

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY  
Court of Common Pleas

Brooks R. Goldsmith, Circuit Court Judge

**RECEIVED**  
NOV 19 2012

**SC Court of Appeals**

Case No. 2010-CP-20-474 and 475  
South Carolina Court of Appeals No. 2012-212596

Carol Brunson, as Personal Representative of the Estate of  
Curtis Parsons ..... Respondent,

v.

Uni-Health Post Acute Care – Tanglewood, LLC, d/b/a Uni-Health Post  
Acute Care –Tanglewood f/k/n Heritage of Ridgeway, and United  
Clinical Services, Inc., United Rehab, Inc., and UHS Pruitt Corporation. .... Appellants.

**MOTION TO REINSTATE APPEAL**

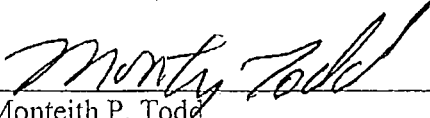
The above appeal was instituted by the filing of a Notice of Appeal on July 26, 2012. (Exhibit 1) On July 27, 2012, counsel for appellants received a telephone call from Elizabeth Carter of the South Carolina Court of Appeals advising the Court did not have a copy of the Orders which were being appealed. By letter dated July 27, 2012, counsel for appellants hand delivered the appropriate Orders to Ms. Carter for filing with the Notice in the case record, as instructed to do by Ms. Carter. (Exhibit 2) A letter from Jenny A. Kitchings of the South Carolina Court of Appeals dated September 4, 2012, was received by counsel for appellants on September 5, 2012, advising the Court did not have the Orders in this matter. (Exhibit 3) Our

office again spoke with Elizabeth Carter who assured us the Court had received everything that was required and that all deficiencies had been corrected. This telephone conversation was confirmed by letter from Robin Owens dated September 5, 2012, to Ms. Carter (Exhibit 4). Since that time, the final transcript needed from the court reporter was received October 22, 2012, making our Initial Brief of Appellant due November 21, 2012. Appellants have requested an extension to file the Initial Brief of Appellant by motion dated and filed November 13, 2012. On November 19, 2012, counsel for appellants received the attached Order from the Court dismissing our appeal in this matter. (Exhibit 5) We respectfully ask for consideration of the events as set forth above, that this order be vacated, and that our appeal proceed.

Therefore, pursuant to Rules 260 of the Appellate Court Rules, Appellants hereby request that the above appeal be reinstated.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: \_\_\_\_\_

  
Monteith P. Todd  
Robert E. Horner  
1310 Gadsden Street  
Post Office Box 11449  
Columbia, South Carolina 29211  
Tel: (803) 929-1400  
Fax: (803) 929-0300

Attorneys for Appellants, Uni-Health Post Acute Care –  
Tanglewood, LLC d/b/a Uni-Health Post Acute Care  
Tanglewood f/k/n, Heritage of Ridgeway and United  
Clinical Services, Inc., United Rehab, Inc., and UHS  
Pruitt Corporation

Columbia, South Carolina

November 19, 2012

# **Exhibit 1**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY  
Court of Common Pleas

Brooks R. Goldsmith, Circuit Court Judge

Case No. 2010-CP-20-474 and 475

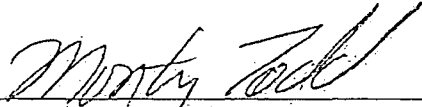
Carol Brunson, as Personal Representative of the Estate of  
Curtis Parsons ..... Respondent,  
v.

Uni-Health Post Acute Care – Tanglewood, LLC d/b/a Uni-Health  
Post Acute Care Tanglewood f/k/n, Heritage of Ridgeway and United  
Clinical Services, Inc., United Rehab, Inc., and UHS Pruitt Corporation. .... Appellants.

NOTICE OF APPEAL

Uni-Health Post Acute Care – Tanglewood, LLC, d/b/a Uni-Health Post Acute Care –  
Tanglewood f/k/n Heritage of Ridgeway and United Clinical Services, Inc., United Rehab, Inc.,  
and UHS Pruitt Corporation appeal the Order Denying Defendants’ Motion to Compel  
Arbitration and Defendants’ Motion for Reconsideration. Appellants received written notice of  
entry of the Order Denying Arbitration on March 23, 2012, and the Order Denying Defendants’  
Motion for Reconsideration on July 11, 2012.

