

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

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SC 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 REPLY 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.*

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The Appellant, Carolina Orthopedic and Neurological Associates, P.A. (“CONA-PA”),¹ respectfully submits this Initial Reply Brief in response to the Brief of the Respondent, Andrea Allen, as Personal Representative of the Estate of Albert Charles Jefferies, deceased (“Ms. Allen”), in this appellate matter.

I. ARGUMENT AND CITATION OF AUTHORITY²

A. CONA-PA Was Never A “True Party” In *Allen v. Lim*.

Contrary to Ms. Allen’s meritless assertions, CONA-PA was never a “true party” in this case. The evidence unequivocally demonstrated Ms. Allen never sued CONA-PA in either her *Complaint* (*Comp.*, paras. 1-8), her *Amended Complaint* (*Amd. Comp.*, pp.1-9), or her *Second Amended Complaint*. (*2nd Amd. Comp.*, pp.1-10). She didn’t even sue 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”) until the *Second Amended Complaint*. (*Id.*, at paras. 9-12). Furthermore, Ms. Allen specifically stated Dr. Lim and PA Nicholas were either CONA-ASC’s agents and/or employees (*Id.*, at paras. 9-10) and, in turn, CONA-ASC was vicariously liable for their medical

¹ There is some confusion as to CONA-PA’s correct nomenclature. CONA-PA’s correct name is Carolina Orthopedic and Neurosurgical Associates, P.A., *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). Ms. Allen agrees. (*Respondent’s Brief*, fn. 2).

² Ms. Allen wastes a good portion of her brief attacking both the undersigned and CONA-PA. It has often been said that if you have the law on your side, then “pound on the law”, if you have the facts on your side, then “pound on the facts”, and, if you have neither, then “pound on the desk”. Ms. Allen does a great deal of “pounding on the desk” while failing to reach the merits of this appeal. It is a “consistent . . . tenet that courts prefer to decide cases on their merits rather than technicalities” Pallottino v. Los Suenos da Albuquerque Homeowners Assn., 2026 WL 2546840, *24 (D.N.M., 28 Aug. 2026) (*citing* Hardin v. Manitowoc–Forsythe Corp., 691 F.2d 449, 456 (10th Cir. 1982)). See also In re Morris, 363 F.3d 891, 894 (9th Cir. 2004); Monahan v. N.Y.C. Dept. of Corr., 214 F.3d 275, 283 (2d Cir. 2000); Teft v. Seward, 689 F.2d 637, 639 (6th Cir. 1982); Stern v. U.S. Gypsum, Inc., 547 F.2d 1329, 1334 (7th Cir. 1977).

negligence. Ms. Allen, however, never included CONA-PA in any of her Allen v. Lim pleadings. (*Id.*, pp.1-10; *Willoughby Aff.*, para. 12; *Roper Aff.*, para. 16; *Chittum Aff.*, para. 15; *Brown Aff.*, para. 14; *Hoenig Aff.*, para. 14; *Dinicola Aff.*, para. 12). Even after Dr. Lim's, PA Nicholas', and CONA-ASC's defense attorneys erroneously filed the unauthorized and unapproved response to the *Second Amended Complaint* (*Answer to 2nd Amd. Comp.*, p.1) indicating CONA-PA employed Dr. Lim and PA Nicholas (*Id.*, at paras. 4-7), Ms. Allen never once referred to and/or otherwise mentioned CONA-PA in Allen v. Lim.³ In fact, the indisputable evidence clearly showed, among other things, as follows:

1. Ms. Allen never served CONA-PA with a copy of the any *Summons* and/or *Complaint* or with a copy of the statutorily mandated *Notice of Intent to File*. (*Willoughby Aff.*, para. 12; *Roper Aff.*, paras. 9, 16; *Chittum Aff.*, paras. 10, 15; *Brown Aff.*, para. 14; *Hoenig Aff.*, para. 14; *Dinicola Aff.*, para. 12).⁴
2. Ms. Allen never served CONA-PA with a copy of the 25 April 2024 *Offer of Judgment*, the caption of which listed CONA-ASC, not CONA-PA, as a named party-defendant – a document filed over 30 months *after* Dr. Lim's, PA Nicholas', and CONA-ASC's defense attorneys' unauthorized designation of CONA-PA as a defendant (*Answer to 2nd Amd. Comp.*, paras. 4-7).⁵

3 This is a case of misidentification, as opposed to misnomer. Misidentification occurs when, as with CONA-PA and CONA-ASC, two separate legal entities exist and Ms. Allen sues the entity with a similar name, whereas misnomer occurs when the correct entity is sued under the wrong name. Chilkewitz v. Hyson, 22 S.W.3d 825, 828 (Texas 1999) See also Bartell v. Liberty Mut. Personal Ins. Co., 2024 WL 1090308, at *3 (D.Me., 13 Mar. 2024) (collecting cases). Amendments to correct a misnomer are allowed, Burns v. Crawford Steel Corp., 2023 WL 196118, at *2 (D.S.C., 17 Jan. 2023), but misidentification of a separate existing entity makes it “ ‘readily apparent that substituting one for the other would change the party against whom the case is asserted.’ ” Hawkins v. Wellpath Liquidating Trust, 2026 WL 562067, at *2 (D.Oregon, 27 Feb. 2026) (*quoting Lemus v. Potter*, 314 Or. App. 201, 207, 498 P.3d 1 (2021) (Cleaned up in original)).

