

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No.: 2013-00-1964

Greenville Hospital System and GHS Partners
in Health, Inc., Respondents, V. Juliet Elizabeth
Cromer, Defendant, and Assurant Health, Third-
Party Defendant, of Whom Juliet Elizabeth
Cromer is the Appellant.

RECORD ON APPEAL

David L. Thomas
23 Wade Hampton Blvd.
Greenville, SC 29609
(864)-271-6371
Attorney for Appellant

Charles M. Sprinkle
Sarah T. Clemons H. Sam Mabry, III
P.O. Box 2048
Greenville, SC 29602
Attorneys for Respondent

RECEIVED

APR 10 2014

SC Court of Appeals

INDEX

Order Dismissing Defendants' Counter Claims.....	1-3
Order Denying Defendants' Motion to Reconsider.....	4-6
Summons and Complaint.....	7-14
Defendants' Answer and Counterclaim.....	15-33
Plaintiffs' Motion to Dismiss Defendants' Counterclaim.....	34-35
Plaintiffs' Memorandum of Law In Support of Motion to Dismiss Counterclaims.....	45-85
Transcripts from June 21, 2013 hearing.....	77-92
Certificate of Appellant.....	93

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2302001

2013 JUL 17 P 3:32

Greenville Hospital System	GHS Partners In Health Inc	Juliet Elizabeth Cromer	Assurant Health
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by:	Attorney for: ☒ Plaintiff ☐ Defendant ☐ Self-Represented Litigant
---------------	--

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **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: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court:
This matter is before the Court on Plaintiff's Motion to Dismiss Defendant's Amended Counterclaims. Defendant has asserted five (5) counterclaims in this debt collection action: violation of the South Carolina Unfair Trade Practices Act, negligence *per se*, gross negligence, and breach of fiduciary duty. Defendant counterclaims are predicated on Plaintiff's alleged failure to comply with the requirements of the South Carolina Medically Indigent Assistance Act (S.C. Code Section 44-6-132) and the South Carolina Disproportionate Share Program. Plaintiff argues that the two statutes do not create a private right of action and as such, Defendant's counterclaims should be dismissed for failure to state a claim upon which relief may be granted, pursuant to Rule 12(b)(6), S.C.R. Civ. P.

This Court finds that Section 44-6-132 and the Medicare/Medicaid Disproportionate Share Program do not create private causes of action. To reach this finding, the Court has analyzed the statutory language, including the General Assembly's "Legislative Findings and Intent." The statute's penalty provision, section 44-6-150, vests authority to enforce the statute with the South Carolina Department of Health and Human Services and the South Carolina Department of Health and Environmental Control. Further, the Department of Health and Environmental Control is the only party expressly granted authority to pursue civil penalties for violation of the statute. Nowhere does the statute grant an individual patient the right to pursue civil penalties against a hospital, its employees, or staff for violations of the statute. Similarly, the Disproportionate Share Program does not create a private right of action for individual patients. Defendant claims that Plaintiff failed to "set-off" their unpaid accounts under the Medicaid program. However, Defendant has failed to cite any statutory or regulatory authority that would impose a

duty on Plaintiff to pursue a "set-off" from the Program. Further, the South Carolina Court of Appeals has held that no private right of action arises under the Medicare and Medicaid programs. See Wogan v. Kunze, 366 S.C. 583, 601, 623 S.E.2d 107, 117 (Ct. App. 2005).

Lastly, Defendant argues that Plaintiff's status as a not-for-profit or "charitable organization (pursuant to Internal Revenue Code § 501(c)(3) and 501(r)(4)) and Plaintiff's alleged violation of those provisions create a private cause of action. This Court finds that Section 501(c)(3) and 501(r)(4) do not create a private right of action for individuals.

Based upon these findings of law, this Court grants Plaintiff's Motion to Dismiss Defendant's Counterclaims.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

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

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2162
Judge Code

7/16/13
Date



For Clerk of Court Office Use Only

7/17/13

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

Sarah Thomas Clemmons PO Box 2048 Greenville, SC
29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

7/17/13

David Lloyd Thomas Moore Taylor & Thomas, PA 23 Wade
Hampton Blvd. Greenville, SC 29609

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

Court Reporter

Handwritten signature

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

FORM 4
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B WICKENSIMMER

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2302001

2013 AUG 14 P 2:44

Greenville Hospital System
and GHS Partners in
Health, Inc.

Juliet Elizabeth Cromer

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ 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: _____
- ☐ 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:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2162

Judge Code

8/8/13
Date

For Clerk of Court Office Use Only

This judgment was entered on 8/14/13, and a copy mailed first class or placed in the appropriate attorney's box on 8/14/13, to attorneys of record or to parties (when appearing pro se) as follows:

~~Andrew Finley Carson 223 W. Stone Avenue Greenville, SC 29609~~

Sarah Clemmon

ATTORNEY(S) FOR THE PLAINTIFF(S)

~~Cassandra Brackett 3300 Memorial Drive Suite D3 Decatur, GA 30032~~

~~Andrew M. Jones Jr. PO Box 9212 Greenville, SC 296049212~~

David Thomas

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

Court Reporter



FILED-CLERK OF COURT
GREENVILLE CO. S.C.
A. B. WICKENSIMER
STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

2013 AUG 14

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Greenville Hospital System
and GHS Partners in Health, Inc.,

Plaintiff,

v.

Juliet Elizabeth Cromer

Defendant.

and

Assurant Health,

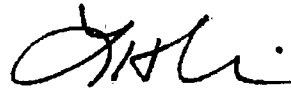
Third-Party Defendant.

Civil Action No: 2013-CP-23-02001

ORDER

This matter comes before the Court on Defendant's Motion to Reconsider this Court's ruling of July 16, 2013, pursuant to Rule 52(b), SCRPC. After reviewing this Court's order dismissing Defendant's counterclaims, this Court remains satisfied with its order and finds no basis to reconsider or amend. Therefore, Defendant's motion is denied.

IT IS SO ORDERED.



Letitia H. Verdin
Circuit Judge

August 8, 2013
Greenville, South Carolina

ENTERED COMPUTER

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

C.A. No.

2013-CP-23-02001

Greenville Hospital System,
and
GHS Partners in Health, Inc.,

Plaintiffs,

vs.

Juliet Elizabeth Cromer,

Defendant(s)

SUMMONS
(Collection)

(Non-Jury)

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the person whose names are subscribed below at One North Main Street, 2nd Floor, Greenville, South Carolina 29601, within thirty (30) days after the service hereof, exclusive of the day of such service. Your Answer must be in writing and signed by you or your attorney and must state your address or the address of your attorney, if signed by your attorney. If you fail to answer the Complaint within the time aforesaid, the Plaintiffs in this action will apply to the Court for judgment by default for the relief demanded in the Complaint.

This communication is an attempt to collect a debt and any information obtained will be used for that purpose.

HAYNSWORTH SINKLER BOYD, P.A.

Sarah T. Clemmons

Sarah T. Clemmons (S.C. Bar No. 74093)

Attorneys for Plaintiff

One North Main Street, 2nd Floor

Greenville, SC 29601

Post Office Box 2048

Greenville, SC 29602

(864) 240-3200

(864) 240-3300 (facsimile)

Dated: 4/3/13
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Greenville Hospital System,
and
GHS Partners in Health, Inc.,

Plaintiffs,

vs.

Juliet Elizabeth Cromer,

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. No. **2013-CP-23-02001**

COMPLAINT
(Collection)

(Non-Jury)

The Plaintiffs, complaining of the Defendant, respectfully show to the Court:

1. That the Plaintiff, Greenville Hospital System, is an eleemosynary institution created by act of the legislature with its principal place of business in Greenville County, South Carolina.

2. That the Plaintiff, GHS Partners in Health, Inc., is a 501(c)(3) organization established under the laws of the State of South Carolina, whose purpose is to support the Greenville Hospital System in fulfilling its mission through the provision of physician services, with its principal place of business in Greenville County, South Carolina.

3. Pursuant to the requirements of the Federal Fair Debt Collection Practices Act, Plaintiffs hereby notify Defendant that the debt described in this Complaint will be assumed by Plaintiffs to be valid unless Defendant, within thirty (30) days after receipt of this Complaint, disputes the validity of this debt, or any portion thereof. If Defendant notifies Sarah T. Clemmons, Esquire, of the law firm of Haynsworth Sinkler Boyd, P.A. at Post Office Box 2048, Greenville, South Carolina, 29602, in writing, within thirty (30) days of receipt of this Complaint that the debt or any portion thereof is disputed, Haynsworth Sinkler Boyd, P.A. will obtain for Defendant a verification of the debt and a copy of such verification will be mailed to Defendant.

Note that the foregoing is not a grace period.

4. This is an action by a debt collector to collect a consumer debt owed by Defendant to Plaintiffs and any information obtained may be used for that purpose. The notice required by the Fair Debt Collection Practices Act is attached hereto as Exhibit A and incorporated herein by reference.

5. That Defendant was a patient in the facilities of Greenville Hospital System and GHS Partners in Health, Inc. located in Greenville County, South Carolina, as shown on the Verified Statements of Account attached hereto as Exhibit B and Exhibit C and incorporated herein by reference.

6. At which time and during which period Plaintiffs provided various diagnostic and therapeutic medical services, accommodations and drugs to Defendant at the prices and on the dates shown on the attached Exhibit B and Exhibit C.

7. That Defendant received said diagnostic and therapeutic medical services, accommodations and drugs, and there is now due and owing to Plaintiffs the total sum of Nineteen Thousand Eight Hundred Two And 70/100 (\$19,802.70) Dollars.

8. That the Defendant is responsible for the payment of all charges incurred by Defendant upon receipt of said services from the Plaintiffs.

9. The Plaintiffs have made demands of the Defendant for payment; however, the sum of Nineteen Thousand Eight Hundred Two And 70/100 (\$19,802.70) Dollars, as shown on the attached Exhibit B and Exhibit C, remains past due and owing to Plaintiffs by the Defendant, no part having been paid by discount or otherwise.

WHEREFORE, Plaintiffs pray that they have judgment against the Defendant in the amount of Nineteen Thousand Eight Hundred Two And 70/100 (\$19,802.70) Dollars, together with the costs of this action.

HAYNSWORTH SINKLER BOYD, P.A.

By: Sarah T Clemmons

Sarah T. Clemmons (S.C. Bar No. 74093)

Attorneys for Plaintiffs

Post Office Box 2048

Greenville, South Carolina 29602

(864) 240-3200

(864) 240-3300 (facsimile)

Dated: 4/3/13
Greenville, SC

EXHIBIT B
VERIFIED STATEMENT OF ACCOUNT
GREENVILLE HOSPITAL SYSTEM

CRISTY HOLLAND, being duly sworn, deposes and states that:

1. She is the Legal Financial Specialist of Patient Account Services with the Greenville Hospital System;
2. Juliet Elizabeth Cromer is indebted to Greenville Hospital System for outstanding account(s) due for medical services, rooms and drugs rendered to Juliet Elizabeth Cromer as itemized below;
3. \$18,012.70 is now due and owing to the Greenville Hospital System by Juliet Elizabeth Cromer as shown below;
4. The foregoing is a true and correct itemization of the outstanding accounts due Greenville Hospital System, and that no part of said amount has been paid by discount or otherwise.

<u>Account Numbers(s)</u>	<u>Date(s) of Service</u>	<u>Amount</u>
08-013706646	09/15/2011 - 09/15/2011	\$18,012.70

Total Due: \$18,012.70

GREENVILLE HOSPITAL SYSTEM

By: Cristy Holland
Cristy Holland
Legal Financial Specialist
Patient Account Services

Sworn to and subscribed before me this 27th
day of March, 2013.

Notary Public
NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 9/16/12

EXHIBIT C

VERIFIED STATEMENT OF ACCOUNT

GHS PARTNERS IN HEALTH, INC.

Juliet Elizabeth Cromer, being duly sworn, deposes and states that:

1. She is the Practice Operations Specialist with the GHS Partners in Health, Inc.;
2. Juliet Elizabeth Cromer is indebted to GHS Partners in Health, Inc. for outstanding account(s) due for medical services, rooms and drugs rendered to Juliet Elizabeth Cromer as itemized below;
3. \$1,790.00 is now due and owing to the GHS Partners in Health, Inc. by Juliet Elizabeth Cromer as shown below;
4. The foregoing is a true and correct itemization of the outstanding accounts due GHS Partners in Health, Inc., and that no part of said amount has been paid by discount or otherwise.

<u>Invoice Numbers(s)</u>	<u>Date(s) of Service</u>	<u>Amount</u>
12622945	09/15/2011 - 09/15/2011	\$1,790.00

Total Due: \$1,790.00

GHS PARTNERS IN HEALTH, INC.

By: Christen Johnson Bruce
Christen Johnson Bruce
Practice Operations Specialist

Sworn to and subscribed before me this 27
day of March, 2013.
Jimmy M. Hall
NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires 3/26/2017

EXHIBIT A

NOTICE REQUIRED BY THE FAIR DEBT COLLECTION PRACTICES ACT, (THE ACT) 15 U.S.C. SECTION 1692 AS AMENDED

1. The amount of the debt is that as stated in the Complaint attached hereto.
2. The Original and Current Creditors are:

Greenville Hospital System
255 Enterprise Boulevard, Suite 210
Greenville, SC 29615

GHS Partners in Health, Inc.
7 Independence Point, Suite 140
Greenville, SC 29615
3. The debt described in the Complaint attached hereto will be assumed to be valid by Plaintiffs' law firm unless you, the Debtor, within thirty (30) days after receipt of this notice, dispute in writing, the validity of the debt or some portion thereof.
4. If you, the Debtor, notify Plaintiffs' law firm in writing within thirty (30) days of receipt of this notice that the debt or any portion thereof is disputed, Plaintiffs' law firm will obtain a verification of the debt and a copy of the verification will be mailed to you, the Debtor, by Plaintiffs' law firm.
5. If Plaintiffs named in the attached Complaint are not the original Creditors, and if you make a written request to Plaintiffs' law firm within thirty (30) days from receipt of this notice, the names and addresses of the original Plaintiffs will be mailed to you by Plaintiffs' law firm.
6. Written requests should be addressed to:

Sarah T. Clemmons
Haynsworth Sinkler Boyd, P.A.
Post Office Box 2048
Greenville, SC 29602
7. This notice should not be construed as a thirty (30) days grace period. Plaintiffs, with the attached Complaint, are pursuing their collection efforts immediately and not waiting thirty (30) days.
8. **This is an attempt to collect a debt and any information obtained may be used for that purpose.**

EXHIBIT B

VERIFIED STATEMENT OF ACCOUNT

GREENVILLE HOSPITAL SYSTEM

CRISTY HOLLAND, being duly sworn, deposes and states that:

1. She is the Legal Financial Specialist of Patient Account Services with the Greenville Hospital System;
2. Juliet Elizabeth Cromer is indebted to Greenville Hospital System for outstanding account(s) due for medical services, rooms and drugs rendered to Juliet Elizabeth Cromer as itemized below;
3. \$18,012.70 is now due and owing to the Greenville Hospital System by Juliet Elizabeth Cromer as shown below;
4. The foregoing is a true and correct itemization of the outstanding accounts due Greenville Hospital System, and that no part of said amount has been paid by discount or otherwise.

<u>Account Numbers(s)</u>	<u>Date(s) of Service</u>	<u>Amount</u>
08-013706646	09/15/2011 - 09/15/2011	\$18,012.70

Total Due: \$18,012.70

GREENVILLE HOSPITAL SYSTEM

By: Cristy Holland
Cristy Holland
Legal Financial Specialist
Patient Account Services

Sworn to and subscribed before me this 27th
day of March, 2013.

sc holl
NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 9/16/18

EXHIBIT C

VERIFIED STATEMENT OF ACCOUNT

GHS PARTNERS IN HEALTH, INC.

Juliet Elizabeth Cromer, being duly sworn, deposes and states that:

1. She is the Practice Operations Specialist with the GHS Partners in Health, Inc.;
2. Juliet Elizabeth Cromer is indebted to GHS Partners in Health, Inc. for outstanding account(s) due for medical services, rooms and drugs rendered to Juliet Elizabeth Cromer as itemized below;
3. \$1,790.00 is now due and owing to the GHS Partners in Health, Inc. by Juliet Elizabeth Cromer as shown below;
4. The foregoing is a true and correct itemization of the outstanding accounts due GHS Partners in Health, Inc., and that no part of said amount has been paid by discount or otherwise.

