

THE STATE OF SOUTH CAROLINA
In The Court of Common Pleas

RECEIVED
SEP 04 2015
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Roger M. Young, Jr., Circuit Court Judge

Case No. 2013-CP-10-5902
Appellate Case No. 2015-001853

Leanna Loud and William Loud,Respondents,

v.

Jeffrey Short, MD, individually, and
Charleston Radiologists, PA,Appellants.

AFFIDAVIT OF JOHN ERIC FULDA

PERSONALLY APPEARED BEFORE ME, John Eric Fulda, who being duly sworn,
deposes and says that:

1. I am one of the attorneys for Respondents Leanna Loud and William Loud. Attached as Exhibits A and B are true and correct copies of the Complaint and Answer filed in this matter.
2. Attached as Exhibit C is a true and correct copy of an email from Lindsey M. Coffey, law clerk to Hon. R. Markley Dennis, Jr., dated August 3, 2015.
3. Attached as Exhibit D is a true and correct copy of Appellants' Motion to Amend filed on August 17, 2015.
4. Attached as Exhibit E is a true and correct copy of Appellants' first Motion to Amend filed on March 3, 2015.

5. Attached as Exhibit F is a true and correct copy of the email of Brian Johnson, attorney for Appellants, dated May 4, 2015.

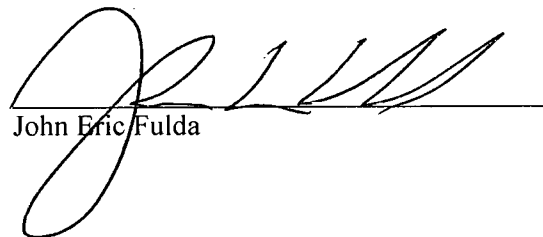
6 Attached as Exhibit G is a true and correct copy of the email of John Eric Fulda to Brian Johnson, attorney for Appellants, with attachment, dated August 27, 2015.

7. I am familiar with Leanna Loud's medical records which indicate that she has Stage IV breast cancer with metastasis to her sternum, pelvis and spine. I am informed from these records that Leanna Loud's medical condition is terminal and that she has a limited life expectancy.

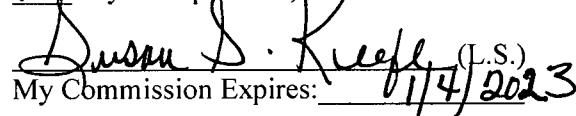
8. On May 1, 2015, the Honorable R. Markley Dennis, Jr., conducted a status conference in this matter and set the case for a day certain trial to begin on August 31, 2015.

9. Short's counsel acknowledged at the August 27, 2015 hearing on the motion to amend that no new facts or information had come to light to trigger the filing of the second motion to amend on August 17, 2015.

FURTHER DEPONENT SAYETH NOT.


John Eric Fulda

SWORN to before me this
4th day of September, 2015

 (L.S.)
My Commission Expires: 11/4/2023

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In The Court of Common Pleas

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SEP 04 2015
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Case No. 2013-CP-10-5902
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Leanna Loud and William Loud,Respondents,

v.

Jeffrey Short, MD, individually, and
Charleston Radiologists, PA,Appellants.

CERTIFICATE OF SERVICE

I certify that on this 4th day of September, 2015, I served the Affidavit of John Eric Fulda on Appellants Jeffrey Short, MD, individually and Charleston Radiologists, PA, by email as well as by depositing a true and correct copy of the same in the United States mail, postage prepaid, return address clearly printed on the envelope and addressed to:

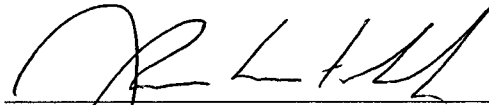
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WHETSTONE PERKINS & FULDA, LLC



John Eric Fulda (#16001)
601 Devine Street (In the Vista)
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Columbia, South Carolina 29202
(803) 799-9400 (telephone)
(803) 799-2017 (facsimile)
ATTORNEYS FOR RESPONDENTS

September 4, 2015

Columbia, South Carolina

and

David L. Savage
THURMOND KIRCHNER TIMBES &
YELVERTON, PA
15 Middle Atlantic Wharf, Suite 101
Charleston, SC 29401
(843) 937-8000 (telephone)
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ATTORNEYS FOR THE PLAINTIFF

October 4, 2013
Columbia, South Carolina.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Leanna Loud and
William Loud,)

Plaintiffs,)

vs.)

Jeffrey Short, MD, individually
and Charleston Radiologists, PA,)

Defendants.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

C.A. No. _____

COMPLAINT

[JURY TRIAL DEMANDED]

FILED
2013 OCT - 7 PM 4:38
JULIE J. ARYSTING
CLERK OF COURT

The Plaintiffs, complaining of the Defendants herein, respectfully allege as follows:

PARTIES

1. The Plaintiff, Leanna Loud (hereinafter also referred to as "Leanna" or "Mrs. Loud"), is and was at all times relevant herein, a resident and citizen of the County of Charleston, State of South Carolina.

2. The Plaintiff, William Loud (hereinafter also referred to as "Bill" or "Mr. Loud"), is and was at all times relevant herein, a resident and citizen of the County of Charleston, State of South Carolina.

3. The Plaintiff is informed and believes that Jeffrey Short, MD (hereinafter also referred to as "Defendant Short" or "Dr. Short") is a physician who, during the times alleged in the Complaint, provided medical care to Mrs. Loud.

4. Defendant Charleston - Radiologists, PA (hereinafter referred to as "Charleston Radiologists"), is upon information and belief, a South Carolina professional

association filed and in good standing with the Secretary of State in South Carolina, which at all times relevant hereto, conducted and operated business within the County of Charleston, State of South Carolina.

5. Jeffrey Short, MD and Charleston Radiologists, PA, may hereinafter be collectively referred to as the "Defendants."

PRE-SUIT PROCEDURES

6. On April 19, 2013, a Civil Action Coversheet, Notice of Intent to File Suit (with attached expert affidavit), and Plaintiff's Answers to Standard Interrogatories, were filed with the Clerk of Court of Charleston County, and given Civil Action Number 2013-CP-10-2278.

7. All parties were subsequently served with the documents described in the preceding paragraph along with the documents referenced therein and the medical records of Mrs. Loud.

8. On August 30, 2013, Robert M. Erwin, Jr., Esquire, mediated the case, but the parties were unable to reach a settlement during this pre-suit mediation process.

9. On August 30, 2013, mediator Robert M. Erwin, Jr., Esquire, sent a letter to the Charleston County Clerk of Court indicating that the parties have been unable to reach a settlement during the pre-mediation conference, and stating that the Plaintiff should now be permitted to move forward with filing of the Summons and Complaint.

GENERAL FACTUAL ALLEGATIONS

10. On April 1, 2008, Mrs. Loud had a digital mammography screening in the form of a bilateral mammogram.

11. The mammogram was performed and subsequently read by Dr. Short who was, upon information and belief, an agent, employee of officer of Charleston Radiologists.

12. The report associated with this mammogram and prepared by Dr. Short stated that "the fibroglandular tissue elements are moderately dense and somewhat nodular in configuration. Dystrophic type calcifications are present within the upper aspect of the right breast, though no suspicious clustered microcalcifications have developed."

13. The dystrophic type calcifications found on this 2008 study were not present on Mrs. Loud's prior mammography screening on November 13, 2003.

14. Dr. Short incorrectly rated Mrs. Loud's 2008 screening as a BiRads 2 (a benign designation) and did not require any additional studies, diagnostic testing or follow up appointments in regard to the calcifications within the upper aspect of the right breast.

15. More than two (2) years later on April 23, 2010, Mrs. Loud was diagnosed with Stage III, Invasive Duct Carcinoma (breast cancer).

16. Due to the delayed diagnosis of Mrs. Loud's breast cancer and despite aggressive therapy and treatment, Mrs. Loud's breast cancer was allowed to progress and she has been left with a probable terminal diagnosis. Mrs. Loud is only 44 years old.

FOR A FIRST CAUSE OF ACTION
(Negligence-Medical Malpractice)

17. Plaintiffs reallege and reiterate all of the allegations contained in the prior paragraphs, as fully as if repeated herein verbatim.

18. The Defendants undertook the duty to render medical care to Mrs. Loud in accordance with the generally recognized medical practices and procedures which would be exercised by medical providers under the same or similar circumstances.

19. The Defendants had a duty to use the reasonable care, skill and learning in regard to the medical care provided to Mrs. Loud, that a prudent medical care provider would use under like circumstances.

