

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

Appellate Case No. 2016-002026
Circuit Court Case No. 2015-CP-11-0363

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S.C. SUPREME COURT

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

v.

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

RETURN TO PETITION FOR REHEARING

Pursuant to Rule 221 of the South Carolina Rules of Appellate Procedure, the Respondent, the Estate of Antonio Gregory, by and through Mae Gregory as the duly appointed Personal Representative, hereby responds to Southern Health Partners, Inc.'s Petition for Rehearing and respectfully requests the Court deny Appellant's request to hold the appeal in abeyance and further requests that this Court issue the remittitur to the lower court as Ordered on October 10, 2016.

STATEMENT OF FACTS

Respondent Mae Gregory's son, Antonio Gregory, was booked at the Cherokee County Detention Center on June 12, 2013 on a charge of shoplifting a package of cigarettes. At the time of Mr. Gregory's detainment, Appellant Southern Health Partners, Inc., a private healthcare provider, had contracted with the Cherokee County Detention Center to provide all medical treatment to the individuals detained there. (Exhibit A, Complaint).

While at the Cherokee County Detention Center, Mr. Gregory began experiencing chest pain and other serious medical symptoms. Mr. Gregory's condition worsened as a result of Appellant's failure to give him proper medical attention and to provide for his most basic needs. For a period of five (5) days, Mr. Gregory reported to have severe chest pains, abdominal pain, kidney pain, and dizziness. On June 25, 2013, it was reported that Mr. Gregory was unable to walk and had been unable to eat for ten days (10) days. According to the medical records, it was noted that Mr. Gregory exhibited symptoms of jaundice and kidney failure, and had a documented glucose reading of 53. Despite his open and obvious medical emergencies, Appellant failed to provide Mr. Gregory with access to medical intervention. (Exhibit A).

On or around 10:30 a.m. on Wednesday, June 26, 2013, Mr. Gregory experienced a fatal heart arrhythmia within his jail cell. EMS and Fire personnel were summoned, and Mr. Gregory was transported to the Gaffney Medical Center where he was pronounced dead shortly thereafter. Medical experts have determined that Mr. Gregory's death was proximately caused by the Appellant's failure to provide him with proper medical attention during his detention. (Exhibit A).

Respondent Mae Gregory, as Personal Representative of the Estate of Antonio Gregory, subsequently filed the instant action alleging medical negligence against Appellant Southern Health Partners, Inc. and negligence against Cherokee County. As a part of the allegations in the Complaint, Respondent alleged that Appellant engaged in a series of “reckless, willful and wanton acts” for which Respondent seeks to recover damages for Wrongful Death and Survival related to the untimely death of Antonio Gregory at the age of thirty-five (35). (Exhibit A).

In order to comply with the statutory requirements of South Carolina Medical Malpractice Act, Respondent attached to the Complaint and incorporated by reference the affidavit of medical expert Jay B. Krasner, MD. (Exhibit A). In his affidavit, Dr. Krasner opined that Appellant committed a series of “willful, wanton and/or reckless acts and/or omissions, which constituted a failure to comply with the appropriate standard of care...” (Exhibit A). As such, Respondent has properly pled and currently seeks punitive damages in this matter. Respondent believes that punitive damages will be before the jury based upon evidence that Mr. Gregory died a slow and very painful death that could have been prevented with the most basic medical care.

In accordance with the original Consent Scheduling Order of the circuit court, Respondent was required to identify expert witnesses expected to testify at trial no later than May 16, 2016. (Exhibit B, Scheduling Order). On May 11, 2016, Respondent served supplemental discovery responses identifying all experts expected to testify at trial. Among those experts, Respondent identified economist Oliver Wood, Ph.D. Dr. Wood has been disclosed to offer expert testimony

regarding Appellant's ability to pay a punitive damages verdict. (Exhibit C, Memorandum in Support of Motion to Compel).

On March 15, 2016, Respondent served her Second Request for Production to Appellant Southern Health Partners, Inc. requesting copies of filed tax returns for the years 2012, 2013, 2014 and 2015, as well as accountant's statements (income statement, balance sheet, and statement of cash flows) for 2012, 2013, 2014, and 2015 for Appellant. (Exhibit D, Respondent's 2nd Set of Requests for Production). Appellant refused to produce the requested documentation. (Exhibit E, Appellant's Answers to 2nd Set of Requests for Production). When the Appellant refused to produce the relevant records, Respondent filed a motion to compel. (Exhibit F, Respondent's Motion to Compel). The parties each submitted a memorandum of law in support of their positions. (See Exhibit C, Respondent's Memorandum in Support of Motion to Compel; Exhibit G, Appellant's Memorandum in Opposition to Motion to Compel). A hearing took place before Judge J. Mark Hayes, II on July 4, 2016. At the hearing, Respondent's counsel presented the court with the affidavit of Dr. Wood indicating that he is unable to provide the expert analysis regarding the ability of the Appellant to pay a punitive verdict without first reviewing the information requested in discovery. (Exhibit C). The circuit court issued an order granting Respondent's motion to compel on July 5, 2016. (Exhibit H, Order Granting Motion to Compel). The Order specifically addresses Appellant's privacy concerns. Specifically, the circuit court ordered that the compelled financial records be produced "pursuant to the Confidentiality Order of this Court."

Id.

Appellant served a motion to reconsider on July 21, 2016. In its brief in support, Appellant simply recited the same exact grounds that were raised in its initial brief and argued at length at the June 20, 2016 hearing on this matter. (Exhibit I, Appellant's Memorandum in Support of Motion for Reconsideration). The Circuit Court denied Appellant's Motion to Reconsider by Order dated September 2, 2016. (Exhibit J, Order Denying Motion for Reconsideration). In the Order, the Circuit Court noted the distinction between "admissibility and discoverability" of the compelled financial records and again ordered the records be produced under the provisions of the confidentiality order. *Id.* at 17.

Incredibly, rather than complying with the Circuit Court's orders, or refusing to comply and being held in contempt prior to seeking review of a discovery order, the Appellant filed a Petition for Writ of Certiorari in the Supreme Court's original jurisdiction and filed the instant Notice of Appeal. This Court dismissed the Notice of Appeal, by Order filed October 10, 2016, correctly ruling that the underlying discovery orders were interlocutory and not directly appealable. (Exhibit K, Order Dismissing Appeal). Now, Appellant has resorted to filing this instant Petition for Rehearing.

ARGUMENT

I. The Appeal was Properly Dismissed because the Court Does Not Have Jurisdiction to Review the Two Interlocutory Orders Listed in the Notice of Appeal

The Notice of Appeal was properly dismissed because (1) the Orders compelling discovery do not involve the merits of the case, (2) the Orders compelling discovery are not final, and (3) the Appellant has filed a Petition for Writ of Certiorari in the Supreme Court for original jurisdiction.

For the reasons set forth below, this Court should deny Appellant's request to hold the appeal in abeyance and should issue the remittitur to the lower court.

A. The Orders Compelling Discovery Do Not Involve the Merits of the Case and May Not be Appealed.

As this Court previous recognized, the two orders listed in the Notice of Appeal are all interlocutory orders that require Appellant to comply with Judge Hayes' Order compelling discovery. A fundamental rule of appellate procedure is that a judgment or order must be final before it can be appealed. The final judgment rule serves the laudatory goal of preventing piecemeal review of matters that are merely steps toward a final judgment. In light of the policy underpinnings of the final judgment rule, exceptions should be recognized cautiously. *Doe v. Howe*, 362 S.C. 212, 607 S.E.2d 354 (Ct. App. 2005).

The sole exceptions to this rule are contained in S.C. Code Ann. § 14-3-330. *Edwards v. Suncom*, 369 S.C. 91, 631 S.E.2d 529 (2006). This statute provides:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action,

S.C. Code Ann. § 14-3-330(2)(a).

The South Carolina Supreme Court, however, has repeatedly ruled that "[a]n order directing a party to participate in discovery is interlocutory and not directly appealable under S.C. Code Ann. § 14-3-330 (1976)." *See, e.g., Ex parte Whetstone*, 289 S.C. 580, 580, 347 S.E.2d 881,

881 (1986); *Patterson v. Specter Broadcasting*, 287 S.C. 249, 335 S.E.2d 803 (1985); *Lowndes Products, Inc. v. Brower*, 262 S.C. 431, 205 S.E.2d 184 (1974).

The discovery orders in the instant case, however, do not effectively meet the requirements for immediate appealability. Here, the Respondent's causes of action for survival and wrongful death are not so intimately associated with the production of the requested financial records that the order itself determines the subject matter of the action. Indeed, regardless of whether the documents are actually produced, Respondent's action would proceed to further stages of the litigation. Therefore, section 14-3-330(2)(a) does not provide for immediate appeal of the order.

B. The Orders Compelling Discovery are Not Final and May Not be Appealed.

Even if the subject discovery orders involved the merits of the case, which they do not, the discovery orders are not final, and therefore may not be appealed. It is established procedural law in South Carolina that a party wishing to challenge an interlocutory discovery order must refuse to comply, be held in contempt by the Circuit Court, and then appeal the contempt order. *See Davis v. Parkview Apts.*, 409 S.C. 266, 280-81, 762 S.E.2d 535, 543 (2014) (“[T]o challenge the specific rulings of the discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding.”). *See also Ex parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881(1986) (order directing a party or a non-party to submit to discovery is not immediately appealable; instead, the party or non-party must be held in contempt before an appeal may be taken challenging the validity of the discovery order). Accord. *Patterson*, 287 S.C. 249, 335 S.E.2d 803 (1985); *Lowndes Products, Inc.*, 262 S.C. 431, 205 S.E.2d 184 (1974).

Here, rather than complying with the circuit court's orders, or refusing to comply and being held in contempt prior to seeking review of a discovery order, the Appellant filed a Petition for Writ of Certiorari in the Supreme Court's original jurisdiction and filed the instant appeal. Appellant attempts to avoid this established procedure by asserting an alleged "public interest" in the discovery order to invoke the Supreme Court's original jurisdiction under Rule 245 of the South Carolina Rules of Appellate Procedure. This is an improper use of Rule 245, and Respondent has submitted a Return to the Petition detailing why the Supreme Court should deny the Petition. (Exhibit L, Return to Petition).

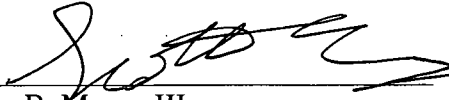
C. The Appellant Filed a Petition for Writ of Certiorari in the South Carolina Supreme Court for the Same Trial Court Orders Appealed to this Court.

The Appellant filed this Notice of Appeal contemporaneously with a Petition for Writ of Certiorari invoking original jurisdiction in the Supreme Court under Rule 245, SCACR. As such, the Respondent respectfully asserts that by doing so, the Appellant divested this Court of jurisdiction. *See* S.C. Code Ann. § 14-3-310 (1976) (discussing the Supreme Court's "power to issue writs" and titled "Original *jurisdiction* of Supreme Court" (emphasis added)); *Key v. Currie*, 305 S.C. 115, 116, 406 S.E.2d 356, 357 (1991) (noting "Article V, § 5, of the South Carolina Constitution vests this Court with the authority to issue extraordinary writs and entertain actions in its original *jurisdiction*" (emphasis added)).

CONCLUSION

For the reasons stated, the Petition for Rehearing should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. B. Moore III", written over a horizontal line.

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

ATTORNEYS FOR RESPONDENT

November 2, 2016
Georgetown, SC

Exhibit A

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

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

Plaintiff(s)

vs.

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

Defendant(s)

(Please Print)

Submitted By: Scott C. Evans

Address: Bell Legal Group

219 Ridge Street, Georgetown, SC 29440

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

015CP110363

SC Bar #: 77684
Telephone #: 843-546-2408
Fax #: 843-546-9604
Other:
E-mail: sevans@edbelllaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199)

- Torts - Professional**
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice
Previous Notice of Intent Case #
2015-CP-11-0180
☐ Notice/ File Med Mal
☐ Other (299)

- Torts - Personal Injury**
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☒ Wrongful Death (360)
☐ Other (399)

- Real Property**
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)

- Inmate Petitions**
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

- Judgments/Settlements**
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment
☐ Minor Settlement (730)
☐ Transcript Judgment
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799)

- Administrative Law/Relief**
☐ Reinstate Driver's License
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order
☐ Other (899)

- Appeals**
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm
☐ Other (999)

Special/Complex /Other

- ☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510)

Submitting Party Signature: 

Date: 5/11/15

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY
Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR.**
 Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)

COUNTY OF CHEROKEE)

MAE GREGORY, As Personal
Representative of the Estate of ANTONIO
L. GREGORY, Deceased,

Plaintiff,

v.)

SOUTHERN HEALTH PARTNERS, INC.
and CHEROKEE COUNTY, SOUTH
CAROLINA,

Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2015-CP-11-_____

015CP-110363

COMPLAINT
(JURY TRIAL REQUESTED)

The Plaintiff would respectfully show unto this Honorable Court and alleges as follows:

PARTIES

1. The Plaintiff, Mae Gregory (hereinafter referred to as "Plaintiff"), is a citizen and resident of the County of Cherokee, State of South Carolina. Plaintiff is the mother and duly appointed Personal Representative of the Estate of Antonio L. Gregory.

2. This suit is filed on behalf of the heirs of Antonio L. Gregory (hereinafter referred to as "Mr. Gregory.") At the time of his death, Mr. Gregory was a thirty-five year old inmate housed within the Cherokee County Detention Center.

3. Defendant Southern Health Partners, Inc. (hereinafter referred to as "Southern Health") is a for-profit corporation existing under the laws of the State of Delaware with employees and agents stationed throughout South Carolina, including Cherokee County, South Carolina, providing healthcare services within county correctional facilities. At all times hereinafter mentioned in this lawsuit, Defendant Southern Health acted and carried on its business by and through its agents, servants, and/or employees at its various locations including the Cherokee

County Detention Center. Additionally, these agents, servants, and/or employees were operating within the scope of their officially assigned and/or compensated duties.

4. Defendant Cherokee County, South Carolina (hereinafter referred to as "Cherokee County") is a governmental agency/entity existing under the laws of the State of South Carolina and is located in Cherokee County, South Carolina. At all times hereinafter mentioned in this lawsuit, the Defendant Cherokee County acted and carried on its business by and through its agents, servants, and/or employees. Additionally, these agents, servants, and or employees were operating within the scope of their officially assigned and/or compensated duties which included the daily operation of the Cherokee County Detention Center.

JURISDICTION AND VENUE

5. Venue is proper in this Court because the alleged acts and omissions giving rise to this cause of action occurred in Cherokee County, South Carolina.

FACTS

6. Mr. Gregory was incarcerated within the Cherokee County Detention Center on June 12, 2013 on a charge of shoplifting a pack of cigarettes. Mr. Gregory was 35 years old at the time of his incarceration.

7. Shortly after admission, Mr. Gregory began complaining of extreme chest pain. These complaints were relayed to both the medical and correctional staff working within the Cherokee County Detention Center. At no point prior to his death was Mr. Gregory properly evaluated for his chest pains.

8. On Saturday, June 22, 2013, Mr. Gregory was found laying on the ground of the recreational yard with complaints of nausea and abdominal pain rated at 8/10. Mr. Gregory further complained about chest pain. Defendants failed to exercise reasonable care to properly

evaluate and diagnose Mr. Gregory when he was found. Defendants failed to exercise reasonable care to consider that the above symptoms were consistent with a variety of life-threatening medical conditions, including but not limited to acute renal failure which can provoke angina; acute left ventricular dysfunction; and flash pulmonary edema.

9. Defendants failed to exercise reasonable care to address the symptoms of oliguria, constipation, and anorexia that Mr. Gregory complained of on that day.

10. Defendants failed to promptly diagnose and treat the hypotension and hypothermia which Mr. Gregory exhibited on that day.

11. Mr. Gregory continued to complain of abdominal pain on Sunday, June 23, 2013. Defendants failed to exercise reasonable care to consider that Mr. Gregory's continued complaints of abdominal pain were consistent with a variety of life-threatening medical conditions, including but not limited to acute renal failure.

12. On Monday, June 24, 2013, Mr. Gregory was again found lying on the ground of the recreational yard with complaints of nausea. Defendants failed to exercise reasonable care to properly evaluate and diagnose Mr. Gregory. Defendants failed to exercise reasonable care to consider that Mr. Gregory's symptoms, coupled with his history and symptoms dating back to June 15, 2013, were consistent with a life-threatening medical condition requiring prompt evaluation and treatment.

13. On Tuesday, June 25, 2013, Mr. Gregory continued to complain of nausea and was noted to have eye jaundice. Defendants failed to exercise reasonable care to recognize that Mr. Gregory's complaints of nausea and eye jaundice were consistent with a serious and life-threatening medical condition.

14. Defendants failed to recognize that the hypoglycemia with which Mr. Gregory was diagnosed on that day was an unexpected finding with an extensive differential diagnosis and serious clinical consequences requiring immediate evaluation and treatment.

15. On Wednesday, June 26, 2013, on or about 4:00 a.m., Mr. Gregory complained of chest pain. Defendants failed to exercise reasonable care to recognize Mr. Gregory's complaints of chest pain were consistent with a cardiac emergency requiring immediate transport to a health care facility capable of managing cardiac emergencies.

16. On or around 10:30 a.m. on June 25, 2013, Mr. Gregory experienced a fatal heart arrhythmia. EMS and Fire personnel were summoned, and Mr. Gregory was transported to the Gaffney Medical Center where he was pronounced dead shortly thereafter.

FOR A FIRST CAUSE OF ACTION
AGAINST DEFENDANT CHEROKEE COUNTY, SOUTH CAROLINA

(Gross Negligence/Negligence/Survival)

17. The foregoing factual allegations are made a part of this First Cause of Action through incorporation by reference.

18. The above incident and Mr. Gregory's resulting injuries and death were proximately caused by the negligent, grossly negligent, and reckless acts of the Defendant, in the following particulars:

- a. In failing to exercise reasonable or slight care to provide Mr. Gregory with appropriate attention and/or properly summon medical treatment for Mr. Gregory's extreme physical deterioration on multiple occasions between June 12 and June 26, 2013;
- b. In failing to exercise reasonable or slight care to sufficiently monitor Mr. Gregory while incarcerated so as to determine the severity of his physical condition and/or obvious physical deterioration and distress;
- c. In failing to exercise reasonable or slight care to request that the appropriate examination and/or evaluation be performed to determine Mr. Gregory's

medical and nutritional needs;

- d. In failing to exercise reasonable or slight care to properly train and/or supervise its personnel, agents and/or employees so as to ensure that inmates, including Mr. Gregory, are provided with proper supervision, attention, and care while incarcerated;
- e. In failing to exercise reasonable or slight care to take the appropriate steps to secure or summon appropriate medical treatment and/or emergency treatment for Mr. Gregory when they had actual and constructive notice of Mr. Gregory's deteriorating physical condition;
- f. In failing to exercise reasonable or slight care to follow and adhere to the policies and procedures of the Cherokee County Detention Center;
- g. In failing to exercise reasonable or slight care to protect Mr. Gregory from harm;
- h. In failing to exercise reasonable or slight care to properly screen, classify or treat Mr. Gregory during his incarceration; and
- i. In failing to exercise reasonable or slight care to properly notify outside medical facilities of Mr. Gregory's extreme physical deterioration.

19. (As a direct and proximate result of the Defendant's negligent, grossly negligent, and reckless conduct, Mr. Gregory was severely injured, suffered needlessly, and subsequently died.

20. Based on the foregoing allegations, the Plaintiff is entitled to an award of ACTUAL and CONSEQUENTIAL DAMAGES.

FOR A SECOND CAUSE OF ACTION
AGAINST THE DEFENDANT CHEROKEE COUNTY, SOUTH CAROLINA

(Gross Negligence/Negligence/Wrongful Death)

21. The foregoing factual allegations are made a part of this Second Cause of Action through incorporation by reference.

22. This action for wrongful death of Mr. Gregory is brought pursuant to the provisions of §15-51-10 et seq., of the Code of Laws of South Carolina (1976, as amended), and is brought on behalf of the statutory heirs of Mr. Gregory, who died on June 26, 2013.

23. The above incident and Mr. Gregory's resulting injuries and death were proximately caused by the negligent, grossly negligent, and reckless acts of the Defendant, in the following particulars:

- a. In failing to exercise reasonable or slight care to provide Mr. Gregory with appropriate attention and/or properly summon medical treatment for Mr. Gregory's serious illness on multiple occasions between June 12 and June 26, 2013;
- b. In failing to exercise reasonable or slight care to sufficiently monitor Mr. Gregory while incarcerated so as to determine the severity of his physical condition and/or obvious physical deterioration and distress;
- c. In failing to exercise reasonable or slight care to request that the appropriate examination be performed to determine Mr. Gregory's medical and nutritional needs;
- d. In failing to exercise reasonable or slight care to properly train and/or supervise its personnel, agents and/or employees so as to ensure that inmates, including Mr. Gregory, are provided with proper supervision, attention, and care while incarcerated;
- e. In failing to exercise reasonable or slight care to take the appropriate steps to secure or summon appropriate medical treatment and/or emergency treatment for Mr. Gregory when they had actual and constructive notice of the Mr. Gregory's deteriorating physical condition;
- f. In failing to exercise reasonable or slight care to follow and adhere to the policies and procedures of the Cherokee County Detention Center;
- g. In failing to exercise reasonable or slight care to protect Mr. Gregory from harm;
- h. In failing to exercise reasonable or slight care to properly screen, classify or treat Mr. Gregory during his incarceration; and
- i. In failing to exercise reasonable or slight care to properly notify outside medical facilities of Mr. Gregory's extreme physical deterioration.

