THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM DARLINGTON COUNTY
Court Of Common Pleas

J. Michael Baxley, Circuit Court Judge

Opinion No. 5451 (S.C. Ct. App. Filed November 2, 2016)

Pee Dee Health Care, P.A. .....Respondent,

v.

Estate of Hugh S. Thompson .....Petitioner.

PETITION FOR A WRIT OF CERTIORARI

John Jay James, II
PAULLING AND JAMES, LLP
P. O. Box 507
Darlington, SC 29540
843-393-3881 (Telephone)
pjlaw507@bellsouth.net (Email)

J. René Josey
TURNER, PADGET, GRAHAM & LANEY, P.A.
Post Office Box 5478
Florence, SC 29502-5478
843-656-4451 (Telephone)
JJosey@TurnerPadget.com (Email)

ATTORNEYS FOR PETITIONER

Other Counsel of Record:

Ariail E. King, Esquire
Lewis Babcock, L.L.P.
PO Box 11208,
Columbia, South Carolina 29211

James M. Griffin, Esquire
Griffin Davis Law Firm
P.O. Box 999
Columbia, SC 29202

Attorneys for Respondent

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled upon by the South Carolina Court of Appeals on February 21, 2017.

QUESTIONS PRESENTED

Pursuant to Rule 242 of the South Carolina Rules of Appellate Procedure, the Estate of Hugh S. Thompson ("Estate") hereby petitions this Court for a writ of *certiorari* to the Court of Appeals to review that court's decision in this matter. Estate respectfully asserts that the Court of Appeals erred in its Opinion No. 5451 filed November 2, 2016; specifically, this Court should consider the following issues:

1. Should this Court grant *certiorari* to correct the Court of Appeals misapplication of this Court's remand precedents and clarify the maximum appropriate time for making a sanctions motion in an appealed matter?
2. Should this Court grant *certiorari* to clarify the novel question of the appropriate use of the inherent power of the courts to protect constitutional adjudications and also correct the Court of Appeals erroneous conclusion that this issue was somehow determined by the other bases for sanctions also asserted in this case?
3. Should this Court grant *certiorari* to reconcile the conflict of the Court of Appeals opinion with United States Supreme Court and other federal precedent allowing for consideration of trial court sanctions after remand so as to promote good public policy of judicial efficiency?

STATEMENT OF THE CASE

This was an action for damages by an employer, Pee Dee Health Care, P.A. ("PDHC"), against the estate of a former employee, Dr. Hugh S. Thompson, Jr. (the "Estate"). PDHC operated a medical clinic in Darlington, South Carolina, and Dr. Thompson was a physician in practice with that clinic.

PDHC's unsuccessful claim related to the overpayment of benefits by Medicare to PDHC occasioned by the failure of PDHC to secure the proper Medicare credentials for Dr. Thompson.[1] After an adjudication of its fault in the federal form, this action began when PDHC filed a Summons and Complaint in the Probate Court and petitioned for removal of the action to the Court of Common Pleas pursuant to S.C. Code Ann. §62-1-302(d)(2009). The Estate filed its Answer on June 17, 2010.

PDHC filed a motion for summary judgment on December 9, 2010. The Estate filed a counter motion for summary judgment on May 20, 2011. The Estate's successful motion was based upon the employer's fault in failing to secure its employee's credentials and the dispositive nature of that fault with regard to all of PDHC's causes of action. The motions were heard on July 19, 2011 without objection.

Before the July 2011 hearing, the trial court had disqualified one of PDHC's two trial attorneys (Mr. Megna – not Mr. Matthews) because of his clear status as a central witness in the case. This disqualification was first announced from the bench on March 16, 2011, and then put in a formal written order of April 15, 2011.

