

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

KRISTI LEA HARRINGTON, Circuit Court Judge

Appellate Case No.: 2013-002177
Case No. 2012-CP-10-5366
(NOI) and 2013-CP-10-4475

JOHNNY EADES AND BARBARA EADES. Appellants,

v.

PALMETTO CARDIOVASCULAR AND THORACIC, PA; JAMES M. BENNER, MD;
MARK J. EPLER, MD; TRIDENT MEDICAL CENTER, LLC; COLUMBIA/HCA
HEALTHCARE CORPORATION OF SOUTH CAROLINA; HCA HEALTHCARE-SOUTH
CAROLINA; TRIDENT MEDICAL CENTER; TRIDENT HEALTH SYSTEM; PALMETTO
PRIMARY CARE PHYSICIANS, LLC; TRIDENT EMERGENCY PHYSICIANS, LLC;
BRIAN R. WHIRRETH, MD; PATRICIA CAMPBELL, MD; CHRISTINE E. MCNEAL,
MD; MATTHEW WALLEN, MD; CHARLESTON RADIOLOGISTS, PA; JOSEPH M.
MULLANE, MD; TRI-COUNTY RADIOLOGY ASSOCIATES, PA; AND
TROY MARLON, MD, ... Defendants;

OF WHOM

PALMETTO CARDIOVASCULAR AND THORACIC, PA; JAMES M. BENNER, MD;
MARK J. EPLER, MD; PALMETTO PRIMARY CARE PHYSICIANS, LLC; AND,
TRIDENT EMERGENCY PHYSICIANS, LLC, ... Respondents.

RECORD ON APPEAL

October 2, 2014

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Johnny Eades and Barbara Eades,

Plaintiffs,

vs.

Palmetto Cardiovascular and Thoracic, PA; James M. Benner, MD; Mark J. Epler, MD; Trident Medical Center, LLC; Columbia/HCA Healthcare Corporation of South Carolina; HCA Healthcare-South Carolina; Trident Medical Center; Trident Health System; Palmetto Primary Care Physicians, LLC; Trident Emergency Physicians, LLC; Brian R. Whirreth, MD; Patricia Campbell, MD; Christine E. McNeal, MD; Matthew Wallen, MD; Charleston Radiologists, PA; Joseph M. Mullaney, MD; Tri-County Radiology Associates, PA; and Troy Marlon, M.D.

Defendants.

2012-CP-10-5366
IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL DISTRICT

Civil Action No: 2012-CP-10-5366 (NOI)

ORDER

FILED
2013 AUG 16 PM 12:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

THIS MATTER CAME BEFORE THE COURT on July 18, 2013, for a hearing on a Motion to Dismiss the Notice of Intent to File Suit on behalf of the above named Defendants. Present at the hearing were Gary L. Cartee on behalf of the Plaintiffs; William McDow on behalf of Defendants Palmetto Primary Care Physicians, Trident Emergency Physicians, Patricia Campbell, M.D.¹, and Matthew Wallen, M.D.²; Perry M. Buckner, IV, also on behalf of Trident Emergency Physicians; Darren K. Sanders on behalf of Palmetto Cardiovascular & Thoracic, PA and James M. Benner, M.D.; and

¹ Counsel for Plaintiffs has agreed not to name Dr. Campbell in any potential Summons & Complaint since she has never been served.

² Counsel for Plaintiffs has agreed not to name Dr. Wallen in any potential Summons & Complaint since he has never been served.

KLH
8/9/13

Jason Ward on behalf of Mark J. Epler.

This case is an alleged medical malpractice action. On August 15, 2012, Plaintiffs filed a Notice of Intent to File Suit alleging injuries as a result of medical malpractice against Defendants. No expert witness affidavit was contemporaneously filed therewith. On August 17, 2012, Plaintiffs' counsel filed Supplemental Answers to Interrogatories and included the affidavit of Dr. Paul Skudder.

At the hearing, Defendants Palmetto Primary Care Physicians, Trident Emergency Physicians, Patricia Campbell, M.D., and Matthew Wallen, M.D., voluntarily withdrew their arguments with regard to the statute of limitations. Having reviewed the Defendants' Motions and Supporting Memoranda of Law, the Court makes the following findings:

I. **The expert affidavit was not contemporaneously filed with the Notice of Intent to File Suit.**

In 2005, as part of comprehensive tort reform, the South Carolina General Assembly enacted S.C. Code Ann. § 15-79-125, which requires that a medical malpractice plaintiff must initially file a Notice of Intent to File Suit together with an affidavit of an expert witness prior to filing a Summons and Complaint. Section 15-79-125(A) also provides that such contemporaneous expert affidavit must comport with the affidavit requirements of section 15-36-100. Section 15-36-100 contains provisions concerning the content of the affidavit as it relates to section 15-79-125, but contains no procedural alternatives to section 15-79-125 with regard to filing the affidavit.

The Court of Appeals recently explored this distinction in Ranucci v. Crain, 397 S.C. 168, 723 S.E.2d 242 (Ct. App. 2012). There, Ranucci filed a Notice of Intent to File Suit against Dr. Crain prior to filing the affidavit of a medical expert, which she did forty-

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five (45) days later. Id. In her Notice, Ranucci attempted to invoke the provisions of section 15-36-100(C)(1)³ by indicating that "time constraints" prevented her from contemporaneously filing the affidavit of a medical expert and that she would file such an affidavit within forty-five days or her allegations of negligence would be within the "ambit of common knowledge and experience" so that Dr. Crain's conduct could be evaluated without the assistance of special learning. Id. The circuit court granted Dr. Crain's motion to dismiss Ranucci's Notice of Intent for failure to timely file the medical expert's affidavit. Id. The Court of Appeals affirmed. Id.

Applying principles of statutory interpretation, the Court of Appeals held sections 15-79-125 and 15-36-100 do not conflict. Each statute governs a distinct time period during the litigation process, and those time periods are consecutive. Id. Section 15-36-100 "institutes, on the one hand, substantive requirements for the authorship and content of affidavits by expert witnesses and, on the other, procedural requirements relating to such affidavits **when filed with a complaint.**" Id. (emphasis added). Therefore, the Court of Appeals held that section 15-79-125 "invokes only the provisions of section 15-36-100 governing the preparation and content of the affidavit," while "[t]he plain language of section 15-36-100, which ties the filing of affidavits under the statute to a complaint or other initial pleading, prevents the remaining provisions from applying to an affidavit filed pursuant to section 15-79-125." Id. Accordingly, the Court of Appeals held that Ranucci failed to comply with section 15-79-125's contemporaneous

³ Section 15-36-100(C)(1) provides in pertinent part:

The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared. In such a case, the plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with the affidavit. . . .

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filing requirement because she filed her expert affidavit after filing her Notice of Intent. The contemporaneous filing requirement mandated the expert affidavit be filed "at the same time as the Notice of Intent to File Suit." Id.

Similarly, this Court finds Plaintiffs' Notice of Intent to File Suit should be dismissed for failing to file the expert affidavit contemporaneously with their Notice of Intent to File Suit. On August 15, 2012, Plaintiffs filed their Notice of Intent. In the Notice, at paragraph 3, the following appears:

Counsel for Plaintiff has reason to believe that the statute of limitations would run within 10 days of the date of this filing, and because of the constraints of time an affidavit of an expert cannot be filed at this time, and it is the intention of Counsel for Plaintiff to file an expert affidavit within the time prescribed by the applicable statute (45 days from filing of this Notice of Intent to File Suit).

(See Ex. A). Similar to Ranucci, Plaintiffs attempted to find safe harbor in the provisions of section 15-36-100(C)(1). As a result, Plaintiffs' failure to file the affidavit contemporaneously with the Notice of Intent is fatal to their claim. The holding in Ranucci is clear—the expert affidavit must be filed with the Notice of Intent to File Suit. This Court finds the failure to file the expert affidavit at the same time as the Notice of Intent to File Suit requires dismissal of this matter because the affidavit was not filed contemporaneously with the Notice of Intent to File Suit. See City of Camden v. Brassell, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct. App. 1997) ("Where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature's language.").

Handwritten signature and date: 8/9/13

II. **The expert affidavit does not comply with S.C. Code Ann. § 15-36-100 with regard to Dr. Campbell and Dr. Wallen.**

Although this Court finds the expert affidavit did not comply with the statutory contemporaneous filing requirement, an additional ground for dismissal was raised by Defendants. The above named Defendants argued before this Court that the expert affidavit submitted by Plaintiffs failed to meet the additional requirements required by section 15-36-100. This Court agrees that even if Plaintiffs' expert affidavit were timely filed, the affidavit is defective because it does not comport with the content requirements of section 15-36-100(A). Thus, the affidavit is insufficient to provide the requisite expert testimony to support the Notice of Intent to File Suit.

Section 15-36-100 requires that an expert completing an affidavit be "licensed by an appropriate regulatory agency to practice his or her profession" and be board certified in the **"area of practice or specialty about which the opinion on the standard of care is offered."** Section 15-36-100(A)(1), (A)(2)(a) (emphasis added). If the expert is not board certified, he still must **"have actual professional knowledge and experience in the area of practice or specialty in which the opinion is to be given** as the result of having been regularly engaged in" the active practice of medicine in the area or specialty, teaching in the area or specialty, or a combination of the two. Section 15-36-100(A)(2)(b) (emphasis added).

Plaintiffs submitted the affidavit of Dr. Paul Skudder, a medical doctor licensed in the states of Vermont, Massachusetts, and New York, as well as in the District of Columbia. (See Ex. B). Dr. Skudder indicates he has practiced medicine for more than the past five years dealing with issues including "occluded arteries, aneurysms, and related medical issues." Id. Dr. Skudder also indicates that he holds board

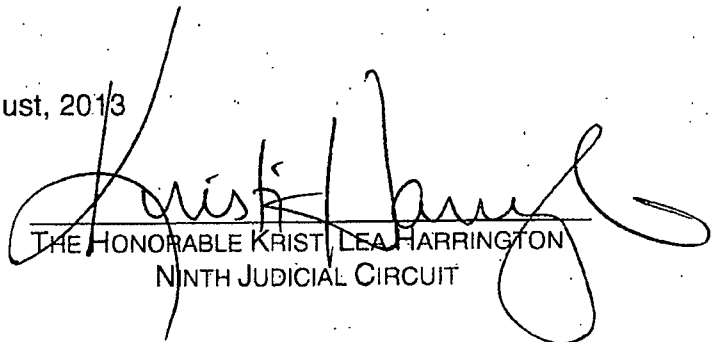
AKH
8/9/13

certifications from the American Board of Surgery, with special qualifications in Vascular Surgery, and Surgical Critical Care. Id. Dr. Skudder's affidavit does not indicate he has "actual professional knowledge and experience" in the practice areas of Dr. Campbell and Dr. Wallen. Dr. Skudder's affidavit fails to provide the proper qualifications, required by section 15-36-100, that would permit Dr. Skudder to present an expert opinion about Dr. Campbell and Dr. Wallen.

Because the affidavit does not contain the substantive content requirements of section 15-36-100, it is insufficient to supply the required affidavit in section 15-79-125. This Court hereby finds the Notice of Intent to File Suit is properly dismissed for failure to provide an expert affidavit which comports with the affidavit requirements of section 15-36-100.

Defendants' Motion to Dismiss is GRANTED as to the claims presented by Plaintiffs. Plaintiffs' claims as to the above named Defendants are hereby DISMISSED. IT IS SO ORDERED!

This the 9th day of August, 2013


THE HONORABLE KRISTI LEA HARRINGTON
NINTH JUDICIAL CIRCUIT

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

FORM 4

2012-CP-10-5366
JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-10-5366

Johnny Eades and Barbara Eades,

Palmetto Cardiovascular and Thoracic, PA;

et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ 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 case came before the Court on July 18, 2013, on Defendants' Motion to Dismiss. The Court hereby GRANTS Defendants' Motion to Dismiss.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

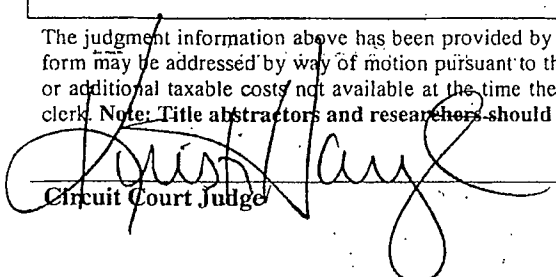
INFORMATION FOR THE JUDGMENT INDEX

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

2151
Judge Code

8/9/13
Date

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Johnny Eades and Barbara)
Eades,)

Plaintiffs,)

vs.)

Palmetto Cardiovascular and)
Thoracic , P.A.;)

James M. Benner, M.D.;)

Mark J. Epler, M.D.; Trident)

Medical Center, LLC, Columbia/)

HCA Healthcare Corporation of)

South Carolina; HCA)

Healthcare-South Carolina;)

Trident Medical Center; Trident)

Health System; Palmetto)

Primary Care Physicians, LLC;)

Trident Emergency Physicians,)

LLC; Brian R. Whirreth, M.D.;)

Patricia Campbell, M.D.;)

Christine E. McNeal, M.D.;)

Matthew Wallen, M.D.;)

Charleston Radiologists, P.A.)

Joseph M. Mullaney, M.D.;)

Tri-County Radiology)

Associates, P.A.; and Troy)

Marlon, M.D.)

Defendants.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-10- 5366

NOTICE OF INTENT TO FILE SUIT

(Medical Malpractice)

FILED
2012 AUG 15 PM 1:40
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Plaintiffs hereby give Notice of Intent to File Suit pursuant to Section 15-79-125, S.C. Code of Laws (1976 as amended):

1. The Plaintiffs are residents and citizens of Dorchester County, South Carolina, and they are husband and wife.

2. Upon information and belief the Defendants Palmetto Cardiovascular and Thoracic, P.A.; James M. Benner, M.D.; and Mark J. Epler, M.D.,

maintain offices and are engaged in the practice of medicine in Charleston County, South Carolina. Upon information and belief the Defendants Trident Medical Center, LLC; Columbila/HCA Healthcare Corporation of South Carolina; HCA Healthcare Corporation of South Carolina; HCA Healthcare-South Carolina; Trident Medical Center; and Trident Health System, maintain offices, operate, and/or own a hospital including an emergency room, and/or engage in the practice of medicine in Charleston County, South Carolina. Upon information and belief, the Defendants Brian R. Whirreth, M. D.; Christine E. McNeal, M.D.; and Matthew Wallen, M.D. practice medicine in Charleston County, South Carolina; and, the Defendant Patricia Campbell practices medicine in Dorchester County, South Carolina. Upon information and belief, the Defendant Trident Emergency Physicians, LLC, maintains offices in and engages in the practice of medicine in Charleston County, South Carolina. Upon information and belief the Defendant Palmetto Primary Care Physicians, LLC maintains offices in and engages in the Practice of medicine in Charleston County, South Carolina. Upon information and belief the Defendants Charleston Radiologists, P.A., Joseph M. Mullaney, M.D., Tri-County Radiology Associates, P.A.; and Troy Martin M.D., engage in the practice of medicine in the field of radiology in Charleston County, South Carolina.

3. Counsel for the Plaintiff has reason to believe that the statute of limitations would run within 10 days of the date of this filing, and because of the constraints of time an affidavit of an expert cannot be filed at this time, and it is the intention of Counsel for the Plaintiff to file an expert affidavit within the time prescribed by the applicable statute (45 days from filing of this Notice of Intent to File Suit).

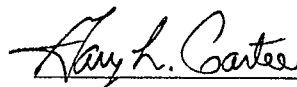
4. The following is a short plain statement of the facts showing that the Plaintiff is entitled to relief:

The Plaintiff Johnny Eades was admitted to Trident Medical Center on July 17, 2009, and surgery was performed during the admission regarding a blockage and aneurysm of the left iliac artery. However, the actions which were taken failed to secure the condition concerning the aneurysm so that it would not recur. Upon information and belief the above referenced actions were performed by the Defendants Palmetto Cardiovascular and Thoracic Associates, P.A.; James M. Benner, M.D.; and Mark J. Epler, MD. Mr. Eades was released and over the next several weeks he continued to have problems and symptoms for which he sought medical attention from a number of the Defendants. It was not recognized that the aneurysm began to expand and it eventually ruptured. Upon information and belief there were breaches of the standard of care in failing to deal with the aneurysm so that it could not later expand and rupture, and there breaches of the standards of care in failing to adequately deal with the re-expanding aneurysm so that it would not cause additional problems including rupture. Although he was seen by a number of health care professionals after his initial release from the hospital the re-expansion of the aneurysm was not recognized by health care professionals until August 15, 2012. Upon information and belief one or more of the Defendants breached the standard of care as described further above, and/or, in failing to properly evaluate the dangerous health care conditions, in failing to recognize the dangerous health care conditions, in failing to treat or obtain treatment for the dangerous health care conditions, and/or in delaying the recognition of the

dangerous health care conditions. Upon information and belief, as a result of the breaches of the standards of care the Plaintiff Johnny Eades suffered serious damages and injuries.

5. Attached hereto as Exhibit A are Standard Interrogatory responses.

6. Mediation of this matter is required pursuant to the South Carolina ADR Rules within 90 days and no later than 120 days from the service of this Notice of Intent to File Suit. The Court will appoint a mediator to serve unless the parties reach agreement as to the choice of mediator.



Gary L. Cartee
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3251 Landmark Dr., Suite 136
North Charleston, S.C. 29418
(843) 767-1800

N. Charleston, South Carolina
August 15, 2012.

ATTORNEY FOR THE PLAINTIFF

EXHIBIT "A"

ANSWERS TO STANDARD INTERROGATORIES

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

NINTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-10-

Johnny Eades and Barbara
Eades,)

Plaintiffs,)

vs.)

ANSWERS TO STANDARD
INTERROGATORIES

Palmetto Cardiovascular and
Thoracic , P.A.;)

James M. Benner, M.D.;)

Mark J. Epler, M.D.; Trident)

Medical Center, LLC, Columbia/)

HCA Healthcare Corporation of)

South Carolina; HCA)

Healthcare-South Carolina;)

Trident Medical Center; Trident)

Health System; Palmetto)

Primary Care Physicians, LLC;)

Trident Emergency Physicians,)

LLC; Brian R. Whirreth, M.D.;)

Patricia Campbell, M.D.;)

Christine E. McNeal, M.D.;)

Matthew Wallen, M.D.;)

Charleston Radiologists, P.A.)

Joseph M. Mullaney, M.D.;)

Tri-County Radiology)

Associates, P.A.; and Troy)

Marlon, M.D.)

Defendants.)

The Plaintiffs, through their undersigned attorney, answer Standard Interrogatories, as follows:

1. Give the name and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

- a. Johnny Eades and Barbara Eades
102 MepkinDr.
Summerville, S.C.

No statements.

- b. Defendants
No statements other than medical records.
- c. MUSC Hospital
All treating health care personnel
169 Ashley Ave.
Charleston, SC
No statements other than medical records.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

None.

3. In cases involving personal injury set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with said injuries and also set forth a statement of all costs involved.

- a. Trident Regional Medical Center
9313 Medical Plaza Dr.
Charleston, S.C.
- b. Palmetto Primary Care Physicians
2550 Elms Center Rd.
N. Charleston, SC
- c. MUSC Hospital
169 Ashley Ave.
Charleston, S.C.
- d. Defendants.
- e. Costs not yet determined.

4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

Unknown.

