THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas
Honorable J. Michael Baxley
Circuit Court Judge

APPELLATE CASE NO: 2011-185767[1]

CONSOLIDATED APPEALS

(Tracking numbers 2011185767)
(Tracking numbers 2011203391)
(Tracking numbers 2011197671)

APPEAL FROM DARLINGTON COUNTY
J. MICHAEL BAXLEY, CIRECUIT COURT JUDGE

Pee Dee Health Care, P.A.,

Appellant,

v.

Estate of Hugh S. Thompson, III, and Louise T. Dailey, as Personal Representative of the Estate of Hugh S. Thompson, Respondent.

Respondent.

APPELLANT'S RESPONSE TO RESPONDENT'S MOTION FOR SANCTIONS

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[1] For the Court's information, a request for a Writ of Certiorari is pending in the Supreme Court regarding this Court's affirmance of the trial court's motion for summary judgment. Appellant has not further appealed the issues surrounding appeals 1 and 2.

Undersigned counsel, on behalf of Appellant, replies to the Motion for Appellate Court Sanctions filed by Respondent as follows:

I. INTRODUCTION

Respondent's Motion for Appellate Court Sanctions is the third motion in series of motions[2] filed by Respondent against Appellant in this Court. Each have requested in varied form, or another, sanctions against the Appellant. The first two have been denied by this Court. The current motion before the Court is without merit, and should again be denied by this Court.[3]

Respondent's first motion was a Motion to Dismiss filed by Respondent on November 14, 2011. The Respondent's basis for its first motion to dismiss was that the appeals of Appellant [2011185767 and 2011197671] were interlocutory and that the appeal of 2011197671 was untimely and in violation of the rules of court. (Exhibit A - exhibit list included, exhibits excluded). The Honorable John Few denied Respondent's first Motion to Dismiss Cases 2011185767 and 2011197671 by order dated January 9, 2012. (Exhibit B). Prior to the filing of the Respondent's motion to dismiss, Judge Huff, by order dated October 11, 2011, had similarly denied Appellant's motions to vacate the order of the circuit court regarding appeal 2011197671, ordered appeal 2011185767 held in abeyance, and denied Appellant's motion to consolidate the cases on appeal. (Exhibit C).[4]

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[2] The motions to dismiss filed by Respondent were requests to this court to sanction the Appellant by dismissing its appeals. All such motions were denied.

[3] The Respondent has raised the same or similar issues in all three motions the Respondent has now filed in this Court against the Appellant. The Respondent has not appealed any issue in regards to the denial of its first two motions to dismiss. The time for appealing the dismissal of those motions has expired. Any issue not challenged on appeal by any party, whether right or wrong, has become the law of the case. *Buckner v. Preferred Mut. Ins. Co.*, 177 SE2d 544, 544 (1970).

[4] The cases were, however, subsequently consolidated by this Court.

The Respondent filed its second Motion to Dismiss for Appellant's failure to file a complete record on appeal on October 24, 2012 on the basis that Appellant had failed to comply with the Rule 210 on providing a Record on Appeal, thus claiming the delay impaired Respondent's ability to file a final brief. The Respondent did not inform the Court that on Monday, October 1, 2012, approximately two weeks prior to the Record on Appeal being due, the ***Appellant provided counsel for Respondent a full and complete copy of the proposed record on appeal.*** The truth of the foregoing statement is evidenced by the email exchange where Appellant writes counsel for Respondent stating:

> **Email to counsel for Respondent from Appellant (Exhibit D – top half of exhibit)**
> Monday, October 1, 2012 at 12:30 P.M.
>
> Dear Mr. Renee Josey and Mr. Jay James:
>
> . . . [E]verything has been submitted by the parties for the appeal regarding summary judgment. The record on appeal for Tracking number 201197671 (Disqualification) is being sent to the printers on Wednesday of this week. Out of courtesy, I wanted to make sure there was no additional information that you would like to have included I the Record on Appeal... I know it is not your responsibility to make sure everything is in the Record on Appeal...

Mr. Jay James, counsel for Respondent, responded the next day, 9:34 a.m. stating as follows:

> . . . **Thank you for your courtesy in asking if we wanted additional material included in the Record on Appeal. We require only those matters listed in our Designation of record previously submitted to the Court** . . . .
>
> Jay James, II
> (Exhibit D – bottom half of exhibit)

The Appellant responded to Mr. James twenty minutes later at 9:54 a.m. stating:

> . . . ***I just wanted to double check with you before getting everything to the printers***.. . (Exhibit E).

There was no further reply from counsel for the Respondent, and the Appellant sent the ROA to the printers as noted in the email exchange.[5]

On October 24, 2011, counsel for Respondent objected to the proposed Record on Appeal and moved before this Court to dismiss the appeal.

On October 31, 2011, counsel for Appellant wrote both Mr. Josey and Mr. James explaining the discrepancies and apologizing for any inconvenience caused by the misunderstanding. (Exhibit F). On the same date, (October 31, 2012), counsel for Respondent agreed the documents they wanted in the record on appeal, were, in fact, in the record on appeal but were not "indexed" as Respondent wished. Respondent failed to mention this fact in its Motion to Dismiss. (Exhibit H- highlighted sentence).

On November 1, 2012, Appellant indicated it would file a supplemental record on appeal **exactly** as counsel for Respondent requested. (Exhibit G). On the same day (November 1, 2012), counsel for Respondent indicated it was agreeable to Appellant filing a supplemental record on appeal. (Exhibit H). Respondent's insinuations to the contrary cast an inaccurate and false sense that Appellant disregarded the rules of this Court.

On January 8, 2013, the Court denied Respondent's Motion to dismiss. (Exhibit I). The Appellant subsequently prepared and filed a supplemental Record on Appeal as required by the Court and agreed to by the counsel for Respondent. In addition, the Appellant provided counsel for Respondent a complete copy of the proposed ROA on October 1, 2012 ***prior to the time it was originally due*** (Exhibit D) ***to prevent the exact scenario that the Respondent inaccurately presented to this Court.*** (Exhibit D). It is equally clear that the Appellant took deliberate and

[5] In mid-April, 2012, the Appellant's office made similar overtures to counsel for Respondent and specifically noted the intent was to insure the Record on Appeal was complete to the satisfaction of counsel for Respondent. See Exhibit F-1.

clear action to insure the accuracy of the Record on Appeal prior to it being filed with this Court. Respectfully, the Respondent disregarded the opportunity to insure a complete and accurate Record on Appeal to their liking was filed with the Court. Further, the Respondent (a) noted on page 6 of its Motion to Dismiss that it had no objection to the Appellant filing a Supplemental Record on Appeal, and (b) waited approximately thirty days *after* Appellant provided a counsel for Respondent a proposed completed proposed copy of the Record on Appeal to inform Appellant that they never agreed the "ROA was complete prior to its filing on October 12, 2012." [last line of Exhibit J]. In addition, Mr. James, on October 2, 2012 thanked Appellant for the courtesy extended to Respondent by "asking if we wanted additional materials included in the Record on Appeal." [Please see the bottom half of Exhibit K – email from Jay James to Appellant]. Thus, counsel for Respondent was offered ample opportunity and time to respond to Appellant's email and expressed any concerns prior to the original ROA on appeal being printed. They choose not to do so. Rather, the Respondent chose to file a Motion to Dismiss because three (3) documents were not located where the Respondent wished them to be in the ROA, and they considered other documents or writings in the ROA unnecessary or improper in the table of contents.[6] Respectfully, this Court correctly denied the motion to dismiss.

[6] Respondent claims material was included in the record that was not needed. While Appellant disputes this assertion, Respondent was not harmed in any way, as it was not responsible for the preparation or the cost of the record. Furthermore, Respondent could have moved to strike any of Appellant's designations it deemed immaterial prior to the preparation of the record but Respondent failed to do so.

II. Counsel for respondent has misrepresented to this court that the conflict of interest issue raised by appellant regarding counsel for Respondent's breach of duty of loyalty to appellant was based on a case that was a "previously settled, dormant matter believed to be concluded."

The most contentious issue in these appeals concerns Respondent's counsel concurrently representing Appellant in a worker's compensation case[7] ***in active litigation and*** counsel for Respondents continuing misinformation that the case it was representing Appellant was "settled, dormant and concluded." Counsel for Respondent knows the litigation it was representing Appellant was not settled, was not dormant and was not concluded. When faced with the truth of the matter, counsel for Respondent could have investigated the matter, and recused themselves from further reorientation of Appellant. Or they could have requested the circuit court to determine the matter. They did neither. Instead, counsel for Respondent immediately denied the concurrent adverse representation, unilaterally withdrew from its seven year representation of Appellant, and continued the representation of Respondent against the interests of Appellant. In the current motion before the Court, however, counsel for the Respondent *admits* their conduct amounted to concurrent representation of clients with adverse interests. However, they now wrongly contend that the concurrent adverse representation did not violate the proscriptions of Rule 403, Rule 1.7, SCACR because the conflicting representation was in a "previously settled, dormant matter that was believed to be concluded..." (see page 11, Item II. A. i) of Respondent's Motion for Appellate Court Sanctions).

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[7] *See, e.g. ,State Farm Fire & Cas. Co. v. Mabry,* 255 Va. 286, 497 S.E.2d 844, 847 (1998) ("The attorney employed by the insurer to defend the insured is bound by the same high standards which govern all attorneys, and owes the insured the same duty as if he were privately retained by the insured.") (Internal quotation marks and citation omitted.) *See also Tripartite Relationship* at 294 ("Defense counsel must treat the insured as the client. Recognizing the insured as the attorney's sole client is consistent with recent judicial decisions.") (Footnote omitted.)

The attached letter of Mr. Brandon Hylton,[8] (Exhibit K) Mr. Josey's partner at Turner Padget, contradicts the statements made by counsel for Respondent to this court that the concurrent conflicting representation was in a "previously settled, dormant matter that was believed to be concluded. This statement is not accurate. Mr. Hylton hand-delivered the July 25, 2011 letter to Appellant indicating the litigation in which Turner Padget was representing Appellant was not a dormant matter, was not previously settled matter, and thus could not have been construed to be settled under any reasonable definition or standard of conduct.[9] Mr. Hylton's letter states, in part,

> . . . With regard to ***future medical treatment, the parties have attempted to reach an agreement; however, all efforts have failed***. Thus, Companion will continue to pay for Claimant causually related medical treatment. The last demand from the claimant was $350,000.00, plus professional administration of a Medicare set-aside Account. Companion's last offer was $250,000.00...
>
> (See Exhibit K, the complete letter).

Mr. Hylton's shows that there was on-going litigation in which Turner Padget was representing Appellant and that it was not "a previously settled, dormant matter" as Respondent claims. As Mr. Hylton stated in his July 25 letter, the case remained very active, and litigation regarding significant damages was yet to be determined. Appellant was seriously concerned regarding concurrent adverse representation by counsel for Respondent.[10] There remained issues

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[8] Mr. Hylton was the attorney directly responsible for protecting the interests of Appellant Mr. Hylton and Mr. Hylton work in the same office in Florence, SC.

[9] While Mr. Hylton did indicate the parties had agreed to the underlying liability, they had not agreed to the severity of the injuries for purposes of future damages. And the demand on those future damages was $350,000.00 *plus* an amount to be determined for use as a Medicare set-aside. In short, the case was very much alive, very contested, and of extreme significant to Appellant as fully explained herein.

[10] Turner Padget (a) had been representing Appellant for the previous seven (7) years, (b) had a working knowledge of the particulars of the case, (c) was intimately familiar with the business

of substantial damages to litigate and resolve. The issues directly affected the operations of Appellant's business and ability to retain and/or obtain worker's compensation insurance due to the size of the claim as well as the Appellant's ability to obtain affordable Worker's Compensation insurance required to operate a business in South Carolina. Thus, the financial impact of Turner Padget's violation of the duty of honesty and loyalty to Appellant is a considerable issue to Appellant. Counsel for Respondent could have likely remedied the matter immediately upon recognition of the problem. Instead, they chose to abandon the interests of Appellant in which they had been representing Appellant for at least seven (7) years.

Appellant properly contested the concurrent representation and conflict of interest and this challenge does not provide any basis for sanctions.

III. The appeal of the disqualification order was necessary despite the presence of co-counsel.

Respondent argues that the appeal of the Order disqualifying Mr. Megna was unnecessary because Mr. Matthews is an experienced litigator who could be substituted as counsel. However, the qualifications of one attorney versus another is not a substitute for a party's choice of counsel[11] – a right that is so important that our Supreme Court has recognized that it is entitled to an immediate, interlocutory appeal. *See*, *Hagood v. Sommerville*, 362 S.C. 91, 194, 607 S.E.2d 707, 708 (2005). The availability of other counsel has no bearing on party's right[12] to appeal the disqualification of a party's chosen attorney.

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operations and structure of Appellant, and (d) had unfettered access to tangible information relating to Appellant's business.

[11] Furthermore, Mr. Matthews is in the same firm as Mr. Megna, and it is possible that he too, could have been disqualified under a theory of imputed disqualification. Thus, Appellant had to protect its right to choose counsel by filing an appeal.

[12] Not only does a party have a right to appeal, it must immediately appeal the disqualification or forever waive the right to raise the issue. *Hagood v. Sommerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005).

IV. The affidavits of record indicate that Decedent never informed Appellant or its employees and agents that he had been disbarred from Medicare, and, in fact, that his actions indicated he enrolled as a Medicare provider. (Exhibit L – also ROA 18, 19, 20, 21, 22, 23, 24), (ROA 14, 37, and 38).

The affidavits attached hereto as Exhibit L indicates that Mr. Megna was not involved with Dr. Thompson's former practice in any manner, the reason being that the Board of Medical Examiners had approved James D. McInnis, M.D. to assist Dr. Thompson in resuming his practice. Allegations to the contrary by Respondent are unsupported and untrue. Moreover, Appellant's statements are consistent with the answer of the Respondent in which it admitted, among other matters:

> On or about March 31, 1996, the Decedent was disbarred from the Medicare program by the Office of Inspector General who oversees physician participation in the Medicare program. [Page 2, ¶ 10 of Defendants Answer filed June 17, 2010]. [ROA 32].
>
> Following the Decedent's disbarment from Medicare, by the Medicare Office of Inspector General, "provisions of federal law provide that a suspension of Medicare privileges [i.e., the Decedent's disbarment from the Medicare program in 1996] continues until [the Decedent was] reinstated by the Office of Inspector General [of the Medicare program]." [See 42 CFR 1001.1901(1)] [Page 3, ¶ 12 of Defendants Answer filed June 17, 2010]. [ROA 32].[13]

V. The Respondent's assertion that the Appellant was unreasonable in regard to the liquidation of the assets of the estate is inaccurate.

The initial probate court order did not require the personal representatives to hold the assets of the estate in trust until the appeals were concluded, but, rather, allowed the Respondent to request distributions at will and the probate court to authorize such distributions. (Exhibit M). Because the Probate Court order did not adequately protect the interests of Appellant, the

[13] Decedent never informed anyone at PDHC of is disbarment from Medicare. (ROA 18, 19, 20, 21, 22, 23, 24)

Appellant appealed the order of the probate court. Thereafter, as noted by Mr. James' September 20, 2010 email (Exhibit N), and at Mr. James' specific suggestion, the parties agreed to execute a consent and release that Mr. James prepared, with both parties agreeing that Appellant would continue to appeal other aspects of the Probate Court order. Simultaneously, the Appellant agreed to reimburse $14,500.00 that the Personal Representatives of the estate had advanced to the estate. The allegations of the Respondent to the contrary are incorrect. Following the agreement of the parties, the Respondent did not object to the sale of any additional properties. In fact, at least three (3) additional properties have been sold to which the Appellant did not object. (Exhibit O, P, and Q). Mr. James' email (Exhibit N) confirms that Appellant was acting according to the agreement of both parties. Respondent's claim that Appellant was attempting to attempting to "eviscerate" the matter before the Court is completely erroneous. Finally, the Respondent never made any further requests of Appellant or motions before the probate court, the court of common pleas, or this court for disbursements of any funds for any purpose. The funds continue to be preserved and protected without payment of bond by mutual agreement of the parties. The Respondent's acidic complaints to the contrary have no merit.

VI. Any violation of Judge Baxley's order of disqualification was unintentional. Mr. Megna expressed his apologies and deference to the Court, and reaffirms that sentiment today.

On the day the Appellant received the order of the circuit granting summary judgment to the Respondent, counsel for Appellant sent a letter to Judge Baxley dated October 10, 2011 from Tony R. Megna that informed the Court (a) that the Notice of Appeal was filed with the SC Court of Appeals two weeks prior to the Motion for Reconsideration of the order of Summary Judgment on September 1, 2011, (b) stating it was Mr. Megna's sincere belief the Motion for

Reconsideration was a natural extension of the Court allowing arguments on the Motion for Summary Judgment, (c) apologizing for any misunderstanding, and (e) voluntarily agreeing for Benjamin Matthews to file all further documents before the circuit court pending determination of the appeals. [See Exhibit S]. On October 27, 2012, Judge Baxley sent Mr. Megna a letter thanking him for his letter of October 10, 2012, and expressing appreciation for Mr. Megna's deference and good faith on the circuit court's decision. [Exhibit T].

The above communications clearly indicate that the violation of Judge Baxley's order of disqualification was unintentional. Upon receiving Judge Baxley's order identifying the Court's determination the order was violated, Mr. Megna immediately apologized. Judge Baxley accepted that apology in writing. Mr. Megna's exhibited immediate honesty and remorse, and stated his belief his decisions were made lawfully and appropriately. Both this Court and Judge Baxley disagreed. Mr. Megna reaffirms his remorse, and reiterates his sincere and earnest apologies to this Court, Judge Baxley, and to all parties for his mistakes. Moreover, Mr. Megna accepts full and complete responsibility for his conduct in these matters.

VII. An appellate federal administrative agency that had no jurisdiction to hear cross claims for indemnity cannot foreclose state cause of action.

The decision of an administrative agency can have preclusive effect, so long as ***its procedures afforded a sufficient opportunity to "actually litigate" the issue for which estoppel is sought.*** Appellant did not have any opportunity to assert its state law claims against Respondent because such matters are not within the limited jurisdiction of the Medicare appeals council. Our courts have held consistently held that the factors to consider in determining the defense of collateral estoppel include "whether the doctrine is used offensively or defensively, and whether the party adversely affected had a full and fair opportunity to litigate the relevant issue effectively in the prior action." *Graham v. State Farm Fire & Cas. Ins. Co.*, 277 S.C. 389,

390-91, 287 S.E.2d 495, 496 (1982). Respondent has argued that the duty under the Medicare statutes is "non-delegable," and thus Respondent cannot be held liable to Appellant under any theory of law. Appellant's does not contest its duty to Medicare in the present circumstances is one of strict liability. But Appellant's liability to Medicare is not a bar to Appellant's ability to assert state law claims against Respondent. Respectfully, the admissions in the answer of Respondent [JA, pages 183-195] are the most useful and informative information available to this Court. Respondent admitted:

a. that decedent was obligated to communicate truthfully with Appellant [JA 184, paragraph 34],

b. that decedent had a duty of loyalty to Appellant [JA 188, paragraph 30], that decedent was bound to act in good faith and with due regard to Appellant's interests. JA 186, paragraph 21], and

c. that Decedent knew in 1996 that he was disbarred from Medicare and that the letter from the Office of Inspector General told him exactly the procedures he would have to employ to be re-admitted as a Medicare provider, and that he did not do so. [JA 628].

As indicated by the affidavits of employees of Appellant, (Exhibit L), the deceased never informed Appellant or Appellant's employees of any such issues. Respectfully, Appellant's contention that its state law claims against Respondent are not barred by the decision of the Medicare appeals council is supported by the law and the facts.[14]

[14] To further demonstrate the flaws inherent in the Medicare Appeals process, Appellant has attached as Exhibit U, an order of the Administrative Law Judge Don W. Joe dated approximately three weeks prior decision on which the Respondent relies. Judge Joe reached the opposite conclusion as to the liability of Dr. Thompson's then current employer's to Medicare.

