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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

JUN 28 2018

SC Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

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Appellate Case No. 2017-002522  
Case No. 2010-CP-5743

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Gregory J. Feldman, MD, Joseph A. Boscia, III, MD, and  
Upstate Lung & Critical Care Specialists, PC,

Appellants,

v.

Ray E. "Chuck" Thompson, and Charles M. Fogarty, MD,

Respondents.

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**APPELLANTS REPLY TO RESPONDENTS' BRIEF  
OPPOSING APPELLANTS' MOTION FOR EXTENSION  
OF TIME TO FILE INITIAL REPLY BRIEF**

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Appellants Gregory J. Feldman, MD, Joseph A. Boscia, III, MD, and Upstate Lung & Critical Care Specialists, PC ("Appellants") reply to each of the Respondents' grounds for opposing Appellants' "Motion for Extension of Time to File Initial Reply Brief of Appellants" as follows:

1. Respondents accurately state the facts which occurred in item one of their grounds. In addition to these facts, Appellants would like to clarify that the motion submitted requesting the extension of time to file was a standard motion template used for the sake of time. Appellants' motion did not provide a detailed outline of the specifics of the conversation between Appellants' counsel and counsel for Respondent

Thompson, Attorney Matt Henrikson.

2. In reply to item two of Respondents' grounds for opposition, Appellants' counsel believed he had Respondents' consent to the motion after the conversation with counsel for Respondent Thompson's, Attorney Matt Henrikson. Appellants' counsel would have simply filed the motion omitting the last line indicating the consent if it was initially believed the Respondents' were in opposition.

3. Appellants acknowledge the facts stated in item three with the exception of what appears to be a misunderstanding regarding consent. Appellants' counsel did inform Respondent Thompson's counsel Matt Henrikson, in their phone conversation on July 26, 2018 of the passing of his wife's grandmother. A copy of the obituary is attached as Exhibit A. Appellants' counsel explained to Attorney Henrikson that due to the passing of his wife's grandmother, he would be out of town traveling to Alabama for the funeral on July 27, 2018. In addition to the trip to Alabama, the passing of Mrs. Jackson on July 22, 2018 has required Appellants' counsel to make multiple trips between North Carolina, Alabama and South Carolina for family and public events held in her honor, as she was a matriarch to her family and an esteemed member of her community. As a result of these events, Appellants' counsel explained he would need additional time to reply, in effect, "to analyze the Respondents Initial Brief, research and prepare Appellants' Initial Reply Brief, and therefore requests a thirty (30) day extension of time to serve and file Appellants' Initial Reply Brief, through and including July 30, 2018." In the phone conversation between Appellants' counsel and Respondent Thompson's counsel Matt Henrikson, Attorney Henrikson indicated he did not foresee that he or counsel for Respondent Fogarty, Attorney Ellen Cheek, would have any issues with the

request for an extension. Based on Appellants' counsel's interpretation of that response, he believed that he had the consent of Respondents and included the last line in the motion indicating Respondents' consent to the extension of time. The attorneys for the Respondents' have customarily acted together in this case in regard to the filing of briefs and motions, and Appellants' counsel has customarily had the majority of the verbal communication that has transpired in this case with Respondent Thompson's attorney Matt Henrikson. Appellants' counsel was of the belief that if Respondents were not in agreement, they would reach out to him. As he was not contacted, the motion was filed indicating their consent. Appellants' counsel previously agreed to an extension of time requested by the Respondents by discussing the matter with Attorney Henrikson. This extension of time was granted based on the same grounds Appellants outline in their motion. Neither request seems unreasonable considering the voluminous amount of the documents in this case. See the Motion for Extension of Time to File Initial Brief of Respondents attached as Exhibit B.