5. Set forth an itemized statement of all damages, exclusive of pain and suffering claimed to have been sustained by the party.

Special damages have not yet been determined.

6. List the names and addresses of any expert whom the party intends to use as a witness at the trial of the case.

All treating health care professionals. An affidavit of an expert witness will be filed within the time prescribed by the statute and a c.v. and other identifying information will be provided at that time.

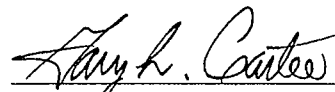
7. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important factors known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

a. The medical factual witnesses are expected to testify regarding their evaluation, treatment, diagnoses, prognoses, and facts observed during the course of each witnesses' participation in the health care of the Plaintiff Johnny Eades.

- b. The Plaintiffs.

These witness are expected to testify regarding their knowledge of the treatment of Johnny Eades and regarding damages.

The Plaintiff reserves the right to supplement these Answers to Standard Interrogatories as necessary.



Gary L. Cartee
Attorney at Law
3251 Landmark Dr., Suite 136
N. Charleston, SC 29418
(843) 767-1800

N. Charleston, S.C.
August 15, 2012.

Attorney for the Plaintiff

58

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)

Johnny Eades and Barbara
Eades,)

Plaintiffs,)
)

vs.)
)

Palmetto Cardiovascular and)
Thoracic , P.A.;)
James M. Benner, M.D.;)
Mark J. Epler, M.D.; Trident)
Medical Center, LLC, Columbia/)
HCA Healthcare Corporation of)
South Carolina; HCA)
Healthcare-South Carolina;)
Trident Medical Center; Trident)
Health System; Palmetto)
Primary Care Physicians, LLC;)
Trident Emergency Physicians,)
LLC; Brian R. Whirreth, M.D.;)
Patricia Campbell, M.D.;)
Christine E. McNeal, M.D.;)
Matthew Wallen, M.D.;)
Charleston Radiologists, P.A.)
Joseph M. Mullaney, M.D.;)
Tri-County Radiology)
Associates, P.A.; and Troy)
Marlon, M.D.)
)

Defendants.)
)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-10-5366

SUPPLEMENTAL
ANSWERS TO STANDARD
INTERROGATORIES

2012 AUG 17 AM 10:54
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

The Plaintiffs, through their undersigned attorney, hereby supplement Answers to Standard Interrogatories, as follows:

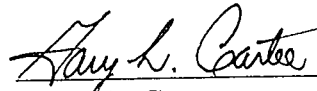
6. List the names and addresses of any expert whom the party intends to use as a witness at the trial of the case.

a. All treating health care professionals.

b. Paul A. Skudder, M.D.
90 Ter Heun Dr., Suite 300
Falmouth, MA 02540-2533

See copy of Affidavit of Dr. Skudder attached hereto.
See copy of *curriculum vitae* of Dr. Skudder attached hereto.

The Plaintiff reserves the right to supplement these Answers to Standard Interrogatories as necessary.



Gary L. Cartee
Attorney at Law
3251 Landmark Dr., Suite 136
N. Charleston, SC 29418
(843) 767-1800

N. Charleston, S.C.
August 17, 2012.

Attorney for the Plaintiff

AFFIDAVIT

1. I, Paul Skudder, am a medical doctor licensed, without restriction and in good standing, in the states of Vermont, Massachusetts, and New York, and in the District of Columbia. I currently practice medicine, and I have been actively engaged in the practice of medicine for more than the past five years, and this practice has included the evaluation and treatment of patients with issues including occluded arteries, aneurysms, and related medical issues, which include issues similar to those of Johnny Eades in July and August, 2009. I have the following board certifications: 1986, American Board of Surgery (Recertified 2004); 1988, ABS Special Qualifications in Vascular Surgery (Recertified 2006); and, ABS Surgical Critical Care (Recertified 2001).

2. I am familiar with the applicable medical standards for the evaluation and treatment of patients under the same or similar circumstances as Johnny Eades, including particularly, but not restricted to, occlusion of the left iliac artery, aneurysm of the same artery, and related issues. I am aware of the degree of care and skill ordinarily exercised by members of the medical profession under the same or similar circumstances as it relates to the care and treatment of patients such as Johnny Eades in July and August of 2009. This knowledge is based upon my education, training, and experience.

3. I have reviewed the following medical records of Johnny Eades:

1. Palmetto Primary Care Physicians records from July and August, 2009.
2. Medical records of Trident Medical Center from July and August, 2009.
3. Medical records of MUSC from August, 2009, as well as follow up records from the remainder of 2009 and through a part of 2010.

4. The patient presented with symptoms related to reduced blood supply of the left leg. He proved to have an occlusion of the left iliac artery, responsible for supplying blood flow to the left leg. The occlusion was related to an aneurysm of the same artery. Unsuccessful efforts were made to restore the patency of the iliac artery. Following this the occlusion was repaired with a femoral crossover bypass, a form of extra-anatomic reconstruction suited to revascularization of a leg in the setting of atherosclerotic occlusion of the iliac artery.

He returned several times over the ensuing weeks with symptoms of varying quality, in the end suffering major hemorrhage with multiple complications associated with dramatic expansion and rupture of the iliac aneurysm.

In this circumstance failure to treat the aneurysm with definitive exclusion of the aneurysm from pressurized arterial flow represents a deviation from the standard of care, as it allowed the aneurysm to expand and rupture.

On several occasions the patient was seen after the initial operation. There is evidence that the physicians seeing the patient during that period of time at the hospital where the initial procedure was performed failed to appreciate the nature of the patient's initial procedure. There is evidence of a failure to properly examine the patient or consult the records of the recent admission. There is evidence of a failure to properly consider complications of the aneurysm as a possible explanation for the patient's signs and symptoms. These failures denied the patient the opportunity to be treated before progression to hemorrhage and further complications. These failures were deviations from the standard of care.

It is my opinion to a reasonable degree of medical certainty that the above referenced deviations from the standard of care were causally related to the complications experienced by the patient.

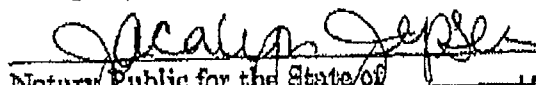
5. The opinions expressed above are held to a reasonable degree of medical certainty.

6. I am a board certified Vascular Surgeon in active clinical practice from 1984 to the present, devoting over 90% of my time to direct patient care.

7. I reserve the right to modify my opinions in response to any further information that may become available.


Paul Skudde MD FACS

Sworn to before me this
15th day of August, 2012.


Notary Public for the State of _____ JACALYN JEPSEN
My Commission expires: _____ MY COMMISSION EXPIRES
NOVEMBER 18, 2016



Curriculum Vitae
Paul A. Skudder, M.D.

CURRENT STATUS

Vascular and General Surgeon, Surgical Critical Care
The Cardiovascular Specialists
90 Ter Heun Drive, Suite 300
Falmouth, MA 02540-2533
508-457-9739
Fax 508-457-9639
Email: Skudder@pol.net

Clinical Assistant Professor of Surgery
Uniformed Services University of the Health Sciences
4301 Jones Bridge Road, Bethesda, MD 20814

Board Certifications

1986 American Board of Surgery (Recertified 2004)
1988 ABS Special Qualifications in Vascular Surgery (Recertified 2006)
1993 ABS Surgical Critical Care (Recertified 2001)

HOME 2505 McGovern Drive, Niskayuna, NY 12309-2410
BORN October 15, 1953
CITIZEN USA
FAMILY Married 1980
Joanne (wife) Co-owner Flying Geese Fabrics (Retail quilt supplies)
Children Paul (1983) Carolyn (1985) Rebecca (1988)

EDUCATION

1979 MD Cornell University Medical College
1975 BA Williams College (Phi Beta Kappa, cum laude with Honors in Biology)

POST-DOCTORAL TRAINING

1984-1985 Vascular Fellowship, Lahey Clinic, Burlington, MA
1979-1984 Intern, Resident, Chief Resident in Surgery
University of Rochester, Rochester, NY
1988 Advanced Cardiac Life Support (Most recent Renewal: 2009)
1985 Advanced Trauma Life Support

PREVIOUS POSITIONS

1991-2009 Vascular Surgery, Schenectady, NY- Practice entity began as Blumenberg, Gelfand and Skudder, PC, then Absorbed into Albany Medical College Faculty Practice Plan, finally resumed private practice under the name "The Vascular Group, PLLC"
Assistant Professor of Surgery, Albany Medical Center
1986-1991 Vascular and General Surgeon, Director Vascular Lab
Williamstown Medical Associates, Williamstown, MA 01267
1985-1986 Assistant Professor of Surgery, George Washington University
2150 Pennsylvania Avenue, Washington DC 20037
Assistant Professor of Surgery, Uniformed Services University
4301 Jones Bridge Road, Bethesda, MD 20814
Vascular Surgeon, Veterans Administration Medical Center
50 Irving Street, Washington DC 20422

HOSPITAL PRIVILEGES

2009-	Falmouth Hospital, Falmouth MA
2000-	Albany Medical Center, Albany, NY
1991-2008	St. Clare's Hospital, 600 McClellan St., Schenectady, NY 12304 (Hospital closed 2008)
1991-	Ellis Hospital, 1101 Nott St., Schenectady, NY 12308
1991-	Sunnyview Hospital, 1270 Belmont Ave, Schenectady NY 12308
1991-	Nathan Littauer Hospital, Gloversville, NY (Courtesy)
1998-1992	Berkshire Medical Center, Pittsfield, MA
1987-1991	Southwestern Vermont Med Center, Bennington, VT
1986-1991	North Adams Regional Hospital, North Adams, MA 01247
1985-1986	George Washington University Hosp, Washington DC, 20037
1985-1986	Veterans Admin Medical Center, Washington DC 20422

LICENSURE

1986	Vermont
1986	Massachusetts
1985	District of Columbia
1980	New York

OTHER ACTIVITY

2008-	Vice President, New England Society for Vascular Surgery
2008	Mission trip: Clinica Cristiana de Salud Integral, Dominican Republic
2008-2009	Chief of Staff Elect, Ellis Hospital
2008-2009	Ellis Hospital Board of Trustees
2005-2008	Vice Chief of Staff, Ellis Hospital
2005-	Membership Committee, New England Society for Vascular Surgery
2005-2009	Chief of Vascular Surgery, Ellis Hospital
2005-2006	Patient Safety Committee, Ellis Hospital
2003-2009	Chief of Vascular Surgery, St. Clare's Hospital
2003-2008	Medical Dental Executive Committee, St. Clare's Hospital
2003-2005	Chairman, Spirit of Healing Award Committee, St. Clare's Hospital
2003-2005	President, Pastoral Council, St. Helen's Church, Schenectady, NY
2003-2006	Treasurer, Schenectady County Medical Society
2002-2003	Co-President, Friends of Niskayuna Crew Club
2003-2005	Ellis Hospital Carotid Surgery Review Committee
2001-2003	Schenectady County Medical Society Delegate to Med Society of State of NY
2000-2001	President, Schenectady County Medical Society
1999-2000	Ellis Hospital Committee on Credentialing for Angiographic Procedures
1999-2008	Pastoral Council, St. Helen's Parish, Schenectady NY
1999-2001	Wound Care Specialist, St. Clare's/Curative Wound Care Center
1999-2003	Cancer Committee, Ellis Hospital
1999-2001	Integrated Health Information Network Task Force, Ellis Hospital
1998-2003	Vice President Medical Staff, St. Clare's Hospital
1998-2008	Youth Ministry Committee, St. Helen's Church, Schenectady
1998-2009	Blood Bank Committee, Ellis Hospital
1997-	National Ski Patrol, Gore Mountain, North Creek NY
1996-1997	Secretary Medical Staff, St. Clare's Hospital
1996-	Merit Badge Counselor, Twin Rivers Council, Boy Scouts of America
1996-1999	Chair, Quality Resource Committee, Ellis Hospital
1996-	Expert Reviewer, Office of Professional Medical Conduct New York State Department of Health

1995-1997	Technology Assessment Committee, Ellis Hospital
1995-1999	Surgical Quality Assessment Committee, St. Clare's Hospital
1995-2009	Medical Advisor, Stephentown Vol. Ambulance, Stephentown, NY
1995-1999	Board of Directors, Inter County Home Care, An Agency of Catholic Charities of Albany Diocese
1995-	Williams College Alumni Fund Class Agent
1995-1997	Critical Care Committee, Ellis Hospital
1993-1994	Guest lecturer, Russell Sage College School of Nursing
1993-2002	Youth Ministry catechist (Teacher), St. Helen's Church
1993-1994	Acting Chair, Quality Assurance Committee, Ellis Hospital
1993-2006	Comitia Minora (Executive Committee) Schenectady County Medical Society
1993-1997	Medical Advisor, Western MA Region, National Ski Patrol
1993-1997	Performance Improvement Council, Ellis Hospital
1993-1996	Chair Ellis/St. Clare's Vascular Pathway Team
1992-1993	Ellis Hospital Communication Task Force
1991-2006	Quality Committee, Ellis Hospital (committee has undergone several name changes)
1990-2007	Medical Advisor, Williams College Ski Patrol
1988-1997	National Ski Patrol, Jiminy Peak, Hancock MA and Goodell Hollow Ski Area
1988-1989	Executive Board, Mt. Greylock Ski Club and Goodell Hollow Ski Area
1987-1989	Medical Vice President, North Berkshire Unit of American Cancer Society, Member Professional Education Committee
1986-1988	Monthly Health Column devoted to topics of community health interest, published in the Williamstown Advocate, a weekly newspaper serving the North Berkshire region
1986-1991	Trauma Committee, North Adams Regional Hospital
1986-1991	Education Committee, North Adams Regional Hospital
	Utilization Review Committee, North Adams Regional Hospital
	Critical Care Committee, North Adams Regional Hospital
1983-1984	Surgical Joint Practice Committee
	Strong Memorial Hospital of the University of Rochester

AWARDS, HONORS

2008	National Ski Patrol 20 year service award
1987	3rd International Symposium on Vascular Surgery, NYC
	4th prize paper: Hemodynamics of in-situ bypass: the role of side branch fistulae."
1986	Nominee for Golden Apple Clinical Teaching Award, Georgetown University Medical School
1983	Upstate NY Vascular Society, Resident Prize Paper
	"Acute Ischemia of the Upper Extremity"
1975	Phi Beta Kappa, Williams College
1975	Benedict Prize for Excellence in Biology, Williams College

MEMBERSHIPS

1994	St. Luke's Guild (Catholic Physicians Society)
1994	Society of Critical Care Medicine
1992	Society for Clinical Vascular Surgery
1992	Society for Vascular Surgery
	(Previously North American Chapter of the International Society for Cardiovascular Surgery)
1992	Society of Vascular Technology
1991	Medical Society of the State of New York
1991	Schenectady County Medical Society
1990	New England Society for Vascular Surgery

1989 Fellow, American College of Surgeons
 1988 Eastern Vascular Society
 1987 Upstate NY Vascular Society
 1986 Chesapeake Vascular Society
 1986-1991 Massachusetts Medical Society

RESEARCH AND PUBLICATIONS

Skudder PA, Gelfand ML, Blumenberg RM, Fulco J. "Tibial artery false aneurysm: uncommon result of blunt injury occurring during athletics." *Ann Vasc surg* 1999; 13:589-591.

Blumenberg RM, Barton E, Gelfand ML, Skudder PA, Brennan J. "Occult deep vein thrombosis complicating superficial thrombophlebitis." *Journal of Vascular Surgery* 27: 338-343. 1998.

Blumenberg RM, Skudder PA, Gelfand ML, Bowers C, Barton E. "Retroperitoneal non-resective staple exclusion of AAA: clinical outcome and fate of the excluded AAA." *Journal of Vascular Surgery* 21:623-635. 1995

Morales JM, Skudder PA, Leach C. "Hepatic artery aneurysm." *Surgical Rounds* 17:501-506. 1994.

Skudder PA, Farrington D. "Venous disorders during pregnancy." *Seminars in Dermatology* 12: 72-78. 1993

Skudder PA, Farrington D, Weld E, Putman C. "Venous dysfunction of late pregnancy persists after delivery." *Journal of Cardiovascular Surgery* 31: 748-752. 1990.

Kasufman J, Shah D, Corson J, Skudder PA, Leather R. "Sartorius muscle coverage of complicated vascular surgical wounds." *Journal of Cardiovascular Surgery* 30: 475-483, 1989.

Skudder PA, Rhodes GR. "Hemodynamics of in situ bypass: role of side branch fistulae." Chapter 7 in *Modern Vascular Surgery* 3, Chang J ed. PMA Press, New York, 1987. pp 93-98.

Rhodes GR, Rollins D, Sidawy AN, Skudder PA, Buchbinder D. "Popliteal to tibial in situ saphenous vein bypass for limb salvage in diabetic patients." *American Journal of Surgery* 154: 245-247. 1987.

Skudder PA, Geary J. "Lymph fistula from the groin following surgery of the femoral artery." *Journal of Cardiovascular Surgery* 28: 460-464. 1987. Abstract published in *Journal of Cardiovascular Surgery* 26: (5) Supplement p. 83.

Skudder PA. "Visceral Artery Aneurysms." Chapter in *Visceral Vascular Surgery*, AV Persson and PA Skudder, eds. Marcel Dekker, New York, 1987.

Schickler WJ, Skudder PA. "Anatomic considerations in visceral vascular surgery." Chapter in *Visceral Vascular Surgery*, AV Persson and PA Skudder, eds. Marcel Dekker, New York, 1987.

Rhodes, GR, Skudder PA. "Salvage of ischemic diabetic feet: the role of transcutaneous oxygen mapping and multiple configurations of in situ bypass." *American Journal of Surgery* 152: 165-171. 1986.

Persson AV, Skudder PA, Bartlett F. "Management of the failed aorto-iliac arterial reconstruction." Chapter in *Secondary Procedures in Surgery*. R. Rossi, ed. JB Lippincott. (Part of the series entitled *Problems in General Surgery* 2 (4): 626-632. October 1985.

Skudder PA, Schwartz SI. "Primary lymphoma of the gastrointestinal tract." *Surgery, Gynecology and Obstetrics* 160: 5-8. 1985.

Skudder PA, Craver WL. "Significance of mesenteric hematoma: rupture of visceral artery aneurysm." Archives of Surgery 119: 863. 1984.

Almqvist, P, Skudder PA, Kuenzig M, Schwartz SI. "Effect of cyproheptadine on endotoxin induced pulmonary platelet trapping." American Surgeon 50: 503-505. 1984.

Ricotta JJ, Skudder PA, McAndrew JA, DeWeese JA, May A. "Management of 77 cases of acute upper extremity ischemia." American Journal of Surgery 145: 661- . 1983.

Skudder PA, Drucker WR. "Pathological basis of fluid therapy in gastrointestinal disorders." Chapter in Scientific Management of Surgical Patients. Peters RM, Peacock EE, Benfield SR eds. Boston. Little Brown and Co. 1983.

Skudder PA. "A cytolytic mechanism for immune paralysis." Honors thesis, Department of biology, Williams College, 1975. Work continued at Cornell University Medical College under Carl Becker MD, Dept. of Pathology.

BOOK EDITOR

Persson AV, Skudder PA eds. Visceral Vascular Surgery. Marcel Dekker, New York. Text with contributions by seventeen authors devoted to surgery of the aorta and its branches.

PRESENTATIONS

VTE/PE Prophylaxis and Treatment: An Urgent Call to Action for a Common but Preventable Disease. Network for Continuing Medical Education Lecture, Multiple sites 2008.