The trial court announced its decision to grant summary judgment by letter to the

[1] The employer's (PDHC) fault for not satisfying the non-delegable duty to insure the proper credentialing of its employee (Thompson) has now been litigated in both federal and state forums with the same adverse result to PDHC.

parties dated August 12, 2011 and mailed to the parties that same day.[2] This letter called for the preparation of a more detailed order but the letter itself expressed the general basis for the decision. On the same date of this letter, the trial court issued a formal order denying the reconsideration of counsel's disqualification.[3]

On August 15, 2011 (the next business day), PDHC filed a notice of appeal from that formal disqualification order (Court of Appeals Tracking Number 2011197671)(appeal determined to be without merit) and immediately asserted that the trial court no longer had jurisdiction to issue its formal order of summary judgment. Even before its August 15, 2011 interlocutory appeal of counsel's disqualification, PDHC had filed *another* interlocutory appeal (Court of Appeals Tracking Number 2011185767) (appeal to Circuit Court determined to be untimely) that related to the Probate Court's failure to require the Estate to post a bond after the Estate had agreed to a freeze of most assets pending the litigation.

Despite the assertion that it lacked jurisdiction, the trial court issued a formal order of summary judgment against PDHC dated August 29, 2011 and filed September 1, 2011. The trial court's order specifically found that the trial court did have jurisdiction to issue its formal order under Rules 205 and 241(a) of the SCACR – again an order that merely formalized the decision that had already been made. A notice of appeal from the summary judgment order was filed by PDHC with the Court of Appeals on November 7, 2011. (Court of Appeals Tracking Number 2011203391)(appeal also determined to be untimely as summarized below). This was the third appeal made by PDHC in this

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[2] R.pp. 779-780 (Judge Baxley Letter of August 12, 2011 Announcing Summary Judgment – Copied to Clerk of Court for file).

[3] R. pp.10-11 (August 12, 2011 Order).

litigation.

Appeals from these first three matters were addressed by the Court of Appeals in a consolidated opinion dated July 3, 2013 which affirmed the trial court's decision that the Probate Court bond appeal was untimely, dismissed the summary judgment appeal as untimely because the Rule 59(e) motion signed by disqualified counsel did not toll the time for appeal, and determined that the appeal from the disqualification of counsel was technically moot (although also finding the appeal of this issue "fails on the merits as well."). Subsequent appellate petitions for rehearing and for *certiorari* were denied.

Remittitur was issued by the Court of Appeals on January 7, 2014. Nine days later, on January 16, 2014, the Estate filed its Motion for Trial Court Sanctions based upon SCRCP Rule 11, the South Carolina Frivolous Civil Proceedings Sanctions Act (the "FCPSA"),[4] and the inherent power of the court. In support of that motion, the Estate filed an extensive set of documents.

In response to the Estate's Motion for Trial Court Sanctions, PDHC filed a March 11, 2014 Motion to Strike the claim to trial court sanctions as outside of the Court's jurisdiction. PDHC also submitted a Memorandum opposing sanctions dated March 25, 2014. The Estate filed a March 24, 2014 Response to the Motion to Strike. Both the Motion for Sanctions and the Motion to Strike were heard by the Circuit Court on March 27, 2014.

At the hearing on March 27, 2014, the Circuit Court announced that some sanctions would be awarded. The Court directed that the Estate give a segregated accounting for different elements of counsel's time so that specific sanctions related to the attorney time spent on certain issues could be awarded. A formal written order was

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[4] See S.C. Code § 15-36-10.

anticipated after the accounting directed by the Court. The Estate filed its supplemental affidavit segregating attorney time as directed on April 1, 2014. PDHC filed a memorandum responding to this supplemental memorandum dated April 4, 2014.

On April 15, 2014, his last day on the bench prior to retirement, the Circuit Court signed a written order granting some sanctions but denying additional requested sanctions. PDHC submitted a Motion to Alter or Amend the April 15, 2014 order and that motion was denied without hearing by the Chief Administrative Judge for the Circuit on May 12, 2014. PDHC filed an appeal (its fourth in the case) to the South Carolina Court of Appeals on June 12, 2014 and the Estate then filed a Notice of Cross Appeal on June 13, 2014. PDHC sought to overturn the award of sanctions and the Estate sought the additional sanctions not awarded by the trial court.

