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No. 5PA15

TWENTY-FIFTH JUDICIAL DISTRICT

**SUPREME COURT OF NORTH CAROLINA**

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COMMSCOPE CREDIT UNION, )  
 )  
 Plaintiff-Appellee, )  
 )  
 v. )  
 )  
 BUTLER & BURKE, LLP, a North )  
 Carolina Limited Liability Partnership, )  
 )  
 Defendant and Third-Party Appellant, )  
 )  
 v. )  
 )  
 BARRY D. GRAHAM *et al.*, )  
 )  
 Third-Party Defendant- Appellees. )

Catawba County  
12 CVS 3021  
COA14-273

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**THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA'S MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF**

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The Chamber of Commerce of the United States of America respectfully moves this Court under North Carolina Rule of Appellate Procedure Rule 28(i) for leave to file an *amicus curiae* brief supporting Appellant Butler & Burke LLP.

### **NATURE OF THE CHAMBER'S INTEREST**

The Chamber of Commerce of the United States of America is the world's largest business federation. Boasting over 300,000 members, the Chamber represents the interests of more than three million companies and professional organizations of every size, in every sector, and from every region of the country. To that end, the Chamber regularly files *amicus curiae* briefs in cases of concern to the Nation's business community.

The Chamber submits this brief because the Court of Appeals' holding that an independent-audit engagement can alone establish a fiduciary relationship between the auditor and its client places North Carolina law at odds with generally accepted auditing standards and a multitude of federal and state laws and regulations. By definition, independence is incompatible with fiduciary status.

If left to stand, the Court of Appeals' decision would disrupt audit practice in North Carolina and elsewhere, creating confusion among public accountants about their responsibilities to their audit clients and to the public. The American Institute of Certified Public Accountants (AICPA)—the organization that promulgates and refines generally accepted auditing standards in the United States—has emphasized that an auditor must avoid even the *appearance* of a lack of independence. *See* AICPA AU § 220.03. With the decision below on the

books, it's unclear how a public accountant serving a North Carolina client could possibly comply with that standard: Under North Carolina law, a fiduciary must always act in the other party's best interest. The decision thus leaves auditors in a quandary, requiring them to discharge irreconcilable duties—one to maintain independence from and another to maintain loyalty to their audit client.

There's more. With auditors' impartiality in the balance, public confidence in audit reports generated in North Carolina (or for North Carolina companies) would wane. Investors and creditors rely on corporate financial statements to make investment or lending decisions; they use independent audit reports to gauge the reasonableness of those financial statements. With auditors torn between competing duties of independence and loyalty, public confidence in the impartiality of audit reports would diminish. And when investor confidence suffers, the economy suffers.

### **QUESTION PRESENTED**

The Chamber's proposed *amicus brief* addresses the following question:

Can an independent-audit engagement alone give rise to a fiduciary relationship between the auditor and its client?

### **THE CHAMBER'S POSITION**

The Chamber urges this Court to answer that question "no." To the Chamber's knowledge, no other court has answered the question "yes."

\* \* \*

The Chamber moves this Court to grant leave to file an *amicus curiae* brief supporting Appellant Butler & Burke LLP.

April 6, 2015

Respectfully submitted,

/s/ Brian D. Boone

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**CERTIFICATE OF SERVICE**

I certify that on April 6, 2015, I filed a copy of this motion through the Court's electronic filing system. The brief was also served by first class mail upon the below parties:

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