An Evidence Based Approach to Optimizing Stroke Care at Community Hospitals. Network for Continuing Medical Education Lecture. Multiple sites, 2008.

Invited Lecture, New England Society for Vascular Surgery, October 7, 2007, Ledyard, CT "The Practicing Physician's Dilemma in Assessing the Results of Clinical Trials"

"Contemporary Management of Aortic Aneurysms" Presented at the ASPA meeting, Lake Placid, NY Feb 29, 2008.

"Contemporary Interventional and Medical Management of Patients With PAD" Sponsored by the Network for Continuing Medical Education. Presented at multiple hospital Grand Rounds in NY, FL, PA, WV, MI, KS, OK, and others. 2005-2007

"Everyone's Responsibility: Screening for Abdominal Aortic Aneurysms" 6th Annual Update on Peripheral Vascular Disease. St. Clare's Hospital. Nov. 3, 2005. This lecture also presented at Ellis Hospital, St. Clare's Hospital, and many other locations.

"A Catholic Perspective on Death, Dying, and End of Life Care" October 2, 2005. St. Helen's Church, Schenectady, NY

"Free Floaters, Sticky Blood, Filters and Other Adventures: DVT in the modern hospital" Presented at multiple Hospital Grand Rounds, 2001-2003. Sponsored CME Lecture.

"Revascularization of the ischemic limb." 2nd Annual Update on Peripheral Vascular Disease. St. Clare's Hospital. Nov. 15, 2001.

"CARE of the ischemic limb: medical and surgical options." Northeast NY Society of Podiatry, Albany, NY. March 21, 1999.

"Partial foot amputations: impact of diabetes, renal failure, smoking and ischemia on healing." American Academy of Orthotists and Prosthetists, San Diego, CA, March 17, 2000.

"Greenfield filter placement in community hospital practice: indications and outcome." American College of Phlebology, Phoenix, AZ, November 12, 1999

"Basilic vein transposition AV fistulae: the role of preoperative vein mapping." New England Society for Vascular Surgery, Chatham, MA, October 3, 1999.

"Care and rehabilitation of the patient with lower extremity ischemia." Rehabilitation update VII: The lower quarter. May 20, 1999. Scotia, NY.

"Venous thrombosis following saphenous vein harvest." Peripheral Vascular Surgery Society, Snowbird, Utah, January 18, 1999. Also presented at Ellis Hospital Doctors Presentation Day, May 20, 1999.

"Deep vein thrombosis: fate of free floating segments." New England Society for Vascular Surgery, Toronto, September 23, 1998. Also presented at Ellis Hospital Doctors Presentation Day.

"Tibial artery false aneurysm: an uncommon complication of athletic trauma." Canadian Vascular Society, Toronto, September 25, 1998.

"C.A.R.E. of the diabetic foot." St. Clares Annual Primary Care Conference, New Seabury, MA, August 7, 1997.

"Retroperitoneal non-resective staple exclusion of AAA: clinical outcome and fate of the excluded AAA." Military Vascular Society, Bethesda MD, December 1995. (Previously presented at the World congress of the International Society for Cardiovascular Surgery, Kyoto, Japan, September 1995).

"Recent experience with carotid endarterectomy in Schenectady." Ellis Hospital Doctors Presentation Day, April 1995.

"Lumbar sympathectomy for unreconstructable limb threatening ischemia: a 25 year experience." Gelfand ML, Blumenberg RM, Skudder PA. Presented by Dr. Gelfand at Castle Point Vascular Symposium, Castle Point NY, September 1993.

"C.A.R.E. of the ischemic diabetic foot." Ellis Hospital Doctors Presentation Day, April 1993. Also presented by invitation at Stratoga Hospital, February 1992, and at Northeast NY Society of Podiatry, Albany NY, November 1991.

"Revascularization of the Diabetic Foot. Symposium on the Care of the Diabetic Foot, Schenectady, NY, October 1991.

"Screening for peripheral atherosclerosis: prevalence in an elderly population." Eastern Vascular Society, May 1990.

"Bypass to the plantar arteries." Skudder PA, Rhodes Gr. Eastern Vascular Society, May 1989.

"Sartorius muscle coverage of complicated vascular surgical wounds." Kaufman J, Shah D, Corson J, Skudder P, Leather R. Veterans Administration Surgeons Society, June 1987 (presented by Dr. Kaufman).

"Venous dysfunction of late pregnancy persists after delivery." Skudder PA, Farrington DT, Weeld E, Putman C. New England Society for Vascular Surgery, September 1987 and IV European-American Symposium on Venous Diseases, November 1987.

Recent Advances in peripheral vascular reconstruction, Northeast Health Center, St. Johnsbury, VT, November 1987.

"Popliteal to tibial in situ bypass for limb salvage in diabetic patients." Rhodes GR, Rollins D, Sidawy AN, Skudder PA, Buchbinder D. Society for Clinical Vascular Surgery, April 1987. (Presented by Dr. Rhodes).

"Hemodynamics of in situ bypass:role of side branch fistulae." 3rd International symposium on Vascular Surgery, New York, May 1987.

"Salvage of ischemic diabetic feet: the role of transcutaneous oxygen mapping and multiple configurations of in situ bypass." Rhodes GR, Skudder PA. Society for Clinical Vascular Surgery April 1986 (by Dr. Rhodes) and Chesapeake Vascular Society, May 1986 (by Dr. Skudder).

"Lymph fistula from the groin after surgery of the femoral artery." Skudder PA, Geary J. World Congress of the International Society for Cardiovascular Surgery, Monte Carlo, September 1985, and Military Vascular Society, Bethesda, MD, December 1985.

"Management of 77 cases of acute upper extremity ischemia." American College of Surgeons Upstate NY Chapter/Upstate NY Vascular Society, Utica NY, April 1983.

"A cytolytic mechanism for immune paralysis." Department of biology thesis presentation, Williams College, May 1975.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Johnny Eades and Barbara Eades,

Plaintiffs,

Versus

Palmetto Cardiovascular and Thoracic, P.A.;
James M. Benner, M.D.; Mark J. Epler, M.D.;
Trident Medical Center, LLC, Columbia/HCA
Healthcare Corporation of South Carolina;
HCA Healthcare-South Carolina; Trident
Medical Center; Trident Health System;
Palmetto Primary Care Physicians, LLC;
Trident Emergency Physicians, LLC; Brian R.
Whirreth, M.D.; Patricia Campbell, M.D.;
Christine E. McNeal, M.D.; Matthew Wallen,
M.D.; Charleston Radiologists, P.A.; Joseph
M. Mullaney, M.D.; Tri-County Radiology
Associates, P.A.; and Troy Marlon, M.D.,

Defendants.

) IN THE COURT OF COMMON PLEAS

)

) NINTH JUDICIAL CIRCUIT

)

) C/A No. 2012-CP-10-5366

)

) **DEFENDANTS PALMETTO**
) **CARDIOVASCULAR AND THORACIC,**
) **P.A. AND JAMES M. BENNER, M.D.'S**
) **NOTICE OF MOTION AND MOTION TO**
) **DISMISS**

BY

JULIE J. ARISTOTONG
CLERK OF COURT

2013 FEB 14 PM 2:33

FILED

PLEASE TAKE NOTICE that the Defendants, Palmetto Cardiovascular and Thoracic, P.A. and James M. Benner, M.D., (hereinafter "these Defendants"), will move the Court in ten days or as soon thereafter as counsel may be heard for an Order dismissing the Notice of Intent to File Suit filed in the above-referenced matter pursuant to the South Carolinas Rules of Civil Procedure, the Alternative Dispute Resolution Rules, S.C. Code Ann. Sections 15-79-125 and 15-36-100.

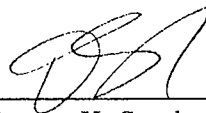
On August 15, 2012, the Plaintiffs filed a Notice of Intent to File Suit alleging injuries as a result of medical malpractice against multiple healthcare providers including these Defendants. The Notice of Intent to File Suit was not filed contemporaneously with an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100. The mandatory contemporaneous filing requirement has also been established by Ranucci v. Crain,

397 S.C. 168, 723 S.E.2d 242 (2012). On August 17, 2012, Plaintiffs' counsel filed Supplemental Answers to Interrogatories and included an affidavit of Dr. Paul Skudder.

Given the failure by Plaintiffs to comply with the requirements of S.C. Code Ann. Section 15-79-125 by contemporaneously filing an affidavit of an expert witness along with the Notice of Intent to File Suit, the Notice of Intent to File Suit should be dismissed. Additionally, this matter should be dismissed because the requisite statute of limitations has expired.

These Defendants reserve the right to submit a memorandum of law at or before the time of the hearing on this motion.

BUYCK & SANDERS LAW FIRM, LLC
757 Johnnie Dodds Blvd., Ste. 100
P.O. Box 2424
Mt. Pleasant, SC 29465-2424
Telephone: (843) 377-1400
Facsimile: (843) 377-1403
Email: dks@buyckfirm.com



Darren K. Sanders (S.C. Bar # 68296)
Hugh W. Buyck (S.C. Bar # 66462)

Attorneys for the Defendants
Palmetto Cardiovascular and Thoracic,
P.A., James M. Benner, M.D. and Mark J.
Epler, M.D.

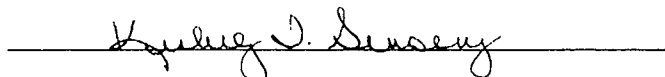
2/14, 2013
Mt. Pleasant, South Carolina

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CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☒ mailing, ☐ emailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 14th day of February, 2013.



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CIVIL ACTION #2012-CP-10-5366
	)	
Johnny Eades and Barbara Eades	)	
	)	
Plaintiffs,	)	
vs.	)	
	)	MARK J. EPLER, M.D.'S NOTICE OF
Palmetto Cardiovascular and Thoracic,	)	MOTION AND MOTION TO DISMISS
P.A.; James M. Benner, M.D.; Mark J.	)	
Epler, M.D.; Trident Medical Center,	)	
LLC, Columbia/HCA Healthcare	)	
Corporation of South Carolina; HCA	)	
Healthcare-South Carolina; Trident	)	
Medical Center; Trident Health System;	)	
Palmetto Primary Care Physicians, LLC;	)	
Trident Emergency Physicians, LLC;	)	
Brian R. Whirreth, M.D.; Patricia	)	
Campbell, M.D.; Christine E. McNeal,	)	
M.D.; Matthew Wallen, M.D.; Charleston	)	
Radiologists, P.A.; Joseph M. Mullaney,	)	
M.D.; Tri-County Radiology Associates,	)	
P.A.; and Troy Marlon, M.D.,	)	
	)	
Defendants.	)	

TO: THE PLAINTIFFS HEREIN AND THEIR ATTORNEY, GARY L. CARTEE, ESQUIRE, AND ALL OTHER COUNSEL OF RECORD:

YOU WILL PLEASE TAKE NOTICE that Defendant Mark J. Epler, M.D., by and through his undersigned counsel, will, and does hereby, move on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, before the Presiding Judge for Charleston County, South Carolina, for an Order of this Court dismissing the Notice of Intent to File Suit ("NOI") in the captioned matter. This case is a medical malpractice matter, and, as required by Section 15-79-125, S.C. Code Ann., an affidavit of an expert witness is required to be filed contemporaneously with the NOI. In addition, the case of *Ranucci v. Crain*, 397 S.C. 168, 723 S.E.2d 242 (2012), underscores the necessity of filing an expert's affidavit contemporaneously with

the filing of the NOI. In the captioned matter, Plaintiffs filed their NOI, without an expert's affidavit, on August 15, 2012. The Plaintiffs subsequently filed the affidavit of Paul Skudder, M.D. on August 17, 2012. Given the failure of the Plaintiffs to comply with the requirements of 15-79-125, S.C. Code Ann., the NOI should be dismissed. This Motion is based on the statutory and common laws of the State of South Carolina, the *South Carolina Rules of Civil Procedure*, and any pleadings, including exhibits thereto, filed herein.

Respectfully submitted,

BARRY L. JOHNSON, PA



Hutson S. Davis, Jr.
Jason W. Ward
10 Pinckney Colony Road, Ste. 200
The Victoria Building
Bluffton, SC 29909
[P.O. Box 7261, Hilton Head Is., SC 29938]
(843) 815-7121- telephone
(843) 815-7122- facsimile
Buster@barryljohnsonpa.com
Jason@barryljohnsonpa.com

Attorneys for Defendant Mark J. Epler,
M.D.

Bluffton, SC
April 19th, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL DISTRICT
COUNTY OF CHARLESTON	)	
	)	
Johnny Eades and Barbara Eades,	)	Civil Action No: 2012-CP-10-5366 (NOI)
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Palmetto Cardiovascular and	)	
Thoracic, PA; James M. Benner,	)	
MD; Mark J. Epler, MD; Trident	)	
Medical Center, LLC; Columbia/HCA	)	NOTICE OF MOTION AND MOTION TO
Healthcare Corporation of South	)	DISMISS ON BEHALF OF
Carolina; HCA Healthcare-South	)	DEFENDANTS PALMETTO PRIMARY
Carolina; Trident Medical Center;	)	CARE PHYSICIANS, LLC; TRIDENT
Trident Health System; Palmetto	)	EMERGENCY PHYSICIANS, LLC;
Primary Care Physicians, LLC;	)	PATRICIA CAMPBELL, MD; AND
Trident Emergency Physicians, LLC;	)	MATTHEW K. WALLEN, MD
Brian R. Whirreth, MD; Patricia	)	
Campbell, MD; Christine E. McNeal,	)	
MD; Matthew Wallen, MD;	)	
Charleston Radiologists, PA; Joseph	)	
M. Mullaney, MD; Tri-County	)	
Radiology Associates, PA; and Troy	)	
Marlon, MD,	)	
	)	
Defendants.	)	

Please take notice that the Defendants, Palmetto Primary Care Physicians, LLC; Trident Emergency Physicians, LLC; Patricia Campbell, MD; and Matthew K. Wallen, MD¹ (hereinafter "these Defendants"), will move the Court in ten days or as soon thereafter as counsel may be heard for an Order dismissing the Notice of Intent to File Suit filed in the above-referenced matter pursuant to the South Carolina Rules of Civil Procedure, the Alternative Dispute Resolution Rules, S.C. Code Ann. §§ 15-79-125 and 15-36-100.

On August 15, 2012, the Plaintiffs filed a Notice of Intent to File Suit alleging injuries as a result of medical malpractice against multiple healthcare providers, including these Defendants. The Notice of Intent to File Suit was not filed contemporaneously with an affidavit of an expert witness, subject to the affidavit requirements established in § 15-36-100. The mandatory contemporaneous filing requirement has also been established by Ranucci v. Crain, 397 S.C. 168, 723 S.E.2d 242 (2012). On August 17, 2012, Plaintiffs' counsel filed Supplemental Answers to Interrogatories and included an affidavit of Dr. Paul Skudder.

Given the failure by Plaintiffs to comply with the requirements of S.C. Code Ann. § 15-79-125 by contemporaneously filing an affidavit of an expert witness along with the Notice of Intent to File Suit, the Notice of Intent to File Suit should be dismissed. Additionally, this matter should be dismissed because the requisite statute of limitations has expired. Furthermore, this matter should be dismissed because Dr. Skudder is a vascular surgeon and does not practice in the field of either primary care or emergency medicine.

These Defendants reserve the right to submit a memorandum of law at or before the time of the hearing on this motion.

This Motion will be based upon the pleadings, depositions, any furnished affidavits, rules of Court, statutes, applicable law and such other evidence as may be acceptable to the Court.

Counsel certifies that he communicated, orally or in writing, with opposing counsel or has attempted in good faith to resolve the matter contained in the Motion

¹ Counsel for Plaintiffs has agreed not to name Dr. Campbell or Dr. Wallen in any potential Summons and Complaint since they have never been served.

or that consultation would serve no useful purpose or could not be timely held.

Respectfully submitted,

Richardson Plowden & Robinson, PA

A handwritten signature in cursive script, reading "Barbara Chesley for".

William C. McDow

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Attorneys for Defendants Palmetto Primary
Care Physicians, LLC; Trident Emergency
Physicians, LLC; Patricia Campbell, MD;
and Matthew K. Wallen, MD

April 10, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Johnny Eades and Barbara
Eades,)
Plaintiffs,)

vs.)

Palmetto Cardiovascular and)
Thoracic , P.A.;)
James M. Benner, M.D.;)
Mark J. Epler, M.D.; Trident)
Medical Center, LLC, Columbia/)
HCA Healthcare Corporation of)
South Carolina; HCA)
Healthcare-South Carolina;)
Trident Medical Center; Trident)
Health System; Palmetto)
Primary Care Physicians, LLC;)
Trident Emergency Physicians,)
LLC; Brian R. Whirreth, M.D.;)
Patricia Campbell, M.D.;)
Christine E. McNeal, M.D.;)
Matthew Wallen, M.D.;)
Charleston Radiologists, P.A.)
Joseph M. Mullaney, M.D.;)
Tri-County Radiology)
Associates, P.A.; and Troy)
Marlon, M.D.)
Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-10-5366

AFFIDAVIT OF COUNSEL

2013 JUL 15 PM 1:46
JUL 15 2013
CLERK OF COURT

The undersigned, first being duly sworn, deposes and says as follows:

- DRG
10/2
1. Affiant is Counsel for the Plaintiffs in this Notice of Intent to File Suit.
 2. An affidavit was prepared and sent by facsimile to the expert on August 14, 2012.
 3. Counsel tried unsuccessfully to get the signed affidavit back on August 14 and August 15, 2012.

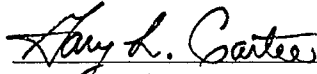
4. Counsel elected to go ahead and file with the Court the Notice of Intent to File Suit along with Answers to Standard Interrogatories, on August 15, 2012.

5. The affidavit was signed by the expert on August 15, 2012, but was not sent back to counsel by facsimile until August 16, 2012.

6. Counsel filed with the Court the affidavit of the expert on August 17, 2012, along with Supplemental Answers to Standard Interrogatories.

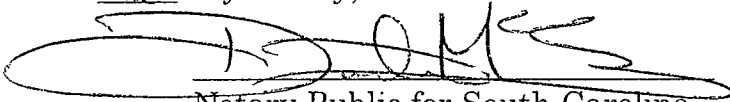
7. Certain named Defendants were served with the Notice of Intent to File Suit, the Answers to Standard Interrogatories, and the Supplemental Answers to Standard Interrogatories within 120 days of August 15, 2012.

8. Counsel respectfully submits that the evidence in the case will clearly support the position that the Statute of Limitations could not have run prior to August 17, 2012, even under a generous interpretation toward the Defendants.



Gary L. Cartee

Sworn to before me this
12 day of July, 2013.



Notary Public for South Carolina.
My Commission expires 9/21/2020



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Johnny Eades and Barbara Eades,

Plaintiffs,

vs.

Palmetto Cardiovascular and Thoracic,
PA; James M. Benner, MD; Mark J. Epler,
MD; Trident Medical Center, LLC;
Columbia/HCA Healthcare Corporation of
South Carolina; HCA Healthcare-South
Carolina; Trident Medical Center; Trident
Health System; Palmetto Primary Care
Physicians, LLC; Trident Emergency
Physicians, LLC; Brian R. Whirreth, MD;
Patricia Campbell, MD; Christine E.
McNeal, MD; Matthew Wallen, MD;
Charleston Radiologists, PA; Joseph M.
Mullaney, MD; Tri-County Radiology
Associates, PA; and Troy Marlon, M.D.

