

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM HORRY COUNTY  
Steven H. John, Circuit Court Judge

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Appellate Case No. 2020-000046  
Case No. 2011-CP-26-7403

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Mark Green, as Personal Representative of the Estate of  
Randall M. Green and Ann Green, ..... Respondents,

v.

Wayne B. Bauerle, M.D. and Wayne B. Bauerle, M.D., P.C., ..... Appellants.

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**PETITION FOR REHEARING**

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The Appellants Wayne B. Bauerle, M.D. and Wayne B. Bauerle, M.D., P.C. petition the South Carolina Court of Appeals for a rehearing of the Court's recent decision in *Green v. Bauerle*, Op. No. 6029 (S.C. Ct. App. filed October 4, 2023).

The grounds for the Appellants' petition for rehearing are addressed in detail in the supporting memorandum filed herewith and incorporated herein.

The Appellants' petition for rehearing is based on the Court's decision in *Green v. Bauerle*, Op. No. 6029 (S.C. Ct. App. filed October 4, 2023); the

supporting memorandum filed herewith; the briefs and Record on Appeal; Rule 221(a), SCACR; Rule 224, SCACR; and other rules of court.

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October 19, 2023

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**MEMORANDUM IN SUPPORT OF  
PETITION FOR REHEARING**

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The Appellants Wayne B. Bauerle, M.D. and Wayne B. Bauerle, M.D., P.C. have petitioned this Court for a rehearing of the recent decision in *Green v. Bauerle*, Op. No. 6029 (S.C. Ct. App. filed October 4, 2023). The Appellants respectfully submit that the following points were overlooked or misapprehended by this Court.

## I.

As a threshold issue, the opinion of this Court does not specifically state the applicable standard of review, and from the analysis by the Court, it is unclear what standard of review was applied.

As briefed in detail, the parties disagree as to the applicable standard of review which made the issue one that required the Court's resolution. The Respondents argue that the standard of review is abuse of discretion. The Appellants, on the other hand, maintain that the standard of review is *de novo*.

In this case, the South Carolina Supreme Court recognized that a non-settling defendant's right to a setoff arises by operation of law under S.C. Code Ann. § 15-38-50 as well as by common law. *Green v. Bauerle*, 2019 WL 2289678, \*3 (S.C. 2019). The Supreme Court explained that S.C. Code Ann. § 15-38-50 "grants the [trial] court no discretion ... in applying a set-off." *Id.*, citing *Smith v. Widener*, 397 S.C. 468, 724 S.E.2d 188, 190 (Ct. App. 2012). The Supreme Court also ruled that "[i]n South Carolina, a non-settling defendant's right to setoff also exists under common law, and the jurisdiction of the court to set off one judgment against another is equitable in its nature, and should be exercised so as to do justice between parties." *Id.*

On appeal, this Court "reviews all questions of law *de novo*." *Fesmire v. Digh*, 385 S.C. 296, 683 S.E.2d 803, 807 (Ct. App. 2009). Thus, rulings as to the

setoff arising by operation of law under S.C. Code Ann. § 15-38-50 should be reviewed *de novo*. Likewise, in matters of equity, all factual findings and legal conclusions are reviewed *de novo*. *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 715 S.E.2d 348, 352 (Ct. App. 2011).

As indicated, the Court's opinion does not specifically address the applicable standard of review. From the Court's analysis, there are rulings of "no error," but there are also rulings addressing the sufficiency of the evidence. *See e.g.*, Slip Op. at 10 ("because the circuit court's allocation is supported by the evidence in the record ...."); Slip Op. at 9 ("we find the circuit court's allocation is supported by the evidence and is reasonable under the facts of this case"). That suggests the Court applied the standard of review for an action at law tried without a jury which requires the appellate court to not disturb the judge's findings of fact unless found to be without evidence which reasonably supports the judge's findings. *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773, 775 (1976). The Appellants submit that standard of review would be incorrect and that only a *de novo* standard applies to the issues on appeal.

In sum, the Court is requested on rehearing to address the parties' dispute as to the applicable standard of review, to find that a *de novo* standard applies to all issues presented, and to apply that *de novo* standard.

## II.

Like the Circuit Court did, this Court overlooked or misapprehended the complete absence of admissible, competent evidence in the record showing that the intention of the Greens was to share equally the \$2 million settlement received from Grand Strand Regional Medical Center.

