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THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2014-002104

Gregory J. Feldman, MD, Joseph A. Boscia, III, MD,
Upstate Lung & Critical Care Specialists, PC, and
Devendra Shantha, MD,

Respondents,

v.

William Mark Casey, Ray E. "Chuck" Thompson,
And Charles M. Fogarty,

Petitioners.

RETURN TO PETITION

November 21, 2014

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Question Presented

Whether the Court of Appeals erred in finding that the allegations of Respondents' complaint do not support a finding that their abuse of process claim is barred by the statute of limitations, when Respondents sued Petitioners in October 2010, for filing a meritless malpractice action in 2006, in which Petitioners actively sought to mislead Respondents and conceal evidence, including an MRI obtained under a fictitious name and date of birth that was kept from Respondents for eighteen months, until August 2008, which showed negative results in Respondents' favor?

Statement of the Case

The lower court action was commenced on October 27, 2010, when Respondents filed a Summons and Complaint initiating an action for Abuse of Process and Civil Conspiracy in the Spartanburg County Court of Common Pleas against Petitioners seeking damages, along with attorneys' fees and costs, arising as a result of alleged wrongdoings during a medical malpractice action captioned William Mark Casey v. Gregory J. Feldman, M.D., Joseph A. Boscia, III, M.D., Devendra Shantha, M.D. and Upstate Lung and Critical Care Specialists, PC, filed in the Court of Common Pleas for Spartanburg County, Seventh Judicial Circuit, case number 2006-CP-42-1728 and tried, commencing on May 11, 2010, before the Honorable Roger L. Couch to a defense verdict on May 28, 2010. In the medical malpractice action, (Petitioner) Mr. William Mark Casey through his attorney, (Petitioner) Mr. Ray E. "Chuck" Thompson, alleged (Respondents) Drs. Feldman, Boscia and Shantha breached the standard of care respecting his medical treatment and as a result of which Mr. Casey suffered permanent

brain damage that rendered him totally disabled. (R. at 23, ¶ 5.)

Mr. Casey came under the care of (Petitioner) Charles Fogarty, M.D., another Spartanburg Pulmonologist, after Drs. Feldman and Boscia would not support Mr. Casey's disability claims. (R. at 24, ¶ 18.) To their misfortunes, Dr. Fogarty was well known by Drs. Feldman and Boscia, prior to the medical malpractice action in a very negative way. (R. at 24, ¶ 19.) Before Drs. Feldman and Boscia became partners within Upstate Lung and Critical Care Specialists, PC, Drs. Feldman and Fogarty had been partners for a number of years. (R. at 24, ¶ 20.) The Feldman/Fogarty separation from joint medical practice was so acrimonious, in 2000, the event was very well known within the medical community of Spartanburg. (R. at 24, ¶ 21.)

As a result of Dr. Fogarty's efforts to hamper the business efforts of Drs. Feldman and Boscia, in 2005, they were forced to sue Dr. Fogarty to clear their names and in an effort to prevent further damage to their reputations and business. (R. at 25, ¶ 24.) The Complaint was captioned S. Carolina Pharmaceutical Research v. Charles M. Fogarty, M.D., filed in the Court of Common Pleas for Spartanburg County, Seventh Judicial Circuit, case number 2005-CP-42-1085. (R. at 25, ¶ 25.) During the S. Carolina lawsuit, Dr. Fogarty, in a couple of ways, saw his involvement with Mr. Casey as a golden opportunity to retaliate against Drs. Feldman and Boscia for his perceived wrongs by them starting a research company and filing suit against him. (R. at 25, ¶ 26.)

First, Dr. Fogarty continued masterminding the generation of the unfounded "permanent brain injury" claims to injure his business competitors by damaging their reputation and through bogging them down for years in the protracted litigation defending against his scheme. (R. at 25, ¶ 27.) Dr. Fogarty actively sought to mislead the doctors

and their attorneys of his level and the purpose of involvement in the litigation by seeing Mr. Casey within his research facility as opposed to his medical practice, which would have created medical records that could have been discovered. (R. at 27, ¶ 39.) In addition, Dr. Fogarty conducted complex medical testing on Mr. Casey at his research facility, yet he did not maintain the medical records in an effort to conceal the purpose of his involvement and in order to harm the doctors' discovery efforts thereby prolonging the medical malpractice case. (R. at 27, ¶ 39.)

