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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
J. Derham Cole, Jr., Circuit Judge

Appellate Case No. 2026-000768
Court of Common Pleas Case No. 2023-CP-10-03391

STÉFANIE SEIXAS-MIKELUS, M.D.,

Appellant,

v.

TENET HEALTHCARE CORPORATION, TENET PHYSICIAN RESOURCES, LLC, AND
EAST COOPER PHYSICIAN NETWORK, LLC,

Respondents.

**RECORD ON APPEAL
VOLUME II OF II**

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INDEX TO RECORD ON APPEAL

Record Page #

VOLUME I

Orders

Order Denying Vacatur and Confirming Arbitral Award filed February 25, 2026	4
Form 4 Order of Honorable J. Derham Cole, Jr. filed February 25, 2026	12

Motions

Petitioner's Motion to Vacate Arbitrator's Award and Request for Limited Discovery and Request for Evidentiary Hearing filed July 13, 2023	15
Exhibit 1 – Final Award dated May 26, 2023	41
Exhibit 2 – Arbitrator's Oath Form of Kristine Cato dated August 20, 2021	50
Exhibit 3 – American Arbitration Association Code of Ethics for Commercial Disputes	54
Exhibit 4 – SCADR Code of Ethics for Arbitrators	65
Exhibit 5 – Nelson Mullins website profile page of Harry Cato	71
Exhibit 6 – Nelson Mullins website profile page of Carmen Thomas.....	74
Exhibit 7 – LinkedIn profile of Harry Cato	80
Exhibit 8 – Who's on the Move article about Harry Cato dated December 3, 2010	82
Exhibit 9 – Lexington Medical Center Leadership & Board of Directors.....	87
Affidavit of Dr. Stéfanie Seixas-Mikelus	92
Affidavit of Barbara Seymour	97

Respondents' Opposition to Petitioner's Motion to Vacate Arbitration Award filed September 18, 2024.....	109
Exhibit 1 – Physician Employment Agreement dated March 31, 2019.....	137
Exhibit 2 – Tenet Open Door Policy and Fair Treatment Process dated January 14, 2019...	173
Exhibit 3 – Termination Notice dated December 11, 2020	178
Exhibit 4 – Demand for Arbitration dated July 7, 2021	180
Exhibit 5 – Response to Demand for Arbitration dated August 12, 2021	233
Exhibit 6 – Final Award dated May 26, 2023.....	238
Exhibit 7 – AAA Ltr. To Parties and Kris Cato resume excerpt dated July 23, 2021	248
Exhibit 8 – Email from Nicholson to Thomas re arbitrator selection dated August 6, 2021	258
Exhibit 9 – Email from Nicholson to Mara Jara (AAA) and Thomas dated August 16, 2021.....	261
Exhibit 10 – Email from AAA to Parties dated September 1, 2021	265
Exhibit 11 – Email from AAA to Parties dated September 14, 2021	275
Exhibit 12 – SC Ethics Commission Lobbyist Disclosures of Harry Cato.....	278

Respondents’ Motion to Confirm Arbitration Award filed September 19, 2024	289
Exhibit 1 – Physician Employment Agreement dated March 31, 2019	297
Exhibit 2 - Tenet Open Door Policy and Fair Treatment Process dated January 14, 2019	333
Exhibit 3 – Email from Stacey Coe (AAA) to Parties with Final Award dated May 26, 2023.....	338
Harry Cato’s Motion to Quash Petitioner’s Deposition Subpoena filed October 9, 2024 (with attached Subpoena, Exhibit A to Subpoena, Notice of Deposition and Certificate of Service)	348
Respondents’ Amended Motion for Protective Order and to Quash Petitioner’s Subpoenas filed November 14, 2024	358
Exhibit 1 – Subpoenas dated September 27, 2024 to Kris Cato, Esq., Harry Cato, Blair Cato Pickren Casterline, LLC, Lexington Medical Center, Nelson Mullins Riley & Scarborough, LLP and Nelson Mullins Government Policy Strategies.....	380
<i>Exhibits 2–8 omitted as duplicative of Opposition Exhibits 4, 7, 8, 9, 10, 11 and 6 (see R. 180, 248, 258, 261, 265, 275 and 238)</i>	
Exhibit 9 – Letters and Subpoenas dated October 30, 2024	429

VOLUME II

Petitioner’s Memorandum of Law in Opposition to Respondents’ Amended Motion for Protective Order and to Quash Petitioner’s Subpoenas filed December 11, 2024	484
<i>Exhibits 1–9 omitted (Exhibits 1–8 duplicate R. 50, 97, 71, 74, 92, 80, 82 and 87; Exhibit 9, Judge Young’s Memorandum, is legal authority)</i>	
Petitioner’s Motion for Continuance of Hearing on Petitioner’s Motion to Vacate Arbitration Award filed December 13, 2024	508
Affidavit of Kristine Cato filed December 16, 2024	510
Exhibit A – AAA Letter to Parties with Checklist for Conflicts and List For Selection of Arbitrator dated July 23, 2021	515
Respondents’ Opposition to Petitioner’s Motion for Continuance filed December 16, 2024.....	520
Affidavit of Harry Cato filed December 17, 2024	522

Transcripts

Transcript of Motions Hearing before The Honorable J. Derham Cole on December 18, 2024.....	524
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Other Materials

Notice of Appeal with Attachments filed March 25, 2026587

Certificate of Counsel.....603

STATE OF SOUTH CAROLINA	)	IN THE NINTH JUDICIAL CIRCUIT FOR
	)	THE COURT OF COMMONS PLEAS
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2023-CP-10-03391
Stéfanie Seixas-Mikelus, M.D.	)	
	)	
Petitioner,	)	PETITIONER’S MEMORANDUM OF LAW
	)	IN OPPOSITION TO RESPONDENTS’
v.	)	AMENDED MOTION FOR PROTECTIVE
	)	ORDER AND TO QUASH PETITIONER’S
Tenet Healthcare Corporation, Tenet	)	SUBPOENAS
Physician Resources, LLC, and East	)	
Cooper Physician Network, LLC.	)	
	)	
Respondents.	)	

Petitioner Stéfanie Seixas-Mikelus (“Petitioner”) hereby opposes Respondents Tenet Healthcare Corporation, Tenet Physician Resources, LLC, and East Cooper Physician Network, LLC’s (“Respondents”) Amended Motion for Protective Order and to Quash Petitioner’s Subpoenas. As explained below, the requested discovery is essential to the Court’s consideration of the Petitioner’s Motion to Vacate the arbitration award that gave rise to this proceeding.

INTRODUCTION

On July 13, 2023, Petitioner filed a motion in which she requested this Court permit limited discovery, conduct an evidentiary hearing, and vacate the arbitrator’s award. Claimant requested this relief on the ground that the award was affected by the bias and evident partiality of the Arbitrator. As described in more detail in Petitioner’s Motion to Vacate and accompanying Affidavit of Barbara Seymour, the Arbitrator failed to meet her ethical disclosure requirements as to her potential bias and partiality. She provided answers in her written disclosures that were incomplete and misleading. The Arbitrator inaccurately described both her husband’s relationship and her relationship with the law firm defending Respondents as “indirect” and further failed to

supplement her disclosures to include her own personal involvement on the Board of Directors for Lexington Medical Center, a private hospital engaging in operations similar to those of the Respondents.

To gather evidence to support her Motion, Petitioner issued six subpoenas to nonparties for documents including the Arbitrator, the Arbitrator's husband, the Lexington Medical Center, Nelson Mullins Riley & Scarborough, LLP ("NMRS"), and Nelson Mullins Government Policy Strategies, LLC ("NM Strategies"). Additionally, Petitioner served deposition subpoenas on the Arbitrator and the Arbitrator's husband. All six parties failed to respond to these subpoenas and issued objections. Respondents filed a Motion for Protective Order and to Quash Petitioner's Subpoenas. Respondents based this Motion on the arguments that (1) Petitioner is not entitled to discovery on her motion to vacate; (2) the subpoenas were not served properly; and (3) Petitioner's subpoenas are unduly burdensome because they seek information not relevant to this case, and the subpoenas can only be intended to subject the subpoena recipients and Respondents to harassment, annoyance, embarrassment, and oppression.

In actuality, courts routinely permit limited discovery where the party seeking vacatur of the award intends to rely on the discovery to show bias.

LEGAL STANDARD

South Carolina Rule of Civil Procedure 26(b)(1) allows parties to obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery, or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information

sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. S.C.R.C.P. 26(b)(1).

Rule 26, SCRCP. A trial court shall quash a subpoena only if the subpoena:

- (i) fails to allow reasonable time for compliance; or
- (ii) requires a person who is not a party nor an officer, director, or managing agent of a party, nor a general partner of a partnership that is a party to travel more than 50 miles from the county where the person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- (iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

Rule 45(c)3(A), SCRCP.

South Carolina Rule of Civil Procedure 26(c) allows a party upon motion to the court, for good cause, to seek a protective order to protect the party or person from annoyance, embarrassment, oppression, or undue burden by expense. South Carolina courts have held that “the person requesting protection from the court or commission must initially show good cause by alleging a particularized harm which will result if the challenged discovery is had. The allegations of particularized harm are usually in the form of a motion, either for a protective order or a return to a motion to compel production. Once the party seeking the protective order has met its burden of showing good cause by alleging a particularized harm, the party seeking the discovery must come forward to show that the information that is sought is both relevant and necessary to the case.

When both parties meet their burden of proof, the court must weigh the opposing factors.” *Hamm v. SCPSC*, 312 S.C. 238, 439 S.E.2d 852, 854 (1994).

ARGUMENT

I. South Carolina law requires a showing of evident partiality.

The law under which Petitioner has moved to vacate the arbitration award, S.C. Code Ann. § 15-48-130, authorizes a court to vacate an award where “[t]here was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party. . . .” “The evident-partiality standard is, at its core, directed to the question of [arbitrator] bias.” *Crouch Const. Co. v. Causey*, 405 S.C. 155, 168, 747 S.E.2d 482, 489 (2013) (citing *Scandinavian Reinsurance Co. v. St. Paul Fire & Marine Ins. Co.*, 668 F.3d 60, 73 (2d Cir. 2012)). “The party asserting bias ‘must establish specific facts that indicate improper motives on the part of an arbitrator.’” *Freeman v. Pittsburgh Glass Works, LLC*, 709 F.3d 240, 252 (3rd Cir. 2013) (quoting *Peoples Sec. Life Ins. v. Monumental Life Ins.*, 991 F.2d 141, 146 (4th Cir.1993)). Clearly, the evident-partiality standard requires the Petitioner to assert specific facts supporting the alleged bias. Because Petitioner’s basis for vacating the award is based on the arbitrator’s *failure to disclose* material facts involving the full extent of her husband’s employment by the law firm defending the Respondents and *complete failure to disclose* her position on the board of a local hospital, the only way to establish the facts of what should have been disclosed is through limited discovery. Petitioner has no avenue to fully investigate its allegations of bias without the allowance of requested discovery.

II. Petitioner needs discovery to fully prove her claims.

Courts have ruled that a party seeking to set aside an award on the basis of partiality and bias is entitled to discovery to substantiate the party’s contentions. *Kauffman v. Haas*, 113 Mich.

App. 816, 819–20, 318 N.W.2d 572, 574 (1982). (where plaintiffs must make a “strong and definite showing” of partiality before an arbitration award may be vacated, the parties “should be given at least an opportunity to develop a record to prove such partiality”). Although there are strong public policy reasons to discourage discovery of arbitrators in order to leave them “free as jurors from the nit-picking and rooting-about of lawyers,” it is also important to protect the public from being victimized by arbitrators who are partial to one party. *Id.* With the requirement of a showing of partiality in place, the “parties to an arbitration proceeding should be given at least an opportunity to develop a record to prove such partiality.” *Id.* (holding that once an issue of partiality is fairly raised, limited discovery of the arbitrator should be allowed, focusing only on the relationship between the arbitrator and the other party); *see also Davis v. Esikoff*, 105 Misc. 2d 955, 956 (Sup. Ct. 1980) (Where an arbitrator is alleged to have done certain improper acts that, if true, “would require the court to void the award, the parties should have an opportunity to question the arbitrator before the hearing as to those alleged acts.”); *Carolina-Virginia Fashion Exhibitors, Inc. v. Gunter*, 291 N.C. 208, 219, 230 S.E.2d 380, 387 (1976) (Permitting plaintiffs to probe the bases of the misconduct “will in many instances, aid in averting substantial injustice, which is surely the first duty of any court.”).

Petitioner’s requested discovery is not an attempt to relitigate the dispute, and she is not seeking to overturn the award based on manifest disregard of the law. Rather, Plaintiff seeks limited discovery *directly related* to the Arbitrator’s bias towards Respondents’ counsel. As required, Petitioner has provided documentation and affidavits to show the partiality of the Arbitrator in her Motion to Vacate. The six parties subpoenaed have unique access to information further substantiating Petitioner’s showing of evident partiality and bias. Respondents should not

be allowed to suppress developing the full record necessary for the Court to fairly decide the ultimate question of whether the award should be vacated.

III. The law clearly permits discovery in motions to vacate arbitration awards.

Petitioner recognizes that as a general rule an arbitrator may not testify to impeach his own award. However, an examination of the case law in South Carolina and in other jurisdictions demonstrates that this statement represents only the “general rule” that is subject to many exceptions and different applications and/or interpretations depending upon the given facts in a case. As discussed more fully below, a unanimous state Supreme Court panel called upon to decide the exact question at issue herein -- whether the depositions of arbitrators were admissible to show the basis by which the arbitrators arrived at their decision or to show misconduct on the part of the arbitrators -- conducted a thorough analysis of this “general rule” and concluded that the use of an arbitrator's sworn testimony to prove misconduct or fraud on the part of the arbitrators does not unduly disturb public policy restricting the impeachment of arbitrators' awards. *Carolina-Virginia*, 230 S.E.2d at 387. Both South Carolina law and the law throughout other jurisdictions provides for the taking of arbitrators' testimony in order to demonstrate grounds for vacating an award.

While Respondents rely heavily on *Van Pelt v. UBS Fin. Servs.*, No. 3:05CV477, 2006 WL 1698861, at *1 (W.D.N.C. June 14, 2006), an unreported North Carolina District Court case, in arguing that Petitioner has waived her right to discovery, there exists abundant authority supporting post-arbitration discovery when an objective basis exists to do so. The most notable of these authorities is the unanimous state Supreme Court decision in *Carolina-Virginia*, 230 S.E.2d 380. There, the issue before the court was whether the trial judge correctly concluded that the depositions of the arbitrators were not competent to show the basis by which the arbitrators arrived at their decision or to show misconduct on the part of the arbitrators. The court thoroughly

reviewed the conflicting authorities as to when it is permissible for a party to depose an arbitrator in an action to set aside the arbitrator's decision, including several of the cases cited by Hayek in support of the “general rule” that arbitrators are not permitted to testify. After fully analyzing the policies that have been asserted on both sides of the issue, the court ultimately concluded that where “some objective basis exists for a reasonable belief that misconduct has occurred, the parties to an arbitration may depose the arbitrators relative to that misconduct, and misconduct or fraud may be proved in a proceeding to vacate an award by the depositions and testimony of the arbitrators themselves, regardless of the objections of one of the parties.” *Id.* at 388.

In reaching its decision, the court in *Carolina-Virginia* emphatically stated that refusing to admit the testimony of the arbitrators would deprive the aggrieved party of its most effective means of ascertaining and proving the alleged misconduct warranting vacation of the arbitration award, thereby thwarting the legislative intent behind the North Carolina equivalent of the Uniform Arbitration Act. The Court went on to note that the admission of such testimony would, in many instances, aid in averting substantial injustice, which it reasoned is surely the first duty of any court. *Id.*

Other jurisdictions have recognized the principles set forth in the *Carolina-Virginia* case. In *Robinson v. Wells. P.C. v. Warren*, 669 P.2d 844 (1983), the court concluded that the testimony or affidavit of an arbitrator is appropriate evidence to show what matters were or were not presented to and considered in arbitration. Likewise, in *Stowe v. Mutual Home Builders' Corp.*, 252 Mich. 492, 233 N.W. 391 (1930), the court held that “testimony of the arbitrators is admissible to establish what matters were submitted and decided, where that fact is not apparent from the award itself. Such testimony is competent for the purpose of showing either that not all the matters submitted were considered or that matters outside of the submission were included. Under these

circumstances, ‘parol evidence,’ it has been said, ‘is not only admissible, but necessary, in order to show what matters the arbitrators acted on.’” Similarly, in *Holcomb v. Blankenship*, 180 S.W. 918 (Tex. Civ. App. 1915), the court recognized that an arbitrator is a competent witness to show what was in controversy before the arbitrators, what matters entered into their decision, and whether they were fair and impartial.

In *Cont'l Bank Supply Co. v. Int'l Bhd. of Bookbinders, Loc. No. 243, Mexico, Mo.*, 239 Mo. App. 1247, 201 S.W.2d 531 (1947), the court voided an arbitration award based upon the testimony of an arbitrator demonstrating that he and another arbitrator were never afforded the opportunity to consider the evidence presented in the case or participate in rendering the award. The court specifically rejected the contention that the arbitrator was incompetent to testify regarding the conduct of the deliberations, citing the well settled principle of law that an award may be impeached for fraud, mistake, or misconduct on the part of the arbitrators, or any one of them, and irregularities in the proceedings. *Id.* at 538.

In *Giannopolus v. Pappas*, 80 Utah 442, 15 P.2d 353 (1932), the court cited the “general rule” that an arbitrator’s testimony is inadmissible to prove misconduct but relied in part upon the affidavits of two arbitrators in deciding to invalidate the award based upon the misconduct or “misbehavior” of one of the arbitrators. In *Griffith Company v. San Diego College for Women*, 45 Cal. 2d 501, 289 P.2d 476 (1955), the court likewise cited the “general rule” but allowed the testimony of a dissenting arbitrator regarding the alleged misconduct of another arbitrator in a proceeding to vacate the arbitration award. In *Sapp v. Barenfeld*, 34 Cal.2d 515, 212 P.2d 333 (1949), the court cited the “general rule” but admitted the testimony of an arbitrator because it tended to show what matters the arbitrators considered in reaching their award.

Indeed, courts routinely elicit the testimony of arbitrators where the party seeking vacatur of the award intends to rely on the testimony to show bias. *See Dadeland Square, Ltd. v. Gould*, 763 So. 2d 524 (Fla. 3d DCA 2000) (discussing discovery permitted by lower court, including deposition of arbitrator; and ultimately quashing order to vacate based on finding that the petitioner had “waived any objection to the arbitrator” because petitioner had waited “until after [petitioner] had suffered an adverse arbitration award” to raise objections); *RZS Holdings AVV v. PDVSA Petroleo S.A.*, 383 Fed. Appx. 281, 284 (4th Cir. 2010) (affirming lower court's decision to confirm arbitration award where “district court allowed [party seeking vacatur] to depose the arbitrators on the subject of bias, and these depositions revealed only that... allegations lacked factual basis”); *Estate of EquiMed, Inc. v. Ernst & Young LLP (In re EquiMed, Inc.)*, 2005 U.S. Dist. LEXIS 25904, at *7-8 (E.D. Pa. Oct. 28, 2005) (allowing deposition of arbitrator where party seeking vacatur alleged non-disclosure on the part of the arbitrator and sought deposition to prove non-disclosure); *Lourdes Med. Ctr. v. JNESO*, 2005 U.S. Dist. LEXIS 31888, at *3 (D.N.J. Dec. 7, 2005)) (reversed on other grounds) (allowing limited discovery in order for party claiming bias to present evidence “regarding what occurred during the off-the-record, ex parte communications” between prevailing party and arbitrator; *see also Hoeft v. MVL Group, Inc.*, 343 F.3d 57, 67 (2d Cir. N.Y. 2003) (recognizing general rule that “arbitrators may be deposed regarding claims of bias or prejudice”); *Garzella v. Borough of Dunmore*, 237 F.R.D. 371, 372 (M.D. Pa. 2006) (acknowledging “well-recognized exception [to arbitral immunity] in which an arbitrator may be deposed regarding claims of bias or prejudice”). Courts also recognize the propriety of allowing arbitrator testimony where a party seeking vacatur relies on such testimony to prove misconduct. *See, e.g., Carolina-Virginia*, 291 N.C. 208 (allowing arbitrator's testimony to determine whether improper ex-parte communication occurred); *see also Hahn v. A. G. Becker Paribas, Inc.*, 164 Ill.

