No. 221A24 TWENTY-SIXTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

ATLANTIC COAST CONFERENCE, Plaintiff-Appellee, v. CLEMSON UNIVERSITY, Defendant-Appellant.	From Mecklenburg County

****

CLEMSON UNIVERSITY'S DEFENDANT-APPELLANT'S BRIEF

****

INDEX

TABLE OF CASES AND AUTHORITIES

Page(s)

Cases

Statutes

Rules

No. 221A24 TWENTY-SIXTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

ATLANTIC COAST CONFERENCE, Plaintiff-Appellee v. CLEMSON UNIVERSITY, Defendant-Appellant	From Mecklenburg County

INTRODUCTION

Clemson University took its claims regarding its media rights contract with the Atlantic Coast Conference to its home forum, state court in Pickens County, South Carolina. Despite being able to fully defend the case there and even bring counterclaims, the ACC responded by suing Clemson in North Carolina state court—arguing that Clemson waived its status as a sovereign South Carolina entity by simply being a member of the ACC, an unincorporated nonprofit association based in North Carolina. But the South Carolina General Assembly has not said that Clemson can be sued in North Carolina or anywhere else outside South Carolina, and Clemson has not, by its litigation conduct, expressly waived its sovereign immunity. Nonetheless, relying on this Court's opinion in *Farmer v. Troy University,* 382 N.C. 366, 879 S.E.2d 124 (2022), the Business Court opined that it does not matter what the law is in South Carolina, and that Clemson's actions—not in litigation, but by simply remaining a member of the ACC—waived its immunity from suit here. The

Business Court's decision rejecting Clemson's sovereign immunity defense is fundamentally inconsistent with the United States Supreme Court's decision in *Franchise Tax Board of California v. Hyatt* (*Hyatt III*), 587 U.S. 230 (2019), as well as longstanding precedent in this State. Accordingly, this Court should reverse that portion of the Business Court's order below by overruling or distinguishing *Farmer* and conforming North Carolina law to federal constitutional requirements.

ISSUES PRESENTED

1. Should the majority opinion in *Farmer* be overruled, and the common law of North Carolina conformed to *Farmer*'s dissenting opinion, which correctly states the law of sovereign immunity?

2. Did the Business Court err by denying Clemson's motion to dismiss under Rules 12(b)(2) and 12(b)(6) of the North Carolina Rules of Civil Procedure in reliance on *Farmer*, and would that decision be different under a correct statement of the law of sovereign immunity consistent with *Farmer*'s dissenting opinion?

3. Alternatively, did the Business Court err by denying Clemson's motion to dismiss under Rules 12(b)(2) and (b)(6) of the North Carolina Rules of Civil Procedure because *Farmer* is distinguishable, and sovereign immunity thus bars the ACC's lawsuit filed against Clemson in North Carolina even as a matter of existing law?

STATEMENT OF THE CASE AND FACTS

On 19 March 2023, Clemson University filed a civil action against the Atlantic Coast Conference in South Carolina state court. *Clemson University v. Atlantic Coast Conference*, 2024-CP-39-00322 (Court of Common Pleas, Pickens County) (R pp 108–34.) Clemson's South Carolina Complaint seeks a declaration regarding the scope of the media rights it granted to the ACC. (R p 109; R S p 51.) ("Clemson

granted the Conference only such media rights as were 'necessary for the Conference to perform the contractual obligations of the Conference expressly set forth in [certain, specifically identified media agreements between the Conference and ESPN].'") It "*does not* challenge the enforceability of the grant of media rights but merely seeks a declaratory judgment regarding the scope of rights granted." (R p 111 (emphasis added); R S p 53.) More specifically, it seeks a declaration that "the contractual obligations of the Conference" do not include providing ESPN media rights to future games played by a school after that school exits the Conference. (R pp 109–10; R S pp 51–52.)

On 20 March 2024, the day after Clemson's suit was filed in South Carolina, the ACC filed a civil action in Superior Court, Mecklenburg County, North Carolina.[1] (R pp 4–45.) The ACC's North Carolina Complaint seeks a declaration that "the Grant of Rights and Amended Grant of Rights are valid and binding contracts, supported by good and adequate consideration, and that the Conference is and will remain the owner of the rights transferred by Clemson under the Grant of Rights through June 30, 2036, regardless of whether it remains a Member Institution." (R p 34.) The ACC also seeks declarations that "Clemson is estopped from challenging the validity or enforceability of the Grant of Rights or Amended Grant of Rights, or has waived its right to contest the validity or enforceability of the terms and

[1] In its briefing to this Court, Clemson refers to and cites only to the redacted publicly available version of the Complaint contained in the record on appeal. The unredacted version of the Complaint has been properly filed under seal with this Court pursuant to N.C. R. App. P. 41.

conditions of these contracts" and that it owes the ACC fiduciary duties as a matter of law (R p 37.) Finally, the ACC alleges claims for breach of contract and breach of the implied duty of good faith and fair dealing based upon Clemson's filing its complaint in South Carolina. (R pp 39–40.)

On 20 March 2024, the ACC also filed a Notice of Designation of its case to the North Carolina Business Court. (R pp 139–44.) On 21 March 2024, Chief Justice Newby signed an order designating this cause as a Mandatory Complex Business Case. (R p 153.) An Assignment Order was entered on the same date in which Chief Judge Louis Bledsoe, III was charged to preside over the case in Business Court. (R p 154.)

On 6 May 2024, Clemson timely filed a motion to dismiss the ACC's Complaint pursuant to Rules 12(b)(1), (b)(2), and (b)(6) of the North Carolina Rules of Civil Procedure. (R pp 167–69; R S pp 1–26.) Clemson also filed an alternative motion to stay the case pertaining to any claims remaining after disposition of Clemson's Rule 12(b) motions under N.C.G.S. § 1-75.12. (R pp 171–72; R S pp 29–39.)

