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SC Court of Appeals

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

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

v.

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

---

RECORD ON APPEAL
VOLUME III

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

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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 RECONSIDER COURT'S NOVEMBER 6, 2024 ORDER ON 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, move this Court pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, to reconsider its November 6, 2024 Order denying Defendants' Motion to Strike. **Ex. 1**. Because the 10th day to file fell on Saturday, November 16, 2024, the deadline to file a Motion to Reconsider moved to Monday, November 18, 2024. *See* Rule 6(a), SCRCP.

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 costs. 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.

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SUMMARY OF RELEVANT FACTS

Current Lawsuit

Plaintiff filed this action on July 22, 2021, asserting various claims attempting to recover the medical bills from Client's attorneys. ***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. Defendants filed their Answer to the first Complaint on April 6, 2023.

Five months after Defendants answered, on September 6, 2023, Plaintiff moved to amend the complaint to change the theories of recovery and add two additional claims. **Ex. 2 (Mtn. to Amnd.)**. With the motion, Plaintiff filed a proposed Amended Complaint, which Plaintiff also filed with a supplemental memo on August 16, 2024 prior to a hearing. **Ex. 2; Ex 3 (8.16.24 Supp. Memo.)**. Defendants contested the motion, but the Court granted that motion on August 26, 2024. **Ex. 4 (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. 5 (9.5.24 Amnd. Compl.)**. Defendants' counsel raised the issue that Plaintiff improperly filed a version different from what Plaintiff had requested leave, and Plaintiff withdrew the improperly filed Amended Complaint and filed the version the court approved. **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. 5 (9.5.24 Amd. Compl.)**.

Because Plaintiff filed a Second Amended Complaint without leave of court or Defendants' consent under Rule 15, SCRCP, Defendants moved to strike the Second Amended Complaint. ***See* Mtn. to Strike**. Plaintiff did not file a response in opposition to the motion.

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The court held a hearing on November 4, 2024. At the hearing, Plaintiff's counsel argued that Plaintiff amended its complaint on September 10, 2024, and, under Rule 15, SCRCP, it had 30 days to amend as of right after that date, which it did when it filed its Second Amended Complaint. This argument is contrary to the plain reading of the rule and persuasive law. Apparently based on this argument, the Court denied Defendant's motion to strike and entered an order on November 6, 2024. The order, however, is silent on why the motion was denied.

Defendants move this Court to reconsider its order because, despite being silent, it must be based on Plaintiff's counsel's argument at the hearing which is contrary to governing law and policy for interpreting Rule 15, SCRCP.

STANDARD

A motion for reconsideration is appropriate when "the court has misunderstood, failed to fully consider, or . . . failed to rule on an argument or issue." *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). "A party is usually allowed to ask the court to reconsider its decision even if it means rehashing an argument previously presented." *Id.* at 21, 602 S.E.2d at 778-79. Motions for reconsideration are a vehicle to call the court's attention to a possible misapprehension of an argument, and "to revisit a previously raised argument." *Id.*, 602 S.E.2d at 779.

ARGUMENT

I. This Court overlooked or misapprehended the law and policy supporting interpreting Rule 15, SCRCP, that should have resulted in striking Plaintiff's invalid Second Amended Complaint and, accordingly, should reconsider its order and strike 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. The "complaint" is considered a pleading, not an "amended complaint." *See* Rule 7(a), SCRCP

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(defining pleadings and including the "complaint," not listing "amended complaints," and stating "no other pleadings shall be allowed").

South Carolina's Rule 15 is similar to Federal Rule 15, and our courts rely frequently on federal law and cases interpreting Federal Rule 15 to interpret South Carolina's Rule 15. *See* Rule 15(a), SCRCP, 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)

Federal Rule 15, which gives 21 days instead of 30 in which to amend a pleading, makes clear that there is only one "as a matter of course" amendment period: "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. & Proc. Civ.* § 1483 (3d ed. 2010) ("These periods are not cumulative; only one amendment as a matter of course is permitted.").

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).

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In *Koulpasis*, Judge Childs dismissed an amended complaint that was filed outside of the 21-day period without leave of court or consent. 2020 WL 3548809, at *2. Judge Childs noted that filing the amended complaint outside of the time period without leave or consent "render[ed] the pleading to be more than technically deficient." *Id.*

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 course 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 a matter of course" is not revived by subsequent amended 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. Defendants filed their Answer to the first Complaint on April 6, 2023. Plaintiff had 30 days from that date to amend its pleading as a matter of course. Plaintiff did not amend as a matter of course, and the right expired on May 6, 2023.

Plaintiff moved for leave to file an Amended Complaint on September 6, 2023. This is a recognition that leave was required because the right to amend as a matter of course had expired. Plaintiff attempted to improperly file a different amended complaint, which it withdrew. Plaintiff filed its Amended Complaint on September 10, 2024. Defendants answered the Amended Complaint on September 20, 2024. On September 24, 2024, without leave or consent, Plaintiff filed a Second Amended Complaint.

Rule 15 is clear and requires leave or consent to amend, neither of which Plaintiff had. Further, pursuant to the comments to Federal Rule 15 and interpreting case law, the 30-day period within which to amend "as a matter of course" is not revived by filing an amended complaint. Thus, Plaintiff, by filing the Amended Complaint on September 10 and Defendants

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answering September 20, does not get a revived or new 30 period within which to amend the pleading. Pursuant to *Koulpasis*, a pleading filed not in compliance with Rule 15 should be dismissed or struck.

This Court, however, denied the motion to strike apparently based on the argument that Plaintiff gets a new 30-day period to amend its pleading as a matter of course. As argued above, this is incorrect. Thus, the Court has overlooked or misapprehended governing and persuasive law to reach its ruling. Because this Court misapprehended or overlooked law on the subject, this Court must reconsider its ruling and grant Defendants' motion to strike, leaving the First Amended Complaint filed September 10, 2024, as the operative pleading.

If this Court's ruling is permitted to stand, however, Plaintiff cannot take issue if, within 30 days after Defendants answer the Second Amended Complaint, the Defendants amend the answer to assert additional affirmative defenses and counterclaims if they so choose.

This 18th day of November, 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.	**ORDER DENYING DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S SECOND AMENDED COMPLAINT AND POSTPONING HEARING ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

THIS MATTER CAME BEFORE THE COURT on November 4 2024, for a hearing on the Defendants' Motion to Strike Plaintiff's Second Amended 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 Defendants' motion to strike, supporting memoranda, and hearing arguments of counsel, the Defendants' Motion to Strike Plaintiff's Second Amended Complaint is DENIED, and the hearing on the Defendants' Motion for Summary Judgment is continued until another term of court.

AND IT IS SO ORDERED!

Dale E. Van Slambrook
Presiding Circuit Court judge

November 5, 2024

Charleston, South Carolina

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Charleston Common Pleas

Case Caption: Carolina Neurosurgery & Orthopedics Inc VS Michael A Maucher , defendant, et al

Case Number: 2021CP1003379

Type: Order/Other

And It Is So Ordered!

s/Dale E. Van Slambrook S.C. Circuit Court Judge #2781

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 MOTION TO AMEND COMPLAINT**

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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

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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

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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

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EXHIBIT
1

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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

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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.

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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

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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*."

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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.

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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

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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

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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

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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.	**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.

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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

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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

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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.
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Counsel for Plaintiff

Beaufort, South Carolina

September 4, 2023

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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.

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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

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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.

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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.

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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

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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

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EXHIBIT 5

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**

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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

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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.

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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

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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.

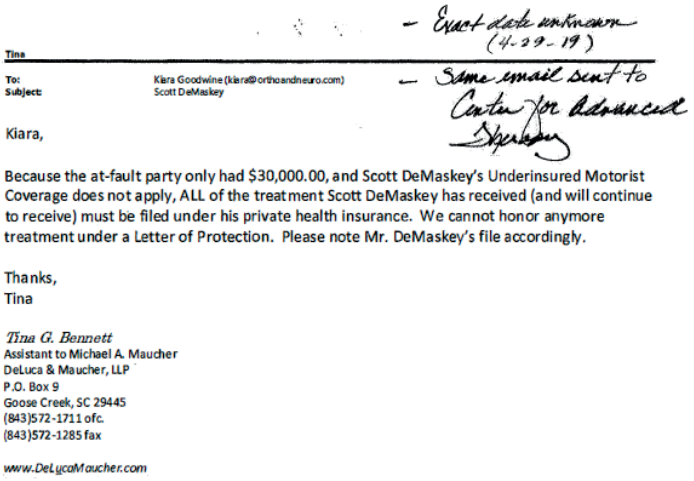
18. After the second surgery, the Lawyers reported to Carolina Neurosurgery that the Lawyers' prior statements representing over $1,000,000 in available insurance coverage were incorrect.

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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 Caitlin 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.

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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.

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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

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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

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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

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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

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ELECTRONICALLY FILED - 2024 Sep 10 8:56 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
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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.

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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

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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*."

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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.

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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

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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

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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

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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.

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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"

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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.

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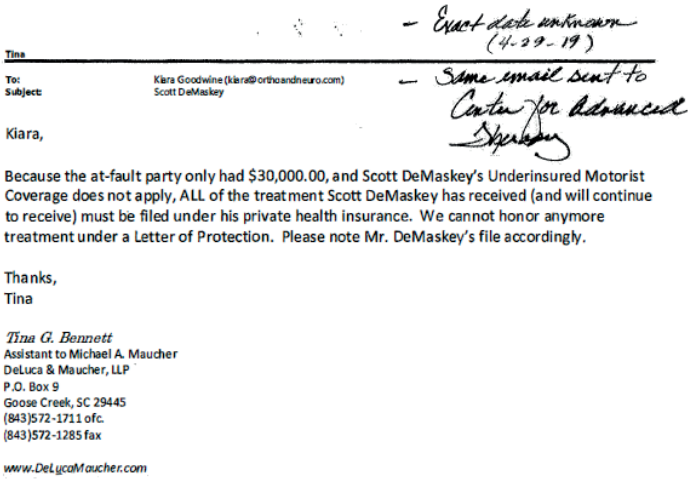
17. On May 2, 2019, relying on the Lawyers' promises and assurances on the amount of insurance coverage, Carolina Neurosurgery performed a second surgery on the Lawyers' client at an approximate cost of $65,000.

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.

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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.

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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

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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

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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 OPPOSING DEFENDANTS' MOTION TO ALTER OR AMEND ORDER DENYING DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S SECOND AMENDED COMPLAINT**

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

Plaintiff, CAROLINA NEUROSURGERY & ORTHOPEDICS, INC., respectfully submits this memorandum opposing Defendants' Motion to Alter or Amend this Court's Order denying Defendants' Motion to Strike Plaintiff's Second Amended Complaint. For the reasons set forth below, Defendants' motion lacks merit and should be denied.

BACKGROUND

On August 26, 2024, the Court issued an Order granting Plaintiff's motion to amend the complaint, and on September 10, 2024, Plaintiff filed an amended Complaint. Defendants filed an Answer on September 20, 2024, and on September 24, Plaintiff filed the Second Amended Complaint at issue in this motion. The Second Amended Complaint contained minor variations in the fact allegations compared to the version attached to the motion to amend and filed on September 10, 2024, *but did not include any new causes of action*. On September 24, 2024, Defendants filed a motion to strike the Second Amended Complaint, which this Court denied by an Order dated November 6, 2024. Defendants now seek to have this Court alter or amend the Court's order denying their motion to strike under Rule 59(e) of the South Carolina Rules of Civil Procedure.

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LEGAL STANDARD

"The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'" *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992).

"A motion to strike, challenging a theory of recovery in the complaint, is comparable to a motion to dismiss under Rule 12(b)(6), SCRCP." *Robinson v. Code*, 384 S.C. 582, 585, 682 S.E.2d 495, 496 (Ct. App. 2009). "A court should not strike a cause of action merely because the court doubts the [claimant] will prevail in the action." *Id.* at 585, 682 S.E.2d at 496. "[A motion to strike] cannot be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case." *McCormick v. England*, 328 S.C. 627, 633, 494 S.E.2d 431, 433 (Ct. App. 1997). "The question is whether in the light most favorable to the [claimant], and with every reasonable doubt resolved in her behalf, the complaint states any valid claim for relief." *Id.* at 633, 494 S.E.2d at 433-34.

ARGUMENT

I. The Court Correctly Denied Defendants' Motion to Strike.

The Court's Order denying Defendants' motion to strike the Second Amended Complaint is well-founded and supported by both the facts and applicable law. The Second Amended Complaint does not contain "redundant, immaterial, impertinent, or scandalous matter" as required for the circuit court to strike a pleading pursuant to Rule 12(f), SCRCP. Therefore, the Court's Order denying Defendants' motion to strike the Second Amended Complaint was proper and should not be altered or amended.

Defendants' motion to strike was premised on procedural argument that the Second Amended Complaint was file four days after Defendants filed their Answer to the pleadings filed after Plaintiff's motion to amend was granted. This hypertechnical argument ignores the reality that the filed Second Amended Complaint contains only a few minor alterations from the version attached to the motion to amend. However, as this Court correctly determined, those alterations were immaterial and did not introduce new causes of action or prejudice Defendants in any way. Striking the Second Amended Complaint would have been contrary to the liberal standard for amendments under Rule 15.

II. Defendants Have Not Identified Any Manifest Error of Law or Fact.

Defendants' motion to alter or amend fails to identify any manifest error of law or fact in the Court's order. Instead, Defendants merely rehash the same arguments raised in their motion to

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strike, which this Court has already considered and rejected.

III. Defendants Have Not Demonstrated Prejudice.

Defendants' motion also fails to demonstrate any prejudice resulting from the Court's order. The minor alterations to the Second Amended Complaint did not substantively change the claims or add any new causes of action. Defendants remain fully capable of responding to the allegations as pled, and their ability to defend this case has not been compromised in any way.

The Second 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.

In August 2024, 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). 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 did not carry their burden to show prejudice when they oppose the motion to amend or in their Motion to Strike. Whether to grant the motion should not be based on the court's perception of the merits of the Second 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

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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 amendment that adds additional legal theories and no new factual allegations, and therefore, also showed no prejudice resulting from the Court's Order denying their motion to strike.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court deny Defendants' motion to alter or amend its order denying the motion to strike the Second Amended 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
January 24, 2025

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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 SECOND 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 Second Amended Complaint, as follows:

PLAINTIFF'S SUMMARY OF THE CASE

1. Defendants deny Paragraph 1 of the Second Amended Complaint as stated.

PARTIES

2. Defendants admit Paragraph 2 of the Second Amended Complaint.

3. Defendants admit Paragraph 3 of the Second Amended Complaint.

4. In response to Paragraph 4 of the Second 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 Second Amended Complaint, Defendants admit only that this Court has jurisdiction, and deny any remaining allegations inconsistent herewith.

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VENUE

6. Defendants admit Paragraph 6 of the Second Amended Complaint.

PLAINTIFF'S FACTS

7. Defendants admit Paragraph 7 of the Second Amended Complaint.

8. In response to Paragraph 8 of the Second 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 Second Amended Complaint.

10. In response to Paragraph 10 of the Second 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 Second Amended Complaint.

12. Defendants deny Paragraph 12 of the Second Amended Complaint.

13. Defendants deny Paragraph 13 of the Second Amended Complaint as stated.

14. In response to Paragraph 14 of the Second Amended Complaint, Defendants admit only that on January 21, 2019, at 11:58:35 a.m., they sent a second email discussing pre-

existing 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 Second 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 Second 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. In response to Paragraph 17 of the Second 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 17.

18. Defendants deny Paragraph 18 of the Second Amended Complaint as stated.

19. In response to Paragraph 19, Defendants admit they warned Plaintiff of the insurance coverage situation. All remaining allegations of Paragraph 19 are denied.

20. In response to Paragraph 20 of the Second Amended Complaint, Defendants admit only that they provided Plaintiff with the referenced email. Defendants deny all remaining allegations of Paragraph 20.

21. In response to Paragraph 21 of the Second Amended Complaint, Defendants admit only that the referenced document contains the language quoted. Defendants deny all remaining allegations of Paragraph 21.

22. Defendants deny Paragraph 22 of the Second Amended Complaint as stated.

23. Defendants admit Paragraph 23 of the Second Amended Complaint as stated.

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24. In response to Paragraph 24 of the Second Amended Complaint, Defendants admit the quoted language is not contained in the referenced document. Defendants deny all remaining allegations of Paragraph 24.

25. Defendants deny Paragraph 25 of the Second Amended Complaint.

26. Defendants deny Paragraph 26 of the Second Amended Complaint.

27. Defendants deny Paragraph 27 of the Second Amended Complaint as stated.

28. Defendants admit Paragraph 28 of the Second Amended Complaint.

29. Defendants deny Paragraph 29 of the Second Amended Complaint as stated.

30. Defendants deny Paragraph 30 of the Second Amended Complaint as stated.

31. In response to Paragraph 31 of the Second Amended Complaint, Defendants admit only that they have not paid Plaintiff any of the stated amounts. Defendants deny all remaining allegations of Paragraph 31, including, but not limited to, the implication that Defendants have an obligation to pay the sums referenced.

32. Defendants deny Paragraph 32 of the Second Amended Complaint.

33. Defendants deny Paragraph 33 of the Second Amended Complaint.

PLAINTIFF'S FIRST CAUSE OF ACTION
(Breach of Contract)

34. In response to Paragraph 34 of the Second Amended Complaint, Defendants incorporate their responses above as if stated fully herein.

35. Defendants deny Paragraph 35 of the Second Amended Complaint.

36. Defendants deny Paragraph 36 of the Second Amended Complaint.

37. Defendants deny Paragraph 37 of the Second Amended Complaint.

38. Defendants deny Paragraph 38 of the Second Amended Complaint.

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39. Defendants deny Paragraph 39 of the Second Amended Complaint.

37. Defendants deny Paragraph 37[1] of the Second Amended Complaint.

PLAINTIFF'S SECOND CAUSE OF ACTION
(Violation of South Carolina Unfair Trade Practices Act)

38. In response to Paragraph 38 of the Second Amended Complaint, Defendants incorporate their responses above as if stated fully herein.

39. Defendants are informed and believe, that Paragraph 39 of the Second Amended Complaint does not require a response.

40. In response to Paragraph 40 of the Second 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 Second Amended Complaint.

42. Defendants deny Paragraph 42 of the Second Amended Complaint.

43. Defendants deny Paragraph 43 of the Second Amended Complaint.

44. Defendants deny Paragraph 44 of the Second Amended Complaint.

45. 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 44.

[1] At this point in Plaintiff's Second 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.

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PLAINTIFF'S THIRD CAUSE OF ACTION
(Negligent Misrepresentation)

40. In response to Paragraph 40 of the Second Amended Complaint, Defendants incorporate their responses above as if stated fully herein.[2]

41. Defendants deny Paragraph 41 of the Second Amended Complaint.

42. Defendants deny Paragraph 42 of the Second Amended Complaint.

43. Defendants deny Paragraph 43 of the Second Amended Complaint as stated.

44. Defendants deny Paragraph 44 of the Second Amended Complaint.

45. Defendants deny Paragraph 45 of the Second Amended Complaint.

46. Defendants deny Paragraph 46 of the Second Amended Complaint.

47. Defendants deny Paragraph 47 of the Second Amended Complaint.

PLAINTIFF'S FOURTH CAUSE OF ACTION
(Promissory Estoppel)

48. In response to Paragraph 48 of the Second Amended Complaint, Defendants incorporate their responses above as if stated fully herein.

49. Defendants deny Paragraph 49 of the Second Amended Complaint.

50. Defendants deny Paragraph 50 of the Second Amended Complaint.

51. Defendants deny Paragraph 51 of the Second Amended Complaint.

52. Defendants deny Paragraph 52 of the Second Amended Complaint.

53. Defendants deny Paragraph 53 of the Second Amended Complaint.

54. Defendants deny any and all relief sought by Plaintiff in its "Prayer for Relief."

[2] At this point in Plaintiff's Second Amended Complaint the paragraph numbering restarts at 40. Defendants' answer is similarly numbered to avoid any confusion related to which paragraphs the Defendants are responding.

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55. Defendants deny each and every allegation contained in the Second 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.

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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
(Rescission)

To the extent there was a contract between D&M and Plaintiff—which Defendants expressly deny—Defendants revoked that contract by expressly instructing Plaintiff to seek payment from the patient/client's BlueCross/BlueShield health insurance. Furthermore, if rescission is found, Plaintiff's damages would be limited to the costs incurred prior to rescission.

SEVENTH AFFIRMATIVE DEFENSE
(Waiver, Estoppel, and Laches)

Plaintiff's claims are or may be barred by the doctrines of waiver, estoppel and/or laches.

EIGHTH 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.

NINTH AFFIRMATIVE DEFENSE
(Limitation of Damages)

In the event the Court finds there was a valid contract with 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.

TENTH 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.

ELEVENTH AFFIRMATIVE DEFENSE
(No Adverse Effect on Public Interest)

Defendants' alleged conduct complained of in Plaintiff's Second 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.

TWELFTH 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.

THIRTEENTH 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.

FOURTEENTH AFFIRMATIVE DEFENSE
(Unclean Hands)

Plaintiff's equitable claims and relief are barred by the doctrine of unclean hands.

FIFTEENTH 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.

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SIXTEENTH 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 Second Amended Complaint, Defendants respectfully request 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 14th day of February, 2025.

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 - 2025 Mar 25 5:22 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' SECOND 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 Second 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. Defendants filed a revised memorandum, but Plaintiff was permitted to amend the complaint a second time to change its allegations. As a result of the multiple amendments, Defendants are submitting this second 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,

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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 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.[1] Plaintiff and Client resolved their case immediately prior 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. **2d 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. **2d Amd. Cmplt. ¶ 7**. Client chose to return to Dr. Highsmith to treat the injuries he sustained in the car accident.

Upon Plaintiff's requests, 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).

[1] *Carolina Neurosurgery and Orthopedics, Inc. v. Scott Demaskey*, 2021CP0801088.

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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 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 agreed, responding "Okay thanks for the update." **Ex. C**. At no point did Plaintiff or any of Plaintiff's employees advise that they did not accept Client's insurance or would not bill Client's insurance.

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.

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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.**

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, Client providing his insurance information, and Goodwine agreeing to bill insurance.

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.[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.**

[2] Plaintiff contests the authenticity of this email and has made it the focus of the case. However, the court already made a finding of fact that Plaintiff received this email, and Plaintiff has not appealed that ruling. **See Exhibit H at ¶ 20 (Order on MTD)**. Therefore, it is the law of the case and conclusively proven for the purposes of trial.

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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.**

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 and its attorney's fees for suing Client. 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 & Procedural History

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). At the time, Plaintiff's theory under breach of contract and SCUTPA was based on the letters of protection Defendants sent Plaintiff. ***See* 7.22.21 Compl. ¶ 41** ("Carolina Neurosurgery and the Lawyers entered into a contract described earlier as the [Letter of Protection].").

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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 and filed a revised motion for summary judgment.

Plaintiff, however, amended the complaint a second time but without leave or consent. Nevertheless, the Court refused to strike the improperly filed Second Amended Complaint. The Second Amended Complaint again changed Plaintiff's theories of recovery. Instead of the letters of protection serving as the basis for the contract, Plaintiff now alleges a contract was formed based on the email about insurance limits. ***See* 2nd Amd. Comp. ¶ 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."). Defendants answered the Second Amended Complaint and now submit this second 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).

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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 "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 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 as they have changed.

"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.

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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 (5) 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.** This language does not prevent this Court from finding the Order is binding on Plaintiff. At the time the Order was entered, Plaintiff's claims for breach of contract and SCUTPA were based on the letters of protection. ***See* 7.22.21 Compl. ¶ 41** ("Carolina Neurosurgery and the Lawyers entered into a contract described earlier as the [Letter of Protection]."). But after the order Plaintiff abandoned its theories of liability based on the letters of protection and, instead, changed to focus on the email from Tina Bennett that identified the insurance limits. ***See* 2nd Amd. Comp. ¶ 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.").

The exclusion from the Order's application was for the remaining breach of contract and SCUTPA claims. Those claims were amended twice and the theories alleged for Breach of Contract and SCUTPA are substantially different, those two claims are not "remaining" and, in fact, should be considered "new" claims. Therefore, the Order will preempt the changed claims

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for Breach of Contract and 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**.

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- "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." **2nd Amd. Compl. ¶ 35**. Plaintiff asserts in a conclusory fashion that Defendants breached that contract and caused it damages. **Amd. Compl. ¶¶ 37-38**.

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

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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. ¶ 41**. 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 did not receive the email and did not know about it until after the surgeries were performed. **Ex. J (Supp ATI 22)**.

