

EXHIBIT C

3/9/15

FILE COPY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Greenville Pharmaceutical Research, Inc.,)
)
 Plaintiff,)
)
 vs.)
)
 Parham & Smith, LLC and Gerald H. Sokol,)
 MD,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

NOTICE OF MOTION AND MOTION FOR
 RECONSIDERATION

C.A. No. 2014-CP-23-5776

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMMER
 APR 9 AM 11 15
 2015

TO: THE HONORABLE J. CORDELL MADDOX, JR., T. DAVID RHENEY, ESQUIRE, ATTORNEY FOR DEFENDANT GERALD H. SOKOL, M.D., AND M. DAWES COOKE, ESQUIRE, ATTORNEY FOR DEFENDANT PARHAM & SMITH, LLC:

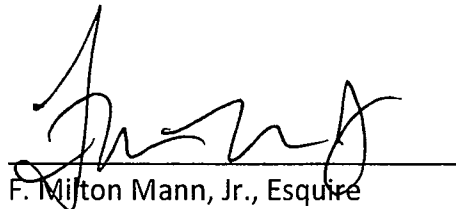
YOU WILL PLEASE TAKE NOTICE that on the _____ day of _____, 2015, at _____ .m. or as soon thereafter as the matter can be heard, the Plaintiff will move before the Honorable J. Cordell Maddox, Jr., for an Order granting a rehearing as to the Form 4 Dismissal, issued by the Honorable J. Cordell Maddox, Jr., signed on February 12, 2015, clocked by the Greenville County Clerk of Court on February 19, 2015, and received by the Plaintiff's attorney by U.S. Mail on February 25, 2015. That such motion shall be based upon federal case law, statutory case law in the State of South Carolina including, but not limited to, South Carolina Rules of Civil Procedure 52(b) and 59(e) and shall be made upon the following grounds:

1. Given that The Court raised the issue of absolute immunity, sua sponte, Plaintiff should have the opportunity to brief and provide arguments regarding this issue

before a final Order is issued;

2. The issue of absolute immunity was not properly before the Court, as it is an affirmative defense which must be plead by the Defendant and had not been raised in this matter to date given that an Answer had not been filed; and
3. If the Court ruled that there was a deficiency in Plaintiff's pled fraud cause of action, Plaintiff should be allowed an opportunity to amend given that no amendment has occurred in this matter.

And, as it may appear at the hearing on such motion and any supporting memorandum.



F. Milton Mann, Jr., Esquire
Attorney for Plaintiff
151 Harold Fleming Court
Spartanburg, SC 29303
864-680-5079

Greenville, SC
March 9, 2015

FILE COPY

3/9/15

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Greenville Pharmaceutical Research, Inc.,)
)
 Plaintiff,)
)
 vs.)
)
 Parham & Smith, LLC and Gerald H.)
 Sokol, M.D.,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

Case No. 2014-CP-23-05776

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMMER
 2015 MAR 9 AM 11 16

CERTIFICATE OF SERVICE

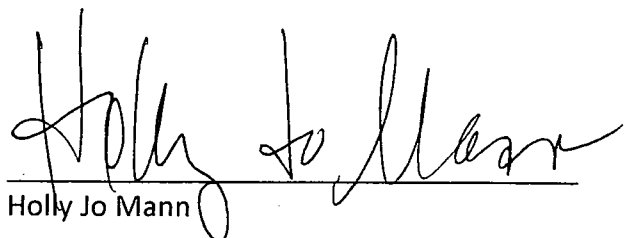
I, Holly Jo Mann, law clerk to F. Milton Mann, Jr., do hereby certify that I have served a copy of the **Notice of Motion and Motion for Reconsideration** upon the below listed, on this 9th day of March, 2015:

By hand-delivery to:

T. David Rheney, Esquire
 Gallivan White & Boyd, PA
 PO Box 10589
 Greenville, South Carolina 29603
 DRheney@GWBlawfirm.com
 Attorney for Defendant Sokol

By email and U.S. Mail to:

M. Dawes Cook, Jr., Esquire
 Alissa D. Fleming, Esquire
 Barnwell Whaley Patterson & Helms, LLC
 PO Drawer H
 Charleston, SC 29402-0197
 Attorneys for Defendant Parham & Smith, LLC



 Holly Jo Mann

EXHIBIT D

F. MILTON MANN, JR.

ATTORNEY AT LAW
LICENSED IN SC, GA & FL

2/25/15
FILE COPY

February 25, 2015

Ms. Caroline Hiskell
32 Duxbury Lane
Easley, South Carolina 29642

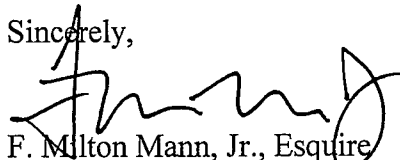
Re: Greenville Pharmaceutical Research, Inc. v. Parham & Smith
and Gerald H. Sokol, M.D., - Case No. 2014-CP-23-05776

Dear Ms. Hiskell:

On February 12, 2015, a hearing on the above-referenced case was heard before the Honorable J. Cordell Maddox, Jr., in Greenville County. My records indicate that you were the court reporter for this case.

I request that you provide me with a transcript of the proceedings. Please transcribe the entire record. I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR.

Sincerely,



F. Milton Mann, Jr., Esquire
SC Bar #68250

cc: T. David Rheney, Esquire
M. Dawes Cooke, Esquire

9

EXHIBIT E

1 STATE OF SOUTH CAROLINA : COURT OF COMMON PLEAS
2 : 2014-CP-23-5776

3 Greenville :
4 Pharmaceutical Rsearch, : TRANSCRIPT RECORD
5 Incorporated :

5 vs :

6 Parham & Smith, LLC :
7 and Gerald H. Sokol, MD :

8 -----
February 12, 2015
Greenville, South Carolina

9 -----

10 BEFORE: The Honorable Cornell Maddox, Judge

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

12

13 F. Milton Mann, Esquire
14 Attorney for the Plaintiff

15 T. David Rheney, Esquire
16 Attorney for the Defendant

16

17

18

19

20

21 Caroline Hiskell
Thirteenth Circuit Court Reporter

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

(No Witnesses or Exhibits admitted at this hearing.)

