

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM FLORENCE COUNTY  
Court of Common Pleas

The Honorable William H. Seals, Circuit Court Judge

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**RECEIVED**

JUL 24 2017

**SC Court of Appeals**

SAMUEL BARR, on behalf of  
himself and all others similarly  
situated,

APPELLANT,

V.

QHG of South Carolina, Inc.,  
d/b/a Carolinas Hospital System,

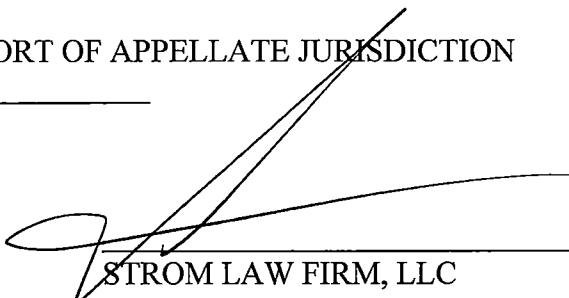
RESPONDENT,

Appellate Case no. 2017-000065

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APPELLANT'S MEMORANDUM IN SUPPORT OF APPELLATE JURISDICTION

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STROM LAW FIRM, LLC  
J. Preston Strom, Jr.  
Jessica L. Fickling  
Mario A. Pacella  
2110 N. Beltline Boulevard  
Columbia, SC 29204

ATTORNEYS FOR APPELLANT

**TABLE OF AUTHORITIES**

CASES

Ex Parte U-Drive-It, Inc. v. Beaver, 369 S.C. 1, 630 S.E.2d 464 (S.C. 2006).....3

Heffner v. Destiny, Inc., 321 S.C. 536, 471 S.E.2d 135 (S.C. 1995).....4

Kremer v. Rural Community Ins., Co., 280 Neb. 591, 788 N.W.2d 538 (2010).....4

Steinmetz v. America Media Services, LLC, 393 S.C. 72, 709 S.E.2d 708 (Ct.App. 2011).....4

Toler’s Cove Homeowner’s Ass’n. v. Trident Const. Co., Inc., 355 S.C. 605, 506 S.E.2d 581 (S.C. 2003).....4

Watson v. Underwood, 407 S.C. 443, 756 S.E.2d 155 (Ct.App. 2014).....3,5

Zabinski v. Bright Acres, Assocs., 346 S.C. 580, 533 S.E.2d 110 (2001).....5

STATUTES

S.C. Code Ann. § 14-3-330.....3,5,6

S.C. Code Ann. § 15-48-10(b)(4).....1,2,4,5

S.C. Code Ann. § 15-48-200.....2,3,4

## INTRODUCTION

This appeal arises out of an order of the circuit court, Honorable William H. Seals, pursuant to S.C. Code Ann. § 15-48-10(b)(4), to enforce an arbitration clause contained within the Institutional Agreement (“the Agreement”) between Respondent QHG, and Blue Cross Blue Shield (“Blue Cross”) on behalf of the Blue Cross member-beneficiaries, including Appellant. There is no dispute that Appellant is a non-signatory to the Agreement, nor that Appellant was an intended recipient of benefits pursuant to the Agreement between Respondent and Blue Cross. (See Agreement, Article I, Sec 1.1, “WHEREAS [Blue Cross] has established a preferred provider arrangement for the benefit of its Members[.]”)

Appellant Samuel Barr initiated this action in circuit court, bringing a complaint on behalf of himself and all those similarly situated for damages arising out of Respondent’s conduct in failing to submit claims for reimbursement to Blue Cross following motor vehicle accidents. Specifically, Appellant contends that after a motor vehicle accident that occurred in March of 2014, Appellant’s daughters received care at Respondent’s emergency department. Both girls were Blue Cross members by virtue of Appellant’s policy of insurance. After providing medical care to Appellant’s daughters, rather than submitting a claim for reimbursement to Blue Cross, and with knowledge that Appellant was a Blue Cross member, Appellant contends that Respondent coded the girls’ bills as self-pay, and thereafter listed Appellant as the guarantor for the full amount of the bills. Respondent then proceeded to collect in excess of the Blue Cross negotiated rate from Appellant as full and final satisfaction of the outstanding balances.

Appellant filed suit, alleging multiple causes of action stemming not only from Appellant’s status as an intended beneficiary of the Agreement between Respondent and Blue

Cross, but also as a party to an independent member contract with Blue Cross. Appellant contends Respondent intentionally interfered with this contract, which governs Appellant's covered health services, at a specific negotiated rate. Appellant also alleged causes of action for quantum meruit and unjust enrichment.

