION, Plaintiff, v. SMOKY MOUNTAIN MEMORIAL PARKS, INC. and Sheila Diane Gahagan, Defendants. | Superior Court of North Carolina, Superior Court Division. | November 29, 2022 | Nos. 21CVS185, 21-CVS-500. | 2022 WL 21295910

Defendants, Smoky Mountain Memorial Parks, Inc. (“SMMP”) and Sheila Diane Gahagan (collectively “Defendants”), hereby submit the following Consolidated Supplemental Memorandum in Support of...

...Here, this is not a permitting **case**....

...Therefore, the “quasi-estoppel” **rule** of Shell Island II is not applicable here....

...In either **case**, however, this regulation does not fall under the State's police power....

...A hearing in the above referenced **case** was held on November 14, 2021, in the Jackson County Superior Court....

23. Defendants' Reply to Plaintiff's Response to Defendants' Motion for Summary Judgment (Refiled in Compliance with ECF 71)

Peter FLEMING, Plaintiffs, v. Adam HORNER and Hamilton Stephens, Steele & Martin, PLLC, Defendants. | Superior Court of North Carolina. | March 10, 2022 | No. 20-CVS-3348. | 2022 WL 2819173

FN1. Although the issue of breach of duty is not before the Court on Defendants' Motion, Defendants nevertheless feel compelled to offer some response in the event that the Court decides to...

...The requirement that Plaintiff prove the “**case** within a **case**” exists without consideration of the actions or inactions of Defendants in the Underlying **Case**:...

...Assuming arguendo that were true, avoidance of summary judgment in the Underlying **Case** fails to establish that Plaintiff can prevail in the “**case** within a **case**”...

...II. The actions or inactions of attorneys in an underlying **case** are irrelevant unless a malpractice plaintiff shows that he can prevail on the “**case** within a **case**”....

...More specifically, Defendants' motion asserts that summary judgment is proper because, “Plaintiff cannot demonstrate that he is not personally liable for the damages entered against him in the Underlying **Case** or that he could prevail in the **case** within the **case**.”...

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24. Petitioners' Response in Opposition to Respondent-Intervenor's Motion for Stay

ENVIRONMENTAL JUSTICE COMMUNITY ACTION NETWORK & Cape Fear River Watch, Petitioners, v. N.C. DEPARTMENT OF ENVIRONMENTAL QUALITY, Division of Water Resources, Respondent, Murphy Brown, LLC, Respondent-Intervenor. | Superior Court of North Carolina, General Court of Justice Superior Court Division. | August 01, 2022 | No. 22-CVS-443. | 2022 WL 19731231

Petitioners Environmental Justice Community Action Network and Cape Fear River Watch ("the Community Groups") submit this response in opposition to Murphy-Brown's second motion for a stay....

...Moreover, the difference between the Cape Fear River Watch **case** and this one only highlights the importance of a prompt **ruling** here....

...Second, the controversy here will not become moot, as explained in more detail below, so Murphy-Brown is simply incorrect that delaying a **ruling** on the paramount legal issue in this **case** would conserve resources....

...First, should DEQ issue certificates of coverage under the Biogas General Permit, the Permits at issue in this **case** would be replaced--likely by virtually identical, but newly issued authorizations--before the **case** can be fully litigated....

...Indeed, the Community Groups filed the instant **case** nearly a year and a half ago, followed a swift scheduling order in the Office of Administrative Hearings, and promptly appealed, yet the **case** has not been resolved....

25. Brief in Support of Defendant David L. Pressly Jr.'s Motion to Consolidate Companion Cases

Edwin A. PRESSLY, individually, Edwin A. Pressly derivatively as member of Free Nancy, L.L.C., Edwin A. Pressly as a General Partner of Free Nancy Partnership, and Free Nancy Partnership by general partner Edwin A. Pressly, Plaintiffs, v. David L. PRESSLY, Jr., Crescent Housing Partners, LLC, Fourth Creek Development Company, LLC, Rebecca A. P. Inglefield, Penelope P. Pressly, and Rebecca A. P. Inglefield as Administrator of the Estate of Anita Pressly, Defendants, Free Nancy, L.L. C., Nominal Defendant. | Superior Court of North Carolina, Superior Court Division. | December 09, 2022 | No. 22 CVS 2003. | 2022 WL 19922462

Defendant David L. Pressly ("David"), by and through the undersigned counsel and pursuant to BCR 7.2, submits this Brief in Support of Motion to Consolidate Companion **Cases**. On August 11,...

...Here, as an initial matter, this **case** and the companion action commenced by David obviously involve common parties, namely both David and Ed. There is also significant overlap of the legal issues presented in each **case**, since each **case** entails requests that the Court determine that applicable law requires dissolution (or the functional equivalent thereof) of one or more entities--in this **case**, FN LLC and FN GP; in the Companion **Case**, FPG I, FPG II, FPG III and PDC--and the terms and procedure of such dissolutions are expected to be at issue....

...The Companion **Case** also has been designated as a mandatory complex business **case** and assigned to Judge Earp....

...For the foregoing reasons, David respectfully requests that the Court enter an order consolidating this **case** with the Companion **Case**....

...David's Motion seeks to consolidate this **case** with a companion **case** that involves the same parties, counsel, and legal issues....

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26. Defendant's Opposition to Plaintiff's Counsel's Petition for Attorney Fees and Costs

Christopher HOWELL, Plaintiff, v. Jerome Kenneth WILLIAMS, Defendant. | Superior Court of North Carolina.
| April 20, 2022 | No. 19CVS03487. | 2022 WL 17267830

NOW COMES the Defendant, Jerome Kenneth Williams, by and through his undersigned counsel, and hereby files this Opposition to the request for attorney fees and costs. This request is not...

...Despite this not being such a **case**, there are **cases** in which attorney fees are appropriately considered and awarded....

...That being the **case**, this Court could easily determine that the legal fee issue is a wash in this **case** and deny the petition for that reason as well....

...None of these provisions apply to the **case** at bar....

...In many civil **cases**, an attorney accepts employment on a contingency fee basis....

27. Petitioners' Response in Opposition to Respondent-Intervenor's Motion to Stay and in Support of Motion for Scheduling Order

ENVIRONMENTAL JUSTICE COMMUNITY ACTION NETWORK & Cape Fear River Watch, Petitioners, v. N.C. DEPARTMENT OF ENVIRONMENTAL QUALITY, Division of Water Resources, Respondent, Murphy Brown, LLC, Respondent-Intervenor. | Superior Court of North Carolina, General Court of Justice. | March 22, 2022 | No. 22-CVS-443. | 2022 WL 19731232

On March 31, 2021, the N.C. Department of Environmental Quality ("DEQ") issued three individual permits and one certificate of coverage under the 2019 Swine General Permit (collectively,...

...On April 29, 2021, the Community Groups timely filed four Petitions for Contested **Case** challenging the Permits; the **cases** were later consolidated....

...On the contrary, one of Murphy-Brown's cited **cases** makes clear that one party's voluntary action to evade judicial scrutiny does not provide a basis for dismissing a **case**: the North Carolina Supreme Court determined that an appeal seeking the removal of a judge was not moot even though the judge had resigned during the pendency of the **case** because "it would indeed be a travesty" if he could escape the consequences by "bring[ing] the proceedings against him to a premature close" In re Peoples, 296 N.C. 109, 150-51, 250 S.E.2d 890, 914 (1978)....

...Here, Murphy-Brown wants to stop the Judicial Branch from **ruling** on the requirements that apply to any permit for its new systems, but it does not contend that this **case** is moot....