<u>Invoice Numbers(s)</u>	<u>Date(s) of Service</u>	<u>Amount</u>
12622945	09/15/2011 - 09/15/2011	\$1,790.00

Total Due: \$1,790.00

GHS PARTNERS IN HEALTH, INC.

By: Christen Johnson Bruce
Christen Johnson Bruce
Practice Operations Specialist

Sworn to and subscribed before me this 27
day of March, 2013.

Jimmy McCall
NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires. 3/26/2017

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
C. A. NO.: 2013-CP-23-02001

Greenville Hospital System and GHS
Partners in Health, Inc.,

Plaintiff,

-vs-

Juliet Elizabeth Cromer,

Defendant.

and

Assurant Health,

Third-Party Defendant.

**ANSWER, COUNTERCLAIM
AND CROSSCLAIM COMPLAINT**

(JURY TRIAL DEMANDED)

2013 MAY -9 PM 12:31

FILED
CLERK OF COURT
GREENVILLE
SOUTH CAROLINA

The Defendant, amending her answer and by way of counterclaim and third-party complaint, answers Complaint of the Plaintiff and would respectfully show unto this Honorable Court as follows:

1. The allegations contained in Paragraphs 1, 2, 3, 4, 5, 6 and 7 of the Complaint are admitted.

2. The allegations contained in Paragraph 8 of the Complaint are denied. No agreement has been shown between Plaintiff and Defendant for Defendant to make payment to the Plaintiff as demanded in the Complaint. Further, the Defendant is insured with Assurant Health ("Assurant") and Assurant Health should be responsible for these bills. This Defendant is not responsible for payment that Assurant Health should make.

3. The allegations contained in Paragraph 9 of the Complaint are denied.

**FOR AN AMENDED FIRST DEFENSE
(Unclean Hands)**

4. Each and every allegation contained above is re-alleged as if fully set forth herein.

5. That the Plaintiffs have an ongoing duty to act equitably with regard to patient accounts, including, but not limited to, the referral of individuals without sufficient third-party coverage, upon such discovery, to the appropriate county designee for further consideration of indigent funding. That upon the Plaintiff's failure to act in good faith and to otherwise deal fairly with individuals such as the Defendant in like situations, they are barred from any equitable remedy, including the collection of accounts derived in an otherwise illegal manner, under the prevailing doctrine of unclean hands.

**BY WAY OF AMENDED ANSWER
FOR A SECOND DEFENSE
(Failure to Mitigate Damages)**

6. Each and every allegation contained above is re-alleged as if fully set forth herein

7. That upon presentment to the Plaintiff GHS for emergency treatment, the Defendant possessed adequate health insurance benefits to pay for all goods and services rendered. But for the collective Plaintiff's failure to act in a manner consistent with normal medical service providers in similar circumstances, ie: their failure to assign correct procedure and diagnosis codes according to the American Medical Association, guidelines, Defendant has been denied payments under that third-party arrangement through no fault of her own.

8. That as a result of the Plaintiff's failure to comply with industry standards, they have failed to mitigate their damages and as such they are further barred from recovery against this

Defendant.

**BY WAY OF COUNTERCLAIM
FOR A THIRD DEFENSE AND FIRST CAUSE OF ACTION
(Violation of S.C. Code Ann. §§39-5-10 *et. seq.* (1976 as amended))
South Carolina Unfair Trade Practices Act**

9. Each and every allegation contained above is re-alleged as if fully set forth herein.

10. That the South Carolina General Assembly has previously enacted legislation providing for financial assistance to indigent patients within the State of South Carolina who do not have private insurance, Medicaid or Medicare or other viable third-party coverage necessary to afford health care, see *South Carolina Indigent Assistance Act* (hereinafter "MIAA"), S.C. Code Ann. §§44-6-132, *et. seq.* (1985 as amended), see also *South Carolina Medically Indigent Assistance Program* (hereinafter "MIAP"), S.C. Code Ann. §44-6-150 (1985 as amended) which provides, in part, for the provision of payment to a General Hospital for indigent services rendered within the county of this state. That by virtue of S.C. Code Ann. §44-6-150 (g) (1985 as amended), the South Carolina General Assembly further delegated all authority and oversight, including the setting forth the policies and procedures of MIAA and MIAP, to the South Carolina Department of Health and Human Services (hereinafter "SCDHHS"), to implement said indigent programs; pursuant to the above statutory authority, SCDHHS did devise certain regulations codified under S.C. Regs §§126-500, *et. seq.* (1986 as amended), thereby further reducing the statutory and regulatory provisions of MIAA and MIAP to a specific policies and procedures manual (hereinafter "Manual" or "manual") which, in turn, sets forth specific program guidelines, rights and responsibilities of the patient and provider alike, a copy of the manual is attached hereto in it's entirety as Exhibit "A", and reference hereafter is craved thereto.

11. That upon information and belief, the Plaintiff Greenville Hospital System is a General Hospital licensed by the South Carolina Department of Health and Environmental Control ("SCDHEC") pursuant to S.C. Code Ann. §44-7-260(A)(1) (1976 as amended), and as such is considered a provider of certain emergency and non-emergency medical services on behalf of indigent patients in Greenville County, South Carolina under the auspices of MIAA, MIAP and other indigent care programs.

12. That upon further information and belief, the Plaintiff, GHS Partners in Health, Inc., is a wholly owned subsidiary of Greenville Hospital System created for the specific purpose of billing and collections on behalf of Greenville Hospital Systems, and as a result of such relationship is further bound by the statutory and regulatory precedent binding its parent as a General Hospital, including all financial matters related to the care of indigents under MIAA, MIAP and other indigent care programs..

13. That pursuant to the intent of the South Carolina General Assembly and underlying SCDHHS regulations concerning MIAA and MIAP, the Plaintiff, as a General Hospital, is bound by the terms and conditions relating to ascertaining financial eligibility of certain indigent patients, more specifically §101 of the manual which clearly requires the provider to determine the financial status of the patient and, upon the discovery that third party financial assistance is not otherwise available to the patient, the provider must refer the patient to the appropriate county official for application and consideration of the MIAP program; furthermore, §101.2 provides for retroactive assistance for up to one (1) year from the date of service, thereby extending the Plaintiffs' duty to refer for that one (1) year period.

14. That upon reaching its determination the Defendant was without viable third-party

coverage due to no fault of the Defendant, no employment or income, and, with all other factors present (ie: family size, total resources including income), she was indigent under the Federal Poverty Guidelines set forth in §315, Table XXVII of the manual (see charitable application attached hereto as Exhibit "B"), the Plaintiff otherwise failed to properly advise of, and refer the Defendant to, the county designee for MIAP consideration despite a clear duty under §101 of the manual to do so, both during the initial emergency registration period and the one (1) year period subsequent to the time services were rendered, but rather required filed suit to collect the putative debt while further not being lawfully referred for third party resources under MIAP.

15. That the Plaintiff's wilful violation of its duty to refer the Defendant to the MIAP program has now rendered Defendant unable to receive retroactive assistance under MIAP, pursuant to §101.2 of the manual, and that as a further result of the Plaintiff's wilful and wanton violations of MIAP regulations, the Defendant has been denied certain substantive and procedural due process rights of appeal afforded under MIAP; Furthermore, if the Defendant is in fact representative of the Plaintiff's procedure relative to MIAA and MIAP, then MIAA and MIAP is not being properly applied under its binding statutory and regulatory framework by the Plaintiff, such failure having the propensity to deny or continue to deny otherwise eligible indigent individuals from proper referral and application of MIAA and MIAP as set forth above.

16. The Defendant is further informed and believes the Plaintiff failed to lawfully treat his account as that of an indigent, failed to set-off his account under a Medicaid disproportionate share rate and further failed to correctly classify him as indigent under the *South Carolina Disproportionate Share Program* (hereinafter "SCDSH") as funds realized and distributed to General Hospitals in South Carolina under the federal *Medicaid Disproportionate Share Hospital*

Program Allotment Program, as provided by the *American Recovery and Reinvestment Act of 2009*, Section 5002 (hereinafter "ARRA") of which the Plaintiff, as a General Hospital is entitled to receive, and is receiving such funds to offset the costs borne by the Plaintiff in providing indigent care; furthermore, if the Defendant is in fact representative of the Plaintiff's procedure relative to SCDSH, then SCDSH is not being properly applied under the statutory and regulatory duty imposed upon the Plaintiff and has the propensity to continue as to other eligible indigent patients similarly situated as the Defendant here.

17. The Defendant is further informed and believes that as a result of the Plaintiff's repeated wilful and wanton violations of MIAA and MIAP, he has been denied her otherwise lawful opportunity to apply for benefits under the program which, properly applied, would have fully satisfied his obligation to the Plaintiffs and, that the Plaintiff's further failure to properly treat her account under SCDSH as that of an indigent and improperly charging her under the inflated master rate results in nothing more than predatory behavior relative to the Plaintiff's knowing and wilful failure to comply with binding statutory and regulatory authority under MIAA, MIAP and SCDSH.

18. That as a result of the foregoing failures of the Plaintiff and its knowing and wilful violations of binding authority relating to financial remuneration of indigent accounts, where the accounts would otherwise be satisfied as a result of MIAP and SCDSH application, albeit at a much lower rate of return, the Plaintiff is now barred from pursuing this collection action as a matter of law.

**AS TO THE COUNTERCLAIM
FOR A FIRST CAUSE OF ACTION
(Violation of S.C. Code Ann. §§39-5-10 *et. seq.* (1976 as amended))
South Carolina Unfair Trade Practices Act**

19. That the fraudulent manner in which the Plaintiff willfully and wantonly, and with

reckless disregard to their statutory and regulatory duty to do so, failed to refer the Defendant to the county designee for Greenville County MIAP upon its discovery the Defendant did not have adequate third-party coverage as contemplated under the prevailing regulations, and further knowingly, willingly and wantonly disregarding the indigent status of the Defendant to unjustly enrich itself at his expense upon such discovery no third party coverage, including Medicaid or Medicare, existed in which to pay for services, this conduct being a direct violation of the regulations concerning MIAP and the Plaintiff's duty to refer the Defendant to the county designee for Greenville County for application of financial consideration under MIAP; the common scheme being the Plaintiff would receive a much lower payment through MIAP for services rendered than under a master rate agreement; this in addition to instituting collection actions against the Defendant to gain possession of certain valuable real and/or personal property in circumvention of binding authority, in an otherwise unlawful gain of payment in excess of its share or payment under MIAP has a propensity to be repeated and therefor falls into the public purview or harm specter.

20. That the fraudulent manner in which the Plaintiff knowingly, willfully and wantonly, and with reckless disregard to their statutory and regulatory duty to do so, failed to adequately consider the Defendant as an indigent under the MIAA definition, and further failed to adequately account for funding under SCDSH as a set off for his otherwise indigent care, notwithstanding their regulated duty to do so, and further willingly and wantonly disregarding the pertinent financial condition of the Defendant to unjustly enrich itself at the expense of the Defendant in place of duly qualifying the Defendant as an indigent and procuring certain SCDSH funding, whereby the Plaintiff would receive a much lower payment for services rendered than under a master rate agreement; this in addition to instituting this illegal and unjust collection actions against the Defendant to gain possession of certain

valuable real and/or personal property, these failures to comply with binding duty and the further unlawful attempts to gain payment in excess of its share or payment under SCDSH has a propensity to be repeated and therefor falls into the public purview or harm specter.

21. Specifically, the Plaintiff engages in deceptive business practices with respect to failing to follow binding statutory and regulatory authority in the designation and referral of indigents to the appropriate service agency or disproportionate share funding programs in contravention to the laws of the State of South Carolina, by:

- a. Failing to comply with its statutory and regulatory duty to refer any patient who is without third-party financial resources to SCDHHS for determination of the MIAP program; and,
- b. Failing to protect the substantive and procedural due process rights afforded under MIAP of patients who fall under the referral obligation of S.C. Regs. §126-505 (C) (1985 as amended); and,
- c. Failing to properly identify and designate eligible individuals as indigent under the statutory definition expressed through MIAA; and,
- d. Failing to adequately set off charges on behalf of indigent patients for payments received under SCDSH notwithstanding the indigent status and offset monies received as a disproportionate share; and,
- e. Requiring agreement of master rates from an otherwise indigent individual prior to rendering services in direct contravention to the prevailing statutory and regulatory authority of the State of South Carolina; and,
- f. Improperly and illegally characterizing customers' accounts as being in default or otherwise delinquent; and,
- g. Instituting improper collections actions with disregard to the consumers' rights, including, but not limited to attaching or attempting to attach individual state income tax refunds from otherwise indigent individuals without first accounting for SCDSH monies or referral to MIAP; and,
- h. Seeking to collect, and collecting, various costs, fees and increases which are legally not due under the account status which only serves to otherwise

unjustly enrich the Plaintiff; and,

- i. Misappropriating funds under the SCDSH program; and,
- j. Executing false and misleading documents; and,
- k. Failing to act in good faith in the charge of exorbitant rates for services but do not fairly charge indigent patients in compliance with applicable law.

22. That the Plaintiff has engaged and continues to engage in a uniform pattern or practice of unfair and illegal trade practices which affects the public interest, not only to this Defendant, but similarly situated individuals who are otherwise eligible to apply for funding under the MIAP program but otherwise failed to be made aware of such program's existence, notwithstanding the Plaintiff's statutory and regulatory duty to do so, and as a result later become ineligible due to time filing limitations which often results in otherwise illegal collection actions being pursued to completion with final judgments rendered against this Defendant and a class of similarly situated individuals of this county; wherein the scheme being designed to otherwise defraud this Defendant and similarly situated individuals in this county and to further unlawfully enrich the Plaintiff.

23. That the Plaintiff has engaged and continues to engage in a uniform pattern or practice of unfair and illegal trade practices which affects the public interests, not only to this Defendant, but similarly situated individuals who are otherwise indigent under the statutory definition of "Indigent" of MIAA and are otherwise eligible for payment of their health care costs through SCDHS application, notwithstanding the Plaintiff's statutory and regulatory duty to do so, the failure of which causes an otherwise eligible indigent consumer to be ineligible for SCDSH set-off due to time filing limitations which often results in otherwise illegal collection actions being pursued to completion with final judgments rendered against this Defendant and a class of similarly situated individuals of

this county; wherein the scheme being designed to otherwise defraud this Defendant and similarly situated individuals in this county and to further unlawfully enrich the Plaintiff.

24. The Plaintiff's actions in filing this collection action when, in fact, it failed to comply with the binding statutory and regulatory requirements of MIAA, MIAP and SCDSH, were deceptive and have caused harm, and are the proximate cause of such damage, to this Defendant, and similarly situated individuals of this county, thereby affecting the public interests, said unfair and illegal trade practices having the propensity to be repeated and therefore fall under the Statute regarding unfair trade practices, whereby treble damages should accrue as determined by the Court and attorneys' fees awarded pursuant to the Statute of Unfair Trade Practices, S.C. Ann. §§39-5-10, *et. seq.* (1976 as amended).

25. By reason of the foregoing, the Plaintiff has been unjustly enriched and should be required to disgorge their otherwise illicit profits and/or make restitution in the manner proscribed above to the Defendant; and to further be enjoined from continuing in such practices pursuant to South Carolina law.

**FOR A SECOND CAUSE OF ACTION
(Negligence *Per Se*)**

26. Each and every allegation contained above is re-alleged as if fully set forth herein.

27. Plaintiffs owed to Defendant a duty to comply with S.C. Code Ann. §44-6-150 (C)((1)(a) of the *Medically Indigent Assistance Act*, (1976 as amended) and further set forth under S.C. Regs. §126-505 and S.C. Regs. §126-510, *et. seq.*, wherein that certain duty to adequately refer the patient to the MIAP program as set forth by statute and regulation, has been specifically violated by the Plaintiffs.

28. That the Plaintiffs, as a Internal Revenue Code §501(c)(3) not for profit corporation owes to Defendant a further duty to comply with IRC §501(r)(4)(v) requiring the Plaintiffs to "widely publicize the policy within the community to be served by the organization" which the Plaintiffs have failed to do.

