

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

RECEIVED

OCT 19 2016

SC Court of Appeals

Case No. 2015-CP-11-0363

Mae Gregory, As Personal Representative of the Estate of
Antonio L. Gregory,..... Respondent,

v.

Southern Health Partners, Inc.,..... Appellant.

PETITION FOR REHEARING

Appellant Southern Health Partners, Inc. ("SHP") respectfully submits this Petition for Rehearing, pursuant to Rules 221 of the South Carolina Appellate Court Rules.

On September 27, 2016, SHP appealed (1) the Order Granting Motion to Compel, filed July 8, 2016 and (2) the Order Denying Motion to Reconsider, filed September 2, 2016 of the Honorable J. Mark Hayes, II. As stated in SHP's Notice of Appeal, filed September 27, 2016, SHP contemporaneously filed a Petition for a Writ of Certiorari with the Supreme Court of South Carolina. The Supreme Court acknowledged receipt of the Petition for Writ of Certiorari in a letter sent by the Honorable Brenda F. Shealy, Chief Deputy Clerk of Court for the Supreme Court of South Carolina, dated September 28, 2016, and assigned appellate case number 2016-002023 to the case. See **Attachment A**.

The Court of Appeals dismissed SHP's Notice of Appeal, by Order filed October 10, 2016, stating that the underlying discovery orders were interlocutory and not directly appealable and that the remittitur will be sent pursuant to Rule 221(b) of the South Carolina Appellate Court Rules. See **Attachment B**, Order Dismissing Appeal, filed October 10, 2016.

For reasons stated in its Petition for Certiorari to the Supreme Court SHP believes the July 8, 2016 discovery order presents an issue that merits guidance from the Supreme Court given the Supreme Court's ruling in *Sulton v. HealthSouth Corp.*, 400 S.C. 412, 734 S.E.2d 641 (2012). See **Attachment C**. SHP respectfully requests the Court of Appeals, pursuant to SCACR 221, to hold the appeal in abeyance and not send the remittitur to the lower court until notified that the Petition for Writ of Certiorari has been either granted or denied by the Supreme Court.

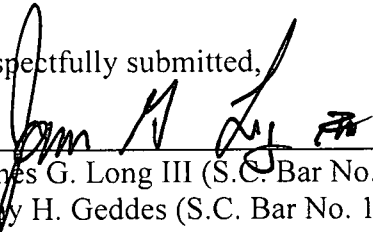
SCACR 221(b), titled *Remittitur*, states:

The remittitur shall contain a copy of the judgment of the appellate court, shall be sealed with the seal and signed by the clerk of the court, and unless otherwise ordered by the court shall not be sent to the lower court or administrative tribunal until fifteen (15) days have elapsed (the day of filing being excluded) since the filing of the opinion, order, judgment, or decree of the court finally disposing of the appeal. If a petition for rehearing is received before the remittitur is sent, the remittitur shall not be sent pending disposition of the petition by the court. Where a petition for rehearing has been denied, the Court of Appeals shall not send the remittitur to the lower court or administrative tribunal until the time to petition for a writ of certiorari under Rule 242(c) has expired. If a petition for writ of certiorari is filed, the Court of Appeals shall not send the remittitur until notified that the petition has been denied. If the writ is granted by the Supreme Court, the Court of Appeals shall not send the remittitur.

SCACR 221(b) (emphasis added).

Accordingly, because a Petition for Certiorari is currently pending before the Supreme Court, SHP respectfully requests that the Court of Appeals hold the appeal in abeyance and not

send the remittitur to the lower court until notified that the Petition for Writ of Certiorari has either been granted or denied by the Supreme Court.

Respectfully submitted,

James G. Long III (S.C. Bar No. 64103)
Amy H. Geddes (S.C. Bar No. 16960)
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
(803) 771-8900
Attorneys for Appellant

Columbia, South Carolina
October 19, 2016

Other Counsel of Record:

Scott C. Evans
James B. Moore, III
EVANS MOORE, LLC
121 Screven Street
Georgetown, South Carolina 29440
(843) 995-5000

Attorneys for Respondent

Other Counsel of Record:

Charles F. Turner
Anne R. Culbreath
WILLSON JONES CARTER & BAXLEY, P.A.
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
(864) 527-3280

Attorneys for Cherokee County

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Case No. 2015-CP-11-0363

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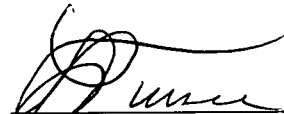
Southern Health Partners, Inc.,..... Appellant.

