

RECEIVED

May 13 2026

SC Court of Appeals

**STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS**

Appeal from the Court of Common Pleas
For Spartanburg County
Honorable J. Derham Cole, Jr., Circuit Court Judge
Honorable Grace Gilchrist Knie, Circuit Judge
Civil Action No.: 2020-CP-42-02169
Appellate Case No. 2025-001716

Andrea Allen, as the Personal Representative of the Estate of Albert
Charles Jefferies, deceased,

Respondent,

v.

Chi Hum Lim, M.D.; Megan Nicholas, P.A.; and Carolina Orthopedic
and Neurological Associates, P.A, are the

Appellants.

**INITIAL BRIEF OF THE APPELLANT,
CAROLINA ORTHOPEDIC AND
NEUROLOGICAL ASSOCIATES, P.A.**

Stephen P. Groves, Sr., Esquire
S.C. Bar No. 7854
BUTLER SNOW LLP
25 Calhoun Street, Suite 250
Charleston, South Carolina 29401
Telephone: 843.277.3704
E-Mail: Stephen.Groves@butlersnow.com

*Attorneys for the Appellant,
Carolina Orthopedic and
Neurological Associates, P.A.*

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	v
I. STATEMENT OF THE ISSUES ON APPEAL	1
A. Whether The Trial Court Improperly Substituted CONA-PA For CONA-ASC?	1
B. Whether The Trial Court Should Have Allowed CONA- PA To Intervene?	1
C. Whether The Trial Court Incorrectly Assessed Pre- Judgment Interest Against CONA-PA?	1
D. Whether The Trial Court Used An Improper Verdict Form Which Included An Outside Third-Party	1
E. Whether The Trial Court Incorrectly Denied The Rule 15(a), <u>SCRCivP</u> , Motion To Assert The Additional Affirmative Defense Of Independent, Intervening, And/Or Superseding Causation?	1
II. STATEMENT OF THE CASE	2
III. STATEMENT OF THE FACTS	4
A. Mr. Jefferies' Surgery And Unfortunate Passing	4
B. CONA-PA And CONA-ASC Are Distinct Legal Entities	5
C. The <u>Allen v. Lim</u> Litigation	6
1. CONA-PA Was Never Made A Party-Defendant	6
2. CONA-PA Was Never Advised Of <u>Allen v. Lim</u>	7
3. CONA-PA Does Not Equate To CONA-ASC	9
D. CONA-PA Is Implicated	10

IV.	ARGUMENT AND CITATION OF AUTHORITY	13
A.	The Trial Court Improperly Substituted <i>CONA-PA</i> For <i>CONA-ASC</i>	13
1.	The Trial Court Violated <i>CONA-PA</i> 's Due Process Rights.....	13
2.	<i>CONA-PA</i> Was Not Provided Notice Nor An Opportunity To Be Heard Before The Trial Court Made The Party Substitution.....	20
B.	The Trial Court Should Have Allowed <i>CONA-PA</i> To Intervene.....	22
1.	Rule 24(a), <u><i>SCRCivP</i></u> , Standards.....	23
2.	<i>CONA-PA</i> Was Entitled To Intervene.....	25
3.	<i>CONA-PA</i> Was Never A Party To <u><i>Allen v. Lim</i></u>	27
C.	<i>CONA-PA</i> Was Not Subject To Rule 68, <u><i>SCRCivP</i></u> , Prejudgment Interest As Ms. Allen Never Served <i>CONA-PA</i> With The April 2024 Offer Of Judgment.....	32
D.	<i>CONA-PA</i> Is Entitled To A New Trial Since The Trial Court Improperly Allowed The Verdict Form To Include An Award Of Damages To Both Ms. Allen And Ms. Hemphill.....	36
E.	<i>CONA-PA</i> Was Entitled To Assert The Additional Defense Of Independent, Intervening, And/Or Superseding Causation.....	40
F.	<i>CONA-PA</i> Joins In Dr. Lim's, PA Nicholas", And <i>CONA-ASC</i> 's Not Inconsistent Appellate Arguments.	45
V.	CONCLUSION.....	46

TABLE OF AUTHORITIES

Case Decisions, Administrative Rulings, Etc.

<u>Alabama v. United States Army Corps of Engineers,</u> 704 F.Supp.3d 20 (D.D.C. 2023).....	19
<u>Alamance Industries v. Chesterfield Hosiery Mill,</u> 239 S.C. 287, 122 S.E.2d 648 (1961).....	43
<u>Alemite Manufacturing Corp. v. Staff,</u> 42 F.2d 832 (2 nd Cir. 1930).....	15
<u>American Surety Co. v. Baldwin,</u> 287 U.S. 156 (1932).....	18
<u>American Synthetic Fibers, LLC v. Nevoun, Inc.,</u> 2010 WL 11530990 (D.S.C., 6 Aug. 2010).....	10, 17, 18
<u>Armstrong v. Collins,</u> 366 S.C. 204, 621 S.E.2d 368 (Ct.App. 2005).....	44
<u>Arnold v. Yarborough,</u> 281 S.C. 570, 316 S.E.2d 416 (Ct.App.1984).....	28
<u>Auvil v. Grafton Homes, Inc.,</u> 92 F.3d 226 (4 th Cir. 1996)	30
<u>Bailey v. Bailey,</u> 312 S.C. 454, 441 S.E.2d 325 (1994)	24
<u>Ballard v. Ballard,</u> 314 S.C. 40, 443 S.E.2d 802 (1994)	36
<u>Belle Hall Plantation Homeowner's Association</u> <u>v. Murray,</u> 419 S.C. 605, 799 S.E.2d 310 (Ct.App. 2017).....	14
<u>Berkeley Electric Cooperative, Inc. v. Town of</u> <u>Mt. Pleasant,</u> 302 S.C. 186, 394 S.E.2d 712 (1990)	23, 24, 25
<u>Blonder-Tongue Laboratories, Inc. v. University of</u> <u>Illinois Foundation,</u> 402 U.S. 313 (1971)	14, 22
<u>Boyle v. United States,</u> 948 F.Supp.2d 577 (D.S.C. 2012).....	39

<u>Bradford & Bradford, P.A. v. Attorneys Liability Protection Society, Inc.</u> , 2010 WL 4225907 (D.S.C., 20 Oct. 2010).....	29
<u>Chase National Bank v. Norwalk</u> , 291 U.S. 431 (1934).....	19
<u>Chunchula Energy Corp. v. Ciba-Geigy Corporation</u> , 503 So.2d 1211 (1987).....	19
<u>Collins Entertainment, Inc. v. White</u> , 363 S.C. 546, 611 S.E.2d 262 (Ct.App. 2005).....	42
<u>Damico v. Lennar Carolinas, LLC</u> , 437 S.C. 596, 879 S.E.2d 746 (2022)	27
<u>D & G Equipment Co. v. First National Bank of Greencastle</u> , 764 F.2d 950 (3d Cir.1985)	30
<u>De Freitas v. Hertz Corp.</u> , 720 F.Supp.3d 993 (D.Nev. 2024).....	33
<u>Dickey v. Clarke Nursing Home</u> , 2007 WL 8327928 (S.C.App., 29 June 2007).....	37, 39
<u>Doe v. Augusta University</u> , 2025 WL 2918366 (D.S.C., 12 Sept. 2025).....	37, 39, 40
<u>Dudek v. Ferro</u> , 2017 WL 128702 (S.C.App., 11 Jan. 2017) (<i>per curiam</i>).....	45
<u>Estate of Stokes ex rel. Spell v. Pee Dee Family Physicians, L.L.P.</u> , 389 S.C. 343, 699 S.E.2d 143 (2010)	37
<u>EverBank v. Scurry</u> , 2015 WL 4755539 (S.C.App., 12 Aug. 12015)	14, 22
<u>Ex parte Berlin</u> , 2022 WL 3224561 (S.C.App., 10 Aug. 2022)	23
<u>Ex parte DeBordieu Colony Community Association</u> , 442 S.C. 285, 898 S.E.2d 179 (Ct.App. 2024).....	23
<u>Ex parte Government Employee Insurance Company (Ex parte GEICO)</u> , 373 S.C. 132, 644 S.E.2d 699 (2007)	24

<u>Ex parte Jones</u> , 47 S.C. 393, 25 S.E. 285 (1896)	28
<u>Ex parte Reichlyn</u> , 310 S.C. 495, 427 S.E.2d 661 (1993)	24
<u>Fennell v. TLB Kent Co.</u> , 865 F.2d 498 (2d Cir. 1989)	30
<u>Fletcher Aircraft Co. v. Bond</u> , 77 F.R.D. 47 (C.D.Cal. 1977)	18
<u>Fontaine v. Peitz</u> , 291 S.C. 536, 354 S.E.2d 565 (1987)	41
<u>Fox v. Pollack</u> , 181 Cal.App.3d 954, 226 Cal.Rptr. 532 (1st Dist. 1986)	29
<u>Francois v. Andry</u> , 930 So.2d 995 (La.App. 4th Cir. 2006)	29
<u>Garrison v. Target Corp.</u> , 435 S.C. 566, 869 S.E.2d 797 (2022)	32
<u>General Electric Capital Corporation v. Shattuck</u> , 132 So.3d 908, 911 (Fla. 2nd DCA 2014)	19, 20
<u>Glenn v. E.I. DuPont De Nemours & Co.</u> , 254 S.C. 128, 174 S.E.2d 155 (1970)	40
<u>Guidry v. Rubin</u> , 425 So.2d 366 (La.App. 3d Cir. 1982)	29
<u>Hansberry v. Lee</u> , 311 U. S. 32 (1940).....	14, 15, 16, 22
<u>Hardaway Concrete Co., Inc., v. Hall Contracting Corp.</u> , 374 S.C. 216, 647 S.E.2d 488 (Ct.App. 2007).....	41-42
<u>Hassell v. Bird</u> , 5 Cal.5 th 522, 420 P.3d 776, 234 Cal.Rptr.3d 867 (2018) (Kruger, J., <i>concurring</i>).....	15
<u>Heyman v. Kline</u> , 444 F.2d 65 (2d Cir. 1971)	17
<u>Hiebel v. South Carolina Department of Natural Resources</u> , 416 S.C. 220, 785 S.E.2d 461 (2016)	32

<u>Holland ex rel. Knox v. Morbark, Inc.</u> , 407 S.C. 227, 754 S.E.2d 714 (Ct. App. 2014).....	42
<u>In re Broome</u> , 356 S.C. 302, 589 S.E.2d 188 (2003).....	29
<u>In re Carter</u> , 400 S.C. 170, 733 S.E.2d 897 (2012)	29
<u>In re Horry County State Bank</u> , 361 S.C. 503, 604 S.E.2d 723 (Ct.App. 2004).....	23, 24
<u>In re N.A.A.C.P., Special Contribution Fund</u> , 849 F.2d 1473 (Table) (6 th Cir. 1988) (1988 WL 61504).....	17
<u>Jackson v. United States</u> , 2018 WL 1755503 (D.S.C., 12 Apr. 2018).....	37
<u>Jim Young Development Corp. v. State Highway of Missouri</u> , 56 F.R.D. 38 (W.D.Mo. 1971).....	14
<u>Johnson v. University College of University of Alabama</u> , 706 F.2d 1205 (11th Cir. 1983)	33
<u>Kurschner v. City of Camden Planning Commission</u> , 376 S.C. 165, 656 S.E.2d 346 (2008) (<i>per curiam</i>)	14
<u>Langeland v. Farmers State Bank of Trimont</u> , 319 N.W.2d 26 (Minn. 1982)	29
<u>Lake Shore Asset Management Ltd. v. Commodity Futures Trading Commission</u> , 511 F.3d 762 (7 th Cir. 2007)	18, 19
<u>Lava Shadows, Ltd. v. Johnson</u> , 121 N.M. 575, 915 P.2d 331 (Ct.App.1996), <i>certiorari</i> <i>denied</i> , 121 N.M. 644, 916 P.2d 844 (1996).....	18
<u>Lee v. Bunch</u> , 373 S.C. 654, 647 S.E.2d 197 (2007)	42
<u>Lester v. McFaddon</u> , 415 F.2d 1101, 1103 (4 th Cir. 1969).....	37
<u>Lima v. Newark Police Dept.</u> , 658 F.3d 324 (3d Cir. 2011)	33
<u>Machado v. Law Offices of Jeffrey H. Ward</u> , 2016 WL 3574007 (D.N.J., 29 June 2016)	32, 33

<u>Magnuson v. Video Yesteryear</u> , 85 F.3d 1424 (9th Cir. 1996)	33
<u>Marek v. Chesny</u> , 473 U.S. 1 (1985)	32
<u>Marshall v. Marshall</u> , 282 S.C. 534, 320 S.E.2d 44 (Ct.App. 1984).....	29
<u>Martin v. Wilks</u> , 490 U.S. 755 (1989).....	15
<u>Mathews v. Eldridge</u> , 424 U.S. 319 (1976).....	14, 15
<u>McCall v. IKON</u> , 363 S.C. 646, 611 S.E.2d 315 (Ct.App. 2005).....	33
<u>McCurry v. Robinson</u> , 2019 WL 6050306 (D.S.C., 15 Nov. 2019)	37
<u>McDaniel v. United States Fidelity & Guaranty Company</u> , 324 S.C. 639, 478 S.E.2d 868 (Ct.App. 1996).....	14
<u>Metropolitan Life Insurance Co. v. Ward</u> , 470 U.S. 869 (1985), <i>rehearing denied</i> , 471 U.S. 1120 (1985)	10-11
<u>Microsystems Software, Inc. v. Scandinavia Online AB</u> , 226 F.3d 35 (1 st Cir. 2000).....	19
<u>Motley v. Williams</u> , 374 S.C.107, 647 S.E.2d 244 (Ct.App. 2007).....	29
<u>Mullane v. Central Hanover Bank & Trust Co.</u> , 339 U.S. 306 (1950)	18
<u>Myat v. Tuomey Regional Medical Center</u> , 427 S.C. 601, 832 S.E.2d 306 (Ct.App. 2019).....	41, 42, 43
<u>Myles v. United States</u> , 416 F.3d 551 (7 th Cir. 2005).....	27
<u>National Labor Relations Bureau v. Local Union 1058, UMW</u> , 957 F.2d 149 (4th Cir. 1992).....	30

<u>National Spiritual Assembly of Baha'is of United States Under Hereditary Guardianship, Inc. v. National Spiritual Assembly of Baha'is of United States, Inc.</u> , 547 F.Supp.2d 879 (N.D.Ill. 2008), <i>affirmed</i> , 628 F.3d 837 (7 th Cir. 2010), <i>rehearing and rehearing en banc denied</i> (29 Dec. 2010)	17
<u>Nelson v. Adams USA, Inc.</u> , 529 U.S. 460 (2000)	18, 20
<u>Nigg v. Smith</u> , 415 So.2d 1082 (Ala. 1982)	19
<u>Nordby v. Anchor Hocking Packaging Co.</u> , 199 F.3d 390 (7th Cir. 1999)	33
<u>Parklane Hosiery Company, Inc. v. Shore</u> , 439 U.S. 322 (1979)	14, 22
<u>Old Wayne Mutual Life Association v. McDonough</u> , 204 U.S. 8 (1907)	15
<u>Oulla v. Velazques</u> , 427 S.C. 428, 831 S.E.2d 450 (Ct.App. 2019)	41
<u>Pacesetter Builders–Joint Venture, Inc. v. Coral Springs Property Services, Inc.</u> , 531 So.2d 1061, 1062 (Fla.4 th DCA 1988)	20
<u>Parklane Hosiery Company, Inc. v. Shore</u> , 439 U.S. 322 (1979)	14
<u>Patton v. Miller</u> , 420 S.C. 471, 804 S.E.2d 252 (2017)	42, 43
<u>Pennoyer v. Neff</u> , 95 U.S. 714 (1878), <i>overruled in part on other grounds by Schaffer v. Heitner</i> , 433 U.S. 186 (1977)	15
<u>Peralta v. Heights Medical Center, Inc.</u> , 485 U.S. 80 (1988)	15
<u>Pool v. Pool</u> , 329 S.C. 324, 494 S.E.2d 820 (1998)	42
<u>Postal Telegraph-Cable Company v. Newport</u> , 247 U.S. 464 (1918)	15

