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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

Case No. 2021-CP-10-05289
Appellate Case No. 2022-000352

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 whom HCA Healthcare, Inc. and Trident Medical Center, LLC; are the..... Respondents.

SUPPLEMENTAL APPENDIX FOR RETURN TO PETITION FOR SUPERSEDEAS

Respondents HCA Healthcare, Inc. and Trident Medical Center, LLC (“Respondents”) by and through undersigned counsel, submit the following documents to supplement the Appellants’ Appendix to Petition for Writ of Supersedeas. The documents included in this Supplemental Appendix are number to begin following the last page of the Appellants’ Appendix; therefore, the first document in this Supplemental Appendix is page 491 of the Appendix.

In addition to the documents included in this Supplemental Appendix, Respondents will make the Physician Preference Cards and Instrument Lists—which Appellants contend contain confidential trade secrets—available for *in camera* review upon request by the Court. Those documents were submitted to the circuit court during the hearing on the Appellants’ Motion for

Temporary Injunction. However, the documents submitted to the Court by Appellants were altered and included an additional label stating, “Highly Confidential, subject to Rule 408, Settlement Discussions Only.” (R. 77; Transcript of December 9, 2021 Hearing 36:12-38-2). That labeling was not on the original documentation. To ensure the Court has accurate copies of those documents, Respondents will provide the Court with copies of the documents for *in camera* review upon request by the Court.

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The Physician Preference Cards attached to the Emails identified on R. 468 - 475
(Available upon request for *in camera* review by the Court)

The Instrument Lists attached to the Emails identified on R. 476
(Available upon request for *in camera* review by the Court)

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,)

C/A No. 2021-CP-10-05289

Plaintiffs,)

vs.)

**ORDER GRANTING
MOTION FOR CONTINUANCE**

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

Defendants,)
)
)

This matter is before the Court on a Consent Motion for Continuance filed February 21, 2022. That motion set forth the following reasons for the four motions scheduled for a hearing February 25, 2022 to be continued:

1. Plaintiffs’ Motion for Assignment to Business Court is pending before the Honorable Roger M. Young, Sr. and does not need to be heard by this Court;
2. Plaintiffs’ Motion to Alter or Amend the Order Denying Plaintiffs’ Motion for Temporary Injunction has been resolved;
3. Defendant HCA Healthcare, Inc.’s Motion to Dismiss and Defendant Trident Medical Center, LLC’s Motion to Dismiss remain pending; however, the parties have agreed to continue these Motions beyond the February 25, 2022 hearing date in light of the pending Motion

for Assignment to Business Court, anticipating that these motions likely will be heard by the Business Court; and

4. Counsel for the Plaintiffs will be out of the state at a long-planned firm retreat at the time the pending motions are currently set to be heard.

For these reasons, the Parties move that the Motion to Dismiss filed by Defendants HCA Healthcare, Inc. and Trident Medical Center, LLC be continued, and the Motion for Case Assignment to the Business Court Program be removed from the current motions roster, as it is pending before Judge Young. The requested extension herein will not prejudice the Parties in any manner.

For the reasons outlined above, and appearing that good cause is shown it is hereby ordered that the Consent Motion to Continue Motions Scheduled for February 25, 2022 is granted.

IT IS SO ORDERED.

The Honorable Diane Goodstein



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/Continuance

It is so Ordered!

s/Diane S. Goodstein

Electronically signed on 2022-03-10 11:14:19 page 3 of 3

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,

vs.

CONSENT ORDER OF PROTECTION

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.

Celeste T. Jones, counsel for the Plaintiffs, requests protection for herself and her clients from the scheduling of hearings or trial on the following dates:

1. March 24, 2022, through April 15, 2022 – Counsel has long standing vacation out of the country and has purchased airline tickets and hotel accommodations.

Counsel for the Defendants consent to this request, which the Court finds made for good cause. Therefore, Celeste T. Jones and Plaintiffs are granted scheduling protection on the dates listed above.

IT IS SO ORDERED.

[Electronic signature of the Honorable Jennifer B. McCoy to follow.]

The Parties so move.

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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/Protection from Court Appearance

So Ordered

s/Julie J. Armstrong, Charleston County Clerk of
Court

Electronically signed on 2022-03-11 13:10:03 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

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

Civil Action No. 2021-CP-10-05289

Plaintiffs,)

v.)

**HCA HEALTHCARE, INC.’S
MOTION TO DISMISS**

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.)

Defendant HCA Healthcare, Inc. (“HCA”), by and through undersigned counsel, hereby moves the Court, pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure, for an Order dismissing the claims of Plaintiffs Medical University of South Carolina and University Medical Associations of the Medical University of South Carolina (collectively “Plaintiffs”) against HCA on the grounds that the Court lacks either general or specific jurisdiction over HCA.

