

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

FEB 01 2016

SC Court of Appeals

APPEAL FROM FAIRFIELD COUNTY
Roger L. Couch, Circuit Court Judge

Case No. 2013-CP-20-0012

Philip Ethier and Jeanne Ethier,

Appellants,

v.

Fairfield Memorial Hospital; Guy R. Bibeau, M.D.;
Tuomey Medical Professionals, Inc.; and
Pee Dee Emergency Medical Associates, P.A.,

Defendants

Of whom, Guy R. Bibeau, M.D. is the

Respondent.

**RESPONDENT'S RETURN TO APPELLANTS'
MOTION TO EXCEED PAGE LIMITATIONS**

The Appellants have filed a motion pursuant to Rule 208(b)(5), SCACR, to allow them to exceed the fifty-page limitation for their initial brief. The Respondent Guy R. Bibeau, M.D. opposes that motion.

Rule 208(b)(5), SCACR, establishes a fifty-page limitation for all principal briefs except in death penalty cases. The rule does provide that "[o]n motion, the appellate court may grant a party permission to exceed those limitations." *See*, Rule 208(b)(5), SCACR. Neither the rule nor any authority from the appellate courts have set forth the applicable standard that must be satisfied in order to exceed the page limitation.

In their motion, the Appellants request to exceed the fifty-page limitation by 29 pages "in order to adequately explain the trial testimony and evidence, as well as the facts, law and arguments related to the post-trial issues." However, that explanation is conclusory and fails to specify any valid basis for allowing a 79-page brief in this case. In actuality, the Appellants' initial brief contains substantial information that is immaterial as well as redundant.

For example, the Court will notice that the Appellants include an eleven-page Statement of Facts and then includes another "Facts" section for *each* of the four issues on appeal. The initial Statement of Facts section is entirely unnecessary because it addresses the trial testimony; yet, *none of the issues on appeal go to the factual merits of the case itself including the medicine involved or the expert opinions offered*. Instead, the Appellants' first issue pertains to whether Mrs. Ethier is entitled to a verdict on her loss of consortium claim despite the jury's finding that Mr. Ethier was seventy percent negligent. The Appellants are not challenging the finding of seventy percent fault on the part of Mr. Ethier. Thus,

the Appellants have presented purely a legal question that is not dependent on any factual background or discussion.

Moreover, the three other issues on appeal address alleged juror misconduct by one single juror during voir dire, the trial, and deliberations. None of these issues are complex, either factually or legally, and do not warrant a 79-page brief. Certainly, there is no need for an eleven-page Statement of Facts, followed by additional "Facts" sections totaling another fifteen pages or so. The Appellants' legal arguments on these issues could have been easily presented within the 50-page limit, and they have presented no reasonable explanation as why that is not the case. Under the circumstances, Dr. Bibeau submits that the Appellants should not be allowed to exceed the fifty-page limitation in their initial brief.

For the foregoing reasons, the Respondent Guy R. Bibeau, M.D. respectfully requests that the Court deny the Appellants' motion to exceed the fifty-page limitation for their initial brief.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

DAVID C. HOLLER
G. MURRELL SMITH, JR.
LEE ERTER WILSON JAMES
HOLLER & SMITH, LLC
Post Office Box 580
Sumter, South Carolina 29151-0580
(803) 778-2471

STANLEY L. MYERS
MOORE TAYLOR LAW FIRM, P.A.
Post Office Box 5709
West Columbia, South Carolina 29171
(803) 796-9160

Counsel for Respondent Guy R. Bibeau, M.D.

Columbia, South Carolina

February 1, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM FAIRFIELD COUNTY FEB 01 2016
Roger L. Couch, Circuit Court Judge

SC Court of Appeals

Case No. 2013-CP-20-0012

Philip Ethier and Jeanne Ethier , Appellants,

v.

Fairfield Memorial Hospital; Guy R. Bibeau, M.D.;
Tuomey Medical Professionals, Inc.; and
Pee Dee Emergency Medical Associates, P.A., Defendants

Of whom, Guy R. Bibeau, M.D. is the Respondent.

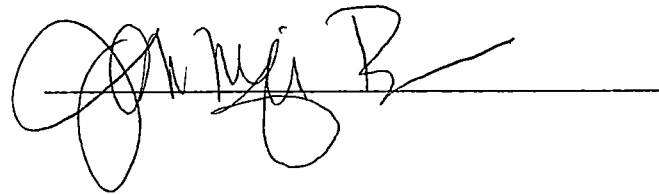
CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., counsel for the Respondent, does hereby certify that service of **Respondent's Return to Appellants' Motion to Exceed Page Limitations** in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 1st day of February 2016:

David Proffitt, Esquire
Ronald B. Cox, Esquire
Proffitt & Cox, LLP
Wildewood Business Center
140 Wildewood Park Drive - Suite A
Columbia, South Carolina 29223

David C. Holler, Esquire
G. Murrell Smith, Jr., Esquire
Lee Erter Wilson James Holler & Smith, LLC
Post Office Box 580
Sumter, South Carolina 29151-0580

Stanley L. Myers, Esquire
Moore Taylor Law Firm, P.A.
Post Office Box 5709
West Columbia, South Carolina 29171-5709

A handwritten signature in black ink, appearing to read "Stanley L. Myers", is written over a horizontal line. The signature is stylized and cursive.

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

RECEIVED

FEB 01 2016

SC Court of Appeals

Daniel C. Plyler
Joel S. Hughes
David A. DeMasters
Steven R. Spreuwers
Todd R. Flippin

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield
Michael B. Wren

1611 Devonshire Drive, Second Floor
Post Office Box 8568
Columbia, South Carolina 29202-8568
Telephone: (803) 806-8222
Facsimile: (803) 806-8855
www.dml-law.com

*Also Admitted In North Carolina
†Certified Mediator

February 1, 2016

Of Counsel
Kenneth P. Woodington

Writer's Email: alindemann@dml-law.com

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: Philip Ethier and Jeanne Ethier v. Guy R. Bibeau, M.D.
Appellate Case Number: 20158-001964
Civil Action Number: 2013-CP-20-0012
Claim Number: CB127439M
Our File Number: 22.9679

Dear Ms. Kitchings:

Please find enclosed for filing the original and one copy of **Respondent's Return to Appellants' Motion to Exceed Page Limitations** in the above referenced matter. Please file the original and return a clocked-in copy to me by way of my courier.

By copy of this letter, I am serving a copy on all counsel of record.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

The Honorable Jenny Abbott Kitchings
February 1, 2016
Page Two

cc: David Proffitt, Esquire (*w/ Enclosure*)
Ronald B. Cox, Esquire (*w/ Enclosure*)
David C. Holler, Esquire (*w/ Enclosure*)
G. Murrell Smith, Jr., Esquire (*w/ Enclosure*)
Stanley L. Myers, Esquire (*w/ Enclosure*)