20. The Defendants failed to exercise that degree of care and skill ordinarily exercised by medical care providers generally under the same or similar circumstances and like surrounding conditions (the "standard of care") and were thereby negligent, grossly negligent, reckless, and/or careless at the time and place hereinabove mentioned in the following particulars:

- a. by failing to order appropriate diagnostic testing;
- b. by failing to recognize and/or appreciate clinical findings;
- c. by failing to properly diagnose and treat Mrs. Loud;
- d. by failing to have in place, proper and adequate policies, procedures and protocols for management of patients such as Mrs. Loud, or, if such policies, procedures and protocols were in place, by failing to use due care to enforce them;
- e. by failing to have in place, adequate policies, procedures and protocols for knowing when to order appropriate tests and make appropriate referrals or, if such policies, procedures and protocols were in place, by failing to use due care to enforce them; and
- f. in such other ways as may be determined or discovered during the pendency of this matter.

21. As a direct and proximate result of the negligence, gross negligence, carelessness, and/or recklessness of the Defendants, proper treatment of Mrs. Loud's breast cancer was delayed. This delay in treatment caused medical complications, severe and debilitating physical, emotional pain and suffering, permanent physical and psychological injuries, and a probably terminal diagnosis. Furthermore, these deviations from the standards of care have resulted in considerable medical expenses to Mrs. Loud, both past and future, a loss of enjoyment of life, unnecessary physical disability, and resultant complete loss in earning capacity, for which Mrs. Loud is entitled to an award of actual damages for past, present and future loss, as well as punitive damages in an amount to be determined by the jury at the trial of this action.

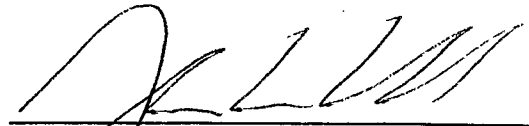
FOR A SECOND CAUSE OF ACTION
(Loss of Consortium)

22. Plaintiffs reallege and reiterate all of the allegations contained in the prior paragraphs, as fully as if repeated herein verbatim.

23. As a direct and proximate result of the negligence of Jeffrey Short, MD and Charleston Radiologists, PA, as aforesaid, Mr. Loud, individually, and as the husband of Leanna Loud, has suffered the loss of aid, comfort, consortium, society and damage to the marital relationship with his wife, Mrs. Loud, for which he is entitled to actual damages in an amount to be determined by the jury at the trial of this action.

24. In support of the Complaint and in accordance with South Carolina Code § 15-36-100, the Affidavit of William W. Woodruff, III, MD, is attached hereto and incorporated herein by reference.

WHEREFORE, the Plaintiffs respectfully pray for judgment against the Defendants for actual and punitive damages in an amount to be determined by the jury at the trial of this matter, for the costs and disbursements in this action, and for such other and further relief as this Court may deem just and proper.



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ATTORNEYS FOR THE PLAINTIFFS

October 4, 2013
Columbia, South Carolina.

Medical Center and read by Jeffrey K. Short, M.D., with findings of "fibroglandular tissue elements are moderately dense and somewhat nodular in configuration. Dystrophic type calcifications are present within the upper aspect of the right breast, though no suspicious clustered microcosmic calcifications have developed." In his interpretation, Dr. Short described dystrophic calcifications in the upper outer quadrant of the right breast and classified the overall mammogram as BiRads 2, benign.

5. In my review, I see the calcifications that I assume Dr. Short is describing in the upper outer quadrant of the right breast, deep third. These microcalcifications are few in number, but appear to represent a small cluster. I see no additional calcifications in either breast. These calcifications were not present on a prior mammographic examination of November 13, 2003.

6. New calcifications of this nature need additional surveillance beyond BiRads 2, benign designation. In my opinion, Dr. Short should have interpreted the study as BiRads 0, incomplete and recommended that Ms. Loud have spot compression, spot magnification images to more precisely characterize these calcifications. If any pleomorphic features to the calcifications would have been detected on these additional images, that would have mandated prompt biopsy of this are of Ms. Loud's breast. If features continued to suggest that these calcifications had a benign morphology, the presence of a new focal cluster of microcalcifications would have warranted classification as BiRads 3, probably benign finding, and a recommendation of additional mammographic surveillance in 6 months.

7. My routine, which I consider the standard of care in such circumstances, is to recommend every 6 month interval surveillance of such calcifications for a 2 year time interval without change before changing the classification to BiRads 2, benign.

8. Had there been every 6 month surveillance, I believe that, to a reasonable degree of medical certainty, Ms. Loud's breast carcinoma in this region would have been detected considerably earlier than the March 2010 detection date and a different outcome for Ms. Loud would likely have transpired. Even if these calcifications were not part of the malignant process, more focused surveillance of this area would reasonably have led to a different outcome in this case.

9. Some radiologists would have gone straight to BiRads 3, probably benign finding, classification for the 2008 mammogram based on the benign-appearing morphology of the calcification on the right described by Dr. Short and skipped the spot compression/spot magnification image recommendation initially. While that is not the approach I would have taken or advised, it would have placed Ms. Loud into a more frequent surveillance mode as discussed in the preceding paragraph; I believe such an alternative would have been within the domain of standard care. Dr. Short did neither; in my opinion, his classification of these new microcalcifications as BiRads 2 benign, without any additional imaging or short interval follow-up, constitutes a deviation in the standard of care.

10. Based upon my review of the records, it appears that Leanna Loud suffered unnecessarily, her cancer was allowed to progress to a greater stage, required additional medical treatment, and has a significantly more grim prognosis as a result of errors in medical management by Dr. Short of East Cooper Medical Center.

11. It is my opinion, based upon a reasonable degree of medical certainty, that Dr. Short failed to meet the standard of care as required by the profession in one or more of the following ways:

- a. In failing to order appropriate diagnostic testing;

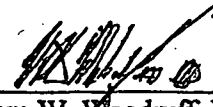
- b. In failing to recognize or appreciate clinical findings;
- c. In failing to have in place proper and adequate policies, procedures and protocols for management of patients such as Leanna Loud, or, if such policies, procedures and protocols were in place, in failing to use due care to enforce them;
- d. In failing to have in place adequate policies, procedures and protocols for exchange of test results and communication of the same, if such policies, and protocols were in place, in failing to use due care to enforce them;
- e. In failing to properly have in place adequate policies, procedures and protocols for knowing when to order appropriate tests and make appropriate referrals or, if such policies, procedures and protocols were in place, in failing to use due care to enforce them;
- f. In failing to properly diagnose and treat Leanna Loud.

12. The information and data that I reviewed to form my opinions in this case are of a type typically and reasonably relied upon by experts in my field in forming opinions. I reserve the right to supplement my opinions if and when additional records become available.

13. I am over the age of 21 years and am competent to testify to the matters stated herein. I have read the foregoing paragraphs, and all matters stated herein are correct and true based upon my own personal knowledge and belief. All opinions expressed herein are based upon my education, training, research and experience, and my review of the records, and are made with a reasonable degree of medical certainty, most probably, under the same or similar circumstances as they existed at the time.

-See Next Page For Signature-

FURTHER THE AFFIANT SAYETH NOT!



William W. Woodruff, III, M.D.

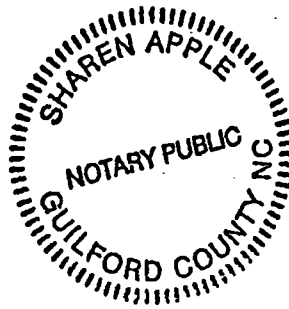
Sworn to and subscribed before me
this 15th day of April, 2013.

Sharon Apple

Notary Public

State of NC

My Commission Expires: 8/9/2017



CURRICULUM VITAE

Name: William Walter Woodruff, III

Business Address: Greensboro Radiology
1317 N. Elm Street, Suite 1-B
Greensboro, NC 27401-1023
336-274-4285

Home Address: 104 Pearce Drive
Jamestown, NC 27282-8444
336-869-3379
wwwrad@gmail.com

Education and Professional Training:

University of North Carolina at Chapel Hill, NC; 1975-78. National Merit Scholar. Phi Beta Kappa. Bachelor of Arts, awarded May 1978. Chemistry major.

Duke University School of Medicine, Durham, NC; 1978-82. Doctor of Medicine, awarded May 1982.

Department of Surgery, Duke University Medical Center, Durham, NC; Internship, July 1982 – June 1983.

Department of Diagnostic Radiology, Duke University Medical Center, Durham, NC; Residency, July 1983 – June 1987.

Department of Diagnostic Radiology, Durham Veterans Administration Medical Center, Durham, NC; Attending Radiologist, September 1986 – December 1986.