The Opinion of the Court of Appeals (Opinion 5451) was filed November 2, 2016. In a case described by the Court as one of first impression, that Opinion found the Petitioner's Motion for Trial Sanctions to have been untimely under both Rule 11 and the FCPSA. Therefore, the Court of Appeals vacated the trial court's limited award of sanctions to the Estate and also affirmed the trial court's denial of additional sanctions sought by the Estate. Pursuant to South Carolina Appellate Rule 221, the Estate petitioned the Court of Appeals for rehearing and pursuant to South Carolina Appellate Court Rule 219(b), suggested the matter be reheard *en banc*. The Petition for Rehearing was denied by the South Carolina Court of Appeals on February 21, 2017.

ARGUMENT

The Factors of Rule 242(b) Are Implicated

Rule 242(b) of the South Carolina Appellate Court Rules provides a non-exclusive but primary list of the "character of reasons" that are considered as this Court considers whether to exercise its discretionary review of a Court of Appeals decision. These reasons include:

> (1) Where there are novel questions of law.
> (2) Where there is a dissent in the decision of the Court of Appeals.
> (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
> (4) Where substantial constitutional issues are directly involved.
> (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

The Estate argues that four out of these five factors are present in this case and thereby warrant review of the Court of Appeals decision.

This Petition Involves At Least Two Novel Questions of Law.

The principal issue in the case is, of course, the appropriate time limit for making a sanctions motion. Petitioner agrees with the Court of Appeals that the ability of the trial court to award sanctions does not last "in perpetuity" (Opinion page 9), but the Estate respectfully disagrees with the court's conclusion of unreasonable delay here. Moreover, despite stating "we decline to read any specific time limits into [Rule 11]", the Court of Appeals implicitly held that a sanctions motion after appeal – even within 10 days of remand – could never be timely.

With regard to a Rule 11 based motion, the Court of Appeals identifies the principal issue as one of first impression. (Page 7 of the Opinion). Lamentably, after

identifying this lack of guidance, the Court of Appeals nevertheless found the Estate was untimely. While the Estate believes its motion for sanctions was timely under this Court's decision in Russell v. Wachovia Bank, N. A., 370 S.C. 5, 633 S.E.2d 722 (2006), and believes the Court of Appeals decision conflicts with clear precedents, appellate review of an effort to seek sanctions after remand is certainly novel and therefore perhaps unclear under South Carolina precedents.

If a bright line deadline is needed, it should be set by this Court and the Petitioner suggests it needs to include the 10 day window following the finality of a judgment after remand. Petitioner makes this suggestion because it shares the Court of Appeals expressed concerns of judicial efficiency. As Petitioner stated to the trial court,

> The Defendant could have filed a motion for sanctions after this Court's decision (appealed) to dismiss the Probate Court Appeal (C/A No. 10-CP-16-0633), then filed a second motion for sanctions after this Court's decision (appealed) to disqualify counsel, and then filed a third motion for sanctions within 10 days of this Court's summary judgment decision (also appealed but jurisdictionally challenged in this Court first) – but defense counsel regrets having to file a single motion for sanctions – and certainly did not want to file three such motions further confusing the situation and taxing judicial resources. As discussed briefly in the footnote above, and more completely in this memorandum, such a piecemeal approach is not required by the Rules and jurisdiction exists for this Court's comprehensive consideration of sanctions in light of the totality of conduct demonstrated in this Court.

R.p. 871-872 (Response in support of Sanctions and Opposing Motion to Strike).

A second novel issue repeatedly raised and preserved by the Petitioner, but not addressed by the lower Courts, is the inherent authority of the trial court to award sanctions *independent of* either Rule 11 or the FCPSA – and the appropriate time and time limits for such an award. Without even identifying the issue, the Court of Appeals in a footnote (number 4) declined to address this issue – and erroneously indicated that the other issues were dispositive. The Estate is unaware of any controlling authority that renders the time frames of Rule 11 and the FCPSA dispositive of the inherent power of the courts. **While there is a lack of guidance from our state courts with regard to this inherent authority, it has repeatedly been used by the federal courts to impose sanctions – even in a trial court following *an appeal.*** See discussion of federal cases, page 17 *infra.* ***This Court's guidance on this novel issue is also needed.***

Decision Below Conflicts With This Court's Precedents For Rule 11 And FCPSA.

