THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Dale E. Van Slambrook, Circuit Court Judge

Jessica A. Salvini, Circuit Court Judge

Appellate Case No. Case: 2025-001304

Case No. 2021-CP-10-03379

RECEIVED
Apr 23 2026
SC Court of Appeals

Carolina Neurosurgery & Orthopedics, Inc.,……Appellant/Respondent

v.

Michael A. Maucher, Esq. and DeLuca & Maucher, LLP,……Respondents /Appellants

---

RECORD ON APPEAL
VOLUME II

Thornwell F. Sowell, III (SC Bar No. 5197)
Bess J. DuRant (SC Bar No. 77920)
SOWELL & DuRANT, LLC
1325 Park Street, Suite 100
Columbia, South Carolina 29201
(803) 722-1100
bsowell@sowelldurant.com
bdurant@sowelldurant.com
Attorneys for Appellant/Respondent

Douglas W. MacKelcan (SC Bar No. 76332)
Skyler C. Wilson (SC Bar No.102865)
COPELAND, STAIR, VALZ & LOVELL, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
(843) 727-0307
dmackelcan@csvl.law
swilson@csvl.law
Attorneys for Respondents/Appellants

INDEX TO RECORD ON APPEAL

VOLUME I

Orders, Judgments, and Decisions

Order on Motion to Dismiss, filed June 28, 2022 1

Amended Order on Defendants' Motion to Dismiss, filed Apr. 5, 2023 18

Order Granting Plaintiff's Motion to Amend Complaint and Postponing Hearing on Defendants' Motion for Summary Judgment, filed August 26, 2024 35

Order Denying Defendants' Motion to Strike Plaintiff's Second Amended Complaint and Postponing Hearing on Defendants' Motion for Summary Judgment, filed Nov. 6, 2024 37

Form 4 Order on Defendant's Motion for Reconsideration, filed Jan. 31, 2025 39

Form 4 Order on Defendants' Motion for Summary Judgment, filed Apr. 3, 2025 43

Order Granting Summary Judgment, filed May 2, 2025 46

Initial Order Regarding Plaintiff's Motion to Reconsider on Order Granting Motion for Summary Judgment, filed May 8, 2025 66

Order Denying Motion for Sanctions, filed June 18, 2025 68

Initial Order on Motion to Reconsider June 18, 2025 Order, filed July 14, 2025 71

Final Order Regarding Motion to Reconsider on Order Granting Motion for Summary Judgment, June 9, 2025 73

Form 4 Order denying Defendants' Motion for Sanctions, June 18, 2025 75

Initial Order regarding Motion for Reconsideration, filed July 14, 2025 78

Final Order Regarding Defendants' Motion to Reconsider on Order Denying Motion for Sanctions, filed Aug. 25, 2025 80

Pleadings and Motions

Summons and Verified Complaint, filed July 22, 2021.....82

Respondents/Appellants' Motion to Dismiss, filed Oct. 22, 2021 126

Appellant/Respondent's Memorandum in Opposition to Motion to Dismiss, filed Feb. 23, 2022.....129

Respondents/Appellants' Memorandum in Support of Motion to Dismiss, filed Feb. 23, 2022 139

Appellant/Respondent's Motion for Reconsideration (erroneously styled as "Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss), filed July 5, 2022.....157

Answer, filed April 6, 2023 163

Respondents/Appellants' Motion for Summary Judgment, filed August 22, 2023.....175

Appellant/Respondent's Motion to Amend Complaint, filed Sept. 6, 2023.....177

ADR/Proof of ADR, filed Aug. 2, 2024.....189

Respondents/Appellants' Memorandum in Support of Motion for Summary Judgment, filed August 14, 2024.....190

Respondents/Appellants' Memorandum in Opposition to Plaintiff's Motion to Amend, filed August 14, 2024.....306

VOLUME II

Appellant/Respondent's Memorandum in Opposition to Defendants' Motion for Summary Judgment, filed August 16, 2024.....378

Appellant/Respondent's Supplemental Memorandum in Support of Motion to Amend Complaint, filed August 16, 2024 573

Amended Complaint, filed Sept. 5, 2024.....584

Plaintiff's Notice of Withdrawal of Amended Complaint Without Prejudice filed Sept. 9, 2024.....593

Amended Complaint, filed Sept. 10, 2024.....594

Answer to Amended Complaint, filed Sept 20, 2024.....602

Second Amended Complaint, filed Sept. 24, 2024 611

Respondents/Appellants' Motion to Strike, filed September 24, 2024 620

Respondents/Appellants' Memo in Support of Motion to Strike with Exhibits, filed October 28, 2024 621

Respondents/Appellants' Revised Memorandum in Support of Summary Judgment, with exhibits, filed October 28, 2024 688

VOLUME III

Respondents/Appellants' Motion to Reconsider Court's Nov. 6, 2024 Order on Motion to Strike, filed Nov. 18, 2024 834

Appellant/Respondent's Memorandum in Opposition to Respondents/Appellants' Motion to Reconsider November 6, 2024 Order filed January 24, 2025 894

Answer to Second Amended Complaint, filed Feb. 14, 2025 898

Respondents/Appellants' Second Revised Memorandum in Support of Motion for Summary Judgment, filed March 25, 2025 908

Appellant/Respondent's Memorandum in Opposition to Defendants' Motion for Summary Judgment and Defendants' Second Revised Memorandum in Support, filed March 26, 2025 1065

Appellant/Respondent's Motion to Reconsider Order Granting Defendants' Motion for Summary Judgment, filed April 14, 2025 1081

Respondents/Appellants' Motion for Sanctions, filed May 12, 2025 1089

Appellant/Respondent's Supplemental Motion to Reconsider Order Granting Summary Judgment, filed May 15, 2025 1234

Respondents/Appellants' Memorandum in Opposition to Appellant/Respondent's Motion to Reconsider, filed May 22, 2025 1244

Respondents/Appellants' Motion for Reconsideration for Order Denying Motion for Sanctions, filed June 30, 2025 1252

Appellant/Respondent's Memo in Opposition to Defendants' Motion for Reconsideration for Order Denying Motion for Sanctions, filed June 30, 2025 1259

Amended Notice of Cross Appeal, filed August 29, 2025 1268

Volume IV

Transcripts

Hearing Transcript of Hearing on Motion to Dismiss before Judge Dickson March 3, 2022.....1283

Hearing Transcript on Plaintiff's Motion for Reconsideration of Partial Motion to Dismiss, Mar. 3, 2023 before Judge Dickson, March 3, 2023.....1314

Hearing Transcript of Hearing to Strike before Judge Dale E. Van Slambrook, November 4, 2024.....1338

Hearing Transcript on Motion for Summary Judgement before Judge Jessica Ann Salvini, March 31, 2025, pp. 3-11 and 21 1356

Certification

Certificate of Counsel 1369

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP, Defendants.	**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGEMENT**

TO: DOUGLAS W MACKELCAN, ESQ. AND SKYLER C. WILSON, ESQ., COUNSEL FOR DEFENDANTS:

Plaintiff respectfully submits this Memorandum in Opposition to the Motion for Summary Judgment filed on behalf of the Defendants, Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP. This Court should deny the Defendants' Motion based on evidence and testimony available that create genuine issues of material fact on each cause of action in the Verified Complaint and the proposed Amended Complaint.

Summary of Arguments in Opposition

There are genuine disagreements between Plaintiff and Defendants on facts legally relevant and material to the claims asserted in Plaintiff's Verified Complaint for breach of contract and violation of the South Carolina Unfair Trade Practices Act, and disagreements on the claims in Plaintiff's proposed Amended Complaint for negligent misrepresentation.

The Defendants are a law firm and lawyer. The Plaintiff is a medical practice that does not accept health insurance payments from its patients and because it is not an "in-network healthcare provider," it cannot obtain payment on its invoices from health insurance companies. The Defendants represented a client with personal injury claims arising from a motor vehicle accident. The client sought to become a patient of the Plaintiff, seeking treatments and, ultimately, two surgeries for back pain, which were determined to be elective medical procedures and not emergent, requiring immediate attention. The Defendants sent emails to the Plaintiff representing

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

that because there was over $1,100,000 in insurance coverage available to the client, "we are not concerned that there will be enough overall coverage to pay" for the Plaintiff's medical services to the client. Further supporting the Defendants' representations on available insurance coverage, the Defendants sent two letters of protection where the Defendants agreed "to protect any portion of your bill not paid by private health insurance out of any settlement proceeds we may receive arising out of the incident referred to above." The Plaintiff performed two back surgeries on the client, which resulted in invoices totaling $125,409.28. As it turned out, 1) the client did not have health insurance or any other insurance available that was sufficient to pay the claim; and 2) the party at-fault in the collision with the client had only $30,000 in coverage, which was $1,070,000 less than what the Defendants represented to the Plaintiff.

Plaintiff contends that the agreement with Defendants included an implied provision on the truth of the Defendants' representations about the amount of coverage available when the representations were made. The Defendants, on the other hand, contend that "Everything that was stated was accurate at the time. When things changed, we updated Carolina Neurosurgery, …." (Transcript from the Rule 30(b)(6) deposition of DeLuca & Maucher, LLP, July 31, 2023, 28:4-8; filed as **Exhibit 1**). So, at a minimum, there is a dispute as to whether the agreement included the truth of the Defendants' representations and a dispute as to whether the Defendants' statements were accurate when made.

Standard of Review

"Rule 56(c) ... provides that the moving party is entitled to summary judgment 'if the [evidence before the court] show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 459, 892 S.E.2d 297, 299 (2023) (alterations in original) (quoting Rule 56(c), SCRCP). "[T]he evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002).

Background Facts

In 2018, Dr. Jason Highsmith left a prior medical practice and formed Carolina Neurosurgery & Orthopedics, Inc., as an out-of-network provider that did not accept insurance for its patients' payment of medical bills. *See* (Transcript from the deposition of Jason M. Highsmith, M.D., May 29, 2023, 21:17-22:10 and 24:9-12; filed as **Exhibit 2**). "This case arises from Defendants' *false or inaccurate representations about the availability of liability and*

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

homeowners' insurance coverage available to cover medical and surgical expenses for one of Defendants' clients and Defendants' promises in a letter of protection, the combination of which led [Plaintiff], and its surgeon, Dr. Highsmith, and their staff to perform over $125,000 in surgery and related healthcare services for Defendants' client when, contrary to Defendants' representations, there was no available insurance coverage, and then to make things worse, Defendants disregarded the promises in letters of protection when Defendants remitted no funds to Dr. Highsmith after their client settled the client's tort claim." Verified Complaint, ¶ 1 (emphasis added); (Transcript from the deposition of Jason M. Highsmith, M.D., May 29, 2023, 30:2-5; filed as Exhibit 2).

On December 20, 2018, the Defendants sent to the Plaintiff a "Letter of Protection" ("the 1st LOP") offering for the Plaintiff to "accept this correspondence as ***our Law Firm's agreement to protect any claim*** which you may have out of any settlement proceeds we may receive arising of the incident referred to above …." *See* (Letter from Defendants to Plaintiff, dated Dec. 20, 2018, filed as **Exhibit 3**) (emphasis added).

In January 2019, before any surgeries were performed on the Defendants' client, the Plaintiffs sent the Defendants an email requesting the insurance policy limits for the client. On January 21, 2019, 9:24 AM the Defendants sent the following reply email to Plaintiff:

From: Tina
Sent: Monday, January 21, 2019 9:24 AM
To: 'Kiara Goodwine'
Cc: Brooke Dunsil; Kary Garcia
Subject: RE: Scott Demaskey

Kiara,

The at-fault party had a North Carolina Policy of automobile insurance. In order for them to disclosure the limits of their North Carolina Policy, we must provide them with a signed Medical Authorization allowing them to obtain copies of Scott Demaskey's medical records. We are NOT willing to comply with that request. We are therefore unable to find out how much Liability Coverage is on their policy. Because Mr. Demaskey carries $100,000.00 in UnderInsured Motorist Coverage on his at-home policy with Safeco, and there is $1,000,000.00 in "Occupational Accident Coverage" to pay bills and wages under the One Beacon Policy, we are not concerned that there will be enough over all coverage to pay the claim.

Thanks,
Tina

Tina G. Bennett
Assistant to Michael A. Maucher
DeLuca & Maucher, LLP

(Email thread dated January 21, 2019; Filed as **Exhibit 4**). In this email, the Defendants represented to Plaintiff that because more than $1,100,000 in coverage was available, "we are not concerned that there will be enough overall coverage to pay [Plaintiff's] claim."

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Later on January 21, 2019, around 11:58 AM, the Defendant sent an email advising that the client "has advised our office that he will require surgery. Based upon the serious nature of his injury, and his pre-existing injuries, we would respectfully request that all of his treatment be filed with his private health insurance company. It would be best for everyone involved if we do NOT do the treatment under an Assignment/Letter of Protection." (Email thread dated January 21, 2019; Filed as **Exhibit 5**). *At no time did the Defendants explain to Plaintiff any concerns regarding the availability of sufficient insurance coverage to cover the invoices for surgeries the Plaintiff provided for the client.*

On March 7, 2019, the Defendants sent a second Letter of Protection to the Plaintiff offering for the Plaintiff to "accept this correspondence as ***our Law Firm's agreement to protect any portion of your bill not paid by private health insurance*** *out of any settlement proceeds we may receive arising from the incident referred to above.*" *See* (Letter from Defendants to Plaintiff, dated Mar. 7, 2019, filed as **Exhibit 6**) (emphasis added).

Plaintiff performed two elective surgeries for the Defendants' client, the first on March 19, 2019, and the second on May 2, 2019.

Because Plaintiff was an out-of-network provider, relying on Defendants' statements about the availability of insurance coverage was critical in Plaintiff's decision to provide Defendants' client with two ***elective*** surgery procedures. *See* (Transcript from the deposition of Jason M. Highsmith, M.D., May 29, 2023, 63:14-18, 68:8-24; filed as Exhibit 2). Dr. Highsmith testified that they "trusted the agreement we had with his attorney" and believed the Defendants' letters of protection were "backed up by – by adequate coverage before providing approval to do the surgery." *See* (Transcript from the deposition of Jason M. Highsmith, M.D., May 29, 2023, 30:25-31:3, 32:16-20, and 43:23-44:3; filed as Exhibit 2). Plaintiff understood from the representations by the Defendants that there was coverage available to pay the invoices for the elective surgeries provided to the Defendants' client. (Transcript from the deposition of Jason M. Highsmith, M.D., May 29, 2023, 44:4-9; filed as Exhibit 2).

Before the second surgery, the Defendants claimed to have sent an "email" to the Plaintiff, claiming to have revoked the letter of protection. ("Email" from Tina Bennett; filed as **Exhibit 7**). The flaws in that assertion are that the "email" has no header, date, or reference to the sending party; the Plaintiff's representatives all testified they never received the email; and the Defendants have been unable to produce anything resembling an actual email.

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

– Exact date unknown (4-29-19)

Tina

To: Kiara Goodwine (kiara@orthoandneuro.com)
Subject: Scott DeMaskey

– Same email sent to Center for Advanced Spine

Kiara,

Because the at-fault party only had $30,000.00, and Scott DeMaskey's Underinsured Motorist Coverage does not apply, **ALL of the treatment Scott DeMaskey has received (and will continue to receive) must be filed under his private health insurance.** We cannot honor anymore treatment under a Letter of Protection. Please note Mr. DeMaskey's file accordingly.

Thanks,
Tina

Tina G. Bennett
Assistant to Michael A. Maucher
DeLuca & Maucher, LLP
P.O. Box 9
Goose Creek, SC 29445
(843)572-1711 ofc.
(843)572-1285 fax

www.DeLucaMaucher.com

When asked about the email, Dr. Highsmith testified

86:16 A. Honestly I would actually hesitate to
17 call it an email.
18 Q. Why is that?
19 A. Because it has multiple missing fields.
20 There's no header. There's no evidence that it was
21 even sent. There's no from. There's no sent date
22 or time. Honestly it looks completed fabricated
23 like somebody copied and pasted something in Word.
24 I mean, this is not an email. This is a document.
25 I would give it that.
87: 1 Q. Do you have, like, a background in,
2 like, IT or something?
3 A. I do. I started an IT company in med
4 school and -- a security IT company, so I'm very,
5 very familiar with that.

87:20 Q. And so -- well, so it's your testimony
21 today that you believe this is fabricated, and it
22 was never sent to Kiara?
23 A. Absolutely. We have no evidence, and I
24 understand that Mr. Maucher said they had no
25 evidence of it being sent either. So if both
88: 1 parties agree an email wasn't sent and suddenly it
2 shows up with no identifying information, it's
3 very, very suspect especially when it is such an
4 important issue like this.

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Q. Have you had conversations with Kiara about this?
A. Yes, Kiara is excellent, and I know she would not delete an email like that. She doesn't delete any emails. She didn't throw anything away.

(Transcript from the deposition of Jason M. Highsmith, M.D., May 29, 2023, 86:7-87:5 and 87:20-88:9; filed as Exhibit 2).

This purported "email"—*if it was ever sent*—would have been the first alleged notification to Plaintiff that the at-fault party had only $30,000 in coverage to pay the medical expenses for the surgeries Plaintiff provided to Defendants' client. (Transcript from the deposition of Jason M. Highsmith, M.D., May 29, 2023, 102:20-103:3; filed as Exhibit 2). Dr. Highsmith testified

We had a relationship with the attorney through the letters that, you know, this is egregious that he would have only $30,000 in coverage and they would approve not one but two surgeries. It's unbelievable to me.
Q. Well, now, did DeLuca & Maucher approve the surgeries?
A. Well, they provided coverage and agreement that they would cover the bills based on the letters of protection.
Q. Well, the letters of protection said that they would protect claims of settlement proceeds; isn't that correct?
A. It stipulates that, but I mean the fact that they don't know the coverage and promised a one million dollar policy early on but never -- never came to fruition.

A. It doesn't affect my treatment recommendations, no; but if it's an elective surgery, I'm not going to put someone through a huge bill if there's supposed coverage that doesn't exist --
Q. And then at least --
A. -- unless it's emergent.

(Transcript from the deposition of Jason M. Highsmith, M.D., May 29, 2023, 103:24-105:1; filed as Exhibit 2).

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ARGUMENTS IN OPPOSITION

I. Genuine issues of disputed material fact exist concerning the Breach of Contract claims asserted in the Verified Complaint and the proposed Amended Complaint.

Plaintiff contends that the agreement with the Defendants includes, as a material term, whether the Defendants' statements about the available insurance coverage were accurate. The Defendants disagree.

"The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." *Chandelle Prop. Owners Ass'n v. Armstrong*, No. 2022-001557, 2024 WL 3688317, at *5 (S.C. Ct. App. Aug. 7, 2024) (citing *Whitlock v. Stewart Title Guar. Co.*, 399 S.C. 610, 614, 732 S.E.2d 626, 628 (2012) (quoting *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009)). "Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." *Id.* at 615, 732 S.E.2d at 628 (quoting *McGill*, 381 S.C. at 185, 672 S.E.2d at 574). "It is a question of law for the court whether the language of a contract is ambiguous." *Id.* (quoting *McGill*, 381 S.C. at 185, 672 S.E.2d at 574).

"Where a contract is unclear, or is ambiguous and capable of more than one construction, the parties' intentions are matters of fact to be submitted to a jury." *HK New Plan Exch. Prop. Owner I, LLC v. Coker*, 375 S.C. 18, 23, 649 S.E.2d 181, 184 (Ct. App. 2007).

A. The parties dispute whether the agreement includes an implied term concerning Defendants' representations on the availability of insurance coverage.

Here, the contract is unclear as to the parties' intentions on whether the contract included a provision concerning the accuracy of Defendants' statements about the available insurance coverage. Such a dispute is a matter of fact that must be submitted to the jury. *Id.* The Defendants' Motion for Summary Judgment should be denied on this point as it is a matter of disputed fact for the jury.

The jury could infer from the evidence and testimony that the agreement included a provision concerning the accuracy of the Defendants' representations concerning insurance coverage. This Court should deny the Defendants' motion to motion for summary judgment because of the existing genuine issues of disputed material fact on this point.

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

B. The parties dispute whether the Defendants breached the agreement with the Plaintiff because the Defendants' representations on the availability and amount of insurance coverage were inaccurate.

The Verified Complaint alleges the Defendants' breach of the agreement with Plaintiff. *See* (Verified Complaint, ¶¶ 11-13, 22-24, 31, 33-34, and 37). The Plaintiff alleges the Defendants represented "'other arrangements' had been made such that the Plaintiff would collect the full value of the client's elective treatments from the funds the Defendants represented would be provided by various liability insurance policies that would cover the Defendants' client's personal injury claims in an amount over $1,100,000." *See* (Verified Complaint, ¶ 16). "The Defendants never explained to CAROLINA NEUROSURGERY, Dr. Highsmith, or their staff before Dr. Highsmith performed the first and second surgeries on the Defendants' client that the available insurance coverage was less than the $1,100,000 mentioned in the Defendants' January 21, 2019 email or that they would not honor the LOP." *See* (Verified Complaint, ¶ 25).

The jury could infer from the evidence and testimony that the Defendants breached the agreement because the Defendants' representations concerning insurance coverage were inaccurate. This Court should deny the Defendants' motion to motion for summary judgment because of the existing genuine issues of disputed material fact on this point.

II. Genuine issues of disputed material fact exist on the Unfair Trade Practices Act claims asserted in the Verified Complaint and the proposed Amended Complaint.

This Court should deny the Defendants' motion to for summary judgment on the Plaintiff's claims for violation of the South Carolina Unfair Trade Practices Act because there are disputes on whether the Defendants' suspect "email" attempting to alter the record on what was communicated about the Letters of Protection constitute unfair and deceptive acts. The jury could conclude those unfair and deceptive acts lead the Plaintiff to provide elective surgery procedures to the client when the Defendants did not know what insurance coverage was actually available for the client.

III. Genuine issues of disputed material fact exist on Negligent Misrepresentation claims asserted in the proposed Amended Complaint.

The Plaintiff's proposed Amended Complaint includes a claim for negligent

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

misrepresentation. To establish liability for negligent misrepresentation, the plaintiff must allege and prove (1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance upon the representation. *See AMA Mgmt. Corp. v. Strasburger*, 309 S.C. 213, 222, 420 S.E.2d 868, 874 (Ct. App. 1992) (referring to *Winburn v. Insurance Co. of North America*, 287 S.C. 435, 339 S.E 2d 142 (Ct. App. 1985)); *Fields v. Melrose Ltd. Partnership*, 312 S.C. 102, 439 S.E.2d 283 (Ct. App. 1993).

The parties dispute virtually every element of this claim, including whether the Defendants made "a false representation to the plaintiff." *Compare* (Transcript from the Rule 30(b)(6) deposition of DeLuca & Maucher, LLP, July 31, 2023, 28:4-8; filed as **Exhibit 1**) ("Everything that was stated was accurate at the time. When things changed, we updated Carolina Neurosurgery, ….") *with* (Transcript from the deposition of Jason M. Highsmith, M.D., May 29, 2023, 44:4-9; filed as Exhibit 2) (Plaintiff understood from the representations by the Defendants that there was coverage available to pay the invoices for the elective surgeries provided to the Defendants' client.)

The Plaintiff may recover damages based "upon a negligently-made false statement" if the jury determines that the Plaintiff "suffers either injury or loss as a consequence of relying upon the misrepresentation." *Winburn*, 287 S.C. at 444, 339 S.E.2d at 146. South Carolina law recognizes if the defendant "has a pecuniary interest in the transaction," as is undisputed in this lawsuit, the defendant has a "duty to exercise reasonable care in giving information…." *Id*. These general rules have been applied universally to support the recognition of a negligent misrepresentation claim where the misrepresented facts induced the plaintiff to enter into a contract or business transaction. *See, e.g., Pittman v. Galloway*, 281 S.C. 70, 313 S.E.2d 632 (Ct. App. 1984) (negligent misrepresentation claim for inducing purchase of property).

The parties do not dispute there was not $1,100,000 in insurance coverage available to pay the client's invoices with the Plaintiff for the two elective surgeries. The Defendants claim they did not know how much coverage was available, but what was represented was truthful based on what they knew when the representations were made. (Transcript from the Rule 30(b)(6) deposition of DeLuca & Maucher, LLP, July 31, 2023, 28:4-8; filed as **Exhibit 1**) ("Everything that was stated was accurate at the time. When things changed, we updated Carolina Neurosurgery,

….”). There is no legitimate dispute that the Defendants had a pecuniary interest in having the Plaintiff perform surgeries on the client as it is common knowledge that the greater medical expenses incurred by a personal injury plaintiff, the higher the likely settlement of that client’s claim will be. But the parties dispute whether the Defendants exercised “due care.” And also dispute whether the Plaintiff justifiably relied on the Defendants’ representations. These are disputed questions of material fact for ultimate determination by the jury.

The testimony of Dr. Highsmith, the exhibits to his deposition and other evidence included with this memorandum create genuine issues of material fact on each element of the negligent misrepresentation claim. Summary judgment is not available on this claim.

CONCLUSION

This Court should deny the Defendants’ Motion for Summary Judgment based on evidence and testimony available that create genuine issues of material fact on each cause of action in the Verified Complaint and the proposed Amended Complaint.

Respectfully submitted,

s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com

Counsel for Plaintiffs

Beaufort, South Carolina

August 16, 2024

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

EXHIBIT 1

STATE OF SOUTH CAROLINA	) COURT OF COMMON PLEAS
	) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	) CASE NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC.,	)
PLAINTIFF,	)
-VS-	)
MICHAEL A. MAUCHER, ESQ. and DeLUCA & MAUCHER, LLP,	)
DEFENDANTS.	)

CERTIFIED TRANSCRIPT

VIDEOTAPED

30(b)(6)

DEPOSITION OF:

DeLUCA & MAUCHER, LLP

MICHAEL A. MAUCHER

JULY 31, 2023

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

AdvancedONE LEGAL is now LEXITAS™

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

A-P-P-E-A-R-A-N-C-E-S

For the Plaintiff: Pendarvis Law Offices
By: Thomas A. Pendarvis, Esq.
710 Boundary Street, Unit A-1
Beaufort, SC 29902-4188
843-524-9500
Thomas@pendarvislaw.com

For the Defendants: Copeland, Stair, Valz & Lovell
By: Douglas W. MacKelcan, Esq.
40 Calhoun Street, Suite 400
Charleston, SC 29401
843-727-0307
Dmackelcan@csvl.law

Corporate Representative for Plaintiff:
Eric Weinberger

also present: Sowell & DuRant
By: Thornton F. Sowell, III, Esq.
1325 Park Street, Suite 100
Columbia, SC 29201

Videographer: Christopher Mills

INDEX TO EXAMINATIONS

Page

Mr. Pendarvis.....4

Reporter's Certificate.....100

Errata Sheet.....101

INDEX TO EXHIBITS

Page marked

No. 1 Plaintiff's Amended Notice of Deposition

No. 2 Verified Complaint

No. 3 Answer of Defendants

VIDEOGRAPHER: We're now on the record. Today's date is July 31st, 2023. The time is approximately 10:26 a.m. This is the beginning of the deposition of Michael Maucher as the 30(b)(6) representative of DeLuca & Maucher, LLP. Location is 40 Calhoun Street, Charleston, South Carolina. This deposition is taken in the matter of Carolina Neurosurgery & Orthopedics, Inc. versus Michael A. Maucher, Esquire and DeLuca & Maucher, LLP.

Will counsel please introduce themselves for the record.

MR. PENDARVIS: Thomas Pendarvis, counsel for the Plaintiff.

MR. MACKELCAN: Doug MacKelcan for the Defendants.

VIDEOGRAPHER: Okay. Will our Court Reporter please swear in the witness?

MICHAEL A. MAUCHER,
having been duly sworn, testified as follows:

EXAMINATION

BY MR. PENDARVIS:

Q Mr. Maucher, if you could state your name for the record, please.

A Michael Maucher.

Q Mr. Maucher, I know you're a lawyer, but the

rules require that I give you a few instructions at the beginning.

A I'll waive those.

Q Well, yeah, but the Supreme Court tells me at the beginning of each deposition that opposing counsel shall instruct the witness to ask deposing counsel rather than the witness's own counsel for clarification, definitions, or explanations of any words, questions, or documents presented during the course of the deposition; so I said that.

Number two, you know, if you need a break at any point in time, please let me know. We'll be glad to accommodate you.

A I appreciate that. Hopefully, we won't be so long that we need to be taking breaks.

Q I'm striving for that same objective.

A Amen.

Q Okay. You and I both are probably as bad as anybody about talking over for the court reporter, the other witnesses or the other person's comments. So I'm going to do my best, and I'm asking if you could do your best, to let each of us finish questions and answer before the other starts. Fair?

A I like that. Very fair. And of course, we'll both forget, but it'll be in the spirit of

AdvancedONE LEGAL is now LEXITAS™

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

civility.

Q Perfect. Well, to begin with, you've been presented with three deposition exhibits. Exhibit No. 1 is the Amended Notice of Deposition that contains the list of topics. And for your benefit, I trust -- let me ask you: Mr. Maucher, did you read the deposition notice?

A Mr. Pendarvis, I know that there was a prior deposition notice that looks like this that had me going to 18 Broad Street this morning, which I did. And this looks very similar, but I am prepared to go forward with my deposition.

Q Okay. Well, so do I understand then that you read -- what was presented as Exhibit 1 is Plaintiff's Amended Notice of Deposition. So is it correct that you read Plaintiff's Notice of Deposition?

A Exactly. There may have been -- there are multiple notices of deposition. I don't know -- I don't know the difference between them. Of course, I looked at them. Very impressed with your six-page intro, but, yes, I've generally looked over everything that I've seen. If we come across something that looks new to me, I'll let you know.

Q Okay. My understanding is and I stand to be corrected, but the only differences in the notice and

the amended notice is the first paragraph and the date on the last page, but I may stand corrected on that.

A If you certify that to me, I take you at your word.

Q Okay. Well, for your convenience, why don't we turn -- the topics for examination begin on Page 6 of the Amended Notice of Deposition, Exhibit No. 1. So if you don't mind turning there.

A I'm there.

Q And the other part of this exercise are -- deal with Exhibits 2 and 3. Exhibit 2 is the Summons and Complaint filed in this action. And Exhibit 3 is the Answer of Defendants Michael A. Maucher, Esquire and DeLuca & Maucher, LLP responding to the allegations in the complaint.

A Actually, it's Maucher. No L in there.

Q Okay. My apologizes.

A No need. I'll be calling you Mr. Pendarvis all day as long as we're having questions and answers. I just wanted to be accurate.

Q I do. Thank you very much. I do appreciate that.

A I'm not trying to be difficult, but, yes, I've seen both the verified complaint and the answer that our attorney filed.

Q The topics of examination are going to relate to the allegations in the complaint and the responses to those allegations. So it might be efficient for you to have those in front of you. Turning now to -- before we get into the actual topic of examination, could you describe what you did, if anything, to prepare for the depo today?

A So within the last -- it's been scheduled for what, about a month? At some point, I reviewed briefly, didn't memorize, Dr. Highsmith's deposition to understand his testimony. I reviewed my testimony Mr. Sowell took in a parallel case, somewhat related case. I reviewed Tina Bennett's deposition, and those depositions had a variety of documents that they referenced.

Q Okay. Anything else?

A That's pretty much it. I mean, it's -- everything's discussing the same e-mails and topics.

Q Very well. All right. One other housekeeping matter: I did get a letter last week from your counsel, and I want to, for the record, state we aren't accepting all the statements, and we didn't agree with some of the assumptions that were stated in the letter, but I think we'll deal with that as the letter suggests, as the questions and answers

come out during the course of this deposition. If objections are made, we'll certainly deal with them accordingly.

A I don't know if I understand what you just said.

Q Well, I wanted to say, for the record, we didn't stipulate to any of the assumptions that your counsel proffered in the letter last week. It's just a statement.

A I didn't really read that letter.

Q Okay. Fair.

A But I would think that what's discussed in the other deposition is still accurate. You probably don't have to go over everything unless you want to.

Q There are some things we'll need for this lawsuit that we may be able to summarily adopt what was stated earlier, but I think for this lawsuit, since it is an independent lawsuit, I'm going to need to have some record testimony and positions.

A Prior statement and all those exhibits speak for themselves. They're accurate. They're effective in this -- this legal action.

Q Okay. Well, I tell you what, let's take -- let's start with the topics on Page 6 of Exhibit 1, and I'm going to come back to the very first topic.

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

We're going to do that toward the end of the deposition, but I'm going to begin with topic of examination No. 2.

The topic for this examination is, "All facts, documents, information, and opinions upon which" the Defendants -- I'm going to -- it says, "DeLuca & Maucher," but I'm going to state Defendants for the sake of this deposition. Anyway --

MR. MACKELCAN: Hey, Thomas, if you're going to do that, are we considering this also Mike's individual deposition?

MR. PENDARVIS: No. Okay. This is -- how about we do this --

MR. MACKELCAN: I just want to make sure. I want to make sure I know what the scope is.

MR. PENDARVIS: Fair enough. I tell you what: Just for brevity, I'll call it D&M just so we can shorten it up and strive towards getting this thing finished.

THE WITNESS: I understand that you're referring to the law firm when you say D&M.

BY MR. PENDARVIS:

Q Very well.

A I'm the 30(b)(6) designee.

Q So back to No. 2: "All facts, documents, information, and opinions upon which D&M bases its contentions set forth in Paragraph 15 of D&M's Answer denying the allegations" "in Paragraph 15 of Plaintiff's Complaint."

Paragraph 15 in Plaintiff's complaint is on Page 4. And the response to those allegations is on Page 3 of the answer in Exhibit No. 3. I'll let you get those two out, and then we'll talk about that.

A All right. I'm looking at Exhibit 1, Page 6. You're looking at Question Number 2?

Q Yes, sir.

A And that refers to Paragraph 15 of Exhibit No. 2 that says, "Because the Lawyers' client did not have in-network health insurance." Is that the paragraph you're referring to?

Q Yes, sir.

A All right. My attorney, our attorney has denied that. Well, all the facts and documents would be every e-mail between my office and Carolina Neurosurgery. It would include all the discussions between Mr. and Ms. DeMaskey and Dr. Highsmith's office. It would include the fact that the DeMaskeys and my office requested that Dr. Highsmith use his Bluecross/Blueshield health insurance.

It would also -- it goes to the basis of this whole problem with Carolina Neurosurgery. They should have told Mr. DeMaskey that his Bluecross/Blueshield was not acceptable that they were not going to do the surgery under his Bluecross/Blueshield, at which point Mr. DeMaskey would have gone to one of the many other orthopaedic spine surgeons in the Charleston area to have the same surgery that Dr. Highsmith eventually performed.

Sort of an all-encompassing question, but that's generally the position that the DeMaskeys take. If -- if I understand it correct, assuming for purposes of my statement that Mr. DeMaskey signed the financial policy, albeit even if he didn't read every page in that financial policy, said that they did not take Bluecross/Blueshield, then that agreement between the DeMaskeys and Dr. Highsmith would have been modified by Mr. and Ms. DeMaskey advising Dr. Highsmith that Bluecross/Blueshield needed to be used to pay for the surgery.

And Dr. Highsmith modified their agreement by acquiescing and saying yes, give your health-insurance information to the ladies out front. And of course, I wasn't party to that discussion. That's all secondhand information that comes to me both from Mr. and Ms. DeMaskey, and it's also corroborated by the fact that Dr. Highsmith's file has a copy of Mr. and Ms. DeMaskey's Bluecross/Blueshield insurance card, Mr. DeMaskey's Bluecross/Blueshield insurance card.

Of course, taking another step back, you have to understand that from D&M's perspective, Mr. DeMaskey did have available Bluecross/Blueshield health insurance that we were aware that on a prior occasion Mr. DeMaskey needed surgery from a motor-vehicle collision, which we represented him, and that he used his Bluecross/Blueshield health insurance with Dr. Highsmith's office.

We didn't have anything to do with that on a prior occasion, and we really didn't have anything to do with that on this occasion. That was between Mr. DeMaskey and Carolina Neurosurgery.

Q Thank you, I think. I want to -- let's -- let's drill down on what facts D&M believes supports its basis to deny the allegations that are premised on Mr. DeMaskey, the lawyer's client. I was careful not to name him in the complaint for privacy reasons, but Mr. DeMaskey did not -- it's premised on this question is he did not have in-network health insurance that would permit services provided by Carolina Neurosurgery to be covered under his policy.

Therefore, assuming he did not have

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

in-network insurance, what's the basis for denying statement in bold --excuse me, in italics and indented, that the Carolina Neurosurgery policy required payment in full or arrangements being made for payments? What's the basis to deny that?

A My point exactly is that the surgery that Dr. Highsmith proposed Mr. DeMaskey had in-network health insurance through Bluecross/Blueshield. Dr. Highsmith should have brought that -- just because Dr. Highsmith didn't accept his Bluecross/Blueshield, of course Mr. DeMaskey didn't know that. He absolutely didn't know that.

He had Bluecross/Blueshield. Dr. Highsmith, but for his office -- office's mistake, should have simply said you need to go somewhere where your Bluecross/Blueshield is in-network, and none of this happens.

Q Are there any specific documents D&M can identify that support the basis for denying the allegations in Paragraph 15?

A Well, I think there were e-mails to Dr. Highsmith's office to provide all medical services under health insurance. That's currently health insurance. Of course, the document in Dr. Highsmith's file with DeMaskey's Bluecross/Blueshield corroborates

what the DeMaskeys say about their discussions with Dr. Highsmith.

Q Can you identify any specific e-mails that support denying the allegations in Paragraph 15?

A I would think that e-mails that suggest that Dr. Highsmith has to file Bluecross/Blueshield.

Q And the date and time of that e-mail?

A I don't have the documents memorized. They're -- you're familiar with them all. And they're all referenced in the other depositions.

Q Just so we're clear: This is the first deposition taken in this case.

A Correct. Just so we're clear: We said that my deposition that I gave in to Mr. Sowell that discussed these same topics continues to be my testimony, and you can incorporate it and adopt it in this case. And I would assume that Ms. Bennett's testimony is incorporated and adopted.

Q Let's take a look Topic No. 3, which states, "All facts, documents, information, and opinions upon which D&M bases its contentions set forth in Paragraph 16 of D&M's Answer denying the allegations contained in Paragraph 16 of Plaintiff's Complaint."

A Mr. Pendarvis, getting back to your other question, I just recalled: I did see an e-mail or a

letter, perhaps it was a letter. I don't know if it was an e-mail or a letter, but e-mails or letters of the type I guess from Jay Masty to you providing essentially all the documents that have been discussed and that are relevant to this case; I did see that. But again, that e-mail just had documents that were discussed in Ms. Bennett's deposition in detail.

So getting back to the next question, we're looking at Number 30(b)(6) Topic No. 3?

Q Correct?

A 16?

Q About the allegations in Paragraph 16, the complaint --

A That's denied.

Q -- and the responses to 16 and the answer.

A That's right.

Q All right.

A All right. So at this time, I don't understand what that means, at the time that the interrogatory's propounded at the time that we first started to see -- to represent Mr. DeMaskey. You can't admit something that you don't understand.

But moving on: It says based on representations of the lawyers in the first Letter of Protection. Let's be really clear: Mr. DeMaskey went

to Dr. Highsmith because he had an established relationship with Dr. Highsmith because he had performed surgery on him in the past.

We didn't -- we, anytime I say "we," refers to D&M. We didn't send DeMaskey to Dr. Highsmith. So I'm real confused by that. That Letter of Protection wasn't bargained for between Dr. Highsmith and our office. Mr. DeMaskey had a conversation with someone at Carolina Neurosurgery, and he advised my assistant, Tina Bennett, to send Dr. Highsmith a Letter of Protection, which we did. That Letter of Protection speaks for itself.

And moving on: And I think this contention in Paragraph 16 discusses a bunch of different topics, another reason to deny it.

However, it's my recollection that initially we were advised by the insurance company for the owner of the car in North Carolina that Mr. DeMaskey was involved in a wreck. We were advised initially that the car was stolen. And as you know, as an esteemed and knowledgeable attorney, if a car is stolen, then you have to use your uninsured motorist coverage. Uninsured motorist coverage I believe on the tractor or the truck Mr. DeMaskey was operating was a million dollars.

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 18

I think, at that time, Mr. DeMaskey had $100,000 underinsured motorist policy, and we didn't know if that paid -- would cover or would not cover. So early on, this is an accurate statement about the possible 1,100,000, but as time went on, for whatever reason, the insurance company, the owner accepted liability coverage, which reduced the policy to $30,000, at which point we let everybody know. We told Dr. Highsmith's office to proceed under Bluecross/Blueshield, which led to a second Letter of Protection, which was merely a Letter of Protection for anything not paid by health insurance. So I think that's why Paragraph 16 is denied.

Q Let's take a look at some of the -- let's put in context. The paragraph before references the financial policy of Carolina Neurosurgery. And the other arrangement phrase in that paragraph we just discussed under the earlier topic was the policy requires full payment unless other arrangements have been made. Okay? Context.

So the other arrangements we're talking about, I think you've just described, insurance coverage and some other things that were being considered, correct? At the time -- before the first surgery.

Page 19

A So you just said a lot. And a couple of different things. I'm trying to follow. Let's be very clear: What occurred between Mr. DeMaskey and Carolina Neurosurgery, we didn't have anything to do with that. He just went there as a patient. So you can't attribute to me Mr. DeMaskey and Carolina -- or DeLuca & Maucher to DeMaskey and Carolina Neurosurgery. I just did what my client asked me: I sent a Letter of Protection. Once things changed, I let everybody know.

Q Let's take a look at Exhibit 4 to the -- Exhibit 4 to Exhibit 2 for this deposition; that's the complaint. Take a look at Exhibit 4 to the complaint, and I want to take you to Page 2 of Exhibit 4.

A (Complies.)

Q The very first page of Exhibit 4 to the complaint, at the top of that page is a January 21, 2019 e-mail. I want to take you to the page before that. I mean, the page behind that. Sorry.

A Yeah, if you're trying to confuse me, you're doing a good job. All right. So this is still early, very early, a month after the wreck, and this is our communication to Kiara, who's I think the office manager or someone in authority at Carolina Neurosurgery, to file Bluecross/Blueshield.

Page 20

Two reasons: One, it looks like his injuries are serious, and he had preexisting injuries. In the world of representing somebody who's been injured from a wreck, the defense is always going to be, hey, you had a preexisting condition. And of course, he did; he had surgery with Dr. Highsmith in the past. And the insurance company is always going to point to the preexisting condition to evade responsibility.

I think, at this point, we still did not know how much coverage it would be.

Q Well, before we get into the language and I'm really focusing on this January 21st, 2019, e-mail transmitted at 9:24 a.m. by Ms. Bennett, is that Tina Bennett?

A That's right. She's my legal assistant.

Q To Kiara Goodwine. Before we get into the language here, I want to find out what had -- by January 21st, 2019, what had D&M done to investigate what coverage was out there for Mr. DeMaskey?

A I think, by that point, we had written UIM. I think we wrote liability. There was Carolina liability policy. We put OneBeacon on notice.

Q Had any of the carriers you just described confirmed the coverage that's stated in the -- in this e-mail from Ms. Bennett to Ms. Goodwine?

Page 21

A Well, the carrier for the at-fault party had advised us that it was a stolen vehicle, so that would be the million or actually says a million occupational, but at that point, we were not -- this e-mail doesn't discuss that.

Scott DeMaskey had $100,000 underinsured-motorist coverage. They had not verified whether or not it would apply or not. Of course, as you know, UIM only applies after all liability is exhausted. Sometimes UIM has an exclusion where if you make a recovery or if it happens at work, work-related injury, UIM at home doesn't apply; sometimes it does, and sometimes it doesn't. It's all dependent on the carrier.

Q So my understanding in the first part -- the sentence begins, "Because Mr. DeMaskey carries." You see that sentence in the e-mail on Page 2 of Exhibit 4 to the complaint?

A It says, Mr. DeMaskey carries $100,000 in Uninsured Motorist Coverage with Safeco, that's correct.

Q Okay. So in the first part of that sentence, if I understood your prior testimony, D&M had not confirmed the availability of $100,000 underinsured motorist coverage for Mr. DeMaskey. You've not

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 22

confirmed that, correct?
A I disagree. We were aware that he had it. We confirmed that he had it. We had not confirmed whether it would be applicable to this claim.
Q Okay. Had D&M confirmed whether the -- and I'm reading here, a million dollars in occupational accident coverage was available for this claim at the time it made this statement in the January 21st --
A We confirmed --
Q -- 2019 e-mail?
A I'm sorry. Were you finished? We confirmed that he had the policy. We applied for the policy. They had not told us one way or the other whether it would apply to either wages or payment of medical bills.
Q What supports the final phrase of this e-mail that begins with, "we are not concerned"? Can you read that into the record, please?
A I'm not your little pony. You can read it if you want to.
Q Sure, I'd be happy to. The Final phrase of this e-mail says, "we are not concerned that there will be enough" coverage over all coverage -- let me rephrase it and make sure I get this right.
"We are not concerned that there will be

Page 23

enough overall coverage to pay the claim."
A You read it correctly.
Q What -- what was the basis for that statement?
A That's -- that was our opinion at that time. Of course, that changed. And as soon as it changed, we let Dr. Highsmith's office know.
Q Was that after the first surgery or after the second surgery?
A It was before the first surgery, sir; you know that. You know these -- why would you try to put words in my mouth like that?
Q I'm asking.
A You know the answer. So why would you misstate -- why would you phrase a question that purposely is confusing trying to trick the witness? I'm here to answer all your questions, but you know that before the first surgery. I think there may be $2,600 in treatment at the point we said, "Hey, use his Bluecross/Blueshield." They should have done that. So I won't put words in your mouth if you don't try to put words in my mouth.
Q Did D&M look into whether the Carolina Neurosurgery was in-network or not and whether it would be available for the Bluecross/Blueshield policy

Page 24

for their services to be used?
A We didn't know anything. I already said this. We didn't know anything between DeMaskey and Highsmith. He went to Dr. Highsmith, and they didn't send us a copy of anything that he filled out. We were completely unaware of that.
The fact of the matter is, our only knowledge was that Dr. Highsmith performed surgery on injured people and filed their health insurance, because he had done it in the past. And in this case, we assumed that he did it in this case. What could be more clear? We said, "File his health insurance." Mr. DeMaskey -- Ms. DeMaskey said, "File my health insurance."
I think the big screw-up was Carolina Neurosurgery had just changed its business model within days of this accident. I think it may have been after the collision and before the surgery. I think that's the big screw-up. I just don't think the people upfront truly understood it, and because of that, Mr. DeMaskey had surgery with Dr. Highsmith. Unknown to Mr. DeMaskey, they weren't -- they didn't certify his procedures. I think -- that's just me. That's what I think.
Q As of the January 21st, 2019 e-mail, as of

Page 25

that date and time that e-mail was transmitted, D&M agrees that Carolina Neurosurgery had a right to rely on that, correct?
MR. MACKELCAN: Object to the form.
THE WITNESS: Let's -- let's take that step -- a step back. Are you referring to the first e-mail on January 21 or the second e-mail?
BY MR. PENDARVIS:
Q I'm referring to the e-mail transmitted at 9:24 a.m. Monday, January 21 by Tina Bennett to Kiara Goodwine, Page 2 of Exhibit 4 to the complaint.
A Well, that would go to the basis of whether D&M and Carolina Neurosurgery had a contract. I don't think we did, right? Wouldn't you have to have a contract for us to rely on that? We provided what our client requested us to do.
We were unaware that Dr. Highsmith accepted letters of protection. We've never had a client in my -- I don't know. Ms. Bennett's been my legal assistant for over 30 years. I've been with Pete DeLuca at DeLuca & Maucher for over 30 years. I've never had a client that treated with Dr. Highsmith before the DeMaskey matter under a letter of protection.
The fact of the matter is, the prior occasion

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 26

when Mr. DeMaskey was probably sent to Dr. Highsmith by his family doctor, Dr. Highsmith had accepted Bluecross/Blueshield. So I didn't have a contract with Carolina Neurosurgery. I didn't have an agreement with them.

What this shows is that we were just keeping everybody updated and advising Carolina Neurosurgery that it would be best to file Bluecross/Blueshield. And if they had done that, the $2,600 in care that had been provided up to that date would have been paid, and we wouldn't be here.

So as far as whether they're relying upon that or not, I can't put myself into their head. All I can tell you is what happened and what it means. I can tell you what I did. I can tell you what I was thinking, but I didn't have -- I didn't have a contract with Carolina Neurosurgery. Does that help?

Q So is this --

A Does that answer your question?

Q Is it D&M's position that Carolina Neurosurgery had no right to rely on statements in the January 21, 2019 e-mail transmitted at 9:24 a.m.?

MR. MACKELCAN: Object to the form.

THE WITNESS: I can't say to what was in their mind; I absolutely can't. We're just keeping

Page 27

them updated regarding everything that was occurring in this case.

BY MR. PENDARVIS:

Q Updated with truthful statements, is that what you're implying?

A At the time, that was what we understood to be true and correct. Yes.

Q So --

A There's -- there's no untruthful statements in there. I'm offended that you would suggest that anything in there is untruthful. You have to understand, Mr. Pendarvis: At the time that you said it, if later on it turns out to not be the case, that doesn't mean it was untruthful when it's said. Things change. And when things changed, we let Carolina Neurosurgery know, and they should have certified his surgeries.

The fact of the matter is, we thought and the DeMaskeys thought that Carolina Neurosurgery certified that both surgeries under his health insurance. Why would -- why would we not have that reasonable expectation based upon the facts as they exist?

Q Why wouldn't Carolina Neurosurgery have a reasonable expectation to believe that lawyers that are representing a patient that's being presented for

Page 28

elective surgery, that those lawyers are accurately stating the amount of coverage?

A Everything that -- I'm going to say it again: Everything that was stated was accurate at the time. When things changed, we updated Carolina Neurosurgery, and we provided them with information that was what we thought in their best interest to file it with Bluecross/Blueshield. They should have done that. And if they couldn't do that, they should have told us that, and they should have told DeMaskey that, and Mr. DeMaskey would have had surgery with someone else. We haven't -- we've done nothing wrong here.

Q It's clear this e-mail represents there's a million and one coverage and that the law firm's saying, "We're not concerned that there will be enough coverage overall to cover -- to pay this claim."

A Is that a question?

Q That's true, correct? That's what Carolina Neurosurgery heard from the lawyers, right?

A The e-mail says exactly what's in the e-mail. I've answered the same questions two times. If you want to ask me to answer it a third time, I'll be glad to do that. Well, this actually is the third time, but if you want to do it a fourth time, I'll do that. When you get to the fifth time, that might be

Page 29

annoying, harassing, and intimidating, but I'm not intimidated by you, so it would just be annoying and harassing. So I respect that you don't agree with my answers; I'm not asking you to, but you have to accept them.

Oh, and my last answer was meant with all civility that I can muster under the circumstances of being unreasonably sued.

Q Let's look now at Topic No. 4. It relates to allegations in Paragraph 18 of the complaint and corresponding Paragraph 18 in the answer.

A All right. So I am looking at Exhibit 1. You want me to look at what number again? 4?

Q This would have been allegations in Paragraph 18 of the complaint marked as Exhibit 2.

A All right. 18.

Q Of the answer marked as Exhibit 3.

A Exhibit -- as regarding Exhibit 3?

Q Correct.

A All right.

Q Allegations state, "On January 16, 2019, after surgery was recommended, Carolina Neurosurgery, Dr. Highsmith, and their staff requested written confirmation of the limits of coverage that would fund additional expenses for elective treatment to be

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

provided to the Lawyers' client. See email." And it refers to this e-mail thread marked as Exhibit No. 4.

A All right. Hold on.

Q The answer denies that allegation. And I want to find out what facts support D&M's denial of the allegations in Paragraph 18.

THE WITNESS: All right.

MR. MACKELCAN: Object to the form.

MR. PENDARVIS: What's wrong with that question?

MR. MACKELCAN: It's been asked, I wasn't counting, but according to Mike, four or five times. It's the same question that we were just talking about. I know -- I know it's a different topic in a different paragraph, but I think we've covered that. Anyway, objection stands, and he can answer the question, of course.

MR. PENDARVIS: That's not a form objection, but go ahead. All objections are reserved until the deposition --

MR. MACKELCAN: I know, but you asked me. I was just trying to answer you. We do this enough. I'm just trying to let you know that's what the objection was.

THE WITNESS: All right. Mr. Pendarvis, so

we're looking at Paragraph 18?

BY MR. PENDARVIS:

Q In the complaint, yes, sir.

A In the complaint, all right. I'm looking at Exhibit 4. That's where we were just looking at, but all right. Again, Exhibit 4, both the first page and the second page are e-mails from my office. The first to Kiara Goodwine. The second one also to Kiara with copies to Brooke Dunsil and Kary Garcia. They may have been at the surgery center. I don't really know who they are.

What's in these e-mails are true and correct. Everything here is true and correct at the time that we represented it to the world, to these individuals. And as far as this answer and the answer says we admit the e-mail thread, so that's good. And of course, the rest of it's probably denied because we don't know what was going through their minds. And if those e-mails were in response to confirmation of the limits, we told them exactly what we knew at that time. Fifth time we've answered the same question.

Q Are there any documents supporting the allegations or the denial of the allegations in Paragraph 18 that have not already been identified by you today?

A Not -- not that I know of.

Q Okay.

A I'm looking at what you've attached, and these are a lot of the same documents that I've read about in depositions, but I don't know if the depositions that I saw had a copy of the exhibits attached. But this matter's been going on so long that I'm familiar with everything.

Q Any other documents that you can identify?

A Not at this time.

Q Okay. Moving now to Topic No. 5: Topic No. 5 asked for discussion today about all facts, documents, information, and opinions of which D&M bases its contentions set forth in Paragraph 19 of its answer denying the allegations in Paragraph 19 of the complaint.

If you would take a look at Paragraph 19, the complaint, and tell me what facts support the denial of those allegations.

A I agree with you that the e-mail thread speaks for itself, but that was what we knew at that time, and it turned out not to be the case, because that -- your complaint's just not clearly drafted in the sense that we can't assume what we find at a later time to be accurate. So as I understand the

complaint, in a perfect world if I had the ability to foresee the future, well, yeah, that would have been different, but everything that we did at the time is -- was accurate what we knew to be true and correct. We didn't misrepresent anything to Dr. Highsmith or his office.

So I mean, I think this tries to tie in both the fact that this is what we said then, and later it turned out not to be the case, but they're two separate points of view, in my opinion. So yeah, I think that would support denying it in general.

Q What's inaccurate about the allegations in Paragraph 19 as stated?

A Well, because subsequently we learned that there wasn't 1,100,000 in coverage for expenses.

Q But this paragraph doesn't talk about later events. We're talking about on January 19th at 9:24 a.m. You can read the paragraph.

A Right.

Q And it's denied. Why? What's factually wrong about that?

A At that day, I would tend to agree that those e-mails speak for themselves.

Q So it's admitted. You're admitting what's in those allegations, correct?

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 34

MR. MACKELCAN: Object to the form.
THE WITNESS: What's in the e-mails. If that's referencing the e-mails, we admit those.
BY MR. PENDARVIS:
Q Where in Paragraph 19, the response to Paragraph 19 are you admitting anything?
A Isn't that a continuation of the contention above where it's just referring to the e-mails?
Q I'm looking at the answer. Bottom of Page 3 of the answer, Paragraph 19, I'm going to read it. "Defendants deny Paragraph 19 in the Complaint as stated." And I'm asking you: What in Paragraph 19 is incorrect as stated?
A So Paragraph 19, once again, refers to the e-mails, Exhibit 4, and my same answer with respect to those e-mails is applicable to this answer is all I can tell you.
Q Okay. Moving on to Topic No. 6, which focuses on the allegations in Paragraph 21 of the complaint and the response to those allegations in Paragraph 21 of the answer.
A Why did you skip Paragraph 20?
Q It's not a topic of examination for today.
A Oh, okay.
Q Do you want to expand?

Page 35

A No, I think -- I think that 21 -- because seems like you have very methodically gone through everything, and that each paragraph of the complaint refers to the Paragraph 4A that's what led me to believe that before we get to 21, we should probably talk about 20, but I'll skip it if you want to.
Q It's not a topic for today, and it would be a fair objection to say you're not prepared, because it's not a topic identified. So anyway, I'm going to stick to this list if it's okay with you.
A All right. All right.
Q So I turn it to you: What facts support the denial of the allegations in Paragraph 21 as stated?
A Well, the e-mail, Exhibit No. 4, we would respectfully request that all his treatment be filed with his private health-insurance company. It would be best for everyone involved if we do not capitalize for emphasis. Do the treatment under an assignment letter of protection, and it was our knowledge that -- well, we communicated this with Scott and Carol DeMaskey, and they advised us that they communicated with Dr. Highsmith on multiple occasions the exact same information; that would be the information.
Q Were there communications directly from D&M to Carolina Neurosurgery about what D&M had learned about the lack of coverage under the uninsured-motorist policy that might have been available to Mr. DeMaskey?
A Not that I know of.
Q Were there any communications in writing --
A Well, wait a minute.
Q I'm sorry.
A Maybe later on when we told them it was only 30,000 in liability coverage, that would be communication, wouldn't it? I would think. You have all this, right?
Q I'm not here to testify today. That's D&M's job. So I've got to get it from you.
A Well, I'm familiar with an e-mail. It would be superhuman. What is it when somebody has total recall, eidetic memory? I don't have that. So I know. Wouldn't that be great if you did. We've all met people who do; they're truly brilliant, but I don't.
So I do know that at some point, we notified Carolina Neurosurgery there was only 30,000 in coverage. I do know that before the first of the two surgeries that we advised Carolina Neurosurgery to file his Bluecross/Blueshield. So other than that, nothing comes to mind. And I do know the DeMaskeys,

Page 37

of course from what they told us and of course what I assume now is that they did tell that to Dr. Highsmith and his staff, because his Bluecross/Blueshield card is in their file. There'd be no reason for that card to be in their file other than if Mr. DeMaskey gave it to them as he says.
(Off-record discussion.)
BY MR. PENDARVIS:
Q Moving now to topic No. 7, these are -- I'm going to move up to 30,000 feet for the next long series of questions. They are basically in the places where allegations in the complaint were denied, and we're trying to find out the basis for the denial.
A All right.
Q So now we're -- now we're dealing with allegations in Paragraph 25 corresponding to Paragraph 25 in the answer where the Defendants deny the allegations as stated. I want to find out the factual basis for D&M's denial of the allegations in Paragraph 25 of the complaint as stated.
A All right. Now, of course, I guess I should have prefaced every answer. We have very competent counsel who's filed an answer on our behalf. So obviously, I can't get into attorney/client privilege. You wouldn't ask me about that either. So obviously,

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 38

Attorney MacKelcan could have some insight on these at some point, but I rely upon him to file an answer.

So getting to Question No. 25 -- actually, it's Question Topic No. 7.

A Okay.

Q Dealing with Paragraph 25 and your response to those allegations in the answer.

A I disagree with that. I deny that, yes. I think the e-mail saying use Bluecross/Blueshield is clearly communication that there's -- that there's something wrong. There could be something wrong. I think that would be a basis to deny.

Q Well, let's make sure we're talking about the same thing because the allegations in Paragraph 25 don't mention Bluecross/Blueshield or health insurance coverage that Mr. DeMaskey might have. It's referring to the $1,100,000 in coverage referenced in the January 21st, 2019 e-mail talking about underinsured coverage and the --

A Occupational.

Q -- OneBeacon Occupational Accident Coverage. That's what we're talking about here. What's the basis for denying Paragraph 25 as stated, factual basis?

A Because you referred to before he performed

Page 39

the first or second surgeries. So I think the overarching, if you want to move up to 30,000 feet, I think you said, we and the DeMaskeys told Dr. Highsmith, "use his Bluecross/Blueshield." That's communication.

Q Was there any communications explaining the lack of insurance coverage through the underinsured or the accidental -- occupational accident coverage?

A Not at that time, no, because we did not know whether either of them would pay. The fact of the matter is, at this time, I don't even know if liability had accepted liability and it was minimum limits North Carolina policy. I think that may have happened after. I don't know. I don't have that memorized.

Q Were there any communications to Carolina Neurosurgery that expressed any concern that there might be a lack of coverage in the underinsured or occupational accident coverage?

A Not that I'm aware of, just the letter saying "use Bluecross/Blueshield." You have to understand, I don't have -- I didn't have an agreement with Carolina Neurosurgery. There's no contract. I didn't send DeMaskey there. DeMaskey asked us to -- said that they wanted us to send a letter of protection, which

Page 40

we did, and we told them not to use that letter of protection but to file Bluecross/Blueshield, as we assumed they would, as they had in the past, as every surgeon in the Charleston area would do, except Dr. Highsmith who probably changed -- who changed his policy within a couple of days of these events.

Q Are there any other documents related to the denial of the allegations in Paragraph 25 that you haven't described?

A Not that I'm aware of.

Q Okay. Moving now to Topic No. 8, this relates to allegations in Paragraph 37 of the complaint and the corresponding denial of those allegations in Paragraph 37 of the answer. I'd like to find out what the factual basis for the Defendant's denial of the allegations in Paragraph 37?

A So I don't think we're saying that we're not -- that we're paying whatever's not paid by private health insurance. There was a letter of protection. The letter of protection speaks for itself. And at the time, as we keep discussing, of the January 21 e-mails, that's the infor -- that information was accurate as we knew it at the time it was communicated.

So to suggest that that e-mail was false is

Page 41

offensive to me. It's offensive. It's false. It's not it wasn't false. It was true at the time that it was made. We're just giving them the information that we had as the case evolves and then proceeds.

I keep coming back to the fact that we told Carolina Neurosurgery on behalf of Mr. DeMaskey -- we knew that Mr. DeMaskey and Carolina Neurosurgery had a doctor-patient relationship. We told Carolina Neurosurgery to use his Bluecross/Blueshield. Our concerns were that Mr. DeMaskey had preexisting conditions; that's a defense. I think another concern was there really wasn't a lot of property damage in this wreck, the December wreck. That's always -- that's always a problem for somebody -- for a plaintiff's attorneys, such as me, trying to represent an injured individual and parse out what's preexisting as opposed to what's caused by a wreck, so...

Q Did D&M make any communications to Carolina Neurosurgery about your concern about a lack of property damage to support the claim?

A No, I don't think that would have come within the purview of our representation of Mr. DeMaskey. I represented Mr. DeMaskey. I didn't represent Carolina Neurosurgery.

Q Let's take a look. Part of the allegations

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 42

in Paragraph 37 refer to the -- refer to a letter of protection. Let's take -- if you don't mind flipping to Exhibit 6 of the -- to the complaint. The second page of Exhibit 6 is a letter of protection. Take a look at that, please.

A Right. A standard letter of protection that we've sent to medical providers for over 30 years ago.

Q And who signed that letter?

A It's stamped me.

Q Did you physically place the stamp there?

A No.

Q Someone else did?

A I'm sorry. What was your question?

Q Someone else did place the stamp on Exhibit -- Page 2 of Exhibit 6?

A My legal assistant would have.

Q Okay. And contracts are agreements, right?

THE WITNESS: Of course, they are.

MR. MACKELCAN: Object to the form.

THE WITNESS: Of course, they are.

BY MR. PENDARVIS:

Q Okay. And in the first sentence of this letter, With regard to the above-named individual, please accept this correspondence as our Law Firm's agreement to protect any portion of your bill not paid

Page 43

by private health insurance out of any settlement proceeds we receive arising from the incident referred to above, correct?

A It says what it says. So wouldn't a condition precedent be for Dr. Highsmith to do the surgeries under private health insurance that the DeMaskeys had?

Q Where is the reference to insurance in here?

A It's right there plain as day, "not paid by private health insurance."

Q Okay. So --

A Private health insurance, which was Bluecross/Blueshield.

Q And if there was no private health insurance available for Dr. Highsmith's services then that condition was satisfied, correct?

A This agreement was private health insurance for the surgery that Dr. Highsmith proposed. The fact that Dr. Highsmith did not let Mr. DeMaskey know that he was not submitting it and getting certified through Bluecross/Blueshield, that's Dr. Highsmith's error. So, no, I disagree with you. I said in my other deposition and I'll say in this deposition as many times as you want me to, Mr. DeMaskey had Bluecross/Blueshield health insurance.

Page 44

Q But Bluecross/Blueshield health insurance was not -- excuse me. Carolina Neurosurgery was not an in-network provider, and that Bluecross/Blueshield coverage was not available for any services Dr. Highsmith or the Carolina Neurosurgery provided, correct?

A Now, that's two different issues. You have to understand that we have nothing to do with certification of a medical procedure with a client's health insurance; that's between the client and the medical provider.

And in this case, Mr. and Ms. DeMaskey are very clear, and you've seen the statement that they provided, I think the video statement they provided, that they advised Dr. Highsmith personally on multiple occasions to -- that they had to use Scott's Bluecross/Blueshield insurance.

So, yes, it existed. Yes, it existed for the type of surgery that Dr. Highsmith proposed. Did I not know that doctor -- did I -- was I -- you're trying to suggest that I might have been aware that Dr. Highsmith was not in-network. No, I wasn't aware, nor would I ever be aware of that for any client. In fact, Mr. DeMaskey wasn't aware of that.

Q Really? Let's take a look at Exhibit 10,

Page 45

third page, Exhibit 10 to the complaint Page 3. Please, take a look at that.

A All right. I'm looking at it.

Q Actually, I'm sorry. I said page -- it is Page 3.

A So what is the exhibit?

Q Exhibit 10.

A All right. Let me look.

Q At the very top, it says, "Carolina Neurosurgery & Orthopedics."

A I'm with you.

Q And there's a bold underlining at the bottom half of the page. It says, "Please Provide a copy of your insurance card." And do you see where Mr. DeMaskey checked, "I do not have Health Insurance at this time"?

A Mr. Pendarvis, I'm looking at Exhibit -- is my Exhibit 10 the same as your Exhibit 10? Am I looking at the wrong thing?

Q Yeah, Page 3 of Exhibit 10.

A Oh, Page 3. All right. I didn't hear the Page 3 part of it. All right. All right?

Q And do you see where Mr. DeMaskey is checking that he does not have private health insurance? "I do not have Health Insurance at this time."

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 46

A A couple of points here.
Q First off, answer my question. Do you see where Mr. DeMaskey has checked and represented to Carolina Neurosurgery that he did not have health insurance?
A I don't know if that's Mr. DeMaskey's signature. I don't know if that's Mr. DeMaskey's -- once again, I don't have the ability to predict the future, nor do I have the ability to go back in the go-back time machine and know what Mr. DeMaskey did at Dr. Highsmith's office.
I can tell you that relying upon my own personal experience of being on this planet many years that when I go for a medical procedure, there are numerous documents that I complete and perhaps I don't pay careful attention to every document. With reference to this, if you're telling me that Scott DeMaskey is going to say that that's his signature, well, okay.
If you're going to tell me that he checked that, okay. I don't know who checked that. I do know that I can't help but wonder how it is that Mr. DeMaskey's Bluecross/Blueshield insurance card is in Dr. Highsmith's file. Now, of course, I didn't know that until litigation, at which point I guess

Page 47

Mr. DeMaskey got a copy of Dr. Highsmith's file. I didn't know any of that. All I knew that -- was that Scott and Carol DeMaskey told me and Tina that every time he was over there with Dr. Highsmith that he was assured that they would provide his surgeries and file it with Bluecross/Blueshield.
I do recall reading maybe Mr. Sowell's deposition of Ms. Bennett that there are some documents where Mr. DeMaskey says I have insurance. There's other documents where it says I don't have insurance, but it's irrefutable that they were aware that he had insurance, his insurance card's in their information that they had on him.
So I wasn't there when this was executed. Of course, it says in the red "Redacted." I don't know what that means. I don't know. It looks like there are some highlights here: I don't know what any of that means. But it says, "Please Provide a copy of your insurance card." I see how it's -- it would be incongruous for him to check, "I do not have Health Insurance at this time," but there's a copy of his insurance card in their file. It just doesn't make any sense to me. I don't know. Have I answered your question?
Q Hard to tell. All right.

Page 48

A I know. It wasn't a good question, but go ahead. I did my best with it.
Q Topic No. 9 of the deposition notice deals with allegations in Paragraph 38 of the complaint and the corresponding denial of those allegations in the answer to the allegations in Paragraph 38. And I'll say to you, the answer states in response to the allegations in Paragraph 38, "Defendants admit only that Defendants do maintain and have maintained that Plaintiff should have submitted its invoices to the health insurance carrier for Defendant's client. Defendants deny the remaining allegations."
That's the part I want to find out today. What is the factual basis for denying the remaining allegations in Paragraph 38 of the complaint?
A I guess it's going to sound repetitious, but we at the time did not know that Dr. Highsmith's office did not accept Mr. DeMaskey's Bluecross/Blueshield insurance. We assumed that Dr. Highsmith was in-network because Dr. Highsmith had previously performed a major orthopaedic-type surgery on Mr. DeMaskey and used his Bluecross/Blueshield insurance.
Mr. DeMaskey did not know that Dr. Highsmith would not take his Bluecross/Blueshield insurance.

Page 49

The fact of the matter is, Mr. DeMaskey and Carol DeMaskey were aware that Dr. Highsmith assured them that the surgeries would be performed under his health insurance. So, yeah, that would be the basis of the denial. So I did not -- we did not know. We, I say I. We did know that Carolina Neurosurgery was out-of-network.
Q Okay. Anything else in response to that question?
A Yeah. Wouldn't it have been really easy when we advised Carolina Neurosurgery to file Bluecross/Blueshield health insurance, available Bluecross/Blueshield health insurance? Wouldn't it have been really easy for Kiara or Dr. Highsmith to simply say, "We're not in-network to provide it under your health insurance"? I keep asking myself. I keep coming back to that. And the answer is, yes, it would have been very easy. Should it have been done? The answer is also, yes. As far as the documents, all the documents speak for themselves.
Q And they disregard the law firm's statements about available underinsured coverage and accident insurance coverage as part of that decision to proceed with the Allstate policy you're describing?
A Well, now you're talking about something

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 50

different.

Q I am.

A So I think we discussed, on multiple occasions, that what we represented with respect to the occupational policy was absolutely true at the time that it was represented. Same thing with the underinsured motorist coverage.

Q Okay. Now let's turn to Topic No. 10. This deals with the allegations in Paragraph 41 of the complaint and the corresponding Paragraph 41 in the answer denying the allegations in Paragraph 41 of the complaint. And I want to ask what is the factual basis for the denial of the allegations that Carolina Neurosurgery and the Defendants in this case, including D&M, entered into a contract described earlier as the LOP?

A I don't believe that the letter of protection is a contract; I just don't. It's just our standard letter of protection.

Q And how do you characterize the word "agreement" in that letter. We agree to do this, and you agree to do that; that's not a contract?

A It's not as if we sent Mr. DeMaskey to Dr. Highsmith's office and requested that he be seen and treated under a letter of protection. It's just

Page 51

our standard letter of protection. In this case, Mr. DeMaskey advised us that Carolina Neurosurgery wanted us to send it. We sent it on Mr. DeMaskey's behalf.

Q Is it D&M's position it had no obligation to perform the agreement that's stated in the letter?

A We would do exactly what's stated in the letter. The first letter of protection will protect your bill for services out of the proceeds or settlement or verdict in the event that there is sufficient, and the patient's ultimately responsible. As you know, attorneys can't guarantee payment to doctors. All we can -- all we can say is what we do out of proceeds of the settlement or verdict.

Q But that was an agreement, correct?

A It was on behalf -- between Mr. DeMaskey and Dr. Highsmith. Dr. Highsmith, they didn't bargain with us for it. They didn't say, "Hey, DeLuca & Maucher, send us a letter of protection, and we'll provide services." The fact of the matter is, they should have used the health insurance, the Bluecross/Blueshield. I've said it multiple times, and I'm sure I'll say it multiple times until we're done.

Q So are there any other factual things,

Page 52

events, conversations, documents that support the denial of the allegations that Carolina Neurosurgery and the lawyers, the Defendants entered into a contract described earlier as the LOP?

A I'll stand on all of my answers up to this point and no other documents.

Q Okay.

A Or conversations that I'm aware of at this time.

Q And Topic No. 11 -- thank you for that. Topic No. 11 for today relates to the allegations in Paragraph 43 of the complaint and the corresponding Paragraph 43 in the answer. Paragraph 43 in the complaint alleges the lawyers breached the LOP. And there's a denial of that. And how -- what's the basis for -- factual basis for the denial of those allegations?

A I stand by all my prior answers. This is the same question for the fifteenth time.

Q Well, not exactly. The allegations are that the lawyers breached the terms of a letter of protection. This is under the heading, breach of contract. So I have to disagree with your characterization. So I'm trying to find out, does the denial mean that there was a contract and it wasn't

Page 53

breached or there never was a contract or what?

A All the above. So at the time that we advised them -- well, prior to any surgeries being done, we advised them we essentially withdrew that letter of protection, then we gave a second letter of protection. We advised them to use his health insurance. So the essence of the letter of protection goes to the available health insurance, liability insurance and health insurance. So we still didn't have the liability issue clarified at that time.

But obviously, we were concerned enough that we advised Dr. Highsmith to not proceed under the letter of protection on behalf of Mr. DeMaskey but rather to file his Bluecross/Blueshield insurance. Dr. Highsmith had followed that, if Dr. Highsmith had listened to his patient and done that, he wouldn't have performed surgeries that were not covered.

Q Do you want to take a break?

A Yeah, let's go five minutes.

VIDEOGRAPHER: Off the record at 11:47.

VIDEOGRAPHER: On the record at 11:54.

BY MR. PENDARVIS:

Q Okay. Let's turn now to -- we finished 11. We're looking now at the Topic No. 12. This relates to the allegations in Paragraph 49, and I'm going to

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 54

apologize on the record for the poor paragraph numbering in the original complaint. There's -- Microsoft and I were just not having a good day.

Anyway, the allegations about Paragraph 49 that we want to talk about is in Paragraph 49 on Page 10 of Exhibit 2. In its answer -- in their answer, the "Defendants admit only that they engaged in trade and commerce in practicing law in the course and scope of their representation of Defendants' client." The remaining allegations are denied. And I want to find out what's the factual basis for the denial of the allegations in Paragraph 49 of the complaint?

A Is that a question?

Q Yes.

A We have not engaged in unfair or deceptive practices, and we have not in our -- obviously, obviously. And then it goes on to say our deceptive acts or practices was willful. That's all denied. That's silly. That baffles me. That is preposterous. That is offensive. And all the facts, as I understand them, we -- we all have the same facts, all the same e-mails.

Q Are you able to identify any specific facts supporting the denial of the allegations in Paragraph 49?

Page 55

A That incorporate every statement and every document that we've talked about.

Q Turning to the next topic, which is the -- focuses on the allegations in Paragraph 50 that's -- and the corresponding denial of those allegations in Paragraph 50 of the answer, and Paragraph 50 in the complaint is that "Lawyer's conduct is capable of repetition," and it's been denied. I would like to find out the factual basis for the denial that the lawyers' conduct alleged in this complaint is not capable of repetition.

A All right. So I'm a little confused as where we are. What question on Exhibit No. 1 are we at?

Q The topic of examination is Topic No. 13.

A All right.

Q It's Page 7 carrying over to the top of Page 8. And it refers to Paragraph 50 in Exhibit 2 and Paragraph 50 in Exhibit 3.

A That's denied, correct. It should be denied.

Q It is, and I'm trying to understand the factual basis for denying the statement that the lawyers' conduct is capable of repetition. How is it not capable of repetition?

A This is a fact-dependent circumstance with Mr. DeMaskey going to Carolina Neurosurgery, a place where he's gone in the past to be treated by a doctor who's done surgery on him in the past. This is a very unique and singular event in the practice of law.

Page 56

This case rises and falls on its facts. The fact of the matter is that DeLuca & Maucher, we were not false and deceptive. The fact of the matter is, DeLuca & Maucher, you would have us colluding with Mr. DeMaskey to obtain services and somehow deprive Dr. Highsmith and his practice of being paid. That's furthest from the truth.

If you take a step back and look at it all, we told Dr. Highsmith, "use his Bluecross/Blueshield health insurance so that you get paid." We didn't know that Dr. Highsmith did not take the DeMaskey's Bluecross/Blueshield health insurance. The fact of the matter is, Mr. DeMaskey and Ms. DeMaskey had no idea that Dr. Highsmith and Carolina Neurosurgery did not take his health insurance.

So this is a very specific event, and I think the mistake, if there are any, lies with Carolina Neurosurgery. So as I understand unfair trade practices and fraud and things like that, you have to show that something that's capable of repetition. I think that's like -- once again, I'm not nearly as smart as you or Beth, but I think it's capable of repetition's something that happens over and over, and that's just not the case here.

Page 57

This is just very unique facts and circumstances. I've never run into a doctor -- a surgeon who doesn't take health insurance. I can't say offhand that I've ever run into anybody who's a surgeon. So, no, I don't think it's capable of repetition at all. I think that would be the basis for denying that. And of course, my attorney, who is very smart, might have another explanation for that.

Q We're here today to get D&M's position on it, and it was a properly-noticed deposition. And you're here to give testimony on behalf of D&M. Didn't D&M testify earlier today that this letter of protection attached as Page 2 of Exhibit 6 of the complaint is a standard letter of protection?

A Correct.

Q Didn't that testify earlier?

A Correct.

Q So if it's a standard letter, has it been out -- been issued more than once?

A Right, but I think --

Q No, answer the question. Yes, has it been issued more than once?

A Yes.

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 58

Q How many times, approximately?
A Often.
Q Hundreds?
A Probably more. Thousands.
Q Okay. So if D&M has issued hundreds of these letters of protection, how can it factually claim that this isn't -- this whole series of events is not capable of repetition?
A Easy. Because it says, the letter of protection that we sent, not paid by health insurance. They didn't file health insurance. That was a condition preceding. This is a unique circumstance. And that second letter of protection was sent before any of the surgeries. So, yeah, I stand by it. You may not like the answer, but you have to accept it.
I don't think it's capable of repetition. I think this is a very unique circumstance in which Dr. Highsmith and his office ignored very clear instruction to file the patient's Bluecross/Blueshield insurance from my office and ignored very clear instruction from the patient to file Bluecross/Blueshield insurance. Yeah, I think it's a unique circumstance. So I'm comfortable with the denial that our attorney filed on our behalf.
Q Turning now to Topic 14, identify the facts

Page 59

supporting the affirmative defense of failure to mitigate, then we'll talk about documents. First, let's talk about what's the factual basis for the failure to mitigate affirmative defense.
A All right. Just so we're clear: Exhibit 3 is the answer. Page 8, "First Affirmative Defense (Failure to Mitigate Damages)."
Q Yes, sir.
A Well, I think Carolina Neurosurgery, correct me if I'm wrong, has sued us for the entire amount. There's 15,000 in our trust account earmarked for Carolina Neurosurgery. They've never acted on that, asked for it. We've offered it multiple times. I think we offered it to you. We offered it to the other attorneys who contacted us and tried to blackmail us to get us to pay Dr. Highsmith's bill. We've refused their blackmail attempts.
I say, "blackmail." I guess, you know, when somebody suggests that we should pay something that we don't owe, I interpret that as blackmail. That's just how I perceive it. I don't know. So, yeah, we don't owe it, but there's 15,000 there for Dr. Highsmith. Why he doesn't take it is beyond me.
Q Are there any other factual bases for the claim failure to mitigate?

Page 60

A Of course.
Q Okay. What are they?
A Should have filed Bluecross/Blueshield, right? Isn't that -- well, of course, I can't ask you questions as much as I'd like to. If he had filed Bluecross/Blueshield, he would have been paid for his surgeries.
Q Is D&M's position that an out-of-network provider be paid for coverage that's not -- in which they're not in the network; is that the position D&M's taking?
A You're ignoring all of my answers to date. Our clear position is that we don't have anything to do with Highsmith -- when I say "Highsmith," I don't mean any disrespect. Carolina Neurosurgery. It's just easier to say Highsmith. Highsmith and DeMaskey, they have a doctor-patient relationship they entered into. They may have entered into a contract, right? And we didn't have anything to do with that.
And as far as Mr. DeMaskey asking that his Bluecross/Blueshield be filed and Dr. Highsmith ignoring that, yeah, I think that's failure to mitigate from a legal standpoint. Us advising Dr. Highsmith to file Bluecross/Blueshield at a time when both our office and the DeMaskeys assumed that

Page 61

Dr. Highsmith accepted it, that would be failure to mitigate.
Now, after ignoring those very obvious requests, instructions if you would, they ended up suing DeLuca & Maucher for the entire bill. That's preposterous in my opinion. They failed to mitigate their damages. They should have filed insurance. And once there was a recovery, gets sent a letter of protection. They should have accepted that money.
Q Any other factual basis for --
A Nothing else that comes to mind right now.
Q Try and let me finish, just so our record's clear.
A Well, you say if there's anything else that comes to mind; there's not at this time. Were you going to say something after that comes to mind?
Q Yeah.
A I apologize. I give you my sincere apologies. We talked over each other.
Q Are there any specific documents that come to mind after you were preparing for this topic that support the failure to mitigate affirmative defense?
A None other than what we've discussed, e-mails, things like that. I'm sure there were letters that -- I saw a letter with a division of the

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

30,000 in liability settlement in which we took no fee. The DeMaskeys didn't receive anything, but just the medical providers would receive those funds with the majority going to Dr. Highsmith. There were competing interests for the limited minimal limits funds, as you're well aware.

Q Why wouldn't DeMaskey and Luca -- DeLuca take a fee?

A Why wouldn't DeMaskey take a fee?

Q Yes.

A I don't know.

Q No, no. Why would the law firm not take a fee from its representation of Mr. DeMaskey?

A Because there was an insufficient recovery. DeMaskey is someone that we had represented previously, probably felt bad about how Dr. Highsmith's office screwed this all up. DeMaskey did get the benefit of the surgery. Dr. Highsmith did do two surgeries and fixed his accident-related injuries. DeMaskey is fortunate he's back -- he's back to work. He's a good guy, if you ever take his deposition. I think the jury's going to like him.

So DeMaskey got the benefit. And us, sometimes we just do the right thing by medical providers, which is what we were doing with reference

to Dr. Highsmith and all the other medical providers. We're just not bad people.

Q Let's go now to Topic 15.

A Say it again?

Q Let's move now to Topic 15, all facts, documents, information, and opinions upon which D&M bases its contentions in its Second Affirmative Defense, (lack of mutual assent).

A I think that defense goes to the whole issue that we didn't have a contract between Carolina Neurosurgery and DeLuca & Maucher. We did not send Mr. DeMaskey to Carolina Neurosurgery and ask for the letter of protection. The fact of the matter is, Mr. DeMaskey went to Carolina Neurosurgery on his own and just told us that Dr. Highsmith requested a letter of protection, which is what we sent.

Q What was the purpose of the letter of protection?

A Exactly what it says.

Q Can you characterize generally the purpose behind the letter of protection?

A Exactly what it says. There's two letters of protection, right?

Q Yes.

A So the second letter of protection, was it

emphasized to file private health insurance and will protect what's not paid by private health insurance? I mean, letters of protection, Mr. Pendarvis, are exactly what they say.

Q Letters to protect the healthcare provider, so they will be able to provide services for the client and be protected out of any recovery; is that fair?

A No, that's absolutely not what it says.

Q Okay.

A Why would you say that? It says what it says. I mean, you know what it says. You can read. It says exactly what it says.

Q Okay.

A I don't -- I don't disagree with what it says.

Q Where was the -- what is it that is the basis of the claim for lack of mutual assent? What is it that was to be agreed upon and assented to?

A I don't think there was anything that was agreed between Carolina Neurosurgery and DeLuca & Maucher. We just sent the letter of protection that Dr. Highsmith requested.

Q So D&M is not accepting the statement in the first sentence of the March 7, 2019, second letter of

protection? You said there was no agreement.

A Can I see that?

Q Yes, you did.

A What -- that's 10, was it?

Q It's Exhibit 10 -- I mean, Exhibit 6, Page 2.

A All right. Says letter of protection covers whatever is not -- I'm looking at the e-mail to Kiara not capitalized emphasized paid by private health insurance. And what's underlined in the second page may have been -- I don't know if it was underlined before it went out. I don't know. I don't know why that's underlined.

Q But you're -- is D&M denying the statement about there's an agreement to protect? Is that -- you said that there was no agreement. You'd accept that this is an agreement in this first sentence, right?

A Agreement between Mr. DeMaskey and Carolina Neurosurgery. We were just carrying out --

Q I don't know if I -- that's what it says. Doesn't it say, "Law Firm's agreement"?

A Right.

Q So where's Mr. DeMaskey in that -- in that phrase?

A Well, I'm just telling you, the agreement is for Mr. DeMaskey.

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Q That's not what this letter says, is it?
A Well, the letter says what it says. I'm not going to argue with you.
Q Yes or no. Does this agreement say Mr. DeMaskey anywhere about -- within ten words of the word agreement?
A It's the agreement to protect any portion of your bill not paid by private health insurance.
Q So who are the parties to that agreement?
A Mr. DeMaskey, and we were communicating this on his behalf.
Q So where does it say that?
A I'm just -- I'm just telling you how I interpret it. That's what it means to me. That's my answer.
Q There's no law firm agreement here?
A You can't change my answer. You may not like it, but that's my answer.
Q You're staying with that answer. Thank you.
A It is my answer.
Q Stick with that. Okay. Now we're going to move to Topic No. 16. All facts, all documents, information, and opinions upon which D&M bases its contention set forth in the Third Affirmative Defense (no acceptance by Plaintiff).

A Okay.
Q What's the factual basis for that affirmative defense?
A Well, I think that refers to the March 7th letter in which -- and also the e-mails in which they were required under the agreement between them and Mr. DeMaskey to submit his bills to his private health insurance for payment. There's certainly no agreement between D&M and Carolina Neurosurgery. And if there was, Carolina Neurosurgery -- if there was, it's obviously modified by this letter of protection, and it requires them to submit their bill to private health insurance.
Q And if that was -- that bill submitted to private health insurance was not paid, what happens then?
A Patient's ultimately responsible.
Q Where does it say that in this letter?
A I think the first letter of protection said that; this does not. Well, says the above-named -- I take that back. Let me clarify: It says in the event of insufficient recovery, the above-named individual, Mr. DeMaskey, remains personally responsible for your outstanding account balance.
Of course, it's my understanding that

Dr. Highsmith modified his agreement with Mr. DeMaskey with reference to that. It's my understanding that Dr. Highsmith agreed to accept his Bluecross/Blueshield health insurance. So that would be a valid defense, in my opinion.
Q Are you aware of Carolina Neurosurgery rejecting the March 7th, 2019 letter of protection?
A No.
Q Are there any other facts where Carolina Neurosurgery objected to any of the terms in either of the letters of protection?
A We assumed that when we specifically and unequivocally instructed on behalf of Mr. DeMaskey that Carolina Neurosurgery proceed and file Mr. DeMaskey's Bluecross/Blueshield insurance, that that instruction was carried out, that they acquiesced in that.
Q That's an acceptance, right?
A That they would file their Bluecross. So we assumed, as I've said from the beginning of the deposition, that Carolina Neurosurgery was filing Bluecross/Blueshield. It was our understanding and the DeMaskeys' assumption that they filed their Bluecross/Blueshield health insurance.
Q And I'm asking: Is that an acceptance of the

terms -- I'm not saying that I agree with you, and I'm asking D&M's response. That would be an acceptance of the terms, correct?
MR. MACKELCAN: Object to the form.
THE WITNESS: Well, I guess, in the alternative, if you were to construe that as a contract, that would be no acceptance, right?
BY MR. PENDARVIS:
Q That would -- what would be no acceptance?
A Their failure to adhere to the terms of filing Bluecross/Blueshield health insurance.
Q Are there any documents that you can identify that support the affirmative defense of no acceptance?
A None other than what we've discussed over and over.
Q Moving to Topic 17, this relates to the Fourth Affirmative Defense of failure of conditions precedent. Can you describe for me, for the record, what facts support the affirmative defense of failure of conditions precedent?
A The exact same answer over and over. A condition precedent assuming for purposes of pleading, right, in the alternative, you assume that there was a contract, that filing the Bluecross/Blueshield health insurance would have been a condition precedent to

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 70

that. So failure of condition precedent is Carolina Neurosurgery failing or ignoring our e-mails to file Bluecross/Blueshield insurance without advising us that they weren't going to do that and ignoring the DeMaskeys' requests to file Bluecross/Blueshield health insurance. And I keep coming back to the fact that they had DeMaskey's Bluecross/Blueshield health insurance card in their file. So, yeah, I think filing and doing the surgery under the patient's Bluecross/Blueshield health insurance was a condition precedent. I think that's -- I think that's the answer as I understand it.

Q There was testimony earlier today you gave that you acknowledge that Carolina Neurosurgery's out-of-network with Bluecross/Blueshield. Are you aware of that now?

A Now, yes.

Q So if the condition precedent you're talking about were satisfied, if they had filed and it had been denied because they were out-of-network, they would have satisfied the conditions of precedent, right?

A I disagree with that.

Q They being Carolina Neurosurgery.

A I disagree with that. The DeMaskeys had

Page 71

Bluecross/Blueshield health insurance. A condition was that -- as I understand this defense that Carolina Neurosurgery have the procedures, two, both of them allowed under that policy. They didn't do it. They didn't meet that condition. So they simply had to say, hey, Mr. DeMaskey, you need this elective procedure. There are 29 other orthopaedic spine surgeons in the Charleston area, and Mr. DeMaskey would have -- who all take your health insurance -- Mr. DeMaskey would have gone there and had the surgery. That's the problem. You want to ignore that, but those are the facts.

Q Let's move -- are there any other documents that support the failure of condition precedent?

A None other than what we've discussed and seen, to my knowledge.

Q Topic 18, about all facts, documents, information, and opinions upon which D&M bases its contention in the Fifth Affirmative Defense of abandonment.

A Same thing: I think the answer speaks for itself. And I think all these affirmative defenses say in the event that the letter of protection constitutes a valid contract that would be the defense. It was abandoned by not filing with

Page 72

Bluecross/Blueshield insurance. I mean, that goes to all of these defenses. Well, obviously, the first defense talks about the failure to mitigate. First defense says there's no contract, and then the ones that we were talking about, the third and fourth and fifth have to do in the alternative if it is construed as a contract, then it was abandoned. And no facts or statements other than what we've discussed already multiple times.

Q What is it that D&M contends supports the statement that Plaintiff acquiesced in and agreed to Defendant's abandonment of the letters of protection?

A They ignored them. They did not file the health insurance. They ignored the e-mail filed with their health insurance. So --

Q But this is a health insurance D&M's now acknowledged doesn't -- was not available for Carolina Neurosurgery to get any benefit from it. It's an out-of-network provider.

A We didn't know that at the time. And also, D&M didn't know it; DeMaskey didn't know it. The person who apparently knew it failed to bring that to our attention or to DeMaskeys attention when we clearly said treat him in accordance with his Bluecross/Blueshield health insurance, his private

Page 73

health insurance. It baffles me why that was ignored.

So continuing: The word "acquiesce," it's an interesting word. It's a fancy word. I guess it means they should have brought that to our attention if they weren't going to file his private Bluecross/Blueshield health insurance. Why would they have taken his card if they weren't going to accept that if he wasn't in the network? Seems obvious to me.

Q Let's move now to Topic 19. All documents, information, and opinions upon which D&M bases its contention set forth in the Sixth Affirmative Defense of waiver, estoppel, and laches. Laches. I'm not doing the French just exactly right.

A I love it when people pronounce that different ways. It's like voir dire or voir dire. And I don't know what's right. So it's laches; is that what you're going with?

Q I'm going with what's typed up on --

A It seems like latches to me. Latches.

Q So let's -- let's talk about what factual -- what's the factual support for those three affirmative defenses set forth in the Sixth Affirmative Defense on the answer.

A It would be the same answer as my responses

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 74

the second, third, fourth, and fifth affirmative defenses that Carolina Neurosurgery ignored e-mails and letters and conversations -- well, e-mails and letters from D&M to file his Bluecross/Blueshield insurance and multiple conversations and even an overact of Mr. DeMaskey providing the folks out front at Carolina Neurosurgery with his Bluecross/Blueshield card.

So I think, you know, there would be a stop to now, try to go back to some fine print in the original contract between Mr. DeMaskey and Carolina Neurosurgery. And certainly, that defense would also enure to us. They waived that in-network nonsense with reference to us.

And laches, as I understand that, they should have brought it to everyone's attention that they weren't in-network. And as I said repeatedly, Mr. DeMaskey would have gone to one of the 29 or 30 other orthopaedic spine surgeons to do the exact same surgery that Dr. Highsmith did.

Dr. Highsmith is someone Mr. DeMaskey went to previously because he accepted his Bluecross/Blueshield insurance. And Dr. Highsmith is a good surgeon, at least he was good enough in the eyes of Mr. DeMaskey. Mr. DeMaskey went back to him,

Page 75

but we both know that Dr. Highsmith's not the only surgeon in this area who does that procedure, and there are many very competent surgeons, all who take Bluecross/Blueshield health insurance that Dr. Highsmith should have referred Mr. DeMaskey to, just my opinion. That's how I'll answer that as far as waiver, estoppel, and laches.

Q Are there any other factual basis D&M asserts to support those three affirmative defenses set forth in the Sixth Affirmative Defense?

A Mr. Pendarvis, none other than we've discussed in the documents that were discussed in connection with the two depositions, my deposition, Ms. Bennett's deposition. Mr. Sowell did a good job identifying a lot of relevant documents, many of which I think you have attached to your summons and complaint.

Q So the factual bases supporting D&M's Sixth Affirmative Defense are limited to the exhibits attached to the complaint?

MR. MACKELCAN: Object to the form.

THE WITNESS: Say it again, please? Sorry, my mind wandered.

BY MR. PENDARVIS:

Q Are there any specific e-mails not included

Page 76

as exhibits to the complaint that D&M asserts supports their Sixth Affirmative Defense?

A Not that I know of, other than what we've discussed and what's in the other depositions.

Q Well, this is the only deposition taken in this case. I need to be clear: There's a related -- related lawsuit, but this case this is the first deposition. So are there any other exhibits?

A What's that mean? I mean, in our discovery, we provided the sworn deposition testimony of myself and Ms. Bennett along with documents that were attached to those depositions. Those depositions speak for themselves. The documents speaks for themselves. And all the -- both depositions and the documents relate 100 percent to the matters that we're discussing today.

So, yeah, anything that was in those other depositions that you've been provided is fair game, stuff that I've seen, that I've read about. I don't know. For you to distance yourself from that, I don't know. I assume that you've looked at those depositions and those documents.

Q Can you identify any other documents outside of what you've described, exhibits to other depositions in the DeMaskey case? Other than that,

Page 77

are there any other documents that D&M contends supports its waiver, estoppel, and laches defense?

A Not that I know.

Q Okay. Moving to Item 20 related to the affirmative defense of the no causation. Let me know -- identify what is the factual basis for that affirmative defense.

A At the time that we instructed on behalf of Mr. DeMaskey that Dr. Highsmith proceed under Mr. DeMaskey's private health insurance with Bluecross/Blueshield, I believe Dr. Highsmith's bill was approximately somewhere between 1,900 and 2,600, and I don't know which of those is accurate; either was, not much. In this lawsuit that you filed, I think Dr. Highsmith is suing us for everything. It's just preposterous.

Dr. Highsmith had filed Bluecross/Blueshield as the patient had requested. His bill would have been very minor and would have been paid out of available liability coverage. So there should be no damages for Dr. Highsmith if he had only done what we requested him and the patient -- what we advised Dr. Highsmith on the patient's behalf and what the patient and his wife on numerous occasions advised Dr. Highsmith there would be no damages whatsoever. I

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 78

think that explains no causation.

Q What was the date funds were recovered on behalf of Mr. DeMaskey?

A I don't have that memorized.

Q Was it before or after the letters of protection?

A That were covered?

Q Recovery.

A Oh, it was after.

Q So if Carolina Neurosurgery had submitted a bill at that time, what -- what funds were available that had been recovered? Zero, right?

A I don't know if I'm following you.

Q You said, just a moment ago, D&M just testified that if Dr. Highsmith and Carolina Neurosurgery had only filed after its initial $2,000 amount of benefits?

A That's right.

Q If it had filed right then and there, what would have happened?

A Their bill would have been 2,000, which we would have paid under the letter of protection.

Q When?

A When the case eventually settled.

Q But it wouldn't have been paid at that time, right?

Page 79

A At what time?

Q At the time of the services and the time of the first letter of protection, January 2019?

A That's silly. You know better. You know better. You know -- of course.

Q Just like it's silly to say that filing for insurance when he's out-of-network would have been of any benefit to anybody?

A No, that is silly. That's incredibly silly because DeMaskey didn't realize that Dr. Highsmith was out-of-network. DeMaskey assumed that Dr. Highsmith accepted his Bluecross/Blueshield insurance because he had surgery with Dr. Highsmith before. That's certainly reasonable on Mr. DeMaskey's behalf, in my opinion.

DeLuca & Maucher assumed Dr. Highsmith took DeMaskey's Bluecross/Blueshield insurance. Certainly reasonable on our behalf because we knew that Dr. Highsmith had done surgery under the Bluecross/Blueshield insurance in the past. Reasonable again for us.

Is it your suggestion that we should have known, DeLuca & Maucher should have known that Carolina Neurosurgery did not accept Mr. DeMaskey's

Page 80

Bluecross/Blueshield insurance? That's ridiculous. That's absolutely a ridiculous suggestion. The fact of matter is, if Carolina Neurosurgery had simply said, "Hey, DeLuca & Maucher, we don't take the DeMaskey's Bluecross/Blueshield health insurance," I would have had the conversation with Doctor -- not doctor but Mr. DeMaskey. I would have said, "Scott, Dr. Highsmith is a very competent surgeon. You have confidence in him because he did surgery for you in the past and filed it under your Bluecross/Blueshield health insurance, and you got better. You went back to him because you had confidence in him, but he doesn't take your insurance anywhere. You're going to have to go to one of the 30 or more other spine surgeons who all take your Bluecross/Blueshield insurance in the Charleston area." That's what -- that's what would have happened, but it didn't happen.

I didn't know -- we didn't know -- when I say "I," I'm referring to DeLuca & Maucher. We had no idea that Carolina Neurosurgery stopped taking health insurance. I know of no surgeon, other than Dr. Highsmith, who does that. And as I read Dr. Highsmith's deposition, I was a little confused. At some point, he said, "Oh, yeah, we do take some types of health insurance, but we don't take other

Page 81

types of health insurance." That made no sense to me, but if we want to go to 30,000 feet and look down and look back, we knew none of that.

We had nothing to do with Bluecross/Blueshield, whether he was in-network or out-of-network. We just assumed he was in-network. And if he wasn't, shame on them for not bringing that to our attention and to the patient's attention because they're suing the patient.

Q Let's turn now to Topic 21. This is the Eighth -- related to the facts, documents, information, and opinions supporting the Eighth Affirmative Defense, limitation of damages. Please identify for me what factual basis for D&M's assertion of a limitation of damages affirmative defense.

A Mr. Pendarvis, none other than what we've discussed with all the above-referenced affirmative defenses. I think I've adequately answered that. And that answer, in reference to those documents, would also apply to this affirmative defense.

Q So do I understand then that the affirmative defense of limitation of damages, there will be no other documents used to support that affirmative defense other than those that have been identified in depositions in this case and depositions taken in the

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

DeMaskey case?

MR. MACKELCAN: Object to the form.

THE WITNESS: I don't know if Mr. DeMaskey -- I didn't study what Mr. DeMaskey said to you before he filed this frivolous action against us. So I didn't memorize what was provided previously. I assume that Doug has a copy of that, and that was probably in our responses. I haven't memorized all the documents, but we keep talking about the same documents. And I think, you know, I have no -- no knowledge of any other documents than what we've discussed.

BY MR. PENDARVIS:

Q And what document -- I'm going to have to respond to an affirmative defense at trial. I want to know what documents I'm going to be dealing with that are going to be asserted to support the affirmative defense. And you earlier testified there were depositions taken in Mr. DeMaskey's case, and there were exhibits attached to those.

A Correct.

Q We're here today, and one document with exhibits is the complaint, and it's got twelve -- eleven exhibits?

A Correct.

Q I need to know are there any other documents?

This is the time for me to find that out from DeLuca & Maulcher --

A Maucher.

Q -- Maucher for the affirmative defense. Can you identify any other documents?

A So I will say again, I know Mr. Masty provided you with documents before the lawsuit was ever filed. I've seen that. I recall that. I don't recall exactly what documents he provided to you. You should know what documents he provided.

Other than the depositions you referenced, documents that you may have attached to the complaint, what Mr. Masty may have provided you, documents that may be contained in the Carolina Neurosurgery file that I think was provided in the other litigation, no documents other than those.

Q So what you're basically saying is all documents produced in this file are what's going to be used to support this affirmative defense?

A I think that's what I said.

Q Okay. I don't think that -- that satisfies your obligations for D&M, but moving on: Next affirmative defense is titled Controlling Person. It states, in the event the court finds D&M violated the South Carolina Unfair Trade Practices Act, which

Defendants expressly deny, as a named partner of D&M, Maucher may not be subject to personal liability for any such violations by D&M pursuant to South Carolina law, including the Controlling Person doctrine.

Are there any documents that you can -- that D&M can identify that support that affirmative defense of Controlling Person?

A None other than we have discussed.

Q What's the factual basis for that affirmative defense?

A Well --

Q I mean, I can read what's stated there. Are there any specific facts that D&M contends supports that?

A I'll leave that to my attorney as far as the interpretation of the facts that we all know to the law, I would leave that, that would be attorney-client privileged, our discussions, but no other facts than what we've discussed.

Q Okay. Turning now to Item 23. The --

MR. PENDARVIS: Let's take a break before we get into this next one. We're on the downhill side.

VIDEOGRAPHER: Off the record at 12:45.

VIDEOGRAPHER: On the record at 12:52.

BY MR. PENDARVIS:

Q Turning now to Topic 23 titled: No Adverse Effect on Public Interest. The affirmative defense stated on Page 10 of the answers states: "Defendants' alleged conduct complained of in Plaintiff's Complaint did not adversely affect the public interest and does not have the potential for repetition. Therefore, Plaintiff cannot maintain a claim against Defendants for violation of the South Carolina Unfair Trade Practices Act."

What is the factual basis for the affirmative defense I just read?

A I stick by my earlier answer that I don't think the South Carolina Unfair Trade Practices Act is in any way applicable to these events. This was a unique circumstance in which Dr. Highsmith's office ignored very clear instructions from the patient for him to file his Bluecross/Blueshield health insurance; they did not. And as a result of their mistakes, they are now suing, frivolously, DeLuca & Maucher.

So I don't think that this is capable of repetition. I think it's very unique circumstances. It's just not how I understand the Unfair Trade Practices Act. I think that's more towards retailers who have deceptive ads, bait and switch, things like that. I think this is just a very unique

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 86

circumstance. I don't think the Unfair Trade Practices Act applies for all the reasons I've said in the deposition up to this time.

Q Turning now the Topic 24, "Lack of Willfulness", the affirmative defense -- the Eleventh Affirmative Defense on Page 11 of the answer to the complaint states: In the event the Court finds Defendants' alleged conduct complained of in Plaintiff's Complaint violates the Unfair Trade Practices Act, any such conduct does not constitute a willful or knowing violation of the Unfair Trade Practices Act, accordingly Plaintiff may not recover treble damages.

Are there any -- what are the factual basis for the affirmative defense we just read?

A Everything I've said up to this point just nothing that we did was willful. We weren't out to, in any way, harm Carolina Neurosurgery or Dr. Highsmith. We always acted in good faith. And, you know, the irony is that we didn't take a fee, and we did make a recovery for Dr. Highsmith, and DeMaskey didn't receive anything for the settlement, and we're getting sued; I don't understand that.

But I don't think the Unfair Trade Practices Act is in any way applicable to this unique set of

Page 87

circumstances.

Q Let's move now to Topic 27. This topic asks for all -- we're going to discuss today -- All facts, documents, information, and opinions concerning D&M's relationship with Scott DeMaskey, including each and every attorney-client relationship and each contractual relationship. What -- how many times has DeLuca -- D&M represented Mr. DeMaskey?

MR. MACKELCAN: Before -- Mike, before you answer this particular question, which I think is an appropriate question, and I will allow you to answer this question, I just want to generally state that we have, before the deposition, responded to Thomas through a letter objecting to this topic on the grounds of attorney-client privilege. And as we discussed at the beginning of the deposition, we will address on a question-by-question basis, but I do want to generally object regarding attorney-client-privilege questions. However, I do think you can answer this question.

THE WITNESS: Do you want me to proceed?

BY MR. PENDARVIS:

Q Yes. I've got some follow-up on that, but the question is permitted: So how many representations --

Page 88

A You guys can talk back and forth about the law all you want, but as far as representations, as Dr. Highsmith's aware, we previously represented Mr. DeMaskey. He was in a wreck of some type. Dr. Highsmith did the surgery. That was our first representation of Mr. DeMaskey, and our second was with reference to this collision.

Q Was the first collision -- what type of -- was it a personal trip and then the accident happened? Was it a work-related trip? What type of circumstance?

A Don't really recall.

Q Okay.

A I think -- but I think, I have a general recollection, it was a vehicular collision of some sort. I don't recall -- I don't think it was a trip-and-fall premises liability.

Q And what you don't recall right now is whether it was a work-related vehicular accident or a personal vehicular accident?

A No idea. I have no idea at all. It was years ago.

Q So D&M has represented Mr. DeMaskey twice?

A Yes.

Q Any others?

Page 89

A Well, we're defending against Highsmith.

Q Okay. Has D&M represented Ms. DeMaskey?

A No. She's not named in the Highsmith -- well, yes, in the sense that any personal-injury situation where you have a spouse, they sign the release, right?

Q Okay.

A So in that -- in that sense, yes, we represented them both, because I believe they were married, obviously married before the second wreck in December of '19. The other wreck had been years before. It's my general recollection, they were married at that time. So she would have been on the release for her technical claim for loss of consortium.

Q Was a lawsuit filed in the first matter?

A No, it was settled.

Q How about the second?

A That's my -- settled.

Q Okay. With no lawsuit being filed?

A Yeah, settled. No lawsuit.

Q Okay. When was the first representation?

A When the other lawsuit was?

Q Yes, sir.

A I'm sorry. I misspoke.

