

**RECEIVED**

**Jul 06 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

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

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

v.

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

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

CONSENT MOTION TO DISMISS APPEAL AND TO VACATE ORDERS

James K. Gilliam, S.C. Bar No. 76695  
Burr & Forman LLP  
104 South Main Street, Suite 700  
Greenville, South Carolina 29601  
(864) 271-4940

Robert L. Widener, S.C. Bar No. 6089  
Celeste T. Jones, S.C. Bar No. 3173  
Burr & Forman LLP  
Post Office Box 11390  
Columbia, South Carolina 29211  
(803) 799-9800

*Attorneys for Appellants*

James Lynn Werner, SC Bar #6029  
David B. Summer, SC Bar # 7974  
Katon E. Dawson, Jr., SC Bar # 101167  
Ashley W. Johnson, SC Bar # 101423  
Parker Poe Adams & Bernstein  
1221 Main Street, #1100 (29201)  
Post Office Box 1509  
Columbia, SC 29202

*Attorneys for Respondents*

Pursuant to Rule 260(b) of the South Carolina Appellate Court Rules, the Parties move for the Court of Appeals to enter an Order dismissing this appeal, with each Party bearing its own attorney's fees and costs. In addition, the Parties move for the Court of Appeals to vacate the following Orders:

- (a) The Order filed on August 11, 2022 signed by the Honorable James E. Lockemy for the Court denying Plaintiffs' Petition for Supersedeas.
- (b) The Order filed on September 13, 2022 denying Plaintiffs' Petition for Full Appellate Court Review of Order Denying Supersedeas.

Appellants and Respondents (collectively "**the Parties**") have vigorously litigated this case, and currently, the Parties have pending matters before the Business Court, the South Carolina Court of Appeals, and the Supreme Court of South Carolina. On April 25, 2023, the Parties agreed to settle the dispute between them. Pursuant to the Parties' Settlement Agreement, they agreed to file consent motions, moving for the Honorable Jennifer B. McCoy, the Honorable Maite Murphy, and the South Carolina Court of Appeals to vacate certain Orders that were entered in this case.

While the Parties do not wish to argue the merits of this case, the Parties respectfully point out that the two Orders that they move for the Court of Appeals to vacate were the subject of a pending Petition for Writ of Certiorari filed by Appellants with the Supreme Court of South Carolina. In the Petition, the Appellants sought reversal of these two Orders. At the time the Parties agreed to settle this case, the Appellants' Petition for Writ of Certiorari was pending with the Supreme Court of South Carolina.

Respectfully, the Parties believe that vacating the Orders promotes and encourages settlements. *See Riley v. Ford Motor Co.*, 414 S.C. 185, 196, 777 S.E.2d 824, 830 (2015) (recognizing South Carolina's strong public policy favoring the settlement of disputes"). If Courts

were not inclined to vacate previously issued Orders that are the subject of pending appeal, litigants may feel as though they cannot settle cases pending appeal. Such a result is antithetical to the strong public policy favoring settlement and encouraging the preservation of scarce judicial resources. *See Darden v. Witham*, 258 S.C. 380, 388, 188 S.E.2d 776, 778 (1972) (“The courts favor settlements and agreements amongst litigants ....”).

For the foregoing reasons, the Parties respectfully move for the Court of Appeals to dismiss this appeal and to vacate the two Orders identified in this Motion.

**THE PARTIES SO MOVE.**

BURR & FORMAN LLP

*s/James K. Gilliam*

James K. Gilliam, S.C. Bar No. 76695  
Burr & Forman LLP  
104 South Main Street, Suite 700  
Greenville, South Carolina 29601  
(864) 271-4940

Robert L. Widener, S.C. Bar No. 6089  
Celeste T. Jones, S.C. Bar No. 3173  
Burr & Forman LLP  
Post Office Box 11390  
Columbia, South Carolina 29211  
(803) 799-9800

*Attorneys for Appellants*

PARKER POE ADAMS & BERNSTEIN

*s/James Lynn Werner*

James Lynn Werner, SC Bar #6029  
David B. Summer, SC Bar # 7974  
Katon E. Dawson, Jr., SC Bar # 101167  
Ashley W. Johnson, SC Bar # 101423  
1221 Main Street, #1100 (29201)  
Post Office Box 1509  
Columbia, SC 29202

*Attorneys for Respondents*

July 6, 2023

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

**Jul 06 2023**

**SC Court of Appeals**

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Case No. 2022-000352

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

v.