App. 3d 660 (Ill. App. Ct. 1st Dist. 1987) (admitting testimony of arbitrator into evidence to support losing party's contention that arbitrator misconduct relating to ex-parte communications supported vacatur of award).

Under the substantial and prevailing weight of these authorities, there is no doubt that Petitioner must be allowed to conduct discovery regarding the bias of the Arbitrator, as set forth in detail in Petitioner's Motion to Vacate and in the affidavits of Petitioner and Barbara Seymour. The discovery sought in Petitioner's subpoenas at issue here must be considered by this Court in order to properly rule on Petitioner's Motion to Vacate.

IV. Petitioner provides a showing of objective bias in her Motion to Vacate.

As discussed above, in *Carolina-Virginia*, the court held that where an objective basis exists for reasonable belief that misconduct has occurred, an arbitrator's testimony is necessary so as not to "deprive the aggrieved party of its most effective means of ascertaining and proving the alleged misconduct." 230 S.E.2d at 388. The Court found that "it was proper for defendants to depose the arbitrators relative to misconduct which apparently led to such result." *Id.* Petitioner has demonstrated an objective basis for reasonable belief that misconduct occurred in this case.

In her Motion to Vacate, Petitioner provided preliminary evidence of partiality of the Arbitrator through publicly available documents and an Affidavit of Barbara Seymour who was an investigating and prosecuting attorney for the Office of Disciplinary Counsel to the Supreme Court of South Carolina from 2000 to 2017. This preliminary evidence of partiality shows that the Arbitrator's disclosures were misleading and untruthful. Specifically, the following disclosures were untruthful, incomplete, and/or misleading:

3. Have you had any professional or social relationship with counsel for any party in this proceeding or the firms for which they work?

Answer: **NO**

5. *Have you had any professional or social relationship of which you are aware with any relative of any of the parties to this proceeding, or any relative of counsel to this proceeding, or any of the witnesses identified to date in the proceeding?*

Answer: **NO**

14. *Are there any connections, direct or indirect, with any of the case participants that have not been covered by the above questions?*

Answer: **YES**

Comments: **Indirectly. My husband is a government relations consultant and contracts with Nelson Mullins to perform some governmental relations consulting for some of their clients, although NOT the defendant in this matter. He is not an attorney and provides consulting and lobbying work only. This will not affect my ability to act impartially in this matter.**

15. *Are you aware of any other information that may lead to a justifiable doubt as to your impartiality or independence or create an appearance of partiality?*

Answer: **NO**

See **Exhibit 1** - General Arbitrator Oath Form, American Arbitration Association.

“Although Ms. Cato disclosed her husband’s relationship with the Respondents’ law firm, she characterized it as “indirect” and downplayed the nature of the relationship.” See **Exhibit 2** - Affidavit of Barbara M. Seymour ¶ 5. The Arbitrator’s husband, Harry F. Cato, is in fact a long-term Government Relations Consultant directly employed by Nelson Mullins. See **Exhibit 3** – Harry F. Cato’s Nelson Mullins Profile. The Arbitrator downplayed her husband’s relationship with Nelson Mullins suggesting that he occasionally does contract work with Nelson Mullins to provide consulting and lobbying work for some of their clients. The disclosure, as stated, implies that Harry Cato is a Government Relations Consultant, not solely for Nelson Mullins but for other law firms and business entities. While the Arbitrator’s description of the connection may be partially true, it does not suggest, much less disclose, a ten-and-a-half-year, exclusive employment

relationship in which Mr. Cato advises Nelson Mullins' healthcare clients and works in the same office as the lawyers who represent the Respondents. *See Exhibit 2 - Affidavit of Barbara M. Seymour ¶ 5.* The Arbitrator omitted material facts such as the length and extent of her husband's relationship with Nelson Mullins, the nature of the relationship (as exclusive employment rather than occasional contract work), and the types of Nelson Mullins' clients with whom Harry Cato consulted. *Id.*

Nelson Mullins website contains a listing of the professional services the firm provides in five (5) broad categories of Corporate, Litigation, Intellectual Property, Government Relations, and Industries.¹ Under each professional service category, the Nelson Mullins professionals providing those services are listed with biographical profiles of each professional's education, experience, recognitions, leadership, articles, professional activities, and areas of focus.² Within the Government Relations category, Nelson Mullins lists Harry F. Cato with his experience, recognitions, education, and areas of focus with a Nelson Mullins mailing address, phone number, and email.³

Harry F. Cato's contact information on the Nelson Mullins website is as follows:

Harry F. Cato
 Government Relations Consultant
 Meridian
 1320 Main Street
 17th Floor
 Columbia, SC 29201
Harry.cato@nelsonmullins.com
 T 803.255.5513

¹ <https://www.nelsonmullins.com/services>

² <https://www.nelsonmullins.com/professionals>

³ <https://www.nelsonmullins.com/professionals/harry-cato#main>

Similarly, counsel for Respondents at the time the arbitration hearing was held, Sue Harper, Esq. and Carmen Thomas, Esq., are listed on the Nelson Mullins website under the Litigation category with the following contact information:

Carmen Harper Thomas
 Partner
 Meridian
 1320 Main Street
 17th Floor
 Columbia, SC 29201
Carmen.thomas@nelsonmullins.com
 T 803.255.9385

Harry Cato's profile demonstrates a much greater role and professional/business relationship with Nelson Mullins than what was disclosed by the Arbitrator. *See Exhibit 3* - Harry F. Cato's Nelson Mullins Profile. He works full time in the same office as Respondents' lead counsel, Carmen Thomas. *See Exhibit 4* - Carmen Harper Thomas Nelson Mullins Profile. A general search for Harry F. Cato does not associate him as a Government Relations Consultant for any firm other than Nelson Mullins. Harry F. Cato works out of the Columbia, South Carolina office of Nelson Mullins, sends and receives emails from his Nelson Mullins email address, and receives financial compensation from Nelson Mullins for his Government Relations Consulting services. "Objectively, regular and long-term employment of the arbitrator's spouse by the law firm representing a party in the arbitration is a material conflict inconsistent with impartiality." *See Exhibit 2* - Affidavit of Barbara M. Seymour ¶ 5.

The Arbitrator led the Claimant to believe in her disclosures that there was only an "indirect" connection between her husband and the case participants that did not warrant disclosure in response to the questions on AAA's General Arbitrator Oath Form. *See Exhibit 5* - Affidavit of Dr. Stéfanie Seixas-Mikelus ¶ 8. Instead, as attested to by Attorney Seymour, "It is a direct, definite, and demonstrable potential bias requiring disclosure." *See Exhibit 2* - Affidavit of

Barbara M. Seymour ¶ 5. Clearly, as spouses, the Catos have a professional relationship with NMRS and most likely a social relationship with its employees, at least within the Columbia office.

The Arbitrator's disclosure response to Question 3 on the AAA's General Arbitrator Oath Form should have been nothing less than an unequivocal YES with comments explaining the full professional and social relationship. "Further, Mrs. Cato's decision to characterize the relationship as insignificant and to not disclose material facts would cause a reasonable person to conclude that she was, in fact, partial to the [Respondents] to the arbitration." See **Exhibit 2** - Affidavit of Barbara M. Seymour ¶ 5.

Both the AAA Code of Ethics and the South Carolina Code of Ethics require the arbitrator to resolve any doubts in favor of disclosure. Instead of disclosing the full extent of her husband's relationship with Nelson Mullins, the Arbitrator downplayed the relationship as indirect, insignificant, and occasional. The Arbitrator's disclosure suggested that for the past thirteen (13) years, she and her husband have not attended any of Nelson Mullins firm functions, do not socialize with fellow Nelson Mullins attorneys, nor have any professional or business relationship with any of Nelson Mullins attorneys, despite Harry F. Cato's direct, significant, and everyday employment relationship with the law firm in the same office as defense counsel. The Arbitrator financially benefits from her husband's work with Nelson Mullins and did so during the entire course of this arbitration proceeding. Certainly, any time money changes hands between an arbitrator and a party, or in this case the party's law firm, involved in a pending arbitration before that arbitrator, disclosure must take place. See *Crow Construction v. Jeffrey M. Brown Assoc. Inc.*, 264 F. Supp.2d 217 (E.D. Pa. 2003). At a minimum, these facts and circumstances known to the Claimant would cause a reasonable person to question the Arbitrator's partiality. See **Exhibit 2** - Affidavit of Barbara M. Seymour ¶ 5.

Furthermore, in his government relations role at Nelson Mullins, Mr. Cato has lobbied on behalf of several health care service providers, including lobbying efforts on behalf of AnMed Health System, Blue Cross Blue Shield of South Carolina, and Metro Treatment of South Carolina. The Arbitrator did not mention any of these facts. Each of these entities is affiliated with private health care organizations just like Respondent Tenet Healthcare and its affiliated entities represented in this matter by Nelson Mullins. The Arbitrator is not removed from her husband's affiliation with private health care providers, nor from his direct affiliation with Nelson Mullins. The Arbitrator should have made full and truthful disclosures but did not do so.

An arbitrator's repeated failed disclosures in an arbitration proceeding results in a selection process that deprives the parties of a fair opportunity to make informed choices in the selection of the arbitrators proposed by the American Arbitration Association. *See Crow Construction*, 264 F. Supp. 2d at 226. Here, the Arbitrator and the Nelson Mullins attorneys representing the Respondents chose to conceal the full extent of the relationship between Harry F. Cato and Nelson Mullins, creating an adversarial advantage for the Respondents. Given her own professional and social relationship with Nelson Mullins and its lawyers, through her husband, the Arbitrator's violation of her Code of Ethics created a substantial danger of an unjust result, which is in fact what happened. *See Merit Ins. Co. v. Leatherby Ins. Co.*, 714 F.2d 673 (7th Cir. 1983).

Harry F. Cato's LinkedIn profile discloses the depth of his involvement with Nelson Mullins. *See Exhibit 6* - Harry F. Cato LinkedIn Profile. His profile lists Nelson Mullins under the "Experience" heading and shows a date range from December 2010 – Present. *Id.* Nelson Mullins is the only company, law firm, or business entity listed in Harry F. Cato's experience. *Id.*

Other sources further reveal the close relationship between Harry F. Cato and Nelson Mullins as well as Nelson Mullins' efforts to intensely market that association to its advantage. On

December 3, 2010, Nelson Mullins issued a press release stating “Former South Carolina House of Representatives Speaker Pro Tem Harry F. Cato has contracted with Nelson Mullins Riley & Scarborough to advise the firm’s government relations clients and expand its practice.” *See Exhibit 7* Midlandsbiz, WHO’S ON THE MOVE IN COLUMBIA, 12.3.2010. The press release quotes Nelson Mullins’ partner David H. Wilkins, stating, “Harry Cato’s extensive knowledge of and experience with state government is a major new resource *for our firm, and our clients* interested in state government will benefit from his wise counsel and strategic advice.” *Id.* (emphasis added).

Clearly, NMRS claims Harry F. Cato as one of their own. NMRS markets Mr. Cato’s services through the firm’s website, provides him with a NMRS email, and furnishes him office space within the capital city of South Carolina to perform his Government Relations work on behalf of NMRS’s client base. *See Exhibit 3* - Harry F. Cato’s NMRS Profile. According to NMRS, Mr. Cato was not only brought in to advise the firm’s government relations clients, but also to expand NMRS’s government practice. *See Exhibit 7* Midlandsbiz, WHO’S ON THE MOVE IN COLUMBIA, 12.3.2010. This tight bond between NMRS and Mr. Cato is more than a simple, periodic third-party consulting relationship for some of NMRS’s clients as described by the Arbitrator. *See Exhibit 1* - General Arbitrator Oath Form, American Arbitration Association. Instead, Harry Cato is the *lynchpin* of the firm’s government relations practice, financially benefiting NMRS and the Cato family.

The Arbitrator’s decision to withhold the full extent of her, and her husband’s, relationship with NMRS violates the ethical guidelines set forth in the South Carolina Code of Ethics for Arbitrators and the AAA Code of Ethics. *See Exhibit 2* - Affidavit of Barbara M. Seymour ¶ 5. Failing to have information that could reasonably create the appearance of partiality by the

arbitrator in favor of Respondents deprived Claimant of her right to a fair and impartial hearing. Allowing opposing counsel and/or the appointed arbitrator to withhold information critical to the integrity of the arbitration process defies the very premise for which the Code of Ethics for Arbitrators were established.

Additionally, the Arbitrator continued to disregard her ongoing duty to disclose potential conflicts and biases by failing to timely supplement her disclosures with significant material information related to her organizational involvement. *See Exhibit 2* - Affidavit of Barbara M. Seymour ¶ 5 (c) – (d). The undisclosed organization involvement can be reasonably viewed as material and relevant to this arbitration. *Id.* Specifically, Question 10 of the disclosure was not properly supplemented by the Arbitrator during the course of this matter:

10. Are you a member of any organization that is not listed on your panel biography that may be relevant to this arbitration?

Answer: **NO**

At the beginning of 2023, the Arbitrator was appointed to the Board of Directors of the Lexington Medical Center. *See Exhibit 8* – Lexington Medical Center Board of Directors. Her appointment occurred during the pendency of this case prior to the close of the arbitration hearing, which concluded with testimony on March 2, 2023, and the post-arbitration briefing which was filed on April 20, 2023.

Lexington Medical Center is a privately owned, independent hospital similar to Respondents. Although Lexington Medical Center is not a party to or otherwise involved in the dispute subject to this arbitration, the Arbitrator's service on its Board of Directors would be a fact subject to disclosure under both the South Carolina and AAA ethics rules because a reasonable person would want to know that information before consenting to her service as arbitrator in this

case. *See* **Exhibit 2** - Affidavit of Barbara M. Seymour ¶ 5. Having not known of this appointment, Claimant was deprived of an opportunity to voice an objection to the Arbitrator's continued service as Arbitrator.

The arbitrator's appointment to serve on the board of an entity similarly situated to one of the adverse parties, coupled with Harry F. Cato's continuous, exclusive work for NMRS' clients, makes the full extent of the arbitrator's involvement with Lexington Medical Center unquestionably relevant to the question of the Arbitrator's ability to impartially and fairly decide claims against another hospital. *Id.* As attested by Ms. Seymour, by not supplementing her information with her appointment to the Lexington Medical Center Board, the Arbitrator violated the instructions in the disclosure form, which state, "this is a continuing obligation throughout your service on the case and should any additional direct or indirect contact arise during the course of the arbitration or if there is any change at any time in the biographical information that you have provided, it must also be disclosed. Any doubts should be resolved in favor of disclosure." *See* **Exhibit 1** - General Arbitrator Oath Form, American Arbitration Association.

It must be kept in mind that her appointment to the board and her acceptance of that position was not an overnight occurrence. It is probable that the Arbitrator was aware of her upcoming appointment well before and certainly during the arbitration of this case. It is also possible that she had experience with hospitals, including possibly their representation, that Lexington Medical Center considered as qualifying her to be a director. The Arbitrator's conscious decision not to supplement her disclosure with this new, material information breached her ethical obligations as the arbitrator in this case, creating the appearance of partiality and bringing into question the integrity of the arbitration process. *Id.* Her decision deprived Claimant of a fair opportunity to determine the Arbitrator's suitability to serve as an arbitrator in this matter.

The facts set forth above and supporting documentation undoubtedly show an objective bias. Petitioner has met her burden set forth in *Carolina-Virginia*. Therefore, Petitioner should be given leave to conduct discovery regarding the Arbitrator's evident partiality, and Respondents' motion should be denied.

V. The information sought in the subpoenas is clearly relevant to the subject matter of Petitioner's Motion to Vacate.

The gist and gravamen of discovery rules mandate full and fair disclosure to prevent a trial from becoming a guessing game or one of ambush for either party. *See State Hwy Dep't v. Booker*, 260 S.C. 245, 252, 195 S.E.2d 615, 619 (1973) (internal citation omitted). "Discovery is the quintessence of preparation for trial, and when discovery rights are trampled, prejudice must be presumed." *Scott v. Greenville Hous. Auth.*, 353 S.C. 639, 652, 579 S.E. 2d 151, 158 (Ct. App. 2003) (internal citation omitted). "[T]he [r]ules [of discovery] often allow extensive intrusion into the affairs of both litigants and third parties." *Seattle Times Co. v. Rhinehardt*, 467 U.S. 20, 30, 104 S. Ct. 2199, 2206, 81 L. Ed. 2d 17, 25 (1984). "In South Carolina the scope of discovery is very broad and, an objection on relevance grounds is likely to limit only the most excessive discovery request." *Samples v. Mitchell*, 329 S.C.105, 110, 495 S.E.2d 213, 215 (Ct. App. 1997).

The documents and testimony requested by Petitioner in her subpoenas is undoubtedly relevant to Petitioner's claims of evident partiality of the Arbitrator. Petitioner clearly seeks information regarding the Arbitrator's and her husband's relationship with NM Strategies and NMRS which was not fully disclosed as required by the AAA. Additionally, Petitioner seeks information regarding the Arbitrator's appointment to the Lexington Medical Center which she completely failed to disclose. As discussed above, Petitioner uncovered limited public information regarding these relationships, and now, as is her right under South Carolina law, seeks to fully investigate the extent of the relationships and the Arbitrator's bias. Respondents' position

regarding relevancy, if accepted, allows Respondents to be the sole arbiter of what is deemed relevant in this case.

In their motion, Respondents' make conclusive statements which are not supported by any documents or testimony. Specifically, Respondents state that "Arbitrator Cato's alleged relationship with Respondents is nonexistent and so attenuated that it is immaterial," "[Arbitrator Cato's husband] has not performed work for Respondents," "Petitioner's argument that Lexington Medical Center and Respondents are similar healthcare entities is not supported and untrue."

To clarify, the evident bias at issue in this case is the bias of the Arbitrator to Respondents' counsel law firm NMRS and its sister organization NM Strategies. Respondent's unsupported factual averments have no bearing on the relevancy of the information requested in the subpoenas at issue in this motion. Furthermore, Respondents attempt to make arguments on behalf of NM Strategies and NMRS and put themselves in the shoes of these nonparties. Respondents' statements are mere opinions, and further support the necessity of discovery to provide both parties the opportunity to fully investigate the claims.

VI. Respondents fails to demonstrate undue burden to any party or nonparty.

The party seeking to oppose production has the burden of demonstrating the request subjects the party to an undue burden. *Hodgdon v. Nw. Univ.*, 245 F.R.D. 337, 341 (N.D. Ill. 2007); *Ohio Valley Env'tl. Coal., Inc. v. U.S. Army Corp of Engineers*, 2012 WL 112325, *2 (N.D. W. Va. Jan. 12, 2012); *Kirschner v. Klemons*, 2005 WL 1214330, *2 (S.D.N.Y. May 19, 2005).

Boilerplate and blanket objections to requests for information or documents on the grounds the requests are overly broad or unduly burdensome are insufficient as a matter of law. *Enron Corp. Sav. Plan v. Hewitt Associates, L.L.C.*, 258 F.R.D. 149, 159 (S.D. Tex. 2009) (citing cases). To say a discovery request is "overly broad, burdensome, oppressive and irrelevant" is not

adequate to voice a successful objection to the request. *McLeod, Alexander, Powel & Apffel, P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990).