29. That where Plaintiffs have wilfully, wantonly and with gross negligence, as to the rights of the Defendant and binding statutory and regulatory duty to protect those rights of the Defendant's indigent status, have violated and failed to comply with the duties imposed upon them to comply with the terms and conditions of S.C. Code Ann. §44-6-150 (C)(1)(a) of the *Medically Indigent Assistance Act*, (1976 as amended) and further set forth under S.C. Regs. §126-505 and S.C. Regs. §126-510, *et. seq.*, and are, therefore, grossly negligent *per se*.

30. That where Plaintiffs, as a Internal Revenue Code §501(c)(3) not for profit corporation, have further wilfully, wantonly and with gross negligence, as to the rights of the Defendant and binding statutory and regulatory duty to protect those rights of the Defendant's indigent status, have violated and failed to comply with the duties imposed upon them to comply with the terms and conditions of Internal Revenue Code §501(r)(4)(v) (2010) requiring the Plaintiffs to "widely publicize the policy within the community to be served by the organization", and are, therefore, grossly negligent *per se*.

31. As a direct and proximate cause of the Plaintiffs gross negligence *per se*, Defendant has suffered actual damages and is in further imminent danger of suffering further material injury and loss due to the negligent *per se* violations of the Plaintiffs.

32. As a result of the above noted gross negligent *per se* violations, the Defendant is entitled to judgment against the Plaintiffs for actual damages, incidental damages, and costs to be determined

by the trier of fact, in addition to an award of attorney's fees pursuant to S.C. Code Ann. §15-77-300 (1976 as amended).

**FOR A THIRD CAUSE OF ACTION
(Gross Negligence)**

33. Each and every allegation contained above is re-alleged as if fully set forth herein.

34. Plaintiffs owed to Defendant a duty to provide a reasonable standard of care under the circumstances in fully complying with the statutory and regulatory notice requirements relating to indigent health care funding including, but not limited to, the duty to refer a party who does not have adequate third party coverage to the appropriate liaison for MIAP application or inclusion in other indigent care reimbursement programs.

35. That the Plaintiffs have failed to exercise slight care and have willfully, wantonly, recklessly and with gross negligence breached the standard of care owed to the Defendant by failing to exercise reasonable care under the circumstances in their handling of the Defendant's accounts ; in failing to properly hire, train, supervise and retain their employees; and by failing to timely and lawfully notify the defendant of her right to apply for MIAP or similarly situated indigent programs notwithstanding their duty to do so, as well as in such other particulars as further discovery will disclose.

36. As a direct and proximate cause of the Plaintiffs negligence, carelessness, recklessness, willfulness, wantonness and heedlessness, the Defendant has suffered actual damages and is in further imminent danger of suffering further material injury and loss.

37. As a direct and proximate result of the above noted gross negligence, the Defendant is entitled to judgment against the Plaintiffs for actual damages, incidental damages, and costs to be

determined by the trier of fact, in addition to an award of attorney's fees pursuant to S.C. Code Ann. §15-77-300 (1976 as amended).

**FOR A FOURTH CAUSE OF ACTION
(Negligence)**

38. Each and every allegation contained above is re-alleged as if fully set forth herein.

39. Plaintiffs owed to Defendant a duty to provide a reasonable standard of care under the circumstances in fully complying with the American Medical Associations industry standard to ensure adequate coding.

40. That the Plaintiffs have failed to exercise slight care and have willfully, wantonly, recklessly and with negligence breached the standard of care owed to the Defendant by failing to exercise reasonable and adequate medical coding in their handling of the Defendant's accounts; in failing to properly hire, train, supervise and retain their employees.; as well as in such other particulars as further discovery will disclose.

41. As a direct and proximate cause of the Plaintiffs negligence, carelessness, recklessness, willfulness, wantonness and heedlessness, the Defendant has suffered actual damages and is in further imminent danger of suffering further material injury and loss.

42. As a direct and proximate result of the above noted negligence, the Defendant are entitled to judgment against the Plaintiffs for actual damages, incidental damages, and costs to be determined by the trier of fact, in addition to an award of attorney's fees pursuant to S.C. Code Ann. §15-77-300 (1976 as amended).

**FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty)³**

43. Each and every allegation contained above is re-alleged as if fully set forth herein.

44. The Plaintiff Greenville Hospital System and its subsidiary GHS Partners in Health, Inc., as a General Hospital, is bound by the terms and conditions relating to ascertaining financial eligibility of certain indigent patients, more specifically §101 of the manual which clearly requires the provider to determine the financial status of the patient and, upon the discovery that third party financial assistance is not otherwise available to the patient, the provider must refer the patient to the appropriate county official for application and consideration of the MIAP program. As such, the Plaintiffs owed the Defendant a duty of fidelity and other fiduciary duties of good faith and fair dealing in the proper referral to indigent care programs, servicing of the indigent account and reconciling payments received in an industry accepted manner.

45. That the Plaintiffs have breached such duties in a negligent, grossly negligent, wilful and wanton manner and in a manner characterized by disloyalty, bad faith and unfair dealing and the failure to adhere to specific statutory and regulatory authority of the State of South Carolina and United States of America as to the proper referral of indigent patients to MIAP or other similarly situated programs and through the misapplication and misappropriation of DSH monies in one or more of the following particulars:

- a. In the negligent handling of the Defendant's account to the particulars of failing to refer the Defendant to MIAP or other similarly situated programs, inconsistent with binding legal authority to do so; and,
- b. In failing to apply payments on the account as received under DSH, creating an account imbalance in a manner the Plaintiffs knew or should have known were improper; and,
- c. For failing to comply with industry acceptable manner of accounting and proper application of monies received under a third-party agreement for the benefit of the Defendant; and,

- d. In failing to adequately substantiate the total amounts due upon receipt of DSH funds or funds expended on behalf of the Defendant by a third-party, although the Plaintiff knew or should have known they were required to do so under binding state and federal authority; and,
- e. In further failing to maintain proper servicing and application records as to DSH benefits received in addition to the requests and submissions of documentation not otherwise provided under the *Fair Debt Collections Practices Act*, where the Plaintiffs knew, or should have known, the impropriety of such demands; and,
- f. In failing to protect the financial interests of the Defendant as an indigent patient despite a clear obligation to do so under the MIAP program regulations; and,
- g. In failing to obtain relevant authorization from any alternative third-party coverage prior to the incurring of charges for services rendered and the further attempt of collection thereof despite a clear duty to do so.

46. The Defendant is informed and believes that as a direct and proximate result of the Plaintiffs' actions and breaches of duties, she has suffered actual damages to be determined by the trier of fact; and as the Plaintiff's conduct was sufficiently malicious, willful, wanton, reckless, grossly negligent and/or outrageous to such as degree, the Defendant is entitled to an award of punitive damages in an amount to be determined by the trier of fact, in addition to an award of attorney's fees pursuant to S.C. Code Ann. §15-77-300 (1976 as amended).

**THIRD PARTY COMPLAINT
FIRST CAUSE OF ACTION
AS TO ASSURANT HEALTH
(Failure to Defend and Failure to Pay a Claim)**

47. Each and every allegation contained above is re-alleged as if fully set forth herein.

48. Defendant is informed and believes that at all times pertaining to this action she was covered under the medical insurance policy of her husband, Thomas J. MacDonald, Jr., which is with Assurant Health. The original effective date of the insurance policy is April 6, 2010, and is renewed

on April 6th of each year thereafter. The identification number is FMKZ0060651102001 and the policy number is, 0060651102.

49. The Defendant would show that upon notification and request, Assurant Health is responsible under its third-party agreement for the payment of any all medical bills associated with subject action as contracted for the first party benefit of the Defendant, and that the Third-Party Defendant Assurant Health has acted in bad faith, and/or was negligent, reckless, wilful and wanton in one or more of the following particulars:

- a. In refusing to honor claims submitted for first party benefits within thirty days from reasonable proofs of claim; and,
- b. In unreasonably delaying payment of the Third-Party Plaintiff's claims; and,
- c. In failing to communicate to the Third-Party Plaintiff any reasonable justification for failing to honor the claims; and,
- d. In failing to act in good faith to effect a fair, prompt and equitable settlement of the claims; and,
- e. In compelling the Third-Party Plaintiff, through it's failure to defend and pay under the contract, to defend himself and further recover lawful benefits, through this action, otherwise due and payable under the aforementioned policy; and,
- f. In failing to adequately investigate and review the claims to determine whether or not the claims came within the coverage afforded by the policy; and,
- g. In failing to protect the interests of the insured party thereto.

50. That as a direct and proximate cause of the Third-party Defendant Assurant Health's negligence, bad faith, recklessness and wantonness, the Third-Party Plaintiff has been damaged, including, but not limited to mental and emotional distress created by the delay, unwarranted and illegal collections actions including the defense of this action, the costs of hiring legal counsel to

pursue the defense of this action and the pursuit of this claim and the costs and expenses associated with this action; that the Third-Party Plaintiff is therefore informed and believes she is entitled to judgment against the Third-Party Defendant for loss and damage in a sum to be determined by the trier of fact, along with an award of punitive damages and attorney's fees and costs relating thereto.

WHEREFORE, having fully answered the Complaint and now setting forth her Answer and Counterclaim against the Plaintiffs and Crossclaim, the Defendant prays as follows:

1. For the Complaint of the Plaintiffs to be dismissed under the doctrine of unclean hands and failure to mitigate; and,
2. For the Plaintiffs to be required to pay Defendant's attorneys fees and costs;
3. For any other monetary damages covered as to South Carolina Unfair Trade Practices Act, in addition to punitive damages and an award of attorney's fees and costs; and,
4. For an award of attorney's fees and costs pursuant to S.C. Code Ann. §39-5-140 (a) (1976 as amended), including punitive damages; and
5. For a finding of a wilful violation of South Carolina Medically Indigent Assistance Act, the South Carolina Department of Health and Human Services Medically Indigent Assistance Program and South Carolina Disproportionate Share Program, and, upon such finding, a further finding that the debt complained of be treated as illegally obtained in the State of South Carolina; and,
6. For specific injunctive relief pursuant to S.C. Code Ann. §39-5-140(c) (1976 as amended) enjoining the Plaintiff from future failures under the South Carolina Medically Indigent Assistance Act, the South Carolina Department of Health and Human Services Medically Indigent Assistance Program and South Carolina Disproportionate Share Program; and,
7. For a finding of Negligence *per se*, and upon such finding, for judgment against the

Plaintiffs for actual damages, incidental damages, and costs to be determined by the trier of fact, in addition to an award of attorney's fees pursuant to S.C. Code Ann. §15-77-300 (1976 as amended); and,

8. For a finding the Plaintiffs' acts, errors and omissions were sufficiently grossly negligent, and upon such finding, for judgment against the Plaintiffs for actual damages, incidental damages, and costs to be determined by the trier of fact, in addition to an award of attorney's fees pursuant to S.C. Code Ann. §15-77-300 (1976 as amended); and,

9. For a finding the Plaintiffs' owed to the Defendant specific fiduciary duties which they failed to protect, and upon such finding, for judgment against the Plaintiffs for actual damages, incidental damages, and costs to be determined by the trier of fact, in addition to an award of attorney's fees pursuant to S.C. Code Ann. §15-77-300 (1976 as amended); and,

10. For a finding that the Third-Party Assurant Health has failed, in bad faith, to pay the claim under the first party insurance agreement as to the Third-Party Plaintiff for services rendered, and upon such finding, for judgment against the Third-Party Defendant for actual damages, incidental damages, punitive damages to be determined by the trier of fact, in addition to an award of attorney's fees and costs; and,

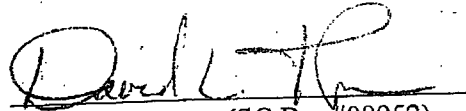
11. For such other and further relief as this Court may deem just and proper.

(SIGNATURE PAGE FOLLOWS)

Respectfully submitted,

MOORE, TAYLOR & THOMAS, P.A.

By:



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Attorney for Defendant/Third-Party
Plaintiff Juliet Elizabeth Cromer

Greenville, South Carolina
May 9, 2013.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Greenville Hospital System and GHS Partners
in Health, Inc.,

Plaintiffs,

vs.

Juliet Elizabeth Cromer,

Defendant/Third-Party Plaintiff,

vs.

Assurant Health,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS

Case No. 2013-CP-23-02001

PLAINTIFFS' MOTION TO DISMISS DEFENDANT'S COUNTERCLAIMS

Pursuant to Rule 12(b)(6), SCRCP, Plaintiffs Greenville Hospital System and GHS Partners in Health, Inc. (hereinafter "GHS") in the above-referenced matter will move on the tenth day after service, or as soon thereafter as counsel may be heard, for an Order dismissing the Counterclaims in Defendant's Answer, Counterclaim and Crossclaim dated May 9, 2013 ("the Answer and Counterclaim") for failure to state sufficient facts to constitute a claim or cause of action under South Carolina law. The grounds for this Motion include:

1. Each of Defendant's counterclaims are premised upon the allegation that GHS violated the *South Carolina Medically Indigent Assistance Act* ("MIAA"), S.C. Ann. §44-6-132, *eq. seq.*, the *South Carolina Medically Indigent Assistance Program* ("MIAP"), S.C. Code Ann. §44-6-150, and the *South Carolina Disproportionate Share Program* ("DSH") as provided for in the *American Recovery and Reinvestment Act* of 2009, Section 5002. Neither the MIAA, MIAP, DSH, nor any other statute, regulation, rule, or procedure cited or relied on by Defendant creates a private right of action under South Carolina law upon which any of Defendant's purported

counterclaims can be based.

2. Defendant's purported counterclaims are barred by her failure to exhaust administrative remedies available to her under the MIAA and MIAP and/or other statutes and regulations cited and relied on by Defendant.

3. Defendant cannot maintain causes of actions for negligence, negligence *per se*, or gross negligence because GHS owed no duty of care to Defendant under South Carolina law.

4. Defendant cannot maintain a cause of action for breach of fiduciary duty because there was no fiduciary duty owed by GHS to Defendant under South Carolina law.

5. Defendant's Answer and Counterclaim otherwise fails to state facts sufficient to constitute a cognizable cause of action under South Carolina law.

This Motion will be further based on the pleadings, the common law and statutory laws of South Carolina, the South Carolina Rules of Civil Procedure and all arguments made in any Memoranda filed by Plaintiffs at or prior to the hearing on this Motion.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

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*Attorneys for Plaintiffs Greenville Hospital System
and GHS Partners in Health, Inc.*

June 6, 2013
Greenville, South Carolina

**STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
GREENVILLE COUNTY**

Greenville Hospital System and GHS Partners in Health, Inc.	)	
vs.	)	
Carol Hughes York	)	

2013-CP-23-01620

Greenville Hospital System and GHS Partners in Health, Inc.	)	
vs.	)	
Tammy Denise Shaw and David Shaw	)	

2013-CP-23-01622

Greenville Hospital System and GHS Partners in Health, Inc.	)	
vs.	)	
Avery C. Pruitt	)	

2013-CP-23-01625

Greenville Hospital System and GHS Partners in Health, Inc.	)	
vs.	)	
Shawn Hunt	)	

2013-CP-23-01997

Greenville Hospital System and GHS Partners in Health, Inc.	)	
vs.	)	
Robin Nichole Church	)	

2013-CP-23-02000

Greenville Hospital System and GHS Partners in Health, Inc.	)	
vs.	)	
Juliet Elizabeth Cromer	)	

2013-CP-23-02001

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTIONS TO DISMISS
DEFENDANTS' COUNTERCLAIMS**

I. INTRODUCTION

Plaintiffs Greenville Hospital System and GHS Partners in Health, Inc. (collectively, "GHS"), submit this memorandum in support of their Motions to Dismiss the Defendants' counterclaims in each of the six above-captioned cases. These six lawsuits were initially brought by GHS to collect amounts that the Defendants owe for medical treatment and services they received from GHS and its physicians but have not paid for. The Defendants in each case are represented by Attorney David Thomas and they have, through counsel, asserted substantively identical counterclaims against GHS for (1) violation of the South Carolina Unfair Trade Practices Act; (2) negligence *per se*; (3); negligence; (4) gross negligence; and (5) breach of fiduciary duty. The grounds for Defendants' counterclaims are based on GHS's alleged failure to comply with the requirements of two statutes: the South Carolina Medically Indigent Assistance Act, S.C. Code Ann. §§ 44-6-132 *et seq.*; and the purported "South Carolina Disproportionate Share Program."

