

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Circuit Court Judge

Appellate Case No. 2018-000943

RECEIVED

NOV 27 2018

SC Court of Appeals

Dr. Gregg N. Battersby, Appellant,

v.

Pamela Reid, State Farm Mutual Automobile Insurance Company and John Wiles,
Defendants,

Of whom State Farm Mutual Automobile Insurance Company and John Wiles are
the Respondents.

RECORD ON APPEAL

Dr. Gregg Battersby
7800 Hwy. 81 South
Starr, South Carolina 29684
(864) 570-0077
Pro se, Appellant

Atty. Charles Norris
151 Meeting Street/ Sixth Floor
Charleston, South Carolina 29401
(843) 853-5200
Attorney for Respondents

INDEX

Order of April 24, 2018.....	1
Complaint.....	5
Answer	23
Defendants' Motion for Summary Judgment.....	32
Defendants' Memorandum in Support of Motion for Summary Judgment.....	34
Exhibit A.....	42
Exhibit B.....	50
Deposition Excerpts: Dr. Gregg N. Battersby.....	53
Deposition Exhibits: Dr. Gregg N. Battersby.....	71
Plaintiff's Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment.....	76
Affidavit.....	94
Exhibit 1.....	95
Exhibit 2.....	96
Exhibit 3.....	101
Exhibit 4.....	102
Exhibit 5.....	107
Exhibit 6.....	108
Exhibit 7.....	111
Transcript of April 12, 2018 Hearing.....	112
Deposition Excerpts: Dr. Gregg N. Battersby pp. 16, 19-23, 25, 27, 30-35, 39, 40, 43-46.....	139
Deposition Exhibits: Dr. Gregg N. Battersby no. 2, 3, 4, and 5.....	150
Certificate of Appellant.....	154

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

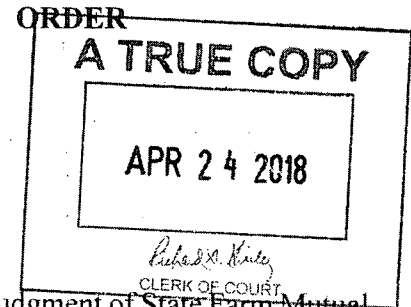
IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

DR. GREGG N. BATTERSBY,)
Plaintiff,)

Civil Action No. 2017-CP-04-02502

vs.)

PAMELA REID, STATE FARM)
MUTUAL AUTOMOBILE)
INSURANCE COMPANY AND JOHN)
WILES,)
Defendant.)



On April 12, 2018 this Court heard the motion for summary judgment of State Farm Mutual Automobile Insurance Company and John Wiles, hereinafter collectively referred to as "State Farm". For the following reasons State Farm's motion for summary judgment is granted.

Construing the facts most strongly in favor of the non-moving party, the following facts are undisputed. These facts are gathered from the Plaintiff's deposition and from the allegations in his complaint.

On July 10, 2017 Pamela Reid was involved in an automobile accident with William Calcutt. Calcutt was insured by State Farm but Reid was not a State Farm insured. On the day after her accident, July 11, 2017, Reid commenced chiropractic treatment with the Plaintiff. At the commencement of her treatment Reid signed several forms with the Plaintiff which included an assignment of proceeds and a contractual lien. One of the documents signed by Reid and attached as an exhibit to the Plaintiff's complaint stated that:

I understand that if the insurance company chooses not to honor said lien and refuses to pay Dr. Gregg Battersby directly for the procedures performed that I give Dr. Gregg Battersby, or his assignee, full legal rights to settle my personal injury

claim on my behalf and direct payment for the services performed to Dr. Gregg Battersby. Dr. Gregg Battersby agrees to wait for payment as long as the insurance company agrees to pay him directly for the services performed.

While this Court cannot furnish legal advice, it does caution the Plaintiff who is not an attorney that his settlement of a third party's personal injury claim may constitute the unauthorized practice of law. It is also noteworthy that the language quoted above recognized that the insurance company might not honor the Plaintiff's lien on settlement proceeds and might refuse to pay the Plaintiff directly.

The Plaintiff's treatment of Reid was from July 11, 2017 to August 14, 2017 at which time the Plaintiff's treatment of Reid concluded. The Plaintiff's bill to Reid totaled \$5,010. After the Plaintiff's treatment of Reid concluded, the Plaintiff spoke with John Wiles of State Farm. Wiles told the Plaintiff that State Farm would pay him directly if that is what Reid wanted. Unfortunately, Reid apparently lied to the Plaintiff, requested that State Farm pay the settlement funds to her and she then failed to pay the Plaintiff out of the settlement funds she received from State Farm.

The Plaintiff's contracts with Reid did not vest the Plaintiff with any right to seek payment directly from State Farm. As noted by the South Carolina Court of Appeals in Trancik v. USAA Insurance Company, 581 S.E. 2d 858 (S.C. App. 2003), because the Plaintiff's patient had no contractual privity with the insurer, the healthcare provider (here, Dr. Battersby) received no greater right from the patient (here, Pamela Reid) through an assignment and, in spite of the obligations incurred by the patient pursuant to the assignment contract, "mere notification of the assignment was insufficient to contractually bind [the insurer]". 581 S.E. 2d at 861, 862 Trancik was cited in a previous, similar case by the Plaintiff against Allstate Insurance Company in an order dismissing that lawsuit.

The Plaintiff argues that, unlike Trancik and the Plaintiff's previous lawsuit against Allstate, this case is different because here the Plaintiff had an oral contract with State Farm.¹ The Plaintiff claims that his discussion on August 15, 2017 with John Wiles of State Farm, after the Plaintiff's treatment of Reid had concluded and after Reid had incurred bills of \$5,010 to the Plaintiff, established a contract requiring State Farm to pay Reid's bills. This alleged oral contract is, however, unenforceable because the South Carolina Statute of Frauds, § 32-3-10(2), requires that, to be legally enforceable, a promise to answer for the debt of another must be in writing and signed by the party to be charged. State v. McIntyre, 415 S.E. 2d 399, 400 (S.C. 1992). Additionally, the Plaintiff cannot claim that his treatment of Reid was based upon State Farm's oral agreement to pay directly to the Plaintiff Reid's bills because the Plaintiff's treatment of Reid had concluded before the Plaintiff ever spoke with Wiles.

State Farm has asserted a number of other grounds in support of its motion for summary judgment on all of the Plaintiff's causes of action. Because the reasons stated above are a sufficient basis to dismiss the Plaintiff's lawsuit, it is unnecessary for this Court to specifically address each ground in State Farm's motion for summary judgment. Accordingly, State Farm's motion for summary judgment is granted and this lawsuit is dismissed with prejudice.

ALL OF WHICH IS SO ORDERED.

The Honorable J. Cordell Maddox, Jr.
Presiding Judge, 10th Judicial Circuit

Anderson, South Carolina

April __, 2018

¹ The Plaintiff had no written contract with State Farm.



Anderson Common Pleas

Case Caption: Dr. Gregg N Battersby VS Pamela Reid , defendant, et al

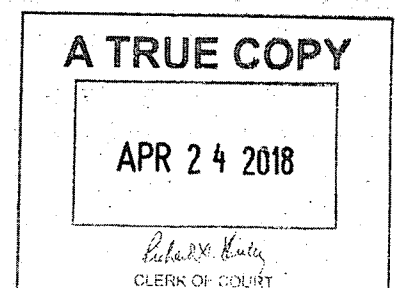
Case Number: 2017CP0402502

Type: Order/Summary Judgment

So Ordered

s/ J. Cordell Maddox Jr.

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IN THE COMMON PLEAS COURT

ANDERSON, SOUTH CAROLINA

Dr. Gregg Battersby
7800 Hwy. 81 South
Starr, South Carolina 29684
Plaintiff,

Pamela Reid
203 Helen Dr.
Anderson, South Carolina 29626

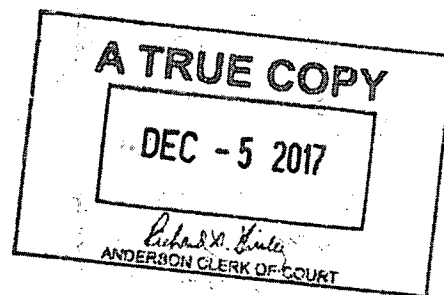
State Farm Mutual Automobile Insurance Company)
State Farm Claims
P.O. 52250
Phoenix, Arizona 85072-2250

John Wiles
State Farm Claims
P.O. 52250
Phoenix, Arizona 85072-2250
Defendants.

Case No.: 2017 CP0402502

Judge:

Complaint for Breach of Contract,
Unjust Enrichment, Fraud,
Negligent Misrepresentation,
and Negligence



INTRODUCTION

Plaintiff, Dr. Gregg N. Battersby, files this Complaint for Breach of Contract, Unjust Enrichment, and Fraud against Defendant, Pamela Reid, and Breach of Contract, Fraud, Negligent Misrepresentation, and Negligence against Defendants, John Wiles and State Farm Mutual Automobile Insurance Company, in support of which he presents the following:

PARTIES

1. Plaintiff, Dr. Gregg N. Battersby, is licensed to practice chiropractic in South Carolina. Plaintiff resides and has a practice in Anderson County,

2. Defendant, Pamela Reid (Reid), was a patient of Plaintiff and resides at 203 Helen Dr., Anderson, South Carolina 29626.

3. Defendant, John Wiles (Wiles), was the claims adjuster for Reid and employee of State Farm Mutual Automobile Insurance Company doing business in Anderson County, South Carolina. Wiles acted in his normal course of employment with State Farm Mutual Automobile Insurance Company.

4. Defendant, State Farm Mutual Automobile Insurance Company (State Farm), is an insurance company doing business in Anderson County, South Carolina. State Farm has vicarious liability for the acts of their employee, Wiles.

JURISDICTION

1. All events occurred within the purview of this Court,
2. All events occurred within the last two years.

MEMORANDUM

1. On or about July 11, 2017, Reid presented herself to Plaintiff's office with injuries sustained in an automobile accident.
2. Reid stated that on or about July 10, 2017 she was rear ended by a motorcycle ridden by William Calcutt (Calcutt).
3. Calcutt was insured by State Farm Insurance, claim number 40-0756-X00.
4. Plaintiff examined Reid and determined a course of treatment.
5. Reid received chiropractic manipulative therapy, manual therapy, and ultrasound treatments.

6. Plaintiff treated Reid from July 11, 2017 until her discharge on August 14, 2017.
7. Reid's diagnoses are cervical strain sprain, thoracic strain sprain, lumbar radiculitis, and knee strain sprain.
8. On July 11, 2017, Reid signed several documents stating that she was personally responsible to pay Plaintiff for the services she received from Plaintiff.
9. On July 11, 2017, Reid signed several documents giving an irrevocable lien to Plaintiff and directing payment to be made directly from benefits, including but not limited to personal injury protection, no-fault coverage, uninsured and underinsured motorist coverage, and third-party liability distributions, to Plaintiff for the services rendered to her.
10. Those documents also assigned all of Reid's rights, remedies, and benefits to Plaintiff to the extent of his charges, as well as any causes of action that Reid may have against State Farm in the event State Farm refuses to pay Plaintiff.
11. On or about August 15, 2017, John Wiles, an adjuster from State Farm, told Plaintiff that State Farm would honor the liens signed by Reid and would make payment directly to Plaintiff. On August 21, 2017, Plaintiff forwarded the liens to State Farm.
12. As a courtesy to Reid for her signing the liens and State Farm agreeing to pay Plaintiff directly out of the settlement, Plaintiff did not demand payment at the time of service but waited until the case was settled to get paid.
13. On or about August 24, 2017, Reid reached a settlement with State Farm.
14. Sometime after Reid finished treatment, Reid told State Farm that she wanted to be paid the money owed to Plaintiff for his services to her.

15. This was in direct violation of the documents she signed.
16. Those documents could not be modified or revoked without written consent of Plaintiff.
17. Plaintiff never agreed to modify or revoke the liens.
18. Wiles and State Farm had been provided with the liens and knew they could not be modified or revoked without Plaintiff's consent.
19. State Farm paid Reid directly for Plaintiff's services in violation of the agreement made with Plaintiff on August 15, 2017 in which Wiles told Plaintiff that State Farm would pay Plaintiff directly.
20. State Farm's actions also prevented Plaintiff from exercising his option to take over the claim and settle or resolve the matter as Plaintiff sees fit.
21. If Plaintiff had known that State Farm wasn't going to pay him directly, Plaintiff would have insisted Reid get an attorney to represent her in the claim to protect Plaintiff's interests, this would have cost State Farm much more in the settlement, or demand that Reid pay for her care at the time of service.
22. Reid owes Plaintiff five thousand forty-five dollars (\$5045.00) for her care.
23. Plaintiff has attempted to collect this balance from Reid.
24. Reid, Wiles and State Farm have refused to pay the outstanding balance to Plaintiff.
25. Defendants caused great emotional distress to Plaintiff.
26. Reid agreed to pay ten percent (10%) interest on any delinquent balance.

CAUSE OF ACTION- BREACH OF CONTRACT (REID)

27. Plaintiff re-alleges paragraphs 1-26,
28. Reid signed several documents agreeing that she was personally responsible for the

treatment and agreed to pay for the treatment,

29. Reid signed several documents directing State Farm to pay for the services rendered to her directly to Plaintiff out of the settlement,
30. Reid later told State Farm not to pay Plaintiff but to pay her instead,
31. Reid refused to pay Plaintiff for his services to her,
32. As a result of this breach, Reid owes Plaintiff five thousand forty-five dollars (\$5045.00).

CAUSE OF ACTION- BREACH OF CONTRACT (STATE FARM)

33. Plaintiff re-alleges paragraphs 1-32,
34. Plaintiff asked Wiles if State Farm would pay Plaintiff directly out of the settlement with Reid,
35. State Farm agreed to pay Plaintiff directly for the services rendered to Reid if Reid agreed to have Plaintiff paid directly, as a result, Plaintiff agreed to wait for payment until the claim was settled,
36. Reid signed several contracts directing State Farm to pay Plaintiff directly for the services rendered to her out of the settlement,
37. State Farm refused to pay Plaintiff for his services to Reid,
38. As a result of this breach, State Farm owes Plaintiff five thousand forty-five dollars (\$5045.00).

CAUSE OF ACTION- UNJUST ENRICHMENT (REID)

39. Plaintiff re-alleges paragraphs 1-38,
40. Reid received chiropractic treatment from Plaintiff for her injuries sustained in an

automobile accident,

41. Reid recovered from her injuries as a result of Plaintiff's treatment,
42. Reid received treatment valued at five thousand forty-five dollars (\$5045.00),
43. In addition, Reid kept the money paid by State Farm for her treatment,
44. It was inequitable of Reid to retain the benefit without paying Plaintiff for its value.

CAUSE OF ACTION- FRAUD (REID)

45. Plaintiff re-alleges paragraphs 1-44,
46. Reid represented to Plaintiff that she would direct State Farm to pay Plaintiff directly for the services he rendered to her,
47. This was false because after Reid finished treatment she told State Farm she wanted to be paid the money owed to Plaintiff for her treatment,
48. This is material to the case at hand in that if State Farm had paid Plaintiff directly there would be no issue needing resolved,
49. Reid knew from the beginning that she wasn't going to direct payment to Plaintiff and signed the liens in order for Plaintiff to treat her without making her pay at the time of service,
50. Reid intended Plaintiff to act upon the false representation that she would direct payment to Plaintiff so that she would get free care and keep the money intended for her treatment,
51. Plaintiff had no idea that Reid would not honor the liens, in fact, Reid told Plaintiff on several occasions that she had called State Farm and told them to pay Plaintiff directly,
52. Plaintiff relied on Reid's verbal promises as well as the signed liens as assurances that Plaintiff's bill would be paid, and did not demand payment from Reid at the time of

service,

53. Plaintiff had every right to rely on Reid's promises to have State Farm pay him directly because Reid signed several liens directing such action,

54. Plaintiff was not paid the five thousand forty-five dollars (\$5045.00) from State Farm for Reid's treatment.

CAUSE OF ACTION- FRAUD (STATE FARM)

55. Plaintiff re-alleges paragraphs 1-54,

56. State Farm told Plaintiff that they would pay him directly if Reid directed them to,

57. Reid signed several liens directing payment to Plaintiff,

58. This was a false statement since Plaintiff found out later that State Farm routinely pays the patient, not the doctor,

59. The non-payment by State Farm of Plaintiff's bill is material to the matter at hand,

60. State Farm knew that they don't honor medical liens,

61. State Farm intended Plaintiff to act on the false statement so that he would not require Reid get a lawyer to represent her, and so Plaintiff would not exercise his option to settle the case on Reid's behalf,

62. Plaintiff had no way of knowing State Farm would not pay him directly,

63. Plaintiff relied on the false statement and did not require Reid obtain a lawyer to represent her to settle the claim and Plaintiff did not exercise his option to take over the claim and settle it as he saw fit,

64. Plaintiff had every right to rely on Wiles' statement since he was the claims adjuster for State Farm,

65. As a result of Plaintiff's reliance on the false statement by Wiles, Plaintiff has not been paid the five thousand forty-five dollars (\$5045.00).

CAUSE OF ACTION- NEGLIGENT MISREPRESENTATION (STATE FARM)

66. Plaintiff re-alleges paragraphs 1-65,

67. Wiles told Plaintiff that State Farm would pay Plaintiff directly if Reid directed them to do so,

68. Reid signed several documents directing State Farm to pay Plaintiff directly,

69. State Farm had a pecuniary interest in the matter in that they were responsible in making payment for the treatment of Reid due to the accident,

70. State Farm owed a duty to exercise reasonable care to Plaintiff in that they were required to communicate truthful information to Plaintiff regarding the payment of Reid's treatment,

71. State Farm breached that duty by failing to exercise reasonable care by not paying Plaintiff for Reid's treatment after telling Plaintiff that they would pay Plaintiff directly for Reid's treatment after being directed to do so,

72. Plaintiff justifiably relied on State Farm's statements,

73. Plaintiff suffered the loss of \$5045.00 by relying on the statements of State Farm, Plaintiff could have required Reid get a lawyer to represent her in the matter to protect his interests or Plaintiff could have exercised his option to take over the claim and settle it directly with State Farm.

CAUSE OF ACTION- NEGLIGENCE (STATE FARM)

74. Plaintiff re-alleges paragraphs 1-73,

75. State Farm owed a duty to exercise reasonable care to Plaintiff because their statements regarded the payment for Reid's treatment,
76. State Farm breached that duty by not paying Plaintiff directly for Reid's treatment after saying they would with Reid's direction,
77. State Farm's conduct in telling Plaintiff they would pay him directly if Reid directed them to, as she did in the liens she signed, and then not paying Plaintiff resulted in Plaintiff not being paid for the care Plaintiff gave to Reid,
78. The harm to Plaintiff was a direct result of State Farm not abiding by their agreement to pay Plaintiff.

RELIEF

Plaintiff requests this Court grant judgment in his favor for compensatory damages against Defendants, Pamela Reid and State Farm Insurance, in excess of Twenty-five Thousand Dollars (\$25,000.00) plus ten percent (10%) interest per year. Plaintiff requests this Court grant judgment in his favor for punitive damages against Defendants, Pamela Reid and State Farm Insurance, in excess of One Million Dollars (\$1,000,000.00). Plaintiff also requests this Court grant costs, and any other relief this Court deems just and proper.



Dr. Gregg N. Battersby, pro se
PLAINTIFF
7800 Hwy. 81 South
Starr, SC 29684
Telephone: (864) 570-0077
greggbattersby@gmail.com

DATE: 08-18-2017

GREGG BATTERSBY, DC
7800 HWY. 81 S
STARR, SC 29684
TAX ID #: 34-1385897
TELEPHONE #: 864-352-2225

FOR : PAMELA REID
203 HELEN DR.
ANDERSON, SC 29626

ACCOUNT NO.: 39871
SPECIAL ID :

PATIENT : PAMELA REID

ACCOUNT NO.: 39871

DIAGNOSES: ~~84470~~ CERVICAL STRAIN-SPRAIN
~~84479~~ KNEE STRAIN-SPRAIN
~~7244~~ LUMBAR RADICULITIS
~~84471~~ THORACIC STRAIN-SPRAIN

5134XXA
52390XA
45410
5233XXA

DATE	DESCRIPTION	CODE/ID	AMOUNT
07/11/17	CMT, EXTRASPINAL	98943	40.00
07/11/17	CMT, 3-4 areas	98941	50.00
07/11/17	MANUAL THERAPY	97140	65.00
07/11/17	N.P. EXTENDED SERVICE	99203	200.00
07/11/17	ULTRASOUND TREATMENT	97035	30.00
07/12/17	ULTRASOUND TREATMENT	97035	30.00
07/12/17	CMT, EXTRASPINAL	98943	40.00
07/12/17	CMT, 3-4 areas	98941	50.00
07/12/17	MANUAL THERAPY	97140	65.00
07/13/17	MANUAL THERAPY	97140	65.00
07/13/17	ULTRASOUND TREATMENT	97035	30.00
07/13/17	CMT, EXTRASPINAL	98943	40.00
07/13/17	CMT, 3-4 areas	98941	50.00
07/14/17	MANUAL THERAPY	97140	65.00
07/14/17	CMT, 3-4 areas	98941	50.00
07/14/17	ULTRASOUND TREATMENT	97035	30.00
07/14/17	CMT, EXTRASPINAL	98943	40.00
07/15/17	ULTRASOUND TREATMENT	97035	30.00
07/15/17	CMT, EXTRASPINAL	98943	40.00
07/15/17	CMT, 3-4 areas	98941	50.00
07/15/17	MANUAL THERAPY	97140	65.00

[illegible]

DATE	DESCRIPTION	CODE/ID	AMOUNT
07/16/17	ULTRASOUND TREATMENT	97035	30.00
07/16/17	CMT, EXTRASPINAL	98943	40.00
07/16/17	CMT, 3-4 areas	98941	50.00
07/16/17	MANUAL THERAPY	97140	65.00
07/17/17	ULTRASOUND TREATMENT	97035	30.00
07/17/17	MANUAL THERAPY	97140	65.00
07/17/17	CMT, 3-4 areas	98941	50.00
07/17/17	CMT, EXTRASPINAL	98943	40.00
07/18/17	ULTRASOUND TREATMENT	97035	30.00
07/18/17	CMT, EXTRASPINAL	98943	40.00
07/18/17	CMT, 3-4 areas	98941	50.00
07/18/17	MANUAL THERAPY	97140	65.00
07/19/17	ULTRASOUND TREATMENT	97035	30.00
07/19/17	CMT, EXTRASPINAL	98943	40.00
07/19/17	CMT, 3-4 areas	98941	50.00
07/19/17	MANUAL THERAPY	97140	65.00
07/20/17	CMT, EXTRASPINAL	98943	40.00
07/20/17	CMT, 3-4 areas	98941	50.00
07/20/17	ULTRASOUND TREATMENT	97035	30.00
07/20/17	MANUAL THERAPY	97140	65.00
07/21/17	ULTRASOUND TREATMENT	97035	30.00
07/21/17	CMT, EXTRASPINAL	98943	40.00
07/21/17	CMT, 3-4 areas	98941	50.00
07/21/17	MANUAL THERAPY	97140	65.00
07/22/17	ULTRASOUND TREATMENT	97035	30.00
07/22/17	CMT, EXTRASPINAL	98943	40.00
07/22/17	CMT, 3-4 areas	98941	50.00
07/22/17	MANUAL THERAPY	97140	65.00
07/23/17	MANUAL THERAPY	97140	65.00
07/23/17	ULTRASOUND TREATMENT	97035	30.00
07/23/17	CMT, EXTRASPINAL	98943	40.00
07/23/17	CMT, 3-4 areas	98941	50.00
07/24/17	CMT, EXTRASPINAL	98943	40.00
07/24/17	CMT, 3-4 areas	98941	50.00
07/24/17	MANUAL THERAPY	97140	65.00
07/24/17	ULTRASOUND TREATMENT	97035	30.00
07/25/17	ULTRASOUND TREATMENT	97035	30.00
07/25/17	CMT, EXTRASPINAL	98943	40.00
07/25/17	CMT, 3-4 areas	98941	50.00
07/25/17	MANUAL THERAPY	97140	65.00
07/26/17	MANUAL THERAPY	97140	65.00

[illegible]

DATE	DESCRIPTION	CODE/ID	AMOUNT
07/26/17	ULTRASOUND TREATMENT	97035	30.00
07/26/17	CMT, EXTRASPINAL	98943	40.00
07/26/17	CMT, 3-4 areas	98941	50.00
07/27/17	MANUAL THERAPY	97140	65.00
07/27/17	CMT, 3-4 areas	98941	50.00
07/27/17	ULTRASOUND TREATMENT	97035	30.00
07/27/17	CMT, EXTRASPINAL	98943	40.00
07/28/17	ULTRASOUND TREATMENT	97035	30.00
07/28/17	CMT, EXTRASPINAL	98943	40.00
07/28/17	CMT, 3-4 areas	98941	50.00
07/28/17	MANUAL THERAPY	97140	65.00
07/29/17	ULTRASOUND TREATMENT	97035	30.00
07/29/17	CMT, EXTRASPINAL	98943	40.00
07/29/17	CMT, 3-4 areas	98941	50.00
07/29/17	MANUAL THERAPY	97140	65.00
07/30/17	ULTRASOUND TREATMENT	97035	30.00
07/30/17	MANUAL THERAPY	97140	65.00
07/30/17	CMT, 3-4 areas	98941	50.00
07/30/17	CMT, EXTRASPINAL	98943	40.00
07/31/17	ULTRASOUND TREATMENT	97035	30.00
07/31/17	CMT, EXTRASPINAL	98943	40.00
07/31/17	CMT, 3-4 areas	98941	50.00
07/31/17	MANUAL THERAPY	97140	65.00
08/02/17	ULTRASOUND TREATMENT	97035	30.00
08/02/17	CMT, EXTRASPINAL	98943	40.00
08/02/17	CMT, 3-4 areas	98941	50.00
08/02/17	MANUAL THERAPY	97140	65.00
08/04/17	CMT, 3-4 areas	98941	50.00
08/04/17	MANUAL THERAPY	97140	65.00
08/04/17	CMT, EXTRASPINAL	98943	40.00
08/04/17	ULTRASOUND TREATMENT	97035	30.00
08/07/17	CMT, EXTRASPINAL	98943	40.00
08/07/17	CMT, 3-4 areas	98941	50.00
08/07/17	MANUAL THERAPY	97140	65.00
08/07/17	ULTRASOUND TREATMENT	97035	30.00
08/10/17	ULTRASOUND TREATMENT	97035	30.00
08/10/17	CMT, EXTRASPINAL	98943	40.00
08/10/17	CMT, 3-4 areas	98941	50.00
08/10/17	MANUAL THERAPY	97140	65.00
08/14/17	MANUAL THERAPY	97140	65.00
08/14/17	ULTRASOUND TREATMENT	97035	30.00

[illegible]

DATE	DESCRIPTION	CODE/ID	AMOUNT
08/14/17	CMT, EXTRASPINAL	98943	40.00
08/14/17	CMT, 3-4 areas	98941	50.00

PREVIOUS BALANCE: \$ 0.00

ABOVE CHARGES: \$ 5,010.00

ABOVE CREDITS: \$ 0.00

NEW BALANCE: \$ 5,010.00

DATE: 11-29-2017

GREGG BATTERSBY, DC
7800 HWY. 81 S
STARR, SC 29684
TAX ID #: 34-1385897
TELEPHONE #: 864-352-2225

FOR : PAMELA REID
203 HELEN DR.
ANDERSON, SC 29626

ACCOUNT NO.: 39871
SPECIAL ID :

PATIENT : PAMELA REID

ACCOUNT NO.: 39871

PREVIOUS BALANCE: \$ 5,045.00
ABOVE CHARGES: \$ 0.00
ABOVE CREDITS: \$ 0.00

NEW BALANCE: \$ 5,045.00
=====

Dr. Gregg N. Battersby

Assignment of Proceeds, Contractual Lien, and Authorization

I, the undersigned, hereby authorize and direct any and all insurance carriers, attorneys, agencies, government departments, companies, individuals, and/or other legal entities (payors), which may elect to be obliged to pay benefits to me for any medical conditions, accidents, injuries or illnesses, past, present, or future (condition) to pay directly to and exclusively in the name of Dr. Gregg N. Battersby D.C. for charges incurred by me, including but not limited to charges for treatment, narrative reports, depositions, testimony, and any other charges incurred by me at the Office (charges). I further grant a contractual lien to Dr. Gregg N. Battersby D.C. with respect to my charges, applicable to all payors; however, I understand that nothing in this Agreement shall be constructed as an election by Dr. Gregg N. Battersby D.C. to claim protection under any statutory lien law. For the purpose of this Agreement, "benefits" shall include, but not limited to, proceeds from any settlement, judgment, or verdict, as well as any proceeds relating to commercial health group insurance, lost wage benefits, lost service benefit, attorney retainer agreements, medical payment benefit, personal injury protection, no-fault coverage, uninsured and underinsured motorist coverage, third-party liability distributions, disability benefits, worker's compensation benefits, malpractice proceeds, and any other benefits or proceeds payable to me for the purpose stated herein, regardless of whether such proceeds are related to my charges or not.

I further agree that in the event a payor refuses to pay Dr. Gregg N. Battersby D.C., I hereby assign, insofar as permitted by law, all of my rights, remedies, and benefits to Dr. Gregg N. Battersby D.C. to extent of my charges, as well as any and all causes of action that I might have against such payor, to prosecute such causes of action either in my name or in the Office's name and to settle or otherwise resolve such causes of action as the Office sees fit.