VIII. The inclusion of orders of the circuit court on appeal in the Respondent's Motion for Sanctions are legally and professionally improper, and do not provide appropriate factual information.

Respondent submitted, as exhibits to its Motion, Circuit Court orders that are on appeal and that do not relate to the issue before this Court, in an attempt by counsel to provoke emotion instead of supply facts. One of the bases of the orders Respondent has attached are the allegations contained in the affidavit of Ms. Gina Lee, Mr. Megna's former client. See Exhibit V. This affidavit was submitted to the circuit court, and Mr. Megna had no opportunity to confront or cross-examine Ms. Lee regarding the falsity of the allegations. Ms. Lee opined, among other things, she was unaware of the continuing representation of Mr. Megna in regard to the matters noted in the orders. This is untrue. To the contrary, Ms. Lee was not only aware, but provided her consent, her recognition, and her acknowledgment that the course of action pursued by Mr. Megna was factual and accurate. Exhibit W is a copy of a letter sent to Ms. Lee by both regular mail and email to the Honorable Allison Lee that specifically discusses the allegations made against Mr. Megna. As noted by Exhibit X, this same letter was sent to Ms. Lee by email at the same email address Ms. Lee's daughter informed Mr. Megna belonged to Ms. Lee as noted by Exhibit YY. In addition, Exhibit Z is a signed statement by Ms. Lee indicating she understood the allegations made against Mr. Megna (and her), and specifically requested Mr. Megna associate Mr. Richard Harpootlian to assist in the matter. Other affidavits and affirmations of Ms. Lee that indicates she was consulted and directly involved in the matters that the circuit court laid blame on Mr. Megna. The attached exhibits are included to demonstrate the circuit court did not have the correct facts, and that Mr. Megna has had no opportunity to defend

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Judge Joe premised his decision on the running of the statute of limitations even though the claims he considered occurred after Dr. Thompson left the employ of Appellant.

against the false accusations made by his former client and others involved in those matters. Most importantly, the use of orders by counsel for Respondent that they know are on appeal is a disservice to this court. The undersigned respectfully requests the court to disregard the orders as a disservice to the court and the parties.

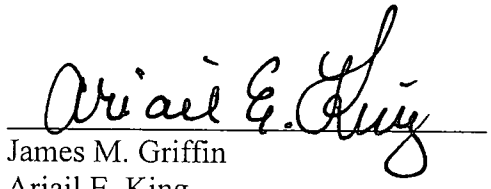
CONCLUSION

The July 25, 2011 letter from Mr. Hylton (Exhibit K) confirms Appellant's legitimate concern in regard to that Turner Padget's simultaneously representation of both Appellant and Respondent. From Appellant's point of view, Turner Padget, knowingly or not, had access to institutional knowledge *from its seven years of continuous representation of Appellant* that could be used adversely against Appellant, and thus, the question of conflict of interest and disqualification was legitimate.

The email communications between and among counsel for Respondent and Appellant (Exhibits D, F, G, H, and J) unequivocally demonstrate that Appellant made a good-faith attempt to get a record on appeal to counsel for Respondent *prior to* sending the ROA to the printers to prevent the exact issue that occurred. This Court properly dismissed both Motions to Dismiss filed by the Respondent. The Respondent's remaining complaints, as noted more fully above, are totally without merit. Regardless, Mr. Megna previously expressed, and reaffirms by and though undersigned counsel, his genuine remorse to this court, the circuit court, and to all parties in all litigation for mistakes he has made. See Exhibit V – apology to Judge Baxley originally identified the issues, and Exhibit W – Judge Baxley's gracious acceptance of the apology.

The undersigned respectfully requests the Court to deny the pending motion of Respondent.

Respectfully submitted,



James M. Griffin
Ariail E. King
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(803) 771-8000

September 16, 2013.

APPELLANT'S LIST OF EXHIBITS	
NAME OF DOCUMENT	**EXHIBIT NUMBER**
November 14, 2011 Motion to Dismiss filed by Respondent	A
Denial by COA of November 14, 2011 Motion to Dismiss filed by Respondent(Judge Few)	B
October 6, 2011 order of Judge Huff	C
a. Top half of document - October 1, 2012 Email from Appellant to counsel for Respondent requesting confirmation of proposed accuracy of record on appeal. b. Bottom half of document - October 1, 2012 Email from Appellant to counsel for Respondent (Jay James) thanking Appellant for the courtesy of providing the draft copy of the proposed record on appeal.	D
Email of Appellant "double-checking" with Jay James to insure proposed record on appeal is correct and can be timely filed.	E
Letter from appellant to Mr. James and Mr. Josey explaining the proposed record on appeal (as provided to counsel for Appellants – see exhibit D) was correct so it could be timely filed. The consultation was intended to prevent issues regarding timely filing of the record on appeal. Counsel for appellant chose not to cooperate.	F
Confirmation regarding record on appeal and expressing Appellants thanks for the cooperative of counsel for Respondent.	G
Letter received from Renee Josey after the record on appeal had been printed and filed with the court pointing out technical issues Respondent objected to regarding the filed Record on Appeal.	H
Order of COA of Appeals denying Respondents; Motion to Dismiss based on the omitted documents form filed ROA.	I
Letter from Jay James regarding Respondent's consent to a supplemental ROA being filed even though they did not present the same objections when presented with the proposed ROA.	J
Letter of Brandon Hylton, the attorney partner at Turner Padget assigned to represent Appellant in the litigation in which Turner Padget had been representing Appellant for approximately (7) years.	K

Affidavits of employees of Appellant indicating (a) lack of Dr. Thompson's knowledge of disbarment from Megna and (b) Mr. Megna's lack of involvement with Dr. Thompson during his employment with Appellant.	L
Affidavit of James D. McInnis, M.D., President of Appellant at the time, indicating he had been appointed to supervise Dr. Thompson by the SC Board of Medical Examiners, and dud not know nor was he told by Dr. Thompson of Dr. Thompson's disbarment from Medicare.	M
Order of probate court allowing distributions of funds of probate estate.	N
Communications from Jay James as to his proposal that the parties enter into a Consent and Release allowing liquidation of assets of estate and repayment of $14,500.00 to the Personal Representatives for funds they had advanced to the estate. Appellant consented to the proposal of Mr. James.	O
Order of probate court allowing sale of property.	P
Order of probate court allowing sale of property.	Q
Order of probate court allowing sale of property.	R
Letter of apology from Mr. Megna to Judge Baxley	S
Letter Judge Baxley accepting Letter of apology from Mr. Megna	T
Decision of Medicare Administrative Law Judge Don W. Joe finding opposite the decision rendered against Appellant in a companion matter.	U
a. The affidavit of Mr. Megna's former client, Gina Lee stating she had no knowledge of the issues addressed by Judge Baxley, and had not authorized Mr. Megna's continued representation. . b. Eight certifications and affidavits of Gina Lee evidencing her knowledge of the issues surrounding the allegations made by others that contain written statements that are opposite the information provided to Judge Baxley.	V
Letter of Mr. Megna to Judge Allison Lee to Gina Lee with explanation on last page of letter brning Ms. Lee up-to-date on the issues eventually heard by before Judge Baxley. letter was sent via both mail and email to Gina.Lee58@gmail.com.	W
Email copy of letter to Judge Lee {Exhbit Z} to Gina Lee	X
Email from Gina Lee's daughter confirming Gina Lee's email address as Gina.Lee58@gmail.com.	Y

Statement of Gina Lee	Z

EXHIBIT A

A

TURNER PADGET
TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

J. RENÉ JOSEY

REPLY TO: FLORENCE OFFICE
E-MAIL: RJOSEY@TURNERPADGET.COM
WRITER'S DIRECT DIAL: (843) 656-4451
WRITER'S DIRECT FAX: (843) 413-5818

November 14, 2011

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Pee Dee Health Care, P.A. v. Estate of Hugh S. Thompson
Case No.: 2010-CP-16-0332 and 2010-CP-16-063
Tracking No.: 2011185767 and 2011197671
TPGL File No.: 10667.101

Dear Ms. Gee:

The above two referenced Interlocutory Appeals are presently docketed with your court under the above-referenced tracking numbers. A third notice of appeal from the final merits of the case has been filed with the circuit court and served upon the parties but has not been filed with your court as required.

Enclosed for filing is a Motion to Dismiss all Appeals presently pending or proposed between these parties in your court. In accordance with SCACR 240, I am enclosing the original (unbound) and 7 copies of our motion with supporting exhibits from the trial court; I ask that one copy be stamped as filed and returned to us in the self-addressed, stamped envelope. Also enclosed you will find an original Certificate of Service and one additional copy; again I ask that the copy be stamped as filed and returned to us in the self-addressed, stamped envelope. Finally, I am also enclosing our firm's check for the filing fee with regard to this motion.

By copy of this letter to attorney Ben Matthews and separately to attorney Tony Megna, we are serving respondent's present and former counsel with this motion, the exhibits, and the certificate of service.

Because the final resolution of the Estate in this matter has been delayed by this litigation, we would ask the court to consider this motion at its earliest convenience. We will be happy to appear for oral argument if the court deems that necessary. If anything additional is needed, please let us know.

Sincerely,

TURNER, PADGET, GRAHAM & LANEY, P.A.

J. René Josey

JRJ:vlb
Enclosures
Cc: Benjamin R. Matthews, Esquire (w/enclosures)
Tony R. Megna, Esquire (w/enclosures)
Jay James, Esquire

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

CASE NO. 2010-CP-16-0332
CASE NO. 2010-CP-16-0633

Pee Dee Health Care, P.A. ..... Appellant,

v.

Estate of Hugh S. Thompson ..... Respondent.

CERTIFICATE OF SERVICE

I certify that I have served Respondent's Motion to Dismiss Appeal., by depositing copies of the same in the United States mail, postage prepaid, on November 14, 2011, to its attorney of record, Benjamin R. Matthews, Esq. and its former attorney Tony R. Megna, Esquire, 3400 West Avenue, Columbia, SC 29203.

J. René Josey
TURNER, PADGET, GRAHAM & LANEY, P.A.
Post Office Box 5478
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843-656-4451 (Telephone)
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ATTORNEYS FOR RESPONDENT

B

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

CASE NO. 2010-CP-16-0332
CASE NO. 2010-CP-16-0633

Pee Dee Health Care, P.A. ..... Appellant,

v.

Estate of Hugh S. Thompson ..... Respondent.

RESPONDENT'S MOTION TO DISMISS APPEAL ON MERITS AS UNTIMELY AND DISMISS ALL INTERLOCUTORY APPEALS AS MOOT

John Jay James, II
Paulling and James, LLP
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ATTORNEYS FOR RESPONDENT

NATURE OF THE CASE

These cases arise from the Pee Dee Health Care, P.A.'s (hereinafter "PDHC") failure to perform required due diligence before collecting Medicare benefits for work performed by its employee, Dr. Hugh S. Thompson (Defendant's decedent). As the assignee of Medicare program benefits, PDHC failed to confirm the program eligibility of Dr. Thompson who was excluded from the program for a period of time. As a result of this failure, the Medicare program subsequently sought and obtained repayment of the ineligible benefits from PDHC.[1] In this action brought years later, PDHC sought to ignore the affirmative non-delegable statutory duty placed upon it by the Medicare program and instead sought to shift blame for its lapse to the deceased; the crux of the PDHC complaint was that decedent Thompson did not disclose information to PDHC or gave wrong information to PDHC.[2]

NATURE OF THESE APPEALS

There are now three appeals in this litigation pending in this Court. Two appeals involve interlocutory issues raised in the context of the litigation described above. The third and most recent appeal is from the trial court's order of summary judgment.

The first interlocutory appeal (first appealed from Probate Court to Circuit Court as Case No. 2010-CP-16-0633 and then appealed to this Court -- tracking number 2011185767) is from a Probate Court Order allowing the payment of attorney's fees and other expenses by the Estate; the appeal also involved the Probate Court refusing to require a bond from the Respondent Estate and refusing to have a damages hearing to set a bond. Specifically, the Appellant sought a bond

---

[1] Both federal statute, 42 U.S.C. § 1320a-7a(a)(6), and federal regulation, 42 CFR 1003.102(a)(2), impose liability upon employers who "should know" of the program exclusion of their employees.

[2] The Complaint alleges that such misrepresentations were made to Plaintiff through its CEO Tony Megna. The Circuit Court has ruled that Megna's status as a witness to such alleged misrepresentations, among other items, disqualifies his service as counsel in the matter.

from the Estate in an amount equal to Appellant's alleged damages in the litigated probate claim against the Estate (Case No. 2010-CP-16-0332).[3] This appeal from the Probate Court was dismissed at the Circuit Court level by reason of the Appellants failure to timely file its grounds for appeal. It has already been fully briefed by the parties in this Court and is awaiting oral arguments and disposition.

The other interlocutory appeal was made in the actual litigated probate claim itself (the litigated Probate Court claim was removed to the Circuit Court and assigned Case No. 2010-CP-16-0332)(Court of Appeals Tracking Number 2011197671). This second interlocutory appeal involves the Circuit Court's disqualification of Appellant's counsel effective after the argument of cross motions for summary judgment.[4]

The final appeal (also in Case No. 2010-CP-16-0332) involves the merits of the underlying claim which was resolved against the Appellant with finality. This appeal was mailed to Respondent and filed with the Circuit Court on October 28, 2011. As of the afternoon

---

[3] The Appellant asserts damages far in excess of the Respondent Estate's value and thus sought a bond exceeding the Estate's value. Rather than require a bond, the Probate Court simply restrained the Respondent from disposing of Estate assets (the majority of which are not liquid) without further order of the Probate Court.

[4] The Appellant filed several motions in this appellate court in connection with the second interlocutory appeal including: a motion to disqualify Turner Padget Graham & Laney P.A., a motion to vacate all lower court rulings, and a motion to consolidate. These motions were addressed by an order of this Court dated October 6, 2011 which denied consolidation of appeals but held the first interlocutory appeal in abeyance pending the second appeal regarding disqualification. This Court's order declined to act on other aspects of the Appellant's motion.

Accompanied by a certificate of service asserting service on October 18th, the Appellant served Respondent with a Petition to this Court, dated October 20th, seeking reconsideration of this Court's October 6th Order. By letter of this Court's Deputy Clerk dated November 3, 2011, Appellant was advised that the petition for rehearing was not going to be considered pursuant to SCACR 240(i) and therefore, the petition was considered moot.

Respondent Estate has filed a motion to dismiss the second interlocutory appeal (again, tracking number 2011185767) because the notice of appeal was not executed by an authorized attorney as required of all pleadings by Rule 11(a) of the SCRCP. This motion is dated September 6th and was filed with this Court on September 7th. ***This motion has not been ruled upon by the Court but would also be moot if the third appeal is untimely as Respondent contends.*** Presumably this motion has delayed the due date for Appellant's Brief in that matter which would have otherwise been ripe for initial briefing under SCACR 208(a) as early as September 15, 2011 (30 days after service of the notice of appeal) because the relevant transcripts were already in Appellant's possession (they had been referenced in earlier pleadings).

of November 10, 2011, the clerk's office at this Court advised that no third notice of appeal involving these parties had been filed with the Court of Appeals.

FINALITY ON THE MERITS

By Order dated September 1, 2011, the Circuit Court granted summary judgment on all claims to the Defendant. A copy of this Order is attached hereto as Exhibit A. This Order was acknowledged as received by Appellant's disqualified counsel, Mr. Megna, on September 6, 2011. Mr. Megna's law partner, Mr. Matthews, is not disqualified and serves as attorney of record in the trial court having alone signed the Complaint and numerous discovery documents prior to the summary judgment order. The trial court's order of summary judgment was mailed to Mr. Matthews at the law firm address he shares with Mr. Megna. By his letter serving the most recent notice of appeal (letter attached as Exhibit B), Mr. Matthews also acknowledges receipt of the Order of Summary Judgment on September 6, 2011.

Without any tolling, the 30 days for appeal from the Order of Summary Judgment, allowed by SCACR 203(b)(1), passed on October 6, 2011 and no notice of appeal was served or filed by Mr. Matthews (or any other person) on behalf of the Appellant by that date. Thus, the Order of Summary Judgment has now become the final law of this case. The dismissal of the Appellant's claims on their merits renders the appeal of interlocutory issues moot. Accordingly, all pending appeals in this matter should be dismissed as moot.

NO TOLLING UNDER SCRCP 59(f)

On September 13, 2011, after the Order of Summary Judgment was "received by the [Appellant] on September 6, 2011,"[5] Mr. Megna signed and submitted a Motion for Reconsideration of the Order of Summary Judgment. (Exhibit C). Ordinarily, such a motion would stay the time for appeal pursuant to the provisions of SCRCP 59(f) which provides, "The

[5] See Exhibit B, first sentence (using "Plaintiff" instead of "Appellant" to refer to PDHC).

time for appeal for all parties shall be stayed by a timely motion under this Rule and shall run from the receipt of written notice of entry of the order granting or denying such motions." Here, trying to tap into the tolling provision of Rule 59, the Appellant characterizes the trial court's Order of September 28, 2011 as a denial of its Rule 59(e) motion; this is *not* correct as the September 28th Order was, in fact, a dismissal of the motion for reconsideration as being 'void *ab initio*'-- as if it had never been made.

Mr. Megna's purported Motion for Reconsideration was needlessly in direct defiance of the trial court's prior order that he not continue representation of the Appellant after the Summary Judgment arguments. (Order of April 15, 2011, attached as Exhibit D). That Order had provided:

> The Court orders complete disqualification effective with the execution of this order. The Court concludes that it is not feasible for Mr. Megna to remain involved as counsel of record even before trial. The potential for problems would exist even with depositions and other pre-trial functions. The immediate availability of Mr. Megna's partner eliminates any hardship or difficulty associated with this effective date.

The Order reinforced the directive given by the Court directly to counsel in the Courtroom on March 16, 2011, "***It begins now.***" Transcript at Page 38, lines 5-6 (emphasis added)(attached hereto as Exhibit E).

Again, despite the undisputed availability of other counsel of record in the trial court in this case, disqualified counsel himself alone filed the Motion for Reconsideration. This prompted the trial court to dismiss the motion as improper and void *ab initio*. In that order of dismissal, the trial court noted that ***"attorney Megna was not authorized to file the present motion on the Plaintiff's behalf."*** (emphasis added). Moreover, the trial court noted that counsel had been put on notice only weeks earlier in an Order that had quashed a series of

motions, subpoenaes, and filings signed only by disqualified counsel. August 12, 2011 Order attached as Exhibit F. Without a valid Rule 59 motion, the time to appeal was not stayed and the notice of appeal served October 28, 2011 comes too late.

NO APPLICABLE STAY UNDER SCACR 241

As an alternative maneuver to fabricate appellate timeliness, the cover letter of Appellant's counsel serving the most recent appeal (attached as Exhibit B) claims that the disqualification of Mr. Megna was stayed by the interlocutory appeal of that order (Tracking Number 2011185767) – presumably thereby rendering the Motion to Reconsider signed by Mr. Megna valid and tolling the time to appeal under SCRCP 59(f). This letter (Exhibit B) erroneously cites subsection (b) of SCACR 241. The claim to a "stay" is also indirectly asserted by the most recent notice of appeal itself which asserts that the Circuit Court "inadvertantly overlooked" that the disqualification order was appealed on August 15, 2011, prior to the filing of the Motion for Reconsideration.[6]

SCACR 241(b), however, does not provide Appellant the relief it needs to save an untimely appeal on the merits. Rule 241(a) does provide that "As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order...." Understandably, there are many exceptions to this general rule – some, but not all, of which are listed in subsection (b) of SCACR 241.

