

RECEIVED

Jul 22 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2022-000352

Case No. 2021-CP-10-05289

Medical University of South Carolina and University Medical
Associates of the Medical University of South Carolina,..... Appellants,

v.

HCA Healthcare, Inc.; Trident Medical Center, LLC;
Terry A. Day; Betsy Kay Davis; Joshua D. Hornig;
Eric J. Lentsch; David M. Neskey; and Anand K. Sharma,..... Defendants,

Of Which HCA Healthcare, Inc. and Trident Medical Center, LLC, are the Respondents.

**APPENDIX TO
RETURN TO MOTION TO HOLD APPEAL IN ABEYANCE**

Consent Motion for Case Assignment to the Business Court Program	1
Consent Motion to Continue Motions Scheduled for February 25, 2022 Motions Roster Before the Honorable Judge Clifton Newman	4
Order for Case Assignment to the Business Court	6
Affidavit of Timothy Brendle	8
Supersedeas Transcript pp 23-25	12

STATE OF SOUTH CAROLINA,)
COUNTY OF CHARLESTON)

IN THE CIRCUIT COURT

**CONSENT MOTION FOR CASE ASSIGNMENT
TO THE BUSINESS COURT PROGRAM**

MEDICAL UNIVERSITY OF SOUTH CAROLINA)
AND UNIVERSITY MEDICAL ASSOCIATES OF)
THE MEDICAL UNIVERSITY OF SOUTH)
CAROLINA)

Plaintiffs)

vs.)

HCA HEALTHCARE, INC.; TRIDENT MEDICAL)
CENTER, LLC; TERRY A. DAY; BETSY KAY)
DAVIS; JOSHUA D. HORNIG; ERIC J. LENTSCH;)
DAVID M. NESKEY; AND ANAND K. SHARMA)

Defendants.)

CASE NO. 2021-CP-10-05289

1. As counsel for a party who has appeared in this action, we move for an order of the Chief Business Court Judge assigning this case to the Business Court Program of the South Carolina Circuit Courts. We certify that as of the date of this Motion, no more than 180 days have passed since the commencement of this action. In addition, we certify that all parties have been notified of this request.

2. The principal claim or claims made in the above-referenced matter are made under the following Titles of the South Carolina Code and the matter is appropriate for assignment to the Business Court Program. (Note: Please check all that are applicable, and attach a description of the claims made in the above-referenced lawsuit.)

- Title 33—South Carolina Business Corporation Act of 1988;
- Title 35—South Carolina Uniform Securities Act of 2005;
- Title 36, Chapter 8— South Carolina Uniform Commercial Code: Investment Securities;
- Title 39, Chapter 3—Trade and Commerce: Trusts, Monopolies, and Restraints of Trade;
- Title 39, Chapter 8—Trade and Commerce: The South Carolina Trade Secrets Act;
- Title 39, Chapter 15—Trade and Commerce: Labels and Trademarks; or
- Other Appropriate Matter determined by the Chief Justice.

3. Indicate whether the non-moving party or parties consents, does not oppose, opposes; position on assignment is unknown.

/s/ James Lynn Werner
Non-Moving Party Signature (if applicable)

/s/ James K. Gilliam
Signature

Attorney Name: James Lynn Werner
Firm: Parker Poe Adams & Bernstein
Contact Information: Post Office Box 1509
Columbia, SC 29202

Attorney Name: James K. Gilliam
Firm: Burr & Forman, LLP
Contact Information: Post Office Box 447
Greenville, SC 29602

SC Bar # 6029
Location: Columbia, SC
Date: February 21, 2022

SC Bar # 76695
Location: Greenville, SC
Date: February 21, 2022

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

MEDICAL UNIVERSITY OF SOUTH
CAROLINA AND UNIVERSITY MEDICAL
ASSOCIATES OF THE MEDICAL
UNIVERSITY OF SOUTH CAROLINA,

Case No. 2021-CP-10-05289

Plaintiffs,

DESCRIPTION OF CLAIMS

vs.

HCA HEALTHCARE, INC., TRIDENT
MEDICAL CENTER, LLC, TERRY A. DAY,
BETSY KAY DAVIS, JOSHUA D. HORNIG,
ERIC J. LENTSCH, DAVID M. NESKEY,
AND ANAND K. SHARMA,

Defendants.

Plaintiffs and the remaining defendants¹ HCA Healthcare, Inc. and Trident Medical Center, LLC (collectively “the Parties”), by way of consent motion, move to submit this case to the South Carolina Business Court based on the nature of the dispute and the specific claims involved. By way of brief background the Individual Defendants who were named in this lawsuit (and who have subsequently been dismissed from the case) were long term faculty members and medical care providers at the Medical University of South Carolina (“MUSC”). Plaintiffs allege the Individual Defendants misappropriated trade secrets belonging to the Plaintiffs prior to resigning from their employment from MUSC and commencing work with a competing hospital, Trident Medical Center, LLC, which is alleged to be owned and operated by defendant HCA Healthcare, Inc.

