

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Letitia H. Verdin, Circuit Court Judge

Case No. 2010-CP-5743

Gregory J. Feldman, MD, Joseph A. Boscia, III, MD,
Upstate Lung & Critical Care Specialists, PC, and
Devendra Shantha, MD,.....Appellants,

v.

William Mark Casey, Ray E. ("Chuck") Thompson,
and Charles M. Fogarty, **M.D.**,..... Respondents.

APPENDIX TO RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Gregory J. Feldman, MD, Joseph)
A. Boscia III, MD, Upstate Lung and)
Critical Care Specialists PC, and)
Devendra T. Shantha, MD,)

2010-CP-42-5743

Plaintiffs,)

Complaint
(Jury Trial Demanded)

vs.)

William Mark Casey,)
Ray E. "Chuck" Thompson, and)
Charles M. Fogarty, MD.)

C. A. No. 2010-CP-42-_____

Defendants.)
_____)

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Now comes the Plaintiffs complaining of the Defendants and allege:

Venue and Jurisdictional Allegations

1. That Plaintiffs are citizens of the County of Spartanburg, State of South Carolina.
2. Defendants are, upon information and belief, citizens of the County of Spartanburg, State of South Carolina.
3. Venue and jurisdiction are vested in the Circuit Court of the Seventh Judicial Circuit in and for Spartanburg County, South Carolina.

Factual Allegations

4. The medical malpractice action from which this complaint arises was captioned *William Mark Casey v. Gregory J. Feldman, M.D., Joseph A. Boscia, III, M.D., Devendra Shantha, M.D. and Upstate Lung and Critical Care Specialists, PC*, filed in the Court of Common Pleas for Spartanburg County, Seventh Judicial Circuit, case number 2006-CP-42-1728.

5. In the medical malpractice action, William Mark Casey through his attorney, Mr. Ray E. "Chuck" Thompson, alleged Doctors Feldman, Boscia and Shantha breached the standard of care respecting his medical treatment and as a result, Mr. Casey suffered various injuries including traumatic brain damage.

6. Mr. Casey sought actual and punitive damages arising out of certain treatment and care, which took place by the Doctors from May 28, 2004 through June 3, 2004.

7. Essentially, Mr. Casey was admitted to Spartanburg Regional Medical Center suffering from chest pain occurring while at his workplace at Michelin on May 28, 2004.

8. As part of the medical work-up at the emergency room, a chest x-ray was done on that date which revealed a small metallic density foreign body, appearing to be within Mr. Casey's airway.

9. Accordingly, Dr. Boscia performed a flexible bronchoscopy, which revealed abnormal tissue within Mr. Casey's airway, but did not result in retrieval of a foreign object.

10. Thereafter, Dr. Boscia referred Mr. Casey to his partner, Dr. Feldman, for a rigid bronchoscopy.

11. Mr. Casey was sent home until June 3, 2004 when he was admitted for the rigid bronchoscopy.

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12. Dr. Feldman performed the rigid bronchoscopy with Dr. Shantha, who was the attending anesthesiologist.

13. At the close of the rigid bronchoscopy, Mr. Casey suffered a pneumothorax, a known risk, requiring his stay in the hospital through June 6, 2004.

14. Following his release from the hospital, Mr. Casey began to complain of pacing the floor, forgetfulness, short-term memory loss, personality changes and total disability.

15. After Doctors Feldman and Boscia would not support Mr. Casey's disability claims, Mr. Casey then came to be under the care of Charles Fogarty, M.D., another Spartanburg Pulmonologist.

16. Mr. Casey, Mr. Thompson and Dr. Fogarty asserted that as a result of the rigid bronchoscopy, Mr. Casey suffered a permanent brain injury due to bubbles or air emboli migrating to Mr. Casey's brain.

17. The office notes of Joseph Grace, Ph.D., a psychologist and therapist in Spartanburg who has seen Mr. Casey on a semi-weekly basis since his alleged injuries were allowed into evidence in the medical malpractice action by agreement of the parties.

18. Contrary to the claims of Mr. Casey, the notes of Dr. Grace show that Mr. Casey was interacting with females and carrying on an active social life within the first year to year and a half after his alleged injuries.

19. Mr. Casey and his attorney, Mr. Thompson, knew of this information contained within paragraph number 18.

20. Additionally, Dr. Grace's notes show that Mr. Casey complained bitterly about the diminishment of his skills with his short game in playing golf and that he simply did not enjoy golf as much as he did before.

21. However, Mr. Casey's golf handicap printout from the South Carolina Golf Association showed that his golf handicap was lower after the supposed injury than it was prior thereto.

22. It was clear Mr. Casey continued to play golf with a reasonable degree of frequency after the treatment and care by Doctors Feldman, Boscia and Shantha.

23. Mr. Casey and his attorney, Mr. Thompson, knew of this information contained within paragraph numbers 20, 21 and 22.

24. The notes of Dr. Grace also indicated that Mr. Casey had additional stressors at work in his life which pre-existed any treatment and care by Doctors Feldman, Boscia and Shantha and which experts acknowledged would be the type forces which induce depression.

25. Some examples where that Mr. Casey had undergone a separation from his wife of many years, his teenage children were engaging in troublesome behavior, he had financial stresses which had caused the sale of his home on the golf course and he for many years had continued to work on an extremely demanding job which required large amounts of narcotic and non-narcotic pain medication to get through the day.

26. Mr. Casey and his attorney, Mr. Thompson, knew of this information contained within paragraph number 24 and 25.

27. Jeffrey Smith, M.D., a psychiatrist who treated Mr. Casey subsequent to the alleged negligence, testified he saw no permanent psychiatric or behavioral injury, but only anxiety and depression and that Mr. Casey had not been honest with him about his pre-existing depression.

28. After a period of depression, Dr. Smith indicated Mr. Casey was able to return to the workforce in early 2006.

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HOSPITALITY

29. Mr. Casey and his attorney, Mr. Thompson, knew of this information contained within paragraph numbers 27 and 28.

30. Before seeing Mr. Casey as a patient within his medical practice, Dr. Fogarty incredibly hatched a theory that Mr. Casey had suffered a brain injury, despite being a Pulmonologist and not a Neurologist or any other specialist relating to such brain injuries.

31. That theory was cultivated by Dr. Fogarty along with a number of allegations of deviations from the standard of care by Doctors Feldman, Boscia and Shantha and suit was filed in 2006.

32. It is important to note that an admitted fact of the medical malpractice action was that Dr. Fogarty's theories of Mr. Casey's alleged injuries were unsupported by any medical literature.

33. Dr. Fogarty's role on behalf of Mr. Casey far exceeded the reasonable role of a treating physician or expert witness and he became an active co-conspirator and catalyst of the litigation team, thereby seeking to ensure success for the nefarious venture.

34. Dr. Fogarty attempted to hide his role and level of involvement in the medical malpractice action by making material misrepresentations during his deposition.

35. Dr Fogarty was well known by Doctors Feldman and Boscia, prior to the medical malpractice action.

36. Before Doctors Feldman and Boscia became partners within Upstate Lung and Critical Care Specialists, Doctors Feldman and Fogarty had been partners for a number of years.

37. The Feldman/Fogarty separation from joint medical practice had been acrimonious.

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38. In addition, Doctors Feldman and Boscia had formed a pharmaceutical research company, which Dr. Fogarty viewed as competition to his own medical practice and research company.

39. Prior to the medical malpractice action, Dr. Fogarty actively sought to interfere with Doctors Feldman's and Boscia's research company and their patient care.

40. During the medical malpractice action, Mr. Thompson, Mr. Casey's attorney, arranged for a diagnostic medical test (MRI) to be performed on Mr. Casey's brain under a fictitious name and birth date.

41. Mr. Thompson arranged for the test through his brother-in-law, a North Carolina general surgeon having no connection to Mr. Casey or the case, to be performed at an out of state hospital.

42. The Radiologist's report of the MRI test results stated that the MRI was negative.

43. Mr. Thompson received this report, and then continued to litigate the matter for eighteen months thereafter without revealing the MRI test or the radiology report.

44. To maintain the secrecy of the MRI test and findings, Mr. Thompson instructed Mr. Casey to deny having any diagnostic medical tests, including specifically, the MRI, in his sworn deposition testimony less than seven months after the MRI was performed and Mr. Casey did so.

45. Ultimately, the Doctors' counsel fortuitously learned of the test by virtue of an anonymous letter sent to attorney Spencer King.

46. The MRI test results were very important, inasmuch as it would tend to negate the theory that Mr. Casey suffered irreversible brain damage on June 3, 2004.

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47. It was a material, important piece of evidence to the Doctors, which was withheld, concealed, and secreted from them by Mr. Casey and his counsel, with a very high degree of impropriety.

48. By the time the Doctors' counsel received the Casey affidavit confirming the MRI and the results of the MRI, in excess of thirty depositions had been taken.

49. These depositions included all of the Doctors, eight treating physicians and five medical experts.

50. The medical malpractice action was tried before the Court and a jury in the Spartanburg County Court of Common Pleas, commencing May 11, 2010.

51. After 14 trial days before the Court and spanning three weeks, the jury returned a verdict in favor of the Doctors on May 28, 2010 after deliberating between two and two and one-half hours.

52. Prior to the trial, Dr. Shantha had been dismissed from proceedings by a motion for summary judgment.

FIRST CAUSE OF ACTION
(Abuse of Process)

53. Plaintiffs reallege all above paragraphs, to the extent not inconsistent herewith as if each is set forth *in toto* hereunder.

54. Defendants have misused the legal process of the medical malpractice action in an attempt to accomplish a purpose for which said proceedings were not allowed by law, specifically, the assassination of Plaintiffs' reputations by publicizing serious and unfounded allegations against them, and the attempted misuse of the legal process for personal, professional, and economic gain.

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55. Defendants have acted with malice and conscious disregard for the rights of the Plaintiffs by committing willful acts of submission of false statements and attempted suppression of evidence, which was required to be produced by the process of litigation, in an effort to injure the Plaintiffs.

56. Plaintiffs have suffered damages, loss and harm, including but not limited to their reputations, money, emotional tranquility, and privacy.

57. That said damages, loss and harm was the proximate and legal result of the misuse of such legal process aforementioned.

SECOND CAUSE OF ACTION
(Civil Conspiracy)

58. Plaintiffs reallege all above paragraphs, to the extent not inconsistent herewith, as if each is set forth *in toto* hereunder.

59. Defendants joined together to injure and damage the Plaintiffs. The common and shared purpose of the enterprise, or conspirators, was to economically reward themselves at the expense of the Plaintiffs through the misuse of the medical malpractice action.

60. Defendants sought monetary gain by way of settlement or judgment. Further, Defendant Fogarty also sought to professionally damage the Plaintiffs, thereby increasing his own business value and productivity at the expense of the Plaintiffs' businesses and their productivity.

61. The Defendants' actions resulted in damages, including, but not limited to, loss of productivity, attorneys' fees and costs, emotional distress, damage to professional Plaintiffs' reputations, accounting expenses and further damages to be ascertained through this lawsuit.

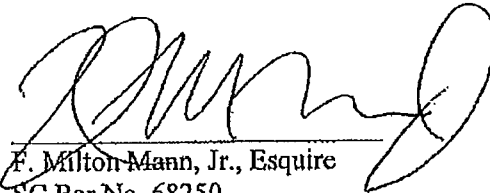
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WHEREFORE, plaintiff prays that this court enter judgment:

- a. For a jury trial to be conducted in this matter;
- a. For actual and compensatory damages in an amount to be determined by the jury;
- b. For punitive damages in an amount to be determined by the jury; and
- c. For the cost of this action, including reasonable attorney's fees and for other such relief as appears just and equitable in the premises.

F. MILTON MANN, JR
ATTORNEY FOR PLAINTIFF

BY:



F. Milton Mann, Jr., Esquire
SC Bar No. 68250
1089 Boiling Springs Road
Spartanburg, South Carolina 29303
(864) 208-0359

October 27, 2010

Spartanburg, South Carolina

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SPARTANBURG COUNTY
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M. HOPE BLANKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2010-CP-42-5743

Gregory J. Feldman, MD and)
Joseph A. Boscia, III, MD, and)
Upstate Lung and Critical Care)
Specialists, PC, and)
Devendar T. Shantha, MD,)

Plaintiffs,)

vs.)

William Mark Casey,)
Ray E. "Chuck" Thompson, and)
Charles M. Fogarty, MD,)

Defendants.)

DEFENDANT WILLIAM MARK CASEY'S
MOTION TO DISMISS

TO: The plaintiffs, and F. Milton Mann, Jr., Esquire, their counsel:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as counsel for Defendant William Mark Casey, will move this Honorable Court, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, and at such time and place as the Court shall direct, for an Order, dismissing the plaintiffs' complaint against him.

The grounds for the motion are that the plaintiffs' complaint fails to facts sufficient to constitute a cause of action against this defendant. The motion is made pursuant to Rule 12(b)(6), *South Carolina Rules of Civil Procedure*.

In the alternative, and as further grounds for the dismissal of the complaint, Defendant Casey will move for dismissal on the grounds that the plaintiffs have failed to join a party under Rule 19(a), *South Carolina Rules of Civil Procedure*. The motion is made pursuant to Rule 12(b)(7), *South Carolina Rules of Civil Procedure*.

The motion will be supported by any memoranda to be filed by the defendant, by the applicable precedents, and by such argument of counsel as the Court may allow.

Counsel hereby affirms that as this motion is a motion to dismiss, no consultation with opposing counsel is required, pursuant to Rule 11(a), *South Carolina Rules of Civil Procedure*.

Respectfully submitted,
Mooneyham, Berry & Karow, LLC



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Greenville, South Carolina

December 15, 2010

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Gregory J. Feldman, M.D., Joseph A. Boscia, III, M.D., Upstate Lung and Critical Care Specialists, P.C., and Devendra T. Shantha, M.D.,

Plaintiffs,

v.

William Mark Casey, Ray E. "Chuck" Thompson, and Charles M. Fogarty, M.D.,

Defendants.

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

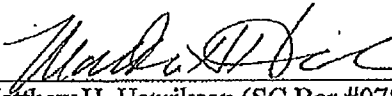
) C.A. NO.: 2010-CP-42-05743

) **MOTION TO DISMISS OF DEFENDANT**
) **RAY E. "CHUCK" THOMPSON**

To: Plaintiffs and their counsel:

Defendant, Ray E. "Chuck" Thompson, by and through his undersigned attorneys, hereby moves this Honorable Court at such time and place as counsel may be heard for an Order dismissing the Complaint filed against him herein. This motion is made pursuant to SCRCF Rule 12(b)(6) and is based on the fact that each cause of action pled in the Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action and should be dismissed. The motion is further based on SCRCF Rule 12(b)(7).

This motion may be supported by any memoranda as may be filed with the Court.


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Attorneys for Defendant Thompson
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Phone: (864) 232-4400
mhenrikson@clarksonwalsh.com

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December 16, 2010
Greenville, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Gregory Feldman, MD, Joseph Boscia, III, et)
 al.)

IN THE COURT OF COMMON PLEAS
 7th JUDICIAL CIRCUIT
 CASE NO.: 2010-CP-42-5743

MOTION AND ORDER INFORMATION

Plaintiff,)

FORM AND COVERSHEET

vs.)

William Mark Casey, Ray E. "Chuck")
 Thompson, and Charles M. Fogarty, MD)
 Defendant.)