INTERLOCUTORY APPEAL DOES NOT RENDER TRIAL COURT MEANINGLESS

Clearly the continued involvement of disqualified counsel in trial court proceedings is a matter that is not stayed – *otherwise, the trial court's initial determination would be meaningless*

[6] Presumably, Appellant believes that the appeal of the disqualification permits disqualified counsel to continue to do anything before the trial court where he was disqualified. As discussed below, this allows the tail to wag the dog – letting trial counsel control the terms and conditions of a trial rather than the trial judge. This is not what the law provides. Indeed, the record confirms the Trial Court was not inadvertent but was very purposeful.

and the trial court's control over proceedings before it would be lost. Because the disqualification order acted to enjoin counsel from further involvement immediately ("It begins now"), the exception found in SCACR 241(b)(8) is precisely on point. This exception provides that restraining orders and injunctions are not subject to an automatic stay – lest those orders be rendered meaningless.

FINAL APPEAL NOT PERFECTED ANYWAY

Even if the time to appeal were stayed by either the invalid Rule 59 motion or the application of a Rule 241(SCACR) stay, no notice of appeal has been filed with the Clerk of the Court of Appeals within 30 days of the Appellant's alleged October 10th receipt of the September 28 Order disposing of the Motion to Reconsider[7]; indeed no notice of appeal from the summary judgment has been filed with the Court of Appeals as of counsel's phone call on November 10, 2011.

While a notice of appeal was filed with the Circuit Court and served on October 28, 2011, that notice must also be filed with the Court of Appeals within 10 days of service per Rule 203(d)(1)(B)("notice *shall* be filed with ...the clerk of the appellate court within ten (10) days after the notice of appeal is served.")(emphasis added). That 10 day deadline ran Monday, November 7, 2011. Under Rule 260(a) (emphasis added), "Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk *shall* issue an order of dismissal...." Accordingly, the October 28th purported appeal from the summary judgment order was not perfected in accordance with the Rules and must be dismissed.

[7] Appellant's law firm – through disqualified counsel and company CEO – acknowledged receipt of the September 28, 2011 Order on October 10, 2011. See Megna letter of October 10, 2011 (attached as Exhibit H).

Even if the time to appeal summary judgment were stayed during the pendency of the motion to reconsider, the Appellant's 30 days[8] following receipt of the Order dismissing that motion would have expired November 9, 2011 and the only notice of appeal served on Respondent in that period of time is the unperfected October 28, 2011 notice that is not filed with the Clerk of the Court of Appeals. Thus, Appellant is too late under the most tolerant of deadlines and the summary judgment stands as the law of the case. Other appeals are therefore moot.

THIS RESULT IS NOT HARSH

While dismissal of Appellant's appeal may seem harsh, it is not at all. Counsel knew of his disqualification and knew that his continued filings had been quashed but he nevertheless chose to disregard the trial court's restraint. To not to punish appellant's conduct would be to allow disqualified counsel Megna -- who is also the CEO and general counsel of Appellant and who further claims to have an economic interest in the outcome of this litigation -- to openly and contemptuously defy the trial court even though his law partner, who was already counsel of record, was available. Appellant and counsel Megna are in many respects one and the same – even sharing the same office locations. This contemptuous conduct rendered the Appellant's motion for reconsideration void *ab initio* for lack of authorized signature as required by the SCRCP and it further renders the present notice of appeal untimely.

Moreover, as the first interlocutory appeal illustrates, the Appellant has previously missed required procedural deadlines (the statutory deadlines for appeals from Probate Court). In addition, the Appellant has only recently (letter of November 11, 2011), answered this Court's inquiries of August 29th and November 3rd seeking proof of service and seeking the status of transcript requests (the transcripts have been completed). Appellant has created its own

[8] See SCACR 203(b)(1).

procedural flaws in this litigation and it is not harsh for our Courts to expect compliance with the Rules and statutes.

CONCLUSION

The Appellant's most recent notice of appeal from the trial court's summary judgment order is untimely and should be dismissed. Because this appeal is untimely, the summary judgment ruling is now the law of the case and stands with finality. The ruling on the merits with finality renders the two previous interlocutory appeals moot and they should be dismissed as such.

November 14th, 2011

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ATTORNEYS FOR RESPONDENT

RESPONDENT'S MOTION TO DISMISS APPEAL ON MERITS AS UNTIMELY AND DISMISS ALL INTERLOCUTORY APPEALS AS MOOT

LIST OF EXHIBITS
(in order of appearance)

A. Trial Court Order of September 1, 2011, granting summary judgment.

B. October 28, 2011 Cover letter of Appellant's counsel serving the most recent, unperfected appeal.

C. September 13, 2011 Motion for Reconsideration of the Order of Summary Judgment (without attachments).

D. Trial Court Order of April 15, 2011.

E. March 16, 2011, Transcript at Page 38, lines 5-6 ("*It begins now.*").

F. Trial Court Order of August 12, 2011.

EXHIBIT B

B

The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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January 9, 2012

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Laney, P.A.
P.O. Box 5478
Florence, SC 29502

John J. James, II, Esquire
Paulling & James, LLP
P.O. Box 507
Darlington, SC 29540

Re: Pee Dee Health v. Estate H. Thompson(3)
2011203391

Dear Counsel:

The following Order has been endorsed on your Respondent's Motion to Dismiss Appeal on Merits as Untimely and Dismiss All Interlocutory Appeals as MOOT in the above entitled case on appeal.

"Denied.

s/ John Cannon Few, C. J.

January 09, 2012."

Please be advised the appellate will need to notify the court in writing of the date the transcript is received. Once the transcript is received the Appellant's Initial Brief and Designation of Matter will be due within thirty (30) days.

Very truly yours,

CLERK

TAG/dw

cc: Benjamin R. Matthews, Esquire
Tony R. Megna, Esquire

EXHIBIT C

C

The South Carolina Court of Appeals

Pee Dee Health Care, P.A., Appellant,

v.

Hugh S. Thompson, III, Louise T. Dailey as personal representatives of the Estate of Hugh S. Thompson, Respondents.

The Honorable J. Michael Baxley
Darlington County
Trial Court Case No. 2010-CP-16-00633

ORDER

On February 17, 2011, Counsel for Appellant, Tony R. Megna, filed Appellant's Notice of Appeal from Judge Baxley's order granting Respondent's motion to dismiss. On August 24, 2011, Mr. Megna filed Appellant's Notice of Appeal from Judge Baxley's orders disqualifying Mr. Megna from further representation of Appellant in this matter and denying reconsideration of the order. On August 24, 2011, Mr. Megna filed a motion with this Court requesting this Court to stay appellate proceedings, to vacate all proceedings resulting therefrom in the circuit court, and to disqualify Respondent's counsel from past and future representation of Respondent. On August 30, 2011, Mr. Megna filed a motion with this Court requesting consolidation of the appeals. After careful consideration, the motion to consolidate is denied. Furthermore, this Court declines to act on the August 24, 2011 motion and will hold the appeal from Judge Baxley's order granting Respondent's motion to dismiss in abeyance pending the resolution of the

appeal from Judge Baxley's order disqualifying Mr. Megna from further representation of Appellant.

IT IS SO ORDERED.

Thomas E. Huff

Columbia, South Carolina

cc: Tony Ray Megna, Esquire
Jay James, Esquire
Renee Josey, Esquire

FILED
10/6/11

EXHIBIT D

Genesis Health Care, Inc.

Matthew Dowtin <matthewd@genesisfqhc.org>

Record on Appeal for Appeal Tracking Number 2011197671 (Disqualification)

4 messages

Matthew Dowtin <matthewd@genesisfqhc.org> Mon, Oct 1, 2012 at 12:30 PM
To: rjosey@turnerpadget.com, pjlaw507@bellsouth.net
Bcc: Tony Megna <tony@genesisfqhc.org>

Dear Mr. Rene Josey and Mr. Jay James,

This email is in regards to the Hubie Thompson Appeal that has been pending before the Court of Appeals. As you both know, everything has been submitted by both parties for the appeal regarding summary judgment. The Record on Appeal for Tracking Number 2011197671 (Disqualification) is being sent to the printers on Wednesday of this week. Out of courtesy, I wanted to make sure that there was no additional information that you would like to have included in the Record on Appeal. I know some significant time has passed as we waited on the decision of the Court of Appeals regarding the Record on Appeal for the above mentioned Tracking Number. I know it is not your responsibility to make sure everything is included in the Record on Appeal. However, as stated above, I just wanted to ask you if there happened to be any additional information you would like to have included besides what you have listed in your Designation of Matters received by the Court of Appeals on April 12, 2012. If there is additional information you would like to have included, please feel free to contact me via email or on my cell phone at (864) 992-8250, and I will be sure it is included in the Record on Appeal. Thank you both very much for your time, and I hope the both of you have a good week.

Sincerely,

Wade Dowtin
Genesis Healthcare, Inc.

Jay James <pjlaw507@bellsouth.net> Tue, Oct 2, 2012 at 9:34 AM
To: Matthew Dowtin <matthewd@genesisfqhc.org>
Cc: "Josey, J. Rene" <RJosey@turnerpadget.com>

Mr. Dowtin,

Thank you for your courtesy in asking if we wanted additional materials included in the Record of Appeal. We require only those matters listed in our Designation of Matters previously submitted to the Court and copied to Mr. Matthews and Mr. Megna (the same Designation mentioned in your email).

Jay James, II

****

EXHIBIT E

Move to Inbox | More

Create Task...

Matthew Dowtin <matthewd@genesisfqhc.org> 10/2/12

to Jay, rjusey

Dear Mr. Jay James,

It is no problem at all. I just wanted to double check with you before getting everything sent to the printers. Thank you very much for your response.

Sincerely,

Wade Dowtin

Create Task...

Matthew Dowtin <matthewd@genesisfqhc.org> 10/29/12

to Tony

EXHIBIT F

F.

Matthews and Megna, LLC

Attorneys and Counselors at Law
3400 West Avenue
Columbia, SC 29203
TELEPHONE: 803-799-1700
E-mail: benrusmat@gmail.com
tmegna@gmail.com

April 10, 2012

J. Rene Josey, Esquire
PO Box 5478 (29502)
Florence, SC 29501

John Jay James, II, Esquire
PO Box 507
Darlington, SC 29540

Re: Pee Dee Health v. Estate of Hugh S. Thompson
Civil Action No.: 2010-CP-16-0332
Tracking No.: **2011203391 [COA III]**

Dear Mr. Josey and Mr. James:

This letter is in response to your letter dated April 9, 2012 regarding the proposed Record on Appeal. I just wanted to inform you that the proposed Record on Appeal you received via email was not intended to be the final copy that Mr. Megna and Mr. Matthews are going to submit to the court as well as to the both of you. As my email indicated, Mr. Megna and Mr. Matthews simply wanted to give you the opportunity to see if there was any additional information that you would like to have added to the Record on Appeal. The information you originally proposed to be included in the Record on Appeal will be in the final copy. I apologize if you were under the belief that Mr. Megna or Mr. Matthews were imposing any "responsibility" on you as you indicated in your letter. Furthermore, a complete copy of the Record on Appeal in compliance with the South Carolina Appellate Court Rules will be sent to you this week.

Once again, I am sorry for any misunderstanding regarding the Record on Appeal, and I hope the both of you have a great week.

Sincerely,

Matthew Dowtin

EXHIBIT G

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Josey, J. Rene Please see the attached letter responsive to your e-mail of yesterday. The or...

Tony R. Megna <tmegna@gmail.com> 10/31/1
to Rene, pjlaw507, bcc: Katie, bcc: Mary

Dear Rene and Jay:

We placed the documents under exhibits in accordance with the rules. Regardless, we would be pleased to acknowledge to the Court that the documents were cited in your original motion and were included by us in the Record on Appeal. Also, please provide [by email so we can review it quickly] Exhibit B to your motion to disqualify and we will be pleased to place it in a supplemental record if it it not already in the Record on Appeal. The record is large, and we will review the record once you send us the specific document. Apparently the exhibit we have identified differs from the one you have identified. I apologize in advance if we were incorrect.

In light of Rule 212, it is unlikely the Court will object to our agreements in this regard, particularly as Jay, I believe, acknowledged by email to our office that the record was complete prior to its' October filing.

We sincerely appreciate your assistance and cooperation in insuring the record is sufficient for the court to make an informed decision. Again, please note our continuing objections to your representation of the Respondent because of the concurrent representation violations of Rule 1.7(b), and more specifically Rule 1.7(b)(4).

Again, many thanks for your insights and assistance,

Regards, Tony

Please send all written correspondence to:

Tony R. Megna, Esquire

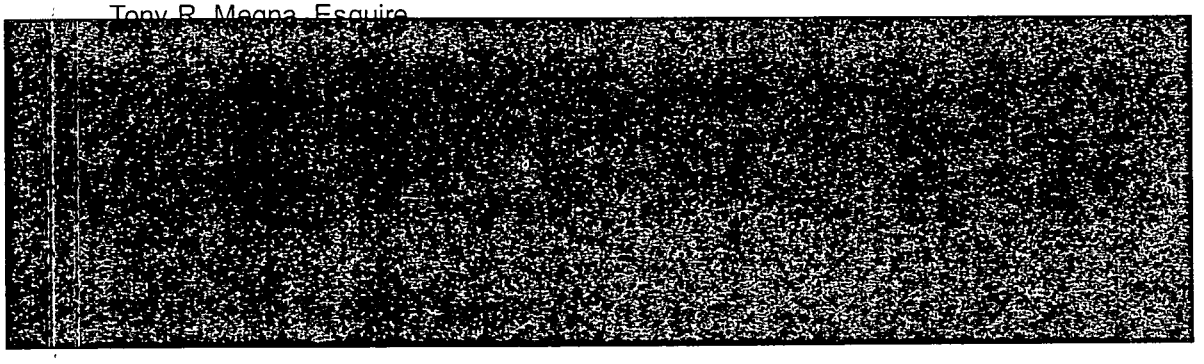

EXHIBIT H

TURNER PADGET
TURNER PADGET GRAHAM & LANEY P.A.

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WRITER'S DIRECT FAX: (843) 413-5818

October 31, 2012

SENT VIA U.S. MAIL, FAX AND E-MAIL
Tony Ray Megna, Esquire
Ben R. Matthews, Esquire
Matthews & Megna
3400 West Avenue
Columbia, SC 29203

Re: Pee Dee Health Care, P.A. v. Estate of Hugh S. Thompson
This Letter Relates to Appeal Tracking Number 2011197671
TPGL File No.: 10667.101

Dear Tony and Ben:

Jay James and I are in receipt of Tony's e-mail dated yesterday, October 30, 2012 at 10:02 a.m. We appreciate any effort to try and resolve the issues regarding the record on appeal. Indeed, this is why our motion asking for compliance with Rule 210 of the SCACR offers to consent to a minor supplement to the record as opposed to a complete re-make.

As you know, there are three particular exhibits identified by our motion for Rule 210 compliance. While it is true that the content of the first two exhibits identified by our motion are reproduced in your record on appeal, they are not indexed, presented, or labeled in the context cited by our Initial Brief.

For example, our Initial Brief cites to Exhibit HH of the Plaintiff's Response to the Motion to Disqualify. This same document is in your present record on appeal at page 803, but, not as a Plaintiff's exhibit but rather as an exhibit to the Defendant's response to the Motion for Reconsideration, a pleading submitted much later in time. While this context may not seem important, it is; our Brief intentionally cites to the document as submitted by the Plaintiff because the context of the Plaintiff's submission of the document is important to our argument.

The second item identified in our SCACR 210 Motion is Exhibit V to a specific pleading (Pee Dee Health Care's Return to Motion to Disqualify) which gives context to the relevance of the exhibit and it is important to our argument. While documents comprising the content of this exhibit do appear to be reproduced in your Record on Appeal, there is no way to tell from the index or the documents itself that they are a part of Exhibit V as referenced in our Brief. The Court would need to take our word for it that these pages are part of an exhibit submitted by the adverse party – following the Rule avoids such a dilemma.

Perhaps these issues could be rectified by some supplemental index or supplemental acknowledgement that these pages do in fact make up the exhibit as cited in our Initial Brief. Without any guidance from the Court, however, it would seem a short supplement properly labeled and indexed would suffice. Obviously we can't speak to what might be acceptable to the Court other than strict compliance with the Rules.

The third exhibit identified in our Motion for Rule 210 compliance is Exhibit B to the Motion to Disqualify. You have included the Motion itself and the reference to this exhibit is on page 718 of your present record on appeal. As you can see, it references a Medicare Enrollment Application executed by you – these were documents found in other litigation on file at the Florence County Clerk of Court's office. They were submitted as an exhibit to the motion to demonstrate your position with the plaintiff entity. Our Brief cites these documents to put our arguments in context and show the entirety of the record that was before Judge Baxley when he made his disqualification ruling. While your e-mail this morning refers us to pages 491, 588, and 641 of the existing Record on Appeal, these are not Exhibit B to the Motion to Disqualify. Again, we will be happy to consent to a simple supplemental record that adds this Exhibit and addresses the context of the two other Exhibits cited by our Initial Brief.

As an additional observation, I also note that the index to the existing Record On Appeal (pages iii to v) refers to various numbered designations of the Respondent (#10, #12, #23, #11, and #9); those numbered designations are apparently from the summary judgment appeal (tracking number 2011203391) and not this appeal. While confusing, we do not suggest any particular remedy is needed for this problem.

Assuming the Court approves something other than strict compliance with the Rules, we believe that our suggested manner of presentation of the omitted materials is the most expeditious and cost effective resolution to the issues. Strict compliance would require inclusion of all exhibits to the Defendant's Motion and the Plaintiff's Return.

Sincerely,

TURNER, PADGET, GRAHAM & LANEY, P.A.

J. René Josey

JRJ:vlb

Cc: Jay James, Esquire

EXHIBIT I

The South Carolina Court of Appeals

Pee Dee Health Care, P. A., Appellant,

v.

Estate of Hugh S. Thompson, Respondent.

Appellate Case No. 2011-197671

ORDER

After careful consideration, Respondent's motion to dismiss is denied. However, within twenty days, Appellant shall serve and file a supplemental record on appeal that includes the three matters Respondent alleges were omitted from the record on appeal. The missing items include: (1) Exhibits to the Return to the Motion to Disqualify, (2) Exhibits to Pee Dee Health Care's Return to Motion to Disqualify, and (3) Exhibits to the Motion to Disqualify.

Furthermore, Appellant's motion for extraordinary relief is denied.

FOR THE COURT

Columbia, South Carolina

FILED
1/8/13 AS

cc:
John J. James, II
Jon Rene Josey
Tony Ray Megna

EXHIBIT J

LAW OFFICE
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DARLINGTON, S. C.
29540

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JOHN JAY JAMES, II

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ALBERT L. JAMES, JR.

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November 1, 2012

Mr. Tony Megna, Esquire
Mr. Benjamin R. Matthews, Esquire
Matthews and Megan, P.A.
3400 West Avenue
Columbia, S. C. 29203

Dear Tony and Ben:

Subject to the Court's agreement, we are agreeable to a supplement to the ROA that (i) indexes Exhibits HH and V as Exhibits to the Return of PDHC to the Motion to Disqualify and (ii) indexes Exhibit B to our Motion to Disqualify, and (iii) provides copies of each document, properly labeled. We will provide to you Exhibit B if your records do not contain it.

Neither René or I have acknowledged by e-mail, or otherwise, that the ROA was complete prior to its filing on October 12.

With kind regards, I am

Very truly yours,

PAULLING & JAMES

JJJII: csa

BY

cc: René Josey

EXHIBIT K

L

Exhibit C

TURNER PADGET
TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

July 25, 2011

J. Brandon Hylton
Email: BHylton@TurnerPadget.com
Writer's Direct Dial: (843) 656-4460

VIA HAND DELIVERY

Pee Dee Health Care, P.A.
Attn: Tony Megna, Esquire
3400 West Avenue
Columbia, SC 29203

RE:	Claimant:	Tanya S. Langston
	Employer:	Pee Dee Health Care, P.A.
	Carrier:	Companion Property & Casualty Group
	Claim No.:	5000892
	WCC File No.:	0320562
	Our File No.:	00576.00798
	D/A:	

Dear Mr. Megna:

I am writing in response your letter dated July 20, 2011. Per your request, I have enclosed an cd containing my file.

