

W Y C H E

Attorneys at Law

October 3, 2017

RECEIVED

OCT 03 2017

VIA HAND DELIVERY

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
1231 Gervais St.
Columbia, SC 29201

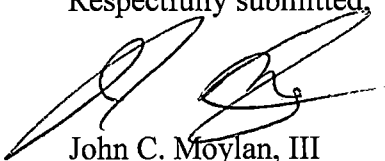
Re: *Amy Elizabeth Williams as the Personal Representative of the Estate for Christian Jacob Millare, and Amy Elizabeth Williams Individually vs. Quest Diagnostics, Inc., Athena Diagnostics, Inc., and ADI Holdings, Inc.*
Appellate Case No: 2017-000787

Dear Mr. Shearouse:

Enclosed please find the original and six copies of a Motion to Submit Additional Materials to the South Carolina Supreme Court, which we have filed with the U.S. District Court in connection with the above referenced matter pursuant to Rule 244(b) of the South Carolina Appellate Court Rules. This rule provides that “[i]n the event a party believes that additional materials from the record before the certifying court are necessary, it shall notify the Supreme Court and the certifying court so that the certifying court can determine if the additional materials will be submitted.”

By copy of this letter, we are serving all counsel of record with a copy of same.

Respectfully submitted,



John C. Moylan, III
jmoylan@wyche.com

Enclosures

cc: Bradford W. Cranshaw, Esquire
Trevor M. Hughey, Esquire
G. Robert DeLoach, III, Esquire
Matthew M. McGuire, Esquire
James M. Ervin, Esquire

W Y C H E
PROFESSIONAL ASSOCIATION

801 Gervais Street, Suite B, Columbia, SC 29201-3155
p: 803.254.6542 | f: 803.254.6544
www.wyche.com

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

RECEIVED

OCT 03 2017

AMY ELIZABETH WILLIAMS as the
PERSONAL REPRESENTATIVE of the
ESTATE FOR [REDACTED],
and AMY ELIZABETH WILLIAMS
individually,

Plaintiffs,

vs.

QUEST DIAGNOSTICS, INC., ATHENA
DIAGNOSTICS, INC., and
ADI HOLDINGS, INC.,

Defendants.

C.A. No. 3:16-cv-00972-MBS
S.C. SUPREME COURT

**MOTION TO SUBMIT ADDITIONAL
MATERIALS TO THE SOUTH CAROLINA
SUPREME COURT**

On March 31, 2017, this Court certified a question to the South Carolina Supreme Court. Pursuant to Rule 244(b) of the South Carolina Appellate Court Rules, the Defendants respectfully request that this Court submit a copy of the First Amended Complaint in the underlying case to the South Carolina Supreme Court for its consideration in this matter. Rule 244(b) provides that “In the event a party believes that additional materials from the record before the certifying court are necessary, it shall notify the Supreme Court and the certifying court so that the certifying court can determine if the additional materials will be submitted.” For the reasons below, Defendants believe that the South Carolina Supreme Court should be provided a copy of the First Amended Complaint with attachments.

In its brief to the Supreme Court (attached as Exhibit A), the Plaintiff in this case makes repeated reference to the allegations of her Complaint and to her Complaint’s attachments, including Quest’s 2007 Report that is an attachment to the affidavit of Robert Mullan Cook-

Deegan. The following are a sampling of references to the Complaint and its attachments that appear in Plaintiff's Brief to the Supreme Court:

- “In the Complaint, Williams asserts several claims for relief against Quest; however, the gravamen of the Williams’ causes of action relate to the assertion that Quest negligently misclassified, otherwise accurate, genetic test results and then published this mistake in the 2007 Report.” (Pl. Brief at p. 4)
- “Moreover, William’s {sic} Complaint asserts that the section of the 2007 Report labeled ‘Technical Results’ appears to ‘methodologically accurate’ and to correctly identify the mutation in question based on the correct SCN1A gene. As such, Quest’s work in this regard does not form the basis for any cause of action asserted by Williams.” (Pl. Brief at p. 4)
- “As alleged by William’s {sic} Complaint, Quest should have classified the Minor’s mutation as a ‘disease associated mutation’ in that portion of the Technical Results used to describe the ‘Variant Type.’ Instead, the Technical Results of the 2007 Report, published by Quest, label the variant type as ‘Variant of unknown significance.’” (Pl. Brief at 4)
- “Quest’s Chief CLIA Laboratory Director, Sat Dev Batish PhD, reviewed and authorized the publication of the 2007 Report along with its Technical Results.” (Pl. Brief at 5)
- “Quest’s motion to dismiss reasons that the medical malpractice statute of repose (S.C. Code § 15-3-545(A)(2005)) – only available to licensed health care providers – bars recovery under the facts alleged by the Complaint.” (Pl. Brief at 5)
- “Williams posits that instant action is one of ordinary negligence and not medical malpractice and is the result of improper and/or inadequate administrative oversight of published Technical Results in the 2007 Report.” (Pl. Brief at 6)
- “Williams would argue that the malfeasance asserted in the instant action is one of ordinary negligence, as opposed or a newly discovered from of medical malpractice {sic}.” (Pl. Brief at 16)
- “the claims Williams has asserted against Quest, for its misclassification, result from a failure of administrative oversight of Quest.” (Pl. Brief at 16)

- “Williams does not assert that the highly specialized and technical aspects of isolating and inspecting the SCN1A gene or the complex analysis used to describe the Minor’s particular SCN1A gene mutation was performed incorrectly, nor does Williams assert that such activities give rise to any of the causes of action asserted in the case at bar.” (Pl. Brief at 16-17)
- “Williams’ claims of negligence arise from the misclassification of the Minor’s mutation as one of ‘unknown significance.’” (Pl. Brief at 17)
- “Quest failed to properly classify, or label, the ‘Variant Type,’ within the 2007 Reports’ Technical Results. Such a failure may have may have {sic} resulted from a routine scrivener’s error, whereby a laboratory technician simply failed to select or write in, the correct category after reviewing correct results.” (Pl. Brief 17)

In response to Plaintiff’s repeated references to the First Amended Complaint, its allegations, and its attachments, Defendants’ Supreme Court Brief cites to the First Amended Complaint and to its attachments in order to respond to Plaintiff’s arguments and to highlight for the Supreme Court the glaring inconsistencies between the allegations of Plaintiff’s First Amended Complaint and her current position.