¹ Shortly after the filing of this lawsuit, the Plaintiffs and the Individual Defendants reached a settlement.

This case involves sophisticated parties and allegations of legal issues clearly in the nature of those deemed appropriate for assignment to the Business Court Program, such as S.C. CODE ANN. §39-8-10, *et seq.* (S.C. Trade Secrets Act), S.C. CODE ANN. §39-5-10, *et seq.* (S.C. Unfair Trade Practices Act), Intentional Interference with Contractual Relationships), and claims for Injunctive Relief. Based on these issues, the Parties believe this case is appropriate for the Business Court and respectfully move for the Business Court to accept this case.

WE SO CONSENT TO THE MOTION TO ASSIGN THIS CASE TO BUSINESS COURT:

BURR & FORMAN LLP

/s/ James K. Gilliam

James K. Gilliam, SC Bar #0076695
104 South Main St., Suite 700 (29601)
Post Office Box 447
Greenville, SC 29602
864-271-4940 (Telephone)
864-271-4015 (Facsimile)
jgilliam@burr.com
Attorney for the Plaintiffs

PARKER POE ADAMS & BERNSTEIN

/s/ James Lynn Werner

James Lynn Werner, SC Bar #6029
1221 Main Street, #1100 (29201)
Post Office Box 1509
Columbia, SC 29202
803-255-8000 (Telephone)
jimwerner@parkerpoe.com
Attorney for Defendants

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

MEDICAL UNIVERSITY OF SOUTH
CAROLINA AND UNIVERSITY MEDICAL
ASSOCIATES OF THE MEDICAL
UNIVERSITY OF SOUTH CAROLINA,

Case No. 2021-CP-10-05289

Plaintiffs,

**CONSENT MOTION TO CONTINUE
MOTIONS SCHEDULED FOR
FEBRUARY 25, 2022 MOTIONS ROSTER
BEFORE THE HONORABLE JUDGE
CLIFTON NEWMAN**

vs.

HCA HEALTHCARE, INC., TRIDENT
MEDICAL CENTER, LLC, TERRY A. DAY,
BETSY KAY DAVIS, JOSHUA D. HORNIG,
ERIC J. LENTSCH, DAVID M. NESKEY,
AND ANAND K. SHARMA,

Defendants.

In this case, there are four motions scheduled to be heard by Judge Newman during the February 25, 2022 motions roster. The motions scheduled to be heard are:

1. Plaintiffs' Motion for Assignment to Business Court
2. Plaintiffs' Motion to Alter or Amend the Order Denying Plaintiffs' Motion for Temporary Injunction
3. HCA Healthcare, Inc.'s Motion to Dismiss
4. Trident Medical Center, LLC's Motion to Dismiss

Motion #1 is pending before the Honorable Roger M. Young, Sr., the Chief Administrative Judge for Business Court, and does not need to be heard by the Court on February 25, 2022. The Plaintiffs and HCA Healthcare, Inc. and Trident Medical Center, LLC, which are the only remaining defendants, have submitted a Consent Motion for Assignment to Business Court to Judge Young. At the time of the filing of this Motion, the Motion for Assignment to Business Court is pending before Judge Young.

Motion #2 is resolved and should be removed from the roster. Judge McCoy entered an Order denying Plaintiffs' Motion to Alter or Amend the Order Denying Plaintiffs' Motion for Temporary Injunction on February 18, 2022.

Motions #3 and #4 (the Defendants' Motions to Dismiss) remain pending. However, the Parties move to continue these Motions because of the pending Motion for Assignment to Business Court. Should the Business Court accept this case, all motions will be heard by the Business Court. In addition, lead counsel for Plaintiffs, Celeste T. Jones, will be out of the country on February 25, 2022 when Defendants' Motions to Dismiss are scheduled to be heard. Co-counsel for the Plaintiffs, James K. Gilliam and William Y. Klett, III, will be in Las Vegas, Nevada for a firm retreat on this date. For these reasons, the Parties move that the Motions to Dismiss filed by HCA Healthcare, Inc. and Trident Medical Center, LLC be continued.

The Parties so move.