In the event I retain one or more attorneys to represent me in this matter, I will direct each attorney to issue a letter of protection to this Office regarding my charges. Upon issuance, I hereby agree that such letter(s) of protection cannot be revoked or modified without the expressed written consent of this Office. I further direct each attorney to provide immediate notice to the Office regarding any funds received by the attorney relating to my accident, to promptly pay such Office, and to provide full accounting of such funds to the Office upon its request.

I hereby direct all payors to release to Dr. Gregg N. Battersby D.C. any information regarding any coverage or benefits which I may have including, but not limited to, the amount of the coverage, the amount paid thus far, and the amount of any outstanding claims.

I authorize this Office to release any information regarding my treatment or pertinent to my case(s) to all payors as defined above to facilitate collection under this agreement. I hereby direct this Office to file a copy of this agreement, together with any applicable charges, with any or all payors, regardless of whether a claim has been established with said payors. I hereby authorize Dr. Gregg N. Battersby D.C. to endorse/sign my name on any and all checks listing me as the payee, which are presented to this Office for payment of and account relating to me, my spouse, or any of my dependents, regardless if these other charges are related to my condition.

I understand that I remain personally responsible for the total amounts due Dr. Gregg N. Battersby D.C. for his services. This assignment lien does not constitute any consideration for this Office to await payments and it may demand immediately upon rendering services at its option. If this Office must take any action to collect an outstanding balance on my account, I will be responsible for payment and will reimburse Dr. Gregg N. Battersby D.C. for all costs of such collection efforts, including, but not limited to, all court costs and all attorneys fees.

This assignment and lien shall not be modified or revoked without the mutual written consent of Dr. Gregg N. Battersby D.C. and myself. I hereby revoke any previously signed authorizations, whether executed at this Office or any other Office to the extent the terms of those authorizations conflict with the terms of this agreement and lien.

I agree that each and every provision of this agreement is reasonably necessary for the protection of the rights and interests of Dr. Gregg N. Battersby D.C. and me. However, should any provision of this agreement be found to be invalid, illegal or unenforceable, or for any reason cease to be binding on any party hereto, all other provisions of this agreement shall, nevertheless, remain in full force and effect.

Personal Injury Cases that the attorneys willfully gave Dr's fees to their clients will be referred to the South Carolina Bar Office of Disciplinary Council.

Please print patient name: Pamela Reid Date 7-11-17

Patient Signature: Pamela Reid Date 7-11-17

Name of Custodial Parent or Legal Guardian (please print)

Parent/Guardian: _____ Date _____

Witness: _____ Date _____

ASSIGNMENT, LIEN AND AUTHORIZATION
INSURANCE BENEFITS AND ATTORNEY

To Whom It may concern:

DR. DATTERSBY

I hereby authorize and direct you, my insurance company, and/or my attorney, to pay directly to _____

such sums as may be due and owing this Office for services rendered me, both by reason of accident or illness, and by reason of any other bills that are due this office, and to withhold such sums from any disability benefits, medical payments benefits, No-Fault benefits, health and accident benefits, workmen's compensation benefits, or any other insurance benefits obligated to reimburse me or from any settlement, judgement or verdict on my behalf as may be necessary to adequately protect said Office. I hereby further give a lien to said Office against any and all insurance benefits named herein, and any and all proceeds of any settlement, judgment or verdict which may be paid to me as a result of the injuries or illness for which I have been treated by said Office. This is to act as an assignment of my rights and benefits to the extent of the Office's services provided.

In the event my insurance company obligated to make payments to me upon the charges made by this Office for their services refuses to make such payments, upon demand by me or this Office, I hereby assign and transfer to this Office any and all causes of action that I might have or that might exist in my favor against such company and authorize this Office to prosecute said cause of action either in my name or in the Office's name and further I authorize this Office to compromise, settle or otherwise resolve said claim or cause of action as they see fit.

I understand that I remain personally responsible for the total amounts due the Office for their services. I further understand and agree that this Assignment, Lien and Authorization does not constitute any consideration for the Office to await payments and they may demand payments from me immediately upon rendering services at their option.

I authorize the Office to release any information pertinent to my case to any insurance company, adjuster or attorney to facilitate collection under this Assignment, Lien and Authorization. I agree that the above mentioned Office be given power of Attorney to endorse/sign my name on any and all checks for payment of my doctor bill.

By signing this paper you give up your right to notice and court trial. If you do not pay on time, a court judgement may be take against you without your prior knowledge and the powers of a court can be used to collect from you regardless of any claims you may have against the creditor whether for returned goods, faulty goods, failure on his part to comply with the agreement, or any other cause.

SIGNED

Pamela Reid

DATE:

7-11-17

LIEN ON MY PERSONAL INJURY CLAIM

I understand that I am giving an irrevocable lien to Dr. Gregg Battersby in the settlement of my personal injury claim. Only Dr. Gregg Battersby can release said lien. I understand that most insurance companies do not pay for repeated office visits, as such, Dr. Gregg Battersby is required to bill for the individual procedures he performs. These include, not are not limited to: 99203, 98940, 98941, 98942, 98943, 97140, 97124. These procedures are billed at his standard fees. I understand that if the insurance company chooses not to honor said lien and refuses to pay Dr. Gregg Battersby directly for the procedures performed that I give Dr. Gregg Battersby, or his assignee, full legal rights to settle my personal injury claim on my behalf and direct payment for the services performed to Dr. Gregg Battersby. Dr. Gregg Battersby agrees to wait for payment as long as the insurance company agrees to pay him directly for the services performed. In the event I default on payment to Dr. Gregg Battersby when he demands payment, I agree to pay ten percent interest plus any legal fees and court costs incurred by Dr. Gregg Battersby in the collection of said debt. I sign this with my full understanding.

Pamela Reid
Print

Pamela Reid
Sign

7-11-11
Date

Dr. Gregg N. Battersby
Chiropractor
7800 Hwy. 81 South
Starr, SC. 29684
864-352-2225

IRREVOCABLE HEALTHCARE POWER OF ATTORNEY

I, Pamela Reid (hereinafter, "Principal") of Asheville,
County of Asheville, in the state of South Carolina, do
appoint Dr. Gregg N. Battersby (hereinafter, "Attorney"), as my true and lawful attorney in fact.
In Principal's name, and for Principal's use and benefit, said Attorney is hereby authorized to:

- 1) Endorse any and all checks or other forms of reimbursement made payable to Principal (or members of Principal's family) by any health insurance companies which relate to medical treatment provided by Attorney to Principal (or members of Principal's family) over to Attorney.
- 2) Demand and direct any and all health insurance companies, during the course of Principal's (or members of Principal's family) medical treatment with Attorney on personal injury cases or major medical matters, to make all reimbursement checks for such treatment payable to Attorney and to send such checks directly to Attorney.

This Special Power of Attorney is created for Attorney's benefit to secure Attorney's right to payment for healthcare services provided and shall be irrevocable throughout the duration of the healthcare services provided by Attorney to Principal arising from any injury or major medical conditions sustained either by Principal or members of Principal's family until said services are paid in full.

GIVING AND GRANTING to said Attorney full power and authority to do all and every act and thing whatsoever requisite and necessary to be done relative to any of the foregoing as fully to all intents and purposes as Principal might or could do if personally present.

All that said Attorney shall lawfully do or cause to be done under the authority of the power of attorney is expressly approved.

Dated: July 11, 20 17

Pamela Reid
Signature

Pamela Reid
Print Name of Principal

Witness: _____

7/11/17
Dated:

A TRUE COPY

SEP 12 2018

Richard M. Anderson
ANDERSON CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

DR. GREGG N. BATTERSBY,

Plaintiff,

vs.

PAMELA REID, STATE FARM
MUTUAL AUTOMOBILE
INSURANCE COMPANY AND JOHN
WILES,

Defendant.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Civil Action No. 2017-CP-04-02502

**ANSWER OF STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY
AND JOHN WILES**

(Jury Trial Requested)

State Farm Mutual Automobile Insurance Company (State Farm) and John Wiles answer the Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE

1. These Defendants admit upon information and belief paragraph 1.
2. These Defendants admit upon information and belief paragraph 2.
3. Answering paragraph 3, these Defendants admit John Wiles was a Claim Specialist for the claim of Pamela Reid against State Farm's insured, that he was an employee of State Farm which does business in Anderson County, South Carolina and that he acted in the normal course of his employment with State Farm but otherwise paragraph 3 is denied.
4. Answering paragraph 4, these Defendants admit State Farm is an insurance company which does business in Anderson County, South Carolina but deny the remaining allegations in paragraph 4 because Wiles did not do anything wrong for which his employer would be vicariously liable.

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5. Answering paragraph 1 under the subheading of "Jurisdiction", these Defendants would show that the issue of the Court's jurisdiction is a matter of law to be determined by the Court and otherwise paragraph 1 is denied.

6. Answering paragraph 2 under the subheading of "Jurisdiction", these Defendants admit the events referenced in the Complaint did occur within the last two years.

7. Answering paragraph 1 under the subheading of "Memorandum", these Defendants admit upon information and belief this paragraph. The following paragraphs in this first defense refer to the paragraphs under the subheading of "Memorandum" in the Plaintiff's Complaint.

8. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 and, therefore, this paragraph is denied.

9. Paragraph 3 is admitted.

10. Paragraph 4 is admitted upon information and belief.

11. These Defendants admit upon information and belief paragraph 5.

12. Answering paragraph 6, these Defendants admit that according to the Plaintiff's records the Plaintiff treated Reid on the dates referenced in paragraph 6.

13. Answering paragraph 7, these Defendants admit upon information and belief that the Plaintiff's records show that the Plaintiff made those diagnoses of Reid's condition.

14. Answering paragraph 8, these Defendants refer to the documents attached to the Complaint for the statements therein and otherwise paragraph 8 is denied.

15. Answering paragraph 9, these Defendants refer to the documents attached to the Plaintiff's Complaint for the statements therein and otherwise paragraph 9 is denied.

16. Answering paragraph 10, these Defendants refer to the documents attached to the Plaintiff's Complaint for the statements therein and these Defendants would further show that no

document signed by Reid could assign to the Plaintiff any causes of action Reid may have against State Farm because Reid, as a third party claimant, would have no right to a direct action against State Farm and otherwise paragraph 10 is denied.

17. Paragraph 11 is denied.

18. Paragraph 12 is denied.

19. Answering paragraph 13, these Defendants would show that on or about August 24, 2017 Reid reached a settlement of her claim against Calcutt but otherwise paragraph 13 is denied.

20. Paragraph 14 is admitted.

21. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 and, therefore, this paragraph is denied.

22. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 and, therefore, this paragraph is denied.

23. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 and, therefore, this paragraph is denied.

24. Answering paragraph 18, these Defendants admit they were provided with the Plaintiff's liens against Pamela Reid but the remaining allegations in paragraph 18 are denied.

25. Answering paragraph 19, these Defendants admit State Farm at the direction of Reid paid Reid but these Defendants deny that State Farm's payment to Reid violated any agreement between State Farm and the Plaintiff and otherwise paragraph 19 is denied.

26. Paragraph 20 is denied.

27. Paragraph 21 is denied.

28. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 and, therefore, this paragraph is denied.

29. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23 and, therefore, this paragraph is denied.

30. Answering paragraph 24, these Defendants would show that State Farm has paid Pamela Reid to settle Reid's claim against State Farm's insured and these Defendants deny that they are in any way indebted to the Plaintiff for any amount Pamela Reid may owe the Plaintiff and otherwise paragraph 24 is denied.

31. Paragraph 25 is denied.

32. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26 and, therefore, this paragraph is denied.

33. Answering paragraph 27, these Defendants incorporate their answers to paragraph 1 through 26 under the subheading of "Memorandum" as fully and effectually as if set forth verbatim.

34. Answering paragraph 28, these Defendants refer to the documents attached to the Complaint and otherwise paragraph 28 is denied.

35. Paragraph 29 is denied.

36. Answering paragraph 30, these Defendants would show that Pamela Reid directed State Farm to send the settlement funds to her instead of the Plaintiff but otherwise paragraph 30 is denied.

37. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31 and, therefore, this paragraph is denied.

38. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32 and, therefore, this paragraph is denied.

39. Answering paragraph 33, these Defendants incorporate their answers to paragraphs 1 through 32 under the subheading of "Memorandum" as fully and effectually as if set forth verbatim.

40. Answering paragraph 34, these Defendants admit the Plaintiff did inquire of Wiles if State Farm would pay the Plaintiff directly out of the settlement with Reid but these Defendants would further show that State Farm never agreed to do that without the agreement of Reid and otherwise paragraph 34 is denied.

41. Answering paragraph 35, these Defendants admit State Farm agreed to pay the Plaintiff directly if Reid instructed State Farm to do so but that never happened and these Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 35 and, therefore, those allegations are denied.

42. Paragraph 36 is denied.

43. Paragraph 37 is denied.

44. Paragraph 38 is denied.

45. Answering paragraph 39, these Defendants incorporate their answers to paragraphs 1 through 38 under the subheading of "Memorandum" as fully and effectually as if set forth verbatim.

46. These Defendants admit upon information and belief paragraph 40.

47. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41 and, therefore, this paragraph is denied.

48. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 42 and, therefore, this paragraph is denied.

49. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43 and, therefore, this paragraph is denied.

50. Answering paragraph 44, these Defendants admit that it would be inequitable of Reid to retain the benefit of the Plaintiff's services without paying for it but to the extent paragraph 44 applies to these Defendants it is denied.

51. Answering paragraph 45, these Defendants incorporate their answers to paragraphs 1 through 44 under the subheading of "Memorandum" as fully and effectually as if set forth verbatim.

52. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 46, 47, 48, 49, 50, 51, 52, 53 and 54 and, therefore, these paragraphs are denied.

53. Answering paragraph 55, these Defendants incorporate their answers to paragraphs 1 through 54 under the subheading of "Memorandum" as fully and effectually as if set forth verbatim.

54. Paragraph 56 is admitted but these Defendants would further show that Reid never directed State Farm to directly pay the Plaintiff and, instead, Reid requested that payment for medical bills be made to her.

55. Answering paragraph 57, these Defendants refer to the documents attached to the Complaint and otherwise paragraph 57 is denied.

56. Answering paragraph 58, these Defendants admit that in some cases State Farm has paid the patient and not the doctor but otherwise paragraph 58 is denied.

57. Paragraph 59 is denied.

58. Paragraph 60 is denied.

59. Paragraph 61 is denied.

60. Paragraph 62 is denied.

61. Paragraph 63 is denied.

62. Paragraph 64 is denied.

63. Paragraph 65 is denied.

64. Answering paragraph 66, these Defendants incorporate their answers to paragraphs 1 through 65 under the subheading of "Memorandum" as fully and effectually as if set forth verbatim.

65. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 67 and, therefore, this paragraph is denied.

66. Paragraph 68 is denied.

67. Paragraph 69 is denied.

68. Answering paragraph 70, these Defendants would show that any duty owed by these Defendants is a matter of law to be determined by the Court and these Defendants would further show that any information communicated directly to the Plaintiff was truthful and otherwise paragraph 70 is denied.

69. Paragraph 71 is denied.

70. Paragraph 72 is denied.

71. Paragraph 73 is denied.

72. Answering paragraph 74, these Defendants incorporate their answers to paragraphs 1 through 73 under the subheading of "Memorandum" as fully and effectually as if set forth verbatim.

73. Answering paragraph 75, these Defendants would show that any duty owed to the Plaintiff is a matter of law to be determined by the Court and otherwise paragraph 75 is denied.

74. Paragraph 76 is denied.

75. Paragraph 77 is denied.

76. Paragraph 78 is denied.

77. Except as is specifically admitted, each and every allegation in the Complaint and in the prayer of the Complaint are denied.

FOR A SECOND DEFENSE

78. The Plaintiff's Complaint fails to set forth facts sufficient to constitute a cause of action against these Defendants.

FOR A THIRD DEFENSE

79. Under South Carolina's Statute of Frauds any agreement to answer for the debt of another must be in writing and signed by the party to be charged and these Defendants had no written agreement with the Plaintiff to pay the debts owed to the Plaintiff by Pamela Reid.

FOR A FOURTH DEFENSE

80. The Plaintiff failed to exercise reasonable care in not requiring Pamela Reid to directly pay the Plaintiff for the Plaintiff's services to Reid without any direct agreement between the Plaintiff and these Defendants and that failure to exercise due care was a direct and proximate cause of any injury or damage sustained by the Plaintiff.

FOR A FIFTH DEFENSE

81. The Plaintiff has no standing to sue these Defendants because Pamela Reid, as a third party claimant, had no standing herself to directly sue these Defendants.

FOR A SIXTH DEFENSE

82. Any alleged contract between these Defendants and the Plaintiff was not supported by consideration from the Plaintiff to these Defendants.

FOR A SEVENTH DEFENSE

83. Neither the Plaintiff nor Pamela Reid were in privity of contract with these Defendants.

FOR AN EIGHTH DEFENSE

84. Any award of punitive damages under the facts of this case will violate the South Carolina and United States Constitutions.

WHEREFORE, having fully answered the Complaint, State Farm Mutual Automobile Insurance Company and John Wiles pray that the Complaint be dismissed, with costs, and for such other and further relief as this Court may deem just and proper.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ CHARLES R. NORRIS

Charles R. Norris
SC Bar No. 004238
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(843) 853-5200

*Attorneys for State Farm Mutual Automobile Insurance
Company and John Wiles*

Charleston, South Carolina

December 28, 2017

A TRUE COPY

SEP 12 2018

STATE OF SOUTH CAROLINA *Richard M. Wiles*
ANDERSON COUNTY COURT

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

DR. GREGG N. BATTERSBY,

Civil Action No. 2017-CP-04-02502

Plaintiff,

vs.

PAMELA REID, STATE FARM
MUTUAL AUTOMOBILE
INSURANCE COMPANY AND JOHN
WILES,

**STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY AND JOHN
WILES' MOTION FOR SUMMARY
JUDGMENT**

Defendant.

Pursuant to SCRCP 56 State Farm Mutual Automobile Insurance Company (State Farm) and John Wiles move for summary judgment on the following causes of action and on the following grounds:

1. As to the Plaintiff's breach of contract claim against State Farm, the Plaintiff had no contract with State Farm which obligated State Farm to pay Pamela Reid's bills owed to the Plaintiff. Also, agreements to pay the debts of others must under the Statute of Frauds be in writing and the Plaintiff had no written contract with State Farm or Wiles.

2. As to the Plaintiff's claim for fraud, the Defendants are entitled to summary judgment on the following grounds:

- a. Neither State Farm nor Wiles made a false statement to the Plaintiff;
- b. The statement in question was made after the Plaintiff had completed his treatment of Pamela Reid and there was therefore no detrimental reliance by the Plaintiff on any statement of State Farm or Wiles; and

c. The Plaintiff cannot establish the nine elements of common law fraud, in particular that he had no way of knowing that State Farm would not pay him directly for Reid's bills.

3. State Farm and Wiles are entitled to summary judgment on the Plaintiff's causes of action for negligent misrepresentation and negligence because the Plaintiff cannot establish detrimental reliance upon any statement made by State Farm or Wiles and State Farm had no pecuniary interest as to whether payment was issued directly to the Plaintiff or issued to Reid.

This motion for summary judgment is based upon the Plaintiff's Complaint, SCRCP 56, the Plaintiff's deposition testimony and the exhibits to that deposition and applicable cases and statutes.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ CHARLES R. NORRIS

Charles R. Norris

SC Bar No. 004238

E-Mail: charles.norris@nelsonmullins.com

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(843) 853-5200

*Attorneys for State Farm Mutual Automobile Insurance
Company and John Wiles*

Charleston, South Carolina

February 26, 2018

A TRUE COPY**SEP 12 2018**

STATE OF SOUTH CAROLINA

ANDERSON CLERK OF COURT

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

DR. GREGG N. BATTERSBY,

Civil Action No. 2017-CP-04-02502

Plaintiff,

vs.

**STATE FARM AUTOMOBILE
INSURANCE COMPANY AND JOHN
WILES' MEMORANDUM IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT**PAMELA REID, STATE FARM
MUTUAL AUTOMOBILE
INSURANCE COMPANY AND JOHN
WILES,

Defendant.

The Plaintiff is a chiropractor who furnished treatment to Pamela Reid for injuries resulting from an automobile accident between Pamela Reid and William Calcutt. Calcutt was insured with State Farm Mutual Automobile Insurance Company (State Farm). The Plaintiff was not. For the following reasons State Farm and its employee John Wiles are entitled to summary judgment.

FACTUAL BACKGROUND

On or about July 10, 2017 Pamela Reid was involved in an automobile accident with William Calcutt. (Plaintiff's Complaint, ¶ 2 under "memorandum") Calcutt was an insured of State Farm but Reid was not an insured of State Farm. (Plaintiff's Deposition, pg. 25) No part of the State Farm policy insuring Calcutt stated that State Farm would pay bills owed by Pamela Reid to the Plaintiff. (Plaintiff's Deposition, pg. 39)

The Plaintiff treated Reid from July 11, 2017 to August 14, 2017 at which time the Plaintiff's treatment of Reid concluded. The Plaintiff's total bill to Reid was \$5,010. (Plaintiff's Deposition, pg. 16, 22) At the commencement of Reid's treatment by the Plaintiff she signed contracts with the Plaintiff. (Plaintiff's Deposition, pg. 19 – 23; Exhibits 2, 3, 4, 5) These contracts

between the Plaintiff and Reid gave the Plaintiff a lien on proceeds paid to Reid and purported to assign Reid's rights to the Plaintiff. However, the Plaintiff had no written contract with State Farm whereby State Farm agreed to pay medical bills of the Plaintiff's patients. (Plaintiff's Deposition, pg. 19, 31, 35) Instead, the Plaintiff claims to have had an oral contract with State Farm whereby State Farm agreed to pay medical bills owed by Pamela Reid to the Plaintiff. (Plaintiff's Deposition, pg. 35)

After the Plaintiff's treatment of Reid concluded on August 14, 2017 the Plaintiff spoke with John Wiles of State Farm on August 15, 2017. (Plaintiff's Deposition, pg. 23, 27, 46) In this conversation the Plaintiff told Wiles that the Plaintiff had concluded treatment of Reid and Wiles replied that State Farm would pay the Plaintiff "if Pamela Reid wants me [the Plaintiff] paid from the settlement..." (Plaintiff's Deposition, pg. 27; See also, pg. 30, 32)

Reid lied to the Plaintiff in telling him that she had requested that State Farm pay directly to the Plaintiff Reid's medical bills. (Plaintiff's Deposition, pg. 45, 46; Plaintiff's Complaint, ¶ 51) Instead, Reid instructed State Farm that Reid wanted to be paid the money that Reid owed to the Plaintiff. (Plaintiff's Deposition, pg. 43; Plaintiff's Complaint, ¶ 30) Reid instructed State Farm not to pay the Plaintiff and, instead, to pay her. (Plaintiff's Complaint, ¶ 30; Plaintiff's Deposition, pg. 44) The Plaintiff has sent a bill to Reid but it has not been paid. (Plaintiff's Deposition, pg. 40)

ARGUMENT

I. The Plaintiff had no written contract with State Farm which obligated State Farm to pay Pamela Reid's medical bills owed to the Plaintiff.

A Plaintiff cannot have a breach of contract claim without there being a contract. The Plaintiff has conceded that he had no written contract with State Farm which obligated State Farm to pay Pamela Reid's medical bills owed to the Plaintiff. (Plaintiff's Deposition, pg. 19, 31, 35)

None of the Plaintiff's contracts with Pamela Reid, who was not an insured with State Farm, obligate State Farm to pay medical bills owed by Reid to the Plaintiff. This issue was addressed by the South Carolina Court of Appeals in Trancik v. USAA Insurance Company, 581 S.E. 2d 858 (S.C. App. 2003). The facts of that case parallel those of this case in that Dr. Trancik brought suit against USAA for failing to honor an assignment of settlement proceeds signed by Trancik's patient. The Court of Appeals affirmed the Trial Court's dismissal of Trancik's suit because he had no contractual privity with USAA. The Court of Appeals concluded that because Wiggs, Trancik's patient, had no contractual privity with USAA, Trancik could receive no greater right from Wiggs through her assignment. 581 S.E. 2d at 861

This lawsuit is not the first time the Plaintiff has sued an insurance company for not paying the Plaintiff medical bills owed by one of the Plaintiff's patients when the patient had no contractual privity with the insurance company. Attached as Exhibit A is an order of Judge Lawton McIntosh in Battersby v. Allstate, civil action no. 2015-CP-04-00667. Page 5 of this order cites Trancik and other cases in holding that the defendant insurer owed no duty to the Plaintiff. Also attached as Exhibit B is a subsequent order in the same case by Judge Scott Sprouse which denied the defendant insurer's motion for sanctions against the Plaintiff. Although the Court declined to impose sanctions against the Plaintiff, it did state that:

After careful consideration of the pleadings and the explanation of Plaintiff's counsel, the Court declines to impose sanctions. However, the Court notes that the Plaintiff's theory of the case was tenuous, making it a close question as to whether sanctions were appropriate. The Court has considered the evidence in a light most favorable to Plaintiff's counsel, reaching this decision after much contemplation. While the Court has decided not to sanction Plaintiff's counsel, the Court cautions him to carefully research the law when evaluating whether or not he has a viable cause of action in future cases. Suspicion without supporting evidence will not sustain a cause of action.

II. The Plaintiff cannot create an oral contract with State Farm because any agreement to pay the debts of others must under the Statute of Frauds be in writing and the Plaintiff had no written contract with State Farm or Wiles.

The Plaintiff claims that his conversation with John Wiles of August 15, 2017 created an oral contract whereby Wiles bound State Farm to pay medical bills owed by Pamela Reid to the Plaintiff. (Plaintiff's Deposition, pg. 35) However, to be legally enforceable, § 32-3-10(2) of the South Carolina Code requires that a promise to answer for the debt of another must be in writing and signed by the party to be charged. Generally, contracts required by the Statute of Frauds to be in writing cannot be orally modified. State v. McIntyre, 415 S.E. 2d 399 (S.C. 1992); Windham v. Honeycutt, 302 S.E. 2d 856 (S.C. 1983) State Farm's alleged oral promise to pay directly to the Plaintiff medical bills owed to the Plaintiff by Pamela Reid contravenes the Statute of Frauds and is unenforceable.

III. State Farm is entitled to summary judgment on the Plaintiff's claim for fraud because neither State Farm nor Wiles made a false statement to the Plaintiff.

When the Plaintiff spoke with John Wiles on August 15, 2017 Wiles told the Plaintiff that State Farm would pay the Plaintiff the medical bills Pamela Reid owed the Plaintiff if Reid agreed to do so. (Plaintiff's Deposition, pg. 32) This was not a false statement because Reid instructed State Farm "that she wanted to be paid the money owed to Plaintiff for his services to her." (Plaintiff's Complaint, ¶ 14) The Plaintiff's complaint alleges that after Reid signed several documents with the Plaintiff, "Reid later told State Farm not to pay Plaintiff but to pay her instead." (Plaintiff's Complaint, ¶ 30) Accordingly, Wiles' statement to the Plaintiff that State Farm would pay the Plaintiff if that is in fact what Pamela Reid wanted was a true statement. Unfortunately, Reid did not ask State Farm to pay the Plaintiff and, instead, she asked State Farm to pay her and she, in turn, refused to pay the bills she owed the Plaintiff.

IV. State Farm and Wiles are entitled to summary judgment because Wiles' statement to the Plaintiff was made after the Plaintiff had completed his treatment of Reid and, therefore, the Plaintiff could not have detrimentally relied on any statement of State Farm or Wiles.

Two of the nine elements of common law fraud are the hearer's reliance and the hearer's consequent and proximate injury based upon this reliance. Redwend Limited Partnership v. Edwards, 581 S.E. 2d 496 (S.C. 2003); May v. Hopkinson, 347 S.E. 2d 508 (S.C. App. 1986) The failure to prove any one of the nine elements of fraud is fatal. Florentine Corporation v. Peda, 339 S.E. 2d 112, 114 (S.C. 1985) Here, the Plaintiff's reliance on Wiles' statement could not have been detrimental reliance because, even assuming Wiles made a false statement to the Plaintiff, the false statement came **after** the Plaintiff's treatment of Reid had concluded. The Plaintiff therefore cannot prove that he furnished treatment to Reid based upon State Farm's promise to pay directly to the Plaintiff Reid's bills. See, Stringer v. State Farm Mutual Automobile Insurance Company, 687 S.E. 2d 58 (S.C. App. 2010), which held that an insured cannot base coverage upon a representation of coverage where the insured cannot prove he suffered a prejudicial change in position or detrimentally relied on the representation of the insurer. In Stringer, the Plaintiff was involved in an accident and after the accident he claimed a State Farm employee informed him he would have uninterrupted coverage. In reversing an award in favor of Stringer the South Carolina Court of Appeals held that the representation of coverage occurred after the accident took place and that "while our Appellate Courts have prevented insurance companies from denying coverage, they have done so when the insurer, or its agent, makes representations of coverage **before** the loss occurred." 687 S.E. 2d at 62 (emphasis in original) The Court added that "here, the representation of coverage occurred after the loss." 687 S.E. 2d at 62 In the present case the Plaintiff's loss – medical bills for treatment of Pamela Reid from July 11 through August 14, 2017 – occurred

before Wiles' alleged representation to the Plaintiff, or, in other words, the representation occurred after the loss.

V. The Plaintiff cannot establish the nine elements of common law fraud, in particular that he had no way of knowing that State Farm would not pay him directly for Reid's bills.