Present Position:

Radiologist, Greensboro Radiology, P.A.
Greensboro, NC since January 1, 2012

Prior Position:

Radiologist, High Point Radiological Services, P.A.
High Point, NC July 1, 1987-December 31, 2011

(High Point Radiological Services merged into Greensboro Radiology on
January 1, 2012)

*Woodruff
sch. doc. + Ex 1*

Licensure: Physician, State of North Carolina (No. 27350)

Specialty Board Certification: Diagnostic Radiology
American Board of Radiology, June 11, 1987.

Hospital Affiliation: High Point Regional Health System
601 North Elm Street
High Point, NC 27261
Active Status, Department of Radiology
Medical Director, PET/CT Laboratory since 2005

Lexington Medical Center
250 Hospital Drive
Lexington, NC 27293
Active Status, Department of Radiology
Medical Director, Department of Radiology since
August 1, 1996

Professional Memberships:

American College of Radiology
Radiological Society of North America
American Roentgen Ray Society
North Carolina Chapter, American College of Radiology
North Carolina Medical Society
High Point Medical Society (President, 1995)
Sigma Xi
American Registry of Diagnostic Medical Sonographers as Registered Vascular
Technologist (RVT) since 1996

National Meeting Presentations:

William W. Woodruff, III, Barbara E Hoeck, W. Randolph Chitwood, Jr., H. Kim
Lyerly, David C. Sabiston, Jr., and James T. T. Chen. Radiographic findings in
pulmonary artery hypertension with chronic pulmonary embolism. Radiological
Society of North America, Washington, D.C., November 26, 1984.

William W. Woodruff, III, David F. Merten, Milton L. Wagner, and Donald R. Kirks. Chronic pulmonary embolism in children. Radiological Society of North America, Chicago, IL. November 18, 1985.

Publications:

1. William W. Woodruff, III and Richard Wolfenden. Inhibition of ribose-5-phosphate isomerase by 4-phosphoerythronate. *Journal of Biological Chemistry* 254:5866-5867, 1979.
2. Robert W. Wheat, William W. Woodruff, III, and Robert S Haltiwanger. Occurrence of antigenic, (species specific?) partially 3-O-methylated heteromannans in cell wall and soluble cellular (non-wall) components of Coccidioides immitis mycelia. *Infection and Immunity* 41:727-734, 1983.
3. William W. Woodruff, III, Gregory Gabliani, and Augustus O. Grant, Patent ductus arteriosus in the elderly. *Southern Medical Journal* 76:1436-1437, 1983.
4. William W. Woodruff, III, C. Edward Buckley, III, Harry A. Gallis, John R. Cohn, and Robert W. Wheat. Reactivity to spherule-derived coccidioidin in the southeastern United States. *Infection and Immunity* 43:860-869, 1984.
5. William W. K. Zung, David T. George, William W. Woodruff, III, and Steven L. Mahorney. Symptom perception by nonpsychiatric physicians in evaluating for depression. *Journal of Clinical Psychiatry* 45(7, Sec. 2):26-29, 1984.
6. William W. Woodruff, III, Barbara E. Hoeck, W. Randolph Chitwood, Jr., H. Kim Lyerly, David C. Sabiston, Jr., and James T. T. Chen. Radiographic findings in pulmonary hypertension from unresolved embolism. *American Journal of Roentgenology* 144:681-686, 1985.
7. W. W. Woodruff, III, D.F. Merten, and D. R. Kirks. Pneumomediastinum: an unusual complication of acute gastrointestinal disease. *Pediatric Radiology* 15:196-198, 1985.
8. C. Edward Buckley, III, William W. Woodruff, III, Harry A. Gallis, Robert W. Wheat, and John R. Cohn. Reactivity to spherule-derived coccidioidin in the southeastern United States. In: Coccidioidomycosis. Proceedings of the 4th International Conference of Coccidioidomycosis. *The National Foundation for Infectious Diseases, Washington, D.C., 1985. 55-60.*

9. William W. Woodruff, III, Jorge L. Gamba, Charles E. Putman, and James T. T. Chen. Chronic tension pneumothorax presumably secondary to a "ball valve" bronchopleural fistula. *Southern Medical Journal* 79:510-512, 1986.
10. William W. Woodruff, III, David F. Merten, Milton F. Wagner, and Donald R. Kirks. Chronic pulmonary embolism in children. *Radiology* 159:511-514, 1986.
11. David E. Tamas, Barry S. Mahony, James D. Bowie, William W. Woodruff, III, and Helen H. Kay. Antenatal sonographic diagnosis of hemifacial microsomia (goldenhar-gorlin syndrome). *Journal of Ultrasound in Medicine*. 5:461-463, 1986.
12. Steven K. Sussman, Fernando F. Illescas, William W. Woodruff, III, and Cirrelda Cooper. Angelchik anti-reflux device: computed tomography appearance. *CT: The Journal of Computed Tomography* 11:212-215, 1987.
13. William W. Woodruff, III and Barbara A. Carroll. Inadvertent iatrogenic introduction of air into myometrium:sonographic demonstration. *Journal of Ultrasound in Medicine* 7:49-51, 1988.
14. Mark A. Kliewer, William Woodruff, III, and James D. Bowie. Mucinous cystadenoma simulating renal transplant lymphocele. *Journal of Clinical Ultrasound* 17:119-122, 1989.
15. J.P. Uglietta, W.W. Woodruff, III, E.L. Effmann, and B.A. Carroll. Duplex doppler ultrasound evaluation of calcified inferior vena cava thrombosis. *Pediatric Radiology* 19:250-252, 1989.
16. William W. Woodruff, III, and Nancy J. Brown. Duplex sonographic detection of ascending pharyngeal artery arising from the internal carotid artery and supplying a dural arteriovenous malformation. *Journal of Ultrasound in Medicine* 12:227-229, 1993.
17. William W. Woodruff, III, Vicki P. Strunsky, and Nancy J. Brown. Separate origins of the left internal and external carotid arteries directly from the aortic arch: duplex sonographic findings. *Journal of Ultrasound in Medicine* 14:867-869, 1995.

Civic/Leadership Activities:

Executive Board, Old North State Council, Boy Scouts of America, since 1992
Silver Beaver Award from Old North State Council, awarded March 2010

Board of Directors, High Point Medical Center, 1994-2005; President 1996.

Communications and Membership Advisory Committee, North Carolina Medical Society, 1995-2011; Vice-Chair 1996

Radiography Advisory Committee, Randolph Community College, Asheboro, NC

National Eagle Scout Association (Life Member)

Eagle Scout Review Board, Akela District, Old North State Council, since 1996.

Vice-Chief of Staff, Lexington Medical Center October 1, 2008-December 31, 2010

Chairman, Credentials Committee, Lexington Medical Center October 1, 2008-December 31, 2010

Chief of Staff, Lexington Medical Center January 1, 2011-December 31, 2012

High Point Regional Health System Medical Isotope Radiation Safety Committee member: July 1987-present

High Point Regional Health System Institutional Review Board (IRB); Chairman: 1992-1999

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
Leanna Loud and William Loud,	)	C/A No. 2013-CP-10-05902
)	
Plaintiffs,	)	DEFENDANTS' ANSWER TO
	)	PLAINTIFFS' COMPLAINT
Versus	)	(Jury Trial Demanded)
)	
Jeffrey Short, MD, individually and)	
Charleston Radiologists, PA,)	
)	
Defendants.)	

Come now the Defendants, Jeffrey Short, MD, individually and Charleston Radiologists, PA (hereinafter "the Defendants"), hereby answer the Plaintiffs' Complaint, subject to any and all affirmative defenses, qualifications, motions, and any other pleadings, as follows:

1. The Defendants deny each and every allegation of the Plaintiffs' Complaint not specifically admitted herein.

AS TO PARTIES

2. The allegations contained in Paragraphs 1 and 2 of the Plaintiffs' Complaint are not directed toward the Defendants and therefore no response is required. To the extent a response is required, the Defendants lack sufficient information upon which to form a belief as to the allegations contained in Paragraphs 1 and 2 of the Plaintiffs' Complaint.

3. In response to the allegations contained in Paragraph 3 of the Plaintiffs' Complaint, the Defendants admit that Jeffrey Short, MD is a physician who has provided medical care to Plaintiff Leanna Loud.

4. In response to the allegations contained in Paragraph 4 of the Plaintiffs' Complaint, the Defendants admit only that Charleston Radiologists, P.A.

is a professional association filed and in good standing with the Secretary of State of the State of South Carolina conducting and operating a business in Charleston County, South Carolina.