<u>Potts v. United States</u> , 2026 WL 499920 (D.S.C., 27 Jan. 2026).....	36
<u>Radecki v. Amoco Co.</u> , 858 F.2d 397 (8th Cir. 1988).....	33
<u>Restor-A-Dent Dental Labs, Inc. v. Certified Alloy Products, Inc.</u> , 725 F.2d 871 (2 nd Cir. 1984).....	24
<u>Richards v. Jefferson County</u> , 517 U.S. 793 (1996).....	19
<u>Roberts v. Bodison</u> , 2015 WL 13215670 (D.S.C., 20 Nov. 2015), <i>Report and Recommendation adopted by</i> , 2015 WL 9581756 (D.S.C., 30 Dec. 2015).....	40
<u>Rogers v. Smith</u> , 287 Ala. 118, 248 So.2d 713 (1971).....	19
<u>Ross v. Waccamaw Community Hospital</u> , 404 S.C. 56, 744 S.E.2d 547 (2013).....	7, 27
<u>Rossi v. Boston Gas Co.</u> , 833 F.Supp. 62 (D.Mass. 1993).....	15
<u>Sagebrush Rebellion, Inc. v. Watt</u> , 713 F.2d 525 (9th Cir. 1983).....	24
<u>Salley v. Board of Governors, University of North Carolina</u> , 136 F.R.D. 417 (M.D.N.C. 1991).....	33
<u>Scott v. Donald</u> , 165 U.S. 107 (1897).....	19
<u>Schaffer v. Heitner</u> , 433 U.S. 186 (1977).....	15
<u>Soil & Material Engineers, Inc. v. Folly Associates</u> , 293 S.C. 498, 361 S.E.2d 779 (Ct.App. 1987).....	41, 43
<u>South Carolina Department of Social Services v. Beeks</u> , 325 S.C. 243, 481 S.E.2d 703 (1997).....	14
<u>Spring Construction Co., Inc. v. Harris</u> , 614 F.2d 374 (4th Cir. 1980).....	24
<u>State of Arizona v. Motorola, Inc.</u> , 139 F.R.D. 141 (D.Ariz. 1991).....	24

<u>State v. Binnarr</u> , 400 S.C. 156, 733 S.E.2d 890 (2012).....	14
<u>State v. Hertz Skycenter, Inc.</u> , 294 Ala. 336, 317 So.2d 324 (1975).....	19
<u>Sullivan v. Hawker Beechcraft Corp.</u> , 397 S.C. 143, 723 S.E.2d 835 (Ct.App. 2012).....	41
<u>Universal Benefits, Inc. v. McKinney</u> , 349 S.C. 179, , 561 S.E.2d 659 (Ct.App. 2002)) (<i>per curiam</i>)	14, 22
<u>Walker v. AnMed Health</u> , 446 S.C. 419, 919 S.E.2d 565 (Ct.App. 2025).....	7, 27
<u>Wells v. Vetech, LLC</u> , 437 S.C. 428, 879 S.E.2d 6 (Ct.App. 2022)	33
<u>Whitehouse v. Target Corp.</u> , 279 F.R.D. 285 (D.N.J. 2012).....	33
<u>Wilson v. Amisub of South Carolina, Inc.</u> , Case No, 2006-CP-46-2891 (S.C. Ct. Comm. Pleas, 29 Mar. 2009).....	39
<u>Wirtz v. State Education Retirement Board</u> , 122 N.M. 292, 923 P.2d 1172 (Ct.App. 1996)	18
<u>World–Wide Volkswagen Corporation v. Woodson</u> , 444 U.S. 286 (1980)	15
<u>Yates v. Estate of Yates</u> , 2014 WL 2579917 (S.C.App., 12 Feb. 2014).....	14
<u>York v. Stiefel</u> , 109 Ill.App.3d 342, 440 N.E.2d 440 (3d Dist. 1982), <i>judgment</i> <i>affirmed in part and reversed in part on</i> <i>other grounds</i> , 99 Ill.2d 312, 458 N.E.2d 488 (1983)	29
<u>Zenith Radio Corporation v. Hazeltine Research, Inc.</u> , 395 U.S. 100 (1969)	16, 17, 19
<u>Zenith Radio Corporation v. Hazeltine Research, Inc.</u> , 388 F.2d 25 (7 th Cir. 1967), <i>judgment affirmed</i> <i>in part, reversed in part on other grounds</i> , 95 U.S. 100 (1969)	16

Statutes, Court Rules, Administrative Regulations, Etc.

Rule 68, <u>FRCivP</u>	33
Rule 208(b)(6), <u>SCACR</u>	45
Rule 5(a), <u>SCRCivP</u>	33
Rule 15(a), <u>SCRCivP</u>	41
Rule 24(a)(2), <u>SCRCivP</u>	23
Rule 68, <u>SCRCivP</u>	32
Rule 68(a), <u>SCRCivP</u>	32
Rule 68(b), <u>SCRCivP</u>	32
<u>S.C. Code Ann. § 15-35-400(a)</u> Thomson Reuters West Supp. 2020)	32
<u>S.C. Code Ann. § 15-35-400(b)</u> (Thomson Reuters West Supp. 2020)	32
<u>S.C. Code Ann. §15-51-20</u> (Thomson Reuters West 2020).....	36, 37, 40
<u>S.C. Code Ann. §15-51-40</u> (Thomson Reuters West 2020).....	37, 38
<u>S.C. Code Ann. § 15-79-125(A)</u> (Thomson Reuters West 2019).....	7, 27
<u>South Carolina Constitution</u>	13
<u>United States Constitution</u>	13, 15

Books, Treatises, Legal Periodicals, Etc.

Abraham Clark Freeman, <u>A Treatise on the Law of Judgments: Including All Final Determinations of the Rights of Parties in Actions or Proceedings at Law or in Equity</u> , 5th Ed., § 407 (West 1938).....	15
--	----

Harry M. Lightsey, Jr. & James F. Flanagan, <u>South Carolina Civil Procedure</u> , 251 (S.C. Bar 1985).....	43
18 Charles A. Wright, Arthur R. Miller, & Edwin Cooper, <u>Federal Practice and Procedure</u> , § 4449 (West 1981).....	15
James F. Flanagan, <u>South Carolina Civil Procedure</u> (Second Edition, S.C. Bar 1996).....	43
71 <u>C.J.S., Pleading</u> , § 149 (Thomson Reuters West Supp. 2021)	27
<u>Restatement (Second) of Agency</u> , §§ 7-8 (Amer. Law. Institute 1957).....	31
1 Ronald E. Mallen, <u>Legal Malpractice</u> , § 8:12 (Thomson Reuters West April 2026 Update).....	29
1 <u>South Carolina Jurisprudence, Attorney and Client</u> , § 18 (Thomson Reuters West 2008).....	29

I. STATEMENT OF THE ISSUES ON APPEAL

- A. Whether The Trial Court Improperly Substituted *CONA-PA* for *CONA-ASC*?
- B. Whether The Trial Court Should Have Allowed *CONA-PA* To Intervene?
- C. Whether The Trial Court Incorrectly Assessed Pre-Judgment Interest Against *CONA-PA*?
- D. Whether The Trial Court Used An Improper Verdict Form Which Included An Outside Third-Party?
- E. Whether The Trial Court Incorrectly Denied The Rule 15(a), *SCRCivP*, Motion To Assert The Additional Affirmative Defense Of Independent, Intervening, And/Or Superseding Causation?

II. STATEMENT OF THE CASE

On 9 July 2020, the Respondent, Andrea Allen, as Personal Representative of the Estate of Albert Charles Jefferies, deceased (“Ms. Allen”), brought this wrongful death and survival medical malpractice action against Spartanburg Regional Health Services District d/b/a Spartanburg Regional Healthcare System d/b/a Spartanburg Medical Center arising from the death of Albert Charles Jefferies (“Mr. Jefferies”).¹ (*Comp.*, pp.3-8). Ms. Allen amended her pleading twice thereafter and, once certain parties settled out, the remaining parties were the Appellants, Chi Hun Lim, M.D. (“Dr. Lim”), Megan Nicholas, P.A. (“PA Nicholas”); and Carolina Orthopedic and Neurological Associates, ASC, LLC (“CONA-ASC”). (*2nd Amd. Comp.*, pp.3-10). Ms. Allen sought unspecified damages. (*Id.*, at para. 50). Dr. Lim, PA Nicholas, and CONA-ASC collectively denied Ms. Allen’s material allegations (*Answer to 2nd Amd. Comp.*, pp.1-9) and asserted various affirmative defenses. (*Id.*, pp.9-10).² The case ultimately proceeded to trial on 2 June 2025 through 6 June 2025, with the jury rendering a verdict of \$3M separately for Ms. Allen and Ms. Hemphill for a total award of \$6M. (*06.10.25 SCRCF Form 4 Order*, pp.1-3; *Verdict Form*, p.1; *Trial Tr.*, p.515, lines 10-22; p.589, line 22 – p.590, line 2; p.598, lines 13-15).³

1 While Ms. Allen was the named plaintiff, she and her sister, Michele Hemphill (“Ms. Hemphill”, as Mr. Jefferies’ two daughters, were his beneficiaries. (*Trial Tr.*, p.101, lines 7-8, p.115, lines 3-7, p.265, line 1 – p.266, line 4; p.291, lines19-22).

2 On 17 April 2025, Dr. Lim, PA Nicholas, and CONA-ASC moved to amend their Answer to the Second Amended Complaint to assert an affirmative defense of superseding/intervening negligence. (*Motion to Amend Answer*, pp.1-3). The Trial Court denied the motion. (*2025.05.09 SCRCF Form 4 Order*, pp.1-3).

3 On 16 June 2025, Ms. Allen moved the Trial Court for an assessment of pre-judgment interest arising from her 25 April 2024, tendered offer of judgment. (*Rule 68, SCRCF, Motion for Assessment of Pre-Judgment Interest*, pp.1-2; *07.02.25 Hearing Tr.*, p.46, lines 3-9). The next day, Dr. Lim, PA Nicholas, and CONA-ASC filed several post-trial motions. (*Motion to Alter or Amend Judgment*, pp.1-4; *07.02.25 Hearing Tr.*, p.16, line 6 – p.18, line 11; *Motion for JNOV*, pp.1-8; *07.02.25 Hearing Tr.*, p.31, line 6– p.34, line 15; *Motion for New Trial 13th Juror*, pp.1-16; *07.02.25 Hearing Tr.*, p.9, line 7– p.14, line 16; p.24, line 19 – p.28, line 15; *Motion for New Trial Absolute/Nisi Remittitur*, pp.1-6; *07.02.25 Hearing Tr.*, p.37, line 25– p.41, line 25; *Motion for Setoff*, pp.1-7; *07.02.25*

On 2 July 2025, the Trial Court heard the post-trial motions. (07.02.25 Hearing Tr., p.1). During the hearing, based upon counsels' joint stipulation, the Trial Court substituted the Appellant, Carolina Orthopedic and Neurological Associates, P.A. ("CONA-PA"),⁴ for CONA-ASC. (07/03/2025 SCRCP Form 4 Order, pp.1-2; Rule 59(c), SCRCP, Motion, p.2; 07.02.25 Hearing Tr., p.5, line 23 – p.8, line 1; 08.27.25 Hearing Tr., p.15, line 16 – p.16, line 15). The next day trial Court issued a form order on the party substitution. (*Id.*). On 14 July 2025, CONA-PA moved to intervene. (Motion to Intervene, pp.1-8; 08.27.25 Hearing Tr., p.22, line 4 – p.25, line 6; p.32, line 3 – p.34, line 23).⁵ CONA-PA also moved to set aside the substitution order. (Rule 59(c), SCRCP, Motion, pp.1-11).

By order dated 28 July 2025, the Trial Court awarded Ms. Allen her requested prejudgment interest (07.28.25 Order, pp.3-5, 12), and denied all Dr. Lim's, PA Nicholas', and CONA-ASC's post-trial motions. (*Id.*, at pp.5-12). On 7 August 2025, CONA-PA moved to alter or amend the judgment regarding pre-judgment interest. (CONA-PA's Rule 59(e), SCRCP, Motion to Alter or Amend, pp.1-6; 08.27.25 Hearing Tr., p.11, line 8 – p.13, line 25; p.16, line 22 – p.19, line 4; p.20, line 20 – p.21, line 20).⁶ On 27 August 2025, the Trial Court heard CONA-PA's two motions (08.27.25 Hearing Tr., p.8, lines 20-

Hearing Tr., p.8, line 2 – p.9, line 4; Motion for Non-Economic Damages Cap, pp.1-3; 07.02.25 Hearing Tr., p.44, lines 4-16).

⁴ There is some confusion as to CONA-PA's correct nomenclature. During a 27 August 2025, hearing Ms. Allen's counsel noted CONA-PA's correct name is Carolina Orthopedic and Neurosurgical Associates, P.A. and *not* Carolina Orthopedic and Neurological Associates, P.A. (09.04.25 SCRCP Form 4 Order, pp.,1-3; 07.27.25 Hearing Tr., p.37, line 12 – p.38, line 19).

⁵ CONA-PA submitted multiple affidavits supporting the set aside motion. See generally *Affidavit of Channing Willoughby, M.D.* (the "Willoughby Aff."); *Affidavit of Kelly Roper* (the "Roper Aff."); *Affidavit of Christopher Chittum, M.D.* (the "Chittum Aff."); *Affidavit of David S. Brown, M.D.* (the "Brown Aff."); *Affidavit of Michael Hoenig, M.D.* (the "Hoenig Aff."); and *Affidavit of Anthony Dinicola, M.D.* (the "Dinicola Aff.").

⁶ Dr. Lim and PA Nicholas joined in CONA-PA's motion. (*Joinder Notice*, pp.1-2).

24) and on 12 September 2025, heard CONA-PA's pre-judgment interest award motion. (09.12.25 Hearing Tr., p.4, lines 7-20). By written order, filed 16 September 2025, the Trial Court denied CONA-PA's motion. (09.16.25 SCRCP Form 4 Order, pp.1-3). The Trial Court later issued formal orders on (a) CONA-PA's requested intervention and attempt to set aside the party substitution (09.22.25 Order, pp.1-17) and (b) CONA-PA's attempt to alter or amend the order on the pre-judgment interest award. (09.25.25 Order, pp.1-9). This appeal followed.

III. STATEMENT OF THE FACTS

A. Mr. Jefferies' Surgery And Unfortunate Passing

On 18 July 2018, Albert Charles Jefferies ("Mr. Jefferies"), went to Spartanburg Medical Center ("SMC") with a history of prior lower back injury and previous lower spinal surgery.¹ (2nd. Amd. Comp., paras.1, 3, 17). Mr. Jefferies was then 72 years old and taking various medications, including 30 mg. of testosterone. (*Id.*, at para. 18). Numerous factors, including Mr. Jefferies' medical history⁸ and age placed him at an increased risk for post-operative development of deep vein thrombosis ("DVT") and/or pulmonary embolus. ("PE"). (*Id.*, at para. 21).

That very same day, Dr. Lim performed a revision laminectomy with fusion surgery on Mr. Jefferies at SMC without any complications noted during the procedure. (*Id.*, at para. 23). On 22 July 2018, Mr. Jefferies commenced a seven-day regime of twice-daily

¹ His prior lumbar fusion surgery was performed in December 2017 for lumbar stenosis. (2nd. Amd. Comp., para. 17). Unfortunately, Mr. Jefferies' hardware screw placement failed requiring a revision. (*Id.*). When more conservative measures proved ineffective in relieving his lower back injuries, Mr. Jefferies chose to undergo an expanded revision surgery. (*Id.*).

⁸ Mr. Jefferies past medical history included, *inter alia*, "hypertension, coronary artery disease, pacemaker placement, chronic kidney disease, obesity, spinal stenosis, and lumbar radiculopathy." (*Id.*, at para. 20).

heparin injections reportedly added as an additional prophylaxis in response to Mr. Jefferies'-surgical immobility and DVT risk factors. (*Id.*, at para. 36). Mr. Jefferies, however, reportedly experienced a number of episodes of hypoxia, tachycardia, tachypnea, leg pain, and shortness of breath during his eight-day stay at SMC. (*Id.*, at paras. 24, 30-35).

