LITIGATION RETENTION AGREEMENT FOR SPECIAL COUNSEL APPOINTED BY THE SOUTH CAROLINA STATE TREASURER

This litigation retention agreement ("Agreement") is by and between the South Carolina State Treasurer Converse Chellis, III, CPA ("State Treasurer") and the below-signed attorney(s) ("Special Counsel").

RECITALS

WHEREAS, the State Treasurer has concluded that it is in the best interest of the State of South Carolina to retain Special Counsel specifically for this litigation matter; and

WHEREAS, the State Treasurer hereby engages Special Counsel to provide legal representation including, but not limited to, all preparation for, settlement of and/or actual litigation arising from the State Treasurer's securities lending arrangement with the Bank of New York (now known as The Bank of New York Mellon) ("Bank"), the Bank's mismanagement of funds and/or violations of its Securities Lending Agreement with the State Treasurer, and the losses suffered in funds entrusted to the Bank by the State Treasurer for certain accounts of the State Treasurer and the South Carolina Retirement Systems pursuant to the March 24, 2000 Securities Lending Agreement with the State Treasurer; and

WHEREAS, Special Counsel specifically represents that he has the skill, experience, expertise, and competence necessary for the meaningful prosecution of this matter;

NOW THEREFORE, in consideration for the mutual promises and covenants set forth herein, and for other valuable consideration, the State Treasurer and Special Counsel hereby agree to the following terms and conditions:

Article 1. TERM

This Agreement, which shall serve as the appointment of the attorneys whose signatures are affixed below as Special Counsel to the State Treasurer, commences on June 18, 2010, and terminates when the case has been fully and finally resolved by settlement, litigation or otherwise, including appeals, unless the State Treasurer or Special Counsel terminate the appointment earlier pursuant to Article VI of this Agreement. The State Treasurer shall not be liable to compensate Special Counsel for any services rendered after termination of the Agreement.

Article II. SERVICES

A. Scope of Appointment

Special Counsel shall provide legal services, advice, and consultation to the State Treasurer for this litigation in a manner consistent with accepted standards of practice in the legal profession. In view of the personal nature of the services to be rendered under this appointment, the State Treasurer shall be the judge of the adequacy of those services, with the advice and consent of the Attorney General of South Carolina. The parties agree:

1. The State Treasurer shall have final authority over all aspects of this litigation. The litigation may be commenced, conducted, settled, approved, and ended only with the express approval and signature of the State Treasurer. The State Treasurer at his sole discretion has the right to appoint a designated assistant ("designated assistant") to oversee the litigation, which appointment the State Treasurer may modify at will.

2. Special Counsel shall provide legal services to the State Treasurer subject to the approval of the State Treasurer for the purposes of seeking injunctive relief, monetary relief, and other relief against all entities in this litigation.

3. The State Treasurer may provide attorneys and other staff members to assist Special Counsel with this litigation. The identity and responsibilities of such personnel so assigned shall be determined solely by the State Treasurer. All pleadings, motions, briefs, formal documents, and agreements must bear the signature of the State Treasurer or his designated assistant.

4. Special Counsel shall coordinate the provision of the legal services with the State Treasurer or his designated assistant, other personnel of the Office of the State Treasurer, and such others as the State Treasurer may appoint as Special Counsel. All pleadings, motions, briefs, and other material which may be filed with the court shall first be approved by the State Treasurer and provided to his office in draft form in a reasonable and timely manner for review. Regular status meetings may be held as requested by the State Treasurer.

5. Special Counsel shall communicate with state entities through the Office of the State Treasurer unless otherwise authorized by the State Treasurer.

6. Special Counsel shall provide sufficient resources, including attorney time, to prosecute this litigation in accordance with Rule 407, Rules of Professional Conduct, South Carolina Appellate Court Rules.

B. Delegation of Work

Special Counsel may delegate work to other attorneys or paralegals within the firm with which the Special Counsel is affiliated but may not, without express approval of the State Treasurer, delegate any work whatsoever to any attorney in any other firm. Special Counsel agrees to accept full responsibility and liability for the work of any delegate.

C. Attorney-Client Relationship

Special Counsel will render services pursuant to this Agreement as an independent contractor. Neither Special Counsel nor any employee of Special Counsel shall be regarded as employed by, or as an employee of, the State Treasurer or the State of South Carolina.