Until his deposition on December 22, 2008, Dr. Fogarty was very successful in shielding his role in the "permanent brain injury" scheme by his active efforts to obstruct and evade his deposition. (R. at 27, ¶ 41.) Dr. Fogarty and Mr. Thompson went to great lengths to ensure that Dr. Fogarty's role as an "expert" witness was concealed until the 11th hour from the doctors and their attorneys to further frustrate discovery efforts and to hide his level of involvement in the execution of the "permanent brain injury" scheme. (R. at 27, ¶ 42.) Even throughout his deposition, Dr. Fogarty continued his attempts to hide his role as a mastermind of the lawsuit and his level of involvement in the medical malpractice action by making material misrepresentations. (R. at 28, ¶ 44.)

Dr. Fogarty and Mr. Thompson willingly implemented Dr. Fogarty's "permanent brain injury" baseless claim with ruthless disregard for the rights of the Plaintiffs. (R. at 29, ¶ 51.) In an effort to meet Mr. Casey's needs thereby ensuring his continuation in the scheme, Mr. Thompson became active in seeking a reversal of his Aetna disability denials, despite not being his attorney in such matters because the denials did not suit his personal needs or agenda. (R. at 32, ¶ 77.) Mr. Thompson's initial efforts centered around the purposeful redaction of Mr. Casey's medical records that were provided to both treating

and retained expert witness with willful intent to make it appear that Mr. Casey suffered from a “permanent brain injury.” (R. at 32, ¶ 78.)

Despite the team’s best efforts, Aetna fully rejected Mr. Casey’s disability claim on October 13, 2006 in a letter addressed to Mr. Thompson. (R. at 32, ¶ 79.) In the rejection package, Aetna gave the team an analysis of the viability of the “permanent brain injury” claim, which included detailed reports from a Consulting Neuropsychologist and a Board Certified Neurologist. (R. at 32, ¶ 80.) In summary of the rejection, Aetna said that the speculations of Dr. Fogarty were not supported by objective neurological evidence or abnormal neurological examination findings. (R. at 32, ¶ 81.) Instead of heeding Aetna’s review and addressing the stated concerns about the lack of any support for the existence of a legitimate “permanent brain injury” claim, the team continues to move forward with the medical malpractice scheme and fails to produce the Aetna report during discovery. (R. at 32, ¶ 82.)

The Doctors’ attorneys had to seek assistance from the Court to obtain a release from Mr. Casey to request the records directly from Aetna as opposed to Mr. Thompson merely turning over the report. (R. at 32, ¶ 83.) Mr. Thompson did place importance on one piece of information within the Aetna report, the need for an MRI study of the brain. (R. at 32, ¶ 84.) However, Mr. Thompson knew full well, based on the Aetna report, that a negative MRI study would be a death nail for the scheme. (R. at 33, ¶ 85.) Therefore in the cover of secrecy, Mr. Thompson, set the stage for an MRI to be performed on Mr. Casey’s brain under a fictitious name and date of birth. (R. at 33, ¶ 86.) Mr. Thompson arranged for the test through his brother-in-law, a North Carolina general surgeon having no connection to Mr. Casey or the case, to be performed at an out of state hospital. (R. at

33, ¶ 87.) The Radiologist's report of the MRI test results stated that the MRI was negative. (R. at 33, ¶ 88.) Mr. Thompson received this report, and then continued to litigate the matter for eighteen months thereafter without revealing the MRI test or the radiology report. (R. at 33, ¶ 89.) To maintain the secrecy of the MRI test and findings, Mr. Thompson instructed his client to deny having any diagnostic medical tests, including specifically, the MRI, in his sworn deposition testimony less than seven months after the MRI was performed. (R. at 33, ¶ 90.)