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

5 A cursory review of Dr. Lim's, PA Nicholas' and CONA-ASC's (*nee* CONA-PA's) response should have caused Ms. Allen to inquire further into the situation as to what entity actually

3. Even though Ms. Allen was aware Dr. Lim's and PA Nicholas' attorneys had asserted, albeit without any authority to do so, that Dr. Lim and PA Nicholas worked for CONA-PA (*Answer to 2nd Amd. Comp.*, paras. 4-7), Ms. Allen never attempted to serve CONA-PA with either a *Notice of Intent to Sue* or civil process.⁶
4. Even though Ms. Allen was aware Dr. Lim's and PA Nicholas' attorneys had asserted, albeit without any authority to do so, that Dr. Lim and PA Nicholas worked for CONA-PA (*Answer to 2nd Amd. Comp.*, paras. 4-7), Ms. Allen never sought to amend her pleadings to add CONA-PA as a named party-defendant in lieu of CONA-ASC.
5. Since 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 *Offer of Judgment* never reached CONA-PA.⁷
6. CONA-PA was not provided any relevant information regarding Allen v. Lim until June 2025 after the trial had concluded and the jury had reached its verdict. (*Id.*, at paras. 5, 7-8; *Chittum Aff.*, paras. 8, 11; *Brown Aff.*, paras. 7, 10; *Hoenig Aff.*, paras. 7, 10; *Dinicola Aff.*, paras. 5, 8).

employed Dr. Lim and PA Nicholas. Ms. Allen never addressed any such alleged “corporate identity confusion” at any point in Allen v. Lim. “Constructive, or inquiry, notice is the legal imputation of notice to a person based upon circumstances sufficient to substitute for actual notice.” State v. Binnarr, 400 S.C. 156, 168, 733 S.E.2d 890, 896 (2012) (*citing City of Greenville v. Washington Amer. League Baseball Club*, 205 S.C. 495, 509, 32 S.E.2d 777, 782 (1945) (“[I]f there are circumstances sufficient to put the party upon inquiry, he is held to have notice of everything which that inquiry, properly conducted, would certainly disclose.” (citations omitted)); Strother v. Lexington County Recreation Comm'n, 332 S.C. 54, 64–65, 504 S.E.2d 117, 123 (1998) (explaining that knowledge of facts or circumstances putting a party on notice to inquire constitutes constructive, not implied actual notice)) (Pleicones, J., *dissenting*). Apparently Ms. Allen thought such an inquiry was not necessary as she was satisfied she had sued the correct entity *i.e.*, CONA-ASC.

⁶ See Hughes v. Water World Water Slide, Inc., 314 S.C. 211, 442 S.E.2d 584 (1994).

⁷ 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).

7. Dr. Lim's, PA Nicholas', and CONA-ASC's defense attorneys never (a) met with CONA-PA's "Board of Directors/Executive Committee before or during the trial, (b) provided CONA-PA with any Allen v. Lim updates, (c) informed CONA-PA of any potential liability and/or damages analysis, (d) communicated any settlement discussions with CONA PA, and (e) asked or permitted 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; *Hoenig Aff.*, para. 11; *Dinicola Aff.*, para. 9).
8. Dr. Lim neither sought nor received any authority from CONA-PA's Board of Directors/Executive Committee for either him or his attorneys to undertake any action or make any decisions on behalf of CONA-PA regarding any aspect of Allen v. Lim. (*Id.*, at para. 13; *Roper Aff.*, para. 17; *Chittum Aff.*, para. 16; *Brown Aff.*, para. 15; *Hoenig Aff.*, para. 15; *Dinicola Aff.*, para. 13).
9. CONA-PA never held any internal meetings or internal 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; *Hoenig Aff.*, para. 15; *Dinicola Aff.*, para. 13).
10. CONA PA (a) was never kept informed by any party (attorney or otherwise) regarding 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; *Hoenig Aff.*, para. 12; *Dinicola Aff.*, para. 10).
11. CONA-PA was never involved in Allen v. Lim and CONA-PA was never present nor did any attorney, any individual, 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; *Hoenig Aff.*, para. 13; *Dinicola Aff.*, para. 11).
12. While the acronym "CONA" was mentioned throughout the Allen v. Lim trial, counsel stipulated (*Trial Tr.*, p.491, lines 11-19) and the Trial Court advised the jury just prior to the attorneys' respective closings that (*Id.*, p.496, lines 16-19), that " 'CONA' [referred to] Carolina Orthopedic and Neurological Associates, ASC, LLC." (*Id.*, at lines 10-15).