Plaintiff's Attorney: F. Milton Mann, Bar No. 68250 Address: 1089 Bolling Springs Rd. Spartanburg, SC 29303 Phone: 864-208-0359 Fax 864-208-0233 E-mail: milton.mann@gmail.com Other: _____	Defendant's Attorney: Charles M. Fogarty, MD, Bar No. Pro Se Address: 450 Mudd Creek Rd Inman, SC 29349 Phone: 864-431-694 Fax 864-583-1518 E-mail: cfogarty@medresearch.com Other: _____
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: 12(b)(6) Motion to Dismiss Complaint Estimated Time Needed: 30 minutes Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for <input type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant	December 20, 2010 Date submitted
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$ <u>25.00</u> <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Gregory J. Feldman, MD,)
 Joseph A. Boscia III, MD,)
 Upstate Lung and Critical Care Specialists,)
 Devendra T. Shantha, MD,)
)
 Plaintiffs,)
)
 vs.)
)
 William Mark Casey,)
 Ray E. "Chuck" Thompson,)
 Charles M. Fogarty, MD.)
 _____)

IN THE COURT OF COMMON PLEAS

2010-CP-42-5743

Defendant Fogarty's Motion
 To Dismiss Plaintiffs' Complaint

Defendant, Charles M. Fogarty, MD Motion to Dismiss Complaint of Gregory J. Feldman, MD, Joseph A. Boscia III, MD, Upstate Lung and Critical Care Specialists PC, and Devendra T. Shantha, MD Pursuant to SCRCF 12(b)(6) With Memorandum in Support.

Defendant Charles M. Fogarty, MD, acting *pro se*, hereby gives notice of his intent to move and does so move this Court to dismiss the Complaint of Gregory J. Feldman, MD, Joseph A. Boscia, III, MD, Upstate Lung and Critical Care Specialists PC, and Devendra T. Shantha, MD (collectively referred to as "Plaintiffs" or "Doctors Feldman, Boscia, and Shantha") pursuant to Rule 12 (b) (6) of the SCRCF. The Plaintiffs have alleged two causes of action: abuse of process and civil conspiracy. The Plaintiffs' Complaint should be dismissed for the following reasons:

- 1) Plaintiffs' civil conspiracy claim is time barred by the applicable statute of limitations.

- 2) Plaintiffs' civil conspiracy claim does not meet the pleading requirements under South Carolina Law and should be dismissed since the civil conspiracy claim does not state any additional acts in furtherance of the conspiracy, but merely incorporates the same allegations contained in the abuse of process claim.
- 3) Plaintiffs' abuse of process claim is time barred by the applicable statute of limitations.
- 4) Plaintiffs' abuse of process claim does not state facts sufficient to support the tort of abuse of process against the Defendants because the Complaint does not allege any facts or reasonable inferences that could be drawn to support the allegation that the primary objective of the medical malpractice action against Doctors Feldman, Boscia, and Shantha was outside the scope of a medical malpractice action.

**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS'
COMPLAINT**

Issue 1 – Civil Conspiracy Claim is Time Barred by Applicable Statute of Limitations.

In South Carolina, civil conspiracy has a three (3) year statute of limitations. According to Paragraph 59 and Paragraph 60 of the Complaint, Charles M. Fogarty along with the other Defendants (Mark Casey, the patient in the underlying medical malpractice action, and Chuck Thompson the attorney who filed the malpractice action) conspired together to damage the Plaintiffs by suing the Plaintiffs for medical malpractice. The Complaint alleges that the civil

conspiracy was that the "Defendants [Fogarty, Thompson, Casey] sought monetary gain by way of settlement or judgment" (Complaint Paragraph 60). Furthermore, according to the Complaint, the malpractice lawsuit filed against Doctors Feldman, Boscia, and Shantha commenced in 2006. The medical malpractice suit made demands for judgment against Doctors Feldman, Boscia, and Shantha (Complaint Paragraphs 4, 5, 6 and 31). The Plaintiffs' Complaint states that Doctors Feldman, Boscia, and Shantha were damaged by the filing of the medical malpractice action against them. The Complaint avers that in seeking monetary redress from Doctors Feldman, Boscia, and Shantha for their alleged substandard care of Casey, Defendants Fogarty, Casey, and Thompson were engaging in a civil conspiracy. Therefore, even when reading the Complaint in the light most favorable to the Plaintiffs, the statute of limitations on the civil conspiracy claim began to accrue in 2006 when the medical malpractice lawsuit was filed because the medical malpractice lawsuit sought "damages" which according to the Plaintiffs' Complaint was the overt conspiracy "act" which damaged them. The Complaint asserts that Doctors Feldman, Boscia, and Shantha were aware of the lawsuit against them in 2006. According to the Complaint, Doctors Feldman, Boscia, and Shantha were aware of two of the alleged conspirators (Casey and Thompson) in 2006 and Doctors Feldman, Boscia, and Shantha discovered in 2006 that they were the alleged victims of a conspiracy. Therefore, the applicable statute of limitations for the alleged civil conspiracy that Doctors Feldman, Boscia, and Shantha now assert began to accrue in 2006. The statute of limitations begins to run when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right has been invaded or that some claim against another party might exist. (Wiggins v Edwards, 442 S.E 2d 169, 170). The statute of limitations is triggered when the plaintiff discovers the injury, not when he discovers the identity of another alleged tortfeasor. (See

Wiggins, 442 S.E. 2d at 170). According to the Complaint, Doctors Feldman, Boscia, and Shantha were damaged by the commencing of the lawsuit by two of the alleged conspirators (Casey and Thompson) in 2006. There is absolutely no uncertainty according to the Complaint that Doctors Feldman, Boscia, and Shantha knew of Thompson and Casey's identities in 2006. Furthermore, Doctors Feldman, Boscia, and Shantha have alleged in their Complaint that they suffered damages in 2006 as a result of the malpractice lawsuit being filed against them. Even reading the Complaint in the light most favorable to Doctors Feldman, Boscia, and Shantha, the Complaint fails to allege facts sufficient to support a claim for civil conspiracy because the applicable statute of limitations expired in 2009; yet the Plaintiffs did not file this action until October 2010.

Issue 2 – Civil Conspiracy Claim Fails to State Additional Acts in Furtherance of the Conspiracy.

Even if this Court were to reject the argument that the civil conspiracy claim is due to be dismissed due to the applicable statute of limitations, the civil conspiracy claim should still be dismissed because the conspiracy claim fails to state **additional** and **independent** acts in furtherance of the conspiracy that have not already been incorporated in the abuse of process cause of action.

The South Carolina Court of Appeals in Hackworth v Greywood at Hammett, LLC 2009 S.C. App. LEXIS 381,*;385 S.C. 110; 682 S.E.2d 871 in its opinion reaffirming a lower court's decision to dismiss a civil conspiracy claim for failing to meet the requirements under South Carolina law, stressed that a claim for civil conspiracy must plead additional and independent acts which are not covered by other causes of action. The Appeals Court averred as follows:

An unexecuted civil conspiracy is not actionable. Charles v. Tex. Co., 199 S.C. 156, 163, 18 S.E.2d 719, 727 (1942). The conspiracy becomes actionable, however, once overt acts occur which proximately cause damage to the plaintiff. Todd, 276 S.C. at 292, 278 S.E.2d at 611. In a civil conspiracy claim, one must plead additional acts in furtherance of the conspiracy separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim. See id., at 293, 278 S.E.2d at 611 (dismissing plaintiff's civil conspiracy claim because "the [civil conspiracy] action does no more than incorporate the prior allegations and then allege the existence of a civil conspiracy and pray for damages resulting from the conspiracy. No additional acts in furtherance of the conspiracy [were] plead"); [*7] Kuznik v. Bees Ferry Assocs., 342 S.C. 579, 611, 538 S.E.2d 15, 31 (Ct. App. 2000) ("Because [the third party plaintiff] . . . merely realleged the prior acts complained of in his other causes of action as a conspiracy action but failed to plead additional acts in furtherance of the conspiracy, he was not entitled to maintain his conspiracy cause of action."); Doe v. Erskine Coll., No. 8:04-23001RBH, 2006 U.S. Dist. LEXIS 35780, 2006 WL 1473853, at *17 (D.S.C. May 25, 2006) (granting defendant's motion for summary judgment on plaintiff's civil conspiracy action because "the Complaint does not plead specific facts in furtherance of the conspiracy; instead the Complaint simply restates alleged wrongful acts pled in relation to the plaintiff's other claims for damages."); James v. Pratt & Whitney, 126 Fed. Appx. 607, 613 (D.S.C. 2005) ("If appellant failed to allege facts for his civil conspiracy claim separate and distinct from his other two claims, then his civil conspiracy claim would fail under Todd.").

The conspiracy claim of the Plaintiffs' Complaint incorporates all of the preceding paragraphs of the complaint and then sets forth four (4) additional paragraphs numbered 58, 59, 60, and 61. Paragraph 58 of the Complaint states the following:

58. Plaintiffs reallege all above paragraphs, to the extent not inconsistent herewith, as if each is set forth *in toto* hereunder.

Paragraphs 59, 60, and 61 of the Complaint do not allege any additional acts in furtherance of the conspiracy by the Defendants that had not already been pled under the abuse of process claim.

Paragraphs 59, 60, and 61 state the following:

59. Defendants joined together to injure and damage the Plaintiffs. The common and shared purpose of the enterprise, or conspirators, was to economically reward themselves at the expense of the Plaintiffs through the misuse of the medical malpractice action.

60. Defendants sought monetary gain by way of settlement or judgment. Further, Defendant Fogarty also sought to professionally damage the Plaintiffs, thereby increasing his own business value and productivity at the expense of the Plaintiffs' business and their loss of productivity.

61. The Defendants' actions resulted in damages, including, but not limited to, loss of productivity, attorneys' fees and costs, emotional distress, damage to professional Plaintiffs' reputations, accounting expenses and further damages to be ascertained through this lawsuit.

However, Plaintiffs alleged the same substantive matter in paragraph 6 of their Complaint and paragraph 54 of their Complaint under the abuse of process claim:

6. Mr. Casey sought actual and punitive damages arising out of certain treatment and care, which took place by the Doctors from May 28, 2004 through June 3, 2004.

54. Defendants have misused the legal process of the medical malpractice action in an attempt to accomplish a purpose for which said proceedings were not allowed by law, specifically, the assassination of Plaintiffs' reputations by publicizing serious and unfounded allegations against them, and the attempted misuse of the legal process for personal, professional, and economic gain.

The Plaintiffs have failed to articulate in their Complaint any independent and additional act that the conspirators took in furtherance of the conspiracy. The conspiracy claim is simply a rehash

of prior allegations made in the abuse of process claim with the added assertion that the Defendants were conspiring together for a common shared purpose. The Plaintiffs' Complaint fails to meet the pleading requirements for civil conspiracy and thus is due to be dismissed consistent with prior South Carolina Case Law.

Issue 3 – The Abuse of Process Claim is Time Barred by the Applicable Statute of Limitations.

In South Carolina, abuse of process has a three (3) year statute of limitations. Doctors Feldman, Boscia, and Shantha maintain in their Complaint that the Defendants were misusing the legal process of medical malpractice to damage their reputations. In Food Lion, Inc. v. United Food & Commercial Workers Int'l Union, 351 S.C. 65, 75, 567 S.E.2d 251, 256 (Ct. App. 2002) the Court of Appeals held that an "entire lawsuit" can be viewed as an abuse of process if the suit is brought not to recover on the stated cause of action, but to accomplish a purpose for which it was not designed. Id

Food Lion correctly observes that an abuse of process action may lie if a party prosecutes an "entire lawsuit" for collateral purposes. n5 See 1 Am. Jur. 2d Abuse of Process § 11 at 420 (1994) ("If the suit is brought not to recover on the cause of action stated in the complaint, but to accomplish a purpose for which the process was not designed, there is an abuse of process."). Id

In the current Complaint against Fogarty, Thompson, and Casey, Doctors Feldman, Boscia, and Shantha have alleged that the entire lawsuit against them was pursued for the purpose of assassinating their reputations and publicizing unfounded allegations against them. (Complaint Paragraph 54). Looking solely at the Plaintiffs' Complaint and viewing the facts most favorable to the Plaintiffs, it is evident that the Plaintiffs believe that the entire lawsuit was

an abuse of process. However, as articulated in the previous arguments to dismiss the civil conspiracy claim, there is no way around the simple fact that the Plaintiffs were put "on notice" that they had a viable claim for abuse of process in 2006 when they suffered damages as a result of the filing and publication of the lawsuit. Therefore, as was the case in the civil conspiracy claim, the abuse of process claim is no longer viable since the statute of limitations expired in 2009.

In the event that this Court finds that the abuse of process claim is not time barred because the Plaintiffs do not allege that the entire lawsuit was an abuse of process, but rather that the abuse commenced within 3 years of the filing of this Complaint, the Court should still dismiss the abuse of process claim for the reasons set forth below:

Issue 4 – The Complaint Fails to State Facts Sufficient to Support a Cause of Action for Abuse of Process against Dr. Fogarty and the other Defendants.

The elements of an abuse of process claim are: (1) an ulterior purpose and (2) a "willful" or overt act "in the use of the process" that is improper because it is either unauthorized or aimed at an illegitimate collateral objective. Food Lion, Inc. v. United Food & Commercial Workers Int'l Union, 351 S.C. 65, 71, 567 S.E.2d 251, 253-54 (Ct. App. 2002). Importantly, an ulterior purpose or bad intention is insufficient to state a claim. *There must be proof that a collateral objective was the sole or paramount reason for acting.* "[A] party who simply pursues a lawsuit with a collateral purpose in mind has done nothing improper." Id. at 76, 567 S.E.2d at 256.

The existence of an ulterior motive, malice or bad intent in bringing the suit does not alone give rise to an action for abuse of process. There must also be a willful act by the defendant whereby the defendant attempts to use that process to harass or pressure the plaintiff with respect to a matter outside the scope of the original writ. Indeed, the essence of the tort of abuse of process centers on events occurring outside of the process, namely:

The improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as the surrender of property or the payment of money, by the use of the process as a threat or club. There is, in other words, a form of extortion, and it is what is done in the course of negotiation, rather than the issuance or any formal use of the process itself, which constitutes the tort. Swicegood v. Lott Opinion No. 4405, COURT OF APPEALS OF SOUTH CAROLINA, April 9, 2008, Heard, June 6, 2008, Filed.

The Plaintiffs have failed to offer any matter outside the scope of the medical malpractice action that Casey and Thompson were harassing or pressuring Drs. Feldman, Boscia, and Shantha on. The Plaintiffs have not alleged that Casey and Thompson were using the medical malpractice action to gain a comparative advantage in another dispute. In an abuse of process action the key ingredient is that one party is improperly using the legal process for leverage / extortion in some completely unrelated dispute or matter.

In Swicegood v. Lott, it was alleged that Sheriff Lott was using the threat of a criminal investigation against Swicegood for allegedly double dipping on his timesheets to coerce Swicegood into changing his testimony to support Lott's contention that Swicegood's partner had acted improperly in another matter. Swicegood alleged that Lott stated that he (Lott) would make the Federal and State Criminal charges for double dipping "go away" if Swicegood

provided testimony implicating his partner. The vital element was the Lott offered to make the other pending criminal charges "go away" if Swicegood changed his sworn testimony to placate Lott's wishes. The Court correctly surmised that the criminal charges brought against Swicegood for "double dipping" were pursued primarily as a means to pressure Swicegood to testify according to Lott's desires because Lott was offering to make the criminal charges "go away" once he achieved his real primary objective, namely for Swicegood to change his testimony about his partner's activities.

The factual allegations of the Complaint support only one reasonable conclusion and inference: Casey and Thompson were primarily acting to win the medical malpractice case. The allegations in the Complaint that Casey and Thompson may have acted improperly in failing to turn over evidence in a timely manner or that Fogarty may have made false statements in his deposition do not support any theory that any of the Defendants had some other primary objective in mind other than trying to win the malpractice suit.

