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PROLOGUE

(as to the grant of the respondent's motion for summary judgment)

> [A]s far as this being an unfair trade practices act, I don't buy it. I think it's good public policy to ask that the health care provider offer a discount if the person needs - - is in a self-pay situation . . . . [R]ather than being a bad public policy, I think it's probably good public policy to encourage them to offer the discount.
>
> And because it's a matter of grace, they set up the circumstances under which the discount is offered, and if they find the discount no longer exists, I think they are perfectly free to withdraw the discount, so as to the summary judgment motion for this being an Unfair Trade Practice act, I'll grant that.

– The Honorable Roger M. Young (R. p. 111, line 24 – p. 112, line 12.)

(as to the denial of the appellant's motion to compel)

> [**Court**]: So you want them to go and tell you 31,000 different reasons why they revoked the discount?
> [**Appellant's Counsel**]: More or less, yes, sir.
> [**Court**]: Okay. Well, that ain't happening, so you got to come up with something better than that.

(R. p. 96, lines 18-24.)

INTRODUCTION

In this appeal, the appellant, Dominique Smalls, challenges the circuit court's grant of summary judgment in favor of the respondent, Roper St. Francis Healthcare ("Roper" or the "Hospital"), on her claim under the South Carolina Unfair Trade Practices Act ("UTPA" or the "Act"). She also challenges the circuit court's denial of her motion to compel certain discovery responses from Roper.

Ms. Smalls' UTPA claim is founded upon Roper's withdrawal of a so-called "self-pay" discount that it had previously – and gratuitously[1] – credited on her Hospital bill because she was without health insurance when she was treated following an automobile accident. Ms. Smalls contends that Roper's withdrawal of the self-pay discount in the wake of her settlement of third-party liability claims arising out of the subject automobile accident – claims for which she expressly sought recovery of her medical expenses – violated the Act because it imposed a monetary penalty upon her based on her pursuit of personal injury claims.

The circuit court properly granted Roper summary judgment, finding that there was no genuine dispute as to any fact material to Ms. Smalls'

[1] To be clear, **Roper was not in any way obligated to give Ms. Smalls this discount to begin with**. It was, as the circuit court aptly described it, "a matter of grace," not an entitlement.

UTPA claim, and that Roper's reversal of its gratuitous self-pay discount so as to collect the full and fair value of the medical services it rendered to Ms. Smalls neither violated the Act nor proximately caused Ms. Smalls any ascertainable loss of money.[2] [3] The circuit court also properly exercised its discretion to deny Ms. Smalls' unnecessary and unduly burdensome motion to compel from Roper specific information regarding each of the approximately 31,000 prior instances in which the Hospital credited and later withdrew its gratuitous self-pay discount.

This Court should affirm the circuit court.

COUNTER-STATEMENT OF THE CASE WITH STATEMENT OF FACTS

On November 23, 2006, Ms. Smalls was injured in an automobile accident. (R. pp. 124-125; R. pp. 126-127; R. pp. 131-134; R. pp. 128-129; R. p. 130; R. pp. 135-136; R. pp. 141-155.) She was immediately transported by EMS to the Hospital for medical treatment. (R. pp. 124-125; R. pp. 126-127; R. pp. 128-129.)

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[2] There is no dispute in this case that the full value of the medical services provided to Ms. Smalls was properly calculated by the Hospital and did not reflect any inflated or otherwise erroneous charges. The full, i.e., undiscounted, value of the medical services Roper provided to Ms. Smalls was indeed a fair value for such services.

[3] Ms. Smalls has not claimed any loss of property in this action – though, Roper notes, however, that the analysis presented herein in support of the circuit court's decision is equally persuasive with respect to such a claim.

During her stay at Roper – which lasted from the date of the accident until her discharge on December 18, 2006 – Ms. Smalls incurred charges for medical services provided by the Hospital totaling $66,563.75. (R. pp. 124-125; R. pp. 126-127; R. pp. 128-129; R. pp. 141-155.) **There is no dispute that the medical services that Ms. Smalls received from Roper were properly valued at $66,563.75. To be clear, Ms. Smalls does not allege that this amount of total charges that she incurred is inflated or in any other way inaccurate or improper.** (R. pp. 115-116; R. pp. 69-77.)

When Ms. Smalls presented to the Hospital for treatment she did not have health insurance. Consequently, Roper noted in its records that she was a self-pay patient. (R. pp. 18-19, ¶¶ 17 & 19; R. p. 60; R. p. 69; R. pp. 141-155; App. Br. p. 3.) **Although Roper was under no obligation whatsoever in this regard**, as a matter of grace, because Ms. Smalls was identified in its records as a self-pay patient – and, therefore, presumptively in the position of having to meet the financial obligations arising out of her treatment on her own – a self-pay discount (of 20%) was credited on her Hospital bill. Applied to her total charges of $66,563.75, the self-pay discount reduced Ms. Smalls' "estimated" balance due to Roper to $53,251.00. (R. p. 11, ¶ 6; R. p. 17, ¶ 2; R. pp. 141-155.)

Ms. Smalls retained the plaintiff, Law Offices of William A. Green ("Green"), to represent her in pursuit of damages from third parties arising out of the subject automobile accident, **such damages expressly including all of the charges she accrued at Roper as a result of the accident**. (R. pp. 124-125; R. pp. 126-127; R. pp. 128-129; R. p. 130.) Green settled Ms. Smalls' claims for a total of $220,000. (R. p. 137; R. pp. 131-134; R. p. 130; R. pp. 135-136.) In doing so, Green understood the total of all charges for medical services provided by Roper to Ms. Smalls to be $66,563.75, and expressly relied upon this figure to negotiate the $220,000 settlement, stating in demand letters to the insurance carriers involved – written after the self-pay discount had been credited to Ms. Smalls' hospital bill – that her "medical specials" included "$66,563.75" attributable to Roper. (R. pp. 141-155; R. pp. 124-125; R. pp. 126-127; R. pp. 128-129.)

Through Green, Ms. Smalls claimed that the drivers of two other vehicles were responsible for the subject accident. She contended that these vehicles collided ahead of her, whereupon one of those vehicles entered her lane of travel and struck the vehicle that she was driving head-on. (R. pp. 124-125; R. pp. 126-127; R. pp. 128-29.) Only one of the other two vehicles involved in the accident had liability insurance coverage, which coverage was in the then minimal lawful limit of $15,000 for bodily injury to one

person in any one accident. The carrier on this policy tendered its policy limits to Ms. Smalls. Ms. Smalls also recovered the full $100,000 limits of both the uninsured motorist ("UM") and underinsured motorist ("UIM") coverage on the vehicle that she was driving.[4] Accordingly, the $220,000 settlement Ms. Smalls obtained exhausted all of the liability, UM, and UIM coverage triggered by the subject accident. (R. pp. 124-125; R. pp. 126-127; R. pp. 131-134; R. pp. 128-129; R. p. 130; R. pp. 135-136; R. pp. 141-155.)[5]

In light of Ms. Smalls' settlement, even though she did not have health insurance, she was not without a third-party source compensating her for medical expenses associated with the subject accident, which included Roper's charges. After learning of Ms. Smalls' settlement, Roper reversed the self-pay discount gratuitously credited to her bill and informed Ms. Smalls that she owed the Hospital's total charges of $66,563.75. (App. Br. p. 2; R. pp. 69-77.) **To be clear, at no time has the Hospital sought payment from Ms. Smalls for more than $66,563.75, the admittedly proper value of the total charges for medical services provided to her.**

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[4] Ms. Smalls was driving her mother's vehicle at the time of the accident. (R. p. 105, lines 17-22.) Ms. Smalls did not present a property damage claim. (R. pp. 124-125; R. pp. 126-127; R. pp. 131-134; R. pp. 128-129; R. p. 130; R. pp. 135-136.)