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

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

---

PROOF OF SERVICE

---

I, Catherine Martin, an employee of Burr & Forman LLP, hereby certify that a copy of the following has been served upon counsel for the Respondents by U.S. first class mail and electronic mail at the below listed address:

- Consent Motion to Dismiss Appeal and to Vacate Orders

James Lynn Werner, Esquire  
[jimwerner@parkerpoe.com](mailto:jimwerner@parkerpoe.com)  
David B. Summer, Esquire  
[davidsummer@parkerpoe.com](mailto:davidsummer@parkerpoe.com)  
Katon E. Dawson, Jr., Esquire  
[katondawson@parkerpoe.com](mailto:katondawson@parkerpoe.com)  
Ashley W. Johnson, Esquire  
[Ashleyjohnson@parkerpoe.com](mailto:Ashleyjohnson@parkerpoe.com)

Parker Poe Adams & Bernstein LLP  
Post Office Box 1509  
Columbia, South Carolina 29202  
*Attorneys for HCA Healthcare, Inc. and  
Trident Medical Center, LLC*

*Catherine Martin*

July 6, 2023  
Columbia, South Carolina

James K. Gilliam  
jgilliam@burr.com  
Direct Dial: (864) 552-9338  
Direct Fax: (864) 250-2054

**RECEIVED**  
**Jul 06 2023**  
**SC Court of Appeals**

Poinsett Plaza  
104 South Main Street  
Suite 700  
Greenville, SC 29601

*Mailing Address*  
Post Office Box 447  
Greenville, SC 29602

*Office* (864) 271-4940  
*Fax* (864) 271-4015

BURR.COM

July 6, 2023

**BY U.S. MAIL AND EMAIL (CTAPPFILINGS@SCCOURTS.ORG)**

The Honorable Jenny Abbott Kitchings  
Clerk  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

**Re: Medical University of South Carolina, et al. v. HCA Healthcare, et al.; Appellate Case No.: 2022-000352**


Dear Ms. Kitchings,

On behalf of the Appellants, Medical University of South Carolina and University Medical Associates of the Medical University of South Carolina, we are enclosing herewith one copy of the following:

- Consent Motion to Dismiss Appeal and to Vacate Orders
- Proof of Service
- Filing Fee

Counsel for the Respondents have been served as indicated on the Proof of Service.

Very truly yours,



James K. Gilliam

JKG/cem

Enclosures

The Honorable Jenny Abbott Kitchings

July 6, 2023

Page 2

---

cc: James Lynn Werner, Esquire ([jimwerner@parkerpoe.com](mailto:jimwerner@parkerpoe.com))  
David B. Summer, Esquire ([davidsummer@parkerpoe.com](mailto:davidsummer@parkerpoe.com))  
Katon E. Dawson, Jr., Esquire ([katondawson@parkerpoe.com](mailto:katondawson@parkerpoe.com))  
Ashley W. Johnson, Esquire ([Ashleyjohnson@parkerpoe.com](mailto:Ashleyjohnson@parkerpoe.com))

**BURR & FORMAN LLP**

NO. 727

Vendor South Carolina Court of Appeals 20438

Check Date 07/06/2023

<u>Invoice</u>	<u>Date</u>	<u>Amount</u>	<u>Description</u>
7/6/23A	7/6/2023	\$50.00	File a consent motion to dismissal appeal and vacate orders

THE ORIGINAL DOCUMENT HAS A WHITE REFLECTIVE WATERMARK ON THE BACK.

HOLD AT AN ANGLE TO VIEW. DO NOT CASH IF NOT PRESENT.

**BURR & FORMAN LLP**

420 N 20th Street  
Suite 3400  
Birmingham, AL 35203

WELLS FARGO - Greenville Sub Operating

Check No. 727

Date: 07/06/2023

Void After 180 days

Pay: \*\*\*Fifty and 00/100 \*\*\*

\$\*\*\*\*\*50.00\*\*\*

Pay  
To The  
Order Of

South Carolina Court of Appeals



⑈00000727⑈

⑆061000227⑆

8231508436⑈