In brief summary, Defendants' counterclaims fundamentally fail to state a claim upon which relief can be granted because neither of these alleged government programs Defendants rely on gives rise to any cognizable cause of action under South Carolina law:

- Defendants' claims based on GHS's alleged failure to comply with the Medically Indigent Assistance Act (MIAA) fail because there is no private right of action under the statute. No such right is provided under the express terms of the statute, no case has recognized such a right, and there is no legislative intent indicating this Court should imply such a right. To the contrary, the General Assembly has expressly provided that the Department of Health and Human Services and Department of Health and Environmental Control have authority to administer and enforce the provisions of the MIAA.
- The purported "South Carolina Disproportionate Share Program"—which is actually part of the federal Medicaid program—creates no basis for any liability on the part of GHS. As a threshold matter, Defendants do not even cite or reference any statutory provision that GHS has allegedly violated related to this federal law. Even if Defendants could

point to a statute or regulation GHS allegedly violated, the South Carolina appellate courts have already held there is no private right of action under Medicare and Medicaid.

For these reasons, and as more fully explained below, Defendants' counterclaims all fail as a matter of law and should be dismissed.

II. RELEVANT BACKGROUND

A. Procedural History

GHS brought these six separate collection actions against each of the Defendants to collect the amounts they owe for medical care and treatment they received from GHS for which Defendants have refused to pay. In each case, the Defendants have retained the same attorney (Attorney David Thomas) to represent them. Through their counsel, Defendants have filed substantively identical Answers and Counterclaims to the Complaints filed by GHS. GHS timely responded to the Counterclaims by filing the present Motions to Dismiss pursuant to Rule 12(b)(6), SCRPC.¹

B. Defendants' Counterclaim Allegations

In their Counterclaims, Defendants do not deny they were treated at GHS, do not claim they received inadequate or deficient care, nor do they claim they were charged for any service or medication they did not receive. In fact, Defendants all admit they received treatment from GHS and that they or their insurers are responsible for the charges for the services they received. (See Answer ¶ 3.) Instead, Defendants' grievance—and the sole basis for their counterclaims—is that GHS allegedly failed to comply with the two government "programs" mentioned above. (*Id.* at ¶¶ 10, 16.)

¹ As an example of the substantively identical pleadings filed in all six of these cases and for ease of reference, copies of GHS's Complaint and Defendant's Answer and Counterclaim filed in the *GHS v. York* suit are attached to this Memorandum as **Exhibit A** and **Exhibit B** respectively. Citations in this Memorandum to specific paragraphs in Defendants' Answer and Counterclaims refer to the pleadings in *GHS v. York*.

With regard to the Medically Indigent Assistance Program (MIAP), Defendants allege GHS “failed to properly advise of, and refer the Defendant to the county designee for MIAP consideration” and that, as a result, Defendants “have been denied [their] otherwise lawful opportunity to apply for benefits under the program which, properly applied, would have fully satisfied [their] obligation to Plaintiffs.” (*Id.* at ¶¶ 14, 17.)

With regard to the purported “South Carolina Disproportionate Share Program,” Defendants allege that GHS:

failed to set-off [their] account[s] under a Medicaid disproportionate share rate and further failed to correctly classify [them] as an indigent under the *South Carolina Disproportionate Share Program* (hereinafter “SCDSH”) as funds realized and distributed to General Hospitals in South Carolina under the *Medicaid Disproportionate Share Hospital Allotment Program*, as provided by the *American Recovery and Reinvestment Act of 2009, Section 5002* (hereinafter “ARRA”) of which the Plaintiff, as a General Hospital is entitled to receive, and is receiving such funds to offset the costs borne by the Plaintiff in providing indigent care.

(*Id.* at ¶ 16.)

Based on GHS’s alleged lack of compliance with these two government programs, Defendants have asserted counterclaims for violation of the South Carolina Unfair Trade Practices Act, negligence *per se*, negligence, gross negligence, and breach of fiduciary duty. GHS strongly denies that it has acted in any way contrary to South Carolina or federal law. However, as discussed below, even assuming the allegations of Defendants’ counterclaims are true for purposes of these Motions to Dismiss, the law is clear that there exists no private right of action under these statutes and related government programs, and Defendants’ counterclaims therefore fail as a matter of law.

III. RULE 12(b)(6) STANDARD

The Court may dismiss a claim where “the defendant demonstrates the plaintiff has failed ‘to state facts sufficient to constitute a cause of action’ in the pleadings filed with the court.” *Williams v. Condon*, 347 S.C. 227, 232-33, 553 S.E.2d 496, 499 (Ct. App. 2001) (quoting Rule 12(b)(6), SCRCP). The court’s “ruling on a motion to dismiss under Rule 12(b)(6), SCRCP, must be based solely on the allegations contained in the complaint.” *Chewning v. Ford Motor Co.*, 346 S.C. 28, 32, 550 S.E.2d 584, 586 (Ct. App. 2001). However, in making a motion to dismiss, only the “well pleaded facts are admitted, but inferences drawn by the plaintiff from such facts and conclusions of law are not admitted.” *Jensen v. S.C. Dep’t of Soc. Servs.*, 297 S.C. 323, 326, 377 S.E.2d 102, 104 (Ct. App. 1987). The motion to dismiss must be granted if, viewing the evidence in favor of the plaintiff, the “facts alleged in the complaint and inferences reasonably deducible therefrom do not entitle the plaintiff to relief on any theory of the case.” *Chewning*, 346 S.C. at 32-33, 550 S.E.2d at 586.

IV. ARGUMENT

A. There is no private right of action under the South Carolina Medically Indigent Assistance Act or Medically Indigent Assistance Program.

Defendants have failed to assert a cognizable claim arising from the alleged violation of the South Carolina Medically Indigent Assistance Act (“MIAA”) or the Medically Indigent Assistance Program (“MIAP”). There is no express or implied private right of action created by the statute and no basis for allowing such a cause of action, whether styled as a claim under the UTPA, or common law negligence *per se*, negligence, or breach of fiduciary duty theory.

A statute must permit a private cause of action in order for a plaintiff to maintain a civil suit. *Whitworth v. Fast Fare Markets of S.C., Inc.*, 289 S.C. 418, 420, 338 S.E.2d 155, 156 (1985) (“[T]he general rule is that a statute which does not purport to establish a civil liability,

but merely makes a provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing a civil liability.” (quoting 73 Am. Jur. 2d *Statutes* § 432 (1974)). “In determining whether a statute creates a private cause of action [in South Carolina], the main factor is legislative intent.” *Doe v. Marion*, 373 S.C. 390, 396, 645 S.E.2d 245, 248 (2007).

The legislative intent to grant or withhold a private right of action for violation of a statute or the failure to perform a statutory duty is determined primarily from the language of the statute In this respect, the general rule is that a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing a civil liability. When a statute does not specifically create a private cause of action, one can be implied only if the legislation was enacted for the special benefit of a private party.

Id. (internal citations omitted). “Legislative intent to grant or withhold a private right of action for a violation of the statute is determined primarily from the language of the statute.” *League of Women Voters v. Smith Land Co.*, 393 S.C. 350, 353, 713 S.E.2d 287, 289 (2011)); *see also Whitworth*, 289 S.C. at 420, 338 S.E.2d at 156 (“A primary consideration in deciding whether a private cause of action should be implied under this type of statute is the legislature’s intent . . . determined primarily from the form or language of the statute.”).

Looking to the express terms of the MIAA statute, it is clear the General Assembly did not intend to create a private right of action. First, there is no provision in the MIAA which allows a private citizen to assert a cause of action based on a hospital’s alleged failure to comply with any provision of the MIAA or MIAP. Under settled principles of statutory construction, this Court must presume that the General Assembly did not intend to create any such right or remedy. *See Ormet Corp. v. Oh. Power Co.*, 98 F.3d 799, 805 (4th Cir. 1996) (“We begin with the presumption that if a statute does not expressly create a private cause of action, one does not

exist.”); *Salley v. Heartland-Charleston of Hanahan, SC, LLC*, No. 2:10-cv-00791, 2011 WL 2728051, *3-*4 (D.S.C. July 12, 2011) (holding same); *see also* 73 Am. Jur. 2d *Statutes* § 307 (Supp. 2012) (“The legislature’s statutory silence in failing to expressly provide a private right of action is a strong indication it did not intend such a remedy for an alleged violation of the statute.”). Moreover, there is no case in South Carolina recognizing any statutory duty giving rise to a private right of action under the MIAA or MIAP.

Second, the fact that the General Assembly did not intend to create a private right of action is further supported by the General Assembly’s express “Legislative Findings and Intent” codified in Section 44-6-132 of the MIAA. These Findings and Intent make clear that the MIAA is not intended for the special benefit of a narrow class of individuals, but instead expressly states that the legislation is intended for the benefit and protection of all those who participate in and are affected by the health care system in South Carolina—including patients, health care providers, government entities, and taxpayers. As stated by the General Assembly in Section 44-6-132:

The General Assembly finds that:

- (1) There are *citizens who cannot afford to pay for hospital care* because of inadequate financial resources or catastrophic medical expenses.
- (2) Rising health care costs and the growth of the medically indigent population have *increased the strains on the health care system with a growing burden on the hospital industry, health insurance companies, and paying patients.*
- (3) This burden *has affected businesses, which are large purchasers of health care services through employee insurance benefits, and taxpayers in counties which support public hospitals,* and it causes the cost of services provided to paying patients to increase in a manner unrelated to the actual cost of services delivered to them.

(4) *Hospitals which provide the bulk of unreimbursed services cannot compete economically* with hospitals which provide relatively little care to indigent persons.

(5) Because of the complexity of the health care system, any effort to resolve the problem of paying for care for medically indigent persons must be multifaceted and shall include at least four general principles:

- a. Funds must be made available to assure continued *access to quality health care for medically indigent patients*.
- b. *Cost containment measures and competitive incentives* must be placed into the health care system along with the additional funds
- c. *The cost of providing indigent care must be equitably borne by the State, the counties, and the providers of care.*
- d. State residents must be *guaranteed access to emergency medical care* regardless of their ability to pay or county of residence.

It is the *intent of the General Assembly* to:

(1) *Assure care for the largest possible number of its medically indigent citizens* within funds available by:

- a. Expanding the number of persons eligible for Medicaid services, using additional state and county funds to take advantage of matching federal funds;
- b. Creating a fund based on provider and local government contributions to provide medical assistance to those citizens who do not qualify for Medicaid or any other government assistance and who do not have the means to pay for hospital care; and
- c. Mandating access to emergency medical care for all state residents in need of the care;

(2) *Provide incentives for cost containment to providers of care* to indigent patients by implementing a prospective payment system in the Medicaid and Medically Indigent Assistance Fund programs;

(3) *Monitor efforts to foster competition in the health care market place* while being prepared to make adjustments in the system through regulatory intervention if needed;

(4) *Promote market reforms*, as the single largest employer in the State, by structuring its health insurance program to encourage healthy lifestyles and prudent use of medical services; and

(5) Reduce where possible or maintain the current rate schedules of hospitals to *keep costs from escalating*.

§ 44-6-132 (emphasis added); *Doe v. Marion*, 361 S.C. 463, 473-474, 605 S.E.2d 556, 561-562 (Ct. App. 2004) (holding that "the general rule is that a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing a civil liability When a statute does not specifically create a private cause of action, one can be implied only if the legislation was enacted for the special benefit of a private party.").

Third, the MIAA expressly delegates authority to administer and enforce the statute to the South Carolina Department of Health and Human Services ("DHHS") and to the South Carolina Department of Health and Environmental Control ("DHEC"). See S.C. Code Ann. § 44-6-150(A) ("There is created the South Carolina Medically Indigent Assistance Program administered by the department."). Specifically, section 44-6-150 of the MIAA expressly provides that DHEC has the authority to pursue civil penalties against a hospital or any of its employees or staff for violation of the statute:

In addition to or in lieu of an action taken affecting the license of the hospital, when it is established that an officer, employee, or member of the hospital medical staff has violated this section, the South Carolina Department of Health and Environmental Control shall require the hospital to pay a civil penalty of up to ten thousand dollars.

S.C. Code Ann. § 44-6-150(A).²

The fact that the General Assembly expressly provided in the MIAA that DHEC could impose a civil penalty on hospitals that fail to comply with the statute is further indication that no private right of action was intended. *See Dema v. Tenet Physician Servs.-Hilton Head, Inc.*, 383 S.C. 115, 122, 678 S.E.2d 430, 433-34 (2009) (“The fact that the [Certificate of Need] Act considers violations a misdemeanor and imposes fines as well as license denial, revocation, or suspension further supports the conclusion that the CON Act does not create a private cause of action by implication.”); *Byrd v. Irmo High Sch.*, 321 S.C. 426, 433-34, 468 S.E.2d 861, 865 (1996) (finding when one statutory provision does not include a right that is included in a related provision, legislative intent is that a right will not be implied where it does not exist).

Because there is no provision in the MIAA allowing an individual patient to assert a private cause of action against a hospital and the legislative intent indicates no such right of action was intended by the General Assembly, there can be no statutory duty arising under the MIAA to support any of Defendants’ purported counterclaims against GHS. *See, e.g., Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 245, 711 S.E.2d 908, 910-11 (2011) (upholding dismissal of plaintiff’s negligence claims for alleged violation of Reporter’s Statute because other provisions of the statute did create civil liability and the purpose of the statute as a whole was not to protect an individual’s private right); *Adkins v. South Carolina Dep’t of Corrections*, 360 S.C. 413, 418-19, 602 S.E.2d 51, 54-55 (2004) (dismissing plaintiff-prisoner’s claims against the Department of Corrections under the Tort Claims Act for alleged violation of the Prevailing Wage statutes requiring inmates be paid wages comparable to wages paid for the same work in

² The MIAA further provides that “[u]nless otherwise specified in this chapter, an individual or facility violating this chapter or a regulation under this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars for the first offense and not more than five thousand dollars for a subsequent offense.” S.C. Code Ann. § 44-6-200.

the private sector because the Prevailing Wage statutes created no private right of action in favor of inmates); *Dorman v. Aiken Communications, Inc.*, 303 S.C. 63, 67, 398 S.E.2d 687, 689 (1990) (dismissing plaintiff's tort claims based on newspaper's alleged violation of statute prohibiting publication of the names of sexual assault victims because the statute did not create a private right of action and no basis for civil liability could be implied because, "[a]lthough [plaintiff] may benefit from its enforcement, the statutory provision is primarily for the protection of the public as an entity, and this Court does not construe it to establish a private right of action"); *Steffens v. Am. Home Mortg. Servicing, Inc.*, No.: 6:10-cv-01788-JMC, 2011 U.S. Dist. LEXIS 26709 (D.S.C. Mar. 15, 2011) (dismissing plaintiff borrower's breach of contract, due process, and Unfair Trade Practices Act claims for lender's alleged failure to comply with the provisions of the federal Home Affordable Modification Program (HAMP) because there was no private right of action under HAMP); *Chase Home Finance, LLC v. Manolopoulos*, C.A. No. 2012-CP-23-04927 (Greenville County Ct. Comm. Pleas) (March 27, 2013) (Welmaker, J.) (dismissing defendants' counterclaims for negligence, breach of contract, violation of the Consumer Protection Code, and violation of the Unfair Trade Practices Act because all of those counterclaims were based on lender's alleged failure to comply with the federal HAMP program for which no private right of action exists).³

Finally, to the extent Defendants rely upon their allegation that GHS has violated an alleged statutory duty under "Internal Revenue Code § 501(c)(3)" and "IRC § 501(r)(4)(v)" to "widely publicize the policy within the community to be served by the organization" (Answer and Counterclaim ¶ 28), any such allegation or argument fails to salvage their attempted

³ A copy of Judge Welmaker's Order in *Chase v. Manolopoulos* is attached as **Exhibit C** and is relied upon as persuasive authority pursuant to *Higgins v. Medical Univ. of S.C.*, 326 S.C. 592, 600, 486 S.E.2d 269, 273 (Ct. App. 1997) (noting that "circuit court orders" may be "submitted to a trial judge as one would submit a memorandum of law on a particular issue . . .").

counterclaims. The provisions of Section 501(r)(4) referenced in Defendants' counterclaims merely impose additional requirements that non-profit hospitals must meet in order to continue to qualify as "charitable organizations" exempt from tax on corporations and trusts under Section 501(c)(3) of the Internal Revenue Code. Section 501(r) does not give individual patients any rights whatsoever, does not purport to create any private rights for individual patients, and does not purport to create a private right of action to enforce any requirement contained in Section 501(r)(4). Courts across the country have repeatedly rejected use of a hospital's not-for-profit, 501(c)(3) status as a basis to create a private cause of action against a hospital related to charges to patients. *See, e.g., Nygaard v. Sioux Valley Hospital*, 731 N.W.2d 184, 198 n.15 (S.D. 2007); *Nash v. Lee Mem'l Health Sys.*, No. 2004CV369FTM29DNF, 2005 U.S. Dist. LEXIS 27248 (M.D. Fla. Aug. 25, 2005); *Amato v. UPMC*, 371 F. Supp. 2d 752 (W.D. Pa. 2005); *Kolari v. N.Y. Presbyterian Hosp.*, 382 F. Supp. 2d 562 (S.D.N.Y. 2005); *Quinn v. BJC Health Sys.*, 364 F. Supp. 2d 1046 (E.D. Mo. 2005); *Shriner v. Promedica Health Sys., Inc.*, No. 3:04CV7435, 2005 WL 139128 (N.D. Ohio Jan. 21, 2005); *Lorens v. Catholic Health Care Partners*, 356 F. Supp. 2d 827 (N.D. Ohio 2005). Indeed, the clear language of 26 U.S.C. § 7401 precludes this Court from enforcing any Section of the Internal Revenue Code without the authorization of the Secretary of the Treasury and the United States Attorney General which has not been secured in any of these cases.