[5] The record is not entirely clear as to the coverage under which the additional $5,000 was paid to Ms. Smalls. (R. p. 137.) Regardless, it is beyond dispute that Ms. Smalls recovered all liability, UM, and UIM

Roper did not increase or inflate or add any new charges to Ms. Smalls' bill, it merely reversed the self-pay discount – which was, again, a matter of grace to begin with – previously credited on her bill. In other words, Roper sought payment from Ms. Smalls for the full and fair value of medical services it provided to her, nothing more.

Ms. Smalls did not agree with Roper's withdrawal of the self-pay discount. (R. p. 12, ¶ 11; R. p. 17, ¶ 5.) Green withheld $13,312.75 of Ms. Smalls' settlement proceeds in trust – i.e., the difference between Ms. Smalls' total Hospital charges and the amount owed with the self-pay discount credited – and Ms. Smalls paid Roper $53,251.00. (R. p. 12, ¶ 10; R. p. 14, ¶ 11; R. p. 18, ¶ 14.)

On February 6, 2009, Green commenced the present action, joining Ms. Smalls and Roper as defendants, and asking the circuit court to accept deposit of the $13,312.75 that it held in trust and to determine the entitlement thereto as between Ms. Smalls and Roper. (R. pp. 10-12.)

Roper timely answered Green's interpleader complaint, asserting a cross-claim against Ms. Smalls for the $13,312.75 outstanding balance on her Hospital bill as well as the recovery of the costs associated with collection of its unpaid account balance. (R. pp. 13-16.) **Notably, Roper**

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coverage triggered by the subject accident.

denied the material allegations of Green's complaint, including, the allegation in paragraph 8 that it "is claiming a lien for $13,312.75, the difference between the initial billed amount of $66,563.75 and the self discount bill amount of $53,251.00." (R. p. 11, ¶ 8; R. p. 14, ¶ 7.) **Roper has never made such a claim, nor has Roper ever demanded, requested, or otherwise encouraged Green to withhold or refrain from disbursing any portion of the proceeds of Ms. Smalls' settlement or to file an interpleader concerning the $13,312.75 that Green chose to retain in its trust account.** (R. pp. 11-12; R. pp. 13-16; R. pp. 17-21; R. pp. 24-26; R. p. 103, line 12 – p. 104, line 6.)[6]

The only claim that Roper has asserted is against Ms. Smalls personally for the recovery of its outstanding balance for medical services rendered (and costs related thereto). Ms. Smalls incorrectly recites in her brief that Roper's cross-claim "alleg[es] that [she] owed **the disputed funds** [i.e., the money held in trust by Green] to Roper as payment for care given."

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[6] In this regard, Roper notes that, at the summary judgment hearing, its counsel explained, "We never wrote Bill Green's office and told Bill Green's office not to disburse these funds. . . . We've never done anything to Bill Green's office and said don't disburse this money, and if they had disbursed this money, it would have been a question of whether or not [Ms.] Smalls chose to pay the money back." (R. p. 103, line 23 – p. 104, line 6.) Neither Ms. Smalls' counsel nor D. Scott Drescher, Esquire, the attorney with Green that represented Ms. Smalls with respect to her personal injury

(App. Br. p. 3) (emphasis added.) Likewise, Ms. Smalls incorrectly recites in her brief that Roper held a lien on her settlement proceeds. (App. Br. p. 3.) Neither proposition finds support in the record. **To be clear, Roper has not asserted any direct claim upon, or interest in, the proceeds of Ms. Smalls' settlement. Roper's claim is for a money judgment against Ms. Smalls.**

In her answer to Green's interpleader complaint and Roper's cross-claim, Ms. Smalls asserted a cross-claim against Roper for violation of the UTPA. (R. pp. 17-21.) She alleged that the Hospital "unilaterally withdrew the self-pay discount based on [her] retention of counsel and pursuit of civil remedies for her injuries," and that this imposed upon her a "monetary penalty . . . based on her choice of association with a lawyer and her pursuit of civil remedies available to her [which] is an unfair or deceptive act or practice in the conduct of trade and commerce and is therefore unlawful pursuant to applicable law." (R. p. 19, ¶¶ 20 & 23.)

Roper timely answered Ms. Smalls' cross-claim, denying its material allegations, and later moved for summary judgment on the claim. (R. pp. 24-26; R. pp. 51-52.) Roper's summary judgment motion was heard before the Honorable Roger M. Young on March 18, 2010. Also heard at this time

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claims (and who was present at the hearing), objected or contradicted

was Ms. Smalls' motion to compel specific discovery responses from Roper relating to each of the approximately 31,000 times that the Hospital previously credited and withdrew its self-pay discount. (R. pp. 27-48; R. pp. 93-114.)[7]

During the March 18, 2010 hearing, Judge Young ruled from the bench, granting Roper's motion for summary judgment and denying Ms. Smalls' motion to compel. (R. pp. 93-114.) On March 30, 2010, Judge Young entered a written order setting forth his ruling. (R. pp. 1-7.) By order entered April 29, 2010, he denied Ms. Smalls' motion for reconsideration of the grant of Roper's summary judgment motion and the denial of her motion to compel. (R. pp. 69-77; R. pp. 8-9.) This appeal followed. (R. pp. 78-79.)

STANDARD OF REVIEW

"The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder." Wogan v. Kunze, 366 S.C. 583, 591, 623 S.E.2d 107, 112, (Ct. App. 2005). "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ,

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Roper's counsel in any way. (R. p. 111, lines 13-18.)

[7] With respect to the summary judgment motion, counsel for both Roper and Ms. Smalls presented Judge Young with a memorandum of law in addition to their oral argument in support of their respective positions. (R. pp. 93-114; R. pp. 53-59; R. pp. 60-66.)

summary judgment should be granted." Id.

"An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP." Brockbank v. Best Capital Corp., 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000). "A trial court may properly grant a motion for summary judgment when 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" Id. at 378, 534 S.E.2d at 692 (citing Rule 56(c)).

