

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2007-CP-40-3564

Appellate Case No. 2011-197986

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S.C. Supreme Court

Columbia/CSA-HS Greater Columbia Healthcare
System d/b/a Providence Hospital, Petitioner,

v.

The South Carolina Medical Malpractice Liability Joint
Underwriting Association and Michael P. Taillon, Respondents.

Reply Brief of Petitioner

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Argument

- I. Providence Hospital’s action for equitable indemnification does not seek “damages for injuries to the person” sustained from medical treatment, and, thus, does not fall within the ambit of the medical malpractice statute of repose.**

Throughout this action, Providence Hospital has maintained that the settlement costs and expenses recoverable in the indemnity action do not seek “damages for injury to the person” as contemplated by the medical malpractice action. Providence Hospital has cited authority that establishes that the settlement costs and expenses maintain a separate and distinct identity from the “damages for injury to the person,” and, therefore, the medical malpractice statute of repose does not bar the indemnity action. In their brief, Respondents now argue that such a position should be rejected because it elevates form over substance. {Respondents’ Brief p. 3-4, 6}. Respondents specifically claim that the settlement costs and expenses sought by Providence Hospital qualify as damages for medical malpractice. {Respondents’ Brief p. 3-4, 6}. This argument lacks merit.

Such a position conflicts with the well-established fact that an indemnity action is legally separate, distinct, and independent from the underlying tort action and does not seek to recover for the damages suffered by the underlying tort plaintiff in the underlying tort action. Providence Hospital cited numerous cases and well-respected treatises that reject Respondents’ unsupported rationale. *See, e.g., Lone Mountain Processing, Inc. v. Browser-Morner*, 94 Fed. Appx. 149, 158 (4th Cir. 2004) (stating that indemnity actions are “distinct, separate causes of action from the underlying wrong”); *Canal Ins. Co. v. Lebanon Ins. Agency, Inc.* 504 F.Supp.2d 113, 117 (W.D.

Va. 2007) (holding that an indemnity claim does not seek to recover for any direct harm caused by the at-fault defendant in the underlying tort action); *McDermott v. City of New York*, 406 N.E.2d 460, 462-63 (N.Y. 1980) (“[T]he indemnity claim is a separate substantive cause of action, independent of the underlying wrong.”); *Central Wash. Refrigeration, Inc. v. Barbee*, 946 P.2d 760, 764 (1997) (stating that “indemnity actions are distinct, separate causes of action from the underlying wrong”); 41 Am. Jur. 2d Indemnity § 38 (2008) (“It is axiomatic that indemnity actions are “wholly distinct from the underlying action which gave rise to the right of indemnity”); *Walker Mfg. Co. v. Dickerson, Inc.*, 619 F.2d 305 (4th Cir. 2005) (recognizing that a cause of action for indemnity normally accrues when the indemnitee suffers actual loss); *In re Fela Asbestos Litig.*, 638 F. Supp. 107, 113 (W.D. Va. 1986) (holding that “accrual of a cause of action for indemnity . . . is better linked to a time at which the indemnitee is injured, not the time at which the original plaintiff was injured”), *rev’d on other grounds*; *Burlington N. R.R. v. Hyundai Merchant Marine Co.*, 63 F.3d 1227, 1230 (3rd Cir. 1995) (stating the general rule is that an indemnity claim does not accrue until the indemnitee suffers a loss).

Based on the foregoing authorities, Providence Hospital does not seek to elevate form over substance. Rather, the substance of this claim is that the indemnity action and the underlying tort are legally distinct and separate. Moreover, the indemnity action seeks to recover different damages than those recoverable by the injured party in the underlying tort action. The settlement costs and expenses sought in the indemnity action are legally distinct and separate from the medical malpractice damages.

Our medical malpractice statute of repose comports with this logic by limiting its application to actions that seek to recover “damages for injury to the person” resulting from medical malpractice. Providence Hospital’s indemnity action is not such an action. Providence Hospital was not injured by medical malpractice. Providence Hospital was damaged by virtue of its payment of the costs and settlement expenses it sustained defending the underlying action due the fault of Respondents.