Another of the nine elements of fraud is the hearer's ignorance of the false statement. Redwend Limited Partnership v. Edwards, 581 S.E. 2d 496 (S.C. 2003) The Plaintiff could have learned from State Farm prior to the Plaintiff's treatment of Reid that State Farm would directly pay the Plaintiff for Reid's bills only if Reid made that request to State Farm. Although the Plaintiff entered into contracts with Reid at the commencement of his services to Reid, the Plaintiff never communicated with State Farm about payment of Reid's bills until the Plaintiff had concluded his treatment of Reid. For example, the Plaintiff could just as easily have conferred with John Wiles before beginning treatment of Reid as he could have conferred with Wiles after concluding Reid's treatment. Accordingly, in addition to being unable to prove the elements of a false statement and detrimental reliance, the Plaintiff also cannot establish his ignorance of the alleged false statement.

The Plaintiff also cannot prove the element that State Farm intended that its representation be acted upon by the Plaintiff because the Plaintiff's acts in this case – treatment of Pamela Reid – had already occurred at the time of the representation. For the same reason, the Plaintiff cannot prove the final element of fraud – a proximate injury resulting from the false representation – because at the time of the alleged false representation on August 15, 2017 the reliance – the Plaintiff's treatment of Pamela Reid – had already concluded. Accordingly, of the nine elements of fraud, the Plaintiff cannot prove at least six of the nine elements – a false statement, knowledge of the false statement or a reckless disregard of its truth by State Farm, State Farm's intent that the representation be acted upon, the Plaintiff's ignorance of the false statement, the Plaintiff's

detrimental reliance on the truth of the statement and the Plaintiff's proximate injury resulting from the alleged false statement. As stated, failure to prove any one of these elements is fatal in claim of fraud. Florentine Corporation v. Peda, 339 S.E. 2d 112, 114 (S.C. 1985)

VI. State Farm and Wiles are entitled to summary judgment on the Plaintiff's causes of action for negligent misrepresentation and negligence because the Plaintiff cannot establish detrimental reliance on any statement made by State Farm or Wiles and State Farm had no pecuniary interest as to whether the payment was issued directly to the Plaintiff or issued to Reid.

This memorandum already explains why the Plaintiff cannot establish detrimental reliance upon an alleged false statement by Wiles. In addition to being unable to prove justifiable reliance on the representation and that the Plaintiff suffered a pecuniary loss caused by reliance on the representation, other elements of a claim of negligent misrepresentation are that the Defendant have a pecuniary interest in making the statement. Redwend Limited Partnership v. Edwards, 581 S.E. 2d 496 (S.C. 2003) Here, it made no difference to State Farm whether it issued the payment to the Plaintiff or issued payment to Reid because in both instances the amount paid by State Farm would be the same. State Farm therefore had no pecuniary interest in making the statement.

CONCLUSION

This is the second time the Plaintiff has filed a lawsuit against an insurance company seeking damages because the insurance company did not pay the Plaintiff directly for bills incurred by the Plaintiff's patient who was not an insured of the insurance company. The Plaintiff's previous case against Allstate was dismissed based upon the Trancik case and the Plaintiff's attorney in that case was chastised by the Court for even filing that case. The only difference between that case and the present case is that the Plaintiff now claims to have had an oral contract with State Farm for State Farm to pay the Plaintiff for medical bills owed to the Plaintiff by Pamela Reid. This alleged oral contract is invalid because it violates the Statute of Frauds. Additionally, the oral

statement upon which the Plaintiff's case is based – the statement to the Plaintiff by John Wiles that State Farm would pay the Plaintiff if Pamela Reid so agreed – was not a false statement, nor could the Plaintiff have detrimentally relied upon this statement because it was made after the Plaintiff's treatment of Reid had concluded. For these and other reasons the Plaintiff's case should be dismissed with prejudice.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ CHARLES R. NORRIS

Charles R. Norris

SC Bar No. 004238

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Charleston, SC 29401-2239

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*Attorneys for State Farm Mutual Automobile Insurance
Company and John Wiles*

Charleston, South Carolina

April 6, 2018

EXHIBIT A

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ANDERSON SC

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON 2015 JUN 12 PM 12:00

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Gregg Battersby,

COMMON PLEAS AND
GENERAL SESSIONS

CIVIL ACTION NO.: 2015-CP-04-00667

Plaintiff,

v.

J. Kirkman Moorhead, Krause, Moorhead &
Draisen, P.A., Allstate Insurance Company,
Allstate Northbrook Indemnity Company,**ORDER GRANTING ALLSTATE
INSURANCE COMPANY AND
ALLSTATE NORTHBROOK INDEMNITY
COMPANY'S MOTION FOR SUMMARY
JUDGMENT AND MOTION TO DISMISS**

Defendants.

This matter comes before me upon Allstate Insurance Company ("Allstate") and Allstate Northbrook Indemnity Company's ("Northbrook") original motion, pursuant to South Carolina Rule of Civil Procedure 12(b)(6), for dismissal of the Second Amended Complaint ("Complaint") of Plaintiff Gregg Battersby ("Plaintiff"). In addition, Allstate and Northbrook moved to sever the claims against them pursuant to South Carolina Rules of Civil Procedure 18, 20, and 21, because Plaintiff's have improperly joined the parties in this lawsuit.

A hearing was held in this matter on June 4, 2015 at the Anderson County Courthouse. A. Johnston Cox appeared for Allstate and Northbrook. Don E. Smith appeared for the Plaintiff. After considering oral arguments and reviewing submissions to the Court made by both parties, Allstate's motions are granted.¹

I. FACTUAL BACKGROUND

Plaintiff alleges that Northbrook was the automobile insurance carrier for his patient, Carrie Neal ("Neal"). (Complaint ¶ 35) Plaintiff alleges that he treated Neal following an automobile accident and that Neal had an outstanding balance of \$12,100.00 following the

¹ As discussed below, Plaintiff requested that Northbrook's motion as to the negligence and gross negligence causes of action be converted into a motion for summary judgment.

treatment, which she did not pay. (Complaint ¶¶ 36, 39) Northbrook and Neal settled her claim in August 2013. (Complaint ¶ 37) Plaintiff contends that Northbrook knew that Plaintiff had a medical lien for the outstanding balance and that Allstate did not pay Plaintiff the money due. (Complaint ¶¶ 40, 38) Plaintiff contends that "Allstate (Northbrook) and Neal conspired to deny payment to Plaintiff." (Complaint ¶ 41)

Plaintiff includes three causes of action against Allstate: 1) conspiracy, 2) negligence, and 3) gross negligence. With regard to the conspiracy cause of action, Plaintiff alleges that the actions of Allstate and Neal "constitute conspiracy" and that he "has suffered actual damage as a direct and proximate result of the conspiracy at the instigation of the Defendant Allstate and Neal." (Complaint ¶¶ 76, 77).

In support of his negligence cause of action, Plaintiff alleges that Allstate's actions "constitute negligence" and that he "has suffered actual damage as a direct and proximate result of the negligence at the instigation of the Defendant Allstate." (Complaint ¶¶ 80, 81) Finally, with regard to his gross negligence cause of action, Plaintiff contends that "Allstate acted without slight care as to the affect [sic] of their actions" and that he "has suffered actual damage as a direct and proximate result of the gross negligence at the instigation of the Defendant Allstate." (Complaint ¶ 84) With regard to each of the three causes of action against Allstate and Northbrook, Plaintiff seeks "actual, special, and punitive damages." (Complaint ¶¶ 78, 82, 86)

A. Motion to Dismiss Standard

Pursuant to Rule 12(b)(6), SCRCP, a court may dismiss a claim when the defendant demonstrates that the plaintiff has "fail[ed] to state facts sufficient to constitute a cause of action in the pleadings filed with the Court." Rule 12(b)(6), SCRCP; *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 121, 634 S.E.2d 5, 6 (Ct. App. 2006). A Rule 12(b)(6) motion will be sustained if the alleged facts and resulting reasonable inferences do not entitle the plaintiff to

relief on any theory of the case. *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602-03 (1995) (citing *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987)). In entertaining a motion to dismiss, a court must only base its ruling upon the allegations as they are set forth on the face of the complaint. *Baird v. Charleston County*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999).

B. The Complaint contains no allegation against Allstate Insurance Company.

A review of the Complaint reveals no allegation against Defendant Allstate Insurance Company. Rather, all allegations are directed toward Northbrook. Plaintiff conceded at the hearing that Allstate is not a proper defendant and agreed to dismiss Allstate from the Complaint. In addition, the Court finds that no cause of action was properly plead against Allstate and grants Allstate's motion to dismiss pursuant to Rule 12(b)(6).

C. Plaintiff has failed to properly plead a claim for conspiracy.

Plaintiff has failed to plead sufficient facts to constitute a claim of conspiracy against Northbrook. When asked to identify the allegations in the Complaint that alleged the elements of conspiracy, Plaintiff's counsel was unable to do so. Plaintiff has failed to satisfy the requirements of bringing a valid cause of action for conspiracy, and this failure is fatal to Plaintiff's cause of action.

"The elements of civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, and (3) which causes special damages." *Pye v. Fox*, 369 S.C. 555, 566-567, 633 S.E.2d 505, 511 (2006) (citations omitted). "A claim for civil conspiracy must allege additional acts in furtherance of a conspiracy rather than reallege other claims within the complaint." *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009) (citation omitted). "[T]he failure to properly plead such acts will merit the dismissal of the claim." *Hackworth*, 385 S.C. at 116, 682 S.E.2d at 875.

See also *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 611, 538 S.E.2d 15, 31 (Ct. App. 2000) ("Because [the third-party plaintiff] ... merely realleged the prior acts complained of in his other causes of action as a conspiracy action but failed to plead additional acts in furtherance of the conspiracy, he was not entitled to maintain his conspiracy cause of action."). "Because the quiddity of a civil conspiracy claim is the damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action." *Pye*, 369 S.C. at 568, 633 S.E.2d at 511.

Plaintiff's allegations as to negligence, gross negligence and conspiracy are essentially the same. Compare Complaint ¶ 76 ("The aforementioned actions, conduct and/or omissions of the Defendant Allstate and Neal constitute conspiracy") with Complaint ¶ 81 ("The aforementioned actions, conduct and/or omissions of the Defendant Allstate constitute negligence.") and Complaint ¶ 84 ("The aforementioned actions, conduct and/or omissions of the Defendant Allstate constitute gross negligence."). Plaintiff's Complaint includes no separate allegations that inform Northbrook of "what acts in furtherance of the alleged conspiracy they are being accused of." *Hackworth*, 385 S.C. at 116, 682 S.E.2d at 875.

In addition, Plaintiff has failed to adequately allege any special damages. Plaintiff merely contends that he is entitled to "actual, special, and punitive damages" in connection with each cause of action alleged as to Northbrook. See (Complaint ¶¶ 78, 82, 86). This is insufficient as a matter of law, and Plaintiff's cause of action for conspiracy is dismissed for failure to state a claim.

D. Plaintiff has failed to demonstrate that Northbrook owed a duty to Plaintiff to support his causes of action for negligence or gross negligence.

Plaintiff contends that Northbrook was negligent and grossly negligent in failing to pay him directly for the services that he rendered to his patient, Neal. In opposition to Northbrook's

motion, Plaintiff requested that the Court consider matters outside of the pleadings and that the Court convert Northbrook's motion from a motion to dismiss to a motion for summary judgment.

Plaintiff alleges that Northbrook "owed a duty to Plaintiff to assure his bill was paid" and that "Allstate (Northbrook) breached that duty." See (Complaint ¶ 40). However, no such duty exists under South Carolina law. See *Gray v. State Farm Auto Ins. Co.*, 327 S.C. 646, 651, 491 S.E.2d 272, 275 (Cl. App. 1997); *Seebaldt v. First Fed. Savings & Loan Assoc.*, 269 S.C. 691, 693, 239 S.E.2d 726, 727 (1977) and *Tranick v. USAA Ins. Co.*, 354 S.C. 549, 581 S.E.2d 858 (2003). Plaintiff conceded at the hearing that no such duty exists, but argued that Allstate undertook the duty to protect his lien, and therefore had a duty to perform in a non-negligent manner.

In opposition to the motion, Plaintiff submitted a standard letter that Northbrook and other companies send out with a settlement check to claimants and their attorneys, reminding them that they have the obligation to satisfy all outstanding liens. I find that the letter from Northbrook to Neal's attorney did not create any duty to Plaintiff as a matter of law and grant Northbrook's motion for summary judgment as to the negligence and gross negligence causes of action. The letter created neither a duty in negligence nor a contract with Plaintiff to pay him directly for services rendered to Neal.

E. Plaintiff's claims against Northbrook and the Remaining Defendants are improperly joined under Rule 21, SCRPC because they do not arise out of the same transaction or occurrence, nor do they implicate common questions of law or fact.

Pursuant to South Carolina Rule of Civil Procedure 21, this Court has broad discretionary power to "drop[] or add[] [parties] by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just." Further, the rule provides that "[a]ny claim against a party may be severed and proceeded with separately." The discretion to

sever is broad. *See Saval v. BL Ltd.*, 710 F.2d 1027, 1031-32 (4th Cir. 1983). Although Rule 21 does not describe a standard for determining misjoinder, “[c]ourts have routinely held that parties are misjoined when either of the preconditions set forth in Rule 20(a) have not been satisfied.” *Hard Drive Prods., Inc. v. Does 1-30*, No. 2:11cv345, 2011 WL 4915551, at *2 (E.D. Va. Oct. 17, 2011). As with Rule 20, the Notes to South Carolina Rule 21 indicate: “This Rule 21 is the same as the Federal Rule.”

“[T]he cases make it clear that misjoinder of parties arises when they fail to satisfy any of the conditions of permissive joinder under Rule 20(a), [and t]hus, Rule 21 applies when the claims asserted do not arise out of the same transaction or occurrence or do not present some common question of law or fact.” *Am. Fid. Fire Ins. Co. v. Construcciones Werl, Inc.*, 407 F. Supp. 164, 190 (D.C. Virgin Islands 1975) (citations omitted).

It is patently clear from the Second Amended Complaint that the Plaintiff’s allegations against Northbrook and Defendants Moorhead and Krause, Moorhead & Draisen, do not arise out of the same transaction or occurrence and do not present any common questions of law or fact. Plaintiff counsel admitted at the hearing that the causes of action against the defendants were separate. Under no circumstances should Northbrook have been included in the same action with the other defendants.

Accordingly, Northbrook is dropped as a defendant in this action. If Plaintiff attempts to bring an action against Northbrook at a later date, he must file a new action and pay a separate filing fee.²

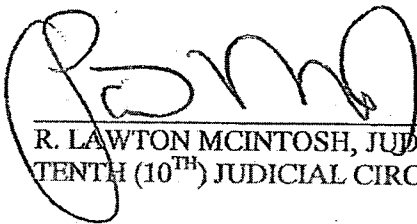
² At the hearing, Northbrook reserved its right to file a motion pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 after entry of this Order.



AND THEREFORE, IT IS ORDERED THAT:

- (1) Allstate Insurance Company is dismissed pursuant to Rule 12(b)(6);
- (2) Northbrook's motion to dismiss the Plaintiff's conspiracy cause of action pursuant to Rule 12(b)(6) SCRCP is granted;
- (3) Northbrook's motion for summary judgment as to the negligence and gross negligence causes of action pursuant to Rule 56 SCRCP is granted; and;
- (4) Northbrook's motion to sever pursuant to Rule 21 SCRCP is granted.

AND IT IS SO ORDERED.


R. LAWTON MCINTOSH, JUDGE
TENTH (10TH) JUDICIAL CIRCUIT

Anderson, South Carolina

6-11, 2015

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ANDERSON SC
2015 JUN 12 PM 12:00
COMMON PLEAS AND
GENERAL SESSIONS

EXHIBIT B

FILED-CLERK'S OFFICE
 STATE OF SOUTH CAROLINA ANDERSON SC IN THE COURT OF COMMON PLEAS
 COUNTY OF ANDERSON TENTH JUDICIAL CIRCUIT

2015 AUG 20 AM 9:46

Gregg Battersby,

Plaintiff,

COMMON PLEAS AND
 GENERAL SESSIONS

CIVIL ACTION NO.: 2015-CP-04-00667

v.

J. Kirkman Moorehead; Krause, Moorehead &
 Draisen, P.A.; Allstate Insurance Company;
 and Allstate Northbrook Indemnity Company,

Defendants.

ORDER

PRESIDING JUDGE:	R. Scott Sprouse
DATE OF HEARING:	July 28, 2015
PLAINTIFF'S ATTORNEY:	Donald L. Smith
DEFENDANT'S ATTORNEY:	A. Johnston Cox
COURT REPORTER:	Renee Tollison

This matter was before the Court pursuant to the Defendant Allstate Insurance Company and Allstate Northbrook Indemnity Company ("Defendant Allstate")'s Motion for Sanctions under Rule 11 of the South Carolina Rules of Civil Procedure. The Defendant Allstate also seeks attorney fees and costs. The basis for the motion is that the Defendant was granted summary judgment by this Court and that the Plaintiff and his attorney should have known that the Plaintiff had no viable cause of action against the Defendant Allstate prior to filing the action.

The Defendant Allstate is an insurance liability carrier who tendered payment to a claimant through her attorney, Tom Dunaway. The Plaintiff was a chiropractor who had treated the claimant and had an outstanding bill for that treatment. Dunaway did not pay the Plaintiff when he disbursed the funds in his client's personal injury settlement. The Plaintiff brought suit against the Defendant Allstate under the theory that, since the Defendant Allstate had notice of the Plaintiff's outstanding bill, it was under a duty to protect the Plaintiff when tendering payment. Plaintiff's counsel relied on an out-of-state case to advance this theory. The Court ultimately rejected the Plaintiff's theory and granted summary judgment in favor of the Defendant Allstate.

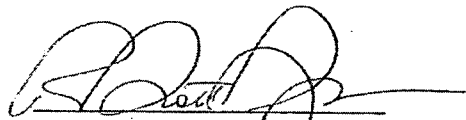
After careful consideration of the pleadings and the explanation of Plaintiff's counsel, the Court declines to impose sanctions. However, the Court notes that the Plaintiff's theory of the case was tenuous, making it a close question as to whether sanctions are appropriate. The Court

Feb

has considered the evidence in a light most favorable to Plaintiff's counsel, reaching this decision after much contemplation. While the Court has decided not to sanction Plaintiff's counsel, the Court cautions him to carefully research the law when evaluating whether or not he has a viable cause of action in future cases. Suspicion without supporting evidence will not sustain a cause of action.

Accordingly, the Defendant Allstate's Motion for Sanctions is denied.

August 13, 2015
Walhalla, SC


R. Scott Sprouse, Judge
Tenth Judicial Circuit

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ANDERSON SC
2015 AUG 20 AM 9:46
COMMON PLEAS AND
GENERAL SESSIONS

DEPOSITION EXCERPTS:

Dr. Gregg N. Battersby

Deposition of:

DR. GREGG N. BATTERSBY

DR. GREGG N. BATTERSBY

VS.

STATE FARM, ET AL.

CASE NO. 2017-CP-04-02502

February 22, 2018



Magnolia Reporting

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Phone: (843) 442-2753

Email: teri.sampson@gmail.com

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DR. GREGG N. BATTERSBY - 2/22/2018

Page 16

1 Q Oh, I see. You weren't a party to that
2 lawsuit?

3 A No.

4 Q You were deposed as a witness?

5 A Yes, an expert witness.

6 Q Say, a defense attorney defending, say, a
7 wreck case, was taking your deposition about the nature
8 and extent of your patient's injuries?

9 A Yes.

10 Q All right. Any other context in which you've
11 been deposed other than as a witness?

12 A I don't believe so.

13 Q Okay. Now, let's go to this case, Dr.
14 Battersby. I think you treated, as I understand it, a
15 Pamela Reid, R-E-I-D; is that right?

16 A Yes.

17 Q Okay. And I'm looking at your bills, which
18 I'll get to in a minute. It looks like you began
19 treating her July 11th, 2017, and you stopped treatment
20 of her on August 14th of 2017; is that correct?

21 A I believe so.

22 Q Okay. I'll show you the bills in a few
23 minutes, and you can review it and verify that
24 yourself. Let's see, actually, before we get there, is
25 that the notice of this deposition you brought with

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Page 19

1 Q And the fact that this notice asked you to
2 bring to your deposition today any contracts between
3 you and State Farm, whereby State Farm agreed to pay
4 medical bills of your patients. Have you brought any
5 such contract with you to the deposition today?

6 A As I just stated, no, I did not.

7 Q All right. Are there any such contracts?
8 Because I assume if there are, you would have brought
9 them today.

10 A There are no such contracts.

11 Q Okay. All right. Now, let's move on to
12 your -- the documents concerning your treatment of
13 Pamela Reid, and I think these are also exhibits to
14 your complaint. I'm going to mark as Exhibit 2, an
15 assignment.

16 (ASSIGNMENT OF PROCEEDS, CONTRACTUAL LIEN, AND
17 AUTHORIZATION MARKED DEFENDANT'S EXHIBIT NO.
18 2 FOR I.D.)

19 BY MR. NORRIS:

20 Q Is that an assignment that Pamela Reid signed
21 on July 11th, 2017?

22 A Yes, it is.

23 Q All right. And this was a contract between
24 you and Pamela Reid?

25 A Yes.

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DR. GREGG N. BATTERSBY - 2/22/2018

Page 22

1 Q Is Exhibit 6 your bills for treatment of
2 Pamela Reid?

3 A Yes.

4 Q Okay, and let's go through that. According to
5 these bills, which are Exhibit 6, which are your
6 records, you began treating her July 11th of 2017?

7 A Yes.

8 Q And you continued to treat her until August
9 14th of 2017?

10 A Yes.

11 Q And your treatment ended August 14th, 2017?

12 A Yes.

13 Q You never treated her after August 14th of
14 2017?

15 A No.

16 Q And your total bill for your treatment of
17 Pamela Reid was \$5,010.00? I'm just looking --

18 A Yes.

19 Q -- at the last page of Exhibit 6.

20 A Yes.

21 Q Okay. All right. So it went, your treatment,
22 from July 11th of 2017 to August 14th of 2017; is that
23 right?

24 A Yes.

25 Q Okay. As far as you knew, did your treatment

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Page 23

1 help Miss Reid?

2 A Yes.

3 Q Was she improved upon discharge?

4 A Yes.

5 Q Is the reason you stopped treating Miss Reid
6 August 14th, 2017, is you felt there was nothing
7 further you could do for her?

8 A I felt she had reached maximum medical
9 improvement.

10 Q You had taken her as far as you could?

11 A Yes.

12 Q Okay. All right. At some point, did you have
13 a discussion with a John Wiles of State Farm?

14 A Yes.

15 Q Do you recall when that was?

16 A August 15th of 2017.

17 Q Okay. And you're looking at your complaint to
18 get that date?

19 A Yes.

20 Q And I'll go over your complaint in a little
21 bit, and I'll make that an exhibit. Had your treatment
22 of Pamela Reid ended when you first spoke to Mr. Wiles
23 on August 15th, 2017?

24 A Yes.

25 Q Did you ever speak with anyone else at State

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DR. GREGG N. BATTERSBY - 2/22/2018

Page 25

1 Q Okay. Of '17, obviously?

2 A Yeah. After I had -- I wanted to check up on
3 the status of the case, and he informed me that the
4 case had been settled and that payment had gone to
5 Pamela Reid.

6 Q All right. Now, when you talk about, quote,
7 the case, unquote, you're referring to Pamela Reid's
8 claim against William Calcutt?

9 A Yes.

10 Q And just for the record, William Calcutt was
11 an insured of State Farm, and Pamela Reid was not an
12 insured of State Farm?

13 A Yes.

14 Q And do you know if Pamela Reid actually filed
15 a lawsuit against William Calcutt, or instead simply
16 made a claim with Mr. Calcutt's liability insurer,
17 which was State Farm?

18 A I don't know.

19 Q Okay. Be that as it may, what did Mr. Wiles
20 tell you in September of 2017 about Pamela Reid's claim
21 against William Calcutt?

22 A He said that the claim had been settled, and I
23 believe it was on August 25th or something like that,
24 and that they had sent payment to Pamela Reid.

25 Q And what did you tell Mr. Wiles in response to

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DR. GREGG N. BATTERSBY - 2/22/2018

Page 27

1 that. And I told him that I had this document signed
2 by Pamela Reid that was directing payment to me from
3 the -- out of the settlement, and I asked him if he
4 would honor that, and he said yes, if Pamela Reid wants
5 you paid, he will pay -- if Pamela Reid wants me paid
6 from the settlement, that he'll make payment to me.

7 Q Is that the first time you ever communicated
8 with State Farm concerning your treatment of Pamela
9 Reid, August 15th?

10 A I believe so. I'm not absolutely sure. I
11 don't know -- I may have called State Farm initially
12 about getting the -- finding out who the adjuster was,
13 or something like that. I don't know if there was
14 prior communication, or what it was regarding.

15 Q Okay. But the first time you ever spoke to
16 anybody at State Farm about whether State Farm would
17 pay Pamela Reid's bills was August 15th when you spoke
18 with Mr. Wiles?

19 A I believe so.

20 Q Did you record that conversation?

21 A Yes.

22 Q You did?

23 A Yes.

24 Q Okay. And you have that recording?

25 A Yes.

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DR. GREGG N. BATTERSBY - 2/22/2018

Page 30

1 A If my phone would turn on. If you want to
2 continue to talk -- do you want to continue asking?

3 Q Sure, let's continue with the deposition. But
4 what I would like to do is for you to send the
5 recording to both me and my administrative assistant,
6 Grace Hamill, and I can then have Miss Sampson
7 transcribe that.

8 Be that as it may, what you say Mr. Wiles told
9 you on August 15th is that if Pamela Reid instructed
10 State Farm to pay you, State Farm would pay you; right?

11 A If -- if -- he said that if she wanted me paid
12 directly out of the settlement, that they would pay me
13 out of the settlement.

14 Q Okay. Did he say anything else beyond that?

15 A I -- I mean, we discussed the sending of the
16 bill and the records.

17 Q Your records?

18 A Yes.

19 Q Which you sent to Mr. Wiles after August 15th?

20 A Yes.

21 Q Okay. Now, you spoke, I think, with Mr. Wiles
22 August 15th, and one time later in September of 2017.

23 Do you recall speaking with him again after September
24 of 2017?

25 A No, I don't believe so.

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DR. GREGG N. BATTERSBY - 2/22/2018

Page 31

1 Q All right. Did John Wiles or anybody else
2 from State Farm ever agree in writing to pay Pamela
3 Reid's bills?

4 A Nothing in writing.

5 Q Okay. In other words, it was a parol
6 contract, I think as you had described it?

7 A Yes, yes.

8 Q At some point, did you correspond with an
9 attorney State Farm hired, a Mr. Tim Domin, do you
10 recall that?

11 A There was somebody from another law firm. I
12 don't remember exactly who the --

13 Q Okay. Well, I'll show you. Perhaps that will
14 help your recollection. I'm going to mark this as
15 Exhibit 7.

16 (LETTER DATED OCTOBER 10, 2017, MARKED
17 DEFENDANT'S EXHIBIT NO. 7 FOR I.D.)

18 BY MR. NORRIS:

19 Q Is Exhibit 7 a letter that you received from
20 Mr. Domin?

21 A Yes.

22 Q And if you look at Mr. Domin's letter, which
23 is Exhibit 7 to this deposition, does that reference
24 the case of Trancik versus USAA Insurance Company?

25 A Yes.

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DR. GREGG N. BATTERSBY - 2/22/2018

Page 32

1 Q Had you ever heard of the Trancik case before
2 you ever got Mr. Domin's letter, which is Exhibit 7?

3 A No.

4 Q Mr. Domin's letter of October 10th of last
5 year says, and I'm looking kind of at the middle of the
6 first paragraph, "State Farm's claim representative had
7 advised you State Farm would be willing to pay you
8 directly if the Claimant was in agreement to do so."
9 Is that an accurate statement, the Claimant being
10 Pamela Reid?

11 A Wait. What was that again?

12 Q Okay. Looking at kind of the middle of the
13 first paragraph of Mr. Domin's letter, he says, and I
14 quote, State Farm's claim representative advised you
15 State Farm would be willing to pay you directly if the
16 Claimant was in agreement to do so, end quote. Is that
17 an accurate statement?

18 A Yes.

19 Q Okay. And at the bottom of that paragraph,
20 Mr. Domin further says, "Whatever is written in your
21 agreement with the patient is not binding on State
22 Farm." Do you agree or disagree with that?

23 A Okay, I'm sorry, I was just trying to --

24 Q That's okay.

25 A Let me -- I narrowed the email down.

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DR. GREGG N. BATTERSBY - 2/22/2018

Page 34

1 Wiles" is the title of the attachment.

2 Q All right.

3 A So, it was sent to you.

4 Q All right. And you attached the recording of

5 your August 15th conversation with John Wiles?

6 A Yes.

7 Q Would you be so kind as to re-send that to me?

8 A I'll have to do it when I get back. Because

9 for every -- for some reason, it's kicking --

10 Q That's okay. When you get back, could you

11 re-send it to me?

12 A Yes.

13 Q And I'll go back and check your February 1st

14 email to me to see if there was an attachment to that;

15 but it may be the case, for whatever reason, the

16 attachment didn't go through. So, once you get back to

17 your office today, if you could re-send to me your

18 February 1st email, I would appreciate it.

19 A Yes.

20 Q Getting back to Exhibit 7, I was asking you

21 at -- at the end of the first paragraph of Mr. Domin's

22 letter, he says, "Whatever is written in your agreement

23 with the patient is not binding on State Farm." Do you

24 agree or disagree with that statement?