HCA’s Motion to Dismiss pursuant to Rule 12(b)(2) is based on the grounds that:

1. The Court does not have general jurisdiction over HCA pursuant to S.C. CODE ANN. § 36-2-802, because HCA is not domiciled in, organized under the laws of, doing business, or maintaining its principal place of business in South Carolina. *See* S.C. CODE ANN. § 36-2-802 (“A court may exercise personal jurisdiction over a person domiciled in, organized under the laws of, doing business, or maintaining his or its principal place of business in, this State as to any cause of action.”). HCA is a holding company headquartered in Nashville, Tennessee and organized under the

laws of Delaware. *See* Affidavit of Michael Bray, attached hereto as **Exhibit 1** and incorporated by reference herein.

2. The Court does not have specific jurisdiction over HCA pursuant to the South Carolina Long-Arm Statute, S.C. CODE ANN. § 36-2-803. HCA does not conduct business in South Carolina; it has no offices, operations, employees, or property in South Carolina. Bray Affidavit ¶¶ 10-12. HCA is a non-operating holding company without employees whose assets consist solely of investments, directly and indirectly, in the stock or other equity interests of its subsidiaries. Bray Affidavit ¶¶ 4-5. HCA has not performed any of its holding company activities in South Carolina. Bray Affidavit ¶¶ 10-11. HCA does not contract to supply services or things in South Carolina. Bray Affidavit ¶ 18. HCA is not a hospital, and is not licensed to be a hospital or healthcare facility in the state of South Carolina. Bray Affidavit ¶ 19. HCA does not have an interest in, and is not using or in possession of, real property in South Carolina. Bray Affidavit ¶ 20. HCA is not involved in, and does not oversee, control, and/or manage the day-to-day operations, management and/or administration of Trident Medical Center, LLC. Bray Affidavit ¶ 23. HCA does not contract to insure any person, property, or risk located in South Carolina. Bray Affidavit ¶ 26. HCA has not entered into a contract to be performed in whole, or in part, by any party to the above-captioned matter in South Carolina. Bray Affidavit ¶ 27. HCA has never participated in, conducted negotiations with, and/or had discussions with the co-defendant doctors in the above-captioned litigation. Bray Affidavit ¶ 30. HCA does not produce, manufacture or distribute goods with the reasonable expectation that those goods

are to be used or consumed in South Carolina. Bray Affidavit ¶ 28. HCA does not maintain a bank account in South Carolina. Bray Affidavit ¶ 31.

3. The exercise of personal jurisdiction over HCA violates due process. *See Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005) (citation omitted). HCA did not purposefully avail itself of the privilege of conducting activities in South Carolina. Bray Affidavit ¶ 33.
4. HCA lacks the requisite minimum contacts with South Carolina such that maintenance of the suit offends the traditional notions of fair play and substantial justice. *See Hidria, USA, Inc. v. Delo*, 415 S.C. 533, 541, 783 S.E.2d 839, 843 (Ct. App. 2016). HCA did not direct any activity to residents of South Carolina. *See id.*
5. HCA does not satisfy any of the factors the Court is to consider under the fairness prong of the requisite jurisdictional due process analysis. *See Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508 (stating the fairness prong of the jurisdictional due process analysis requires the Court to consider the following factors: (1) the duration of the nonresident defendant's activity in South Carolina; (2) the character and circumstances of the nonresident's acts; (3) the inconvenience to the parties; and (4) the State's interest in exercising jurisdiction). HCA does not conduct any activity in South Carolina. Bray Affidavit ¶¶ 10-11. It is inconvenient for HCA to defend itself in the Charleston County Circuit Court because HCA is a holding company with its principal place of business in Nashville, Tennessee that has no contact with the state of South Carolina. Bray Affidavit ¶ 34. The State of South Carolina has no interest in exercising jurisdiction over business entities in other states based upon actions that may have occurred in those states. *See Cribb v.*

Spatholt, 382 S.C. 475, 489, 676 S.E.2d 706, 714 (Ct. App. 2009) (finding South Carolina has little interest in exercising jurisdiction and adjudicating a dispute involving the conduct of a business operating solely in another state).

This Motion is based upon the Complaint, the other pleadings on file, the documents referenced therein, the affidavit referenced herein and attached hereto as **Exhibit 1**, the applicable authorities, and upon such arguments and memoranda of law as may be submitted in support hereof.

Respectfully submitted,

s/ James Lynn Werner

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*Attorneys for Defendants HCA Healthcare, Inc. and
Trident Medical Center LLC*

December 7, 2021
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

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

Civil Action No. 2021-CP-10-05289

Plaintiffs,)

v.)

AFFIDAVIT OF MICHAEL BRAY

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.)

I, Michael Bray, first being duly sworn, do hereby make oath and affirm as follows:

1. I am over (18) years of age, of sound mind, capable of making this oath, and fully competent to testify to the matters stated herein.

2. For the past 34 years, I have been employed in various roles at HCA Management Services, LP and its predecessor organizations. My current title is Director and Assistant VP of Financial Reporting.