PLEASE NOTE: (ph)=phonetically spelled

Greenville Pharmaceutical vs. Parham & Smith

P R O C E E D I N G S

1
2 MR. RHENEY: Good morning, Judge, David
3 Rheney for the defendant, Dr. Gerald Sokol in his motion
4 to dismiss a lawsuit filed by Greenville Pharmaceutical.
5 Research against him.

6 This is one that requires a little bit of
7 explanation with regards to background. This lawsuit
8 arises from a previous medical malpractice lawsuit in
9 which a Mr. Bruce participated in a study of chronic
10 obstructive pulmonary disease. And I think I've got the
11 dates right, it's not crucial that they be correct, but in
12 or about January of 2010 an xray or some type of scan was
13 taken of his lung and that xray showed a tumor, small
14 tumor of 1. something centimeters.

15 The allegations of the underlying case is
16 that was not reported to him, he was not tested with
17 further scans. And along he goes until August of 2010
18 when another scan was done of his chest when the tumor had
19 grown to 2, 3 and a half or so centimeters.

20 At that point he was told about it. He was
21 sent for an additional scan and by then the tumor was
22 inoperable and ultimately he died of lung cancer.

23 He retained Michael Parham to represent him
24 in a lawsuit against the various entities, a Dr. Desai at
25 the North Hills Medical Center, Greenville Pharmaceutical

Greenville Pharmaceutical vs. Parham & Smith

1 Research And added to that was a company was a company
2 Alliance and I don't know what it is but there's some
3 relationship between Alliance and Greenville
4 Pharmaceutical Research, but Alliance in that case
5 disputed that it was a proper entity to be sued. It
6 claimed it was not the same as Greenville Pharmaceutical
7 Research.

8 Mr. Parham retained a Dr. Sokol to offer an
9 opinion in that case, multiple opinions.

10 THE COURT: For the presuit affidavits?

11 MR. RHENEY: Yes, sir.

12 THE COURT: And you have in the file part of
13 the complaint, the affidavit, it's also part of my
14 memorandum in support of this motion. Dr. Sokol was
15 contacted by a nurse at the request of Mike Parham and he
16 was asked to provide opinions regarding several things.
17 One was the probably of survival had the tumor been
18 reported when it was first seen on a scan and various
19 other things.

20 Dr. Sokol offered the opinions that there had
21 been a breach of the standard of care by Greenville
22 Pharmaceutical Research, Dr. Desai and North Hills
23 Medical.

24 THE COURT: And he wasn't connected in any
25 way. He was asked to offer an opinion pursuant to the

Greenville Pharmaceutical vs. Parham & Smith

1 statute?

2 MR. RHENEY: Yes, sir. So he did sign an
3 affidavit saying that there had been a breach of standard
4 of care, that he would have had a better than 50 percent
5 chance of survival and be based on what he said was record
6 provided to him by Mr. Parham.

7 Ultimately Alliance was dropped from that
8 lawsuit but ultimately it was settled for, and I have
9 attached to my memorandum, a relief of \$300 and something
10 thousand dollars.

11 That was the end of that case. Sometime in
12 2014, though, Alliance sued Dr. Sokol and Mike Parham
13 personally for various causes of action. As to Dr. Sokol,
14 it alleges that he committed fraud and in selling his
15 signature falsely and also it alleged somewhat more less
16 clearly to me a negligence claim based upon the statute
17 that he had violated the statute requiring the presuit
18 affidavit.

19 We moved to dismiss that case. That's in
20 Pickens County and as to Dr. Sokol that case was
21 dismissed. A couple or three months later, Greenville
22 Pharmaceutical Research sued Dr. Sokol here in Greenville
23 alleging purely a cause of action for fraud against him,
24 alleging generally speaking that he committed fraud by
25 submitting this affidavit providing his opinion that

Greenville Pharmaceutical vs. Parham & Smith

1 Greenville Pharmaceutical Research, Dr. Desai and North
2 Hills Medical had breached a standard of care to Mr. Bruce
3 and his wife and we have now moved to dismiss that.

4 The cause of action, Your Honor, is fraud.
5 That is the only cause of action.

6 THE COURT: Because of the letter?

7 MR. RHENEY: Because of the affidavit, yes.
8 He has also sued the Parham Law Firm. In Pickens he has
9 sued Mr. Parham personally and in Greenville, Greenville
10 Pharmaceutical Research has sued Parham, Smith Law Firm.
11 The cause of action, Your Honor, is fraud and we have
12 moved to dismiss because the plaintiff has failed to state
13 the elements of fraud, elements sufficient to constitute a
14 cause of action for fraud and basically our position, Your
15 Honor is, Number 1, they haven't stated the elements of
16 fraud because the cause of action for fraud has to be base
17 upon the misrepresentation of a fact.

18 In this case, they're basing it on an opinion
19 provided by a professional expert or professional
20 practitioner. Dr. Sokol is a specialist in cancer. He
21 practices clinically in Tampa and also serves as a medical
22 expert from time to time.

23 So a cause of action fraud can't be based on
24 opinion and, Your Honor, I apologize I have not attached
25 to that, and I only have one copy, a case of Winberg

Greenville Pharmaceutical vs. Parham & Smith

1 versus Insurance Company of North America.

2 THE COURT: I am actually aware of that.

3 MR. RHENEY: So a cause of action has to be
4 based upon a fact existing at the time the representation
5 is made and that disputer knew to be false. Here he is
6 offered an opinion. A cause of action for fraud can't be
7 based opinion, can't be based on something off into the
8 future.

9 The second thing is the misrepresentation has
10 to be made directly from the speaker to the (inaudible)
11 who is injured. Dr. Sokol signed an affidavit and
12 provided it to a lady by the name of Ellen Ryback who was
13 the nurse who Mr. Parham got in touch it and it was
14 provided to Mr. Parham to be used in the underlying tort
15 claim. There wasn't even a representation much less a
16 misrepresentation by Dr. Sokol to Greenville
17 Pharmaceutical Research. There was no contact between
18 them. Greenville Pharmaceutical Research didn't retain
19 him. There's no connection between them at all so there
20 is no representation wrongly or rightly from Sokol to
21 Greenville Pharmaceutical Research.