Clemson's motion to dismiss was rooted in several legal theories. First, and pertinent to this appeal, Clemson argued that the lawsuit filed against it is barred by the doctrine of sovereign immunity. (R p 167; R S pp 4–14.) Specifically, Clemson argued that the ACC's allegations regarding Clemson's purported consent to abrogate sovereign immunity do not support the Business Court's exercise of personal jurisdiction under Rule 12(b)(2). (R S pp 4–14.) Clemson further argued that it is immune from suit outside of South Carolina state court under South Carolina law,

and that the facts alleged in the ACC's complaint are distinguishable from those that led to this Court's opinion in *Farmer v. Troy*. (R S pp 5–11.) In addition, Clemson argued below that, if the allegations at bar are not sufficiently distinguishable from the facts in *Farmer*, and that decision can be read so broadly as to support a finding of waiver of sovereign immunity on these facts, then the majority opinion in *Farmer* should be overruled to conform to the dissenting opinion in *Farmer*. Clemson contended that *Farmer's* dissent is a correct statement of the law of sovereign immunity, consistent with the U.S. Constitution and U.S. Supreme Court precedent. (R S pp 11–14.)

Clemson also contended that, even if the ACC's suit was not barred by sovereign immunity, the ACC's Complaint suffers several other fatal legal deficiencies warranting dismissal under Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure that are not now before the Court. (R S pp 14–26.)

On 10 July 2024, the Business Court entered an order granting Clemson's motion, in part, with respect to several of its Rules 12(b)(1) and 12(b)(6) arguments, but denying Clemson's sovereign immunity dismissal motion under Rules 12(b)(2) and (b)(6). (R pp 187–239.) On that issue, the Business Court ruled that, while Clemson is, as a threshold matter, cloaked with sovereign immunity (R p 202), Clemson had waived its sovereign immunity to suit in North Carolina under this Court's ruling in *Farmer*. (R pp 198–211.)

On 11 July 2024, Clemson filed a Notice of Appeal, taken to this Court, of the Business Court's 10 July 2024 Order and Opinion on Defendant Clemson University's Motion to Dismiss and Motion to Stay Under N.C.G.S. § 1-75.12. (R p 240–41.)

On 22 July 2024, the Business Court entered an order recognizing the automatic stay codified at N.C.G.S. § 1-294 and therefore stayed all further proceedings below pending this Court's disposition of Clemson's appeal.

STATEMENT OF THE GROUNDS FOR APPELLATE REVIEW

Clemson's direct appeal to this Court was properly taken pursuant to N.C.G.S. § 7A-27(a)(3) (2023), which provides, in relevant part, that an appeal of right lies directly to the Supreme Court "[f]rom any interlocutory order of a Business Court Judge that . . . [a]ffects a substantial right."

"An interlocutory order is one made during the pendency of an action, which does not dispose of the case, but leaves it for further action by the business court in order to settle and determine the entire controversy." *Veazey v. City of Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950). To appeal from an interlocutory order, the appellant must show that the order affects a "substantial right which [it] might lose if the order is not reviewed before final judgment." *City of Raleigh v. Edwards*, 234 N.C. 528, 530, 67 S.E.2d 669, 671 (1951). To that end, this Court has concluded that a "substantial right is a legal right affecting or involving a matter of substance as distinguished from matters of form: a right materially affecting those interests which [one] is entitled to have preserved and protected by law: a material right." *Gilbert v. N.C. State Bar*, 363 N.C. 70, 75, 678 S.E.2d 602, 605 (2009). In addition to the right

being substantial, its deprivation must also "potentially work injury to [the appellant] if not corrected before appeal from final judgment." *Goldston v. Am Motors Corp.,* 326 N.C. 723, 726, 392 S.E.2d 735, 736 (1990).

Application of these principles confirms that Clemson has properly taken an interlocutory appeal which satisfies the substantial rights test. This Court has held that, "[a]lthough an order denying a dismissal motion predicated upon the doctrine of sovereign immunity is interlocutory in nature, such an order is immediately appealable 'because it represents a substantial right.'" *State ex rel. Stein v. Kinston Charter Acad.*, 379 N.C. 560, 571, 866 S.E.2d 647, 655 (2021) (quoting *Craig v. New Hanover Cnty. Bd. of Educ.*, 363 N.C. 334, 338, 678 S.E.2d 351, 354 (2009)). That is because "the entitlement is an immunity from suit rather than a mere defense to liability; and . . . it is effectively lost if a case is erroneously permitted to go to trial." *Craig*, 363 N.C. at 338, 678 S.E.2d at 354.

Here, Clemson filed a motion to dismiss the ACC's lawsuit filed against it pursuant to Rules 12(b)(2) and 12(b)(6) of the North Carolina Rules of Civil Procedure on the grounds of sovereign immunity. (R pp 167–69.) Since that motion was denied by order entered on 10 July 2024, the Business Court declined to recognize Clemson's claimed entitlement to immunity from suit. (R pp 198–211.) As in *Stein* and *Craig*, Clemson's claimed shield of sovereign immunity is more than a mere defense; it is an immunity that would effectively be lost if the lawsuit was erroneously permitted to proceed. Thus, Clemson has satisfied the substantial rights test here, and this Court has appellate jurisdiction under G.S. § 7A-27(a)(3) to decide Clemson's interlocutory appeal of the Business Court's denial of its dismissal motion based on sovereign

immunity grounds. *Stein*, 379 N.C. at 571, 866 S.E.2d at 655; *Craig*, 363 N.C. at 338, 678 S.E.2d at 354.

ARGUMENT

A. Standard of Review

This Court reviews both Rule 12(b)(2) and Rule 12(b)(6) motions to dismiss based on sovereign immunity grounds *de novo*. *Farmer*, 382 N.C. at 369–70, 879 S.E.2d at 127. The underlying analysis for each Rule 12 motion is also the same where, as here, the Rule 12 questions are both rooted in the issue of sovereign immunity. *See id.* ("[T]he motion and the business court's order were made pursuant to both Rule 12(b)(2) and Rule 12(b)(6); however the questions of whether there is personal jurisdiction over defendants and whether plaintiff has stated a claim for relief in this particular case both turn on the sole issue of sovereign immunity, and the standard of review is the same for both.")

Furthermore, "questions of law regarding the applicability of sovereign or governmental immunity" are also reviewed *de novo*. *Est. of Long by and through Long v. Fowler*, 378 N.C. 138, 142–43, 861 S.E.2d 686, 691 (2021) (cleaned up) (quoting *Wray v. City of Greensboro*, 370 N.C. 41, 47, 802 S.E.2d 894, 898 (2017)). "Under a *de novo* review," this North Carolina Court of last resort "considers the matter anew and freely substitutes its own judgment for that of the [Business Court]." *In re C.V.D.C.*, 374 N.C. 525, 530, 843 S.E.2d 202, 205 (2020) (quoting *In re Appeal of Greens of Pine Glen Ltd. P'ship*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003)).