As to the underlying issues, compensability and permanent disability have been resolved by a prior Order of the South Carolina Workers' Compensation Commission. The outstanding issues in this claim are future causally related medical treatment and whether Companion is responsible for past prescriptions and mileage related to Claimant's treatment with Dr. Stephens.

With regard to future medical treatment, the parties have attempted to reach an agreement to close out future medical treatment; however, all efforts have failed. Thus, Companion will continue to pay for Claimant causally related medical treatment. The last demand from the Claimant was $350,000, plus professional administration of a Medicare Set-Aside Account. Companion's last offer was $250,000.

With regard to past prescriptions and mileage, Claimant's attorney has requested reimbursement/payment for prescriptions written by Dr. Stephens in the amount of $3,254.52 and mileage to/from the pharmacy to fill such prescriptions for a total of 912 miles. The adjuster, Felicia Lucas, is refusing to pay for the prescriptions and mileage until she receives Dr. Stephens' written medical records showing such prescriptions are causally related to the workers compensation accident.

As you know, I am in the process of withdrawing from representation of Pee Dee Health Care in this matter. The adjuster has requested that I send the file to Anne Noonan with Wilson, Jones, Carter, and Baxley.

With kind regards, I am

Very truly yours,

TURNER PADGET GRAHAM & LANEY P.A.

J. Brandon Hylton, Esq.

JBH/jbh

Enclosure: CD of file

cc: Felicia Lucas

EXHIBIT L

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

Pee Dee Health Care, P.A.,	
Plaintiff,	
v.	**AFFIDAVIT**
Estate of Hugh S. Thompson,	
Defendant.	**10-CP-16-0332**

NOW COMES Kimberly Weatherford, Deponent, who first being duly sworn, deposes and says:

1. I am an employee of Pee Dee Health Care, Pa, and was so employed during the time Dr. Hugh Thompson practiced at Pee Dee Health Care, PA. as the billing supervisor. In such capacity, I saw and spoke to Dr. Thompson on many occasions.

2. At no time did Dr. Thompson inform me that he was barred from the Medicare program or he could not provide billable services to Medicare patients.

3. My staff billed Medicare on numerous occasions for serviced performed by Dr. Thompson and at no time did he object to the billing of these services nor inform us any reason he was unable to provide medical services to Medicare beneficiaries.

4. I am not aware of any conversations that Dr. Thompson had with Tony Megna concerning these matters. Also, Tony is in the Darlington office once or twice per week, and I work with him closely during these times. I am unaware of Dr. Thompson ever meeting nor talking with Tony at any time since he left the employ of Plaintiff; and I was employed with Plaintiff prior to Dr. Thompson's employment.

FURTHER THE AFFIANT SAYETH NOT.

Kimberly E. Weatherford

SWORN TO BEFORE ME this
9th day of March, 2011.
(L.S.)
Notary Public for South Carolina
My Commission Expires: My Commission Expires August 10, 2017

O-2

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

Pee Dee Health Care, P.A.,	
Plaintiff,	
v.	**AFFIDAVIT**
Estate of Hugh S. Thompson,	
Defendant.	
	10-CP-16-0332

NOW COMES Barbara Stokes, RN, Deponent, who first being duly sworn, deposes and says:

1. I am an employee of Pee Dee Health Care, Pa, and was so employed during the time Dr. Hugh Thompson practiced at Pee Dee Health Care, PA.

2. During Dr. Thompson's employment with Pee Dee Health Care, PA., I worked with him as a nurse. A major component of his practice was patients who had Medicare as their insurance. During these encounters with the Medicare patients he did not inform me or the patient's that he had been prohibited from participating in the Medicare program.

3. Dr. Thompson never told me while in the in the presence or out of the presence of, patients or any other person, that he was barred or had ever been barred from participating in the Medicare program.

4. I am not aware of any direct conversations that Dr. Thompson had with Tony Megna concerning these matters. Tony is in the Darlington office once or twice per week, and I work with him closely during these times. I am unaware of Dr. Thompson ever meeting nor talking with Tony at any time since he left the employ of Plaintiff; and I was employed with Plaintiff prior to Dr. Thompson's employment.

FURTHER THE AFFIANT SAYETH NOT.

Barbara Stokes, RN

SWORN TO BEFORE ME this
9th day of March 2011.
(L.S.)
Notary Public for South Carolina
My Commission Expires: My Commission Expires August 10, 2017

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

Pee Dee Health Care, P.A.,	
Plaintiff,	
v.	**AFFIDAVIT**
Estate of Hugh S. Thompson,	
Defendant.	**10-CP-16-0332**

NOW COMES Warren Mark Matthews, Sr, Deponent, who first being duly sworn, deposes and says:

1. I am an employee of Pee Dee Health Care, Pa, and was so employed during the time Dr. Hugh Thompson practiced at Pee Dee Health Care, PA.

2. In later September or early October, 1998, the Decedent approached PDHC requesting to be employed as a physician. PDHC agreed to hire Dr Thompson.

3. At the time he was hired, Dr. Thompson was enrolled in the Medicare program as a physician.

4. Dr. Thompson did not inform me, nor anyone else that I am aware of, that he had received a letter from Medicare in September, 1998 requesting that he provide them a copy of his reinstatement letter from the Medicare OIG as it was needed to verify that he had been reinstated into the Medicare program after his disbarment from the program in 1996. See Exhibit O.

5. At the beginning of Dr. Thompson's employment with PDHC, I assisted him with completing the assignment of benefits form for Medicare. I reviewed the entire application for assignment of benefits, both prior to and after it was completed. Dr. Thompson provided all of the answers on the application and signed it without further comment, objection, or discussion, and verifying the answers as true and complete.

6. At no time did Dr. Thompson tell or inform me that he was barred from participating in the Medicare program. Nor was I informed of the matter by anyone else. In fact, Dr. Thompson asked me on multiple occasions to assist him in attracting new patients of all types [Medicare, Medicaid, private insurance, etc.] to build his practice.

7. After we received the notice from Medicare in 2007 that they were recouping the funds from Pee Dee Health Care that were paid on behalf of Dr. Thompson during the time he was employed at Pee Dee Health Care, I spoke with Dr. Thompson and Dean Banks from First Choice Health Care in regard to the matter. Dr. Thompson told me he was experiencing the same difficulty at First Choice. He further stated he was working with an attorney in Columbia to resolve the matters, and that he would keep us informed as

matters progressed. He also told me that his attorneys were appealing the decision of Medicare to recoup the funds form First Choice and that he would provide PDHC any decisions or made by Medicare. During the next several months, I had a few conversations with Dr. Thompson in which he told me there were no new developments.

8. Pee Dee Health Care was never advised by Dr. Thompson or others that the Medicare ALC hearing the First choice appeal had actually ruled in Dr. Thompson's favor; and PDHC was unable to use this decision to assist in the defense of the claims made by Medicare.

9. I am not aware of any direct conversations that Dr. Thompson had with Tony Megna concerning these matters. In fact, all conversations were directed through me other than the one where Tony told me that Dr. Thompson called him and told him he was sending some documents. Also, Tony is in the Darlington office once or twice per week, and I work with him closely during these times. I am unaware of Dr. Thompson ever meeting nor talking with Tony at any time since he left the employ of Plaintiff; and I was employed with Plaintiff prior to Dr. Thompson's employment.

FURTHER THE AFFIANT SAYETH NOT.

Warren M Matthews Sr

Warren Mark Matthews, Sr.

SWORN TO BEFORE ME this
9th day of March, 2011.
Helen H. Anderson (L.S.)
Notary Public for South Carolina
My Commission Expires: My Commission Expires August 10, 2017

STATE OF SOUTH CAROLINA)
) COURT OF
COUNTY OF)

Plaintiff,) Docket Number:
)
) AFFIDAVIT
)
)
)
)
Defendants.)

NOW COMES Katherine Noyes, Deponent, who first being duly sworn, deposes and says:

1. I am an employee of Pee Dee Health Care, Pa, and was so employed during the time Dr. Hugh Thompson practiced at Pee Dee Health Care, PA. as the Vice President of Business Operations. In such capacity, I saw and spoke to Dr. Thompson on many occasions.

2. At no time did Dr. Thompson inform me that he was barred from the Medicare program or he could not provide billable services to Medicare patients.

3. My staff billed Medicare on numerous occasions for serviced performed by Dr. Thompson and at no time did he object to the billing of these services nor inform us any reason he was unable to provide medical services to Medicare beneficiaries..

FURTHER THE AFFIANT SAYETH NOT.

Katherine Noyes

SWORN TO BEFORE ME this
3rd day of March, 2011.
Pamela L. Hobbs (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/17/12

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

Pee Dee Health Care, P.A.,

Plaintiff,

v.

Estate of Hugh S. Thompson,

Defendant.

AFFIDAVIT

10-CP-16-0332

NOW COMES James Goodson, FNP, Deponent, who first being duly sworn, deposes and says:

1. I am an employee of Pee Dee Health Care, Pa, and was so employed during the time Dr. Hugh Thompson practiced medicine and was employed at Pee Dee Health Care, PA.

2. During Dr. Thompson's employment with PDHC, I referred patients to him for pain management services, and discussed the treatments he provided to these patients. . These patients had many different insurance plans including Medicare.

3. At no time did Dr. Thompson inform me:

    1. that he was not able to see and treat Medicare patients;

    2. that he was barred from seeing Medicare patients. .

FURTHER THE AFFIANT SAYETH NOT.

James Goodson, FNP

SWORN TO BEFORE ME this
16 day of Feb, 2011.
(L.S.)
Notary Public for South Carolina
My Commission Expires: My Commission Expires August 10, 2017

O-6

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

Pee Dee Health Care, P.A.,	
Plaintiff,	
v.	**AFFIDAVIT**
Estate of Hugh S. Thompson,	
Defendant.	
	10-CP-16-0332

NOW COMES Eileen S. Segers, RN, Deponent, who first being duly sworn, deposes and says:

1. I am an employee of Pee Dee Health Care, Pa, and was so employed during the time Dr. Hugh Thompson practiced at Pee Dee Health Care, PA.
2. During Dr. Thompson's employment with Pee Dee Health Care, PA., I worked with him as a nurse. A major component of his practice was patients who had Medicare as their insurance. During these encounters with the Medicare patients he did not inform me or the patient's that he had been prohibited from participating in the Medicare program.
3. Dr. Thompson never told me in the presence or out of the presence of patient's that he was barred from participating in the Medicare program.

FURTHER THE AFFIANT SAYETH NOT.

Eileen S. Segers, R.N.
Eileen S. Segers, RN

SWORN TO BEFORE ME this
15 day of Feb, 2011.
Notary Public for South Carolina (L.S.)
My Commission Expires: My Commission Expires August 10, 2017

EXHIBIT M

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

Pee Dee Health Care, P.A.,	
Plaintiff,	
v.	**AFFIDAVIT**
Estate of Hugh S. Thompson,	
Defendant.	
	10-CP-16-0332

NOW COMES James D. McInnis, MD, Deponent, who first being duly sworn, deposes and says:

1. I am an employee of Pee Dee Health Care, Pa, and was so employed during the time Dr. Hugh Thompson practiced at Pee Dee Health Care, PA. At the time, I was also the President of Pee Dee Health Care, P.A.

2. During Dr. Thompson's employment with PDHC, I referred patients to him for pain management services. These patients had many different insurance plans including Medicare.

3. At no time did Dr. Thompson ask me to stop referring Medicare patients to him. In addition he never informed me that he was barred from seeing Medicare patients.

4. Prior to Dr. Thompson being employed at Pee Dee Health Care, I had extensive conversations with Dr. Thompson about his past troubles with the state Board of Medical Examiners. During these conversations, and during his employ at Pee Dee Health Care, he never mentioned or suggested that he had any ongoing issues with any insurance program or that he could not provide medical services to whomever he chose. I had known Dr. Thompson may years prior to his employment at Pee Dee Health Care, and had no reason not to believe the statements he was making. Nor did I have any reason to question his judgment, his honesty, or his ability to treat medically patients referred to him.

5. At his request, I accompanied Dr. Thompson to the offices of the state Board of Medical examiners in order to appear before the Board with Dr. Thompson so that he could work at Pee Dee Health, P.A. We spent several hours together that day and discussed the matters that led to his having to appear before the Board in order to his license to practice medicine in the offices of Pee Dee Health Care approved. At no time did Dr. Thompson ever inform me that he was barred from the Medicare program or he could not provide billable services to Medicare patients. Nor did I ever hear Dr. Thompson have any conversation with anyone that he was unable to provide medical services to patients with Medicare. Moreover, during our meeting at the medical board, Dr. Thomson very specifically informed me that he was able and willing to see and treat any patient, regardless of insurance coverage.

6. I never heard Dr. Thompson, at any time, object to the billing of the medical services he performed on any patient.

FURTHER THE AFFIANT SAYETH NOT.

James D. McInnis, MD

SWORN TO BEFORE ME this
14th day of February, 2011.

(L.S.)
Notary Public for South Carolina
My Commission Expires: My Commission Expires August 10, 2017

EXHIBIT N

EXHIBIT A

STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON	)	IN THE PROBATE COURT 2009-ES-16-424
IN THE MATTER OF: ESTATE OF HUGH S. THOMPSON	)	
Hugh S. Thompson, III and Louise T. Dailey, as Personal Representatives of the Estate of Hugh S. Thompson, Petitioners, versus Pee Dee Health Care, P.A. and Greta S. Capers, Respondents.	)	**ORDER**

INTRODUCTION

On September 15, 2010, this matter came before the Court for hearing on the petition of the personal representatives of the Thompson Estate, dated August 12, 2010, seeking approval for the sale of Darlington County real property identified in the petition. In connection with that sale, petitioners seek court approval for estate payment of certain items related to the sale including satisfaction of the mortgage on the property, payment of pro-rated real property taxes on the property, and payment for deed preparation, deed recording fees, and other customary closing costs of a seller. In addition, the petition seeks court approval to use proceeds from that sale, up to $40,000, for the payment of litigation fees and costs associated with defending claims made against the estate and for the payment of carrying costs associated with other real property in the estate.

TRUE COPY

JUDGE OF PROBATE
DARLINGTON COUNTY, S.C.

FILED
2010 SEP 17 AM 8:31
JUDGE OF PROBATE
DARLINGTON COUNTY, SC

Because they have asserted claims against the estate, the petitioners have named Pee Dee Health Care, P.A. (hereinafter "PDHC")[1] and Greta S. Capers as parties to these proceedings and served them with their petition over 30 days prior to the Court's hearing on these matters.[2] PDHC filed a written response to the petition on September 10, 2010,[3] and the petitioners submitted a reply to that response on September 14, 2010 (and again at the hearing). The creditor Greta S. Capers has not responded to the petition and did not appear at the hearing after notice of the same. The Court has considered all the pleadings and the arguments of counsel and makes the following findings of fact:

FINDINGS OF FACT

1. Petitioners have entered into an agreement with Franklin Goforth whereby the estate will sell and Franklin Goforth will purchase the Property for a consideration of $80,000.

2. The property was appraised by Pam Sherrill and Company to have a value of $78,000.

3. The creditors of the estate have no objection to the proposed sale of property to Franklin Goforth.

---

[1] The claim of PDHC arises from Medicare's overpayment of benefits to PDHC for work performed by the decedent while he was an employee of PDHC. The Medicare program subsequently sought and obtained repayment from PDHC of the overpayment. PDHC now seeks damages related to the repayment of such benefits to the Medicare program.

[2] While the transcript of the hearing in this matter will reflect PDHC's objection to the Court's rulings based upon an alleged lack of adequate notice, PDHC does not deny receipt of the petition more than 30 days prior to the Court's hearing. Instead, PDHC suggests that its own request for a bond was not ripe for hearing although the estate consented to that request being considered and PDHC both briefed and argued the issue. PDHC argued that additional hearings were needed in this Court to flesh out the full value of their claim which is pending in Circuit Court; this Court disagrees and finds that even if the alleged claim is worth in excess of the estate value (most recently estimated with the inventory of April 6, 2010), a bond is still not needed to protect the claim of PDHC to the extent recovery can be made against the estate. Moreover, the Court notes that the issue of an alternative to bond is raised in the estate's August 12, 2010 petition; thus, the issue is hardly a surprise to any of the creditors.

[3] That response also made additional requests for this Court's intervention including, among other issues, the appointment of a Special Administrator; however, at the hearing, counsel for PDHC agreed that other issues did not need to be heard. The Court agreed that PDHC could present these withdrawn issues again without prejudice if PDHC deemed it necessary; for now, all matters before the Court are resolved by this order.

4. It is in the best interest of the estate, of the beneficiaries thereof, and of potential creditors, to sell the said property to Franklin Goforth for a consideration of $80,000.

5. It is reasonable for the estate to pay certain items related to the sale including satisfaction of the mortgage on the property, payment of pro-rated real property taxes on the property, and payment for deed preparation, deed recording fees, and other customary closing costs of a seller. The creditors of the estate also have no objection to the payment of these items.

6. The threatened claim of PDHC is alleged to be serious. Counsel for PDHC repeatedly represented at the hearing that the value of this claim will likely exceed the value of the estate. The Medicare overpayment was $208,821.03 but PDHC has prayed for consequential and punitive damages as well. In light of the seriousness of the PDHC claim as represented by the claimant, the Thompson Estate's choice to engage the law firms of record represents a reasonable response to the seriousness of the threatened litigation. The Court further finds it is reasonable for the estate to pay up to $40,000 at this stage of the litigation for attorneys fees and costs. To preserve and protect the value of other real property held in the estate, it is also reasonable for the estate to pay carrying costs associated with that other real property from the $40,000 requested authorization.[4]

7. While the value and validity of the PDHC claim is not presently before this Court, the Court finds that the estate's opposition to and defense of that claim, particularly in light of the March 14, 2008 decision of United States Administrative Law Judge Dean C. Metry, is certainly in good faith.

8. Prior to the anticipated sale of the property described in the petition, one of the personal representatives (Hugh S. Thompson, III) advanced approximately $14,500 of his personal funds

[4] PDHC repeatedly represented at the hearing that it did not object to the amount of attorney's fees sought; rather, PDHC focused on its request for a bond in an amount equal to the alleged full value of its claim.

to the estate for the payment of anticipated litigation fees and expenses as well as the real property carrying costs. It is reasonable for the personal representatives to reimburse these personal funds in light of the anticipated sales proceeds. The creditors do not object to the estate's repayment of this sum to Mr. Thompson.

9. PDHC has made demand that the personal representatives post bond pursuant to the probate code. S.C. Code § 62-3-605. For more than 30 days before the Court's hearing on these matters, PDHC has also been on notice of the petitioners' pleaded motion (Petition page 3, item number 7) that bond not be required.

10. Under the circumstances of this case, a bond is not needed. The estate is comprised primarily of real estate which is in no danger of depletion or disappearance. The instant petition arises from the fully disclosed efforts of the Thompson Estate to liquidate some of this real property. The personal representatives agree to be bound not to convey any other real property without making similar petition for approval to this Court; thus, to the extent that the estate is comprised of real property, that property would be protected by such agreement (and this order).

11. The personal representatives propose to hold the net proceeds of the pending sale in a court protected account (after payment of the fees and expenses sought by the petition) as provided by S. C. Code Ann. 62-3-604. Any other liquid assets or proceeds of future real property sales can be protected in the same or similar account without risk to any creditors. The Court finds that these proposed measures will adequately protect the personal property of the estate pending resolution of the creditors' claims.