22 Even if it's wrong, Your Honor, even if his
23 opinion was ultimately wrong, that's not improper in South
24 Carolina. The facts could have changed and ultimately the
25 opinion could have just been wrong. That's not improper

Greenville Pharmaceutical vs. Parham & Smith

1 in South Carolina.

2 The next thing, Your Honor, is the plaintiff
3 in this case Greenville Pharmaceutical Research, to
4 establish cause of action for fraud, you have to rely on a
5 misrepresentation to your detriment. Greenville
6 Pharmaceutical Research didn't rely on anything Dr. Sokol
7 said. In fact, they fought it every step of the way and
8 said, he's wrong, he's wrong, he's wrong, before they paid
9 \$300,000 to settle the case.

10 So there can be no reliance in this
11 situation. There was no representation from him to them
12 upon which they relied for anything.

13 And finally, Your Honor, Rule 9 and case law
14 requires that the Rule 9(b), "circumstances constitution
15 the fraud or mistake shall be stated with particularity."
16 There is no statement of particularity. They just said
17 fraud, fraud, fraud without saying -- they take issue with
18 his opinion and that's fine, but they have yet to state
19 with any particularity what the fraud was. It's just an
20 opinion that was used in a case.

21 On that basis, Dr. Sokol moves for the case
22 to be dismissed.

23 THE COURT: I see these as I walk in here but
24 there's also an allegation in there that he sent a letter
25 to someone who was operating a drug test and in that

Greenville Pharmaceutical vs. Parham & Smith

1 letter he said this guy's cancer was caused by the drug
2 test and it turns out he wasn't in the drug test. Am I
3 missing that?

4 MR. MANN: That allegation relates to Parham
5 Smith. It does not relate to Dr. Sokol. There's some
6 interconnection here.

7 THE COURT: That was just the last
8 allegation of the complaint.

9 Let me get this straight, this doctor is
10 asked by a lawyer to issue an opinion in an affidavit that
11 comports with the statute that's part of the tort reform
12 requiring a presuit affidavit and the defendant's
13 allegation is that his opinion was erroneous and that he
14 would have said anything if Mike Parham asked him to say
15 it?

16 MR. MANN: The affidavit was provided to him
17 that the medical records that he was provided to base his
18 opinion on was incomplete, that he signed the affidavit
19 without question. And furthermore in the complaint it
20 says when it ultimately came time to take his deposition
21 he threw up his hands and said I'm not going to make any
22 standard of care deviation opinions.

23 The whole purpose of the statute is to
24 require a physician to step up and state with
25 particularity what a physician did wrong. But for that

Greenville Pharmaceutical vs. Parham & Smith

1 affidavit, Greenville Pharmaceutical Research would have
2 never been drug into court, would never have been subject
3 to the litigation that they went through.

4 The letter that you referenced, Your Honor,
5 in the complaint it states that's the reason a settle
6 occurred. That was the knife being held to their throat
7 as to why it settled. It wasn't settled on the basis that
8 my client felt anything was every done wrong. It was
9 settled on the basis of a business decision.

10 I would like to incorporate two things if I
11 could, the memorandum that I provided to the Court. I'd
12 like to incorporate the complaint, of course, which is the
13 subject of this discussion and in the chance that this
14 complaint is somehow dismissed, I would like to orally ask
15 the opportunity to amend. I do think there's a legitimate
16 cause of action here. I think it has been articulated
17 within the complaint, and I think that the long and short
18 of it is that it has clearly and repeatedly been stated as
19 to the objections to Dr. Sokol's affidavit.

20 THE COURT: I'd like to tell you that I don't
21 think much of this. I know you're a good lawyer but what
22 I'm concerned about is it's very difficult, as you know,
23 to get a doctor -- let's assume -- for any reason to file
24 one of these affidavits because they're immediately
25 ostracized.

Greenville Pharmaceutical vs. Parham & Smith

1 The statute requires you to get one and thank
2 God I got out of that practice before that statute came
3 into place because I have my own opinions of it but all he
4 did was give his opinion that the threshold for filing the
5 lawsuit was there and if the opinion was wrong, then it
6 was wrong.

7 MR. MANN: May I briefly respond.

8 THE COURT: Sure, and I shouldn't have
9 started off by saying I don't think much of this.

10 MR. MANN: And I understand that, but my
11 background is I spent five years in Florida doing nothing
12 but with a personal injury law firm. They were one of ten
13 in Florida that fought against the tobacco industry.

14 THE COURT: It's like a killing kind of
15 affect to be honest with you.

16 MR. MANN: I think also, Your Honor, it's a
17 policing kind of affect and the complaint clearly states
18 an opinion was not offered. Credentials were sold.

19 THE COURT: By that you mean sold for money?

20 MR. MANN: That's right. In other words, he
21 was being paid for a signature and he gladly provided it
22 upon an affidavit that was presented to him that he just
23 ripped the signature off on.

24 We're not even saying he had an opinion. We
25 don't think he had an opinion.

Greenville Pharmaceutical vs. Parham & Smith

1 THE COURT: The experts in the defendants
2 case get paid or did they come in and do it for free?

3 MR. MANN: Of course. Judge, I agree with
4 you totally but what I'm saying is in this case he got
5 paid for providing a signature to an affidavit that he
6 didn't care whether it was truthful or not and that's what
7 the complaint said.

8 THE COURT: I guess what I'm saying is giving
9 you the benefit of the doubt other than the fact that
10 there was a disagreement with it, what proof do you have
11 at this point that it was done specifically for
12 pecuniary interest and that what you're saying is he
13 didn't read anything and Mike Parham, rest his soul, could
14 have put down on there anything and he would have signed
15 it if you paid him money?

16 MR. MANN: That's exactly what the complaint
17 said. I took his deposition over two days and he refused
18 to answer any questions about his payments, his prior
19 cases, things of that nature. He ran from every basis of
20 inquiry into his prejudices. He testified that he only
21 testified for the benefits of plaintiffs, period, case
22 closed.