An attorney-client relationship shall exist between the State Treasurer and Special Counsel.

Article III. CASE MANAGEMENT

A. Status Reports, Time Records

The State Treasurer may at any time request status reports from Special Counsel regarding any aspect of this litigation. Within twenty days after the request is received, Special Counsel shall submit such status reports to the State Treasurer. Failure to timely provide such status reports may result in forfeiture of a portion of Special Counsel's compensation at the sole discretion of the State Treasurer.

At a minimum, status reports must include a description of the current status of the matter, any significant events that have occurred since the previous status report, and a prospective analysis of any significant future events.

B. Notices and Correspondence

All notices, demands, requests, consents, approvals, and other instruments required to be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been properly given when: (1) hand delivered; (2) sent by U.S. Registered or Certified mail, return receipt requested, postage prepaid; (3) if certified or registered mail is either refused or unclaimed, then by regular U.S. Mail; (4) by overnight delivery service with receipt (Airborne, FedEx, UPS, etc.); (5) by email; or (6) by fax, followed by one of the other methods of delivery described herein. Fax delivery shall be deemed to be on the date of receipt of the fax, and the parties hereto agree that a fax with confirmation shall be adequate proof of receipt of the fax.

Both Special Counsel and the State Treasurer may designate a representative to receive such instruments and correspondence as described herein. While both parties recognize this designation may be changed at any time, and without consent of the other party by giving written notice of the new designated representative, until further notice, such instruments and/or correspondence should be addressed to:

Name:	Converse Chellis, III, CPA State Treasurer
Address:	P.O. Box 11778 Columbia, SC 29211
Phone:	803-734- 2016
Fax:	803-734-2690
Email:	treasurer@sto.sc.gov

Name:	Frank Rainwater Deputy State Treasurer
Address:	P. O. Box 11778 Columbia, SC 29211
Phone:	803-734-2655
Fax:	803-734-3677
Email:	frank.rainwater@sto.sc.gov

[Special Counsel's information]

Name:	Mitchell Willoughby Shareholder and President
Firm:	WILLOUGHBY & HOEFER, P.A.
Address:	930 Richland Street P.O. Box 8416 Columbia, SC 29202
Phone:	(803) 252-3300
Fax:	(803) 256-8062
E-mail:	mwilloughby@willoughbyhoefer.com

C. Communication

Special Counsel agrees to consult in advance, by telephone, fax machine, or in writing, with the State Treasurer promptly on all matters that may be precedential, controversial, of particular public interest, or otherwise noteworthy or important, and to keep the State Treasurer fully informed at all times.

Special Counsel shall give timely written notice to the State Treasurer of any and all of the following legal events in this litigation:

1. Pleadings
2. Dispositive motions
3. Hearings
4. Rulings
5. Trials

6. Settlement negotiations
7. Appeals or Notice of Appeals
8. Briefs filed by any party or entity
9. Appellate arguments or decisions
10. Enforcement efforts

Special Counsel agrees to meet with State Treasurer's Office personnel when and where requested by the State Treasurer in furtherance of this litigation.

D. Settlement

The State Treasurer must approve in advance all aspects of this litigation and shall be included in any settlement discussions. Special Counsel agrees that any settlement in this case must receive the State Treasurer's express prior approval in writing. Special Counsel shall confer with the State Treasurer as early as practicable in any settlement negotiation process.

E. Appeals

It is important that the State Treasurer receives early notice of any potential appellate litigation in any way affecting the State. Therefore, Special Counsel agrees to give prompt oral and written notice to the State Treasurer when receiving: (1) any dispositive decision by any appellate court affecting the litigation in any way; or (2) a Notice of Appeal from a court's decision filed by any party to this litigation.

F. Public Records

Any material, data, files, discs, or documents created, produced, or gathered by Special Counsel, or in Special Counsel's possession in furtherance of this litigation, or which fulfills an obligation of this appointment, shall be considered the exclusive property of the State of South Carolina. Special Counsel agrees to adhere to South Carolina's Freedom of Information Act, South Carolina Code of Laws §30-4-10 *et. seq.*, and maintain all public records in accordance with State law; provided, however, that Special Counsel shall consult with, and obtain the approval of, the State Treasurer before responding to any public records request. Special Counsel agrees to comply with the State Treasurer's policy on document retention and to refrain from destroying documents unless otherwise permitted under this policy. Special Counsel agrees to comply with Rule 417 of the South Carolina Appellate Court Rules. Special Counsel agrees to request written confirmation from the State Treasurer's Office prior to destroying any documents. This Agreement shall be considered a public document.