On 26 July 2018, Mr. Jefferies was discharged from SMC over to Peachtree Centre Skilled Nursing Facility ("PTC"), an inpatient rehabilitation facility in Gaffney, South Carolina. (*Id.*, at para. 40). While at PTC, Mr. Jefferies required extensive transfer, ambulation, and bed mobility assistance. (*Id.*, at para 44). He also complained of both back pain and shortness of breath. (*Id.*, at para. 45). Mr. Jefferies also experienced decreased oxygen saturation. (*Id.*). Two days later, on 28 July 2018, at 4:00 a.m. PTC staff found Mr. Jefferies unresponsive on the floor in his room. (*Id.*, at para. 46). Although medical personnel attempted resuscitation, Mr. Jefferies was pronounced dead at 5:14 a.m. (*Id.*). His autopsy determined Mr. Jefferies' cause of death was an acute thromboembolus likely originating from the site of his recent surgery. (*Id.*, at para. 47).

B. CONA-PA And CONA-ASC Are Distinct Legal Entities

CONA-PA is a "South Carolina Professional Association, a surgical practice [which] provides medical services through its employed doctors, physicians' assistants, and medical staff." (*Willoughby Aff.*, para. 3; *Roper Aff.*, para. 2; *Chittum Aff.*, para. 3; *Brown Aff.*, para. 3; *Hoening Aff.*, para. 3; *Dinicola Aff.*, para. 3). CONA-PA is a separate and distinct legal entity from [CONA-JASC[and] [o]ther than overlapping ownership groups, there is no relation between CONA-PA and [CONA-JASC." (*Id.*, para. 4; *Roper Aff.*, para. 4; *Chittum Aff.*, paras. 5-6; *Brown Aff.*, paras. 5-6; *Hoening Aff.*, paras. 5-6; *Dinicola Aff.*, para. 4). CONA-PA and CONA-ASC are "comprised of different

owners/members and different executive officers” [and] [n]either [CONA-PA or CONA-ASC] is a parent or subsidiary of the other, neither entity controls or manages the other, nor does either have an ownership interest in the other. (*Roper Aff.*, para. 3; *Chittum Aff.*, para. 5; *Brown Aff.*, para. 5; *Hoening Aff.*, para. 5). CONA-ASC “is a member-managed South Carolina Limited Liability Company that carries on no business and has no employees[and] [s]ome (not all) of its members are also employed by CONA[-]PA, and some, but not all, doctors at CONA-PA are also members of [CONA-]ASC.” (*Chittum Aff.*, para. 4; *Brown Aff.*, para. 4; *Hoening Aff.*, para. 4).⁹

C. The Allen v. Lim Litigation

1. CONA-PA Was Never Made A Party-Defendant

Ms. Allen was appointed the Personal Representative of the Estate of Albert Charles Jefferies (the “Jefferies Estate”). (*2nd Amd. Comp.*, at p.1). In turn, as the Jefferies Estate’s designated PR, Ms. Allen brought this wrongful death and survival action on the Jefferies Estate’s behalf against, among other, Dr. Lim, PA Nicholas, and CONA-ASC (“Allen v. Lim”). (*Id.*). Ms. Allen ***did not*** sue CONA-PA in the *Complaint* (*Comp.*, paras. 1-8), the *Amended Complaint* (*Amd. Comp.*, pp.1-9), or the *Second Amended Complaint*. (*2nd Amd. Comp.*, pp.1-10). Ms. Allen did not include either Dr. Lim, PA Nicholas, or CONA-ASC as party-defendants ***until*** she filed the *Second Amended Complaint*. (*Id.*, at paras. 9-12). She specifically alleged Dr. Lim and PA Nicholas were either CONA-ASC’s agents and/or employees (*Id.*, at paras. 9-10) and, therefore, CONA-ASC was vicariously liable for Dr. Kim’s and/or PA Nicholas’ negligence.

⁹ Dr. Lim’s, PA Nicholas’, and CONA-ASC’s defense attorneys confirmed CONA-ASC and CONA-PA were separate and distinct legal entities. (*Motion to Alter or Amend Judgment*, pp.1-4).

(*Id.*, at paras. 9-11, 55).¹⁰ Ms. Allen, however, never included CONA-PA in any Allen v. Lim pleading iteration. (*Id.*, pp.1-10; *Willoughby Aff.*, para. 12; *Roper Aff.*, para. 16; *Chittum Aff.*, para. 15; *Brown Aff.*, para. 14; *Hoening Aff.*, para. 14; *Dinicola Aff.*, para. 12). Moreover, Ms. Allen never served CONA-PA with a copy of the any *Summons* and/or *Complaint* (whether original and/or or amended version) or with a copy of the statutorily mandated *Notice of Intent to File*.¹¹ (*Willoughby Aff.*, para. 12; *Roper Aff.*, paras. 9, 16; *Chittum Aff.*, paras. 10, 15; *Brown Aff.*, para. 14; *Hoening Aff.*, para. 14; *Dinicola Aff.*, para. 12).¹²

2. CONA-PA Was Not Advised Of Allen v. Lim

CONA-PA was not provided any relevant information regarding Allen v. Lim until June 2025 at or around the time of the trial. (*Id.*, at paras. 5, 7-8; *Chittum Aff.*, paras. 8, 11; *Brown Aff.*, paras. 7, 10; *Hoening Aff.*, paras. 7, 10; *Dinicola Aff.*, paras. 5, 8). Dr. Lim's, PA Nicholas', and CONA-ASC's defense attorneys (a) **never** met with CONA-PA's "Board of Directors/Executive Committee before the trial, (b) **never** provided CONA-PA with any updates on Allen v. Lim, (c) **never** informed CONA-PA of any potential liability and/or damages analysis, (d) **never** communicated any settlement discussions with

¹⁰ While Dr. Lim's, PA Nicholas', and CONA-ASC's response to the Second Amended Complaint referenced "Carolina Orthopedic and Neurosurgical Associates, P.A." (*Answer to 2nd Amd. Comp.*, pp. 1, 2, 11) the caption clearly designated CONA-ASC as the relevant defendant-party. (*Id.*, at p.1). The error, by legal counsel who admittedly did not represent CONA-PA, was later corrected in Dr. Lim's, PA Nicholas', and CONA-ASC's various post-trial submissions. (e.g., *Motion for Setoff*, pp.1-7, *Motion for New Trial 13th Juror, etc.*, pp.1-16; *Motion for New Trial Absolute, etc.*, pp.1-6).

¹¹ See generally S.C. Code Ann. § 15-79-125(A) (Thomson Reuters West 2019) ("Prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit . . . in a county in which venue would be proper for filing or initiating the civil action."). See Walker v. AnMed Health, 446 S.C. 419, 430, 919 S.E.2d 565, 570 (Ct.App. 2025) (*quoting* Ross v. Waccamaw Community Hospital, 404 S.C. 56, 59, 744 S.E.2d 547, 548 (2013)(Footnote omitted in original)).

¹² Ms. Allen did, however, serve Dr. Lim, PA Nicholas, and CONA-ASC with a Notice of Intent and Summons in Allen v. Lim. (*Roper Aff.*, para. 7).

CONA PA, and (e) **never** asked, much less allowed, CONA-PA to participate in the defense of Ms. Allen's claims. (*Id.*, at para. 9; *Roper Aff.*, para. 13; *Chittum Aff.*, para. 12; *Brown Aff.*, para. 11; *Hoening Aff.*, para. 11; *Dinicola Aff.*, para. 9).

Furthermore, while Dr. Lim's defense attorneys assuredly discussed *Allen v. Lim* with Dr. Lin and prepared him for trial, Dr. Lim never requested nor received any authority from CONA-PA's Board of Directors/Executive Committee for either Dr. Lim or his defense attorneys to take any action or make any decisions on CONA-PA's behalf vis-à-vis *Allen v. Lim*. (*Id.*, at para. 13; *Roper Aff.*, para. 17; *Chittum Aff.*, para. 16; *Brown Aff.*, para. 15; *Hoening Aff.*, para. 15; *Dinicola Aff.*, para. 13). CONA-PA never held any internal meetings or proceedings regarding either *Allen v. Lim* generally or CONA-PA's need to be defended in *Allen v. Lim*. (*Id.*, at para. 13; *Roper Aff.*, para. 17; *Chittum Aff.*, para. 16; *Brown Aff.*, para. 15; *Hoening Aff.*, para. 15; *Dinicola Aff.*, para. 13).

CONA PA (a) was never kept informed about the status of and/or proceedings in *Allen v. Lim*, (b) did not consult with any attorneys regarding *Allen v. Lim*, (c) did not participate in Dr. Lim's, PA Nicholas', and/or CONA-ASC's defense against Ms. Allen's claims, and (d) did not have a CONA-PA representative present either to observe the proceedings or present testimony during the *Allen v. Lim* trial. (*Id.*, at para. 10; *Roper Aff.*, para. 14; *Chittum Aff.*, para. 13; *Brown Aff.*, para. 12; *Hoening Aff.*, para. 12; *Dinicola Aff.*, para. 10). CONA-PA was never involved in *Allen v. Lim* and CONA-PA was never present nor did anyone or any entity have authority to represent CONA-PA's interests at the trial. (*Id.*, at para. 11; *Roper Aff.*, para. 15; *Chittum Aff.*, para. 14; *Brown Aff.*, para. 13; *Hoening Aff.*, para. 13; *Dinicola Aff.*, para. 11).

3. CONA-PA Does Not Equate To CONA-ASC

While the abbreviation “CONA” (*Trial Tr.*, p.27, lines 8-10; p.31, lines 15-17; p.101, lines 22-24; p.106, lines 5-6; p.117, lines 1-2; p.118, line 2; p.119, line 12; p.200, lines 12-14; p.316, lines 23-25; p.317, lines 4-25; p.357, lines 11-16; p.358, lines 14-16; p.367, lines 17-23; p.404, lines 11-13; p.472, lines 9-25; p.483, line 25 – p.484, line 4; p.488, lines 5-12; p.494, lines 5-8) and the name - “Carolina Orthopedic Neurologic Associates” - was used during the *Allen v. Lim* trial (*Id.*, p.208, lines 6-8), there was **never** any indication the abbreviation or the full name usage referenced anything other than CONA-ASC, much less **CONA-PA**. Moreover, trial counsel stipulated (*Id.*, p.491, lines 11-19) and the Trial Court announced the stipulation just prior to the attorneys’ respective closing arguments (*Id.*, p.496, lines 16-19), as follows:

It is stipulated by [Ms. Allen] and [Dr. Kim, PA Nicholas, and CONA-ASC] that Dr. Lim and [PA] Nicholas . . . are employees of CONA. As such, it is agreed that CONA is vicariously liable for any negligence found against either Dr. Lim or M[s.] Nicholas And, of course, **CONA is Carolina Orthopedic and Neurological Associates, ASC, LLC**.

(*Id.*, at lines 10-15) (Emphasis supplied).

At the conclusion of the testimony, the closing arguments, the Trial Court’s charge, and the deliberations, the jury returned a verdict of \$3M each for Ms. Allen and, her sister, Ms. Hemphill for a total award of \$6M against Dr. Lim and PA Nicholas.¹³ (*06.10.25 SCRCF Form 4 Order*, pp.1-3; *Verdict Form*, p.1; *Trial Tr.*, p.515, lines 10-22; p.589, line 22 – p.590, line 2; p.598, lines 13-15). The Trial Court subsequently affirmed the jury’s verdict and the \$6M judgment. (*Id.*; *Verdict Form*, p.1; *Trial Tr.*, p.515, lines 10-22; p.589,

¹³ *CONA-ASC* had previously been designated as vicariously liable for Dr. Lim’s and/or PA Nicholas’ negligence, if any such negligence was adjudicated against them. (*06.10.25 SCRCF Form 4 Order*, pp.1-3; *Verdict Form*, p.1; *Trial Tr.*, p.515, lines 10-22; p.589, line 22 – p.590, line 2; p.598, lines 13-15).

line 22 – p.590, line 2; p.598, lines 13-15). Neither the Trial Court’s *SCRCP* Form 4 Order nor the jury’s *Verdict Form* stated the \$6M verdict applied to or was directed towards *CONA-PA*. (*Id.*; *Verdict Form*, p.1).

D. CONA-PA Is Implicated

In June 2025, *CONA-PA* was advised the *Allen v. Lim* jury had ruled against Dr. Lim and PA Nicholas. (*Willoughby Aff.*, para. 14; *Roper Aff.*, para. 18; *Chittum Aff.*, para. 17; *Brown Aff.*, para. 16; *Hoening Aff.*, para. 16; *Dinicola Aff.*, para. 14). While Dr. Lim told Ms. Roper, *CONA-PA*’s CEO (*Roper Aff.*, para. 1), about the \$6M verdict and, in addition, Ms. Roper received notice from Ms. Allen’s attorneys regarding interest accruing on the \$6M judgment due to the April 2024 offer of judgment, that information did not lead Ms. Roper to believe *CONA-PA*’s interest had been implicated by the verdict (*Id.*, at 18), especially since *CONA-PA* had never been named as a party-defendant. (*Id.*).

On 2 July 2025, the Trial Court addressed both Ms. Allen’s request for an assessment of Rule 68, *SCR CivP*, pre-judgment interest, as well as Dr. Lim’s, PA Nicholas’, and *CONA-ASC*’s multiple post-trial motions. (*Rule 68, SCRCP, Motion for Assessment of Pre-Judgment Interest*, pp.1-2; 07.02.25 Hearing *Tr.*, p.46, lines 3-9; *Motion to Alter or Amend Judgment*, pp.1-4; 07.02.25 Hearing *Tr.*, p.16, line 6 – p.18, line 11; *Motion for JNOV*, pp.1-8; 07.02.25 Hearing *Tr.*, p.31, line 6– p.34, line 15; *Motion for New Trial 13th Juror*, pp.1-16; 07.02.25 Hearing *Tr.*, p.9, line 7– p.14, line 16; *Tr.*24, line 19 – p.28, line 15); *Motion for New Trial Absolute/Nisi Remittitur*, pp.1-6; 07.02.25 Hearing *Tr.*, p.37, line 25– p.41, line 25); *Motion for Setoff*, pp.1-7; 07.02.25 Hearing *Tr.*8, line 2 – *Tr.*9, line 4; *Motion for Non-Economic Damages Cap*, pp.1-3; 07.02.25 Hearing *Tr.*, p.44, lines 4–16). During the hearing, defense counsel for Dr. Lim, PA Nicholas, and *CONA-ASC*, albeit without requesting or obtaining *CONA-PA*’s authority, consent, and/or

permission from *CONA-PA* (*Willoughby Aff.*, para. 9; *Roper Aff.*, para. 13; *Chittum Aff.*, para. 12; *Brown Aff.*, para. 11; *Hoening Aff.*, para. 11; *Dinicola Aff.*, para. 9), gratuitously stated:

. . . **after the verdict** in this case, we were informed by our clients that *CONA[-]ASC* . . . was not the proper entity or not the proper party in this case. And as soon as we realized that, we relayed that information to [Ms. Allen’s attorneys], and included that in our post-trial motions, and [we] don’t . . . expect there to be any disagreement from [Ms. Allen] as to substituting *CONA[-PA]* for *CONA[-]ASC* . . . **which has been the party that has been included throughout the litigation in this case, and appears on the case caption.**

(07.02.25 Hearing Tr., p.6, lines 12-21) (Emphasis supplied).¹⁴ The Trial Court then directly asked *CONA-ASC*’s counsel if he “agree[d] for *CONA[-]PA* to be substituted for *CONA[-]ASC* . . .” (*Id.*, at lines 22-23) to which he agreed. (*Id.*, at line 24). The Trial Court then inquired as to both sides’ attorneys “do we **stipulate then right now** that the caption [in *Allen v. Lim*] is to be amended from Carolina Orthopedic and Neurosurgical Associates, ASC, LLC [*CONA-ASC*] to Carolina Orthopedic and Neurosurgical Associates, P.A. [*CONA-PA*]?” (*Id.*, at p.7, lines 20-23) (Emphasis supplied). Counsel collectively agreed and the Trial Court accepted counsels’ joint oral stipulation. (*Id.*, at line 24 – p.8, line 1). The Trial Court, by order filed the next day, confirmed counsels’ joint stipulation, as follows:

Counsel informed th[is] [Trial] Court at the commencement of the [2 July 2025] hearing that they **agree and stipulate** that the **caption in this action should be amended** as follows: Defendant Carolina Orthopaedic (*sic*) and Neurological Associates ASC, LLC

¹⁴ Dr. Lim’s, PA Nicholas’, and *CONA-ASC*’s defense attorneys did not and were not representing *CONA-PA* in *Allen v. Lim*. (*Willoughby Aff.*, para. 13; *Roper Aff.*, para. 17; *Chittum Aff.*, para. 16; *Brown Aff.*, para. 15; *Hoening Aff.*, para. 15; *Dinicola Aff.*, para. 13),

[CONA-ASC] should correctly be referred to as Carolina Orthopaedic (*sic*) and Neurological Associates, PA [CONA-PA]. It is so ordered.