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JUDGE OF PROBATE
DARLINGTON COUNTY, S.C.

CONCLUSIONS OF LAW

After reviewing the pleadings, arguments of counsel, applicable case law, and statutory provisions, the Court has reached the following conclusions of law:

A. The Probate Code provides that this Court can authorize the sale of the estate's real property upon such terms and conditions as the Court finds just. See S.C. Code § 62-3-711. The Court concludes that the sale requested by this petition, and agreed to by creditor PDHC, is just and in the best interest of the estate.

B. Probate Code § 62-3-604 specifically provides that the need for a requested bond amount may be reduced "by the value of assets of the estate deposited with a domestic financial institution (as defined in § 62-6-101) in a manner that prevents their unauthorized disposition." In this case, the real property can and will be protected by this order and the need for a bond equal to the value of personal property, otherwise required under § 62-3-605, will be reduced to zero by this Courts' order that any liquid assets, not approved for disposition herein, shall be placed in a qualified account pursuant to the statute.

C. The personal representatives of this estate are empowered to "defend claims, or proceedings in any jurisdiction for the protection of the estate...." S.C. Code § 62-3-715(20). In addition, the personal representatives are further empowered to "employ persons, including attorneys ... to advise or assist the personal representative in the performance of his administrative duties...." S.C. Code § 62-3-715 (19). Indeed, it is the personal representatives' "bounden duty to defend the property committed to their care to the last extremity...." Reid v. Colcock, 1 Nott & McC. 592, 10 S.C.L. 592 (S.C. Const. App. 1819).

TRUE COPY

CLERK OF PROBATE
BERKELEY COUNTY, S.C.

D. The Uniform Probate Code also authorizes the compensation of litigation professionals from the corpus of the estate provided such litigation is in "good faith, whether successful or not...." S.C. Code § 62-3-720; see, e.g., Franklin v. Chavis, 371 S.C. 527, 640 S.E.2d 873 (2007)(approving use of estate funds to defend contest of facially valid will). Because this Court has found the estate's defense of the PDHC claim to be in good faith, the Code authorizes the payment of defense costs and this Court will approve the same – having concluded that the fees requested to date are reasonable in light of the threatened litigation.

IT IS THEREFORE ORDERED THAT:

(1) the sale by petitioners as personal representatives of the Estate of Hugh S. Thompson of the property to Franklin Goforth for a consideration of $80,000 is approved;

(2) the petitioners are authorized to execute and deliver on behalf of the Estate of Hugh S. Thompson a limited warranty deed in favor of Franklin Goforth and to execute all other documents customary to real estate closings in this area;

(3) the petitioners are authorized to satisfy mortgage indebtedness on the property to First Palmetto Savings Bank from the proceeds of sale;

(4) from the estate, the petitioners are authorized to pay the deed recording fee provided by Section 12-24-10 of the Code of Laws of South Carolina (2000), together with any other costs necessary and incidental to the closing and normally paid by sellers in similar real estate transactions, together with property taxes for the year 2010 to be prorated to the date of closing;

(5) the petitioners are authorized to use the sum of $40,000 for payment of legal fees and carrying costs for other real estate (property taxes, insurance and the like);

(6) in addition, the petitioners are authorized to reimburse the sum of $14,500 to Hugh S. Thompson, III ;

TRUE COPY

JUDGE OF PROBATE
DARLINGTON COUNTY, S.C.

(7) in lieu of any bond the petitioners are ordered to place any remaining proceeds from the real property sale approved herein in a qualified account only for further distribution as may be ordered by this Court from time to time;

(8) no bond shall be required of the petitioners in this matter; and

(9) the petitioners are ordered not to convey or encumber any remaining real property of the estate without further order of this Court.

AND IT IS SO ORDERED.

Darlington, South Carolina

September 17, 2010

The Honorable Marvin I. Lawson

FILED

2010 SEP 17 AM 8:31

MARVIN I. LAWSON
JUDGE OF PROBATE
DARLINGTON COUNTY, SC

TRUE COPY

JUDGE OF PROBATE
DARLINGTON COUNTY, S.C.

EXHIBIT O

R

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PDHC v Estate of Thompson Inbox x tony@Drive x

Tony R. Megna Jay- Please find attached the Notice of Appeal of PDHC to the probate order i...

Jay James <pjlaw507@bellsouth.net> 9/20/1

to Benjamin, me

In light of your intent to appeal and in light of your having no objection to the sale of the house and payment of m selling expenses and no objection to the repayment of Mr. Thompson's personal funds ($14,500), I ask that you proceed as follows:

1. I can prepare a document for you to sign on behalf of PDHC indicating that you consent to the sale and the (and payment of mortgage and related selling expenses) and waive any and all rights which PDHC may have wit residence property (but not the proceeds), with this document to be filed in the probate court.

2. Alternatively, that we get a consent order from the administrative circuit judge to the above effect.

The attorney for the purchaser indicates that either procedure is fine with him. The first procedure may be slight

I would appreciate your letting me know whether you would approve one of the aforesaid courses of action and w necessary paperwork.

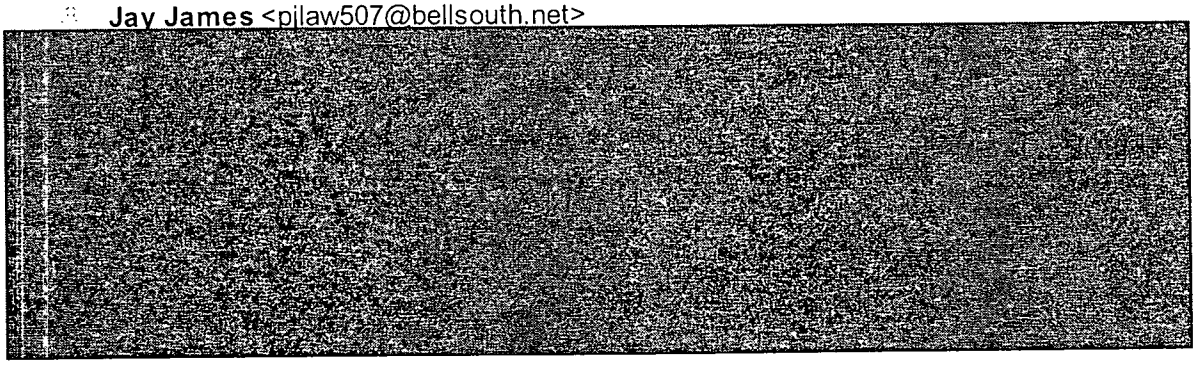
The proceeds, of course, would be held by the personal representatives until the appeal is final.

Tony R. Megna <tmegna@gmail.com> 9/20/1

to Jay

Your choice.

Jay James <pjlaw507@bellsouth.net> 9/22/1



R

STATE OF SOUTH CAROLINA, COUNTY OF DARLINGTON.	)	IN THE PROBATE COURT 2009-ES-16-424
IN THE MATTER OF: ESTATE OF HUGH S. THOMPSON	)	
Hugh S. Thompson, III and Louise T. Dailey, as Personal Representatives of the Estate of Hugh S. Thompson, Petitioners, versus Pee Dee Health Care, P.A. and Greta S. Capers, Respondents.	)	CONSENT AND RELEASE

RECITALS

1. By Order dated September 17, 2010, the Darlington County Probate Court approved, inter alia, (i) the sale of real property identified as Darlington County Tax Parcel Nos. 164-15-03-006 and 164-15-03-044 to Franklin Goforth for a consideration of $80,000.00; (ii) the execution and delivery by the estate's personal representatives of a limited warranty deed in favor of Franklin Goforth and other documents customary to real estate closings in this area; (iii) satisfaction of mortgage indebtedness to First Palmetto Savings Bank; (iv) payment from the sales proceeds of normal seller closing costs, to include deed recording fee provided by Section 12-24-10 of the Code of Laws of South Carolina (2000) and proration of Darlington County ad valorem real property taxes for 2010 to date of closing plus any other costs necessary and incidental to the closing and normally paid by Sellers in similar real estate transactions; and (v)

the estate's reimbursement of the sum of $14,500.00 of personal funds advanced by Hugh S. Thompson, III to defray estate litigation costs.

2. Pee Dee Health Care, P.A. entered no objection to the above matters and indicated at the hearing its consent thereto.

3. Pee Dee Health Care, P.A. has appealed the Probate Court's order of September 17, 2010 because of other aspects of that order.

4. Because of that pending appeal and the desire of all parties to liquidate the real property described above, Pee Dee Health Care, P.A., by this instrument, desires to set forth its consent to the consummation of those matters set forth in Paragraph 1 above and to release any claim or lien that it might have with respect to the real property identified in Paragraph 1, subject, however, to the conditions hereinbelow set forth.

NOW THEREFORE, for and in consideration of the premises above stated, Pee Dee Health Care, P.A., does hereby consent and agree as follows:

1. The sale of real property identified as Darlington County Tax Parcel Nos. 164-15-03-006 and 164-15-03-044 to Franklin Goforth for a consideration of $80,000.00 is hereby consented to and approved. By this approval and consent, Pee Dee Health Care, P.A., agrees that it releases any and all rights, claims, and liens which it might have with respect to the said real property by reason of its claim on file with Darlington County Probate Court and the Darlington County Court of Common Pleas.

2. The execution and delivery of a limited warranty deed in favor of Franklin Goforth and other documents customary to real estate closings in this area by the personal representatives of the estate is hereby consented to and approved.

3. Satisfaction of mortgage indebtedness to First Palmetto Savings Bank from the sales proceeds is hereby consented to and approved.

4. Payment from the sales proceeds of normal seller closing costs to include deed recording fee provided by Section 12-24-10 of the Code of Laws of South Carolina (2000), proration of Darlington County ad valorem property taxes for 2010 to date of closing, and any other costs necessary and incidental to the closing and normally paid by Sellers in similar real estate transactions is hereby consented to and approved.

5. The estate's reimbursement of the sum of $14,500.00 of personal funds advanced by Hugh S. Thompson, III is hereby consented to and approved.

6. The aforesaid consents and approvals are conditioned upon the personal representatives depositing the net proceeds of the real estate sale described above into a domestic financial institution (as defined in §62-6-101) in a manner that prevents disposition of those proceeds until the appeal of the order and judgment of the Darlington County Probate Court dated September 17, 2010 to the Court of Common Pleas, Court of Appeals and/or Supreme Court is had and completed and then only with further authorization of the Darlington County Probate Court.

IN THE PRESENCE OF:

PEE DEE HEALTH CARE, PA

_____

_____

BY _____

Its _____

STATE OF SOUTH CAROLINA,
COUNTY OF DARLINGTON.

I, _____, do hereby certify that Pee Dee Health Care, PA by _____, its _____, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this the ____ day of _____, 2010.

_____(SEAL)
Notary Public for South Carolina
My commission expires:

EXHIBIT P

5

STATE OF SOUTH CAROLINA,)
)
COUNTY OF DARLINGTON.)

IN THE PROBATE COURT
2009-ES-16-424

IN THE MATTER OF:)
ESTATE OF HUGH S. THOMPSON)
)

ORDER

The Personal Representatives of the Estate of Hugh S. Thompson, having closed on the sale of the decedent's residence property known as 111 North Ervin Street, Darlington, S. C. and having received net proceeds of $65,400.21, are HEREBY ORDERED to deposit the said proceeds with a domestic financial institution (as defined in §62-6-101) so that no withdrawals shall be made therefrom without further order of this Court, which shall not be issued until the appeal of the order and judgment of this Court's order and judgment dated September 17,2010 by Pee Dee Health Care, P.A. to the Court of Common Pleas, Court of Appeals, and/or Supreme Court is had and completed.

IT IS FURTHER ORDERED that the financial institution selected by the Personal Representatives of the Estate of Hugh S. Thompson be provided a copy of this Order and comply strictly therewith.

AND IT IS SO ORDERED.

Nov. / 2010

MARVIN I. LAWSON
Judge of Probate, Darlington County, S.C.

DARLINGTON COUNTY, SC

2010 NOV -1 AM 9:47

TRUE COPY

JUDGE OF PROBATE
DARLINGTON COUNTY, S.C.

EXHIBIT Q

T

STATE OF SOUTH CAROLINA,)
)
COUNTY OF DARLINGTON.)

IN THE MATTER OF:)
ESTATE OF HUGH S. THOMPSON)

Hugh S. Thompson, III and Louise T.)
Dailey, as Personal Representatives of the)
Estate of Hugh S. Thompson,)
)
Petitioners,)
)
versus)
)
Pee Dee Health Care, P.A.,)
)
Respondent.)

IN THE PROBATE COURT
2009-ES-16-424

TRUE COPY

JUDGE OF PROBATE
DARLINGTON COUNTY, S.C.

MARVIN L. LAWSON
JUDGE OF PROBATE
DARLINGTON COUNTY, SC

2012 DEC -5 PM 4:24

FILED

ORDER

On December 5, 2012, this matter came before the Court for hearing on the Petition of the Personal Representatives of the Thompson estate. The Petitioners are seeking the Court's approval for the sale of Lot 332, Cliff Ridge Subdivision, Greenville County, South Carolina, TMS #0690.07-01-002.00 to Bruce Taylor Filer and Rebekah L. Filer pursuant to Contract of Sale dated October 20, 2012, a copy of which is attached to the Petition. Petitioners further seek the Court's approval for payment of normal selling expenses in connection with the proposed sale of Lot 332 including sales commission of ten percent (10%) to the Marchant Company, the deed recording tax provided by §12-24-10 of the Code of Laws of South Carolina, proration of taxes and any other charges (such as homeowners association assessments) requiring proration and the court filing fee in this proceeding.

Because it has asserted a claim against the estate, the Petitioners named Pee Dee Health Care, P.A. (PDHC) as a party to this proceeding and served it with the Summons and Petition and Notice of Hearing on October 30, 2012. PDHC did not file responsive pleadings or appear for the hearing. Present at the hearing was the Petitioners' counsel John Jay James, II.

MDL

1

FINDINGS OF FACT

1. The Court finds that Lot 332 was appraised by Appraisal Services of Greenville to have a value of $28,500.00 as of November 5, 2009. The Court further finds that the said lot has been listed for sale continuously since the decedent's death and that the decedent had the lot listed for sale prior to his death.

2. The Court finds that the proposed selling price of $22,000.00 is fair and reasonable in light of the marketing efforts made by Petitioners and the current depressed real estate market conditions..

3. The Court finds that it is reasonable to pay payment of a real estate commission of ten percent (10%) to the Marchant Company, the deed recording tax provided by §12-24-10 of the Code of Laws of South Carolina, and prorated taxes and any other charges requiring proration.

4. The Court finds that it is reasonable that the filing fee for this action in the amount of $150.00 and the appearance fee of the court reporter in the amount of $100.00 be paid from the proceeds realized from the contemplated transactions.

5. The Court notes that Petitioners are in compliance with this Court's Order of September 17, 2010 wherein they were ordered not to convey or encumber any real property of the estate without further order of this Court.

6. The Court finds finally that net proceeds realized from this sale should be deposited into the estate checking account so that funds are available to pay 2012 real property taxes and regime fees (estimated to be a little over $9,000.00) and that the balance be retained by the Petitioners in the estate checking account to defray ongoing real estate carrying costs, including taxes and regime fees in 2013.

7. The Court finds that it has jurisdiction of this matter under S. C. Code Ann. §62-1-302.

IT IS THEREFORE ORDERED, without any objection of any party hereto as follows:

1. That Petitioners be allowed to consummate all transactions contemplated by the Contract of Sale for Lot 332 for a gross consideration of $22,000.00 and that normal selling costs be paid from the proceeds, including real estate commission of ten percent (10%) to the Marchant Company, deed recording tax imposed by §12-24-10 of the Code of Laws of South Carolina, and property tax and other charges requiring proration between Seller and Buyer.

2. That from the proceeds to be realized from the contemplated transaction the sum of $150.00 be paid to the Darlington County Probate Court in payment of the filing fee for this proceeding and the sum of $100.00 be paid to Advantage Court Reporting for its appearance fee.

3. That all proceeds realized from the consummation of the sale of Lot 332 be deposited into the estate's checking account, to be used thereafter for payment of 2012 property taxes and regime fees and the balance to remain in said account to be used for real estate carrying costs, including future 2013 property taxes and regime fees.

4. That Petitioners be allowed to execute and deliver all documents necessary to effectuate the closing of the sale of Lot 332, including limited warranty deed, closing statement, and all other documents necessary and incidental to the closing of said sale.

AND IT IS SO ORDERED.

Darlington, SC

December 5, 2012

MARVIN I. LAWSON
Probate Judge, Darlington County, S.C.

EXHIBIT R

4

STATE OF SOUTH CAROLINA,	)	
	)	IN THE PROBATE COURT
COUNTY OF DARLINGTON.	)	2009-ES-16-424
IN THE MATTER OF:	)	
ESTATE OF HUGH S. THOMPSON	)	ORDER
	)	

The Personal Representatives of the Estate of Hugh S. Thompson, having closed on the sale of the decedent's residence property known as 111 North Ervin Street, Darlington, S. C. and having received net proceeds of $65,400.21, are HEREBY ORDERED to deposit the said proceeds with a domestic financial institution (as defined in §62-6-101) so that no withdrawals shall be made therefrom without further order of this Court, which shall not be issued until the appeal of the order and judgment of this Court's order and judgment dated September 17,2010 by Pee Dee Health Care, P.A. to the Court of Common Pleas, Court of Appeals, and/or Supreme Court is had and completed.

IT IS FURTHER ORDERED that the financial institution selected by the Personal Representatives of the Estate of Hugh S. Thompson be provided a copy of this Order and comply strictly therewith.

AND IT IS SO ORDERED.

Nov. / 2010 ~~October~~

MARVIN I. LAWSON
Judge of Probate, Darlington County, S.C.

DARLINGTON COUNTY SC

2010 NOV -1 AM 9:47

TRUE COPY

JUDGE OF PROBATE
DARLINGTON COUNTY, S.C.

EXHIBIT S

Matthews and Megna, LLC

Attorneys and Counselors at Law
3400 West Avenue
Columbia, SC 29203
TELEPHONE: 803-799-1700
E-mail: tmegna@gmail.com

October 10, 2011

The Honorable J. Michael Baxley
531 East Carolina Avenue
Hartsville, SC 29550-4311
[Via email to JBaxleyLC@sccourts.org and first class mail]

Re: Estate of Hugh S. Thompson, Case No: 10-CP-16-0332
Response to Mr. Josey's letter dated May 26, 2011 and his supplemental memoranda

Dear Judge Baxley:

I am in receipt of your order filed October 4, 2011, and received by me on October 10, 2011.

The order of disqualification was appealed to the SC Court of Appeals by notice dated August 15, 2011 – two weeks prior to the Motion for Reconsideration filed with this Court on September 1, 2011. In addition, as the court graciously allowed me to represent the Plaintiff in the hearing on the Motion for Summary Judgment, it was my sincere belief that the Motion for Reconsideration was a natural extension of the hearing on the motion for summary judgment as well as the other matters that directly involved matters surrounding that motion. I genuinely apologize for any misunderstanding. As a gesture of good faith and deference to the Court, I will request Ben represent the Plaintiff in all further proceedings before the circuit court pending the determination of the appeals.