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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."

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 insurance limits 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 limits, 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 establish a violation of SCUTPA, and those findings are unchangeable absent appeal. Therefore, this Court should dismiss Plaintiff's claim for violation of SCUTPA.

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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. **2nd Amd. Compl. ¶¶ 41, 45**. 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. **2nd Amd. Compl. ¶¶ 49-50**. 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.").

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**

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("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 claims for negligent misrepresentation and promissory estoppel, the claims are preempted by the Order and this Court should grant Defendants summary judgment.

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)).

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

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about coverage. **2nd Amd. Compl. ¶ 35**. Plaintiff alleges that it fulfilled all necessary preconditions, and that Defendants breached the contract. **2nd Amd. Compl. ¶¶ 36-37**.

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 January 21 statement about insurance coverage created a contract. However, there was not an offer or an acceptance.

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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.** Bennett confirmed this in her testimony and that when she mentioned "coverage" she was referring to the policy limits not whether the claim would be covered within the policies. **Ex. O (Bennett Depo. at 27:3-14)**. 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

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the treatment 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. Furthermore, 19 days before the alleged offer, Plaintiff was already providing services to the Client, having accepted him has a new patient and charging him $900 for his initial visit. **See Ex. F** ($900 charge for services on January 2, 2019).

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 was already providing services to the client before the email exchange about coverage.

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Third, 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

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be construed as 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 limits 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 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

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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. 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

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representations about email communications that never occurred"—referencing the April 29, 2019 email from Bennett to Goodwine and alleging Plaintiff did not receive the email and did not know about it until after the surgeries were performed. **Ex. J (Pltf's Supp ATI 22)**.

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**. Bennett confirmed this in her testimony and that when she mentioned "coverage" she was referring to the policy limits not whether the claim would be covered within the policies. **Ex. O (Bennett Depo. at 27:3-14)**. 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.

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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 and information 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

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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 that Plaintiff was out-of-network.

Therefore, there is no genuine issue of material fact that Defendants did not know Plaintiff was out of network and the SCUTPA claim should be dismissed.

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." **Ex. J (Pltf's Supp ATI 22)**. 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

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there being enough overall coverage to cover the claim based on the limits of those policies. 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.

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

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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 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 Dr. Highsmith 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

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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)**.

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 Plaintiff to render medical services it thought would be covered by insurance that supposedly were not covered.

Also underlying Plaintiff's SCUTPA claim is the allegation that it was unfair or deceptive to represent Defendants sent an email to Plaintiff that Plaintiff did not receive—referring to the April 29, 2019 email wherein Tina mentions issues with coverage. Plaintiff refers to it as the "false email." However, this "unfair or deceptive" email cannot have proximately caused Plaintiff any monetary loss because, according to Plaintiff's own allegations it had already treated Plaintiff and incurred medical costs. **2nd Amd. Compl. ¶¶ 18-28** (noting Plaintiff received the "false email" after the second surgery, and that occurred after Plaintiff had already incurred $125,409.25 in medical costs through December 20, 2019). If the representations about the April 29, 2019 email being sent occurred after Plaintiff had already provided the services, i.e., the damages Plaintiff is claiming in this lawsuit, then it cannot have caused Plaintiff to provide those services and incur costs. Therefore, Plaintiff cannot prove the

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representations about 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.

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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." **Ex. J (Pltf's Supp ATI 22)**. 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.

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

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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**.

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

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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 Second 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—a true statement that remained true. *See* **Ex. L (50:3-7)**. Client had those policies in effect when Bennett communicated with 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,

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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 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.

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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 *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

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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.

VI. If any claims survive the motion for summary judgment, this Court should dismiss Plaintiff's claims for its attorney's fees suing Client in the collection action because there is no statute or contract giving the right to recover attorney's fees for suing Client.

It is well established that that attorney's fees are not recoverable unless authorized by contract or statute." *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993). *Duke Power Co. v. South Carolina Pub. Serv. Comm'n*, 284 S.C. 81, 100, 326 S.E.2d 395, 406 (1985) ("Ordinarily, an attorney must look to his client for compensation for services performed by his employment" unless authorized by contract or statute.).

"A statute allowing attorney fees is in derogation of the common law and must be strictly construed." *Belton v. State*, 339 S.C. 71, 74, 529 S.E.2d 4, 5 (2000). For example, the court found that an attorney was not entitled to his fees, and reversed the lower court, where the statute stated that fees could be awarded from an estate if the court "appointed" the attorney and the court had not appointed the attorney requesting fees. *Dowalby v. Chambless*, 344 S.C. 558, 563, 544 S.E.2d 646, 648 (Ct. App. 2001). Similarly, the court found an attorney was not entitled to his fees when the court entered judgment an offer of judgment on the Whistleblower Act because the Whistleblower Act stated that a "court or jury award" would be entitled to attorney's fees and the ministerial act of entering an offer of judgment was not a court "award." *Belton v. State*, 339 S.C. 71, 74, 529 S.E.2d 4, 5 (2000).

In discovery, Plaintiff included an updated itemized damages list that directly claims the attorney's fees it incurred paying Biff Sowell and the firm Sowell Durant to represent it related to its lawsuit against Client to recover medical bills under the Financial Policy. ***See* Ex. J (Supp. ATI 5** (claiming as damages the "Legal fees paid to Sowell & Durant to pursue recovery under

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One Beacon policy" for $93,716); Plaintiff mischaracterizes the fees as incurred to pursue recovery against One Beacon. The fees were incurred primarily for litigating against Client in the debt collection action. **Ex. P (Plaintiff 30(b)(6) at 40:10-14)** (Plaintiff confirming they are asserting as damages Sowell's attorney's fees were for suing the client).

This Court should dismiss the claim for Sowell's attorney's fees because there is no contract or statute that permits the recovery of those fees against Defendants. First, unquestionably, there is no contract expressly allowing for the recovery of legal fees. Plaintiff relies on the insurance coverage email in January 2019 to assert its contract claim, and there is no term in that contract for the recovery of attorney's fees.

Although SCUTPA mentions the right to recover certain attorney fees, strictly construing SCUTPA as is required leads to the conclusion attorney's fees incurred in a separate lawsuit not involving a SCUTPA claim are not recoverable in this lawsuit. The statute states: "Upon the finding by the court of a violation of this article, the court shall award to the person bringing such action under this section reasonable attorney's fees and costs." S.C. Code Ann. § 39-5-140. Similar to *Dowalby* and *Benton*, the statute allowing fees contains limitations on recovering fees. The statute requires (1) a finding by the court of a violation of the article, and (2) indicates the fees should be awarded "to the person bringing the action" i.e., that the fees awardable under statute are limited to those reasonable fees incurred in "bringing the action" for violation of SCUTPA. To interpret the statute otherwise to allow claims for fees not related to bringing the SCUTPA claim would require a broad interpretation of the statute, which is impermissible because attorney's fees statutes are to be strictly construed.

Under a strict interpretation of the statute, Plaintiff's fees paid to a *different* attorney (Biff Sowell) for a different lawsuit (collection action against the Client) cannot be awarded because they are not related to "bringing the action" for violation of SCUTPA. Therefore, this Court

should dismiss Plaintiff's damage claim for Biff Sowell's fees even if it does not dismiss any of the claims.

CONCLUSION

For the foregoing reasons, this Court should grant Defendants summary judgment.

This 25th day of March, 2025.

Respectfully submitted,

COPELAND, STAIR, VALZ & LOVELL, LLP

By: *s/Skyler C. Wilson*
DOUGLAS W. MACKELCAN
SC Bar No.: 76332
SKYLER C. WILSON
SC Bar No.: 102865
Attorneys for Defendants

40 Calhoun Street, Suite 400
Charleston, SC 29401
dmackelcan@csvl.law
swilson@csvl.law
Ph: 843-727-0307

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EXHIBIT A

DeLUCA MAUCHER
LAW OFFICES

MICHAEL A. MAUCHER
MIKE@DELUCAMAUCHER.COM
(O) (843) 572-1711 • (F) (843) 572-1285
REPLY TO GOOSE CREEK OFFICE

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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

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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
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With kindest regards, I am,

Very truly yours,

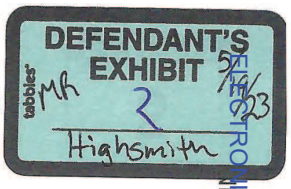
Michael A. Maucher

MAM/tgb

Fax: (843) 474-0712

EXHIBIT B

Fax: (843) 474-0712



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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 L

Patient Signature

Appointment Date: 1-3-2019

EXHIBIT
C

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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

DEFENDANT'S EXHIBIT 5/19/23 Highsmith

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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

EXHIBIT D

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.
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DEFENDANT'S EXHIBIT 4 5/19/23 MR Highsmith

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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 — 3-7-2019
Patient Name — Date

Patient Signature

Kiara Goodwine — 3/7/19
Witness — Date

DEFENDANT'S EXHIBIT 5 5/19/23 MR HighSmith

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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



Bill to:
[redacted] DEMASKEY
[redacted]E
[redacted]

TOTAL BALANCE: $125,409.28
(PLEASE PAY THIS AMOUNT)

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

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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

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DEFENDANT'S EXHIBIT 12 MR 5/19/23 Highsmith

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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.,)	
)	**AMENDED ORDER ON DEFENDANTS' MOTION TO DISMISS**
Plaintiff,)	
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.

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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.

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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.

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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").

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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

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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

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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

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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).

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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.

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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.*

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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.

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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

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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

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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 ¶¶

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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.

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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]

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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

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

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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

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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**

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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.**

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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.

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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-

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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**

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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

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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

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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.

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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

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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**

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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 DEFENDANTS' FIRST SET OF INTERROGATORIES TO PLAINTIFF;

Tracy Lyn Landry

September 5, 2024

Beaufort, South Carolina

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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

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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

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

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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.

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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.

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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

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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

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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.

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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

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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

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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.

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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

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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

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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

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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?

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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

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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

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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

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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?

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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

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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 --

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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

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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?

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

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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?

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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

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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

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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?

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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?

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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

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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.

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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

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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

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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

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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

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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.)

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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

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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

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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.

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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

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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 --

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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

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EXHIBIT
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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

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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

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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.

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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.

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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.

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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

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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

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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

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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

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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

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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.

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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

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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

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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,

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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

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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

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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?

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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

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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

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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.

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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

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CareWorks

Explanation of Review

EXHIBIT M

2000 Mallory Lane
Ste 130-280
Franklin, TN 37067
615-399-8658
877-494-7937

ELECTRONICALLY FILED - 2025 Mar 25 5:22 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]

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

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Explanation of Review

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Franklin, TN 37067
615-399-8658
877-494-7937

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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]

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

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Franklin, TN 37067
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877-494-7937

ELECTRONICALLY FILED - 2025 Mar 25 5:22 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]

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

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ELECTRONICALLY FILED - 2025 Mar 25 5:22 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 - 2025 Mar 25 5:22 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]

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 - 2025 Mar 25 5:22 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]

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 - 2025 Mar 25 5:22 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]

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 - 2025 Mar 25 5:22 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]

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

intact INSURANCE
Claims Processing Center
188 Inverness Drive W., Suite 600
Englewood CO 80112

EXHIBIT N

ELECTRONICALLY FILED - 2025 Mar 25 5:22 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Mail to:

000001 - 0261

JASON HIGHSMITH MD
7301 RIVERS AVE STE 242
NORTH CHARLESTON SC 29406-4616

intact INSURANCE
Claims Processing Center
188 Inverness Drive W., Suite 600
Englewood CO 80112

EXPLANATION OF PAYMENT

2120042605

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

PAY TO: CAROLINA NEUROSURGERY & ORTHOPEDICS INC

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.

intact INSURANCE
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.

AUTHORIZED SIGNATURE

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

T1D101 - 41986276-000289-01/01-0-0-0

[redacted]

JH_00219

EXHIBIT
O

ELECTRONICALLY FILED - 2025 Mar 25 5:22 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA — IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON — IN THE NINTH JUDICIAL CIRCUIT

C.A. NO.: 2021-CP-10-03379

CAROLINA NEUROSURGERY & ORTHOPEDICS, INC.,

Plaintiff,

vs.

MICHAEL A. MAUCHER, ESQ., and DELUCA & MAUCHER, LLP,

Defendants.

Videoconference Zoom deposition of TINA BENNETT, held within the state of South Carolina, on Wednesday, March 12, 2025, commencing at 10:05 a.m., before Monica C. Haynie, a Certified Stenographic Reporter, Certified Shorthand Reporter No. 14181, and Notary Public.

claims?
A. No.
Q. There have been many emails -- or some emails produced, emails between you and Carolina Neurosurgery. Did you have any telephone calls with Ms. Goodwine?
A. Not that I recall.
Q. So all the communications, to your knowledge, were via email or letter?
A. That's my recollection, yes.
Q. And, Ms. Bennett, one more question, and if you need to look back at Exhibit 2, you're welcome to, but this is the January 21, 2019, email at 9:23 a.m. Am I correct in understanding that you did not verify with OneBeacon whether there would be coverage to pay for surgeries or medical treatments through Carolina Neurosurgery before you sent the email, did you?
A. No.
Q. Ms. Bennett, please describe your understanding of your responsibilities in priming insurance coverage before communicating coverages to Carolina Neurosurgery.
A. Auto coverages or private health insurance?
Q. Any type of insurance coverage. The two that were in the email were Safeco and OneBeacon, and I want to understand -- I'm trying to get an understanding of what you believed your responsibility was before

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communicating to Carolina Neurosurgery about these coverages.

A. At that time, we had checked the available coverages and that's what they were and that's what we knew them to be.

Q. And by "coverages," you mean policy limits, correct?

A. Correct.

Q. And you don't really -- you're not meaning whether the claim would be covered within the policy? The email was intended to describe the policy limits of whatever coverages were available on those two policies; is that correct?

A. Correct.

Q. Did you consult with Mr. Maucher about coverage details before transmitting the email, Exhibit Number 2, the January 21, 2019, email?

A. Yes.

Q. Okay. And tell me about that communication with Mr. Maucher.

A. I mean, we discussed what the coverages were at that time.

Q. And by "coverages," do you mean policy limit amounts or coverages?

A. I'll start saying "policy amounts." We've just

ELECTRONICALLY FILED - 2025 Mar 25 5:22 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2025 Mar 25 5:22 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 &
ORTHOPEDICS, INC.,
Plaintiff,
v.
MICHAEL A. MAUCHER, Esq., and
DELUCA & MAUCHER, LLP,
Defendants.

TELEPHONIC DEPOSITION OF JASON HIGHSMITH, M.D., FACS
AS 30(b)(6) CORPORATE REPRESENTATIVE
FOR CAROLINA NEUROSURGERY & ORTHOPEDICS, INC.

DATE: Friday, January 17, 2025
TIME: 2:00 p.m.
LOCATION: Carolina Neurosurgery & Orthopedics
7301 Rivers Avenue, Suite 242
North Charleston, SC 29405
REPORTED BY: Kylee Clark
JOB NO.: 7100439

Q Carolina Neurosurgery has patients that are represented by law firms -- right? -- and attorneys?

A Yes.

Q Is it a part of their practice at Carolina Neurosurgery to look to those attorneys to approve medical procedures for their clients?

A No, it's ultimately the patient's responsibility 'cause they're responsible for the bill.

Q All right. In paragraph 30 of the amended complaint, it states that Carolina Neurosurgery retained counsel and incurred at least 93,000 plus in legal fees to pursue recovery under the OneBeacon policy; ultimately, obtained 6,323.50 under that policy. And the amount listed, 6,000, is what the OneBeacon did eventually pay; correct?

A Yes.

Q And in this paragraph, the counsel referred to, is that Biff Sowell?

A Yes. And I believe Mr. Pendarvis as well is part of that.

Q Mr. Pendarvis's fees, do you believe are included in that $93,000 number?

A I'd have to review the bills. I don't know. Mainly Mr. Sowell's.

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Q Okay. And Mr. Sowell was hired to do other things than just pursue recovery under the OneBeacon policy; right?

A Yes. He's our retained counsel for other legal matters as well.

Q Okay. And is it your understanding that the legal bills that he incurred that are being asked as damages in this case were incurred for suing Demaskey under the financial policy? Is that part of it?

A No, we tried not to sue them. We tried to get -- do the work they should have done, which was get the policy elaborated on and discovered and utilized so we did not have to bring judgment against the patient and/or their -- his attorney. So we tried -- tried to avoid that actually.

Q But Carolina Neurosurgery did sue Demaskey; right?

A Absolutely.

Q Yeah.

A Because we had to do their job, and they -- we found out that their job was, not only inadequate, they didn't adequately vet the policy that we had to do, and it cost us a lot of money to do that.

Q But the lawsuit against Demaskey wasn't because of OneBeacon; right? It was under the

ELECTRONICALLY FILED - 2025 Mar 25 5:22 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

financial policy for collection of the debt.

A That was one of the -- one of the contingencies, yes.

Q Okay. And OneBeacon wasn't a defendant in that case; right?

A They were not, no.

Q Okay. And did Carolina Neurosurgery ever sue OneBeacon for anything related to Demaskey?

A I don't believe so, no.

Q And then, just for clarity, the amount of fees that Biff incurred in that lawsuit against Demaskey are being requested as damages in this case?

A Yes, because we were trying to avoid drawing this out legally. Unfortunately, that's not working.

Q Such is the legal landscape and how these things work.

I'm going to move on now to -- there's this section called "First cause of action, breach of contract." And there are a couple of different paragraphs in here.

Okay. In this paragraph 35, it is alleged "Carolina Neurosurgery and the lawyers entered into a contract where Carolina Neurosurgery would provide medical services to lawyer's client based on lawyer's representations about insurance coverage."

ELECTRONICALLY FILED - 2025 Mar 25 5:22 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2025 Mar 26 5:59 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 AND DEFENDANTS' SECOND REVISED MEMORANDUM IN SUPPORT**

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

Plaintiff CAROLINA NEUROSURGERY & ORTHOPEDICS, INC. ("Carolina Neurosurgery") respectfully submits this Memorandum in Opposition to the Motion for Summary Judgment and their Second Revised Memorandum in Support 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 Second Amended Complaint.

INTRODUCTION

This dispute centers around Defendants' promises and representations to Carolina Neurosurgery regarding the availability of $1,100,000 in insurance *coverage* for their client, Scott DeMaskey. These representations were embodied in an email that led to Carolina Neurosurgery accepting two Letters of Protection ("LOPs")—dated December 20, 2018, and March 7, 2019—wherein Defendants agreed to protect payment of Carolina Neurosurgery's medical invoices arising from elective surgeries to be performed on DeMaskey. Carolina Neurosurgery reasonably relied on these representations when delivering nearly $125,409.28 in medical services, reasonably believing representations from the law firm that there was over $1,000,000 in insurance *coverage* to pay for the medical services. Defendants later discounted the truthfulness of their claims and attempted to revoke the LOP obligations without credible notice or justification.

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Despite the explicit representations in the LOPs and communications, Defendants assert in their motions that Carolina Neurosurgery's reliance was unreasonable, their representations were accurate at the time they were made, and no enforceable contract existed. The documents, testimony, and arguments presented by the parties contradict Defendants' position, leaving material factual disputes for resolution by a jury.

In both their original Memorandum filed in August 2024 and the Second Revised Memorandum filed in March 2025, Defendants improperly seek summary judgment on Carolina Neurosurgery's claims for breach of contract, negligent misrepresentation, and violations of the South Carolina Unfair Trade Practices Act ("SCUTPA"). However, unresolved factual disputes—including whether Defendants knowingly misrepresented coverage amounts—must be addressed by a jury, rendering summary judgment inappropriate.

Summary of Arguments in Opposition

There are genuine disagreements between Carolina Neurosurgery and Defendants on facts legally relevant and material to the claims asserted in Carolina Neurosurgery's Second Amended Complaint for **breach of contract**, **violation of the South Carolina Unfair Trade Practices Act** (UTPA"), **negligent misrepresentation**, and **promissory estoppel**.

The Defendants are a law firm and lawyer. Carolina Neurosurgery 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, Mr. DeMaskey, with personal injury claims arising from a motor vehicle accident. Mr. DeMaskey sought to have Carolina Neurosurgery provide 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 Carolina Neurosurgery representing 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 Carolina Neurosurgery'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." Carolina Neurosurgery performed two back surgeries on the client,

ELECTRONICALLY FILED - 2025 Mar 26 5:59 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

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 Carolina Neurosurgery.

Carolina Neurosurgery contends that the agreement with Defendants, like all agreements, 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 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 [Carolina Neurosurgery], 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

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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." Second Amended 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 Carolina Neurosurgery a "Letter of Protection" ("the 1st LOP") offering for Carolina Neurosurgery 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 Carolina Neurosurgery, dated Dec. 20, 2018, filed as **Exhibit 3**) (emphasis added).

In January 2019, before any surgeries were performed on the Defendants' client, Carolina Neurosurgery 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 Carolina Neurosurgery:

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

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

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

ELECTRONICALLY FILED - 2025 Mar 26 5:59 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

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 Carolina Neurosurgery any concerns regarding the availability of sufficient insurance coverage to cover the invoices for surgeries Carolina Neurosurgery provided for the client.*

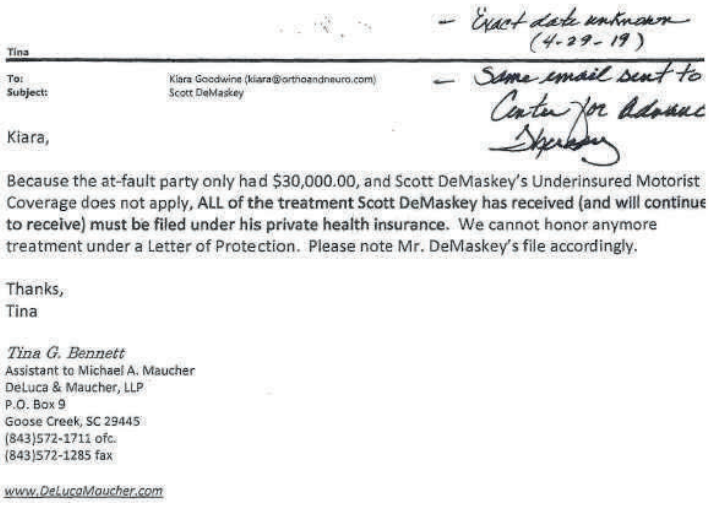
On March 7, 2019, the Defendants sent a second Letter of Protection to Carolina Neurosurgery offering for Carolina Neurosurgery to "accept this correspondence as ***our Law Firm's agreement to protect any portion of your bill not paid by private health insurance*** *out of any settlement proceeds we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

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

Because Carolina Neurosurgery was an out-of-network provider, relying on Defendants' statements about the availability of insurance coverage was critical in Carolina Neurosurgery'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). Carolina Neurosurgery 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 Carolina Neurosurgery, 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; Carolina Neurosurgery's representatives all testified they never received the email; and the Defendants have been unable to produce anything resembling an actual email.

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– Exact date unknown (4-29-19)

Tina

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

– Same email sent to Center for Advanc

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.
5 Q. Have you had conversations with Kiara
6 about this?
7 A. Yes, Kiara is excellent, and I know she
8 would not delete an email like that. She doesn't

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9 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 Carolina Neurosurgery that the at-fault party had only $30,000 in coverage to pay the medical expenses for the surgeries Carolina Neurosurgery 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

103:24 We had a relationship with the
25 attorney through the letters that, you know, this
104: 1 is egregious that he would have only $30,000 in
2 coverage and they would approve not one but two
3 surgeries. It's unbelievable to me.
4 Q. Well, now, did DeLuca & Maucher approve
5 the surgeries?
6 A. Well, they provided coverage and
7 agreement that they would cover the bills based on
8 the letters of protection.
9 Q. Well, the letters of protection said
10 that they would protect claims of settlement
11 proceeds; isn't that correct?
12 A. It stipulates that, but I mean the fact
13 that they don't know the coverage and promised a
14 one million dollar policy early on but never --
15 never came to fruition.

104:20 A. It doesn't affect my treatment
21 recommendations, no; but if it's an elective
22 surgery, I'm not going to put someone through a
23 huge bill if there's supposed coverage that doesn't
24 exist --
25 Q. And then at least --
105: 1 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).

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ARGUMENTS IN OPPOSITION

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

Carolina Neurosurgery 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.

Defendants represented to Carolina Neurosurgery that $1,100,000 in insurance coverage was available to pay DeMaskey's medical expenses. These statements, made in the January 21, 2019 email from Defendants to Carolina Neurosurgery heavily influenced Carolina Neurosurgery's decision to proceed with elective surgeries on DeMaskey.