In *Curtis v. Time Warner Ent.-Advance/Newhouse P'ship*, Judge Joseph Anderson emphatically held that stating in a nonspecific, boilerplate fashion that a discovery request is “vague, overly broad, or unduly burdensome” is “meaningless and will be found meritless.” No. 3:12-CV-2370-JFA, 2013 WL 2099496, at *2 (D.S.C. May 14, 2013); *see also Ohio Valley Envtl. Coal*, 2012 WL 112325 at *3 (“[B]lanket assertions of undue burden” fail “to meet the high burden of showing, with particularity, the source and extent of the burden claimed.”); *Fischer v. Forrest*, No. 14CIV1304PAEAJP, 2017 WL 773694, at *3 (S.D.N.Y. Feb. 28, 2017) (Response “stating that the requests are ‘overly broad and unduly burdensome’ is meaningless boilerplate. Why is it burdensome? How is it overly broad? This language tells the Court nothing.”). More recently, in a memorandum addressing the South Carolina Bar regarding discovery motions, Judge Roger Young quoting *Curtis* warns the members of the Bar that “[o]bjections that state that the discovery request is ‘vague, overly broad, or unduly burdensome’ are, standing alone, meaningless and will be found meritless by the court.” *See Exhibit 9- Judge Young’s Memorandum.*

The objecting party must show specifically how each discovery request is burdensome or oppressive by submitting affidavits or offering evidence revealing the nature of the burden. *Oleson v. Kmart Corp.*, 175 F.R.D. 560, 565 (D. Kan. 1997); *Roesberg v. Johns–Manville Corp.*, 85 F.R.D. 292, 29-97 (E.D. Pa. 1980). “The mere fact that responding to a discovery request will require the objecting party to expend considerable time, effort and expense consulting, reviewing and analyzing huge volumes of documents and information is an insufficient basis to object to a relevant discovery request.” *Cappetta v. GC Servs. Ltd. P'ship*, No. CIV. A. 3:08CV288, 2008 WL 5377934, at *3 (E.D. Va. Dec. 24, 2008) (internal quotations omitted). Further, “[u]ncorroborated

speculation as to the potential volume of responsive documents is not a sufficient basis on which to object to a relevant discovery request.” *Schaefer v. Fam. Med. Centers of S.C., LLC*, No. 3:18-CV-02775-MBS, 2019 WL 5893632, at *5 (D.S.C. Aug. 5, 2019).

The Respondents’ boilerplate and blanket objections that the Petitioner’s subpoenas are overly broad or unduly burdensome provide no information whatsoever in support of these assertions. The Respondents filed no affidavit or other evidence with its motion to reveal the nature of the alleged burden. Respondents also argue that they will suffer particularized harm if Petitioner’s subpoenas are allowed without providing what that “particularized harm” would be. Respondents’ arguments are unpersuasive and fail to show a particularized harm sufficient to warrant a protective order. Though the Respondents have failed to show any particularized harm stemming from production of the requested information, certainly any harm present can be eliminated through the use of a Confidentiality Order or redaction of the identities of the nonparties.

VII. The documents subpoenaed from all six nonparties are not protected by any privilege or immunity.

Rule 45(c)(3)(a) of the South Carolina Rules of Civil Procedure provides that “[o]n timely motion, the court by which a subpoena was issued, ... shall quash or modify the subpoena if it ... requires disclosure of privileged or otherwise protected matter ... or subjects a person to undue burden.” Rule 45(c)(3)(a), SCRCPP.

Petitioner’s subpoenas are narrowly tailored to only produce documents related to the Arbitrator and her husband’s relationships with NM Strategies and NMRS and the Arbitrator’s involvement on the Lexington Medical Center Board. Additionally, Respondents have failed to articulate any facts which demonstrate how production of the subpoenaed documents would be an undue burden, nor have they identified any privilege or protection that would preclude discovery

of the subpoenaed documents. *See* Rule 45(d)(2)(A), SCRPC (requiring that any information withheld on a claim of privilege shall be made expressly and supported by a description of the nature of the documents that is sufficient to enable the demanding party to contest the privilege).

Though various “safeguards have been established to preclude unwarranted excursions into the privacy of a man's work [,]” ... “public policy supports reasonable and necessary inquiries.” *Hickman v. Taylor*, 329 U.S. 495, 497, 67 S. Ct. 385, 387, 91 L. Ed. 451 (1947) (discussing discovery of professional files, including those of an attorney, under Federal Discovery Rules). It is recognized that “[m]utual knowledge of relevant facts gathered by both parties is essential to proper litigation. *Id.* at 507, 67 S. Ct. at 392, 91 L. Ed. 451. Instruments of discovery serve as a device to narrow and clarify basic issues between the parties and ascertain facts relative to those issues so parties can obtain the fullest possible knowledge of the issues and facts before trial. *Id.* at 501, 67 S. Ct. at 389, 91 L. Ed. 451 (internal citation omitted).

In accordance with public policy supporting reasonable and necessary inquiries into private documents in efforts to narrow issues and ascertain relevant facts and the broad scope of discovery rules, production of the subpoenaed documents would allow Petitioner to investigate the Arbitrator’s bias and prove her claims. Production of the subpoenaed documents would provide mutual knowledge of the relevant facts gathered by both parties, which is essential to proper litigation, and would arguably be in Respondents’ best interest. Respondents assert no other claims or privileges in these records and does not provide any compelling justification as to why the subpoenaed documents should not be produced.

Although not asserted in Respondents’ motion, Petitioner would like to briefly note that arbitral immunity--and more specifically, testimonial privilege--is not absolute. Petitioner agrees that federal courts protect arbitrators' decision-making processes from discovery in some

circumstances. However, the discovery rules only permit quashing a subpoena based on privileged or protected matter if no exception or waiver applies. In their motion and supporting documentation, Respondents fail to argue or provide any supporting law showing that the documents and testimony sought in the subpoenas at issue are privileged or protected. In fact, there is a well-recognized exception to arbitral immunity for claims of fraud, misconduct, bias, or prejudice. *Garzella*, 237 F.R.D. at 372; *Carolina-Virginia*, 230 S.E.2d at 387.

CONCLUSION

Based upon the above law and incorporated pleadings, Petitioner respectfully requests this Court deny Respondents' Amended Motion for Protective Order and to Quash Petitioner's Subpoenas.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

Charleston, South Carolina
December 11, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2023-CP-10-03391
	)	
Stéfanie Seixas-Mikelus, M.D.,	)	
	)	
Petitioner,	)	
	)	MOTION FOR CONTINUANCE OF
v.	)	HEARING ON PETITIONER'S
	)	MOTION TO VACATE ARBITRATION
Tenet Healthcare Corporation, Tenet	)	AWARD AND RESPONDENTS'
Physician Resources, LLC, and East Cooper	)	MOTION TO CONFIRM
Physician Network, LLC,	)	ARBITRATION AWARD
	)	
Respondents.	)	
	)	

This matter comes before the Court upon Motion of Petitioner Stéfanie Seixas-Mikelus, M.D. for a continuance of the hearing on Petitioner's Motion to Vacate Arbitration Award and Respondent's Motion to Confirm Arbitration Award in this matter, which is currently scheduled for December 18, 2024, at 11:30 a.m. before the Honorable Judge J. Derham Cole, Jr. Petitioner filed a Motion to Vacate Arbitration Award, Request for Limited Discovery, and Request for Evidentiary Hearing on July 13, 2023. Respondents filed a Motion to Confirm Arbitration Award on September 19, 2024. Respondents subsequently filed a Motion for Protective Order and to Quash Petitioner's Subpoenas on September 19, 2024, and an Amended Motion for Protective Order and to Quash Petitioner's Subpoenas on November 14, 2024. Counsel for Petitioner requests a continuance of the hearing on Petitioner's Motion to Vacate Arbitration Award and Respondents' Motion to Confirm Arbitration Award to a future term of court after a ruling is issued on Respondents' Motions for Protective Order and to Quash Petitioner's Subpoenas. The Court's ruling on Respondents' Motions for Protective Order and to Quash Petitioner's Subpoenas will determine whether Petitioner is permitted to conduct discovery to prove her claims in the Motion

to Vacate Arbitration Award and therefore needs to be resolved prior to Petitioner's Motion to Vacate Arbitration Award and Respondents' Motion to Confirm Arbitration Award.

Pursuant to South Carolina Rule of Civil Procedure 11, Counsel for Petitioner Stéfanie Seixas-Mikelus, M.D. has consulted with counsel for Respondents but was unable to reach an agreement. Petitioner hereby moves for a continuance of the hearing on Petitioner's Motion to Vacate Arbitration Award, Request for Limited Discovery, and Request for Evidentiary Hearing and Respondents' Motion to Confirm Arbitration Award and requests the hearing be rescheduled for a future term of court after a ruling is issued on Respondents' Motions for Protective Order and to Quash Petitioner's Subpoenas.

Respectfully submitted,

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ATTORNEYS FOR PETITIONER

Charleston, South Carolina
December 13, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
<i>Ex Parte:</i> Kristine Cato,	)	Case No. 2023-CP-10-03391
	)	
Affiant,	)	
	)	
<i>In re:</i>	)	AFFIDAVIT OF KRISTINE CATO
	)	
Stefanie Seixas-Mikelus, M.D.,	)	
Petitioner,	)	
vs.	)	
	)	
Tenet Healthcare Corporation, Tenet	)	
Physician Resources, LLC and East Cooper	)	
Physician Network, LLC	)	
Respondents.	)	

Personally appeared before me, Kristine Cato, who being duly sworn, deposes and says that:

1. I am over the age of eighteen (18) years and am competent to state the matters set forth herein. I have personal knowledge of the matters set forth herein, except as to those matters stated on information and belief, and as to those, I have a good faith basis for believing them to be true.
2. I am licensed to practice law in South Carolina, having been admitted to practice in 1990. I practice exclusively in the area of labor and employment law. I have served as a neutral for the America Arbitration Association (AAA) for Employment cases since approximately 2007.
3. The AAA is a neutral administering organization and neither it, nor the arbitrators that serve, take a position with respect to the arguments made by the parties in the litigation.

4. There is case law in South Carolina and nationwide that protects professional arbitrators from post-decision discovery, specifically because of the integrity of the arbitration process and the need to protect the arbitration process from judicial inquiry. *See Gramling v. Food Mach. & Chem. Corp.*, 151 F.Supp. 853 (W.D.S.C. 1957)(“it would be most unfair to the arbitrators to order them to come into court to be subjected to grueling examinations by the attorneys for the disappointed party and to afford the disappointed party a ‘fishing expedition’ in an attempt to set aside the award. To do this would neutralize and negate the strong judicial admonitions that a party who has accepted this form of adjudication must be content with the results.”); *See also National Labor Relations Board v. Joseph Macaluso Inc.*, 618 F.2d 51 (9th Cir. 1980); *Hoelt v. MVL Group Inc.*, 343 F.3d 57 (2d Cir. 2003); *Woods v. Saturn Dist. Corp.*, 78 F.3d 424 (9th Cir. 1996); *Reichman v. Creative Real Estate Consultants Inc.*, 476 F.Supp. 1276 (S.D.N.Y. 1979); *Lester v. Mills*, 201 P. 752, 117 Wash. 502 (1921); *Corrigan v. Rockefeller*, 67 Ohio St. 354, 66 N.E. 95 (1902); and *Lloyd v. Seal*, 1849 WL 718 (Del.Super. 1849). This is consistent with a recent South Carolina Supreme Court opinion, wherein the Court noted more broadly “[w]e begin by acknowledging – and reaffirming – the rare and narrow basis upon which we may disturb an arbitration award.” *Waldo v. Cousins*, 442 S.C. 662, 665, 901 S.E.2d 276 (2024)
5. I am informed and believe that the doctrine of arbitral immunity protects arbitrators from being subjected to post-decision discovery in order to protect the integrity of the arbitration process. Without waiving arbitral immunity, and solely because my integrity is being improperly attacked in this proceeding, I provide the following information for the Court’s consideration as appropriate.

6. The AAA has a detailed selection process; it does not appoint arbitrators for employment cases.
7. As such, I was not appointed in this matter. I was selected by the parties and their counsel under the provisions of the AAA Employment Arbitration Rules and Mediation Procedures last amended and effective November 1, 2009.
8. As part of the AAA selection process, the AAA provides names of numerous proposed arbitrators to the parties, with the list based on criteria requested by the parties. Information provided by the AAA is not limited to mere names of potential neutrals, but includes very detailed pre-selection disclosures.
9. The detailed information provided by AAA is sufficient to inform the parties and their counsel of relevant information, which in turn enables them to evaluate and consider each prospective arbitrator pursuant to the parties' own self-determined criteria, including potential conflict of interest concerns. **Exhibit A.** After consideration to the extent desired by the parties, the parties ultimately select an appropriate neutral before the arbitration proceeds to consideration by the selected arbitrator.
10. In this case, the lawyers for the parties were asked to select an arbitrator from a AAA provided list. No one asked any additional questions regarding my fitness or disclosures after I was included in AAA's list for this matter.
11. My disclosure to the parties accurately and fully disclosed to the parties that my husband, Harry Cato, has an independent contractor relationship with Nelson Mullins. Harry is not a lawyer and does not work with any legal team at Nelson Mullins. I am informed and believe that Harry's work with Nelson Mullins is solely related to the firm's lobbying

branch. Neither of us socialize with anyone at Nelson Mullins, however, I do remember an initial happy hour more than ten years ago with some members of the lobbying team when Harry first began his association with Nelson Mullins. Harry works with other companies, including Blue Cross, through his LLC (Blue Moon Strategies) in addition to working with Nelson Mullins. He does not have an exclusive relationship with Nelson Mullins and he is free to work with, or decline to work with, anyone he desires.

12. Prior to the hearing in this matter, I had never met Nelson Mullins' counsel Carmer Harper Thomas, nor have I ever socialized with her. I am informed and believe that my husband does not know and has never met Ms. Thomas.
13. The information I provided in my disclosures was sufficient for the parties to recognize that my husband had a relationship with Nelson Mullins more broadly, and that he provided services for which he was paid. If counsel had a question or needed further clarification, it was incumbent upon them to address that through the administration of AAA. I have no knowledge of whether that occurred, but I was not asked for further information during the screening process and I was notified that I was selected by the parties to serve as arbitrator.
14. I have no information or knowledge as to any fact indicating the parties were denied the ability to, or otherwise declined, to evaluate all criteria disclosed to them, including the information that was disclosed to them. Likewise, I have no information or knowledge as to any fact that they were precluded from considering other public information available to them prior to their election to have me serve as arbitrator. (Exhibit A).
15. The arbitration hearing in this matter took place on February 1 and 2, 2023, at which time I was able to consider and weigh all the evidence and credibility of the witnesses. I made

preliminary determinations regarding the legal issues presented, which I kept to myself, and on March 23, 2023, the parties and counsel provided additional testimony limited solely to the issue of damages.

16. I was asked to join the Lexington Medical Center Board of Directors on March 1, 2023, which is a voluntary position. I attended my first Board of Directors meeting on March 23, 2023. The voluntary position with LMC has and had no bearing on my work as an arbitrator with AAA generally, or with respect to this proceeding.

FURTHER DEPONENT SAYETH NOT.

Kristine L. Cato
Kristine Cato

Sworn to before me this
16th day of December, 2024.

Tara N. Cribb
Printed name: Tara N. Cribb
Notary public for South Carolina
My Commission expires: 2/24/27

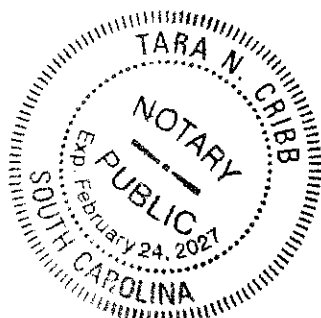


Exhibit A



AMERICAN
ARBITRATION
ASSOCIATION®

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®

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July 23, 2021

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Case Number: 01-21-0004-6490

Stephanie Seixas-Mikelus
-vs-
Tenet Healthcare Corporation

Dear Parties:

The American Arbitration Association (the AAA) acknowledges receipt on July 7, 2021, of a Demand for Arbitration dated July 7, 2021, which has been filed with us in accordance with the employment plan or contract containing a clause providing for administration by the AAA.

As of October 1, 2017, the AAA applies the Employment/Workplace Fee Schedule to employment disputes as well as any dispute between an individual (who has provided services as an individual and not incorporated) and a business or organization. The outcome of our preliminary administrative review, which is subject to review by the arbitrator, is to apply the Employment Arbitration Rules and Employment/Workplace Fee Schedule to this dispute, a copy of which is located on our website at www.adr.org. Please also review the *AAA-ICDR® Best Practices Guide for Maintaining Cybersecurity and Privacy* and *AAA-ICDR Cybersecurity Checklist* that is attached to this correspondence.

Please make note of the Case Management Fee referenced in the Employment/Workplace fee schedule. Should the parties wish to mediate with the AAA prior to the assessment of this fee, the AAA will waive the fee if the parties settle or defer the fee until after impasse. In the event this matter closes for any reason prior to the Case Management Fee being due, it will not be charged.

Mediation is a private, non-binding process under which the parties submit their dispute to a third-party neutral. The mediator may suggest ways of resolving the dispute, but may not impose a settlement on the parties; the

parties attempt to negotiate their own settlement agreement. Please contact me for further details regarding mediation.

Please note the following:

- The Respondent has until **August 9, 2021** to file an answer to the claim. If an answer is not received, we will assume a general denial. Please reference the Rules if filing a counterclaim.
- A request has been made for the hearing to be held in Charleston County, SC. Please refer to Section 10 of the Rules.
- Attached is a list for your selection of the arbitrator. Please see the attached list for further instruction on this process. This list is due on **August 9, 2021**.
- We ask that the attached Checklist for Conflicts be returned to the AAA by **August 9, 2021**. Further instructions are also located on the enclosed sheet.
- We also ask the parties to provide the applicable version of Tenet's Fair Treatment Process by **August 9, 2021**.
- Provided that the AAA has email addresses for all parties, the AAA will communicate with the parties via email for all AAA communications, unless notified otherwise.

Finally, the AAA can provide interested parties and the arbitrator with videoconferencing services through Zoom. Zoom is a user friendly application that can be used on your desktop (with webcam)/laptop/tablet or phone and allows for screen sharing to display exhibits, as well as breakout rooms for private sessions, etc. Of course, if the parties and arbitrator have another videoconferencing platform they are comfortable using, you should feel free to proceed with that platform. Please notify your case manager if your hearings are proceeding through videoconferencing platform so we can continue to provide the appropriate administrative services.

If the parties and arbitrator wish to use the Zoom service, we would be happy to schedule and set up a test meeting(s) in advance to make sure all are comfortable using the technology. To find out more about Zoom's functionality, because it is a commercial product, professionally produced tutorials/written instructions can be found on its website at <https://support.zoom.us/hc/en-us/articles/206618765-Zoom-Video-Tutorials>.

If you have any questions or need clarification on any of the enclosed documents, please feel free to call or email me at any time.

Sincerely,

Mary Jara

Mary Jara
Manager of ADR Services
Direct Dial: (866)440-1796
Email: AAAMaryJara@adr.org
Fax: (855)267-4082
qr

Enclosure

cc: James A. Bruorton, IV, Esq. ***Via Email to: cbruorton@rosenhagood.com***

**AMERICAN ARBITRATION ASSOCIATION
CHECKLIST FOR CONFLICTS**

In the Matter of the Arbitration between:

Case Number: 01-21-0004-6490

Stephanie Seixas-Mikelus

-vs-

Tenet Healthcare Corporation

DATE LIST DUE: AUGUST 9, 2021

The AAA must advise each neutral, upon appointment, complete names of all entities and persons involved in this matter. You should be aware that arbitrators will need to divulge any relevant information in order to make appropriate and necessary disclosures in accordance with the applicable arbitration rules. In order to do so we ask that you complete this attached list including the following:

Witnesses

Consultants

Attorneys

Subsidiaries

Any other related entities or persons

This form will only be used as a list for conflicts, not a preliminary or final witness list. Please note that the AAA will not divulge this information to the opposing party and the parties are not required to exchange this list.