23 We may be outside of the four corners of the
24 complaint, but I think what I'm saying is within the gist
25 of the four corners of the complaint, and that is the man

Greenville Pharmaceutical vs. Parham & Smith

1 didn't care what his affidavit said. He didn't give an
2 opinion, Your Honor. He sold an affidavit to allow
3 Greenville Pharmaceuticals to be brought into court.

4 THE COURT: And they settled.

5 MR. MANN: They settled because as you quoted
6 that letter earlier and as the complaint states, they had
7 a knife held to their throat by Mr. Parham, God rest his
8 soul. He was intentionally putting pressure on Greenville
9 Pharmaceutical Research through very important third-party
10 businesses to affect the settlement. And that's the basis
11 of that aspect, which quite frankly they didn't file a
12 motion to dismiss on that because it's stated in the cause
13 of action.

14 He had a knife to their throat and Greenville
15 Pharmaceutical had to settle. And the reason they had to
16 settle because this individual, Dr. Sokol, simply threw
17 ink to paper irrespective of what the facts and what the
18 truth was.

19 He didn't provide an opinion, Your Honor. I
20 never ever alleged that he provided an opinion or
21 testified for day one. He was a paid for witness and
22 that's all he was, Your Honor.

23 THE COURT: And I really don't mean this to
24 be disrespectful as it sounds, I was lucky enough to be
25 involved with more veteran attorneys than me in medical

Greenville Pharmaceutical vs. Parham & Smith

1 malpractice and they were all paid for witnesses and, you
2 know.

3 MR. MANN: And, Judge, if I may say my
4 complaint is what he was paid for. He wasn't paid for an
5 opinion, he was paid for a signature on an affidavit.

6 THE COURT: This is what I'm going to do, I'm
7 going to grant your motion. You need time to amend to do
8 what?

9 MR. MANN: Your Honor, if you tell me where
10 I'm deficient then I will -- what's the basis for the
11 complaint being dismissed?

12 MR. RHENEY: Just for the record, Dr. Sokol
13 opposes the motion to amend. We've been down this road
14 before.

15 THE COURT: What he's telling me is -- I
16 don't think there's a cause of action here. I think if I
17 don't dismiss this, then ever doctor in the world that
18 signs -- and it could happen to the defense just the same
19 way -- could be subject to -- they are already under a
20 tremendous amount of pressure not to get involved in
21 these, but the remedy here is to go to the medical board
22 and say, this guy is not really doing what he's supposed
23 to be doing, he's a trained hire gun.

24 Look, I knew hired guns. They were the worse
25 things in the world because you could get them to say

Greenville Pharmaceutical vs. Parham & Smith

1 anything and as the late great Carrie Doyle, rest his
2 soul, used to tell you don't ever hire those people. If
3 he's that, then I think you all need to go to the medical
4 board.

5 I'm not sure there's anything you can do in
6 this case against Dr. Sokol.

7 MR. MANN: Judge, I don't know what grounds
8 other than what you just said I'm not pleading the cause
9 of action.

10 THE COURT: I ~~think~~ under the theory of
11 summary of judgment -- I think just looking at the case
12 and the facts and what I have in front of me, there's not
13 enough there to deny summary judgment.

14 MR. MANN: Here's what I would ask, Your
15 Honor. What I would ask that the order dismissing this
16 cause of action be without prejudice and let me talk to my
17 client and if I feel that an amendment can be made, I will
18 file a motion and that will give Mr. Rheney time to
19 respond to whatever I bring that.

20 THE COURT: I'll do that but you need to give
21 your clients this warning that unless something really
22 comes flying out of the sky, they would be subject to the
23 rules of civil procedure and the pecuniary nature of some
24 of those rules. I know you got pressure and this is not
25 towards you -- I hate that you have to get pre-lawsuit

Greenville Pharmaceutical vs. Parham & Smith

1 affidavits. I mean that was just absurd. I was in the
2 legislature and I know exactly where that came from, I
3 disagreed with it but that was just me. I was a democrat
4 what the heck, but --

5 MR. RHENEY: Your Honor, you were just asked
6 dismissing this without prejudice but fraud is the only
7 cause of action but it should be dismissed with prejudice
8 because there was no fraud.

9 THE COURT: I'm going to grant your motion
10 for summary judgment and if you want to refile something,
11 you can. I can't leave it open. If y'all go back and
12 y'all discover another way around the bush, than you can.

13 MR. RHENEY: Your Honor, I just want to put
14 this on the record that we oppose them filing a new
15 complaint. They can assert everything they need to assert
16 in this complaint and this complaint is being dismissed.
17 If they were going to assert something else, they need to
18 do it here and they don't get another bite at the apple.

19 THE COURT: I can't say to them in the future
20 that they can't file something. I understand what you're
21 doing and another judge may do that, but I guess that's my
22 concern about your position. I'm granting your motion for
23 summary judgment.

24 ---END OF TRANSCRIPT RECORD---

25

Greenville Pharmaceutical vs. Parham & Smith

1
2 I, the undersigned Caroline Hiskell, Official
3 Court Reporter for the Thirteenth Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 proceedings had and evidence introduced in the trial of
7 the captioned case, relative to appeal, in the Court of
8 Common Pleas of Greenville County, South Carolina on this
9 12th February of 2015.

10 I do further certify that I am neither of kin,
11 counsel, nor interest to any party hereto.

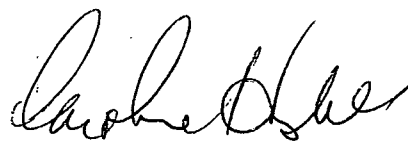
12
13
14 
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT F

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

FILED-CLERK OF COURT 13TH JUDICIAL CIRCUIT

GPR

GREENVILLE CO. S.C. CASE NO.: 2014-CP-23-05776
PAUL B. WILSON

ALLIANCE BIOMEDICAL RESEARCH, LLC)

Plaintiffs,)

vs.)

PARHAM & SMITH, LLC AND GERALD H. SOKOL, M.D.)

Defendants.)