B. Defendants fail to assert any cognizable cause of action related to the Medicaid "Disproportionate Share Program."

Equally unavailing is Defendants' attempt to create a statutory duty based on alleged violation of what is referred to in their counterclaims as the "South Carolina Disproportionate Share Program." As described above, Defendants allege that GHS "failed to set-off" their accounts "under a Medicaid disproportionate share rate." (*See Answer and Counterclaims*, ¶ 16.)

However, Defendants do not and cannot point to any state or federal statute, regulation, or rule that requires GHS to apply a “set off” on the amount owed under any patient’s account—whether indigent or otherwise—based on any “disproportionate share” funds or allotment the Hospital may receive from the state or federal government under the Medicaid or Medicare programs.

The federal Medicaid statute requires that each state must provide Medicaid under a “State Plan” that complies with numerous federal requirements. *See* 42 U.S.C. § 1396a(a)(1)-(81); 42 C.F.R. § 430.12. Among those requirements is that states set Medicaid payment rates that take into account “the situation of hospitals which serve a disproportionate number of low-income patients with special needs.” 42 U.S.C. § 1396a(a)(13)(A)(iv). This requirement is commonly referred to as the Medicaid “disproportionate share hospital payment adjustment” (DSH). These DSH payments are designed to assist “safety net” hospitals in making up for high levels of uncompensated care. *See Ashley County Med. Ctr. v. Thompson*, 205 F. Supp. 2d 1026, 1031 (E.D. Ark. 2002). Whether a hospital qualifies for a Medicaid DSH adjustment, and the amount of the adjustment it receives, depends on the hospital’s “disproportionate patient percentage,” which is determined according to a complex statutory formula. According to the statutory formula, the disproportionate patient percentage is the sum of two fractions which have no relation or connection to any individual patient’s account:

1. the percentage of Medicare inpatient days attributable to patients entitled to both Medicare Part A and Supplemental Security Income; and
2. the percentage of total inpatient days attributable to patients eligible for Medicaid but not eligible for Medicare Part A.

See 42 U.S.C. § 1395ww(d)(5)(F)(vi)(I)-(II).

The DSH program contains no provisions which require, contemplate, or touch upon a "set off" or "offset" of an individual patient's account based on the supplemental funds received through the DSH program. Defendants do not allege and cannot point to any provision of the Medicare or Medicaid statute that requires or even mentions an obligation on the part of the Hospital to apply such an "offset" or "set off" to a particular patient's account as a result of any funds received from the federal Department of Health and Human Services under the DSH program.

However, even if Defendants could point to such a requirement under any provision of the of the Medicare or Medicaid statutes or regulations, our appellate courts have already held that no private right of action arises under the federal Medicare and Medicaid programs. *See Wogan v. Kunze*, 366 S.C. 583, 601, 623 S.E.2d 107, 117 (Ct. App. 2005) (finding plaintiff could not assert tort claims against physician who failed to file a claim for benefits as required by the Medicare Act because there was no private right of action created under the Medicare Act: "The Medicare Act provides for specific remedies in the form of sanctions and penalties, and this weighs against finding that Congress intended to create the remedy of a private right of action.").

V. CONCLUSION

As discussed above, Defendants' counterclaims all fail to state a claim as a matter of law because the statutory programs they claim GHS has violated and which form the sole basis for their counterclaims do not give rise to any private right of action under South Carolina law. GHS is therefore entitled to dismissal of these counterclaims pursuant to Rule 12(b)(6), SCRCP.

[Signature appears on the following page.]

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.



H. Sam Mabry, III (S.C. Bar No. 3490)
Charles M. Sprinkle III (S.C. Bar No. 70630)
Sarah T. Clemmons (S.C. Bar No. 74093)
One North Main Street, Second Floor (29601)
Post Office Box 2048
Greenville, South Carolina 29602
Phone: (864) 240-3200
Fax: (864) 240-3300

*Attorneys for Plaintiffs Greenville Hospital System
and GHS Partners in Health, Inc.*

June 18, 2013
Greenville, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Greenville Hospital System,
and
GHS Partners in Health, Inc.,

Plaintiffs,

vs.

Carol Hughes York,

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. No.

2013-CP-23-01620

COMPLAINT
(Collection)

(Non-Jury)

FILED-CLEAR OF COURT
GREENVILLE CO. S.C.
MAR 19 AM 10:27

The Plaintiffs, complaining of the Defendant, respectfully show to the Court:

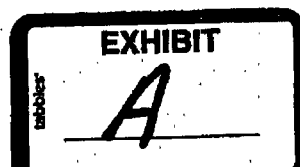
1. That the Plaintiff, Greenville Hospital System, is an eleemosynary institution created by act of the legislature with its principal place of business in Greenville County, South Carolina.

2. That the Plaintiff, GHS Partners in Health, Inc., is a 501(c)(3) organization established under the laws of the State of South Carolina, whose purpose is to support the Greenville Hospital System in fulfilling its mission through the provision of physician services, with its principal place of business in Greenville County, South Carolina.

3. Pursuant to the requirements of the Federal Fair Debt Collection Practices Act, Plaintiffs hereby notify Defendant that the debt described in this Complaint will be assumed by Plaintiffs to be valid unless Defendant, within thirty (30) days after receipt of this Complaint, disputes the validity of this debt, or any portion thereof. If Defendant notifies Sarah T. Clemmons, Esquire, of the law firm of Haynsworth Sinkler Boyd, P.A. at Post Office Box 2048, Greenville, South Carolina, 29602, in writing, within thirty (30) days of receipt of this Complaint that the debt or any portion thereof is disputed, Haynsworth Sinkler Boyd, P.A. will obtain for Defendant a verification of the debt and a copy of such verification will be mailed to Defendant.

Note that the foregoing is not a grace period.

4. This is an action by a debt collector to collect a consumer debt owed by Defendant to Plaintiffs and any information obtained may be used for that purpose. The notice required by the Fair Debt Collection Practices Act is attached hereto as Exhibit A and incorporated herein by reference.



5. That Defendant was a patient in the facilities of Greenville Hospital System and GHS Partners in Health, Inc. located in Greenville County, South Carolina, as shown on the Verified Statements of Account attached hereto as Exhibit B and Exhibit C and incorporated herein by reference.

6. At which time and during which period Plaintiffs provided various diagnostic and therapeutic medical services, accommodations and drugs to Defendant at the prices and on the dates shown on the attached Exhibit B and Exhibit C.

7. That Defendant received said diagnostic and therapeutic medical services, accommodations and drugs, and there is now due and owing to Plaintiffs the total sum of Twenty-Two Thousand Two Hundred Seventy-Eight And 01/100 (\$22,278.01) Dollars.

8. That the Defendant is responsible for the payment of all charges incurred by Defendant upon receipt of said services from the Plaintiffs.

9. The Plaintiffs have made demands of the Defendant for payment; however, the sum of Twenty-Two Thousand Two Hundred Seventy-Eight And 01/100 (\$22,278.01) Dollars, as shown on the attached Exhibit B and Exhibit C, remains past due and owing to Plaintiffs by the Defendant, no part having been paid by discount or otherwise.

WHEREFORE, Plaintiffs pray that they have judgment against the Defendant in the amount of Twenty-Two Thousand Two Hundred Seventy-Eight And 01/100 (\$22,278.01) Dollars, together with the costs of this action.

HAYNSWORTH SINKLER BOYD, P.A.

By: Sarah T Clemmons
Sarah T. Clemmons (S.C. Bar No. 74093)
Attorneys for Plaintiffs
Post Office Box 2048
Greenville, South Carolina 29602
(864) 240-3200
(864) 240-3300 (facsimile)

Dated: MARCH 18, 2013
Greenville, SC

EXHIBIT A

**NOTICE REQUIRED BY THE FAIR DEBT COLLECTION
PRACTICES ACT, (THE ACT)
15 U.S.C. SECTION 1692 AS AMENDED**

1. The amount of the debt is that as stated in the Complaint attached hereto.
2. The Original and Current Creditors are:

Greenville Hospital System
255 Enterprise Boulevard, Suite 210
Greenville, SC 29615

GHS Partners in Health, Inc.
7 Independence Point, Suite 140
Greenville, SC 29615
3. The debt described in the Complaint attached hereto will be assumed to be valid by Plaintiffs' law firm unless you, the Debtor, within thirty (30) days after receipt of this notice, dispute in writing, the validity of the debt or some portion thereof.
4. If you, the Debtor, notify Plaintiffs' law firm in writing within thirty (30) days of receipt of this notice that the debt or any portion thereof is disputed, Plaintiffs' law firm will obtain a verification of the debt and a copy of the verification will be mailed to you, the Debtor, by Plaintiffs' law firm.
5. If Plaintiffs named in the attached Complaint are not the original Creditors, and if you make a written request to Plaintiffs' law firm within thirty (30) days from receipt of this notice, the names and addresses of the original Plaintiffs will be mailed to you by Plaintiffs' law firm.
6. Written requests should be addressed to:

Sarah T. Clemmons
Haynsworth Sinkler Boyd, P.A.
Post Office Box 2048
Greenville, SC 29602
7. This notice should not be construed as a thirty (30) days grace period. Plaintiffs, with the attached Complaint, are pursuing their collection efforts immediately and not waiting thirty (30) days.
8. **This is an attempt to collect a debt and any information obtained may be used for that purpose.**

EXHIBIT B
VERIFIED STATEMENT OF ACCOUNT
GREENVILLE HOSPITAL SYSTEM

T. C. MILLS, being duly sworn, deposes and states that:

1. She is the Legal Financial Specialist of Patient Account Services with the Greenville Hospital System;
2. Carol Hughes York is indebted to Greenville Hospital System for outstanding account(s) due for medical services, rooms and drugs rendered to Carol Hughes York as itemized below;
3. \$18,828.00 is now due and owing to the Greenville Hospital System by Carol Hughes York as shown below;
4. The foregoing is a true and correct itemization of the outstanding accounts due Greenville Hospital System, and that no part of said amount has been paid by discount or otherwise.

<u>Account Numbers(s)</u>	<u>Date(s) of Service</u>	<u>Amount</u>
03-0015521313	05/29/2012 - 05/30/2012	\$3,950.60
08-0015533430	06/01/2012 - 06/01/2012	\$14,877.40

Total Due: \$18,828.00

GREENVILLE HOSPITAL SYSTEM

By: T. C. Mills
T. C. Mills
Legal Financial Specialist
Patient Account Services

Sworn to and subscribed before me this 08
day of March, 2013.

Gregory H. Hadden
NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 10/17/19

EXHIBIT C

VERIFIED STATEMENT OF ACCOUNT

GHS PARTNERS IN HEALTH, INC.

Christen Johnson Bruce, being duly sworn, deposes and states that:

1. She is the Practice Operations Specialist with the GHS Partners in Health, Inc.;
2. Carol Hughes York is indebted to GHS Partners in Health, Inc. for outstanding account(s) due for medical services, rooms and drugs rendered to Carol Hughes York as itemized below;
3. \$3,450.01 is now due and owing to the GHS Partners in Health, Inc. by Carol Hughes York as shown below;
4. The foregoing is a true and correct itemization of the outstanding accounts due GHS Partners in Health, Inc., and that no part of said amount has been paid by discount or otherwise.

<u>Invoice Numbers(s)</u>	<u>Date(s) of Service</u>	<u>Amount</u>
13775252	05/31/2012 - 05/31/2012	\$125.00
1380960	06/01/2012 - 06/01/2012	\$3,325.01

Total Due: \$3,450.01

GHS PARTNERS IN HEALTH, INC.

By: Christen Bruce
Christen Johnson Bruce
Practice Operations Specialist

Sworn to and subscribed before me this 15th
day of March 2013.
Jimmy J. Bruce
NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 3/26/2017

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

) IN THE COURT OF COMMON PLEAS
)
) C. A. NO.: 2013-CP-23-1620

Greenville Hospital System and GHS
Partners in Health, Inc.,

Plaintiff,

-vs-

Carol Hughes York,

Defendant

**AMENDED
ANSWER AND COUNTERCLAIM
(JURY TRIAL DEMANDED)**

The Defendant, hereby propounding their answer and by way of counterclaim hereby answers the Plaintiff's Complaint and would respectfully show unto this Honorable Court as follows:

1. The Defendant, upon information and belief, admits the allegations contained within paragraphs one (1) and two (2) of the Complaint.

2. The Defendant demands compliance of the Federal Fair Debt Collection Act as pled in paragraphs three (3) and four (4) of the Complaint.

3. The Defendant admits so much of paragraphs five (5), six (6), seven (7), eight (8) and nine (9) of the Complaint as she was a patient upon the facilities of the Plaintiff, that certain services were rendered, she is responsible for the true charges for such services and demand for payment has been made. The Defendant, however, denies the remaining allegations relating to the amount(s) due and owing on said accounts due to her indigent status as contemplated by the regulatory and statutory authority of the State of South Carolina.



FOR AN AMENDED FIRST DEFENSE
(Unclean Hands)

4. Each and every allegation contained above is re-alleged as if fully set forth herein.

5. That the Plaintiffs have an ongoing duty to act equitably with regard to patient accounts, including, but not limited to, the referral of individuals without sufficient third-party coverage, upon such discovery, to the appropriate county designee for further consideration of indigent funding. That upon the Plaintiff's failure to act in good faith and to otherwise deal fairly with individuals such as the Defendant in like situations, they are barred from any equitable remedy, including the collection of accounts derived in an otherwise illegal manner, under the prevailing doctrine of unclean hands.

FOR A SECOND DEFENSE
(Failure to Mitigate Damages)

6. Each and every allegation contained above is re-alleged as if fully set forth herein

7. That upon presentment to the Plaintiff's facilities, the Defendant possessed no adequate health insurance benefits to pay for all goods and services rendered. But for the Plaintiff's failure to act in a manner consistent with indigent patients ie: their failure to adequately refer the Defendant to certain indigent or scholarship programs notwithstanding the Defendant's requests for information, the Defendant has been denied assistance under certain indigent and/or scholarship programs through no fault of her own.

8. That as a result of the Plaintiff's failure to comply with binding authority, they have failed to mitigate their damages and as such are further barred from recovery against this Defendant.