As referenced by the Court of Appeals (Opinion at 12), Russell held that "a motion for sanctions [pursuant to the FCPSA] must be filed within ten days of the notice of the entry of judgment." 370 S.C. at 20, 633 S.E.2d at 730 (2006). As also referenced by the Court of Appeals (Opinion at 6-7), Russell noted that a Rule 11 sanctions motion does *not* have to be made within ten days from notice of entry of judgment. Russel at footnote 11.

Petitioner has argued that the Russell decision, together with other precedents, allows for a renewed 10-day window of trial court jurisdiction after an appellate remand for any kind of sanctions motion – whether under the FCPSA, Rule 11, or the inherent power of the Court.[5] These other precedents include: Muller v. Myrtle Beach Golf &

[5] Again, neither the trial court nor the Court of Appeals dealt with the inherent power of the courts to award sanctions despite this basis being repeatedly raised. These alternative

Yacht Club, 313 S.C. 412, 438 S.E.2d 248 (1993)(*"Once the remittitur is sent down from this Court, the Circuit Court acquires jurisdiction to enforce the judgment and take any action consistent with the Supreme Court ruling."*)(emphasis added)(citing Hamm v. Southern Bell, 305 S.C. 1, 406 S.E.2d 157 (1991)[6]); McDowell v. South Carolina Department Of Social Services, 300 S.C. 24; 386 S.E.2d 280 (Ct. App. 1989); State v. Wise, 33 S.C. 582, 12 S.E. 556 (1891); Brooks v. Brooks, 16 S.C. 621 (1881)); and Cox v. Fleetwood Homes of Georgia, Inc., 334 S.C. 55, 512 S.E.2d 498,500 (1999)(Supreme Court recognized that original trial judge may exercise jurisdiction following an appeal – in a manner consistent with the appellate decision – even if that original judge is not a resident of or then assigned to the circuit where the case arose).

A) Rule 11

As noted in the Russell opinion, the jurisdictional window allowed for a sanctions motion under Rule 11 need not be the same as the window allowed for a FCPSA motion. The Russell opinion does not clarify, however, how much those windows differ – or why they need to differ at all.

Even if the window for FCPSA does not reopen for at least10 days upon remand, the Russell opinion's footnote expressly declines to close any such window for a Rule 11

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authorities have not been abandoned. If the motion here was timely on any one (or more) of its bases, as the Estate asserts, then *the entirety of sanctions sought by the Estate should be awarded in order to make the victim's here financially whole -- even though not emotionally and chronologically.*

[6] In Hamm, this Court also made it clear that no specific remand instructions were required to re-establish the trial court's jurisdiction upon remittitur. This Court stated, "Further, although we did not expressly "remand" the case, no such instruction was necessary under the facts of this case. Section 18-9-270 provides that "the Supreme Court may reverse, affirm or modify the judgment decree or order appealed from in whole or in part and as to any or all of the parties, and the judgment shall be remitted to the court below to be enforced according to the law."

motion ("we decline to address what time limit is proper with regard to Rule 11"). The Court of Appeals opinion, however, jurisdictionally closes that possibility in contrast with the general remand jurisdiction recognized in the precedents of this Court listed above (pages 9-10). The Court of Appeals here expressly held that the Estate's Rule 11 motion filed in that 10 day window was "untimely" and should have therefore been dismissed for *a lack of jurisdiction.* (Opinion page 4). ***This denial of jurisdiction conflicts with the numerous decisions of this Court holding that the issuance of the remittitur returns jurisdiction to the trial court for action consistent with the appellate court ruling.***

B) <u>FCPSA</u>

In ruling on the Estate's cross-appeal, the Court of Appeals *also* denied the existence of any 10-day jurisdictional window with regard to the FCPSA after an appellate remand. While perhaps unclear, the Estate argues this denial is in conflict with this Court's remand precedents listed above.[7]

As the Court of Appeals noted, the FCPSA expressly provides for a triggering event to open a window of opportunity. The Act provides that "*At the conclusion* of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous." S.C. Code § 15-36-10(C)(1)(emphasis added). The

[7] While the Estate argues that this conflict with remand precedents is evident, the Court of Appeals found the case law clearly prohibitive of the Estate's position and suggested that Petitioner was "mounting, in essence, a direct challenge" to precedent and seeking an "expansive" reading of the FCPSA. Respectfully, Petitioner disagrees but will seek leave to argue against precedent if necessary to bring clarity to that precedent.