As the Court recognizes, the “Covenant Not to Sue and Covenant Not to Prosecute or Execute Judgment” does not provide for an allocation between the settling parties. However, as the Appellants argued, the intent to equally allocate the \$2 million is not shown by any language within the agreement. In other words, the agreement contains no allocation nor any indication that an allocation was even contemplated by the parties. A suggestion to the contrary is pure speculation, and speculation is not evidence. *See, Gordon v. Busbee*, 397 S.C. 119, 723 S.E.2d 822, 831 (Ct. App. 2012). Likewise, silence in the Covenant is not evidence that an allocation was contemplated or bargained for.

The Appellants pointed out that the Circuit Court cited only to the arguments of counsel that the Greens intended to allocate the \$2 million settlement equally between them. This Court disagreed with that assessment. However, the Circuit Court wrote: “The Plaintiffs asserted before the Supreme Court as well as this Court that the lack of allocation reflects their intentions to share equal entitlement to the funds.” (R. 4). That is reliance on the arguments of counsel, and of course,

it is well established that argument by counsel is not evidence nor is it a substitute for evidence. *Bowers v. Bowers*, 304 S.C. 65, 403 S.E.2d 127, 129 (Ct. App. 1991) (“Arguments of counsel are ... not evidence”). Nonetheless, with due respect, this Court did the very same thing when it writes: “The Greens submit that their decision not to specifically allocate the settlement funds [in the Covenant] indicates their intent to allocate the funds equally amongst themselves.” *See*, Slip Op. at 7. This Court relied on the argument of counsel as evidence. In fairness, there is *no evidence* – other than argument of counsel which is not evidence – that the Greens intended to allocate the \$2 million equally. Moreover, the Greens’ trial testimony as to their damages is not evidence of whether (or how) they allocated a pre-trial settlement. That is simply not credible nor competent evidence of the settling parties’ intent.

The Court further erred in making references to cases where there is an attempt to “reallocate” an allocated settlement. *See*, Slip Op. at 8. This is not a “reallocation” case. As the Court recognizes, the Covenant includes no bargained for allocation by the Greens. Hence, the Appellants are not seeking a reallocation. Indeed, that is important because the burden of proof shifts in a reallocation case. *See, Edwards v. Scapa Waycross, Inc.*, 437 S.C. 396, 878 S.E.2d 696, 711 (Ct. App. 2022) (“the party seeking departure from the application of standard setoff

rules bears the burden of proof and must be prepared to justify such reallocation as fair, bona fide, and just”).

There is one piece of evidence that *does show the Greens’ intent*, but that evidence was rejected by the Circuit Court as “harmless error” and “should be disregarded.” As the Appellants have explained, on April 14, 2016, a Consent Order to Partially Release Funds Deposited with Clerk of Court was signed and filed by Circuit Court Judge Larry Hyman. That Consent Order was based on the Greens’ motion “for an Order directing that the sum of \$228,505.69 be paid by the Clerk of Court to the Plaintiffs Randall Green and Ann Green.” (R. 26). That Consent Order further provided that “the judgment in favor of the Plaintiff Randall Green is partially satisfied by the payment of \$163,622.01 and the judgment in favor of the Plaintiff Ann Green is partially satisfied by the payment of \$64,883.68.” (R. 27).

Thus, Mrs. Green, with her husband's consent, accepted \$64,883.68, and they partially satisfied/released the Appellants in that amount on April 20, 2016. (R. 126). The acceptance of funds by Mrs. Green to partially satisfy the judgment entered in her favor is inconsistent with the Greens’ current position that Mrs. Green’s allocation was \$1 million (as intended by the parties to the Grand Strand settlement) and thus no payment of any amount was required to satisfy Mrs. Green's verdict of \$550,000. But, by accepting the \$64,883.68 and satisfying Mrs.

Green’s judgment in that amount, the Greens acknowledged that her judgment was not fully satisfied by the Grand Strand settlement. That is clearly evidence demonstrating that the Greens never intended to allocate and *indeed did not allocate* the \$2 million equally.