While Defendants claim their representations were accurate at the time, testimony by Carolina Neurosurgery's representative, Dr. Jason Highsmith, refutes this claim. Dr. Highsmith testified that the representations about coverage were critical to Carolina Neurosurgery's decision. "[Defendants] promised a one million dollar policy early on but [it] never came to fruition" (Deposition of Jason M. Highsmith, May 29, 2023, p. 104:13-15).

- **The LOPs' Binding Terms:** The December 20, 2018 LOP states unequivocally: "[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.]" Similarly, the March 7, 2019 LOP contained an express promise to protect any portion of Carolina Neurosurgery's bill not paid by health insurance. These representations form the basis of Carolina Neurosurgery's reasonable reliance.

- **Defendants' Breach:** Testimony establishes that Defendants encouraged Carolina Neurosurgery to rely on the LOPs while misrepresenting available insurance coverage. As Dr. Highsmith testified, "[We trusted the agreement we had with his attorney, backed up by adequate coverage...before providing approval to do the surgery" (Deposition of Jason M. Highsmith, May 29, 2023, p. 43:23-44:3).

- **Defendants' Misrepresentations Regarding Coverage**: Defendants stated that $1,100,000 in insurance *coverage* existed to cover medical services rendered for their client. Evidence, including Defendants' January 21, 2019 email, demonstrates that Carolina Neurosurgery reasonably relied on these representations in deciding to proceed with elective

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surgeries rather than pursue alternative payment options.

- **Reasonable Reliance**: Carolina Neurosurgery, as an out-of-network provider, was uniquely positioned to depend on Defendants' assurances regarding payment. Carolina Neurosurgery would not have performed services absent Defendants' express representations.

Defendants claim their representations were accurate when made and argue Carolina Neurosurgery's reliance was unreasonable. However, evidence supports Carolina Neurosurgery's contention that the alleged representations were false, misleading, and central to its decision-making process.

"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

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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.

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

The Second Amended Complaint alleges the Defendants' breach of the agreement with Carolina Neurosurgery. *See* (Second Amended Complaint, ¶¶ 11-37). Carolina Neurosurgery alleges the Defendants represented "'other arrangements' had been made such that Carolina Neurosurgery 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* (Second Amended 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* (Second Amended 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 UTPA claims asserted in the Second Amended Complaint.

This Court should deny the Defendants' motion to for summary judgment on Carolina Neurosurgery'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 Carolina Neurosurgery to provide elective surgery procedures to the client when the Defendants did not know what insurance coverage was actually available for the client.

- **Fabricated Revocation Email:** Defendants assert that they provided notice of a revocation of the March LOP via email. However, this purported email lacks essential metadata—

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headers, timestamps, and sender identity—which undermines its authenticity. Dr. Highsmith further highlighted the fabricated nature of this document, stating: "This is not an email. It's a document" (Deposition of Jason M. Highsmith, May 29, 2023, p. 86:20-24).

Defendants argue that the UTPA claims fail because their conduct did not adversely affect public interest or demonstrate potential for repetition. However:

- **Adverse Public Impact:** Defendants' issuance of misleading emails on the available insurance *coverage* to support a proposed LOP impacts not only Carolina Neurosurgery but other healthcare providers relying on such assurances. Evidence indicates Defendants have employed similar LOPs in numerous cases, suggesting a broader pattern of conduct that could affect public interest.

Defendants motion for summary judgment on Carolina Neurosurgery's UTPA claims on the basis that this is a private dispute. However, Carolina Neurosurgery's Second Amended Complaint demonstrates that the Defendants' deceptive trade practices harm the public interest. Because the evidence indicates Defendants have employed similar LOPs, this creates a risk of repeated deceptive practices. Deceptive trade practices involving prospective clients are inherently damaging to public interest. *See Ward v. Dick Dyer & Assocs., Inc*., 432 S.E.2d 472 (S.C. 1993) (holding deceptive practices capable of repetition as sufficient to demonstrate public harm).

- **Capability of Repetition:** Deposition testimony confirms that Defendants routinely relied on similar LOPs in their representation of clients. Such practices are inherently capable of repetition and warrant scrutiny under UTPA. Defendants' representative, Mr. Maucher, testified that DeLuca & Maucher routinely issued similar LOPs to providers, suggesting the conduct at issue here is not isolated. "[Everything that was stated was accurate at the time; things changed...we updated Carolina Neurosurgery]" (Deposition of Michael Maucher, July 31, 2023, p. 28:4-8).

In *Beneficial Fin. I, Inc. v. Windham,* the South Carolina Court of Appeals recently addressed what allegations are required to establish whether an unfair trade practice has an impact on the public interest.

> The SCUTPA establishes: "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." S.C. Code Ann. § 39-5-20(a) (1985).

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> An unfair trade practice has been defined as a practice which is offensive to public policy or which is immoral, unethical, or oppressive. In order to be actionable under SCUTPA, the unfair or deceptive act or practice must have an impact on the public interest. 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.
>
> *After alleging and proving facts demonstrating the potential for repetition of the defendant's actions, the plaintiff has proven an adverse effect on the public interest ... the plaintiff need not allege or prove anything further in relation to the public interest requirement*.
>
> An impact on the public interest may be shown if the acts or practices have the potential for repetition. The potential for repetition may be shown in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures created a potential for repetition of the unfair and deceptive acts.
>
> However, these are not the only two ways impact on the public interest may be shown, rather "each case must be evaluated on its own merits.

Beneficial Fin. I, Inc. v. Windham, 431 S.C. 256, 268-69, 847 S.E.2d 793, 800 (Ct. App. 2020) (internal quotes and citations omitted) (emphasis added).

The Second Amended Complaint contains allegations that satisfy these requirements. *See Crary v. Djebelli*, 329 S.C. 385, 388, 496 S.E.2d 21, 23 (1998) ("The potential for repetition may be shown in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures created a potential for repetition of the unfair and deceptive acts.").

- **Claims Against Lawyers and Law Firms Are Actionable Under the UTPA.**

Defendants argue that lawyers and law firms cannot be subject to UTPA claims. Section 39-5-39 unequivocally establishes that they can. The allegations in Carolina Neurosurgery's Second Amended Complaint directly invoke Section 39-5-39, supporting its claims. South Carolina courts have routinely held legal professionals accountable under the UTPA. See *Daisy Outdoor Advert. Co., Inc. v. Abbott Outdoor Media, Inc.*, 620 S.E.2d 378 (S.C. Ct. App. 2005).

The UTPA contains several exemptions, including one that states the Act does not apply to "[a]ctions or transactions permitted under laws administered by any regulatory body or officer acting under statutory authority of this State or the United States or actions or transactions permitted by any other South Carolina State law." S.C. CODE ANN. § 39-5-40(a) (1985). In 2012, the South Carolina Supreme Court found that this exemption did not apply to the defendant

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lawyers. *See RFT Mgmt. Co. v. Tinsley & Adams, L.L.P.*, 399 S.C. at 38, 732 S.E.2d at 174 ("Despite the trial court's error in finding the UTPA is not available against the legal profession, RFT has shown no reversible error in this regard."). The Court relied on *Taylor v. Medenica*, 324 S.C. 200, 217, 479 S.E.2d 35, 44 (1996), in which the court noted that UTPA did not exclude professional services from its definition. The *RFT Mgmt*. opinion also cited to *Camp v. Springs Mortgage Corp*., 307 S.C. 283, 285, 414 S.E.2d 784, 786 (Ct. App. 1991) *aff'd in part, rev'd in part*, 310 S.C. 514, 426 S.E.2d 304 (1993), which held "[T]here is no question but what legal services come within the definition of this statute."

> SECTION 39-5-39. Attorney advertising in false, deceptive or misleading manner.
>
> Notwithstanding another provision of law, it is an unlawful trade practice, pursuant to Section 39-5-20, for an attorney to advertise his services in this State in a false, deceptive, or misleading manner including, but not limited to, the use of a nickname that creates an unreasonable expectation of results.

S.C. CODE ANN. § 39-5-20.

Lawyers and law firms are subject to UTPA claims. The Defendants' arguments to the contrary should be rejected, and their motion for summary judgment on this claim should be denied. Defendants' conclusory arguments fail to address the broader implications of their actions, which jeopardize trust between healthcare providers and legal representatives.

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

Defendants argue that Carolina Neurosurgery's negligent misrepresentation claims are baseless because their statements about insurance coverage were truthful when made. This assertion ignores evidence showing the falsity of Defendants' representations and their failure to update Carolina Neurosurgery about coverage changes.

Carolina Neurosurgery's Second Amended Complaint includes a claim for negligent misrepresentation. To establish liability for negligent misrepresentation, Carolina Neurosurgery must allege and prove (1) the defendant made a false representation to Carolina Neurosurgery; (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 Carolina Neurosurgery; (4) the defendant breached that duty by failing to exercise due care; (5) Carolina Neurosurgery justifiably relied on the representation; and (6) Carolina Neurosurgery 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,

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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).

South Carolina law provides for liability in negligent misrepresentation where a false statement leads to economic harm. Carolina Neurosurgery has clearly established all elements of this claim, including:

- **False Representations by Defendants:** Defendants made statements about insurance coverage that were either inaccurate or inadequately investigated. Although Defendants contend that their representations were correct at the time, they failed to notify Carolina Neurosurgery of discrepancies in coverage prior to the surgeries being performed.

- **Reasonable Reliance and Resulting Damages:** Carolina Neurosurgery reasonably relied on Defendants' representations when performing services. Carolina Neurosurgery relied on Defendants' representations, including the January 2019 email that unequivocally claimed coverage exceeding $1,100,000, despite Defendants later conceding that the at-fault party's liability was capped at $30,000. Documents and testimony confirm that Carolina Neurosurgery operated based on Defendants' assurances about coverage availability, directly resulting in financial harm to Carolina Neurosurgery.

The parties dispute virtually every element of this claim, including whether the Defendants made "a false representation to Carolina Neurosurgery." *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) (Carolina Neurosurgery 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.)

- **Proximate Harm:** Carolina Neurosurgery incurred substantial financial losses directly tied to the surgeries performed in reliance on Defendants' statements. Testimony from Dr. Highsmith confirms Carolina Neurosurgery's justified reliance and subsequent harm.

Carolina Neurosurgery may recover damages based "upon a negligently-made false

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statement" if the jury determines that the Carolina Neurosurgery "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 Carolina Neurosurgery 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 Carolina Neurosurgery 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 Carolina Neurosurgery 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.

IV. Defendants' Affirmative Defenses Lack Support.

Defendants assert multiple affirmative defenses, including failure to mitigate damages and procedural deficiencies by Carolina Neurosurgery. These defenses are unsupported and unreasonable:

- **Failure to Mitigate:** Defendants argue that Carolina Neurosurgery should have billed health insurance. However, Defendants explicitly instructed Carolina Neurosurgery to

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proceed under the LOP and provided assurances that sufficient coverage existed, negating any failure by Carolina Neurosurgery to mitigate damages.

- **Procedural Challenges:** Defendants' claim that Carolina Neurosurgery failed to follow specific procedures under the LOP is contradicted by the terms of the document itself, which did not impose limitations on Carolina Neurosurgery's reliance.

V. Limitation of Damages Arguments Are Unpersuasive.

Defendants further assert that Carolina Neurosurgery's recovery should be limited. This argument is misplaced:

- **Full Liability for Carolina Neurosurgery's Losses:** The financial harm Carolina Neurosurgery incurred derives directly from Defendants' misrepresentations and failure to fulfill their obligations to make truthful statements about the available insurance coverage as part of their inducement for Carolina Neurosurgery to accept the LOP. Defendants cannot escape responsibility for the consequences of their conduct.

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 Second Amended Complaint. There remain unresolved factual disputes central to Carolina Neurosurgery's claims for breach of contract, negligent misrepresentation, and violations of SCUTPA. These factual disputes must be presented to a jury for determination.

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 Carolina Neurosurgery

Beaufort, South Carolina

March 26, 2025

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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 ALTER OR AMEND THE ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

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

Plaintiff CAROLINA NEUROSURGERY & ORTHOPEDICS, INC. ("Plaintiff") respectfully files this Motion to Alter or Amend under Rule 59(e), SCRCP, to have the Court alter or amend its Form 4 Order ("the Order") filed on April 3, 2025, granting the Motion for Summary Judgment filed on behalf of Defendants, Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP (collectively "the Lawyers"). Although the Order directs counsel for Defendants to submit "a more formal Order within twenty (20) days[,]" this motion is filed to protect Plaintiff's rights and ability to preserve errors under Rule 59(e), SCRCP, notwithstanding the fact that a more formal Order may be entered at a later date.

Plaintiff incorporates into this motion all previously filed exhibits, transcripts, and legal memoranda opposing Defendants' motion for summary judgment.

SUMMARY

There exist genuine issues of material fact regarding Plaintiff's claims for negligent misrepresentation, breach of contract, and violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"), which warrant further review and adjudication.

Specifically, the evidence in the record—including but not limited to conflicting testimony and documentary evidence cited in Plaintiff's memorandum in opposition to Defendants' first

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motion for summary judgment and Defendants' second revised memorandum in support of summary judgment—demonstrate unresolved disputes on key factual issues. Applicable South Carolina legal authorities further support the argument that summary judgment was prematurely granted in this matter.

Standard for Motion to Alter or Amend

Rule 59(e), SCRCP, permits parties to seek reconsideration of a judgment to correct errors of law or fact and prevent manifest injustice. Where an issue is not ruled upon by the trial judge, it is not preserved for purposes of appeal unless the complaining party moves before the trial court to amend the judgment pursuant to Rule 59(e). *See Talley v. South Carolina Higher Educ. Tuition Grants Committee*, 289 S.C. 483, 347 S.E.2d 99 (1986); *Nelums v. Cousins*, 304 S.C. 306, 403 S.E.2d 681 (Ct. App. 1991). *See also Englert, Inc. v. Netherlands Ins. Co*., 315 S.C. 300, 433 S.E.2d 871 (Ct. App. 1993) (where a position is not argued to the trial court, the trial court does not rule upon it, and the party does not file a post-trial motion to obtain a ruling, the issue is not preserved for appeal).

> Ordinarily, a Rule 59 motion is necessary when the trial court overlooks an issue raised and presented, and fails to rule upon it. However, the motion is also required where the trial court does rule upon an issue which was not raised. The failure to bring a motion to alter and amend the judgment precludes complaining about the error on appeal.

Motions to alter or amend judgment, TRIAL HANDBOOK FOR SOUTH CAROLINA LAWYERS § 36:5 (5th ed.) (citing *Pelican Bldg. Centers of Horry-Georgetown, Inc. v. Dutton*, 311 S.C. 56, 427 S.E.2d 673 (1993) (where an appellant learns for the first time when the appellant receives the order that the respondent would be granted certain relief, the appellant must move, pursuant to Rule 59(e), SCRCP, to alter or amend the judgment to "preserve the record for appeal."); *Godfrey v. Heller*, 311 S.C. 516, 429 S.E.2d 859 (Ct. App. 1993) (following the rule in *Pelican Bldg. Centers of Horry-Georgetown, Inc. v. Dutton*). *See also*, *Swing v. Swing*, No. 2023-001389, 2024 WL 5458125, at *6 (S.C. Mar. 12, 2025) ("'Timely,' as that term is used in Rules 203(b)(1) and 59(f), means the Rule 59(e) motion was served on the opposing parties within ten days from the date of receipt of written notice of the entry of the order the merits of which the motion purports to address.") A motion under Rule 59(e) is appropriate when (a) the Court misapprehends or overlooks factual evidence in the record, (b) parties present new evidence, or (c) errors of law or logic undermine the judgment.

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ARGUMENTS

This Motion requests the Court amend the Order because a) the evidence and testimony in the record contain factual disputes on each element of Plaintiff's causes of action for negligent misrepresentation and for violation of the South Carolina Unfair Trade Practices Act, and b) all "Findings of Fact" and "Conclusions of Law" that relied on an Order dated June 28, 2022 ("the 2022 Order") granting in part and denying in part, Defendants' motion to dismiss should be removed because they are based—or should have been based—solely on the allegations in the original Complaint, and were not supposed to be based on the actual evidence and testimony, the majority of which had not even been developed when the 2022 Order was issued. The 2022 Order contains multiple Findings of Fact that were not alleged in the original Complaint and not needed to support the trial court's conclusions of law. *See* (2022 Order, ¶ ¶ 7, 10-13, 16-24, 41, 45, 48, 50-62, 68, and 75). The Order contained a majority of "Findings of Fact" that were not included in the trial court's email to counsel sent at 3:36 pm on June 9, 2022, instructing counsel for Defendants to prepare a proposed Order. The proposed Order was submitted to the Court on June 28, 2022, while the undersigned counsel for Plaintiff was under a Consent Order of Protection between June 13 and July 1, 2022. A footnote was added to each of the Amended Complaints that Plaintiff filed in this matter preserving its objections to the 2022 Order.

I. The 2022 Order did not establish the "Law of the Case" because it did not determine the merits of the breach of contract and UTPA claims.

The Order should be altered or amended to correct the misapprehension of the "law of the case" doctrine in so far as it relied upon findings of fact and conclusions of law related to other causes of action. *See McLendon v. South Carolina Dept. of Highways and Public Transp*., 313 S.C. 525, 443 S.E.2d 539 (1994) (denial of a motion to dismiss does not establish the law of the case because the order does not finally determine anything about the merits of the case on the remaining claims); *Ballenger v. Bowen*, 313 S.C. 476, 443 S.E.2d 379 (1994) (same as applied to a motion for summary judgment).

II. Genuine Issues of Material Fact Exist Regarding Plaintiff's Claim of Negligent Misrepresentation.

Plaintiff's evidence demonstrates the existence of genuine disputes concerning its claim for negligent misrepresentation. In its Second Amended Complaint, Plaintiff alleges Defendants

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negligently misrepresented the availability and applicability of *insurance coverage*, causing Plaintiff injury. Testimony and documentation in the record substantiate this claim, including:

1. **Conflicting testimony regarding Defendants' representations of insurance coverage**:

    - Plaintiff's principal, Jason M. Highsmith, MD, testified that Defendants made false or inaccurate representations about the availability of liability and 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 Carolina Neurosurgery 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. (Transcript from the deposition of Jason M. Highsmith, M.D., May 29, 2023, 30:2-5, 30:25-31:3, 32:16-20, 43:23-44:3, 44:4-9, 63:14-18, 68:8-24, 86:7-87:5 87:20-88:9, 103:24-105:1).

    - In January 2019, before any surgeries were performed on the Defendants' client, Carolina Neurosurgery 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 Carolina Neurosurgery:

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. In this email, the Defendants represented to Carolina Neurosurgery that because more than $1,100,000 in coverage was available, "we are not

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concerned that there will be enough overall coverage to pay [Carolina Neurosurgery's] claim."

- However, Defendant Michael Maucher, Esq., testified inconsistently regarding whether this representation pertained to available limits versus specific applicability. (See Deposition of Michael Maucher, 28:4-8; July 31, 2023.)
- Tina Bennett, Defendants' paralegal, also acknowledged during deposition that she did not verify specifics of policy applicability before conveying coverage limits. (See Tina Bennett Deposition, March 12, 2025.)
- At no time did the Defendants explain to Carolina Neurosurgery any concerns regarding the availability of sufficient insurance coverage to cover the invoices for surgeries Carolina Neurosurgery provided for the client.

2. **Defendants failed to exercise reasonable care**:
   - Plaintiff relied on misleading assurances provided by Defendants before undertaking costly medical services. These assurances contradicted subsequent communications instructing Plaintiff to rely solely on private health insurance—a late-stage directive that Plaintiff could not reasonably implement given its "out-of-network" status.

South Carolina law holds that negligence claims should proceed to trial where conflicting evidence creates material disputes over duty and breach. *Nelson v. Piggly Wiggly Central, Inc.*, 390 S.C. 382, 389, 701 S.E.2d 776, 780 (Ct. App. 2010). Here, testimonial contradictions and Defendants' conflicting actions demonstrate such disputes, making summary judgment inappropriate.

III. Genuine Issues of Material Fact Exist Regarding Plaintiff's SCUTPA Claim.

Plaintiff's claim under SCUTPA asserts that Defendants engaged in unfair or deceptive practices through misrepresentations and omissions that directly harmed Plaintiff. Courts routinely deny summary judgment in SCUTPA claims where records contain evidence of deceptive practices affecting trade or commerce. *Taylor v. Nix*, 307 S.C. 381, 383, 415 S.E.2d 392, 396 (Ct. App. 1992).

The record highlights disputes of material fact on multiple elements of SCUTPA:

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1. **Unfair or deceptive act**:

    - Defendants' representations made via email in January 2019 regarding insurance limits induced Plaintiff to schedule costly surgeries despite Defendants failing to confirm the applicability of said policies beforehand. This constitutes a specific act of unfair or deceptive trade practice.

    - Plaintiff's "out-of-network" status was known to Defendants prior to these representations, yet the communications failed to disclose this critical risk. (See Deposition of Jason Highsmith, MD, May 19, 2023.)

2. **Impact on Plaintiff's trade or commerce**:

    - Plaintiff incurred $125,409.28 in unpaid medical services, as evidenced by invoices submitted and cited in its Supplemental Interrogatory Responses, dated September 5, 2024. This economic injury was proximately caused by Defendants' conduct.

3. **Public interest consideration**:

    - Unfair practices engaging medical providers under false pretenses have wider implications for healthcare providers in the state of South Carolina. Plaintiff's case exemplifies potential harm beyond this transaction. See *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).

4. **Capability of Repetition:**

    - Deposition testimony confirms that Defendants routinely relied on similar LOPs in their representation of clients. Such practices are inherently capable of repetition and warrant scrutiny under UTPA. Defendants' representative, Mr. Maucher, testified that DeLuca & Maucher routinely issued similar LOPs to providers, suggesting the conduct at issue here is not isolated. "[Everything that was stated was accurate at the time; things changed...we updated Carolina Neurosurgery]" (Deposition of Michael Maucher, July 31, 2023, p. 28:4-8).

In *Beneficial Fin. I, Inc. v. Windham,* the South Carolina Court of Appeals recently addressed what allegations are required to establish whether an unfair trade practice has an impact

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on the public interest.

> The SCUTPA establishes: "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." S.C. CODE ANN. § 39-5-20(a) (1985).
>
> An unfair trade practice has been defined as a practice which is offensive to public policy or which is immoral, unethical, or oppressive. In order to be actionable under SCUTPA, the unfair or deceptive act or practice must have an impact on the public interest. 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.
>
> *After alleging and proving facts demonstrating the potential for repetition of the defendant's actions, the plaintiff has proven an adverse effect on the public interest ... the plaintiff need not allege or prove anything further in relation to the public interest requirement*.
>
> An impact on the public interest may be shown if the acts or practices have the potential for repetition. The potential for repetition may be shown in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures created a potential for repetition of the unfair and deceptive acts.
>
> However, these are not the only two ways impact on the public interest may be shown, rather "each case must be evaluated on its own merits.

Beneficial Fin. I, Inc. v. Windham, 431 S.C. 256, 268-69, 847 S.E.2d 793, 800 (Ct. App. 2020) (internal quotes and citations omitted) (emphasis added).

The testimony, evidence, and allegations in the Second Amended Complaint contains allegations that satisfy these requirements. *See Crary v. Djebelli*, 329 S.C. 385, 388, 496 S.E.2d 21, 23 (1998) ("The potential for repetition may be shown in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures created a potential for repetition of the unfair and deceptive acts.").

IV. South Carolina requires jury trials to resolve disputed fact issues.

Under South Carolina law, where parties present evidence creating reasonable doubts about material facts, those doubts prevent summary judgment. See *Edgewater on Broad Creek Owners Association, Inc. v. Ephesian Ventures, LLC*, 430 S.C. 400, 405, 845 S.E.2d 211, 214 (Ct. App. 2020). Analysis of the record demonstrates substantial unresolved factual disputes rendering summary judgment improper.

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Misrepresentation and SCUTPA are inherently fact-dependent. Disputed testimony in this matter necessitates further discovery and trial proceedings to adjudicate Plaintiff's claims fairly.

CONCLUSION

Plaintiff has demonstrated through testimony, documentary evidence, and South Carolina legal authorities that genuine issues of material fact exist related to claims for comparative negligence and violation of SCUTPA. Accordingly, Plaintiff respectfully requests the Court grant its Motion to Alter or Amend the April 3, 2025, Order and allow this case to proceed to trial.

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 CAROLINA NEUROSURGERY & ORTHOPEDICS, INC.