At all times material, Mr. Thompson despite being well aware of his duties to the Court pursuant to Rule 3.3, Candor Toward The Tribunal, willfully sought to injure the Plaintiffs by instructing Mr. Casey to lie under oath and by Mr. Thompson's failure to protect the candor of the proceedings within the medical malpractice case. (R. at 33, ¶ 91.) Ultimately, the Doctors' counsel only learned of the test fortuitously by virtue of an anonymous letter sent to attorney Spencer King. (R. at 33, ¶ 92.) It was a materially important piece of evidence to the Doctors, which was withheld, concealed, and secreted from them by Mr. Casey and Mr. Thompson, with a very high degree of impropriety. (R. at 34, ¶ 94.) By the time the Doctors' counsel received the Casey affidavit confirming the MRI and the results of the MRI, in excess of thirty (30) depositions had been taken. (R. at 34, ¶ 95.) This included all of the Doctors, eight treating physicians and five medical experts. (R. at 34, ¶ 96.)

The medical malpractice action was tried before the Court and a jury in the Spartanburg County Court of Common Pleas, commencing May 11, 2010. (R. at 34, ¶ 99.) After 14 trial days, the jury returned a verdict in favor of the Doctors on May 28, 2010 after deliberating between two and two and one-half hours. (R. at 34, ¶ 100.) Between February

4, 2007 and 2009, Mr. Casey, in furtherance of Dr. Fogarty and Mr. Thompson's permanent brain damage conspiracy, willingly took part with Mr. Thompson, and other unnamed third party(ies) in the scheme to circumvent the Rules of Civil Procedure. (R. at 38, ¶ 125.)

Mr. Casey, in furtherance of Dr. Fogarty and Mr. Thompson's scheme to establish civil liability against Drs. Feldman and Boscia for causing Mr. Casey fictitious permanent brain damage, agreed to conceal the fact that on February 4, 2007, he had an MRI study of his brain. (R. at 38, ¶ 126.) Mr. Casey, in furtherance of Dr. Fogarty and Mr. Thompson's permanent brain damage conspiracy, agreed and proceeded to lie under oath in his deposition of August 30, 2007, in a willful and knowing effort to conceal the existence of the MRI report and image disc dated February 4, 2007. (R. at 38, ¶ 127.) Mr. Casey willingly participated in the concealment of the MRI report and image disc dated February 4, 2007, of the MRI study of his brain, which he received at the conclusion of the MRI study performed in the out-of-state hospital on February 4, 2007. (R. at 38, ¶ 128.) Mr. Casey was fully aware that the February 4, 2007, MRI study had been arranged by Mr. Thompson. (R. at 38, ¶ 129.) Mr. Casey utilized an assumed name and fictitious date of birth, given to him by Mr. Thompson, when submitting to the February 4, 2007, MRI study. (R. at 38, ¶ 130.)

Mr. Thompson solicited unnamed third-party(ies) to conceal Mr. Casey's MRI report and image disc that were dated February 4, 2007. (R. at 39, ¶ 131.) Mr. Casey solicited unnamed third-party(ies) to conceal his MRI report and disc that were dated February 4, 2007. (R. at 39, ¶ 132.) Mr. Casey accepted funds from Mr. Thompson and/or unnamed third party(ies) to pay for his February 4, 2007, MRI study, knowing that such payment was never to be reported or claimed within his lawsuit. (R. at 33, ¶ 133.)

In 2008, Mr. Thompson and Dr. Fogarty, in furtherance of their permanent brain damage scheme, agreed for Dr. Fogarty to make material misrepresentations, under oath, during his deposition pursuant to Discovery in the original lawsuit. Mr. Casey came under the care of (Respondent) Charles Fogarty, M.D., another Spartanburg Pulmonologist, after Drs. Feldman and Boscia would not support Mr. Casey's disability claims. (R. at 39, ¶ 134.)

Petitioners moved to dismiss Respondents' Complaint, and two successive amended complaints, on grounds that the three-year statute of limitations period on Respondents' abuse of process claim expired before Respondents filed this action. (R.App. at 11-12, 13, 15-28, 53-54, 55, 56, 58-60.) Petitioners argued that when Respondents were sued in 2006, for medical malpractice, they were put on notice that they had a viable abuse of process claim, because they believed, and therefore knew or should have known, that they had been damaged by the filing and publicizing of a baseless lawsuit. (R. App. At 15-28; R. at 54-56, 75-79, 82, 88-89.)