That is the *only competent evidence* in the record that reflects the Greens’ intent with respect to the \$2 million settlement. The Circuit Court erred in disregarding it, and this Court did as well. This Court writes: “we agree with the Greens that an isolated sentence from a Consent Order directing the release of undisputed funds in the total of a UIM payout has no application here.” *See*, Slip Op. at 8.<sup>1</sup> There is no isolated sentence in a Consent Order that is at issue; it is the net effect of that Consent Order. The Greens were asking the Circuit Court to satisfy the judgment in favor of Mrs. Green by \$64,883.68, and that satisfaction was indeed accomplished. It is the request and the partial satisfaction of Mrs. Green’s judgment that is *probative evidence* that the Greens did not allocate the Grand Strand settlement as they now claim.

The Court also errs in rejecting the *only competent and probative evidence* of the Greens’ intent based on language in the Order filed December 23, 2014,

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<sup>1</sup> The reference to a “UIM payout” is a mischaracterization and not substantively material. The Circuit Court likewise erred in characterizing the April 2016 payment as “the disbursement of UIM proceeds.” (R. 8). The payment was not “UIM proceeds” or a “UIM payout” and was not made by the UIM insurer. Instead, it was a payment made by the Appellants’ insurer in partial satisfaction of *both* the medical malpractice verdict for Mr. Green and the loss of consortium verdict for Mrs. Green.

stating “the release of the judgment liens has no effect on any issues currently on appeal[,] including the amount of the verdicts to which the Plaintiffs are ultimately entitled, which will be determined by the appellate courts.” (R. 25). The referenced Order was entered in December 2014, long before the Greens sought to partially satisfy the judgment in favor of Mrs. Green. That Order resolved the Appellants’ request to pay a sum equal to the judgment and accrued interest into court pursuant to Rule 67, SCRPC. (R. 21). The Appellants also requested “an Order declaring that, upon the deposit of the sum of \$409,480.53, plus accrued interest, with the Horry County Clerk of Court, the judgment liens established as a matter of law by the judgments entered in this action are released with respect to any real property owned by the Defendants in Horry County, South Carolina.” (R. 21). Judge Larry B. Hyman, Jr. made the following ruling:

In addition, the Court is advised that the Defendant Wayne B. Bauerle, M.D. is attempting to sell some real property that is presently encumbered by the judgment liens resulting as a matter of law from the judgments entered in this litigation. The Defendants seek the release of the judgment liens for properties owned by the Defendants within Horry County. The Court finds that the requested relief is appropriate upon the Defendants making the deposit of \$446,669.82 with the Clerk of Court. The amount of funds necessary to fully satisfy the judgments will then be available to the Plaintiffs after the pending appeal, if the Plaintiffs are successful in upholding those judgments. Therefore, the Plaintiffs do not require the protection of the judgment liens in order to obtain satisfaction of those judgments. Accordingly, this Court hereby orders the Defendants to make

immediate tender of the check in the amount of \$446,669.82 to the Horry County Clerk of Court, and the Court further hereby releases the judgment liens thereby removing those judgment liens as an encumbrance upon the Defendants' properties located in Horry County.

(R. 24). Thus, the purpose of the Order filed December 11, 2014 was simply to release the judgment liens on the Appellants' property. In the language quoted by this Court, it is "the release of the judgment liens" which "has no effect on any issues currently on appeal." (R. 25). The controversy before this Court does not involve "the release of the judgment liens." Indeed, Judge Hyman's Order does not even remotely address the issues related to the allocation, if any, of the \$2 million settlement, and it certainly does not preclude this Court or the Circuit Court from considering the Greens' later conduct in partially satisfying the judgment in favor of Mrs. Green to be considered for what it is -- competent and probative evidence of the Greens' intent with respect to that settlement. The Court is respectfully requested to reconsider its erroneous rejection of clearly probative and admissible evidence as to the Greens' intent -- evidence that should not have been rejected by the Circuit Court as "harmless error."<sup>2</sup>

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<sup>2</sup> The Court is also reminded that the Greens never even objected to the admissibility or consideration of the Consent Order filed April 14, 2016 during the Circuit Court hearing on remand. No contemporaneous objection was made. The Court should not reject such evidence where no objection was made. This is a point that this Court overlooked or did not mention in its analysis.

### III.

The Circuit Court ruled that Ann Green sustained damages in excess of what the jury determined, thereby justifying her receipt of \$1 million of the Grand Strand settlement as compensation for her consortium claim. Likewise, the Circuit Court ruled that such an equal allocation of the \$2 million in settlement proceeds prevents the risk of a double recovery while, in reality, the court's allocation leads to just that -- a double recovery. The jury awarded Mrs. Green \$550,000 as her consortium damages; yet, with the Circuit Court's ruling, Mrs. Green achieved a result in excess of \$1 million as her recovery -- close to twice the jury's determination.