Beaufort, South Carolina

April 14, 2025

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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 FOR SANCTIONS**
Plaintiff,	)	
vs.	)	
	)	
Michael A. Maucher, Esq. and DeLuca & Maucher, LLP,	)	
	)	
Defendants.	)	

Michael A. Maucher, Esq. and Deluca & Maucher, LLP, by and through their undersigned counsel, move this Court under the Frivolous Civil Proceedings Sanctions Act (S.C. Code Ann. § 15-36-10, et seq.) and Rule 11, SCRCP, for an order sanctioning Plaintiff for filing and maintaining multiple frivolous claims in this lawsuit, and requiring Plaintiff to pay Defendants' attorneys' fees and costs. Counsel for Defendants certify consultation with Plaintiff or its counsel regarding this motion would serve no useful purpose considering how litigation has unfolded.

INTRODUCTION

For nearly four years, Plaintiff, a medical practice owned and operated by Jason Highsmith, M.D., has pursued numerous baseless claims trying to force a law firm and lawyer to pay for a shared client's medical costs totaling more than $125,000. Plaintiff also sued the client—who an attorney in Defendants' office represented pro bono—abandoning that case on the eve of trial and then asserting as damages against the law firm and lawyer Plaintiff's approximate $90,000 of attorney's fees incurred suing the client.

Thankfully, the courts realized the claims were without merit, dismissing the majority on motion to dismiss and the remainder at summary judgment on the most basic aspects.

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Nevertheless, Defendants were required to defend themselves and incur a significant amount in attorney's fees--$114,757.50 as of the date of the summary judgment order. As detailed below, Plaintiff's conduct in bringing and maintaining this case warrants this Court sanctioning Plaintiff and forcing it to pay Defendants' fees and costs.

SUMMARY OF 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. 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).

Plaintiff began treating Client on January 2, 2019. **Ex. B (Medical Costs)**. On January 3, 2019, Client executed Plaintiff's Financial Policy. **Ex. C.** Under the section entitled "If you have insurance," the Financial Policy provides that Plaintiff "will file with [the patient's] primary insurance." **Ex. C.** The Financial Policy also provides that the patient may be responsible for all of part of the balance not paid by the insurance company. **Ex. C**. 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

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the at-fault driver had. **Ex. D**. 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. D**.

Hours later the same day, Bennett emailed Goodwine and explained Client advised that he required surgery. **Ex. D**. 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. D.** Goodwine responded, "Okay thanks for the update." **Ex. D**.

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. E (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. F.**

Dr. 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

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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.

Ex. G (emphasis in original).

On May 2, 2019, Highsmith performed additional surgery on Client, charging him an additional $62,451.87 (Second Surgery). **Ex. B**. In total, Plaintiff charged Client $125,409.28. **Ex. B.** 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. H**. 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. H.**

Because Client has been unable to pay for Plaintiff's services, Plaintiff initiated a debt collection action against him on May 21, 2021.[1] Further, Plaintiff has demanded payment from Defendants for Client's medical bills. Defendants attempted to tender payment to Plaintiff out of the settlement proceeds they received, and Plaintiff refused it.

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.

[1] *Carolina Neurosurgery and Orthopedics, Inc. v. Demaskey*, 2021-CP-08-01088.

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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. I (Order Granting Motion)**. That order made numerous findings of fact and conclusions of law that Plaintiff opted not to immediately appeal. After significant written discovery and multiple depositions, 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, in an obvious effort to avoid summary judgment, Plaintiff moved to amend the complaint to change the theories of recovery and add two claims: Negligent Misrepresentation and Promissory Estoppel. Plaintiff asked the court to approve it filing a specific proposed amended complaint, which the Court granted over Defendants' objections. Rather than filing the proposed amended complaint, however, Plaintiff filed an altered version from what the Court approved that meaningfully changed the allegations. Defendant raised the error to Plaintiff's counsel, who withdrew the improperly filed amended complaint and filed the one the Court authorized. But in violation of Rule 15, Plaintiff filed a second amended complaint with the changed allegations. Defendants moved to strike the pleading, which the Court declined without explanation. The circumstances of these pleadings are outlined in Defendants' Motion to Strike with exhibits filed October 28, 2024, and are incorporated by reference.

Because Plaintiff's allegations changed throughout litigation, Defendants had to change their motion for summary judgment three times before the Court ruled on the motion, the last of which was filed March 25, 2025. After a hearing, Judge Salvini granted Defendants summary judgment and dismissed Plaintiff's claims by formal order on May 2, 2025. **Ex. J.**

Importantly, the Court found that many of Plaintiff's allegations were preempted by the Court's prior order granting Defendants' motion to dismiss, that there was no contract between Plaintiff and Defendants whereby Defendants would be obligated to pay Client's medical bills,

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and that Defendants were not engaged in trade or commerce with Plaintiff to sustain a SCUTPA claim. **Ex. J.**

Considering Plaintiff's meritless and shifting allegations through litigation and the findings in the Court's orders on the motion to dismiss and motion for summary judgment, Defendants file this motion for sanctions and ask the Court order Plaintiff to pay Defendants' attorney's fees and costs.

STANDARD

The decision to impose sanctions under the Frivolous Civil Proceedings Sanctions Act (FCPSA) and under Rule 11, SCRCP, sounds in equity, not in law, and is for a judge to decide. *Father v. S.C. Dep't of Soc. Servs.*, 353 S.C. 254, 260, 578 S.E.2d 11, 14 (2003); *Site Prep, L.L.C. v. Atl. Coast Builders & Contractors, L.L.C.*, 394 S.C. 97, 104, 713 S.E.2d 650, 653 (Ct. App. 2011) ("The determination of whether attorney's fees should be awarded under Rule 11 or under the [FCPSA] is treated as one in equity."). The Court must find by a preponderance of the evidence that a party or its attorney advanced a frivolous claim or defense in order to impose sanctions. S.C. Code Ann. § 15-36-10(C)(2).

ARGUMENT

I. This Court should sanction Plaintiff because the preponderance of the evidence establishes that at multiple stages of this litigation Plaintiff advanced frivolous claims, tried to change allegations to bypass relevant testimony and documents to prolong litigation, and its ultimate claims were found lacking on basic elements.

After summary judgment, "upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous." S.C. Code Ann. § 15-36-10(C)(1). An attorney or party must be sanctioned for a frivolous claim if the court finds that attorney or party did not comply with any of the following conditions:

> (a) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument

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> did not exist for the extension, modification, or reversal of existing law;
>
> . . . .
>
> (c) a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based.

§ 15-36-10(C)(1)(a) & (c). Under Rule 11(a), SCRCP, when a party signs a pleading, motion or other paper, the signature is a certificate that he has read it and "to the best of his knowledge, information and belief, there is a good ground to support it." When something is signed in violation of the rule, the court "may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party" a reasonable attorney's fee. Rule 11(a), SCRCP. Also relevant, a verification is a sworn written statement that the party signing it swears "the facts stated to be true of his own knowledge, except to those matters stated on information or belief." Rule 11(c), SCRCP. Nevertheless, the "criteria for Rule 11 sanctions are essentially the same as those for sanctions under the [FCPSA]." *The Father v. S.C. Dep't of Soc. Servs.*, 345 S.C. 57, 72, 545 S.E.2d 523, 531 (Ct. App. 2001).

When determining whether a party or attorney violated the FCPSA, the court must consider:

> (1) the number of parties;
> (2) the complexity of the claims and defenses;
> (3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4);
> (4) information disclosed or undisclosed to the attorney, party, or pro se litigant through discovery and adequate investigation;
> (5) previous violations of the provisions of this section;
> (6) the response, if any, of the attorney, party, or pro se litigant to the allegation that he violated the provisions of this section; and
> (7) other factors the court considers just, equitable, or appropriate under the circumstances.

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S.C. Code Ann. § 15-36-10(E)(1)-(7); *see Holmes v. East Cooper Community Hosp., Inc.*, 408 S.C. 138, 166, 758 S.E.2d 483, 498 (2014) (citing the FCPSA and outlining the factors relevant to determining sanctions).

Pursuant to these above factors, sanctions are warranted against Plaintiff. Defendants address the general factors first, then specific instances of conduct that violated the FCPSA and Rule 11.

For (1), this case had only three parties, and two of those were Defendants who are functional equivalents. For (2), Plaintiff's claims, although numerous and shifting, were not complex, and neither were the defenses. The claims were based on two short Letters of Protection and a few emails between the staff of the parties that clearly outlined Defendants' involvement and statements about insurance. For (3), Plaintiff and the parties have had nearly 4 years of litigation to determine any violations of (A)(4), and Defendants included as an affirmative defense the FCPSA in their answers. For (4), Plaintiff had all the information on which it based its complaint from the very beginning—the letters and emails. Yet Plaintiff continued to insist on litigation and change its verified allegations to maintain the claims. For (5), Defendants are unaware of whether Plaintiff previously violated the FCPSA. Plaintiff's response, (6), has yet to materialize. For (7), Defendants otherwise outline below the various other factors favoring a decision imposing sanctions.

A. The majority of Plaintiff's verified original complaint was frivolous because many of the claims were clearly not supported by the facts Plaintiff verified were true.

Plaintiff's original complaint, filed on July 22, 2021, asserted 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. Dr. Highsmith, after being duly sworn, attested that he read the original complaint and that the statements contained therein were true to the best of his knowledge. **Compl. Verification.** The

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court dismissed the three different fraud claims, and the unjust enrichment and negligence claims. The court's order dismissing five of Plaintiff's seven claims demonstrates that there was no reasonable basis to bring those claims in law or fact.

1. Plaintiff's negligence claim was clearly unsupported by the facts alleged.

The court dismissed Plaintiff's negligence claim because, as a matter of law, there was no duty running from Defendants to Plaintiff. **Ex. I, ¶ 39**. The court recognized that attorneys are immune from liability to third parties arising from performing their professional activities on behalf of and with the knowledge of their client, citing *Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions*, 388 S.C. 394, 400, 697 S.E.2d 551, 554 (2010). **Ex. I, ¶¶ 32-35**.

The court held that the allegations in the complaint established that there was no attorney-client relationship between Plaintiff and Defendants, and the complaint made clear that the circumstances alleged to give rise to the negligence claim all occurred in the context of Defendants representing Client and with Client's knowledge and consent. **Ex. I, ¶ 39**. Sanctions have been awarded against a plaintiff for suing in violation of the doctrine that attorneys are immune from liability to third parties for actions taken in the course and scope of their representation. *See, e.g.*, *Harbin v. Blair*, Case No.: 2017-CP-04-2099, 2019 WL 13129354 (S.C. Com. Pl. October 9, 2019) (finding the plaintiff's claim was in violation of the attorney immunity doctrine because he was trying to hold his opponent's attorneys liable for actions taken in representing the opponent, and awarding sanctions after the claim was dismissed for over $13,000 in attorney's fees and costs), *affirmed* 2022 WL 2826361 (S.C. Ct. App., filed July 20, 2022).

Therefore, Plaintiff's facts Dr. Highsmith swore were true to support a negligence claim did not, as a matter of law, support a claim for negligence and that claim was dismissed with prejudice. Any reasonable attorney, especially one with expertise in legal malpractice, would know those facts did not support a negligence claim. Because there were no facts to support a

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claim for negligence under existing law, the claim was frivolous. § 15-36-10(C)(1)(a) (finding sanctionable conduct where a reasonable attorney would believe the facts clearly did not warrant a claim or defense); 15-36-10(C)(1)(c) (stating it is sanctionable conduct where a reasonable attorney would believe the case or defense was not reasonably founded in fact); Rule 11, SCRCP (permitting sanctions against a party who file documents, and verify the truth of statements, when there is no reasonable grounds to support them).

2. Plaintiff's fraud claims were clearly not supported by the facts alleged.

Pursuant to Rule 9(b), SCRCP, all fraud allegations must be stated with particularity. The failure to state with particularity any of the elements renders a claim fatally defective. *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993). Plaintiff accused Defendants of fraudulent representations on insurance coverage and Defendants' intent to pay Plaintiff from a recovery as referenced in the Letters of Protection. **Compl. ¶¶ 47-53**. To support the constructive fraud claim, Plaintiff alleged it relied on the special confidence imposed on lawyers to be truthful in statements to others. **Compl. ¶ 63**.

When granting Defendants' motion to dismiss, the court made multiple findings establishing that Plaintiff failed to allege the elements of fraud with particularity and, therefore, the claims as pled had no support in law. With respect to representations about insurance coverage in the January 21 email (Exhibit D), the court found that there were no facts supporting Plaintiff's right to rely on those statements. **Ex. I, ¶ 45**. The court noted there is no right to rely where there is no confidential or fiduciary relationship, and Plaintiff did not bother to allege that there was a confidential or special relationship between Plaintiff and Defendants. **Ex. I, ¶ 46-47**. By the facts Dr. Highsmith verified were true, the court found that two months before Client's first surgery Plaintiff was on notice that treatment under the first Letter of Protection had been withdrawn and that Plaintiff should file claims with the Client's private health insurance. **Ex. I, ¶ 52**. Further, Plaintiff was under a duty to exercise reasonable diligence to protect its own

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interests and investigate coverage for itself. However, there were no facts alleged that Plaintiff exercised reasonable diligence. Plaintiff's fraud claims based on the Letters of Protection were similarly inadequately pled because Plaintiff did not allege with particularity indicating Defendants had no intention of paying plaintiff when they sent the second Letter of Protection, or that the statements were false when made. **Ex. I, ¶ 62**. In addition, critical to why the fraud claims failed was that Plaintiff was on notice to submit claims to private health insurance but did not do so or inform Defendants it would not do so. **Ex. I, ¶ 51; ¶ 61.**

Additionally, with respect to Plaintiff's breach of contract accompanied by a fraudulent act claim, Plaintiff failed to allege facts sufficient to establish that there was a fraudulent act accompanying the alleged breach. **Ex. I, ¶ 77-78**.

Because of these basic pleading failures, all of the fraud claims failed and were dismissed at the initial pleading stage. Any reasonable attorney would have known the verified *facts* were insufficient to support various elements of the fraud claims under the heightened pleading standard of Rule 9(b) and, as a result, the initiation of those failed claims is sanctionable conduct. § 15-36-10(C)(1)(a) (finding sanctionable conduct where a reasonable attorney would believe the facts clearly did not warrant a claim or defense); 15-36-10(C)(1)(c) (stating it is sanctionable conduct where a reasonable attorney would believe the case or defense was not reasonably founded in fact); Rule 11, SCRCP (permitting sanctions against a party who file documents, and verify the truth of statements, when there is no reasonable grounds to support them).

3. Plaintiff's claim for unjust enrichment was clearly not supported by the facts alleged.

An unjust enrichment claim requires there to be a benefit given to the defendant, the defendant must realize that benefit, and retaining that benefit would be inequitable without paying its value. *Ellis v. Smith Grading & Paving, Inc.*, 294 S.C. 470, 474, 366 S.E.2d 12, 15

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(Ct. App. 1988). Speculative claims for future increased value are insufficient to support the claim. **Ex. I, ¶ 66**.

Plaintiff alleged it provided services to Client and that it enhanced the settlement value of the Client's claim. The court found that these allegations did not support a claim because the complaint effectively admitted it conferred a benefit to Client, not Defendants, by providing services to Client. Further, the assertion that providing services to Client would increase settlement value was speculative and was not sufficiently pled. **Ex. I, ¶ 71**. A reasonable attorney in similar circumstances would know that the facts Dr. Highsmith verified were true clearly did not support an unjust enrichment claim. Thus, Plaintiff should be sanctioned for filing a pleading in violation of the FCPSA and Rule 11.

B. Plaintiff engaged in litigation tactics not to obtain a determination on the merits, but solely to survive dispositive motions and unnecessarily prolong the case.

After the majority of Plaintiff's claims were dismissed at the pleading stage, Plaintiff continued to litigate a breach of contract claim and claim for violation of SCUTPA. After substantial discovery and on the cusp of a summary judgment motion, Plaintiff changed its allegations contrary to prior testimony and sworn statements to the court to prolong the case, and filed pleadings in violation of the Rules of Civil Procedure.

1. Plaintiff's changed allegations contrary to prior sworn representations and testimony warrant imposing sanctions because they indicate the purpose was other than obtaining a determination on the merits of the claims.

Plaintiff's breach of contract claim was initially based on the Letters of Protection being a contract between Plaintiff and Defendant. **Compl. ¶ 41**. Plaintiff was using the Letters of Protection to try and force Defendants to pay for Client's medical bills after Client's recovery in the personal injury claim was not sufficient to pay the bills. Plaintiff's SCUTPA claim was vague, but in discovery it was based on the email on insurance. **Ex. K (Plaintiff's ATI No. 22)**. In his individual deposition in May 2023, Dr. Highsmith testified that the only way he has to try

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and hold Defendants responsible for Client's medical bills are the Letters of Protection. **Ex. L (Dr. Highsmith Depo. Tr. 33:22 – 34:7)**.

Defendants moved for summary judgment on August 22, 2023, because the Letters of Protection specifically contemplated an insufficient recovery and who would be responsible for the costs—Client.[2] The March LOP prior to any surgeries stated:

> 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. E. Clearly, the language in the letters explains that Defendants would "protect" claims to "settlement proceeds we may receive" and the Client was personally responsible if there was an insufficient recovery—establishing no basis in fact to hold Defendants responsible for Client's medical bills after an insufficient recovery. Defendants also moved for summary judgment on the SCUTPA claim as pled, which was based on the January 2019 emails on insurance coverage according to Plaintiff's discovery responses. **Ex. K**.

Two weeks after the motion for summary judgment was filed, however, Plaintiff moved to amend the complaint in a clear attempt to avoid the unambiguous language in the Letters of Protection, instead describing the "contract" that was breached as "a contract wherein [Plaintiff] would provide medical services to the [Defendants'] client based on the [Defendants'] representations about insurance coverage." **Pltf's Mot. Amnd, Ex. 1 ¶ 27**. The court allowed that amendment over Defendants' protest because the standard for amendment does not consider the merits. The allegation changed contrary to the verified complaint and Dr. Highsmith's testimony. In short, on the cusp of a summary judgment motion that was going to succeed,

[2] In the interest of brevity, Defendants do not outline each and every argument they made in summary judgment because they were required to file three different memoranda. Nevertheless, Defendants incorporate into this Motion the reasoning in their memoranda and exhibits in support of summary judgment, filed August 14, 2024, October 28, 2024, and March 25, 2025.

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Plaintiff changed its theory on breach of contract to change the basis of the contract and try to avoid summary judgment.

But Plaintiff continued to change allegations. Plaintiff verified that it received the April 29, 2019 email from Ms. Bennett notifying that they had recovered only $30,000. **Compl. ¶ 29**. That fact was also a finding in the court's order on the motion to dismiss. **Ex. I, ¶ 20**. This fact was also in the amended complaint. **Amd. Compl. ¶ 17.** Plaintiff then changed that allegation in its Second Amended Complaint to make the "false email" the focus of its SCUTPA claim, asserting it received the "false email" after incurring the medical costs. **2nd Amd. Compl. ¶¶ 20-29.** Dr. Highsmith, who has a background in IT, apparently knew that the email was fake and had no evidence it was sent. **Ex. L (86:16 – 86:25)**. As an aside, it is absolutely frivolous to argue that the email caused any damages under SCUTPA or otherwise when Plaintiff did not receive the email until after they incurred costs, and immediately suspected its authenticity.

Plaintiff modified its sworn allegations in order to prolong the case and determination on the SCUTPA claim. In addition, Plaintiff initially filed an amended complaint that did not comply with the court order granting leave to amend, withdrew and filed the proper amended complaint, and then without consent or leave from court again amended the complaint in violation of Rule 15, SCRCP.

Our courts have awarded sanctions when sworn statements in an affidavit are contradicted by later testimony, establishing there was not a reasonable ground to support the affidavit. *See Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 19, 633 S.E.2d 722, 729 (2006). For example, in *Russell*, the court upheld sanctions under Rule 11 against a party for filing an affidavit when later deposition testimony contradicted the statements in the affidavit. *Id.* The court found that the contradicted statements demonstrated the affidavit was not based on knowledge that there were good grounds to support it. Therefore, the court upheld the lower

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court's order requiring the plaintiff to pay attorney's fees and costs incurred up until summary judgment. *Id.*

Despite Plaintiff's verified complaint attesting that the contract was based on the Letters of Protection and that it received the April 29, 2019 email about the insufficient recovery of $30,000 and Dr. Highsmith's testimony the case was based on the letters, Plaintiff changed its allegations to the contrary to avoid the clear language of the Letters of Protection and state, after many years of knowing the circumstances of the April 29 email, that it did not receive it and the case was now about the email. Further, filing a Second Amended Complaint without consent or court order was a clear violation of Rule 15, SCRCP. This conduct is sanctionable because the shifting allegations, some initially in contravention of the rules and contrary to prior pleadings, were not initiated to obtain a determination on the merits, but to avoid summary judgment.

2. **Plaintiff continued to assert that representations about insurance coverage were false despite the insurer, One Beacon, finding that Client was covered and paid Plaintiff an amount for each of the services charged to Client**.

Throughout litigation Plaintiff has maintained that Ms. Bennett's representations about there being over $1,000,000 in Occupational Accident Coverage under the One Beacon Policy were completely false. **Compl. ¶ 37 (filed 7.22.21) , Amd. Compl. ¶20 (filed 9.10.24) , 2nd Amd. Compl. ¶ 1; ¶ 32 (filed 9.24.24)**. In discovery, Plaintiff as late as September 5, 2024, based the SCUTPA claim, in part, on the representations about the coverage. **Ex. K.**

While the litigation was pending, however, Plaintiff submitted its bills to One Beacon under Client's $1,000,000 Occupational Accident Policy. In July 2023, Plaintiff submitted its bills that it demanded Defendants pay in full. **Ex. M. (One Beacon EOB)**. Also in July 2023, One Beacon issued an Explanation of Benefits to Dr. Highsmith, explaining on every page that Client "is covered under an Occupational Accident Policy." **Ex. M.** At the same time, One Beacon sent a check to Dr. Highsmith paying a sum for each one of the services Plaintiff rendered to Client that is the subject of this action. **Ex. M; Ex. N (Check)**. Comparing the

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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. B**.

Despite knowing that the $1,000,000 policy provided coverage, Plaintiff continued to allege that Ms. Bennett's statement about coverage was false, maintaining that allegation in amended pleadings and discovery filed a year after it received the explanation of benefits. No reasonable attorney under similar circumstances would believe that claim had any basis in fact after receiving that information, yet Plaintiff continued to assert it. The conduct violates the FCPSA and Rule 11.

3. Plaintiff asserted a frivolous claim for attorney's fees for litigating against another person contrary to their representation to the court and a straightforward interpretation of SCUTPA.

Plaintiff hired Attorney Biff Sowell and the firm Sowell Durant to represent it in a debt collection action against Client. Plaintiff litigated that case until the eve of trial, and paid Sowell and Durant $93,716. **Ex. K (ATI 5)**. Plaintiff entered into a settlement agreement with the Client and filed a stipulation of dismissal with prejudice on February 24, 2024, including a representing that "Each party shall bear its own attorney's fees and court costs." **Ex. O (Dismissal)**. Plaintiff then amended its discovery responses to claim as damages in this case those attorney's fees, mischaracterizing them as "Legal fees paid to Sowell & Durant to pursue recovery under One Beacon policy" for $93,716. The fees were incurred primarily for litigating against Client in the debt collection action. **Ex. P (Plaintiff 30(b)(6) at 40:10-14)** (Plaintiff confirming they are asserting as damages Sowell's attorney's fees were for suing the client).

Plaintiff's conduct in asserting as damages the attorney's fees in this case is sanctionable because (1) it is contrary their representations to the court and Client/his attorney, (2) the reason for the fees is misrepresented, (3) there was no basis in law to recover those fees.

First, Plaintiff represented in Client's case when it filed its stipulation of dismissal with prejudice that it would bear its own attorney's fees and costs. That dismissal was signed by

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Attorney Sowell and, clearly, included the fees incurred litigating that case. Notably, Client was represented by an attorney from DeLuca Maucher—Jay Masty, who also signed the dismissal. ***See*** **Ex. O.** Months later, despite that representation to DeLuca Maucher and the court, Plaintiff amended its discovery responses to directly assert as damages against DeLuca Maucher those attorney's fees and costs. **Ex. K.**

Second, Plaintiff characterized the attorney's fees and costs as "Legal Fees paid to Sowell & Durant to pursue recovery under One Beacon Policy." **Ex. K**. Plaintiff confirmed in its deposition that the fees were incurred suing Client. **Ex. P (Plaintiff 30(b)(6) at 40:10-14)**. The invoices Sowell & DuRant provided bear out that conclusion.[3] It would be abundantly clear to a reasonable attorney under similar circumstances that the fees were not incurred to pursue recovery under the One Beacon Policy.

