

# McGowan, Hood & Felder, LLC

Chad A. McGowan (SC,GA,NC)  
 S. Randall Hood  
 John G. Felder, Jr.  
 W. Jones Andrews, Jr.  
 Jordan C. Calloway  
 Susan F. Campbell  
 Ashley White Creech  
 Christy M. DeLuca (SC,IL)  
 Ruskin C. Foster  
 Lara Pettis Harrill



Whitney Harrison  
 Patrick M. Killen  
 William A. McKinnon (SC,DC)  
 Daniel "Ernie" Feagler  
 Robert V. Phillips  
 Seth Rose  
 James Stephen Welch\* (SC,OK)  
 Jay F. Wright  
 Joseph G. Wright, III\*  
 Of Counsel\*

Writer's Email: rfoster@mcgowanhood.com

May 30, 2013

**RECEIVED**

MAY 30 2013

The Supreme Court of South Carolina  
 Attn: Daniel E. Shearhouse, Clerk of Court  
 Post Office Box 11330  
 Columbia, SC 29211

**S.C. SUPREME COURT**

Re: Hoftiezer v. Hicklin, et al.  
 Appellate Case No: 2011-203086

Dear Mr. Shearhouse:

Please be advised that the above-referenced matter was scheduled to be heard on Wednesday, May 15, 2013 at 9:30 a.m.. We settled this matter before the hearing and advised the Court of same. An Order was issued on May 14<sup>th</sup> by this Court stating that if the settlement is approved, the appeal would be dismissed. Accordingly, I am enclosing a copy of the signed and filed Order Approving Settlement. If you would kindly let me know if there is anything else that is needed to have this matter properly disposed of, it would be greatly appreciated.

With kindest regards, I remain

Sincerely,

Ruskin C. Foster

RCF/ldt  
 Attachment  
 cc: Perry Boulter, Esquire

# The Supreme Court of South Carolina

James Hoftiezer, as Personal Representative for the  
Estate of Martha Sue Hoftiezer, Appellant,

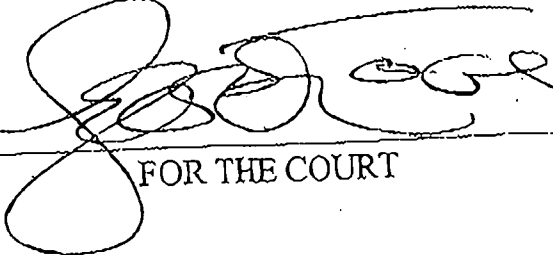
v.

D. Mark Hicklin, M.D., Drs. Taylor, Hicklin,  
Westmoreland and Coley, P.A., and Spartanburg  
Regional Helath Services District, Inc., d/b/a Spartanburg  
Regional Healthcare System, Respondents.

Appellate Case No. 2011-203086

\_\_\_\_\_  
ORDER  
\_\_\_\_\_

This matter is remanded to the circuit court to determine if the proposed settlement should be approved. Pending action by the circuit court, this appeal will be held in abeyance. Counsel shall promptly notify this Court of the action taken by the circuit court. If the settlement is approved, this appeal will be dismissed.

  
C.J.  
FOR THE COURT

Columbia, South Carolina  
May 14, 2013

cc: Ruskin C. Foster, Sr., Esquire  
Ginger D. Goforth, Esquire  
Perry D. Boulter, Esquire  
Bradley Davis Hewett, Esquire



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

IN THE COURT OF COMMON PLEAS

JAMES HOFTIEZER, as Personal )  
Representative for the Estate of )  
Martha Sue Hoftiezer, )

Plaintiff, )

ORDER APPROVING SETTLEMENT

vs. )

Case Number: 2009-CP-42-5373

D. MARK HICKLIN, M.D., )  
DRS. TAYLOR, HICKLIN, )  
WESTMORELAND AND COLEY, P.A. )  
and SPARTANBURG REGIONAL )  
HEALTH SERVICES DISTRICT, INC., )  
d/b/a Spartanburg Regional )  
Healthcare System, )

Defendants. )

This matter comes before the Court upon the Petition of Plaintiff, as Personal Representative of the Estate of Martha Sue Hoftiezer, seeking the approval of a settlement of all claims arising out of the death of Martha Sue Hoftiezer. This matter has currently been remanded to this Court from the South Carolina Supreme Court thereby vesting jurisdiction in this Court for purposes of this settlement hearing. (see attached Exhibit "A")

It appears that Plaintiff's decedent, Martha Sue Hoftiezer, was a patient of D. Mark Hicklin, M.D. on July 31, 2006, where she was treated in their office for chest discomfort. Ms. Hoftiezer died on August 4, 2006 after suffering from cardiac arrest.