As the Appellants explained, from an equitable standpoint, any notion that the Greens were equally damaged is entirely unsupported in the evidence. Hence, it is not fair or reasonable to allocate 50% of the Grand Strand settlement proceeds to each of the Greens. As the record reflects, Mr. Green's injuries, including significant personal injury, impairment, and paralysis as well as medical expenses and a Life Care Plan, far exceeded the loss of consortium suffered by Mrs. Green. The jury's verdict -- \$2.3 million in damages for Mr. Green and \$550,000 in damages for Mrs. Green -- bears that out and should not be entirely ignored or discounted, as the Circuit Court and now this Court have done. It is important to note that the Supreme Court indicated the ratios based on the verdicts "may well be

relevant to the ultimate determination of a proper setoff” but are “not necessarily the sole relevant circumstance.” *Green*, 2019 WL 2289678 at \*4.

This Court rejected the Appellants’ position on three bases, each of which respectfully should be reconsidered.

First, this Court found that the allocation “is supported by the evidence in the record.” *See*, Slip Op. at 10. The Court does not state what that evidence is. There is no evidence in the record, however, that would lead a reasonable factfinder to conclude that Mr. and Mrs. Green’s injuries were equal or even closely similar in value. Certainly, the jury’s decision in that regard cannot be completely disregarded.

Second, the Court refers to and rejects the Appellants’ “formula,” but there is no “formula” that was presented. The Appellants argue that the jury’s determination of damages and the relative harm sustained by Mr. and Mrs. Green (\$2.3 million in damages for Mr. Green vis-à-vis \$550,000 in damages for Mrs. Green) is entitled to weight in the analysis. Contrary to this Court’s opinion, the Appellants never argued that the jury’s verdict is the only evidence to be considered. Moreover, contrary to this Court ruling, a comparison of the Greens’ jury verdicts does not “contravene the supreme court’s prior opinion in this case.” *See*, Slip Op. at 10. Respectfully, that represents a misreading of the Supreme Court’s decision. The Supreme Court *explicitly* stated that the ratios based on the

verdicts “may well be relevant to the ultimate determination of a proper setoff” but are “not necessarily the sole relevant circumstance.” *Green*, 2019 WL 2289678 at \*4. Therefore, proper weight should have been given to the jury’s determination of damages sustained by the Greens in assessing the amounts to be set off from the verdicts. The Circuit Court as well as this Court thus erred in rejecting that component of the analysis. It was not improper under the Supreme Court’s ruling to consider the jury’s relative verdicts for the Greens.

Third, this Court erred in rejecting the argument that allocating \$1 million to Mrs. Green would not result in a windfall or double recovery. This Court rejects that argument based solely on inapposite case law where the settling parties explicitly allocated the settlement proceeds and the non-settling party sought a *reallocation*. See, Slip Op. at 10. The case of *Riley v. Ford Motor Co.*, 414 S.C. 185, 777 S.E.2d 824 (2015), has no application to the case at bar. This is not a case where the Appellants have sought a “reallocation” of an allocated settlement. To the contrary, this is a case where there is no allocation, and the Circuit Court was required, sitting in equity, to determine the settling parties’ intent and allocate the settlement. Thus, the reliance on *Riley*, which permeates the Court’s opinion, is in error and warrants reconsideration on rehearing.

#### IV.

The Appellants have also argued that the Circuit Court erred in disregarding

the position originally taken by the Greens post-trial and on appeal that their settlement with Grand Strand is or should be treated as “marital property” and, for that reason, the allocation of the \$2 million should be equal. As the Appellants pointed out, if the \$2 million settlement is “marital property,” then the verdicts themselves are also collectively “marital property,” which is supported by the applicable case law on how proceeds of litigation received during marriage are treated. *See, Mears v. Mears*, 313 S.C. 42, 437 S.E.2d 34, 36 (1993) (holding “proceeds of a personal injury settlement acquired during the marriage are marital property”). *See also, Marsh v. Marsh*, 313 S.C. 42, 437 S.E.2d 34 (1993); *Covington v. Covington*, 306 S.C. 473, 412 S.E.2d 455 (Ct. App. 1991); *Orszula v. Orszula*, 292 S.C. 264, 356 S.E.2d 114 (1987); S.C. Code Ann. § 20-3-630 (defining “marital property”). Respectfully, the Circuit Court and this Court have erred in rejecting this authority.

