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**Aug 16 2022**  
**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

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

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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.

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PETITION FOR FULL APPELLATE COURT REVIEW OF ORDER DENYING  
SUPERSEDEAS

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Appellants Medical University of South Carolina (“MUSC”) and University Medical Associates of the Medical University of South Carolina (“UMA”) respectfully petition this Court, pursuant to Rule 241(d)(2) of the South Carolina Appellate Court Rules (“SCACR”),<sup>1</sup> for a full appellate court review of the Order filed on August 11, 2022 denying Appellants’ Petition for Writ of Supersedeas.

### **PROCEDURAL HISTORY**

Appellants filed a Petition for Writ of Supersedeas with this Court on July 22, 2022, in accordance with the requirements of Rule 241, SCACR. In the Petition, Appellants requested review by Chief Judge Bruce H. Williams, and requested that Judge Williams either (1) issue an order granting the requested relief during the pendency of the appeal or (2) issue an order granting the requested relief on a temporary basis and refer the matter to the full appellate court for a hearing.

Appellants and Respondents completed briefing on the Petition for Writ of Supersedeas on August 8, 2022. Three days later, on August 11, 2022, Judge James E. Lockemy issued a two-sentence Order that did not address the merits of the Petition. Instead, Judge Lockemy’s Order states, “After careful consideration, Appellants’ petition for supersedeas is denied. Appellants’ request for a hearing on their petition is denied.”

### **PETITION FOR HEARING**

Under Rule 241(d)(2), “upon issuance of a final order by an individual judge or justice [on the petition for supersedeas], an aggrieved party may petition the full appellate court for review of that decision.” Rule 241(d)(7), SCACR, further states “[a]ny party aggrieved by a decision of . . . an individual judge or justice may petition under this Rule for a review of that decision.” Finally,

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<sup>1</sup> Alternatively, Appellants move for an *en banc* hearing to hear or rehear the Petition under Rule 219(a), SCACR.

under Rule 219(a), SCACR, this Court has the authority to hear or rehear an appeal or other proceeding *en banc*.

Appellants respectfully request that the full Court of Appeals review Judge Lockemy's Order. Respectfully, Judge Lockemy's Order is procedurally and substantively incorrect.

Procedurally, Judge Lockemy's Order violates Rule 220(b), SCACR. *See* Rule 220(b), SCACR ("In every decision rendered by an appellate court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case."); *see also In re Memorandum Decisions by Ct. of Appeals*, 322 S.C. 53, 54, 471 S.E.2d 456, 457 (1993) (explaining the Court of Appeals' limited authority to issue an opinion without giving a reason for each issue). Judge Lockemy's Order fails to address any of the arguments made in the Petition, and for this reason, it violates Rule 220(b) and the Supreme Court's opinion in *In re Memorandum Decisions by Ct. of Appeals*.

Substantively, Judge Lockemy's Order fails to grant supersedeas relief where it is warranted. The Petition seeks to preserve the fruits of Appellants' appeal of the circuit court's order denying its motion for temporary injunction. Rule 241(c)(2), SCACR; *Graham v. Graham*, 301 S.C. 128, 130, 390 S.E.2d 468, 470 (Ct. App. 1990). If the Petition is not granted, the fruits of Appellants' appeal will be lost before the appeal can ever be decided. In moving for temporary injunction, Appellants asked the circuit court to order Respondents to return MUSC's Property.<sup>2</sup> The circuit court refused, and Appellants appealed that decision to this Court. While the appeal is pending, Respondents, a competitor of MUSC, remain in possession of MUSC's Property. By

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<sup>2</sup> MUSC's Property is specifically defined in the Petition.

remaining in possession of the Property, Respondents erode the competitive advantage MUSC has gained through lawful means.

There is no dispute that Respondents are in possession of MUSC's Property. Respondents came into possession of the Property through employee misappropriation. The Individual Defendants<sup>3</sup> were long-term employees and faculty members at MUSC. The Individual Defendants decided to leave their employment with MUSC and commence work for the Respondents' head and neck cancer practice at Trident Regional Medical Center in North Charleston.

While still employed by MUSC and while still members of UMA, the Individual Defendants misappropriated the Property and disseminated it to the Respondents. Prior to the unlawful actions of the Individual Defendants, the Respondents never had any right to access the Property. MUSC seeks an immediate return of this Property to preserve the fruits of its meritorious appeal.

Due to the very serious matters raised in the Petition, Appellants hereby petition the full Court of Appeals for a review of Judge Lockemy's Order denying Appellants' Petition. Appellants specifically request a hearing before the full Court so their Petition may be considered.

*[signature block to follow]*

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<sup>3</sup> The Individual Defendants are Terry Day, Betsy Davis, Joshua Hornig, Eric Lentsch, David Neskey, and Anand Sharma.

Respectfully submitted,

**BURR & FORMAN, LLP**

*s/James K. Gilliam*

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Columbia, South Carolina  
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PROOF OF SERVICE

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I, Amy C. Elkins, an employee of Burr & Forman LLP, hereby certify that a true and correct copy of the Petition for Full Appellate Court Review of Order Denying Supersedeas was served upon counsel for the Respondents in the above-captioned matter via email at the email addresses shown below, this 16<sup>th</sup> day of August, 2022, as follows:

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