The circuit court dismissed Respondents' claim as being time-barred, finding that Respondents knew or should have known when the medical malpractice action was filed that they possessed a claim for abuse of process against Petitioners, because Respondents alleged various pre-suit facts that should have put them on notice when the civil action was filed that such suit was not interposed to redress legitimate injuries suffered by Casey, and instead was filed for ulterior purposes, including harming Respondents. (R. at 8-14.) Applying the discovery rule to Respondents' complaint, the circuit court further held that when the medical malpractice suit was filed, Respondents could have discovered Petitioners' alleged wrongdoing through the exercise of ordinary care and

reasonable diligence. (R. at 8-14) The circuit court concluded that because Respondents failed to file suit for abuse of process within three years of the date the medical malpractice action was filed, their abuse of process claim was time-barred. (R. at 12-14.)

The Court of Appeals reversed the lower court decision, finding that the allegations of Respondents' complaint do not support a finding that their abuse of process claim is barred by the statute of limitations. (P. App. at 5.) The court held that "[T]he paragraphs of the complaint cited by the circuit court to support this finding, however, do not give any indication as to when Appellants knew or should have known either that Casey was obtaining narcotic drugs and disability benefits as a result of the pending medical malpractice action or that Casey filed the lawsuit with this objective." (P. App. at 5). Further, the court stated "Without any information in Appellants' complaint as to when any such acts allegedly occurred, we hold the allegations in the complaint do not support a finding that Appellants could be charged with knowledge that they had a potential abuse of process claim at the time the malpractice action against them was filed." (P. App. at 5.)

Petitioners sought a rehearing of the court's decision, on the basis that the court allegedly overlooked or misapprehended allegations of the complaint that Petitioners claim identified dates Respondents knew or should have known that the medical malpractice action might not be a legitimate action, and thus might support a claim for abuse of process. (P. App. at 7-22, 33-42.) Respondents argued that Petitioners presented points not previously before the court and "rehashed" points that had already been presented to the court. (P. App. at 24-32.) The appellate court, after careful consideration, rightly held that it was "unable to discover that any material fact or

principle of law has either been overlooked or disregarded, and hence there is no basis for granting a rehearing.” The Petition for Rehearing was denied. (P. App. 45.)

Petitioners have now asked this Court to reverse the Court of Appeals’ decision. Respondents respectfully disagree and ask that this Court uphold the Court of Appeals’ decision that Respondents timely filed suit for the abuse of process cause of action in the underlying medical malpractice action and that the statute of limitations does not bar Respondents’ claim.

Arguments

I. The Court of Appeals Opinion Should Be Upheld Because Respondents’ Claim For Abuse Of Process Is Not Barred By The Statute Of Limitations.

Respondents agree with the Appellate Court Opinion’s finding that the circuit court misapplied the discovery rule in dismissing their complaint for abuse of process and that “the allegations of Appellants’ complaint do[es] not support a finding that their action for abuse of process was barred by the statute of limitations...”. (Opinion at 3.) Further, Petitioners’ arguments in their Petition was a “rehash” of their previous arguments and their arguments found in pages 9 through 25 of their Final Brief. (Respondents’ Br. at 9 to 25.) And, yet again, Petitioners attempt to ignore any application of the discovery rule and hinge their argument on the date the suit was filed. This argument was correctly and unanimously rejected by the Appellate Court.

“The lower court action is governed by a three-year statute of limitations period. S.C. Code Ann §15-3-530 (2005); see Whitfield Const. Co. v. Bank of Tokyo Trust Co., 338 S.C. 207, 525 S.E.2d 888 (Ct. App. 1999) (applying three-year statute of limitations in abuse of process action); Burgess v. American Cancer So., South Carolina Div., Inc.,

300 S.C. 182, 386 S.E.2d 798 (Ct. App. 1989)(recognizing that Section 15-3-530's limitations period (which was previously six years) applies to conspiracy claims). "The limitations period is intended to run against those who are neglectful of their rights and who fail to exercise reasonable diligence in enforcing their rights. However, it is not the policy of the law to unjustly deprive an injured person of a remedy." Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000).

In determining when a cause of action arose under an applicable statute of limitations, South Carolina courts apply the "discovery rule," Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 394, 593 S.E.2d 183, 187 (Ct. App. 2004). In Epstein v. Brown, 363 S.C. 372, 610 S.E.2d 816 (2005) the Court "recognized that, under the discovery rule, the statute of limitations begins to run when a reasonable person of common knowledge and experience would be on notice that a claim against another party might exist." However, "the statute of limitations is triggered not merely by knowledge of an injury but by knowledge of facts, diligently acquired, **sufficient to put an injured person on notice of the existence of a cause of action against another.**" True v. Monteith, 327 S.C. 116, 118, 489 S.E.2d 615, 617 (S.C. 1997)(emphasis added).