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 90

Q The other claim?
A The other claim, three to five years before this one. It had been a while.
Q '13, '14, something like that?
A No. You know what? I'd be speculating, but if I had to speculate or guess, I guess three to five. I think it had been a while, not that unusual. You represent somebody, and years later, they call you back, call you up, which is, you know, a credit to us. But, yeah, my recollection, was three to five years before this 2019 wreck.
Q Okay. Thank you. Moving to Topic 28, take a look at that, and we'll talk about it. I'll let you read it first.
A Okay. I've read it.
Q And I've seen the letter from your counsel, that there are no indemnity or hold-harmless agreements between D&M and Mr. DeMaskey.
A That would be attorney-client privilege if there were. So I don't know what my counsel has taken a position on, but if he told you that there were no indemnify agreements, that'd be accurate.
Q Okay. And just for our discussion and we referred multiple times today about the depositions taken in Mr. DeMaskey's case, I'm sure everyone

Page 91

recalls the statement about the waiver of privilege. We know this is a total waiver state, but I'm going to read it.
MR. PENDARVIS: I'll pass along a copy to you, Doug, where I'm going to read --
THE WITNESS: I don't think that came up in that deposition, indemnity.
BY MR. PENDARVIS:
Q This is Page 61, and I will pass a copy. I'll direct you down to Lines 15, 16, 17, where the client waived privilege for me to even be testifying. So if we've got a waiver of privilege, we've got a waiver of privilege. That's the position taken in the earlier lawsuit; has that changed?
MR. MACKELCAN: Thomas, can we talk outside for a second?
MR. PENDARVIS: Sure.
VIDEOGRAPHER: Off the record at 1:03.
MR. PENDARVIS: For the record, Doug and I had a very, as usual, productive conversation in the hallway. There's questions about privilege waiver, about Mr. DeMaskey and that privilege with his -- with Mr. DeMaskey's lawyer being waived. The questions that are going to occur today are not going to invade the attorney-client privilege. I'm not going to be

Page 92

asking about communications. There are some agreements I want to find out about, and that's the position the Plaintiffs will be making, the questions we will be asking today.
MR. MACKELCAN: And as counsel for Defendants, I wanted to state for the record that the deposition that Mr. Pendarvis has just referred to and that was taken in the related case, I was never made aware of. At the time the deposition was taken, I was -- had been and was actively representing Mr. Maucher, his practice, and that certainly would have included his longtime paralegal, as well.
I was unaware that the deposition was noticed; although, I had been in communication with counsel for the Plaintiff in that case, as well. And the purpose of the off-the-record conversation was to express my concern about that to Mr. Pendarvis to the extent that he was going to attempt to hold my client to a waiver of privilege that I wasn't aware of or wasn't involved with.
MR. PENDARVIS: Thank you.
VIDEOGRAPHER: On the record at 1:08.
BY MR. PENDARVIS:
Q So Topic 28 is asking about any agreements between D&M and Mr. DeMaskey, including but not

Page 93

limited to agreements of indemnity or hold harmless. And we were provided with the representation that there were no agreements for indemnity or hold harmless with Mr. DeMaskey. And my question is: Are there any other agreements existing today between D&M and Mr. DeMaskey?
A No.
Q Okay. Turning now to Topic 29, any and all communications between D&M and Mr. DeMaskey and One Beacon Specialty Insurance Company or its successors regarding payments under the Occupational Accident insurance policy.
Have there been any communications between D&M and OneBeacon about payment under the Occupational Accident insurance policy for Mr. DeMaskey.
A Yes.
Q Tell me about that.
A I think Professor Sowell requested that we go back and submit everything to OneBeacon; we did that, and they're still considering it as far as I understand. I thought that Doug and you would have had copies of all that.
Q Are those conversations continuing at this time?
A Yes. We've checked within the last couple of

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 94

weeks, and there still has been no decision.
Q So they haven't denied or accepted?
A Correct.
Q Are there any proposals that are under consideration by -- proposals on behalf of Mr. DeMaskey to OneBeacon?
A I know Mr. Sowell has taken that position. I haven't seen those depositions. I'm not really familiar with what happened in those depositions. I assume you've seen them, and you would know more about that than I would.
Q If you understood depositions, I misspoke. What I'm trying to ask: Are there any offers, acceptance, agreements, proposals with OneBeacon that are under consideration right now?
A Not that I know.
Q Okay.
A Just to pay under the policy.
Q When was the first communication D&M had with OneBeacon?
A It was early on. I wouldn't -- I'd only be guessing as to a date, but in the first couple of weeks.
Q Okay.
A I think that was discussed and may have been

Page 95

exhibits in Ms. Bennett's deposition.
Q So would the communication with -- I'm saying OneBeacon; it's got a longer name. Would the communications with OneBeacon begin in earnest after Ms. Bennett's deposition was taken in the DeMaskey case?
A No. Actually, we placed them on notice. They opened a claim earlier on within weeks of the motor-vehicle wreck. I understand they did pay -- they may have paid something. I don't know if they paid any lost wages. Maybe Mister -- my recollection is a little vague there. They do -- they have asserted a lien for something that they paid. I don't know if that was bills or wages, right?
They had an insurance defense firm contact us, place us on notice of the lien early on, but your characterization in earnest, I mean, within weeks of the wreck, we wrote everybody and said we represent Mr. DeMaskey, and we understand he has this or that policy. They opened up a claim. That's how I understand that works.
Q How long was it before the next communication with OneBeacon after the initial communication?
A I don't have a recollection of how many initial -- as far as the sequencing, I would only --

Page 96

I'd only be guessing.
Q Months? Years?
A I'd only be guessing. Certainly, less than years. May have been years. I know it's been years, right? It's 2023. We went back and said, "Hey, Dr. Highsmith, these surgeries, we submitted them. And as to whether they paid for them or not remains to be seen."
So my understanding that a condition precedent to that was that Mr. DeMaskey use his private health insurance with Bluecross/Blueshield which was not done because Dr. Highsmith did not bring it to his attention that Dr. Highsmith would not process the Bluecross/Blueshield.
MR. PENDARVIS: Let me make a phone call, and then we may be able to wrap up quickly.
VIDEOGRAPHER: Off the record at 1:14.
VIDEOGRAPHER: On the record at 1:18.
BY MR. PENDARVIS:
Q Last few follow-ups. I'm trying to understand the circumstances: Is D&M aware of whether other healthcare providers to Mr. DeMaskey were operating under LOPs?
A I just don't have a recollection of that at this time. That was like 2019.

Page 97

Q Would -- would the other healthcare providers be identified on like a disbursement statement on the settlement of Mr. DeMaskey's claim?
A I do recall seeing a disbursement statement. I think you've been provided with a copy of it. We gave everybody a copy of it. I think we even sent it to Carolina Neurosurgery. So the other medical providers --
(Interruption in proceeding.)
THE WITNESS: I'm looking at a garage door here. Do you want to see what I'm looking at?
BY MR. PENDARVIS:
Q I trust you.
A I'm down at the bottom right. So I do know there's a settlement statement, and that identifies the other providers.
Q I'm not sure I've seen that. I may follow-up up on that. If there were other providers, they would be identified on the settlement disbursement statement?
A Correct.
Q Do you recall whether -- does D&M recall whether LOPs were used with those providers?
A I just don't have a recollection one way or the other.

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Q Do you know -- does D&M know whether the other providers submitted invoices through -- or submitted their statements through insurance?

A I don't know the answer to that. I do know that it's my recollection and I saw in Ms. Bennett's deposition that the surgery center the DeMaskeys paid $500, which was their deductible under their Bluecross/Blueshield. And I think the DeMaskeys have provided proof of that. I think that's what Ms. Bennett testified to. So that would be another provider.

As to -- and I think Dr. Highsmith, if my recollection serves me correct, once again, not remembering everything, I think Dr. Highsmith was the primary provider. May have been the emergency room up in North Carolina, though I'm drawing -- I'm just guessing. I don't want to speculate, but whatever providers there would have been would have been on that settlement statement. We'll send you a copy if you don't have it.

MR. PENDARVIS: Let me check on that. No further questions from the Plaintiff.

MR. MACKELCAN: I don't have any questions.

VIDEOGRAPHER: This concludes the Video Deposition. The time is 1:21. We were off the

record.

MR. PENDARVIS: Electronic, ASCII.

MR. MACKELCAN: E-Trans with exhibits.

* * *

C-E-R-T-I-F-I-C-A-T-E

I, Lisa A. McCarn, Professional Court Reporter and Notary Public for the State of South Carolina, certify that the witness in the foregoing deposition was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the deposition was taken at Copeland, Stair, Valz & Lovell, 40 Calhoun Street, Suite 400, Charleston, South Carolina; that the foregoing pages constitute a true and accurate transcript of the deposition proceeding.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 8th day of August, 2023.

Lisa A. McCarn
Notary Public for South Carolina
My Commission Expires:
April 30, 2025

ERRATA SHEET

I have read the entire deposition. To the best of my knowledge, it contains a true and accurate transcript of the proceedings at the time and place herein mentioned. Any corrections that I have are contained and described on this sheet.

Signed the _____ day of _____, 2023,

_____
Michael A. Maucher

PAGE	LINE	DESCRIPTION OF ERROR/CHANGE
___	___	_____
___	___	_____
___	___	_____
___	___	_____
___	___	_____
___	___	_____
___	___	_____
___	___	_____
___	___	_____

AdvancedONE LEGAL is now LEXITAS™

Exhibits

Maucher -30(b)(6), Michael A. 07-31-23 (Carolina Neurosurgery & Orthopedics) Exhibit 1
3:8 6:3,4,14 7:7 9:24 11:9 29:12 55:13

Maucher -30(b)(6), Michael A. 07-31-23 (Carolina Neurosurgery & Orthopedics) Exhibit 2
3:9 7:11 11:12,13 19:12 29:15 54:6 55:17

Maucher -30(b)(6), Michael A. 07-31-23 (Carolina Neurosurgery & Orthopedics) Exhibit 3
3:10 7:12 11:7 29:17,18 55:18 59:5

$

$1,100,000
38:17

$100,000
18:2 21:6,19,24

$2,000
78:16

$2,600
23:19 26:9

$30,000
18:8

$500
98:7

-

--excuse
14:2

1

1
6:4,14 7:7 9:24 11:9 29:12 55:13

1,100,000
18:5 33:15

1,900
77:12

10
44:25 45:1,7,18,20 50:8 54:6 65:4,5 85:3

100
76:15

10:26
4:3

11
52:10,11 53:23 86:6

11:47
53:20

11:54
53:21

12
53:24

12:45
84:23

12:52
84:24

13
55:14 90:4

14
58:25 90:4

15
11:2,3,5,12 14:20 15:4 63:3,5 91:10

15,000
59:11,22

16
15:22,23 16:11,12,15 17:14 18:13 29:21 66:22 91:10

17
69:16 91:10

18
6:10 29:10,11,15,16 30:6 31:1,24 71:17

19
32:14,15,17 33:13 34:5, 6,10,11,12,14 73:10 89:11

19th
33:17

1:03
91:18

1:08
92:22

1:14
96:17

1:18
96:18

1:21
98:25

2

2

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

7:11 10:3,25 11:10,13 19:12,14 21:17 25:11 29:15 42:15 54:6 55:17 57:15 65:5

2,000
78:21

2,600
77:12

20
34:22 35:6 77:4

2019
19:18 20:12,18 22:10 24:25 26:22 29:21 38:18 64:25 68:7 79:4 90:11 96:25

2023
4:2 96:5

21
19:17 25:7,10 26:22 34:19,21 35:1,5,13 40:22 81:10

21st
20:12,18 22:8 24:25 38:18

23
84:20 85:1

24
86:4

25
37:16,17,20 38:3,6,14,23 40:8

27
87:2

28
90:12 92:24

29
71:7 74:18 93:8

3

3
7:11,12 11:7 15:19 16:9 29:17,18 34:9 45:1,5,20, 21,22 55:18 59:5

30
25:20,21 42:7 74:18 80:14

30(b)(6)
4:4 10:24 16:9

30,000
36:9,21 37:10 39:2 62:1 81:2

31st
4:2

37
40:12,14,16 42:1

38
48:4,6,8,15

4

4
11:6 19:11,12,13,14,16 21:17 25:11 29:9,13 30:2 31:5,6 34:15 35:14

40
4:6

41
50:9,10,11

43
52:12,13

49
53:25 54:4,5,12,25

4A
35:4

5

5
32:11,12

50
55:4,6,17,18

6

6
7:6 9:24 11:9 34:18 42:3, 4,15 57:15 65:5

61
91:9

7

7
37:9 38:4 55:16 64:25

7th
67:4 68:7

8

8
40:11 55:17 59:6

9

9
48:3

9:24
20:13 25:10 26:22 33:18

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

A

a.m.
4:3 20:13 25:10 26:22 33:18

abandoned
71:25 72:7

abandonment
71:20 72:12

ability
33:1 46:8,9

able
9:16 54:23 64:6 96:16

about
5:19 8:9 10:13 11:8 15:1 16:12 18:4,22 30:14 32:5,12 33:12,16,17,21 35:6,25 36:1 37:25 38:13,18,22 41:19 49:22, 25 54:4,5 55:2 59:2,3 62:16 65:14 66:5 70:19 71:17 72:3,5 73:21 76:19 82:9 88:1 89:18 90:13,24 91:1,21,22 92:1,2,17,24 93:14,17 94:10

above
34:8 43:3 53:2

above-named
42:23 67:20,22

above-referenced
81:17

absolutely
14:12 26:25 50:5 64:9 80:2

accept
14:10 29:4 42:24 48:18 58:15 65:15 68:3 73:7 79:25

acceptable
12:3

acceptance
66:25 68:18,25 69:2,7,9, 13 94:14

accepted
18:6 25:17 26:2 39:12 61:1,9 74:22 79:13 94:2

accepting
8:22 64:24

accident
22:7 24:17 38:21 39:8,19 49:22 88:9,19,20 93:11, 15

accident-related
62:19

accidental
39:8

accommodate
5:13

accordance
72:24

according
30:12

accordingly
9:3 86:12

account
59:11 67:24

accurate
7:20 9:13,21 18:4 28:4 32:25 33:4 40:23 77:13 90:22

accurately
28:1

acknowledge
70:14

acknowledged
72:17

acquiesce
73:2

acquiesced
68:16 72:11

acquiescing
12:21

across
6:22

Act
83:25 85:9,13,23 86:2, 10,12,25

acted
59:12 86:19

action
7:12 9:22 82:5

actively
92:10

acts
54:18

actual
8:5

actually
7:16 21:3 28:23 38:3 45:4 95:7

additional
29:25

address
87:17

adequately
81:18

adhere

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

69:10

admit
16:22 31:15 34:3 48:8 54:7

admitted
33:24

admitting
33:24 34:6

adopt
9:16 15:16

adopted
15:18

ads
85:24

Adverse
85:1

adversely
85:5

advised
17:9,17,19 21:2 35:21 36:23 44:15 49:11 51:2 53:3,4,6,12 77:22,24

advising
12:17 26:7 60:23 70:3

affect
85:5

affirmative
59:1,4,6 61:22 63:7 66:24 67:2 69:13,17,19 71:19,22 73:12,22,23 74:1 75:9,10,19 76:2 77:5,7 81:13,15,17,20, 21,23 82:14,16 83:4,19, 23 84:6,9 85:2,10 86:5,6, 15

after
19:22 21:9 23:8 24:18 29:22 39:14 61:3,16,21 78:5,9,16 95:4,23

again
16:6 28:3 29:13 31:6 34:14 46:8 56:24 63:4 75:22 79:22 83:6 98:13

against
82:5 85:7 89:1

ago
42:7 78:14 88:22

agree
8:23 29:3 32:20 33:22 50:21,22 69:1

agreed
64:19,21 68:3 72:11

agreement
12:15,20 26:5 39:22 42:25 43:17 50:21 51:6, 15 65:1,14,15,16,17,20, 24 66:4,6,7,9,16 67:6,8 68:1

agreements
42:17 90:18,22 92:2,24 93:1,3,5 94:14

agrees
25:2

ahead
30:19 48:2

albeit
12:13

all
7:19 8:19,22 9:20 10:4, 25 11:9,17,18,20 12:23 14:22 15:9,10,20 16:4, 17,18 19:21 21:9,13 22:23 23:17 26:13 29:6, 12,16,20 30:3,7,19,25 31:4,6 32:12 34:16 35:11,15 36:11,17 37:14, 21 45:3,8,21,22 47:2,25 49:19 51:13 52:5,18 53:2 54:18,20,21 55:12,15 56:11 57:8 59:5 60:12 62:17 63:1,5 65:6 66:22 71:9,17,22 72:2 73:10 75:3 76:14 80:15 81:17 82:8 83:17 84:16 86:2 87:3 88:2,21 93:8,22

all-encompassing
12:9

allegation
30:4

allegations
7:15 8:2,3 11:3,6 13:18 14:20 15:4,22 16:12 29:10,14,21 30:6 31:23 32:15,19 33:12,25 34:19, 20 35:13 37:12,16,18,19 38:7,14 40:8,12,14,16 41:25 48:4,5,6,8,12,15 50:9,11,13 52:2,11,17,20 53:25 54:4,10,12,24 55:4,5

alleged
55:10 85:4 86:8

alleges
52:14

allow
87:11

allowed
71:4

Allstate
49:24

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

along
76:11 91:4

already
24:2 31:24 72:8

also
10:10 11:25 12:25 31:8 49:19 67:5 72:20 74:12 81:20

alternative
69:6,23 72:6

although
92:14

always
20:4,7 41:13,14 86:19

am
6:11 29:12 45:18 50:2

Amen
5:17

amended
6:4,15 7:1,7

amount
28:2 59:10 78:17

an
9:18 12:9 15:25 16:2 17:1,20 18:4 21:10 26:4 35:18 36:14 37:23 38:2 39:22 41:16 44:2 51:15 60:8 62:14 65:14,16 68:18,25 69:2 72:18 73:2 74:5 82:14 87:10 95:15

and
4:9 5:18,21,22,24 6:5,11, 24,25 7:1,10,11,12,14, 19,24 8:2,13,18,21,22,25 9:19,20,25 10:5,18 11:1, 6,8,12,18,19,21,23 12:16,17,20,21,22,25 13:1,9,13,15 14:2,16 15:7,9,16,17,18,20 16:5, 15 17:7,9,13,20,21 18:2, 16,23 19:1,3,6,7,14,22 20:2,5,6,11 21:13 22:5, 24 23:6,24 24:3,4,9,10, 18,20 25:1,13 26:7,9,11, 14 27:7,15,16,18 28:6,9, 10,14 29:1,2,6,10,23 30:1,4,16 31:6,9,12,13, 15,16,18 32:3,13,18,22 33:4,8,20 34:12,15,20 35:3,7,19,20,21 36:25 37:1,3,12 38:6,19 39:3, 12 40:1,13,21 41:4,7,16 42:8,17,22 43:14,20,23 44:3,10,12,13 45:12,14, 23 46:3,10,15 47:3,5 48:4,6,9,22 49:1,17,21, 22 50:10,12,14,20,21,24, 25 51:11,16,19,23 52:3, 6,10,12,14,15,25 53:9, 16,25 54:3,8,10,16,17,20 55:1,5,6,8,17,18,20 56:3, 4,6,8,9,11,16,17,19,22 57:1,3,9,12 58:13,18,20 59:15 60:16,19,20,21,25 61:7,12 62:7,19,23 63:1, 6,11,12,15 64:1,7,19,21 65:9,17 66:10,23 67:5,6, 9,11,14 68:12,14,22,25 69:1,14,21 70:4,6,9,19 71:8,10,15,18,22 72:4,5, 7,11,20 73:11,13,17 74:1,3,5,11,12,15,17,23 75:2,7,16 76:4,11,14,22 77:2,12,13,19,22,23,24 78:15,19 79:3 80:10,11, 22 81:2,7,8,12,18,25 82:7,9,13,17,18,21,22 85:5,18,24 86:19,20,21, 22 87:4,5,6,11,15 88:1,6, 9,18 90:8,13,16,18,23 91:9,19,22 92:2,5,7,10, 11,15,25 93:2,4,6,8,9,14, 19,20,21 94:1,10,25 95:18,19 96:5,7,15 97:15 98:5,8,12

annoying
29:1,2

another
13:4 17:15 41:11 57:10 98:10

answer
5:23 7:13,24 11:2,7 15:22 16:15 23:14,17 26:19 28:22 29:6,11,17 30:4,16,22 31:15 32:15 34:9,10,15,16,21 37:17, 22,23 38:2,7 40:14 46:2 48:6,7 49:17,19 50:11 52:13 54:6 55:6 57:23 58:15 59:6 66:15,17,18, 19,20 69:21 70:12 71:21 73:24,25 75:6 81:19 85:12 86:6 87:10,11,20 98:4

answered
28:21 31:21 47:23 81:18

answers
7:19 8:25 29:4 52:5,18 60:12 85:3

any
5:8,12 9:7 14:18 15:3 20:23 31:22 32:9 36:5 39:6,16,17 40:7 41:18 42:25 43:1 44:4,23 47:2, 17,23 51:25 53:3 54:23 56:20 58:14 59:24 60:15 61:10,20 64:7 66:7 68:9, 10 69:12 71:13 72:18

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

75:8,25 76:8,23 77:1 79:9 82:10,25 83:5 84:3, 5,13 85:14 86:10,14,18, 25 88:25 89:4 92:24 93:5,8,13 94:4,13 95:11 98:23

anybody
5:19 57:6 79:9

anything
8:6,16 13:12,13 18:12 19:4 24:2,3,5 27:11 33:5 34:6 49:8 60:13,19 61:14 62:2 64:20 76:17 86:22

anytime
17:4

anyway
10:8 30:16 35:9 54:4

anywhere
66:5 80:13

apologies
61:19

apologize
54:1 61:18

apologizes
7:17

apparently
72:22

applicable
22:4 34:16 85:14 86:25

applied
22:12

applies
21:9 86:2

apply
21:8,12 22:14 81:20

appreciate
5:14 7:21

appropriate
87:11

approximately
4:3 58:1 77:12

are
5:18 6:17 7:10 8:1 9:2,15 10:10 13:18 14:18 16:5 20:2 22:17,22,25 25:6 27:25 28:1 30:19 31:7, 11,12,22 32:4 34:6 37:9, 11 40:7 42:17,18,20 44:12 46:14 47:8,17 51:25 52:20 54:10,23 55:13 56:20 59:24 60:2 61:20 64:3 66:9 68:6,9 69:12 70:15 71:7,12,13 75:3,8,19,25 76:8 77:1 82:16,25 83:18 84:5,12 85:19 86:14 90:17 91:24 92:1 93:4,23 94:4,13,15

area
12:6 40:4 71:8 75:2 80:16

aren't
8:22

argue
66:3

arising
43:2

arrangement
18:17

arrangements
14:4 18:19,21

as
4:4,19 5:18 6:14 7:19 8:25 17:20 18:5 19:5 21:8 23:6 24:25 26:12 27:22 29:15,17,18 30:2 31:15 32:25 33:13 34:11, 13 35:13 37:6,18,20 38:23 40:2,3,21,23 41:4, 15,17 42:24 43:9,23,24 45:18 49:19,23 50:16,23 51:12 52:4 54:20 55:12 56:21,24,25 57:15 59:20 60:5,20 62:6 68:20 69:6 70:12 71:2 72:7 73:25 74:15,17 75:6 76:1 77:18 80:22 84:1,15 85:18 87:15 88:2 91:20 92:5, 12,15 93:20 94:22 95:25 96:7 98:12

ASCII
99:2

ask
5:6 6:6 28:22 37:25 50:12 60:4 63:12 94:13

asked
19:8 30:11,21 32:12 39:24 59:13

asking
5:21 23:13 29:4 34:12 49:16 60:20 68:25 69:2 92:1,4,24

asks
87:2

assent
63:8 64:18

assented
64:19

asserted
82:16 95:13

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

assertion
81:14

asserts
75:8 76:1

assignment
35:18

assistant
17:9 20:15 25:20 42:16

assume
15:17 32:24 37:2 69:23 76:21 82:6 94:10

assumed
24:10 40:3 48:19 60:25 68:12,20 79:12,17 81:6

assuming
12:11 13:25 69:22

assumption
68:23

assumptions
8:23 9:7

assured
47:5 49:2

at
5:1,4,11 6:20 7:3 8:9 11:9,10 12:4 16:9,18,19, 20 17:9 18:1,8,14,24 19:11,13,17,24 20:9,13 21:4,11,12 22:7 23:5,19 25:9,21 26:22 27:6,12 28:4 29:9,12,13 31:1,4,5, 10,13,20 32:3,10,17,21, 24 33:3,17,22 34:9 36:20 38:1 39:9,11 40:21,23 41:2 42:5 44:25 45:2,3,9, 12,16,17,19,25 46:10,25 47:21 48:17 50:5 52:8 53:2,10,20,21,24 55:13 56:11 57:8 60:24 61:15 65:7 72:20 74:7,24 76:21 77:8 78:11,25 79:2,3 80:24 82:14 84:23,24 87:16 88:21 89:13 90:13 91:18 92:9,22 93:23 96:17,18,24 97:10,11,14

at-fault
21:1

attached
32:3,7 57:15 75:16,20 76:12 82:19 83:12

attempt
92:18

attempts
59:17

attention
46:16 72:23 73:4 74:16 81:8 96:13

attorney
7:25 11:17 17:21 38:1 57:9 58:24 84:15

attorney-client
84:17 87:6,15 90:19 91:25

attorney-client-
87:18

attorney/client
37:24

attorneys
41:15 51:12 59:15

attribute
19:6

authority
19:24

availability
21:24

available
13:6 22:7 23:25 36:2 43:15 44:4 49:12,22 53:8 72:17 77:20 78:11

aware
13:7 22:2 39:20 40:10 44:21,22,23,24 47:11 49:2 52:8 62:6 68:6 70:16 88:3 92:9,19 96:21

B

back
9:25 10:25 13:4 15:24 16:8 25:6 41:5 46:9 49:17 56:11 62:20 67:21 70:6 74:10,25 80:11 81:3 88:1 90:9 93:19 96:5

bad
5:18 62:16 63:2

baffles
54:19 73:1

bait
85:24

balance
67:24

bargain
51:17

bargained
17:7

based
16:23 27:22

bases
11:1 15:21 32:14 59:24 63:7 66:23 71:18 73:11 75:18

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

basically
37:11 83:17

basis
11:25 13:18 14:1,5,19 23:3 25:12 37:13,19 38:12,23,24 40:15 48:14 49:4 50:13 52:15,16 54:11 55:9,21 57:8 59:3 61:10 64:17 67:2 75:8 77:6 81:14 84:9 85:10 86:14 87:17

be
5:12,14,15,25 6:24 7:18, 20,23 8:3 9:16 11:19 12:18 13:24 15:15 16:25 19:2 20:4,10 21:3 22:4, 21,23,25 23:18,25 24:1, 11 26:8,11 27:7,13 28:15,22,25 29:2,25 32:22,25 33:4,9 35:7,15, 17,23 36:9,15,17 37:4,5 38:11,12 39:18 43:5 44:23 47:19 49:3,4 50:24 55:19 56:1 57:8 60:9,21 61:1 64:6,7,19 68:5 69:2, 7,9 71:24 73:25 74:9 76:6 77:20,25 81:22 82:15,16 83:14,18 84:2, 17 90:5,19,22 91:11,25 92:3,4 94:21 96:1,3,8,16 97:2,19 98:10

Beacon
93:10

because
11:13 14:9 17:1,2 21:16 24:9,20 31:17 32:22 33:14 35:1,8 37:3 38:14, 25 39:9 48:20 58:9 62:14 70:20 74:22 79:11,13,19 80:9,12 81:9 89:9 96:12

been
4:19 6:2,17 8:8 12:16 16:4 18:20 20:3 24:18 25:19,20 26:10 29:14 30:11 31:10,24 32:7 33:2 36:2 44:21 49:10,14,18 55:8 57:20,21,23 60:6 65:10 69:25 70:20 76:18 77:19 78:12,21,25 79:8 81:24 89:11,13 90:3,7 92:10,14 93:13 94:1,25 96:4 97:5 98:15,18

before
5:23 8:5 18:15,24 19:18 20:11,16 23:10,18 24:18 25:23 35:5 36:22 38:25 58:13 65:11 78:5 79:14 82:4 83:7 84:21 87:9,13 89:10,12 90:2,11 95:22

begin
6:2 7:6 10:2 95:4

beginning
4:3 5:2,5 68:20 87:16

begins
21:16 22:17

behalf
37:23 41:6 51:4,16 53:13 57:13 58:24 66:11 68:13 77:8,23 78:3 79:15,19 94:5

behind
19:19 63:21

being
14:4 18:23 27:25 29:8 46:13 53:3 56:9 70:24 89:20 91:23

believe
17:23 27:24 35:5 50:17 77:11 89:9

believes
13:17

benefit
6:5 62:18,23 72:18 79:9

benefits
78:17

Bennett
17:10 20:13,14,25 25:10 47:8 76:11 98:10

Bennett's
8:13 15:17 16:7 25:19 75:14 95:1,5 98:5

best
5:21,22 26:8 28:7 35:17 48:2

Beth
56:25

better
79:5,6 80:11

between
6:19 11:19,21 12:15 13:14 17:7 19:3 24:3 44:10 51:16 63:10 64:21 65:17 67:6,9 74:11 77:12 90:18 92:25 93:5,9,13

beyond
59:23

big
24:15,19

bill
42:25 51:9 59:16 61:5 66:8 67:12,14 77:11,18 78:11,21

bills
22:15 67:7 95:14

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

blackmail
59:16,17,18,20

Bluecross
68:19

Bluecross/blueshield
11:24 12:2,4,15,18 13:2, 3,6,10 14:8,10,13,16,25 15:6 18:10 19:25 23:20, 25 26:3,8 28:8 36:24 37:3 38:9,15 39:4,21 40:2 41:9 43:13,21,25 44:1,3,17 46:23 47:6 48:19,22,25 49:12,13 51:22 53:14 56:12,15 58:19,22 60:3,6,21,24 68:4,15,22,24 69:11,24 70:3,5,7,10,15 71:1 72:1, 25 73:6 74:4,7,23 75:4 77:11,17 79:13,18,21 80:1,5,10,15 81:5 85:17 96:11,14 98:8

bold
14:2 45:12

both
5:18,25 7:24 12:24 27:20 31:6 33:7 60:25 71:3 75:1 76:14 89:9

bottom
34:9 45:12 97:14

breach
52:22

breached
52:14,21 53:1

break
5:11 53:18 84:21

breaks
5:15

brevity
10:17

briefly
8:10

brilliant
36:18

bring
72:22 96:12

bringing
81:7

Broad
6:10

Brooke
31:9

brought
14:9 73:4 74:16

bunch
17:14

business
24:16

but
4:25 5:4,25 6:11,21,25 7:2,23 8:24 9:12,17 10:2, 7 12:9 13:20 14:14 16:2, 6,23 18:5 21:4 23:17 26:16 28:24 29:1,4 30:12,15,19,21 31:5 32:5,7,21 33:3,9,16 35:6 36:18 38:2 40:2 44:1 46:22 47:11,18,21 48:1, 16 51:15 53:11,13 56:25 57:22 58:15 59:22 62:2 65:13 66:18 71:12 72:16 75:1 76:7 78:25 80:7,12, 17,25 81:2 82:8 83:22 84:18 86:24 87:17,23 88:2,14 90:5,10,21 91:2 92:25 94:22 95:16 98:17

by
4:21 10:22 12:17,20,25 13:23 17:6,17 18:12 20:13,17,20 25:8,10 26:2 27:3 29:2 31:2,24 34:4 37:8 40:18 41:17 42:21 43:1,9 52:18 53:22 56:1 58:10,14 62:24 64:2 65:8 66:8,25 67:11 69:8 71:25 75:24 82:12 84:3,25 85:12 87:22 91:8 92:23 94:5 96:19 97:12

C

Calhoun
4:6

call
10:17 90:8,9 96:15

calling
7:18

came
91:6

can
10:18 14:18 15:3,16 22:17,19 26:14,15 29:7 30:16 32:9 33:18 34:17 46:12 51:13 58:6 63:20 64:12 65:2 69:12,18 76:23 83:4 84:5,6,12 87:19 88:1 91:15

can't
16:22 19:6 26:13,24,25 32:24 37:24 46:22 51:12 57:5 60:4 66:17

cannot
85:7

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

capable
55:7,11,22,23 56:23,25 57:7 58:8,16 85:20

capitalize
35:17

capitalized
65:8

car
17:18,20,21

card
13:2,3 37:3,4 45:14 46:23 47:19,22 70:8 73:7 74:8

card's
47:12

care
26:9

careful
13:19 46:16

Carol
35:20 47:3 49:1

Carolina
4:6,7 11:19 12:1 13:15, 23 14:3 17:9,18 18:16 19:4,6,7,24 20:21 23:23 24:15 25:2,13 26:4,7,17, 20 27:15,19,23 28:5,18 29:22 35:25 36:21,23 39:13,16,22 41:6,7,8,18, 23 44:2,5 45:9 46:4 49:6, 11 50:13 51:2 52:2 55:25 56:17,20 59:9,12 60:15 63:10,12,14 64:21 65:17 67:9,10 68:6,9,14,21 70:1,14,24 71:2 72:17 74:2,7,11 78:10,15 79:25 80:3,20 83:14,25 84:3 85:8,13 86:18 97:7 98:16

carried
68:16

carrier
21:1,14 48:11

carriers
20:23

carries
21:16,19

carrying
55:16 65:18

case
8:12,13 15:12,17 16:5 24:10,11 27:2,13 32:22 33:9 41:4 44:12 50:14 51:1 56:4 57:2 76:6,7,25 78:24 81:25 82:1,18 90:25 92:8,15 95:6

causation
77:5 78:1

caused
41:17

center
31:10 98:6

certainly
9:2 67:8 74:12 79:15,18 92:11 96:3

certification
44:9

certified
27:16,19 43:20

certify
7:3 24:23

change
27:15 66:17

changed
19:9 23:6 24:16 27:15 28:5 40:5 91:14

characterization
52:24 95:17

characterize
50:20 63:20

Charleston
4:6 12:6 40:4 71:8 80:16

check
47:20 98:21

checked
45:15 46:3,20,21 93:25

checking
45:23

circumstance
55:24 58:12,17,23 85:15 86:1 88:11

circumstances
29:7 57:4 85:21 87:1 96:21

civility
6:1 29:7

claim
22:4,7 23:1 28:16 41:20 58:6 59:25 64:18 85:7 89:14 90:1,2 95:8,20 97:3

clarification
5:8

clarified
53:10

clarify
67:21

clear
15:11,13 16:25 19:3 24:12 28:13 44:13 58:18, 20 59:5 60:13 61:13 76:6

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

85:16

clearly
32:23 38:10 72:24

client
11:13 13:19 19:8 25:16, 18,22 30:1 44:10,23 48:11 54:9 64:7 91:11 92:18

client's
44:9

collision
13:9 24:18 88:7,8,15

colluding
56:7

come
6:22 9:1,25 41:21 61:20

comes
12:24 36:25 61:11,15,16

comfortable
58:23

coming
41:5 49:17 70:6

comments
5:20

commerce
54:8

communicated
35:20,21 40:24

communicating
66:10

communication
19:23 36:10 38:10 39:5 92:14 94:19 95:2,22,23

communications
35:24 36:5 39:6,16 41:18 92:1 93:9,13 95:4

company
17:17 18:6 20:7 35:16 93:10

competent
37:22 75:3 80:8

competing
62:5

complained
85:4 86:8

complaint
7:12,15,24 8:2 11:4,5 13:20 15:23 16:13 19:13, 17 21:18 25:11 29:10,15 31:3,4 32:16,18 33:1 34:11,20 35:3 37:12,20 40:13 42:3 45:1 48:4,15 50:10,12 52:12,14 54:2, 12 55:7,10 57:15 75:17, 20 76:1 82:22 83:12 85:4 86:7,9

complaint's
32:23

complete
46:15

completely
24:6

Complies
19:15

concern
39:17 41:11,19 92:17

concerned
22:17,22,25 28:15 53:11

concerning
87:4

concerns
41:10

concludes
98:24

condition
20:5,8 43:5,16 58:12 69:22,25 70:1,10,18 71:1,5,14 96:9

conditions
41:11 69:17,20 70:21

conduct
55:7,10,22 85:4 86:8,10

confidence
80:9,12

confirmation
29:24 31:19

confirmed
20:24 21:24 22:1,3,5,9, 11

confuse
19:20

confused
17:6 55:12 80:23

confusing
23:16

connection
75:13

consideration
94:5,15

considered
18:24

considering
10:10 93:20

consortium
89:15

constitute

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

86:10

constitutes
71:24

construe
69:6

construed
72:6

contact
95:15

contacted
59:15

contained
15:23 83:14

contains
6:5

contends
72:10 77:1 84:13

contention
17:13 34:7 66:24 71:19 73:12

contentions
11:2 15:21 32:14 63:7

context
18:15,20

continuation
34:7

continues
15:15

continuing
73:2 93:23

contract
25:13,15 26:3,17 39:23 50:15,18,22 52:4,23,25 53:1 60:18 63:10 69:7,24 71:24 72:4,7 74:11

contracts
42:17

contractual
87:7

Controlling
83:23 84:4,7

convenience
7:5

conversation
17:8 80:6 91:20 92:16

conversations
52:1,8 74:3,5 93:23

copies
31:9 93:22

copy
13:1 24:5 32:6 45:13 47:1,18,21 82:7 91:4,9 97:5,6 98:19

correct
6:15 12:11 15:13 16:10 18:24 21:21 22:1 25:3 27:7 28:18 29:19 31:12, 13 33:5,25 43:3,16 44:6 51:15 55:19 57:17,19 59:9 69:3 82:20,24 94:3 97:21 98:13

corrected
6:25 7:2

correctly
23:2

correspondence
42:24

corresponding
29:11 37:16 40:13 48:5 50:10 52:12 55:5

corroborated
12:25

corroborates
14:25

could
4:22 5:21 8:6 24:11 38:1, 11

couldn't
28:9

counsel
4:10,12 5:5,6,7 8:21 9:8 37:23 90:16,20 92:5,15

counting
30:12

couple
19:1 40:6 46:1 93:25 94:22

course
5:10,24 6:19 9:1 12:22 13:4 14:11,24 20:5 21:8 23:6 30:17 31:16 37:1,21 42:18,20 46:24 47:15 54:8 57:9 60:1,4 67:25 79:6

court
4:16 5:4,19 83:24 86:7

cover
18:3 28:16

coverage
17:22,23 18:7,23 20:10, 19,24 21:7,20,25 22:7,23 23:1 28:2,14,16 29:24 33:15 36:1,9,22 38:16, 17,19,21 39:7,8,18,19 44:4 49:22,23 50:7 60:9 77:20

covered
13:24 30:15 53:17 78:7

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

covers
65:6

credit
90:9

currently
14:23

D

D&m
10:17,21 11:1 13:17 14:18 15:21 17:5 20:18 21:23 22:5 23:23 25:1,13 32:13 35:24,25 41:18 50:15 57:13 58:5 63:6 64:24 65:13 66:23 67:9 71:18 72:10,21 73:11 74:4 75:8 76:1 77:1 78:14 83:22,24 84:1,3,6, 13 87:8 88:23 89:2 90:18 92:25 93:5,9,14 94:19 96:21 97:22 98:1

D&m's
11:2 13:5 15:22 26:20 30:5 36:12 37:19 51:5 57:11 60:8,10 69:2 72:16 75:18 81:14 87:4

damage
41:12,20

damages
59:7 61:7 77:21,25 81:13,15,22 86:13

date
4:2 7:1 15:7 25:1 26:10 60:12 78:2 94:22

day
7:19 33:22 43:9 54:3

days
24:17 40:6

deal
7:11 8:24 9:2

dealing
37:15 38:6 82:15

deals
48:3 50:9

December
41:13 89:11

deceptive
54:15,17 56:6 85:24

decision
49:23 94:1

deductible
98:7

Defendant's
40:15 48:11 72:12

Defendants
4:15 7:13 10:6,7 34:11 37:17 48:8,9,12 50:14 52:3 54:7 84:1 85:7 92:6

Defendants'
54:9 85:3 86:8

defending
89:1

defense
20:4 41:11 59:1,4,6 61:22 63:8,9 66:24 67:3 68:5 69:13,17,19 71:2, 19,25 72:3,4 73:12,23 74:12 75:10,19 76:2 77:2,5,7 81:13,15,20,22, 24 82:14,17 83:4,19,23 84:6,10 85:2,11 86:5,6, 15 95:15

defenses
71:22 72:2 73:23 74:2 75:9 81:18

definitions
5:8

Deluca
4:5,9 7:14 10:7 19:7 25:21 51:18 56:5,7 61:5 62:7 63:11 64:21 79:17, 24 80:4,19 83:1 85:19 87:8

Demaskey
11:21 12:2,5,12,17,25 13:6,8,15,19,21 14:7,11 16:21,25 17:5,8,18,24 18:1 19:3,6,7 20:19 21:6, 16,19,25 24:3,13,21,22 25:23 26:1 28:10,11 35:21 36:3 37:5 38:16 39:24 41:6,7,10,22,23 43:19,24 44:12,24 45:15, 23 46:3,10,18 47:1,3,9 48:22,24 49:1,2 50:23 51:2,16 53:13 55:25 56:8,16 60:16,20 62:7,9, 13,15,17,20,23 63:12,14 65:17,22,25 66:5,10 67:7,23 68:1,13 71:6,8, 10 72:21 74:6,11,18,21, 25 75:5 76:25 77:9 78:3 79:11,12 80:7 82:1,3,4 86:21 87:5,8 88:4,6,23 89:2 90:18 91:22 92:25 93:4,6,9,15 94:6 95:5,19 96:10,22

Demaskey's
13:2,3 14:25 46:6,7,23 48:18 51:3 56:14 68:15 70:7 77:10 79:15,18,25 80:5 82:18 90:25 91:23 97:3

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Demaskeys
11:22 12:10,16 15:1 27:19 36:25 39:3 43:7 60:25 62:2 70:25 72:23 98:6,8

Demaskeys'
68:23 70:5

denial
30:5 31:23 32:18 35:13 37:13,19 40:8,13,16 48:5 49:5 50:13 52:2,15,16,25 54:11,24 55:5,9 58:24

denied
11:18 16:14 18:13 31:17 33:20 37:12 54:10,18 55:8,19 70:20 94:2

denies
30:4

deny
13:18 14:5 17:15 34:11 37:17 38:8,12 48:12 84:1

denying
11:3 14:1,19 15:4,22 32:15 33:11 38:23 48:14 50:11 55:21 57:9 65:13

dependent
21:13

depo
8:7

deposing
5:6

deposition
4:4,7 5:5,10 6:3,4,7,9,12, 15,16,18 7:7 8:10,13 9:1, 13 10:2,8,11 15:12,14 16:7 19:12 30:20 43:23 47:8 48:3 57:12 62:21 68:21 75:13,14 76:5,8,10 80:23 86:3 87:13,16 91:7 92:7,9,13 95:1,5 98:6,25

depositions
8:14 15:10 32:5,6 75:13 76:4,12,14,18,22,25 81:25 82:18 83:11 90:24 94:8,9,12

deprive
56:8

describe
8:6 69:18

described
18:22 20:23 40:9 50:15 52:4 76:24

describing
49:24

designee
10:24

detail
16:7

did
6:6,10 8:6,20 11:13 12:14 13:6,21,22,25 15:25 16:5 17:11 19:8 20:5,9 23:23 24:11 25:14 26:15 33:3 34:22 36:17 37:2 39:9 40:1 41:18 42:10,12,14 43:19 44:19, 20 46:4,10 48:2,17,18,24 49:5,6 56:14,17 62:17,18 63:11 65:3 72:13 74:20 75:14 79:25 80:9 85:5,18 86:17,21 88:5 93:19 95:9 96:12

didn't
8:10,23 9:7,10 12:13 13:12,13 14:10,11,12 17:4,5 18:2 19:4 24:2,3, 4,22 26:3,4,16 33:5 39:22,23 41:23 45:21 46:24 47:2 51:17,18 53:9 56:13 57:13,18 58:11 60:19 62:2 63:10 71:4,5 72:20,21 79:11 80:17,18 82:4,5 86:20,22

difference
6:19

differences
6:25

different
17:14 19:2 30:14,15 33:3 44:7 50:1 73:16

difficult
7:23

dire
73:16

direct
91:10

directly
35:24

disagree
22:2 38:8 43:22 52:23 64:15 70:23,25

disbursement
97:2,4,19

discovery
76:9

discuss
21:5 87:3

discussed
9:12 15:15 16:4,7 18:18 50:3 61:23 69:14 71:15 72:8 75:12 76:4 81:17 82:11 84:8,19 87:16

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

94:25

discusses
17:14

discussing
8:18 40:21 76:16

discussion
12:23 32:12 37:7 90:23

discussions
11:20 15:1 84:18

disregard
49:21

disrespect
60:15

distance
76:20

division
61:25

do
5:21,22 6:13 7:21 10:1, 10,13 12:3 13:12,14 19:4 25:16 28:9,23,24 30:22 34:25 35:17,18 36:18,20, 22,25 40:4 43:5 44:8 45:14,15,23,24 46:2,9,21 47:7,20 48:9 50:20,21,22 51:7,13 53:18 60:14,19 62:18,24 70:4 71:4 72:6 74:19 80:24 81:4,21 87:17,19,21 95:12 97:4, 11,14,22 98:1,4

doctor
26:2 44:20 56:1 57:4 80:6,7

doctor-patient
41:8 60:17

doctors
51:13

doctrine
84:4

document
14:24 46:16 55:2 82:13, 21

documents
5:9 8:14 10:5,25 11:18 14:18 15:8,20 16:4,6 31:22 32:4,9,13 40:7 46:15 47:9,10 49:19,20 52:1,6 59:2 61:20 63:6 66:22 69:12 71:13,17 73:10 75:12,15 76:11,13, 15,22,23 77:1 81:11,19, 23 82:8,9,11,15,25 83:5, 7,9,10,12,13,16,18 84:5 87:4

does
21:12 26:17,19 45:24 52:24 66:4,12 67:18,20 75:2 80:22 85:5 86:10 97:22 98:1

doesn't
21:5,12,13 27:14 33:16 47:22 57:5 59:23 65:20 72:17 80:13

doing
19:21 62:25 70:9 73:14

dollars
17:25 22:6

don't
6:18,19 7:5,8 9:4,14 15:8 16:1,18,22 23:21 24:19 25:13,19 29:3 31:10,17 32:5 36:16,19 38:15 39:11,14,22 40:17 41:21 42:2 46:6,7,8,15,21 47:10,15,16,17,23 50:17, 18 57:7 58:16 59:20,21 60:13,14 62:11 64:15,20 65:10,11,19 73:17 76:19, 20 77:13 78:4,13 80:4,25 82:3 83:8,21 85:12,20 86:1,23,24 88:12,16,18 90:20 91:6 95:10,13,24 96:24 97:24 98:4,17,20, 23

done
20:18 23:20 24:10 26:9 28:8,12 49:18 51:24 53:4,16 56:2 77:21 79:20 96:12

door
97:10

Doug
4:14 82:7 91:5,19 93:21

down
13:17 81:2 91:10 97:14

downhill
84:22

Dr
8:10 11:21,23 12:7,16, 18,20 13:1,11 14:7,9,10, 13,21,24 15:2,6 17:1,2,5, 7,10 18:9 20:6 23:7 24:4, 8,21 25:17,22 26:1,2 29:23 33:6 35:22 37:2 39:4 40:4 43:5,15,18,19, 21 44:4,15,19,22 46:11, 24 47:1,4 48:17,20,24 49:2,14 50:24 51:17 53:12,15 56:9,12,14,17 58:18 59:16,22 60:21,24 61:1 62:4,16,18 63:1,15 64:23 68:1,3 74:20,21,23 75:1,4 77:9,11,15,17,21, 23,25 78:15 79:11,12,14, 17,19 80:8,21,22 85:15

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

86:18,21 88:3,5 96:6,12, 13 98:12,14

drafted
32:23

drawing
98:16

drill
13:17

duly
4:19

Dunsil
31:9

during
5:9 9:1

E

e-mail
11:19 15:7,25 16:2,6 19:18 20:12,25 21:5,17 22:10,16,22 24:25 25:1, 6,7,9 26:22 28:13,20 30:2 31:16 32:20 35:14 36:14 38:9,18 40:25 65:7 72:14

e-mails
8:18 14:21 15:3,5 16:2 31:7,12,19 33:23 34:2,3, 8,15,16 40:22 54:22 61:24 67:5 70:2 74:2,3 75:25

E-TRANS
99:3

each
5:5,22 35:3 61:19 87:5,6

earlier
9:17 18:18 50:16 52:4 57:14,18 70:13 82:17 85:12 91:14 95:8

early
18:4 19:21,22 94:21 95:16

earmarked
59:11

earnest
95:4,17

easier
60:16

easy
49:10,14,18 58:9

Effect
85:2

effective
9:21

efficient
8:3

eidetic
36:16

Eighth
81:11,12

either
22:14 37:25 39:10 68:10 77:13

elective
28:1 29:25 71:6

Electronic
99:2

eleven
82:23

Eleventh
86:5

else
8:16 28:11 42:12,14 49:8 61:11,14

email
30:1

emergency
98:15

emphasis
35:18

emphasized
64:1 65:8

end
10:1

ended
61:4

engaged
54:7,15

enough
10:16 22:23 23:1 28:15 30:22 53:11 74:24

entered
50:15 52:3 60:17,18

entire
59:10 61:5

enure
74:13

error
43:21

Esquire
4:9 7:13

essence
53:7

essentially
16:4 53:4

established
17:1

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

esteemed
17:20

estoppel
73:13 75:7 77:2

evade
20:8

even
12:13 39:11 74:5 91:11 97:6

event
51:10 56:3,19 67:21 71:23 83:24 86:7

events
33:17 40:6 52:1 58:7 85:14

eventually
12:7 78:24

ever
44:23 57:6 62:21 83:8

every
11:19 12:13 37:22 40:3 46:16 47:3 55:1 87:6

everybody
18:8 19:10 26:7 95:18 97:6

everyone
35:17 90:25

everyone's
74:16

everything
6:21 9:14 27:1 28:3,4 31:13 32:8 33:3 35:3 77:15 86:16 93:19 98:14

everything's
8:18

evolves
41:4

exact
35:22 69:21 74:19

exactly
6:17 14:6 28:20 31:20 51:7 52:20 63:19,22 64:4,13 73:14 83:9

examination
4:20 7:6 8:1,5 10:3,4 34:23 55:14

except
40:4

exclusion
21:10

excuse
44:2

executed
47:14

exercise
7:10

exhausted
21:9

exhibit
6:3,14 7:7,11,12 9:24 11:7,9,12 19:11,12,13, 14,16 21:17 25:11 29:12, 15,17,18 30:2 31:5,6 34:15 35:14 42:3,4,14,15 44:25 45:1,6,7,17,18,20 54:6 55:13,17,18 57:15 59:5 65:5

exhibits
6:3 7:11 9:20 32:6 75:19 76:1,8,24 82:19,22,23 95:1 99:3

exist
27:22

existed
44:18

existing
93:5

expand
34:25

expectation
27:22,24

expenses
29:25 33:15

experience
46:13

explaining
39:6

explains
78:1

explanation
57:10

explanations
5:8

express
92:17

expressed
39:17

expressly
84:1

extent
92:18

eyes
74:25

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

F

fact
11:22 13:1 24:7 25:25 27:18 33:8 39:10 41:5 43:18 44:24 49:1 51:20 56:5,6,15 63:13 70:6 80:2

fact-dependent
55:24

facts
10:5,25 11:18 13:17 15:20 27:22 30:5 32:12, 18 35:12 54:20,21,23 56:4 57:3 58:25 63:5 66:22 68:9 69:19 71:12, 17 72:7 81:11 84:13,16, 18 87:3

factual
37:19 38:23 40:15 48:14 50:12 51:25 52:16 54:11 55:9,21 59:3,24 61:10 67:2 73:21,22 75:8,18 77:6 81:14 84:9 85:10 86:14

factually
33:20 58:6

failed
61:6 72:22

failing
70:2

failure
59:1,4,7,25 60:22 61:1, 22 69:10,17,19 70:1 71:14 72:3

fair
5:23,24 9:11 10:16 35:8 64:8 76:18

faith
86:19

falls
56:4

false
40:25 41:1,2 56:6

familiar
15:9 32:8 36:14 94:9

family
26:2

fancy
73:3

far
26:12 31:15 49:19 60:20 75:6 84:15 88:2 93:20 95:25

fee
62:2,8,9,13 86:20

feet
37:10 39:2 81:2

felt
62:16

few
5:1 96:20

fifteenth
52:19

fifth
28:25 31:21 71:19 72:6 74:1

file
13:1 14:25 15:6 19:25 24:12,13 26:8 28:7 36:24 37:4,5 38:2 40:2 46:24 47:1,5,22 49:11 53:14 58:11,19,21 60:24 64:1 68:14,19 70:2,5,8 72:13 73:5 74:4 83:14,18 85:17

filed
7:12,25 24:9 35:15 37:23 58:24 60:3,5,21 61:7 68:23 70:19 72:14 77:14, 17 78:16,19 80:10 82:5 83:8 89:16,20

filing
68:21 69:11,24 70:9 71:25 79:7

filled
24:5

final
22:16,21

financial
12:13,14 18:16

find
20:17 30:5 32:24 37:13, 18 40:15 48:13 52:24 54:10 55:9 83:1 92:2

finds
83:24 86:7

fine
74:10

finish
5:22 61:12

finished
10:19 22:11 53:23

firm
10:21 62:12 66:16 95:15

firm's
28:14 42:24 49:21 65:20

first
7:1 9:25 15:11 16:20,24 18:24 19:16 21:15,22

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

23:8,10,18 25:6 31:6,7 36:22 39:1 42:22 46:2 51:8 59:2,6 64:25 65:16 67:19 72:2,3 76:7 79:4 88:5,8 89:16,22 90:14 94:19,22

five
30:12 53:19 90:2,6,10

fixed
62:19

flipping
42:2

focuses
34:19 55:4

focusing
20:12

folks
74:6

follow
19:2

follow-up
87:23 97:17

follow-ups
96:20

followed
53:15

following
78:13

follows
4:19

for
4:10,12,14,22 5:7,16,19 6:5 7:5,6 8:3,7,8,21 9:6, 15,17,21 10:4,8,17 12:11,19 13:20 14:1,5, 14,19 17:7,12,17 18:5,12 19:12 20:19 21:1,25 22:7,12 23:3,25 24:1 25:15,20,21 27:25 29:25 32:12,21 33:15,23 34:23 35:7,17,18 37:4,10,13,19 38:23 40:15,20 41:14 42:7 43:5,15,18 44:4,18, 23 46:14 47:20 48:11,14 49:14,20 50:13 51:9,18 52:10,11,16,19 54:1,11 55:9,21 57:9,10 59:3,10, 11,13,22,24 60:6,9 61:5, 10,21 62:5 63:12 64:6,18 65:25 67:2,8,23 69:18,22 71:21 72:17 73:22 76:13, 20 77:6,15,21 79:7,22 80:9 81:7,14 83:1,4,22 84:2,9 85:6,8,10,16 86:2, 15,21,22 87:3 89:14 90:23 91:11,16,19 92:5, 6,15 93:3,15 95:13 96:7

foresee
33:2

forget
5:25

form
25:4 26:23 30:8,18 34:1 42:19 69:4 75:21 82:2

forth
11:2 15:21 32:14 66:24 73:12,23 75:9 88:1

fortunate
62:20

forward
6:12

four
30:12

fourth
28:24 69:17 72:5 74:1

fraud
56:22

French
73:14

frivolous
82:5

frivolously
85:19

from
8:21 12:24 13:5,8 16:3 20:3,25 28:19 31:7 35:24 36:13 37:1 43:2 56:10 58:20,21 60:23 62:13 68:20 72:18 74:4 76:20 83:1 85:16 90:16 98:22

front
8:4 12:22 74:6

full
14:4 18:19

fund
29:24

funds
62:3,6 78:2,11

further
98:22

furthest
56:10

future
33:2 46:9

G

game
76:18

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

garage
97:10

Garcia
31:9

gave
15:14 37:5 53:5 70:13 97:6

general
33:11 88:14 89:12

generally
6:21 12:10 63:20 87:12, 18

get
8:5,20 11:8 20:11,16 22:24 28:25 35:5 36:13 37:24 56:13 57:11 59:16 62:18 72:18 84:22

gets
61:8

getting
10:18 15:24 16:8 38:3 43:20 86:23

give
5:1 12:21 57:13 61:18

giving
41:3

glad
5:12 28:22

go
6:11 9:14 14:15 25:12 30:19 46:9,14 48:1 53:19 63:3 74:10 80:14 81:2 93:18

go-back
46:10

goes
11:25 53:8 54:17 63:9 72:1

going
5:21 6:10 8:1 9:18,25 10:1,2,6,7,9 12:3 20:4,7 28:3 31:18 32:7 34:10 35:9 37:10 46:18,20 48:16 53:25 55:25 61:16 62:4,22 66:3,21 70:4 73:5,7,18,19 80:13 82:13,15,16 83:18 87:3 91:2,5,24,25 92:18

gone
12:5 35:2 56:1 71:10 74:18

good
19:21 31:16 48:1 54:3 62:21 74:24 75:14 86:19

Goodwine
20:16,25 25:11 31:8

got
36:13 47:1 62:23 80:11 82:22 87:23 91:12 95:3

great
36:17

grounds
87:15

guarantee
51:12

guess
16:3 37:21 46:25 48:16 59:18 69:5 73:3 90:6

guessing
94:22 96:1,3 98:17

guy
62:21

guys
88:1

H

had
6:9 8:14 14:7,13 16:6 17:1,2,8 18:1 20:2,5,6, 17,18,20,23 21:1,6,7,23 22:2,3,5,12,13 24:10,16, 21 25:2,13,18,22 26:2,9, 21 28:11 32:6 33:1 35:25 39:12 40:3 41:4,7,10 43:7,24 44:16 47:12,13 48:20 51:5 53:15 56:16 60:5 62:15 70:7,19,25 71:5,10 77:17,18,21 78:10,12,16,19 79:14,20 80:3,6,12,19 81:4 89:11 90:3,6,7 91:20 92:10,14 93:22 94:19 95:15

half
45:13

hallway
91:21

happen
80:17

happened
26:14 39:14 78:20 80:17 88:9 94:9

happens
14:17 21:11 57:1 67:15

happy
22:21

harassing
29:1,3

Hard
47:25

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

harm
86:18

harmless
93:1,4

has
11:17 13:1 15:6 21:10 36:15 46:3 57:20,23 58:5 59:10 82:7 87:7 88:23 89:2 90:20 91:14 92:7 94:1,7 95:19

have
6:17 8:4 9:14,19 11:14 12:2,5,7,16 13:4,6,12,13, 22,25 14:9,14 15:8 16:4 17:22 18:19 19:4 23:20 24:17 25:14 26:3,4,10,16 27:11,16,21,23 28:8,9, 10,11 29:4,14 31:10,24 33:2 35:2 36:2,10,16 37:22 38:1,16 39:13,14, 21,22 41:21 42:16 44:7, 8,21 45:15,24,25 46:4,8, 9 47:9,10,20,23 48:9,10 49:10,14,18 51:21 52:23 53:10,17 54:15,16,21 56:7,22 57:10 58:15 60:3,6,13,17,18,19 61:7, 9 63:10 65:10 69:25 70:21 71:3,9,10 72:6 73:4,7 74:16,18 75:5,16 77:18,19 78:4,20,21,22, 25 79:8,23,24 80:6,7,8, 14,17 81:24 82:10,13 83:12,13 84:8 85:6,24 87:13 88:14,21 89:5,13 92:12 93:13,21 94:25 95:10,12,24 96:4,24 97:24 98:8,15,18,20,23

haven't
28:12 40:9 82:8 94:2,8

having
4:19 7:19 54:3

he
12:13 13:10,22,25 14:11, 13 17:1,2,9 19:5 20:2,5,6 22:2,3,12 24:4,5,9,11 30:16 37:6 38:25 43:20 45:24 46:4,20 47:4,12 50:24 53:16 59:23 60:5,6 73:8 74:22,24 77:21 79:13 80:9,12,24 81:5,6, 7 82:4 83:9,10 88:4 90:21 92:18 95:19

he's
56:1 62:20,21 79:8

head
26:13

heading
52:22

health
11:14,24 13:7,10,22 14:8,23 18:12 24:9,12,13 27:20 38:15 40:19 43:1, 6,10,12,14,17,25 44:1,10 45:15,24,25 46:4 47:20 48:11 49:3,12,13,16 51:21 53:6,8,9 56:13,15, 18 57:5 58:10,11 64:1,2 65:8 66:8 67:7,13,15 68:4,24 69:11,24 70:6,7, 10 71:1,9 72:14,15,16,25 73:1,6 75:4 77:10 80:5, 11,20,25 81:1 85:17 96:11

health-insurance
12:21 35:16

healthcare
64:5 96:22 97:1

hear
45:21

heard
28:19

help
26:17 46:22

her
89:14

here
20:17 22:6 23:17 26:11 28:12 31:13 36:12 38:22 43:8 46:1 47:17 57:2,11, 13 66:16 82:21 97:11

hey
10:9 20:4 23:19 51:18 71:6 80:4 96:5

highlights
47:17

Highsmith
11:23 12:7,16,18,20 14:7,9,10,13 15:2,6 17:1, 2,5,7,10 20:6 24:4,8,21 25:17,22 26:1,2 29:23 33:6 35:22 37:2 39:4 40:5 43:5,18,19 44:5,15, 19,22 47:4 48:20,24 49:2,14 51:17 53:12,15 56:9,12,14,17 58:18 59:22 60:14,16,21,24 61:1 62:4,18 63:1,15 64:23 68:1,3 74:20,21,23 75:5 77:9,15,17,21,23,25 78:15 79:11,12,14,17,20 80:8,22 86:19,21 88:5 89:1,3 96:6,12,13 98:12, 14

Highsmith's
8:10 11:21 13:1,11

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

14:22,24 18:9 23:7 43:15,21 46:11,24 47:1 48:17 50:24 59:16 62:17 75:1 77:11 80:23 85:15 88:3

him
13:9,20 17:3 38:2 47:13, 20 56:2 62:22 72:24 74:25 77:22 80:9,12 85:17

his
8:11 11:23 12:2,4 13:10, 24 14:10,14 20:1 23:20 24:12,23 26:2 27:16,20 33:6 35:15,16 36:24 37:3 39:4 40:5 41:9 46:18 47:5,12,21 48:22,25 49:3 53:6,14,16 56:9,12,18 58:18 60:6,20 62:19,21 63:14 66:11 67:7 68:1,3 72:24,25 73:5,7 74:4,7, 22 77:18,24 79:13 85:17 91:22 92:11,12 96:10,13

hold
30:3 92:18 93:1,3

hold-harmless
90:17

home
21:12

Hopefully
5:14

housekeeping
8:20

how
10:12 20:10 46:22 47:19 50:20 52:15 55:22 58:1,6 59:21 62:16 66:13 75:6 85:22 87:7,24 89:18 95:20,22,24

However
17:16 87:19

hundreds
58:3,5

I

I'D
22:21 40:14 60:5 90:5 94:21 96:1,3

I'LL
5:3 6:23 7:18 10:17 11:7 28:22,24 35:6 43:23 48:6 51:23 52:5 75:6 84:15 90:13 91:4,10

I'M
5:16,21 7:9,23 9:18,25 10:2,6,7,24 11:9 17:6 19:2 20:11 22:6,11,19 23:13,17 25:9 27:10 28:3 29:1,4 30:23 31:4 32:3,8 34:9,10,12 35:9 36:7,12, 14 37:9 39:20 40:10 42:13 45:3,4,11,17 51:23 52:8,24 53:25 55:12,20 56:24 58:23 59:10 61:24 65:7,24 66:2,13 68:25 69:1 73:13,19 78:13 80:19 82:13,15 89:25 90:25 91:2,5,25 94:8,13 95:2 96:20 97:10,11,14, 17 98:16

I'VE
6:21,22 7:24 25:20,21 28:21 32:4 36:13 51:22 57:4,6 68:20 76:19 81:18 83:8 86:2,16 87:23 90:15,16 97:17

idea
56:17 80:20 88:21

identified
31:24 35:9 81:24 97:2,19

identifies
97:15

identify
14:19 15:3 32:9 54:23 58:25 69:12 76:23 77:6 81:14 83:5 84:6

identifying
75:15

if
4:22 5:11,21 6:22 7:3,8 8:6 9:1,4 10:9 12:11,13 16:1 17:21 18:3 19:20 21:10,11,23 22:19 23:21 26:9 27:13 28:9,21,24 31:18 32:5,17 33:1 34:2 35:6,10,17 36:17 37:5 39:2,11 42:2 43:14 46:6, 7,17,20 50:23 53:15 56:11,20 57:20 58:5 59:10 60:5 61:4,14 62:21 65:10,19 67:9,10,14 69:6 70:18,19 72:6 73:5,7,8 77:21 78:10,13,15,19 80:3 81:2,7 82:3 90:6,19, 21 91:12 94:12 95:10,14 97:18 98:12,19

ignore
71:11

ignored
58:18,20 72:13,14 73:1 74:2 85:16

ignoring
60:12,22 61:3 70:2,4

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

implying
27:5

impressed
6:20

in
4:7,17 5:12,25 6:25 7:12, 15,16 8:2,4,12,24 9:8,12, 22 11:2,3,5,7 12:6,14 13:20 14:2,4,20,24 15:4, 10,12,14,16,21,23 16:7, 12,24 17:3,14,18,19 18:15,17 19:24 20:2,6,24 21:15,17,19,22 22:6,8 23:12,19,21,22 24:10,11 25:18 26:9,21,24 27:2, 10,11 28:7,20 29:10,11, 14 30:6,14 31:3,4,12,19, 23 32:5,14,15,23 33:1,7, 10,11,12,15,24 34:2,5, 11,12,19,20 35:13 36:5, 9,21 37:4,5,11,12,16,17, 19 38:7,14,17 39:18 40:3,4,8,12,14,16 41:12 42:1,22 43:8,22,23 44:12,23 46:9,23 47:12, 15,22 48:4,5,6,7,8,15 49:8 50:9,10,11,14,21 51:1,6,7,10 52:11,13 53:25 54:2,5,6,7,8,12,15, 16,24 55:4,5,6,10,17,18 56:1,2,3 58:17 59:11 60:9,10 61:6 62:1 63:7 64:24 65:9,16,22 66:24 67:5,18,21 68:5,10,16 69:5,23 70:8 71:8,19,23 72:6,11,24 73:8,12,23 74:10,24 75:2,10,12 76:4,5,9,17,25 77:14 79:15,21 80:9,12,16 81:19,24,25 82:7,18 83:14,15,18,24 85:4,14, 15 86:2,7,8,18,19,25 88:4 89:3,4,8,10,16 90:25 91:6,13,20 92:8, 14,15 94:9,22 95:1,4,5, 17 97:9 98:5,16

in-network
11:14 13:22 14:1,7,16 23:24 44:3,22 48:20 49:15 74:13,17 81:5,6

inaccurate
33:12

Inc
4:8

incident
43:2

include
11:20,22

included
75:25 92:12

including
50:15 84:4 87:5 92:25

incongruous
47:20

incorporate
15:16 55:1

incorporated
15:18

incorrect
34:13

incredibly
79:10

indemnify
90:22

indemnity
90:17 91:7 93:1,3

indented
14:3

independent
9:18

individual
10:11 41:16 42:23 67:22

individuals
31:14

infor
40:22

information
10:5 11:1 12:22,24 15:20 28:6 32:13 35:23 40:23 41:3 47:13 63:6 66:23 71:18 73:11 81:12 87:4

initial
78:16 95:23,25

initially
17:16,19

injured
20:3 24:8 41:16

injuries
20:1,2 62:19

injury
21:12

insight
38:1

instruct
5:6

instructed
68:13 77:8

instruction
58:19,21 68:16

instructions
5:1 61:4 85:16

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

insufficient
62:14 67:22

insurance
11:14,24 13:2,3,7,10,22 14:1,8,23,24 17:17 18:6, 12,22 20:7 24:9,12,14 27:20 38:15 39:7 40:19 43:1,6,8,10,12,14,17,25 44:1,10,17 45:14,15,24, 25 46:5,23 47:9,11,12, 19,21,22 48:11,19,23,25 49:4,12,13,16,23 51:21 53:7,8,9,14 56:13,15,18 57:5 58:10,11,20,22 61:7 64:1,2 65:9 66:8 67:8,13, 15 68:4,15,24 69:11,25 70:3,6,8,10 71:1,9 72:1, 14,15,16,25 73:1,6 74:5, 23 75:4 77:10 79:8,13, 18,21 80:1,5,11,13,16, 21,25 81:1 85:17 93:10, 12,15 95:15 96:11 98:3

interest
28:7 85:2,5

interesting
73:3

interests
62:5

interpret
59:20 66:14

interpretation
84:16

interrogatory's
16:20

interruption
97:9

intimidated
29:2

intimidating
29:1

into
8:5 20:11,16 22:18 23:23 26:13 37:24 50:15 52:3 57:4,6 60:18 84:22

intro
6:21

introduce
4:10

invade
91:24

investigate
20:18

invoices
48:10 98:2

involved
17:19 35:17 92:20

irony
86:20

irrefutable
47:11

is
4:2,3,5,7 6:4,14,15,24 7:1,11,12 9:13,18 10:4, 12,15 11:5,6,14 13:22 14:6,16 15:11,18 17:21 18:4,13 19:17,21,22 20:4,7,13 21:9 23:16 24:7 25:25 26:6,14,18,20 27:4,11,18 28:17,23 31:13 33:4,8 34:12,16 36:15 37:2,4 38:9 39:11 40:25 42:4 43:8 45:4,6, 17,23 46:18,22,23 48:14 49:1,17,19 50:12,18 51:5,10,13,20 52:18,22 54:5,13,19,20 55:3,7,10, 14,20,22,24 56:2,5,6,16, 19 57:3,9,15 58:7,12,17 59:6,23 60:8,10,13 62:15,20,25 63:13,16 64:7,17,18,24 65:7,13, 14,16,24 66:1,20 68:25 70:1 72:6,10,16 73:17 74:21,23 76:5,7,18 77:6, 13,15 79:10,23 80:3,8 81:10 82:22 83:1,17,23 85:10,13,20,25 86:20,25 87:10,24 88:18 90:9 91:2,9 92:24 93:4 95:12 96:21 98:25

isn't
34:7 58:7 60:4

issue
53:10 63:9

issued
57:21,24 58:5

issues
44:7

it
6:15 8:3,17 9:18 10:6,17, 18 11:20,22,25 12:11 15:16 16:1,23 17:15 20:1,10 21:2,8,11,12,13, 19 22:2,3,4,8,13,19,24 23:2,6,10,24 24:10,11, 17,20 26:8,14,20 27:13, 14 28:3,7,22,24 29:2,9 30:1 31:14 32:22 33:8,11 34:10 35:6,7,12,16,19 36:8,10,13,14,15 37:5 39:12 40:23 41:2 43:4,20 44:18 45:3,4,9,13,22 46:22 47:6,10,15,16,18, 19,22 48:1,2 49:10,13, 15,17,18 50:6 51:3,5,16,

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

18,22,23 52:25 54:17 55:17,19,20,22 56:11 57:11,12,20,23 58:6,9, 14,15 59:13,14,21,22,23 61:1 63:4,19,22,25 64:9, 11,12,13,15,17,18 65:4, 10,11,19,20 66:1,2,12, 14,18,20 67:12,18,21 68:22 70:12,19 71:4,25 72:6,7,10,18,21,22 73:1, 3,15,20,25 74:16 75:22 78:5,9,19,25 79:23 80:10,17 83:23 88:9,10, 15,16,19,21 89:17 90:3, 7,13,14,15 91:3 93:20 94:21 95:22 96:13 97:5,6 98:20

it'll
5:25

it's
7:16 8:8,17 9:8 12:25 13:21 17:16 21:13 27:14 28:13 30:11,13,14 31:17 33:20,24 34:8,23 35:7,9, 10 38:4,16 41:1 42:9 43:9 47:11,19 48:16 50:18,23,25 55:8,16 56:25 57:7,20 58:16,22 60:15 65:5 66:7 67:10,25 68:2 72:18 73:2,3,16,17 77:15 79:7 82:22 85:21, 22 89:12 95:3 96:4,5 98:5

italics
14:2

Item
77:4 84:20

its
11:1 13:18 15:21 24:16 32:14 48:10 54:6 56:4 62:13 63:7 66:23 71:18 73:11 77:2 78:16 93:10

itself
17:12 32:21 40:21 71:22

J

January
19:17 20:12,18 22:8 24:25 25:7,10 26:22 29:21 33:17 38:18 40:22 79:4

Jay
16:3

job
19:21 36:13 75:14

July
4:2

jury's
62:22

just
7:20 9:4,8 10:14,17 14:9 15:11,13,25 16:6 18:17, 22 19:1,5,8 20:23 24:16, 19,23 26:6,25 29:2 30:13,22,23 31:5 32:23 34:8 39:20 41:3 47:22 50:18,25 54:3 57:2,3 59:5,20 60:16 61:12 62:2,24 63:2,15 64:22 65:18,24 66:13 73:14 75:5 77:16 78:14 79:7 81:6 85:11,22,25 86:15, 16 87:12 90:23 92:7 94:18 96:24 97:24 98:16

K

Kary
31:9

keep
40:21 41:5 49:16 70:6 82:9

keeping
26:6,25

Kiara
19:23 20:16 25:10 31:8 49:14 65:7

knew
31:20 32:21 33:4 40:23 41:7 47:2 72:22 79:19 81:3

know
4:25 5:11,12 6:8,18,19, 23 9:4 10:15 14:11,12 16:1 17:20 18:3,8 19:10 20:9 21:8 23:7,11,14,17 24:2,3 25:19 27:16 30:14,21,23 31:10,17 32:1,5 36:4,17,20,22,25 39:9,11,14 43:19 44:20 46:6,7,10,21,24 47:2,15, 16,17,23 48:1,17,24 49:5,6 51:12 56:14 59:18,21 62:11 64:12 65:10,11,19 72:20,21 73:17 74:9 75:1 76:3,20, 21 77:3,6,13 78:13 79:5, 6 80:18,21 82:3,10,15,25 83:6,10 84:16 86:20 90:5,9,20 91:2 94:7,10, 16 95:10,14 96:4 97:14 98:1,4

knowing

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

86:11

knowledge
24:7 35:19 71:16 82:10

knowledgeable
17:21

known
79:24

L

laches
73:13,17 74:15 75:7 77:2

lack
36:1 39:7,18 41:19 63:8 64:18 86:4

ladies
12:22

language
20:11,17

last
7:2 8:8,20 9:8 29:6 93:25 96:20

latches
73:20

later
27:13 32:24 33:8,16 36:8 90:8

law
10:21 28:14 42:24 49:21 54:8 56:3 62:12 65:20 66:16 84:4,17 88:2

lawsuit
9:16,17,18 76:7 77:14 83:7 89:16,20,21,23 91:14

lawyer
4:25 91:23

lawyer's
13:19 55:7

lawyers
16:24 27:24 28:1,19 52:3,14,21

lawyers'
11:13 30:1 55:10,22

learned
33:14 35:25

least
74:24

leave
84:15,17

led
18:10 35:4

legal
9:22 20:15 25:19 42:16 60:23

less
96:3

let
5:12,22 6:6,23 11:7 18:8 19:10 22:23 23:7 27:15 30:23 43:19 45:8 61:12 67:21 77:5 90:13 96:15 98:21

let's
9:23,24 13:16,17 15:19 16:25 18:14 19:2,11 25:5 29:9 38:13 41:25 42:2 44:25 50:8 53:19,23 59:3 63:3,5 71:13 73:10,21 81:10 84:21 87:2

letter
8:20,24,25 9:8,10 16:1,2, 24 17:6,10,11 18:10,11 19:9 25:23 35:19 39:20, 25 40:1,19,20 42:1,4,6,8, 23 50:17,19,21,25 51:1, 6,8,19 52:21 53:5,7,13 57:14,16,20 58:9,13 61:8,25 63:13,15,17,21, 25 64:22,25 65:6 66:1,2 67:5,11,18,19 68:7 71:23 78:22 79:4 87:14 90:16

letters
16:2 25:18 58:6 61:25 63:22 64:3,5 68:11 72:12 74:3,4 78:5

liability
18:7 20:21,22 21:9 36:9 39:12 53:8,10 62:1 77:20 84:2 88:17

lien
95:13,16

lies
56:20

like
5:24 6:9 20:1 23:12 35:2 40:14 47:16 55:8 56:22, 24 58:15 60:5 61:24 62:22 66:17 73:16,20 79:7 85:24 90:4 96:25 97:2

limitation
81:13,15,22

limited
62:5 75:19 93:1

limits
29:24 31:20 39:13 62:5

Lines
91:10

list

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

6:5 35:10

listened
53:16

litigation
46:25 83:15

little
22:19 55:12 80:23 95:12

LLP
4:5,9 7:14

Location
4:5

long
5:15 7:19 32:7 37:10 95:22

longer
95:3

longtime
92:12

look
15:19 18:14 19:11,13 23:23 29:9,13 32:17 41:25 42:5 44:25 45:2,8 56:11 81:2,3 90:13

looked
6:20,21 76:21

looking
11:9,10 16:9 29:12 31:1, 4,5 32:3 34:9 45:3,17,19 53:24 65:7 97:10,11

looks
6:9,11,23 20:1 47:16

LOP
50:16 52:4,14

LOPS
96:23 97:23

loss
89:14

lost
95:11

lot
19:1 32:4 41:12 75:15

love
73:15

Luca
62:7

M

machine
46:10

Mackelcan
4:14 10:9,14 25:4 26:23 30:8,11,21 34:1 38:1 42:19 69:4 75:21 82:2 87:9 91:15 92:5 98:23 99:3

made
9:2 14:4 18:20 22:8 41:3 81:1 92:8

maintain
48:9 85:7

maintained
48:9

major
48:21

majority
62:4

make
10:14,15 21:10 22:24 38:13 41:18 47:22 86:21 96:15

making
92:3

manager
19:24

many
12:5 43:23 46:13 58:1 75:3,15 87:7,24 95:24

March
64:25 67:4 68:7

marked
29:15,17 30:2

married
89:10,13

Masty
16:3 83:6,13

matter
4:7 8:20 24:7 25:23,25 27:18 39:11 49:1 51:20 56:5,6,16 63:13 80:3 89:16

matter's
32:7

matters
76:15

Maucher
4:4,5,9,18,22,24,25 6:6 7:13,14,16 10:7 19:7 25:21 51:19 56:5,7 61:5 63:11 64:22 79:17,24 80:4,19 83:3,4 84:2 85:19 92:11

Maulcher
83:2

may
6:17 7:2 9:16 23:18 24:17 31:9 39:13 58:15 60:18 65:10 66:17 83:12,

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

13,14 84:2 86:12 94:25 95:10 96:4,16 97:17 98:15

maybe
36:8 47:7 95:11

me
5:4,12 6:6,9,23 7:3 12:24 14:2 19:6,8,20 22:23 24:23 28:22 29:13 30:21 32:18 35:4 37:25 41:1,15 42:9 43:24 44:2 45:8 46:17,20 47:3,23 54:19 59:10,23 61:12 66:14 67:21 69:18 73:1,9,20 77:5 81:1,14 83:1 87:21 91:11 93:17 96:15 98:13, 21

mean
8:17 19:19 27:14 33:7 52:25 60:15 64:3,12 65:5 72:1 76:9 84:12 95:17

means
16:19 26:14 47:16,18 66:14 73:4

meant
29:6

medical
14:22 22:14 42:7 44:9,11 46:14 62:3,24 63:1 97:7

meet
71:5

memorize
8:10 82:6

memorized
15:8 39:15 78:4 82:8

memory
36:16

mention
38:15

merely
18:11

met
36:18

methodically
35:2

Michael
4:4,8,18,24 7:13

Microsoft
54:3

might
8:3 28:25 36:2 38:16 39:18 44:21 57:10

Mike
30:12 87:9

Mike's
10:10

million
17:24 21:3 22:6 28:14

mind
7:8 26:25 36:25 42:2 61:11,15,16,21 75:23

minds
31:18

minimal
62:5

minimum
39:12

minor
77:19

minute
36:6

minutes
53:19

misrepresent
33:5

misspoke
89:25 94:12

misstate
23:15

mistake
14:14 56:20

mistakes
85:18

Mister
95:11

mitigate
59:2,4,7,25 60:23 61:2,6, 22 72:3

model
24:16

modified
12:17,20 67:11 68:1

moment
78:14

Monday
25:10

money
61:9

month
8:9 19:22

Months
96:2

more
24:11 57:21,24 58:4 80:14 85:23 94:10

morning
6:10

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

motor-vehicle
13:9 95:9

motorist
17:22,23 18:2 21:7,20,25 36:2 50:7

mouth
23:12,21,22

move
37:10 39:2 63:5 66:22 71:13 73:10 87:2

moving
16:23 17:13 32:11 34:18 37:9 40:11 69:16 77:4 83:22 90:12

Mr
4:12,14,21,22,25 6:6,8 7:18 8:12 10:9,12,14,16, 22 11:21 12:2,5,12,17,24 13:1,3,6,8,15,19,21 14:7, 11 15:14,24 16:21,25 17:8,18,24 18:1 19:3,6 20:19 21:16,19,25 24:13, 21,22 25:4,8 26:1,23 27:3,12 28:11 30:8,9,11, 18,21,25 31:2 34:1,4 36:3 37:5,8 38:16 41:6,7, 10,22,23 42:19,21 43:19, 24 44:12,24 45:15,17,23 46:3,6,7,10,22 47:1,7,9 48:18,22,24 49:1 50:23 51:2,3,16 53:13,22 55:25 56:8,16 60:20 62:13 63:12,14 64:3 65:17,22, 25 66:5,10 67:7,23 68:1, 13,14 69:4,8 71:6,8,10 74:6,11,17,21,25 75:5, 11,14,21,24 77:9 78:3 79:15,25 80:7 81:16 82:2,3,4,12,18 83:6,13 84:21,25 87:8,9,22 88:4, 6,23 90:18,25 91:4,8,15, 17,19,22,23 92:5,7,11, 17,21,23,25 93:4,6,9,15 94:5,7 95:19 96:10,15, 19,22 97:3,12 98:21,23 99:2,3

Ms
11:21 12:17,25 13:2 15:17 16:7 20:13,25 24:13 25:19 44:12 47:8 56:16 75:14 76:11 89:2 95:1,5 98:5,10

much
7:21 8:17 20:10 60:5 77:14

multiple
6:18 35:22 44:15 50:3 51:22,23 59:13 72:9 74:5 90:24

muster
29:7

mutual
63:8 64:18

my
5:21 6:12,24 7:17 8:11 11:17,19,23 12:12 14:6 15:14,15 17:9,16 19:8 20:15 21:15 23:12,22 24:13 25:19 29:3,6 31:7 33:10 34:15 42:16 43:22 45:18 46:2,12 48:2 52:5, 18 57:9 58:20 60:12 61:6,18 66:14,17,18,20 67:25 68:2,5 71:16 73:25 75:6,13,23 79:15 84:15 85:12 89:12,19 90:10,20 92:17,18 93:4 95:11 96:9 98:5,12

myself
26:13 49:16 76:10

N

name
4:22 13:20 95:3

named
84:1 89:3

nearly
56:24

need
5:11,15 7:18 9:15,18 14:15 71:6 76:6 82:25

needed
12:18 13:8

network
60:10 73:8

Neurosurgery
4:8 11:20 12:1 13:15,24 14:3 17:9 18:16 19:4,8, 25 23:24 24:16 25:2,13 26:4,7,17,21 27:16,19,23 28:5,19 29:22 35:25 36:21,23 39:17,23 41:6, 7,9,19,24 44:2,5 45:10 46:4 49:6,11 50:14 51:2 52:2 55:25 56:17,21 59:9,12 60:15 63:11,12, 14 64:21 65:18 67:9,10 68:6,10,14,21 70:2,24 71:3 72:18 74:2,7,12 78:10,16 79:25 80:3,20 83:14 86:18 97:7

Neurosurgery's
70:14

never
25:18,22 53:1 57:4 59:12

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

92:8

new
6:23

next
16:8 37:10 55:3 83:22 84:22 95:22

no
6:4 7:7,16,18 10:3,12,25 11:7,13 15:19 16:9 26:21 27:9 29:9 30:2 32:11,12 34:18 35:1,14 37:4,9 38:3,4 39:9,23 40:11 41:21 42:11 43:14,22 44:22 48:3 50:8 51:5 52:6,10,11 53:24 55:13, 14 56:16 57:7,23 62:1,12 64:9 65:1,15 66:4,16,22, 25 67:8 68:8 69:7,9,13 72:4,7 77:5,20,25 78:1 79:10 80:19,21 81:1,22 82:10 83:15 84:18 85:1 88:21 89:3,17,20,21 90:5,17,21 93:3,7 94:1 95:7 98:21

none
14:16 61:23 69:14 71:15 75:11 81:3,16 84:8

nonsense
74:13

nor
44:23 46:9

North
17:18 39:13 98:16

not
7:23 11:13 12:3,14 13:19,21,22,25 18:3,12 20:9 21:4,7,8,23,25 22:3, 13,17,19,22,25 23:24 26:13 27:13,21 28:15 29:1,4 30:18 31:24 32:1, 10,22,23 33:9 34:23 35:7,8,9,17 36:4,12 39:9, 20 40:1,10,18 41:2 42:25 43:9,19,20 44:2,4,20,22 45:15,24,25 46:4 47:20 48:17,18,24,25 49:5,15 50:22,23 52:20 53:12,17 54:3,15,16 55:10,23 56:6,14,18,24 57:2 58:7, 10,15 60:9,10 61:15 62:12 63:2,11 64:2,9,24 65:7,8 66:1,2,8,17 67:15, 20 69:1 71:25 72:13,17 73:13 75:1,25 76:3 77:3, 14 79:25 80:6 81:7 84:2 85:5,6,18,22 86:10,12 89:3 90:7 91:24,25 92:25 94:8,16 96:7,12,13 97:17 98:13

nothing
28:12 36:25 44:8 61:11 81:4 86:17

notice
6:4,7,9,15,16,25 7:1,7 20:22 48:3 95:7,16

noticed
92:14

notices
6:18

notified
36:20

now
4:1 8:4 29:9 32:11 37:2, 9,15,21 40:11 44:7 46:24 49:25 50:8 53:23,24 58:25 61:3,11 63:3,5 66:21 70:16,17 72:16 73:10 74:10 81:10 84:20 85:1,19 86:4 87:2 88:18 93:8 94:15

number
5:11 11:10 16:9 29:13

numbering
54:2

numerous
46:15 77:24

O

object
25:4 26:23 30:8 34:1 42:19 69:4 75:21 82:2 87:18

objected
68:10

objecting
87:14

objection
30:16,18,24 35:8

objections
9:2 30:19

objective
5:16

obligation
51:5

obligations
83:22

obtain
56:8

obvious
61:3 73:8

obviously
37:24,25 53:11 54:16,17

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

67:11 72:2 89:10

occasion
13:8,13,14 25:25

occasions
35:22 44:16 50:4 77:24

occupational
21:4 22:6 38:20,21 39:8, 19 50:5 93:11,14

occur
91:24

occurred
19:3

occurring
27:1

of
4:3,4,5,7 5:5,8,10,22,24, 25 6:4,5,15,16,18,19 7:7, 10,13 8:1,4,5,14,23 9:1, 7,24 10:1,2,8 11:2,3,7, 12,25 12:5,9,12,22 13:1, 4 14:11,16,24 15:7,22,23 16:2,24 17:6,10,11,14,18 18:10,11,14,16 19:1,9, 14,16,17 20:3,5,23 21:8, 17,22,24 22:14,16,21 23:6 24:5,6,7,17,20,25 25:11,12,18,23,25 27:18 28:2 29:7,10,15,17,24 30:5,17 31:16,17,19,23 32:1,4,6,13,14,15,19 33:10 34:7,9,10,19,21,23 35:3,13,19 36:1,4,22 37:1,11,19,20,21 39:7, 10,18,20,25 40:1,6,8,10, 12,13,14,16,19,20,21 41:6,12,19,22,25 42:1,3, 4,6,15,18,20,22,25 43:1 44:9,19,23,24 45:13,20, 22 46:1,13,24 47:1,2,8, 14,17,18,21 48:3,4,5,15 49:1,4,23 50:9,11,13,17, 19,25 51:1,8,9,14,19,20 52:2,5,8,12,15,16,21,22 53:5,7,13 54:6,9,11,12, 24 55:5,6,7,11,14,16,22, 23 56:3,5,6,9,15,23,25 57:7,9,13,14,15,16 58:5, 6,7,8,9,13,14,16 59:1 60:1,4,12 61:8,25 62:13, 18 63:8,13,16,17,21,22, 25 64:3,7,18,22,25 65:6 66:5,7 67:11,19,22,25 68:6,7,10,11,13,20,25 69:2,10,13,17,19,20,22 70:1,16,21 71:3,14,19,23 72:2,12 73:13 74:6,18,25 75:15 76:3,10,24 77:5,8, 13,19 78:3,5,17,22 79:3, 4,6,8 80:3,14,21,25 81:1, 3,13,15,22 82:7,10 84:1, 7,16 85:3,4,8,18,20 86:4, 6,8,11,25 87:15,16 88:4, 6,8,10,15 89:11,14 91:1, 12,13 92:9,16,19 93:1, 22,25 94:5,22 95:8,16, 17,24 96:21,24 97:3,5,6 98:9

off
46:2 53:20 84:23 91:18 96:17 98:25

off-record
37:7

off-the-record
92:16

offended
27:10

offensive
41:1 54:20

offered
59:13,14

offers
94:13

offhand
57:6

office
11:19,22,23 13:11 14:14, 22 17:8 18:9 19:23 23:7 31:7 33:6 46:11 48:18 50:24 58:18,20 60:25 62:17 85:15

office's
14:14

Often
58:2

Oh
29:6 34:24 45:21 78:9 80:24

okay
4:16 5:18 6:13,24 7:5,17 8:16 9:11,23 10:12 18:20 21:22 22:5 32:2,11 34:18,24 35:10 38:5 40:11 42:17,22 43:11 46:19,21 49:8 50:8 52:7 53:23 58:5 60:2 64:10,14 66:21 67:1 77:4 83:21 84:20 88:13 89:2,7,20,22 90:12,15,23 93:8 94:17, 24

on
4:1 7:2,6 9:24 11:5,6 13:7,12,14,17,18,21 16:23 17:3,13,23 18:4,5 20:12,22 21:13,17 24:8 25:3,7,15 26:21 27:13 29:21 30:3 32:7 33:17

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

34:18,19 35:22 36:8 37:23 38:1 41:6 42:14 44:15 46:13 47:13 48:22 50:3 51:3,16 52:5 53:13, 21 54:1,5,17 55:4,13 56:2,4 57:11,13 58:24 59:12 63:14 66:11 68:13 73:19,23 77:8,23,24 78:2 79:15,19 81:7 83:22 84:22,24 85:2,3 86:6 87:14,17,23 89:13 90:21 92:22 94:5,21 95:7,8,16 96:18 97:2,18,19 98:18, 21

once
19:9 34:14 46:8 56:24 57:21,24 61:8 98:13

one
8:19 12:5 20:1 22:13 28:14 31:8 74:18 80:14 82:21 84:22 90:3 93:9 97:24

Onebeacon
20:22 38:21 93:14,19 94:6,14,20 95:3,4,23

ones
72:4

only
6:25 21:9 24:7 36:8,21 48:8 54:7 75:1 76:5 77:21 78:16 94:21 95:25 96:1,3

opened
95:8,20

operating
17:24 96:23

opinion
23:5 33:10 61:6 68:5 75:6 79:16

opinions
10:5 11:1 15:20 32:13 63:6 66:23 71:18 73:11 81:12 87:4

opposed
41:17

opposing
5:5

or
5:8,9,20 14:4 15:25 16:2 17:24 18:3 19:6,24 21:3, 7,8,11 22:13,14 23:8,24 25:7 26:13 30:12 31:23 33:6 38:15 39:1,7,18 44:5 49:14 51:9,10,14 52:8 53:1 54:15,18 56:25 66:4 70:2 72:7,23 73:16 74:18 78:5 80:14 81:5 86:11,18 88:19 90:6,17 92:19 93:1,3,10 94:2 95:14,19 96:7 97:24 98:2

original
54:2 74:11

orthopaedic
12:6 71:7 74:19

orthopaedic-type
48:21

Orthopedics
4:8 45:10

other
5:20,23 7:10 8:19 9:13 12:5 15:10,24 18:17,19, 21,23 22:13 32:9 36:24 37:5 40:7 43:22 47:10 51:25 52:6 59:15,24 61:10,19,23 63:1 68:9 69:14 71:7,13,15 72:8 74:18 75:8,11 76:3,4,8, 17,23,24,25 77:1 80:14, 21,25 81:16,23,24 82:11, 25 83:5,11,15,16 84:8,18 89:11,23 90:1,2 93:5 96:22 97:1,7,16,18,25 98:2

others
88:25

our
4:16 7:25 11:17 17:7 19:22 23:5 24:7 25:15 35:19 37:23 41:9,22 42:24 50:18 51:1 54:16, 17 58:24 59:11 60:13,25 61:12 68:22 70:2 72:23 73:4 76:9 79:19 81:8 82:7 84:18 88:5,6 90:23

out
9:1 11:8 12:22 20:17,19 24:5 27:13 30:5 32:22 33:9 37:13,18 40:15 41:16 43:1 48:13 51:9,14 52:24 54:11 55:9 57:20 64:7 65:11,18 68:16 74:6 77:19 83:1 86:17 92:2

out-of-network
49:7 60:8 70:15,20 72:19 79:8,12 81:6

outside
76:23 91:15

outstanding
67:24

over
5:19 6:21 9:14 22:23 25:20,21 42:7 47:4 55:16 57:1 61:19 69:14,15,21

overact

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

74:6

overall
23:1 28:16

overarching
39:2

owe
59:20,22

own
5:7 46:12 63:14

owner
17:17 18:6

P

page
7:2,6 9:24 11:6,7,9 12:14 19:14,16,17,18,19 21:17 25:11 31:6,7 34:9 42:4, 15 45:1,4,5,13,20,21,22 54:5 55:16,17 57:15 59:6 65:5,9 85:3 86:6 91:9

paid
18:3,12 26:10 40:18 42:25 43:9 56:9,13 58:10 60:6,9 64:2 65:8 66:8 67:15 77:19 78:22,25 95:10,11,13 96:7 98:6

paragraph
7:1 11:2,3,5,12,15 14:20 15:4,22,23 16:12 17:14 18:13,15,17 29:10,11,15 30:6,15 31:1,24 32:14, 15,17 33:13,16,18 34:5, 6,10,11,12,14,19,21,22 35:3,4,13 37:16,17,20 38:6,14,23 40:8,12,14,16 42:1 48:4,6,8,15 50:9,10, 11 52:12,13 53:25 54:1, 4,5,12,24 55:4,6,17,18

paralegal
92:12

parallel
8:12

parse
41:16

part
7:10 21:15,22 41:25 45:22 48:13 49:23

particular
87:10

parties
66:9

partner
84:1

party
12:23 21:1

pass
91:4,9

past
17:3 20:6 24:10 40:3 56:1,2 79:21 80:10

patient
19:5 27:25 53:16 58:21 77:18,22,24 81:9 85:16

patient's
51:11 58:19 67:17 70:9 77:23 81:8

pay
12:19 23:1 28:16 39:10 46:16 59:16,19 94:18 95:9

paying
40:18

payment
14:4 18:19 22:14 51:12 67:8 93:14

payments
14:5 93:11

Pendarvis
4:12,21 6:8 7:18 10:12, 16,22 15:24 25:8 27:3,12 30:9,18,25 31:2 34:4 37:8 42:21 45:17 53:22 64:3 69:8 75:11,24 81:16 82:12 84:21,25 87:22 91:4,8,17,19 92:7,17,21, 23 96:15,19 97:12 98:21 99:2

people
24:9,20 36:18 63:2 73:15

perceive
59:21

percent
76:15

perfect
6:2 33:1

perform
51:6

performed
12:8 17:3 24:8 38:25 48:21 49:3 53:17

perhaps
16:1 46:15

permit
13:23

permitted
87:24

person
72:22 83:23 84:4,7

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

person's
5:20

personal
46:13 84:2 88:9,20

personal-injury
89:4

personally
44:15 67:23

perspective
13:5

Pete
25:20

phone
96:15

phrase
18:17 22:16,21 23:15 65:23

physically
42:10

place
42:10,14 55:25 95:16

placed
95:7

places
37:11

plain
43:9

Plaintiff
4:13 48:10 66:25 72:11 85:7 86:12 92:15 98:22

plaintiff's
6:14,16 11:4,5 15:23 41:15 85:4 86:9

Plaintiffs
92:3

planet
46:13

pleading
69:22

please
4:10,17,23 5:12 22:18 42:5,24 45:2,13 47:18 75:22 81:13

point
5:12 8:9 12:4 14:6 18:8 20:7,9,20 21:4 23:19 36:20 38:2 46:25 52:6 80:24 86:16

points
33:10 46:1

policy
12:13,14 13:24 14:3 18:2,7,16,18 20:22 22:12 23:25 36:2 39:13 40:6 49:24 50:5 71:4 93:12,15 94:18 95:20

pony
22:19

poor
54:1

portion
42:25 66:7

position
12:10 26:20 51:5 57:11 60:8,10,13 90:21 91:13 92:3 94:7

positions
9:19

possible
18:5

potential
85:6

practice
56:3,9 92:11

practices
54:16,18 56:22 83:25 85:9,13,23 86:2,10,12,24

practicing
54:8

precedent
43:5 69:18,20,22,25 70:1,11,18,21 71:14 96:10

preceding
58:12

predict
46:8

preexisting
20:2,5,8 41:10,16

prefaced
37:22

premised
13:18,21

premises
88:17

prepare
8:7

prepared
6:11 35:8

preparing
61:21

preposterous
54:19 61:6 77:16

presented
5:9 6:3,14 27:25

pretty
8:17

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

previously
48:21 62:16 74:22 82:6 88:3

primary
98:15

print
74:10

prior
6:8 9:20 13:7,13 21:23 25:25 52:18 53:3

privacy
13:20

private
35:16 40:19 43:1,6,10, 12,14,17 45:24 64:1,2 65:8 66:8 67:7,12,15 72:25 73:5 77:10 96:11

privilege
37:24 87:15,19 90:19 91:1,11,12,13,21,22,25 92:19

privileged
84:18

probably
5:18 9:13 26:1 31:17 35:5 40:5 58:4 62:16 82:7

problem
12:1 41:14 71:11

procedure
44:9 46:14 71:7 75:2

procedures
24:23 71:3

proceed
18:9 49:23 53:12 68:14 77:9 87:21

proceeding
97:9

proceeds
41:4 43:2 51:9,14

process
96:14

produced
83:18

productive
91:20

Professor
93:18

proffered
9:8

pronounce
73:15

proof
98:9

properly-noticed
57:12

property
41:12,20

proposals
94:4,5,14

proposed
14:7 43:18 44:19

propounded
16:20

protect
42:25 51:8 64:2,5 65:14 66:7

protected
64:7

protection
16:25 17:6,11 18:11 19:9 25:18,24 35:19 39:25 40:2,20 42:2,4,6 50:17, 19,25 51:1,8,19 52:22 53:5,6,7,13 57:14,16 58:6,10,13 61:9 63:13, 16,18,21,23,25 64:3,22 65:1,6 67:11,19 68:7,11 71:23 72:12 78:6,22 79:4

provide
14:22 45:13 47:5,18 49:15 51:20 64:6

provided
13:23 25:15 26:10 28:6 30:1 44:5,14 76:10,18 82:6 83:7,9,10,13,15 93:2 97:5 98:9

provider
44:3,11 60:9 64:5 72:19 98:11,15

providers
42:7 62:3,25 63:1 96:22 97:1,8,16,18,23 98:2,18

providing
16:3 74:6

public
85:2,5

purpose
63:17,20 92:16

purposely
23:16

purposes
12:12 69:22

pursuant
84:3

purview
41:22

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

put
18:14 20:22 23:11,21,22 26:13

Q

question
11:10 12:9 13:21 15:25 16:8 23:15 26:19 28:17 30:10,13,17 31:21 38:3,4 42:13 46:2 47:24 48:1 49:9 52:19 54:13 55:13 57:23 87:10,11,12,20,24 93:4

question-by-question
87:17

questions
5:9,22 7:19 8:25 23:17 28:21 37:11 60:5 87:19 91:21,23 92:3 98:22,23

quickly
96:16

R

rather
5:7 53:14

read
6:6,14,16 9:10 12:13 22:18,19 23:2 32:4 33:18 34:10 64:12 76:19 80:22 84:12 85:11 86:15 90:14, 15 91:3,5

reading
22:6 47:7

real
17:6

realize
79:11

really
9:10 13:13 16:25 20:12 31:10 41:12 44:25 49:10, 14 88:12 94:8

reason
17:15 18:6 37:4

reasonable
27:21,24 79:15,19,22

reasons
13:20 20:1 86:2

recall
36:16 47:7 83:8,9 88:12, 16,18 97:4,22

recalled
15:25

recalls
91:1

receive
43:2 62:2,3 86:22

recollection
17:16 88:15 89:12 90:10 95:11,24 96:24 97:24 98:5,13

recommended
29:22

record
4:1,11,23 8:21 9:6,19 22:18 53:20,21 54:1 69:18 84:23,24 91:18,19 92:6,22 96:17,18 99:1

record's
61:12

recover
86:12

recovered
78:2,12

recovery
21:11 61:8 62:14 64:7 67:22 78:8 86:21

red
47:15

Redacted
47:15

reduced
18:7

refer
42:1

reference
43:8 46:17 62:25 68:2 74:14 81:19 88:7

referenced
8:15 15:10 38:17 83:11

references
18:15

referencing
34:3

referred
38:25 43:2 75:5 90:24 92:7

referring
10:21 11:15 25:6,9 34:8 38:16 80:19

refers
11:12 17:4 30:2 34:14 35:4 55:17 67:4

refused
59:17

regard
42:23

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

regarding
27:1 29:18 87:18 93:11

rejecting
68:7

relate
8:1 76:15

related
8:12 40:7 76:6,7 77:4 81:11 92:8

relates
29:9 40:12 52:11 53:24 69:16

relationship
17:2 41:8 60:17 87:5,6,7

release
89:6,14

relevant
16:5 75:15

rely
25:2,15 26:21 38:2

relying
26:12 46:12

remaining
48:12,14 54:10

remains
67:23 96:7

remembering
98:14

repeatedly
74:17

repetition
55:8,11,22,23 56:23 57:8 58:8,16 85:6,21

repetition's
57:1

repetitious
48:16

rephrase
22:24

reporter
4:16 5:19

represent
16:21 41:15,23 90:8 95:18

representation
41:22 54:9 62:13 88:6 89:22 93:2

representations
16:24 87:25 88:2

representative
4:5

represented
13:9 31:14 41:23 46:3 50:4,6 62:15 87:8 88:3, 23 89:2,9

representing
20:3 27:25 92:10

represents
28:13

request
35:15

requested
11:23 25:16 29:23 50:24 63:15 64:23 77:18,22 93:18

requests
61:4 70:5

require
5:1

required
14:4 67:6

requires
18:19 67:12

reserved
30:19

respect
29:3 34:15 50:4

respectfully
35:15

respond
82:14

responded
87:13

responding
7:14

response
11:6 31:19 34:5,20 38:6 48:7 49:8 69:2

responses
8:2 16:15 73:25 82:8

responsibility
20:8

responsible
51:11 67:17,23

rest
31:17

result
85:18

retailers
85:23

reviewed
8:9,11,13

ridiculous
80:1,2

right
8:19 11:9,17 16:16,17,18

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

19:21 20:15 22:24 25:2, 14 26:21 28:19 29:12,16, 20 30:3,7,25 31:4,6 33:19 35:11 36:11 37:14, 21 42:6,17 43:9 45:3,8, 21,22 47:25 55:12,15 57:22 59:5 60:4,18 61:11 62:24 63:23 65:6,16,21 68:18 69:7,23 70:22 73:14,17 78:12,18,19 79:1 88:18 89:6 94:15 95:14 96:5 97:14

rises
56:4

room
98:15

rules
5:1

run
57:4,6

S

Safeco
21:20

said
5:10 9:5 12:14 14:15 15:13 19:1 23:19 24:2, 12,13 27:12,14 33:8 39:3,24 43:22 45:4 51:22 65:1,15 67:19 68:20 72:24 74:17 78:14 80:4, 7,24 82:4 83:20 86:2,16 95:18 96:5

sake
10:8

same
5:16 8:18 12:7 15:15 28:21 30:13 31:21 32:4 34:15 35:23 38:14 45:18 50:6 52:19 54:21 69:21 71:21 73:25 74:19 82:9

satisfied
43:16 70:19,21

satisfies
83:21

saw
32:6 61:25 98:5

say
9:6 10:21 15:1 17:4 26:24 28:3 35:8 43:23 46:18 48:7 49:5,15 51:13,18,23 54:17 57:6 59:18 60:14,16 61:14,16 63:4 64:4,11 65:20 66:4, 12 67:18 71:6,23 75:22 79:7 80:18 83:6

saying
12:21 28:15 38:9 39:20 40:17 69:1 83:17 95:2

says
10:6 11:13 16:23 21:3,19 22:22 28:20 31:15 37:6 43:4 45:9,13 47:9,10,15, 18 58:9 63:19,22 64:9, 11,12,13,16 65:6,19 66:1,2 67:20,21 72:4

scheduled
8:8

scope
10:15 54:8

Scott
21:6 35:20 46:17 47:3 80:7 87:5

Scott's
44:16

screw-up
24:15,19

screwed
62:17

second
18:10 23:9 25:7 31:7,8 39:1 42:3 53:5 58:13 63:7,25 64:25 65:9 74:1 88:6 89:10,18 91:16

secondhand
12:24

see
15:25 16:5,21 21:17 30:1 45:14,23 46:2 47:19 65:2 97:11

seeing
97:4

seems
35:2 73:8,20

seen
6:22 7:24 44:13 50:24 71:16 76:19 83:8 90:16 94:8,10 96:8 97:17

send
17:5,10 24:5 39:23,25 51:3,19 63:11 98:19

sense
32:24 47:23 81:1 89:4,8

sent
19:9 26:1 42:7 50:23 51:3 58:10,13 61:8 63:16 64:22 97:6

sentence
21:16,17,22 42:22 64:25 65:16

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

separate
33:10

sequencing
95:25

series
37:11 58:7

serious
20:2

serves
98:13

services
13:23 14:22 24:1 43:15 44:4 51:9,20 56:8 64:6 79:3

set
11:2 15:21 32:14 66:24 73:12,23 75:9 86:25

settled
78:24 89:17,19,21

settlement
43:1 51:10,14 62:1 86:22 97:3,15,19 98:19

shall
5:6

shame
81:7

she
89:13

She's
20:15 89:3

shorten
10:18

should
12:1 14:9,14 23:20 27:16 28:8,9,10 35:5 37:21 48:10 49:18 51:21 55:19 59:19 60:3 61:7,9 73:4 74:15 75:5 77:20 79:23, 24 83:10

show
56:23

shows
26:6

side
84:22

sign
89:5

signature
46:7,18

signed
12:12 42:8

silly
54:19 79:5,7,10

similar
6:11

simply
14:15 49:15 71:5 80:3

since
9:18

sincere
61:18

singular
56:3

sir
11:11,16 23:10 31:3 59:8 89:24

situation
89:5

six-page
6:20

Sixth
73:12,23 75:10,18 76:2

skip
34:22 35:6

smart
56:25 57:10

so
5:10,14,20 6:13,15 7:8 8:3,8 10:17,25 15:11,13 16:8,18 17:5 18:4,12,21 19:1,5,21 21:2,15,22 23:14,21 26:3,12,18 27:8 29:2,3,12 30:25 31:16 32:7,25 33:7,10,24 34:14 35:9,12 36:13,16,20,24 37:15,23,25 38:3 39:1 40:17,25 41:17 43:4,11, 22 44:18 45:6 47:14 49:4,5 50:3 51:25 52:23, 24 53:2,7,9 55:12 56:13, 19,21 57:7,20 58:5,14,23 59:5,21 61:12 62:23 63:25 64:6,24 65:22 66:9,12 68:4,19 70:1,8, 18 71:5 72:15 73:2,17,21 74:9 75:18 76:8,17 77:20 78:10 81:21 82:5 83:6,17 85:20 87:24 88:23 89:8, 13 90:20 91:12 92:24 94:2 95:2 96:9 97:7,14 98:10

some
8:9,23 9:15,19 18:14,23 36:20 38:1,2 47:8,17 74:10 80:24 87:23 88:4, 15 92:1

somebody
20:3 36:15 41:14 59:19 90:8

somehow

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

56:8

someone
17:8 19:24 28:11 42:12, 14 62:15 74:21

something
6:22 16:22 38:11 49:25 56:23 57:1 59:19 61:16 90:4 95:10,13

sometimes
21:10,12,13 62:24

somewhat
8:12

somewhere
14:15 77:12

soon
23:6

sorry
19:19 22:11 36:7 42:13 45:4 75:22 89:25

sort
12:9 88:16

sound
48:16

South
4:6 83:25 84:3 85:8,13

Sowell
8:12 15:14 75:14 93:18 94:7

Sowell's
47:7

speak
9:20 33:23 49:20 76:13

speaks
17:12 32:21 40:20 71:21 76:13

Specialty
93:10

specific
14:18 15:3 54:23 56:19 61:20 75:25 84:13

specifically
68:12

speculate
90:6 98:17

speculating
90:5

spine
12:6 71:7 74:19 80:14

spirit
5:25

spouse
89:5

staff
29:23 37:3

stamp
42:10,14

stamped
42:9

stand
6:24 7:2 52:5,18 58:14

standard
42:6 50:18 51:1 57:16,20

standpoint
60:23

stands
30:16

start
9:24

started
16:21

starts
5:23

state
4:22 8:22 10:7 29:21 87:12 91:2 92:6

stated
8:24 9:17 20:24 28:4 33:13 34:12,13 35:13 37:18,20 38:23 51:6,7 84:12 85:3

statement
9:9,20 12:12 14:2 18:4 22:8 23:4 44:13,14 55:1, 21 64:24 65:13 72:11 91:1 97:2,4,15,20 98:19

statements
8:22 26:21 27:4,9 49:21 72:8 98:3

states
15:19 48:7 83:24 85:3 86:7

stating
28:2

staying
66:19

step
13:4 25:5,6 56:11

stick
35:10 66:21 85:12

still
9:13 19:21 20:9 53:9 93:20 94:1

stipulate
9:7

stolen
17:20,21 21:2

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

stop
74:9

stopped
80:20

Street
4:6 6:10

strive
10:18

striving
5:16

study
82:4

stuff
76:19

subject
84:2

submit
67:7,12 93:19

submitted
48:10 67:14 78:10 96:6
98:2,3

submitting
43:20

subsequently
33:14

successors
93:10

such
41:15 84:3 86:10

sued
29:8 59:10 86:23

sufficient
51:11

suggest
15:5 27:10 40:25 44:21

suggestion
79:23 80:2

suggests
8:25 59:19

suing
61:5 77:15 81:9 85:19

summarily
9:16

summons
7:11 75:16

superhuman
36:15

support
14:19 15:4 30:5 32:18
33:11 35:12 41:20 52:1
61:22 69:13,19 71:14
73:22 75:9 81:23 82:16
83:19 84:6

supporting
31:22 54:24 59:1 75:18
81:12

supports
13:17 22:16 72:10 76:1
77:2 84:13

Supreme
5:4

sure
10:14,15 22:21,24 38:13
51:23 61:24 90:25 91:17
97:17

surgeon
40:4 57:5,7 74:24 75:2
80:8,21

surgeons
12:6 71:8 74:19 75:3
80:15

surgeries
27:17,20 36:23 39:1 43:6
47:5 49:3 53:3,17 58:14
60:7 62:19 96:6

surgery
12:4,7,19 13:8 14:6 17:3
18:25 20:6 23:8,9,10,18
24:8,18,21 28:1,11 29:22
31:10 43:18 44:19 48:21
56:2 62:18 70:9 71:11
74:20 79:14,20 80:9 88:5
98:6

swear
4:17

switch
85:24

sworn
4:19 76:10

T

take
7:3 9:23 12:10,15 15:19
18:14 19:11,13,14,18
25:5 32:17 41:25 42:2,4
44:25 45:2 48:25 53:18
56:11,14,18 57:5 59:23
62:7,9,12,21 67:21 71:9
75:3 80:4,13,15,24,25
84:21 86:20 90:12

taken
4:7 15:12 73:7 76:5
81:25 82:18 90:20,25
91:13 92:8,9 94:7 95:5

taking
5:15 13:4 60:11 80:20

talk
11:8 33:16 35:6 54:5

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

59:2,3 73:21 88:1 90:13 91:15

talked
55:2 61:19

talking
5:19 18:21 30:13 33:17 38:13,18,22 49:25 70:18 72:5 82:9

talks
72:3

technical
89:14

tell
9:23 10:16 26:14,15 32:18 34:17 37:2 46:12, 20 47:25 93:17

telling
46:17 65:24 66:13

tells
5:4

ten
66:5

tend
33:22

terms
52:21 68:10 69:1,3,10

testified
4:19 78:15 82:17 98:10

testify
36:12 57:14,18

testifying
91:11

testimony
8:11 9:19 15:16,18 21:23 57:13 70:13 76:10

than
5:7 36:24 37:5 57:21,24 61:23 69:14 71:15 72:8 75:11 76:3,25 80:21 81:16,24 82:11 83:11,16 84:8,18 94:11 96:3

thank
7:21 13:16 52:10 66:19 90:12 92:21

that
5:1,5,10,14,15,16,24 6:4, 8,9,13,15,22 7:2,3,22,25 8:14,23,24 9:7,10,12,16 10:1,10,20 11:8,12,13, 14,18,22,23 12:2,3,7,10, 12,14,15,18,23,24 13:1, 5,7,10,12,14,18,22 14:3, 5,6,9,11,12,19 15:3,5,7, 13,14,17 16:4,5,6,19,20, 22 17:6,11,16,18,19 18:1,3,17,23 19:5,17,19 20:13,20 21:2,4,5,17,22 22:1,2,3,12,17,18,22,25 23:3,5,6,8,11,12,15,18, 21 24:5,6,8,11,21 25:1,2, 3,5,12,15,17,22 26:6,8,9, 10,13,17,19,20 27:1,4,6, 10,12,13,19,20,21,24 28:1,3,4,6,8,9,10,14,15, 17,23,24,25 29:3,7,24 30:4,9,13,15 31:13,20,24 32:1,4,6,8,9,20,21,23,24 33:2,3,8,11,14,21,22 34:7 35:1,3,5,15,19,21, 23 36:2,4,9,16,17,20,22, 23,24 37:2,4,25 38:8,10, 12,16 39:9,13,14,17,20, 24 40:1,8,10,17,18,22,25 41:2,3,5,7,10,21 42:5,6,8 43:6,15,18,19 44:3,8,13, 15,16,19,20,21,23,24 45:2,24 46:4,12,14,15, 17,18,20,21,22,25 47:2, 3,4,5,8,11,12,13,16,18 48:9,17,19,24 49:2,3,4,6, 8,17,23 50:4,6,13,17,21, 22,24 51:2,10,15 52:1,2, 8,10,15,20,25 53:2,4,10, 11,15,16,17 54:5,7,13, 19,20 55:1,2,7,9,21 56:5, 13,14,17,22,23 57:1,6,8, 9,10,14,18 58:6,10,11, 13,24 59:12,19,20 60:4, 8,10,13,19,20,22,25 61:1,9,11,14,16,20,21, 24,25 62:15 63:9,10,15 64:7,11,17,19,20,22 65:2,14,15,22 66:9,12, 19,21 67:2,4,14,18,20, 21,25 68:2,4,12,14,15, 16,17,19,21,23,25 69:1, 2,6,7,9,12,13,23,24 70:1, 4,7,14,16,23,25 71:2,4,5, 12,14,23,24 72:1,5,10, 11,20,22 73:1,4,8,15,18 74:2,12,13,15,16,20 75:1,2,4,6,12 76:1,3,9, 11,15,17,18,19,20,21,25 77:1,3,6,8,9,14 78:1,4,7, 11,12,15,25 79:7,10,11, 12,19,23,24 80:20,22 81:1,3,7,18,19,21,23,24 82:6,7,15 83:1,8,12,13, 15,21 84:5,6,9,13,14,15, 16,17 85:12,20,25 86:17, 20,23 87:12,23 88:5 89:4,8,13 90:4,7,13,17, 19,21 91:6,7,14,22,24 92:6,7,8,11,13,15,17,18, 19 93:2,17,18,19,21,22 94:4,7,11,14,16,25 95:13,14,19,21 96:9,10, 13,24,25 97:15,17,18