13. Dr. Lim'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. (*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).
14. Neither CONA-PA nor its Board of Directors/Executive Committee ever authorized Dr. Lim, PA Nicholas, or CONA-ASC and/or Dr. Lim'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 *Allen v. Lim*. (*Id.*, para. 18; *Roper Aff.*, para. 22; *Chittum Aff.*, para. 22; *Brown Aff.*, para. 16; *Hoenig Aff.*, para. 16; *Dinicola Aff.*, para. 14).

Notwithstanding the substantial contrary evidence, Ms. Allen, looking to *Sentell v. Southern Railway Co.*,⁸ asserted the Trial Court had the "discretion to amend the caption to correct a misnomer in furtherance of justice." (*Respondent's Brief*, p.7). Ms. Allen's reliance on *Sentell* is misplaced as Southern Railway Co. therein "was served with summons . . . , appeared generally, and, in addition to the plea as to misnomer, answered to the merits."⁹ CONA-ASC, Dr. Lim, and PA Nicholas were each served with both the *Notice of Intent to Sue*, the *Amended Summons*, and the *Second Amended Complaint*, however CONA-PA was not so served. (*Willoughby Aff.*, para. 12; *Roper Aff.*, paras. 9, 16; *Chittum Aff.*, paras. 10, 15; *Brown Aff.*, para. 14; *Hoenig Aff.*, para. 14; *Dinicola Aff.*, para. 12). No document was ever directed to CONA-PA until after the jury reached its verdict and the trial proceedings were over. Again, in *Sentell*, unlike with CONA-PA, "it [wa]s manifest from the pleadings that the corporation intended to be sued [*i.e.*, Southern Railway Co.] was the same corporation which was served and which answered[and,

⁸ See *Sentell v. Southern Railway Co.*, 67 S.C. 229, 45 S.E. 155 (1903).

⁹ *Id.*, 67 S.C. 229, 231, 45 S.E. 155, 156.

therefore,] [t]he [caption] amendment allowed was not so extensive as to substitute a new defendant”¹⁰ Unfortunately for Ms. Allen, Sentell and its progeny does not apply herein, as the substitution of *CONA-PA* for *CONA-ASC* was extremely extensive and clearly substituted a new defendant for one dismissed from the proceedings.¹¹

More importantly, the Trial Court’s lamentable decision to accept (07 02 25 *Hearing Tr.*, p.7, line 24 – p.8, line 1) trial counsels’ agreed-upon “*CONA-PA* for *CONA-ASC*” party substitution stipulation (*Id.*, at p.6, lines 12-24)¹² significantly prejudiced *CONA-PA* as *CONA-PA* was now “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). Dr. Lim’s, PA Nicholas’, and *CONA-ASC*’s defense attorneys failed to give *CONA-PA* 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). Moreover, Dr. Lim’s, PA Nicholas’, and *CONA-ASC*’s defense attorneys hid their surreptitious plan to disclose *CONA-PA*’s existence and to deceitfully agree to substitute *CONA-PA* 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).

¹⁰ *Id.*

¹¹ See Tri-County Ice and Fuel Co. v. Palmetto Ice Co., 303 S.C. 237, 241, 399 S.E.2d 779, 782 (1990) (*citing* Long v. Carolina Baking Co., 193 S.C. 225, 8 S.E.2d 326 (1939) (judgment would . . . be invalidated against corporation who is incorrectly named where corporate defendant has suffered . . . prejudice); Rollins v. Junior Miller Roofing Co., 55 N.C.App. 158, 284 S.E.2d 697 (1981) (if real party receives [no] notice, . . . prejudice results in permitting him to be sued)). See also generally McCall v. IKON, 363 S.C. 646, 611 S.E.2d 315 (Ct.App. 2005).

¹² The Trial Court should have inquired further into the proposed stipulation and sought to have a *CONA-PA* representative/attorney present to address *CONA-PA*’s position and/or concerns. This is particularly true given the parties’ previous stipulation presented to the jury stating any mention of “CONA” during the trial proceedings specifically referred to *CONA-ASC*. (*Trial Tr.*, p.491, lines 11-19; p.496, lines 10-19).

The Trial Court should have never substituted CONA-PA CONA-ASC as there was no evidence to support any inference CONA-PA had knowledge of Allen v. Lim or had authorized Dr. Lim's, PA Nicholas', and CONA-ASC's defense attorneys to stipulate for such a party substitution.