Respondents' Second Amended Complaint is comprised of two causes of action, abuse of process and civil conspiracy. The elements of abuse of process are an ulterior purpose and a willful act in the use of the process not proper in the conduct of the proceeding. Huggins v. Winn-Dixie Greenville, Inc., 249 S.C. 206, 153 S.E.2d 693 (1967). "A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff." McMillian v. Oconee Memorial Hosp., Inc., 367

S.C. 559, 564, 626 S.E.2d 884, 886 (2006); Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 701 S.E.2d 39 (S.C.App. 2010).

As stated within the Second Amended Complaint, Petitioner Fogarty actively sought to prevent discovery efforts respecting the level, purpose and his involvement in the litigation and was successful until his deposition on December 22, 2008. (R. at 27, ¶¶ 39-41.) Unjustly, Fogarty and Thompson concealed their relationship to the extent of Fogarty lying under oath during his deposition in a continuing effort to hide his role and level of involvement in the medical malpractice action, with Thompson suborning his perjury. (R. at 27, ¶ 42 and R. at 28, 44 and R. at 39, ¶ 134.)

On February 4, 2007, Thompson and Casey engaged in secret medical testing, an MRI, which they knew if negative would be disastrous to their medical malpractice claim by having it performed under a fictitious name, date of birth and in another state. (R. at 33 ¶¶ 85-87 and R. at 38, ¶126.) Approximately seven months after the secret MRI test, Thompson advised Casey to lie under oath during his deposition, thereby abandoning Thompson's ethical obligations to the Court pursuant to Rule 3.3 in an effort to continue their abuse of discovery efforts by the Respondents. (R. at 33, ¶¶ 90-91.)

Between February 4, 2007 and 2009, Casey, in furtherance of Fogarty and Thompson's permanent brain damage scheme, willingly took part with Thompson, and other unnamed third party(ies) in their efforts to circumvent the Rules of Civil Procedure. (R. at 38, ¶ 125.) Thompson received the negative results, yet continued to litigate the matter for eighteen (18) months, August of 2008, without revealing the MRI test or report to the Respondents, with the Respondents only learning of the MRI by virtue of an anonymous letter. (R. at 33, ¶¶ 88, 89, 92 and R. at 38, ¶ 126.)

The MRI was a materially important piece of evidence to the Respondents, which was withheld, concealed, and secreted from them by Casey and Thompson. (R. at 34, ¶ 94.) By the time the Respondents were aware of the MRI, in excess of thirty depositions had been taken, including the Respondents, eight treating physicians and five medical experts. (R. at 34, ¶¶ 95-96.)

The mere filing of a lawsuit does not give rise to a cause of action for an abuse of process claim. (“Hence, to sustain a claim for the tort, a party must allege facts sufficient to show not only that the lawsuit was brought for an ulterior purpose, i.e. for collateral reasons, but that willful acts were taken through which the process was misapplied or abused.” Food Lion, Inc. v. United Food & Commercial Workers Inter. Union, 567 S.E.2d 251, 351 S.A. 65 (S.C.App. 2002). An aggrieved party must be aware of facts sufficient to allege not only the inception of a lawsuit but an ulterior purpose and a willful act in the use of the process not proper in the conduct of the proceeding. (Food Lion, Inc. v. United Food & Commercial Workers Inter. Union, 567 S.E.2d 251, 351 S.A. 65 (S.C.App. 2002). Respondents’ Second Amended Complaint alleges, in great detail, the depths the Respondents conducted themselves to avoid discovery of their ulterior purposes, willful acts in the use of the process not proper in the conduct of the proceedings and their conjoined efforts which were concealed until sometime within 2008.

