

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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JUN 27 2016

**SC Court of Appeals**

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

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Appellate Case No. 2015-001964

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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, PA,

Defendants,

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

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**APPELLANTS' REPLY  
TO RESPONDENT'S RETURN TO APPELLANTS' MOTION TO CERTIFY APPEAL  
FOR REVIEW FROM COURT OF APPEALS AND  
TO RESPONDENT'S RETURN TO APPELLANTS' MOTION FOR PERMISSION TO  
FILE AMENDED INITIAL BRIEF EXCEEDING PAGE LIMIT**

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Appellants, by and through their undersigned counsel, submit their Reply to Respondent's Return to Appellants' Motion To Certify Appeal For Review From Court Of Appeals and to Respondent's Return to Appellants' Motion for Permission to File an Amended Initial Brief Exceeding the Page Limit.

The true motivation for Appellants' request that the Supreme Court certify this case from the Court of Appeals for review is that it presents one or more novel legal issues which are of significant public interest or legal principles of major importance. Nothing more, nothing less.

In particular, the sole authority for the trial judge's decision to deny Jeanne Ethier her loss of consortium verdict was one brief statement of apparent dicta made in passing by the Supreme Court in a single case<sup>1</sup> where the issue of imputation of negligence from the injured spouse to the consortium spouse was not in any way at issue. This novel legal issue is of significant public interest and major importance, and it requires extensive consideration of South Carolina law and the law of other jurisdictions.

Appellants submit that the remaining three issues also present novel facts and unusually egregious acts of juror concealment during voir dire and juror misconduct during premature and actual jury deliberations. The conduct in question presents issues of significant public interest or legal principles of major importance which warrant review by this Court under Rule 204(b), SCACR.

Appellants are not "engage[ed] in a type of 'forum shopping,'" as Respondent contends. (Resp. Ret. to Mot. to Certify, p. 4.) From the day they filed their notice of appeal, Appellants believed the proper forum for this case was the Supreme Court because it presented novel legal issues. Appellants fully intended to move before this Court to certify the appeal for review after the parties' briefs were filed and record on appeal prepared in the Court of Appeals. The only thing which changed in Appellants' original plan is the timing of the motion for certification.

After the Court of Appeals refused Appellants' requests<sup>2</sup> to file a brief exceeding the page limit, Appellants were left with two options:

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<sup>1</sup> Lee v. Bunch, 373 S.C. 654, 647 S.E.2d 197 (2007).

<sup>2</sup> Appellants note that the Court of Appeals did not review or consider on the merits their second motion to file a longer brief, but viewed it as a motion for reconsideration and declined to even review it pursuant to Rule 240(i), SCACR.

- Cut the brief and eliminate discussion of the factual background, law and arguments to a further extent that would unfairly prejudice and greatly diminish Appellants' effort to fully present their appeal, after which Respondent would have filed his brief; and then move to certify the case for review and also ask the Supreme Court for permission to file a longer brief. If this Court then granted those motions, this approach would have put Respondent in the position of having to revise its brief in light of Appellants' revised brief. Or this Court might have then granted the motion to certify and denied the motion for permission to file a longer brief, concluding Appellants had waived that issue or because it was unfair to make Respondent rewrite its brief.
- Or Appellants could do what they did – go ahead and ask the Supreme Court to certify the case for review and simultaneously ask for permission to file a longer brief.

In Appellants' view, the latter option was the more sensible and pragmatic one.

In short, Appellants submit this case presents novel legal issues which are of significant public interest and legal principles of major importance. That is the reason for Appellants' motion for certification. If this Court agrees and certifies the appeal for review, Appellants ask to be allowed to file a brief that is 14 pages longer than the usual 50-page limit.

Respectfully submitted,



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David Proffitt, SC Bar # 11193

Ronald Cox, SC Bar # 11129

Proffitt & Cox, LLP

140 Wildewood Park Drive, Suite A

Columbia, S.C. 29223-4311

Telephone: (803) 834-7097

Fax: (888) 711-1057

Email: [dproffitt@proffittcox.com](mailto:dproffitt@proffittcox.com)

Email: [rcox@proffittcox.com](mailto:rcox@proffittcox.com)

Attorneys for Appellants

June 23, 2016

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Defendants,

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

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**PROOF OF SERVICE**

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I, the undersigned lawyer or employee in the offices Proffitt & Cox, LLP, Attorneys for Appellants, do hereby certify that I have served the counsel or parties specified below in this action with a copy of the specified pleadings by causing a copy of the same to be X mailed by United States Mail, postage prepaid; \_\_\_ e-mailed; \_\_\_ faxed; \_\_\_ hand-delivered, to the following address:

Pleading:

APPELLANTS' REPLY TO RESPONDENT'S RETURN TO  
APPELLANTS' MOTION TO CERTIFY APPEAL FOR  
REVIEW FROM COURT OF APPEALS AND TO  
RESPONDENT'S RETURN TO APPELLANTS' MOTION  
FOR PERMISSION TO FILE AMENDED INITIAL BRIEF  
EXCEEDING PAGE LIMIT

Counsel / Parties Served:

Andrew F. Lindemann  
Davidson & Lindemann, PA  
PO Box 8568  
Columbia, SC 29202  
[alindemann@dml-law.com](mailto:alindemann@dml-law.com)

G. Murrell Smith, Jr.  
David Holler  
Lee Erter Wilson Holler & Smith LLC  
P.O. Box 580  
Sumter, SC 29151  
[murrellsmith@leeandmoise.com](mailto:murrellsmith@leeandmoise.com)

Stanley L. Myers  
Moore Taylor Law Firm  
PO Box 5709  
W. Columbia, SC 29171  
[Stanley@mttlaw.com](mailto:Stanley@mttlaw.com)



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June 23, 2016

# PROFFITT & COX

Attorneys at Law

PROFFITT & COX, LLP  
140 WILDEWOOD PARK DRIVE, SUITE A  
COLUMBIA, SC 29223  
TELEPHONE (803) 834-7097  
FACSIMILE (888) 711-1057  
WWW.PROFFITTCOX.COM

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DAVID PROFFITT  
dproffitt@proffittcox.com

June 23, 2016

JUN 27 2016

SC Court of Appeals

The Honorable Daniel E. Shearouse  
Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

RE: Philip Ethier and Jeanne Ethier v. Guy R. Bibeau, M.D.  
Appellate Case No. 2015-001964  
PC File No. 1236.01

Dear Mr. Shearouse:

Please find enclosed the original and seven copies of Appellants' Reply to Respondent's Return to Appellants' Motion To Certify Appeal For Review From Court Of Appeals and to Respondent's Return to Appellants' Motion for Permission to File Amended Initial Brief Exceeding Page Limit.

Please file the original and return the date-stamped copy to me in the enclosed envelope.

With kindest personal regards, I remain

Sincerely yours,

PROFFITT & COX, LLP



David Proffitt

RDP/nif  
Enclosures

cc: The Honorable Jenny Abbott Kitchings (w/ enclosures)  
Andrew F. Lindemann (w/ enclosures)  
G. Murrell Smith, Jr. (w/ enclosures)  
David Holler (w/ enclosures)  
Stanley L. Myers (w/ enclosures)

Proffitt & Cox, LLP  
Attorneys at Law  
140 Wildewood Park Drive, Suite A  
Columbia, S.C. 29223-4311

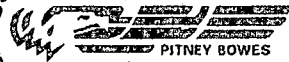
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**SC Court of Appeals**

The Honorable Jenny Alford Hitchings  
S.C. Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

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