Respondents claim that Providence Hospital “attempts to rename a medical malpractice action as an indemnification action.” {Respondents’ Brief p. 4}. Respondents rely solely on *Krasaeath v. Parker*, 441 S.E.2d 868 (Ga. App. 1994), in support of its position. {Respondents’ Brief p. 4-5}. *Krasaeath* has no application to this matter and is wholly distinguishable. Unlike *Krasaeath*, Providence Hospital did not take an assignment to allow the party injured by medical malpractice to pursue damages. Rather, Providence Hospital brought a direct indemnity action against the at-fault doctor. The injured party in the medical malpractice action was not involved. The facts of *Krasaeath* illustrate the distinction from this matter.¹

The *Krasaeath* court did not analyze a direct indemnity action brought by a hospital against an at-fault doctor. Instead, the court analyzed a situation where the plaintiff in *Krasaeath* took an assignment from one of the doctors that she had originally pursued for medical malpractice. *Id.* at 868-69. The doctor assigned his rights against the other doctor to the plaintiff after the assigning doctor and plaintiff had

¹ In *Krasaeath*, the court addressed whether contribution, not indemnity, was barred under the medical malpractice statute of repose. *Id.* at 868. In this action, Providence Hospital did not pursue Respondents based on contribution; rather, Providence Hospital sought indemnification. Indemnification and contribution are separate causes of action and are not interchangeable under South Carolina law. *See, generally*, 7 S.C. Jur. Contribution § 3 (2008) (describing the differences between indemnity and contribution actions). Hence, the *Krasaeath* case is distinguishable for this reason as well.

settled. *Id.* Then, more than five years after the date of treatment, Parker, the party injured by medical malpractice, attempted to bring a medical malpractice action against the non-settling doctor, Krasaeath. *Id.* Any such attempt would have been barred because the applicable repose and limitations periods expired for actions against the other doctors. *Id.* Thus, Parker sought contribution from Krasaeath, the separate doctor from the assigning doctor. *Id.* While Parker captioned the action as one for contribution, it was actually a disguised medical malpractice action against Krasaeath brought by the person he allegedly injured through medical malpractice. *Id.* at 870. Concluding that the underlying medical malpractice action against Krasaeath was untimely, the court held Parker could not circumvent the statute of repose by claiming her action was for contribution. *Id.*

This matter is factually distinct and does not present the same concerns as raised to the *Krasaeath* court. Providence Hospital did not receive an assignment. It does not seek to improperly circumvent any limitations period. It is not an injured person seeking to recover for injuries. Rather, Providence Hospital seeks to enforce its own right to equitable indemnification, which is a separate and distinct action from the underlying tort action and arose upon payment of the settlement funds. Hence, the *Krasaeath* case has no application to this matter and does not support Respondents' position.² This Court should thus reverse.

² In addition, Respondents' position has been rejected by other courts. *See Roland v. Skaggs Companies, Inc.*, 666 S.W.2d 770, 772 (Mo. 1984). In that case, the trial court held that an action for contribution was barred by the two-year medical malpractice statute of limitations. *Id.* at 773. The Supreme Court of Missouri disagreed because "while [the medical malpractice statute of limitations] clearly covers all claims brought by consumers of health care services against health care providers for injuries related to such services, we find no words indicating a legislative intent to include suits for contribution among health care providers." *Id.* (emphasis added). The *Roland* Court also reasoned that "claims for . . .

II. Respondents improperly ask this Court to ignore the part of section 15-3-545 that limits its application to actions seeking “to recover damages for injuries to the person” by the injured patient.