3. I have personal knowledge regarding the matters referenced herein.

4. HCA Healthcare, Inc. (“HCA”) is a non-operating holding company.

5. HCA’s assets consist solely of investments, directly and indirectly, in the stock or other equity interests of its subsidiaries.

6. HCA is headquartered in Nashville, Tennessee.

7. HCA does not maintain a place of business in South Carolina.

8. HCA is organized under the laws of the State of Delaware.

9. HCA is not domiciled in South Carolina.

10. HCA does not conduct any activity in South Carolina.
11. HCA does no business of any kind in South Carolina.
12. HCA has no offices, operations, employees, or property in South Carolina.
13. HCA and its subsidiaries observe corporate formalities, and operate as separate and distinct corporate entities.
14. HCA does not exercise greater control over its subsidiaries than that normally associated with common ownership or directorship.
15. HCA is not, and has never been, registered to do business in South Carolina.
16. HCA does not maintain a registered agent for service of process in South Carolina.
17. HCA maintains its accounting records and other business records in Tennessee.
18. HCA does not contract to supply services or things in South Carolina.
19. HCA is not a hospital, and is not licensed to be a hospital or healthcare facility in South Carolina.
20. HCA does not have an interest in, use, or possess real property in South Carolina.
21. HCA is the ultimate corporate parent of Trident Medical Center, LLC.
22. There are at least three levels of subsidiaries between HCA and Trident Medical Center, LLC.
23. HCA is not involved in, and does not oversee, control and/or manage the day-to-day operations, management and/or administration of Trident Medical Center, LLC—or any other hospital in South Carolina.
24. HCA did not commit a tortious act in South Carolina.
25. HCA did not cause tortious injury or death in South Carolina.
26. HCA does not contract to insure any person, property, or risk located within South Carolina.

27. HCA does not contract for work to be performed in whole or in part in South Carolina with any party to this lawsuit.

28. HCA does not produce, manufacture, or distribute goods with the reasonable expectation that those goods are to be used or consumed in South Carolina.

29. HCA has not entered into a contract to be performed in whole, or in part, by any party to the above-captioned matter in South Carolina.

30. HCA has never participated in, conducted negotiations with, and/or had discussions with the co-defendant doctors in the above-captioned lawsuit.

31. HCA does not maintain any savings, checking, brokerage, or other financial accounts in South Carolina.

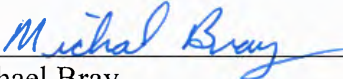
32. HCA does not owe, and has never owed, paid, or been required to pay taxes in South Carolina.

33. HCA has not purposefully availed itself to the privilege of conducting activities in South Carolina.

34. It is inconvenient for HCA to defend itself in the Charleston County Circuit Court because HCA is a holding company with its principal place of business in Nashville, Tennessee that has no contact with the state of South Carolina.

35. I declare under penalty of perjury that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NOT.



Michael Bray
Asst. Vice President of Financial Reporting
HCA Management Services, LP

SWORN and subscribed to before me this
6th day of December 2021

Holly Stockman
Notary Public for Davidson County
My Commission expires: 05/09/2023



STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

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

Civil Action No. 2021-CP-10-05289

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,)

**HCA HEALTHCARE, INC.’S
 MEMORANDUM OF LAW IN
 SUPPORT OF THE MOTION TO
 DISMISS**

Defendants.)

Defendant HCA Healthcare, Inc. (“HCA”), submits this Memorandum in support of its Motion to Dismiss the Complaint filed by Plaintiffs Medical University of South Carolina (“MUSC”) and University Medical Associations of the Medical University of South Carolina (“UMA” and collectively with MUSC, “Plaintiffs”) pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure for a lack of personal jurisdiction.

INTRODUCTION

This lawsuit concerns the decision by a group of physicians (Terry Day, Betsy Davis, Joshua Hornig, Eric Lentsch, David Neskey and Anand Sharma (collectively, “the Physicians”)) to resign from their employment with UMA and transition employment to another healthcare provider. Plaintiffs’ allege the Physicians obtained proprietary information from Plaintiffs to use while practicing medicine at facilities owned and operated by defendant Trident Medical Center, LLC (“Trident”). [Complaint ¶ 111]. According to the Complaint, Trident is a “wholly owned subsidiary of HCA through other wholly owned subsidiaries of HCA.” [Complaint ¶ 28].

Plaintiffs have named HCA as a defendant in this action. Plaintiffs are incorrect in their conclusory assertion that personal jurisdiction exists over HCA. [Complaint ¶ 6]. In the Complaint, Plaintiffs disregard the corporate forms of HCA and Trident and attempt to unify those separate and distinct entities. Specifically, the Complaint imputes the alleged actions of a subsidiary company (Trident) on a distant parent corporation (HCA) by using “HCA” to reference alleged actions by Trident.