Article IV. COMPENSATION

A. Fee Schedule

This is a contingent fee case. Special Counsel shall receive no compensation for any services rendered unless the State of South Carolina receives a settlement or damage award in connection

with this litigation. If the State receives such an award, Special Counsel will be compensated for his services pursuant to this Article, as follows:

1. Special Counsel shall be reimbursed all reasonable, normal, and verified "out of pocket" costs and expenses as specified in Article V below.

These costs and expenses necessary for conducting this litigation, as defined in Article V of this Agreement, shall initially be advanced by Special Counsel and shall be deducted from the litigation's gross or total recovery, if any, before any further distribution is made.

Provided, however, that civil penalties, if any, shall not be included in calculating the gross or total recovery, and Special Counsel shall not receive any fees or costs from awards of civil penalties with such penalty payments to be made to the Office of the State Treasurer for the State of South Carolina.

2. At least 77% of the remaining or net settlement or judgment proceeds (but not including punitive or exemplary damages, if any) shall be paid or applied to or for the State or the people of South Carolina or the victims in a manner to be determined by the State Treasurer in his sole discretion; and

3. Special Counsel shall be paid the remaining 23% or less in fees of said remaining or net settlement or judgment proceeds (but not including punitive or exemplary damages), as follows:

Amount of net proceeds of judgment or settlement (in millions)	Contingent percentage
First $0 to $5	23%
Excess over $5 up to $10	19%
Excess over $10 up to $25	15%
Excess over $25 up to $50	11%
Excess over $50 up to $100	7%
Excess over $100	4%

Provided, however, that the State Treasurer shall retain 10% of Special Counsel's fees awarded under this section 3.

4. Special Counsel shall be paid 10% or less of any punitive or exemplary damage proceeds as follows, with the remaining 90% or more to be paid or applied to or for the State or the people of South Carolina or the victims in a manner to be determined by the State Treasurer at his sole discretion:

Amount of punitive or exemplary proceeds (in millions)	Contingent percentage
First $0 to $10	10%
Excess over $10 to $100	5%
Excess over $100	3%

Provided, however, the State Treasurer shall retain 10% of Special Counsel's fees awarded under this section 4.

5. All settlement or judgment proceeds shall be paid by or on behalf of the defendant(s) to the State Treasurer's office, which shall distribute them or have them distributed.

6. It is strictly agreed and understood by Special Counsel that if the proposed or actual defendants in this matter agree to a settlement or resolution prior to or upon commencement of the action or shortly thereafter, upon negotiation or consultation or upon only initial responses, then Special Counsel's compensation shall be one-half of that specified in sections 3 and 4 above.

7. This distribution and compensation calculation shall be included in a final order in the case.

B. Settlement or Judgment

The above Fee Schedule applies to any settlement or judgment, whether the settlement or judgment is entirely monetary in nature or is combined with non-monetary relief. Should the litigation be resolved by settlement or judgment involving a combination of monetary and non-monetary relief (such as injunctive relief, non-monetary payment, the provision of goods and/or services or any other "in kind" terms, or any combination of those), the State Treasurer shall determine the monetary value to the State.

C. Payment of Fees, Costs and Expenses

Neither the State of South Carolina nor the State Treasurer shall be required under this Agreement, or otherwise, to compensate or reimburse Special Counsel for his work in this matter, other than as set forth in Articles IV (A), and IV(B), and V herein. Accordingly, except for the fee schedule, expenses, and costs enumerated and outlined herein, Special Counsel shall not be entitled to and shall not accept compensation or reimbursement from any other source.

Article V. EXPENSES AND COSTS

A. Advancement of Expenses and Costs

Special Counsel shall advance all costs, expenses, and disbursements, including expert witness fees and costs, deposition costs, and costs of document production. Special Counsel's agreement

to advance all litigation expenses and costs, as well as its agreement to defer fees while any and all litigation (including appeals and enforcement actions) is pending has been taken into consideration in establishing the fee schedule above.