B. Clemson respectfully contends that the dissenting opinion in *Farmer* correctly states the law of sovereign immunity, consistent with the U.S. Constitution, U.S. Supreme Court precedent, and longstanding precedent in North Carolina.

1. This issue has been properly preserved for appellate review.

Acknowledging the limits of the Business Court's institutional authority, and to comply with the error preservation requirements of N.C. R. App. P 10(a), Clemson contended below that if *Farmer could be read such that* Clemson is found to have waived sovereign immunity on these facts, then *Farmer* was, with respect, wrongly decided. (R S pp 11–14.) Clemson argued below that Justice Barringer's dissenting opinion in *Farmer*, joined by Chief Justice Newby, is a correct statement of sovereign immunity law under the U.S. Constitution and thus should be the law in North Carolina. (R S pp 12–14.) The Business Court acknowledged and rejected this argument in its 10 July 2024 order. (R pp 210–11.) Because Clemson made this argument below and obtained a ruling on it, the issue is properly preserved for appellate review by this Court.

2. Application of this Court's *stare decisis* principles indicates that reconsideration of *Farmer* is both appropriate and justified.

As set forth in the dissenting opinion in *Farmer,* the *Farmer* majority "misunderst[ood] the extent of the holding in *Franchise Tax Board of California v. Hyatt* (*Hyatt III*), 587 U.S. 230 (2019), thus rendering a misguided departure from the United States Constitution, as well as our own [North Carolina] precedent." *Farmer*, 382 NC at 380, 879 S.E.2d at 134 (Barringer J., dissenting). As a threshold matter, *Farmer* is not untouchable under the *stare decisis* principles set forth by this Court. The "doctrine of *stare decisis* . . . proclaims, in effect, that where a principle of law has

become settled by a series of decisions, it is binding on the courts and should be followed in similar cases." *State v. Ballance*, 229 N.C. 764, 767, 51 S.E.2d 731, 733 (1949) (internal citations omitted). But the decision in *Farmer* "does not meet any criteria for adhering to stare decisis—*it is neither long-standing nor has it been relied upon in other cases*." *Harper v. Hall*, 384 N.C. 292, 373–74, 886 S.E.2d 393, 445–46 (2023) (emphasis added). This Court's opinion in *Farmer* is not yet two years old, and no appellate case in this state has relied upon its reasoning to decide whether there has been a waiver of sovereign immunity in North Carolina.

Furthermore, when adhering to the doctrine would "perpetuate error," this Court has refused to apply *stare decisis*. *Id.*; *Sidney Spitzer & Co.*, 188 N.C. 30, 32, 123 S.E. 636, 638 (1924) ("There is no virtue in sinning against light or in persisting in palpable error, for nothing is settled until it is settled right."); *Ballance*, 229 N.C. at 767, 51 S.E.2d at 733 ("[S]tare decisis will not be applied in any event to preserve and perpetuate error[.]"); *State v. Walker*, 385 N.C. 763, 770, 898 S.E.2d 661, 665 (2024) (Berger, J., concurring) (quoting *Ballance* for the proposition that precedential value may be lacking where this Court is "confronted by a single case which is much weakened as an authoritative precedent by a strong and well-reasoned dissenting opinion").

Accordingly, and consistent with the strong and well-reasoned dissenting opinion in *Farmer*, this Court should take the opportunity properly presented to it and realign the common law of this State with the correct understanding of U.S. Supreme Court precedent and this Court's prior precedent.

3. The law in North Carolina should be conformed to *Farmer's* dissent, which is a correct statement of the law of sovereign immunity and consistent with the U.S. Constitution.

a. *Clemson's challenges here do not implicate waiver of immunity through conduct, and this Court should resist the ACC's attempt to obfuscate the questions before it.*

Because the ACC clouded the issue of sovereign immunity with the Business Court, a few important points of clarification are in order. "It has long been the established law of North Carolina that the State cannot be sued except with its consent or upon its waiver of immunity." *Whitfield v. Gilchrist*, 348 N.C. 39, 42, 497 S.E.2d 412, 414 (1998). "Absent consent or waiver, this immunity is absolute and unqualified." *State v. Taylor*, 322 N.C. 433, 435, 368 S.E.2d 601, 602 (1988). Waivers of sovereign immunity or consent for the State to be sued are generally created by statute. *Id.* at 437, 368 S.E.2d at 603.

In response to that point, the ACC argues that there are decisions finding waiver of sovereign immunity in the absence of any legislative pronouncement from the foreign state. (R S p 7; R S pp 350–53.) But the decisions on which the ACC relies are inapposite because those cases involved unequivocal waiver by virtue of the sovereign's litigation conduct. For example, the ACC relies on one decision in which the court concluded that sovereign immunity had been waived by the sovereign's failure to preserve the defense for appeal by raising it at the trial court level. *Henry v. New Jersey Transit*, 39 N.Y.3d 361, 389 (2023). Another decision cited by the ACC involved an unremarkable finding that a sovereign waived its immunity by joining a case in another state's courts voluntarily as a plaintiff and expressly inviting the service of subpoenas. *South Carolina Department of Parks, Recreation and Tourism*

v. Google LLC, 103 F.4th 287, 291–94 (4th Cir. 2024). Yet another involved a finding of waiver when the sovereign removed an action from state to federal court. *Lapides v. Bd. of Regents*, 535 U.S. 613 (2022).

The waiver principle at issue in these cases—*i.e.*, that a sovereign can waive its immunity by litigation conduct that purposely avails itself of another state's jurisdiction—is well known, but there is no question of that here. Clemson filed suit, in the first instance, in its own home state. It did not invoke the jurisdiction of North Carolina courts and has properly preserved and maintained its sovereign immunity defense at every stage of this proceeding. The line of cases relied upon by the ACC has no bearing on the outcome here, and the law does not recognize a broader theory of implied waiver based on non-litigation conduct. *See, e.g.*, *Lapides*, 535 U.S. at 620 (distinguishing litigation conduct from other "constructive waivers" that have been repudiated); *Nizomov*, 220 A.D.3d at 881 ("[A] state can waive sovereign immunity only under limited circumstances, including by the enactment of legislation or by specific conduct during litigation.").