HCA is the ultimate corporate parent of Trident, which is the entity that owns and operates Trident Medical Center. The Complaint does not allege that HCA had an “enduring relationship” with the State of South Carolina, such that the assertion of general jurisdiction over HCA is permissible under the South Carolina long-arm statute and comports with the due process clause. *See Cribb v. Spatholt*, 382 S.C. 475, 481-84, 676 S.E.2d 706, 709-11 (Ct. App. 2009). South Carolina law is clear that HCA’s ownership of a domestic subsidiary—like Trident—does not subject HCA to the jurisdiction of this Court. *See Yarborough & Co. v. Schoolfield Furniture Indus., Inc.*, 275 S.C. 151, 153, 268 S.E.2d 42, 44 (1980).

HCA has no direct connection to South Carolina or the claims at issue in the captioned litigation. HCA is a non-operating holding company without employees whose assets consist solely of investments, directly and indirectly, in the stock or other equity interests of its subsidiaries. *See* Affidavit of Michael Bray, attached hereto as **Exhibit 1**. HCA is headquartered in Nashville, Tennessee and organized under the laws of the State of Delaware. Bray Affidavit ¶¶ 6-8. HCA does not do business in South Carolina. Bray Affidavit ¶ 11. HCA has no employees in South Carolina (or anywhere) and none of its holding company activities take place in South Carolina. Bray Affidavit ¶ 12. HCA does not own or operate any assets or conduct any other business activities in South Carolina. Although HCA is the ultimate parent company in Trident’s

corporate family, there are at least three levels of subsidiaries between HCA and Trident. Bray Affidavit ¶ 22.

These facts negate the Court's assertion of jurisdiction over HCA; therefore, the Court must dismiss the claims against HCA pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure for a lack of personal jurisdiction.

STANDARD OF REVIEW

The plaintiff bears the burden to establish a *prima facie* showing of personal jurisdiction either in the complaint or in affidavits. *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 327, 594 S.E.2d 878, 882 (Ct. App. 2004); *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). “When a nonresident defendant attacks the allegations of a complaint based on jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction.” *Power Prods. & Servs. Co. v. Kozma*, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008). The Court may consider evidence outside the pleadings without converting the motion to a summary judgment motion. *Springmasters, Inc. v. D & M Mfg.*, 303 S.C. 528, 532, 402 S.E.2d 192, 194 (Ct. App. 1991).

ARGUMENT

The claims against HCA should be dismissed pursuant to Rule 12(b)(2) for lack of personal jurisdiction. Personal jurisdiction is exercised as “general jurisdiction” or “specific jurisdiction.” *Cribb v. Spatholt*, 382 S.C. 475, 481–84, 676 S.E.2d 706, 709-11 (Ct. App. 2009) (citing *Coggeshall v. Reprod. Endocrine Associates of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007)). The Court has neither general, nor specific jurisdiction over HCA. Therefore, Plaintiffs’ claims against HCA must be dismissed pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure.

I. The Court does not have general jurisdiction over HCA.

General jurisdiction is governed by S.C. CODE ANN. § 36-2-802 which states that “[a] court may exercise personal jurisdiction over a person domiciled in, organized under the laws of, doing business, or maintaining his or its principal place of business in, this State as to any cause of action.” A court has general jurisdiction over a defendant if the defendant has an “enduring relationship” with the state of South Carolina. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 495, 611 S.E.2d 505, 510 (2005). To satisfy the “enduring relationship” requirement, a defendant’s contacts must be substantial, continuous, and systematic. *Cribb*, 382 S.C. at 483, 676 S.E.2d at 710.

Recently, in *Daimler AG v. Bauman*, 134 S.Ct. 746, 749 (2014) the Supreme Court significantly narrowed the scope of general personal jurisdiction. The Court in *Daimler* clarified that general jurisdiction over corporate defendants will only exist in three (3) circumstances:

1. in the forum where the defendant is incorporated;
2. in the forum where the defendant has its principal place of business; and
3. in a forum where a “corporation's affiliations with the [forum] are so continuous and systematic as to render [it] essentially at home in the forum State.”

Carl v. Mazda Motor Corp., No. 4:20-CV-00640-DCC, 2020 WL 7360174, at *3 (D.S.C. Dec. 15, 2020) (citation omitted).

None of the three *Daimler* circumstances necessary for the Court to have general jurisdiction over HCA exist—not one. The first *Daimler* circumstance is not satisfied because HCA is organized under the laws of Delaware—not South Carolina. Bray Affidavit ¶ 8. The second *Daimler* circumstance is not satisfied because HCA’s principal place of business is Tennessee. Bray Affidavit ¶ 6. The third *Daimler* circumstance is not applicable because HCA does not have any relationship, much less a continuous and systematic relationship, with South

Carolina. Bray Affidavit ¶¶ 10-12. HCA does no business of any kind in South Carolina. Bray Affidavit ¶ 11. HCA has not entered South Carolina for any purpose and has no contacts *at all* with the state of South Carolina. Bray Affidavit ¶¶ 10-12. HCA's complete lack of contacts with South Carolina means that HCA does not satisfy any of the requirements for the Court to have general jurisdiction over it.