For your convenience, this form may be completed online through AAA's WebFile. If you do not have a WebFile account, please contact your case manager. You may then complete the Conflicts Checklist as part of this case's online record.

FULL NAME

AFFILIATION

ADDRESS

DATED: _____

PARTY: _____

Please Print

**AMERICAN ARBITRATION ASSOCIATION
LIST FOR SELECTION OF ARBITRATOR**

In the Matter of the Arbitration between:

Case Number: 01-21-0004-6490

Stephanie Seixas-Mikelus

-vs-

Tenet Healthcare Corporation

CASE MANAGER: Mary Jara

DATE LIST SUBMITTED: July 23, 2021

DATE LIST DUE: AUGUST 9, 2021

In accordance with the Rules we are providing you a list of arbitrators who are members of our Employment Dispute Resolution Roster. Along with this list are the attached Biographical Information Sheets on each arbitrator listed. We encourage parties to review the following list of arbitrators and if possible, agree to a single arbitrator from this list. Should parties not be able to agree to an arbitrator please review and independently submit the attached list to me by **August 9, 2021**. In accordance with the Rules:

Strike any names that you have an objection on
Number the remaining names in order of preference
Return list to AAA upon completion

Should you not return your list by the above date all names will be deemed acceptable.

Note: If appointment cannot be made from this list the AAA may appoint without the submission of an additional list, in accordance with the rules. For your convenience, this form may be completed online through AAA's WebFile at www.adr.org.

Kristine L. Cato
Denise Smith Cline, Esq.
Hon. William (Bill) Constangy
William H. Floyd III, Esq.
Angela N. Gray, Esq.
David B. McCormack, Esq.
Dennis R. Nolan
Joseph A. Seiner, Esq.
H. Landis Wade, Jr.
Reagan H. Weaver, Esq.

Arbitrators are compensated at the rate stated on their biographical data. The compensation is an independent obligation of the parties and it is understood that the American Arbitration Association has no liability, direct or indirect, for such payments. Deposits shall be made promptly with the AAA as required by the case manager, pursuant to the Rules, subject to final appointment by the arbitrator in the award. If you have any questions, please call or email me.

Party: _____

By: _____

Title: _____

STATE OF SOUTH CAROLINA	)	IN THE NINTH JUDICIAL CIRCUIT FOR
	)	THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	Case No.: 2023-CP-100-3391
Stéfanie Seixas-Mikelus, M.D.	)	
	)	
Petitioner,	)	<u>RESPONDENTS' OPPOSITION TO</u>
	)	<u>PETITIONER'S</u>
v.	)	<u>MOTION FOR CONTINUANCE</u>
	)	
Tenet Healthcare Corporation, Tenet	)	
Physician Resources, LLC, and East Cooper	)	
Physician Network, LLC.	)	
	)	
Respondents.	)	

Respondents Tenet Healthcare Corporation (“Tenet”), Tenet Physician Resources, LLC (“TPR”), and East Cooper Physician Network, LLC (“ECPN”) (collectively, “Respondents”) oppose Petitioner’s December 13, 2024 motion for continuance, which seeks to continue the hearing set for December 18, 2024, only as to Petitioner’s Motion to Vacate and Respondents’ Motion to Confirm the arbitration award. Respondents oppose the continuance, as described below.

Petitioner asserts that before hearing the motions addressed to the arbitration award, the Court first should address Respondents’ Motion for Protective Order and to Quash Petitioner’s Subpoenas. Petitioner presents the issue as being whether Petitioner is permitted to conduct discovery. The initial question regarding discovery is not whether it is permitted, however, but is whether discovery is even needed—it is not. The Court will determine whether the record already before the Court via the motions to vacate and to confirm the arbitration award is sufficient for the Court to rule on these motions. Respondents contend that the record is more than sufficient, and

the Court is equipped to consider and decide Petitioner's Motion to Vacate and Respondents' Motion to Confirm. Accordingly, Petitioner's request for continuance should be denied.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Carmen H. Thomas
Carmen Harper Thomas
SC Bar 76012
carmen.thomas@nelsonmullins.com
Caroline Warner
SC Bar 104280
Caroline.warner@nelsonmullins.com
1320 Main Street, 17th Floor
Columbia, SC 29201
803.799.2000

*Attorneys for Tenet Healthcare Corporation, Tenet
Physician Resources, LLC, and East Cooper Physician
Network, LLC*

Columbia, South Carolina

December 16, 2024

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
Stefanie Seixas-Mikelus, M.D.,	)	Case No. 2023-CP-10-03391
	)	
Petitioner,	)	
	)	
vs.	)	AFFIDAVIT OF HARRY F. CATO
	)	
Tenet Healthcare Corporation, Tenet Physician	)	
Resources, LLC and East Cooper Physician Network,	)	
LLC,	)	
	)	
Respondents.	)	

I, Harry F. Cato, declare as follows:

- (1) I am the sole member of Blue Moon Strategies, LLC. ("Blue Moon"), an independent governmental relations consulting firm. I am not an attorney.
- (2) Blue Moon has performed contract governmental relations work with Nelson Mullin Riley and Scarborough ("NMRS") on an independent contract basis since 2010. I have no employment agreement with NMRS, and I am not an employee of NMRS.
- (3) While Blue Moon represents some NMRS clients, Blue Moon by no means represents NMRS's entire stable of clients.
- (4) Blue Moon has always had its own clients separate and apart from any relationship it has with NMRS.
- (5) NMRS allows Blue Moon to rent a limited furnished office, a desk phone, and use of the internet on a monthly basis.
- (6) The office I rent is located on the on the 11th floor of the office building in which NMRS is located. My security card does not allow me access to any floor other than the 11th floor.
- (7) There are no litigation attorney offices located on the 11th floor; only other members of the governmental relations team and administrative staff (Human Resources, Accounting, etc.).
- (8) NMRS does not furnish me with a cell phone or any other equipment for use in my business.
- (9) Payment I receive from NMRS is made out to Harry F. Cato, d/b/a Blue Moon Strategies. It is reported on a 1099. I do not receive any benefits from NMRS. I do not have a 401k through NMRS.

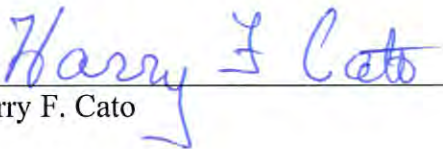
(10) I am not invited to NMRS attorney social events. I do not attend any attorney meetings, firm retreats or other NMRS attorney activities.

(11) I do not know Carmen Thomas. I do not have any personal or professional relationship with her. I have very limited contact with any attorneys employed by NMRS.

(12) I am in and out of the office I rent on the 11th floor 2-3 times a week during the legislative session due to its proximity to the Capitol. I am there on average 2 times a month when the General Assembly is not in session.

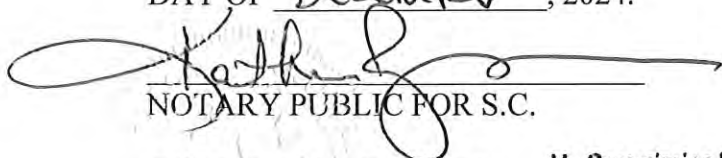
(13) I have no knowledge of the factual or legal issues involved in this case.

FURTHER AFFIANT SAYETH NOT.


Harry F. Cato

SWORN TO BEFORE ME THIS 17th

DAY OF December, 2024.


NOTARY PUBLIC FOR S.C.

COMMISSION EXPIRES: _____ My Commission Expires October 20, 2025

STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS
 *
 COUNTY OF CHARLESTON * TRANSCRIPT OF RECORD

-----X
 STÉFANIE SEIXAS-MIKELUS, M.D. *
 *
 * Petitioner,
 *
 vs. * Case No. 2023-CP-10-03391
 *
 TENET HEALTHCARE CORPORATION, *
 TENET PHYSICIAN RESOURCES, *
 LLC, AND EAST COOPER PHYSICIAN *
 NETWORK, LLC, *
 *
 * Respondents.
 -----X

December 18, 2024

B E F O R E:

The Honorable J. Derham Cole, Presiding Judge

A P P E A R A N C E S:

Chip Bruorton, Esq.
 Attorney for the Petitioner

Carmen Thomas, Esq.
 Attorney for Respondents

Desa Ballard, Esq.
 Attorney for Kris Cato

Johnston Cox, Esq.
 Attorney for Harry Cato

Bill Wood, Esq.
 Attorney for Nelson Mullins

Recorded by: WebEx Recording
 Transcribed by: Bobbi Fisher, RPR
 SC Official Court Reporter III

I N D E X

DESCRIPTION	PAGE
Proceedings	3

E X H I B I T S

(None.)

COURT REPORTER/TRANSCRIBER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word/unclear word
[sic]	Indicates the word is written as said
(Indiscernible)	Indicates word(s) is not known due to poor audio recording quality

P R O C E E D I N G S

(The proceedings commenced as follows:)

THE COURT: All right, everyone. We are back and we've got several motions for Mikelus vs. Tenet Healthcare Corporation. Do we have everybody here for that?

MS. BALLARD: Desa Ballard present for Kris Cato, the arbitrator, Your Honor.

MR. Bruorton: Chip Bruorton here on behalf of the petitioner, Dr. Seixas Mikelus.

MS. THOMAS: This is Carmen Thomas on behalf of the three respondents, Your Honor.

MS. BALLARD: Okay.

MR. COX: And Johnston Cox here for -- I'm sorry -- for Mr. Cato -- Harry Cato.

THE COURT: Okay. All right.

MR. WOOD: Bill Wood here for the Nelson Mullins Law Firm, recipient of one of the subpoenas that's going to be talked about today.

THE COURT: Okay. All right. Well, good afternoon, everyone. Let me say before we start, when I saw this, I guess there was a subpoena issued to Harry Cato.

I mean, before we go forward, I just want everybody to know that Mr. Cato and I served in the House together back in 2008 and 2010. I mean, he is -- I do consider him a friend. I have not -- I have not -- we have not communicated recently.

1 I don't see him regularly. I'm not sure if there's a -- I
2 don't think there would be any conflict with me hearing this,
3 but I wanted to disclose that to everyone in case one of you
4 thought there might be an issue with it.

5 MS. BALLARD: No objection from Kris Cato, Your Honor.

6 THE COURT: Okay.

7 MR. BRUORTON: Your Honor, I'm -- this is Chip Bruorton
8 on behalf of the petitioner. You know, one of the -- one of
9 the issues that's going to be potentially before you today is
10 whether or not there is evident partiality on the part of the
11 arbitrator, which comes from Mr. Cato's relationship with
12 Nelson Mullins.

13 I believe, you know, from the petitioner's standpoint, if
14 you feel that that will have no bearing on your ability to
15 fairly and -- you know, evaluate the facts of this case and
16 make a fair and impartial ruling, then I don't have an
17 objection on the part of the plaintiff.

18 MS. THOMAS: And on behalf of respondents, Your Honor, we
19 do not object.

20 THE COURT: Okay. Well, thank you. Thank you all for
21 that.

22 I don't believe my relationship with Mr. Cato would have
23 any impact on my ability to decide these motions impartially.
24 So I -- if there's no further objection, we can proceed.

25 MR. BRUORTON: Thank you, Your Honor.

1 THE COURT: If you want to give the Court some guidance
2 about the best way to take the --

3 MR. BRUORTON: Sure, Your Honor. Again, Chip Bruorton
4 here today on behalf of the petitioner, Dr. -- I'm just going
5 to call her Dr. Seixas rather than the full name. It's just
6 easier, and that's how I refer to her, if that's okay with the
7 Court.

8 But there are multiple motions before you today. There
9 are -- there's the petitioner's Motion to Continue the Motion
10 to Vacate and conduct the evidentiary hearing. There is the
11 petitioner's Motion to Vacate the arbitration award. There
12 are multiple motions to quash and for protective orders
13 related to subpoenas that were issued on behalf of the
14 petitioner. And then there is the Motion to Confirm the
15 arbitration award that was filed by the respondents. I
16 believe that covers all of them.

17 And, from our standpoint, Your Honor, you know, the
18 purpose of today's hearing, we believe that the Court's either
19 going to allow the petitioner to do discovery -- and that's a
20 question that this Court's going to have to decide prior to
21 conducting the evidentiary hearing or on the Motion to Vacate.

22 And so we believe the Motion to Continue should be heard
23 first, and then, depending on the outcome of that hearing, if
24 you are going to permit discovery, then we can have the motion
25 hearing on the Motion to Quash and the Motion for Protective

1 Order. If you're not going to permit discovery, then we would
2 simply ask for additional time to be able to come to the Court
3 and present the evidence for the evidentiary hearing on the
4 Motion to Vacate.

5 So that's -- that's where we come from on these motions.
6 I'm happy to address all of them. I'm prepared to address all
7 of them, but I did want to bring that to the Court's attention
8 given that the Motion to Continue was the one that was most
9 recently filed, but we believe one that should be heard first.

10 THE COURT: Okay. Well, we can go ahead with that.

11 MR. Bruorton: Okay. Thank you, Your Honor.

12 So just to give you a little bit of background on this
13 case, the petitioner, Dr. Seixas, is a urologist who
14 specializes in robotic surgical procedures. She was hired by
15 the respondents to start and develop a new urology practice
16 within the Tenet corporate umbrella in Charleston, South
17 Carolina.

18 She relocated from Massachusetts to start the practice
19 based on representations and promises that were made to her in
20 the interview process. It's our position -- and I don't want
21 to get into the merits of the arbitration -- that those
22 representations and promises were not fulfilled, resulting in
23 the failure of the urology practice and, ultimately, the
24 termination of Dr. Seixas.

25 The employment agreement that Dr. Seixas had with Tenet

1 calls for arbitration to be conducted in accordance with
2 Tenet's fair treatment process, which essentially directs the
3 dispute to proceed through the American Arbitration
4 Association.

5 The arbitrator, Kristine Cato, was selected by agreement
6 of the parties from a list of potential arbitrators provided
7 by the AAA. She was appointed by the AAA to serve as the
8 arbitrator and made disclosures on the AAA general arbitrator
9 oath form.

10 Relying on those accuracies -- relying on the accuracy of
11 those disclosures, Petitioner agreed to the confirmation of
12 Arbitrator Cato, and the arbitration proceeded, to which there
13 was a final award that was issued denying Petitioner's claim
14 in full and some issues that have come to light that have
15 brought this Motion to Vacate that was originally filed here
16 before the Court.

17 But the reason that we believe that Motion to Vacate
18 should be continued and the discovery motions be heard first,
19 Your Honor, is whether there is evident partiality on the part
20 of the arbitrator such that the award rendered in favor of the
21 respondents provides a basis for vacating the award. And in
22 order to be able to establish that, we believe that the Court
23 has the right to allow us to do discovery to further develop
24 those arguments.

25 The issue in this case is what is written in Arbitrator

1 Cato's disclosures versus what is the whole truth. We're not
2 suggesting that what she says in her disclosures is a lie.
3 What we're suggesting is that there are material facts that
4 were left out that should have been disclosed initially and
5 certainly should have been disclosed in a supplemental
6 disclosure that have a bearing on her ability to not be
7 partial in this case and certainly creates an impression that
8 there was some partiality.

9 If you look at page 12 of the respondent's Amended Motion
10 for Protective Order and the brief that Ms. Thomas submitted,
11 they make a point in their brief that I believe strikes right
12 on the crux of one of our arguments. And what it says is,
13 "The documents already in the record show that Arbitrator
14 Cato's husband is a government relations contractor at Nelson
15 Mullins." Well, that is not what was disclosed by Arbitrator
16 Cato.

17 If you look at her disclosure, which is in response to
18 Question No. 14, what she says is, "Are there any connections,
19 direct or indirect, with any of the case participants that
20 have not been covered by the above questions?"

21 Her answer is, "Yes. Indirectly, my husband is a
22 government relations consultant and contracts with Nelson
23 Mullins to perform some governmental relations consulting for
24 some of their clients although not the defendant in this
25 matter. He is not an attorney and provides consulting and

1 lobbying work only. This will not affect my ability to act
2 impartially in this matter."

3 I want to show you a bio page of Mr. Cato, which
4 Ms. Nicholson, one of my law partners who's also on today's
5 hearing, is going to share her screen with the Court.

6 If you look at this bio page of Mr. Cato, what Ms. Cato
7 in her disclosure says is that it's an indirect relationship.
8 In its own brief, the respondent --

9 THE COURT: Can you increase the size of that? I don't
10 think I can do it on my end.

11 MR. Bruorton: Sure. Is that better?

12 THE COURT: Yeah, that's better. Thank you.

13 MR. Bruorton: Okay. By their own admission, in their
14 brief, you know, they indicate that he is a government
15 relations contractor at Nelson Mullins, which is more in line
16 with what this bio page shows on the Nelson Mullins website
17 that clearly takes into consideration an ownership that
18 Mr. Cato is one of their own.

19 What her disclosure states -- implies that her husband
20 occasionally contracts with Nelson Mullins to provide some
21 consulting with some of the law firm's clients and implies
22 that the arbitrator's husband does the work not just for
23 Nelson Mullins but other law firms and entities, when, in
24 actuality, Mr. Cato, he has an office at Nelson Mullins, he
25 has a Nelson Mullins email address, he has credentials and

1 access to Nelson Mullins' office, he likely has access to
2 Nelson Mullins case files, likely has access to in-house
3 emails, and they claim him as one of their own and have
4 substantially financially benefited from the work that he does
5 with the firm.

6 We have submitted an affidavit from Barbara Seymour in
7 which one of her opinions is this isn't just, you know,
8 evident partiality; she believes it's a material conflict.

9 And I don't know if you're familiar with Ms. Seymour or
10 not, but if you look at her affidavit, she has been practicing
11 law in South Carolina and Georgia since 1993. From 2000 to
12 2017, she worked as an investigating and prosecuting attorney
13 for the Office of Disciplinary Counsel to the Supreme Court of
14 South Carolina, including service as the Deputy Disciplinary
15 Counsel from 2007 until 2017. The matters that she handled as
16 the -- in the Office of Disciplinary Counsel involved the
17 capacity and professional conduct of lawyers and judges.

18 As lead counsel, she has 130 opinions published by the
19 Supreme Court, which all relate to the professional conduct
20 and capacity of lawyers and judges. It's our position that
21 there is nobody that is more qualified than Ms. Seymour to
22 give the opinion as to whether or not there is evident
23 partiality here or a failure on the part of the arbitrator to
24 meet her ethical obligations and disclosures.

25 If you look at her opinions, on paragraph 5 of her

1 affidavit, it says, "It's my opinion, to a reasonable degree
2 of professional certainty, that Ms. Cato was ethically
3 required to disclose relevant information to the claimant in
4 this case that could reasonably call her impartiality into
5 question. Although she does disclose the connection with the
6 law firm representing the respondents, Ms. Cato significantly
7 downplayed that association, stating that it was an indirect
8 connection, implying that her husband occasionally contracted
9 with the law firm to provide some consulting to some of the
10 law firm clients.

11 "While her description of the connection might be
12 technically true, it does not suggest a 10-1/2-year exclusive
13 employment relationship in which Mr. Cato advises the law
14 firm's health care clients and works in the same office as the
15 lawyers who represent the respondents."

16 If you look at Mr. Cato's LinkedIn page, which
17 Ms. Nicholson will share -- can you make that bigger,
18 Elizabeth? -- and you go down to experience for Mr. Cato, it
19 shows he's been with Nelson Mullins from December 2010 to the
20 present, almost 13 years or it would be 13 years -- or 14
21 years now, given that it's December of 2024. He doesn't show
22 any other experience of doing consulting work with any other
23 law firm, that it's solely Nelson Mullins that shows up in his
24 experience.

25 Thanks, Elizabeth.

1 MS. BALLARD: I want to make sure my objection is heard,
2 Your Honor. This is Desa Ballard. I have objected in the
3 chat box for all panelists to see, and I've asked for a ruling
4 on my objection. I think this presentation goes to the
5 substance of the issues that are pending before the Court, not
6 to the Motion for Continuance.

