THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
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S.C. SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
Carmen Mullen, Circuit Court Judge

Appellate Case No. 2026-001886
Case No. 2020-CP-07-0065

Sandra Holland, as Administrator of the Estate of Christopher Lee Holland, deceased, and Saleena Ramm, as Parent and Natural Guardian of R.D.H., a Minor Child of Decedent Christopher Lee Holland …… Respondents,

v.

David A. Brosman, M.D., Pain Management ASC, LLC, MPS Solutions, Inc., Anesthesia Associates of Hilton Head Pain Management, LLC, ... Petitioners.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for the Petitioners certifies that the Petition for Rehearing was made and finally ruled on by the South Carolina Court of Appeals on October 16, 2026.

QUESTION PRESENTED

(1) Did the South Carolina Court of Appeals err in dismissing the Petitioners' appeal of an order deciding the choice of law issue and striking all asserted defenses under Georgia law?

STATEMENT OF THE CASE

This is a medical malpractice/duty to warn action arising from a motor vehicle accident that occurred in Effingham County, Georgia. The decedent, Christopher Lee Holland, was a resident of Georgia. The decedent's estate is administered in the State of Georgia. The Personal Representative and the only statutory beneficiary, who is also named as a plaintiff in accordance with Georgia law, was domiciled in the State of Georgia at the time of the accident. The decedent's injuries and death as well as any injuries to the statutory beneficiary occurred in the State of Georgia. Moreover, the Petitioners' patient who was also involved in the motor vehicle accident, James Sanders, is a resident of the State of Georgia, and his tort liability for the accident was subject to Georgia law.[1]

The Petitioner David A. Brosman, M.D. and his practice (also named as Petitioners) provided treatment to James Sanders for pain management in his office located in South Carolina. There is no physician-patient relationship between Dr. Brosman and the decedent, Christopher Lee Holland, nor with any of the statutory beneficiaries.

The Respondents filed this action in 2020 in the Beaufort County Court of Common Pleas. The parties do not agree on the governing law. The Petitioners contend that, pursuant to the prevailing choice of law rule under South Carolina law, which is *lex loci delicti*, the law of Georgia governs in this action. The Respondents, in contrast, contend that the law of South Carolina governs.

[1] In fact, there was previously a civil action brought by the Respondents against Sanders in Georgia state court.

At the hearing held on July 30, 2026, the parties agreed that the choice of law issue, which may be adjudicated on undisputed facts, was to be decided as a question of law by the trial court and that the issue required adjudication prior to the commencement of the trial.

In her order filed August 24, 2026,[2] Circuit Court Judge Carmen T. Mullen granted the motion in limine which fully adjudicated the choice of law issue. Judge Mullen first noted that "[t]he parties agree that the question of which state's substantive law governs this action is a question of law for the Court and that it must be answered before the trial scheduled to begin on August 31, 2026." (App. 6). Then, in a detailed, twelve-page opinion, Judge Mullen made a final ruling on the choice of law issue and determined that "substantive South Carolina law governs this action." (App. 17). As she further ruled, "[b]ecause the substantive law of South Carolina governs, the defenses the Defendants assert under Georgia law, including Georgia's privity requirement and its two-year statute of limitations, are unavailable." (App. 16).

On that same date, August 24, 2026, Judge Mullen issued a separate order, which applied the substantive law of South Carolina, and ruled that "the Plaintiffs' available theory of liability is limited to a duty to warn claim." (App. 20). Citing this Court's holding in *Hardee v. Bio-Medical Applications of South Carolina, Inc.*, 370 S.C. 511, 636 S.E.2d 629 (2006), Judge Mullen ruled "as a matter of law that the only duty of care owed by a physician to a non-patient third party is a duty to warn the patient of 'the attendant risks and effects of any treatment.'" (App. 23). She further ruled that "there is no duty of care owed *directly* to the non-patient third party or even generally to the motoring public." (App. 23). (Emphasis in original).

On August 25, 2026, the Petitioners filed a timely appeal from the trial court's order granting the motion in limine which adjudicated the choice of law issue. The Respondents then

[2] The trial court's order is incorrectly captioned as "Proposed Order."

filed a motion to dismiss the appeal in which they argued that the trial court's order is not immediately appealable. (App. 25-37). The Petitioners disagreed and opposed that motion. (App. 112-122).