MOTION AND ORDER INFORMATION
FORM 3 02 FORM AND COVERSHEET

FILE COPY

Plaintiffs' Attorney: F. Milton Mann, Jr., Bar No. 68250 Address: 151 Harold Fleming Court, Spartanburg 29303 Phone: 864/208-0359 Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Jeffrey M. Bogdan., Esq., Bar No. _____ Address: PO Drawer H, Charleston, SC 29402-0197 Phone: - _____ Fax _____ E-mail: _____ Other: _____ T. David Rheney, Esq. PO Box 10589 Greenville, SC 29603
---	---

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

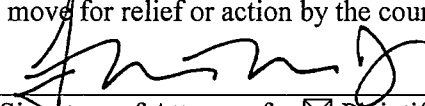
SECTION I: Hearing Information

Nature of Motion: Amended Reconsideration
 Estimated Time Needed: 30 Minutes Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant Date submitted 9/9/15

SECTION III: Motion Fee

PAID - AMOUNT: \$ _____
 EXEMPT: (check reason)

Rule to Show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRCP)
 Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION

<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
--	-------------------------------------

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

MOTION FEE COLLECTED: \$ _____

CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Greenville Pharmaceutical Research, Inc.,)
)
 Plaintiff,)
)
 vs.)
)
 Parham & Smith, LLC and Gerald H. Sokol,)
 MD,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

FILE COPY

AMENDED NOTICE OF MOTION AND
 AMENDED MOTION FOR
 RECONSIDERATION

C.A. No. 2014-CP-23-5776

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENHUISER
 2015 SEP 14 PM 3 02

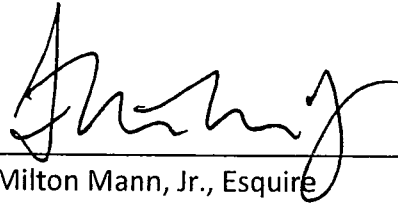
TO: THE HONORABLE J. CORDELL MADDOX, JR., T. DAVID RHENEY, ESQUIRE, ATTORNEY FOR DEFENDANT GERALD H. SOKOL, M.D., AND JEFFREY M. BOGDAN, ESQUIRE, ATTORNEY FOR DEFENDANT PARHAM & SMITH, LLC:

YOU WILL PLEASE TAKE NOTICE that on the _____ day of _____, 2015, at _____ .m. or as soon thereafter as the matter can be heard, the Plaintiff will move before the Honorable J. Cordell Maddox, Jr., for an Order granting a rehearing as to the Form 4 Dismissal, issued by the Honorable J. Cordell Maddox, Jr., signed on February 12, 2015, clocked by the Greenville County Clerk of Court on February 19, 2015, and received by the Plaintiff's attorney by U.S. Mail on February 25, 2015. On August 8, 2015, Plaintiff received an email from Defendant Parham & Smith, LLC's counsel stating that the Greenville County Clerk's Office informed him that this case had been dismissed in its entirety. However, please be informed that the hearing on February 12, 2015, only concerned the First Cause of Action (Fraud as to Sokol) of Plaintiff's Complaint filed on October 20, 2014, as related to Defendant Sokol and as evidenced by the hearing transcript, attached hereto and incorporated herein as

Exhibit A. As to Defendant Parham & Smith, LLC, there was no issue before the Court and it appears that the Clerk's office may be interpreting the Judge's Order incorrectly. In an abundance of caution, we are hereby amending our Motion for Reconsideration to include this issue for the Court's consideration. That such motion shall be based upon federal case law, statutory case law in the State of South Carolina including, but not limited to, South Carolina Rules of Civil Procedure 52(b) and 59(e) and shall be made upon the following grounds:

1. Given that The Court raised the issue of absolute immunity, sua sponte, Plaintiff should have the opportunity to brief and provide arguments regarding this issue before a final Order is issued;
2. The issue of absolute immunity was not properly before the Court, as it is an affirmative defense which must be plead by Defendant Sokol and had not been raised in this matter to date given that an Answer had not been filed;
3. If the Court ruled that there was a deficiency in Plaintiff's pled fraud cause of action, Plaintiff should be allowed an opportunity to amend given that no amendment has occurred in this matter; and
4. On or about August 10, 2015, the Greenville County Clerk of Court advised counsel for Defendant Parham & Smith, LLC this matter had been dismissed in its entirety, as opposed to only dismissing the case against Defendant Sokol, as was believed to be the case.

And, as it may appear at the hearing on such motion and any supporting memorandum.



F. Milton Mann, Jr., Esquire
Attorney for Plaintiff
151 Harold Fleming Court
Spartanburg, SC 29303
864-680-5079

Greenville, SC
September 9, 2015

1 STATE OF SOUTH CAROLINA : COURT OF COMMON PLEAS
 2 : 2014-CP-23-5776

3 Greenville :
 4 Pharmaceutical Rsearch, : TRANSCRIPT RECORD
 4 Incorporated :

5 vs :

6 Parham & Smith, LLC :
 7 and Gerald H. Sokol, MD :

February 12, 2015
 Greenville, South Carolina

10 BEFORE: The Honorable Cornell Maddox, Judge

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

13 F. Milton Mann, Esquire
 14 Attorney for the Plaintiff

15 T. David Rheney, Esquire
 16 Attorney for the Defendant

20 Caroline Hiskell
 21 Thirteenth Circuit Court Reporter

22
 23
 24
 25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

(No Witnesses or Exhibits admitted at this hearing.)

PLEASE NOTE: (ph)=phonetically spelled

Greenville Pharmaceutical vs. Parham & Smith

P R O C E E D I N G S

1
2 MR. RHENEY: Good morning, Judge, David
3 Rheney for the defendant, Dr. Gerald Sokol in his motion
4 to dismiss a lawsuit filed by Greenville Pharmaceutical
5 Research against him.

6 This is one that requires a little bit of
7 explanation with regards to background. This lawsuit
8 arises from a previous medical malpractice lawsuit in
9 which a Mr. Bruce participated in a study of chronic
10 obstructive pulmonary disease. And I think I've got the
11 dates right, it's not crucial that they be correct, but in
12 or about January of 2010 an xray or some type of scan was
13 taken of his lung and that xray showed a tumor, small
14 tumor of 1. something centimeters.