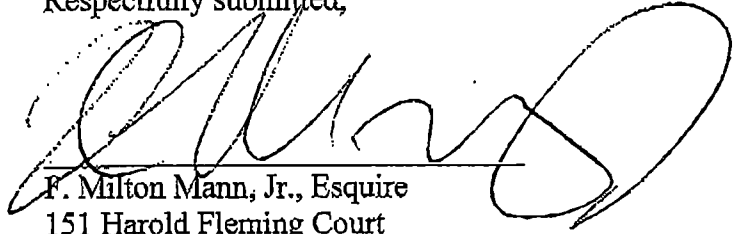
4. In reply to item four, Appellants' counsel denies implying that he would only requests a 10-day extension. Appellants' counsel specifically informed Attorney Henrikson of his intent to request a 30-day extension. Respondents' counsel inaccurately sites that Rule 207, SCACR, establishes a period of ten (10) days to file the reply brief, nor does this rule establish guidelines for an extension of time to file. Rule 207, SCACR specifically relates to the transcript of the proceeding. Appellants' assert that their motion for an extension of time was filed in accordance with Rule 240 of the SCACR.

5. In item five, Respondents' deny their consent for an extension of time. Due to the above cited explanations, as well as the voluminous amount of the documents designated

for the Record on Appeal, Appellants' counsel feels that a 30-day extension is required in the interest of justice to prepare Appellants' Reply Brief. The documents that have been compiled thus far in preparation for the Record on Appeal exceeds six thousand (6000) pages with more documents still to be added from the Respondents' Designation of Matter. Appellants' respectfully request the court grant the requested 30-day extension.

Signature on following page.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'F. Mann, Jr.', written over a horizontal line.

F. Milton Mann, Jr., Esquire  
151 Harold Fleming Court  
Spartanburg, SC 29303  
(864) 680-5079  
Attorney for Appellants

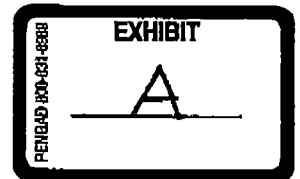
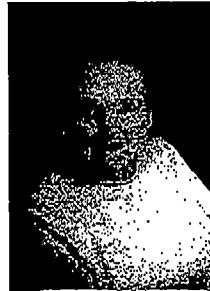
June 28, 2018

CHARLOTTE, NC

## OBITUARY

*Elizabeth Richardson (Higgins)  
Jackson*

BORN JULY 22, 1928



**E**lizabeth Richardson Higgins Jackson, wife of the late Ervin Jackson, Jr, died at her home on Sunday, June 17th, 2018 after a brief illness. She was born in Birmingham, Alabama on July 22, 1928, the daughter of the late Major General John David Higgins and Elizabeth Maclin Hobbs Higgins.

Beth was a member of the Class of 1949 of Holton Arms Junior College in Washington, DC. She married Ervin, the love of her life, in 1950. They moved wherever there was an Ivey's Department Store, claiming sixteen different homes in eighteen years of marriage, eventually settling in Charlotte, North Carolina. They lived an active and happy life together, traveling the world extensively in their later years. Beth and Ervin especially enjoyed their home at High Hampton in Cashiers, North Carolina. Her family tradition of raising the American flag on July 4th has become part of her legacy. Fiercely independent, she lived life for her husband, family, and close friends.

Beth was a dedicated volunteer. She was honored as a Life Member of the Charlotte Garden Club and the Women of the Church (Myers Park Presbyterian). She also was an active member of the Halifax Convention Chapter, NSDAR, The Junior League of Charlotte, and the Order of the Crown in America.

Beth is survived by their daughters Ivey Jackson Sumrell (Jim) of Columbus, North Carolina and Katherine Jackson Howe (Dr. Harold, Jr.) of Charlotte North Carolina, grandchildren Dr. Harold Ragan Howe III (Jess), Katherine Holton Howe, Elizabeth Sumrell Mann (Milton), Jane Howe Dickson (Paul, Jr.), great grandchildren Paul Meade Dickson, III, Higgins Louise Dickson, and nephews John David Higgins, III (Kelly) and Robert Bond Higgins (Margaret) of Birmingham Alabama. Her brother John David Higgins, Jr. preceded her in death.