II. The Court does not have specific jurisdiction over HCA.

Traditionally, courts conduct a two-step analysis to determine whether specific jurisdiction exists. *Cribb*, 382 S.C. at 481-84, 676 S.E.2d at 709-11. First, the court determines whether the Long-Arm Statute, S.C. CODE ANN. § 36-2-803, applies to a defendant. Next, the Court determines whether the non-resident's contacts in South Carolina are sufficient to satisfy the due process requirements. *Id.* (citing *Power Prods. & Servs. Co. v. Kozma*, 379 S.C. 423, 431, 665 S.E.2d 660, 664 (Ct. App. 2008)).

HCA did not act in any manner that would, directly or through an agent, permit the exercise of specific jurisdiction in South Carolina pursuant to the Long Arm Statute. Furthermore, HCA does not have contacts with South Carolina that are sufficient to satisfy the due process requirements.

A. The Long-Arm Statute, S.C. CODE ANN. § 36-2-803, does not apply to HCA.

Specific jurisdiction is determined under the South Carolina Long-Arm Statute, S.C. CODE ANN. § 36-2-803. *See Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 329, 594 S.E.2d 878, 883 (Ct. App. 2004). The Long-Arm Statute states that a court may exercise jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's:

1. transacting any business in this State;
2. contracting to supply services or things in the State;
3. commission of a tortious act in whole or in part in this State;

4. causing tortious injury or death in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this State;
5. having an interest in, using, or possessing real property in this State;
6. contracting to insure any person, property, or risk located within this State at the time of contracting;
7. entry into a contract to be performed in whole or in part by either party in this State; or
8. production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed.

S.C. CODE ANN. § 36-2-803.

HCA does not satisfy any of the requirements of the Long-Arm Statute. HCA does not transact any business in South Carolina. Bray Affidavit ¶ 11. HCA does not contract to supply services or things in South Carolina. Bray Affidavit ¶ 18. HCA did not commit a tortious act in South Carolina. Bray Affidavit ¶ 24. HCA did not cause tortious injury or death in South Carolina. Bray Affidavit ¶ 25. HCA does not have an interest in, use, or possess real property in this State. Bray Affidavit ¶ 20. HCA does not contract to insure any person, property, or risk located within South Carolina. Bray Affidavit ¶ 26. HCA does not contract for work to be performed in whole or in part in South Carolina with any party to this lawsuit. Bray Affidavit ¶ 27. HCA does not produce, manufacture, or distribute goods with the reasonable expectation that those goods are to be used or consumed in South Carolina. Bray Affidavit ¶ 28.

There is no evidence and no verified facts before the Court indicating that HCA engaged in any conduct that would subject it to the South Carolina Long-Arm Statute. Plaintiffs' domicile, or that of Trident, cannot form the basis for the assertion of jurisdiction here. This is insufficient as a matter of law to justify this Court's exercise of jurisdiction over HCA.

B. The exercise of personal jurisdiction over HCA violates due process.

Even if the Court were to consider that HCA's conduct is somehow covered by the Long-Arm Statute, HCA does not have contacts with South Carolina that are sufficient to satisfy the due process requirements for the exercise of jurisdiction. The determination of whether the requirements of due process are satisfied involves a two-prong analysis: the "power" prong and the "fairness" prong. *Hidria, USA, Inc. v. Delo*, 415 S.C. 533, 541, 783 S.E.2d 839, 843 (Ct. App. 2016). Neither of these prongs are applicable to HCA.

1. HCA does not have the necessary minimum contacts to satisfy the "power" prong.

The "power" prong, requires HCA have minimum contacts with South Carolina to grant the Court the "power" to adjudicate the action. *Id.* To satisfy the power prong, the Court must find HCA purposefully availed itself of the privilege of conducting activities within South Carolina, thus invoking the benefits and protections of the laws of South Carolina. *Cribb*, 382 S.C. at 481-84, 676 S.E.2d at 709-11.

HCA has not purposefully availed itself of the privilege of conducting any activity within South Carolina. Bray Affidavit ¶ 33. HCA is a non-operating holding company without employees whose assets consist solely of investments, directly and indirectly, in the stock or other equity interests of its subsidiaries. Bray Affidavit ¶¶ 4, 5, 12. HCA has not performed any of its holding company activities in South Carolina Bray Affidavit ¶ 10. HCA has no offices, operations, employees, or property in South Carolina. Bray Affidavit ¶ 13. HCA is not involved in, and does not oversee, control and/or manage the day-to-day operations, management and/or administration of Trident. Bray Affidavit ¶ 23. HCA has never participated in, conducted negotiations with, and/or had discussions with the co-defendant doctors in the above-captioned litigation. Bray Affidavit ¶ 30.