July 26, 2012

  
\_\_\_\_\_  
Monteith P. Todd  
Robert E. Horner  
J. Michael Montgomery  
Sowell Gray Stepp & Laffitte  
1310 Gadsden Street  
Post Office Box 11449  
Columbia, SC 29211  
(803) 929-1400

RECEIVED  
NOV 19 2012  
SC Court of Appeals

RECEIVED  
JUL 26 2012  
SC Court of Appeals

Jason E. Bring  
William Jerad Rissler  
Tyler L. Arnold  
Arnall Golden & Gregory, LLP  
171.17<sup>th</sup> Street, NW, Suite 2100  
Atlanta, GA 30363  
(404) 873-8780  
Attorneys for Appellants

Other Counsel of Record:

Lee D. Cope  
Grahame E. Holmes  
Peters, Murdaugh, Parker, Eltzroth & Detrick  
101 Mulberry Street East  
Post Office Box 457  
Hampton, SC 29924  
(803) 943-2111

Shane M. Burroughs  
Lanier & Burroughs, LLC  
Post Office Drawer 2789  
Orangeburg, SC 29116  
(803) 268-9800

Attorneys for Respondent

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM FAIRFIELD COUNTY  
Court of Common Pleas

Brooks R. Goldsmith, Circuit Court Judge

---

Case No. 2010-CP-20-474 and 475  
South Carolina Court of Appeals No. 2012209407

---

Carol Brunson, as Personal Representative of the Estate of  
Curtis Parsons ..... Respondent,

v.

Uni-Health Post Acute Care – Tanglewood, LLC, d/b/a Uni-Health Post  
Acute Care –Tanglewood f/k/n Heritage of Ridgeway, and United  
Clinical Services, Inc., United Rehab, Inc., and UHS Pruitt Corporation. .... Appellants.

---

CERTIFICATE OF SERVICE

---

I, the undersigned legal assistant, of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Appellants, do hereby certify that I have served all counsel in this action with a copy of the Notice of Appeal by mailing a copy of same to counsel via United States Mail, postage prepaid, at the following address(es):

Lee D. Cope  
Grahame Holmes  
Peters, Murdaugh, Parker, Eltzroth & Detrick  
101 Mulberry Street East  
Post Office Box 457  
Hampton, SC 29924

Shane M. Burroughs  
Lanier & Burroughs, LLC  
Post Office Drawer 2789  
Orangeburg, SC 29116

**RECEIVED**

JUL 26 2012

**SC Court of Appeals**

Robin C. Owens  
Robin C. Owens  
Legal Assistant

7/26, 2012

# **Exhibit 2**

July 27, 2012

**VIA HAND DELIVERY**

Ms. Elizabeth Carter  
SC Court of Appeals  
John C. Calhoun Building  
1015 Sumter Street  
Columbia, SC 29201

RE: Carol Brunson, as Personal Representative of the Estate of Curtis Parsons  
v. Uni-Health Post Acute Care – Tanglewood, LLC, d/b/a Uni-Health Post  
Acute Care – Tanglewood f/k/a Heritage of Ridgeway, and United Clinical  
Services, Inc., United Rehab, Inc., and UHS-Pruitt Corporation  
Civil Action Nos. 10-CP-20-474 and 475  
Our File No. 5593/1512

Dear Ms. Carter:

Enclosed please find a copy of the Order Denying Defendants' Motion to Compel Arbitration and the Order Denying Defendants' Motion for Reconsideration of this order. These are the orders for which we filed our Notice of Appeal on July 26 which we are hereby filing with the court. I appreciate your call to let me know these orders need to be filed.