(07.03.25 SCRC Form 4 Order, p.1) (Emphasis supplied).

CONA-PA, now seemingly “saddled” with a \$6M verdict (*Willoughby Aff.*, para. 15; *Roper Aff.*, para. 19; *Chittum Aff.*, para. 19; *Brown Aff.*, para. 18; *Hoenig Aff.*, para. 18; *Dinicola Aff.*, para. 16), was not given any advance notice of the 2 July 2025, hearing. (*Id.*, para. 16; *Roper Aff.*, para. 20; *Chittum Aff.*, para. 20; *Brown Aff.*, para. 19; *Hoenig Aff.*, para. 19; *Dinicola Aff.*, para. 16). CONA-PA was never told Dr. Kim’s, PA Nicholas’, and CONA-ASC’s defense attorneys would disclose the existence of CONA-PA, much less suggest and agree CONA-PA should be substituted for CONA-ASC. (*Id.*, para. 15; *Roper Aff.*, para. 19; *Chittum Aff.*, para. 19; *Brown Aff.*, para. 18; *Hoenig Aff.*, para. 18; *Dinicola Aff.*, para. 16).

Dr. Kim’s, PA Nicholas’, and CONA-ASC’s defense attorneys **did not then** represent and **had not** represented CONA-PA in *Allen v. Lim* (*Id.*, para. 20; *Roper Aff.*, para. 23; *Chittum Aff.*, para. 24; *Brown Aff.*, para. 23; *Hoenig Aff.*, para. 23; *Dinicola Aff.*, para. 20) since CONA-PA was never a defendant-party to or participant in *Allen v. Lim*. (*Id.*, at para. 11; *Roper Aff.*, para. 15; *Chittum Aff.*, paras. 21-22; *Brown Aff.*, paras. 20-21; *Hoenig Aff.*, paras. 20-21; *Dinicola Aff.*, para. 11). Dr. Kim’s, PA Nicholas’, and CONA-ASC’s defense attorneys never requested nor were granted any authority by CONA-PA to (1) act for, (2) bind, (3) enter into any stipulations, and/or (4) otherwise speak for or on behalf of CONA-PA. (*Id.*, paras. 17-18, 21; *Roper Aff.*, paras. 21-22; *Chittum Aff.*, para. 24; *Brown Aff.*, para. 23; *Hoenig Aff.*, para. 23; *Dinicola Aff.*, paras. 17-18). Moreover, neither CONA-PA nor its Board of Directors/Executive Committee authorized Dr. Kim, PA Nicholas, or CONA-ASC and/or Dr. Kim’s, PA Nicholas’, and/or CONA-ASC’s

defense attorneys or, for that matter, any person or entity, to agree to substitute CONA-PA for CONA-ASC in the Allen v. Lim Litigation. (*Id.*, para. 18; *Roper Aff.*, para. 22; *Chittum Aff.*, para. 22; *Brown Aff.*, para. 16; *Hoening Aff.*, para. 16; *Dinicola Aff.*, para. 14).

IV. ARGUMENT AND CITATION OF AUTHORITY

A. The Trial Court Improperly Substituted CONA-PA For CONA-ASC.

1. The Trial Court Violated CONA-PA's Due Process Rights

On 2 July 2025, during a post-trial and, more importantly, a **post-verdict** hearing, Dr. Kim's, PA Nicholas', and CONA-ASC's defense counsel advised the Trial Court they had been "informed by [their] clients that CONA[-]ASC . . . was not the proper entity or not the proper party in this case [and requested] to substitute[e] CONA[-]PA for CONA[-]ASC [even though CONA-ASC had] been the party that has been included throughout the litigation in this case, and [which] appear[ed] on the case caption." (*07.02.25 Hearing Tr.*, p.6, lines 12-21). The Trial Court, seemingly taken aback by such an unusual post-verdict request, asked if the parties were, in fact, stipulating the [Allen v. Lim] caption [wa]s to be amended from [CONA-ASC] to [CONA-PA]? (*Id.*, at p.7, lines 20-23). Counsel affirmatively agreed and the Trial Court accepted the oral stipulation. (*Id.*, at line 24 – p.8, line 1). The Trial Court then issued a form order confirming the stipulated CONA-PA for CONA-ASC. Paty substitution. (*07.03.25 SCRCF Form 4 Order*, p.1).

The United States Constitution and the South Carolina Constitution both guarantee that neither the United States nor the State of South Carolina will deprive anyone "of life, liberty, or property without due process of law".¹⁵ Notwithstanding this constitutional

¹⁵ Corporations and/or business entities are considered "persons" when addressing alleged constitutional due process issues. See American Synthetic Fibers, LLC v. Nevoun, Inc., 2010 WL 11530990, *5 (D.S.C., 6 Aug. 2010) (citing Metropolitan Life Insurance Co. v. Ward, 470 U.S. 869, 881 n.9 (1985), *rehearing denied*, 471 U.S. 1120 (1985) ("It is well established that a corporation is a 'person' within the meaning of the

prohibition, the Trial Court did exactly that by substituting *CONA-PA* for *CONA-ASC* and, thereby, imposing a \$6M verdict on *CONA-PA* in *Allen v. Lim*, in violation of *CONA-PA*'s due process rights.

“ ‘The requirements of due process not only include notice, but also include an opportunity to be heard in a meaningful way, and judicial review.’ ”¹⁶ “ ‘Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth [Amendment] or Fourteenth Amendment of the United States Constitution.’ ”¹⁷ “The requirements in a particular case depend on the importance of the interest involved and the circumstances under which the deprivation may occur.”¹⁸ “ ‘Generally, a person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it against his person or property.’ ”¹⁹ “It is a violation of due process for a judgment to be binding on a litigant who [or which] was not a party or a privy and therefore has never had an opportunity to be heard.”²⁰

Fourteenth Amendment.”); *Jim Young Development Corp. v. State Highway of Missouri*, 56 F.R.D. 38, 41 (W.D.Mo. 1971) (noting that a corporation is a “person” for purposes of constitutional guarantees of due process)).

¹⁶ *EverBank v. Scurry*, 2015 WL 4755539, at *1 (S.C.App., 12 Aug. 12015) (quoting *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct.App. 2002)) (*per curiam*).

¹⁷ *Yates v. Estate of Yates*, 2014 WL 2579917, at *1 (S.C.App., 12 Feb. 2014) (quoting *Kurschner v. City of Camden Planning Commission*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008)) (*per curiam*). See also *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).

¹⁸ *State v. Binnarr*, 400 S.C. 156, 165, 733 S.E.2d 890, 894 (2012) (citing *South Carolina Department of Social Services v. Beeks*, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997)).

¹⁹ *Belle Hall Plantation Homeowner's Association v. Murray*, 419 S.C. 605, 618, 799 S.E.2d 310, 316 (Ct.App. 2017) (quoting *McDaniel v. United States Fidelity & Guaranty Company*, 324 S.C. 639, 644, 478, S.E.2d 868, 871 (Ct.App. 1996)).

²⁰ *Parklane Hosiery Company, Inc. v. Shore*, 439 U.S. 322, 327 fn.7 (1979) (citing *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 329 (1971); *Hansberry v. Lee*, 311 U.S. 32, 40 (1940)).

In Hansberry v. Lee, the United States Supreme Court acknowledged that “[i]t is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process.”²¹ “This common law principle is backed by the Constitution's guarantee of procedural fairness - a guarantee that, at its core, entitles persons to meaningful notice and opportunity to be heard before a court fixes their legal rights and responsibilities.”²² “Failure to give notice violates ‘the most rudimentary demands of due process of law’ ”²³ Moreover, “[t]his rule is part of our ‘deep-rooted historic tradition that everyone should have his own day in court.’ ”²⁴ A “judgment or decree among parties to a lawsuit resolves issues as among them, but it does not conclude the rights of strangers to those proceedings.”²⁵

In Alemite Manufacturing Corporation v. Staff, the distinguished jurist - Judge Learned Hand, speaking for the United States Court of Appeals for the Second Circuit, stated “no court can make a decree which will bind any one but a party”²⁶ Judge

²¹ Hansberry, 311 U.S. 32, 40 (citing Pennoyer v. Neff, 95 U.S. 714 (1878), *overruled in part on other grounds by* Schaffer v. Heitner, 433 U.S. 186 (1977), Abraham Clark Freeman, A Treatise on the Law of Judgments: Including All Final Determinations of the Rights of Parties in Actions or Proceedings at Law or in Equity, 5th Ed., § 407 (West 1938)). “[A]ny “judicial action enforcing [such a judgment] against the person or property of the absent party is not that due process which the [United State Constitution] requires.” *Id.*, at 41 (citing Postal Telegraph-Cable Company v. Newport, 247 U.S. 464 (1918); Old Wayne Mutual Life Association v. McDonough, 204 U.S. 8 (1907)).

²² Hassell v. Bird, 5 Cal.5th 522, 549, 420 P.3d 776, 794, 234 Cal.Rptr.3d 867, 888-889 (2018) (Kruger, J., concurring) (Internal citations omitted).

²³ Rossi v. Boston Gas Co., 833 F.Supp. 62, 68 (D.Mass. 1993) (quoting Peralta v. Heights Medical Center, Inc., 485 U.S. 80, 84 (1988) (Citations omitted in original)). *See also generally* World-Wide Volkswagen Corporation v. Woodson, 444 U.S. 286, 291 (1980); Mathews v. Eldridge, 424 U.S. 319, 333.

²⁴ Martin v. Wilks, 490 U.S. 755, 762 (1989) (quoting 18 Charles A. Wright, Arthur R. Miller, & Edwin Cooper, Federal Practice and Procedure, § 4449 (West 1981)).

²⁵ *Id.*

²⁶ Alemite Mfg. Corp. v. Staff, 42 F.2d 832, 832-833 (2nd Cir. 1930).

Hand also noted “[i]f [a court] assumes to do so, the decree is *pro tanto brutum fulmen*, and the persons [affected] are free to ignore it. [A court] is not vested with sovereign powers to declare conduct unlawful; its jurisdiction is limited to those over whom it gets personal service, and who . . . can [then] have their day in court.”²⁷

In *Zenith Radio Corp. v. Hazeltine Research, Inc.*, the United States Supreme Court addressed a prime example of this situation. In *Hazeltine*, the parties had stipulated that Hazeltine Research and its parent corporation, Hazeltine Corporation, “were to be considered as one entity for purposes of the litigation . . .”²⁸ and, based upon the stipulation the District Court awarded judgment to Zenith of almost \$35M against both Hazeltine entities.²⁹ On appeal the Seventh Circuit vacated the judgment against Hazeltine Corporation, noting:

Since Hazeltine Corporation was neither named [as a party-defendant] nor served [with a Summons and Complaint], the sole basis for [Hazeltine Corporation’s] liability on the judgment is the theory that [Hazeltine Research] HRI [wa]s [Hazeltine Corporation’s] *alter ego*. We cannot say that [Hazeltine] Corporation was ‘adequately represented’ here on the *alter ego* issue.³⁰

The Supreme Court agreed with and affirmed the Seventh Circuit’s decision regarding the appropriateness of the nearly \$35M judgment applying against Hazeltine Corporation, noting:

²⁷ *Id.*

²⁸ *Zenith Radio Corporation v. Hazeltine Research, Inc.*, 395 U.S. 100, 107, 109 (1969).

²⁹ *Id.*, 395 U.S. 100, 107.

³⁰ *Zenith Radio Corporation v. Hazeltine Research, Inc.*, 388 F.2d 25, 30 (7th Cir. 1967), *judgment affirmed in part, reversed in part on other grounds*, 95 U.S. 100 (1969) (*citing* *Hansberry*, 311 U.S. 32, 40-41).

Here, Hazeltine [Corporation] was **not named as a party**, was **never served**[,] and **did not formally appear at the trial**. **Nor was the stipulation an adequate substitute for the normal methods of obtaining jurisdiction over a person or a corporation**. The stipulation represented [Hazeltine Research's] agreement to be bound by and to be liable for the acts of its parent, but it was signed only by [Hazeltine Research] through its attorney, Dodds. Hazeltine [Corporation] did not execute the stipulation, and Dodds, although an officer of Hazeltine [Corporation], did not purport to be signing on its behalf. The [District] [C]ourt apparently viewed the stipulation as binding Hazeltine [Corporation], as equivalent to an entry of appearance, or as consent to entry of judgment against it. The stipulation on its face, however, hardly warrants this construction, and if there were other circumstances which justified the [District] [C]ourt's conclusion, the findings do not reveal them.³¹

A “non-party's role in litigation proceedings cannot render the non-party ‘legally identified’ with a bound party[as] Zenith Radio . . . teaches that a non-party cannot be personally bound by an [order] unless that non-party has had an **actual** day in court in its own right.”³²

In American Synthetic Fibers, LLC v. Nevown, Inc., the United States District Court for the District of South Carolina, acknowledged “ [a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the

³¹ Hazeltine Research, 395 U.S. 100, 110 (Emphasis supplied). See also In re N.A.A.C.P., Special Contribution Fund, 849 F.2d 1473 (Table) (6th Cir. 1988) (1988 WL 61504) (No “personal jurisdiction over a non-party entity because of its relationship to a named party [if] the entity” was never served process nor voluntarily appeared); Heyman v. Kline, 444 F.2d 65 (2d Cir. 1971) (Non-party individual not bound by order since never served with process nor voluntarily appeared).

³² National Spiritual Assembly of Baha'is of United States Under Hereditary Guardianship, Inc. v. National Spiritual Assembly of Baha'is of United States, Inc., 547 F.Supp.2d 879, 892 (N.D.Ill. 2008), *affirmed*, 628 F.3d 837, 853 (7th Cir. 2010), *rehearing and rehearing en banc denied* (29 Dec. 2010) (Emphasis in original)..

pendency of the action and afford them an opportunity to present their objections.’ ”³³ Moreover,“ ‘[i]t is a firmly established procedural maxim that a judgment which substantially affects the rights of a party who is not joined violates due process.’ ”³⁴

The Court of Appeals of New Mexico, in Wirtz v. State Educational Retirement Board, opined:

It is an elementary, if not oft-stated, principle that judgment may not be entered against one not a party to the action. A person does not become a party subject to liability merely by receiving notice of the action. The pleading that provides notice must seek relief against the person. Ordinarily, a court has jurisdiction to enter judgment against a person only if the person receives proper notice, and such **notice must include notice that the person is a party against whom judgment is sought.**³⁵

In Lake Shore Asset Mgmt. Ltd. v. Commodity Futures Trading Commission, the United States Court of Appeals for the Seventh Circuit noted the:

[D]istrict [J]udge evidently was confident that other members of the Lake Shore Group of Companies [we]re ‘in active concert or participation with’ Lake Shore Asset Management, and that may well be true. But so far **none of these other entities has been served with process and given an opportunity to present evidence. That is essential before any enforcement action may be taken against a non-litigant.** Zenith Radio held that even a defendant's concession that some additional entity is the defendant's *alter ego* does not warrant an injunction

³³ American Synthetic Fibers, LLC v. Nevown, Inc., 2010 WL 11530990, at *5 (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)).