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

98:4,5,6,9,10,19,21

that'd
90:22

that's
8:17 12:10,23 14:23 16:14,16 18:13 19:12 20:15,24 21:20 23:5 24:19,23,24 27:25 28:18 30:18,23 31:5,16 34:3 35:4 36:12 38:22 39:4 40:22 41:11,13,14 43:21 44:7,10 46:6,7,18 48:13 50:22 51:6 54:18,19 55:4,19 56:10,23,24 57:2 59:20 60:9,22 61:5 64:9 65:4,12,19 66:1,14,18 68:18 70:11 71:11 75:6 78:18 79:5,10,14 80:1,2, 16,17 83:20 85:23 89:19 91:13 92:2 95:20 98:9

the
4:1,2,3,4,7,11,13,14,17, 23,25 5:2,4,5,6,7,9,10, 19,20,23,25 6:4,5,7,19, 25 7:1,2,6,7,10,11,13,14, 15,24 8:1,2,5,7,8,18,21, 22,23,24,25 9:1,6,7,8,13, 24,25 10:1,4,6,8,15,20, 21,24 11:3,6,7,13,14,18, 20,22,25 12:3,5,6,7,10, 12,16,19,22,25 13:18,19, 20 14:1,3,5,6,19,24 15:1, 4,7,8,10,11,22 16:3,4,8, 12,15,19,20,24 17:3,17, 18,20,23,24 18:4,6,7,14, 15,16,18,21,24 19:11,12, 13,16,17,18,19,22,23 20:2,4,6,7,11,16,23,24 21:1,3,13,15,17,18,22,24 22:5,7,8,12,13,16,18,21 23:1,3,8,10,14,16,18,19, 23,25 24:7,10,15,18,19, 25 25:4,5,6,7,9,11,12,23, 25 26:9,21,23,24 27:6, 12,13,18,22 28:2,4,14, 19,20,21,23,25 29:7,10, 11,15,17,24 30:1,4,6,7,8, 13,16,19,23,25 31:3,4,6, 7,8,10,13,14,15,16,19, 21,22,23 32:4,5,6,15,17, 18,20,22,24,25 33:1,2,3, 8,9,12,18 34:1,2,3,5,7,8, 9,10,11,14,19,20,21 35:3,4,12,13,14,18,22,23 36:1,22,25 37:10,11,12, 13,17,18,19,20 38:7,9, 13,14,17,19,22 39:1,3,6, 7,8,10,18,20 40:3,4,7,8, 12,13,14,15,16,20,21,22, 23 41:2,3,4,5,13,20,22, 25 42:1,3,10,14,18,19, 20,22,23 43:2,5,6,8,18 44:5,10,13,14,18 45:1,6, 9,12,13,18,19,21 46:8,9 47:15 48:3,4,5,6,7,10,12, 13,14,15,17 49:1,3,4,17, 18,19,21,24 50:5,6,9,10, 11,12,13,14,16,17,20 51:6,7,8,9,10,11,14,20, 21 52:1,2,3,4,11,12,13, 14,15,16,18,19,20,21,22, 24 53:2,7,8,10,12,20,21, 24,25 54:1,2,4,7,8,9,11, 12,20,21,24 55:3,4,5,6,9, 14,16,20,21 56:1,2,3,4,5, 6,10,14,15,16,20 57:2,8, 15,23 58:9,14,15,19,21, 23,25 59:1,3,6,10,14,24 60:10,25 61:5,22,25 62:2,3,4,5,12,18,22,23, 24 63:1,9,12,13,17,20, 21,25 64:5,6,17,18,22, 24,25 65:7,9,13,24 66:2, 5,7,9,24 67:2,4,5,6,19, 20,21,22 68:7,10,11,20, 23,25 69:3,4,5,10,13,16, 18,19,21,23,24 70:4,6,9, 11,18,21,25 71:3,8,10, 11,12,14,19,21,23,24 72:2,3,4,5,6,10,12,13,14, 20,21 73:2,8,12,14,22, 23,24,25 74:1,6,10,18, 19,24 75:1,10,12,13,18, 19,20,21,22 76:1,4,5,7, 10,13,14,15,25 77:4,5,6, 8,18,22,23 78:2,5,22,24 79:3,4,20,21 80:2,4,6,10, 14,16 81:8,9,10,11,12, 17,21,25 82:2,3,8,9,16, 22 83:1,4,7,11,12,14,15, 24 84:4,9,15,16,20,22, 23,24 85:2,3,5,6,8,10,13, 16,22 86:1,2,3,4,5,6,7,9, 11,14,15,20,22,24 87:13, 14,16,21,24 88:1,5,8,9 89:3,4,5,10,11,13,16,18, 22,23 90:1,2,16,24 91:1, 6,10,13,18,19,20,23,25 92:2,3,6,8,9,13,15,16,17, 22 93:2,11,14,25 94:18, 19,22 95:2,3,5,8,16,18, 22,23,25 96:14,17,18,21 97:1,2,7,10,14,16,19,25 98:1,4,6,8,14,15,22,24, 25

their
12:20 15:1 24:1,9 26:13, 25 28:7 29:23 31:18 37:4,5 47:12,22 54:6,9 59:17 61:7 67:12 68:19, 23 69:10 70:8 72:15 76:2 78:21 85:18 98:3,7

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

them
6:19,20 9:2 15:9 26:5 27:1 28:6 29:5 31:20 36:8 37:6 39:10 40:1 41:3 49:2 53:3,4,6 54:21 67:6,12 71:3 72:13 81:7 89:9 94:10 95:7 96:6,7

themselves
4:10 9:21 33:23 49:20 76:13,14

then
6:13 11:8 12:15 17:21 33:8 41:4 43:15 53:5 54:17 59:2 67:16 72:4,7 78:19 81:21 88:9 96:16

there
6:8,17 7:8,9,16 9:15 14:18,21 19:5 20:19,21 22:22,25 23:18 27:10,11 28:15 31:22 33:15 35:24 36:5,21 38:11 39:6,16, 17,24 40:7,19 41:12 42:10 43:9,14 46:14 47:4,8,14,16 51:10,25 52:25 53:1 56:20 59:22, 24 61:8,20,24 62:4,14 64:20 65:1,15 67:9,10 68:9 69:12,23 70:13 71:7,10,13 74:9 75:3,8, 25 76:8 77:1,20,25 78:19 81:22 82:17,18,25 84:5, 12,13 86:14 90:17,20,21 92:1 93:3,5,13 94:1,4,13 95:12 97:18 98:18

There'd
37:4

there's
27:9 28:13 38:10 39:23 45:12 47:10,21 52:15 54:2 59:11,22 61:14,15 63:22 65:14 66:16 67:8 72:4 76:6 91:21 97:15

Therefore
13:25 85:6

these
15:15 23:11 31:12,14 32:4 37:9 38:1 40:6 58:5 71:22 72:2 85:14 96:6

they
8:14 12:1,3,14 21:7 22:13 23:20 24:4,22 26:9 27:16,22 28:8,9,10 31:9, 11 35:21 37:1,2,11 39:25 40:3 42:18,20 44:13,14, 15,16 47:5,11,13 49:21 51:17,18,20 54:7 58:11 60:2,17,18 61:4,6,7,9 64:4,6 67:5 68:16,19,23 70:4,7,19,20,24 71:4,5 72:13,14 73:4,5,6,7 74:13,15,16 85:18 89:5, 9,12 90:8 94:2 95:8,9,10, 12,13,15,20 96:7 97:18

they're
9:21 15:9 26:12 33:9 36:18 60:10 81:9 93:20

They've
59:12

thing
10:19 38:14 45:19 50:6 62:24 71:21

things
9:15 18:23 19:2,9 27:14, 15 28:5 51:25 56:22 61:24 85:24

think
8:24 9:12,17 13:16 14:21 15:5 17:13 18:1,12,22 19:23 20:9,20,21 23:18 24:15,17,19,23,24 25:14 30:15 33:7,11 35:1 36:10 38:9,12 39:1,3,13 40:17 41:11,21 44:14 50:3 56:19,24,25 57:7,8,22 58:16,17,22 59:9,14 60:22 62:22 63:9 64:20 67:4,19 70:8,11 71:21,22 74:9 75:16 77:15 78:1 81:18 82:10 83:15,20,21 85:13,20,21,23,25 86:1, 24 87:10,19 88:14,16 90:7 91:6 93:18 94:25 97:5,6 98:8,9,12,14

thinking
26:16

third
28:22,23 45:1 66:24 72:5 74:1

this
4:3,6 6:9,10,11 7:10,12 9:1,15,17,22 10:4,8,10, 12,13,18 11:25 13:14,21 14:16 15:11,12,17 16:5, 18 17:13 18:4 19:12,21, 22 20:9,12,24 21:4 22:4, 7,8,16,22,24 24:3,10,11, 17 26:6,18 27:2 28:13, 16,23 29:14 30:2,22 31:15 32:7,10 33:7,8,16 34:16 35:10,20 36:11 39:11 40:11 41:13 42:22, 24 43:17,23 44:12 45:16, 25 46:13,17 47:14,21 50:8,14,21 51:1 52:5,8, 18,22 53:24 55:10,24 56:2,4,19 57:3,14 58:7, 12,17 61:15,21 62:17 65:16 66:1,4,10 67:11,

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

18,20 69:16 71:2,6 72:16 75:2 76:5,6,7 77:14 81:10,20,25 82:5 83:1, 18,19 84:22 85:14,20,25 86:3,16,25 87:2,10,12, 14,20 88:7 90:3,11 91:2, 9 93:23 95:19 96:25 98:24

Thomas
4:12 10:9 87:13 91:15

those
5:3 8:3,4,13 9:20 11:6,8 28:1 31:18 32:19 33:22, 25 34:3,16,20 38:7 40:13 48:5 52:16 55:5 61:3 62:3 71:12 73:22 75:9 76:12,17,21,22 77:13 81:19,24 82:19 83:16 93:23 94:8,9 97:23

though
98:16

thought
27:18,19 28:7 93:21

Thousands
58:4

thread
30:2 31:16 32:20

three
6:3 73:22 75:9 90:2,6,10

through
14:8 31:18 35:2 39:7 43:20 87:14 98:2,3

tie
33:7

time
4:2 5:12 15:7 16:18,19, 20 18:1,5,24 22:8 23:5 25:1 27:6,12 28:4,22,23, 24,25 31:13,21 32:10,22, 25 33:3 39:9,11 40:21,23 41:2 45:16,25 46:10 47:4,21 48:17 50:6 52:9, 19 53:2,10 60:24 61:15 72:20 77:8 78:11,25 79:2,3 83:1 86:3 89:13 92:9 93:24 96:25 98:25

times
28:21 30:12 43:24 51:22, 23 58:1 59:13 72:9 87:7 90:24

Tina
8:13 17:10 20:13 25:10 47:3

titled
83:23 85:1

to
5:6,13,15,21,22 6:2,10, 11,23,24 7:3,14,20,23 8:1,2,3,4,6,11,21 9:6,7, 14,16,18,19,25 10:1,2,6, 7,10,14,15,21,25 11:6, 12,15,25 12:3,5,6,18,19, 22,23,24 13:5,12,13,16, 18,20,24 14:5,15,21,22 15:6,14,15,24 16:3,5,8, 15,21 17:1,5,10,15,22 18:7,9,10 19:2,4,6,7,11, 12,13,14,16,18,20,23,25 20:4,7,8,16,17,18,25 21:18 22:4,14,20,21 23:1,11,16,17,22 24:1,4, 22 25:2,4,6,9,10,11,12, 14,15,16 26:1,8,10,21, 23,24 27:6,11,13,24 28:3,7,16,22,23,24,25 29:4,9,13,25 30:1,2,5,8, 12,22,23 31:8,9,14,19 32:11,22,25 33:1,4,5,7,9, 22 34:1,5,8,10,14,15,16, 18,20,25 35:4,5,6,8,9,10, 12,25 36:2,12,13,23,25 37:2,5,6,9,10,13,16,18 38:2,3,7,12,17,25 39:2, 16,21,24,25 40:1,2,7,11, 12,15,25 41:1,5,9,15,17, 18,20 42:1,3,7,19,23,25 43:3,5,8,24 44:8,16,21 45:1 46:3,8,9,16,17,18, 20 47:20,23,25 48:6,7, 10,13,16 49:8,11,14,15, 17,23 50:4,8,12,21,22,23 51:3,5,12 52:5,11,23,24 53:3,6,8,12,14,16,18,23, 25 54:5,10,17,23 55:3,8, 16,17,20,25 56:1,8,22 57:11,13 58:15,19,21,25 59:1,4,7,14,15,16,25 60:5,12,13,16,19,22,24 61:1,6,11,15,16,20,22 62:4,20,22 63:1,3,5,9,12, 14 64:1,5,6,19 65:7,14 66:3,7,9,14,21,22 67:4,7, 12,14 68:2,3,10 69:4,6, 10,16,25 70:2,4,5,6 71:5, 11,16 72:1,3,6,11,18,22, 23 73:4,5,7,8,10,20 74:4, 10,13,14,16,18,19,21,25 75:5,9,16,19,20,21 76:1, 6,12,15,20,24 77:4 79:7, 9 80:12,13,14,19 81:1,2, 4,8,10,11,19,20,23 82:2, 4,13,14,15,16,19,25 83:1,9,12,18,19 84:2,3, 15,16,20 85:1,14,17 86:3,6,16,17,25 87:2,3, 11,12,13,14,18,21 88:7 90:2,6,9,10,12 91:2,4,5, 10,11,24,25 92:2,6,7,16, 17,18,19 93:1,8,19 94:6,

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

13,18,22 96:7,10,13,16, 20,22 97:7,11 98:4,10, 12,17

today
8:7 31:25 32:12 34:23 35:7 36:12 48:13 52:11 57:11,14 70:13 76:16 82:21 87:3 90:24 91:24 92:4 93:5

Today's
4:2

told
12:2 18:9 22:13 28:9,10 31:20 36:8 37:1 39:3 40:1 41:5,8 47:3 56:12 63:15 90:21

took
8:12 62:1 79:17

top
19:17 45:9 55:16

topic
8:5 9:25 10:2,4 15:19 16:9 18:18 29:9 30:14 32:11 34:18,23 35:7,9 37:9 38:4 40:11 48:3 50:8 52:10,11 53:24 55:3,14 58:25 61:21 63:3,5 66:22 69:16 71:17 73:10 81:10 85:1 86:4 87:2,14 90:12 92:24 93:8

topics
6:5 7:6 8:1,18 9:24 15:15 17:14

total
36:15 91:2

toward
10:1

towards
10:18 85:23

tractor
17:23

trade
54:7 56:21 83:25 85:8, 13,22 86:1,9,11,24

transmitted
20:13 25:1,9 26:22

treat
72:24

treated
25:22 50:25 56:1

treatment
23:19 29:25 35:15,18

treble
86:13

trial
82:14

trick
23:16

tried
59:15

tries
33:7

trip
88:9,10

trip-and-fall
88:17

truck
17:24

true
27:7 28:18 31:12,13 33:4 41:2 50:5

truly
24:20 36:18

trust
6:6 59:11 97:13

truth
56:10

truthful
27:4

try
23:11,22 61:12 74:10

trying
7:23 19:2,20 23:16 30:22,23 37:13 41:15 44:21 52:24 55:20 94:13 96:20

turn
7:6 35:12 50:8 53:23 81:10

turned
32:22 33:9

turning
7:8 8:4 55:3 58:25 84:20 85:1 86:4 93:8

turns
27:13

twelve
82:22

twice
88:23

two
5:11 11:8 20:1 28:21 33:9 36:22 44:7 62:19 63:22 71:3 75:13

type
16:3 44:19 88:4,8,10

typed
73:19

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

types
80:25 81:1

U

UIM
20:20 21:9,10,12

ultimately
51:11 67:17

unaware
24:6 25:17 92:13

under
12:4 13:24 14:23 18:9,18 25:23 27:20 29:7 35:18 36:1 43:6 49:3,15 50:25 52:22 53:12 67:6 70:9 71:4 77:9 78:22 79:20 80:10 93:11,14 94:4,15, 18 96:23 98:7

underinsured
18:2 21:24 38:18 39:7,18 49:22 50:7

underinsured-
21:6

underlined
65:9,10,12

underlining
45:12

understand
6:13 8:11 9:4 10:20 12:11 13:5 16:19,22 27:12 32:25 39:21 44:8 54:20 55:20 56:21 70:12 71:2 74:15 81:21 85:22 86:23 93:21 95:9,19,21 96:21

understanding
6:24 21:15 67:25 68:2,22 96:9

understood
21:23 24:20 27:6 94:12

unequivocally
68:13

unfair
54:15 56:21 83:25 85:8, 13,22 86:1,9,11,24

uninsured
17:22,23 21:20

uninsured-
36:1

unique
56:3 57:3 58:12,17,23 85:15,21,25 86:25

Unknown
24:22

unless
9:14 18:19

unreasonably
29:8

until
30:19 46:25 51:23

untruthful
27:9,11,14

unusual
90:7

up
10:18 26:10 37:10 39:2 52:5 61:4 62:17 73:19 86:3,16 90:9 91:6 95:20 96:16 97:18 98:15

updated
26:7 27:1,4 28:5

upfront
24:20

upon
10:5 11:1 15:20 26:12 27:22 38:2 46:12 63:6 64:19 66:23 71:18 73:11

us
5:22 21:2 22:13 24:5 25:15,16 28:9 35:21 37:1 39:24,25 51:2,3,18,19 56:7 59:10,15,16 60:23 62:23 63:15 70:3 74:13, 14 77:15 79:22 82:5 90:9 95:16

use
11:23 17:22 23:19 38:9 39:4,21 40:1 41:9 44:16 53:6 56:12 96:10

used
12:19 13:10 24:1 48:22 51:21 81:23 83:19 97:23

usual
91:20

V

vague
95:12

valid
68:5 71:24

variety
8:14

vehicle
21:2

vehicular
88:15,19,20

verdict
51:10,14

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

verified
7:24 21:7

versus
4:8

very
5:24 6:11,20 7:21 8:19 9:25 10:23 19:3,16,22 35:2 37:22 44:13 45:9 49:18 56:2,19 57:3,10 58:17,18,20 61:3 75:3 77:19 80:8 85:16,21,25 91:20

video
44:14 98:24

VIDEOGRAPHER
4:1,16 53:20,21 84:23,24 91:18 92:22 96:17,18 98:24

view
33:10

violated
83:24

violates
86:9

violation
85:8 86:11

violations
84:3

voir
73:16

W

wages
22:14 95:11,14

wait
36:6

waive
5:3

waived
74:13 91:11,23

waiver
73:13 75:7 77:2 91:1,2,12,13,21 92:19

wandered
75:23

want
8:21 9:14 10:14,15 13:16 19:14,18 20:17 22:20 28:22,24 29:13 30:5 34:25 35:6 37:18 39:2 43:24 48:13 50:12 53:18 54:5,10 71:11 81:2 82:14 87:12,17,21 88:2 92:2 97:11 98:17

wanted
7:20 9:6 39:25 51:3 92:6

was
6:8,14 9:17 12:3 13:14,19 16:1,2 17:18,20,24 18:11,18 20:19,21 21:2 22:7 23:3,5,8,10,24 24:8,15 25:1 26:1,15,24 27:1,6,14 28:4,6 29:6,22 30:22,24 31:18 32:21 33:4 35:19 36:8,21 39:6,12 40:19,23,24,25 41:2,3,12 42:13 43:12,14,16,17,20 44:1,2,4,20,22 47:2,4,14 48:20 49:6 50:5,6 51:15,16 52:25 53:1 54:18 57:12 58:11,13 61:8 62:14 63:17,25 64:17,19,20 65:1,4,10,15 67:10,14,15 68:16,21,22 69:23 70:10,13 71:2,25 72:7,17 73:1 74:24 76:17 77:12,14 78:2,5,9 79:11 80:23 81:5,6 82:6,7 83:7,15 85:14 86:17 88:4,5,6,8,9,10,15,16,19,21 89:16,17,22,23 90:10 92:8,9,10,13,16,18 94:19,21,25 95:5,14,22 96:10,12,25 98:7,14

wasn't
12:23 17:7 30:11 33:15 41:2,12 44:22,24 47:14 48:1 52:25 73:8 81:7 92:19,20

way
22:13 85:14 86:18,25 97:24

ways
73:16

we
5:14,15 6:22 7:6 8:5,22 9:6,16 10:10,13,17 13:7,9,12,13 15:13 16:20 17:4,5,11,17,19 18:2,8,17 19:4 20:9,11,16,20,21,22 21:4 22:2,3,9,11,12,17,22,25 23:7,19 24:2,3,5,10,12 25:14,15,17 26:6,11 27:6,15,18,21 28:5,6,12 30:13,22 31:5,14,15,17,20 32:21,24 33:3,4,5,8,14 34:3 35:5,14,17,20 36:8,20,23 37:22 39:3,9 40:1,2,21,23 41:4,5,6,8 43:2 44:8 48:17,19 49:5,6,11 50:3,4,21,23 51:3,7,13 53:2,4,5,6,9,11,12,23 54:5,15,16,21 55:13 56:5,12,13 58:10 59:14,19,21 60:13,

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

19 61:19 62:1,15,24,25 63:10,11,16 64:22 65:18 66:10 68:12,19 72:5,20, 23 75:1 76:10 77:8,21,22 78:21 79:19,23 80:4,18, 19,24,25 81:2,3,4,6 82:9 84:8,16,21 86:15,17,19, 20 87:12,15,16 88:3 89:8 90:23 91:2,15 92:4 93:2, 18,19 95:7,18,19 96:5,6, 16 97:5,6 98:25

we'll
5:12,25 8:24 9:2,15 11:8 51:19 59:2 90:13 98:19

we're
4:1 7:19 10:1 15:11,13 16:8 18:21 26:25 28:15 31:1 33:17 37:13,15 38:13,22 40:17,18 41:3 49:15 51:23 53:24 57:11 59:5 63:2 66:21 76:15 82:21 84:22 86:22 87:3 89:1

we've
25:18 28:12 30:15 31:21 36:17 42:7 55:2 59:13,17 61:23 69:14 71:15 72:8 75:11 76:3 81:16 82:11 84:19 91:12 93:25

week
8:20 9:8

weeks
94:1,23 95:8,17

well
5:4 6:2,13 7:5 8:19 9:6, 23 10:23 11:18 14:21 20:11 21:1 25:12 28:23 33:2,14 35:14,20 36:6,14 38:13 46:19 49:25 52:20 53:3 59:9 60:4 61:14 62:6 65:24 66:2 67:4,20 69:5 72:2 74:3 76:5 84:11 89:1,4 92:12,15

went
16:25 18:5 19:5 24:4 63:14 65:11 74:21,25 80:11 96:5

were
8:23 12:3 13:7 14:21 16:6 17:17,19 18:23 21:4 22:2,11 24:6 25:17 26:6 30:13 31:5,19 35:24 36:5 37:12 39:16 41:10 47:11 49:2 53:11,17 54:3 56:5 61:15,21,24 62:4,25 65:18 66:10 67:6 69:6 70:19,20 72:5 75:12 76:11 78:2,7,11 82:17,19 89:9,12 90:20,21 93:2,3 96:22 97:18,23 98:25

weren't
24:22 70:4 73:5,7 74:17 86:17

what
6:14 8:6,9 9:4,16,23 10:15,17 13:17 15:1 16:19 19:3,8 20:17,18,19 22:16 23:3 24:11,24 25:15 26:6,14,15,24 27:5,6 28:6,18 29:13 30:5,23 31:18,20 32:3, 18,21,24 33:4,8 34:12 35:4,12,25 36:15 37:1 38:22 40:15 42:13 43:4 45:6 46:10 47:16,17 48:14 50:4,12 51:13 53:1 55:13 60:2 61:23 62:25 63:16,17,19,22 64:4,9, 11,12,13,15,17,18 65:4, 19 66:1,2,14 67:15 69:9, 14,19 71:15 72:8,10 73:18,21 76:3,24 77:6, 21,22,23 78:2,11,19 79:2 80:16,17 81:14,16 82:4, 6,11,13,15 83:9,10,13, 17,20 84:19 85:10 86:14 87:7 88:8,10,18 90:5,20 94:9,13 97:11 98:9

what's
9:12 14:1,5 28:20 30:9 31:12 33:12,20,24 34:2 38:22 41:16,17 51:7 52:15 54:11 59:3 64:2 65:9 67:2 73:17,19,22 76:4,9 83:18 84:9,12

whatever
18:5 65:7 98:17

whatever's
40:18

whatsoever
77:25

when
10:21 26:1 27:14,15 28:5,25 36:8,15 46:14 47:14 49:10 59:18 60:14, 25 68:12 72:23 73:15 78:23,24 79:8 80:18 89:22,23 94:19

where
14:15 21:10 31:5 34:5,8 37:12,17 43:8 45:14,23 46:3 47:9,10 55:12 56:1 64:17 66:12 67:18 68:9 89:5 91:5,10

where's
65:22

whether

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

21:7 22:4,5,13 23:23,24 25:12 26:12 39:10 81:5 88:19 96:7,21 97:22,23 98:1

which
6:10 10:6 11:1 12:4 13:9 15:19,21 17:11 18:7,8, 10,11 32:13 34:18 39:25 43:12 46:25 55:3 58:17 60:9 62:1,25 63:6,16 66:23 67:5 71:18 73:11 75:15 77:13 78:21 83:25 85:15 87:10 90:9 96:12 98:7

while
90:3,7

who
31:11 36:18 40:5 42:8 46:21 57:5,9 59:15 66:9 71:9 72:22 75:2,3 80:15, 22 85:24

who's
19:23 20:3 37:23 56:2 57:6

whole
12:1 58:7 63:9

why
7:5 18:13 23:11,14,15 27:20,21,23 33:20 34:22 59:23 62:7,9,12 64:11 65:11 73:1,6

wife
77:24

will
4:10,16 22:23,25 28:15 51:8 64:1,6 81:22 83:6 87:11,16 91:9 92:3,4

willful
54:18 86:11,17

Willfulness
86:5

with
6:2,3,12,20 7:11 8:23,24 9:2,24 10:2 12:1 13:11, 12,14 14:25 15:1,9 17:2, 8 19:5 20:6 21:20 22:17 24:21 25:20,22 26:4,5,17 27:4 28:6,7,11 29:3,6 30:9 31:8 32:8,20 34:15 35:10,16,20,22 36:14 37:15 38:6,8 39:22 42:23 43:22 44:8,9 45:11 46:16 47:4,6 48:2,4 49:24 50:4, 6,9 51:18 52:23 55:24 56:7,20 58:23 60:14,19 61:25 62:3,25 64:15 66:3,19,21 68:1,2 69:1 70:15,23,25 71:25 72:14, 24 73:18,19 74:7,14 75:13 76:11 77:10 79:14 80:6 81:4,17 82:15,21 83:7 87:5 88:7 89:20 91:22 92:14,20 93:2,4 94:9,14,19 95:2,4,23 96:11 97:5,23 99:3

withdrew
53:4

within
8:8 24:17 40:6 41:21 66:5 93:25 95:8,17

without
70:3

witness
4:17 5:6 10:20 23:16 25:5 26:24 30:7,25 34:2 42:18,20 69:5 75:22 82:3 87:21 91:6 97:10

witness's
5:7

witnesses
5:20

won't
5:14 23:21

wonder
46:22

word
7:4 50:20 66:6 73:2,3

words
5:9 23:12,21,22 66:5

work
21:11 62:20

work-related
21:11 88:10,19

works
95:21

world
20:3 31:14 33:1

would
9:12 11:18,20,22,25 12:5,16 13:23 15:5,17 18:3 20:10 21:2,8 22:4, 14 23:11,14,15,25 25:12 26:8,10 27:10,21 28:11 29:2,14,24 32:17 33:2, 11,22 35:7,14,16,23 36:9,10,14 38:12 39:10 40:3,4 41:21 42:16 44:23 47:5,19 48:25 49:3,4,17 51:7 55:8 56:7 57:8 60:6 61:1,4 62:3,12 64:11 68:4,19 69:2,7,9,25 70:21 71:9,10,24 73:6,25 74:9,12,18 77:18,19,25

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

78:20,21,22 79:8 80:6,7, 17 81:19 84:17 89:13 90:19 92:11 93:21 94:10, 11 95:2,3,25 96:13 97:1, 18 98:10,18

wouldn't
25:14 26:11 27:23 36:10, 17 37:25 43:4 49:10,13 53:16 62:7,9 78:25 94:21

wrap
96:16

wreck
17:19 19:22 20:4 41:13, 17 88:4 89:10,11 90:11 95:9,18

writing
36:5

written
20:20 29:23

wrong
28:12 30:9 33:21 38:11 45:19 59:10

wrote
20:21 95:18

Y

yeah
5:4 19:20 33:2,10 45:20 49:4,10 53:19 58:14,22 59:21 60:22 61:17 70:8 76:17 80:24 89:21 90:10

years
25:20,21 42:7 46:13 88:22 89:11 90:2,8,10 96:2,4

yes
6:21 7:23 11:11,16 12:21 27:7 31:3 38:8 44:18 49:17,19 54:14 57:23,25 59:8 62:10 63:24 65:3 66:4 70:17 87:23 88:24 89:4,8,24 93:16,25

you
4:22 5:1,11,13,18,21 6:6, 13,16,23 7:3,8,18,21 8:4, 6 9:4,13,14,23 10:16,21 11:7 13:4,16 14:15 15:3, 16 16:3,21,22 17:20,22 19:1,5,14,18 20:4,23 21:8,10,16 22:11,17,19, 20 23:2,10,11,14,15,17, 21 25:6,14 26:14,15 27:10,11,12 28:21,24,25 29:2,3,4,13 30:21,22,23 31:25 32:9,17,20 33:18 34:6,12,17,22,25 35:2,6, 10,12 36:10,13,17 37:25 38:25 39:2,3,21 40:8 42:2,10 43:22,24 44:7 45:11,14,23 46:2,12 48:7 50:20,22 51:12 52:10 53:18 54:23 56:7,11,13, 22,25 58:14,15 59:14,18 60:4 61:4,14,15,18,21 62:21 63:20 64:11,12 65:1,3,14,24 66:3,13,17, 19 68:6 69:1,6,12,18,23 70:13,14,15 71:6,11 74:9 75:16 76:20,23 77:14 78:13,14 79:5,6 80:8,9, 11,12 82:4,10,17 83:5,7, 9,11,12,13 84:5 86:19 87:9,11,19,21 88:1,2,18 89:5 90:5,7,8,9,12,13,21 91:5,10 92:21 93:21 94:10,12 97:11,13,22 98:1,19,20

You'd
65:15

you're
4:25 10:9,20 11:10,15 15:9 19:20 27:5 33:24 35:8 44:20 46:17,20 49:24,25 57:12 60:12 62:6 65:13 66:19 70:18 73:18 80:13 83:17

you've
6:2 18:22 21:25 32:3 44:13 76:18,21,24 94:10 97:5

your
4:22 5:22 6:5,20 7:3,5 8:21 9:7 12:21 14:15 15:24 17:22 21:23 22:19 23:17,21 26:19 32:23 38:6 41:19 42:13,25 45:14,18 47:19,23 49:16 51:9 52:23 66:8 67:23 71:9 75:16 79:23 80:10, 13,15 83:22 90:16 95:16

yourself
76:20

Z

Zero
78:12

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

EXHIBIT 2

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC.,
Plaintiff,
vs. CASE NO. 2021-CP-10-03379
MICHAEL A. MAUCHER, ESP. AND DELUCA & MAUCHER, LLP,

Defendants.

VIDEOCONFERENCE
DEPOSITION OF: JASON M. HIGHSMITH, MD

DATE: May 19, 2023

TIME: 3:06 PM

LOCATION: COPELAND, STAIR, VALZ & LOVELL
40 Calhoun Street
Suite 400
Charleston, SC
TAKEN BY: Counsel for the Defendants
REPORTED BY: MICHAEL DAVID ROBERTS,
Court Reporter

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 2

APPEARANCES OF COUNSEL:
ATTORNEYS FOR PLAINTIFF
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC.:
PENDARVIS LAW OFFICES
BY: THOMAS A. PENDARVIS
710 Boundary Street, Unit A1
Beaufort, SC 29902
(843) 524-9500
thomas@pendarvislaw.com

AND

(Appearing by VTC)
SOWELL & DURANT
BY: THORNWELL F. SOWELL, III
1325 Park Street, Suite 100
Columbia, SC 29201
(803) 722-1100
bsowell@sowelldurant.com

ATTORNEYS FOR DEFENDANTS
MICHAEL A. MAUCHER, ESP. AND DELUCA & MAUCHER, LLP:

COPELAND, STAIR, VALZ & LOVELL
BY: SKYLER C. WILSON
40 Calhoun Street, Suite 400
Charleston, SC 29401
(843) 727-0307
swilson@csvl.law
AND
DELUCA MAUCHER
BY: JAY S. MASTY
102 Marilyn Street
Goose Creek, SC 29445
(843) 572-1711
jay@delucamaucher.com

ALSO PRESENT:

Eric Weinberger (Appearing by VTC)

(INDEX AT REAR OF TRANSCRIPT)

Page 3

JASON M. HIGHSMITH, MD
being first duly sworn, testified as follows:
THE COURT REPORTER: State your full name for the record.
THE WITNESS: Jason Highsmith.
THE COURT REPORTER: Thank you.
EXAMINATION
BY MR. WILSON:
Q. Good afternoon, Dr. Highsmith. My name is Skyler Wilson. We just met a little bit ago. I represent DeLuca & Maucher and Mike Maucher in the lawsuit brought by Carolina Neurosurgery that we are here to take your deposition today. Do you understand that?
A. Yes.
Q. And the court reporter did a great job a second ago giving you some instructions on answering questions, make sure we don't speak over each other, and I'm assuming you understand those instructions, correct?
A. Correct.
Q. Perfect. Now, I'm going to be asking you questions today for the court reporter to take down a transcript of our conversation, and I ask that if you have any questions about what I ask

Page 4

you, you direct those questions to me, okay?
A. Yes.
Q. And if you have any questions about what I ask, you can ask me to clarify, rephrase, repeat. If you don't understand anything, just let me know and I'll do my best to try and clarify it, okay?
A. Okay.
Q. If you need a break, let us know. We'll take a break. I don't imagine we'll be here too long today, at least I don't hope to be here too long today. So just let me know if you need a break. And then I'll ask that you attempt to understand a question before you answer it, okay?
A. Yes.
Q. And because you have the right to ask me to clarify, rephrase or repeat, if you answer a question without asking me to clarify, rephrase or repeat, I'm going to assume that you understood the question. Is that fair?
A. Yes.
Q. Perfect. Are you the only provider at Carolina Neurosurgery & Orthopedics?
A. Yes.
Q. And how many staff are at that

Page 5

business?
A. At the facility I have two staff.
Q. And what are their names?
A. Kiara and Aaliyah.
Q. Is that Kiara Goodwine?
A. Yes.
Q. And what does Kiara do for Carolina Neurosurgery?
A. She's the office manager.
Q. How long has she been there?
A. She's been with me probably about four, five years maybe.
Q. And then what was the name of the other employee?
A. Aaliyah, A-A-I-L-I-Y-A-H [sic], I believe.
Q. And last name? Do you know?
A. I don't know actually. I think Parker, I believe.
Q. Those the only other staff that you have at Carolina -- that are at Carolina Neurosurgery?
A. At that office, yes.
Q. And are there two offices for Carolina Neurosurgery?

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 6

A. Yes.
Q. Where are those?
A. Office in Charleston here and an office in Columbia.
Q. And who are the -- the treatment that you provided to Mr. Demaskey, that was out of the Charleston office?
A. Yes.
Q. Who are the employees at the Columbia office?
A. It's the same employees that work for me there.
Q. Just the two?
A. Just the two of them.
Q. Is Eric Weinberger also an employee of Carolina Neurosurgery?
A. He's contracted, yes, but he's not a formal employee.
Q. What is his role at Carolina Neurosurgery?
A. He's my business administrator, business manager.
Q. And what are the duties that would entail for Eric?
A. Pretty much everything I ask him to do.

Page 7

You know, handle phone calls, take care of administrative details. It's anything I ask.
Q. What do you mean by administrative? Can you expand on that at all?
A. Well, he's the one responsible for helping hire staff, helping to cover payroll, you know, sort of day-to-day operations of the office.
Q. Do you have any specific employee that is assigned to billing?
A. Everyone in the office handles billing. I am the main person that handles the bills, but everyone in the office acts on my behalf and does that.
Q. Is there any one specific person that would submit bills to an insurance carrier?
A. Kiara might if we have them, yes.
Q. What was Aaliyah's role or what is her role?
A. Aaliyah is basically a nurse assistant so she sees patients and brings them back and does initial evaluations before I come in, medical histories, medication list, et cetera.
Q. So she travels between the offices?
A. Yes.
Q. Do you have any one employee

Page 8

specifically that handles patient intake?
A. I do basically with Aaliyah's help. So she'll go see the patient, what meds are you on; and I come in, do a history, physical, that stuff.
Q. What about the administrative filling out paperwork prior to seeing you or Aaliyah?
A. The patients fill it out. They have paperwork there at the office, standard intake forms.
Q. And is Kiara the one who gives the forms to the patients when they first come?
A. Either Aaliyah or Kiara does.
Q. Is there any specific employee that will handle billing disputes with insurance carriers?
A. Not a specific employee, no.
Q. So does everyone have a hand on handling any insurance billing disputes?
A. Yes. If there's any issues, they come to me.
Q. Are you aware of any other -- any policies or procedures that Carolina Neurosurgery has for insurance -- for insurance paperwork for patients?
A. Well, like I said, we have our standard

Page 9

intake forms that all patients sign --
Q. Do you know --
A. -- and.
Q. -- sorry. Go ahead.
A. And we rely on those forms.
Q. What specific -- do you know the names of the specific documents that they usually fill out, the patients when they first come to get services from you?
A. One of them is a health insurance verification form. We have other forms. Financial policies, intake forms, HIPAA release, those type things.
Q. And do you have a hand in developing those policies yourself?
A. Yes.
Q. Any other employees have a hand in those policies?
A. I consult Eric with a few things. We also have counsel that we handle these with.
Q. Who's the -- do you have a general counsel for Carolina Neurosurgery?
A. Yes, it's Mr. Sowell.
Q. Okay. Do you know what your current patient load is at Carolina Neurosurgery?

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 10

A. I'm not sure what you mean by current load.
Q. Well, do you have a roster of, like, active patients? Do you keep track of how many patients you're seeing at any certain time?
A. We don't really keep track of any certain number. We just have patients on the schedule, get people in as soon as we can if they're having issues.
Q. Once somebody -- if somebody comes to see you for the first time, I think you mentioned that some of the documents they fill out are health insurance verification, HIPAA release and financial policy; is that correct?
A. Correct.
Q. Were there any others documents that I missed?
A. It's all part of the intake forms, so emergency contact I think is one of the forms through our standard packet.
Q. Have you yourself, not Carolina Neurosurgery, ever been named a plaintiff or defendant in a lawsuit?
A. No.
Q. Are you aware of whether Carolina

Page 11

Neurosurgery has sued patients for collections before Mr. Demaskey?
A. Yes.
Q. Is that a frequent occurrence?
A. Not frequent. We try to work things out with patients and work out a payment plan or whatever means they can pay.
Q. Do you know at all how often Carolina Neurosurgery has had to speak with patients that have -- over billing that have led to lawsuits?
A. I missed that one word.
Q. How many patients that Carolina Neurosurgery has had in the past that have led to litigation over billing disputes?
A. I don't know. We don't really track it. We've worked with Mr. Sowell for several years, so I turn over delinquent bills to him.
Q. And those won't necessarily go to litigation?
A. So we try to work with patients. I focus mainly on the medicine to getting them better.
Q. I'm assuming you have been deposed before?
A. Yes.

Page 12

Q. How many times have you been deposed if you can estimate for me?
A. I don't know. It seems to be happening a lot more since COVID ended. Everything seems to be catching up. I don't know. A few times a month.
Q. A few times a month?
A. Yeah, a few times a month or every other month.
Q. And is that mostly as, like, an expert witness or just as a treating provider?
A. A little bit of everything. Mainly treating provider, though.
Q. Have you served -- you've served as an expert witness in the past?
A. I have, yes.
Q. Do you know, was that mostly on plaintiff's side, mostly on defendant's side? Do you know how it shakes out?
A. I try to keep it balanced. I just try to do a little bit of each. The last big case I did was a med mal case in Alaska.
Q. Oh, wow, Alaska?
A. Yeah.
Q. Were you on the plaintiff's or defense

Page 13

side.
A. I was on the plaintiff's side for that.
Q. And you were -- were you in that case just an expert, or were you also a treating?
A. Expert physician.
Q. If you had to estimate, would you say that you're more often than not on the plaintiff's side versus the defense side?
A. I take care of patients so if patients are plaintiff, I'm, you know, treating physician as a majority of my practice, vast majority.
Q. But you are contacted in some instances by a defense counsel to serve as an expert witness?
A. Usually it's from the CME or IME type thing.
Q. So do you get referrals from, like, workers' compensation?
A. Yes.
Q. What portion of your practice is that?
A. Very little. I just don't do a lot of work comp. I mainly just do CMEs, IMEs, that type stuff.
Q. And are those referrals direct from, like, workers' compensation carrier or from getting those independent evaluations, I'm guessing, for

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 14

the patients themselves?
A. Whoever asks. Some patients come initially. Sometimes I get referrals from case workers. I don't really track it. It's just whoever comes in the door.
Q. Do you know if Carolina Neurosurgery tracks that kind of information?
A. No.
Q. No, you don't know or no, they don't?
A. We don't, no.
Q. Do attorneys frequently send their clients to you to get treatment if they're involved in litigation?
A. Usually most of the referrals I get -- I've been in the community a long time -- are from primary care docs, chiropractors, therapists, friends, neighbors.
Q. Is it a rarity that you will treat a patient who has been sent to you directly by an attorney?
A. Yeah, usually I don't -- I don't -- usually if they're sending me a patient directly, it's, you know, an expert witness type thing, defense IME or something.
Q. How often do you treat patients under a

Page 15

letter of protection?
A. I just don't use them. I don't use them anymore for sure probably as a result of this incident. I just don't use a letter of protection as part of my standard policy.
Q. Not anymore?
A. Not anymore, correct.
Q. Have you done it at all after Mr. Demaskey got treatment from you?
A. I don't think so. This sort of unfortunately soured it for us.
Q. And before that, how often did you provide services under a letter of protection?
A. If they came, I didn't really notice. You know, we just -- we didn't necessarily seek it out. We have a financial policy that basically says the patient is ultimately responsible for their bill.
Q. So you're not particularly worried about getting a letter of protection?
A. Correct.
Q. Prior to adopting a policy where you no longer accept letters of protection, what is it a practice to ask --
MR. WEINBERGER: Whoever is asking the

Page 16

questions, can you speak up a little bit? I'm having a hard time hearing. I don't know if I'm the only one, but if you would be kind enough to do that, I would greatly appreciate it.
THE COURT REPORTER: No, that's not it. Give me one minute.
MR. WEINBERGER: I apologize. Thank you.
(A recess transpired.)
THE WITNESS: Can you repeat the question?
BY MR. WILSON:
Q. Certainly. Let me see if I can remember it word for word. Prior to adopting a -- prior to Carolina Neurosurgery adopting a policy of no longer requesting letters of protection -- or accepting letters of protection, was it a policy to request them?
A. No, not traditionally. If they came with one, we saw -- we would see the patient either way.
Q. You would have seen the patient either way with or without a letter of protection?
A. Correct.
Q. In circumstances when you would receive

Page 17

a letter of protection, would that be documented somehow in a file outside of just putting a letter in the file for a patient?
A. That would be the only place we have it. It would just be in the chart.
Q. There's no other area where it would be marked that there's a letter of protection?
A. No, we just have it as part of the chart if it comes up.
Q. In the past for Carolina Neurosurgery, how many patients do you think you've treated best estimate under -- where a letter of protection has been involved?
A. I don't know. We don't see them very often. We never really request them, so very few.
Q. Is that just -- is that a guess? You don't really --
A. I don't really know. I don't -- we don't track that.
Q. So you wouldn't require in the past when there was a letter of protection coming in any specific type of language in that letter of protection?
A. No. Again, we don't typically request them.

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 18

Q. Just whatever came in the file -- it would be in the file?
A. Correct.
Q. Before you provide any services to a patient when you get a new patient, what is the extent of your review of a file?
A. Well, we interview the patient. We go through the intake paperwork with them, what they've described is going on. We interview them and perform our exam. So as a provider I'm taking care of the patient medically.
Q. Okay. And you testified a little bit earlier a couple of the documents that are in that intake file including the health insurance verification, a HIPAA release, financial policy and emergency contact. When you first treat a patient, is it part or your practice to go through each and every one of those documents with the patients?
A. My staff does. I don't necessarily go through every page with my patient. I focus on the medical side.
Q. So you're not reviewing those intake forms that aren't relevant to the reason why the patient is there for treatment?
A. Correct.

Page 19

Q. And so a letter of protection if it's in the files is something that you would be concerned about or review prior to treating a patient?
A. At some point in their treatment I would review it, but I mean we have -- we're very forthcoming with the surgical cost and how our patients sign the letter and, you know, cost estimate and those type of things. We've been doing that for years.
Q. You've been providing good cost -- or good faith estimates for costs for years?
A. Yes.
Q. When did you start providing good faith estimates?
A. Really when we started the practice several years ago.
Q. Do you know if you would have provided a good faith estimate for both of Demaskey's surgeries that are involved in this -- or relevant in this case?
A. I don't know that it's considered a good faith estimate. That language, I believe, is from the 2022 No Surprises Act, but we've had written estimates for all of our patients with

Page 20

every procedure we provide from the beginning of the practice.
Q. Okay. And so your testimony here today is that you would have both of those for -- at least an estimate in the file for Mr. Demaskey for both of these surgeries that are involved?
A. Yeah. We have them sign them before they leave, and before the surgery is even posted they know -- we don't ask them to -- you know, we tell them look, if you want to think about it, here's what it's going to cost. Some patients take the estimate home and don't schedule surgery. Some people sign it then and then schedule surgery.
Q. Is there any specific paperwork that -- and I kind of asked this question already, but I want to make sure I'm clear on it -- any specific paperwork that you go over with a patient when you're discussing their care with them?
A. If there's any questions I have about their, you know, contacts or, you know, who the family is. If they're with somebody there in the exam room, is this your emergency contact or is it a girlfriend or, you know, those type things. We try to sort those out so it's not awkward.
Q. I'm assuming there's some kind of

Page 21

intake form that says why you're here today, and the patient would describe why they're actually requesting services from you?
A. Well, that's what we do as part of the history of present illness when we interview the patient. But the general paperwork has demographics, those type of things, phone number, contact, email.
Q. Oh, so the present history of illness wouldn't be necessarily on the intake paperwork?
A. No, it's part of what we ask the patient when the medical side starts.
Q. Is it your practice to discuss any issues with insurance with patients when you're treating them?
A. No. Early in my practice I did tell patients that I had seen before -- I made it very clear as I did with Mr. Demaskey. I said, look, I'm no longer insurance. This is a brand new office, brand new building, brand new staff, brand new practice, brand new -- completely different than any other way I've treated you. And so the new practice, we're no longer in network with insurance, and so all patients were aware of that.
My staff tells them many times; they

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 22

sign paperwork to that effect and especially if I've seen them before as a patient I make it ultra clear then that I do not accept insurance just so there's no confusion. Oh, well, I saw you before and -- it's different now.

Q. And that's part of your practice since you stopped accepting all insurance; is that what you're --

A. Correct, because I'm not in network with insurance.

Q. And so under no circumstances since you stopped accepting insurance do you submit bills to insurance, or do you still bill insurance companies?

A. We can't really bill insurance companies. We're not providers. If patients have out-of-network benefits, we'll assist them in filing for those, and we're very clear with that. We don't file for them; we don't have -- because we're not in network. We don't even have a contact at these insurance companies. If they have out-of-network benefits, we go forward and help them file those with their carrier.

Q. When you mention you help them file them, do you -- you say you do not file them on

Page 23

their behalf. Do you provide -- or does any employees within Carolina Neurosurgery provide advice on how to file? I'm just trying to figure out, like, what exactly happens there?

A. No, we give them whatever they need. Sometimes they'll need, you know, an operative note, for example, or a clinic note justifying a procedure to be done, those type things. So we'll give them whatever they need, and if they have questions on the basic forms, we'll do our best; but we don't submit them on their behalf.

Q. If a patient asked you to submit them on their behalf, would you decline?

A. Yes, because we can't. Like I said, we don't have any contacts there. We don't have a fax number for Blue Cross. We don't have any -- we're not network providers, so we have no way to file. There's no electronic portal for us. There's no -- no other way.

Q. You mentioned earlier that there was a brand new building, brand new staff. Is that -- are you referring to the Charleston office?

A. Yes.

Q. When did that open?

A. I've been here in Charleston for 17

Page 24

years, but that office opened about five or six years ago.

Q. And where were you practicing before?

A. I was right across from the hospital in the new Trident hospital.

Q. Was that under the Carolina Neurosurgery & Orthopedics umbrella?

A. No, it was a different practice.

Q. And so sorry, what year did Carolina Neurosurgery open in Charleston?

A. I think it was 2018, I believe. I don't remember for sure.

Q. And Mr. Demaskey got treatment from you prior to the treatment that is relevant to this case, correct?

A. That's correct, when I was at the old practice. That's why I made it very clear to him that this is a totally different practice, and I'm no longer in network with insurance.

Q. So when he came to see you for this case, it was -- or for the treatment that is relevant to this case, he came to the Charleston office that had recently opened?

A. Yes.

Q. When you opened your office in

Page 25

Charleston, or when the office opened in Charleston, did you -- do you know if any paperwork was imported over, taken over to Carolina Neurosurgery, anything like that?

A. We have some of the previous records. Some of them I couldn't get from another practice so...

Q. When you transitioned to Carolina, did you take any patients with you over there?

A. Not directly. Not intentionally. No, I, you know, took whatever patients wanted to follow me.

Q. And how did you notify those patients?

A. They call the office -- the old office. They would say, well, Dr. Highsmith is in a different practice now. You can see one of our providers or go see Dr. Highsmith.

THE COURT REPORTER: I'm having a very hard time getting down what y'all are saying. Can you slow down, please.

MR. WILSON: We'll talk slower.

BY MR. WILSON:

Q. So there was no formal notification to your current patients prior to transferring to Carolina that you were transferring to Carolina and

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 26

they had the opportunity to come with you or they could make their own choice?
A. There's no formal communication with them. They were offered it when they called. My former partners agreed to take patients of mine, so it was a peaceful parting of ways.
Q. The decision to move over to Carolina, how long was that process in the works before you actually transferred?
A. I mean, it was just -- it's something I told my partners I wanted to do. I was tired of taking call in the hospital and wanted to do more outpatient work.
Q. So do you not know how long you actually -- when you said I'm going to go open Carolina Neurosurgery to actually opening it?
A. Well, I told them it was coming, so it was no surprise to them. I don't remember the date that the switch over occurred.
Q. Best estimate a month, a year, a couple months?
A. Probably a few months. I don't remember exactly. I told them it was coming just so they knew. I wanted to be finished with the call schedules that I had done for the practice and

Page 27

make sure that all of our patients were cared for appropriately. And the hospital at the same time was hiring a neurosurgeon to take over my spot on the call schedule, so I wanted to make sure that transition happened appropriately so I didn't overburden my colleagues.
Q. Okay. So when you notified your colleagues that you were intending to leave, then they went to go hire somebody to replace you and then --
A. The hospital did.
Q. The hospital did?
A. Yeah.
Q. And in any informal conversations with your patients before you transferred after you had made the decision to transfer, did you tell those patients that you were intending to leave?
A. Any patient that was in active care, we completed the care before leaving. In other words, if someone just had surgery, I would make sure we finished them up.
Q. Any postop appointments after surgery to make sure those were complete before you transferred over to Carolina?
A. Correct.

Page 28

Q. So clean slate when you went over there?
A. Yes.
Q. So the intake paperwork that we've kind of discussed today, was that intake paperwork developed when you made that transfer and specific to Carolina?
A. Yes.
Q. And so from that point on -- just so we're clear -- no longer accepted insurance?
A. Correct.
Q. Unless they had something that had an out-of-network benefits that you could help the patient submit themselves to -- a claim to?
A. Correct.
Q. When you first treated Demaskey before opening Carolina, did -- do you know, were you involved at all with submitting bills to insurance during that period?
A. My office staff did that, so they were -- we were an in network at the time. We had a staff member dedicated to that.
Q. Did you take any staff members over with you to Carolina?
A. No.

Page 29

Q. Now, I've kind of already premarked some exhibits, so I'm going to jump around a little bit. But I'm going to start with what was 11, but we'll have the numbers be pretty clear. Hopefully not too confusing so it doesn't mess everybody up.
MR. WILSON: Thomas, before I sent these I forgot to remove the exhibit stickers.
MR. PENDARVIS: Yeah. So this is number 3? I was like wait a minute.
MR. WILSON: I covered it up on his, but I just -- scratch it out there.
MR. PENDARVIS: You're fine.
(DFT. EXHIBIT 11, One-page document dated 11/02/2020, was marked for identification.)
BY MR. WILSON:
Q. Okay. So what I've handed you is the surgery cost document that, I believe, was filed as a complaint that's -- for this case?
A. This is a billing ledger.
Q. Billing ledger. Right.
A. Okay.
Q. That's what I meant.
A. Okay.
Q. Is it front and back as well, or is that one-sided?

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 30

A. No, just one-sided.
Q. Is this a ledger of the services that you provided to Mr. Demaskey that are relevant to this case?
A. Yes.
Q. And the total down there it looks like it's $125,409.28; is that correct?
A. Yes.
Q. And is that amount that you -- for that -- that's at issue in this?
A. That's the entire outstanding bill, yes.
Q. And has anything been paid to date?
A. No, not to my knowledge.
Q. Now, is it those costs that you believe DeLuca & Maucher and Mike Maucher are responsible for the amount in this?
MR. PENDARVIS: Form. Objection.
THE WITNESS: Well, the patient is ultimately responsible by whatever means he can pay.
BY MR. WILSON:
Q. So do you not believe that they're responsible then?
A. I believe that the patient is

Page 31

ultimately responsible for the bill through whatever relationship he has, and I trusted the agreement we had with his attorney.
Q. All right. So the patient is ultimately responsible for the bill, and you trusted the agreement that you had with the attorney. Are you referring to the letter of protection or multiple letters of protection?
A. Yes.
Q. And is it under those letters of protection that you believe DeLuca & Maucher, Mike Maucher are responsible for their patients medical bills?
A. Under that yes, but again, ultimately the patient is responsible.
Q. Are you aware of someone pursuing coverage through OneBeacon for the surgery -- or for these medical costs?
A. I've heard that in some of the discussions with counsel, but I don't know the status of that.
Q. You don't know the status, but you're just generally aware that that might be going on?
A. Yes.
Q. And the absence of a letter of

Page 32

protection or letters of protection in this case, do you believe that DeLuca & Maucher or Mike Maucher will be responsible for Mr. Demaskey's medical bills?
A. I don't know what agreement he has with his attorneys, but again, he's ultimately responsible. And that's what we provided him the written estimates, and he signed the paperwork that he's responsible.
Q. And really what I'm trying to ask is: From your perspective I think you had testified that the letter of protection -- letter of protections -- letters of protection are the reason why DeLuca & Maucher and Mike Maucher might be responsible for the cost; is that correct?
A. That's my understanding, that they've taken on the responsibility with the letters; and again, we had no reason to doubt that was the case, and we trusted the relationship and the agreement we had.
Q. Okay. Did you have a relationship with DeLuca & Maucher or Mike Maucher prior --
A. No relationship. I meant relationship documents, the understanding, the agreement from paper.

Page 33

Q. Absent those agreements or the papers that you're referring to, do you believe that DeLuca & Maucher or Mike Maucher would be directly responsible to Carolina Neurosurgery for Mr. Demaskey's bills?
A. You said exclusive of that agreement?
Q. Yes.
A. I can't speak to that. I don't know the relationship he has with the patient. He has a relationship with me based on those documents to provide coverage.
Q. And so if those documents were not there, then would you agree that they wouldn't be responsible for direct payment to you for those medical bills or direct payment to Carolina Neurosurgery?
A. Again, I can't speak to what the patient and the attorney -- his counsel has as an agreement.
Q. Well, I'm not asking --
A. The patient is ultimately responsible.
Q. I'm not asking about their agreement or -- with their specific patient. I'm asking about any other reasons why DeLuca & Maucher or Mike Maucher could be responsible directly to you

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 34

or directly to Carolina Neurosurgery for Mr. Demaskey's costs?
MR. PENDARVIS: Object to the form.
THE WITNESS: Again, I trust the agreement and the paperwork we had from them. Beyond that, I don't have any other way to hold them accountable.
BY MR. WILSON:
Q. Okay. Looking at exhibit 1 -- or exhibit 11, sorry, the different dates that are listed in the left-hand column, are those all dates that you would have seen Mr. Demaskey?
A. Yes, those are dates of service.
Q. Sitting here today, can you remember or recall any of the conversations that you would have had with Mr. Demaskey during these different treatments that are listed on exhibit 11?
A. Like I said, every new patient I have seen in the new practice that I had seen in the old practice I made it very clear from the very first visit everything I just mentioned before. This is a different patient interaction. I'm not in network with insurance anymore; that's why I'm not at the old practice anymore.
So that was the initial encounter with

Page 35

every single patient I have and still have even new patients that I've never seen before. But I've made it especially certain for patients I had seen before because they knew me. But every patient knows that I'm not in network. Our staff tells them that. The sign in says that. The forms say that.
Q. So your practice when having new patients was to inform them of all of these different changes on insurance, that you're no longer in network with any insurers and you would tell them that?
A. Yes.
Q. And you would tell them that in their first visit?
A. The first visit and just reminder throughout their stay that, you know, this is something that is different than the previous interactions we've had.
Q. But yourself specifically you would go over that with the patient?
A. Yeah, especially when we give them a cost estimate of the bill, you know, we -- if they have an insurance, they don't need that cost estimate; we don't give them that cost estimate if

Page 36

they're using insurance. But when they -- in my practice we don't use insurance, so they get a cost estimate.
Q. So then every patient gets a cost estimate, right?
A. Every patient in my practice gets a cost estimate, yes.
Q. And that's true even if they have out-of-network benefits with some insurer?
A. Yes, because ultimately they're responsible for the bill. We want to be very forthcoming with them this is what you're responsible for.
Q. Okay. Other than your general practice of notifying patients about the changes in accepting insurance, do you actually recall any specific instance of telling Mr. Demaskey that?
A. I did, and I understood he knew very well why we didn't accept insurance. That's the first question most people ask is why don't you accept insurance. And I said I like to be able to do what the patient needs not beholding to a certain policy or certain restrictions that the insurance companies place on the ability to practice medicine.

Page 37

Q. So that would have been on January 2nd, 2019 the first time that you saw him under the Carolina Neurosurgery?
A. Yes, we would discuss, you know, I don't take insurance anymore and answer the questions they have about the new practice.
Q. Do you know if you would have had that conversation on January 21st, 2019 with Mr. Demaskey?
A. I probably would just because I wanted to drill it home to patients especially when they're contemplating surgery just so they knew that it was a different model than they had encountered before.
Q. So you probably would, but you can't specifically recall?
A. I can't say for sure. It's been, you know, three years -- four years ago now, but it was standard practice to keep patients well-informed as all my staff did the fact we were out of network.
Q. So is discussing insurance with patients part of what you focus on with -- I think you referenced earlier focusing on the medical side of treatment?
A. Well, it's something they should be

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 38

aware of when we talk about surgical cost and implications of -- of their health care.
Q. Are employees of Carolina Neurosurgery instructed to discuss with the patients the fact that Carolina Neurosurgery does not submit bills to insurance carriers?
A. Absolutely, and that's part of our intake paperwork. They tell the patient that; the patient signs something to that effect in paperwork understanding that they know we are not in network.
Q. Did you view the video of Mr. Demaskey and his wife discussing basically the insurance issues that from their perspective that they had done with their attorney?
A. I did, yes.
Q. And sitting here today, is there anything specific in that video that you disagree with what they said?
A. The majority of what they said --
Q. The majority of it?
A. -- did not happen, and there was no reason for it to happen. I wouldn't discuss the way they described it with any patient let alone them.
Q. Do you treat any patients with learning

Page 39

disabilities?
A. I'm sure some patients have had them. I've got patients that have had strokes, and we bring family members in to make sure that they're -- you know, understand the implications. I've got some patients that are developmentally disabled, so we have a caregiver present at all times especially with medical decision and they've been listed as power of attorney.
Q. A medical power of attorney?
A. Typically, yes.
Q. And so your practice in that case is to, then, describe the -- not only the type of care that you're going to provide to the individual describing that to the caregiver or whoever is the responsible party but also to discuss the insurance issues?
A. Yes.
Q. Are all of the -- what portion of the patient population that you see is by some type of referral over someone who comes to you directly without a referral if you can answer that question?
A. I don't know. I've got patients -- like I said, I've been in town 17 years, so I've got a lot of patients that's come by word of mouth,

Page 40

family members refer patients. I've known other primary care docs in Charleston, so a lot of them send me patients. It just depends.
Q. Any of the intake paperwork for Carolina Neurosurgery ask how did you hear about us, anything like that?
A. It doesn't, no.
Q. All right. I'm going to hand you what's going to be marked as exhibit 1.
(DFT. EXHIBIT 1, Two-page letter to Jason H. Highsmith, MD from Michael A. Maucher dated December 20, 2018, was marked for identification.)
BY MR. WILSON:
Q. And this is a letter from DeLuca & Maucher addressed to yourself dated December of 2018. And it is front and back, but I think it's the same letter on the back, but there's, like, a fax notification at the top. Are you familiar with this document?
A. Yes.
Q. And this is the letter of protection that DeLuca & Maucher sent your office related to Mr. Demaskey's treatment; is that correct?
A. That's correct.

Page 41

Q. Do you know if you would have read this letter prior to providing any -- well, let me -- do you know if you would have read this letter prior to providing treatment on January 2nd of 2019?
A. At some point I reviewed it in his chart or in dictating his note. I don't recall exactly when.
Q. Is this something that you would have noted in any dictations for Mr. Demaskey that you read a certain document or anything like that?
A. No. Again, I'm sort of focussed on the medical with the documentation that we provide, so no.
Q. Okay. Does Kiara have the authority to accept letters of protection on behalf of Carolina Neurosurgery that you know of?
A. Well, there's a matter of accepting meaning receiving the fax and putting in the chart, yes. In terms of following through on the implementation of that, that would be something she would consult with me on.
Q. Would the practice generally be to consult with you about a letter of protection prior to providing services?
A. Not prior to providing services, but as

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 42

part of our handling of the patient, yes.
Q. So at some point afterwards yourself and Kiara would mostly have a conversation if there was a letter of protection in the file for a patient?
A. Yes, but we don't really typically use them so...
Q. All right. And the date of this letter is -- looks like December 20th, 2018; is that correct?
A. Yes.
Q. And I would like to walk you through this language real quick and get your thoughts on it. So here it begins, with regard to the above named individual. And that refers to Mr. Demaskey; is that correct?
A. Yes.
Q. And then it continues, please accept this correspondences as our law firm's agreement. The law firm would be DeLuca & Maucher; is that correct?
A. That's my understanding, yes.
Q. To protect any claim which you may have out of any settlement proceeds we may receive arising out of the incident referred to above. And

Page 43

the incident is the accident that caused the injury necessitating the treatment you provided; is that correct?
A. That's my understanding, yes.
Q. Okay. Now, so in this letter the law firm is agreeing to protect claims out of any settlement proceeds; isn't that correct?
A. That's what it says, yes.
Q. Is that your understanding?
A. Yes.
Q. And then, I believe, it goes on to say, the above named individual. Again, that's referring to Mr. Demaskey; is that correct?
A. Yes.
Q. And then it says, in the event of insufficient recovery, he'll be responsible for the balance. Is that correct?
A. Yes.
Q. So in this letter at least there's -- it seems to be outlining a potential for -- or at least -- at least the potential for an insufficient recovery; is that correct?
A. I wouldn't say it outlines that. I mean, it certainly -- you know, we're very forthcoming with the cost to the patient and expect

Page 44

an agreement like this to be backed up by -- by adequate coverage before providing approval to do a surgery.
Q. But that's not what the letter says, is it?
A. That's not the wording, but the understanding is that the patient is being seen for treatment and the bills will be covered. Our understanding is they will stand by their word.
Q. Well, who according to this letter and your interpretation of the language of it, who's going to cover those bills?
A. Who's going to what?
Q. Who will pay -- who will cover those bills?
A. The Maucher law firm.
Q. The Maucher law firm. So then what is the point of your understanding of mentioning that the patient would be personally responsible for any account balance?
A. Because that's our policy as well. The patient is ultimately responsible.
Q. Okay. Do you know if DeLuca & Maucher was aware of the financial policy that Mr. Demaskey executed?

Page 45

A. I don't know.
Q. If I represented to you that the financial policy was executed after the date of this letter, then do you have any other independent knowledge of DeLuca & Maucher being aware of Carolina Neurosurgery's financial policy?
A. Just I provided it to them when his referral was made.
Q. When the referral was made?
A. Yeah.
Q. Well, let me hand you what's been marked as exhibit 2. This one actually matches the complaint.
(DFT. EXHIBIT 2, One-page document entitled Financial Policy, was marked for identification.)
BY MR. WILSON:
Q. Okay. Is this the financial policy that we've kind of been discussing a little bit?
A. Yes.
Q. And can you read for me the date on which it appears Mr. Demaskey signed that?
A. January 3rd, 2019.
Q. And that was really the first date according to the billing ledger that you had seen

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 46

Mr. Demaskey relevant to this case; is that correct?
A. Yes.
Q. So I know it sounds like a dumb question, but that was after the letter of protection, correct?
A. After the letter of protection is dated. I don't know when we received the letter of protection.
Q. Okay. Why don't we flip over to the letter of protection and look at the fax number? Is there a date on that, a date when it was faxed?
A. This was faxed on 12/21 at two in the morning.
Q. And in the top left-hand corner is the date 12/21/2018?
A. Yes.
Q. Do you have any reason to doubt that accuracy, that this was sent on 12/21/2018?
A. I don't know. I don't have any reason to doubt it, but I don't know for sure.
Q. Well, do you know if that's your -- is that the fax number for Carolina Neurosurgery?
A. We have a fax number with kind of financial policy of (843) 474-0712.

Page 47

Q. Based on the financial policy the fax number is different?
A. Yes.
Q. Okay. But sitting here today, do you have any reason to doubt that Carolina Neurosurgery actually received this letter of protection at least around the time that it appears to be sent?
A. I don't -- I can't verify when we received it.
Q. Do you know if Kiara or Aaliyah would know whether or not or when it was received?
MR. PENDARVIS: Form. Objection.
THE WITNESS: I don't think they would know.
BY MR. WILSON:
Q. Well, if we assume for the sake of questioning that it was sent in December of 2018 and received in December of 2018, that would be prior to when you even first saw Mr. Demaskey, correct, for this -- the injuries relevant to this case?
A. If we signed -- received it in 2018, it was before we treated him, yes.
Q. All right. Looking back at exhibit 1, the letter of protection, the language here, this

Page 48

agrees to protect claims to settlement proceeds, correct?
A. That's what it says, yes.
Q. And then I think we got off in a little tangent here, but agree or disagree it at least mentions what will occur in the event of an insufficient recovery; is that correct?
A. Yes.
Q. Does this letter say anything about actually making payment for the claims?
A. It does not specify that.
Q. Now, if the law firm DeLuca & Maucher is holding the settlement proceeds that they have received relevant to this case, would you agree or disagree that that would be at least protecting a claim to those proceeds?
MR. PENDARVIS: Form. Objection.
THE WITNESS: I would have to defer to my counsel on that.
BY MR. WILSON:
Q. Do you know whether or not the funds are sitting in a trust account or anything like that?
A. I don't know for sure. I've heard that they may be. I don't know. Again, if something

Page 49

settles with this other -- Beacon I don't know the status.
Q. Well, at least you know that Carolina Neurosurgery has not been paid out of that -- the settlement proceeds; is that correct?
A. That's correct.
Q. Okay. Is it your understanding that -- let me ask you, has the law firm offered to pay you any portion or pay Carolina Neurosurgery any portion of that -- those settlement proceeds?
A. Not to my knowledge.
Q. And let's take a look at exhibit 2. Again, this is the financial policy that Mr. Demaskey signed in order to receive treatment at your office?
A. Yes.
Q. And here the basic policy is the patient is responsible for medical bills; is that correct?
A. Yes.
Q. And we discussed this before, staff will help with completing insurance forms as an accommodation; is that correct?
A. Yes.
Q. And then ultimately it's the patient's

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 50

responsibility to know benefits, collecting insurance payments and so on and so forth; is that correct?
A. Yes.
Q. Now, there are two sections here, and one of them indicates if you do not have insurance and the other is if you have insurance. Do you see those?
A. Yes.
Q. We've discussed that Carolina Neurosurgery does not accept insurance or bill insurance; is that correct?
A. Unless the patient has out-of-network benefits.
Q. But you do not -- at least Carolina Neurosurgery does not directly bill those out-of-network benefits providers?
A. We can if they have the benefits, yes.
Q. All right. Well, let's look at the if you have insurance section. It asks the patient -- or notifies the patients to fill out the insurance section of the form; is that correct?
A. Yes.
Q. And that would be the health insurance verification form?

Page 51

A. Yes.
Q. And then it states that Carolina Neurosurgery does not accept Medicare, Medicaid or any HMO plans. We've mentioned this -- so this next phrase here or next sentence, if you are covered by private insurance or PPO with out-of-network benefits. Is that referring to out-of-network benefits for both PPO and private insurance?
A. Yes.
Q. Okay. And then here it goes on to say to present the card to -- insurance card to the receptionist at the time of the appointment. And then I understand Carolina Neurosurgery will file with my primary insurance. So that does not occur, correct?
A. If we have the ability to do it through their plan we will.
Q. But that doesn't say that, does it?
A. I understand as a courtesy Carolina Neurosurgery & Orthopedics will file with my primary insurance. This is only the qualification of out of network.
Q. So all of that is primary insurance but only it's limited to out of network? If your

Page 52

primary insurance provides out-of-network benefits, then we will submit it to them?
A. Yes.
Q. Okay. And then the last sentence in that section indicates that medical providers are out of network and you may be responsible for -- may be responsible for all or part of your balance. I think that's a misstatement here but...
Is that the provision upon which Carolina Neurosurgery is relying upon to notify its patients that it is no longer in network with any insurance providers?
A. That's one of the many ways we tell them.
Q. In addition to the standard policies of discussing it with the patients themselves?
A. Correct, and the signed surgery cost estimate reiterates that as well as the health insurance verification form.
Q. Now, the term medical providers here is capitalized, but I didn't see a definition. What is your understanding of what that term means? Is that just you?
A. That's me and any other associates that work under me.

Page 53

Q. Do you have any associates that work under you?
A. Not at this time.
Q. Did you have any associates working under you at the time that -- for any of the care that you provided Mr. Demaskey?
A. I don't believe so. I had a PA for a while, but I don't think I had a PA at that time.
Q. Now, are you aware that Mr. Demaskey gave the receptionist an insurance card with Blue Cross Blue Shield when he -- prior to his surgery in March of 2019?
A. That's my understanding, yes.
Q. Do you know if the file would contain a copy of that insurance card?
A. I don't know. It should. If he gave it to us, we should have a copy.
Q. Is it the practice of Carolina -- is it the practice of Carolina Neurosurgery to make a copy of an insurance card?
A. Yes.
Q. Now, if Mr. Demaskey provided an insurance card for Blue Cross Blue Shield and you've testified today that you only -- Carolina Neurosurgery only submits bills for insurers that

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 54

provide out-of-network benefits, would there have been a discussion with Mr. Demaskey referencing his Blue Cross Blue Shield being out of network or not providing out-of-network benefits?

A. Yes, that's why we have that conversation many times.

Q. You have the conversation with patients many times whether or not their particular insurance provider will cover any of the services that you provide?

A. Correct.

Q. Standard practice?

A. Yes.

Q. Is that written down anywhere?

A. No, but it's part of my policy that we're not network providers and patients understand that they're responsible for the bill, but we'll help file it if we can and they have out-of-network benefits.

Q. And there is at least one statement in this financial policy that says as a courtesy Carolina will file with the primary insurance, correct?

A. Yes.

Q. And I understand what you're saying,

Page 55

the primary insurance is just only if it has out-of-network benefits; is that right?

A. Correct. Like I said, we're not in network, so there's no way for us to file unless they have out-of-network benefits and there's a portal to do so.

Q. How would a staff member Kiara or Aaliyah go about determining whether or not a particular insurance card that was provided to them provided out-of-network benefits?

A. Sometimes they'll interpret it. If there's any question, then they call Eric or somebody.

Q. Other than this financial policy that the patients sign, are there any internal written policies of which you are aware that Carolina Neurosurgery has with respect to insurance?

A. No.

Q. Does Carolina Neurosurgery to your knowledge have any written policies and procedures?

A. No, just what's in our patient charts.

Q. Do you know if sitting here today at the time this financial policy was signed on January 3rd of 2019 if you would have or if you actually did review the December letter of

Page 56

protection?

A. I don't know at what point I reviewed it, but at some point in the care of Mr. Demaskey I reviewed the chart and all intake paperwork.

Q. And so that's your -- I mean, that's your standard practice is if there's any paperwork in that chart at some point in time you're reviewing everything that that patient has submitted?

A. Yes, because when the patients come to us for the initial patient visit, they have all these forms completed and I get the stack when I go talk to them.

Q. So you would have taken the stack with the financial policy, the health insurance verification form, the HIPAA notification and emergency contact information when you first saw Mr. Demaskey?

A. Yes.

Q. Is there anything in part of the patients chart or intake that indicates whether or not the patient is involved in litigation?

A. No.

Q. Is that something that you yourself are generally aware of when you treat patients?

Page 57

A. Not usually, not until I get a subpoena or something like that.

Q. It's not part of getting any kind of present health information, anything like that?

A. No. Again, I'm just focused on the mechanism of injury medical side.

Q. And the mechanism of injury in this case as far as you're aware is a car accident?

A. Yes.

Q. If you have somebody coming to you that has been injured in a car accident, do you know whether or not you would ask them if they have any open claims or have an attorney or anything like that?

A. No. I mean, if they offer that information, they may tell me, but I'm focused on their medical care and getting them better.

Q. After the -- looking back at the second exhibit after all of the bullet points, there is a sentence indicating, if this account is assigned -- oh, sorry, the second -- the second line after all the bullet points beginning with, I hereby. And it states, I hereby authorize payment to health care provider. That would be Carolina Neurosurgery?

A. Yes.

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 58

Q. For all funds owing to me from my case by way of insurance payments, judgment, verdict or other source which may be paid to my attorney or myself. So this financial policy recognizes the potential that there would be a case ongoing?
A. Yes.
Q. And at least injuries for which there could be some type of insurance payment?
A. That's one of the stipulations, yes.
Q. Judgment, verdict, any other source, correct?
A. Yes.
Q. If a patient has questions about the financial policy, who do they ask?
A. They'll ask our staff if they have any questions. I know Eric talks to a lot of my patients if they have questions.
Q. When you are seeing a patient in Charleston, your staff travels with you there?
A. Yes.
Q. Is that including Eric?
A. Sometimes he's there, yeah.
Q. Is there any specific practice where Eric would be at the location where you are providing patient treatment? Is it random?

Page 59

A. It's just whenever he's needed. If there's a lot of stuff to do there, he'll come up.
Q. Do you know if Eric had any interactions with Mr. Demaskey while you were treating him?
A. I don't know.
Q. Prior to receiving that letter of protection that's dated in December of 2018, exhibit 1, do you know if you would have had any conversations with any individual at DeLuca & Maucher about the letter of protection or giving treatment to Mr. Demaskey?
A. None that I recall.
Q. Okay. Do you know if it's a potential -- if there's a potential that someone at DeLuca & Maucher whether it be one of the attorneys or a staff member talked to one of your staff members about a letter of protection?
A. I don't know.
Q. You would --
A. I have no way to know.
Q. Okay. Fair enough. All right. I'm going to hand you what's been marked exhibit 3. Dr. Highsmith, yours is two pages.
MR. WILSON: Thomas, we're saving

Page 60

paper. You're front and back.
(DFT. EXHIBIT 3, Multiple email threads commencing Wednesday, January 16, 2016 at 4:12 PM, was marked for identification.)
BY MR. WILSON:
Q. This is a series of emails between January 16th of 2019 and January 21st of 2019 between Kiara Goodwine and Tina Bennett with DeLuca & Maucher. This was attached to the complaint that was filed in this case. I'm assuming that you are familiar with this document; is that correct?
A. Yes, I've seen this.
Q. Now, they are in reverse chronological order, so I'll start asking you questions about the very first email, which is on the second page. And this email is from Kiara Goodwine. Again, she is a staff member for Carolina Neurosurgery, correct?
A. Yes.
Q. And then it appears that she is reaching out to Tina who do you understand is a staff member with DeLuca & Maucher?
A. That's my understanding, yes.
Q. Who is Kary Garcia?
A. She helps out Eric sometimes if it's

Page 61

needed. She supervisors the staff.
Q. Is she still an employee with Carolina Neuro?
A. Just directly an employee. Just more contract.
Q. 1099?
A. Yes.
Q. And who is Brooke Dunsil?
A. She used to be my medical assistant.
Q. Do you know when she left?
A. I don't recall when she left. Sometime in 2019.
Q. Do you have any other contractors other than Kary and Eric?
A. No, just those two.
Q. Does Kary work 40 hours for Carolina Neuro?
A. She works as much as I need her to. Some weeks probably more, some weeks less.
Q. And for Eric about how often -- what is an average work week like as far as hours?
A. It varies from week to week. Just however much I need him.
Q. So back to this email on January 16th, 2019. Kiara is reaching out to Tina about

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 62

Mr. Demaskey and asking for the limits for Mr. Demaskey; is that correct?
A. Yes.
Q. Okay. And if you know, why would she be reaching out to Tina about the limits?
A. I don't know why. Probably just to find out if we could take care of him and do the surgery, but I can't say for sure.
Q. Sitting here today, can you recall if you would have instructed her to reach out and ask about limits?
A. I don't know.
Q. Is that a part of Carolina Neuro's standard practice to reach out to the attorneys if they're involved in a case for a patient that you're treating to ask about limits?
A. No. You know, it's just on a case-by-case basis. If it's somebody that's considering surgery and he had a significant problem, maybe yes, but not consistently.
Q. In a situation where -- your best guests, how often would someone with Carolina Neuro reach out to an attorney and ask about limits? Is it rare?
A. It's rare. I think we're looking at --

Page 63

you know, something like surgery like the one we did for him, that's a big bill, so we -- but, again, I can't speak to the specifics. I don't recall.
Q. If in this situation an attorney or the attorney's office does not know what the limits are, would you -- do you know if you would still provide treatment?
A. Again, we would handle it on a case-by-case basis. If the patient was in need of emergent surgery, we would certainly proceed with getting him treated; or if it is only more elective, we could send them to another provider.
Q. And were Mr. Demaskey's surgeries emergent or elective?
A. They were elective.
Q. Both of them?
A. Yes.
Q. And what is your -- how do you go about determining whether or not a surgery is elective or emergent?
A. Well, emergency they should be in the ER. That's the -- that's what emergent surgery is. So you have to go to the ER and be admitted to the hospital and have surgery within hours, days

Page 64

following a problem. When several weeks even a few months go by, it becomes more of an elective procedure.
Q. So since you've opened Carolina Neurosurgery, have you performed any emergents -- any emergency surgeries?
A. Yes.
Q. How often would you perform an emergency surgery?
A. It was more common when I was covering the emergency room where I would get direct referrals for that, but I still have emergency surgeries on occasion, hematomas, things like that.
Q. So you still got referrals from I'm assuming the hospitals where you have privileges for emergent services -- emergency services?
A. In some cases, yes. I get referrals -- I know most of the ER docs in Charleston, so I get a lot of referrals from them.
Q. Where would you perform those surgeries for emergency surgeries?
A. Typically the hospital where they are. I have privileges at all of the major hospitals in Charleston so...
Q. So you would go to them?

Page 65

A. Yeah, or commute for the patient. Safer than transferring to another hospital.
Q. The surgeries that you performed on Mr. Demaskey, those were at the -- was it the Charleston Surgery Center?
A. I don't have the operative note in front of me. I don't know where they were done.
Q. Do you frequently perform surgeries at the Charleston Surgery Center?
A. Yes.
Q. Would you say that is your main location for performing elective surgery?
A. The Charleston Surgery Center is, yes.
Q. Is it exclusive for elective surgeries?
A. No, I do a lot of stuff at the hospitals still, too.
Q. Do you have any ownership interest in the Charleston Surgery Center?
A. No.
Q. Do you have any interest at all as far as like maybe a management or anything else within the Charleston Surgery Center?
A. No.
Q. So if an attorney -- looking back at exhibit 3, if an attorney or attorney's office

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 66

doesn't know what the limits are for a particular patient, would that affect your decision to provide services?
A. I can't speak in hypotheticals.
Q. Have you ever declined to provide services in a situation where you didn't have any information about insurance coverage for potential litigation?
A. Yeah, if I don't think the patient needs surgery, I won't do surgery. Some people come in wanting surgery, and they don't need it. I'll tell them you don't need it.
Q. Did Mr. Demaskey need surgery?
A. He would -- could benefit from an elective surgery, yes. Did he need it? No. Was it life threatening? No. Was it emergent? No. It was an elective surgery. But to get relief of his pain and condition, he would need surgery.
Q. Okay. So he just needed the surgery that you performed, correct?
A. Yes.
Q. So in a situation where a patient needs surgery, and you don't know anything about what insurance coverage is, would you still provide that surgery?

Page 67

A. Yes.
Q. Do you make it a habit of concerning yourself about whether or not a patient can actually pay for your services?
A. I don't make a habit of it. I take care of the patient and trust them to pay their bills. They sign paperwork saying that I trust my patients to pay the bill.
Q. I mean, you're certainly not, like, asking any patients to show, like, bank balances or anything like that to show proof of payment or the fact that they can pay before you provide surgery; is that correct?
A. No, that's why we give them a written estimate and let them know they're responsible for the bill.
Q. Looking at exhibit 3, Tina is providing here a little bit of information about potential coverage, and in it she is saying that the at-fault party had a North Carolina policy of automobile insurance, but they were not willing to provide the limits.
So at least at this point they didn't know what -- and they meaning DeLuca & Maucher or their staff didn't know what the potential limits

Page 68

were for at least the at-fault party's insurance policy; is that correct?
MR. PENDARVIS: Objection.
THE WITNESS: That's what it says on the paperwork, but I can't speak to the validity of that statement.
BY MR. WILSON:
Q. Now, she also mentioned Mr. Demaskey's underinsured motorist coverage of $100,000; is that correct?
A. It does say that, yes.
Q. Do you know what underinsured motorist coverage is?
A. I'm not an expert in interpreting that, but my understanding is it's insurance for patients that don't have adequate -- it covers patients -- other drivers that don't have adequate insurance.
Q. And the policy would be the person who's injured?
A. That's my understanding.
Q. Do you know anything about what occupation accident coverage is?
A. Other than the title, no. I would defer to the attorneys on that.
Q. At least this email references a

Page 69

OneBeacon policy. Is that from your understanding something that someone is pursuing for Mr. Demaskey's medical costs for the services that you provided?
A. I can't speak to what's been done by them.
Q. Well, I think you testified earlier that you were generally aware something about OneBeacon; is that correct?
A. Yes.
Q. And this email does reference the OneBeacon policy?
A. Yes, it does.
Q. And do you know if you would have read this email to Kiara -- between Kiara and Tina prior to providing any services or the services after that date for Mr. Demaskey?
A. I don't know. I don't remember.
Q. Do you know if it is a part of the practice for Carolina Neuro to put emails in some type of file for the patient?
A. If it's relevant to their care, yes.
Q. Do you think that the substance of what these emails are are relevant to the care that you provided Mr. Demaskey?

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 70

A. Again, I'm focused on the medical care, so it's not really relevant to the medical care event.
Q. Would you know if it was actually put in the file?
A. I don't know.
Q. Now, on January 21st after Tina discusses the different coverages, she notifies Kiara that she learned Mr. Demaskey required surgery. Is that your understanding of what this -- it's the first email the first page, I think.
A. What's the question?
Q. It appears to me that Tina with DeLuca & Maucher is notifying here that Mr. Demaskey will require surgery; is that correct?
A. That's what it says, yes.
Q. And it's your understanding that would have been the surgery that you performed I think it was in March of 2019?
A. Yes.
Q. And here she is at least telling Kiara that all of the treatment be filed with his private health insurance company. Is that your understanding of at least what it says?

Page 71

A. That's what it says, yes.
Q. Do you think -- and then it goes on, it would be best for everyone involved if we do not -- if we not do the treatment under an assignment, letter of protection. Is that your understanding of at least what this email says directed to Kiara?
A. That's what the email says, yes.
Q. Now, do you know if this would have triggered a conversation between Kiara and anybody else?
A. I don't know. She probably would call Eric on something like this.
Q. Okay. And then least if these -- the timing on these emails are correct, it looks like Kiara is saying, okay, thanks for the update 20 minutes later -- less than 20 minutes later; is that correct?
A. That's what -- yes.
MR. WILSON: Why don't we take just a quick five-minute break?
(A recess transpired.)
BY MR. WILSON:
Q. I'm going to hand you what's been marked as exhibit 4.
(DFT. EXHIBIT 4, Two-page email chain

Page 72

commencing on Thursday, March 7, 2019 at 9:34 AM, was marked for identification.)
(Off-the-record conference.)
MR. PENDARVIS: So the exhibit is the...
(Off-the-record conference.)
BY MR. WILSON:
Q. So exhibit 4 what I've handed you appears to be -- well, the very first if you look at the email side of it is an email between Kiara and I'm assuming that's Eric Weinberger?
A. Yes.
Q. And then below that there's an email from Tina who we established is DeLuca & Maucher to Kiara about Scott Demaskey providing a different letter of protection. And she indicates in the email at least that letter of protection covers whatever is not paid by private health insurance.
Have you -- this is an exhibit. It was attached to the complaint that was filed in this case, so I'm assuming that you have seen it before?
A. Yes.
Q. Do you recall if you saw it -- do you recall when the first time you saw it was?
A. No.

Page 73

Q. And is this something that would have gone in the patient's file?
A. Maybe. It was Kiara that handled this with Eric.
Q. All right. So if we look at what the letter is that's dated March 7th, 2019 at the back, and this is another letter of protection addressed to yourself; is that correct?
A. It appears to be, yes.
Q. And it indicates, with regards to the above named individual. That is referring to Mr. Demaskey; is that correct?
A. Yes.
Q. It says, please accept this correspondence as our law firm's agreement to protect any portion of bill not paid by private health insurance out of any settlement proceeds we may receive arising out of the incident referred to above. And the law firm is DeLuca & Maucher, correct?
A. Yes.
Q. Incident above is the vehicle accident that Mr. Demaskey was in; is that correct?
A. Yes.
Q. Now, here again, the agreement is to

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 74

protect any portion of the bill not paid by private -- at least here it's now introducing private health insurance, but again, we're looking at an agreement to protect bills out of settlement proceeds; is that correct?

MR. PENDARVIS: Objection.

Answer if you can.

THE WITNESS: That's what it appears to be, yeah. Unfortunately, yeah, but it wasn't the case.

BY MR. WILSON:

Q. And this is -- I mean, it's similar to the first letter of protection that we went over already; is that correct?

A. Similar wording, yes.

Q. Except that it talks about private health insurance; is that correct?

A. Yes.

Q. And Carolina Neurosurgery's practice is that it doesn't accept private health insurance, is that correct, unless it's out-of-network benefits?

A. Correct.

Q. And, again, this is indicating that the individual, referring to Mr. Demaskey, has informed in the event of an insufficient recovery he would

Page 75

be responsible; is that accurate?

A. Yes. Unfortunately he's going to go bankrupt for this.

Q. And nothing in this letter indicates that law firm would pay for the medical bills in the event that there's insufficient recovery; is that correct?

A. It doesn't state that, correct.

Q. Now, did you have any conversation that you can recall with Kiara about this letter of protection?

A. No.

Q. Do you know if you would have reviewed this letter before giving -- before performing the surgery that was in March of 2019 for Mr. Demaskey?

A. Again, I reviewed the chart, so at some point I would have reviewed it. I don't recall exactly when.

Q. Let me show you what's been marked as exhibit 5.

(DFT. EXHIBIT 5, One-page document entitled Health Insurance Verification Form For Surgery, was marked for identification.)

BY MR. WILSON:

Q. We discussed the health insurance

Page 76

verification form previously. Is that what this documents appears to be?

A. Yes.

Q. Are patients only required to fill out a health insurance verification form prior to surgery, or do they also do something like that at intake?

A. They do a similar form at intake.

Q. And that form would most likely be in the patient's file?

A. Yes.

Q. Do you know if Kiara -- at least looking at this document it appears Kiara Goodwine has written her name as a witness?

A. Yes.

Q. Do you recognize her -- that as her handwriting?

A. Yes.

Q. Okay. And this is part of the practice for Carolina Neurosurgery prior to providing any surgery; is that correct?

A. Well, if the patients complete the paperwork, yes.

Q. And at least for this one this is specific for surgery, correct -- in anticipation of

Page 77

surgery?

A. That's correct.

Q. And at least on this form it looks like Mr. Demaskey has provided his insurance company's name and ID number and group number; is that correct?

A. At this time he did, yes. Before he said he didn't have health insurance so...

Q. Before this document he said he didn't have health insurance?

A. I'm not sure at what point he said he didn't have health insurance. I don't have the whole chart here but...

Q. So at least at this point he's saying he did have health insurance?

A. At this point he did.

Q. Okay. Now, is it part of either Carolina Neurosurgery's practice or Kiara's practice to highlight specific sections on forms that clients need to complete?

A. Well, they're supposed to complete the whole form, but sometimes people don't, so we highlight the most important parts.

Q. Highlight the most important parts?

A. (Witness moves head up and down.)

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 78

THE COURT REPORTER: Can we go off real quick?
MR. WILSON: Yeah.
(Off-the-record conference.)
BY MR. WILSON:
Q. Just a housekeeping thing. You've checked your phone a couple of times during this deposition. You're not getting any kind of texts about the substance of your testimony during this deposition, are you?
A. No, I'm trying to keep in touch with my wife to see if she can pick up our son. I would like to get this done.
Q. All right. If you could compare this to exhibit 11, it appears that you provided services to Mr. Demaskey on March 7th, 2019, the date that this document is executed; is that correct?
A. Yes.
Q. And that would have been the first surgery if you look at exhibit 11, March 15th, 2019?
A. Yes.
Q. So then prior to the first surgery Mr. Demaskey has provided information about his

Page 79

insurance provider to your office; is that correct?
A. It appears to be, yes.
Q. Now, for Blue Cross Blue Shield, are there any versions of their policies that have out-of-network benefits that your -- that Carolina Neurosurgery would bill to?
A. If they have out-of-network benefits, we bill for out-of-network benefits, but we also submit this information to the surgery center because they are in network.
Q. The surgery center is in network for Blue Cross?
A. Correct.
Q. And how do you know that?
A. Just because they ask for this information if you're a network provider for them.
THE COURT REPORTER: It looks like the Zoom disconnected.
(Off-the-record conference.)
BY MR. WILSON:
Q. Does the surgery center and Charleston Surgery Center have a different business name?
A. It's the Charleston Surgery Center, and there's different -- there's other surgery centers in Charleston. There's the Charleston Surgery

Page 80

Center, and then there's Center For Advanced Surgery.
Q. And you have an ownership interest in the Center For Advanced Surgery?
A. I do in that facility, yes.
Q. Do you know if the Center For Advanced Surgery is in network of anyone?
A. They're in network last I knew. I no longer operate there.
Q. You no longer operate in that business?
A. Correct.
Q. Are you still an owner?
A. It's in -- I can't speak because of pending litigation, but it is in process.
Q. Your ownership is being litigating or at least it's --
A. Somewhat, yes.
Q. Okay. I'm going to hand you what's been marked as exhibit 6. Another one I forgot to take the little exhibit off of.
(DFT. EXHIBIT 6, Three-page email chain commencing on Tuesday, March 19, 2019 at 5:44 PM, was marked for identification.)
BY MR. WILSON:
Q. So I've handed you exhibit 6. It's a

Page 81

document that was filed with the complaint involved in this action. And the first page appears to be an email from Kiara to Tina sending the operative report for March 15th of 2019 for Mr. Demaskey's surgery; is that correct?
A. Yes.
Q. Now, for this operative report, would you have dictated this information, or do you write information in it?
A. It's a dictated operative note.
Q. Do you review it prior to going out after dictation is entered?
A. Yes.
Q. And at the very top is the Center For Advanced Surgery. Is that where this surgery took place?
A. This one did, yes.
Q. And at the time that's the one that you had the ownership interest at the time at least?
A. Yes.
Q. And it is your understanding that at that time surgeries performed at the Center For Advanced Surgery were in network for Blue Cross Blue Shield?
A. Yes.

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 82

Q. Can you explain why the difference as far as your practice versus the Center For Advanced Surgery for being in network for Blue Cross Blue Shield?
A. So just like a hospital is in network with certain insurances and other hospitals are not, different centers are in network for certain insurances and others are not.
Q. At the time of this surgery, were you the majority owner of the Center For Advanced Surgery?
A. No, I've never been a majority owner.
Q. Did you have any role at the Center For Advanced Surgery for determining whether or not it was in network with specific insurers?
A. No.
Q. For the employees at Center For Advanced Surgery -- oh, never mind.
Do you know who Melinda Roten is?
A. She used to work for the center. I don't know exactly what her title was.
Q. All right. I'm going to hand you what's been marked as exhibit 7.
(DFT. EXHIBIT 7, One-page email chain commencing on Monday, April 29, 2019 at 11:29 AM,

Page 83

was marked for identification.)
BY MR. WILSON:
Q. This is another exhibit that was filed with the complaint. I'm assuming you've seen this document before; is that correct?
A. Yes.
Q. And at the bottom it appears to be an email -- or it's a series of emails between Melinda Roten at Charleston CAS. Is that Center For Advanced Surgery?
A. Yes.
Q. And it appears to be dated April 29th, 2019, and that was in between the two surgeries that you provided to Mr. Demaskey; is that correct?
A. Yes.
Q. And in it Tina is at least notifying Melinda with the Center For Advanced Surgery that -- of the amount of coverage that the at-fault party had; is that correct?
A. Yes.
Q. And then she's updating the Center For Advanced Surgery about the applicability of underinsured motorist coverage; is that correct?
A. That's what it says, yes.
Q. And she's notifying the Center For

Page 84

Advanced Surgery that they're not honoring treatment under a letter of protection anymore; is that correct?
A. That's what it says, yes.
Q. Okay. When is the first time you saw this email that you can recall?
A. Within the last few months of this discovery.
Q. Did you have any interactions with the employees of the Center For Advanced Surgery?
A. Not really, no. My staff did, but not me. The nurses and stuff, yes, but not administrative.
Q. And is Melinda at least -- I know you testified you don't know what her role was, but was she administrative generally?
A. Yes.
Q. Okay. Do you know if -- is their practice -- is the practice at Carolina Neurosurgery for someone like Kiara to communicate with the Center For Advanced Surgery?
A. Yeah, they handle the scheduling and stuff like that.
Q. Do you know if the employees between the two entities would discuss anything about

Page 85

insurance coverage?
A. I don't know what they would discuss. I mean, again, we don't take insurance, so we typically don't discuss insurance with them.
Q. Would you agree with me at least as of April 29th, 2019 the Center For Advanced Surgery was on notice of no longer providing service to Mr. Demaskey under a letter of protection?
A. I'm not sure what the legal definition of no service means, but I can't verify they received the email either or acted on it. I can't speak for the surgery center.
Q. Well, let's just use a little bit of logic here. It looks like Melinda who we've identified as an employee for the Center For Advanced Surgery has at least replied to Tina in response to an email about insurance coverage; is that accurate?
A. Appears to be.
Q. Would that be a safe assumption that she knew about the issues with coverage and not provide any treatment under a letter of protection as far as for the Center For Advanced Surgery is concerned?
MR. PENDARVIS: Form. Objection.

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 86

THE WITNESS: Again, I can't speak for them. I don't know if she has authority to do that either way.
BY MR. WILSON:
Q. I'm going to hand you what's been marked as exhibit 8.
(DFT. EXHIBIT 8, One-page document to Kiara Goodwine from Tina G. Bennett, was marked for identification.)
BY MR. WILSON:
Q. I've handed you an email; it's undated, but I want to ask you a couple of questions about it. Now, it's addressed to Kiara, and it appears to be from Tina. Have you seen this document before?
A. Honestly I would actually hesitate to call it an email.
Q. Why is that?
A. Because it has multiple missing fields. There's no header. There's no evidence that it was even sent. There's no from. There's no sent date or time. Honestly it looks completed fabricated like somebody copied and pasted something in Word. I mean, this is not an email. This is a document. I would give it that.