24. As a direct and proximate result of the negligent, grossly negligent, and reckless acts and omissions of the Defendant, Mr. Gregory suffered a premature death and Mr. Gregory's statutory heirs have been damaged and suffered as follows:

- a. loss of contribution of the deceased;
- b. extreme mental shock and suffering;
- c. extreme wounded feelings;
- d. tremendous grief and sorrow;
- e. loss of friendship and companionship;
- f. loss of a father and relative.

25. Based on the foregoing allegations, the Plaintiff is entitled to an award of ACTUAL and CONSEQUENTIAL DAMAGES.

FOR A THIRD CAUSE OF ACTION
AGAINST DEFENDANT SOUTHERN HEALTH PARTNERS, INC.

(Medical Malpractice/Survival)

26. The foregoing factual allegations are made a part of this Third Cause of Action through incorporation by reference.

27. At all times mentioned herein, Mr. Gregory was under the care of the medical staff of Southern Health Partners, Inc. who contracted to provide in-house medical care within the Cherokee County Detention Center, and had a physician-patient relationship with Mr. Gregory.

28. The above incident and Mr. Gregory's resulting injuries and death were proximately caused by the negligent, grossly negligent, reckless, willful and wanton acts of the Defendant, in the following particulars:

- a. Failing to exercise reasonable care to properly evaluate and diagnose Mr. Gregory when he was found lying on the ground of the recreational yard on Saturday, June 22, 2013, with complaints of nausea and abdominal pain, rated at 8/10;
- b. Failing to exercise reasonable care to consider that the above-referenced symptoms were consistent with a variety of life-threatening medical conditions, including but not limited to acute renal failure, that could provoke angina, acute left ventricular dysfunction and flash pulmonary edema;

- c. Failing to exercise reasonable care in addressing the symptoms of oliguria, constipation and anorexia that Mr. Gregory complained of on that day;
- d. Failing to promptly diagnose and treat the hypotension and hypothermia which Mr. Gregory exhibited on that day;
- e. Failing to exercise reasonable care to recognize that Mr. Gregory's continued complaints of abdominal pain on Sunday, June 23, 2013 were consistent with a variety of life-threatening medical conditions, including but not limited to acute renal failure;
- f. Failing to exercise reasonable care to properly evaluate and diagnose Mr. Gregory when he was, again, found lying on the ground of the recreational yard on Monday, June 24, 2013, with complaints of nausea, now present for 9 days;
- g. Failing to exercise reasonable care to consider that Mr. Gregory's above-referenced symptoms, coupled with his history and symptoms dating back to June 15, 2013, were consistent with a life-threatening medical condition requiring prompt evaluation and treatment;
- h. Failing to exercise reasonable care to recognize that Mr. Gregory's continued complaints of nausea and eye (pseudo)jaundice as noted on Tuesday, June 25, 2013 were consistent with a serious medical condition;
- i. Failing to recognize that the hypoglycemia with which Mr. Gregory was diagnosed on that day was an unexpected finding with an extensive differential diagnosis and serious clinical consequences requiring immediate evaluation and treatment in and of itself; and
- j. Failing to exercise reasonable care to recognize that Mr. Gregory's complaints of chest pain on or about 4:00 a.m. on Wednesday, June 26, 2013 were consistent with a cardiac emergency requiring immediate transport to a health care facility capable of managing cardiac emergencies.

29. As a direct and proximate result of the Defendant's negligent, grossly negligent, and reckless conduct, Mr. Gregory was severely injured, suffered needlessly, and subsequently died.

30. Based on the foregoing allegations, the Plaintiff is entitled to an award of ACTUAL and CONSEQUENTIAL DAMAGES.

31. Defendant's conduct as outline above was reckless, wanton, and willful, as such Plaintiff is further entitled to an award of PUNITIVE DAMAGES.

FOR A FOURTH CAUSE OF ACTION
AGAINST DEFENDANT SOUTHERN HEALTH PARTNERS, INC.

(Medical Malpractice/Wrongful Death)

32. The foregoing factual allegations are made a part of this Fourth Cause of Action through incorporation by reference.

33. This action for wrongful death of Mr. Gregory is brought pursuant to the provisions of §15-51-10 et seq., of the Code of Laws of South Carolina (1976, as amended), and is brought on behalf of the statutory heirs of Antonio Gregory, who died on June 26, 2013.

34. At all times mentioned herein, Mr. Gregory was under the care of the medical staff of Southern Health Partners, Inc. who contracted to provide in-house medical care within the Cherokee County Detention Center, and had a physician-patient relationship with Mr. Gregory.

35. The above incident and Mr. Gregory's resulting injuries and death were proximately caused by the negligent, grossly negligent, reckless, willful and wanton acts of the Defendant, in the following particulars:

- a. Failing to exercise reasonable care to properly evaluate and diagnose Mr. Gregory when he was found lying on the ground of the recreational yard on Saturday, June 22, 2013, with complaints of nausea and abdominal pain, rated at 8/10;
- b. Failing to exercise reasonable care to consider that the above-referenced symptoms were consistent with a variety of life-threatening medical conditions, including but not limited to acute renal failure, that could provoke angina, acute left ventricular dysfunction and flash pulmonary edema;
- c. Failing to exercise reasonable care in addressing the symptoms of oliguria, constipation and anorexia that Mr. Gregory complained of on that day;

- d. Failing to promptly diagnose and treat the hypotension and hypothermia which Mr. Gregory exhibited on that day;
- e. Failing to exercise reasonable care to recognize that Mr. Gregory's continued complaints of abdominal pain on Sunday, June 23, 2013 were consistent with a variety of life-threatening medical conditions, including but not limited to acute renal failure;
- f. Failing to exercise reasonable care to properly evaluate and diagnose Mr. Gregory when he was, again, found lying on the ground of the recreational yard on Monday, June 24, 2013, with complaints of nausea, now present for 9 days;
- g. Failing to exercise reasonable care to consider that Mr. Gregory's above-referenced symptoms, coupled with his history and symptoms dating back to June 15, 2013, were consistent with a life-threatening medical condition requiring prompt evaluation and treatment;
- h. Failing to exercise reasonable care to recognize that Mr. Gregory's continued complaints of nausea and eye (pseudo)jaundice as noted on Tuesday, June 25, 2013 were consistent with a serious medical condition;
- i. Failing to recognize that the hypoglycemia with which Mr. Gregory was diagnosed on that day was an unexpected finding with an extensive differential diagnosis and serious clinical consequences requiring immediate evaluation and treatment in and of itself; and
- j. Failing to exercise reasonable care to recognize that Mr. Gregory's complaints of chest pain on or about 4:00 a.m. on Wednesday, June 26, 2013 were consistent with a

cardiac emergency requiring immediate transport to a health care facility capable of managing cardiac emergencies.

36. As a direct and proximate result of the grossly negligent acts, omissions, willful and wanton conduct of the Defendant, Mr. Gregory's statutory heirs have been damaged and suffered as follows:

- g. loss of contribution of the deceased;
- h. extreme mental shock and suffering;
- i. extreme wounded feelings;
- j. tremendous grief and sorrow;
- k. loss of friendship and companionship;
- l. loss of a father or relative.

37. Based on the foregoing allegations, the Plaintiff is entitled to an award of ACTUAL and CONSEQUENTIAL DAMAGES.

38. Defendant's conduct as outline above was reckless, wanton, and willful, as such Plaintiff is further entitled to an award of PUNITIVE DAMAGES.

DEMAND FOR JURY TRIAL

WHEREFORE, the Plaintiff hereby requests a trial by jury on all of the issues that have been or may hereafter be raised in any of the pleadings. Plaintiff further seeks judgment against Defendants for:

- a. actual and consequential damages as to each independent cause of action;
- b. punitive damages against defendant Southern Health Partners, Inc. in an amount to be assessed by the jury as just and proper and in an amount sufficient to punish Defendants and to deter future misconduct;

- c. the costs and disbursements of this action;
- d. such other and further relief as this Court deems just and proper.

Respectfully Submitted,



J. Edward Bell, III
Scott C. Evans
Bell Legal Group, LLC
219 Ridge Street
Georgetown, SC 29440
(843) 546-2408
(843) 546-9604 facsimile

May, 1 2015
Georgetown, South Carolina

FILED
CLERK OF
COURT
J. SC.
2015 MAY 4 PM 3 45
RANDY W. MOORE

015CP-110363

Exhibit 1

FILED
CLERK
U.S.C.
2015 MAY 4 PM 3 45
BRANDY W. MOORE

) IN THE COURT OF COMMON PLEAS

)
) **CIVIL ACTION 2015-CP-11-**

015CP-110363

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1. I am a physician, licensed by the State of Massachusetts and the appropriate regulatory agency having jurisdiction over the practice of my profession in the location in which I practice.
2. I am Board Certified by the American Board of Internal Medicine, a national association which administers written and/or oral examinations for certification in the area of practice and specialty about which this opinion on the standard of care is offered.
3. I have actual professional knowledge and experience in the specialty and area of practice in which this opinion is given, as a result of my having been regularly engaged in the active practice in the area of specialty and practice for at least three (3) of the last five (5) years immediately preceding this opinion. (see attached CV).
4. This affidavit is made pursuant §15-36-100 of the 1976 SC Code of Laws, which requires that this affidavit must specify at least one negligent act or omission claimed to exist and

the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.

5. The evidence made available to me, for my review, prior to the making of this affidavit, includes:

- SLED Report (Including Investigative Report, Statements of Officer Caggiano; Nurse Parker; Officer Wood; and Officer Philbeck);
- Autopsy Report;
- Death Certificate;
- Gaffney Fire & Rescue Records, 06/26/2013; and
- Gaffney Medical Center Records, 06/26/2013.

Additionally, it is my understanding that discovery is expected to commence immediately and that I can expect to receive further information including depositions or medical records and/or reports. Therefore, upon receipt and review of this information my opinions may be further supplemented, altered or changed.

6. Through my professional standing as set forth above, I am familiar with the applicable standard of care practiced by health care providers generally, including those who practice internal medicine and evaluate adult patients in a custodial setting. The applicable standard of care requires that:

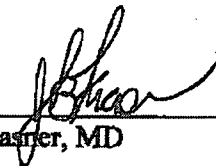
- Inmates with physical or medical complaints be seen in a timely manner;
- Inmates with physical or medical complaints be properly evaluated;
- Inmates exhibiting symptoms that could be indicative of a medical emergency be properly evaluated, screened, and or diagnosed; and,
- Inmates exhibiting symptoms that can be indicative of a medical emergency be transferred to an appropriate medical facility for diagnosis

and treatment when the proper services are not available within the institution.

7. I have reviewed the records as submitted to me, and based upon my expertise, as set forth above, it is my opinion to a reasonable degree of medical certainty that the medical staff working within the Cherokee County Detention Center, to include those employed by Southern Health Partners, Inc., the Cherokee County Detention Center, the Cherokee County Sheriff's Office, and/or Cherokee County, South Carolina committed the following negligent, grossly negligent, willful, wanton and/or reckless acts and/or omissions, which constituted a failure to comply with the appropriate standard of care:
- a. Failing to exercise reasonable care to properly evaluate and diagnose Antonio Gregory when he was found lying on the ground of the recreational yard on Saturday, June 22, 2013, with complaints of nausea and abdominal pain, rated at 8/10;
 - b. Failing to exercise reasonable care to consider that the above-referenced symptoms were consistent with a variety of life-threatening medical conditions, including but not limited to acute renal failure, that could provoke angina, acute left ventricular dysfunction and flash pulmonary edema;
 - c. Failing to exercise reasonable care in addressing the symptoms of oliguria, constipation and anorexia that Antonio Gregory complained of on that day;
 - d. Failing to promptly diagnose and treat the hypotension and hypothermia which Antonio Gregory exhibited on that day;
 - e. Failing to exercise reasonable care to recognize that Antonio Gregory's continued complaints of abdominal pain on Sunday, June 23, 2013 were consistent with a variety of life-threatening medical conditions, including but not limited to acute renal failure;

- f. Failing to exercise reasonable care to properly evaluate and diagnose Antonio Gregory when he was, again, found lying on the ground of the recreational yard on Monday, June 24, 2013, with complaints of nausea, now present for 9 days;
- g. Failing to exercise reasonable care to consider that Mr. Gregory's above-referenced symptoms, coupled with his history and symptoms dating back to June 15, 2013, were consistent with a life-threatening medical condition requiring prompt evaluation and treatment;
- h. Failing to exercise reasonable care to recognize that Antonio Gregory's continued complaints of nausea and eye (pseudo)jaundice as noted on Tuesday, June 25, 2013 were consistent with a serious medical condition;
- i. Failing to recognize that the hypoglycemia with which Antonio Gregory was diagnosed on that day was an unexpected finding with an extensive differential diagnosis and serious clinical consequences requiring immediate evaluation and treatment in and of itself;
- j. Failing to exercise reasonable care in recognizing that Antonio Gregory's complaints of chest pain on or about 4:00 a.m. on Wednesday, June 26, 2013 were consistent with a cardiac emergency requiring immediate transport to a health care facility capable of managing cardiac emergencies.

8. Had Mr. Gregory been timely evaluated by a medical professional and treated for his mounting cardiac emergency, his deterioration and ultimate death could have, more likely than not based on a reasonable degree of medical certainty, been prevented.


Jay B. Kramer, MD

SWORN TO before me this

12th day of February, 2015

 (L.S.)

Notary Public for Massachusetts

My commission expires: 11-13-20

CURRICULUM VITAE

Jay B. Krasner, MD, FACP

111 Boston Post Road Suite 107 Sudbury, MA 01776 Office Telephone: (978) 443-8010
Home Telephone: (978) 440-7699

e-mail: doctorjay@mailforce.net

Cell: (508) 561 7232

EMPLOYMENT HISTORY

August 1990 - Present

Wayside Health Associates: Private Practice, General Internal Medicine

<http://www.waysidehealth.com>

Sudbury, Massachusetts

- Founder and owner of a solo primary care practice in this community with a strong emphasis on achieving and maintaining an optimal level of health for each patient
- Active medical staff, Emerson Hospital, Concord MA, 1990 -
- Courtesy medical staff, MetroWest Medical Center, Framingham MA, 1991-present
- Medical Director, Parmenter Health Services (home health agency), 1991-
- Active medical staff, Newton-Wellesley Hospital, Newton MA, 1993 - 2002
- Delegate-At-Large, Medical Executive Committee, Emerson Hospital, 1997-1999
- Board of Directors, Emerson Independent Practice Association, 2001-2007

June 1987 - May 1990

Medical Officer

Federal Correctional Institution, Lexington, KY

- NHSC scholarship obligation fulfillment
- Commissioned Officer, United States Public Health Service (attained rank of Commander)
- Responsible for providing ambulatory and inpatient care to inmates at this facility.
- FCI Lexington served as the only medical referral center for female inmates in the Federal Bureau of Prisons.
A substantial portion of the inmate population required skilled and ongoing medical care.
- Medical Director, Outpatient Services, June 1988 - May 1990
- Teaching attending physician, Veterans' Administration Hospital, Lexington KY

July 1984 - May 1987

Attending Physician, Section Of General Internal Medicine

Albert Einstein Medical Center, Northern Division, Philadelphia PA

- Member of a three physician group (full time faculty) responsible for teaching and supervision of house staff providing primary ambulatory, inpatient and perioperative consultative care to a group of largely indigent patients followed in the Ambulatory Care Clinic at this Temple University teaching hospital.
- Teaching Service attending physician (general inpatient and ICU)
- Instructor, sophomore history & physical diagnosis course, Temple University
- Director, Employee Health Service, July 1986 - March 1987

November 1981 - August 1993

Attending Physician, Emergency Department/Urgent Care

Continuous employment on a part time basis at local facilities in this capacity (about 6000 hours total). Settings have ranged from busy Emergency Departments in the inner city to low volume Emergency Departments in rural areas as well as a free-standing Urgent Care Center in a suburban location.
- Recommenced this activity January 2008

Have moonlighted as hospitalist (then called "house physician") during residency in early 1980's.
Recommenced this activity January 2007 - February 2008 on a part-time basis.

EDUCATION

June 1980 - June 1984

Graduate Hospital of the University of PA, Philadelphia PA

Residency in Internal Medicine completed June 1983

Chief Resident, July 1983 - June 1984

September 1976 - May 1980

Brown University Program in Medicine, Providence RI

MD Awarded 1980

September 1972 - May 1976

Massachusetts Institute of Technology, Cambridge MA

Areas of study: Electrical engineering (biomedical track), computer science

BSEE Awarded 1976

LICENSURE/CERTIFICATION

Commonwealth of Massachusetts Medical License #72857, 1990

State of Kentucky Medical License #25385, 1987

Diplomate, American Board of Internal Medicine #049940, 1984

Commonwealth of Pennsylvania Medical License #MD-025935-E, 1981

Drug Enforcement Administration Registration #BK 0781270, 1981

Diplomate, National Board of Medical Examiners, 1981

Advanced Cardiac Life Support, 1981-

(most recent recertification, September 2008)

Pediatric Advanced Life Support, 1993

FACULTY APPOINTMENTS

June 1988 - May 1990

Clinical Assistant Professor, Internal Medicine

University of Kentucky School of Medicine, Lexington, KY

April 1985 - May 1987

Assistant Professor, Internal Medicine

Temple University School of Medicine, Philadelphia, PA

July 1980 - June 1984

Clinical Instructor, Internal Medicine

University of PA School of Medicine, Philadelphia, PA

MEMBERSHIPS IN PROFESSIONAL/HONORARY SOCIETIES

American Society of Internal Medicine, 1990

Massachusetts Medical Society, 1990 (Delegate, 2004-)

Society for General Internal Medicine, 1986

Alpha Omega Alpha, U. of Penn. (Medical honor society), 1984

American College of Physicians, 1983. Elected to Fellowship, 2006.

IEEE Computer Society, 1983

National Board of Medical Examiners - Task Force on Computer Based Examination, 1983

American Medical Joggers Association, 1977

Eta Kappa Nu, MIT (Electrical engineering honor society), 1976

Sigma Xi, MIT (Scientific research honor society), 1975

OTHER CLINICAL ACTIVITIES Massachusetts Medical Malpractice Tribunal: Member, 1995 - present
 Internal Medicine: Clinical Reactor, 1994 - present
 Contemporary Internal Medicine: Clinical Reviewer, 1996 - present
 Department of Industrial Accidents, Commonwealth of Massachusetts:
 Impartial Medical Examiner, 1993 - present
 Senior medical student ambulatory elective, "The Office Practice of General Internal Medicine in the Community Setting", Tufts University School of Medicine:
 Course director, 1992 - present
 Central Massachusetts Region, HMO Blue: Associate Medical Director for
 Quality Assurance and Utilization Review, 1992 - 1994
 Medical Software Reviews: Reviewer, software, 1991 - present
 Computer News for Physicians: Reviewer, software, 1987 - 1990
 Annals of Internal Medicine: Reviewer, manuscripts and software, 1985-1987 and 2003-

SPECIAL INTERESTS

Computer-assisted diagnosis and patient management
 Fluent in Microsoft Office, VBA, HTML, Perl, XML and Javascript
 Medical decision analysis & clinical reasoning science
 Clinical knowledge representation theory
 Nutritional assessment, therapy and diet-disease interaction
 Exercise biochemistry, physiology & biomechanics

BIBLIOGRAPHY

ORIGINAL PAPERS

Krasner JB: Interview: Computers in medicine and in the laboratory.
 Clinical Laboratory Update 1(4):6-7 (1988)

Krasner JB: A technique for optimization of enteral feeding regimens: implementation on a microcomputer. Journal of Parenteral and Enteral Nutrition 10(2):208-12 (1986)

Krasner JB, Marino PL: An analytical approach to the creation of parenteral feeding regimens: implementation on a microcomputer.
 Journal of Parenteral and Enteral Nutrition 9(2):226-9 (1985)

Marino PL, Krasner JB: The computer as consultant in the intensive care unit.
 Update: Computers in Medicine 2(6):51-4 (1984)

Krasner JB, Marino PL: ENTERAL EXPERT: Tube feeding made easy.
 Proceedings of the 8th Annual Symposium on Computer Applications in Medical Care
 Washington DC: IEEE Computer Society Press, p. 900 (1983)

Krasner JB, Marino PL: The use of a pocket computer for hemodynamic profiles.
 Critical Care Medicine 11(10):826-7 (1983)

Marino PL, Krasner JB: A comprehensive computer program for analyzing hemodynamics in the intensive care unit. Proceedings of the 5th Annual Symposium on Computers in Critical Care and Pulmonary Medicine Salt Lake City (1983)

REVIEWS Krasner JB: COAG Expert (software review) Medical Software Reviews 3(6):6-7 (1994)

Krasner JB: Physician's Data Base Manager v6.0 (software review).
Medical Software Reviews 1(4):6-7 (1992)

Krasner JB: Symptom Analyst Plus v2.0 (software review).
Medical Software Reviews 1(1):5-6 (1992)

Krasner JB: Care and Punishment - The Dilemma of Prison Medicine (book review).
Ann Int Med 110:950 (1989)

Krasner JB: HE-1: Disorders of Coagulation (software review).
Computer News for Physicians, June 15, 1989, p. C-14

Krasner JB: Internist Plus (software review). Ann Int Med 104:89 (1986)

BOOK CHAPTERS

Krasner JB: Computers and medicine - an auspicious union. In Nash DB:
Medicine: Future Practice Alternatives, ed. 2. New York: Igaku-Shoin (1993)

SOFTWARE

Krasner JB: Parenteral Hyperalimentation Expert. Chicago: Mednastic
Software, Inc. (1984)

Krasner JB: Enteral Hyperalimentation Expert. Chicago: Mednastic Software, Inc. (1984)

Krasner JB, Marino PL: Respiratory Expert. Philadelphia: W.B. Saunders Co. (1984)

Marino PL, O'Moore P, Krasner JB: Fluid and Electrolyte Expert.
Philadelphia: W.B. Saunders Co. (1984)

Exhibit B

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Mae Gregory, as Personal Representative of the
Estate of Antonio L. Gregory

Plaintiff,

vs.