The Plaintiffs assert that the medical malpractice action was brought in "an attempt to accomplish a purpose for which said proceedings were not allowed by law, specifically, the assassination of the Plaintiffs' reputations by publicizing serious and unfounded allegations against them, and the attempted misuse of the legal process of the legal process for personal, professional, and economic gain." (Complaint Paragraph 54). However, the South Carolina Court of Appeals has already ruled that statements such as these are insufficient to support a claim for abuse of process. In their discussion of Food Lion, Inc. v. United Food & Commercial Workers Int'l Union, 351 S.C. 65, 75, 567 S.E.2d 251, 256 (Ct. App. 2002) the Court of Appeals referenced a case where abuse of process could not be predicated on general allegations that a

lawsuit was allegedly motivated to generate negative publicity against a competitor or cause a competitor to lose sales. Where abuse of process claims are supported only by general assertions that there was some ulterior motive, the courts have held that such pleadings are insufficient to support a cause of action for the tort of abuse of process. The courts have consistently upheld that in order to bring action for abuse of process the Complaint must set forth specific facts which support the requirement that the primary objective of the legal action was not to seek a redress for the alleged wrong doing, but rather some other objective not normally purported with the underlying case. In Food Lion, the Appeals Court of South Carolina states:

Moreover, nowhere in the complaint did Food Lion claim the Union did not use the Bryant lawsuit for its stated purpose, i.e., to redress the termination and health care grievances of several former Food Lion employees. As a result, the amended complaint failed to assert any facts sufficient to show the acts undertaken by the Union in the Bryant proceeding were aimed not at its purported, and therefore proper, purpose of remedying alleged wrongs, but towards a primary purpose of achieving a collateral objective. n7 We therefore find Food Lion did not adequately allege the second element of the tort. n8 See Mozzochi v. Beck, 204 Conn. 490, 529 A.2d 171, 174 (Conn. 1987) ("Existing case law demonstrates that there is no bright line that clearly distinguishes between the ends ordinarily associated with litigation and the ulterior purpose that the tort of abuse of process is intended to sanction. Much [*19] turns on the specificity of the pleadings . . . [Courts have held [general] complaints to be legally insufficient because they do not allege conduct showing the use of process to accomplish a purpose for which it was not designed, . . . So general an allegation of abuse does not satisfy the requirement of showing the use of legal process 'primarily to accomplish a purpose for which it is not designed. . . .'" (citations omitted); Hart, 647 A.2d at 552 ("[The complaint fails to address an essential element of the tort of abuse of process, i.e., that the process was used primarily for a purpose for which the process was not designed. It is not enough that the process employed was used with a collateral purpose in mind. . . . Appellants'

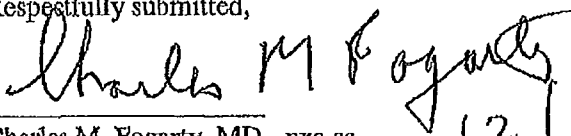
complaint [must] factually set forth that the continuance was not used for the purpose for which continuances are intended.") (internal citations omitted) (emphasis added); Baubles & Beads v. Louis Vuitton, S.A., 766 S.W.2d 377, 379 (Tex. App. 1989) (holding pleadings insufficient to state a cause of action for abuse of process where plaintiffs merely averred "Defendants improperly used the process [*20] to intimidate Plaintiffs, to obtain publicity and to increase Christmas sales of [Louis Vuitton] products, to decrease the sales of Defendants, to threaten Defendants with criminal prosecution, and to falsely accuse Defendants of a crime"). [Bold added for emphasis] Food Lion, Inc. v. United Food & Commercial Workers Int'l Union, 351 S.C. 65, 75, 567 S.E.2d 251, 256 (Ct. App. 2002)

Plaintiffs Feldman, Boscia, and Shantha have failed to articulate any willful actions, facts, or any other inferences that could be reasonably drawn by this Court in reading the Complaint in the light most favorable to the Plaintiffs, that a cause of action exists for abuse of process. The Plaintiffs have failed to assert that the primary object of the medical malpractice lawsuit was not to seek legal redress for the wrongdoing that Casey claimed in his medical malpractice action against Feldman, Boscia, and Shantha. To the contrary, the alleged willful acts of attempted suppression of evidence and submission of false statements by the Defendants, even if true, were allegedly done in attempt to help Mr. Casey prevail in his malpractice claim against Doctors Feldman, Boscia, and Shantha. The alleged bad "acts" by the Defendants do not support any theory that there was another primary objective other than seeking redress for the medical malpractice action that Casey would normally be entitled to under law. Seeking a judgment or settlement for medical malpractice by Casey and Thompson was not an objective outside the scope of a malpractice action. Plaintiffs, in order to state a cause of action for abuse of process, have to assert that the Defendants primary objective in pursuing the medical malpractice claim against Doctors Feldman, Boscia, and Shantha were not

seeking a proper legal remedy (i.e. a judgment against them or settlement), but rather the Plaintiffs have to assert that Casey, Thompson, and Fogarty were primarily trying to achieve some other objective which would not be consistent with a medical malpractice claim. However, the Complaint fails to set forth any facts and reasonable inferences whereby Defendants Casey and Thompson (the plaintiff in the original medical malpractice action and his attorney) were not acting in a manner consistent with seeking legal redress for the substandard medical care that they alleged occurred. The Complaint asserts that Fogarty, the medical expert, was motivated to help Casey and Thompson succeed in winning the medical malpractice case due to Fogarty's alleged acrimonious relationship with Feldman and Boscia, but even if true, that only supports the proposition that Fogarty was not engaged in an abuse of process since he wanted to "ensure the success" of the medical malpractice action by helping Casey prevail at trial. Thus as a matter of law, the Plaintiffs' Complaint fails to state a cause of action for the abuse of process and should be dismissed.

Wherefore, Defendant Charles M. Fogarty requests that this Court grants his Motion to Dismiss the Plaintiffs' Complaint with the added stipulation that should this Court agree that some, if not all, of the Plaintiffs' causes of action are time barred by the applicable statute of limitations that said claims be dismissed with prejudice.

Respectfully submitted,


12/20/10

Charles M. Fogarty, MD, *pro se*
450 Mudd Creek Road
Inman, South Carolina 29349
Telephone: 864-431-6964
Facsimile: 864-583-1518

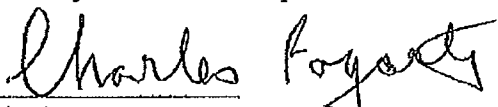
CERTIFICATE OF SERVICE

The undersigned, by affixing his signature hereto, certifies that he has, on December 20, 2010, served a copy of this pleading on counsel for the Plaintiffs by mailing a true and correct copy by United States Mail, first class postage prepaid and addressed as follows:

F. Milton Mann, Jr., Esquire
1089 Boiling Springs Road
Spartanburg, South Carolina 29303
Attorney for Plaintiffs

Joe Mooneyham
Post Office Box 8359
Greenville, South Carolina 29604
Attorney for Mark Casey

Matthew Holmes Henrikson
Post Office Box 6728
Greenville, South Carolina 29606
Attorney for Chuck Thompson

 12 20 '10
Charles M. Fogarty, MD, pro se

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-42-5743

Gregory J. Feldman, MD, Joseph A. Boscia,
MD, Upstate Lung and Critical Care
Specialists PC, and Devendra Shantha, MD,

Plaintiffs,)

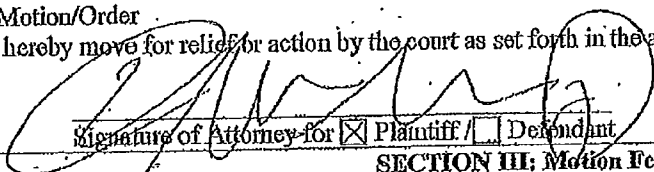
vs.)

William Mark Casey, Ray E. "Chuck"
Thompson, and Charles M. Fogarty, MD,

Defendants.)

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiffs' Attorney: F. Milton Mann, Jr., Bar No. 68250 Address: 1089 Bolling Springs Road, Spartanburg Phone: 864/208-0359 Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Joe Mooneyham, Bar No. _____ Address: PO Box 8359, Greenville, SC 29605 Phone: _____ Fax _____ E-mail: _____ Other: _____
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and II) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: to Amend Complaint Estimated Time Needed: 10 Minutes Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant Date submitted: 8/29/2011	
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason) <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69; SCRCF) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____	

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Gregory J. Feldman, MD, Joseph A.)
Boscia, III, MD, Upstate Lung and Critical)
Care Specialists PC, and Devendra)
Shantha, MD,)

Plaintiffs,)

vs.)

William Mark Casey, Ray E. "Chuck")
Thompson, and Charles M. Fogarty, MD,)
)
Defendants.)

NOTICE OF MOTION AND
MOTION TO AMEND COMPLAINT

C.A. NO.: 2010-CP-42-5743

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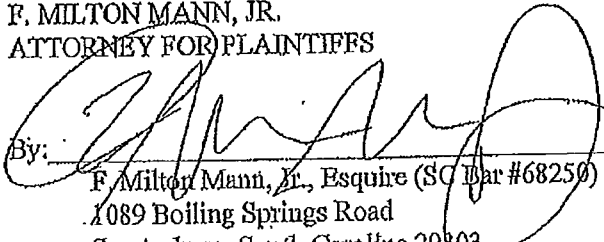
TO: JOE MOONEYHAM, ATTORNEY FOR DEFENDANT, WILLIAM MARK CASEY,
MATTHEW H. HENRICKSON, ATTORNEY FOR DEFENDANT RAY E. "CHUCK"
THOMPSON AND DEFENDANT CHARLES M. FOGARTY, M.D.:

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, by and through their undersigned attorneys, will move on the tenth (10th) day after service hereof or as soon thereafter as counsel can be heard before the presiding Judge of the Court of Common Pleas for Spartanburg County, for an order allowing Plaintiffs to amend their Complaint pursuant to Rule 15 of the South Carolina Rules of Civil Procedure.

More specifically, this motion is based on the grounds that justice requires necessary parties be named as parties hereto in this action and to correct a scrivener's error.

Defendants will not be prejudiced by Plaintiffs being allowed to amend their Complaint and justice will be served by such amendment.

F. MILTON MANN, JR.
ATTORNEY FOR PLAINTIFFS

By: 
F. Milton Mann, Jr., Esquire (SC Bar #68250)
1089 Boiling Springs Road
Spartanburg, South Carolina 29303
(864) 208-0359

August 29, 2011

Spartanburg, South Carolina

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CERTIFICATE OF SERVICE

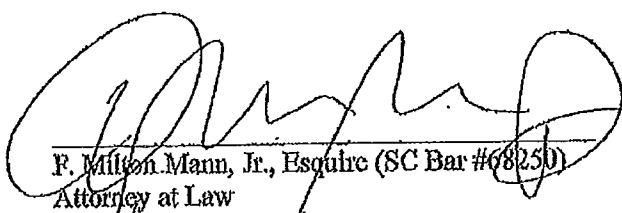
I, F. Milton Mann, Jr., attorney for the Plaintiffs, Gregory J. Feldman, M.D., Joseph A. Boscia, III, M.D., Upstate Lung and Critical Care Specialists, PC, and Devendar T. Shantha, M.D., do hereby certify that I have served a copy of the Notice of Motion and Motion to Amend Complaint by placing copies in the U.S. Mail, first class postage prepaid, to the following addresses:

Joe Mooneyham, Esquire
Post Office Box 8359
Greenville, South Carolina 29605
Attorney for Defendant Mr. Casey

Matthew H. Henrikson, Esquire
Clarkson, Walsh, Terrell, Coulter, P.A.
Post Office Box 6728
Greenville, South Carolina 29606
Attorney for Defendant Mr. Thompson

Charles M. Fogarty, M.D.
450 Mudd Creek Road
Irman, South Carolina 29349
Pro Se Defendant

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F. Milton Mann, Jr., Esquire (SC Bar #68250)
Attorney at Law
1089 Bolling Springs Road
Spartanburg, South Carolina 29303
(864) 208-0359(864)-208-0233 - fax
Milton.mann@gmail.com

August 29, 2011
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Gregory J. Feldman, MD, Joseph)
A. Boscia III, MD, Upstate Lung and)
Critical Care Specialists PC, and)
Devendra Shantha, MD,)

Plaintiffs,)

vs.)

William Mark Casey,)
Ray E. "Chuck" Thompson, and)
Charles M. Fogarty, MD.)

Defendants.)
_____)

Amended Complaint
(Jury Trial Demanded)

C. A. No. 2010-CP-42-5743

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Now comes the Plaintiffs complaining of the Defendants and allege:

Venue and Jurisdictional Allegations

1. That Plaintiffs are citizens of the County of Spartanburg, State of South Carolina.
2. Defendants are, upon information and belief, citizens of the County of Spartanburg, State of South Carolina.
3. Venue and jurisdiction are vested in the Circuit Court of the Seventh Judicial Circuit in and for Spartanburg County, South Carolina.

Factual Allegations

4. The medical malpractice action out of which this complaint arose was captioned *William Mark Casey v. Gregory J. Feldman, M.D., Joseph A. Boscia, III, M.D., Devendra Shantha, M.D. and Upstate Lung and Critical Care Specialists, PC*, filed in the Court of Common Pleas for Spartanburg County, Seventh Judicial Circuit, case number 2006-CP-42-1728.

5. In the medical malpractice action, Mr. William Mark Casey through his attorney, Mr. Ray B. "Chuck" Thompson, alleged Drs. Feldman, Boscia and Shantha breached the standard of care respecting his medical treatment and as a result of which Mr. Casey suffered permanent brain damage that rendered him totally disabled.

6. Mr. Casey sought actual and punitive damages arising out of certain treatment and care, which took place at the hands of the doctors from the period May 28, 2004 through June 3, 2004, that allegedly caused a profound neurological injury and permanent disability.

7. Essentially, Mr. Casey was admitted to Spartanburg Regional Medical Center with chest pain from his workplace at Michelin on May 28, 2004.

8. As part of the work-up, a chest x-ray was done on that date which revealed a small metallic density foreign body and clinical correlation was suggested.

9. Accordingly, Dr. Boscia performed a flexible bronchoscopy, which did not result in retrieval of a foreign object, but did reveal abnormal tissue.

10. Thereafter, Dr. Boscia referred Mr. Casey to his partner, Dr. Feldman, for a rigid bronchoscopy.

11. Mr. Casey was sent home until several days later on June 3, 2004 when he was admitted for the rigid bronchoscopy.

12. Dr. Feldman performed that procedure with Dr. Shantha, who was the attending anesthesiologist.

13. At the close of the rigid bronchoscopy, Mr. Casey suffered a pneumothorax, a known risk, and was required to stay in the hospital through June 6, 2004.

14. Mr. Casey contended that as a result of the rigid bronchoscopy, he suffered irreversible and "permanent brain injury" as a result of the pneumothorax.

15. He claims, *inter alia*, that bubbles or air emboli migrated to his brain and caused his injury.

16. Following his release from the hospital, Mr. Casey began to complain of pacing the floor, forgetfulness, short-term memory loss and personality changes.

17. Based upon the assertions within Paragraph 16, Mr. Casey sought permanent disability from the Social Security Administration and Aetna Disability Insurance.

18. Mr. Casey came under the care of Charles Fogarty, M.D., another Spartanburg Pulmonologist, after Drs. Feldman and Boscia would not support Mr. Casey's disability claims.

19. To their misfortunes, Dr. Fogarty was well known by Drs. Feldman and Boscia prior to the medical malpractice action in a very negative way.

20. Before Drs. Feldman and Boscia became partners within Upstate Lung and Critical Care Specialists, PC, Drs. Feldman and Fogarty had been partners for a number of years.

21. The Feldman/Fogarty separation from joint medical practice was so acrimonious, in 2000, the event was very well known within the medical community of Spartanburg.

22. In September of 2004, Drs. Feldman and Boscia formed a pharmaceutical research company, which Dr. Fogarty viewed as a threat to his own medical practice and research company.