25 A It's -- it's -- I disagree.

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DR. GREGG N. BATTERSBY - 2/22/2018

Page 39

1 Q Have you ever seen that order that is Exhibit
2 11?

3 A No, I haven't.

4 Q Not aware of it?

5 A I don't know what the -- I know that there was
6 some -- was this the dismissal, I think? Or the
7 summary judgment?

8 Q The order speaks for itself. It's my
9 understanding Exhibit 10 dismisses your case against
10 Allstate.

11 A I haven't seen the order. I just know that
12 the case was dismissed.

13 Q Okay. But your attorney, Mr. Smith,
14 apparently did not forward you these orders that are
15 Exhibit 10 and Exhibit 11?

16 A I don't recall seeing them.

17 Q Okay. All right. Okay. Have you seen State
18 Farm's policy issued to William Calcutt?

19 A Yes. You sent it to me the other day.

20 Q All right. Does it say anywhere in that
21 policy that State Farm would pay debts owed by Pamela
22 Reid to you?

23 A No. It just states they would pay for the
24 injuries caused by Mr. Calcutt.

25 Q All right. But neither you or Pamela Reid are

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DR. GREGG N. BATTERSBY - 2/22/2018

Page 40

1 mentioned anywhere in that policy, are they?

2 A No.

3 Q Let's talk for a second about Pamela Reid.

4 You have named her also as a defendant in this lawsuit

5 in addition to State Farm and Mr. Wiles; right?

6 A Yes.

7 Q Have you served the complaint on her?

8 A Yes.

9 Q Has she answered it?

10 A She's in default.

11 Q Have you moved to hold her in default?

12 A Not yet.

13 Q Have you made any attempts to collect from her
14 the debt that she owes you?

15 A Yes. I sent her a bill.

16 Q Okay. Have you gotten any response at all
17 from her?

18 A No.

19 Q Have you called her?

20 A No.

21 Q Not talked to her?

22 A No.

23 Q But have you sent her any letters or anything
24 like that?

25 A I sent her a bill.

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DR. GREGG N. BATTERSBY - 2/22/2018

Page 43

1 I think the way I have it -- I mean, they do have an
2 option for that.

3 Q Okay.

4 A But I just have it reported on their credit
5 rating.

6 Q All right. In your complaint, are all of the
7 factual allegations accurate?

8 A Yes.

9 Q Okay. I assume you wouldn't put something
10 false in your complaint; right?

11 A No.

12 Q Okay. Could you look at the bottom of page 3,
13 please? Dr. Battersby, in paragraph 14 of your
14 complaint at the bottom of page 3, you said Reid told
15 State Farm that she wanted to be paid the money owed to
16 Plaintiff for his services to her. Did you learn that
17 from what Mr. Wiles told you?

18 A Yes.

19 Q Because I assume you haven't discussed this
20 with Pamela Reid.

21 A No.

22 Q So that came from John Wiles; right?

23 A Yes.

24 Q All right. And looking at the next page,
25 paragraph 23, it says you've attempted to collect the

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DR. GREGG N. BATTERSBY - 2/22/2018

Page 44

1 balance from Reid. Is that what you were talking about
2 a few minutes ago, that you've sent her the bills and
3 you've referred it to a collection service?

4 A Yes.

5 Q Okay. And look at the next page, please, of
6 paragraph 30 on page 5. You say Reid later told State
7 Farm not to pay Plaintiff, but to pay her instead. Is
8 that what John Wiles told you?

9 A Yes.

10 Q And you allege in paragraph 35, a few lines
11 down, that State Farm agreed to pay Plaintiff, you,
12 directly for the services rendered to Reid, if read
13 agreed to have Plaintiff paid directly?

14 A Yes.

15 Q Okay. And it appears to be the case that she
16 signed documents with you, directing insurance
17 companies to pay you; but later, after that, she told
18 the insurance company, specifically Mr. Wiles, to pay
19 her. Is that what happened?

20 A All I know is that she signed documents
21 directing payment to me. I am just getting, from what
22 Mr. Wiles told me, that she told him that she wanted to
23 be paid directly.

24 Q Okay.

25 A So I'm just going by what Mr. Wiles says on

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DR. GREGG N. BATTERSBY - 2/22/2018

Page 45

1 that portion.

2 Q All right. If that is indeed what she told
3 Mr. Wiles, then that was inconsistent with her
4 agreements with you; right?

5 A Correct.

6 Q Okay. And looking the next page, page 6,
7 paragraph 47, you allege in your fraud claim against
8 Pamela Reid, that after she finished treatment, she
9 told State Farm she wanted to be paid the money owed to
10 you. And again, that's --

11 A According to what Mr. Wiles said.

12 Q Okay. You don't have any reason to disbelieve
13 that that's what she told him, do you?

14 A I'm just going -- I mean, I wouldn't think
15 that Mr. Wiles would tell me something incorrect.

16 Q Okay.

17 A I have no proof that she actually said this.
18 I'm just going by what Mr. Wiles said.

19 Q Okay. Obviously, you believe it's true,
20 because you put it in your complaint; right?

21 A Like I said, I'm trusting Mr. Wiles to giving
22 me accurate information.

23 Q Okay. And you allege in paragraph 51 of your
24 complaint that Reid told Plaintiff, you, on several
25 occasions she had called State Farm and told them to

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DR. GREGG N. BATTERSBY - 2/22/2018

Page 46

1 pay Plaintiff directly?

2 A That's what she told me.

3 Q But, in fact, based on what you know now, that
4 was a lie?

5 A Correct.

6 Q Okay. So not only did she not pay your bill,
7 she lied to you?

8 A Yes.

9 Q All right. Looking at the next page, page 7,
10 you have sued State Farm for fraud; is that correct?

11 A Yes.

12 Q And the fraud concerns what Mr. Wiles told you
13 on August 15th of 2017?

14 A Yes.

15 Q And that was the day after you concluded your
16 treatment of Pamela Reid on August 14th, 2017; right?

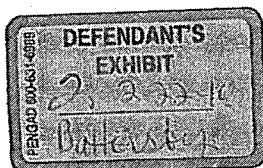
17 A Yes.

18 Q Okay. Looking at the last page, page 9,
19 paragraph 75, that's an incomplete sentence. Do you
20 have any idea what the rest of paragraph 75 should read
21 as?

22 A No, it's not an incomplete sentence. It says,
23 "State Farm owed a duty to exercise reasonable care to
24 Plaintiff because their statements regarded the payment
25 for Reid's treatment."

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DEPOSITION EXHIBITS:
Dr. Gregg N. Battersby, No. 2, 3, 4 and 5



Dr. Gregg N. Battersby

Assignment of Proceeds, Contractual Lien, and Authorization

I, the undersigned, hereby authorize and direct any and all insurance carriers, attorneys, agencies, government departments, companies, individuals, and/or other legal entities (payors), which may elect to be obliged to pay benefits to me for any medical conditions, accidents, injuries or illnesses, past, present, or future (condition) to pay directly to and exclusively in the name of Dr. Gregg N. Battersby D.C. for charges incurred by me, including but not limited to charges for treatment, narrative reports, depositions, testimony, and any other charges incurred by me at the Office (charges). I further grant a contractual lien to Dr. Gregg N. Battersby D.C. with respect to my charges, applicable to all payors; however, I understand that nothing in this Agreement shall be construed as an election by Dr. Gregg N. Battersby D.C. to claim protection under any statutory lien law. For the purpose of this Agreement, "benefits" shall include, but not limited to, proceeds from any settlement, judgment, or verdict, as well as any proceeds relating to commercial health group insurance, lost wage benefits, lost service benefit, attorney retainer agreements, medical payment benefit, personal injury protection, no-fault coverage, uninsured and underinsured motorist coverage, third-party liability distributions, disability benefits, worker's compensation benefits, malpractice proceeds, and any other benefits or proceeds payable to me for the purpose stated herein, regardless of whether such proceeds are related to my charges or not.

I further agree that in the event a payor refuses to pay Dr. Gregg N. Battersby D.C., I hereby assign, insofar as permitted by law, all of my rights, remedies, and benefits to Dr. Gregg N. Battersby D.C. to extent of my charges, as well as any and all causes of action that I might have against such payor, to prosecute such causes of action either in my name or in the Office's name and to settle or otherwise resolve such causes of action as the Office sees fit.

In the event I retain one or more attorneys to represent me in this matter, I will direct each attorney to issue a letter of protection to this Office regarding my charges. Upon issuance, I hereby agree that such letter(s) of protection cannot be revoked or modified without the expressed written consent of this Office. I further direct each attorney to provide immediate notice to the Office regarding any funds received by the attorney relating to my accident, to promptly pay such Office, and to provide full accounting of such funds to the Office upon its request.

I hereby direct all payors to release to Dr. Gregg N. Battersby D.C. any information regarding any coverage or benefits which I may have including, but not limited to, the amount of the coverage, the amount paid thus far, and the amount of any outstanding claims.

I authorize this Office to release any information regarding my treatment or pertinent to my case(s) to all payors as defined above to facilitate collection under this agreement. I hereby direct this Office to file a copy of this agreement, together with any applicable charges, with any or all payors, regardless of whether a claim has been established with said payors. I hereby authorize Dr. Gregg N. Battersby D.C. to endorse/sign my name on any and all checks listing me as the payee, which are presented to this Office for payment of and account relating to me, my spouse, or any of my dependents, regardless if these other charges are related to my condition.

I understand that I remain personally responsible for the total amounts due Dr. Gregg N. Battersby D.C. for his services. This assignment lien does not constitute any consideration for this Office to await payments and it may demand immediately upon rendering services at its option. If this Office must take any action to collect an outstanding balance on my account, I will be responsible for payment and will reimburse Dr. Gregg N. Battersby D.C. for all costs of such collection efforts, including, but not limited to, all court costs and all attorneys fees.

This assignment and lien shall not be modified or revoked without the mutual written consent of Dr. Gregg N. Battersby D.C. and myself. I hereby revoke any previously signed authorizations, whether executed at this Office or any other Office to the extent the terms of those authorizations conflict with the terms of this agreement and lien.

I agree that each and every provision of this agreement is reasonably necessary for the protection of the rights and interests of Dr. Gregg N. Battersby D.C. and me. However, should any provision of this agreement be found to be invalid, illegal or unenforceable, or for any reason cease to be binding on any party hereto, all other provisions of this agreement shall, nevertheless, remain in full force and effect.

Personal Injury Cases that the attorneys willfully gave Dr's fees to their clients will be referred to the South Carolina Bar Office of Disciplinary Council.

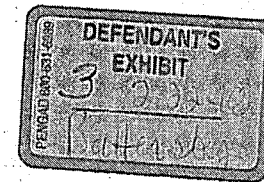
Please print patient name: Pamela Reid Date 7-11-17

Patient Signature: Pamela Reid Date 7-11-17

Name of Custodial Parent or Legal Guardian (please print)

Parent/Guardian: _____ Date _____

Witness: _____ Date _____



ASSIGNMENT, LIEN AND AUTHORIZATION
INSURANCE BENEFITS AND ATTORNEY

To Whom It may concern:

DR. DATTERSBY

I hereby authorize and direct you, my insurance company, and/or my attorney, to pay directly to

such sums as may be due and owing this Office for services rendered me, both by reason of accident or illness, and by reason of any other bills that are due this office, and to withhold such sums from any disability benefits, medical payments benefits, No-Fault benefits, health and accident benefits, workmen's compensation benefits, or any other insurance benefits obligated to reimburse me or from any settlement, judgment or verdict on my behalf as may be necessary to adequately protect said Office. I hereby further give a lien to said Office against any and all insurance benefits named herein, and any and all proceeds of any settlement, judgment or verdict which may be paid to me as a result of the injuries or illness for which I have been treated by said Office. This is to act as an assignment of my rights and benefits to the extent of the Office's services provided.

In the event my insurance company obligated to make payments to me upon the charges made by this Office for their services refuses to make such payments, upon demand by me or this Office, I hereby assign and transfer to this Office any and all causes of action that I might have or that might exist in my favor against such company and authorize this Office to prosecute said cause of action either in my name or in the Office's name and further I authorize this Office to compromise, settle or otherwise resolve said claim or cause of action as they see fit.

I understand that I remain personally responsible for the total amounts due the Office for their services. I further understand and agree that this Assignment, Lien and Authorization does not constitute any consideration for the Office to await payments and they may demand payments from me immediately upon rendering services at their option.

I authorize the Office to release any information pertinent to my case to any insurance company, adjuster or attorney to facilitate collection under this Assignment, Lien and Authorization. I agree that the above mentioned Office be given power of Attorney to endorse/sign my name on any and all checks for payment of my doctor bill.

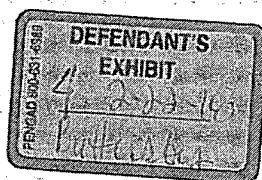
By signing this paper you give up your right to notice and court trial. If you do not pay on time, a court judgement may be take against you without your prior knowledge and the powers of a court can be used to collect from you regardless of any claims you may have against the creditor whether for returned goods, faulty goods, failure on his part to comply with the agreement, or any other cause.

SIGNED

Pamela Reid

DATE:

7-11-17



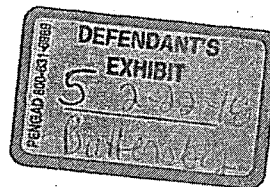
LIEN ON MY PERSONAL INJURY CLAIM

I understand that I am giving an irrevocable lien to Dr. Gregg Battersby in the settlement of my personal injury claim. Only Dr. Gregg Battersby can release said lien. I understand that most insurance companies do not pay for repeated office visits, as such, Dr. Gregg Battersby is required to bill for the individual procedures he performs. These include, not are not limited to: 99203, 98940, 98941, 98942, 98943, 97140, 97124. These procedures are billed at his standard fees. I understand that if the insurance company chooses not to honor said lien and refuses to pay Dr. Gregg Battersby directly for the procedures performed that I give Dr. Gregg Battersby, or his assignee, full legal rights to settle my personal injury claim on my behalf and direct payment for the services performed to Dr. Gregg Battersby. Dr. Gregg Battersby agrees to wait for payment as long as the insurance company agrees to pay him directly for the services performed. In the event I default on payment to Dr. Gregg Battersby when he demands payment, I agree to pay ten percent interest plus any legal fees and court costs incurred by Dr. Gregg Battersby in the collection of said debt. I sign this with my full understanding.

Pamela Reid
Print

Pamela Reid
Sign

7-11-17
Date



Dr. Gregg N. Battersby
Chiropractor
7800 Hwy. 81 South
Starr, SC. 29684
864-352-2225

IRREVOCABLE HEALTHCARE POWER OF ATTORNEY

I, Pamela Reid (hereinafter, "Principal") of Anderson,
County of Anderson, in the state of South Carolina, do
appoint Dr. Gregg N. Battersby (hereinafter, "Attorney"), as my true and lawful attorney in fact.
In Principal's name, and for Principal's use and benefit, said Attorney is hereby authorized to:

- 1) Endorse any and all checks or other forms of reimbursement made payable to Principal (or members of Principal's family) by any health insurance companies which relate to medical treatment provided by Attorney to Principal (or members of Principal's family) over to Attorney.
- 2) Demand and direct any and all health insurance companies, during the course of Principal's (or members of Principal's family) medical treatment with Attorney on personal injury cases or major medical matters, to make all reimbursement checks for such treatment payable to Attorney and to send such checks directly to Attorney.

This Special Power of Attorney is created for Attorney's benefit to secure Attorney's right to payment for healthcare services provided and shall be irrevocable throughout the duration of the healthcare services provided by Attorney to Principal arising from any injury or major medical conditions sustained either by Principal or members of Principal's family until said services are paid in full.

GIVING AND GRANTING to said Attorney full power and authority to do all and every act and thing whatsoever requisite and necessary to be done relative to any of the foregoing as fully to all intents and purposes as Principal might or could do if personally present.

All that said Attorney shall lawfully do or cause to be done under the authority of the power of attorney is expressly approved.

Dated: July 11, 20 17

Pamela Reid
Signature

Pamela Reid
Print Name of Principal

Witness:

Dated: 7/11/17

IN THE COMMON PLEAS COURT
ANDERSON, SOUTH CAROLINA

A TRUE COPY

APR 10 2018

Richard W. Wiles
ANDERSON CLERK OF COURT

Dr. Gregg Battersby	)	Case No.: 2017-CP-04-02502
Plaintiff,	)	
	)	
vs.	)	
	)	Plaintiff's Memorandum in
	)	Opposition to Defendants State Farm
Pamela Reid, et.al.	)	and John Wiles'
	)	Motion for Summary Judgment
Defendants.	)	

INTRODUCTION

Plaintiff, Dr. Gregg N. Battersby, files this Memorandum in Opposition to Defendant State Farm and John Wiles' Motion for Summary Judgment proving that there are genuine issues of material fact remaining, in support of which he presents the following:

MEMORANDUM

On or about July 11, 2017, Pamela Reid (Reid) presented herself to Plaintiff's office with injuries sustained in an automobile accident. Reid stated that on July 10, 2017 she was rear ended by William Calcutt (Calcutt). Calcutt was insured by State Farm Mutual Automobile Insurance (State Farm). The claim number was 40-0756-X00. Plaintiff examined Reid and determined a course of treatment. Plaintiff initiated a course of treatment that included chiropractic manipulative therapy, manual therapy, and ultrasound treatments. On July 11, 2017, Reid signed several documents giving an irrevocable lien to Plaintiff and directing any and all insurance carriers to make payment directly to Plaintiff for the services rendered to her. (See Exhibit 1). Those documents also assigned all of Reid's rights, remedies, and benefits to Plaintiff to the extent of his charges, as well as any causes of action that Reid may have against

State Farm in the event State Farm refuses to pay Plaintiff. Plaintiff treated Reid from July 11, 2017 until her discharge on August 14, 2017. Reid's diagnoses are cervical strain sprain, thoracic strain sprain, lumbar radiculitis, and knee strain sprain.

On or about August 15, 2017, John Wiles (Wiles), a claims specialist for State Farm, told Plaintiff that State Farm would honor the liens signed by Reid and would make payment directly to Plaintiff out of the settlement. (See Exhibit 2). State Farm sent Plaintiff an Authorization for Release of Information (Release). The Release requested treatment and billing records from Plaintiff for Reid's care. The Release permitted "State Farm to investigate, process, and determine the amount payable". (See Exhibit 3). On August 21, 2017, Plaintiff forwarded the liens, as well as Reid's records and itemized bill, to State Farm. Since State Farm agreed to pay Plaintiff, he was prohibited from exercising the option to take over the claim and settle it as he saw fit.

On or about August 24, 2017, Reid reached a settlement with State Farm. Reid agreed to settle her bodily injury claim for \$7,000.00. The settlement included all medical bills of which Plaintiff's bill was a part thereof. (See Exhibit 4). Wiles told Plaintiff that Reid told State Farm to pay her directly for Plaintiff's services to her. This was in direct violation of the documents she signed. Those documents could not be modified or revoked without written consent of Plaintiff. Plaintiff never agreed to modify or revoke the liens. State Farm had been provided with the liens and knew they could not be modified or revoked without Plaintiff's consent. It should be noted that Plaintiff has not been provided any proof from Reid that she told State Farm to pay her directly, just hearsay from Wiles and State Farm. State Farm has provided no affidavits from Reid or Wiles that the conversation ever occurred. In fact, the audio recording

between Reid and Wiles, presumably the only communication between the two, makes no mention of Reid saying she wants to be paid directly.

State Farm paid Reid directly for Plaintiff's services to Reid. This was in violation of the agreement made with Plaintiff on August 15, 2017 in which Wiles told Plaintiff that State Farm would pay Plaintiff directly. State Farm's actions prevented Plaintiff from exercising his option to take over the claim and settle or resolve the matter as Plaintiff saw fit. If Plaintiff had known that State Farm wasn't going to pay him directly, Plaintiff would have insisted Reid get an attorney to represent her in the claim to protect Plaintiff's interests.

Reid signed an Irrevocable Healthcare Power of Attorney (POA). This POA directed State Farm to make the check for her treatment payable to Plaintiff and send such checks directly to Plaintiff. (See Exhibit 5). State Farm failed to do so.

ARGUMENT

Plaintiff will prove that there are genuine issues of material fact remaining. "In determining whether a genuine issue of material fact exists, the evidence and inferences that can reasonably be drawn therefrom are to be viewed in the light most favorable to the nonmoving party. *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010)." See *Stevens Aviation, Inc. v. Dyncorp Int'l LLC*, 407 S.C. 407, 756 S.E.2d 148 (S.C., 2014).

BREACH OF CONTRACT

Plaintiff entered into a contract with Wiles. "The required elements of a contract are an offer, acceptance, and valuable consideration. *Sauner v. Pub. Serv. Auth. of South Carolina*, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). "A contract is an obligation which arises from actual agreement of the parties manifested by words, *oral or written*, or by conduct." *Roberts v.*

Gaskins, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct.App.1997). Valuable consideration may consist of "some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other." Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship, 331 S.C. 385, 389, 503 S.E.2d 184, 186 (Ct.App.1998). A benefit to the promisor or a detriment to the promisee may provide sufficient consideration for a contract. Shayne of Miami, Inc. v. Greybow, Inc., 232 S.C. 161, 167, 101 S.E.2d 486, 489 (1957). If the evidence as to the existence of a contract is conflicting or raises more than one reasonable inference, the issue should be submitted to the jury. Hendricks v. Clemson Univ., 353 S.C. 449, 459, 578 S.E.2d 711, 716 (2003). With certain exceptions, ***a contract need not be in writing to be enforceable.*** Gaskins v. Firemen's Ins. Co. of Newark, N.J., 206 S.C. 213, 216, 33 S.E.2d 498, 499 (1945) (noting that if there is a meeting of the minds with regard to the essential elements of a contract, it is immaterial whether the contract is written or oral)." See Armstrong v. Collins, 621 S.E.2d 368, 366 S.C. 204 (SC, 2005).

Plaintiff called Wiles on August 15, 2017. Plaintiff asked Wiles if he would pay Plaintiff for his services rendered to Reid. Reid signed documents directing payment to Plaintiff out of the settlement funds. State Farm became liable for the injuries to Reid once Calcutt became legally liable for the accident. This obligation was created under the insurance policy issued to Calcutt. Wiles said that he would pay Plaintiff directly for the services provided to Reid out of the settlement. Plaintiff provided chiropractic care to Reid totaling \$5,045.00. Wiles and State Farm refused to pay Plaintiff; instead they paid Reid the \$5,045.00 in violation of the agreement with Plaintiff.

A contract existed between Plaintiff and State Farm. Wiles and State Farm breached the contract with Plaintiff by not paying him for his services to Reid. Plaintiff had damages of \$5,045.00. "The elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach." *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491–92, 732 S.E.2d 205, 209 (Ct.App.2012)." See *Hotel & Motel Holdings, LLC v. BJC Enters., LLC*, 414 S.C. 635, 780 S.E.2d 263 (S.C. App., 2015).

STATUTE OF FRAUDS

Plaintiff's oral contract with State Farm falls outside the Statute of Frauds. Plaintiff had an oral agreement with Wiles to pay him directly for Reid's treatment out of the settlement funds. State Farm admitted that they agreed to pay Plaintiff directly for Reid's treatment in paragraph 41 of their Answer. A written contract was not required.

State Farm issued an automobile insurance policy to Calcutt that was in effect at the time of the accident. As a part of the insuring agreement it states that "*We will pay damages an insured becomes legally liable to pay because of bodily injury to others caused by an accident that involves a vehicle for which that insured is provided Liability Coverage by this policy*". (See Exhibit 6). Calcutt was found to have contributed to the collision thus legally liable for Reid's injuries. (See Exhibit 7). Once Calcutt became legally liable, State Farm became liable to pay for Reid's treatment. "It appears to us that the agreement here used upon was not, on the part of the insurer, a promise to answer for the debt, default, or miscarriage by another required by the Statute of Frauds to be in writing. The insurer's contract is the promise to answer for the debt, default, or miscarriage of the insured as provided in the terms of the policy. That contract is in writing. See *Brown v. Noland Co.*, 403 S.W.2d 33 (Ky.1966); [116 Ga.App. 688] *Ortis v.*

Travelers Ins. Co., 2 Mich.App. 548, 140 N.W.2d 791 (1966); Regus v. Schartkoff, 156 Cal.App.2d 382, 319 P.2d 721 (1958). We quote from the case of Ortis v. Travelers Ins. Co., supra: 'Travelers did agree in its written policy with (its insured) to pay certain of (its insured's) obligations which might arise in the future up to the policy limits. Travelers' oral agreement with plaintiff was within the limits of its written agreement with (its insured). Furthermore, Travelers' was settling not only (its insured's) potential liability but its own possible obligation to pay and its own duty to defend (its insured).' ***The insurer has a financial interest in the claim against the insured even though it only becomes liable to the third party when legal liability is established against the insured, and where the insurer agrees to settle its potential liability as well as the potential liability of the insured, the oral promise by the insurer to settle or pay the claim against the insured is an original undertaking and need not be in writing.*** See Ferst's Sons & Co. v. Bank of Waycross, 111 Ga. 229, 36 S.E. 773. As was said by the California court in Regus v. Schartkoff, 156 Cal.App.2d 382, 319 P.2d 721 (1958): 'The leading and main object of (the insurance adjuster) was not to become surety or guarantor for (their insured), but to subserve the purpose and interest of Allstate. Therefore, the promise was an original one and valid, though oral.' See also Evans v. Griffin, 1 Ga.App. 327, 57 S.E. 921; Holt v. Empire Tire & Rubber Co., 33 Ga.App. 723, 127 S.E. 803; Palmetto Mfg. Co. v. Parker, 123 Ga. 798, 51 S.E. 714; Harris v. Jones, 140 Ga. 768, 79 S.E. 841; Fuller v. Holsomback, 42 Ga.App. 483, 156 S.E. 460." See *Klag v. Home Ins. Co.*, 158 S.E.2d 444, 116 Ga.App. 678 (Ga. App., 1967). "One test for determining whether a promise to pay the debt of another is within or without the Statute of Frauds is whether the promisor is a surety, only secondarily liable, or has accepted primary responsibility for the debt. Gulf Liquid Fertilizer Co. v. Titus, 163 Tex. 260, 354 S.W.2d 378,

382 (1962); Tex. Bus. & Com. Code Ann. § 26.01(b)(2). *If the party is primarily liable, its promise to pay a debt is not required to be in writing by the Statute of Frauds.* See *Gulf Liquid*, 354 S.W.2d at 382.” See *Carter v. Allstate Ins. Co.*, 962 S.W.2d 268 (Tex.App.-Hous. (1 Dist.), 1998). The oral agreement between Plaintiff and State Farm did not create any additional liability than what was already in place by the insurance policy with Calcutt. Plaintiff merely requested that the payment for the treatment rendered to Reid be paid to Plaintiff and not Reid. State Farm did in fact make this payment to Reid. State Farm was primarily liable for the injuries caused by Calcutt.

State Farm was settling a business and financial liability of its own. “It is important to determine in each case of an undertaking, which in form purports to be a promise to pay the debt of another, whether it is such fact; for it is well settled that, *if an oral agreement is in effect a promise to pay the debt of the promisor himself, it is not within the statute of frauds, although the incidental result of its performance may be the discharge of the indebtedness of another person.*” *** “Wherever the main purpose and object of the promisor is, not to answer for another, but to subserve some purpose of his own, his promise is not within the statute, although it may be in form a promise to pay the debt of another.” See *Lowrance v. Caldwell*, 85 S. C. 94, 67 S. E. 143 (S.C., 1910). “It is important to determine in each case of an undertaking, which in form purports to be a promise to pay the debt of another, whether it is such in fact; for it is well settled that, if an oral agreement is in effect a promise to pay the debt of the promisor himself, it is not within the statute of frauds, although the incidental result of its performance may be the discharge of the indebtedness of another person.” 20 Cyc. 167, 168. * * *” See *Stackhouse v. Pure Oil Co.*, 176 S.C. 318, 180 S.E. 188 (S.C., 1935). “Whenever the main purpose and object

of the promisor is not to answer for another, but to subserve some pecuniary or business purpose of his own, involving either a benefit to himself, or damage to the other contracting party, his promise is not within the statute, although it may be in form a promise to pay the debt of another, and although the performance of it may incidentally have the effect of extinguishing that liability." See *Yracheta v. Stanford* (), 120 N. Y. . 117; *Cortelyou v. Hoagland*, 40 N. J. Eq. 1; *Beall v. Board of Trade*, 164 Mo. App. 186, 148 S. W. 386." See *Am. Wholesale Corp. v. Mauldin*, 122 S.E. 576, 128 S.C. 241 (S.C., 1924). State Farm was contractually liable for the injuries to Reid caused by Calcutt up to the policy limits.

State Farm was holding the settlement funds to pay for the treatment of Reid. State Farm paid these settlement funds to Reid in violation of the agreement made between Plaintiff and Wiles. No written contract is needed when a promisor, State Farm, is holding funds of the debtor, Reid. "Another exception is that *a promise to pay a debt out of the debtor's funds or property taken over or held by the promisor is an original undertaking, and the Statute is not applicable to the promise.* See the case of *Stackhouse v. Pure Oil Co.*, 176 S.Ct. 318, 180 S.E. 188, and the cases therein cited. Also, see 37 C.J.S. Frauds, Statute of § 18, page 525." See *Campbell v. Hickory Farms of Ohio*, 190 S.E.2d 26, 258 S.C. 563 (S.C., 1972).