BURR & FORMAN LLP

/s/ James K. Gilliam

James K. Gilliam, SC Bar #0076695
104 South Main St., Suite 700 (29601)
Post Office Box 447
Greenville, SC 29602
864-271-4940 (Telephone)
864-271-4015 (Facsimile)
jgilliam@burr.com
Attorney for the Plaintiffs

PARKER POE ADAMS & BERNSTEIN

/s/ James Lynn Werner

James Lynn Werner, SC Bar #6029
1221 Main Street, #1100 (29201)
Post Office Box 1509
Columbia, SC 29202
803-255-8000 (Telephone)
jimwerner@parkerpoe.com
Attorney for Defendants

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Medical University of South Carolina and
University Medical Associates of the Medical
University of South Carolina,

Plaintiffs,

vs.

HCA Healthcare, Inc.; Trident Medical Center,
LLC; Terry A. Day; Betsy Kay Davis; Joshua D.
Horning; Eric J. Lentsch; David M. Neskey; and
Anand K. Sharma,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2021-CP-10-05289

**ORDER FOR CASE ASSIGNMENT
TO THE BUSINESS COURT**

It is hereby ordered that the above-captioned case be assigned to the Business Court for Kershaw County. It is further ordered that exclusive jurisdiction over this case be assigned to the **Honorable J. Maite Murphy** to hear and handle all pretrial motions and other matters pertaining to this case.

AND IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE TO FOLLOW



Charleston Common Pleas

Case Caption: Medical University Of South Carolina , plaintiff, et al VS Hca
Healthcare Inc , defendant, et al
Case Number: 2021CP1005289
Type: Order/Case Assignment to Business Court Approved

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Electronically signed on 2022-02-24 13:05:51 page 2 of 2

ELECTRONICALLY FILED - 2022 Feb 24 1:59 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1005289

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)

MEDICAL UNIVERSITY OF SOUTH)
CAROLINA and UNIVERSITY MEDICAL)
ASSOCIATES OF THE MEDICAL UNIVERSITY)
OF SOUTH CAROLINA,)

Plaintiffs,)

v.)

HCA HEALTHCARE, INC.,)
TRIDENT MEDICAL CENTER, LLC,)
TERRY A. DAY,)
BETSY KAY DAVIS, JOSHUA D. HORNIG,)
ERIC J. LENTSCH, DAVID M. NESKEY, and)
ANAND K. SHARMA,)

Defendants.)

Civil Action No. _____

AFFIDAVIT OF.
TIMOTHY BRENDEL

I, Timothy Brendle, first being duly sworn deposes and says:

1. I am the Chief Perioperative Operations Officer at MUSC Health, Charleston Division.
2. I earned a Bachelor of Science in Nursing, M.S. in Leadership and a Doctor of Nursing Practice or DNP in Nursing Administration from Regis University. I first obtained my license as a Registered Nurse in South Carolina in 1995. I hold the following certificates and licenses: Certified Nurse Operating Room or CNOR from the Competency & Credentialing Institute and Nurse Executive Certification or NE-BC from the American Nurses Credentialing Center.
3. I have worked at MUSC for approximately twenty-one (21) years. I oversee the Operating Room ("OR") operations for over 50 ORs and hybrid OR suites in all of MUSC Health's

Charleston facilities. The procedures performed in the ORs include a broad range of highly specialized procedures with specific, tailored OR needs for each specialty and subspecialty procedure, including the Head & Neck Oncology procedures performed by the individual defendants.

4. While working for MUSC in the year 2000, I served as the ear, nose, and throat (“ENT”) OR Coordinator, which oversaw all ENT procedures performed in the ORs, including Head and Neck Oncology procedures. At that time, I frequently oversaw day-to-day operations within the ENT service line, which included procedures performed by defendant Day. At that time, defendant Day and others on the Head and Neck team began developing the processes, procedures, and staffing requirements needed for the complex, multi-phase cancer removal and free-flap procedures performed by the defendants that often last up to ten (10) to fifteen (15) hours. These highly complex procedures involve multiple teams and specialized equipment. Over the past several years, MUSC’s Department of Otolaryngology in the Division of Head and Neck Oncology (“HNO Division”) surgeons performed approximately three (3) to four (4) of these long, complex cases per week. This is an increase from what the Head and Neck team could perform when I began working for MUSC in the year 2000. At that time, the Head and Neck surgeons performed approximately one (1) to two (2) cases per week.

5. As new physicians were added to the multidisciplinary team developed to treat Head and Neck cancer patients, surgical “physician preference” cards were developed that specify each surgeon’s preferences with respect to types and brands of instruments, supplies, and pharmaceuticals as well as processes to follow for each specialized type of procedure. The cards and equipment lists for the procedures are highly detailed and technical and have been perfected and assembled over decades of development at MUSC. Defendants Day, Hornig, Lentsch, and

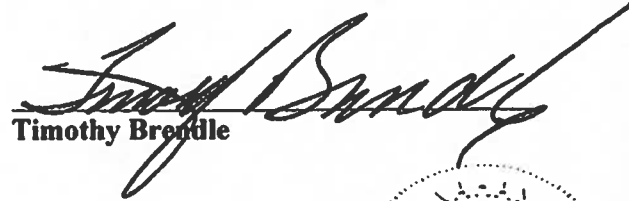
Neskey collectively have developed over 100 preference cards over the years for a broad range of specialized procedures.