In Plaintiff’s Reply Brief, filed September 21, 2017, Plaintiff “objects the belabored {sic} references to the Amended Complaint as well as the attached evidentiary materials and supporting affidavits.” (Pl. Reply Brief at 1) Plaintiff argues that “Quest’s references to such materials are improper and should be stricken from its brief.” (Pl. Reply Brief at 2)

It is remarkable that the Plaintiff would repeatedly reference her First Amended Complaint, its allegations, and its attachments and then argue that the Defendants should be barred from doing the same in order to refute those arguments. It is equally remarkable that the Plaintiff would object to the Supreme Court being informed of her own allegations and the basic facts underlying the case. Indeed, one of Plaintiff’s main arguments to the Supreme Court is that Defendants are not

entitled to the protections of the Statute of Repose because Plaintiff's allegations sound in ordinary negligence rather than medical negligence. *See e.g., Pl. Brief at 14*: "The Actions of Quest Constitute Ordinary Negligence, Not Medical Malpractice." In response, Defendants have pointed out to the Court that Plaintiff attached to her Complaint the affidavits of two medical experts and the "affidavit and all of its attachments are incorporated within this complaint and attached hereto as Exhibit A [and B], as if set forth herein verbatim." [First Amended Complaint at ¶¶ 11 and 38] Contrary to Plaintiff's claim to the Supreme Court, the affidavit of Dr. Cook-Deegan explicitly accuses the Defendants of "negligent diagnosis and failure to accurately advise selection of appropriate therapy." (Am. Compl. Ex. A, ¶ 23) Because the Plaintiff has made repeated representations to the Supreme Court about the contents of her Complaint, the Defendants respectfully request that the Complaint be submitted to the Supreme Court in order that the Court may ascertain the truth of those representations and in order that the Defendants may defend themselves against those representations.

Rule 244(b) provides that "[t]he Supreme Court will not consider any documents or other evidentiary materials unless the certifying court has submitted those materials." Defendants do not believe that the underlying complaint in a case – a public record publicly available through PACER – falls within the purview of 'documents or other evidentiary materials' requiring inclusion in the record in order to be considered on certification to the South Carolina Supreme Court. The complaint provides the Supreme Court with the basic factual background and allegations that give rise to the certified question being considered. Moreover, it appears that the Supreme Court could take judicial notice pursuant to Rule 201 of the South Carolina Rules of Evidence of the fact that a Complaint, a public document, has been filed and contains certain allegations. Nonetheless, in an abundance of caution and out of respect for the rules of this Court

and the Supreme Court, Defendants respectfully request that this Court submit the First Amended Complaint with all attachments to the South Carolina Supreme Court for its consideration.

The undersigned affirms that, prior to the filing of this motion, he communicated with Plaintiff's counsel concerning this motion and Counsel for Plaintiff does not consent to the request to submit additional materials to the South Carolina Supreme Court.

Respectfully submitted,

WYCHE, P.A.

s/ John C. Moylan, III

John C. Moylan, III (S.C. Bar No. 11227)
Alice W. Parham Casey (S.C. Bar No. 13459)
801 Gervais St., Suite B
Columbia, South Carolina 29201
Telephone: (803) 254-6542
Facsimile: (803) 254-6544
Email: jmoylan@wyche.com; tcasey@wyche.com

Wallace K. Lightsey (S.C. Bar No. 6476)
Wade S. Kolb III (S.C. Bar No. 100379)
44 East Camperdown Way
Post Office Box 728
Greenville, South Carolina 29602-0728
Telephone: (864) 242-8200
Facsimile: (864) 235-8900
Email: wlightsey@wyche.com; wkolb@wyche.com

Attorneys for Defendants

October 3, 2017

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

AMY ELIZABETH WILLIAMS as the
PERSONAL REPRESENTATIVE of the
ESTATE FOR [REDACTED],
and AMY ELIZABETH WILLIAMS
individually,

Plaintiffs,

vs.

QUEST DIAGNOSTICS, INC., ATHENA
DIAGNOSTICS, INC., and
ADI HOLDINGS, INC.,

Defendants.

C.A. No. 3:16-cv-00972-MBS

RECEIVED

OCT 03 2017

S.C. SUPREME COURT

PROOF OF SERVICE

I certify that I have served this 3rd day of October, 2017, the Motion to Submit Additional Materials to the South Carolina Supreme Court on counsel for the Plaintiffs by depositing copies of same in the U.S. Mail, first class postage prepaid, addressed as shown below:

Bradford W. Cranshaw
Trevor M. Hughey
G. Robert DeLoach, III
Grier, Cox and Bradshaw, LLC
2999 Sunset Blvd., Suite 200
West Columbia, SC 29169

Matthew M. McGuire
James M. Ervin
The Ervin & McGuire Law Firm
1824 Bull St.
Columbia, S.C. 29201

s/John C. Moylan, III
John C. Moylan, III (Fed. Id. No: 9431)
S.C. Bar No. 11227
Attorney for Defendants