B. Expenses and Cost Reimbursement

Special Counsel shall be reimbursed solely from the litigation's gross recovery as approved by the State Treasurer for certain reasonable expenses and costs enumerated below. Proper documentation by receipts or otherwise shall be submitted with all invoices and all documentation shall be retained by Special Counsel for at least one full year following this Agreement's termination. All expenses must be itemized and no reimbursement may be applied for or requested for "miscellaneous" listings. The State Treasurer in his sole discretion may decline to reimburse Special Counsel for improperly documented, unnecessary, or unreasonable costs or expenses.

1. Experts

Special Counsel shall be reimbursed for retention of experts, including fees and other reasonable costs, only when expressly authorized by the State Treasurer.

2. Lodging

Receipts are required. In-state overnight lodging shall be reimbursed at actual cost up to a maximum of $75.00 plus tax per day. Any expenses incurred due to out-of-state lodging greater than $75.00 plus tax per day shall be approved in advance by the State Treasurer. If circumstances render Special Counsel unable to obtain the prior approval of the State Treasurer in this situation, as soon as thereafter practicable, Special Counsel shall notify the State Treasurer of the location, the hotel, the daily rate, and the reasons for not obtaining prior approval. Failure to follow these procedures shall result in such lodging costs being borne by Special Counsel.

3. Meals

There is no reimbursement for meals.

4. Travel

Receipts are required. Airfare shall be reimbursed at actual cost based on coach fares.

5. Mileage

Automobile travel shall be reimbursed at the maximum state mileage rate of the State of South Carolina in effect at the time. Travel by car shall not exceed

coach fares on commercial airlines. Mileage is to be itemized on the invoice as "Mileage" (number of miles @ rate per mile).

6. **Photocopying**

In-house photocopying (including color copies) shall be reimbursed at the Special Counsel's actual expense, not to exceed 15 cents ($0.15) per copy and is to be itemized on the invoice as "Photocopies" (number of copies @ rate per copy). Reasonable amounts for outside photocopying shall be reimbursed at actual cost if receipts are provided.

7. **Priority/Overnight Mail**

Charges for priority or overnight mail services shall be reimbursed only if a justifiable basis exists for using the service. In no event shall the Special Counsel be reimbursed for the cost of sending invoices or status reports to the State Treasurer by overnight or priority mail services.

8. **Secretarial or Staff Overtime**

There shall be no reimbursement for secretarial or staff overtime unless expressly authorized in writing by the State Treasurer prior to invoicing.

9. **Other Expenses**

Actual costs shall be reimbursed for certain routine expenses including transcripts, deposition costs, witness fees, subpoena service, postage, printing, cab and bus fares, parking, and long-distance telephone calls when itemized and receipts are provided. Expenses for office space, word processing, secretarial, and paralegal costs are not reimbursable. Westlaw expenses shall be reimbursed only when authorized in advance by the State Treasurer.

C. One Invoice

At the conclusion of the litigation, Special Counsel agrees to submit one original invoice to the State Treasurer for expenses and costs.

Article VI. TERMINATION

A. Termination by the Parties

The State Treasurer reserves the right to terminate this Agreement at any time, in his discretion with the advice and consent of the South Carolina Attorney General, and without cause or duty of explanation. Special Counsel may terminate its duties and obligations under the Appointment and this Agreement upon thirty (30) days written notice to the State Treasurer. Termination on

the part of the Special Counsel shall not be effective if the State Treasurer finds in his sole discretion that such termination prejudices or has a material adverse effect on the State of South Carolina. Upon termination, all material, data, files, discs, or documents created, produced, or gathered by Special Counsel, or in Special Counsel's possession in furtherance of this litigation, or which fulfills an obligation of this appointment shall be immediately delivered to the State Treasurer as directed by him, and without encumbrance or lien or any cost or charge to the State Treasurer.