The motion was heard on an expedited basis by a single judge of the Court of Appeals, who issued a three-page order on August 28, 2026, dismissing the appeal "because the order on appeal is interlocutory and not immediately appealable." (App. 3). The Petitioners subsequently filed a petition for rehearing, which was summarily denied by a three-judge panel of the Court of Appeals without providing any analysis of the appealability issues. (App. 4).

The Petitioners now seek a writ of certiorari in this Court.

ARGUMENTS

I. The South Carolina Court of Appeals erred in dismissing the Petitioner's appeal of an order deciding the choice of law issue which struck all asserted defenses under Georgia law.

Under South Carolina law, the right of appeal arises from and is controlled by statutory law, specifically Section 14-3-330 of the Code of Laws. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707, 708 (2005). "An appeal ordinarily may be pursued only after a party has obtained a final judgment." *Id*. "A final judgment is one that ends the action and leaves the court with nothing to do but enforce the judgment by execution." *Tillman v. Tillman*, 420 S.C. 246, 801 S.E.2d 757, 759 (Ct. App. 2017). "An order reserving an issue, or leaving open the possibility of further action by the trial court before the rights of the parties are resolved, is interlocutory." *Id.*

However, under Section 14-3-330(1), an interlocutory order "involving the merits" is subject to an immediate appeal. An order "involves the merits" when it "finally determines some substantial matter forming the whole or a part of some cause of action or defense." *Jefferson by Johnson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 368 S.E.2d 456, 456 (1988). Additionally, "[i]nterlocutory orders affecting a substantial right may be immediately appealed pursuant to § 14-3-330(2). Orders affecting a substantial right discontinue an action, prevent an appeal, grant or refuse a new trial, or *strike out an action or defense*." *Edwards v. SunCom*, 369 S.C. 91, 631 S.E.2d 529, 530 (2006). (Emphasis added).

The Court of Appeals, acting through the single judge, erred in finding the trial court's August 24, 2026 order to be "not immediately appealable." (App. 3). That ruling is then followed by a string citation that does not address the specific rulings made by the trial court in

this case and cites case law inapplicable to the appealability question which was before that Court. In then dismissing this appeal, the single judge, as later summarily affirmed by a three-judge panel, overlooked or misapprehended that the order on appeal does actually meet the requirements of both Section 14-3-330(1) and Section 14-3-330(2) for an immediate appeal of an interlocutory order. As discussed above, the trial court issued an order fully adjudicating the choice of law issue, which is the controlling issue at the very heart of this litigation. The trial court determined as a question of law and based on undisputed facts (as stipulated by the parties) that the substantive law of South Carolina governs. The trial court made that ruling by applying the seldom-used exception to the rule of *lex loci delicti* and finding that the public policy of South Carolina requires that South Carolina law be applied. Further, and most significantly to the appealability issue, the trial court found that "the defenses the Defendants assert under Georgia law, including Georgia's privity requirement and its two-year statute of limitations, are unavailable," which struck those defenses. (App. 16).[3] With that ruling on the choice of law, it

[3] While the Petitioners recognize that it is premature to fully argue the merits of the choice of law issues which are presented for appeal, the Petitioners include a brief explanation of the defenses available under Georgia law for proper context in evaluating the appealability question before this Court. In particular, if the substantive law of Georgia is applied to this case, the Petitioners take the position that the Respondents are barred from any recovery. Of note, the Respondents have never challenged the applicable Georgia law, as raised by the Petitioners, nor disputed that their claims are barred under Georgia law. The Respondents have only argued that Georgia law does not govern.

Thus, if the substantive law of Georgia is applied, there is no dispute that the Respondents' medical malpractice claim against the Petitioners is barred as a matter of law. Georgia law requires a physician-patient relationship as a prerequisite to bringing a medical malpractice cause of action. There was no physician-patient relationship between the Petitioners and the decedent Christopher Holland and/or the Respondent Saleena Ramm, and as a result, the Respondents' medical malpractice claim would be barred as a matter of law under Georgia law.