23. Prior to the medical malpractice action, Dr. Fogarty actively sought to interfere with Drs. Feldman's and Boscia's research company and their patient care.

24. As a result of Dr. Fogarty's efforts to hamper the business efforts of Drs. Feldman and Boscia, in 2005 they were forced to sue Dr. Fogarty to clear their names and in an effort to prevent further damage to their reputations and business.

25. The Complaint was captioned *S. Carolina Pharmaceutical Research v. Charles M. Fogarty, M.D.*, filed in the Court of Common Pleas for Spartanburg County, Seventh Judicial Circuit, case number 2005-CP-42-1085.

26. During the *S. Carolina* lawsuit, Dr. Fogarty, in a couple of ways, saw his involvement with Mr. Casey as a golden opportunity to retaliate against Drs. Feldman and Boscia for his perceived wrongs of them starting a research company and filing suit against him.

27. First, Dr. Fogarty continued masterminding the generation of the unfounded "permanent brain injury" claims to injure his business competitors by damage to their reputation and through bogging them down for years in the protracted litigation defending against his scheme.

28. The "permanent brain injury" theory, along with a number of associated allegations of causation due to alleged deviations from the standard of care by Drs. Feldman, Boscia and Shantha ("the scheme"), was developed by Dr. Fogarty from sometime in 2004 until he finally published it in the medical records on July 21, 2005.

29. Second, Dr. Fogarty directly benefited himself by derailing his business competitors' efforts in the *S. Carolina* litigation due to the tremendous pressure created in their lives by the publicizing of the baseless allegations of a "permanent brain injury" within the destructive scheme.

30. Dr. Shantha and ULCCS were merely collateral damage and included in the medical malpractice case as parties in an effort to damage Drs. Feldman and Bosola.

31. Despite a total lack of objective medical investigation into Mr. Casey's alleged neurological condition and having no qualifications within any neurological specialty, Dr. Fogarty hatched a theory that Mr. Casey had suffered a cerebral air embolism ("permanent brain injury"), thereby causing the personality changes and cognitive deficits of which Mr. Casey complained.

32. It is important to note that an admitted fact of the medical malpractice action was that Dr. Fogarty's theories of Mr. Casey's "permanent brain injury" were unsupported by any medical literature. In addition, it was uncontroverted that Mr. Casey suffered no permanent lung damage as a result of the procedures.

33. Dr. Fogarty performed no basic neurological examination of Mr. Casey.

34. Under Dr. Fogarty's "care," Mr. Casey was not referred to any neurological expert nor did Dr. Fogarty order an MRI study of the brain.

35. Although taking the lead in Mr. Casey's medical treatment and being the architect of the "permanent brain injury" scheme, Dr. Fogarty did not review any objective neurological test results for Mr. Casey.

36. Despite the complete absence of any objective support of the "permanent brain injury" scheme, Dr. Fogarty ensured that Mr. Casey's medical records prominently and categorically reflected his baseless injury assertions by inserting this in his office notes dated July 21, 2005.

37. At all times material, Dr. Fogarty intended for his baseless injury assertions within Mr. Casey's medical records to be the basis for Mr. Casey to claim and receive disability benefits.

38. Furthermore, leading up to and during the litigation, Dr. Fogarty intended for his baseless permanent injury fabrications within Mr. Casey's medical records to be the cornerstone of orchestrated "expert" testimony that was designed to be used in ensuring the survivability of the medical malpractice case for as long as possible.

39. Dr. Fogarty actively sought to mislead the doctors and their attorneys of his level and the purpose of involvement in the litigation by seeing Mr. Casey within his research facility as opposed to his medical practice, which would have created medical records that could have been discovered.

40. In addition, Dr. Fogarty conducted complex medical testing on Mr. Casey at his research facility, yet he did not maintain the medical records in an effort to conceal the purpose of his involvement and in order to harm the doctors' discovery efforts thereby prolonging the medical malpractice case.

41. Until his deposition on December 22, 2008, Dr. Fogarty was very successful in shielding his role in the "permanent brain injury" scheme by his active efforts to obstruct and evade his deposition.

42. Dr. Fogarty and Mr. Thompson went to great lengths to ensure that Dr. Fogarty's role as an "expert" witness was concealed until the 11th hour from the doctors and their attorneys to further frustrate discovery efforts and to hide his level of involvement in the execution of the "permanent brain injury" scheme.

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STATE OF TEXAS

43. Despite the best efforts of Dr. Fogarty and Mr. Thompson in implementing the scheme, Mr. Casey testified during his deposition that no one told him he had a brain injury.

44. Even throughout his deposition, Dr. Fogarty continued his attempts to hide his role as a mastermind of the lawsuit and his level of involvement in the medical malpractice action by making material misrepresentations.

45. A more perfect cast of individuals could not have been available for Dr. Fogarty's use in his efforts of destruction aimed primarily at Drs. Feldman and Boscia.

46. Mr. Thompson's fiancée and agent worked within Dr. Fogarty's clinical practice, assisting in giving Dr. Fogarty and Mr. Thompson unfettered access to each other, off the record and behind the scene, which they used to full advantage in their formation and pursuit of the scheme.

47. Mr. Casey's sister worked at the hospital for more than a decade and knew very well the animosity between Drs. Fogarty and Feldman.

48. It was a simple matter in 2004, when Dr. Fogarty got wind of Mr. Casey's procedure, for him to convince Mr. Casey's sister to allow him to review some of the medical records and offer his practice group's help, ensuring Dr. Fogarty the leadership role in the "permanent brain injury" scheme.

49. Yet, that is not all of the connections between the Defendants. Mr. Thompson and Mr. Casey's sister dated in high school. Further, Mr. Thompson and Mr. Casey played team sports together in high school.

50. In summary, the Defendants were well acquainted with each other for years prior to their schemes against Drs. Feldman and Boscia.

51. Dr. Fogarty and Mr. Thompson willingly implemented Dr. Fogarty's "permanent brain injury" baseless claim with ruthless disregard for the rights of the Plaintiffs.

52. Prior to being brought to SRHS on May 28, 2004, Mr. Casey worked a very physically demanding job on the tire production line of Michelin.

53. At middle age, Mr. Casey was facing burn out from the punishing work and the natural aging process of his body.

54. In addition, Mr. Casey was struggling in several other areas of his life: financially due to excessive debt; going through a divorce; and having trouble with his children. Each of which were significant stressors in his life.

55. Before May 28, 2004, Mr. Casey suffered from depression; was taking pain medications; and had abused prescription drugs. Each fact is clearly documented within Mr. Casey's medical records.

56. Immediately following his hospitalization in June of 2004, Mr. Casey actively sought increases in his pain medications and support for his disability claims from Drs. Feldman and Boscia. These requests of Mr. Casey were not medically supported and therefore were denied.

57. Months after the hospitalization, Mr. Casey started to claim that he could no longer play golf or have relationships with women.

58. In 2004 and in addition to requesting "help" from Dr. Fogarty, arrangements were made for Mr. Casey to start seeking treatment from Joseph Grace, Ph.D., a psychologist and therapist in Spartanburg.

59. Dr. Grace saw Mr. Casey, on a semi-weekly basis following his alleged "permanent brain injury," and his medical records were in evidence in the medical malpractice action by agreement of the parties.

60. Contrary to the claims of Mr. Casey, the notes of Dr. Grace show that he was interacting with females and carrying on an active social life within the first year or year and a half after his supposed injury.

61. Additionally, Dr. Grace's notes show that Mr. Casey complained bitterly about the diminishment of his skills with his short game in playing golf and that he simply did not enjoy golf as much as he did before.

62. However, Mr. Casey's golf handicap printout from the South Carolina Golf Association showed that his golf handicap was lower after the supposed injury than it was prior thereto.

63. Clearly, Mr. Casey continued to play golf with a reasonable degree of frequency after the treatment and care by Drs. Feldman, Bosola and Shantha.

64. The notes of Dr. Grace also indicated that Mr. Casey had additional stressors at work in his life which pre-existed any treatment and care by Drs. Feldman, Bosola and Shantha and which experts acknowledged to be the type of forces that induce depression.

65. For example and from the notes of Dr. Grace, Mr. Casey had undergone a separation from his wife of many years, his teenage children were engaging in troublesome behavior, he had financial stresses which had caused the sale of his home on the golf course and he for many years had continued to work on an extremely demanding job which required large amounts of narcotic and non-narcotic pain medication to get through the day.

66. Jeffrey Smith, M.D., a psychiatrist who treated Mr. Casey subsequent to the alleged negligence, testified he saw no permanent psychiatric or behavioral injury, but only anxiety and depression and that Mr. Casey had not been honest with him about his pre-existing depression.

67. After a period of depression, Dr. Smith indicated Mr. Casey was able to return to the workforce in early 2006.

68. It is a well-accepted fact by the medical and scientific communities that a known side effect of narcotic pain medication misuse is depression or the worsening of preexisting depression.

69. For an unexplained reason within Mr. Casey's medical records, Dr. Fogarty abruptly doubled Mr. Casey's Hydrocodone prescription in February of 2006.

70. Hydrocodone is a narcotic pain medication and is one of the most widely abused prescription drugs in the United States.

71. Despite mandated state and federal regulations, Dr. Fogarty prescribed narcotics to Mr. Casey without the required medical documentation within Mr. Casey's medical records.

72. Mr. Casey was willing to do whatever it took to ensure his narcotic source and obtain disability benefits to keep him from returning to the backbreaking work at Michelin.

73. With a sure supply of narcotic, Mr. Casey was free to seek help obtaining disability monies.

74. Prior to the medical malpractice litigation, Mr. Casey's disability benefits were denied from the Social Security Administration on July 14, 2005 and Aetna Insurance Company for long-term benefits on May 28, 2006.

75. Following the denials, Mr. Casey turned to Dr. Fogarty and Mr. Thompson for help with his money issues and disability claim problems.

76. To "help" Mr. Casey and Mr. Thompson, as previously stated in the complaint, Dr. Fogarty ensured the development of the "permanent brain injury" scheme, which he infused into Mr. Casey's medical records for their use in the disability appeal and medical malpractice case.

77. In an effort to meet Mr. Casey's needs, thereby ensuring his continuation in the scheme, Mr. Thompson became active in seeking a reversal of his Aetna disability denials, despite not being his attorney in such matters because the denials did not suit his personal needs or agenda.

78. Mr. Thompson's initial efforts centered around the purposeful redaction of Mr. Casey's medical records that were provided to both treating physicians and retained expert witness with willful intent to make it appear that Mr. Casey suffered from a "permanent brain injury."

79. Despite the team's best efforts, Aetna fully rejected Mr. Casey's disability claim on October 13, 2006 in a letter addressed to Mr. Thompson.

80. In the rejection package, Aetna gave the team an analysis of the viability of the "permanent brain injury" claim, which included detailed reports from a Consulting Neuropsychologist and a Board Certified Neurologist.

81. In summary of the rejection, Aetna said that the speculations of Dr. Fogarty were not supported by objective neurological evidence or abnormal neurological examination findings.

82. Instead of heeding Aetna's review and addressing the stated concerns about the lack of any support for the existence of a legitimate "permanent brain injury" claim, the team continues to move forward with the medical malpractice scheme and fails to produce the Aetna report during discovery.

83. The Doctors' attorneys had to seek assistance from the Court to obtain a release from Mr. Casey to request the records directly from Aetna as opposed to Mr. Thompson merely turning over the report.

84. Mr. Thompson did place importance on one piece of information within the Aetna report, the need for an MRI study of the brain.

85. However, Mr. Thompson knew full well, based on the Aetna report, that a negative MRI study would be a death nail for the scheme.

86. Therefore in the cover of secrecy, Mr. Thompson, set the stage for an MRI to be performed on Mr. Casey's brain under a fictitious name and date of birth.

87. Mr. Thompson arranged for the test through his brother-in-law, a North Carolina general surgeon having no connection to Mr. Casey or the case, to be performed at an out of state hospital.

88. The Radiologist's report of the MRI test results stated that the MRI was negative.

89. Mr. Thompson received this report, and then continued to litigate the matter for eighteen months thereafter without revealing the MRI test or the radiology report.

90. To maintain the secrecy of the MRI test and findings, Mr. Thompson instructed his client to deny having any diagnostic medical tests, including specifically, the MRI, in his sworn deposition testimony less than seven months after the MRI was performed.

91. At all times material, Mr. Thompson despite being well aware of his duties to the Court pursuant to Rule 3.3, Candor Toward The Tribunal, willfully sought to injure the Plaintiffs by instructing Mr. Casey to lie under oath and by Mr. Thompson's failure to protect the candor of the proceedings within the medical malpractice case.

92. Ultimately, the Doctors' counsel only learned of the test fortuitously by virtue of an anonymous letter sent to attorney Spencer King.

93. The MRI test results were very important, inasmuch as it exposed the truth and totally confirmed the fact that Mr. Casey's "permanent brain injury" claim was nothing more than a scheme.

94. It was a materially important piece of evidence to the Doctors, which was withheld, concealed, and secreted from them by Mr. Casey and Mr. Thompson, with a very high degree of impropriety.

95. By the time the Doctors' counsel received the Casey affidavit confirming the MRI and the results of the MRI, in excess of thirty depositions had been taken.

96. This included all of the Doctors, eight treating physicians and five medical experts.

97. Once the MRI test and findings were brought into the light of day, Mr. Thompson continued the litigation in an effort to forestall an ethics complaint by Drs. Feldman and Boscia.

98. In addition, once the MRI test and findings were brought into the light of day, Mr. Thompson and Mr. Casey continued the litigation in an effort to forestall a counter lawsuit from Drs. Feldman and Bosola, thereby serving the agenda of Dr. Fogarty as well.

99. The medical malpractice action was tried before the Court and a jury in the Spartanburg County Court of Common Pleas, commencing May 11, 2010.

100. After 14 trial days, the jury returned a verdict in favor of the Doctors on May 28, 2010 after deliberating between two and two and one-half hours.

101. Mr. Thompson knew the lack of validity of Dr. Fogarty's theories respecting any deviation of the standard of care by Dr. Shantha, yet still sought to gain by the publishing and disseminating of the fraudulent theories of injuries by willfully prolonging the medical malpractice litigation.

102. Prior to the trial, Dr. Shantha had been dismissed from proceedings by a motion for summary judgment.

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CLERK OF COURT
SPARTANBURG COUNTY

FIRST CAUSE OF ACTION
(Abuse of Process)

103. Plaintiffs reallege all above paragraphs, to the extent not inconsistent herewith, as if each is set forth *in toto* hereunder.

104. Defendants have misused the legal process of the medical malpractice action in an attempt to accomplish purposes for which said proceedings were not allowed by law, specifically, as set out below:

105. Mr. Casey, at all times material, knew he did not have a "permanent brain injury" and that the scheme was simply developed for the purposes of the lawsuit and not for any treatment or medical purpose.

106. Mr. Casey willfully used the legal proceeding of the medical malpractice claim in an effort to continue to obtain narcotic drugs by the submission of false information about his physical condition and lying under oath.

107. Mr. Casey willfully used the legal proceeding of the medical malpractice claim in an effort to continue receiving disability benefits by the submission of false information about his physical condition within his lawsuit/scheme.

108. Dr. Fogarty willfully used the legal proceedings of the medical malpractice claim, which he initiated, in an effort to damage the reputations of Drs. Feldman and Boscia by publishing and disseminating fraudulent theories of injuries of Mr. Casey and thereby materially prolonging the litigation for his direct benefit.

109. Dr. Fogarty willfully used the legal proceedings of the medical malpractice claim in an effort to economically damage the business interests of Drs. Feldman and Bosola in S. Carolina Pharmaceutical Research by publishing and disseminating fraudulent theories of injuries of Mr. Casey and by materially misrepresenting his involvement on behalf of the litigation team.