5. Paragraph 5 of the Plaintiffs' Complaint contains no allegations as to the Defendants and no response is required.

AS TO PRE-SUIT PROCEDURES

6. The allegations contained in Paragraphs 6, 7, 8 and 9 of the Plaintiffs' Complaint contain statements of procedural history not directed toward the Defendants and therefore no response is required. To the extent a response is required, the Defendants crave reference to the Charleston County Clerk of Court file for C/A No. 13-CP-10-2278 for a more complete description of the matters contained in Paragraphs 6, 7, 8 and 9 of the Plaintiffs' Complaint.

AS TO GENERAL FACTUAL ALLEGATIONS

7. The Defendants admit the allegations contained in Paragraph 10 of the Plaintiffs' Complaint.

8. In response to the allegations contained in Paragraph 11 of the Plaintiffs' Complaint, the Defendants admit only that Dr. Short read a mammogram of the Plaintiff Leanna Loud taken on or about April 1, 2008 and that Dr. Short was at the time an employee of Charleston Radiologists, PA. All remaining and inconsistent allegations contained in Paragraph 11 of the Plaintiffs' Complaint are denied.

9. In response to the allegations contained in Paragraphs 12, 13, 14 and 15 of the Plaintiffs' Complaint, the Defendants crave reference to the Plaintiff Leanna Loud's medical records from all providers for a more complete and accurate

description of the condition and medical care and treatment rendered during those time periods. All allegations contained in Paragraphs 12, 13, 14 and 15 of the Plaintiffs' Complaint inconsistent with the Defendants position the standard of care was at all times met are denied.

10. The Defendants deny the allegations contained in Paragraph 16 of the Plaintiffs' Complaint.

AS TO THE FIRST CAUSE OF ACTION
(Negligence-Medical Malpractice)

11. In response to the allegations contained in Paragraph 17 of the Plaintiffs' Complaint, the Defendants reassert and reallege the above paragraphs as if fully restated herein verbatim.

12. The allegations contained in Paragraphs 18 and 19 of the Plaintiffs' Complaint contain conclusions of law to which no response is required.

13. These Defendants deny the allegations contained in Paragraphs 20, including subparts (a) through (f) and 21 of the Plaintiffs' Complaint, such being the remaining allegations of the First Cause of Action.

AS TO THE SECOND CAUSE OF ACTION
(Loss of Consortium)

14. In response to the allegations contained in Paragraph 22 of the Plaintiffs' Complaint, the Defendants reassert and reallege the above paragraphs as if fully restated herein verbatim.

15. The Defendants deny the allegations contained in Paragraph 23 of the Plaintiffs' Complaint.

16. The allegations contained in Paragraph 24 of the Plaintiffs' Complaint contain conclusions of law to which no response is required.

17. The Defendants deny the Plaintiffs' Prayer for Relief, such being the remaining allegations of the Plaintiffs' Second Cause of Action and Complaint.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:
(Failure to State a Claim)

18. The allegations contained in the Plaintiffs' Complaint fails in its entirety to state a claim upon which relief may be granted against the Defendants.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:
(No Deviation from Standard of Care)

19. That the care and treatment administered by the Defendants conformed to and was in full compliance with the standard of care. All care and treatment administered by the Defendants was within acceptable medical standards and methods, and, at no time pertinent hereto, did the Defendants deviate from any medical standard while caring for or tending to the Plaintiffs. Consequently, the Plaintiffs are barred from recovery against the Defendants.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:
(No Proximate Cause)

20. That, even if the Defendants were negligent, as alleged in the Complaint, which is specifically denied, the negligence of the Defendants is not the direct or proximate cause of any injury alleged by the Plaintiffs and therefore the Defendants are not liable for any damages allegedly sustained by the Plaintiffs.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:
(Natural Disease Process)

21. That the Defendants would allege, upon information and belief, that any injuries or damages sustained by Plaintiffs were due to, caused and occasioned by the natural disease process over which the Defendants had no control and as

such, the Defendants plead such a natural disease process as a complete bar to this action.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:
(Reasonableness and Good Faith)

22. That the Defendants acted reasonably and in good faith at all times material herein, based on all relevant facts and circumstances known by at the time it so acted. Accordingly, the Plaintiffs are not entitled to recover any damages whatsoever.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:
(Noneconomic Damage Awards)

23. No award for noneconomic damages shall exceed the statutory limits contained in the Noneconomic Damages Awards Act of 2005, South Carolina Code Ann. §15-32-200, et. seq. The Defendants are health care providers or health care institutions as defined by S.C. Code Ann. § 15-32-210 and pursuant to §15-32-220 of the Noneconomic Damage Awards Act of 2005, any potential recovery of noneconomic damages is limited to the amounts stated therein.

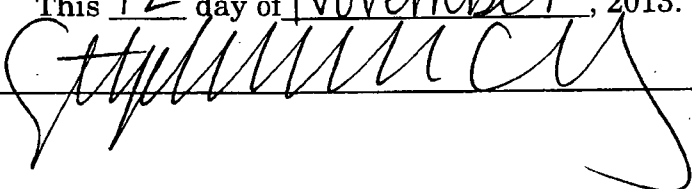
FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:
(Punitive Damages Unconstitutional)

24. That any award or assessment of punitive damages as prayed for by the Plaintiffs would violate the Defendants' Constitutional rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and comparable provisions of the South Carolina Constitution.

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, e-mailing, facsimile, or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 12 day of November, 2013.



Lou Christian

From: Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey) <MDennisLC@sccourts.org>
Sent: Monday, August 03, 2015 11:33 AM
To: John Eric Fulda; Don Michel; 'Brian Johnson'
Cc: Tammy Villanueva; Lou Christian; Charles Whetstone; Cheryl Perkins; Young, Roger Law Clerk (Stefan Feidler); Young, Roger Secretary (Robyn R. Hills)
Subject: RE: Leanna and William Loud v. Jeffrey Short, MD, individually and Charleston Radiologists, P.A.; 2013-CP-10-05902

All:

I thought I had already emailed you about this. I confirmed with Judge John that he is unable to do this case if it continues into the 2nd week. However, I have already spoken with Judge Young and he has agreed to do the case and remain the 2nd week if necessary. I have CC'd his law clerk and secretary if you have any further questions about this. Thank you.

Lindsey M. Coffey

Law Clerk to the Honorable R. Markley Dennis, Jr.
100 Broad Street, Suite 439
Charleston, SC 29401
Phone: (843)958-5062
Email: MDennisLC@sccourts.org

From: John Eric Fulda [<mailto:jfulda@attorneyssc.com>]
Sent: Monday, August 03, 2015 11:29 AM
To: Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey); Don Michel; 'Brian Johnson'
Cc: Tammy Villanueva; Lou Christian; Charles Whetstone; Cheryl Perkins
Subject: RE: Leanna and William Loud v. Jeffrey Short, MD, individually and Charleston Radiologists, P.A.; 2013-CP-10-05902

Lindsey,

I hope you are doing well. I am just following up on whether y'all had heard anything from Judge Johns in regard to his availability for a possible second week of trial in this matter.

Thanks,
John Eric

John Eric Fulda

Whetstone Perkins & Fulda, LLC

P.O. Box 8086

601 Devine Street

Columbia, South Carolina 29202 (29201)

Telephone: 803-799-9400

Faxsimile: 803-799-2017

Email: jfulda@attorneyssc.com

Website: www.attorneyssc.com

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
Leanna Loud and William Loud,) C/A No. 2013-CP-10-05902
))
Plaintiffs,) **DEFENDANTS' NOTICE OF**
) **MOTION AND MOTION TO AMEND**
Versus))
))
Jeffrey Short, MD, individually and))
Charleston Radiologists, PA,))
))
Defendants.)

FILED
2015 AUG 17 PM 3:46
JULIE J. ARMSTRONG
CLERK OF COURT

TO: JOHN ERIC FULDA AND DAVID L. SAVAGE, ATTORNEYS FOR THE PLAINTIFFS:

PLEASE TAKE NOTICE that pursuant to Rule 15 of the South Carolina Rules of Civil Procedure, the Defendants, Jeffrey Short, M.D., individually and Charleston Radiologists, PA (hereinafter "the Defendants"), by and through their undersigned counsel will move as soon as may be heard for an Order granting leave to Amend their Answer to the Plaintiffs' Complaint to assert the affirmative defenses of statute of limitations and comparative negligence.

Leave of Court is required to amend a pleading after thirty days has expired, and such leave is freely given when it does not prejudice another party. The Defendants reserved the right to amend their Answer to add additional affirmative defenses in the Answer to Plaintiffs' Complaint previously filed with the Court. The documents produced to date and deposition testimony given throughout discovery addressed issues of statute of limitations and comparative negligence and the Plaintiffs are on notice that these issues will be raised at trial.