In the case of *Shortnacy v. North Atlanta Internal Medicine*, 252 Ga. App. 321, 556 S.E.2d 209 (2001), the Georgia Court of Appeals held that third parties who were injured by a patient who drove after taking Demerol and Phenergan could not maintain a medical malpractice

is clear that the trial court's order on appeal "involves the merits" because that order "finally determines some substantial matter forming the whole or a part of some cause of action or defense." The choice of law issue, as fully adjudicated by Judge Mullen's detailed order, is at the heart of this litigation, and hence, there is appellate jurisdiction under Section 14-3-330(1). Moreover, the trial court's order "struck out" the defenses available to the Petitioners under Georgia law – such defenses that indisputably defeat the Respondents' claims (see footnote three above). As discussed at length in the lower court, the net effect of the trial court's decision to apply substantive South Carolina law is to grant the Respondents, who are all Georgia citizens, greater substantive rights that they do not enjoy in their own state and under their own laws. In sum, based on the case law interpreting Section 14-3-330(1) and Section 14-3-330(2), the choice of law order filed August 24, 2026 should be deemed immediately appealable.

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cause of action against the treating doctor because no physician-patient relationship existed between the injured persons and the doctor.

The case of *Gilhuly v. Dockery*, 273 Ga. App. 418, 615 S.E.2d 237 (2005), is also dispositive. The plaintiffs brought a medical malpractice for their injured children. The children were injured in a motor vehicle accident caused by their mother who was driving. Prior to the accident, the mother had been prescribed Demerol and Phenergan at the hospital and was discharged without being warned not to drive. The Georgia Court of Appeals reversed a denial of summary judgment finding that there was no physician-patient relationship between the sons and the doctor who was sued. The Court explained that "Georgia law is clear that physician-patient privity is an absolute requirement for the maintenance of a professional malpractice action." 615 S.E.2d at 238. There are two narrow exceptions to the general rule, but neither applied. The Court concluded that "Dr. Gilhuly had no duty to the sons here, as they were not his patients." 615 S.E.2d at 239.

In addition, as mentioned by the trial court in its order, Georgia law provides for a two-year statute of limitations for medical malpractice actions. *See*, O.C.G.A. § 9-3-71(a). The Notice of Intent to Sue was filed in this case on October 11, 2019. The date of the accident was October 13, 2016. The case is thus barred by the two-year statute of limitations under Georgia law.

As indicated, in denying the immediate appealability of the trial court's order, the Court of Appeals focused on the fact that the trial court denied the Petitioners' motion for summary judgment and *disregarded entirely* that the trial court actually *granted* the motion in limine on the choice of law issues, and it was *that* ruling which aggrieves the Petitioners by rejecting the application of Georgia law, "including Georgia's privity requirement and its two-year statute of limitations," which defenses the trial court ruled "are unavailable." (App. 16). Instead of addressing the motion in limine which was granted in the Respondents' favor, the Court of Appeals erred in treating the order on appeal solely as a denial of a motion for summary judgment.

As the Petitioners previously represented to the Court of Appeals, they are not appealing the denial of the motion for summary judgment. The Petitioners fully acknowledged in their return to the motion to dismiss appeal that "an order denying a motion for summary judgment is not appealable." *Ballenger v. Bowen*, 313 S.C. 476, 443 S.E.2d 379, 380 (1994). That is because "[a] denial of a motion for summary judgment decides nothing about the merits of the case." *Id*.

Instead, the Petitioners made it clear to the Court of Appeals that they are appealing the order issued *granting the motion in limine on the choice of law issues.* In fact, the Petitioners cited to case law – which was not addressed by Court of Appeals in either of its orders – requiring an appellate court, in assessing appealability, to "focus on the effect of the order, not the label given to the motion or to the order granting it." *Thornton v. South Carolina Electric & Gas Corp*., 391 S.C. 297, 705 S.E.2d 475, 478 (Ct. App. 2011). Similarly stated, "[o]ur courts have previously looked beyond the labels on motions and orders to discern their actual effect for purposes of appealability." *Id.* at n.6. As the Petitioners argued, that rule is particularly critical

in assessing the appealability of the trial court's choice of law order filed August 24, 2026. There is no question that is a dispositive order on the choice of law issue and that a dispositive ruling has been made that substantive South Carolina law rather than substantive Georgia law applies to the trial of this case. The Respondents fully concede in their motion to dismiss appeal that the Petitioners are precluded from arguing their defenses under Georgia law at trial. (App. 32-33). They also fully concede that the "choice of law argument was heard, considered, and rejected *as a matter of law*." (App. 33). (Emphasis added). Frankly, there is no other way to construe the trial court's order.