With kind regards, I remain

Sincerely yours,

Tony R. Megna

Cc:

Jay James
P.O. Box 507
Darlington, SC 29540
[Via email to
pjlaw507@bellsouth.net

Renee Josey
1831 W. Evans Street
Florence, SC 29501
[Via email to
RJosey@turnerpadget.com
and first class mail

The Honorable Scott B. Suggs
Clerk Of Court,
Darlington County
1 Public Square, Room B-4
Darlington, South Carolina 29532
[Via first class mail]

EXHIBIT T

State of South Carolina
The Circuit Court of the Fourth Judicial Circuit

J. MICHAEL BAXLEY
JUDGE

531 EAST CAROLINA AVENUE
HARTSVILLE, SOUTH CAROLINA 29550-4
TELEPHONE: (843) 383-4114
FAX: (843) 383-4116
E-MAIL: jbaxleyj@scjd.state.sc.us

October 27, 2011

Tony R. Megna, Esquire
Attorney at Law
3400 West Avenue
Columbia, South Carolina 29203

Re: PDHC v Estate of Thompson (Case No. 10-CP-16-0332)

Dear Mr. Megna:

Thank you for your letter of October 10, 2011, stating your intention to refer any further circuit proceedings in this matter to your partner Ben Matthews. This act of good faith and deference to my decision is appreciated. I look forward to working with you on other matters in the future, as well as with Mr. Matthews should there be further circuit proceedings in this case. Until our paths again cross, best wishes to you. Thank you again for your letter.

Sincerely,

J. Michael Baxley
JMB/jlc

cc: John Jay James, II, Esquire
J. Rene Josey, Esquire
Hon. Scott Suggs (for filing)

EXHIBIT U

U.S. Department of Health and Human Services
OFFICE OF MEDICARE HEARINGS AND APPEALS
Southern Region
Miami, Florida

Appeal of:	**First Choice Healthcare**	ALJ Appeal No.:	**1-214602021**
Beneficiary:	**Multiple (See Attached List)**	**Medicare Part B**	
HICN:	**Multiple (See Attached List)**	Before:	**Don W. Joe** U.S. Administrative Law Judge

DECISION

After carefully considering the evidence and arguments presented in the record, a **FULLY FAVORABLE** decision is entered for appellant.

PROCEDURAL HISTORY

First Choice Healthcare (appellant) was appealing an overpayment determination by Medicare. A redetermination hearing upheld the overpayment decision. The appellant then submitted a request for a reconsideration hearing. A Qualified Independent Contractor (QIC) issued a reconsideration decision regarding the appellant's claim.[1]

The QIC reviewed the claim and found that appellant incorrectly billed Medicare for date(s) of service April 20, 2000-June 20, 2002. The QIC found that the appellant was responsible for returning to Medicare any and all funds Medicare previously paid for the above date(s) of service. The appellant then filed a timely request for a hearing before an Administrative Law Judge (ALJ).[2]

On a review of the record, the undersigned finds that a decision fully favorable to the Appellant is warranted. As such, the following decision has been issued based on the evidence of record

[1] Exhibit 1
[2] *Id.*

without holding an oral hearing. *See* 42 CFR §405.1038. Exhibits 1 and 2 were admitted into evidence.

ISSUES

The general issue is whether payment made under Part B of Title XVIII of the Social Security Act (the Act) to the appellant for the services provided to the beneficiary on April 20, 2000-June 20, 2002 must be returned to Medicare.

FINDINGS OF FACT

The record reflects that the appellant employed Dr. Hugh Thompson to provide physician's services to various patients/beneficiaries for the dates of services at issue in this case.[3] The following represents the timeline of events that are relevant to the case at hand:

- On May 31, 1994, the South Carolina Board of Medical Examiners suspended Dr. Hugh Thompson's medical license due to misconduct which involved providing inappropriate prescriptions for his girl-friend at that time.[4]
- On March 31, 1996, Dr. Thompson was excluded from participating in Medicare due to his license being suspended.[5]
- In May 1998, the South Carolina Board of Medical Examiners reinstated Dr. Thompson's medical license.[6]
- Dr. Thompson sought reinstatement into Medicare by contacting Centers for Medicare and Medicaid Services contractor, Palmetto GBA (Palmetto).[7]
- On April 17, 2000, Palmetto issued Dr. Thompson a Medicare provider number.[8]
- Following the assignment of a provider number, Medicare payment of claims was issued to the appellant for services rendered by Dr. Thompson. The dates of service for these claims were from April 20, 2000 to June 20, 2002.[9] Notice of initial payment is usually sent within 90 days of the date of service.

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[3] Exhibit 1/22
[4] Exhibit 1/86
[5] *See* Exhibit 1/12
[6] *See Id. See also* Exhibit 1/22
[7] Exhibit 1/39
[8] Exhibit 1/12
[9] *Id.*

- In 2002, Palmetto informed the appellant that it was investigating a potential overpayment for services provided by Dr. Thompson. The record does not reflect that an actual notice of overpayment determination was sent at this time.[10]

- On June 20, 2002, Dr. Thompson was officially reinstated into the Medicare program by the Department of Health and Human Services, Office of Inspector General (OIG).[11]

- In 2004, the OIG and Department of Justice (DOJ) began an investigation of the appellant regarding Medicare payment of services rendered by Dr. Thompson.[12]

- On May 24, 2004, the appellant met with representatives of the OIG and DOJ. The appellant was informed by Jennifer Aldrich of the DOJ that the government would not pursue any further investigation of the appellant regarding Medicare payment of services rendered by Dr. Thompson.[13]

- On May 30, 2007, Palmetto issued an official notice of overpayment determination letter to the appellant for Medicare payment of services rendered by Dr. Thompson.[14]

LEGAL FRAMEWORK

I. ALJ Review Authority

A. Jurisdiction

An individual or an organization that is dissatisfied with the reconsideration of an initial determination is entitled to a hearing before the Secretary of the Department of Health and Human Services (DHHS); however, the appeal must have a sufficient amount in controversy and the request for hearing with DHHS must be filed in a timely manner.[15]

In implementing this statutory directive, the Secretary has delegated his authority to administer the nationwide hearings and appeals system for the Medicare program to the Office of Medicare Hearings and Appeals (OMHA).[16] The ALJ's within OMHA issue the final decisions of the Secretary, except for decisions reviewed by the Medicare Appeals Council.[17]

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[10] *See* Exhibits 1/22 & 1/83
[11] Exhibit 1/53
[12] Exhibit 1/22
[13] *Id.*
[14] Exhibit 1/56
[15] § 1869(b)(1)(A); 42 U.S.C. § 1395ff(b)(1)(A). *See also* 42 C.F.R. § 405.1002 – 42 C.F.R. § 405-1054
[16] *See* 70 Fed. Reg. 36386, 36387 (June 23, 2005)
[17] *Id.*

B. Scope of Review

Under the implementation policy of the United States Department of Health and Human Services, all Medicare Part B claims are governed by the Administrative Law Judge Hearing Procedures outlined in the federal regulations.[18] The ALJ may also, "...decide a case on the record and not conduct an oral hearing if [the appellant] and all the parties indicate in writing that [they] do not wish to appear before the administrative law judge at an oral hearing."[19]

C. Standard of Review

"The [Office of Medicare Hearings and Appeals] directs four field offices staffed with Administrative Law Judges who conduct "de novo" hearings."[20]

II. Principles of Law

A. Statutes and Regulations

Section 1831 of the Act establishes a supplementary insurance program for the aged and disabled. This insurance program, commonly referred to as Part B of Medicare, is financed through premium payments by enrollees together with contributions from funds appropriated by the Federal Government.[21] The program allows for the reimbursement of physicians' services including surgery, consultation, and office visits.[22]

The Act allows the Secretary of the Department of Health and Human Services (DHHS) to exclude various individuals and entities from participating in the Medicare program. The Act states that the Secretary may exclude from Medicare an individual or entity whose medical license has been revoked or suspended by the State licensing authority.[23] In the case of such exclusion, the period of exclusion must be no less than the period during which the individual or entity's license was revoked or suspended by the State licensing authority.[24]

Section 1870 of the title XVIII of the Social Security Act (the Act) governs situations in which Medicare has discovered that it overpaid providers of services, individuals, or beneficiaries. Section 1870 states that Medicare may recoup overpayment amounts from providers of services,

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[18] *See* 42 C.F.R. § 405.1002 – 42 C.F.R. § 405-1054

[19] 20 C.F.R. § 404.948(b)(i)

[20] 70 Fed. Reg. 36386 (June 23, 2005); *See also* In the case of Atlantic Anesthesia Associates, P.C., M.A.C. (June 17, 2004): "An ALJ qualified and appointed pursuant to the Administrative Procedure Act acts as an independent finder of fact in conducting a hearing pursuant to section 1869 of the Act. This requires *de novo* consideration of the facts and law."

[21] §1831; 42 U.S.C. 1395j.

[22] §1861(q); 42 U.S.C. 1395x(q).

[23] §1128(b)(4); 42 U.S.C. 1320a–7(b)(4).

[24] §1128(c)(E); 42 U.S.C. 1320a–7(c)(E)

or individuals; however, Medicare may not recoup an overpayment amount when the provider of services or individual is "without fault."[25]

The Act and the regulations state that a provider or individual is "without fault" when Medicare's determination "...that more than the correct amount was paid was made subsequent to the third year following the year in which notice was sent to such individual that such amount had been paid."[26] The Act and the regulations also state that Medicare may not recover an overpayment from an individual or an individual's heir (via disability and/or railroad retirement payments) who is without fault and "...[a]djustment or recovery would either defeat the purposes of title II (disability insurance) or title XVIII of the Act or be against equity and good conscience."[27]

The Act explains that recovery of an overpayment is "against equity and good conscience" when the incorrect payment was made for services which are not medically reasonable and necessary and if the overpayment was determined three years after such payment was sent to the individual or provider of services.[28] Additionally, the regulations state that an individual is only liable for overpayment amounts to the "...extent that he has benefited from such payment."[29]

The regulations allow for contractors to revise initial determinations in the case of overpayments years after an initial determination has been made; however, the regulations do not explain how to reconcile this policy with the Act's "without fault" calendar year exception.[30]

The federal regulations are prescribed by the Secretary of DHHS. Further, DHHS is an executive branch agency.[31] The Act along with its "without fault" calendar year exception is a Congressional statute that must be followed by DHHS and its administrators. There is no regulation which may override or trump any part of the Social Security Act. Therefore the undersigned finds that the regulation's policy of reopening initial determinations cannot trump the Social Security Act's "without fault" calendar year exception in the case of an overpayment. Consequently the undersigned will apply the Act's "without fault" calendar year exception as relevant in this case.

B. Policy

The Medicare Financial Management Manual (the Manual) attempts to provide guidance on calculating the "without fault" calendar years. The Manual explains that only the year of payment and the year of overpayment determination should be used to calculate the without fault calendar years (the day and month are irrelevant). The Manual provides the following example for reference:

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[25] *See* § 1870(b); 42 U.S.C. § 1395gg(b)
[26] 42 C.F.R. § 405.350(c). *See also* § 1870(b); 42 U.S.C. § 1395gg(b)
[27] 42 C.F.R. § 405.358 which is incorporated by 42 C.F.R. § 405.356, which is incorporated by 42 C.F.R. § 405.355, which is incorporated by 42 C.F.R. § 405.352
[28] § 1870(c); 42 U.S.C. § 1395gg(c)
[29] 42 C.F.R. § 405.351
[30] *See* 42 C.F.R. § 405.980
[31] *See* § 1871; 42 U.S.C. § 1395hh

> "Example 1: On May 9, 2003 Dr. A is notified that he has been paid $1005.00 for services provided to Mr. Smith, beneficiary. On January 6, 2007 the contractor determines that Dr. A was overpaid for the services to Mr. Smith, beneficiary. The F[iscal] I[ntermidiary] or carrier will not recover this overpayment as long as there is no evidence to the contrary because it was determined subsequent to the third year after notification of payment (any determination date later than Jan. 1, 2007 will not be recovered)."[32]

Thus, according to the Manual, when calculating calendar years, the day and month should not be considered. Consequently, the fourth year after initial payment notification would represent the year in which the provider or individual is deemed "without fault."

The Manual's application of the "without fault" calendar year exception is suspect. The statute clearly states that a provider or individual is "without fault" when Medicare's determination "...that more than the correct amount was paid was made subsequent to the third year," not the fourth year, "following the year in which notice was sent to such individual that such amount had been paid."[33] Further, the statute states that the Secretary of the Department of Health and Human Services may "reduce such three-year period" under certain circumstances; however, the Secretary may not increase the three-year period.[34] While executive branch agencies may interpret Congressional statutes to give affected parties additional leeway or protection, such agencies may not restrict statutes beyond their intended effectiveness.

The undersigned finds that applying the three-year "without fault" calendar year exception during the fourth year after initial payment incorrectly restricts the plain language of the Act. See Mount Sinai Hospital of Greater Miami, Inc. v. Weinberger, 517 F.2d 329, 342 (5th Cir. 1975) (finding in effect a three-year statute of limitation). Per the regulations, the undersigned is not bound by Centers for Medicare and Medicaid Services manuals.[35]

In its reconsideration decision, the QIC references section 90 of the Manual. There the Manual states that an assessment of culpability must be made in order to determine "without fault" status.[36] While this may be an acceptable means to determine when to waive an overpayment, it is not the only manner to determine "without fault" status. The Social Security Act clearly states the following:

> "...such provider of services or such other person shall, in the absence of evidence to the contrary, be deemed to be ***without fault*** if the Secretary's determination that more than such correct amount was paid was made subsequent to the third year following the year in which notice was sent to such individual that such amount had been paid; except that

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[32] Medicare Financial Management Manual (Publication 100-06), Chapter 3, §§80-80.1
[33] *See* 42 C.F.R. § 405.350(c). *See also* § 1870(b); 42 U.S.C. § 1395gg(b)
[34] *See* § 1870(b); 42 U.S.C. § 1395gg(b)
[35] 42 C.F.R. §405.1062
[36] *See* Medicare Financial Management Manual (Publication 100-06), Chapter 3, §90

> the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this title."[37]

Consequently, the Act states that a determination of "without fault" status may be made based solely on the three year calendar rule.

ANALYSIS

Having carefully reviewed all of the evidence in the record, the undersigned finds that Medicare may not recoup overpayment funds in this case because the appellant is without fault.

The Act and the regulations state that a provider or individual is without fault when Medicare determines that there is an overpayment three years after it sent notice of the initial payment.

In May 1998, Dr. Thompson's medical license was reinstated. The dates of service at issue were April 20, 2000 to June 20, 2002. Notice of initial payment is usually sent within 60 days of the date of service. Medicare did not send an overpayment notice by July 2003 or September 2005. Even assuming the Medicare Manual policy is correct, Medicare did not send an overpayment notice by July 2004 or September 2006.

There is no allegation that the services provided were medically unreasonable or unnecessary.

On June 20, 2002, Dr. Thompson was officially reinstated into the Medicare program by the Department of Health and Human Services, Office of Inspector General (OIG). Medicare did not send an overpayment notice by June 2005.

On May 24, 2004, appellant met with representatives of the OIG and U.S. Department of Justice. Evidently OIG had actual notice of a potential problem, but Medicare did not send an overpayment notice in 2004.

On May 30, 2007, an official notice of overpayment determination letter was sent.

In this case the overpayment determination was issued too late to recover payment for the dates of service. Notice of the initial payment was sent more than three years prior to the overpayment determination of May 30, 2007. Therefore, the appellant is without fault for the dates of service at issue in this case.

The government had several opportunities to recover the overpayment amount at issue in this case. At each opportunity, various government representatives chose not to pursue the matter.

Adhering to the Social Security Act's "without fault" calendar year exception will ensure that demands for refunds are issued in a fair and timely manner.

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[37] § 1870(b); 42 U.S.C. § 1395gg(b), emphasis added. Note that the appellant, First Choice Healthcare, P.C., is a partnership corporation and considered an entity or "person" under the law.

For all of the above reasons the undersigned finds that Medicare may not recoup alleged overpayment funds from the appellant for dates of service April 20, 2000-June 20, 2002.

CONCLUSIONS OF LAW

It is the decision of the undersigned Administration Law Judge that the appellant does not have to reimburse Medicare for alleged overpayment amounts represented by date(s) of service April 20, 2000-June 20, 2002. Medicare may not recoup overpayment funds from the appellant for the date(s) of service at issue in this case.

ORDER

The Medicare Contractor is **DIRECTED** to process the claim in accordance with this decision.

SO ORDERED.

Dated: JAN 2 2 2008

Don W. Joe
U.S. Administrative Law Judge

EXHIBIT V

STATE OF SOUTH CAROLINA)
) AFFIDAVIT OF GINA ANASTI LEE
COUNTY OF RICHLAND)

PERSONALLY APPEARED BEFORE ME, the undersigned, GINA ANASTI LEE, who after being duly sworn, deposes and says:

1. I am over eighteen (18) years of age and the facts stated herein are true and accurate to the best of my knowledge and belief and based on information that I believe to be true.
2. I understand that Mr. Tony R. Megna has issued several deposition notices, interrogatories and requests for production of documents on my behalf.
3. I never authorized Mr. Megna to issue this discovery on my behalf.
4. Mr. Megna never contacted or consulted with me to obtain my approval or permission prior to issuing this discovery.
5. Mr. Megna never told me about, or sent me a copy of, the discovery that he apparently issued.
6. Mr. Megna has not informed me about a hearing related to this discovery.
7. I do not approve of Mr. Megna's conduct.
8. To the extent the court determines Mr. Megna's conduct was wrongful, I request that sanctions not be issued against me personally because I had nothing to do with Mr. Megna's actions or conduct.

FURTHER, YOUR AFFIANT SAYETH NAUGHT.

Gina Anasti Lee
GINA ANASTI LEE

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 26th DAY OF April, 2012.

Mallory Guibault
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 9/6/2021

MATTHEWS AND MEGNA, P.A.

ATTORNEYS-AT-LAW
3400 WEST AVENUE
COLUMBIA, SOUTH CAROLINA 29016
TELEPHONE: 803-254-3676
tmegna@gmail.com

November 3, 2011

VIA FAX TO (803) 576-1768

The Honorable Alison Renee Lee
P O Box 192
1701 Main St., Room 324
Columbia, SC 29202-0192

Re: Lee v. Anasti, Docket Number 2007-CP-40-0576

Dear Judge Lee:

I have received a copy of a letter from Douglas Truslow in which he requested a status conference in regard to the above matter. I respectfully request the Court to disregard the request for a status conference, and deny any request by Mr. Truslow or others to take any further action in the above-referenced case due to the following:

1. Ms. Lee filed for Chapter 13 bankruptcy in February, 2009. The provisions of 11 USC Section 362 automatically stayed the state-court action then pending between Mr. Anasti and Ms. Lee. On December 21, 2009, the bankruptcy court allowed the state court appeal to be finalized. Ms. Lee's confirmed Chapter 13 plan dated March 24, 2010. A copy is attached as Exhibit A.

   By order entered December 21, 2009, the Court granted ***limited relief from the automatic stay to allow the state court to finalize its consideration of state court appellate proceeding*** that were pending at the time of the filing of the Debtor's bankruptcy case.

   By its' plain terms, the confirmed plan allows only the state appellate proceedings to be finalized.

2. Mr. Truslow has informed the Court that the bankruptcy court allowed this court to determine damages. That is not correct. The bankruptcy court, in its' order of confirmation, stated:

   ". The evidence indicates that while Mr. Anasti has not and may not intend to file a claim for prepetition debt, he does not waive any post petition claim(s), including any claim for costs or damages associated with the ongoing state court litigation and federal appeals."

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHAPTER 13 BANKRUPTCY APPEAL
BANKRUPTCY CASE NUMBER: 09-02854

IN RE:

Gina Anasti Lee,

DISTRICT COURT CASE NO. 3:10-196

Debtor.

PERSONALLY APPEARED BEFORE ME, Gina Anasti Lee, who, first being duly sworn, deposes and says:

1. I spoke with Mr. Megna on approximately Tuesday, November 13, 2007, wherein he advised me he received an Order Granting Partial Summary Judgment in favor of the Respondent on the previous Saturday, which would have been November 10, 2007. Mr. Megna explained to me the contents and the meaning of the Order, and we decided to appeal the Order to the SC Supreme Court.