PROOF OF SERVICE

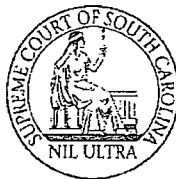
I certify that I have served a Petition for Rehearing on the following attorneys of record,
by depositing a copy of the Notice of Appeal in the United States Mail, postage pre-paid,
addressed to them at their offices as shown below this 19th day of October, 2016:

Scott C. Evans
James B. Moore, III
EVANS MOORE, LLC
121 Screven Street
Georgetown, South Carolina 29440
(843) 995-5000
Attorneys for Respondent

Charles F. Turner
Anne R. Culbreath
WILLSON JONES CARTER & BAXLEY, P.A.
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
(864) 527-3280
Attorneys for Cherokee County


NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
(803) 771-8900

ATTACHMENT A



RECEIVED

SEP 30 2016

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

September 28, 2016

James Grant Long, III, Esquire
PO Drawer 2426
Columbia SC 29202

Amy Harmon Geddes, Esquire
PO Drawer 2426
Columbia SC 29202-2426

Re: Mae Gregory, As Personal Representative of the Estate of Antonio L.
Gregory, v. Southern Health Partners, Inc.
Appellate Case No. 2016-002023

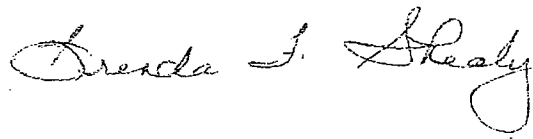
Dear Counsel:

This Court has received your Petition for Writ of Certiorari, and this matter has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter. Your check No. 476483 in the amount of \$100.00 is returned herewith since there is no filing fee in this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

A handwritten signature in cursive script that reads "Brenda J. Shealy". The signature is written in black ink and is positioned above the typed name of the signatory.

Chief Deputy Clerk

Enclosure

cc: Scott Christopher Evans, Esquire
James Bernice Moore, III, Esquire
Charles Franklin Turner, Jr., Esquire
Anne Ross Culbreath, Esquire

DOCUMENTS PRINTED ON AMERICAN RECYCLED PAPER AT THE BACK OF THIS CHECK MAY INCLUDE SOME OF THE FOLLOWING INFORMATION:
NEXSEN PRUET, LLC
ATTORNEYS AND COUNSELORS AT LAW
POST OFFICE DRAWER 2426
COLUMBIA, SOUTH CAROLINA 29202

BANK OF AMERICA ACCOUNT
COLUMBIA, SOUTH CAROLINA

CHECK NO.: 476483

PAY ONE HUNDRED AND 00/100 USD

DATE 09/26/16

NET AMOUNT \$100.00

TO
THE
ORDER
OF

SC SUPREME COURT

OPERATING ACCOUNT
VOID AFTER 180 DAYS

BY:

Janifer Silberman
AUTHORIZED SIGNATURE



⑈476483⑈ ⑆053904483⑆ 000707905572⑈

ATTACHMENT B

The South Carolina Court of Appeals

Mae Gregory, As Personal Representative of the Estate
of Antonio L. Gregory, Respondent,

v.

Southern Health Partners, Inc. and Cherokee County,
South Carolina, Defendants,

Of Whom Southern Health Partners, Inc. is the
Appellant.

Appellate Case No. 2016-002026

ORDER

This appeal arises out of an order compelling a party to produce discovery responses. Because such an order is interlocutory and not directly appealable, this appeal is dismissed. *See Patterson v. Spector Broadcasting Corp.*, 287 S.C. 249, 249, 335 S.E.2d 803, 803 (1985). The remittitur will be sent pursuant to Rule 221(b) of the South Carolina Appellate Court Rules.


FOR THE COURT

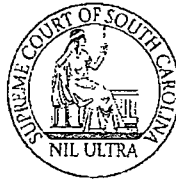
Columbia, South Carolina

cc:

James Grant Long, III, Esquire
Amy Harmon Geddes, Esquire
Scott Christopher Evans, Esquire
James Bernice Moore, III, Esquire

FILED

October 10, 2016



RECEIVED

SEP 30 2016

The Supreme Court of South Carolina

NIXSEN PRUETT, L.L.C.

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

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COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1080

FAX: (803) 734-1499

www.sccourts.org

September 28, 2016

James Grant Long, III, Esquire
PO Drawer 2426
Columbia SC 29202

Amy Harmon Geddes, Esquire
PO Drawer 2426
Columbia SC 29202-2426

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Gregory, v. Southern Health Partners, Inc.
Appellate Case No. 2016-002023

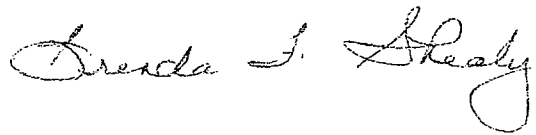
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Very truly yours,

A handwritten signature in cursive script that reads "Brenda J. Shealy". The signature is written in black ink and is positioned centrally below the closing phrase.