The Court of Common Pleas’ Order dismissing the Respondents’ Second Amended Complaint applies the discovery rule as being triggered in 2006, when the underlying Medical Malpractice Action was filed. (R. at 11-14.) Respondents respectfully disagree and submit, as shown above, that their Second Amended Complaint clearly pleads in detail that the essential facts required in establishing the necessary elements of their causes of

action were actively concealed from them by the Respondents until 2008. Upon receipt of the medical malpractice suit, it would have been in bad faith for the Respondents to simply file an abuse of process claim and/or civil conspiracy claim, subjecting them to judicial sanction. (The South Carolina Frivolous Civil Proceedings Sanction Act, South Carolina Code Ann. § 15-36-10 (2005)).

In summation, Respondents contend that it would be against public policy and the interests of justice to overturn the Appellate Court's Order which would serve to reward the Petitioners' intentional bad conduct, including Thompson's suborning perjury as an Officer of the Court, while condemning Respondents' caution in assuring that the ethical requirements of South Carolina's Frivolous Civil Proceedings Sanctions Act were met before they filed suit. Respondents request that the Appellate Court Order finding that the allegations of Respondents' complaint do not support a finding that their abuse of process claim is barred by the statute of limitations. (P. App. at 5.) and that "the paragraphs of the complaint cited by the circuit court to support this finding, however, do not give any indication as to when Appellants knew or should have known either that Casey was obtaining narcotic drugs and disability benefits as a result of the pending medical malpractice action or that Casey filed the lawsuit with this objective" be upheld. (P. App. at 5). And that the Appellate Court finding that "Without any information in Appellants' complaint as to when any such acts allegedly occurred, we hold the allegations in the complaint do not support a finding that Appellants could be charged with knowledge that they had a potential abuse of process claim at the time the malpractice action against them was filed" stand. (P. App. at 5.)

Further, Petitioners' request for the Court to take appellate judicial notice of the

date Respondents dismissed *S. Carolina Pharmaceutical Research v. Charles M. Fogarty, M.D.*, Spartanburg County Court of Common Pleas, Case No. 2005-CP-42-1085 is irrelevant in that S. Carolina Pharmaceutical Research, Inc. (“S. Carolina”) is not a party to this lawsuit, nor has it ever been a party to this lawsuit. Appellants Gregory J. Feldman, M.D. and Joseph A. Boscia, III, M.D. are partial owners in S. Carolina. However, this litigation was resolved in 2007, more than a year and one-half prior to the necessary facts discovered in mid to late 2008 to justify Respondents’ allegations within the underlying lawsuit. S. Carolina was, also, never a party to the underlying medical malpractice action.

Petitioners’ argument regarding the significance of the date in which the S. Carolina lawsuit was dismissed was before the Appellate Court for the first time in Petitioners’ Petition for Rehearing. Petitioners had an opportunity to make this argument prior to this point in time and to include a “true and accurate copy of the Stipulation of Dismissal with Prejudice” in the Appendix to Record on Appeal dated on May 6, 2013, filed with this Court. However, they did not.

Finally, in *Masters v. Rodgers Development Group*, 321 S.E.2d 194, 283 S.C. 251 (S.C.App. 1984), it was held that “Appellate courts are generally reluctant to notice adjudicative facts even when those facts may be absolutely reliable. See *United States v. Jones*, 580 F.2d 219 (6th Cir.1978) (applying Fed.R.Evid. 201); *Turner*, *Judicial Notice and Federal Rule of Evidence 201--A Rule Ready For Change*, 45 U.Pitt.L.Rev. 181, 196 (1983).” Based upon the Appellate Court’s Order and Respondents’ arguments above, Petitioners’ Petition for a Writ of Certiorari should be denied.

II. Petitioners' Petition For A Writ Of Certiorari Should Be Denied Because It Fails To Meet The Considerations Governing Review As Set Forth In Rule 242(b), South Carolina Rules Of Civil Procedure.

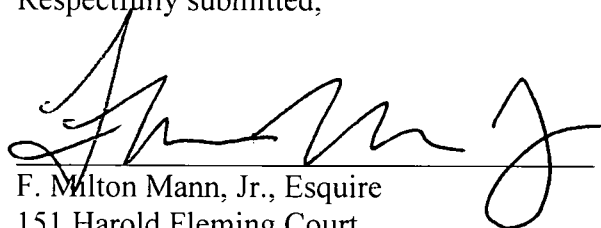
Rule 242(b) of the South Carolina Rules of Civil Procedure, Considerations Governing Review, states that "A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted **only** where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered: (1) Where there are novel questions of law. (2) Where there is a dissent in the decision of the Court of Appeals. (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court. (4) Where substantial constitutional issues are directly involved. (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court. (Emphasis added.) Petitioners' Petition for a Writ of Certiorari fails to meet any of the considerations for review as set forth in Rule 242(b). As such, Petitioners' Petition for a Writ of Certiorari should be denied.