Graveside services will be Wednesday, June 27 at 11.00 am, Elmwood Cemetery, Birmingham, Alabama.

In lieu of flowers, memorials may be made to Myers Park Presbyterian Church, 2501 Oxford Place, Charlotte NC 28207; Crisis Assistance Ministry, 500-A Spratt St., Charlotte, NC 28206; or to a charity of your choice.



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## *Services*

*Graveside Service Wednesday, June 27, 2018*

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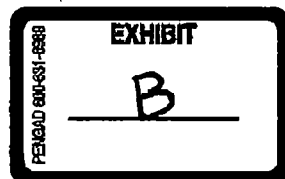
Gregory J. Feldman, MD, Joseph A. Boscia, III, MD, and  
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v.

Ray E. ("Chuck") Thompson  
and Charles M. Fogarty,..... Respondents.

MOTION FOR EXTENSION OF TIME TO FILE  
INITIAL BRIEF OF RESPONDENTS

Respondents Ray E. ("Chuck") Thompson and Charles M. Fogarty, MD ("Respondents") requests an additional thirty (30) days within which to file their Initial Brief of Respondents in this matter. Respondents received Appellants' Initial Brief on April 20, 2018; so upon information and belief, Respondents' Initial Brief is presently due on Monday, May 21, 2018. Respondents' counsel need additional time to complete necessary research and prepare Respondents' Initial Brief, and therefore request a thirty (30) day extension of time to file Respondents' Initial Brief, through and including June 20, 2018. Counsel for Appellants consents to this request.



May 4, 2018

*Matthew H. Henrikson / by Ellen S. Cheek*  
Matthew H. Henrikson (S.C. Bar #7897) *with screen*  
Henrikson Law Firm *per memo*  
1164 Woodruff Road  
Greenville, SC 29607  
*Counsel for Defendant Ray E. Thompson*

*Michael B.T. Wilkes*  
Michael B.T. Wilkes (SC Bar #6107)  
[mwilkes@wilkeslaw.com](mailto:mwilkes@wilkeslaw.com)  
Ellen S. Cheek (SC Bar #69642)  
[echeek@wilkeslaw.com](mailto:echeek@wilkeslaw.com)

WILKES LAW FIRM, PA  
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*Attorneys for Respondent Charles M. Fogarty, MD*

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**PROOF OF SERVICE**

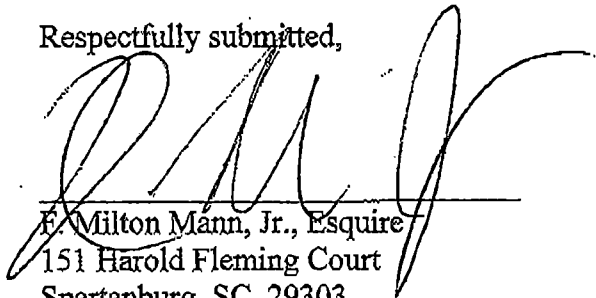
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This is to certify that I caused a copy of the Appellants' Reply to Respondents' Brief Opposing Appellant's Motion for Extension of Time to File Appellants Initial Reply Brief in this matter to be served on counsels of record as indicated below, on June 28, 2018, via email to the addresses listed below.:

Matthew H. Henrikson, Esq.  
Henrikson Law Firm  
[matt@henriksonlaw.com](mailto:matt@henriksonlaw.com)

Ellen Cheek, Esq.  
Wilkes Law Firm  
[echeek@wilkeslaw.com](mailto:echeek@wilkeslaw.com)

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'F. Mann, Jr.', is written over a horizontal line.

June 28, 2018

F. Milton Mann, Jr., Esquire  
151 Harold Fleming Court  
Spartanburg, SC 29303  
(864) 680-5079  
Attorney for Appellants