B. CONA-PA Was Legally Entitled To Intervene.

CONA-PA, after the CONA-PA for CONA-ASC substitution, sought to intervene into Allen v. Lim. (*Intervention Motion*, pp.1-8). The Trial Court refused noting CONA-PA was "already a party" (*09/16/2025 SCRCF Order*, pp.1-3; *09.22.25 Order*, pp.1-17). Contrary to Ms. Allen's assertions, the Trial Court's decision was incorrect as the overwhelming evidence demonstrated CONA-PA was never served with civil process (*Willoughby Aff.*, para. 12; *Roper Aff.*, paras. 9, 16; *Chittum Aff.*, paras. 10, 15; *Brown Aff.*, para. 14; *Hoenig Aff.*, para. 14; *Dinicola Aff.*, para. 12), as well as never authorized any person, attorney or otherwise, to catapult CONA-PA into Allen v. Lim as a party-defendant and, therefore, knowingly and voluntarily subject CONA-PA to the Trial Court's jurisdiction. (*Willoughby Aff.*, para. 15; *Roper Aff.*, para. 19; *Chittum Aff.*, para. 19; *Brown Aff.*, para. 18; *Hoenig Aff.*, para. 18; *Dinicola Aff.*, para. 16).

CONA-PA was "in a position such that without intervention, disposition of [Allen v. Lim unquestionably] impair[ed] or impede[d] [CONA-PA's] ability to protect [CONA-PA's] interest[s]" involving, arising from, and/or otherwise related to the claims asserted in Allen v. Lim since the evidence demonstrated CONA-PA was **never** (a) properly made a party to the case, (b) served with a copy of the *Second Amended Complaint* or any other legal process, (c) advised of or otherwise allowed to participate in either the Allen v. Lim trial or the 2 July 2025 post-trial hearing, and (d) represented by any legal counsel in Allen v.

Lim (including specifically Dr. Lim's, PA Nicholas', and CONA-ASC's defense attorneys).¹³ Furthermore, for the very same stated reasons, CONA-PA clearly "demonstrate[d] . . . its interest [were] inadequately represented by other parties" involved in Allen v. Lim.¹⁴

It cannot be credibly argued that any of the "existing parties [to Allen v. Lim would] undoubtedly make all of [CONA-PA]'s arguments; [as none of] the existing parties [were or] are capable and willing to make [CONA-PA's] arguments; and [CONA-PA certainly] [offered and still] offers different knowledge, experience, or perspective on the proceedings [which] would otherwise be absent [without CONA-PA's involvement]."¹⁵ CONA-PA should have been permitted to intervene. Regardless of Ms. Allen's meritless assertions, no Allen v. Lim party would have argued against the substitution of CONA-PA for CONA-ASC.¹⁶ This is particularly true since the evidence demonstrated CONA-PA was never:

- (a) properly named/designated as an Allen v. Lim defendant (*Willoughby Aff.*, para. 21; *Roper Aff.*, para. 24; *Chittum Aff.*, para. 15; *Brown Aff.*, para. 14; *Hoenig Aff.*, para. 14; *Dinicola Aff.*, para. 12),

¹³ Ex parte Reichlyn, 310 S.C. 495, 499-500, 427 S.E.2d 661, 664 (1993) (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 (1990) (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)).

¹⁴ See In re Horry Cnty. State Bank, 361 S.C. 503, 508-509, 604 S.E.2d 723, 726 (Ct.App. 2004).

¹⁵ *Id.*, (quoting Berkeley Elec. Co-op., Inc. v. Town of Mt. Pleasant, 302 S.C. 186, 191, 394 S.E.2d 712, 715).

¹⁶ Dr. Lim, PA Nicholas, and, most of all, CONA-ASC each benefited by CONA-PA's presence as a party-defendant in Allen v. Lim as they each had a significant monetary incentive to want CONA-PA involved.

- (b) advised of or allowed to participate in Allen v. Lim on any level or at any stage (*Id.*, at para. 11; *Roper Aff.*, para. 15; *Chittum Aff.*, para.14; *Brown Aff.*, para. 13; *Hoenig Aff.*, para. 13; *Dinicola Aff.*, para. 11),
- (c) consented to any representation and/or represented by any attorney (specifically including Dr. Lim's, 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; *Hoenig Aff.*, para. 13; *Dinicola Aff.*, para. 11),
- (d) kept informed by or consulted with any attorneys concerning Allen v. Lim, (e) invited and/or allowed 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; *Hoenig Aff.*, para. 12; *Dinicola Aff.*, para. 10),
- (f) provided 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; *Hoenig Aff.*, paras. 18-19; *Dinicola Aff.*, paras. 16-17), or
- (g) advised Dr. Lim's, PA Nicholas', and CONA-ASC's defense attorneys intended to have CONA-PA substituted for CONA-ASC. (*Id.*; *Roper Aff.*, paras. 19-20; *Chittum Aff.*, paras. 19-20; *Brown Aff.*, paras. 18-19; *Hoenig Aff.*, paras. 18-19; *Dinicola Aff.*, paras. 16-17).