³⁴ *Id.*, (quoting Fletcher Aircraft Co. v. Bond, 77 F.R.D. 47, 52 (C.D.Cal. 1977); Nelson v. Adams USA, Inc., 529 U.S. 460, 460-461 (2000) (a party added after judgment was entered must be given an opportunity to respond and contest its liability for the judgment). As the late Justice Ginsberg opined the mere ability to lodge an “[a]ppeal after judgment . . . d[oes] not provide an adequate opportunity to defend against the imposition of liability.” Nelson v. Adams USA, 529 U.S. 460, 466 (citing American Surety Co. v. Baldwin, 287 U.S. 156 (1932)).

³⁵ Wirtz v. State Education Retirement Board, 122 N.M. 292, 297, 923 P.2d 1177, 1182 (Ct.App. 1996) (quoting Lava Shadows, Ltd. v. Johnson, 121 N.M. 575, 915 P.2d 331 (Ct.App.1996), *certiorari. denied*, 121 N.M. 644, 916 P.2d 844 (1996)) (Internal citation omitted and emphasis supplied).

against that entity, until it has been served with process and offered the opportunity to say whether it agrees with the original defendant's concession.³⁶

In Chunchula Energy Corporation v. Ciba-Geigy Corporation, the Supreme Court of Alabama reversed an order imposing certain liabilities against two individuals characterized as alleged and/or purported corporate *alter egos*, noting “[Dr. and Mrs. Wallace] were never named as [party-]defendants [n]or served with notice[and even though] Ciba-Geigy argue[d] . . . the Wallaces were certainly aware of the suit, [even such knowledge, if true,] cannot substitute for [actually] naming them as [defendant-]parties and raising the *alter ego* issue in a court which had personal jurisdiction over [Dr. and Mrs. Wallace] in their individual capacities.”³⁷ Consequently, any “judgment [against the Wallaces] is void as [they were] persons not named as parties to the complaint, [nor] served with notice, and [not] given an opportunity to be heard.”³⁸

In General Electric Capital Corporation v. Shattuck, the Florida Second District Court of Appeals stated the “requirements of notice and an opportunity to be heard before being bound by a judgment are of constitutional dimension.”³⁹ The court also noted:

[even] the relationships between [two close corporate entities] do[es] not obviate the need for separate notice and opportunity to be heard. In Pacesetter Builders–Joint

³⁶ Lake Shore Asset Management Ltd. v. Commodity Futures Trading Commission, 511 F.3d 762, 767 (7th Cir. 2007). *See also generally* Chase National Bank v. Norwalk, 291 U.S. 431, 436–437 (1934); Scott v. Donald, 165 U.S. 107, 117 (1897). *See also* Microsystems Software, Inc. v. Scandinavia Online AB, 226 F.3d 35, 43 (1st Cir. 2000); Alabama v. U.S. Army Corps of Engineers, 704 F.Supp.3d 20, 78 (D.D.C. 2023).

³⁷ Chunchula Energy Corp. v. Ciba-Geigy Corporation, 503 So.2d 1211, 1216 (1987).

³⁸ *Id.*, (*citing* Hazeltine Research, 395 U.S. 100; Nigg v. Smith, 415 So.2d 1082 (Ala. 1982); State v. Hertz Skycenter, Inc., 294 Ala. 336, 317 So.2d 324 (1975); Rogers v. Smith, 287 Ala. 118, 248 So.2d 713 (1971)).

³⁹ General Electric Capital Corporation v. Shattuck, 132 So.3d 908, 911 (Fla. 2nd DCA 2014), (*citing* Richards v. Jefferson County, 517 U.S. 793, 797 fn. 4 (1996) (“[A] State may not, consistently with the Fourteenth Amendment, enforce a judgment against a party named in the proceedings without a hearing or an opportunity to be heard” (Citations omitted in original))).

Venture, Inc. v. Coral Springs Property Services, Inc., . . . for example, despite the fact that a final judgment had been entered against ‘Pacesetter Builders, Inc.’ the Fourth District held that a motion to amend final judgment to include ‘Pacesetter Builders—Joint Venture, Inc.’ was improperly granted when the motion was not served on the latter entity, even though the same individuals owned and were officers of both companies. In reversing the order that granted the motion, the court noted that

[t]he appellant correctly contends that it was deprived of its due process protections. The appellant was not served with process, not given an opportunity to file defenses, and not given an evidentiary hearing, although a hearing was held on the motion . . . **Notwithstanding the obvious ties between the entities**, appellant could not be added as a post-judgment defendant without having an opportunity to defend itself.⁴⁰

The appellate court also stated the “fact that some of the Appellants may have been aware of the litigation and even “controlling” or financing it likewise does not mean that the basic requirements of due process could be avoided.”⁴¹

2. CONA-PA Was Not Provided Notice Nor An Opportunity To Be Heard Before The Trial Court Made The Party Substitution

CONA-PA was never named as a party-defendant in Allen v. Lim (Willoughby Aff., para. 21; Roper Aff., para. 24; Chittum Aff., para. 15; Brown Aff., para. 14; Hoening Aff., para. 14; Dinicola Aff., para. 12), did not participate in Allen v. Lim (Id., at para. 11; Roper Aff., para. 15; Chittum Aff., para.14; Brown Aff., para. 13; Hoening Aff., para. 13; Dinicola Aff., para. 11), and was not represented by any of Dr. Lim’s, PA Nicholas’, or CONA-

⁴⁰ Id., at 913 (quoting Pacesetter Builders—Joint Venture, Inc. v. Coral Springs Property Services, Inc., 531 So.2d 1061, 1062 (Fla.4th DCA 1988)) (Emphasis in original).

⁴¹ Id., (citing Nelson v. Adams USA, 529 U.S. 460, 470-472 (an individual sought to be held liable for attorney’s fees after the original plaintiff had been ordered to pay the fees has “the right to contest on the merits his personal liability for” such an award, even when the individual was the president and sole shareholder of the plaintiff, was the “effective controller” of the litigation, and personally appeared as a witness at a hearing).

ASC's defense attorneys in Allen v. Lim. (*Id.*; *Roper Aff.*, para. 15; *Chittum Aff.*, para.14; *Brown Aff.*, para. 13; *Hoening Aff.*, para. 13; *Dinicola Aff.*, para. 11).

CONA PA (a) was not kept informed about Allen v. Lim, (b) did not consult with any attorneys, including Dr. Lim's, PA Nicholas', or CONA-ASC's defense attorneys, regarding Allen v. Lim, (c) did not participate in Dr. Lim's, PA Nicholas', or CONA-ASC's defense against Ms. Allen's claims, and (d) was not present to observe the proceedings or present testimony during the Allen v. Lim trial. (*Id.*, at para. 10; *Roper Aff.*, para. 14; *Chittum Aff.*, para. 13; *Brown Aff.*, para. 12; *Hoening Aff.*, para. 12; *Dinicola Aff.*, para. 10). CONA-PA was never involved in Allen v. Lim and CONA-PA was never present nor was its interests represented by anyone in Allen v. Lim. (*Id.*, at para. 11; *Roper Aff.*, para. 15; *Chittum Aff.*, para.14; *Brown Aff.*, para. 13; *Hoening Aff.*, para. 13; *Dinicola Aff.*, para. 11).

Furthermore, CONA-PA was not provided any advance notice of the 2 July 2025 motions hearing by (a) the Trial Court, (b) Dr. Lim's, PA Nicholas', and CONA-ASC's attorneys, or (c) any other party or individual involved in the Allen v. Lim Litigation, including specifically Dr. Lim, PA Nicholas, or CONA-ASC. (*Id.*, at paras. 15-16; *Roper Aff.*, paras. 19-20; *Chittum Aff.*, paras. 19-20; *Brown Aff.*, paras. 18-19; *Hoening Aff.*, paras. 18-19; *Dinicola Aff.*, paras. 16-17). CONA-PA was never told beforehand Dr. Lim's, PA Nicholas', and CONA-ASC's defense attorneys intended to propose the CONA-PA for CONA-ASC defendant switch. (*Id.*; *Roper Aff.*, paras. 19-20; *Chittum Aff.*, paras. 19-20; *Brown Aff.*, paras. 18-19; *Hoening Aff.*, paras. 18-19; *Dinicola Aff.*, paras. 16-17). CONA-PA first learned the Trial Court had ordered the CONA-PA for CONA-ASC party substitution four days **after** the order was issued. (*Id.*, at para. 15; *Roper Aff.*, para. 19; *Brown Aff.*, para. 18; *Hoening Aff.*, para .18; *Dinicola Aff.*, para. 15).

The 07/03/2025 SCRCP Form 4 Order violated CONA-PA's due process rights (1) to notice, (2) an opportunity to be heard in a meaningful way, and (3) judicial review.' "42 Moreover, the 07/03/2025 SCRCP Form 4 Order violated CONA-PA's due process [rights as the 07/03/2025 SCRCP Form 4 Order constituted] a judgment . . binding on [CONA-PA, even though CONA-PA] was not a party or a privy and therefore . . never had an opportunity [before imposition of the \$6M judgment] to be heard."43

The Trial Court's post-judgment decision to substitute CONA-PA for CONA-ASC without providing CONA-PA either advance notice or an opportunity to be heard must be reversed in all respects and CONA-PA dismissed from Allen v. Lim.

B. The Trial Court Should Have Allowed CONA-PA To Intervene.

Eleven days after the Trial Court issued the substitution order substituting CONA-PA for CONA-ASC (07/03/2025 SCRCP Form 4 Order, pp.1-3), CONA-PA moved to intervene pursuant to Rule 24, SCRCP. (*Intervention Motion*, pp.1-8). The Trial Court denied the motion (09/16/2025 SCRCP Order, pp.1-3; 09.22.25 *Order*, pp.1-17), asserting CONA-PA was already a party, having "filed an *Answer* to the [*Second Amended*] [*C*]omplaint on August 30, 2021." (09.22.25 *Order*, p.4). The Trial Court, however, misinterpreted the law and the facts. The Trial Court's decision disallowing CONA-PA's intervention was improper and must be reversed in all respects as CONA-PA never knowingly and voluntarily subjected itself to the jurisdiction of the Trial Court as a party to Allen v. Lim.

42 EverBank v. Scurry, 2015 WL 4755539, at *1 (*quoting Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 183, 561 S.E.2d 659, 661).

43 Parklane Hosiery Company, Inc. v. Shore, 439 U.S. 322, 327 fn.7 (*citing Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 329; Hansberry v. Lee, 311 U. S. 32, 40).

1. Rule 24(a), SCRCivP, Standards

When addressing a party's intervention request made via Rule 24(a)(2), SCRCivP, our courts have:

'interpret[ed] the rules to permit liberal intervention particularly [when]. . . judicial economy will be promoted by the declaration of the rights of all parties who may be affected. Accordingly, [courts] must consider the pragmatic consequences of a decision to permit or deny intervention and avoid setting up rigid applications of Rule 24(a)(2)[, SCRCivP, so as to deny an intervention when the facts and circumstances reasonably require such a request to be granted].'⁴⁴

Consequently, under Rule 24(a)(2), SCRCivP, a court must grant intervention in situations "when the applicant claims an interest relating to the property or transaction which is the subject of the action and he [or she] is so situated that the disposition of the action may as a practical matter impair or impede his [or her] ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."⁴⁵ To succeed under Rule 24(a)(2), SCRCivP, "a party must '(1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties.'"⁴⁶

⁴⁴ *Ex parte DeBordieu Colony Community Association*, 442 S.C. 285, 289, 898 S.E.2d 179, 181 (Ct.App. 2024) (*quoting* *Berkeley Electric Cooperative, Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990)).

⁴⁵ *Id.*, 442 S.C. 285, 290-291, 898 S.E.2d 179, 182 (*quoting* Rule 24(a)(2), SCRCivP).

⁴⁶ *Ex parte Berlin*, 2022 WL 3224561, at *1 (S.C.App., 10 Aug. 2022) (*quoting* *In re Horry County State Bank*, 361 S.C. 503, 507, 604 S.E.2d 723, 725 (Ct.App. 2004)).

CONA-PA easily meets the temporal requirement, as it moved to intervene seven days after first learning it had been substituted for CONA-ASC.⁴⁷ CONA-PA also easily “assert[s] an interest relating to the . . . transaction which is the subject of [*Allen v. Lim*]” since CONA-PA is now exposed to the \$6M verdict. Any argument to the contrary is not credible.⁴⁸ CONA-PA is also clearly “in a position such that without intervention, disposition of [*Allen v. Lim*] may impair or impede [CONA-PA’s] ability to protect that interest” as CONA-PA⁴⁹ (a) was never a party to the case, (b) was never served with a copy of the *Second Amended Complaint* (or any there *Complaint*) or other legal process, and (c) did not participate in the *Allen v. Lim* trial or the 2 July 2025 post-trial hearing.⁵⁰ Finally, since CONA-PA (1) was never served with legal process, (2) was never made a party to *Allen v. Lim*, (3) never participated in *Allen v. Lim*, and (4) was never represented by any legal counsel in *Allen v. Lim* (including specifically Dr. Lim’s, PA Nicholas’, and CONA-ASC’s defense attorneys), CONA-PA clearly satisfies the final requirement mandating CONA-PA “demonstrate . . . its interest is inadequately represented by other parties” to *Allen v. Lim*.⁵¹

⁴⁷ See *Ex parte Reichlyn*, 310 S.C. 495, 500, 427 S.E.2d 661, 664 (1993) (setting forth factors relevant in determining timeliness).

⁴⁸ See generally *In re Horry County State Bank*, 361 S.C. 503, 507-508, 604 S.E.2d 723, 725. See *Ex parte Government Employees Insurance Company (Ex parte GEICO)*, 373 S.C. 132, 135, 644 S.E.2d 699, 701 (2007) (citing *Bailey v. Bailey*, 312 S.C. 454, 458, 441 S.E.2d 325, 327 (1994)) (a real party in interest has a real, actual, material, or substantial interest in the subject matter of the action, not simply only a nominal, formal, or technical interest in, or connection). See also *Restor-A-Dent Dental Labs., Inc. v. Certified Alloy Prods., Inc.*, 725 F.2d 871, 874 (2d Cir. 1984) (interest required for intervention as a matter of right must be “direct,” “immediate,” and “significantly protectable,” rather than “remote or contingent”).

⁴⁹ Regardless of the false proposition CONA-PA was allegedly already a party to *Allen v. Lim*.

⁵⁰ *Ex parte Reichlyn*, 310 S.C. 495, 499-500, 427 S.E.2d 661, 664 (citing *State of Arizona v. Motorola, Inc.*, 139 F.R.D. 141, 144 (D.Ariz. 1991)). See *Berkeley Electric Cooperative, Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 189-192, 394 S.E.2d 712, 714-715 (citing *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525 (9th Cir. 1983); *Spring Construction Co., Inc. v. Harris*, 614 F.2d 374 (4th Cir. 1980)).

⁵¹ See generally *In re Horry Cnty. State Bank*, 361 S.C. 503, 508-509, 604 S.E.2d 723, 726.

None of the “existing parties will undoubtedly make all of [CONA-PA]'s arguments; [none of] the existing parties are capable and willing to make [CONA-PA's] arguments; and [CONA-PA certainly] offers different knowledge, experience, or perspective on the proceedings [which] would otherwise be absent.”⁵² CONA-PA met all the legal requirements and should have been permitted to intervene.

2. CONA-PA Was Entitled To Intervene

No party to Allen v. Lim was in a position to or, in reality, would have wanted to represent CONA-PA's interests vis-à-vis the substitution of CONA-PA for CONA-ASC. Neither Dr. Lim nor PA Nicholas nor CONA-ASC were benefited by CONA-PA's absence as a party-defendant in Allen v. Lim. With CONA-PA present in the case as a participant, CONA-PA became an additional solvent entity available to satisfy the \$6M judgment in whole or, at least, in part. None of the parties in Allen v. Lim, including specifically Dr. Lim, PA Nicholas, and CONA-ASC, prior to the attorneys' substitution stipulation and the resulting 07/03/2025 SCRCP Form 4 Order would have argued in favor of CONA-PA's intervention motion or would have otherwise properly and adequately represented CONA-PA's interests in Allen v. Lim. All of the parties, pre-substitution, had every incentive to do just the opposite.