FRAUD

Plaintiff has established the nine elements of fraud. "As to whether the trial court erred in finding Babb failed to prove constructive fraud: *Armstrong v. Collins*, 366 S.C. 204, 219, 621 S.E.2d 368, 375 (Ct. App. 2005) ("To establish constructive fraud, all elements of actual fraud except the element of intent must be established."); *Schnellmann v. Roettger*, 373 S.C. 379, 382, 645 S.E.2d 239, 241 (2007) (stating the elements of fraud are: (1) a representation of fact; (2) its

falsity; (3) its materiality; (4) knowledge of its falsity or a reckless disregard for whether it is true; (5) intent that the representation be acted upon; (6) the hearer's ignorance of the falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury); *Armstrong*, 366 S.C. at 219, 621 S.E.2d at 375 ("[I]n a constructive fraud case, where there is no confidential or fiduciary relationship, and an arm's length transaction between mature, educated people is involved, there is no right to rely."). See *Babb v. Estate of Watson* (S.C. App., 2012).

1. State Farm told Plaintiff that they would pay him directly if Reid directed them to. Reid signed several liens directing payment to Plaintiff.
2. This was a false statement since Plaintiff found out later that State Farm had paid Reid. State Farm claimed that Reid told them to pay her directly without any proof of her saying that.
3. The non-payment by State Farm of Reid's treatment to Plaintiff is material to the matter at hand.
4. State Farm knew that they don't pay the treating doctor. State Farm was aware that Reid had signed documents directing payments for her care to Plaintiff. State Farm had no intent on paying Plaintiff. State Farm knew that its promise to pay Plaintiff was false.
5. State Farm intended Plaintiff to act on the false statement so that he would not require Reid get a lawyer to represent her, and so Plaintiff would not exercise his option to settle the case on Reid's behalf.
6. Plaintiff had no way of knowing that State Farm would not honor its agreement and pay him directly.

7. Plaintiff relied on the false statement and did not require Reid obtain a lawyer to represent her to settle the claim and Plaintiff did not exercise his option to take over the claim and settle it as he saw fit.
8. Plaintiff had every right to rely on Wiles' statement since he was the claims specialist for State Farm. This element is not even needed since this was an arm's length transaction.
9. As a result of Plaintiff's reliance on the false statement by Wiles, Plaintiff has not been paid the five thousand forty-five dollars (\$5045.00). Since State Farm agreed to pay Plaintiff, he was prohibited from exercising the option to take over the claim and settle it as he saw fit.

Plaintiff met all the elements of fraud.

Wiles made a false statement to Plaintiff when he told Plaintiff that State Farm would pay Plaintiff directly out of the settlement. Plaintiff sent Wiles the liens signed by Reid directing payment to Plaintiff. State Farm and Wiles have provided no evidence that Reid told them to pay her. It can be assumed that there was no statement by Reid violating her signed liens with Plaintiff and directing payment to her. Plaintiff relied on Wiles statement that Reid told him she wanted to be paid directly in drafting this Complaint as he relied on Wiles statement that State Farm would pay him directly out of the settlement. It appears that Wiles made two false statements to Plaintiff.

State Farm and Wiles cleverly omits the first part of their citation of *Stringer*. This is the full citation. "In addition, ***nothing in the record demonstrates Stringer satisfied the remaining elements of estoppel***. Namely, Stringer has failed to prove that he suffered a prejudicial change in position or detrimentally relied on the representations of Jennings." See *Stringer v. State*

Farm Mut. Auto. Ins., 687 S.E.2d 58, 386 S.C. 188 (S.C. App., 2009). Plaintiff has no causes of action for estoppel.

State Farm and Wiles claim Plaintiff cannot establish hearer's ignorance of the false statement. They claim that Plaintiff could have learned prior to treating Reid that State Farm would directly pay the Plaintiff for Reid's bills only if Reid made that request to State Farm. Plaintiff had signed liens from Reid directing State Farm to pay Plaintiff directly. These liens were irrevocable. It made no difference when Plaintiff communicated with State Farm because he had Reid's direction of payment in writing.

Defendants claim that Plaintiff cannot prove the final element of fraud – a proximate injury resulting from the false representation – because at the time of the alleged false representation on August 15, 2017 the reliance – the Plaintiff's treatment of Pamela Reid – had already concluded. State Farm knew that Plaintiff had the option to settle Reid's claim to protect Plaintiff's interests. By assuring Plaintiff that they would pay his bill, Plaintiff could not take over Reid's claim and settle it as he saw fit. "An action in fraud, however, can be based on an unfulfilled promise to perform in the future made with a present undisclosed intention not to perform and for the purpose of inducing one to sign a paper or do some other act. *Jones v. Cooper*, 234 S.C. 477, 109 S.E.2d 5 (1959)." See *Winburn v. Insurance Co. of North America*, 339 S.E.2d 142, 287 S.C. 435 (S.C. App., 1985). "A future promise is not fraudulent unless such promise was part of a general design or plan, existing at the time, to induce a party to enter into a contract or act as he or she otherwise would not have acted, to his or her injury. *Bishop Logging Co. v. John Deere Indus. Equip. Co.*, 317 S.C. 520, 527, 455 S.E.2d 183, 187 (Ct.App.1995) (quoting *Coleman v. Stevens*, 124 S.C. 8, 16, 117 S.E. 305, 307 (1923))." See *John v. Milliman*,

392 S.C. 116, 708 S.E.2d 766 (S.C., 2011).

NEGLIGENT MISREPRESENTATION

Plaintiff satisfied the elements of negligent misrepresentation. “To establish liability for negligent misrepresentation, the plaintiff must show by a preponderance of the evidence: (1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the representation; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance on the representationⁿ. Quail Hill, LLC v. County of Richland, 387 S.C. 223, 240, 692 S.E.2d 499, 508 (2010).” See *John v. Milliman*, 392 S.C. 116, 708 S.E.2d 766 (S.C., 2011).

State Farm made a false representation to Plaintiff by telling him that State Farm would pay Plaintiff directly out of the settlement funds. Reid signed several documents directing State Farm to pay Plaintiff directly yet State Farm did not pay Plaintiff for the services he rendered to Reid. State Farm claims that Reid told State Farm to pay her instead, yet they provided no proof of such statement by Reid. Plaintiff was never paid for his services to Reid. “The recovery of damages may be predicated upon a negligently-made false statement where a party suffers either injury or loss as a consequence of relying upon the misrepresentation. 65 C.J.S. Negligence § 20 at 642 (1966); see 37 Am.Jur.2d Fraud and Deceit § 209 at 276-77 (1968); Prosser and Keaton, The Law of Torts § 107 at 745-46 (5th ed. 1984).” *Winburn v. Insurance Co. of North America*, 339 S.E.2d 142, 287 S.C. 435 (S.C. App., 1985).

State Farm was liable to pay for the treatment rendered to Reid in the insurance policy

issued to Calcutt. State Farm had a pecuniary interest in the claim. "In *Hirst v. St. Paul Fire & Marine Insurance Co.*, 106 Idaho 792, 683 P.2d 440 (Ct.App.1984), we noted a distinction between an insurance company's pecuniary liability upon a claim and its duty to defend the insured." See *Maxson v. Farmers Ins. of Idaho, Inc.*, 107 Idaho 1043, 695 P.2d 428 (Idaho App., 1985). "This is true for the simple reason that a fire insurance policy, like many forms of insurance, is a contract of pecuniary indemnity." See *United States v. Globe & Rutgers Fire Ins. Co.*, 104 F. Supp. 632 (N.D. Tex., 1952). "In *Liddell v. Detroit Automobile Inter-Ins. Exchange*, 102 Mich.App. 636, 649, 302 N.W.2d 260 (1981), where the Court reasoned: "In our view, **a contract for no-fault insurance benefits, like uninsured motorist coverage and disability insurance, is a pecuniary contract requiring the insurance company to pay certain sums upon the occurrence [116 Mich.App. 120] of a specified event.**" See *Schaible v. Michigan Mut. Ins. Co.*, 321 N.W.2d 860, 116 Mich.App. 116 (Mich. App., 1982).

State Farm owed a duty of care to communicate truthful information to Plaintiff. State Farm had a pecuniary interest in the claim against its insured, Calcutt. State Farm was liable for the injuries to Reid caused by Calcutt. State Farm owed a duty to tell Plaintiff the truth when they told Plaintiff they would pay Reid's bill to Plaintiff. Since State Farm agreed to pay Plaintiff, he was prohibited from exercising the option to take over the claim and settle it as he saw fit. "A duty to exercise reasonable care in giving information exists when the defendant has a pecuniary interest in the transaction." *Winburn v. Insurance Co. of North America*, 339 S.E.2d 142, 287 S.C. 435 (S.C. App., 1985). "The Supreme Court, in *Gilliland v. Elmwood Props.*, 301 S.C. 295, 391 S.E.2d 577 (1990), discussed the tort of negligent misrepresentation: In South Carolina, one may bring an action sounding in tort for negligent misrepresentation. "A duty to

exercise reasonable care in giving information exists when the defendant has a pecuniary interest in the transaction." Wilburn v. Insurance Co., 287 S.C. 435, 441, 339 S.E.2d 142, 146 (Ct.App.1985)." See *Redwend Ltd. Partnership v. Edwards*, 354 S.C. 459, 581 S.E.2d 496 (S.C. App., 2003).

State Farm breached their duty of care by telling Plaintiff they would pay him directly for Reid's treatment out of the settlement funds, then paying Reid instead.

Plaintiff justifiably relied on State Farms' statement that they would pay Plaintiff directly. If Plaintiff would have believed that State Farm was not truthful in its agreement to pay Plaintiff, he would have taken over the claim and settle it as he saw fit or require Reid get a lawyer to represent her to settle the claim. "Whether reliance is justified in a given situation requires an evaluation of the circumstances involved, including the positions and relations of the parties. *Id.*; see *Giles v. Lanford & [286 S.C. 234] Gibson*, --- S.C. ---, 328 S.E.2d 916 (Ct.App.1985)." See *Elders v. Parker*, 286 S.C. 228, 332 S.E.2d 563 (S.C. App., 1985). "We hold ***that reliance can only be justified in these cases if the relationship of the parties is such that the defendant occupies a superior position to the plaintiff with respect to knowledge of the truth of the statement made.***" See *Gruber v. Santee Frozen Foods, Inc.*, 419 S.E.2d 795, 309 S.C. 13 (S.C. App., 1992). Wiles was the only person to know if his statement to Plaintiff was truthful or not.

Plaintiff suffered a pecuniary loss of \$5,045.00 as a result of relying on State Farm and Wiles' false statement. "The recovery of damages may be predicated upon a negligently made false statement where a party suffers either injury or loss as a consequence of relying upon the misrepresentation." *Id.*" *Redwend Ltd. Partnership v. Edwards*, 354 S.C. 459, 581 S.E.2d 496 (S.C. App., 2003).

NEGLIGENCE

Plaintiff has satisfied all the elements of negligence. "To prevail in an action founded in negligence, the plaintiff must establish three essential elements: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately caused by a breach of duty." *Vinson v. Hartley*, 324 S.C. 389, 399, 477 S.E.2d 715, 720 (Ct.App.1996)." See *Hinds v. Elms*, 595 S.E.2d 855, 358 S.C. 581 (S.C. App., 2004). State Farm and Wiles owed a duty to tell Plaintiff the truth because they were liable for the injuries caused by Calcutt. Thus, they had a pecuniary interest in the claim. State Farm was paying for the bodily injury to Reid caused by their insured Calcutt. See *Wilburn*. State Farm and Wiles breached their duty by telling Plaintiff they would pay for the treatment to Reid directly to Plaintiff and not doing so. Reid signed documents directing payment to go directly to Plaintiff out of the settlement funds. Instead, they paid the bill to Reid and she failed to pay Plaintiff. Plaintiff had damages of \$5,045.00.

PECUNIARY INTEREST

State Farm claims that they had no pecuniary interest in whether payment was made to Plaintiff or Reid. The element of pecuniary interest is established in the insurance policy issued to Calcutt. State Farm became liable for the injuries to Reid caused by Calcutt. Whether payment was made to Plaintiff or Reid had no effect on State Farm's pecuniary interest. The basis of this Complaint is the assurance by State Farm that they would pay Plaintiff for his services to Reid. State Farm reached a settlement with Reid in which a portion of that settlement was Plaintiff's services to Reid.

DETRIMENTAL RELIANCE

State Farm claims that Plaintiff cannot establish any detrimental reliance upon any statement made by State Farm or Wiles. Detrimental reliance is not an element of fraud, negligent misrepresentation or negligence. See *Babb, Qual Hill. LLC* and *Hinds*. Only justifiable reliance is an element of negligent misrepresentation. Detrimental reliance is not a cause of action in South Carolina. "Because the court can locate no South Carolina law providing for detrimental reliance as a cause of action, the court understands Plaintiffs' claim of detrimental reliance to be one of either promissory estoppel or equitable estoppel." See *Weber v. Bank of Am. NA (D.S.C., 2013)*. Detrimental reliance means that some sort of harm was suffered.

It appears that Defendants are trying to change Plaintiff's cause of action to promissory estoppel. "Promissory estoppel is an equitable doctrine, *Blanton Enters., Inc. v. Burger King Corp.*, 680 F.Supp. 753, 777 n. 24 (D.S.C.1988); which holds: "An estoppel may arise from the making of a promise, even though without consideration, if it was intended that the promise should be relied upon and in fact it was relied upon, and if a refusal to enforce it would be virtually to sanction the perpetration of fraud or would result in other injustice." *Higgins Constr. Co. v. Southern Bell Tel. & Tel. Co.*, 276 S.C. 663, 281 S.E.2d 469, 470 (1981) (citation omitted). Four elements must be proven in order to establish a cause of action for promissory estoppel: (1) the presence of a promise unambiguous in its terms; (2) reasonable reliance upon the promise by the party to whom the promise is made; (3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise. *Powers Constr. Co. v. Salem Carpets, Inc.*, 283 S.C. 302, 322 S.E.2d 30, 33 (Ct. App.1984). "***Promissory estoppel comes into play in situations where actual consideration is not present,***" and is thus "inapplicable in situations where a

contract exists since a necessary element of a valid contract is consideration." *Glover v. Lockheed Corp.*, 772 F.Supp. 898, 907 (D.S.C. 1991); see also *Carlson v. Arnot-Ogden Memorial Hosp.*, 918 F.2d 411, 416 (3d Cir.1990) (relief under theory of promissory estoppel is "unwarranted" where a contract exists)" See *White v. Roche Biomedical Laboratories, Inc.*, 807 F.Supp. 1212 (D.S.C., 1992).

There was consideration by Plaintiff in giving treatment to Reid for her injuries sustained in the automobile accident caused by Calcutt. State Farm agreed to pay Plaintiff for the treatment to Reid. This constituted consideration by State Farm and Wiles. It was this consideration that State Farm and Wiles breached.

There was a detrimental reliance on the promise of Wiles that State Farm would pay him directly. Reid agreed to assign all her rights, remedies, and benefits to Plaintiff to the extent of his charges, as well as any causes of action that she might have against State Farm, to prosecute such causes of action in Plaintiff's name and settle or otherwise resolve such causes of action as Plaintiff sees fit, if State Farm did not agree to pay him directly. (See Exhibit 1). Reid has never challenged this agreement. Since State Farm agreed to pay Plaintiff directly, Plaintiff could not take over the claim and settle it as he saw fit. In addition, if Plaintiff knew that State Farm was not going to pay him directly, Plaintiff would have required Reid obtain a lawyer to settle her claim against Calcutt, which would have cost State Farm more money. Reid has never paid Plaintiff.

PRIOR LITIGATION

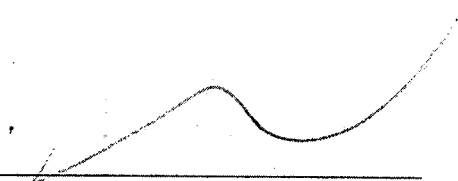
State Farm and Wiles raise an argument of a prior litigation involving Plaintiff and Allstate Insurance. This case differs from Allstate in that an oral contract exists in this case,

where there was no communication with Allstate in the previous case. Plaintiff has contract privity with State Farm and Wiles.

CONCLUSION

There are genuine issues of material fact remaining. Plaintiff prays that this Court DENY State Farm and Wiles' Motion for Summary Judgment.

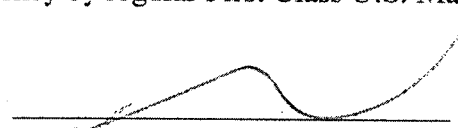
April 9, 2018



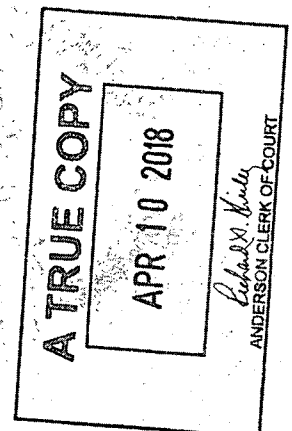
Dr. Gregg N. Battersby, pro se
PLAINTIFF
7800 Hwy. 81 South
Starr, SC 29684
Telephone: (864) 570-0077
greggbattersby@gmail.com

CERTIFICATE OF SERVICE

Plaintiff served this Memorandum in Opposition to Defendant State Farm and John Wiles' Motion for Summary Judgment on Defendant's attorney by regular First Class U.S. Mail on April 9, 2018.



Dr. Gregg N. Battersby



State of South Carolina
County of Anderson

BEFORE ME, the undersigned Notary, Dr. Christal B. Wilson, on this 30 day of March, 2018, personally appeared Gregg N. Battersby, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says:

On or about August 15, 2017, I, Dr. Gregg N. Battersby, called John Wiles, a claims specialist for State Farm Mutual Automobile Insurance Company, to inform him that I had finished treating Pamela Reid. I treated Ms. Reid for injuries sustained in a collision with William Calcutt, an insured of State Farm Mutual Automobile Insurance Company. I asked Mr. Wiles if State Farm Mutual Automobile Insurance Company would honor the lien signed by Ms. Reid directing payment to me for her treatment. Mr. Wiles said that if Ms. Reid wanted me paid directly they would do so. Ms. Reid reached a settlement with State Farm Mutual Automobile Insurance Company. Instead of paying me, State Farm Mutual Automobile Insurance Company paid Ms. Reid for the care I rendered to her for her injuries. Ms. Reid never paid me for her care.

[signature of affiant]

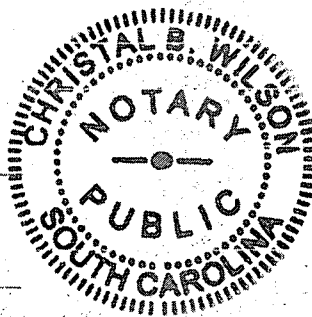
Dr. Gregg N. Battersby
7800 Hwy. 81 South
Starr, South Carolina 29684

Subscribed and sworn to before me, this 30 day of March, 2018.

[Notary Seal:]

Christal B. Wilson
[signature of Notary]

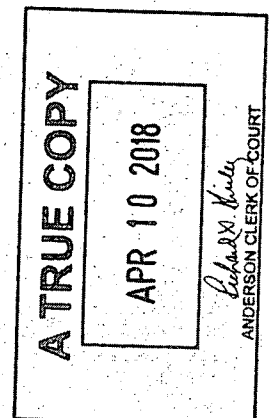
Christal B. Wilson
[typed name of Notary]



NOTARY PUBLIC

My commission expires: October 16, 2023

Oct. 16 2023



Dr. Gregg N. Battersby

Assignment of Proceeds, Contractual Lien, and Authorization

I, the undersigned, hereby authorize and direct any and all insurance carriers, attorneys, agencies, government departments, companies, individuals, and/or other legal entities (payors), which may elect to be obliged to pay benefits to me for any medical conditions, accidents, injuries or illnesses, past, present, or future (condition) to pay directly to and exclusively in the name of Dr. Gregg N. Battersby D.C. for charges incurred by me, including but not limited to charges for treatment, narrative reports, depositions, testimony, and any other charges incurred by me at the Office (charges). I further grant a contractual lien to Dr. Gregg N. Battersby D.C. with respect to my charges, applicable to all payors; however, I understand that nothing in this Agreement shall be constructed as an election by Dr. Gregg N. Battersby D.C. to claim protection under any statutory lien law. For the purpose of this Agreement, "benefits" shall include, but not limited to, proceeds from any settlement, judgment, or verdict, as well as any proceeds relating to commercial health group insurance, lost wage benefits, lost service benefit, attorney retainer agreements, medical payment benefit, personal injury protection, no-fault coverage, uninsured and underinsured motorist coverage, third-party liability distributions, disability benefits, worker's compensation benefits, malpractice proceeds, and any other benefits or proceeds payable to me for the purpose stated herein, regardless of whether such proceeds are related to my charges or not.

I further agree that in the event a payor refuses to pay Dr. Gregg N. Battersby D.C., I hereby assign, insofar as permitted by law, all of my rights, remedies, and benefits to Dr. Gregg N. Battersby D.C. to extent of my charges, as well as any and all causes of action that I might have against such payor, to prosecute such causes of action either in my name or in the Office's name and to settle or otherwise resolve such causes of action as the Office sees fit.

In the event I retain one or more attorneys to represent me in this matter, I will direct each attorney to issue a letter of protection to this Office regarding my charges. Upon issuance, I hereby agree that such letter(s) of protection cannot be revoked or modified without the expressed written consent of this Office. I further direct each attorney to provide immediate notice to the Office regarding any funds received by the attorney relating to my accident, to promptly pay such Office, and to provide full accounting of such funds to the Office upon its request.

I hereby direct all payors to release to Dr. Gregg N. Battersby D.C. any information regarding any coverage or benefits which I may have including, but not limited to, the amount of the coverage, the amount paid thus far, and the amount of any outstanding claims.

I authorize this Office to release any information regarding my treatment or pertinent to my case(s) to all payors as defined above to facilitate collection under this agreement. I hereby direct this Office to file a copy of this agreement, together with any applicable charges, with any or all payors, regardless of whether a claim has been established with said payors. I hereby authorize Dr. Gregg N. Battersby D.C. to endorse/sign my name on any and all checks listing me as the payee, which are presented to this Office for payment of and account relating to me, my spouse, or any of my dependents, regardless if these other charges are related to my condition.

I understand that I remain personally responsible for the total amounts due Dr. Gregg N. Battersby D.C. for his services. This assignment lien does not constitute any consideration for this Office to await payments and it may demand immediately upon rendering services at its option. If this Office must take any action to collect an outstanding balance on my account, I will be responsible for payment and will reimburse Dr. Gregg N. Battersby D.C. for all costs of such collection efforts, including, but not limited to, all court costs and all attorneys fees.

This assignment and lien shall not be modified or revoked without the mutual written consent of Dr. Gregg N. Battersby D.C. and myself. I hereby revoke any previously signed authorizations, whether executed at this Office or any other Office to the extent the terms of those authorizations conflict with the terms of this agreement and lien.

I agree that each and every provision of this agreement is reasonably necessary for the protection of the rights and interests of Dr. Gregg N. Battersby D.C. and me. However, should any provision of this agreement be found to be invalid, illegal or unenforceable, or for any reason cease to be binding on any party hereto, all other provisions of this agreement shall, nevertheless, remain in full force and effect.

Personal Injury Cases that the attorneys willfully gave Dr's fees to their clients will be referred to the South Carolina Bar Office of Disciplinary Council.

Please print patient name: James B. B. B. Date: 1/1/11

Patient Signature: James B. B. B. Date: 1/1/11

Name of Custodial Parent or Legal Guardian (please print)

Parent/Guardian: _____ Date: _____

Witness: _____ Date: _____

AUDIO TRANSCRIPTION OF:
BATTERSBY CALL TO WILES
AUGUST 15, 2017



Magnolia Reporting
Magnolia Reporting
Phone: (843) 442-2753
Email: teri.sampson@gmail.com
Internet: www.MagnoliaReporting.com

TRANSCRIPTION OF:
BATTERSBY CALL TO WILES
AUGUST 15, 2017

Page 2

1 [Beginning of recording.]

2 DR. GREGG N. BATTERSBY: Dr. Battersby
3 speaking.

4 JOHN WILES: Hi, Dr. Battersby. John Wiles
5 from State Farm Auto Claims returning your call from
6 earlier.

7 DR. GREGG N. BATTERSBY: Oh, yes, John.
8 Thank you for calling. I just want to let you know
9 that I have finished treatment on Pamela Reid.

10 JOHN WILES: Okay.

11 DR. GREGG N. BATTERSBY: And I wanted to get
12 a -- do you want to send me a -- a records request or
13 what do you want in ref- -- in regards to the bill and
14 records and so forth?

15 JOHN WILES: Oh, yeah. Let's see. Well,
16 we're still waiting for her to return her -- her signed
17 medical (inaudible) so we can do that. And we sent it
18 to her on July 31st, so it's -- she's probably
19 (inaudible) going to get it back to us. But once we
20 get that, we will certainly forward it to you.

21 DR. GREGG N. BATTERSBY: Okay. Also, she had
22 signed a lien directing payment to me. Are you
23 going -- I will forward that to you, and I believe she
24 has also spoken with -- I don't know if it was you or
25 one of the other adjusters reinforcing that, that she

1 does want payment to go to me for her -- her care.

2 JOHN WILES: Okay.

3 DR. GREGG N. BATTERSBY: I would like to
4 honor that.

5 JOHN WILES: Yeah, if she wants us to pay
6 you-all directly, we -- we certainly can. That's not a
7 problem for us.

8 DR. GREGG N. BATTERSBY: Okay, great, great.
9 All right. I will include the lien with the records so
10 you have that for your reference.

11 JOHN WILES: Okay.

12 DR. GREGG N. BATTERSBY: Um, if there is
13 anything -- so I'll -- I'll let her know that they are
14 waiting --- that you are waiting on those forms to be
15 filled out and returned so we can get this going.

16 JOHN WILES: Yup, yup. That's what we're
17 waiting for. (Inaudible) request that.

18 DR. GREGG N. BATTERSBY: Great. I appreciate
19 it. Thank you very much.

20 JOHN WILES: Sure, thank you, Dr. Battersby.

21 DR. GREGG N. BATTERSBY: Bye-bye.

22 JOHN WILES: Bye.

23 [End of recording.]

24

25

Page 1

C E R T I F I C A T E

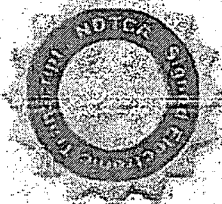
STATE OF SOUTH CAROLINA:

COUNTY OF CHARLESTON:

I, TERI L. SAMPSON, Registered Professional
Reporter, Notary Public and Certified Live Note
Reporter, State of South Carolina at Large, certify
that I was authorized to and did stenographically
transcribe the foregoing audio recording; and that the
transcript is a true record.

I further certify that I am not a relative,
employee, attorney or counsel of any of the parties,
nor am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 6th day of
March, 2018, in the City of Charleston, County of
Charleston, State of South Carolina.



Teri L. Sampson

Teri L. Sampson, RPR,
Notary Public and Certified
Live Note Reporter
My commission expires:
March 13, 2025



Authorization for Release of Information

NOTE: Property and Casualty insurance is excluded from the definition of "health plan" in the privacy rules developed pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and is not a covered entity. However, this authorization meets the core elements criteria set forth in the HIPAA privacy rule, Section 164.508 (c).

Name of Injured Person: Pamela Reid (herein after referred to as the "Injured Person")

Date of Birth of Injured Person: June 17, 1960 (needed to locate records)

State Farm® Claim Number: 40-0756-X00

I authorize:

- (1) any medical, psychological, psychiatric, osteopathic or chiropractic physician, dentist, any other medical practitioner or healthcare provider, hospital, clinic, rehabilitation facility, nursing home, or any other healthcare facility to disclose information from the medical and healthcare records of the Injured Person. I understand that the specific type of information to be disclosed includes, but is not limited to, medical and healthcare records and any other information including any history, treatment records, diagnosis, prognosis, narrative reports, and billing records. This authorization also permits my medical providers to discuss in person, by telephone, electronically, or by mail, medical options, conclusions, treatment plans and other information; and
- (2) any firm, employer, or insurance company to furnish information about the earnings, loss of earnings, work history, workers compensation claim, and other medical information in its/their possession concerning the Injured Person as well as, Event Data Recorder (EDR) information, photographs and other information about the physical damage to the vehicle(s) involved in the accident; and
- (3) any educational organization to furnish the school records of the Injured Person to; State Farm Mutual Automobile Insurance Company, its subsidiaries and affiliates, its claim associates, and legal representatives (hereinafter referred to collectively as "State Farm").

I authorize the use of the above information to permit State Farm to investigate, process, and determine the amount payable, if any, for all claims made under any State Farm property and casualty insurance policy that applies to the accident or occurrence on July 10, 2017.

I understand as part of the claim handling process, State Farm may disclose medical or other information obtained by this authorization to physicians, dentists, other medical or healthcare providers or other professionals for their review and professional opinion. This information may also be released to other insurance companies for their use in connection with insurance transactions, or as required or permitted by law. Information obtained pursuant to this authorization may later be redisclosed and may not be protected under the HIPAA privacy rule. I understand that I may refuse to authorize disclosure of all or some of the requested information, but that refusal may potentially cause a delay in processing, or result in the denial of, insurance benefits for the pending injury claim(s).

This authorization may be revoked at any time, except to the extent that State Farm has taken action in reliance on this authorization prior to notice of revocation. Such revocation must be in writing, dated, signed, and include the claim number referenced above. I understand that revocation of this authorization may potentially cause a delay in processing, or result in the denial of, insurance benefits for the pending injury claim(s).