The fact that Trident is a distant downstream subsidiary of HCA, and is present and conducts business in South Carolina is not sufficient to establish this Court’s personal jurisdiction over HCA. It is well-established that a distant foreign parent corporation does not subject itself to personal jurisdiction in a forum state simply by having subsidiaries that are active or based in that state. *See, e.g., Yarborough & Co. v. Schoolfield Furniture Indus., Inc.*, 275 S.C. 151, 153, 268 S.E.2d 42, 44 (1980); *Fancy That! Bistro & Catering, LLC v. Sentinel Ins. Co., Ltd.*, No. 3:20-CV-2382-BHH, 2021 WL 4804974, at *4 (D.S.C. Oct. 14, 2021) (“[A] parent company is not subject to personal jurisdiction in a particular forum merely due to its relationship with a subsidiary”); *Black Magic, LLC v. Hartford Fin. Servs. Grp., Inc.*, No. 2:20-CV-1743-BHH, 2021 WL 964969, at *5 (D.S.C. Mar. 15, 2021) (same); *Wright v. Waste Pro USA Inc.*, No. 2:17-CV-02654, 2019 WL 3344040, at *11 (D.S.C. July 25, 2019) (same); *Fitzhenry v. One on One Mktg. LLC*, No. 2:14-CV-4782-DCN, 2015 WL 4459023, at *4 (D.S.C. July 21, 2015) (same); *Gray v. Riso Kagaku Corp.*, 82 F.3d 410, 1996 WL 181488 at 3 (4th Cir. 1996) (same). Moreover, the contacts of subsidiaries in the forum state are not attributed to the parent company in determining whether the due process minimum contacts requirement is met. *See Gray*, 1996 WL 181488 at *3 (rejecting argument that minimum contacts prong was satisfied because defendant’s wholly owned subsidiaries marketed its product in South Carolina).

The only connection that HCA has with South Carolina is the presence of its distant downstream subsidiaries in the state. *See Bray Affidavit* ¶ 21. The subsidiaries’ presence in and contacts with the state of South Carolina are insufficient to subject their ultimate corporate parent, HCA, to personal jurisdiction in this Court. *Yarborough*, 275 S.C. at, 153, 268 S.E.2d at 44.

These facts plainly demonstrate that the “power” prong is not satisfied and the Court does not have specific jurisdiction over HCA. Accordingly, the Court should grant HCA’s Motion and

dismiss Plaintiffs' claims against it pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure.

2. It is neither reasonable, nor fair, for the Court to exercise specific jurisdiction over HCA.

The “fairness” prong, requires the exercise of jurisdiction to be “reasonable” or “fair.” *Hidria, USA, Inc. v. Delo*, 415 S.C. 533, 541, 783 S.E.2d 839, 843 (Ct. App. 2016) (citing *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992)). In determining fairness and reasonableness of exercising jurisdiction, the Court must consider the following factors: (1) the duration of HCA’s activity in this state; (2) the character and circumstances of HCA’s acts; (3) the inconvenience to the parties by conferring or refusing to confer jurisdiction over the non-resident; and (4) the state’s interest in exercising jurisdiction. *Cribb*, 382 S.C. at 488, 676 S.E.2d at 713 (citing *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 91, 666 S.E.2d 218, 223 (2008)).

HCA conducts no activity in South Carolina. Bray Affidavit ¶ 10. HCA would be burdened by being haled into this Court, because it is a holding company based in Tennessee that conducts no business in South Carolina and has no contact with South Carolina. Bray Affidavit ¶ 34. South Carolina’s interest in adjudicating this dispute is limited to its interest in its own citizens—not the purported actions of a foreign holding company several steps removed from a domestic subsidiary. *See Contra Aviation Assocs. & Consultants, Inc. v. Jet Time, Inc.*, 303 S.C. 502, 509, 402 S.E.2d 177, 181 (1991) (“[W]hile South Carolina has an interest in providing redress for its citizens, that interest is diminished when no business [of the defendant] was transacted in this State[.]”).

Review of each of the factors for the “fairness” prong reveals that none of those factors are apply to HCA in this case. Accordingly, the Court should grant HCA’s Motion and dismiss

Plaintiffs' claims against it pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure.

CONCLUSION

Based on the foregoing, Plaintiffs' claims against HCA in the Complaint should be dismissed for lack of personal jurisdiction.

s/ James Lynn Werner
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*Attorneys for Defendants HCA Healthcare, Inc. and
Trident Medical Center LLC*

December 7, 2021
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

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

Civil Action No. 2021-CP-10-05289

Plaintiffs,)

v.)

AFFIDAVIT OF MICHAEL BRAY

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.)

I, Michael Bray, first being duly sworn, do hereby make oath and affirm as follows:

1. I am over (18) years of age, of sound mind, capable of making this oath, and fully competent to testify to the matters stated herein.

2. For the past 34 years, I have been employed in various roles at HCA Management Services, LP and its predecessor organizations. My current title is Director and Assistant VP of Financial Reporting.