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL DISTRICT

Civil Action No: 2012-CP-10-5366 (NOI)

**MEMORANDUM OF LAW IN SUPPORT
OF MOTION TO DISMISS ON BEHALF
OF DEFENDANTS PALMETTO
PRIMARY CARE PHYSICIANS, LLC;
TRIDENT EMERGENCY PHYSICIANS,
LLC; PATRICIA CAMPBELL, MD; AND
MATTHEW K. WALLEN, MD**

Defendants Palmetto Primary Care Physicians, LLC; Trident Emergency
Physicians, LLC, Patricia Campbell, MD; and Matthew K. Wallen, MD,¹ (hereinafter
“these Defendants”) submit their Memorandum of Law in Support of their Motion to
Dismiss the Notice Intent to File Suit.

PROCEDURAL HISTORY

On August 15, 2012, Plaintiffs filed a Notice of Intent to File Suit alleging injuries
as a result of medical malpractice against multiple healthcare providers, including these
Defendants. No expert witness affidavit was contemporaneously filed therewith. On
August 17, 2012, Plaintiffs' counsel filed Supplemental Answers to Interrogatories and

¹ Counsel for Plaintiffs has agreed not to name Dr. Campbell or Dr. Wallen in any potential Summons & Complaint since they have never been served.

included the affidavit of Dr. Paul Skudder.

LEGAL ANALYSIS AND ARGUMENTS

I. The Notice of Intent should be dismissed because the expert affidavit was not contemporaneously filed with the Notice of Intent.

In 2005, as part of comprehensive tort reform, the South Carolina General Assembly enacted S.C. Code Ann. § 15-79-125, which requires that a medical malpractice plaintiff must initially file a Notice of Intent together with an affidavit of an expert witness prior to filing a Summons and Complaint. Section 15-79-125(A) also provides that such contemporaneous expert affidavit must comport with the affidavit requirements of section 15-36-100. Section 15-36-100 contains provisions, discussed more fully below, concerning the content of the affidavit as it relates to section 15-79-125, but contains no procedural alternatives to section 15-79-125 with regard to filing the affidavit.

The Court of Appeals recently explored this distinction in Ranucci v. Crain, 397 S.C. 168, 723 S.E.2d 242 (Ct. App. 2012). There, Ranucci filed a Notice of Intent to File Suit against Dr. Crain and subsequently filed the affidavit of a medical expert. Id. In her Notice, Ranucci attempted to invoke the provisions of section 15-36-100(C)(1)² by indicating that “time constraints” prevented her from contemporaneously filing the affidavit of a medical expert and that she would file such an affidavit within forty-five days or her allegations of negligence would be within the “ambit of common knowledge

² Section 15-36-100(C)(1) provides in pertinent part:

The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared. In such a case, the plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with the affidavit. . . .

and experience” so that Dr. Crain’s conduct could be evaluated without the assistance of special learning. Id. The circuit court granted Dr. Crain’s motion to dismiss Ranucci’s Notice of Intent for failure to timely file the medical expert’s affidavit. Id. The Court of Appeals affirmed. Id.

Using commonly-accepted principles of statutory interpretation, the Court of Appeals found sections 15-79-125 and 15-36-100 do not conflict; rather, each statute governs a distinct time period during the litigation process, and those time periods are consecutive. Id. To the Court of Appeals, section 15-36-100 “institutes, on the one hand, substantive requirements for the authorship and content of affidavits by expert witnesses and, on the other, procedural requirements relating to such affidavits **when filed with a complaint.**” Id. (emphasis added). Therefore, the Court of Appeals found that section 15-79-125 “invokes only the provisions of section 15-36-100 governing the preparation and content of the affidavit;” while “[t]he plain language of section 15-36-100, which ties the filing of affidavits under the statute to a complaint or other initial pleading, prevents the remaining provisions from applying to an affidavit filed pursuant to section 15-79-125.” Id. Accordingly, the Court of Appeals held that Ranucci failed to comply with section 15-79-125’s contemporaneous filing requirement because she filed her expert affidavit after filing her Notice of Intent. Id.

Similarly, Plaintiffs’ Notice of Intent should be dismissed for failing to file the expert affidavit contemporaneously with their Notice of Intent. On August 15, 2012, Plaintiffs filed their Notice of Intent. In the Notice, at paragraph 3, the following appears:

Counsel for Plaintiff has reason to believe that the statute of limitations would run within 10 days of the date of this filing, and because of the constraints of time an affidavit of an expert cannot be filed at this time, and it is the intention of Counsel for Plaintiff to file an expert affidavit within the

time prescribed by the applicable statute (45 days from filing of this Notice of Intent to File Suit).

(See Ex. A). Like Ranucci, Plaintiffs have attempted to find safe harbor in the provisions of section 15-36-100(C)(1) and like Ranucci, Plaintiffs' failure to file the affidavit contemporaneously with the Notice of Intent is fatal to their claim. Ranucci is clear. The failure to contemporaneously file an expert affidavit with the Notice of Intent requires dismissal of the Notice of Intent.

Section 15-79-125 requires a Plaintiff to file an expert affidavit with the Notice of Intent to File suit. Because Plaintiffs failed to comply with the statute for properly filing a Notice of Intent, same should be dismissed. See City of Camden v. Brassell, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct. App. 1997) ("Where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature's language.").

II. Even if the affidavit were properly filed, it does not comport with the requirements of S.C. Code Ann. § 15-36-100 and therefore requires dismissal of the Notice of Intent to File Suit.

Assuming, *arguendo*, that Plaintiffs' expert affidavit were timely filed, the affidavit is defective because it does not comport with the content requirements of section 15-36-100(A). Therefore, the affidavit is insufficient to provide the requisite expert testimony to support the Notice of Intent to File Suit.

Section 15-36-100 requires that an expert completing an affidavit be "licensed by an appropriate regulatory agency to practice his or her profession" and be board certified in the "area of practice or specialty about which the opinion on the standard of care is offered." Section 15-36-100(A)(1), (A)(2)(a) (emphasis added). If the expert is not board certified, he still must "have actual professional knowledge

and experience in the area of practice or specialty in which the opinion is to be given as the result of having been regularly engaged in” the active practice of medicine in the area or specialty, teaching in the area or specialty, or a combination of the two. Section 15-36-100(A)(2)(b) (emphasis added).

Plaintiffs submitted the untimely affidavit of Dr. Paul Skudder, a medical doctor licensed in the states of Vermont, Massachusetts, and New York, as well as in the District of Columbia. (See Ex. B). Dr. Skudder indicates he has practiced medicine for more than the past five years dealing with issues including “occluded arteries, aneurysms, and related medical issues.” Id. Dr. Skudder also indicates that he holds board certifications from the American Board of Surgery, with special qualifications in Vascular Surgery, and Surgical Critical Care. Id. However, Defendant Primary Care Physicians, LLC, specializes in primary care medicine and Defendant Trident Emergency Physicians, LLC, specializes in emergency medicine. Therefore, Dr. Skudder’s affidavit, which contains no indication he has experience in the areas of primary care or emergency medicine, fails to provide the proper qualifications, as required by section 15-36-100, to allow Dr. Skudder to present an expert opinion about these Defendants.

Because the affidavit, if considered, does not contain the substantive content requirements of section 15-36-100, it is insufficient to supply the required affidavit in section 15-79-125. Consequently, the Notice of Intent should be dismissed for failure to provide an expert affidavit which comports with the affidavit requirements of section 15-36-100.

III. The Notice of Intent should be dismissed because the Statute of Limitations has expired.

S.C. Code Ann. § 15-3-545 provides that an action for medical malpractice “must be commenced within three years from the date of the treatment, omission, or operation giving rise to the cause of action, or three years from the date of discovery, or when it reasonably ought to have been discovered. . . .” Plaintiff Johnny Eades (hereinafter “Mr. Eades”) first presented to Defendant Primary Care Physicians, LLC on June 15, 2009 with pain related to this injury. Mr. Eades also indicates in the Notice of Intent to File Suit that he was admitted to Defendant Trident Medical Center on July 17, 2009, with surgery being performed during the admission. (See. Ex. A at ¶ 4). It is that surgery which Mr. Eades contends led to the remainder of his medical ailments. The Notice of Intent was filed on August 15, 2012. This date is in excess of the three year statute of limitations for bringing medical malpractice actions. Any medical malpractice claim against these Defendants would have needed to be filed by July 15, 2012, or July 17, 2012 at the latest—three years from Mr. Eades’ receipt of treatment from Defendant Primary Care Physicians, LLC, and surgery from Defendant Trident Emergency Physicians, LLC.

Moreover, Mr. Eades may not attempt to assert that the statute of limitations had not run when he filed his Notice of Intent because he had not yet discovered his injury in July of 2009. In their Notice, Plaintiffs claim health care professionals did not recognize the medical problem until August 15, 2012; although Mr. Eades had allegedly continued to have problems stemming from his initial treatment in July of 2009. Plaintiffs aver Mr. Eades was “seen by a number of health care professionals after his initial release from the hospital” before health care professionals discovered an alleged issue. Section 15-

3-545 does not contemplate that the statute of limitations begins to run when a health care professional discovers an injury, but rather when the injured party discovers the injury. See McCLain v. Jarrard, 354 S.C. 218, 220, 580 S.E.2d 763, 764 (Ct. App. 2003) ("Under the discovery rule, the statute does not run from the date of the negligent act, but from the date when the injury resulting from the wrongful conduct is either discovered or may be discovered by the exercise of reasonable diligence."); Strong v. Univ. of S.C. Sch. Of Med., 316 S.C. 189, 191, 447 S.E.2d 850, 852 (1994) ("An injured party must act with some promptness where the facts and circumstances of the injury would put a person of common knowledge on notice that some right of his has been invaded or that some claim against another party might exist."). If, as Plaintiffs contend, Mr. Eades continued to experience pain from July 2009 until health care professionals discovered the injury in August 2012; the exercise of reasonable diligence could have alerted Plaintiffs to a potential injury before the running of the applicable statute of limitations. Further, when faced with pain and discomfort spanning years, a person of common knowledge would have been on notice that some right had been invaded and would have acted more promptly than plaintiffs. Accordingly, based on a reading of the Notice of Intent, Plaintiff should have "discovered" his injury in July 2009, thus necessitating that any Notice of Intent to File Suit should have been filed before July 17, 2012.

Because the statute of limitations expired before Plaintiffs filed their Notice of Intent to File Suit, the Notice of Intent is untimely and must be dismissed.

CONCLUSION

For the foregoing reasons, these Defendants request this Court grant their

Motions to Dismiss the Notice of Intent to File Suit.

Respectfully submitted,

Richardson Plowden & Robinson, PA



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July 18, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Johnny Eades and Barbara)
Eades,)
Plaintiffs,)

vs.)

Palmetto Cardiovascular and)
Thoracic , P.A.;)
James M. Benner, M.D.;)
Mark J. Epler, M.D.; Trident)
Medical Center, LLC, Columbia/)
HCA Healthcare Corporation of)
South Carolina; HCA)
Healthcare-South Carolina;)
Trident Medical Center; Trident)
Health System; Palmetto)
Primary Care Physicians, LLC;)
Trident Emergency Physicians,)
LLC; Brian R. Whirreth, M.D.;)
Patricia Campbell, M.D.;)
Christine E. McNeal, M.D.;)
Matthew Wallen, M.D.;)
Charleston Radiologists, P.A.)
Joseph M. Mullaney, M.D.;)
Tri-County Radiology)
Associates, P.A.; and Troy)
Marlon, M.D.)

Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-10-5366

MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTIONS TO DISMISS

THE PLAINTIFFS submit the following as their Memorandum in opposition to the Defendants' Motions to Dismiss.

FACTS

Surgery was performed on Mr. Johnny Eades for blockage and an aneurysm of the left iliac artery on July 17, 2009. Later there was a re-expanding of the aneurism and a rupture on August 15, 2009. The Plaintiffs' position is that the

surgical procedure was inadequate and that there was inadequate monitoring of the condition to prevent the eventual rupture.

Plaintiff's counsel prepared an affidavit for an expert witness, Dr. Paul Skudder, and faxed it to Dr. Skudder who practices medicine in Massachusetts on August 14, 2012. Dr. Skudder signed the affidavit on August 15, 2012, but did not fax it back to counsel until August 16, 2012. Counsel elected to go ahead and file the Notice of Intent to File Suit on August 15, 2012. The Affidavit of Dr. Skudder was filed on the morning of August 17, 2012.

The fax markings on the affidavit show that it was sent to Dr. Skudder by Counsel for the Plaintiff on August 14, 2012. The affidavit was signed on August 15, 2012. The fax markings show that it was faxed back to Counsel for the Plaintiff on August 16, 2012. It was filed on August 17, 2012. An Affidavit of Counsel has been filed with the Court explaining this.

A. PLAINTIFFS ARE IN COMPLIANCE WITH SECTION 15-79-125.

1. The Circuit Court has discretion in the matter before the Court.

In filing Motions to Dismiss, the Defendants have improvised a procedure which has not been provided for in Section 15-79-125. The Court is not required to entertain the Motions. They can be denied summarily. All that is before the Court pursuant to the statute is a Notice of Intent to File Suit. The only purpose of a Notice of Intent to File Suit is some very limited discovery and mediation. Section 15-79-125 does not provide for a motions procedure. There are statutory provisions and Rules of Civil Procedure for motions regarding a summons and complaint (which, of course, are required to commence a civil action). (Rule 2: There shall be

one form of action to be known as “civil action.” Rule 3 (a): A civil action is commenced when the summons and complaint are filed....)

Any improvised motions which the Court chooses to address are governed by the South Carolina Rules of Civil Procedure. Rule 1: “These rules govern the procedure in all South Carolina Courts.... They shall be construed to secure the just...determination of every action.”

The Defendants in this case are seeking a draconian and unjust result because of two days between the filing of the Notice of Intent to File Suit and the Affidavit of Dr. Skudder.

Two of the Defendants filed their Motion to Dismiss 60+ days after service of the Notice of Intent and Affidavit of Dr. Skudder; one of the Defendants filed its Motion to Dismiss 75+ days after service; one of the Defendants filed its Motion to Dismiss 120+ days after service; and one or two of the Defendants filed the Motion to Dismiss 130+ days after service. None of the Defendants filed an Answer to the Notice of Intent. The earliest Motion to Dismiss was filed nearly 6 months after the filing of the Notice of Intent to File Suit and the latest Motion to Dismiss was filed more than 8 months after the filing of the Notice of Intent to File Suit.

The two days between the filing of the Notice of Intent to File Suit and the Affidavit of Dr. Skudder did not prejudice any Defendant in any way. Respectfully, it would be unjust to dismiss the Notice of Intent to File Suit under all of the circumstances of this case, discussed further below.

2. The facts of *Ranucci v. Crain*, 397 S.C. 168, 723 S.E.2d 242 (Ct. App. 2012) are distinguishable from this case, and the ruling in *Ranucci*

does not require a dismissal of this Notice of Intent to File Suit.

In Ranucci there was no explanation of why the expert affidavit was not filed with the Notice of Intent to File Suit. In this case the matter is fully explained. Counsel for the Plaintiff prepared the affidavit and forwarded it to the doctor on August 14, it was signed on August 15, but it was not returned to Counsel until August 16, and it was filed on the morning of August 17. Meanwhile, the Notice of Intent to File Suit was filed on August 15.

In Ranucci the expert affidavit was not filed until 15 days after the Notice of Intent to File Suit. In this case the expert affidavit was filed within two days of the Notice of Intent to File Suit.

In Ranucci the statute of limitations undoubtedly ran between the time of the filing of the Notice of Intent to File Suit and the filing of the affidavit. In this case there is evidence that the statute of limitations did not expire until after the filing of the expert affidavit.

The Court in Ranucci limited itself to the “narrow question” of “which requirements” of section 15-36-100 constitute the affidavit requirements referenced by section 15-79-125(A) Ranucci, *supra*, 723 S.E. 2d at 245. In this case it is not necessary to reach that question at all in order to rule for the Plaintiff since there is evidence that both the Notice of Intent to File Suit and the Affidavit of Dr. Skudder were filed within the statute of limitations (and for the other reasons discussed herein).

Under the facts of Ranucci the Court found that the “circuit court did not abuse its discretion,” Ranucci, *supra*, 723 S.E. 2d at 247, in dismissing the Notice of

Intent to File Suit under the circumstances of that case. The facts of this case are different, and the Ranucci decision does not support or require a similar result in this case.

3. The Notice of Intent to File Suit and the Affidavit of
Dr. Skudder were filed “contemporaneously.”

The statute requires that the Plaintiffs “contemporaneously” file a Notice of Intent to File Suit and an affidavit of an expert witness. The meaning of the word “contemporaneously” must not be ignored. Events which are “contemporaneous” occur during the same period. On the other hand events which are “simultaneous” occur at the same time. “Simultaneous” events are a subset of “contemporaneous” events.

American Heritage Dictionary of the English Language:

contemporaneous 1. Belonging to the same period of time.

simultaneous 1. Happening, existing, or done at the same time.

American Heritage Publishing Co. Inc, 1969-1970.

Webster’s Universal College Dictionary:

contemporaneous 1. Living or occurring during the same period of time,
contemporary.

simultaneous 1. Existing, occurring, or operating at the same time;
concurrent.

Random House, Inc., 1997.

The use of the word “contemporaneously” in the statute prevents draconian and unjust results such as that sought by the Defendants.

The affidavit was filed prior to the expiration of the period prior to the running of the statute of limitations.

The statute does not prohibit filing the Notice of Intent to File Suit prior to the affidavit, and the two day delay does not prejudice the Defendants.

4. The Notice of Intent to File Suit and the Affidavit of Dr. Skudder were filed “simultaneously.”

The Notice of Intent to File Suit was already filed for two days when the Affidavit of Dr. Skudder was filed on August 17, 2012. As of August 17, 2012, the two documents were “simultaneously” on file, and have been ever since.

As long as the statute of limitations had not run by August 17, 2012, there is no conceivable reason to prohibit filing the Notice of Intent to File Suit and the Affidavit of Dr. Skudder two days apart, and the statute does not prohibit this.

Further, Section 15-79-125 provides that, “ Filing the Notice of Intent to File Suit tolls all applicable statutes of limitations.” The filing of the Affidavit of Dr. Skudder, under the circumstances of this case, should be related back to the filing of the Notice of Intent to Appeal.

B. THE STATUTE OF LIMITATIONS DOES NOT PROVIDE BASIS FOR DISMISSAL.

In the Ranucci case the Circuit Court refused to address the Defendant’s motion to dismiss based upon the statute of limitations, and the Court of Appeals did not take issue with the Circuit Court’s decision. “...because the Notice and Affidavit did not constitute an ‘action,’ the circuit court denied Dr. Crain’s motion to

dismiss based upon the applicable statute of limitations.” Ranucci, *supra*, 723 S.E. 2d at 243.

The discovery available under a Notice of Intent to File Suit is extremely limited, there is not a full record, and the statute of limitations issue should not be addressed at this stage of the proceedings.

That being said, by any objective standard, there is evidence that the statute of limitations did not run prior to August 17, 2012. The Plaintiff, Johnny Eades, did not suffer the ruptured aneurism until August 15, 2012, and he was under heavy medication thereafter. In medical malpractice actions a discovery rule applies. The applicable statute of limitations, Section 15-3-545(A) which is three years after the actionable conduct or “when it reasonably ought to have been discovered.”