Yours truly,

**FILE**

Monteith P. Todd

MPT:rco

Enclosures

cc: Honorable Betty Jo Beckham (via regular mail)  
Honorable Brooks R. Goldsmith (via regular mail)  
Lee D. Cope, Esquire (via regular mail)  
Shane M. Burroughs, Esquire (via regular mail)  
Tyler L. Arnold, Esquire (via regular mail)

3120

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF FAIRFIELD )

IN THE COURT OF COMMON PLEAS  
SIXTH JUDICIAL CIRCUIT  
CASE NO: 2010-CP-20-474 & 475

Carol Brunson, As Personal )  
Representative of the Estate of Curtis )  
Parsons, )

Plaintiff, )

vs. )

ORDER DENYING DEFENDANT'S  
MOTION TO COMPEL  
ARBITRATION

Uni-Health Post Acute Care-- )  
Tanglewood, LLC, D/B/A Uni-Health )  
Post-Acute Care-Tanglewood, F/K/N )  
Heritage of Ridgeway, and United )  
Clinical Services, Inc., United Rehab, )  
Inc., and UHS-Pruitt Corporation, )

Defendants. )

FAIRFIELD COUNTY  
CLERK OF COURT  
RECEIVED  
MAR 21 4 11:07 PM

This matter comes before the Court on the Defendant's Motion to Compel Arbitration.

For the reasons set forth below, the motion is denied.

The policy of this state is to favor arbitration of disputes. Teler's Cove Homeowners Ass'n. Inc. v. Trident Constr. Co., Inc., 355 S.C. 605, 612, 586 S.E.2d 581 (2003). However, not all arbitration clauses are enforceable. Arbitration is a matter of contract and South Carolina courts must determine the enforceability of an arbitration agreement based on principles of contract law. Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 538, 542 S.E.2d 360, 364 (2001). In order to have a valid and enforceable contract, there must be a meeting of the minds as to all essential and material terms of the contract. Player v. Chandler, 299 S.C. 101, 105, 382 S.E.2d 891 (1989).



A. Forum Selected by Defendant Tanglewood is Not Available.

The Arbitration Agreement between Ms. Brunson, on behalf of Curtis Parsons, and Tanglewood is not enforceable. There is no dispute that the agreement at issue was prepared by Tanglewood and calls for any claims between the resident and Tanglewood to be handled under the rules of the American Arbitration Association (AAA).

Since January 1, 2003, the AAA has not accepted cases for arbitration involving individual patients in a healthcare facility unless there was a post-dispute agreement to arbitrate. The subject Arbitration Agreement was signed at the time Mr. Parsons was admitted to Tanglewood. Therefore, the Arbitration Agreement was signed "pre-injury." By its own language, the Arbitration Agreement is not enforceable as the AAA will not hear the matter and the agreement is silent as to the method by which the arbitration shall be conducted absent the AAA rules.

Our Supreme Court has recently addressed this very issue. In Grant v. Magnolia Manor—Greenwood, Inc. et al, 383 S.C. 125, 678 S.E.2d 435 (2009), the Court held that the selection of an arbitration forum is an "integral part of the agreement." There, the chosen forum, the National Health Lawyers Association, took the same position as the AAA in that it would not administer arbitration of a health care personal injury claim unless the arbitration agreement was entered into after the event giving rise to the claim. Id. Because Tanglewood chose the AAA's rules as the guiding principle for arbitration, it is an integral part of the agreement. The chosen forum also negates the ability to look to the Federal Arbitration Agreement ("FAA") for another means of arbitration. The Grant court held that the chosen means by which an arbitrator will be selected and the "rules that govern the arbitration" are not "logistical" nor "ancillary." Id. The Defendant Tanglewood knew or should have known that the AAA did not recognize these types of

arbitration agreements when it entered into it in 2007. It should not look to the Court now to correct its mistake. Accordingly, the arbitration agreement must fail.

**B. The FAA is not Involved as There is no Interstate Commerce in the Agreement.**

The agreement of the parties is not a transaction involving interstate commerce. This issue was addressed by the South Carolina Supreme Court in the case of Tims v. Green, which involved an action by a nursing home resident seeking damages for injuries sustained while she was left unattended under a hair dryer at defendant's facility. 310 S.C. 469, 427, S.E. 2d 642 (1993). The arbitration agreement between Tims and the defendant required submission of any dispute to binding arbitration. The defendant argued that interstate commerce was involved in the contract as the defendant was a division of a national corporation; it hired employees from out of state; it marketed its services out of state; purchased the majority of its goods and equipment from out of state; and contemplated payments from Medicare and Medicaid. The lower court disagreed with the defendant's position, finding the contract did not involve interstate commerce, rendering the FAA moot. The Court found that although the factors could evidence the center's involvement in interstate commerce, their relationship to the agreement between the center and the respondent was insufficient to form the basis of a contract between the parties.