3. I have personal knowledge regarding the matters referenced herein.

4. HCA Healthcare, Inc. (“HCA”) is a non-operating holding company.

5. HCA’s assets consist solely of investments, directly and indirectly, in the stock or other equity interests of its subsidiaries.

6. HCA is headquartered in Nashville, Tennessee.

7. HCA does not maintain a place of business in South Carolina.

8. HCA is organized under the laws of the State of Delaware.

9. HCA is not domiciled in South Carolina.

10. HCA does not conduct any activity in South Carolina.
11. HCA does no business of any kind in South Carolina.
12. HCA has no offices, operations, employees, or property in South Carolina.
13. HCA and its subsidiaries observe corporate formalities, and operate as separate and distinct corporate entities.
14. HCA does not exercise greater control over its subsidiaries than that normally associated with common ownership or directorship.
15. HCA is not, and has never been, registered to do business in South Carolina.
16. HCA does not maintain a registered agent for service of process in South Carolina.
17. HCA maintains its accounting records and other business records in Tennessee.
18. HCA does not contract to supply services or things in South Carolina.
19. HCA is not a hospital, and is not licensed to be a hospital or healthcare facility in South Carolina.
20. HCA does not have an interest in, use, or possess real property in South Carolina.
21. HCA is the ultimate corporate parent of Trident Medical Center, LLC.
22. There are at least three levels of subsidiaries between HCA and Trident Medical Center, LLC.
23. HCA is not involved in, and does not oversee, control and/or manage the day-to-day operations, management and/or administration of Trident Medical Center, LLC—or any other hospital in South Carolina.
24. HCA did not commit a tortious act in South Carolina.
25. HCA did not cause tortious injury or death in South Carolina.
26. HCA does not contract to insure any person, property, or risk located within South Carolina.

27. HCA does not contract for work to be performed in whole or in part in South Carolina with any party to this lawsuit.

28. HCA does not produce, manufacture, or distribute goods with the reasonable expectation that those goods are to be used or consumed in South Carolina.

29. HCA has not entered into a contract to be performed in whole, or in part, by any party to the above-captioned matter in South Carolina.

30. HCA has never participated in, conducted negotiations with, and/or had discussions with the co-defendant doctors in the above-captioned lawsuit.

31. HCA does not maintain any savings, checking, brokerage, or other financial accounts in South Carolina.

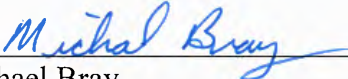
32. HCA does not owe, and has never owed, paid, or been required to pay taxes in South Carolina.

33. HCA has not purposefully availed itself to the privilege of conducting activities in South Carolina.

34. It is inconvenient for HCA to defend itself in the Charleston County Circuit Court because HCA is a holding company with its principal place of business in Nashville, Tennessee that has no contact with the state of South Carolina.

35. I declare under penalty of perjury that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NOT.



Michael Bray
Asst. Vice President of Financial Reporting
HCA Management Services, LP

SWORN and subscribed to before me this
6th day of December 2021

Holly Stockman
Notary Public for Davidson County
My Commission expires: 05/09/2023



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

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

Civil Action No. 2021-CP-10-05289

Plaintiffs,)

v.)

**AFFIDAVIT OF DR. PETER
HORWICH**

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.)

I, Dr. Peter Horwich, first being duly sworn, do hereby make oath and affirm as follows:

1. I am over (18) years of age, of sound mind, capable of making this oath, and fully competent to testify to the matters stated herein.

2. I am currently a member of the medical staff and performing surgeries at Trident Medical Center.

3. I have personal knowledge regarding the matters referenced herein.

4. I was a fellow at MUSC from July 1, 2019 to June 30, 2020 studying under the physicians who are parties to this litigation.

5. Because of the COVID pandemic, there were few opportunities for employment so I entered into another fellowship program in head and neck ablation and reconstructive surgery at LSU Health Shreveport.

6. In order to be hired at my second fellowship and be privileged at LSU Health Shreveport, I was required to and did provide case logs from MUSC for purposes of credentialing at LSU and to demonstrate my previous surgical experiences.

7. Because I was a fellow, I did not have my own preference cards to forward to LSU. Instead, because Dr. Hornig was my primary reconstructive mentor, I asked the MUSC Nurse Coordinator to provide Dr. Hornig's preference cards to me, which I then used as a template to choose my preferred instruments at LSU.

8. At no time did anyone from MUSC assert that the case logs or preference cards were a trade secret, or confidential, or proprietary, and no one at MUSC objected to the transfer of the case logs or Dr. Hornig's preference cards to LSU.

9. On or about September 1, 2021, Dr. Hornig contacted me regarding an opportunity to work at the head and neck program at Trident Medical Center.

10. Based upon the information provided by Dr. Hornig, I pursued membership on the medical staff at Trident.

11. As part of my duties at Trident over the past few months, I have been responsible for the establishment of a multidisciplinary clinic for the care of head and neck oncology patients.