15 The allegations of the underlying case is
16 that was not reported to him, he was not tested with
17 further scans. And along he goes until August of 2010
18 when another scan was done of his chest when the tumor had
19 grown to 2, 3 and a half or so centimeters.

20 At that point he was told about it. He was
21 sent for an additional scan and by then the tumor was
22 inoperable and ultimately he died of lung cancer.

23 He retained Michael Parham to represent him
24 in a lawsuit against the various entities, a Dr. Desai at
25 the North Hills Medical Center, Greenville Pharmaceutical

Greenville Pharmaceutical vs. Parham & Smith

1 Research And added to that was a company was a company
2 Alliance and I don't know what it is but there's some
3 relationship between Alliance and Greenville
4 Pharmaceutical Research, but Alliance in that case
5 disputed that it was a proper entity to be sued. It
6 claimed it was not the same as Greenville Pharmaceutical
7 Research.

8 Mr. Parham retained a Dr. Sokol to offer an
9 opinion in that case, multiple opinions.

10 THE COURT: For the presuit affidavits?

11 MR. RHENEY: Yes, sir.

12 THE COURT: And you have in the file part of
13 the complaint, the affidavit, it's also part of my
14 memorandum in support of this motion. Dr. Sokol was
15 contacted by a nurse at the request of Mike Parham and he
16 was asked to provide opinions regarding several things.
17 One was the probably of survival had the tumor been
18 reported when it was first seen on a scan and various
19 other things.

20 Dr. Sokol offered the opinions that there had
21 been a breach of the standard of care by Greenville
22 Pharmaceutical Research, Dr. Desai and North Hills
23 Medical.

24 THE COURT: And he wasn't connected in any
25 way. He was asked to offer an opinion pursuant to the

Greenville Pharmaceutical vs. Parham & Smith

1 statute?

2 MR. RHENEY: Yes, sir. So he did sign an
3 affidavit saying that there had been a breach of standard
4 of care, that he would have had a better than 50 percent
5 chance of survival and be based on what he said was record
6 provided to him by Mr. Parham.

7 Ultimately Alliance was dropped from that
8 lawsuit but ultimately it was settled for, and I have
9 attached to my memorandum, a relief of \$300 and something
10 thousand dollars.

11 That was the end of that case. Sometime in
12 2014, though, Alliance sued Dr. Sokol and Mike Parham
13 personally for various causes of action. As to Dr. Sokol,
14 it alleges that he committed fraud and in selling his
15 signature falsely and also it alleged somewhat more less
16 clearly to me a negligence claim based upon the statute
17 that he had violated the statute requiring the presuit
18 affidavit.

19 We moved to dismiss that case. That's in
20 Pickens County and as to Dr. Sokol that case was
21 dismissed. A couple or three months later, Greenville
22 Pharmaceutical Research sued Dr. Sokol here in Greenville
23 alleging purely a cause of action for fraud against him
24 alleging generally speaking that he committed fraud by
25 submitting this affidavit providing his opinion that

Greenville Pharmaceutical vs. Parham & Smith

1 Greenville Pharmaceutical Research, Dr. Desai and North
2 Hills Medical had breached a standard of care to Mr. Bruce
3 and his wife and we have now moved to dismiss that.

4 The cause of action, Your Honor, is fraud.
5 That is the only cause of action.

6 THE COURT: Because of the letter?

7 MR. RHENEY: Because of the affidavit, yes.
8 He has also sued the Parham Law Firm. In Pickens he has
9 sued Mr. Parham personally and in Greenville, Greenville
10 Pharmaceutical Research has sued Parham, Smith Law Firm.
11 The cause of action, Your Honor, is fraud and we have
12 moved to dismiss because the plaintiff has failed to state
13 the elements of fraud, elements sufficient to constitute a
14 cause of action for fraud and basically our position, Your
15 Honor is, Number 1, they haven't stated the elements of
16 fraud because the cause of action for fraud has to be base
17 upon the misrepresentation of a fact.

18 In this case, they're basing it on an opinion
19 provided by a professional expert or professional
20 practitioner. Dr. Sokol is a specialist in cancer. He
21 practices clinically in Tampa and also serves as a medical
22 expert from time to time.

23 So a cause of action fraud can't be based on
24 opinion and, Your Honor, I apologize I have not attached
25 to that, and I only have one copy, a case of Winberg

Greenville Pharmaceutical vs. Parham & Smith

1 versus Insurance Company of North America.

2 THE COURT: I am actually aware of that.

3 MR. RHENEY: So a cause of action has to be
4 based upon a fact existing at the time the representation
5 is made and that disputer knew to be false. Here he is
6 offered an opinion. A cause of action for fraud can't be
7 based opinion, can't be based on something off into the
8 future.

9 The second thing is the misrepresentation has
10 to be made directly from the speaker to the (inaudible)
11 who is injured. Dr. Sokol signed an affidavit and
12 provided it to a lady by the name of Ellen Ryback who was
13 the nurse who Mr. Parham got in touch it and it was
14 provided to Mr. Parham to be used in the underlying tort
15 claim. There wasn't even a representation much less a
16 misrepresentation by Dr. Sokol to Greenville
17 Pharmaceutical Research. There was no contact between
18 them. Greenville Pharmaceutical Research didn't retain
19 him. There's no connection between them at all so there
20 is no representation wrongly or rightly from Sokol to
21 Greenville Pharmaceutical Research.

22 Even if it's wrong, Your Honor, even if his
23 opinion was ultimately wrong, that's not improper in South
24 Carolina. The facts could have changed and ultimately the
25 opinion could have just been wrong. That's not improper

Greenville Pharmaceutical vs. Parham & Smith

1 in South Carolina.

2 The next thing, Your Honor, is the plaintiff
3 in this case Greenville Pharmaceutical Research, to
4 establish cause of action for fraud, you have to rely on a
5 misrepresentation to your detriment. Greenville
6 Pharmaceutical Research didn't rely on anything Dr. Sokol
7 said. In fact, they fought it every step of the way and
8 said, he's wrong, he's wrong, he's wrong, before they paid
9 \$300,000 to settle the case.