While it is true that the summary judgment standard favors the non-moving party, and that the existence of any triable issues of fact is determined by viewing the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to that party,[8] this Court has recognized summary judgment to be a viable pretrial device for the resolution of many cases. Eldridge v. Greenwood, 300 S.C. 369, 378, 388 S.E.2d 247, 252 (Ct. App. 1989). Respectfully, this is such a case. *Cf.* Camp v. Springs Mortgage Corp., 310 S.C. 514, 518, 426 S.E.2d 304, 306 (1993) (affirming dismissal of complaint where "[t]he conduct complained

[8] Id. at 378-79, 534 S.E.2d at 692.

of . . . [did] not describe any action . . . that was 'unfair' or 'deceptive.'").

Additionally, a circuit court's ruling on discovery matters will not be disturbed on appeal absent an abuse of discretion. Creighton v. Coligny Plaza Ltd. P'ship, 334 S.C. 96, 121, 512 S.E.2d 510, 523 (Ct. App. 1998). The burden is on the appellant to demonstrate that the circuit court abused its discretion. Id. at 122, 512 S.E.2d at 523. A reviewing court may find abuse of discretion where an appellant shows that the circuit court's conclusion is based upon an error of law or without evidentiary support. Id.

ARGUMENT[9]

I. The circuit court did not err in granting Roper summary judgment on Ms. Smalls' UTPA claim.

A. As an initial matter, Ms. Smalls' challenge to the circuit court's grant of summary judgment in favor of Roper on her UTPA claim is undermined by the requirements of appellate issue preservation.

Ms. Smalls contends that the circuit court erred by granting Roper summary judgment on her UTPA claim "before the interpleader action is resolved." (App. Br. p. 5) (all capital letters in original.) A review of the record reveals that Ms. Smalls never argued to the circuit court that Roper's

[9] Though separately set forth, the argument/analysis presented herein necessarily contains some overlap amongst the issues before the Court. To the extent that the argument/analysis contained in any particular portion of this brief is relevant to any other portion, the same is hereby incorporated therein by reference.

summary judgment motion should not be heard "before the interpleader action is resolved." Consequently, she cannot raise this argument as a challenge to the circuit court's ruling on appeal. Mathis v. Brown & Brown of S.C. Inc., 389 S.C. 299, 311, 698 S.E.2d 773, 779 (2010) ("In order for an issue to be properly preserved for appeal, it must have been both raised to and ruled on by the trial court."); Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review. Moreover, an objection must be sufficiently specific to inform the trial court of the point being urged by the objector.") (internal citation omitted).

Moreover, at the outset of the March 18, 2010 motion hearing, the circuit court questioned Roper's counsel as to the propriety of proceeding with the Hospital's summary judgment motion in light of Ms. Smalls' claim that additional discovery needed to be conducted. During this exchange, Ms. Smalls' counsel confirmed that the only discovery that Ms. Smalls claimed needed to be conducted pertained to her pending motion to compel information relating to each of the some 31,000 prior instances in which Roper credited and later reversed the self-pay discount:

> [**Court**]: All right. We're here on [G]reen versus Roper Hospital and Smalls. Summary

judgment motions on here. And I read the stuff y'all gave me, and what I just got this morning from Smalls side says discovery is not finished yet, so isn't that kind of basic, that you need to finish that up before we can do summary judgment?

***

[**Roper's Counsel**]: Well, I have an objection to what they've asked for in discovery. I don't think the discovery is relevant to the issues in this case. . . . They want us to go through 31,000 patient files and determine why a self-paid discount was revoked on those 31,000 patients, and our position is, A, first of all, it would be a HIPPA violation for us to provide any of that information, and the second is it's irrelevant for them to need that information to prove an unfair trade practices claim.

And if you'll note, I submitted an affidavit from Laura Icar[d] which basically gives them the information they need, as far as proving the elements of the unfair trade practice claim which would be repetition, and I believe that's why they wanted these documents is to prove repetition. I've submitted an affidavit from [a] Roper employee who said [s]he's done it 31,000 times.

[**Court**]: You're basically saying you agree with everything they say. There is no factual dispute that you give this discount and you, in the same circumstances - -

[**Roper's Counsel**]: Absolutely. There is no factual dispute that we give a self-paid discount and that we reverse the self-paid discount when we found out that there is a third party payor or a payor who is going to be responsible for the medical bills. So their requests, the information they want - -

[**Court**]: And you're willing to stipulate to that if I rule against you and you got to go to trial?

[**Roper's Counsel**]: That we do the self-pay discount and reverse it?

[**Court**]: Yes.

[**Roper's Counsel**]: Yes. There is no question about it.

[**Court**]: Is that satisfactory?

[**Ms. Smalls' Counsel**]: In addition to the repetition, one of the points that Ms. Smalls would like to make is that this practice is unfair because of the arbitrary manner in which the self-paid discount is granted and then taken away by any random person, really, who might answer the phone that day or might be working in the billing department that day.

So it's not only that this happened to this 31,000 times, but sort of the willy nilly way in which it happens we think is relevant to Ms. Smalls' claim for unfair trade practices.

[**Court**]: So you want them to go and tell you 31,000 different reasons why they revoked the discount?

[**Ms. Smalls' Counsel**]: More or less, yes, sir.

[**Court**]: Okay. Well, that ain't happening, so you got to come up with something better.

[**Ms. Smalls' Counsel**]: Okay.

[**Roper's Counsel**]: And I don't enjoy proving my opposition's case, but I believe they

> can call Laura Icar[d] to the stand. They've taken her discovery deposition, and she tells them why, the circumstances why they reversed the self-pay discount. That testimony is going to be in the record. It already is in the form of her deposition testimony, so that is why I don't believe that information that they're seeking prejudices them at all for this motion for summary judgment. They've already gotten that information.
>
> [**Court**]: **Okay. All right. Well, <u>is that the only other thing that you need in order to go forward on this motion?</u>**
>
> [**Ms. Smalls' Counsel**]: **<u>That is correct, sir.</u>**
>
> [**Court**]: Okay. Well, I'm not going to make them give you 31,000 records and then you sit there and ask somebody 31,000 different reasons why. That is just way too burdensome, and they're willing to basically stipulate to whatever it is that you want to suggest is nefarious on their part, and they're saying it's perfectly legitimate on their part.
>
> It doesn't really sound like there is a real factual dispute at all. All right. Let's go ahead and rule on the motion then.

(R. p. 94, line 2 – p. 97, line 24) (emphasis added.) Accordingly, Ms. Smalls' counsel conceded that, but for the specific discovery she sought to compel, Roper's motion for summary judgment was ripe for adjudication and cannot now be heard to contend otherwise. <u>TNS Mills, Inc. v. S.C. Dep't of Revenue</u>, 331 S.C. 611, 617, 503 S.E.2d 471, 474 (1998) ("An issue conceded in a lower court may not be argued on appeal.").