Objectively, Mr. Eades had no way of discovering any actionable conduct before the aneurism ruptured and, objectively, afterward he was too sick and medicated to know what had happened for an extended time. He had seen several of the Defendants or employees of the Defendants and none of them apprised him of any actionable conduct. This case is nothing like Arant v. Kressler, 327 S.C. 225, 489 S.E. 2d (1997), where the Plaintiff was warned by a doctor she saw that a part of the placenta had not been removed by another doctor. Likewise, this case is nothing like Knox v. Greenville Hosp. Sys., 362 S.C. 566, 608 S.E.2d 459 (Ct. App 2005), in which a man knew immediately when he was injured by an I.V. Mr. Eades had no way of knowing of any actionable conduct until after the ruptured aneurism and the medication and sickness in the aftermath.

Both the Notice of Intent to File Suit and the Affidavit of Dr. Skudder were filed by August 17, 2012, and there is evidence that the statute of limitations had not run at that time. The Plaintiffs could possibly have known of any actionable conduct before the aneurism ruptured on August 15, 2012, and Mr. Eades was very sick and heavily medicated in the following weeks. Also, the Court could find that the filing of the Affidavit of Dr. Skudder relates back to August 15, but does not need to reach that issue at this time.

C. THE AFFIDAVIT OF DR. SKUDDER COMPLIES WITH SECTION 15-36-100(A).

Two of the Defendants have taken issue with the sufficiency of the affidavit of Dr. Skudder. The Court is not required to rule upon this issue at this time, in its discretion, and the Plaintiff requests that this issue not be addressed until after the Summons and Complaint have been filed and served.

The Affidavit of Dr. Skudder is, however, compliant with Section 15-36-100(A). Palmetto Primary Physicians, LLC, and Trident Emergency Physicians, LLC, argue that there must be an affidavit from a family practitioner and an ER specialist, respectively.

This misconstrues and too narrowly limits the requirements of the statute. The opinion of Dr. Skudder is that the records of the previous admission to the hospital were not consulted and a proper examination of the patient was not performed. Dr. Skudder, as a vascular surgeon, is qualified to render an opinion that the medical records reveal that the physicians did not consult the medical

record. He is likewise qualified to render an opinion that the physicians did not properly examine the patient.

The limited nature and discovery of proceedings under the Notice of Intent to File Suit statute do not provide the procedural or substantive basis for full consideration of the issues regarding expertise, and the Plaintiffs respectfully request that this issue be deferred until a later stage of the proceedings.

D. SECTION 15-79-100 EXPLICITLY ADOPTS THE PROCEDURES OF SECTION 15-36-100.

It is respectfully submitted that Section 15-79-125 adopts not only Section 15-36-100(A), but it adopts the other provisions of Section 15-36-100 regarding affidavits as well. Section 15-79-125 explicitly refers to the affidavit provisions of Section 15-36-100. If the legislature intended the affidavit matters to be limited to Section 15-36-100(A), it obviously would have stated that limitation clearly in Section 15-79-125. To hold otherwise is to rewrite the statute.

It would make no sense to hold plaintiffs to a higher standard regarding affidavits at an earlier stage of proceedings, with presumably less information, than later. Such would be arbitrary and without a rational basis. The Plaintiffs recognize that this position is in conflict with the Ranucci case, and respectfully submits that case is erroneous in that regard.

Obviously, the application of Section 15-36-100(C) would require the denial of the Defendants' motions to dismiss. Likewise, that application of Sections 15-36-100(D), (E), and (F) would favor the Plaintiffs in this case.

E. STATE AND FEDERAL CONSTITUTIONAL PROVISIONS AS WELL AS

HARMONY WITH OTHER STATE STATUTES AND THE SCRCP ARE
APPLICABLE.

The concept of requiring expert affidavits as an entry point to civil litigation is a step backwards. Rules of Civil Procedure have been developed over a long period of time to allow discovery and related procedures to insure a modern and fair proceeding. The procedures of statutes such as Section 15-79-125 and Section 15-36-100 leave plaintiffs without a full and fair process of adjudication. For example, there is no remedy for incomplete or falsified documentation in the medical record. There is no remedy for additional information which could be supplied by testimony of treating physicians, other treating healthcare personnel, admissions by the defendants, or many other matters which can be discovered or illuminated by discovery. Many cases in the past have been successfully litigated without the requirements of any specially retained "expert" witness. These pre-suit affidavit requirements unfairly limit plaintiffs. These limitations violate Article 1, Section 3 of the South Carolina Constitution relating to due process, equal protection of laws, and privileges and immunities. The limitations also violate Amendments Five and Fourteen of the U.S. Constitution regarding due process and equal protection of the laws. They also violate the privileges and immunities clause of the U.S. Constitution.

These laws requiring the filing of affidavits of experts in pre-suit proceedings, and along with the complaint, are a step back to pre-discovery days hundreds of years ago. It is a step back to the "forms of action" rather than one cause of action. It is a step back to unreasonable and irrational legal requirements before the

merger of law and equity. There is no rational basis for depriving litigants of the Rules of Civil Procedure for discovery and protection simply because a defendant is a professional.

It is irrational to require the filing of an affidavit with a Notice of Intent to File Suit which is not even required to be served upon the Defendant for 120 days. There is no rational basis in law or reason for such a requirement, and it is therefore in conflict with the Constitutions of South Carolina and the United States, it is in conflict with the statutory basis for the Rules of Civil Procedure, it is in conflict with the Rules of Civil Procedure, it is in conflict with the common law, and it is conflict with sound judgment and reason.

Also, the interpretation of the Ranucci Court of the affidavit provisions of Section 15-79-125 and Section 15-36-100 is at variance with the Constitutions, law, and rules of procedure, as set forth in the proceeding paragraph.

CONCLUSION

It is respectfully submitted that the Motions to Dismiss of the Defendants should be denied for all of the reasons set forth above. The filing of the Affidavit of Dr. Skudder two days after the filing of the Notice of Intent to File Suit in no way prejudices any Defendant, and is not in conflict with Section 15-79-125.

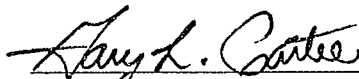
The South Carolina Supreme Court has recently ruled on the mediation provisions of Section 15-79-125. In that case the Defendants attempted to apply unreasonable technicalities to the operation of Section 15-79-125. The Court made it clear that it would not adopt such an approach in regard to this statute.

The Court stated that "... statutes in derogation of the common law are to be strictly construed." (citations omitted). "Under this rule, a statute restricting the common law will not be extended beyond the clear intent of the legislature." (citations omitted). "Statutes subject to this rule include those which limit a claimant's right to bring suit." (Citation omitted). Ross v. Waccamaw Cmty. Hospital, 2013 WL 3200593, 2013 S.C. LEXIS 161, Filed June 26, 2013. The Court went on to state, "Specifically, Respondents would have this Court construe section 15-79-125 as a trap for plaintiffs with potentially meritorious claims. Given the pressures of practicing law for even the moderately busy practitioner, completion of the mediation conference in a timely manner will not always be achievable...." "A mandated penalty of dismissal,,, is fundamentally at odds with the language and purpose of section 15-79-125." The Court went on to quote the Wisconsin Supreme Court with approval: "In the absence of express language, we are unwilling to read the harsh penalty of dismissal of the lawsuit into the mediation statute. The tenor of modern law is to avoid dismissal of cases on technical grounds and to allow adjudication on the merits." Waccamaw, supra.

As the South Carolina Supreme Court has made clear, the purpose of Section 15-79-125 is to provide an opportunity for mediation and very limited discovery. The Supreme Court has rejected restrictive applications of this statute not explicitly required by the language of the statute.

It is not intended as a trap for plaintiffs, and it is not intended as the forum for extensive and dispositive motions.

Respectfully submitted,

A handwritten signature in cursive script, reading "Gary L. Cartee", is positioned above a horizontal line.

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N. Charleston, S.C.
July 18, 2013.

Attorney for the Plaintiffs

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF CHARLESTON) Court of Common Pleas
) Case No. 2012-CP-10-5366
 3 _____)
 4 JOHNNY EADES and BARBARA EADES)
)
 5 Plaintiffs,)
)
 6 VS.) Transcript of Record
)
 7 PALMETTO CARDIOVASCULAR AND)
 THORACIC, P.A., et al,)
 _____)

8 DATE: July 18, 2013

9 B E F O R E:

10 The Honorable Kristi Lea Harrington

11 A P P E A R A N C E:

12 Gary L. Cartee
 Attorney for the Plaintiffs

13 Darren Sanders
 Attorney for Defendants, Dr. James Benner and
 Palmetto Cardiovascular and Thoracic

14 Jason Ward,
 Attorney for Defendant, Mark J. Epler

15 Perry Buckner,
 Attorney for Defendant, Trident Emergency Physician

16 William Curry McDow,
 Attorney for Defendant, Palmetto Primary Care
 Physicians, LLC; Trident Emergency Physicians, LLC;
 Patricia Campbell, MD; and Matthew Wallen, MD,

22
 23 Karen V. Andersen, RMR, CRR
 Circuit Court Reporter

1 THE COURT: To make this easy on y'all, it
2 doesn't -- makes no order preference to me as to who goes
3 first.

4 MR. SANDERS: Good morning, Judge. I'm Darren
5 Sanders. We have, I think, three motions in a row.

6 THE COURT: Are all your attorneys here? We are
7 ahead of schedule. I need for you to know.

8 MR. SANDERS: Judge, there are three motions
9 filed in the case called Eades vs. Dr. Benner and a slew
10 of other healthcare providers.

11 THE COURT: So what are the case numbers?

12 MR. SANDERS: It is 2012-CP-10-5366.

13 THE COURT: All right. And those have been
14 consolidated? You said there were three cases?

15 MR. SANDERS: No, ma'am. I meant to say there
16 are three motions to dismiss before you all on the exact
17 same issue.

18 THE COURT: Thank you. State your name for the
19 record and who you represent.

20 MR. SANDERS: Yes, I'm Darren Sanders, and I
21 represent Dr. James Benner and Palmetto Cardiovascular
22 and Thoracic.

23 MR. WARD: Your Honor, I'm Jason Ward. We
24 represent Mark J. Epler.

25 MR. BUCKNER: Your Honor, I'm Perry Buckner.

1 And I'm here on behalf of defendant Trident Emergency
2 Physician.

3 MR. McDOW: Judge, my name is Bill McDow. I'm
4 with Richardson Plowden in Columbia. I represent
5 Palmetto Primary Care Physicians, LLC; Trident Emergency
6 Physicians, LLC; Patricia Campbell, MD; and Matthew
7 Wallen, MD, although there's some things we can sort out
8 with that as we go through that.

9 MR. CARTEE: Your Honor, I'm Gary Cartee.

10 THE COURT: One second. I'm trying to sort out.
11 I didn't have Mr. McDow. I didn't have you listed as
12 Palmetto Primary Care.

13 So, Mr. Buckner and Mr. McDow, y'all are in the
14 same firm, or you are representing --

15 MR. McDOW: There is --

16 THE COURT: Is there some overlap?

17 MR. McDOW: There's potential an overlap of
18 coverage there for the emergency group.

19 THE COURT: That's how I split it up so I'm
20 making sure I have all the players. Thank you.

21 And in the spirit of disclosure, I don't know
22 that it matters, it's none of the doctors, but I'm a
23 patient at Palmetto Primary Care. Do you wish for me to
24 recuse myself?

25 MR. SANDERS: No, ma'am.

1 MR. CARTEE: No, Your Honor.

2 MR. BUCKNER: No, Your Honor.

3 MR. WARD: No, Your Honor.

4 MR. McDOW: Fine by me.

5 THE COURT: All right. Thank you. And just for
6 the record, I know none of these doctors. They are not
7 my treating physician.

8 And, finally, certainly, but not last --

9 MR. CARTEE: Your Honor, I'm Gary Cartee. I
10 represent the plaintiffs, Johnny Eades and Barbara Eades.
11 And I also have a memo. I have an extra copy for your
12 law clerk.

13 THE COURT: We are here on three motions to
14 dismiss?

15 MR. SANDERS: That's correct.

16 THE COURT: Mr. Sanders, is there any particular
17 order that y'all wish to go? Do you want to go in order
18 that you are seated, or is there some preference?

19 MR. SANDERS: I think I've been tagged, Judge,
20 to make the primary argument because it's the same
21 argument in each one of the motions.

22 THE COURT: All right. And, Mr. Cartee, you are
23 prepared to go forward on those three motions to dismiss?

24 MR. CARTEE: Yes, Your Honor.

25 THE COURT: Thank you. I will be happy to hear

1 from you.

2 MR. SANDERS: May it please the Court, Your
3 Honor. Just by a little way of background, this is a
4 medical malpractice case involving repair and surgical
5 treatment of a blockage in an artery down in Mr. Eades's
6 pelvis back in 2009. He required subsequent surgery.

7 The allegation is that he suffered some
8 complications that were related to the first surgical
9 procedure that arguably could have been avoided, I think
10 is the gist of the allegation.

11 The motion before you, Judge, is a motion to
12 dismiss. The notice of intent to file suit pursuant to
13 15-79-125A, the notice of intent was filed on 8/15/2012
14 with no expert affidavit. Two days later, the expert
15 affidavit was filed.

16 I have a copy of a case from the Court of
17 Appeals called Ranucci v. Crain, which is 397 S.C. 168.
18 And I would like to pass a copy up, if that's okay,
19 Judge.

20 THE COURT: Thank you.

21 MR. SANDERS: Your Honor, Ranucci dealt with the
22 exact issue we are dealing with today. In that case,
23 again, the notice of intent was filed without an expert
24 affidavit. The expert affidavit was supplemented as a
25 filing later in time. The Court of Appeals ruled that

1 there is a mandate under 15-79-125A that the affidavit
2 has to be filed with the notice, contemporaneously and
3 simultaneously. Particularly, Judge, underlying the
4 opinion where they say that the requirement is that it
5 has to be filed at the same time. So the basis for the
6 motion to dismiss is that the affidavit was not filed at
7 the same time as the notice of intent.

8 THE COURT: There are some exceptions to that,
9 correct? Statute of limitations is -- did I misread the
10 statute?

11 MR. SANDERS: Well, Ranucci discusses this
12 issue. There are exceptions under 15-36-100 for the
13 affidavit that is required to be filed with the summons
14 and complaint. According to Ranucci, there are no
15 exceptions of those type for the notice of intent to file
16 suit. It's after the requirement.

17 THE COURT: And so it is your position that --
18 what relief are you seeking?

19 MR. SANDERS: Dismissal of the notice of intent
20 to file suit.

21 THE COURT: Mr. Ward, you are joining in the
22 argument; anything additional?

23 MR. WARD: Your Honor, I can't add anything in
24 addition to what Mr. Sanders said.

25 THE COURT: Mr. Buckner?

1 MR. BUCKNER: Nothing further, Your Honor.

2 THE COURT: Mr. McDow?

3 MR. McDOW: Thank you. May it please the Court.

4 Bill McDow for Palmetto Primary Care, Trident Emergency
5 Physicians, and under those two headings, Patricia
6 Campbell and Matthew Wallen.

7 If you get an opportunity at some point in time
8 to take a look at the memorandum I handed up, I have
9 three grounds. One is the same as Mr. Sanders argued on
10 Ranucci. I won't go over that again.

11 The second one was the fact that I have an
12 emergency medicine physician and a primary care
13 physician. Their expert's affidavit is from a vascular
14 surgeon, so it is not in the same area of practice.

15 Third is on the statute of limitations. But for
16 the purpose of our argument today, I will withdraw that
17 portion of the motion. We can deal with that at a later
18 time, if necessary.

19 THE COURT: All right. Mr. Cartee, in any
20 particular order that you wish to address, if you want to
21 go defendant by defendant or globally, or however you
22 wish to.

23 MR. CARTEE: Okay, Your Honor. First of all, I
24 would like to address the issue of the simultaneous
25 filing, which all of the defendants have raised. What

1 happened in this case, Your Honor, there's an affidavit
2 that counsel filed. There's also the affidavit of the
3 expert witness which shows the fax dates. And I've
4 explained the affidavits with counsel.

5 What happened was, I prepared an affidavit for
6 the expert witness on August the 14th. I sent it to them
7 by fax. I expected to get it back by the 15th. I did
8 not get it back by the 15th. It was signed by the 15th,
9 but not faxed back to me until the 16th. I elected to go
10 ahead and file the notice of intent to file suit on the
11 15th. That was the day of the surgery and the ruptured
12 aneurysm. And so then the affidavit was faxed back to me
13 on the afternoon of the 16th. On the morning of the
14 17th, I filed the affidavit.

15 Now, I disagree with the characterization of the
16 Ranucci decision. And in my memo, I have a lot of
17 reasons set forth for that. And the Ranucci court did
18 not rule that there are no exceptions. There's some
19 dicta in that opinion that could be construed in that
20 way, but that's not the actual ruling. What the ruling
21 was, that it was under the facts of that case, this
22 was -- it also explicitly said that they were narrowing
23 ruling on the issue of whether or not Section 15-36-100,
24 what parts of that were included in Section 15-79-125.
25 So it was narrowly limited that way.

1 It was not before the court whether there are
2 any exceptions under 15-79-125. That was just not before
3 the court. They ruled that it was not an abuse of
4 discretion for the court under the circumstances of that
5 case to dismiss.

6 However, this case is distinguishable and is
7 very different from that case. First of all, Your Honor,
8 I would like to point out that the Circuit Court has
9 discretion in this matter that's before you. In fact,
10 that was the explicit ruling in the Ranucci case, was
11 that there was no abuse of discretion in that case.

12 But Section 15-79-125 does not include any
13 procedures for dispositive motions. That statute is
14 nothing more than a procedure presuit to deal with
15 mediation and limited discovery. That's the purpose of
16 it. And there are no statutory provisions for the types
17 of motions that have been filed.

18 So it's entirely discretionary with Your Honor
19 whether you choose to entertain those motions. These are
20 improvised motions which are not provided for in the
21 statute.

22 Also, the defendants are seeking a draconian and
23 unjust result because of these two days. And it is
24 absolutely irrational. It makes no sense under the
25 statute or under the law. One of these motions was filed

1 60 days -- earliest one was filed approximately 60 plus
2 days after service of the notice. Another was filed 75
3 days later. Another was filed 120 days later. Another
4 was filed 130 days later. So it is absolutely absurd to
5 suggest that there's any prejudice to the defendant
6 months later.

7 In fact, the earliest motion to dismiss was
8 filed six months after the filing of notice intent to
9 file suit. And the latest was filed eight months. It
10 just makes no sense to say that this two-day thing, that
11 the two-day difference in any way prejudiced them.

12 Just to -- the Ranucci case is quite different.
13 In Ranucci, there was no explanation as to why the expert
14 affidavit was not filed with the notice of intent to file
15 suit. There just wasn't an explanation here, and the
16 Court of Appeals referred to that.

17 In this case, the affidavit itself is stamped
18 with markings that show that it was extent to the expert
19 on the 14th, signed on the 15th, and then it was faxed
20 back to counsel on the 16th. And that's explained in the
21 affidavit of counsel. So there's an explanation for what
22 happened.

23 In Ranucci, the expert affidavit was not filed
24 until 15 days after the notice of intent to file suit.
25 In this case, there's a mere two days. And that's fully

1 explained by the delay in receiving the affidavit back
2 from the doctor.