Southern Health Partners, Inc., and Cherokee
County

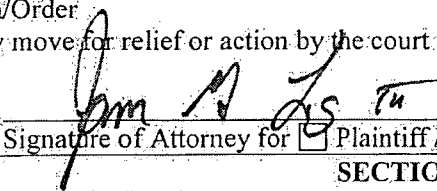
Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2015 -CP-11-00363

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney: Scott C. Evans, Bar No. _____ Address: Evans Moore, 121 Screven St., Georgetown SC 29440 Phone: 843.995.5000 Fax 843.527.4128 E-mail: _____ Other: _____	Defendant's Attorney: James G. Long, III, Bar No. 64103 Address: Nexsen Pruet, LLC 1230 Main St., Ste. 700, Columbia SC 29201 Phone: 803.253.8224 Fax 803.727.1460 E-mail: jlong@nexsenpruet.com Other: _____																
☐ 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: _____ Estimated Time Needed: _____ 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 February 16, 2015 Date submitted																	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ 25.00 ☐ EXEMPT: (check reason) <table border="0" style="width: 100%;"> <tr> <td>☐ Rule to Show Cause in Child or Spousal Support</td> <td>☐ State Agency v. Indigent Party</td> </tr> <tr> <td>☐ Domestic Abuse or Abuse and Neglect</td> <td>☐ Post-Conviction Relief</td> </tr> <tr> <td>☐ Indigent Status</td> <td>☐ Motion for Stay in Bankruptcy</td> </tr> <tr> <td>☐ Sexually Violent Predator Act</td> <td>☐ Motion for Publication</td> </tr> <tr> <td>☐ Motion for Execution (Rule 69, SCRCP)</td> <td>☐ Proposed order submitted at request of the court; or,</td> </tr> <tr> <td colspan="2">reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td colspan="2">Name of Court Reporter: _____</td> </tr> <tr> <td colspan="2">☐ Other: _____</td> </tr> </table>		☐ Rule to Show Cause in Child or Spousal Support	☐ State Agency v. Indigent Party	☐ Domestic Abuse or Abuse and Neglect	☐ Post-Conviction Relief	☐ Indigent Status	☐ Motion for Stay in Bankruptcy	☐ Sexually Violent Predator Act	☐ 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: _____	
☐ Rule to Show Cause in Child or Spousal Support	☐ State Agency v. Indigent Party																
☐ Domestic Abuse or Abuse and Neglect	☐ Post-Conviction Relief																
☐ Indigent Status	☐ Motion for Stay in Bankruptcy																
☐ Sexually Violent Predator Act	☐ Motion for Publication																
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reduced to writing from motion made in open court per judge's instructions																	
Name of Court Reporter: _____																	
☐ Other: _____																	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ 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 CHEROKEE

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2015-CP-11-00363

Mae Gregory, as Personal Representative of
the Estate of Antonio L. Gregory,

Plaintiff,

vs.

Southern Health Partners, Inc. and Cherokee
County,

Defendants.

**CONSENT
SCHEDULING ORDER**

FILED IN THE OFFICE
CLERK OF COURT
JUL 16 A 9 55
JUL 16 2016

THIS MATTER CAME BEFORE THE JUDGE, with the consent of the parties, for a scheduling order in the above-captioned matter pursuant to Rule 16 of the South Carolina Rules of Civil Procedure. Accordingly, I enter the following scheduling order into this case:

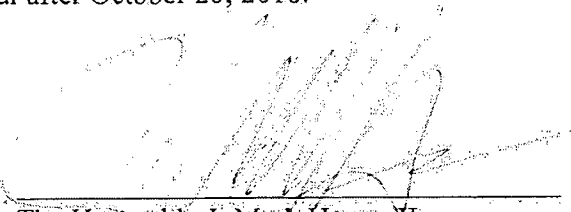
1. The Plaintiff shall identify all expert witnesses, produce any reports of said witnesses, and make the records and file materials of those expert witnesses available to all counsel by May 16, 2016.
2. The Defendants shall identify all expert witnesses, produce any reports of those witnesses, and make the records and file materials of those expert witnesses available to all counsel by July 15, 2016.
3. This case shall be mediated on or by September 30, 2016.
4. This case shall be set for a date certain trial. The Court shall set a status conference in this matter so that said trial may be scheduled. This status conference shall take place on or before September 15, 2016.



5. Trial in this matter shall occur after October 20, 2016.

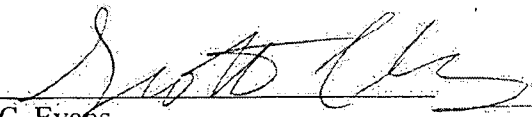
AND IT IS SO ORDERED!

Dated: February 16, 2016


The Honorable J. Mark Hayes, II
Cherokee County Chief Administrative Judge

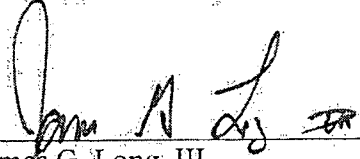
FILED IN THE OFFICE
CLERK OF DISTRICT
JAN 16 16 A 11 45
JAN 16 16 A 11 45
JAN 16 16 A 11 45

We Consent:



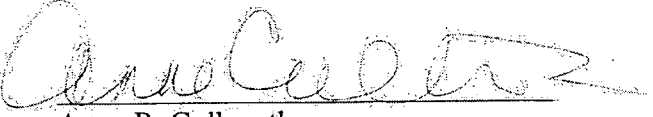
Scott C. Evans
EVANS MOORE
121 Screven St.
Georgetown, SC 29440
Telephone: 843.995.5000
Fax: 843.527.4128

Attorney for Plaintiff



James G. Long, III
Amy H. Geddes
NEXSEN PRUET, LLC
1230 Main St., Suite 700
P. O. Box 2426
Columbia, SC 29202
Telephone: 803.771.8900
Fax: 803.727.1460

Attorneys for Defendant Southern Health Partners, Inc.



Anne R. Culbreath
Charles F. Turner
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Dr.
Greenville, SC 29607
Telephone: 864.672.3713
Fax: 864.373.7055

*Attorneys for Defendants Cherokee County Detention Center,
Cherokee County Sheriff's Department, and Cherokee County,
South Carolina*

RECEIVED
JAN 10 2013
CLERK OF COURT
JAN 10 2013
JAN 10 2013

Exhibit C

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

MAE GREGORY, As Personal
Representative of the Estate of ANTONIO
L. GREGORY,

Plaintiff,

v.

SOUTHERN HEALTH PARTNERS, INC.
and CHEROKEE COUNTY, SOUTH
CAROLINA,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION 2015-CP-11-0363

SUPPLEMENTAL MEMORANDUM
IN SUPPORT OF MOTION TO
COMPEL

FILED IN THE CLERK'S OFFICE
JUN 16 A 11:42
ANDY N. MOORE
CLERK OF COURT
CHEROKEE COUNTY, SC

Comes now the Plaintiff, and hereby files this supplemental memorandum in support of the Plaintiff's Motion to Compel discovery responses from Defendant Southern Health Partners, Inc. which was filed on May 19, 2016. This matter has been set for a hearing on June 20, 2016.

The requested materials that are the subject of the motion to compel include financial summary documents as requested in the Plaintiff's Second Request for Production to Southern Health Partners. Specifically, the Plaintiff has requested copies of the filed tax returns for the years 2012, 2013, 2014 and 2015, as well as accountant's statements (income statement, balance sheet, and statement of cash flows) for 2012, 2013, 2014, and 2015 for Defendant Southern Health Partners. In determining whether to limit discovery pursuant to a Protective Order, this Court need only look to the guidance provided in South Carolina Rule of Civil Procedure 26.

I. Plaintiff's Requests Are Not Overly Broad, Unduly Burdensome, or Irrelevant

South Carolina Rule of Civil Procedure 26(b) provides that "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or

defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.” S.C. Rule Civ. P. 26(b). Subsection (b) concludes by noting that “[i]t is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” S.C. Rule Civ. P. 26(b). South Carolina Rule of Civil Procedure (c) provides that protective orders are only to be granted in situations in which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense. S.C. Rule Civ. P. 26(c) (emphasis added).

The instant case is a medical malpractice action in which the Plaintiff seeks to recover damages for Wrongful Death and Survival related to the untimely death of Antonio Gregory at the age of 34. The Plaintiff has properly pled and currently seeks punitive damages in this matter. The Plaintiff believes that punitive damages will be before the jury based upon evidence that Mr. Gregory died a slow and very painful death that could have been prevented with the most basic of medical care. In accordance with the original Consent Scheduling Order of this Court, the Plaintiff was required to identify expert witnesses expected to testify at trial no later than May 16, 2016. On May 11, 2016, the Plaintiff served supplemental discovery responses identifying all experts expected to testify at trial. Among those experts, Plaintiff has identified economist Oliver Wood, Ph.D. Dr. Wood has been disclosed to offer expert testimony regarding Southern Health Partners’ ability to pay a punitive damages verdict.

South Carolina Courts have long held that evidence regarding a defendant’s ability to pay a punitive damages award is relevant in cases in which punitive damages are before the jury. The South Carolina Court of Appeals has expressly approved of Dr. Wood’s methodology in testifying

regarding financial condition of a defendant in connection with a punitive damages analysis. In

Duncan v. Ford Motor Company, the South Carolina Court of Appeals held as follows:

[t]he trial court properly allowed Wood to testify about Ford's ability to respond to a punitive damages award. During his testimony, Wood testified beyond the mere net worth of Ford and informed the jury of Ford's assets, gross profits, and the amount of compensation it paid executives. Appellate courts in our state have allowed testimony beyond a defendant's mere net worth to establish its ability to pay a punitive damages award. *See Bryant v. Waste Mgmt., Inc.*, 342 S.C. 159, 170, 536 S.E.2d 380, 386 (Ct.App.2000) (allowing testimony of the defendant's assets, liabilities, net worth, shareholders' equity, operating revenue, and net income per day to establish whether the defendant could pay punitive damages). In addition, Wood's testimony concerning the state of Ford's economic affairs allowed the jury to follow the instructions of the trial court and "punish the defendant but not [e]ffect economic bankruptcy." Therefore, the trial court properly allowed Wood to testify about Ford's ability to pay punitive damages and such testimony did not offend the Due Process Clause.

Duncan v. Ford Motor Company, 385 S.C. 119, 141, 682 S.E.2d 877, 888 (Ct. App. 2009)(footnote omitted).

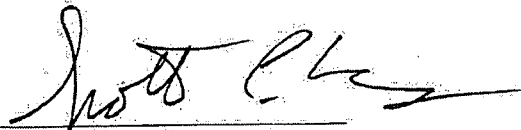
Plaintiff has attached the affidavit of Dr. Wood indicating that he is unable to provide the expert analysis regarding the ability of the two corporate defendants to pay a punitive verdict without first reviewing the information requested in discovery. (Exhibit A, Affidavit of Dr. Oliver Wood). While this information is not only reasonably calculated to lead to the discovery of admissible evidence, this information will be necessary for the jury to fully and accurately assess the question of punitive damages at the trial in this case. This information will likely be directly admissible through the testimony of Dr. Wood, and will be necessary for Dr. Wood's expert opinions to be properly supported pursuant to Rule 26. The documents, several of which are required to be prepared and maintained by both state and federal law, are not requested in an attempt to annoy, embarrass, or oppress the corporate defendants, but to accurately inform the jury.

Further, the Plaintiff has not sought information that would be unduly burdensome for Defendant Southern Health Partners to compile. As a corporate entity, Defendant Southern Health

Partners is required to file the requested tax returns with both the state and federal governments. Further, these tax returns cannot be generated without first preparing accountant's statements as requested by the Plaintiff. Not only should these documents be easily accessible and readily available to any responsible corporate entity, retention of these documents is required by law as the corporate defendant is subject to being audited. To the extent that Southern Health Partners has any confidentiality concerns, this Court issued a Confidentiality Order on January 20, 2016 which adequately protects these documents from disclosure. The Plaintiff certainly does not object to these documents being produced pursuant to the Confidentiality Order.

To the extent that Southern Health Partners may seek to delay the production of these materials until the time of trial, the Plaintiff would respectfully object. Dr. Wood, as an economist and professor of economics, requires adequate time to review and analyze the requested materials. Forcing a properly and timely disclosed expert witness to review key materials necessary for the formulation of expert opinions during rather than prior to trial would cause needless delay of the trial. Delayed production would also substantially prejudice the Plaintiff who would be forced to interrupt the presentation of her case in chief, a case which will include testimony from three separate medical experts and one correctional expert, to allow for Dr. Wood to perform an expert analysis which could be handled during discovery. The instant action is a complex medical case for which adequate time for discovery has been graciously allowed by this Court, and Southern Health Partners cannot illustrate that it would be prejudiced by producing the requested materials pursuant to the Confidentiality Order at this stage in the proceedings. For these reasons, the Plaintiff respectfully requests that this Court grant the Plaintiff's Motion to Compel.

Respectfully submitted,



EVANS MOORE, LLC

Scott C. Evans

James B. Moore, III

121 Screven Street

Georgetown, SC 29440

(843) 995-5000

Georgetown, South Carolina
June 13, 2016

2016 JUN 16 AM 11:12
EVANS MOORE, LLC
121 SCREVEN STREET
GEORGETOWN, SC 29440

Exhibit A

RECEIVED
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IN THE COURT OF COMMON PLEAS

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2. Complete statements of condition reveal the composition of assets and liabilities as well as shareholders' equity or net worth. Net worth is owners' bookkeeping claim on assets. It is not cash. Net worth may or may not be an appropriate measure of a company's ability to pay a punitive damages award.

3. Income statements reveal how well a company is earning gross revenue, gross profit, operating income, and pretax and after-tax income. These are important measures of a company's well being and ability to pay a potential punitive damages award.

4. Cash flow statements 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. These financial measures can assist in determining a company's ability to pay punitive damages.

Oliver G. Wood Jr.
Oliver G. Wood, Jr.

SWORN to before me this
10th June, 2016

[Signature]
Notary Public for South Carolina
My Commission Expires: February 21, 2017

Exhibit D

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

**MAE GREGORY, As Personal
Representative of the Estate of ANTONIO
L. GREGORY,**

Plaintiff,

v.

**SOUTHERN HEALTH PARTNERS, INC.
and CHEROKEE COUNTY, SOUTH
CAROLINA,**

Defendants.

) IN THE COURT OF COMMON PLEAS

) CIVIL ACTION 2015-CP-11-0363

**) PLAINTIFF'S SECOND REQUEST
) FOR PRODUCTION TO DEFENDANT
) SOUTHERN HEALTH PARTNERS,
) INC.**

**TO: JAMES LONG and AMY GEDDES, Attorneys for the Defendant
SOUTHERN HEALTH PARTNERS, INC.**

The following requests for production are served on you pursuant to the provisions of South Carolina Rules of Civil Procedure 26 and 34. You are requested to produce each of the following described documents and things at the law offices of Evans Moore, LLC, located at 121 Screven Street, Georgetown, South Carolina on the 30th day following service of these discovery requests.

A. SPECIAL INSTRUCTIONS

In responding to the Plaintiffs Discovery Requests in this action, you are requested to follow the following instructions, which the Plaintiff believes are consistent with the Rules:

1. Unless otherwise requested, please produce all requested documents and things at the offices of your lead counsel at the time indicated in the Discovery Request.

2. Where no discoverable matter exists which would be responsive to a Discovery Request, please so state.

3. Please respond to Discovery Requests by furnishing all responsive discoverable matter either in your possession, in your control, or accessible to you by reasonable inquiry. This includes discoverable matter in the possession, custody, or control of your (a) agents; (b) employees; (c) attorneys; (d) corporate departments or divisions; (e) your parent or subsidiary corporations; (f) corporate affiliates; and (g) any other persons, firms, or corporations which because of your business relationship would readily respond to your inquiry in the ordinary course of business.

4. Where documents and things exist which fall within the descriptive terms of one of the Plaintiff's Discovery Requests, and production of the same will be made by you, please produce such documents and things in a manner corresponding to the numbered request in which they are described, so that identification with the appropriate request can readily be made.

5. In addition to the original of any such requested documents, any request for a document also includes:

- a. any copy by whatever name called, which relates to the original, specifically including any material underlying, supporting, or used in the preparation of any such original document;
- b. any and all attachments to the original;
- c. any and all documents referred to in the original;
- d. any and all subsequent additions, deletions, substitutions, amendments, or modifications to the original of any sort.

6. If you are unsure of the meaning of a word, phrase, or abbreviation used in any Discovery Request, please contact the undersigned counsel for the Plaintiff in writing, specify the word or phrase whose meaning you claim is unclear, and ask for written clarification of the word or phrase in question. To the extent any ambiguity genuinely exists, such clarification will be promptly provided to you.

B. TABLE OF DEFINITIONS AND ABBREVIATIONS

The Plaintiff provides the following definitions of words, phrases, and abbreviations used by the Plaintiff in propounding the Discovery Requests to help you understand the objectives of his discovery efforts and to locate and disclose all discoverable matter sought by the Discovery Requests without engaging in semantic arguments:

"Document" means and includes all "papers" of any kind or character, correspondence, writings, records, meeting minutes, reports, studies, evaluations, projections, analyses, presentations, memoranda, drawings, graphs, charts, books, statements, ledgers, financial records, checks, drafts, receipts, forms prescribed by government agencies, photographs, motion pictures, videotape, videodisc, audiotape or other sound recording, any method or medium by which information is utilized by computers, including e-mail, computer tapes, computer drives, computer discs, computer printouts, photocopies, microfilm, microfiche and any other data, sound or image compilation or recording from which information regarding the described transactions can be obtained, translated if necessary by you through appropriate and necessary devices into reasonably usable and intelligible form.

"Identify", when used with respect to documents, things, or other items of real or demonstrative evidence, not withheld because of claim of privilege or other objection, means to list and describe the items of which discovery is sought:

- (a) State the type of document or thing, its date, title or heading, and subject matter;
- (b) Give an exhibit number for the document or thing if one has been assigned;
- (c) Identify all persons who participated in creating the document or thing; and
- (d) State the present location and identify the present custodian of the document or thing.

"*Identify*", when used with respect to documents, things, or other items of real or demonstrative evidence, withheld because of claim of privilege or other objection, means to list and describe the items of which discovery is sought sufficiently for the Plaintiff to identify the items in a motion for in camera inspection:

- (a) State the type of document or thing, its date, title or heading, and subject matter;
- (b) Give an exhibit number for each if one has been assigned;
- (c) Identify all persons who participated in creating the document or thing;
- (d) Identify all persons to whom the document or thing has been given, shown, exhibited, distributed, made available or explained;
- (e) State the present location and identify the present custodian of the document or thing;
- (f) State the factual and legal basis for your refusal to produce the document or thing, including any claim of privilege, in sufficient detail to permit the Plaintiff and the Court to evaluate the validity of each refusal; and
- (g) Describe each item sufficiently to indicate the factual and legal grounds for its inclusion within the scope of the privilege claimed or objection asserted and sufficiently to enable Plaintiff to identify the item in a motion to compel production or a motion for in camera inspection by the Court.

"*Person*" includes any individual, public or private corporation, partnership, government agency, incorporated association,, or unincorporated association.

"*Plaintiff*" means the Plaintiff in this action.

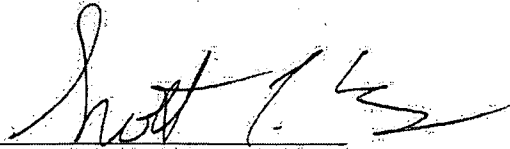
"*Senior Management*" means and refers to all members of management which if looking at an organizational chart include all members or department heads for the first 4 tiers of any organizational structure.

"*You*" and "*your*" mean and refer to the particular party to whom Plaintiff's Discovery Requests are specifically directed and who is undertaking to respond to them.

C. REQUEST FOR PRODUCTION

12. Please provide the tax returns for Southern Health Partners, Inc. for the years 2012, 2013, 2014 and 2015.

13. Please provide the 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.



EVANS MOORE, LLC

Scott C. Evans

James B. Moore, III

121 Screven Street

Georgetown, SC 29440

(843) 995-5000

Georgetown, SC
March 15, 2015

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION 2015-CP-11-0363

MAE GREGORY, As Personal
Representative of the Estate of ANTONIO
L. GREGORY,

Plaintiff,

v.

SOUTHERN HEALTH PARTNERS, INC.
and CHEROKEE COUNTY, SOUTH
CAROLINA,

Defendants.

CERTIFICATE OF MAILING

I hereby certify that Plaintiff's Second Requests for Production to Cherokee County have been sent to James Long, Attorney for Southern Health Partners, at Post Office Drawer 2426, Columbia SC 29202, with a copy to Charles Turner and Anne Culbreath, Attorneys for Defendant Cherokee County, South Carolina, in this proceeding by U.S. Postal Service with a copy to all counsel of record, on March 19, 2016.