Interstate commerce is a necessary basis for the application of the FAA. Because interstate commerce was absent in the contract between Tims and the defendant, the Supreme Court refused to require arbitration because Tims' cause of action was not subject to the Arbitration Act of South Carolina and the Federal Arbitration Act was inapplicable.

In this case, there is no evidence of interstate commerce in the arbitration agreement between the parties. The contract was entered into between Ms. Parsons, a South Carolina resident, and Uni-Health Post Acute Care-Tanglewood, LLC, a South Carolina LLC. The agreement is void

as to any issues of interstate commerce between the parties to the agreement. Furthermore, there has been no evidence of any interstate commerce between the parties to the arbitration agreement.

The Defendants' contention that interstate commerce is stipulated between the parties to the agreement is unavailing. Just as parties cannot "stipulate" to subject matter jurisdiction, parties cannot "stipulate" to interstate commerce that would invoke the FAA. It is not enough to say it must be evidenced in the contract itself. Tims.

The fact that Georgia corporations are also defendants is immaterial and not a basis for finding that the arbitration agreement involves interstate commerce. The agreement itself, the focus of this inquiry, does not mention any out of state entity. The agreement specifically limits arbitration to disputes involving the resident and the "facility." The "facility" is Uni-Health Post Acute Care-Tanglewood, LLC. Tanglewood's own employee did not know the arbitration agreement involved out-of-state entities. In addition, the responsive pleadings of the out of state corporations deny that they are responsible for the care provided at the Tanglewood facility. Accordingly, the FAA does not apply.

**C. There is no Meeting of the Minds.**

The Court is also concerned about the lack of understanding between the parties in the case as to what exactly was being agreed upon. In order to have a contract, there must be a meeting of the minds as to essential parts of the contract. Player v. Chandler, 299 S.C. 101, 105, 382 S.E.2d 891 (1989). Here, there is no meeting of the minds as to what the parties were entering into and the arbitration agreement must fail.

**D. The Defendants have Waived Arbitration.**

Assuming that the arbitration agreement was valid or that the FAA applied, the Defendants have waived their right to arbitrate these claims. Parties can waive their right to enforce an

arbitration agreement. Liberty Builders, Inc. v. Horton, 336 S.C. 658, 521 S.E.2d 749 (Ct.App. 1999). There are three factors generally considered to determine if a party has waived its right to enforce an arbitration clause: (1) the time between commencement of the action and moving for arbitration; (2) whether the party seeking to compel arbitration engaged in discovery before moving for arbitration; and (3) prejudice to the non-moving party which must be more than mere inconvenience. Rhodes v. Benson Chrysler-Plymouth, Inc., 374 S.C. 122, 647 S.E.2d 249 (Ct. App. 2007).

The Defendants waited too long to move for arbitration and the prejudice to the Plaintiff is more than mere inconvenience. The parties have conducted extensive discovery. The Defendants can point to no reasonable basis for waiting this long to move for arbitration. The only logical explanation for moving at this stage to compel arbitration is to cause an unnecessary delay and unfair prejudice to Plaintiff. Accordingly, Defendants have waived their right to arbitrate these claims, even if the Arbitration Agreement was valid.

**E. Ms. Brunson Lacked Standing to Enter into Arbitration Agreement.**

The Arbitration Agreement also fails for lack of standing. On the date of Mr. Parsons' admission, the nursing home staff performed an evaluation and found Mr. Parsons to be mentally competent, able to read and write, and able to make informed decisions. The nursing home staff also verified that Mr. Parsons had no legal guardian. Ms. Brunson told Tanglewood's admissions representative that she did not understand the admissions paperwork and to talk directly to Mr. Parsons about it. The Tanglewood staff told Ms. Brunson to sign the Arbitration Agreement despite knowing that she did not have a Power of Attorney or any other legal basis to enter into this agreement and did not understand the paperwork.

In order for a person to be bound by a contract, the person signing must have standing to enter into the contract. In this case, there has been no evidence that Ms. Brunson had the authority to bind Mr. Parsons to the Arbitration Agreement. Therefore, the standing element has not been met.