Thus, in looking at the effect of the order -- rather than the label assigned to the motion or the order – there is no question that an immediate appeal has been commenced under Section 14-3-330(1) or Section 14-3-330(2) or mostly likely both sections. The Court of Appeals did not engage in this critical analysis in any respect in its dismissal orders. Notably, the South Carolina Rules of Civil Procedure and the case law in this state are silent as to the appropriate mechanism for bringing a choice of law issue before the trial court for an adjudication prior to trial. The Petitioners recognized, as did the Respondents at the hearing and the trial court in its order, that the choice of law issue had to be fully resolved prior to the commencement of the trial – otherwise neither the parties nor the trial court proceeds with an understanding of the substantive law applicable to the trial. Thus, the Petitioners brought the matter before the trial court in a motion captioned as a motion for summary judgment or alternatively as a "motion in limine on choice of law issues." The Petitioners relied on the body of federal case law where courts have adjudicated a choice of law issue ahead of trial by way of a motion in limine.[4] The Respondents

[4] *See e.g.*, *Hopp v. MJC America, Ltd.*, 2025 WL 306575 (W.D. Wisc. 2025) ("If the parties dispute the choice-of-law question for trial, they will have to present that issue in a motion in limine"); *Long v. Fairbank Farms Reconstruction Corp.*, 2011 WL 5118853 (D.

did not dispute whether a motion in limine may be utilized to obtain an adjudication of the choice of law issue prior to the start of trial. Nonetheless, regardless of the label, it is clear that the Petitioners were attempting to obtain *and did succeed in obtaining* an adjudication of the choice of law issue.

To that point, the trial court granted the motion in limine to rule that the "substantive law of South Carolina governs this action." (App. 17). There is no question that the Petitioners are aggrieved by that decision and have standing to appeal that order. Whether the granting of a "motion in limine" is the proper label is not dispositive; instead, the appellate courts must look at the *effect* of the order. Not only is there no guiding law in this state on what motion or other appropriate mechanism there may be for obtaining a ruling on choice of law, there is also no case law that addresses whether a decision on choice of law is immediately appealable under Section 14-3-330(1) or Section 14-3-330(2). Admittedly, there is authority holding that a pre-trial decision on a motion in limine *on an evidentiary issue* is not immediately appealable. *See*, *South Carolina Dept. of Transportation v. McDonald's Corp.*, 375 S.C. 90, 650 S.E.2d 473, 474 (2007) ("[a] motion in limine is generally not considered a final order on the admissibility of evidence and, for that reason, is not immediately appealable"). But the present case does not involve an evidentiary issue – it involves a question of law. It makes sense that an in limine ruling on an evidentiary issue cannot be subject to an immediate appeal because the law recognizes that evidentiary objections must be asserted contemporaneously when the evidence is presented at trial.

Maine) ("[t]o the extent [the motion] asks this Court to make a final determination regarding choice of law in advance of trial, the Court will treat this portion of the motion as a motion in limine regarding choice of law"); *Jenkins v. Whittaker Corp.*, 545 F. Supp. 1117 (D. Hawaii 1982) (court decided choice of law issue by way of motion in limine).

Conversely, it also makes sense that an adjudication of the choice of law, as in the case at bar, which definitively decides a question of law and strikes defenses available under Georgia law should be subject to an immediate appeal under Section 14-3-330(1) and Section 14-3-330(2). In effect, the choice of law issue presents something much different than an evidentiary in limine ruling. Whether the trial court's ruling on appeal is truly an "in limine" ruling or not, what is clear is that the ruling was final, dispositive, and binding. There is no avenue for the Petitioners to re-assert their Georgia law defenses during the trial of the case or for the trial court to make a different ruling. A case cannot be tried with the possibility that the applicable choice of law will change during the course of the trial. That is not practicable, nor should that be proper procedure. The choice of law should be decided before the trial begins – just as the parties and the trial court agreed – and once that decision is made, there is no opportunity to change the law from that of the forum to that of another jurisdiction or vice versa. Even the Respondents concede that point. They acknowledge, as the trial court also made clear, that the defenses based on Georgia law are unavailable at trial. (App. 32-33).