10 So there can be no reliance in this
11 situation. There was no representation from him to them
12 upon which they relied for anything.

13 And finally, Your Honor, Rule 9 and case law
14 requires that the Rule 9(b), "circumstances constitution
15 the fraud or mistake shall be stated with particularity."
16 There is no statement of particularity. They just said
17 fraud, fraud, fraud without saying -- they take issue with
18 his opinion and that's fine, but they have yet to state
19 with any particularity what the fraud was. It's just an
20 opinion that was used in a case.

21 On that basis, Dr. Sokol moves for the case
22 to be dismissed.

23 THE COURT: I see these as I walk in here but
24 there's also an allegation in there that he sent a letter
25 to someone who was operating a drug test and in that

Greenville Pharmaceutical vs. Parham & Smith

1 letter he said this guy's cancer was caused by the drug
2 test and it turns out he wasn't in the drug test. Am I
3 missing that?

4 MR. MANN: That allegation relates to Parham
5 Smith. It does not relate to Dr. Sokol. There's some
6 interconnection here.

7 THE COURT: That was just the last
8 allegation of the complaint.

9 Let me get this straight, this doctor is
10 asked by a lawyer to issue an opinion in an affidavit that
11 comports with the statute that's part of the tort reform
12 requiring a presuit affidavit and the defendant's
13 allegation is that his opinion was erroneous and that he
14 would have said anything if Mike Parham asked him to say
15 it?

16 MR. MANN: The affidavit was provided to him
17 that the medical records that he was provided to base his
18 opinion on was incomplete, that he signed the affidavit
19 without question. And furthermore in the complaint it
20 says when it ultimately came time to take his deposition
21 he threw up his hands and said I'm not going to make any
22 standard of care deviation opinions.

23 The whole purpose of the statute is to
24 require a physician to step up and state with
25 particularity what a physician did wrong. But for that

Greenville Pharmaceutical vs. Parham & Smith

1 affidavit, Greenville Pharmaceutical Research would have
2 never been drug into court, would never have been subject
3 to the litigation that they went through.

4 The letter that you referenced, Your Honor,
5 in the complaint it states that's the reason a settle
6 occurred. That was the knife being held to their throat
7 as to why it settled. It wasn't settled on the basis that
8 my client felt anything was every done wrong. It was
9 settled on the basis of a business decision.

10 I would like to incorporate two things if I
11 could, the memorandum that I provided to the Court. I'd
12 like to incorporate the complaint, of course, which is the
13 subject of this discussion and in the chance that this
14 complaint is somehow dismissed, I would like to orally ask
15 the opportunity to amend. I do think there's a legitimate
16 cause of action here. I think it has been articulated
17 within the complaint, and I think that the long and short
18 of it is that it has clearly and repeatedly been stated as
19 to the objections to Dr. Sokol's affidavit.

20 THE COURT: I'd like to tell you that I don't
21 think much of this. I know you're a good lawyer but what
22 I'm concerned about is it's very difficult, as you know,
23 to get a doctor -- let's assume -- for any reason to file
24 one of these affidavits because they're immediately
25 ostracized.

Greenville Pharmaceutical vs. Parham & Smith

1 The statute requires you to get one and thank
2 God I got out of that practice before that statute came
3 into place because I have my own opinions of it but all he
4 did was give his opinion that the threshold for filing the
5 lawsuit was there and if the opinion was wrong, then it
6 was wrong.

7 MR. MANN: May I briefly respond.

8 THE COURT: Sure, and I shouldn't have
9 started off by saying I don't think much of this.

10 MR. MANN: And I understand that, but my
11 background is I spent five years in Florida doing nothing
12 but with a personal injury law firm. They were one of ten
13 in Florida that fought against the tobacco industry.

14 THE COURT: It's like a killing kind of
15 affect to be honest with you.

16 MR. MANN: I think also, Your Honor, it's a
17 policing kind of affect and the complaint clearly states
18 an opinion was not offered. Credentials were sold.

19 THE COURT: By that you mean sold for money?

20 MR. MANN: That's right. In other words, he
21 was being paid for a signature and he gladly provided it
22 upon an affidavit that was presented to him that he just
23 ripped the signature off on.

24 We're not even saying he had an opinion. We
25 don't think he had an opinion.

Greenville Pharmaceutical vs. Parham & Smith

1 THE COURT: The experts in the defendants
2 case get paid or did they come in and do it for free?

3 MR. MANN: Of course. Judge, I agree with
4 you totally but what I'm saying is in this case he got
5 paid for providing a signature to an affidavit that he
6 didn't care whether it was truthful or not and that's what
7 the complaint said.

8 THE COURT: I guess what I'm saying is giving
9 you the benefit of the doubt other than the fact that
10 there was a disagreement with it, what proof do you have
11 at this point that it was done specifically for
12 pecuniary interest and that what you're saying is he
13 didn't read anything and Mike Parham, rest his soul, could
14 have put down on there anything and he would have signed
15 it if you paid him money?

16 MR. MANN: That's exactly what the complaint
17 said. I took his deposition over two days and he refused
18 to answer any questions about his payments, his prior
19 cases, things of that nature. He ran from every basis of
20 inquiry into his prejudices. He testified that he only
21 testified for the benefits of plaintiffs, period, case
22 closed.

23 We may be outside of the four corners of the
24 complaint, but I think what I'm saying is within the gist
25 of the four corners of the complaint, and that is the man

Greenville Pharmaceutical vs. Parham & Smith

1 didn't care what his affidavit said. He didn't give an
2 opinion, Your Honor. He sold an affidavit to allow
3 Greenville Pharmaceuticals to be brought into court.

4 THE COURT: And they settled.

5 MR. MANN: They settled because as you quoted
6 that letter earlier and as the complaint states, they had
7 a knife held to their throat by Mr. Parham, God rest his
8 soul. He was intentionally putting pressure on Greenville
9 Pharmaceutical Research through very important third-party
10 businesses to affect the settlement. And that's the basis
11 of that aspect, which quite frankly they didn't file a
12 motion to dismiss on that because it's stated in the cause
13 of action.