Likewise, there is no evidence that Ms. Brunson had the apparent authority to enter into the Arbitration Agreement. Whether an agency relationship exists is a question of fact to be determined by the relation, the situation, the conduct, and the declarations of the party sought to be charged as principal. American Fed. Bank, FSB v. Number One Main Joint Venture, 321 S.C. 169, 467 S.E.2d 439 (1996); Hinson v. Roof, 128 S.C. 470, 122 S.E. 488 (1924). The Defendants have not produced any evidence that Mr. Parsons knew Ms. Brunson had signed an Arbitration Agreement on his behalf; much less any evidence that he authorized or acquiesced to this act. Accordingly, the Court finds Mrs. Brunson did not have the authority to sign the Arbitration Agreement for Mr. Parsons.

**F. Plaintiff is not Estopped from Seeking a Jury Trial.**

Defendants are unable to establish the elements of equitable estoppel. In order to estopp Ms. Brunson, Defendants must establish:


(1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey an impression that facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or at least expectation, that the conduct shall be acted upon by other party; and (3) knowledge, actual or constructive, of the real facts.

Langdale v. Carpets, 395 S.C. 194, 717 S.E.2d 80 (Ct. App. 2011). Defendants must also show as to themselves "a (1) lack of knowledge and of means of knowledge of truth as to facts in question, (2) reliance upon conduct of party estopped, and (3) prejudicial change in position." Id.

Ms. Brunson did not make a false misrepresentation or conceal material facts. The only evidence presented is that Ms. Brunson told Mrs. Maddox she did not understand the Admissions Agreement and Arbitration Agreement and asked Mrs. Maddox to review the agreements with Curtis Parsons. As such, Ms. Brunson could not have intended that Defendants act upon a false representation or had knowledge of contrary facts. Further, as she told Mrs. Maddox the truth, Defendants cannot claim a "lack of knowledge" or that they relied upon Ms. Brunson's conduct. Mrs. Maddox testified Mr. Parsons would still have been admitted to the facility and that his care and costs would have been the same even if Ms. Brunson had not signed the arbitration agreement. Therefore, Defendants cannot claim a prejudicial change of position.

#### CONCLUSION

Our Court's policy of favoring arbitration does not override the basic requirements of contracts in South Carolina. Ms. Brunson did not have the legal or apparent authority to enter into an arbitration agreement on behalf of Curtis Parsons. Even if she did have the authority, there was no meeting of the minds as to material terms of the contract. Tanglewood's agent admitted she did not know numerous material contract terms. Furthermore, the forum selected by the Defendant will not hear this type of dispute. Our Supreme Court has determined that the forum selection is an integral part of the agreement and cannot be remedied by following the FAA which does not apply to this intrastate agreement. Moreover, the Defendants have waited too long to move for arbitration and have substantially prejudiced the Plaintiff in the process such that any arbitration that it could have sought to compel is waived. Therefore, Defendants' Motion to Compel Arbitration should be denied.



Brooks P. Goldsmith, Judge

*Laureate*

Fairfield, South Carolina  
March 20, 2012

STATE OF SOUTH CAROLINA

COUNTY OF FAIRFIELD

Carol Brunson, as Personal Representative of the Estate of Curtis Parsons

Plaintiff,

vs.

UNI-HEALTH POST ACUTE CARE-TANGLEWOOD, LLC, d/b/a Uni-Health Post -Acute Care- Tanglewood, f/w Heritage Of Ridgeway, and UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- FRUITT CORPORATION