This authorization is valid for the duration of the claim referenced above, and a photocopy is as valid as the original. This authorization specifically applies to records made before, during, and after the date of signing this authorization for as long as the authorization is in effect.

I have read the authorization and signed this document as a free and voluntary act for the purposes noted above. I understand that I may obtain a copy of this authorization upon written request submitted to State Farm.

Date: 8/15/17

Pamela Reid

Signature of individual or personal representative

Description of personal representative's authority or relationship to patient

Provide the last four digits of the Social Security Number of Injured Person:

(REQUIRED TO LOCATE RECORDS)

6/6/2017

TRANSCRIPTION OF AUDIO RECORDING

August 24, 2017

**JOHN WILES
and
PAMELA REID**



Magnolia Reporting

Magnolia Reporting

Phone: (843) 442-2753

Email: teri.sampson@gmail.com

Internet: www.MagnoliaReporting.com

- 8/24/2017

Page 1

TRANSCRIPTION OF:
JOHN WILES AND PAMELA REID

MAGNOLIA REPORTING (843) 442-2753
www.MagnoliaReporting.com

1 [Beginning of recording.]

2 PAMELA REID: I'm ready.

3 JOHN WILES: This is John Wiles at State Farm
4 Auto Claims on Thursday, August 24th, 2017, just after
5 9:30 a.m. Eastern Time; and I'm speaking with Pamela
6 Reid in order to record the release for the settlement
7 of her bodily injury claim under Claim No. 400756, X as
8 in X-ray, 00.

9 Miss Reid, are you aware that I'm recording
10 this release?

11 PAMELA REID: Yes.

12 JOHN WILES: Do I have your permission to
13 do so?

14 PAMELA REID: Yes.

15 JOHN WILES: This release is for the accident
16 which occurred on July 10th, 2017, in Anderson, South
17 Carolina, at approximately 4:50 p.m. Eastern Time.

18 With this settlement, you are releasing our
19 insured, William Calcutt, for all injuries known and
20 unknown, resulting from this accident. We've agreed to
21 settle your bodily injury claim for \$7,000, to include
22 all medical bills, lost wages and pain and suffering.

23 Miss Reid, do you agree with this bodily
24 injury settlement as outlined?

25 PAMELA REID: Yes.

MAGNOLIA REPORTING (843) 442-2753
www.MagnoliaReporting.com

1 JOHN WILES: This is John Wiles and I am
2 turning off the recorder.

3 [End of recording.]
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MAGNOLIA REPORTING (843) 442-2753
www.MagnoliaReporting.com

C E R T I F I C A T E

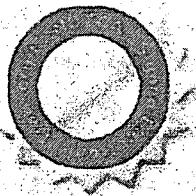
STATE OF SOUTH CAROLINA:

COUNTY OF CHARLESTON:

I, TERI L. SAMPSON, Registered Professional
Reporter, Notary Public and Certified Live Note
Reporter, State of South Carolina at Large, certify
that I was authorized to and did stenographically
transcribe the foregoing audio recording; and that the
transcript is a true record.

I further certify that I am not a relative,
employee, attorney or counsel of any of the parties,
nor am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 26th day of
December, 2017, in the City of Charleston, County of
Charleston, State of South Carolina.



Teri L. Sampson

Teri L. Sampson, RPR,
Notary Public and Certified
Live Note Reporter
My commission expires:
March 13, 2025

MAGNOLIA REPORTING (843) 442-2753
www.MagnoliaReporting.com

5

Dr. Gregg N. Battersby
Chiropractor
7800 Hwy. 81 South
Starr, SC. 29684
864-352-2225

IRREVOCABLE HEALTHCARE POWER OF ATTORNEY

I, Gregg N. Battersby (hereinafter, "Principal") of Starr, SC
County of Starr, in the state of South Carolina, do
appoint Dr. Gregg N. Battersby (hereinafter, "Attorney"), as my true and lawful attorney in fact,
In Principal's name, and for Principal's use and benefit, said Attorney is hereby authorized to:

- 1) Endorse any and all checks or other forms of reimbursement made payable to Principal (or members of Principal's family) by any health insurance companies which relate to medical treatment provided by Attorney to Principal (or members of Principal's family) over to Attorney.
- 2) Demand and direct any and all health insurance companies, during the course of Principal's (or members of Principal's family) medical treatment with Attorney on personal injury cases or major medical matters, to make all reimbursement checks for such treatment payable to Attorney and to send such checks directly to Attorney.

This Special Power of Attorney is created for Attorney's benefit to secure Attorney's right to payment for healthcare services provided and shall be irrevocable throughout the duration of the healthcare services provided by Attorney to Principal arising from any injury or major medical conditions sustained either by Principal or members of Principal's family until said services are paid in full.

GIVING AND GRANTING to said Attorney full power and authority to do all and every act and thing whatsoever requisite and necessary to be done relative to any of the foregoing as fully to all intents and purposes as Principal might or could do if personally present.

All that said Attorney shall lawfully do or cause to be done under the authority of the power of attorney is expressly approved.

Dated: July 11, 2017

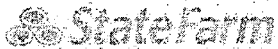
Gregg N. Battersby
Signature

Gregg N. Battersby
Print Name of Principal

Witness: _____

Dated: July 11, 2017

6



Certified Policy Record

I, the undersigned, do hereby confirm that I am custodian of the records pertaining to the issuance of policies by State Farm Fire and Casualty Company.

I certify that the attached documents represent a true and accurate record of the terms and conditions of Policy Number 564 1602-F27-40A including any endorsements, if applicable, for the policy term(s) May 31, 2017 to October 03, 2017 and insuring William Calcutt based on available records.

The policy was in effect on the loss date of July 10, 2017.

A handwritten signature in cursive script that reads 'Kim Chapman'.

Kim Chapman

Underwriter

Date: 12/20/2017

State Farm Fire and Casualty Company

1111 Hammond Drive NE
Atlanta, GA 30346-2311

R 76267-5-C MATCH. 00209 FIRE OVL

DECLARATIONS PAGE

NAMED INSURED 00209 40-2099-5 C A

CALCUTT, WILLIAM
3418 EMANUEL CHURCH RD LOT 3
LEXINGTON SC 29013-9085

POLICY NUMBER 564 1602-F27-40A
POLICY PERIOD DEC 29 2016 to DEC 27 2017
12:01 A.M. Standard Time

STATE FARM PAYMENT PLAN NUMBER
1472181227

AGENT

C SHEALY INS AND FIN SVCS INC
3940 AUGUSTA HWY
GILBERT, SC 29054-9666

PHONE: (803)532-4283 or (803)892-5428

DO NOT PAY PREMIUMS SHOWN ON THIS PAGE.
IF AN AMOUNT IS DUE, THEN A SEPARATE STATEMENT IS ENCLOSE D.

YOUR CAR

YEAR	MAKE	MODEL	BODY STYLE	VEHICLE ID. NUMBER	CLASS
2009	HONDA	VT750CA	CRUISER	JH2RC50439K501763	1B0T000000

SYMBOLS	COVERAGE & LIMITS	PREMIUMS
A	Liability Coverage Bodily Injury Limits Each Person Each Accident \$25,000 \$50,000 Property Damage Limit Each Accident \$25,000	\$246.60
D	Comprehensive Coverage - \$1,000 Deductible	\$285.80
G	Collision Coverage - \$1,000 Deductible	\$684.00
U	Uninsured Motor Vehicle Coverage Bodily Injury Limits Each Person Each Accident \$25,000 \$50,000 Property Damage Limit Each Accident \$25,000	\$44.52

Total premium for DEC 29 2016 to DEC 27 2017 \$1,260.92 This is not a bill.

IMPORTANT MESSAGES

Replaced policy number 5641602-40.

Your total renewal premium for DEC 27 2016 to DEC 27 2017 is \$1,262.19.

State Farm works hard to offer you the best combination of price, service, and protection. The amount you pay for automobile insurance is determined by many factors such as the coverages you have, where you live, the kind of car you drive, how your car is used, who drives the car, and information from consumer reports.

You have the right to request, no more than once annually, that your policy be re-rated using a current credit-based insurance score. Re-rating could result in a lower rate, no change in rate, or a higher rate.

Notice of insurance information collection practices - personal, family, or household insurance transactions: We often collect personal information from persons other than the individual or individuals listed on the policy. Such personal information may, in certain circumstances, be disclosed to third parties without your authorization. If you would like additional information concerning the collection and disclosure of personal information - and your right to see and correct any personal information in your files - it will be furnished upon request.

EXCEPTIONS, POLICY BOOKLET & ENDORSEMENTS (See policy booklet & individual endorsements for coverage details.)

YOUR POLICY CONSISTS OF THIS DECLARATIONS PAGE, THE POLICY BOOKLET - FORM 9840A, AND ANY ENDORSEMENTS THAT APPLY, INCLUDING THOSE ISSUED TO YOU WITH ANY SUBSEQUENT RENEWAL NOTICE.
CREDITOR- REGIONAL FINANCE 1047 BROAD ST. CAMDEN SC 29020-4307
6028BN ADDITIONAL INSURED (PRIOR NOTICE OF TERMINATION)-JOHN GANTT, 338
PINE GROVE RD, LEESVILLE SC 29070-8300
6128DP AMENDATORY ENDORSEMENT
6279EM.1 MOTORCYCLE COVERAGE
6940A AMENDATORY ENDORSEMENT.

Agent: C SHEALY INS AND FIN SVCS INC

Telephone: (803)532-4283

See Reverse Side

109

Prepared JAN 17 2017

2099-A20

04780/06008

155-3860 2 04-2005 (01-02-25-01)
145X011 10-002501

101-023401

6940A AMENDATORY ENDORSEMENT

This endorsement is a part of the policy. Except for the changes this endorsement makes, all other provisions of the policy remain the same and apply to this endorsement.

1. THIS POLICY

Item 5. is changed to read:

Your purchase of this policy may allow:

- a. *you* to purchase or obtain certain coverages, coverage options, coverage deductibles, coverage limits, or coverage terms on other products from the *State Farm Companies*, subject to their applicable eligibility rules; or
- b. the premium or price for other products or services purchased by *you*, including non-insurance products or services, to vary. Such other products or services must be provided by the *State Farm Companies* or by an organization that has entered into an agreement or contract with the *State Farm Companies*. The *State Farm Companies* do not warrant the merchantability, fitness, or quality of any product or service offered or provided by that organization.

2. LIABILITY COVERAGE

Insuring Agreement and Supplementary Payments are replaced by the following:

Insuring Agreement

1. *We* will pay damages an *insured* becomes legally liable to pay because of:
 - a. *bodily injury* to others; and
 - b. damage to property caused by an accident that involves a vehicle for which that *insured* is

provided Liability Coverage by this policy.

2. *We* have the right to:

- a. investigate, negotiate, and settle any claim or lawsuit;
- b. defend an *insured* in any claim or lawsuit, with attorneys chosen by *us*; and
- c. appeal any award or legal decision

for damages payable under this policy's Liability Coverage.

Supplementary Payments

We will pay, in addition to the damages described in the *Insuring Agreement* of this policy's Liability Coverage, those items listed below that result from such accident:

1. Attorney fees for attorneys chosen by *us* to defend an *insured* who is sued for such damages. *We* have no duty to pay attorney fees incurred after *we* deposit in court or pay the amount due under the *Insuring Agreement* of this policy's Liability Coverage;
2. Court costs awarded by the court against an *insured* and resulting from that part of the lawsuit:
 - a. that seeks damages payable under this policy's Liability Coverage; and
 - b. against which *we* defend an *insured* with attorneys chosen by *us*.

We have no duty to pay court costs incurred after *we* deposit in court or pay the amount due under the *Insuring Agreement* of this policy's Liability Coverage;

3. Interest the *insured* is legally liable to pay on damages payable under the *Insuring Agreement* of this policy's Liability Coverage:

- a. before a judgment, but only the interest on the lesser of:
 - (1) that part of the damages *we* pay; or
 - (2) this policy's applicable Liability Coverage limit; and
- b. after a judgment.

We have no duty to pay interest that accrues after *we* deposit in court, pay, or offer to pay, the amount due under the *Insuring Agreement* of this policy's Liability Coverage. *We* also have no duty to pay interest that accrues on any damages paid or payable by a party other than the *insured* or *us*;

4. Premiums for bonds, provided by a company chosen by *us*, required to appeal a decision in a lawsuit against an *insured*. *We* have no duty to:

- a. pay for any bond with a face amount that exceeds this policy's applicable Liability Coverage limit;
- b. furnish or apply for any bonds; or
- c. pay premiums for bonds purchased after *we* deposit in court, pay, or offer to pay, the amount due under the *Insuring Agreement* of this policy's Liability Coverage; and

5. The following costs and expenses if related to and incurred after a lawsuit has been filed against an *insured*:

- a. Loss of wages or salary, but not other income, up to \$200 for each day an *insured* attends, at *our* request:
 - (1) an arbitration;
 - (2) a mediation; or
 - (3) a trial of a lawsuit; and
- b. Reasonable expenses incurred by an *insured* at *our* request other than loss of wages, salary, or other income.

The amount of any of the costs or expenses listed above that are incurred by an *insured* must be reported to *us* before *we* will pay such incurred costs or expenses.

3. GENERAL TERMS**a. The paragraph under Where Coverage Applies that reads:**

Liability Coverage, Personal Injury Protection Coverage, Medical Payments Coverage, and Physical Damage Coverages also apply in Mexico within 50 miles of the United States of America border. A Physical Damage Coverage *loss* in Mexico is determined on the basis of cost at the nearest United States of America point.

is deleted.

b. The following is added:**Limited Coverage in Mexico**

This policy does not provide Mexican auto insurance and does not comply with Mexican auto insurance requirements. If *you* or any other *insured* plan to drive in Mexico, then auto insurance providing



STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
-----)

IN THE COURT OF
COMMON PLEAS
2017-CP-04-02502

ORIGINAL

DR. GREGG N. BATTERSBY,)
)
PLAINTIFF)
)
vs.)
)
PAMELA REID, STATE FARM)
)
MUTUAL AUTOMOBILE INS.)
)
COMPANY and JOHN WILES,)
)
DEFENDANTS)
-----)

TRANSCRIPT OF RECORD

APRIL 12, 2018
ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. CORDELL MADDOX

A P P E A R A N C E S:

PLAINTIFF APPEARING PRO SE

CHARLES R. NORRIS, ESQUIRE
ATTORNEY FOR DEFENDANT/REID

VIVIAN CROSS
CIRCUIT COURT REPORTER

I N D E X

Motion hearing 3

* * * APRIL 12, 2018 * * *

THE COURT: All right. What we got here?

MR. NORRIS: Your Honor, this is a motion for summary judgment in Battersby vs. Pamela Reid and State Farm. I'm Charles Norris and I represent State Farm. And in this case also -- I have paper copies of the brief to give to you and your clerk. I think -- Dr. Battersby, you've got one?

DR. BATTERSBY: Yes.

MR. NORRIS: Do you want another one?

DR. BATTERSBY: No.

MR. NORRIS: Okay.

THE COURT: Thanks.

MR. NORRIS: It saves you from looking at a computer screen.

THE COURT: Okay. Yeah. I hate that.

MR. NORRIS: I do, too. So here's -- here's what happened. Dr. Battersby is a chiropractor and he has sued State Farm to make State Farm pay his bills for treatment of Pamela Reid. Pamela Reid was his patient and the bills were to her.

The facts are that Pamela Reid was in an automobile accident on July 10th of 2017 with a William Calcutt. Reid was not insured with State Farm.

1 Calcutt was insured with State Farm. Reid made a claim
2 against Calcutt and it was turned over to State Farm.
3 There was never any lawsuit. It was turned over to
4 State Farm to adjust.

5 Pamela Reid went to Dr. Battersby for treatment.
6 And before she began treatment, she signed several
7 contracts with Dr. Battersby which gave him a lien upon
8 any settlement proceeds, and which assigned to him any
9 claim she would have. Of course, she would not have a
10 claim against State Farm. She would have a claim
11 against State Farm insured, William Calcutt. It is
12 undisputed that there was no written contract between
13 Dr. Battersby and State Farm.

14 Dr. Battersby treated Pamela Reid from July 11th
15 to August 14th, 2017, at which time he released her
16 from treatment and completed the treatment, and his
17 bill was for \$5,010. After Dr. Battersby had completed
18 his treatment of Pamela Reid, he spoke to John Wiles at
19 State Farm on August 15th of 2017, and Wiles said that
20 State Farm would pay Dr. Battersby directly if that is
21 what Pamela Reid wanted.

22 The problem is, is that Reid told State Farm to
23 pay her. So State Farm paid her including the medical
24 bills. She then refused to pay Dr. Battersby and Dr.
25 Battersby has now sued State Farm.

1 It's undisputed that there was no written
2 contract. There's no contractual privity between Dr.
3 Battersby and State Farm, and he couldn't even take an
4 assignment from Reid because Reid would only have a
5 claim against Calcutt. Reid -- there's no direct
6 action in South Carolina. Reid could not sue State
7 Farm.

8 So -- and there's a case on point, Trancik vs.
9 USAA involving the same kind of documents that Dr.
10 Battersby had with Pamela Reid. And the Court of
11 Appeals held in that case -- it's cited in my brief --
12 that -- that there was no standing by Dr. Trancik to
13 recover from USAA. That case, in fact, is cited in an
14 order that is attached to our brief where three years
15 ago Dr. Battersby, in Anderson County, sued Allstate
16 under the same kind of theory as here. And the court
17 in that case, Judge McIntosh, issued a seven page order
18 granting summary judgment to Allstate. And Judge
19 Sprouse later issued an order cautioning Mr. -- Dr.
20 Battersby attorney at that time, Don Smith, to be more
21 careful in researching the law before filing that kind
22 of case again.

23 Now, Dr. Battersby distinguishes this case from
24 that case because he claims in this case he had an oral
25 contract with State Farm whereby State Farm agreed to

1 pay the bills owed by Pamela Reid to Dr. Battersby.
2 The problem with that theory is that it violates the
3 statute of frauds because the contract to pay the debt
4 of another has to be invited. And it's undisputed that
5 there was no written contract.

6 But Dr. Battersby has also asserted a tort cause
7 of action, all of which require either some kind of
8 reliance -- the only kind of reliance that there is, is
9 detrimental reliance. There is no other reliance or
10 causation -- and the problem with that is Dr.
11 Battersby's injury, which is the unpaid bills, had
12 already occurred before he ever spoke to State Farm,
13 and that is what brings this case within the case of
14 Stringer v. State Farm, which is a case I tried right
15 here in Anderson County. And the Court of Appeals
16 issued a decision on that.

17 So, you know, there's another -- there are many
18 other reasons that we put in our brief -- I'm not going
19 to bore the court. I think the -- the memorandum is
20 self-explanatory. I would like to comment on several
21 things that Dr. Battersby has raised in his 18 page
22 brief which was filed this morning with the court, and
23 he attached an affidavit of his to that which was filed
24 this morning.

25 He says that Plaintiff, which is Dr. Battersby,

1 has not provided -- has not been provided any proof
2 from Reid that she told State Farm to pay her directly,
3 just hearsay from Wiles and State Farm. State Farm has
4 provided no affidavits from Wiles. It's at the bottom
5 of page 2.

6 Well, we don't need to provide proof of
7 something that the Plaintiff alleges in his own
8 complaint because people are bound by the allegations
9 in their complaints. Paragraph 14 of Dr. Battersby's
10 complaint says sometime after Reid finished treatment,
11 Reid told State Farm that she wanted to be paid the
12 money owed to Plaintiff for his services earned.

13 Paragraph 30 of Dr. Battersby's complaint
14 alleges and I quote, "Reid later told State Farm not to
15 pay Plaintiff, but to pay her instead", unquote.
16 Finally, paragraph 47 alleges that Reid's
17 representation was false because after Reid finished
18 treatment, she told State Farm she wanted to be paid
19 the money owed to the plaintiff for her treatment.

20 The real problem in this whole thing is that
21 Pamela Reid signed an agreement to pay Dr. Battersby.
22 And then, according to Dr. Battersby, she -- she lied
23 to him and instead told State Farm to pay her, which
24 they did to settle her claim against William Calcutt.
25 And then she hasn't paid the money to Dr. Battersby.

1 That -- that's the problem.

2 Dr. Battersby also says in page 5 of his brief
3 on the statute of frauds, he quotes paragraph 41 of our
4 answer and counterclaim, State Farm has admitted in the
5 answer that he agreed to pay him directly for Reid's
6 treatment. He's only quoting part of the answer.
7 Paragraph 41 says State Farm did agree to do that if
8 Reid told State Farm to do it. In fact the problem,
9 again, is Reid told State Farm to pay me. She's got
10 the money, but she hasn't paid it to Dr. Battersby.
11 That's the problem.

12 Lastly, on page 7 of his 18 page brief, he
13 refers to a debt of the promisor -- the promisor in
14 this context would be State Farm -- is taking the case
15 out of the statute of frauds. And the problem is State
16 Farm, itself, had no debt to Dr. Battersby. It had no
17 written contract with him. The only -- the only
18 allegation in this is an oral contract, which again is
19 barred by the statute of frauds.

20 So that's kind of what there is to this case and
21 I'll be glad to answer any questions Your Honor has.

22 THE COURT: No. I'm good. I understand it. Yes,
23 sir, anything you want to tell me to look at
24 specifically?

25 DR. BATTERSBY: Your Honor, in rebuttal to his --

1 THE COURT: Well, yeah. Yeah, his motion for
2 summary judgment.

3 DR. BATTERSBY: Well, I just -- I just wanted to
4 start by making a clarification. The defendants raised
5 the issue that -- that in my complaint I put Reid later
6 told State Farm not to pay claims, but to pay her
7 instead. That information was derived from my
8 conversation with John Wiles. I did not have any
9 firsthand knowledge of any communication that Reid had
10 with them directing payment to her.

11 THE COURT: Okay.

12 DR. BATTERSBY: So everything I put in the
13 complaint was in reference to a communication I had
14 with John Wiles. So it was not something that I had
15 known about prior to the conversation with John Wiles,
16 so I just wanted to make a clarification on that.

17 Now, there's no disputing that I treated Pamela
18 Reid for these injuries related to this car accident.
19 Pamela Reid had signed some documents directing payment
20 -- directing any and all insurance carriers to -- to
21 pay me directly for my services rendered to her. A
22 part of that stated that if an insurance company
23 refused to pay me, that it would assign all of Reid's
24 rights, remedies and benefits to me to the extent of
25 the charges, as well as any cause of action that I may

1 have to settle a claim --

2 THE COURT: Right.

3 DR. BATTERSBY: -- on my behalf. In my
4 communication with John Wiles on August 15, 2017, John
5 Wiles told me that he would honor the liens signed by
6 Reid, and he would make payment directly to me out of
7 the settlement. I told him that Reid had signed these
8 liens directing payment. And in his -- his -- in the
9 audio transcript it reads -- this is John Wiles saying,
10 "yeah, if she wants us to pay you all directly, we --
11 we certainly can. That's not a problem for us."

12 I forwarded the liens -- oh, I forwarded the
13 liens and the records to -- and the itemized bill to
14 State Farm. Since State Farm had agreed to pay the
15 bill, I was barred from exercising my option to take
16 over the case and settle it on my behalf -- or settling
17 it on Reid's behalf.

18 THE COURT: All right.

19 DR. BATTERSBY: Reid had agreed to settle the
20 bodily injury claim for \$7,000, and this is in the
21 audio transcript that she had with John Wiles -- and
22 it's part of the exhibits.

23 After this settlement on August 24th, it was
24 about a month later I had -- because I had no knowledge
25 of the settlement. I contacted John Wiles asking what

1 the status was. It was at that time that John Wiles
2 told me that the case was settled and that Pamela Reid
3 was paid directly. And I asked him why would she paid
4 directly when he agreed to pay me. He said, well,
5 Pamela Reid told him that she wanted to be paid
6 directly. I said, well, this is a violation of the
7 liens -- the irrevocable liens that I have that she had
8 signed, and its in violation of the agreement that was
9 made between me and John Wiles.

10 Pamela Reid has shown no proof -- or the
11 defendants have shown no proof that Pamela Reid has
12 made this statement and it is just hearsay. There's no
13 affidavits from John Wiles, no affidavits from Pamela
14 Reid. As far as we -- we presume that the only -- that
15 was the only communication that they had was this audio
16 transcript that I have in the evidence there. And no
17 where in that audio transcript does Pamela Reid say
18 that she wants to be paid directly. And, once again,
19 as I reiterate because State Farm told me that they
20 would pay me directly, I cannot exercise my rights
21 under the contract to settle it -- to settle her claim.

22 Reid also signed an irrevocable health care
23 power of attorney that directed State Farm to make
24 checks for her treatment payable to me and send the
25 checks directly to me. There is no dispute that there

1 is a contract involved. It was an oral contract.
2 Contracts do not have to be in writing in order to be
3 enforceable, and that's under Armstrong vs. Collins.

4 The defendants raised the issue that this falls
5 within the statute of frauds. There's several examples
6 that this does not fall into the statute of frauds.
7 Under Exhibit 6, the contract -- this is the insurance
8 contract that State Farm issued to William Calcutt. It
9 reads in part, "We will pay damages when the insured
10 becomes legally liable to pay because of bodily injury
11 to others caused by an accident that involves a vehicle
12 for which the insured is provided liability coverage by
13 this policy."

14 On Exhibit 7, that's the police report. It
15 states that William Calcutt was determined to be --
16 have contributed to the collision thus legally liable
17 for these injuries. Once Calcutt became legally liable
18 to pay for Reid's treatment -- once -- once Calcutt was
19 found legally liable, State Farm was liable for the
20 payment of the bill.

21 In Klag vs. Home Insurance Company it states in
22 part, "The insurer has a financial interest in the
23 claim once the insured, even though it only becomes
24 liable to the third party when legal liability is
25 established against the insured, and where the insurer

1 agrees to settle this potential liability as well as
2 the potential liability of the insured, the oral
3 promise by an insured to settle the claim -- settle or
4 pay the claim against the insured is an original
5 undertaking and need not be in writing".

6 In Kerner vs. Allstate Insurance it states, "If
7 the party is primarily liable, its promise to pay the
8 debt is required to be in writing under the statute of
9 frauds". State Farm is primarily liable for the
10 injuries caused by Calcutt.

11 In addition, State Farm was settling a business
12 and financial liability of its own because it was
13 legally liable for -- or liable to pay for the -- for
14 the injuries caused by William Calcutt.

15 In Lowrance v. Caldwell it states, "If an oral
16 agreement is in effect, a promise to pay the debt of
17 the promisor himself is not within the statute of
18 frauds. Therefore, the incidental result of its
19 performance may be the discharge of the indebtedness of
20 another person".

21 And it also under American Wholesale Corporation
22 vs. Mauldin, "Whenever the main purpose and object of
23 the promisor is not to answer for another, but to serve
24 some pecuniary or business purpose of his own involving
25 a benefit to himself or damage to the other contracted

1 party, his promise is not within the statute although
2 it may be an informed -- or a promise to pay the debt
3 of another and -- although the performance of it may
4 incidentally have the effect of extinguishing that
5 liability". State Farm is contractually liable for the
6 injuries to Reid caused by Calcutt up to the policy
7 limits.

8 Lastly, State Farm is holding settlement funds
9 to pay for the treatment of Reid. No written contract
10 is needed when the promisor, State Farm, is holding
11 funds for the debtor of Reid. Under Campbell vs.
12 Hickory Falls of Ohio it states, "A promise to pay a
13 debt out of the debtor's funds for property taken over
14 or held by the promisor is an original undertaking and
15 the statute is not applicable to the promise". So you
16 have at least three areas where this oral contract
17 falls outside of the statute of frauds.

18 The defendants keep raising this issue of
19 detrimental reliance. Detrimental reliance is not a
20 cause of action in any -- it is not an element in any
21 of my causes of action. I have established that under
22 all the elements under the statute of -- or under the
23 cause of action of fraud.

24 State Farm told me that they would pay me
25 directly if Reid directed them to. Reid signed several

1 liens directing payments to me. This is a false
2 statement since I found out later that State Farm had
3 paid Reid. State Farm claimed that Reid told them to
4 pay her directly without any proof of her saying that.
5 The non-payment of State Farm -- by State Farm of
6 Reid's treatment through me is material to the matter
7 at hand.

8 State Farm was aware that Reid has signed
9 documents directing payment from her -- from -- for her
10 care to me. State Farm had no intent of paying me.
11 State Farm knew that his promise to pay me was false.
12 State Farm intended to act on a false statement so that
13 he -- would not require Reid to get a lawyer to
14 represent her and so that I would not exercise my
15 option to settle the case on Reid's behalf.

16 State Farm claims that I have no way of knowing
17 that State Farm would not honor the agreement to pay me
18 directly. Wiles knew about the lien and said that he
19 would pay me. I trusted that he would tell the truth.
20 No additional costs to State Farm would be incurred by
21 paying me directly.

22 If you look at Exhibit 2 which is the -- the
23 transcript of the conversation that I had with John
24 Wiles, you can read that and see anywhere in there that
25 would lead somebody to believe that they would not pay

1 me.

2 I relied on a false statement that did not
3 require Reid to obtain a lawyer to settle her -- to
4 settle her claim, and I did not exercise my option to
5 take over the claim and settle it as I saw fit because
6 I could not -- because she had already -- or State Farm
7 had agreed to pay me.