Conclusion

Respondents support the Appellate Court's Opinion stating "[W]e therefore hold the allegations of Appellants' complaint do not support a finding that their action for

abuse of process was barred by the statute of limitations..." (Opinion 4.) As such,
Respondents respectfully request Petitioners' Petition for a Writ of Certiorari be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "F. Mann, Jr.", written over a horizontal line.

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November 21, 2014

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2014-002104

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Upstate Lung & Critical Care Specialists, PC, and
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William Mark Casey, Ray E. "Chuck" Thompson,
And Charles M. Fogarty,

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PROOF OF SERVICE

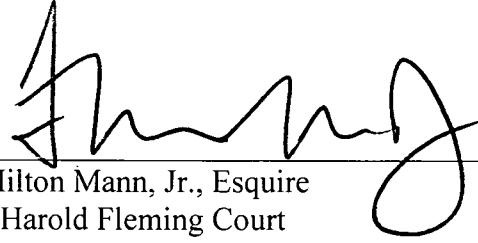
I certify that I have served the Return to Petition upon Petitioners William Mark Casey, Ray E. "Chuck" Thompson, and Charles M. Fogarty by Federal Express, on November 21, 2014, addressed to their respective attorneys' of record at the addresses listed below:

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Attorneys for: Petitioner Fogarty

November 21, 2014

A handwritten signature in black ink, appearing to read 'F. Mann, Jr.', written over a horizontal line.

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ATTORNEY AT LAW
LICENSED IN SC, GA & FL

RECEIVED

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S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
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BY FEDERAL EXPRESS

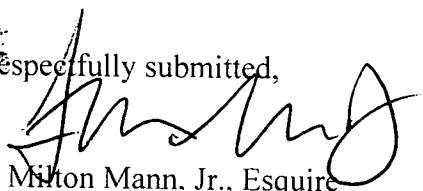
Re: Gregory J. Feldman, MD v. William Casey
Appellate Case No. 2014-002104

Dear Mr. Shearouse:

Please find enclosed one (1) original and seven (7) copies of the Return to Petition filed on behalf of Respondents. Please mark the extra copy of the Return to Petition "filed" and return to me in the enclosed, self-addressed stamped envelope.

Thank you in advance for your assistance in this matter.

Respectfully submitted,


F. Milton Mann, Jr., Esquire
Attorney for Respondents
SC Bar #68250

cc: Joe Mooneyham, Esquire (by Federal Express)
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1231 Gervais Street
COLUMBIA, SC 29201

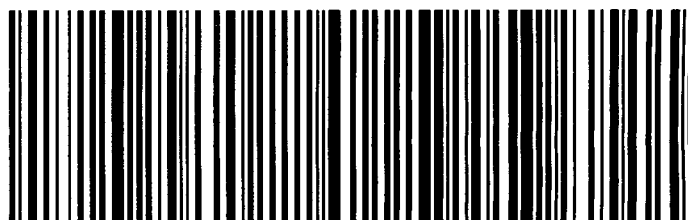
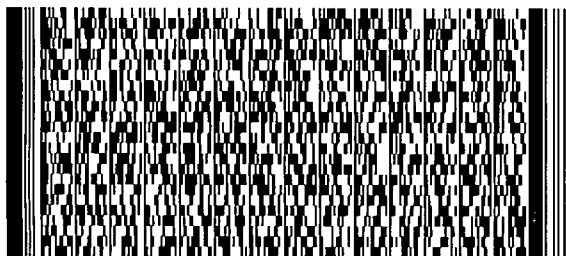
Ref # ULCC-FB
Invoice #
PO #
Dept #

MON - 24 NOV AA
STANDARD OVERNIGHT
DSR
29201
SC-US
CAE

TRK# 7719 4391 6920

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XH USCA



522G1616C8AC9

After printing this label:

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

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