Respondent thereafter moved to dismiss the underlying complaint for failure to state a cause of action. In the alternative, Respondent argued the complaint should be dismissed and/or stayed, and the arbitration provision contained within the Agreement enforced. In opposition to Respondent's motion to compel arbitration, Appellant argued that S.C. Code Ann. § 15-48-10(b)(4) exempted this controversy from arbitration as the Agreement constituted the "business of insurance," for purposes of McCarren-Ferguson reverse preemption. Moreover, Appellant argued that his claims arose not only pursuant to the Agreement by and between Respondent and Blue Cross, but also as a result of Respondent's intentional interference with Appellant's own contract with Blue Cross.

After argument, the circuit court granted Respondent's Motion to Compel Arbitration, finding that S.C. Code Ann. § 15-48-10(b)(4) did not apply to exempt the complaint from arbitration as the Agreement. The circuit court, without providing its analysis, also concluded that the totality of Appellant's claims "arose under" the Agreement, such that every claim must be subject to arbitration. Appellant moved to reconsider, and the circuit court denied Appellant's motion. This appeal followed.

Currently, the question from the Court of Appeals is whether the decision of the circuit court is immediately appealable. As the court's decision is "a judgment or decree entered pursuant to the provisions of this chapter," the order is immediately appealable, and this court is vested with jurisdiction under S.C. Code Ann. § 15-48-200.

## STANDARD

The right of appeal arises from and is controlled by statutory law. *Watson v. Underwood*, 407 S.C. 443, 756 S.E.2d 155 (Ct.App. 2014), citing *Ex Parte U-Drive-It, Inc.*, 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006). Absent a more specific statute, S.C. Code Ann. § 14-3-330 governs whether a party may immediately appeal an order issued before or during trial, and provides that the court shall review upon appeal, “(b) [a]n 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, (b) grants or refuses a new trial, or (c) strikes out an answer or any part thereof or any pleading in any action.” “Absent a specialized statute, an order must fall into one of several categories set forth in [s]ection 14-3-330 in order to be immediately appealable.” *Underwood*, at 458, 756 S.E.2d at 163, citing *Ex Parte*, supra.

In addition to the general statutes governing the jurisdictions of appellate courts, S.C. Code Ann. § 15-48-200 provides that appeals may be taken of the following:

- (1) An order denying an application to compel arbitration;
- (2) An order granting an application to stay arbitration;
- (3) An order confirming or denying confirmation of an award;
- (4) An order modifying or correction an award;
- (5) An order vacating an award without directing a rehearing; or
- (6) A judgment or decree entered pursuant to the provisions of this chapter.

## ANALYSIS

The Court of Appeals has previously considered the question of whether an order compelling arbitration is immediately appealable. The caselaw has established that, where a more specific statute exists, that law typically prevails over a general law. *Heffner v. Destiny, Inc.*, 321 S.C. 536, 471 S.E.2d 135 (S.C. 1995), abrogated by *Toler's Cove Homeowner's Ass'n. v. Trident Const. Co., Inc.*, 355 S.C. 605, 586 S.E.2d 581 (S.C. 2003).<sup>1</sup>

In the South Carolina Uniform Arbitration Act, the state legislature specifically set forth the aforementioned six (6) categories of orders that confer a right to immediately appeal. The legislature included within those categories “[a] judgment or decree entered pursuant to the provisions of [the Uniform Arbitration Act].” *Steinmetz v. America Media Services, LLC*, 393 S.C. 72, 709 S.E.2d 708 (Ct.App. 2011), citing S.C. Code Ann. § 15-48-200.

Often, disputes involving the enforceability of an arbitration clause turn on general principles of contract formation and interpretation. However, in the instant case, the circuit court’s order was specifically based upon application of the exception to arbitration included in the Uniform Arbitration Act at S.C. Code Ann. § 15-48-10(b)(4). (See Order of the Circuit Court, ps. 6-12). The circuit court declined to apply this exception to the instant controversy. (Order of the Circuit Court, p. 8, “Applying the same reasoning as the court’s in *Walden* and *Wilson* the Court finds section 15-48-10(b)(4)’s arbitration exemption is inapplicable[.]”) As a result the court’s order is a decree under the South Carolina Uniform Arbitration Act, and is subject to immediate appeal.

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<sup>1</sup> It is worth noting that a substantial split exists as to whether a state statute enumerating the arbitration orders from which an appeal may issue are exclusive, and instead have found that a legislature’s silence as to orders compelling arbitration is not meant to preclude from appeals those orders not specifically listed. *Kremer v. Rural Community Ins. Co.*, 280 Neb. 591, N.W.2d 538 (N.E. 2010)

The court's order further found that all of Appellant's claims "arose out of" the Agreement and were thus subject to the Arbitration clause incumbent in the Agreement. The circuit court did not provide analysis for this ruling, and in so ruling ignored Appellant's own contract with Blue Cross, under which Appellant contends he was conferred substantial rights, which Respondent violated.