8 I had every right to rely on Wiles' statement
9 since he was a claims specialist for State Farm. And
10 this part is not even needed because it's an arms
11 length transaction under Behr vs. The State of
12 Washington that states "Where there's no confidential
13 or fiduciary relationship, an arms length transaction
14 between mature, educated people is involved, there is
15 no right to rely". And then, finally, there was the
16 result of -- I had -- as a result of my reliance on the
17 false statement by Wiles, I was not paid the 5,000 and
18 some odd dollars. And since State Farm agreed to pay
19 me, I could not -- I was prohibited from exercising my
20 option to settle the claim as I saw fit.

21 Wiles made a false statement to me when he told
22 me the claim -- when he told me that State Farm
23 would pay me directly out of the settlement. I sent
24 the liens to Wiles. He knew full well that she had --
25 that Pamela Reid had directed payment to me and these

1 were irrevocable.

2 In -- in defendant's memorandum, they cite
3 Stringer vs. -- Stringer vs. State Farm Insurance.
4 This case, as in the case I was involved in with
5 Allstate, were different from the case here in that
6 there was no contract -- no verbal or written contract
7 involved. And they cite a -- they only give part of
8 the -- the citation. The first sentence before the
9 citation that they cite it says, "In addition, nothing
10 in the record demonstrates Stringer satisfied the
11 remaining elements of estoppel". Then it goes on to
12 say, "Namely Stringer has failed to prove that he
13 suffered a prejudicial change in position or
14 detrimentally relied on representations of Jones (ph)."
15 I did not have a claim of estoppel or a cause of action
16 of estoppel. Once again, they keep -- they're
17 twisting, putting elements in causes of action that I
18 did not claim.

19 The defendants claim that I did not establish
20 the curious ignorance of the false statement. They
21 claim that I could have learned prior to treating Reid
22 that State Farm would pay me directly for Reid's bills
23 only if Reid had made the request to State Farm. I had
24 liens from Reid directing payment to me. These were
25 irrevocable.

1 THE COURT: Well, let me ask you this: Did you
2 ever send those liens to State Farm?

3 DR. BATTERSBY: Yes. Yes.

4 THE COURT: Okay.

5 DR. BATTERSBY: They acknowledged that they
6 received them.

7 THE COURT: All right.

8 DR. BATTERSBY: It made no difference to me
9 whether -- or it made no difference when I communicated
10 to State Farm whether it was at the beginning of the
11 care or at the end of the care, the fact is that they
12 knew that Reid had assigned the payment to me or had
13 directed payment to me, so whether it was at the
14 beginning, or at the end, it made no difference.

15 And then the defendants claim that I could not
16 prove the final element of fraud, being the proximate
17 injury resulting from the false representation.
18 Because at the time of the alleged representation,
19 August 15, 2017, the reliance claims treatment of
20 Pamela Reid had already concluded. State Farm knew
21 that I had an option to settle the claim to protect my
22 interest by assuring me that they would pay my bill. I
23 was precluded from settling the case as I saw fit.

24 Under negligent misrepresentation, I settled --
25 I satisfied all the elements. And, once again, the

1 defendants are inputting detrimental reliance, which is
2 not a cause of action -- or is not an element under
3 detrimental reliance. The causes -- or the elements
4 include the defense made a false representation to
5 plaintiff. The defendant had a pecuniary interest in
6 making a representation. The defendant owed a duty of
7 care to see that he communicated truthful information
8 to the plaintiff. The defendant breached the duty by
9 failing to exercise due care, and the plaintiff
10 justifiably relied on the representation. And, lastly,
11 the plaintiff suffered pecuniary loss. Justifiable
12 reliance is not the same as detrimental reliance.

13 Under -- I'll go to that --

14 THE COURT: Well, let me ask you something. I --
15 I can -- I can cut to the chase here. Have you ever
16 settled a case on behalf of a client under this --

17 DR. BATTERSBY: I never have and I never have the
18 need to because I would always --

19 THE COURT: Yeah. I wouldn't do that.

20 DR. BATTERSBY: -- I --

21 THE COURT: I mean, I'm trying to be as nice as I
22 can be. I would never do that. I -- that -- I mean, I
23 can't give you legal advice. That would be a huge
24 problem.

25 I mean, here's the problem you've got. Your --

1 your cause of action is against Ms. Reid. I don't know
2 how in the world -- because there is a requirement --
3 and I -- I understand there is a subtle difference in
4 services to be rendered and detrimental reliance on a
5 promise to pay for those future services, because
6 that's what detrimental reliance is. But once the
7 services are rendered, then you can't say you have
8 detrimentally relied on a promise and then perform the
9 services.

10 DR. BATTERSBY: But I also could have required
11 that Pamela Reid get a lawyer to represent her against
12 William Calcutt and --

13 THE COURT: Well, you could have asked her.

14 DR. BATTERSBY: Yeah.

15 THE COURT: But, I mean, that's the problem here.
16 I think you can't step into the feet of Ms. Reid. I
17 think you've got to sue her.

18 DR. BATTERSBY: I --

19 THE COURT: I mean --

20 DR. BATTERSBY: She's a party. She is a party to
21 this suit.

22 THE COURT: Yes.

23 DR. BATTERSBY: But she has defaulted in her
24 answer.

25 THE COURT: Yeah.

1 DR. BATTERSBY: She's not responding. So -- but
2 the thing is, is there was an oral contract. And even
3 if I could not exercise the option of the settling the
4 case, there is an oral contract between me and State
5 Farm, and it does fall outside of the statute of
6 frauds. So even if some of the other causes of action
7 have detrimental -- or that I couldn't rely on settling
8 the case on her behalf, I still have breach of
9 contract. And if I may continue --

10 THE COURT: Well, yeah, briefly. I've got another
11 one and I'm running late.

12 DR. BATTERSBY: I mean, under -- under -- you
13 know, State Farm is liable to pay for the treatment
14 rendered to Reid under the insurance policy, under
15 Shaple vs. Mutual -- Michigan Mutual Insurance. It
16 says, "In our view, a contract with no fault insurance
17 benefits, like uninsured motorist coverage and
18 disability insurance, is a pecuniary contract requiring
19 the insurance company to pay sums upon an occurrence of
20 the event."

21 And, I mean, this -- and justifiable reliance is
22 under Gruber vs. Santee Frozen Foods, holds that
23 "reliance can only be justified in these cases if a
24 relationship with the parties is such that the
25 defendant acted by his superior position to the

1 plaintiff with respect to the knowledge of the truth of
2 the statement made". Wiles is the only person who
3 knows if his statement was going to be true or false.
4 I mean, the -- the fact is that even if I could not --
5 I mean, we -- we haven't -- I guess we haven't breached
6 that taking her claim over and settling it. I mean,
7 the fact that she had assigned that --

8 THE COURT: Right.

9 DR. BATTERSBY: -- you know, that is not something
10 that the court has determined. And she had assigned
11 those rights to me, so I had those. It would -- it
12 would be up to a future court to determine whether
13 that, in fact, would have been liable -- would have
14 been legal, but it's up to her to raise that.

15 THE COURT: Well, here's the problem: She lied to
16 you just like I had clients lie to me. And she just
17 lied to you. But I'm not sure even -- the statute of
18 frauds is very strict and -- and -- and a promise to
19 pay the debts of another just has to be in writing for
20 obvious reasons.

21 DR. BATTERSBY: But -- but -- but if -- not when
22 the promisor is liable. When they had -- they -- you
23 know --

24 THE COURT: But they are liable to her.

25 DR. BATTERSBY: No. They were legally -- but they

1 were legally liable for the injuries caused by their
2 client, and also they were holding funds of her -- the
3 settlement funds, so I was also going after that.

4 THE COURT: I understand.

5 DR. BATTERSBY: See, they didn't have -- the
6 statute requires that you protect some innocent third
7 party from the debt of somebody they have no
8 involvement in --

9 THE COURT: Well, the statute of frauds is 400
10 years old. And it requires --

11 DR. BATTERSBY: Yes.

12 THE COURT: -- certain contracts to be in writing.
13 Period.

14 DR. BATTERSBY: Yeah.

15 THE COURT: Just straight. Period. That's why
16 you have a written contract with Ms. Reid. You know,
17 contract for services.

18 DR. BATTERSBY: But there are exclusions --

19 THE COURT: I know there are.

20 DR. BATTERSBY: But even like I said, the last one
21 being that if the promisor is holding funds of the
22 debtor, it does not have to be in writing. It can be
23 an oral contract. So that part, it falls outside of
24 the statute of frauds, even though I do disagree that
25 the other part is -- they still -- it still falls

1 outside of the statute of frauds with the fact that
2 they were legally liable for the bills owed for her
3 treatment, the fact is -- it's to protect somebody that
4 had no legal liability in the -- in the claim. They
5 were legally liable for her bodily injury, and hence it
6 falls outside the statute of frauds.

7 And like I keep repeating myself, the fact that
8 they were holding her settlement funds -- and that also
9 falls outside -- if you're holding settlement funds,
10 it's under -- I'll read it to you again --

11 THE COURT: No. I'm okay. I get this. I'm
12 telling you, I understand exactly what's going on. And
13 I just -- you're just wrong. I mean, I hate to be that
14 blunt. I think you're wrong. And I think your action
15 is against her. She owes you the money. I understand
16 that. Good --

17 DR. BATTERSBY: -- a promise to pay a debt out of
18 the debtor's funds are properly taken or covered by the
19 promisor if an original undertaking -- and the statute
20 is not applicable to the promise --

21 THE COURT: That is a -- that was a contract with
22 Ms. Reid?

23 DR. BATTERSBY: No.

24 THE COURT: Right?

25 DR. BATTERSBY: That --

1 THE COURT: She assigned benefits to you. She
2 also signed this power of attorney, which I'm just --
3 again, I can't give you legal advice -- but man, I
4 would never enforce that. And these guys are over
5 here, and I understand that you think that the
6 policeman on the scene assigning liability for the
7 wreck makes them liable, that's just not true either.

8 DR. BATTERSBY: They're liable under the factors
9 of the insurance policy. It even states that they
10 become liable to pay for the bodily injury caused by
11 their insured. Their -- their written contract states
12 that, which gives them liability. They're settling not
13 only Calcutt's liability, but their own liability. And
14 I showed -- I wrote that citation in there as well. I
15 mean, it specifically said the insurance company
16 settling not only the insured's liability, but their
17 own.

18 THE COURT: Right. Okay. Well, I'm sorry, I just
19 disagree with you. I'm going to grant your motion for
20 summary judgment only against the insurance company.
21 Ms. Reid owes you the money. I'm just telling you -- I
22 mean, I understand your position. And in a perfect
23 world, it might be right. But it's just -- I mean, I
24 just don't think you're right with it, but you can
25 appeal me.

1 MR. NORRIS: Do you want, Your Honor, to issue a
2 form 4 order, or do you want me to prepare --

3 THE COURT: Do a regular order. I think, just in
4 case, you know, he wants to appeal it. I -- do a form
5 -- a regular order. All right. I got to take a quick
6 break and then --

7 MR. NORRIS: I'll submit a proposed order to the
8 -- to the court --

9 THE COURT: Okay. All right. Thanks.

10 (Whereupon, the hearing adjourned.)

11

12 * * * END OF TRANSCRIPT * * *

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CERTIFICATE OF REPORTER

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I, SHARON D. JONES, CERTIFIED COURT REPORTER,
DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE,
ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF
THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF
COMMON PLEAS FOR ANDERSON COUNTY ON THE 12TH OF APRIL,
2018.

I DO FURTHER CERTIFY THAT I AM NEITHER OF
KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

8/25/18

ORIGINAL

Sharon D. Jones

SHARON D. JONES,
CERTIFIED COURT REPORTER
COMMISSION EXPIRES 9.22.2024

Deposition of:
DR. GREGG N. BATTERSBY

DR. GREGG N. BATTERSBY
VS.
STATE FARM, ET AL.

CASE NO. 2017-CP-04-02502

February 22, 2018



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STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT
CASE NO. 2017-CP-04-02502

DR. GREGG N. BATTERSBY,)
Plaintiff,)
vs.)
PAMELA REID, STATE FARM MUTUAL)
AUTOMOBILE INSURANCE COMPANY AND)
JOHN WILES,)
Defendants.)

DEPOSITION OF: DR. GREGG N. BATTERSBY
DATE TAKEN: Thursday, February 22, 2018
TIME: 10:00 a.m.
PLACE: Nelson Mullins
104 South Main Street
Greenville, SC
REPORTED BY: TERI L. SAMPSON, RPR,
Notary Public and Certified
Live Note Reporter

POST OFFICE BOX 61011
NORTH CHARLESTON, SOUTH CAROLINA 29419

MAGNOLIA REPORTING (843) 442-2753
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Page 14 1 Q And did this, again, relate to the indecent 2 exposure matter? 3 A Yes. 4 Q And what happened to that? 5 A One suit we filed in federal court, and it was 6 dismissed on a summary judgment in favor of the 7 sheriff. The other suit was filed in Anderson County, 8 and it's in appeal. 9 Q Now? 10 A Yes. 11 Q And who is -- are you appealing? 12 A I appealed, yeah. 13 Q Okay. You're appealing the dismissal of that? 14 A Yes. 15 Q Did an attorney represent you in those cases? 16 A They represented me in the suit against 17 the -- in the federal court. But, I initially had one 18 in the state court, and then I got rid of him and did 19 it -- followed up with myself. 20 Q What attorney represented you before you 21 dismissed him? 22 A It was Don Smith. 23 Q Okay. He's an attorney in Anderson? 24 A Yes. 25 Q All right. Any other lawsuits you've been	Page 16 1 Q Oh, I see. You weren't a party to that 2 lawsuit? 3 A No. 4 Q You were deposed as a witness? 5 A Yes, an expert witness. 6 Q Say, a defense attorney defending, say, a 7 wreck case, was taking your deposition about the nature 8 and extent of your patient's injuries? 9 A Yes. 10 Q All right. Any other context in which you've 11 been deposed other than as a witness? 12 A I don't believe so. 13 Q Okay. Now, let's go to this case, Dr. 14 Battersby. I think you treated, as I understand it, a 15 Pamela Reid, R-E-I-D; is that right? 16 A Yes. 17 Q Okay. And I'm looking at your bills, which 18 I'll get to in a minute. It looks like you began 19 treating her July 11th, 2017, and you stopped treatment 20 of her on August 14th of 2017; is that correct? 21 A I believe so. 22 Q Okay. I'll show you the bills in a few 23 minutes, and you can review it and verify that 24 yourself. Let's see, actually, before we get there, is 25 that the notice of this deposition you brought with
Page 15 1 involved in? 2 A Yeah. I sued the women accusing me, and I won 3 a judgment of 112,000. 4 Q Have you collected on that? 5 A Well, hard to when they're meth addicts, so, 6 no. 7 Q The answer is no, all right. Any other 8 lawsuits you've been involved in as a plaintiff or 9 defendant? 10 A This one. 11 Q This one against State Farm? 12 A Yes. 13 Q The one you're being deposed in today? 14 A Yes, yes. 15 Q Any others? 16 A I think that's it. 17 Q Okay. That's all you can remember? 18 A Yes. 19 Q All right. Have you ever had your deposition 20 taken before today? 21 A Yes. 22 Q In which of these cases? 23 A I mean, it was in -- I was deposed in 24 relationship to representing -- or to treating patients 25 for their personal injury claims.	Page 17 1 you? 2 A Yes, yes. 3 Q May I look at that for just a second? 4 A (Witness complied with request of counsel.) 5 (DEPOSITION NOTICE MARKED DEFENDANT'S EXHIBIT 6 NO. 1 FOR ID.) 7 BY MR. NORRIS: 8 Q The notice of deposition, I'm going to 9 actually make that Exhibit 1 to the deposition, asked 10 you to bring to your deposition any and all written 11 contracts between the Plaintiff, that's you, and State 12 Farm, whereby State Farm agreed to pay medical bills of 13 the Plaintiff's patients. Are there any such 14 documents? 15 A See, this is where I'm a little confused. 16 Where in the complaint -- I believe you're trying to go 17 towards me asking State Farm to answer for the debt of 18 another person, correct? 19 Q Well, I don't answer questions in these 20 depositions. 21 A Okay. 22 Q You need to answer questions. And 23 irrespective of what the issues are, you got a notice 24 which asked you to bring to this deposition today any 25 written contracts between you and State Farm, where

5 (Pages 14 to 17)

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Page 18

1 State Farm agreed to pay medical bills of your
2 patients. Have you brought any such documents with you
3 today?

4 A Well, I believe what you're trying to do is
5 twist the narrative to go towards your defense of a --
6 of me asking State Farm to answer for the debt of
7 another person, which I did not do. State Farm issued
8 an insurance policy to William Calcutt. As part of
9 that policy, there's a bodily injury clause which
10 states that State Farm is -- will pay for injuries
11 caused by Mr. Calcutt as a result of his actions. Mr.
12 Cal- -- and when they're legally -- when he's found
13 legally liable.

14 Mr. Calcutt was found legally liable. State
15 Farm did -- was then liable for those bills. I merely
16 asked State Farm if they would pay my bill out of the
17 settlement that was related to the treatment that I
18 rendered to Pamela Reid. I did not ask State Farm to
19 answer for any debt of another person. So, no, I did
20 not have any written contracts.

21 Q All right. Well, I'll get to the issues and
22 the allegations in a little while. Right now, I just
23 want to focus on this deposition notice that's Exhibit
24 1.

25 A Yes.

Page 20

1 Q And I take it, you use this with all of your
2 patients. Is that right, you have all of your patients
3 sign this form?

4 A Yes.

5 Q Okay. Just kind of a standard form?

6 A Yes.

7 Q And whoever the patient is at the bottom, they
8 print their name and sign it, which Pamela Reid did,
9 right?

10 A Yes, yes.

11 Q Okay. All right. And by the way, just as an
12 aside, those documents I put an exhibit sticker on, at
13 the end of the deposition, you need to give those to
14 Miss Sampson. She'll attach those as exhibits to your
15 deposition.

16 A Okay.

17 Q Okay. Let's look at the next document, which
18 I am going to mark as Exhibit 3.

19 (ASSIGNMENT, LIEN, AND AUTHORIZATION INSURANCE
20 BENEFITS AND ATTORNEY MARKED DEFENDANT'S
21 EXHIBIT NO. 3 FOR LD.)

22 BY MR. NORRIS:

23 Q Is that another agreement that you had Pamela
24 Reid sign on July 11th, 2017?

25 A Yes.

Page 19

1 Q And the fact that this notice asked you to
2 bring to your deposition today any contracts between
3 you and State Farm, whereby State Farm agreed to pay
4 medical bills of your patients. Have you brought any
5 such contract with you to the deposition today?

6 A As I just stated, no, I did not.

7 Q All right. Are there any such contracts?
8 Because I assume if there are, you would have brought
9 them today.

10 A There are no such contracts.

11 Q Okay. All right. Now, let's move on to
12 your -- the documents concerning your treatment of
13 Pamela Reid, and I think these are also exhibits to
14 your complaint. I'm going to mark as Exhibit 2, an
15 assignment.

16 (ASSIGNMENT OF PROCEEDS, CONTRACTUAL LIEN, AND
17 AUTHORIZATION MARKED DEFENDANT'S EXHIBIT NO.
18 2 FOR LD.)

19 BY MR. NORRIS:

20 Q Is that an assignment that Pamela Reid signed
21 on July 11th, 2017?

22 A Yes, it is.

23 Q All right. And this was a contract between
24 you and Pamela Reid?

25 A Yes.

Page 21

1 Q Okay. All right. And again, this is a
2 standard form you use with your patients; right?

3 A Yes.

4 Q All right. And is Exhibit 4 another agreement
5 you had Pamela Reid sign on July 11th of 2017?

6 (LIEN ON MY PERSONAL INJURY CLAIM MARKED
7 DEFENDANT'S EXHIBIT NO. 4 FOR LD.)

8 A (Continuing) Yes.

9 Q And again, this is a standard form you use
10 with all of your patients?

11 A Yes.

12 (IRREVOCABLE HEALTHCARE POWER OF ATTORNEY
13 MARKED DEFENDANT'S EXHIBIT NO. 5 FOR LD.)

14 BY MR. NORRIS:

15 Q And is Exhibit 5 yet another standard form
16 that you had Pamela Reid sign on July 11th of 2017?

17 A Yes.

18 Q And am I correct that if she had refused to
19 sign these forms, you wouldn't have treated her?

20 A Correct.

21 Q Okay. Let's look at your bills for treatment
22 of Pamela Reid. I'm going to mark this as Exhibit 6.

23 (BILLS FOR TREATMENT MARKED DEFENDANT'S
24 EXHIBIT NO. 6 FOR LD.)

25 BY MR. NORRIS:

6 (Pages 18 to 21)

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Page 22 1 Q Is Exhibit 6 your bills for treatment of 2 Pamela Reid? 3 A Yes. 4 Q Okay, and let's go through that. According to 5 these bills, which are Exhibit 6, which are your 6 records, you began treating her July 11th of 2017? 7 A Yes. 8 Q And you continued to treat her until August 9 14th of 2017? 10 A Yes. 11 Q And your treatment ended August 14th, 2017? 12 A Yes. 13 Q You never treated her after August 14th of 14 2017? 15 A No. 16 Q And your total bill for your treatment of 17 Pamela Reid was \$5,010.00? I'm just looking - 18 A Yes. 19 Q - at the last page of Exhibit 6. 20 A Yes. 21 Q Okay. All right. So it went, your treatment, 22 from July 11th of 2017 to August 14th of 2017; is that 23 right? 24 A Yes. 25 Q Okay. As far as you knew, did your treatment	Page 24 1 Farm other than John Wiles? 2 A I don't recall. I - I may have - I may have 3 spoken to somebody about where they accept legal 4 filings. 5 Q That would be your complaint - 6 A Yeah. 7 Q - that you filed? 8 A Yes. 9 Q Do you remember who that was? 10 A I don't know. 11 Q Do you remember what they said? 12 A They gave me some address. I believe it was 13 in Arizona. I don't recall offhand. 14 Q The substance of that conversation concerned 15 who on behalf of State Farm would accept service of the 16 complaint that you filed? 17 A Correct. 18 Q Not any of the issues in this case? 19 A No. 20 Q When you first spoke to Mr. Wiles on August 21 15th, 2017, did you ever speak with him again? 22 A Yes. 23 Q Okay. When after August 15th, 2017, did you 24 speak to Mr. Wiles? 25 A It was - it was in September, I believe.
Page 23 1 help Miss Reid? 2 A Yes. 3 Q Was she improved upon discharge? 4 A Yes. 5 Q Is the reason you stopped treating Miss Reid 6 August 14th, 2017, is you felt there was nothing 7 further you could do for her? 8 A I felt she had reached maximum medical 9 improvement. 10 Q You had taken her as far as you could? 11 A Yes. 12 Q Okay. All right. At some point, did you have 13 a discussion with a John Wiles of State Farm? 14 A Yes. 15 Q Do you recall when that was? 16 A August 15th of 2017. 17 Q Okay. And you're looking at your complaint to 18 get that date? 19 A Yes. 20 Q And I'll go over your complaint in a little 21 bit, and I'll make that an exhibit. Had your treatment 22 of Pamela Reid ended when you first spoke to Mr. Wiles 23 on August 15th, 2017? 24 A Yes. 25 Q Did you ever speak with anyone else at State	Page 25 1 Q Okay. Of '17, obviously? 2 A Yeah. After I had - I wanted to check up on 3 the status of the case, and he informed me that the 4 case had been settled and that payment had gone to 5 Pamela Reid. 6 Q All right. Now, when you talk about, quote, 7 the case, unquote, you're referring to Pamela Reid's 8 claim against William Calcutt? 9 A Yes. 10 Q And just for the record, William Calcutt was 11 an insured of State Farm, and Pamela Reid was not an 12 insured of State Farm? 13 A Yes. 14 Q And do you know if Pamela Reid actually filed 15 a lawsuit against William Calcutt, or instead simply 16 made a claim with Mr. Calcutt's liability insurer, 17 which was State Farm? 18 A I don't know. 19 Q Okay. Be that as it may, what did Mr. Wiles 20 tell you in September of 2017 about Pamela Reid's claim 21 against William Calcutt? 22 A He said that the claim had been settled, and I 23 believe it was on August 25th or something like that, 24 and that they had sent payment to Pamela Reid. 25 Q And what did you tell Mr. Wiles in response to

7. (Pages 22 to 25)

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Page 26

1 that information?

2 A Well, I said that we had discussed back

3 several weeks earlier that payment was supposed to come

4 to me for the treatment that I rendered to Pamela Reid,

5 and I wanted to know why he hadn't done that.

6 Q And what did Mr. Wiles say in response?

7 A He said something that Pamela Reid said that

8 she wanted the payment to come to her, and I said that

9 she had signed a document stating that payment was to

10 come to me, and that it was irrevocable and that she --

11 that, you know, he couldn't just ignore that document.

12 Q And what did Mr. Wiles say in response to

13 that?

14 A He said that he just made payment to her.

15 Q Okay. Do you know if Pamela Reid, in fact,

16 instructed Mr. Wiles to make payment to her?

17 A I don't know. That's what he said.

18 Q Okay. All right. Going back to your -- your

19 first discussion with John Wiles was August 15th, 2017,

20 the day after you concluded your treatment of Pamela

21 Reid. Tell me what was said in that conversation on

22 August 15th.

23 A I believe I told him that I had finished

24 treatment and that, you know, if he wanted the records

25 and the bills and so forth, and he said yes, he wanted

Page 27

1 that. And I told him that I had this document signed

2 by Pamela Reid that was directing payment to me from

3 the -- out of the settlement, and I asked him if he

4 would honor that, and he said yes, if Pamela Reid wants

5 you paid, he will pay -- if Pamela Reid wants me paid

6 from the settlement, that he'll make payment to me.

7 Q Is that the first time you ever communicated

8 with State Farm concerning your treatment of Pamela

9 Reid, August 15th?

10 A I believe so. I'm not absolutely sure. I

11 don't know -- I may have called State Farm initially

12 about getting the -- finding out who the adjuster was,

13 or something like that. I don't know if there was

14 prior communication, or what it was regarding.

15 Q Okay. But the first time you ever spoke to

16 anybody at State Farm about whether State Farm would

17 pay Pamela Reid's bills was August 15th when you spoke

18 with Mr. Wiles?

19 A I believe so.

20 Q Did you record that conversation?

21 A Yes.

22 Q You did?

23 A Yes.

24 Q Okay. And you have that recording?

25 A Yes.

Page 28

1 Q Have we not asked you to produce that?

2 A I sent it to you. It was in the email.

3 You're talking about the August 15th?

4 Q Yeah.

5 A Yeah, I sent -- it was part of the email.

6 Q Okay. I did not get that.

7 A I may have sent -- well, did it go to -- maybe

8 it went to Grace Hamill. Is that who --

9 Q That's my assistant, but I don't have that

10 recording.

11 A Did you get any of those emails?

12 Q I've gotten your emails.

13 A I mean, did you -- but, see, what I did was I

14 sent the documents on the -- I sent a hard copy as well

15 as I sent everything email, but I didn't have the -- I

16 couldn't send the phone conversation by --

17 Q How do you have that retained, the phone

18 conversation?

19 A It records through my phone.

20 Q Okay. You didn't tell Mr. Wiles that you were

21 recording him, did you?

22 A No.

23 Q Okay. Because I think -- I'm looking at the

24 request to produce that we served on you. Paragraph 7

25 asks all audio recordings --

Page 29

1 A Yeah, I sent it.

2 Q -- and communications --

3 A I sent it to you.

4 Q And I'm looking at your responses --

5 A Now, like I said, it was in the email.

6 Q Okay.

7 A Because I just copied the tape, the recording,

8 out of the -- from the phone, and I sent it to the

9 email.

10 Q Here is what I need you to do, because I

11 didn't get it, and I can't believe that Grace would

12 not, if she got it, give that to me. I need you to

13 send -- make a copy of that. You can put it whatever

14 you want to, and I need you to send it to me. Because

15 you and I had corresponded directly; right?

16 A Yes.

17 Q So you've got my email address?

18 A Yeah.

19 Q I need you to send it to me; okay?

20 A Well, let me look in my phone and see who I

21 sent it to, because --

22 Q Or alternatively, you could send it to Grace

23 now. Can you do that?

24 A I'll see if I can. I would imagine I could.

25 Q Okay.

8 (Pages 26 to 29)

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Page 30

1 A If my phone would turn on. If you want to
2 continue to talk - do you want to continue asking?
3 Q Sure, let's continue with the deposition. But
4 what I would like to do is for you to send the
5 recording to both me and my administrative assistant,
6 Grace Hamill, and I can then have Miss Sampson
7 transcribe that.
8 Be that as it may, what you say Mr. Wiles told
9 you on August 15th is that if Pamela Reid instructed
10 State Farm to pay you, State Farm would pay you, right?
11 A If - if - he said that if she wanted me paid
12 directly out of the settlement, that they would pay me
13 out of the settlement.
14 Q Okay. Did he say anything else beyond that?
15 A I - I mean, we discussed the sending of the
16 bill and the records.
17 Q Your records?
18 A Yes.
19 Q Which you sent to Mr. Wiles after August 15th?
20 A Yes.
21 Q Okay. Now, you spoke, I think, with Mr. Wiles
22 August 15th, and one time later in September of 2017.
23 Do you recall speaking with him again after September
24 of 2017?
25 A No, I don't believe so.