3 The court in Ranucci, as I mentioned before,
4 limited itself to the narrow question of which
5 requirements of Section 15-36-100 are the affidavit
6 requirements referenced by 15-79-125. It's not even
7 necessary to reach that issue, Your Honor, in this case.

8 In the facts of Ranucci, the court found the
9 Circuit Court did not abuse its discretion. But the
10 facts of the case are different. Ranucci's decision does
11 not support or require similar result in this case.

12 And also, counsel said that the Court of Appeals
13 said that the motion must be filed contemporaneously and
14 simultaneously. Those are two different words. And the
15 word simultaneously is not found in the Court of Appeals
16 decision, nor is the word simultaneously found in the
17 statute. The word is contemporaneously. And while those
18 words are similar, they do have a distinct meaning. And
19 the legislature undoubtedly had a purpose in using the
20 word contemporaneously instead of the word
21 simultaneously.

22 Contemporaneously means filed within the same
23 period; whereas, simultaneously means filed at the same
24 time. And in this case, there are also affidavits that
25 have been filed of my clients, and there is the affidavit

1 of the expert witness, Dr. Scudder, which make it clear
2 that the -- by any objective standard, the statute of
3 limitations had not run as of the time that this
4 affidavit was filed on the 17th.

5 If the statute said simultaneously, then the
6 argument could be made that under 15-79-125, under no
7 circumstances are there any exceptions in which one can
8 be filed before the other. In fact, the statute does not
9 say that.

10 Now, also, Your Honor, simultaneous is a subset
11 of the word contemporaneous. Contemporaneous means in a
12 period, and simultaneous means at the same time. But,
13 actually, there was simultaneous filing as of the two
14 days later, because one was already on file. The other
15 one was then filed. So from that time forward, from
16 August 17th to the present day, they have simultaneously
17 been on file. We are not even required to serve them
18 until 120 days later. So there's absolutely no prejudice
19 that these things were on file that much time before.

20 THE COURT: Mr. Cartee, how long does
21 simultaneous or contemporaneous last? Because we know it
22 is not 15 days; is it 14?

23 MR. CARTEE: Yes.

24 THE COURT: Anything less than 15?

25 MR. CARTEE: Well, it does not last 15 in the

1 case of Ranucci. Because under the facts of that case,
2 the statute of limitations ran after one day. So there
3 was -- in that case -- I mean, that's the way the Court
4 interpreted it. So -- and there is an opinion there.
5 And I think that's why it defines the period in that
6 situation.

7 THE COURT: Tell me, Mr. Cartee, why you didn't
8 file it at the same time, meaning you filed the affidavit
9 and your notice of intent --

10 MR. CARTEE: Okay, Your Honor. The reason --

11 THE COURT: -- within minutes of each other by
12 the clerk.

13 MR. CARTEE: The reason is because a glitch
14 happened in the doctor's office in Massachusetts. So I
15 sent him the affidavit on the 14th, but he did not get it
16 back to me until the 16th. I wanted to file this on the
17 15th. So I went ahead and filed the notice, but I didn't
18 have an affidavit to file.

19 THE COURT: Was there some reason that you
20 needed to file the notice without the affidavit?

21 MR. CARTEE: I wanted to file that and take the
22 most conservative position that I could, because that's
23 the date that the aneurysm ruptured. So I wanted it
24 filed on that day.

25 Now, as it happened, Mr. Eades was -- this was a

1 very severe event that occurred medically, the ruptured
2 aneurysm. And so he was entirely out of it on the 15th,
3 and for weeks afterward he was medically that way. The
4 affidavits have been filed that show that, and he was
5 under heavy medication.

6 So there is no way in this case -- in medical
7 malpractice cases, there is a discovery rule. So there's
8 no way he could have discovered anything about ruptured
9 aneurysm in the condition that he was in. Therefore, the
10 statute of limitations could not have run at that time.

11 Your Honor, it is my understanding too that
12 today they are not trying to assert the statute of
13 limitations because -- for whatever reasons they have,
14 but I think that's correct, in the Ranucci case, the
15 trial court did not consider the statute of limitations
16 argument because the court found that it was -- that
17 there was no action. See, this is presuit. This is a
18 presuit procedure.

19 Our Rules of Civil Procedure, Rule 1, 2 and 3
20 combined, hold that an action is commenced by a summons
21 and complaint. So that's the next step in this
22 proceeding, is to file a summons and complaint. But what
23 has happened here is there's this improvised procedure in
24 which they are trying to prevent the case from getting to
25 the next step.

1 Now, in addition to the Ranucci case -- and I've
2 included a copy of the Ranucci case and a case called
3 Waccamaw with the materials that I've submitted. There's
4 also copies of the affidavit and copies of the
5 supplemental interrogatory answers, along with the
6 affidavit and the resume -- CV, excuse me, of Dr.
7 Scudder.

8 Now, our Supreme Court just three weeks ago
9 ruled on another aspect of this same statute. Now,
10 15-79-125 only does two things. It gives you the
11 opportunity to mediate and it gives you the opportunity
12 to do some very limited discovery.

13 And the mediation had a requirement of 120 days.
14 And defendants in the Waccamaw case said, well, because
15 things happen with counsel, it went beyond the 120-day
16 rule and, therefore, it should be dismissed. The lower
17 court agreed with that. And the lower court did dismiss
18 that case because they didn't get within that strict 120
19 days.

20 However, our Supreme Court in Waccamaw, on the
21 same statute we are dealing with, came out with some very
22 strong language, very strong language, that they do not
23 want this statute interpreted in such a restricted
24 fashion. And if I could just refer to some of the things
25 the court said --

1 THE COURT: That's all right. I've got it.

2 I've got your memo. Anything further, counsel?

3 MR. CARTEE: I just want to make sure, Your
4 Honor. I did not address the issue of the sufficiency of
5 the affidavit as far as Mr. McDow's client.

6 THE COURT: Thank you. Is there anything
7 additional that's not in your memo?

8 MR. CARTEE: Your Honor, I tried to cover
9 everything.

10 THE COURT: All right.

11 MR. CARTEE: For the affidavit --

12 THE COURT: I just want to hear something that's
13 not in your memo then, because y'all have given me a
14 whole stack that I haven't had time to read. So just
15 wrap it -- if you will please wrap it up so I will have
16 time to read your memo.

17 MR. CARTEE: All right. Your Honor, I will wrap
18 it up as fast as I can. The affidavit of Dr. Scudder
19 applies to any physician, not just -- it would apply to a
20 family physician. It would apply to a surgeon. It would
21 apply to the ER physicians. Because what he's talking
22 about there is that they didn't refer to the record. And
23 that's something that obviously a vascular surgeon is
24 qualified to render an opinion on, is whether or not they
25 referred to the record of his prior surgery, and also,

1 whether or not a proper exam is done. So those are
2 things he is clearly qualified to render an opinion on,
3 Your Honor. Thank you.

4 THE COURT: All right.

5 MR. SANDERS: Very briefly.

6 THE COURT: You are going to be the
7 spokesperson?

8 MR. SANDERS: Yes, ma'am, if that's all right
9 with you guys.

10 On a couple of issues, first, 15-79-125D
11 specifically says that the Circuit Court has jurisdiction
12 to enforce the provisions of that act. So I don't
13 believe that the argument that somehow the court cannot
14 dismiss the notice of intent is valid, because that's
15 exactly what happened. Ranucci was brought exactly this
16 way in front of the court.

17 In Ranucci on Page 712, Mr. Cartee referenced a
18 difference between contemporaneous and simultaneous and
19 said that simultaneous means at the same time. I came
20 upon this earlier when I was talking on Page 7 of 12.
21 This is the quote from the opinion: Section 15-79-125A
22 mandates that prior to filing a suit, a plaintiff shall
23 contemporaneously file a notice of intent to file suit
24 and an affidavit of an expert witness subject to the
25 affidavit requirements established in 15-36-100. This

1 provision imposes two requirements on the affidavit, that
2 it be filed at the same time as the notice of intent to
3 file suit and that it comply with the affidavit
4 requirements set out in 15-36-100.

5 So the issue about the statute of limitations, I
6 think the statute of limitations will bar summons and
7 complaint that was filed in this case. I don't know that
8 we need to entertain that argument here today. But the
9 statute of limitations discussion in Ranucci comes up in
10 Judge Hughes's concurring opinion when he says that the
11 issues discussed by the majority dismissing -- affirming
12 the lower court's dismissal of notice of intent didn't
13 need to be reached because the tolling provision had
14 expired. And the appeal should have been dismissed for
15 statute of limitations violation, which I think
16 ultimately would apply here as well.

17 And in regards to the issue about two days being
18 a draconian result, the surgery occurred in 2009. The
19 only reason why an argument could be made that the two
20 days is draconian, if one infers that the only time a
21 lawsuit can be filed is the day that the statute of
22 limitations is about to expire, and that's just not the
23 case. There are three years before that.

24 And in the notice of intent, Mr. Cartee says in
25 Paragraph 3 that the reason why he was filing the notice

1 of intent without the expert affidavit is because he
2 believed that the statute of limitations would run within
3 10 days of the filing, trying to trigger the provisions
4 in 15-36-100 that the Court of Appeals says definitively
5 do not apply to 15-79-125 in the prelitigation
6 requirements of the affidavit being filed at the same
7 time as the notice of intent.

8 The issue about the Ross vs. Waccamaw and
9 Dr. Jones's case, I have a lot of familiarity with that
10 case, but the bottom line is that case related to presuit
11 mediation, which was a totally different issue than is
12 involved in this case.

13 THE COURT: Everyone concurs?

14 MR. WARD: Completely, Your Honor.

15 MR. BUCKNER: Your Honor, if I could add just
16 one thing, I will be at brief as possible. One of the
17 things that plaintiff's counsel raised was the fact that
18 his situation was somewhat factually distinct from
19 Ranucci and that the Ranucci opinion never offered any
20 sort of explanation as to why the 15 days had passed.
21 But there is actually reference in the Ranucci opinion to
22 the argument that was raised. And it was the same, if
23 not exactly the same thing as what's being raised here.
24 And it was "time constraints", which is exactly what we
25 are dealing with here when three years after the surgery,

1 there's communication between the doctor in Massachusetts
2 trying to get the affidavit filed on the last day. That
3 sounds to me exactly -- at least the same sort of topic
4 or excuse for noncompliance that was raised in that Court
5 of Appeals decision.

6 THE COURT: All right.

7 MR. McDOW: We concur.

8 THE COURT: Thank you.

9 MR. CARTEE: Your Honor, may I reply?

10 THE COURT: No. Counsel, I will accept proposed
11 orders until Friday of next week, 5 p.m. You may e-mail
12 my clerk. You will have my ruling within one week after
13 next Friday. Good luck to you all. Thank you.

14 (Whereupon, proceedings are adjourned.)

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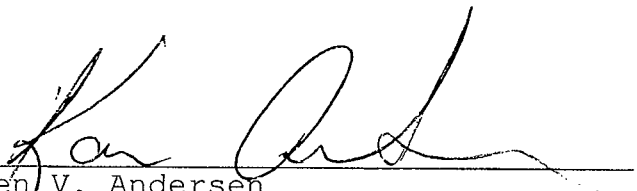
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CERTIFICATE OF REPORTER.

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter, and Notary Public for the
State of South Carolina at Large, do hereby certify that
the foregoing transcript is a true, accurate and complete
Transcript of Record of the proceedings.

I further certify that I am neither related to
nor counsel for any party to the cause pending or
interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal this 18th day of July, 2013 at Charleston,
Charleston County, South Carolina.



Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JOHNNY EADES AND BARBARA
EADES,

PLAINTIFF,

vs.

PALMETTO CARDIOVASCULAR AND
THORACIS, P.A.; JAMES M. BENNER,
M.D.; MARK J. EPLER, M.D.; TRIDENT
MEDICAL CENTER, LLC, COLUMBIA
HCA HEALTHCARE CORPORATION OF
SOUTH CAROLINA; HCA
HEALTHCARE-SOUTH CAROLINA;
TRIDENT MEDICAL CENTER; TRIDENT
HEALTH SYSTEM; PALMETTO
PRIMARY CARE PHYSICIANS, LLC;
TRIDENT EMERGENCY PHYSICIANS,
LLC; BRIAN R. WHIRRETH, M.D.;
PATRICIA CAMPBELL, M.D.;
CHRISTINE E. MCNEAL, M.D.;
MATTHEW WALLEN, M.D.;
CHARLESTON RADIOLOGISTS, P.A.;
JOSEPH M. MULLANEY, M.D.; TRI-
COUNTY RADIOLOGY ASSOCIATES,
P.A.; AND TROY MARLON, M.D.,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

JUDICIAL CIRCUIT

CASE NO. 2012-CP-10-5366

NOTICE OF APPEARANCE

FILED
2013 JAN -9 PM 1:30
JULIE
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that D. Jay Davis, Jr., Esquire and James E. Scott, IV, Esquire, of Young Clement Rivers, LLP hereby enters their appearance as counsel on behalf of the Defendant Trident Emergency Physicians, LLC. Entry of this Notice of Appearance is done subject to the Defendant's right to responsively plead to the allegations set forth in the Notice of Intent to file suit, as well as any affirmative defenses and motions that may be available to the Defendant if mediation is unsuccessful and a civil action is filed. Defendant Trident Emergency Physicians, LLC is prepared to attend pre suit mediation arranged by Plaintiff in this matter in accordance with the appropriate deadlines.

YOUNG CLEMENT RIVERS, LLP

By: 

D. Jay Davis, Jr.

James E. Scott, IV

P.O. Box 993,

Charleston, SC 29402

(843) 720-5406;

davis@ycrlaw.com; jscott@ycrlaw.com

Attorneys for the Defendant

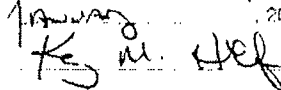
Trident Emergency Physicians

Charleston, South Carolina

Dated: 1/8/13

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was
mailed to all counsel of record in this proceeding this 8th
day of January, 2012.



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Johnny Eades and Barbara Eades,

Plaintiffs,

Versus

Palmetto Cardiovascular and Thoracic, P.A.;
James M. Benner, M.D.; Mark J. Epler, M.D.;
Trident Medical Center, LLC, Columbia/HCA
Healthcare Corporation of South Carolina;
HCA Healthcare-South Carolina; Trident
Medical Center; Trident Health System;
Palmetto Primary Care Physicians, LLC;
Trident Emergency Physicians, LLC; Brian R.
Whirreth, M.D.; Patricia Campbell, M.D.;
Christine E. McNeal, M.D.; Matthew Wallen,
M.D.; Charleston Radiologists, P.A.; Joseph
M. Mullaney, M.D.; Tri-County Radiology
Associates, P.A.; and Troy Marlon, M.D..

Defendants.

) IN THE COURT OF COMMON PLEAS
)
) TWELFTH JUDICIAL CIRCUIT
)
) C/A No. 2012-CP-10-5366
)

NOTICE OF APPEARANCE

FILED
2013 JAN 10 PM 1:57
JULIE A. SANDERS FROM
CLERK OF COURT
BY _____

JSB

The undersigned attorneys are in receipt of the Plaintiffs' Notice of Intent to File Suit. The undersigned have been retained to represent Palmetto Cardiovascular and Thoracic, P.A. and James M. Benner, M.D. in the above-referenced matter and hereby notify the Court, the parties and their attorneys that they are appearing on their behalf in this action. Please note that through this limited appearance, the Defendants do not waive any defenses, objections, jurisdictional arguments or available statutory or common law defenses.

BUYCK & SANDERS LAW FIRM, LLC
757 Johnnie Dodds Blvd., Ste. 100
P.O. Box 2424
Mt. Pleasant, SC 29465-2424
Telephone: (843) 377-1400
Facsimile: (843) 377-1403
Email: dks@buyckfirm.com

[Signature]

Darren K. Sanders (S.C. Bar # 68296)
Hugh W. Buyck (S.C. Bar # 66462)

Attorneys for the Defendants
Palmetto Cardiovascular and Thoracic, P.A.
and James M. Benner, M.D.

1/8, 2013
Mt. Pleasant, South Carolina

2012-CP-10-5364

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☒ mailing, ☐ emailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 9 day of January, 2013.



BY

JULIE J. ARMSTRONG
CLERK OF COURT

2013 JAN 10 PM 1:57

FILED

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Johnny Eades and Barbara Eades

Plaintiffs,

vs.

Palmetto Cardiovascular and Thoracic,
P.A.; James M. Benner, M.D.; Mark J.
Epler, M.D.; Trident Medical Center,
LLC, Columbia/HCA Healthcare
Corporation of South Carolina; HCA
Healthcare-South Carolina; Trident
Medical Center; Trident Health System;
Palmetto Primary Care Physicians, LLC;
Trident Emergency Physicians, LLC;
Brian R. Whirreth, M.D.; Patricia
Campbell, M.D.; Christine E. McNeal,
M.D.; Matthew Wallen, M.D.;
Charleston Radiologists, P.A.; Joseph M.
Mullaney, M.D.; Tri-County Radiology
Associates, P.A.; and Troy Marlon, M.D.,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION #2012-CP-10-5366

NOTICE OF APPEARANCE

BY



JULIE J. ARMSTRONG
CLERK OF COURT

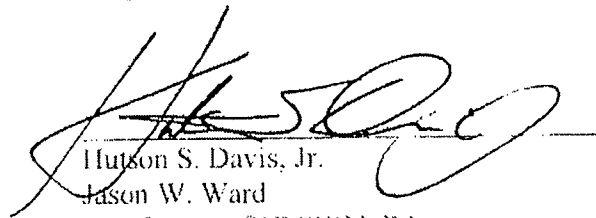
2013 JAN 15 PM 2:17

FILED

TO: THE CLERK OF COURT FOR CHARLESTON COUNTY

PLEASE TAKE NOTICE that the undersigned, Hutson S. Davis, Jr., Esquire and Jason
W. Ward, Esquire are the attorneys of record for the Defendant, Mark J. Epler, M.D.

Respectfully submitted,



Hutson S. Davis, Jr.

Jason W. Ward

BARRY L. JOHNSON, PA

10 Pinckney Colony Road, Ste. 200

Bluffton, SC 29909

(843) 815-7121

Buster@barryljohnsonpa.com

Jason@barryljohnsonpa.com

2012-CP-10-5366

Bluffton, SC

1.15.15, 2013.

CERTIFICATE OF SERVICE

I hereby certify that I have served a true copy of the foregoing document by delivering a copy to the following counsel/parties on the 14th day of January, 2013, by first class mail:

Gary L. Cartee, Esquire
3251 Landmark Drive, Suite 136
N. Charleston, SC 29418

Darren Sanders, Esquire
757 Johnny Dodds Blvd., Suite 100
P.O. Box 2424
Mt. Pleasant, SC 29465

By:



Deborah A. Clisham, Paralegal for Hutson S. Davis, Jr.

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2013 JAN 15 PM 2:17

FILED

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Johnny Eades and Barbara Eades,
Plaintiffs,

vs.