...Respondent-Intervenor Murphy-Brown seeks to prevent the Community Groups from obtaining a **ruling** by the Judicial Branch, but the significant delay it seeks in an effort to eventually try to dismiss this **case** as moot is not warranted....

28. Defendants' Brief in Opposition to Plaintiff's Motion to Exclude Defense Expert

Ashton K. LOYD, Plaintiff, v. James Michael GRIFFIN, an individual; Griffin Insurance Agency, Inc., a NC corporation, Defendants. | Superior Court of North Carolina, Superior Court Division. | June 27, 2022 | No. 20 CVS 2394. | 2022 WL 19569077

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NOW COME Defendants James Michael Griffin (“Griffin”) and Griffin Insurance Agency, Inc. (“GIA”) (collectively “Defendants”) and submit this Brief in Opposition of Defendant’s Motion (“the...

...Page 6 references that the source of the data is “Excel Worksheet: ' 2. 1 Historical Financials and Projection' ” Pages 7a and 7b comprise Excel Worksheet 2. 1.[FN13]...

...The Court noted that, in 2011, the North Carolina General Assembly amended **Rule** 702 of the North Carolina **Rules** of Evidence in virtually the same way the United States Congress had amended **Rule** 702 of the Federal **Rules** in response to Daubert....

...But unlike Daubert, Joiner, and Kumho--all of which were decided before the General Assembly amended North Carolina's **rule** in 2011--this **case** law could not have been incorporated into the amended state **rule**.”)...

...While the **cases** discussed by the Plaintiff are distinguishable from the present matter, the more fundamental flaw with Plaintiff's argument is that it has no bearing on the **Rule** 702 reliability analysis as it applies to what Janik did in this **case**....

29. Defendant David L. Pressly Jr.'s Motion to Consolidate Companion Cases

Edwin A. PRESSLY, individually, Edwin A. Pressly derivatively as member of Free Nancy, L.L.C., Edwin A. Pressly as a General Partner of Free Nancy Partnership, and Free Nancy Partnership by general partner Edwin A. Pressly, Plaintiffs, v. David L. PRESSLY, Jr., Crescent Housing Partners, LLC, Fourth Creek Development Company, LLC, Rebecca A. P. Inglefield, Penelope P. Pressly, and Rebecca A. P. Inglefield as Administrator of the Estate of Anita Pressly, Defendants, Free Nancy, L.L. C., Nominal Defendant. | Superior Court of North Carolina, Superior Court Division. | December 09, 2022 | No. 22 CVS 2003. | 2022 WL 19922463

Defendant David L. Pressly (“David”), by and through the undersigned counsel and pursuant to **Rule** 42 of the **Rules** of Civil Procedure, moves the Court to consolidate this action with a...

...7.The Companion **Case** also has been designated as a mandatory complex business **case** and assigned to Judge Earp....

...Defendant David L. Pressly (“ David ”), by and through the undersigned counsel and pursuant to **Rule** 42 of the **Rules** of Civil Procedure, moves the Court to consolidate this action with a related proceeding....

...8.Both **cases** arise out of the soured business relations between David and Ed. All other entities in each **case** are either family members of David and/or Ed, or are entities controlled and/or owned by David and/or Ed....

...All defendants consent to the consolidation of these **cases**....

30. Motion to Consolidate Durham County Superior Court Cases 21-CVS-1382 and 21-CVS-1387 (N.C. R. Civ. P. 42)

MONTESSORI SCHOOL OF DURHAM, Plaintiff, v. Daniel FUCHS and Dikla Fuchs, Defendants. | Superior Court of North Carolina, Superior Court Division. | February 22, 2022 | No. 21 CVS 1382. | 2022 WL 20400578

COME NOW Defendants Daniel Fuchs and Dikla Fuchs, by and through undersigned counsel, and do hereby, pursuant to North Carolina **Rule** of Civil Procedure 42, move this Court to consolidate...

...COME NOW Defendants Daniel Fuchs and Dikla Fuchs, by and through undersigned counsel, and do hereby, pursuant to North Carolina **Rule** of Civil Procedure 42, move this Court to consolidate this action

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with the companion **case** Montessori School of Durham v. Philip A. Daye and Kathleen E. Tedford, 21-CVS-1387, now pending in the Durham County, North Carolina Superior Court....

...In both **cases**, 21-CVS-1382 and 21-CVS-1387, Plaintiff sues Defendants for breach of contract on the theory that Defendants owe Plaintiff for unpaid tuition....

...Each **case** thus turns on the question of law whether Plaintiff is correct that it need not prove actual damages to support its claims....

...In addition, the **cases** involve common questions of fact such that separate trial of the action would result in unnecessary costs and duplicative effort....

31. Respondent Commission's Memorandum of Law in Opposition to the Petition for Judicial Review

Henry FONVIELLE, Petitioner, v. NORTH CAROLINA COASTAL RESOURCES COMMISSION, Respondent; and WBRP, LLC; Thomas G. Conley; and Timothy R. Conley, Intervenor-Respondents. | Superior Court of North Carolina, Superior Court Division. | March 01, 2022 | No. 21 CVS 3584. | 2022 WL 20400583

Respondent North Carolina Coastal Resources Commission ("Commission" or "Respondent"), through its undersigned attorney, respectfully submits this Memorandum in Opposition to the Amended...

...This claim is simply not supported by the record, the CAMA statute, the Commission's **rules**, or **case** law....

...The Commission's **rule** at 15A NCAC 07J.0302(c) specifically states that the failure to submit a request for a contested **case** "within the time period in G.S. 113A-121.1(a) and (b) constitutes a waiver of the opportunity for a contested **case** hearing."...

...Under the Commission's **rules**, that failure waives the Petitioner's right to request a contested **case** hearing....

...N.C.G.S. § 113A-121.1(b) To receive a contested **case** hearing (following a timely request) a petitioner has the burden to identify a section of the CAMA statute or the Commission's **rules** allegedly violated by the permit, show that he or she is directly affected by the issuance of the permit, and demonstrate that a contested **case** hearing would not be frivolous....

32. Respondent-Intervenor Murphy-Brown LLC's Motion for Stay of the Proceedings, or, in the Alternative, for an Appropriate Case Schedule

ENVIRONMENTAL JUSTICE COMMUNITY ACTION NETWORK and Cape Fear River Watch, Petitioners, v. NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY, Division of Water Resources, Respondent, v. Murphy-Brown LLC, Respondent-Intervenor. | Superior Court of North Carolina, General Court of Justice Superior Court Division. | March 09, 2022 | No. 22 CVS 443. | 2022 WL 19731229

NOW COMES Respondent-Intervenor Murphy-Brown LLC ("Murphy-Brown"), by and through counsel and pursuant to **Rule** 7 of the North Carolina **Rules** of Civil Procedure, and hereby moves to stay...

...On June 2, 2022, the four contested **cases** were consolidated (the "Consolidated Contested **Case**")....

...1. That this Court enter a stay of the proceedings in this **case** until July 15, 2022;...

...c. Avoid this Court issuing a **ruling** that could only apply to Permits no longer in effect....

...Petitioners' proposed schedule deprives both the Court and the parties of the time necessary to resolve this **case** properly....

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33. Petitioner's Response in Opposition to Respondent's Motion to Dismiss

N.C. DEPARTMENT OF REVENUE, Petitioner, v. INTEGON NATIONAL INSURANCE COMPANY, Respondent.
| Superior Court of North Carolina, Superior Court Division. | January 26, 2022 | No. 21 CVS 14395. | 2022 WL 17902679

NOW COMES Petitioner North Carolina Department of Revenue ("Department" or "Petitioner") and, pursuant to BCR 7.6, responds in opposition to the motion to dismiss ("Motion") filed by...