FOR A THIRD DEFENSE AND FIRST CAUSE OF ACTION
(Violation of S.C. Code Ann. §§39-5-10 et. seq. (1976 as amended))
South Carolina Unfair Trade Practices Act

9. Each and every allegation contained above is re-alleged as if fully set forth herein.

10. That the South Carolina General Assembly has previously enacted legislation providing for financial assistance to indigent patients within the State of South Carolina who do not have private insurance, Medicaid or Medicare or other viable third-party coverage necessary to afford health care, see *South Carolina Indigent Assistance Act* (hereinafter "MIAA"), S.C. Code Ann. §§44-6-132, et. seq. (1985 as amended), see also *South Carolina Medically Indigent Assistance Program* (hereinafter "MIAP"), S.C. Code Ann. §44-6-150 (1985 as amended) which provides, in part, for the provision of payment to a General Hospital for indigent services rendered within the county of this state. That by virtue of S.C. Code Ann. §44-6-150 (g) (1985 as amended), the South Carolina General Assembly further delegated all authority and oversight, including the setting forth the policies and procedures of MIAA and MIAP, to the South Carolina Department of Health and Human Services (hereinafter "SCDHHS"), to implement said indigent programs; pursuant to the above statutory authority, SCDHHS did devise certain regulations codified under S.C. Regs §§126-500, et. seq. (1986 as amended), thereby further reducing the statutory and regulatory provisions of MIAA and MIAP to a specific policies and procedures manual (hereinafter "Manual" or "manual") which, in turn, sets forth specific program guidelines, rights and responsibilities of the patient and provider alike, a copy of the manual is attached hereto in its entirety as Exhibit "A", and reference hereafter is craved thereto.

11. That upon information and belief, the Plaintiff Greenville Hospital System is a General Hospital licensed by the South Carolina Department of Health and Environmental Control

("SCDHEC") pursuant to S.C. Code Ann. §44-7-260(A)(1) (1976 as amended), and as such is considered a provider of certain emergency and non-emergency medical services on behalf of indigent patients in Greenville County, South Carolina under the auspices of MIAA, MIAP and other indigent care programs.

12. That upon further information and belief, the Plaintiff, GHS Partners in Health, Inc., is a wholly owned subsidiary of Greenville Hospital System created for the specific purpose of billing and collections on behalf of Greenville Hospital Systems, and as a result of such relationship is further bound by the statutory and regulatory precedent binding its parent as a General Hospital, including all financial matters related to the care of indigents under MIAA, MIAP and other indigent care programs..

13. That pursuant to the intent of the South Carolina General Assembly and underlying SCDHHS regulations concerning MIAA and MIAP, the Plaintiff, as a General Hospital, is bound by the terms and conditions relating to ascertaining financial eligibility of certain indigent patients, more specifically §101 of the manual which clearly requires the provider to determine the financial status of the patient and, upon the discovery that third party financial assistance is not otherwise available to the patient, the provider must refer the patient to the appropriate county official for application and consideration of the MIAP program; furthermore, §101.2 provides for retroactive assistance for up to one (1) year from the date of service , thereby extending the Plaintiffs' duty to refer for that one (1) year period.

14. That upon reaching its determination the Defendant were without viable third-party coverage due to no fault of the Defendant, no employment or income, and, with all other factors present (ie: family size, total resources including income),she were indigent under the Federal

Poverty Guidelines set forth in §315, Table XXVII of the manual, the Plaintiff otherwise failed to properly advise of, and refer the Defendant to the county designee for MIAP consideration despite a clear duty under §101 of the manual to do so, both during the initial emergency registration period and the one (1) year period subsequent to the time services were rendered, but rather required filed suit to collect the putative debt while further not being lawfully referred for third party resources under MIAP.

15. That the Plaintiff's wilful violation of its duty to refer the Defendant to the MIAP program has now rendered Defendant unable to receive retroactive assistance under MIAP, pursuant to §101.2 of the manual, and that as a further result of the Plaintiff's wilful and wanton violations of MIAP regulations, the Defendant have been denied certain substantive and procedural due process rights of appeal afforded under MIAP; Furthermore, if the Defendant is in fact representative of the Plaintiff's procedure relative to MIAA and MIAP, then MIAA and MIAP is not being properly applied under its binding statutory and regulatory framework by the Plaintiff, such failure having the propensity to deny or continue to deny otherwise eligible indigent individuals from proper referral and application of MIAA and MIAP as set forth above.

16. The Defendant is further informed and believes the Plaintiff failed to lawfully treat her account as that of an indigent, failed to set-off her account under a Medicaid disproportionate share rate and further failed to correctly classify her as indigent under the *South Carolina Disproportionate Share Program* (hereinafter "SCDSH") as funds realized and distributed to General Hospitals in South Carolina under the federal *Medicaid Disproportionate Share Hospital Program Allotment Program*, as provided by the *American Recovery and Reinvestment Act of 2009, Section 5002* (hereinafter "ARRA") of which the Plaintiff, as a General Hospital is entitled to receive, and is

receiving such funds to offset the costs borne by the Plaintiff in providing indigent care; furthermore, if the Defendant is in fact representative of the Plaintiff's procedure relative to SCDSH, then SCDSH is not being properly applied under the statutory and regulatory duty imposed upon the Plaintiff and has the propensity to continue as to other eligible indigent patients similarly situated as the Defendant here.

17. The Defendant is further informed and believes that as a result of the Plaintiff's repeated wilful and wanton violations of MIAA and MIAP, she have been denied her otherwise lawful opportunity to apply for benefits under the program which, properly applied, would have fully satisfied her obligation to the Plaintiffs and, that the Plaintiff's further failure to properly treat her account under SCDSH as that of an indigent and improperly charging them under the inflated master rate results in nothing more than predatory behavior relative to the Plaintiff's knowing and wilful failure to comply with binding statutory and regulatory authority under MIAA, MIAP and SCDSH.

18. That as a result of the foregoing failures of the Plaintiff and its knowing and wilful violations of binding authority relating to financial remuneration of indigent accounts, where the accounts would otherwise be satisfied as a result of MIAP and SCDSH application, albeit at a much lower rate of return, the Plaintiff is now barred from pursuing this collection action as a matter of law.

**AS TO THE COUNTERCLAIM
FOR A FIRST CAUSE OF ACTION
(Violation of S.C. Code Ann. §§39-5-10 *et. seq.* (1976 as amended))
South Carolina Unfair Trade Practices Act**

19. That the fraudulent manner in which the Plaintiff willfully and wantonly, and with reckless disregard to their statutory and regulatory duty to do so, failed to refer the Defendant to the county designee for Greenville County MIAP upon its discovery the Defendant did not have adequate

third-party coverage as contemplated under the prevailing regulations, and further knowingly, willingly and wantonly disregarding the indigent status of the Defendant to unjustly enrich itself at her expense upon such discovery no third party coverage, including Medicaid or Medicare, existed in which to pay for services, this conduct being a direct violation of the regulations concerning MIAP and the Plaintiff's duty to refer the Defendant to the county designee for Greenville County for application of financial consideration under MIAP; the common scheme being the Plaintiff would receive a much lower payment through MIAP for services rendered than under a master rate agreement; this in addition to instituting collection actions against the Defendant to gain possession of certain valuable real and/or personal property in circumvention of binding authority, in an otherwise unlawful gain of payment in excess of its share or payment under MIAP has a propensity to be repeated and therefor falls into the public purview or harm specter.

20. That the fraudulent manner in which the Plaintiff knowingly, willfully and wantonly, and with reckless disregard to their statutory and regulatory duty to do so, failed to adequately consider the Defendant as indigent under the MIAA definition, and further failed to adequately account for funding under SCDSH as a set off for her otherwise indigent care, notwithstanding their regulated duty to do so, and further willingly and wantonly disregarding the pertinent financial condition of the Defendant to unjustly enrich itself at the expense of the Defendant in place of duly qualifying the Defendant as indigent and procuring certain SCDSH funding, whereby the Plaintiff would receive a much lower payment for services rendered than under a master rate agreement; this in addition to instituting this illegal and unjust collection actions against the Defendant to gain possession of certain valuable real and/or personal property, these failures to comply with binding duty and the further unlawful attempts to gain payment in excess of its share or payment under SCDSH has a propensity

to be repeated and therefor falls into the public purview or harm specter.

21. Specifically, the Plaintiff engages in deceptive business practices with respect to failing to follow binding statutory and regulatory authority in the designation and referral of indigents to the appropriate service agency or disproportionate share funding programs in contravention to the laws of the State of South Carolina, by:

- a. Failing to comply with its statutory and regulatory duty to refer any patient who is without third-party financial resources to SCDHHS for determination of the MIAP program; and,
- b. Failing to protect the substantive and procedural due process rights afforded under MIAP of patients who fall under the referral obligation of S.C. Regs. §126-505 (C) (1985 as amended); and,
- c. Failing to properly identify and designate eligible individuals as indigent under the statutory definition expressed through MIAA; and,
- d. Failing to adequately set off charges on behalf of indigent patients for payments received under SCDSH notwithstanding the indigent status and offset monies received as a disproportionate share; and,
- e. Requiring agreement of master rates from an otherwise indigent individual prior to rendering services in direct contravention to the prevailing statutory and regulatory authority of the State of South Carolina; and,
- f. Improperly and illegally characterizing customers' accounts as being in default or otherwise delinquent; and,
- g. Instituting improper collections actions with disregard to the consumers' rights, including, but not limited to attaching or attempting to attach individual state income tax refunds from otherwise indigent individuals without first accounting for SCDSH monies or referral to MIAP; and,
- h. Seeking to collect, and collecting, various costs, fees and increases which are legally not due under the account status which only serves to otherwise unjustly enrich the Plaintiff; and,
- i. Misappropriating funds under the SCDSH program; and,

- j. Executing false and misleading documents; and,
- k. Failing to act in good faith in the charge of exorbitant rates for services but do not fairly charge indigent patients in compliance with applicable law.

22. That the Plaintiff has engaged and continues to engage in a uniform pattern or practice of unfair and illegal trade practices which affects the public interest, not only to this Defendant, but similarly situated individuals who are otherwise eligible to apply for funding under the MIAP program but otherwise failed to be made aware of such program's existence, notwithstanding the Plaintiff's statutory and regulatory duty to do so, and as a result later become ineligible due to time filing limitations which often results in otherwise illegal collection actions being pursued to completion with final judgments rendered against this Defendant and a class of similarly situated individuals of this county; wherein the scheme being designed to otherwise defraud this Defendant and similarly situated individuals in this county and to further unlawfully enrich the Plaintiff.

23. That the Plaintiff has engaged and continues to engage in a uniform pattern or practice of unfair and illegal trade practices which affects the public interests, not only to this Defendant, but similarly situated individuals who are otherwise indigent under the statutory definition of "Indigent" of MIAA and are otherwise eligible for payment of her health care costs through SCDHS application, notwithstanding the Plaintiff's statutory and regulatory duty to do so, the failure of which causes an otherwise eligible indigent consumer to be ineligible for SCDSH set-off due to time filing limitations which often results in otherwise illegal collection actions being pursued to completion with final judgments rendered against this Defendant and a class of similarly situated individuals of this county; wherein the scheme being designed to otherwise defraud this Defendant and similarly situated individuals in this county and to further unlawfully enrich the Plaintiff.

24. The Plaintiff's actions in filing this collection action when, in fact, it failed to comply with the binding statutory and regulatory requirements of MIAA, MIAP and SCDSH, were deceptive and have caused harm, and are the proximate cause of such damage, to this Defendant, and similarly situated individuals of this county, thereby affecting the public interests, said unfair and illegal trade practices having the propensity to be repeated and therefore fall under the Statute regarding unfair trade practices, whereby treble damages should accrue as determined by the Court and attorneys' fees awarded pursuant to the Statute of Unfair Trade Practices, S.C. Ann. §§39-5-10, *et. seq.* (1976 as amended).

25. By reason of the foregoing, the Plaintiff has been unjustly enriched and should be required to disgorge their otherwise illicit profits and/or make restitution in the manner proscribed above to the Defendant; and to further be enjoined from continuing in such practices pursuant to South Carolina law.

**FOR A SECOND CAUSE OF ACTION
(Negligence *Per Se*)**

26. Each and every allegation contained above is re-alleged as if fully set forth herein.

27. Plaintiffs owed to Defendant a duty to comply with S.C. Code Ann. §44-6-150 (C)(1)(a) of the *Medically Indigent Assistance Act*, (1976 as amended) and further set forth under S.C. Regs. §126-505 and S.C. Regs. §126-510, *et. seq.*, wherein that certain duty to adequately refer the patient to the MIAP program as set forth by statute and regulation, has been specifically violated by the Plaintiffs.

28. That the Plaintiffs, as a Internal Revenue Code §501(c)(3) not for profit corporation owes to Defendant a further duty to comply with IRC §501(r)(4)(v) requiring the Plaintiffs to "widely

publicize the policy within the community to be served by the organization" which the Plaintiffs have failed to do.

29. That where Plaintiffs have wilfully, wantonly and with gross negligence, as to the rights of the Defendant and binding statutory and regulatory duty to protect those rights of the Defendant's indigent status, have violated and failed to comply with the duties imposed upon them to comply with the terms and conditions of S.C. Code Ann. §44-6-150 (C)((1)(a) of the *Medically Indigent Assistance Act*, (1976 as amended) and further set forth under S.C. Regs. §126-505 and S.C. Regs. §126-510, *et. seq*, and are, therefore, grossly negligent *per se*.

30. That where Plaintiffs, as a Internal Revenue Code §501(c)(3) not for profit corporation, have further wilfully, wantonly and with gross negligence, as to the rights of the Defendant and binding statutory and regulatory duty to protect those rights of the Defendant's indigent status, have violated and failed to comply with the duties imposed upon them to comply with the terms and conditions of Internal Revenue Code §501(r)(4)(v)(2010) requiring the Plaintiffs to "widely publicize the policy within the community to be served by the organization", and are, therefore, grossly negligent *per se*.

31. As a direct and proximate cause of the Plaintiffs gross negligence *per se*, the Defendant has suffered actual damages and is in further imminent danger of suffering further material injury and loss due to the negligent *per se* violations of the Plaintiffs.

32. As a result of the above noted gross negligent *per se* violations, the Defendant is entitled to judgment against the Plaintiffs for actual damages, incidental damages, and costs to be determined by the trier of fact, in addition to an award of attorney's fees pursuant to S.C. Code Ann. §15-77-300 (1976 as amended).

**FOR A THIRD CAUSE OF ACTION
(Negligence)**

33. Each and every allegation contained above is re-alleged as if fully set forth herein.

34. Plaintiffs owed to Defendant a duty to provide a reasonable standard of care under the circumstances in fully complying with the statutory and regulatory notice requirements relating to indigent health care funding including, but not limited to, the duty to refer a party who does not have adequate third party coverage to the appropriate liason for MIAP application or inclusion in other indigent care reimbursement programs and that any deviation therefrom is negligent.

35. That the Plaintiffs have failed to exercise slight care and have willfully, wantonly, recklessly and with negligence breached the standard of care owed to the Defendant by failing to exercise reasonable care under the circumstances in their handling of the Defendant's accounts ; in failing to properly hire, train, supervise and retain their employees; and by failing to timely and lawfully notify the Defendant of their right to apply for MIAP or similarly situated indigent programs notwithstanding their duty to do so, as well as in such other particulars as further discovery will disclose.

36. As a direct and proximate cause of the Plaintiffs negligence, carelessness, recklessness, willfulness, wantonness and heedlessness, the Defendant have suffered actual damages and is in further imminent danger of suffering further material injury and loss.

37. As a direct and proximate result of the above noted negligence, the Defendant are entitled to judgment against the Plaintiffs for actual damages, incidental damages, and costs to be determined by the trier of fact, in addition to an award of attorney's fees pursuant to S.C. Code Ann. §15-77-300 (1976 as amended).

**FOR A FOURTH CAUSE OF ACTION
(Gross Negligence)**

38. Each and every allegation contained above is re-alleged as if fully set forth herein.

39. Plaintiffs owed to Defendant a duty to provide a reasonable standard of care under the circumstances in fully complying with the statutory and regulatory notice requirements relating to indigent health care funding including, but not limited to, the duty to refer a party who does not have adequate third party coverage to the appropriate liason for MIAP application or inclusion in other indigent care reimbursement programs and any deviation therefrom is grossly negligent.

40. That the Plaintiffs have failed to exercise slight care and have willfully, wantonly, recklessly and with gross negligence breached the standard of care owed to the Defendant by failing to exercise reasonable care under the circumstances in their handling of the Defendant's accounts ; in failing to properly hire, train, supervise and retain their employees; and by failing to timely and lawfully notify the Defendant of their right to apply for MIAP or similarly situated indigent programs notwithstanding their duty to do so, as well as in such other particulars as further discovery will disclose.

41. As a direct and proximate cause of the Plaintiffs gross negligence, carelessness, recklessness, willfulness, wantonness and heedlessness, the Defendant have suffered actual damages and is in further imminent danger of suffering further material injury and loss.