CONA-PA's non-participation and non-involvement in Allen v. Lim is best demonstrated by trial counsels' joint stipulation, which the Trial Court read to the jury, stating that any and all uses of the term "CONA" during the trial specifically referred to CONA-ASC. (*Trial Tr.*, p.491, lines 11-19; p.496, lines 10-19). In fact, Ms. Allen made no mention of or reference to CONA-PA whatsoever, including in Ms. Allen's 25 April 2024 *Offer of Judgment* (*Rule 68, SCRCPP, Motion*, p.1; *Offer of Judgment*, p.1) even though she had been aware of CONA-PA's employment of Dr. Lim and PA Nicholas since 30 August 2021 – 30+ months earlier. (*Answer to 2nd Amd. Comp.*, paras. 4-7). Ms. Allen failed to present any evidence that she had questioned either Dr. Lim or PA Nicholas regarding, among other things, (1) the identity of the entity which employed them, (2) their

relationship and/or connection to CONA-ASC, (3), their relationship and/or connection to CONA-PA, (4) whether CONA-ASC was a proper defendant in Allen v. Lim, (5) whether CONA-PA should be included as a defendant in Allen v. Lim, and (6) whether there was any other person and/or entity, other than CONA-ASC, who or which should be included as a defendant in Allen v. Lim.¹⁷

There was no party in Allen v. Lim who or which would have protected and/or argued for CONA-PA's interests in the litigation. To do so would have arguably been against those parties' respective own interests. CONA-PA should have been allowed to intervene as a matter of law. The Trial Court incorrectly and improperly denied CONA-PA's intervention request. Consequently, the Trial Court's decision must be reversed.

C. CONA-PA Was Not Subject To Prejudgment Interest¹⁸

Notwithstanding Ms. Allen's assertions to the contrary, there is absolutely no evidence showing Ms. Allen and her attorneys served CONA-PA with a copy of the *Offer of Judgment*. The caption of the *Offer of Judgment* lists CONA-ASC, not CONA-PA, as a named party-defendant.¹⁹ Ms. Allen's motion noted she had previously "filed an *Offer*

¹⁷ Ms. Allen, after being directly notified CONA-PA, *arguendo*, potentially had some liability vis-a-vis her claims in Allen v. Lim (*Answer to 2nd Amd. Comp.*, paras. 4-7), simply "dropped the ball" and failed to pursue any effort to clarify the role of CONA-PA regarding Dr. Lim, PA Nicholas, and/or CONA-ASC. The Trial Court completely ignored Ms. Allen's own responsibility for failing to investigate CONA-PA and CONA-PA's possible exposure in Allen v. Lim.

¹⁸ CONA-PA believes the Trial Court improperly made CONA-PA a party to this case through the party substitution order. (07.03.2025 SCRC Form 4 Order, pp.1-2). By asserting the position taken in this section CONA-PA does not waive nor abandon its arguments that CONA-PA was improperly included herein.

¹⁹ 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 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-

of Judgment on [Dr. Lim, PA Nicholas, and CONA-ASC] in the amount of \$500,000.00.” (Rule 68, SCRCivP, Motion, p.1). Moreover, the *Offer of Judgment* itself stated Ms. Allen “hereby submit[ed] an *Offer of Judgment* to [Dr. Lim, PA Nicholas, and CONA-ASC] in the amount of [\$500,000.00].” (*Offer of Judgment*, p.1). Again, Ms. Allen did not mention and/or refer to CONA-PA even though her *Offer of Judgment* was filed on 25 April 2024, 30+ months after Dr. Lim’s, PA Nicholas’, and CONA-ASC’s defense attorneys filed the unapproved response to Ms. Allen’s *Second Amended Complaint*. (*Answer to 2nd Amd. Comp.*, p.1).

Ms. Allen obviously believed CONA-ASC was the proper party on which to serve the *Offer of Judgment* as she (a) designated CONA-ASC in the caption, (b) directed the *Offer of Judgment* to Dr. Lim, PA Nicholas, and CONA-ASC,²⁰ and (c) specifically referenced CONA-ASC in her motion for pre-judgment interest assessment. (Rule 68, SCRCivP, Motion, p.1).²¹ Ms. Allen did not mention or refer to CONA-PA.

6; Motion for Setoff, pp.1-7; and Motion for Non-Economic Damages Cap, pp.1-3). Dr. Lim’s, PA Nicholas’, and CONA-ASC’s defense attorneys did not mention and/or reference CONA-PA in any way. Dr. Lim’s, PA Nicholas’, and CONA-ASC’s defense attorneys did, however, 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 “dual-person” 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, and/or defendant in Allen v. Lim.

20 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).

21 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.

Axiomatically, “[i]n cases involving [Rule 68[, SCRCivP,] offers, service of process must comply with [Rule] 5(b)[, SCRCivP].”²² Consequently, “[a]ctual notice of an offer of judgment does not suffice.”²³ South Carolina provides, in pertinent part, that “[u]nless otherwise ordered by the court because of numerous defendants or other reasons . . . offers of judgment . . . shall be served upon each of the parties of record.”²⁴ Furthermore, “[t]he plain language of the rule therefore requires that **each** party shall be served separately.”²⁵ That was clearly not done in this case and there is no logical argument to the contrary.