Further, to demonstrate the issuance of a writ of certiorari is warranted, the Petitioners reiterate that each of the three cases cited in the Court of Appeals' string citation is inapplicable to the appealability question. This Court of Appeals cited only case law holding that the *denial* of a motion for summary judgment or a motion to dismiss is not immediately appealable. That case law is not dispositive because the Petitioners are *not* appealing from the denial of a motion for summary judgment or a motion to dismiss. Moreover, the Court of Appeals' reliance on *Watson v. Underwood*, 407 S.C. 443, 756 S.E.2d 155 (Ct. App. 2014), is also misplaced. Citing *Watson*, the Court wrote: "A judgment that determines what law is applicable but leaves questions of fact unsettled is not a *final judgment*." 756 S.E.2d at 163. (Emphasis added). That

citation, and the reliance thereon, is inapposite for three primary reasons. First, *Watson* is an appeal from the denial of a motion for summary judgment. This appeal is not. Second, the proposition of law from *Watson* states that a judgment that determines what law is applicable is not a *final judgment*. The Petitioners agree. The Petitioners have never taken the position that the trial court's order on appeal is a "final judgment." Instead, the Petitioners fully concede it is *interlocutory order* which is dispositive and hence immediately appealable under both Section 14-3-330(1) and Section 14-3-330(2). Third, on the choice of law issue, the controlling facts are undisputed and were agreed to by the parties, and as a result, there does not remain unsettled questions of fact, as existed in *Watson*. Indeed, the trial court and the parties fully agreed in the case at bar that the choice of law issue presented purely a question of law for the trial court to determine – a question of law on which the court then issued a dispositive ruling which allows for an immediate appeal under Section 14-3-330(1) and Section 14-3-330(2).[5]

A issuance of a writ of certiorari will allow this Court the opportunity to address several issues of benefit to the bar and bench. In addition to correcting the Court of Appeals' error on the appealability issue, the Court can address the appropriate procedure for raising and adjudicating a choice of law question. There is currently no such guidance in our case law or procedural rules. In addition, the Court can address whether a motion in limine, as in the federal court, is an appropriate pre-trial motion to obtain an adjudication of a choice of law issue. Further, the Court can address whether a motion in limine (or other such styled motion) asserted in order to gain a pre-trial adjudication of a choice of law is subject to an immediate appeal under

[5] In the order filed August 24, 2026, the trial court explained that "[t]he parties agree that the question of which state's substantive law governs this action is a question of law for the Court and that it must be answered before the trial scheduled to begin on August 31, 2026." (App. 19).

Section 14-3-330(1) and/or Section 14-3-330(2). Finally, if the Court directs briefing on the merits of the choice of law issue (as opposed to a remand to the Court of Appeals), the Court can address whether the trial court correctly applied the "good morals or natural justice" exception to the rule of *lex loci delicti* under the undisputed facts of this case. In particular, the Court can address whether the absence of a *Hardee*-like private right of action for an alleged violation of a duty to warn, which is the law in Georgia, violates the "good morals or natural justice" in South Carolina, particularly where the plaintiffs have no ties to South Carolina and the motor vehicle accident and all injuries occurred in Georgia.

CONCLUSION

Based on the foregoing discussion, the Petitioners have presented a legitimate basis for the immediate appealability of a dispositive ruling on the choice of law issue that is absolutely central to and arguably dispositive of the litigation. While South Carolina law recognizes a "narrow carve-out" to the requirement of a physician-patient relationship, Georgia law does not. *See*, *Hardee v. Bio–Medical Applications of South Carolina, Inc.*, 370 S.C. 511, 636 S.E.2d 629 (2006). South Carolina law has a three-year statute of limitations, whereas Georgia law has a two-year limitations period. Hence, the trial court's dispositive ruling which struck the Petitioners' defenses under Georgia law should be immediately appealable under South Carolina statutory law. Section 14-3-330(1) and Section 14-3-330(2) recognize that such a ruling is subject to an immediate appeal, and for reasons of judicial economy, it should be. Accordingly, the Petitioners respectfully request that the Court grant a writ of certiorari to review the choice of law issue.

Respectfully submitted,

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