2013 MAY 29 PM 1:26  
CLEMSON COUNTY  
CLERK OF COURT  
SPARTANBURG COUNTY

A hearing was held before me on May 29, 2013. Present were the Plaintiff, James Hoftiezer, as Personal Representative of the Estate of Martha Sue Hoftiezer, Ruskin C. Foster, attorney for Plaintiff and Perry D. Boulier, attorney for Defendants.

It appears to the Court that a proposed settlement has been reached in this matter, subject to the Court's approval, for the total sum of one hundred sixty-five thousand and no/100 dollars (\$165,000.00) being paid by Defendant Spartanburg Regional Health Services District, Inc.

Defendants are protected by the provisions of the South Carolina Tort Claims Act. Plaintiff's recovery in this matter against Defendants is limited pursuant to the provisions of Section 15-78-120 of the South Carolina Tort Claims Act. Defendants are self-insured in this matter up to the amount of \$600,000 and maintains excess coverage for all exposure from \$600,000 to the statutory cap of \$1.2 million. Defendant Dr. Hicklin was, at all times involved in this matter, employed by Defendant Spartanburg Regional Health Services District, Inc. Accordingly, pursuant to the provisions of Section 15-78-70 of the South Carolina Tort Claims Act, Dr. Hicklin is dismissed as an individual Defendant in this matter and Defendant Spartanburg Regional Health Services District, Inc is substituted as the sole Defendant as to all allegations of negligence against Dr. Hicklin. Defendant Taylor, Westmoreland, Hicklin, and Coley, P.A. was the practice group under which Dr. Hicklin practiced prior to his employment with Defendant Spartanburg Regional Health Services District, Inc. Defendant Taylor, Westmoreland, Hicklin, and Coley, P.A. is likewise dismissed in this matter. settlement funds are being paid by Defendant Spartanburg Regional Health Services District, Inc.

CLERK OF COURT  
SERIALS SECTION  
2013 MAY 29 PM 1:26  
TAYLOR, WESTMORELAND, HICKLIN, AND COLEY, P.A.

Plaintiff requests that Seven Thousand Eight Hundred Seven and 26/100 dollars (\$7,807.26) of the settlement proceeds be allocated to the survival action and One Hundred Forty Eight Thousand Three Hundred Thirty Eight and 02/100 dollars (\$148,338.02) be allocated to the wrongful death action.

Plaintiff retained the services of The Mike Kelly Law Group, LLC and Ruskin C. Foster in this matter. The Mike Kelly Law Group, LLC and Ruskin C. Foster have agreed that no attorney's fees from the settlement proceeds shall be paid to The Mike Kelly Law Group, LLC or Ruskin C. Foster. No legal fees of any kind will be deducted from the settlement amount however incurred costs of eight thousand eight hundred fifty-four and 72/100 dollars (\$8,854.72) shall be reimbursed to The Mike Kelly Law Group for costs and expenses in connection with the litigation of this matter. After deduction of attorneys' costs, the net amounts shall be payable to the Ruskin C. Foster, LLC and James Hoftiezer, as Personal Representative of the Estate of Martha Sue Hoftiezer's and placed in trust until such time as the money is available. Based on the testimony presented at the hearing, the Court finds that this allocation is reasonable and appropriate.

It appears that the Plaintiff understands that he has the right to have this matter further litigated and that such litigation might result in a verdict greater than the amount of the settlement. It further appears that Plaintiff understands the consequences of this settlement and the finality of same and the resulting release of all claims against the Defendants. After considering all the aspects of this matter, I am of the opinion that the proposed settlement is fair, reasonable and in the best interests of the Estate and should be approved.