Court of Appeals did not note, however, that the FCPSA *does not* contain language to limit the duration of time in which a petition must be brought *after the triggering event.*[8]

The triggering event for the FCPSA (*after* "the conclusion") is much the same as the triggering language for the fee provision in Muller (*after* a party has "prevailed"[9]) and the triggering language for the fee provision in McDowell (*after* the "final disposition"[10]). Petitioner suggests that the distinctions among these statutory triggers are without differences. These finality based triggers all serve to avoid the interlocutory piece-meal approach of filing multiple requests during on-going trial litigation – this is also what the Estate sought to avoid. Regardless of the triggering language, in this case, the "final disposition" or case "conclusion" or ultimate "prevailing" did not occur until

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[8] McDowell, one of the precedents cited, provides an example of a statute that provides both a triggering event and duration of available time after that event. In McDowell, the statutory fee provision provided for both a trigger ("final disposition") and duration of availability ("30 days"). South Carolina Code § 15-77-310 provides in relevant part, "The party shall petition for the attorney's fees within thirty days following final disposition of the case."

[9] South Carolina Code § 29-5-10 provides in pertinent part: "The costs which may arise in enforcing or defending against the lien under this chapter, including a reasonable attorney's fee, may be recovered by the prevailing party. The fee must be determined by the court in which the action is brought but the fee and the court costs may not exceed the amount of the lien." In Muller, the Supreme Court found that following remittitur, the Circuit Court was vested with jurisdiction to award statutory attorney's fees in a mechanic's lien foreclosure. The procedural history recited in the opinion confirms a delay of at least 26 days. Specifically, the prevailing party failed to file his petition for appellate fees and costs (under SCRAP 222) on time as the remittitur had been sent to the trial court 26 days earlier. The prevailing party *then*, after that late Rule 222 petition, petitioned for both trial and appellate fees and costs *in the Circuit Court.* The trial court held that it was without jurisdiction. On appeal, this Court reversed and stated "The holding of Circuit Court that it was without jurisdiction to adjudicate the issue of attorney's fees was erroneous."

[10] In McDowell, the Court of Appeals allowed that statutory time within which to petition for attorney's fees in an appealed case began to run *following remittitur* – the "final disposition."

after all the consolidated appellate decisions and remittitur.

In Pitman v. Republic Leasing Company, Inc., 351 S.C. 429, 570 S.E.2d 187 (Ct. App. 2002), the Court of Appeals interpreted the FCPSA's triggering phrase "at the conclusion of the trial" for the first time.[11] The court noted as a preliminary matter that the term "trial" was itself a misnomer since any case surviving to trial is presumptively *not* frivolous. The Pitman Court determined that it was *not* going to vary from the "established case law that a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed."[12]

Neither Pitman nor Ex parte Beard, 359 S.C. 351, 358, 597 S.E.2d 835, 838 (Ct. App. 2004) addressed the *established* precedent of a trial court's reacquisition of jurisdictional authority following an appeal; these opinions did not need to address that

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[11] The present version of the statute has been amended since Pitman but the "at the conclusion of a trial" language, however, was repeated in the new provisions. The FCPSA amendments were discussed in Rutland v. Holler, Dennis, et.al., 371 S.C. 91, 637 S.E.2d 316 (2006)(noting that the original statutes that made up the FCPSA were repealed in 2005 and completely revised with new provisions).