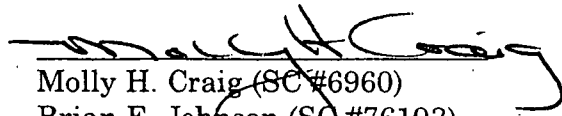
A motion to amend is addressed to the sound discretion of the trial judge. Stanley v. Kirkpatrick, 357 S.C. 169, 592 S.E.2d 296 (2004). Leave to amend pleadings pursuant to Rule 15, SCRCF, shall be liberally and freely given when

justice so requires and does not prejudice any other party. Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 493 S.E.2d 826 (1997). The party opposing the amendment has the burden of establishing prejudice. Foggie v. CSX Transp., Inc., 315 S.C. 17, 431 S.E.2d 587 (1993). In Tanner v. Florence County Treasurer, 336 S.C. 552, 521 S.E.2d 153 (1999), the court explained the prejudice envisioned by Rule 15 as a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it. Rule 15 strongly favors amendments and the court is encouraged to freely grant leave to amend. Jarrell v. Seaboard Sys. R.R., 294 S.C. 183, 363 S.E.2d 398 (Ct. App. 1987).

The undersigned counsel for the moving party certifies, pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, that prior to filing the motion, they communicated with counsel for the Plaintiffs, concerning the motion and attempted to resolve the matter contained in the motion. To date, the undersigned has not received written confirmation of consent to amendment.

This Motion is based in part on the discussion above, as well as the pleadings in this case and testimony of witnesses. The proposed Amended Answer to Plaintiffs' Complaint is attached hereto as **Exhibit A** and may be supported by supplemental memoranda, affidavits, or other evidence prior to a hearing on this matter

HOOD LAW FIRM, LLC
172 Meeting Street
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Molly H. Craig (SC #6960)
Brian E. Johnson (SC #76103)
Caroline Rinehart Niland (SC #100709)

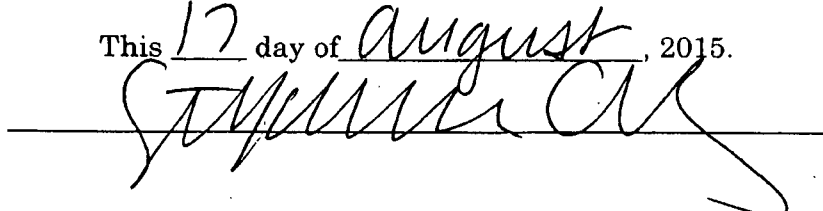
Attorneys for the Defendants
Jeffrey Short, MD, individually and
Charleston Radiologists, PA

Aug 17, 2015
Charleston, South Carolina

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, e-mailing, facsimile, or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 17 day of August, 2015.



2015 AUG 17 PM 3:46
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
Leanna Loud and William Loud,	)	C/A No. 2013-CP-10-05902
)	
	)	DEFENDANTS' AMENDED ANSWER
Plaintiffs,	)	TO PLAINTIFFS' COMPLAINT
	)	(Jury Trial Demanded)
Versus)	
)	
Jeffrey Short, MD, individually and)	
Charleston Radiologists, PA,)	
)	
Defendants.)	



Come now the Defendants, Jeffrey Short, MD, individually and Charleston Radiologists, PA (hereinafter "the Defendants"), hereby submit this amended answer the Plaintiffs' Complaint, subject to any and all affirmative defenses, qualifications, motions, and any other pleadings, as follows:

1. The Defendants deny each and every allegation of the Plaintiffs' Complaint not specifically admitted herein.

AS TO PARTIES

2. The allegations contained in Paragraphs 1 and 2 of the Plaintiffs' Complaint are not directed toward the Defendants and therefore no response is required. To the extent a response is required, the Defendants lack sufficient information upon which to form a belief as to the allegations contained in Paragraphs 1 and 2 of the Plaintiffs' Complaint.

3. In response to the allegations contained in Paragraph 3 of the Plaintiffs' Complaint, the Defendants admit that Jeffrey Short, MD is a physician who has provided medical care to Plaintiff Leanna Loud.

4. In response to the allegations contained in Paragraph 4 of the Plaintiffs' Complaint, the Defendants admit only that Charleston Radiologists, P.A.

is a professional association filed and in good standing with the Secretary of State of the State of South Carolina conducting and operating a business in Charleston County, South Carolina.

5. Paragraph 5 of the Plaintiffs' Complaint contains no allegations as to the Defendants and no response is required.

AS TO PRE-SUIT PROCEDURES

6. The allegations contained in Paragraphs 6, 7, 8 and 9 of the Plaintiffs' Complaint contain statements of procedural history not directed toward the Defendants and therefore no response is required. To the extent a response is required, the Defendants crave reference to the Charleston County Clerk of Court file for C/A No. 13-CP-10-2278 for a more complete description of the matters contained in Paragraphs 6, 7, 8 and 9 of the Plaintiffs' Complaint.

AS TO GENERAL FACTUAL ALLEGATIONS

7. The Defendants admit the allegations contained in Paragraph 10 of the Plaintiffs' Complaint.

8. In response to the allegations contained in Paragraph 11 of the Plaintiffs' Complaint, the Defendants admit only that Dr. Short read a mammogram of the Plaintiff Leanna Loud taken on or about April 1, 2008 and that Dr. Short was at the time an employee of Charleston Radiologists, PA. All remaining and inconsistent allegations contained in Paragraph 11 of the Plaintiffs' Complaint are denied.

9. In response to the allegations contained in Paragraphs 12, 13, 14 and 15 of the Plaintiffs' Complaint, the Defendants crave reference to the Plaintiff Leanna Loud's medical records from all providers for a more complete and accurate

description of the condition and medical care and treatment rendered during those time periods. All allegations contained in Paragraphs 12, 13, 14 and 15 of the Plaintiffs' Complaint inconsistent with the Defendants position the standard of care was at all times met are denied.

10. The Defendants deny the allegations contained in Paragraph 16 of the Plaintiffs' Complaint.

AS TO THE FIRST CAUSE OF ACTION
(Negligence-Medical Malpractice)

11. In response to the allegations contained in Paragraph 17 of the Plaintiffs' Complaint, the Defendants reassert and reallege the above paragraphs as if fully restated herein verbatim.

12. The allegations contained in Paragraphs 18 and 19 of the Plaintiffs' Complaint contain conclusions of law to which no response is required.

13. The Defendants deny the allegations contained in Paragraphs 20, including subparts (a) through (f) and 21 of the Plaintiffs' Complaint, such being the remaining allegations of the First Cause of Action.

AS TO THE SECOND CAUSE OF ACTION
(Loss of Consortium)

14. In response to the allegations contained in Paragraph 22 of the Plaintiffs' Complaint, the Defendants reassert and reallege the above paragraphs as if fully restated herein verbatim.

15. The Defendants deny the allegations contained in Paragraph 23 of the Plaintiffs' Complaint.

16. The allegations contained in Paragraph 24 of the Plaintiffs' Complaint contain conclusions of law to which no response is required.

17. The Defendants deny the Plaintiffs' Prayer for Relief, such being the remaining allegations of the Plaintiffs' Second Cause of Action and Complaint.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:
(Failure to State a Claim)

18. The allegations contained in the Plaintiffs' Complaint fails in its entirety to state a claim upon which relief may be granted against the Defendants.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:
(No Deviation from Standard of Care)

19. That the care and treatment administered by the Defendants conformed to and was in full compliance with the standard of care. All care and treatment administered by the Defendants was within acceptable medical standards and methods, and, at no time pertinent hereto, did the Defendants deviate from any medical standard while caring for or tending to the Plaintiffs. Consequently, the Plaintiffs are barred from recovery against the Defendants.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:
(No Proximate Cause)

20. That, even if the Defendants were negligent, as alleged in the Complaint, which is specifically denied, the negligence of the Defendants is not the direct or proximate cause of any injury alleged by the Plaintiffs and therefore the Defendants are not liable for any damages allegedly sustained by the Plaintiffs.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:
(Natural Disease Process)

21. That the Defendants would allege, upon information and belief, that any injuries or damages sustained by Plaintiffs were due to, caused and occasioned by the natural disease process over which the Defendants had no control and as

such, the Defendants plead such a natural disease process as a complete bar to this action.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:
(Reasonableness and Good Faith)

22. That the Defendants acted reasonably and in good faith at all times material herein, based on all relevant facts and circumstances known by at the time it so acted. Accordingly, the Plaintiffs are not entitled to recover any damages whatsoever.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:
(Noneconomic Damage Awards)