B. The circuit court properly found that Ms. Smalls' UTPA claim failed as a matter of law.

The circuit court did not err in granting Roper summary judgment on Ms. Smalls' UTPA claim because there is no genuine dispute as to any fact material to the determination of her claim as a matter of law and, under the material and undisputed/indisputable circumstances presented, Ms. Smalls cannot make the requisite showing for recovery under the Act. More specifically, the circuit court did not err in ruling that Roper neither violated the Act nor proximately caused Ms. Smalls any ascertainable loss of money.

1. Elements of a successful UTPA claim

To recover on an UTPA claim, a plaintiff must prove a violation of the Act by the commission of an unfair or deceptive act in trade or commerce, proximate cause, and damages. Charleston Lumber Co. v. Miller Housing Corp., 318 S.C. 471, 482, 458 S.E.2d 431, 438 (Ct. App. 1995).

With respect to proving a violation of the Act, UTPA makes it unlawful to engage in "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." S.C. CODE ANN. § 39-5-20. "A trade practice is 'unfair' when it is offensive to public policy or when it is immoral, unethical, or oppressive; a practice is 'deceptive' when it has a tendency to deceive." Young v. Century Lincoln-Mercury, Inc., 302 S.C. 320, 326, 396 S.E.2d 105, 108 (Ct. App. 1989)

affirmed in part, reversed in part, on other grounds, 309 S.C. 263, 422 S.E.2d 103 (1992); *accord* Johnson v. Collins Entm't Co., Inc., 349 S.C. 613, 636, 564 S.E.2d 653, 665 (2002). Additionally, to be actionable under the Act, the unfair or deceptive trade practice must have an impact on the public interest. Crary v. Djebelli, 329 S.C. 385, 387, 496 S.E.2d 21, 23-24 (1998).

Proving "[p]roximate cause requires proof of both causation in fact and legal cause." Small v. Pioneer Mach., Inc., 329 S.C. 448, 463, 494 S.E.2d 835, 842 (Ct. App. 1997). "Causation in fact is proved by establishing the injury would not have occurred 'but for' the defendant's [complained-of act]." Id. "Legal cause is proved by establishing foreseeability." Id. "The test of foreseeability is whether some injury to another is the natural and probable consequence of the complained-of act." Id. "A plaintiff therefore proves legal cause by establishing the injury in question occurred as a natural and probable consequence of the defendant's act." Id., 494 S.E.2d at 843.

With respect to damages, a plaintiff must suffer an ascertainable loss of money or property proximately caused by the alleged UTPA violation. S.C. CODE ANN. § 39-5-140 ("(a) Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or

employment by another person of an unfair or deceptive method, act or practice declared unlawful by Section 39-5-20 may bring an action individually, but not in a representative capacity, to recover actual damages."). The plain language of the statute does not contemplate an UTPA claim founded on non-pecuniary loss, for example, emotional distress (as Ms. Smalls claims here).

2. Facts beyond genuine dispute

The following facts are beyond genuine dispute:

- Ms. Smalls incurred total charges of $66,573.75 for medical services provided to her by Roper following the subject automobile accident.

- The total amount of Ms. Smalls' Hospital charges ($66,573.75) was not inflated or in any other way improper or incorrect, and reflected a fair amount to be paid to Roper for the services that it provided to Ms. Smalls in the absence of any discount.

- Roper was not in any way obligated to provide Ms. Smalls a self-pay discount – or any other discount.

- Roper initially credited Ms. Smalls' Hospital bill with the self-pay discount, as matter of grace, because she did not have health insurance.

- Roper reversed the self-pay discount on Ms. Smalls' Hospital bill after learning that she had, through her attorney, settled third-party liability claims arising out the accident that lead to her treatment at the Hospital.

- In settling her third-party claims, Ms. Smalls specifically

sought and recovered the full amount of the Hospital's charges ($66,573.75) as special damages.

- Ms. Smalls settled her third-party claims for a total amount $220,000, exhausting all liability, UM, and UIM coverage triggered by the subject automobile accident.

- Roper has never claimed any direct entitlement to Ms. Small's settlement proceeds.

- Green unilaterally withheld $13,312.75 of Ms. Smalls' settlement proceeds in trust and commenced the interpleader regarding the same without any demand, request, or encouragement of any kind from Roper to do so.

- Roper has sought, and continues to seek, from Ms. Smalls recovery of its unpaid account balance for services rendered to her.

- Roper has never sought from Ms. Smalls more that the full amount of its fair total charges for medical services provided to her following the subject accident.

3. Roper did not violate the Act.

In her brief, Ms. Smalls explains her UTPA claim as follows:

> Roper billed the full amount, granted a discount when it learned Miss Smalls had no health insurance coverage, and revoked the discount when it learned that Miss Smalls had counsel and there may be insurance coverage *from some source* that Miss Smalls would recover.
>
> ***
>
> Because the self-pay discount was not reversed until the hospital learned a lawyer was involved and a settlement was being reached, Miss Smalls

> was penalized for exercising her right to seek counsel. When Roper reversed its discount based on Miss Smalls' pursuit of a personal injury claim, its actions constituted an unfair trade practice.
>
> ***
>
> Miss Smalls does not allege that the discount violates public policy, as the [circuit] Court seemed to think, and she concedes that Roper is under no obligation to offer discounts to its patients. Miss Smalls does, however, allege that once a discount is given, and where the situation has not changed (i.e. the patient has no medical insurance) the discount is depended on by a patient in decision making regarding care, treatment, and third-party claims, that to arbitrarily revoke it threatens the public, especially if revocation is responsive to the patient's retention of legal counsel.

(App. Br. pp. 6, 12, & 14) (italics in original.)

Ms. Smalls' argument relies upon the untenable premise that Roper's reversal of a gratuitous discount – which, it should be noted, was credited after the provision of medical services to Ms. Smalls and was not presented as an inducement to Ms. Smalls to utilize the Hospital's services – amounts to a "penalty." It cannot reasonably be concluded that requiring Ms. Smalls to pay the full and fair price for the medical services she received from Roper constitutes a penalty.

Moreover, Ms. Smalls' suggestion that Roper's withdrawal of the self-pay discount would unduly chill the public's exercise of legal rights by

the pursuit of personal injury claims is illogical as, indeed, particularly illustrated by her own case. Here, Ms. Smalls received $220,000 in settlement of her third-party claims arising out the subject automobile accident. It cannot reasonably be concluded that requiring Ms. Smalls to pay the full and fair price for the medical services she received from Roper – as opposed to the discounted price that was $13,312.75 less – would unduly dissuade her – or anyone other reasonable person similarly situated – from pursuing $220,000 in personal injury claims. This is especially true when, with the assistance of counsel, Ms. Smalls expressly sought and recovered the full amount of Roper's total charges from third-parties.