Last, there is no basis in law to assert the attorney's fees as damages in this case. It is well known that attorney's fees are not recoverable absent a contract or statute. Plaintiff did not allege and there was a contract allowing for recovery of attorney's fees. Plaintiff asserted them as Damages, not under a right to recover pursuant to a statute.

Nevertheless, even if Plaintiff intended to assert the right under statute, the fees were not recoverable under SCUTPA. Strictly construing SCUTPA as is required leads to the conclusion attorney's fees incurred in a separate lawsuit not involving a SCUTPA claim are not recoverable in this lawsuit. The statute states: "Upon the finding by the court of a violation of this article, the court shall award to the person bringing such action under this section reasonable attorney's fees and costs." S.C. Code Ann. § 39-5-140. The statute allowing fees contains limitations on recovering fees. The statute requires (1) a finding by the court of a violation of the article, and (2) indicates the fees should be awarded "to the person bringing the action" i.e., that the fees

[3] Defendants will bring a copy of the invoices for the Court's inspection during a hearing on this motion. Plaintiff has the invoices.

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awardable under statute are limited to those reasonable fees incurred in "bringing the action" for violation of SCUTPA. Under a strict interpretation of the statute, Plaintiff's fees paid to a *different* attorney (Biff Sowell) for a different lawsuit (collection action against the Client) cannot be awarded because they are not related to "bringing the action" for violation of SCUTPA. As such, there was no basis in law to assert the claim for Sowell's attorney's fees.

This Court should find it was a violation of the FCPSA and Rule 11 to assert the claim to attorney's fees when Plaintiff indicated it would not in court filings and representations to DeLuca Maucher, mischaracterized the claims in discovery, and there was no basis in law to recover those fees.

C. Plaintiff's last, altered claims were manifestly without merit, as determined by the court on summary judgment.

This Court's order granting summary judgment establishes that no reasonable attorney under similar circumstances would believe the claims were warranted under existing law or reasonably founded in fact. Plaintiff had claims for breach of contract, violation of SCUTPA, negligent misrepresentation, and promissory estoppel. The Court granted summary judgment on two overarching grounds (1) that a prior order of the court preempted the claims, and (2) that the claims failed on the most basic grounds.

First, the Court found that the claims were preempted by the Court's prior order dismissing five of Plaintiff's seven claims. **Ex. J**. Plaintiff was made aware of this outcome when Defendants contested Plaintiff's motion to amend in its memorandum in opposition filed August 14, 2024. Plaintiff nevertheless continued to maintain the claims in the face of the prior order that was the law of the case. Plaintiff could have appealed the prior order to change that outcome, but chose not to. Indeed, Plaintiff made sure to let the Court know in its pleadings that it reserved the right to appeal that prior order. ***See* Amd. Compl., at n.1** ("Plaintiff respectfully reserves its objections and potential appeal of the trial court's ruling granting Defendants'

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motion to dismiss . . . ."); **2nd Amd. Compl. at n.1** (same). Further, although Defendants asserted in opposition to the amendment and at summary judgment that the claims were preempted by the previous order, Plaintiff did not bother to respond to that argument in its memorandum in opposition to summary judgment or at the hearing on the motion, seemingly conceding the issue. Despite clearly intending to appeal that order, Plaintiff forced Defendants to litigate for years and incur significant legal fees and costs in doing so, and then did not respond to that argument at summary judgment. No reasonable attorney under the same circumstances would believe there were grounds to support that position.

Second, the Court's summary judgment order found Plaintiff's claims lacking on the most basic grounds. The Court granted summary judgment on the breach of contract claim because there was no legally enforceable contract. **Ex. J, p. 10**. Although there were the Letters of Protection and an email about insurance, Plaintiff claim was essentially that there was a contract whereby Defendants would be responsible for Client's medical bills. No matter how the facts were twisted, there was no evidence that Defendants offered to pay for Client's medical costs if Plaintiff treated Client, or that Plaintiff accepted by providing medical services conditioned on the promise to pay the bills. The Court found no offer because the Letters of Protection explained Client was responsible for his bills in the event of an insufficient recovery, Plaintiff had a Financial Policy with Client containing similar language, Plaintiff was already providing services to Client, and Ms. Bennett retracted the first Letter of Protection and asked Plaintiff to bill private health insurance mere hours after the email referencing insurance. **Ex. J, at p. 13**. All of this information was available to Plaintiff and was clear prior to it initiating suit against Defendants that there was no basis in fact or law that there was a legally enforceable contract obligating Defendants to pay for Client's medical bills.

The Court also granted judgment to Defendants on the SCUTPA claim because SCUTPA requires that a plaintiff and defendant be engaged in trade or commerce with each other.

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Plaintiff alleged that Defendants were engaged in commerce representing Client. However, Defendants were not engaged in trade or commerce with Plaintiff because the communications about insurance were not in the context of Defendants providing services to Plaintiff and were not related to advertising, sale or distribution of services or property to Plaintiff. **Ex. J, at p. 14**. Because this claim failed on the most basic element and it was clear from the beginning that Defendants were not engaged in trade or commerce with Plaintiff, no reasonable attorney in those circumstances would believe it proper to continue that position or that there was reasonable factual support for that claim.

Likewise, Plaintiff's claims for negligence misrepresentation and promissory estoppel failed on the most basic elements. For negligent misrepresentation, the Court found there was no false statement of fact about the insurance coverage representations. **Ex. J, at p. 16**. The Occupational Accident Coverage from One Beacon did apply and it eventually paid, which Plaintiff knew in July 2023 but still maintained the statement was false. After One Beacon paid Plaintiff under its policy, there was no support to continue to maintain that Ms. Bennett's statement was a false statement of fact. Certainly, there were no grounds to ask the Court for permission to amend the complaint and assert a negligent misrepresentation claim on the basis of the insurance email after Plaintiff knew One Beacon found coverage.

For promissory estoppel, the claim requires an unambiguous promise and none of the relevant emails or Letters of Protection contained an unambiguous promise that Defendants would pay for Client's medical bills out of specific coverages. **Ex. J, at p. 18**. Thus, the claim failed on the first element based on information Plaintiff knew for years prior to asking the court permission to assert the claim.

Considering the reasons the Court granted summary judgment, a reasonable attorney in the same circumstances would know under the facts that existed when Plaintiff filed the claim and as the allegations changed that the claims were clearly not warranted under existing law, the

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case was not reasonably founded in fact, or that there were good grounds to support the claims. Accordingly, this Court should impose sanctions for violating the FCPSA and Rule 11.

II. If the Court finds reasonable attorney's fees and costs should be awarded, the fees and costs incurred on behalf of Defendants is reasonable.

The FCSPA and Rule 11 each allow for the recovery of reasonable attorney's fees and costs. § 15-36-10(G)(1) (stating the sanctions may include "reasonable costs and attorney's fees of the prevailing party"); Rule 11(a), SCRCP (stating that the court may order as a sanction against the offending party "a reasonable attorney's fee").

When determining whether a fee is reasonable, the court should consider the following factors:

> (1) the nature, extent, and difficulty of the case;
> (2) the time necessarily devoted to the case;
> (3) professional standing of counsel;
> (4) contingency of compensation;
> (5) beneficial results obtained;
> (6) customary legal fees for similar services.

Glasscock v. Glasscock, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991). The court must make a finding on each of the above factors.

Here, the parties litigated this case from August 17, 2021, until summary judgment was entered on May 2, 2025. The case took nearly four years to litigate, and it involved substantial written discovery, deposition practice, and motions practice. The parties took 6 depositions: Dr. Highsmith, two separate 30(b)(6) depositions of DeLuca Maucher, Tina Bennett, Eric Weinberger, and a 30(b)(6) of Plaintiff. Although the case did not involve particularly complex legal issues, the factual issues shifted and the case took a long time to litigate to a successful conclusion. During that time, attorneys for Defendants spent 498.50 hours on work related to the defense and incurred $114,757.50 in attorney's fees, making the average rate approximately $230/hour. ***See* Ex. Q (Affidavit)**. The average hourly amount charged is similar to the customary legal fees for similar services Defendants provide in similar cases. Defendants'

attorneys obtained beneficial results by having the court dismiss all of Plaintiff's claims by motion to dismiss or by summary judgment.

According to the factors above, Defendants' attorneys' fees of $114,757.50 are reasonable and this Court should award that amount as the sanction against Plaintiff under the FCSPA and Rule 11, SCRCP.

CONCLUSION

Plaintiff's actions in maintaining this meritless case and shifting, self-serving allegations to prolong the case support finding Plaintiff violated the FCPSA and Rule 11, and imposing sanctions in the amount of Defendants' attorney's fees and costs of $114,757.50, and whatever other relief the Court deems just and proper.

This 12th day of May, 2025.

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 No.: 102865
Attorneys for Defendants

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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

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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

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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

EXHIBIT B

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



Bill to:
[redacted] DEMASKEY
[redacted]E
[redacted]

TOTAL BALANCE: $125,409.28
(PLEASE PAY THIS AMOUNT)

Patient: [redacted] DEMASKEY [redacted]

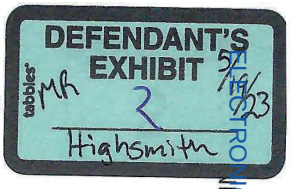
Date	Description	Charges	Payment	Balance
	You are responsible for the following charges:			
12/20/19	EST. PATIENT MOD. HIGH COMPLEX	480.00	0.00	480.00
09/06/19	EST. PATIENT MOD. HIGH COMPLEX	480.00	0.00	480.00
07/18/19	POST OP	0.00	0.00	0.00
07/18/19	XRAY REVIEW	180.00	0.00	180.00
06/13/19	EST. PATIENT 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

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Fax: (843) 474-0712

EXHIBIT C

Fax: (843) 474-0712



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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 D

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

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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

Subject: **Fw: Scott Demaskey**
Date: 1/3/2020 2:21:54 PM Eastern Standard Time
From: kiara@orthoandneuro.com
To: edweinberger@aol.com

EXHIBIT E

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.
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DEFENDANT'S EXHIBIT 4 5/19/23 MR Highsmith

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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 F

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

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EXHIBIT G

Tina

– Exact date unknown (4-29-19)

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

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EXHIBIT H

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

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DEFENDANT'S EXHIBIT 12 5/19/23 Highsmith

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EXHIBIT
I

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.,	)	
	)	**AMENDED**
Plaintiff,	)	**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.

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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.

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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.

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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").

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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

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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

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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

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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).

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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.

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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.*

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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.

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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

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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

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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 ¶¶

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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.

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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]

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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 J

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 **ORDER GRANTING SUMMARY JUDGMENT**

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Plaintiff is a medical practice that treated a client of Defendants after the client sustained injuries in a car accident. When the amount of insurance proceeds recovered did not cover the client's medical bills with Plaintiff, Plaintiff sued the client and, separately in the present action, the client's attorney and law firm, seeking under multiple theories to recover those medical costs.

This matter came before the Court on March 31, 2025, for a hearing on Defendants' Motion for Summary Judgment. Attorney Thomas Pendarvis appeared on behalf of Plaintiff Carolina Neurosurgery & Orthopaedics, Inc., and Attorney Skyler Wilson appeared on behalf of Defendants Michael A. Maucher, Esq. and DeLuca & Maucher, LLP. After considering the memoranda of counsel filed prior to the hearing and arguments at the hearing, this Court GRANTS Summary Judgment to Defendants. Plaintiff's claims are preempted by a prior order of this Court and there are no genuine issues of material fact on one or more elements of each of Plaintiff's claims.

FINDINGS OF FACT

Defendants' 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

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accident, Client was a patient of Dr. Jason Highsmith and chose to return to Dr. Highsmith to treat the injuries he sustained in the car accident.

Upon Plaintiff's requests, 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.

In order to receive treatment, Client executed Plaintiff's Financial Policy, under which the policy stated: "If you have insurance" that Plaintiff "will file with [the patient's] primary insurance." The Financial Policy also stated the patient may be responsible for all of part of the balance not paid by the insurance company. At the time, Client had primary health insurance through Blue Cross/Blue Shield. Defendants were not a party to the Financial Policy. Client then began receiving treatment with Plaintiff and Dr. Highsmith.

Afterwards, staff with Plaintiff and Defendants communicated about insurance. On January 21, 2019, Defendant's paralegal responded to an inquiry from Plaintiff's employee regarding the "limits" for Client. Defendants' paralegal explained the at-fault driver's carrier would not disclose its insurance limits, and stated: "Because [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, we are not concerned that there will be enough over all coverage to pay the claim." But hours later the same day after learning Client needed surgery, Defendants' paralegal emailed Plaintiff's employee, requesting Plaintiff file with Client's private health insurance and that it was best "if we NOT do the treatment under an Assignment/Letter of Protection." Plaintiff's employee said "Okay thanks for the update."

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Defendants then sent Plaintiff a revised Letter of Protection on March 7, 2019, 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.

That same day, Client completed a Health Insurance Verification form for his upcoming surgery, providing Plaintiff with his BlueCross/BlueShield insurance information. Dr. Highsmith performed Client's first surgery on March 15, 2019 (First Surgery) and charged Client $58,697.41. On May 2, 2019, Dr. Highsmith performed additional surgery on Client, charging him an additional $62,451.87 (Second Surgery). In total, Plaintiff charged Client $125,409.28.

However, Plaintiff never filed claims with Client's private health insurance. Defendants' paralegal contacted Plaintiff's employee on January 3, 2020, reminding her of the Letters of Protection and that it appeared Client's health insurance did not pay any of Plaintiff's bills. Defendants' paralegal explained there was only $30,000 in coverage to pay the claim and they needed to discuss how to allocate that amount amongst everyone. Because Client was unable to pay for Plaintiff's services, Plaintiff sued client under its Financial Policy in May 2021, but resolved that case prior to trial.

Current Lawsuit & Procedural History

Plaintiff filed this action in July 2021, seeking to recover its medical costs directly from Defendants based on seven different claims. Defendants moved to dismiss Plaintiff's claims, which Judge Dickson granted in part, and the only remaining claims were for (1) breach of contract and (2) SCUTPA violation. That order made numerous findings of fact and conclusions of law that have not been appealed.

After substantial discovery, Defendants moved for summary judgment in August 2023. Plaintiff, however, was granted leave to amend the complaint to alter its theories of recovery and

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add claims for negligent misrepresentation and promissory estoppel. Plaintiff amended the complaint a second time, further changing its theories of recovery but leaving the four causes of action. The parties engaged in additional discovery and depositions, and Defendants' motion for summary judgment was rescheduled for a hearing before this Court. Defendants and Plaintiff each submitted memoranda supporting their positions, and the Court heard argument on March 31, 2025. This Court GRANTED Defendants summary judgment on April 3, 2025, and now issues its formal opinion.

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 "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

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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 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).

CONCLUSIONS OF LAW

I. Plaintiff's claims are preempted by the unappealed findings of fact and conclusions of law in Judge Dickson's Order that are the law of the case.

Defendants argued that Judge Dickson's Order dismissing the majority of Plaintiff's claims preempted Plaintiff's remaining claims because the Order made multiple findings of fact and conclusions of law on central issues to the case that were not appealed. Plaintiff did not address Defendants' argument on the effect of the order in its brief or in arguments at the hearing. This Court agrees the Order preempts 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.*

Judge Dickson's Order is the law of the case. It decided a substantial right—dismissing Plaintiff's claims for (1) breach of contract accompanied by a fraudulent act; (2) fraud; (3) constructive fraud; (4) unjust enrichment and (5) negligence. The claims that were dismissed were based, in part, on allegations related to statements about insurance coverage. The Order

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made numerous findings of fact and conclusions of law that Plaintiff has not appealed. Because the Order ruled on important issues, not collateral issues, and was decided by Judge Dickson, this Court cannot overrule or modify the Order. Wrong or right, the Order is the law of the case.

As an initial matter, this Court recognizes the Order states it will not be "admissible" to prove facts or law for the "remaining claims of Breach of Contract and" SCUTPA. Defendants argued this language does not prevent the Court from finding the Order binding on Plaintiff's current claims because after the Order, Plaintiff twice amended its complaint and added claims. Specifically, Defendants argued that Plaintiff's breach of contract and SCUTPA claims were previously based on the letters of protection, but then were amended to be based on the email from Defendants' paralegal about insurance. Plaintiff did not respond to Defendants' argument in its brief or at the hearing. This Court agrees with Defendants and finds the Order applies to Plaintiff's altered claims of breach of contract and violation of SCUTPA, and also applies to the new claims for negligent misrepresentation and promissory estoppel.

This Court finds the following findings in the Order 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." Order, ¶ 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." Order, ¶ 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." Order, ¶ 17.
- "On April 29, 2019, D&M notified Plaintiff via email of the foregoing issues" (Order, ¶ 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

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to file claims for Client's surgical services with Client's private health insurance. Order, ¶ 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 discover the truth of the representations." Order, ¶ 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." Order, ¶ 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." Order, ¶ 52.
- "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." Order, ¶ 53.
- Plaintiff "should have refused Bennett's instructions to file claims with Client's private health insurance company." Order, ¶ 54.
- "Plaintiff should have known the only potential avenue for payment would have been through Client's underinsured motorist and/or occupational accident policies." Order, ¶ 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. Order, ¶ 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." Order, ¶ 57.

Plaintiff alleges four causes of action: (1) breach of contract; (2) SCUTPA violation; (3) negligent misrepresentation; and (4) promissory estoppel, all of which are preempted by the Order.

1. Plaintiff's breach of contract claim is preempted by the findings in the Order.

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

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based on the Lawyers' representations about insurance coverage." 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. The Order also 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. Moreover, the Order 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.

To succeed on its breach of contract claim, Plaintiff would have to prove it agreed to provide medical services because Defendants made statements about insurance coverage. However, this conflicts with the Order's findings above that are the law of the case. Therefore, this Court grants Defendants summary judgment on Plaintiff's breach of contract claim.

2. Plaintiff's SCUTPA claim is preempted by the findings in the Order.

In its SCUTPA claim, Plaintiff asserts that Defendants "engaged in unfair or deceptive acts or practices of trade or commerce." In discovery, Plaintiff explained 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." Plaintiff also asserted 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 Defendants' paralegal to Plaintiff's employee and alleging Plaintiff did not receive the email and did not know about it until after the surgeries were performed.

The Order explicitly finds that Plaintiff was notified of the April 29, 2019 email. Order, ¶¶ 19-20. Wrong or right, that finding is the law of the case and Plaintiff cannot now state it did not receive that email as a basis for SCUTPA liability.

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Further, the findings in the Order also preempt liability based on representations about insurance coverage. 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. Also, 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. According to the Order, 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 insurance limits 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 limits, that Plaintiff agreed to, and Plaintiff had no right to rely on the statement. Therefore, this Court grants Defendants summary judgment on Plaintiff's claim for SCUTPA violation.

3. Plaintiff's claims for negligent misrepresentation and promissory estoppel are preempted by the findings in the Order.

Plaintiff alleges in the negligent misrepresentation claim that Defendants made false representations, and Plaintiff justifiably relied on those representations. 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. 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

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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 because the Order states Plaintiff did not have a right to rely on representations about coverage. Order, ¶ 48, ¶ 57. Further, the findings in the Order recognize Plaintiff had a duty to use reasonable diligence to discover the truth of the representations about coverage. Order, ¶ 48; ¶ 56. In addition, the Order finds the statement about insurance coverage was an opinion and, therefore, not a statement of fact. Because these rulings are the law of the case, but Plaintiff would need to prove the opposite to succeed on claims for negligent misrepresentation and promissory estoppel, the claims are preempted by the Order and this Court grants Defendants summary judgment on those claims.

II. Plaintiff cannot prove the necessary elements of breach of contract because, as a matter of law, there was no legally enforceable contract between Plaintiff and Defendants.

Initially, Plaintiff alleged the contract was based on the Letters of Protection. Then Plaintiff alleged in its Second Amended Complaint that it entered into a contract with Defendants wherein it "would provide medical services to the Lawyers' client based on the Lawyers' representations about coverage." In its memorandum in opposition to summary judgment, Plaintiff argued there is a genuine issue of material fact whether the agreement included an implied term about the availability of coverage. Defendants argued there was no contract because Defendants did not offer to pay for Client's medical bills if Plaintiff treated Client, and Plaintiff did not accept by providing medical services conditioned on a promise to pay the bills. This Court agrees with Defendants.

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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)).

"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.*

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Construing the facts and reasonable inferences in Plaintiff's favor, there is no genuine issue of material fact that there was no legally enforceable contract between Defendants and Plaintiff whereby Plaintiff agreed to provide medical services to Client in return for a promise on the availability of coverage, or that Defendants would be personally responsible for Client's medical bills.

The language in the Letters of Protection and the emails on insurance coverage did not include an offer that Defendants would pay for Client's medical costs. The December 20, 2018 letter stated the law firm agreed "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." Thus, prior to discussion of insurance coverage, Plaintiff was on notice of the potential of an insufficient recovery in settlement proceeds and that the agreement was limited to protection out of settlement proceeds received.

The January 21, 2019 emails did not include, or imply, a promise that Defendants agreed to be responsible for Client's medical costs. According to the medical bills, Plaintiff was already treating Client when it inquired about "limits" for the client on January 21, 2019. Defendants' paralegal explained she did not know the limits of the at-fault driver, but 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." However, hours later the same day, Defendants' paralegal informed Plaintiff that Defendants just learned that Client needed surgery and 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 under an Assignment/Letter of Protection." Plaintiff's employee responded, "Okay thanks for the update."

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The language in the email 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 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 mere hours after referencing 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. The offer did not identify that Plaintiff could accept by providing treatment and, regardless, Plaintiff was already providing services to Client before the email exchange about coverage and Defendants' paralegal immediately contacted Plaintiff's employee about obtaining payment through insurance before any further services were rendered.

Ultimately, in order to find there was a contract, there would need to be a definite offer that Defendants agreed to be responsible for the medical bills if Plaintiff provided treatment to Client. The only reasonable inference is that Defendants did not offer to be responsible for Client's medical bills if Plaintiff agreed to provide medical services to Client, and Plaintiff did not accept that offer and provide medical service to Client based on that offer. Without that offer

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and acceptance, there is no contract, and this Court grants Defendants summary judgment on Plaintiff's breach of contract claim.

III. Defendants did not violate the South Carolina Unfair Trade Practices Act because Defendants were not engaged in a "trade or commerce" with Plaintiff.

Defendants argued, among other things, that this Court should grant summary judgment because Defendants were not engaged in trade or commerce with Plaintiff. Plaintiff argued this Court should deny summary judgment "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 or deceptive acts." This Court agrees with Defendants.

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). 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)." *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 638, 743 S.E.2d 808, 816 (2013) (quoting *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006)).

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*, 403 S.C. at 638, 743 S.E.2d at 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)). 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.

Construing the facts and reasonable inferences in Plaintiff's favor, there is no genuine issue of material fact that 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, and the communication 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 grants Defendants summary judgment on that claim.

IV. Plaintiff cannot prove the necessary elements of negligent misrepresentation because Plaintiff cannot establish Defendants made a false statement to Plaintiff or that Plaintiff actually relied on those statements.

Defendants argue there is no genuine issue of material fact and summary judgment is appropriate, because they did not make a false statement of fact regarding insurance to Plaintiff or that Plaintiff actually relied on any statements of Defendants. Plaintiff argues there are genuine issues of material fact on every element of its negligent misrepresentation claim, specifically that "Defendants made statements about insurance coverage that were either inaccurate or inadequately investigated." Further, Plaintiff argues there is evidence that Carolina Neurosurgery reasonably relied on Defendants' representations about insurance coverage. This Court agrees with Defendants.

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

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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).

Construing the facts and inferences in the light most favorable to Plaintiff, there is no genuine issue of material fact and Defendants did not make an affirmative misrepresentation of fact to Plaintiff. Plaintiff takes issue with Defendants' paralegal mentioning the insurance policies in response to Plaintiff's employee inquiring about limits. The statements Defendants' paralegal made in the email were not false. Defendants' employee replied to Plaintiff's employee's email, telling Plaintiff's employee she did not know what the at-fault party's liability insurance was—a true statement. Defendants' employee 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—a true statement that remained true. Client had those policies in effect when Defendants' paralegal communicated with Plaintiff's employee. In addition, Defendants' paralegal mentioned that they were "not concerned that there will be enough overall coverage to pay the claim." This statement was true at the time made and only an opinion about their concern about coverage.