CONA-PA was **never named** as a party-defendant in Allen v. Lim (*Willoughby Aff.*, para. 21; *Roper Aff.*, para. 24; *Chittum Aff.*, para. 15; *Brown Aff.*, para. 14; *Hoening Aff.*, para. 14; *Dinicola Aff.*, para. 12), **did not** participate in Allen v. Lim (*Id.*, at para. 11; *Roper Aff.*, para. 15; *Chittum Aff.*, para.14; *Brown Aff.*, para. 13; *Hoening Aff.*, para. 13; *Dinicola Aff.*, para. 11), and **was not represented** by any attorney (specifically including Dr. Lim's,

⁵² *Id.*, (quoting Berkeley Elec. Co-op., Inc. v. Town of Mt. Pleasant, 302 S.C. 186, 191, 394 S.E.2d 712, 715)

PA Nicholas', and CONA-ASC's defense attorneys) involved in Allen v. Lim. (*Id.*; *Roper Aff.*, para. 15; *Chittum Aff.*, para.14; *Brown Aff.*, para. 13; *Hoening Aff.*, para. 13; *Dinicola Aff.*, para. 11). Moreover, CONA PA (a) was **not kept informed** about Allen v. Lim, (b) **did not consult** with any attorneys regarding Allen v. Lim, (c) **did not participate** in Dr. Lim's, PA Nicholas', or CONA-ASC's defense against Ms. Allen's claims, and (d) **was not present** to observe the proceedings or present testimony during the Allen v. Lim trial. (*Id.*, at para. 10; *Roper Aff.*, para. 14; *Chittum Aff.*, para. 13; *Brown Aff.*, para. 12; *Hoening Aff.*, para. 12; *Dinicola Aff.*, para. 10). CONA-PA was never involved in Allen v. Lim and, in turn, CONA-PA was neither present nor was its interests otherwise represented in Allen v. Lim. (*Id.*, at para. 11; *Roper Aff.*, para. 15; *Chittum Aff.*, para.14; *Brown Aff.*, para. 13; *Hoening Aff.*, para. 13; *Dinicola Aff.*, para. 11).

Furthermore, neither Dr. Lim's, nor PA Nicholas', nor CONA-ASC's defense attorneys, nor the Trial Court, nor anyone involved in Allen v. Lim provided CONA-PA any advance notice of the 2 July 2025 motions hearing. (*Id.*, at paras. 15-16; *Roper Aff.*, paras. 19-20; *Chittum Aff.*, paras. 19-20; *Brown Aff.*, paras. 18-19; *Hoening Aff.*, paras. 18-19; *Dinicola Aff.*, paras. 16-17). CONA-PA had no notice from Dr. Lim, PA Nicholas, or CONA-ASC or their defense attorneys that the attorneys intended to propose and stipulate the CONA-PA for CONA-ASC defendant-party substitution. (*Id.*; *Roper Aff.*, paras. 19-20; *Chittum Aff.*, paras. 19-20; *Brown Aff.*, paras. 18-19; *Hoening Aff.*, paras. 18-19; *Dinicola Aff.*, paras. 16-17). CONA-PA first learned CONA-PA had been substituted for CONA-ASC four days **after** the Trial Court issued the order. (*Id.*, at para. 15; *Roper Aff.*, para. 19; *Brown Aff.*, para. 18; *Hoening Aff.*, para .18; *Dinicola Aff.*, para. 15).

3. CONA-PA Was Never A Party To Allen v. Lim

The Trial Court based its denial of CONA-PA's intervention motion on the faulty proposition "CONA-PA [wa]s already a party to [Allen v. Lim since CONA-PA] filed an [A]nswer to the [Second Amended [C]omplaint on August 30, 2021[and,] [a]s such, there [wa]s no need for a motion to intervene – CONA[-]PA [wa]s, and has been, a party to this action" (09.22.2025 Order, p.4). The Trial Court's assumption was faulty and legally unsupportable. Ms. Allen never sued CONA-PA in the original *Complaint* (*Comp.*, paras. 1-8), the *Amended Complaint* (*Amd. Comp.*, pp.1-9), or in the *Second Amended Complaint*. (*2nd Amd. Comp.*, pp.1-10). Ms. Allen never included CONA-PA as a party-defendant in any Allen v. Lim pleading iteration. (*Id.*, pp.1-10; *Willoughby Aff.*, para. 12; *Roper Aff.*, para. 16; *Chittum Aff.*, para. 15; *Brown Aff.*, para. 14; *Hoening Aff.*, para. 14; *Dinicola Aff.*, para. 12).

Moreover, Ms. Allen never served CONA-PA with either legal process or a copy of the statutorily mandated *Notice of Intent to File*.⁵³ (*Willoughby Aff.*, para. 12; *Roper Aff.*, paras. 9, 16; *Chittum Aff.*, paras. 10, 15; *Brown Aff.*, para. 14; *Hoening Aff.*, para. 14; *Dinicola Aff.*, para. 12).⁵⁴ Ms. Allen only sued CONA-ASC. (*2nd Amd. Comp.*, pp.1-10).⁵⁵ This is clearly born out in the parties' stipulation just prior to the closing arguments that

⁵³ See generally S.C. Code Ann. § 15-79-125(A). See Walker v. AnMed Health, 446 S.C. 419, 430, 919 S.E.2d 565, 570 (quoting Ross v. Waccamaw Community Hospital, 404 S.C. 56, 59, 744 S.E.2d 547, 548 (Footnote omitted in original)).

⁵⁴ Ms. Allen did, however, serve Dr. Lim, PA Nicholas, and CONA-ASC with a Notice of Intent and Summons in Allen v. Lim. (*Roper Aff.*, para. 7).

⁵⁵ Ms. Allen was "the master of h[er] own complaint and [wa]s the sole decider of whom to sue for h[er] injuries." Damico v. Lennar Carolinas, LLC, 437 S.C. 596, 615, 879 S.E.2d 746, 757 (2022) (citing Myles v. United States, 416 F.3d 551, 552 (7th Cir. 2005)("[I]tigators are masters of their own complaints and may choose who to sue - or not to sue."); 71 C.J.S., Pleading, § 149 (Thomson Reuters West Supp. 2021) (Citation omitted in original). Through discovery Ms. Allen could have easily learned CONA-PA employed Dr. Lim and PA Nicholas and then amended her pleadings to add CONA-PA as a party-defendant. Ms. Allen apparently did not do so.

when any party used the term “CONA” during the trial the term was referring to CONA-ASC. (Tr.496, lines 10-15). There was never any mention of CONA-PA until long after the verdict was rendered and the jury discharged.

Most importantly, CONA-PA was never represented by any attorney in Allen v. Lim (Willoughby Aff., at para. 11; Roper Aff., para. 15; Chittum Aff., para.14; Brown Aff., para. 13; Hoening Aff., para. 13; Dinicola Aff., para. 11), including specifically Dr. Lim’s, PA Nicholas’, and CONA-ASC’s defense attorneys. (*Id.*, para. 20; Roper Aff., para. 23; Chittum Aff., para. 24; Brown Aff., para. 23; Hoening Aff., para. 23; Dinicola Aff., para. 20). CONA-PA was never a party to or participated in Allen v. Lim. (*Id.*, at para. 11; Roper Aff., para. 15; Chittum Aff., paras. 21-22; Brown Aff., paras. 20-21; Hoening Aff., paras .20-21; Dinicola Aff., para. 11). Dr. Lim’s, PA Nicholas’, and CONA-ASC’s defense attorneys never requested nor were given any authority by CONA-PA whatsoever to either act for, bind, enter into any stipulations, and/or otherwise speak for and/or on behalf of CONA-PA. (*Id.*, paras. 17-18, 21; Roper Aff., paras. 21-22; Chittum Aff., para. 24; Brown Aff., para. 23; Hoening Aff., para. 23; Dinicola Aff., paras. 17-18).

In Arnold v. Yarborough, this Court of Appeals concluded “ ‘the employment of an attorney in a particular suit implies his client's assent that he may do everything which the court may approve in the progress of the cause [and] . . . [l]itigants must necessarily be held bound by the acts of their attorneys in the conduct of a cause in court . . . ’”⁵⁶ This proposition, of course, **presumes** the client at issue has actually retained the particular attorney to provide the client with legal representation and, in turn, the client has

⁵⁶ Arnold v. Yarborough, 281 S.C. 570, 572, 316 S.E.2d 416, 417 (Ct.App.1984) (quoting Ex parte Jones, 47 S.C. 393, 397, 25 S.E. 285, 286 (1896)).

manifested that retained legal representation to third-parties.⁵⁷ That was not the situation in this matter.

A lawyer cannot bind a party to a judgment, a settlement, or an order when the lawyer does not represent that party, as the attorney-client relationship is the foundation for an attorney's authority to act on behalf of a client. "Under South Carolina law the attorney-client relationship is created when the attorney undertakes to perform a particular legal service for the client."⁵⁸ A "person attains the status of a 'client' when that person seeks legal advice by communicating in confidence with an attorney for the purpose of obtaining such advice[and such] legal advice or assistance must be sought from the attorney with a view to employing him professionally"⁵⁹ The "attorney-client relationship cannot be assumed because it is created by the consent of the parties [and] **'the attorney [cannot] create the relationship without the client's consent.'**"⁶⁰ Furthermore, "[a]n appearance by an attorney [on behalf of a party] without either consent [of the party] or [credible and reasonable] justifiable reliance does not create a [legitimate attorney-client] relationship."⁶¹

⁵⁷ See Motley v. Williams, 374 S.C.107, 647 S.E.2d 244 (Ct.App. 2007).

⁵⁸ Bradford & Bradford, P.A. v. Attorneys Liability Protection Society, Inc., 2010 WL 4225907, at *5 (D.S.C., 20 Oct. 2010) (citing 1 South Carolina Jurisprudence, Attorney and Client, § 18 (Thomson Reuters West 2008)).

⁵⁹ *Id.*, (citing In re Broome, 356 S.C. 302, 589 S.E.2d 188, 195-196 (2003) (citing Marshall v. Marshall, 282 S.C. 534, 320 S.E.2d 44, 47 (Ct.App. 1984) (Internal citation omitted in original)). See also generally In re Carter, 400 S.C. 170, 176, 733 S.E.2d 897, 900 (2012).

⁶⁰ *Id.* (quoting 1 South Carolina Jurisprudence, Attorney and Client, § 18) (Second alteration in original and emphasis supplied). See also generally 1 Ronald E. Mallen, Legal Malpractice, § 8:12 (Thomson Reuters West April 2026 Update) (citing Francois v. Andry, 930 So.2d 995 (La.App. 4th Cir. 2006); Fox v. Pollack, 181 Cal.App.3d 954, 226 Cal.Rptr. 532 (1st Dist. 1986); Guidry v. Rubin, 425 So.2d 366 (La.App. 3d Cir. 1982); York v. Stiefel, 109 Ill.App.3d 342, 440 N.E.2d 440 (3d Dist. 1982), *judgment affirmed in part and reversed in part on other grounds*, 99 Ill.2d 312, 458 N.E.2d 488 (1983)).

⁶¹ 1 Ronald E. Mallen, Legal Malpractice, § 8:12 (citing Francois, 930 So.2d 995; Langeland v. Farmers State Bank of Trimont, 319 N.W.2d 26 (Minn. 1982)).

The proposition that Dr. Lim's, PA Nicholas', and CONA-ASC's attorneys mistakenly filed a response to the *Second Amended Complaint* which wrongly indicated they were submitting the pleading for Dr. Lim, PA Nicholas, **and CONA-PA** is nothing more than a "red herring". The Trial Court had no evidence, other than Dr. Lim's, PA Nicholas', and CONA-ASC's counsel's completely unapproved stipulation (07.02.25 *Hearing* Tr.6, lines 12-21), to show Dr. Lim's, PA Nicholas', and CONA-ASC's defense counsel **also represented CONA-PA** and, in turn, were legally authorized to take any action whatsoever on CONA-PA's behalf. This is particularly true since CONA-PA **was not** a named defendant. (2nd *Amd. Comp.*, pp.1-10). Dr. Lim's, PA Nicholas', and CONA-ASC's defense counsel could not have unilaterally created or assumed legal representation of CONA-PA without CONA-PA's specific agreement/consent to the representation – an agreement which was neither given nor requested. (*Willoughby Aff.*, para. 20; *Roper Aff.*, para. 23; *Chittum Aff.*, para. 24; *Brown Aff.*, para. 23; *Hoening Aff.*, para. 23; *Dinicola Aff.*, para. 20).

In *Auvil v. Grafton Homes, Inc.*, the United States Court of Appeals for the Fourth Circuit vacated the District Court's order enforcing a settlement since the client did not grant his attorney the authority to settle the dispute.⁶² The Fourth Circuit stated that "[f]rom the well-established tenet that an **agent cannot create his own authority to represent a principal**, it follows that an agent's statements that he has such authority cannot, without more, entitle a third party to rely on his agency."⁶³ "An agent's authority

⁶² See *Auvil v. Grafton Homes, Inc.*, 92 F.3d 226 (4th Cir. 1996).

⁶³ *Id.*, at 230 (citing *NLRB v. Local Union 1058, UMW*, 957 F.2d 149, 153 (4th Cir. 1992); *Fennell v. TLB Kent Co.*, 865 F.2d 498, 502 (2^d Cir. 1989); *D & G Equip. Co. v. First Nat'l Bank of Greencastle*, 764 F.2d 950, 954 (3^d Cir.1985)). (Emphasis supplied).

must be conferred by some manifestation by the *principal* that the agent is authorized to act on the principal's behalf.”⁶⁴

The Trial Court’s reliance on Dr. Lim’s, PA Nicholas’, and CONA-ASC’s defense attorneys’ filed *Answer* to the *Second Amended Complaint* “naming” CONA-PA as the basis to deny CONA-PA intervention request was unjustified, without merit, and legally unsupportable. Dr. Lim’s, PA Nicholas’, and CONA-ASC’s defense attorneys could not reasonably or credibly file any “response” to the *Second Amended Complaint* or any other pleading on CONA-PA’s behalf as (a) they did not represent CONA-PA, (b) they had never been asked to represent CONA-PA in *Allen v. Lim*, and (c) CONA-PA was not and never had been a party-defendant in *Allen v. Lim*.

The Trial Court’s decision to deny CONA-PA’s intervention motion was incorrect and legally unsupportable. The decision must be reversed in all respects and the case remanded to allow CONA-PA to intervene in order to protect its due process rights to notice, a meaningful opportunity to be heard, and appropriate judicial review.

⁶⁴ *Id.*, (citing Restatement (Second) of Agency, §§ 7-8 (1957)) (Emphasis in original).

C. CONA-PA Was Not Subject To Rule 68, SCRCivP, Prejudgment Interest As Ms. Allen Never Served CONA-PA With The April 2024 Offer Of Judgment.⁶⁵

“An offer of judgment is intended to ‘encourage settlement and avoid litigation.’”⁶⁶ Moreover, “ ‘prompts both parties to a suit to evaluate the risks and costs of litigation, and to balance them against the likelihood of success upon trial on the merits.’ ”⁶⁷ Under South Carolina law, “[a]ny party in a civil action . . . may file, no later than [20] days before the trial date, a written offer of judgment signed by the offeror or his attorney, directed to the opposing party, offering to take judgment in the offeror's favor, or to allow judgment to be taken against the offeror for a sum stated therein, or to the effect specified in the offer.”⁶⁸ Furthermore, if and when “an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall be allowed to recover from the offeree: . . . (2) if the offeror is a plaintiff, eight percent interest computed on the amount of the verdict or award from the date of the offer”⁶⁹

⁶⁵ *CONA-PA* believes the Trial Court improperly made *CONA-PA* a party to this case through the party substitution order. (07.03.2025 *SCRCP Form 4 Order*, pp.1-2). Nevertheless, to the extent *CONA-PA* is considered a “party” herein *CONA-PA* makes the present argument in its capacity, albeit strenuously challenged, as a party to *Allen v. Lim* and an appellant herein. *CONA-PA* does not waive nor abandon its arguments that *CONA-PA* was improperly included herein.

⁶⁶ *Machado v. Law Offices of Jeffrey H. Ward*, 2016 WL 3574007, *1 (D.N.J., 29 June 2016) (quoting *Marek v. Chesny*, 473 U.S. 1, 5 (1985)).