23. No award for noneconomic damages shall exceed the statutory limits contained in the Noneconomic Damages Awards Act of 2005, South Carolina Code Ann. §15-32-200, et. seq. The Defendants are health care providers or health care institutions as defined by S.C. Code Ann. § 15-32-210 and pursuant to §15-32-220 of the Noneconomic Damage Awards Act of 2005, any potential recovery of noneconomic damages is limited to the amounts stated therein.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:
(Punitive Damages Unconstitutional)

24. That any award or assessment of punitive damages as prayed for by the Plaintiffs would violate the Defendants' Constitutional rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and comparable provisions of the South Carolina Constitution.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:
(Comparative Negligence)

25. That, upon information and belief, even if the Defendants were negligent as described in the Complaint, which is specifically denied, the Plaintiffs' alleged injuries and damages, if any, may have resulted from, or may have been due to comparative negligence of the Plaintiffs or third parties, which combined and concurred with any negligence on the part of the Defendants, which is specifically denied, to bring about the damages, if any, as a proximate cause thereof and without which the same would not have occurred.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANT ALLEGES:
(Statute of Limitations)

26. That the Plaintiffs' causes of action against the Defendants are barred by the applicable statutes of limitations provided by S.C. Code § 15-3-545 and the discovery rule.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:
(Reservation and Non-Waiver)

27. The Defendants reserve any additional and affirmative defenses as may be revealed or become available to it during the course of their investigation and/or discovery in the case and is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the Plaintiffs' Complaint, and having asserted these affirmative defenses, the Defendants, Jeffrey Short, MD, individually and Charleston Radiologists, PA, pray that the Plaintiffs' Complaint be dismissed with prejudice and that they be awarded the costs and reasonable fees associated with this matter, and such other relief as the Court may deem just and proper.

HOOD LAW FIRM, LLC
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Email: Info@hoodlaw.com

Molly H. Craig (SC #6960)
Brian E. Johnson (SC #76103)
Caroline Rinehart Niland (SC #100709)

*Attorneys for the Defendants
Jeffrey Short, MD, individually and
Charleston Radiologists, PA*

_____, 2015
Charleston, South Carolina

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, e-mailing, facsimile, or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This _____ day of _____, 2015.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
)	
Leanna Loud and William Loud,	)	C/A No. 2013-CP-10-05902
)	
Plaintiffs,	)	NOTICE OF MOTION AND MOTION
	)	TO AMEND
Versus)	
)	
Jeffrey Short, MD, individually and)	
Charleston Radiologists, PA,)	
)	
Defendants.)	

FILED
 2015 MAR -3 PM 3:58
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

TO: JOHN ERIC FULDA AND DAVID L. SAVAGE, ATTORNEYS FOR THE PLAINTIFFS:

PLEASE TAKE NOTICE that pursuant to Rule 15 of the South Carolina Rules of Civil Procedure, the Defendants, Jeffrey Short, MD, individually and Charleston Radiologists, PA (hereinafter "the Defendants"), by and through their undersigned counsel will move as soon as may be heard for an Order granting leave to Amend their Answer to the Plaintiffs' Complaint to assert the affirmative defense of comparative negligence.

Leave of Court is required to amend a pleading after thirty days has expired, and such leave is freely given when it does not prejudice another party. The Defendants reserved the right to amend their Answer to add additional affirmative defenses in the Answer to Plaintiff's Complaint previously filed with the Court. The documents produced to date and deposition testimony given throughout discovery addressed issues of comparative negligence and the Plaintiffs are on notice that this issue will be raised at trial.

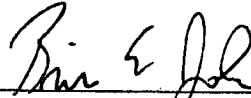
A motion to amend is addressed to the sound discretion of the trial judge. Stanley v. Kirkpatrick, 357 S.C. 169, 592 S.E.2d 296 (2004). Leave to amend pleadings pursuant to Rule 15, SCRCF, shall be liberally and freely given when

justice so requires and does not prejudice any other party. Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 493 S.E.2d 826 (1997). The party opposing the amendment has the burden of establishing prejudice. Foggie v. CSX Transp., Inc., 315 S.C. 17, 431 S.E.2d 587 (1993). In Tanner v. Florence County Treasurer, 336 S.C. 552, 521 S.E.2d 153 (1999), the court explained the prejudice envisioned by Rule 15 as a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it. Rule 15 strongly favors amendments and the court is encouraged to freely grant leave to amend. Jarrell v. Seaboard Sys. R.R., 294 S.C. 183, 363 S.E.2d 398 (Ct. App. 1987).

The undersigned counsel for the moving party certifies, pursuant to Rule 11 of the South Carolina Rules of Civil Procedure, that prior to filing the motion, he communicated with counsel for the Plaintiffs, concerning the motion and attempted to resolve the matter contained in the motion. To date, the undersigned has not received written confirmation of consent to amendment.

This Motion is based in part on the discussion above, as well as the pleadings in this case and testimony of witnesses. The proposed Amended Answer to Plaintiffs' Amended Complaint is attached hereto as Exhibit A and may be supported by supplemental memoranda, affidavits, or other evidence prior to a hearing on this matter.

HOOD LAW FIRM, LLC
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Email: Info@hoodlaw.com



Molly H. Craig (SC #6960)
Brian E. Johnson (SC #76103)

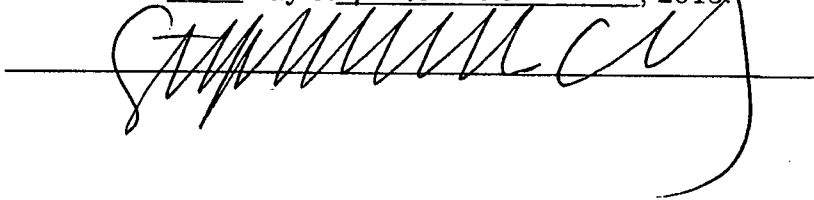
Attorneys for the Defendants
Jeffrey Short, MD, individually and
Charleston Radiologists, PA

March 3, 2015
Charleston, South Carolina

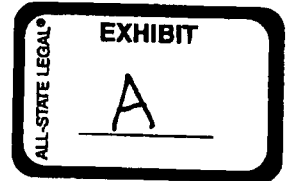
CERTIFICATE OF SERVICE

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

This 3 day of March, 2015.



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
)	
Leanna Loud and William Loud,	)	C/A No. 2013-CP-10-05902
)	
Plaintiffs,	)	DEFENDANTS' AMENDED ANSWER
	)	TO PLAINTIFFS' COMPLAINT
Versus	)	(Jury Trial Demanded)
)	
Jeffrey Short, MD, individually and)	
Charleston Radiologists, PA,)	
)	
Defendants.)	



Come now the Defendants, Jeffrey Short, MD, individually and Charleston Radiologists, PA (hereinafter "the Defendants"), hereby submit this amended answer the Plaintiffs' Complaint, subject to any and all affirmative defenses, qualifications, motions, and any other pleadings, as follows:

1. The Defendants deny each and every allegation of the Plaintiffs' Complaint not specifically admitted herein.

AS TO PARTIES

2. The allegations contained in Paragraphs 1 and 2 of the Plaintiffs' Complaint are not directed toward the Defendants and therefore no response is required. To the extent a response is required, the Defendants lack sufficient information upon which to form a belief as to the allegations contained in Paragraphs 1 and 2 of the Plaintiffs' Complaint.

3. In response to the allegations contained in Paragraph 3 of the Plaintiffs' Complaint, the Defendants admit that Jeffrey Short, MD is a physician who has provided medical care to Plaintiff Leanna Loud.

4. In response to the allegations contained in Paragraph 4 of the Plaintiffs' Complaint, the Defendants admit only that Charleston Radiologists, P.A.

is a professional association filed and in good standing with the Secretary of State of the State of South Carolina conducting and operating a business in Charleston County, South Carolina.

5. Paragraph 5 of the Plaintiffs' Complaint contains no allegations as to the Defendants and no response is required.

AS TO PRE-SUIT PROCEDURES

6. The allegations contained in Paragraphs 6, 7, 8 and 9 of the Plaintiffs' Complaint contain statements of procedural history not directed toward the Defendants and therefore no response is required. To the extent a response is required, the Defendants crave reference to the Charleston County Clerk of Court file for C/A No. 13-CP-10-2278 for a more complete description of the matters contained in Paragraphs 6, 7, 8 and 9 of the Plaintiffs' Complaint.

AS TO GENERAL FACTUAL ALLEGATIONS

7. The Defendants admit the allegations contained in Paragraph 10 of the Plaintiffs' Complaint.

8. In response to the allegations contained in Paragraph 11 of the Plaintiffs' Complaint, the Defendants admit only that Dr. Short read a mammogram of the Plaintiff Leanna Loud taken on or about April 1, 2008 and that Dr. Short was at the time an employee of Charleston Radiologists, PA. All remaining and inconsistent allegations contained in Paragraph 11 of the Plaintiffs' Complaint are denied.