Because sovereign immunity has been challenged and reviewed as an issue of personal jurisdiction, *see Farmer*, 382 N.C. at 369, 879 S.E.2d at 127, the ACC has also tried to argue that, if Clemson's activities in North Carolina create due process minimum contacts with North Carolina, then Clemson has waived its sovereign immunity in North Carolina. This is a red herring, particularly because the lack of waiver or consent by a sovereign to be sued can equally be raised by a failure to state

a claim, *see id.*, which does not implicate a traditional test for jurisdiction of a foreign, non-government entity.

Last, the ACC has responded to Clemson's highlighting shortcomings in the Court's analysis in *Farmer* by noting that Troy University sought review of this Court's decision before the United States Supreme Court and that review was denied. But the Supreme Court "has said again and again and again that [a certiorari] denial has no legal significance whatever bearing on the merits of the claim." *Ramos v. Louisiana*, 590 U.S. 83, 105 n.56 (2020) (quotation marks omitted and emphasis added); *see also United States v. Carver*, 260 U.S. 482, 490 (1923) ("The denial of a writ of certiorari imports no expression of opinion upon the merits of the case."). Thus, contrary to the ACC's prior assertions (R S pp 102–04, 349), it is improper to assign the denial of certiorari as "a meaningful symbol" when the highest court in this republic has explained repeatedly that such denial has no legal significance whatsoever.

Thus, in accordance with *Hyatt III*, only a finding of express statutory waiver by the foreign sovereign could justify rejection of Clemson's sovereign immunity defense in this case. As no such waiver exists under South Carolina law, Clemson's immunity is intact and must be respected by its sister state.

b. *Farmer's analysis of consent or waiver is misguided.*

As set out in Justice Barringer's dissenting opinion in *Farmer*, the United States Supreme Court opinion in *Hyatt III* controls the outcome here. Under *Hyatt*

III, Clemson has not consented to be haled into court in North Carolina and thus did not waive its sovereign immunity.

There is no dispute that one of the limitations on sovereignty in the Constitution "is the inability of one State to hale another into its courts without the latter's consent." *Hyatt III*, 587 U.S. at 245. "The Constitution does not merely allow States to afford each other immunity as a matter of comity; it embeds interstate sovereign immunity within the constitutional design." *Id.* The Court in *Hyatt III* emphasized this constitutional design, and this Court in *Farmer* unanimously agreed that Troy was entitled to sovereign immunity. 382 N.C. at 371, 879 S.E.2d at 128. The *Farmer* Court's divergence from *Hyatt III* was in measuring Troy University's consent to be sued.

"The Constitution implicitly strips States of any power they once had to refuse each other sovereign immunity, just as it denies them the power to resolve border disputes by political means." *Hyatt III*, 587 U.S. at 247. If state A lacks the power to refuse the sovereignty of state B, meaning that state A must recognize state B's sovereignty within the courts of state A, then it stands to reason that state A would likewise lack the authority to strip state B of its sovereignty. Rather, state B would need to consent or waive its sovereignty *on its own*. The sue-and-be-sued clause which the majority analyzed in *Farmer* was contained in a North Carolina statute and obviously not a product of the Alabama legislature: the only state sovereign that could waive an Alabama university's immunity from suit by giving consent for *its*

public entity to be sued outside Alabama. For this basic reason, the majority opinion in *Farmer* is wrongly decided.

In other words, when assessing whether a foreign sovereign has consented to suit in North Carolina, a North Carolina court should look to the law of the *foreign sovereign* in assessing whether and to what extent that foreign sovereign has waived its immunity from suit. *Farmer*, 382 N.C. at 379, 384, 879 S.E.2d at 133–34, 136 (Barringer J., dissenting). In this case, that inquiry would start with the South Carolina Constitution, which decrees in Article X, Section 10 and Article XVII, Section 2 that "[t]he General Assembly may direct, by law, in what manner claims against the State may be established and adjusted." These provisions thus limit claims against the State to those allowed by the legislature. *Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Off.*, 346 S.C. 158, 170, 551 S.E.2d 263, 270 (2001). There is no dispute that South Carolina's General Assembly has not waived Clemson's sovereign immunity to suit outside the courts of the State of South Carolina.

As it relates to claims sounding in tort (like the ACC's breach of fiduciary duty claim),[2] Section 15-78-30(e) of the Code of Laws of South Carolina, South Carolina's Tort Claims Act, notes that the "State" includes its "state supported schools, colleges, and universities," of which Clemson is a part. *See also Martin v. Clemson Univ.*, 654

[2] *Hendricks v. Clemson Univ.*, 339 S.C. 552, 562, 529 S.E.2d 293, 298 (Ct. App. 2000) ("[W]e reject Hendricks's assertion that his cause of action for breach of fiduciary duty is not controlled by the South Carolina Tort Claims Act."), *rev'd on other grounds*, 353 S.C. 449, 578 S.E.2d 711 (2003).

F. Supp. 2d 410, 415 (D.S.C. 2009) (Clemson is an arm of the state for purposes of Eleventh Amendment immunity from suit). The Tort Claims Act waives sovereign immunity only to the extent of certain damage limits and provides for exclusive jurisdiction of tort claims in South Carolina courts. *Repko v. Cty. of Georgetown*, 424 S.C. 494, 501, 818 S.E.2d 743, 747 (2018).

