

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
Civil Case No. 5:15-cv-627

FREDERICK L. ALLEN and
NAUTILUS PRODUCTIONS, LLC
Plaintiffs

v.

ROY COOPER, Governor of the State of
North Carolina, *in his official capacity*, et al.,
Defendants

PLAINTIFF'S REPLY BRIEF
Exhibit 1
North Carolina's Affirmative
Defense Regarding the 2013
Settlement Agreement in Intersal v.
Hamilton

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
15 CVS 9995

INTERSAL, INC.,)
)
Plaintiff,)
)
v.)
)
SUSI H. HAMILTON, *et al.*,)
)
Defendants.)
_____)

**DEFENDANTS' ANSWER TO
PLAINTIFF'S THIRD AMENDED
COMPLAINT**

NOW COME Defendants Susi H. Hamilton, in her official capacity as Secretary of the North Carolina Department of Natural and Cultural Resources, the North Carolina Department of Natural and Cultural Resources (“DNCR”), and the State of North Carolina, (collectively, the “Defendants”), by and through undersigned counsel, and hereby submit the following answer to Plaintiff’s Third Amended Complaint:

FIRST DEFENSE – ANSWER

1. Defendants admit that this case relates to the shipwreck of Blackbeard’s flagship, the *Queen Anne’s Revenge* (“*QAR*”). Defendants further admit that the shipwreck was discovered by Intersal. Defendants deny that they refuse the honor their contractual obligations with Plaintiff. Except as expressly admitted, denied.

2. Defendants admit that Intersal initially filed a complaint in this action on July 27, 2015. Plaintiff’s July 27, 2015 Complaint speaks for itself and provides the best evidence of its contents.

3. Admitted.

4. Defendants admit that the North Carolina General Assembly ratified Session Law 2015-218 on August 11, 2015, that it was signed into law by the Governor on August 18, 2015,

RESPONSE TO SECOND CLAIM FOR RELIEF

68. This paragraph contains conclusions of law, to which no response is required. To the extent a response is required, Defendants admit that the 2013 Agreement speaks for itself and provides the best evidence of its contents. Except as admitted, denied.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

DEFENDANTS DENY, GENERALLY, EACH AND EVERY ALLEGATION OF THE COMPLAINT NOT HEREINBEFORE SPECIFICALLY ADMITTED, DENIED, OR OTHERWISE QUALIFIED.

**SECOND DEFENSE – THE 2013 AGREEMENT
IS ILLEGAL AND VOID AS AGAINST PUBLIC POLICY**

Regardless of whether DNCR breached the 2013 Agreement, which Defendants expressly deny, any relief for the alleged breach of contract should be denied because the 2013 Agreement, as construed by Plaintiff in this lawsuit, including specifically but not limited to paragraphs 15 and 16 of the agreement, is void, illegal, and unenforceable, in its entirety or in part, as being against public policy addressing the State’s sovereign immunity, the prohibition on exclusive emoluments (N. C. Constitution, Art. I, § 32), public records law (N.C. Gen. Stat. § 132-1, *et seq.*), DNCR’s statutory mandates (including N.C. Gen. Stat. § 121-4), and other applicable public policy interests, statutes, regulations, and laws. Therefore, Defendants are not responsible for and have no liability to Plaintiff under the alleged agreement and/or its parts.

THIRD DEFENSE – UNCLEAN HANDS

To the extent Plaintiff seeks equitable relief in this action, Plaintiff has acted inequitably and with unclean hands in that it committed various acts inconsistent with or in breach of the spirit