In this regard, Roper notes that Ms. Smalls' contention that she was denied the self-pay discount merely by virtue of her retention of counsel is plainly belied by the undisputed record, including her pleadings and statements from her own counsel.[10] In her cross-claim, Ms. Smalls alleges that "[o]n information and belief, **Roper St. Francis was aware, at the time it applied the 'self-pay' discount, that [she] was represented by counsel and/or was pursuing legal remedies available under the law.**" (R. p. 20, ¶ 28) (emphasis added). At the summary judgment hearing, Ms. Smalls'

[10] Notably, Ms. Smalls describes this issue as "a crux of this case . . . ." (App. Br. p. 15) (claiming that "whether Ms. Smalls' discount was revoked, at least in part, because she hired counsel . . . is a crux of this case . . . .")

counsel expressly stated that "during Ms. Smalls' stay at Roper, **Roper knew that she had an attorney, and they still provided her with this discount** . . . ." (R. p. 105, lines 23-25) (emphasis added.) This fact is again recognized in Ms. Smalls' brief, which states: "On information and belief, **Roper St. Francis was aware, at the time it applied the 'self-pay' discount, that [she] was represented by counsel** and was pursuing legal remedies available to her under the law . . . ." (App. Br. p. 15.) Further, the statement of case[11] in Ms. Smalls' brief provides: "**After** [her] personal injury matter was settled and funds disbursed, [Roper] demanded additional payment on its bill." (App. Br. p. 2) (emphasis added.)

Clearly, Roper's reversal of the self-pay discount was not prompted by Ms. Smalls' retention of counsel, but by her change in status as a self-pay patient in light of her recovery on third-party claims arising out of the subject accident.[12] [13] This was properly recognized by the circuit court:

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[11] The South Carolina Appellate Court Rules provide that "[a]ny matters stated or alleged in appellant's statement [of the case] shall be binding on appellant." Rule 208(b)(1)(C), SCACR.

[12] In this regard, Roper notes that the mere retention of an attorney to pursue third-party liability claims has no logical impact on a patient's status as a self-pay patient. It is not until a recovery for medical expenses is obtained – whether with the assistance of counsel or not – that this status changes. Roper is no position to evaluate the merits of a patient's personal injury claim. Just because such a claim is being pursued does not give Roper any assurance that the patient will recover their medical expenses.

[**Roper's Counsel**]: When you walk in the door to Roper Hospital and you tell the hospital that you don't have insurance, they, when they're entering all your information on the admission form, this self-pay discount is automatically generated. . . .

We give a discount, and then when we find out someone is actually going to pay the medical bills, we ask for the money back, and the reason we ask for the money back is because Roper is actually paying the nurses. They're paying the techs who provide care. They're paying the pharmaceutical company who supplies the medications to [Ms.] Smalls, and that - -

[**Court**]: Well, the conditions under which you granted the discount no longer exist, is my understanding.

[**Roper's Counsel**]: That's exactly - - that's the quickest way to say it, is that the condition changed. We granted the discount because you weren't able - - you didn't have a source to pay the medical bills, and now you do, so we reversed it. So I don't think that is offensive to public policy to do that, and I think if that is offensive to public policy, then what is going to end up happening is that Roper is going to cut out the self-pay discount completely.

(R. p. 100, lines 8-12; R. p. 101, line 24 – p. 102, line 17.)

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[13] Nonetheless, Roper maintains that even assuming, *arguendo*, its reversal of the gratuitous self-pay discount from Ms. Smalls' Hospital bill was purely motivated by her retention of counsel, it still has not violated the Act or proximately caused Ms. Smalls any ascertainable loss of money under the undisputed circumstances presented here.

Ms. Smalls' position wrongfully equates being without health insurance with somehow being entitled to the self-pay discount, a discount which is, of course, gratuitous to begin with. (App. Br. p. 3) (claiming that "[a]s a result of her injuries, [Ms. Smalls] sought treatment at Roper and was provided a bill for services rendered based on her status as a **'self-pay' (i.e., uninsured)** patient.") (emphasis added); (App. Br. p. 15) (arguing that "Miss Smalls did still meet **the condition for the discount (i.e. uninsured)** . . . .") (emphasis added). Ms. Smalls also overlooks or ignores the material and undisputed change in circumstances occasioned by the settlement of her third-party liability claims.

There can be no reasonable dispute that Roper's gratuitous self-pay discount is directed at patients that the Hospital identifies as self-pay patients, i.e., patient's without the benefit of third-party assistance to meet the financial obligations of their medical treatment. As the circuit court correctly observed, that the Hospital provides a discount at all for patients in this circumstance is an objectively benevolent act in keeping with sound public policy.

Nonetheless, according to Ms. Smalls, an UTPA violation is born out of Roper's beneficence. She argues that once she was identified as a self-pay patient by virtue of her lack of health insurance, so long as she remained

without health insurance, the fact of her settlement of third-party claims – claims expressly seeking and obtaining recovery for the full value of her Hospital charges – cannot be considered by Roper in evaluating her self-pay status. In other words, even though her settlement, in fact, establishes the existence of a third-party source for payment of her medical expenses – a circumstance at odds with the self-pay discount that the Hospital created as a matter of grace – the Hospital must still allow her the self-pay discount or else face UTPA liability because she has been "penalized" because she exercised her legal rights in pursuit of a personal injury claim. Respectfully, this position is more appropriately described as absurd than novel. It simply cannot reasonably be found to be contrary to the public policy of this State to prevent Ms. Smalls having her cake and eating it too under the circumstances presented here. *Cf.* State v. Brown, 284 S.C. 407, 410, 326 S.E.2d 410, 412 (1985) ("The public policy of this State is derived by implication from the established law of the State, as found in its Constitution, statutes, and judicial decisions."); Read Phosphate Co. v. S.C. Tax Comm'n, 169 S.C. 314, 329, 168 S.E. 722, 728 (1933) ("To apply an old adage, 'One cannot have his cake and eat it, too.'").

In this regard, Ms. Smalls appears to believe that her recovery of UM and UIM coverage – as opposed to under an at-fault driver's liability

has no liability coverage or has less liability coverage than required by statutes. Over and above uninsured coverage, he may procure underinsured motorist coverage to protect himself in case an at-fault driver has liability coverage but the amount is insufficient to cover the damages sustained."). With respect to the question of third-party assistance and a patient's self-pay status for purposes of the subject discount, there is no material difference between a patient's assistance from his/her own health insurance carrier and his/her UM/UIM carrier – besides the fact that, as evidenced by this case, assistance from the latter is contingent upon successful pursuit of third-party liability.

By reversing the self-pay discount previously credited to Ms. Smalls' Hospital bill, Roper merely sought full and fair payment for the medical services it provided to her, the quality and propriety of such medical services not being in dispute. Since Roper was not in any way obligated to provide Ms. Smalls with the self-pay discount to begin with, it cannot reasonably be concluded that Roper's actions contravene public policy. Likewise, under the undisputed circumstances presented here, Roper's provision and withdrawal of a purely gratuitous discount in favor of full payment of its admittedly proper charges for medical services cannot reasonably be found to be immoral, unethical, or oppressive. **At no time has Roper ever looked**

coverage – is material. (App. Br. p. 10) (asserting that Ms. Smalls' "settlement funds . . . were received . . . from her underinsured motorist carrier (not, as Roper contends, insurance from a third-party) . . . .") It is not.