With regard to contract claims, the South Carolina Supreme Court held that, "when a State secures to itself the benefits of a contract, it implicitly assumes the corresponding liabilities." *Kinsey Const. Co. v. S.C. Dep't of Mental Health*, 272 S.C. 168, 171, 249 S.E.2d 900, 902 (1978), *overruled by McCall by Andrews v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), *and overruled by Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Off.*, 346 S.C. 158, 551 S.E.2d 263 (2001). South Carolina law is clear, however – as a default, "[t]he circuit courts of this State are hereby vested with jurisdiction to hear and determine all questions, actions and controversies . . . affecting boards, commissions and agencies of this State . . . in the circuit where such question, action, or controversy shall arise." S.C. Code Ann. § 15-77-50. In some instances, the General Assembly has altered that default, expressly stating *where* the state can be sued. For instance, in *Unisys*, the Court held that, while there may be contractual liability, the Procurement Review Panel, and not the circuit court, had the jurisdiction to hear the dispute. *Unisys Corp.*, 346 S.C. at 170, 551 S.E.2d at 270 (examining challenges to S.C. Code Ann. § 11-35-4230 regarding resolution of contractual disputes with the state). But the South Carolina General Assembly has created no such exception for cases involving contracts with

out-of-state entities like the ones at issue here. Accordingly, under South Carolina law, even if a sovereign entity such as Clemson University can be sued on a contract, it cannot be sued in a courtroom in another state where, as here, *there is no clear and express consent from the South Carolina General Assembly*. *See id.* ("[B]ecause a statute waiving the State's immunity must be strictly construed, the State can be sued only in the manner and upon the terms and conditions prescribed by the statute.").

This point is confirmed by cases addressing Section 59-119-60 of the Code of Laws of South Carolina, which the ACC pleads as the basis for its claim that Clemson has waived sovereign immunity. (R p 8.) The ACC's pleading misreads Section 59-119-60, which establishes the Board of Trustees for Clemson as a corporate body that may sue and be sued (among other things). This statute has been held not to constitute a waiver of sovereign immunity for Clemson even in a South Carolina federal court. *See, e.g.*, *Martin v. Clemson*, 654 F. Supp. 2d 410, 415 (D.S.C. 2009) ("Clemson is an arm of the state and entitled to Eleventh Amendment immunity . . . .").

A state's waiver of sovereign immunity is neither horseshoes nor hand grenades — "close enough" is "not enough." *Austin v. Glynn Cty., Georgia*, 80 F.4th 1342, 1351 (11th Cir. 2023). Courts have generally emphasized that "a State's constitutional interest in immunity encompasses not merely *whether* it may be sued, but *where* it may be sued." *Port Auth. Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 307 (1990) (emphasis in original). Waivers of sovereign immunity are strictly

construed by South Carolina courts. *See Unisys Corp.,* 346 S.C. at 167, 551 S.E.2d at 268. Although Section 59-119-60 provides that Clemson may "sue and be sued and plead and be impleaded in its corporate name," it does not constitute clear and express consent to suit in any court other than a South Carolina state court. Thus, under South Carolina law, there has been no waiver of Clemson's sovereign immunity on a breach of contract claim outside of the courts of South Carolina.

Federal constitutional jurisprudence is in accord: "A State's consent to suit must be unequivocally expressed in the text of the relevant statute." *Sossamon v. Texas*, 563 U.S. 277, 284 (2011) (cleaned up). "Only by requiring this clear declaration by the State can we be certain that the State in fact consents to suit." *Id.* (cleaned up.) "Waiver may not be implied." *Id.* The Supreme Court has stressed that a waiver will be "strictly construed, *in terms of its scope*, in favor of the sovereign." *Sossamon*, 563 U.S. at 285 (emphasis added). "So, for example, a State's consent to suit in its own courts is not a waiver of its immunity from suit in federal court." *Id.*

Indeed, in every case except *Farmer* decided since *Hyatt III* (of which counsel is aware), courts have looked to the laws of the foreign sovereign when deciding the question whether that foreign sovereign has consented to suit in the courts of another state. *See Shoemaker v. Tazewell Cty. Pub. Schs.*, 895 S.E, 854, 860 (W.Va. App. Ct. 2023) ("This leaves us to consider whether Virginia has unequivocally expressed its consent to be sued in West Virginia."); *Marshall v. Se. Pennsylvania Transp. Auth.*, 300 A.3d 537, 549 (Pa. Commw. Ct. 2023) ("Plaintiffs also misconstrue sovereign immunity as merely permitting NJ Transit to invoke, in Pennsylvania court, any

immunities it would have in New Jersey court. Absent NJ Transit's consent, or some other exception not before this Court, NJ Transit cannot be sued in Pennsylvania state courts."); *Nizomov v. Jones*, 220 A.D.3d 879, 881 (N.Y. App. Div. 2023); *Belfand v. Petosa*, 196 A.D.3d 60, 73, (N.Y. App. Div. 2021); *State v. Great Lakes Mins., LLC*, 597 S.W.3d 169, 173 (Ky. 2019).

The majority's determination of consent in *Farmer* was heavily influenced by *Thacker v. Tennessee Valley Auth.*, 587 U.S. 218 (2019), but that reliance was misplaced, as Justice Barringer's dissent explains. In *Thacker*, the Supreme Court of the United States evaluated congressional statutory authorization for the Tennessee Valley Authority—an entity created by Congress—to sue and be sued in its own name:

> In establishing this mixed entity, Congress decided (as it had for similar government businesses) that the TVA could "sue and be sued in its corporate name." Without such a clause, the TVA (as an entity of the Federal Government) would have enjoyed sovereign immunity from suit. By instead providing that the TVA could "be sued," Congress waived at least some of the corporation's immunity.

Thacker, 587 U.S. at 221. Critical to the Court's analysis in *Thacker* was the fact that *Congress* created the TVA as an arm of the sovereign, and it was the *same* sovereign federal government establishing, by enabling statute, that the TVA could be sued. Put differently, *Thacker* did not involve the more relevant question here of whether the sovereign of state A has consented to be sued in the courts of state B because of laws state B passed—an issue the dissent notes cannot be resolved by resort to the laws of state B.

Since "the Supreme Court did not address [in *Hyatt* III] the distinction between commercial and governmental activity," that distinction should not change the result here. *See Farmer*, 382 N.C. at 379, 384, 879 S.E.2d at 133–34, (Barringer J., dissenting). ("[T]he mere fact that Alabama was doing business in North Carolina does not cause waiver of its immunity under *Hyatt III*.")