2. After my telephone conversation with Mr. Megna, I discussed this matter with my husband and my two (2) daughters.

3. Later in the week, I received a copy of the Order Granting Partial Summary Judgment from Mr. Megna for my records.

FURTHER THE AFFIANT SAYETH NOT.

Gina Anasti Lee

SWORN TO before me this
23 day of February 2010.
(L.S.)
Notary Public for South Carolina
My Commission expires: 4-17-12

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHAPTER 13 BANKRUPTCY APPEAL
BANKRUPTCY CASE NUMBER: 09-02854

IN RE:

Gina Anasti Lee,

DISTRICT COURT CASE NO. 3:10-196

Debtor.

PERSONALLY APPEARED BEFORE ME, Candace Lee Garland, who, first being duly sworn, deposes and says:

1. I spoke with my Mother, Gina Lee, after she talked with Mr. Megna on or about Tuesday, November 13, 2007, regarding the Order Granting Partial Summary Judgment. Mother advised me of her conversation with Mr. Megna and that he would be appealing this Order to the SC Supreme Court.

FURTHER THE AFFIANT SAYETH NOT.

Candace Lee Garland

SWORN TO before me this

28 day of February 2010.

(L.S.)

Notary Public for South Carolina
My Commission expires: 4-17-12

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA
CHAPTER 13 PROCEEDING
CASE NUMBER: 09-02854

IN RE:

Gina Anasti Lee,

Debtor.

I have been informed of the Appeals filed with the Bankruptcy Court and now pending before US District Court. I am fully aware of the nature of the appeals, and have given my consent to the appealing of these issues of law as I remain firm that the Two Notch property belongs to me and has always belonged to me per my Father's wishes as stated in his Last Will and Testament and the fact that during the probate of my father's estate there was never a question that I owned the Two Notch property. In fact, my brother was very much involved in the probate proceedings and agreed to my ownership of the Two Notch property.

In addition, I have been informed of the nature of the continuing bankruptcy proceedings and understand that the Two Notch property, if ownership is determined to be in my name, is property of the bankruptcy estate. .

Gina A. Lee
Gina A. Lee

SWORN TO before me this
24 day of February 2010.

Notary Public for South Carolina (L.S.)
My Commission expires: 4-17-12

STATE OF SOUTH CAROLINA

James A. Anasti,

Plaintiff,

vs.

Lance Wilson, Willis Goodwin, Gina L. Anasti Lee, Richland County Clerk of Court,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO: 07-CP-40-0576

AFFIDAVIT OF GINA ANASTI LEE IN

A. OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

AND

B. IN SUPPORT OF DEFENDANT LEE'S MOTION FOR SUMMARY JUDGMENT

2007 SEP 13 AM 10:29
BARBARA A. SCOTT
CLERK OF COURT & G.S.
RICHLAND COUNTY
FILED

TO: (a) Plaintiff named above and their attorney, Douglas N. Truslow, Esquire
(b) Thomas G. Earle, Esquire, Attorney for Defendants Wilson and Goodwin

PERSONALLY APPEARD BEFORE ME Gina A. Lee, who being sworn, upon information and belief, deposes and says as follows:

1. On or about 1993, my father, Albert A. Anasti, executed his last will and testament. I had nothing to do with the drafting of my father's will nor did I see the will prior to my father's death on October 24, 1995. See Certificate of Death 95-028773 – Ex. A-1. I have attached a copy of my father's last will and testament as Exhibit A-2. The last will and testament of the deceased Albert A. Anasti specifically:

   a. bequeaths the property located on Two Notch Road, which property in the subject of this action, to me, Gina Anasti Lee.

   b. requires that beneficiary, such as the Plaintiff, that challenges any term of the Last Will and Testament of the deceased shall "forfeit any interest" from the estate of the deceased and shall forfeit all interest in all properties.

2. On or about November 16, I was appointed the Personal Representative of my father's estate. See Ex. A-3. My father consistently told me the Two Notch property would belong to me at this death because he assisted Jim with attorney's fees and living expenses when Jim left the country in the early 1990's after being accused of sex crimes concerning a minor with another man in Florida. I learned of the allegations based on newspaper articles. I have attached copy of the one article as Exhibits B, B-1, and B-2. My father told me he had paid Jim's attorney fees and was assisting Jim with living expenses even though it caused him personal and financial

stress. Jim and I were my father's sole beneficiaries and I know my father intended to make as certain as possible that I was provided equivalent funds that Jim had previously and continued to receive while he was trying to elude prosecution of the molestation charges made against him.

3. Shortly after my father's death in 1995, I was appointed the Personal Representative of my father's estate by the Richland County Probate Court. I did not have an attorney assisting me with the estate, but rather officials at the Probate Court and my accountant assisted me. In fact, officials at the Probate Court completed most of the Probate forms with me. They were wonderful to work with during a very stressful time of my life. I completed all of the in regard to my father's funeral and taking care of the details that needed to be completed. Jim was living in Europe and did not attend our father's funeral in 1995 because of the pending criminal charges.

4. During the time period my father's estate was under the jurisdiction of the Probate Court [1995-1996], I was in occasional contact with my brother, James A. Anasti [Jim]. He confirmed to me that he was living out-of-the-country. All of our contacts were by telephone. Jim had moved out-of-the country in 1990, and during the 1990s, lived in various places in Europe including, I believe, Spain, Amsterdam and other parts of Europe. Jim has returned to the United States, and currently lives in Charleston, SC with a friend.

5. During the time Jim was out-of-the country, and upon his return, I had only very occasional contact with Jim. When our father died, Jim told me he had executed a general power of attorney and that all matters, legal or otherwise, affecting him and the probate of our father's estate were to be handled by his power-of-attorney, Joseph Gravelyn. He and Jim had been close friends for many years. The power of attorney was filed in the office of the Richland County Clerk of Court in January 1, 1992 and filed May 29, 1992. A copy of the power of attorney is attached as Exhibit C-2. Mr. Anasti testified in his deposition that Mr. Joseph Gravelyn, as Mr. Anasti's power-of-attorney had full and complete authority to take on Mr. Anasti's behalf. See deposition of James A. Anasti dated June 26, 2007, page 18, lines 19-25 and page 19, lines 1-13. Exhibit C-2.

6. All of my dealings as Personal Representative of my father's estate were made with notice to Jim and his power of attorney, Joseph W. Gravelyn. Jim's power-of-attorney worked in the Richland County Courthouse and was able to review the Probate documents at any time. I have attached copies of various probate documents where Jim's power-of-attorney acknowledge participating in the probate proceedings and further acknowledged that I had properly distributed all of the property of the estate, including the 'Two Notch property.' See also 1996 Deed of Distribution dated November 18, 1996 attached hereto as Exhibit D. In fact, during the probate proceedings, Jim and I sold my father's home in Columbia, and as the will stipulated, equally divided the proceedings. All transactions relating to this matter were conducted by Jim's power-of-attorney. I have attached copies of various documents evidencing that Jim used his power-of-attorney exclusively in this regard. Please see Exhibits E-1, E-2, E-3, *including Jim's signed waivers of notice of inventory, accounting, hearings/right to appear and all closing documents [See Exhibit E-4].*

7. Following my father's death in October, 1995, and until this date, I have collected the rent and other generated from use of the 'Two Notch' property from the same tenants who had been renting it for several years prior to my father's death. I also continued to maintain the building as I had done in the past. For instance, my husband had put a new roof on the building in 1990 or so, etc. In addition to maintaining an interest in the property by virtue what, in effect, amounted to be a land-sale contract of the property, I have also purchased property insurance, and paid property taxes.

8. At the behest of the same tenant who had leased the property for many years, [Lance Wilson] I decided to sell the property to him and his partner, Willis Goodwin. The purchase price for the property was $177,000.00. Wilson and Goodwin agreed to pay a $50,000.00 deposit and I agreed to owner-financing of the balance in the amount of $122,000.00. Messieurs Wilson, Goodwin and I contacted the Dallis Law Firm, P.A, located in Columbia, SC to prepare and complete the various legal documents needed to certify title to the property, and to complete the document necessary for the owner financing. I relied entirely on the Dallis Law Firm, P.A. in all matters relating to searching the title, preparing the contracts and other documents needed, including the owner-financing contracts, and conducting the closing. The closing was completed in early January, 2001. The owner-financed mortgage is currently in litigation in Richland the County court of Common Pleas as payments have not been made since 2001. It later became clear that the Dallis Law Firm, P.A. had failed to discover a 1978 deed granting Jim a one-half interest to the Two Notch property. As it turns out, and in effect, the purchasers had a land-sale contract with me as I sold them the property that I currently own – as against Jim's interest -- by adverse possession.

9. In 2002, I was served with a lawsuit filed on behalf of the SC Department of Transportation. Jim was named as a Defendant. The DOT was condemning a strip of land located to the front of the property in order to make improvements on and widen Two Notch Road. This was the first time that I became aware that Jim had been deeded a one-half interest in the property by my father in 1978. Prior to this time, I did not know of the existence of the 1978 deed. Jim did not contact me then, nor at any time since. I did not where he was living. In fact, I was under the impression he still lived out of the country. As had occurred since the early 1990's, Jim's attorney-in-fact, Joseph Gravelyn, continued to act for Jim. And received a copy of the condemnation lawsuit. See Exhibit F.

10. During the course of this case, I discovered Jim also had actual knowledge of the lawsuit brought by the SC Department of Transportation. The lawsuit [see Exhibit E-3, page 2, paragraph 5] specifically refers to my claim to the property. In his deposition, Jim stated he took the papers he received from the SCDOT to his criminal lawyers. See deposition of James A. Anasti dated June 26, 2007, page 22, lines 14-25, and page 23, lines 1-22. See Exhibit G attached hereto. During this time, Jim never contacted me nor informed me of his claim to the 'Two Notch property' property nor let me know of his whereabouts. In fact, I heard nothing further regarding Jim until he filed the present lawsuit in this action against me earlier this year. I was served with the lawsuit in late February, 2007 – approximately 11 years and 3 months after my father died and approximately ten years and 3 months after the Probate Court deed was filed in Richland County in 1996.

11. Since my father's death in 1995, I have maintained an interest in the 'Two Notch property' property that has been uninterrupted, continuous, open and hostile to any rights of Jim to ownership and possession of the property. *Jim had actual knowledge of my claim to the property based on the Probate court documents, the participation of his attorney-in-fact in the Probate Court proceedings and the document and waivers executed on his behalf, the 1996 deed of distribution, and the 2002 SCDOT condemnation lawsuit that Jim testified in his deposition that he received.* As Jim testified in his deposition in this case, it is absolutely true that he has never attempted to contact me nor take any other action to prevent my continuous and open use of the property. I have been the sole person asserting title since the death of our father in 1995. During this time, neither Jim nor his power-of attorney questioned my title nor my assertion of sole ownership of the 'Two Notch property.' I have continued to actively defend my title to the property, [I have now defended three lawsuit relating to the property], I have maintained owner financing on the property, I have maintained my right to sell the property or otherwise use it as I see fit, I have maintained insurance on the property and I alone have taken an active interest in protecting and preserving the property. My assertion of ownership that has been on-going for over 11 years has been open, continuous, and hostile to all other interests.

12. It is undisputed that since the transfer of title to the 'Two Notch property' by the Probate Court to me in 1996, [regardless of who prepared the Probate deed transferring the 'Two Notch property' to me – See Exhibits H-1 and H-2 supporting my claim that employees of the Probate Court assisted in the transfer of all properties of my father's estate][1], I placed Jim and the world on notice that I have a clear and irrefutably claim to the 'Two Notch property'. The Probate Court deed was recorded in the Richland County, SC. Regardless of whether the deed is technically correct, it was recorded and is an additional indicia of ownership by me in that it provides notice to all that I have claimed and continue to claim sole ownership of the property. In addition, I provided Jim direct notice of my claim of ownership to the 'Two Notch property' as a direct result of his participation in the Probate Court proceedings through his general power-of-attorney. Without doubt, it was and has always been my intent and remains my express intent that I am and have been for more than ten years, the true and lawful owner of the 'Two Notch property.' While I have always believed that my brother should be entitled to what he was left by my father, and have so stated in the depositions taken in this case, I believed then and I believe now it was our father's intent that I was to receive the 'Two Notch property' in return for all of

[1] See *Woods v. Bivens*, 292 S.C. 76, 78-79, 354 S.E.2d 909, 911 (1987) wherein the S.C. Supreme court analyzed a defective deed in relation to its usefulness as proof of intent for proving adverse possession. The Court stated, "Although not complying with legal requirements for recording as a deed of conveyance, the document nevertheless constituted "color of title" under adverse possession statutes, S. C. Code Ann. Sections 15-67-210, 15-67-220, 15-67-230 (1976); *Graniteville Company v. Williams*, 209 S. C. 112, 39 S. E. (2d) 202 (1946). Louise and Parker occupied the property exclusively, claiming it as their own and openly exercising all the indicia of ownership. In *Harrelson v. Reaves*, 219 S. C. 394, 65 S. E. (2d) 478 (1951), involving occupancy under a *parol* gift of land, we held: An entry under a parol gift of land, though permissive and friendly in the popular sense, is hostile to and adverse to the paper title in the legal sense, because there is an assertion of ownership in the occupant. *Id.* at 400, 65 S. E. (2d) 478.

the money my father spent supporting Jim and paying his attorney's fees and costs while he was living in Europe to avoid facing criminal prosecution of being involved with the sexual molestation of a child. In no way should any answer to questions during my deposition that Jim should get what is rightfully his be misinterpreted. Jim has received everything my father wanted him have. I truly love Jim even though he put our father and me through much financial stress, shame and humiliation – and continues to do so. While I have not judged and do not judge his lifestyle, I have questioned the thoughtfulness of the decisions that has placed him and our family at such risk. My father sacrificed for Jim while he was living, and he left a one-half interest in our home residence to Jim upon his death as well as funds my father left in certificate of deposits. I made certain Jim received the property he was entitled to receive, and I know he is not entitled to receive any interest in the 'Two Notch property.' Jim made decisions that has led to his living many years of his life outside the United States to avoid facing criminal prosecution of alleged crimes. He chose to participate in situations that were dangerous to him and others. I hope and pray the charges have dismissed against Jim, but the charges being dismissed does not change the fact that my father sacrificed emotionally and financially to assist Jim in his legal plight. Jim should not be allowed to escape the consequences of his past behaviors by now claiming property to which he has demonstrated no interest against my claim of complete ownership that began over 10 years ago. Regardless of any other issue, Jim knows the truth, and he knows he has received what he has been entitled to receive.

13. I respectfully inform the court that I was under significant duress at the time Mr. Truslow insisted on taking my deposition in this case against my attorney's advice. I had recently been told by my physician that I may have a cancerous abdominal tumor. I had no health insurance, I was in the process of scheduling surgery for the week following the deposition schedule Mr. Truslow insisted upon, I had no previous experience with these types of situations, I was on several medications that have significant side effects, I was not sleeping, and I thought it would be best to postpone the deposition until a later time when I would be better able to answer questions. I have filed documents supporting these matters under seal as Exhibit K [11 pages].

For reasons known only to Mr. Truslow, he seemed completely indifferent to my physical and emotional turmoil, and demanded my deposition go forward, and ignored the entreaties of my attorney. See letters from Megan to Mr. Tousle dated May 7, 2007 and June 8, 2007 as well as affidavit of Harriet Hobbs attached hereto as Exhibits I-1 and I-2. It is not every day that a person has a reasonable expectation they may be diagnosed with cancer. Without doubt, I was emotionally distraught, physically exhausted, under the care of a physician, sleep-deprived, and anticipating major surgery in the coming days. I appeared as required, and did the best I could under the situation. I was very emotional at the time, and in retrospect I simply was not myself. I truly believe Mr. Truslow was unreasonable and I can honestly tell this Court that while I do love my brother, I absolutely know that my father wanted me to have the Two Notch property because of all of the debts he paid for Jim during his life, including his attorney's fees for defending against the criminal charges and his living expenses while he traveled in Europe to avoid facing the criminal charges. I understand most of these difficulties have been resolved, and I am thrilled for my brother. However, it does not change the past. My father's will was drafted in

March, 1993 – well after the 1978 deed and well before his death. I had nothing to with the drafting of the will nor did I know of the filing of the 1978 deed. My father was a very fair man and knew what he was doing. In fact, he told me on a number of times the Two Notch property was mine after his death.

14. I respectfully submit to this Court that I have not only proven title to the 'Two Notch property' by adverse possession exceeding complete possession for more than 10 years, I have openly exercised all the indicia of ownership to the property, including but not limited to leasing the property, placing the property for sale, negotiating a contract-sale purchase of the property wherein I provided owner-financing of the property, taking care of the property, paying property taxes, insuring the property, and filing. In addition, the doctrine of laches and estoppel applies in this case to preclude Jim from asserting any claim to ownership of the 'Two Notch property.'

15. According to Jim's own testimony, he has failed for more than 10 years to assert title to the 'Two Notch property' even though he had actual knowledge, through his attorney-in-fact, that I claimed exclusive title to the 'Two Notch property' as early as 1995. Laches is an equitable doctrine, which "arises upon the failure to assert a known right." Ex parte Stokes, 256 S.C. 260, 267, 182 S.E.2d 306, 309 (1971); see Byars v. Cherokee County, 237 S.C. 548, 559, 118 S.E.2d 324, 330 (1961) ("Laches is the neglect for an unreasonable and unexplained length of time, under circumstances permitting diligence, to do what in law should have been done, or neglecting or omitting to do what in law should have been done for an unreasonable and unexplained length of time and in circumstances which afforded opportunity for diligence."). To prove laches, a party must establish: "(1) delay, (2) unreasonable delay, [and] (3) prejudice." Hallums v. Hallums, 296 S.C. 195, 199, 371 S.E.2d 525, 528 (1988); see Arceneaux v. Arrington, 284 S.C. 500, 503, 327 S.E.2d 357, 358 (Ct. App. 1985) ("Whether . . . [a claim] is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party."). In addition, "the circumstances must . . [be] such as to import that the complainant had abandoned or surrendered the claim or right which he now asserts." Byars, 237 S.C. at 559, 118 S.E.2d at 330; see Pendarvis, 227 S.C. at 58, 86 S.E.2d at 744 (holding a party seeking to enforce a trust "may become barred by laches if he fails to proceed with reasonable diligence").

16. As late as July, 2006, I was still taking care of the 'Two Notch' property. Please find attached a notice of cancellation of insurance on the 'Two Notch' property that I received, and subsequently handled. See Exhibit J.

17. I respectfully request this Court deny judgment to Jim, and instead enter its order quieting title to the 'Two Notch property' to me.

Gina Anasti Lee

Gina Anasti Lee

Sworn to and subscribed before me this 12th day of September, 2007.

Notary Public for South Carolina
My Commission expires: 2-10-12.

COPY

RECEIVED
APR 15 2009
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

CIVIL ACTION NO: 2007-CP-40-0576

James A. Anasti,	Respondent,
v.	
Lance Wilson, Willis Goodwin, Gina L. Lee, Richland County Clerk of Court,	Appellants,
Of whom Lance Wilson, Willis Goodwin, Gina L. Lee, Richland County Clerk of Court are	Respondents
And Gina L. Lee is the	Appellant.

NOTICE OF APPEAL

Pursuant to Rule 201, SCACR, Gina L. Anasti Lee appeals (a) the order of the Honorable Casey Manning, Jr. dated April 1, 2009, which was filed with the Richland County Clerk of Court on April 1, 2009, and received by the Appellant Lee on April 6, 2009. The April 1, 2009 order of Judge Manning is attached hereto and (b) the order of the Honorable Casey Manning, Jr. dated April 3, 200. A copy of the April 3, 2008 order of Judge Manning is attached hereto.