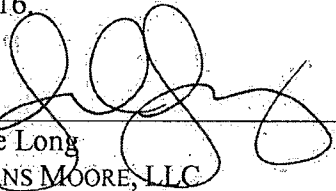

Julie Long
EVANS MOORE, LLC
121 Screven Street
Georgetown, SC 29440
julie@evansmoorelaw.com
Telephone number 843-995-5000
Facsimile number 843-527-4128

Exhibit E

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

IN THE COURT OF COMMON PLEAS
Civil Action No. 2015-CP-11-0363

Mae Gregory, as Personal Representative of
the Estate of Antonio L. Gregory,

Plaintiff,

vs.

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

Defendants.

**DEFENDANT SOUTHERN HEALTH
PARTNERS, INC.'S
ANSWERS TO PLAINTIFF'S SECOND
REQUEST FOR PRODUCTION**

Pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, Defendant Southern Health Partners, Inc. ("SHP"), hereby responds to Plaintiff's Second Request for Production as follows:

GENERAL OBJECTIONS

1. Defendant SHP has not completed its investigation and discovery relating to this case. The specific responses set forth below and any production made pursuant to the accompanying document requests are based upon, and necessarily limited by, information now available.

2. Defendant SHP objects to the Requests to the extent that they seek information or documents protected by the attorney-client privilege, the attorney-work product doctrine, and/or any other applicable privileges or protections. The inadvertent production of any such privileged or protected information or documents shall not constitute a waiver of any privilege or protection applicable thereto, or to any related information or documents. Defendants request that anyone suspecting such an inadvertent

production or disclosure bring it to the attention of the undersigned counsel immediately and promptly return any such document or information.

3. Defendant SHP objects to the Requests to the extent that they seek information or documents not within this Defendant's possession, custody or control.

4. Defendant SHP objects to the Requests to the extent that they are overly broad, unduly burdensome, vague and ambiguous, oppressive and/or are not reasonably calculated to lead to the discovery of admissible evidence.

5. Except for facts specifically admitted herein, no admission of any kind is to be implied or inferred by these responses. The fact that Defendant SHP responds to any Requests should not be taken as an admission or concession of the existence of the facts set forth or assumed by any Requests, or that such answer constitutes evidence of any fact thus set forth or assumed.

6. When Defendant SHP responds to a Request by stating that it will make documents available for inspection or produce documents, Defendant SHP will do so on a continuing basis, subject to the objections in these Requests.

7. These General Objections shall be deemed to be applicable to and incorporated by reference into Defendants' response to each Request set forth below.

8. Defendant SHP objects to these Requests to the extent they seek information beyond June 26, 2013, the last date of Plaintiff's detention at the Detention Center, and produce herein documents only up to this date.

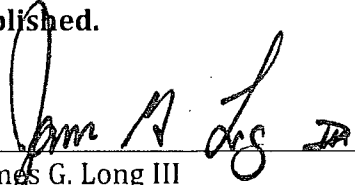
REQUESTS FOR PRODUCTION

12. Please provide the tax returns for Southern Health Partners, Inc. for the years 2012, 2013, 2014 and 2015.

RESPONSE: Defendant SHP objects to the foregoing as overly broad, unduly burdensome, intrusive, premature and confidential, as no liability or damages as to this Plaintiff have been established.

13. Please provide the 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.

RESPONSE: Defendant SHP objects to the foregoing as overly broad, unduly burdensome, intrusive, premature and confidential, as no liability or damages as to this Plaintiff have been established.



James G. Long III
Amy H. Geddes
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, SC 29202
803.771.8900
Attorneys for Defendants
Southern Health Partners, Inc.

May 26, 2016
Columbia, South Carolina

CERTIFICATE OF SERVICE

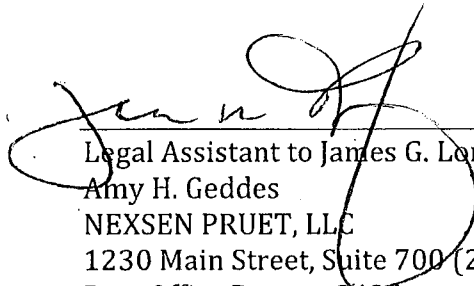
This is to certify that a copy of the foregoing **Defendant Southern Health Partners, Inc.'s Responses to Plaintiff's Second Request for Production** has been served upon the following counsel of record, addressed as shown below this 26th day of May, 2016.

Scott C. Evans, Esquire
Evans Moore, LLC
121 Screven Street
Georgetown SC 29440

Attorney for Plaintiff

Anne R. Culbreath, Esquire
Wilson, Jones, Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville SC 29607

*Attorneys for Defendant Cherokee County,
Cherokee County Detention Center and
Cherokee County Sheriff's Department*



Legal Assistant to James G. Long, III and
Amy H. Geddes
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
Telephone: 803.771.8900

Exhibit F

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

MAE GREGORY, As Personal Representative of the
Estate of ANTONIO L. GREGORY,

Plaintiff,

vs.

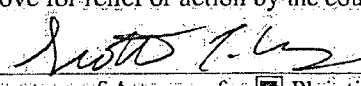
SOUTHERN HEALTH PARTNERS, INC. and
CHEROKEE COUNTY, SOUTH CAROLINA,

Defendant.

IN THE COURT OF COMMON PLEAS
7th JUDICIAL CIRCUIT

CASE NO.: 2015 -CP-11 -0363

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Scott C. Evans, Bar No. 77684 Address: Evans Moore, LLC 121 Screven Street, Georgetown, SC 29440 Phone: (843) 995-5000 Fax: (843) 527-4128 E-mail: scott@evansmoorelaw.com Other: julie@evansmoorelaw.com		Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax: _____ E-mail: _____ Other: _____	
☒ 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: <u>Motion to Compel Discovery</u> Estimated Time Needed: <u>15</u> 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 May _____, 2016 Date submitted			
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ <u>25.00</u> ☐ 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, SCRPC) ☐ 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			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____, 20____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____, 20____			
☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF CHEROKEE

) CIVIL ACTION 2015-CP-11-0363

MAE GREGORY, As Personal
Representative of the Estate of ANTONIO
L. GREGORY,

Plaintiff,

v.

NOTICE OF MOTION AND
MOTION TO COMPEL

SOUTHERN HEALTH PARTNERS, INC.
and CHEROKEE COUNTY, SOUTH
CAROLINA,

Defendants.

TO: JAMES LONG and AMY GEDDES, Attorneys for Defendant Southern Health
Partners, Inc.

PLEASE TAKE NOTICE that Plaintiff, by and through her undersigned attorneys, will move at the first available hearing no sooner than ten (10) days after service, before the Presiding Judge, or at such time as counsel is scheduled to be heard, for an Order pursuant to Rule 37 of the South Carolina Rules of Civil Procedure compelling Defendant Southern Health Partners, Inc. to respond fully to Plaintiff's:

Second Request for Production to SHP served on March 15, 2015 (attached as Exhibit A);
Third Request for Production to SHP served on March 22, 2016 (attached as Exhibit B);
Fourth Request for Production to SHP served on March 25, 2016 (attached as Exhibit C); and,
Second Interrogatories to SHP served on March 25, 2016 (attached as Exhibit D).

To date, Defendant Southern Health Partners, Inc. has failed to provide any responses to these discovery requests.

Plaintiff's counsel contacted Defendant's counsel via U.S. mail in a letter served on May 3, 2016 in a good faith effort to communicate in compliance with Rule 11 of the South Carolina Rules of Civil Procedure (Attached as Exhibit E). Pursuant to Rule 11, this affirms that Plaintiff's

counsel has endeavored in good faith to communicate with Defendant's counsel and resolve this matter prior to the filing of this Motion. A Proposed Order has been attached hereto as Exhibit F.

Respectfully submitted,



EVANS MOORE, LLC

Scott C. Evans

James B. Moore, III

121 Screven Street

Georgetown, SC 29440

(843) 995-5000

Georgetown, South Carolina

May 16, 2016

FILED
CLERK OF COURT
2016 MAY 19 A 11:03
JANET W. MOORE
CLERK OF COURT
GEORGETOWN, SC

Exhibit A

FILED MAY 19 2016
CLERK OF COURT
JEREMY W. MOORE
CHANDLER COUNTY, IL

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHEROKEE) CIVIL ACTION 2015-CP-11-0363

MAE GREGORY, As Personal
Representative of the Estate of ANTONIO
L. GREGORY,

Plaintiff,

v.

SOUTHERN HEALTH PARTNERS, INC.
and CHEROKEE COUNTY, SOUTH
CAROLINA,

Defendants.

PLAINTIFF'S SECOND REQUEST
FOR PRODUCTION TO DEFENDANT
SOUTHERN HEALTH PARTNERS,
INC.

TO: JAMES LONG and AMY GEDDES, Attorneys for the Defendant
SOUTHERN HEALTH PARTNERS, INC.

The following requests for production are served on you pursuant to the provisions of South Carolina Rules of Civil Procedure 26 and 34. You are requested to produce each of the following described documents and things at the law offices of Evans Moore, LLC, located at 121 Screven Street, Georgetown, South Carolina on the 30th day following service of these discovery requests:

A. SPECIAL INSTRUCTIONS

In responding to the Plaintiff's Discovery Requests in this action, you are requested to follow the following instructions, which the Plaintiff believes are consistent with the Rules:

1. Unless otherwise requested, please produce all requested documents and things at the offices of your lead counsel at the time indicated in the Discovery Request.

2. Where no discoverable matter exists which would be responsive to a Discovery Request, please so state.

3. Please respond to Discovery Requests by furnishing all responsive discoverable matter either in your possession, in your control, or accessible to you by reasonable inquiry. This includes discoverable matter in the possession, custody, or control of your (a) agents; (b) employees; (c) attorneys; (d) corporate departments or divisions; (e) your parent or subsidiary corporations; (f) corporate affiliates; and (g) any other persons, firms, or corporations which because of your business relationship would readily respond to your inquiry in the ordinary course of business.

4. Where documents and things exist which fall within the descriptive terms of one of the Plaintiffs Discovery Requests, and production of the same will be made by you, please produce such documents and things in a manner corresponding to the numbered request in which they are described, so that identification with the appropriate request can readily be made.

5. In addition to the original of any such requested documents, any request for a document also includes:

- a. any copy by whatever name called, which relates to the original, specifically including any material underlying, supporting, or used in the preparation of any such original document;
- b. any and all attachments to the original;
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6. If you are unsure of the meaning of a word, phrase, or abbreviation used in any Discovery Request, please contact the undersigned counsel for the Plaintiff in writing, specify the word or phrase whose meaning you claim is unclear, and ask for written clarification of the word or phrase in question. To the extent any ambiguity genuinely exists, such clarification will be promptly provided to you.

B. TABLE OF DEFINITIONS AND ABBREVIATIONS

The Plaintiff provides the following definitions of words, phrases, and abbreviations used by the Plaintiff in propounding the Discovery Requests to help you understand the objectives of his discovery efforts and to locate and disclose all discoverable matter sought by the Discovery Requests without engaging in semantic arguments:

"Document" means and includes all "papers" of any kind or character, correspondence, writings, records, meeting minutes, reports, studies, evaluations, projections, analyses, presentations, memoranda, drawings, graphs, charts, books, statements, ledgers, financial records, checks, drafts, receipts, forms prescribed by government agencies, photographs, motion pictures, videotape, videodisc, audiotape or other sound recording, any method or medium by which information is utilized by computers, including e-mail, computer tapes, computer drives, computer discs, computer printouts, photocopies, microfilm, microfiche and any other data, sound or image compilation or recording from which information regarding the described transactions can be obtained, translated if necessary by you through appropriate and necessary devices into reasonably usable and intelligible form.

"Identify", when used with respect to documents, things, or other items of real or demonstrative evidence, not withheld because of claim of privilege or other objection, means to list and describe the items of which discovery is sought:

- (a) State the type of document or thing, its date, title or heading, and subject matter;
- (b) Give an exhibit number for the document or thing if one has been assigned;
- (c) Identify all persons who participated in creating the document or thing; and
- (d) State the present location and identify the present custodian of the document or thing.

"Identify", when used with respect to documents, things, or other items of real or demonstrative evidence, withheld because of claim of privilege or other objection, means to list and describe the items of which discovery is sought sufficiently for the Plaintiff to identify the items in a motion for in camera inspection:

- (a) State the type of document or thing, its date, title or heading, and subject matter;
- (b) Give an exhibit number for each if one has been assigned;
- (c) Identify all persons who participated in creating the document or thing;
- (d) Identify all persons to whom the document or thing has been given, shown, exhibited, distributed, made available or explained;
- (e) State the present location and identify the present custodian of the document or thing;
- (f) State the factual and legal basis for your refusal to produce the document or thing, including any claim of privilege, in sufficient detail to permit the Plaintiff and the Court to evaluate the validity of each refusal; and
- (g) Describe each item sufficiently to indicate the factual and legal grounds for its inclusion within the scope of the privilege claimed or objection asserted and sufficiently to enable Plaintiff to identify the item in a motion to compel production or a motion for in camera inspection by the Court.

"Person" includes any individual, public or private corporation, partnership, government agency, incorporated association, or unincorporated association.

"Plaintiff" means the Plaintiff in this action.

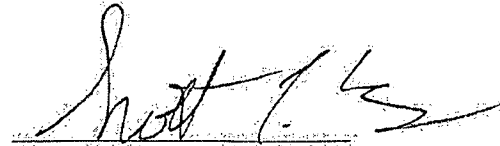
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"You" and "your" mean and refer to the particular party to whom Plaintiff's Discovery Requests are specifically directed and who is undertaking to respond to them.

C. REQUEST FOR PRODUCTION

12. Please provide the tax returns for Southern Health Partners, Inc. for the years 2012, 2013, 2014 and 2015.

13. Please provide the 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.



EVANS MOORE, LLC

Scott C. Evans

James B. Moore, III

121 Screven Street

Georgetown, SC 29440

(843) 995-5000

Georgetown, SC
March 15, 2015

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

) IN THE COURT OF COMMON PLEAS

) CIVIL ACTION 2015-CP-11-0363

MAE GREGORY, As Personal
Representative of the Estate of ANTONIO
L. GREGORY,

Plaintiff,

v.

SOUTHERN HEALTH PARTNERS, INC.
and CHEROKEE COUNTY, SOUTH
CAROLINA,

Defendants.

CERTIFICATE OF MAILING

I hereby certify that Plaintiff's Second Requests for Production to Cherokee County have been sent to James Long, Attorney for Southern Health Partners, at Post Office Drawer 2426, Columbia SC 29202, with a copy to Charles Turner and Anne Culbreath, Attorneys for Defendant Cherokee County, South Carolina, in this proceeding by U.S. Postal Service with a copy to all counsel of record, on March 19, 2016.

Julie Long

EVANS MOORE, LLC

121 Screven Street

Georgetown, SC 29440

julie@evansmoorelaw.com

Telephone number 843-995-5000

Facsimile number 843-527-4128

Exhibit B

FILED IN THE DISTRICT
CLERK OF COURT

2016 MAY 19 AM 11:03

GRANDY W. MOORE
CHANDLER COUNTY, IL

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

) IN THE COURT OF COMMON PLEAS

) CIVIL ACTION 2015-CP-11-0363

MAE GREGORY, As Personal
Representative of the Estate of ANTONIO
L. GREGORY,

Plaintiff,

v.

SOUTHERN HEALTH PARTNERS, INC.
and CHEROKEE COUNTY, SOUTH
CAROLINA,

Defendants.

)
)
)
)
) PLAINTIFF'S THIRD REQUEST FOR
) PRODUCTION TO DEFENDANT
) SOUTHERN HEALTH PARTNERS,
) INC.

TO: JAMES LONG and AMY GEDDES, Attorneys for the Defendant
SOUTHERN HEALTH PARTNERS, INC.

The following requests for production are served on you pursuant to the provisions of South Carolina Rules of Civil Procedure 26 and 34. You are requested to produce each of the following described documents and things at the law offices of Evans Moore, LLC, located at 121 Screven Street, Georgetown, South Carolina on the 30th day following service of these discovery requests.

A. SPECIAL INSTRUCTIONS

In responding to the Plaintiff's Discovery Requests in this action, you are requested to follow the following instructions, which the Plaintiff believes are consistent with the Rules:

1. Unless otherwise requested, please produce all requested documents and things at the offices of your lead counsel at the time indicated in the Discovery Request.

2. Where no discoverable matter exists which would be responsive to a Discovery Request, please so state.

3. Please respond to Discovery Requests by furnishing all responsive discoverable matter either in your possession, in your control, or accessible to you by reasonable inquiry. This includes discoverable matter in the possession, custody, or control of your (a) agents, (b) employees; (c) attorneys, (d) corporate departments or divisions; (e) your parent or subsidiary corporations; (f) corporate affiliates; and (g) any other persons, firms, or corporations which because of your business relationship would readily respond to your inquiry in the ordinary course of business.

4. Where documents and things exist which fall within the descriptive terms of one of the Plaintiff's Discovery Requests, and production of the same will be made by you, please produce such documents and things in a manner corresponding to the numbered request in which they are described, so that identification with the appropriate request can readily be made.

5. In addition to the original of any such requested documents, any request for a document also includes:

- a. any copy by whatever name called, which relates to the original, specifically including any material underlying, supporting, or used in the preparation of any such original document;
- b. any and all attachments to the original;
- c. any and all documents referred to in the original;
- d. any and all subsequent additions, deletions, substitutions, amendments, or modifications to the original of any sort.

6. If you are unsure of the meaning of a word, phrase, or abbreviation used in any Discovery Request, please contact the undersigned counsel for the Plaintiff in writing, specify the word or phrase whose meaning you claim is unclear, and ask for written clarification of the word or phrase in question. To the extent any ambiguity genuinely exists, such clarification will be promptly provided to you.

B. TABLE OF DEFINITIONS AND ABBREVIATIONS

The Plaintiff provides the following definitions of words, phrases, and abbreviations used by the Plaintiff in propounding the Discovery Requests to help you understand the objectives of his discovery efforts and to locate and disclose all discoverable matter sought by the Discovery Requests without engaging in semantic arguments:

"Document" means and includes all "papers" of any kind or character, correspondence, writings, records, meeting minutes, reports, studies, evaluations, projections, analyses, presentations, memoranda, drawings, graphs, charts, books, statements, ledgers, financial records, checks, drafts, receipts, forms prescribed by government agencies, photographs, motion pictures, videotape, videodisc, audiotape or other sound recording, any method or medium by which information is utilized by computers, including e-mail, computer tapes, computer drives, computer discs, computer printouts, photocopies, microfilm, microfiche and any other data, sound or image compilation or recording from which information regarding the described transactions can be obtained, translated if necessary by you through appropriate and necessary devices into reasonably usable and intelligible form.

"Identify", when used with respect to documents, things, or other items of real or demonstrative evidence, not withheld because of claim of privilege or other objection, means to list and describe the items of which discovery is sought:

- (a) State the type of document or thing, its date, title or heading, and subject matter;
- (b) Give an exhibit number for the document or thing if one has been assigned;
- (c) Identify all persons who participated in creating the document or thing; and
- (d) State the present location and identify the present custodian of the document or thing;

"Identify", when used with respect to documents, things, or other items of real or demonstrative evidence, withheld because of claim of privilege or other objection, means to list and describe the items of which discovery is sought sufficiently for the Plaintiff to identify the items in a motion for in camera inspection:

- (a) State the type of document or thing, its date, title or heading, and subject matter;
- (b) Give an exhibit number for each if one has been assigned;
- (c) Identify all persons who participated in creating the document or thing;
- (d) Identify all persons to whom the document or thing has been given, shown, exhibited, distributed, made available or explained;
- (e) State the present location and identify the present custodian of the document or thing;
- (f) State the factual and legal basis for your refusal to produce the document or thing, including any claim of privilege, in sufficient detail to permit the Plaintiff and the Court to evaluate the validity of each refusal; and
- (g) Describe each item sufficiently to indicate the factual and legal grounds for its inclusion within the scope of the privilege claimed or objection asserted and sufficiently to enable Plaintiff to identify the item in a motion to compel production or a motion for in camera inspection by the Court.

"Person" includes any individual, public or private corporation, partnership, government agency, incorporated association, or unincorporated association.

"Plaintiff" means the Plaintiff in this action.

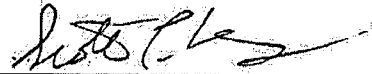
"Senior Management" means and refers to all members of management which if looking at an organizational chart include all members or department heads for the first 4 tiers of any organizational structure.

"You" and "your" mean and refer to the particular party to whom Plaintiff's Discovery Requests are specifically directed and who is undertaking to respond to them.

C. REQUEST FOR PRODUCTION

14. A complete, clear, legible and un-redacted copy of the Personnel and Training Files of Nurse Margret Lewis, Nurse Rhonda Marks, and Dr. Steven Miszkiewicz.

15. A complete, clear, legible copy of any and all training materials provided and/or presented to the medical staff employed by Southern Health Partners, Inc. at the Cherokee County Detention Center from the time period of July 1, 2012 to July 1, 2013.



EVANS MOORE, LLC

Scott C. Evans

James B. Moore, III

121 Screven Street

Georgetown, SC 29440

(843) 995-5000

Georgetown, SC
March 22, 2015

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

) IN THE COURT OF COMMON PLEAS

)

) CIVIL ACTION 2015-CP-11-0363

MAE GREGORY, As Personal
Representative of the Estate of ANTONIO
L. GREGORY,

Plaintiff,

v.

SOUTHERN HEALTH PARTNERS, INC.
and CHEROKEE COUNTY, SOUTH
CAROLINA,

Defendants.