14 He had a knife to their throat and Greenville
15 Pharmaceutical had to settle. And the reason they had to
16 settle because this individual, Dr. Sokol, simply threw
17 ink to paper irrespective of what the facts and what the
18 truth was.

19 He didn't provide an opinion, Your Honor. I
20 never ever alleged that he provided an opinion or
21 testified for day one. He was a paid for witness and
22 that's all he was, Your Honor.

23 THE COURT: And I really don't mean this to
24 be disrespectful as it sounds, I was lucky enough to be
25 involved with more veteran attorneys than me in medical

Greenville Pharmaceutical vs. Parham & Smith

1 malpractice and they were all paid for witnesses and, you
2 know.

3 MR. MANN: And, Judge, if I may say my
4 complaint is what he was paid for. He wasn't paid for an
5 opinion, he was paid for a signature on an affidavit.

6 THE COURT: This is what I'm going to do, I'm
7 going to grant your motion. You need time to amend to do
8 what?

9 MR. MANN: Your Honor, if you tell me where
10 I'm deficient then I will -- what's the basis for the
11 complaint being dismissed?

12 MR. RHENEY: Just for the record, Dr. Sokol
13 opposes the motion to amend. We've been down this road
14 before.

15 THE COURT: What he's telling me is -- I
16 don't think there's a cause of action here. I think if I
17 don't dismiss this, then ever doctor in the world that
18 signs -- and it could happen to the defense just the same
19 way -- could be subject to -- they are already under a
20 tremendous amount of pressure not to get involved in
21 these, but the remedy here is to go to the medical board
22 and say, this guy is not really doing what he's supposed
23 to be doing, he's a trained hire gun.

24 Look, I knew hired guns. They were the worse
25 things in the world because you could get them to say

Greenville Pharmaceutical vs. Parham & Smith

1 anything and as the late great Carrie Doyle, rest his
2 soul, used to tell you don't ever hire those people. If
3 he's that, then I think you all need to go to the medical
4 board.

5 I'm not sure there's anything you can do in
6 this case against Dr. Sokol.

7 MR. MANN: Judge, I don't know what grounds
8 other than what you just said I'm not pleading the cause
9 of action.

10 THE COURT: I think under the theory of
11 summary of judgment -- I think just looking at the case
12 and the facts and what I have in front of me, there's not
13 enough there to deny summary judgment.

14 MR. MANN: Here's what I would ask, Your
15 Honor. What I would ask that the order dismissing this
16 cause of action be without prejudice and let me talk to my
17 client and if I feel that an amendment can be made, I will
18 file a motion and that will give Mr. Rheney time to
19 respond to whatever I bring that.

20 THE COURT: I'll do that but you need to give
21 your clients this warning that unless something really
22 comes flying out of the sky, they would be subject to the
23 rules of civil procedure and the pecuniary nature of some
24 of those rules. I know you got pressure and this is not
25 towards you -- I hate that you have to get pre-lawsuit

Greenville Pharmaceutical vs. Parham & Smith

1 affidavits. I mean that was just absurd. I was in the
2 legislature and I know exactly where that came from, I
3 disagreed with it but that was just me. I was a democrat
4 what the heck, but --

5 MR. RHENEY: Your Honor, you were just asked
6 dismissing this without prejudice but fraud is the only
7 cause of action but it should be dismissed with prejudice
8 because there was no fraud.

9 THE COURT: I'm going to grant your motion
10 for summary judgment and if you want to refile something,
11 you can. I can't leave it open. If y'all go back and
12 y'all discover another way around the bush, than you can.

13 MR. RHENEY: Your Honor, I just want to put
14 this on the record that we oppose them filing a new
15 complaint. They can assert everything they need to assert.
16 in this complaint and this complaint is being dismissed.
17 If they were going to assert something else, they need to
18 do it here and they don't get another bite at the apple.

19 THE COURT: I can't say to them in the future
20 that they can't file something. I understand what you're
21 doing and another judge may do that, but I guess that's my
22 concern about your position. I'm granting your motion for
23 summary judgment.

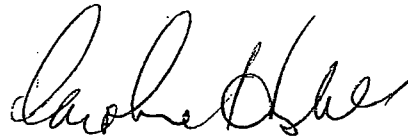
24 ---END OF TRANSCRIPT RECORD---

25

Greenville Pharmaceutical vs. Parham & Smith

1
2 I, the undersigned Caroline Hiskell, Official
3 Court Reporter for the Thirteenth Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 proceedings had and evidence introduced in the trial of
7 the captioned case, relative to appeal, in the Court of
8 Common Pleas of Greenville County, South Carolina on this
9 12th February of 2015.

10 I do further certify that I am neither of kin,
11 counsel, nor interest to any party hereto.

12
13
14 
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Greenville Pharmaceutical Research, Inc.,)
)
 Plaintiff,)
)
 vs.)
)
 Parham & Smith, LLC and Gerald H.)
 Sokol, M.D.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

Case No. 2014-CP-23-05776

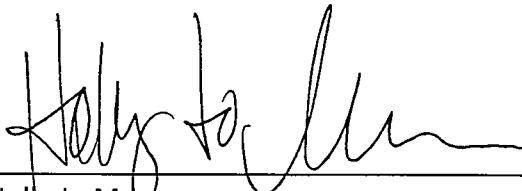
FILED-CLERK OF COURT
 GREENVILLE SO. S.C.
 PAUL B. WICKENSIMMER
 2015 SEP 14 PM 3 02

CERTIFICATE OF SERVICE

I, Holly Jo Mann, law clerk to F. Milton Mann, Jr., do hereby certify that I have served a copy of the **Amended Notice of Motion and Amended Motion for Reconsideration** upon the below listed, on this 9th day of September, 2015, by U.S. Mail, with proper postage affixed thereto:

T. David Rheney, Esquire
 Gallivan White & Boyd, PA
 PO Box 10589
 Greenville, South Carolina 29603
 Attorney for Defendant Sokol

Jeffrey M. Bogdan, Esquire
 Barnwell Whaley Patterson & Helms, LLC
 PO Drawer H
 Charleston, SC 29402-0197
 Attorneys for Defendant Parham & Smith, LLC



 Holly Jo Mann