



BLUESTEIN · NICHOLS · THOMPSON · DELGADO LLC
ATTORNEYS AT LAW

Margaret Miles Bluestein
John Shannon Nichols
Stacy Elizabeth Thompson
John Dennis Delgado
Allison Paige Sullivan
Ashley Trout Thompson
Blake Alexander Hewitt
Kenneth Henry Dojaquez
John Clarke Newton

OF COUNSEL
O. Eugene Powell, Jr.

October 3, 2013

RECEIVED

OCT 07 2013

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

Re: *Ann Coleman, etc. v. Mariner Health Care, Inc., et al.*
Appellate Case No. 2011-194946

Dear Mr. Shearouse:

Pursuant to Rule 208(b)(7), SCACR, Respondent provides the following brief response to the letter Appellants provided on September 20, 2013, notifying the Court of two new cases out of New Mexico (one from the federal 10th Circuit and one from the Court of Appeals of New Mexico), and advising the Court that the cases are "relevant to the Appellants' argument that the wrongful-death claim at issue in this appeal must be arbitrated."

Respondent disagrees that these cases are relevant to this issue. See *Estate of Krahmer ex rel. Peck v. Laurel Healthcare Providers, LLC*, Op. No. 30,868 (N.M. Ct. App. filed Sept. 16, 2013) (2013 WL 5297138) slip at 2, ¶¶ 6, 8 ("Because a decedent's claim survives her death, we have referred to the Act as a 'survival statute'; 'the Act does not create a new cause of action'; under the Act, 'a wrongful death representative may recover for the decedent's pain and suffering.'). If the Court is inclined to consider these citations, Respondent requests an opportunity to submit a brief memorandum explaining the meaningful way the New Mexico scheme is different from South Carolina's wrongful death/survival proceedings. See Part II, pages 24 through 30, of the Brief of Respondent; S.C. Code Ann. § 15-5-90 (the "Survival Act"); and S.C. Code Ann. § 15-51-10 (the Wrongful Death Act).

Thank you for your attention to this matter. Please pass this letter to the Court for its consideration.

Sincerely,

John S. Nichols
BLUESTEIN, NICHOLS, THOMPSON &
DELGADO, LLC

cc: Matt Christian, Esquire
Marion S. Fowler, III, Esquire
Carmelo B. Sammataro, Esquire
W. McElhaney White, Esquire
Russell G. Hines, Esquire
Michael I Bernstein, Esquire
Sandra L.W. Miller, Esquire
Lori D. Proctor, Esquire
D. Jay Davis, Jr., Esquire
Malcolm J. Harkins, III, Esquire