Again, there can be no reasonable dispute that Roper's gratuitous self-pay discount is directed at patients that the Hospital identifies as self-pay patients, i.e., patient's without the benefit of third-party assistance to meet the financial obligations of their medical treatment. Indeed the very point of UM and UIM coverage is to provide protection (by virtue of funds coming from a third party, an insurance carrier) against damages, such as financial obligations for medical treatment, arising out of an automobile accident for which the insured is not at fault – such as Ms. Smalls did here. Fireman's Ins. Co. v. State Farm Mut. Auto. Ins. Co., 295 S.C. 538, 541-42, 370 S.E.2d 85, 87 (1988). ("Uninsured motorist coverage refers to a motorist who either does not carry any liability coverage applicable to his motor vehicle or who carries liability coverage with limits less than those required by a state's financial responsibility law. Underinsured motorist coverage refers, on the other hand, to a motor vehicle covered by complying liability limits which are not adequate to compensate the . . . insured for his damages. . . . One buys uninsured motorist coverage to protect himself in case an at-fault driver

to Ms. Smalls for payment of any more than the full and fair value of its services.

Although Ms. Smalls has focused on the alleged "unfairness" of the Hospital's actions – specifically, as they relate to public policy considerations regarding her pursuit of personal injury claims – Roper notes that its actions cannot reasonably been seen as "deceptive" within the contemplation of the Act either.

In enacting UTPA, our Legislature made clear that its intent with respect to construction of the Act's prohibition on "unfair or deceptive acts or practices in the conduct of any trade or commerce" is for "the courts [to] be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to Section 5(a) (1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended." Section 39-5-20. "As defined by the Federal Trade Commission and most states," Black's Law Dictionary provides, that a "deceptive act" is "conduct that is likely to deceive a consumer acting reasonably under similar circumstances." BLACK'S LAW DICTIONARY 413 (7th ed. 1999).

Under the undisputed circumstances presented here, there is no evidence in the record – or allegation – that Ms. Smalls was lured into the Hospital by the promise of a self-pay discount. Indeed, she was transported

directly from the scene of the subject automobile accident to the Hospital by EMS. Further, the self-pay discount was credited – automatically, by the Hospital – on Ms. Smalls' bill after her discharge, and there is no evidence – or allegation – that it played any role in any decision making regarding her care and treatment. Further still, Ms. Smalls' suggestion – not plead in her cross-claim[14] – of any detrimental reliance upon the self-pay discount with respect to her third-party claims is plainly belied by the record showing that she was represented by counsel in the pursuit of such claims; that her counsel utilized the full, undiscounted amount of her total Hospital charges to settle her third-party claims; and, in so doing, obtained all available liability, UM, and UIM insurance proceeds for Ms. Smalls.

The circuit court did not err in finding that Roper did not violate the Act.

4. Roper did not proximately cause Ms. Smalls any ascertainable loss of money.

According to her brief,

> Miss Smalls' claims for violation of unfair trade

[14] In her pleading, Ms. Smalls alleges only that the reversal of the self-pay discount caused "a new charge to be made against [her] in the amount of $13,312.75" and that this "monetary penalty . . . based on her choice of association with a lawyer and her pursuit of civil remedies available to her is an unfair or deceptive act or practice in the conduct of trade and commerce and is therefore unlawful pursuant to applicable law." (*See generally* R. pp. 18-19, ¶¶17-28.)

> practices rests on the question of whether Roper harmed her, and harms the public in general, by asserting a claim over settlement funds that were received by her from her underinsured motorist carrier (not, as Roper contends, insurance from a third party), and reversing the discount it granted her as an uninsured patient – a status that did not change.

(App. Br. p. 10.)

With regard to the damages allegedly caused Ms. Smalls by Roper's crediting and later withdrawal of the self-pay discount, Ms. Smalls' argument is founded upon the fundamentally false premise that Roper "asserted a claim over [her] settlement funds . . ." and that there exists – or has ever existed – a dispute as to whom the money held in Green's trust account – i.e., the subject of the interpleader Green filed – belongs.

Ms. Smalls claims that she has been damaged because she has not received the $13,312.75 in settlement proceeds that Green retained in trust. She reasons that "[i]f the[se] funds are ultimately determined (in the interpleader action, which has not yet been ruled on) to belong to [her], [then] she has lost the benefit of the interest that could have been earned on those funds while Roper litigates its entitled to those funds." (App. Br. p. 13.)

As explained above, Roper has never asserted any claim to the $13,312.75 retained in Green's trust account or any other portion of Ms.

Smalls' settlement proceeds. Roper's cross-claim simply seeks to collect from Ms. Smalls the balance that it is owed for its services and costs incurred in conjunction with such collection. If successful, Roper would have a money judgment against Ms. Smalls personally but no claim on her settlement proceeds; proceeds Roper never prevented Ms. Smalls from receiving from her attorney, Green.[15] [16]

According to Ms. Smalls, "[t]he question presented at the summary

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[15] In this regard, Roper notes that Ms. Smalls' argument that the circuit court erred in granting summary judgment because it "essentially decided the interpleader" and "[c]learly there are material facts at issue as to whom the money belongs (which should be determined BEFORE Miss Smalls' claim for UTPA can be heard, and then, whether Roper's conduct in revoking the discount was improper under the UTPA)" is plainly misplaced. Respectfully, it is not the circuit court, but Ms. Smalls that misinterprets the issues in this case. The circuit court simply, and correctly, ruled that the material and undisputed facts were not susceptible of any reasonable conclusion but that Ms. Smalls' UTPA claim fails as a matter of law. It did not "decide the interpleader" nor did it decide any factual issue material to the issue presented to it by Roper's motion for summary judgment, which was, again, the validity of Ms. Smalls' UTPA claim as a matter of law when set against the backdrop of the undisputed/indisputable material facts of this case.

[16] Ms. Smalls' suggestion that "if Roper continues its collection action against [her], her credit will be harmed, if it has not already been so," is unavailing. (App. Br. p. 14.) The record contains no evidence regarding any harm to Ms. Smalls' credit. Further, Ms. Smalls' conslusory assertion is illogical. If Roper succeeds in its cross-claim to collect its unpaid balance from Ms. Smalls and obtains a judgment against her, such cannot fairly be viewed as damage to Ms. Smalls proximately cause by an UTPA violation. Such is a valid exercise of Roper's legal rights. Further still, Roper submits that any damage to Ms. Smalls' credit does not constitute an ascertainable

judgment hearing was whether there are material questions of fact regarding whether Roper acted in bad faith **by asserting ownership over the funds being held.**" (App. Br. p. 6) (emphasis added.) Because Roper has never asserted any "ownership over the funds being held," Ms. Smalls' claim is fundamentally misguided. Any monetary damage done to Ms. Smalls by her own attorney's retention of a portion of her settlement proceeds and commencement of an interpleader action to determine an issue that has never been disputed – i.e., the issue of the ownership of Ms. Smalls' settlement proceeds – cannot reasonably be found to have been proximately caused by Roper. Green's actions in withholding disbursement of Ms. Smalls' settlement proceeds are the sole proximate cause of any ascertainable loss of money to Ms. Smalls as a result of delay in receipt of her settlement proceeds, including any lost interest upon and/or income from and/or use of her settlement proceeds.