110. Mr. Thompson willfully used the legal proceedings to develop bogus "expert" witness testimony by the misleading redaction of medical records, which Mr. Thompson then used to seek Mr. Casey's disability benefits and to unnecessarily prolong the litigation.

111. Mr. Thompson willfully abused the legal process by using his court appointed powers to subvert the disability claims process for the purposes of manufacturing damages for use in the medical malpractice litigation scheme.

112. In addition, Mr. Thompson knew the lack of validity of Dr. Fogarty's theories respecting the "permanent brain injury" scheme, yet still sought to gain by the publishing and disseminating of the fraudulent theories of injuries by willfully prolonging the medical malpractice litigation.

113. Defendant Thompson willfully used the legal proceedings of the medical malpractice case in an effort to escape or forestall a report of his ethical breach to the South Carolina Bar respecting the suborning of perjury by his client.

114. Defendant Thompson willfully used the legal proceedings of the medical malpractice case in an effort to escape or forestall a counter lawsuit being filed against himself, Mr. Casey and Dr. Fogarty by continuing the litigation with full knowledge as to the lack of truthfulness in the "permanent brain injury" scheme and assertions of disability.

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COURT

115. Plaintiffs have suffered damages, loss and harm, including but not limited to their reputations, money, emotional tranquility, and privacy.

116. Such damages, loss and harm were the proximate and legal result of the misuse of such legal process aforementioned.

SECOND CAUSE OF ACTION
(Civil Conspiracy)

117. Plaintiffs reallege all above paragraphs, to the extent not inconsistent herewith, as if each is set forth *in toto* hereunder.

118. Dr. Fogarty's role on behalf of Mr. Casey far exceeded the reasonable role of a treating physician or expert witness and at all times material, Mr. Thompson was well aware of this fact, even seeking to help him with his efforts.

119. Dr. Fogarty was the author of the "permanent brain injury" scheme, thereby seeking to ensure success for the venture in damaging Drs. Feldman and Boscla by unfairly trapping them in senseless litigation for years and at all times material, Mr. Thompson was well aware of this fact, even seeking to help him with his efforts.

120. Defendant Fogarty sought to professionally damage Drs. Feldman and Boscla, thereby increasing his own business value and productivity at the expense of the Plaintiffs' businesses and their loss of productivity and at all times material, Mr. Thompson was well aware of this fact, even seeking to help him with his efforts.

121. Dr. Fogarty was well aware that he was indispensable for Mr. Thompson in their common scheme to manufacture a pretext for the lawsuit and disability claim.

122. Further, Dr. Fogarty knew that Mr. Thompson would willingly turn a blind eye to any scheme to forward their abusing agenda regardless of how improbable the allegation of permanent injury may be.

123. Mr. Thompson was well aware that he was indispensable for Dr. Fogarty's destructive agenda in their common scheme to manufacture a pretext for claiming "damages" in the lawsuit and disability claim.

124. Mr. Thompson was very well aware that Dr. Fogarty would go to any length to advance his improbable and malicious scheme in an effort to hurt and to retaliate against Drs. Feldman and Boscia.

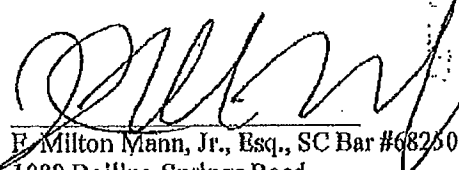
125. The Defendants' concerted efforts directly and proximately resulted in damages, including, but not limited to, loss of productivity, attorneys' fees and costs, emotional distress, damage to professional Plaintiffs' reputations, accounting expenses and further damages to be ascertained through this lawsuit.

WHEREFORE, plaintiff prays that this court enter judgment:

- a. For a jury trial to be conducted in this matter;
- b. For actual and compensatory damages in an amount to be determined by the jury;
- c. For punitive damages in an amount to be determined by the jury; and
- d. For the cost of this action, including reasonable attorney's fees and for other such relief as appears just and equitable in the premises.

F. MILTON MANN, JR.
ATTORNEY FOR PLAINTIFFS

BY:


F. Milton Mann, Jr., Esq., SC Bar #68260
1089 Boiling Springs Road
Spartanburg, South Carolina 29303
(864) 208-0359

2011 JUN 16 PM 1:22

OFFICE OF THE CLERK
Spartanburg County Courthouse
Spartanburg, SC 29303

June 16th, 2011
Spartanburg, South Carolina

CERTIFICATE OF SERVICE

I, F. Milton Mann, Jr., Esq., attorney for the Plaintiff, Gregory J. Feldman, M.D., Joseph A. Boscia, III, M.D., Upstate Lung and Critical Care Specialists, PC and Devendar T. Shantha, M.D., do hereby certify that I have served a copy of the pleading(s) hereinbelow specified by placing copies in the U.S. Mail, first class postage prepaid, to the following address(es):

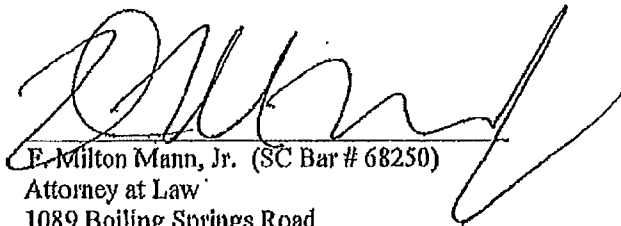
Pleadings: **AMENDED COMPLAINT**

Party(ies) Served: Joe Mooneyham, Esquire
Post Office Box 8359
Greenville, SC 29605
Attorney for Defendant Mr. Casey

Matthew H. Henrikson, Esquire
Clarkson, Walsh, Terrell, Coulter, P.A.
Post Office Box 6728
Greenville, SC 29606
Attorney for Defendant Mr. Thompson

Charles M. Fogarty, MD
450 Mudd Creek Road
Inman, SC 29349
Pro Se Defendant

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U.S. MAIL
FIRST CLASS



F. Milton Mann, Jr. (SC Bar # 68250)
Attorney at Law
1089 Boiling Springs Road
Spartanburg, SC 29303
864-208-0359
864-208-0233 fax
milton.mann@gmail.com

June 16, 2011
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Gregory J. Feldman, M.D., Joseph A. Boscia, III, M.D., Upstate Lung and Critical Care Specialists, PC, and Devendar T. Shantha, M.D.,
 Plaintiff

v.

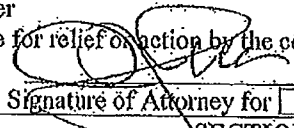
William Mark Casey, Ray E. "Chuck" Thompson, and Charles M. Fogarty, M.D.,
 Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2010-CP-42-5743

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: F. Milton Mann, Bar No. 68250 Address: 1089 Boling Springs Road, Spartanburg, SC 29303 phone: (864) 208-0359 fax: (864) 208-0233 e-mail: _____ other: _____	Defendant's Attorney: Joe Mooneyham, Bar No. 004041 Address: PO Box 8359, Greenville, SC 29605 phone: (864) 421-0036 fax: (864) 421-9060 e-mail: _____ other: _____
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Motion to Dismiss Estimated Time Needed: 15 minutes Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. <div style="text-align: right;">  Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant </div> <div style="text-align: right;"> Date submitted: July 5, 2011 </div>	
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID -- AMOUNT: \$25.00 <input type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE: _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ <input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED -- AMOUNT DUE: _____	Date Filed: _____

CLERK OF COURT
SPARTANBURG COUNTY
2011 JUL -5 PM 4:17
M. HOPE BLANCHLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2010-CP-42-5743

Gregory J. Feldman, MD and)
Joseph A. Boscia, III, MD, and)
Upstate Lung and Critical Care)
Specialists, PC, and)
Devendar T. Shantha, MD,)

Plaintiffs,)

vs.)

William Mark Casey,)
Ray E. "Chuck" Thompson, and)
Charles M. Fogarty, MD,)

Defendants.)

DEFENDANT WILLIAM MARK CASEY'S
MOTION TO DISMISS

TO: The plaintiffs, and F. Milton Mann, Jr., Esquire, their counsel:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as counsel for Defendant William Mark Casey, will move this Honorable Court, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, and at such time and place as the Court shall direct, for an Order, granting the following relief:

- 1) For an Order dismissing the plaintiffs' first cause of action against him.
- 2) For an Order dismissing the plaintiffs' second cause of action against him.

The grounds for the motion are that the plaintiffs' amended complaint fails to state facts sufficient to constitute a cause of action against this defendant. The motion is made pursuant to Rule 12(b)(6), *South Carolina Rules of Civil Procedure*.

In the alternative, and as further grounds for the dismissal of the complaint, Defendant Casey will move for dismissal on the grounds that the plaintiffs have failed to join parties who

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M. MANN, JR.
COUNSEL FOR DEFENDANT

would be indispensable under Rule 19(b), *South Carolina Rules of Civil Procedure*. The motion is made pursuant to Rule 12(b)(7), *South Carolina Rules of Civil Procedure*.

The motion will be supported by any memoranda to be filed by the defendant, by the applicable precedents, and by such argument of counsel as the Court may allow.

Counsel hereby affirms that as this motion is a motion to dismiss, no consultation with opposing counsel is required, pursuant to Rule 11(a), *South Carolina Rules of Civil Procedure*.

Respectfully submitted,
Mooneyham, Berry & Karow, LLC



Joe Mooneyham, S.C. Bar No. 004041
Attorneys for Defendant William Mark Casey
Post Office Box 8359
Greenville, South Carolina 29604
864.421.0036 Fax 864.421.9060
joe@upstatetriallawyers.com

Greenville, South Carolina

July 5, 2011

CLERK OF COURT
SPARTANBURG COUNTY
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M. HOPE BLAOMLEY

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Gregory J. Feldman, M.D., Joseph A. Boscia, III, M.D., Upstate Lung and Critical Care Specialists, P.C., and Devendra T. Shantha, M.D.,

Plaintiffs,

v.

William Mark Casey, Ray E. "Chuck" Thompson, and Charles M. Fogarty, M.D.,

Defendants.

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

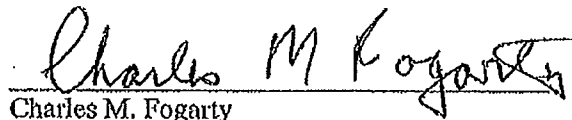
) C.A. NO.: 2010-CP-42-05743

)
) **DEFENDANT CHARLES M. FOGARTY'S**
) **MOTION TO DISMISS PLAINTIFF'S**
) **AMENDED COMPLAINT**

To: Plaintiffs and their counsel:

Defendant Charles M. Fogarty, acting *pro se*, hereby moves this Honorable Court at such time and place as the parties may be heard to dismiss the Amended Complaint filed against him herein. This motion is made pursuant to SCRCF Rule 12(b)(6) and is based on the facts that each cause of action pled in the Plaintiffs' Amended Complaint fails to state facts sufficient to constitute a cause of action and should be dismissed.

This motion may be supported by any memoranda as may be filed with the Court.



Charles M. Fogarty
450 Mudd Creek Rd
Inman, SC 29349
Phone: (864) 431-6964
Fax: (864) 583-9360
cfogarty@medresearch.com

July 5, 2011
Spartanburg, South Carolina

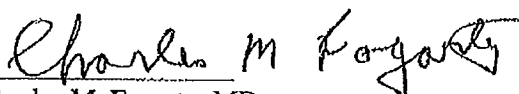
CERTIFICATE OF MAILING

The undersigned, by affixing his signature hereto, certifies that he has, on July 5, 2011, served a copy of this pleading by mailing a true and correct copy by United States Mail, first class postage prepaid and addressed as follows:

F. Milton Mann, Jr., Esquire
1089 Boiling Springs Road
Spartanburg, South Carolina 29303
Attorney for Plaintiffs

Joe Mooneyham
Post Office Box 8359
Greenville, South Carolina 29604
Attorney for Mark Casey

Matthew Holmes Henrikson
Post Office Box 6728
Greenville, South Carolina 29606
Attorney for Chuck Thompson


Charles M. Fogarty, MD, *pro se*

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2010-CP-42-5743

Gregory J. Feldman, MD and)
Joseph A. Boscia, III, MD, and)
Upstate Lung and Critical Care)
Specialists, PC, and)
Devendar T. Shantha, MD,)

Plaintiffs,)

vs.)

William Mark Casey,)
Ray E. "Chuck" Thompson, and)
Charles M. Fogarty, MD,)

Defendants.)

DEFENDANT CHARLES M. FOGARTY'S
MOTION TO DISMISS
SECOND AMENDED COMPLAINT

TO: The Plaintiffs, and F. Milton Mann, Jr., Esquire, their counsel:

YOU WILL PLEASE TAKE NOTICE that Charles M. Fogarty, acting pro se, will move this Honorable Court, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, and at such time and place as the Court shall direct, for an Order, dismissing the Plaintiffs' Second Amended Complaint against him.

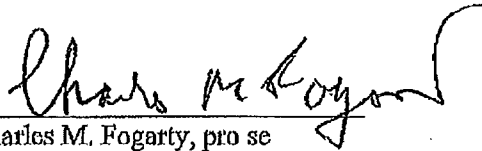
The grounds for the motion are that the Plaintiffs' Second Amended Complaint fails to state facts sufficient to constitute a cause of action against Charles M. Fogarty. The motion is made pursuant to Rule 12(b)(6), *South Carolina Rules of Civil Procedure*.

In the alternative, and as further grounds for the dismissal of the Second Amended Complaint, Charles M. Fogarty will move for dismissal on the grounds that the Plaintiffs have failed to join a party under Rule 19(a), *South Carolina Rules of Civil Procedure*. The motion is made pursuant to Rule 12(b)(7), *South Carolina Rules of Civil Procedure*.

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SPARTANBURG COUNTY
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THOPE BLACKLEY

The motion will be supported by any memoranda to be filed by Charles M. Fogarty and by the applicable precedents.

Respectfully submitted,



Charles M. Fogarty, pro se
450 Mudd Creek Rd
Inman, SC 29349
(864) 494-6106
(864) 583-9360 (fax)
cfogarty@medresearch.com

Spartanburg, South Carolina

October 25, 2011

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

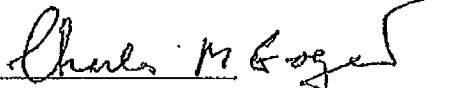
CERTIFICATE OF MAILING

The undersigned, by affixing his signature hereto, certifies that he has on October 25, 2011 served a copy of this pleading on the parties listed below by mailing a true and correct copy by United States Mail, first class postage prepaid and addressed as follows:

F. Milton Mann, Jr., Esquire
1089 Boiling Springs Road
Spartanburg, South Carolina 29303
Attorney for Plaintiffs

Joe Mooneyham
Post Office Box 8359
Greenville, South Carolina 29604
Attorney for Mark Casey

Matthew Holmes Henrikson
Post Office Box 6728
Greenville, South Carolina 29606
Attorney for Chuck Thompson


Charles M. Fogarty, MD, *pro se*
450 Mudd Creek Rd
Inman, SC 29349

FILED
CLERK OF COURT
SPARTANBURG COUNTY
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M. HOPE BLACKLEY

F. MILTON MANN, JR.
ATTORNEY AT LAW
LICENSED IN SC, GA & FL

COPY

August 28, 2012

Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: Gregory J. Feldman, MD, Joseph A. Boscia, III, MD,
Upstate Lung & Critical Care Specialists, PC, and
Devendra Shantha, MD, Appellants, v. William Mark
Casey, Ray E. "Chuck" Thompson, and Charles M.
Fogarty, Respondents -- Case No. 2010-CP-5743

Dear Ms. Kitchings:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

- (1) Proof of Service of the Notice of Appeal on the Respondents.
- (2) A copy of the Orders which are to be challenged on Appeal.
- (3) A filing fee of \$100.00.