Such disposition is also consistent with this Court's prior precedent. That Clemson is making money or conducting business in North Carolina is not relevant to the question of whether there has been a waiver of Clemson's sovereign immunity in North Carolina courts. In *Evans v. Hous. Auth. of City of Raleigh*, this Court stated that the "State's sovereign immunity applies to *both* its governmental and proprietary functions, while the more limited governmental immunity covers only the acts of a municipality or a municipal corporation committed pursuant to its governmental functions." 359 N.C. 50, 53, 602 S.E.2d 668, 670 (2004) (emphasis added); *see also Guthrie v. N. Carolina State Ports Auth.*, 307 N.C. 522, 535, 299 S.E.2d 618, 625 (1983) ("[W]e continue to recognize no distinction between 'governmental' or 'proprietary' functions of the State as sovereign. We hold that the State Ports Authority, as an agency of the State, is entitled to claim the defense of sovereign immunity absent express statutory waiver.").

The same is true of the federal Constitution. For instance, in *College Savings Bank*, the Supreme Court emphatically rejected an argument that a Florida board's robust market participation constituted a waiver of its sovereign immunity.

> Nor do we think that the constitutionally grounded principle of state sovereign immunity is any less robust

> where, as here, the asserted basis for constructive waiver is conduct that the State realistically could choose to abandon, that is undertaken for profit, that is traditionally performed by private citizens and corporations, and that otherwise resembles the behavior of "market participants." Permitting abrogation or constructive waiver of the constitutional right only when these conditions exist would of course limit the evil—but it is hard to say that that limitation has any more support in text or tradition than, say, limiting abrogation or constructive waiver to the last Friday of the month. Since sovereign immunity itself was not traditionally limited by these factors, and since they have no bearing upon the voluntariness of the waiver, there is no principled reason why they should enter into our waiver analysis.

Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd., 527 U.S. 666, 684 (1999).

The Court saw "constructive waiver" of sovereign immunity as anathema to the constitutional design. *See id.* at 675–76. Because of that same constitutional design, in *Nizomov v. Jones*, 220 A.D.3d 879, 881 (N.Y. App. Div. 2023), the New York Appellate Division applied *Hyatt III* to reject an injured plaintiff's argument that the New Jersey transit authority had waived its sovereign immunity in New York. "Contrary to the plaintiffs' contention, the defendants did not consent to suit or waive their sovereign immunity in New York by virtue of their extensive operations within this State." *Id.* Similarly, it was incorrect for the *Farmer* Court to seize upon Troy University doing business in North Carolina, just as it was error for the Business Court here to look at Clemson's alleged proprietary functions in North Carolina; neither indicates unequivocal consent to be sued in North Carolina.

This result also comports with existing North Carolina law which holds that, when a statute grants a state entity the power to "sue and be sued," that power "standing alone, does not necessarily act as a waiver of immunity." *Farmer*, 382 N.C. at 384–85, 879 S.E.2d at 136–37 (Barringer J., dissenting) (citing *Evans ex rel. Horton v. Hous. Auth. of Raleigh*, 359 N.C. 50, 56, 602 S.E.2d 668 (2004)); *accord College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. at 676 ("[A] state does not . . . consent to suit in federal court merely by stating its intention to 'sue and be sued'"); *Orange Cty. v. Heath*, 282 N.C. 292, 296, 192 S.E.2d 308 (1972) ("The concept of sovereign immunity is so firmly established that it should not and cannot be waived by indirection or by procedural rule. Any such change should be by plain, unmistakable mandate of the lawmaking body."); *accord Petty v. Tenn.-Mo. Bridge Comm'n*, 359 U.S. 275, 276 (1959).

In sum: (1) Clemson is a South Carolina state entity entitled to sovereign immunity (R S p 98); (2) under the U.S. Supreme Court's decision in *Hyatt III*, absent waiver by litigation conduct (which did not occur here) a state entity like Clemson can only be sued in another jurisdiction if it consents; (3) consent is determined by review of the law of the sovereign that is alleged to have consented; and (4) "any waiver of sovereign immunity must be explicit." *Farmer*, 382 N.C. at 371. The State of North Carolina cannot unilaterally impose a waiver of sovereign immunity on the State of South Carolina under *Hyatt III*. To the extent that this Court's prior decision in *Farmer* is inconsistent with that answer, the law of this State should be aligned with *Farmer's* dissent, which is consistent with the United States Constitution and

this Court's own long-standing precedent. *Farmer*, 382 N.C. at 380, 879 S.E.2d at 134 (Barringer J., dissenting).

4. Under a correct statement of sovereign immunity law consistent with *Farmer*'s dissent, the Business Court's order denying Clemson's motion to dismiss under Rules 12(b)(2) and (b)(6) should be reversed and remanded with instructions to grant the motion dismissing the ACC's complaint *with prejudice*.

Should this Court conclude that it is appropriate to conform the law of sovereign immunity to *Farmer*'s dissenting opinion, such opinion should have retrospective application to the case at bar under this Court's settled directives. *See Cox v. Haworth*, 304 N.C. 571, 573, 284 S.E. 2d 322 (1981) (under a long-established North Carolina law, a decision of a court of supreme jurisdiction overruling a former decision is, as a general rule, retrospective in its operation). "This rule is based on the so-called 'Blackstonian Doctrine' of judicial decision-making: courts merely discover and announce law; they do not create it; and the act of overruling is a confession that the prior ruling was erroneous and was never the law." *Cox*, 304 N.C. at 573, 284 S.E. 2d at 324–25. Thus, there is a strong presumption in North Carolina favoring retroactive application of a decision rendered by our Supreme Court that changes the existing law. *Id.* The intervening decision will be applied unless **compelling reasons** exist for limiting its retroactive effect. *Id.* In balancing the countervailing interests, this Court considers whether the plaintiff was unfairly prejudiced by his reliance on prior law, whether the purposes of the intervening decision could be achieved solely by prospective application, and the impact of retroactive application on the administration of justice. *Id.*

No compelling reasons exist on this record. The ACC cannot point to any sufficient reliance on *Farmer*, which was a departure from the prior common law of this Court and is not even two years old. Furthermore, the purpose of sovereign immunity is to shield a litigant from suit, and such a result necessarily could not be achieved through prospective application of any modification of *Farmer* here. The policy behind sovereign immunity thus provides strong support for retroactive application of a modification of existing law. For the same reasons, the administration of justice strongly supports retroactive application.

