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\* INACTIVE

November 12, 2015

**RECEIVED**  
NOV 12 2015  
S.C. SUPREME COURT

VIA U.S. MAIL

The Honorable Daniel E. Shearouse  
CLERK OF COURT  
S.C. SUPREME COURT  
1231 Gervais Street  
Columbia, S.C. 29211

Re: *Linda Johnson v. Heritage Healthcare, et al.*;  
**SC Supreme Court Case No. 2014-002502**  
Notice of Related Case and New Authority

Dear Mr. Shearouse:

Pursuant to Rule 208(b)(7) of the South Carolina Appellate Court Rules, we are writing to notify the Court of a pertinent and significant authority that was issued by the South Carolina Court of Appeals subsequent to the filing of final briefs in this matter, *Flexon v. PHC-Jasper, Inc.*, 776 S.E.2d 397 (Ct. App. 2015). A copy of this opinion is attached. This new authority directly addressed the issues of this Appeal and that of waiver.

First, in *Flexon* the Court of Appeals recognizes and affirmed the precedent that the issue of waiver must be reviewed through a fact based analysis, the formula of which depends on each case. *Id.* at 24. Second, the Court of Appeals acknowledged the directive that instead of expending the other parties' time and resources on determining the arbitrability of the dispute, the party should simply file its own motion to compel arbitration. *Id.* at 25. Lastly, when determining timeliness, the Court of Appeals considered all the opportunities that the party seeking arbitration had to make such motion. *Id.* The Court of Appeals ultimately held that the party seeking arbitration must take "the steps necessary to protect its own interests in a timely manner." *Id.* at 26.

By copy of this letter to counsel shown below, I am serving a copy of same upon them by mail. Thank you for your consideration.

With kind regards, I am,

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Creech', with a stylized flourish at the end.

Matthew V. Creech

Enclosures

cc: Monteith P. Todd, Esquire  
Jason Bring, Esquire  
Jerad Rissler, Esquire  
Margie Bright-Matthews, Esquire  
Matthew Creech, Esquire  
Josh Whitley, Esquire

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S.C. SUPREME COURT

FAX COVER SHEET

TO: The Honorable Daniel E. Shearouse

FAX NO.: 803-734-1499

FROM: LAW OFFICES OF DANIEL E. HENDERSON AND MATTHEW V. CREECH

RE: 2014-002502

PAGES: 3 (INCLUDING COVER PAGE)

DATE: 12<sup>th</sup> DAY OF Nov, 2015

SENT BY: Matthew Creech

MESSAGE: \_\_\_\_\_

Copy of Cover letter w/o enclosure  
hard copy w/enclosure in mail.

*J. Lee*

**IF YOU DO NOT RECEIVE ALL PAGES OR IF YOU INCUR ANY PROBLEMS WITH THIS TRANSMISSION, PLEASE CALL (843) 726-6131.**

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