Page 32

1 Q Had you ever heard of the Trancik case before
2 you ever got Mr. Domin's letter, which is Exhibit 7?
3 A No.
4 Q Mr. Domin's letter of October 10th of last
5 year says, and I'm looking kind of at the middle of the
6 first paragraph, "State Farm's claim representative had
7 advised you State Farm would be willing to pay you
8 directly if the Claimant was in agreement to do so."
9 Is that an accurate statement, the Claimant being
10 Pamela Reid?
11 A Wait. What was that again?
12 Q Okay. Looking at kind of the middle of the
13 first paragraph of Mr. Domin's letter, he says, and I
14 quote, State Farm's claim representative advised you
15 State Farm would be willing to pay you directly if the
16 Claimant was in agreement to do so, end quote. Is that
17 an accurate statement?
18 A Yes.
19 Q Okay. And at the bottom of that paragraph,
20 Mr. Domin further says, "Whatever is written in your
21 agreement with the patient is not binding on State
22 Farm." Do you agree or disagree with that?
23 A Okay, I'm sorry, I was just trying to -
24 Q That's okay.
25 A Let me - I narrowed the email down.

Page 31

1 Q All right. Did John Wiles or anybody else
2 from State Farm ever agree in writing to pay Pamela
3 Reid's bills?
4 A Nothing in writing.
5 Q Okay. In other words, it was a verbal
6 contract, I think as you had described it?
7 A Yes, yes.
8 Q At some point, did you correspond with an
9 attorney State Farm hired, a Mr. Tim Domin, do you
10 recall that?
11 A There was somebody from another law firm. I
12 don't remember exactly who the -
13 Q Okay. Well, I'll show you. Perhaps that will
14 help your recollection. I'm going to mark this as
15 Exhibit 7.
16 (LETTER DATED OCTOBER 10, 2017, MARKED
17 DEFENDANT'S EXHIBIT NO. 7 FOR I.D.)
18 BY MR. NORRIS:
19 Q Is Exhibit 7 a letter that you received from
20 Mr. Domin?
21 A Yes.
22 Q And if you look at Mr. Domin's letter, which
23 is Exhibit 7 to this deposition, does that reference
24 the case of Trancik versus USAA Insurance Company?
25 A Yes.

Page 33

1 Q Sure.
2 A And I'm just trying to see who -
3 Q Do you want to take a break while you try to
4 send it to me? This is your recording.
5 A For some reason, it's kicking - whenever I
6 try to hit on this. It was January 22nd it looks like
7 it was sent, and every time I -
8 Q To?
9 A Grace Hamill. Every time I click on the
10 stupid thing, it bounces me back.
11 Q Well, let's do this, Dr. Battersby. I don't
12 want to get you distracted in this deposition with
13 trying -
14 A Well, actually, you know, it was sent - it
15 was sent to you. Hold on.
16 Q Okay. As an attachment to an email?
17 A It was, yeah.
18 Q On January 22nd?
19 A Once again, let me bring it - every time I
20 try to click on this thing, it's kicking me back.
21 Q Okay.
22 A For some reason. It looks like the - it was
23 on February 1st to you, to Charles Norris.
24 Q Okay.
25 A And it says "The August 15th, 2017, call to

9 (Pages 30 to 33)

Page 34

1. Wiles" is the title of the attachment.
 2. Q All right.
 3. A So, it was sent to you.
 4. Q All right. And you attached the recording of
 5. your August 15th conversation with John Wiles?
 6. A Yes.
 7. Q Would you be so kind as to re-send that to me?
 8. A I'll have to do it when I get back. Because
 9. for every -- for some reason, it's kicking --
 10. Q That's okay. When you get back, could you
 11. re-send it to me?
 12. A Yes.
 13. Q And I'll go back and check your February 1st
 14. email to me to see if there was an attachment to that;
 15. but it may be the case, for whatever reason, the
 16. attachment didn't go through. So, once you get back to
 17. your office today, if you could re-send to me your
 18. February 1st email, I would appreciate it.
 19. A Yes.
 20. Q Getting back to Exhibit 7, I was asking you
 21. at -- at the end of the first paragraph of Mr. Domin's
 22. letter, he says, "Whatever is written in your agreement
 23. with the patient is not binding on State Farm." Do you
 24. agree or disagree with that statement?
 25. A It's -- it's -- I disagree.

Page 35

1. Q Okay. Let me ask you this: Did you have any
 2. written contract yourself in writing with State Farm?
 3. A No.
 4. Q Okay. All right. Now, let's look at your
 5. reply to Mr. Domin's letter. Is Exhibit 8 your letter
 6. of the very next day, October 11th, 2017, to Mr. Domin?
 7. (LETTER DATED OCTOBER 11, 2017, MARKED
 8. DEFENDANT'S EXHIBIT NO. 8 FOR I.D.)
 9. A (Continuing) Yes.
 10. Q All right. And you cited some legal
 11. authorities in your letter which is Exhibit 8; is that
 12. right?
 13. A Yes.
 14. Q Did you do that research yourself?
 15. A Yes.
 16. Q Okay. And looking at, like, the 10th or 11th
 17. line down, you say, "The communication between Mr.
 18. Wiles and me created a parol contract." Do you see
 19. what I'm talking about?
 20. A Yes, yes.
 21. Q Again, I think you confirmed that today. You
 22. had a parol or oral contract; you believe, with Mr.
 23. Wiles at State Farm, but not a written contract; is
 24. that correct?
 25. A Correct.

Page 36

1. Q Did you have any help in drafting this letter,
 2. Exhibit 8?
 3. A No.
 4. (OCTOBER 18, 2017, LETTER MARKED DEFENDANT'S
 5. EXHIBIT NO. 9 FOR I.D.)
 6. BY MR. NORRIS:
 7. Q And let's see, I believe that on October the
 8. 18th, Mr. Domin responded to your letter of October
 9. 11th, and that's Exhibit 9; is that correct?
 10. A Yes.
 11. Q And that's the extent of your correspondence
 12. with Mr. Domin; is that correct?
 13. A I believe so.
 14. Q All right. Let's see. I am going to mark as
 15. Exhibit 10 an order.
 16. (ORDER MARKED DEFENDANT'S EXHIBIT NO. 10 FOR
 17. I.D.)
 18. BY MR. NORRIS:
 19. Q Have you ever seen that order that's Exhibit
 20. 10 to your deposition?
 21. A I don't know. This was when Don Smith was
 22. representing me. I don't believe I ever saw this
 23. order.
 24. Q Okay. You were aware of the fact that you
 25. sued Kirkman Moorhead, Krause, Moorhead & Draisen;

Page 37

1. Allstate Insurance Company; and Allstate Northbrook
 2. Indemnity Company? You're obviously aware of that
 3. lawsuit, aren't you?
 4. A Yeah. This was all a part of the -- we tried
 5. to add them to the lawsuit with the -- against the
 6. women that accused me. And for some -- I guess it was,
 7. if I recall correctly, it was the court denied our
 8. amended complaint to add them, so there was a separate
 9. suit that was filed.
 10. Q Okay. The question is, had you ever, before
 11. today, seen this order which is Exhibit 10 to your
 12. deposition? Have you ever seen that?
 13. A I don't believe I have.
 14. Q Okay. Were you aware of the order?
 15. A I know that there was -- there was something
 16. that they were -- that they had dismissed the lawyers
 17. and were -- the insurance company and the lawyers from
 18. something, the suit or something.
 19. Q Now, earlier in this deposition, I asked you
 20. to recall the cases you had been involved in other than
 21. this lawsuit against State Farm, and I don't recall you
 22. mentioning this lawsuit against Allstate. Is there any
 23. reason why you --
 24. A I said it was a part of the -- we tried to --
 25. it was a -- initially, we tried to put it as a part of

10 (Pages 34 to 37)

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Page 38 1 the initial complaint against the women, so I just 2 assumed it was still part of that. 3 Q Okay. Well, as part of this lawsuit in which 4 this order, which is Exhibit 10 to your deposition, as 5 part of that lawsuit, you were trying to get Allstate 6 to pay some of your bills, were you not? Isn't that 7 one of the things you were trying to get? 8 A No. This was - I don't remember what the 9 just (sic) of this - this was - Allstate, I believe, 10 was the insurance company that was involved with the 11 patient that had accused me, and I was treating her for 12 a car accident, and she ended up - in order to not 13 have to pay my bill, she made those false accusations. 14 And I don't remember exactly how the lawyer was trying 15 to bring them into the case, I don't know offhand. I 16 was not - 17 Q By the lawyer, you mean your lawyer, Don 18 Smith? 19 A Yes. 20 Q Okay. All right. Well, let me mark as 21 Exhibit 11 another order issued in your case against 22 Allstate and others. 23 (ORDER MARKED DEFENDANT'S EXHIBIT NO. 11 FOR 24 LD.) 25 BY MR. NORRIS:	Page 40 1 mentioned anywhere in that policy, are they? 2 A No. 3 Q Let's talk for a second about Pamela Reid. 4 You have named her also as a defendant in this lawsuit 5 in addition to State Farm and Mr. Wiles; right? 6 A Yes. 7 Q Have you served the complaint on her? 8 A Yes. 9 Q Has she answered it? 10 A She's in default. 11 Q Have you moved to hold her in default? 12 A Not yet. 13 Q Have you made any attempts to collect from her 14 the debt that she owes you? 15 A Yes. I sent her a bill. 16 Q Okay. Have you gotten any response at all 17 from her? 18 A No. 19 Q Have you called her? 20 A No. 21 Q Not talked to her? 22 A No. 23 Q But have you sent her any letters or anything 24 like that? 25 A I sent her a bill.
Page 39 1 Q Have you ever seen that order that is Exhibit 2 11? 3 A No, I haven't. 4 Q Not aware of it? 5 A I don't know what the - I know that there was 6 some - was this the dismissal, I think? Or the 7 summary judgment? 8 Q The order speaks for itself. It's my 9 understanding Exhibit 10 dismisses your case against 10 Allstate. 11 A I haven't seen the order. I just know that 12 the case was dismissed. 13 Q Okay. But your attorney, Mr. Smith, 14 apparently did not forward you these orders that are 15 Exhibit 10 and Exhibit 11? 16 A I don't recall seeing them. 17 Q Okay. All right. Okay. Have you seen State 18 Farm's policy issued to William Calcutt? 19 A Yes. You sent it to me the other day. 20 Q All right. Does it say anywhere in that 21 policy that State Farm would pay debts owed by Pamela 22 Reid to you? 23 A No. It just states they would pay for the 24 injuries caused by Mr. Calcutt. 25 Q All right. But neither you or Pamela Reid are	Page 41 1 Q Okay. Did you follow that up when you got no 2 response from her? 3 A I then informed her that I would turn the 4 matter over to collections. 5 Q Informed her how, orally or in writing? 6 A It was - I think I - it was in writing. I 7 think it was via text or an email. 8 Q If you - if you can retrieve your text or 9 email to Pamela Reid, can you send that to me in 10 addition to your recording of your conversation with 11 John Wiles, please? 12 A I'll see if I still have it, yes. 13 Q All right. If you have it, would you send it? 14 I'm assuming if you don't send it to me, you still 15 don't have it. Is that a fair assumption? 16 A Yes. 17 Q All right. Now, let's mark as Exhibit 12 18 your - the complaint that you drafted in this lawsuit. 19 (SUMMONS AND COMPLAINT MARKED DEFENDANTS' 20 EXHIBIT NO. 12 FOR LD.) 21 BY MR. NORRIS: 22 Q Is Exhibit 12 a copy of your complaint? 23 A Yes. 24 Q Okay. And you drafted that by yourself? 25 A Yes.

11 (Pages 38 to 41)

Page 42 1 Q Without any help from an attorney? 2 A No. 3 Q No, you didn't get a - 4 A No, I did not have help. 5 Q And I think you did indicate you served this 6 on Miss Reid, she has not responded, and she is in 7 default? 8 A Yes. 9 Q All right. Have you ever had to file suit 10 against any other patient to collect debts other than 11 Pamela Reid? 12 A I may have sent them to collections. I don't 13 think I filed a lawsuit. 14 Q Well, you got some company that you refer 15 unpaid bills to, is that the way it works? 16 A I would - mainly, right now, I just send the 17 bill to a - 18 Q Collections service? 19 A Collection to - it's - it's like a notice - 20 it sends people notices of the debt, and then it puts 21 their debt on their credit rating. 22 Q Okay. And if they collect something, what, 23 they take a percentage of it and give the balance to 24 you? 25 A No. I don't think they even do a percentage.	Page 44 1 balance from Reid. Is that what you were talking about 2 a few minutes ago, that you've sent her the bills and 3 you've referred it to a collection service? 4 A Yes. 5 Q Okay. And look at the next page, please, of 6 paragraph 30 on page 5. You say Reid later told State 7 Farm not to pay Plaintiff, but to pay her instead. Is 8 that what John Wiles told you? 9 A Yes. 10 Q And you allege in paragraph 35, a few lines 11 down, that State Farm agreed to pay Plaintiff, you, 12 directly for the services rendered to Reid, if read 13 agreed to have Plaintiff paid directly? 14 A Yes. 15 Q Okay. And it appears to be the case that she 16 signed documents with you, directing insurance 17 companies to pay you, but later, after that, she told 18 the insurance company, specifically Mr. Wiles, to pay 19 her. Is that what happened? 20 A All I know is that she signed documents 21 directing payment to me. I am just getting, from what 22 Mr. Wiles told me, that she told him that she wanted to 23 be paid directly. 24 Q Okay. 25 A So I'm just going by what Mr. Wiles says on
Page 43 1 I think the way I have it - I mean, they do have an 2 option for that. 3 Q Okay. 4 A But I just have it reported on their credit 5 rating. 6 Q All right. In your complaint, are all of the 7 factual allegations accurate? 8 A Yes. 9 Q Okay. I assume you wouldn't put something 10 false in your complaint, right? 11 A No. 12 Q Okay. Could you look at the bottom of page 3, 13 please? Dr. Battersby, in paragraph 14 of your 14 complaint at the bottom of page 3, you said Reid told 15 State Farm that she wanted to be paid the money owed to 16 Plaintiff for his services to her. Did you learn that 17 from what Mr. Wiles told you? 18 A Yes. 19 Q Because I assume you haven't discussed this 20 with Pamela Reid. 21 A No. 22 Q So that came from John Wiles, right? 23 A Yes. 24 Q All right. And looking at the next page, 25 paragraph 23, it says you've attempted to collect the	Page 45 1 that portion. 2 Q All right. If that is indeed what she told 3 Mr. Wiles, then that was inconsistent with her 4 agreements with you, right? 5 A Correct. 6 Q Okay. And looking the next page, page 6, 7 paragraph 47, you allege in your fraud claim against 8 Pamela Reid, that after she finished treatment, she 9 told State Farm she wanted to be paid the money owed to 10 you. And again, that's - 11 A According to what Mr. Wiles said. 12 Q Okay. You don't have any reason to disbelieve 13 that that's what she told him, do you? 14 A I'm just going - I mean, I wouldn't think 15 that Mr. Wiles would tell me something incorrect. 16 Q Okay. 17 A I have no proof that she actually said this. 18 I'm just going by what Mr. Wiles said. 19 Q Okay. Obviously, you believe it's true, 20 because you put it in your complaint, right? 21 A Like I said, I'm trusting Mr. Wiles to giving 22 me accurate information. 23 Q Okay. And you allege in paragraph 51 of your 24 complaint that Reid told Plaintiff, you, on several 25 occasions she had called State Farm and told them to

12 (Pages 42 to 45)

Page 46

1 pay Plaintiff directly?
 2 A That's what she told me.
 3 Q But, in fact, based on what you know now, that
 4 was a lie?
 5 A Correct.
 6 Q Okay. So not only did she not pay your bill,
 7 she lied to you?
 8 A Yes.
 9 Q All right. Looking at the next page, page 7,
 10 you have sued State Farm for fraud; is that correct?
 11 A Yes.
 12 Q And the fraud concerns what Mr. Wiles told you
 13 on August 15th of 2017?
 14 A Yes.
 15 Q And that was the day after you concluded your
 16 treatment of Pamela Reid on August 14th, 2017, right?
 17 A Yes.
 18 Q Okay. Looking at the last page, page 9,
 19 paragraph 75, that's an incomplete sentence. Do you
 20 have any idea what the rest of paragraph 75 should read
 21 as?
 22 A No, it's not an incomplete sentence. It says,
 23 "State Farm owed a duty to exercise reasonable care to
 24 Plaintiff because their statements regarded the payment
 25 for Reid's treatment."

Page 47

1 Q Okay. Well, maybe I'm confused. That looks
 2 to be a - is that a comma or a period?
 3 A It's a comma, but it should be a period.
 4 Well, each one has - there's a comma after each of the
 5 paragraphs.
 6 Q I see. I'm sorry.
 7 A And then I put the period at the end of the -
 8 Q Fair enough, okay. All right, that's fair. I
 9 don't have any other questions, Dr. Battersby. I do
 10 want to reiterate that I would appreciate your sending,
 11 actually, both me and my assistant, Grace Hamill, the
 12 recording of your conversation with Mr. Wiles.
 13 A Yes.
 14 Q That would be your conversation of August
 15 15th, 2017. And I think you've testified you sent that
 16 to me in an email on February 1st; is that right?
 17 A Yeah. If the date - I think it was February
 18 1st that I told you.
 19 Q Okay. All right. Did you send that to me, or
 20 to me and Grace Hamill?
 21 A I think it was just - once again, it says to
 22 Charles, and then I don't know if there's anybody else,
 23 because every time I click on it, it brings me back to
 24 the original -
 25 Q Okay. All right.

Page 48

1 A - emails.
 2 Q Well, do your best, please, to send that to
 3 me. And, you know, I didn't want to distract you
 4 during this deposition with your trying to manipulate
 5 your iPhone, but do you think you could send it to me
 6 this week?
 7 A I can do it this afternoon.
 8 Q That's fine, okay.
 9 A As soon as I get back.
 10 Q Last thing, have you understood my questions?
 11 A Yes.
 12 Q And you're not on any medication that would
 13 prevent you from understanding my questions, are you?
 14 A No.
 15 Q Okay. And the very last thing, do you want to
 16 read and sign your deposition?
 17 A I can waive it.
 18 Q Okay. All right. Then I have nothing. Thank
 19 you, sir.
 20 A Great.
 21 Q Thank you for coming.
 22 A Thank you.
 23 Q Take care.
 24 (The deposition was concluded at 10:41 a.m.)
 25

Page 49

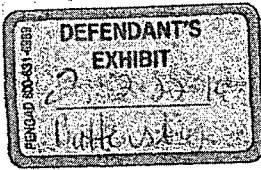
1 CERTIFICATE
 2 STATE OF SOUTH CAROLINA:
 3 COUNTY OF CHARLESTON:
 4 I, TERI L. SAMPSON, Registered Professional
 5 Reporter, Notary Public and Certified Live Note
 6 Reporter, State of South Carolina at Large, certify
 7 that I was authorized to and did stenographically
 8 report the foregoing deposition, and that the
 9 transcript is a true record of the testimony given by
 10 the witness.
 11 I further certify that I am not a relative,
 12 employee, attorney or counsel of any of the parties,
 13 nor am I a relative or employee of any of the parties'
 14 attorney or counsel connected with the action, nor am I
 15 financially interested in the action.
 16 WITNESS MY HAND AND OFFICIAL SEAL this 6th day of
 17 March, 2018, in the City of Charleston, County of
 18 Charleston, State of South Carolina.
 19
 20
 21
 22
 23
 24
 25

Teri L. Sampson
 Teri L. Sampson, RPR,
 Notary Public and Certified
 Live Note Reporter
 My commission expires:



13 (Pages 46 to 49)

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Dr. Gregg N. Battersby

Assignment of Proceeds, Contractual Lien, and Authorization

I, the undersigned, hereby authorize and direct any and all insurance carriers, attorneys, agencies, government departments, companies, individuals, and/or other legal entities (payors), which may elect to be obliged to pay benefits to me for any medical conditions, accidents, injuries or illnesses, past, present, or future (condition) to pay directly to and exclusively in the name of Dr. Gregg N. Battersby D.C. for charges incurred by me, including but not limited to charges for treatment, narrative reports, depositions, testimony, and any other charges incurred by me at the Office (charges). I further grant a contractual lien to Dr. Gregg N. Battersby D.C. with respect to my charges, applicable to all payors; however, I understand that nothing in this Agreement shall be constructed as an election by Dr. Gregg N. Battersby D.C. to claim protection under any statutory lien law. For the purpose of this Agreement, "benefits" shall include, but not limited to, proceeds from any settlement, judgment, or verdict, as well as any proceeds relating to commercial health group insurance, lost wage benefits, lost service benefit, attorney retainer agreements, medical payment benefit, personal injury protection, no-fault coverage, uninsured and underinsured motorist coverage, third-party liability distributions, disability benefits, worker's compensation benefits, malpractice proceeds, and any other benefits or proceeds payable to me for the purpose stated herein, regardless of whether such proceeds are related to my charges or not.

I further agree that in the event a payor refuses to pay Dr. Gregg N. Battersby D.C., I hereby assign, insofar as permitted by law, all of my rights, remedies, and benefits to Dr. Gregg N. Battersby D.C. to extent of my charges, as well as any and all causes of action that I might have against such payor, to prosecute such causes of action either in my name or in the Office's name and to settle or otherwise resolve such causes of action as the Office sees fit.

In the event I retain one or more attorneys to represent me in this matter, I will direct each attorney to issue a letter of protection to this Office regarding my charges. Upon issuance, I hereby agree that such letter(s) of protection cannot be revoked or modified without the expressed written consent of this Office. I further direct each attorney to provide immediate notice to the Office regarding any funds received by the attorney relating to my accident, to promptly pay such Office, and to provide full accounting of such funds to the Office upon its request.

I hereby direct all payors to release to Dr. Gregg N. Battersby D.C. any information regarding any coverage or benefits which I may have including, but not limited to, the amount of the coverage, the amount paid thus far, and the amount of any outstanding claims.

I authorize this Office to release any information regarding my treatment or pertinent to my case(s) to all payors as defined above to facilitate collection under this agreement. I hereby direct this Office to file a copy of this agreement, together with any applicable charges, with any or all payors, regardless of whether a claim has been established with said payors. I hereby authorize Dr. Gregg N. Battersby D.C. to endorse/sign my name on any and all checks listing me as the payee, which are presented to this Office for payment of and account relating to me, my spouse, or any of my dependents, regardless if these other charges are related to my condition.

I understand that I remain personally responsible for the total amounts due Dr. Gregg N. Battersby D.C. for his services. This assignment lien does not constitute any consideration for this Office to await payments and it may demand immediately upon rendering services at its option. If this Office must take any action to collect an outstanding balance on my account, I will be responsible for payment and will reimburse Dr. Gregg N. Battersby D.C. for all costs of such collection efforts, including, but not limited to, all court costs and all attorneys fees.

This assignment and lien shall not be modified or revoked without the mutual written consent of Dr. Gregg N. Battersby D.C. and myself. I hereby revoke any previously signed authorizations, whether executed at this Office or any other Office to the extent the terms of those authorizations conflict with the terms of this agreement and lien.

I agree that each and every provision of this agreement is reasonably necessary for the protection of the rights and interests of Dr. Gregg N. Battersby D.C. and me. However, should any provision of this agreement be found to be invalid, illegal or unenforceable, or for any reason cease to be binding on any party hereto, all other provisions of this agreement shall, nevertheless, remain in full force and effect.

Personal Injury Cases that the attorneys willfully gave Dr's fees to their clients will be referred to the South Carolina Bar Office of Disciplinary Council.

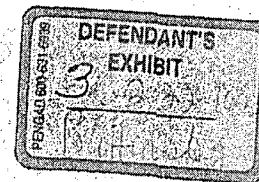
Please print patient name: Pamela Reid Date 7-11-17

Patient Signature: Pamela Reid Date 7-11-17

Name of Custodial Parent or Legal Guardian (please print)

Parent/Guardian: _____ Date _____

Witness: _____ Date _____



ASSIGNMENT, LIEN AND AUTHORIZATION
INSURANCE BENEFITS AND ATTORNEY

To Whom It may concern:

DR. BATTERSBY

I hereby authorize and direct you, my insurance company, and/or my attorney, to pay directly to

such sums as may be due and owing this Office for services rendered me, both by reason of accident or illness, and by reason of any other bills that are due this office, and to withhold such sums from any disability benefits, medical payments benefits, No-Fault benefits, health and accident benefits, workmen's compensation benefits, or any other insurance benefits obligated to reimburse me or from any settlement, judgement or verdict on my behalf as may be necessary to adequately protect said Office. I hereby further give a lien to said Office against any and all insurance benefits named herein, and any and all proceeds of any settlement, judgement or verdict which may be paid to me as a result of the injuries or illness for which I have been treated by said Office. This is to act as an assignment of my rights and benefits to the extent of the Office's services provided.

In the event my insurance company obligated to make payment to me upon the charges made by this Office for their services refuses to make such payments, upon demand by me or this Office, I hereby assign and transfer to this Office any and all causes of action that I might have or that might exist in my favor against such company and authorize this Office to prosecute said cause of action either in my name or in the Office's name and further I authorize this Office to compromise, settle or otherwise resolve said claim or cause of action as they see fit.

I understand that I remain personally responsible for the total amounts due the Office for their services. I further understand and agree that this Assignment, Lien and Authorization does not constitute any consideration for the Office to await payments and they may demand payments from me immediately upon rendering services at their option.

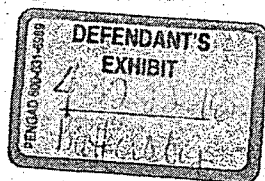
I authorize the Office to release any information pertinent to my case to any insurance company, adjuster or attorney to facilitate collection under this Assignment, Lien and Authorization. I agree that the above mentioned Office be given power of Attorney to endorse/sign my name on any and all checks for payment of my doctor bill.

By signing this paper you give up your right to notice and court trial. If you do not pay on time, a court judgement may be take against you without your prior knowledge and the powers of a court can be used to collect from you regardless of any claims you may have against the creditor whether for returned goods, faulty goods, failure on his part to comply with the agreement, or any other cause.

SIGNED

Pamela Bevil

DATE: 7-11-17



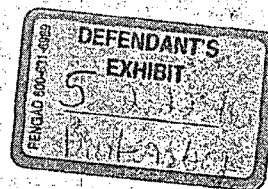
LIEN ON MY PERSONAL INJURY CLAIM

I understand that I am giving an irrevocable lien to Dr. Gregg Battersby in the settlement of my personal injury claim. Only Dr. Gregg Battersby can release said lien. I understand that most insurance companies do not pay for repeated office visits, as such, Dr. Gregg Battersby is required to bill for the individual procedures he performs. These include, not are not limited to: 99203, 98940, 98941, 98942, 98943, 97140, 97124. These procedures are billed at his standard fees. I understand that if the insurance company chooses not to honor said lien and refuses to pay Dr. Gregg Battersby directly for the procedures performed that I give Dr. Gregg Battersby, or his assignee, full legal rights to settle my personal injury claim on my behalf and direct payment for the services performed to Dr. Gregg Battersby. Dr. Gregg Battersby agrees to wait for payment as long as the insurance company agrees to pay him directly for the services performed. In the event I default on payment to Dr. Gregg Battersby when he demands payment, I agree to pay ten percent interest plus any legal fees and court costs incurred by Dr. Gregg Battersby in the collection of said debt. I sign this with my full understanding.

Pamela Reid
Print

Pamela Reid
Sign

7-11-17
Date



Dr. Gregg N. Battersby
Chiropractor
7800 Hwy. 81 South
Starr, SC. 29684
864-352-2225

IRREVOCABLE HEALTHCARE POWER OF ATTORNEY

I, Patricia Reid (hereinafter, "Principal") of Starr, South Carolina, do
County of Starr, in the state of South Carolina, do
appoint Dr. Gregg N. Battersby (hereinafter, "Attorney"), as my true and lawful attorney in fact.
In Principal's name, and for Principal's use and benefit, said Attorney is hereby authorized to:

- 1) Endorse any and all checks or other forms of reimbursement made payable to Principal (or members of Principal's family) by any health insurance companies which relate to medical treatment provided by Attorney to Principal (or members of Principal's family) over to Attorney.
- 2) Demand and direct any and all health insurance companies, during the course of Principal's (or members of Principal's family) medical treatment with Attorney on personal injury cases or major medical matters, to make all reimbursement checks for such treatment payable to Attorney and to send such checks directly to Attorney.

This Special Power of Attorney is created for Attorney's benefit to secure Attorney's right to payment for healthcare services provided and shall be irrevocable throughout the duration of the healthcare services provided by Attorney to Principal arising from any injury or major medical conditions sustained either by Principal or members of Principal's family until said services are paid in full.

GIVING AND GRANTING to said Attorney full power and authority to do all and every act and thing whatsoever requisite and necessary to be done relative to any of the foregoing as fully to all intents and purposes as Principal might or could do if personally present.

All that said Attorney shall lawfully do or cause to be done under the authority of the power of attorney is expressly approved.

Dated: July 11, 20 17

Patricia Reid
Signature

Patricia Reid
Print Name of Principal

Witness:

Dated: 7/11/17

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Circuit Court Judge

Appellate Case No. 2018-000943

RECEIVED
NOV 27 2018
SC Court of Appeals

Dr. Gregg Battersby, Appellant,

v.

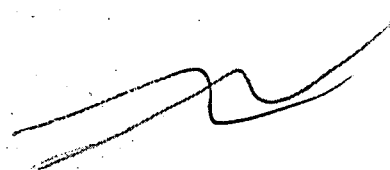
Pamela Reid, State Farm Mutual Automobile Insurance Company and John Wiles, Defendants,

Of whom State Farm Mutual Automobile Insurance Company and John Wiles are the
Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

October 11, 2018



Dr. Gregg Battersby
7800 Hwy. 81 South
Starr, South Carolina 29684
(864) 570-0077
Pro se, Appellant