CERTIFICATE OF MAILING

I hereby certify that Plaintiff's Third Request for Production to Defendant Cherokee County, South Carolina has been sent to James Long, Attorney for Southern Health Partners, at Post Office Drawer 2426, Columbia SC 29202, with a copy to Charles Turner and Anne Culbreath, Attorneys for Defendant Cherokee County, South Carolina to 872 S. Pleasantburg Drive, Greenville SC 29607 in this proceeding by U.S. Postal Service with a copy to all counsel of record, on March 23, 2016.

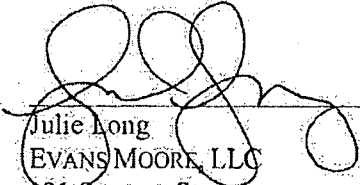

Julie Long
EVANS MOORE, LLC
121 Screven Street
Georgetown, SC 29440
julie@evansmoorelaw.com
Telephone number 843-995-5000
Facsimile number 843-527-4128

Exhibit C

FRANKLIN COUNTY
CLERK'S OFFICE
2018 MAY 19 A 11:03
BRANDY W. HEBBE
CLERK OF COURT
FRANKLIN COUNTY, SC

IN THE COURT OF COMMON PLEAS

CIVIL ACTION 2015-CP-11-0363

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4. Where documents and things exist which fall within the descriptive terms of one of the Plaintiff's Discovery Requests, and production of the same will be made by you, please produce such documents and things in a manner corresponding to the numbered request in which they are described, so that identification with the appropriate request can readily be made.

5. In addition to the original of any such requested documents, any request for a document also includes:

- a. any copy by whatever name called, which relates to the original, specifically including any material underlying, supporting, or used in the preparation of any such original document;
- b. any and all attachments to the original;
- c. any and all documents referred to in the original;
- d. any and all subsequent additions, deletions, substitutions, amendments, or modifications to the original of any sort.

6. If you are unsure of the meaning of a word, phrase, or abbreviation used in any Discovery Request, please contact the undersigned counsel for the Plaintiff in writing, specify the word or phrase whose meaning you claim is unclear, and ask for written clarification of the word or phrase in question. To the extent any ambiguity genuinely exists, such clarification will be promptly provided to you.

B. TABLE OF DEFINITIONS AND ABBREVIATIONS

The Plaintiff provides the following definitions of words, phrases, and abbreviations used by the Plaintiff in propounding the Discovery Requests to help you understand the objectives of his discovery efforts and to locate and disclose all discoverable matter sought by the Discovery Requests without engaging in semantic arguments:

"Document" means and includes all "papers" of any kind or character, correspondence, writings, records, meeting minutes, reports, studies, evaluations, projections, analyses, presentations, memoranda, drawings, graphs, charts, books, statements, ledgers, financial records, checks, drafts, receipts, forms prescribed by government agencies, photographs, motion pictures, videotape, videodisc, audiotape or other sound recording, any method or medium by which information is utilized by computers, including e-mail, computer tapes, computer drives, computer discs, computer printouts, photocopies, microfilm, microfiche and any other data, sound or image compilation or recording from which information regarding the described transactions can be obtained, translated if necessary by you through appropriate and necessary devices into reasonably usable and intelligible form.

"Identify", when used with respect to documents, things, or other items of real or demonstrative evidence, not withheld because of claim of privilege or other objection, means to list and describe the items of which discovery is sought:

- (a) State the type of document or thing, its date, title or heading, and subject matter;
- (b) Give an exhibit number for the document or thing if one has been assigned;
- (c) Identify all persons who participated in creating the document or thing; and
- (d) State the present location and identify the present custodian of the document or thing.

"Identify", when used with respect to documents, things, or other items of real or demonstrative evidence, withheld because of claim of privilege or other objection, means to list and describe the items of which discovery is sought sufficiently for the Plaintiff to identify the items in a motion for in camera inspection:

- (a) State the type of document or thing, its date, title or heading, and subject matter;
- (b) Give an exhibit number for each if one has been assigned;
- (c) Identify all persons who participated in creating the document or thing;
- (d) Identify all persons to whom the document or thing has been given, shown, exhibited, distributed, made available or explained;
- (e) State the present location and identify the present custodian of the document or thing;
- (f) State the factual and legal basis for your refusal to produce the document or thing, including any claim of privilege, in sufficient detail to permit the Plaintiff and the Court to evaluate the validity of each refusal; and
- (g) Describe each item sufficiently to indicate the factual and legal grounds for its inclusion within the scope of the privilege claimed or objection asserted and sufficiently to enable Plaintiff to identify the item in a motion to compel production or a motion for in camera inspection by the Court.

"Person" includes any individual, public or private corporation, partnership, government agency, incorporated association, or unincorporated association.

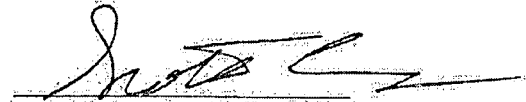
"Plaintiff" means the Plaintiff in this action.

"Senior Management" means and refers to all members of management which if looking at an organizational chart include all members or department heads for the first 4 tiers of any organizational structure.

"You" and "your" mean and refer to the particular party to whom Plaintiff's Discovery Requests are specifically directed and who is undertaking to respond to them.

C. REQUEST FOR PRODUCTION

16. Please produce complete copies of all insurance policies pertaining to Dr. Miskiewicz for the policy period encompassing June of 2013, including but not limited to all medical malpractice insurance coverage, excess coverage, and umbrella coverage.



EVANS MOORE, LLC

Scott C. Evans

James B. Moore, III

121 Screven Street

Georgetown, SC 29440

(843) 995-5000

Georgetown, SC

March 25, 2015

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF CHEROKEE

) CIVIL ACTION 2015-CP-11-0363

MAE GREGORY, As Personal
Representative of the Estate of ANTONIO
L. GREGORY,

Plaintiff,

v.

CERTIFICATE OF MAILING

SOUTHERN HEALTH PARTNERS, INC.
and CHEROKEE COUNTY, SOUTH
CAROLINA,

Defendants.

I hereby certify that Plaintiff's Second Interrogatories and Fourth Request for Production to Defendant Southern Health Partners has been sent to James Long, Attorney for Southern Health Partners, at Post Office Drawer 2426, Columbia SC 29202, with a copy to Charles Turner and Anne Culbreath, Attorneys for Defendant Cherokee County, South Carolina to 872 S. Pleasantburg Drive, Greenville SC 29607 in this proceeding by U.S. Postal Service with a copy to all counsel of record, on March 25, 2016.

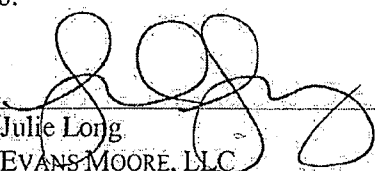

Julie Long
EVANS MOORE, LLC
121 Screven Street
Georgetown, SC 29440
julie@evansmoorelaw.com
Telephone number 843-995-5000
Facsimile number 843-527-4128

Exhibit D

CLERK OF SUPERIOR COURT
JAMES E. COOPER, JR.
JAMES E. COOPER, JR.

2018 MAY 19 AM 11:03

CLERK OF SUPERIOR COURT
JAMES E. COOPER, JR.
JAMES E. COOPER, JR.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHEROKEE	)	CIVIL ACTION 2015-CP-11-0363
	)	
MAE GREGORY, As Personal	)	
Representative of the Estate of ANTONIO	)	
L. GREGORY,	)	
	)	
Plaintiff,	)	
	)	PLAINTIFF'S SECOND
v.	)	INTERROGATORIES TO
	)	DEFENDANT SOUTHERN HEALTH
SOUTHERN HEALTH PARTNERS, INC.	)	PARTNERS, INC.
and CHEROKEE COUNTY, SOUTH	)	
CAROLINA,	)	
	)	
Defendants.	)	

To: JAMES LONG and AMY GEDDES, Attorneys for Southern Health Partners, Inc.

The following requests for production are served on you pursuant to the provisions of South Carolina Rules of Civil Procedure 26 and 34. You are requested to produce each of the following described documents and things at the law offices of Evans Moore, LLC, located at 121 Screven Street, Georgetown, South Carolina on the 30th day following service of these discovery requests.

A. SPECIAL INSTRUCTIONS

In responding to the Plaintiffs Discovery Requests in this action, you are requested to follow the following instructions, which the Plaintiff believes are consistent with the Rules:

1. Where no discoverable matter exists which would be responsive to a Discovery Request, please so state.
2. The Plaintiffs Discovery Requests are intended to call into question any and all responsive discoverable matter known or reasonably available to you and all your attorneys, agents, employees, representatives, private investigators, and others who are in possession custody or control of such matter, or who have or who have obtained such matter for you or on your behalf.
3. Please respond to Discovery Requests by furnishing all responsive discoverable matter either in your possession, in your control, or accessible to you by reasonable inquiry. This includes discoverable matter in the possession, custody, or control of your (a) agents, (b) employees; (c) attorneys, (d) corporate departments or divisions; (e) your parent or subsidiary corporations; (f) corporate affiliates; and (g) any other persons, firms, or corporations which because of your business relationship would readily respond to your inquiry in the ordinary course of business.

4. In answering Discovery Requests, you may wish to refer to your business records. In this event, please follow the directions of S.C.R.C.P. 33(c) and identify specifically the records from which the answer may be derived or ascertained and state when and where such business records will be made available to the Plaintiff for inspection and copying.

5. If you are unsure of the meaning of a word, phrase, or abbreviation used in any Discovery Request, please contact the undersigned counsel for the Plaintiff in writing, specify the word or phrase whose meaning you claim is unclear, and ask for written clarification of the word or phrase in question. To the extent any ambiguity genuinely exists, such clarification will be promptly provided to you.

B. TABLE OF DEFINITIONS AND ABBREVIATIONS

The Plaintiff provides the following definitions of words, phrases, and abbreviations used by the Plaintiff in propounding the Discovery Requests to help you understand the objectives of his discovery efforts and to locate and disclose all discoverable matter sought by the Discovery Requests:

"Document" means and includes all "papers" of any kind or character, correspondence, writings, records, meeting minutes, reports, studies, evaluations, projections, analyses, presentations, memoranda, drawings, graphs, charts, books, statements, ledgers, financial records, checks, drafts, receipts, forms prescribed by government agencies, photographs, motion pictures, videotape, videodisc, audiotape or other sound recording, any method or medium by which information is utilized by computers, including e-mail, computer tapes, computer drives, computer discs, computer printouts, photocopies, microfilm, microfiche and any other data, sound or image compilation or recording from which information regarding the described transactions can be obtained, translated if necessary by you through appropriate and necessary devices into reasonably usable and intelligible form.

"Identify", when used with respect to individual persons, means to state the full name, address, telephone number, place of employment, job title and present whereabouts of such person.

"Identify", when used with respect to artificial persons, i.e. corporations, partnerships, joint ventures, legal entities, and associations-in-fact although not legal entities, means to state the full name, address and telephone number of such "person" together with the name, address, telephone number and job title of the employee, agent, servant or representative of such "person" who has knowledge of the particular facts or possession, custody or control of the particular documents or things of which discovery is sought.

"Identify", when used with respect to facts, opinions, circumstances or information, means to give a concise summary of the nature and substance of the facts, opinions, circumstances or information of which discovery is sought.

"Identify", when used with respect to meetings, means to state the date, time, and place of the meeting, state whether there was a written agenda, identify all persons who participated in the meeting, state whether minutes were kept or a document containing a report of the meeting was created, and identify the custodian of such minutes or reports;

"Identify", when used with respect to documents, things, or other items of real or demonstrative evidence, not withheld because of claim of privilege or other objection, means to list and describe the items

of which discovery is sought:

- (a) State the type of document or thing, its date, title or heading, and subject matter;
- (b) Give an exhibit number for the document or thing if one has been assigned;
- (c) Identify all persons who participated in creating the document or thing; and
- (d) State the present location and identify the present custodian of the document or thing.

"Identify", when used with respect to documents, things, or other items of real or demonstrative evidence, withheld because of claim of privilege or other objection, means to list and describe the items of which discovery is sought sufficiently for the Plaintiff to identify the items in a motion for in camera inspection:

- (a) State the type of document or thing, its date, title or heading, and subject matter;
- (b) Give an exhibit number for each if one has been assigned;
- (c) Identify all persons who participated in creating the document or thing;
- (d) Identify all persons to whom the document or thing has been given, shown, exhibited, distributed, made available or explained;
- (e) State the present location and identify the present custodian of the document or thing;
- (f) State the factual and legal basis for your refusal to produce the document or thing, including any claim of privilege, in sufficient detail to permit the Plaintiff and the Court to evaluate the validity of each refusal; and
- (g) Describe each item sufficiently to indicate the factual and legal grounds for its inclusion within the scope of the privilege claimed or objection asserted and sufficiently to enable Plaintiff to identify the item in a motion to compel production or a motion for in camera inspection by the Court.

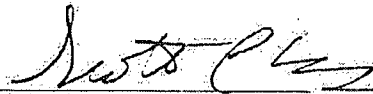
"Person" includes any individual, public or private corporation, partnership, government agency, incorporated association,, or unincorporated association.

"Plaintiff" means the Plaintiff in this action.

"You" and *"your"* mean and refer to the particular party to whom Plaintiffs Discovery Requests are specifically directed and who is undertaking to respond to them.

INTERROGATORIES

16. Please provide information regarding all insurance available for Dr. Miskiewicz for the policy period encompassing June of 2013, including but not limited to all medical malpractice insurance coverage, excess coverage, and umbrella coverage.



EVANS MOORE, LLC

Scott C. Evans

James B. Moore, III

121 Screven Street

Georgetown, SC 29442

(843) 995-5000

Georgetown, SC

March 25, 2016

Exhibit E

FILED IN THE OFFICE
OF THE CLERK OF COURT
2016 MAY 19 A 11:03
JEREMY W. MCREE
OF PROKEE COUNTY, SC



May 3, 2016

Amy Geddes
James Long
Nexsen Pruet, LLC
Post Office Drawer 2426
Columbia SC 29202

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

Dear Amy and Jimmy:

I am writing to follow up regarding various discovery request served upon your client. Specifically, I am writing with regard to the Plaintiff's:

Second Request for Production to SHP served on March 15, 2015
Third Request for Production to SHP served on March 22, 2016
Fourth Request for Production to SHP served on March 25, 2016, and
Second Interrogatories to SHP served on March 25, 2016.

To the extent that you and your client need additional time to compile materials, we are certainly amenable to an extension. However, to the extent that your client intends to object to any of these requests, I would ask that you notify me prior to May 13, 2016 in light of the upcoming discovery deadline. After that time, we will be constrained to file a motion to compel.

To the extent that your client objects to any of the materials requested in the Second Request for Production regarding financial information, I understand that this may raise a relatively novel issue. However, this precise issue was taken up by the Circuit Court for the fifteenth circuit last month. I have enclosed the motion for protective order, response, and order denying the request for protective order for reference to the extent that it may shed some light on the subject.

Please don't hesitate to reach out to me directly if you would like to discuss any of these discovery request in more detail. I look forward to seeing you again in the near future at the upcoming depositions.

Sincerely,

Scott C. Evans

cc: Charles Turner
Anne Culbreath

Exhibit F

FILED IN THE OFFICE
CLERK OF COURT
2016 MAY 19 A 11:03
BRANDY W. HOBBS
CHEROKEE COUNTY, SC

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF CHEROKEE

) CIVIL ACTION 2015-CP-11-0363

MAE GREGORY, As Personal
Representative of the Estate of ANTONIO
L. GREGORY,

Plaintiff,

v.

SOUTHERN HEALTH PARTNERS, INC.
and CHEROKEE COUNTY, SOUTH
CAROLINA,

Defendants.

ORDER GRANTING
MOTION TO COMPEL

This matter is before the Court for consideration of the Plaintiff's motion to compel responses to the Plaintiff's Second Request for Production to Southern Health Partners; Third Request for Production to Southern Health Partners; Fourth Request for Production to Southern Health Partners; and Second Interrogatories to Southern Health Partners. After reviewing the filings, the Court finds that production of the material requested in the above referenced discovery requests is appropriate. For this reason, the Plaintiff's motion to compel is **GRANTED**.

Southern Health Partners, Inc. is directed to provide complete responses to the Plaintiff's Second Request for Production to Southern Health Partners; Third Request for Production to Southern Health Partners; Fourth Request for Production to Southern Health Partners; and Second Interrogatories to Southern Health Partners within fifteen (15) days from the entry of this Order.

IT IS SO ORDERED.

The Honorable J. Mark Hayes, II
South Carolina Circuit Judge

Gaffney, South Carolina
 , 2016

Exhibit G

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

IN THE COURT OF COMMON PLEAS
Civil Action No. 2015-CP-11-0363

Mae Gregory, as Personal Representative of
the Estate of Antonio L. Gregory,

Plaintiff,

vs.

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

Defendants.

**DEFENDANT SOUTHERN HEALTH
PARTNERS, INC.'S MEMORANDUM
IN OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL CERTAIN
FINANCIAL INFORMATION**

Defendant Southern Health Partners, Inc. ("SHP"), by and through the undersigned counsel, hereby submits this Memorandum in Opposition to Plaintiff's Motion to Compel. The case against SHP is a medical malpractice case. As shown below, allowing Plaintiff to conduct the discovery she seeks on SHP's sensitive proprietary financial records and information would be unduly intrusive, unreasonably oppressive, and an invasion of SHP's privacy. Specifically, such discovery should be denied because such information is simply not relevant to the issue of damages in this case. SHP's insurance coverage exceeds the statutory caps for any possible recovery by Plaintiff absent punitive damages—for which no evidence exists to support a viable claim—and SHP's coverage may very well exceed any possible punitive damages based on the statutory caps. Thus, Plaintiff's request is overly broad, unduly burdensome and irrelevant. Further, absent any evidence supporting a viable claim for punitive damages, Plaintiff's request for financial documents is premature. Accordingly, this Court should deny Plaintiff's motion to compel.

BACKGROUND

Plaintiff Mae Gregory, as Personal Representative of the Estate of Antonio L. Gregory ("Plaintiff") filed her Second Request for Production to Defendant SHP on March 15, 2015,

requesting SHP's proprietary financial information. Specifically, Plaintiff requested all of SHP's tax returns and accountant's/accounting statements, including income statements, balance sheets, and statement of cash flows for the years 2012, 2013, 2014 and 2015. Defendant SHP objected to the production of this proprietary financial information on the grounds that Plaintiff's request is "overly broad, unduly burdensome, intrusive, premature and confidential, as no liability or damages as to this Plaintiff have been established." For reasons explained below, production of SHP's financial information is irrelevant to this action and Plaintiff's request is premature.

ARGUMENT

The record shows that Mr. Gregory died suddenly in his cell of a cardiac event. There is no evidence that he ever regained consciousness. The Autopsy shows that he died from cardiomyopathy (arrhythmia of the heart). He had a 60% blockage in two arteries including the left anterior descending artery—commonly called the widow maker because a significant blockage in this artery leads to sudden death. The medical record shows that prior to the time he died, Mr. Gregory exhibited no life threatening or emergent symptoms.

1. SHP's insurance coverage is significant; therefore, SHP's proprietary financial information is not relevant.

SHP's insurance coverage exceeds Plaintiff's possible claims for economic and non-economic damages even in a best case scenario for Plaintiff.

First, regarding Plaintiff's survival claim, Plaintiff has no claim for pain and suffering because there is no evidence that Mr. Gregory ever regained consciousness after his sudden cardiomyopathy.¹ Medical expenses according to Plaintiff's Answer to Interrogatory No. 11 are \$11,043.38. Mr. Gregory's funeral bill is \$5,000.00. Thus, the maximum recovery for

¹ Assuming Plaintiff had a claim for pain and suffering in her survival claim, which she does not, South Carolina's caps on non-economic damages would still prevent Plaintiff's damages from rising SHP's insurance policy even in a best case scenario for Plaintiff.

Plaintiff's survival claim is \$16,043.38.

As to the wrongful death claim, the non-economic loss for the death of Mr. Gregory to his daughter, including pain and suffering and emotional distress, are capped by the South Carolina Noneconomic Damage Awards Act of 2005 at \$435,015.00. S.C. Code Ann. §15-32-220(A)-(B). The economic loss to the daughter would be child support for ten years, which in a best case scenario for Plaintiff would be \$24,000 discounted to present value. There is no evidence that Mr. Gregory ever lived with his daughter or provided financial support to his daughter other than vague testimony of the payment of child support.

Accordingly, the total damages in a best case scenario for Plaintiff would be \$475,058.38. SHP has an insurance policy with more insurance than Plaintiff can recover. Thus, Plaintiff's request for SHP's financial information is simply irrelevant and without merit, and should be denied.

The record is devoid of evidence to support Plaintiff's claim for punitive damages. Punitive damages are recoverable in a medical malpractice case only "where a physician has been guilty of gross negligence amounting to reckless indifference in treating a patient. The test by which a tort is to be characterized as reckless . . . is whether it has been committed in such a manner or under such circumstances that a person of ordinary reason or prudence would then have been conscious of it as an invasion of the plaintiff's rights." *Cash v. Kim*, 288 S.C. 292, 297, 342 S.E.2d 61, 63-64 (Ct. App. 1986)(internal citations omitted).