Respondents also claim that the indemnity action is barred by the medical malpractice statute of repose because “[i]t applied to ‘any action’ that relies upon personal injuries to establish damages.” {Respondents’ Brief p. 6}. This argument misconstrues the medical malpractice statute of repose. Respondents ask this Court to ignore the other language of the statute that qualifies the “any action” language cited by Respondents and defines the scope of the statute. The statute limits its application to actions seeking “any action . . . to recover *damages for injury to the person*” resulting from “medical, surgical, or dental treatment, omission, or operation by any licensed health care provider.” S.C. Code Ann. § 15-3-545(A) (1988) (emphasis added). The Court cannot ignore the inclusion of the “damages for injuries to the person” language in the statute.

By focusing solely on the “any action” language of the statute, Respondents ask this Court to effectively eliminate the “damages for injuries to the person” language from the statute.³ Respondents’ reading of the statute would allow the “any action” language to swallow the qualifying language that limits the scope of the statute to

apportionment of fault need not be subject to the statute of limitations applicable to medical malpractice actions . . . because of the independent nature of that claim from the underlying claim of [the patient] for damages.” *Aherron v. St. John's Mercy Med. Center*, 713 S.W.2d 498, 499 (Mo. 1986); *see also Breedon v. Hueser*, 273 S.W.3d 1, 11 (Mo. 2008) (holding the “claims that fall within the scope of [the medical malpractice statute] are those for damages resulting from the acts of a physician in the delivery of health care to the consumer”). That logic fits squarely with the legal separation between the underlying tort action and the subsequent indemnity action.

³ The “any action” language references the myriad ways an injured patient can bring a claim for medical malpractice. The injured party could seek damages based on a negligence theory, a wrongful death action, a survival action, gross negligence, or strict liability, to name a few. If any of those seek to recover for damages for injuries to the person sustained by medical malpractice, then Section 15-3-545 would apply the limitations period applicable to such a claim.

actions for recovery of “damages for injuries to the person.” Such a construction contravenes our well-settled rules of statutory construction.

Courts should seek a construction of a statute that gives meaning to every word of a statute rather than one that renders a portion meaningless. *Hinton v. S. Carolina Dep’t of Prob., Parole & Pardon Servs.*, 357 S.C. 327, 342, 592 S.E.2d 335, 343 (Ct. App. 2004); *Steinke v. S. Carolina Dep’t of Labor, Licensing & Regulation*, 336 S.C. 373, 396, 520 S.E.2d 142, 154 (1999) (stating that courts should “avoid a construction that would read a provision out of a statute”). “Every word, clause, and sentence must be given some meaning, force, and effect, if it can be done by any reasonable construction.” *Breeden v. TCW, Inc./Tennessee Exp.*, 355 S.C. 112, 120, 584 S.E.2d 379, 383 (2003). “It is never to be supposed that a single word was inserted in the law of this state without the intention of thereby conveying some meaning.” *Davenport v. City of Rock Hill*, 315 S.C. 114, 117, 432 S.E.2d 451, 453 (1993). “A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.” *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011); *Matter of Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (citations omitted).

The placing of the “damages for injuries to the person” language immediately after the “any action” language signifies the legislature’s intent to modify, qualify, or limit the broad “any action” language. *See, e.g., Total Environmental Solutions, Inc. v. S.C. Pub. Servs. Comm’n*, 351 S.C. 175, 181-82, 568 S.E.2d 365, 369 (2002) (finding a subsequent phrase in the statute modified a preceding phrase and defined the

scope of the statute). Such a grammatical construction demonstrates the legislature’s intent to limit the scope of the medical malpractice statute of repose.

When “any action” is read in conjunction with “damages for injuries to the person,” the conclusion is inescapable—the medical malpractice statute of limitations unambiguously applies only to actions that seek to recover “**damages for injury to the person**” resulting from medical malpractice. This language is not ambiguous and triggers the scope of this particular statute of repose. Therefore, this Court should reject Respondents’ argument and reverse the Court of Appeals.⁴

III. Respondents’ position on interpreting section 15-3-545(A) is not supported by our rules of statutory construction.

Respondents allege that section 15-3-545(A) defines its scope negatively to include indemnity actions.⁵ {Respondents’ Br. p. 7-8}. Specifically, Respondents claim the medical malpractice statute of repose “applies to all actions and then excludes three separate categories of claims.” {Respondents’ Br. p. 8}. Both unsupported claims are incorrect and should be rejected.