Further, there is no dispute that Roper provided medical services benefitting Ms. Smalls that were properly valued at $66,563.75 but has only been paid $53,251.00 by Ms. Smalls for such services. Through Green, Ms. Smalls sought and recovered medical special damages against third-parties to expressly include "medical specials" in the amount of $66,563.75

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loss of money as contemplated by the UTPA – and Ms. Smalls has provided

attributable to Roper. In fact, at the summary judgment hearing, Ms. Smalls' counsel expressly acknowledged that Green represented and relied upon the full, undiscounted amount of Roper's total charges in settling Ms. Smalls' personal injury claims:

> [**Court**]: I was reading something either last night or a little bit ago, yesterday afternoon or a little bit ago, that in fact, when Bill Green's office was negotiating with whoever they negotiated with to settle the claim, they represented to them, She's got $66,000 worth of medical bills, not she's got $53,000 worth of medical bills: is that not correct?
>
> [**Ms. Smalls' Counsel**]: That is true.

(R. p. 110, lines 7-15.)[17] Accordingly, Ms. Smalls was compensated via third-party settlement for the total amount of Roper's services ($66,563.75) even though she only paid Roper $53,251.00 for its services. She has suffered no ascertainable loss of money proximately caused by Roper.

In her brief, Ms. Smalls states that "evidence at trial would show that settlement moneys in the amount of $13,312.75 paid by AIG were intended to compensate [her] for her pain and suffering from the accident and were not intended for Roper." (App. Br. p. 13.) According to Ms. Smalls,

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no analysis or authority to show otherwise.

[17] Roper notes that Ms. Smalls' personal injury attorney was present at the motion hearing and offered no objection, contradiction, or qualification of any kind with respect to Ms. Smalls' counsel's acknowledgment. (R. p. 111, lines 13-18.)

"[d]etermining the intent behind any excess settlement funds is a question of fact for the jury and is not a matter of law. In determining this issue, testimony will be required from the lawyers who represented Miss Smalls in her personal injury case; inquiries will have to be made into what elements of damages were sought and recovered from the settling parties . . . ." (App. Br. pp. 13-14.)

In all candor, and most respectfully, the meaning of this portion of Ms. Smalls' brief is not entirely clear to Roper. Nonetheless, to the extent that Ms. Smalls is suggesting that additional discovery would show that her third-party settlement did not compensate her for the full amount of her Hospital bill ($66,573.75), as explained above, such a claim has been waived by her counsel's express agreement that no discovery beyond that specifically requested in her motion to compel was needed before adjudication of Roper's motion for summary judgment. TNS Mills, 331 S.C. at 617, 503 S.E.2d at 474 ("An issue conceded in a lower court may not be argued on appeal."). Also, this portion of Ms. Smalls' brief relies upon speculation about "facts" not appearing in the record. Rule 210(h), SCACR ("Except as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal."); Rule 210(c) ("The Record [on Appeal] shall not,

however, include matter which was not presented to the lower court or tribunal."). Further still, when a motion for summary judgment is made with proper support, "an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise . . . must set forth specific facts showing that there is a genuine issue for trial." Rule 56(e). Ms. Smalls' unsubstantiated speculation about the hidden intent behind "'excess' settlement moneys in the amount of $13,312.75 . . ." is not sufficient to show a genuine issue for trial.

Regardless, the record before the Court shows that, through her attorney, Ms. Smalls presented "***TOTAL SPECIALS***" of "$82,294.00" comprised of $440.50 attributable to Charleston County EMS, $66,563.75 attributable to Roper, $3,00.3.54 attributable to Orthopaedic [sic] Specialists of Chas., (apparently, an additional) $440.50 attributable to Charleston Emergency Services, $173.00 attributable to Diagnostic Radiology of Chas., $2,100.00 attributable to Anesthesia Associates of Chas., and Lost wages of $9,600.00. (R. pp. 128-129.)[18] Even assuming, *arguendo*, that $13,312.75 of Ms. Smalls' settlement proceeds was allocated to compensate her for pain and suffering, it is nonetheless clear that she recovered all of her pecuniary loss as represented by her counsel's demand. Her total settlement of

$220,000 – which, as explained above, exhausted all available liability, UM, and UIM coverage arising out of the subject automobile accident – exceeds the $13,312.75 amount she claims to represent compensation for her nonpecuniary damage in the form of pain and suffering by more than $200,000, an amount well over the total of all the special damages she claimed, including, of course, her Hospital charges of $66,563.75.[19]

The circuit court did not err in finding that Roper did not proximately cause Ms. Smalls an ascertainable loss of money.

II. The circuit court did not err in denying Ms. Smalls' motion to compel discovery responses from Roper.

As an initial matter, to the extent that Ms. Smalls is unsuccessful in reversing the circuit court's grant of summary judgment on her UTPA claim, her appeal of the circuit court's denial of her motion to compel discovery relating to that claim is moot and need not be addressed by the Court. Whiteside v. Cherokee County Sch. Dist. No. One, 311 S.C. 335, 340-41, 428 S.E.2d 886, 889 (1993) (noting that an appellate court need not address remaining issues when determination of prior issue is dispositive). To the

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[18] Roper notes that the total sum of the special damages identified in Ms. Smalls' counsel's demand letter of August 13, 2007 is, in fact, $82,321.29.

[19] In this regard, Roper notes that any nonpecuniary damages claimed by Ms. Smalls as result of its alleged UTPA violation are plainly outside the contemplation of the Act, which, again, requires an ascertainable loss of "money." § 39-5-140(a).

extent, however, that the Court is inclined to address Ms. Smalls' challenge to the denial of her motion to compel, such challenge is without merit.

The circuit court denied Ms. Smalls' motion to compel because "the information sought would prove to be [(1)] a violation of patient privacy and [(2)] unduly burdensome on [Roper]" and (3), "the objective for the information sought could be accomplished through a less obtrusive and burdensome method." (R. pp. 1-7.)