Respectfully submitted,

F. Milton Mann, Jr.



Enclosures

cc: Hope M. Blackely, Spartanburg County Clerk of Court (Enclosures)
Joe Mooneyham, Esquire (Enclosures)
Matthew H. Henrikson, Esquire (Enclosures)
Ellen Cheek, Esquire (Enclosures)

1089 BOILING SPRINGS ROAD • SPARTANBURG, SOUTH CAROLINA 29303
864-208-0359 • FAX 864-208-0233 • CELL 864-680-5079
EMAIL: MILTON.MANN@GMAIL.COM

Record Appendix 61

COPY

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2010-CP-5743

Gregory J. Feldman, MD, Joseph A. Boscia, III, MD,
Upstate Lung & Critical Care Specialists, PC, and
Devendra Shantha, MD,

Appellants,

v.

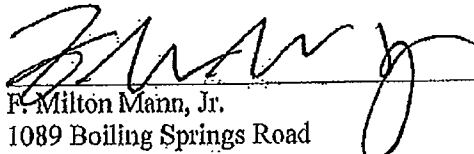
William Mark Casey, Ray E. "Chuck" Thompson,
And Charles M. Fogarty,

Respondents.

NOTICE OF APPEAL

Gregory J. Feldman, MD, Joseph A. Boscia, III, MD, Upstate Lung & Critical Care Specialists, PC, and Devendra Shantha, MD, appeal the Orders of the Honorable Letitia H. Verdin dated January 30, 2012, March 21, 2012, and April 30, 2012. Appellants received written notice of entry of the January 30, 2012 Form 4 Order (Exhibit A), indicating a formal order to follow, on February 7, 2012. Appellants received written notice of entry of the March 21, 2012 Order (Exhibit B) on March, 28, 2012. Appellants timely filed their Notice of Motion and Motion for Reconsideration and to Amend (Exhibit C) on April 9, 2012. Appellants received written notice of entry of the April 30, 2012 Form 4 Order (Exhibit D), indicating a formal order to follow, on May 16, 2012. Appellants inquired of the Court, by letter (Exhibit E), on August 24, 2012, as to when a formal order might be expected. Appellants received email notice (Exhibit F) on August 24, 2012, that no formal order would be forthcoming and that a clerical error had occurred indicating a formal order would follow the Form 4 Order dated April 30, 2012.

August 28, 2012



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EXHIBIT A

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF SPARTANBURG
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2010CP4205743

Gregory J. Feldman, MD Upstate Lung and Critical Care Specialists PC	Joseph A. Bosca, III Devendra T. Shantha, MD	William Mark Casey Charles M. Fogarty MD.	Ray E. "Chuck" Thompson
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by: Court	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Dismiss);
 - Rule 43(k), SCRPC (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):
 - Rule 40(g) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other: _____

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 COUNTY OF SPARTANBURG

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court.
 This matter comes before the Court on Motions to Dismiss of all Defendants. This Court finds that the Plaintiffs had notice of a potential claim for abuse of process and for civil conspiracy before October 27, 2007. This action was filed on October 27, 2010. Therefore, the claim is time-barred by the statute of limitations. Defendants' Motions to Dismiss are granted in full. Defendants are requested to submit a single proposed order consistent with these findings.

ORDER INFORMATION

This order ends does not end the case. Additional information for the Clerk:

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INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects real property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

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Judge Code

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For Clerk of Court Office Use Only

This judgment was entered on 2/1/12, and a copy mailed first class or placed in the appropriate attorney's box on, 2/1/12 to attorneys of record or to parties (when appearing pro se) as follows:

Franklin Milton Mann, Jr., F. Milton Mann, Jr Atty at Law,
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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Hope Blackley

Hope Blackley - Spartanburg County Clerk Of Court

Per [Signature]

Court Reporter

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EXHIBIT B

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STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Gregory J. Feldman, MD, Joseph A. Boscia, III, MD, Upstate Lung & Critical Care Specialists, PC, and Devendra Shantha, MD,

Plaintiffs,

vs.

William Mark Casey, Ray E. "Chuck" Thompson, and Charles M. Fogarty, MD,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-5743

ORDER GRANTING DEFENDANTS'
MOTIONS TO DISMISS
SECOND AMENDED COMPLAINT

This action came for hearing before me on January 18, 2012, on the Motions to Dismiss Plaintiffs' Second Amended Complaint filed by Defendants William Mark Casey ("Casey"), Ray E. "Chuck" Thompson ("Thompson"), and Charles M. Fogarty, MD ("Fogarty") (collectively referred to herein as "Defendants"). Plaintiffs were represented by Milton Mann. Casey was represented by Joe Mooncyhani; Thompson was represented by Matt Henriksen; and Fogarty was represented by Ellen Cheek. Defendants submitted or rested on previously submitted briefs, which the Court has considered in addition to the parties' oral argument. For the reasons stated below, Defendants' respective Motions to Dismiss Plaintiffs' Second Amended Complaint are granted, Plaintiffs' abuse of process claim is dismissed with prejudice, and Plaintiffs are barred from reasserting at any time in the future their civil conspiracy claim.

Motion to Dismiss Standard

Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a plaintiff's pleading based on a failure to state facts sufficient to constitute a cause of action. Rule 12(b)(6), SCRCP. The circuit court properly dismisses a claim when the defendant demonstrates that the facts stated in plaintiff's pleading fail to establish an actionable claim. *Hambrick v. GMAC Mortg.*

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Corp., 370 S.C. 118, 121, 634 S.E.2d 5, 7 (Cl. App. 2006). In considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint. *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995).

Plaintiffs' Claims

Plaintiffs' Second Amended Complaint asserts causes of action against all Defendants for abuse of process and civil conspiracy arising from an underlying medical malpractice suit, *William Mark Casey v. Gregory J. Feldman, M.D., Joseph A. Boscia, III, M.D., Devendra Shantha, M.D. and Upstate Lung and Critical Care Specialists, PC*, filed in the Court of Common Pleas for Spartanburg County, Seventh Judicial Circuit, Case No. 2006-CP-42-1728 (the "Medical Malpractice Action"). See Second Amended Complaint at ¶ 4. According to the Second Amended Complaint:

Plaintiffs provided medical services and treatment to Casey between May 28, 2004, and June 3, 2004, with respect to chest pain Casey experienced at work on May 28, 2004. See Second Amended Complaint at ¶¶ 6-13. After Casey was admitted to the hospital, a chest x-ray was taken that showed a small metallic foreign body in the x-ray field. See Second Amended Complaint at ¶ 8. To "clinical[ly] correlate" (or investigate) the foreign body shown on the x-ray, Plaintiffs performed on Casey a flexible bronchoscopy followed by a rigid bronchoscopy. See Second Amended Complaint at ¶¶ 8-12. During the rigid bronchoscopy, Casey suffered a pneumothorax. See Second Amended Complaint at ¶¶ 9-13.

After Casey was discharged from the hospital, he complained to Plaintiffs that he suffered from forgetfulness, short-term memory loss, personality changes and permanent disability caused by the rigid bronchoscopy and resulting pneumothorax. See Second Amended Complaint at ¶¶ 14-17. Plaintiffs rejected Casey's complaints and refused to support his resulting attempt to obtain disability benefits, and declined to continue treating Casey. See

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Second Amended Complaint at ¶ 18, 56.

In 2004, after Plaintiffs refused to continue treating Casey, Casey began treating with a psychologist and therapist in Spartanburg. See Second Amended Complaint at ¶¶ 58-59. Also in 2004, Casey became a patient of Fogarty, who previously had been medical partners with Plaintiff Gregory Feldman. See Second Amended Complaint at ¶¶ 18, 20, 28, 48, 58. In the course of assuming Casey's treatment, Fogarty reviewed Casey's medical records, including those relating to Casey's bronchoscopies and pneumothorax, and saw Casey at Fogarty's medical office and Fogarty's medical research facility. See Second Amended Complaint at ¶ 18, 34, 40, 48. Based thereon, Fogarty developed the medical opinion that Casey had suffered a cerebral air embolism and resulting permanent brain injury during the rigid bronchoscopy Plaintiffs performed on Casey, and that Plaintiffs had deviated from the applicable standard of medical care in treating Casey. See Second Amended Complaint at ¶¶ 28, 31, 33-36, 39-40. Fogarty did not order a MRI of Casey's brain. See Second Amended Complaint at ¶ 34. On July 21, 2005, in Fogarty's medical chart for Casey, Fogarty noted his opinion that Casey had suffered a "permanent brain injury." See Second Amended Complaint at ¶¶ 28, 36. As Casey's treating's physician, Fogarty's opinion regarding Casey's medical condition and his office notes regarding same also were provided in relation to Casey's application for private disability insurance benefits, as well as Social Security disability benefits. See Second Amended Complaint at ¶¶ 37, 74-76.

In 2005 and 2006, Thompson, a Spartanburg lawyer who went to high school with Casey, provided Casey legal assistance in relation to Casey's applications for disability benefits. See Second Amended Complaint at ¶¶ 49, 75, 77. Thompson also consulted with Fogarty regarding Fogarty's opinion that Casey had suffered a permanent brain injury as a result of Plaintiffs' having violated their standard of care with respect to Casey's medical treatment. See Amended

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Complaint at ¶¶ 28, 44, 51.

Also in 2006, Thompson filed the Medical Malpractice Action on behalf of Casey.¹ See Second Amended Complaint at ¶ 5. In that suit, Casey alleged that Plaintiffs in the present case breached the standard of care with respect to Casey's medical treatment between May 28, 2004, and June 3, 2004, causing him damages, including neurological injury and permanent disability. See Second Amended Complaint at ¶ 6. Fogarty was identified and deposed in the Medical Malpractice Action as an expert witness, and was consulted by Thompson on occasions with respect to medical matters relating to the Medical Malpractice Action, and with respect to Casey's independent applications for disability coverage. See Second Amended Complaint at ¶¶ 41-42, 48, 76.

During the course of discovery in the Medical Malpractice Action, Thompson arranged for Casey to obtain an MRI under a fictitious name and date of birth from Thompson's brother-in-law. See Second Amended Complaint at ¶¶ 86-90. Thompson and Casey did not reveal the MRI, which was negative, to Plaintiffs during discovery in the Medical Malpractice Action. See Second Amended Complaint at ¶¶ 90-91. Fogarty was not involved in Casey's having the MRI, or Thompson's and Casey's discovery-related efforts with respect to the MRI. See Second Amended Complaint. Plaintiffs learned of the MRI after one of Plaintiffs' lawyers in the Medical Malpractice Action received an anonymous letter regarding it. See Second Amended Complaint at ¶ 92.

The Medical Malpractice Action was tried before a Spartanburg County jury beginning on May 11, 2010. See Second Amended Complaint at ¶ 99. On May 28, 2010, after a 4-day trial, the jury returned a defense verdict in favor of Plaintiffs in this case. See Second Amended

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¹ Plaintiffs' Second Amended Complaint does not specify the date that the Medical Malpractice Case was filed; but the case number Plaintiffs cite (2006-CP-42-1728) indicates that the suit was filed in 2006. See Second Amended Complaint at ¶ 4.

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Complaint at ¶ 100.

Plaintiffs filed their original Complaint in this case on October 27, 2010, claiming that Defendants engaged in abuse of process and civil conspiracy in relation to the Medical Malpractice Action. See Complaint; see also Second Amended Complaint. After Defendants moved to dismiss Plaintiffs' original Complaint in lieu of answering same, Plaintiffs filed an Amended Complaint as of right, reasserting against Defendants their claims for abuse of process and civil conspiracy. See Amended Complaint. When Defendants moved to dismiss the Amended Complaint, Plaintiffs moved for and received leave of court to file their Second Amended Complaint, again asserting against Defendants claims for abuse of process and civil conspiracy. See Second Amended Complaint.

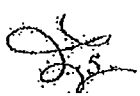
On January 18, 2012, at the hearing on Defendants' Motions to Dismiss Plaintiffs' Second Amended Complaint, Plaintiffs withdrew their civil conspiracy claim, expressly reserving the right to re-file such claim if additional facts were discovered during discovery in this case that Plaintiffs believed supported that claim.

Because this Court finds that Plaintiffs' claims for abuse of process and civil conspiracy are time-barred, which fact necessitates the dismissal of the Second Amended Complaint and prevents Plaintiffs from re-filing their civil conspiracy claim at any time in the future, this Order addresses both of these causes of action.

Analysis

The facts alleged in Plaintiffs' Second Amended Complaint show that Plaintiffs had notice of a potential claim for abuse of process more than three years before this action was filed on October 27, 2010. Therefore, Plaintiffs' abuse of process claim is time-barred by the statute of limitations, and Plaintiffs' Second Amended Complaint is dismissed with prejudice pursuant to Rule 12(b)(6), SCRPC. Further, because Plaintiffs' pleading also demonstrates that Plaintiffs

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had notice of a potential claim for civil conspiracy more than three years before this action was filed, Plaintiffs are time-barred from re-asserting such claim at any time in the future.

I. Plaintiffs' Claims Are Time-Barred.

This action is governed by a three-year statute of limitations period. S.C. Code Ann. § 15-3-530 (2005); see *Whitfield Const. Co. v. Bank of Tokyo Trust Co.*, 338 S.C. 207, 525 S.E.2d 888 (Ct. App. 1999) (applying three-year statute of limitations in abuse of process action); *Burgess v. American Cancer Soc., South Carolina Div., Inc.*, 300 S.C. 182, 386 S.E.2d 798 (Ct. App. 1989) (recognizing that Section 15-3-530's limitations period (which previously was six years) applies to conspiracy claims).

"A statute of limitations is a procedural device that operates as a defense to limit the remedy available from an existing cause of action." *Capco of Summerville, Inc. v. J.H. Ghyse Const. Co., Inc.*, 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006). Significantly, South Carolina courts recognize that "[s]tatutes of limitations are not simply technicalities." *Montes v. Bobb*, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). "Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." *Id.* Statutes of limitations relieve courts of the burden of trying stale claims of those who have slept on their rights, and are intended to "ensure litigation is brought within a reasonable time in order that evidence be reasonably available and there be some end to litigation." *Transportation Ins. Co. and Flagstar Corp. v. South Carolina Second Injury Fnd.*, 389 S.C. 422, 428, 699 S.E.2d 687, 690 (2010) (citations and internal punctuation omitted).

In determining when a cause of action arose under an applicable statute of limitations, South Carolina courts apply the "discovery rule." *Rumpf v. Massachusetts Mut. Life Ins. Co.*, 357 S.C. 386, 394, 593 S.E.2d 183, 187 (Ct. App. 2004). Under the discovery rule, the statute of

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limitations begins to run from the date the party either knew, or by the exercise of reasonable diligence should have known, that some legal right had been invaded. *City of Newberry v. Newberry Elec. Co-op., Inc.*, 387 S.C. 254, 260, 692 S.E.2d 510, 513 (2010). The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. *Snell v. Columbia Gun Exchange, Inc.*, 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981).

The discovery rule thus focuses upon whether the complaining party acquired knowledge of any existing facts sufficient to put the party on inquiry which, if developed, would disclose alleged wrongdoing. *Burgess*, 300 S.C. at 186-87, 386 S.E.2d at 800. "Moreover, although a party claims ignorance of existing facts and circumstances, the same result [i.e., the statute of limitation's running] follows if such facts and circumstances could have been known to the party through the exercise of ordinary care and reasonable diligence." *Id.* Thus, the statute of limitations begins to run from the date a plaintiff knew or should have known that he had a claim, and not when the plaintiff sought advice of counsel, or developed a full-blown theory of recovery, or discovered a witness to support or prove his case, or "obtain[ed] actual knowledge of either the potential claim or the facts giving rise thereto." *Gibson v. Bank of America, N.A.*, 383 S.C. 399, 406, 680 S.E.2d 778, 782 (Ct. App. 2009) (citations omitted). "Moreover, the focus is upon the date of discovery of the injury, not the date of discovery of the wrongdoer:

The important date under the discovery rule is the date that a plaintiff discovers the injury, not the date of the discovery of the identity of another alleged wrongdoer. If, on the date of injury, a plaintiff knows or should know that she had some claim against someone else, the statute of limitations begins to run for all claims based on that injury.