Rutland involved multiple lawsuits (somewhat similar to the multiple appeals in the case at bar) and Rutland involved a challenge to the trial court's jurisdiction to impose sanctions (also like the case at bar). The Rutland sanction's request was filed in the final of three related actions but filed more than 10 days after the form order for summary judgment but before the anticipated follow-up formal order. The Rutland Court found this request timely and then approved the trial court's entry of a sanction's order some 9 ½ months after entry of the final formal order of summary judgment. Thus, Rutland affirmed the trial court's ability to consider sanctions *during any period of the Court's general jurisdiction.*

[12] In Pitman, the party seeking sanctions waited some two months after an order of summary judgment that was not appealed. Obviously, the facts and circumstances presented by this thrice appealed case are different from Pitman and have not been considered by previous appellate decisions of our courts. Specifically, the appellate courts have not addressed a request for sanctions under FCPSA after the successful defense of multi-staged appeals. *In addition, the very merits of the matter, which directly bear on these requests for sanctions – at least in part, were under appellate review.* See also footnote 16 *infra.*

issue since neither case involved an appeal before the FCPSA motion. Thus, these two decisions are not inconsistent with or prohibitive of another 10 day window of court's general jurisdiction to act consistent with an appellate decision -- including FCPSA jurisdiction. ***Petitioner here simply urges the Court to confirm the proposition converse to that stated in Pittman: confirming the proposition that a trial judge has general jurisdiction over a case during the windows of time recognized by established case law – both after an entry of judgment and upon remand.***

The Estate's position is also in accord with SCRCP Rule 54 which provides for a delay when seeking costs in an appealed case; the Rule provides that trial costs may be sought in the 10 day window following "written notice of the entry of the final judgment *after* appeal." (emphasis added). Furthermore, this position of a limited renewed window of jurisdiction promotes sound public policy by encouraging a more complete deliberative consideration of sanctions after completion of the appellate process.

The window of jurisdiction opened by remittitur may not be limited to 10 days – the Supreme Court allowed more than double that in Muller where, like here, the statutory fee provision expressed no clear cap on the duration of available jurisdiction. If the Court wishes to provide a bright line limit of 10 days following remand in an appealed case, that would be consistent with established law, and would give the members of the bar greater guidance than the uncertainty created by the Court of Appeals.

This Case Directly Involves The Administration of Justice And The Constitutional Right To A Fair Adjudication.

Citizen litigants of this state are constitutionally entitled to seek redress in our court system. See S.C. Constitution Article I § 9 ("every person shall have speedy remedy [in the public courts] for wrongs sustained"). Such court redress must also comply with a constitutional guarantee of due process – both in procedure and substance. S.C. Constitution Article I § 3.

Essential to the protection and provision of these constitutional rights is an orderly and controlled system of adjudication. Thus, the South Carolina Constitution also provides for the regulation of that judicial system through the adoption and enforcement of court rules.[13] These rules seek to assure a "just, speedy, and inexpensive determination" of issues. See Rule 1, South Carolina Rules of Civil Procedure; see also Ex parte Wilson, 367 S.C.7, 625 S.E.2d 205 (2009).

The resolution of issues in this case was not "speedy" and was not "inexpensive." Moreover, while the ultimate dismissal of the Respondent's claims was correct, without the redress available through sanctions, the adjudication was not truly "just" and not in accordance with the Constitutional ideals. Compensating the victims of inappropriate conduct is a recognized purpose for an award of sanctions. While the Court of Appeals acknowledged this purpose,[14] its decision fails this purpose. In addition, without

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[13] South Carolina Article V § 4 ("The Supreme Court shall make rules governing the administration of all the courts of the State. Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts.").

[14] Opinion at page 8 (citing Moore v. Southtrust Corp., 392 F. Supp. 2d 724, 736 (E.D. Va. 2005) (quoting In re Kunstler, 914 F.2d at 522)("[O]ther purposes of the rule include compensating the victims of the Rule 11 violation, as well as punishing present litigation

sanctions, a pattern of conduct hijacking the expected adherence to constitutional norms of fairness will not be deterred.