Palmetto Cardiovascular and
Thoracic, PA; James M. Benner,
MD; Mark J. Epler, MD; Trident
Medical Center, LLC; Columbia/HCA
Healthcare Corporation of South
Carolina; HCA Healthcare-South
Carolina; Trident Medical Center;
Trident Health System; Palmetto
Primary Care Physicians, LLC;
Trident Emergency Physicians, LLC;
Brian R. Whirreth, MD; Patricia
Campbell, MD; Christine E. McNeal,
MD; Matthew Wallen, MD;
Charleston Radiologists, PA; Joseph
M. Mullaney, MD; Tri-County
Radiology Associates, PA; and Troy
Marlon, MD,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL DISTRICT

Civil Action No: 2012-CP-10-5366 (NOI)

**NOTICE OF APPEARANCE ON
BEHALF OF DEFENDANTS PALMETTO
PRIMARY CARE PHYSICIANS, LLC;
TRIDENT EMERGENCY PHYSICIANS,
LLC; PATRICIA CAMPBELL, MD; AND
MATTHEW K. WALLEN, MD**

AB
JULIE J. ARMSTRONG
CLERK OF COURT
2013 JAN 24 PM 2:23
FILED

Reserving any and all motions, and other rights of these Defendants, William C. McDow, of the law firm Richardson Plowden & Robinson, PA, hereby gives notice to the Court, the parties, and counsel of record that he is entering an appearance as counsel for Defendants Palmetto Primary Care Physicians, LLC; Trident Emergency Physicians, LLC; Patricia Campbell, MD; and Matthew K. Wallen, MD in the above-captioned case.

Respectfully submitted,

Richardson Plowden & Robinson, PA

A handwritten signature in black ink, appearing to read 'W.C. McDow', followed by the letters 'NOA' in a smaller, less stylized font.

William C. McDow

P.O. Drawer 7788

Columbia, SC 29202

(803) 771-4400

(803) 779-0016 (fax)

bmcdow@richardsonplowden.com

Attorneys for Defendants Palmetto Primary
Care Physicians, LLC; Trident Emergency
Physicians, LLC; Patricia Campbell, MD;
and Matthew K. Wallen, MD

Columbia, South Carolina
January 22, 2013

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258

RETURN SERVICE REQUESTED



www3.charlestoncounty.org

124



GARY LANE CARTEE
3251 LANDMARK DR STE 136
N CHARLESTON SC 29418-8466

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRC

Order/Crt grants defnts motion go dismiss

CASE NO: 2012CP1005366

Johnny Eades , plaintiff, et al VS Palmetto Cardiovascular and Thoracic P A , defendant, et al

This judgment was entered on the 16th day of August, 2013, and a copy mailed first class on Tuesday, September 03, 2013, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258

RETURN SERVICE REQUESTED



www3.charlestoncounty.org

Gary Lane Cartee
3251 Landmark Dr., Ste.136
N. Charleston, SC 29418

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/Courts grants defnts' mot to dismiss

CASE NO: 2013CP1004475

Johnny Eades VS Palmetto Cardiovascular and Thoracic P A

This judgment was entered on the 16th day of August, 2013, and a copy mailed first class on Tuesday, September 03, 2013, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258

RETURN SERVICE REQUESTED



www3.charlestoncounty.org

16



GARY LANE CARTEE
3251 LANDMARK DR STE 136
N CHARLESTON SC 29418-8466

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Consent order to stay proceedings

CASE NO: 2013CP1004475

Johnny Eades , plaintiff, et al VS Palmetto Cardiovascular and Thoracic P A , defendant, et al

This judgment was entered on the 10th day of February, 2014, and a copy mailed first class on Tuesday, February 11, 2014, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.

PROPOSED ORDER SUBMITTED TO CIRCUIT
COURT BY DEFENDANTS

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Johnny Eades and Barbara Eades,

Plaintiffs,

vs.

Palmetto Cardiovascular and Thoracic, PA;
James M. Benner, MD; Mark J. Epler, MD;
Trident Medical Center, LLC; Columbia/HCA
Healthcare Corporation of South Carolina;
HCA Healthcare-South Carolina; Trident
Medical Center; Trident Health System;
Palmetto Primary Care Physicians, LLC;
Trident Emergency Physicians, LLC; Brian R.
Whirreth, MD; Patricia Campbell, MD;
Christine E. McNeal, MD; Matthew Wallen,
MD; Charleston Radiologists, PA; Joseph M.
Mullaney, MD; Tri-County Radiology
Associates, PA; and Troy Marlon, M.D.

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL DISTRICT

Civil Action No: 2012-CP-10-5366 (NOI)

ORDER

THIS MATTER CAME BEFORE THE COURT on July 18, 2013, for a hearing on a Motion to Dismiss the Notice of Intent to File Suit on behalf of the above named Defendants. Present at the hearing were Gary L. Cartee on behalf of the Plaintiffs; William McDow on behalf of Defendants Palmetto Primary Care Physicians, Trident Emergency Physicians, Patricia Campbell, M.D.¹, and Matthew Wallen, M.D.²; Perry M. Buckner, IV, also on behalf of Trident Emergency Physicians; Darren K. Sanders on behalf of Palmetto Cardiovascular & Thoracic, PA and James M. Benner, M.D.; and Jason Ward on behalf of Mark J. Epler.

This case is an alleged medical malpractice action. On August 15, 2012,

¹ Counsel for Plaintiffs has agreed not to name Dr. Campbell in any potential Summons & Complaint since she has never been served.

² Counsel for Plaintiffs has agreed not to name Dr. Wallen in any potential Summons & Complaint since he has never been served.

Plaintiffs filed a Notice of Intent to File Suit alleging injuries as a result of medical malpractice against Defendants. No expert witness affidavit was contemporaneously filed therewith. On August 17, 2012, Plaintiffs' counsel filed Supplemental Answers to Interrogatories and included the affidavit of Dr. Paul Skudder.

At the hearing, Defendants Palmetto Primary Care Physicians, Trident Emergency Physicians, Patricia Campbell, M.D., and Matthew Wallen, M.D., voluntarily withdrew their arguments with regard to the statute of limitations. Having reviewed the Defendants' Motions and Supporting Memoranda of Law, the Court makes the following findings:

I. The expert affidavit was not contemporaneously filed with the Notice of Intent to File Suit.

In 2005, as part of comprehensive tort reform, the South Carolina General Assembly enacted S.C. Code Ann. § 15-79-125, which requires that a medical malpractice plaintiff must initially file a Notice of Intent to File Suit together with an affidavit of an expert witness prior to filing a Summons and Complaint. Section 15-79-125(A) also provides that such contemporaneous expert affidavit must comport with the affidavit requirements of section 15-36-100. Section 15-36-100 contains provisions, discussed more fully below, concerning the content of the affidavit as it relates to section 15-79-125, but contains no procedural alternatives to section 15-79-125 with regard to filing the affidavit.

The Court of Appeals recently explored this distinction in Ranucci v. Crain, 397 S.C. 168, 723 S.E.2d 242 (Ct. App. 2012). There, Ranucci filed a Notice of Intent to File Suit against Dr. Crain and subsequently filed the affidavit of a medical expert. Id. In her

Notice, Ranucci attempted to invoke the provisions of section 15-36-100(C)(1)³ by indicating that “time constraints” prevented her from contemporaneously filing the affidavit of a medical expert and that she would file such an affidavit within forty-five days or her allegations of negligence would be within the “ambit of common knowledge and experience” so that Dr. Crain’s conduct could be evaluated without the assistance of special learning. Id. The circuit court granted Dr. Crain’s motion to dismiss Ranucci’s Notice of Intent for failure to timely file the medical expert’s affidavit. Id. The Court of Appeals affirmed. Id.

Using commonly-accepted principles of statutory interpretation, the Court of Appeals found sections 15-79-125 and 15-36-100 do not conflict; rather, each statute governs a distinct time period during the litigation process, and those time periods are consecutive. Id. To the Court of Appeals, section 15-36-100 “institutes, on the one hand, substantive requirements for the authorship and content of affidavits by expert witnesses and, on the other, procedural requirements relating to such affidavits **when filed with a complaint.**” Id. (emphasis added). Therefore, the Court of Appeals found that section 15-79-125 “invokes only the provisions of section 15-36-100 governing the preparation and content of the affidavit;” while “[t]he plain language of section 15-36-100, which ties the filing of affidavits under the statute to a complaint or other initial pleading, prevents the remaining provisions from applying to an affidavit filed pursuant to section 15-79-125.” Id. Accordingly, the Court of Appeals held that Ranucci failed to

³ Section 15-36-100(C)(1) provides in pertinent part:

The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared. In such a case, the plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with the affidavit. . . .

comply with section 15-79-125's contemporaneous filing requirement because she filed her expert affidavit after filing her Notice of Intent. The contemporaneous filing requirement mandated the expert affidavit be filed "at the same time as the Notice of Intent to File Suit." Id.

Similarly, this Court finds Plaintiffs' Notice of Intent to File Suit should be dismissed for failing to file the expert affidavit contemporaneously with their Notice of Intent to File Suit. On August 15, 2012, Plaintiffs filed their Notice of Intent. In the Notice, at paragraph 3, the following appears:

Counsel for Plaintiff has reason to believe that the statute of limitations would run within 10 days of the date of this filing, and because of the constraints of time an affidavit of an expert cannot be filed at this time, and it is the intention of Counsel for Plaintiff to file an expert affidavit within the time prescribed by the applicable statute (45 days from filing of this Notice of Intent to File Suit).

(See Ex. A). Like Ranucci, Plaintiffs have attempted to find safe harbor in the provisions of section 15-36-100(C)(1) and like Ranucci, Plaintiffs' failure to file the affidavit contemporaneously with the Notice of Intent is fatal to their claim. Ranucci is clear—the expert affidavit must be filed with the Notice of Intent to File Suit. This Court finds the failure to file the expert affidavit at the same time as the Notice of Intent to File Suit requires dismissal of this matter because the affidavit was not filed contemporaneously with the Notice of Intent to File Suit. See City of Camden v. Brassell, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct. App. 1997) ("Where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature's language.").

II. The expert affidavit does not comply with S.C. Code Ann. § 15-36-100 with

regard to Dr. Campbell and Dr. Wallen.

As an additional ground for dismissal, this Court finds that even if Plaintiffs' expert affidavit were timely filed, the affidavit is defective because it does not comport with the content requirements of section 15-36-100(A). Thus, the affidavit is insufficient to provide the requisite expert testimony to support the Notice of Intent to File Suit.

Section 15-36-100 requires that an expert completing an affidavit be "licensed by an appropriate regulatory agency to practice his or her profession" and be board certified in the **"area of practice or specialty about which the opinion on the standard of care is offered."** Section 15-36-100(A)(1), (A)(2)(a) (emphasis added). If the expert is not board certified, he still must **"have actual professional knowledge and experience in the area of practice or specialty in which the opinion is to be given"** as the result of having been regularly engaged in "the active practice of medicine in the area or specialty, teaching in the area or specialty, or a combination of the two." Section 15-36-100(A)(2)(b) (emphasis added).

Plaintiffs submitted the untimely affidavit of Dr. Paul Skudder, a medical doctor licensed in the states of Vermont, Massachusetts, and New York, as well as in the District of Columbia. (See Ex. B). Dr. Skudder indicates he has practiced medicine for more than the past five years dealing with issues including "occluded arteries, aneurysms, and related medical issues." Id. Dr. Skudder also indicates that he holds board certifications from the American Board of Surgery, with special qualifications in Vascular Surgery, and Surgical Critical Care. Id. However, Dr. Skudder's affidavit does not indicate he has "actual professional knowledge and experience" in the practice areas of Drs. Campbell and Wallen. Therefore, Dr. Skudder's affidavit fails to provide

the proper qualifications, as required by section 15-36-100, to allow Dr. Skudder to present an expert opinion about Drs. Campbell and Wallen.

Because the affidavit, if considered, does not contain the substantive content requirements of section 15-36-100, it is insufficient to supply the required affidavit in section 15-79-125. Consequently, this Court determines the Notice of Intent to File Suit should be dismissed for failure to provide an expert affidavit which comports with the affidavit requirements of section 15-36-100.

Defendants' Motion to Dismiss is GRANTED as to the claims presented by Plaintiffs. Any and all claims asserted by Plaintiffs in this case are hereby DISMISSED. IT IS SO ORDERED!

This the _____ day of July, 2013

THE HONORABLE KRISTIE LEA HARRINGTON
NINTH JUDICIAL CIRCUIT

PROPOSED ORDER SUBMITTED TO CIRCUIT
COURT BY PLAINTIFFS

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Johnny Eades and Barbara
Eades,)
Plaintiffs,)

vs.)

Palmetto Cardiovascular and)
Thoracic , P.A.;)
James M. Benner, M.D.;)
Mark J. Epler, M.D.; Trident)
Medical Center, LLC, Columbia/)
HCA Healthcare Corporation of)
South Carolina; HCA)
Healthcare-South Carolina;)
Trident Medical Center; Trident)
Health System; Palmetto)
Primary Care Physicians, LLC;)
Trident Emergency Physicians,)
LLC; Brian R. Whirreth, M.D.;)
Patricia Campbell, M.D.;)
Christine E. McNeal, M.D.;)
Matthew Wallen, M.D.;)
Charleston Radiologists, P.A.)
Joseph M. Mullaney, M.D.;)
Tri-County Radiology)
Associates, P.A.; and Troy)
Marlon, M.D.)

Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-10-5366

ORDER DENYING DEFENDANTS'
MOTIONS TO DISMISS

THIS MATTER WAS HEARD BEFORE ME at the Charleston County Courthouse on July 18, 2013. The Plaintiff was represented by Gary L. Cartee, Esq.; the Defendants Palmetto Cardiovascular & Thoracic, PA and James M. Benner, M.D. were represented by Darren K. Sanders, Esq.; the Defendant Mark J. Epler, M.D., was represented by Jason Ward, Esq.; the Defendants Palmetto Primary Care Physicians, LLC, and Trident Emergency Physicians, LLC, were

represented by William McDow, Esq.; and the Defendant Trident Emergency Physicians were also represented by Perry M. Buckner, IV, Esq. Mr. Cartee and Mr. McDow also filed memoranda with the Court. All of the remaining Defendants have either been dismissed by stipulation or agreement has been made by Counsel for the Plaintiff to not pursue any further for recovery.

Before the Court are Motions to Dismiss by all of the Defendants represented at the hearing. The Defendants all have moved to dismiss on the issue of whether the Plaintiffs' filing of the expert's affidavit two days after filing the Notice of Intent bars further pursuit of recovery by the Plaintiffs. The Defendants Palmetto Primary Care Physicians, LLC, and Trident Emergency Physicians, LLC, have move for dismissal on the additional ground that the Plaintiff's expert was not qualified to render an opinion as to those defendants. At the hearing the Defendants abandoned any other grounds for their Motions to Dismiss.

A. FILING OF THE NOTICE OF INTENT AND AFFIDAVIT OF EXPERT

The Plaintiff filed the Notice of Intent to File Suit in this matter on August 15, 2012. The Affidavit of Dr. Paul Skudder was filed on August 17, 2012. Notations on the expert affidavit, and the record of this case, indicate that it was faxed to Dr. Skudder by Counsel for the Plaintiff on August 14, 2012; it was signed on August 15, 2012; it was faxed back to Counsel for the Plaintiff on the afternoon of August 16, 2012; and, it was filed with the Court on the morning of August 17, 2012. An Affidavit of Plaintiffs' Counsel has been filed to explain and clarify the sequence of events.

The Defendants argue that the Notice of Intent to File Suit and the expert affidavit must be filed at precisely the same time, or the Plaintiffs' Notice of Intent to File Suit must be dismissed. Under the Defendants' own logic, their Motions to Dismiss would fail had the Plaintiffs' waited until the arrival of the expert affidavit to file the Notice of Intent to File Suit. The logic of the Defendants' argument is that the Plaintiff's position under the applicable statute would be improved by waiting to file the Notice of Intent to File Suit. This result would be both unjust and unreasonable.

The applicable statute states in pertinent part that "prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100...." S.C. Code Ann. Section 15-79-125 (A). The statute does not state that the Notice of Intent to File Suit must be dismissed if the two documents are not filed at precisely the same time. Under the circumstances of this case, it was reasonable to file the affidavit two days after filing the Notice of Intent to File Suit. (The plain meaning of "contemporaneous" is occurring within the same period of time, and the plain meaning of "simultaneous" is occurring at the same time. Two days is a reasonable period of time under the facts of this case).

The Defendants rely upon Ranucci v. Crain, 397 S.C. 168, 723 S.E. 2d 242 (Ct. App. 2012). However, the only question before the Ranucci Court was whether the provisions of Section 15-36-100 (C) were applicable to Section 15-79-125 (A). The holding of Ranucci limited itself to the "narrow question" of "which

requirements” of section 15-36-100 constitute the affidavit requirements referenced by Section 15-79-125 (A). Ranucci, *supra*, 723 S.E. 2d at 247. The Court held that Section 15-36-100 (C) did not apply.

At issue in this case and not in Ranucci is whether the language of Section 15-79-125 (A) permits, under the circumstances of this case, the filing of the Notice of Intent to File Suit in anticipation of the filing of the affidavit when it shortly becomes available. The Defendants also rely upon language in Ranucci which refer to the necessity to file at the same time or not to file the Notice of Intent to File Suit prior to the expert affidavit. However, that language is *dicta* not necessary to the holding of Ranucci which dealt only with the relationship between Section 15-79-125 (A) and section 15-36-100.

Our Supreme Court has made it clear that Section 15-79-125 is a statute in derogation of the common law which limits a claimant’s right to bring suit, and, therefore, it must not be extended beyond the clear intent of the legislature. Grier v. AMISUB, Inc., 397 S.C. 531, 725 S.E. 2d 693 (2012) at 536. The Supreme Court has also recently construed the mediation portion of Section 15-9-125 as follows: “In the absence of express language, we are unwilling to read the harsh penalty of dismissal of the lawsuit into the mediation statute. The tenor of modern law is to avoid dismissal of cases on technical grounds and to allow adjudication on the merits.” Ross v. Waccamaw Cmty. Hosp., Op. No. 27276, slip-op. at 4 (S.C. Sup. Ct. June 26, 2013).

The Plaintiffs in their memorandum have raised additional arguments in opposition to the Motions to Dismiss which are not necessary to reach. For

example, the Plaintiffs tracked language from Section 15-36-100 (C) in their Notice of Intent to File Suit; they have contested the ruling in Ranucci as to the applicability of Section 15-36-100 (C); and, they have raised constitutional objections to the statutes.

It is the ruling of the Court that the Plaintiffs have substantially complied with the provisions of Section 15-79-125 and the Motions to Dismiss are denied as to the contemporaneous filing provisions.

**B. SUFFICIENCY OF THE EXPERT AFFIDAVIT AS TO PALMETTO
PRIMARY CARE PHYSICIANS, LLC AND TRIDENT EMERGENCY
PHYSICIANS, LLC**

The Defendants Palmetto Primary Care Physicians, LLC, and Trident Emergency Physicians, LLC, have moved to dismiss the Notice of Intent to File Suit on the additional ground that the expert witness is not qualified to render an opinion as to these Defendants.

Palmetto Primary Care Physicians, LLC, is a family practice and Trident Emergency Physicians is an emergency medicine practice. The Plaintiffs' expert, Dr. Skudder, is a vascular surgeon who is board certified in surgery, in vascular surgery, and ABS Surgical Critical Care.

Dr. Skudder's affidavit states that he is "familiar with the applicable medical standards for the evaluation and treatment of patients under the same or similar circumstances as Johnny Eades, including particularly, but not restricted to, occlusion of the left iliac artery, aneurysm of the same artery, and related issues. I am aware of the degree of care and skill ordinarily exercised by members of the

medical profession under the same or similar circumstances as it relates to the care and treatment of patients such as Johnny Eades in July and August of 2009. This knowledge is based upon my education, training, and experience.”