Plaintiff's allegations are just that—allegations. Plaintiff has presented no evidence supporting her claim for punitive damages, yet seeks to delve into all of SHP's proprietary financial information over a period of three years in the off-chance that punitive damages may come before the jury. Plaintiff must make "some kind of factual showing that a viable claim for

punitive damages exists before [the Court allows] discovery of financial worth." *See Blount v. Wake Elec. Membership Corp.*, 162 F.R.D. 102, 105 (E.D.N.C. 1993). Plaintiff has not done so in this case. *See also generally* 23 AmJur 2d *Depositions and Discovery* § 38 (West 2005)(The trial judge has the power to regulate the timing of the disclosure of the defendant's financial condition in a punitive damage case until the plaintiff establishes a prima facie case of malice. . .); *Collens v. City of New York*, 222 F.R.D. 249 (S.D.N.Y. 2004)(Plaintiff could not discover information of defendant officer's financial worth prior to a finding of liability, since the issue of punitive damages might never arise). Discovery of SHP's proprietary financial information is thus irrelevant because it has no bearing on SHP's ability to pay in this case.

The undisputed facts further show that Plaintiff's claim for punitive damages is without merit.

- On June 12, 2013, Antonio Gregory was booked into Cherokee County Detention Center. (SHP Medical Record, p. 70.)
- On June 22, 2013, Mr. Gregory placed his first sick call, complaining of "upset stomach and flu like symptom" on his sick call sheet. Mr. Gregory admitted to the nurse that he had not vomited in several days and had not voided for one day. He was seen twice by the nurse that day. On the second visit, he said he had voided and eaten. (SHP Medical Record, p. 68 and 60.)
- On June 23, 2013, Inmate Gregory was seen by a nurse again. The nurse took Mr. Gregory's history and physical appraisal that is required to be completed within 14 days. No significant medical issues were noted during this visit. (SHP Medical Record, p. 65 - 66.)
- On June 24, 2013, Mr. Gregory complained of nausea, but denied vomiting or pain. He is seen by a nurse and told to rest and drink liquids. (SHP Medical Record, p. 60.)
- On June 25, 2013, Mr. Gregory complained of nausea. His blood sugar was checked twice and confirmed to be at a normal range. He was seen by a nurse twice. While his eyes appeared yellow he exhibited no other symptoms. (SHP Medical Record, p. 56 and 62.)
- On June 26, 2013, the nurse informed a physician of suspected jaundice at 8:00 AM. The physician ordered a blood test and a nurse made arrangements to transport Mr. Gregory to the hospital later that day. Inmate Gregory was found unresponsive in his cell. Shortly before 11:00 a.m., Emergency Medical Services

was called and responded. Mr. Gregory died that day. (SHP Medical Record, p. 56.)

The evidence shows that Mr. Gregory was seen by a nurse every day from Saturday, June 22, 2013 until his death on June 26, 2014 and received consistent treatment. He exhibited no significant, life threatening or emergent symptoms and the autopsy shows he died of an unpreventable pre-existing condition. There is simply no evidence that SHP acted with "reckless indifference." Plaintiff has presented no facts to support her claim for punitive damages and the record is devoid of any such facts.

II. Plaintiff's motion to compel financial information is overbroad and premature.

Courts routinely deny motions to compel production of financial information as premature when a plaintiff has presented no evidence to support a viable claim for punitive damages. See, e.g., *Long v. M&M Transp., LLC*, No. 3:13-CV-65, 2014 WL 235517, at *2 (N.D.W. Va. Jan. 22, 2014)(finding discovery of financial information premature where plaintiff has not presented any evidence to support punitive damages claim); *Leo T. Thibodeau Gen. Contractors, Inc. v. Brault, Graham, Scott & Brault*, No. CIV. A. 90-0533-LFO, 1991 WL 255940, at *1 (D.D.C. Nov. 15, 1991)(finding discovery of financial information regarding a punitive damage claim premature when the compensatory and punitive damage phases of this case will probably be bifurcated and there will be time enough to produce that financial information when the compensatory damage phase of the case has been completed); *Haaf v. Flagler Const. Equip., LLC*, No. 10-62321-CIV, 2011 WL 1871159, at *3 (S.D. Fla. May 16, 2011)(holding discovery of financial information to determine punitive damages was premature, even though plaintiff pled punitive damages, because plaintiff had not yet presented any evidence in support of its claim).

With regard to Plaintiff's claim for punitive damages, information regarding tax returns and accountant's/accounting statements, including income statements, balance sheets, and statement of cash flows for the years 2012, 2013, 2014 and 2015 is not relevant. *See Chenoweth v. Schaaf, M.D.*, 98 F.R.D. 587 (W.D. Pa. 1983)(Even if doctors could have been required to disclose information concerning their financial conditions, the required disclosure would have been limited to a general statement of each doctor's net worth). In *Chenoweth*, like this case, the plaintiff alleged a series of allegations, then concluded with a generalized allegation that the defendants were "careless, reckless, wanton and grossly negligent" and therefore the plaintiff sought punitive damages. *Id.* at 589. The court held that discovery of financial information was not warranted because plaintiff failed to show a real possibility that punitive damages would be an issue. The court further stated that if it were to rule differently, plaintiff's request would still be overbroad and defendants would only be required to provide a "general statement" of their net worth.

Here, like *Chenoweth*, Plaintiff merely alleged a string of allegations followed by a generalized statement that "Defendant's conduct as outline [sic] above was reckless, wanton, and willful, as such Plaintiff is further entitled to an award of Punitive Damages." (Complaint ¶ 31.) Accordingly, this Court should rule that SHP is not required to produce sensitive financial information pursuant to Plaintiff's overbroad request. In the event this Court deems it necessary to produce any financial information, a "generalized statement" of SHP's net worth would suffice, rather than Plaintiff's intrusive demand. *See Chenoweth* at 590.

Further, courts routinely defer discovery of financial information related to a determination of punitive damages until after the summary judgment stage. *See, e.g., McNamee v. Clemens*, No. 09 CV 1647 SJ, 2013 WL 6572899, at *9 (E.D.N.Y. Sept. 18, 2013)(denying

motion to compel discovery of financial information with leave to re-file after motion for summary judgment is decided); *Bakhit v. Safety Marking, Inc.*, No. 3:13CV1049 JCH, 2014 WL 4437736, at *2 (D. Conn. Sept. 9, 2014)(same); *Nkemakolam v. St. John's Military Sch.*, No. 12-CV-2132-JWL-KGG, 2012 WL 6610980, at *7 (D. Kan. Dec. 18, 2012)(deferring discovery of financial information related to punitive damages until 15 days after dispositive motions if the rulings do not eliminate the punitive damages cause of action).

Here, as shown above, Plaintiff has presented no evidence to support a viable claim for punitive damages. The undisputed facts established thus far show that Plaintiff has no claim for punitive damages. SHP certainly intends to file for summary judgment on the punitive damages issue once discovery is concluded. The Court should not allow production of sensitive SHP financial information and records when Plaintiff has not made any factual showing to support a claim of punitive damages and SHP's insurance policy more than covers Plaintiff's best case recovery. Plaintiff's request is overbroad, unnecessary, and irrelevant, and should not be allowed prior to mediation or the summary judgment stage.

Accordingly, Plaintiff's motion to compel production of SHP's sensitive proprietary financial information is premature and Plaintiff's motion to compel should be denied.

III. Plaintiff's demand for SHP's sensitive financial information is improper under *Sulton v. HealthSouth Corporation et al.*, 400 S.C. 412 (2012).

In *Sulton v. HealthSouth*, the plaintiff brought suit against medical defendants for injuries sustained by plaintiff patient in connection with a pressure ulcer. *Id.* at 415. 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 \$8 million verdict against HealthSouth. *Id.* at 419. The Supreme Court held that the lower court erred when it permitted Respondents to refer to HealthSouth's net operating revenue. *Id.*

In 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 from net worth may be introduced on the issue. In addition, such evidence 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." (internal citations omitted.) *Id.* at 420.

Informing 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 *421 (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. *Id.*

Here, Plaintiff's overbroad requests for SHP's sensitive financial information violates

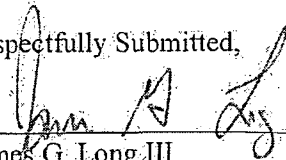
Sulton. Plaintiff seeks detailed financial information of SHP, including income statements and cash flow statements, as well as tax statements that do not accurately reflect SHP's net worth. "Only evidence of net worth and extrapolations of net worth may be introduced on the issue [of punitive damages.] *Id.* at 420. Accordingly, even if Plaintiff were entitled to discovery on the issue of punitive damages—which it is not for reasons stated above—Plaintiff's request would be overbroad and in violation of *Sulton*. Thus, it should be denied.

CONCLUSION

For the reasons stated above, Plaintiff's Motion to Compel should be denied.

(signature on following page.)

Respectfully Submitted,


James G. Long III

Amy H. Geddes

NEXSEN PRUET, LLC

1230 Main Street, Suite 700 (29201)

Post Office Drawer 2426

Columbia, SC 29202

803.771.8900

Attorneys for Defendants

Southern Health Partners, Inc.

June 19, 2016

Columbia, South Carolina

CERTIFICATE OF SERVICE

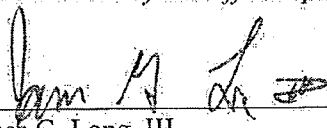
This is to certify that a copy of the foregoing **Defendant Southern Health Partners, Inc.'s Memorandum in Opposition to Plaintiff's Motion to Compel** has been hand delivered and served upon the following counsel of record on this 20 day of June 2016.

Scott C. Evans, Esquire
Evans Moore, LLC
121 Screven Street
Georgetown SC 29440

Attorney for Plaintiff

Anne R. Culbreath, Esquire
Wilson, Jones, Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville SC 29607

*Attorneys for Defendant Cherokee County,
Cherokee County Detention Center and
Cherokee County Sheriff's Department*


James G. Long, III
Amy H. Geddes
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
Telephone: 803.771.8900

FILED IN THE OFFICE
CLERK OF COURT
2016 JUN 20 A 9:06
RANDY W. MCBEE
CHEROKEE COUNTY, SC

Exhibit H

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

MAE GREGORY, As Personal
Representative of the Estate of ANTONIO
L. GREGORY,

Plaintiff,

v.

SOUTHERN HEALTH PARTNERS, INC.
and CHEROKEE COUNTY, SOUTH
CAROLINA,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION 2015-CP-11-0363

ORDER GRANTING
MOTIONS TO COMPEL

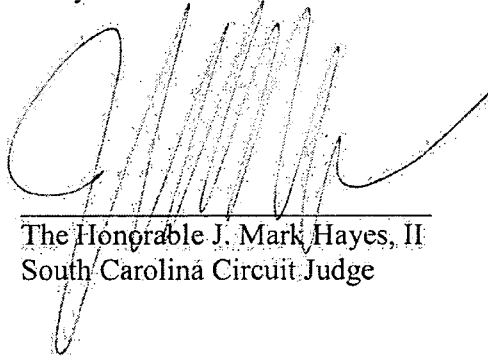
This matter came before the Court for consideration of the Plaintiff's two motions to compel discovery responses from Defendant Southern Health Partners, Inc. The Plaintiff and Defendant Southern Health Partners each submitted a separate memorandum of law. A hearing was held on this matter on June 20, 2016, during which time the Court heard argument from counsel for the Plaintiff and counsel for Defendant Southern Health Partners, Inc. Based upon the submissions and argument of the parties at the hearing on this matter, the Court hereby **GRANTS** the Plaintiff's separate motions to compel in part as set forth herein.

In response to Plaintiff's Request for Production No. 7, Defendant Southern Health Partners, Inc. is directed to produce the forty-eight (48) Southern Health Partners Inc.'s Policies & Procedures referenced during the hearing within thirty (30) days. This production shall be pursuant to the Confidentiality Order of this Court. In response to Plaintiff's Request for Production No. 12, Defendant Southern Health Partners is directed to produce tax returns for Southern Health Partners, Inc. for the years 2012, 2013, 2014, and 2015 within thirty (30) days. This production shall be pursuant to the Confidentiality Order of this Court. In response to Plaintiff's Request for



Production No. 13, Defendant Southern Health Partners is directed to produce accountant's/accounting statements, to include income state, balance sheet, and statement of cash flows, for Southern Health Partners, Inc. for the years 2012, 2013, 2014, and 2015. This production shall be pursuant to the Confidentiality Order of this Court.

IT IS SO ORDERED.



The Honorable J. Mark Hayes, II
South Carolina Circuit Judge

Gaffney, South Carolina

June 5, 2016



Exhibit I

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

Mae Gregory, as Personal Representative of the Estate
of Antonio L. Gregory, Deceased,

☐ Plaintiff

v.

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

☒ Defendants

check box above indicating submitting party

IN THE ☒ COURT OF COMMON PLEAS
☐ FAMILY COURT

CASE NO. 2015-CP-11-0363

**MOTION AND ORDER INFORMATION FORM
AND COVER SHEET**

name, S.C. Bar no. and address of plaintiff's attorney

Scott C. Evans	Anne R. Culbreath
James B. Moore	Charles F. Turner
Evans Moore, LC	Willson, Jones, Carter &
121 Screven Street	Baxley, P.A
Georgetown, SC 29440	872 S. Pleasantburg Drive
	Greenville, SC 29607

name, S.C. Bar no. and address of defendant's attorney

James G. Long III S. C. Bar No. 64103
Amy H. Geddes S. C. Bar No. 16960
Nexsen Pruet, LLC
PO Drawer 2426
Columbia, SC 29202
telephone: 803.771.8900

☐ 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:

Estimated Time Needed: Court Reporter Needed:

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

7-21-16
Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ 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, SCRPC)

☐ 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: **CONSENT CONFIDENTIALITY ORDER**

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

DATE FILED

Collected by: _____
(print name)

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

IN THE COURT OF COMMON PLEAS
Civil Action No. 2015-CP-11-0363

Mae Gregory, as Personal Representative of
the Estate of Antonio L. Gregory,

Plaintiff,

vs.

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

Defendants.

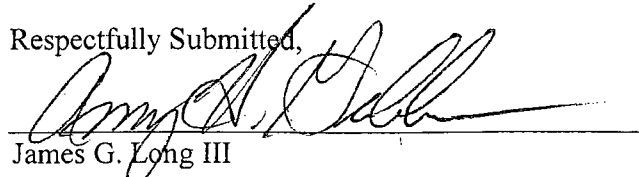
**DEFENDANT SOUTHERN HEALTH
PARTNERS, INC.'S MOTION TO
RECONSIDER DISCOVERY ORDER**

Defendant Southern Health Partners, Inc. ("SHP") respectfully moves the Court for an order altering, amending, or rescinding its *Order Granting Motions to Compel*, signed by the Honorable J. Mark Hayes, II on July 5, 2016; filed with the Clerk of Court for Cherokee County on July 8, 2016; and a copy of which received by counsel for SHP on July 14, 2016. A copy of the Order is attached hereto. The Motion is based on South Carolina Rules of Civil Procedure 26, 34, 52 and 59(e).

The grounds for this Motion, as more fully stated in the accompanying Memorandum in Support, are that Plaintiff's discovery request exceeds the scope of discovery allowed by our Supreme Court and seeks highly sensitive information. As such, the request is overbroad, irrelevant, premature, and not reasonably calculated to lead to the discovery of admissible evidence, and should not be permitted. S.C.R. Civ. P. 26(c).

(Signature block on following page.)

Respectfully Submitted,



James G. Long III

Amy H. Geddes

NEXSEN PRUET, LLC

1230 Main Street, Suite 700 (29201)

Post Office Drawer 2426

Columbia, SC 29202

803.771.8900

Attorneys for Defendants

Southern Health Partners, Inc.

July 21, 2016

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

MAE GREGORY, As Personal
Representative of the Estate of ANTONIO
L. GREGORY,

Plaintiff,

v.

SOUTHERN HEALTH PARTNERS, INC.
and CHEROKEE COUNTY, SOUTH
CAROLINA,

Defendants.

) IN THE COURT OF COMMON PLEAS

) CIVIL ACTION 2015-CP-11-0363

ORDER GRANTING
MOTIONS TO COMPEL

2016 JUL - 8 PM 07
CLERK OF COURT
CHEROKEE COUNTY, SC

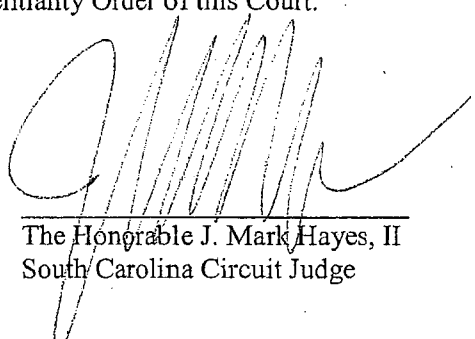
This matter came before the Court for consideration of the Plaintiff's two motions to compel discovery responses from Defendant Southern Health Partners, Inc. The Plaintiff and Defendant Southern Health Partners each submitted a separate memorandum of law. A hearing was held on this matter on June 20, 2016, during which time the Court heard argument from counsel for the Plaintiff and counsel for Defendant Southern Health Partners, Inc. Based upon the submissions and argument of the parties at the hearing on this matter, the Court hereby **GRANTS** the Plaintiff's separate motions to compel in part as set forth herein.

In response to Plaintiff's Request for Production No. 7, Defendant Southern Health Partners, Inc. is directed to produce the forty-eight (48) Southern Health Partners Inc.'s Policies & Procedures referenced during the hearing within thirty (30) days. This production shall be pursuant to the Confidentiality Order of this Court. In response to Plaintiff's Request for Production No. 12, Defendant Southern Health Partners is directed to produce tax returns for Southern Health Partners, Inc. for the years 2012, 2013, 2014, and 2015 within thirty (30) days. This production shall be pursuant to the Confidentiality Order of this Court. In response to Plaintiff's Request for



Production No. 13, Defendant Southern Health Partners is directed to produce accountant's/accounting statements, to include income state, balance sheet, and statement of cash flows, for Southern Health Partners, Inc. for the years 2012, 2013, 2014, and 2015. This production shall be pursuant to the Confidentiality Order of this Court.

IT IS SO ORDERED.



The Honorable J. Mark Hayes, II
South Carolina Circuit Judge

Gaffney, South Carolina
June 5, 2016

J. Hayes

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **Defendant Southern Health Partners, Inc.'s Motion to Reconsider Discovery Order** has been served upon the following counsel of record via U. S. Mail and via electronic mail as addressed below this 21st day of July, 2016.

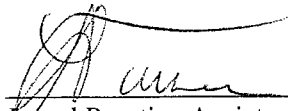
The Honorable J. Mark Hayes, II
South Carolina Circuit Judge
180 Magnolia Street
Spartanburg, SC 29306
mhayesj@sccourts.org

Scott C. Evans, Esquire
James B. Moore, Esquire
Evans Moore, LLC
121 Screven Street
Georgetown SC 29440
scott@evansmoorelaw.com
james@evansmoorelaw.com

Attorney for Plaintiff

Anne R. Culbreath, Esquire
Charles F. Turner, Esquire
Wilson, Jones, Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville SC 29607
arculbreath@wjlaw.com
cfturner@wjlaw.com

*Attorneys for Defendant Cherokee County,
Cherokee County Detention Center and,
Cherokee County Sheriff's Department*



Legal Practice Assistant to
James G. Long, III
Amy H. Geddes
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
Telephone: 803.771.8900

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

IN THE COURT OF COMMON PLEAS
Civil Action No. 2015-CP-11-0363

Mae Gregory, as Personal Representative of
the Estate of Antonio L. Gregory,

Plaintiff,

vs.

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

Defendants.

**DEFENDANT SOUTHERN HEALTH
PARTNERS, INC.'S MEMORANDUM
IN SUPPORT OF ITS MOTION TO
RECONSIDER DISCOVERY ORDER**

The Supreme Court of South Carolina has unequivocally held that only evidence of *net worth* is admissible in connection with a claim for punitive damages. *Sulton v. HealthSouth Corp.*, 400 S.C. 412, 420, 734 S.E.2d 641, 645 (2012) (citing *Branham v. Ford Motor Co.*, 390 S.C. 203, 239–40, 701 S.E.2d 5, 24–25 (2010)). The Court has also recognized the sensitive nature of a Defendant's finances, advising that such evidence must be handled cautiously. *Id.* To allow unfettered discovery of a Defendant's finances when those finances have no relevance to the merits of the lawsuit and are requested prior to the conclusion of discovery or dispositive motions should not be permitted. As a result, the Defendant Southern Health Partners ("SHP") requests that this Court reconsider its Order dated July 5, 2016, and deny the Plaintiff's Motion to Compel the financial information requested.¹

I. Background

Plaintiff initiated this action on May 4, 2015 asserting a claim against Southern Health Partners ("SHP") for medical malpractice. SHP is a Tennessee based company who hires nurses

¹ Plaintiff filed a separate motion to compel SHP's production of its policy and procedure manual. This motion only addresses the Court's Order with respect to SHP's proprietary financial information.

and contracts with physicians to provide medical services at county jails. Cherokee County is one of the county jails serviced by SHP. It has also been disclosed in discovery that SHP carries liability insurance for medical malpractice claims. The parties have exchanged documents and answered interrogatories. Several depositions have been taken with more depositions noticed in the next few months. Each party has identified experts but none of the experts have been deposed. As shown below, Plaintiff has not articulated any behavior that could be considered reckless to support an award of punitive damages. Further, Plaintiff has made no claim directly against SHP other than vicarious liability.

On March 15, 2016, Plaintiff served her Second Request for Production to Defendant SHP (attached as **Exhibit A**) 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).

SHP objected to Plaintiff's request for SHP's proprietary financial information in its Answer to Plaintiff's Second Request for Production, on the grounds that Plaintiff's requests were "overly broad, unduly burdensome, intrusive, premature and confidential, as no liability or damages as to this Plaintiff have been established." [Defendant SHP's Answers to Plaintiff's Second Request for Production ¶¶ 12–13, attached as **Exhibit B**]. Plaintiff followed with a Motion to Compel. The Plaintiff and SHP each submitted a separate memorandum of law and a hearing was held on June 20, 2016. The Court granted Plaintiff's motions to compel in an Order dated July 5, 2016, which was received by counsel for SHP on July 14, 2016.