First, this Court should reject this argument because Respondents offer no authority to support this conclusion. Instead, Respondents merely make conclusory statements that the statute is drafted in such a manner. Therefore, Respondents have

⁴ Respondents also claim that South Dakota has “interpreted South Carolina’s statute similarly” and cite *Avera St. Luke’s Hospital v. Karamali*, 848 F. Supp. 2d 1017 (D. S.D. 2012), in support. {Respondents’ Br. p. 6}. This statement misconstrues *Karamali*. The South Dakota court did not apply rules of construction to interpret the South Carolina medical malpractice statute of repose. Rather, the court merely cited to the South Carolina Court of Appeals’ opinion *in this matter*. Thus, Respondents’ are disingenuous in their claim that the South Dakota court supports their position.

⁵ In the Respondents’ view, this means that section 15-3-545(A) applies to indemnity actions because the statute does not exclude indemnity actions.

abandoned this argument. *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 327 n. 1, 730 S.E.2d 282, 284 n. 1 (2012) (finding an issue abandoned because it was both unsupported by legal authority and relied upon a summary conclusion); *D.R. Horton, Inc. v. Wescott Land Co., LLC*, 398 S.C. 528, 548–49, 730 S.E.2d 340, 350–51 (Ct. App. 2012) (finding the party’s failure to cite supporting law or authority results in an issue being abandoned despite the existence of a conclusory argument).

Second, section 15-3-545 is not drafted “negatively.” The statute’s later subsections do not contain a list of exceptions, negative words, or any exceptions at all. Rather, subsection (B) affirmatively sets out a different, two-year limitations period for suits alleging a foreign object was left in the body after a surgery. Subsection (C) affirmatively states that the statute is not retroactive. Subsection (D) affirmatively permits tolling for causes of action held by a minor.

Moreover, the method the legislature utilized to draft the limitations and repose statutes establish that indemnity actions are only included when such actions were specifically named in the individual section. All the limitations sections in articles 3 and 5 of Title 15 show that when the legislature intended for indemnity to be included in the repose or limitations period for a cause of action, it was specifically named in that statute.

This is illustrated by the legislature’s drafting of the other limitations and repose statutes in articles 3 and 5 of Title 15. The general rule states that “[c]ivil actions may only be commenced within the periods prescribed in this title after the cause of action has accrued, except when, in special cases, a different limitation is prescribed by statute.” S.C. Code Ann. § 15-3-20(A) (2002); *see also State v. McClinton*, 369 S.C.

167, 173, 631 S.E.2d 895, 898 (2006) (recognizing that Title 15 is limited to the individualized cause of action to each section, noting “[t]he Legislature has provided in Title 15, which contains the statutes of limitations governing *various causes of action* . . .”) (emphasis added). This manner of limiting actions based on the particular cause of action continues throughout Title 15. Each subsequent section applies to one cause of action or claim unless that section says otherwise. *See, e.g.*, S.C. Code Ann. § 15-3-330 (applying to “actions by individual for recovery of real property”); S.C. Code Ann. § 15-3-530 (creating a three-year limitation period for causes of actions upon contract, damage to real property, or insurance, among others); S.C. Code Ann. § 15-3-550 (creating a two-year limitation period for slander, libel, and false imprisonment causes of action).

Respondents’ position requires this Court to ignore the fact that the legislature limited each repose or limitations period to the respective individual cause of action in each section. Respondents’ argument would render section 15-3-545 as the only section in articles 3 and 5 of Title 15 to be construed in a different manner. Thus, this Court should reject Respondents’ position.