9. In response to the allegations contained in Paragraphs 12, 13, 14 and 15 of the Plaintiffs' Complaint, the Defendants crave reference to the Plaintiff Leanna Loud's medical records from all providers for a more complete and accurate

description of the condition and medical care and treatment rendered during those time periods. All allegations contained in Paragraphs 12, 13, 14 and 15 of the Plaintiffs' Complaint inconsistent with the Defendants position the standard of care was at all times met are denied.

10. The Defendants deny the allegations contained in Paragraph 16 of the Plaintiffs' Complaint.

AS TO THE FIRST CAUSE OF ACTION
(Negligence-Medical Malpractice)

11. In response to the allegations contained in Paragraph 17 of the Plaintiffs' Complaint, the Defendants reassert and reallege the above paragraphs as if fully restated herein verbatim.

12. The allegations contained in Paragraphs 18 and 19 of the Plaintiffs' Complaint contain conclusions of law to which no response is required.

13. The Defendants deny the allegations contained in Paragraphs 20, including subparts (a) through (f) and 21 of the Plaintiffs' Complaint, such being the remaining allegations of the First Cause of Action.

AS TO THE SECOND CAUSE OF ACTION
(Loss of Consortium)

14. In response to the allegations contained in Paragraph 22 of the Plaintiffs' Complaint, the Defendants reassert and reallege the above paragraphs as if fully restated herein verbatim.

15. The Defendants deny the allegations contained in Paragraph 23 of the Plaintiffs' Complaint.

16. The allegations contained in Paragraph 24 of the Plaintiffs' Complaint contain conclusions of law to which no response is required.

17. The Defendants deny the Plaintiffs' Prayer for Relief, such being the remaining allegations of the Plaintiffs' Second Cause of Action and Complaint.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:
(Failure to State a Claim)

18. The allegations contained in the Plaintiffs' Complaint fails in its entirety to state a claim upon which relief may be granted against the Defendants.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:
(No Deviation from Standard of Care)

19. That the care and treatment administered by the Defendants conformed to and was in full compliance with the standard of care. All care and treatment administered by the Defendants was within acceptable medical standards and methods, and, at no time pertinent hereto, did the Defendants deviate from any medical standard while caring for or tending to the Plaintiffs. Consequently, the Plaintiffs are barred from recovery against the Defendants.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:
(No Proximate Cause)

20. That, even if the Defendants were negligent, as alleged in the Complaint, which is specifically denied, the negligence of the Defendants is not the direct or proximate cause of any injury alleged by the Plaintiffs and therefore the Defendants are not liable for any damages allegedly sustained by the Plaintiffs.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:
(Natural Disease Process)

21. That the Defendants would allege, upon information and belief, that any injuries or damages sustained by Plaintiffs were due to, caused and occasioned by the natural disease process over which the Defendants had no control and as

such, the Defendants plead such a natural disease process as a complete bar to this action.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:
(Reasonableness and Good Faith)

22. That the Defendants acted reasonably and in good faith at all times material herein, based on all relevant facts and circumstances known by at the time it so acted. Accordingly, the Plaintiffs are not entitled to recover any damages whatsoever.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:
(Noneconomic Damage Awards)

23. No award for noneconomic damages shall exceed the statutory limits contained in the Noneconomic Damages Awards Act of 2005, South Carolina Code Ann. §15-32-200, et. seq. The Defendants are health care providers or health care institutions as defined by S.C. Code Ann. § 15-32-210 and pursuant to §15-32-220 of the Noneconomic Damage Awards Act of 2005, any potential recovery of noneconomic damages is limited to the amounts stated therein.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:
(Punitive Damages Unconstitutional)

24. That any award or assessment of punitive damages as prayed for by the Plaintiffs would violate the Defendants' Constitutional rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and comparable provisions of the South Carolina Constitution.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:
(Comparative Negligence)

25. That, upon information and belief, even if the Defendants were negligent as described in the Complaint, which is specifically denied, the Plaintiffs' alleged injuries and damages, if any, may have resulted from, or may have been due to comparative negligence of the Plaintiffs or third parties, which combined and concurred with any negligence on the part of the Defendants, which is specifically denied, to bring about the damages, if any, as a proximate cause thereof and without which the same would not have occurred.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:
(Reservation and Non-Waiver)

26. The Defendants reserve any additional and affirmative defenses as may be revealed or become available to it during the course of their investigation and/or discovery in the case and is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the Plaintiffs' Complaint, and having asserted these affirmative defenses, the Defendants, Jeffrey Short, MD, individually and Charleston Radiologists, PA, pray that the Plaintiffs' Complaint be dismissed with prejudice and that they be awarded the costs and reasonable fees associated with this matter, and such other relief as the Court may deem just and proper.

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Robert H. Hood (SC #2599)
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Attorneys for the Defendants
Jeffrey Short, MD, individually and
Charleston Radiologists, PA,

_____, 2015
Charleston, South Carolina

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, e-mailing, facsimile, or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This ____ day of _____, 2015.

Cheryl Perkins

From: John Eric Fulda
Sent: Tuesday, August 18, 2015 9:22 AM
To: Cheryl Perkins
Subject: FW: Leanna and William Loud v. Jeffrey Short, MD, individually and Charleston Radiologists, P.A.; 2013-CP-10-05902

From: Brian Johnson [mailto:brian.johnson@hoodlaw.com]
Sent: Monday, May 04, 2015 8:25 AM
To: John Eric Fulda <jfulda@attorneyssc.com>
Cc: Lou Christian <lchristian@attorneyssc.com>
Subject: RE: Leanna and William Loud v. Jeffrey Short, MD, individually and Charleston Radiologists, P.A.; 2013-CP-10-05902

Good morning John Eric

I am agreeable to withdraw the motion scheduled for tomorrow. I will let the court know that we will not need a hearing and will copy you on my correspondence.

Thanks,
Brian

From: John Eric Fulda [mailto:jfulda@attorneyssc.com]
Sent: Monday, May 04, 2015 8:00 AM
To: Brian Johnson
Cc: Lou Christian
Subject: RE: Leanna and William Loud v. Jeffrey Short, MD, individually and Charleston Radiologists, P.A.; 2013-CP-10-05902

Brian,
I hope you are doing well. I think you indicated on Friday that y'all may be withdrawing your motion to amend. I was just following up so I can adjust my schedule if that is the case. When you get a chance, please let me know.

Thanks,
John Eric

From: Brian Johnson [mailto:brian.johnson@hoodlaw.com]
Sent: Thursday, April 30, 2015 5:01 PM
To: Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey); John Eric Fulda; Don Michel
Cc: Tammy Villanueva; Lou Christian; Charles Whetstone
Subject: RE: Leanna and William Loud v. Jeffrey Short, MD, individually and Charleston Radiologists, P.A.; 2013-CP-10-05902

Lindsey

I am available on behalf of the Defendant.

John Eric Fulda

From: John Eric Fulda
Sent: Thursday, August 27, 2015 12:23 PM
To: Stephanie Chickey
Cc: Brian Johnson; Tammy Villanueva; Lou Christian; dsavage@savagelawchs.com; paralegal@savagelawchs.com; Charles Whetstone; Cheryl Perkins
Subject: RE: Loud v. Jeffrey Short, MD, et al., C/A No. 2013-CP-10-05902
Attachments: Baldwin Const Co Inc v Graham.doc

See attached. I removed the judge as a cc on this email.

John Eric

Sent from my Verizon 4G LTE Smartphone

---- Young, Roger wrote ----

Much to my pleasant surprise it looks like we will finish (or at least get this case to the jury) shortly, so we are still on for 10 am tomorrow. If for some reason the jury doesn't return a verdict today I'll bring them in the resume deliberations at 9:30

RY

From: Stephanie Chickey [mailto:stephanie.chickey@hoodlaw.com]
Sent: Monday, August 24, 2015 4:05 PM
To: Young, Roger; Young, Roger Law Clerk (Daniel Rinaldo)
Cc: Brian Johnson; Tammy Villanueva; jfulda@attorneyssc.com; lchristian@attorneyssc.com; dsavage@savagelawchs.com; paralegal@savagelawchs.com
Subject: Loud v. Jeffrey Short, MD, et al., C/A No. 2013-CP-10-05902

Stephanie Chickey
Legal Secretary
Stephanie.Chickey@hoodlaw.com



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357 S.C. 227  
Supreme Court of South Carolina.

BALDWIN CONSTRUCTION COMPANY, INC.,  
Respondent,

v.