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-20-474 & 475

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

2012 JUL 11 3:50 FAIRFIELD COUNTY CLERK OF COURT BETTY JO BECKHAM

Plaintiff's Attorney: <u>Grahame E. Holmes</u> , Bar No. 68842 Address: P.O. Box 457 Hampton, SC 29924 Phone: (803) 943-2111 Fax (803) 914-2014 E-mail: <u>gholmes@mpmped.com</u>	Defendant's Attorney: <u>Tyler L. Arnold</u> , Esquire Address: <u>171 17th Street, NW Ste 2100</u> <u>Atlanta, GA 30363-1031</u> Phone: Fax(404) 873-8747 E-mail: <u>Other:</u>
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES/ <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$50.00 <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> 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: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of this attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: <u>BLB</u> Date Filed: <u>7-11-12</u> <input checked="" type="checkbox"/> MOTION FEE COLLECTED: \$ <u>25.00</u> <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF FAIRFIELD )  
 )  
 CAROL BRUNSON, AS PERSONAL )  
 REPRESENTATIVE OF THE ESTATE )  
 OF CURTIS PARSONS, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 UNI-HEALTH POST ACUTE CARE- )  
 TANGLEWOOD, LLC, D/B/A UNI- )  
 HEALTH POST - ACUTE CARE - )  
 TANGLEWOOD, F/K/N HERITAGE OF )  
 RIDGEWAY, AND UNITED CLINICAL )  
 SERVICESS, INC., UNITED REHAB, )  
 INC., AND UHS - PRUITT )  
 CORPORATION, )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 CIVIL ACTION NO. 2010-CP-20-474 & 475

**ORDER DENYING DEFENDANTS'  
 MOTION FOR RECONSIDERATION  
 PURSUANT TO RULE 59(e), SCRPC**

2012 JUL 11 P 3:54  
 FAIRFIELD COUNTY  
 CLERK OF COURT  
 BETTY JO BECKHAM

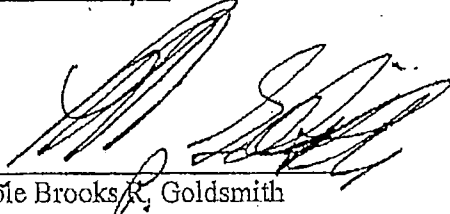
The Court heard the Defendants' Motion to Reconsider Pursuant to Rule 59(e), SCRPC, on June 7, 2012 at the Fairfield County Courthouse. Robert E. Horner, Esquire appeared on behalf of the moving party, the Defendants. Matthew V. Creech, Esquire, appeared on behalf of the Plaintiff. Having heard and considered the motion of the Defendants, the Defendants' memorandum in support thereof, as well as carefully considering the arguments of the parties, the Court respectfully denies the Defendants' motion.

In reviewing the Defendants' motion to reconsider, the same basic arguments ruled upon by the Court in the underlying motion were again raised in the Motion to Reconsider. Having been presented with these issues again, the Court has been provided no new information or arguments which persuade the Court that the underlying Order denying the Defendants' Motion to Compel Arbitration suffers from any misunderstanding, misapprehension, or error of law. Of the numerous issues raised in the Defendants' Motion to Reconsider, the core of the argument on reconsideration centers upon the Defendants' contention that the South Carolina Supreme Court Decision of Tims v. Green, 310 S.C. 469, 427 S.E.2d

642 (1993) has been reversed by subsequent United States Supreme Court cases and also that the Court should be persuaded by cases from outside of this jurisdiction which appear to disagree with the analysis of Tims. However, at the motions hearing, the Court was presented with the very recent Court of Appeals decision of Lucey v. Meyer, Opinion No. 4960 (Ct. App. March 28, 2012). While other jurisdictions have apparently reached different conclusions from those reached in South Carolina courts, the Lucey case again indicates South Carolina Appellate Courts' continued use of the Tims analysis in deciding whether contracts are subject to arbitration. The Court's decision in the underlying order finding that this dispute is not arbitrable because it does not affect interstate commerce is appropriate in the light of Tims and the underlying order will not be disturbed on these grounds.

For the foregoing reasons, the Court finds that reconsideration as requested by the Defendants is inappropriate. The Defendants' Motion to Reconsider Pursuant to Rule 59(e), SCRPC is respectfully denied.

AND IT IS SO ORDERED this 2 day of July, 2012 at Lancaster, South Carolina.

  
The Honorable Brooks R. Goldsmith  
6th Judicial Circuit

# Exhibit 3



Recd 9/5/12  
Lee 5593/1572

## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccouris.org](http://www.sccouris.org)

September 4, 2012

Mr. Monteith Powell Todd  
PO Box 11449  
Columbia SC 29211

Re: Carol Brunson v. Uni-Health Post  
Appellate Case No. 2012-212596

Dear Counsel:

Upon reviewing your notice of appeal, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- The notice of appeal is not accompanied by the order(s) and/or judgment(s) challenged on appeal.