When the legislature wanted to include a subsequent indemnity action within the ambit of a statute of repose, it did so explicitly. This is evident in section 15-3-640. In that statute, the legislature explicitly and clearly included indemnity actions within the application of the statute of repose for defective or unsafe improvements to real property. *See* S.C. Code Ann. § 15-3-640(6) (the repose period applies to “an action for contribution or indemnification for damages sustained on account of an action described in this section”). In contrast, the medical malpractice statute of repose

contains no mention of applicability to indemnity actions. If the legislature wanted to extend the reach of section 15-3-545(A) to include indemnity actions, then it knew how to do so. Thus, Respondents' position lacks merit, and this Court should reverse.

IV. The cases applying the medical malpractice statute of response to medical malpractice actions brought by the injured party against the at-fault medical provider do not address the issue before this Court and have no bearing on Providence Hospital's indemnity action.

Next, Respondents rely extensively on opinions that apply the medical malpractice statute of repose to a direct medical malpractice action brought by the tort plaintiff injured by the medical malpractice of the medical provider. {Respondents' Br. p. 11-14}. None of the cases cited by Respondents analyzed or ruled on the issue presented in this matter—whether the medical malpractice statute of repose bars a subsequent and legally distinct indemnity action.

The fact that section 15-3-545(A) is universally regarded as the statute of repose applicable to *medical malpractice* actions does not mean it bars *indemnity and contribution* actions. *See, e.g., Lone Mountain*, 94 Fed. Appx. at 158 (stating that indemnity actions are “distinct, separate causes of action from the underlying wrong”); *Canal Ins.*, 504 F. Supp. 2d at 117 (“An indemnity claim does not seek recovery for any direct harm caused by the [underlying] defendant to the [underlying] plaintiff—it is clearly distinct from a direct cause of action.”); *McDermott*, 406 N.E.2d at 462-63 (“[T]he indemnity claim is a separate substantive cause of action, independent of the underlying wrong.”); 41 Am. Jur.2d Indemnity § 38 (“[C]ommon law indemnity is . . . wholly distinct from the underlying action which gave rise to the right of indemnity.”). As a result, the cases cited by Respondents have no bearing on whether the medical

malpractice statute of repose bars Providence Hospital's subsequent indemnity action against Respondents.

The damages sought to be recovered in Providence Hospital's indemnity action differ from those sought for an "injury to the person" in a medical malpractice action as set forth in section 15-3-545(A). Therefore, the recovery sought by Providence Hospital does not fall within the ambit of section 15-3-545(A). Similarly, Respondents' recitation of general rules regarding the effect the medical malpractice statute of repose has on claims against physicians or hospitals for their acts of medical malpractice does not impact this matter.

Respondents cite *Kerr v. Richland Memorial Hospital*, 383 S.C. 146, 678 S.E.2d 809 (2009), for the proposition that this Court has refused to limit the statute of repose. {Respondents' Br. p. 11, 13}. This misconstrues the actual holding and impact of that case. In *Kerr*, this Court determined that the medical malpractice statute of repose applied to a medical malpractice action brought under the South Carolina Tort Claims Act. *Kerr*, 383 S.C. at 148, 678 S.E.2d at 810. This Court was *not* asked to determine whether the medical malpractice statute of repose applied to an action for indemnity. This Court simply applied the existing medical malpractice statute of repose to a medical malpractice action brought under a different statutory vehicle. *Id.* In fact, *Kerr* actually demonstrates that the statute of repose set forth in section 15-3-545(A) applies only to medical malpractice actions. Throughout the opinion, this Court consistently referred to the section 15-3-545(A) statute of repose as applicable to

medical malpractice actions, indicating the statute of repose is limited to *only* medical malpractice actions. *Id.*; *see also Id.* at 147 and 149, 678 S.E.2d at 810 and 811.