Page 87

Q. Do you have, like, a background in, like, IT or something?
A. I do. I started an IT company in med school and -- a security IT company, so I'm very, very familiar with that.
Q. What was that IT about -- that IT company?
A. Networking for the Department of Juvenile Justice in the states of Florida and South Carolina.
Q. Was that prior to --
A. It was during med school.
Q. During med school?
A. Yeah, I started a business during med school doing this, so I'm an expert in this stuff, and there's no headers; there's no tracking. This is completely -- this adds to the poor credibility of our interactions with this law firm unfortunately.
Q. And so -- well, so it's your testimony today that you believe this is fabricated, and it was never sent to Kiara?
A. Absolutely. We have no evidence, and I understand that Mr. Maucher said they had no evidence of it being sent either. So if both parties agree an email wasn't sent and suddenly it shows up with no identifying information, it's very, very suspect especially when it is such an important issue like this.
Q. Have you had conversations with Kiara about this?
A. Yes, Kiara is excellent, and I know she would not delete an email like that. She doesn't delete any emails. She didn't throw anything away.
Q. What's your preservation policy at Carolina Neurosurgery as far as electronic -- storage of electronic information?
A. We have everything backed up on our server, and I wouldn't have an official policy, but we keep relevant documents.
Q. Is there any specific type of document that you okay employees to delete?
A. Spam, email that's not relevant to the patient's care, socials, things like that.
Q. Is that written down anywhere?
A. No, it's just part of the standard practice. All our employees know that every document we generate is important.
Q. And your history with IT and being an expert in the area, do you believe that it is

Page 88

Page 89

probably best practice to have written policies governing the electronic storage of information for even a medical practice?
A. There's no requirement for us to do so. We have a policy that handles this type stuff just basically staff is to save everything that comes through.
Q. Except social, junk email?
A. Correct.
Q. Do they kind of have carte blanche with whatever they want to delete?
A. Well, we encourage them not to use their personal email -- use a personal email for this type stuff so...
Q. In your work with the -- you said juvenile justice department in Florida?
A. Yes.
Q. As part of the IT company?
A. Yes.
Q. Did you develop any type of written policies for the --
A. No, there was no --
Q. Can I finish my question, please. I know it's really hard. You probably know where I'm going. I just want to make his job easier -- any

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 90

written policies governing the storage of electronic information?
A. No.
Q. No. And what was the name of that company?
A. It was myself.
Q. It was yourself?
A. Jason Highsmith Consulting.
Q. Is that business still a going concern?
A. No.
Q. Did it ever operate in South Carolina?
A. No.
Q. Were there any incorporation documents for it?
A. No, it was just my own consulting company.
Q. And how long did it operate for?
A. From 1995 to 2001 or 2002.
Q. All right. I'm going to hand you what's been marked as exhibit 9.
(Off-the-record conference.)
(DFT. EXHIBIT 9, Multipage email commencing on April 30, 2019 at 7:44 AM, was marked for identification.)
BY MR. WILSON:

Page 91

Q. All right. What I've handed you is, I believe, another exhibit that was filed with the complaint in this case. I'm assuming that you've seen this. It's a ten-page document. I'm assuming you've seen this before; is that correct?
A. Yes.
Q. Now, do you still have Mr. Demaskey's paper -- a paper file for Mr. Demaskey in your office?
A. We've never had a paper file. Just -- these are all generated from our PDFs.
Q. So all the paperwork that is completed by a patient when they come in, do you scan -- does your practice scan and then destroy them?
A. Yes.
Q. So it's an electronic file keeping system?
A. Yes.
Q. Did you have a paper file keeping system at one point at Carolina Neurosurgery?
A. No, it's always been electronic.
Q. All right. Back to the exhibit I handed you, exhibit number 9, I believe these are the records associated with the May 2nd surgery that you performed for Mr. Demaskey. Is that

Page 92

generally what they are?
A. Yes.
Q. And this is the -- the second page is the -- let's see -- notice to the patient in preparation for their surgery. Is that -- how would you describe that document?
A. It's what we call the scheduling form. It gives them the date, location, a description and then instructions surrounding the surgery.
Q. And it's Carolina Neurosurgery's practice to have this type of document executed in anticipation of every single surgery?
A. Yes.
Q. And he was scheduled for a lumbar decompression L4 through -- is that S1?
A. Yes.
Q. And these appear to be executed April 26th, 2019; is that accurate?
A. Yes.
Q. And then the third page is the health insurance verification form for the surgery executed the same date, April 26th, 2019, correct?
A. Yes.
Q. All right. And here there's a box that says, I do not have health insurance at this time;

Page 93

is that accurate?
A. Yes.
Q. Okay. Would your office have already maintained, to your knowledge, Mr. Demaskey's Blue Cross Blue Shield insurance information?
A. I don't know. If the card is no good and the policy is expired, we may not. I don't know.
Q. Do you know if by this point Mr. Demaskey's Blue Cross Blue Shield policy was expired?
A. I don't know.
Q. And your office never actually tried to submit any bills to Blue Cross Blue Shield; is that correct?
A. My understanding was he had no out-of-network benefits, so there was nothing we could help him with.
Q. And that was your understanding at the time of each treatment that you provided him?
A. Yes.
Q. And that would have been a conversation that you had with Kiara?
A. Yes, and again with the patient as well.

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 94

Q. Did you witness Mr. Demaskey prepare this document the -- and I'm referring to the health insurance verification form?
A. I don't recall specifically, but I give the patient's scheduling form to the staff; they start the paperwork. I talk to the patient a little bit more about it afterwards, see if they have any questions. You know, some people stick around; some people take it with them; some send it back.
Q. So this type of paperwork is something that's completed after you've already visited with the patient?
A. It's part of the visitation with the patient, yes. In other words, I'll see the patient; they say they want to do surgery. Sometimes they'll call ahead and say, hey, look I want to do it; and my staff will get it ready. We'll bring them in. We'll talk about everything. So I can't speak to when this form was signed other than the date.
Q. So there's no specific practice as far as when the timing of the paper -- this type of paperwork is completed with respect to the service that you provide to the patient on the date that

Page 95

the paperwork is executed?
A. Correct. No particular order. Some patients come in early, do the paperwork before I can get there at the office and they're ready. Sometimes they mail -- the staff mails it to them.
Q. On the health insurance verification form, does that appear to be Kiara's writing at the bottom witnessing the document?
A. Yes.
Q. And comparing this to the health insurance verification form for March of 2019, does it appear at least that similar areas on this form are at least shaded? And I'm referring specifically to patient name, DOB, SSN, the box for not having health insurance and then the patient name, date, and signature?
A. Again, I mean it's not a color copy, so I can't say what -- there appears to be some shading there, but I can't speak to what that is.
Q. But there does appear to be some shading just you don't know what it is on those parts that I referenced?
A. Yes.
Q. And you testified earlier that part of the practice for Kiara is to highlight what the

Page 96

most important parts are on these forms that are provided to the patients?
A. Yes.
Q. Why is the practice to have a patient complete a health insurance verification form prior to every single surgery?
A. For this very reason because sometimes patients have policies that are active or inactive. They may not pay their premiums. Sometimes they get new jobs. Sometimes they get new policies. We just always want to be accurate, and again -- remind the patient, again, that we're out of network, which is very clear when they -- if they have no health insurance.
Q. Is there any policy for Kiara or Aaliyah when they receive a health insurance verification form that does list insurance to check how or whether or not that insurer provides out-of-network benefits?
A. We do that with the card. Usually the card will say out-of-network benefits or not, or if it's, like, an HMO, and they don't have out-of-network benefits.
Q. Okay. Now, if you look at the sixth page on this, I think if you look at the bottom --

Page 97

there's no page number -- it's the cost of surgery form we've discussed kind of generally what those are?
A. Yes.
Q. And this cost of surgery forms -- surgery form lists the surgery that he's going to have, Mr. Demaskey, and the approximate -- lists the approximate cost at $65,000; is that correct?
A. Yes.
Q. Sitting here today, do you know whether or not that same form was executed for the surgery in March of 2019?
A. I believe it was.
Q. Okay. And the reason I might ask some of these questions is because we don't have the documentation that shows that, so just to provide you context of why some of these questions -- why I'm asking them.
And does that appear to be at least Kiara's handwriting in the office use only section for this document?
A. Yes.
Q. Another part of this package of documents is a notice to the surgical patients generally notifying them of a cancellation policy

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 98

for Carolina Neurosurgery; is that accurate?
A. Yes.
Q. Then following that the postoperative visit. Is this another document you would have dictated after seeing Mr. Demaskey?
A. Yes.
Q. And then the final page is a ledger of Mr. Demaskey's balance for services received up to that point; is that accurate?
A. Yes.
Q. And this is addressed -- is that addressed to Mr. Demaskey?
A. It is, yes.
Q. Would you have sent that to him in the mail, or would Carolina Neurosurgery have done that?
A. We usually hand it to them on their postop visits just so we know they get it.
Q. Is the only reason -- I'm assuming at this point as of April 26th, 2019 Mr. Demaskey hadn't paid for any of the previous services that you provided?
A. Correct.
Q. Okay. And why is that?
A. Well, he's got a deferred payment plan.

Page 99

We're still working him up, getting repaired, and getting him as good as we could get.
Q. He had a deferred payment plan?
A. Yeah.
Q. And what was that plan?
A. Well, it just means we're not -- he's not paying at this point. We're still actively treating him medically.
Q. Isn't the financial policy generally to pay on the day the services are received?
A. It is, but it's up to my discretion. We handle it on a case-by-case basis.
Q. And you would have had that discussion with Mr. Demaskey himself?
A. Yes, he knows he's still responsible for the bill. That's why we give him the bill.
Q. If I represented to you that you also performed that surgery at the Center For Advanced Surgery, and what I'm referring to is the May 2nd, 2019 surgery, would you have any reason to doubt that?
A. No.
Q. I had already provided you exhibit 11, but I'm just jumping around here so as not to confuse the record. I'm going to 12.

Page 100

(Off-the-record conference.)
(DFT. EXHIBIT 12, One-page email commencing on Friday, January 3, 2020 at 1:52 PM, was marked for identification.)
MR. WILSON: Thomas, did I hand that to you already? No. All right. Exhibit 12.
BY MR. WILSON:
Q. What I've handed you is a single-page document. It's an email from Tina to Kiara dated January 3rd, 2020. Are you familiar with this document?
A. Yes.
Q. Do you recall when the first time you may have seen this document is?
A. In reviewing for today's deposition and going through these exhibits.
Q. Okay. And just based on the dates of treatment -- were you still providing any treatment to Mr. Demaskey as of January 3rd, 2020 to your knowledge?
A. No, I don't believe so.
Q. He was not scheduled for any, like, postops or anything with you that you can recall?
A. I can't -- I don't recall.
Q. And then here it appears that Tina is

Page 101

notifying Kiara that it appears to her Blue Cross Blue Shield hasn't paid any of Mr. Demaskey's bills. And was that accurate at the time?
A. Not paying any of my bills. I can't speak to the surgery center.
Q. Right. Any of the bills from Carolina Ortho & Neuro -- or Neuro & Orthopedics?
A. Not to my knowledge.
Q. Now, she references three different bullets points here. There was a December 20th, 2018 letter of protection. And we went over that letter of protection early on in this deposition, and you agree that at least at some point Carolina Neuro received that letter of protection?
A. Yes.
Q. And then she identifies a January 21st, 2019 email requesting filing charges with Blue Cross -- Blue Cross Blue Shield due to a preexisting medical condition. And we went over that email today, correct?
A. Yes.
Q. Okay. And that at least at some point around that time this was sent to Kiara; is that accurate?
A. Yes, I'm not sure what she's referring

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 102

to as a preexisting medical condition.
Q. Well, let's go back then for a second to exhibit 3. Does she -- does Tina appear to mention in that email to Kiara something about preexisting conditions?
A. She does, but I don't know why she would exclude that on the subsequent email, the nature of the injury.
Q. And we also discussed generally that email you doubt the authenticity of referencing the $30,000 in coverage and inability of -- or inapplicability of UIM coverage, right?
A. Yes.
Q. And she references generally emailing you or emailing Kiara about that aspect, and just the fact that she's referencing in this email she's -- you agree with that at least she's referencing it, correct?
MR. PENDARVIS: Form. Objection.
THE WITNESS: She doesn't have a date for that one, and I guess no one has a date for that email -- that quote, unquote, email. She acknowledges -- she says she emailed us.
BY MR. WILSON:
Q. Okay. So then in your understanding

Page 103

would this have been the first notification to Kiara or Carolina Neuro about the at-fault party's coverage amount?
A. That's -- to my knowledge that is, yes.
Q. And then also that the underinsured motorist coverage does not apply, correct?
A. Correct. Yeah, it's unfortunate at this point. He's due a lot of bills.
Q. And in this last paragraph that she's sending to Kiara she's referencing the need to spread around the settlement proceeds that they received to the various different providers to cover portions of the medical bills; is that accurate?
A. Yes.
Q. And in Carolina Neurosurgery's past has there ever been a situation that you can recall where treatment has been provided where the coverage and settlement is insufficient to cover your bills and Carolina has agreed to waive costs or some other form of reducing the bill?
A. Certainly on a case-by-case basis we have, but again, my understanding is there was coverage there. We had a relationship with the attorney through the letters that, you know, this

Page 104

is egregious that he would have only $30,000 in coverage and they would approve not one but two surgeries. It's unbelievable to me.
Q. Well, now, did DeLuca & Maucher approve the surgeries?
A. Well, they provided coverage and agreement that they would cover the bills based on the letters of protection.
Q. Well, the letters of protection said that they would protect claims of settlement proceeds; isn't that correct?
A. It stipulates that, but I mean the fact that they don't know the coverage and promised a one million dollar policy early on but never -- never came to fruition.
Q. And correct me if I'm wrong, but I believe you testified earlier that the amount of coverage doesn't necessarily affect your treatment recommendation; is that accurate?
A. It doesn't affect my treatment recommendations, no; but if it's an elective surgery, I'm not going to put someone through a huge bill if there's supposed coverage that doesn't exist --
Q. And then at least --

Page 105

A. -- unless it's emergent.
Q. Sorry. And at least in Mr. Demaskey's case his surgery was elective, but you testified that he did need it; is that correct?
A. Yes. It was medically necessary.
Q. I'm going to hand you what's been marked as exhibit 13.
(DFT. EXHIBIT 13, Multipage letter to Scott Demaskey from Blue Cross Blue Shield dated August 26, 2021, was marked for identification.)
BY MR. WILSON:
Q. Other than potentially reviewing this five-page document before this deposition and the exhibits that we sent previously, do you recall any independent knowledge of seeing this document before?
A. No.
Q. No. Okay. Do you have any knowledge of whether or not Mr. Demaskey's Blue Cross Blue Shield insurance was active during all the treatment that you provided without getting into whether or not he had out-of-network benefits?
A. I don't know. I would point to if his policy was valid or what coverage dates he had.
Q. And if I represent to you at least his

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 106

policy was active for all of the days you provided treatment, would you have any reason to doubt that?
A. Yes, the fact that he said he had no health insurance before the second surgery.
Q. Okay. And is that the only reason is because of that health insurance verification form for the second surgery?
A. Yes, it implies that he doesn't have health insurance.
Q. Now, when you're performing that second surgery, I think you had testified that these documents, these health insurance forms, various documents that are executed prior to any surgeries, are placed in an electronic file; is that correct?
A. Yes.
Q. So if you are treating a patient who has multiple surgeries, and you are going to treat them for a second surgery, do you go through all that paperwork again with that patient?
A. Yes, for every surgery we file the same paperwork, cost of surgery verification, surgical consents, scheduling forms.
Q. And the previous paperwork, too?
A. We don't go through the previous paperwork. We do new paperwork for each

Page 107

procedure --
Q. And so --
A. -- to be accurate.
Q. Okay. So you only review the paperwork that they fill out prior to the procedure that is relevant to that paperwork?
A. Yes. I can't say that I don't ever look at it, but I look at the paperwork that's necessary for the procedure planned.
Q. So when you were treating Mr. Demaskey for his second surgery, you're saying that you would not have necessarily gone over the -- any of the paperwork for the first surgery?
A. I don't remember if I did or not. I don't know if I had reason to.
Q. Is that part of your practice generally?
A. Well, if it's relevant. If I'm doing a revision surgery and that previous surgery had, you know, a complication or something, then I would review that paperwork. But it's a different surgery so all new paperwork.
Q. And at least for Mr. Demaskey's operative notes for the first procedure, you would have at least gone over that; is that correct?

Page 108

A. Yes.
Q. Just maybe not the administrative paperwork?
A. Correct.
Q. Have you ever been in a situation that you can recall where you've gone through treating a patient for multiple surgeries where you actually looked back at administrative paperwork for the first surgery?
A. Not that I recall. I don't know a reason I would.
Q. So sitting here today and really what I want to ask is, you know, do you think if you would have reviewed the paperwork for the health insurance verification form for the first surgery before you performed the second surgery, any alarms would have ringed about oh, he's saying he's got insurance in the one hand and then now he's saying he doesn't have it? Is that something that generally would have been, like, I don't know what's going on here. Should I talk to the patient?
A. No, I don't -- I can't speak to that. I don't know. I don't remember if I would have. I mean, I can't speak in hypotheticals. I don't know

Page 109

if I would have if I had known.
Q. I mean, I get it. You do not provide, and you meaning Dr. Jason Highsmith as part of Carolina Neuro, do not provide surgery or at least do not bill insurance companies unless the patient has out-of-network benefits through some PPO or insurance company; is that correct?
A. Correct.
Q. And as part of your practice treating a patient you're not necessarily concerned with insurance coverage for treating that person, are you?
A. No. I mean, they know they're responsible for the bill. And if they don't want to use their health insurance, they can use family money or something like that.
Q. You've got the financial policy that they execute in the beginning?
A. Correct. We trust patients to pay their bills.
Q. And then if you take a look back at exhibit 13 and the last two pages, there is some -- it's identified individual claim report explanation of benefits. And it identifies the Center For Advanced Surgery for different charges for an

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 110

outpatient surgery, and it's generally dated for March of 2019.

Again, you haven't seen this document prior to basically preparing for this deposition; is that correct?

A. Correct.

Q. And I think you testified earlier that the Center For Advanced Surgery is an in-network provider for Blue Cross Blue Shield?

A. That's my understanding, yes.

Q. And so when --

A. Of this particular plan they are.

Q. Does it appear to you based on the notes and the explanation of benefits that the Center For Advanced Surgery was within network for Mr. Demaskey's first surgery?

A. I'm not sure what part you're referring to. Sorry.

Q. I'm looking at the notes that indicate outpatient surgery. There's a couple of different boxes. Generally under service type, outpatient surgery and the very first one 3/15/19?

A. What page is this?

Q. It says three of eight in the bottom right corner, but it's the last page -- or the

Page 111

first to last page of the exhibit here. Let me see if I can...

A. Yeah.

Q. It's a confusing description. There we go. Okay. This one here. (Indicating)

A. Can you repeat the question?

Q. Certainly. Does it appear to you at least based on this document that the Center For Advanced Surgery was in network for Mr. Demaskey for the 3/15/2019 surgery?

A. It appears that way, yes.

Q. And this is an explanation of benefits from Blue Cross Blue Shield, correct, at least to your understanding?

A. Yes.

Q. And so when you're providing surgery or performing surgery at the Center For Advanced Surgery, it's considered in network for the Center For Advanced Surgery's bills, correct?

A. Yes.

Q. But not for Carolina Neurosurgery's bills for the same surgery?

A. Correct.

Q. And that's because in general you're not in network, you meaning Carolina Neurosurgery,

Page 112

for at least Blue Cross Blue Shield in this case?

A. Correct.

Q. Okay. Do you know anything about the status for payment of the Center For Advanced Surgery's bills related to the treatment you provided for Mr. Demaskey?

A. No.

(DFT. EXHIBIT 14, Three pages of screenshots with heading Carolina Neurosurgery Orthopedics, was marked for identification.)

BY MR. WILSON:

Q. Do you have any hand in designing the website for Carolina Neurosurgery & Orthopedics?

A. I give feedback on it and what I like to include on it, and this was something we included in 2022 after legislation became effective. It's even dated 2022 on the bottom of the printout. So this is something we had added to comply with the No Surprises Act.

Q. Right. And this was -- since it was in 2022, that was after you provided services to Mr. Demaskey, correct?

A. Yes.

Q. Okay. For your financial policy or for the financial policy for Carolina Neurosurgery, has

Page 113

that been updated since Mr. Demaskey's --

A. I believe so. We try to update them every couple years just to make sure the language is appropriate and addressing things like good faith estimates and things, which we've been doing long before it was required.

Q. You're giving those estimates for the surgery prior to the surgery?

A. Yes.

Q. Okay. Now, there is a section here I think it's on the second page, the back of the first page, and if you hopefully can read it. I know it's small print. Three bullet points on the Privacy Act Statement, health insurance, workmens' compensation and then rejected claims. Do you see those sections?

A. Yes.

Q. And, again, these were prepared at least as far as you know as of 2022?

A. Correct.

Q. Now, in the health insurance aspect, it reads, if you're covered by private commercial insurance or a preferred provider organization with out-of-network benefits, please present your identification card to the receptionist at the time

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 114

of your appointment.
That is more or less generally what the policy was for Mr. Demaskey in the financial policy that he signed, correct?
A. Yes.
Q. And then it goes on to state that the officer will verify your benefits and you will be notified if your insurance cannot be used for medical treatment at the practice.
That was not in the financial policy for Mr. Demaskey, correct?
A. I don't think we had that language there, but we -- it was standard practice to tell patients so they didn't -- again, we've accommodated this type of policies from before the law became required.
Q. So part of your policy was to verify if the insurance was acceptable before you added it to the web -- before it was added to the website and even though it wasn't in the writing in the financial policy for Mr. Demaskey?
A. You're talking about website or the financial policy?
Q. Not really either. I'm asking about what the policy was for Carolina Neurosurgery

Page 115

because I think you testified -- correct me if I'm wrong -- that you had been verifying insurance and notifying the patients about whether or not the practice would accept the insurance prior to it being listed on this website?
MR. PENDARVIS: Form. Objection.
THE WITNESS: Yes.
BY MR. WILSON:
Q. Okay. Now, we discussed a little bit about this verifying. And what do employees for Carolina Neurosurgery do to verify whether or not insurance is in network -- sorry, whether insurance is accepted by Carolina Neurosurgery?
A. Again, we know that PPOs are the only insurance plan that would be accepted, so if it's a PPO plan, then we investigate it further to verify that coverage will be obtained.
Q. And would that be contacting the PPO?
A. Contacting them, looking on their website, reading the card. Like I said, all the cards will say.
Q. And then also private commercial insurance, correct?
A. If it has out-of-network benefits.
Q. Does private network -- and I don't

Page 116

know the answer to this question -- so does private commercial insurance, the cards for those generally state something about out-of-network benefits?
A. They usually do just so patients have the knowledge of their co-pay, their expectations. The card often says it. If not, the patient's paperwork will.
Q. And if a card doesn't say it provides out-of-network benefits, will it state the opposite that it does not provide out-of-network benefits?
A. I don't know for sure.
Q. Don't know. Okay. Do you know whether or not -- do you know who came up with the language in this -- for the website?
A. I believe it was done in consultation with my counsel.
Q. And do you know whether or not that would have been as a direct result of the issues in Mr. Demaskey's case?
A. It was part of the results of the legislation requiring it.
Q. Oh, so the legislation for the good faith estimates requires that you identify and verify whether or not your practice accepts insurance?

Page 117

A. No, I mean the website was created and the pages on the website were created in response to the legislation. We just wanted to make sure our policies were clear.
Q. So that good faith part, that was added in response to the legislation in 2022, correct?
A. On the website, yes.
Q. On the website. And you had been giving estimates for surgeries prior to that point?
A. Correct.
Q. And then just as additional information on this page, it was added the different aspects of health insurance and workmen's comp and rejected claims?
A. Yes.
Q. Okay. But then not necessarily because of Mr. Demaskey's case?
A. Correct.
Q. I think I'm done. Let me take a break real quick, and then we should be able to go pretty soon.
A. Okay.
(A recess transpired.)
BY MR. WILSON:
Q. Dr. Highsmith, remind me again when --

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

do you know exactly when, maybe the month and the year of when Carolina Neurosurgery opened up? I can't recall if it was 2017 or in 2018?

A. I don't remember the exact month, but it was a gradual process as I was closing down one clinic, seeing those postops and starting the others. I just wanted to make sure that the patients had continuity of care.

Q. Understandable. Do you know if when you were at Carolina Neurosurgery whether or not it was within the transition period if Carolina Neurosurgery accepted Blue Cross Blue Shield in any type of aspect for their patients?

A. No, that's why we made it a totally separate practice.

Q. So at Carolina Neurosurgery there was no point in which you were providing services that Blue Cross Blue Shield you accepted -- the practice accepted that insurance?

A. Correct.

Q. Okay. And I asked you this before, but just to clarify. Do you know if any Blue Cross Blue Shield policies have out-of-network benefits that you could bill to?

A. PPO plans do.

Q. And Blue Cross has that?

A. They have PPO plans, yes.

Q. And you still accept those if they have PPO benefits or PPO plan?

A. Yes.

Q. And then just a little bit of background about you given trial is coming up. Do you have family in Charleston that are above the age of 18?

A. My wife, but no -- no -- no family that would be a jury pool if that's what your question is.

Q. It's Ms. Highsmith?

A. Yes.

Q. And what is your current address?

A. I live --

Q. Do you live in Columbia or Charleston?

A. I live in Charleston.

Q. And what's your address?

A. I don't intend to give it for private -- privacy on the record.

Q. I mean, you can strike it from the deposition. It doesn't matter. I can write it down. I just...

A. What's the best way to --

MR. PENDARVIS: Why don't we do this afterwards. I'll give it to you.

MR. WILSON: That's fine. That's fine.

THE WITNESS: Yeah.

MR. WILSON: And I think --

THE WITNESS: Sorry.

MR. WILSON: -- that's it. No, I really appreciate your time, Dr. Highsmith. Thank you. I know it's never fun to be that side.

MR. PENDARVIS: Just drop me an email, and I'll give you the response.

MR. WILSON: Yeah, I appreciate that. Thank you.

(The witness, after having been advised of his right to read and sign this transcript, does not waive that right.)

(The deposition was concluded at 5:32 PM.)

CERTIFICATE OF REPORTER

I, Michael David Roberts, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 8th day of June, 2023 at Charlesto h Carolina.

Michael David Roberts
Court Reporter
My Commission expires
June 20th, 2028

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

I N D E X

	Page	Line
JASON M. HIGHSMITH, MD	3	1
EXAMINATION	3	7
BY MR. WILSON		
CERTIFICATE OF REPORTER	121	1

REQUESTED INFORMATION INDEX

(No Information Requested)

E X H I B I T S

	Page	Line
EXHIBIT 1, Two-page letter to Jason H. Highsmith, MD from Michael A. Maucher dated December 20, 2018	40	10
EXHIBIT 2, One-page document entitled Financial Policy	45	14

EXHIBIT 3, Multiple email threads commencing Wednesday, January 16, 2016 at 4:12 PM	60	2
EXHIBIT 4, Two-page email chain commencing on Thursday, March 7, 2019 at 9:34 AM	71	25
EXHIBIT 5, One-page document entitled Health Insurance Verification Form For Surgery	75	21
EXHIBIT 6, Three-page email chain commencing on Tuesday, March 19, 2019 at 5:44 PM	80	21
EXHIBIT 7, One-page email chain commencing on Monday, April 29, 2019 at 11:29 AM	82	24
EXHIBIT 8, One-page document to Kiara Goodwine from Tina G. Bennett	86	7
EXHIBIT 9, Multipage email commencing on April 30, 2019 at 7:44 AM	90	22
EXHIBIT 11, One-page document dated 11/02/2020	29	13

EXHIBIT 12, One-page email commencing on Friday, January 3, 2020 at 1:52 PM	100	2
EXHIBIT 13, Multipage letter to Scott Demaskey from Blue Cross Blue Shield dated August 26, 2021	105	8
EXHIBIT 14, Three pages of screenshots with heading Carolina Neurosurgery Orthopedics	112	8

Thomas Pendarvis
thomas@pendarvislaw.com
June 9, 2023
RE: Carolina Neurosurgery & Orthopedics, Inc. v. Maucher, Michael A.
5/19/2023, Jason M. Highsmith, MD (#5846168)

The above-referenced transcript is available for review.

Within the applicable timeframe, the witness should read the testimony to verify its accuracy. If there are any changes, the witness should note those with the reason, on the attached Errata Sheet.

The witness should sign the Acknowledgment of Deponent and Errata and return to the deposing attorney. Copies should be sent to all counsel, and to Veritext at cs-carolinas@veritext.com.

Return completed errata within 30 days from receipt of testimony.

If the witness fails to do so within the time allotted, the transcript may be used as if signed.

Yours,
Veritext Legal Solutions

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Page 126

Carolina Neurosurgery & Orthopedics, Inc. v. Maucher, Michael A.
Jason M. Highsmith, MD (#5846168)

E R R A T A S H E E T

PAGE_____ LINE_____ CHANGE_____
_____
REASON_____
PAGE_____ LINE_____ CHANGE_____
_____
REASON_____
PAGE_____ LINE_____ CHANGE_____
_____
REASON_____
PAGE_____ LINE_____ CHANGE_____
_____
REASON_____
PAGE_____ LINE_____ CHANGE_____
_____
REASON_____
PAGE_____ LINE_____ CHANGE_____
_____
REASON_____

_____ _____
Jason M. Highsmith, MD Date

Page 127

Carolina Neurosurgery & Orthopedics, Inc. v. Maucher, Michael A.
Jason M. Highsmith, MD (#5846168)

ACKNOWLEDGEMENT OF DEPONENT

I, Jason M. Highsmith, MD, do hereby declare that I have read the foregoing transcript, I have made any corrections, additions, or changes I deemed necessary as noted above to be appended hereto, and that the same is a true, correct and complete transcript of the testimony given by me.

_____ _____
Jason M. Highsmith, MD Date
*If notary is required

SUBSCRIBED AND SWORN TO BEFORE ME THIS
_____ DAY OF _____, 20___.

_____
NOTARY PUBLIC

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

&

& 1:3,6,12 2:2 2:9,13,14 3:11 4:23 24:7 30:16 31:11 32:2,14,22 33:3,24 40:15 40:23 42:20 44:23 45:5 48:12 51:21 59:10,16 60:9 60:22 67:24 70:15 72:14 73:19 101:7,7 104:4 112:13 125:4 126:1 127:1

1

1 34:9 40:9,10 47:24 59:9 122:4,7,19
10 122:19
10-03379 1:5
100 2:10 124:1
100,000 68:9
102 2:20
105 124:4
1099 61:6
11 29:3,13 34:10,17 78:15 78:21 99:23 123:24
11/02/2020 29:14 123:25
112 124:8
11:29 82:25 123:17
12 99:25 100:2 100:6 124:1
12/21 46:13
12/21/2018 46:16,19
121 122:7
125,409.28 30:7
13 105:7,8 109:22 123:24 124:4
1325 2:10
14 112:8 122:23 124:8
15th 78:21 81:4
16 60:3 123:3
16th 60:7 61:24
17 23:25 39:24
18 119:9
19 1:10 80:22 123:13
1995 90:18
1:52 100:3 124:3

2

2 45:12,14 49:12 122:23 123:1 124:1
20 40:12 71:15 71:16 122:22 127:15
2001 90:18
2002 90:18
2016 60:3 123:3
2017 118:3
2018 24:11 40:12,17 42:9 47:17,18,22 59:8 101:11 118:3 122:22
2019 37:2,8 41:4 45:23 53:12 55:24 60:7,7 61:12 61:25 70:20 72:1 73:6 75:15 78:16,22 80:22 81:4 82:25 83:13 85:6 90:23 92:18,22 95:11 97:12 98:20 99:20 101:17 110:2 123:6,13 123:17,23
2020 100:3,10 100:19 124:3
2021 1:5 105:10 124:7
2022 19:24 112:16,17,21 113:19 117:6
2023 1:10 121:12 125:3
2028 121:19
20th 42:9 101:10 121:19
21 123:7,11
21891 121:17
21st 37:8 60:7 70:7 101:16
22 123:21
24 123:15
25 123:4
26 105:10 124:7
26th 92:18,22 98:20
29 82:25 123:17,24
29201 2:10
29401 2:16
29445 2:20
29902 2:5
29th 83:12 85:6
2nd 37:1 41:4 91:24 99:19

3

3 29:9 59:23 60:2 65:25 67:17 100:3 102:3 122:4,5 123:1 124:3
3/15/19 110:22
3/15/2019 111:10
30 90:23 123:22 125:17
30,000 102:11 104:1

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

3:06 1:11
3rd 45:23 55:24 100:10 100:19

4

4 71:24,25 72:8 123:4
40 1:13 2:15 61:16 122:19
400 1:13 2:15
45 122:23
474-0712 46:25
4:12 60:3 123:3

5

5 75:20,21 123:7
5/19/2023 125:5
524-9500 2:6
572-1711 2:21
5846168 125:5 126:2 127:2
5:32 120:18
5:44 80:22 123:14

6

6 80:19,21,25 123:11
60 123:1
65,000 97:8

7

7 72:1 82:23,24 122:5 123:6,15 123:18
71 123:4
710 2:5
722-1100 2:11
727-0307 2:16
75 123:7
7:44 90:23 123:23
7th 73:6 78:16

8

8 86:6,7 123:18 124:4,8
80 123:11
803 2:11
82 123:15
843 2:6,16,21 46:25
86 123:18
8th 121:12

9

9 90:20,22 91:23 123:21 125:3
90 123:21
9:34 72:1 123:6

a

a1 2:5
aaliyah 5:4,15 7:19 8:6,12 47:10 55:8 96:16
aaliyah's 7:17 8:2
ability 36:24 51:17
able 36:21 117:20
above 42:14,25 43:12 73:11,19 73:22 119:8 125:6 127:7
absence 31:25
absent 33:1
absolutely 38:7 87:23
accept 15:23 22:3 36:19,21 41:15 42:18 50:11 51:3 73:14 74:20 115:4 119:3
acceptable 114:18
accepted 28:10 115:13,15 118:12,18,19
accepting 16:17 22:7,12 36:16 41:17
accepts 116:24
accident 43:1 57:8,11 68:22 73:22
accommodated 114:15
accommodati... 49:23
account 44:20 48:22 57:20
accountable 34:7
accuracy 46:19 125:9
accurate 75:1 85:18 92:18 93:1 96:11 98:1,9 101:3 101:24 103:14 104:19 107:3 121:6
acknowledge... 127:3
acknowledges 102:23
acknowledg... 125:12
act 19:24 112:19 113:14
acted 85:11
action 81:2
active 10:4 27:18 96:8 105:20 106:1
actively 99:7
acts 7:12
actually 5:18 21:2 26:9,15 26:16 36:16 45:12 47:6 48:10 55:25 67:4 70:4 86:16 93:13 108:7

added 112:18 114:18,19 117:5,12
addition 52:15
additional 117:11
additions 127:6
address 119:15 119:19
addressed 40:16 73:7 86:13 98:11,12
addressing 113:4
adds 87:17
adequate 44:2 68:16,17
administrative 7:2,3 8:5 84:13 84:16 108:2,8
administrator 6:21
admitted 63:24
adopting 15:22 16:14,15
advanced 80:1 80:4,6 81:15 81:23 82:2,10 82:14,18 83:10 83:17,22 84:1 84:10,21 85:6 85:16,23 99:18 109:25 110:8 110:15 111:9 111:17,19 112:4
advice 23:3
advised 120:14
affect 66:2 104:18,20
affixed 121:11
afternoon 3:9
age 119:9
ago 3:10,17 19:17 24:2 37:18
agree 33:13 48:5,14 85:5 88:1 101:13 102:17
agreed 26:5 103:20
agreeing 43:6
agreement 31:3 31:6 32:5,19 32:24 33:6,19 33:22 34:5 42:19 44:1 73:15,25 74:4 104:7
agreements 33:1
agrees 48:1
ahead 9:4 94:17
alarms 108:16
alaska 12:22,23
allotted 125:20
amount 30:9,17 83:18 103:3 104:17
answer 4:14,17 37:5 39:22 74:7 116:1
answering 3:18
anticipation 76:25 92:12
anybody 71:9
anymore 15:3,6 15:7 34:23,24 37:5 84:2
apologize 16:7
appear 92:17 95:7,12,20 97:19 102:3 110:13 111:7
appearances 2:1
appearing 2:8 2:23
appears 45:22 47:7 60:20 70:14 72:9 73:9 74:8 76:2 76:13 78:15 79:2 81:2 83:7 83:12 85:19 86:13 95:18 100:25 101:1 111:11
appended 127:7
applicability 83:22
applicable 125:8
apply 103:6
appointment 51:13 114:1
appointments 27:22
appreciate 16:4 120:8,12
appropriate 113:4
appropriately 27:2,5
approval 44:2
approve 104:2 104:4
approximate 97:7,8
april 82:25 83:12 85:6 90:23 92:18,22 98:20 123:17 123:22
area 17:6 88:25
areas 95:12
arising 42:25 73:18
asked 20:15 23:12 118:21
asking 3:22 4:18 15:25 33:20,22,23 60:15 62:1 67:10 97:18 114:24

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

asks 14:2 50:20
aspect 102:15 113:21 118:13
aspects 117:12
assigned 7:9 57:20
assignment 71:4
assist 22:17
assistant 7:19 61:9
associated 91:24
associates 52:24 53:1,4
assume 4:19 47:16
assuming 3:19 11:23 20:25 60:11 64:15 72:11,21 83:4 91:3,4 98:19
assumption 85:20
attached 60:9 72:20 125:11
attempt 4:13
attorney 14:20 31:3,7 33:18 38:14 39:9,10 57:13 58:3 62:23 63:5 65:24,25 103:25 125:13
attorney's 63:6 65:25
attorneys 2:2 2:12 14:11 32:6 59:16 62:14 68:24
august 105:10 124:7
authenticity 102:10
authority 41:14 86:2
authorize 57:23
automobile 67:20
available 125:6
average 61:21
aware 8:21 10:25 21:24 31:16,23 38:1 44:24 45:5 53:9 55:16 56:25 57:8 69:8
awkward 20:24

b

b 122:16
back 7:20 29:24 40:17,18 47:24 57:18 60:1 61:24 65:24 73:6 91:22 94:10 102:2 108:8 109:21 113:11
backed 44:1 88:13
background 87:1 119:7
balance 43:17 44:20 52:7 98:8
balanced 12:20
balances 67:10
bank 67:10
bankrupt 75:3
based 33:10 47:1 100:17 104:7 110:13 111:8
basic 23:10 49:17
basically 7:19 8:2 15:16 38:12 89:6 110:4
basis 62:18 63:10 99:12 103:22
beacon 49:1
beaufort 2:5
beginning 20:1 57:22 109:18
begins 42:14
behalf 7:12 23:1,11,13 41:15
beholding 36:22
believe 5:16,19 19:23 24:11 29:17 30:15,23 30:25 31:11 32:2 33:2 43:11 53:7 87:21 88:25 91:2,23 97:13 100:21 104:17 113:2 116:15
benefit 66:14
benefits 22:17 22:22 28:13 36:9 50:1,14 50:17,18 51:7 51:8 52:1 54:1 54:4,19 55:2,5 55:10 74:21 79:5,7,8 93:17 96:19,21,23 105:22 109:6 109:24 110:14 111:12 113:24 114:7 115:24 116:3,9,10 118:23 119:4
bennett 60:8 86:8 123:20
best 4:6 17:11 23:10 26:20 62:21 71:3 89:1 119:25
better 11:22 57:17

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

beyond 34:6
big 12:21 63:2
bill 15:18 22:13 22:15 30:11 31:1,5 35:23 36:11 50:11,16 54:17 63:2 67:8,16 73:16 74:1 79:6,8 99:16,16 103:21 104:23 109:5,14 118:24
billing 7:9,10 8:14,18 11:10 11:14 29:19,20 45:25
bills 7:11,15 11:17 22:12 28:18 31:13 32:4 33:5,15 38:5 44:8,12 44:15 49:18 53:25 67:7 74:4 75:5 93:14 101:3,4 101:6 103:8,13 103:20 104:7 109:20 111:19 111:22 112:5
bit 3:10 12:12 12:21 16:1 18:12 29:3 45:19 67:18 85:13 94:7 115:9 119:6
blanche 89:10
blue 23:16 53:10,11,23,23 54:3,3 79:3,3 79:12 81:23,24 82:3,3 93:4,5 93:10,10,14,14 101:1,2,17,18 101:18 105:9,9 105:19,19 110:9,9 111:13 111:13 112:1,1 118:12,12,18 118:18,22,23 119:1 124:6,6
bottom 83:7 95:8 96:25 110:24 112:17
boundary 2:5
box 92:24 95:14
boxes 110:21
brand 21:19,20 21:20,20,21 23:21,21
break 4:9,10,13 71:20 117:19
bring 39:4 94:19
brings 7:20
brooke 61:8
brought 3:12
bsowell 2:11
building 21:20 23:21
bullet 57:19,22 113:13
bullets 101:10
business 5:1 6:21,22 79:22 80:10 87:14 90:9

c

c 2:15
calhoun 1:13 2:15
call 25:14 26:12,25 27:4 55:12 71:11 86:17 92:7 94:17
called 26:4
calls 7:1
cancellation 97:25
capitalized 52:21
car 57:8,11
card 51:12,12 53:10,15,20,23 55:9 93:6 96:20,21 113:25 115:20 116:6,8
cards 115:21 116:2
care 7:1 13:9 14:16 18:11 20:18 27:18,19 38:2 39:13 40:2 53:5 56:3 57:17,23 62:7 67:6 69:22,24 70:1,2 88:19 118:8
cared 27:1
caregiver 39:7 39:15
carolina 1:1,3 2:2 3:12 4:23 5:7,21,21,24 6:16,19 8:22 9:22,25 10:21 10:25 11:8,12 14:6 16:15 17:10 23:2 24:6,9 25:3,8 25:25,25 26:7 26:16 27:24 28:7,17,24 33:4,15 34:1 37:3 38:3,5 40:5 41:15 45:6 46:23 47:5 49:3,9 50:10,15 51:2 51:14,20 52:10 53:18,19,24 54:22 55:16,19 57:24 60:18 61:2,16 62:13 62:22 64:4 67:20 69:20

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

74:19 76:20 77:18 79:5 84:19 87:10 88:11 90:11 91:20 92:10 98:1,15 101:6 101:13 103:2 103:16,20 109:4 111:21 111:25 112:9 112:13,25 114:25 115:11 115:13 118:2 118:10,11,16 121:4,13 124:10 125:4 126:1 127:1
carolinas 125:15
carrier 7:15 13:24 22:23
carriers 8:15 38:6
carte 89:10
cas 83:9
case 1:5 12:21 12:22 13:3 14:3 19:21 24:15,21,22 29:18 30:4 32:1,18 39:12 46:1 47:21 48:14 57:8 58:1,5 60:10 62:15,18,18 63:10,10 72:21 74:10 91:3 99:12,12 103:22,22 105:3 112:1 116:19 117:17
cases 64:17
catching 12:5
cause 121:9
caused 43:1
center 65:5,9 65:13,18,22 79:9,11,21,22 79:23 80:1,1,4 80:6 81:14,22 82:2,10,13,17 82:20 83:9,17 83:21,25 84:10 84:21 85:6,12 85:15,23 99:18 101:5 109:24 110:8,15 111:8 111:17,18 112:4
centers 79:24 82:7
certain 10:5,7 35:3 36:23,23 41:10 82:6,7
certainly 16:13 43:24 63:11 67:9 103:22 111:7
certificate 121:1 122:7
certify 121:5,8
cetera 7:22
chain 71:25 80:21 82:24 123:5,12,16
change 126:4,7 126:10,13,16 126:19
changes 35:10 36:15 125:10 127:6
charges 101:17 109:25
charleston 1:2 1:14 2:16 6:3,7 23:22,25 24:10 24:22 25:1,2 40:2 58:19 64:18,24 65:5 65:9,13,18,22 79:21,23,25,25 83:9 119:8,17 119:18 121:13 121:13
chart 17:5,9 41:6,18 56:4,7 56:21 75:16 77:13
charts 55:21
check 96:17
checked 78:7
chiropractors 14:16
choice 26:2
chronological 60:14
circumstances 16:25 22:11
claim 28:14 42:23 48:16 109:23
claims 43:6 48:1,10 57:13 104:10 113:15 117:14
clarify 4:4,6,17 4:18 118:22
clean 28:1
clear 20:16 21:18 22:3,18 24:17 28:10 29:4 34:20 96:13 117:4
clients 14:12 77:20
clinic 23:7 118:6
closing 118:5
cme 13:14
cmes 13:21
colleagues 27:6 27:8
collecting 50:1
collections 11:1
color 95:17
columbia 2:10 6:4,9 119:17
column 34:11

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

come 7:21 8:4 8:11,19 9:8 14:2 26:1 39:25 56:10 59:2 66:11 91:13 95:3
comes 10:10 14:5 17:9 39:21 89:6
coming 17:21 26:17,23 57:10 119:7
commencing 60:3 72:1 80:22 82:25 90:23 100:3 123:2,5,12,16 123:22 124:2
commercial 113:22 115:22 116:2
commission 121:18
common 1:1 64:10
communicate 84:20
communication 26:3
community 14:15
commute 65:1
comp 13:21 117:13
companies 22:14,16,21 36:24 109:5
company 70:24 87:3,4,7 89:18 90:5,16 109:7
company's 77:4
compare 78:14
comparing 95:10
compensation 13:17,24 113:15
complaint 29:18 45:13 60:10 72:20 81:1 83:4 91:3
complete 27:23 76:22 77:20,21 96:5 121:6 127:8
completed 27:19 56:12 86:22 91:12 94:12,24 125:17
completely 21:21 87:17
completing 49:22
complication 107:20
comply 112:19
concern 90:9
concerned 19:3 85:24 109:10
concerning 67:2
concluded 120:17
condition 66:18 101:19 102:1
conditions 102:5
conference 72:3,6 78:4 79:19 90:21 100:1
confuse 99:25
confusing 29:5 111:4
confusion 22:4
consents 106:22
considered 19:22 111:18
considering 62:19
consistently 62:20
consult 9:19 41:21,23
consultation 116:15
consulting 90:8 90:15
contact 10:19 18:16 20:22 21:8 22:20 56:17
contacted 13:12
contacting 115:18,19
contacts 20:20 23:15
contain 53:14
contemplating 37:12
context 97:17
continues 42:18
continuity 118:8
contract 61:5
contracted 6:17
contractors 61:13
conversation 3:24 37:8 42:3 54:6,7 71:9 75:9 93:22
conversations 27:14 34:15 59:10 88:5
copeland 1:12 2:14
copied 86:23
copies 125:14
copy 53:15,17 53:20 95:17

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

corner 46:15 110:25
correct 3:20,21 10:14,15 15:7 15:21 16:24 18:3,25 22:9 24:15,16 27:25 28:11,15 30:7 32:15 40:24,25 42:10,16,21 43:3,7,13,17,22 46:2,6 47:20 48:2,7 49:5,6 49:19,23 50:3 50:12,22 51:16 52:17 54:11,23 55:3 58:11 60:12,18 62:2 66:20 67:13 68:2,10 69:9 70:16 71:14,17 73:8,12,20,23 74:5,14,17,21 74:22 75:7,8 76:21,25 77:2 77:6 78:18 79:1,13 80:11 81:5 83:5,14 83:19,23 84:3 89:9 91:5 92:22 93:15 95:2 97:8 98:23 101:20 102:18 103:6,7 104:11,16 105:4 106:14 107:25 108:4 109:7,8,19 110:5,6 111:13 111:19,23 112:2,22 113:20 114:4 114:11 115:1 115:23 117:6 117:10,18 118:20 127:8
corrections 127:6
corresponden... 73:15
corresponden... 42:19
cost 19:7,8,11 20:11 29:17 32:15 35:23,24 35:25 36:2,4,7 38:1 43:25 52:17 97:1,5,8 106:21
costs 19:12 30:15 31:18 34:2 69:3 103:20
counsel 1:15 2:1 9:20,22 13:13 31:20 33:18 48:19 116:16 121:9 125:14
county 1:2 121:13
couple 18:13 26:20 78:7 86:12 110:20 113:3
court 1:1,16 3:3,6,16,23 16:5 25:18 78:1 79:17 121:3,18
courtesy 51:20 54:21
cover 7:6 44:12 44:14 54:9 103:13,19 104:7
coverage 31:17 33:11 44:2 66:7,24 67:19 68:9,13,22 83:18,23 85:1 85:17,21 102:11,12 103:3,6,19,24 104:2,6,13,18 104:23 105:24 109:11 115:17
coverages 70:8
covered 29:10 44:8 51:6 113:22
covering 64:10
covers 68:16 72:17
covid 12:4
cp 1:5
created 117:1,2
credibility 87:17
creek 2:20
cross 23:16 53:11,23 54:3 79:3,12 81:23 82:3 93:5,10 93:14 101:1,18 101:18 105:9 105:19 110:9 111:13 112:1 118:12,18,22 119:1 124:6
cs 125:15
csvl.law 2:17
current 9:24 10:1 25:24 119:15

d

d 122:1
date 1:10 26:18 30:13 42:8 45:3,21,24 46:12,12,16 69:17 78:17 86:21 92:8,22 94:21,25 95:16 102:20,21 126:24 127:12
dated 29:14 40:12,16 46:8 59:8 73:6

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

83:12 100:9 105:9 110:1 112:17 122:22 123:25 124:6
dates 34:10,11 34:13 100:17 105:24
david 1:16 121:3,17
day 7:7,7 99:10 121:12 127:15
days 63:25 106:1 125:17
december 40:12,16 42:9 47:17,18 55:25 59:8 101:10 122:22
decision 26:7 27:16 39:8 66:2
declare 127:4
decline 23:13
declined 66:5
decompression 92:15
dedicated 28:22
deemed 127:6
defendant 10:23
defendant's 12:18
defendants 1:7 1:15 2:12
defense 12:25 13:8,13 14:24
defer 48:18 68:24
deferred 98:25 99:3
definition 52:21 85:9
delete 88:8,9,17 89:11
delinquent 11:17
deluca 1:6 2:13 2:19 3:11 30:16 31:11 32:2,14,22 33:3,24 40:15 40:23 42:20 44:23 45:5 48:12 59:10,16 60:9,22 67:24 70:15 72:14 73:19 104:4
delucamauch... 2:21
demaskey 6:6 11:2 15:9 20:5 21:18 24:13 28:16 30:3 34:12,16 36:17 37:9 38:11 41:9 42:15 43:13 44:24 45:22 46:1 47:19 49:14 53:6,9,22 54:2 56:3,18 59:4 59:12 62:1,2 65:4 66:13 69:17,25 70:9 70:16 72:15 73:12,23 74:24 75:15 77:4 78:16,25 83:14 85:8 91:8,25 94:1 97:7 98:5 98:12,20 99:14 100:19 105:9 107:10 111:9 112:6,22 114:3 114:11,21 124:5
demaskey's 19:19 32:3 33:5 34:2 40:24 63:14 68:8 69:3 81:4 91:7 93:4,10 98:8 101:2 105:2,19 107:23 110:16 113:1 116:19 117:17
demographics 21:7
department 87:8 89:16
depends 40:3
deponent 125:13 127:3
deposed 11:23 12:1
deposing 125:13
deposition 1:9 3:13 78:8,10 100:15 101:12 105:13 110:4 119:23 120:17
describe 21:2 39:13 92:6
described 18:9 38:23
describing 39:15
description 92:8 111:4
designing 112:12
destroy 91:14
details 7:2
determining 55:8 63:20 82:14
develop 89:20
developed 28:6
developing 9:14
development... 39:6
dft 29:13 40:10 45:14 60:2 71:25 75:21 80:21 82:24 86:7 90:22

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

100:2 105:8 112:8
dictated 81:8 81:10 98:5
dictating 41:6
dictation 81:12
dictations 41:9
difference 82:1
different 21:21 22:5 24:8,18 25:16 34:10,16 34:22 35:10,18 37:13 47:2 70:8 72:15 79:22,24 82:7 101:9 103:12 107:21 109:25 110:20 117:12
direct 4:1 13:23 33:14,15 64:11 116:18
directed 71:6
directly 14:19 14:22 25:10 33:3,25 34:1 39:21 50:16 61:4
disabilities 39:1
disabled 39:7
disagree 38:17 48:5,15
disconnected 79:18
discovery 84:8
discretion 99:11
discuss 21:13 37:4 38:4,22 39:16 84:25 85:2,4
discussed 28:5 49:21 50:10 75:25 97:2 102:9 115:9
discusses 70:8
discussing 20:18 37:21 38:12 45:19 52:16
discussion 54:2 99:13
discussions 31:20
disputes 8:14 8:18 11:14
dob 95:14
docs 14:16 40:2 64:18
document 29:13,17 40:20 41:10 45:14 60:11 75:21 76:13 77:9 78:17 81:1 83:5 86:7,14 86:24 88:16,23 91:4 92:6,11 94:2 95:8
97:21 98:4 100:9,11,14 105:13,15 110:3 111:8 122:24 123:8 123:19,25
documentation 41:12 97:16
documented 17:1
documents 9:7 10:12,16 18:13 18:18 32:24 33:10,12 76:2 88:15 90:13 97:24 106:12 106:13
doing 19:10 87:15 107:18 113:5
dollar 104:14
door 14:5
doubt 32:18 46:18,21 47:5 99:20 102:10 106:2
dr 3:9 25:15,17 59:24 109:3 117:25 120:8
drill 37:11
drivers 68:17
drop 120:10
due 101:18 103:8
duly 3:2
dumb 46:4
dunsil 61:8
durant 2:9
duties 6:23

e

e 122:1,16 126:3,3,3
earlier 18:13 23:20 37:23 69:7 95:24 104:17 110:7
early 21:16 95:3 101:12 104:14
easier 89:25
effect 22:1 38:9
effective 112:17
egregious 104:1
eight 110:24
either 8:12 16:20,22 77:17 85:11 86:3 87:25 114:24
elective 63:13 63:15,16,20 64:2 65:12,14 66:15,17 104:21 105:3
electronic 23:18 88:11,12 89:2 90:2 91:16,21

106:14
email 21:8 60:2 60:16,17 61:24 68:25 69:11,15 70:11 71:6,7 71:25 72:10,10 72:13,17 80:21 81:3 82:24 83:8 84:6 85:11,17 86:11 86:17,24 88:1 88:8,18 89:8 89:13,13 90:22 100:2,9 101:17 101:20 102:4,7 102:10,16,22 102:22 120:10 123:1,4,12,15 123:22 124:2
emailed 102:23
emailing 102:14,15
emails 60:6 69:20,24 71:14 83:8 88:9
emergency 10:19 18:16 20:22 56:17 63:22 64:6,9 64:11,12,16,21
emergent 63:11 63:15,21,23 64:16 66:16 105:1
emergents 64:5
employee 5:14 6:15,18 7:8,25 8:13,16 61:2,4 85:15
employees 6:9 6:11 9:17 23:2 38:3 82:17 84:10,24 88:17 88:22 115:10
encounter 34:25
encountered 37:14
encourage 89:12
ended 12:4
entail 6:24
entered 81:12
entire 30:11
entities 84:25
entitled 45:15 75:22 122:24 123:8
er 63:23,24 64:18
eric 2:23 6:15 6:24 9:19 55:12 58:16,21 58:24 59:3 60:25 61:14,20 71:12 72:11 73:4
errata 125:11 125:13,17
esp 1:6 2:13
especially 22:1 35:3,22 37:11 39:8 88:3
established 72:14
estimate 12:2 13:6 17:12 19:9,19,23 20:5,12 26:20 35:23,25,25 36:3,5,7 52:18 67:15
estimates 19:12 19:15,25 32:8 113:5,7 116:23 117:9
et 7:22
evaluations 7:21 13:25
event 43:15 48:6 70:3 74:25 75:6
events 121:10
everybody 29:5
evidence 86:20 87:23,25
exact 118:4
exactly 23:4 26:23 41:7 75:18 82:21 118:1
exam 18:10 20:22
examination 3:7 122:5
example 23:7
excellent 88:7
except 74:16 89:8
exclude 102:7
exclusive 33:6 65:14
execute 109:18
executed 44:25 45:3 78:17 92:11,17,22 95:1 97:11 106:13
exhibit 29:7,13 34:9,10,17 40:9,10 45:12 45:14 47:24 49:12 57:19 59:9,23 60:2 65:25 67:17 71:24,25 72:4 72:8,19 75:20 75:21 78:15,21 80:19,20,21,25 82:23,24 83:3 86:6,7 90:20 90:22 91:2,22 91:23 99:23 100:2,6 102:3 105:7,8 109:22 111:1 112:8 122:19,23 123:1,4,7,11,15

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

123:18,21,24 124:1,4,8
exhibits 29:2 100:16 105:14
exist 104:24
expand 7:4
expect 43:25
expectations 116:5
expert 12:10,15 13:4,5,13 14:23 68:14 87:15 88:25
expired 93:7,11
expires 121:18
explain 82:1
explanation 109:23 110:14 111:12
extent 18:6

f

f 2:9
fabricated 86:22 87:21
facility 5:2 80:5
fact 37:20 38:4 67:12 102:16 104:12 106:3
fails 125:19
fair 4:20 59:22
faith 19:12,14 19:19,23 113:5 116:23 117:5
familiar 40:19 60:11 87:5
100:10
family 20:21 39:4 40:1 109:15 119:8 119:10
far 57:8 61:21 65:20 82:2 85:23 88:11 94:22 113:19
fault 67:19 68:1 83:18 103:2
fax 23:15 40:19 41:18 46:11,23 46:24 47:1
faxed 46:12,13
feedback 112:14
fields 86:19
figure 23:3
file 17:2,3 18:1 18:2,6,14 20:5 22:19,23,24,25 23:3,17 42:4 51:14,21 53:14 54:18,22 55:4 69:21 70:5 73:2 76:10 91:8,10,16,19 106:14,20
filed 29:17 60:10 70:23 72:20 81:1 83:3 91:2
files 19:2
filing 22:18 101:17
fill 8:7 9:7 10:12 50:21 76:4 107:5
filling 8:5
final 98:7
financial 9:11 10:13 15:16 18:15 44:24 45:3,6,15,18 46:25 47:1 49:13 54:21 55:14,23 56:15 58:4,14 99:9 109:17 112:24 112:25 114:3 114:10,21,23 122:24
find 62:7
fine 29:12 120:3,3
finish 89:23
finished 26:24 27:21
firm 42:20 43:6 44:16,17 48:12 49:8 73:19 75:5 87:18
firm's 42:19 73:15
first 3:2 8:11 9:8 10:11 18:16 28:16
34:20 35:15,16 36:20 37:2 45:24 47:19 56:17 60:16 70:11,11 72:9 72:24 74:13 78:20,24 81:2 84:5 100:13 103:1 107:13 107:24 108:9 108:15 110:16 110:22 111:1 113:12
five 5:12 24:1 71:20 105:13
flip 46:10
florida 87:9 89:16
focus 11:21 18:20 37:22
focused 57:5,16 70:1
focusing 37:23
focussed 41:11
follow 25:12
following 41:19 64:1 98:3
follows 3:2
foregoing 121:5 127:5
forgot 29:7 80:19
form 9:11 21:1 30:18 34:3 47:12 48:17

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

50:22,25 52:19 56:16 75:22 76:1,5,8,9 77:3 77:22 85:25 92:7,21 94:3,5 94:20 95:7,11 95:12 96:5,17 97:2,6,11 102:19 103:21 106:6 108:15 115:6 123:9
formal 6:18 25:23 26:3
former 26:5
forms 8:9,11 9:1,5,11,12 10:18,19 18:23 23:10 35:6 49:22 56:12 77:19 96:1 97:5 106:12,22
forth 50:2
forthcoming 19:7 36:12 43:25
forward 22:22
four 5:11 37:18
frequent 11:4,5
frequently 14:11 65:8
friday 100:3 124:2
friends 14:17
front 29:24 40:17 60:1
65:7
fruition 104:15
full 3:3
fun 120:9
funds 48:21 58:1
further 115:16 121:8

g

g 86:8 123:20
garcia 60:24
general 9:21 21:6 36:14 111:24
generally 31:23 41:22 56:25 69:8 84:16 92:1 97:2,25 99:9 102:9,14 107:17 108:20 110:1,21 114:2 116:2
generate 88:23
generated 91:11
getting 11:21 13:24 15:20 25:19 57:3,17 63:12 78:8 99:1,2 105:21
girlfriend 20:23
give 16:6 23:5,9 35:22,25 67:14 86:25 94:4
99:16 112:14 119:20 120:2 120:11
given 119:7 127:9
gives 8:10 92:8
giving 3:17 59:11 75:14 113:7 117:9
go 8:3 9:4 11:18 18:7,17 18:19 20:17 22:22 25:17 26:15 27:9 35:20 55:8 56:12 63:19,24 64:2,25 75:2 78:1 102:2 106:18,24 111:5 117:20
goes 43:11 51:11 71:2 114:6
going 3:22 4:19 18:9 20:11 26:15 29:2,3 31:23 39:14 40:8,9 44:12 44:13 59:23 71:23 75:2 80:18 81:11 82:22 86:5 89:25 90:9,19 97:6 99:25 100:16 104:22
105:6 106:17 108:21
good 3:9 19:11 19:12,14,19,23 93:6 99:2 113:4 116:22 117:5
goodwine 5:5 60:8,17 76:13 86:8 123:19
goose 2:20
governing 89:2 90:1
gradual 118:5
great 3:16
greatly 16:4
group 77:5
guess 17:16 102:21
guessing 13:25
guests 62:22

h

h 5:15 40:11 122:16,20 126:3
habit 67:2,5
hand 8:17 9:14 9:17 34:11 40:8 45:11 46:15 59:23 71:23 80:18 82:22 86:5 90:19 98:17 100:5 105:6 108:18 112:12

121:11
handed 29:16 72:8 80:25 86:11 91:1,23 100:8
handle 7:1 8:14 9:20 63:9 84:22 99:12
handled 73:3
handles 7:10 7:11 8:1 89:5
handling 8:18 42:1
handwriting 76:17 97:20
happen 38:21 38:22
happened 27:5
happening 12:3
happens 23:4
hard 16:2 25:19 89:24
he'll 43:16 59:2
head 77:25
header 86:20
headers 87:16
heading 112:9 124:9
health 9:10 10:12 18:14 38:2 50:24 52:18 56:15 57:4,23 70:24 72:18 73:17 74:3,17,20 75:22,25 76:5 77:8,10,12,15 92:20,25 94:3 95:6,10,15 96:5,14,16 106:4,6,9,12 108:14 109:15 113:14,21 117:13 123:8
hear 40:5
heard 31:19 48:24
hearing 16:2
help 8:2 22:22 22:24 28:13 49:22 54:18 93:18
helping 7:6,6
helps 60:25
hematomas 64:13
hereto 127:7
hereunto 121:11
hesitate 86:16
hey 94:17
highlight 77:19 77:23,24 95:25
highsmith 1:9 3:1,5,9 25:15 25:17 40:11 59:24 90:8 109:3 117:25 119:13 120:8 122:4,20 125:5 126:2,24 127:2 127:4,12
hipaa 9:12 10:13 18:15 56:16
hire 7:6 27:9
hiring 27:3
histories 7:22
history 8:4 21:5,9 88:24
hmo 51:4 96:22
hold 34:6
holding 48:13
home 20:12 37:11
honestly 86:16 86:22
honoring 84:1
hope 4:11
hopefully 29:4 113:12
hospital 24:4,5 26:12 27:2,11 27:12 63:25 64:22 65:2 82:5
hospitals 64:15 64:23 65:16 82:6
hours 61:16,21 63:25
housekeeping 78:6
huge 104:23
hypotheticals 66:4 108:25

i

identification 29:14 40:13 45:16 60:4 72:2 75:23 80:23 83:1 86:9 90:24 100:4 105:10 112:10 113:25
identified 85:15 109:23
identifies 101:16 109:24
identify 116:23
identifying 88:2
iii 2:9
illness 21:5,9
imagine 4:10
ime 13:14 14:24
imes 13:21
implementati... 41:20
implications 38:2 39:5
implies 106:8
important 77:23,24 88:4 88:23 96:1
imported 25:3
inability 102:11

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

inactive 96:8
inapplicability 102:12
incident 15:4 42:25 43:1 73:18,22
include 112:15
included 112:16
including 18:14 58:21
incorporation 90:13
independent 13:25 45:4 105:15
index 2:25 122:10
indicate 110:19
indicates 50:6 52:5 56:21 72:16 73:10 75:4
indicating 57:20 74:23 111:5
individual 39:14 42:15 43:12 59:10 73:11 74:24 109:23
inform 35:9
informal 27:14
information 14:7 56:17 57:4,16 66:7 67:18 78:25 79:9,16 81:8,9 88:2,12 89:2 90:2 93:5 117:11 122:10 122:13
informed 37:19 74:24
initial 7:21 34:25 56:11
initially 14:3
injured 57:11 68:19
injuries 47:20 58:7
injury 43:1 57:6,7 102:8
instance 36:17
instances 13:12
instructed 38:4 62:10
instructions 3:17,20 92:9
insufficient 43:16,21 48:7 74:25 75:6 103:19
insurance 7:15 8:14,18,23,23 9:10 10:13 18:14 21:14,19 21:24 22:3,7 22:10,12,13,13 22:15,21 24:19 28:10,18 34:23 35:10,24 36:1 36:2,16,19,21 36:24 37:5,21 38:6,12 39:16 49:22 50:2,6,7 50:11,12,20,21 50:24 51:6,9 51:12,15,22,24 52:1,12,19 53:10,15,20,23 54:9,22 55:1,9 55:17 56:15 58:2,8 66:7,24 67:21 68:1,15 68:17 70:24 72:18 73:17 74:3,17,20 75:22,25 76:5 77:4,8,10,12,15 79:1 85:1,3,4 85:17 92:21,25 93:5 94:3 95:6 95:11,15 96:5 96:14,16,17 105:20 106:4,6 106:9,12 108:15,18 109:5,7,11,15 113:14,21,23 114:8,18 115:2 115:4,12,12,15 115:23 116:2 116:25 117:13 118:19 123:9
insurances 82:6,8
insurer 36:9 96:18
insurers 35:11 53:25 82:15
intake 8:1,8 9:1 9:12 10:18 18:8,14,22 21:1,10 28:4,5 38:8 40:4 56:4 56:21 76:7,8
intend 119:20
intending 27:8 27:17
intentionally 25:10
interaction 34:22
interactions 35:19 59:4 84:9 87:18
interest 65:17 65:20 80:3 81:19
interested 121:10
internal 55:15
interpret 55:11
interpretation 44:11
interpreting 68:14
interview 18:7 18:9 21:5

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

introducing 74:2
investigate 115:16
involved 14:12 17:13 19:20 20:6 28:18 56:22 62:15 71:3 81:1
issue 30:10 88:4
issues 8:19 10:9 21:14 38:13 39:17 85:21 116:18

j

january 37:1,8 41:4 45:23 55:24 60:3,7,7 61:24 70:7 100:3,10,19 101:16 123:3 124:3
jason 1:9 3:1,5 40:11 90:8 109:3 122:4,20 125:5 126:2,24 127:2,4,12
jay 2:19,21
job 3:16 89:25
jobs 96:10
judgment 58:2 58:10
jump 29:2
jumping 99:24
june 121:12,19 125:3
junk 89:8
jury 119:11
justice 87:9 89:16
justifying 23:7
juvenile 87:9 89:16

k

kary 60:24 61:14,16
keep 10:4,6 12:20 37:19 78:11 88:15
keeping 91:16 91:19
kiara 5:4,5,7 7:16 8:10,12 41:14 42:3 47:10 55:7 60:8,17 61:25 69:15,15 70:9 70:22 71:6,9 71:15 72:10,15 73:3 75:10 76:12,13 81:3 84:20 86:8,13 87:22 88:5,7 93:23 95:25 96:15 100:9 101:1,23 102:4 102:15 103:2 103:10 123:19
kiara's 77:18 95:7 97:20
kind 14:7 16:3 20:15,25 28:4 29:1 45:19 46:24 57:3 78:8 89:10 97:2
knew 26:24 35:4 36:18 37:12 80:8 85:21
know 4:6,9,12 5:17,18 7:1,7 9:2,6,24 11:8 11:15 12:3,5 12:17,19 13:10 14:6,9,23 15:15 16:2 17:14,18 19:8 19:18,22 20:9 20:9,20,20,23 23:6 25:2,11 26:14 28:17 31:20,22 32:5 33:8 35:17,23 37:4,7,18 38:10 39:5,23 41:1,3,16 43:24 44:23 45:1 46:4,8,20 46:21,22 47:10 47:11,14 48:21 48:24,25 49:1 49:3 50:1 53:14,16 55:22 56:2 57:11 58:16 59:3,6,9 59:14,19,21 61:10 62:4,6 62:12,17 63:1 63:6,7 64:18 65:7 66:1,23 67:15,24,25 68:12,21 69:14 69:18,19 70:4 70:6 71:8,11 75:13 76:12 79:14 80:6 82:19,21 84:14 84:15,18,24 85:2 86:2 88:7 88:22 89:24,24 93:6,8,9,12 94:8 95:21 97:10 98:18 102:6 103:25 104:13 105:23 107:15,20 108:10,13,20 108:24,25 109:13 112:3 113:13,19 115:14 116:1 116:11,12,12 116:13,17 118:1,9,22 120:9
knowledge 30:14 45:5

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

49:11 55:20 93:4 100:20 101:8 103:4 105:15,18 116:5
known 40:1 109:1
knows 35:5 99:15

l

l 5:15
l4 92:15
language 17:22 19:23 42:13 44:11 47:25 113:3 114:12 116:13
large 121:5
law 2:4 42:19 42:20 43:5 44:16,17 48:12 49:8 73:15,19 75:5 87:18 114:16
lawsuit 3:12 10:23
lawsuits 11:10
learned 70:9
learning 38:25
leave 20:8 27:8 27:17
leaving 27:19
led 11:10,13
ledger 29:19,20 30:2 45:25 98:7
left 34:11 46:15 61:10,11
legal 85:9 125:23
legislation 112:16 116:21 116:22 117:3,6
letter 15:1,4,13 15:20 16:23 17:1,2,7,12,21 17:22 19:1,8 31:7,25 32:12 32:12 40:10,15 40:18,22 41:2 41:3,23 42:4,8 43:5,19 44:4 44:10 45:4 46:5,7,8,11 47:6,25 48:9 55:25 59:7,11 59:18 71:5 72:16,17 73:6 73:7 74:13 75:4,10,14 84:2 85:8,22 101:11,12,14 105:8 122:20 124:5
letters 15:23 16:16,17 31:8 31:10 32:1,13 32:17 41:15 103:25 104:8,9
life 66:16
likely 76:9
limited 51:25
limits 62:1,5,11 62:16,23 63:6 66:1 67:22,25
line 57:21 122:3,18 126:4 126:7,10,13,16 126:19
list 7:22 96:17
listed 34:11,17 39:9 115:5
lists 97:6,7
litigating 80:15
litigation 11:14 11:19 14:13 56:22 66:8 80:14
little 3:10 12:12 12:21 13:20 16:1 18:12 29:2 45:19 48:4 67:18 80:20 85:13 94:7 115:9 119:6
live 119:16,17 119:18
llp 1:6 2:13
load 9:25 10:2
location 1:12 58:24 65:12 92:8
logic 85:14
long 4:11,12 5:10 14:15 26:8,14 90:17 113:6
longer 15:23 16:16 21:19,23 24:19 28:10 35:11 52:11 80:9,10 85:7
look 20:10 21:18 46:11 49:12 50:19 72:9 73:5 78:21 94:17 96:24,25 107:8 107:8 109:21
looked 108:8
looking 34:9 47:24 57:18 62:25 65:24 67:17 74:3 76:13 110:19 115:19
looks 30:6 42:9 71:14 77:3 79:17 85:14 86:22
lot 12:4 13:20 39:25 40:2 58:16 59:2 64:19 65:15 103:8
lovell 1:12 2:14

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

lumbar 92:14

m

m 1:9 3:1 122:4 125:5 126:2,24 127:2,4,12
made 21:17 24:17 27:16 28:6 34:20 35:3 45:8,9 118:14 127:5
mail 95:5 98:15
mails 95:5
main 7:11 65:11
maintained 93:4
major 64:23
majority 13:11 13:11 38:19,20 82:10,12
make 3:18 20:16 22:2 26:2 27:1,4,20 27:23 39:4 53:19 67:2,5 89:25 113:3 117:3 118:7
making 48:10
mal 12:22
management 65:21
manager 5:9 6:22
march 53:12 70:20 72:1 73:6 75:15 78:16,21 80:22 81:4 95:11 97:12 110:2 123:6,13
marilyn 2:20
marked 17:7 29:14 40:9,12 45:12,15 59:23 60:4 71:24 72:2 75:19,23 80:19,23 82:23 83:1 86:6,8 90:20,23 100:4 105:7,10 112:10
masty 2:19
matches 45:12
matter 41:17 119:23
maucher 1:6,6 2:13,13,19 3:11,11 30:16 30:16 31:11,12 32:2,3,14,14,22 32:22 33:3,3 33:24,25 40:11 40:16,23 42:20 44:16,17,23 45:5 48:12 59:11,16 60:9 60:22 67:24 70:15 72:14 73:19 87:24 104:4 122:21 125:4 126:1 127:1
md 1:9 3:1 40:11 122:4,21 125:5 126:2,24 127:2,4,12
mean 7:3 10:1 19:6 26:10 43:24 56:5 57:15 67:9 74:12 85:3 86:24 95:17 104:12 108:25 109:2,13 117:1 119:22
meaning 41:18 67:24 109:3 111:25
means 11:7 30:20 52:22 85:10 99:6
meant 29:22 32:23
mechanism 57:6,7
med 12:22 87:3 87:12,13,14
medicaid 51:3
medical 7:21 18:21 21:12 31:12,18 32:4 33:15 37:23 39:8,10 41:12 49:18 52:5,20 57:6,17 61:9 69:3 70:1,2 75:5 89:3 101:19 102:1 103:13 114:9
medically 18:11 99:8 105:5
medicare 51:3
medication 7:22
medicine 11:21 36:25
meds 8:3
melinda 82:19 83:8,17 84:14 85:14
member 28:22 55:7 59:17 60:18,22
members 28:23 39:4 40:1 59:18
mention 22:24 102:4
mentioned 10:11 23:20 34:21 51:4 68:8
mentioning 44:18
mentions 48:6
mess 29:5
met 3:10
michael 1:6,16 2:13 40:11

121:3,17 122:21 125:4 126:1 127:1
mike 3:11 30:16 31:11 32:2,14,22 33:3,25
million 104:14
mind 82:18
mine 26:5
minute 16:6 29:9 71:20
minutes 71:16 71:16
missed 10:17 11:11
missing 86:19
misstatement 52:8
model 37:13
monday 82:25 123:16
money 109:16
month 12:6,7,8 12:9 26:20 118:1,4
months 26:21 26:22 64:2 84:7
morning 46:14
motorist 68:9 68:12 83:23 103:6
mouth 39:25
move 26:7
moves 77:25
multipage 90:22 105:8 123:21 124:4
multiple 31:8 60:2 86:19 106:17 108:7 123:1

n

n 122:1
name 3:4,9 5:13,17 76:14 77:5 79:22 90:4 95:14,16
named 10:22 42:15 43:12 73:11
names 5:3 9:6
nature 102:8
necessarily 11:18 15:15 18:19 21:10 104:18 107:12 109:10 117:16
necessary 105:5 107:9 127:6
necessitating 43:2
need 4:9,12 23:5,6,9 35:24 61:18,23 63:10 66:11,12,13,15 66:18 77:20 103:10 105:4
needed 59:1 61:1 66:19
needs 36:22 66:10,22
neighbors 14:17
neither 121:8
network 21:23 22:9,17,20,22 23:17 24:19 28:13,21 34:23 35:5,11 36:9 37:20 38:10 50:13,17 51:7 51:8,23,25 52:1,6,11 54:1 54:3,4,16,18 55:2,4,5,10 74:21 79:5,7,8 79:10,11,16 80:7,8 81:23 82:3,5,7,15 93:17 96:13,19 96:21,23 105:22 109:6 110:8,15 111:9 111:18,25 113:24 115:12 115:24,25 116:3,9,10 118:23
networking 87:8
neuro 61:3,17 62:22 69:20 101:7,7,14 103:2 109:4
neuro's 62:13
neurosurgeon 27:3
neurosurgery 1:3 2:2 3:12 4:23 5:8,22,25 6:16,20 8:22 9:22,25 10:22 11:1,9,13 14:6 16:15 17:10 23:2 24:7,10 25:4 26:16 33:4,16 34:1 37:3 38:3,5 40:5 41:16 46:23 47:5 49:4,9 50:11 50:16 51:3,14 51:21 52:10 53:19,25 55:17 55:19 57:24 60:18 64:5 76:20 79:6 84:20 88:11 91:20 98:1,15 111:25 112:9 112:13,25 114:25 115:11 115:13 118:2 118:10,12,16 124:10 125:4

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

126:1 127:1
neurosurgery's 45:6 74:19 77:18 92:10 103:16 111:21
never 17:15 35:2 82:12,18 87:22 91:10 93:13 104:14 104:15 120:9
new 18:5 21:19 21:20,20,21,21 21:23 23:21,21 24:5 34:18,19 35:1,8 37:6 96:10,10 106:25 107:22
north 67:20
notary 121:4 127:13,19
note 23:7,7 41:6 65:6 81:10 125:10
noted 41:9 127:7
notes 107:24 110:14,19
notice 15:14 85:7 92:4 97:24
notification 25:23 40:19 56:16 103:1
notified 27:7 114:8
notifies 50:21 70:8
notify 25:13 52:10
notifying 36:15 70:15 83:16,25 97:25 101:1 115:3
number 10:7 21:7 23:16 29:9 46:11,23 46:24 47:2 77:5,5 91:23 97:1
numbers 29:4
nurse 7:19
nurses 84:12

o

object 34:3
objection 30:18 47:12 48:17 68:3 74:6 85:25 102:19 115:6
obtained 115:17
occasion 64:13
occupation 68:22
occur 48:6 51:15
occurred 26:19
occurrence 11:4
offer 57:15
offered 26:4 49:8
office 5:9,23 6:3,3,7,10 7:7 7:10,12 8:8 21:20 23:22 24:1,23,25 25:1,14,14 28:20 40:23 49:15 63:6 65:25 79:1 91:9 93:3,13 95:4 97:20
officer 114:7
offices 2:4 5:24 7:23
official 88:14 121:12
oh 12:23 21:9 22:4 57:21 82:18 108:17 116:22
okay 4:1,7,8,14 9:24 18:12 20:3 27:7 29:16,21,23 32:21 34:9 36:14 41:14 43:5 44:23 45:18 46:10 47:4 49:7 51:11 52:4 59:14,22 62:4 66:19 71:13,15 76:19 77:17 80:18 84:5,18 88:17 93:3 96:24 97:14 98:24 100:17 101:22 102:25 105:18 106:5 107:4 111:5 112:3,24 113:10 115:9 116:12 117:16 117:22 118:21
old 24:16 25:14 34:19,24
once 10:10
onebeacon 31:17 69:1,9 69:12
ongoing 58:5
open 23:24 24:10 26:15 57:13
opened 24:1,23 24:25 25:1 64:4 118:2
opening 26:16 28:17
operate 80:9,10 90:11,17
operations 7:7
operative 23:6 65:6 81:3,7,10 107:24
opportunity 26:1

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

opposite 116:9
order 49:14 60:15 95:2
organization 113:23
ortho 101:7
orthopedics 1:3 2:2 4:23 24:7 51:21 101:7 112:10,13 124:11 125:4 126:1 127:1
outlines 43:23
outlining 43:20
outpatient 26:13 110:1,20 110:21
outside 17:2
outstanding 30:11
overburden 27:6
owing 58:1
own 26:2 90:15
owner 80:12 82:10,12
ownership 65:17 80:3,15 81:19

p

pa 53:7,8
package 97:23
packet 10:20
page 18:20 29:13 40:10 45:14 60:16 70:11 71:25 75:21 80:21 81:2 82:24 86:7 91:4 92:3 92:20 96:25 97:1 98:7 100:2,8 105:13 110:23,25 111:1 113:11 113:12 117:12 122:3,18,19,23 123:4,7,11,15 123:18,24 124:1 126:4,7 126:10,13,16 126:19
pages 59:24 109:22 112:8 117:2 124:8
paid 30:13 49:4 58:3 72:18 73:16 74:1 98:21 101:2
pain 66:18
paper 32:25 60:1 91:8,8,10 91:19 94:23
papers 33:1
paperwork 8:6 8:8,23 18:8 20:14,17 21:6 21:10 22:1 25:2 28:4,5 32:8 34:5 38:8 38:9 40:4 56:4 56:6 67:7 68:5 76:23 91:12 94:6,11,24 95:1,3 106:19 106:21,23,25 106:25 107:4,6 107:8,13,21,22 108:3,8,14 116:7
paragraph 103:9
park 2:10
parker 5:18
part 10:18 15:5 17:8 18:17 21:4,11 22:6 37:22 38:7 42:1 52:7 54:15 56:20 57:3 62:13 69:19 76:19 77:17 88:21 89:18 94:14 95:24 97:23 107:16 109:3,9 110:17 114:17 116:20 117:5
particular 54:8 55:9 66:1 95:2 110:12
particularly 15:19
parties 88:1
parting 26:6
partners 26:5 26:11
parts 77:23,24 95:22 96:1
party 39:16 67:20 83:19 121:9
party's 68:1 103:2
past 11:13 12:15 17:10,20 103:16
pasted 86:23
patient 8:1,3 9:25 14:19,22 15:17 16:20,22 17:3 18:5,5,7 18:11,16,20,24 19:4 20:17 21:2,6,12 22:2 23:12 27:18 28:14 30:19,25 31:4,15 33:9 33:18,21,23 34:18,22 35:1 35:4,21 36:4,6 36:22 38:8,9 38:23 39:20 42:1,5 43:25 44:7,19,22 49:18 50:13,20 55:21 56:8,11 56:22 58:13,18 58:25 62:15

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

63:10 65:1 66:2,9,22 67:3 67:6 69:21 91:13 92:4 93:24 94:6,13 94:15,16,25 95:14,15 96:4 96:12 106:16 106:19 108:7 108:22 109:5 109:10
patient's 49:25 73:2 76:10 88:19 94:5 116:6
patients 7:20 8:7,11,24 9:1,8 10:4,5,7 11:1,6 11:9,12,20 13:9,9 14:1,2 14:25 17:11 18:18 19:8,25 20:11 21:14,17 21:24 22:16 25:9,11,13,24 26:5 27:1,15 27:17 31:12 35:2,3,9 36:15 37:11,19,22 38:4,25 39:2,3 39:6,23,25 40:1,3 50:21 52:11,16 54:7 54:16 55:15 56:10,21,25 58:17 67:8,10 68:15,16 76:4 76:22 95:3 96:2,8 97:24 109:19 114:14 115:3 116:4 118:8,13
pay 11:7 30:21 44:14 49:8,9 67:4,6,8,12 75:5 96:9 99:10 109:19 116:5
paying 99:7 101:4
payment 11:6 33:14,15 48:10 57:23 58:8 67:11 98:25 99:3 112:4
payments 50:2 58:2
payroll 7:6
pdfs 91:11
peaceful 26:6
pendarvis 2:4,4 29:8,12 30:18 34:3 47:12 48:17 68:3 72:4 74:6 85:25 102:19 115:6 120:1,10 125:1
pendarvislaw... 2:6 125:2
pending 80:14 121:9
people 10:8 20:13 36:20 66:10 77:22 94:8,9
perfect 3:22 4:22
perform 18:10 64:8,20 65:8
performed 64:5 65:3 66:20 70:19 81:22 91:25 99:18 108:16
performing 65:12 75:14 106:10 111:17
period 28:19 118:11
person 7:11,14 68:18 109:11
personal 89:13 89:13
personally 44:19
perspective 32:11 38:13
phone 7:1 21:7 78:7
phrase 51:5
physical 8:4
physician 13:5 13:10
pick 78:12
place 17:4 36:24 81:16
placed 106:14
plaintiff 1:4 2:2 10:22 13:10
plaintiff's 12:18,25 13:2 13:7
plan 11:6 51:18 98:25 99:3,5 110:12 115:15 115:16 119:4
planned 107:9
plans 51:4 118:25 119:2
pleas 1:1
please 25:20 42:18 73:14 89:23 113:24
pm 1:11 60:3 80:22 100:3 120:18 123:3 123:14 124:3
point 19:5 28:9 41:5 42:2 44:18 56:2,3,7 67:23 75:17 77:11,14,16 91:20 93:9 98:9,20 99:7 101:13,22 103:8 105:23 117:9 118:17

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

points 57:19,22 101:10 113:13
policies 8:22 9:12,15,18 52:15 55:16,20 79:4 89:1,21 90:1 96:8,10 114:15 117:4 118:23
policy 10:14 15:5,16,22 16:15,17 18:15 36:23 44:21,24 45:3,6,15,18 46:25 47:1 49:13,17 54:15 54:21 55:14,23 56:15 58:4,14 67:20 68:2,18 69:1,12 88:10 88:14 89:5 93:7,10 96:15 97:25 99:9 104:14 105:24 106:1 109:17 112:24,25 114:3,3,10,17 114:21,23,25 122:25
pool 119:11
poor 87:17
population 39:20
portal 23:18 55:6
portion 13:19 39:19 49:9,10 73:16 74:1
portions 103:13
posted 20:8
postop 27:22 98:18
postoperative 98:3
postops 100:23 118:6
potential 43:20 43:21 58:5 59:15,15 66:7 67:18,25
potentially 105:12
power 39:9,10
ppo 51:6,8 109:6 115:16 115:18 118:25 119:2,4,4
ppos 115:14
practice 13:11 13:19 15:24 18:17 19:16 20:2 21:13,16 21:21,23 22:6 24:8,17,18 25:6,16 26:25 34:19,20,24 35:8 36:2,6,14 36:25 37:6,19 39:12 41:22 53:18,19 54:12 56:6 58:23 62:14 69:20 74:19 76:19 77:18,19 82:2 84:19,19 88:22 89:1,3 91:14 92:11 94:22 95:25 96:4 107:16 109:9 114:9,13 115:4 116:24 118:15 118:18
practicing 24:3
preexisting 101:19 102:1,5
preferred 113:23
premarked 29:1
premiums 96:9
preparation 92:5
prepare 94:1
prepared 113:18
preparing 110:4
present 2:22 21:5,9 39:7 51:12 57:4 113:24
preservation 88:10
pretty 6:25 29:4 117:20
previous 25:5 35:18 98:21 106:23,24 107:19
previously 76:1 105:14
primary 14:16 40:2 51:15,22 51:24 52:1 54:22 55:1
print 113:13
printout 112:18
prior 8:6 15:22 16:14,15 19:3 24:14 25:24 32:22 41:2,3 41:23,25 47:19 53:11 59:7 69:15 76:5,20 78:24 81:11 87:11 96:5 106:13 107:5 110:4 113:8 115:4 117:9
privacy 113:14 119:21
private 51:6,8 70:23 72:18 73:16 74:2,3 74:16,20 113:22 115:22 115:25 116:1

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

119:21
privileges 64:15,23
probably 5:11 15:3 26:22 37:10,15 61:19 62:6 71:11 89:1,24
problem 62:20 64:1
procedure 20:1 23:8 64:3 107:1,5,9,24
procedures 8:22 55:20
proceed 63:11
proceeds 42:24 43:7 48:1,13 48:16 49:5,10 73:17 74:5 103:11 104:11
process 26:8 80:14 118:5
promised 104:13
proof 67:11
protect 42:23 43:6 48:1 73:16 74:1,4 104:10
protecting 48:15
protection 15:1 15:4,13,20,23 16:16,17,23 17:1,7,12,21,23 19:1 31:8,8,11 32:1,1,12,13 40:22 41:15,23 42:4 46:6,7,9 46:11 47:6,25 56:1 59:8,11 59:18 71:5 72:16,17 73:7 74:13 75:11 84:2 85:8,22 101:11,12,14 104:8,9
protections 32:13
provide 15:13 18:4 20:1 23:1 23:2 33:11 39:14 41:12 54:1,10 63:8 66:2,5,24 67:12,21 85:22 94:25 97:16 109:2,4 116:10
provided 6:6 19:18 30:3 32:7 43:2 45:7 53:6,22 55:9 55:10 69:4,25 77:4 78:15,25 83:14 93:20 96:2 98:22 99:23 103:18 104:6 105:21 106:1 112:6,21
provider 4:22 12:11,13 18:10 54:9 57:24 63:13 79:1,16 110:9 113:23
providers 22:16 23:17 25:17 50:17 52:5,12,20 54:16 103:12
provides 52:1 96:18 116:8
providing 19:11,14 41:2 41:4,24,25 44:2 54:4 58:25 67:17 69:16 72:15 76:20 85:7 100:18 111:16 118:17
provision 52:9
public 121:4 127:19
pursuing 31:16 69:2
put 69:20 70:4 104:22
putting 17:2 41:18

q

qualification 51:22
question 4:14 4:18,20 16:11 20:15 36:20 39:22 46:5 55:12 70:13 89:23 111:6 116:1 119:11
questioning 47:17
questions 3:18 3:23,25 4:1,3 16:1 20:19 23:10 37:6 58:13,16,17 60:15 86:12 94:8 97:15,17
quick 42:13 71:20 78:2 117:20
quote 102:22

r

r 126:3,3
random 58:25
rare 62:24,25
rarity 14:18
reach 62:10,14 62:23
reaching 60:21 61:25 62:5
read 41:1,3,10 45:21 69:14 113:12 120:15 125:9 127:5
reading 115:20
reads 113:22
ready 94:18 95:4

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

real 42:13 78:1 117:20
really 10:6 11:15 14:4 15:14 17:15,17 17:18 19:16 22:15 32:10 42:6 45:24 70:2 84:11 89:24 108:12 114:24 120:8
rear 2:25
reason 18:23 32:13,18 38:22 46:18,20 47:5 96:7 97:14 98:19 99:20 106:2,5 107:15 108:11 125:11 126:6,9,12,15 126:18,21
reasons 33:24
recall 34:15 36:16 37:16 41:6 59:13 61:11 62:9 63:4 72:23,24 75:10,17 84:6 94:4 100:13,23 100:24 103:17 105:14 108:6 108:10 118:3
receipt 125:18
receive 16:25 42:24 49:14 73:18 96:16
received 46:8 47:6,9,11,18,22 48:14 85:11 98:8 99:10 101:14 103:12
receiving 41:18 59:7
recently 24:23
receptionist 51:13 53:10 113:25
recess 16:9 71:21 117:23
recognize 76:16
recognizes 58:4
recommendat... 104:19
recommendat... 104:21
record 3:4 72:3 72:6 78:4 79:19 90:21 99:25 100:1 119:21 121:7
records 25:5 91:24
recovery 43:16 43:22 48:7 74:25 75:6
reducing 103:21
refer 40:1
reference 69:11
referenced 37:23 95:22 125:6
references 68:25 101:9 102:14
referencing 54:2 102:10,16 102:18 103:10
referral 39:21 39:22 45:8,9
referrals 13:16 13:23 14:3,14 64:12,14,17,19
referred 42:25 73:18
referring 23:22 31:7 33:2 43:13 51:7 73:11 74:24 94:2 95:13 99:19 101:25 110:17
refers 42:15
regard 42:14
regards 73:10
reiterates 52:18
rejected 113:15 117:13
related 40:23 112:5 121:8
relationship 31:2 32:19,21 32:23,23 33:9 33:10 103:24
release 9:12 10:13 18:15
relevant 18:23 19:20 24:14,22 30:3 46:1 47:20 48:14 69:22,24 70:2 88:15,18 107:6 107:18
relief 66:17
rely 9:5
relying 52:10
remember 16:14 24:12 26:18,23 34:14 69:18 107:14 108:24 118:4
remind 96:12 117:25
reminder 35:16
remove 29:7
repaired 99:1
repeat 4:5,17 4:19 16:10 111:6
rephrase 4:4,17 4:18
replace 27:9
replied 85:16
report 81:4,7 109:23
reported 1:16

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

reporter 1:16 3:3,6,16,23 16:5 25:18 78:1 79:17 121:1,3,18 122:7
represent 3:11 105:25
represented 45:2 99:17
request 16:18 17:15,24
requested 122:10,13
requesting 16:16 21:3 101:17
require 17:20 70:16
required 70:9 76:4 113:6 114:16 127:13
requirement 89:4
requires 116:23
requiring 116:21
respect 55:17 94:24
response 85:17 117:2,6 120:11
responsibility 32:17 50:1
responsible 7:5 15:17 30:16,20 30:24 31:1,5 31:12,15 32:3 32:7,9,15 33:4 33:14,21,25 36:11,13 39:16 43:16 44:19,22 49:18 52:6,7 54:17 67:15 75:1 99:15 109:14
restrictions 36:23
result 15:3 116:18
results 116:20
return 125:13 125:17
reverse 60:14
review 18:6 19:3,6 55:25 81:11 107:4,21 125:7
reviewed 41:5 56:2,4 75:13 75:16,17 108:14
reviewing 18:22 56:8 100:15 105:12
revision 107:19
right 4:16 24:4 29:20 31:4 36:5 40:8 42:8 47:24 50:19 55:2 59:22 73:5 78:14 82:22 90:19 91:1,22 92:24 100:6 101:6 102:12 110:25 112:20 120:15 120:16
ringed 108:17
roberts 1:16 121:3,17
role 6:19 7:17 7:18 82:13 84:15
room 20:22 64:11
roster 10:3
roten 82:19 83:9

s

s 2:19 122:16 126:3
s1 92:15
safe 85:20
safer 65:2
sake 47:16
save 89:6
saving 59:25
saw 16:20 22:4 37:2 47:19 56:17 72:23,24 84:5
saying 25:19 54:25 67:7,19 71:15 77:14 107:11 108:17 108:18
says 15:17 21:1 35:6 43:8,15 44:4 48:3 54:21 68:4 70:17,25 71:1 71:6,7 73:14 83:24 84:4 92:25 102:23 110:24 116:6
sc 1:14 2:5,10 2:16,20
scan 91:13,14
schedule 10:8 20:12,13 27:4
scheduled 92:14 100:22
schedules 26:25
scheduling 84:22 92:7 94:5 106:22
school 87:4,12 87:13,15
scott 72:15 105:9 124:5
scratch 29:11
screenshots 112:9 124:9
seal 121:12
second 3:17 57:18,21,21 60:16 92:3

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

102:2 106:4,7 106:10,18 107:11 108:16 113:11
section 50:20 50:22 52:5 97:20 113:10
sections 50:5 77:19 113:16
security 87:4
see 8:3 10:11 16:13,20 17:14 24:20 25:16,17 39:20 50:7 52:21 78:12 92:4 94:7,15 111:1 113:15
seeing 8:6 10:5 58:18 98:5 105:15 118:6
seek 15:15
seems 12:3,4 43:20
seen 16:22 21:17 22:2 34:12,19,19 35:2,3 44:7 45:25 60:13 72:21 83:4 86:14 91:4,5 100:14 110:3
sees 7:20
send 14:11 40:3 63:13 94:9
sending 14:22 81:3 103:10
sent 14:19 29:6 40:23 46:19 47:7,17 86:21 86:21 87:22,25 88:1 98:14 101:23 105:14 125:14
sentence 51:5 52:4 57:20
separate 118:15
series 60:6 83:8
serve 13:13
served 12:14,14
server 88:14
service 34:13 85:7,10 94:24 110:21
services 9:9 15:13 18:4 21:3 30:2 41:24,25 54:9 64:16,16 66:3 66:6 67:4 69:3 69:16,16 78:16 98:8,21 99:10 112:21 118:17
settlement 42:24 43:7 48:1,13 49:5 49:10 73:17 74:4 103:11,19 104:10
settles 49:1
several 11:16 19:17 64:1
shaded 95:13
shading 95:19 95:21
shakes 12:19
she'll 8:3
sheet 125:11
shield 53:11,23 54:3 79:3 81:24 82:4 93:5,10,14 101:2,18 105:9 105:20 110:9 111:13 112:1 118:12,18,23 124:6
show 67:10,11 75:19
shows 88:2 97:16
sic 5:15
side 12:18,18 13:1,2,8,8 18:21 21:12 37:23 57:6 72:10 120:9
sided 29:25 30:1
sign 9:1 19:8 20:7,13 22:1 35:6 55:15 67:7 120:15 125:12
signature 95:16 121:17
signed 32:8 45:22 47:22 49:14 52:17 55:23 94:20 114:4 125:20
significant 62:19
signs 38:9
similar 74:12 74:15 76:8 95:12
single 35:1 92:12 96:6 100:8
sitting 34:14 38:16 47:4 48:22 55:22 62:9 97:10 108:12
situation 62:21 63:5 66:6,22 103:17 108:5
six 24:1
sixth 96:24
skyler 2:15 3:10
slate 28:1
slow 25:20
slower 25:21
small 113:13
social 89:8
socials 88:19

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

solutions 125:23
somebody 10:10,10 20:21 27:9 55:13 57:10 62:18 86:23
somewhat 80:17
son 78:12
soon 10:8 117:21
sorry 9:4 24:9 34:10 57:21 105:2 110:18 115:12 120:6
sort 7:7 15:10 20:24 41:11
sounds 46:4
source 58:3,10
soured 15:11
south 1:1 87:9 90:11 121:4,13
sowell 2:9,9 9:23 11:16
sowelldurant.... 2:11
spam 88:18
speak 3:18 11:9 16:1 33:8,17 63:3 66:4 68:5 69:5 80:13 85:12 86:1 94:20 95:19 101:5 108:23
specific 7:8,14 8:13,16 9:6,7 17:22 20:14,16 28:6 33:23 36:17 38:17 58:23 76:25 77:19 82:15 88:16 94:22
specifically 8:1 35:20 37:16 94:4 95:14
specifics 63:3
specify 48:11
spot 27:3
spread 103:11
ssn 95:14
stack 56:12,14
staff 4:25 5:2 5:20 7:6 18:19 21:20,25 23:21 28:20,22,23 35:5 37:20 49:21 55:7 58:15,19 59:17 59:17 60:18,22 61:1 67:25 84:11 89:6 94:5,18 95:5
stair 1:12 2:14
stand 44:9
standard 8:8 8:25 10:20 15:5 37:19 52:15 54:12 56:6 62:14 88:21 114:13
start 19:14 29:3 60:15 94:6
started 19:16 87:3,14
starting 118:6
starts 21:12
state 1:1 3:3 75:8 114:6 116:3,9 121:4
statement 54:20 68:6 113:14
states 51:2 57:23 87:9
status 31:21,22 49:2 112:4
stay 35:17
stick 94:8
stickers 29:7
stipulates 104:12
stipulations 58:9
stopped 22:7 22:12
storage 88:12 89:2 90:1
street 1:13 2:5 2:10,15,20
strike 119:22
strokes 39:3
stuff 8:4 13:22 59:2 65:15 84:12,23 87:15 89:5,14
submit 7:15 22:12 23:11,12 28:14 38:5 52:2 79:9 93:14
submits 53:25
submitted 56:9
submitting 28:18
subpoena 57:1
subscribed 127:14
subsequent 102:7
substance 69:23 78:9
suddenly 88:1
sued 11:1
suite 1:13 2:10 2:15
supervisors 61:1
supposed 77:21 104:23
sure 3:18 10:1 15:3 20:16 24:12 27:1,4 27:20,23 37:17 39:2,4 46:21 48:24 62:8 77:11 85:9

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

101:25 110:17 113:3 116:11 117:3 118:7
surgeries 19:20 20:6 63:14 64:6,13,20,21 65:3,8,14 81:22 83:13 104:3,5 106:13 106:17 108:7 117:9
surgery 20:8,12 20:13 27:20,22 29:17 31:17 37:12 44:3 52:17 53:11 62:8,19 63:1 63:11,20,23,25 64:9 65:5,9,12 65:13,18,22 66:10,10,11,13 66:15,17,18,19 66:23,25 67:12 70:10,16,19 75:15,23 76:6 76:21,25 77:1 78:21,24 79:9 79:11,21,22,23 79:24,25 80:2 80:4,7 81:5,15 81:15,23 82:3 82:9,11,14,18 83:10,17,22 84:1,10,21 85:6,12,16,23 91:24 92:5,9 92:12,21 94:16 96:6 97:1,5,6,6 97:11 99:18,19 99:20 101:5 104:22 105:3 106:4,7,11,18 106:20,21 107:11,13,19 107:19,22 108:9,15,16 109:4,25 110:1 110:8,15,16,20 110:22 111:9 111:10,16,17 111:18,22 113:8,8 123:10
surgery's 111:19 112:5
surgical 19:7 38:1 97:24 106:21
surprise 26:18
surprises 19:24 112:19
surrounding 92:9
suspect 88:3
swilson 2:17
switch 26:19
sworn 3:2 127:14
system 91:17 91:20

t

t 122:16 126:3 126:3
take 3:13,23 4:10 7:1 13:9 20:11 25:9 26:5 27:3 28:23 37:5 49:12 62:7 67:5 71:19 80:20 85:3 94:9 109:21 117:19
taken 1:15 25:3 32:17 56:14
talk 25:21 38:1 56:13 94:6,19 108:21
talked 59:17
talking 114:22
talks 58:16 74:16
tangent 48:5
tell 20:10 21:16 27:16 35:12,14 38:8 52:13 57:16 66:12 114:13
telling 36:17 70:22
tells 21:25 35:5
ten 91:4
term 52:20,22
terms 41:19
testified 3:2 18:12 32:11 53:24 69:7 84:15 95:24 104:17 105:3 106:11 110:7 115:1
testimony 20:3 78:9 87:20 125:9,18 127:8
texts 78:8
thank 3:6 16:7 120:8,13
thanks 71:15
therapists 14:16
thereof 121:10
thing 13:15 14:23 78:6
things 9:13,19 11:5 19:9 20:23 21:7 23:8 64:13 88:19 113:4,5
think 5:18 10:11,19 15:10 17:11 20:10 24:11 32:11 37:22 40:17 47:13 48:4 52:8 53:8 62:25 66:9 69:7,23 70:12 70:19 71:2 96:25 106:11

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

108:13 110:7 113:11 114:12 115:1 117:19 120:5
third 92:20
thomas 2:4,6 29:6 59:25 100:5 125:1,2
thornwell 2:9
thoughts 42:13
threads 60:2 123:2
threatening 66:16
three 37:18 80:21 101:9 110:24 112:8 113:13 123:11 124:8
throw 88:9
thursday 72:1 123:5
time 1:11 10:5 10:11 14:15 16:2 25:19 27:2 28:21 37:2 47:7 51:13 53:3,5,8 55:23 56:7 72:24 77:7 81:18,19,22 82:9 84:5 86:22 92:25 93:20 100:13 101:3,23 113:25 120:8 125:19
timeframe 125:8
times 12:1,5,7,8 21:25 39:8 54:6,8 78:7
timing 71:14 94:23
tina 60:8,21 61:25 62:5 67:17 69:15 70:7,14 72:14 81:3 83:16 85:16 86:8,14 100:9,25 102:3 123:20
tired 26:11
title 68:23 82:21
today 3:13,23 4:11,12 20:3 21:1 28:5 34:14 38:16 47:4 53:24 55:22 62:9 87:21 97:10 101:20 108:12
today's 100:15
told 26:11,17 26:23
took 25:11 81:15
top 40:19 46:15 81:14
total 30:6
totally 24:18 118:14
touch 78:11
town 39:24
track 10:4,6 11:15 14:4 17:19
tracking 87:16
tracks 14:7
traditionally 16:19
transcript 2:25 3:24 120:15 121:6 125:6,20 127:5,8
transfer 27:16 28:6
transferred 26:9 27:15,24
transferring 25:24,25 65:2
transition 27:5 118:11
transitioned 25:8
transpired 16:9 71:21 117:23
travels 7:23 58:19
treat 14:18,25 18:16 38:25 56:25 106:17
treated 17:11 21:22 28:16 47:23 63:12
treating 12:11 12:13 13:4,10 19:3 21:15 59:5 62:16 99:8 106:16 107:10 108:6 109:9,11
treatment 6:5 14:12 15:9 18:24 19:5 24:13,14,21 37:24 40:24 41:4 43:2 44:8 49:14 58:25 59:12 63:8 70:23 71:4 84:2 85:22 93:20 100:18 100:18 103:18 104:18,20 105:21 106:2 112:5 114:9
treatments 34:17
trial 119:7
trident 24:5
tried 93:13
triggered 71:9
true 36:8 121:6 127:8
trust 34:4 48:22 67:6,7 109:19

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

trusted 31:2,6 32:19
try 4:6 11:5,20 12:20,20 20:24 113:2
trying 23:3 32:10 78:11
tuesday 80:22 123:13
turn 11:17
two 5:2,24 6:13 6:14 40:10 46:13 50:5 59:24 61:15 71:25 83:13 84:25 104:2 109:22 122:19 123:4
type 9:12 13:14 13:21 14:23 17:22 19:9 20:23 21:7 23:8 39:13,20 58:8 69:21 88:16 89:5,14 89:20 92:11 94:11,23 110:21 114:15 118:13
typically 17:24 39:11 42:6 64:22 85:4

u

uim 102:12
ultimately 15:17 30:20 31:1,5,14 32:6 33:21 36:10 44:22 49:25
ultra 22:2
umbrella 24:7
unbelievable 104:3
undated 86:11
under 14:25 15:13 17:12 22:11 24:6 31:10,14 37:2 52:25 53:2,5 71:4 84:2 85:8 85:22 110:21
underinsured 68:9,12 83:23 103:5
understand 3:14,19 4:5,14 39:5 51:14,20 54:16,25 60:21 87:24
understandable 118:9
understanding 32:16,24 38:10 42:22 43:4,9 44:7,9,18 49:7 52:22 53:13 60:23 68:15,20 69:1 70:10,18 70:25 71:5 81:21 93:16,19 102:25 103:23 110:10 111:14
understood 4:19 36:18
unfortunate 103:7
unfortunately 15:11 74:9 75:2 87:19
unit 2:5
unquote 102:22
update 71:15 113:2
updated 113:1
updating 83:21
use 15:2,2,4 36:2 42:6 85:13 89:12,13 97:20 109:15 109:15
used 61:9 82:20 114:8 125:20
using 36:1
usually 9:7 13:14 14:14,21 14:22 57:1 96:20 98:17 116:4

v

v 125:4 126:1 127:1
valid 105:24
validity 68:5
valz 1:12 2:14
varies 61:22
various 103:12 106:12
vast 13:11
vehicle 73:22
verdict 58:2,10
verification 9:11 10:13 18:15 50:25 52:19 56:16 75:22 76:1,5 92:21 94:3 95:6,11 96:5 96:17 106:6,21 108:15 123:9
verify 47:8 85:10 114:7,17 115:11,16 116:24 125:9
verifying 115:2 115:10
veritext 125:14 125:23
veritext.com. 125:15
versions 79:4
versus 13:8 82:2
video 38:11,17
videoconfere... 1:9

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

view 38:11
visit 34:21 35:15,16 56:11 98:4
visitation 94:14
visited 94:12
visits 98:18
vs 1:5
vtc 2:8,23

w

wait 29:9
waive 103:20 120:16
walk 42:12
want 20:10,16 36:11 86:12 89:11,25 94:16 94:18 96:11 108:13 109:14
wanted 25:11 26:11,12,24 27:4 37:10 117:3 118:7
wanting 66:11
way 16:21,23 21:22 23:17,19 34:6 38:23 55:4 58:2 59:21 86:3 111:11 119:25
ways 26:6 52:13
we've 11:16 19:9,24 28:4 35:19 45:19 50:10 51:4 85:14 91:10 97:2 113:5 114:14
web 114:19
website 112:13 114:19,22 115:5,20 116:14 117:1,2 117:7,8
wednesday 60:3 123:2
week 61:21,22 61:22
weeks 61:19,19 64:1
weinberger 2:23 6:15 15:25 16:7 72:11
went 27:9 28:1 74:13 101:11 101:19
wife 38:12 78:12 119:10
willing 67:21
wilson 2:15 3:8 3:10 16:12 25:21,22 29:6 29:10,15 30:22 34:8 40:14 45:17 47:15 48:20 59:25 60:5 68:7 71:19,22 72:7 74:11 75:24 78:3,5 79:20 80:24 83:2 86:4,10 90:25 100:5,7 102:24 105:11 112:11 115:8 117:24 120:3,5,7,12 122:6
witness 3:5 12:11,15 13:13 14:23 16:10 30:19 34:4 47:13 48:18 68:4 74:8 76:14 77:25 86:1 94:1 102:20 115:7 120:4,6,14 121:11 125:8 125:10,12,19
witnessing 95:8
word 11:11 16:14,14 39:25 44:9 86:23
wording 44:6 74:15
words 27:19 94:15
work 6:11 11:5 11:6,20 13:21 26:13 52:25 53:1 61:16,21 82:20 89:15
worked 11:16
workers 13:17 13:24 14:4
working 53:4 99:1
workmen's 117:13
workmens 113:14
works 26:8 61:18
worried 15:19
wow 12:23
write 81:8 119:23
writing 95:7 114:20
written 19:25 32:8 54:14 55:15,20 67:14 76:14 88:20 89:1,20 90:1
wrong 104:16 115:2

x

x 122:1,16

y

y 5:15
y'all 25:19
yeah 12:8,24 14:21 20:7 27:13 29:8 35:22 45:10 58:22 65:1

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

66:9 74:9,9
78:3 84:22
87:14 99:4
103:7 111:3
120:4,12
year 24:9 26:20
118:2
years 5:12
11:17 19:10,12
19:17 24:1,2
37:18,18 39:24
113:3

z

zoom 79:18

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds

that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

DM

DELUCA MAUCHER

LAW OFFICES

MICHAEL A. MAUCHER
MIKE@DELUCAMAUCHER.COM
(O) (843) 572-1711 • (F) (843) 572-1285
REPLY TO GOOSE CREEK OFFICE

December 20, 2018

FAX MAIL
(843) 553-1008

Jason H. Highsmith, M.D.
9313 Medical Plaza Drive, Suite 303
Charleston, South Carolina 29406

RE: My Client: Scott DeMaskey
Date of Accident: 12/14/18

Dear Sir or Madam:

With regard to the above-named individual, please accept this correspondence as our Law Firm's agreement to protect any claim which you may have out of any settlement proceeds we may receive arising out of the incident referred to above. The above-named individual has been informed that, in the event of insufficient recovery, he remains personally responsible for your outstanding account balance.