Wiggins v. Edwards, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994) (quoting *Tollison v. ...*

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Machinery Co., Inc., 812 F.Supp. 618, 620 (D.S.C.1993).

The date on which discovery of the cause of action should have been made is an objective question, *Joubert v S.C. Dep't of Soc. Servs.*, 341 S.C. 176, 191, 534 S.E.2d 1, 9 (Cl. App. 2000).

In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.

Young v. South Carolina Department of Corrections, 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Cl. App. 1999).

In this case, Plaintiffs' abuse of process and conspiracy claims are time-barred because the facts alleged in Plaintiffs' Second Amended Complaint, when taken in the light most favorable to Plaintiffs, clearly demonstrate that Plaintiffs knew or should have known that their claims for abuse of process and civil conspiracy existed in 2006, when the Medical Malpractice Action was filed against them. See Second Amended Complaint at ¶ 4. These facts mandate the dismissal of Plaintiffs' abuse of process claim in the current action, which Plaintiffs filed more than three years after 2006, on October 27, 2010, and prevent Plaintiffs from re-asserting their voluntarily-dismissed civil conspiracy claim at any time in the future.

A. The Statute Of Limitations Expired On Plaintiffs' Abuse of Process Claim.

1. Plaintiffs' Abuse of Process Claim Arose at Least When the Medical Malpractice Action was filed in 2006.

Plaintiffs' abuse of process claim is time-barred, because that claim arose at least when the Medical Malpractice Action was filed in 2006 - more than three years before Plaintiffs filed their current suit. According to the Second Amended Complaint, and construing those allegations in the light most favorable to Plaintiffs:

In 2004, before the Medical Malpractice Action was filed, Plaintiffs knew that

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Casey claimed that he had suffered brain injury and permanent disability as a result of the pneumothorax Casey experienced during the rigid bronchoscopy. Plaintiffs did not believe Casey's injury or permanent disability claims were true or legitimate, and they did not support Casey's theory or Casey's attempt to obtain resulting disability benefits. See Second Amended Complaint at ¶¶ 13-18.

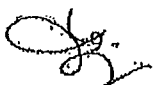
In 2006, when the Medical Malpractice Action was filed, Plaintiffs knew that Casey and Thompson had filed a medical malpractice lawsuit against them, which suit Plaintiffs believed was for a purpose other than to redress legitimate medical injuries sustained by Casey. Plaintiffs knew Casey and Thompson were claiming that Plaintiffs had committed medical malpractice in the course of Casey's treatment. See Second Amended Complaint at ¶¶ 4-5.

Plaintiffs contend that Casey's motivation for filing the Medical Malpractice Action was to obtain prescription pain medication and disability benefits. See Second Amended Complaint at ¶¶ 106-107.

Thus, when Casey sued Plaintiffs for malpractice in 2006, Plaintiffs believed that the suit was an abuse of process, because Plaintiffs already had determined that Casey had sustained no permanent injury, and because Plaintiffs believed that Casey was simply seeking to obtain prescription narcotics and disability benefits. The statute of limitations on Plaintiffs' abuse of process claim thus began to run at least from the date the Medical Malpractice Action was filed in 2006, and prevents Plaintiffs from maintaining such claims in the present case, which Plaintiffs filed in 2010. See *Gibson*, 383 S.C. at 406, 680 S.E.2d at 782.

Significantly, the discovery rule bars Plaintiffs' claims regardless of the fact that Plaintiffs' Second Amended Complaint appears to allege that Plaintiffs were not aware of Bogarty's involvement in the Medical Malpractice Action until sometime during the pendency of

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that case.² As explained above, the discovery rule focuses on the date a plaintiff discovers an injury — in this case, the fact that the Medical Malpractice Action was filed against them — “not the date of the discovery of the wrongdoer.” *Wiggins*, 314 S.C. at 128, 442 S.E.2d at 170. Although Plaintiffs’ pleading alleges that Fogarty’s “involvement” in the Medical Malpractice Action was concealed from Plaintiffs until the “11th hour” of that case, see Second Amended Complaint at ¶ 42, the claimed fact that Plaintiffs did not know the identity of all alleged wrongdoers in that suit did not prevent the statute of limitations from running. See *id.* This is because the filing of the Medical Malpractice Action reasonably put Plaintiffs — who believed the suit to be meritless and only interposed to harm them, see Second Amended Complaint at ¶¶ 18, 30, 56 — on notice that some right of theirs may have been invaded, regardless of whether Plaintiffs knew the identity of the alleged wrongdoer(s) other than Casey and Thompson, whose names appeared on the pleading. See *Young*, 333 S.C. at 719, 511 S.E.2d at 416. “[T]he requirement of presenting expert testimony to meet the burden of proof on subjects beyond the knowledge and understanding of lay jurors is by no means new,” especially in medical malpractice cases. *5 Star, Inc. v. Ford Motor Co.*, 395 S.C. 392, 399, 718 S.E.2d 220, 224 n.3 (Ct. App. 2011). A reasonable person in Plaintiffs’ position would have known that Casey and Thompson had consulted with and/or were working with a medical expert in relation to the Medical Malpractice Action prior to and upon its filing; and because Plaintiffs believed the suit to be baseless, Plaintiffs knew or should have known that some alleged claim against that medical expert might exist. Because Fogarty’s identity and alleged “role” in the Medical Malpractice Action were facts and circumstances that could have been known to Plaintiffs.

² The Second Amended Complaint does not specify when Plaintiffs became aware that Fogarty was Casey’s treating physician, or when Fogarty was identified as an expert witness. See Second Amended Complaint. Plaintiffs allege simply that Fogarty’s “role as an expert witness was concealed until the 11th hour” from Plaintiffs and their counsel. See Second Amended Complaint at ¶ 42.



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through the exercise of ordinary care and reasonable diligence when the Medical Malpractice Action was filed in 2006 - more than three years before Plaintiffs instituted this suit - Plaintiffs' Second Amended Complaint is time-barred.

2. When The Medical Malpractice Action Terminated Is Irrelevant To The Application Of The Discovery Rule And The Time-Barring Of Plaintiffs' Abuse of Process Claim.

Perhaps notably, facts pled in Plaintiffs' Second Amended Complaint indicate that Plaintiffs intentionally waited to file their abuse of process claim until after the disposition of the Medical Malpractice Action. See Second Amended Complaint at ¶ 98 (alleging that Thompson sought to protract the Medical Malpractice Action in order to "forestall a counter lawsuit" from Plaintiffs). Significantly, when the Medical Malpractice Action ultimately was resolved is of no relevance to the application of the discovery rule bar to Plaintiffs' abuse of process claim. Unlike a claim for malicious prosecution, an abuse of process claim does not require the termination of the underlying proceedings in the plaintiffs' favor, see *McBride v. School Dist. of Greenville County*, 389 S.C. 546, 565, 698 S.E.2d 845, 855 (Cl. App. 2010),³ and instead begins to run when the plaintiffs knew or should have known that the alleged abuse had occurred, see *Wiggins*, 314 S.C. at 128, 442 S.E.2d at 170.

B. Plaintiffs' Civil Conspiracy Claim Is Time-Barred.

The three-year statute of limitations also time-bars Plaintiffs' civil conspiracy claim, which Plaintiffs voluntarily dismissed at the hearing on Defendants' Motions to Dismiss with the expressly reserved right to reassert such claim should discovery in this case produce facts which Plaintiffs believe support such claim.

A civil conspiracy becomes actionable only "once overt acts occur which proximately

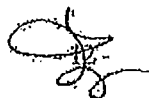
³ The elements of malicious prosecution are (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage." *McBride*, 389 S.C. at 565, 698 S.E.2d at 855.

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cause damage to the plaintiff." *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009). As discussed above, in South Carolina, the statute of limitations for conspiracy claims is governed by the "discovery rule," and therefore begins to run upon discovery of the conspiracy itself or of "such facts as would have led to the knowledge thereof, if pursued with reasonable diligence." See *Burgess*, 300 S.C. at 187, 386 S.E.2d at 800-01. A party cannot escape the application of this rule by claiming ignorance of existing facts and circumstances, or ignorance of the identity of an alleged tortfeasor. *Wiggins*, 314 S.C. at 128, 442 S.E.2d at 170.

Any claim by Plaintiffs for civil conspiracy is time-barred because more than three years have elapsed since the filing of the Medical Malpractice Action -- which is the date when Plaintiffs knew that an alleged conspiracy existed, or when Plaintiffs knew or could have known pertinent facts sufficient to apprise themselves of their claim's alleged existence. Specifically, according to the Second Amended Complaint, Fogarty was the author of the "permanent brain injury scheme" and indispensable for Thompson in "their common scheme to manufacture a pretext for the lawsuit and disability claim." See Second Amended Complaint at ¶¶ 199-221. Thus, the alleged conspiracy was to manufacture a pretext to sue Plaintiffs for malpractice; and the overt "act" in furtherance of the conspiracy was the filing of that suit. Accordingly, once Plaintiffs were sued for malpractice -- i.e., once the Medical Malpractice Action was filed in 2006 -- they were damaged by the alleged conspiracy, and the statute of limitations on that claim began to run, regardless of whether Plaintiffs claim that they only later learned of Fogarty's "involvement" in the alleged scheme. See *Hackworth*, 385 S.C. at 115, 682 S.E.2d at 871. When the Medical Malpractice Action was filed against Plaintiffs in 2006, Plaintiffs knew the identity of two of the alleged conspirators, Casey and Thompson; and because medical malpractice claims require expert medical testimony, the filing of the suit put Plaintiffs on notice



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that some other physician was involved in the alleged case-filing conspiracy, thus tolling the statute of limitations. Because the three-year statute of limitations on Plaintiffs' civil conspiracy claim expired in 2009, such claim is and will remain time-barred.

II. The Court Does Not Reach Defendants' Arguments That Plaintiffs' Second Amended Complaint Fails To State A Claim Upon Which Relief Can Be Granted.

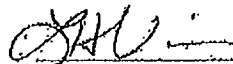
Because this Court finds that Plaintiffs' claims against Defendants for abuse of process and civil conspiracy are time-barred by the statute of limitations; the Court has not reached or ruled upon Defendants' additional arguments that Plaintiffs have failed to plead actionable claims for abuse of process or civil conspiracy.

Conclusion

Because Plaintiffs had notice of a potential claim abuse of process and civil conspiracy when the underlying Medical Malpractice Action was filed in 2006, and because more than three years have expired since that date, Plaintiffs' claims for abuse of process and civil conspiracy are time-barred by the statute of limitations. Therefore, this Court grants in full Defendants' Motions to Dismiss Plaintiffs' Second Amended Complaint, and dismisses with prejudice the abuse of process claim asserted therein; and Plaintiffs are barred from re-asserting at any time in the future their claim for civil conspiracy.

IT IS SO ORDERED.

3/21, 2012



Leitha H. Verdin
Presiding Judge.

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CLERK OF COURT
SPRINGFIELD COUNTY
2012 MAR 23 PM 2:18
M. HOPE BLACKLEY

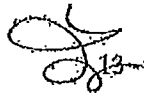


EXHIBIT C

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-42-5743

Gregory J. Feldman, MD, Joseph A. Boscia,
 MD, Upstate Lung and Critical Care
 Specialists PC, and Devendra Shantha, MD,
 Plaintiffs,)

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

vs.)

William Mark Casey, Ray E. "Chuck"
 Thompson, and Charles M. Fogarty, MD,
 Defendants.)

Plaintiffs' Attorney: F. Milton Mann, Jr., Bar No. 68250 Address: 1089 Boiling Springs Road, Spartanburg Phone: 864/680-5079 Fax 866/452-2276 E-mail: _____ Other: _____	Defendant's Attorney: *SEE DEFENSE ATTORNEY'S LISTED BELOW _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: <u>Reconsideration of March 21, 2012 Order and to Amend</u> Estimated Time Needed: 30 Minutes Court Reporter Needed: <input type="checkbox"/> YES/ <input checked="" type="checkbox"/> NO	
SECTION II: Motion/Order Type <input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant	Date submitted 04/09/2012
SECTION III: Motion Fee <input checked="" type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason) <ul style="list-style-type: none"> <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____

CLERK OF COURT
 SPARTANBURG COUNTY
 2012 APR -9 AM 11:57
 M. HOPE BLACKLEY

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

MOTION FEE COLLECTED: \$ _____

CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

***DEFENSE ATTORNEYS**

Joe Mooneyham, Esquire

Post Office Box 8359

Greenville, South Carolina 29605

Phone: 864/421-0036

Fax: 864/421-9060

Attorney for Defendant Mr: Casey

Matthew H. Henrickson, Esquire

Henrickson Law Firm

1164 Woodruff Road

Greenville, South Carolina 29607

Phone: 864/672-7106

Fax: 864/235-4399

Attorney for Defendant Mr. Thompson

Ellen Cheek, Esquire

Wilkes Law Firm

127 Dunbar Street, Suite 200

Spartanburg, SC 29306

Phone: 864/591-1113

Fax: 864/591-1767

Attorney for Defendant Dr. Fogarty

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 APR -9 AM 11:57
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Grégory J. Feldman, MD, Joseph A.)
Bosola, III, MD, Upstate Lung and Critical)
Care Specialists PC, and Devendra)
Shantha, MD,)

Plaintiffs,)

vs.)

William Mark Casey, Ray E. "Chuck")
Thompson, and Charles M. Fogarty, MD,)

Defendants.)

NOTICE OF MOTION AND
MOTION FOR RECONSIDERATION
AND TO AMEND

C.A. NO.: 2010-CP-42-5743

**TO: THE HONORABLE LETITIA VERDIN, JOE MOONEYHAM, ATTORNEY FOR
DEFENDANT, WILLIAM MARK CASEY, MATTHEW H. HENRICKSON,
ATTORNEY FOR DEFENDANT RAY E. "CHUCK" THOMPSON AND ELLEN
CHECK, ATTORNEY FOR DEFENDANT CHARLES M. FOGARTY, M.D.:**

YOU WILL PLEASE TAKE NOTICE that on the _____ day of

_____, 2012, at _____ .m. or as soon thereafter as the matter

can be heard, the Plaintiffs will move before the Honorable Letitia Verdin, for an Order granting

a rehearing or in the alternative for an Order allowing the amendment of the Court's Order

Granting Defendants' Motions to Dismiss Second Amended Complaint as it relates to Plaintiff's

claims being time-barred and issued by the Honorable Letitia Verdin, signed on March 21, 2012,

clocked by the Spartanburg County Clerk of Court on March 23, 2012, and received by the

Plaintiffs' attorney by U.S. Mail on March 28, 2012. That such motion shall be based upon

federal case law, statutory case law in the State of South Carolina including, but not limited to,

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SPARTANBURG COUNTY
2012 APR 9 AM 10:58
M. HOPE BIRCKBEY

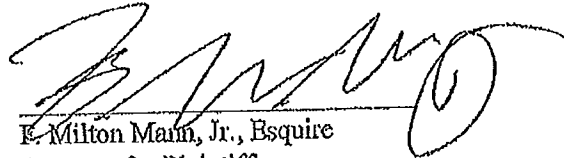
South Carolina Rules of Civil Procedure 52(b) and 59(e) and shall be made upon such grounds as it may appear at the hearing on such motion and any supporting memorandum.