Further, even though Defendants' employee 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 Defendants testified, this shows that Defendants were concerned about coverage. 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 responded to Defendants' paralegal's request to submit claims to insurance, saying "Okay thanks for the update." Moreover, during Plaintiff's lawsuit, One Beacon's successor accepted coverage and paid an amount for each of Plaintiff's services provided Client according to the Explanation of Benefits, albeit at a reduced amount. Thus, it would be true that Client's One Beacon policy provided coverage. Because there is no genuine issue of material facts that the statements on which Plaintiff relies for its negligent misrepresentation were true when made, there is no false statement, and this Court finds summary judgment appropriate.

Additionally, there is no genuine issue of material fact that Plaintiff did not actually rely on any of Defendants' representations to provide services to Client. Plaintiff has a financial policy that said the Client was responsible for the bill and Dr. Highsmith testified he relies on that financial policy. Dr. Highsmith also testified that coverages do not affect his treatment recommendation. Moreover, Dr. Highsmith testified that he did not know whether he saw the email from Defendants' paralegal 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. 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; and Client needed the surgery.

Even construing the evidence and reasonable inferences in Plaintiff's favor, the only reasonable inference from the evidence is that the statements Plaintiff takes issues with were true and that Plaintiff did not actually, reasonably, or justifiably rely on statements about insurance coverage to provide medical care to Client. Accordingly, this Court grants Defendants summary judgment on Plaintiff's negligent misrepresentation claim.

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V. Plaintiff cannot prove the necessary elements for promissory estoppel because there is no evidence that Defendants made an unambiguous promise that insurance coverages would be available to pay for Client's medical bills.

Defendants argued that summary judgment is appropriate on Plaintiff's claim for promissory estoppel because there is no evidence of any unambiguous promise to pay for Client's medical bills out of specific insurance coverages if Plaintiff provided Client services. Plaintiff did not directly address this argument in its memorandum or at the hearing. This Court agrees with Defendants.

"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)).

Construing the facts and reasonable inferences in Plaintiff's favor, there is no genuine issue of material fact that Defendants did not make an unambiguous promise to pay for Clients medical bills out of specific coverages. In its Complaint, Plaintiff alleged 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.

The email on which Plaintiff relies, however, does not contain an unambiguous promise that the insurance proceeds would be available to pay for the medical services. In the email, Defendants' employee 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. Those statements were truthful representations of the policies Client had. In addition, Defendants' paralegal stated they were "not concerned that there will be enough overall coverage to pay the

claim." Bennett's statement that *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, Defendants' paralegal responded again to Plaintiff's employee two hours later after she discovered the Client needed surgery, and told Plaintiff to bill Client's health insurance, and that it would be better not to provide services under an assignment or letter of protection. Plaintiff's employee agreed. Because there is no genuine issue of material fact that there was no unambiguous promise that coverages would pay for Plaintiff's services, this Court grants Defendants summary judgment on Plaintiff's promissory estoppel claim.

ORDERED, ADJUDGED, and DECREED that Defendants' Motion for Summary Judgment is hereby GRANTED.

_____

The Honorable Jessica A. Salvini
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina

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Charleston Common Pleas

Case Caption:	Carolina Neurosurgery & Orthopedics Inc VS Michael A Maucher , defendant, et al
Case Number:	2021CP1003379
Type:	Order/Summary Judgment

So Ordered

Jessica A. Salvini

EXHIBIT K

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

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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**

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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.**

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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.

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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-

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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**

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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

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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

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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.

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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

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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**

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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 - 2025 May 12 5:18 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

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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

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

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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.

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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.

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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

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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

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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.

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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

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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

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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.

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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

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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

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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

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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?

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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

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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

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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

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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?

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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

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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 --

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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

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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?

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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

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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?

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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

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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

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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?

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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?

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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

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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.

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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

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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

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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

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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

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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.)

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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

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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

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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.

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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

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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.

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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

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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 --

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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

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CareWorks

Explanation of Review

EXHIBIT M

2000 Mallory Lane
Ste 130-280
Franklin, TN 37067
615-399-8658
877-494-7937

ELECTRONICALLY FILED - 2025 May 12 5:13 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]

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 - 2025 May 12 5:13 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.

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Explanation of Review

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Franklin, TN 37067
615-399-8658
877-494-7937

ELECTRONICALLY FILED - 2025 May 12 5:13 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.

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Explanation of Review

2000 Mallory Lane
Ste 130-280
Franklin, TN 37067
615-399-8658
877-494-7937

ELECTRONICALLY FILED - 2025 May 12 5:13 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

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Franklin, TN 37067
615-399-8658
877-494-7937

ELECTRONICALLY FILED - 2025 May 12 5:13 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:

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Explanation of Review

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877-494-7937

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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:

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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 - 2025 May 12 5:13 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]

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.

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CareWorks

Explanation of Review

2000 Mallory Lane
Ste 130-280
Franklin, TN 37067
615-399-8658
877-494-7937

ELECTRONICALLY FILED - 2025 May 12 5:13 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:

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For questions regarding, this review please contact CareWorks at 615-399-8658 877-494-7937

EXHIBIT N

ELECTRONICALLY FILED - 2025 May 12 5:18 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

intact INSURANCE

Claims Processing Center
188 Inverness Drive W., Suite 600
Englewood CO 80112

Mail to:

000001 - 0261

JASON HIGHSMITH MD
7301 RIVERS AVE STE 242
NORTH CHARLESTON SC 29406-4616

intact INSURANCE

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.

intact INSURANCE

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.

AUTHORIZED SIGNATURE

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

T1D101 - 41988276-000289-01/01-0-0-0

[redacted]

EXHIBIT
O

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	Case No. 2021-CP-08-01088
	)	
Carolina Neurosurgery and Orthopedics, Inc.,	)	
	)	
Plaintiff,	)	**STIPULATION OF DISMISSAL WITH PREJUDICE**
	)	
vs.	)	
	)	
Scott DeMaskey,	)	
	)	
Defendant,	)	

The undersigned, as counsel for the Plaintiff and Defendant, representing all parties who have appeared in this action, hereby stipulate, pursuant to Rule 41(a)(1)(B) of the South Carolina Rules of Civil Procedure that this action is dismissed with prejudice as to all claims against all parties. Each party shall bear its or his own attorney's fees and court costs.

s/Thornwell F. Sowell, III
Thornwell F. Sowell, III (SC Bar # 5197)
SOWELL & DuRANT, LLC
1325 Park Street, Suite 100
Columbia, South Carolina 29201
803-722-1100
bsowell@sowelldurant.com

Attorneys for Plaintiff Carolina Neurosurgery and Orthopedics Inc.

s/Jay S. Masty
Jay S. Masty (SC Bar # 12490)
DeLuca Maucher, L.L.P.
Post Office Box 9
Goose Creek, SC 29445
(843) 572-1711
Jay@delucamaucher.com

Attorneys for Defendant Scott DeMaskey

February 21, 2024

ELECTRONICALLY FILED - 2024 Feb 21 1:47 PM - BERKELEY - COMMON PLEAS - CASE#2021CP0801088
ELECTRONICALLY FILED - 2025 May 12 5:18 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

ELECTRONICALLY FILED - 2025 May 12 5:18 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 &
ORTHOPEDICS, INC.,
Plaintiff,
v.
MICHAEL A. MAUCHER, Esq., and
DELUCA & MAUCHER, LLP,
Defendants.

_____

TELEPHONIC DEPOSITION OF JASON HIGHSMITH, M.D., FACS AS 30(b)(6) CORPORATE REPRESENTATIVE FOR CAROLINA NEUROSURGERY & ORTHOPEDICS, INC.

DATE: Friday, January 17, 2025
TIME: 2:00 p.m.
LOCATION: Carolina Neurosurgery & Orthopedics
7301 Rivers Avenue, Suite 242
North Charleston, SC 29405
REPORTED BY: Kylee Clark
JOB NO.: 7100439

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Q Carolina Neurosurgery has patients that are represented by law firms -- right? -- and attorneys?
A Yes.
Q Is it a part of their practice at Carolina Neurosurgery to look to those attorneys to approve medical procedures for their clients?
A No, it's ultimately the patient's responsibility 'cause they're responsible for the bill.
Q All right. In paragraph 30 of the amended complaint, it states that Carolina Neurosurgery retained counsel and incurred at least 93,000 plus in legal fees to pursue recovery under the OneBeacon policy; ultimately, obtained 6,323.50 under that policy. And the amount listed, 6,000, is what the OneBeacon did eventually pay; correct?
A Yes.
Q And in this paragraph, the counsel referred to, is that Biff Sowell?
A Yes. And I believe Mr. Pendarvis as well is part of that.
Q Mr. Pendarvis's fees, do you believe are included in that $93,000 number?
A I'd have to review the bills. I don't know. Mainly Mr. Sowell's.

Q Okay. And Mr. Sowell was hired to do other things than just pursue recovery under the OneBeacon policy; right?

A Yes. He's our retained counsel for other legal matters as well.

Q Okay. And is it your understanding that the legal bills that he incurred that are being asked as damages in this case were incurred for suing Demaskey under the financial policy? Is that part of it?

A No, we tried not to sue them. We tried to get -- do the work they should have done, which was get the policy elaborated on and discovered and utilized so we did not have to bring judgment against the patient and/or their -- his attorney. So we tried -- tried to avoid that actually.

Q But Carolina Neurosurgery did sue Demaskey; right?

A Absolutely.

Q Yeah.

A Because we had to do their job, and they -- we found out that their job was, not only inadequate, they didn't adequately vet the policy that we had to do, and it cost us a lot of money to do that.

Q But the lawsuit against Demaskey wasn't because of OneBeacon; right? It was under the

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financial policy for collection of the debt.

A That was one of the -- one of the contingencies, yes.

Q Okay. And OneBeacon wasn't a defendant in that case; right?

A They were not, no.

Q Okay. And did Carolina Neurosurgery ever sue OneBeacon for anything related to Demaskey?

A I don't believe so, no.

Q And then, just for clarity, the amount of fees that Biff incurred in that lawsuit against Demaskey are being requested as damages in this case?

A Yes, because we were trying to avoid drawing this out legally. Unfortunately, that's not working.

Q Such is the legal landscape and how these things work.

I'm going to move on now to -- there's this section called "First cause of action, breach of contract." And there are a couple of different paragraphs in here.

Okay. In this paragraph 35, it is alleged "Carolina Neurosurgery and the lawyers entered into a contract where Carolina Neurosurgery would provide medical services to lawyer's client based on lawyer's representations about insurance coverage."

EXHIBIT
Q

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 **Affidavit of Attorney's Fees**

PERSONALLY appeared before me, the undersigned Skyler C. Wilson, who after being duly sworn, states as follows:

1. I am over the age of eighteen (18) and am otherwise competent to provide this sworn statement under the penalty of perjury.

2. I swear and affirm that the statements contained herein are true and correct based upon my personal knowledge.

3. I am an attorney with the law firm of Copeland, Stair, Valz & Lovell, LLP, and licensed to practice law in the State of South Carolina, United States District Court for the District of South Carolina, and the United States Court of Appeals Fourth Circuit. I have been licensed to practice law for nearly 9 years, the majority of that time spent in civil litigation.

4. Douglas W. MacKelcan is an attorney licensed to practice law in the State of South Carolina and United States District Court for the District of South Carolina. Doug has nearly 18 years of experience as a practicing civil litigation attorney.

5. I, along with Douglas W. MacKelcan, represent the Defendants in the above-captioned lawsuit and are counsel of record.

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6. We began representing Defendants in response to Plaintiff's complaint in August 2021, and successfully defended against the claims through May 2, 2025, when the Court entered summary judgment in Defendants' favor.

7. Between August 2021 and May 2, 2025, the Defendants spent 498.50 hours defending the action, incurring attorneys' fees totaling $114,757.50, at an average rate of approximately $230/hour.

8. Upon information and belief, the attorney's fees charged herein are reasonable based upon the nature, extent, and difficulty of the legal services rendered; the time and labor necessarily devoted to the case; the professional standing of counsel; the beneficial results obtained; and the fee customarily charged in the locality for similar legal services. *Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991).

FURTHER AFFIANT SAYETH NOT.

Skyler C. Wilson (SC Bar No. 102865)

SWORN TO and subscribed before me,
this 12th day of May, 2025

Teri J. Rewt

Notary Public for the State of South Carolina
My Commission Expires: June 28, 2028.

TERI J. REWT
Notary Public-State of South Carolina
My Commission Expires
June 28, 2028

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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 MOTION TO ALTER OR AMEND THE ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

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

As directed by the Court's "Initial Order Regarding Motion to Reconsider," filed on May 8, 2025, Plaintiff CAROLINA NEUROSURGERY & ORTHOPEDICS, INC. ("Carolina Neurosurgery") respectfully files this Supplemental Motion to Alter or Amend under Rule 59(e), SCRCP, to have the Court alter or amend its Form 4 Order ("the Form 4 Order") filed on April 3, 2025, granting the Motion for Summary Judgment and the Order Granting Summary Judgment ("the Order") filed on May 2, 2025, granting the Motion for Summary Judgment, both filed on behalf of Defendants, Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP (collectively "the Lawyers").

Carolina Neurosurgery incorporates into this motion all previously filed motion to alter or amend, memoranda in opposition to the Lawyers' motion for summary judgment, exhibits, transcripts, and legal memoranda opposing the Lawyers' motion for summary judgment.

SUMMARY

There exist genuine issues of material fact regarding Carolina Neurosurgery's claims for negligent misrepresentation, breach of contract, and violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"), which warrant further review and adjudication.

Specifically, the evidence in the record - including but not limited to conflicting testimony and documentary evidence cited in Carolina Neurosurgery's memorandum in opposition to the

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Lawyers' first motion for summary judgment and the Lawyers' second revised memorandum in support of summary judgment—demonstrate unresolved disputes on key factual issues. Applicable South Carolina legal authorities further support the argument that summary judgment was prematurely granted in this matter.

Standard for Motion to Alter or Amend

Rule 59(e), SCRCP, permits parties to seek reconsideration of a judgment to correct errors of law or fact and prevent manifest injustice. Where an issue is not ruled upon by the trial judge, it is not preserved for purposes of appeal unless the complaining party moves before the trial court to amend the judgment pursuant to Rule 59(e). *See Talley v. South Carolina Higher Educ. Tuition Grants Committee*, 289 S.C. 483, 347 S.E.2d 99 (1986); *Nelums v. Cousins*, 304 S.C. 306, 403 S.E.2d 681 (Ct. App. 1991). *See also Englert, Inc. v. Netherlands Ins. Co*., 315 S.C. 300, 433 S.E.2d 871 (Ct. App. 1993) (where a position is not argued to the trial court, the trial court does not rule upon it, and the party does not file a post-trial motion to obtain a ruling, the issue is not preserved for appeal).

> Ordinarily, a Rule 59 motion is necessary when the trial court overlooks an issue raised and presented, and fails to rule upon it. However, the motion is also required where the trial court does rule upon an issue which was not raised. The failure to bring a motion to alter and amend the judgment precludes complaining about the error on appeal.

Motions to alter or amend judgment, TRIAL HANDBOOK FOR SOUTH CAROLINA LAWYERS § 36:5 (5th ed.) (citing *Pelican Bldg. Centers of Horry-Georgetown, Inc. v. Dutton*, 311 S.C. 56, 427 S.E.2d 673 (1993) (where an appellant learns for the first time when the appellant receives the order that the respondent would be granted certain relief, the appellant must move, pursuant to Rule 59(e), SCRCP, to alter or amend the judgment to "preserve the record for appeal."); *Godfrey v. Heller*, 311 S.C. 516, 429 S.E.2d 859 (Ct. App. 1993) (following the rule in *Pelican Bldg. Centers of Horry-Georgetown, Inc. v. Dutton*). *See also*, *Swing v. Swing*, No. 2023-001389, 2024 WL 5458125, at *6 (S.C. Mar. 12, 2025) ("'Timely,' as that term is used in Rules 203(b)(1) and 59(f), means the Rule 59(e) motion was served on the opposing parties within ten days from the date of receipt of written notice of the entry of the order the merits of which the motion purports to address.") A motion under Rule 59(e) is appropriate when (a) the Court misapprehends or overlooks factual evidence in the record, (b) parties present new evidence, or (c) errors of law or logic undermine the judgment.

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ARGUMENTS

This Motion requests the Court amend the Form 4 Order and the Order because a) the evidence and testimony in the record contain factual disputes on each element of Carolina Neurosurgery's causes of action for negligent misrepresentation and for violation of the South Carolina Unfair Trade Practices Act, and b) all "Findings of Fact" and "Conclusions of Law" that relied on an Order dated June 28, 2022 ("the 2022 Order") granting in part and denying in part, the Lawyers' motion to dismiss should be removed because they are based—or should have been based—solely on the allegations in the original Complaint, and were not supposed to be based on the actual evidence and testimony, the majority of which had not even been developed when the 2022 Order was issued. The 2022 Order contains multiple Findings of Fact that were not alleged in the original Complaint and not needed to support the trial court's conclusions of law. *See* (2022 Order, ¶ ¶ 7, 10-13, 16-24, 41, 45, 48, 50-62, 68, and 75). The 2022 Order contained a majority of "Findings of Fact" that were not included in the trial court's email to counsel sent at 3:36 pm on June 9, 2022, instructing counsel for the Lawyers to prepare a proposed Order. The proposed Order was submitted to the Court on June 28, 2022, while the undersigned counsel for Carolina Neurosurgery was under a Consent Order of Protection between June 13 and July 1, 2022. A footnote was added to each of the Amended Complaints that Carolina Neurosurgery filed in this matter, preserving its objections to the 2022 Order.

I. The 2022 Order did not establish the "Law of the Case" because it did not determine the merits of the breach of contract and UTPA claims.

The Order should be altered or amended to correct the misapprehension of the "law of the case" doctrine in so far as it relied upon findings of fact and conclusions of law related to other causes of action. *See McLendon v. South Carolina Dept. of Highways and Public Transp.*, 313 S.C. 525, 443 S.E.2d 539 (1994) (denial of a motion to dismiss does not establish the law of the case because the order does not finally determine anything about the merits of the case on the remaining claims); *Ballenger v. Bowen*, 313 S.C. 476, 443 S.E.2d 379 (1994) (same as applied to a motion for summary judgment).

The 2022 Order contains no findings determining the UTPA claims. This is critical given the Court's clear error on pages 14-15 of the Order incorrectly finding that the Lawyers "were not engaged in trade or commerce with Plaintiff in a business context when the representations were made." First, this construes the facts and testimony in the light most favorable to the Lawyers,

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contrary to the standard of review. Next, the conclusion that representations to third parties made by lawyers during the representation of clients are outside the scope of the UTPA is patently contrary to specific South Carolina Supreme Court findings. *See RFT Mgmt. Co. v. Tinsley & Adams, L.L.P.,* 399 S.C. 322, 337 38, 732 S.E.2d 166, 174 (2012) (UTPA claims are available against lawyers and law firms; appellant could not show harm from that contrary erroneous finding); *Taylor v. Medenica,* 324 S.C. 200, 217, 479 S.E.2d 35, 44 (1996) (UTPA did not exclude professional services from its definition); *Camp v. Springs Mortgage Corp.,* 307 S.C. 283, 285, 414 S.E.2d 784, 786 (Ct. App. 1991) aff'd in part, rev'd in part, 310 S.C. 514, 426 S.E.2d 304 (1993) ("[T]here is no question but [t]hat legal services come within the definition of this statute.").

Caroline Neurosurgery's motion to alter or amend should be granted on this point.

II. The Form 4 Order and the Order did not apply the proper standard of review.

The Court should grant this motion and issue a new Order denying the Lawyers' motion for summary judgment because it did not apply the proper standard of review. Our Supreme Court has commanded that "[s]ummary judgment is appropriate when it is clear there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. *McClanahan v. Richland Cnty. Council*, 350 S.C. 433, 437–38, 567 S.E.2d 240, 242 (2002) (citing *Garvin v. Bi–Lo, Inc*., 343 S.C. 625, 541 S.E.2d 831 (2001) (citation omitted). "In ruling on a motion for summary judgment, the evidence and the inferences that can be drawn therefrom should be viewed in the light most favorable to the non-moving party." *Id*.

Contrary to the standard of review, the Form 4 Order and the Order granted the Lawyers' motion for summary judgment despite genuine issues of material fact being in dispute. And also construed conclusions and inferences drawn from the facts in favor of the Lawyers as the moving parties, instead of the nonmoving party, Carolina Neurosurgery.

III. Genuine Issues of Material Fact Exist Regarding Carolina Neurosurgery's Claim of Negligent Misrepresentation.

Carolina Neurosurgery's evidence demonstrates the existence of genuine disputes concerning its claim for negligent misrepresentation. In its Second Amended Complaint, Carolina Neurosurgery alleges the Lawyers negligently misrepresented the availability and applicability of *insurance coverage*, causing Carolina Neurosurgery injury. Testimony and documentation in the record substantiate this claim, including:

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A. Conflicting testimony regarding the Lawyers' representations of insurance coverage:

Carolina Neurosurgery's principal, Jason M. Highsmith, MD, testified that the Lawyers made false or inaccurate representations about the availability of liability and homeowners' insurance coverage available to cover medical and surgical expenses for one of the Lawyers' clients and the Lawyers' promises in a letter of protection, the combination of which led Carolina Neurosurgery to perform over $125,000 in surgery and related healthcare services for the Lawyers' client when, contrary to the Lawyers' representations, there was no available insurance coverage. (Transcript from the deposition of Jason M. Highsmith, M.D., May 29, 2023, 30:2-5, 30:25-31:3, 32:16-20, 43:23-44:3, 44:4-9, 63:14-18, 68:8-24, 86:7-87:5, 87:20-88:9, 103:24-105:1).

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

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.

In this email, the Lawyers represented to Carolina Neurosurgery that, because more than $1,100,000 in coverage was available, "**we are not concerned that there will be enough overall *coverage* to pay [Carolina Neurosurgery's] claim**."

However, Defendant Michael Maucher, Esq., testified inconsistently regarding whether this representation pertained to available *limits* versus actual insurance *coverage*. (See Deposition of Michael Maucher, 28:4-8; July 31, 2023.)

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Tina Bennett, the Lawyers' paralegal, also acknowledged during deposition that she did not verify specifics of policy applicability before conveying *coverage* limits. (See Tina Bennett Deposition, March 12, 2025.)

At no time did the Lawyers explain to Carolina Neurosurgery any concerns regarding the availability of sufficient insurance *coverage* to cover the invoices for surgeries Carolina Neurosurgery provided for the client. Carolina Neurosurgery relied on those representations to its detriment. There was no such coverage.

B. The Lawyers failed to exercise reasonable care:

Carolina Neurosurgery relied on misleading assurances provided by the Lawyers before undertaking costly medical services. These assurances contradicted subsequent communications instructing Carolina Neurosurgery to rely solely on private health insurance—a late-stage directive that Carolina Neurosurgery could not reasonably implement given its "out-of-network" status.

South Carolina law holds that negligence claims should proceed to trial where conflicting evidence creates material disputes over duty and breach. *Nelson v. Piggly Wiggly Central, Inc.*, 390 S.C. 382, 389, 701 S.E.2d 776, 780 (Ct. App. 2010). Here, testimonial contradictions and the Lawyers' conflicting actions demonstrate such disputes, making summary judgment inappropriate.

IV. Genuine Issues of Material Fact Exist Regarding Carolina Neurosurgery's SCUTPA Claim.

Carolina Neurosurgery's claim under SCUTPA asserts that the Lawyers engaged in unfair or deceptive practices through misrepresentations and omissions that directly harmed Carolina Neurosurgery. Courts routinely deny summary judgment in SCUTPA claims where records contain evidence of deceptive practices affecting trade or commerce. *Taylor v. Nix*, 307 S.C. 381, 383, 415 S.E.2d 392, 396 (Ct. App. 1992).

The record highlights disputes of material fact on multiple elements of SCUTPA:

A. Lawyers and law firms are within the scope of the SCUTPA.

The Order incorrectly finds on pages 14-15, contrary to explicit South Carolina Supreme Court authority, that lawyers and law firms are outside the scope of a claim under the SCUTPA. *See RFT Mgmt. Co. v. Tinsley & Adams, L.L.P.*, 399 S.C. 322, 337 38, 732 S.E.2d 166, 174 (2012) (UTPA claims are available against lawyers and law firms; appellant could not show harm from

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that contrary erroneous finding); *Taylor v. Medenica*, 324 S.C. 200, 217, 479 S.E.2d 35, 44 (1996) (UTPA did not exclude professional services from its definition); *Camp v. Springs Mortgage Corp*., 307 S.C. 283, 285, 414 S.E.2d 784, 786 (Ct. App. 1991) *aff'd in part, rev'd in part*, 310 S.C. 514, 426 S.E.2d 304 (1993) ("[T]here is no question but [t]hat legal services come within the definition of this statute.").