...Just as a special superior court judge may be assigned to matters in any of those counties, when a Business Court judge is assigned to a **case** that has been designated as a complex business **case**, whether by a mandatory or discretionary assignment, he is commissioned to preside over that entire **case** until its conclusion, and he proceeds with the same jurisdiction and authority as any other superior court judge who may be commissioned to hear matters in that **case**....

...Any party or person aggrieved by the final decision in a contested **case**, and who has exhausted all administrative remedies made available to the party or person aggrieved by statute or agency **rule**, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which **case** the review shall be under such other statute....

...ECF No. 1. Integon did not object to the designation and waived any objection to the designation of this **case** as a complex business **case**....

...But Williams, King, and the line of **cases** relied on by Respondent are distinguishable on the fundamental fact that the proposed draft consent order submitted by the parties in this **case** was discarded by the ALJ and never entered....

34. Reply Brief of Defendants Maxum, Ironshore, Novae, Hallmark, and Hudson in Support of Their Motion to Reconsider

BRAKEBUSH BROTHERS, INC. and House of Raeford Farms, Plaintiffs, v. CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON - NOVAE 2007 SYNDICATE SUBSCRIBING TO POLICY WITH NUMBER 93PRX17F157; Hallmark Specialty Insurance Co.; Evanston Insurance Co.; Maxum Indemnity Co.; Hudson Specialty Insurance Co.; Liberty Surplus Insurance Corporation; Ironshore Specialty Insurance Co.; and Certain Underwriters at Lloyd's of London -Brit Syndicate 2987 Subscribing to Policy with Number PD-1 0972-00, Defendants. | Superior Court of North Carolina. | March 04, 2022 | No. 20 CVS 367. | 2022 WL 2819180

Defendants Certain Underwriters at Lloyd's of London - Novae 2007 Syndicate Subscribing to Policy with Number 93PRX17F157 ("Novae"), Hallmark Specialty Insurance Co. ("Hallmark"), Ironshore...

...In that **case**, a client, Jones Trucking Company, and the client's excess insurer, sued a law firm for malpractice in defending Jones in an underlying personal injury **case**....

...Brakebush's argument that "the Court has already analyzed the applicability of the North Carolina **cases** on which Skyline relied for its decision," (ECF No. 118, p. 11), ignores the possibility of clear error in the Court's interpretation of those **cases**....

...The Fourth Circuit's **ruling** in Skyline constitutes an important intervening development within the body of North Carolina **case** law addressing whether a plaintiff assignee of insurance proceeds could sue an insurer for extra-contractual liability or unfair trade practices where the plaintiff was not an insured or in direct privity with the insurer....

...These **cases**, then, involved third-party insurance coverage....

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35. Motion to Dismiss Rule 12(b)(6) Affirmative Defense

EAST BAY COMPANY, LTD., Plaintiff, v. Brandon Scott BAXLEY, Defendant. | Superior Court of North Carolina, General Court of Justice. | August 29, 2022 | No. 22 CVS 7152. | 2022 WL 21780679

NOW COMES Defendant Brandon Scott Baxley ("Defendant"), through undersigned counsel, and respectfully moves the Court pursuant to **Rule** 12(b)(6) of the North Carolina **Rules** of Civil...

...3.On July 8, 2018, Defendant filed a petition for relief under Chapter 7 of the United States Bankruptcy Code in the Eastern District of North Carolina, **Case** No. 18-03406-5-DMW ("Bankruptcy **Case**")....

...NOW COMES Defendant Brandon Scott Baxley ("Defendant"), through undersigned counsel, and respectfully moves the Court pursuant to **Rule** 12(b)(6) of the North Carolina **Rules** of Civil Procedure to dismiss in lieu of answering the Complaint filed by East Bay Company, Ltd., for failure to state a claim upon which relief can be granted because the deadline for Plaintiff to have filed this matter was July 29, 2020....

...(1)the end of such period, including any suspension of such period occurring on or after the commencement of the **case**; or...

...The "suspension of such period occurring on or after the commencement of the **case**" in Section 108(c)(1) is only available to governmental entities like the Internal Revenue Service and specifically where federal or state statute provides for a suspension....

36. Respondent's Reply to Petitioners' Response to the Department's Exceptions

John M. MCCABE and Rebecca B. McCabe, Petitioners, v. NORTH CAROLINA DEPARTMENT OF REVENUE, Respondent. | Superior Court of North Carolina, Superior Court Division. | February 11, 2022 | No. 2021CVS5724. | 2022 WL 19574732

FN1. Unless otherwise defined in this Reply, the defined terms have the same meaning as set forth in the Glossary to the Department's principal brief. Petitioners wrongly assert that...

...When reviewing the filings in this **case**, the majority of these federal **cases**, including the seminal **cases**, addressing both the bona fide partnership doctrine and disguised sale **rule** were advanced by the parties for this Court's consideration....

...Nevertheless, and undertaking the role of a jurist, Petitioners' experts spend much of their reports, opinions, and testimony relying on this same body of federal **cases**, including the seminal **cases** of Virginia Historic and Historic Boardwalk, to explain and support their determination on the outcome of this **case**....

...Instead, the OAH has original and exclusive jurisdiction to determine contested tax **cases** that arise under the Revenue Act, as does this **case**....

...All of these experts are the exact same experts employed by the petitioner in the Farm Bureau **case** (2020 CVS 10244) and have advanced substantially the same opinions in each **case**....

37. Plaintiffs' Consolidated Response to Objection to and Motion to Strike Notice of Filing Verifications and Motion for Leave to Amend Verifications

Carl E. MERRELL; Lyle Ranson; Jeanette Ranson; Craig S. Miller; Wanda Edwards Miller; and Robert J. Nastase, Plaintiffs, v. James M. SMITH; Jennifer Smith; Carolina Beverage Group, LLC f/k/a CAROLINA BEER & BEVERAGE, LLC; and Home Run Holdings, LLC f/k/a CBB Holdings, LLC, Defendants. | Superior Court of North Carolina,

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Superior Court Division. | October 05, 2022 | Nos. 19 CVS 21650 (MASTER FILE), 19 CVS 22027, 19 CVS 23665. | 2022 WL 17222963

Plaintiffs, Carl E. Merrell, Lyle Ranson, Jeanette Ranson, Craig S. Miller, and Wanda Edwards Miller hereby respond to Defendants, James M. Smith and Jennifer Smith's (the "Smiths") Amended...

...At this time the Aldridge **Cases** and CBB **Cases** consisted of a total of nineteen (19) filed **cases** with a total of forty-eight (48) Plaintiffs....

...The circumstances were such that the undersigned was faced with having to request consolidation of the Aldridge **Cases** in which the Croziers and Kent Kalina were joined Plaintiffs with the CBB **Cases** or requesting leave to amend relevant Aldridge **Cases** to add the recently discovered CBB insider trading claims and to add new Defendants more than a year after the **cases** were filed....

...By consent of the parties, on 10 March 2020, the undersigned filed Second Amended Complaints in the CBB Merrell and Strack **cases**, moving Plaintiffs, Carolyn Crozier, Thomas Crozier, Jr., and Kent Kalina from the Merrell **case** to the Strack **case**. [FN11]...

...On 6 February 2020, the Court held a status conference with all counsel for the Aldridge **Cases** and CBB **Cases**. [FN8]...