Applying a conformed sovereign immunity jurisprudence aligned with Justice Barringer's dissenting opinion here compels the dismissal of the ACC's complaint with prejudice. South Carolina did not waive its sovereign immunity under North Carolina's settled jurisprudence, which strictly construes waiver in accordance with *Hyatt III*. The Business Court's Order Denying Clemson's Rule 12(b)(2) and 12(b)(6) Motion to Dismiss on the grounds of sovereign immunity should thus be reversed and remanded with instructions to the Business Court to enter an order granting the dismissal motion with prejudice.

C. The facts alleged in the ACC's complaint are distinguishable from *Farmer v. Troy University,* so the Business Court's order could be reversed even under existing law.

Even if *Farmer* is not overruled, that case involved unique facts, not present here, which distinguish it from this case and do not support a conclusion of explicit waiver by Clemson.

The ACC pled that Clemson has waived its sovereign immunity by agreeing to be a member of the ACC, which is an unincorporated nonprofit association. (R pp 9–

12.) Despite substantial differences between the Uniform Unincorporated Nonprofit Association Act (the UUNAA) regulating the ACC here (Chapter 59B of the North Carolina General Statutes) and the Nonprofit Corporation Act regulating Troy University in *Farmer* (Chapter 55A of the North Carolina General Statutes), the ACC nevertheless argues that *Farmer* compels a similar conclusion here – that Clemson has consented to being sued within North Carolina, in derogation of the University's sovereign immunity. (R pp 11–12.)

But in *Farmer*, this Court held that Alabama's Troy University had consented to being sued in North Carolina because, when "it registered as a nonprofit corporation here and engaged in business in North Carolina, it accepted the sue and be sued clause in the North Carolina Nonprofit Corporation Act and thereby explicitly waived its sovereign immunity from suit in this state." 382 N.C. at 371, 879 S.E.2d at 128. The Business Court's order in this case concluded that Clemson is no different than Troy University in *Farmer* and likewise it has consented to be sued in North Carolina. (R p 209.) But in so doing, the Business Court avoided a number of key differences between the *Farmer* case and this one.

The *Farmer* Court emphasized that Troy took affirmative steps to do business here. Troy registered to do business in this State as a nonprofit corporation, leased an office building here, and employed North Carolina residents to carry out its activities here. *See Farmer*, 382 N.C. at 367. Notably, as required by the statute under which it registered, Troy also obtained from the North Carolina Secretary of State a certificate of authority, reflecting its agreement to be treated just like a

domestic corporation of the same character, with all the same rights, privileges, duties, and liabilities. *See id.* at 374. Not so here. There is no allegation that Clemson has registered to do business in North Carolina, obtained a certificate of authority, leased an office building in North Carolina, or employed North Carolina residents. Indeed, unlike the statutory scheme for nonprofit corporations that governed Troy, there has never been a requirement for a member of an unincorporated association to register in this State or obtain any certificate of authority.

All Clemson is alleged to have done is to join as a member of an unincorporated association and remain a member. Importantly, when Clemson elected to be a founding member of the *unincorporated* ACC in 1953, Chapter 59B had not been enacted, and neither Clemson nor the ACC could sue each other at common law. *See* N.C.G.S. § 59B-7(a) (Official Commentary) ("At common law a nonprofit association was not a legal entity separate from its members."). Although N.C.G.S. § 59B-7(c) changed that in 2006—53 years after Clemson joined the Conference—all Clemson did was passively remain a member of the ACC.

In contrast, Troy University was on notice at the time it chose to do business here that it was signing up to a statutory scheme that not only contained a "sue and be sued" clause, but also expressly subjected Troy to the authority of North Carolina regulators and courts in various respects. For example, a nonprofit corporation like Troy is required to make filings with the North Carolina Secretary of State and also subjects itself to the authority of that office, including the Secretary's power to serve

interrogatories, impose penalties, revoke certificates of authority, and make decisions on applications for reinstatement. *See, e.g.*, N.C.G.S. §§ 55A-1-20, 55A-1-31, 55A-1-32, 55A-15-01, 55A-15-05, 55A-15-01-07, 55A-15-30, 55A-15-31, 55A-15-32. Not so for a member of an unincorporated association. Troy, as a nonprofit corporation, also knowingly subjected itself to proceedings in the Superior Courts of North Carolina. *See, e.g.*, N.C.G.S. §§ 55A-1-60, 55A-7-40, 55A-14-23, 55A-14-31, 55A-14-32, 55A-15-32, and 55A-16-04. Again, not so for a member of an unincorporated association.

The *Farmer* Court emphasized what Troy University knew when it chose to do business here in support of that Court's finding of "explicit" waiver of immunity. *See* 382 N.C. at 371, 373, 375–76 (Troy "chose to do business in North Carolina, while knowing it was subject to the North Carolina Nonprofit Corporation Act"). But the Business Court's decision below avoids the many distinctions between the two statutory schemes at issue, finding that the two universities were similarly situated. These distinctions go directly to the determination of knowing waiver, and the Business Court's failure to consider them constitutes error.

Of particular significance, this Court has consistently held that "[w]aiver of sovereign immunity may not be lightly inferred and State statutes waiving this immunity, being in derogation of the sovereign right to immunity, must be strictly construed." *Guthrie v. N. Carolina State Ports Auth.*, 307 N.C. 522, 537–38, 299 S.E.2d 618, 627 (1983) (rejecting argument that General Assembly providing the Ports Authority with the power to sue and be sued waived its liability outside of the Tort Claims Act). "Statutory authority to 'sue or be sued' is not always construed as

an express waiver of sovereign immunity and is not dispositive of the immunity defense when suit is brought against an agency of the State." *Id.; see also Evans*, 359 at 57, 602 S.E.2d at 672–73 (waiver found where statute authorizes not only the ability to sue and be sued but the power to waive immunity through the purchase of insurance).[3]

Here, those admonitions are especially significant because the authors of the Unincorporated Nonprofit Association Act twice note that the Act does not deal with contractual or tort liability for a *member's own conduct*; rather, it leaves "that to the other law of the jurisdiction enacting this Act." N.C.G.S. § 59B-7 (Official Commentary).