6. Access to the procedure cards and instrument lists are restricted access for only certain MUSC employees and they are not accessible by the public.

7. I estimate it would take Trident Medical Center eight (8) to ten (10) years to independently grow the high-quality, multi-disciplinary Head and Neck surgical practice that MUSC has developed to date, and that is assuming that Trident devotes the same level of resources that MUSC has furnished to defendant physicians and their practice over the years.


8. I have reviewed the equipment list in Trident Medical Center's Certificate of Need ("CON") Application, filed on August 30, 2021 and identified in Exhibit #4. The items listed in the CON Application are not adequate to perform the procedures performed by the Head and Neck team at MUSC, or to train and educate residents, fellows, surgical nurses and surgical techs.

FURTHER AFFIANT SAYETH NOT.


Timothy Brendle



SWORN TO AND SUBSCRIBED before me this 19th day of November, 2021.


Notary Public for S.C.

Michelle M Sharahan
Print Name

My Commission Expires: 6/10/2026



1 came up. They've got a huge one in Colorado. The idea that
2 they needed equipment lists in order to set up an HNO
3 operation is ridiculous.

4 You also -- they talk about it. They keep focusing on
5 the lists and the cards, but they talk about financial
6 information. Well, they made an allegation that the
7 physicians had attempted to get that information. But if
8 you look at the exhibits they gave you back at the
9 beginning, in them is the e-mail showing that MUSC never
10 gave it to them. They never got it. And they sure as heck
11 never gave it to Trident.

12 So they make up this list of things that they want to
13 try to justify. They never established that they meet the
14 test of being protectable documents or information. But oh,
15 we say it, Judge, so it's true. You just have to take our
16 word. Well, you don't. They had the chance to prove it to
17 you twice and you issued your decision saying they hadn't
18 done that.

19 Now, aside from this thing being now a question of the
20 status quo at the time of the appeal, there's another thing
21 which they have never -- didn't talk to you about it today
22 either. We cited you the law. To win now, they've got to
23 prove to you that they have a likelihood of success not on
24 the argument that you've already said they didn't succeed on
25 twice, but they've got to prove that their likelihood of

1 that may be in them. It doesn't say refrain from using your
2 knowledge of all that information.

3 So they want to make a settlement with these
4 physicians, which would allow these physicians -- they
5 admitted in their own affidavits submitted to you earlier
6 that it was the physicians who prepared and created these
7 cards and these lists. Those physicians have that
8 knowledge. That admission recognizes that the physicians
9 have that knowledge. So a physician likely doesn't need
10 those cards or those lists.

11 They want to free them up from it by having given them
12 a release and now they want to tie Trident's hands from an
13 undefined, quote, use of the information. Not of the cards,
14 of the information. That doesn't even pass the test of a
15 Rule 65 injunction. You can't give injunctive relief which
16 is undefined.

17 The other thing that I, again, find amusing,
18 particularly, I guess, since I wrote it, counsel, I guess
19 pretends to be clairvoyant and to tell you what Trident is
20 doing or intends to do with this information. He's provided
21 you no evidence of what they're doing with it. And he sure
22 as heck doesn't know what they intend to do with it.
23 Nowhere has Trident said that it is or intends to give that
24 information, to give those cards, to give those lists to
25 anyone. And it has never been established that that has

1 happened.

2 You were sort of asked a rhetorical question, well, why
3 do they want to keep this stuff? Unfortunately, Judge, I
4 have to tell you, one reason why you saw during the initial
5 hearing, you were handed up as exhibits copies of --
6 so-called copies of some of these lists and cards in
7 question, which suddenly had at the bottom of them
8 confidential designation stamps, which counsel did
9 ultimately admit was never on them when they were, in fact,
10 transmitted to Trident.

11 If a defendant is forced to turn over so that it can be
12 destroyed in the meantime or hidden from the Court when the
13 ultimate decision is made, the very fundamental nature of
14 their case, whether there is a justification for finding
15 that this stuff meets the test of being a trade secret or
16 confidential or proprietary information in the first place,
17 then just let every plaintiff just declare their own relief.
18 There's no judging.

19 Frankly, their position and their argument is
20 preposterous. They want to tell you that Trident would take
21 eight to ten years to do this. Well, Your Honor, as you
22 know, Trident is a hospital within the broader HCA
23 framework. HCA has lots of hospitals around and they have
24 lots of preexisting head and neck units like this one.
25 They've got one in Savannah. They had that before this ever