38. Plaintiff's Motion to Bifurcate Trial

ERIE INSURANCE EXCHANGE, Plaintiff, v. INSTALLS UNLIMITED LLC, Mary Lane, Adrian Bang, and Daron Satterfield in his capacity as Receiver for the choses of action of Installs Unlimited, LLC and Mary Lane, Defendants. | Superior Court of North Carolina, Superior Court Division. | May 03, 2022 | No. 20-CVS-1342. | 2022 WL 18951378

NOW COMES Plaintiff, Erie Insurance Exchange ("Plaintiff" or "Erie"), pursuant to N.C. Gen. Stat. § 1 A-I, **Rule** 42(b), and moves for an order bifurcating the trial of this matter into...

...If the Court (or the jury, as the **case** may be) [FN1] determines Erie properly and lawfully cancelled the Q34 Policy, then that disposes of the entire **case**....

...The only remaining question to be answered in this **case** is whether Erie's cancellation of the Q34 Policy complied with Ohio law - a purely legal question. [FN2]...

...Furthermore, presenting the aforementioned issues to the Court (or the jury, as the **case** may be) in the liability phase will prejudice Plaintiff and confuse the jury....

...NOW COMES Plaintiff, Erie Insurance Exchange ("Plaintiff" or "Erie"), pursuant to N.C. Gen. Stat. § 1 A-I, **Rule** 42(b), and moves for an order bifurcating the trial of this matter into phases for contractual liability and compensatory damages....

39. Defendants' Memorandum of Law in Support of Refiled Motion for Summary Judgment (in Compliance with ECF 71)

Peter FLEMING, Plaintiffs, v. Adam HORNER and Hamilton Stephens, Steele & Martin, PLLC, Defendants. | Superior Court of North Carolina. | February 01, 2022 | No. 20-CVS-3348. | 2022 WL 2819174

NOW COME Defendants Adam Horner ("Horner") and Hamilton Stephens Steele & Martin, PLLC ("HSSM") (collectively "Defendants") acting by and through their attorneys, and pursuant to **Rule** 56 of...

...A malpractice plaintiff is not required to prove what outcome a particular fact-finder in the underlying **case** - in this **case**, Judges Levinson and Bridges or a jury - would have reached; instead, this Court at

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summary judgment must substitute its own judgment in applying the relevant law to the facts of the **case** and render its determination on the outcome of the Underlying **Case**....

...Plaintiff filed an action for malpractice, and the trial court bifurcated the “**case** within the **case**” from the legal malpractice allegations, and required the plaintiff to try her premises liability **case** first, before putting on any evidence of the alleged malpractice of defendant attorney....

...The finder of fact then determines the outcome of the underlying “**case** within the **case**.”...

...Accordingly, this Court must first determine whether Plaintiff has forecast sufficient evidence that he could have prevailed in the Underlying **Case**, and in so doing must evaluate the undisputed facts and evidence that Defendants - standing in the shoes of GFIC for purposes of the proximate cause element of the “**case** within a **case**” - have presented....

40. Brief in Support of Petition for Judicial Review

WILSON COUNTY BOARD OF EDUCATION, Petitioner, v. RETIREMENT SYSTEMS DIVISION, Department of State Treasurer, Tsers Board of Trustees; Tim Moore, North Carolina Speaker of the House; and Philip E. Berger, President Pro Tempore of the North Carolina Senate, Respondents. | Superior Court of North Carolina, Superior Court Division. | May 06, 2022 | No. 21-CVS-1471. | 2022 WL 21756284

Petitioner, Wilson County Board of Education, submits this Brief in Support of its Petition for Judicial Review. On July 19, 2019, Petitioner Wilson County Board of Education (“Board”)...

...In the instant **case**, Respondent violated the APA upon the adoption of 20 N.C.A.C. 02B.0405 in that it: (1) failed to analyze the economic impact of the proposed **rule** on employers; (2) failed to seek to reduce the burden or impact on employers who would be subject to the **rule**; and (3) failed to propose two alternatives for consideration....

...3.Retroactive application of the Cap Factor **Rule** is permissible if directed by statutes, as Respondents claim was the **case** here....

...The Supreme Court decided in the Cabarrus **case** that formal rulemaking was required in order for there to be a valid Cap Factor **Rule**....

...While that **case** was on appeal, the Retirement System pursued rulemaking, eventually adopting a valid Cap Factor **Rule**, effective March 21, 2019, and codified at 20 N.C.A.C. 02B.0405....

41. Innovare's Supplemental Brief in Support of Motion to Dismiss Counterclaims

INNOVARE, LTD., A Nevada Limited Liability Company, Plaintiff, v. SCITECK(R) DIAGNOSTICS, INC., A Delaware Corporation, Defendant. | Superior Court of North Carolina. | October 05, 2022 | No. 21-CVS-2180. | 2022 WL 18867798

Plaintiff Innovare, Ltd. (“Innovare”) submits this supplemental brief on the questions posed in the Court's September 25, 2022 order (ECF No. 48) as follows: Sciteck Diagnostics, Inc....

...How does that **rule** apply to Sciteck Diagnostics, Inc.'s counterclaim under 15 U.S.C. § 1125(a) on the facts of the present **case**?...

...How does that **rule** apply to Sciteck Diagnostics, Inc.'s counterclaim under 15 U.S.C. § 1125(a) on the facts of the present **case**?...

...FN1. Statutory standing is a separate doctrine from constitutional standing, which asks whether a court has the constitutional power to adjudicate a **case** based on the plaintiff's injury....

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...IV. Identify all **cases** analyzing trademark infringement claims brought under North Carolina common law that you contend are instructive regarding Sciteck Diagnostics, Inc.'s counterclaim for trademark infringement under North Carolina common law....

42. Motion to Conform Judgment to Well-Settled Case Law or In the Alternative Motion to Vacate Judgment Pursuant to Rule 60 and Motion to Withdraw Upon Conclusion of These Motions

Teruyo BARRY, by and through her Guardian Ad Litem, Sharon A. Keyes, Deceased, Plaintiff, v. Joan BLUE and George Barry, Defendants, v. Ruth Gallo and William Barry, Third-Party Defendants. | Superior Court of North Carolina. | May 24, 2022 | No. 20 CVS 733. | 2022 WL 21807954

Now comes the undersigned attorney, making a limited appearance on behalf of Defendants, and shows to the Court as follows: 1. That the undersigned counsel has been retained for the limited...

...3. In the alternative, if this court feels that it cannot conform the order of this court to the well-settled **case** law on civil conspiracy, then in that event, Defendants respectfully pray that the final order be vacated pursuant to **Rule** 60 as...

...13. The final order, entered on December 14, 2021, does not conform to well-settled NC **case** law on civil conspiracy and allows for the recovery of six times the actual damages identified by the Jury verdict and in compliance with **case** law....

...Returning the assets to the Executor for equal disbursement satisfies the expectations of the Jury and **case** law....

...1. That the court conform the final order in this action to the well-settled **case** law of this state regarding civil conspiracy by:...

43. Plaintiff Brakebush Brothers, Inc.'s Memorandum in Opposition to Defendants' Motion to Reconsider

BRAKEBUSH BROTHERS, INC. and House of Raeford Farms, Plaintiffs, v. CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON - NOVAE 2007 SYNDICATE SUBSCRIBING TO POLICY WITH NUMBER 93PRX17F157, Hallmark Specialty Insurance Co., Evanston Insurance Co., Maxum Indemnity Co., Hudson Specialty Insurance Co., Liberty Surplus Insurance Corporation, Ironshore Specialty Insurance Co., and Certain Underwriters at Lloyds of London - Brit Syndicate 2987 Subscribing to Policy with Number PD- 10972-00, Defendants. | Superior Court of North Carolina. | February 18, 2022 | No. 20-CvS-367. | 2022 WL 2819177

Plaintiff Brakebush Brothers, Inc. ("Brakebush") respectfully submits this Memorandum in Opposition to Defendants Certain Underwriters at Lloyd's of London - Novae 2007 Syndicate...