7 THE COURT: Okay. Well, I'm trying to get some back --
8 some background for --

9 MS. BALLARD: I understand, but you're being provided
10 with the substance of the case, not the grounds for the
11 request for continuance.

12 THE COURT: Okay. Well, I'll overrule the objection, but
13 Mr. Bruorton, can you (indiscernible) --

14 MR. Bruorton: Yes -- yes, Your Honor.

15 THE COURT: (Indiscernible) on the grounds for objection.

16 MR. Bruorton: I didn't hear that last part. What did
17 you say, Your Honor?

18 THE COURT: Just tailor it to -- if you can just tailor
19 -- you know, tailor your argument to the specific grounds.

20 MR. Bruorton: Certainly, Your Honor. And my point in
21 going through Ms. Seymour's affidavit is that there's nothing
22 in the record to rebut her opinions other than two
23 self-serving affidavits from Kris Cato and Harry Cato.

24 And I believe that that's important because what the --
25 what the respondents are wanting you to do is to take

1 Mr. Cato's affidavit and take Ms. Cato's affidavit and just
2 accept them as true but then say that we're not entitled on
3 our end to be able to do discovery to question them on the
4 testimony that they are providing through their affidavits.

5 They want to suggest that you just rely on those
6 affidavits that have been submitted and not allow us to dig
7 into their sworn statements, which is essentially asking the
8 Court to grant summary judgment without even the most minimal
9 discovery.

10 We're not suggesting that what they say isn't true, but
11 what it's not is not inclusive of all of the pertinent facts.
12 And it's like the oath of a witness, Your Honor, to not just
13 tell the truth but to tell the whole truth. And we're
14 entitled to the whole truth in developing our arguments as it
15 relates to the Motion to Vacate, and in order to do that, we
16 need to be able to do limited discovery, get responses to the
17 subpoenas that we issued, and get depositions taken that we
18 believe are relevant to support the facts that we are
19 presenting before the Court.

20 Now, the reason I say that we need to be able to do
21 additional discovery is for, one, I'll just address Mr. Cato's
22 affidavit first that was submitted. And, really, Mr. Cato's
23 affidavit presents more questions than it does prevent --
24 present any clarification. He states there's a lease
25 agreement -- or he states that he rents space from Nelson

1 Mullins. Well, is there a lease agreement with Nelson
2 Mullins, or does Nelson Mullins allow him to have that space
3 free of charge? Is the rent that's charged, you know, Nelson
4 Mullins' market rate? Whether Mr. Cato's security card grants
5 him access or not to other floors on the Nelson -- in the
6 Nelson Mullins' office space? Does he personally have access
7 to those other floors if he wants to go on to those other
8 floors? Is he furnished with a computer or office supplies by
9 Nelson Mullins?

10 MS. BALLARD: Your Honor, I object again. This is in the
11 merits of the motion. This is -- we're supposed to be hearing
12 the Motion for Continuance. We're not hearing it.

13 MS. THOMAS: I actually think it's helpful --

14 MR. BRUORTON: Your Honor, I respectfully --

15 THE COURT: I'm going to overrule the -- and if y'all --
16 if you can give oral objections. I don't have the chat pulled
17 up, and I want to make sure everybody hears that and it's
18 recorded.

19 I'm going to overrule the objection. He's -- I'm going
20 -- I'm going to ask for responses about whether -- you know,
21 the ability to reopen or grant limited discovery, but I do
22 want to hear the background. I'm not -- I'm not
23 necessarily -- I'm not considering this for the merits of the
24 other issues. It's just so I can gain an understanding of why
25 there should or should not be a continuance.

1 MR. BRUORTON: Thank you, Your Honor.

2 As I was saying before I was interrupted, what is Harry
3 Cato's basis of compensation? Does he have a salary? Is he
4 invited to attorney meetings, firm retreats, or other attorney
5 activities and just doesn't go? Does he know Sue Harper?

6 There's a -- there's a -- Ms. Corky Harper was the
7 original counsel of record for the respondents. She remained
8 counsel of record for the respondents all the way up until the
9 point where the Motion to Vacate was filed within which she
10 filed a Motion to Withdraw as counsel from the Court. The
11 only thing that's addressed in the affidavit is that Ms. Cato
12 or Mr. Cato didn't know Carman Thomas.

13 You know, does he have access to Nelson Mullins' file
14 system to access case files?

15 These are all things that we believe that we are entitled
16 to know through the course of discovery in order to
17 substantiate the Motion to Vacate that we have presented
18 before the Court. And most would think that discovery
19 post-arbitration is not allowed, but we have cited to numerous
20 cases in our brief that clearly show where, when the
21 arbitration award that is being challenged, is being
22 challenged on allegations of partiality or bias, that the
23 Court allows discovery to be done.

24 We cited William Vick Construction, which is a North
25 Carolina appellate court case. One of the main cases that the

1 respondents rely on is a North Carolina case that's
2 unreported. But what the William Vick case states is that,
3 where an arbitrator fails to disclose significant
4 relationships which give an appearance of impartiality, the
5 petitioning party has the right to take the deposition of the
6 arbitrator to further investigate those relationships.

7 We also cited to Kaufman v. Haas, which is a Michigan
8 appellate court case, which says that, "Where the plaintiff
9 must make a strong and definite showing of partiality before
10 an arbitration award can be vacated, the parties should be
11 given at least an opportunity to develop a record to prove
12 such partiality."

13 We also cited Carolina Virginia Fashion Exhibitors, which
14 is another North Carolina case that states that -- held "where
15 an objective basis exists for reasonable belief that
16 misconduct has occurred, an arbitrator's testimony is
17 necessary so as not to deprive the aggrieved party of its most
18 effective means of ascertaining and proving the alleged
19 misconduct."

20 Then, on page 9 of our brief, we go through seven more
21 cases -- and I'm not going to go through all of them -- which
22 allow discovery before an evidentiary hearing on a Motion to
23 Vacate when the petitioner is alleged bias. And there's a
24 Florida Court of Appeals case. There's federal district court
25 cases that have been cited. There's Illinois cases that have

1 been cited.

2 Now, not all of these cases end up granting the Motion to
3 Vacate but what they do is they allow the plaintiff the
4 opportunity to conduct discovery to develop the arguments that
5 bias exists or evident partiality exists. We believe that
6 we've demonstrated an objective basis solely by Mrs. Seymour's
7 affidavit alone which may exist that may show evident
8 partiality that exists that led to the result in this case.

9 And so, based on the case law and South Carolina Rules of
10 Civil Procedure 26(b), which allows parties to obtain
11 discovery regarding any manner that is not privileged which is
12 relevant to the subject matter pending before the Court,
13 allows the party to conduct discovery, we believe we should be
14 allowed to conduct discovery and then come back to the Court
15 and ask for the evidentiary hearing and the Motion to Vacate
16 to be heard based on the outcome of that discovery in support
17 of already the facts and evidence that we've put before the
18 Court today.

19 THE COURT: Okay. Thank you, Mr. Bruorton.

20 Anybody --

21 MS. THOMAS: Your Honor, I'm --

22 THE COURT: On the Motion for Continuance.

23 MS. THOMAS: On the Motion for Continuance, Your Honor --
24 again, this is Carmen Thomas with Nelson Mullins for the
25 respondents, which are Tenet Healthcare Corporation, East

1 Cooper Physician Network, and -- we have one more -- Tenet
2 Physician Resources.

3 And Mr. Bruorton explained generally what this case is
4 about, but he skimmed over the fact that they consented to
5 Kris Cato as the arbitrator; in fact, selected her as their
6 first choice for an arbitrator. And he read out the
7 disclosure that she made about her husband, to which they made
8 no objection at all at the time it was made. They asked no
9 questions about it at the time it was made. All of this
10 information that was just shown to you was available online
11 and in the public at the time the disclosure was made. And to
12 bring this up at this point is against every comment that the
13 Supreme Court of the United States and the State of South
14 Carolina have made about respecting the finality of
15 arbitration proceedings.

16 Specifically about this Motion for Continuance, it
17 doesn't even make sense why it's filed. They raised the issue
18 of discovery within the Motion to Vacate. And, respectfully,
19 Your Honor, the Motion to Vacate should be heard first, and
20 you are able to determine whether discovery is even needed.
21 And if you determine in the context of that motion that
22 discovery is needed, then you have the power to decide whether
23 to hold that Motion to Vacate and the Motion to Confirm in
24 abeyance.

25 And I guess that the Motion for Continuance is offering

1 you another tool to do that, but we would like to argue more
2 directly to the Motion to Vacate and that discovery is not
3 necessary in that context and that it's not appropriate in
4 this case.

5 So I'm glad to go into that and I think that's
6 appropriate, but I think the Motion to Continue, just on the
7 face of the Motion to Continue, should be denied, and that we
8 should return our focus to the Motion to Vacate and whether
9 you even think you need discovery in that context.

10 THE COURT: Okay. Anyone else?

11 MS. BALLARD: Your Honor, Desa Ballard for Kris Cato. We
12 have appeared in this action. We've had subpoenas served on
13 us and Ms. Cato's law firm. We did not file a Motion for
14 Protection because we simply objected, as Rule 45 allows you
15 to do.

16 But as we pointed out in our objection to the Motion to
17 Continue, there's more than an hour and a half set aside for
18 the Court to hear all the motions that are on the roster, and
19 we believe that the moving party is attempting to delay the
20 ultimate issue that is before the Court, which is confirmation
21 of the arbitration award, which is the process that the AAA
22 requires be followed after an arbitration award is issued.

23 My client is the arbitrator. She's not a party to this
24 action. The statute, both federal and state, says that,
25 essentially, the basis -- the only basis for setting aside an

1 arbitration award is collusion or fraud. Bias doesn't get you
2 anywhere near that, and we've cited cases from the District
3 court of South Carolina that say that.

4 Your Honor, this is a fishing expedition. It is --
5 completely flies in the face of the reasons for arbitration.
6 It flies in the face of multiple cases from around the
7 country, including the South Carolina Supreme Court, that says
8 that the arbitration is essentially sacrosanct. And so the
9 only issue that should be heard is the motions that are
10 pending. So we argued against the continuance for that
11 reason. Ms. Cato ruled on this case more than a year --
12 almost a year ago, and it needs to be finalized.

13 MR. BRUORTON: Your Honor, may I briefly respond to that?

14 THE COURT: Yes, please, briefly.

15 MR. BRUORTON: Thank you, Your Honor.

16 I certainly disagree that collusion or fraud is the only
17 basis. I mean, the statute in South Carolina clearly provides
18 additional basis, one of which is, "When there is evident
19 partiality by an arbitrator appointed as a neutral or
20 corruption in any of the arbitrators or misconduct prejudicing
21 the rights of any party." And that's what we've brought
22 before the Court.

23 So I completely disagree that it has to be corruption or
24 fraud and we have to show evident partiality. I believe the
25 case from South Carolina Supreme Court that she's referring to

1 is Woods, which was a -- I believe recently -- decided in
2 2024, which, ironically, vacated the arbitration award.

3 So, you know, I believe that there is certainly a basis
4 to allow us to conduct discovery. The Motion to Continue was
5 only to continue the evidentiary hearing. I don't believe you
6 can have an evidentiary hearing until you have been able to be
7 given an opportunity to do discovery, and we provided
8 substantial case law that supports our position that discovery
9 can be had.

10 Now, I'm happy to address the, the subpoenas themselves,
11 and if they are overreaching or overly broad, having to tailor
12 those down to be in line with what the Court believes that
13 we're entitled to, which is why I think that those discovery
14 motions should be heard today. But I don't think we should
15 hear the Motion to Vacate today, because, quite frankly, this
16 issue with regards to discovery has to be dealt with first.

17 MS. BALLARD: Your Honor, we stand on our objection to
18 the motion.

19 MS. THOMAS: Your Honor, may I --

20 THE COURT: Ms. Thomas.

21 MS. THOMAS: Thank you.

22 The burden to prove evident partiality is, as the courts
23 have said, onerous on the plaintiff; however, the Court has
24 limited authority to review an arbitration award.

25 As our courts have said, it's severely limited and very

1 rare for a Court to disturb an arbitration award. The
2 petitioner has to demonstrate just to be able to even proceed
3 with the discovery, objectively -- objective evidence that --
4 of partiality that a reasonable person would perceive as
5 partiality. Specifically in the case that Mr. Brewer
6 mentioned, Carolina Virginia Fashion [sic] in North Carolina,
7 where they allowed discovery, that case was, I believe, before
8 the South Carolina Uniform Arbitration Act was even passed in
9 1978 and was based on a situation where, on the face of the
10 arbitration award, it was clear that the arbitrators had
11 visited the site of the incident at issue and considered
12 evidence outside of the proceeding and, in many cases, that
13 kind of considering evidence outside the proceeding has been
14 determined to be misconduct. And that was the issue in that
15 case. It wasn't evident partiality.

16 So the Court allowed discovery of what the arbitrators
17 did and what evidence they considered. It wasn't this kind of
18 fishing expedition into all these -- I mean, really listening
19 to Mr. Bruorton earlier describe the things they wanted to
20 find out about Mr. Cato, I can't imagine anything else other
21 than a fishing expedition as to label that discovery. They
22 want to know whether he can get to a different floor in this
23 building and -- I mean, it's just -- it's ridiculous. And it
24 goes not at all to whether there was an evident partiality of
25 the arbitrator.

1 And I need to go back every time to the fact that they
2 consented to Kris Cato and selected her as the arbitrator, and
3 they were aware of his relationship with Nelson Mullins.

4 And I don't want to argue the Motion to Vacate right now,
5 because we should be focused on the Motion for Continuance,
6 but there is no need for discovery in this case. It is
7 patently clear that they have waived their objections to any
8 issues about Harry Cato's relationship and that the other
9 issue related to Arbitrator Cato being on the Lexington
10 Medical Center board is not material to whether evident
11 partiality exists.

12 So we've got a lot of different issues that are
13 overlapping here, but if you -- you can choose to deny the
14 Motion for Continuance and still take us to the discovery
15 motions, which are the Motion for Protection and to quash that
16 respondents filed against all the subpoenas and depositions,
17 or you can go straight back to the Motion to Vacate and let us
18 argue that and decide whether you do think discovery is
19 necessary.

20 And that's what we request, Your Honor, is that you deny
21 the Motion for Continuance, go to the Motion to Vacate, hear
22 that evidence and decide whether you do think discovery is
23 necessary because you're not getting it presented directly and
24 squarely to you right now in the context of a Motion for
25 Continuance.

1 THE COURT: No, I understand, and I do agree with you. I
2 think we need to get into the substantive motions. So I'm
3 going to -- I'm going to deny the Motion for Continuance and
4 move to the Motion to Vacate. Is that -- is that the best --

5 MR. Bruorton: Thank you, Your Honor.

6 THE COURT: -- (indiscernible) as far as y'all are
7 concerned? Does somebody have any objection to proceeding
8 that way?

9 MS. THOMAS: I'm sorry. I couldn't hear the very last
10 part. I think you said move to the Motion to Vacate?

11 THE COURT: Oh, yeah. I'll deny the Motion for
12 Continuance and move to the Motion to Vacate unless someone
13 has an objection and wants to proceed in a different fashion.

14 MS. THOMAS: Thank you.

15 THE COURT: Okay. Let's go -- let's move forward then.

16 MR. BRUORTON: Thank you, Your Honor. I'll spare you the
17 background that we just went through with regards to who our
18 client is and what kind of precipitated this claim.

19 I do want to reiterate the legal standards for vacating
20 an award in South Carolina under 15-48-130 include when
21 there's evident partiality by an arbitrator appointed as a
22 neutral or corruption in any of the arbitrator's actions or
23 misconduct prejudicing the rights of any party.

24 And that's what we bring before the Court today, Your
25 Honor, is a Motion to Vacate on the basis that there is bias

1 and evident partiality on the part of the sole -- or sole
2 arbitrator who heard and issued an award in this matter.

3 This was not a panel arbitration. This was heard by a
4 sole arbitrator, Kristine Cato. And in order to prove evident
5 partiality, what we have to show is that a reasonable person
6 would have to conclude that the arbitrator was partial to the
7 other party.

8 So what we have put before the Court through our
9 memorandum and through the evidentiary documents and
10 affidavits that have been submitted is that the arbitrator
11 failed to meet her ethical disclosure requirements as to her
12 potential bias and partiality. Arbitrator provided answers in
13 her written disclosures that were incomplete and misleading,
14 and the arbitrator's complete failure to disclose her position
15 on the board of a local hospital, which was required by her
16 ethical disclosure requirements to supplement disclosures that
17 could be viewed by either party as relevant to partiality.

18 I referenced the affidavit of Barbara Seymour in my
19 earlier arguments, and I won't get back into her credentials,
20 but I do want to go back to her opinions. And the only thing
21 that's been issued to the Court to rebut her opinions are
22 counsel's arguments, which are not evidence, and two
23 self-serving affidavits from Kris Cato and Harry Cato. There
24 isn't an independent affidavit that refutes the opinions of
25 Ms. Seymour.

1 And what she says in her affidavit is that, "Ms. Cato
2 disclosed her husband's relationship with the respondent's law
3 firm, and she characterized it as indirect and downplayed the
4 nature of the relationship. She omitted material facts such
5 as the length and extent of her husband's relationship with
6 the law firm, which we now know is was 12-1/2 years at the
7 time of the arbitration, the nature of the relationship, and
8 the types of law firm clients in which he consulted with.

9 "Objectively, regular and long-term employment of an
10 arbitrator's spouse by the law firm representing a party in
11 the arbitration is a material conflict inconsistent with
12 impartiality. It is direct, definite, and demonstrable
13 potential bias requiring disclosure. Ms. Cato's decision to
14 characterize the relationship as insignificant and to not
15 disclose material facts would cause a reasonable person to
16 conclude that she was, in fact, partial to the other party to
17 the arbitration.

18 "Whether Mr. Cato is a 1099 employee or not is really
19 immaterial to whether or not there's a material conflict by
20 the fact that he works for Nelson Mullins at the Nelson
21 Mullins office; that the attorneys that represented Tenet in
22 this matter and the other respondents work from."

23 She goes on to say in her affidavit that, "The failure to
24 fully disclose the relationship is compounded by her failure
25 to supplement her disclosure when she was appointed to serve

1 on the board of directors for the Lexington Medical Center.
2 That appointment would have been responsive to Question 10 on
3 the disclosure form, which is, 'Are you a member of an
4 organization that is not listed on your panel biography that
5 may' -- keyword "may" -- 'be relevant to the arbitration?'"

6 Although Lexington Medical Center is not a party to this
7 arbitration, Your Honor, her service on the board is a fact
8 that's subject to disclosure -- that should have been subject
9 to disclosure under the ethical guidelines in the AAA rules,
10 because a reasonable person would want to know that
11 information before consenting to her service as an arbitrator.

12 She moved on to this board while this case was pending
13 before her final award was issued. And it's -- the key word
14 there is "may." And in the interest of transparency, under
15 the canons of ethics, "The continuing obligation throughout
16 the service to disclose any additional direct or indirect
17 contacts arise during the course of the arbitration. If
18 there's a change at any time, any doubt should be resolved in
19 favor of disclosure and it must be disclosed." That's a must.

20 She didn't do that. And it's not her ability to say,
21 "Well, I don't think it's relevant or not." That's our --
22 that's our decision as the attorneys for the petitioner to
23 decide whether or not we believe it's relevant. We didn't
24 even know about it; it was not supplemented or disclosed to
25 us.

1 So when you take those things into consideration
2 together, based on Barbara Seymour's affidavit, her opinion is
3 that Arbitrator Cato breached her ethical obligations as an
4 arbitrator by concealing relevant information and failing to
5 supplement her disclosures. Those opinions are not challenged
6 other than to say she applies the wrong standard, which I
7 don't understand because there's nothing that has been
8 presented to say what standard she was supposed to apply and
9 how it differs from the canons of ethics that she cites and
10 the ethical responsibilities that are presented by AAA and the
11 South Carolina Uniform Arbitration Act.