In general, "[a]n order affects a substantial right and is immediately appealable when it '(a) in effect determines the action and prevents a judgment from which an appeal may be taken or discontinues the action[.]'" *Underwood* at 458-59, 756 S.E.2d 707, 709 (2005) Typically, doubts concerning the scope of issues subject to arbitration should be resolved in favor of arbitration. *Zabinski v. Bright Acres, Assocs.*, 346 S.C. 580, 597, 533 S.E.2d 110, 118 (2001). However, a party can only be compelled to arbitrate those claims within the confines of the agreement. Moreover, once claims have been restricted to arbitration, it severely curtails those issues on which a party may seek review.

In the present case, where Appellant alleges that a number of claims do not arise out of the Agreement, the order of the circuit court operates to take from Appellant the opportunity to have those claims heard by a jury. Moreover, the circuit court's order lacks any analysis regarding its determination that all the claims, including those which arise from a separate contractual relationship between Appellant and his insurer, actually arose out of the Agreement. The result of requiring the Appellant to submit these claims to arbitration would be to require the Appellant to litigate claims not properly before the arbitrator through a judgment, and then to contest the judgment, at which time the circuit court may only confirm or deny any award or decree. Thus the circuit court's order substantially affects the rights of Appellant and constitutes an immediately appealable order pursuant to S.C. Code Ann. § 14-3-330(a).

## CONCLUSION

As set forth herein, the circuit court's order that S.C. Code Ann. § 15-48-10(b)(4) did not operate to exempt Appellant's complaint from arbitration constitutes a judgment or decree under S.C. Code Ann. § 15-48-200(a)(6), and is immediately appealable. Moreover, to the extent the circuit court concluded that all of Appellant's causes of action "arose out of" the Institutional Agreement, and to the extent the circuit court provided no analysis for its conclusion and the order substantially affects the rights of the parties, and is subject to immediate appeal pursuant to S.C. Code Ann. § 14-3-330.

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V.

QHG of South Carolina, Inc.,  
d/b/a Carolinas Hospital System,

RESPONDENT,

Appellate Case no. 2017-000065

CERTIFICATE OF SERVICE

I hereby certify that I have served Appellant's Memorandum in Support of Jurisdiction upon counsel for Respondent, James L. Werner, of Parker Poe Adams and Bernstein, by forwarding a copy of same via United States mail to Mr. Werner at the following address: Parker Poe Adams & Bernsetin, LLP, P.O. Box 1509, Columbia, SC 29202.

This 24<sup>th</sup> day of July, 2017.

AND SWORN TO ME

This 24<sup>th</sup> day of July, 2017



Notary Public for South Carolina

My Commission Expires: 7/25/21



Jessica Lerer Fickling  
STROM LAW FIRM, LLC  
2110 N. Beltline Boulevard  
Columbia, SC 29204  
TEL: (803) 252-4800  
[jfickling@stromlaw.com](mailto:jfickling@stromlaw.com)

ATTORNEY FOR APPELLANT

J. P. STROM, JR. P.A.  
MARIO A. PACELLA\*  
JOHN R. ALPHIN  
BAKARI T. SELLERS  
JESSICA L. FICKLING  
ALEXANDRA BENEVENTO  
AMY E. WILLBANKS\*

\* ALSO ADMITTED IN GA AND N.Y.  
° OF COUNSEL

**STROM**  
LAW FIRM L.L.C.

2110 N. BELTLINE BOULEVARD  
COLUMBIA, SOUTH CAROLINA 29204

COLUMBIA, SOUTH CAROLINA  
BRUNSWICK, GEORGIA

PHONE: 803-252-4800  
FAX: 803-252-4801  
TOLL FREE: 888.490.2847  
WWW.STROMLAW.COM

July 24, 2017

**VIA HAND-DELIVERY**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

**RECEIVED**

**JUL 24 2017**

**SC Court of Appeals**

RE: Samuel Barr on behalf of Himself and those Similarly Situated, Appellant, v. OHG of South Carolina, Inc. d/b/a Carolina Hospital System, Respondent,  
Appellant Case No. 2017-000065

Dear Ms. Kitchings:

Enclosed for filing please find Appellant's Memorandum in support of Appellate Jurisdiction and Proof of Service on the respondent in the above case. Please return the filed copy to me in the enclosed self-addressed stamped envelope I have provided for your convenience.

By copy of this letter I hereby serve counsel in this matter with the same.

Sincerely,



Amanda Weaver  
Paralegal to Jessica L. Fickling

cc: Other Counsel of Record:  
Jim Werner  
Parker Poe Adams & Bernstein, LLP  
1221 Main Street, Suite 1100  
Columbia, SC 29201