Chief Deputy Clerk

Enclosure

cc: Scott Christopher Evans, Esquire
James Bernice Moore, III, Esquire
Charles Franklin Turner, Jr., Esquire
Anne Ross Culbreath, Esquire

NEXSEN PRUET, LLC
ATTORNEYS AND COUNSELORS AT LAW
POST OFFICE DRAWER 2426
COLUMBIA, SOUTH CAROLINA 29202

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TO
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OPERATING ACCOUNT
VOID AFTER 180 DAYS

BY:

AUTHORIZED SIGNATURE



VOID
credit
Back to
(49513-37) client

⑈476483⑈ ⑆053904483⑆ 000707905572⑈

ATTACHMENT C

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

SEP 27 2016

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

J. Mark Hayes, II, Circuit Court Judge

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PETITION FOR WRIT OF CERTIORARI

James G. Long III
Amy H. Geddes
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
(803) 771-8900

Attorneys for Petitioner

Other Counsel of Record:

Scott C. Evans
James B. Moore, III
EVANS MOORE, LLC
121 Screven Street
Georgetown, South Carolina 29440
(843) 995-5000

Attorneys for Respondent

Other Counsel of Record:

Charles F. Turner
Anne R. Culbreath
WILLSON JONES CARTER & BAXLEY, P.A.
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
(864) 527-3280

Attorneys for Cherokee County

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Certificate of Counsel

The undersigned counsel for Petitioner certifies that the Motion for Reconsideration was made and finally ruled on by the trial court, by Order filed September 2, 2016, and that a Notice of Appeal was filed with the Court of Appeals on this day, September 27, 2016.

Questions Presented

1. What is the appropriate standard for the discovery of confidential and proprietary financial information when the sole purpose for seeking the information is to ascertain the ability to pay a punitive damages award?
2. Did the trial court err in granting Respondent the relief she sought for such confidential and proprietary financial information in her Motion to Compel and by denying Petitioner's Motion to Reconsider?

Introduction

Petitioner Southern Health Partners, Inc. ("SHP") has filed a Notice of Appeal with the South Carolina Court of Appeals (**App. at 2**) and respectfully submits this Petition for Writ of Certiorari and Memorandum of Law and Authorities, pursuant to Rules 241 and 245, SCACR, Article V, §5 of the South Carolina Constitution, and S.C. Code Ann. §§14-3-310 and -330. Petitioner hereby files an appendix of relevant documents for the Court's review.

Statement of Jurisdiction

This Petition asks this Court to resolve a novel issue that is common, recent, and recurring in actions when plaintiffs seek the production of sensitive and confidential financial information solely for the purpose of proving a defendant's ability to pay a punitive damage award. This question often arises in professional negligence cases and significant tort claims. It affects individuals and both large and small corporations. This Court clearly held in *Sulton v.*

HealthSouth Corp., 400 S.C. 412, 734 S.E.2d 641 (2012) that only evidence of net worth and extrapolations of net worth may be introduced in evidence on the issue of an ability to pay punitive damages. The Court specifically rejected in *Sulton* the Plaintiff's reliance on net operating revenue and the reference to information in the tax return which is exactly the same evidence and approach requested and proposed by the Plaintiff in this case. Now that this Court has provided specific guidance as to the admissibility of evidence to show a defendant's ability to pay punitive damages, Petitioner urges this Court to accept this case to inform the bench and bar as to the appropriate boundaries of discovery when a plaintiff seeks sensitive and confidential financial information for the sole purpose to show a defendant's ability to pay a punitive damage award.

Prior to this request for extraordinary and related relief, SHP filed a Memorandum in Opposition to Respondent Mae Gregory's ("Respondent") Motion to Compel production of certain SHP proprietary and financial information sought for the sole purpose of showing SHP's ability to pay a punitive damage award (**App. at 75**). After the trial court granted Respondent's Motion to Compel by Order filed July 8, 2016 (**App. at 14**), SHP filed its Motion to Reconsider (**App. at 84**), which was denied by Order filed September 2, 2016 (**App. at 15**).

The Court has jurisdiction over SHP's Petition for Writ of Certiorari pursuant to Article V, §5 of the South Carolina Constitution and S.C. Code Ann. §§14-3-310 and -330. The trial court's order compelling SHP to produce its proprietary financial information for the years 2012, 2013, 2014 and 2015 in the form of tax returns and accountant's/accounting statements, to include income statements, balance sheets, and statements of cash flows (**App. at 14**), is inconsistent with this Court's ruling in *Sulton*, which states that "only evidence of net worth and

extrapolations of net worth may be introduced on the issue [of a party's ability to pay punitive damages]." *Sulton v. HealthSouth Corp.*, 400 S.C. 412, 420, 734 S.E.2d 641, 645 (2012).