This pattern of conduct in this case was described by the trial court as "ill-conceived, vitriolic, and abusive." The trial court further concluded ***"[t]he lack of respect Megna has shown for this Court, the legal process, and the purposes of these proceedings is unprecedented for this Court."*** (emphasis added). The court also found that "[p]erhaps the most egregious part of Megna's conduct is his uncompromised assertion that everyone else is wrong, everyone else is unethical, and he is blameless."[15] This characteristic observed by the trial court – not just by the Petitioner or its counsel – is exactly why the Estate waited until the ultimate conclusion of the matter to seek sanctions.[16]

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abuse, streamlining court dockets[,] and facilitating court management.").

[15] This description is found in the trial court's contempt order of February 11, 2013 (R. pp. 34-46 ¶¶ 27-29). At the time, sanctions were sought by attorneys subjected to discovery subpoenas in this matter although they were non-participants in this matter.

[16] The unending pattern of conduct in this case suggests that seeking sanctions early and often – as implicitly suggested by the Court of Appeals opinion --would not have deterred these personalities – but only precipitated more procedural counterpunches. Indeed, as described above (Response in support of Sanctions and Opposing Motion to Strike), this is why the Estate made the informed decision to consolidate its sanctions request at the conclusion of the matter. Nevertheless, sanctions here could still serve the purpose of deterring others and could definitely serve the equally important purpose of making the Estate whole after needless years of vexing litigation.

The sanctioned conduct here is strikingly similar to that observed in Holmes v. Haynsworth, Sinkler & Boyd, 408 S.C. 620 , 760 S.E. 2d 399 (2014). In the Holmes case, this Court found that the trial court's award of sanctions was "without a doubt" not an abuse of discretion. 408 S.C. at 645, 760 S.E. 2d at 412. The Motion for Sanctions in Holmes, was filed more than seven years after Dr. Holmes embarked on her scorched earth and litigious journey of multiple frivolous motions and multiple interlocutory appeals. The Holmes' motion was filed at the immediate conclusion of trial – but in that unique litigation, that trial conclusion occurred after the seven years of extraordinary conduct. In the unique behavior here, the trial court's summary judgment conclusion fell

The Opinion Below Conflicts With Parallel United States Supreme Court Precedent

The Court of Appeals' holding (that a sanctions motion *after appeal* is implicitly late) stands in conflict with parallel federal precedent from both the United States Supreme Court and the United States Courts of Appeal. In Chambers v. NASCO, Inc., 501 U.S. 32 (1991), the United States Supreme Court affirmed a trial court's award of common-law sanctions *after remand* from the United States Court of Appeals for the Fifth Circuit. Likewise, our own federal circuit has upheld Rule 11 sanctions awarded pursuant to a motion brought after an earlier remand from their court. Hicks vs. Southern Maryland Health Systems Agency, 805 F. 2d 1165 (4th Cir. 1987). Thus, a sanctions motion is not necessarily untimely if brought *following* the conclusion of appellate proceedings.[17]

The United States Supreme Court has also held that, except where individual federal courts have adopted local rules on the subject,[18] the parallel Rule 11 of the Federal Rules of Civil Procedure has no firm deadline. White v. New Hampshire Department of Employment Security, 455 U.S.445 (1982). While the Court of Appeals

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amid the Respondent's multiple interlocutory appeals and the Respondent's ongoing tactical movements. Moreover, the merits of the summary judgment conclusion were also immediately appealed thereby delaying the finality of any conclusion of frivolity.

[17] The Court of Appeals noted "we are unable to find any authority to support the proposition that a party can wait until the entire case has finished." (Opinion, page 10). The Hicks decision, brought to the attention of the Court of Appeals in Petitioners effort to secure a rehearing, is precisely such authority. The Nasco decision, first referenced in the trial court by Petitioners response to the Motion to Strike, is also such authority.