With kindest regards, I am,

Very truly yours,

Michael A. Maucher

Michael A. Maucher

MAM/tgb
NOTE: To ensure that this office is aware of your medical lien, please provide an itemized billing statement for services rendered.

DEFENDANT'S EXHIBIT 1
tabbies MR 5/19/23
Highsmith

****
*** FAX TX REPORT ***
****

TRANSMISSION OK

JOB NO.	4427
DESTINATION ADDRESS	8435531008
SUBADDRESS	
DESTINATION ID	
ST. TIME	12/21 02:12
TX/RX TIME	00' 37
PGS.	1
RESULT	OK

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

DELUCA MAUCHER
LAW OFFICES

MICHAEL A. MAUCHER
MIKE@DELUCAMAUCHER.COM
(O) (843) 572-1711 • (F) (843) 572-1285
REPLY TO GOOSE CREEK OFFICE

December 20, 2018

FAX MAIL
(843) 553-1008

Jason H. Highsmith, M.D.
9313 Medical Plaza Drive, Suite 303
Charleston, South Carolina 29406

RE: My Client: Scott DeMaskey
Date of Accident: 12/14/18

Dear Sir or Madam:

With regard to the above-named individual, please accept this correspondence as our Law Firm's agreement to protect any claim which you may have out of any settlement proceeds we may receive arising out of the incident referred to above. The above-named individual has been informed that, in the event of insufficient recovery, he remains personally responsible for your outstanding account balance.

With kindest regards, I am,

Very truly yours,

Michael A. Maucher

MAM/tgb

Fax: (843) 474-0712

ELECTRONICALLY FILED - 2024 Aug 16 2:24 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

FINANCIAL POLICY

- **BASIC POLICY:** The patient is responsible for medical bills in our office. Our staff will help with completion of insurance forms as an accommodation and convenience to you without charge. It is the patient's responsibility to know your contract benefits, assure collection of insurance payments to us, and to negotiate with your insurance company over any disputed claims.
- **IF YOU DO NOT HAVE INSURANCE:** Our policy requires payment in full today, unless other arrangements are made. If you cannot pay in full now, we request partial payment today as you arranged for credit on your account with a payment plan agreement with our credit and collection manager.
- **IF YOU HAVE INSURANCE:** Fill out the insurance section of our form, Carolina Neurosurgery & Orthopedics, Inc. does not accept Medicare, Medicaid or any HMO plan. If you are covered by private insurance or PPO with out of network benefits, please present your identification card to the receptionist at the time of your appointment. I understand, as a courtesy, Carolina Neurosurgery & Orthopedics, Inc. will file with my primary insurance. If after 90 (ninety) days from the date of service from the date of service and/or surgery insurance has not paid, the total balance will be considered due and payable. The Medical Providers are out of network and you may be responsible all or part of your balance.
- **WORKMAN'S COMPENSATION:** In the event it is determined by the worker's compensation board that the illness or injury is not a result of a compensable worker's compensation case, I hereby agree to pay the usual and customer fees for the services rendered.
- **REJECTED CLAIMS:** If your insurance company rejects your claim, or if they pay less than the total bill, our policy requires you to pay the balance in full upon receipt of your statement. If you cannot pay your balance in full after your insurance payment, please call Carolina Neurosurgery & Orthopedics, Inc. and make arrangements to pay your bill.
- **FORMS OF PAYMENT:** We accept payments in cash, check, or money order. Checks must be made payable to Carolina Neurosurgery & Orthopedics, Inc.
- **RETURNED CHECKS:** A $100.00 handling charge is applied to all returned checks.
- **DELINQUENT ACCOUNTS:** Delinquent accounts over 90 days are turned over to our collection manager, unless other arrangements are made. If the bill remains unpaid and satisfactory arrangements for payment are not made, the collection manager will review the account with the doctor to decide appropriate legal action including placing a lien on a third-party case. We reserve the right to addition late charges to delinquent accounts requiring collections action and to addition attorney fees, court costs, and/or collections agency fees. If your account is placed with a 3rd party, they have the right to contact you at any number provided to our office.
- **MONTHLY STATEMENTS:** Once your insurance has paid you are responsible for the unpaid balance. You will receive an itemized monthly statement of any patient balance until your bill is paid in full. Interest of 1.5% (18% per year) will be applied to any amount not paid after 30 days with a minimum charge of $0.50 per month.

If this account is assigned to an attorney for collections and/or suit, Carolina Neurosurgery & Orthopedics, Inc. will be entitled to all attorney's fees and costs of collection.

I hereby authorize payment to healthcare provider for all funds owing to me from my case by way of insurance payments, judgment, verdict or other source which may be paid to my attorney or myself.

In addition to my foregoing, in order to secure my obligation to pay the amount of my charges to healthcare provider, and in consideration for healthcare provider's agreements set forth herein, I hereby grant to healthcare provider, in accordance with the uniform commercial code as in effect in the applicable jurisdiction, a security interest in and lien upon: (I) the proceeds; and (II) all proceeds thereof, in each aseptic whether now owned or hereafter existing, acquired or arising, and wherever located. I authorize healthcare provider to file one or more UCC Financing statements (and continuations thereof) naming me as debtor and evidencing healthcare provider's security interest in such collateral. I hereby authorize my attorney to pay healthcare provider from any proceeds of any settlement, if applicable.

To the extent necessary to determine liability for payment and to obtain reimbursement, I authorize disclosure my records to any third party.

I hereby assign all medical and/or surgical benefits to include major medical benefits to which I am entitled, including private insurance and other health plan.

This assignment may not be revoked by me or anyone else. A photocopy of this assignment is to be considered valid as an original. I understand that I am financially responsible for all charges whether or not paid by said insurance.

I have read and agree to the financial policy of this office.

Scott D

Patient Signature

Appointment Date: 1-3-2019

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2021 Jul 22 2:24 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Tina

From: Kiara Goodwine <kiara@orthoandneuro.com>
Sent: Monday, January 21, 2019 12:11 PM
To: Tina
Cc: 'Scott DeMaskey'
Subject: Re: Scott DeMaskey

Okay thanks for the update !

Thanks, Kiara
Dr. Jason Highsmith
Fax: 843-474-0712
Phone: 843-510-0727

From: Tina <Tina@delucamaucher.com>
Sent: Monday, January 21, 2019 11:58:35 AM
To: Kiara Goodwine
Cc: 'Scott DeMaskey'
Subject: Scott DeMaskey

Kiara,

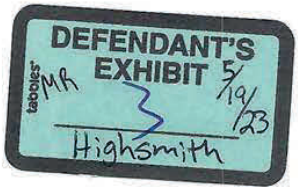
Scott DeMaskey has advised our office that he will require surgery. Based upon the serious nature of his injury, and his pre-existing injuries, we would respectfully request that all of his treatment be filed with his private health insurance company. It would be best for everyone involved if we NOT do the treatment under an Assignment/Letter of Protection.

On a separate matter, please provide this office with the office note and/or documentation which shows the recommended surgery.

Thanks,
Tina

Tina G. Bennett
Assistant to Michael A. Maucher
DeLuca & Maucher, LLP
P.O. Box 9
Goose Creek, SC 29445
(843)572-1711 ofc.
(843)572-1285 fax

www.DeLucaMaucher.com



ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2021 Jul 22 2:24 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Tina

From: Tina
Sent: Monday, January 21, 2019 9:24 AM
To: 'Kiara Goodwine'
Cc: Brooke Dunsil; Kary Garcia
Subject: RE: Scott Demaskey

Kiara,

The at-fault party had a North Carolina Policy of automobile insurance. In order for them to disclosure the limits of their North Carolina Policy, we must provide them with a signed Medical Authorization allowing them to obtain copies of Scott Demaskey's medical records. We are NOT willing to comply with that request. We are therefore unable to find out how much Liability Coverage is on their policy. Because Mr. Demaskey carries $100,000.00 in Underinsured Motorist Coverage on his at-home policy with Safeco, and there is $1,000,000.00 in "Occupational Accident Coverage" to pay bills and wages under the One Beacon Policy, we are not concerned that there will be enough over all coverage to pay the claim.

Thanks,
Tina

Tina G. Bennett
Assistant to Michael A. Maucher
DeLuca & Maucher, LLP
P.O. Box 9
Goose Creek, SC 29445
(843)572-1711 ofc.
(843)572-1285 fax

www.DeLucaMaucher.com

From: Kiara Goodwine [mailto:kiara@orthoandneuro.com]
Sent: Wednesday, January 16, 2019 4:12 PM
To: Tina
Cc: Brooke Dunsil; Kary Garcia
Subject: Scott Demaskey

Good afternoon,

May I please get limits on patient Scott Demaskey DOB Reda /54

Thanks, Kiara
Dr. Jason Highsmith
Fax: 843-474-0712
Phone: 843-510-0727

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2021 Jul 22 2:24 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Subject: **Fw: Scott Demaskey**
Date: 1/3/2020 2:21:54 PM Eastern Standard Time
From: kiara@orthoandneuro.com
To: edweinberger@aol.com

Thanks, Kiara
Dr. Jason Highsmith
Fax: 843-474-0712
Phone: 843-510-0727

From: Tina <Tina@delucamaucher.com>
Sent: Thursday, March 7, 2019 9:34 AM
To: Kiara Goodwine <kiara@orthoandneuro.com>
Subject: Scott Demaskey

Please see attached LOP. This LOP covers whatever is NOT paid by private health insurance.

Thanks,
Tina

Tina G. Bennett
Assistant to Michael A. Maucher
DeLuca & Maucher, LLP
P.O. Box 9
Goose Creek, SC 29445
(843)572-1711 ofc.
(843)572-1285 fax

www.DeLucaMaucher.com

DEFENDANT'S EXHIBIT 4 5/19/23 MR Highsmith

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2021 Jul 22 2:24 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

DELUCA MAUCHER
LAW OFFICES

MICHAEL A. MAUCHER
MIKE@DELUCAMAUCHER.COM
(O) (843) 572-1711 • (F) (843) 572-1285
REPLY TO GOOSE CREEK OFFICE

March 7, 2019

Jason H. Highsmith, M.D.
9313 Medical Plaza Drive, Suite 305
Charleston, South Carolina 29406

RE: My Client: Scott Demaskey
Date of Accident: 12/14/18

Dear Sir or Madam:

With regard to the above-named individual, please accept this correspondence as our Law Firm's agreement to protect any portion of your bill not paid by private health insurance out of any settlement proceeds we may receive arising out of the incident referred to above. The above-named individual has been informed that, in the event of insufficient recovery, he remains personally responsible for your outstanding account balance.

With kindest regards, I am,

Very truly yours,

Michael A. Maucher

MAM/tgb
NOTE: To ensure that this office is aware of your medical lien, please provide an itemized billing statement for services rendered.

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Carolina Neurosurgery & Orthopedics, Inc.

9313 Medical Plaza, Suite 303
North Charleston, South Carolina 29406
Charleston Office: (843) 510-0727
Fax: (843) 474-0712

161 Medical Cir
West Columbia, South Carolina 29169
Columbia Office (803) 764-1813
Fax: (843) 474-0712

Health Insurance Verification Form For Surgery

MRN #: _____

Patient Name: Scott DeMaskey

DOB: 10-13-1954 SSN: 298-54-5127

Insurance Company: Blue Cross Blue Shield

ID #: ZCF470861586493

Group#: 004336

Please Provide a copy of your insurance card

☐ I do not have Health Insurance at this time

Scott DeMaskey 3-7-2019
Patient Name Date

Patient Signature

Kiara Goodwine 3/7/19
Witness Date

DEFENDANT'S EXHIBIT 5/19/23
MR 5
tabbies
HighSmith

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2021 Jul 22 2:24 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Subject: **Fw: Scott Demaskey**
Date: 1/3/2020 2:22:38 PM Eastern Standard Time
From: kiara@orthoandneuro.com
To: edweinberger@aol.com

Thanks, Kiara
Dr. Jason Highsmith
Fax: 843-474-0712
Phone: 843-510-0727

From: Kiara Goodwine
Sent: Tuesday, March 19, 2019 5:44 PM
To: Tina <tina@delucamaucher.com>
Cc: Kary Garcia <Kary@orthoandneuro.com>
Subject: Scott Demaskey

Good afternoon,

Attached is OP report from 3/15

Thanks, Kiara
Dr. Jason Highsmith
Fax: 843-474-0712
Phone: 843-510-0727

ELECTRONICALLY FILED 2020 Aug 12 2:17 PM CHARLESTON COMMON PLEAS CASE #2020CP1003379

Center for Advanced Surgery

3821 Commercial Center Drive
Ladson, South Carolina 29456
843.628.0510 phone
CenterforAdvancedSurgery.com

OPERATIVE REPORT

PATIENT NAME: DEMASKEY, SCOTT
MEDICAL NUMBER: Red
DATE OF BIRTH: Reda /1954
SURGEON: JASON M. HIGHSMITH, MD
DATE OF OPERATION: 03/15/2019

PREOPERATIVE DIAGNOSIS: Cervical disc disruption at C6-7 with bilateral C7 radiculopathy.

POSTOPERATIVE DIAGNOSIS: Cervical disc disruption at C6-7 with bilateral C7 radiculopathy.

OPERATIONS PERFORMED:
1. Anterior cervical discectomy and fusion, C6-7.
2. Interbody cage x1.
3. Anterior instrumentation.
4. Intraoperative fluoroscopy with interpretation.
5. Intraoperative microscope use.

SURGEON: Jason M. Highsmith, MD

ASSISTANTS: None.

INDICATIONS FOR SURGERY: The patient is a gentleman with a history of worsening neck and radicular arm pain and neurologic impingement at C6-7. He is felt to be a candidate for anterior cervical discectomy and fusion having failed less invasive measures. He understands the risks, benefits, and alternatives of procedure. Specific risks discussed included but not limited to bleeding, infection, neurologic injuries, spinal fluid leakage, subsidence, hoarseness, swallowing difficulty, loss of motion, risk of adjacent segment disease, and worsening or no improvement in symptoms.

DESCRIPTION OF PROCEDURE: After obtaining informed consent, the patient was taken to the operating room where he underwent the successful induction of general endotracheal anesthesia. The neck was mildly extended and prepped and draped in standard sterile fashion. A #10 blade scalpel was used to open a healed incision from the C5-6 fusion. We carried out dissection medial to the sternocleidomastoid and carotid sheath down to the prevertebral fascia and localized at C6-7. Caspar pin was placed at C7 body and in the interbody graft at C5-6. Distraction was carried out. We carried out anterior discectomy from significant broad-based disruption posteriorly with neurologic impingement and lateral foramen stenosis. This was carefully debrided and resected in addition to the posterior longitudinal ligament to provide a generous decompression of the cord and exiting nerve roots. We noted erythema on the right C7 exiting nerve root. We explored the epidural space and found it to be free of injury. We copiously irrigated the wound with bacitracin solution and sized extra and extra large 5 mm Globus coalition implant in the interspace which we anchored in place with cranially and caudally directed screws and filled with allograft. AP and lateral fluoroscopy showed adequate placement of the hardware. We engaged the locking mechanism. We inspected the soft tissues and found them to be free of injury. We then closed the wound in anatomic layers followed by application of sterile dressing. . All sponge and needle counts were correct at the end of the case.

ESTIMATED BLOOD LOSS: 150 mL from venous plexus.

OPERATIVE COMPLICATIONS: None apparent.

Jason M. Highsmith, MD

JH/TS/iMD/Job# 4435

DD: 03/15/2019
DT: 03/15/2019

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2021 Jul 22 2:24 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2021 Jul 22 2:24 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Tina

From: Tina
Sent: Monday, April 29, 2019 12:31 PM
To: 'Melinda Roten'
Cc: 'Scott DeMaskey'
Subject: RE: S. Demaskey

Yes, please move forward with BCBS. Unfortunately, Mr. DeMaskey will need to be responsible for his co-pay.

Thanks,
Tina

Tina G. Bennett
Assistant to Michael A. Maucher
DeLuca & Maucher, LLP
P.O. Box 9
Goose Creek, SC 29445
(843)572-1711 ofc.
(843)572-1285 fax

www.DeLucaMaucher.com

From: Melinda Roten [mailto:mroten@chscas.com]
Sent: Monday, April 29, 2019 12:14 PM
To: Tina
Cc: 'Scott DeMaskey'
Subject: RE: S. Demaskey

Okay we have BCBS on file. We can file through insurance. However since the letter of protection is being taken away he would be responsible for his 500 co payment associated with his insurance. Please let me know how you would like me to proceed

From: Tina <Tina@delucamaucher.com>
Sent: Monday, April 29, 2019 11:29 AM
To: Melinda Roten <mroten@chscas.com>
Cc: 'Scott DeMaskey' <dem6060@gmail.com>
Subject: RE: S. Demaskey

Melinda,

Because the at-fault party only had $30,000.00, and Scott DeMaskey's Underinsured Motorist Coverage does not apply, all treatment will need to proceed under his private health insurance. We cannot honor anymore treatment under a Letter of Protection. Please note Mr. DeMaskey's file accordingly.

Thanks,
Tina

Tina G. Bennett
Assistant to Michael A. Maucher

- Exact date unknown (4-29-19)

Tina

To: Kiara Goodwine (kiara@orthoandneuro.com)
Subject: Scott DeMaskey

- Same email sent to Center for Advanced Spine

Kiara,

Because the at-fault party only had $30,000.00, and Scott DeMaskey's Underinsured Motorist Coverage does not apply, **ALL of the treatment Scott DeMaskey has received (and will continue to receive) must be filed under his private health insurance.** We cannot honor anymore treatment under a Letter of Protection. Please note Mr. DeMaskey's file accordingly.

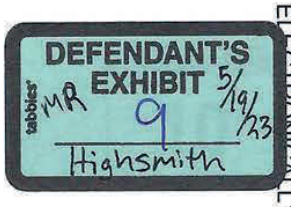
Thanks,
Tina

Tina G. Bennett
Assistant to Michael A. Maucher
DeLuca & Maucher, LLP
P.O. Box 9
Goose Creek, SC 29445
(843)572-1711 ofc.
(843)572-1285 fax

www.DeLucaMaucher.com

ELECTRONICALLY FILED - 2021 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Subject: **Fw: Scott Demaskey**
Date: 1/3/2020 2:23:13 PM Eastern Standard Time
From: kiara@orthoandneuro.com
To: edweinberger@aol.com



Thanks, Kiara
Dr. Jason Highsmith
Fax: 843-474-0712
Phone: 843-510-0727

From: Kiara Goodwine
Sent: Tuesday, April 30, 2019 7:44 AM
To: Tina <tina@delucamaucher.com>
Cc: Kary Garcia <Kary@orthoandneuro.com>
Subject: Scott Demaskey

Good morning,

Attached are notes and bill ledger from previous visit.

NEXT APPT: 05/02/2019

Thanks, Kiara
Dr. Jason Highsmith
Fax: 843-474-0712
Phone: 843-510-0727

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2021 Jul 22 2:24 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2021 Jul 22 2:24 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Carolina Neurosurgery & Orthopedics, Inc.

9313 Medical Plaza, Suite 303
North Charleston, South Carolina 29406
Charleston Office: (843) 510-0727
Fax: (843) 474-0712

161 Medical Cir
West Columbia, South Carolina 29169
Columbia Office (803) 764-1813
Fax: (843) 474-0712

Dear: Scott Dymasky

You have been scheduled for your procedure on 5/21/19.

It is scheduled at the following location:

X Center For Advanced Surgery 3821 Commercial Center Drive Ladson, Sc 29456 Phone: 843-628-5695	Surgeon: X Jason Highsmith, M.D.

You are scheduled for a B Lumbar Dycomp L4-S1

Please initial below that you have read and understand the following:

SD **DO NOT** take aspirin, Advil, Motrin or anything that contains aspirin or is a blood thinner seven (7) days prior to surgery.

SD **DO NOT** have anything to eat or drink after midnight the night before surgery. This includes chewing gum or eating mints. **NO ALCOHOL 48 HOURS PRIOR TO SURGERY.**

SD **YOU MUST BRING YOUR MRI films, back brace or collar (if applicable) with you the day of surgery.**

SD **YOU MUST** have someone drive you to and from the surgery AND you must have someone at home to take care of you after the procedure.

Scott D. Dymasky
Patient Signature

4/26/19
Date

Post-Op Appt: 5/24/19 @ 8:30am

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP100379
ELECTRONICALLY FILED - 2021 Jul 22 2:24 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP100379

Carolina Neurosurgery & Orthopedics, Inc.

9313 Medical Plaza, Suite 303
North Charleston, South Carolina 29406
Charleston Office: (843) 510-0727
Fax: (843) 474-0712

161 Medical Cir
West Columbia, South Carolina 29169
Columbia Office (803) 764-1813
Fax: (843) 474-0712

Health Insurance Verification Form For Surgery

MRN #:_____

Patient Name: Scott DeMarks

DOB: Redacted 1/54 SSN: Redacted

Insurance Company:_____

ID #:_____

Group#:_____

Please Provide a copy of your insurance card

☑ I do not have Health Insurance at this time

Scott DeMarks 4/26/19
Patient Name Date

Scott DeMarks
Patient Signature

KIARA G. 4/26/19
Witness Date

ELECTRONICALLY FILED - 2021 Jul 12 2:24 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003709

Carolina Neurosurgery & Orthopedics, Inc.

9313 Medical Plaza, Suite 303
North Charleston, South Carolina 29406
Charleston Office: (843) 510-0727
Fax: (843) 474-0712

161 Medical Cir
West Columbia, South Carolina 29169
Columbia Office (803) 764-1813
Fax: (843) 474-0712

Patient Name: SCOTT DYMASKEY

1) I authorize the following procedure (s):

2) The procedure will be performed by a physician at Carolina Neurosurgery & Orthopedics, Inc.. or surgical assistants, banked tissue, tissue substitutes equipment, devices, products or instruments, etc as needed. SD pt

3) I consent to the performance of procedures and treatments in addition to or different from that named above if during the course of the procedure, the physician considers such additions or changes necessary, appropriate or advisable. I authorize Carolina Neurosurgery & Orthopedics, Inc. to tender care and services that are customary and necessary with respect of all such procedures and treatments. SD pt

4) I have conferred with the said physicians and/or other physicians about the nature of the procedures, the possibility that complications may arise or develop, risks, which may be involved, and possible alternate methods of treatment. SD pt

5) I understand that no warranty or guarantee has been made as to the results or treatment. SD pt

6) I authorize and direct the above named physician and/or his associates and assistants to provide such additional service as they deem reasonable and necessary including, but limited to the administration and maintenance of anesthesia, the administration of blood and blood procedures, the administration of intrathecal narcotics, and the performance of ancillary services (Pathology, X-rays, Radiology, etc.). SD pt

7) I give permission that any tissues, parts or devices surgically removed may be retained or disposed of Carolina Neurosurgery & Orthopedics, Inc. in accordance with its accustomed practice. SD pt

8) I understand that some devices available for use in spinal procedures may be developmental, investigational and/or not yet approved by U.S. Governmental agencies. SD pt

9) I give permission to document all or a portion of my procedure by photographs, videotapes or other means and consent to release of such materials in the presentations, publications, etc. In addition, the procedure may be observed for educational purposes. SD pt

10) I understand that certain behaviors, actions and/or habitus may adversely the affect the outcome of my procedure. Examples of such actions, behaviors, and/or habitus are tobacco use, alcohol use, recreational drug use, noncompliance with physician recommendations, etc. SD pt

11) I understand that since prescription narcotic drugs can be addictive and habit forming, it is the policy of this office that these medications will only be prescribed for two (2) weeks following surgery. SD pt

12) I realize that, as with any form of treatment, whether surgical or non-surgical, complications may arise. Complications can occur during any hospitalization related to general medical conditions, anesthesia or surgery. Certain complications are specific for each type of Procedure. I also realize that no matter how extensive, exhaustive and complete is the list of potential complications, other unforeseen or unexpected complications or events may occur. These types of complications related to my procedure and hospitalization, both general and specific, have been discussed with me. I understand and agree to proceed with surgery. GL pt

13) I have received an explanation of this procedure as stated above and give my informed consent to it performance. I hereby release Carolina Neurosurgery & Orthopedics, Inc. from any further responsibility for obtaining additional permission to perform this procedure. GL pt

14) This Healthcare Provider does not provide samples of medication. I understand that I must have my prescriptions filled at a pharmacy. GL pt

Patient: [signature]

Date: 4/26/19

Witness: Kiara G.

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2021 Jul 22 2:24 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Aug 12 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP0003389

Carolina Neurosurgery & Orthopedics, Inc.

9313 Medical Plaza, Suite 303
North Charleston, South Carolina 29406
Charleston Office: (843) 510-0727
Fax: (843) 474-0712

161 Medical Cir
West Columbia, South Carolina 29169
Columbia Office (803) 764-1813
Fax: (843) 474-0712

Cost of Surgery Form

Date: 7/26/19

Name: Scott Mack

SSN: Redacted

DOB: Redacted 54

Account #:

You have been scheduled for a: B Lumbar DLcamp. L4-S1

The approximate cost of the procedure is: $65,000.00

I fully understand that this is an estimate. The above listed fee is subject to change. This price only includes the physician's surgical charges. The hospital/surgery center and anesthesiologist bill separately for services performed and are NOT included in the price listed above.

I fully understand the information listed above and all of my questions have been answered.

Patient Signature: Scott

OFFICE USE ONLY

Witness: Kiara G.

Date: 7/26/19

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2021 Jul 22 2:24 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Carolina Neurosurgery & Orthopedics, Inc.

9313 Medical Plaza, Suite 303
North Charleston, South Carolina 29406
Charleston Office: (843) 510-0727
Fax: (843) 474-0712

161 Medical Circle
West Columbia, South Carolina 29169
Columbia Office (803) 764-1813
Fax: (843) 474-0712

NOTICE TO OUR SURGICAL PATIENTS

Patient Name: Scott DeMaskey Date: 4/26/19

Your surgery has been scheduled for 5/2/19

at CAS

Scheduling surgery/injections is a lengthy process, involving time and cost to the surgeon's office, as well as the surgical facility. During this surgery, the physicians and/or staff may take photographs of you during this procedure.

If a surgery is cancelled at the last moment these costs multiply significantly. Additionally, other patients who are waiting for surgery cannot be scheduled as we have blocked out time for your surgery. The facility cannot accommodate their numerous other patients as well as they too have scheduled time for your procedure.

Due to these factors we find it necessary to charge for cancelled surgeries. We must receive notice of the cancellation at least two (2) weeks prior to the scheduled surgical date. The following charge will apply to any and all surgeries that are cancelled without adequate notice.

For patients scheduling surgery: If we are not given at least two (2) weeks notice you will be charged a standard surgical cancellation fee of $10,000.

For patients scheduling injections: If we are not given at least one (1) week notice you will be charged a standard surgical cancellation fee of $3,000.

Occasionally, surgeries may be cancelled at the last moment due to medical reasons that may not be under your control. In this case the cancellation fee may be waived at the surgeon's discretion.

Please be sure that you want to go ahead with the surgery on the date that we have scheduled you for. If any problems, changes or emergencies arise please notify the office at once.

We require notification of the intent to cancel this surgery by 4/26/19 in order for you to avoid the cancellation fee.

Signature: Scott DeMy Date: 4/26/19

Witness: Kiara Goodwine Date: 4/26/19

ELECTRONICALLY FILED - 2021-Aug-12 2:24 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Carolina Neurosurgery & Orthopedics, Inc.

161 Medical Circle
West Columbia, SC 29169
Phone: (803) 764-1813
Fax: (843) 474-0712

2910 Tricom Street, Suite 201
North Charleston, SC 29406
Phone: (843) 510-0727
Fax: (843) 474-0712

POSTOPERATIVE VISIT

Patient Name: Scott Demaskey
Record #: 177271
Date: 04/26/2019
Date of Birth: Redac./1954
Date of Injury: 12/14/2018

Subjective: The patient returns today having undergone anterior cervical discectomy and fusion at C6-7 on 03/15/2019. He reports improvement in his radicular neck and arm pain. He still has some posterior neck stiffness and discomfort but he is concerned primarily about his lower extremity numbness and paresthesias. He has difficulty walking for prolonged time without significant pain and discomfort. His pain is improved with forward flexion with history of tingling in the feet bilaterally. He is here today to discuss additional treatment options.

Review of Systems:
General: Negative for dizziness, chills, fevers or sweats.
Musculoskeletal: Significant as in HPI.
Genitourinary: Denies blood in urine, frequent urination, or lack of bowel or bladder control. Denies any sexual dysfunction.
Skin: Denies bruising easily, itching or rashes.
Gastrointestinal: Denies nausea, vomiting or indigestion.
Cardiovascular: Denies chest pain.
HEENT: Denies blurry vision, bleeding gums, double vision, earaches or hoarseness.

Medications: Atorvastatin, valsartan, hydrochlorothiazide, Flomax, diclofenac, Tylenol and Motrin.

Allergies: Latex and Vicodin.

Physical Examination: General: The patient is a well-nourished and well-developed male who presents today for evaluation. Vital Signs: Stable. Afebrile. Height is 5 feet 9 inches and weight is 227 pounds. HEENT: Head is normocephalic. Neck: Supple. Chest: Nontender. Cardiovascular: Regular. Abdomen: Nontender. Neurological: Cranial nerves II through XII are grossly intact. Musculoskeletal: Strength is 5/5 throughout. Deep tendon reflexes are 2/4 throughout. Negative Hoffmann. Negative clonus. Negative Babinski sign.

Sensation diminished in the calves bilaterally; otherwise intact to pinprick and light touch throughout. Physical exam of the cervical spine reveals a well-healing incision. The patient has mild tenderness to palpation of the cervical paraspinous muscle with palpable muscle spasm present. Trigger points are identified in the right and left splenius capitis, trapezius and rhomboids. The patient is minimally tender at the midline from occiput to C7 with improved range of motion and minimal pain at the endpoints. Negative Spurling maneuver and negative Lhermitte sign.

Physical exam of the lumbar spine reveals moderate-to-severe tenderness to palpation of the lumbar paraspinous muscles with palpable muscle spasms present. Trigger points are identified in the right and left quadratus lumborum. The patient is moderately tender at the midline from L3 to S1 with limited range of motion and pain at the endpoints. No SI joint tenderness. Negative FABER's test. Negative straight leg raise.

Diagnostic Assessment:

1. Axial neck pain with bilateral upper extremity radiculopathy, right greater than left.
2. Axial low back pain with bilateral lower extremity radiculopathy.
3. Status post C5-6 anterior cervical discectomy and fusion November 2015.
4. Status post cervical laminectomy in California in approximately 2000.
5. Cervical disc disruptions at C2-3, C3-4 and C4-5.
6. Status post C6-7 anterior cervical discectomy and fusion on 03/15/2019.
7. Cervical disc disruption at C7-T1 with moderate neural foraminal narrowing on the left.
8. Lumbar disc disruptions from L2 to S1, most notable at L3 to S1.

Treatment/Recommendations: We discussed most definitive surgical treatment for lumbar spine would include posterior decompression at the L4 to S1 levels. We discussed the risks, benefits, alternatives of the surgery. The patient understands and wishes to proceed.

Jason M. Highsmith, M.D., FACS
Board Certified in Neurological Surgery
JMH/pmt

Dictated but not proofread

ELECTRONICALLY FILED 2024 Aug 16 2:24 PM CHARLESTON COMMON PLEAS CASE #2024CP1003379

ELECTRONICALLY FILED 2021-Jul-22 2:24 PM CHARLESTON COMMON PLEAS CASE#2021CP1003379

Send payment to:
Carolina Neurosurgery and Orthopedics Inc.
2910 Tricom Street, Suite 201
N. Charleston
SC, 29406
Phone No : 843-510-0727 Fax : 843-474-0712

Page	Account#	Statement Date
page 1 of 1	177271	04/30/2019

TOTAL BALANCE: $61,337.41
(PLEASE PAY THIS AMOUNT)

Bill to:
SCOTT DEMASKEY
112 MCLAURIN AVE
SUMMERVILLE,SC
29483

Patient: SCOTT DEMASKEY (177271)

Date	Description	Charges	Payment	Balance
	You are responsible for the following charges:			
04/26/19	POST OP	0.00	0.00	0.00
04/04/19	POST OP	0.00	0.00	0.00
03/15/19	C6-7 Anterior Cervical Discectomy & Fusion, C6-7 / Interbody Cage x1 / Anterior Instrumentation / Global Instrumentation / Intraoperative Fluoroscopy with Interpretation / Intraoperative Micr	58,697.41	0.00	58,697.41
03/07/19	EST. PATIENT MOD. HIGH COMPLEX	480.00	0.00	480.00
01/21/19	EST. PATIENT MOD. HIGH COMPLEX	480.00	0.00	480.00
01/21/19	XRAY REVIEW	180.00	0.00	180.00
01/21/19	MRI OF CERVICAL W/O CONTRAST	300.00	0.00	300.00
01/21/19	MRI OF LUMBAR W/O CONTRAST	300.00	0.00	300.00
01/02/19	NP MOD.HIGH COMPLEX	900.00	0.00	900.00
	TOTAL BALANCE ----->			$61,337.41

Total Charges	61,337.41
Total Payments	0.00
Total Adjustments	0.00

Balance	61,337.41
Insurance Balance	0.00
Patient Balance	61,337.41

Send payment to:
Carolina Neurosurgery and Orthopedics Inc.
2910 Tricom Street, Suite 201
N. Charleston
SC, 29406
Phone No : 843-510-0727 Fax : 843-474-0712

Page	Account#	Statement Date
page 1 of 1	177271	11/02/2020

TOTAL BALANCE: $125,409.28
(PLEASE PAY THIS AMOUNT)

Bill to:
SCOTT DEMASKEY
112 MCLAURIN AVE
SUMMERVILLE,SC
29483

Patient: SCOTT DEMASKEY (177271)

Date	Description	Charges	Payment	Balance
	You are responsible for the following charges:			
12/20/19	EST. PATIENT MOD. HIGH COMPLEX	480.00	0.00	480.00
09/06/19	EST. PATIENT MOD. HIGH COMPLEX	480.00	0.00	480.00
07/18/19	POST OP	0.00	0.00	0.00
07/18/19	XRAY REVIEW	180.00	0.00	180.00
06/13/19	EST. PATIENT MOD. HIGH COMPLEX	480.00	0.00	480.00
05/24/19	POST OP	0.00	0.00	0.00
05/02/19	Bilateral L4-S1 Posterior Decompression with L4 Microdiscectomy, Bilateral / Intraoperative Fluoroscopy with Interpretation / Intraoperative Microscope Use	62,451.87	0.00	62,451.87
04/26/19	POST OP	0.00	0.00	0.00
04/04/19	POST OP	0.00	0.00	0.00
03/15/19	C6-7 Anterior Cervical Discectomy & Fusion, C6-7 / Interbody Cage x1 / Anterior Instrumentation / Global Instrumentation / Intraoperative Fluoroscopy with Interpretation / Intraoperative Micr	58,697.41	0.00	58,697.41
03/07/19	EST. PATIENT MOD. HIGH COMPLEX	480.00	0.00	480.00
01/21/19	EST. PATIENT MOD. HIGH COMPLEX	480.00	0.00	480.00
01/21/19	XRAY REVIEW	180.00	0.00	180.00
01/21/19	MRI OF CERVICAL W/O CONTRAST	300.00	0.00	300.00
01/21/19	MRI OF LUMBAR W/O CONTRAST	300.00	0.00	300.00
01/02/19	NP MOD.HIGH COMPLEX	900.00	0.00	900.00
	TOTAL BALANCE ----->			$125,409.28

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2021 Jul 22 2:24 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Tina

From: Tina
Sent: Friday, January 03, 2020 1:52 PM
To: 'kiara@orthoandneuro.com'
Subject: Scott DeMaskey

Kiara,

From a review of the updated itemized billing statement you recently provided, it does not appear that Blue Cross Blue Shield has paid any of your bill for services rendered. You may recall that back on:

1. December 20, 2018 we provided your office with a Letter of Protection.
2. January 21, 2019 I emailed you and requested that your office file ALL of Mr. DeMaskey's charges with BCBS due to his extensive pre-existing medical condition.
3. I thereafter emailed you advising that the at-fault party only had $30,000.00 in Liability Coverage and that Mr. DeMaskey's Underinsured Motorist Coverage does not apply.

Even though Mr. DeMaskey's medical bills total $199,744.68, there is only $30,000.00 in available coverage to pay his claim for injury. We will need to figure out a pay to spread those very limited funds around to the medical providers, our office for attorney's fees, and to Scott DeMaskey. In that regard, please confirm the balance owed on Mr. DeMaskey's account.

Thanks,
Tina

Tina G. Bennett
Assistant to Michael A. Maucher
DeLuca & Maucher, LLP
P.O. Box 9
Goose Creek, SC 29445
(843)572-1711 ofc.
(843)572-1285 fax

www.DeLucaMaucher.com

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

PO Box 100228
Columbia, SC 29202-3228
TTY users: 800-735-8583

South Carolina

BlueCross BlueShield of South Carolina is an independent licensee of the Blue Cross and Blue Shield Association

Visit My Health Toolkit at SouthCarolinaBlues.com

August 26, 2021

Scott Demaskey
112 Mclaurin Ave
Summerville, SC 29486-2311

RE: ZCF470861586495

Dear Mr. Demaskey:

Thank you for being a valued BlueCross BlueShield of South Carolina member.

Why we are writing:
Here is the certificate of coverage you requested.

It provides evidence of your prior health coverage. You may need to furnish this certificate if you become eligible under a group health plan or another Qualified Health Plan.

1. Date of this certificate: August 26, 2021

2. Name of last/current health plan: Blue Essentials Silver 2

3. Name of participant: Scott Demaskey

4. Identification number of participant: ZCF470861586495

5. Name of person to whom this certificate applies: Scott Demaskey

6. Date coverage began: January 1, 2017

CER5 440/30/ IKEY: ZCF470861586495

DEFENDANT'S EXHIBIT 13 5/19/23 tabbies MH Highsmith

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

7. Date coverage ended: (or check if coverage is continuing as of the date of this certificate) October 10, 2019

8. Name, address and telephone number of plan administrator or issuer responsible for providing this certificate: See the contact information below.

What you need to do:
Nothing, unless you have questions or require further assistance.

How to contact us:
- Call Customer Service toll free at 855-404-6752.
- Visit SouthCarolinaBlues.com and email us through My Health Toolkit
- Send us a fax to 803-870-9439
- Write to us at:
  BlueCross BlueShield of South Carolina
  P.O. Box 100228
  Columbia, SC 29202-3228

We appreciate the opportunity to serve you.

Sincerely,

Marketplace Operations

CER5 440/30/ IKEY: ZCF470861586495

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

South Carolina

BlueCross BlueShield of South Carolina is an Independent licensee of the Blue Cross and Blue Shield Association

Individual Claim Report

EXPLANATION OF BENEFITS

Plan Holder: SCOTT DEMASKEY
(ID # ZCF470861586495)
Benefit Plan Year: 01/01/2019 - 01/01/2020
Notice Date: 01/07/2019

0000662

SCOTT DEMASKEY
112 MCLAURIN AVE
SUMMERVILLE, SC 29486

I-20 @ Alpine Road
Columbia, SC 29219

000000
0001 of 0004

THIS IS NOT A BILL

PAYMENTS SUMMARY for SCOTT DEMASKEY

	Claim 01/02/2019
Your health care providers' charges	$99.00
Amount **you saved**	$67.74
Total amount **your plan paid**	$0.00
AMOUNT YOU MAY OWE OR HAVE PAID PROVIDER(S)	**$31.26**

IN-NETWORK BENEFITS AT-A-GLANCE

Family

Deductible
$6,000.00 Maximum
$6,000.00 Remaining
$0.00 Applied

Out-of-Pocket
$13,200.00 Maximum
$13,158.74 Remaining
$41.26 Applied

Member(s)

SCOTT DEMASKEY

Deductible
$3,000.00 Maximum
$3,000.00 Remaining
$0.00 Applied

Out-of-Pocket
$6,600.00 Maximum
$6,558.74 Remaining
$41.26 Applied

Deductible

Each covered individual has a deductible that applies toward the family deductible. Once the family deductible is met, all deductibles are met.

Out-of-Pocket

Single person plan: Member must meet individual maximum. Family plan: All members contribute to family maximum, each contributing till his/her maximum is met.

WE'RE HERE!

Write: BlueCross BlueShield of South Carolina
P.O. Box 100300
Columbia, SC 29202-3300

Web: Log on to **www.SouthCarolinaBlues.com**
Toll-free: 800-868-2500 (Monday - Friday, 8:30 a.m. - 5:30 p.m.)
Local: 803-788-0500

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Individual Claim Report: EXPLANATION OF BENEFITS
Plan Holder: **SCOTT DEMASKEY** (ID # ZCF470861586495)

South Carolina
BlueCross BlueShield of South Carolina is an Independent Licensee of the Blue Cross and Blue Shield Association

MEDICAL CLAIMS for patient SCOTT DEMASKEY

THIS IS NOT A BILL

Provider and Service Information		*Charges and Insurance Payments*			*Breakdown of Member Responsibility*				
Claim Number Provider Group	**Service Type** Date of Service(s) Provider Name Network	**Provider Charges** see Comments below table	**Covered Expense**	**Your Plan Paid**	**Copay**	**Deductible**	**Coinsurance**	**Not Covered** see Comments below table	**Amount You May Owe or Have Paid**
Adjustment to a claim we processed previously									
9082036WD0001 CENTER FOR ADVANCED S	**OUTPATIENT SURGERY** 03/15/2019 JASON M HIGHSMITH MD In-Network	33,336.00	0.00	0.00	0.00	0.00	0.00	33,336.00 1	33,336.00
	OUTPATIENT SURGERY 03/15/2019 JASON M HIGHSMITH MD In-Network	25,000.00	0.00	0.00	0.00	0.00	0.00	25,000.00 1	25,000.00
	OUTPATIENT SURGERY 03/15/2019 JASON M HIGHSMITH MD In-Network	7,430.00 2	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	OUTPATIENT SURGERY 03/15/2019 JASON M HIGHSMITH MD In-Network	3,080.00 3	0.00	0.00	0.00	0.00	0.00	0.00	0.00
End of adjusted claim									
Statement Period Total		**68,846.00**	**0.00**	**0.00**	**0.00**	**0.00**	**0.00**	**58,336.00**	**58,336.00**

0002038

Comments

1 THIS HEALTH PLAN REQUIRES PRE-CERTIFICATION FOR ALL RADIATION ONCOLOGY TREATMENT PLANS. PLEASE SEE THE BENEFITS SECTION OF YOUR BENEFIT BOOKLET FOR MORE DETAILS.

2 THIS PROCEDURE CODE IS CONSIDERED A COMPONENT OF ANOTHER SERVICE WHICH SHOULD BE FILED BY THE PROVIDER (I.E., E&M, MEDICAL CARE, CONSULTATIONS, SURGICAL CARE). IT IS NOT CONSIDERED AN INDEPENDENT PROCEDURE IN THIS PLACE OF SERVICE AND THEREFORE, IT NOT CONSIDERED A SEPARATELY REIMBURSABLE CODE.

3 WE HAVE ALREADY RECEIVED A CLAIM FOR THIS SERVICE(S). WE PROCESSED THAT CLAIM AND SENT YOU AN EXPLANATION OF BENEFITS (EOB).

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Individual Claim Report: EXPLANATION OF BENEFITS
Plan Holder: **SCOTT DEMASKEY** (ID # ZCF470861586495)

South Carolina
BlueCross BlueShield of South Carolina is an Independent Licensee of the Blue Cross and Blue Shield Association

MEDICAL CLAIMS for patient SCOTT DEMASKEY

THIS IS NOT A BILL

Provider and Service Information		*Charges and Insurance Payments*			*Breakdown of Member Responsibility*				
Claim Number Provider Group	**Service Type** Date of Service(s) Provider Name Network	**Provider Charges** see Comments below table	**Covered Expense**	**Your Plan Paid**	**Copay**	**Deductible**	**Coinsurance**	**Not Covered** see Comments below table	**Amount You May Owe or Have Paid**
Adjustment to a claim we processed previously									
908003HQV0001 CENTER FOR ADVANCED S	**OUTPATIENT SURGERY** 03/15/2019 JASON M HIGHSMITH MD In-Network	33,336.00	0.00	0.00	0.00	0.00	0.00	33,336.00 1	33,336.00
	OUTPATIENT SURGERY 03/15/2019 JASON M HIGHSMITH MD In-Network	25,000.00	0.00	0.00	0.00	0.00	0.00	25,000.00 1	25,000.00
	OUTPATIENT SURGERY 03/15/2019 JASON M HIGHSMITH MD In-Network	7,430.00 2	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	OUTPATIENT SURGERY 03/15/2019 JASON M HIGHSMITH MD In-Network	3,080.00	3,080.00	2,580.00	500.00	0.00	0.00	0.00	500.00
End of adjusted claim									
Statement Period Total		**68,846.00**	**3,080.00**	**2,580.00**	**500.00**	**0.00**	**0.00**	**58,336.00**	**58,836.00**

0004054

Comments

1 THIS HEALTH PLAN REQUIRES PRE-CERTIFICATION FOR ALL RADIATION ONCOLOGY TREATMENT PLANS. PLEASE SEE THE BENEFITS SECTION OF YOUR BENEFIT BOOKLET FOR MORE DETAILS.

2 THIS PROCEDURE CODE IS CONSIDERED A COMPONENT OF ANOTHER SERVICE WHICH SHOULD BE FILED BY THE PROVIDER (I.E., E&M, MEDICAL CARE, CONSULTATIONS, SURGICAL CARE). IT IS NOT CONSIDERED AN INDEPENDENT PROCEDURE IN THIS PLACE OF SERVICE AND THEREFORE, IT NOT CONSIDERED A SEPARATELY REIMBURSABLE CODE.

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

CAROLINA NEUROSURGERY ORTHOPEDICS

F.A.Q.s | Spinal Conditions | Treatment Options | Surgery Recovery | Good Faith Estimate

Good Faith Estimate

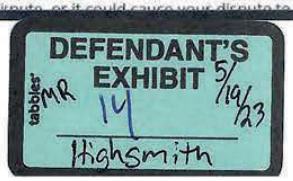
You have the right to receive a "Good Faith Estimate" explaining how much your health care will cost.

Under the law, health care providers need to give patients who don't have certain types of health care coverage or who are not using certain types of health care coverage an estimate of their bill for health care items and services before those items or services are provided.

- You have the right to receive a Good Faith Estimate for the total expected cost of any health care items or services upon request or when scheduling such items or services. This includes related costs like medical tests, prescription drugs, equipment, and hospital fees.
- If you schedule a health care item or service at least 3 business days in advance, make sure your health care provider or facility gives you a Good Faith Estimate in writing within 1 business day after scheduling. If you schedule a health care item or service at least 10 business days in advance, make sure your health care provider or facility gives you a Good Faith Estimate in writing within 3 business days after scheduling. You can also ask any health care provider or facility for a Good Faith Estimate before you schedule an item or service. If you do, make sure the health care provider or facility gives you a Good Faith Estimate in writing within 3 business days after you ask.
- If you receive a bill that is at least $400 more for any provider or facility than your Good Faith Estimate from that provider or facility, you can dispute the bill.
- Make sure to save a copy or picture of your Good Faith Estimate and the bill.

For questions or more information about your right to a Good Faith Estimate, visit www.cms.gov/nosurpr·ises/consumers, email ederalPPDRQuestions@cms.hhs.gov, or call 1-800-985-3059.

PRIVACY ACT STATEMENT: CMS is authorized to collect the information on this form and any suppotting documentation under section 2799B-7 of the Public Health Service Act, as added by section 112 of the No Surprises Act, title I of Division BB of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260). We need the information on the form to process your request to initiate a payment dispute, verify the eligibility of your dispute for the PPDR process, and to determine whether any conflict of interest exists with the independent dispute resolution entity selected to decide your dispute. The information may also be used to: (1) support a decision on your dispute; (2) support the ongoing operation and oversight of the PPDR program; (3) evaluate selected IDR entity's compliance with program rules. Providing the requested information is voluntary. But failing to provide it may delay or prevent processing of your dispute, or it could cause your dispute to be



ELECTRONICALLY FILED - 2024 Aug 15 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

CAROLINA NEUROSURGERY ORTHOPEDICS

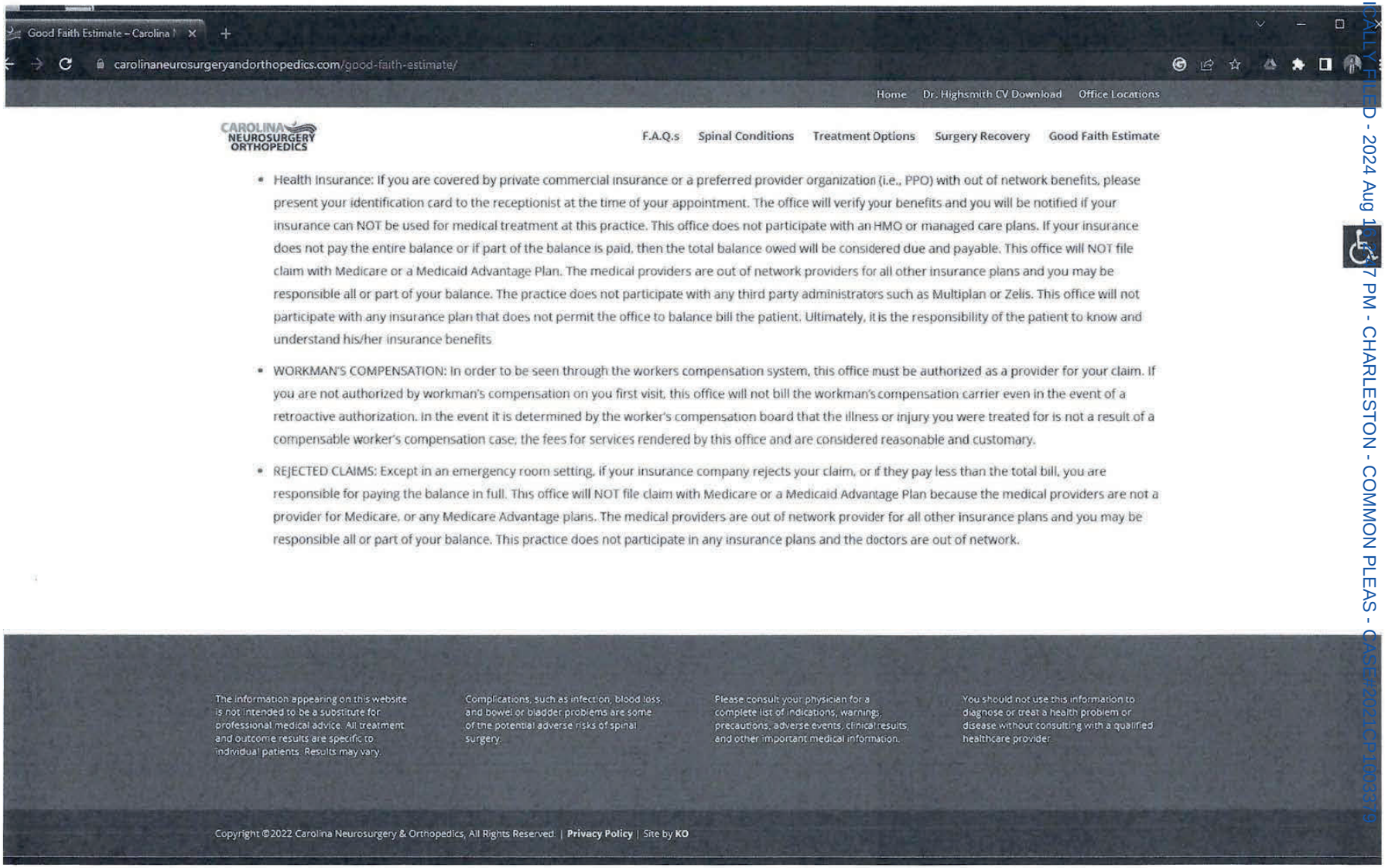
F.A.Q.s Spinal Conditions Treatment Options Surgery Recovery Good Faith Estimate

or call 1-800-985-3059.

PRIVACY ACT STATEMENT: CMS is authorized to collect the information on this form and any suppotting documentation under section 2799B-7 of the Public Health Service Act, as added by section 112 of the No Surprises Act, title I of Division BB of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260). We need the information on the form to process your request to initiate a payment dispute, verify the eligibility of your dispute for the PPDR process, and to determine whether any conflict of interest exists with the independent dispute resolution entity selected to decide your dispute. The information may also be used to: (1) support a decision on your dispute; (2) support the ongoing operation and oversight of the PPDR program; (3) evaluate selected IDR entity's compliance with program rules. Providing the requested information is voluntary. But failing to provide it may delay or prevent processing of your dispute, or it could cause your dispute to be decided in favor of the provider or facility.

- Health Insurance: If you are covered by private commercial insurance or a preferred provider organization (i.e., PPO) with out of network benefits, please present your identification card to the receptionist at the time of your appointment. The office will verify your benefits and you will be notified if your insurance can NOT be used for medical treatment at this practice. This office does not participate with an HMO or managed care plans. If your insurance does not pay the entire balance or if part of the balance is paid, then the total balance owed will be considered due and payable. This office will NOT file claim with Medicare or a Medicaid Advantage Plan. The medical providers are out of network providers for all other insurance plans and you may be responsible all or part of your balance. The practice does not participate with any third party administrators such as Multiplan or Zelis. This office will not participate with any insurance plan that does not permit the office to balance bill the patient. Ultimately, it is the responsibility of the patient to know and understand his/her insurance benefits
- WORKMAN'S COMPENSATION: In order to be seen through the workers compensation system, this office must be authorized as a provider for your claim. If you are not authorized by workman's compensation on you first visit, this office will not bill the workman's compensation carrier even in the event of a retroactive authorization. In the event it is determined by the worker's compensation board that the illness or injury you were treated for is not a result of a compensable worker's compensation case, the fees for services rendered by this office and are considered reasonable and customary.
- REJECTED CLAIMS: Except in an emergency room setting, if your insurance company rejects your claim, or if they pay less than the total bill, you are responsible for paying the balance in full. This office will NOT file claim with Medicare or a Medicaid Advantage Plan because the medical providers are not a provider for Medicare, or any Medicare Advantage plans. The medical providers are out of network provider for all other insurance plans and you may be responsible all or part of your balance. This practice does not participate in any insurance plans and the doctors are out of network.

ELECTRONICALLY FILED - 2024 Aug 1 4:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379



ELECTRONICALLY FILED - 2024 Aug 15 4:17 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1803379

EXHIBIT
3

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

DM

DELUCA MAUCHER

LAW OFFICES

MICHAEL A. MAUCHER
MIKE@DELUCAMAUCHER.COM
(O) (843) 572-1711 • (F) (843) 572-1285
REPLY TO GOOSE CREEK OFFICE

December 20, 2018

FAX MAIL
(843) 553-1008

Jason H. Highsmith, M.D.
9313 Medical Plaza Drive, Suite 303
Charleston, South Carolina 29406

RE: My Client: Scott DeMaskey
Date of Accident: 12/14/18

Dear Sir or Madam:

With regard to the above-named individual, please accept this correspondence as our Law Firm's agreement to protect any claim which you may have out of any settlement proceeds we may receive arising out of the incident referred to above. The above-named individual has been informed that, in the event of insufficient recovery, he remains personally responsible for your outstanding account balance.

With kindest regards, I am,

Very truly yours,

Michael A. Maucher

MAM/tgb
NOTE: To ensure that this office is aware of your medical lien, please provide an itemized billing statement for services rendered.

EXHIBIT 4

Subject: **Fw: Scott Demaskey**
Date: 1/3/2020 2:44:22 PM Eastern Standard Time
From: kiara@orthoandneuro.com
To: edweinberger@aol.com, Kary@orthoandneuro.com

Thanks, Kiara
Dr. Jason Highsmith
Fax: 843-474-0712
Phone: 843-510-0727

From: Tina <Tina@delucamaucher.com>
Sent: Monday, January 21, 2019 9:23 AM
To: Kiara Goodwine <kiara@orthoandneuro.com>
Cc: Brooke Dunsil <brooke@orthoandneuro.com>; Kary Garcia <Kary@orthoandneuro.com>
Subject: RE: Scott Demaskey

Kiara,

The at-fault party had a North Carolina Policy of automobile insurance. In order for them to disclosure the limits of their North Carolina Policy, we must provide them with a signed Medical Authorization allowing them to obtain copies of Scott Demaskey's medical records. We are NOT willing to comply with that request. We are therefore unable to find out how much Liability Coverage is on their policy. Because Mr. Demaskey carries $100,000.00 in Underinsured Motorist Coverage on his at-home policy with Safeco, and there is $1,000,000.00 in "Occupational Accident Coverage" to pay bills and wages under the One Beacon Policy, we are not concerned that there will be enough over all coverage to pay the claim.

Thanks,
Tina

Tina G. Bennett
Assistant to Michael A. Maucher
DeLuca & Maucher, LLP
P.O. Box 9
Goose Creek, SC 29445
(843)572-1711 ofc.
(843)572-1285 fax

www.DeLucaMaucher.com

From: Kiara Goodwine [mailto:kiara@orthoandneuro.com]
Sent: Wednesday, January 16, 2019 4:12 PM
To: Tina
Cc: Brooke Dunsil; Kary Garcia
Subject: Scott Demaskey

Good afternoon,

May I please get limits on patient Scott Demaskey DOB 10/13/54

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Thanks, Kiara
Dr. Jason Highsmith
Fax: 843-474-0712
Phone: 843-510-0727

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

EXHIBIT
5

Subject: **Fw: Scott DeMaskey**
Date: 1/3/2020 2:11:49 PM Eastern Standard Time
From: kiara@orthoandneuro.com
To: edweinberger@aol.com

Thanks, Kiara
Dr. Jason Highsmith
Fax: 843-474-0712
Phone: 843-510-0727

From: Tina <Tina@delucamaucher.com>
Sent: Monday, January 21, 2019 11:58 AM
To: Kiara Goodwine <kiara@orthoandneuro.com>
Cc: 'Scott DeMaskey' <dem6060@gmail.com>
Subject: Scott DeMaskey

Kiara,

Scott DeMaskey has advised our office that he will require surgery. Based upon the serious nature of his injury, and his pre-existing injuries, we would respectfully request that all of his treatment be filed with his private health insurance company. It would be best for everyone involved if we NOT do the treatment under an Assignment/Letter of Protection.

On a separate matter, please provide this office with the office note and/or documentation which shows the recommended surgery.

Thanks,
Tina

Tina G. Bennett
Assistant to Michael A. Maucher
DeLuca & Maucher, LLP
P.O. Box 9
Goose Creek, SC 29445
(843)572-1711 ofc.
(843)572-1285 fax

www.DeLucaMaucher.com

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

EXHIBIT 6

ELECTRONICALLY FILED - 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

DeLUCA MAUCHER
LAW OFFICES

MICHAEL A. MAUCHER
MIKE@DELUCAMAUCHER.COM
(O) (843) 572-1711 • (F) (843) 572-1285
REPLY TO GOOSE CREEK OFFICE

March 7, 2019

Jason H. Highsmith, M.D.
9313 Medical Plaza Drive, Suite 305
Charleston, South Carolina 29406

RE: My Client: Scott Demaskey
Date of Accident: 12/14/18

Dear Sir or Madam:

With regard to the above-named individual, please accept this correspondence as our Law Firm's agreement to protect any portion of your bill not paid by private health insurance out of any settlement proceeds we may receive arising out of the incident referred to above. The above-named individual has been informed that, in the event of insufficient recovery, he remains personally responsible for your outstanding account balance.

With kindest regards, I am,

Very truly yours,

Michael A. Maucher

MAM/tgb
NOTE: To ensure that this office is aware of your medical lien, please provide an itemized billing statement for services rendered.

– Exact date unknown (4-29-19)

Tina

To: Kiara Goodwine (kiara@orthoandneuro.com)
Subject: Scott DeMaskey

– Same email sent to Center for Advanced Spine

Kiara,

Because the at-fault party only had $30,000.00, and Scott DeMaskey's Underinsured Motorist Coverage does not apply, **ALL of the treatment Scott DeMaskey has received (and will continue to receive) must be filed under his private health insurance.** We cannot honor anymore treatment under a Letter of Protection. Please note Mr. DeMaskey's file accordingly.

Thanks,
Tina

EXHIBIT 7

Tina G. Bennett
Assistant to Michael A. Maucher
DeLuca & Maucher, LLP
P.O. Box 9
Goose Creek, SC 29445
(843)572-1711 ofc.
(843)572-1285 fax

www.DeLucaMaucher.com

ELECTRONICALLY FILED 2024 Aug 16 2:47 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Aug 16 2:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP Defendants.	**PLAINTIFF'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO AMEND COMPLAINT**

TO: DOUGLAS W. MACKELCAN, ESQ. AND SKYLER C. WILSON, ESQ., COUNSEL FOR DEFENDANTS:

Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., respectfully submits this supplemental memorandum in reply to Defendants' opposition and in support of its motion for an Order allowing Plaintiff to amend its Complaint to assert additional legal theories arising out of the facts alleged in the original Verified Complaint. A copy of the proposed Amended Complaint is filed with this motion as **Exhibit 1**.

REPLY ARGUMENTS

It is remarkable that the Defendants' opposition memorandum relies heavily on antique jurisprudence issued long before the South Carolina Rules of Civil Procedure were adopted in July 1985, which have governed the operation of lawsuits in South Carolina for almost 40 years. The Defendants' heavy reliance on these antique cases, *e.g.*, *Braudie v. Richland County*, 217 S.C. 57, 59, S.E.2d 548 (1950); *Alamance Indus. v. Chesterfield Hosiery Mill*, 239 S.C. 287, 122 S.E.2d 648 (1961); and *Crowley v. Spivey*, 285 S.C. 397, 329 S.E.2d 774 (Ct. App. Apr. 29, 1985), is a tacit acknowledgment that the law and the South Carolina Rules of Civil Procedure support the proposed amended pleadings.

ELECTRONICALLY FILED - 2024 Aug 16 2:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

I. Defendants have not carried their burden to show prejudice by allowing Plaintiff to amend its pleadings.

The proposed Amended Complaint will not require additional discovery because of any delay in the case going to trial, as it only adds legal theories premised on facts known to Defendants, addressed during discovery in this case, and already implicated in Plaintiff's original Verified Complaint.

A few weeks ago, the Court of Appeals issued its opinion in *Maybank 2754, LLC v. Zurlo*, reversing a trial court's ruling denying a party's motion to amend its complaint. *Maybank 2754, LLC v. Zurlo*, No. 2020-001030, 2024 WL 3688319, at *14 (S.C. Ct. App. Aug. 7, 2024). This matter is in very similar circumstances. The motion should be granted.

In *Maybank* the Court of Appeals reminded the bench and bar that the "rules of civil procedure strongly favor granting motions to amend, and the court should freely grant such a motion." *Id.* at 14. Rule 15(a), SCRCP, strongly favors amendments and the court is encouraged to grant leave to amend freely. *Id.* Under Rule 15(a), the circuit court should consider whether the amendment would prejudice the defendants or whether there was some other *substantial* reason to deny the motion. *Id.*

The Defendants have not carried their burden to show prejudice. Whether to grant the motion should not be based on the court's perception of the merits of the proposed Amended Verified Complaint. In rare cases, however, a trial court may deny a motion to amend if the amendment is clearly futile. *Id.* (citing *Skydive Myrtle Beach, Inc.*, 426 S.C. at 192, 804 S.E.2d at 594 ("In this case, we cannot definitively say it would be impossible for [the appellant] to succeed with an amended pleading. Allowing leave to amend the complaint, therefore, was not clearly futile.")).

Prejudice occurs when the amendment states a new claim or defense requiring the opposing party to introduce additional or different evidence to prevail in the amended action. *Holland ex rel. Knox v. Morbark, Inc.*, 407 S.C. 227, 235, 754 S.E.2d 714, 719 (Ct. App. 2014). Leave to amend pleadings under Rule 15 shall be liberally and freely given when justice so requires and does not prejudice any other party in so far as the party opposing the amendment can establish that the proposed amendments would cause a lack of notice that the new issue will be tried, and a lack of opportunity to refute it. *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 716-17 (Ct. App. 2005).

The status of this case establishes that Defendants have not shown prejudice from an

ELECTRONICALLY FILED - 2024 Aug 16 2:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

amendment that adds additional legal theories and no new factual allegations.

II. There was no undue delay in Plaintiff as filing its Motion to Amend.

The procedural timeline defeats the Defendants' arguments claiming undue delay by CAROLINA NEUROSURGERY.

- July 22, 2021 – Summons & Complaint filed.
- October 22, 2021 – Defendants filed a Motion to Dismiss.
- June 28, 2022 – An initial Order was filed granting in part and denying in part Defendants' Motion to Dismiss.
- July 5, 2022 – Plaintiff filed a Motion to Alter or Amend the Order on Defendants' Motion to Dismiss.
- April 5, 2023 – An Amended Order was issued about the Defendants' Motion to Dismiss.
- September 6, 2023 – Plaintiff filed its Motion to Amend the Complaint.

Finally, the proposed Amended Complaint is not being filed in bad faith or after undue delay, nor will it cause prejudice to the Defendants.

WHEREFORE, Plaintiff, *Carolina Neurosurgery & Orthopedics, Inc*., respectfully requests this Court issue an Order granting its Motion to Amend its Complaint.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com

Counsel for Plaintiff

Beaufort, South Carolina
August 16, 2024

EXHIBIT 1

ELECTRONICALLY FILED - 2024 Aug 16 2:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP Defendants.	**AMENDED SUMMONS**

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint, a copy of which is served upon you, and to serve a copy of your Answer to the Amended Complaint on the Plaintiff's attorney within (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Verified Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

/s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
Christopher W. Lempesis, Jr. (SC Bar #77012)
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com
Chris@PendarvisLaw.com

Counsel for Plaintiff

Beaufort, South Carolina

September 4, 2023

ELECTRONICALLY FILED - 2024 Aug 16 2:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP Defendants.	**AMENDED COMPLAINT**[1] **(Jury Trial Demanded)** 1. Breach of Contract; 2. Violation SC Unfair Trade Practices Act 3. Negligent Misrepresentation; and 4. Promissory Estoppel.

Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., complaining of Defendants, Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP, respectfully shows unto the Court:

SUMMARY OF THE CASE

1. This case arises from Defendants' false and inaccurate representations about the availability of $1,000,000 in insurance coverage they were pursuing to cover medical and surgical expenses for one of Defendants' clients that induced Plaintiff to perform over $125,000 in surgery and related healthcare services for Defendants' client when, contrary to Defendants' representations, there was no available insurance coverage or the Defendants were unable to recover insurance proceeds to pay for the surgeries.

PARTIES

2. Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC. ("Carolina Neurosurgery"), is a Corporation organized and existing under the laws of South Carolina with offices in Charleston County, South Carolina.

3. Defendant, Michael A. Maucher, Esq. ("Mr. Maucher"), is, upon information and belief, a citizen and resident of Charleston County, South Carolina.

[1] Plaintiff respectfully reserves its objections and potential appeal of the trial court's ruling granting Defendants' motion to dismiss Plaintiff's claims asserted in the original Complaint for Breach of Contract Accompanied by a Fraudulent Act, Fraud, Constructive Fraud, and Unjust Enrichment.

ELECTRONICALLY FILED - 2024 Aug 16 2:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

4. Defendant, DeLuca & Maucher, LLP ("the Law Firm"), is, upon information and belief, a South Carolina Limited Liability Partnership operating as a law practice with offices in Charleston County, South Carolina. (Mr. Maucher and the Law Firm will be referred to collectively as "the Lawyers".)

JURISDICTION

5. This Court has jurisdiction based upon Article V of the South Carolina Constitution, S.C. Code Ann. §§ 36-2-802 and 36-2-803, and its plenary powers.

VENUE

6. Venue is proper in Charleston County because, upon information and belief, Mr. Maucher resides in Charleston County, the Lawyers' offices are in Charleston County, and the acts and omissions complained of occurred in Charleston County, South Carolina.

FACTS

7. In December 2018, an individual identified in this Amended Complaint as "the Lawyers' client" was injured in a motor vehicle collision. The Lawyers' client was a prior patient of Carolina Neurosurgery's surgeon, Dr. Highsmith, and had a procedure with Dr. Highsmith before December 2018.

8. On December 20, 2018, the Lawyers sent Carolina Neurosurgery a "Letter of Protection" ("the LOP") promising to "protect *any claim* which you may have out of any settlement proceeds we may receive arising of the incident referred to above" to secure payment for all future surgeries and medical treatment expenses out of liability insurance proceeds providing coverage for the Lawyers' client's claims.

9. Based on the Lawyers' representations, Carolina Neurosurgery began treating the Lawyers' client's collision-related injuries providing elective treatments for the benefit of the Lawyers' client under Carolina Neurosurgery's "Financial Policy."

10. At the time of the Lawyers' representations and thereafter, all involved parties including the Lawyers' client, the Lawyers, and Carolina Neurosurgery, knew or should have known a) Carolina Neurosurgery and its' surgeon, Dr. Highsmith were "out-of-network" healthcare providers for the Lawyers' client and b) Carolina Neurosurgery was offering to provide elective medical/surgical services for the Lawyers' client.

11. Because the Lawyers' client did not have in-network health insurance coverage for any treatments provided by Carolina Neurosurgery, payment for services fell under the second

ELECTRONICALLY FILED - 2024 Aug 16 2:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

bullet point of Carolina Neurosurgery's "Financial Policy", "IF YOU DO NOT HAVE INSURANCE:"

> *Our policy requires payment in full today, unless, other arrangements are made. If you cannot pay in full now, we request partial payment today as you arranged for credit on your account with a payment plan agreement with our credit and collection manager.*

12. At this time, based on the Lawyers' representations, the "*other arrangements*" would be provided by various liability insurance policies over $1,000,000 that the Lawyers represented were available to cover medical expenses related to the Lawyers' client's personal injury claims.

13. On January 21, 2019 at 9:24 am, the Lawyers provided Carolina Neurosurgery written confirmation of the limits of coverage that would fund additional expenses for elective treatment to be provided to the Lawyers' client, stating, "[*the Lawyer's client] carries $100,000.00 in Underinsured Motorist Coverage on his at-home policy with Safeco, and there is $1,000,000.00 in 'Occupational Accident Coverage' to pay bills and wages under the One Beacon Policy*.

14. On January 21, 2019, at 11:58:35 AM, the Lawyers sent a second email discussing pre-existing injuries and indicating that they preferred that treatment not be provided under the LOP but did not explain or disclose that their prior statements representing there was $1,000,000 in insurance coverage were incorrect.

15. On March 7, 2019, the Lawyers forwarded a second Letter of Protection by email wherein the Lawyers agreed "to protect any portion of your bill not paid by private health insurance out of any settlement proceeds we may receive arising out of the incident referred to above" but again did not inform or disclose to Carolina Neurosurgery that their prior representation of the availability of over $1,000,000 in liability insurance policies providing coverage was not correct.

16. On March 15, 2019, Carolina Neurosurgery relying on the Lawyers' representations of insurance coverage performed surgery on the Lawyers' client at an approximate cost of $60,000.

17. On April 29, 2019, at 11:20 am, the Lawyers sent Carolina Neurosurgery an email stating, "*Because the at-fault party only had $30,000.00, and [the Lawyers' client]'s Underinsured Motorist Coverage does not apply, ALL of the treatment [the Lawyers' client] has received (and will continue to receive) must be filed under his private health insurance. We cannot honor anymore treatment under a Letter of Protection. Please note [the Lawyers' client]'s file accordingly*."

ELECTRONICALLY FILED - 2024 Aug 16 2:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

18. The Lawyers' April 29, 2019, 11:20 am email, however, did not advise or explain that there was no coverage under the "*$1,000,000.00 in 'Occupational Accident Coverage' ... under the One Beacon Policy"* as stated in the Lawyers' January 21, 2019 at 9:24 am email.

19. On May 2, 2019, relying on the Lawyers' promises and assurances on the amount of insurance coverage, Carolina Neurosurgery performed a second surgery on the Lawyers' client at an approximate cost of $65,000.

20. The Lawyers did not explain or disclose to Carolina Neurosurgery that the Lawyers' prior statements representing there was over $1,000,000 in insurance coverage were not correct until after Carolina Neurosurgery provided treatments and performed two surgeries to the Lawyers' client.

21. The final invoice for the additional elective treatments Carolina Neurosurgery provided the Lawyers' client through December 20, 2019, is $125,409.25.

22. Upon information and belief, the Lawyers were not able to collect any of the "*$1,000,000.00 in 'Occupational Accident Coverage' ... under the One Beacon Policy"* to pay for the two surgeries Carolina Neurosurgery provided based on the Lawyers' representations.

23. Neither the Lawyers nor the Lawyers' client have paid Carolina Neurosurgery the outstanding balance of $125,409.25.

24. The Lawyers' representations to Carolina Neurosurgery there was "*$1,000,000.00 in 'Occupational Accident Coverage' ... under the One Beacon Policy"* were either not true or the Lawyers were not able to secure payment from One Beacon on the subject policy.

25. Carolina Neurosurgery would not have performed the two surgeries on the Lawyers' client but for the representations made by the Lawyers concerning the insurance coverage.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

26. Carolina Neurosurgery realleges and incorporates the foregoing factual and jurisdictional statements by reference as if they were set forth herein.

27. Carolina Neurosurgery and the Lawyers entered into a contract wherein Carolina Neurosurgery would provide medical services to the Lawyers' client based on the Lawyers' representations about insurance coverage.

28. Carolina Neurosurgery fulfilled all necessary preconditions, if any, of the contract.

29. The Lawyers breached the contract.

ELECTRONICALLY FILED - 2024 Aug 16 2:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

30. As a direct and proximate cause of the Lawyers' multiple or singular breach of the contract, Carolina Neurosurgery sustained actual, consequential, and incidental damages in an amount to be determined by the jury at the trial of this case.

31. Under the Contract, Carolina Neurosurgery also requests all fees and costs generated in pursue of the relief claimed, including but not limited to legal fees.

37. WHEREFORE, Carolina Neurosurgery demands judgment and an award against the Lawyers under this breach of contract cause of action for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper.

FOR A SECOND CAUSE OF ACTION
(Violation of The South Carolina Unfair Trade Practices Act)

38. The foregoing factual and jurisdictional allegations are reiterated and realleged as though set forth verbatim.

39. This is a cause of action under the South Carolina Unfair Trade Practice Act, S.C. CODE ANN. §39-5-10, et seq.

40. The Lawyers engaged in trade or commerce in South Carolina, including practicing law in representing the Lawyers' Client, who, as alleged throughout this Complaint, have engaged in unfair or deceptive acts or practices of trade or commerce. Further, the Lawyers' use of such unfair and/or deceptive acts was willful.

41. The Lawyers' conduct is capable of repetition.

42. As a direct and proximate result of the Lawyers' use or employment of unfair and/or deceptive acts of trade or commerce as described in this Complaint, Carolina Neurosurgery has suffered an ascertainable loss of money or property.

WHEREFORE, Carolina Neurosurgery is entitled to and requests an award of actual damages under this Unfair Trade Practices Act claim for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper. Further Carolina Neurosurgery is entitled to and requests an award of treble damages, legal fees, and costs, for the Lawyers' willful conduct and statutory violation.

FOR A THIRD CAUSE OF ACTION
(Negligent Misrepresentation)

32. Carolina Neurosurgery realleges and incorporates the foregoing factual and

ELECTRONICALLY FILED - 2024 Aug 16 2:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

jurisdictional statements by reference as if they were set forth herein.

33. The Lawyers made false representations to Carolina Neurosurgery.

34. The Lawyers had a pecuniary interest in making the statements to Carolina Neurosurgery.

35. The Lawyers owed a duty of care to see that they communicated truthful information to Carolina Neurosurgery, including duties grounded in the Lawyers' obligations under Rule 4.1(a), RPC, Rule 407, SCACR - Truthfulness in Statements to Others and other Rules and standards governing lawyers practicing law in South Carolina.

36. The Lawyers breached their duty duties to communicate truthful information to Carolina Neurosurgery by failing to exercise due care.

37. Carolina Neurosurgery justifiably relied on the Lawyer's representations.

38. Carolina Neurosurgery suffered a pecuniary loss as the proximate result of its reliance upon the Lawyers' representations.

39. WHEREFORE, Carolina Neurosurgery is entitled to and requests an award of actual damages against the Lawyers under this negligent misrepresentation claim for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper.

FOR A FOURTH CAUSE OF ACTION
(Promissory Estoppel)

40. Carolina Neurosurgery realleges and incorporates the foregoing factual and jurisdictional statements by reference as if they were set forth herein.

41. The Lawyers made unambiguous promise and gave unambiguous assurances to Carolina Neurosurgery concerning the availability of over $1 million in insurance coverage for the medical services Carolina Neurosurgery was to provide to the Lawyers' client.

42. Carolina Neurosurgery reasonably relied on the promise by the Lawyers.

43. Carolina Neurosurgery's reliance was expected by and foreseeable to the Lawyers.

44. Carolina Neurosurgery suffered substantial financial losses caused by its reasonable reliance on the Lawyers' unambiguous promises and unambiguous assurances concerning insurance coverage.

45. WHEREFORE, Carolina Neurosurgery is entitled to and requests an award of actual damages against the Lawyers under this promissory estoppel claim for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the

Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., prays for judgment against Defendants, Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP, jointly and severally, for the relief sought in each of the Causes of Action asserted in this Verified Complaint, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
Christopher W. Lempesis, Jr. (SC Bar #77012)
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com
Chris@PendarvisLaw.com

Counsel for Plaintiff

Beaufort, South Carolina

September 4, 2023

ELECTRONICALLY FILED - 2024 Aug 16 2:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Sep 05 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP Defendants.	**AMENDED SUMMONS**

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint, a copy of which is served upon you, and to serve a copy of your Answer to the Amended Complaint on the Plaintiff's attorney within (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Verified Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

/s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com

Counsel for Plaintiff

Beaufort, South Carolina

September 5, 2024

ELECTRONICALLY FILED - 2024 Sep 05 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP Defendants.	**AMENDED COMPLAINT**[1] **(Jury Trial Demanded)** 1. Breach of Contract; 2. Violation SC Unfair Trade Practices Act 3. Negligent Misrepresentation; and 4. Promissory Estoppel.

Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., complaining of Defendants, Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP, respectfully shows unto the Court:

SUMMARY OF THE CASE

1. This case arises from Defendants' false and inaccurate representations about the availability of $1,000,000 in insurance coverage they were pursuing to cover medical and surgical expenses for one of the Defendants' clients that induced Plaintiff to perform over $125,000 in surgery and related healthcare services for Defendants' client when contrary to Defendants' representations, there was no available insurance coverage, or the Defendants were unable to recover insurance proceeds to pay for the surgeries.

PARTIES

2. Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC. ("Carolina Neurosurgery"), is a Corporation organized and existing under the laws of South Carolina with offices in Charleston County, South Carolina.

3. Defendant, Michael A. Maucher, Esq. ("Mr. Maucher"), is, upon information and belief, a citizen and resident of Charleston County, South Carolina.

[1] Plaintiff respectfully reserves its objections and potential appeal of the trial court's ruling granting Defendants' motion to dismiss Plaintiff's claims asserted in the original Complaint for Breach of Contract Accompanied by a Fraudulent Act, Fraud, Constructive Fraud, and Unjust Enrichment.

ELECTRONICALLY FILED - 2024 Sep 05 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

4. Defendant, DELUCA & MAUCHER, LLP ("the Law Firm"), is, upon information and belief, a South Carolina Limited Liability Partnership operating as a law practice with offices in Charleston County, South Carolina. (Mr. Maucher and the Law Firm will be referred to collectively as "the Lawyers").

JURISDICTION

5. This Court has jurisdiction based upon Article V of the South Carolina Constitution, S.C. CODE ANN. §§ 36-2-802 and 36-2-803, and its plenary powers.

VENUE

6. Venue is proper in Charleston County because, upon information and belief, Mr. Maucher resides in Charleston County, the Lawyers' offices are in Charleston County, and the acts and omissions complained of occurred in Charleston County, South Carolina.

FACTS

7. In December 2018, an individual identified in this Amended Complaint as "the Lawyers' client" was injured in a motor vehicle collision. The Lawyers' client was a prior patient of Carolina Neurosurgery's surgeon, Dr. Highsmith, and had a procedure with Dr. Highsmith before December 2018.

8. On December 20, 2018, the Lawyers sent Carolina Neurosurgery a "Letter of Protection" ("the LOP") promising to "protect *any claim* which you may have out of any settlement proceeds we may receive arising of the incident referred to above" to secure payment for all future surgeries and medical treatment expenses out of liability insurance proceeds providing coverage for the Lawyers' client's claims.

9. Based on the Lawyers' representations, Carolina Neurosurgery began treating the Lawyers' client's collision-related injuries providing elective treatments for the benefit of the Lawyers' client under Carolina Neurosurgery's "Financial Policy."

10. At the time of the Lawyers' representations and thereafter, all involved parties including the Lawyers' client, the Lawyers, and Carolina Neurosurgery, knew or should have known a) Carolina Neurosurgery and its' surgeon, Dr. Highsmith, were "out-of-network" healthcare providers for the Lawyers' client and b) Carolina Neurosurgery was offering to provide elective medical/surgical services for the Lawyers' client.

11. Because the Lawyers' client did not have in-network health insurance coverage for any treatments provided by Carolina Neurosurgery, payment for services fell under the second

ELECTRONICALLY FILED - 2024 Sep 05 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

bullet point of Carolina Neurosurgery's "Financial Policy", "IF YOU DO NOT HAVE INSURANCE:"

> *Our policy requires payment in full today, unless, other arrangements are made. If you cannot pay in full now, we request partial payment today as you arranged for credit on your account with a payment plan agreement with our credit and collection manager.*

12. At this time, based on the Lawyers' representations, the "*other arrangements*" would be provided by various liability insurance policies over $1,000,000 that the Lawyers represented were available to cover medical expenses related to the Lawyers' client's personal injury claims.

13. On January 21, 2019 at 9:24 am, the Lawyers provided Carolina Neurosurgery written confirmation of the limits of coverage that would fund additional expenses for elective treatment to be provided to the Lawyers' client, stating, "[*the Lawyer's client] carries $100,000.00 in Underinsured Motorist Coverage on his at-home policy with Safeco, and there is $1,000,000.00 in 'Occupational Accident Coverage' to pay bills and wages under the One Beacon Policy*.

14. On January 21, 2019, at 11:58:35 AM, the Lawyers sent a second email discussing pre-existing injuries and indicating that they preferred that treatment not be provided under the LOP but did not explain or disclose that their prior statements representing there was $1,000,000 in insurance coverage were incorrect.

15. On March 7, 2019, the Lawyers forwarded a second Letter of Protection by email wherein the Lawyers agreed "to protect any portion of your bill not paid by private health insurance out of any settlement proceeds we may receive arising out of the incident referred to above" but again did not inform or disclose to Carolina Neurosurgery that their prior representation of the availability of over $1,000,000 in liability insurance policies providing coverage was not correct.

16. On March 15, 2019, Carolina Neurosurgery, relying on the Lawyers' representations of insurance coverage, performed surgery on the Lawyers' client at an approximate cost of $60,000.

17. On May 2, 2019, relying on the Lawyers' promises and assurances on the amount of insurance coverage, Carolina Neurosurgery performed a second surgery on the Lawyers' client at an approximate cost of $65,000.

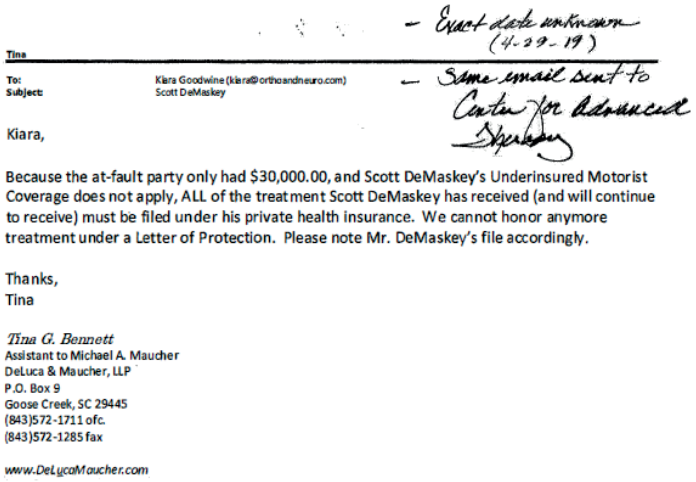
18. After the second surgery, the Lawyers reported to Carolina Neurosurgery that the Lawyers' prior statements representing over $1,000,000 in available insurance coverage were incorrect.

ELECTRONICALLY FILED - 2024 Sep 05 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

19. The Lawyers claimed they had warned Carolina Neurosurgery about the insurance coverage situation.

20. To convince Carolina Neurosurgery of the purported prior warning, the Lawyers physically handed Carolina Neurosurgery a print copy of an "email" the Lawyers claim they sent Carolina Neurosurgery on April 29, 2019, even though the email had no header, date, or reference to the sending party. This document will be referred to as the "false email."

21. The false email purports to have stated, "*Because the at-fault party only had $30,000.00, and [the Lawyers' client]'s Underinsured Motorist Coverage does not apply, ALL of the treatment [the Lawyers' client] has received (and will continue to receive) must be filed under his private health insurance. We cannot honor anymore treatment under a Letter of Protection. Please note [the Lawyers' client]'s file accordingly*." This is an image of the "false email":



Tina

To: Kiara Goodwine (kiara@orthoandneuro.com)
Subject: Scott DeMaskey

Kiara,

Because the at-fault party only had $30,000.00, and Scott DeMaskey's Underinsured Motorist Coverage does not apply, ALL of the treatment Scott DeMaskey has received (and will continue to receive) must be filed under his private health insurance. We cannot honor anymore treatment under a Letter of Protection. Please note Mr. DeMaskey's file accordingly.

Thanks,
Tina

Tina G. Bennett
Assistant to Michael A. Maucher
DeLuca & Maucher, LLP
P.O. Box 9
Goose Creek, SC 29445
(843)572-1711 ofc.
(843)572-1285 fax

www.DeLucaMaucher.com

22. Carolina Neurosurgery did not receive the "false email" the Lawyers claim to have sent on April 29, 2019.

23. The Lawyers cannot show the "false email" was electronically transmitted to Carolina Neurosurgery via email on April 29, 2019.

24. The Lawyers' "false email", however, even if it had been transmitted, did not advise or explain that there was no coverage under the "*$1,000,000.00 in 'Occupational Accident Coverage' ... under the One Beacon Policy"* as stated in the Lawyers' January 21, 2019 at 9:24 am email.

25. The Lawyers' "false email" was unfair and deceptive.

26. The Lawyers knew or should have known their conduct and representations concerning the "false email" violated the South Carolina Unfair Trade Practices Act.

ELECTRONICALLY FILED - 2024 Sep 05 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

27. The Lawyers did not explain or disclose to Carolina Neurosurgery that their prior statements representing over $1,000,000 in insurance coverage were not correct until after Carolina Neurosurgery provided treatments and performed two surgeries on the Lawyers' client.

28. The final invoice for the additional elective treatments Carolina Neurosurgery provided the Lawyers' client through December 20, 2019, is $125,409.25.

29. The Lawyers were not able to collect any of the "*$1,000,000.00 in 'Occupational Accident Coverage' ... under the One Beacon Policy"* to pay for the two surgeries Carolina Neurosurgery provided based on the Lawyers' representations.

30. Carolina Neurosurgery retained counsel and incurred at least $93,716.15 in legal fees to pursue recovery under the One Beacon Policy, and ultimately obtained only $6,323.50 under that policy.

31. Neither the Lawyers nor the Lawyers' client have paid Carolina Neurosurgery the remaining $119,085.78 outstanding balance for the medical treatments provided or the $93,716.15 in legal fees incurred.

32. The Lawyers' representations to Carolina Neurosurgery there was "*$1,000,000.00 in 'Occupational Accident Coverage' ... under the One Beacon Policy"* were not true.

33. Carolina Neurosurgery would not have performed the two surgeries on the Lawyers' client but for the representations made by the Lawyers concerning the insurance coverage.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

34. Carolina Neurosurgery realleges and incorporates the foregoing factual and jurisdictional statements by reference as if they were set forth herein.

35. Carolina Neurosurgery and the Lawyers entered into a contract wherein Carolina Neurosurgery would provide medical services to the Lawyers' client based on the Lawyers' representations about insurance coverage.

36. Carolina Neurosurgery fulfilled all necessary preconditions, if any, of the contract.

37. The Lawyers breached the contract.

38. As a direct and proximate cause of the Lawyers' multiple or singular breach of the contract, Carolina Neurosurgery sustained actual, consequential, and incidental damages in an amount to be determined by the jury at the trial of this case.

39. Under the Contract, Carolina Neurosurgery also requests all fees and costs generated in pursue of the relief claimed, including but not limited to legal fees.

ELECTRONICALLY FILED - 2024 Sep 05 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

37. WHEREFORE, Carolina Neurosurgery demands judgment and an award against the Lawyers under this breach of contract cause of action for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper.

FOR A SECOND CAUSE OF ACTION
(Violation of The South Carolina Unfair Trade Practices Act)

38. The foregoing factual and jurisdictional allegations are reiterated and realleged as though set forth verbatim.

39. This is a cause of action under the South Carolina Unfair Trade Practice Act, S.C. CODE ANN. §39-5-10, et seq.

40. The Lawyers engaged in trade or commerce in South Carolina, including practicing law in representing the Lawyers' Client.

41. The Lawyers engaged in unfair or deceptive acts or practices of trade or commerce.

42. Further, the Lawyers' use of such unfair and/or deceptive acts was willful.

43. The Lawyers' conduct is capable of repetition.

44. As a direct and proximate result of the Lawyers' use or employment of unfair and/or deceptive acts of trade or commerce as described in this Complaint, Carolina Neurosurgery has suffered an ascertainable loss of money or property.

WHEREFORE, Carolina Neurosurgery is entitled to and requests an award of actual damages under this Unfair Trade Practices Act claim, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper. Further Carolina Neurosurgery is entitled to and requests an award of treble damages, legal fees, and costs, for the Lawyers' willful conduct and statutory violation.

FOR A THIRD CAUSE OF ACTION
(Negligent Misrepresentation)

40. Carolina Neurosurgery realleges and incorporates the foregoing factual and jurisdictional statements by reference as if they were set forth herein.

41. The Lawyers made false representations to Carolina Neurosurgery.

42. The Lawyers had a pecuniary interest in making the statements to Carolina Neurosurgery.

43. The Lawyers owed a duty of care to see that they communicated truthful information to Carolina Neurosurgery, including duties grounded in the Lawyers' obligations under Rule 4.1(a), RPC, Rule 407, SCACR - Truthfulness in Statements to Others and other Rules and standards

ELECTRONICALLY FILED - 2024 Sep 05 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

governing lawyers practicing law in South Carolina.

44. The Lawyers breached their duty duties to communicate truthful information to Carolina Neurosurgery by failing to exercise due care.

45. Carolina Neurosurgery justifiably relied on the Lawyer's representations.

46. Carolina Neurosurgery suffered a pecuniary loss as the proximate result of its reliance upon the Lawyers' representations.

47. WHEREFORE, Carolina Neurosurgery is entitled to and requests an award of actual damages against the Lawyers under this negligent misrepresentation claim for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper.

FOR A FOURTH CAUSE OF ACTION
(Promissory Estoppel)

48. Carolina Neurosurgery realleges and incorporates the foregoing factual and jurisdictional statements by reference as if they were set forth herein.

49. The Lawyers made unambiguous promise and gave unambiguous assurances to Carolina Neurosurgery concerning the availability of over $1 million in insurance coverage for the medical services Carolina Neurosurgery was to provide to the Lawyers' client.

50. Carolina Neurosurgery reasonably relied on the promise by the Lawyers.

51. Carolina Neurosurgery's reliance was expected by and foreseeable to the Lawyers.

52. Carolina Neurosurgery suffered substantial financial losses caused by its reasonable reliance on the Lawyers' unambiguous promises and unambiguous assurances concerning insurance coverage.

53. WHEREFORE, Carolina Neurosurgery is entitled to and requests an award of actual damages against the Lawyers under this promissory estoppel claim for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., prays for judgment against Defendants, Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP, jointly and severally, for the relief sought in each of the Causes of Action asserted in this Verified Complaint, including an award of actual damages, consequential damages, pre-judgment interest,

court costs, and treble damages, legal fees, and costs, for the Lawyers' willful conduct and statutory violation; and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com

Counsel for Plaintiff

Beaufort, South Carolina

September 5, 2024

ELECTRONICALLY FILED - 2024 Sep 05 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Sep 09 4:48 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP, Defendants.	**PLAINTIFF'S NOTICE OF WITHDRAWAL OF AMENDED COMPLAINT WITHOUT PREJUDICE**

TO: DOUGLAS W MACKELCAN, ESQ. AND SKYLER C. WILSON, ESQ., COUNSEL FOR DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., by and through the undersigned counsel, and hereby withdraws Plaintiff's Amended Complaint, filed September 5, 2024, without prejudice.

Respectfully submitted,

/s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
PENDARVIS LAW OFFICES, P.C.
710 Boundary Street, Suite 1-A
Beaufort, SC 29902
843.524.9500
Thomas@PendarvisLaw.com

Counsel for Plaintiff

Beaufort, South Carolina

September 9, 2024

ELECTRONICALLY FILED - 2024 Sep 10 8:56 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP Defendants.	**AMENDED SUMMONS**

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint, a copy of which is served upon you, and to serve a copy of your Answer to the Amended Complaint on the Plaintiff's attorney within (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Verified Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

/s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
Christopher W. Lempesis, Jr. (SC Bar #77012)
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com
Chris@PendarvisLaw.com

Counsel for Plaintiff

Beaufort, South Carolina

September 10, 2024

ELECTRONICALLY FILED - 2024 Sep 10 8:56 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP Defendants.	**AMENDED COMPLAINT**[1] **(Jury Trial Demanded)** 1. Breach of Contract; 2. Violation SC Unfair Trade Practices Act 3. Negligent Misrepresentation; and 4. Promissory Estoppel.

Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., complaining of Defendants, Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP, respectfully shows unto the Court:

SUMMARY OF THE CASE

1. This case arises from Defendants' false and inaccurate representations about the availability of $1,000,000 in insurance coverage they were pursuing to cover medical and surgical expenses for one of Defendants' clients that induced Plaintiff to perform over $125,000 in surgery and related healthcare services for Defendants' client when, contrary to Defendants' representations, there was no available insurance coverage or the Defendants were unable to recover insurance proceeds to pay for the surgeries.

PARTIES

2. Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC. ("Carolina Neurosurgery"), is a Corporation organized and existing under the laws of South Carolina with offices in Charleston County, South Carolina.

3. Defendant, Michael A. Maucher, Esq. ("Mr. Maucher"), is, upon information and belief, a citizen and resident of Charleston County, South Carolina.

[1] Plaintiff respectfully reserves its objections and potential appeal of the trial court's ruling granting Defendants' motion to dismiss Plaintiff's claims asserted in the original Complaint for Breach of Contract Accompanied by a Fraudulent Act, Fraud, Constructive Fraud, and Unjust Enrichment.

ELECTRONICALLY FILED - 2024 Sep 10 8:56 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

4. Defendant, DELUCA & MAUCHER, LLP ("the Law Firm"), is, upon information and belief, a South Carolina Limited Liability Partnership operating as a law practice with offices in Charleston County, South Carolina. (Mr. Maucher and the Law Firm will be referred to collectively as "the Lawyers".)

JURISDICTION

5. This Court has jurisdiction based upon Article V of the South Carolina Constitution, S.C. CODE ANN. §§ 36-2-802 and 36-2-803, and its plenary powers.

VENUE

6. Venue is proper in Charleston County because, upon information and belief, Mr. Maucher resides in Charleston County, the Lawyers' offices are in Charleston County, and the acts and omissions complained of occurred in Charleston County, South Carolina.

FACTS

7. In December 2018, an individual identified in this Amended Complaint as "the Lawyers' client" was injured in a motor vehicle collision. The Lawyers' client was a prior patient of Carolina Neurosurgery's surgeon, Dr. Highsmith, and had a procedure with Dr. Highsmith before December 2018.

8. On December 20, 2018, the Lawyers sent Carolina Neurosurgery a "Letter of Protection" ("the LOP") promising to "protect *any claim* which you may have out of any settlement proceeds we may receive arising of the incident referred to above" to secure payment for all future surgeries and medical treatment expenses out of liability insurance proceeds providing coverage for the Lawyers' client's claims.

9. Based on the Lawyers' representations, Carolina Neurosurgery began treating the Lawyers' client's collision-related injuries providing elective treatments for the benefit of the Lawyers' client under Carolina Neurosurgery's "Financial Policy."

10. At the time of the Lawyers' representations and thereafter, all involved parties including the Lawyers' client, the Lawyers, and Carolina Neurosurgery, knew or should have known a) Carolina Neurosurgery and its' surgeon, Dr. Highsmith were "out-of-network" healthcare providers for the Lawyers' client and b) Carolina Neurosurgery was offering to provide elective medical/surgical services for the Lawyers' client.

11. Because the Lawyers' client did not have in-network health insurance coverage for any treatments provided by Carolina Neurosurgery, payment for services fell under the second

ELECTRONICALLY FILED - 2024 Sep 10 8:56 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

bullet point of Carolina Neurosurgery's "Financial Policy", "IF YOU DO NOT HAVE INSURANCE:"

> *Our policy requires payment in full today, unless, other arrangements are made. If you cannot pay in full now, we request partial payment today as you arranged for credit on your account with a payment plan agreement with our credit and collection manager.*

12. At this time, based on the Lawyers' representations, the "*other arrangements*" would be provided by various liability insurance policies over $1,000,000 that the Lawyers represented were available to cover medical expenses related to the Lawyers' client's personal injury claims.

13. On January 21, 2019 at 9:24 am, the Lawyers provided Carolina Neurosurgery written confirmation of the limits of coverage that would fund additional expenses for elective treatment to be provided to the Lawyers' client, stating, "[*the Lawyer's client] carries $100,000.00 in Underinsured Motorist Coverage on his at-home policy with Safeco, and there is $1,000,000.00 in 'Occupational Accident Coverage' to pay bills and wages under the One Beacon Policy*.

14. On January 21, 2019, at 11:58:35 AM, the Lawyers sent a second email discussing pre-existing injuries and indicating that they preferred that treatment not be provided under the LOP but did not explain or disclose that their prior statements representing there was $1,000,000 in insurance coverage were incorrect.

15. On March 7, 2019, the Lawyers forwarded a second Letter of Protection by email wherein the Lawyers agreed "to protect any portion of your bill not paid by private health insurance out of any settlement proceeds we may receive arising out of the incident referred to above" but again did not inform or disclose to Carolina Neurosurgery that their prior representation of the availability of over $1,000,000 in liability insurance policies providing coverage was not correct.

16. On March 15, 2019, Carolina Neurosurgery relying on the Lawyers' representations of insurance coverage performed surgery on the Lawyers' client at an approximate cost of $60,000.

17. On April 29, 2019, at 11:20 am, the Lawyers sent Carolina Neurosurgery an email stating, "*Because the at-fault party only had $30,000.00, and [the Lawyers' client]'s Underinsured Motorist Coverage does not apply, ALL of the treatment [the Lawyers' client] has received (and will continue to receive) must be filed under his private health insurance. We cannot honor anymore treatment under a Letter of Protection. Please note [the Lawyers' client]'s file accordingly*."

ELECTRONICALLY FILED - 2024 Sep 10 8:56 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

18. The Lawyers' April 29, 2019, 11:20 am email, however, did not advise or explain that there was no coverage under the "*$1,000,000.00 in 'Occupational Accident Coverage' ... under the One Beacon Policy"* as stated in the Lawyers' January 21, 2019 at 9:24 am email.

19. On May 2, 2019, relying on the Lawyers' promises and assurances on the amount of insurance coverage, Carolina Neurosurgery performed a second surgery on the Lawyers' client at an approximate cost of $65,000.

20. The Lawyers did not explain or disclose to Carolina Neurosurgery that the Lawyers' prior statements representing there was over $1,000,000 in insurance coverage were not correct until after Carolina Neurosurgery provided treatments and performed two surgeries to the Lawyers' client.

21. The final invoice for the additional elective treatments Carolina Neurosurgery provided the Lawyers' client through December 20, 2019, is $125,409.25.

22. Upon information and belief, the Lawyers were not able to collect any of the "*$1,000,000.00 in 'Occupational Accident Coverage' ... under the One Beacon Policy"* to pay for the two surgeries Carolina Neurosurgery provided based on the Lawyers' representations.

23. Neither the Lawyers nor the Lawyers' client have paid Carolina Neurosurgery the outstanding balance of $125,409.25.

24. The Lawyers' representations to Carolina Neurosurgery there was "*$1,000,000.00 in 'Occupational Accident Coverage' ... under the One Beacon Policy"* were either not true or the Lawyers were not able to secure payment from One Beacon on the subject policy.

25. Carolina Neurosurgery would not have performed the two surgeries on the Lawyers' client but for the representations made by the Lawyers concerning the insurance coverage.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

26. Carolina Neurosurgery realleges and incorporates the foregoing factual and jurisdictional statements by reference as if they were set forth herein.

27. Carolina Neurosurgery and the Lawyers entered into a contract wherein Carolina Neurosurgery would provide medical services to the Lawyers' client based on the Lawyers' representations about insurance coverage.

28. Carolina Neurosurgery fulfilled all necessary preconditions, if any, of the contract.

29. The Lawyers breached the contract.

ELECTRONICALLY FILED - 2024 Sep 10 8:56 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

30. As a direct and proximate cause of the Lawyers' multiple or singular breach of the contract, Carolina Neurosurgery sustained actual, consequential, and incidental damages in an amount to be determined by the jury at the trial of this case.

31. Under the Contract, Carolina Neurosurgery also requests all fees and costs generated in pursue of the relief claimed, including but not limited to legal fees.

37. WHEREFORE, Carolina Neurosurgery demands judgment and an award against the Lawyers under this breach of contract cause of action for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper.

FOR A SECOND CAUSE OF ACTION
(Violation of The South Carolina Unfair Trade Practices Act)

38. The foregoing factual and jurisdictional allegations are reiterated and realleged as though set forth verbatim.

39. This is a cause of action under the South Carolina Unfair Trade Practice Act, S.C. CODE ANN. §39-5-10, et seq.

40. The Lawyers engaged in trade or commerce in South Carolina, including practicing law in representing the Lawyers' Client, who, as alleged throughout this Complaint, have engaged in unfair or deceptive acts or practices of trade or commerce. Further, the Lawyers' use of such unfair and/or deceptive acts was willful.

41. The Lawyers' conduct is capable of repetition.

42. As a direct and proximate result of the Lawyers' use or employment of unfair and/or deceptive acts of trade or commerce as described in this Complaint, Carolina Neurosurgery has suffered an ascertainable loss of money or property.

WHEREFORE, Carolina Neurosurgery is entitled to and requests an award of actual damages under this Unfair Trade Practices Act claim for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper. Further Carolina Neurosurgery is entitled to and requests an award of treble damages, legal fees, and costs, for the Lawyers' willful conduct and statutory violation.