This finding is erroneous and the Order should be altered or amended to correct the errors in construing the facts in the light most favorable to the Lawyers and to correct, it is clear misapprehension of law.

B. Unfair or deceptive act:

The Lawyers' representations made via email in January 2019 regarding insurance limits induced Carolina Neurosurgery to schedule costly surgeries despite the Lawyers' failing to confirm the applicability of said policies beforehand. This constitutes a specific act of unfair or deceptive trade practice.

Carolina Neurosurgery's "out-of-network" status was known to the Lawyers prior to these representations, yet the communications failed to disclose this critical risk. (See Deposition of Jason Highsmith, MD, May 19, 2023.)

C. Impact on trade or commerce:

Carolina Neurosurgery incurred $125,409.28 in unpaid medical services, as evidenced by invoices submitted and cited in its Supplemental Interrogatory Responses, dated September 5, 2024. This economic injury was proximately caused by the Lawyers' conduct.

D. Public interest consideration:

Unfair practices engaging medical providers under false pretenses have wider implications for healthcare providers in the state of South Carolina. Carolina Neurosurgery's case exemplifies potential harm beyond this transaction. See *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).

E. <u>Capability of Repetition</u>:

Deposition testimony confirms that the Lawyers routinely relied on similar LOPs in their representation of clients. Such practices are inherently capable of repetition and warrant scrutiny

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under UTPA. the Lawyers' representative, Mr. Maucher, testified that DeLuca & Maucher routinely issued similar LOPs to providers, suggesting the conduct at issue here is not isolated. "[Everything that was stated was accurate at the time; things changed...we updated Carolina Neurosurgery]" (Deposition of Michael Maucher, July 31, 2023, p. 28:4-8).

In *Beneficial Fin. I, Inc. v. Windham,* the South Carolina Court of Appeals recently addressed what allegations are required to establish whether an unfair trade practice has an impact on the public interest.

> The SCUTPA establishes: "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." S.C. CODE ANN. § 39-5-20(a) (1985).
>
> An unfair trade practice has been defined as a practice which is offensive to public policy or which is immoral, unethical, or oppressive. In order to be actionable under SCUTPA, the unfair or deceptive act or practice must have an impact on the public interest. 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.
>
> *After alleging and proving facts demonstrating the potential for repetition of the defendant's actions, the plaintiff has proven an adverse effect on the public interest ... the plaintiff need not allege or prove anything further in relation to the public interest requirement*.
>
> An impact on the public interest may be shown if the acts or practices have the potential for repetition. The potential for repetition may be shown in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures created a potential for repetition of the unfair and deceptive acts.
>
> However, these are not the only two ways impact on the public interest may be shown, rather "each case must be evaluated on its own merits.

Beneficial Fin. I, Inc. v. Windham, 431 S.C. 256, 268-69, 847 S.E.2d 793, 800 (Ct. App. 2020) (internal quotes and citations omitted) (emphasis added).

The testimony, evidence, and allegations in the Second Amended Complaint contains allegations that satisfy these requirements. *See Crary v. Djebelli*, 329 S.C. 385, 388, 496 S.E.2d 21, 23 (1998) ("The potential for repetition may be shown in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures created a potential for repetition of the unfair and deceptive acts.").

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V. South Carolina requires jury trials to resolve disputed fact issues.

Under South Carolina law, where parties present evidence creating reasonable doubts about material facts, those doubts prevent summary judgment. See *Edgewater on Broad Creek Owners Association, Inc. v. Ephesian Ventures, LLC*, 430 S.C. 400, 405, 845 S.E.2d 211, 214 (Ct. App. 2020). Analysis of the record demonstrates substantial unresolved factual disputes rendering summary judgment improper.

Misrepresentation and UTPA are inherently fact-dependent. Disputed testimony in this matter necessitates further discovery and trial proceedings to adjudicate Carolina Neurosurgery's claims fairly.

This Court should grant Carolina Neurosurgery's motion to alter or amend and issue a new order denying the Lawyers' Motion for Summary Judgment because the allegations in the Second Amended Complaint state facts sufficient to support a cause of action under the South Carolina Unfair Trade Practices Act based on the unfair and deceptive acts alleged in their deceptive and false representations leading Carolina Neurosurgery to provide elective surgery procedures to the Lawyers' client knowing Carolina Neurosurgery was an out-of-network healthcare provider outside of the client's healthcare coverage.

CONCLUSION

Carolina Neurosurgery has demonstrated through testimony, documentary evidence, and South Carolina legal authorities that genuine issues of material fact exist related to claims for comparative negligence and violation of SCUTPA. Accordingly, Carolina Neurosurgery respectfully requests that the Court grant its Motion to Alter or Amend and this Supplemental Motion to Amend the Form 4 Order and the Order to deny the Lawyers' motion for summary judgment, and allow this case to proceed to trial.

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 CAROLINA NEUROSURGERY & ORTHOPEDICS, INC.

Beaufort, South Carolina

May 15, 2025

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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' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION**

Michael A. Maucher, Esq. and Deluca & Maucher, LLP, by and through their undersigned counsel, submit this Memorandum in Opposition to Plaintiff's Motion for Reconsideration, filed May 15, 2025, requesting this Court deny Plaintiff's Motion for Reconsideration.

SUMMARY

Plaintiff—a medical practice who treated Defendants' Client for injuries Client sustained in a car accident—sued Defendants to pay Client's approximately $125,000 in medical bills when the insurance proceeds received in settlement, $30,000, were insufficient to pay Client's medical bills. On June 28, 2022, the Court dismissed many of Plaintiff's claims via a motion to dismiss at the beginning of litigation that Plaintiff did not appeal. Plaintiff asked the Court to reconsider that June 28 Order, but by agreement with Defendants' counsel and Court approval, the Court entered a modified Order on April 5, 2023, which is the Order this Court considered at summary judgment.

After much back and forth in the pleadings over four years, this Court granted Defendants summary judgment on Plaintiff's last claims for breach of contract, SCUTPA violation, negligent misrepresentation, and promissory estoppel. The Court's ruling on summary

judgment falls into two categories: (1) that the findings in the Court's April 5, 2023 Order partially granting Defendants' motion to dismiss preempted Plaintiff's last claims; and (2) there were no genuine issues of material fact on Plaintiff's last claims. Plaintiff now asks this Court to alter or amend its Order granting Defendants summary judgment.

The facts with supporting exhibits are outlined in Defendants' Memoranda in Support of Summary Judgment, filed August 14, 2024, October 28, 2024, and March 25, 2025, which are incorporated by reference. Defendants do not include a lengthy explanation of the facts for the purposes of this memorandum because the Court is likely familiar with the facts.

ARGUMENT

As an initial matter, Plaintiff's motion for reconsideration does not challenge or ask this Court to reconsider its ruling finding no genuine issue of material fact on breach of contract and promissory estoppel. Because Plaintiff is not challenging the rulings on the breach of contract and promissory estoppel, those rulings must stand. Defendants address Plaintiff's specific arguments below.

I. This Court should deny Plaintiff's motion for reconsideration for the arguments under "Arguments" and in Part I of the motion because Plaintiff did not present these grounds to the Court in opposition to summary judgment.

A party cannot raise an issue or argument for the first time in a Rule 59(e) motion. *Elam v. S.C. Dep't of Transp.,* 361 S.C. 9, 23–24, 602 S.E.2d 772, 779–80 (2004); *see also Commercial Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 186, 512 S.E.2d 123, 129 (Ct. App. 1999) (finding argument statute of limitations should be tolled was not presented until Rule 59(e) motion and, accordingly, could not be considered); *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995) (stating a party cannot raise an issue for the first time via Rule 59(e) motion that could have been raised previously); *see also Johnson v. Sonoco Products Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) ("An issue may not be raised for the first time in a motion to reconsider."). This includes a prohibition on presenting additional evidence within a

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Rule 59(e) motion. *See Spreeuw v. Barker*, 385 S.C. 45, 68-69, 682 S.E.2d 843, 855 (Ct. App. 2009) (finding a financial form attached to a Rule 59(e) motion and not previously submitted could not be considered on appeal).

In its Motion for Reconsideration, Plaintiff makes multiple arguments about the findings in and effect of the 2022 Order granting Defendants' motion to dismiss. Plaintiff argues the findings of fact and conclusions of law in the June 2022 Order "should be removed" because the findings were not based solely on the complaint and, instead, include information outside of the complaint not necessary to the Court's determination. Further, Plaintiff argues "the 2022 Order did not establish the 'Law of the Case' because it did not determine the merits of the breach of contract and UTPA claims."

Plaintiff did not make these arguments to the Court in any of its submissions in opposition to summary judgment, or at the hearing on the motion for summary judgment. Because a Rule 59(e) motion is not the time to present new arguments not previously presented, and Plaintiff did not present arguments about the impact of the Order it now seeks to make, this Court should refuse to consider those arguments and deny Plaintiff's motion for reconsideration.

Even if the Court were to consider the new arguments, Plaintiff is arguing whether the rulings of a previous judge were wrong or right. Our case law is clear that one judge of the same court cannot overrule another, and an unappealed ruling, wrong or right, is the law of the case. *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013). This Court was correct in relying on the rulings in the previous Order and should deny Plaintiff's motion for reconsideration.

Also, Plaintiff takes issue with the finding that Defendants were not engaged in trade or commerce with Plaintiff in a business context. Plaintiff did not challenge this argument at summary judgment in its briefing or at oral argument and, instead, focused on "unfair or deceptive." Thus, this Court need not address it in the Rule 59(e) motion. Even so, this Court's

finding was appropriate under the evidence presented because it was the only reasonable inference.

Plaintiff then argues "the conclusion that representations to third parties made by lawyers during the representation of clients are outside the scope of the [SCUTPA] is patently contrary to specific South Carolina Supreme Court findings", citing *RFT Management*, *Taylor*, and *Camp*. First, this Court did not find the actions were not within the scope of the SCUTPA, it found Plaintiff did not establish Plaintiff was engaged in trade or commerce with Defendants, which implies that the SCUTPA could apply.

Second, the cases Plaintiff cites do not establish a lawyer's representations to third parties fall within the scope of the UTPA. *See RFT Mgt. Co. v. Tinsley & Adams, L.L.P.*, 399 S.C. 322, 327, 732 S.E.2d 166, 168 (2012) (former client suing law firm for legal malpractice and UTPA violation arising from legal services to former client, not a third party or representations); *Taylor v. Medenica*, 324 S.C. 200, 206, 479 S.E.2d 35, 38 (1996) (former patient suing medical laboratory for violation of UTPA by performing unwarranted lab tests, not a third party, representations, or law firm); *Camp v. Springs Mort. Corp.*, 307 S.C. 283, 285, 414 S.E.2d 784, 786 (Ct. App. 1991) (finding legal services come within definition of UTPA in case by lawyer against a mortgage company, with nothing involving claims against a lawyer or representations), *rev'd on other grounds by* 310 S.C. 514, 517, 426 S.E.2d 304, 306 (finding attorney did not state a claim for UTPA violation because he did not explain how the mortgage company's actions were unfair or deceptive). Because these authorities do not support the proposition Plaintiff represents them to support, this Court should ignore them and deny Plaintiff's motion for reconsideration.

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II. This Court applied the correct summary judgment standard.

Plaintiff argues this Court applied the wrong standard of review for summary judgment, referencing the general standard and indicating the court construed conclusions and inferences in favor of the moving party.

This Court applied the correct standard, which requires construing only *reasonable* inferences in favor of the non-moving party. *See Stokes v. Oconee Cnty.*, 441 S.C. 566, 584, 895 S.E.2d 689, 699 (Ct. App. 2023) (affirming summary judgment dismissing defamation claim in part because only reasonable inferences must be viewed in the light most favorable to the nonmoving party, and it would be unreasonable to infer the alleged defamer knew a statement was false under the evidence presented). This "reasonableness" requirement is throughout summary judgment law, which includes finding summary judgment is appropriate "[w]hen reasonable minds cannot differ on plain, palpable, and indisputable facts." *Singleton v. Sherer*, 377 S.C. 185, 197, 659 S.E.2d 196, 202 (Ct. App. 2008).

Also, the nonmoving party must demonstrate, and the court must find, "that a genuine issue of material fact exists for each essential element of the plaintiff's claim." *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 358, 650 S.E.2d 68, 71 (2007). It is improper to "deny the motion after only finding that a genuine issue of material fact exists as to one element." *Id.* "[W]hen the evidence is susceptible of only one reasonable interpretation, summary judgment may be granted." *Brooks v. Northwood Little League, Inc.*, 327 S.C. 400, 403, 489 S.E.2d 647, 648 (Ct. App. 1997).

This Court applied the correct standard for summary judgment, construing the reasonable inferences in Plaintiff's favor but finding on certain elements of Plaintiff's claims that the evidence was capable of only one reasonable interpretation. Thus, this Court should deny Plaintiff's motion for reconsideration.

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III. This Court correctly found there are no genuine issues of material fact on Plaintiff's negligent misrepresentation claim.

Plaintiff argues there are genuine issues of material fact on the representations about insurance coverage in the January 21, 2019 email, specifically on the meaning of "coverage." Further, Plaintiff asserts in a conclusory fashion that Defendants failed to exercise reasonable care and there is conflicting evidence on duty and breach.

The elements of negligent misrepresentation require an affirmative representation of fact that is false, and cannot be based on opinion or silence of a party. *See, e.g.*, *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). To be actionable, the statement must be one of "a present or preexisting fact, and cannot be predicated on unfulfilled promises or statements as to future events." *Turner v. Milliman*, 392 S.C. 116, 125, 708 S.E.2d 766, 770 (2011). "There is no liability for casual statements, representations as to matters of law, or matters which plaintiff could ascertain on his own in the exercise of due diligence." *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 240, 692 S.E.2d 499, 508 (2010) (quoting *AMA Mgt. Corp. v. Strasburger*, 309 S.C. 213, 223, 420 S.E.2d 868, 874 (Ct. App. 1992)).

This Court found that Plaintiff failed to establish a genuine issue of material fact that the statements in the January 21, 2019 email were false. The Client had the policies referenced in the amounts referenced. Further, the statement that Defendants' employee was not concerned about there being enough coverage was an opinion that was true. Critically, an insurer paid Plaintiff out of one of the policies mentioned in the email.

The Court also found there was no evidence Plaintiff actually, justifiably, or reasonably relied on the email because, hours after that email, Defendants' employee followed up with Plaintiff's employee saying to bill Client's health insurance—i.e., seek payment from the health insurance rather than the policies mentioned—to which Plaintiff's employee agreed. Dr.

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Highsmith testified that coverages do not impact his treatment of patients, and he is not certain he saw the email before providing any services to Client. Also, Plaintiff relies on its own financial policy. Plaintiff's conclusions that it relied on the email are without any evidentiary support and the only reasonable inference is that it did not actually, justifiably, or reasonably rely on the email. Therefore, this Court should deny Plaintiff's motion for reconsideration.

IV. This Court correctly ruled there was no genuine issue of material fact on Plaintiff's SCUTPA claim.

Plaintiff argues there are genuine issues of material fact on multiple elements of SCUTPA. Plaintiff argues "the Order incorrectly finds on pages 14-15, contrary to explicit South Carolina Supreme Court authority, that lawyers and law firms are outside the scope of a claim under the SCUTPA."

The problem with this argument is that the troubling finding is not within this Court's Order—this Court did not find as a general matter, or specifically to Defendants, that lawyers and law firms are outside the scope of SCUTPA. This Court found Plaintiff did not establish Plaintiff was engaged in trade or commerce with Defendants. The finding itself implies SCUTPA could be applicable to Defendants. There was no such evidence or reasonable inference and, therefore, the claim failed.

Plaintiff also argues there are genuine issues of material fact on the other elements of SCUTPA, including "unfair or deceptive act," "impact on trade or commerce," "public interest consideration," and "capability of repetition." Defendants disagree with those arguments, and it is highly suspect that Plaintiff is attempting to establish genuine issues by referencing different "acts"—relying on the insurance limit email as the unfair or deceptive act, but then relying on the Letters of Protection under the "capability of repetition" element. Plaintiff also erroneously continues to represent, without any evidence, that Defendants knew it was an out-of-network provider, and that it incurred $125,409.28 in unpaid medical services despite One Beacon paying

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a portion of those medical services. Setting aside those disagreements, whether or not there are genuine issues of material fact on the other elements of SCUTPA is irrelevant, because this Court's Order found the first element of SCUTPA lacking, and summary judgment is appropriate if Plaintiff cannot establish a genuine issue of material fact on *every* element of a claim. Because there is no genuine issue of material fact on the first element of SCUTPA, the other elements do not matter, and this Court should deny Plaintiff's motion for reconsideration.

V. Trials are required only when there is a genuine issue of material fact on every element of a claim, which Plaintiff has failed to show and requires denying its motion for reconsideration.

Plaintiff appeals generally to the proposition that summary judgment is not appropriate when there is evidence creating reasonable doubts of material fact. As argued in Defendants' motion for summary judgment and above, and appropriately found in this Court's Order granting summary judgment, Plaintiff did not present evidence or reasonable inferences to create a genuine issue of material fact on every element of every claim. Therefore, this Court should deny Plaintiff's motion for reconsideration.

This 22nd day of May, 2025.

Respectfully submitted,

COPELAND, STAIR, VALZ & LOVELL, LLP

40 Calhoun Street, Suite 400
Charleston, SC 29401
dmackelcan@csvl.law
swilson@csvl.law
Ph: 843-727-0307

By: *s/Skyler C. Wilson*
DOUGLAS W. MACKELCAN
SC Bar No.: 76332
SKYLER C. WILSON
SC Bar N.: 102865
Attorneys for Defendants

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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.,)	
)	
Plaintiff,)	**DEFENDANTS' MOTION TO RECONSIDER COURT'S JUNE 18, 2025 ORDER DENYING SANCTIONS**
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, move this Court pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, to reconsider its June 18, 2025 Order denying Defendants' Motion for Sanctions without a response from Plaintiff and without any findings of fact. **Ex. 1**.

INTRODUCTION

Plaintiff, a medical practice owned and operated by Jason Highsmith, M.D., has pursued numerous baseless claims trying to force a law firm and lawyer to pay for a shared client's medical costs totaling more than $125,000. Plaintiff also sued the client—whom an attorney in Defendants' office represented pro bono—abandoning that case on the eve of trial and then asserting as damages against the law firm and lawyer Plaintiff's approximate $90,000 of attorney's fees incurred suing the client. After getting all of the claims dismissed, Defendants timely moved for sanctions under Rule 11 and the Frivolous Civil Proceedings Sanctions Act (the Act). This Court denied the motion but declined to hold a hearing on the motion, plaintiff did not submit a response, and the Court did not make any findings of fact.

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SUMMARY OF FACTS

The facts of this case are outlined with supporting exhibits in Defendants' Motion for Sanctions, filed May 12, 2025, and are incorporated by reference. After that motion, this Court denied Plaintiff's Motion for Reconsideration of its Order granting Defendants' Motion for Summary Judgment. Without a hearing or any response in opposition, this Court denied the Motion for Sanctions. Defendants ask this Court to reconsider its ruling and make findings of fact on the Motion for Sanctions, predominantly to preserve the issue for appeal in response to Plaintiff's appeal.

STANDARD

A motion for reconsideration is appropriate when "the court has misunderstood, failed to fully consider, or . . . failed to rule on an argument or issue." *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). "A party is usually allowed to ask the court to reconsider its decision even if it means rehashing an argument previously presented." *Id.* at 21, 602 S.E.2d at 778-79. Motions for reconsideration are a vehicle to call the court's attention to a possible misapprehension of an argument, and "to revisit a previously raised argument." *Id.*, 602 S.E.2d at 779.

ARGUMENT

I. This Court should reconsider its Order and find sanctions are appropriate because Plaintiff did not respond to the motion and it is effectively uncontested, or in the alternative, at least make findings of fact to support a decision on sanctions.

When a prevailing party at summary judgment moves for sanctions under the Act, "the court shall proceed to determine if the claim or defense was frivolous." S.C. Code Ann. § 15-36-10(C)(1). After notification, a party has 30 days to respond to the allegations as that person considers appropriate. S.C. Code Ann. § 15-36-10(D). In determining whether sanctions are appropriate, "the court shall take into account" a list of seven specific factors. S.C. Code Ann. § 15-36-10(E)(1)-(7).

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First, this Court should reconsider its order and award sanctions against Plaintiff because Defendants' motion was supported by the facts and law. The preponderance of the evidence shows that Plaintiff made frivolous claims or filings to unnecessarily prolong litigation, and the claims were ultimately found lacking, as explained in the Motion for Sanctions. Plaintiff had 30 days to respond to the Motion for Sanctions and failed to do so. Because Plaintiff did not respond to the Motion for Sanctions within the time allotted, the motion was effectively uncontested, and this Court was without any argument or evidence contrary to what was presented in the Motion for Sanctions. Without Plaintiff contesting the motion, this Court should have granted the sanctions requested therein.

In addition, Plaintiff's failure to respond to the Motion for Sanctions should be considered a waiver. "Waiver is a voluntary and intentional abandonment or relinquishment of a known right." *Skipper v. Perrone*, 382 S.C. 53, 62, 674 S.E.2d 510, 514 (Ct. App. 2009). "It may be expressed or implied by a party's conduct." *Id.* Litigants are charged with knowledge of the law. *See Labruce v. City of N. Charleston*, 268 S.C. 465, 467, 234 S.E.2d 866, 867 (1977). Here, the law for frivolous proceedings sanctions gives a party accused of violating the statute an opportunity to respond to the allegations within 30 days. S.C. Code Ann. § § 15-36-10(D). By not responding and presumably knowing of the right to respond, Plaintiff has waived its right to respond to the Motion for Sanctions. Accordingly, even without a hearing, this Court should find that Plaintiff's conduct as detailed in the Motion for Sanctions violated the Act, awarding Defendants the relief requested in the motion.

In the alternative, this Court should reconsider its order and make findings of fact to support a decision on the sanctions motion. The language in the Act uses the mandatory language "shall" that requires the Court to consider specific factors to determine whether sanctions should or should not be awarded. Without a hearing to discuss those factors, and without findings of fact and analysis on the issues, it is unclear exactly what the Court

considered when denying the Motion for Sanctions. Furthermore, on an appeal of an order on sanctions, the appellate court finds facts in accordance with its own view of the preponderance of the evidence. *Site Prep, L.L.C. v. Atl. Coast Builders & Contractors, L.L.C.*, 394 S.C. 97, 104, 713 S.E.2d 650, 653 (Ct. App. 2011). If the appellate court agrees with the circuit court's findings of fact, the appellate court reviews the decision under an abuse of discretion standard. *Id.*, 713 S.E.2d at 654. Without the trial court making findings of fact on the sanctions motion, the appellate court cannot review the trial court's findings to fulfill its review function of such motions. Thus, this Court should reconsider its order and make findings to support a decision on the Motion for Sanctions.

Plaintiff is appealing the orders on the motion to dismiss and motion for summary judgment, and Defendants submit this Motion for Reconsideration to protect the record in response to Plaintiff's appeal.

This 30th day of June, 2025.

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

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1003379

EXHIBIT 1

Carolina Neurosurgery & Orthopedics Inc
PLAINTIFF(S)

Michael A Maucher et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

This matter is before the Court by way of Defendants' Motion for Sanctions filed on May 12, 2025. After reviewing the motion and the record, the Court declines to hold a hearing. Defendants' Motion for Sanctions is denied.

IT IS SO ORDERED.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/18/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2025 Jun 18 4:17 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379
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Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Charleston Common Pleas

Case Caption: Carolina Neurosurgery & Orthopedics Inc VS Michael A Maucher , defendant, et al

Case Number: 2021CP1003379

Type: Order/Electronic Form 4

So Ordered

Jessica A. Salvini

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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 RECONSIDERATION OF THE ORDER DENYING THEIR MOTION FOR SANCTIONS**

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

Plaintiff CAROLINA NEUROSURGERY & ORTHOPEDICS, INC. ("Carolina Neurosurgery") respectfully submits this memorandum in opposition to the motion for reconsideration of the Order Denying the motion for sanctions filed on behalf of Defendants Michael A. Maucher, Esq. and DELUCA & MAUCHER, LLP, and the Motion for Sanctions.