[18] See, e.g., Mary Ann Pensiero, Inc. v. Lingle, 847 F. 2d 90 (3rd Cir. 1988) (where the Third Circuit adopted *prospectively* a supervisory rule for courts in that Circuit requiring Rule 11 sanctions motions be filed in the district court *before* entry of a final judgment). While the Court of Appeals referenced the Lingle decision (Opinion pages 9-10), it did *not* note that the rule was applied prospectively.

in this case declared "we decline to read any specific time limits into [Rule 11]", it implicitly held that a sanctions motion after appeal – even within 10 days of remand – could never be timely; ***this is in direct contrast with the United States Supreme Court and other federal precedent noted above.***

CONCLUSION

This Petition presents the Court with an opportunity to provide the bar and lower courts with guidance on the appropriate time to file a motion for sanctions under Rule 11, the FCPSA, and the inherent power of the courts. The Court has the opportunity to provide a clear bright-line remand window of time consistent with its prior precedents. The Court also has an opportunity to re-affirm the inherent power and authority of the trial courts to issue sanctions as needed to deter "ill-conceived, vitriolic, and abusive" conduct as necessary to provide constitutional adjudications – free from the lack of respect shown in this matter – one that truly is a "just, speedy, and inexpensive determination" of the matter.

The Thompson estate respectfully submits that its motion for sanctions was timely. In light of the novelty of issues under South Carolina law and in light of the guidance given by federal courts, to hold otherwise is to reward the party which polluted the stream of justice and taxed judicial resources to their utmost. To hold otherwise will also pass those litigious costs onto the innocent young heirs of the Thompson estate and to leave them disillusioned and frustrated with their constitution's process of adjudication. For all of the reasons set forth herein, the Thompson estate respectfully petitions this Court for review of the Court of Appeals decision.

[SIGNATURE PAGE TO FOLLOW]

March 21, 2017

J. René Josey
TURNER, PADGET, GRAHAM & LANEY, P.A.
Post Office Box 5478
Florence, SC 29502-5478
843-656-4451 (Telephone)
843-413-5818 (Fax)
RJosey@TurnerPadget.com (Email)

March 21, 2017

John Jay James, II
PAULLING AND JAMES, LLP
P. O. Box 507
Darlington, SC 29540
843-393-3881 (Telephone)
843-393-6089 (Fax)
pjlaw507@bellsouth.net (Email)

ATTORNEYS FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
MAR 22 2017
S.C. SUPREME COURT

APPEAL FROM DARLINGTON COUNTY
Court Of Common Pleas

J. Michael Baxley, Circuit Court Judge

Opinion No. 5451 (S.C. Ct. App. Filed November 2, 2016)

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v.

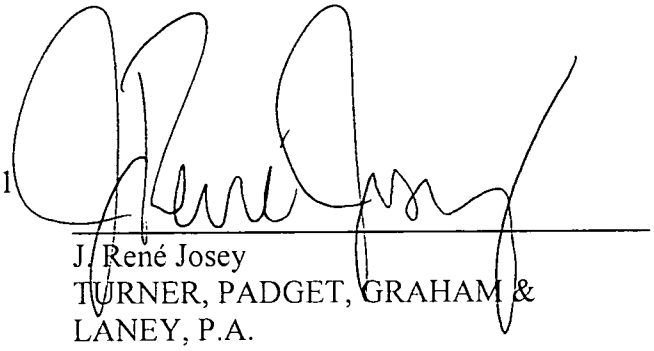
Estate of Hugh S. Thompson ..... Petitioner.

PROOF OF SERVICE

I certify that I have served the Petition for a Writ of Certiorari on Pee Dee Health Care, P.A. by depositing one (1) copy of it in the United States Mail, postage prepaid, on March 21, 2017, addressed to: mailing it their attorneys of record,

James Mixon Griffin
Griffin | Davis
PO Box 999
Columbia, SC 29202

Ariail E. King, Esquire
Lewis Babcock, L.L.P.
PO Box 11208,
Columbia, South Carolina 29211



J. René Josey
TURNER, PADGET, GRAHAM & LANEY, P.A.
Post Office Box 5478
Florence, SC 29502-5478
843-656-4451 (Telephone)
843-413-5818 (Fax)
RJosey@TurnerPadget.com (Email)

Attorneys for Petitioner
Estate of Hugh S. Thompson