SHP faces immediate and irreparable harm if forced to produce this financial information. In *Sulton*, the Court noted that informing a jury of a corporation's net operating revenue was improper and the prejudicial effect of doing so was "self-evident." *Id.* In the alternative, it is otherwise an Order for which the Court should issue an extraordinary writ, as it did in *Oncology & Hematology Associates of S.C., LLC v. S. Carolina Dep't of Health & Envtl. Control*, 387 S.C. 380, 692 S.E.2d 920 (2010) and *Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 674 S.E. 2d 154 (2009), wherein this Court corrected an error of law regarding discovery orders and used the opinion to establish appropriate boundaries for the bench and bar. Moreover, the Court has also previously recognized the appropriateness of certiorari to review discovery orders involving disclosure of confidential information. See *McMakin v. Bruce Hosp. Sys.*, 318 S.C. 15, 455 S.E. 693 (1995); *McGee v. Bruce Hosp. Sys.*, 312 S.C. 58, 439 S.E. 2d 257 (1993); accord, Hon. Jean Toal, *et al.*, *Appellate Practice in South Carolina*, at 93-94 (2d ed. 2002).

The confidential and proprietary nature of the information is not in dispute, and the parties have in place a Consent Confidentiality Order providing that such information is protected from third-party use (**App. at 4**). Under the circumstances, however, protection under that Order of the particular information ordered to be disclosed is clearly insufficient to prevent such imminent and irreparable harm, as such information is not "relevant to the subject matter" and cannot "lead to the discovery of admissible evidence" under SCRCP 26(b)(1) in light of *Sulton* and *Branham*. SHP further notes that a confidentiality order does not convert irrelevant information into relevant information for discovery purposes.

Petitioner, therefore, seeks the granting of this Writ of Certiorari by the Court in its original jurisdiction to accept this case and reverse the trial court's Order compelling disclosure of confidential and proprietary financial information requested solely to show an ability to pay a punitive damage award.

Statement of the Case

Petitioner is Tennessee based company who hires nurses and contracts with physicians to provide medical services at county jails across the Southeast, including throughout South Carolina and in Cherokee County.

Respondent is the mother and personal representative of the estate of Antonio L. Gregory, who was an inmate who died suddenly from a fatal heart arrhythmia at the Cherokee County Detention Center on June 26, 2013.

Discovery has been underway in the present case for many months and the parties have exchanged documents and answered interrogatories. Several depositions have been taken but more discovery remains and the case has not appeared on a trial roster. On March 15, 2016, Plaintiff served her Second Request for Production to Defendant SHP (**App. at 52**) requesting:

- Tax returns for Southern Health Partners, Inc. for the years 2012, 2013, 2014 and 2015. (*Id.* ¶ 12).
- Accountant's/accounting statements, to include income statement, balance sheet, and statement of cash flows, for Southern Health partners, Inc. for the years 2012, 2013, 2014 and 2015. (*Id.* ¶ 13).

Petitioner objected to Respondent's discovery requests for SHP's proprietary financial information (**App. at 56**). Respondent followed with a Motion to Compel (**App. at 59**). The parties each submitted a memorandum of law in support of its position. (*See App. at 67*, Respondent's Supplemental Memorandum in Support of Motion to Compel; **App. at 75**, SHP's Memorandum in Opposition to Motion to Compel.) Plaintiff conceded that the only purpose for

requesting the financial information was to show the Defendant's ability to pay a punitive damage award (**App. at 68–70; 73 and 74**). SHP's financial information has no other relevance to this case or request. A hearing was held before Judge J. Mark Hayes, II on June 20, 2016. The trial court granted Respondent's Motion to Compel by Order dated July 5, 2016 (**App. at 14**). Petitioner served its Motion to Reconsider on July 21, 2016 (**App. at 84**), which was denied by Order dated August 30, 2016 (**App. at 15**). The Court ordered SHP to produce all the financial information requested.