Even CONA-PA’s improper inclusion in Dr. Lim’s, PA Nicholas’, and CONA-ASC’s response to the *Second Amended Complaint (Answer to 2nd Amd. Comp.*, paras. 4-7), does not save Ms. Allens’ pre-judgment interest claim as she never referenced CONA-PA at any point in Allen v. Lim until after the jury rendered its verdict. Ms. Allen clearly believed CONA-ASC was the proper party and did not pursue any investigation into CONA-PA. Ms. Allen is not entitled to benefit from her own failures when she had the requisite knowledge to put her on notice as to CONA-PA’s possible involvement.

The Trial Court improperly and incorrectly assessed pre-judgment interest against CONA-PA. The Trial Court’s decision must be reversed in all respects.

²² 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).

²³ *Id.*, (*citing Magnuson*, 85 F.3d 1424, 1431).

²⁴ Rule 5(a), SCRCivP. (Emphasis supplied). *See McCall v. IKON*, 363 S.C. 646, 654, 611 S.E.2d 315, 319.

²⁵ McCall, 363 S.C. 646, 655, 611 S.E.2d 315, 319 (Emphasis in original).

**D. The Verdict Form Improperly Included An Award
Of Damages To A Non-Party²⁶**

The Trial Court allowed the verdict form to list as a potential damages award recipient, not only Ms. Allen, but also her sister - Michelle Hemphill (“Ms. Hemphill”), a mere statutory beneficiary. (*Verdict Form*, pp.1-2). This improper and extraordinary action allowed the jury to specifically award both Ms. Allen and Ms. Hemphill monetary damages of \$3M each. (*Id.*). The Trial Court decision constituted a shocking departure from normal practice²⁷ and represented an egregious procedural error.²⁸

Notwithstanding Ms. Allen’s meritless assertions to the contrary, Dr. Lim’s, PA Nicholas’, and CONA-ASC’s defense attorneys collectively objected to the Trial Court’s use of the dual-person verdict form. (*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). During the 2 July 2025, post-trial motions hearing, Dr. Lim’s, PA Nicholas’, and CONA-ASC’s defense attorneys stated, in relevant part, as follows:

As to the verdict form, [Dr. Lim, PA Nicholas, and CONA-ASC] **objected to M[rs.] Hemphill being listed on the jury form during the charge conference** in this case. And it ended up resulting in duplicative recovery. Under [S.C.] Code [Ann. §] 15-51-40, it states

²⁶ CONA-PA believes the Trial Court improperly made CONA-PA a party to this case through the party substitution order. (*07.03.2025 SCRCF Form 4 Order*, pp.1-2). By asserting the position taken in this section, CONA-PA does not waive nor abandon its arguments that CONA-PA was improperly included herein.

²⁷ See Lester v. McFaddon, 415 F.2d 1101, 1103 (4th Cir. 1969) (“In South Carolina an action for wrongful death may be maintained only by an executor or administrator of the decedent's estate . . . and the statutory beneficiaries cannot proceed in their own names.”) (Internal citation omitted). This means, therefore that individual beneficiaries — such as a spouse, children, or parents — do not appear as plaintiffs on the verdict form in their own right.

²⁸ See South Carolina Dept. of Trans. v. First Carolina Corp. of S.C., 372 S.C. 295, 303, 641 S.E.2d 903, 907-908 (2007) (*citing* 9A Charles A. Wright, Jr. & Arthur R. Miller, Federal Practice and Procedure, Civil 2d, § 2508 (Thomson Reuters West 2004)) (“[A] special verdict question may be so defective in its formulation that its submission results in a prejudicial effect which constitutes reversible error.”).

that ‘A jury considering a wrongful death claim may give damages as they may think proportion to the injury resulting from the death to the parties respectively for whom, and for whose benefit such action shall be brought.’ Thus, a -- a jury should only award damages to the estate.

* * *

However, strictly controlled -- controlled strictly by the share each would take as an heir and -- and test the -- regardless of the proportion of the damages suffered by each. Thus, turning to this case, **Michele Hemphill was improperly listed on the verdict form over our objection.**

* * *

I'll just briefly address the **verdict form** . . before moving on I would just rely on the fact that **there was an objection made**, at least to my recollection, and obviously we're a few weeks out from trial, so everybody's recollection can be a little fuzzy at this point. But **I do remember there being an objection raised.**

(07.02.2025 Hearing Tr., p.13, lines 2-11; p.14, lines 8-14; p.24, lines 19-25) (Emphasis supplied).²⁹ Neither the Trial Court nor Ms. Allen's attorneys ever asserted that Dr. Lim's, PA Nicholas', and CONA-ASC's defense attorneys failed to object to the "dual-person" verdict form, just that their objection was either insufficient, improperly preserved, and/or not made on the court record.

While "an objection must be sufficiently specific to inform the trial court of the point being urged by the objector",³⁰ "[i]t is possible, however, that the context of the proceeding may make the specific ground for the objection sufficiently apparent to the trial court so that a general statement . . is enough to preserve an argument for appeal."³¹ Furthermore,

²⁹ Ms. Allen's legal counsel stated that to his "recollection . . an objection to the verdict form was not put on the record." (07.02.2025 Hearing Tr., p.18, lines 17-19).