12. Additionally, I have provided advice to Trident on the selection and implementation of equipment to be used by physicians and staff at the head and neck oncology program at Trident. The information and advice I have provided to Trident includes such information as that on the equipment lists and physician preference cards at issue in this litigation. Similar information was made available to me, without restriction, during my time at MUSC.

13. I have also provided advice and direction to Trident on the purchase and setup of clinical instruments and all supplies necessary for surgical head and neck oncology and reconstructive surgery at Trident.

14. I have also provided training for new staff members and coordinated with Trident hospital administration regarding all aspects of the head and neck oncology program.

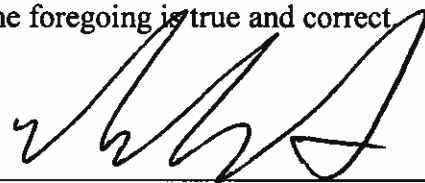
15. I arrived at Trident Medical Center on October 19, 2021, when I began my administrative duties for the program.

16. The head and neck oncology reconstructive practice has been fully implemented at Trident and is currently performing surgeries for patients in need of such care.

17. Having previously worked at MUSC and LSU, I believe that the facilities and infrastructure of the Trident head and neck oncology program are state-of-the-art, and the best with which I have ever worked. For example: a.) Trident has a brand new 10-bed ICU dedicated to head and neck patients and neurosurgery patients. b.) The instruments and supplies provided by Trident are brand new, state-of-the-art, and the best instruments and supplies available for purchase today. c.) The head and neck cancer clinic established by Trident is a brand new custom designed, multidisciplinary focused ambulatory clinic with the ability to treat patients from initial diagnosis through to survivorship. All of the surgical equipment provided at Trident is state-of-the-art and is the best collection of equipment for the treatment of head and neck oncology patients that I have seen in any setting. The clinic that has been established at Trident is a comprehensive, multidisciplinary clinic which includes providers of all ancillary services necessary for the optimal care for head and neck cancer patients.

18. I declare under penalty of perjury that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NOT.



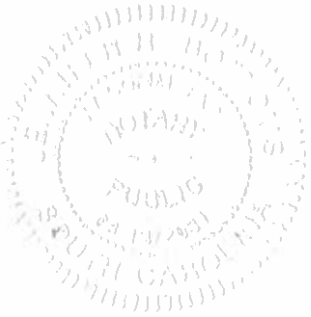
Dr. Peter Horwich
Physician

SWORN and subscribed to before me this
17th day of December 2021

Frank R. Butler

Notary Public for 08/13/2031 South Carolina

My Commission expires: 67



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON
PLEAS
NINTH JUDICIAL CIRCUIT

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

Civil Action No. 2021-CP-10-05289

Plaintiffs,)

v.)

AFFIDAVIT OF ELAINE MEULI

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.

I, Elaine Meuli, first being duly sworn, do hereby make oath and affirm as follows:

1. I am over (18) years of age, of sound mind, capable of making this oath, and fully competent to testify to the matters stated herein.
2. I have been employed in the role of Director of Medical Staff Services at Trident Medical Center since August 2017.
3. I have personal knowledge regarding the matters referenced herein.
4. I have 37 years of experience in physician credentialing in the hospital setting.

5. Previously, I was the Director of Medical Staff Services at Easter Cooper Medical Center in Mt. Pleasant, as well as St. Elizabeth's Hospital in Brighton, Massachusetts.

6. In my capacity as Director of Medical Staff Services, I coordinated the credentialing of each of the physicians who are parties in the present litigation.

7. In my experience, and to my personal knowledge, in order to demonstrate competency to perform surgical procedures, surgeons who are applicants for privileges at any hospital must provide case logs of each of the types of procedures for which they seek privileges at a new institution. It is the normal and routine practice for such case logs from other institutions to be provided to the hospital when the physician seeks to obtain new privileges. I have never heard of such case logs ever being identified as trade secrets or as protected confidential information or proprietary records or documents.

8. In the present case, consistent with my prior experience, each of the surgeons presented case logs of their historical cases in order to demonstrate current competency to perform each of the procedures for which they sought privileges at Trident.

9. It is standard in the industry at all hospitals that surgeons present case logs to demonstrate current competency.

10. It is a standard practice for hospitals to maintain case logs on surgeons to ensure that these physicians develop and maintain competency to perform specific surgical procedures.


11. The case logs presented to Trident by the physicians who are parties in this action bear no designation or notation that they came from MUSC, or that they are trade secrets, or proprietary, or confidential.

12. In my experience, case logs are regarded and understood to be property of the individual physician.

13. I routinely receive case logs from all surgeons from facilities all over the country when seeking credentialing at Trident Medical Center, and I review them.


14. I declare under penalty of perjury that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NOT.



Elaine Meuli
Director of Medical Staff Services
Trident Medical Center

SWORN and subscribed to before me this
7th day of December 2021



Notary Public for South Carolina
My Commission expires: 08/13/2031