Argument

I. THE SUPREME COURT SHOULD EXERCISE ITS JURISDICTION TO REVIEW THE TRIAL COURT'S ORDERS.

If the Supreme Court does not intervene and SHP is forced to comply with the trial court's order to produce its proprietary financial information, any attempt to obtain relief at the trial court level or on appeal will be moot because the information will be irreversibly disclosed. The Court has recognized that issues "capable of repetition, yet evading review" are properly appealable. *See* 15 S.C. Jur. Appeal and Error § 19. This exception arises in "situations where two elements combine: (1) [t]he challenged action was in its duration too short to be fully litigated prior to its cessation or expiration; and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again." *In re Angela Suzanne C.*, 286 S. C. 186, 189, 332 S. E. 2d 542, 543 (Ct. App. 1985). In such cases, the Court may decide the appeal even though the case has become moot. *Id.*

SHP provides medical care in many jails throughout the Southeast by contracting with counties. SHP employs nurses and contracts with physicians. SHP has insurance for claims of professional negligence. Lawsuits against SHP fall under the South Carolina Noneconomic Damages Awards Act of 2005, S.C. Code Ann. § 15-32-200 *et seq.*, and the Act's caps on

damages apply. Allowing the trial court to compel production of SHP's detailed proprietary financial information not germane to the issue of net worth in violation of *Sulton* would encourage future enterprising plaintiffs to request the same, effectively nullifying the Supreme Court's rulings on the issue of the ability to pay an award of punitive damages.

A similar principle supporting a decision to hear this appeal is that the Court may decide questions of public interest and an appropriate ground for the Court to exercise its original jurisdiction is when the public interest is involved. SCACR 245. In *Branham v. Ford Motor Co.*, the Supreme Court made clear that the issue of evidence of an ability to pay punitive damages implicates the public interest.

We next examine the admission of financial data regarding Ford. Unless the United States Supreme Court holds otherwise under the Due Process Clause, we adhere to South Carolina law that "the wealth of a defendant is a relevant factor in assessing punitive damages." *Welch v. Epstein*, 342 S.C. 279, 307, 536 S.E.2d 408, 423 (Ct.App.2000). This is frequently described as the "ability to pay" factor. But this factor is not without boundaries. **"Punitive damages pose an acute danger of arbitrary deprivation of property. Jury instructions typically leave the jury with wide discretion in choosing amounts, and the presentation of evidence of a defendant's net worth creates the potential that juries will use their verdicts to express biases against big businesses, particularly those without strong local presences."** *Honda Motor Co. v. Oberg*, 512 U.S. 415, 432, 114 S.Ct. 2331, 129 L.Ed.2d 336 (1994); *see also State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 427, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003) ("[R]eference to [the defendant's] assets ... ha[s] little to do with the actual harm sustained by the [plaintiff]. The wealth of a defendant cannot justify an otherwise unconstitutional punitive damages award.").

Branham v. Ford Motor Co., 390 S.C. 203, 239, 701 S.E.2d 5, 24 (2010) (emphasis supplied).

Here, SHP is a foreign corporation headquartered in Tennessee doing business in South Carolina. The trial court has compelled SHP to produce all income tax forms and accounting statements from 2012 through 2015, including detailed income statements, balance sheets, and statements of cash flow (**App. at 14**). The trial court has erred by failing to consider *Sulton's*

limitation on the issue of the admissibility of information related to punitive damages and the public interest of preventing bias against foreign businesses as espoused in *Branham*.

II. IN SOUTH CAROLINA, ONLY STATEMENTS OF NET WORTH AND EXTRAPOLATIONS OF NET WORTH ARE ADMISSIBLE FOR THE PURPOSE OF SHOWING ABILITY TO PAY PUNITIVE DAMAGES; THEREFORE, COURTS SHOULD LIMIT DISCOVERY OF IRRELEVANT BUT SENSITIVE AND PROPRIETARY FINANCIAL INFORMATION.

The Court in *Sulton v. HealthSouth Corp.*, 400 S.C. 412, 420, 734 S.E.2d 641, 645 (2012) addressed the appropriate standard for introducing evidence on the ability to pay punitive damages in South Carolina. In *Sulton*, a patient and his wife sued HealthSouth (a hospital) and several of its nurses, alleging that the patient had been injured by defendants' negligent provision of nursing care. After the jury returned a verdict finding HealthSouth reckless, willful, and wanton, the court proceeded to a punitive damages phase of trial in which the jury returned an eight million dollar verdict against HealthSouth.

HealthSouth argued that the trial court erred when it permitted respondent to refer to the HealthSouth's net operating revenue. The Supreme Court agreed, stating, "[i]n assessing punitive damages, the wealth of a defendant is a relevant factor in determining the defendant's ability to pay, but only evidence of net worth and extrapolations of net worth may be introduced on the issue." *Sulton v. HealthSouth Corp.*, 400 S.C. 412, 420, 734 S.E.2d 641, 645 (2012) (quoting *Branham v. Ford Motor Co.*, 390 S.C. 203, 239–40, 701 S.E.2d 5, 24–25 (2010)) (internal quotations omitted). The Court further stated that evidence of ability to pay punitive damages "must be handled cautiously, since the presentation of evidence of a defendant's net worth creates the potential that juries will use their verdicts to express biases against big businesses, particularly those without strong local presences." *Id.* (internal quotations omitted).