...A federal court's analysis of those **cases**, in connection with the facts that the Court has already distinguished from this **case** in its prior **ruling**, can have no effect on the Court's decision denying Defendants' motion to dismiss....

...And the **cases** on which Skyline relies were already considered and distinguished by the Court in denying Defendants' motion to dismiss because those **cases** involved third-party claimants....

...Defendants cited these **cases** in support of their first motion to dismiss (ECF No. 43), and the Court carefully analyzed the applicability of those decisions to this **case**....

...In particular, the Court denied the Reconsideration Defendants' motion to dismiss Brakebush's bad faith and UDTPA claims for several reasons: (1) the bad faith claims asserted by Brakebush were never owned by Raeford and were thus never assigned, meaning that North Carolina **cases** barring assignment

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of tort claims are inapplicable, (2) Brakebush is a first-party claimant, so **cases** barring bad faith claims by adverse third-party claimants are inapplicable, (3) public policy concerns underpinning **cases** barring assignment of tort claims are not relevant to the facts at issue here, and (4) a party in Brakebush's position must have a remedy in tort for bad faith conduct against it by an insurer....

44. Defendants' Motion for Summary Judgment (Rule 56)

Edward BARTELS, Administrator of the Estate of Jeanne Ellen Bartels, Plaintiff, v. FRANKLIN OPERATIONS, LLC d/b/a Franklin Manor Assisted Living Center, Saber Healthcare Group, LLC, and Kimberly Richardson, Defendants.
| Superior Court of North Carolina, Superior Court Division. | March 04, 2022 | No. 18-CVS-12063. | 2022 WL 20400683

Pursuant to **Rule** 56 of the North Carolina **Rules** of Civil Procedure, Defendants Franklin Operations, LLC d/b/a Franklin Manor Assisted Living Center ("Franklin Manor") and Saber Healthcare...

...30.Under the claim-splitting prohibition **rule**, a second action (this **case**) is barred by res judicata--even though it may assert a new legal theory or is styled with a different claim--if it involves the same alleged wrong as the first **case** (the Federal Action)....

...Pursuant to **Rule** 56 of the North Carolina **Rules** of Civil Procedure, Defendants Franklin Operations, LLC d/b/a Franklin Manor Assisted Living Center ("Franklin Manor") and Saber Healthcare Group, LLC ("Saber") (collectively, "Defendants") move for summary judgment because Plaintiff's claims are precluded under the doctrines of collateral estoppel and res judicata (including its **rule** against impermissible "claim-splitting")....

...29.Indeed, "[a] party is required to bring forth the whole **case** at one time and will not be permitted to split the claim or divide the grounds for recovery" among multiple **cases**....

...This **case** is about the care Ms. Bartels received at Franklin Manor....

45. Defendant's Motions in Limine

Kevin HUGHES, Administrator of the Estate of Lynn Hughes and Larry Hughes, Plaintiffs, v. INVACARE CORPORATION, Defendant. | Superior Court of North Carolina, General Court of Justice. | November 04, 2022 | No. 18 CVS 00323. | 2022 WL 20013240

NOW COMES Defendant Invacare Corporation ("Invacare"), by and through the undersigned counsel, and respectfully moves the Court for Orders in Limine prohibiting Plaintiffs and their counsel...

...Evidence of liability insurance is irrelevant and expressly prohibited by **Rule** 411 of the North Carolina **Rules** of Evidence....

...The most recent amendment to **Rule** 26 recognizes that such disclosures are necessary "[i]n order to provide openness and avoid unfair tactical advantage in the presentation of a **case** at trial."...

...Moreover, it shifts the focus from the evidence in the **case** . . . , and impermissibly broadens the **case** by replacing specific evidence of conduct with considerations of potential future threats to the community....

...Any testimony not revealed previously would defeat the express purpose of the discovery **rules** as established by the North Carolina **Rules** of Civil Procedure and would amount to undue surprise and trial by ambush....

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46. Plaintiffs' Reply in Support of Their Motion for Partial Summary Judgment

NORTH CAROLINA BAR and Tavern Association; et al., Plaintiffs, v. Roy A. COOPER, III, in his official capacity as Governor of North Carolina, Defendant. | Superior Court of North Carolina. | January 07, 2022 | No. 20 CVS 6358. | 2022 WL 2819182

NOW COME plaintiffs, by and through undersigned counsel, offering this reply memorandum in support of plaintiffs' Motion for Partial Summary Judgment. The bulk of defendant's brief in...

...Defendant's effort to classify this **case** as a "police powers" **case** fails....

...Those **cases** do not deal with statutory language similar to the language at issue here nor is this a "police power" **case**....

...Thus, even under the holding in the New Jersey **case**, the facts in this **case** compel a different result and a recognition that a taking occurred....

...Comparing the similar circumstances at issue in Kirby and in this **case** is instructive....

47. Defendant Eric Parker's Motion to Dismiss or in the Alternative to Stay

Justin MARLOW, as Administrator of the Estate of Michelle Marlow Deceased, Plaintiff, v. TCS DESIGNS, INC., Jobie G. Redmond, Jeff McKinney, and Eric Parker, Defendants. | Superior Court of North Carolina, Superior Court Division. | April 25, 2022 | No. 22 CVS 363. | 2022 WL 20637217

NOW COMES Defendant Eric Parker, by and through counsel, and hereby moves the Court for an Order dismissing Plaintiff's claims against Defendant Eric Parker pursuant to North Carolina **Rules**...

...5. Allowing the civil **case** to go forward while the Criminal **Case** is ongoing will severely prejudice Defendant Eric Parker, in that his constitutional rights against selfincrimination, to due process, and to a fair and impartial jury trial will be impaired by permitting this **case** to proceed prior to or in parallel with the Criminal **Case**, in ways including but not limited to permitting discovery under the **Rules** of Civil Procedure which exceeds the scope of discovery allowed in N.C.G.S. Chapter 15A and which will impinge upon his constitutional rights in the trial of the Criminal **Case**...

...WHEREFORE Defendant Eric Parker respectfully requests that the Court grant his Motion to Dismiss for lack of subject matter jurisdiction and failure to state a claim on which relief can be granted pursuant to **Rules** 12(b)(1) and (12(b)(6) of the North Carolina **Rules** of Civil Procedure and enter an order dismissing this action as to Defendant Eric Parker and grant such other and further relief as the Court deems just and proper; or, in the alternative, that this action be stayed pending the conclusion of the Criminal **Case** in the interests of justice and preservation of Defendant Eric Parker's Constitutional rights in the Criminal **Case**...

...In the alternative to the above motion to dismiss, Defendant Eric Parker, by and through counsel, hereby moves the Court for an Order staying the above-captioned **case** until the completion of the criminal **case** 21 CRS 050145, State of North Carolina v. Eric Carroll Parker, Catawba County, North Carolina (the "Criminal **Case** ")....

...The substantial overlap between the instant action and the Criminal **Case** will impair Defendant Eric Parker's Fifth Amendment privilege, permit discovery beyond the scope of N.C.G.S. Chapter 15A, and otherwise prejudice the pending Criminal **Case**....

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48. Plaintiff's Memorandum in Opposition to Summary Judgment

Peter FLEMING, Plaintiff, v. Adam HORNER and Hamilton, Stephens, Steele & Martin, PLLC, Defendants.
| Superior Court of North Carolina. | April 25, 2022 | No. 20-CVS-3348. | 2022 WL 2819172

In their Memorandum in Support of Summary Judgment, the Defendants spend an inordinate amount of time advancing evidence and arguments never featured in the matter of GFIC v. WFT, INC.,...