FOR A THIRD CAUSE OF ACTION
(Negligent Misrepresentation)

32. Carolina Neurosurgery realleges and incorporates the foregoing factual and

ELECTRONICALLY FILED - 2024 Sep 10 8:56 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

jurisdictional statements by reference as if they were set forth herein.

33. The Lawyers made false representations to Carolina Neurosurgery.

34. The Lawyers had a pecuniary interest in making the statements to Carolina Neurosurgery.

35. The Lawyers owed a duty of care to see that they communicated truthful information to Carolina Neurosurgery, including duties grounded in the Lawyers' obligations under Rule 4.1(a), RPC, Rule 407, SCACR - Truthfulness in Statements to Others and other Rules and standards governing lawyers practicing law in South Carolina.

36. The Lawyers breached their duty duties to communicate truthful information to Carolina Neurosurgery by failing to exercise due care.

37. Carolina Neurosurgery justifiably relied on the Lawyer's representations.

38. Carolina Neurosurgery suffered a pecuniary loss as the proximate result of its reliance upon the Lawyers' representations.

39. WHEREFORE, Carolina Neurosurgery is entitled to and requests an award of actual damages against the Lawyers under this negligent misrepresentation claim for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper.

FOR A FOURTH CAUSE OF ACTION
(Promissory Estoppel)

40. Carolina Neurosurgery realleges and incorporates the foregoing factual and jurisdictional statements by reference as if they were set forth herein.

41. The Lawyers made unambiguous promise and gave unambiguous assurances to Carolina Neurosurgery concerning the availability of over $1 million in insurance coverage for the medical services Carolina Neurosurgery was to provide to the Lawyers' client.

42. Carolina Neurosurgery reasonably relied on the promise by the Lawyers.

43. Carolina Neurosurgery's reliance was expected by and foreseeable to the Lawyers.

44. Carolina Neurosurgery suffered substantial financial losses caused by its reasonable reliance on the Lawyers' unambiguous promises and unambiguous assurances concerning insurance coverage.

45. WHEREFORE, Carolina Neurosurgery is entitled to and requests an award of actual damages against the Lawyers under this promissory estoppel claim for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the

Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., prays for judgment against Defendants, Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP, jointly and severally, for the relief sought in each of the Causes of Action asserted in this Verified Complaint, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
Christopher W. Lempesis, Jr. (SC Bar #77012)
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com
Chris@PendarvisLaw.com

Counsel for Plaintiff

Beaufort, South Carolina

September 10, 2024

ELECTRONICALLY FILED - 2024 Sep 10 8:56 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Sep 20 4:27 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2021-CP-10-03379
	)	
Carolina Neurosurgery & Orthopaedics, Inc.,	)	
	)	**DEFENDANTS' ANSWER TO AMENDED COMPLAINT**
Plaintiff,	)	
vs.	)	
	)	
Michael A. Maucher, Esq. and DeLuca & Maucher, LLP,	)	
	)	
Defendants.	)	
	)	

Defendants Michael A. Maucher, Esq,. and Deluca & Maucher, LLP (D&M), by and through their undersigned counsel, submit their Answer to Plaintiff's Amended Complaint filed September 10, 2024, as follows:

PLAINTIFF'S SUMMARY OF THE CASE

1. Defendants deny Paragraph 1 of the Amended Complaint as stated.

PARTIES

2. Defendants admit Paragraph 2 of the Amended Complaint.

3. Defendants admit Paragraph 3 of the Amended Complaint.

4. In response to Paragraph 4 of the Amended Complaint, Defendants admit only that D&M operates as a law practice and has one office in Charleston County, South Carolina. Defendants deny the remaining allegations of Paragraph 4 as stated.

JURISDICTION

5. In response to Paragraph 5 of the Amended Complaint, Defendants admit only that this Court has jurisdiction, and deny any remaining allegations inconsistent herewith.

ELECTRONICALLY FILED - 2024 Sep 20 4:27 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

VENUE

6. Defendants admit Paragraph 6 of the Amended Complaint.

PLAINTIFF'S FACTS

7. Defendants admit Paragraph 7 of the Amended Complaint.

8. In response to Paragraph 8 of the Amended Complaint, Defendants admit only that on December 20, 2018, Defendants sent a letter of protection in which D&M agreed to "protect any claim which you may have out of any settlement proceeds we may receive arising out of the incident referred to above." Defendants assert that the letter of protection also indicated that the client "has been informed that, in the event of insufficient recovery, he remains personally responsible for [Plaintiff's] outstanding account balance. Defendants deny the remaining allegations of Paragraph 8 as stated.

9. Defendants deny Paragraph 9 of the Amended Complaint.

10. In response to Paragraph 10 of the Amended Complaint, Defendants admit only that they knew Plaintiff was offering to provide medical/surgical services to Defendants' client. Defendants deny that Defendants knew Plaintiff and Dr. Highsmith were "out of network" healthcare providers for Defendants' client. Defendants deny the remaining allegations of Paragraph 10 as stated.

11. Defendants deny Paragraph 11 of the Amended Complaint.

12. Defendants deny Paragraph 12 of the Amended Complaint.

13. Defendants deny Paragraph 13 of the Amended Complaint as stated.

14. In response to Paragraph 14 of the Amended Complaint, Defendants admit only that on January 21, 2019, at 11:58:35 a.m., they sent a second email discussing pre-existing

ELECTRONICALLY FILED - 2024 Sep 20 4:27 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

injuries to Plaintiff. Defendants further crave reference to said email, and deny any remaining allegations in Paragraph 14 inconsistent therewith.

15. In response to Paragraph 15 of the Amended Complaint, Defendants admit they forwarded the March 7, 2019 email and letter of protection with the highlighted language, noting that the letter also included a provision detailing what would happen in the event of an insufficient recovery. Defendants deny the remaining allegations of Paragraph 15.

16. In response to Paragraph 16 of the Amended Complaint, Defendants admit only that on March 15, 2019, Dr. Highsmith performed surgery on Defendants' client. Defendants deny the remaining allegations of Paragraph 16.

17. Defendants admit Paragraph 17 of the Amended Complaint.

18. In response to Paragraph 18 of the Amended Complaint, Defendants assert the referenced email speaks for itself. Defendants deny any allegations or implication that they had an obligation to include the referenced language in Paragraph 18.

19. In response to Paragraph 19 of the Amended Complaint, Defendants admit only that on May 2, 2019, Dr. Highsmith performed additional surgery on Defendants' client. Defendants deny the remaining allegations of Paragraph 19.

20. Defendants deny Paragraph 20 of the Amended Complaint as stated.

21. In response to Paragraph 21 of the Amended Complaint, Defendants crave reference to the final invoice itself, and deny any allegations in Paragraph 21 inconsistent therewith.

22. Defendants deny Paragraph 22 of the Amended Complaint as stated.

23. Defendants deny Paragraph 23 of the Amended Complaint as stated.

24. Defendants deny Paragraph 24 of the Amended Complaint.

ELECTRONICALLY FILED - 2024 Sep 20 4:27 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

25. Defendants deny Paragraph 25 of the Amended Complaint.

PLAINTIFF'S FIRST CAUSE OF ACTION
(Breach of Contract)

26. In response to Paragraph 26 of the Amended Complaint, Defendants incorporate and reassert the foregoing responses as if more fully set forth verbatim herein.

27. Defendants deny Paragraph 27 of the Amended Complaint.

28. Defendants deny Paragraph 28 of the Amended Complaint.

29. Defendants deny Paragraph 29 of the Amended Complaint.

30. Defendants deny Paragraph 30 of the Amended Complaint.

31. Defendants deny Paragraph 31 of the Amended Complaint.

37. Defendants deny Paragraph 37[1] of the Amended Complaint.

PLAINTIFF'S SECOND CAUSE OF ACTION
(Violation of South Carolina Unfair Trade Practices Act)

38. In response to Paragraph 38 of the Amended Complaint, Defendants incorporate and reassert the foregoing responses as if more fully set forth herein.

39. Defendants are informed and believe, that Paragraph 39 of the Amended Complaint does not require a response.

40. In response to Paragraph 40 of the Amended Complaint, Defendants admit only that they engaged in trade and commerce in practicing law in the course and scope of their representation of Defendants' client. Defendants deny the remaining allegations of Paragraph 40.

41. Defendants deny Paragraph 41 of the Amended Complaint.

[1] At this point in Plaintiff's Amended Complaint the paragraph numbering restarts at 37. Defendants' answer is similarly numbered to avoid any confusion related to which paragraphs the Defendants are responding.

ELECTRONICALLY FILED - 2024 Sep 20 4:27 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

42. Defendants deny Paragraph 42 of the Amended Complaint.

43. Defendants deny Plaintiff's entitlement to any of the damages and any other relief sought in the Paragraph beginning with "WHEREFORE," which immediately follows Paragraph 42.

PLAINTIFF'S THIRD CAUSE OF ACTION
(Violation of South Carolina Unfair Trade Practices Act)

32. In response to Paragraph 32 of the Amended Complaint, Defendants incorporate and reassert the foregoing responses as if more fully set forth herein.[2]

33. Defendants deny Paragraph 33 of the Amended Complaint.

34. Defendants deny Paragraph 34 of the Amended Complaint.

35. Defendants deny Paragraph 35 of the Amended Complaint as stated.

36. Defendants deny Paragraph 36 of the Amended Complaint.

37. Defendants deny Paragraph 37 of the Amended Complaint.

38. Defendants deny Paragraph 38 of the Amended Complaint.

39. Defendants deny Paragraph 39 of the Amended Complaint.

PLAINTIFF'S FOURTH CAUSE OF ACTION
(Promissory Estoppel)

40. In response to Paragraph 40 of the Amended Complaint, Defendants incorporate and reassert the foregoing responses as if more fully set forth herein.

41. Defendants deny Paragraph 41 of the Amended Complaint.

42. Defendants deny Paragraph 42 of the Amended Complaint.

43. Defendants deny Paragraph 43 of the Amended Complaint.

[2] At this point in Plaintiff's Amended Complaint the paragraph numbering restarts at 32. Defendants' answer is similarly numbered to avoid any confusion related to which paragraphs the Defendants are responding.

ELECTRONICALLY FILED - 2024 Sep 20 4:27 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

44. Defendants deny Paragraph 44 of the Amended Complaint.

45. Defendants deny Paragraph 45 of the Amended Complaint.

46. Defendants deny any and all relief sought by Plaintiff in its "Prayer for Relief."

47. Defendants deny each and every allegation contained in the Amended Complaint not specifically admitted herein.

FIRST AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

Plaintiff may have failed to mitigate its damages, if any, as required under South Carolina law.

SECOND AFFIRMATIVE DEFENSE
(Lack of Mutual Assent)

Plaintiff and Defendants may not have agreed to all essential and material terms relating to the matters underlying the alleged contract.

THIRD AFFIRMATIVE DEFENSE
(No Acceptance by Plaintiff)

To the extent the communications between the parties regarding insurance or Letters of Protection constitute an offer by D&M inviting acceptance by Plaintiff in a certain manner, Plaintiff failed to comply with the prescribed manner of acceptance. Therefore, no valid contract between the parties was formed.

FOURTH AFFIRMATIVE DEFENSE
(Failure of Conditions Precedent)

In the event the Court finds there was a valid contract between the parties, Plaintiff failed to satisfy all necessary conditions precedent to D&M's performance thereunder, because Plaintiff failed to file any claims for payment of its services rendered with Defendants' clients' private health insurance, prior to seeking payment from Defendants.

ELECTRONICALLY FILED - 2024 Sep 20 4:27 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

FIFTH AFFIRMATIVE DEFENSE
(Abandonment)

To the extent there was a contract between D&M and Plaintiff—which Defendants expressly deny—Plaintiff acquiesced in and agreed to Defendants' abandonment thereof.

SIXTH AFFIRMATIVE DEFENSE
(Waiver, Estoppel, and Laches)

Plaintiff's claims are or may be barred by the doctrines of waiver, estoppel and/or laches.

SEVENTH AFFIRMATIVE DEFENSE
(No Causation)

Any damages alleged to have been suffered by Plaintiff were not the direct and proximate result of any alleged breaches of contract by Defendants.

EIGHTH AFFIRMATIVE DEFENSE
(Limitation of Damages)

In the event the Court finds that either Letter of Protection constitutes a valid contract between Plaintiff, and that D&M has breached the contract, Plaintiff may not recover consequential damages or any other items of special damages, pursuant to Rule 9(g), SCRCP and South Carolina common law.

NINTH AFFIRMATIVE DEFENSE
(Controlling Person)

In the event the Court finds D&M violated the South Carolina Unfair Trade Practices Act—which Defendants expressly deny—as a named partner of D&M, Maucher may not be subject to personal liability for any such violations by D&M, pursuant to South Carolina law, including the controlling person doctrine.

ELECTRONICALLY FILED - 2024 Sep 20 4:27 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

TENTH AFFIRMATIVE DEFENSE
(No Adverse Effect on Public Interest)

Defendants' alleged conduct complained of in Plaintiff's Amended Complaint did not adversely affect the public interest and does not have the potential for repetition. Therefore, Plaintiff cannot maintain a claim against Defendants for violation of the South Carolina Unfair Trade Practices Act.

ELEVENTH AFFIRMATIVE DEFENSE
(Lack of Willfulness)

In the event the Court finds Defendants' alleged conduct complained of in Plaintiff's Complaint violates the South Carolina Unfair Trade Practices Act, any such conduct does not constitute a willful or knowing violation of the Unfair Trade Practices Act. Accordingly, Plaintiff may not recover treble damages.

TWELFTH AFFIRMATIVE DEFENSE
(Frivolous Proceedings)

That Plaintiff and its counsel have filed and prosecuted frivolous claims against Defendants, and should be sanctioned under section 15-36-10 of the South Carolina Code.

THIRTEENTH AFFIRMATIVE DEFENSE
(Unclean Hands)

Plaintiff's equitable claims and relief are barred by the doctrine of unclean hands.

FOURTEENTH AFFIRMATIVE DEFENSE
(Payment and Release)

Plaintiff's claims may be barred in full or in part by the doctrines of Payment and Release considering partial payment by One Beacon, and Plaintiff's release of Defendants' client.

ELECTRONICALLY FILED - 2024 Sep 20 4:27 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

FIFTEENTH AFFIRMATIVE DEFENSE
(General Reservation)

Defendants reserve any additional and further defenses as may be revealed by additional information during the course of discovery and investigation, and as are consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully responded to Plaintiff's Amended Complaint, Defendants respectfully request that this Court inquire as to the matters raised herein, that Plaintiff's claims be dismissed with costs taxed against Plaintiff, and for such other and further relief as the Court deems just and proper.

This 20th day of September, 2024.

Respectfully submitted,

COPELAND, STAIR, VALZ & LOVELL, LLP

By: *s/Skyler C. Wilson*
DOUGLAS W. MACKELCAN
State Bar No.: 76332
SKYLER C. WILSON
State Bar No.: 102865
Attorneys for Defendants

40 Calhoun Street, Suite 400
Charleston, SC 29401-3531
dmackelcan@csvl.law
swilson@csvl.law
Ph: 843-727-0307

ELECTRONICALLY FILED - 2024 Sep 24 10:50 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP Defendants.	**SECOND AMENDED SUMMONS**

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Second Amended Complaint, a copy of which is served upon you, and to serve a copy of your Answer to the Second Amended Complaint on the Plaintiff's attorney within (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Second Amended Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Second Amended Complaint.

/s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com

Counsel for Plaintiff

Beaufort, South Carolina

September 24, 2024

ELECTRONICALLY FILED - 2024 Sep 24 10:50 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP Defendants.	**SECOND AMENDED COMPLAINT[1]** **(Jury Trial Demanded)** 1. Breach of Contract; 2. Violation SC Unfair Trade Practices Act 3. Negligent Misrepresentation; and 4. Promissory Estoppel.

Pursuant to Rule 15(a), SCRCP, permitting a party to "amend his pleading once as a matter of course, at any time before or within 30 days after a responsive pleading is served[,]" Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., complaining of Defendants, Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP, respectfully shows unto the Court:

SUMMARY OF THE CASE

1. This case arises from Defendants' false and inaccurate representations about the availability of $1,000,000 in insurance coverage they were pursuing to cover medical and surgical expenses for one of the Defendants' clients that induced Plaintiff to perform over $125,000 in surgery and related healthcare services for Defendants' client when contrary to Defendants' representations, there was no available insurance coverage, or the Defendants were unable to recover insurance proceeds to pay for the surgeries.

PARTIES

2. Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC. ("Carolina Neurosurgery"), is a Corporation organized and existing under the laws of South Carolina with

[1] Plaintiff respectfully reserves its objections and potential appeal of the trial court's ruling granting Defendants' motion to dismiss Plaintiff's claims asserted in the original Complaint for Breach of Contract Accompanied by a Fraudulent Act, Fraud, Constructive Fraud, and Unjust Enrichment.

ELECTRONICALLY FILED - 2024 Sep 24 10:50 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

offices in Charleston County, South Carolina.

3. Defendant, Michael A. Maucher, Esq. ("Mr. Maucher"), is, upon information and belief, a citizen and resident of Charleston County, South Carolina.

4. Defendant, DeLuca & Maucher, LLP ("the Law Firm"), is, upon information and belief, a South Carolina Limited Liability Partnership operating as a law practice with offices in Charleston County, South Carolina. (Mr. Maucher and the Law Firm will be referred to collectively as "the Lawyers").

JURISDICTION

5. This Court has jurisdiction based upon Article V of the South Carolina Constitution, S.C. Code Ann. §§ 36-2-802 and 36-2-803, and its plenary powers.

VENUE

6. Venue is proper in Charleston County because, upon information and belief, Mr. Maucher resides in Charleston County, the Lawyers' offices are in Charleston County, and the acts and omissions complained of occurred in Charleston County, South Carolina.

FACTS

7. In December 2018, an individual identified in this Second Amended Complaint as "the Lawyers' client" was injured in a motor vehicle collision. The Lawyers' client was a prior patient of Carolina Neurosurgery's surgeon, Dr. Highsmith, and had a procedure with Dr. Highsmith before December 2018.

8. On December 20, 2018, the Lawyers sent Carolina Neurosurgery a "Letter of Protection" ("the LOP") promising to "protect *any claim* which you may have out of any settlement proceeds we may receive arising of the incident referred to above" to secure payment for all future surgeries and medical treatment expenses out of liability insurance proceeds providing coverage for the Lawyers' client's claims.

9. Based on the Lawyers' representations, Carolina Neurosurgery began treating the Lawyers' client's collision-related injuries providing elective treatments for the benefit of the Lawyers' client under Carolina Neurosurgery's "Financial Policy."

10. At the time of the Lawyers' representations and thereafter, all involved parties including the Lawyers' client, the Lawyers, and Carolina Neurosurgery, knew or should have known a) Carolina Neurosurgery and its' surgeon, Dr. Highsmith, were "out-of-network"

ELECTRONICALLY FILED - 2024 Sep 24 10:50 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

healthcare providers for the Lawyers' client and b) Carolina Neurosurgery was offering to provide elective medical/surgical services for the Lawyers' client.

11. Because the Lawyers' client did not have in-network health insurance coverage for any treatments provided by Carolina Neurosurgery, payment for services fell under the second bullet point of Carolina Neurosurgery's "Financial Policy", "IF YOU DO NOT HAVE INSURANCE:"

> *Our policy requires payment in full today, unless, other arrangements are made. If you cannot pay in full now, we request partial payment today as you arranged for credit on your account with a payment plan agreement with our credit and collection manager.*

12. At this time, based on the Lawyers' representations, the "*other arrangements*" would be provided by various liability insurance policies over $1,000,000 that the Lawyers represented were available to cover medical expenses related to the Lawyers' client's personal injury claims.

13. On January 21, 2019 at 9:24 am, the Lawyers provided Carolina Neurosurgery written confirmation of the limits of coverage that would fund additional expenses for elective treatment to be provided to the Lawyers' client, stating, "[*the Lawyer's client] carries $100,000.00 in Underinsured Motorist Coverage on his at-home policy with Safeco, and there is $1,000,000.00 in 'Occupational Accident Coverage' to pay bills and wages under the One Beacon Policy*.

14. On January 21, 2019, at 11:58:35 AM, the Lawyers sent a second email discussing pre-existing injuries and indicating that they preferred that treatment not be provided under the LOP but did not explain or disclose that their prior statements representing there was $1,000,000 in insurance coverage were incorrect.

15. On March 7, 2019, the Lawyers forwarded a second Letter of Protection by email wherein the Lawyers agreed "to protect any portion of your bill not paid by private health insurance out of any settlement proceeds we may receive arising out of the incident referred to above" but again did not inform or disclose to Carolina Neurosurgery that their prior representation of the availability of over $1,000,000 in liability insurance policies providing coverage was not correct.

16. On March 15, 2019, Carolina Neurosurgery, relying on the Lawyers' representations of insurance coverage, performed surgery on the Lawyers' client at an approximate cost of $60,000.

ELECTRONICALLY FILED - 2024 Sep 24 10:50 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

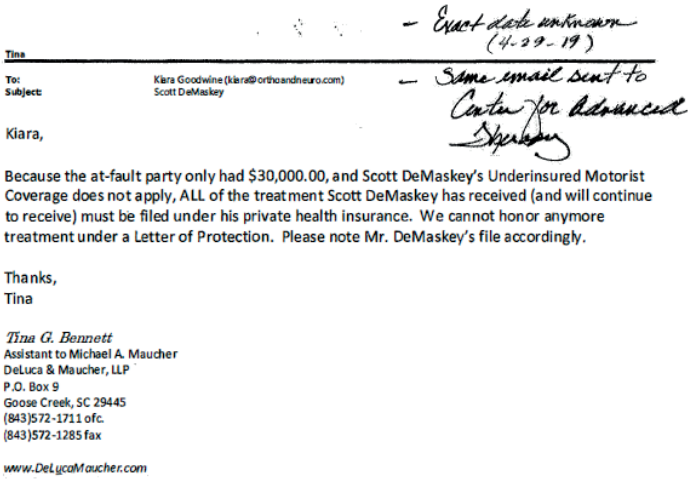
17. On May 2, 2019, relying on the Lawyers' promises and assurances on the amount of insurance coverage, Carolina Neurosurgery performed a second surgery on the Lawyers' client at an approximate cost of $65,000.

18. After the second surgery, the Lawyers reported to Carolina Neurosurgery that the Lawyers' prior statements representing over $1,000,000 in available insurance coverage were incorrect.

19. The Lawyers claimed they had warned Carolina Neurosurgery about the insurance coverage situation.

20. To convince Carolina Neurosurgery of the purported prior warning, the Lawyers physically handed Carolina Neurosurgery a print copy of an "email" the Lawyers claim they sent Carolina Neurosurgery on April 29, 2019, even though the email had no header, date, or reference to the sending party. This document will be referred to as the "false email."

21. The false email purports to have stated, "*Because the at-fault party only had $30,000.00, and [the Lawyers' client]'s Underinsured Motorist Coverage does not apply, ALL of the treatment [the Lawyers' client] has received (and will continue to receive) must be filed under his private health insurance. We cannot honor anymore treatment under a Letter of Protection. Please note [the Lawyers' client]'s file accordingly*." This is an image of the "false email":



– Exact date unknown (4-29-19)

Tina

To: Kiara Goodwine (kiara@orthoandneuro.com)
Subject: Scott DeMaskey

– Same email sent to Carter for Advanced

Kiara,

Because the at-fault party only had $30,000.00, and Scott DeMaskey's Underinsured Motorist Coverage does not apply, ALL of the treatment Scott DeMaskey has received (and will continue to receive) must be filed under his private health insurance. We cannot honor anymore treatment under a Letter of Protection. Please note Mr. DeMaskey's file accordingly.

Thanks,
Tina

Tina G. Bennett
Assistant to Michael A. Maucher
DeLuca & Maucher, LLP
P.O. Box 9
Goose Creek, SC 29445
(843)572-1711 ofc.
(843)572-1285 fax

www.DeLucaMaucher.com

22. Carolina Neurosurgery did not receive the "false email" the Lawyers claim to have sent on April 29, 2019.

23. The Lawyers cannot show the "false email" was electronically transmitted to Carolina Neurosurgery via email on April 29, 2019.

ELECTRONICALLY FILED - 2024 Sep 24 10:50 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

24. The Lawyers' "false email", however, even if it had been transmitted, did not advise or explain that there was no coverage under the "*$1,000,000.00 in 'Occupational Accident Coverage' ... under the One Beacon Policy"* as stated in the Lawyers' January 21, 2019 at 9:24 am email.

25. The Lawyers' "false email" was unfair and deceptive.

26. The Lawyers knew or should have known their conduct and representations concerning the "false email" violated the South Carolina Unfair Trade Practices Act.

27. The Lawyers did not explain or disclose to Carolina Neurosurgery that their prior statements representing over $1,000,000 in insurance coverage were not correct until after Carolina Neurosurgery provided treatments and performed two surgeries on the Lawyers' client.

28. The final invoice for the additional elective treatments Carolina Neurosurgery provided the Lawyers' client through December 20, 2019, is $125,409.25.

29. The Lawyers were not able to collect any of the "*$1,000,000.00 in 'Occupational Accident Coverage' ... under the One Beacon Policy"* to pay for the two surgeries Carolina Neurosurgery provided based on the Lawyers' representations.

30. Carolina Neurosurgery retained counsel and incurred at least $93,716.15 in legal fees to pursue recovery under the One Beacon Policy, and ultimately obtained only $6,323.50 under that policy.

31. Neither the Lawyers nor the Lawyers' client have paid Carolina Neurosurgery the remaining $119,085.78 outstanding balance for the medical treatments provided or the $93,716.15 in legal fees incurred.

32. The Lawyers' representations to Carolina Neurosurgery there was "*$1,000,000.00 in 'Occupational Accident Coverage' ... under the One Beacon Policy"* were not true.

33. Carolina Neurosurgery would not have performed the two surgeries on the Lawyers' client but for the representations made by the Lawyers concerning the insurance coverage.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

34. Carolina Neurosurgery realleges and incorporates the foregoing factual and jurisdictional statements by reference as if they were set forth herein.

35. Carolina Neurosurgery and the Lawyers entered into a contract wherein Carolina Neurosurgery would provide medical services to the Lawyers' client based on the Lawyers' representations about insurance coverage.

ELECTRONICALLY FILED - 2024 Sep 24 10:50 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

36. Carolina Neurosurgery fulfilled all necessary preconditions, if any, of the contract.

37. The Lawyers breached the contract.

38. As a direct and proximate cause of the Lawyers' multiple or singular breach of the contract, Carolina Neurosurgery sustained actual, consequential, and incidental damages in an amount to be determined by the jury at the trial of this case.

39. Under the Contract, Carolina Neurosurgery also requests all fees and costs generated in pursue of the relief claimed, including but not limited to legal fees.

37. WHEREFORE, Carolina Neurosurgery demands judgment and an award against the Lawyers under this breach of contract cause of action for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper.

FOR A SECOND CAUSE OF ACTION
(Violation of The South Carolina Unfair Trade Practices Act)

38. The foregoing factual and jurisdictional allegations are reiterated and realleged as though set forth verbatim.

39. This is a cause of action under the South Carolina Unfair Trade Practice Act, S.C. CODE ANN. §39-5-10, et seq.

40. The Lawyers engaged in trade or commerce in South Carolina, including practicing law in representing the Lawyers' Client.

41. The Lawyers engaged in unfair or deceptive acts or practices of trade or commerce.

42. Further, the Lawyers' use of such unfair and/or deceptive acts was willful.

43. The Lawyers' conduct is capable of repetition.

44. As a direct and proximate result of the Lawyers' use or employment of unfair and/or deceptive acts of trade or commerce as described in this Second Amended Complaint, Carolina Neurosurgery has suffered an ascertainable loss of money or property.

WHEREFORE, Carolina Neurosurgery is entitled to and requests an award of actual damages under this Unfair Trade Practices Act claim, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper. Further Carolina Neurosurgery is entitled to and requests an award of treble damages, legal fees, and costs, for the Lawyers' willful conduct and statutory violation.

FOR A THIRD CAUSE OF ACTION
(Negligent Misrepresentation)

40. Carolina Neurosurgery realleges and incorporates the foregoing factual and

ELECTRONICALLY FILED - 2024 Sep 24 10:50 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

jurisdictional statements by reference as if they were set forth herein.

41. The Lawyers made false representations to Carolina Neurosurgery.

42. The Lawyers had a pecuniary interest in making the statements to Carolina Neurosurgery.

43. The Lawyers owed a duty of care to see that they communicated truthful information to Carolina Neurosurgery, including duties grounded in the Lawyers' obligations under Rule 4.1(a), RPC, Rule 407, SCACR - Truthfulness in Statements to Others and other Rules and standards governing lawyers practicing law in South Carolina.

44. The Lawyers breached their duty duties to communicate truthful information to Carolina Neurosurgery by failing to exercise due care.

45. Carolina Neurosurgery justifiably relied on the Lawyer's representations.

46. Carolina Neurosurgery suffered a pecuniary loss as the proximate result of its reliance upon the Lawyers' representations.

47. WHEREFORE, Carolina Neurosurgery is entitled to and requests an award of actual damages against the Lawyers under this negligent misrepresentation claim for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper.

FOR A FOURTH CAUSE OF ACTION
(Promissory Estoppel)

48. Carolina Neurosurgery realleges and incorporates the foregoing factual and jurisdictional statements by reference as if they were set forth herein.

49. The Lawyers made unambiguous promise and gave unambiguous assurances to Carolina Neurosurgery concerning the availability of over $1 million in insurance coverage for the medical services Carolina Neurosurgery was to provide to the Lawyers' client.

50. Carolina Neurosurgery reasonably relied on the promise by the Lawyers.

51. Carolina Neurosurgery's reliance was expected by and foreseeable to the Lawyers.

52. Carolina Neurosurgery suffered substantial financial losses caused by its reasonable reliance on the Lawyers' unambiguous promises and unambiguous assurances concerning insurance coverage.

53. WHEREFORE, Carolina Neurosurgery is entitled to and requests an award of actual damages against the Lawyers under this promissory estoppel claim for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the

Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., prays for judgment against Defendants, Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP, jointly and severally, for the relief sought in each of the Causes of Action asserted in this Second Amended Complaint, including an award of actual damages, consequential damages, pre-judgment interest, court costs, and treble damages, legal fees, and costs, for the Lawyers' willful conduct and statutory violation; and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com

Counsel for Plaintiff

Beaufort, South Carolina

September 24, 2024

ELECTRONICALLY FILED - 2024 Sep 24 10:50 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Sep 24 3:25 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	IN THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 2021-CP-10-03379
)	
Carolina Neurosurgery & Orthopaedics, Inc.,)	
)	**DEFENDANTS' MOTION TO STRIKE**
Plaintiff,)	
vs.)	
)	
Michael A. Maucher, Esq. and DeLuca & Maucher, LLP,)	
)	
Defendants.)	
)	

PLEASE TAKE NOTICE that Defendants Michael A. Maucher, Esq. and Deluca & Maucher, LLP, by and through their undersigned counsel, will move this Honorable Court on the tenth day after service hereof, and do hereby move, for an Order pursuant to Rule 12(f), SCRCP, striking Plaintiff's Second Amended Complaint filed September 24, 2024. Plaintiff did not obtain leave of court or written consent from Defendants to amend the complaint under Rule 15, SCRCP, and, accordingly, Plaintiff's Second Amended Complaint is ineffective and a legal nullity. Defendants request this Court order Defendants any additional relief it deems just under the circumstances, including, but not limited to, appropriate costs, fees or sanctions. Defendants will supplement this motion with a memorandum in support prior to a hearing.

This 24th day of September, 2024.

Respectfully submitted,

COPELAND, STAIR, VALZ & LOVELL, LLP
By: *s/Skyler C. Wilson*
DOUGLAS W. MACKELCAN
State Bar No.: 76332
SKYLER C. WILSON
State Bar No.: 102865
Attorneys for Defendants

40 Calhoun Street, Suite 400
Charleston, SC 29401
dmackelcan@csvl.law
swilson@csvl.law
Ph: 843-727-0307

ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2021-CP-10-03379
	)	
Carolina Neurosurgery & Orthopaedics, Inc.,	)	
	)	**DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO STRIKE**
Plaintiff,	)	
vs.	)	
	)	
Michael A. Maucher, Esq. and DeLuca & Maucher, LLP,	)	
	)	
Defendants.	)	
	)	

Defendants Michael A. Maucher, Esq. and Deluca & Maucher, LLP, by and through their undersigned counsel, submit this memorandum in support of their Motion to Strike Plaintiff's Second Amended Complaint for failure to comply with Rule 15 of the South Carolina Rules of Civil Procedure.

INTRODUCTION

This case arises from Plaintiff's failure to exercise due diligence and follow its financial policy before proceeding with approximately $125,000.00 in surgical treatment for one of Defendants' clients (Client), who was injured in a motor vehicle collision on December 14, 2018. Defendants ended up only recovering $30,000 from the at-fault party. Unsatisfied with nothing less than full payment, Plaintiff sued Client to recover its medical bills. Plaintiff also sued Client's attorneys, the Defendants, claiming Defendants are responsible for paying the medical bills. After wasting nearly $90,000 in legal fees pursuing its claims against Client, Plaintiff settled its lawsuit with Client on the eve of trial. Now Plaintiff claims Defendants are responsible for those legal fees.

ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

SUMMARY OF RELEVANT FACTS

Client was injured in a car accident on December 14, 2018. Shortly thereafter, he retained Defendants to pursue claims against the at-fault driver. Before the accident, Client was a patient of Dr. Highsmith and Carolina Neurosurgery. Client chose to return to Dr. Highsmith to treat the injuries he sustained in the car accident.

At Plaintiff's request, Defendants sent a letter of protection explaining they would protect any claims to proceeds received from settlement, but that the Client remained responsible in the event of an insufficient recovery. After learning Client needed major surgery, Defendants retracted the letter of protection, and sent a new one requesting Plaintiff bill Client's medical insurance. Plaintiff agreed, but failed to follow through on that promise. Plaintiff never billed Client's insurance nor informed Defendants that it could not bill Client's insurance. Plaintiff went ahead with two surgeries for Client, incurring $125,000 in medical expenses.

Defendants pursued Client's personal injury claim. However, Defendants were only able to recover $30,000 from the at-fault party and no other insurance policies would cover Client's injuries and damages. Due to competing claims to the settlement funds, Defendants attempted to pay Plaintiff $15,000 but Plaintiff refused anything short of full payment. Client is a blue-collar worker with little to no assets and could not pay the full medical bills. Nevertheless, Plaintiff sued Client pursuant to its financial policy, and sued Defendants.

Current Lawsuit

Plaintiff filed this action on July 22, 2021, asserting claims for (1) breach of contract; (2) breach of contract accompanied by a fraudulent act; (3) violation of the S.C. Unfair Trade Practice Act; (4) fraud; (5) constructive fraud; (6) unjust enrichment; and (7) negligence. ***See* Compl**. Defendants moved to dismiss Plaintiff's claims, which was granted in part, and the

ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

only remaining claims are for (1) Breach of Contract and (2) Violation of the SC Unfair Trade Practice Act. Defendants filed their Answer to the first Complaint on April 6, 2023.

Plaintiff moved to amend the complaint to change the theories of recovery and add two additional claims. **Ex. 1 (Mtn. to Amnd.)**. Plaintiff moved for leave to file an Amended Complaint on September 6, 2023. **Ex. 1**. With the motion Plaintiff filed a proposed Amended Complaint. **Ex. 1**. Prior to the hearing on the Motion to Amend, on August 16, 2024, Plaintiff filed a memorandum in support of its motion that again contained the same proposed Amended Complaint. **Ex. 2 (8.16.24 Supp. Memo.)**. Defendants contested the motion, but the Court granted that motion on August 26, 2024. **Ex. 3 (8.26.24 Order)**.

However, rather than filing the proposed Amended Complaint, on September 4, 2024, Plaintiff filed a different version of the Amended Complaint with substantive changes to the factual allegations, shifting its case theory significantly. **Ex. 4 (9.5.24 Amnd. Compl.)**. Defendants' counsel pointed out that Plaintiff improperly filed a version different from what Plaintiff sought leave to file and for which the Court granted leave. **Ex. 5 (Emails re Amended Complaint)**. Because Plaintiff had not obtained leave nor consent to file it, Defendants' counsel requested Plaintiff withdraw the Amended Complaint. **Ex. 5**. Plaintiff agreed, and withdrew the improperly filed version of the Amended Complaint and filed the Court-approved version on September 10, 2024. **Ex. 6 (Withdrawal); Ex. 7 (9.10.24 Amd. Compl.)**. Defendants answered the Amended Complaint on September 20, 2024. Four days later, Plaintiff filed a Second Amended Complaint identical to the improperly-filed and withdrawn Amended Complaint. ***Compare*** **Ex. 8 (2nd Amd. Cmpl)** ***with*** **Ex. 4 (9.5.24 Amd. Compl.)**.

Because the Second Amended Complaint was filed without consent or leave of Court, Defendants move this Court to strike the Second Amended Complaint as a legal nullity.

ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ARGUMENT

I. This Court should strike Plaintiff's Second Amended Complaint because amendment is permitted only by consent or with leave of court, and Plaintiff's obtained neither before filing the Second Amended Complaint.

"A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served . . . Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party." Rule 15(a), SCRCP. No South Carolina cases of which Defendants are aware address whether a party can amend an amended complaint as of right. However, because South Carolina's Rule 15 is similar to federal Rule 15, federal cases interpreting federal Rule 15 are persuasive to interpret South Carolina's Rule 15. *See* Rule 15(a), note ("This Rule 15(a) is substantially the same as the Federal Rule . . . ."); *Patton v. Miller*, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017) (relying on SCOTUS case to interpret South Carolina's Rule 15(a)); *Skydive Myrtle Beach, Inc., v. Horry County*, 426 S.C. 175, 183, 826 S.E.2d 585, 589 (2019) (relying on and quoting Wright & Miller's Federal Practice and Procedure section 1487 (3d ed. 2010) to interpret futility under Rule 15, SCRCP)

The comments to Rule 15, FRCP, make clear that the time period within which to amend a pleading as of right is not cumulative, and there is no new "as of right" time period for subsequent pleadings. *See* Rule 15, FRCP ("The 21-day periods to amend once as a matter of course after service of a responsive pleading or after service of a designated motion are not cumulative. If a responsive pleading is served after one of the designated motions is served, for example, there is no new 21-day period."). In other words, the period to amend as a matter of course expires 21 days after the date of the earliest defensive action. *O'Reilly Plumbing & Constr., Inc. v. Lionsgate Disaster Relief, LLC*, No. 1:19-CV-00024, 2020 WL 6393902, at *3 (D.V.I. Nov. 2, 2020); 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Fed. Prac. &*

ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Proc. Civ. § 1483 (3d ed. 2010) ("These periods are not cumulative; only one amendment as a matter of course is permitted.").

Judge Childs noted that, under Rule 15(a), FRCP, if the time within which to amend a complaint has expired, a party can amend the complaint with consent or leave of court, and if filed without consent and without the court's leave, the amended complaint is a legal nullity without effect. *Koulpasis v. State Farm Fire & Cas. Co.*, No. 0:19-CV-02674-JMC, 2020 WL 3548809, at *2 (D.S.C. June 30, 2020); *see also United States ex rel. Mathews v. Healthsouth Corp.*, 332 F.3d 293, 296 (5th Cir. 2003) (finding an amended complaint is without legal effect if leave or consent was required but not obtained).

Similar to federal Rule 15(a), South Carolina's Rule 15(a) limits amendment as of right to one amendment. The time within which to amend as of right is limited to 30 days after a responsive pleading is served. Once the thirty days passes, a pleading can be amended only with the adverse party's consent or leave of court. Similar to the federal rule, the time to amend "as of right" is not revived by subsequent pleadings. Otherwise, a plaintiff could request leave to amend for one reason and, if leave to amend is granted, could amend the complaint within 30 days to include anything the plaintiff wanted.

Here, Plaintiff's Second Amended Complaint is a legal nullity and should be dismissed. Plaintiff filed its Complaint, i.e., pleading, on July 22, 2021. Defendants filed a motion to dismiss, i.e. responsive pleading, on October 22, 2021. Plaintiff's ability to amend as of right was limited to amending within 30 days after October 22, 2021, after which time Plaintiff could amend only by consent or leave of court. The Court granted in part and denied in part Defendants' motion to dismiss, and Defendants filed their Answer to the first Complaint on April 6, 2023.

ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Plaintiff moved for leave to file an Amended Complaint on September 6, 2023. **Ex. 1**. With the motion Plaintiff filed a proposed Amended Complaint. **Ex. 1**. Prior to the hearing on the Motion to Amend, on August 16, 2024, Plaintiff filed a memorandum in support of its motion that again contained the same proposed Amended Complaint. **Ex. 2**. Defendants contested the motion, but the Court granted that motion on August 26, 2024. **Ex. 3**. However, rather than filing the proposed Amended Complaint, on September 4, 2024, Plaintiff filed a different version of the Amended Complaint with substantive changes to the factual allegations, shifting its case theory significantly. **Ex. 4**. Defendants' counsel pointed out that Plaintiff improperly filed a version different from what Plaintiff sought leave to file and for which the Court granted leave. **Ex. 5**. Because Plaintiff had not obtained leave nor consent to file it, Defendants' counsel requested Plaintiff withdraw the Amended Complaint. Plaintiff agreed and withdrew the improperly filed version of the Amended Complaint and filed the Court-approved version on September 10, 2024. **Ex. 6; Ex. 7**. Defendants answered the Amended Complaint on September 20, 2024.

Four days later, Plaintiff filed a Second Amended Complaint identical to the improperly-filed and withdrawn Amended Complaint. ***Compare* Ex. 8 *with* Ex. 4**. Plaintiff did not request and was not granted leave from the Court to file a Second Amended Complaint. Plaintiff never requested consent to file the Second Amended Complaint. Instead, in clear wanton disregard of the Rules of Civil Procedure and this Court's authority, Plaintiff amended the complaint again.

Defendants' counsel brought this to Plaintiff's counsel's attention, explaining it had happened in another case previously and the Court struck the pleading. **Ex. 9 (Emails re 2nd Amended Complaint)**. Defendants' counsel asked Plaintiff to withdraw the Second Amended Complaint. **Ex. 9**. Plaintiff's counsel refused, explaining that there was no prejudice. **Ex. 9**.

ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Prejudice, however, does not factor into the decision. Rule 15 is clear and requires leave or consent to amend, neither of which Plaintiff had. Further, the filing of the improper Second Amended Complaint without consulting Defendants' counsel flies in the face of Rule 11 that a signature on a pleading is a certificate that there is good ground to support filing the pleading and counsel consulted with the opposing party. *See* Rule 11(a), SCRCP.

Because Defendants do not consent to the Second Amended Complaint, and Plaintiff did not obtain leave of court, the Second Amended Complaint is a legal nullity and should be struck.

Conclusion

For the aforementioned reasons, Defendants request this Court dismiss or strike Plaintiffs' Second Amended Complaint and award any further relief within its discretion it deems just.

This 28th day of October, 2024.

Respectfully submitted,

COPELAND, STAIR, VALZ & LOVELL, LLP
By: *s/Skyler C. Wilson*
DOUGLAS W. MACKELCAN
State Bar No.: 76332
SKYLER C. WILSON
State Bar No.: 102865
Attorneys for Defendants

40 Calhoun Street, Suite 400
Charleston, SC 29401
dmackelcan@csvl.law
swilson@csvl.law
Ph: 843-727-0307

EXHIBIT 1

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP Defendants.	**PLAINTIFF'S MOTION TO AMEND COMPLAINT**

TO: DOUGLAS W. MACKELCAN, ESQ. AND SKYLER C. WILSON, ESQ., COUNSEL FOR DEFENDANTS:

NOTICE

YOU WILL PLEASE TAKE NOTICE THAT on the 10th day after service hereof, or as soon thereafter as counsel can be heard before the presiding judge for the Court of Common Pleas for Charleston County, in the Charleston County Courthouse or at such other time and place as is convenient to the Court and counsel, Plaintiff, Carolina Neurosurgery & Orthopedics, Inc., will move pursuant to Rule 15, SCRCP, for an order allowing Plaintiff to amend its Complaint.

MOTION

Pursuant to Rule 15, SCRCP, Plaintiff, Carolina Neurosurgery & Orthopedics, Inc., moves this Court for an Order allowing Plaintiff to amend its Complaint to assert additional legal theories arising out of the facts alleged in the original Verified Complaint. A copy of the proposed Amended Complaint is filed with this motion as **Exhibit 1**.

LAW, ARGUMENT, AND ANALYSIS

I. Justice requires leave for Plaintiff to amend its pleadings because there will be no prejudice to Defendants by allowing amendments adding legal theories premised on facts known to Defendants and already implicated in Plaintiff's original Verified Complaint.

Amendment of pleadings is controlled by Rule 15, SCRCP. The Rule provides in pertinent

ELECTRONICALLY FILED - 2023 Sep 26 12:43 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2023 Sep 28 12:13 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

part:

> A party may amend his pleading once as a matter of course at any time before . . . a responsive pleading is served or, . . . he may so amend it at any time within 30 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party.

Rule 15(a), SCRCP.

A motion to amend is addressed to the sound discretion of the trial judge discretion, and the party opposing the motion has the burden of establishing prejudice. See Shah v. Richland Mem'l Hosp., 350 S.C. 139, 147-48, 564 S.E.2d 681, 685-86 (Ct. App. 2002) (holding the trial court erred in denying the appellant's motion to amend the complaint stating "[t]he test of whether an amendment should be allowed is whether the amendment will prejudice or work an injustice to the adverse party" (quoting Forrester v. Smith & Steele Builders, Inc., 295 S.C. 504, 509, 369 S.E.2d 156, 159 (Ct. App. 1988))). Prejudice occurs when the amendment states a new claim or defense that would require the opposing party to introduce additional or different evidence to prevail in the amended action. Holland ex rel. Knox v. Morbark, Inc., 407 S.C. 227, 235, 754 S.E.2d 714, 719 (Ct. App. 2014). Leave to amend pleadings pursuant to Rule 15 shall be liberally and freely given when justice so requires and does not prejudice any other party in so far as the party opposing the amendment are able to establish that the proposed amendments would cause a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it. Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.E.2d 711, 716-17 (Ct. App. 2005). The South Carolina Court of Appeals has indicated that the "rule strongly favors amendments and the court is encouraged to freely grant leave to amend." Jarrell v. Seaboard Systems RR, Inc., 294 S.C. 183, 186, 363 S.E.2d 398, 399 (Ct. App. 1987).

Further, the Supreme Court that a trial court's "decision to deny a motion to amend should

not be based on the court's perception of the merits of an amended complaint." Skydive Myrtle Beach, Inc. v. Horry Cnty., 426 S.C. 175, 182, 826 S.E.2d 585, 589 (2019). The Court of Appeals ruled that "[i]n the absence of a proper reason, such as bad faith, undue delay or prejudice, a denial of leave to amend is an abuse of discretion. It is the responsibility of the party opposing an amendment to establish prejudice. See Harvey v. Strickland, 350 S.C. 303, 313, 566 S.E.2d 529, 535 (2002) ("A motion to amend is addressed to the sound discretion of the trial judge, and the party opposing the motion has the burden of establishing prejudice."); Forrester v. Smith & Steele Builders, 295 S.C. at 508, 369 S.E.2d at 158.

The status of this case establishes that Defendants will not be able to show prejudice from an amendment adding additional legal theories.

Finally, the proposed Amended Complaint is not being filed in bad faith, after undue delay, nor will it cause prejudice to Defendants.

WHEREFORE, Plaintiff, Carolina Neurosurgery & Orthopedics, Inc., respectfully requests this Court issue an Order granting its Motion to Amend its Complaint.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
Christopher W. Lempesis, Jr. (SC Bar #77012)
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com
Chris@PendarvisLaw.com

Counsel for Plaintiff

Beaufort, South Carolina

September 6, 2023

ELECTRONICALLY FILED - 2023 Sep 26 12:13 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2023 Sep 28 12:43 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

EXHIBIT 1

ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP Defendants.	**AMENDED SUMMONS**

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint, a copy of which is served upon you, and to serve a copy of your Answer to the Amended Complaint on the Plaintiff's attorney within (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Verified Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

/s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
Christopher W. Lempesis, Jr. (SC Bar #77012)
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com
Chris@PendarvisLaw.com

Counsel for Plaintiff

Beaufort, South Carolina

September 4, 2023

ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP Defendants.	**AMENDED COMPLAINT**[1] **(Jury Trial Demanded)** 1. Breach of Contract; 2. Violation SC Unfair Trade Practices Act 3. Negligent Misrepresentation; and 4. Promissory Estoppel.

Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., complaining of Defendants, Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP, respectfully shows unto the Court:

SUMMARY OF THE CASE

1. This case arises from Defendants' false and inaccurate representations about the availability of $1,000,000 in insurance coverage they were pursuing to cover medical and surgical expenses for one of Defendants' clients that induced Plaintiff to perform over $125,000 in surgery and related healthcare services for Defendants' client when, contrary to Defendants' representations, there was no available insurance coverage or the Defendants were unable to recover insurance proceeds to pay for the surgeries.

PARTIES

2. Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC. ("Carolina Neurosurgery"), is a Corporation organized and existing under the laws of South Carolina with offices in Charleston County, South Carolina.

3. Defendant, Michael A. Maucher, Esq. ("Mr. Maucher"), is, upon information and belief, a citizen and resident of Charleston County, South Carolina.

[1] Plaintiff respectfully reserves its objections and potential appeal of the trial court's ruling granting Defendants' motion to dismiss Plaintiff's claims asserted in the original Complaint for Breach of Contract Accompanied by a Fraudulent Act, Fraud, Constructive Fraud, and Unjust Enrichment.

ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

4. Defendant, DELUCA & MAUCHER, LLP ("the Law Firm"), is, upon information and belief, a South Carolina Limited Liability Partnership operating as a law practice with offices in Charleston County, South Carolina. (Mr. Maucher and the Law Firm will be referred to collectively as "the Lawyers".)

JURISDICTION

5. This Court has jurisdiction based upon Article V of the South Carolina Constitution, S.C. CODE ANN. §§ 36-2-802 and 36-2-803, and its plenary powers.

VENUE

6. Venue is proper in Charleston County because, upon information and belief, Mr. Maucher resides in Charleston County, the Lawyers' offices are in Charleston County, and the acts and omissions complained of occurred in Charleston County, South Carolina.

FACTS

7. In December 2018, an individual identified in this Amended Complaint as "the Lawyers' client" was injured in a motor vehicle collision. The Lawyers' client was a prior patient of Carolina Neurosurgery's surgeon, Dr. Highsmith, and had a procedure with Dr. Highsmith before December 2018.

8. On December 20, 2018, the Lawyers sent Carolina Neurosurgery a "Letter of Protection" ("the LOP") promising to "protect *any claim* which you may have out of any settlement proceeds we may receive arising of the incident referred to above" to secure payment for all future surgeries and medical treatment expenses out of liability insurance proceeds providing coverage for the Lawyers' client's claims.

9. Based on the Lawyers' representations, Carolina Neurosurgery began treating the Lawyers' client's collision-related injuries providing elective treatments for the benefit of the Lawyers' client under Carolina Neurosurgery's "Financial Policy."

10. At the time of the Lawyers' representations and thereafter, all involved parties including the Lawyers' client, the Lawyers, and Carolina Neurosurgery, knew or should have known a) Carolina Neurosurgery and its' surgeon, Dr. Highsmith were "out-of-network" healthcare providers for the Lawyers' client and b) Carolina Neurosurgery was offering to provide elective medical/surgical services for the Lawyers' client.

11. Because the Lawyers' client did not have in-network health insurance coverage for any treatments provided by Carolina Neurosurgery, payment for services fell under the second

ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

bullet point of Carolina Neurosurgery's "Financial Policy", "IF YOU DO NOT HAVE INSURANCE:"

> *Our policy requires payment in full today, unless, other arrangements are made. If you cannot pay in full now, we request partial payment today as you arranged for credit on your account with a payment plan agreement with our credit and collection manager.*

12. At this time, based on the Lawyers' representations, the "*other arrangements*" would be provided by various liability insurance policies over $1,000,000 that the Lawyers represented were available to cover medical expenses related to the Lawyers' client's personal injury claims.

13. On January 21, 2019 at 9:24 am, the Lawyers provided Carolina Neurosurgery written confirmation of the limits of coverage that would fund additional expenses for elective treatment to be provided to the Lawyers' client, stating, "[*the Lawyer's client] carries $100,000.00 in Underinsured Motorist Coverage on his at-home policy with Safeco, and there is $1,000,000.00 in 'Occupational Accident Coverage' to pay bills and wages under the One Beacon Policy*.

14. On January 21, 2019, at 11:58:35 AM, the Lawyers sent a second email discussing pre-existing injuries and indicating that they preferred that treatment not be provided under the LOP but did not explain or disclose that their prior statements representing there was $1,000,000 in insurance coverage were incorrect.

15. On March 7, 2019, the Lawyers forwarded a second Letter of Protection by email wherein the Lawyers agreed "to protect any portion of your bill not paid by private health insurance out of any settlement proceeds we may receive arising out of the incident referred to above" but again did not inform or disclose to Carolina Neurosurgery that their prior representation of the availability of over $1,000,000 in liability insurance policies providing coverage was not correct.

16. On March 15, 2019, Carolina Neurosurgery relying on the Lawyers' representations of insurance coverage performed surgery on the Lawyers' client at an approximate cost of $60,000.

17. On April 29, 2019, at 11:20 am, the Lawyers sent Carolina Neurosurgery an email stating, "*Because the at-fault party only had $30,000.00, and [the Lawyers' client]'s Underinsured Motorist Coverage does not apply, ALL of the treatment [the Lawyers' client] has received (and will continue to receive) must be filed under his private health insurance. We cannot honor anymore treatment under a Letter of Protection. Please note [the Lawyers' client]'s file accordingly*."

ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

18. The Lawyers' April 29, 2019, 11:20 am email, however, did not advise or explain that there was no coverage under the "*$1,000,000.00 in 'Occupational Accident Coverage' ... under the One Beacon Policy"* as stated in the Lawyers' January 21, 2019 at 9:24 am email.

19. On May 2, 2019, relying on the Lawyers' promises and assurances on the amount of insurance coverage, Carolina Neurosurgery performed a second surgery on the Lawyers' client at an approximate cost of $65,000.

20. The Lawyers did not explain or disclose to Carolina Neurosurgery that the Lawyers' prior statements representing there was over $1,000,000 in insurance coverage were not correct until after Carolina Neurosurgery provided treatments and performed two surgeries to the Lawyers' client.

21. The final invoice for the additional elective treatments Carolina Neurosurgery provided the Lawyers' client through December 20, 2019, is $125,409.25.

22. Upon information and belief, the Lawyers were not able to collect any of the "*$1,000,000.00 in 'Occupational Accident Coverage' ... under the One Beacon Policy"* to pay for the two surgeries Carolina Neurosurgery provided based on the Lawyers' representations.

23. Neither the Lawyers nor the Lawyers' client have paid Carolina Neurosurgery the outstanding balance of $125,409.25.

24. The Lawyers' representations to Carolina Neurosurgery there was "*$1,000,000.00 in 'Occupational Accident Coverage' ... under the One Beacon Policy"* were either not true or the Lawyers were not able to secure payment from One Beacon on the subject policy.

25. Carolina Neurosurgery would not have performed the two surgeries on the Lawyers' client but for the representations made by the Lawyers concerning the insurance coverage.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

26. Carolina Neurosurgery realleges and incorporates the foregoing factual and jurisdictional statements by reference as if they were set forth herein.

27. Carolina Neurosurgery and the Lawyers entered into a contract wherein Carolina Neurosurgery would provide medical services to the Lawyers' client based on the Lawyers' representations about insurance coverage.

28. Carolina Neurosurgery fulfilled all necessary preconditions, if any, of the contract.

29. The Lawyers breached the contract.

ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

30. As a direct and proximate cause of the Lawyers' multiple or singular breach of the contract, Carolina Neurosurgery sustained actual, consequential, and incidental damages in an amount to be determined by the jury at the trial of this case.

31. Under the Contract, Carolina Neurosurgery also requests all fees and costs generated in pursue of the relief claimed, including but not limited to legal fees.

37. WHEREFORE, Carolina Neurosurgery demands judgment and an award against the Lawyers under this breach of contract cause of action for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper.

FOR A SECOND CAUSE OF ACTION
(Violation of The South Carolina Unfair Trade Practices Act)

38. The foregoing factual and jurisdictional allegations are reiterated and realleged as though set forth verbatim.

39. This is a cause of action under the South Carolina Unfair Trade Practice Act, S.C. CODE ANN. §39-5-10, et seq.

40. The Lawyers engaged in trade or commerce in South Carolina, including practicing law in representing the Lawyers' Client, who, as alleged throughout this Complaint, have engaged in unfair or deceptive acts or practices of trade or commerce. Further, the Lawyers' use of such unfair and/or deceptive acts was willful.

41. The Lawyers' conduct is capable of repetition.

42. As a direct and proximate result of the Lawyers' use or employment of unfair and/or deceptive acts of trade or commerce as described in this Complaint, Carolina Neurosurgery has suffered an ascertainable loss of money or property.

WHEREFORE, Carolina Neurosurgery is entitled to and requests an award of actual damages under this Unfair Trade Practices Act claim for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper. Further Carolina Neurosurgery is entitled to and requests an award of treble damages, legal fees, and costs, for the Lawyers' willful conduct and statutory violation.

FOR A THIRD CAUSE OF ACTION
(Negligent Misrepresentation)

32. Carolina Neurosurgery realleges and incorporates the foregoing factual and

ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

jurisdictional statements by reference as if they were set forth herein.

33. The Lawyers made false representations to Carolina Neurosurgery.

34. The Lawyers had a pecuniary interest in making the statements to Carolina Neurosurgery.

35. The Lawyers owed a duty of care to see that they communicated truthful information to Carolina Neurosurgery, including duties grounded in the Lawyers' obligations under Rule 4.1(a), RPC, Rule 407, SCACR - Truthfulness in Statements to Others and other Rules and standards governing lawyers practicing law in South Carolina.

36. The Lawyers breached their duty duties to communicate truthful information to Carolina Neurosurgery by failing to exercise due care.

37. Carolina Neurosurgery justifiably relied on the Lawyer's representations.

38. Carolina Neurosurgery suffered a pecuniary loss as the proximate result of its reliance upon the Lawyers' representations.

39. WHEREFORE, Carolina Neurosurgery is entitled to and requests an award of actual damages against the Lawyers under this negligent misrepresentation claim for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper.

FOR A FOURTH CAUSE OF ACTION
(Promissory Estoppel)

40. Carolina Neurosurgery realleges and incorporates the foregoing factual and jurisdictional statements by reference as if they were set forth herein.

41. The Lawyers made unambiguous promise and gave unambiguous assurances to Carolina Neurosurgery concerning the availability of over $1 million in insurance coverage for the medical services Carolina Neurosurgery was to provide to the Lawyers' client.

42. Carolina Neurosurgery reasonably relied on the promise by the Lawyers.

43. Carolina Neurosurgery's reliance was expected by and foreseeable to the Lawyers.

44. Carolina Neurosurgery suffered substantial financial losses caused by its reasonable reliance on the Lawyers' unambiguous promises and unambiguous assurances concerning insurance coverage.

45. WHEREFORE, Carolina Neurosurgery is entitled to and requests an award of actual damages against the Lawyers under this promissory estoppel claim for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the

Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., prays for judgment against Defendants, Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP, jointly and severally, for the relief sought in each of the Causes of Action asserted in this Verified Complaint, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
Christopher W. Lempesis, Jr. (SC Bar #77012)
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com
Chris@PendarvisLaw.com

Counsel for Plaintiff

Beaufort, South Carolina

September 4, 2023

ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

EXHIBIT 2

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP Defendants.	**PLAINTIFF'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO AMEND COMPLAINT**

ELECTRONICALLY FILED - 2024 Aug 16 2:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

TO: DOUGLAS W. MACKELCAN, ESQ. AND SKYLER C. WILSON, ESQ., COUNSEL FOR DEFENDANTS:

Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., respectfully submits this supplemental memorandum in reply to Defendants' opposition and in support of its motion for an Order allowing Plaintiff to amend its Complaint to assert additional legal theories arising out of the facts alleged in the original Verified Complaint. A copy of the proposed Amended Complaint is filed with this motion as **Exhibit 1**.

REPLY ARGUMENTS

It is remarkable that the Defendants' opposition memorandum relies heavily on antique jurisprudence issued long before the South Carolina Rules of Civil Procedure were adopted in July 1985, which have governed the operation of lawsuits in South Carolina for almost 40 years. The Defendants' heavy reliance on these antique cases, *e.g.*, *Braudie v. Richland County*, 217 S.C. 57, 59, S.E.2d 548 (1950); *Alamance Indus. v. Chesterfield Hosiery Mill*, 239 S.C. 287, 122 S.E.2d 648 (1961); and *Crowley v. Spivey*, 285 S.C. 397, 329 S.E.2d 774 (Ct. App. Apr. 29, 1985), is a tacit acknowledgment that the law and the South Carolina Rules of Civil Procedure support the proposed amended pleadings.

ELECTRONICALLY FILED - 2024 Aug 16 2:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

I. Defendants have not carried their burden to show prejudice by allowing Plaintiff to amend its pleadings.

The proposed Amended Complaint will not require additional discovery because of any delay in the case going to trial, as it only adds legal theories premised on facts known to Defendants, addressed during discovery in this case, and already implicated in Plaintiff's original Verified Complaint.

A few weeks ago, the Court of Appeals issued its opinion in *Maybank 2754, LLC v. Zurlo*, reversing a trial court's ruling denying a party's motion to amend its complaint. *Maybank 2754, LLC v. Zurlo*, No. 2020-001030, 2024 WL 3688319, at *14 (S.C. Ct. App. Aug. 7, 2024). This matter is in very similar circumstances. The motion should be granted.

In *Maybank* the Court of Appeals reminded the bench and bar that the "rules of civil procedure strongly favor granting motions to amend, and the court should freely grant such a motion." *Id.* at 14. Rule 15(a), SCRCP, strongly favors amendments and the court is encouraged to grant leave to amend freely. *Id.* Under Rule 15(a), the circuit court should consider whether the amendment would prejudice the defendants or whether there was some other *substantial* reason to deny the motion. *Id.*

The Defendants have not carried their burden to show prejudice. Whether to grant the motion should not be based on the court's perception of the merits of the proposed Amended Verified Complaint. In rare cases, however, a trial court may deny a motion to amend if the amendment is clearly futile. *Id.* (citing *Skydive Myrtle Beach, Inc.*, 426 S.C. at 192, 804 S.E.2d at 594 ("In this case, we cannot definitively say it would be impossible for [the appellant] to succeed with an amended pleading. Allowing leave to amend the complaint, therefore, was not clearly futile.")).

Prejudice occurs when the amendment states a new claim or defense requiring the opposing party to introduce additional or different evidence to prevail in the amended action. *Holland ex rel. Knox v. Morbark, Inc.*, 407 S.C. 227, 235, 754 S.E.2d 714, 719 (Ct. App. 2014). Leave to amend pleadings under Rule 15 shall be liberally and freely given when justice so requires and does not prejudice any other party in so far as the party opposing the amendment can establish that the proposed amendments would cause a lack of notice that the new issue will be tried, and a lack of opportunity to refute it. *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 716-17 (Ct. App. 2005).

The status of this case establishes that Defendants have not shown prejudice from an

ELECTRONICALLY FILED - 2024 Aug 16 2:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

amendment that adds additional legal theories and no new factual allegations.

II. There was no undue delay in Plaintiff as filing its Motion to Amend.

The procedural timeline defeats the Defendants' arguments claiming undue delay by CAROLINA NEUROSURGERY.

- July 22, 2021 – Summons & Complaint filed.
- October 22, 2021 – Defendants filed a Motion to Dismiss.
- June 28, 2022 – An initial Order was filed granting in part and denying in part Defendants' Motion to Dismiss.
- July 5, 2022 – Plaintiff filed a Motion to Alter or Amend the Order on Defendants' Motion to Dismiss.
- April 5, 2023 – An Amended Order was issued about the Defendants' Motion to Dismiss.
- September 6, 2023 – Plaintiff filed its Motion to Amend the Complaint.

Finally, the proposed Amended Complaint is not being filed in bad faith or after undue delay, nor will it cause prejudice to the Defendants.

WHEREFORE, Plaintiff, *Carolina Neurosurgery & Orthopedics, Inc.*, respectfully requests this Court issue an Order granting its Motion to Amend its Complaint.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com

Counsel for Plaintiff

Beaufort, South Carolina
August 16, 2024

EXHIBIT 1

ELECTRONICALLY FILED - 2024 Aug 16 2:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP Defendants.	**AMENDED SUMMONS**

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint, a copy of which is served upon you, and to serve a copy of your Answer to the Amended Complaint on the Plaintiff's attorney within (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Verified Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

/s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
Christopher W. Lempesis, Jr. (SC Bar #77012)
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com
Chris@PendarvisLaw.com

Counsel for Plaintiff

Beaufort, South Carolina

September 4, 2023

ELECTRONICALLY FILED - 2024 Aug 16 2:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP Defendants.	**AMENDED COMPLAINT**[1] **(Jury Trial Demanded)** 1. Breach of Contract; 2. Violation SC Unfair Trade Practices Act 3. Negligent Misrepresentation; and 4. Promissory Estoppel.

Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., complaining of Defendants, Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP, respectfully shows unto the Court:

SUMMARY OF THE CASE

1. This case arises from Defendants' false and inaccurate representations about the availability of $1,000,000 in insurance coverage they were pursuing to cover medical and surgical expenses for one of Defendants' clients that induced Plaintiff to perform over $125,000 in surgery and related healthcare services for Defendants' client when, contrary to Defendants' representations, there was no available insurance coverage or the Defendants were unable to recover insurance proceeds to pay for the surgeries.

PARTIES

2. Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC. ("Carolina Neurosurgery"), is a Corporation organized and existing under the laws of South Carolina with offices in Charleston County, South Carolina.

3. Defendant, Michael A. Maucher, Esq. ("Mr. Maucher"), is, upon information and belief, a citizen and resident of Charleston County, South Carolina.

[1] Plaintiff respectfully reserves its objections and potential appeal of the trial court's ruling granting Defendants' motion to dismiss Plaintiff's claims asserted in the original Complaint for Breach of Contract Accompanied by a Fraudulent Act, Fraud, Constructive Fraud, and Unjust Enrichment.

ELECTRONICALLY FILED - 2024 Aug 16 2:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

4. Defendant, DeLuca & Maucher, LLP ("the Law Firm"), is, upon information and belief, a South Carolina Limited Liability Partnership operating as a law practice with offices in Charleston County, South Carolina. (Mr. Maucher and the Law Firm will be referred to collectively as "the Lawyers".)

JURISDICTION

5. This Court has jurisdiction based upon Article V of the South Carolina Constitution, S.C. Code Ann. §§ 36-2-802 and 36-2-803, and its plenary powers.

VENUE

6. Venue is proper in Charleston County because, upon information and belief, Mr. Maucher resides in Charleston County, the Lawyers' offices are in Charleston County, and the acts and omissions complained of occurred in Charleston County, South Carolina.

FACTS

7. In December 2018, an individual identified in this Amended Complaint as "the Lawyers' client" was injured in a motor vehicle collision. The Lawyers' client was a prior patient of Carolina Neurosurgery's surgeon, Dr. Highsmith, and had a procedure with Dr. Highsmith before December 2018.

8. On December 20, 2018, the Lawyers sent Carolina Neurosurgery a "Letter of Protection" ("the LOP") promising to "protect *any claim* which you may have out of any settlement proceeds we may receive arising of the incident referred to above" to secure payment for all future surgeries and medical treatment expenses out of liability insurance proceeds providing coverage for the Lawyers' client's claims.

9. Based on the Lawyers' representations, Carolina Neurosurgery began treating the Lawyers' client's collision-related injuries providing elective treatments for the benefit of the Lawyers' client under Carolina Neurosurgery's "Financial Policy."

10. At the time of the Lawyers' representations and thereafter, all involved parties including the Lawyers' client, the Lawyers, and Carolina Neurosurgery, knew or should have known a) Carolina Neurosurgery and its' surgeon, Dr. Highsmith were "out-of-network" healthcare providers for the Lawyers' client and b) Carolina Neurosurgery was offering to provide elective medical/surgical services for the Lawyers' client.

11. Because the Lawyers' client did not have in-network health insurance coverage for any treatments provided by Carolina Neurosurgery, payment for services fell under the second

ELECTRONICALLY FILED - 2024 Aug 16 2:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

bullet point of Carolina Neurosurgery's "Financial Policy", "IF YOU DO NOT HAVE INSURANCE:"

> *Our policy requires payment in full today, unless, other arrangements are made. If you cannot pay in full now, we request partial payment today as you arranged for credit on your account with a payment plan agreement with our credit and collection manager.*

12. At this time, based on the Lawyers' representations, the "*other arrangements*" would be provided by various liability insurance policies over $1,000,000 that the Lawyers represented were available to cover medical expenses related to the Lawyers' client's personal injury claims.

13. On January 21, 2019 at 9:24 am, the Lawyers provided Carolina Neurosurgery written confirmation of the limits of coverage that would fund additional expenses for elective treatment to be provided to the Lawyers' client, stating, "[*the Lawyer's client] carries $100,000.00 in Underinsured Motorist Coverage on his at-home policy with Safeco, and there is $1,000,000.00 in 'Occupational Accident Coverage' to pay bills and wages under the One Beacon Policy*.

14. On January 21, 2019, at 11:58:35 AM, the Lawyers sent a second email discussing pre-existing injuries and indicating that they preferred that treatment not be provided under the LOP but did not explain or disclose that their prior statements representing there was $1,000,000 in insurance coverage were incorrect.

15. On March 7, 2019, the Lawyers forwarded a second Letter of Protection by email wherein the Lawyers agreed "to protect any portion of your bill not paid by private health insurance out of any settlement proceeds we may receive arising out of the incident referred to above" but again did not inform or disclose to Carolina Neurosurgery that their prior representation of the availability of over $1,000,000 in liability insurance policies providing coverage was not correct.

16. On March 15, 2019, Carolina Neurosurgery relying on the Lawyers' representations of insurance coverage performed surgery on the Lawyers' client at an approximate cost of $60,000.

17. On April 29, 2019, at 11:20 am, the Lawyers sent Carolina Neurosurgery an email stating, "*Because the at-fault party only had $30,000.00, and [the Lawyers' client]'s Underinsured Motorist Coverage does not apply, ALL of the treatment [the Lawyers' client] has received (and will continue to receive) must be filed under his private health insurance. We cannot honor anymore treatment under a Letter of Protection. Please note [the Lawyers' client]'s file accordingly*."

ELECTRONICALLY FILED - 2024 Aug 16 2:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

18. The Lawyers' April 29, 2019, 11:20 am email, however, did not advise or explain that there was no coverage under the "*$1,000,000.00 in 'Occupational Accident Coverage' ... under the One Beacon Policy"* as stated in the Lawyers' January 21, 2019 at 9:24 am email.

19. On May 2, 2019, relying on the Lawyers' promises and assurances on the amount of insurance coverage, Carolina Neurosurgery performed a second surgery on the Lawyers' client at an approximate cost of $65,000.

20. The Lawyers did not explain or disclose to Carolina Neurosurgery that the Lawyers' prior statements representing there was over $1,000,000 in insurance coverage were not correct until after Carolina Neurosurgery provided treatments and performed two surgeries to the Lawyers' client.

21. The final invoice for the additional elective treatments Carolina Neurosurgery provided the Lawyers' client through December 20, 2019, is $125,409.25.

22. Upon information and belief, the Lawyers were not able to collect any of the "*$1,000,000.00 in 'Occupational Accident Coverage' ... under the One Beacon Policy"* to pay for the two surgeries Carolina Neurosurgery provided based on the Lawyers' representations.

23. Neither the Lawyers nor the Lawyers' client have paid Carolina Neurosurgery the outstanding balance of $125,409.25.

24. The Lawyers' representations to Carolina Neurosurgery there was "*$1,000,000.00 in 'Occupational Accident Coverage' ... under the One Beacon Policy"* were either not true or the Lawyers were not able to secure payment from One Beacon on the subject policy.

25. Carolina Neurosurgery would not have performed the two surgeries on the Lawyers' client but for the representations made by the Lawyers concerning the insurance coverage.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

26. Carolina Neurosurgery realleges and incorporates the foregoing factual and jurisdictional statements by reference as if they were set forth herein.

27. Carolina Neurosurgery and the Lawyers entered into a contract wherein Carolina Neurosurgery would provide medical services to the Lawyers' client based on the Lawyers' representations about insurance coverage.

28. Carolina Neurosurgery fulfilled all necessary preconditions, if any, of the contract.

29. The Lawyers breached the contract.

ELECTRONICALLY FILED - 2024 Aug 16 2:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

30. As a direct and proximate cause of the Lawyers' multiple or singular breach of the contract, Carolina Neurosurgery sustained actual, consequential, and incidental damages in an amount to be determined by the jury at the trial of this case.

31. Under the Contract, Carolina Neurosurgery also requests all fees and costs generated in pursue of the relief claimed, including but not limited to legal fees.

37. WHEREFORE, Carolina Neurosurgery demands judgment and an award against the Lawyers under this breach of contract cause of action for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper.

FOR A SECOND CAUSE OF ACTION
(Violation of The South Carolina Unfair Trade Practices Act)

38. The foregoing factual and jurisdictional allegations are reiterated and realleged as though set forth verbatim.

39. This is a cause of action under the South Carolina Unfair Trade Practice Act, S.C. CODE ANN. §39-5-10, et seq.

40. The Lawyers engaged in trade or commerce in South Carolina, including practicing law in representing the Lawyers' Client, who, as alleged throughout this Complaint, have engaged in unfair or deceptive acts or practices of trade or commerce. Further, the Lawyers' use of such unfair and/or deceptive acts was willful.

41. The Lawyers' conduct is capable of repetition.

42. As a direct and proximate result of the Lawyers' use or employment of unfair and/or deceptive acts of trade or commerce as described in this Complaint, Carolina Neurosurgery has suffered an ascertainable loss of money or property.

WHEREFORE, Carolina Neurosurgery is entitled to and requests an award of actual damages under this Unfair Trade Practices Act claim for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper. Further Carolina Neurosurgery is entitled to and requests an award of treble damages, legal fees, and costs, for the Lawyers' willful conduct and statutory violation.

FOR A THIRD CAUSE OF ACTION
(Negligent Misrepresentation)

32. Carolina Neurosurgery realleges and incorporates the foregoing factual and

ELECTRONICALLY FILED - 2024 Aug 16 2:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

jurisdictional statements by reference as if they were set forth herein.

33. The Lawyers made false representations to Carolina Neurosurgery.

34. The Lawyers had a pecuniary interest in making the statements to Carolina Neurosurgery.

35. The Lawyers owed a duty of care to see that they communicated truthful information to Carolina Neurosurgery, including duties grounded in the Lawyers' obligations under Rule 4.1(a), RPC, Rule 407, SCACR - Truthfulness in Statements to Others and other Rules and standards governing lawyers practicing law in South Carolina.

36. The Lawyers breached their duty duties to communicate truthful information to Carolina Neurosurgery by failing to exercise due care.

37. Carolina Neurosurgery justifiably relied on the Lawyer's representations.

38. Carolina Neurosurgery suffered a pecuniary loss as the proximate result of its reliance upon the Lawyers' representations.

39. WHEREFORE, Carolina Neurosurgery is entitled to and requests an award of actual damages against the Lawyers under this negligent misrepresentation claim for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper.

FOR A FOURTH CAUSE OF ACTION
(Promissory Estoppel)

40. Carolina Neurosurgery realleges and incorporates the foregoing factual and jurisdictional statements by reference as if they were set forth herein.

41. The Lawyers made unambiguous promise and gave unambiguous assurances to Carolina Neurosurgery concerning the availability of over $1 million in insurance coverage for the medical services Carolina Neurosurgery was to provide to the Lawyers' client.

42. Carolina Neurosurgery reasonably relied on the promise by the Lawyers.

43. Carolina Neurosurgery's reliance was expected by and foreseeable to the Lawyers.

44. Carolina Neurosurgery suffered substantial financial losses caused by its reasonable reliance on the Lawyers' unambiguous promises and unambiguous assurances concerning insurance coverage.

45. WHEREFORE, Carolina Neurosurgery is entitled to and requests an award of actual damages against the Lawyers under this promissory estoppel claim for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the

Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., prays for judgment against Defendants, Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP, jointly and severally, for the relief sought in each of the Causes of Action asserted in this Verified Complaint, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
Christopher W. Lempesis, Jr. (SC Bar #77012)
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com
Chris@PendarvisLaw.com

Counsel for Plaintiff

Beaufort, South Carolina

September 4, 2023

ELECTRONICALLY FILED - 2024 Aug 16 2:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

EXHIBIT 3

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP Defendants.	**ORDER GRANTING PLAINTIFF'S MOTION TO AMEND COMPLAINT AND POSTPONING HEARING ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

THIS MATTER CAME BEFORE THE COURT on August 19, 2024, for a hearing on the Plaintiff's Motion to Amend its Complaint and the Defendants' Motion for Summary Judgment. Thomas A. Pendarvis, Esq. appeared as counsel for Plaintiff, and Skyler C. Wilson, Esq. appeared as counsel for Defendants.

After reviewing the Plaintiff's motion, supporting and opposing memoranda, and hearing arguments of counsel, the Motion to Amend is GRANTED, and the hearing on the Defendants' Motion for Summary Judgment is POSTPONED until 60 days after this Order is signed to give the parties time for additional discovery, including depositions of individuals or entities already deposed in this case.

AND IT IS SO ORDERED!

Roger M. Young, Sr.
Presiding Circuit Court judge

August 21, 2024

Charleston, South Carolina

ELECTRONICALLY FILED - 2024 Aug 26 2:29 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Aug 26 2:29 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Charleston Common Pleas

Case Caption: Carolina Neurosurgery & Orthopedics Inc VS Michael A Maucher , defendant, et al

Case Number: 2021CP1003379

Type: Order/Amend

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

EXHIBIT 4

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP Defendants.	**AMENDED SUMMONS**

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint, a copy of which is served upon you, and to serve a copy of your Answer to the Amended Complaint on the Plaintiff's attorney within (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Verified Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

/s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com

Counsel for Plaintiff

Beaufort, South Carolina

September 5, 2024

ELECTRONICALLY FILED - 2024 Sep 05 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Sep 05 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP Defendants.	**AMENDED COMPLAINT**[1] **(Jury Trial Demanded)** 1. Breach of Contract; 2. Violation SC Unfair Trade Practices Act 3. Negligent Misrepresentation; and 4. Promissory Estoppel.

Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., complaining of Defendants, Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP, respectfully shows unto the Court:

SUMMARY OF THE CASE

1. This case arises from Defendants' false and inaccurate representations about the availability of $1,000,000 in insurance coverage they were pursuing to cover medical and surgical expenses for one of the Defendants' clients that induced Plaintiff to perform over $125,000 in surgery and related healthcare services for Defendants' client when contrary to Defendants' representations, there was no available insurance coverage, or the Defendants were unable to recover insurance proceeds to pay for the surgeries.

PARTIES

2. Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC. ("Carolina Neurosurgery"), is a Corporation organized and existing under the laws of South Carolina with offices in Charleston County, South Carolina.

3. Defendant, Michael A. Maucher, Esq. ("Mr. Maucher"), is, upon information and belief, a citizen and resident of Charleston County, South Carolina.

[1] Plaintiff respectfully reserves its objections and potential appeal of the trial court's ruling granting Defendants' motion to dismiss Plaintiff's claims asserted in the original Complaint for Breach of Contract Accompanied by a Fraudulent Act, Fraud, Constructive Fraud, and Unjust Enrichment.

ELECTRONICALLY FILED - 2024 Sep 05 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

4. Defendant, DeLuca & Maucher, LLP ("the Law Firm"), is, upon information and belief, a South Carolina Limited Liability Partnership operating as a law practice with offices in Charleston County, South Carolina. (Mr. Maucher and the Law Firm will be referred to collectively as "the Lawyers").

JURISDICTION

5. This Court has jurisdiction based upon Article V of the South Carolina Constitution, S.C. Code Ann. §§ 36-2-802 and 36-2-803, and its plenary powers.

VENUE

6. Venue is proper in Charleston County because, upon information and belief, Mr. Maucher resides in Charleston County, the Lawyers' offices are in Charleston County, and the acts and omissions complained of occurred in Charleston County, South Carolina.

FACTS

7. In December 2018, an individual identified in this Amended Complaint as "the Lawyers' client" was injured in a motor vehicle collision. The Lawyers' client was a prior patient of Carolina Neurosurgery's surgeon, Dr. Highsmith, and had a procedure with Dr. Highsmith before December 2018.

8. On December 20, 2018, the Lawyers sent Carolina Neurosurgery a "Letter of Protection" ("the LOP") promising to "protect *any claim* which you may have out of any settlement proceeds we may receive arising of the incident referred to above" to secure payment for all future surgeries and medical treatment expenses out of liability insurance proceeds providing coverage for the Lawyers' client's claims.

9. Based on the Lawyers' representations, Carolina Neurosurgery began treating the Lawyers' client's collision-related injuries providing elective treatments for the benefit of the Lawyers' client under Carolina Neurosurgery's "Financial Policy."

10. At the time of the Lawyers' representations and thereafter, all involved parties including the Lawyers' client, the Lawyers, and Carolina Neurosurgery, knew or should have known a) Carolina Neurosurgery and its' surgeon, Dr. Highsmith, were "out-of-network" healthcare providers for the Lawyers' client and b) Carolina Neurosurgery was offering to provide elective medical/surgical services for the Lawyers' client.

11. Because the Lawyers' client did not have in-network health insurance coverage for any treatments provided by Carolina Neurosurgery, payment for services fell under the second

ELECTRONICALLY FILED - 2024 Sep 05 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

bullet point of Carolina Neurosurgery's "Financial Policy", "IF YOU DO NOT HAVE INSURANCE:"

> *Our policy requires payment in full today, unless, other arrangements are made. If you cannot pay in full now, we request partial payment today as you arranged for credit on your account with a payment plan agreement with our credit and collection manager.*

12. At this time, based on the Lawyers' representations, the "*other arrangements*" would be provided by various liability insurance policies over $1,000,000 that the Lawyers represented were available to cover medical expenses related to the Lawyers' client's personal injury claims.

13. On January 21, 2019 at 9:24 am, the Lawyers provided Carolina Neurosurgery written confirmation of the limits of coverage that would fund additional expenses for elective treatment to be provided to the Lawyers' client, stating, "[*the Lawyer's client] carries $100,000.00 in Underinsured Motorist Coverage on his at-home policy with Safeco, and there is $1,000,000.00 in 'Occupational Accident Coverage' to pay bills and wages under the One Beacon Policy*.

14. On January 21, 2019, at 11:58:35 AM, the Lawyers sent a second email discussing pre-existing injuries and indicating that they preferred that treatment not be provided under the LOP but did not explain or disclose that their prior statements representing there was $1,000,000 in insurance coverage were incorrect.

15. On March 7, 2019, the Lawyers forwarded a second Letter of Protection by email wherein the Lawyers agreed "to protect any portion of your bill not paid by private health insurance out of any settlement proceeds we may receive arising out of the incident referred to above" but again did not inform or disclose to Carolina Neurosurgery that their prior representation of the availability of over $1,000,000 in liability insurance policies providing coverage was not correct.

16. On March 15, 2019, Carolina Neurosurgery, relying on the Lawyers' representations of insurance coverage, performed surgery on the Lawyers' client at an approximate cost of $60,000.

17. On May 2, 2019, relying on the Lawyers' promises and assurances on the amount of insurance coverage, Carolina Neurosurgery performed a second surgery on the Lawyers' client at an approximate cost of $65,000.

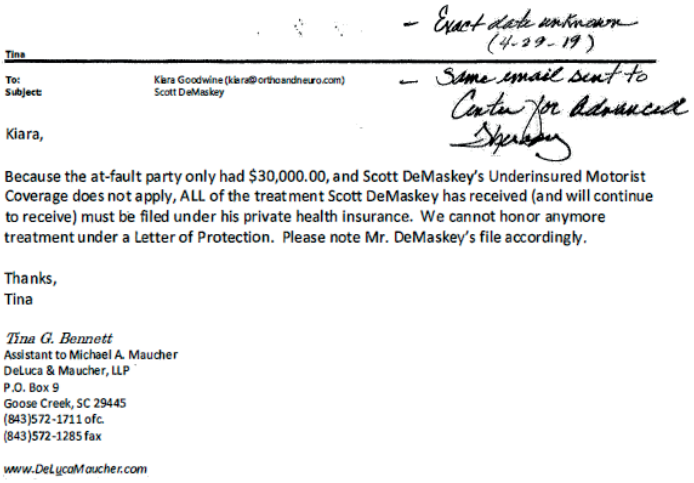
18. After the second surgery, the Lawyers reported to Carolina Neurosurgery that the Lawyers' prior statements representing over $1,000,000 in available insurance coverage were incorrect.

ELECTRONICALLY FILED - 2024 Sep 05 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

19. The Lawyers claimed they had warned Carolina Neurosurgery about the insurance coverage situation.

20. To convince Carolina Neurosurgery of the purported prior warning, the Lawyers physically handed Carolina Neurosurgery a print copy of an "email" the Lawyers claim they sent Carolina Neurosurgery on April 29, 2019, even though the email had no header, date, or reference to the sending party. This document will be referred to as the "false email."

21. The false email purports to have stated, "*Because the at-fault party only had $30,000.00, and [the Lawyers' client]'s Underinsured Motorist Coverage does not apply, ALL of the treatment [the Lawyers' client] has received (and will continue to receive) must be filed under his private health insurance. We cannot honor anymore treatment under a Letter of Protection. Please note [the Lawyers' client]'s file accordingly*." This is an image of the "false email":



– Exact date unknown (4-29-19)

Tina

To: Kiara Goodwine (kiara@orthoandneuro.com)
Subject: Scott DeMaskey

– Same email sent to Carter for Advanced Spine

Kiara,

Because the at-fault party only had $30,000.00, and Scott DeMaskey's Underinsured Motorist Coverage does not apply, ALL of the treatment Scott DeMaskey has received (and will continue to receive) must be filed under his private health insurance. We cannot honor anymore treatment under a Letter of Protection. Please note Mr. DeMaskey's file accordingly.

Thanks,
Tina

Tina G. Bennett
Assistant to Michael A. Maucher
DeLuca & Maucher, LLP
P.O. Box 9
Goose Creek, SC 29445
(843)572-1711 ofc.
(843)572-1285 fax

www.DeLucaMaucher.com

22. Carolina Neurosurgery did not receive the "false email" the Lawyers claim to have sent on April 29, 2019.

23. The Lawyers cannot show the "false email" was electronically transmitted to Carolina Neurosurgery via email on April 29, 2019.

24. The Lawyers' "false email", however, even if it had been transmitted, did not advise or explain that there was no coverage under the "*$1,000,000.00 in 'Occupational Accident Coverage' ... under the One Beacon Policy"* as stated in the Lawyers' January 21, 2019 at 9:24 am email.

25. The Lawyers' "false email" was unfair and deceptive.

26. The Lawyers knew or should have known their conduct and representations concerning the "false email" violated the South Carolina Unfair Trade Practices Act.

ELECTRONICALLY FILED - 2024 Sep 05 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

27. The Lawyers did not explain or disclose to Carolina Neurosurgery that their prior statements representing over $1,000,000 in insurance coverage were not correct until after Carolina Neurosurgery provided treatments and performed two surgeries on the Lawyers' client.

28. The final invoice for the additional elective treatments Carolina Neurosurgery provided the Lawyers' client through December 20, 2019, is $125,409.25.

29. The Lawyers were not able to collect any of the "*$1,000,000.00 in 'Occupational Accident Coverage' ... under the One Beacon Policy"* to pay for the two surgeries Carolina Neurosurgery provided based on the Lawyers' representations.

30. Carolina Neurosurgery retained counsel and incurred at least $93,716.15 in legal fees to pursue recovery under the One Beacon Policy, and ultimately obtained only $6,323.50 under that policy.

31. Neither the Lawyers nor the Lawyers' client have paid Carolina Neurosurgery the remaining $119,085.78 outstanding balance for the medical treatments provided or the $93,716.15 in legal fees incurred.

32. The Lawyers' representations to Carolina Neurosurgery there was "*$1,000,000.00 in 'Occupational Accident Coverage' ... under the One Beacon Policy"* were not true.

33. Carolina Neurosurgery would not have performed the two surgeries on the Lawyers' client but for the representations made by the Lawyers concerning the insurance coverage.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

34. Carolina Neurosurgery realleges and incorporates the foregoing factual and jurisdictional statements by reference as if they were set forth herein.

35. Carolina Neurosurgery and the Lawyers entered into a contract wherein Carolina Neurosurgery would provide medical services to the Lawyers' client based on the Lawyers' representations about insurance coverage.

36. Carolina Neurosurgery fulfilled all necessary preconditions, if any, of the contract.

37. The Lawyers breached the contract.

38. As a direct and proximate cause of the Lawyers' multiple or singular breach of the contract, Carolina Neurosurgery sustained actual, consequential, and incidental damages in an amount to be determined by the jury at the trial of this case.

39. Under the Contract, Carolina Neurosurgery also requests all fees and costs generated in pursue of the relief claimed, including but not limited to legal fees.

ELECTRONICALLY FILED - 2024 Sep 05 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

37. WHEREFORE, Carolina Neurosurgery demands judgment and an award against the Lawyers under this breach of contract cause of action for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper.

FOR A SECOND CAUSE OF ACTION
(Violation of The South Carolina Unfair Trade Practices Act)

38. The foregoing factual and jurisdictional allegations are reiterated and realleged as though set forth verbatim.

39. This is a cause of action under the South Carolina Unfair Trade Practice Act, S.C. CODE ANN. §39-5-10, et seq.

40. The Lawyers engaged in trade or commerce in South Carolina, including practicing law in representing the Lawyers' Client.

41. The Lawyers engaged in unfair or deceptive acts or practices of trade or commerce.

42. Further, the Lawyers' use of such unfair and/or deceptive acts was willful.

43. The Lawyers' conduct is capable of repetition.

44. As a direct and proximate result of the Lawyers' use or employment of unfair and/or deceptive acts of trade or commerce as described in this Complaint, Carolina Neurosurgery has suffered an ascertainable loss of money or property.

WHEREFORE, Carolina Neurosurgery is entitled to and requests an award of actual damages under this Unfair Trade Practices Act claim, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper. Further Carolina Neurosurgery is entitled to and requests an award of treble damages, legal fees, and costs, for the Lawyers' willful conduct and statutory violation.

FOR A THIRD CAUSE OF ACTION
(Negligent Misrepresentation)

40. Carolina Neurosurgery realleges and incorporates the foregoing factual and jurisdictional statements by reference as if they were set forth herein.

41. The Lawyers made false representations to Carolina Neurosurgery.

42. The Lawyers had a pecuniary interest in making the statements to Carolina Neurosurgery.

43. The Lawyers owed a duty of care to see that they communicated truthful information to Carolina Neurosurgery, including duties grounded in the Lawyers' obligations under Rule 4.1(a), RPC, Rule 407, SCACR - Truthfulness in Statements to Others and other Rules and standards

ELECTRONICALLY FILED - 2024 Sep 05 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

governing lawyers practicing law in South Carolina.

44. The Lawyers breached their duty duties to communicate truthful information to Carolina Neurosurgery by failing to exercise due care.

45. Carolina Neurosurgery justifiably relied on the Lawyer's representations.

46. Carolina Neurosurgery suffered a pecuniary loss as the proximate result of its reliance upon the Lawyers' representations.

47. WHEREFORE, Carolina Neurosurgery is entitled to and requests an award of actual damages against the Lawyers under this negligent misrepresentation claim for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper.

FOR A FOURTH CAUSE OF ACTION
(Promissory Estoppel)

48. Carolina Neurosurgery realleges and incorporates the foregoing factual and jurisdictional statements by reference as if they were set forth herein.

49. The Lawyers made unambiguous promise and gave unambiguous assurances to Carolina Neurosurgery concerning the availability of over $1 million in insurance coverage for the medical services Carolina Neurosurgery was to provide to the Lawyers' client.

50. Carolina Neurosurgery reasonably relied on the promise by the Lawyers.

51. Carolina Neurosurgery's reliance was expected by and foreseeable to the Lawyers.

52. Carolina Neurosurgery suffered substantial financial losses caused by its reasonable reliance on the Lawyers' unambiguous promises and unambiguous assurances concerning insurance coverage.

53. WHEREFORE, Carolina Neurosurgery is entitled to and requests an award of actual damages against the Lawyers under this promissory estoppel claim for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., prays for judgment against Defendants, Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP, jointly and severally, for the relief sought in each of the Causes of Action asserted in this Verified Complaint, including an award of actual damages, consequential damages, pre-judgment interest,

court costs, and treble damages, legal fees, and costs, for the Lawyers' willful conduct and statutory violation; and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com

Counsel for Plaintiff

Beaufort, South Carolina

September 5, 2024

ELECTRONICALLY FILED - 2024 Sep 05 4:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

EXHIBIT 5

ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

From: Wilson, Skyler C.
To: Thomas A. Pendarvis; Tracy L. Landry
Cc: Mackelcan, Douglas W.; Moran, Rosie
Subject: RE: Carolina Neurosurgery v. Maucher - Amended complaint
Date: Monday, September 9, 2024 6:29:37 AM
Attachments: image001.png

Thomas,

I am not sure that the differences are mere clarifications and, instead, are substantive changes. Do you have any authority to support making those changes?

Rule 15 permits amended pleadings with consent or leave. The court gave leave to file the proposed amended complaint included in your motion and memoranda. You never reached out to us to seek consent. Thus, what you filed was without consent or leave. I was in a similar scenario earlier this year and the court struck the unauthorized pleading. I'd ask that you consider withdrawing the pleading you filed and file the one that the court gave you permission to file. If not, I am going to have to move to strike.

Best regards,

Skyler

csvl-block

Skyler C. Wilson
Partner
d: 843.266.8221 | f: 843.727.2995
swilson@csvl.law | www.csvl.law
40 Calhoun Street, Suite 400, Charleston, SC 29401

From: Thomas A. Pendarvis <thomas@pendarvislaw.com>
Sent: Sunday, September 8, 2024 1:40 PM
To: Tracy L. Landry <tracy@pendarvislaw.com>; Wilson, Skyler C. <swilson@csvl.law>
Cc: Mackelcan, Douglas W. <dmackelcan@csvl.law>; Moran, Rosie <rmoran@csvl.law>
Subject: RE: Carolina Neurosurgery v. Maucher - Amended complaint

Skyler,

The minor revisions in the Amended Complaint were intended to clarify the same facts and events described in the original Complaint and the testimony in the depositions taken so far, in light of the new negligent misrepresentation claim.

With my best regards,

Thomas A. Pendarvis
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit A-1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com

ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

www.PendarvisLaw.com

Admitted in South Carolina and Georgia

Board Certified in Legal Malpractice by the American Board of Professional Liability Attorneys

Practice concentrated in lawyer professional responsibility matters (plaintiff lawyer-malpractice claims, lawyer disciplinary matters, ethics consultations, law-firm dissolutions, and lawyer moves between firms).

From: Tracy L. Landry <tracy@pendarvislaw.com>
Sent: Friday, September 6, 2024 10:32 AM
To: Wilson, Skyler C. <swilson@csvl.law>; Thomas A. Pendarvis <thomas@pendarvislaw.com>
Cc: Mackelcan, Douglas W. <dmackelcan@csvl.law>; Moran, Rosie <rmoran@csvl.law>
Subject: RE: Carolina Neurosurgery v. Maucher - Amended complaint

Good morning Skyler,

Thomas is out of the office and out of contact today. He may not have a chance until Monday to get back to you on this.

Thank you and I hope you have a wonderful weekend.
Respectfully,

Tracy Lyn Landry

Tracy Lyn Landry
Paralegal

Pendarvis Law Office, PC
710 Boundary Street, Unit A1
Beaufort, SC 29902
843-524-9500 Ext. 1002
tracy@pendarvislaw.com
www.PendarvisLaw.com

The Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521, applies to e-mail, prohibits unauthorized interception, unauthorized use, and unauthorized disclosure of an e-mail, of the contents of an e-mail, and of any attachments to the e-mail. 18 U.S.C. §§ 2510-2521, the Electronic Communications Privacy Act, provides for civil remedies, including an award of damages, in cases of unauthorized interception, unauthorized use, or unauthorized disclosure of an e-mail, of the contents of an e-mail, or of any attachments to the e-mail.

From: Wilson, Skyler C. <swilson@csvl.law>
Sent: Friday, September 6, 2024 10:26 AM
To: Thomas A. Pendarvis <thomas@pendarvislaw.com>
Cc: Mackelcan, Douglas W. <dmackelcan@csvl.law>; Tracy L. Landry <tracy@pendarvislaw.com>; Moran, Rosie <rmoran@csvl.law>
Subject: RE: Carolina Neurosurgery v. Maucher - Amended complaint

Good morning Thomas,

ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

We pulled the amended complaint you filed yesterday and noticed it was different from the proposed amended complaint included in your motion to amend that the court granted. Can you please let us know why they are different?

Best regards,

Skyler

csvl-block

Skyler C. Wilson
Partner
d: 843.266.8221 | f: 843.727.2995
swilson@csvl.law | www.csvl.law
40 Calhoun Street, Suite 400, Charleston, SC 29401

From: Thomas A. Pendarvis <thomas@pendarvislaw.com>
Sent: Wednesday, September 4, 2024 11:18 AM
To: Wilson, Skyler C. <swilson@csvl.law>
Cc: Mackelcan, Douglas W. <dmackelcan@csvl.law>; Tracy L. Landry <tracy@pendarvislaw.com>; Moran, Rosie <rmoran@csvl.law>
Subject: RE: Carolina Neurosurgery v. Maucher - Amended complaint

Skyler,

Just wanted to give you the heads up that something has come up today, so it will likely be tomorrow when the Amended Complaint is filed.

With my best regards,

Thomas A. Pendarvis
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit A-1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com
www.PendarvisLaw.com

Admitted in South Carolina and Georgia

Board Certified in Legal Malpractice by the American Board of Professional Liability Attorneys

Practice concentrated in lawyer professional responsibility matters (plaintiff lawyer-malpractice claims, lawyer disciplinary matters, ethics consultations, law-firm dissolutions, and lawyer moves between firms).

From: Thomas A. Pendarvis
Sent: Tuesday, September 3, 2024 5:33 PM
To: Wilson, Skyler C. <swilson@csvl.law>
Cc: Mackelcan, Douglas W. <dmackelcan@csvl.law>; Tracy L. Landry <tracy@pendarvislaw.com>;

ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Moran, Rosie <rmoran@csvl.law>
Subject: RE: Carolina Neurosurgery v. Maucher - Amended complaint

Okay, we will file the Amended Complaint tomorrow. We just want to make sure it was not going to jam you and Doug.

With my best regards,

Thomas A. Pendarvis
Pendarvis Law Offices, P.C.
710 Boundary St., Unit A-1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com
www.PendarvisLaw.com

Admitted in South Carolina and Georgia

Board Certified in Legal Malpractice by the American Board of Professional Liability Attorneys

Practice concentrated in lawyer professional responsibility matters (plaintiff lawyer-malpractice claims, lawyer disciplinary matters, ethics consultations, law-firm dissolutions, and lawyer moves between firms).

From: Wilson, Skyler C. <swilson@csvl.law>
Sent: Tuesday, September 3, 2024 5:10 PM
To: Thomas A. Pendarvis <thomas@pendarvislaw.com>
Cc: Mackelcan, Douglas W. <dmackelcan@csvl.law>; Tracy L. Landry <tracy@pendarvislaw.com>; Moran, Rosie <rmoran@csvl.law>
Subject: RE: Carolina Neurosurgery v. Maucher - Amended complaint

Thomas,

That is fine by us. Just trying to stay on top of the case. We will be sure to file a response by the 15 day deadline from whenever you end up filing, and can get that done if you end up filing tomorrow.

Best regards,

Skyler

csvl-block

Skyler C. Wilson
Partner
d: 843.266.8221 | f: 843.727.2995
swilson@csvl.law | www.csvl.law
40 Calhoun Street, Suite 400, Charleston, SC 29401

From: Thomas A. Pendarvis <thomas@pendarvislaw.com>
Sent: Tuesday, September 3, 2024 3:56 PM

ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

To: Wilson, Skyler C. <swilson@csvl.law>
Cc: Mackelcan, Douglas W. <dmackelcan@csvl.law>; Tracy L. Landry <tracy@pendarvislaw.com>; Moran, Rosie <rmoran@csvl.law>
Subject: RE: Carolina Neurosurgery v. Maucher - Amended complaint

We plan on filing the Amended Complaint tomorrow unless it causes you significant problems. Please let me know if you prefer a different date. Thanks.

With my best regards,

Thomas A. Pendarvis
Pendarvis Law Offices, P.C.
710 Boundary St., Unit A-1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com
www.PendarvisLaw.com

Admitted in South Carolina and Georgia

Board Certified in Legal Malpractice by the American Board of Professional Liability Attorneys

Practice concentrated in lawyer professional responsibility matters (plaintiff lawyer-malpractice claims, lawyer disciplinary matters, ethics consultations, law-firm dissolutions, and lawyer moves between firms).

From: Wilson, Skyler C. <swilson@csvl.law>
Sent: Tuesday, September 3, 2024 1:26 PM
To: Thomas A. Pendarvis <thomas@pendarvislaw.com>; Tracy L. Landry <tracy@pendarvislaw.com>
Cc: Mackelcan, Douglas W. <dmackelcan@csvl.law>; Moran, Rosie <rmoran@csvl.law>
Subject: Carolina Neurosurgery v. Maucher - Amended complaint

Good morning Thomas,

I noticed the court entered the order granting the motion to amend on August 26, 2024. Checking the docket and didn't see that you all had filed the amended complaint that was included with the original motion. I just wanted to write to make sure you all were planning on doing that so I can figure out timing to respond.

Best regards,

Skyler

csvl-block

Skyler C. Wilson
Partner
d: 843.266.8221 | f: 843.727.2995
swilson@csvl.law | www.csvl.law
40 Calhoun Street, Suite 400, Charleston, SC 29401

EXHIBIT 6

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP, Defendants.	**PLAINTIFF'S NOTICE OF WITHDRAWAL OF AMENDED COMPLAINT WITHOUT PREJUDICE**

TO: DOUGLAS W MACKELCAN, ESQ. AND SKYLER C. WILSON, ESQ., COUNSEL FOR DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., by and through the undersigned counsel, and hereby withdraws Plaintiff's Amended Complaint, filed September 5, 2024, without prejudice.

Respectfully submitted,

/s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
PENDARVIS LAW OFFICES, P.C.
710 Boundary Street, Suite 1-A
Beaufort, SC 29902
843.524.9500
Thomas@PendarvisLaw.com

Counsel for Plaintiff

Beaufort, South Carolina

September 9, 2024

ELECTRONICALLY FILED - 2024 Sep 09 4:48 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

EXHIBIT 7

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP Defendants.	**AMENDED SUMMONS**

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint, a copy of which is served upon you, and to serve a copy of your Answer to the Amended Complaint on the Plaintiff's attorney within (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Verified Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

/s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
Christopher W. Lempesis, Jr. (SC Bar #77012)
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com
Chris@PendarvisLaw.com

Counsel for Plaintiff

Beaufort, South Carolina

September 10, 2024

ELECTRONICALLY FILED - 2024 Sep 10 8:56 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Sep 10 8:56 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP Defendants.	**AMENDED COMPLAINT**[1] **(Jury Trial Demanded)** 1. Breach of Contract; 2. Violation SC Unfair Trade Practices Act 3. Negligent Misrepresentation; and 4. Promissory Estoppel.

Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., complaining of Defendants, Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP, respectfully shows unto the Court:

SUMMARY OF THE CASE

1. This case arises from Defendants' false and inaccurate representations about the availability of $1,000,000 in insurance coverage they were pursuing to cover medical and surgical expenses for one of Defendants' clients that induced Plaintiff to perform over $125,000 in surgery and related healthcare services for Defendants' client when, contrary to Defendants' representations, there was no available insurance coverage or the Defendants were unable to recover insurance proceeds to pay for the surgeries.

PARTIES

2. Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC. ("Carolina Neurosurgery"), is a Corporation organized and existing under the laws of South Carolina with offices in Charleston County, South Carolina.

3. Defendant, Michael A. Maucher, Esq. ("Mr. Maucher"), is, upon information and belief, a citizen and resident of Charleston County, South Carolina.

[1] Plaintiff respectfully reserves its objections and potential appeal of the trial court's ruling granting Defendants' motion to dismiss Plaintiff's claims asserted in the original Complaint for Breach of Contract Accompanied by a Fraudulent Act, Fraud, Constructive Fraud, and Unjust Enrichment.

ELECTRONICALLY FILED - 2024 Sep 10 8:56 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

4. Defendant, DELUCA & MAUCHER, LLP ("the Law Firm"), is, upon information and belief, a South Carolina Limited Liability Partnership operating as a law practice with offices in Charleston County, South Carolina. (Mr. Maucher and the Law Firm will be referred to collectively as "the Lawyers".)

JURISDICTION

5. This Court has jurisdiction based upon Article V of the South Carolina Constitution, S.C. CODE ANN. §§ 36-2-802 and 36-2-803, and its plenary powers.

VENUE

6. Venue is proper in Charleston County because, upon information and belief, Mr. Maucher resides in Charleston County, the Lawyers' offices are in Charleston County, and the acts and omissions complained of occurred in Charleston County, South Carolina.

FACTS

7. In December 2018, an individual identified in this Amended Complaint as "the Lawyers' client" was injured in a motor vehicle collision. The Lawyers' client was a prior patient of Carolina Neurosurgery's surgeon, Dr. Highsmith, and had a procedure with Dr. Highsmith before December 2018.

8. On December 20, 2018, the Lawyers sent Carolina Neurosurgery a "Letter of Protection" ("the LOP") promising to "protect *any claim* which you may have out of any settlement proceeds we may receive arising of the incident referred to above" to secure payment for all future surgeries and medical treatment expenses out of liability insurance proceeds providing coverage for the Lawyers' client's claims.

9. Based on the Lawyers' representations, Carolina Neurosurgery began treating the Lawyers' client's collision-related injuries providing elective treatments for the benefit of the Lawyers' client under Carolina Neurosurgery's "Financial Policy."

10. At the time of the Lawyers' representations and thereafter, all involved parties including the Lawyers' client, the Lawyers, and Carolina Neurosurgery, knew or should have known a) Carolina Neurosurgery and its' surgeon, Dr. Highsmith were "out-of-network" healthcare providers for the Lawyers' client and b) Carolina Neurosurgery was offering to provide elective medical/surgical services for the Lawyers' client.