The Court held that “the trial court properly declined to admit HealthSouth’s 10-K financial form.” *Id.* However, the Court held that the trial court erred by permitting respondents, over objection, “to inform the jury that HealthSouth’s 2009 net operating revenue as shown on the 10-K was \$1.911 billion.” *Id.* The Court stated the trial court erred, *inter alia*, for the following reason:

[I]nforming the jury of a corporation's net operating revenue is improper under *Branham*, and the prejudicial effect of doing so is self-evident. **Net revenue has no necessary relation to net worth and it could be, as HealthSouth contends, that shareholder equity was actually negative (i.e., the corporation had no net worth).** Putting this huge sum of money into the minds of the jury, reflecting the company's net income but accounting for none of its expenses and obligations, was almost certainly misleading and very likely to have stirred any jury bias against big businesses.

Sulton v. HealthSouth Corp., 400 S.C. 412, 420–21, 734 S.E.2d 641, 646 (2012) (emphasis added).

Here, the trial court has ordered the production of evidence that is clearly inadmissible under *Sulton*. The trial court in this case went much further than the trial court in *Sulton*, which declined to admit HealthSouth’s 10-K into evidence. The trial court in the present case ordered SHP to produce “tax returns for Southern Health Partners, Inc. for the years 2012, 2013, 2014, and 2015 within thirty (30) days” and “accountant’s/accounting statements, to include income statement, balance sheet, statement of cash flows, for Southern Health Partners, Inc. for the years 2012, 2013, 2014, and 2015,” (**App. at 14**), and then issued an order denying SHP’s Motion to Reconsider, (**App. at 15**).

Sulton held that “only evidence of net worth and extrapolations of net worth may be introduced on the issue [of a party’s ability to pay punitive damages].” *Sulton v. HealthSouth Corp.*, 400 S.C. 412, 420, 734 S.E.2d 641, 645 (2012). Accordingly, the trial court’s Order compelling SHP to produce proprietary financial information other than a statement of net worth

or extrapolations from net worth is overbroad and unduly burdensome in light of the Supreme Court's ruling in *Sulton*.

III. THE TRIAL COURT ERRED IN GRANTING RESPONDENT THE RELIEF SHE SOUGHT FOR SUCH CONFIDENTIAL AND PROPRIETARY INFORMATION IN HER MOTION TO COMPEL AND IN DENYING PETITIONER'S MOTION TO RECONSIDER.

A. Respondent Failed to Demonstrate the Information Demanded is Relevant or Necessary and Further Provided no Factual Basis Supporting the Trial Court Order Granting Her Motion to Compel and Order Denying Petitioner's Motion to Reconsider.

SHP acknowledges the scope of discovery is generally broad. Rule 26 of the South Carolina Rules of Civil Procedure, however, places some limits on discovery. Specifically, under SCRCPP 26(b)(1), the scope of discovery is limited to information "which is relevant to the subject matter" and is "reasonably calculated to lead to the discovery of admissible evidence." SCRCPP 26(b)(1). The Court in *Sulton* stated, "[n]et revenue has no necessary relation to net worth" when it held that "only evidence of net worth and extrapolations from net worth may be introduced on the issue [of ability to pay punitive damages]." *Sulton* at 420. Clearly, SHP's income statements and cash flow statements are irrelevant to the issue of net worth and should be outside the scope of discovery because they cannot lead to the discovery of admissible evidence.

The broad list of financial records ordered by the Court is well beyond what a Plaintiff would need to evaluate the net worth of a Defendant, which is the cornerstone to determine a Defendant's ability to pay a punitive damages award. This Court has found the Texas Supreme Court's ruling on the scope of discovery in *In re CSX Corp.*, 124 S.W.3d 149 (2003) persuasive. When discussing appropriate boundaries for discovery in *Oncology & Hematology Associates of S.C., LLC v. S. Carolina Dep't of Health & Envtl. Control*, 387 S.C. 380, 388, 692 S.E.2d 920,

924–25 (2010), the Court included the following passage from the Texas Supreme Court opinion:

Generally, the scope of discovery is within the trial court's discretion. **However, the trial court must make an effort to impose reasonable discovery limits.** The trial court abuses its discretion by ordering discovery that exceeds that permitted by the rules of procedure.