12 So these are required disclosures. They're not optional.
13 They're mandatory. She didn't make them. Any doubt in favor
14 of disclosure should be made. And it's our position that,
15 because of that, there is evident partiality.

16 Now, the facts that have been submitted as proof, Your
17 Honor, is that, when it comes to arbitration disclosures, you
18 err on the side of disclosure. Not only was Ms. Cato's
19 disclosure regarding her husband misleading, but then she
20 failed to supplement her disclosure later on.

21 We looked at the bio page which clearly shows that
22 Mr. Cato is working for Nelson Mullins. We looked at the
23 LinkedIn page where he lists his experience solely to be a
24 consultant for Nelson Mullins. She didn't disclose also that
25 Mr. Cato lobbies on behalf of several health care providers,

1 including AnMed Health System, BlueCross BlueShield, and Metro
2 Treatment, each which are affiliated private healthcare
3 organizations like the respondents in this matter.

4 The question is whether a reasonable person could
5 conclude that the arbitrator was impartial towards the party.
6 It's not -- it's more than just an appearance of bias, but
7 Ms. Seymour, in her affidavit, answers both of these questions
8 in the affirmative.

9 And like I said, there's nothing to refute her opinions
10 except for these two affidavits. And I want to address those
11 two affidavits, if I might, the first being the affidavit of
12 Kris Cato.

13 And I said this before, but it's the respondent's
14 position that we're supposed to accept these affidavits for
15 what they are, except the sworn testimony as true, and not be
16 given an opportunity to question Ms. Cato on what she says in
17 her affidavit and how it applies to the facts of this case.

18 The same with Mr. Cato; he can submit an affidavit
19 saying, "Oh, no, you know, we can explain this," but then we
20 don't get an opportunity to question him about the
21 explanation.

22 I think that's patently unfair. I think that's an
23 extremely flawed position. And, certainly, if there is
24 evidence of partiality, we're allowed to expand that through
25 additional discovery in taking their depositions.

1 Ms. Cato's affidavit on paragraph 7 says she was not
2 appointed in this matter. I don't know what she's trying to
3 provide by saying she wasn't appointed. There's no dispute
4 that it was a consent to selecting her from a list of
5 arbitrators that was given. But Exhibit 2 to our Motion to
6 Vacate is a notice of appointment for Kristine Cato. Whether
7 by agreement or not, she was appointed by the AAA to serve.
8 And as part of that appointment, she gives a general
9 arbitrator oath that she signed in this case, which includes
10 the disclosures that are in question.

11 In her affidavit, she cites to nine cases supporting her
12 position of arbitral immunity from post-hearing discovery.
13 All but one of those cases relate to arbitration awards which
14 are being challenged on the merits. We are not challenging
15 this arbitration award on the merits. We are challenging it
16 on the basis of bias.

17 The sole case, Woods vs. Saturn, deals with the claim of
18 bias, and in that case, it was an arbitration panel and not a
19 sole arbitrator like we have here that was the sole
20 decision-maker. And in nondisclosure cases, "a vacatur of the
21 arbitration award is appropriate where the arbitrator's
22 failure to disclose information gives an impression of bias in
23 favor of one party." That's what the Woods case said, which
24 is the sole case that is relied on in Ms. Cato's affidavit
25 that relates to a challenge based off of bias.

1 Here's what Ms. Cato's affidavit doesn't say. It doesn't
2 say whether she knew Sue Harper on a personal level. It
3 doesn't disclaim that her husband, Harry Cato, only works with
4 one law firm, Nelson Mullins. It doesn't disclaim that she
5 failed to supplement her disclosures to notify the parties of
6 her joining the board of directors for Lexington Medical
7 Center, where she attended her first board meeting before even
8 issuing her arbitration award in this matter. It doesn't
9 disclaim that her husband is paid by Nelson Mullins, whether
10 directly or through an LLC.

11 Then, if you look at the affidavit of Harry Cato, Your
12 Honor, again, they want us to accept what Mr. Cato says as
13 true without giving us an opportunity to depose him.

14 And Mr. Cato's affidavit presents more questions than it
15 does clarifications. And I went through a lot of those. I
16 know Ms. Thomas believes they're ridiculous, but we don't
17 believe they're ridiculous. He works at the same office that
18 the respondent's counsel does. He puts in his affidavit that
19 his access is limited to the 11th floor. Well, we don't know
20 that, other than to take it as true. If he has credential
21 cards -- I can't imagine that, if Mr. Cato goes to the 14th
22 floor, somebody's not going to let him in.

23 We don't know that Mr. Cato doesn't have access to Nelson
24 Mullins' files on the server -- on the computer that he's
25 working on at the desk within -- that Nelson Mullins provides

1 him in the office space.

2 So, you know, does he have a personal, professional
3 relationship with Sue Harper? He doesn't address that either.

4 There is an important distinction that I believe the
5 Court needs to address in dealing with post-arbitration award
6 discovery, and we cited two cases: World Invest Corp. and the
7 William Vick Construction matter.

8 The World Investment Corp. is a Florida District Court
9 case, which says that, "When a petition to vacate an
10 arbitration award alleges facially sufficient grounds for
11 relief, the trial court must, at a minimum, hold a limited
12 evidentiary hearing to allow the movant to submit evidence to
13 establish its claim."

14 And in William Vick, "Where an arbitrator fails to
15 disclose significant relationships which give an appearance of
16 impartiality, the petitioning party has the right to take the
17 deposition of the arbitrator to further investigate those
18 relationships."

19 Your Honor, we believe that the record before the Court,
20 if nothing else, based off Ms. Seymour's affidavit alone,
21 provides evidence of partiality, which is a basis to vacate
22 this award. We still believe that we should be entitled to do
23 some additional discovery to flesh these issues out.

24 But if we're not entitled to additional discovery, I
25 would submit to the Court that Ms. Seymour's affidavit alone

1 serves as enough basis for this arbitration award to be
2 vacated.

3 Thank you, Your Honor. I'll be happy to answer any
4 questions that you have now or after respondents have an
5 opportunity to present their arguments.

6 THE COURT: Okay. Thank you, sir.

7 Ms. Thomas, are you going to respond to that?

8 MS. THOMAS: Yes, Your Honor. And may I screen-share
9 from my computer?

10 THE COURT: Yes.

11 MS. THOMAS: Thank you.

12 I wanted to start with this quote from a May 2024 case
13 decided by our Supreme Court. Are you able to see this?

14 THE COURT: Yes, I can. Thank you.

15 MS. THOMAS: Okay. And this is important. This is the
16 framework through which we are asking you -- and the case law
17 related to Motions to Vacate and Motions to Confirm requires
18 that you consider the Motion to Vacate.

19 "Arbitration is designed to be the end, not the
20 beginning, of legal wrangling." And this is written by
21 Justice Hill in Waldo vs. Cousins.

22 All of the parameters around Motions to Vacate and
23 Motions to Confirm circumscribe the Court's role in reviewing
24 an arbitration award.

25 In this case, the opposite of this is happening

1 (indiscernible) legal wrangling. As you've heard, we've had a
2 multitude of motions related to this Motion to Vacate.

3 Our Supreme Court worries about situations just like this
4 where there's a suspicious -- and I'm quoting -- "a suspicious
5 or disgruntled party can say -- that seize on potential
6 evident partiality as a pretext for invalidating the award."
7 That is what is happening in this case.

8 I want to review the timeline of events here, and I have
9 it on the screen just to orient you to the sequence,
10 especially at the beginning of the arbitration. And I'm just
11 starting with the event that led to the case, which is
12 Dr. Seixas being terminated, then, in July of 2021, she filed
13 her arbitration demand with AAA.

14 The next month, in a communication I'll show next, she
15 selected Kris Cato as her first choice for the arbitrator,
16 even noting in that communication that they had a second
17 choice in case a conflict existed.

18 The next month, Arbitrator Cato disclosed her husband,
19 Harry Cato, is a non-lawyer government relations contractor to
20 Nelson Mullins with a non-exclusive arrangement. All of those
21 facts were disclosed, and I'll show those to you.

22 Later that month, after no objections had been received
23 for a two-week period, AAA notified that Arbitrator Cato was
24 appointed because no objections had been received. And then,
25 a few weeks later, we had our first contact with Arbitrator

1 Cato in a case management conference, and that was the first
2 time that I met, so to speak, virtually, Arbitrator Cato.

3 Then, two years later, we have the arbitration before
4 Arbitrator Cato. We had an additional day later that
5 Arbitrator Cato allowed because of some evidence that had not
6 been provided in discovery, and then she issued the award in
7 May 2023. And then the Motion to Vacate was filed after that.

8 And you may have seen in the docket, but the case was
9 briefly in federal court, and we came back here to bring you
10 the Motion to Vacate and Motion to Confirm to decide.

11 But I wanted you to see the multiple events early in the
12 case, years ago when this information about Harry Cato and his
13 contractor relationship to Nelson Mullins had been made known
14 to Dr. Seixas and her counsel.

15 THE COURT: Ms. Thomas, let me ask you something about
16 that really quickly. So that September -- so the August -- do
17 you mind going back? Yeah.

18 MS. THOMAS: Here we go.

19 THE COURT: Thank you. So August 1st is the selection.
20 And in that time period between August 1st and September 1st,
21 is that just the natural time period that an arbitrator has to
22 complete the initial disclosures or...

23 MS. THOMAS: Yes, Your Honor, that was after AAA finds
24 out about the arbitrator selection. They then get the
25 disclosures filled out and submit them to us.

1 So, yes, that's just what happened in that time period.

2 THE COURT: Okay. And then -- and, you know, what I'm
3 going -- getting to with that is, at this time period, whether
4 August or September, I was -- because I assumed the website
5 bio was, I guess -- I mean, from today or recent, but did
6 Mr. Cato appear on the Nelson Mullins website in substantially
7 the same way at that September 1st --

8 MS. THOMAS: Yes, Your Honor.

9 THE COURT: -- point in time as it does today, or what --
10 or as of the date that whatever that was shown to me just now?

11 MS. THOMAS: Yes, Your Honor. The website bio was
12 substantially the same. The LinkedIn bio, the same. The
13 multitude -- many years of ethics disclosures with the State
14 Ethics Commission were available publicly to find out who all
15 he represented and what his arrangements were. All of that
16 was publicly available in the substantially -- in the same
17 form.

18 And I could -- I haven't actually done some kind of
19 electronic comparison, so I'm not saying exactly the same
20 form, but I would be willing to do that comparison and show,
21 if there are any changes, they're probably immaterial.

22 THE COURT: He had a bio on this Nelson Mullins website
23 at that point?

24 MS. THOMAS: Yes.

25 THE COURT: Okay. That's -- okay. Thank you. Yeah.

1 Okay. Yeah, you can proceed. Thank you.

2 MS. THOMAS: And I'll note they have also relied on a
3 press release that Nelson Mullins issued when Mr. Cato joined
4 the firm in this relationship -- this arrangement, I think, in
5 2010, and that was issued back at that time. That was
6 available online also at the time, so...

7 THE COURT: Okay.

8 MS. THOMAS: I wanted to -- I'll just show you these
9 documents from the time period. And these are the key facts
10 to keep in mind throughout all of this argument.

11 We heard a lot about the potential bias and the facts
12 surrounding Harry Cato's, you know, position with Nelson
13 Mullins, and that may have mattered if this were not
14 disclosed, but it was completely disclosed at the outset, and,
15 again, no questions were asked.

16 This is a snapshot of an email. It's an exhibit multiple
17 times over in the pleadings before you, but it's Exhibit 8 to
18 Respondent's opposition to the Motion to Vacate, showing a
19 communication to me where they are naming Kris Cato as their
20 first choice for the arbitrator, even noting here that they're
21 considering whether a conflict issue may exist.

22 And this is another email back to AAA, you can see at the
23 top, noting that they confirmed -- they have agreed with Cato
24 as the arbitrator. And this is another exhibit that our
25 opposition to the Motion to Vacate, Exhibit 9, is part of a

1 longer chain where AAA follows up with us because we were
2 waiting on Petitioner's counsel to tell us who they agreed on.
3 And I responded and said the parties agreed on Cato and this
4 is confirmation that they do agree on Kris Cato as the
5 arbitrator. And, again, this was on August 16th, as you saw
6 from that timeline.

7 Another important fact from that -- from the point of the
8 disclosures forward, even to the date of the arbitration
9 proceeding, they had an ability -- an opportunity to
10 investigate and object to these facts.

11 This shows that the disclosures were made on
12 September 1st, 2021, and there was a specific time period
13 allowed where they could have made objections and investigated
14 and nothing happened in that time period.

15 And here is the actual disclosure that we're discussing.
16 I snapped it out of the document and pasted it here. And the
17 -- again, a lot of weight has been given to the word
18 "indirectly" here.

19 And the "indirectly" -- excuse me -- the "indirectly" is
20 about the arbitrator's relationship to the participants in the
21 proceeding. And from Arbitrator Cato's perspective, that's a
22 correct answer.

23 And she goes on to describe that her husband is a
24 government relations consultant and contracts with Nelson
25 Mullins to perform some governmental relations consulting for

1 some of their clients, not this defendant, not -- he's not an
2 attorney. Provides consulting and lobbying work only.

3 And she goes on then to say, as you did at the beginning
4 of this proceeding, that this will not affect her ability to
5 act impartially in this matter. And they agreed to this and
6 consented and never asked any questions about it.

7 The third important fact to keep in mind -- and we've
8 talked about this already -- all of this information that
9 they're relying on in their Motion to Vacate was publicly
10 available at the time of these disclosures. And I've listed
11 the disclosure itself, the Nelson Mullins profile. There's
12 another reference to Nelson Mullins' website that talks about
13 the different practice areas of the firm, also available then;
14 my profile page showing where I work and what I do, also
15 available; Mr. Cato's disclosures with the Ethics Commission,
16 his LinkedIn profile, and this press release from 2010 that
17 was online that I also mentioned earlier.

18 All of this was available in August and September of 2021
19 when the disclosure was made about Arbitrator Cato's husband
20 being a non-lawyer contractor to Nelson Mullins.

21 And then, finally, Petitioner did not object to the
22 arbitrator's appointment. This is the communication from
23 September 14th where AAA acknowledges that no objection was
24 received and so her appointment is confirmed.

25 And, again, we had a case management conference shortly

1 after that, as shown by this email, and that's the first time
2 I encountered Kris Cato in person, or virtually.

3 So I wanted to show you those documents before -- and
4 I've tried to stop sharing; I don't know if that's worked.

5 Do y'all see the screen?

6 THE COURT: Yeah, you've taken it down.

7 MS. THOMAS: Okay. Thank you. It doesn't look like that
8 from what I'm seeing, but...

9 I wanted to show those facts and those documents so that
10 you are able to found any decisions about the Motion to Vacate
11 in the fact that this information about Harry Cato was known
12 at the time.

13 So the issue here is whether the arbitration award was
14 affected by bias or evident partiality by Arbitrator Cato.
15 And we've discussed one basis that they argue is that Harry
16 Cato, her husband, was an independent contractor to Nelson
17 Mullins, the law firm for Respondent's counsel.

18 And the other ground is that Arbitrator Cato did not
19 disclose her relationship to Lexington Medical Center, a
20 hospital that she joined the board of during the case.

21 Neither of these supports binding bias or evident
22 partiality, so the Motion to Vacate should be denied and our
23 Motion to Confirm should be granted.

24 This also means, as you'll see from the rest of this
25 record, that no discovery is needed, and our motions to -- for

1 protection or to quash are only filed because they serve the
2 discovery and are based primarily on the fact that no
3 discovery is needed. There are additional grounds to discuss
4 if discovery is allowed about the breadth and extent of
5 discovery, but as a, again, foundational matter, it's not
6 needed at all in this case because the record is sufficient,
7 especially given the Court's limited review of arbitration
8 awards and the circumstances surrounding them.

9 So I want to address the two issues that they have argued
10 are -- support evident partiality. And, first, I'll go back
11 to the issue that I will just beat a drum about it. They have
12 waived any argument or objection about Harry Cato and his
13 status with Nelson Mullins. We argued this in our opposition
14 to the Motion to Vacate, which is incorporated in our Motion
15 to Confirm.

16 Based on the arbitration clause, the AAA rules, and the
17 communications with Dr. Seixas's counsel, she knowingly waived
18 her right to object to Harry Cato's relationship to Nelson
19 Mullins when she did not object at the time of the disclosure
20 or at any point before the arbitration award was made.

21 The AAA rules, in fact, say that "any party who proceeds
22 with the arbitration after knowledge that any provision or
23 requirement of these rules has not been complied with and who
24 fails to state objections thereto in writing or in a
25 transcribed record, shall be deemed to have waived the right

1 to object."

2 We presented cases in which the courts have found that a
3 disclosure or an objection about a relationship to support
4 evident partiality had been waived and denied a Motion to
5 Vacate. This is addressed in our opposition, like I said, on
6 pages 23 and 24. So we ask that, if you have any questions
7 about that argument, please let us know.

8 She also cannot establish the grounds to vacate an
9 arbitration award under either the Federal Arbitration Act or
10 the South Carolina Uniform Arbitration Act, again, focusing on
11 the Harry Cato status with Nelson Mullins.

12 One of the (indiscernible; technical issue) that is
13 addressed in our briefing is whether you're applying the
14 Federal Arbitration Act or the South Carolina Uniform
15 Arbitration Act. The arbitration agreement between the
16 parties, which is attached, relies on and says that the
17 proceedings will be governed by the Federal Arbitration Act.
18 And that is what governs this proceeding in your decisions.

19 But the bottom line is that it doesn't matter. The tests
20 that you would be applying, if you're examining whether
21 evident partiality exists, is a test created in the Fourth
22 Circuit in the case ANR Coal vs. Cogenetrix, in which our
23 Supreme Court has adopted in Crouch vs. Causey. So it's the
24 same test either way if you're evaluating evident partiality.

25 Another important factor to consider is -- and I've

1 mentioned this already, but the petitioner's burden to vacate
2 an arbitration award. That's extremely important to consider
3 when especially deciding whether discovery would be necessary.
4 I showed the quote earlier that our Supreme Court -- that
5 arbitration is designed to be the end, not the beginning of
6 legal wrangling, and also that, in that case, the Court
7 acknowledged and reaffirmed the rare and narrow basis upon
8 which courts may disturb an arbitration award.

9 And, in that case, yes, the arbitration award was
10 vacated, but it was an entirely different ground, and it was
11 on the allegation that the arbitrator failed to follow
12 controlling law. That's, obviously, not the situation we have
13 here, and, in fact, that is notable. There are no allegations
14 at all about anything improper or unfair happening in this
15 proceeding. There is no fact, no objective evidence that
16 Arbitrator Cato acted with any partiality at all. The only
17 issue that they are complaining about is the result. They
18 think that the result was unfair. And, again, arbitration is
19 designed to be the end, not the beginning of legal wrangling.

20 Our courts have said that the function of a court in
21 considering a Motion to Vacate is severely limited. Also have
22 said that, "Given the full" -- I'm quoting -- "full scrutiny
23 of such awards would frustrate the purpose of having
24 arbitration at all--the quick resolution of disputes and the
25 avoidance of the expense and delay associated with

1 litigation."

2 So a court's review of an arbitration award, quote, "is
3 among the narrowest known at law."

4 The petitioner and Mr. Bruorton said this earlier, "Must
5 show facts that objectively demonstrate such a degree of
6 partiality that a reasonable person could assume that the
7 arbitrator had improper motives." This is more than just a
8 vague appearance of partiality.