FILED  
CLERK OF COURT  
SHERMAN COUNTY  
2013 MAY 09 PM 1:26  
HONORABLE JUDGE J. BOBBY

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the settlement and disbursements as set forth above are approved, such that the Defendant Spartanburg Regional Health Services District, Inc. will pay to the Plaintiff the total sum of one hundred sixty-five thousand and no/100 dollars (\$165,000.00). I find that there was evidence of some conscious pain and suffering such that the proceeds from this settlement shall be allocated as set forth above.

IT IS FURTHER ORDERED that Defendant Dr. Hicklin is dismissed with prejudice as a Defendant in this matter pursuant to Section 15-78-70 of the South Carolina Tort Claims Act and Defendant Spartanburg Regional Health Services District, Inc. is substituted as the sole Defendant in this matter concerning all allegations of wrongdoing. Defendant Taylor, Westmoreland, Hicklin, and Coley, P.A. is likewise dismissed with prejudice as a Defendant in this case based on the fact that it was not the employer of Dr. Hicklin at the time of the alleged wrongdoing.

IT IS FURTHER ORDERED that Plaintiff is authorized and directed to execute those releases or other documents which may be required to settle and dismiss all causes in this action or any other action against Defendants, their officials, agents and employees arising out of the care and treatment provided to Martha Sue Hoftiezer as set forth above and in Plaintiff's Complaint in this matter.

IT IS FURTHER ORDERED that this action against Defendant Spartanburg Regional Health Services District, Inc. is hereby dismissed, with prejudice.

FILED  
 CLERK OF DISTRICT  
 SPARTANBURG COUNTY  
 2013 MAY 29 PM 1:26  
 MARCOLE DEBARDLEY

IT IS SO ORDERED.

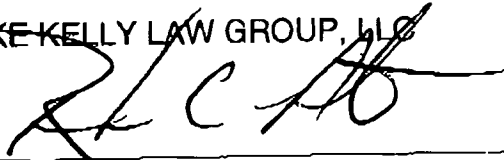
St Roger & Couch / M. Hope Blackley  
Roger L. Couch, Judge  
Seventh Judicial Circuit DC

May 29, 2013

Spartanburg, South Carolina

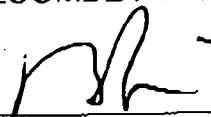
WE CONSENT:

MIKE KELLY LAW GROUP, LLC



Ruskin C. Foster  
Attorneys for Plaintiff

HOLCOMBE BOMAR, P.A.



Perry D. Boulter  
Attorneys for Defendants

A CERTIFIED COPY  
M. Hope Blackley  
CLERK OF COURT  
SPARTANBURG COUNTY  
BY: M. Hope Blackley C.  
DATED 5-29-13

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2013 MAY 29 PM 1:26  
M. HOPE BLACKLEY

# The Supreme Court of South Carolina

James Hoftiezer, as Personal Representative for the  
Estate of Martha Sue Hoftiezer, Appellant,

v.

D. Mark Hicklin, M.D., Drs. Taylor, Hicklin,  
Westmoreland and Coley, P.A., and Spartanburg  
Regional Helath Services District, Inc., d/b/a Spartanburg  
Regional Healthcare System, Respondents.

Appellate Case No. 2011-203086

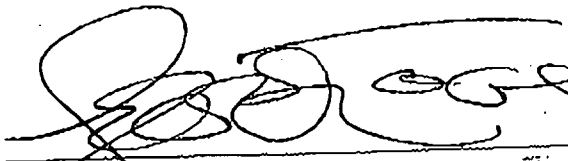
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MAY 30 2013

S.C. SUPREME COURT

ORDER

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\_\_\_\_\_  
FOR THE COURT

Columbia, South Carolina  
May 14, 2013

cc: Ruskin C. Foster, Sr., Esquire  
Ginger D. Goforth, Esquire  
Perry D. Boulter, Esquire  
Bradley Davis Hewett, Esquire

CLERK OF COURT  
SPARTANBURG, SOUTH CAROLINA  
MAY 29 2013 1:26 PM  
RUSKIN C. FOSTER, SR.