...As the present **case** alleges errors in an underlying litigation matter, it requires a retrial of the “ **case** within the **case**.”...

...In this setting, a plaintiff “must prove a ‘ **case** within a **case** ’ meaning a showing of the viability and likelihood of success of the underlying action.”...

...This is the classic **case** within a **case** and Fleming will prove by curing the evidentiary defect caused by the Defendants that he would have defeated GFIC's claims....

...In their Memorandum in Support of Summary Judgment, the Defendants spend an inordinate amount of time advancing evidence and arguments never featured in the matter of GFIC v. WFT, INC., Blessmatch Marine, LLC, File No. 14-CVS-9043 (“Underlying **Case**”) in an effort to distract the Court from the central issue now presented by this legal malpractice **case**: In defense of summary judgment in the Underlying **Case**, Defendants did nothing....

49. Legislative-Intervenors' Reply Brief Regarding Issues on Remand

HOKE COUNTY BOARD OF EDUCATION, et al., Plaintiffs; and Charlotte-Mecklenburg Board of Education, Plaintiff-Intervenor; and Rafael Penn, et al., Plaintiff-Intervenors, v. STATE OF NORTH CAROLINA and the State Board of Education, Defendants; and Charlotte-Mecklenburg Board of Education, Realigned Defendant; and Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, and Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives, Intervenor-Defendants. | Superior Court of North Carolina, Superior Court Division. | April 11, 2022 | No. 95-CVS-1158. | 2022 WL 18685872

As a threshold matter, it is important to clarify the relationship of the parties. In its filings, DOJ purports to concede various matters on behalf of “the State.” Plaintiffs then rely on...

...First, the **cases** the Penn-Intervenors cite all stand for the proposition that decisions by appellate courts represent law of the **case** in later trial court proceedings....

...The governing statutes, however, make clear DOJ represents only the Executive Branch in this **case**....

...This distinction is critical for understanding the threat this **case** poses to the separation of powers....

...That is not “relitigating” the **case**, nor is it asking the Court to decide issues that are solely for appeal....

50. Memorandum of Law in Support of Stay Pending Appeal

Veronica Jane DILLREE, by and through her General Guardian, Emily A. Tobias, Plaintiff, v. Harry DILLREE, and his Attorney-in-Fact, Lisa Wilcox, The Harry Dillree Trust, and The Veronica Jane Dillree Trust, Defendants. | District Court of North Carolina. | March 15, 2022 | No. 21 CVD 108. | 2022 WL 20401593

Defendants Harry Dillree and Lisa Wilcox (herein “Defendants”), by and through counsel, submit this Memorandum of Law in support of their position that proceedings in this action are stayed...

...Estate planning **case** law applies a similar **rule** for incompetent persons....

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...The determination of whether an interlocutory order affects a substantial right is one that must be made on a **case-by-case** basis....

...Id. This principle stems from the general **rule** that two courts cannot have jurisdiction over the same **case** at the same time....

...16. On November 1, 2021, this Court entered its Order Denying Defendants' Motion to Dismiss: **Rule** 12(b)(1) and its Order Denying Motion to Dismiss: **Rule** 12(b)(6)....

51. Plaintiffs' Memorandum in Opposition to Defendants' Motion to Dismiss

BRAKEBUSH BROTHERS, INC. and House of Raeford Farms, Plaintiffs, v. CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON - NOVAE 2007 SYNDICATE SUBSCRIBING TO POLICY WITH NUMBER 93PRX17F157, Hallmark Specialty Insurance Co., Evanston Insurance Co., Maxum Indemnity Co., Hudson Specialty Insurance Co., Liberty Surplus Insurance Corporation, Ironshore Specialty Insurance Co., and Certain Underwriters at Lloyds of London - Brit Syndicate 2987 Subscribing to Policy with Number PD- 10972-00, Defendants. | Superior Court of North Carolina. | February 18, 2022 | No. 20-CvS-367. | 2022 WL 2819179

Plaintiffs Brakebush Brothers, Inc. ("Brakebush") and House of Raeford Farms, Inc. ("Raeford") (collectively, "Plaintiffs") respectfully submit this Opposition to Defendants' Joint Motion...

...Both of these **cases**, as well as the explanation of **Rule** 15, are plainly distinguishable because they do not involve substituting the real party in interest as a plaintiff, which is expressly allowed under **Rule** 17(a)....

...This **case** is readily distinguishable and has no effect on the **case** at hand....

...This **rule** changed when the **Rules** of Civil Procedure were enacted in 1967....

...Even so, Raeford's claims against the Unassigned Insurers are not barred by the statute of limitations for three reasons: (1) they relate back to the original complaint, which was timely filed on October 12, 2020, because Raeford is the real party in interest under **Rule** 17(a) of the North Carolina **Rules** of Civil Procedure; (2) Raeford's claims were equitably tolled while the **case** proceeded with Brakebush as the only plaintiff; and (3) the Unassigned Insurers' conduct induced the delay in Raeford bringing these claims, meaning that those insurers are equitably estopped from raising a statute of limitations defense....

52. Plaintiff's Response in Opposition to Defendant Robert Cavazos's Daubert Motion to Exclude Paul T. Jenson as an Expert and Paul T. Jenson's Expert Report and Testimony

WINNER'S MARKETING, INC., a North Carolina corporation, n/k/a Winner's Marketing, Inc., a Delaware corporation, Plaintiff/Counterclaim Defendant, v. Robert CAVAZOS, Defendant/Counterclaim Plaintiff. | Superior Court of North Carolina, Superior Court Division. | December 01, 2022 | No. 21 CVS 3135. | 2022 WL 18457463

Plaintiff Winner's Marketing, Inc. ("Plaintiff"), pursuant to North Carolina Business Court **Rule** 7.6, submits its Response in Opposition to Defendant Robert Cavazos's ("Defendant") Motion...

...North Carolina **Rule** of Evidence **Rule** 702 provides that expert testimony is admissible if:...

...Defendant cites no **case** law stating that an expert cannot consider **case** holdings relevant to the industry--and none exists....

...For reliability, the "precise nature of the reliability inquiry will vary from **case** to **case** depending on the nature of the proposed testimony," and "the trial court has discretion in determining how to address the three prongs of the reliability test."...

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...The **cases** demonstrate the uncertainty inherent in the operation of Grey Games....

53. Petitioner's Reply to Motion to Strike

NORTH CAROLINA DEPARTMENT OF REVENUE, Petitioner, v. PHILIP MORRIS USA, INC., Respondent.
Superior Court of North Carolina, Superior Court Division. | September 19, 2022 | No. 22 CVS 1162.
2022 WL 19919273

NOW COMES Petitioner North Carolina Department of Revenue ("Department"), pursuant to BCR 7.2, and submits this reply to Respondent's Response to Motion to Strike certain exhibits filed by...

...These **cases** have no application because the posture of this **case** does not involve trial....

...A response brief on judicial review, however, is not a "pleading" as defined by **Rule** 7(a), and thus, not subject to the requirements of **Rule** 12(f)....

...NC Board of Education has no application to this **case**....

...None of these **cases** involve judicial review, which requires the review of a closed Official Record....