Our procedural rules define the general scope of discovery as any unprivileged information that is relevant to the subject of the action, even if it would be inadmissible at trial, as long as the information sought is ‘reasonably calculated to lead to the discovery of admissible evidence.’ . . . **Although the scope of discovery is broad, requests must show a reasonable expectation of obtaining information that will aid the dispute’s resolution. Thus, discovery requests must be “reasonably tailored” to include only relevant matters.**

Id. (quoting *In re CSX Corp.*, 124 S.W.3d 149, 152 (2003)). Four years of tax returns and detailed accountant statements are not “reasonably tailored” for the purpose of ascertaining SHP’s ability to pay a punitive damages award. A statement of net worth, in line with the Court’s ruling in *Sulton*, would be an appropriate remedy here.

B. The Trial Court Abused its Discretion by Granting Respondent’s Motion to Compel and Denying Petitioner’s Motion to Reconsider.

A lower court’s discovery order should be overturned if the trial court abused its discretion. *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 787 S.E.2d 485, 495 (2016); *Fairchild v. S. Carolina Dep’t of Transp.*, 398 S.C. 90, 108, 727 S.E.2d 407, 416 (2012); *Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989). A trial court abuses its discretion when its order is controlled by an error of law or when there is no evidentiary support for the trial court’s factual conclusions. *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 681 S.E.2d 885 (2009).

For the reasons stated above, given the Supreme Court’s holding in *Sulton*, the trial court’s orders were controlled by an error of law. Further, there is no evidentiary support for the

trial court's factual conclusions. Respondent has failed to show how the information it seeks will shed light on SHP's net worth, as required by *Sulton*. Respondent has submitted an affidavit by her expert, Oliver G. Wood, Jr., but that affidavit does not adequately set forth how Respondent's requests are relevant to net worth. Respondent's expert explains that Respondent seeks income statements to reveal "gross revenue, gross profit, operating income, and pretax and after-tax income," which are not indicative of net worth. (**App. at 73 and 74**); *see Sulton* at 420 ("Net revenue has no necessary relation to net worth . . ."). Respondent's expert further explains that Respondent seeks cash flow statements to "reveal how much cash the company is realizing from its operations, how much cash it had to raise to finance itself, and how much cash the company invested in assets," which do not indicate net worth (**App. at 74**). Respondent's expert provides no explanation as to how four years of federal tax returns indicate net worth. Finally, Respondent's expert explains that Respondent seeks to learn "the *composition* of assets and liabilities" of SHP "as well as shareholders' equity or net worth." (*Id.*) Despite stating that "complete statements of condition" reveal net worth, Respondent's expert states that "[n]et worth may or may not be an appropriate measure of a company's ability to pay a punitive damages award." (*Id.*) Because the Court has stated that net worth is the *only* relevant inquiry as to ability to pay punitive damages, it is clear that Respondent seeks to disregard the Supreme Court's ruling in *Sulton* and present evidence of revenue and other financial indicators to show an ability to pay. As shown by Respondent's expert, it is clear that Respondent's requests are not reasonably tailored to ascertain SHP's net worth for the purposes of ascertaining its ability to pay punitive damages, but, instead are an attempt to present a detailed description of the Company's finances to improperly distract the jury.

The trial court's Order compelling discovery of SHP's sensitive and proprietary information not relevant to determine net worth was made without factual support and prejudiced SHP. Thus, the trial court abused its discretion. *Davis v. Parkview Apartments*, 409 S.C. 266, 282, 762 S.E.2d 535, 543 (2014), *reh'g denied* (Sept. 11, 2014) ("An 'abuse of discretion' may be found by this Court where the appellant shows that the conclusion reached by the lower court was without reasonable factual support, resulted in prejudice to the right of appellant, and, therefore, amounted to an error of law."); *see also* *Wielgosz v. Millard*, 679 S.W.2d 163 (Tex. App. 1984) (finding in surety company's action against administratrix, of estate of decedent who allegedly embezzled funds from company of which he was general manager which action was against administratrix in her personal capacity, trial judge abused his discretion in ordering administratrix to produce her entire tax returns, financial statements, and personal household records for discovery without examining them and separating relevant parts from the irrelevant); *Maresca v. Marks*, 362 S.W.2d 299 (Tex. 1962) (holding an order of the trial judge requiring disclosure and exposure of information contained in income tax returns which was immaterial and irrelevant to the cause in which discovery was sought was a clear abuse of discretion for correction of which the writ of mandamus might issue); *In re ReadyOne Indus., Inc.*, 394 S.W.3d 697, 700 (Tex. App. 2012) ("Accordingly, an order that compels production of patently irrelevant matters is an abuse of discretion.") (citing *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex.2003)); *Trangle v. Rojas*, 2002-Ohio-6510, ¶ 17, 150 Ohio App. 3d 549, 553, 782 N.E.2d 617, 621 ("The trial court should have conducted an in-camera inspection to determine which information, documents, or records were discoverable and which were privileged. Failure to conduct such an in-camera inspection constitutes an abuse of discretion."); *W. Pinal Family Health Ctr., Inc. v. McBryde*, 162 Ariz. 546, 785 P.2d 66 (Ct. App. 1989) (finding trial court's

granting of motion to compel discovery of irrelevant matters, and denial of motions in limine seeking to preclude introduction of irrelevant evidence at trial, constituted abuse of trial court's discretion and was contrary to law, and thus petitioner was entitled to special action relief.).