⁶⁷ *Id.*

⁶⁸ *Hiebel v. S. C. Dept. of Natural Resources*, 416 S.C. 220, 228, 785 S.E.2d 461, 465 (2016) (quoting Rule 68(a), *SCRCivP*). See also generally *S.C. Code Ann.* § 15-35-400(a) (Thomson Reuters West Supp. 2020) (performs essentially the same function as Rule 68(a), *SCRCivP*). Since *CONA-PA* was not a party to *Allen v. Lim* and was not represented by counsel therein (*Willoughby Aff.*, paras. 17-18, 21; *Roper Aff.*, paras. 21-22; *Chittum Aff.*, para. 24; *Brown Aff.*, para. 23; *Hoening Aff.*, para. 23; *Dinicola Aff.*, paras. 17-18), there was no method through which Ms. Allen’s filed *Offer of Judgment* would ever have reached *CONA-PA*.

⁶⁹ *Garrison v. Target Corp.*, 435 S.C. 566, 585-586, 869 S.E.2d 797, 808 (2022) (quoting Rule 68(b), *SCRCivP*). See also generally *S.C. Code Ann.* § 15-35-400(b) (Thomson Reuters West Supp. 2020) (performs essentially the same function as Rule 68(b), *SCRCivP*).

Importantly, interpreting offers made under Rule 68 involves construing a contract . . .”⁷⁰ and “an offer and acceptance [under] Rule 68 requires a ‘meeting of the minds’.”⁷¹ Consequently, any “ambiguities in offers of judgment will be construed against the offeror in accordance with customary rules of contract interpretation.”⁷²

“In cases involving Rule 68[, SCRCivP,] offers, service of process must comply with [Rule] 5(b)[, SCRCivP].”⁷³ “Actual notice of an offer of judgment does not suffice.”⁷⁴ South Carolina provides, in pertinent part, that “[u]nless otherwise ordered by the court because of numerous defendants or other reasons, all . . . (8) offers of judgment . . . shall be served upon each of the parties of record.”⁷⁵

On 25 April 2024, pursuant to Rule 68(a), SCRCivP, and S.C. Code Ann. § 15-35-400(a), Ms. Allen “filed an *Offer of Judgment* on [Dr. Lim, PA Nicholas, and CONA-ASC] in the amount of \$500,000.00.” (*Rule 68. SCRCivP, Motion*, p.1; *Offer of Judgment*, p.1). Dr. Lim, PA Nicholas, and CONA-ASC “rejected the *Offer of Judgment*” (*Id.*) and the case proceeded to trial where the jury rendered a verdict in Ms. Allen’s favor. (*Verdict Form*, pp.1-3). After the trial, again pursuant to Rule 68(b), SCRCivP, and S.C. Code Ann. §

⁷⁰ Wells v. Vetech, LLC, 437 S.C. 428, 431, 879 S.E.2d 6, 7 (Ct.App. 2022).

⁷¹ Machado, 2016 WL 3574007, *1 (*quoting Johnson v. Univ. Coll. of Univ. of Ala.*, 706 F.2d 1205, 1209 (11th Cir. 1983). *See also Radecki v. Amoco Co.*, 858 F.2d 397, 400 (8th Cir. 1988) (“To decide whether there has been a valid offer and acceptance for purposes of Rule 68, courts apply the principles of contract law.”); Whitehouse v. Target Corp., 279 F.R.D. 285, 287 (D.N.J. 2012) (same).

⁷² *Id.*, (*citing Lima v. Newark Police Dept.*, 658 F.3d 324, 330 (3d Cir. 2011) (*citing Nordby v. Anchor Hocking Packaging Co.*, 199 F.3d 390, 391-393 (7th Cir. 1999))).

⁷³ De Freitas v. Hertz Corp., 720 F.Supp.3d 993, 1009 (D.Nev. 2024) (*citing Magnuson v. Video Yesteryear*, 85 F.3d 1424, 1429 (9th Cir. 1996) (analyzing service of offers of judgment under Rule 68, FRCivP). *See also Salley v. Board of Governors, Univ. of N.C.*, 136 F.R.D. 417, 419 (M.D.N.C. 1991).

⁷⁴ *Id.*, (*citing Magnuson*, 85 F.3d 1424, 1431).

⁷⁵ Rule 5(a), SCRCivP. (Emphasis supplied). *See McCall v. IKON*, 363 S.C. 646, 654, 611 S.E.2d 315, 319 (Ct.App. 2005).

15-35-400(b), Ms. Allen requested the Trial Court award her “pre[-]judgment interest . . . in the amount of \$540,489.66.” (*Rule 68. SCRCPP, Motion*, p.2). By written order dated 28 July 2025, the Trial Court granted Ms. Allen’s motion (*07.28.2025 Order*, pp.3-5, 11) noting neither Dr. Lim, nor PA Nicholas, nor CONA-ASC “contest[ed] that the *Offer of Judgment* was made and rejected, nor [Ms. Allen’s accrued pre-judgment interest] calculations [as Dr. Lim, PA Nicholas, and CONA-ASC merely] contest[ed] the verdict as being excessive and not supported by the evidence presented.” (*Id.*, at p.3).

The fallacy of the Trial Court’s application of pre-judgment interest as to CONA-PA is that Ms. Allen and her attorneys ***never*** served CONA-PA with a copy of the *Offer of Judgment*. The caption of Ms. Allen’s own *Offer of Judgment* lists CONA-ASC, ***not CONA-PA***, as a named party-defendant. Notwithstanding Ms. Allen’s spurious argument CONA-PA had somehow voluntarily submitted itself to the Trial Court’s jurisdiction due to Dr. Lim’s, PA Nicholas’, and CONA-ASC’s defense attorneys’ unwarranted and unauthorized naming of CONA-PA, instead of CONA-ASC, as a defendant in the *Answer to the Second Amended Complaint*,⁷⁶ Ms. Allen specifically noted she had “filed an *Offer of Judgment* on Defendants Chi Hun Lim, M.D., Megan Nicholas, P.A., and ***Carolina Orthopaedic (sic) and Neurological Associates ASC, LLC*** in the amount of

⁷⁶ Dr. Lim’s, PA Nicholas’, and CONA-ASC’s defense attorneys’ subsequently filed and consented to pleadings between 12 December 2021, and 17 June 2025 and stated they represented Dr. Lim, Ms. Nicholas, and ***CONA-ASC***, as well as only referred to ***CONA-ASC***. (*2021.12.16 Consent Scheduling Order*, pp.1-3; *2022.05.05 Consent Amended Scheduling Order*, pp.1-2; *2022.11.17 Consent Scheduling Order*, pp.1-3; *2023.09.13 Consent Scheduling Order*, pp.1-2; *Motion for JNOV*, pp.1-8; *Motion for New Trial 13th Juror*, pp.1-16; *Motion for New Trial Absolute/Nisi Remittitur*, pp.1-6; *Motion for Setoff*, pp.1-7; and *Motion for Non-Economic Damages Cap*, pp.1-3). The defense attorneys never mentioned and/or referred to CONA-PA. Dr. Lim’s, PA Nicholas’, and CONA-ASC’s defense attorneys did reference CONA-PA in one post-trial motion, but only to the extent of noting (a) Ms. Allen never sued CONA-PA, (b) CONA-ASC and CONA-PA were separate and distinct legal entities, and (c) the verdict form did not mention either CONA-ASC or CONA-PA. (*Motion to Alter or Amend Judgment*, pp.1-4). This again confirmed CONA-PA was never a party to, participant in, or defendant associate with *Allen v. Lim*.

\$500,000.00.” (*Rule 68, SCRCivP, Motion*, p.1). Moreover, the *Offer of Judgment* itself specifically stated Ms. Allen “hereby submits an *Offer of Judgment* to Defendants Chi Hun Lim, MD, Megan Nicholas, PA, and **Carolina Orthopaedic (sic) Associates ASC, LLC** in the amount of [\$500,000.00].” (*Offer of Judgment*, p.1). Again, Ms. Allen did not make mention of and/or reference *CONA-PA* even though her *Offer of Judgment* was filed on 25 April 2024, **almost 32 months after** Dr. Lim’s, PA Nicholas’, and *CONA-ASC*’s defense attorneys filed the faulty and inaccurate *Answer* to the *Second Amended Complaint* on 30 August 2021. (*Answer to 2nd Amd. Comp.*, p.1). Ms. Allen clearly believed *CONA-ASC* was the proper party upon which to serve her *Offer of Judgment* as she (a) included *CONA-ASC*, not *CONA-PA*, in the caption, (b) directed the Offer of Judgment to Dr. Lim, PA Nicholas, and *CONA-ASC*⁷¹, not *CONA-PA*, and (c) specifically referenced *CONA-ASC*, not *CONA-PA*, in her motion for an assessment of pre-judgment interest. (*Rule 68, SCRCivP, Motion*, p.1).⁷⁸ As *CONA-PA* was not a party to *Allen v. Lim* and was not represented therein (*Willoughby Aff.*, paras. 17-18, 21; *Roper Aff.*, paras. 21-22; *Chittum Aff.*, para. 24; *Brown Aff.*, para. 23; *Hoenig Aff.*, para. 23; *Dinicola Aff.*, paras. 17-18), Ms. Allen’s filed *Offer of Judgment* would never have reached *CONA-PA*.

⁷¹ The *Offer of Judgment* specifically was directed as follows:

TO: ASHBY DAVIS, ESQUIRE, RYAN GINTY, ESQUIRE, AND DAVIS & SNYDER, P.A., ATTORNEYS FOR DEFENDANTS CHI HUN LIM, MD, MEGAN NICHOLAS, PA, AND CAROLINA ORTHOPAEDIC (sic) AND NEUROLOGICAL ASSOCIATES ASC, LLC

(*Offer of Judgment*, p.1) (Bolding in original and emphasis supplied).

⁷⁸ Ms. Allen stipulated any reference to “CONA” during the trial was considered as a reference to *CONA-ASC*. (Tr.496, lines 10-15). There was no mention of *CONA-PA*.

The Trial Court's decision to impose an award of Rule 68, SCRCivP, pre-judgment interest against *CONA-PA* was improper, incorrect, and legally unsupportable. It must be reversed in all respects.

D. CONA-PA Is Entitled To A New Trial Since The Trial Court Improperly Allowed The Verdict Form To Include An Award Of Damages To Both Ms. Allen And Ms. Hemphill.⁷⁹

Over Dr. Lim's. PA Nicholas', and *CONA-ASC*'s objection (*Trial Tr.*, p.492, lines 10-15; *07.02.2025 Hearing Tr.*, p.13, line 2 – p.14, line 16; p.15, lines 3-18; p.15, line 24 – p.16, line 5; p.24, lines 19-25), the Trial Court improperly allowed the verdict form to list, not only Ms. Allen, but also Ms. Hemphill - a mere statutory beneficiary – which, in turn, permitted the jury to specifically also award Ms. Hemphill damages of \$3M. (*Verdict Form*, pp.1-2). This error resulted in a duplicative recovery to the Jefferies Estate. Dr. Lim, PA Nicholas, and *CONA-ASC* (*nee CONA-PA*) are, therefore, entitled to either a new trial or, at a minimum, the \$6M verdict reduced by \$3M to address the improper double recovery.

In South Carolina only an executor or administrator of a decedent's estate may maintain an action for the decedent's wrongful death.⁸⁰ The law provides:

Every such action shall be for the benefit of the wife or husband and **child or children of the person whose death shall have been so caused**, and, if there be no such wife, husband, child or children, then for the benefit of the parent or parents, and if there be none such, then for the benefit of the heirs of the person whose death shall have been so caused.⁸¹

⁷⁹ To the extent *CONA-PA* is considered an appellate “party” herein *CONA-PA* makes the present argument in its capacity, albeit strenuously challenged, as a party to *Allen v. Lim* and appellant herein. *CONA-PA* does not waive nor abandon its arguments that *CONA-PA* was improperly included in this matter.

⁸⁰ See S.C. Code Ann. §15-51-20 (Thomson Reuters West 2020) (“Every such action shall be brought by or in the name of the executor or administrator of such person.”). See Potts v. United States, 2026 WL 499920, at *8 (D.S.C., 27 Jan. 2026); Ballard v. Ballard, 314 S.C. 40, 41-42, 443 S.E.2d 802, 802 (1994).

⁸¹ *Id.* (Emphasis supplied).

“ ‘The wrongful death statute provides a remedy for the spouse, child, parent, or heir of an injured party when a person commits a wrongful or negligent act causing the injured party's death.’ ”⁸² Stated otherwise, “[a] wrongful death action [is] **brought by the estate for the benefit of the decedent's heirs.**”⁸³

Furthermore, a jury considering a wrongful death claim “may give damages . . . as they may think proportioned to the injury resulting from the death to the parties respectively for whom and for whose benefit such action shall be brought.”⁸⁴ Therefore, pursuant to S.C. Code Ann. §15-51-20, the Allen v. Lim jury could only award damages to the party for whose benefit the action was brought and, in this case, that person was Ms. Allen – the duly appointed personal representative of the Jefferies Estate. Under South Carolina law a wrongful-death claim “inheres in the personal representative, and the statutory beneficiaries **cannot proceed** in their own names.”⁸⁵

When a personal representation suing for an estate obtains a recovery in a wrongful-death and/or survival action, any monetary recovery “does not go into the decedent's general estate but is payable, **upon receipt by the personal representative,** directly to the statutory beneficiaries.”⁸⁶ Consequently, **only the estate is awarded a verdict,** and then the verdict “so recovered shall be divided among the [statutory

⁸² Doe v. Augusta University, 2025 WL 2918366, at *13 (D.S.C., 12 Sept. 2025) (*quoting Dickey v. Clarke Nursing Home*, 2007 WL 8327928, at *2 (S.C.App., 29 June 2007)).

⁸³ Jackson v. United States, 2018 WL 1755503, at *14 (D.S.C., 12 Apr. 2018) (*quoting Estate of Stokes ex rel. Spell v. Pee Dee Family Physicians, L.L.P.*, 389 S.C. 343, 346-347, 699 S.E.2d 143, 145 (2010)) (Emphasis supplied).

⁸⁴ S.C. Code Ann. §15-51-40 (Thomson Reuters West 2020). *See McCurry v. Robinson*, 2019 WL 6050306, at * 1 (D.S.C., 15 Nov. 2019).

⁸⁵ Lester v. McFaddon, 415 F.2d 1101, 1103 (4th Cir. 1969).

⁸⁶ *Id.* (Emphasis supplied).

beneficiaries] in those shares as they would have been entitled to if the deceased had died intestate and the amount recovered had [merely] been personal assets of his or her estate.”⁸⁷ For example, in Ballard v. Ballard, our Supreme Court concluded S.C. Code Ann. § 15-51-40 “allow[ed] a total recovery equal to those damages proved to have been sustained by the statutory beneficiaries in a wrongful death action; the distribution of those damages among the statutory beneficiaries, however, [wa]s controlled strictly by the share each would take as an heir in intestacy regardless of the proportion of damages suffered by each.”⁸⁸

Consistent with South Carolina’s wrongful-death statutory scheme, Ms. Allen – the Jefferies Estate’s designated personal representative and one of Mr. Jefferies’ daughters – brought this action for wrongful death and survival on behalf of the Jefferies Estate. (2nd Amd. Comp., pp.1-10). Prior to the jury’s deliberations, Ms. Allen presented the Trial Court with a proposed verdict form as did Dr. Lim’s, PA Nicholas’, and CONA-ASC’s attorneys. The most glaring difference in the respective forms was Ms. Allen’s suggestion that both she and her sister – Ms. Hemphill – be separately listed as seeking an actual damages award against Dr. Lin, PA Nicholas, and CONA-ASC. The relevant Question No. 3 on Ms. Allen’s proposed verdict form provided as follows:

3. We the jury award damages for the wrongful death of Albert Jefferies as follows:

Andrea Allen _____

Michelle Hemphill _____

⁸⁷ Ballard v. Ballard, 314 S.C.40, 42, 443 S.E.2d 802, 802-803 (quoting S.C. Code Ann. § 15-51-40).

⁸⁸ *Id.*, 314 S.C.40, 42, 443 S.E.2d 802, 803.

(*Verdict Form*, p.2) (Emphasis supplied).