54. Plaintiff's Brief in of Opposition to Defendant's 12(b)6 and 12(b)1 Motions to Dismiss

Joel KELLY, DPM, Individually and as Former Partner and Minority Shareholder in Piedmont Foot Clinic, P.A., and Derivatively on behalf of Piedmont Foot Clinic, P.A.; Elizabeth Bass Daughtry, Dpm, Individually and as Former Partner and Minority Shareholder in Piedmont Foot Clinic, P.A., and as Owner of Dunn Foot and Ankle Center, P.A., and Derivatively on behalf of Piedmont Foot Clinic, P.A.; Dunn Foot and Ankle Center, P.A.; and Piedmont Foot Clinic, P.A., Plaintiffs, v. Jason NOLAN, DPM, Individually, and as a Former Partner and Majority Shareholder in Piedmont Foot Clinic, P.A.; and Richard Hauser, Dpm, Individually and as Former Partner and Majority Shareholder in Piedmont Foot Clinic, P.A., Defendants. and PIEDMONT FOOT CLINIC, P.A., Nominal Defendant. | Superior Court of North Carolina, Superior Court Division. | March 09, 2022 | No. 2021CVS2015. | 2022 WL 19574729

Under the **case** of Stanback v. Stanback "As a general **rule**, a complaint should not be dismissed for insufficiency unless it appears to a certainty (emphasis added) that plaintiff is entitled...

...N.C. **Rule** of Civil Procedure 8(a) is often interpreted in conjunction with **Rule** 12(b)(6)....

...Given the involvement of multiple companies and also of consumers, this **case** falls in line with the Sara Lee lines of **cases**....

...The Court reviewed the background on the history behind North Carolina's enactment of the current **rule** and concluded from that history that the **rules** of pleading were intended to be relaxed....

...Under the **case** of Stanback v. Stanback "As a general **rule**, a complaint should not be dismissed for insufficiency unless it appears to a certainty (emphasis added) that plaintiff is entitled to no relief under any state of facts which could be proved in support of the claim" Stanback v. Stanback, 297 N.C. 181, 185, 254 S.E.2d 611 (1979)....

55. Defendants' Brief in Support of Their Motion to Dismiss and Alternative Motion to Strike

Nancy MONDA, Plaintiff, v. Timothy L. MATTHEWS, Jr. and Kelly Banigan, Defendants. | Superior Court of North Carolina, General Court of Justice. | January 20, 2022 | No. 21 CVS 335. | 2022 WL 20837410

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COME NOW the Defendants, TIMOTHY L. MATTHEWS, JR. and KELLY BANIGAN, by and through their undersigned attorneys of record and pursuant to **Rule** 12(b)(6) and **Rule** 12(f) of the North Carolina...

...See, e.g., Barham v. Hawk, 165 N.C. App. 708, 719, 600 S.E.2d 1, 8 (2004) (holding that “An order under N.C. R. Civ. P. 26 does not survive a voluntary dismissal without prejudice”), Tompkins v. Log Systems, Inc., 96 N.C. App. 333, 385 S.E.2d 545 (1989) (holding that where a **case** has been voluntarily dismissed and refiled, a summary judgment **ruling** in the former action does not preclude a summary judgment **ruling** in the latter, refiled action)....

...If plaintiff timely refiles the **case**, “such refiling begins [the] **case** anew for all purposes”, and “it is as if the suit had never been filed.”...

...**Rule** 408 of the North Carolina **Rules** of Evidence specifically states that “[e]vidence of conduct or evidence of statements made in compromise negotiations is ... not admissible.”...

...When a plaintiff dismisses her suit without prejudice pursuant to **Rule** 41 (a)(1) of the North Carolina **Rules** of Civil Procedure, “a new action based upon the same claim may be commenced within one year.”...

56. rFactr's Memorandum of Law in Opposition to Defendants' Motion for Sanctions and to Amend Case Management Order

RFACTR, INC., Richard Brasser and Greg Gentner, Plaintiffs/Counterclaim Defendants, v. Chris MCDOWELL and Caroline McDowell, Defendants/Counterclaim Plaintiffs. | Superior Court of North Carolina, Superior Court Division. | November 15, 2022 | No. 18-CVS-12299. | 2022 WL 17902733

Plaintiff/Counterclaim Defendant RFACTR, Inc. (“rFactr”) hereby opposes Defendants/Counterclaim Plaintiffs Chris McDowell and Caroline McDowell's (jointly, “Defendants” or the “McDowells”)...

...On May 3, 2021, rFactr, Brasser, and Gentner produced 194,214 pages of documents to all counsel in the Lee **Case**--this includes counsel representing the McDowells in both **cases** (this and the Lee **Case**)....

...Defendants rely on **Rule** 37 of the North Carolina **Rules** of Civil Procedure as the basis for their Motion for Sanctions....

...The documents produced in this **case** on May 13, 2022, contain many of the documents the McDowells had for the 18-month time period leading up to the Motion for Sanctions and to Amend the **Case** Management Order before the Court now....

...For all these reasons, Defendants' reliance on **Rule** 37 is misplaced and their Motion must be denied. rFactr does acknowledge that, as recognized by Red Value and Cloer, trial courts possess inherent authority to impose sanctions for litigation abuses beyond those enumerated in the **rules**....

57. Richard Brasser and Greg Gentner's Memorandum of Law in Opposition to Defendants' Motion for Sanctions and to Amend Case Management Order

RFACTR, INC., Richard Brasser and Greg Gentner, Plaintiffs/Counterclaim Defendants, v. Chris MCDOWELL and Caroline McDowell, Defendants/Counterclaim Plaintiffs. | Superior Court of North Carolina, Superior Court Division. | November 15, 2022 | No. 18-CVS-12299. | 2022 WL 17902732

Plaintiffs, RICHARD BRASSER AND GREG GENTNER (“Brasser” and “Gentner”), oppose Defendants' Motion for Sanctions and to Amend the **Case** Management Order and in support of their opposition...

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...Here Defendants have not and never have filed a motion to compel under **Rule** 37(a), therefore the cost shifting provisions available to the Court under **Rule** 37(a) are not available, nor does Defendant seek relief under this provision of the **Rule**....

...In fact, on May 3, 2021, rFactr, Brasser, and Gentner produced to all counsel, including counsel for the McDowells, 195,310 pages of records in the Lee v. McDowell, et. al. **case** (the “Lee **Case**”)....

...) Defendants' counsel has had many of the documents at issue for 18 months, selected some of the documents to use during the trial, and now has asked the Court for leave to use the documents produced in the Lee **Case**, in this **case**, which the Court granted on November 15, 2022....

...On November 7, 2022, Defendants filed a Motion to Amend Consent Protective Order noting that “[i]n their pretrial disclosure of trial exhibits, Plaintiffs/Counterclaim Defendants listed many documents which were produced in the Lee **Case** and which are subject to the Protective Order in that **case**....

58. Defendants' Reply Brief in Support of Joint Motion to Dismiss or in the Alternative Hold Proceedings in Abeyance

BIOMILQ, INC., Plaintiff, v. Shayne GUILIANO, and 108Labs, LLC, Defendants. | Superior Court of North Carolina, Superior Court Division. | July 29, 2022 | No. 22-CVS-255. | 2022 WL 18910594

Defendant 108Labs, LLC (“108Labs”), by and through its undersigned counsel, and Defendant Shayne Guiliano, Pro Se, (collectively “Defendants”), jointly file this reply brief in support of...

...Moreover, Guiliano has acknowledged in this **case** that his and Dr. Strickland's post-separation dealings are subject to review by the district court pending an equitable distribution determination and as such would be relevant in the equitable distribution **case**....

...In the present **case** Dr. Strickland has already admitted that some or all of the property that is the subject of the equitable distribution **case** is held by BIOMILQ in her Answer to the Complaint for Equitable Distribution....

...In fact, the Court of Appeals overturned the dismissal by the superior court in Jessee because the necessary factors to divest the superior court of jurisdiction were not divulged in that **case**, contrary to the **case** at bar....