After the Supreme Court ruled, the Greens changed course and now dispute taking that position, but the record clearly demonstrates otherwise. *See, Gurganious v. City of Beaufort*, 317 S.C. 481, 454 S.E.2d 912, 916 (Ct. App. 1995) (a litigant is prohibited from “chang[ing] his theory on appeal”). In their Appellants’ Brief to this Court in the first appeal, the Greens, citing the *Marsh* case on marital property, wrote: “The evidence dictates that it should be allocated equally to each cause of action, and equity requires that it be allocated equally between the two

Plaintiffs. Even if the Settlement has been allocated entirely between the medical malpractice and loss of consortium causes of action, the funds would still be marital property to which each Plaintiff is equally entitled.” See, Greens’ Court of Appeals Appellants’ Brief, pp. 42-43. Later, in their brief to the Supreme Court, the Greens cited *Marsh* again, arguing: “Permitting courts to allocate joint property unequally between a husband and wife without their consent for the purpose of setoff implies that the pecuniary interests of third party tortfeasors conveys upon a trial court the authority to alter an agreement consummated by a married couple and force the division and characterization of their joint property.” See, Greens’ Supreme Court Brief, p. 21.

As demonstrated, the Greens clearly have taken the position that the Grand Strand settlement was “marital property” and “joint property.”<sup>3</sup> Thus, the Court should treat both the verdicts and the settlement as marital or joint property consistent with existing law. Under that approach, the total of the verdicts (\$2.85 million) would be subject to the entire setoff (\$2.025 million) which leaves the total recovery of \$825,000 in marital or joint property to be paid jointly to the

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<sup>3</sup> In fact, in their original memorandum of law opposing the Appellants’ Motion for Setoff, the Greens argued that they each had “an undeniable property right in an undisclosed and unallocated portion of the settlement proceeds. Essentially Ann Green owns a portion of every cent of that settlement and Randall Green owns a portion of every cent.” (R. 73). As they further wrote, “a set-off of any part of the verdict in favor of Randall Green would deprive Ann Green of her ownership right to the proceeds of the settlement and conversely, the set-off of any portion of Ann Green’s verdict would deprive Randall Green of his ownership of a portion of the settlement proceeds.” (R. 74).

Greens.

In its opinion rejecting this argument, this Court never acknowledge that this position was taken by the Greens or that they ultimately changed their theory. In fact, it appears that the Court disagreed with that assessment, but that is not clear. *See*, Slip Op. at 11. Nonetheless, the Court *sua sponte* raised the issue of “mootness,” which was not raised in the Circuit Court or at any point by the Greens to reject this argument. The Court includes no legal analysis or citations for its ruling that “this argument is now moot – Mr. Green has passed away and the interests of the Estate and its beneficiaries will never be subjected to a divorce proceeding.” *See*, Slip Op. at 11. Respectfully, the Court erred in rejecting this argument – made by the Greens themselves – based on mootness resulting from Mr. Green’s death. The set-off issue is not a fluid one. The right to a set-off of the \$2 million in settlement proceeds from Grand Strand -- which the Supreme Court has already affirmed -- arose at the time of the verdict in September 2013. In other words, the right to a set-off in some amount was established at the time of the verdict, and events that occurred after that date do not impact that right. Quite simply, Mr. Green’s death did not “moot” the Appellants’ right to a set-off nor the amount of that set-off. The determinative facts are those that exist at the time that the right accrued. The Court, in fact, cites no authority for its conclusion that the Appellants’ argument is now moot because of a death occurring in 2019.