Respondents' reliance on *Harrison v. Bevilacqua*, 354 S.C. 129, 580 S.E.2d 109 (2003), *Langley v. Pierce*, 313 S.C. 401, 438 S.E.2d 242 (1993), and *Hoffman v. Powell*, 298 S.C. 338, 380 S.E.2d 821 (1989), likewise has no impact on the issues before this Court. {Respondents' Br. p. 12-14}. Each of those cases merely addressed the medical malpractice statute of repose in the context of a medical malpractice action. However, none of these cases analyzed, or even addressed, whether the medical malpractice statute of repose bars a subsequent action for indemnity. The cases cited by Respondents fail to address and offer no guidance on the issue presented in this matter. Therefore, this Court should reject Respondents' reliance on these cases.

V. The South Carolina and foreign precedent relied upon by Respondents does not support the Court of Appeals' opinion.

Respondents cite cases from Georgia, Illinois, and Florida as support for its claim that the medical malpractice statute of repose bars Providence Hospital's indemnity action.⁶ {Respondents' Br. p. 15-17}. Those cases are distinguishable from the facts of this action. Moreover, the medical malpractice statutes of repose analyzed in those cases differ materially from South Carolina's medical malpractice statute of repose. This Court should find Respondents' reliance on those cases is misplaced and cannot support the Court of Appeals' opinion.

Respondents first rely on Illinois case law. {Respondents' Br. p. 16-17}. The Illinois legislature drafted a broadly worded statute of repose. Such a broadly worded

⁶ Respondents again cite *Krasaeath* in support of its claim. Providence Hospital distinguished that case in section I, *supra*.

statute supports its courts' decisions that the statute of repose bars an indemnity action against a doctor. The Illinois statute provides that no action may be maintained against a physician or hospital "based on tort, or breach of contract, *or otherwise*, arising out of patient care" 735 Ill. Stat. Ann. § 5/13-212 (2008) (emphasis added). This broad, all-encompassing language used by the Illinois legislature supported the finding by the courts there that the statute of repose can bar an action for indemnity. By contrast, South Carolina's legislature employed no such broad, all-encompassing language in drafting section 15-3-545(A). Our legislature specifically drafted section 15-3-545(A) to only apply to medical malpractice actions.

Respondents also rely on Florida's interpretation of its statute of repose. {Respondents' Br. p. 17}. Similar to Illinois, Florida statutorily defined its medical malpractice action to include actions for indemnity. There, the legislature drafted the medical malpractice statute of repose to broadly apply to "a claim in tort or contract for damages because of the death, injury, *or monetary loss* to any person" Fla. Stat. Ann. § 95.11(4)(b) (2009) (emphasis added). Thus, Florida's statute covers actions seeking to recover any type of monetary loss. That is not the case in South Carolina. Our medical malpractice statute of repose is limited to actions seeking to "to recover damages for injury to the person" resulting from "medical, surgical, or dental treatment, omission, or operation by any licensed health care provider." Accordingly, Florida's interpretation of its broadly-worded statute of repose offers no guidance in interpreting section 15-3-545(A).

Neither *Florence County* nor *Capco* supports Respondents' claim that the medical malpractice statute of repose bars a subsequent indemnity action.⁷ {Resp. Br. p. 17-21}. While both cases addressed the statute of repose contained in section 15-3-640, neither case resorted to the rules of statutory interpretation in order to hold that actions for indemnity and contribution were included in the statute of repose. Those courts merely applied the plain language of the statute as directed by the legislature. Thus, those do not aid in the resolution of this matter.