42. As a direct and proximate result of the above noted gross negligence, the Defendant are entitled to judgment against the Plaintiffs for actual damages, incidental damages, and costs to be determined by the trier of fact, in addition to an award of attorney's fees pursuant to S.C. Code Ann. §15-77-300 (1976 as amended).

**FOR A FIFTH CAUSE OF ACTION
(Breach of Fiduciary Duty)**

43. Each and every allegation contained above is re-alleged as if fully set forth herein.

44. The Plaintiff Greenville Hospital System and its subsidiary GHS Partners in Health, Inc., as a General Hospital, is bound by the terms and conditions relating to ascertaining financial eligibility of certain indigent patients, more specifically §101 of the manual which clearly requires the provider to determine the financial status of the patient and, upon the discovery that third party financial assistance is not otherwise available to the patient, the provider must refer the patient to the appropriate county official for application and consideration of the MIAP program. As such, the Plaintiffs owed the Defendant a duty of fidelity and other fiduciary duties of good faith and fair dealing in the proper referral to indigent care programs, servicing of the indigent account and reconciling payments received in an industry accepted manner.

45. That the Plaintiffs have breached such duties in a negligent, grossly negligent, wilful and wanton manner and in a manner characterized by disloyalty, bad faith and unfair dealing and the failure to adhere to specific statutory and regulatory authority of the State of South Carolina and United States of America as to the proper referral of indigent patients to MIAP or other similarly situated programs and through the misapplication and misappropriation of DSH monies in one or more of the following particulars:

- a. In the negligent handling of the Defendant's account to the particulars of failing to refer the Defendant to MIAP or other similarly situated programs, inconsistent with binding legal authority to do so; and,
- b. In failing to apply payments on the account as received under DSH, creating an account imbalance in a manner the Plaintiffs knew or should have known were improper; and,

- c. For failing to comply with industry acceptable manner of accounting and proper application of monies received under a third-party agreement for the benefit of the Defendant; and,
- d. In failing to adequately substantiate the total amounts due upon receipt of DSH funds or funds expended on behalf of the Defendant by a third-party, although the Plaintiff knew or should have known they were required to do so under binding state and federal authority; and,
- e. In further failing to maintain proper servicing and application records as to DSH benefits received in addition to the requests and submissions of documentation not otherwise provided under the *Fair Debt Collections Practices Act*, where the Plaintiffs knew, or should have known, the impropriety of such demands; and,
- f. In failing to protect the financial interests of the Defendant as an indigent patient despite a clear obligation to do so under the MIAP program regulations; and,
- g. In failing to obtain relevant authorization from any alternative third-party coverage prior to the incurring of charges for services rendered and the further attempt of collection thereof despite a clear duty to do so; and,
- h. In failing to disclose the existence of certain indigent and/or scholarship programs notwithstanding the Defendant's request to do so.

46. The Defendant are informed and believes that as a direct and proximate result of the Plaintiffs' actions and breaches of duties, they have suffered actual damages to be determined by the trier of fact; and as the Plaintiff's conduct was sufficiently malicious, willful, wanton, reckless, grossly negligent and/or outrageous to such as degree, the Defendant are entitled to an award of punitive damages in an amount to be determined by the trier of fact, in addition to an award of attorney's fees pursuant to S.C. Code Ann. §15-77-300 (1976 as amended).

WHEREFORE, having fully answered the Complaint and now setting forth their Answer and Counterclaim against the Plaintiffs, the Defendant prays as follows:

- 1. For the Complaint of the Plaintiffs to be dismissed under the doctrine of unclean hands

and failure to mitigate; and,

2. For the Plaintiffs to be required to pay Defendant's attorneys fees and costs;

3. For any other monetary damages covered as to South Carolina Unfair Trade Practices Act, in addition to punitive damages and an award of attorney's fees and costs; and,

4. For an award of attorney's fees and costs pursuant to S.C. Code Ann. §39-5-140 (a) (1976 as amended); and,

5. For a finding of a wilful violation of South Carolina Medically Indigent Assistance Act, the South Carolina Department of Health and Human Services Medically Indigent Assistance Program and South Carolina Disproportionate Share Program, and, upon such finding, a further finding that the debt complained of be treated as illegally obtained in the State of South Carolina; and,

6. For specific injunctive relief pursuant to S.C. Code Ann. §39-5-140(c) (1976 as amended) enjoining the Plaintiff from future failures under the South Carolina Medically Indigent Assistance Act, the South Carolina Department of Health and Human Services Medically Indigent Assistance Program and South Carolina Disproportionate Share Program; and,

9. For a finding of Negligence *per se*, and upon such finding, for judgment against the Plaintiffs for actual damages, incidental damages, and costs to be determined by the trier of fact, in addition to an award of attorney's fees pursuant to S.C. Code Ann. §15-77-300 (1976 as amended); and,

10. For a finding the Plaintiffs' acts, errors and omissions were sufficiently negligent and therefore grossly negligent, and upon such finding, for judgment against the Plaintiffs for actual damages, incidental damages, and costs to be determined by the trier of fact, in addition to an award of attorney's fees pursuant to S.C. Code Ann. §15-77-300 (1976 as amended); and,

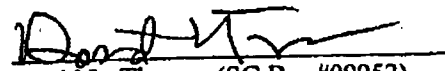
11. For a finding the Plaintiffs' owed to the Defendant specific fiduciary duties which they failed to protect, and upon such finding, for judgment against the Plaintiffs for actual damages, incidental damages, and costs to be determined by the trier of fact, in addition to an award of attorney's fees pursuant to S.C. Code Ann. §15-77-300 (1976 as amended); and,

12. For such other and further relief as this Court may deem just and proper.

Respectfully submitted,

MOORE, TAYLOR & THOMAS, P.A.

By:



David L. Thomas (SC Bar #09952)

23 Wade Hampton Boulevard

Greenville, South Carolina 29609

Phone: (864) 271-6371

Fax: (864) 271-1707

Attorney for Defendant

Greenville, South Carolina

4-18, 2013.

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

) C. A. NO.: 2013-CP-23-1620

Greenville Hospital System and GHS
Partners in Health, Inc.,

Plaintiff,

-vs-

Carol Hughes York

Defendant

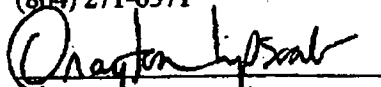
**AMENDED
CERTIFICATE OF SERVICE**

I, Drayton Lipscomb, Legal Assistant with the Law Offices of MOORE TAYLOR & THOMAS, PA, do hereby certify that I have served the Plaintiff with Defendant's AMENDED Answer and Counterclaim in the above-captioned action by placing a copy of same in the United States Mail, postage properly affixed thereto, this 19th day of April, 2013, addressed as follows:

Sarah T. Clemmons, Esq.
Haynsworth Sinkler Boyd, P.A.
P.O. Box 2048
Greenville, SC 29602

MOORE TAYLOR & THOMAS, PA
Attorneys for Defendant
23 Wade Hampton Boulevard
Greenville, SC 29609
(864) 271-6371

By:


Drayton Lipscomb

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP2304927

Chase Home Finance Llc	Athanasios G Manolopoulos Gmac Mortgage Corporation.	Virginia Manolopoulos Ditechcom
PLAINTIFF(S)		DEFENDANT(S)
Submitted by:		Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **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: _____
- ☐ **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:

Before the Court is Plaintiff's Motion to Dismiss Defendants' Counterclaims. Appearing for the Plaintiff was Charles Sprinkle; appearing for the Defendants was Susan Ingles.

"Under Rule 12(b)(6), SCRPC, a party may move to dismiss a complaint against him based on a failure to state facts sufficient to constitute a cause of action. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). In considering a motion to dismiss under Rule 12(b)(6), the circuit court must base its ruling solely on the allegations set forth in the complaint. *Doe v. Marion*, 373 S.C. 390, 645 S.E.2d 245 (2007). Such a motion may not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. *Id.* The question is whether, in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Cole Vision Corp. v. Hobbs*, 394 S.C. 144, 148-49, 714 S.E.2d 537, 539 (2011).



In this foreclosure action, the Defendants have asserted counterclaims against the Plaintiff, alleging violations under the Home Affordable Modification Program ("HAMP"), as codified in S.C. Code Ann. § 37-5-108, and under the South Carolina Supreme Court Administrative Order 2009-05-22-01 ("Administrative Order"). However, "HAMP does not create a private cause of action." *Steffens v. Am. Home Mortg. Servicing, Inc.*, CIV.A. 6:10-1788-JMC, 2011 WL 901812 (D.S.C. Jan. 5, 2011) *report and recommendation adopted sub nom. Steffens v. Am. Home Mortg. Servicing, Inc.*, 6:10-CV-01788-JMC, 2011 WL 901179 (D.S.C. Mar. 15, 2011); *see also, Watkins v. Flagstar Bank, FSB*, 3:11-CV-3298-CMC-PJG, 2012 WL 1431367 (D.S.C. Apr. 25, 2012).

Having reviewed the pleadings and having considered the relevant case law and the arguments of counsel, I find that the counterclaims as plead fail to state a cognizable cause of action. Accordingly, the Plaintiff's motion to dismiss is GRANTED; however, the Defendants are given leave of twenty (20) days to file amended pleadings, if they so desire.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2137

Judge Code

Date

3/27/13

3-28-13 For Clerk of Court Office Use Only 3-28-13

This judgment was entered on 3-28-13, and a copy mailed first class or placed in the appropriate attorney's box on 3-28-13, to attorneys of record or to parties (when appearing pro se) as follows:

Charles M. Sprinkle III Haynsworth Sinkler Boyd, P.A. P.O.
Box 2048 Greenville, SC 29602
Kenneth N Shaw Haynsworth Sinkler Boyd, P.A. P.O. Box
2048 Greenville, SC 29602
James Y. Becker PO Box 11889 Columbia, SC 292111889

ATTORNEY(S) FOR THE PLAINTIFF(S)

Susan P. Ingles 701 S. Main St. Greenville, SC 29601

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

GREENVILLE HOSPITAL SYSTEMS,
PLAINTIFFS.

Transcript of Record

-vs-

YORK, SHORT, PRUITT, CHURCH
AND CROMER,
DEFENDANTS.

June 21, 2013
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA VERDIN, Judge.

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

CHARLES SPRINKLE
Attorney for the Plaintiffs

DAVID THOMAS
Attorney for the Defendants

TRACY MCBRIDE
COURT REPORTER

INDEX

1		
2	STATEMENTS	PAGE
3	By Mr. Sprinkle	3
4	By Mr. Thomas	9
5	Certificate of the Reporter	16

There no exhibits.

1 THE COURT: Your first case up this morning is Greenville Hospital System vs.
2 Carol Hughes York. And I just noticed it looks like there are a lot of the same motions
3 on several different cases involving the same attorneys; but however y'all want to handle
4 it is fine.

5 MR. SPRINKLE: Yes, ma'am, Your Honor, my name is Charles Sprinkle and I
6 represent Greenville Hospital System---

7 THE COURT: Yes, sir.

8 MR. SPRINKLE: ---GHS Partners and Health who are the Plaintiffs in all 6 of
9 the cases this morning--or the Defendants I should say. The hospital brought these cases
10 as collection actions---

11 THE COURT: Yes, sir.

12 MR. SPRINKLE: ---to collect amounts that are owed for treatment that were
13 provided to each of the patients. And each of these patients are represented by Mr.
14 Thomas. And they have all asserted counterclaims against the hospital in the collection
15 action. They're all the same counterclaims.

16 THE COURT: Okay.

17 MR. SPRINKLE: So I would propose that we--I'm prepared to make one
18 argument that would apply to all of the cases.

19 THE COURT: All right.

20 MR. SPRINKLE: That would be the most efficient way I think.

21 MR. THOMAS: I have no objection to that.

22 THE COURT: Okay, great, very well; y'all are easy to deal with, all right.

23 MR. SPRINKLE: And this argument does apply to all 6 of the cases, York,
24 Shaw, Pruitt, Hunt, Church and Cromer cases that are on your roster this morning, Your
25 Honor; and as I mentioned all of the Defendants have filed substantively identical

1 counterclaims for violation of the Unfair Trade Practice Act, negligence per say, gross
2 negligence and breach of fiduciary duty against the hospital. All of their counterclaims
3 are based on alleged violations of two statutes, the Medically Indigent Assistance Act and
4 the Disproportionate Share Program, which is apart of the Federal Medicare Program.
5 And the grounds for our motions are that the statutes that they're relying upon in their
6 counterclaims do not create any private right of action or any other type of legal duty or
7 opinion which those claims can be based. And we've submitted to, Your Honor, a
8 memorandum setting out our argument; and I have an extra copy if you need that.

9 THE COURT: I have it here.

10 MR. SPRINKLE: Okay great. The claims based on the Medically Assistance
11 Act, the Defendants claim that GHS failed to properly advise of and refer them to the
12 accounting designee for consideration under the Medically Indigent Assistance Program.
13 Now this is a program that's actually administered by the Department of Health and
14 Human Services and authorized by the Medically Indigence Assistance Act. I'll just refer
15 to that as the MIAA for short. The MIAA was enacted by the General Assembly to
16 provide--in part to provide some reimbursement to hospitals that are faced with having to
17 provide uncompensated care to individuals who simply can't afford to pay for it. And the
18 expressed purpose of the statute is to address the strains that having to provide
19 uncompensated care puts on the hospitals and others in the healthcare system. And the
20 statute says it's intended to ameliorate the problems of uncompensated care that cause
21 problems to the hospitals, the patients, healthcare system, employers, government entities
22 and tax pay years. The counterclaims fail, as a matter of law based on MIAA, because
23 there's no private right of action and no basis to apply any private right of action or any
24 legal duty upon which their claims can be based. So under South Carolina law a statute
25 cannot be construed as establishing civil liability unless there's a clear legislative intent

1 that that being the case; and as our Supreme Court, Court of Appeals have held to make
2 this determination on whether such a duty arises under the statute; you look to whether
3 there is an actual provision which would create it first; and if there is no actual provision
4 you would look to whether one can be implied by looking at the legislative intent. And
5 the key question there, if we're going to apply a right of action, is was the statute enacted
6 for the special benefit of a private individual? And we submit that's not the case here in
7 looking at MIAA. First of all there's no provision in the MIAA which allows a private
8 citizen to assert any cause of action based on the hospital's failure to comply with the
9 statute. And therefore we must presume under the canons of statutory construction that
10 none was intended.

11 THE COURT: Okay.

12 MR. SPRINKLE: But there's also no case under South Carolina law which
13 would recognize any such right of action. So there's no expressed provision; so can one
14 be implied. Your Honor, I submit that you cannot imply such a cause of action. Rather
15 than being created for the special benefit of a private party, the legislative's intent, which
16 is actually set forth in a legislative finding and intent section of the statute, expressly
17 provides that it is, as I mentioned a few minutes ago, for the benefit of quote, "the
18 healthcare system, the hospital industry, health insurance companies, paying patients,
19 businesses which are quote, "large purchasers of health care services, tax payers and
20 counties which support public hospitals; and it says it's intended to address the problems
21 where you have hospitals which provides the bulk of unreimbursed services and cannot
22 compete economically with hospitals which provide relatively little care---

23 THE COURT: Okay.

24 MR. SPRINKLE: ---to indigent patients.

25 THE COURT: All right.

1 MR. SPRINKLE: So we have expressed legislative findings that indicate it is not
2 for the benefit of just a private individual or a narrow class of individuals, rather it's for
3 the system as a whole. So no right can be implied by looking at the legislative's intent as
4 set forth in the statute. In this lack of intent I think it's further supported by the fact that
5 in the statute it expressly delegates to the Department of Health and Human Services and
6 D-HEC the right to enforce the provisions of the statute and actually assert a civil penalty
7 against a hospital that does not comply with the statute. Section 44-6-150 (A) says that
8 D-HEC can take action against the license of a hospital or require the hospital to pay a
9 fine of up to ten thousand dollars (\$10,000) for not complying with the statute. There's
10 also a provision section 44-6-200, which provides that a violation constitutes a
11 misdemeanor punishable by a fine not more than a hundred dollars for the first offense
12 and not more than five thousand dollars (\$5,000) for each subsequent offense. Our
13 Supreme Court, in looking at analytic situation under the Certificate of Need Act,
14 actually said, quote, "the fact that the Certificate of Need Act considers violations a
15 misdemeanor and poses fines as well as license denial, revocation or suspension further
16 supports the conclusion that the Certificate of Need Act does not create a private right of
17 action by implication; and that's *Dema versus Tenet Physician Services Hilton Head,*
18 *Inc.*, 678 S.E.2d 430. So we have no expressed--no implied intent in the legislative
19 findings. We have also an indication that no such civil liability was intended because
20 they gave that power to DHHS and D-HEC; and additionally, just one more point with
21 regard to the UTPA, the Unfair Trade Practices Act---

22 THE COURT: Yes, sir.

23 MR. SPRINKLE: ---there's no provision in the MIAA which allows a party who
24 feels that the hospital has violated the MIAA to bring a claim under the UTPA. Now the
25 legislature does in many places in their code actually provide that a violation of the

1 statute constitutes a violation of the UTPA; and they even do so in the very same title that
2 this Medically Indigent Assistance Act appears in. And just to make this point clear, I
3 have just a one page hand-up if I may hand it up?