In addition, the Court also misapprehends the precedent based on the Supreme Court's decision in *Broome v. Watts*, 319 S.C. 337, 461 S.E.2d 46 (1995). As the Appellants point out, the *Broome* decision actually addresses how to apply a setoff where there are personal injury and consortium trial verdicts in favor of spouses. In *Broome*, a husband and wife settled a personal injury claim and consortium claim with the at-fault driver and received an unallocated sum of \$50,000. The husband and wife then made an underinsured motorist (UIM) claim, and the Supreme Court addressed whether the UIM carrier was entitled to a setoff for the \$50,000. The claims were tried to a jury verdict, as occurred in this case. The husband received a verdict of \$90,000 on his personal injury claim and the wife a verdict of \$7,500 (after an additur) on her loss of consortium claim. The Supreme Court explained that the \$50,000 setoff could be applied to the total verdicts for both husband and wife, leaving a judgment for both spouses of \$47,500.

Thus, consistent with *Broome*, it is appropriate to treat the settlements and verdicts as marital or joint property. As indicated, using the framework from *Broome*, the total of the judgment (\$2.85 million) should be subject to the entire setoff (\$2.025 million) which leaves the total recovery of \$825,000 to be paid jointly to the Greens.

This Court relegated the discussion of binding Supreme Court precedent to a footnote. *See*, Slip Op. at 11. Moreover, the Court attempts to distinguish *Broome* by pointing out the setoff in *Broome* was a UIM setoff rather than an equitable setoff, but the Court never explains why that is a significant or even a dispositive difference. This is a classic example of a distinction without a difference. Setoffs are not different under South Carolina law based on their statutory source, or at least, this Court does not explain how or why the setoffs are different and/or require different treatment or analysis under the law.

This Court also states that *Broome* did not involve a settlement allocation. Frankly, that is the very point. What *Broome* does show is how to apply a setoff where there are personal injury and consortium trial verdicts in favor of both spouses. *Broome* shows that there is no allocation required to be made between spouses. Instead, under *Broome*, the total of the judgments (\$2.85 million) is subject to the entire setoff (\$2.025 million) which leaves the total recovery of \$825,000 to be paid jointly to the spouses. That is precisely why *Broome* is critical precedent that should not have been discounted or ignored.

On rehearing, this Court is respectfully requested to apply the precedent established by the Supreme Court's decision in *Broome* which the Circuit Court without explanation chose to disregard and which this Court rejected.

## **CONCLUSION**

Based on the foregoing discussion, the Appellants Wayne B. Bauerle, M.D. and Wayne B. Bauerle, M.D., P.C. respectfully request that the Court rehear its decision in this case and reverse the Orders on appeal and direct on remand that judgment be entered in favor of the Respondents jointly in the amount of \$825,270.

Respectfully submitted,

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October 19, 2023

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**CERTIFICATE OF SERVICE**

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Pursuant to Section (d)(1) of the Supreme Court's Order RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022), the undersigned employee of the Lindemann Law Firm, P.A., counsel for the Appellants, does hereby certify that service of the **Petition for Rehearing** and the **Memorandum in Support of Petition for Rehearing** was made upon all counsel of record by email only this the 19th day of October 2023 as follows:

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**RECEIVED**

**Oct 19 2023**

**SC Court of Appeals**

**Via Email Only**

The Honorable Jenny Abbott Kitchings

Clerk of Court

South Carolina Court of Appeals

Email: [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

RE: Mark Green, Personal Representative of the Estate of Randall M. Green and Ann Green v.  
Wayne B. Bauerle, M.D. and Wayne B. Bauerle, M.D., P.C.  
Court of Appeals Tracking Number: 2020-000046  
Civil Action Number: 2011-CP-26-7403  
Claim Number: CB053262M  
Our File Number: 22.9301

Dear Ms. Kitchings:

Pursuant to Section (b)(2) the Supreme Court's Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (as amended May 6, 2022), please find enclosed for filing the **Petition for Rehearing** and the **Memorandum in Support of Petition for Rehearing** with regard to the above referenced matter. By copy of this letter, I am serving copies on all counsel of record by email only pursuant to Section (d)(1) of the same Supreme Court Order. My firm's \$50.00 filing fee will be placed in today's U.S. Mail.

If you have any questions, please advise. Thank you for your assistance.

Sincerely,

LINDEMANN LAW FIRM, P.A.

Andrew F. Lindemann

AFL/jmb

Enclosure

cc: O. Grady Query, Esquire (w/ Enclosures, Via Email Only)  
L. Morgan Martin, Esquire (w/ Enclosures, Via Email Only)  
Cristin A. Uricchio, Esquire (w/ Enclosures, Via Email Only)  
John B. McCutcheon, Jr., Esquire (w/ Enclosures, Via Email Only)