Notwithstanding South Carolina's unambiguous wrongful-death statutory scheme, the Trial Court, over Dr. Lim's, PA Nicholas', and CONA-ASC's objections (*Trial Tr.*, p.492, lines 10-15; *07.02.2025 Hearing Tr.*, p.13, line 2 – p.14, line 16; p.15, lines 3-18; p.15, line 24 – p.16, line 5; p.24, lines 19-25), accepted Ms. Allen's proposed verdict form which, as noted, not only listed Ms. Allen on the verdict form, but also separately listed Ms. Hemphill – a mere statutory beneficiary - as a distinct person to whom the jury could (*and, in fact, did*) award damages. (*Verdict Form*, pp.1-2). Ms. Hemphill, however, (a) had not ever been appointed and/or designated as a personal representative of the Jefferies Estate, (b) was not listed as a party-plaintiff in *Allen v. Lim*, and (c) was not specifically referenced in Ms. Allen's wrongful death pleadings against Dr. Lim, PA Nicholas, and CONA-ASC. (*2nd Amd. Comp.*, pp.1-10).

Under the wrongful death statutory scheme, the *Verdict Form* should have contained only **one line** for the jury to award wrongful death actual damages – a line which did not even need to specifically designate Ms. Allen.⁸⁹ By listing Ms. Hemphill – simply one of Mr. Jefferies' statutory beneficiaries and who was neither a Jefferies Estate personal representative nor a named plaintiff in *Allen v. Lim*,⁹⁰ the Trial Court allowed the jury to impermissibly award duplicative damages to the Jefferies Estate, namely an

⁸⁹ See generally *Boyle v. United States*, 948 F.Supp.2d 577, 586 (D.S.C. 2012) (*citing Wilson v. Amisub of South Carolina, Inc.*, Case No, 2006-CP-46-2891 (S.C. Ct. Comm. Pleas, 29 March 2009)) (Acknowledging that State Trial Court had allowed dual lines to be used on verdict form, but noted situation involve dual personal representatives).

⁹⁰ *Doe v. Augusta University*, 2025 WL 2918366, at *13 (*quoting Dickey v. Clarke Nursing Home*, 2007 WL 8327928, at *2) (Second alteration in original). Ms. Hemphill could not have been a party-plaintiff in this matter since “a wrongful death ‘action inheres only in the [personal representative], and the statutory beneficiaries cannot proceed in their individual capacity.’”

award of \$3M to Ms. Allen on behalf of the Jefferies Estate and another \$3M to Ms. Hemphill, assumably also on behalf of the Jefferies Estate since Ms. Hemphill did not have independent standing to assert wrongful death claims against Dr. Lim, PA Nicholas, or CONA-ASC.⁹¹

The *Verdict Form* was defective and the Trial Court's decision to allow the jury to use it constituted a fatal error warranting, at a minimum, this Court of Appeals to grant Dr. Lim, PA Nicholas, and CONA-ASC a new trial absolute. Failing that, the improper verdict form led to the Jefferies Estate's impermissible double recovery of actual damages which this Court of Appeals should rectify by striking the \$3M actual damages awarded to Ms. Hemphill.

E. CONA-PA Was Entitled To Assert The Additional Defense Of Independent, Intervening, And/Or Superseding Causation.⁹²

On 17 April 2025, Dr. Lim, PA Nicholas, and CONA-ASC moved the Trial Court, pursuant to Rule 15(a), SCRCivP, for permission to assert an additional affirmative defense, namely, independent, intervening, and/or superseding negligence causation by another medical professional. After the motion was heard (*05.08.20255 Hearing Tr.*, pp.1-16), the Trial Court, albeit incorrectly, denied the request by form order. (*05.09.2025 SCRCP Form Order*, pp.1-2). The Trial Court based its decision on the following:

⁹¹ See Roberts v. Bodison, 2015 WL 13215670, at *2 (D.S.C., 20 Nov. 2015) (“[S.C.Code Ann. § 15-51-20] “is unequivocal and without exception that only the executor or administrator of the decedent's estate may bring an action for wrongful death.”), *Report and Recommendation adopted by*, 2015 WL 9581756 (D.S.C., 30 Dec. 2015). See also Glenn v. E.I. DuPont De Nemours & Co., 254 S.C. 128, 133, 174 S.E.2d 155, 157 (1970). See also Doe v. Augusta University, 2025 WL 2918366, at *13 (“[A] decedent's relative who is not the personal representative of the estate does not have standing to bring such a claim.”) (Citations omitted).

⁹² To the extent CONA-PA is considered an appellate “party” herein CONA-PA makes the present argument in its capacity, albeit strenuously challenged, as a party to Allen v. Lim and appellant herein. CONA-PA, however, specifically does not waive nor abandon its arguments that CONA-PA was improperly included in this matter.

This matter has been pending against [Dr. Lim, PA Nicholas, and CONA-ASC] for almost four years and is set as a date certain trial the week of June 2, 2025.

Rule 15(a), *SCRCP*, provides in pertinent part that 'leave (to amend a pleading) shall be freely given when justice so requires and does not prejudice the other party.' In this case, given the length of time the action has been pending and the fact that it is only approximately three weeks until a date-certain trial, th[is] [Trial] Court finds that allowing the amendment of [Dr. Lim's, PA Nicholas', and CONA-ASC's] *Answer* to assert an additional defense would not permit [Ms. Allen] adequate time to conduct any additional discovery needed regarding the new defense and would serve to prejudice [Ms. Allen].

(05.09.2025 *SCRCP Form 4 Order*, p.2).

Even though a Rule 15(a) motion is left up to the court's sound discretion,⁹³ "[a]n abuse of [that] discretion occurs when the [Circuit Court's] ruling is based upon an error of law or, when based on factual conclusions, is without evidentiary support.' "⁹⁴ Where a trial court erroneously denies a litigants reasonable request to amend an answer and when the proposed amendment would not prejudice the opposition, the most appropriate remedy for the error is to grant the defendant a new trial.⁹⁵

The timing of Dr. Lim's, PA Nicholas', and CONA-ASC's motion to amended does not afford a legitimate basis to conclude their proposed amendment was made "too late"; instead, the Rule 15(a), *SCR CivP*, makes clear, the question is one of prejudice to the opposing party.⁹⁶ The type of prejudice which Rule 15(a) contemplates "is not that the

⁹³ *Oulla v. Velazques*, 427 S.C. 428, 435, 831 S.E.2d 450, 453 (Ct.App. 2019) (*citing Sullivan v. Hawker Beechcraft Corp.*, 397 S.C. 143, 153, 723 S.E.2d 835, 840 (Ct.App. 2012)).

⁹⁴ *Id.*, (*quoting Fontaine v. Peitz*, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987)).

⁹⁵ *Soil & Material Engineers, Inc. v. Folly Associates*, 293 S.C. 498, 499, 361 S.E.2d 779, 780 (Ct.App. 1987) (reversing and remanding the case for a new trial where trial court erred by failing to allow the defendant the right to amend the answer where the plaintiff failed to show prejudice).

⁹⁶ *Myat v. Tuomey Regional Medical Center*, 427 S.C. 601,609, 832 S.E.2d 306, 310 (Ct.App. 2019) (*applying* Rule 15(a)). *See also Hardaway Concrete Co., Inc., v. Hall Contracting Corp.*, 374 S.C. 216, 227-

non-moving party is forced to defend the merits of a valid claim[, but] is some result flowing from the amendment [which] puts the non-mov[ant] . . . at a disadvantage in defending the merits, which disadvantage the party would not have faced if the amended claim had been included in the original pleading or [in] a timely motion to amend."⁹⁷

As noted, over a month before trial, Dr. Lim, PA Nicholas, and CONA-ASC moved to amend their response to the *Second Amd. Comp.* to include an additional affirmative defense, namely: "[Ms. Allen's] damages or [the Jefferies Estate's] damages, if any, may have been the result of independent, intervening, and superseding causes over which [Dr. Lim, PA Nicholas, and CONA-ASC] had no control." (*Proposed Amd. Answer to Second Amd. Comp.*, p.11, para. 62). Dr. Lim, PA Nicholas, and CONA-ASC clearly asserted the independent, intervening, and superseding cause they wished to offer at trial as a defense against Ms. Allen's claims was the negligent care Alfred Ezman, M.D. ("Dr. Ezman") provided to Mr. Jefferies. (*Motion to Amend*, pp.2-3) Ms. Allen objected, broadly asserting she would be "prejudiced" by the amendment as the "proposed amendment comes too late.". (*Ms. Allen's Opp. Memo.*, pp.1-6). Importantly, Ms. Allen had the burden to establish prejudice which would result from the proposed amendment, not on either Dr. Lim, PA Nicholas, and/or CONA-ASC to justify the timing of their request.⁹⁸

228, 647 S.E.2d 488, 493-494 (Ct.App. 2007) (Amendment allowed after opposition had two months' notice of additional claim).

⁹⁷ *Patton v. Miller*, 420 S.C. 471, 491-492, 804 S.E.2d 252, 262-263 (2017) (*citing* *Lee v. Bunch*, 373 S.C. 654, 661, 647 S.E.2d 197, 201 (2007) ("The prejudice that would warrant denial of a motion to amend the pleadings is a lack of notice that a new issue is to be tried and a lack of opportunity to refute it.") (*citing* *Collins Entertainment, Inc. v. White*, 363 S.C. 546, 562, 611 S.E.2d 262, 270 (Ct.App. 2005))); *Holland ex rel. Knox v. Morbark, Inc.*, 407 S.C. 227, 235-36, 754 S.E.2d 714, 719 (Ct. App. 2014)). *See* *Pool v. Pool*, 329 S.C. 324, 328, 494 S.E.2d 820, 823 (1998).

⁹⁸ *See generally* *Myat*, 427 S.C. 601, 609, 832 S.E.2d 306, 310.

Notwithstanding the Trial Court's order, Ms. Allen failed to establish she would be prejudiced by Dr. Lim's, PA Nicholas', and/or CONA-ASC's proposed amended pleading.

Ms. Allen, instead of directly analyzing the alleged prejudice she would "suffer", Ms. Allen's opposition arguments and the Trial Court's denial merely emphasized the *timing* of Dr. Lim's, PA Nicholas', and/or CONA-ASC's motion. Ms. Allen relied upon *Alamance Industries v. Chesterfield Hosiery Mill*,⁹⁹ as instructive, but ignored that *Alamance* was decided almost 25 years **before** our State's adoption of the *South Carolina Rules of Civil Procedure*, the purpose of which was "to secure justice, and consequently, they reduce formalities and technicalities."¹⁰⁰ This Court of Appeals recognized that "our new rule makes manifest, amendments to conform to proof should be liberally allowed when no prejudice to the opposing party will result therefrom."¹⁰¹

Notably, the Trial Court's order denying Dr. Lim's, PA Nicholas', and CONA-ASC's motion states, "allowing the amendment of [Dr. Lim's, PA Nicholas', and CONA-ASC's] *Answer* to assert an additional defense would not permit [Ms. Allen] adequate time to conduct any additional discovery needed regarding the new defense and would serve to prejudice [Ms. Allen]/." (05.09.2025 *SCRCF Form 4 Order*, at 2). The Trial Court's reasoning, however, ignored the unassailable fact - made clear in Dr. Lim's, PA Nicholas', and CONA-ASC's motion - that Ms. Allen would not be prejudiced because **she had sued Dr. Ezman**, a PTC, alleging that his care to Mr. Jefferies was negligent and such failure

⁹⁹ *Alamance Industries v. Chesterfield Hosiery Mill*, 239 S.C. 287, 122 S.E.2d 648 (1961).

¹⁰⁰ *Patton v. Miller*, 420 S.C. 471, 492, 804 S.E.2d 252, 263 (*quoting* James F. Flanagan, *South Carolina Civil Procedure: 2nd Ed.* (S.C. Bar 1996)).

¹⁰¹ *Soil & Material Engineers, Inc. v. Folly Associates*, 293 S.C. 498, 501, 361 S.E.2d 779, 781 (*citing* Harry M. Lightsey, Jr. & James F. Flanagan, *South Carolina Civil Procedure*, 251 (S.C. Bar 1985)); *Myat*, 427 S.C. 601, 832 S.E.2d 306.

was the direct and proximate cause of Mr. Jefferies' death. (*Motion to Amend*, p.2, para. 2). Furthermore, Dr. Lim, PA Nicholas, and CONA-ASC argued that Ms. Allen's own medical expert opined that Dr. Ezman deviated from the standard of care when he failed to appropriately assess Mr. Jefferies' numerous risk factors for DVT and PE development and, in turn, timely initiate prophylactic treatment and that Dr. Ezman's negligence resulted in Mr. Jefferies' critical pulmonary embolism and cardiopulmonary arrest. (*Id.*). In other words, Ms. Allen well-knew the issue of Dr. Ezman's intervening/superseding negligence - an additional defense which Dr. Lim, PA Nicholas, and CONA-ASC sought to assert in their amended pleading. Moreover, Ms. Allen argued and developed the issue of Dr. Ezman's negligence in discovery for several years prior to Dr. Lim's, PA Nicholas', and CONA-ASC's motion.

Importantly, Ms. Allen's own opposition argument, cut against the Trial Court's "conclusion" regarding any alleged prejudice. Ms. Allen's response not only acknowledged she had previously alleged other medical professionals were negligent, but admitted Ms. Allen had time engaged in discovery regarding Dr. Lim's, PA Nicholas', and CONA-ASC's proposed new additional affirmative defense. (*Ms. Allen's Opp. Memo.*, pp.2-4).

Since Ms. Allen had prior notice of the issue of Dr. Ezman's alleged negligence and had spent several years in discovery advancing the causation-argument herself (and thus had a full and fair opportunity to introduce testimony to refute it), Dr. Lim's, PA Nicholas', and CONA-ASC's proposed amendment did not have risen to Rule 15(a), SCRCivP's, level of contemplated prejudice.¹⁰²

¹⁰² See generally Armstrong v. Collins, 366 S.C. 204, 231, 621 S.E.2d 368, 381-382 (Ct.App. 2005) (trial court properly allowed a plaintiff to amend a complaint to add claims after the close of plaintiffs case

Consequently, the Trial Court's denial of Dr. Lim's, PA Nicholas', and CONA-ASC's motion to amended to add a proposed new additional affirmative defense was an abuse of discretion. This Court of Appeals should reverse in all respects and grant Dr. Lim, PA Nicholas, and CONA-ASC a new trial.

F. CONA-PA, Joins In Dr. Lim's, PA. Nicholas', And CONA-ASC's Not Inconsistent Appellate Arguments.¹⁰³

Pursuant to Rule 208(b)(6) of the South Carolina Appellate Court Rules,¹⁰⁴ CONA-PA hereby provides notice to all concerned that CONA-PA joins in all the appellate arguments separately made in this appellate matter by either Dr. Lim, PA Nicholas, and/or CONA-ASC which are not inconsistent with and/or contrary to the arguments CONA-PA has asserted herein, either in whole or in part.

because the issues were an integral part of the case and the defendant had the opportunity to examine witnesses on the issues).

¹⁰³ To the extent CONA-PA is considered an appellate "party" herein CONA-PA makes the present argument in its capacity, albeit strenuously challenged, as a party to Allen v. Lim and appellant herein. CONA-PA, however, specifically does not waive nor abandon its arguments that CONA-PA was improperly included in this matter.

¹⁰⁴ See generally Dudek v. Ferro, 2017 WL 128702, at *1 (S.C.App., 11 Jan. 2017) (*per curiam*).

V. CONCLUSION

Based upon the foregoing arguments and citation of authority, the Appellant, Carolina Orthopedic and Neurological Associates, P.A., respectfully requests this Court of Appeals to reverse the Trial Court in all respects and remand this matter back for, at a minimum, a new trial absolute.

Respectfully submitted:

BUTLER SNOW LLP

By: *Stephen P. Groves, Sr.*

Stephen P. Groves, Sr., Esquire

S.C. Bar No.: 007854

25 Calhoun Street, Suite 250

Charleston, South Carolina 29401

Telephone: 843.277.3704

E-Mail: Stephen.Groves@butlersnow.com

Attorneys for the Appellant,

Carolina Orthopedic and Neurological Associates, P.A.

Charleston, South Carolina

13 May 2026