9 One of the pieces of evidence that they argue supports
10 the Motion to Vacate is the affidavit from Barbie Seymour, and
11 we certainly respect Ms. Seymour and her experience in legal
12 ethics in South Carolina, but, unfortunately, that affidavit
13 is not useful in any way in this case. She has no firsthand
14 factual information, and the information that was presented to
15 her and on which she relied is inaccurate; primarily, the
16 affidavit of Dr. Seixas and her conclusions and personal
17 perceptions about the situation and what she saw and, indeed,
18 she says her gut feelings about things. And this was what
19 Barbie Seymour relied on.

20 Some of the assumptions that Seymour relied on in her
21 affidavit factually are contradicted directly by the Cato
22 affidavits, such as that Harry Cato is not an employee, in
23 fact, of Nelson Mullins, he is an independent contractor, and
24 Seymour assumed that he was an employee. And there are
25 multiple other examples of incorrect assumptions on which the

1 the factual opinions are based in that affidavit.

2 In addition, it is based on incorrect law. And
3 Mr. Bruorton mentioned that we didn't oppose the affidavit.
4 That is untrue. There are multiple sections of our brief in
5 opposition to the Motion to Vacate that address the faults
6 with the affidavit, and we would ask that you consider the
7 additional detail.

8 But, primarily, multiple cases in South Carolina say that
9 the code of ethics for arbitrators that Ms. Seymour relied on
10 is not a basis for vacating an award. There's just no dispute
11 about this. It's very clear and stated plainly in cases.

12 So to rely on the code of ethics to say that there's a
13 material conflict is improper and not something that the Court
14 can rely on to decide whether to vacate an award.

15 In addition, the AAA rules that govern this proceeding
16 say you cannot vacate on such a basis. They also -- again,
17 the quote I read earlier -- "Any party who proceeds with the
18 arbitration after knowing that any provision or requirement of
19 these rules has not been complied with and who fails to state
20 objections thereto in writing shall be deemed to have waived
21 the right to object."

22 And now we're at the point of applying the test that I
23 mentioned earlier that had been created by the Fourth Circuit
24 and adopted by the South Carolina Supreme Court, and that is
25 from ANR Coal or Crouch Construction. And Crouch is the South

1 Carolina case.

2 But it has four factors. The first factor is the extent
3 and character of the personal interest, pecuniary or
4 otherwise, of the arbitrator in the proceeding. And
5 Petitioner Seixas has not demonstrated a personal interest of
6 Arbitrator Cato in the proceeding.

7 Her evidence -- again, the affidavits of Barbie Seymour
8 and Dr. Seixas -- are total speculation and are contradicted
9 by the documents and facts in the record, including the Cato
10 affidavits. There is no evidence at all that Kris Cato has
11 any interest in this proceeding.

12 Even for an indirect interest, you have to assume that
13 she benefits from her husband's work, which is not an
14 assumption that can be made. You have to assume that his
15 relationship with Nelson Mullins is of the nature that would
16 show benefits to him from the result in this case. And,
17 again, all of these are assumptions. Even if discovery were
18 made, you have to assume, contrary to Arbitrator Cato stating
19 in her affidavit that none of this had anything to do with her
20 ultimate decision in the case, you have to assume that it did.

21 And, again, with the limited review by this Court of
22 arbitration findings and awards, that's just -- it's improper
23 and against the case law.

24 According to Harry Cato's affidavit, he is not an
25 employee of Nelson Mullins and is not a lawyer. He has a

1 separate business through which he represents clients and only
2 represents some of Nelson Mullins' clients. He has limited
3 access to Nelson Mullins. He is paid as an independent
4 contractor and does not receive any benefits or 401(k) with
5 Nelson Mullins.

6 And, again, this level of detail that has been identified
7 for the potential discovery is simply not the level of detail
8 that meets the Court's expectations for a review of an
9 arbitration award. Again, it's severely limited.

10 Seixas's selection and acceptance of Kris Cato after she
11 disclosed her husband's relationship to Nelson Mullins also,
12 quote, "severely undercuts," end quote, their argument that
13 Cato had a personal interest in the proceeding.

14 In this case ANR Coal that the Fourth Circuit decided
15 that is where the test was created for evident partiality, the
16 Court acknowledged that when -- when the party objecting and
17 alleging evident partiality had known of the relationship and
18 was willing to accept the arbitrator, despite its knowledge of
19 the relationship, that -- again, I'm quoting -- "severely
20 undercut their position of any personal interest by the
21 arbitrator."

22 She knew that relationship needed to be disclosed, and
23 she did disclose it. This instance is not a case of
24 nondisclosure of the relationship to Harry Cato and of his to
25 Nelson Mullins. The disclosure was complete and appropriate,

1 and her lawyers had the burden to inquire or investigate,
2 either through AAA or public information. They have not
3 offered any evidence to explain or demonstrate that they did
4 investigate and this information was not available to them at
5 the time for some reason because it was available at the time.

6 The second factor of the ANR Coal analysis is the
7 directness of the relationship between the arbitrator and the
8 parties she's alleged to favor. Again, the focus of this
9 analysis is on the arbitrator's relationship to the
10 respondents. There is none. You start with Arbitrator Cato.
11 Then you go -- under Petitioner's analysis, you get to go to
12 her husband, who's a contractor to Nelson Mullins and who is
13 not a lawyer, who has limited access, limited presence, and
14 limited contact with the lawyers of Nelson Mullins.

15 And, again, as both I wrote in this filing and he put in
16 his affidavit, he and I don't know each other nor do I know
17 Kris Cato.

18 Then you go from Nelson Mullins to Respondents.
19 Arbitrator Cato herself does not have a relationship to
20 Respondents, and that's important for this factor in the ANR
21 test.

22 The third is the connection of the relationship to the
23 arbitration. Again, there is none between Arbitrator Cato and
24 Respondents. Harry Cato, as a non-lawyer, can't have a
25 lawyer-client relationship with Respondents.

1 The fourth factor is the proximity in time between the
2 relationship and the arbitration proceeding. And, again,
3 there is no relationship between Arbitrator Cato and
4 Respondents. The relationship that was identified is
5 ultimately an attenuated relationship, and Plaintiff -- or
6 Petitioner has waived any objection to it at all.

7 In conclusion, Seixas cannot meet her burden to show
8 objective evidence that a reasonable person would find evident
9 partiality based on the disclosure that was made regarding
10 Arbitrator Cato's husband's non-lawyer contractor relationship
11 with Nelson Mullins.

12 I want to briefly address the Lexington Medical Center
13 appointment. The same analysis applies, though this is a
14 slightly different situation because it is a non-disclosure,
15 and you have to decide whether the non-disclosure itself is
16 material. And we've addressed in the briefing that it is, in
17 fact, the opposite.

18 In arbitrations -- and courts recognize this and
19 arbitration panels recognize this -- having an arbitrator with
20 experience and knowledge of the industry or sector being
21 arbitrated is preferred. And the idea that her relationship
22 to a hospital that has no connection at all to this proceeding
23 or these respondents, the idea that that creates bias or
24 partiality is against all authority on that issue. There,
25 again, is no complaint about the process at all and about how

1 Arbitrator Cato conducted the arbitration. It is about the
2 result.

3 The purported appearance of partiality is not enough to
4 vacate an arbitration award, and no discovery -- and we
5 address this in our opposition to the Motion to Vacate -- no
6 discovery is going to change the facts about the disclosure
7 that was made about Harry Cato or the immateriality of
8 Arbitrator Cato's position on the board of Lexington Medical
9 Center. Again, her affidavit addresses this and provides the
10 facts that she wasn't even appointed to that board until after
11 the arbitration proceeding occurred.

12 She also testified in her affidavit that that position
13 was voluntary and has no bearing on her work as an arbitrator
14 with AAA generally or with respect to this proceeding.

15 So no discovery will change her answer about that, that
16 she acted impartially and that the Lexington Medical Center
17 appointment had no bearing on her decision.

18 Again, Seixas cannot meet her burden to show objective
19 evidence that a reasonable person would find evident
20 partiality based on the non-disclosure of Arbitrator Cato's
21 appointment to the Lexington Medical Center board at the end
22 of this proceeding, and on these grounds, the Motion to Vacate
23 should be denied, and the Motion to Confirm that we filed also
24 should be granted.

25 And if you have any questions, Your Honor, I'd be glad to

1 answer them.

2 THE COURT: Thank you. Thank you, Ms. Thomas, for that.

3 I'm going to ask Mr. Bruorton if he's got a response or
4 does anyone else want to be heard?

5 MS. BALLARD: Your Honor, I had a few comments. This is
6 Desa Ballard again.

7 THE COURT: Yes, ma'am.

8 MS. BALLARD: Very briefly, Your Honor, I'm just speaking
9 to Barbara Seymour's affidavit, which says in paragraph 3,
10 that she is assuming the facts in the Motion to Vacate are,
11 quote, "accurate and complete."

12 As has been pointed out by the documents you have seen
13 and heard about, the facts stated in the Motion to Vacate
14 award are neither accurate nor complete. And the most glaring
15 absence in Ms. Seymour's affidavit is her lack of knowledge of
16 the AAA process.

17 You look at the things in paragraph 4 that she's
18 reviewed, she has no knowledge of the arbitrator selection
19 process and is completely unaware of what the standards are
20 for selecting an arbitrator.

21 So Mr. Bruorton made reference to there being evidence of
22 impartiality through the Seymour affidavit. No, there's not.
23 There's an opinion that there might have been more disclosure,
24 but that's not evidence. That's an opinion, and it's an
25 uneducated opinion because Ms. Seymour has no knowledge of the

1 AAA process, according to her affidavit.

2 Thank you, Your Honor.

3 THE COURT: Thank you, Ms. Ballard.

4 MR. COX: Your Honor, just briefly, I'm Johnston Cox
5 and --

6 THE COURT: Yes, sir, Mr. Cox.

7 MR. COX: -- on behalf of Harry Cato.

8 And I'm just here because there was an attempted service
9 on Mr. Cato at some point for a deposition, which wasn't --
10 which wasn't served. But I -- just very limited. I mean,
11 there has been multiple reference to a self-serving affidavit.
12 I just -- you know, I guess every affidavit could be
13 categorized as self-serving in some form or fashion.

14 But we just -- we just submitted the affidavit just to
15 show that, you know, the disclosure made and that they were
16 well aware of was exactly correct.

17 And just to clear up what Mr. Bruorton said, there wasn't
18 some information or had some questions in it. It's -- the
19 affidavit specifically states that he has only access to the
20 11th floor where he rents his office because it's close to the
21 State House. He does not have access to any other floor other
22 than the 11th floor. There are no litigation attorneys at all
23 located on the 11th floor.

24 And so he has, you know, no access to the litigation side
25 of the business. He doesn't know Ms. Thomas. Never met her.

1 You know, he's only up there in and out of that office, you
2 know, during legislative session, you know, what, two or three
3 times a week, and that's just to come up and -- you know,
4 because that's a place to go when he's not over at the State
5 House and two times a month.

6 So, you know, I just was kind of objecting to the whole
7 self-serving thing. I mean, I would argue that the affidavit
8 of -- I mean -- sorry -- yeah, the affidavit of Ms. Seymour is
9 actually, while not self-serving, somewhat serving to the
10 petitioners in this case.

11 As Desa pointed out, she had no fact. She's giving
12 opinions based on a LinkedIn page? Really? Okay.

13 But that's all I got to say. It seems to me that -- like
14 I say, I have no real dog in the fight, but if they wanted to
15 ask questions about this based on that very clear disclosure
16 that was made at the beginning of the proceedings, they should
17 have done it then. You can't go through an arbitration
18 process, spend a bunch of money, spend a bunch of time, and
19 lose, and then try to look for reasons to go after the award.
20 I mean, they had all the information they needed.

21 THE COURT: Thank you, Mr. Cox.

22 Mr. Bruorton, do you want to respond?

23 MR. BRUORTON: Thank you, Your Honor. I just went back
24 through Ms. Seymour's affidavit. I don't see anywhere in here
25 where she says she doesn't know the AAA process. So I'm not

1 sure where that came from. I mean, she was a lawyer for seven
2 or eight years before she started being a prosecuting attorney
3 for the Office of Disciplinary Counsel. I don't know whether
4 she's familiar with the AAA process or not. I don't know
5 where that comes from. That's not in her affidavit.

6 But she was -- Arbitrator Cato was selected in this -- in
7 this arbitration based off of her profile which showed her
8 experience as an employment lawyer, which this is an
9 employment case.

10 And arbitration -- you saw the quote earlier. It's
11 supposed to be the beginning and the end, but it's also
12 designed to be fair with an impartial -- with an impartial
13 neutral.

14 And I don't take this motion lightly, Your Honor. I've
15 never filed a Motion to Vacate an arbitration award based on
16 bias of the arbitrator. And I can assure you that I have
17 tried a number of arbitrations; some, I've won and some, I've
18 lost. But I've never moved the Court to vacate an award on
19 the basis of bias.

20 So to say that we're just doing this because we lost and
21 we're upset about it, that's untrue. We believe that there is
22 certainly evident partiality here. That's why we've brought
23 it to the Court's attention and asked the Court to make a
24 decision on it.

25 If the Court disagrees with us, the Court disagrees with

1 us, but we believe that there's a basis to bring that to you,
2 and we believe that Barbara Seymour's affidavit clearly shows
3 that a reasonable person could see evidence of bias in this
4 case.

5 As far as what Ms. Seymour relied upon, if you look at
6 Section 4, she does not rely upon any affidavit that was
7 issued by Dr. Seixas. The affidavit that was issued by
8 Dr. Seixas was filed the same date that Ms. Seymour's
9 affidavit was filed. It's not an exhibit to the Motion to
10 Vacate, which she reviewed. It was filed simultaneously. She
11 does not say that she reviewed that affidavit. She says she
12 reviewed the claimant's Motion to Vacate. She reviewed the
13 general arbitrator oath, the State Ethics Commission website,
14 the article that we provided her that we found related to
15 Harry Cato being brought on to advise clients in Nelson
16 Mullins, his online profile, his LinkedIn profile, and then
17 the list of the medical board directors. She doesn't rely on
18 the affidavit of Ms. Seixas to form her opinions.

19 Now, I will say that if the Court is going to allow these
20 affidavits from Ms. Cato and Mr. Cato, then we should be given
21 an opportunity to depose them and question them on the
22 affidavit, just like Respondents' counsel can have the
23 opportunity to depose Ms. Seymour to find out whether she
24 understands the AAA selection process or not.

25 But if you look at the disclosure -- and they made a

1 point that somehow there's an obligation or a burden on behalf
2 of the petitioner's counsel to unturn every stone related to a
3 relationship of the arbitrator's husband is just not a burden
4 that is on us. The burden is on Ms. Cato to make proper,
5 accurate, complete disclosures. She doesn't even give the
6 name of Mr. Cato in her disclosure. If she wanted to let us
7 know that he worked -- and she doesn't say how long that
8 relationship with Nelson Mullins has lasted. She doesn't say
9 that he works out of the same office as the respondent's
10 counsel.

11 You know, that is not our burden to go digging into a
12 spouse of the decision-maker to determine what affiliation
13 there is with the involvement in the case. That is the
14 arbitrator's responsibility, and she failed to make a full and
15 complete disclosure.

16 What she said may be true, but it gives an impression
17 that isn't reality, and that's why we've brought this to the
18 Court.

19 And to completely discount her becoming involved with the
20 board of Lexington Medical Center when we're suing a
21 medical -- a private organization just like one that would be
22 in the same -- operate in the same funding forums as Lexington
23 Medical Center and we're alleging that the practice failed
24 because of unsanitary working conditions, failure to provide
25 necessary equipment to perform procedures, failure to replace

1 damaged or broken equipment, you know, all led to the demise
2 of this urology practice, to say that her being on the board
3 of a similarly situated medical center is not relevant to this
4 case, I disagree, and it's something that we should have known
5 about, and it was completely not supplemented in her
6 disclosure, which she had an obligation to do.

7 It's a continuing obligation. She didn't fulfill that
8 continuing obligation. And we are entitled to have this case
9 before an impartial neutral. And we believe that, in order to
10 do that, it needs to be tried in somebody -- in front of
11 somebody other than Ms. Cato because of what the evidence has
12 shown through our Motion to Vacate.

13 At a minimum, we should be allowed to do additional
14 discovery to develop these points further including, you know,
15 getting the documentation that we've requested in our
16 subpoenas and taking the depositions that we've requested
17 through our deposition notices.

18 I appreciate your time today, Your Honor. You've been
19 very receptive. I've watched -- I've never been in front of
20 you before, but I've watched your hearings today, and you
21 certainly gave everybody an opportunity to state their
22 position, and I appreciate that because it gives us -- I think
23 I speak for everybody when I say it gives us an opportunity to
24 at least feel like we've been heard, even if you rule against
25 us. So I appreciate that.

1 THE COURT: Thank you. Thank you, Mr. Bruorton.

2 Does anyone have anything to add to this motion?

3 MS. THOMAS: Your Honor, I'll be very brief, if that's
4 all right.

5 THE COURT: That's fine.

6 MS. BALLARD: I have nothing further. Thank you.

7 THE COURT: All right. Thank you.

8 MS. THOMAS: Thank you. I wanted to point Your Honor to
9 the South Carolina case I mentioned that adopts that test for
10 evident partiality, the Crouch Construction Company case, and
11 it goes to several of the points that have been re-raised.

12 But as to the completeness of the disclosure made by
13 Arbitrator Cato -- and, again, a reminder: No follow-up was
14 done about that. No questions were asked. No objections were
15 raised.

16 Our Supreme Court has said, "An arbitrator is not
17 required to provide the parties with his complete and
18 unexpurgated business biography or disclose interest or
19 relationships that are merely trivial."

20 Arbitrator Cato disclosed the relationship, and she had
21 no obligation to go into every detail imaginable about that
22 relationship. It was on Dr. Seixas herself and her lawyers to
23 ask questions and find out more information. The documents
24 from AAA repeatedly state that and provided an opportunity for
25 that and nothing was done.

1 And, again, in that case, the Supreme Court also says,
2 "We seek to discourage the losing party to every arbitration
3 from conducting a background investigation of each of the
4 arbitrators in an effort to uncover evidence to have the
5 arbitration award set aside."

6 Again, that is what is attempting to be done here, and we
7 request Your Honor deny the Motion to Vacate.

8 THE COURT: Okay. Thank you. Thank you, Ms. Thomas.

9 Well, you-all have given me a lot to consider here, and I
10 will do that. I'm going to take this motion under advisement.

11 Ms. Thomas, I understand -- I know you have a Motion to
12 Confirm the award. Is that essentially a reciprocal motion?
13 I mean, do you need to make additional arguments on that?

14 MS. THOMAS: No, Your Honor, I don't. The motion -- the
15 grounds for a confirmation are very defined, and the only one
16 that would really be at issue here, I think, is whether
17 there's a ground to vacate. So if you find that there is no
18 ground to vacate, then -- and the statute actually says you
19 shall confirm the award. And in South Carolina, the
20 statute -- that's the Federal Arbitration Act. The South
21 Carolina statute says that you shall confirm an arbitration
22 award if one is presented to you.

23 THE COURT: Okay.

24 MR. BRUORTON: Your Honor, I don't -- I don't disagree
25 with that at all. The only timeline in the statute is that

1 you got 90 days to file a Motion to Vacate, and you can't
2 confirm an award until -- if that Motion to Vacate is filed
3 before, you know, you hear the Motion to Vacate.

4 So I agree with Ms. Thomas. Your ruling on the Motion to
5 Vacate will certainly dictate how you handle the Motion to
6 Confirm. We have no further arguments against that other than
7 what's been presented to the Court.

8 THE COURT: Okay. Well, then -- then I'll have that one
9 under advisement as well.

10 So, with that, how do we need to handle these discovery
11 motions? Do you want to go ahead and --

12 MS. THOMAS: Those are our motions, Your Honor, because
13 they are for protection and to quash. And the primary basis
14 for those motions is that the discovery is premature. It was
15 served while the -- I mean, while these motions have been
16 pending, and our position is that you decide whether discovery
17 is appropriate. So we would await your decision.

18 And I guess, at this point, if you're taking those under
19 advisement, we would ask that you hold those in abeyance at
20 this point.