C. The Production of Financial Information and Net Worth Should be Delayed Until Shortly Before Trial and After Dispositive Motions are Heard and Ruled Upon.

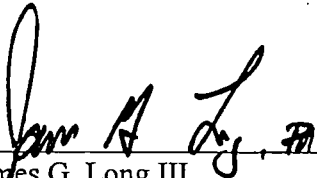
Other states that have addressed the issue of discovery on net worth have taken two paths: first, requiring the plaintiff to make a showing establishing a viable claim for punitive damages exists (that must be more than simply pleading a claim for punitive damages in the complaint); and second, limiting the production of net worth information until after a ruling on dispositive motions. *See Blount v. Wake Elec. Membership Corp.*, 162 F.R.D. 102, 105 (E.D.N.C. 1993) (precluding discovery of financial net worth until plaintiff “make[s] some kind of factual showing that a viable claim for punitive damages exists”); *Collens v. City of New York*, 222 F.R.D. 249 (S.D.N.Y. 2004) (holding plaintiff could not discover information of defendant officer’s financial net worth prior to a finding of liability, since the issue of punitive damages might never arise). Both caveats are a reasonable approach, limiting the discovery of sensitive and prejudicial information until a time when the information actually becomes potentially relevant and necessary. SHP requests the Court to impose these limitations on Plaintiff’s request here.

SHP further notes that in the present case, unlike *Sulton*, there has been no finding that SHP was reckless, willful, and wanton and that Respondent has presented no evidence to support such a finding. Therefore, SHP asserts that in addition to seeking discovery of information irrelevant under *Sulton*, Respondent’s requests are premature.

Conclusion

For the foregoing reasons, SHP respectfully requests this Honorable Court to grant their Petition for a Writ of Certiorari, to review the trial court's Order requiring disclosure of confidential and proprietary information not related to net worth, to review the trial court's Order denying SHP's Motion to Reconsider, to reverse those orders, and to grant such other relief to which Petitioner may be entitled.

September 27, 2016



James G. Long III
Amy H. Geddes
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
(803) 771-8900

Attorneys for Petitioner

Other Counsel of Record:

Scott C. Evans
James B. Moore, III
EVANS MOORE, LLC
121 Screven Street
Georgetown, South Carolina 29440
(843) 995-5000

Attorneys for Respondent

Other Counsel of Record:

Charles F. Turner
Anne R. Culbreath
WILLSON JONES CARTER & BAXLEY, P.A.
872 S. Pleasantburg Drive
Greenville, South Carolina 29607
(864) 527-3280

Attorneys for Cherokee County

James G. Long III
Member
Admitted in SC

October 19, 2016

BY HAND DELIVERY

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

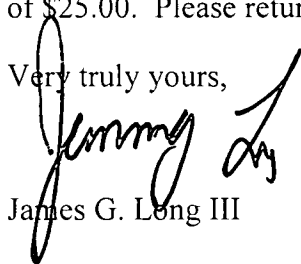
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SC Court of Appeals

Re: Southern Health Partners, Inc., Petitioner, v. Mae Gregory, as
Personal Representative of the Estate of Antonio L. Gregory,
Respondent, Case No. 2015-CP-11-0363

Dear Ms. Kitchings:

Enclosed for filing is the original Petition for Rehearing with six (6) copies in
the above case along with the original proof of service and a filing fee in the amount
of \$25.00. Please return the filed stamped copy with our courier.

Very truly yours,



James G. Long III

- Charleston
- Charlotte
- Columbia**
- Greensboro
- Greenville
- Hilton Head
- Myrtle Beach
- Raleigh

cc: Scott C. Evans
James B. Moore, III
EVANS MOORE, LLC
121 Screven Street
Georgetown, South Carolina 29440
(843) 995-5000
Attorneys for Respondent

Charles F. Turner
Anne R. Culbreath
WILLSON JONES CARTER
& BAXLEY
872 S. Pleasantburg Drive
Greenville, SC 29607
(864) 527-3280
**Attorneys for Cherokee
County**