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For purposes of further explanation of the procedural history of this case, the Appellant Lee respectfully states as follows:

a. Gina L. Anasti Lee first appealed the order of the Honorable J. Ernest Kinard, Jr. dated October 26, 2007, which order was filed with the Richland County Clerk of Court on October 26, 2007, and received by the Appellant Lee on November 10, 2007. [Because November 10, 2007 was a Saturday, the actual date of receipt for purposes of appeal was November 12, 2007]. A copy of the October 26, 2007 order is attached hereto. Appellant Lee subsequently filed a Motion to Alter or Amend Judge Kinard's order. A copy of Judge Kinard's order denying the Rule 59(e) motion is attached hereto. A Notice of Appeal from the December 6, 2007 order was subsequently filed with this Court on January 4, 2008. A copy of that Notice of Appeal is attached hereto. An amended Notice of Appeal was filed February 1, 2008.

b. After filing of the Notice of Appeal, the Appellee Anasti filed a Motion to Dismiss with this Court alleging the Rule 59(e) motion ruled upon by Judge Kinard on December 5, 2007 had not been filed within the ten day requirement of the South Carolina Rules of Civil Procedure, and therefore the appeal was not filed timely.

c. On March 18, 2007 this Court issued an order requiring the trial court to make a factual determination as to when Appellant Lee actually received written notice of the October 26, 2007 order of Judge. A copy of this court's order is attached hereto.

d. A hearing pursuant to this Court's March 18, 2008 order was then scheduled to be held before the Honorable Casey Manning on April 3, 2008 which resulted in an order dated April 3, 2008. It is undisputed neither the Appellant nor her counsel

attended this hearing. The Appellant Lee contends that she did not get notice of this hearing as the only notice given was by Appellee Anasti was by facsimile, which Appellant Lee denies receiving.

e. Appellant Lee then immediately filed a Rule 59(e) Motion to Alter or Amend dated April 7, 2008 in regard to the April 3, 2008 Order of the Trial Court. A copy of that motion is attached hereto.

f. On June 19, 2008, this court issued an order in response to Appellee Anasti's Motion to Dismiss the first appeal of the Appellant Lee as to Judge Kinard's order dated October 26, 2007. This order remanded the matter to the circuit court to rule upon the Appellant Lee's then pending Rule 59(e) motion regarding the April 3, 2008 order of the trial court. The Appellant Lee's Rule 59(e) Motion has now been ruled upon by the Trial Court by order dated April 1, 2009, and it is from this order as well as the order of the trial court dated April 3, 2008 that the Appellant Lee appeals.

In addition to the foregoing, the Appellant Lee requests any further consideration of orders of this Court in regard to Appellant Lee's original appeal from Judge Kinard's dated October as well as Judge Kinard's order denying Appellant's Rule 59(e) Motion for Reconsideration dated December 5, 2007 be stayed until resolution of Appellant's appeal from Judge Manning's orders dated April 1, 2009 and April 3, 2008.

The undersigned apologizes this Honorable Court for the convoluted nature of these proceedings.

Respectfully submitted,

Tony R. Megna
Attorney for Appellant Lee
3400 West Avenue
Columbia, South Carolina 29203
803-799-1700
tmegna@gmail.com

April 15, 2009.

I agree and consent to the filing of the Notice of Appeal in the foregoing matters:

Gina L. Lee

April 15, 2009.

TONY R. MEGNA

ATTORNEY-AT-LAW

3400 West Avenue

Columbia, SOUTH CAROLINA 29203

TELEPHONE: 803-799-1700

August 20, 2008

Ms. Gina L. Lee
PO Box 655
Blythewood, SC 29016

Re: Wilson v. Lee, CA Number 04CP405333

Dear Gina:

I have enclosed the Arbitration Award of Judge Cooper as well as a Motion to Vacate and/or Modify the Award I have filed with him on your behalf. Unfortunately, and as we have discussed many times in the past, this was a very difficult matter and, as we contemplated as a possibility, the arbitrator has ruled against you. We do not know how he will respond to my request to vacate and/or modify the award, and we will simply have to await a decision.

After you review the documents, I would appreciate you contacting Harriet at 803-799-1700 so we may set-up a to discuss the matter in more detail, and to further consider the matter pending before the S.C. Court of Appeals.

With kind regards, I remain

Sincerely yours,

Tony R. Megna

EXHIBIT W

please contact me at your convenience if I may be of further assistance.

Sincerely yours,

Tony R. Megna

Cc: D. Truslow

November 3, 2011

Gina-

I have enclosed a copy of Douglas Truslow's letter to me dated November 1, 2011. It is self-explanatory. This is all directed at me – not you. You are protected by the Chapter 13 bankruptcy. Mr. Truslow brought the same motion against me in the Court of Appeals, and he lost. He knows he cannot do so again. I have no idea of why his has taken such action again – other than his on-going harassment of me. I believe his action violates the rules of court, and will bring the matter to the court's attention when appropriate. The Court will likely not respond well to his actions, but I still have to respond and try to determine exactly what his doing now. Please call me or Harriet if you have questions. Otherwise, I will just continue doing what is necessary to get the matter concluded. Trust all is going well.

Tony

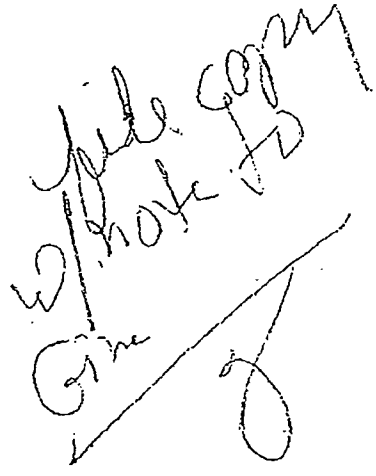
PS - Sue Votta to Judge Lee
Take Care -
Tony

MATTHEWS AND MEGNA, P.A.

ATTORNEYS-AT-LAW
3400 WEST AVENUE
COLUMBIA, SOUTH CAROLINA 29016
TELEPHONE: 803-254-3676
tmegna@gmail.com

November 3, 2011

VIA FAX TO (803) 576-1768



The Honorable Alison Renee Lee
P O Box 192
1701 Main St., Room 324
Columbia, SC 29202-0192

Re: Lee v. Anasti, Docket Number 2007-CP-40-0576

Dear Judge Lee:

I have received a copy of a letter from Douglas Truslow in which he requested a status conference in regard to the above matter. I respectfully request the Court to disregard the request for a status conference, and deny any request by Mr. Truslow or others to take any further action in the above-referenced case due to the following:

1. Ms. Lee filed for Chapter 13 bankruptcy in February, 2009. The provisions of 11 USC Section 362 automatically stayed the state-court action then pending between Mr. Anasti and Ms. Lee. On December 21, 2009, the bankruptcy court allowed the state court appeal to be finalized. Ms. Lee's confirmed Chapter 13 plan dated March 24, 2010. A copy is attached as Exhibit A.

> By order entered December 21, 2009, the Court granted ***limited relief from the automatic stay to allow the state court to finalize its consideration of state court appellate proceeding*** that were pending at the time of the filing of the Debtor's bankruptcy case.

By its' plain terms, the confirmed plan allows only the state appellate proceedings to be finalized.

2. Mr. Truslow has informed the Court that the bankruptcy court allowed this court to determine damages. That is not correct. The bankruptcy court, in its' order of confirmation, stated:

> ". The evidence indicates that while Mr. Anasti has not and may not intend to file a claim for prepetition debt, he does not waive any post petition claim(s), including any claim for costs or damages associated with the ongoing state court litigation and federal appeals."

A copy of the order of confirmation is attached as Exhibit B. Mr. Anasti, in fact, did *not* file a filed a proof of claim in the bankruptcy case for pre-petition damages or any other type of relief based on pre-petition issues between the parties. Failure to file a proof of claim results in the discharge of the Debtor from any relief that based on prepetition issues. See 11 U.S.C. §§ 524, 727; Bankruptcy Rule 3002(a). Moreover, as noted below, the state Court of Appeals actually denied Mr. Anasti's request for damages. [See Exhibit B].

3. I am befuddled by Mr. Truslow's failure to inform this Court of the decision of the Court of Appeals denying his request he made during the appellate proceedings for sanctions and damages. I have enclosed a copy of the order of the Court of Appeals as Exhibit C to this letter. Mr. Truslow did not appeal the decision of the Court of Appeals to our Supreme Court, and the decision of the Court of Appeals is now the law of the case. *Barth v. Barth*, 360 SE2d 309 (1987): (...the disposition of a case in the Court of Appeals when certiorari is not applied for nor granted becomes the law of the case...) See also *Charleston Lumber Co., Inc. v. Miller Hous. Corp.*, 338 S.C. 171, 175, 525 S.E.2d 869, 871 (2000):

> *Charleston Lumber I* reversed the grant of summary judgment on fraud, specifically found employee time expended on the Charleston Lumber billing was compensable, and remanded for "development of the facts ... to determine the extent of actual damages." *Charleston Lumber I* at 481, 318 S.E.2d at 437. This ruling was adverse to Charleston Lumber. Accordingly, it was incumbent upon Charleston Lumber to seek rehearing and/or petition this Court for a writ of certiorari or be bound by *Charleston Lumber I* as the law of the case. *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 489 S.E.2d 470 (1997) (unappealed ruling is law of the case); *Buckner v. Preferred Mut. Ins. Co.*, 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970) (an unchallenged ruling, "right or wrong, is the law of this case and requires affirmance.")..

4. Ms. Lee appealed the orders of the bankruptcy orders lifting the automatic stay [that allowed the state court appeals to go forward in the first instance] to the Fourth Circuit Court of Appeals. Those appeals remain pending. Depending on the outcome of that appeal, the state appellate court judgment may, indeed, be *void ab initio*.

5. As the state Court of Appeals has denied Mr. Truslow's motion for damages, as noted on exhibit A, and he did not appeal the denial of the motion to the Supreme Court, principles of issue preclusion [collateral estoppel, judgment estoppel, res judicata, etc.] prevent re-litigating the issues. See *In re Crews*, 389 S.C. 322, 340, 698 S.E.2d 785, 794 (2010) (equating issue preclusion and collateral estoppel). "Collateral estoppel prevents a party from re-litigating an issue in a subsequent suit which was actually and necessarily litigated and determined in a prior action." *Aaron v. Mahl*, 381 S.C. 585, 592, 674 S.E.2d 482, 486 (2009). Thus, Mr. Anasti is estopped in both state and federal court from re-litigating these matters.

In sum, Ms. Lee's bankruptcy stay has been in effect since the filing of her bankruptcy petition, and it has remained in effect as to all matters other than the one matter that the bankruptcy court allowed to proceed, i.e., the determination by the state appellate courts of ownership of the Two Notch property. The bankruptcy court did not authorize any further proceedings in state court, and not such proceedings are allowed under the terms of the bankruptcy code. In addition, our Court of Appeals denied Mr. Anasti's request for damages during the appellate proceedings that were actually allowed by the bankruptcy court to be finalized. I respectfully request this Court deny Mr. Truslow's request for a pretrial conference as Ms. Lee is operating under a confirmed chapter 13 bankruptcy case. Mr. Anasti did not file a proof of claim in the bankruptcy court, and all claims he had and may have had, have been waived and ended as a matter of law by the bankruptcy court's confirmation of Ms. Lee's Chapter 13 plan of reorganization. Moreover, the bankruptcy court did not authorize any proceedings to continue in circuit court, and the state appellate court proceedings have concluded.

Mr. Truslow is now attempting to re-litigate matters in state court that have already been determined adversely to him in the state Court of Appeals and by confirmation of Ms. Lee's Chapter 13 bankruptcy plan or reorganization. His attempts to do so are in direct violation of the confirmation orders of the bankruptcy court, the provisions of Ms. Lee's confirmed Chapter 13 plan, and the bankruptcy code. His failure to appeal the order of the Court of Appeals denying his motion for damages to the SC Supreme Court is the law of the case in state court. In addition, matters of issue preclusion prevent the re-assertion of claims that have been previously determined adversely to his client in state or federal court. Therefore, Ms. Lee respectfully requests this Court deny any request of Mr. Anasti for any further proceedings in the circuit court, including but not limited to a pre-trial conference. My concern is that Mr. Truslow's request, in and of itself, is a violation of the bankruptcy code, and harassment of both Ms. Lee and myself. Based simply on the documents have attached to this letter, and to which Mr. Truslow has received on numerous occasions, I am at a complete loss to understand how Mr. Truslow could make such requests to your office as the requests, in any of themselves, are unlawful.

I remain available to discuss this with you at your convenience if you so desire. However, I would agree to an order that simply notes the state court appellate proceedings that the confirmed Chapter 13 plan of reorganization have been completed, and that the circuit court has no further involvement in the matters. For the Court's convenience, I have attached a proposed order to this effect. Thank you in advance for your consideration in this matter, and

please contact me at your convenience if I may be of further assistance.

Sincerely yours,

Tony R. Megna

Cc: D. Truslow

EXHIBIT X

Gmail by Google

Tony R. Megna <tmegna@gmail.com>

Lee v Anasti

1 message

Tony R. Megna <tmegna@gmail.com> Fri, Nov 4, 2011 at 4:53 PM
To: "Douglas N. Truslow" <douglastruslow@truslowlaw.com>
Bcc: gina.lee58@gmail.com, Ben Matthews <benrusmat@gmail.com>

Douglas-

Thank you for your letter dated October 28, 2011 [received on November 1, 2011]. Before I could respond to it, I received [on November 2, 2011] a copy of your letter to Judge Lee. I replied to your letter to Judge Lee, and provided a copy to you which you should have received by now. For your convenience, however, I have also attached a copy of the correspondence to Judge Lee to this email. As you continue to evaluate matters, I trust you will thoughtfully consider whether or or your requests to Judge Lee are intentional violations of 11 USC Section 362.

A reasonable option to end matters between Ms. Lee and Mr. Anasti as to the final determination of the ownership of the Two Notch property is to remove the uncertainty regarding the issues pending in the Fourth Circuit. I suggest we consider arbitrating the issue of ownership of the property with finality (with time limits of a few hours). If you are agreeable, please let me know so that we can work out the specifics of such an arrangement.

I appreciate you taking the time to consider alternative means of resolving the disputes between Mr. Anasti and Ms. Lee. I look forward to hearing from you.

Best regards, Tony

Please send all written correspondence to:

Tony R. Megna, Esquire
3400 West Avenue
Columbia, SC 29203
tmegna@gmail.com
Office telephone: 803.799.1700

Judge Lee Letter 11-03-2011.pdf
452K

EXHIBIT Y

Gmail by Google

Tony R. Megna <tmegna@gmail.com>

Gina's E-mail

4 messages

burkett-christina@sc.rr.com <burkett-christina@sc.rr.com> Thu, Feb 25, 2010 at 2:01 PM
To: "Tony R. Megna" <tmegna@gmail.com>

Tony-
The new email is gina.lee58@gmail.com

Thanks

— "Tony R. Megna" <tmegna@gmail.com> wrote:
> Christina-
>
> Let me know your mom's e-mail address and I will let you know the
> information we discussed this morning.
>
> Thanks, Tony
>
> Please send all written correspondence to:
>
> Tony R. Megna, Esquire
> 3400 West Avenue
> Columbia, SC 29203
> tmegna@gmail.com
> Office telephone: 803.799.1700
>
> This message is intended for the use of the person or entity to which it is
> addressed and may contain information, including legal and/or health
> information, that is privileged, confidential, and the disclosure of which
> is governed by applicable law. If the reader of this message is not the
> intended recipient, or the employee or agent responsible to deliver it to
> the intended recipient, you are hereby notified that any dissemination,
> distribution or copying of this information is STRICTLY PROHIBITED. If you
> have received this in error, please notify us immediately and destroy the
> related message. Thank you.

Tony R. Megna <tmegna@gmail.com> Fri, Feb 26, 2010 at 5:46 PM
To: burkett-christina@sc.rr.com
Cc: gina.lee58@gmail.com, Ben Matthews <benrusmat@gmail.com>, Harriet <HarrietlHobbs@gmail.com>

Christina-

Please let Gina know that Judge Waites denied her request not to attend the confirmation hearing. I am somewhat surprised as he is ordinarily a kind and thoughtful person. This means she will have to appear at the confirmation hearing when it is scheduled.

I suggest, if Gina wants, that she obtain a note from her physician indicating she has had significant medical issues and that the Court should work to decrease the distress these continued proceedings have caused and continue to cause her.

EXHIBIT Z

Memorandum

To: Gina Lee

From: Tony R. Megna

Date: 9/8/2008

Re: Anasti v. Lee [2007-CP-40-0576]

Dear Gina:

As you and I discussed on the telephone on September 8, 2008, I have requested Dick Harpootlian assist me with your case against James Anasti. Dick has agreed to do so subject to the following understandings.

First, as you and I have discussed, Mr. Anasti has obtained a judgment [by arbitration] against you, and Mr. Anasti's lawyer has, once again, made accusations of impropriety against both you and me. You and I have discussed these matters, and you have determined that it is in your individual interests for me to continue to represent you, and to have Mr. Harpootlian assist me and represent our collective interests. Potential conflicts of interest, including but not limited to the accusations made by Mr. Anasti's lawyer between you and me, are expressly waived by you. You also understand and agree that Mr. Harpootlian and I may freely convey between us in regard to the case.

Obviously, as are you, I am terribly sorry that the arbitration did not turn out differently. However, we have filed a Motion to Vacate the Arbitration, [which you received together with the arbitration award], and are still awaiting a decision. I will let you know when I hear further in this regard.

Sincerely yours,

Tony R. Megna

I understand, agree and consent to the foregoing:

Gina Lee L.S.

Gina Lee

Witnesss

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas
Honorable J. Michael Baxley
Circuit Court Judge

APPELLATE CASE NO: 2011-185767

APPEAL FROM DARLINGTON COUNTY
J. MICHAEL BAXLEY, CIRECUIT COURT JUDGE

Pee Dee Health Care, P.A.,

Appellant,

v.

Estate of Hugh S. Thompson, III, and Louise T. Dailey, as Personal Representative of the Estate of Hugh S. Thompson, Respondent.

Respondent.

PROOF OF SERVICE

I, Jaime Harmon, the undersigned employee of Lewis, Babcock & Griffin L.L.P, attorney for Appellant Pee Dee Health Care, P.A., do hereby certified that I have served a copy of the foregoing **Appellant's Response to Respondent's Motion for Sanctions**, in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses on September 16, 2013:

John James
P.O. Box 507
Darlington, SC 29540

Renee Josey
PO Box 5478
Florence, SC 29501

Jaime Harmon

Columbia, South Carolina
September 16, 2013

A. CAMDEN LEWIS
KEITH M. BABCOCK
JAMES M. GRIFFIN
ARIAIL E. KING
MARGARET N. FOX*

*ALSO ADMITTED IN N.C.

OF COUNSEL
J. RYAN HEISKELL
ALSO ADMITTED IN D.C.

LB&G

LEWIS, BABCOCK & GRIFFIN L.L.P.

1513 HAMPTON STREET
P.O. BOX 11208 (29211)
COLUMBIA, S.C. 29201
FACSIMILE: 803-733-3541
TELEPHONE: 803-771-8000

WEBSITE: WWW.LBGLEGAL.COM

EMAIL: JLH@LBGLEGAL.COM

September 16, 2013

VIA U.S. MAIL
The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: ***Pee Dee Health Care, P.A. v. Estate of Hugh S. Thompson, III, and Louise T. Dailey, as Personal Representative of the Estate of Hugh S. Thompson***
Appellant Case No. 2011-185767

Dear Ms. Abbott Kitchings:

Enclosed please find the original and seven copies of Appellant's Response to Respondent's Motion for Sanctions in the above-referenced case. Please file these documents and return a clocked copy to this office in the stamped envelope provided.

By copy of this letter and as evidenced on the Proof of Service, I am serving counsel of record.

If you have any questions, please do not hesitate to contact this office.

With kind regards, I am

Very truly yours,

Jaime Harmon
Assistant to James M. Griffin

/jh
Enclosures

cc: John James
Rene Josey