Very truly yours,

A handwritten signature in cursive script that reads "Jenny A. Kitchings".

CLERK

cc: Robert E. Horner  
John Michael Montgomery

Jason Edward Bring  
W. Jerad Rissler  
Tyler Lawrence Arnold  
Lee Deer Cope  
Grahame Ellison Holmes  
Shane Morris Burroughs

# **Exhibit 4**

September 5, 2012

Ms. Elizabeth Carter  
SC Court of Appeals  
John C. Calhoun Building  
1015 Sumter Street  
Columbia, SC 29201

RE: Carol Brunson, as Personal Representative of the Estate of Curtis Parsons  
v. Uni-Health Post Acute Care – Tanglewood, LLC, d/b/a Uni-Health Post  
Acute Care – Tanglewood f/k/a Heritage of Ridgeway, and United Clinical  
Services, Inc., United Rehab, Inc., and UHS-Pruitt Corporation  
Court of Appeal Tracking No. 2012-212596  
Our File No. 5593/1512

Dear Elizabeth:

This will confirm our telephone conversation today in which you confirmed that all deficiencies in the above Appellate Case have been corrected and that you have everything in your file that the Court requires. If you need anything further from us, please let me know and we will be happy to provide it to you. Thank you for your assistance.

Yours truly,



Robin Owens, Assistant to Monteith P. Todd

:rco

cc: Lee D. Cope, Esquire  
Shane M. Burroughs, Esquire  
Tyler L. Arnold, Esquire

# **Exhibit 5**

# The South Carolina Court of Appeals

Carol Brunson, as Personal Representative of the Estate  
of Curtis Parsons, Respondent,

v.

Uni-Health Post Acute Care- Tanglewood, LLC d/b/a  
Uni-Health Post Acute Care Tanglewood f/k/n, Heritage  
of Ridgeway and United Clinical Services, Inc., United  
Rehab, Inc., and UHS Pruitt Corporation, Appellants.

Appellate Case No. 2012-212596

The Honorable Brooks P. Goldsmith, Brooks P.  
Goldsmith  
Fairfield County  
Trial Court Case No. 2010CP2000474

RECEIVED

NOV 19 2012

SC Court of Appeals

---

ORDER

---

Appellant has failed to serve and file a copy of the order on appeal, as required by Rule 203 of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy  
CLERK

Columbia, South Carolina

FILED  
11-16-12 *HM*

cc:

Monteith Powell Todd

Robert E. Horner

John Michael Montgomery

Jason Edward Bring

W. Jerad Rissler

Tyler Lawrence Arnold

Lee Deer Cope

Grahame Ellison Holmes

Shane Morris Burroughs

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM FAIRFIELD COUNTY  
Court of Common Pleas

Brooks R. Goldsmith, Circuit Court Judge

---

Case No. 2010-CP-20-474 and 475  
South Carolina Court of Appeals No. 2012-212596

---

Carol Brunson, as Personal Representative of the Estate of  
Curtis Parsons ..... Respondent,  
v.

Uni-Health Post Acute Care – Tanglewood, LLC, d/b/a Uni-Health Post  
Acute Care –Tanglewood f/k/n Heritage of Ridgeway, and United  
Clinical Services, Inc., United Rehab, Inc., and UHS Pruitt Corporation. .... Appellants.

---

CERTIFICATE OF SERVICE

---

I, the undersigned legal assistant, of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Appellants, do hereby certify that I have served all counsel in this action with a copy of the Motion to Reinstate Appeal by mailing a copy of same to counsel via United States Mail, postage prepaid, at the following address(es):

Lee D. Cope  
Grahame Holmes  
Peters, Murdaugh, Parker, Eltzroth & Detrick  
101 Mulberry Street East  
Post Office Box 457  
Hampton, SC 29924.

Shane M. Burroughs  
Lanier & Burroughs, LLC  
Post Office Drawer 2789  
Orangeburg, SC 29116

RECEIVED

NOV 19 2012

SC Court of Appeals

Robin C. Owens

Robin C. Owens  
Legal Assistant

11/19, 2012