Dr. Skudder expressed the opinion that,” There is evidence of a failure to properly examine the patient or consult the records of the recent admission.” He also expressed the opinion that, “These failures were deviations from the standard of care.”

In the case of Grier v. AMISUB of S.C., Inc., 397 S.C. 532, 725 S.E.2d 693 (2012), the Defendant challenged the affidavit of a nurse who had expressed an opinion of negligence as to the Piedmont Medical Center (AMISUB) for failure to monitor and treat bedsores and sepsis., on the ground that she was not qualified to give an opinion as to causation. The Supreme Court rejected those arguments, and stated that statutes in derogation of the common law and which limit a claimant’s right to bring suit are “not to be extended beyond the clear intent of the legislature.” Grier v. AMISUB of S.C., Inc., *supra*, 397 S.C. at 536.

The nurse in the Grier case was obviously not board certified in every specialty responsible for the treatment and monitoring of bed sores and sepsis.

Dr. Skudder, is well qualified to express an opinion as to whether medical doctors properly examined Mr. Eades, and he is well qualified to express an opinion as to whether medical doctors consulted the records of the recent admission. His affidavit explicitly states that he has the training and experience to render the opinions as to “members of the medical profession.”

The statute does not state that the expert witness must have the same board certification as the defendants, but that he be qualified to render an opinion about the applicable standard of care. Section 15-36-100 (A) (3) even provides for individuals who have no board certification at all to provide affidavits if they state credentials that show them to be qualified.

It is the finding of the Court that Dr. Skudder is sufficiently qualified to render an opinion for the purpose of Section 15-79-125, and therefore the Motion to Dismiss is denied.

C. CONCLUSION

The statute at issue in the motions before the Court is essentially for the purpose of allowing mediation and limited discovery prior to filing a lawsuit. The Supreme Court has explicitly stated that the law should be construed strictly in favor of permitting the resolution of cases on the merits. The Court finds that the Plaintiff has substantially complied with Section 15-79-125 and therefore the Motions to Dismiss are denied.

IT IS SO ORDERED.

Honorable Kristi Lea Harrington
Judge, Ninth Judicial Circuit

July ____, 2013.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Johnny Eades and Barbara Eades.

Plaintiffs,

vs.

Palmetto Cardiovascular and Thoracic, P.A.;
James M. Brenner, M.D.; Mark J. Epler, M.D.;
Trident Medical Center, LLC; Columbia HCA
Healthcare Corporation of South Carolina; HCA
Healthcare-South Carolina; Trident Health
System; Palmetto Primary Care Physicians,
LLC; Trident Emergency Physicians, LLC;
Brian R. Whirreth, M.D.; Patricia Campbell,
M.D.; Christine E. McNeal, M.D.; Matthew
Wallen, M.D.; Charleston Radiologists, P.A.;
Joseph M. Mullaney, M.D.; Tri-County
Radiology Associates, P.A.; Troy Marlon, M.D.)

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO: 2012-CP-10-5366

MEDIATION RESULTS FORM

FILED
2013 JUN 13 AM 11:48
JULIE A. ARMSTRONG
CLERK OF COURT
BY 

(THIS FORM TO BE COMPLETED BY MEDIATOR WITHIN 10 DAYS OF CONCLUSION OF THE CONFERENCE, WHETHER OR NOT AGREEMENT WAS REACHED BY THE PARTIES)

1. Mediated settlement conferences were held before me on June 10, 2013.
2. As a result of these conferences, this case should be considered *(please check one)*:

☐ Fully Settled *(please check one)*:

☐ by Consent Judgment, to be filed by _____ or,
(Name of Designee)

☐ by Voluntary Dismissal, to be filed by _____
(Name of Designee)

☐ Partially Settled, with agreement of the Parties on the following issues:

(Attach separate sheet if necessary):

☒ At an impasse. The mediation session was productive and there is the possibility that further discussion over settlement options could lead to an agreement. *Tele, phone mediation - present.*

☐ In need of further mediation. (I ___ am/___ am not willing to mediate this case further.

☐ Continued (Date) _____

3. Plaintiff ☐ was/☒ was not present. *Telephone Mediation*

Defendants ☐ were/☒ were not present. "

4. Other participants were:

- ☒ attorney for plaintiff. }
- ☒ attorney for defendant } *By telephone*
- ☐ representatives for insurance carrier _____
- ☐ guardian ad litem _____
- ☐ experts _____
- ☐ others _____

5. This case was co-mediated with _____

6. Choice of the mediator was by:

- ☒ Stipulation
- ☐ Court Order.

7. The total number of hours spent in mediation was: *1 1/2* hours.

8. The total mediator fees were \$ *23750*

9. Further comments of the mediator:

Date: June 10, 2013

[Signature]
Signature of Mediator: _____
Print Name of Mediator: Thomas J. Wills

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-10-

Johnny Eades and Barbara
Eades,

Plaintiffs,

vs.

Palmetto Cardiovascular and
Thoracic, P.A.; James M.
Benner, M.D.; Mark J.
Epler, M.D.; Palmetto Primary
Care Physicians, LLC; and
Trident Emergency Physicians,
LLC,

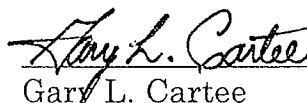
Defendants.

SUMMONS
(Medical Malpractice)
(Jury Trial)

FILED
2013 JUL 31 PM 4:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscriber hereunder, at his address, 3251 Landmark Drive, Suite 136, North Charleston, South Carolina 29418, within thirty (30) days from the date of service upon you of same, exclusive of the date of such service; and, if you fail to answer the said Complaint within the time aforesaid, the Plaintiff, in this action will apply to the Court for the relief demanded in the Complaint and judgment by default.



Gary L. Cartee
Attorney at Law
3251 Landmark Dr., Suite 136
North Charleston, S.C. 29418
(843) 767-1800

N. Charleston, South Carolina
July 31, 2013.

ATTORNEY FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Johnny Eades and Barbara)
Eades,)
Plaintiffs,)

vs.)

Palmetto Cardiovascular and)
Thoracic, P.A.; James M.)
Benner, M.D.; Mark J.)
Epler, M.D.; Palmetto Primary)
Care Physicians, LLC; and)
Trident Emergency Physicians,)
LLC,)
Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-10-

COMPLAINT
(Medical Malpractice)
(Jury Trial)

FILED
2013 JUL 31 PM 4:27
JULIE J. ARMSTRONG
CLERK OF COURT

The Plaintiffs, complaining of the Defendants, allege and say as follows:

1. The Plaintiffs are residents and citizens of Dorchester County, South Carolina, and they are husband and wife.
2. Upon information and belief the Defendants Palmetto Cardiovascular and Thoracic, P.A. and James M. Benner, M.D., maintain offices and are engaged in the practice of medicine in Charleston County, South Carolina. Upon information and belief, the Defendant Mark J. Epler, M.D. engages in the practice of medicine in a State other than South Carolina. Upon information and belief, at all times material to this action, the Defendants James M. Benner, M.D. and Mark J. Epler, M.D., were employees, officers, or agents of the Defendant Palmetto Cardiovascular and Thoracic, P.A. Upon information and belief, the Defendant Trident Emergency Physicians, LLC, maintains offices in and engages in the practice of medicine in Charleston County, South Carolina. Upon information and belief the Defendant

Palmetto Primary Care Physicians, LLC, maintains offices in and engages in the practice of medicine in Charleston County, South Carolina.

3. The Plaintiff was admitted to Trident Medical Center on July 17, 2009, and surgery was performed during the admission regarding a blockage and aneurysm of the left iliac artery. Upon information and belief the above referenced actions were performed by the Defendants Palmetto Cardiovascular and Thoracic Associates, P.A., James Benner, M.D., and Mark J. Epler, M.D.

4. Following release from the hospital, the Plaintiff Johnny Eades was seen for problems and symptoms by the Defendant Epler and the Defendant Palmetto Cardiovascular and Thoracic, P.A. The Plaintiff was also seen on several occasions by physicians employed by the Defendant Trident Emergency Physicians, LLC, and the Defendant Palmetto Primary Care Physicians, LLC. Upon information and belief, none of the physicians properly dealt with the condition of Mr. Eades, or admitted him to a hospital which could properly treat his condition, or warned him of the status of his condition, or recognized any problems related to the previous surgery, or warned of any problems related to the previous surgery, or warned him of the impending danger from his condition, or properly evaluated or treated his condition, or sought a consultation with a hospital or physician able to properly evaluate and treat his condition, or took other steps to prevent further harm.

5. On August 15, 2012, the Plaintiff Johnny Eades was admitted to Trident Medical Center. The Defendant Mark J. Epler saw the Plaintiff Johnny Eades, but was unable to deal with the medical problems which were occurring.

6. After an extended delay, the Plaintiff Johnny Eades was transferred to the

Medical University of South Carolina Hospital. There he underwent emergency surgery for a ruptured aneurysm.

7. Upon information and belief, the Defendants were negligent, reckless, willful, and wanton in one or more of the following particulars:

As to the Defendants Cardiovascular and Thoracic, P.A., James M. Benner, M.D., and Mark J. Epler, M.D.:

- a. Failure to properly evaluate and treat the condition concerning the blood vessel and aneurysm;
- b. Failure to properly perform surgical procedures;
- c. Failure to treat the aneurysm with definitive exclusion of the aneurysm from pressurized arterial flow;
- d. Failure to take adequate steps to make sure that the condition did not recur;
- e. Failure to take adequate steps for evaluation and treatment of the left iliac artery;
- f. Failure to properly monitor Mr. Eades' condition following the surgery;
- g. Failure to properly warn of the dangers;
- h. Failure to properly evaluate and identify problems and dangers on at least one follow up visit, and failure to admit Mr. Eades to the hospital;
- i. Failure to properly follow up with Mr. Eades;
- j. Failure to properly instruct regarding the condition;
- k. Failure to properly consider complications of the aneurysm as a possible explanation of the patient's signs and symptoms;
- l. Failure to properly evaluate and treat the condition of Mr. Eades on the second admission to the hospital;
- m. Failure to avoid delay in the transfer of Mr. Eades to MUSC Hospital upon the second admission to Trident Medical Center; and,

- n. Failure to exercise the degree of care and caution of a reasonable physician under the same or similar circumstances.

As to the Defendants Palmetto Primary Care Physicians, LLC and Trident Emergency Physicians, LLC:

- o. Failure to properly evaluate and treat Mr. Eades' condition;
- p. Failure to properly appreciate the nature of Mr. Eades' initial procedure or to consult a physician qualified to properly appreciate the nature of Mr. Eades' initial procedure;
- q. Failure to properly examine Mr. Eades;
- r. Failure to properly consult the records of the previous admission;
- s. Failure to consult with a physician properly qualified to assess and treat the condition of Mr. Eades;
- t. Failure to admit Mr. Eades to the hospital;
- u. Failure to properly consider complications of the aneurysm as a possible explanation for the patient's signs and symptoms; and,
- v. Failure to exercise the degree of care and caution of a reasonable physician under the same or similar circumstances.

8. Upon information and belief, as the direct and proximate result of the negligence, recklessness, willfulness, and wantonness of the Defendants, as is set forth more fully in Paragraph 7 above, the Plaintiff was injured, he has been permanently injured and impaired, he has in the past and will in the future endure pain and suffering, he has in the past and will in the future endure mental and emotional distress, he has in the past and will in the future incur medical expenses, he has in the past and will in the future require medical procedures, he has lost enjoyment of life in the past and will lose enjoyment of life in the future, he has lost wages in the past and will lose wages in the future, he has been economically damaged in the past and will be economically damaged in the future, he has

incurred incidental expenses and he will incur incidental expenses in the future, and he has been and will be further injured and damaged; and, the Plaintiff Barbara Eades has suffered loss of consortium and has otherwise been injured and damaged.

9. A copy of the affidavit and *curriculum vitae* of medical expert Paul Skudder, M.D., F.A.C.S., is attached hereto and made a part hereof as "Exhibit A."

WHEREFORE, the Plaintiffs pray for actual and punitive damages, for the costs and disbursements of this action, and for such other and further relief as is just and proper.

The Plaintiffs demand a trial by jury.



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North Charleston, S.C. 29418
(843) 767-1800

N. Charleston, South Carolina
July 31, 2013.

ATTORNEY FOR THE PLAINTIFF

IN THE COURT OF COMMON PLEAS

1) CIVIL ACTION #2013-CP-10-4475

3

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**CONSENT ORDER TO STAY
PROCEEDINGS**

FILED
2014 FEB -4 PM 12:39
TAYLOR J. ARMSTRONG
CLERK OF COURT

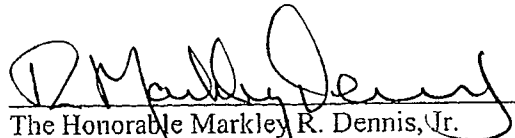
The captioned matter is a medical malpractice case that the Plaintiffs filed on July 31, 2013. Pursuant to Section S.C. Code Ann. § 15-79-125, the Plaintiffs, prior to filing the captioned matter, filed a Notice of Intent to File Suit on August 15, 2012 (Case No. 2012-CP-10-5366). In an Order dated August 9, 2013, Judge Harrington dismissed the NOI due to failure to comply with certain statutory requirements associated with an expert's affidavit. The Plaintiffs appealed the Order, and the appeal is presently pending before the South Carolina Court of Appeals (Appellate Case No. 2013-002177) (hereinafter referred to as the "Appeal"). The Defendants all timely filed Motions to Dismiss the captioned case.

Due to the likelihood that the outcome of the Appeal will directly affect this case, including the Defendants' Motions to Dismiss, all counsel have agreed, and the Court orders, that this matter be stayed pending the outcome of the Appeal. The parties stipulate that they have reached this agreement based on judicial efficiency and economy, and by agreeing to stay the case, the Defendants in no way waive any defenses or affirmative defenses they may have, and the Plaintiffs in no way waive any claims they may have.

IT IS ORDERED, ADJUDGED, AND DECREED, that the captioned case be stayed until the outcome of the Appeal.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, that the Defendants' Motions to Dismiss shall remain pending to be heard and decided as soon as is reasonably possible after the remittitur is sent down in the Appeal; provided, however, in light of the likelihood that the outcome of the Appeal will directly affect this case, including the Defendants' Motion to Dismiss, if the Defendants (or any of them) wish to withdraw their motion(s) after the Appeal is decided, they may do so, and are allowed thirty (30) days from the date of the remittitur of the Appeal to answer the Plaintiffs' complaint in this action.

Ordered this 30 day of January 2014.

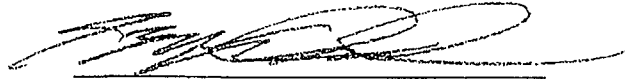

The Honorable Markley R. Dennis, Jr.
Circuit Court Judge for the State of South
Carolina

Charleston, SC

RMD/2

WE CONSENT:

JOHNSON DAVIS WARD, PA

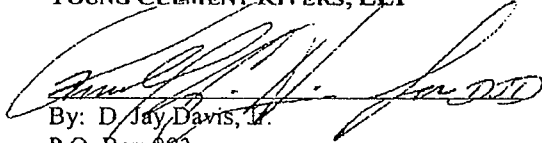


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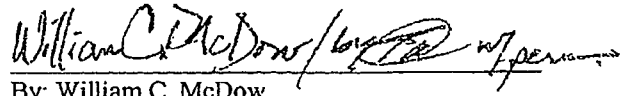
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am 11/3

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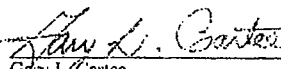
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Attorney for the Plaintiffs

RMD/4

WE CONSENT:

JOHNSON DAVIS WARD, PA

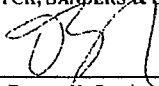
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Physicians, LLC*

DMB/5

CERTIFICATE OF COUNSEL

The undersigned Counsel for Appellants hereby certifies that to the best of his ability the foregoing Record on Appeal contains all of the material proposed to be included by any of the parties, with the exception of the Amended Notice of Appeal, which request was withdrawn, and not any other material.



Gary L. Cartee

Attorney at Law

3251 Landmark Dr., Suite 136

N. Charleston, SC 29418

(843) 767-1800

October 2, 2014

RECEIVED

OCT 03 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

KRISTI LEA HARRINGTON, Circuit Court Judge

RECEIVED

OCT 06 2014

SC Court of Appeals

Appellate Case No.: 2013-002177
Case No. 2012-CP-10-5366
(NOI) and 2013-CP-10-4475

JOHNNY EADES AND BARBARA EADES. Appellants,

v.

PALMETTO CARDIOVASCULAR AND THORACIC, PA; JAMES M. BENNER, MD;
MARK J. EPLER, MD; TRIDENT MEDICAL CENTER, LLC; COLUMBIA/HCA
HEALTHCARE CORPORATION OF SOUTH CAROLINA; HCA HEALTHCARE-SOUTH
CAROLINA; TRIDENT MEDICAL CENTER; TRIDENT HEALTH SYSTEM; PALMETTO
PRIMARY CARE PHYSICIANS, LLC; TRIDENT EMERGENCY PHYSICIANS, LLC;
BRIAN R. WHIRRETH, MD; PATRICIA CAMPBELL, MD; CHRISTINE E. MCNEAL,
MD; MATTHEW WALLEN, MD; CHARLESTON RADIOLOGISTS, PA; JOSEPH M.
MULLANE, MD; TRI-COUNTY RADIOLOGY ASSOCIATES, PA; AND
TROY MARLON, MD, ... Defendants;

OF WHOM

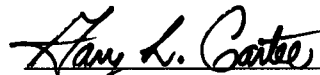
PALMETTO CARDIOVASCULAR AND THORACIC, PA; JAMES M. BENNER, MD;
MARK J. EPLER, MD; PALMETTO PRIMARY CARE PHYSICIANS, LLC; AND,
TRIDENT EMERGENCY PHYSICIANS, LLC, ... Respondents.

AMENDED PROOF OF SERVICE

I certify that I have served the Record on Appeal in this matter by depositing
copies in the United States Mail, Priority Mail, postage prepaid, on October 3, 2014,
addressed to the Respondents' attorneys of record as follows: Thomas C. Salane,
Esq., R. Hawthorne Barrett, Esq., Turner Padgett Graham & Laney P.A., PO Box 1473,
Columbia, SC 29202; Andrew F. Lindemann, Esq., Davidson & Lindemann, P.A., PO

Box 8568, Columbia, SC 29202; Darren K. Sanders, Esq., Buyck & Sanders Law Firm, LLC, PO Box 2424, Mt. Pleasant, SC 29465-2424; William C. McDow, Esq., Richardson Plowden & Robinson, PA, PO Drawer 7788, Columbia, SC 29202; D. Jay Davis, Jr., Esq., Stephen L. Brown, Esq., Russell G. Hines, Esq., Young Clement Rivers, LLP, PO Box 993, Charleston, SC 29402; and Hutson S. Davis, Jr., Esq., Jason W. Ward, Esq., Johnson Davis Ward, PA, 10 Pinckney Colony Road, Victoria Bldg., Suite 200, Bluffton, SC 29909.

This additional copy of the Record on Appeal is being served upon Respondents' attorneys of record because it was learned by counsel today that the copies mailed on October 2, 2014, went by a type of mail which is inappropriately slow.



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