21 And they do also address the scope of the discovery, and
22 we would probably address that later, unless -- or do you want
23 to address it now?

24 THE COURT: I mean, that's fine with me, but I don't know
25 -- hold me, let me just make sure.

1 But, Mr. Cox, you've got a Motion to Quash as well; is
2 that correct?

3 MR. COX: I do, Your Honor, but it's based on a
4 deposition subpoena that's long past. I mean, so it's
5 probably actually moot at this point because I think the time
6 for the deposition has already passed.

7 And I think everybody agreed, "Hey, we want to have this
8 hearing first before we, you know, really get into all that."

9 THE COURT: Okay. Well, I'm happy to do that now
10 however. If we're holding it in abeyance is the -- that
11 Motion to Quash --

12 MR. BRUORTON: What I would propose, Your Honor, is if --
13 if you decide that we're entitled to do discovery and I can't
14 work with these lawyers to narrow or tailor the scope of what
15 we're looking for and we need to come back to you, we will.
16 Obviously, if you deny the motion to do discovery and to
17 vacate, there's no need for that.

18 So I think that, you know, my -- the reason I wanted it
19 continued was to have a decision whether we can do discovery
20 or not. You've heard the Motion to Vacate, and I think you
21 can make a preliminary ruling on the Motion to Discovery
22 within your Order on how you rule with regards to that.

23 And if you decide that we're entitled to do discovery
24 before you make a definitive decision on the Motion to Vacate,
25 then I'll work with these lawyers to figure out what the scope

1 of that discovery is.

2 THE COURT: Okay. Well, that sounds good to me. And
3 then, essentially, all this will be under advisement and will
4 issue Orders accordingly.

5 Is there anything else that I need to hear from the
6 parties before we conclude?

7 MS. BALLARD: Nothing from Ms. Cato. Thank you, Your
8 Honor.

9 THE COURT: Okay. Thank you.

10 MR. BRUORTON: Nothing else, Your Honor. Thank you.

11 THE COURT: Okay. Well, thank you all. I appreciate
12 your -- the thoroughness of your preparation and giving me all
13 the information I'm going to need to make decisions. Thank
14 you.

15 MR. BRUORTON: Thank you, Your Honor.

16 MS. BALLARD: Thank you.

17 MS. THOMAS: Thank you.

18 THE COURT: All right. Have a good afternoon.

19 (The above hearing concluded.)
20
21
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23
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25

Certificate of Transcriber

CASE NAME: Mikelus v. Tenet Healthcare

DATE OF HEARING: 12/18/24

RECORDING METHOD: WebEx Recording

I, Bobbi Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that I was not present for the live proceeding; and that said proceedings were transcribed to the best of my ability from the audio and/or video recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case; and I have no interest, financial or otherwise, in its outcome.



/s/ Bobbi Fisher_____

Bobbi Fisher, SC Official Court Reporter III, RPR

Transcript Prepared: 4/26/26

NOTE: THIS TRANSCRIPT IS MADE EXCLUSIVELY FOR THE REQUESTOR ON FILE AND SHALL NOT BE SHARED WITH OPPOSING COUNSEL. PURSUANT TO RULE 607(h)(1)(B), SCACR, A COURT REPORTER/TRANSCRIBER SHALL BE COMPENSATED FOR A COPY OF THIS TRANSCRIPT. IF A COPY OF THIS TRANSCRIPT IS NEEDED, PLEASE CONTACT ME AT BOBBI@TOPDOGTRANSCRIPTS.COM.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
J. Derham Cole, Jr., Circuit Judge

Court of Common Pleas Case No. 2023CP1003391

Stéfanie Seixas-Mikelus, M.D.,

Appellant,

v.

Tenet Healthcare Corporation, Tenet Physician Resources, LLC, and East Cooper
Physician Network, LLC,

Respondents.

NOTICE OF APPEAL

Appellant Stéfanie Seixas-Mikelus, M.D. appeals the order of the Honorable J. Derham Cole, Jr., dated February 25, 2026, which denied Appellant Stéfanie Seixas-Mikelus, M.D.'s Motion to Vacate Arbitration Award and granted Respondents' Motion to Confirm Arbitration Award. Judge Derham's order is attached hereto as Exhibit A.

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Charleston, South Carolina
March 25, 2026

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
J. Derham Cole, Jr., Circuit Judge

Court of Common Pleas Case No. 2023CP1003391

Stéfanie Seixas-Mikelus, M.D.,

Appellant,

v.

Tenet Healthcare Corporation, Tenet Physician Resources, LLC, and East Cooper
Physician Network, LLC,

Respondents.

PROOF OF SERVICE

I hereby certify that on March 25, 2026, I have served the Notice of Appeal on the Respondent by email, pursuant to The Supreme Court of South Carolina's Order, dated August 25, 2021, to the attorneys of record as follows:

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Charleston, South Carolina
March 25, 2026

Exhibit A

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Stéfanie Seixas-Mikelus, M.D.

Petitioner,

v.

Tenet Healthcare Corporation, Tenet Physician
Resources, LLC, and East Cooper Physician
Network, LLC.

Respondents.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO.: 2023-CP-10-03391

**ORDER DENYING VACATUR AND
CONFIRMING ARBITRAL AWARD**

Petitioner's and Respondents' cross-motions to vacate and to confirm the arbitration award in this matter, respectively, came before this Court on December 18, 2024. James Atkinson Bruorton IV appeared on behalf of Petitioner Stéfanie Seixas-Mikelus, M.D. Carmen Harper Thomas appeared on behalf of Respondents. Desa Ballard appeared on behalf of Arbitrator Kristine L. Cato. Johnston Cox appeared on behalf of Harry F. Cato. Bill Wood appeared on behalf of Nelson Mullins Riley & Scarborough, LLP. The motions before this Court present the question of whether the mutually agreed-upon Arbitrator Kristine L. Cato demonstrated evident partiality in favor of the Respondents such that the underlying arbitral award in favor of Respondents must be vacated. Petitioner's motion to vacate also includes a motion to conduct limited discovery and an evidentiary hearing pertaining to her motion.

BACKGROUND

Petitioner is a urologist with specialization in robotics-based treatment. The parties entered into a five-year employment agreement and opened Petitioner's urology practice June 1, 2019. Petitioner began seeing patients in July of 2019. Eighteen months thereafter, in December of 2021, the parties began to have disagreements on material terms in Petitioner's employment agreement. Respondents terminated her employment without cause that same month pursuant to the parties' agreement. Petitioner initiated arbitration proceedings against Respondents in July of 2022. In her Demand for Arbitration, Petitioner brought claims for breach of contract, breach of implied covenant of good faith and fair dealing, and wrongful termination in violation of public policy.

The parties mutually selected Kristine L. Cato, Esq. to arbitrate the claims. Arbitration hearings on the matter took place on February 1 and 2, and March 1, 2023. On May 26, 2023, Arbitrator Cato issued a Final Award finding that Petitioner failed to meet the burden of proof as to any claims and entered judgment in favor of Respondents.

Following the issuance of the Final Award on July 13, 2023, Petitioner filed this Motion to Vacate Arbitration Award. Respondents removed the matter to the United States District Court on August 11, 2023, and the federal court remanded it to the Circuit Court on April 30, 2024. Respondents filed their Motion to Confirm Arbitration Award September 19, 2024.

In her Motion to Vacate, Petitioner claims that Arbitrator Cato made untruthful, incomplete and misleading disclosures in the materials provided to Petitioner for her assessment. Specifically, Petitioner claims that Arbitrator Cato failed to appropriately disclose or downplayed her professional and business relationship with Nelson Mullins Riley & Scarborough LLP (“Nelson Mullins”), the law firm representing Respondents in the arbitration. The nexus of that relationship is Arbitrator Cato’s husband, Harry F. Cato, a non-attorney government relations consultant who has a contractual relationship with Nelson Mullins pursuant to which he provides consulting services to certain of Nelson Mullins’ clients. Petitioner also claims that Arbitrator Cato failed to update her disclosures and inform the parties of her election to the Board of Directors of Lexington Medical Center on March 1, 2023.

STANDARD OF REVIEW

The preference for the arbitration of legal disputes is well established in South Carolina. *Batten v. Howell*, 300 S.C. 545, 547, 389 S.E.2d 170, 172 (1990). *See Waldo v. Cousins*, 442 S.C. 662, 664, 901 S.E.2d 276, 278 (2024) (acknowledging the rare and narrow basis the court may disturb an arbitration award). “Upon application of a party, the court shall vacate an award where: [t]here was evident partiality by arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party.” S.C. Code Ann. §15-48-130 (a)(2).¹ “The language of the statute requires the party seeking vacatur to demonstrate ‘that a reasonable person would have to conclude that an arbitrator was partial to the other party to the arbitration.’”

¹ As Respondents note in their Opposition to Petitioner’s Motion to Vacate Arbitration Award, Petitioner moves to vacate the judgment pursuant to S.C. Code Ann. §15-48-130 (a)(2) of the South Carolina Uniform Arbitration Act. Respondents argue the Federal Arbitration Act (“FAA”), applied to this dispute, the relevant section of which is 9 U.S.C. §10. Respondents further note that either section sets a standard of evident partiality for vacatur of an arbitral award. The South Carolina Supreme Court has incorporated the FAA test for evident partiality as described in *Crouch Const. Co. v. Causey*, 405 S.C. 155, 165-66, 747 S.E.2d 482, 487-88 (2013).

Crouch Const. Co., Inc. v. Causey, 405 S.C. 155, 168, 747 S.E.2d 482, 489 (2013) (citing *ANR Coal Co. v. Cogentrix of North Carolina*, 173 F.3d 493 (4th Cir. 1995)). “The party asserting bias ‘must establish specific facts that indicate improper motives on the part of an arbitrator.’” *Id.* (citing *Freeman v. Pittsburgh Glass Works, LLC*, 709 F.3d 240, 253 (3d Cir. 2013)).

“A court should examine four factors to determine if a claimant has demonstrated evident partiality: (1) the extent and character of the personal interest, pecuniary or otherwise, of the arbitrator in the proceeding; (2) the directness of the relationship between the arbitrator and the party he is alleged to favor; (3) the connection of that relationship to the arbitration; (4) the proximity in time between the relationship and the arbitration proceeding.” *ANR Coal*, 173 F.3d at 500 (quoting *Consolidation Coal Co. v. Local 1643, United Mine Workers of America*, 48 F.3d 125, 130 (4th Cir. 1995)).

“The word ‘evident’ suggests that the [FAA] requires more than a vague appearance of bias. The arbitrator’s bias must be sufficiently obvious that a reasonable person would easily recognize it.” *Crouch Const. Co.*, 405 S.C. at 166 (internal citations omitted). The *Crouch Const. Co.* court explicitly rejects an “appearance-of-bias” standard in favor of a standard in which a party seeking vacatur must demonstrate that a reasonable person would have to conclude that an arbitrator was partial to the other party in the arbitration. *Id.* (internal quotations and citations omitted). The movant carries a heavy burden to meet this onerous standard. *Crouch Const. Co.*, 405 S.C. at 168.

ANALYSIS

A. Evident Partiality

In this case, Petitioner has not met the onerous burden required to vacate the arbitrator’s award. Specifically, she has not demonstrated to the Court the specific facts as required in *Crouch Const. Co.*, to satisfy the evident-partiality standard. In her motion for vacatur, Petitioner cites two alleged examples of evident partiality on the part of Arbitrator Cato:

1. In her disclosures provided to the parties in connection with her selection as arbitrator in this case, Arbitrator failed to adequately disclose the nature of her husband’s relationship with the law firm representing the Respondents in the arbitration.
2. A failure on the part of Arbitrator Cato to update her disclosures during the pendency of the arbitration to reflect her appointment to the Board of Directors of Lexington Medical Center.

The three disclosures in Arbitrator Cato's disclosure document Petitioner alleges are untruthful, incomplete and/or misleading are as follows:

3. *Have you had any professional or social relationship with counsel for any party in this proceeding or the firms for which they work?* Answer: NO.

5. *Have you had any professional or social relationship of which you are aware with any relative of any of the parties to this proceeding, or any relative of counsel to this proceeding, or any of the witnesses identified to date in the proceeding?* Answer: NO.

14. *Are there any connections, direct or indirect, with any of the case participants that have not been covered by the above questions?* Answer: YES. Comments: Indirectly. My husband is a government relations consultant and contracts with Nelson Mullins to perform some governmental relations consulting for some of their clients, although NOT the defendant in this matter. He is not an attorney and provides consulting and lobbying work only. This will not affect my ability to act impartially in this matter.

15. *Are you aware of any other information that may lead to a justifiable doubt as to your impartiality or independence or create an appearance of partiality?* Answer: NO.

In *Crouch Const. Co.*, the South Carolina Supreme Court drew a distinction between a violation of the South Carolina Code of Ethics for Arbitrators and a factual showing that justifies vacating an arbitration award. *Crouch Const. Co.*, 405 S.C. at 164. This Court is not suggesting there was a breach of the applicable code of ethics, and that issue is not before the Court, although it is referenced in Petitioner's expert affidavit submitted in connection with her motion to vacate. Rather, this Court notes the distinction to underscore the appropriate standard of review to be applied to the decision of whether or not to vacate an arbitration award on the basis of evident partiality.

Conducting an analysis of evident partiality requires a court to examine four factors as to both of Petitioner's allegations of bias. They are:

1. The extent and character of the personal interest, pecuniary or otherwise, of the arbitrator in the proceeding;

2. The directness of the relationship between the arbitrator and the party she is alleged to favor;
3. The connection of that relationship to the arbitration; and
4. The proximity in time between the relationship and the arbitration proceeding.

Turning to each allegation of acts or omissions Petitioner's have alleged against Arbitrator Cato in this case, the Court examines the four factors as to each.

1. Relationship to Respondents' Law Firm

Petitioner has not alleged any significant personal interest of Arbitrator Cato in this proceeding. The record reflects no relationship or personal interest in or with any party to the proceeding or otherwise. The Petitioner's complaint is centered on Arbitrator Cato's spousal relationship with Harry Cato, who is a non-lawyer contractor for the law firm representing Respondents in this matter. His work is in the area of governmental relations, and he did not represent any of the Respondents in his contracted work.

This is not a "non-disclosure" case as to her spousal relationship, as the court decided in *Crouch Const. Co.* Arbitrator Cato specifically indicated that she had an indirect relationship with the case participants to the extent of her relationship with her husband, as described above. Petitioner alleges Arbitrator Cato downplayed the extent of her husband's affiliation with Respondents' law firm. Once Petitioner was on notice of the affiliation during the arbitrator selection process, however, she had ample opportunity to conduct due diligence on the nature, extent, and character of Harry Cato's affiliation with Respondents' law firm, including but not limited to his office address, website biography, and the length of his affiliation with the law firm. The record does not reflect any contemporaneous objections to Arbitrator Cato's selection to arbitrate this case or any further investigation into her indirect connection to Respondents' law firm.

The connection of the relationship to the arbitration is tenuous at best. The "indirect" relationship, as Arbitrator Cato characterized it, consists of her relationship with her husband, who serves as a non-lawyer contractor for Respondents' law firm. In that capacity, he represents various clients before governmental bodies, but notably had no representational relationship with the parties to the arbitration. The proximity-in-time factor was contemporaneous, inasmuch as Harry Cato served as a contractor for Nelson Mullins during the arbitration, but that timing is

immaterial to the Court's analysis as to whether the relationship between Arbitrator Cato and Respondents' law firm established evident partiality. It did not.

2. *Arbitrator Cato's Election to the Lexington Medical Center Board of Directors*

Arbitrator Cato's election to the Board of Directors of Lexington Medical Center did not give rise to any demonstrable evident partiality in this case. That role did not confer any personal interest in the arbitration. Lexington Medical Center had no role whatsoever in the underlying arbitration. Furthermore, it had no bearing on any relationship Arbitrator Cato had, however attenuated, with Respondents in this matter. The Court does not find any connection between that relationship and the arbitration. Finally, Arbitrator Cato's election to the Lexington Medical Center Board of Directors occurred well into the arbitration proceedings.

B. Petitioner's Request for Limited Discovery and Evidentiary Hearing

In connection with her Motion to Vacate, Petitioner seeks an evidentiary hearing as well as limited discovery, including, but not limited to the issuance of various subpoenas, which have been subject to motions to quash. Respondents object, as have various parties to whom subpoenas have been issued.

"Arbitration proceedings are summary in nature to effectuate the national policy of favoring arbitration, and they require 'expeditious and summary hearing, with only restricted inquiry into factual issues.'" *O.R. Securities, Inc. v. Professional Planning Associates, Inc.*, 857 F.2d 742 (11th Cir. 1988)(citing *Legion Insurance Co. v. Insurance General Agency, Inc.*, 822 F.2d 541, 543 (5th Cir.1987) (quoting *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 22, 103 S.Ct. 927, 940, 74 L.Ed.2d 765 (1983)).

The Court finds the record before it sufficient to determine whether or not Petitioner has satisfied her burden of demonstrating evident partiality on the part of Arbitrator Cato. As to the indirect connection with Respondents' law firm, Petitioner had notice and opportunity to inquire further into that connection prior to Arbitrator Cato's selection as arbitrator in this case, and potentially decline to select her to arbitrate the case. Therefore, the Court declines to permit additional discovery or evidentiary hearings on that issue. *O.R. Securities, Inc.*, 857 F.2d 742, 749. As to the issue of Arbitrator Cato's service on the Lexington Medical Center's Board of Directors, Petitioner must establish more than an appearance-of-bias. She has not alleged facts sufficient to demonstrate that Arbitrator Cato's election to the Lexington Medical Center's Board of Directors meets the required evident-partiality standard as detailed in this Order and the

supporting case law. Likewise, Arbitrator Cato's failure to update her disclosures to reflect her election to that board of directors did not establish evident partiality under the standard the Court is required to employ. This Court declines to permit additional discovery or an evidentiary hearing on that issue.

CONCLUSION

The Court hereby orders the following in this matter for the reasons stated hereinabove:

1. Petitioner Stéfanie Seixas-Mikelus' Motion to Vacate Arbitration Award is **DENIED**;
2. Respondents' Motion to Confirm Arbitration Award pursuant to S.C. Code Ann. §15-48-120 is **GRANTED**;
3. Judgment shall be **ENTERED** pursuant to S.C. Code Ann. §15-48-150;
4. Petitioner's Motion for Leave to Conduct Limited Discovery is **DENIED**, including any subpoenas or discovery requests issued prior to the hearing in this matter;
5. Petitioner's Motion for an Evidentiary Hearing is **DENIED**; and
6. Each party shall bear their own costs and fees.

[Electronic Signature Page Follows.]



Charleston Common Pleas

Case Caption: Stefanie Seixas Mikelus VS Tenet Healthcare Corporation ,
defendant, et al
Case Number: 2023CP1003391
Type: Order/Other

IT IS SO ORDERED!

s/ J. Derham Cole, Jr. 2789

Electronically signed on 2026-02-25 15:46:53 page 8 of 8

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP1003391

Stefanie Seixas Mikelus
PLAINTIFF(S)

Tenet Healthcare Corporation et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

This matter was before the Court on Petitioner's motion to vacate an arbitral award. Respondents moved to confirm the arbitral award and have judgment entered thereon.

The Court, via separate order to be filed contemporaneously herewith, finds in favor of Respondents. The arbitral award is confirmed and judgment entered in favor of Respondents Tenet Healthcare Corporation, Tenet Physician Resources, LLC, and East Cooper Physician Network, LLC.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/25/2026 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Charleston Common Pleas

Case Caption: Stefanie Seixas Mikelus VS Tenet Healthcare Corporation ,
defendant, et al
Case Number: 2023CP1003391
Type: Order/Electronic Form 4

IT IS SO ORDERED!

s/ J. Derham Cole, Jr. 2789

Electronically signed on 2026-02-25 15:41:42 page 3 of 3

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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October 2, 2026

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