II. Argument

The Supreme Court of South Carolina has made clear that “[w]hen the discovery process threatens to become abusive or to create a particularized harm to a litigant or third party, the Rules [of Civil Procedure] allow the trial judge broad latitude in limiting the scope of discovery.” *Hamm v. S. Carolina Pub. Serv. Comm’n*, 312 S.C. 238, 241, 439 S.E.2d 852, 854 (1994). Upon a showing of good cause by the party opposing discovery, “the party seeking discovery must come forward and show that the information sought is both relevant and necessary to the case.” *Id.*

In a more recent case, our Supreme Court has recognized the important role of the trial court to impose reasonable discovery limits and to make sure discovery requests are reasonably tailored to include only relevant matters. *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 (2010) (quoting *In re CSX Corp.*, 124 S.W.3d 149 (2003)). The Supreme Court explained:

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. After finding the trial court had abused its discretion by issuing an overly broad discovery order, the trial court order compelling discovery was vacated.

Id. (internal citations omitted). As set forth more fully below, the requested discovery is not so reasonably tailored.

A. Production of SHP's Financial Information is harmful and prejudicial and Plaintiff has made no showing of relevance or necessity.

Our Supreme Court has articulated in two recent decisions how the misuse of sensitive financial information can be harmful to a defendant, particularly an out of state business like SHP. Our Supreme Court stated:

Only evidence of net worth and extrapolations from net worth may be introduced on the issue [of punitive damages]. In addition, such evidence 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.

Sulton v. HealthSouth Corp., 400 S.C. 412, 420, 734 S.E.2d 641, 645 (2012) (emphasis supplied) (internal quotations and citations omitted). In *Sulton*, the Plaintiff encouraged the jury to return a punitive damage verdict based on the net operating revenue of the company. *Id.* at 645. The Court reversed the verdict and held that such an attempt was reversible error and likely to stir juror bias. *Id.* at 646. As in *Sulton*, SHP's tax returns, income statements and cash flow statements have no bearing on its net worth. *Sulton* at 420-21 ("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).").

Second, and equally if not more importantly, our Supreme Court has determined that presenting evidence on assets "beyond net worth and extrapolations from net worth" violates Constitutional Due Process. *Branham v. Ford Motor Co.*, 390 S.C. 203, 239, 701 S.E.2d 5, 24 (2010) (finding that admitting evidence of vehicle manufacturer's financial condition beyond net worth, including income, revenues, cash flow, and salaries of corporate officers, for purposes of determining appropriate level of punitive damages, was prejudicial error and violated manufacturer's due process rights). Therefore, as a matter of law, the presentation of SHP's tax returns, income statements and statements of cash flows would be *prejudicial and not admissible*

on the issue of punitive damages, and would violate SHP's Due Process rights. *Sulton* at 420-21; *Branham* at 203. As a result, it follows that such information cannot lead to the discovery of any admissible evidence, since they have no bearing on SHP's net worth.

Based on the *Sulton* and *Branham* decisions, it cannot be disputed that the production of sensitive financial information is harmful and prejudicial to SHP, particularly when the requests are as broad as Plaintiff's request is here (tax returns, accounting statements, cash flow analysis, and income statements, all of which show and report income). The only reason provided by Plaintiff for seeking the information is for Plaintiff to show SHP's ability to pay a punitive damage award. In other words, the Plaintiff admits that the requested financial information (and the testimony of their expert on that information) has no relevance to the merits of their claims. As such, it is not necessary for the preparation of those claims. If the evidence requested is clearly inadmissible and prejudicial to the Defendant, its production should be limited unless Plaintiff can show that the information is likely to lead to relevant and admissible evidence or is necessary. Here, Plaintiff has made no showing of either.

B. Plaintiff's Request for Financial Information is Premature

As set forth above, if Plaintiff presents evidence showing a viable claim for punitive damages — which she cannot do in this case — Plaintiff would, at most, be entitled to present a simple statement of net worth. See *Sulton* at 420; *Branham* at 240–41. 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 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) (Plaintiff could not discover information of defendant officer’s financial 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. At a minimum, SHP requests the Court to impose these limitations on Plaintiff’s request here.

Plaintiff has presented no evidence to support her conclusory belief that punitive damages will be before the jury. In fact, the undisputed factual record shows that no claim for punitive damages exists.² Thus, without any facts to support a claim for punitive damages, the Court

² Punitive damages are recoverable in a medical malpractice case only “where a physician has been guilty of gross negligence amounting to reckless indifference in treating a patient. The test by which a tort is to be characterized as reckless . . . is whether it has been committed in such a manner or under such circumstances that a person of ordinary reason or prudence would then have been conscious of it as an invasion of the plaintiff’s rights.” *Cash v. Kim*, 288 S.C. 292, 297, 342 S.E.2d 61, 63-64 (Ct. App. 1986) (internal citations omitted) (emphasis supplied). While Defendant SHP sympathizes with Plaintiff for the loss of Decedent, his passing was not a result of any fault of SHP, much less reckless indifference, as shown by the following undisputed facts.

- On June 12, 2013, Antonio Gregory was booked into Cherokee County Detention Center. (SHP Medical Record, p. 70).
- On June 22, 2013, Mr. Gregory placed his first sick call, complaining of “upset stomach and flu like symptom” on his sick call sheet. Mr. Gregory admitted to the nurse that he had not vomited in several days and had not voided for one day. He was seen twice by the nurse that day. On the second visit, he said he had voided and eaten. (SHP Medical Record, pp. 68 and 60).
- On June 23, 2013, Inmate Gregory was seen by a nurse again. The nurse took Mr. Gregory’s history and physical appraisal that is required to be completed within 14 days. No significant medical issues were noted during this visit. (SHP Medical Record, p. 65 - 66).

erred in granting Plaintiff's motion to compel. Further, the combination of SHP's liability insurance and the statutory caps imposed by S.C. Code Ann. §§ 15-32-220 and -530 make it highly unlikely that SHP would ever actually be required to pay a punitive damage award, even assuming, *arguendo*, that a jury ever made such a determination. These facts further diminish any need for the requested information.

As shown herein, requiring SHP to produce its proprietary financial information is harmful and prejudicial as made clear by our Supreme Court in *Sultan* and *Branham*. See also S.C.R. Civ. P. 26(c). Further, granting Plaintiff's broad requests at this stage, when no substantiated punitive damage claim exists and before dispositive motions have been heard, would encourage plaintiffs to demand all of a defendant's financial information at the earliest stages of all litigation, after merely alleging—but not substantiating—a punitive damages claim. Opening the floodgates to this type of discovery practice violates the principles espoused by our Supreme Court and should not be allowed.³

-
- On June 24, 2013, Mr. Gregory complained of nausea, but denied vomiting or pain. He is seen by a nurse and told to rest and drink liquids. (SHP Medical Record, p. 60).
 - On June 25, 2013, Mr. Gregory complained of nausea. His blood sugar was checked twice and confirmed to be at a normal range. He was seen by a nurse twice. While his eyes appeared yellow he exhibited no other symptoms. (SHP Medical Record, pp. 56 and 62).
 - On June 26, 2013, the nurse informed a physician of suspected jaundice at 8:00 AM. The physician ordered a blood test and a nurse made arrangements to transport Mr. Gregory to the hospital later that day. Inmate Gregory was found unresponsive in his cell. Shortly before 11:00 a.m., Emergency Medical Services was called and responded. Mr. Gregory died that day. (SHP Medical Record, p. 56).

³ Further, Plaintiff's concerns for the convenience of her expert cannot trump the rulings of our Supreme Court, especially when no punitive damages claim has been substantiated. Contrary to Plaintiff's concerns, her expert would have ample time to review a statement of SHP's net worth after the summary judgment stage, provided Plaintiff is able to overcome SHP's motion for

Based on the record to date, SHP will certainly file a motion for summary judgment on the Plaintiff's claim for punitive damages at the conclusion of all deposition testimony. At a minimum, Plaintiff's request for information related to net worth should be delayed until SHP's future motion for summary judgment is ruled upon by the Court.

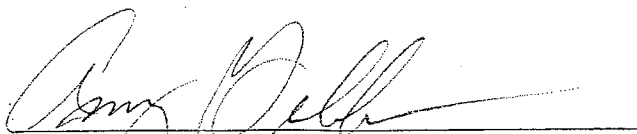
III. Conclusion

For the reasons stated above, Plaintiff's discovery requests for financial information exceed the scope allowed by our Supreme Court for punitive damage claims, and are irrelevant, prejudicial, premature, and cannot lead to the discovery of admissible evidence. Accordingly, this Court should grant Defendant SHP's motion to reconsider and deny the Plaintiff's motion to compel the financial information requested.

(signature block on following page)

summary judgment on the purported punitive damages issue.

Respectfully Submitted,



James G. Long III
Amy H. Geddes
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, SC 29202
803.771.8900
Attorneys for Defendants
Southern Health Partners, Inc.

July 21 2016
Columbia, South Carolina

EXHIBIT
A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHEROKEE	)	CIVIL ACTION 2015-CP-11-0363
 MAE GREGORY, As Personal	)	
Representative of the Estate of ANTONIO	)	
L. GREGORY,	)	
	)	
Plaintiff,	)	
	)	PLAINTIFF'S SECOND REQUEST
v.	)	FOR PRODUCTION TO DEFENDANT
	)	SOUTHERN HEALTH PARTNERS,
SOUTHERN HEALTH PARTNERS, INC.	)	INC.
and CHEROKEE COUNTY, SOUTH	)	
CAROLINA,	)	
	)	
Defendants.	)	
	)	

**TO: JAMES LONG and AMY GEDDES, Attorneys for the Defendant
SOUTHERN HEALTH PARTNERS, INC.**

The following requests for production are served on you pursuant to the provisions of South Carolina Rules of Civil Procedure 26 and 34. You are requested to produce each of the following described documents and things at the law offices of Evans Moore, LLC, located at 121 Screven Street, Georgetown, South Carolina on the 30th day following service of these discovery requests.

A. SPECIAL INSTRUCTIONS

In responding to the Plaintiff's Discovery Requests in this action, you are requested to follow the following instructions, which the Plaintiff believes are consistent with the Rules:

1. Unless otherwise requested, please produce all requested documents and things at the offices of your lead counsel at the time indicated in the Discovery Request.
2. Where no discoverable matter exists which would be responsive to a Discovery Request, please so state.
3. Please respond to Discovery Requests by furnishing all responsive discoverable matter either in your possession, in your control, or accessible to you by reasonable inquiry. This includes discoverable matter in the possession, custody, or control of your (a) agents, (b) employees; (c) attorneys, (d) corporate departments or divisions; (e) your parent or subsidiary corporations; (f) corporate affiliates; and (g) any other persons, firms, or corporations which because of your business relationship would readily respond to your inquiry in the ordinary course of business.

4. Where documents and things exist which fall within the descriptive terms of one of the Plaintiff's Discovery Requests, and production of the same will be made by you, please produce such documents and things in a manner corresponding to the numbered request in which they are described, so that identification with the appropriate request can readily be made.

5. In addition to the original of any such requested documents, any request for a document also includes:

- a. any copy by whatever name called, which relates to the original, specifically including any material underlying, supporting, or used in the preparation of any such original document;
- b. any and all attachments to the original;
- c. any and all documents referred to in the original;
- d. any and all subsequent additions, deletions, substitutions, amendments, or modifications to the original of any sort.

6. If you are unsure of the meaning of a word, phrase, or abbreviation used in any Discovery Request, please contact the undersigned counsel for the Plaintiff in writing, specify the word or phrase whose meaning you claim is unclear, and ask for written clarification of the word or phrase in question. To the extent any ambiguity genuinely exists, such clarification will be promptly provided to you.

B. TABLE OF DEFINITIONS AND ABBREVIATIONS

The Plaintiff provides the following definitions of words, phrases, and abbreviations used by the Plaintiff in propounding the Discovery Requests to help you understand the objectives of his discovery efforts and to locate and disclose all discoverable matter sought by the Discovery Requests without engaging in semantic arguments:

"Document" means and includes all "papers" of any kind or character, correspondence, writings, records, meeting minutes, reports, studies, evaluations, projections, analyses, presentations, memoranda, drawings, graphs, charts, books, statements, ledgers, financial records, checks, drafts, receipts, forms prescribed by government agencies, photographs, motion pictures, videotape, videodisc, audiotape or other sound recording, any method or medium by which information is utilized by computers, including e-mail, computer tapes, computer drives, computer discs, computer printouts, photocopies, microfilm, microfiche and any other data, sound or image compilation or recording from which information regarding the described transactions can be obtained, translated if necessary by you through appropriate and necessary devices into reasonably usable and intelligible form.

"Identify", when used with respect to documents, things, or other items of real or demonstrative evidence, not withheld because of claim of privilege or other objection, means to list and describe the items of which discovery is sought:

- (a) State the type of document or thing, its date, title or heading, and subject matter;
- (b) Give an exhibit number for the document or thing if one has been assigned;
- (c) Identify all persons who participated in creating the document or thing; and
- (d) State the present location and identify the present custodian of the document or thing.

"Identify", when used with respect to documents, things, or other items of real or demonstrative evidence, withheld because of claim of privilege or other objection, means to list and describe the items of which discovery is sought sufficiently for the Plaintiff to identify the items in a motion for in camera inspection:

- (a) State the type of document or thing, its date, title or heading, and subject matter;
- (b) Give an exhibit number for each if one has been assigned;
- (c) Identify all persons who participated in creating the document or thing;
- (d) Identify all persons to whom the document or thing has been given, shown, exhibited, distributed, made available or explained;
- (e) State the present location and identify the present custodian of the document or thing;
- (f) State the factual and legal basis for your refusal to produce the document or thing, including any claim of privilege, in sufficient detail to permit the Plaintiff and the Court to evaluate the validity of each refusal; and
- (g) Describe each item sufficiently to indicate the factual and legal grounds for its inclusion within the scope of the privilege claimed or objection asserted and sufficiently to enable Plaintiff to identify the item in a motion to compel production or a motion for in camera inspection by the Court.

"Person" includes any individual, public or private corporation, partnership, government agency, incorporated association,, or unincorporated association.

"Plaintiff" means the Plaintiff in this action.

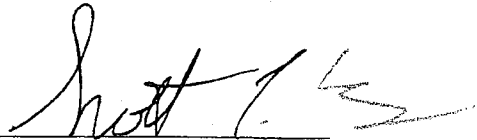
"Senior Management" means and refers to all members of management which if looking at an organizational chart include all members or department heads for the first 4 tiers of any organizational structure.

"You" and *"your"* mean and refer to the particular party to whom Plaintiff's Discovery Requests are specifically directed and who is undertaking to respond to them.

C. REQUEST FOR PRODUCTION

12. Please provide the tax returns for Southern Health Partners, Inc. for the years 2012, 2013, 2014 and 2015.

13. Please provide the 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.



EVANS MOORE, LLC

Scott C. Evans

James B. Moore, III

121 Screven Street

Georgetown, SC 29440

(843) 995-5000

Georgetown, SC
March 15, 2015

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF CHEROKEE) CIVIL ACTION 2015-CP-11-0363

MAE GREGORY, As Personal)
Representative of the Estate of ANTONIO)
L. GREGORY,)

Plaintiff,)

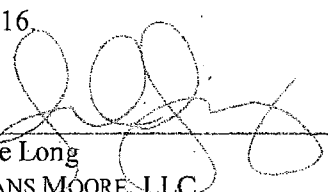
v.)

SOUTHERN HEALTH PARTNERS, INC.)
and CHEROKEE COUNTY, SOUTH)
CAROLINA,)

Defendants.)

CERTIFICATE OF MAILING

I hereby certify that **Plaintiff's Second Requests for Production to Cherokee County** have been sent to James Long, Attorney for Southern Health Partners, at Post Office Drawer 2426, Columbia SC 29202, with a copy to Charles Turner and Anne Culbreath, Attorneys for Defendant Cherokee County, South Carolina, in this proceeding by U.S. Postal Service with a copy to all counsel of record, on March 19, 2016.



Julie Long
EVANS MOORE, LLC
121 Screven Street
Georgetown, SC 29440
julie@evansmoorelaw.com
Telephone number 843-995-5000
Facsimile number 843-527-4128

EXHIBIT
B

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

IN THE COURT OF COMMON PLEAS
Civil Action No. 2015-CP-11-0363

Mae Gregory, as Personal Representative of
the Estate of Antonio L. Gregory,

Plaintiff,

vs.

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

Defendants.

**DEFENDANT SOUTHERN HEALTH
PARTNERS, INC.'S
ANSWERS TO PLAINTIFF'S SECOND
REQUEST FOR PRODUCTION**

Pursuant to Rules 26 and 34 of the South Carolina Rules of Civil Procedure, Defendant Southern Health Partners, Inc. ("SHP"), hereby responds to Plaintiff's Second Request for Production as follows:

GENERAL OBJECTIONS

1. Defendant SHP has not completed its investigation and discovery relating to this case. The specific responses set forth below and any production made pursuant to the accompanying document requests are based upon, and necessarily limited by, information now available.

2. Defendant SHP objects to the Requests to the extent that they seek information or documents protected by the attorney-client privilege, the attorney-work product doctrine, and/or any other applicable privileges or protections. The inadvertent production of any such privileged or protected information or documents shall not constitute a waiver of any privilege or protection applicable thereto, or to any related information or documents. Defendants request that anyone suspecting such an inadvertent

production or disclosure bring it to the attention of the undersigned counsel immediately and promptly return any such document or information.

3. Defendant SHP objects to the Requests to the extent that they seek information or documents not within this Defendant's possession, custody or control.

4. Defendant SHP objects to the Requests to the extent that they are overly broad, unduly burdensome, vague and ambiguous, oppressive and/or are not reasonably calculated to lead to the discovery of admissible evidence.

5. Except for facts specifically admitted herein, no admission of any kind is to be implied or inferred by these responses. The fact that Defendant SHP responds to any Requests should not be taken as an admission or concession of the existence of the facts set forth or assumed by any Requests, or that such answer constitutes evidence of any fact thus set forth or assumed.

6. When Defendant SHP responds to a Request by stating that it will make documents available for inspection or produce documents, Defendant SHP will do so on a continuing basis, subject to the objections in these Requests.

7. These General Objections shall be deemed to be applicable to and incorporated by reference into Defendants' response to each Request set forth below.

8. Defendant SHP objects to these Requests to the extent they seek information beyond June 26, 2013, the last date of Plaintiff's detention at the Detention Center, and produce herein documents only up to this date.

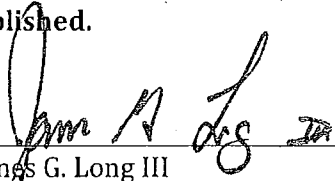
REQUESTS FOR PRODUCTION

12. Please provide the tax returns for Southern Health Partners, Inc. for the years 2012, 2013, 2014 and 2015.

RESPONSE: Defendant SHP objects to the foregoing as overly broad, unduly burdensome, intrusive, premature and confidential, as no liability or damages as to this Plaintiff have been established.

13. Please provide the 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.

RESPONSE: Defendant SHP objects to the foregoing as overly broad, unduly burdensome, intrusive, premature and confidential, as no liability or damages as to this Plaintiff have been established.



James G. Long III
Amy H. Geddes
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, SC 29202
803.771.8900
Attorneys for Defendants
Southern Health Partners, Inc.

May 26, 2016
Columbia, South Carolina

CERTIFICATE OF SERVICE

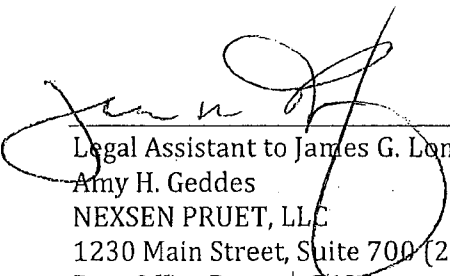
This is to certify that a copy of the foregoing **Defendant Southern Health Partners, Inc.'s Responses to Plaintiff's Second Request for Production** has been served upon the following counsel of record, addressed as shown below this 26th day of May, 2016.

Scott C. Evans, Esquire
Evans Moore, LLC
121 Screven Street
Georgetown SC 29440

Attorney for Plaintiff

Anne R. Culbreath, Esquire
Wilson, Jones, Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville SC 29607

*Attorneys for Defendant Cherokee County,
Cherokee County Detention Center and
Cherokee County Sheriff's Department*



Legal Assistant to James G. Long, III and
Amy H. Geddes
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
Telephone: 803.771.8900

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **Defendant Southern Health Partners, Inc.'s Memorandum in Support of Motion to Reconsider Discovery Order** has been served upon the following counsel of record via U. S. Mail and via electronic mail as addressed below this 21st day of July, 2016.

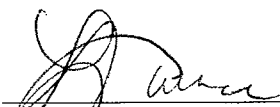
The Honorable J. Mark Hayes, II
South Carolina Circuit Judge
180 Magnolia Street
Spartanburg, SC 29306
mhayesj@sccourts.org

Scott C. Evans, Esquire
James B. Moore, Esquire
Evans Moore, LLC
121 Screven Street
Georgetown SC 29440
scott@evansmoorelaw.com
james@evansmoorelaw.com

Attorney for Plaintiff

Anne R. Culbreath, Esquire
Charles F. Turner, Esquire
Wilson, Jones, Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville SC 29607
arculbreath@wjlaw.com
cfturner@wjlaw.com

*Attorneys for Defendant Cherokee County,
Cherokee County Detention Center and,
Cherokee County Sheriff's Department*



Legal Practice Assistant to
James G. Long, III
Amy H. Geddes
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
Telephone: 803.771.8900

Exhibit J

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHEROKEE) CIVIL ACTION 2015-CP-11-0363

MAE GREGORY, As Personal)
Representative of the Estate of ANTONIO)
L. GREGORY,)

Plaintiff,)

v.)