...In the **case** at bar, there is no doubt that the determination of whether BIOMILQ and 108Labs are marital property, divisible property, or separate property by the district court in the equitable distribution proceeding will significantly impact the outcome of the **case** before this Court....

59. Brief in Opposition to Defendant's Motion to Compel Arbitration

John GRIFFING, Plaintiff, v. GRAY, LAYTON, KERSH, SOLOMON, FURR & SMITH, P.A., Defendant. | Superior Court of North Carolina, Superior Court Division. | February 18, 2022 | No. 21CVS4249. | 2022 WL 3355085

Now Comes John Griffing, by and through counsel, and hereby opposes Gray, Layton, Kersh, Solomon, Furr & Smith's (“Gray Layton”) motion to compel arbitration concerning certain matters,...

...The State **case** contract also involves a non-party....

...John Griffing individually was not a party to the State **case** contract....

...The Defendant's motion should be denied, and the entirety of this **case** should proceed to discovery....

...The only parties to the State **case** contract were Gray Layton and the two associates....

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60. Memorandum of Law in Opposition to Petition for Judicial Review

GRANVILLE COUNTY BOARD OF EDUCATION, Petitioner, v. RETIREMENT SYSTEMS DIVISION, Department of State Treasurer, Respondent. Elkin City Schools Board of Education, Petitioner, v. Retirement Systems Division, Department of State Treasurer, Respondent. Mitchell County Board of Education, Petitioner, v. Retirement Systems Division, Department of State Treasurer, Respondent. Moore County Board of Education, Petitioner, v. Retirement Systems Division, Department of State Treasurer, Respondent. Blue Ridge Community College Board of Trustees, Petitioner, v. Retirement Systems Division, Department of State Treasurer, Respondent. Henderson County Board of Education, Petitioner, v. Retirement Systems Division, Department of State Treasurer, Respondent. Davidson County Board of Education, Petitioner, v. Retirement Systems Division, Department of State Treasurer, Respondent. Superior Court of North Carolina, Superior Court Division. | October 28, 2022 | Nos. 21-CVS-10201, 21-CVS-10494, 21-CVS-10575, 21-CVS-10947, 21-CVS-11205, 21-CVS-11206, 21-CVS-11625. | 2022 WL 21781057

NOW COMES Respondent, the Retirement Systems Division of the North Carolina Department of State Treasurer ("RSD"), through undersigned counsel, and hereby submits this memorandum in...

...In this **case**, the Cap Factor **Rule** was applied to retirements that occurred prior to the **Rule's** effective date because, per the **rulings** of the courts in the Cabarrus County **case**, the cap factor that was in place at the time of the retirements was later declared void....

...Petitioners have cited no State **cases** holding that a **rule** may be applied retroactively only if the General Assembly expressly authorizes the retroactive application of the **rule**....

...The other **ruling** cited by Petitioners was a **ruling** on a petition for judicial review filed by a school board in one of three **cases** that had been consolidated for hearing in OAH....

...The **rule** adopting the cap factor (the "Cap Factor **Rule**" or the "**Rule**") established a cap factor of 4.5, the same value that had been adopted by the TSERS Board at its October 2015 meeting and that was used in the CBBC analysis of each retirement at issue here....

61. Defendant/Counterclaim Plaintiff Robert Cavazos's Memorandum of Law in Support of His Daubert Motion to Exclude Paul T. Jenson as an Expert and Paul T. Jenson's Expert Report and Testimony

WINNER'S MARKETING, INC., a North Carolina corporation, n/k/a Winner's Marketing, Inc., a Delaware corporation, Plaintiff/Counterclaim Defendant, v. Robert CAVAZOS, Defendant/Counterclaim Plaintiff. | Superior Court of North Carolina, Superior Court Division. | November 01, 2022 | No. 21 CVS 3135. | 2022 WL 18457461

Defendant/Counterclaim Plaintiff Robert Cavazos ("Cavazos"), by and through his undersigned counsel, submits this Memorandum of Law in support of his Daubert Motion to Exclude Paul T....

...Defendant/Counterclaim Plaintiff Robert Cavazos ("Cavazos"), by and through his undersigned counsel, submits this Memorandum of Law in support of his Daubert Motion to Exclude Paul T. Jenson as an Expert and Paul T. Jenson's Expert Report and Testimony pursuant to **Rule** 26 of the North Carolina **Rules** of Civil Procedure, **Rule** 702 of the North Carolina **Rules** of Evidence, and **Rules** 7 and 12.9[FN1] of the General **Rules** of Practice and Procedure for the North Carolina Business Court (the "Business Court **Rules**...)

...**Rule** 702 of the North Carolina **Rules** of Evidence governs the admissibility of expert testimony....

...The Jenson Report runs afoul of **Rule** 401 and 402 of the North Carolina **Rules** of Evidence....

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...See State v. McGrady, 368 N.C. 880, 888 (2016) (“North Carolina's **Rule** 702(a) now incorporates the standard from the Daubert line of **cases** ” and “the [North Carolina] General Assembly has made it clear that North Carolina is now a Daubert state.”)....

62. Defendants' Brief in Opposition to Plaintiffs' Motion for Summary, Judgment as to Defendants' Remaining Claims

Lee W. BETTIS, JR. and Kelly Marie Bettis, Plaintiffs, v. Candle Graham WEISS, Stephen Dipiero, Clyde Swindell, and Patti Walsh, Defendants. | Superior Court of North Carolina, Superior Court Division. | December 15, 2022 | No. 21-CVS-294. | 2022 WL 20863959

NOW COME the Defendants, and move this Honorable Court to deny. Plaintiffs' Motion for Summary Judgment where the law of easement by prescription fully supports Defendants' claims, and...

...This portion of Section 840.10 of the North Carolina Pattern Jury Instructions (the Second element of proof) grows out of two appellate North Carolina **cases** that are particularly instructive and relevant to the facts of the instant **case**....

...A full and fair. reading f the depositions of the Defendants in the instant **case** emphasizes the similarity of relevant facts on the issue of “adverse, hostile, without permission” when compared to the comparable facts of the Dickinson and Potts **cases**....

...Binding precedent **case** law cited herein supports the conclusion that the elements of prescriptive easement present material facts to be decided by a jury and not by Summary Judgment....

...Settled North Carolina Supreme Court **case** law sets forth the requirement of submission to the jury of such fact, as set forth in the detailed North Carolina Pattern Jury Instructions at § 840.10 for Easement by Prescription (Exhibit A)....

63. Fee Petition and Supporting Evidence in Response to Order on Garrett Perdue's Motion for Award of Costs and Attorney's Fees

Marcy BUCCI; Rick Bucci; Eugene N. Bucci; Eugene M. Bucci; David Lubin; Laurel Manderback; and Karl Schuler, Plaintiffs, v. Robert BURNS; Zeeshan-UL-Hassan Usmani; and Garrett Perdue, Defendants. | Superior Court of North Carolina, Superior Court Division. | March 08, 2022 | No. 16 CVS 15478. | 2022 WL 17902723

Defendant Garrett Perdue (“Perdue”) submits the following fee petition and supporting evidence in response to the Order on Garrett Perdue's Motion for Award of Costs and Attorney's Fees....

...In this **case**, undersigned counsel incurred time and labor litigating the fee award as to Plaintiffs Lubin and Schuler....

...•Invoice 4062 (July/August 2018): 52.9 hours on labor involving discovery review, deposition review, mediation, discovery deposition, and **case** management issues....

...•Invoice 4003 (May/June 2018): 49.8 hours on labor involving depositions, discovery, amended answer, investigation of the underlying facts and **case** management issues....

...The North Carolina Court of Appeals recognized “that the trial court has the authority to award attorney's fees for all phases” of a **case**....