11. Because the Lawyers' client did not have in-network health insurance coverage for any treatments provided by Carolina Neurosurgery, payment for services fell under the second

ELECTRONICALLY FILED - 2024 Sep 10 8:56 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

bullet point of Carolina Neurosurgery's "Financial Policy", "IF YOU DO NOT HAVE INSURANCE:"

> *Our policy requires payment in full today, unless, other arrangements are made. If you cannot pay in full now, we request partial payment today as you arranged for credit on your account with a payment plan agreement with our credit and collection manager.*

12. At this time, based on the Lawyers' representations, the "*other arrangements*" would be provided by various liability insurance policies over $1,000,000 that the Lawyers represented were available to cover medical expenses related to the Lawyers' client's personal injury claims.

13. On January 21, 2019 at 9:24 am, the Lawyers provided Carolina Neurosurgery written confirmation of the limits of coverage that would fund additional expenses for elective treatment to be provided to the Lawyers' client, stating, "[*the Lawyer's client] carries $100,000.00 in Underinsured Motorist Coverage on his at-home policy with Safeco, and there is $1,000,000.00 in 'Occupational Accident Coverage' to pay bills and wages under the One Beacon Policy*.

14. On January 21, 2019, at 11:58:35 AM, the Lawyers sent a second email discussing pre-existing injuries and indicating that they preferred that treatment not be provided under the LOP but did not explain or disclose that their prior statements representing there was $1,000,000 in insurance coverage were incorrect.

15. On March 7, 2019, the Lawyers forwarded a second Letter of Protection by email wherein the Lawyers agreed "to protect any portion of your bill not paid by private health insurance out of any settlement proceeds we may receive arising out of the incident referred to above" but again did not inform or disclose to Carolina Neurosurgery that their prior representation of the availability of over $1,000,000 in liability insurance policies providing coverage was not correct.

16. On March 15, 2019, Carolina Neurosurgery relying on the Lawyers' representations of insurance coverage performed surgery on the Lawyers' client at an approximate cost of $60,000.

17. On April 29, 2019, at 11:20 am, the Lawyers sent Carolina Neurosurgery an email stating, "*Because the at-fault party only had $30,000.00, and [the Lawyers' client]'s Underinsured Motorist Coverage does not apply, ALL of the treatment [the Lawyers' client] has received (and will continue to receive) must be filed under his private health insurance. We cannot honor anymore treatment under a Letter of Protection. Please note [the Lawyers' client]'s file accordingly*."

ELECTRONICALLY FILED - 2024 Sep 10 8:56 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

18. The Lawyers' April 29, 2019, 11:20 am email, however, did not advise or explain that there was no coverage under the "*$1,000,000.00 in 'Occupational Accident Coverage' ... under the One Beacon Policy"* as stated in the Lawyers' January 21, 2019 at 9:24 am email.

19. On May 2, 2019, relying on the Lawyers' promises and assurances on the amount of insurance coverage, Carolina Neurosurgery performed a second surgery on the Lawyers' client at an approximate cost of $65,000.

20. The Lawyers did not explain or disclose to Carolina Neurosurgery that the Lawyers' prior statements representing there was over $1,000,000 in insurance coverage were not correct until after Carolina Neurosurgery provided treatments and performed two surgeries to the Lawyers' client.

21. The final invoice for the additional elective treatments Carolina Neurosurgery provided the Lawyers' client through December 20, 2019, is $125,409.25.

22. Upon information and belief, the Lawyers were not able to collect any of the "*$1,000,000.00 in 'Occupational Accident Coverage' ... under the One Beacon Policy"* to pay for the two surgeries Carolina Neurosurgery provided based on the Lawyers' representations.

23. Neither the Lawyers nor the Lawyers' client have paid Carolina Neurosurgery the outstanding balance of $125,409.25.

24. The Lawyers' representations to Carolina Neurosurgery there was "*$1,000,000.00 in 'Occupational Accident Coverage' ... under the One Beacon Policy"* were either not true or the Lawyers were not able to secure payment from One Beacon on the subject policy.

25. Carolina Neurosurgery would not have performed the two surgeries on the Lawyers' client but for the representations made by the Lawyers concerning the insurance coverage.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

26. Carolina Neurosurgery realleges and incorporates the foregoing factual and jurisdictional statements by reference as if they were set forth herein.

27. Carolina Neurosurgery and the Lawyers entered into a contract wherein Carolina Neurosurgery would provide medical services to the Lawyers' client based on the Lawyers' representations about insurance coverage.

28. Carolina Neurosurgery fulfilled all necessary preconditions, if any, of the contract.

29. The Lawyers breached the contract.

ELECTRONICALLY FILED - 2024 Sep 10 8:56 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

30. As a direct and proximate cause of the Lawyers' multiple or singular breach of the contract, Carolina Neurosurgery sustained actual, consequential, and incidental damages in an amount to be determined by the jury at the trial of this case.

31. Under the Contract, Carolina Neurosurgery also requests all fees and costs generated in pursue of the relief claimed, including but not limited to legal fees.

37. WHEREFORE, Carolina Neurosurgery demands judgment and an award against the Lawyers under this breach of contract cause of action for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper.

FOR A SECOND CAUSE OF ACTION
(Violation of The South Carolina Unfair Trade Practices Act)

38. The foregoing factual and jurisdictional allegations are reiterated and realleged as though set forth verbatim.

39. This is a cause of action under the South Carolina Unfair Trade Practice Act, S.C. CODE ANN. §39-5-10, et seq.

40. The Lawyers engaged in trade or commerce in South Carolina, including practicing law in representing the Lawyers' Client, who, as alleged throughout this Complaint, have engaged in unfair or deceptive acts or practices of trade or commerce. Further, the Lawyers' use of such unfair and/or deceptive acts was willful.

41. The Lawyers' conduct is capable of repetition.

42. As a direct and proximate result of the Lawyers' use or employment of unfair and/or deceptive acts of trade or commerce as described in this Complaint, Carolina Neurosurgery has suffered an ascertainable loss of money or property.

WHEREFORE, Carolina Neurosurgery is entitled to and requests an award of actual damages under this Unfair Trade Practices Act claim for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper. Further Carolina Neurosurgery is entitled to and requests an award of treble damages, legal fees, and costs, for the Lawyers' willful conduct and statutory violation.

FOR A THIRD CAUSE OF ACTION
(Negligent Misrepresentation)

32. Carolina Neurosurgery realleges and incorporates the foregoing factual and

ELECTRONICALLY FILED - 2024 Sep 10 8:56 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

jurisdictional statements by reference as if they were set forth herein.

33. The Lawyers made false representations to Carolina Neurosurgery.

34. The Lawyers had a pecuniary interest in making the statements to Carolina Neurosurgery.

35. The Lawyers owed a duty of care to see that they communicated truthful information to Carolina Neurosurgery, including duties grounded in the Lawyers' obligations under Rule 4.1(a), RPC, Rule 407, SCACR - Truthfulness in Statements to Others and other Rules and standards governing lawyers practicing law in South Carolina.

36. The Lawyers breached their duty duties to communicate truthful information to Carolina Neurosurgery by failing to exercise due care.

37. Carolina Neurosurgery justifiably relied on the Lawyer's representations.

38. Carolina Neurosurgery suffered a pecuniary loss as the proximate result of its reliance upon the Lawyers' representations.

39. WHEREFORE, Carolina Neurosurgery is entitled to and requests an award of actual damages against the Lawyers under this negligent misrepresentation claim for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper.

FOR A FOURTH CAUSE OF ACTION
(Promissory Estoppel)

40. Carolina Neurosurgery realleges and incorporates the foregoing factual and jurisdictional statements by reference as if they were set forth herein.

41. The Lawyers made unambiguous promise and gave unambiguous assurances to Carolina Neurosurgery concerning the availability of over $1 million in insurance coverage for the medical services Carolina Neurosurgery was to provide to the Lawyers' client.

42. Carolina Neurosurgery reasonably relied on the promise by the Lawyers.

43. Carolina Neurosurgery's reliance was expected by and foreseeable to the Lawyers.

44. Carolina Neurosurgery suffered substantial financial losses caused by its reasonable reliance on the Lawyers' unambiguous promises and unambiguous assurances concerning insurance coverage.

45. WHEREFORE, Carolina Neurosurgery is entitled to and requests an award of actual damages against the Lawyers under this promissory estoppel claim for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the

Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., prays for judgment against Defendants, Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP, jointly and severally, for the relief sought in each of the Causes of Action asserted in this Verified Complaint, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
Christopher W. Lempesis, Jr. (SC Bar #77012)
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com
Chris@PendarvisLaw.com

Counsel for Plaintiff

Beaufort, South Carolina

September 10, 2024

ELECTRONICALLY FILED - 2024 Sep 10 8:56 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

EXHIBIT 8

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP Defendants.	**SECOND AMENDED SUMMONS**

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Second Amended Complaint, a copy of which is served upon you, and to serve a copy of your Answer to the Second Amended Complaint on the Plaintiff's attorney within (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Second Amended Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Second Amended Complaint.

/s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com

Counsel for Plaintiff

Beaufort, South Carolina

September 24, 2024

ELECTRONICALLY FILED - 2024 Sep 24 10:50 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Sep 24 10:50 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP Defendants.	**SECOND AMENDED COMPLAINT[1]** **(Jury Trial Demanded)** 1. Breach of Contract; 2. Violation SC Unfair Trade Practices Act 3. Negligent Misrepresentation; and 4. Promissory Estoppel.

Pursuant to Rule 15(a), SCRCP, permitting a party to "amend his pleading once as a matter of course, at any time before or within 30 days after a responsive pleading is served[,]" Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., complaining of Defendants, Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP, respectfully shows unto the Court:

SUMMARY OF THE CASE

1. This case arises from Defendants' false and inaccurate representations about the availability of $1,000,000 in insurance coverage they were pursuing to cover medical and surgical expenses for one of the Defendants' clients that induced Plaintiff to perform over $125,000 in surgery and related healthcare services for Defendants' client when contrary to Defendants' representations, there was no available insurance coverage, or the Defendants were unable to recover insurance proceeds to pay for the surgeries.

PARTIES

2. Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC. ("Carolina Neurosurgery"), is a Corporation organized and existing under the laws of South Carolina with

[1] Plaintiff respectfully reserves its objections and potential appeal of the trial court's ruling granting Defendants' motion to dismiss Plaintiff's claims asserted in the original Complaint for Breach of Contract Accompanied by a Fraudulent Act, Fraud, Constructive Fraud, and Unjust Enrichment.

ELECTRONICALLY FILED - 2024 Sep 24 10:50 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

offices in Charleston County, South Carolina.

3. Defendant, Michael A. Maucher, Esq. ("Mr. Maucher"), is, upon information and belief, a citizen and resident of Charleston County, South Carolina.

4. Defendant, DeLuca & Maucher, LLP ("the Law Firm"), is, upon information and belief, a South Carolina Limited Liability Partnership operating as a law practice with offices in Charleston County, South Carolina. (Mr. Maucher and the Law Firm will be referred to collectively as "the Lawyers").

JURISDICTION

5. This Court has jurisdiction based upon Article V of the South Carolina Constitution, S.C. Code Ann. §§ 36-2-802 and 36-2-803, and its plenary powers.

VENUE

6. Venue is proper in Charleston County because, upon information and belief, Mr. Maucher resides in Charleston County, the Lawyers' offices are in Charleston County, and the acts and omissions complained of occurred in Charleston County, South Carolina.

FACTS

7. In December 2018, an individual identified in this Second Amended Complaint as "the Lawyers' client" was injured in a motor vehicle collision. The Lawyers' client was a prior patient of Carolina Neurosurgery's surgeon, Dr. Highsmith, and had a procedure with Dr. Highsmith before December 2018.

8. On December 20, 2018, the Lawyers sent Carolina Neurosurgery a "Letter of Protection" ("the LOP") promising to "protect *any claim* which you may have out of any settlement proceeds we may receive arising of the incident referred to above" to secure payment for all future surgeries and medical treatment expenses out of liability insurance proceeds providing coverage for the Lawyers' client's claims.

9. Based on the Lawyers' representations, Carolina Neurosurgery began treating the Lawyers' client's collision-related injuries providing elective treatments for the benefit of the Lawyers' client under Carolina Neurosurgery's "Financial Policy."

10. At the time of the Lawyers' representations and thereafter, all involved parties including the Lawyers' client, the Lawyers, and Carolina Neurosurgery, knew or should have known a) Carolina Neurosurgery and its' surgeon, Dr. Highsmith, were "out-of-network"

ELECTRONICALLY FILED - 2024 Sep 24 10:50 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

healthcare providers for the Lawyers' client and b) Carolina Neurosurgery was offering to provide elective medical/surgical services for the Lawyers' client.

11. Because the Lawyers' client did not have in-network health insurance coverage for any treatments provided by Carolina Neurosurgery, payment for services fell under the second bullet point of Carolina Neurosurgery's "Financial Policy", "IF YOU DO NOT HAVE INSURANCE:"

> *Our policy requires payment in full today, unless, other arrangements are made. If you cannot pay in full now, we request partial payment today as you arranged for credit on your account with a payment plan agreement with our credit and collection manager.*

12. At this time, based on the Lawyers' representations, the "*other arrangements*" would be provided by various liability insurance policies over $1,000,000 that the Lawyers represented were available to cover medical expenses related to the Lawyers' client's personal injury claims.

13. On January 21, 2019 at 9:24 am, the Lawyers provided Carolina Neurosurgery written confirmation of the limits of coverage that would fund additional expenses for elective treatment to be provided to the Lawyers' client, stating, "[*the Lawyer's client] carries $100,000.00 in Underinsured Motorist Coverage on his at-home policy with Safeco, and there is $1,000,000.00 in 'Occupational Accident Coverage' to pay bills and wages under the One Beacon Policy*.

14. On January 21, 2019, at 11:58:35 AM, the Lawyers sent a second email discussing pre-existing injuries and indicating that they preferred that treatment not be provided under the LOP but did not explain or disclose that their prior statements representing there was $1,000,000 in insurance coverage were incorrect.

15. On March 7, 2019, the Lawyers forwarded a second Letter of Protection by email wherein the Lawyers agreed "to protect any portion of your bill not paid by private health insurance out of any settlement proceeds we may receive arising out of the incident referred to above" but again did not inform or disclose to Carolina Neurosurgery that their prior representation of the availability of over $1,000,000 in liability insurance policies providing coverage was not correct.

16. On March 15, 2019, Carolina Neurosurgery, relying on the Lawyers' representations of insurance coverage, performed surgery on the Lawyers' client at an approximate cost of $60,000.

ELECTRONICALLY FILED - 2024 Sep 24 10:50 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

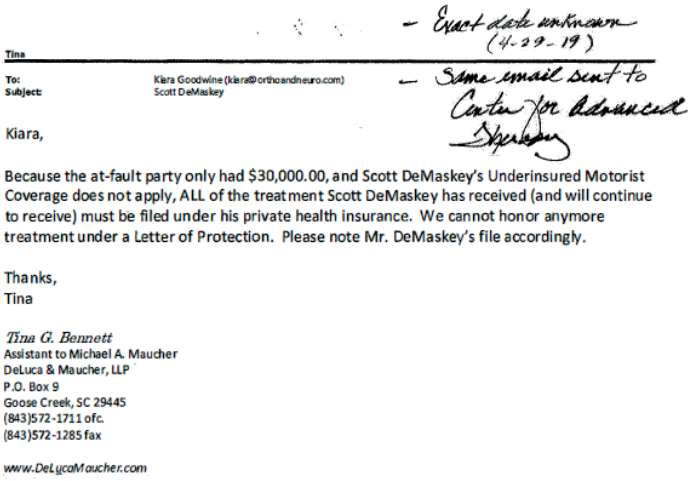
17. On May 2, 2019, relying on the Lawyers' promises and assurances on the amount of insurance coverage, Carolina Neurosurgery performed a second surgery on the Lawyers' client at an approximate cost of $65,000.

18. After the second surgery, the Lawyers reported to Carolina Neurosurgery that the Lawyers' prior statements representing over $1,000,000 in available insurance coverage were incorrect.

19. The Lawyers claimed they had warned Carolina Neurosurgery about the insurance coverage situation.

20. To convince Carolina Neurosurgery of the purported prior warning, the Lawyers physically handed Carolina Neurosurgery a print copy of an "email" the Lawyers claim they sent Carolina Neurosurgery on April 29, 2019, even though the email had no header, date, or reference to the sending party. This document will be referred to as the "false email."

21. The false email purports to have stated, "*Because the at-fault party only had $30,000.00, and [the Lawyers' client]'s Underinsured Motorist Coverage does not apply, ALL of the treatment [the Lawyers' client] has received (and will continue to receive) must be filed under his private health insurance. We cannot honor anymore treatment under a Letter of Protection. Please note [the Lawyers' client]'s file accordingly*." This is an image of the "false email":



– Exact date unknown (4-29-19)

Tina

To: Kiara Goodwine (kiara@orthoandneuro.com)
Subject: Scott DeMaskey

– Same email sent to Carter for Advanced

Kiara,

Because the at-fault party only had $30,000.00, and Scott DeMaskey's Underinsured Motorist Coverage does not apply, ALL of the treatment Scott DeMaskey has received (and will continue to receive) must be filed under his private health insurance. We cannot honor anymore treatment under a Letter of Protection. Please note Mr. DeMaskey's file accordingly.

Thanks,
Tina

Tina G. Bennett
Assistant to Michael A. Maucher
DeLuca & Maucher, LLP
P.O. Box 9
Goose Creek, SC 29445
(843)572-1711 ofc.
(843)572-1285 fax

www.DeLucaMaucher.com

22. Carolina Neurosurgery did not receive the "false email" the Lawyers claim to have sent on April 29, 2019.

23. The Lawyers cannot show the "false email" was electronically transmitted to Carolina Neurosurgery via email on April 29, 2019.

ELECTRONICALLY FILED - 2024 Sep 24 10:50 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

24. The Lawyers' "false email", however, even if it had been transmitted, did not advise or explain that there was no coverage under the "*$1,000,000.00 in 'Occupational Accident Coverage' ... under the One Beacon Policy"* as stated in the Lawyers' January 21, 2019 at 9:24 am email.

25. The Lawyers' "false email" was unfair and deceptive.

26. The Lawyers knew or should have known their conduct and representations concerning the "false email" violated the South Carolina Unfair Trade Practices Act.

27. The Lawyers did not explain or disclose to Carolina Neurosurgery that their prior statements representing over $1,000,000 in insurance coverage were not correct until after Carolina Neurosurgery provided treatments and performed two surgeries on the Lawyers' client.

28. The final invoice for the additional elective treatments Carolina Neurosurgery provided the Lawyers' client through December 20, 2019, is $125,409.25.

29. The Lawyers were not able to collect any of the "*$1,000,000.00 in 'Occupational Accident Coverage' ... under the One Beacon Policy"* to pay for the two surgeries Carolina Neurosurgery provided based on the Lawyers' representations.

30. Carolina Neurosurgery retained counsel and incurred at least $93,716.15 in legal fees to pursue recovery under the One Beacon Policy, and ultimately obtained only $6,323.50 under that policy.

31. Neither the Lawyers nor the Lawyers' client have paid Carolina Neurosurgery the remaining $119,085.78 outstanding balance for the medical treatments provided or the $93,716.15 in legal fees incurred.

32. The Lawyers' representations to Carolina Neurosurgery there was "*$1,000,000.00 in 'Occupational Accident Coverage' ... under the One Beacon Policy"* were not true.

33. Carolina Neurosurgery would not have performed the two surgeries on the Lawyers' client but for the representations made by the Lawyers concerning the insurance coverage.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

34. Carolina Neurosurgery realleges and incorporates the foregoing factual and jurisdictional statements by reference as if they were set forth herein.

35. Carolina Neurosurgery and the Lawyers entered into a contract wherein Carolina Neurosurgery would provide medical services to the Lawyers' client based on the Lawyers' representations about insurance coverage.

ELECTRONICALLY FILED - 2024 Sep 24 10:50 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

36. Carolina Neurosurgery fulfilled all necessary preconditions, if any, of the contract.

37. The Lawyers breached the contract.

38. As a direct and proximate cause of the Lawyers' multiple or singular breach of the contract, Carolina Neurosurgery sustained actual, consequential, and incidental damages in an amount to be determined by the jury at the trial of this case.

39. Under the Contract, Carolina Neurosurgery also requests all fees and costs generated in pursue of the relief claimed, including but not limited to legal fees.

37. WHEREFORE, Carolina Neurosurgery demands judgment and an award against the Lawyers under this breach of contract cause of action for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper.

FOR A SECOND CAUSE OF ACTION
(Violation of The South Carolina Unfair Trade Practices Act)

38. The foregoing factual and jurisdictional allegations are reiterated and realleged as though set forth verbatim.

39. This is a cause of action under the South Carolina Unfair Trade Practice Act, S.C. CODE ANN. §39-5-10, et seq.

40. The Lawyers engaged in trade or commerce in South Carolina, including practicing law in representing the Lawyers' Client.

41. The Lawyers engaged in unfair or deceptive acts or practices of trade or commerce.

42. Further, the Lawyers' use of such unfair and/or deceptive acts was willful.

43. The Lawyers' conduct is capable of repetition.

44. As a direct and proximate result of the Lawyers' use or employment of unfair and/or deceptive acts of trade or commerce as described in this Second Amended Complaint, Carolina Neurosurgery has suffered an ascertainable loss of money or property.

WHEREFORE, Carolina Neurosurgery is entitled to and requests an award of actual damages under this Unfair Trade Practices Act claim, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper. Further Carolina Neurosurgery is entitled to and requests an award of treble damages, legal fees, and costs, for the Lawyers' willful conduct and statutory violation.

FOR A THIRD CAUSE OF ACTION
(Negligent Misrepresentation)

40. Carolina Neurosurgery realleges and incorporates the foregoing factual and

ELECTRONICALLY FILED - 2024 Sep 24 10:50 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

jurisdictional statements by reference as if they were set forth herein.

41. The Lawyers made false representations to Carolina Neurosurgery.

42. The Lawyers had a pecuniary interest in making the statements to Carolina Neurosurgery.

43. The Lawyers owed a duty of care to see that they communicated truthful information to Carolina Neurosurgery, including duties grounded in the Lawyers' obligations under Rule 4.1(a), RPC, Rule 407, SCACR - Truthfulness in Statements to Others and other Rules and standards governing lawyers practicing law in South Carolina.

44. The Lawyers breached their duty duties to communicate truthful information to Carolina Neurosurgery by failing to exercise due care.

45. Carolina Neurosurgery justifiably relied on the Lawyer's representations.

46. Carolina Neurosurgery suffered a pecuniary loss as the proximate result of its reliance upon the Lawyers' representations.

47. WHEREFORE, Carolina Neurosurgery is entitled to and requests an award of actual damages against the Lawyers under this negligent misrepresentation claim for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the Court deems just and proper.

FOR A FOURTH CAUSE OF ACTION
(Promissory Estoppel)

48. Carolina Neurosurgery realleges and incorporates the foregoing factual and jurisdictional statements by reference as if they were set forth herein.

49. The Lawyers made unambiguous promise and gave unambiguous assurances to Carolina Neurosurgery concerning the availability of over $1 million in insurance coverage for the medical services Carolina Neurosurgery was to provide to the Lawyers' client.

50. Carolina Neurosurgery reasonably relied on the promise by the Lawyers.

51. Carolina Neurosurgery's reliance was expected by and foreseeable to the Lawyers.

52. Carolina Neurosurgery suffered substantial financial losses caused by its reasonable reliance on the Lawyers' unambiguous promises and unambiguous assurances concerning insurance coverage.

53. WHEREFORE, Carolina Neurosurgery is entitled to and requests an award of actual damages against the Lawyers under this promissory estoppel claim for actual damages, consequential damages, pre-judgment interest, court costs; and such other and further relief the

Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., prays for judgment against Defendants, Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP, jointly and severally, for the relief sought in each of the Causes of Action asserted in this Second Amended Complaint, including an award of actual damages, consequential damages, pre-judgment interest, court costs, and treble damages, legal fees, and costs, for the Lawyers' willful conduct and statutory violation; and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar #64918)
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit 1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com

Counsel for Plaintiff

Beaufort, South Carolina

September 24, 2024

ELECTRONICALLY FILED - 2024 Sep 24 10:50 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

EXHIBIT 9

From: Thomas A. Pendarvis
To: Wilson, Skyler C.
Cc: Tracy L. Landry; Mackelcan, Douglas W.; Moran, Rosie; Rewt, Teri J.
Subject: RE: Carolina Neurosurgery v. D&M - Second Amended Complaint
Date: Tuesday, September 24, 2024 1:34:28 PM
Attachments: image001.png

Thank you, Skyler, for your email, attachments, and comments.

The plaintiff respectfully declines to withdraw the Amended Complaint filed earlier today. Unlike your other matter, the Amended Complaint filed earlier today contains no causes of action that were not identified in the complaint used as an exhibit to the motion to amend, which Judge Young granted. The only changes were improvements to the fact allegations to provide greater clarity to the Defendants. As you know, the parties' pleadings are not evidence and will not be submitted to the jury, so there is simply no prejudice to your clients.

With my best regards,

Thomas A. Pendarvis
PENDARVIS LAW OFFICES, P.C.
710 Boundary St., Unit A-1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com
www.PendarvisLaw.com

Admitted in South Carolina and Georgia

Board Certified in Legal Malpractice by the American Board of Professional Liability Attorneys

Practice concentrated in lawyer professional responsibility matters (plaintiff lawyer-malpractice claims, lawyer disciplinary matters, ethics consultations, law-firm dissolutions, and lawyer moves between firms).

From: Wilson, Skyler C. <swilson@csvl.law>
Sent: Tuesday, September 24, 2024 11:47 AM
To: Thomas A. Pendarvis <thomas@pendarvislaw.com>
Cc: Tracy L. Landry <tracy@pendarvislaw.com>; Mackelcan, Douglas W. <dmackelcan@csvl.law>; Moran, Rosie <rmoran@csvl.law>; Rewt, Teri J. <trewt@csvl.law>
Subject: Carolina Neurosurgery v. D&M - Second Amended Complaint

Thomas,

I see that you filed a Second Amended Complaint, which is nearly identical to the one you attempted to file after the motion to amend was granted. It is attached.

I did not see where the court granted Plaintiff leave to file a Second Amended Complaint or where you obtained Defendants' written consent to file it, which is what is required under Rule 15. I presume your basis is that you believe Plaintiff can amend as of right because you are doing it within 30 days after you filed the Amended Complaint. If so, that is not how the rule works.

Unless there is some other legal basis for filing the Second Amended Complaint, what was filed is ineffective and considered a legal nullity. I had to address this issue in another case

ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

where an attorney tried the same maneuver. I moved to strike the pleading and the Court granted it. Attached is the motion and court order in that other case.

Please withdraw the Second Amended Complaint. If you do not, we will be filing a motion to strike. If you have some other basis for amending the complaint without leave or consent, please let me know.

Best regards,

Skyler

csvl-block

Skyler C. Wilson
Partner
d: 843.266.8221 | f: 843.727.2995
swilson@csvl.law | www.csvl.law
40 Calhoun Street, Suite 400, Charleston, SC 29401

ELECTRONICALLY FILED - 2024 Oct 28 12:12 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Carolina Neurosurgery & Orthopaedics, Inc., Plaintiff, vs. Michael A. Maucher, Esq. and DeLuca & Maucher, LLP, Defendants.	IN THE COURT OF COMMON PLEAS IN THE NINTH JUDICIAL CIRCUIT CASE NO.: 2021-CP-10-03379 **DEFENDANTS' REVISED MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Michael A. Maucher, Esq. and Deluca & Maucher, LLP, by and through their undersigned counsel, submit their Revised Memorandum in Support of Summary Judgment, requesting this Court find there is no genuine issue of material fact, and dismissing Plaintiff's remaining causes of action for (1) Breach of Contract; (2) violation of the South Carolina Unfair Trade Practice Act; (3) Negligent Misrepresentation; and (4) Promissory Estoppel.

Defendants previously moved for summary judgment, but Plaintiff was permitted to amend its Complaint and the court postponed the motion for summary judgment. As a result of the amendment, Defendants are submitting this revised memorandum.

INTRODUCTION

This case arises from Plaintiff's failure to exercise due diligence and follow its financial policy before proceeding with approximately $125,000.00 in surgical treatment for one of Defendants' clients (Client), who was injured in a motor vehicle collision on December 14, 2018. Defendants were unaware that Plaintiff and its surgeon, Dr. Highsmith, were "out of network" healthcare providers under Client's private health insurance.

Further, despite repeated instructions from both Defendants and Client regarding billing insurance for Plaintiff's services, Plaintiff never attempted to: (1) confirm with Defendants its

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

network status with Client's health insurance; or (2) submit the proposed procedures to the Client's health insurance for pre-approval before proceeding with the surgeries. Until recently, however, Plaintiff had never attempted to submit claims for payment to the Client's health insurance following each of the surgeries. Moreover—despite Defendants' offer to pay Plaintiff out of the $30,000 settlement proceeds recovered for their client—Plaintiff not only rejected such offer, but it brought a debt collection action against Defendants' client in the Berkeley County, South Carolina Court of Common Pleas.[1] Plaintiff and Client resolved their case before trial, with Plaintiff accepting partial payment from Client's insurer for Client's medical bills Plaintiff asserts Defendants owe.

SUMMARY OF FACTS

Client was injured in a car accident on December 14, 2018. **Amd. Cmplt. ¶ 7**. Shortly thereafter, he retained Defendants to pursue claims against the at-fault driver. Before the accident, Client was a patient of Dr. Highsmith and Carolina Neurosurgery. **Amd. Cmplt. ¶ 7**. Client chose to return to Dr. Highsmith to treat the injuries he sustained in the car accident.

Defendants sent Plaintiff a letter of protection on December 20, 2018, that stated:

> Please accept this correspondence as our Law Firm's agreement to protect any claim which you may have out of any settlement proceeds we may receive arising out of the incident referred to above. The above-named individual has been informed that, in the event of insufficient recovery, he remains personally responsible for your outstanding balance.

Ex. A (First Letter of Protection).

On January 3, 2019, Client executed Plaintiff's Financial Policy. **Ex. B.** Under the section entitled "If you have insurance," the Financial Policy provides that Plaintiff "will file with [the patient's] primary insurance." **Ex. B.** The Financial Policy also provides that the

[1] *Carolina Neurosurgery and Orthodontics, Inc. v. Scott Demaskey*, 2021CP0801088.

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

patient may be responsible for all of part of the balance not paid by the insurance company. **Ex. B**. At the time, Client had primary health insurance through Blue Cross/Blue Shield.

On January 21, 2019, Tina Bennett, a paralegal with Defendant Law Firm, responded to an inquiry from Kiara Goodwine, Plaintiff's employee, regarding the "limits" for Client, explaining the at-fault carrier was from North Carolina and would not disclose policy limits without a medical authorization, and they were unable to discover how much liability coverage the at-fault driver had. **Ex. C**. However, Bennett informed Goodwine that Client had $100,000 in UIM coverage on a Safeco Policy and carried $1,000,000 in "Occupational Accident Coverage" on a One Beacon policy. **Ex. C**.

Hours later the same day, Bennett emailed Goodwine and explained Client advised that he required surgery. **Ex. C**. Based on the seriousness of the injury, and pre-existing injuries, Bennett requested all of Client's treatment be filed with his private health insurance company. Further, that it "would be best for everyone involved if we NOT do the treatment under an Assignment/Letter of Protection." **Ex. C.** Goodwine responded, "Okay thanks for the update." **Ex. C**.

On March 7, 2019, Defendant Law Firm sent a revised Letter of Protection to Plaintiff, stating:

> Please accept this correspondence as our Law Firm's agreement to protect any portion of your bill not paid by private health insurance out of any settlement proceeds we may receive arising out of the incident referred to above. The above-named individual has been informed that, in the event of insufficient recovery, he remains personally responsible for your outstanding balance.

Ex. D (Second Letter of Protection). That same day, Client completed a Health Insurance Verification form for his upcoming surgery, providing Plaintiff with his BlueCross/BlueShield insurance information and the document was signed by Goodwine. **Ex. E.**

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Highsmith performed Client's first surgery on March 15, 2019 (First Surgery) and charged Client $58,697.41. For the First Surgery, Plaintiff did not submit any bills to BlueCross/BlueShield, despite the language in the Letter of Protection and Client providing his insurance information.

As Client's personal injury case developed, it was determined that: (1) the at-fault driver did not have sufficient insurance coverage to fully cover Client's medical treatment; (2) one of Client's other additional policies was inapplicable; and (3) the other additional policy was subject to subrogation and only applicable after Client's primary private health insurance had been exhausted.

On April 29, 2019, Defendants notified Plaintiff via email of the foregoing issues, stating:

> Because the at-fault party only had $30,000.00 and [Client's] Underinsured Motorist Coverage does not apply, **ALL of the treatment [Client] has received (and will continue to receive) must be filed under his private health insurance.** We cannot honor anymore treatment under a Letter of Protection. Please note [Client] file accordingly.

Compl. ¶ 29 (emphasis in original).[2]

On May 2, 2019, Highsmith performed additional surgery on Client, charging him an additional $62,451.87 (Second Surgery). **Ex. F**. In total, Plaintiff charged Client $125,409.28. **Ex. F.** Despite receiving explicit instructions regarding claim submission and payment on several occasions prior to both surgeries, Plaintiff did not file claims with Client's private health insurance. On January 3, 2020, Bennett wrote Goodwine and reminded her of the Letters of Protection and that it appeared Client's health insurance did not pay any of Plaintiff's bills. **Ex. G**. Bennett explained there was only $30,000 in coverage to pay the claim and they needed to discuss how to allocate that amount amongst everyone. **Ex. G.**

[2] It is anticipated Plaintiff may contest the authenticity of the email. However, Plaintiff's complaint alleges the email was sent to it and Defendants admitted the allegation in their answer. ***Compare*** **Amd. Compl. ¶17** ***with*** **Ans. ¶17.** Because Defendants admitted the fact as Plaintiff pled it, it is conclusively proven for the purposes of trial.

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Because Client has been unable to pay for Plaintiff's services, Plaintiff initiated a debt collection action against him on May 21, 2021. Further, Plaintiff has demanded payment from Defendants for Client's medical bills. Defendants attempted to tender payment to Plaintiff out of the settlement proceeds, and Plaintiff refused it. Moreover, the settlement proceeds are currently being held in Defendant Law Firm's trust account, and Defendants will not receive any of the funds upon resolution of this matter.

Current Lawsuit

Plaintiff filed this action on July 22, 2021, asserting claims for (1) breach of contract; (2) breach of contract accompanied by a fraudulent act; (3) violation of the S.C. Unfair Trade Practice Act; (4) fraud; (5) constructive fraud; (6) unjust enrichment; and (7) negligence. ***See*** **Compl**.

Defendants moved to dismiss Plaintiff's claims, which was granted in part, and the only remaining claims were for (1) Breach of Contract and (2) Violation of the SC Unfair Trade Practice Act. **Ex. H (Order Granting Motion)**. That order made numerous findings of fact and conclusions of law that are now the law of the case. *See* **Ex. H**. There is, however, one caveat—that the "order will not be admissible . . . to prove or disprove any matter of fact or establish or challenge any conclusion of law with respect to *Plaintiff's remaining claims for Breach of Contract and violation of the South Carolina Unfair Trade Practice Act.*" **Ex. H** (emphasis added).

Defendants moved for summary judgment on August 22, 2023, asking the Court to grant judgment based on the pleadings and discovery up to that date. Two weeks later, Plaintiff moved to amend the complaint to change the theories of recovery and add two additional claims: Negligent Misrepresentation and Promissory Estoppel. The Court granted Plaintiff leave to file the amended complaint and postponed Defendants' motion for summary judgment. **Ex. I**

(8.26.24 Order). Plaintiff filed the amended complaint and Defendants answered it. Defendants now submit this revised memorandum in support of summary judgment.

STANDARD OF REVIEW

"Summary judgment is appropriate 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003) (quoting Rule 56(c), SCRCP). Summary judgment's purpose is to expedite the disposition of cases not requiring a fact finder. *Nakatsu v. Encompass Indem. Co.*, 390 S.C. 172, 177, 700 S.E.2d 283, 286 (Ct. App. 2010).

The burden of proof rests with the party seeking summary judgment; however, the non-moving party must make a showing sufficient to establish the existence of an essential element on which it will bear the burden to prove at trial. *Baughman v. Am. Tel. & Tel. Co*., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). In determining whether summary judgment is appropriate, the evidence is viewed in the light most favorable to the non-moving party. *Edgewater on Broad Creek Owners Ass'n, Inc. v. Ephesian Ventures, LLC,* 430 S.C. 400, 407, 845 S.E.2d 211, 214 (Ct. App. 2020).

The South Carolina Supreme Court recently clarified that the "mere scintilla" standard does not apply to defeat summary judgment, but instead the party must establish a genuine issue of material fact. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023). "A fact is material if it 'might affect the outcome of the suit under the governing law.'" *Libertarian Party of Va. v. Judd*, 718 F.3d 308, 313 (4th Cir. 2013) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). A dispute is "genuine" if "a reasonable jury could return a verdict for the non-moving party." *Strothers v. City of Laurel*, 895 F.3d 317, 326 (4th Cir. 2018) (quoting *Anderson*, 477 U.S. at 248). It is not sufficient for a party to create an inference

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

that is not reasonable or an issue of fact that is not genuine. *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

ARGUMENT

I. This Court should grant Defendants summary judgment on Plaintiff's claims because findings in the order granting Defendants' motion to dismiss are the law of the case and interfere or preempt Plaintiff's claims.

"This State has a long-standing rule that one judge of the same court cannot overrule another." *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013). If a ruling is not appealed, whether it is wrong or right, it becomes the law of the case. *Id.* "The doctrine of the law of the case applies to an order or ruling which finally determines a substantial right." *Id.* (quoting *Weil v. Weil*, 299 S.C. 84, 89, 382 S.E.2d 471, 473 (Ct. App. 1989)). If the order, however, merely decides a point collateral to the issues of the case, it is not binding and can be reconsidered before a final order on the merits. *Id.*

This Court's prior order is the law of the case. It finally decided a substantial right—dismissing the entirety of Plaintiff's claims for (1) breach of contract accompanied by a fraudulent act; (2) fraud; (3) constructive fraud; (4) unjust enrichment and negligence. The claims that were dismissed were based, in part, on allegations related to statements about insurance coverage. **Ex. H**. The Order made numerous findings of fact and conclusions of law that Plaintiff has not appealed, and were decided by Judge Dickson. Because the Order ruled on important issues, not collateral issues, and was decided by another judge of the same Court, this Court cannot overrule or modify the Court's Amended Order on the motion to dismiss, and it is the law of the case.

The Order indicates it will not be "admissible" to prove facts or law for the "remaining claims of Breach of Contract and" SCUTPA. **Ex. H.** Because Plaintiff changed its theories for breach of contract and SCUTPA, those claims are no longer "remaining" and, therefore, this caveat does not apply, and the order will impact the changed claims for breach of contract and

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

SCUTPA. Further, the language limiting the Order's application clearly does not include new claims within that limitation, such as those for negligent misrepresentation and promissory estoppel. Thus, the findings in the Order are binding on and impact Plaintiff's claims.

The Order makes the findings of fact and conclusions of law below that are the law of the case and preempt Plaintiff's claims:

- "as of January 21, 2019, Plaintiff was aware of the need to file claims for payment with Client's private health insurance." **Ex. H, ¶ 13.**
- "as of March 7, 2019, Plaintiff was aware of the need to file claims for payment with Client's private health insurance first before seeking payment under the March 7, 2019 LOP." **Ex. H, ¶ 16**.
- "Plaintiff never attempted to confirm its in-network status with Client's private health insurance carrier prior to rendering surgical services, or to file claims for payment with Client's private health insurance, as is required under Plaintiff's Financial Policy." **Ex. H, ¶ 17**.
- "On April 29, 2019, D&M notified Plaintiff via email of the foregoing issues" (**Ex. H, ¶ 20**), referring to **Paragraph 19** that states it was determined the at-fault driver did not have sufficient insurance coverage, one policy was inapplicable, and the "additional policy was subject to subrogation only applicable after Client's primary private health insurance had been exhausted."
- "Despite receiving explicit instructions regarding claim submission and payment on several occasions prior to both surgeries, Plaintiff never attempted to file claims for Client's surgical services with Client's private health insurance. **Ex. H, ¶ 22**.
- Under "Fraud" and "Availability of Insurance Coverage" finding Plaintiff was not entitled, by virtue of the parties' relationship to one another, to rely on Defendants' representations as to insurance coverage or intent to pay. Instead, Plaintiff was under an affirmative duty to use reasonable prudence and diligence to attempt to discovery the truth of the representations." **Ex. H, ¶ 48**.
- "While Bennett initially emailed Goodwine on January 21, 2019 and indicated 'we are not concerned that there will be enough overall coverage to pay the claim,' . . . she followed up that same day and notified Goodwine that all of Client's surgical treatment was to be filed with his private health insurance company, and that treatment should not proceed under an assignment or letter of protection." **Ex. H, ¶ 50**.
- "as of January 21, 2019—approximately two (2) months before Client's First Surgery—Plaintiff had actual notice that . . . (2) Defendants did not intend to protect Plaintiff's claims out of any settlement proceeds from Client's personal injury claim; and (3) Plaintiff should file all claims for payment with Client's private health insurance company." **Ex. H, ¶ 52**.

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

- "Bennett's email to Goodwine did not indicate any claims could or should be filed with Client's underinsured motorist carrier or his occupational accident carrier." **Ex. H, ¶ 53**.
- Plaintiff "should have refused Bennett's instructions to file claims with Client's private health insurance company." **Ex. H, ¶ 54**.
- "Plaintiff should have known the only potential avenue for payment would have been through Client's underinsured motorist and/or occupational accident policies." **Ex. H, ¶ 55**.
- "Plaintiff, in the exercise of reasonable diligence, could and should have taken steps to obtain written confirmations of coverage from the underinsured motorist and occupational accident carriers themselves before furnishing costly surgical and other medical services to Client. **Ex. H, ¶ 56**.
- "Plaintiff apparently instead chose to rely solely on Bennett's first January 21, 2019 email to Goodwine—expressing only an opinion on available coverage—which, as discussed above, Plaintiff had no right to rely on." **Ex. H, ¶ 57**.

Plaintiff's Amended Complaint alleges four causes of action: (1) breach of contract; (2) SCUTPA violation; (3) negligent misrepresentation; and (4) promissory estoppel.

1. Plaintiff's breach of contract claim is preempted by the findings in the Order granting Defendants' motion to dismiss.

Plaintiff's breach of contract action is based on allegations that the parties "entered into a contract wherein Carolina Neurosurgery would provide medical services to the Lawyers' client based on the Lawyers' representations about insurance coverage." **Amd. Compl. ¶ 27**. Plaintiff asserts in a conclusory fashion that Defendants breached that contract and caused it damages. **Amd. Compl. ¶¶ 29-30**.

This Court must dismiss Plaintiff's breach of contract claim because it conflicts with the findings in the Order granting Defendants' motion to dismiss that are the law of the case, unchangeable absent appeal. The Order finds that Plaintiff was on notice as of January 2019 of the need to seek payment from private health insurance, and that Defendants did not intend to protect any claims to insurance proceeds—*after* the statement about insurance proceeds and before any further letter of protection. Further, the Order finds Plaintiff was aware as of April 29, 2019, that the additional policy had a subrogation requirement and required filing with

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

private health insurance first. The Order also clearly states Plaintiff had no right to rely on statements about coverage, the statement about insurance coverage was only an opinion, and Plaintiff needed to perform its own due diligence about the referenced policies and seek confirmations of coverage from the carriers before surgery.

With these findings in the Order that are the law of the case, Plaintiff cannot now prove that it agreed to provide medical services to Client because Defendants made statements about insurance coverage—this would conflict with the findings in the Order. Pursuant to the Order, Plaintiff had no right to rely on statements about coverage that were an opinion, and Plaintiff was subsequently told numerous times to seek payment from Client's private health insurer. Plaintiff, and this Court, cannot ignore those findings and Plaintiff cannot proceed on a theory contrary to them. Accordingly, this Court should grant summary judgment on the breach of contract claim.

2. Plaintiff's revised SCUTPA claim is preempted by the findings in the Order granting Defendants' motion to dismiss.

In its SCUTPA claim, Plaintiff asserts that Defendants "engaged in unfair or deceptive acts or practices of trade or commerce." **Amd. Compl. ¶ 40**. Plaintiff does not specify what acts are unfair or deceptive in the complaint, other than to say "as alleged throughout this Complaint."

In discovery, however, Plaintiff explains that the unfair or deceptive act was (1) making "representations, assurances, and promises to a healthcare provider that payments for elective surgical procedures . . . would be paid out of $1,100,000 of liability coverage." **Ex. J (Supp ATI 22)**. Plaintiff also asserts that it was unfair or deceptive "for a lawyer and a law firm to make false representations about email communications that never occurred"—referencing the April 29, 2019 email from Bennett to Goodwine and alleging Plaintiff didn't receive the email and did not know about it until after the surgeries were performed. **Ex. J (Supp ATI 22)**.

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

First, the Order explicitly finds that Plaintiff was notified of the April 29, 2019 email:

- "On April 29, 2019, D&M notified Plaintiff via email of the foregoing issues" (**Ex. H, ¶ 20**), referring to **Paragraph 19** that states it was determined the at-fault driver did not have sufficient insurance coverage, one policy was inapplicable, and the "additional policy was subject to subrogation only applicable after Client's primary private health insurance had been exhausted."

Further, the amended complaint alleges Plaintiff received this email and Defendants admitted that fact. Thus, Plaintiff cannot now assert that the April 29 email was not received and, accordingly, its claim it was unfair or deceptive to assert it was received is preempted by the Order.

Second, the Order also preempts arguing that the representations about coverage were unfair or deceptive and caused Plaintiff to provide services, for the same reasons the breach of contract claim is preempted. The Order finds that Plaintiff was on notice as of January 2019 of the need to seek payment from private health insurance, and that Defendants did not intend to protect any claims to insurance proceeds—*after* the statement about insurance proceeds and before any further letter of protection. Further, the Order finds Plaintiff was aware as of April 29, 2019, that the additional policy had a subrogation requirement and required filing with private health insurance first. The Order also clearly states Plaintiff had no right to rely on statements about coverage, the statement about insurance coverage was only an opinion, and Plaintiff needed to perform its own due diligence about the referenced policies and seek confirmations of coverage from the carriers before surgery.

It cannot be unfair and deceptive to make a statement of opinion on coverage that caused Plaintiff to provide services, when Plaintiff knew to seek payment from private health insurance instead of proceeding under a letter of protection or assignment immediately after the statement about coverage, that Plaintiff agreed to, and Plaintiff had no right to rely on the statement. Accordingly, the findings in the Order conflict with what Plaintiff would need to prove to

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

establish a violation of SCUTPA, and those findings are unchangeable absent appeal. Therefore, this Court should dismiss Plaintiff' claim for violation of SCUTPA.

3. Plaintiff's claims for negligent misrepresentation and promissory estoppel are preempted by the findings in the Order on Defendants' motion to dismiss.

Plaintiff alleges in the negligent misrepresentation claim that Defendants made false representations, and Plaintiff justifiably relied on those representations. **Amd. Compl. ¶¶ 33, 37**. Plaintiff alleges in its promissory estoppel claim that Defendants gave an "unambiguous promise" and assurances about "the availability of over $1 million in insurance coverage" and that Plaintiff reasonably relied on that promise. **Amd. Compl. ¶¶ 41-42**. Reasonable reliance, of course, is an element of both claims. *See West v. Gladney*, 341 S.C. 127, 134, 533 S.E.2d 334, 337 (Ct. App. 2000) (listing the elements of negligent representation and including "the defendant owed a duty of care to see that he communicated truthful information to the plaintiff," "the plaintiff justifiably relied on the representation," and explaining reliance must be reasonable (quoting *AMA Management Corp. v. Strasburger*, 309 S.C. 213, 222, 420 S.E.2d 868, 874 (Ct. App. 1992));*Woods v. State*, 314 S.C. 501, 505, 431 S.E.2d 260, 263 (Ct. App. 1993) (including as element of promissory estoppel "reasonable reliance upon the promise by the party to whom the promise is made).

The findings in the Order, however, preempt any arguments that Plaintiff justifiably or reasonably relied on statements about coverage. The Order states in multiple findings that Plaintiff did not have a right to rely on representations about coverage. **Ex. H, ¶ 48** (stating "Plaintiff was not entitled, by virtue of the parties' relationship to one another, to rely on Defendants' representations as to insurance coverage"); **Ex. H, ¶ 57** ("Plaintiff apparently instead chose to rely solely on Bennett's first January 21, 2019 email to Goodwine—expressing only an opinion on available coverage—which, as discussed above, Plaintiff had no right to rely on.").

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Further, the findings in the Order recognize Plaintiff had a duty to use reasonable diligence to discover the truth of the representations about coverage. **Ex. H, ¶ 48; ¶ 56** ("Plaintiff, in the exercise of reasonable diligence, could and should have taken steps to obtain written confirmations of coverage from the underinsured motorist and occupational accident carriers themselves before furnishing costly surgical and other medical services to Client.").

Because the Order clearly states that Plaintiff did not have a right to rely on statements about coverage, and should have exercised reasonable diligence in discovering the truth of those representations, Plaintiff cannot now allege that it reasonably or justifiably relied on statements about coverage.

Further, the Order states the statement about coverage was an opinion—not a statement of fact. An opinion about insurance coverage cannot also be an unambiguous promise that that coverage was available to pay for medical services. Because those rulings are the law of the case, but Plaintiff would need to prove the opposite to succeed on a claims for negligent misrepresentation and promissory estoppel, the claims are preempted by the Order and this Court should dismiss them.

II. This Court should grant Defendants summary judgment on Plaintiff's claim for breach of contract because Plaintiff cannot prove the necessary elements.

To succeed on a breach of contract claim a plaintiff must establish (1) the existence of a contract, (2) its breach, and (3) the damages caused by the breach. *Branche Builders, Inc. v. Coggins*¸ 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009). "The general rule is that for a breach of contract the [breaching party] is liable for whatever damages follow as a natural consequence and a proximate result of such breach." *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 492, 732 S.E.2d 205, 209 (Ct. App. 2012) (quoting *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962)).

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Plaintiff alleges generally that it entered into a contract with Defendant, wherein it "would provide medical services to the Lawyers' client based on the Lawyers' representations about coverage. **Amd. Compl. ¶ 27**. Plaintiff alleges that it fulfilled all necessary preconditions, and that Defendants breached the contract. **Compl. ¶¶ 28-29**.

A. There was no contract between Plaintiff and Defendants because Defendants did not manifest a willingness to pay for Client's medical bills and Plaintiff did not accept by providing medical services conditioned on a promise to pay the bills.

"The necessary elements of a contract are an offer, acceptance, and valuable consideration." *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). "An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." *Carolina Amusement Co. v. Connecticut Nat'l Life Ins. Co.*, 313 S.C. 215, 437 S.E.2d 122 (Ct. App. 1993) (quoting Restatement (Second) of Contracts § 24 (1981)). A valid offer "identifies the bargained for exchange and creates a power of acceptance in the offeree." *Id.* "To be binding, an offer must be definite. *Prescott v. Farmers Tel. Co-op., Inc.*, 335 S.C. 330, 336–37, 516 S.E.2d 923, 926 (1999). Also, it must "be one which is intended of itself to create legal relations on acceptance." *Id.*(quoting *McLaurin v. Hamer*, 165 S.C. 411, 420, 164 S.E. 2, 5 (1932)).

"Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer." *Electro-Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter*, 357 S.C. 363, 369, 593 S.E.2d 170, 173 (Ct. App. 2004) (quoting Restatement (Second) of Contracts § 50 (1981)). "A typical contract contains mutual promises and is created by an acceptance constituting a return promise by the offeree." *Id.* "Moreover, a contract only arises when there is an actual agreement by the parties in which the parties demonstrate a mutual intent to be bound." *Id.*

There was no legally enforceable contract between Plaintiff and Defendants with a term requiring Defendants be personally liable for Client's medical bills. Plaintiff is alleging that the

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

January 21 statement about insurance coverage created a contract. However, there was not an offer or an acceptance.

The language in the email referencing coverage did not constitute an offer that Defendants would pay for the medical services, and there is no genuine issue of material fact on that point.

First, prior to the email about coverage, Defendants on December 20, 2018, sent a letter of protection identifying they would "protect any claim which you may have out of any settlement proceeds we may receive arising out of the incident" and that the Client "has been informed that, in the event of insufficient recovery, he remains personally responsible for your outstanding balance." **Ex. A (First Letter of Protection)**. Client subsequently executed Plaintiff's Financial Policy on January 3, 2019. **Ex. B**. Under the section entitled "If you have insurance," the Financial Policy provides that Plaintiff "will file with [the patient's] primary insurance." **Ex. B.** The Financial Policy also states the patient is responsible for all of part of the balance not paid by the insurance company. **Ex. B**. Thus, Plaintiff was on notice of the potential of an insufficient recovery in settlement proceeds and that the protection would be limited to settlement proceeds received prior to any discussion of coverage.

On January 21, 2019, Goodwine asked what the "limits" were for Client, and Bennett explained the at-fault carrier would not disclose limits and Bennett was unable to determine the amount of liability coverage. **Ex. C.** Bennett informed Goodwine that Client had $100,000 in UIM coverage on a Safeco Policy and carried $1,000,000 in "Occupational Accident Coverage" on a One Beacon policy, and that Defendants were "not concerned that there will be enough over all coverage to pay the claim." **Ex. C.** However, hours later the same day, Bennett informed Goodwine that all of Client's treatment should be filed with his private health insurance company. Further, that it "would be best for everyone involved if we NOT do the treatment

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

under an Assignment/Letter of Protection." **Ex. C.** Goodwine responded, "Okay thanks for the update."

The language in the letter referencing insurance coverage cannot be construed as an offer that Defendants would agree to pay for Client's medical bills out of that specific coverage. The language in email is not definite, and does not "identify the bargained for exchange" and create "a power of acceptance" in Plaintiff. The language does not contain a bargained for exchange identifying what Plaintiff is giving in exchange for insurance coverage representations. The language does not create a power of acceptance because it does not identify what Plaintiff would need to do (or refrain from doing) in order to accept. Without language identifying the bargained for exchange, there can be no contract. Also, without language identifying what Plaintiff would need to do to accept, there can be no offer and no contract.

In the context of the prior letter of protection explaining Client would be personally responsible in the event of an insufficient recovery, Plaintiff's Financial Policy reflecting the same language, that Plaintiff was already providing services to Client, and a retraction of any assignment or letter of protection and Goodwine's agreement to bill private health insurance, there is no genuine issue of material fact and there was no offer.

Even if the statement about coverage could be construed as an offer, Plaintiff did not communicate any acceptance in the manner invited or required by the offer. Plaintiff will most likely argue that it accepted by providing treatment to Client. First, the offer did not identify that Plaintiff could accept by providing treatment and, therefore, Plaintiff could not have accepted in the manner invited or required by the offer.

Second, Plaintiff could not have relied on the "offer" related to insurance coverage in order to provide care to Client. Dr. Highsmith testified that the only way he has to try and hold Defendants responsible for Client's medical bills are the Letters of Protection. **Ex. K (Dr. Highsmith Depo. Tr. 33:22 – 34:7)**. If the Letters of Protection are the only way to hold

Defendants responsible, Plaintiff could not have relied on information outside of those letters to form a contract, which would include a statement in an email about coverage.

In addition, Dr. Highsmith testified that he did not know why Goodwine would contact Bennett to ask about limits and could not say for sure **(Ex. K (61:24-62:8)**); Dr. Highsmith did not know if he instructed her to reach out (**Ex. K (62:9-12))**; and that it is not a standard practice and happens rarely. **(Ex. K (62:13-25)**. Dr. Highsmith also testified that he would provide a surgery if a patient needed it and he did not know anything about insurance coverage, and the Client needed the surgery. **(Ex. K (64:19-65:1))**. Moreover, Dr. Highsmith does not know if he read the email before providing services to the Client **(Ex. K (69:14-18))**. In fact, Dr. Highsmith testified that the statements in the email were not relevant to the Client's medical care and he is focused on the medical care. **(Ex. K (69:23-70:3)**). If Dr. Highsmith did not know why Goodwine reached out for the information, cannot recall and doesn't know if he would have read the email about coverage, and believed it was not relevant to the medical care, then Plaintiff could not have relied on the statement about coverages to provide medical care and could not have "accepted" providing care in exchange for representations about coverages. Because there is no reasonable inference from the evidence that Plaintiff agreed to provide services to Client based on representations about coverage, there is no acceptance and no contract.

Ultimately, in order to impose the liability Plaintiff alleges (Defendants are responsible for Client's medical bills), the language in email would need to be definite and show that Defendants agreed to be responsible for the medical bills. But the language in the email cannot be construed such a promise. The only reasonable inference is there was no contract obligating the Defendants to pay for Client's medical bills.

Stated simply, the email about coverage cannot be reasonably interpreted to create a contract that Defendants offered to be responsible for Client's medical bills if Plaintiff agreed to provide medical services to Client, and Plaintiff actually provided medical services based on that

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

offer. Without that offer and acceptance, there is no contract. Accordingly, this Court should grant Defendants summary judgment on Plaintiff's claim for breach of contract.

III. This Court should grant Defendants summary judgment because they did not violate the South Carolina Unfair Trade Practice Act.

SCUTPA makes unlawful "unfair or deceptive acts or practices in the conduct of any trade or commerce." S.C. Code Ann. § 39-5-20(a). Under the Act, "trade or commerce" includes "the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate." S.C. Code Ann. § 39-5-10(b). These terms make clear the Act applies "to business and consumer transactions." *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 638, 743 S.E.2d 808, 816 (2013). "Furthermore, by its very definition, 'trade or commerce' involves ''[e]very business occupation carried on for subsistence or profit and involving the elements of bargain and sale, barter, exchange, or traffic." *Id.* (quoting *Black's Law Dictionary* (9th ed. 2009)).

"Unfair" acts are acts that offend public policy or are immoral, unethical, or oppressive. *Bessinger v. Bi-Lo, Inc.*, 366 S.C. 426, 432, 622 S.E.2d 564, 567 (Ct. App. 2005). "Deceptive" acts are acts that have a tendency to deceive. *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 638, 743 S.E.2d 808, 816 (2013).

To state a claim under SCUTPA, a plaintiff must show "(1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected [the] public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." *Id.* (quoting *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006)). A "deliberate or intentional breach of a valid contract, without more, does not constitute a violation of the Unfair Trade Practices Act." *Columbia E.*

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Assocs. v. Bi-Lo, Inc., 299 S.C. 515, 522, 386 S.E.2d 259, 263 (Ct. App. 1989) (affirming trial court dismissal of SCUTPA claim based on breach of commercial lease agreement).

"The legislature intended in enacting [SCUTPA] to control and eliminate 'the large scale use of unfair and deceptive trade practices within the state of South Carolina.'" *Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc.*, 290 S.C. 475, 477, 351 S.E.2d 347, 349 (Ct. App. 1986) (quoting Note, *Consumer Protection and the Proposed "South Carolina Unfair Trade Practices Act*," 22 S.C.L.REV. 767, 787 (1970)). This is why SCUTPA requires the unfair or deceptive act to affect the people of South Carolina. *Id.* The purpose of the limitation is to circumscribe the "kind of trade or commerce" that can serve as a basis for a SCUTPA claim. *Id.* "An unfair or deceptive act or practice that affects only the parties to a trade or a commercial transaction is beyond the act's embrace . . . ." *Id.* at 479, 351 S.E.2d at 349-50.

Here, Plaintiff's complaint contains merely a formulaic recitation of the elements of a SCUTPA claim. The complaint does not specifically allege what acts were "unfair or deceptive" or what ascertainable loss of money Plaintiff suffered. In discovery, Plaintiff stated it is "unfair or deceptive" to "make representations, assurances, and promises to a healthcare provider that payments for elective surgical procedures to be rendered by the healthcare provider . . . would be paid out of $1,100,000 of liability coverage available to the at-fault party who allegedly injured the lawyer's client when the lawyer and law firm did not verify the availability of the insurance coverage before making the representations to the healthcare provider." Plaintiff also alleges Defendants knew Plaintiff was an out-of-network provider. **Ex. J (Pltf's Supp ATI 22)**. Plaintiff also asserts that it was unfair or deceptive "for a lawyer and a law firm to make false representations about email communications that never occurred"—referencing the April 29, 2019 email from Bennett to Goodwine and alleging Plaintiff didn't receive the email and did not know about it until after the surgeries were performed. **Ex. J (Pltf's Supp ATI 22)**.

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

The email from Ms. Bennett stated, in pertinent part, that they did not know the limits of the liability coverage and because Client "carries $100,000.00 in Underinsured Motorist Coverage on his at-home policy with Safeco, and there is $1,000,000 in "Occupational Accident Coverage" to pay bills and wages under the One Beacon Policy, we are not concerned that there will be enough over all coverage to pay the claim." **Ex. C**. Hours later that same day, once Defendants knew Client needed surgery, Ms. Bennett informed Plaintiff the treatment should be filed with private health insurance and it "would be best for everyone involved if we NOT do the treatment under an Assignment/Letter of Protection." **Ex. C**. Plaintiff's employee responded "Okay thanks for the update." **Ex. C**.

A. Plaintiff's SCUTPA claim fails because Defendants were not engaged in trade or commerce with Plaintiff when the allegedly unfair or deceptive acts occurred.

There is no genuine issue of material fact that Defendants were not engaged in "trade or commerce" with *Plaintiff*. For example, our supreme court determined the Board of Dentistry was not engaged in trade or commerce under the act when it promulgated a regulation because it was not involved in the "advertisement, sale, or distribution of services or property within a business context." *Health Promotion Specialists, LLC*, 403 S.C. at 639, 743 S.E.2d at 816. The court also discussed how the act can apply to professional services, which the regulation governed, but it still was not within the ambit of SCUTPA because it did not involve the sale of those services. *Id.* at 639 n.13, 743 S.E.2d at 816 n.13.

Here, Defendants were not engaged in trade or commerce with Plaintiff in a business context when the representations were made. Defendants were not selling professional services to Plaintiff, the comments were not related to the "advertisement, sale, or distribution of services or property" to Plaintiff. Plaintiff gave nothing in response to the representations. Because Defendants were not engaged in trade or commerce with Plaintiff when the representations

occurred, Plaintiff's SCUTPA claim fails, and this court must grant Defendants summary judgment.

B. The only reasonable inference from the evidence is that Defendants did not know Plaintiff was an out-of-network provider when Defendants made statements about the other policies.

Defendants did not know Plaintiff was considered "out-of-network" with Client's health insurer, BlueCross BlueShield. Defendant testified that it did not know Plaintiff was out-of-network. *See* **Ex. L (D&M Depo. Tr. 48:16-49:7)**. There is no evidence in the record to establish, or support a reasonable inference, that Defendants knew that Plaintiff was out-of-network at any time before Plaintiff stopped providing Client medical care. It is anticipated Plaintiff may rely on its Financial Policy, but there is no evidence to show that Defendants received the policy. *See* **Ex. L (18:14-19:10); Ex. L (24:3-5)** ("We didn't know anything between [Client] and Dr. Highsmith. He went to Dr. Highsmith, and they didn't send us a copy of anything that he filled out."). Moreover, the language in the Financial Policy does not clearly state Plaintiff is out of network, and Plaintiff's actions establish the opposite when they requested, and Client provided, his health insurance card for the first surgery.

Further, Plaintiff, knowing it was out of network, should have said something in response to the Letter of Protection and emails requiring that treatment be provided through and billed to Client's insurer. *See* **Ex. L (49:10-20).** The fact that Defendant's employee made that request shows that it did not know Plaintiff was out-of-network and assumed the opposite. None of Plaintiff's employees corrected that misunderstanding. In fact, Plaintiff's employee responded and agreed to abide by the request to bill Client's health insurer when she said "Okay." Thus, contrary to Plaintiff's allegation, there is no evidence to establish that Defendants knew at the time of the initial statements about coverage and that Plaintiff was out-of-network.

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

C. Plaintiff's allegations of the "unfair or deceptive" act are unsupported by the evidence.

Plaintiff alleges it was unfair or deceptive to "make representations, assurances, and promises to a healthcare provider that payments for elective surgical procedures to be rendered by the healthcare provider . . . would be paid out of $1,100,000 of liability coverage available to the at-fault party." The only reasonable inference from the evidence is that Defendants never represented, promised or assured that Plaintiff would be paid out of "$1,100,00 of liability coverage available to the at-fault party."

Bennett explained that the at-fault party had North Carolina auto insurance, and would not release the limits without a medical authorization that they were not willing to provide. **Ex. C.** Thus, Defendants did not know what liability insurance was available to the at-fault party. Moreover, Bennett explained that *Client* had a UIM policy and an Occupational Accident Coverage policy. This was not liability coverage available to the at-fault party. In fact, the policy names imply certain preconditions to coverage that Plaintiff was unaware of at the time. Plaintiff could not have known if the $100,000 in underinsured motorist coverage applied, because no one at the time knew if the at-fault party was underinsured. Further, the name of the One Beacon policy—Occupational Accident Coverage—implies that the accident would need to occur within Client's occupation, which Plaintiff was unaware of at the time. Essentially, Bennett never made any representation, promise, or assurance that *Plaintiff's medical charges* would be paid out of those policies. Instead, she expressed that they were not concerned about there being enough overall coverage to cover the claim. This is not tantamount to an assurance, promise, or representation that Plaintiff's medical bills would be paid out of those amounts.

Accordingly, the unfair or deceptive act on which Plaintiff relies is a mischaracterization of the statements by Bennett, unsupported by any evidence or reasonable inferences therefrom.

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

D. Even if Plaintiff's unfair or deceptive act allegations were generally about referencing coverage at all, there is no evidence or reasonable inferences from evidence to show that Defendants' statements about coverage were unfair or deceptive.

The references to coverage cannot be an unfair or deceptive act because the statement, when made, was accurate. Kiara Goodwine asked Bennett in general what the "limits" were for Client. **Ex. C.** Ms. Bennett stated that Client "carried" a policy with Safeco with $100,000 in UIM and One Beacon Policy for "Occupational Accident Coverage" for $1,000,000. That was a truthful statement of the limits of those policies, and remains true. *See* **Ex. L (50:3-7)**. Client had those policies in effect when Bennett told Kiara Goodwine. In addition, Ms. Bennett mentioned that they were "not concerned that there will be enough overall coverage to pay the claim." Again, this statement was true at the time made and only a representation about their concern about coverage. Because they were true when made, it is hard to fathom how it could constitute unfair or deceptive practice.

Even though Ms. Bennett said they were "not concerned," she followed up that same day after she found out that Client needed surgery, explaining to Plaintiff's employee that all of Client's surgical treatment was to be filed with his private health insurance company, and that the treatment should not proceed under an assignment or Letter of Protection. As Defendant testified, this shows that Defendants were concerned about coverage. *See* **Ex. L (53:2-17)**. Thus, Plaintiff knew after any statements about policies, that it was to process payment through the private health insurer—not the UIM policy or occupational policy limits. Also, Plaintiff's employee did not bat an eye at the request for Plaintiff to submit claims to health insurance, instead agreeing to do so when she said "Okay thanks for the update."

Finally, after Ms. Bennett informed Kiara about the Safeco and One Beacon policies, the Letter of Protection explained what would occur in the event of an insufficient recovery—Client would be responsible. The reference to "insufficient recovery" is directly contrary to Plaintiff's

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

belief forming the basis for the SCUTPA claim—the belief there would be a sufficient recovery on the policies mentioned to pay the claim. Dr. Highsmith agreed the letter outlined who would be responsible in the event of an insufficient recovery—the Client and not Defendants. **Ex. K (74:23-75:8)**.

Because the general references to other policies were true at the time, Bennett notified Plaintiff it should seek payment for its surgical services from Client's health insurer, and the subsequent letter informed Plaintiff of the possibility of an insufficient recovery, the statements about the other policies were not unfair or deceptive, and this Court should grant Defendants summary judgment on the SCUTPA claim.

E. Plaintiff cannot establish Defendants' alleged unfair or deceptive acts proximately caused an ascertainable loss of money or property.

In order to recover actual damages under SCUTPA, the plaintiff must establish that the damages are the "natural and proximate result of deceptive conduct." *Wright v. Craft*, 372 S.C. 1, 24, 640 S.E.2d 486, 499 (Ct. App. 2006); *see Collins Holding Corp. v. Defibaugh*, 373 S.E.2d at 446, 451, 646 S.E.2d 147, 150 (Ct. App. 2007) (finding the trial court erred in finding for plaintiff on SCUTPA claim because plaintiff did not establish the deceptive act (reflexive payout on gaming machines) was the cause of the plaintiff's machines earning less money).

As indicated above, Plaintiff has a financial policy that says the patient is responsible for the bill and he relies on that financial policy. **Ex. K (15:16-18)**. In addition, Dr. Highsmith testified that coverages do not affect his treatment recommendation. He stated that "if it's an elective surgery, [he] is not going to put someone through a huge bill if there's supposed coverage that doesn't exist". But Dr. Highsmith testified that the Client needed the surgery. *See* **Ex. K (104:6-105:5)**. He also testified that, in a situation where a patient needs surgery and he doesn't know anything about what insurance coverage is, he would still provide the surgery. **Ex. K (66:22-67:1)**.

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Moreover, Dr. Highsmith testified that he did not know whether he saw the email from Bennett referencing insurance policies prior to providing services to Client, and further that the substance of the emails about coverage were not relevant to Client's medical care. *See* **Ex. K (Tr. 69:14-70:3).**

The only reasonable inference from the evidence above is that Plaintiff did not rely on statements about insurance coverage from Ms. Bennett to provide medical care to Client. If he did not rely on those statements, those statements could not have proximately caused him damages, i.e., caused it to render medical services it thought would be covered by insurance that supposedly were not covered.

Furthermore, to the extent that Plaintiff is relying on the "unfair or deceptive act" being Defendants' asserting that Bennett sent the April 29, 2019 email when Plaintiff asserts it did not receive it and it is a "fake email," that act cannot have proximately caused any damages because it occurred *after* Plaintiff had already provided the services and charged Client. If the representations about the April 29, 2019 email being sent occurred after Plaintiff had already provided the services, i.e., the damages it is claiming in this lawsuit, then it cannot have caused Plaintiff to provide those services and incur costs. Therefore, Plaintiff cannot prove the April 29, 2019 email proximately caused an ascertainable loss of money.

Without a reasonable inference to support causation, Plaintiff's claim for SCUTPA fails, and this Court should grant Defendants summary judgment.

F. This Court should dismiss the SCUTPA claim because the actions alleged to support the claim affect only the parties to the transaction.

"To be actionable under the UTPA, an unfair or deceptive practice or act must adversely affect the public interest." *Jefferies v. Phillips*, 316 S.C. 523, 527, 451 S.E.2d 21, 23 (Ct. App. 1994). "Therefore, conduct [that] only affects the parties to the transaction provides no basis for

a UTPA claim." *Id.* "The act is not available to redress a private wrong . . . ." *Columbia East Assoc. v. Bi-Lo, Inc.*, 299 S.C. 515, 386 S.E.2d 259 (Ct. App. 1989).

The plaintiff must prove the impact on public interest based on specific facts, without which the court would be left to speculate on the public impact and that will not support a UTPA claim. *Jeffries*, 316 S.C. at 527, 451 S.E.2d at 23. The court must analyze each case and determine whether the wrongful conduct impacts the public, either through circumstances of the transaction or by evidence of similar acts. *Id.* at 529, 451 S.E.2d at 23.

"In the course of human endeavor, every action has some potential for repetition. The mere proof that the actor is still alive and engaged in the same business is not sufficient to establish this element." *Id.*, 451 S.E.2d at 24 (finding there was no evidence of similar acts or facts to establish the conduct has potential for repetition in claim that a contractor overcharged for termite repair work, even though there were allegations the contractor might pad other bills).

Plaintiff is attempting to use SCUTPA to redress a private wrong where only parties to the transaction are impacted. There is no evidence of similar acts or facts to establish the conduct has potential for repetition and, therefore, Plaintiff fails to show an impact on public interest.

Plaintiff alleges a violation occurred when Bennett made "representations, assurances, and promises to a healthcare provider that payments for elective surgical procedures to be rendered by the healthcare provider . . . would be paid out of $1,100,000 of liability coverage available to the at-fault party." First, the circumstances of this "transaction" establishes that it affected only the parties. The statement was in response to Plaintiff's solicitation about Client's "limits", was based on the Client's case, his need for medical care, and what insurance policies the Client had. The circumstances are unique, entirely dependent on the facts of each matter. Therefore, there is no potential impact on the public interest.

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Further, there is no evidence in this case that Defendants made similar statements in other cases before Client's case and treatment. Therefore, there is no affect on the public interest based on previous similar acts.

Importantly, the deposition testimony and any allegations about Defendants sending similar letters of protection in previous cases cannot be used to establish an impact on the public interest because Plaintiff is relying on statements about insurance coverage. Just because Defendants continue to exist and practice law representing injured plaintiffs, is not sufficient to show that any conduct could be repeated. The only parties affected are the parties to the transaction, and there is no evidence or reasonable inference from the evidence to create a genuine issue of material fact that Defendants' conduct could impact the public interest. Accordingly, this Court should grant Defendants summary judgment.

G. Finally, One Beacon eventually accepted coverage under its policy, although it did not pay Plaintiff's bills in full.

While this litigation has been ongoing, Plaintiff eventually submitted its bills to One Beacon under Client's Occupational Accident Policy. One Beacon paid Plaintiff something for each one of the services Plaintiff rendered to Client that is the subject of this action. **Ex. M (EOB); Ex. N (Check)**.

One Beacon included in its payment an explanation of benefits stating on each of the eight pages that "the patient is covered under an Occupational Accident Policy." **Ex. M; Ex. N**. It also explained that "[u]nless otherwise noted, charges were reduced by the lesser of the usual and customary charges for the service, treatment or supply as reflected in the local Workers' Compensation schedule or negotiated rate." Comparing the explanation of benefits to the full list of charges for services to Client it is clear that One Beacon paid an amount for each one of the charges. **Compare Ex. M to Ex. F**.

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Clearly, One Beacon found there was coverage under its Occupational Accident Policy that had the $1,000,000 in coverage, even though it did not pay what Plaintiff wanted. Because One Beacon found coverage under that policy in the course of this litigation, it is incredible to continue to assert that Bennett's statements in one email were unfair and deceptive. Accordingly, this Court should grant Defendants summary judgment.

IV. This Court should grant Defendants summary judgment on Plaintiff's negligent misrepresentation claim because Plaintiff cannot establish Defendants made a false statement to Plaintiff or that Plaintiff actually relied on the statements.

To prevail on a cause of action for negligent misrepresentation as it relates to a pecuniary loss, a plaintiff must prove: (1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as a result of his reliance upon that representation. *Ama Management Corp v. Strasburger*, 309 S.C. 213, 420 S.E.2d 868 (1992). For the tort of negligent misrepresentation, "the element of 'false misrepresentation' cannot be premised upon an omission or silence of a party." *Allegro, Inc. v. Scully*, 409 S.C. 392, 419, 762 S.E.2d 54, 68 (Ct. App. 2014), *rev'd in part on other grounds*, 418 S.C. 24, 791 S.E.2d 140 (2016).

Here, Defendants did not make any false representations to Plaintiff. Plaintiff does not specify in its negligent misrepresentation claim what false representations Defendants made, but it is otherwise in the Amended Complaint that Plaintiffs take issue with representations about insurance coverage. The statements Bennett made in the email were not false. As argued in Part III(D) above, Bennett replied to Goodwine's email and told her that she did not know what the at-fault party's liability insurance was—a true statement. Ms. Bennett stated that Client "carried" a policy with Safeco with $100,000 in UIM and One Beacon Policy for "Occupational Accident Coverage" for $1,000,000. That was a truthful statement of the limits of those policies,

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

and remains true. *See* **Ex. L (50:3-7)**. Client had those policies in effect when Bennett told Kiara Goodwine. In addition, Ms. Bennett mentioned that they were "not concerned that there will be enough overall coverage to pay the claim." Again, this statement was true at the time made and only a representation about their concern about coverage.

Further, even though Bennett said they were "not concerned," she followed up that same day after she found out that Client needed surgery, explaining to Plaintiff's employee that all of Client's surgical treatment was to be filed with his private health insurance company, and that the treatment should not proceed under an assignment or Letter of Protection. As Defendant testified, this shows that Defendants were concerned about coverage. *See* **Ex. L (53:2-17)**. Thus, Plaintiff knew after any statements about policies, that it was to process payment through the private health insurer—not the UIM policy or occupational policy limits. Also, Plaintiff's employee did not bat an eye at the request for Plaintiff to submit claims to health insurance, instead agreeing to do so when she said "Okay thanks for the update."

Moreover, One Beacon's successor did eventually accept coverage and attempted to pay Plaintiff something for each of the services that it provided Client, albeit at a reduced cost. Thus, it would be true that Client's One Beacon policy provided coverage. Because the statements were true when made, there is no false statement, and the negligent misrepresentation claim fails.

Additionally, as argued in Part III(E) above, Plaintiff did not actually, justifiably, or reasonably rely on the statements about coverage to provide services to client. Plaintiff has a financial policy that says the patient is responsible for the bill and Plaintiff relies on that financial policy. **Ex. K (15:16-18)**. In addition, Dr. Highsmith testified that coverages do not affect his treatment recommendation. He stated that "if it's an elective surgery, [he] is not going to put someone through a huge bill if there's supposed coverage that doesn't exist". But Dr. Highsmith testified that the Client needed the surgery. *See* **Ex. K (104:6-105:5)**. He also testified that, in a situation where a patient needs surgery and he doesn't know anything about what insurance

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

coverage is, he would still provide the surgery. **Ex. K (66:22-67:1)**. Moreover, Dr. Highsmith testified that he did not know whether he saw the email from Bennett referencing insurance policies prior to providing services to Client, and further that the substance of the emails about coverage were not relevant to Client's medical care. *See* **Ex. K (Tr. 69:14-70:3).**

The only reasonable inference from the evidence above is that Plaintiff did not actually, reasonably, or justifiably rely on statements about insurance coverage from Bennett to provide medical care to Client. Because there is no genuine issue of material fact that Plaintiff did not rely on those statements, Plaintiff's claim for negligent misrepresentation fails.

V. This Court should grant summary judgment on Plaintiff's claim for promissory estoppel because there is no evidence of an unambiguous promise to pay for Client's medical bills.

"The elements of promissory estoppel are:

> (1) the presence of a promise unambiguous in its terms; (2) reasonable reliance upon the promise by the party to whom the promise is made; (3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise.

Rushing v. McKinney, 370 S.C. 280, 295, 633 S.E.2d 917, 925 (Ct. App. 2006) (quoting *Woods v. State,* 314 S.C. 501, 505, 431 S.E.2d 260, 263 (Ct. App. 1993)).

Plaintiff alleges Defendants "made [an] unambiguous promise and gave unambiguous assurances to [Plaintiff] concerning the availability of over $1 million in insurance coverage for the medical services [Plaintiff] was to provide to" the Client. **Amd. Compl. ¶ 41**.

The January 21 email does not contain an unambiguous promise that those proceeds would be available to pay for the medical services. In the email, Bennett mentions that the Client "carried" a policy with Safeco with $100,000 in UIM and One Beacon Policy for "Occupational Accident Coverage" for $1,000,000. Those statements were truthful representations of the policies client had. In addition, Ms. Bennett mentioned that they were "not concerned that there will be enough overall coverage to pay the claim." Bennett's statement that

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

she was not concerned about coverage is not tantamount to an unambiguous promise that those coverages were available to pay for Plaintiff's medical services. Further, Bennett responded again after she discovered the Client needed surgery and told Goodwine that Plaintiff should bill Client's health insurance, and that it would be better not to provide services under an assignment or letter of protection. Goodwine agreed. Therefore, there is no unambiguous promise that those coverages would pay for services and Plaintiff's promissory estoppel claim fails.

Also, as argued in Part IV, Plaintiff did not actually, reasonably, or justifiably rely on representations about coverage to provide Client's medical services. In addition, by the same evidence and testimony, Defendants did not expect, and it was not foreseeable, that Plaintiff would rely on that email. Hours after that email Bennett instructed Plaintiff to seek reimbursement for medical services by billing Client's health insurer and that Plaintiff should not operate through an assignment or letter of protection. Goodwine agreed, and never raised any issues with Plaintiff being out of network with Client's insurer. Because Bennett informed Plaintiff to seek reimbursement from sources other than the insurance coverages mentioned, and Goodwine agreed and did not raise any issues, Defendants did not expect Plaintiff to rely on, and it was not foreseeable, for Plaintiff to rely on statements about coverage. Therefore, Plaintiff's claim for promissory estoppel fails.

CONCLUSION

For the foregoing reasons this Court should grant Defendants summary judgment.

This 28th day of October, 2024.

Respectfully submitted,

40 Calhoun Street, Suite 400
Charleston, SC 29401
dmackelcan@csvl.law
swilson@csvl.law
Ph: 843-727-0307

COPELAND, STAIR, VALZ & LOVELL, LLP

By: *s/Skyler C. Wilson*
DOUGLAS W. MACKELCAN: SC Bar No.: 76332
SKYLER C. WILSON: SC Bar N.: 102865
Attorneys for Defendants

DeLUCA MAUCHER
LAW OFFICES

EXHIBIT A

MICHAEL A. MAUCHER
MIKE@DELUCAMAUCHER.COM
(O) (843) 572-1711 • (F) (843) 572-1285
REPLY TO GOOSE CREEK OFFICE

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

December 20, 2018

FAX MAIL
(843) 553-1008

Jason H. Highsmith, M.D.
9313 Medical Plaza Drive, Suite 303
Charleston, South Carolina 29406

RE: My Client: Scott DeMaskey
Date of Accident: 12/14/18

Dear Sir or Madam:

With regard to the above-named individual, please accept this correspondence as our Law Firm's agreement to protect any claim which you may have out of any settlement proceeds we may receive arising out of the incident referred to above. The above-named individual has been informed that, in the event of insufficient recovery, he remains personally responsible for your outstanding account balance.

With kindest regards, I am,

Very truly yours,

Michael A. Maucher

Michael A. Maucher

MAM/tgb
NOTE: To ensure that this office is aware of your medical lien, please provide an itemized billing statement for services rendered.

DEFENDANT'S EXHIBIT 1 5/19/23 MR Highsmith

****
*** FAX TX REPORT ***
****

TRANSMISSION OK

JOB NO.	4427
DESTINATION ADDRESS	8435531008
SUBADDRESS	
DESTINATION ID	
ST. TIME	12/21 02:12
TX/RX TIME	00' 37
PGS.	1
RESULT	OK

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

DeLUCA MAUCHER
LAW OFFICES

MICHAEL A. MAUCHER
MIKE@DELUCAMAUCHER.COM
(O) (843) 572-1711 ' (F) (843) 572-1285
REPLY TO GOOSE CREEK OFFICE

December 20, 2018

FAX MAIL
(843) 553-1008

Jason H. Highsmith, M.D.
9313 Medical Plaza Drive, Suite 303
Charleston, South Carolina 29406

RE: My Client: Scott DeMaskey
Date of Accident: 12/14/18

Dear Sir or Madam:

With regard to the above-named individual, please accept this correspondence as our Law Firm's agreement to protect any claim which you may have out of any settlement proceeds we may receive arising out of the incident referred to above. The above-named individual has been informed that, in the event of insufficient recovery, he remains personally responsible for your outstanding account balance.

With kindest regards, I am,

Very truly yours,

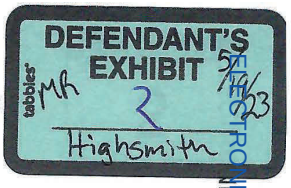
Michael A. Maucher

MAM/tgb

Fax: (843) 474-0712

EXHIBIT B

Fax: (843) 474-0712



ELECTRONICALLY FILED - 2024 Oct 22 2:24 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

FINANCIAL POLICY

- **BASIC POLICY:** The patient is responsible for medical bills in our office. Our staff will help with completion of insurance forms as an accommodation and convenience to you without charge. It is the patient's responsibility to know your contract benefits, assure collection of insurance payments to us, and to negotiate with your insurance company over any disputed claims.
- **IF YOU DO NOT HAVE INSURANCE:** Our policy requires payment in full today, unless other arrangements are made. If you cannot pay in full now, we request partial payment today as you arranged for credit on your account with a payment plan agreement with our credit and collection manager.
- **IF YOU HAVE INSURANCE:** Fill out the insurance section of our form, Carolina Neurosurgery & Orthopedics, Inc. does not accept Medicare, Medicaid or any HMO plan. If you are covered by private insurance or PPO with out of network benefits, please present your identification card to the receptionist at the time of your appointment. I understand, as a courtesy, Carolina Neurosurgery & Orthopedics, Inc. will file with my primary insurance. If after 90 (ninety) days from the date of service from the date of service and/or surgery insurance has not paid, the total balance will be considered due and payable. The Medical Providers are out of network and you may be responsible all or part of your balance.
- **WORKMAN'S COMPENSATION:** In the event it is determined by the worker's compensation board that the illness or injury is not a result of a compensable worker's compensation case, I hereby agree to pay the usual and customer fees for the services rendered.
- **REJECTED CLAIMS:** If your insurance company rejects your claim, or if they pay less than the total bill, our policy requires you to pay the balance in full upon receipt of your statement. If you cannot pay your balance in full after your insurance payment, please call Carolina Neurosurgery & Orthopedics, Inc. and make arrangements to pay your bill.
- **FORMS OF PAYMENT:** We accept payments in cash, check, or money order. Checks must be made payable to Carolina Neurosurgery & Orthopedics, Inc.
- **RETURNED CHECKS:** A $100.00 handling charge is applied to all returned checks.
- **DELINQUENT ACCOUNTS:** Delinquent accounts over 90 days are turned over to our collection manager, unless other arrangements are made. If the bill remains unpaid and satisfactory arrangements for payment are not made, the collection manager will review the account with the doctor to decide appropriate legal action including placing a lien on a third-party case. We reserve the right to addition late charges to delinquent accounts requiring collections action and to addition attorney fees, court costs, and/or collections agency fees. If your account is placed with a 3rd party, they have the right to contact you at any number provided to our office.
- **MONTHLY STATEMENTS:** Once your insurance has paid you are responsible for the unpaid balance. You will receive an itemized monthly statement of any patient balance until your bill is paid in full. Interest of 1.5% (18% per year) will be applied to any amount not paid after 30 days with a minimum charge of $0.50 per month.

If this account is assigned to an attorney for collections and/or suit, Carolina Neurosurgery & Orthopedics, Inc. will be entitled to all attorney's fees and costs of collection.

I hereby authorize payment to healthcare provider for all funds owing to me from my case by way of insurance payments, judgment, verdict or other source which may be paid to my attorney or myself.

In addition to my foregoing, in order to secure my obligation to pay the amount of my charges to healthcare provider, and in consideration for healthcare provider's agreements set forth herein, I hereby grant to healthcare provider, in accordance with the uniform commercial code as in effect in the applicable jurisdiction, a security interest in and lien upon: (I) the proceeds; and (II) all proceeds thereof, in each aseptic whether now owned or hereafter existing, acquired or arising, and wherever located. I authorize healthcare provider to file one or more UCC Financing statements (and continuations thereof) naming me as debtor and evidencing healthcare provider's security interest in such collateral. I hereby authorize my attorney to pay healthcare provider from any proceeds of any settlement, if applicable.

To the extent necessary to determine liability for payment and to obtain reimbursement, I authorize disclosure my records to any third party.

I hereby assign all medical and/or surgical benefits to include major medical benefits to which I am entitled, including private insurance and other health plan.

This assignment may not be revoked by me or anyone else. A photocopy of this assignment is to be considered valid as an original. I understand that I am financially responsible for all charges whether or not paid by said insurance.

I have read and agree to the financial policy of this office.

Scott D

Patient Signature

Appointment Date: 1-3-2019

EXHIBIT C

Tina

From: Kiara Goodwine <kiara@orthoandneuro.com>
Sent: Monday, January 21, 2019 12:11 PM
To: Tina
Cc: 'Scott DeMaskey'
Subject: Re: Scott DeMaskey

Okay thanks for the update !

Thanks, Kiara
Dr. Jason Highsmith
Fax: 843-474-0712
Phone: 843-510-0727

From: Tina <Tina@delucamaucher.com>
Sent: Monday, January 21, 2019 11:58:35 AM
To: Kiara Goodwine
Cc: 'Scott DeMaskey'
Subject: Scott DeMaskey

Kiara,

Scott DeMaskey has advised our office that he will require surgery. Based upon the serious nature of his injury, and his pre-existing injuries, we would respectfully request that all of his treatment be filed with his private health insurance company. It would be best for everyone involved if we NOT do the treatment under an Assignment/Letter of Protection.

On a separate matter, please provide this office with the office note and/or documentation which shows the recommended surgery.

Thanks,
Tina

Tina G. Bennett
Assistant to Michael A. Maucher
DeLuca & Maucher, LLP
P.O. Box 9
Goose Creek, SC 29445
(843)572-1711 ofc.
(843)572-1285 fax

www.DeLucaMaucher.com

DEFENDANT'S EXHIBIT 5/19/23 Highsmith

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2021 Jul 22 2:24 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2021 Jul 22 2:24 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Tina

From: Tina
Sent: Monday, January 21, 2019 9:24 AM
To: 'Klara Goodwine'
Cc: Brooke Dunsil; Kary Garcia
Subject: RE: Scott Demaskey

Kiara,

The at-fault party had a North Carolina Policy of automobile insurance. In order for them to disclosure the limits of their North Carolina Policy, we must provide them with a signed Medical Authorization allowing them to obtain copies of Scott Demaskey's medical records. We are NOT willing to comply with that request. We are therefore unable to find out how much Liability Coverage is on their policy. Because Mr. Demaskey carries $100,000.00 in Underinsured Motorist Coverage on his at-home policy with Safeco, and there is $1,000,000.00 in "Occupational Accident Coverage" to pay bills and wages under the One Beacon Policy, we are not concerned that there will be enough over all coverage to pay the claim.

Thanks,
Tina

Tina G. Bennett
Assistant to Michael A. Maucher
DeLuca & Maucher, LLP
P.O. Box 9
Goose Creek, SC 29445
(843)572-1711 ofc.
(843)572-1285 fax

www.DeLucaMaucher.com

From: Kiara Goodwine [mailto:klara@orthoandneuro.com]
Sent: Wednesday, January 16, 2019 4:12 PM
To: Tina
Cc: Brooke Dunsil; Kary Garcia
Subject: Scott Demaskey

Good afternoon,

May I please get limits on patient Scott Demaskey DOB Reda /54

Thanks, Kiara
Dr. Jason Highsmith
Fax: 843-474-0712
Phone: 843-510-0727

EXHIBIT D

ELECTRONICALLY FILED - 2021 Jul 22 2:24 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Subject: **Fw: Scott Demaskey**
Date: 1/3/2020 2:21:54 PM Eastern Standard Time
From: kiara@orthoandneuro.com
To: edweinberger@aol.com

Thanks, Kiara
Dr. Jason Highsmith
Fax: 843-474-0712
Phone: 843-510-0727

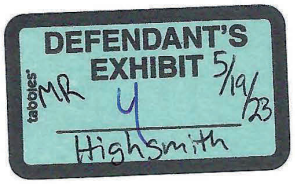
From: Tina <Tina@delucamaucher.com>
Sent: Thursday, March 7, 2019 9:34 AM
To: Kiara Goodwine <kiara@orthoandneuro.com>
Subject: Scott Demaskey

Please see attached LOP. This LOP covers whatever is NOT paid by private health insurance.

Thanks,
Tina

Tina G. Bennett
Assistant to Michael A. Maucher
DeLuca & Maucher, LLP
P.O. Box 9
Goose Creek, SC 29445
(843)572-1711 ofc.
(843)572-1285 fax

www.DeLucaMaucher.com



ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1000379
ELECTRONICALLY FILED - 2021 Jul 22 2:24 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1000379

DELUCA MAUCHER
LAW OFFICES

MICHAEL A. MAUCHER
MIKE@DELUCAMAUCHER.COM
(O) (843) 572-1711 • (F) (843) 572-1285
REPLY TO GOOSE CREEK OFFICE

March 7, 2019

Jason H. Highsmith, M.D.
9313 Medical Plaza Drive, Suite 305
Charleston, South Carolina 29406

RE: My Client: Scott Demaskey
Date of Accident: 12/14/18

Dear Sir or Madam:

With regard to the above-named individual, please accept this correspondence as our Law Firm's agreement to protect any portion of your bill not paid by private health insurance out of any settlement proceeds we may receive arising out of the incident referred to above. The above-named individual has been informed that, in the event of insufficient recovery, he remains personally responsible for your outstanding account balance.

With kindest regards, I am,

Very truly yours,

Michael A. Maucher

MAM/tgb
NOTE: To ensure that this office is aware of your medical lien, please provide an itemized billing statement for services rendered.

EXHIBIT
E

Carolina Neurosurgery & Orthopedics, Inc.

9313 Medical Plaza, Suite 303
North Charleston, South Carolina 29406
Charleston Office: (843) 510-0727
Fax: (843) 474-0712

161 Medical Cir
West Columbia, South Carolina 29169
Columbia Office (803) 764-1813
Fax: (843) 474-0712

Health Insurance Verification Form For Surgery

MRN #:_____

Patient Name: Scott DeMaskey

DOB: [redacted] SSN: [redacted]

Insurance Company: Blue Cross Blue Shield

ID #: [redacted]

Group#: [redacted]

Please Provide a copy of your insurance card

☐ I do not have Health Insurance at this time

Scott DeMaskey — Patient Name
3-7-2019 — Date

Patient Signature

Kiara Goodwine — Witness
3/7/19 — Date

DEFENDANT'S EXHIBIT 5 5/19/23 MR HighSmith

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

EXHIBIT F

Send payment to:
Carolina Neurosurgery and Orthopedics Inc.
2910 Tricom Street, Suite 201
N. Charleston
SC, 29406
Phone No : 843-510-0727 Fax : 843-474-0712

Page: page 1 of 1
Account#: [redacted]
Statement Date: 11/02/2020

TOTAL BALANCE: $125,409.28
(PLEASE PAY THIS AMOUNT)

Bill to:
[redacted] DEMASKEY
[redacted]E
[redacted]

Patient: [redacted] DEMASKEY [redacted]

Date	Description	Charges	Payment	Balance
	You are responsible for the following charges:			
12/20/19	EST. PATIENT MOD. HIGH COMPLEX	480.00	0.00	480.00
09/06/19	EST. PATIENT MOD. HIGH COMPLEX	480.00	0.00	480.00
07/18/19	POST OP	0.00	0.00	0.00
07/18/19	XRAY REVIEW	180.00	0.00	180.00
06/13/19	EST. PATIENT MOD. HIGH COMPLEX	480.00	0.00	480.00
05/24/19	POST OP	0.00	0.00	0.00
05/02/19	[redacted] / [redacted]	62,451.87	0.00	62,451.87
04/26/19	POST OP	0.00	0.00	0.00
04/04/19	POST OP	0.00	0.00	0.00
03/15/19	[redacted]	58,697.41	0.00	58,697.41
03/07/19	EST. PATIENT MOD. HIGH COMPLEX	480.00	0.00	480.00
01/21/19	EST. PATIENT MOD. HIGH COMPLEX	480.00	0.00	480.00
01/21/19	XRAY REVIEW	180.00	0.00	180.00
01/21/19	[redacted]	300.00	0.00	300.00
01/21/19	[redacted]	300.00	0.00	300.00
01/02/19	NP MOD.HIGH COMPLEX	900.00	0.00	900.00
	TOTAL BALANCE ----->			$125,409.28

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2021 Jul 22 2:24 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

EXHIBIT G

Tina

From: Tina
Sent: Friday, January 03, 2020 1:52 PM
To: 'kiara@orthoandneuro.com'
Subject: Scott DeMaskey

Kiara,

From a review of the updated itemized billing statement you recently provided, it does not appear that Blue Cross Blue Shield has paid any of your bill for services rendered. You may recall that back on:

1. December 20, 2018 we provided your office with a Letter of Protection.
2. January 21, 2019 I emailed you and requested that your office file ALL of Mr. DeMaskey's charges with BCBS due to his extensive pre-existing medical condition.
3. I thereafter emailed you advising that the at-fault party only had $30,000.00 in Liability Coverage and that Mr. DeMaskey's Underinsured Motorist Coverage does not apply.

Even though Mr. DeMaskey's medical bills total $199,744.68, there is only $30,000.00 in available coverage to pay his claim for injury. We will need to figure out a pay to spread those very limited funds around to the medical providers, our office for attorney's fees, and to Scott DeMaskey. In that regard, please confirm the balance owed on Mr. DeMaskey's account.

Thanks,
Tina

Tina G. Bennett
Assistant to Michael A. Maucher
DeLuca & Maucher, LLP
P.O. Box 9
Goose Creek, SC 29445
(843)572-1711 ofc.
(843)572-1285 fax

www.DeLucaMaucher.com

DEFENDANT'S EXHIBIT 12 5/19/23 Highsmith

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

EXHIBIT H

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	IN THE NINTH UDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 2021-CP-10-03379
)	
Carolina Neurosurgery & Orthopedics, Inc.,)	
)	
Plaintiff,)	**AMENDED ORDER ON DEFENDANTS' MOTION TO DISMISS**
vs.)	
)	
Michael A. Maucher, Esq. and DeLuca & Maucher, LLP,)	
)	
Defendants.)	
)	

THIS MATTER comes before the Court on Defendants' Michael A Maucher, Esq. ("Maucher") and Deluca & Maucher, LLP's ("D&M") (collectively, "Defendants") Motion to Dismiss Plaintiff's Complaint, filed October 22, 2021. The Court heard oral argument on Defendants' Motion on March 3, 2022. The Court granted in part and denied in part Defendants' Motion to Dismiss on June 28, 2022. Plaintiff timely moved to reconsider the Order, which was heard on March 3, 2023. As a result of the hearing and with agreement of counsel, the Court enters this Amended Order on Defendants' Motion to Dismiss.

With Court agreement the parties stipulate that the content of the Order or this Amended Order will not be admissible in this lawsuit to prove or disprove any matter of fact or establish or challenge any conclusion of law with respect to Plaintiff's remaining claims for Breach of Contract and violation of the South Carolina Unfair Trade Practices Act. The Order and Amended Order shall have no effect beyond that of which an order on a motion to dismiss would normally have.

ELECTRONICALLY FILED - 2023 Apr 05 1:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2023 Apr 05 1:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

FINDINGS OF FACT

1. Plaintiff Carolina Neurosurgery & Orthopedics, Inc. ("Plaintiff") is a citizen and resident of Charleston County, South Carolina licensed to practice medicine in South Carolina.

2. Jason M. Highsmith, M.D. ("Highsmith") is Plaintiff's primary surgeon.

3. Maucher is a citizen and resident of Charleston County, South Carolina, and he is an attorney licensed to practice law in South Carolina.

4. D&M is a South Carolina Limited Liability Partnership operating as a law practice with offices in Charleston County and Berkeley County, South Carolina.

5. On December 14, 2018, Defendants' client ("Client") was injured in a motor vehicle collision. Shortly thereafter, he retained Defendants to pursue claims against the at-fault driver.

6. As Client was a prior surgery patient of Plaintiff and Highsmith, he selected Plaintiff for surgical treatment of his injuries arising from the accident. Highsmith performed the procedures.

7. On December 20, 2018, at Client's request, D&M sent Plaintiff a letter of protection ("December 20, 2018 LOP"), in which D&M agreed to protect any claim by Plaintiff for the cost of Client's treatment out of any settlement proceeds arising from the accident. The December 20, 2018 LOP is attached to Plaintiff's Complaint as Exhibit 1 and is incorporated herein by reference.

8. On January 3, 2019, Client executed Plaintiff's Financial Policy ("Financial Policy"), which is attached to Plaintiff's Complaint as Exhibit 2 and is incorporated herein by reference.

ELECTRONICALLY FILED - 2023 Apr 05 1:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

9. The Financial Policy provides that Plaintiff will submit claims for payment under a patient's primary health insurance.

10. On January 16, 2019, Kiara Goodwine ("Goodwine"), an employee in Plaintiff's office, contacted D&M to request information regarding the at-fault driver's liability policy limits. On January 21, Tina Bennett, a paralegal with D&M ("Bennett") responded that the at-fault carrier was from North Carolina and would not disclose policy limits without a medical authorization from Client. However, Bennett informed Goodwine that Client carried a total of $1,100,000 in accident coverage under two additional insurance policies.

11. On the same day, Bennett also emailed Goodwine and informed her that based upon the severity of Client's injury and his pre-existing injuries, all of his treatment would need to be filed with his private health insurance and should not proceed under a letter of protection.

12. Goodwine acknowledged receipt of the email and Bennett's instructions. The foregoing emails are attached to Plaintiff's Complaint as Exhibits 4-5 and are incorporated herein by reference.

13. Accordingly, as of January 21, 2019, Plaintiff was aware of the need to file claims for payment with Client's private health insurance.

14. On March 7, 2019, D&M sent a revised letter of protection to Plaintiff ("March 7, 2019 LOP"), stating that D&M would protect whatever amounts Client's private health insurance did not pay out of the proceeds of any settlement of Client's personal injury claim.

15. Bennett's email containing the March 7, 2019 LOP stated that "[t]his LOP covers whatever is NOT paid by private health insurance." Bennett's email and the March 7, 2019 LOP are attached to Plaintiff's Complaint as Exhibit 6 and are incorporated herein by reference.

ELECTRONICALLY FILED - 2023 Apr 05 1:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

16. As of March 7, 2019, Plaintiff was aware of the need to file claims for payment with Client's private health insurance first before seeking payment under the March 7, 2019 LOP.

17. Despite D&M's prior instructions and the express language of the March 7, 2019 LOP, Plaintiff never attempted to confirm its network status with Client's private health insurance carrier prior to rendering surgical services, or to file claims for payment with Client's private health insurance, as is required under Plaintiff's Financial Policy.

18. Highsmith performed Client's first surgery—a C6-7 ACDF surgery—on March 15, 2019 ("First Surgery") at a cost of $62,451.87.

19. As Client's personal injury case developed, it was determined that: (1) the at-fault driver did not have sufficient insurance coverage to fully cover Client's medical treatment; (2) one of Client's other additional policies was inapplicable; and (3) the other additional policy was subject to subrogation and only applicable after Client's primary private health insurance had been exhausted.

20. On April 29, 2019, D&M notified Plaintiff via email of the foregoing issues, stating:

> "Because the at-fault party only had $30,000.00 and [Client's] Underinsured Motorist Coverage does not apply, ALL of the treatment [Client] has received (and will continue to receive) must be filed under his private health insurance. We cannot honor anymore treatment under a Letter of Protection. Please note [Client's] file accordingly."

21. On May 2, 2019, Highsmith performed additional surgery on Client at an approximate cost of $65,000.00 ("Second Surgery").

ELECTRONICALLY FILED - 2023 Apr 05 1:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

22. Despite receiving explicit instructions regarding claim submission and payment on several occasions prior to both surgeries, Plaintiff never attempted to file claims for Client's surgical services with Client's private health insurance.

23. Instead, Plaintiff waited until around November 2, 2020—almost one year after the completion of Client's treatment—to send Client a bill for surgical services in the amount of $125,409.28. Plaintiff's bill is attached to Plaintiff's Complaint as Exhibit 3 and is incorporated herein by reference.

24. Client has made no payments to Plaintiff for the medical and surgical services provided, and Defendants have not disbursed any funds from the $30,000.00 settlement proceeds recovered for Client.

25. Plaintiff filed this action on July 22, 2021, asserting causes of action against Defendants for: (1) Breach of Contract; (2) Breach of Contract Accompanied by a Fraudulent Act; (3) Violation of the South Carolina Unfair Trade Practices Act; (4) Fraud; (5) Constructive Fraud; (6) Unjust Enrichment; and (7) Negligence.

26. Defendants were served with process on September 24, 2021.

27. Defendants filed their Motion to Dismiss Plaintiff's Complaint on October 22, 2021.

PROCEDURAL STANDARD

When ruling on a Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP, "[t]he circuit court may dismiss a claim when the defendant demonstrates the plaintiff's 'failure to state facts sufficient to constitute a cause of action' in the pleadings filed with the court." *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 121, 634 S.E.2d 5, 7 (Ct. App. 2006) (*citing FOC Lawshe Ltd. P'ship v. Int' l Paper Co.*, 352 S.C. 408, 412, 574 S.E.2d 228, 230 (Ct.App.2002)). If, in

ELECTRONICALLY FILED - 2023 Apr 05 1:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

viewing the complaint in the light most favorable to the plaintiff, the court determines the facts in the complaint are insufficient to entitle the plaintiff to the relief it seeks, the court should grant the motion. *Baird v. Charleston Co.*, 333 S.C. 519, 527, 511 S.E.2d, 69, 73 (1999).

CONCLUSIONS OF LAW

Based upon the foregoing, the Court makes the following Conclusions of Law:

28. The Court has jurisdiction over the subject matter of this case and the parties hereto.

29. Venue is proper in Charleston County, South Carolina.

I. Plaintiff's Negligence Claim

30. Plaintiff's Complaint fails to allege facts sufficient to support a cause of action for Negligence against Defendants because, as a matter of law, Defendants owed no duty of care to Plaintiff.

31. To establish a cause of action for negligence, a plaintiff must show: (1) the defendant owes a duty of care to the plaintiff; (2) the defendant breached that duty by a negligent act or omission; (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) the plaintiff suffered an injury or damages. *Roddey v. Wal-Mart Stores East, LP*, 415 S.C. 580, 589, 784 S.E.2d 670, 675 (2016).

32. The existence of a legal duty is an indispensable element of Negligence. See, e.g., S.C. Elec. & Gas Co. v. Utilities Const. Co., 244 S.C. 79, 88, 135 S.E.2d 613, 617 (1964) ("The breach of a legal duty is essential to negligence…Without a violation of such a legal duty, there is no negligence.").

33. For a duty to arise in the context of an attorney's professional activity, an attorney-client relationship must generally exist between the attorney and the party asserting a

ELECTRONICALLY FILED - 2023 Apr 05 1:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

claim for Negligence. *See Holy Loch Distributors, Inc. v. Hitchcock*, 340 S.C. 20, 26, 531 S.E.2d 282, 285 (2000) (stating that in a legal malpractice and negligence action, a plaintiff must establish, among other elements, "the existence of an attorney-client relationship.").

34. "Generally, "an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client.' " *Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions*, 388 S.C. 394, 400, 697 S.E.2d 551, 554 (2010) (*citing Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 509 (2006).

35. Where a plaintiff in a negligence action against an attorney is not the attorney's client, no duty of care exists. *See Argoe*, 388 S.C. at 400, 697 S.E.2d at 554 (holding that the appellant "was not owed a duty of care" because she "was not Respondent's client.").