With respect to patient privacy, Ms. Smalls merely responds that "no names or identifying information would be required [to respond to her requests] and may, therefore, be redacted. So privacy is not an issue." (App. Br. p. 16.) Roper submits that this response, without any authority addressing the legal requirements regarding disclosure of patient records, is conclusory and insufficient to merit reversal of the circuit court's decision. Colleton County Taxpayers Ass'n v. School Dist. of Colleton County, 371 S.C. 224, 241, 638 S.E.2d 685, 694 (2006) ("The Plaintiffs' brief presents only this blanket conclusion and provides no authority supporting their argument. Thus, the Plaintiffs have effectively waived this argument.") (citing Solomon v. City Realty Co., 262 S.C. 198, 201, 203 S.E.2d 435, 436 (1974) (an exception was deemed effectively abandoned where the argument

relating to the exception consisted solely of an inaccurate "bald conclusion")).[20]

Additionally, our Supreme Court recently addressed the court's role with respect to ensuring reasonable bounds of discovery requests in Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep't of Health and Envtl. Control, 387 S.C. 380, 692 S.E.2d 920 (2010):

> "Generally, the scope of discovery is within the trial court's discretion. However, the trial court must make an effort to impose reasonable discovery limits. The trial court abuses its discretion by ordering discovery that exceeds that permitted by the rules of procedure.
>
> Our procedural rules define the general scope of discovery as any unprivileged information that is relevant to the subject of the action, even if it would be inadmissible at trial, as long as the information sought is 'reasonably calculated to lead to the discovery of admissible evidence.' . . . Although the scope of discovery is broad, requests must show a reasonable expectation of obtaining information that will aid the dispute's resolution. Thus, discovery requests must be 'reasonably tailored' to include only relevant matters."

Id. at 388, 692 S.E.2d at 924-25 (citing In re CSX Corp., 124 S.W.3d 149 (Tex. 2003)).

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[20] In this regard, Roper notes that Ms. Smalls' brief presents no legal authority of any kind to support her challenge to the circuit court's denial of her motion to compel. Accordingly, this whole argument is rightfully deemed abandoned.

As has been explained above, in presenting Ms. Smalls' motion to compel to the circuit court, Ms. Smalls' counsel made clear that the object of the motion was to compel "31,000 different reasons why [Roper] revoked the [self-pay] discount." (R. p. 96, lines 18-14.) Ms. Smalls persisted in requesting this relief notwithstanding the affidavit of Laura Icard, Roper's Customer Service and Patient Financial Services Coordinator, explaining that providing Ms. Smalls this information would require a manual review of each patient account taking some 15,700 hours to complete. (R. pp. 67-68.) Clearly, the circuit court acted within the bounds of its considerable discretion in matters of discovery to deny Ms. Smalls' unduly burdensome request that was not in any way tailored to meet the demands of presenting her claim – indeed, Roper submits that it would have been an abuse of discretion for the circuit court to have granted such a request.

Lastly, the information sought by Ms. Smalls' motion to compel was plainly unnecessary to prosecute her UTPA claim. In Hollman v. Woolfson, 384 S.C. 571, 683 S.E.2d 495 (2009) our Supreme Court granted a petition for a writ of certiorari to review a circuit court's order allowing the plaintiffs to contact nonparty patients of the defendants in a medical malpractice action alleging, among other things, violation of the UTPA. In reversing the circuit court, the Supreme Court observed that to establish a cause of action

under the Act, the alleged unfair or deceptive act or practice must impact the public interest and that such an impact could be proven by showing "(1) the same kind of actions occurred in the past . . . or (2) the defendant's procedures created a potential for repetition of the unfair and deceptive acts." Id. at 580, 683 S.E.2d at 499. "Although," the Court acknowledged, "evidence of petitioners' treatment of nonparty patients could be relevant for the UTPA cause of action . . . the evidence is not necessary for respondents to establish that cause of action." Id., 384 S.E.2d at 500 (emphasis added). The Court went on to explain that "[i]n determining whether information is necessary, the party seeking the information must 'demonstrate with specificity exactly how the lack of information will impair the presentation of its case on the merits to the point that an unjust result is real, rather than a merely possible, threat.'" Id.

As made clear in the exchange between Roper's counsel and the circuit court at the outset of the March 18, 2010 hearing (quoted above), the information sought by Ms. Smalls' motion to compel – which was, by her counsels' own admission, some "31,000 different reasons why [Roper previously] revoke the [self-pay] discount" – is not necessary, and Ms. Smalls' presents no sufficiently specific argument to the contrary. Indeed, in her brief, Ms. Smalls tacitly admits that she has discovered information by

which she believes that she can prove the public impact requirement of her claim, stating: "One element of unfair trade practices is the likelihood that the unfair practice will be repeated. We know, by Roper's own admission, that from 2006 forward, it initial granted the self-pay discount, then reversed it, in 31,400 cases. . . . Repetition is not speculative. It is certain." (App. Br. p. 11.)

Moreover, Ms. Smalls claims that the information sought by her motion to compel is necessary to show the reason behind the reversal of the self-pay discount and "would prove that the revocation came after counsel was retained." (App. Br. p. 16.) Here, it has already been established, by virtue of, among other things, Ms. Smalls' brief that Roper "was aware, at the time it applied the 'self-pay' discount, that Miss Smalls was represented by counsel . . ." and that Roper's "demand" for Ms. Smalls' full payment occurred "**[a]fter** [her] personal injury matter was settled and funds disbursed . . . ." (App. Br. pp. 2, 15.) Accordingly, and as has been explained elsewhere herein, it has already been established that reversal of the self-pay discount on Ms. Smalls' Hospital bill was not in response to her retention of counsel. The information sought by Ms. Smalls' motion to compel is unnecessary.

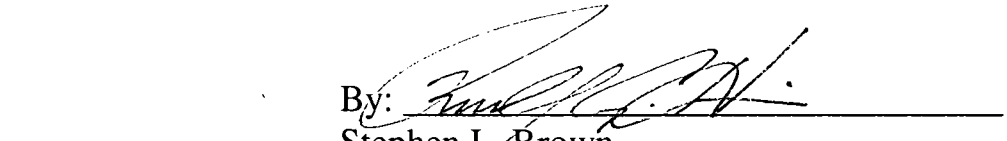
The circuit court did not err in denying Ms. Smalls' motion to compel.

CONCLUSION

For the foregoing reasons and, pursuant to Rule 220(c), SCACR, for any reason appearing in the record, the circuit court should be affirmed.

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP



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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No. 2009-CP-10-0735

Law Offices of William A. Green,

Plaintiff,

v.

Roper St. Francis Healthcare and Dominique Smalls,

Defendants,

of whom, Roper St. Francis Healthcare is

Respondent,

and Dominique Smalls is

Appellant.

RULE 211(b), SCACR, CERTIFICATION
FOR FINAL BRIEF OF RESPONDENT ROPER ST. FRANCIS HEALTHCARE

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I, Russell G. Hines, hereby certify that the Final Brief of Respondent Roper St. Francis Healthcare complies with Rule 211(b), SCACR.

Respectfully submitted,

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of whom, Roper St. Francis Healthcare is

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and Dominique Smalls is

Appellant.

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I, Russell G. Hines, do hereby certify that a copy of the **Final Brief of Respondent Roper St. Francis Healthcare, Motion for Leave to File Supplemental Record on Appeal, and the Supplemental Record on Appeal** in the above-captioned matter was served on all parties hereto by depositing a copy of the same in the United States Mail, postage prepaid, on February 24, 2011, addressed as follows to their attorneys of record:

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Dated: 2/24/11