4 THE COURT: Yes.

5 MR. SPRINKLE: And here's a copy to Mr. Thomas as well. This just shows the
6 penalty provision of the Medically Indigent Assistance Act on the left-hand side. That's
7 the act we are here about today. And on the right hand side of the same title, title 44 you
8 have a penalty provision of under what's called the Physical Fitness Services Act; and
9 you will see in that provision in title 44, the legislature actually provided for a violation
10 of any provision in this chapter considering violation of the Unfair Trade Practices Act.
11 So I believe had the legislature intended to create a right to bring a UTPA claim under the
12 MIAA they knew how to do so. And they could've done it. They in fact enacted these
13 two statutes in the same legislative session. So I think that's further indication that
14 especially with regard to the UTPA no such claim was intended to be allowed.

15 THE COURT: All right.

16 MR. SPRINKLE: And there are--like--as I mentioned there are lots of--at least
17 numerous other places in the code where they expressly provide for a UTPA claim.

18 THE COURT: Sure.

19 MR. SPRINKLE: So, Your Honor, one more point; in their answer and
20 counterclaims, I think they try to rescue this claim by referencing the IRS Code as it
21 pertains to the requirements for a hospital to maintain its status as a charitable
22 organization under section 501(c)(3). And they reference some requirements that were
23 added to 501 as apart of the Affordable Care Act that was recently enacted. However
24 501(c)(3) or any other provision of 501 does not give patients any rights at all; does not
25 create any private right of action. And in fact courts across the country have held, and

1 I've cited these in my memo, have held that no private right of action can be brought
2 based on alleged failure to comply with 501(c)(3). That simply allows the IRS to
3 withdraw your tax exempt status. In fact section 26 USC 7401 actually says that the only
4 entities that are authorized to take such action are the Secretary of Treasury and the U.S.
5 Attorney General. So this court can't use that as a basis for finding of private right of
6 action. So, Your Honor, I think all the sign codes indicate that the General Assembly
7 does not intend to create any private right of action of civil liability under the MIAA. I
8 would respectfully submit this, Court, should follow the cases cited and discussed in our
9 memorandum, which the Supreme Court, Court of Appeals our Federal District Court
10 even Judge Welmaker in March of this year threw out claims that were based on statutes
11 where there was no private right of action. So that's with respect to MIAA.

12 The Disproportionate Share Program referenced in the answer and counterclaim
13 also does not provide any--defendants any right of action or basis for their civil liability
14 claims. That program is actually apart of the Medicaid Program. And it's simply a
15 program which each State gets a single allotment of money each year from the Federal
16 Government to distribute to hospitals that serve a disproportionate number of low income
17 individuals. And that statute--and as far as how much each hospital gets is based on a
18 very complicated statutory formula. And I sort of put out the basis for that formula in our
19 memo. It has nothing whatsoever to do with an individual patient's account, their status
20 as an indigent patient or anything like that; and it provides no--as they claim in their
21 answer and counterclaims a right of settle, that is simply supplemental funds received
22 from the Government to help out these hospitals. There's no connection to any
23 individual patient's account and there's no basis in the statute of regulation that would
24 allow or require a hospital to set off or credit an individual patient's account based on any
25 money received under this Disproportionate Share Program. And finally, Your Honor,

1 even if there was such a requirement our Court of Appeals has already held that there's
2 no private right of action under the Medicare Act. And I would submit that the same
3 reason would apply here that's in the Wogan versus Koontz case, Your Honor. So for
4 these reasons we would submit that the counterclaims in all of the 6 cases, Judge, should
5 be dismissed.

6 THE COURT: Thank you so much. I appreciate it.

7 Mr. Thomas?

8 MR. THOMAS: Thank you, Your Honor. Your Honor, Mr. Sprinkle my friend
9 mischaracterizes what we are suing on today. It is true that we rely heavily on the MIAA
10 or MIAP; I've got a copy of the manual which I will pass up to you if I can find it; and I
11 think Mr. Sprinkle has plenty of copies. Briefly, Your Honor, this is--after the code was
12 enacted, Your Honor, this is the consequence--may I approach, Your Honor---

13 THE COURT: Yes, sir.

14 MR. THOMAS: ---under 101 section, Your Honor, which is after all the
15 preliminaries, this is essentially the outcome of the code. And it is called the manual and
16 you can see. And, Your Honor, I would remind you while you are turning, if you will do
17 that with me, if you will turn to 101---

18 THE COURT: Okay.

19 MR. THOMAS: ---under application process---

20 THE COURT: Oh, section 101.

21 MR. THOMAS: I apologize.

22 THE COURT: I was looking for page 101.

23 MR. THOMAS: I apologize, section 101.

24 THE COURT: No, no, no, no, no, I'm sorry, one second; yes, sir.

25 MR. THOMAS: It discusses what must take place. This is the law of the State;

1 and under the second paragraph, to overcome a lot of the technicals, if a person does not
2 have sufficient coverage, that's the patient, this person is now contracted--they've had to
3 sign a contract. So we'll talk about contract in just a minute---

4 THE COURT: Okay.

5 MR. THOMAS: ---but if a person does not have sufficient coverage the hospital
6 or medical provider must inform him of the existence of the MIAP and refer him. If the
7 applicant so chooses to the designee of the county of residence for an eligible
8 determination. Now there is such an individual that is with the hospital. It's a county
9 designee. In each of the counties there's a county designee that handles the MIAP
10 applications. This is what hospitals have been avoiding doing. Now what is the
11 consequence of not letting people do it? They're not letting them do it. You go there
12 now they do not follow this. It says must. They do not follow this. We're trying to
13 essentially say in our complaint not that there's--here's your cause of action and it's a
14 MIAP violation per say. We're saying by a consequential failure to do what they're told
15 to do by the State they have incurred certain damages because of either negligence, gross
16 negligence or any of the things that might fall; for instance, this then becomes their
17 violation, becomes one of the elements of a proof of Unfair Trade Practices. That is the
18 damage as a matter of fact. This is essentially an insurance policy. That's an
19 oversimplification to say that but this would pay for a person's hospital stay; but they're
20 not told this, Your Honor, nor are they adequately given--Mr. Sprinkle in the previous
21 case is the predecessor, which is the Stewart case that, Judge Miller, as a matter of fact
22 heard the same argument and did not choose to dismiss under 12 (b)(6) because we were
23 at the outset of discovery, we'd gotten into discovery; couldn't believe that case had
24 settled. We're not real sure but we have a number of other cases that we are now
25 proceeding along the very same lines. So, Your Honor, first we would argue--and this is

1 laid out probably more articulately in the brief. And I know you read the briefs, Your
2 Honor, because you're careful about that. And it's probably more laid out a little better
3 in the brief than I'm presenting; but, Your Honor, number one the basis is not the MIAP
4 violation. We have a number of issues that are going on here. We have IRS questions
5 that have been raised and we clearly succinctly state that according to Rule 8. That's
6 clearly laid out. We have discussed this before in the predecessor case, the Stewart case,
7 in front of, Judge Miller. Your Honor, it's a matter at this point of consequential action.
8 Now what has happened in the Federal actions on the modification issues--I think the,
9 Court, probably knows I do some defense work on foreclosure actions---

10 THE COURT: Yes, sir.

11 MR. THOMAS: It's pretty clear cut. You can't sue for a violation of the HAMP
12 Program per say because they refuse to admit you into the HAMP application process;
13 but if HAMP has been undertaken or they refuse to proceed with a HAMP application
14 when they're mandated by the Government that can certainly be brought up as a cause of
15 action; or if they fail a modification that you're in the middle of under the HAMP process
16 then Spaulding says--which I think is the miracle case. I have a copy of the Spaulding
17 case--that the consequential actions--may I approach with this, Your Honor?

18 THE COURT: Of course.

19 MR. THOMAS: ---that the consequential actions are actionable. And that's what
20 we're contending here, that these consequential actions, either the hospital negligently
21 failed to provide the monetary coverage for an indigent or it was grossly negligent or it's
22 an Unfair Trade--and/or it's an Unfair Trade Practice. Your Honor, what we find to be
23 very interesting is this, these lawsuits the, Court, will be I'm sure surprised to know, are
24 against people that have property. And we are contending that the application that it's
25 taking, not the HAMP application, they refer them to a different application for charity.

1 THE COURT: So if I'm understanding your argument correctly, and just tell me
2 if I'm over-simplifying this---

3 MR. THOMAS: Yes, ma'am.

4 THE COURT: ---you're saying that the statute--you're not suing under the
5 statute---

6 MR. THOMAS: That's right.

7 THE COURT: You might've titled it that way in your counterclaim but you're
8 not suing under the statute. You're going under a negligence theory for consequential
9 action---

10 MR. THOMAS: And all because of---

11 THE COURT: ---and possibly an Unfair Trade Practices.

12 MR. THOMAS: Yes, ma'am.

13 THE COURT: Okay.

14 MR. THOMAS: That's the first part.

15 THE COURT: Gotcha.

16 MR. THOMAS: The second part, we do contend that there is a privy issue called
17 Horizontal. And the contract that is here is implied contract. There is a contract that's
18 signed; and the contract that is signed is that they should receive the best rate possible.
19 There is Federal law about their obligations to provide information concerning this the
20 IRS 501--or 501(r) which is very clear about the dictates that they must do. Their failure
21 to do this, Your Honor, that's when they do the application. It's an application for not
22 this, not MIAP or MIAA or MIAP, the procedure that we are talking about, an
23 application process; but rather they have them fill out something for the hospital charity
24 and they think this is a viable substitute. There is nothing in the law about the
25 substitutional ability and there's no appeal process. With MIAP there's an appeal

1 process; but if you never tell them that such a program exist--in fact if you go to the
2 designee at the hospital for the MIAP Program she will say I can't take your application
3 even though I am a designee. So, Your Honor, there's a contract that is signed, supposed
4 to be given the best price. Well what's the best price? We contend they would have had
5 a much better price, maybe no cost at all; and what hospitals are really doing is using the
6 application from the charity as a screen to figure out who's got property and then to turn
7 around and sue them, though they have gotten because these numbers become part of the
8 total number that's leveraged to get this proportionate share. Millions of dollars flow
9 through the hospital under this. So there has been money that's been accounted. It might
10 not have been one individual account but the cumulative number is there. These
11 individual's got no kind of set off or no kind of compensation. In fact they were charged
12 at the highest rate possible.

13 Very interesting article appeared in the Greenville News just two weeks ago on
14 this very issue, front page of the Greenville News about the highest rate. Oh, but don't
15 worry says the article in the Hospital System. You're not really charged the half rate if
16 you have insurance, if you have Medicaid; but what about the others that are indigent that
17 this was meant to address. These are the ones that are left with the highest price. They
18 get sued at the highest rate. They're getting a compensation from the Federal
19 Government at a disproportionate sharing with no offset to it, Your Honor. There is
20 something just totally wrong about what is going on with the property and individuals
21 who are being sued, who are indigent, medically indigent. They may have a piece of
22 property, could be upside down. That's how I come across these a couple of times now.
23 So, Your Honor, if you would just take a look at the brief in the case that's essentially
24 our--and certainly, Your Honor, under 12 (b)(6) I think this is totally wrong to be here.
25 This might be subject matter--summary judgment when we have even more discovery;

1 thank you, Your Honor.

2 THE COURT: Thank you.

3 MR. SPRINKLE: May I briefly reply?

4 THE COURT: Very briefly if you don't mind.

5 MR. SPRINKLE: Okay, I'll be brief.

6 THE COURT: Thank you.

7 MR. SPRINKLE: First of all, Your Honor, Mr. Thomas references the Stewart
8 case. Judge Miller did not hear the same argument in the Stewart case. At that time the
9 only claim asserted was a UTPA claim. We moved to dismiss and argued that they did
10 not allege any ascertainable loss, which is an element under the UTPA claim. That's
11 what he heard and decided. And they have amended--he allowed them to amend and
12 assert these claims. In Stewart we were served with the amended pleading the day before
13 yesterday, which we haven't responded to yet. So it's procedurally in the same position
14 as these cases. There has not been any ruling by, Judge Miller, on these issues. I want to
15 be very clear on that. With regard to the distinction between bringing these cases under
16 negligence theory or UTPA theory, under the statute, the analysis, and it's in the cases
17 that are cited in our memo, the Doe versus Marion and the other cases, the negligence per
18 say analysis, which is what these claims are; he's saying that they violate the statute.
19 That's the basis for the duty. That's a legal question that this, Court, has to decide. And
20 those claims in those cases, just like here, they found no claim exist, no private right of
21 action is the same analysis in determining the legislative intent, whether it was intended
22 or enacted for the benefit of the individual party. They can style it whatever way that
23 they want. That is the exact same situation in this case.

24 THE COURT: Okay.

25 MR. SPRINKLE: I've already touched on the IRS argument that there's no

1 private right of action there. The statute's very clear about that. Mr. Thomas referenced
2 a whole lot of things about the application process and whether we're targeting
3 individuals. None of that is in these pleadings. I would ask for the, Court, to simply refer
4 back to the pleadings. That's what we're here on, on this motion. And Mr. Thomas
5 alleges that we charge different patients different amounts. That is totally false. The
6 Medicare law requires us to charge everyone the same price. The hospital charges
7 everyone, regardless of whether they have insurance, Medicare, Medicaid or they have no
8 insurance, the same price for the same procedure. That's the Federal law requirement.

9 THE COURT: Thank you.

10 Mr. Thomas, is this manual mine to keep?

11 MR. THOMAS: Yes, ma'am.

12 THE COURT: Okay, good; and this is mine to keep as well?

13 MR. SPRINKLE: Yes, ma'am.

14 THE COURT: Okay, I do want to take a look at your briefs a little further and
15 things you've given me today as well as the case that you've handed up. I'll be issuing
16 decisions in these cases very shortly.

17 MR. THOMAS: Thank you, Your Honor.

18 THE COURT: Thank you.

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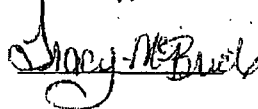
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1 I, Tracy McBride, Court Reporter for the 13th Judicial Circuit hereby certify that
2 the previous 15 pages are true, accurate and complete to the best of my abilities including
3 all exhibits, if any, in the case that took place in Greenville County, South Carolina.

4 I further certify that I am not interested in the outcome of this case nor am I
5 related to any of the parties in this case.
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Sincerely,



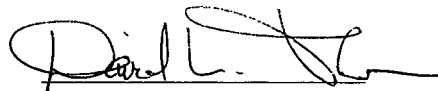
Tracy McBride

Court Reporter

Certificate of Counsel

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

April 9, 2014

A handwritten signature in black ink, appearing to read "David L. Thomas", with a stylized flourish at the end.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No.: 2013-001964

Greenville Hospital System and GHS Partners in Health, Inc.....Respondent,

Juliet Elizabeth Cromer, ...Appellant.

PROOF OF SERVICE

I certify that I have served Appellant's Record on Appeal by personally depositing a copy of same in the United States Mail postage prepaid, on the 21st day March, 2014, addressed to Respondent, by and through Respondent's Counsel of Record at the following address:

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No.: 2013-001964

Greenville Hospital System and GHS Partners in Health, Inc. Respondent,

Juliet Elizabeth Cromer, ... Appellant.

PROOF OF SERVICE

I certify that I have served Appellant's Record on Appeal by personally depositing a copy of same in the United States Mail postage prepaid, on the 10th day of April, 2014, addressed to Respondent, by and through Respondent's Counsel of Record at the following address:

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APR 10 2014

SC Court of Appeals

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