In short, the waiver of sovereign immunity found in *Farmer* was based on a markedly different statute on distinct facts not present here. In this case, unlike *Farmer*, the ACC's argument regarding purported consent is based primarily on the existence of a sue-and-be-sued clause that did not even come into existence for more than half a century after Clemson decided to join the ACC. It is well-settled that such

---

[3] United States Supreme Court precedent is the same. In *Edelman v. Jordan*, 415 U.S. 651, 673 (1974), for example, the Supreme Court stated that "[c]onstructive consent is not a doctrine commonly associated with the surrender of constitutional rights, and we see no place for it here." There, the Court was determining whether Eleventh Amendment immunity was waived by a state as to retroactive payments sought from the state participating in a federal program. "In deciding whether a State has waived its constitutional protection under the Eleventh Amendment, we will find waiver only where stated by the most express language or by such overwhelming implications from the text as (will) leave no room for any other reasonable construction." *Id.* Likewise, in *Fla. Dep't of Health & Rehab. Servs. v. Fla. Nursing Home Ass'n*, 450 U.S. 147, 149 (1981), the Court rejected Eleventh Amendment waiver even though Florida had authorized the agency at issue to sue and be sued and the agency had contractually agreed to follow federal law.

a clause, standing alone, does not constitute consent to suit sufficient to waive sovereign immunity.

Furthermore, Clemson did not otherwise provide the necessary express consent to be sued simply by virtue of remaining a member of the ACC after North Carolina adopted the Uniform Unincorporated Nonprofit Association Act. The ACC says that this unilateral action of the North Carolina General Assembly "imposes" on Clemson an obligation to consent to suit here. (R S p 100.) It does not. As discussed above, while Troy University specifically sought authority to do business under the Nonprofit Corporation Act and to be treated the same as any such domestic entity, Clemson made no such affirmative choice. Furthermore, the statutory scheme imposed on Clemson 53 years after it joined the ACC did not suggest that every member of the association would necessarily be subject to jurisdiction here. To the contrary, the Act does not create contract liability for a member where none exists at common law, and it does not specify that an association may sue the member, much less a sovereign member, in a North Carolina court. *See* N.C.G.S. § 59B-7 cmt. 2 ("This Act does not deal with liability of members or other persons acting for a nonprofit association for their own conduct. With respect to contract and tort Section 6 leaves that to the other law of the jurisdiction enacting this Act."), cmt. 6 ("Liability for one's own conduct is left to the other law of the jurisdiction."). Furthermore, the Act was intended to mitigate the risks faced by members, *see* N.C.G.S. § 59B-7 cmts. 3–5, 8, not to enhance their exposure. Among other things, the statute makes clear

that a member does not, by virtue of being a member, accept liability for the contract, tort, or other obligations of the association. *See* N.C.G.S. § 59B-7(b).

Accordingly, simply remaining a member of an association after the Act's passage, unlike Troy University's affirmative step of applying for a certificate of authority, is not the type of unequivocal expression of consent by Clemson to waive its sovereign immunity required by Supreme Court precedent. After all:

> [a] State's consent to suit must be unequivocally expressed in the text of the relevant statute. Only by requiring this clear declaration by the State can we be certain that the State in fact consents to suit. Waiver may not be implied.
>
> For these reasons, a waiver of sovereign immunity will be strictly construed, in terms of its scope, in favor of the sovereign. So, for example, a State's consent to suit in its own courts is not a waiver of its immunity from suit in federal court. Similarly, a waiver of sovereign immunity to other types of relief does not waive immunity to damages: [T]he waiver of sovereign immunity must extend unambiguously to such monetary claims.

Sossamon, 563 U.S. at 284–85 (internal citations and quotations omitted).

Thus, even if *Farmer* is not overruled, the Business Court's decision to rely on *Farmer* to conclude that Clemson waived its sovereign immunity here is erroneous, and its order should be reversed and remanded with instructions to enter an order granting Clemson's dismissal motion with prejudice.

CONCLUSION

For the reasons set forth above, Clemson respectfully requests that this Court reverse the portion of the Business Court's 10 July 2024 Order denying Clemson's Motion to Dismiss the ACC's Complaint Under Rules 12(b)(2) and 12(b)(6) based on

sovereign immunity and remand this cause with instructions to the Business Court to enter an order granting Clemson's Rule 12(b) motion dismissing the ACC's complaint *with prejudice*.

Respectfully submitted, this the 14th day of November, 2024.

Electronically submitted
D. Martin Warf
N.C. State Bar No. 32982
NELSON MULLINS RILEY & SCARBOROUGH LLP
301 Hillsborough Street, Suite 1400
Raleigh, North Carolina 27603
Telephone: (919) 329-3800
Facsimile: (919) 329-3799
Email: martin.warf@nelsonmullins.com

I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it:

Lorin J. Lapidus
N.C. State Bar No. 33458
NELSON MULLINS RILEY & SCARBOROUGH LLP
380 Knollwood Street, Suite 530
Winston-Salem, NC 27103
Telephone: (336) 774-3300
Facsimile: (336) 774-3372
Email: lorin.lapidus@nelsonmullins.com

David E. Dukes*
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street
Meridian Building, 17th Floor
Columbia, SC 29201
(803) 255-9451
david.dukes@nelsonmullins.com
*admitted *pro hac vice*

K. Alan Parry
N.C. Bar No. 31343
PARRY LAW, PLLC
100 Europa Drive, Suite 351
Chapel Hill, NC 27517
919.913.3320
kap@parryfirm.com

Neil A. Riemann
N.C. Bar No. 19258
PARRY LAW, PLLC
100 Europa Drive, Suite 351
Chapel Hill, NC 27517
919.913.3320
nar@parryfirm.com

Attorneys for Clemson

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date the foregoing CLEMSON UNIVERSITY'S DEFENDANT-APPELLANT'S BRIEF was served upon the following via email:

James P. Cooney III
Sarah Motley Stone
Patrick Grayson Spaugh
Womble Bond Dickinson, LLP
jim.cooney@wbd-us.com
sarah.stone@wbd-us.com
patrick.spaugh@wbd-us.com

Counsel for Plaintiff-Appellee Atlantic Coast Conference

This the 14th day of November, 2024.

/s D. Martin Warf
D. Martin Warf
N.C. State Bar No. 32982
NELSON MULLINS RILEY & SCARBOROUGH LLP
301 Hillsborough Street, Suite 1400
Raleigh, North Carolina 27603
Telephone: (919) 329-3800
Facsimile: (919) 329-3799
Email: martin.warf@nelsonmullins.com