³⁰ Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (citing Broom v. Southeastern Highway Contracting Co., 291 S.C. 93, 352 S.E.2d 302 (Ct.App. 1986), *abrogated on other grounds by* Davenport v. Cotton Hope Horizontal Prop. Regime, 333 S.C. 71, 508 S.E.2d 565 (1998)).

³¹ Busillo v. City of North Charleston, 404 S.C. 604, 608, 745 S.E.2d 142, 145 (Ct.App. 2013) (citing Rule 103(a)(1), SCREvid. (stating the requirement of "stating the specific ground of objection" applies "if the specific ground was not apparent from the context"); State v. Byers, 392

“our appellate courts are to be ‘ ‘mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner’ ’ and thus should not apply preservation rules in a manner that ‘elevat[es] form over substance to trap trial lawyers so as to prevent the appeal of a legitimate issue.’ ”³² “[O]ur jurisprudence sometimes permits reaching unpreserved issues to avoid hyper-technical applications of preservation rules”³³ The “purpose [of our preservation rules] is not to sabotage attorneys' efforts to bring issues before the appellate courts, particularly where, as here, it was clear to all concerned that [Dr. Lim's, PA Nicholas', and CONA-ASC's defense] counsel [had] object[ed] to the [Trial Court's use of the “dual-person” verdict form].”³⁴

The Trial Court acknowledged, during the same post-trial hearing, that Dr. Lim's, PA Nicholas', and CONA-ASC's defense attorneys had objected to the “dual-person” verdict form noting:

And my recollection of the verdict form conference and the charge conference was that it went very well. It took much less time than we had anticipated -- I had anticipated. And with regard to the verdict form, the objection was not -- I mean, there was a little bit of an objection, but not much.”

(07.02.2025 *Hearing Tr.*, p.14, line 25 – p.15, line 5). Importantly, while Ms. Allen's counsel asserted to his “recollection . . . [Dr. Lim's, PA Nicholas', and CONA-ASC's] objection to the [“dual-person”] verdict form was not put on the record” (07.02.2025

S.C. 438, 446, 710 S.E.2d 55, 59 (2011) (stating “to be preserved, the objection must include a specific ground ‘if the specific ground was not apparent from the context’ ”)).

³² Moses v. State, 442 S.C. 263, 269, 898 S.E.2d 174, 177 (2024) (*quoting* State v. Morales, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023) (*quoting* Herron v. Century BMW, 395 S.C. 461, 470, 719 S.E.2d 640, 644 (2011))) (Alteration in original).

³³ *Id.*, 442 S.C. 263, 271, 898 S.E.2d 174, 178.

³⁴ State v. Jones, 435 S.C. 138, 145, 866 S.E.2d 588, 561 (2021).

Hearing Tr., p.18, lines 17-19), Ms. Allen's counsel did not assert and has never asserted Dr. Lim's, PA Nicholas', and CONA-ASC's defense attorneys failed to make any objection whatsoever. (*Id.*). Ms. Allen knew the substance and basis of Dr. Lim's, PA Nicholas', and CONA-ASC's defense attorneys' objection to including Ms. Hemphill on the "dual-person" verdict form. Despite Dr. Lim's, PA Nicholas', and CONA-ASC's counsels' objection, Ms. Allen prevailed in her defense of the "dual person" verdict form as the Trial Court ultimately used the document to allow the jury to award both Ms. Allen and Ms. Hemphill each \$3M. (*Verdict Form*, pp.1-2).

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."³⁵ The *Allen v. Lim* jury could only award damages to the party for whose benefit the action was brought, in this case - Ms. Allen – the duly appointed Jefferies Estate's personal representative). A wrongful-death claim "inheres in the personal representative, and the statutory beneficiaries cannot proceed in their own names"³⁶ and only the estate is awarded a verdict with the verdict "so recovered shall be divided among the [statutory beneficiaries] in those shares as they would have been entitled to if the deceased had died intestate and the amount recovered had been personal assets of his or her estate."³⁷

³⁵ 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).

³⁶ *Lester v. McFaddon*, 415 F.2d 1101, 1103. When a personal representation, suing for an estate makes a recovery in a wrongful-death action, any recovery "does not go into the decedent's general estate but is payable, upon receipt by the personal representative, directly to the statutory beneficiaries." *Id.*

³⁷ *Ballard v. Ballard*, 314 S.C.40, 42, 443 S.E.2d 802, 802-803 (1994) (*quoting* S.C. Code Ann. § 15-51-40).

Notwithstanding the wrongful-death statutory scheme and over Dr. Lim's, PA Nicholas', and CONA-ASC's defense counsels' objections, the Trial Court used the "dual person" verdict form. (*Verdict Form*, pp.1-2). Ms. Hemphill, even though specifically designated as a potential damages recipient on the "dual-person" verdict form, had **never been** (a) appointed and/or designated as a personal representative of the Jefferies Estate, (b) listed as a plaintiff in *Allen v. Lim*, and (c) specifically referenced in Ms. Allen's wrongful death pleadings against Dr. Lim, PA Nicholas, and CONA-ASC. (*2nd Amd. Comp.*, pp.1-10).