In addition, the Plaintiffs will move for an order allowing Plaintiffs to amend their Complaint pursuant to Rule 15(b) of the South Carolina Rules of Civil Procedure. More specifically, this motion is based on the grounds that justice requires necessary dates be included for clarification, efficiency, and in the interest of justice. That such motion shall be based upon federal case law, the statutory case law in the State of South Carolina, including but not limited to South Carolina Rules of Civil Procedure 15(b) and shall be made upon such grounds as it may appear at the hearing on such motion and any supporting memorandum. Defendants will not be prejudiced by Plaintiffs being allowed to amend their Complaint due to the fact that Defendants are fully aware of all pertinent dates and justice will be served by such amendments.

In addition, the Plaintiffs will move for an order allowing Plaintiffs to amend their Complaint pursuant to Rule 15 of the South Carolina Rules of Civil Procedure, more specifically, this motion is based on the grounds that justice requires Equitable Tolling where the Plaintiffs, by exercising reasonable diligence, could not have discovered essential information bearing on their claims. That such motion shall be based upon federal case law, the statutory case law in the State of South Carolina, including but not limited to South Carolina Rules of Civil Procedure 15 and shall be made upon such grounds as it may appear at the hearing on such motion and any supporting memorandum. Defendants will not be prejudiced by Plaintiffs being allowed to amend their Complaint because Defendants' alleged illegal actions of suborning perjury make

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SPARTANBURG COUNTY
2012 APR -9 AM 11:58
M. ROPELA
M. KYLE

material misrepresentations to the Court, and concealing evidence, caused Plaintiffs to be actively misled and prevented the Plaintiffs in extraordinary ways from discovering the facts essential to the filing of their Complaint and justice will be served by such amendment.



E. Milton Mann, Jr., Esquire
Attorney for Plaintiffs
1089 Boling Springs Road
Spartanburg, SC 29303
864-680-5079

Spartanburg, SC
April 9, 2012

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 APR -9 AM 11:58
M. NOPE BLACKLEY

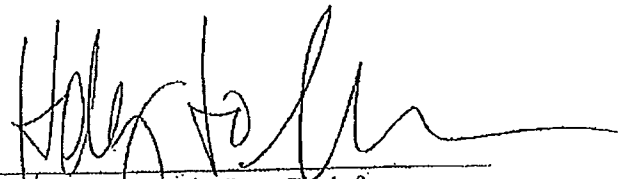
CERTIFICATE OF SERVICE

I, Holly Jo Mann, do hereby certify that I have served a copy of the **Motion and Order Information Form and Coversheet and Notice of Motion and Motion for Reconsideration and to Amend** by email and by placing copies in the U.S. Mail, first class postage prepaid, to the following addresses, on this 9th day of April, 2012:

Joe Mooneyham, Esquire
Mooneyham, Barry & Karow, LLC
PO Box 8359
Greenville, South Carolina 29604
Phone: 864/421-0036
Fax: 864/421-9060
joe@upstatetriallawyers.com
Attorney for Defendant Mr. Casey

Matthew H. Henrikson, Esquire
Henrickson Law Firm
1164 Woodruff Road
Greenville, South Carolina 29607
Phone: 864/672-7106
Fax: 864/235-4399
matt@henricksonlaw.com
Attorney for Defendant Mr. Thompson

Ellen Cheek, Esquire
Wilkes Law Firm
127 Dunbar Street, Suite 200
Spartanburg, SC 29306
Phone: 864/591-1113
Fax: 864/591-1767
ECheck@wilkeslaw.com
Attorney for Defendant Dr. Fogarty



Holly Jo Mann, JD - Law Clerk for
F. Milton Mann, Jr., Esquire
Attorney for Plaintiffs
1090 Boiling Springs Road
Spartanburg, SC 29302
Phone: 864/680-5076
Fax: 866/452/2276
Milton.Mann@gmail.com

EXHIBIT D

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF SPARTANBURG
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2010CP4205743

Gregory J. Feldman, MD Upstate Lung and Critical Care Specialists PC	Joseph A. Boscia, III Devendra T Shantha, MD	William Mark Casey Charles M Fogarty MD	Ray E "Chuck" Thompson
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by: Court	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
---------------------	---

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other: _____

MAY 14 2012
 11:09:12 AM
 M. HOPE B. AUSTIN
 CLERK

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court.
 This matter comes before the Court on Plaintiff's Motion to Reconsider pursuant to Rule 59(e) SCRPC. Plaintiff's Motion to Reconsider and for Rehearing is denied.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

COMPUTER &

5

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

JAC
Circuit Court Judge

2162
Judge Code

4/30/2012
Date

5/14/12 For Clerk of Court Office Use Only

5/14/12

This judgment was entered on, and a copy mailed first class or placed in the appropriate attorney's box on, to attorneys of record or to parties (when appearing pro se) as follows:

Franklin Milton Mann, Jr., F. Milton Mann, Jr Atty at Law,
1089 Boiling Springs Road, Spartanburg, SC 29303

Joe Mooneyham, Mooneyham Flowers Berry & Karow, P.O.
Box 8359, Greenville, SC 29604
Matthew Holmes Henrikson, Henrikson Law Firm, LLC,
P.O. Box 26554, Greenville, SC 29616
Michael B.T. Wilkes, Michael Wilkes Law Firm, PA, 127
Dunbar Street #200 Spartanburg, SC 29306
Ellen S. Cheek, Michael Wilkes Law Firm, PA, 127 Dunbar
Street, Suite 200, Spartanburg, SC 29306

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

M. Hope Blackley
Hope Blackley - Spartanburg County Clerk Of Court
Paul Stewart OC

Court Reporter

M. HOPE BLACKLEY

2012 MAY 14 AM 9:12

EXHIBIT E

F. MILTON MANN, JR.

ATTORNEY AT LAW
LICENSED IN SC, GA. & FL

August 24, 2012

Honorable Letitia Verdin
Greenville County
305 E. North Street, Suite 318
Greenville, SC 29601

BY EMAIL & U.S. MAIL

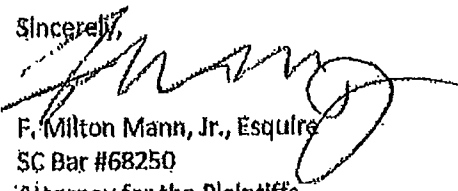
Re: Gregory Feldman, MD, et al v. William Mark Casey, et al
Case No. 2010-CP-42-5743

Dear Judge Verdin:

I hope this letter finds you well. We are in receipt of your Form 4 Order docketed May 14, 2012, which indicates that a formal Order will follow. To-date, we have not received said Order. May we have a time-frame in which we might expect the formal Order?

Thank you for your assistance in this matter.

Sincerely,



F. Milton Mann, Jr., Esquire
SC Bar #68250
Attorney for the Plaintiffs

CC: Ellen Cheek, Esquire
Matt Henrickson, Esquire
Joe Mooneyham, Esquire
Mr. Overby - **by email only**

1089 BOILING SPRINGS ROAD • SPARTANBURG, SOUTH CAROLINA 29303
864-208-0359 • FAX 864-208-0233 • CELL 864-680-5079
EMAIL: MILTON.MANN@GMAIL.COM

Record Appendix 94

EXHIBIT F



holly mann <holly.jo.mann@gmail.com>

Gregory Feldman, MD, et al v. William Mark Casey, et al - Case No. 2010-CP-42-5743

Verdin, Letitia H. Law Clerk () <lverdinc@sccourts.org>

Fri, Aug 24, 2012 at 11:16 AM

To: holly mann <holly.jo.mann@gmail.com>, Milton Mann <milton.mann@gmail.com>, "EChcek@wilkeslaw.com" <EChcek@wilkeslaw.com>, "matt@henriksonlaw.com" <matt@henriksonlaw.com>, "Joe Mooneyham (Joe@upstatetriallawyers.com)" <Joe@upstatetriallawyers.com>

No formal order will follow on Judge Verdin's ruling on Plaintiff's Motion to Reconsider. That is a clerical error.

Thank you.

Stan Overby
Law Clerk to the Honorable Letitia H. Verdin

From: holly mann [holly.jo.mann@gmail.com]

Sent: Friday, August 24, 2012 10:03 AM

To: Milton Mann; EChcek@wilkeslaw.com; matt@henriksonlaw.com; Joe Mooneyham (Joe@upstatetriallawyers.com); Verdin, Letitia H. Law Clerk ()

Subject: Gregory Feldman, MD, et al v. William Mark Casey, et al - Case No. 2010-CP-42-5743

Good Morning!

Please see attached.

Thank you.

holly mann, J.d.
1089 bolling springs road
spartanburg, sc 29303
cell: 864/384-0421 <tel:864%2F384-0421>
fax: 866/452-2276 <tel:866%2F452-2276>

CERTIFICATE OF SERVICE

I, Holly Jo Mann, do hereby certify that I have served a copy of the Notice of Appeal by placing copies in the U.S. Mail, first class postage prepaid, to the following addresses, on this

28th day of August, 2012:

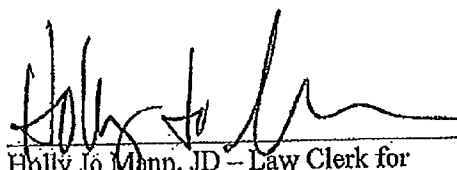
Joe Mooneyham, Esquire
Mooneyham, Barry & Karow, LLC
PO Box 8359
Greenville, South Carolina 29604
Phone: 864/421-0036

Matthew H. Henrickson, Esquire
Henrickson Law Firm
1164 Woodruff Road
Greenville, South Carolina 29607
Phone: 864/672-7106

Ellen Cheek, Esquire
Wilkes Law Firm
127 Dunbar Street, Suite 200
Spartanburg, SC 29306
Phone: 864/591-1113

By hand-delivery to:

Hope M. Blackely,
Spartanburg County Clerk of Court
180 Magnolia Street
Spartanburg, SC 29306



Holly Jo Mann, JD - Law Clerk for
P. Milton Mann, Jr., Esquire
Attorney for Appellants
1090 Boiling Springs Road
Spartanburg, SC 29302
Phone: 864/680-5076
Fax: 866/452/2276
Milton.Mann@gmail.com

Ellen Cheek

From: charles fogarty <cfogarty@medresearch.com>
Sent: Wednesday, February 13, 2013 2:46 PM
To: Ellen Cheek
Subject: FW: feldman v. casey

Charles M. Fogarty, MD
Spartanburg Medical Research
(864) 583-1556
(864) 431-6964 (Cell)

From: Couch, Roger L. Law Clerk (Mark A. Nowell) [<mailto:rcouchlc@sccourts.org>]
Sent: Wednesday, October 05, 2011 5:39 PM
To: holly mann; milton.mann@gmail.com; Joe Mooneyham(Joe@upstatetriallawyers.com);
mhenrikson@clarksonwalsh.com; charles fogarty
Subject: RE: feldman v. casey

All:

There appears to be some confusion as to Judge Couch's ruling on the 12(b)(6) motions to dismiss in the above-referenced case. Since my September 30th email did not indicate any deficiencies in the abuse of process cause of action, Plaintiffs appear to have inferred that Judge Couch was denying Defendants' motions as to that claim. This is not the Court's intention. Rather, my email was only meant to inform Plaintiffs that the Court had granted them leave to amend for a second time. The Defendants' motions have not been denied as to the abuse of process cause of action. Moreover, even though my email did specify some deficiencies in Plaintiffs' civil conspiracy claim, Judge Couch did not grant the motions as to that claim.

Bottom-line: The Court has neither denied nor granted any part of Defendants' 12(b)(6) motions to dismiss. Rather, the Court's ruling is that Plaintiffs are permitted to amend for a second time in order to fix all shortcomings in their Complaint. Defendants' motions to dismiss shall be continued until after service of the Second Amended Complaint. Plaintiffs will have 30 days to file a Second Amended Complaint following the issuance of an order. Defendants will have 15 days to respond to the Second Amended Complaint. Defendants need not answer the First Amended Complaint prior to the filing of the Second Amended Complaint. Please let me know if you have any questions.

Thanks,

Mark A. Nowell
Law Clerk to the Honorable Roger L. Couch
Seventh Judicial Circuit
180 Magnolia Street
Spartanburg, SC 29304
Tel: (864) 562-4235
Fax: (864) 562-4234

From: holly mann [<mailto:holly.jo.mann@gmail.com>]
Sent: Wednesday, October 05, 2011 4:26 PM
To: Couch, Roger L. Law Clerk (Mark A. Nowell); milton.mann@gmail.com; Joe

Mooneyham(Joe@upstatetriallawyers.com); mhenrikson@clarksonwalsh.com; [charlesfogarty \(cfogarty@medresearch.com\)](mailto:charlesfogarty@medresearch.com)
Subject: feldman v. casey

gentlemen -

attached please find the letter to judge couch, coversheet and draft proposed order. i understand that certain parties have concerns with the language utilized in the draft proposed order. i ask that you address those concerns directly with judge couch.

thank you and, i look forward to hearing from you.

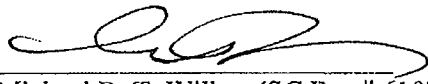
FMMjr/hjm

...
holly mann, j.d.
1089 boiling springs road
spartanburg, sc 29303
cell: 864/384-0421
fax: 864/208-0233

Certificate of Counsel

The undersigned hereby certifies that the Appendix to Record on Appeal contains all materials proposed by any of the parties to be included in the Appendix to Record, and not any other material.

May 6, 2013



Michael B. T. Wilkes (SC Bar # 6107)

mwilkes@wilkeslaw.com

Ellen S. Cheek (SC Bar # 69642)

echeek@wilkeslaw.com

WILKES LAW FIRM, PA
127 Dunbar Street, Suite 200
Spartanburg, South Carolina 29306
(864) 591-1113
(864) 591-1767 (fax)

Attorneys for Respondent Charles M. Fogarty, MD

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
Letitia H. Verdin, Circuit Court Judge

RECEIVED
MAY 07 2013
SC Court of Appeals

Case No. 2010-CP-5743

Gregory J. Feldman, MD, Joseph A. Boscia, III, MD,
Upstate Lung & Critical Care Specialists, PC, and
Devendra Shantha, MD,.....Appellants,

v.

William Mark Casey, Ray E. ("Chuck") Thompson,
and Charles M. Fogarty,..... Respondents.

PROOF OF SERVICE

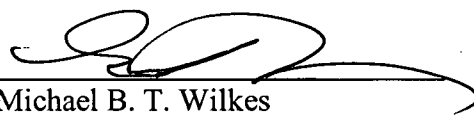
I certify that I have served the *Appendix to Record on Appeal* upon Gregory J. Feldman, MD, Joseph A. Boscia, III, MD, Upstate Lung & Critical Care Specialists, PC, and Devendra Shantha, MD, by depositing a copy of it in the United States Mail, postage prepaid, on May 6, 2013, addressed to their attorney of record, F. Milton Mann, Jr., Esquire, at his office at 1089 Boiling Springs Road, Spartanburg, South Carolina, 29303.

Additionally, I hereby certify that I have served the *Appendix to Record on Appeal* upon co-respondents, William Mark Casey and Ray E. ("Chuck") Thompson, by depositing a copy of it in the United States Mail, postage prepaid, on May 6, 2013, addressed to their attorneys, Joe Mooneyham, Esquire, PO Box 8359, Greenville, South

ORIGINAL

Carolina, 29604, and Matthew H. Henrikson, Esquire, 1164 Woodruff Road, Greenville,
South Carolina, 29607, respectively.

May 6, 2013



Michael B. T. Wilkes
Ellen S. Cheek
Wilkes Law Firm, P.A.
127 Dunbar Street, Ste. 200
Spartanburg, SC 29306
(864) 591-1113
Attorney for Respondent Charles M. Fogarty