B. Compensation Upon Termination

In the event this Agreement is terminated by Special Counsel, Special Counsel shall be reimbursed only from the litigation's gross recovery and only for all properly documented expenses and costs, as defined in Article V of this Agreement, rendered prior to termination; there shall be no payment of any attorneys' fees unless the State Treasurer agrees in writing to the payment of fees for work performed under such terms and conditions as may be set by him in his informed and reasonable discretion with the advice and consent of the South Carolina Attorney General. In the event the State Treasurer terminates this Agreement without cause, Special Counsel shall be reimbursed only from the litigation's gross recovery for all properly documented expenses and costs, as defined in Article V of this Agreement, rendered prior to termination, and Special Counsel shall be awarded appropriate attorneys fees on a quantum meruit basis as determined by the State Treasurer, with the advice and consent of the South Carolina Attorney General. If this Agreement is terminated for cause, Special Counsel will not be reimbursed for any expenses and costs or paid any fees or other compensation for any services relating to the litigation.

Article VII. OTHER TERMS AND CONDITIONS

A. Media Statements

The parties agree that neither Special Counsel nor any partner, associate, employee, or any other person assisting with the legal work contemplated by this Agreement shall speak to any representative of a television station, radio station, newspaper, magazine, or any other media outlet concerning the work outlined or contemplated by this Agreement without first obtaining approval of the State Treasurer. This Agreement specifically prohibits Special Counsel from speaking on behalf of the State Treasurer or the State of South Carolina to any representative of the news media.

B. Jurisdiction and Choice of Law

This Agreement shall be administered in the State of South Carolina and shall be interpreted under the laws of the State of South Carolina. Special Counsel consents to complete jurisdiction in the appropriate courts of the State of South Carolina. This Agreement and any claims arising in any way out of it shall be governed by the laws of the State of South Carolina. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be

brought in state courts of appropriate jurisdiction in the State of South Carolina, and Special Counsel hereby irrevocably consents to such exclusive jurisdiction.

C. Code of Professional Responsibility

If, during the appointment as Special Counsel, a complaint is filed against Special Counsel or Special Counsel's firm, alleging a violation of Rule 407, Rules of Professional Conduct, South Carolina Appellate Court Rules, or the applicable rules governing the state bar in which Special Counsel has been admitted, or the Code of Professional Responsibility, Special Counsel shall give prompt written notice of such complaint to the State Treasurer. The State Treasurer retains the right, in his sole discretion, to immediately terminate this Agreement if he deems the complaint to adversely affect in any way Special Counsel's ability to perform his duties required herein, or to adversely affect this litigation, the State Treasurer, or the State of South Carolina.

D. Insurance

Special Counsel agrees to carry adequate professional liability insurance and to provide proof of same to the State Treasurer promptly upon request.

E. Conflict of Interest

Special Counsel represents that neither he nor his firm has any conflict of interest with the State of South Carolina, its agencies, or subdivisions at this time, except as may be disclosed in a separate writing. Special Counsel agrees that if a conflict of interest, potential or otherwise, arises, as defined by Rule 407, Rules of Professional Conduct, South Carolina Appellate Court Rules, during the term of this litigation, then Special Counsel will give timely written notice to the State Treasurer. Special Counsel must request and obtain a written authorization from the State Treasurer prior to undertaking any representation against or adverse to the State of South Carolina, its offices, boards, departments, or institutions during the term of this appointment.

F. Equal Opportunity

Special Counsel hereby represents that neither he nor his law firm discriminates on the basis of race, religion, color, sex, age, national origin, or disability against any person in the employment of personnel in their offices.

G. Entire Agreement/Integration

This Agreement constitutes the entire understanding of the parties. Both parties agree that there is no other understanding or agreement other than the terms expressly stated herein.

H. Severability of Terms and Conditions

If any provision of this Agreement shall be held invalid, illegal, or unenforceable in any respect, said provision shall be severed. The validity, legality, and enforceability of all other provisions

of this Agreement shall not in any way be affected or impaired unless such severance would cause this Agreement to fail of its essential purpose.

I. Amendment or Modification

No amendment or modification of this Agreement shall be effective against either party unless such amendment or modification is set forth in writing and signed by both parties.

J. Headings

The headings herein are for reference and convenience only. They are not intended and shall not be construed to be a substantive part of this Agreement or in any other way to affect the validity, construction, interpretation, or effect of any of the provisions of this Agreement.

K. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which constitute one and the same instrument.

[Signatures follow on the next page.]

State Treasurer of South Carolina

Converse A. Chellis, III, CPA

Date: June 18, 2010

Special Counsel

[Special Counsel's signature(s)]

WILLOUGHBY & HOEFER, P.A.

By: Mitchell Willoughby
Its: President

Date: June 18, 2010