The *Verdict Form* should have contained a single line for the jury to award wrongful death actual damages – a single line entry which need not have even specifically designated Ms. Allen.³⁸ The Trial Court, by listing Ms. Hemphill – a statutory beneficiary who was neither a Jefferies Estate personal representative nor an *Allen v. Lim* plaintiff,³⁹ improperly and incorrectly allowed the jury to award the Jefferies Estate duplicative damages.⁴⁰

³⁸ 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).

³⁹ *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) (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.' "

⁴⁰ 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).

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. Dr. Lim, PA Nicholas, And CONA-ASC Should Have Been Allowed To Amend Their Response To The Second Amended Complaint⁴¹

In 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. While the Trial Court concluded Ms. Allen would be prejudiced by permitting the proposed amendment (05.09.2025 SCRCP Form Order, pp.1-2), the facts belied that determination notwithstanding Ms. Allen's assertions to the contrary.

The timing of Dr. Lim's, PA Nicholas', and CONA-ASC's motion to amend did not support the Trial Court's conclusion the proposed amendment was made "too late". (05.09.2025 SCRCP Form Order, pp.1-2). instead, the Rule 15(a), SCRCivP, makes clear, the question is one of prejudice to Ms. Allen.⁴² The type of prejudice involved "is

⁴¹ To the extent *CONA-PA* is considered an appellate "party" herein *CONA-PA* makes the present argument in its capacity. *CONA-PA* does not waive nor abandon its arguments that *CONA-PA* was improperly included in this matter.

⁴² See generally *Soil & Material Engineers, Inc. v. Folly Associates*, 293 S.C. 498, 499, 361 S.E.2d 779, 780 (Ct.App. 1987). Ms. Allen had the burden to establish prejudice which would result from the proposed amendment. See *Myat v. Tuomey Regional Medical Center*, 427 S.C. 601, 609, 832 S.E.2d 306, 310 (Ct.App. 2019).

not that [Ms. Allen] [wa]s forced to defend the merits of a valid claim[, but] is some result flowing from the amendment [which] p[laced] [Ms. Allen] at a disadvantage in defending the merits, which disadvantage [Ms. Allen] would not have faced if the amended claim had been included [originally by Dr. Lim, PA Nicholas, and CONA-ASC] or [asserted in] a timely motion to amend."⁴³

A good part of the Trial Court justification for denying the amendment was the proposition that Ms. Allen would not have “adequate time to conduct any additional discovery needed regarding the new defense” (05.09.2025 SCRCP Form 4 Order, at 2). The Trial Court’s reasoning disregarded the evidence which demonstrated Ms. Allen would not and could not have been prejudiced by allowing Dr. Lim’s, PA Nicholas’, and CONA-ASC’s proposed additional defense of Dr. Ezman’s independent, intervening, and/or superseding negligence, since:

- (a) Ms. Allen had sued Dr. Ezman (who worked for Peachtree Operating Group, LLC d/b/a Peachtree Center SNF) alleging he provided negligent care to Mr. Jefferies and such failure was the direct and proximate cause of Mr. Jefferies’ death. (*First Amended Complaint*, paras. 7, 45-46, 48-50).
- (b) Dr. Lim’s, PA Nicholas’, and CONA-ASC’s proposed amendment argued Ms. Allen’s own medical expert had opined Dr. Ezman had deviated from the standard of care when he failed to (1) appropriately assess Mr. Jefferies’ various risk factors for DVT and PE development⁴⁴ and (2) timely initiate prophylactic treatment. (*Motion to Amend*, pp.2-3).

⁴³ 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) (*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).

⁴⁴ Deep vein thrombosis ("DVT") and pulmonary embolus. ("PE").

- (c) Ms. Allen's medical expert opined Dr. Ezman's negligence resulted in Mr. Jefferies' critical pulmonary embolism and cardiopulmonary arrest. (*Id.*).

Stated otherwise, the evidence demonstrated Ms. Allen well-knew the issue of Dr. Ezman's alleged intervening/superseding negligence - an additional defense which Dr. Lim, PA Nicholas, and CONA-ASC sought to assert in their amended pleading. Moreover, Ms. Allen had argued and developed the issue of Dr. Ezman's negligence in her discovery for several years prior to Dr. Lim's, PA Nicholas', and CONA-ASC's motion seeking the amendment.⁴⁵

The Trial Court's denial of Dr. Lim's, PA Nicholas', and CONA-ASC's motion to amend to add the 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.

⁴⁵ Ms. Allen's response to Dr. Lim's, Ms. Nicholas', and CONA-ASC's amendment request not only acknowledged she had previously alleged other medical professionals were negligent vis-à-vis Mr. Jefferies, but also admitted that Ms. Allen had 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).

II. 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
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.*

Charleston, South Carolina

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