SOUTHERN HEALTH PARTNERS, INC.)
and CHEROKEE COUNTY, SOUTH)
CAROLINA,)

Defendants.)

ORDER DENYING MOTION TO
RECONSIDER

2016 SEP - 2 A 10:41
CLERK OF COURT
ANDY W. HOBBS
CHEROKEE COUNTY, SC

This matter came before the Court for consideration of Defendant Southern Health Partners, Inc.'s motion to reconsider this Court's prior July 5, 2016 Order granting the Plaintiff's prior motions to compel. In its motion to reconsider filed on July 22, 2016, Defendant Southern Health Partners, Inc. asked that this Court revisit the portion of the July 5, 2016 Order directing Southern Health Partners, Inc. to respond to the Plaintiff's Request for Production No. 12 (seeking tax returns) and Request for Production No. 13 (seeking accounting/accountant's statements).

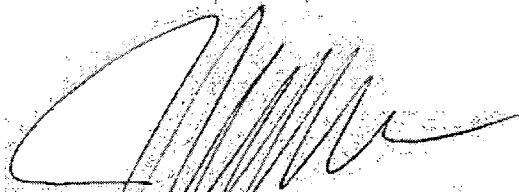
Southern Health Partners, Inc. filed a memorandum of law on July 22, 2016, to which the Plaintiff responded on August 15, 2016. A hearing was held on this matter on August 22, 2016, during which time the Court heard argument from counsel for Defendant Southern Health Partners, Inc. and counsel for the Plaintiff. Based upon the submissions and argument of the parties at the hearing on this matter, the Court hereby **DENIES** Defendant Southern Health Partners, Inc.'s motion to reconsider.

In reaching this conclusion, the Court notes the distinction between the admissibility versus the discoverability of information noted by the District Court for the Eastern District of North



Carolina in Blount v. Wake Elec. Membership Corp., 162 F.R.D. 102, 105 (E.D.N.C. 1993). The Court further notes that the information to be released will be released under the provisions of this Court's Confidentiality Order. The Court directs Southern Health Partners, Inc. to produce the materials detailed in this Court's July 5, 2016 Order within 30 days from the date of this Order.

IT IS SO ORDERED.



The Honorable J. Mark Hayes, II
South Carolina Circuit Judge

Gaffney, South Carolina

Aug 30, 2016

2016 SEP -2 A 10:41
CLERK OF COURT
JUDICIAL BRANCH
SOUTH CAROLINA
COUNTY, SC

Exhibit K

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

Exhibit L

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

OCT 14 2016

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

J. Mark Hayes, II, Circuit Court Judge

Appellate Case No. 2016-002023
Circuit Court Case No. 2015-CP-11-0363

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

v.

Southern Health Partners, Inc., ... Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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

Attorneys for Respondent

Other Counsel of Record:

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

Attorneys for Petitioner

Other Counsel of Record:

Charles F. Turner
Anne R. Culbreath
Wilson, Jones, Carter, & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, SC 29607
(803) 527-3280

Attorneys for Cherokee County

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COUNTER STATEMENT OF QUESTIONS PRESENTED

1. Whether the Petition Meets the Requirements of Rule 245, SCACR, when a Lower Court May First Decide the Matter and when the Circuit Court's Order Fully Complies with Rule 26 of the South Carolina Rules of Civil Procedure.
2. Whether the Circuit Court's Relevancy Determinations may be Bootstrapped to an Alleged "public interest" Argument, and whether those Determinations Are Correct when Respondent's Discovery Requests Are Directly Related to the Damages sought in the Complaint.

COUNTER STATEMENT OF THE CASE

Respondent Mae Gregory's son, Antonio Gregory, was booked at the Cherokee County Detention Center on June 12, 2013 on a charge of shoplifting a package of cigarettes. (App. at 22). At the time of Mr. Gregory's detainment, Petitioner Southern Health Partners, Inc., a private healthcare provider, had contracted with the Cherokee County Detention Center to provide all medical treatment to the individuals detained there. (Pet. p. 5).

While at the Cherokee County Detention Center, Mr. Gregory began experiencing chest pain and other serious medical symptoms. Mr. Gregory's condition worsened as a result of Petitioner's failure to give him proper medical attention and to provide for his most basic needs. For a period of five (5) days, Mr. Gregory reported to have severe chest pains, abdominal pain, kidney pain, and dizziness. On June 25, 2013, it was reported that Mr. Gregory was unable to walk and had been unable to eat for ten days (10) days. According to the medical records, it was noted that Mr. Gregory exhibited symptoms of eye jaundice and kidney failure, and had a documented glucose reading of 53. Despite his open and obvious medical conditions, Petitioner failed to provide Mr. Gregory with access to medical intervention. (App. at 23-24).

On or around 10:30 a.m. on Wednesday, June 26, 2013, Mr. Gregory experienced a fatal heart arrhythmia within his jail cell. EMS and Fire personnel were summoned, and Mr. Gregory was transported to the Gaffney Medical Center where he was pronounced dead shortly thereafter.

Medical experts have determined that Mr. Gregory's death was proximately caused by the Petitioner's failure to provide him with basic medical attention during his detention. (App. at 24-25).

Respondent Mae Gregory, as Personal Representative of the Estate of Antonio Gregory, subsequently filed the instant action alleging medical negligence against Petitioner Southern Health Partners, Inc. and negligence against Cherokee County. As a part of the allegations in the Complaint, Respondent alleged that Petitioner engaged in a series of "reckless, willful and wanton acts" in which Respondent seeks to recover damages for Wrongful Death and Survival related to the untimely death of Antonio Gregory at the age of thirty-five (35). (App. at 24-32).

Moreover, in order to comply with the statutory requirements of South Carolina Medical Malpractice Reform Act, Respondent attached to the Complaint and incorporated by reference the affidavit of medical expert Jay B. Krasner, MD. (App. at 34). In his affidavit, Dr. Krasner opined that Petitioner committed a series of "willful, wanton and/or reckless acts and/or omissions, which constituted a failure to comply with the appropriate standard of care..." (App. at 34-38). As such, Respondent has properly pled and currently seeks punitive damages in this matter. Respondent believes that punitive damages will be before the jury based upon evidence that Mr. Gregory died a slow and very painful death that could have been prevented with the most basic of medical care.

In accordance with the original Consent Scheduling Order of the circuit court, Respondent was required to identify expert witnesses expected to testify at trial no later than May 16, 2016. On May 11, 2016, Respondent served supplemental discovery responses identifying all experts expected to testify at trial. (App. at 70). Among those experts, Respondent identified economist Oliver Wood, Ph.D. Dr. Wood has been disclosed to offer expert testimony regarding Petitioner's ability to pay a punitive damages verdict. (App. at 74-75).

On March 15, 2016, Respondent served her Second Request for Production to Petitioner Southern Health Partners, Inc. requesting copies of filed tax returns for the years 2012, 2013, 2014 and 2015, as well as accountant's statements for 2012, 2013, 2014, and 2015 for Petitioner. (App. at 55). Petitioner refused to produce the requested documentation. (App. at 59). When the Petitioner refused to produce the relevant records, Respondent filed a motion to compel. (App. at 60-62). The parties each submitted a memorandum of law in support of its position. (See App. at 68; App. at 76). A hearing took place before Judge J. Mark Hayes, II on June 20, 2016. At the hearing, Respondent's counsel presented the court with the affidavit of Dr. Wood indicating that he is unable to provide the expert analysis regarding the ability of the Petitioner to pay a punitive verdict without first reviewing the information requested in discovery. (App. at 74-75). The circuit court issued an order granting Respondent's motion to compel on July 5, 2016. (App. at 14-15). The Order addressed Petitioner's privacy concerns. Specifically, the circuit court ordered that the compelled financial records be produced "pursuant to the Confidentiality Order of this Court." *Id.*

Petitioner served its motion to reconsider on July 21, 2016. (App. at 86). In its brief in support, Petitioner simply recited the same exact grounds that were raised in its initial brief and argued at length at the June 20, 2016 hearing on this matter. (See App. at 88). The circuit court denied Petitioner's Motion to Reconsider by Order dated August 30, 2016. (App. at 16). In the Order, the circuit court noted the distinction between "admissibility and discoverability" of the compelled financial records and again ordered the records be produced under the provisions of the Confidentiality Order. *Id.* at 17.

Rather than complying with the circuit court's order, or refusing to comply and being held in contempt prior to seeking review of a discovery order, the Petitioner filed a Petition for Writ of Certiorari in this Court's original jurisdiction and a Notice of Appeal before the South Carolina

Court of Appeals. For the reasons stated below, the Respondent requests the Court deny this Petition.

ARGUMENT

I. There is No Basis for the Court to Exercise its Original Jurisdiction

The Petition fails to meet the requirements of Rule 245 of the South Carolina Rules of Appellate Procedure, because (1) the matter can be first determined by a lower court and (2) there is no public interest involved. It is established procedural law in South Carolina that a party wishing to challenge an interlocutory discovery order must refuse to comply, be held in contempt by the circuit court, and then appeal the contempt order. *See Davis v. Parkview Apts.*, 409 S.C. 266, 280-81, 762 S.E.2d 535, 543 (2014) (“[T]o challenge the specific rulings of the discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding.”). Petitioner attempts to avoid this established procedure by asserting an alleged “public interest” in the discovery order to invoke this Court’s original jurisdiction under Rule 245, SCACR. This is an improper use of Rule 245, and the Court should deny the Petition for the reasons set forth below.

A. The Matter Can be Determined in a Lower Court

“The Supreme Court will not entertain matters in its original jurisdiction when the matter can be determined in a lower court in the first instance, without material prejudice to the rights of the parties.” Rule 245(a), SCACR; Jean H. Toal, *Appellate Practice in South Carolina* 265 (1999). In this case, Petitioner’s challenge to the merits of the discovery order can be determined in a lower court in the first instance. Petitioner may be held in contempt and appeal that final order to the Court of Appeals. *See Tucker v. Honda of S.C. Mfg.*, 354 S.C. 574, 577, 582 S.E.2d 405, 406-07 (2003) (“[A]n order compelling discovery does not ordinarily involve the merits of the case and

may not be appealed. Since a contempt order is final in nature, an order compelling discovery may be appealed only after the trial court holds a party in contempt.” (internal citation omitted)).

Seeking a writ of certiorari from the Supreme Court when the matter is one regularly determined in a lower court in the first instance is legally and procedurally improper.

Although Article V, § 5, of the South Carolina Constitution vests this Court with the authority to issue extraordinary writs and entertain actions in its original jurisdiction, this Court’s primary function is to act as an appellate court to review appeals from the trial courts. In Rule 229, SCACR,¹ this Court has indicated it will not entertain matters in its original jurisdiction where the matter can be entertained in the trial courts of this State.

Key v. Currie, 305 S.C. 115, 116, 406 S.E.2d 356, 357 (1991). The Petitioner fails to address in the Petition why the matter cannot first be heard in the Court of Appeals.² There is no material prejudice to the rights of Petitioner because it will receive a review of the order, should it so choose to do so in a procedurally proper manner.

B. There is No Public Interest Involved

Even if the Court found that the matter could not first be determined in a lower court, it should still deny the Petition because there is no public interest involved. “Only when there is an extraordinary reason such as a question of significant public interest or an emergency will this Court exercise its original jurisdiction.” *Key*, 305 S.C. at 116, 406 S.E.2d at 357. Under Rule 245, “[i]f the public interest is involved, or if special grounds of emergency or other good reasons exist why the original jurisdiction of the Supreme Court should be exercised, the facts showing the

¹ Rule 229, SCACR, is the predecessor to Rule 245, SCACR.

² The Petitioner filed a Notice of Appeal contemporaneously with the Petition for Writ of Certiorari. On October 10, 2016, the Court of Appeals dismissed the appeal as interlocutory and not directly appealable based upon this Court’s ruling in *Patterson v. Spector Broadcasting Corp.*, 287 S.C. 249, 249, 335 S.E.2d 803, 803 (1985). A copy of the Order Dismissing the Appeal is attached as Exhibit A.

reasons must be stated in the petition.” The only basis Petitioner states for the Court to exercise its original jurisdiction is “a compelling public interest.” (Pet. p. 3).

The alleged public interest involved is that the “detailed proprietary financial information... would encourage future enterprising plaintiffs to request the same...” (Pet. p. 6). The Petitioner cites one case, *Branham v. Ford Motor Co.*, in support of this contention. The Respondent respectfully submits that Petitioner’s interpretation of *Branham* is flawed. To the contrary, in *Branham*, this Court made it clear that “[u]nless 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 fact in assessing punitive damages.”** *Branham v. Ford Motor Co.*, 390 S.C. 203, 239, 701 S.E.2d 5, 24 (2010) (emphasis added). While Respondent respectfully agrees that the “ability to pay” factor has boundaries, the financial records compelled by the circuit court for the purpose of discovery clearly do not rise to the level of an “extraordinary reason such as a question of significant public interest or an emergency” necessitating this Court to exercise its original jurisdiction. For these reasons, Respondent respectfully requests that the Petition be denied because there is no public interest involved.

II. The Circuit Court Correctly Granted Respondent’s Motion to Compel

A. The Requested Records are Narrowly Tailored to Lead to Discovery of Relevant Evidence

Should this Court grant the Petition, Respondent requests it not address any relevancy arguments made by Petitioner, as those do not constitute an exceptional circumstance or public interest. Petitioner should not be able to bootstrap relevancy arguments to the alleged public interest involved in the petition. Rule 245, SCACR, is not intended for this Court to make relevancy determinations regarding routine discovery requests.

Regardless, the circuit court's relevancy ruling was correct. Under Rule 26(b)(1), SCRCP, "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." Under Rule 401, SCRE, "Relevant Evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

This Court has long held that evidence regarding a defendant's ability to pay a punitive damages award is relevant in cases in which punitive damages are before the jury. See *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991). Moreover, the South Carolina Court of Appeals has expressly approved of Dr. Wood's methodology in testifying regarding financial condition of a defendant in connection with a punitive damages analysis. In *Duncan*, the South Carolina Court of Appeals held as follows:

[t]he trial court properly allowed Wood to testify about Ford's ability to respond to a punitive damages award. During his testimony, Wood testified beyond the mere net worth of Ford and informed the jury of Ford's assets, gross profits, and the amount of compensation it paid executives. Appellate courts in our state have allowed testimony beyond a defendant's mere net worth to establish its ability to pay a punitive damages award. See *Bryant v. Waste Mgmt., Inc.*, 342 S.C. 159, 170, 536 S.E.2d 380, 386 (Ct.App.2000) (allowing testimony of the defendant's assets, liabilities, net worth, shareholders' equity, operating revenue, and net income per day to establish whether the defendant could pay punitive damages). In addition, Wood's testimony concerning the state of Ford's economic affairs allowed the jury to follow the instructions of the trial court and "punish the defendant but not [e]ffect economic bankruptcy." Therefore, the trial court properly allowed Wood to testify about Ford's ability to pay punitive damages and such testimony did not offend the Due Process Clause.

Duncan v. Ford Motor Company, 385 S.C. 119, 141, 682 S.E.2d 877, 888 (Ct. App. 2009)(footnote omitted).

Moreover, Petitioner's reliance on *Sulton* is misplaced because it is factually and legally distinguishable from this case. In *Sulton*, the Court ruled that permitting the Plaintiff to inform the jury of a corporation's net operating revenue was improper as it was presented to the jury in closing

arguments without any supporting evidence. *See Sulton v. HealthSouth Corp.*, 400 S.C. 412, 421, 734 S.E.2d 641, 646 (2012). The issue currently before the Court involves the *discoverability* of *financial records*, not the admissibility of the “net operating revenue” of the Petitioner. Moreover, as approved in *Duncan*, the Respondent anticipates that Dr. Wood’s testimony will assist the jury in understanding the state of Petitioner’s economic affairs within the boundaries of the circuit court’s jury instructions on punitive damages.

Additionally, the discovery requests in this case are completely dissimilar from the situation Petitioner cites in *Oncology & Hematology Assocs. of S.C. v. S.C. Dep’t of Health & Envtl. Control*, 387 S.C. 380, 692 S.E.2d 920 (2010). Central to the Court’s decision in *Oncology*, was the fact that the plaintiff and defendant were “fiercely competitive healthcare providers.” *Id.* at 381, 692 S.E.2d at 921. This Court held the discovery requests at issue “were not remotely relevant to a resolution of the issue concerning the relocation of the linear accelerator.” *Id.* at 289, 692 S.E.2d at 925. In this case, the requests are directly relevant to specific damages sought in the Complaint.

Finally, to the extent the Petitioner has any confidentiality concerns, the circuit court issued a Confidentiality Order, as drafted by the Petitioner, on January 20, 2016 which adequately protects these documents from disclosure. (App. at 4). Moreover, in the Order Granting Respondent’s Motion to Compel and the Order Denying Petitioner’s Motion for Reconsideration, the circuit court specifically addressed Petitioner’s concerns and reiterated that the records be “produced pursuant to the Confidentiality Order.” (App. at 14; App. at 16). For these reasons, the Petitioner has no justifiable concerns regarding the confidentiality of the compelled financial records.

Contrary to Petitioner's characterization of the discovery requests and Complaint allegations, Respondent is not casting a wide net to gain irrelevant information. Rather Respondent made discovery requests aimed at specific information necessary for Respondent's expert's analysis and relevant to the jury's consideration regarding Respondent's claim for punitive damages.

B. There is No Basis for Delaying the Production of Relevant Discovery to a Trial Date

Petitioner's request to delay the production of the discoverable records until the time of trial is without merit and would be highly prejudicial to the Respondent. As articulated in Respondent's Memorandum in Support to Compel, Dr. Wood, as an economist and professor of economics, requires adequate time to review and analyze the requested materials. (App. at 71). Forcing a properly and timely disclosed expert witness to review key materials necessary for the formulation of expert opinions during rather than prior to trial would cause needless delay of the trial. Delayed production would also substantially prejudice the Respondent who would be forced to interrupt the presentation of her case in chief, a case which will include testimony from three separate medical experts and one correctional expert, to allow for Dr. Wood to perform an expert analysis which could be and should be handled during discovery.

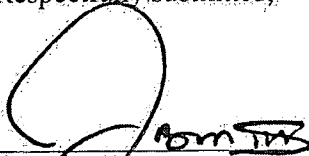
The instant action is a complex medical case for which adequate time for discovery has been graciously allowed by the circuit court, and Petitioner has failed to illustrate that it would be prejudiced by producing the requested materials pursuant to the Confidentiality Order at this stage in the proceedings.

CONCLUSION

The Petition does not warrant this Court's exercise of its original jurisdiction under Rule 245, SCACR, because the matter may first be decided by a lower court and there is no public interest involved in an order that fully complies with the South Carolina Rules of Civil Procedure,

Respondent respectfully requests this Court deny the Petition for Writ of Certiorari and remand the case to the circuit court.

Respectfully submitted,



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

ATTORNEYS FOR RESPONDENT

October 11, 2016
Georgetown, SC

Exhibit A

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

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Appellate Case No. 2016-002023
Circuit Court Case No. 2015-CP-11-0363

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SC Court of Appeals

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

v.

Southern Health Partners, Inc., ... Petitioner.

PROOF OF SERVICE

I certify that I have served a Return to Petition for Rehearing on the following attorneys of record, by depositing a copy in the United States Mail, postage pre-paid, addressed to them at their offices as shown below this 2nd day of November, 2016.

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

Attorneys for Petitioner

Charles F. Turner
Anne R. Culbreath
Wilson, Jones, Carter, & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, SC 29607
(803) 527-3280

Attorneys for Cherokee County

(Signature Page to Follow)



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



November 2, 2016

Supreme Court of South Carolina
Attn: Brenda F. Shealy, Deputy Clerk of Court
1231 Gervais Street
Columbia, SC 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 Gregory, Respondent

Appellate Case No. 2016-002023

Circuit Court Case No. 2015-CP-11-0363

Dear Madam Deputy Clerk Shealy:

Enclosed please find for filing, Respondent's Return to Petition for Rehearing and Proof of Service for the same. I have also enclosed a copy to be filed and returned to our office in the enclosed self-addressed, stamped envelope.

We thank you in advance for your assistance with this matter. Please do not hesitate to contact our office with any questions or concerns. By copy of this correspondence I am notifying defense/Petitioner counsel of the same.

Sincerely,

Scott C. Evans
Attorney for Respondent

cc: James G. Long, III
Amy H. Geddes
Nexsen Pruet, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, SC 29202
Attorneys for Petitioner

Charles F. Turner
Anne R. Culbreath
Wilson, Jones, Carter & Baxley, P.A.
872 S. Pleasantburg Drive
Greenville, SC 29607
Attorneys for Cherokee County

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GEORGETOWN, SC 29440
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SC SUPREME COURT
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COLUMBIA SC 29201

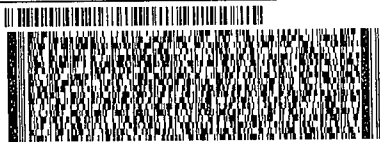
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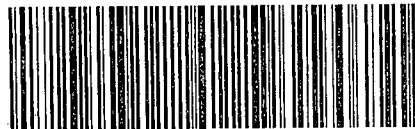
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SC Court of Appeals

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