36. Plaintiff has never been Defendants' client with regard to this matter, nor does its Complaint allege an attorney-client relationship existed between Plaintiff and Defendants. As the Complaint makes clear, Plaintiff is merely a third-party medical services provider that provided surgical treatment for Defendants' Client in the past and that provided additional surgical treatment during Defendants' representation of their Client following his December 14, 2018 accident.

37. Defendants' communications with Plaintiff and its staff were in the course and scope of their representation of Client and pursuit of his personal injury claim against the at-fault driver. *See, e.g.*, December 20, 2018 LOP and March 7, 2019 LOP (identifying Defendants' Client, setting forth the date of Client's accident, and addressing protection of claims Plaintiff may have "out of any settlement proceeds we may receive arising out of [Client's accident]"); Pltf.'s Compl. at Ex. 4, Jan. 21, 2019 email from Tina Bennett to Kiara Goodwine ("[Client] has

ELECTRONICALLY FILED - 2023 Apr 05 1:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

advised our office that he will require surgery. Based upon the serious nature of his injury, and his pre-existing injuries, we would respectfully request that all of his treatment be filed with his private health insurance company.").

38. Plaintiff's Complaint fails to allege any facts to indicate any of Defendants' alleged statements were made outside the course and scope of Defendants' representation of Client.

39. Therefore, because at all relevant times herein Plaintiff was not Defendants' client, and Defendants' statements to Plaintiff were made in the course and scope of their professional activities on behalf of Client and with his knowledge, Defendants did not owe Plaintiff a duty of care as a matter of law.

40. Accordingly, Plaintiff's cause of action for Negligence is dismissed with prejudice.

II. Plaintiff's Fraud and Constructive Fraud Claims

41. Plaintiff's claims for Fraud and Constructive Fraud are subject to dismissal because Plaintiff failed to allege facts sufficient to establish it had a right to rely on the truth of any representations made to it in connection with this matter.

42. "To establish a cause of action for fraud, the following elements must be proven by clear, cogent, and convincing evidence: (1) a representation of fact; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent or proximate injury." *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 50, 691 S.E.2d 135, 149 (2010).

ELECTRONICALLY FILED - 2023 Apr 05 1:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

43. Further, pursuant to Rule 9(b), SCRCP, "[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." "A complaint is fatally defective if it fails to allege all nine elements of fraud." *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993). Where the complaint omits allegations on any element of fraud, the trial court should grant the defendant's motion to dismiss the claim. *Id.*

a. Availability of Insurance Coverage

44. Plaintiff alleges Defendants knowingly or recklessly made false representations of fact as to: (1) "the amount of insurance coverage available to pay for medical/surgical services [Plaintiff] planned to provide to [Client];" and (2) "[Defendants'] intent to pay [Plaintiff] from any recovery [Defendants] obtained on behalf of [Client]." *See* Pltf.'s Compl. at ¶¶ 47-53.

45. However, while Plaintiff generally alleges it had a right to rely on such representations, *See id.* at ¶ 57, its Complaint fails to state with particularity any facts supporting such a right, as required by Rule 9(b), SCRCP and South Carolina case law.

46. "The right to rely must be determined in light of the plaintiff's duty to use reasonable prudence and diligence under the circumstances in identifying the truth with respect to the representations made to him." *Regions Bank v. Schmauch*, 354 S.C. 648, 672, 582 S.E.2d 432, 445 (Ct. App. 2003). "Moreover, there is no right to rely, as required to establish fraud, where there is no confidential or fiduciary relationship and there is an arm's length transaction between mature, educated people. This is especially true in circumstances where one should have utilized precaution and protection to safeguard his interests." *Id.*

47. Here, no confidential or fiduciary relationship existed between Plaintiff and Defendants, and Plaintiff's Complaint does not allege otherwise. Plaintiff was not Defendants' client; it was merely a third-party provider of medical services to Client.

ELECTRONICALLY FILED - 2023 Apr 05 1:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

48. Accordingly, Plaintiff was not entitled, by virtue of the parties' relationship to one another, to rely on Defendants' representations as to insurance coverage or intent to pay. Instead, Plaintiff was under an affirmative duty to use reasonable prudence and diligence to attempt to discover the truth of the representations.

49. Plaintiff alleges that by January 3, 2019—the date on which Client executed Plaintiff's Financial Policy—all parties involved knew Plaintiff and Highsmith were "out-of-network" healthcare providers under Client's private health insurance. Pltf.'s Compl. at ¶ 14.

50. While Bennett initially emailed Goodwine on January 21, 2019 and indicated "we are not concerned that there will be enough overall coverage to pay the claim," *id.* at Ex. 4, she followed up the same day and notified Goodwine that all of Client's surgical treatment was to be filed with his private health insurance company, and that treatment should not proceed under an assignment or letter of protection. *See id*.

51. Goodwine acknowledged receipt of Bennett's instructions and did not indicate there would be any issues with proceeding in the instructed manner. *See id*.

52. Accordingly, the Court finds that as of January 21, 2019—approximately two (2) months before Client's First Surgery—Plaintiff had actual notice that: (1) the December 20, 2018 LOP would no longer be honored; (2) Defendants did not intend to protect Plaintiff's claims out of any settlement proceeds from Client's personal injury claim; and (3) Plaintiff should file all claims for payment with Client's private health insurance company.

53. Further, Bennett's email to Goodwine did not indicate any claims could or should be filed with Client's underinsured motorist carrier or his occupational accident carrier. *See id.*

ELECTRONICALLY FILED - 2023 Apr 05 1:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

54. Assuming, as Plaintiff alleges, that it knew it was an "out-of-network" provider for which claims would not be paid under Client's private health insurance policy, it should have refused Bennett's instructions to file claims with Client's private health insurance company.

55. Further—as of January 21, 2019—because Plaintiff knew Defendants did not intend to protect its claims out of any settlement proceeds, and it allegedly knew there would be no coverage under Client's private health insurance policy, Plaintiff should have known the only potential avenue for payment would have been through Client's underinsured motorist and/or occupational accident policies.

56. Plaintiff, in the exercise of reasonable diligence, could and should have taken steps to obtain written confirmations of coverage from the underinsured motorist and occupational accident carriers themselves before furnishing costly surgical and other medical services to Client.

57. In doing so, Plaintiff could have discovered the potential coverage issues and referred Client to an appropriate "in-network" surgeon for further treatment. However, Plaintiff apparently instead chose to rely solely on Bennett's first January 21, 2019 email to Goodwine—expressing only an opinion on available coverage—which, as discussed above, Plaintiff had no right to rely on.

58. Accordingly—because Plaintiff had no right to rely on Bennett's statement regarding the amount of insurance coverage available to pay for Client's medical and surgical expenses, and Plaintiff's Complaint fails to allege any other efforts undertaken by Plaintiff to protect its interests and discover the truth of the matter—Plaintiff's Fraud and Constructive Fraud claims fail as a matter of law and are hereby dismissed with prejudice.

ELECTRONICALLY FILED - 2023 Apr 05 1:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

b. The Letters of Protection

59. As an initial matter—to the extent Plaintiff asserts claims for Fraud and Constructive Fraud in connection with Defendants' December 20, 2018 LOP, Plaintiff had no right to rely on any statements contained therein because the letter was effectively revoked in Bennett's second January 21, 2019 email to Goodwine stating that treatment should not proceed under a letter of protection.

60. Assuming—for purposes of this Order only—that the March 7, 2019 LOP constitutes a contract by which D&M agreed to "protect any portion of [Plaintiff's] bill not paid by private health insurance out of any settlement proceeds we may receive," then by its terms, Plaintiff was required to seek payment from Client's private health insurance before making a claim to any settlement funds.

61. First, Plaintiff never attempted to submit claims for its services to Client's private health insurance carrier.

62. Second, Plaintiff has failed to allege with particularity any facts or circumstances indicating either that: (1) Defendants had no intention of paying Plaintiff under the March 7, 2019 LOP at the time they sent the letter to Plaintiff; or (2) the statements contained in the March 7, 2019 LOP were false at the time they were made. At most, such statements could possibly be construed as contractual promises of D&M.

63. Without more, Defendants' alleged failure to pay Plaintiff under the March 7, 2019 LOP is insufficient to state valid claims for Fraud or Constructive Fraud. *See Davis v. Upton*, 250 S.C. 288, 291, 157 S.E.2d 567, 568 (1967) ("The general rule is that fraud must relate to a present or pre-existing fact, and cannot ordinarily be predicated on unfulfilled

ELECTRONICALLY FILED - 2023 Apr 05 1:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

promises or statements as to future events."). *See also, id.*, 250 S.C. 288 at 293, 157 S.E.2d at 569 (holding that "[t]he mere breach of a contract does not constitute fraud.").

64. Therefore, as Plaintiff's Fraud and Constructive Fraud claims relate to the March 7, 2019 LOP, they are also dismissed with prejudice.

III. Plaintiff's Unjust Enrichment Claim

65. The essential elements of unjust enrichment are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by defendant of the benefit under conditions that make it inequitable for him to retain it without paying its value. *Ellis v. Smith Grading & Paving, Inc.*, 294 S.C. 470, 474, 366 S.E.2d 12, 15 (Ct. App. 1988).

66. Moreover, speculative claims of future increased value are not a sufficient benefit to support an unjust enrichment claim. *See Bouchard v. Price*, 694 A.2d 670, 673 (R.I. 1997) (holding insufficient "profits that plaintiffs anticipate defendant might obtain by selling the rights to his story at some unspecified time in the future.").

67. Here, Plaintiff alleges it provided surgical services to Client, Pltf.'s Compl. at ¶ 73, and that the provision of such services enhanced the settlement value of Client's claim. *Id.* at ¶74.

68. These allegations are insufficient to support a valid claim for Unjust Enrichment. First, as the Complaint itself admits, Plaintiff provided surgical and other medical services to Client, not to Defendants. Therefore, while Plaintiff clearly conferred a benefit on Client, it did not confer any benefit on Defendants.

69. Second, the potential enhancement in settlement value of Client's claim is too speculative to form the basis of a valid Unjust Enrichment claim. Plaintiff cannot rely on

ELECTRONICALLY FILED - 2023 Apr 05 1:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

conjecture that as a result of its services, at some indeterminate point in the future, Client's claim may have been resolved for a larger amount, or that Defendants would somehow benefit therefrom.

70. Further, Plaintiff has not alleged any facts to show: (1) whether and how the surgical services rendered to Client affected settlement negotiations, if at all; or (2) whether and how Defendants have realized a benefit based on a purported enhancement in settlement value of Client's claim.

71. Accordingly, Plaintiff has failed to plead facts sufficient to show it has conferred any benefit on Defendants, or that Defendants have realized any valid, non-speculative benefit as a result of the surgical services performed for Client. Therefore, Plaintiff's Unjust Enrichment claim is dismissed with prejudice.

IV. Breach of Contract Accompanied by a Fraudulent Act

72. In order to state a claim for Breach of Contract Accompanied by a Fraudulent Act, a plaintiff "must plead facts establishing three elements: (1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach." *Harper v. Ethridge*, 290 S.C. 112, 119, 348 S.E.2d 374, 378 (Ct. App. 1986). Plaintiff's claim fails for two primary reasons.

73. First—even assuming the March 7, 2019 LOP is a valid contract and that Defendants' alleged failure to pay Plaintiff constitutes a breach thereof—Plaintiff has failed to allege facts establishing fraudulent intent specifically relating to Defendants' alleged breach of the March 7, 2019 LOP.

74. Plaintiff alleges Defendants breached the March 7, 2019 LOP by refusing to pay it any portion of the $30,000.00 in settlement funds recovered for Client. *See* Pltf.'s Compl. at ¶¶

ELECTRONICALLY FILED - 2023 Apr 05 1:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

35, 39, 40-44. Based on the allegations in Plaintiff's Complaint, it appears Defendants' alleged refusal to pay occurred either in late 2020 or early 2021, after Plaintiff sent Client an invoice for its services on or around November 2, 2020.

75. However, all of Plaintiff's allegations of fraud or fraudulent intent on the part of Defendants relate to Bennett's statements to Goodwine in January, 2019 regarding the availability of insurance coverage. Such statements were made approximately two months prior to the March 7, 2019 LOP.

76. As Plaintiff alleges, "[Defendants] and [Plaintiff] ***entered*** [into] the LOP, with all parties knowing the availability of liability or other insurance coverage was a material term…," *id.* at ¶ 39. Therefore, Plaintiff's allegations relate to the making of the March 7, 2019 LOP, not its alleged breach approximately two years later.

77. Second, Plaintiff has not alleged any fraudulent acts by Defendants accompanying their purported failure to pay Plaintiff under the March 7, 2019 LOP. "[A] fraudulent act is any act characterized by dishonesty in fact, unfair dealing, or the unlawful appropriation of another's property by design." *Harper*, 290 S.C. at 119, 348 S.E.2d at 378.

78. Plaintiff's Complaint contains no allegations of any such dishonest representations of fact, unfair dealing, or unlawful appropriation of property on the part of Defendants.

79. Indeed, as Plaintiff's Complaint admits, "[Defendants] have no explanation on why they have not paid [Plaintiff] the entire $30,000 from the recovery obtained for [Client]." Pltf.'s Compl. at ¶ 39.

ELECTRONICALLY FILED - 2023 Apr 05 1:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

80. At most, the matters alleged in Plaintiff's Complaint may constitute a breach of contract. However, for the foregoing reasons, they are insufficient to support a valid claim for Breach of Contract Accompanied by a Fraudulent Act.

81. Therefore, Plaintiff's claim for Breach of Contract Accompanied by a Fraudulent Act is dismissed with prejudice.

WHEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED that:

A. Defendants' Motion to Dismiss Plaintiff's Complaint is GRANTED as to Plaintiff's claims for: (1) Negligence; (2) Fraud; (3) Constructive Fraud; (4) Unjust Enrichment; and (5) Breach of Contract Accompanied by a Fraudulent Act, and such claims are hereby dismissed with prejudice; and

B. The Court finds Plaintiff has alleged sufficient facts to state a cause of action for: (1) Breach of Contract; and (2) Violation of the South Carolina Unfair Trade Practices Act. Therefore, Defendants' Motion to Dismiss is DENIED as to these claims.

SO ORDERED!

This_____ day of March, 2023.

_____
The Honorable Edgar W. Dickson
First Judicial Circuit

[Electronic Signature Page Follows]

ELECTRONICALLY FILED - 2023 Apr 05 1:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Charleston Common Pleas

Case Caption: Carolina Neurosurgery & Orthopedics Inc VS Michael A Maucher , defendant, et al

Case Number: 2021CP1003379

Type: Order/Other

IT IS SO ORDERED.

Edgar W. Dickson

EXHIBIT
I

ELECTRONICALLY FILED - 2024 Aug 26 2:29 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP Defendants.	**ORDER GRANTING PLAINTIFF'S MOTION TO AMEND COMPLAINT AND POSTPONING HEARING ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

THIS MATTER CAME BEFORE THE COURT on August 19, 2024, for a hearing on the Plaintiff's Motion to Amend its Complaint and the Defendants' Motion for Summary Judgment. Thomas A. Pendarvis, Esq. appeared as counsel for Plaintiff, and Skyler C. Wilson, Esq. appeared as counsel for Defendants.

After reviewing the Plaintiff's motion, supporting and opposing memoranda, and hearing arguments of counsel, the Motion to Amend is GRANTED, and the hearing on the Defendants' Motion for Summary Judgment is POSTPONED until 60 days after this Order is signed to give the parties time for additional discovery, including depositions of individuals or entities already deposed in this case.

AND IT IS SO ORDERED!

Roger M. Young, Sr.
Presiding Circuit Court judge

August 21, 2024

Charleston, South Carolina

ELECTRONICALLY FILED - 2024 Aug 26 2:29 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Charleston Common Pleas

Case Caption: Carolina Neurosurgery & Orthopedics Inc VS Michael A Maucher , defendant, et al

Case Number: 2021CP1003379

Type: Order/Amend

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

EXHIBIT J

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP, Defendants.	**PLAINTIFF'S SUPPLEMENTAL ANSWERS TO DEFENDANTS' FIRST SET OF INTERROGATORIES TO PLAINTIFF**

TO: DOUGLAS W. MACKELCAN, ESQ. AND MICHAEL C. MASCIALE, ESQ., COUNSEL FOR DEFENDANTS:

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Plaintiff supplements its responses to Defendants' First Set of Interrogatories to Plaintiff, dated August 11, 2022, with the supplemental responses highlighted in red as follows.

ANSWERS TO INTERROGATORIES

INTERROGATORY NO. 1: State the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses, and if so, indicate who has possession of such statements.

ANSWER: Plaintiff identifies the individuals listed on Exhibit 1, and the presumptive Rule 30(b)(6), SCRCP, designees of the organizations listed on Exhibit 2. Unless otherwise indicated, Plaintiff is unaware of any written or recorded statements. The section identified as "Role in Case" provides the information known about each witness and includes a summary to inform the other party of the important facts known to or observed by such witness.

INTERROGATORY NO. 2: For each person known to the parties or counsel to be a witness concerning the facts of this case, set forth either a summary sufficient to inform Defendant of the important facts known to or observed by such witness, or provide a copy of

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

any written or recorded statements taken from such witness.

ANSWER: **See Answer to Interrogatory No. 1.**

INTERROGATORY NO. 3: Set forth a list of photographs, plats, sketches, or other prepared documents in the possession, custody, or control of Plaintiff or its counsel that relate to the claims or defenses in this case.

ANSWER: **Plaintiff identifies the documents listed on Exhibit 3 and produced contemporaneously herewith in response to Request for Production.**

INTERROGATORY NO. 4: Identify each and every witness whom Plaintiff expects to call as a witness at the trial of this case.

ANSWER: **Plaintiff has not identified any witnesses Plaintiff expects to call as a witness at the trial of this case. Plaintiff proposes the parties exchange witness lists prior to the trial of this lawsuit.**

INTERROGATORY NO. 5: Set forth an itemized statement of all damages claimed to have been sustained by Plaintiff as a result of the matters alleged in the Complaint.

ANSWER: **Objection. Plaintiff is not able to fully and accurately respond to this interrogatory at this time. Plaintiff reserves the right to produce itemized statement in the future and will timely supplement its interrogatory responses accordingly.**

SUPPLEMENTAL ANSWER:

Description	Amount
Damages:	
Scott DeMaskey's 2019 surgeries (2) total costs	$125,409.28
Legal Fees paid to Sowell & DuRant to pursue recovery under One Beacon policy	$93,716.15
Pre-judgment interest (applied only to surgical costs) (annual % = $10,973.31) (4.68 years using 12/2019 date)	$51,355.09
Total Damages:	**$270,480.52**
Set-Offs:	
Intact Insurance Claims Check (One Beacon policy)	-$6,323.50
Tender of one-half of the $30,000 recovered by Defendants	-$15,000.00
Total Net Damages:	**$249,157.02**

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

INTERROGATORY NO. 6: List the name and address of any expert witnesses whom Plaintiff proposes to use as a witness at the trial of this case.

ANSWER: **Plaintiff has not identified an expert witness, reserves the right name expert witness in the future, and will timely supplement its interrogatory responses accordingly.**

INTERROGATORY NO. 7: For each expert witness whom Plaintiff proposes to use as a witness at the trial of this case, please set forth:

a. the subject matter on which the expert is expected to testify;

b. the substance of the facts and opinions to which the expert is expected to testify;

c. a summary of the grounds for each opinion;

d. a complete list of articles, treatises, texts, technical bulletins, professional guidelines, periodicals or papers which support the expert's opinion. For each text or periodical cited, please denote the chapter and page where the information is located that supports the expert's opinion;

e. whether the witness has testified in any breach of contract or Unfair Trade Practices Act cases before and, if so, please list each time the witness has testified, including the name of the court and whether the witness testified for the plaintiff or the defendant;

f. whether the witness, in any prior testimony in a breach of contract or Unfair Trade Practices Act case, was paid compensation for his or her testimony and, if so, for each act of testimony, the amount of compensation paid and by whom; and

g. whether the witness served as an expert witness and testified in any prior case involving Plaintiff's attorney or any other member of the firm of the attorneys for Plaintiff and, if so, state the name and the action in which the testimony was given, the amount of compensation paid to the witness, and the source of the compensation of the witness.

ANSWER: **See Answer to Interrogatory No. 6.**

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

INTERROGATORY NO. 8: Identify each and every communication between Plaintiff and/or its counsel and Defendants, their agents, and/or employees relating to the matters set forth in Plaintiff's Complaint. In responding, please set forth: (1) the date of the communication; (2) the parties to the communication; (3) the mode of communication; and (4) a summary of its substance.

ANSWER: Plaintiff identifies documents contemporaneously produced in Plaintiff's responses to Request for Production, which documents are provided via OneDrive link and Bates Labeled as: JH_00001-00177; JM_00001; and BS_00001-00649. In response to subparts (1) – (4), and under Rule 33(c), SCRCP, the answer to these subparts may be derived or ascertained from the documents produced, JH_00001-00177; JM_00001; and BS_00001-00649.

INTERROGATORY NO. 9: Identify each and every communication between Plaintiff and/or its counsel and any third parties relating to the matters set forth in Plaintiff's Complaint. In responding, please set forth: (1) the date of the communication; (2) the parties to the communication; (3) the mode of communication; and (4) a summary of its substance.

ANSWER: Objection. The information responsive to this request is protected from production under the client-lawyer privilege and all protections under Rule 26(b)(3), SCRCP, and the work product doctrine regarding all such communications. Plaintiff's representative and its undersigned counsel representing Plaintiff in this lawsuit have communicated with counsel for Plaintiff in the related case involving Mr. Demaskey. Plaintiff's representative, its undersigned counsel representing Plaintiff in this lawsuit, and counsel for Plaintiff in the related case involving Mr. Demaskey are and have been operating under a Joint Defense Agreement to preserve all client-lawyer privilege and all protections under Rule 26(b)(3), SCRCP, and the work product doctrine regarding all such communications.

INTERROGATORY NO. 10: Identify with specificity any and all contracts for services, agreements for use of surgical facilities, operating room schedules, and other documents between Plaintiff and/or Jason Highsmith, M.D. and the Center for Advanced Surgery, LLC.

ANSWER: Plaintiff no longer has ownership and currently has only privileges to practice at the Center for Advanced Surgery.

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

INTERROGATORY NO. 11: Set forth whether Jason Highsmith, M.D. possesses any ownership or management interest, or any other legal or equitable interest, in the Center for Advanced Surgery, LLC. If so, please set forth the nature and percentage of his interest and the date such interest was acquired.

ANSWER: **None**.

INTERROGATORY NO. 12: Set forth whether Plaintiff possesses any ownership or management interest, or any other legal or equitable interest, in the Center for Advanced Surgery, LLC. If so, please set forth the nature and percentage of its interest and the date such interest was acquired.

ANSWER: **None.**

INTERROGATORY NO. 13: Set forth whether any entity associated with Plaintiff and/or Jason Highsmith, M.D. possesses any ownership or management interest, or any other legal or equitable interest, in the Center for Advanced Surgery, LLC. If so, please set forth the nature and percentage of its interest and the date such interest was acquired.

ANSWER: **None.**

INTERROGATORY NO. 14: Identify with specificity any and all policies or procedures relating to the submission of proposed surgical procedures to a patient's health insurance provider for "pre- approval" which Plaintiff has had in place since 2018.

ANSWER: **None.**

INTERROGATORY NO. 15: Identify with specificity any and all policies or procedures relating to the submission of claims for medical and/or surgical services to a patient's health insurance provider for payment which Plaintiff has had in place since 2018.

ANSWER: **None.**

INTERROGATORY NO. 16: Identify with specificity any and all policies or procedures relating to the investigation and/or determination of Plaintiff and/or Jason Highsmith, M.D.'s "in-

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

network" or "out-of-network" status with regard to health insurance providers, which Plaintiff has had in place since 2018.

ANSWER: **Plaintiff and Jason Highsmith, M.D. have been "Out of Network" since 2018.**

INTERROGATORY NO. 17: Identify with specificity any and all medical or surgical services rendered by Plaintiff or Jason Highsmith, M.D. to Scott DeMaskey prior to December 14, 2018. In responding, please identify: (1) the date(s) of such prior services; (2) a description of the services rendered; (3) any insurance claim information relating to such services; and (4) any payments received by Plaintiff and/or Jason Highsmith, M.D. for such services.

ANSWER: **Objection. This interrogatory is not reasonably calculated to lead to discovery of evidence admissible at trial of this case. In addition, Plaintiff and/or Jason Highsmith, M.D. no longer has the information responsive to this request as this Interrogatory seeks information related to events over the retention policy of 7 years.**

INTERROGATORY NO. 18: Set forth each and every attempt Plaintiff, Jason Highsmith, M.D., and/or their agents or employees made to determine the existence and availability of health insurance for Scott DeMaskey during 2018-2020. In responding, please provide: (1) the date of each attempt; (2) a description of what was undertaken; and (3) the result of each attempt.

ANSWER: **Mr. DeMaskey advised Jason Highsmith, M.D. in writing that he had health insurance for his first surgery; however, Mr. DeMaskey was unable to pay for the co-pays or deductibles. Mr. DeMaskey advised Jason Highsmith, M.D. that he did not health insurance for his second surgery.**

INTERROGATORY NO. 19: Set forth each and every attempt Plaintiff, Jason Highsmith, M.D., and/or their agents or employees made to determine the existence and availability of liability insurance, or any other insurance, for Scott DeMaskey during 2018-2020. In responding, please provide: (1) the date of each attempt; (2) a description of what was undertaken; and (3) the result of each attempt.

ANSWER: **In response to subparts (1) – (3), and under Rule 33(c), SCRCP, the answer to these subparts may be derived or ascertained from the documents contemporaneously produced in Plaintiff's responses to Request for Production, which documents are provided via OneDrive link**

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

and Bates Labeled as: JH_00105-00159; BS_00046-00047; BS_00060-00071; BS_00074-00076; BS_00084-00108; BS_00110-00135; BS_00348-BS_370.

INTERROGATORY NO. 20: Identify all actions taken by Plaintiff and/or Jason Highsmith, M.D. to seek payment, from any source, for the medical and surgical services rendered to Scott DeMaskey which are the subject of this case. In responding, please provide: (1) the date of each action; (2) a description of what was undertaken; and (3) the result of each action.

ANSWER: In response to subparts (1) – (3), and under Rule 33(c), SCRCP, the answer to these subparts may be derived or ascertained from the documents contemporaneously produced in Plaintiff's responses to Request for Production, which documents are provided via OneDrive link and Bates Labeled as: JH_00001-00177; and BS_00001-00649.

INTERROGATORY NO. 21: Identify with specificity the basis for Plaintiff's belief that it is entitled to recover "all fees and costs generated in pursue *[sic]* of the relief claimed, including but not limited to legal fees", under the March 7, 2019 Letter of Protection, as alleged in Paragraph 45 of the Complaint.

ANSWER: In Defendants' letters of protection dated December 28, 2018 and March 7, 2019, Defendants promised to "protect any claim" and "protect any portion of your bill not paid by private health insurance." In common English, Plaintiff understood the "protection" Defendants promised included legal fees incurred in obtaining the recovery Defendants' promise to protect.

INTERROGATORY NO. 22: Identify with specificity the basis for Plaintiff's belief that Defendants' alleged conduct in this case was "unfair or deceptive," as set forth in Paragraph 49 of the Complaint.

ANSWER: It is simply "unfair or deceptive" for a lawyer and a law firm to make representations, assurances, and promises to a healthcare provider that payments for elective surgical procedures to be rendered by the healthcare provider to the lawyer's client would be paid out of $1,100,000 of liability coverage available to the at-fault party who allegedly injured the lawyer's client when the lawyer and law firm did not verify the availability of the insurance

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

coverage before making the representations to the healthcare provider. Defendants' unfair or deceptive practices are highlighted by Defendants' knowledge that Plaintiff was an out-of-network healthcare provider regarding the lawyer's client's insurance coverage.

SUPPLEMENTAL ANSWER: It is also "unfair or deceptive" for a lawyer and a law firm to make false representations about email communications that never occurred. After Carolina Neurosurgery had performed two surgeries on Mr. DeMaskey, the Defendants physically delivered to Carolina Neurosurgery a print copy of an "email" the Defendants claim they sent Carolina Neurosurgery on April 29, 2019, purporting to have provided notice that "*Scott Demaskey's Underinsured Motorist Coverage does not apply, ALL of the treatment [the Lawyers' client] has received (and will continue to receive) must be filed under his private health insurance. We cannot honor anymore treatment under a Letter of Protection[,]*" even though the email had no header, date, or reference to the sending party. This document will be referred to as the "false email." Carolina Neurosurgery did not receive the "false email" the Defendants claim to have electronically transmitted on April 29, 2019. The Defendants have not shown the "false email" was actually transmitted to Carolina Neurosurgery on April 29, 2019.

INTERROGATORY NO. 23: Identify with specificity the basis for Plaintiff's belief that Defendants' alleged unfair or deceptive conduct in this case was "willful", as alleged in Paragraph 49 of the Complaint.

ANSWER: See Answer to Interrogatory No 22.

INTERROGATORY NO. 24: Identify any litigation to which Plaintiff and/or Jason Highsmith, M.D. have been a party within the last five (5) years. In responding, please provide: (1) the case number and caption; (2) type of case; (3) venue; and (4) outcome of the case.

ANSWER: Objection. This interrogatory is not reasonably calculated to lead to discovery of evidence admissible at trial of this case.

INTERROGATORY NO. 25: Identify with specificity any and all policies or procedures relating to the collection of debts owed for medical and/or surgical services, which Plaintiff and/or Jason Highsmith, M.D. have had in place since 2015.

ANSWER: This matter is the first for Jason Highsmith, M.D. and Plaintiff.

INTERROGATORY NO. 26: Set forth Plaintiff's annual income for each year since 2018.

ANSWER: Objection. This interrogatory is not reasonably calculated to lead to discovery of evidence admissible at trial of this case.

INTERROGATORY NO. 27: Set forth Jason Highsmith, M.D.'s annual income for each year since 2018.

ANSWER: Objection. This interrogatory is not reasonably calculated to lead to discovery of evidence admissible at trial of this case.

Respectfully submitted,

/s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar # 064918)
PENDARVIS LAW OFFICES, PC
e710 Boundary Street, Unit A-1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com

Counsel for Plaintiff

Beaufort, South Carolina

September 5, 2024

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP, Defendants.	**PLAINTIFF'S SUPPLEMENTAL RESPONSES TO DEFENDANTS' FIRST SET OF REQUESTS FOR PRODUCTION TO PLAINTIFF (Dated: September 5, 2024)**

TO: DOUGLAS W. MACKELCAN, ESQ. AND MICHAEL C. MASCIALE, ESQ., COUNSEL FOR DEFENDANTS

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, Plaintiff responds to Defendants' First Set of Requests for Production to Plaintiff, dated August 11, 2022, as follows.

GENERAL RESPONSES TO REQUESTS FOR PRODUCTION

Plaintiff does not intend to produce or specifically identify documents already received from Defendants, whether in discovery in this case or prior to the filing of this lawsuit. Plaintiff likewise does not intend to produce or specifically identify documents received by Defendants by virtue of a subpoena issued by counsel for Defendants. Please notify Plaintiff's counsel if Defense Counsel objects to this General Response.

RESPONSES TO REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: A copy of all documents, electronically stored information, writings, drawings, graphs, charts, photographs, recordings, other data compilations, or any tangible items relating to the events or occurrences forming the basis of Plaintiff's claims or otherwise related to the allegations set forth in the Complaint.

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

RESPONSE: Plaintiff identifies documents previously provided or produced to Plaintiffs by Defendants or their counsel, and documents contemporaneously produced via OneDrive link and Bates Labeled as: JH_00001-00177; JM_00001; and BS_00001-00649.

SUPPLEMENTAL RESPONSE (Dated: October 25, 2023): Plaintiff identifies all INTACT INSURANCE documents and communications with INTACT INSURANCE recently received, many of which documents were contemporaneously provided to Defendants' agent, Jay S. Masty, Esq., in related litigation. These documents are being contemporaneously produced via OneDrive link and Bates Labeled as: BS_00650-00827.

SUPPLEMENTAL RESPONSE (Dated: November 16, 2024): Plaintiff identifies documents Plaintiff previously provided or produced to Defendants; identifies documents provided or produced to Plaintiff by Defendants or their counsel; and documents contemporaneously produced via OneDrive link provided below and Bates Labeled as: BS_00828-02708; and JH_00178-00229.

SUPPLEMENTAL RESPONSE (Dated: August 14, 2024): Plaintiff identifies documents Plaintiff previously provided or produced to Defendants; identifies documents provided or produced to Plaintiff by Defendants or their counsel; and documents contemporaneously produced via OneDrive link provided below and Bates Labeled as: BS_02709-02713; and JH_00230.

SUPPLEMENTAL RESPONSE (Dated: September 5, 2024): Plaintiff identifies documents Plaintiff previously provided or produced to Defendants; identifies documents provided or produced to Plaintiff by Defendants or their counsel; and documents contemporaneously produced attached to this response and Bates Labeled as: BS_02714-02715.

Respectfully submitted

/s/ Thomas A. Pendarvis
Thomas A. Pendarvis (SC Bar # 064918)
PENDARVIS LAW OFFICES, PC
710 Boundary Street, Unit A-1
Beaufort, SC 29902-4188
843.524.9500
Thomas@PendarvisLaw.com

Counsel for Plaintiff

Beaufort, South Carolina

September 5, 2024

Sowell + DuRant

Invoice ID	Client	Issue Date	Total
953	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics	6/2/2020	2898
	Non DeMaskey Time Entries		-2268
991	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics	6/30/2020	862.43
	Non DeMaskey Time Entries		-210
1010	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics	7/31/2020	210
	Non DeMaskey Time Entries		-210
1059	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics	10/2/2020	3325.45
	Non DeMaskey Time Entries		-1848
1097	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics	10/31/2020	798
	Non DeMaskey Time Entries		-798
1120	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics	12/2/2020	770
	Non DeMaskey Time Entries		-770
1172	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics	12/31/2020	630
	Non DeMaskey Time Entries		-630
1184	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics	1/31/2021	2114
	Non DeMaskey Time Entries		-2114
1241	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics	3/31/2021	588
	Non DeMaskey Time Entries		-558
1281	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics	4/30/2021	1344
	Non DeMaskey Time Entries		-1344
1293	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics	5/31/2021	2743.32
	Non DeMaskey Time Entries		-882
1312	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics	6/30/2021	336
1361	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics	7/31/2021	910
1387	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics	8/31/2021	434
	Non DeMaskey Time Entries		-434
1428	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics	9/30/2021	336
1462	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics	10/31/2021	1092
	Non DeMaskey Time Entries		-378
1525	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics	12/31/2021	1061.67
	Non DeMaskey Time Entries		-546
1564	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics	1/31/2022	463.56

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

1593	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics		2/28/2022	238
1618	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics		3/31/2022	252
	Non DeMaskey Time Entries			-252
1646	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics		4/30/2022	2303.61
1671	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics		5/31/2022	1638
	Non DeMaskey Time Entries			-924
1718	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics		6/30/2022	10011.77
	Non DeMaskey Time Entries			-1724.75
1777	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics		8/31/2022	10172.47
1816	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics		9/30/2022	2734.02
1847	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics		11/16/2022	971.74
	Non DeMaskey Time Entries			-971.74
1903	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics		12/31/2022	514
1936	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics		1/31/2023	3979.74
1970	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics		2/28/2023	941.74
1993	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics		3/31/2023	1959
2038	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics		4/30/2023	1571.03
2050	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics		5/31/2023	8561.55
2087	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics		6/30/2023	9270.5
2121	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics		7/31/2023	11455.42
2167	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics		8/31/2023	2479.24
2183	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics		9/30/2023	1836.27
	Non DeMaskey Time Entries			-1043
2218	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics		10/31/2023	5332.5
2238	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics		11/30/2023	3855.74
2249	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics		12/31/2023	932.5
2274	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics		1/31/2024	4047.5
2301	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics		2/29/2024	6400.09
	Non DeMaskey Time Entries			-880
2326	Jason Highsmith, M.D. and Columbia Neurosurgery & Orthopedics		3/31/2024	874.78
	Non DeMaskey Time Entries			-748
		TOTAL		**93716.15**

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., Plaintiff, vs. Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP, Defendants.	**CERTIFICATE OF SERVICE**

I, Tracy Lyn Landry, paralegal for Pendarvis Law Offices, P.C., hereby certify that I have served the documents listed below upon all counsel of record by **email only**, to said counsel at the following email address(s):

Douglas W. Mackelcan, Esq.
Skylar C. Wilson, Esq,
COPELAND, STAIR, VALZ & LOVELL, LLP
dmackelcan@csvl.law
swilson@csvl.law

Documents Served:

- PLAINTIFF'S SUPPLEMENTAL RESPONSES TO DEFENDANTS' FIRST SET OF REQUESTS FOR PRODUCTION TO PLAINTIFF (DATED: SEPTEMBER 5, 2024); AND
- PLAINTIFF'S SUPPLEMENTAL RESPONSES TO DI[illegible]T SET OF INTERROGATORIES TO PLAINTIFF;

Tracy Lyn Landry

Tracy Lyn [illegible]

September 5, 2024

Beaufort, South Carolina

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC.,
Plaintiff,
vs. CASE NO. 2021-CP-10-03379
MICHAEL A. MAUCHER, ESP. AND DELUCA & MAUCHER, LLP,

Defendants.

VIDEOCONFERENCE
DEPOSITION OF: JASON M. HIGHSMITH, MD

DATE: May 19, 2023

TIME: 3:06 PM

LOCATION: COPELAND, STAIR, VALZ & LOVELL
40 Calhoun Street
Suite 400
Charleston, SC
TAKEN BY: Counsel for the Defendants
REPORTED BY: MICHAEL DAVID ROBERTS,
Court Reporter

letter of protection?

A. I just don't use them. I don't use them anymore for sure probably as a result of this incident. I just don't use a letter of protection as part of my standard policy.

Q. Not anymore?

A. Not anymore, correct.

Q. Have you done it at all after Mr. Demaskey got treatment from you?

A. I don't think so. This sort of unfortunately soured it for us.

Q. And before that, how often did you provide services under a letter of protection?

A. If they came, I didn't really notice. You know, we just -- we didn't necessarily seek it out. We have a financial policy that basically says the patient is ultimately responsible for their bill.

Q. So you're not particularly worried about getting a letter of protection?

A. Correct.

Q. Prior to adopting a policy where you no longer accept letters of protection, what is it a practice to ask --

MR. WEINBERGER: Whoever is asking the

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

questions, can you speak up a little bit? I'm having a hard time hearing. I don't know if I'm the only one, but if you would be kind enough to do that, I would greatly appreciate it.

THE COURT REPORTER: No, that's not it. Give me one minute.

MR. WEINBERGER: I apologize. Thank you.

(A recess transpired.)

THE WITNESS: Can you repeat the question?

BY MR. WILSON:

Q. Certainly. Let me see if I can remember it word for word. Prior to adopting a -- prior to Carolina Neurosurgery adopting a policy of no longer requesting letters of protection -- or accepting letters of protection, was it a policy to request them?

A. No, not traditionally. If they came with one, we saw -- we would see the patient either way.

Q. You would have seen the patient either way with or without a letter of protection?

A. Correct.

Q. In circumstances when you would receive

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

a letter of protection, would that be documented somehow in a file outside of just putting a letter in the file for a patient?

A. That would be the only place we have it. It would just be in the chart.

Q. There's no other area where it would be marked that there's a letter of protection?

A. No, we just have it as part of the chart if it comes up.

Q. In the past for Carolina Neurosurgery, how many patients do you think you've treated best estimate under -- where a letter of protection has been involved?

A. I don't know. We don't see them very often. We never really request them, so very few.

Q. Is that just -- is that a guess? You don't really --

A. I don't really know. I don't -- we don't track that.

Q. So you wouldn't require in the past when there was a letter of protection coming in any specific type of language in that letter of protection?

A. No. Again, we don't typically request them.

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Q. So clean slate when you went over there?
A. Yes.
Q. So the intake paperwork that we've kind of discussed today, was that intake paperwork developed when you made that transfer and specific to Carolina?
A. Yes.
Q. And so from that point on -- just so we're clear -- no longer accepted insurance?
A. Correct.
Q. Unless they had something that had an out-of-network benefits that you could help the patient submit themselves to -- a claim to?
A. Correct.
Q. When you first treated Demaskey before opening Carolina, did -- do you know, were you involved at all with submitting bills to insurance during that period?
A. My office staff did that, so they were -- we were an in network at the time. We had a staff member dedicated to that.
Q. Did you take any staff members over with you to Carolina?
A. No.

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

A. No, just one-sided.
Q. Is this a ledger of the services that you provided to Mr. Demaskey that are relevant to this case?
A. Yes.
Q. And the total down there it looks like it's $125,409.28; is that correct?
A. Yes.
Q. And is that amount that you -- for that -- that's at issue in this?
A. That's the entire outstanding bill, yes.
Q. And has anything been paid to date?
A. No, not to my knowledge.
Q. Now, is it those costs that you believe DeLuca & Maucher and Mike Maucher are responsible for the amount in this?
MR. PENDARVIS: Form. Objection.
THE WITNESS: Well, the patient is ultimately responsible by whatever means he can pay.
BY MR. WILSON:
Q. So do you not believe that they're responsible then?
A. I believe that the patient is

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ultimately responsible for the bill through whatever relationship he has, and I trusted the agreement we had with his attorney.

Q. All right. So the patient is ultimately responsible for the bill, and you trusted the agreement that you had with the attorney. Are you referring to the letter of protection or multiple letters of protection?

A. Yes.

Q. And is it under those letters of protection that you believe DeLuca & Maucher, Mike Maucher are responsible for their patients medical bills?

A. Under that yes, but again, ultimately the patient is responsible.

Q. Are you aware of someone pursuing coverage through OneBeacon for the surgery -- or for these medical costs?

A. I've heard that in some of the discussions with counsel, but I don't know the status of that.

Q. You don't know the status, but you're just generally aware that that might be going on?

A. Yes.

Q. And the absence of a letter of

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

protection or letters of protection in this case, do you believe that DeLuca & Maucher or Mike Maucher will be responsible for Mr. Demaskey's medical bills?

A. I don't know what agreement he has with his attorneys, but again, he's ultimately responsible. And that's what we provided him the written estimates, and he signed the paperwork that he's responsible.

Q. And really what I'm trying to ask is: From your perspective I think you had testified that the letter of protection -- letter of protections -- letters of protection are the reason why DeLuca & Maucher and Mike Maucher might be responsible for the cost; is that correct?

A. That's my understanding, that they've taken on the responsibility with the letters; and again, we had no reason to doubt that was the case, and we trusted the relationship and the agreement we had.

Q. Okay. Did you have a relationship with DeLuca & Maucher or Mike Maucher prior --

A. No relationship. I meant relationship documents, the understanding, the agreement from paper.

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Q. Absent those agreements or the papers that you're referring to, do you believe that DeLuca & Maucher or Mike Maucher would be directly responsible to Carolina Neurosurgery for Mr. Demaskey's bills?

A. You said exclusive of that agreement?

Q. Yes.

A. I can't speak to that. I don't know the relationship he has with the patient. He has a relationship with me based on those documents to provide coverage.

Q. And so if those documents were not there, then would you agree that they wouldn't be responsible for direct payment to you for those medical bills or direct payment to Carolina Neurosurgery?

A. Again, I can't speak to what the patient and the attorney -- his counsel has as an agreement.

Q. Well, I'm not asking --

A. The patient is ultimately responsible.

Q. I'm not asking about their agreement or -- with their specific patient. I'm asking about any other reasons why DeLuca & Maucher or Mike Maucher could be responsible directly to you

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

or directly to Carolina Neurosurgery for Mr. Demaskey's costs?

MR. PENDARVIS: Object to the form.

THE WITNESS: Again, I trust the agreement and the paperwork we had from them. Beyond that, I don't have any other way to hold them accountable.

BY MR. WILSON:

Q. Okay. Looking at exhibit 1 -- or exhibit 11, sorry, the different dates that are listed in the left-hand column, are those all dates that you would have seen Mr. Demaskey?

A. Yes, those are dates of service.

Q. Sitting here today, can you remember or recall any of the conversations that you would have had with Mr. Demaskey during these different treatments that are listed on exhibit 11?

A. Like I said, every new patient I have seen in the new practice that I had seen in the old practice I made it very clear from the very first visit everything I just mentioned before. This is a different patient interaction. I'm not in network with insurance anymore; that's why I'm not at the old practice anymore.

So that was the initial encounter with

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

family members refer patients. I've known other primary care docs in Charleston, so a lot of them send me patients. It just depends.

Q. Any of the intake paperwork for Carolina Neurosurgery ask how did you hear about us, anything like that?

A. It doesn't, no.

Q. All right. I'm going to hand you what's going to be marked as exhibit 1.

(DFT. EXHIBIT 1, Two-page letter to Jason H. Highsmith, MD from Michael A. Maucher dated December 20, 2018, was marked for identification.)

BY MR. WILSON:

Q. And this is a letter from DeLuca & Maucher addressed to yourself dated December of 2018. And it is front and back, but I think it's the same letter on the back, but there's, like, a fax notification at the top. Are you familiar with this document?

A. Yes.

Q. And this is the letter of protection that DeLuca & Maucher sent your office related to Mr. Demaskey's treatment; is that correct?

A. That's correct.

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Q. Do you know if you would have read this letter prior to providing any -- well, let me -- do you know if you would have read this letter prior to providing treatment on January 2nd of 2019?

A. At some point I reviewed it in his chart or in dictating his note. I don't recall exactly when.

Q. Is this something that you would have noted in any dictations for Mr. Demaskey that you read a certain document or anything like that?

A. No. Again, I'm sort of focussed on the medical with the documentation that we provide, so no.

Q. Okay. Does Kiara have the authority to accept letters of protection on behalf of Carolina Neurosurgery that you know of?

A. Well, there's a matter of accepting meaning receiving the fax and putting in the chart, yes. In terms of following through on the implementation of that, that would be something she would consult with me on.

Q. Would the practice generally be to consult with you about a letter of protection prior to providing services?

A. Not prior to providing services, but as

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

part of our handling of the patient, yes.

Q. So at some point afterwards yourself and Kiara would mostly have a conversation if there was a letter of protection in the file for a patient?

A. Yes, but we don't really typically use them so...

Q. All right. And the date of this letter is -- looks like December 20th, 2018; is that correct?

A. Yes.

Q. And I would like to walk you through this language real quick and get your thoughts on it. So here it begins, with regard to the above named individual. And that refers to Mr. Demaskey; is that correct?

A. Yes.

Q. And then it continues, please accept this correspondences as our law firm's agreement. The law firm would be DeLuca & Maucher; is that correct?

A. That's my understanding, yes.

Q. To protect any claim which you may have out of any settlement proceeds we may receive arising out of the incident referred to above. And

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

the incident is the accident that caused the injury necessitating the treatment you provided; is that correct?

A. That's my understanding, yes.

Q. Okay. Now, so in this letter the law firm is agreeing to protect claims out of any settlement proceeds; isn't that correct?

A. That's what it says, yes.

Q. Is that your understanding?

A. Yes.

Q. And then, I believe, it goes on to say, the above named individual. Again, that's referring to Mr. Demaskey; is that correct?

A. Yes.

Q. And then it says, in the event of insufficient recovery, he'll be responsible for the balance. Is that correct?

A. Yes.

Q. So in this letter at least there's -- it seems to be outlining a potential for -- or at least -- at least the potential for an insufficient recovery; is that correct?

A. I wouldn't say it outlines that. I mean, it certainly -- you know, we're very forthcoming with the cost to the patient and expect

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

an agreement like this to be backed up by -- by adequate coverage before providing approval to do a surgery.

Q. But that's not what the letter says, is it?

A. That's not the wording, but the understanding is that the patient is being seen for treatment and the bills will be covered. Our understanding is they will stand by their word.

Q. Well, who according to this letter and your interpretation of the language of it, who's going to cover those bills?

A. Who's going to what?

Q. Who will pay -- who will cover those bills?

A. The Maucher law firm.

Q. The Maucher law firm. So then what is the point of your understanding of mentioning that the patient would be personally responsible for any account balance?

A. Because that's our policy as well. The patient is ultimately responsible.

Q. Okay. Do you know if DeLuca & Maucher was aware of the financial policy that Mr. Demaskey executed?

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

A. I don't know.
Q. If I represented to you that the financial policy was executed after the date of this letter, then do you have any other independent knowledge of DeLuca & Maucher being aware of Carolina Neurosurgery's financial policy?
A. Just I provided it to them when his referral was made.
Q. When the referral was made?
A. Yeah.
Q. Well, let me hand you what's been marked as exhibit 2. This one actually matches the complaint.
(DFT. EXHIBIT 2, One-page document entitled Financial Policy, was marked for identification.)
BY MR. WILSON:
Q. Okay. Is this the financial policy that we've kind of been discussing a little bit?
A. Yes.
Q. And can you read for me the date on which it appears Mr. Demaskey signed that?
A. January 3rd, 2019.
Q. And that was really the first date according to the billing ledger that you had seen

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

agrees to protect claims to settlement proceeds, correct?

A. That's what it says, yes.

Q. And then I think we got off in a little tangent here, but agree or disagree it at least mentions what will occur in the event of an insufficient recovery; is that correct?

A. Yes.

Q. Does this letter say anything about actually making payment for the claims?

A. It does not specify that.

Q. Now, if the law firm DeLuca & Maucher is holding the settlement proceeds that they have received relevant to this case, would you agree or disagree that that would be at least protecting a claim to those proceeds?

MR. PENDARVIS: Form. Objection.

THE WITNESS: I would have to defer to my counsel on that.

BY MR. WILSON:

Q. Do you know whether or not the funds are sitting in a trust account or anything like that?

A. I don't know for sure. I've heard that they may be. I don't know. Again, if something

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

the primary insurance is just only if it has out-of-network benefits; is that right?

A. Correct. Like I said, we're not in network, so there's no way for us to file unless they have out-of-network benefits and there's a portal to do so.

Q. How would a staff member Kiara or Aaliyah go about determining whether or not a particular insurance card that was provided to them provided out-of-network benefits?

A. Sometimes they'll interpret it. If there's any question, then they call Eric or somebody.

Q. Other than this financial policy that the patients sign, are there any internal written policies of which you are aware that Carolina Neurosurgery has with respect to insurance?

A. No.

Q. Does Carolina Neurosurgery to your knowledge have any written policies and procedures?

A. No, just what's in our patient charts.

Q. Do you know if sitting here today at the time this financial policy was signed on January 3rd of 2019 if you would have or if you actually did review the December letter of

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

protection?

A. I don't know at what point I reviewed it, but at some point in the care of Mr. Demaskey I reviewed the chart and all intake paperwork.

Q. And so that's your -- I mean, that's your standard practice is if there's any paperwork in that chart at some point in time you're reviewing everything that that patient has submitted?

A. Yes, because when the patients come to us for the initial patient visit, they have all these forms completed and I get the stack when I go talk to them.

Q. So you would have taken the stack with the financial policy, the health insurance verification form, the HIPAA notification and emergency contact information when you first saw Mr. Demaskey?

A. Yes.

Q. Is there anything in part of the patients chart or intake that indicates whether or not the patient is involved in litigation?

A. No.

Q. Is that something that you yourself are generally aware of when you treat patients?

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

needed. She supervisors the staff.

Q. Is she still an employee with Carolina Neuro?

A. Just directly an employee. Just more contract.

Q. 1099?

A. Yes.

Q. And who is Brooke Dunsil?

A. She used to be my medical assistant.

Q. Do you know when she left?

A. I don't recall when she left. Sometime in 2019.

Q. Do you have any other contractors other than Kary and Eric?

A. No, just those two.

Q. Does Kary work 40 hours for Carolina Neuro?

A. She works as much as I need her to. Some weeks probably more, some weeks less.

Q. And for Eric about how often -- what is an average work week like as far as hours?

A. It varies from week to week. Just however much I need him.

Q. So back to this email on January 16th, 2019. Kiara is reaching out to Tina about

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Mr. Demaskey and asking for the limits for Mr. Demaskey; is that correct?

A. Yes.

Q. Okay. And if you know, why would she be reaching out to Tina about the limits?

A. I don't know why. Probably just to find out if we could take care of him and do the surgery, but I can't say for sure.

Q. Sitting here today, can you recall if you would have instructed her to reach out and ask about limits?

A. I don't know.

Q. Is that a part of Carolina Neuro's standard practice to reach out to the attorneys if they're involved in a case for a patient that you're treating to ask about limits?

A. No. You know, it's just on a case-by-case basis. If it's somebody that's considering surgery and he had a significant problem, maybe yes, but not consistently.

Q. In a situation where -- your best guests, how often would someone with Carolina Neuro reach out to an attorney and ask about limits? Is it rare?

A. It's rare. I think we're looking at --

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

you know, something like surgery like the one we did for him, that's a big bill, so we -- but, again, I can't speak to the specifics. I don't recall.

Q. If in this situation an attorney or the attorney's office does not know what the limits are, would you -- do you know if you would still provide treatment?

A. Again, we would handle it on a case-by-case basis. If the patient was in need of emergent surgery, we would certainly proceed with getting him treated; or if it is only more elective, we could send them to another provider.

Q. And were Mr. Demaskey's surgeries emergent or elective?

A. They were elective.

Q. Both of them?

A. Yes.

Q. And what is your -- how do you go about determining whether or not a surgery is elective or emergent?

A. Well, emergency they should be in the ER. That's the -- that's what emergent surgery is. So you have to go to the ER and be admitted to the hospital and have surgery within hours, days

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

following a problem. When several weeks even a few months go by, it becomes more of an elective procedure.

Q. So since you've opened Carolina Neurosurgery, have you performed any emergents -- any emergency surgeries?

A. Yes.

Q. How often would you perform an emergency surgery?

A. It was more common when I was covering the emergency room where I would get direct referrals for that, but I still have emergency surgeries on occasion, hematomas, things like that.

Q. So you still got referrals from I'm assuming the hospitals where you have privileges for emergent services -- emergency services?

A. In some cases, yes. I get referrals -- I know most of the ER docs in Charleston, so I get a lot of referrals from them.

Q. Where would you perform those surgeries for emergency surgeries?

A. Typically the hospital where they are. I have privileges at all of the major hospitals in Charleston so...

Q. So you would go to them?

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

A. Yeah, or commute for the patient. Safer than transferring to another hospital.

Q. The surgeries that you performed on Mr. Demaskey, those were at the -- was it the Charleston Surgery Center?

A. I don't have the operative note in front of me. I don't know where they were done.

Q. Do you frequently perform surgeries at the Charleston Surgery Center?

A. Yes.

Q. Would you say that is your main location for performing elective surgery?

A. The Charleston Surgery Center is, yes.

Q. Is it exclusive for elective surgeries?

A. No, I do a lot of stuff at the hospitals still, too.

Q. Do you have any ownership interest in the Charleston Surgery Center?

A. No.

Q. Do you have any interest at all as far as like maybe a management or anything else within the Charleston Surgery Center?

A. No.

Q. So if an attorney -- looking back at exhibit 3, if an attorney or attorney's office

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

doesn't know what the limits are for a particular patient, would that affect your decision to provide services?

A. I can't speak in hypotheticals.

Q. Have you ever declined to provide services in a situation where you didn't have any information about insurance coverage for potential litigation?

A. Yeah, if I don't think the patient needs surgery, I won't do surgery. Some people come in wanting surgery, and they don't need it. I'll tell them you don't need it.

Q. Did Mr. Demaskey need surgery?

A. He would -- could benefit from an elective surgery, yes. Did he need it? No. Was it life threatening? No. Was it emergent? No. It was an elective surgery. But to get relief of his pain and condition, he would need surgery.

Q. Okay. So he just needed the surgery that you performed, correct?

A. Yes.

Q. So in a situation where a patient needs surgery, and you don't know anything about what insurance coverage is, would you still provide that surgery?

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

A. Yes.

Q. Do you make it a habit of concerning yourself about whether or not a patient can actually pay for your services?

A. I don't make a habit of it. I take care of the patient and trust them to pay their bills. They sign paperwork saying that I trust my patients to pay the bill.

Q. I mean, you're certainly not, like, asking any patients to show, like, bank balances or anything like that to show proof of payment or the fact that they can pay before you provide surgery; is that correct?

A. No, that's why we give them a written estimate and let them know they're responsible for the bill.

Q. Looking at exhibit 3, Tina is providing here a little bit of information about potential coverage, and in it she is saying that the at-fault party had a North Carolina policy of automobile insurance, but they were not willing to provide the limits.

So at least at this point they didn't know what -- and they meaning DeLuca & Maucher or their staff didn't know what the potential limits

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

were for at least the at-fault party's insurance policy; is that correct?

MR. PENDARVIS: Objection.

THE WITNESS: That's what it says on the paperwork, but I can't speak to the validity of that statement.

BY MR. WILSON:

Q. Now, she also mentioned Mr. Demaskey's underinsured motorist coverage of $100,000; is that correct?

A. It does say that, yes.

Q. Do you know what underinsured motorist coverage is?

A. I'm not an expert in interpreting that, but my understanding is it's insurance for patients that don't have adequate -- it covers patients -- other drivers that don't have adequate insurance.

Q. And the policy would be the person who's injured?

A. That's my understanding.

Q. Do you know anything about what occupation accident coverage is?

A. Other than the title, no. I would defer to the attorneys on that.

Q. At least this email references a

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

OneBeacon policy. Is that from your understanding something that someone is pursuing for Mr. Demaskey's medical costs for the services that you provided?

A. I can't speak to what's been done by them.

Q. Well, I think you testified earlier that you were generally aware something about OneBeacon; is that correct?

A. Yes.

Q. And this email does reference the OneBeacon policy?

A. Yes, it does.

Q. And do you know if you would have read this email to Kiara -- between Kiara and Tina prior to providing any services or the services after that date for Mr. Demaskey?

A. I don't know. I don't remember.

Q. Do you know if it is a part of the practice for Carolina Neuro to put emails in some type of file for the patient?

A. If it's relevant to their care, yes.

Q. Do you think that the substance of what these emails are are relevant to the care that you provided Mr. Demaskey?

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

A. Again, I'm focused on the medical care, so it's not really relevant to the medical care event.

Q. Would you know if it was actually put in the file?

A. I don't know.

Q. Now, on January 21st after Tina discusses the different coverages, she notifies Kiara that she learned Mr. Demaskey required surgery. Is that your understanding of what this -- it's the first email the first page, I think.

A. What's the question?

Q. It appears to me that Tina with DeLuca & Maucher is notifying here that Mr. Demaskey will require surgery; is that correct?

A. That's what it says, yes.

Q. And it's your understanding that would have been the surgery that you performed I think it was in March of 2019?

A. Yes.

Q. And here she is at least telling Kiara that all of the treatment be filed with his private health insurance company. Is that your understanding of at least what it says?

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

A. That's what it says, yes.
Q. Do you think -- and then it goes on, it would be best for everyone involved if we do not -- if we not do the treatment under an assignment, letter of protection. Is that your understanding of at least what this email says directed to Kiara?
A. That's what the email says, yes.
Q. Now, do you know if this would have triggered a conversation between Kiara and anybody else?
A. I don't know. She probably would call Eric on something like this.
Q. Okay. And then least if these -- the timing on these emails are correct, it looks like Kiara is saying, okay, thanks for the update 20 minutes later -- less than 20 minutes later; is that correct?
A. That's what -- yes.
MR. WILSON: Why don't we take just a quick five-minute break?
(A recess transpired.)
BY MR. WILSON:
Q. I'm going to hand you what's been marked as exhibit 4.
(DFT. EXHIBIT 4, Two-page email chain

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

commencing on Thursday, March 7, 2019 at 9:34 AM, was marked for identification.)

(Off-the-record conference.)

MR. PENDARVIS: So the exhibit is the...

(Off-the-record conference.)

BY MR. WILSON:

Q. So exhibit 4 what I've handed you appears to be -- well, the very first if you look at the email side of it is an email between Kiara and I'm assuming that's Eric Weinberger?

A. Yes.

Q. And then below that there's an email from Tina who we established is DeLuca & Maucher to Kiara about Scott Demaskey providing a different letter of protection. And she indicates in the email at least that letter of protection covers whatever is not paid by private health insurance.

Have you -- this is an exhibit. It was attached to the complaint that was filed in this case, so I'm assuming that you have seen it before?

A. Yes.

Q. Do you recall if you saw it -- do you recall when the first time you saw it was?

A. No.

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Q. And is this something that would have gone in the patient's file?

A. Maybe. It was Kiara that handled this with Eric.

Q. All right. So if we look at what the letter is that's dated March 7th, 2019 at the back, and this is another letter of protection addressed to yourself; is that correct?

A. It appears to be, yes.

Q. And it indicates, with regards to the above named individual. That is referring to Mr. Demaskey; is that correct?

A. Yes.

Q. It says, please accept this correspondence as our law firm's agreement to protect any portion of bill not paid by private health insurance out of any settlement proceeds we may receive arising out of the incident referred to above. And the law firm is DeLuca & Maucher, correct?

A. Yes.

Q. Incident above is the vehicle accident that Mr. Demaskey was in; is that correct?

A. Yes.

Q. Now, here again, the agreement is to

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

protect any portion of the bill not paid by private -- at least here it's now introducing private health insurance, but again, we're looking at an agreement to protect bills out of settlement proceeds; is that correct?

MR. PENDARVIS: Objection.

Answer if you can.

THE WITNESS: That's what it appears to be, yeah. Unfortunately, yeah, but it wasn't the case.

BY MR. WILSON:

Q. And this is -- I mean, it's similar to the first letter of protection that we went over already; is that correct?

A. Similar wording, yes.

Q. Except that it talks about private health insurance; is that correct?

A. Yes.

Q. And Carolina Neurosurgery's practice is that it doesn't accept private health insurance, is that correct, unless it's out-of-network benefits?

A. Correct.

Q. And, again, this is indicating that the individual, referring to Mr. Demaskey, has informed in the event of an insufficient recovery he would

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

be responsible; is that accurate?

A. Yes. Unfortunately he's going to go bankrupt for this.

Q. And nothing in this letter indicates that law firm would pay for the medical bills in the event that there's insufficient recovery; is that correct?

A. It doesn't state that, correct.

Q. Now, did you have any conversation that you can recall with Kiara about this letter of protection?

A. No.

Q. Do you know if you would have reviewed this letter before giving -- before performing the surgery that was in March of 2019 for Mr. Demaskey?

A. Again, I reviewed the chart, so at some point I would have reviewed it. I don't recall exactly when.

Q. Let me show you what's been marked as exhibit 5.

(DFT. EXHIBIT 5, One-page document entitled Health Insurance Verification Form For Surgery, was marked for identification.)

BY MR. WILSON:

Q. We discussed the health insurance

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

verification form previously. Is that what this documents appears to be?

A. Yes.

Q. Are patients only required to fill out a health insurance verification form prior to surgery, or do they also do something like that at intake?

A. They do a similar form at intake.

Q. And that form would most likely be in the patient's file?

A. Yes.

Q. Do you know if Kiara -- at least looking at this document it appears Kiara Goodwine has written her name as a witness?

A. Yes.

Q. Do you recognize her -- that as her handwriting?

A. Yes.

Q. Okay. And this is part of the practice for Carolina Neurosurgery prior to providing any surgery; is that correct?

A. Well, if the patients complete the paperwork, yes.

Q. And at least for this one this is specific for surgery, correct -- in anticipation of

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

surgery?

A. That's correct.

Q. And at least on this form it looks like Mr. Demaskey has provided his insurance company's name and ID number and group number; is that correct?

A. At this time he did, yes. Before he said he didn't have health insurance so...

Q. Before this document he said he didn't have health insurance?

A. I'm not sure at what point he said he didn't have health insurance. I don't have the whole chart here but...

Q. So at least at this point he's saying he did have health insurance?

A. At this point he did.

Q. Okay. Now, is it part of either Carolina Neurosurgery's practice or Kiara's practice to highlight specific sections on forms that clients need to complete?

A. Well, they're supposed to complete the whole form, but sometimes people don't, so we highlight the most important parts.

Q. Highlight the most important parts?

A. (Witness moves head up and down.)

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

THE COURT REPORTER: Can we go off real quick?

MR. WILSON: Yeah.

(Off-the-record conference.)

BY MR. WILSON:

Q. Just a housekeeping thing. You've checked your phone a couple of times during this deposition. You're not getting any kind of texts about the substance of your testimony during this deposition, are you?

A. No, I'm trying to keep in touch with my wife to see if she can pick up our son. I would like to get this done.

Q. All right. If you could compare this to exhibit 11, it appears that you provided services to Mr. Demaskey on March 7th, 2019, the date that this document is executed; is that correct?

A. Yes.

Q. And that would have been the first surgery if you look at exhibit 11, March 15th, 2019?

A. Yes.

Q. So then prior to the first surgery Mr. Demaskey has provided information about his

insurance provider to your office; is that correct?
A. It appears to be, yes.
Q. Now, for Blue Cross Blue Shield, are there any versions of their policies that have out-of-network benefits that your -- that Carolina Neurosurgery would bill to?
A. If they have out-of-network benefits, we bill for out-of-network benefits, but we also submit this information to the surgery center because they are in network.
Q. The surgery center is in network for Blue Cross?
A. Correct.
Q. And how do you know that?
A. Just because they ask for this information if you're a network provider for them.
THE COURT REPORTER: It looks like the Zoom disconnected.
(Off-the-record conference.)
BY MR. WILSON:
Q. Does the surgery center and Charleston Surgery Center have a different business name?
A. It's the Charleston Surgery Center, and there's different -- there's other surgery centers in Charleston. There's the Charleston Surgery

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

is that accurate?

A. Yes.

Q. Okay. Would your office have already maintained, to your knowledge, Mr. Demaskey's Blue Cross Blue Shield insurance information?

A. I don't know. If the card is no good and the policy is expired, we may not. I don't know.

Q. Do you know if by this point Mr. Demaskey's Blue Cross Blue Shield policy was expired?

A. I don't know.

Q. And your office never actually tried to submit any bills to Blue Cross Blue Shield; is that correct?

A. My understanding was he had no out-of-network benefits, so there was nothing we could help him with.

Q. And that was your understanding at the time of each treatment that you provided him?

A. Yes.

Q. And that would have been a conversation that you had with Kiara?

A. Yes, and again with the patient as well.

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

would this have been the first notification to Kiara or Carolina Neuro about the at-fault party's coverage amount?

A. That's -- to my knowledge that is, yes.

Q. And then also that the underinsured motorist coverage does not apply, correct?

A. Correct. Yeah, it's unfortunate at this point. He's due a lot of bills.

Q. And in this last paragraph that she's sending to Kiara she's referencing the need to spread around the settlement proceeds that they received to the various different providers to cover portions of the medical bills; is that accurate?

A. Yes.

Q. And in Carolina Neurosurgery's past has there ever been a situation that you can recall where treatment has been provided where the coverage and settlement is insufficient to cover your bills and Carolina has agreed to waive costs or some other form of reducing the bill?

A. Certainly on a case-by-case basis we have, but again, my understanding is there was coverage there. We had a relationship with the attorney through the letters that, you know, this

is egregious that he would have only $30,000 in coverage and they would approve not one but two surgeries. It's unbelievable to me.

Q. Well, now, did DeLuca & Maucher approve the surgeries?

A. Well, they provided coverage and agreement that they would cover the bills based on the letters of protection.

Q. Well, the letters of protection said that they would protect claims of settlement proceeds; isn't that correct?

A. It stipulates that, but I mean the fact that they don't know the coverage and promised a one million dollar policy early on but never -- never came to fruition.

Q. And correct me if I'm wrong, but I believe you testified earlier that the amount of coverage doesn't necessarily affect your treatment recommendation; is that accurate?

A. It doesn't affect my treatment recommendations, no; but if it's an elective surgery, I'm not going to put someone through a huge bill if there's supposed coverage that doesn't exist --

Q. And then at least --

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

A. -- unless it's emergent.
Q. Sorry. And at least in Mr. Demaskey's case his surgery was elective, but you testified that he did need it; is that correct?
A. Yes. It was medically necessary.
Q. I'm going to hand you what's been marked as exhibit 13.
(DFT. EXHIBIT 13, Multipage letter to Scott Demaskey from Blue Cross Blue Shield dated August 26, 2021, was marked for identification.)
BY MR. WILSON:
Q. Other than potentially reviewing this five-page document before this deposition and the exhibits that we sent previously, do you recall any independent knowledge of seeing this document before?
A. No.
Q. No. Okay. Do you have any knowledge of whether or not Mr. Demaskey's Blue Cross Blue Shield insurance was active during all the treatment that you provided without getting into whether or not he had out-of-network benefits?
A. I don't know. I would point to if his policy was valid or what coverage dates he had.
Q. And if I represent to you at least his

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

EXHIBIT
L

STATE OF SOUTH CAROLINA	) COURT OF COMMON PLEAS
	) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	) CASE NO. 2021-CP-10-03379
CAROLINA NEUROSURGERY & ORTHOPEDICS, INC.,	)
PLAINTIFF,	)
-VS-	)
MICHAEL A. MAUCHER, ESQ. and DeLUCA & MAUCHER, LLP,	)
DEFENDANTS.	)

CERTIFIED TRANSCRIPT

VIDEOTAPED

30(b)(6)

DEPOSITION OF:

DeLUCA & MAUCHER, LLP

MICHAEL A. MAUCHER

JULY 31, 2023

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

AdvancedONE LEGAL is now LEXITAS™

letter, perhaps it was a letter. I don't know if it was an e-mail or a letter, but e-mails or letters of the type I guess from Jay Masty to you providing essentially all the documents that have been discussed and that are relevant to this case; I did see that. But again, that e-mail just had documents that were discussed in Ms. Bennett's deposition in detail.

So getting back to the next question, we're looking at Number 30(b)(6) Topic No. 3?

Q Correct?

A 16?

Q About the allegations in Paragraph 16, the complaint --

A That's denied.

Q -- and the responses to 16 and the answer.

A That's right.

Q All right.

A All right. So at this time, I don't understand what that means, at the time that the interrogatory's propounded at the time that we first started to see -- to represent Mr. DeMaskey. You can't admit something that you don't understand.

But moving on: It says based on representations of the lawyers in the first Letter of Protection. Let's be really clear: Mr. DeMaskey went

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

to Dr. Highsmith because he had an established relationship with Dr. Highsmith because he had performed surgery on him in the past.

We didn't -- we, anytime I say "we," refers to D&M. We didn't send DeMaskey to Dr. Highsmith. So I'm real confused by that. That Letter of Protection wasn't bargained for between Dr. Highsmith and our office. Mr. DeMaskey had a conversation with someone at Carolina Neurosurgery, and he advised my assistant, Tina Bennett, to send Dr. Highsmith a Letter of Protection, which we did. That Letter of Protection speaks for itself.

And moving on: And I think this contention in Paragraph 16 discusses a bunch of different topics, another reason to deny it.

However, it's my recollection that initially we were advised by the insurance company for the owner of the car in North Carolina that Mr. DeMaskey was involved in a wreck. We were advised initially that the car was stolen. And as you know, as an esteemed and knowledgeable attorney, if a car is stolen, then you have to use your uninsured motorist coverage. Uninsured motorist coverage I believe on the tractor or the truck Mr. DeMaskey was operating was a million dollars.

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

I think, at that time, Mr. DeMaskey had $100,000 underinsured motorist policy, and we didn't know if that paid -- would cover or would not cover. So early on, this is an accurate statement about the possible 1,100,000, but as time went on, for whatever reason, the insurance company, the owner accepted liability coverage, which reduced the policy to $30,000, at which point we let everybody know. We told Dr. Highsmith's office to proceed under Bluecross/Blueshield, which led to a second Letter of Protection, which was merely a Letter of Protection for anything not paid by health insurance. So I think that's why Paragraph 16 is denied.

Q Let's take a look at some of the -- let's put in context. The paragraph before references the financial policy of Carolina Neurosurgery. And the other arrangement phrase in that paragraph we just discussed under the earlier topic was the policy requires full payment unless other arrangements have been made. Okay? Context.

So the other arrangements we're talking about, I think you've just described, insurance coverage and some other things that were being considered, correct? At the time -- before the first surgery.

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

A So you just said a lot. And a couple of different things. I'm trying to follow. Let's be very clear: What occurred between Mr. DeMaskey and Carolina Neurosurgery, we didn't have anything to do with that. He just went there as a patient. So you can't attribute to me Mr. DeMaskey and Carolina -- or DeLuca & Maucher to DeMaskey and Carolina Neurosurgery. I just did what my client asked me: I sent a Letter of Protection. Once things changed, I let everybody know.

Q Let's take a look at Exhibit 4 to the -- Exhibit 4 to Exhibit 2 for this deposition; that's the complaint. Take a look at Exhibit 4 to the complaint, and I want to take you to Page 2 of Exhibit 4.

A (Complies.)

Q The very first page of Exhibit 4 to the complaint, at the top of that page is a January 21, 2019 e-mail. I want to take you to the page before that. I mean, the page behind that. Sorry.

A Yeah, if you're trying to confuse me, you're doing a good job. All right. So this is still early, very early, a month after the wreck, and this is our communication to Kiara, who's I think the office manager or someone in authority at Carolina Neurosurgery, to file Bluecross/Blueshield.

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

enough overall coverage to pay the claim."

A You read it correctly.

Q What -- what was the basis for that statement?

A That's -- that was our opinion at that time. Of course, that changed. And as soon as it changed, we let Dr. Highsmith's office know.

Q Was that after the first surgery or after the second surgery?

A It was before the first surgery, sir; you know that. You know these -- why would you try to put words in my mouth like that?

Q I'm asking.

A You know the answer. So why would you misstate -- why would you phrase a question that purposely is confusing trying to trick the witness? I'm here to answer all your questions, but you know that before the first surgery. I think there may be $2,600 in treatment at the point we said, "Hey, use his Bluecross/Blueshield." They should have done that. So I won't put words in your mouth if you don't try to put words in my mouth.

Q Did D&M look into whether the Carolina Neurosurgery was in-network or not and whether it would be available for the Bluecross/Blueshield policy

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

for their services to be used?

A We didn't know anything. I already said this. We didn't know anything between DeMaskey and Highsmith. He went to Dr. Highsmith, and they didn't send us a copy of anything that he filled out. We were completely unaware of that.

The fact of the matter is, our only knowledge was that Dr. Highsmith performed surgery on injured people and filed their health insurance, because he had done it in the past. And in this case, we assumed that he did it in this case. What could be more clear? We said, "File his health insurance." Mr. DeMaskey -- Ms. DeMaskey said, "File my health insurance."

I think the big screw-up was Carolina Neurosurgery had just changed its business model within days of this accident. I think it may have been after the collision and before the surgery. I think that's the big screw-up. I just don't think the people upfront truly understood it, and because of that, Mr. DeMaskey had surgery with Dr. Highsmith. Unknown to Mr. DeMaskey, they weren't -- they didn't certify his procedures. I think -- that's just me. That's what I think.

Q As of the January 21st, 2019 e-mail, as of

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

when Mr. DeMaskey was probably sent to Dr. Highsmith by his family doctor, Dr. Highsmith had accepted Bluecross/Blueshield. So I didn't have a contract with Carolina Neurosurgery. I didn't have an agreement with them.

What this shows is that we were just keeping everybody updated and advising Carolina Neurosurgery that it would be best to file Bluecross/Blueshield. And if they had done that, the $2,600 in care that had been provided up to that date would have been paid, and we wouldn't be here.

So as far as whether they're relying upon that or not, I can't put myself into their head. All I can tell you is what happened and what it means. I can tell you what I did. I can tell you what I was thinking, but I didn't have -- I didn't have a contract with Carolina Neurosurgery. Does that help?

Q So is this --

A Does that answer your question?

Q Is it D&M's position that Carolina Neurosurgery had no right to rely on statements in the January 21, 2019 e-mail transmitted at 9:24 a.m.?

MR. MACKELCAN: Object to the form.

THE WITNESS: I can't say to what was in their mind; I absolutely can't. We're just keeping

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

them updated regarding everything that was occurring in this case.

BY MR. PENDARVIS:

Q Updated with truthful statements, is that what you're implying?

A At the time, that was what we understood to be true and correct. Yes.

Q So --

A There's -- there's no untruthful statements in there. I'm offended that you would suggest that anything in there is untruthful. You have to understand, Mr. Pendarvis: At the time that you said it, if later on it turns out to not be the case, that doesn't mean it was untruthful when it's said. Things change. And when things changed, we let Carolina Neurosurgery know, and they should have certified his surgeries.

The fact of the matter is, we thought and the DeMaskeys thought that Carolina Neurosurgery certified that both surgeries under his health insurance. Why would -- why would we not have that reasonable expectation based upon the facts as they exist?

Q Why wouldn't Carolina Neurosurgery have a reasonable expectation to believe that lawyers that are representing a patient that's being presented for

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

elective surgery, that those lawyers are accurately stating the amount of coverage?

A Everything that -- I'm going to say it again: Everything that was stated was accurate at the time. When things changed, we updated Carolina Neurosurgery, and we provided them with information that was what we thought in their best interest to file it with Bluecross/Blueshield. They should have done that. And if they couldn't do that, they should have told us that, and they should have told DeMaskey that, and Mr. DeMaskey would have had surgery with someone else. We haven't -- we've done nothing wrong here.

Q It's clear this e-mail represents there's a million and one coverage and that the law firm's saying, "We're not concerned that there will be enough coverage overall to cover -- to pay this claim."

A Is that a question?

Q That's true, correct? That's what Carolina Neurosurgery heard from the lawyers, right?

A The e-mail says exactly what's in the e-mail. I've answered the same questions two times. If you want to ask me to answer it a third time, I'll be glad to do that. Well, this actually is the third time, but if you want to do it a fourth time, I'll do that. When you get to the fifth time, that might be

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

A I know. It wasn't a good question, but go ahead. I did my best with it.

Q Topic No. 9 of the deposition notice deals with allegations in Paragraph 38 of the complaint and the corresponding denial of those allegations in the answer to the allegations in Paragraph 38. And I'll say to you, the answer states in response to the allegations in Paragraph 38, "Defendants admit only that Defendants do maintain and have maintained that Plaintiff should have submitted its invoices to the health insurance carrier for Defendant's client. Defendants deny the remaining allegations."

That's the part I want to find out today. What is the factual basis for denying the remaining allegations in Paragraph 38 of the complaint?

A I guess it's going to sound repetitious, but we at the time did not know that Dr. Highsmith's office did not accept Mr. DeMaskey's Bluecross/Blueshield insurance. We assumed that Dr. Highsmith was in-network because Dr. Highsmith had previously performed a major orthopaedic-type surgery on Mr. DeMaskey and used his Bluecross/Blueshield insurance.

Mr. DeMaskey did not know that Dr. Highsmith would not take his Bluecross/Blueshield insurance.

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

The fact of the matter is, Mr. DeMaskey and Carol DeMaskey were aware that Dr. Highsmith assured them that the surgeries would be performed under his health insurance. So, yeah, that would be the basis of the denial. So I did not -- we did not know. We, I say I. We did know that Carolina Neurosurgery was out-of-network.

Q Okay. Anything else in response to that question?

A Yeah. Wouldn't it have been really easy when we advised Carolina Neurosurgery to file Bluecross/Blueshield health insurance, available Bluecross/Blueshield health insurance? Wouldn't it have been really easy for Kiara or Dr. Highsmith to simply say, "We're not in-network to provide it under your health insurance"? I keep asking myself. I keep coming back to that. And the answer is, yes, it would have been very easy. Should it have been done? The answer is also, yes. As far as the documents, all the documents speak for themselves.

Q And they disregard the law firm's statements about available underinsured coverage and accident insurance coverage as part of that decision to proceed with the Allstate policy you're describing?

A Well, now you're talking about something

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

different.

Q I am.

A So I think we discussed, on multiple occasions, that what we represented with respect to the occupational policy was absolutely true at the time that it was represented. Same thing with the underinsured motorist coverage.

Q Okay. Now let's turn to Topic No. 10. This deals with the allegations in Paragraph 41 of the complaint and the corresponding Paragraph 41 in the answer denying the allegations in Paragraph 41 of the complaint. And I want to ask what is the factual basis for the denial of the allegations that Carolina Neurosurgery and the Defendants in this case, including D&M, entered into a contract described earlier as the LOP?

A I don't believe that the letter of protection is a contract; I just don't. It's just our standard letter of protection.

Q And how do you characterize the word "agreement" in that letter. We agree to do this, and you agree to do that; that's not a contract?

A It's not as if we sent Mr. DeMaskey to Dr. Highsmith's office and requested that he be seen and treated under a letter of protection. It's just

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

our standard letter of protection. In this case, Mr. DeMaskey advised us that Carolina Neurosurgery wanted us to send it. We sent it on Mr. DeMaskey's behalf.

Q Is it D&M's position it had no obligation to perform the agreement that's stated in the letter?

A We would do exactly what's stated in the letter. The first letter of protection will protect your bill for services out of the proceeds or settlement or verdict in the event that there is sufficient, and the patient's ultimately responsible. As you know, attorneys can't guarantee payment to doctors. All we can -- all we can say is what we do out of proceeds of the settlement or verdict.

Q But that was an agreement, correct?

A It was on behalf -- between Mr. DeMaskey and Dr. Highsmith. Dr. Highsmith, they didn't bargain with us for it. They didn't say, "Hey, DeLuca & Maucher, send us a letter of protection, and we'll provide services." The fact of the matter is, they should have used the health insurance, the Bluecross/Blueshield. I've said it multiple times, and I'm sure I'll say it multiple times until we're done.

Q So are there any other factual things,

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

events, conversations, documents that support the denial of the allegations that Carolina Neurosurgery and the lawyers, the Defendants entered into a contract described earlier as the LOP?

A I'll stand on all of my answers up to this point and no other documents.

Q Okay.

A Or conversations that I'm aware of at this time.

Q And Topic No. 11 -- thank you for that. Topic No. 11 for today relates to the allegations in Paragraph 43 of the complaint and the corresponding Paragraph 43 in the answer. Paragraph 43 in the complaint alleges the lawyers breached the LOP. And there's a denial of that. And how -- what's the basis for -- factual basis for the denial of those allegations?

A I stand by all my prior answers. This is the same question for the fifteenth time.

Q Well, not exactly. The allegations are that the lawyers breached the terms of a letter of protection. This is under the heading, breach of contract. So I have to disagree with your characterization. So I'm trying to find out, does the denial mean that there was a contract and it wasn't

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

breached or there never was a contract or what?

A All the above. So at the time that we advised them -- well, prior to any surgeries being done, we advised them we essentially withdrew that letter of protection, then we gave a second letter of protection. We advised them to use his health insurance. So the essence of the letter of protection goes to the available health insurance, liability insurance and health insurance. So we still didn't have the liability issue clarified at that time.

But obviously, we were concerned enough that we advised Dr. Highsmith to not proceed under the letter of protection on behalf of Mr. DeMaskey but rather to file his Bluecross/Blueshield insurance. Dr. Highsmith had followed that, if Dr. Highsmith had listened to his patient and done that, he wouldn't have performed surgeries that were not covered.

Q Do you want to take a break?

A Yeah, let's go five minutes.

VIDEOGRAPHER: Off the record at 11:47.

VIDEOGRAPHER: On the record at 11:54.

BY MR. PENDARVIS:

Q Okay. Let's turn now to -- we finished 11. We're looking now at the Topic No. 12. This relates to the allegations in Paragraph 49, and I'm going to

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

apologize on the record for the poor paragraph numbering in the original complaint. There's -- Microsoft and I were just not having a good day.

Anyway, the allegations about Paragraph 49 that we want to talk about is in Paragraph 49 on Page 10 of Exhibit 2. In its answer -- in their answer, the "Defendants admit only that they engaged in trade and commerce in practicing law in the course and scope of their representation of Defendants' client." The remaining allegations are denied. And I want to find out what's the factual basis for the denial of the allegations in Paragraph 49 of the complaint?

A Is that a question?

Q Yes.

A We have not engaged in unfair or deceptive practices, and we have not in our -- obviously, obviously. And then it goes on to say our deceptive acts or practices was willful. That's all denied. That's silly. That baffles me. That is preposterous. That is offensive. And all the facts, as I understand them, we -- we all have the same facts, all the same e-mails.

Q Are you able to identify any specific facts supporting the denial of the allegations in Paragraph 49?

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

A That incorporate every statement and every document that we've talked about.

Q Turning to the next topic, which is the -- focuses on the allegations in Paragraph 50 that's -- and the corresponding denial of those allegations in Paragraph 50 of the answer, and Paragraph 50 in the complaint is that "Lawyer's conduct is capable of repetition," and it's been denied. I would like to find out the factual basis for the denial that the lawyers' conduct alleged in this complaint is not capable of repetition.

A All right. So I'm a little confused as where we are. What question on Exhibit No. 1 are we at?

Q The topic of examination is Topic No. 13.

A All right.

Q It's Page 7 carrying over to the top of Page 8. And it refers to Paragraph 50 in Exhibit 2 and Paragraph 50 in Exhibit 3.

A That's denied, correct. It should be denied.

Q It is, and I'm trying to understand the factual basis for denying the statement that the lawyers' conduct is capable of repetition. How is it not capable of repetition?

A This is a fact-dependent circumstance with Mr. DeMaskey going to Carolina Neurosurgery, a place

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

where he's gone in the past to be treated by a doctor who's done surgery on him in the past. This is a very unique and singular event in the practice of law.

This case rises and falls on its facts. The fact of the matter is that DeLuca & Maucher, we were not false and deceptive. The fact of the matter is, DeLuca & Maucher, you would have us colluding with Mr. DeMaskey to obtain services and somehow deprive Dr. Highsmith and his practice of being paid. That's furthest from the truth.

If you take a step back and look at it all, we told Dr. Highsmith, "use his Bluecross/Blueshield health insurance so that you get paid." We didn't know that Dr. Highsmith did not take the DeMaskey's Bluecross/Blueshield health insurance. The fact of the matter is, Mr. DeMaskey and Ms. DeMaskey had no idea that Dr. Highsmith and Carolina Neurosurgery did not take his health insurance.

So this is a very specific event, and I think the mistake, if there are any, lies with Carolina Neurosurgery. So as I understand unfair trade practices and fraud and things like that, you have to show that something that's capable of repetition. I think that's like -- once again, I'm not nearly as smart as you or Beth, but I think it's capable of

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

repetition's something that happens over and over, and that's just not the case here.

This is just very unique facts and circumstances. I've never run into a doctor -- a surgeon who doesn't take health insurance. I can't say offhand that I've ever run into anybody who's a surgeon. So, no, I don't think it's capable of repetition at all. I think that would be the basis for denying that. And of course, my attorney, who is very smart, might have another explanation for that.

Q We're here today to get D&M's position on it, and it was a properly-noticed deposition. And you're here to give testimony on behalf of D&M. Didn't D&M testify earlier today that this letter of protection attached as Page 2 of Exhibit 6 of the complaint is a standard letter of protection?

A Correct.

Q Didn't that testify earlier?

A Correct.

Q So if it's a standard letter, has it been out -- been issued more than once?

A Right, but I think --

Q No, answer the question. Yes, has it been issued more than once?

A Yes.

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Q How many times, approximately?

A Often.

Q Hundreds?

A Probably more. Thousands.

Q Okay. So if D&M has issued hundreds of these letters of protection, how can it factually claim that this isn't -- this whole series of events is not capable of repetition?

A Easy. Because it says, the letter of protection that we sent, not paid by health insurance. They didn't file health insurance. That was a condition preceding. This is a unique circumstance. And that second letter of protection was sent before any of the surgeries. So, yeah, I stand by it. You may not like the answer, but you have to accept it.

I don't think it's capable of repetition. I think this is a very unique circumstance in which Dr. Highsmith and his office ignored very clear instruction to file the patient's Bluecross/Blueshield insurance from my office and ignored very clear instruction from the patient to file Bluecross/Blueshield insurance. Yeah, I think it's a unique circumstance. So I'm comfortable with the denial that our attorney filed on our behalf.

Q Turning now to Topic 14, identify the facts

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

CareWorks

Explanation of Review

EXHIBIT M

2000 Mallory Lane
Ste 130-280
Franklin, TN 37067
615-399-8658
877-494-7937

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Provider: HIGHSMITH ,JASON
7301 RIVERS AVE STE 242
Charleston, SC 29406

Treating Provider: HIGHSMITH ,JASON
Account #: [redacted]

Claim Jurisdiction: SC
Carrier Received: 07/07/23
Date Received: 07/07/23
Date Printed: 07/17/23
Processor: GW
Review #: 1[redacted]
Document Name: [redacted]

Bill Type: Office Visit

Client: INTACT INSURANCE
[redacted]

Patient: DEMASKEY, [redacted]
[redacted]

Dates of Service: 01/02/19 - 01/02/19

Diagnosis Code(s)
M542 [redacted]
M5412 [redacted]
M545 [redacted]
M5430 [redacted]

Provider TIN: [redacted]
Rendering Zip: 29406
Adjuster: KMGANT
Employer:

Claim #: [redacted]
DOI: 12/14/18
Coverage: Workers Compensation

Line	DOS	Procedure /Modifier	Description	Units	Billed Charges	FS/UCR Reductions	Audit Reductions	Network Reductions	Allowance	Qualify Code
1	01/02/19	99204	[redacted] 45 MIN	1	$900.00	$681.00	$0.00	$0.00	$219.00	FS001
			Totals:	**1**	**$900.00**	**$681.00**	**$0.00**	**$0.00**	**$219.00**	

0000000450

Qualify Code Descriptions:

FS001 - FEE SCHEDULE REDUCTION - STANDARD

Notes:

The patient is covered under an Occupational Accident Policy. Unless otherwise noted, charges were reduced by the lesser of the usual and customary charge for the service, treatment or supply as reflected in the local Workers' Compensation schedule or negotiated rate. All treatment and services must be due to the covered injury.

For questions regarding, this review please contact CareWorks at 615-399-8658 877-494-7937

CareWorks

Explanation of Review

2000 Mallory Lane
Ste 130-280
Franklin, TN 37067
615-399-8658
877-494-7937

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Provider: HIGHSMITH ,JASON
7301 RIVERS AVE STE 242
Charleston, SC 29406

Treating Provider: HIGHSMITH ,JASON
Account #: [redacted]

Claim Jurisdiction: SC
Carrier Received: 07/07/23
Date Received: 07/07/23
Date Printed: 07/17/23
Processor: GW
Review #: [redacted]
Document Name: [redacted]

Bill Type: Office Visit

Client: INTACT INSURANCE
[redacted]

Patient: DEMASKEY, [redacted]
[redacted]

Dates of Service: 01/21/19 - 01/21/19

Diagnosis Code(s)
M50220 [redacted]
M5126 [redacted]

Provider TIN: 811234492
Rendering Zip: 29406
Adjuster: KMGANT
Employer:

Claim #: [redacted]
DOI: 12/14/18
Coverage: Workers Compensation

Line	DOS	Procedure /Modifier	Description	Units	Billed Charges	FS/UCR Reductions	Audit Reductions	Network Reductions	Allowance	Qualify Code
1	01/21/19	99214	[redacted]	1	$480.00	$336.50	$0.00	$0.00	$143.50	FS001
2	01/21/19	76140	[redacted]	1	$180.00	$140.00	$0.00	$0.00	$40.00	UC001
3	01/21/19	72141 26	[redacted]	1	$300.00	$198.50	$0.00	$0.00	$101.50	FS001
4	01/21/19	72148 26	[redacted]	1	$300.00	$198.50	$0.00	$0.00	$101.50	FS001
			Totals:	**4**	**$1,260.00**	**$873.50**	**$0.00**	**$0.00**	**$386.50**	

0000000450

Qualify Code Descriptions:

FS001 - FEE SCHEDULE REDUCTION - STANDARD
UC001 - USUAL AND CUSTOMARY REDUCTION - STANDARD FAIR HEALTH

Notes:

The patient is covered under an Occupational Accident Policy. Unless otherwise noted, charges were reduced by the lesser of the usual and customary charge for the service, treatment or supply as reflected in the local Workers' Compensation schedule or negotiated rate. All treatment and services must be due to the covered injury.

For questions regarding, this review please contact CareWorks at 615-399-8658 877-494-7937

CareWorks

Explanation of Review

2000 Mallory Lane
Ste 130-280
Franklin, TN 37067
615-399-8658
877-494-7937

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Provider: HIGHSMITH ,JASON
7301 RIVERS AVE STE 242
Charleston, SC 29406

Treating Provider: HIGHSMITH ,JASON
Account #: [redacted]

Claim Jurisdiction: SC
Carrier Received: 07/07/23
Date Received: 07/07/23
Date Printed: 07/17/23
Processor: GW
Review #: [redacted]
Document Name: [redacted]

Bill Type: Office Visit

Client: INTACT INSURANCE
[redacted]

Patient: DEMASKEY, [redacted]
[redacted]

Dates of Service: 03/07/19 - 03/07/19

Diagnosis Code(s)
M545 [redacted]

Provider TIN: [redacted]
Rendering Zip: 29406
Adjuster: KMGANT
Employer:

Claim #: [redacted]
DOI: 12/14/18
Coverage: Workers Compensation

Line	DOS	Procedure /Modifier	Description	Units	Billed Charges	FS/UCR Reductions	Audit Reductions	Network Reductions	Allowance	Qualify Code
1	03/07/19	99214	[redacted]	1	$480.00	$336.50	$0.00	$0.00	$143.50	FS001
			Totals:	**1**	**$480.00**	**$336.50**	**$0.00**	**$0.00**	**$143.50**	

0000000450

Qualify Code Descriptions:

FS001 - FEE SCHEDULE REDUCTION - STANDARD

Notes:

The patient is covered under an Occupational Accident Policy. Unless otherwise noted, charges were reduced by the lesser of the usual and customary charge for the service, treatment or supply as reflected in the local Workers' Compensation schedule or negotiated rate. All treatment and services must be due to the covered injury.

For questions regarding, this review please contact CareWorks at 615-399-8658 877-494-7937

CareWorks

Explanation of Review

2000 Mallory Lane
Ste 130-280
Franklin, TN 37067
615-399-8658
877-494-7937

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Provider: HIGHSMITH ,JASON
7301 RIVERS AVE STE 242
Charleston, SC 29406

Treating Provider: HIGHSMITH ,JASON
Account #: [redacted]

Claim Jurisdiction: SC
Carrier Received: 07/07/23
Date Received: 07/07/23
Date Printed: 07/17/23
Processor: GW
Review #: 1[redacted]
Document Name: [redacted]

Bill Type: Surgery

Client: INTACT INSURANCE
[redacted]

Patient: DEMASKEY, [redacted]

Dates of Service: 03/15/19 - 03/15/19

Diagnosis Code(s)
M50223 [redacted]
M5412 [redacted]

Provider TIN: [redacted]
Rendering Zip: 29456
Adjuster: KMGANT
Employer:

Claim #: [redacted]
DOI: 12/14/18
Coverage: Workers Compensation

Line	DOS	Procedure /Modifier	Description	Units	Billed Charges	FS/UCR Reductions	Audit Reductions	Network Reductions	Allowance	Qualify Code
1	03/15/19	22551	[redacted]	1	$43,692.28	$41,458.78	$0.00	$0.00	$2233.50	FS001
2	03/15/19	22845	[redacted]	1	$8,092.44	$7,132.94	$0.00	$0.00	$959.50	FS001 R51B
3	03/15/19	22853	[redacted]	1	$6,912.69	$6,579.69	$0.00	$0.00	$333.00	FS001 R51B
			Totals:	**3**	**$58,697.41**	**$55,171.41**	**$0.00**	**$0.00**	**$3,526.00**	

0000000450

Qualify Code Descriptions:

FS001 - FEE SCHEDULE REDUCTION - STANDARD
R51B - THE PROCEDURE DOES NOT FALL WITHIN THE MEDICARE MULTIPLE PROCEDURE GUIDELINES, THEREFORE RECOMMENDED PAYMENT IS BASED ON 100% OF THE ALLOWED AMOUNT FOR THE PROCEDURE BILLED OR THE BILLED AMOUNT, WHICHEVER IS LESS.

Notes:

The patient is covered under an Occupational Accident Policy. Unless otherwise noted, charges were reduced by the lesser of the usual and customary charge for the service, treatment or supply as reflected in the local Workers' Compensation schedule or negotiated rate. All treatment and services must be due to the covered injury.

For questions regarding, this review please contact CareWorks at 615-399-8658 877-494-7937

CareWorks

Explanation of Review

2000 Mallory Lane
Ste 130-280
Franklin, TN 37067
615-399-8658
877-494-7937

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Provider: HIGHSMITH ,JASON
7301 RIVERS AVE STE 242
Charleston, SC 29406

Treating Provider: HIGHSMITH ,JASON
Account #: [redacted]

Claim Jurisdiction: SC
Carrier Received: 07/07/23
Date Received: 07/07/23
Date Printed: 07/17/23
Processor: GW
Review #: [redacted]
Document Name: [redacted]

Bill Type: Surgery

Client: INTACT INSURANCE
[redacted]

Patient: DEMASKEY [redacted]
[redacted]

Dates of Service: 05/02/19 - 05/02/19

Diagnosis Code(s)
M5126 [redacted]

Provider TIN: [redacted]
Rendering Zip: 29456
Adjuster: KMGANT
Employer:

Claim #: [redacted]
DOI: 12/14/18
Coverage: Workers Compensation

Line	DOS	Procedure /Modifier	Description	Units	Billed Charges	FS/UCR Reductions	Audit Reductions	Network Reductions	Allowance	Qualify Code
1	05/02/19	63047	[redacted]	1	$43,857.77	$42,416.27	$0.00	$0.00	$1441.50	FS001
2	05/02/19	63048	[redacted]	1	$18,594.10	$18,316.10	$0.00	$0.00	$278.00	FS001 R51B
			Totals:	**2**	**$62,451.87**	**$60,732.37**	**$0.00**	**$0.00**	**$1,719.50**	

0000000450

Qualify Code Descriptions:

FS001 - FEE SCHEDULE REDUCTION - STANDARD
R51B - THE PROCEDURE DOES NOT FALL WITHIN THE MEDICARE MULTIPLE PROCEDURE GUIDELINES, THEREFORE RECOMMENDED PAYMENT IS BASED ON 100% OF THE ALLOWED AMOUNT FOR THE PROCEDURE BILLED OR THE BILLED AMOUNT, WHICHEVER IS LESS.

Notes:

The patient is covered under an Occupational Accident Policy. Unless otherwise noted, charges were reduced by the lesser of the usual and customary charge for the service, treatment or supply as reflected in the local Workers' Compensation schedule or negotiated rate. All treatment and services must be due to the covered injury.

For questions regarding, this review please contact CareWorks at 615-399-8658 877-494-7937

CareWorks

Explanation of Review

2000 Mallory Lane
Ste 130-280
Franklin, TN 37067
615-399-8658
877-494-7937

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Provider: HIGHSMITH ,JASON
7301 RIVERS AVE STE 242
Charleston, SC 29406

Treating Provider: HIGHSMITH ,JASON
Account #: [redacted]

Claim Jurisdiction: SC
Carrier Received: 07/07/23
Date Received: 07/07/23
Date Printed: 07/17/23
Processor: GW
Review #: [redacted]
Document Name: [redacted]

Bill Type: Radiology

Client: INTACT INSURANCE
[redacted]

Patient: DEMASKEY, [redacted]
[redacted]

Dates of Service: 07/18/19 - 07/18/19

Diagnosis Code(s)
M545 [redacted]

Provider TIN: [redacted]
Rendering Zip: 29406
Adjuster: KMGANT
Employer:

Claim #: [redacted]
DOI: 12/14/18
Coverage: Workers Compensation

Line	DOS	Procedure /Modifier	Description	Units	Billed Charges	FS/UCR Reductions	Audit Reductions	Network Reductions	Allowance	Qualify Code
1	07/18/19	99024	[redacted]	1	$0.00	$0.00	$0.00	$0.00	$0.00	UC001
2	07/18/19	76140 26	[redacted]	1	$180.00	$140.00	$0.00	$0.00	$40.00	UC001
			Totals:	**2**	**$180.00**	**$140.00**	**$0.00**	**$0.00**	**$40.00**	

0000000450

Qualify Code Descriptions:

UC001 - USUAL AND CUSTOMARY REDUCTION - STANDARD FAIR HEALTH

Notes:

The patient is covered under an Occupational Accident Policy. Unless otherwise noted, charges were reduced by the lesser of the usual and customary charge for the service, treatment or supply as reflected in the local Workers' Compensation schedule or negotiated rate. All treatment and services must be due to the covered injury.

For questions regarding, this review please contact CareWorks at 615-399-8658 877-494-7937

CareWorks

Explanation of Review

2000 Mallory Lane
Ste 130-280
Franklin, TN 37067
615-399-8658
877-494-7937

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Provider: HIGHSMITH ,JASON
7301 RIVERS AVE STE 242
Charleston, SC 29406

Treating Provider: HIGHSMITH ,JASON
Account #: [redacted]

Claim Jurisdiction: SC
Carrier Received: 07/07/23
Date Received: 07/07/23
Date Printed: 07/17/23
Processor: GW
Review #: [redacted]
Document Name: [redacted]

Bill Type: Office Visit

Client: INTACT INSURANCE
[redacted]

Patient: DEMASKEY, [redacted]
[redacted]

Dates of Service: 08/06/19 - 08/06/19

Diagnosis Code(s)
M545 [redacted]

Provider TIN: 811234492
Rendering Zip: 29406
Adjuster: KMGANT
Employer:

Claim #: [redacted]
DOI: 12/14/18
Coverage: Workers Compensation

Line	DOS	Procedure /Modifier	Description	Units	Billed Charges	FS/UCR Reductions	Audit Reductions	Network Reductions	Allowance	Qualify Code
1	08/06/19	99214	[redacted]	1	$480.00	$335.50	$0.00	$0.00	$144.50	FS001
			Totals:	**1**	**$480.00**	**$335.50**	**$0.00**	**$0.00**	**$144.50**	

0000000450

Qualify Code Descriptions:

FS001 - FEE SCHEDULE REDUCTION - STANDARD

Notes:

The patient is covered under an Occupational Accident Policy. Unless otherwise noted, charges were reduced by the lesser of the usual and customary charge for the service, treatment or supply as reflected in the local Workers' Compensation schedule or negotiated rate. All treatment and services must be due to the covered injury.

For questions regarding, this review please contact CareWorks at 615-399-8658 877-494-7937

CareWorks

Explanation of Review

2000 Mallory Lane
Ste 130-280
Franklin, TN 37067
615-399-8658
877-494-7937

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Provider: HIGHSMITH ,JASON
7301 RIVERS AVE STE 242
Charleston, SC 29406

Treating Provider: HIGHSMITH ,JASON
Account #: [redacted]

Claim Jurisdiction: SC
Carrier Received: 07/07/23
Date Received: 07/07/23
Date Printed: 07/17/23
Processor: GW
Review #: [redacted]
Document Name: [redacted]

Bill Type: Office Visit

Client: INTACT INSURANCE
[redacted]

Patient: DEMASKEY, [redacted]
[redacted]

Dates of Service: 12/20/19 - 12/20/19

Diagnosis Code(s)
M545 [redacted]

Provider TIN: [redacted]
Rendering Zip: 29406
Adjuster: KMGANT
Employer:

Claim #: [redacted]
DOI: 12/14/18
Coverage: Workers Compensation

Line	DOS	Procedure /Modifier	Description	Units	Billed Charges	FS/UCR Reductions	Audit Reductions	Network Reductions	Allowance	Qualify Code
1	12/20/19	99214	[redacted]	1	$480.00	$335.50	$0.00	$0.00	$144.50	FS001
			Totals:	**1**	**$480.00**	**$335.50**	**$0.00**	**$0.00**	**$144.50**	

0000000450

Qualify Code Descriptions:

FS001 - FEE SCHEDULE REDUCTION - STANDARD

Notes:

The patient is covered under an Occupational Accident Policy. Unless otherwise noted, charges were reduced by the lesser of the usual and customary charge for the service, treatment or supply as reflected in the local Workers' Compensation schedule or negotiated rate. All treatment and services must be due to the covered injury.

For questions regarding, this review please contact CareWorks at 615-399-8658 877-494-7937

Claims Processing Center
188 Inverness Drive W., Suite 600
Englewood CO 80112

EXHIBIT N

ELECTRONICALLY FILED - 2024 Oct 28 4:45 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Mail to:

000001 - 0261

JASON HIGHSMITH MD
7301 RIVERS AVE STE 242
NORTH CHARLESTON SC 29406-4616

Claims Processing Center
188 Inverness Drive W., Suite 600
Englewood CO 80112

EXPLANATION OF PAYMENT 2120042605

PAY TO: CAROLINA NEUROSURGERY & ORTHOPEDICS INC

COMPANY:	ATLANTIC SPECIALTY INSURANCE COMPANY
DATE ISSUED:	07/20/2023
CHECK AMT:	$6323.50
INSURED:	SUPERIOR BULK LOGISTICS, INC. DBA SUPERIOR CARRIE
POLICY NO:	2160001880012
DATE/LOSS:	12/14/2018
CLAIM NO.:	0AB245416-01-01
CLAIM TYPE:	MEDICAL (NC)
CLAIMANT:	[redacted] DEMASKEY
ADJUSTER:	KRISTI GANT

AGENT: COTTINGHAM & BUTLER INSURANCE SERVICES
800 MAIN STREET
DUBUQUE, IA 52001

IN PAYMENT OF: OFFICE VISIT AND RADIOLOGY AND SURGERY

SERVICE DATES: 01/02/2019 THRU 12/20/2019

INVOICE NUMBER: BULK PAYMENT X 8 - 177271

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND. SECURITY FEATURES INCLUDE THERMOCHROMIC INK, MICROPRINTING, A VOID PANTOGRAPH, AND AN ARTIFICIAL WATERMARK AND SECURITY SCREEN ON THE BACK.

Claims Processing Center
188 Inverness Drive W., Suite 600
Englewood CO 80112

93-445/929

Check Number	Date
[redacted]	07/20/2023

ALL PAYEES MUST ENDORSE

Amount
$******6,323.50

PAY TO THE ORDER OF: CAROLINA NEUROSURGERY & ORTHOPEDICS INC

IN PAYMENT OF: OFFICE VISIT AND RADIOLOGY AND SURGERY

PAY EXACTLY SIX THOUSAND THREE HUNDRED TWENTY THREE DOLLARS AND 50 CENTS

NOT VALID AFTER 90 DAYS FROM ISSUE

usbank

INSURED: SUPERIOR BULK LOGISTICS, INC. DBA SUPERIOR CARRIE
POLICY NO: 2160001880012
CLAIM NO: 0AB245416-01-01
CLAIMANT: [redacted] DEMASKEY

ADJUSTER: KRISTI GANT
LOSS DATE: 12/14/2018
CLM TYPE: MEDICAL (NC)

GN8P

AUTHORIZED SIGNATURE

T1D101 - 41988276-000289-01/01-0-0-0

[redacted]