The medical malpractice statute of repose does not contain the same clear directive from the legislature as section 15-3-640. The legislature drafted the 15-3-640 statute of repose to specifically *include* an indemnity action. The legislature explicitly drafted section 15-3-640 to apply to "an action for contribution *or indemnification* for damages sustained on account of an action described in this section." S.C. Code Ann. § 15-3-640(6) (emphasis added). There is no question as to legislative intent in that section respecting actions for indemnity. Therefore, because section 15-3-640 was plain and unambiguous, the courts in *Florence County* and *Capco* simply had no choice but to apply the unambiguous language of the statute to the issue presented to the court.⁸

In fact, the rationale employed by the *Florence County* and *Capco* courts supports Providence Hospital's position. The clear and unambiguous language of section 15-3-545(A) establishes that the legislature did not include indemnity actions in

⁷ *Florence County School District #2 v. Interkal, Inc.*, 348 S.C. 446, 559 S.E.2d 866 (Ct. App. 2002), and *Capco of Summerville, Inc. v. J.H. Gayle Const. Co., Inc.*, 368 S.C. 137, 628 S.E.2d 38 (2006).

⁸ The *Florence County* Court recognized the clarity of the statute and stated that "because the [s]tatute of [r]epose specifically applies to actions for contribution, it is *clear* the General Assembly intended . . ." for the statute of repose to apply to contribution actions in that context. 248 S.C. at 452, 559 S.E.2d at 869 (emphasis added).

the medical malpractice statute of repose. Instead, the legislature drafted that section to be limited to actions “to recover damages for injury to the person” resulting from “medical, surgical, or dental treatment, omission, or operation by any licensed health care provider.” These phrases are not ambiguous and clearly define the scope of the statute of repose. Therefore, just as the *Florence County* and *Capco* correctly declined to employ rules of statutory interpretation in addressing the plain language of section 15-3-640, this Court should similarly hold that the plain language of section 15-3-545(A) does not apply to indemnity actions.

Respondents also claim *Capco* addressed broader implications of the statute of repose. {Respondents’ Br. p. 20}. Respondents allege that the court relied on the general policy supporting statutes of repose in order to find the subsequent action was barred. However, this again misconstrues the holding of that case. The general public policy supporting a statute of repose had no impact on the court’s decision. The *Capco* Court had to decide whether a specific claim for contribution was controlled by the unambiguous bar in section 15-3-640 or controlled by a competing provision of the Contribution Act. *Capco*, 368 S.C. at 141, 628 S.E.2d at 41. The court looked to clear language employed by the legislature to include the contribution action in the statute of repose for defective or unsafe improvements to real property. *Id.* at 143, 628 S.E.2d at 41. The court barred that specific contribution action for one reason—the legislature specifically *included* a subsequent contribution action in the statute of repose for defective or unsafe improvements to real property. Notably, the court did not rely on the general policy behind a statute of repose as its basis to find the contribution

action was included in the statute of repose for defective or unsafe improvements to real property, as suggested by the Respondents. Therefore, Respondents' contention lacks merit and should be rejected.

VI. The general public policy regarding repose statutes cannot be used to expand the reach of the medical malpractice statute of repose to an action not included by the legislature.

Respondents claim that the Court of Appeals properly used the general public policy supporting statutes of repose in order to bar Providence Hospital's indemnity action because the indemnity action depends on the proof of the underlying medical malpractice. {Respondents' Br. p. 9-10}. This Court should reject this argument.

As an initial matter, Respondents offer no support for this argument. Instead, Respondents merely make conclusory statements. Therefore, this Court should reject the claim because Respondents have abandoned this argument.⁹ Second, Respondents' claim ignores the well-established substantive law that recognizes the indemnity action remains legally separate and distinct from the underlying tort. Thus, Respondents' position lacks support and should be rejected.

Third, the issue of what must be proven in the indemnity action is not before this Court. The issue before this Court is whether the medical malpractice statute of repose bars an indemnity action as a preliminary matter before Providence Hospital even has a chance to prove the elements of equitable indemnification. This Court should not rule on hypothetical arguments or pass on questions not before it. *See, e.g.,*

⁹ *Lewis*, 398 S.C. at 327 n. 1, 730 S.E.2d at 284 n. 1 (finding an issue abandoned because it was both unsupported by legal authority and relied upon a summary conclusion); *D.R. Horton*, 398 S.C. at 548-49, 730 S.E.2d at 350-51 (finding the party's failure to cite supporting law or authority results in an issue being abandoned despite the existence of a conclusory argument).