Barry P. GRAHAM and Terry D. Graham d/b/a  
The Auto Tech and Centura Bank, Defendants,  
of whom Barry P. GRAHAM and Terry D. Graham  
d/b/a The Auto Tech, are the Petitioners.

No. 25781. | Heard Nov. 19, 2003. | Decided Feb. 2,  
2004.

**Synopsis**

**Background:** Construction company filed suit against property owners, asserting claims for foreclosure of mechanic's lien, breach of contract, and quantum meruit. Upon retaining counsel, property owners moved to permit filing of amended answer, set-offs, and counterclaims and moved for a jury trial. The Circuit Court, Horry County, John L. Breeden, J., denied motions. Property owners **appealed**. The Court of Appeals affirmed. Property owners sought writ of certiorari, which was granted.

[**Holding:**] The Supreme Court, Pleicones, J., held that **denial of motion to amend** answer was an **interlocutory** order that was not directly **appealable**.

Decision of Court of Appeals vacated.

West Headnotes (2)

**111 Appeal and Error**  
On Motions Relating to Pleadings

Trial court's **denial** of property owners' **motion to amend** answer was an **interlocutory** order that was not directly **appealable** in construction company's action that asserted claims for foreclosure of mechanic's lien, breach of contract, and quantum meruit; while statute governing appellate jurisdiction in law cases provided for review of striking out of an answer, trial court did not strike a pleading but rather

refused to allow its filing. Code 1976, § 14-3-330(2)(b).

8 Cases that cite this headnote

**121 Appeal and Error**  
Interlocutory and Intermediate Decisions

Absent some specialized statute, determining if an **interlocutory** order is immediately **appealable** depends on whether the order falls within one of the several categories of **appealable** judgments, decrees, or orders listed in statute governing appellate jurisdiction in law cases. Code 1976, § 14-3-330.

10 Cases that cite this headnote

**Attorneys and Law Firms**

**\*\*146 \*228** Kevin Michael Hughes, of N. Myrtle Beach, for Petitioners.

J. Jackson Thomas and Mark A. Bruntey, both of Thompson & Henry, P.A., of Myrtle Beach, for Respondent.

**Opinion**

Justice PLEICONES:

Baldwin Construction Company (respondent) filed suit against the Grahams (petitioners). Petitioners, after initially responding *pro se*, retained counsel and moved to be allowed to file an amended answer, set-offs, and counterclaims. In connection with this motion, counsel also moved for a jury trial. The motions were denied. The Court of Appeals affirmed this **denial** in an unpublished opinion. *Baldwin Const. Co., Inc. v. Graham*, Op. No.2002-UP-509 (S.C. Ct.App. filed July 30, 2002). Petitioners sought a writ of certiorari, which we granted. We vacate the Court of Appeals' opinion because the **interlocutory** order is not immediately **appealable**.

### FACTS

On September 2, 1998, respondent filed suit against petitioners alleging causes of action for foreclosure of a mechanic's lien, breach of contract, and quantum meruit. Petitioners wrote respondent a letter dated September 30, 1998, which was construed by respondent as a *pro se* answer to the summons and complaint. Petitioners did not appear for scheduled depositions that were to take place in December 1998. Respondent moved for sanctions pursuant to Rule 37, SCRPC. The petitioners were sanctioned in May 1999. Petitioners submitted to the taking of their depositions in June 1999, under threat of further sanctions.

Petitioners subsequently retained counsel and on October 1, 1999, their attorney moved \*\*147 to permit filing of an amended answer, set-offs, and counterclaims. In connection with this motion, counsel also moved for a jury trial. The motions were \*229 denied. In his order denying petitioners' motions, the judge stated:

The [petitioners'] motions come over a year after the filing of the Summons and Complaint, after the failure of the [petitioners] to cooperate in discovery, after their sanction for such failure, and after their depositions were taken in the case only under threat of further sanction. Moreover, the requested pleading would assert counter-claims and set-offs on multiple theories not previously at issue, and would entitle [petitioners] to trial by jury on certain of the claims when request for jury trial had not been previously made. The interjection of the new matter would require additional discovery by [respondent] including the re-deposing of the [petitioners].

Under the circumstances, I find the relief requested by [petitioners] to be unduly prejudicial to the [respondent], and that the [petitioners] simply are not entitled, as a matter of the Court's discretion to substantially change the parameters and issues involved in the lawsuit at this late date.

### ISSUE

Is an order denying a motion to amend an answer directly appealable?

### ANALYSIS

<sup>141</sup> The Court of Appeals held the order denying the motion to amend an answer was immediately appealable. We disagree.

In this case, petitioners requested a jury trial based on allegations in their *proposed amended answer*. The Court of Appeals stated that petitioners' "amended answer asserted several counterclaims and set-offs including a cause of action for breach of contract, which is an action at law and petitioners were therefore entitled to a jury trial as a matter of right pursuant to their amended answer." (emphasis supplied). The Court of Appeals stated that "in order to preserve their right to a jury trial, [petitioners were] required to immediately appeal the order denying the motion to amend their answer and request for a jury trial based on the claims asserted in this amended answer." (emphasis supplied). However, this \*230 reasoning "puts the cart before the horse." Instead of deciding whether an order denying a motion to amend an answer is appealable, the Court of Appeals focused on whether the not-yet-amended answer would ultimately lead to a jury trial.

<sup>121</sup> "Absent some specialized statute, determining if an interlocutory order is immediately appealable depends on whether the order falls within one of the several categories of appealable judgments, decrees, or orders listed in S.C.Code Ann. § 14-3-330 (1976 & Supp. [2002])." *Woodard v. Westvaco Corp.*, 319 S.C. 240, 242, 460 S.E.2d 392, 393 (1995), *overruled on other grounds Sabb v. South Carolina State University*, 350 S.C. 416, 567 S.E.2d 231 (2002). We decide, then, whether an order denying a motion to amend an answer is immediately appealable under S.C.Code Ann. § 14-3-330.

Under Section 14-3-330(2), this Court may "review upon appeal (2)[a]n order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action." The only subsection that might conceivably be implicated by the order denying petitioners' request to be allowed to file an amended answer is subsection (c). In *Jefferson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 368 S.E.2d 456 (1988), this Court held that an order denying a party's motion to file a late answer was a not directly appealable. The Court reached this conclusion because the trial judge did not rule on the substantive contents of the answer, nor did the order strike a pleading, *but refused to allow its filing*. This case is similar, as the judge did not strike a pleading but refused to allow its filing. Petitioners have not "arrived at the end of the road" and will be able to appeal

Baldwin Const. Co., Inc. v. Graham, 357 S.C. 227 (2004)

593 S.E.2d 146

the decision after the trial is finished. *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993).

We dismiss the appeal without prejudice to a right to appeal from a final judgment. The decision of the Court of Appeals is

**VACATED.**

TOAL, C.J., MOORE, WALLER and BURNETT, JJ., concur.

**All Citations**

357 S.C. 227, 593 S.E.2d 146

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End of Document

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September 4, 2015

**RECEIVED**  
SEP 04 2015  
SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk, S.C. Court of Appeals  
1220 Senate Street  
Columbia, SC 29211

RE: Leanna Louse v. Jeffrey Short, M.D.  
Appellate Case No.: 2015-001853

Dear Ms. Kitchings:

Enclosed for filing is the original and seven (7) copies of the Respondents' Memorandum Regarding Appealability in the above matter. Also, enclosed is the original and seven (7) copies of the Affidavit of John Eric Fulda to be filed in support of the Memorandum. We would greatly appreciate your filing the same and returning to us the file-stamped extra copy. As shown by the Certificate of Service, these documents are being served via email as well as by U.S. Mail on counsel for Appellants.

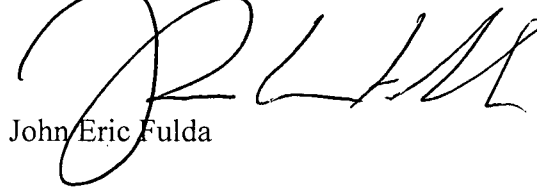
Also, please note for the docket that Appellants omitted from the Notice of Appeal counsel of record for Respondents, Cheryl F. Perkins whose email address is [cperkins@attorneyssc.com](mailto:cperkins@attorneyssc.com).

We greatly appreciate your consideration in this matter.

The Honorable Jenny Abbott Kitchings  
Page Two  
September 4, 2015

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read 'JEF', written over the printed name 'John Eric Fulda'.

John Eric Fulda

JEF:ssk

Enclosures

cc: Mary Agnes Hood Craig, Esquire  
Deborah Harrison Sheffield, Esquire  
Brian Edward Johnson, Esquire  
Caroline Rinehart Niland, Esquire