Carolina Neurosurgery respectfully requests that the Court deny the Defendants' motion, as it contends that the trial court erred in granting summary judgment on its claims for negligent misrepresentation, breach of contract, and violation of the South Carolina Unfair Trade Practices Act, all of which had merit. Furthermore, the trial court's Order denying Defendants' motion for sanctions was filed before any notice of a hearing on the motion was served and before Carolina Neurosurgery filed its opposition. Carolina, neurosurgery's claims have substantial merit. It was proper for the trial court to deny the motion for sanctions, and it will be proper for the trial court to deny the Defendants' motion to alter or amend that Order.

Background

On May 12, 2025, Defendants filed a Motion for Sanctions under Rule 11 of the South Carolina Rules of Civil Procedure and the South Carolina Frivolous Civil Proceedings Sanctions Act, alleging that Plaintiff's claims were frivolous. No notice of a hearing on Defendants motion was

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served before the trial court issued its Order denying the Defendants' Motion for Sanctions on June 18, 2025, without holding a hearing.

On June 30, 2025, Carolina Neurosurgery timely filed a Notice of Appeal. Defendants subsequently filed a Motion for Reconsideration on June 30, 2025, arguing that Carolina Neurosurgery did not respond to the Motion for Sanctions, rendering it uncontested.

ARGUMENTS

I. The Defendants' motion for reconsideration should be denied because Carolina Neurosurgery's claims have merit.

Carolina Neurosurgery's claims are not frivolous and have a legitimate basis in fact and law. The trial court's summary judgment ruling failed to consider the evidence supporting the Carolina Neurosurgery's claims, which include significant financial damages resulting from the Defendants' actions. Carolina Neurosurgery's claims are grounded in established legal principles and should be allowed to proceed to trial.

The trial court made multiple errors in granting Defendants' motion to dismiss in 2022, and made errors in 2025 when it granted Defendants' motion for summary judgment on Carolina Neurosurgery's claims for negligent misrepresentation, breach of contract, and violation of the South Carolina Unfair Trade Practices Act. These claims are supported by substantial evidence, and the trial court's Orders were erroneous. There exist genuine issues of material fact regarding Carolina Neurosurgery's claims for negligent misrepresentation, breach of contract, and violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"), which warrant further review and adjudication.

Specifically, the evidence in the record - including but not limited to conflicting testimony and documentary evidence cited in Carolina Neurosurgery's memorandum in opposition to the Defendants' first motion for summary judgment and the Defendants' second revised memorandum in support of summary judgment—demonstrate unresolved disputes on key factual issues. Applicable South Carolina legal authorities further support the argument that summary judgment was prematurely granted in this matter.

The evidence and testimony in the record contain factual disputes on each element of Carolina Neurosurgery's causes of action for negligent misrepresentation and for violation of the

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South Carolina Unfair Trade Practices Act. The "Findings of Fact" and "Conclusions of Law" relied on an Order dated June 28, 2022 ("the 2022 Order") granting in part and denying in part, the Defendants' motion to dismiss should be removed because they are based—or should have been based—solely on the allegations in the original Complaint, and were not supposed to be based on the actual evidence and testimony, the majority of which had not even been developed when the 2022 Order was issued. The 2022 Order contains multiple Findings of Fact that were not alleged in the original Complaint and not needed to support the trial court's conclusions of law. *See* (2022 Order, ¶ ¶ 7, 10-13, 16-24, 41, 45, 48, 50-62, 68, and 75). The 2022 Order contained a majority of "Findings of Fact" that were not included in the trial court's email to counsel sent at 3:36 pm on June 9, 2022, instructing counsel for the Defendants to prepare a proposed Order. The proposed Order was submitted to the Court on June 28, 2022, while the undersigned counsel for Carolina Neurosurgery was under a Consent Order of Protection between June 13 and July 1, 2022. A footnote was added to each of the Amended Complaints that Carolina Neurosurgery filed in this matter, preserving its objections to the 2022 Order.

The Order granting Defendants' motion for summary judgment incorrectly applied the "law of the case" doctrine in so far as it relied upon findings of fact and conclusions of law related to other causes of action. *See McLendon v. South Carolina Dept. of Highways and Public Transp*., 313 S.C. 525, 443 S.E.2d 539 (1994) (denial of a motion to dismiss does not establish the law of the case because the order does not finally determine anything about the merits of the case on the remaining claims); *Ballenger v. Bowen*, 313 S.C. 476, 443 S.E.2d 379 (1994) (same as applied to a motion for summary judgment).

The 2022 Order contained no findings determining the UTPA claims. This is critical given the Court's clear error on pages 14-15 of the Order incorrectly finding that the Defendants "were not engaged in trade or commerce with Plaintiff in a business context when the representations were made." First, this construes the facts and testimony in the light most favorable to the Defendants, contrary to the standard of review. Next, the conclusion that representations to third parties made by lawyers during the representation of clients are outside the scope of the UTPA is patently contrary to specific South Carolina Supreme Court findings. *See RFT Mgmt. Co. v. Tinsley & Adams, L.L.P.,* 399 S.C. 322, 337 38, 732 S.E.2d 166, 174 (2012) (UTPA claims are available against lawyers and law firms; appellant could not show harm from that contrary erroneous finding); *Taylor v. Medenica,* 324 S.C. 200, 217, 479 S.E.2d 35, 44 (1996) (UTPA did not exclude

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professional services from its definition); *Camp v. Springs Mortgage Corp.,* 307 S.C. 283, 285, 414 S.E.2d 784, 786 (Ct. App. 1991) aff'd in part, rev'd in part, 310 S.C. 514, 426 S.E.2d 304 (1993) ("[T]here is no question but [t]hat legal services come within the definition of this statute.").

Carolina Neurosurgery's claims had merit and were not frivolous. Carolina Neurosurgery's evidence demonstrates the existence of genuine disputes concerning its claim for negligent misrepresentation. In its Second Amended Complaint, Carolina Neurosurgery alleges the Defendants negligently misrepresented the availability and applicability of *insurance coverage*, causing Carolina Neurosurgery injury. Testimony and documentation in the record substantiate this claim, including:

A. Conflicting testimony regarding the Defendants' representations of insurance coverage.

Carolina Neurosurgery's principal, Jason M. Highsmith, MD, testified that the Defendants made false or inaccurate representations about the availability of liability and homeowners' insurance coverage available to cover medical and surgical expenses for one of the Defendants' clients and the Defendants' promises in a letter of protection, the combination of which led Carolina Neurosurgery to perform over $125,000 in surgery and related healthcare services for the Defendants' client when, contrary to the Defendants' representations, there was no available insurance coverage. (Transcript from the deposition of Jason M. Highsmith, M.D., May 29, 2023, 30:2-5, 30:25-31:3, 32:16-20, 43:23-44:3, 44:4-9, 63:14-18, 68:8-24, 86:7-87:5, 87:20-88:9, 103:24-105:1).

In January 2019, before any surgeries were performed on the Defendants' client, Carolina Neurosurgery 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 Carolina Neurosurgery:

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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.

In this email, the Defendants represented to Carolina Neurosurgery that, because more than $1,100,000 in coverage was available, "**we are not concerned that there will be enough overall *coverage* to pay [Carolina Neurosurgery's] claim**."

However, Defendant Michael Maucher, Esq., testified inconsistently regarding whether this representation pertained to available *limits* versus actual insurance *coverage*. (See Deposition of Michael Maucher, 28:4-8; July 31, 2023.)

Tina Bennett, the Defendants' paralegal, also acknowledged during deposition that she did not verify specifics of policy applicability before conveying *coverage* limits. (See Tina Bennett Deposition, March 12, 2025.)

At no time did the Defendants explain to Carolina Neurosurgery any concerns regarding the availability of sufficient insurance *coverage* to cover the invoices for surgeries Carolina Neurosurgery provided for the client. Carolina Neurosurgery relied on those representations to its detriment. There was no such coverage.

B. The Defendants failed to exercise reasonable care.

Carolina Neurosurgery relied on misleading assurances provided by the Defendants before undertaking costly medical services. These assurances contradicted subsequent communications instructing Carolina Neurosurgery to rely solely on private health insurance—a late-stage directive that Carolina Neurosurgery could not reasonably implement given its "out-of-network" status.

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South Carolina law holds that negligence claims should proceed to trial where conflicting evidence creates material disputes over duty and breach. *Nelson v. Piggly Wiggly Central, Inc.*, 390 S.C. 382, 389, 701 S.E.2d 776, 780 (Ct. App. 2010). Here, testimonial contradictions and the Defendants' conflicting actions demonstrate such disputes, making summary judgment inappropriate.

C. Genuine Issues of Material Fact Exist Regarding Carolina Neurosurgery's SCUTPA Claim.

Carolina Neurosurgery's claim under SCUTPA asserts that the Defendants engaged in unfair or deceptive practices through misrepresentations and omissions that directly harmed Carolina Neurosurgery. Courts routinely deny summary judgment in SCUTPA claims where records contain evidence of deceptive practices affecting trade or commerce. *Taylor v. Nix*, 307 S.C. 381, 383, 415 S.E.2d 392, 396 (Ct. App. 1992).

The record highlights disputes of material fact on multiple elements of SCUTPA:

- **Lawyers and law firms are within the scope of the SCUTPA.**

Lawyers and law firms are within the scope of a claim under the SCUTPA. *See RFT Mgmt. Co. v. Tinsley & Adams, L.L.P.*, 399 S.C. 322, 337 38, 732 S.E.2d 166, 174 (2012) (UTPA claims are available against lawyers and law firms; appellant could not show harm from that contrary erroneous finding); *Taylor v. Medenica*, 324 S.C. 200, 217, 479 S.E.2d 35, 44 (1996) (UTPA did not exclude professional services from its definition); *Camp v. Springs Mortgage Corp*., 307 S.C. 283, 285, 414 S.E.2d 784, 786 (Ct. App. 1991) *aff'd in part, rev'd in part*, 310 S.C. 514, 426 S.E.2d 304 (1993) ("[T]here is no question but [t]hat legal services come within the definition of this statute.").

This finding is erroneous, and the Order should have been altered or amended to correct the errors in construing the facts in the light most favorable to the Defendants, and its failure to correct it was a clear misapprehension of law.

- **Unfair or deceptive act**:

The Defendants' representations made via email in January 2019 regarding insurance limits induced Carolina Neurosurgery to schedule costly surgeries despite the Defendants' failing to

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confirm the applicability of said policies beforehand. This constitutes a specific act of unfair or deceptive trade practice.

Carolina Neurosurgery's "out-of-network" status was known to the Defendants prior to these representations, yet the communications failed to disclose this critical risk. (See Deposition of Jason Highsmith, MD, May 19, 2023.)

- **Impact on trade or commerce**:

Carolina Neurosurgery incurred $125,409.28 in unpaid medical services, as evidenced by invoices submitted and cited in its Supplemental Interrogatory Responses, dated September 5, 2024. This economic injury was proximately caused by the Defendants' conduct.

- **Public interest consideration**:

Unfair practices engaging medical providers under false pretenses have wider implications for healthcare providers in the state of South Carolina. Carolina Neurosurgery's case exemplifies potential harm beyond this transaction. See *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).

- **Capability of Repetition:**

Deposition testimony confirms that the Defendants routinely relied on similar LOPs in their representation of clients. Such practices are inherently capable of repetition and warrant scrutiny under UTPA. the Defendants' representative, Mr. Maucher, testified that DeLuca & Maucher routinely issued similar LOPs to providers, suggesting the conduct at issue here is not isolated. "[Everything that was stated was accurate at the time; things changed...we updated Carolina Neurosurgery]" (Deposition of Michael Maucher, July 31, 2023, p. 28:4-8).

In *Beneficial Fin. I, Inc. v. Windham,* the South Carolina Court of Appeals recently addressed what allegations are required to establish whether an unfair trade practice has an impact on the public interest.

> The SCUTPA establishes: "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." S.C. CODE ANN. § 39-5-20(a) (1985).
>
> An unfair trade practice has been defined as a practice which is offensive to public policy or which is immoral, unethical, or oppressive. In order to be actionable under SCUTPA, the unfair or deceptive act or practice must have an impact on the public

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> interest. 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.
>
> *After alleging and proving facts demonstrating the potential for repetition of the defendant's actions, the plaintiff has proven an adverse effect on the public interest ... the plaintiff need not allege or prove anything further in relation to the public interest requirement*.
>
> An impact on the public interest may be shown if the acts or practices have the potential for repetition. The potential for repetition may be shown in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures created a potential for repetition of the unfair and deceptive acts.
>
> However, these are not the only two ways impact on the public interest may be shown, rather "each case must be evaluated on its own merits.

Beneficial Fin. I, Inc. v. Windham, 431 S.C. 256, 268-69, 847 S.E.2d 793, 800 (Ct. App. 2020) (internal quotes and citations omitted) (emphasis added).

The testimony, evidence, and allegations in the Second Amended Complaint contains allegations that satisfy these requirements. *See Crary v. Djebelli*, 329 S.C. 385, 388, 496 S.E.2d 21, 23 (1998) ("The potential for repetition may be shown in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures created a potential for repetition of the unfair and deceptive acts.").

In summary, Carolina Neurosurgery's claims have merit. The trial court's Order from 2022, granting Defendants' motion to dismiss, in part, and the Order from 2025, granting Defendants' motion for summary judgment, contain reversible error.

II. The trial court issued its Order denying Defendants' motion for sanctions before Carolina Neurosurgery filed its opposition.

Carolina Neurosurgery was not provided with adequate notice or an opportunity to respond to the Defendants' Motion for Sanctions. Under South Carolina law, a party is entitled to a 30-day period to respond to a motion for sanctions. *See* S.C. CODE ANN. § 15-36-10(D). Carolina Neurosurgery did not receive such notice, and therefore, the motion should not be considered uncontested. The lack of response was not a waiver of rights, as Defendants suggest, but rather a result of procedural deficiencies.

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CONCLUSION

Carolina Neurosurgery respectfully requests that the Court deny the Defendants' Motion for Reconsideration. Carolina Neurosurgery's claims are meritorious, and the procedural deficiencies in the handling of the Motion for Sanctions warrant a denial of the Defendants' request for reconsideration.

Carolina Neurosurgery has demonstrated through testimony, documentary evidence, and South Carolina legal authorities that genuine issues of material fact exist related to its meritorious claims for comparative negligence and violation of SCUTPA.

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 CAROLINA NEUROSURGERY & ORTHOPEDICS, INC.

Beaufort, South Carolina

June 30, 2025

RECEIVED
Aug 29 2025
SC Court of Appeals

ELECTRONICALLY FILED - 2025 Aug 29 11:43 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jessica A. Salvini, Circuit Court Judge
Case No.: 2021-CP-10-03379

Appellate Case No. 2025-001304

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

v.

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

---

RESPONDENTS/APPELLANTS' AMENDED NOTICE OF CROSS-APPEAL

Respondents/Appellants Michael A. Maucher, Esq., and DeLuca & Maucher, LLP, submit this amended notice of cross appeal pursuant to Rule 203(c), SCACR, of the following orders:

1. Judge van Slambrook's Order denying Defendants' Motion to Strike, dated November 6, 2024. ***See* Exhibit A.**

2. Judge van Slambrook's Order denying Defendants' Motion to Reconsider the Order denying the Motion to Strike, dated January 30, 2025. ***See* Exhibit B.**

3. Judge Salvini's Order denying Defendants' Motion for Sanctions, dated June 18, 2025. ***See* Exhibit C.**

4. Judge Salvini's Order denying Defendants' Motion to Reconsider the Order denying the Motion to Strike, dated August 25, 2025. ***See* Exhibit D.**

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Appellant filed its Notice of Appeal on June 27, 2025. Appellant's Notice of Appeal was filed prior to the 10-day time expiring for Respondents to ask for reconsideration of the June 18, 2025 Order denying sanctions. Respondents asked the circuit court to reconsider its order denying sanctions on Monday, June 30, 2025. Out of an abundance of caution and while the motion to reconsider was pending, Respondents filed their Notice of Cross-Appeal on July 2, 2025, informing this Court of the same. In response, on July 3, 2025, this Court held the appeal in abeyance pending a decision on the motion to reconsider. Judge Salvini ruled on the motion to reconsider on August 25, 2025. *See* Ex. D. Accordingly, Respondents now amend their Notice of Cross-Appeal to include Judge Salvini's August 25, 2025 order denying the motion to reconsider.

COPELAND, STAIR, VALZ & LOVELL, LLP

This 29th day of August, 2025.

s/ Skyler C. Wilson
Douglas W. MacKelcan
S.C. Bar No.: 76332
Skyler C. Wilson
S.C. Bar No.: 102865
40 Calhoun Street, Suite 400
Charleston, SC 29401
dmackelcan@csvl.law
swilson@csvl.law
Phone: (843) 727-0307
Attorneys for Respondents/Appellants

RECEIVED
Aug 29 2025
SC Court of Appeals

ELECTRONICALLY FILED - 2025 Aug 29 11:43 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jessica A. Salvini, Circuit Court Judge
Case No.: 2021-CP-10-03379

Appellate Case No. 2025-001304

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

v.

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

---

PROOF OF SERVICE

I certify that I have served ***Respondents/Appellants' Amended Notice of Cross-Appeal*** upon the parties below by electronic mail, addressed as follows:

Bess Jones DuRant, Esq.
Sowell & DuRant, LLC
1325 Park Street, Suite 100
Columbia, SC 29201
bdurant@sowelldurant.com
Counsel for Appellant/Respondent

Thomas A. Pendarvis, Esq.
710 Boundary Street, Unit 1
Beaufort, SC 29902
thomas@pendarvislaw.com
Counsel for Appellant/Respondent

This 29th day of August, 2025.

COPELAND, STAIR, VALZ & LOVELL, LLP

s/Skyler C. Wilson
Douglas W. MacKelcan
S.C. Bar No.: 76332
Skyler C. Wilson
S.C. Bar No.: 102865
Attorneys for Respondents/Appellants

40 Calhoun Street, Suite 400
Charleston, SC 29401
dmackelcan@csvl.law
swilson@csvl.law
Phone: (843) 727-0307

FILED ELECTRONICALLY FILED -- 2024-11-05 12:03:53 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 DENYING DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S SECOND AMENDED COMPLAINT AND POSTPONING HEARING ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

THIS MATTER CAME BEFORE THE COURT on November 4 2024, for a hearing on the Defendants' Motion to Strike Plaintiff's Second Amended 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 Defendants' motion to strike, supporting memoranda, and hearing arguments of counsel, the Defendants' Motion to Strike Plaintiff's Second Amended Complaint is DENIED, and the hearing on the Defendants' Motion for Summary Judgment is continued until another term of court.

AND IT IS SO ORDERED!

Dale E. Van Slambrook
Presiding Circuit Court judge

November 5, 2024

Charleston, South Carolina

ELECTRONICALLY FILED - 2024-11-06 12:06:53 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

And It Is So Ordered!

s/Dale E. Van Slambrook S.C. Circuit Court Judge #2781

ELECTRONICALLY FILED - 2025 Aug 19 10:03 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021-CP-10-03379

CAROLINA NEUROSURGERY & ORTHOPAEDICS, INC.
PLAINTIFF(S)

MICHAEL A. MAUCHER, ESQ.
DELUCA & MAUCHER, LLP
DEFENDANT(S)

Submitted by: The Court.	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before the Court on Defendant's Motion to Reconsider, filed on November 18, 2024, which asks this Court to reconsider its ruling in its November 6, 2024 Order denying Defendant's Motion to Strike. The Court timely received a copy of the Motion for Reconsideration; a Memorandum in opposition was filed by Plaintiff.

"The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider the matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "A party may wish to file such motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised but not rule on, in order to preserve it for appellate review." *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). "A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not." *Anderson Memorial Hosp., Inc., v. Hagen*, 313 S.C. 389, 434 S.E.2d 268 (1993); *See also Arnold*, 309 S.C. at 172-173, 420 S.E.2d at 842.

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After consideration of the record, as well as the various interests balanced by the Court at the time of the ruling, the Defendant's Motion to Reconsider is heard and is respectfully Denied. This motion is disposed of without the necessity of a hearing and decided on the record and briefs.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX **Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.**		
Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled (List amount(s) below)**
		$
		$
		$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

	2781	
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**
	CLERK OF COURT

ELECTRONICALLY FILED - 2025 Aug 29 10:03 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2025 Aug 19 10:03 AM - 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

And It Is So Ordered!

s/Dale E. Van Slambrook S.C. Circuit Court Judge #2781

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1003379

Carolina Neurosurgery & Orthopedics Inc
PLAINTIFF(S)

Michael A Maucher et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

This matter is before the Court by way of Defendants' Motion for Sanctions filed on May 12, 2025. After reviewing the motion and the record, the Court declines to hold a hearing. Defendants' Motion for Sanctions is denied.

IT IS SO ORDERED.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/18/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

FILED ELECTRONICALLY IN COMMON PLEAS - CHARLESTON COUNTY - 2021CP1003379 - 06/18/2025 11:14:37 AM

E-FILED CLERK OF COURT 2025 Aug 28 11:14:37 AM - CHARLESTON - COMMON PLEAS - CASE# 2021CP1003379

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

FILED ELECTRONICALLY 2025-06-18 11:47:37 AM - 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/Electronic Form 4

So Ordered

Jessica A. Salvini

ELECTRONICALLY FILED - 2025 Aug 29 11:13 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Carolina Neurosurgery & Orthopedics, Inc., Plaintiff, vs. Michael A. Maucher, Esq. and DeLuca & Maucher, LLP, Defendants.	)	FINAL ORDER REGARDING MOTION TO RECONSIDER Case No.: 2021-CP-10-03379

A Rule 59(e), SCRCP motion to reconsider and to alter or amend has been received, filed with the Court on June 30, 2025, and was served on the Court on June 30, 2025. As previously explained, pursuant to Rule 59(f), SCRCP, the Court, in its discretion, may decide the motion based on briefs without oral argument. The Court indicated to the parties by prior order in the Initial Order Regarding Motion for Reconsideration that it would decide the issues on written submissions. Further, the Court informed the parties that written submissions were not required by the non-moving party, and that the moving party could rely upon its filings or supplement. The deadlines to file written submissions regarding these motions have now passed.

After careful consideration of the able arguments and filings of Counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered.

Accordingly, the Motion for Reconsideration made pursuant to Rule 59, SCRCP, [1] is respectfully DENIED.

AND IT IS SO ORDERED.

Presiding Judge's Signature Page to Follow.

[1] The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRCP.

ELECTRONICALLY FILED - 2025 Aug 29 11:43 AM - 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

So Ordered

Jessica A. Salvini

ELECTRONICALLY FILED - 2025 Aug 29 11:43 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003379

From:	Wilson, Skyler C.
To:	Bess DuRant; Thomas A. Pendarvis
Cc:	Amy Kelly; Tracy Lyn Landry; Mackelcan, Douglas W.; Davis, Lars; Rewt, Teri J.
Bcc:	062608 Carolina Neurosurgery _ Orthopedics_ Inc_ v_ Michael A_ Maucher_ Esq_ and DeLuca _ Maucher_ LLP _E_Mail
Subject:	Carolina Neurosurgery v. Maucher, Esq., et al, Amended Notice of Cross Appeal
Date:	Friday, August 29, 2025 11:23:56 AM
Attachments:	Amended Notice of Cross Appeal (8.29.25) w. Exs.pdf image001.png

Good morning,

Please find attached for service Respondents/Appellants' Amended Notice of Cross Appeal with Exhibits. We are filing the attached with the Court of Appeals today.

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: Rewt, Teri J.
Sent: Wednesday, July 2, 2025 1:02 PM
To: Bess DuRant <bdurant@sowelldurant.com>; Thomas A. Pendarvis <thomas@pendarvislaw.com>
Cc: Amy Kelly <akelly@sowelldurant.com>; Tracy Lyn Landry <tracy@pendarvislaw.com>; Mackelcan, Douglas W. <dmackelcan@csvl.law>; Wilson, Skyler C. <swilson@csvl.law>; Davis, Lars <ldavis@csvl.law>
Subject: Carolina Neurosurgery & Orthopaedics, Inc. v. Michael A. Maucher, Esq. and DeLuca & Maucher, LLP; Case No.: 2021-CP-10-03379; CSVL File No.: 62608

Good afternoon Bess and Thomas,

On behalf of Respondents Michael A. Maucher, Esq. and DeLuca & Maucher, LLP, we are electronically filing the attached Notice of Cross-Appeal in this case today.

Best regards,

Teri Rewt
Legal Assistant II
d: 843.329-8346 | f: 843.727.2995
trewt@csvl.law | www.csvl.law
40 Calhoun Street, Suite 400, Charleston, SC 29401