Colleton Cnty. Taxpayers Ass'n v. Dist. of Colleton Cnty., 371 S.C. 224, 242, 638 S.E.2d 685, 694 (2006) (holding that “an issue that is contingent, hypothetical, or abstract is not ripe for judicial review”); *Hitter v. McLeod*, 274 S.C. 616, 619, 266 S.E.2d 418, 420 (1980) (holding the court will not rule on academic questions, questions not ripe for review, or make an adjudication on a controversy not before the court because it “presents the court with nothing more than a vehicle for rendering an advisory opinion”).

Respondents claim that the existence of Rule 14, SCRCPP, alleviates the judicial economy arguments advanced by Providence Hospital. {Respondents’ Br. p. 14}. Specifically, Respondents claim that because the indemnity claim can be asserted via Rule 14, SCRCPP, then no unnecessary litigation will arise. This claim misconstrues Providence Hospital’s argument. Providence Hospital argued that the Court of Appeals’ opinion created practical problems that would lead to judicial inefficiency if not reversed by this Court. Providence Hospital illustrated how the opinion would force parties seeking indemnification or contribution in the numerous medical malpractice actions filed each year in South Carolina to file such claims before they are ripe for fear of being barred by a statute of repose time expiration. Providence Hospital did not argue that the indemnity plaintiff could not bring the action. Rather, Providence Hospital argued the party would have to bring the claim before it was ripe. The presence of Rule 14, SCRCPP, does not alleviate that fact.

In a convoluted argument, Respondents also allege the indemnity action is synonymous with the underlying medical malpractice action due to the existence of Rule 14, SCRCPP, and, as such, Providence Hospital’s claim that the indemnity action is

legally distinct from the underlying tort fails. {Respondents' Br. p. 15}. This argument lacks merit because it ignores well-established precedent. As established in section I, *supra*, the indemnity action and the underlying tort are legally distinct and separate, and the indemnity action seeks to recover different damages than those recoverable by the injured party in the underlying tort action. The existence of Rule 14, SCRCF, does not alter this fact. Rule 14, SCRCF, merely provides a procedural vehicle to allow filing of an indemnity action in the underlying tort case, if proper. Rule 14, SCRCF, does not alter the well-established substantive law that recognizes the indemnity action remains legally separate and distinct from the underlying tort. This Court should reject Respondents' argument to the contrary.

Conclusion

Section 15-3-545(A) of the South Carolina Code does not bar Providence Hospital's claims for equitable indemnification against Dr. Taillon and the JUA. The plain and unambiguous language of section 15-3-545(A) demonstrates that the legislature did not intend for claims for equitable indemnification to be barred by the statute of repose for medical malpractice. Instead, the legislature limited the statute of repose to cover actions seeking "damages for injury to the person" resulting from "medical, surgical, or dental treatment, omission, or operation by any licensed health care provider."

Providence Hospital has not brought an action seeking "damages for injury to the person." Instead, Providence Hospital seeks indemnification of costs and settlement expenses. Those sums do not compensate Providence Hospital for any damages it

sustained resulting from medical malpractice. The trial court and Court of Appeals' decisions result in a forced construction that expands the statute's operation in contravention of the intent of the General Assembly. Therefore, this Court should reverse.

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November 18, 2013

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2007-CP-40-3564

Appellate Case No. 2011-197986

Columbia/CSA-HS Greater Columbia Healthcare
System db/a Providence Hospital, Petitioner,

v.

The South Carolina Medical Malpractice Liability Joint
Underwriting Association and Michael P. Tallion, Respondents,

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Plaintiff, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

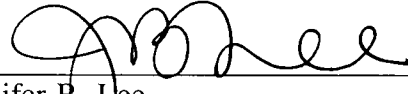
Pleadings:

Reply Brief of Petitioner

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