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April 3, 2019

**HAND DELIVERY**

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

RE: Clair Craver Johnson, Respondent, v. John Roberts M.D., Petitioner; Clair Craver Johnson, Respondent v. Medical University of South Carolina, Petitioner  
Supreme Court of South Carolina Case No.: 2018-000914

Dear Mr. Shearouse:

Pursuant to Rule 208(b)(7), SCACR, I am writing a letter to advise you of a pertinent and significant case that was recently decided by the Supreme Court of South Carolina after the filing of the Respondent's brief in the present case on December 19, 2018. The case in question is *Marshall v. Dodds*, Op. No. 27873 (S.C. Sup. Ct. filed March 27, 2019). The formal "Issue" presented before the Supreme Court in *Marshall v. Dodds* was stated in its Opinion as follows: "[i]n a medical malpractice case where evidence exists that doctors breached the standard of care on multiple occasions, does the statute of repose begin to run with each breach, resulting in recent breaches being actionable even though older ones are barred?" The Supreme Court's formal holding in *Marshall v. Dodds* was that "Section 15-3-545(A) begins to run after each occurrence, which is consistent with our rejection of the continuous treatment rule and the continuous tort doctrine." The Supreme Court further stated in *Marshall v. Dodds* that "[o]ur decision also does not implicate any tolling principles, as only claims based on acts within the repose period are actionable. We find it wholly inconsistent to immunize serial malpractice under the guise that the legislature intended an 'absolute time limit' when the acts for which the Marshalls seek to recover fall within such time constraints."

In the present case, the secondary issue on appeal proffered in Respondent's brief is substantially similar to the issue in *Marshall v. Dodds*: "[i]n a medical malpractice case where doctors breached the standard of care on multiple occasions, did the Court of Appeals correctly hold that each breach triggers the statute of repose and that recent breaches can be actionable even though older breaches are stale?" This issue is argued in Respondent's brief from Pages Eight through Sixteen (8-16). Respondent's brief

repeatedly cites and relies upon the decision by the South Carolina Court of Appeals in *Marshall v. Dodds*, 417 S.C. 196, 789 S.E.2d 88 (Ct. App. 2016), as argued summarily beginning on Page 10 of her brief in a subsection titled “[t]he Court of Appeals’ decision in the present case and in *Marshall* is consistent with the plain language of the statute and South Carolina precedent.”

Respondent’s brief summarizes the Respondent’s overall argument on Page Fifteen (15), which Respondent contends in this supplemental citation letter echoes substantially similar policy-based arguments to those ultimately adopted by the Supreme Court’s decision in *Marshall v. Dodds*:

The Maryland Court of Appeals [in *Jones v. Speed*, 320 Md. 249, 577 A.2d 64 (Md. 1990)] wisely recognized that allowing incidents of negligence that occur within the repose window to move forward is not an implicit adoption of the continuous treatment rule. The court noted that any damages that resulted from non-actionable negligence (the “cumulative effect” as the Petitioners have labeled it) would be fact issues for plaintiff to prove and for the trier of fact to sort out. *Id.* The holding by the South Carolina Court of Appeals [in the underlying holding in the present case] likewise does not “resuscitate” the continuous treatment rule. The continuous treatment rule remains “lifeless” in South Carolina, and the ruling in [*Harrison v. Bevilacqua*, 354 S.C. 129, 580 S.E.2d 109 (2003)] is alive and well. The rule advocated by the Petitioners, however, would insulate medical negligence occurring within the repose window from suit because it is part of a pattern of negligence outside the repose window. Such a rule would encourage serial malpractice by healthcare providers in order to cross the six year “finish line” and avoid liability. If the spirit of this Court’s prior decision in *Harrison* is to follow the strict lettering of the statute of repose, then surely aggregating treatments that could have occurred months or days before a lawsuit was filed with a date occurring outside the six-year period preceding the lawsuit simply because a doctor was repeatedly negligent is not what the legislature intended when it adopted Section 15-3-545(A). Respondent urges this Court to not adopt the Petitioners’ argument.

The underlying decision by the South Carolina Court of Appeals that is currently being appealed in the present case pertinently held the following in its decision:

The allegations in this case are indistinguishable from *Marshall*. Appellant asserts she has been harmed as a result of treatment she received within the six-year statute of repose. Because there is evidence that her injury occurred as a result of treatment she received within the

six-years prior to her lawsuit, the circuit court erred in finding as a matter of law her claim is barred by the statute of repose.

Moreover, both Petitioners in this matter also recognize the importance that the Supreme Court's decision in *Marshall v. Dodds* will have on the outcome of this case. Petitioner Roberts stated the following on Page Twenty (20) of his brief:

On the merits, the Subject Decision hinged on *Marshall*, 417 S.C. 196, 789 S.E.2d 88, a case which is, as the Court of Appeals recognized in the Subject Decision, presently before this Court on writ of certiorari granted August 23, 2017. (See generally J.A. at 622-28.) Indeed, in her return to the certiorari petitions in this matter, Ms. Johnson herself framed the question presented (i.e., the question she says those petitions presented to the Court) as being the very same as the question still (as of the date of this brief) before this Court for decision in *Marshall*, thus conceding that, insofar as the merits are concerned, Petitioners should fare no worse than their counterparts in *Marshall*. To the extent the merits need be reached to decide this appeal, the Court should hold the instant appeal in abeyance as may be necessary to see that this is so.

Likewise, Petitioner MUSC stated the following on Page Fifteen (15) of its brief:

Respectfully, *Marshall* was incorrectly decided and does not support affirmance here. This conclusion is, in part, supported by the fact that the Supreme Court has granted certiorari to review the *Marshall* opinion, although it has not reached a ruling as of this filing. If the *Marshall* opinion is overturned by the Supreme Court, then the reasoning for the Court of Appeals' ruling in this matter would be completely undermined and would clearly justify affirmance of the circuit court's ruling in this matter. . . . Both the Marshall opinion and the Court of Appeals' Opinion ignored [*Harrison v. Bevilacqua*, 354 S.C. 129, 580 S.E.2d 109 (2003)] and resurrected the continuing tort rule without explicitly identifying it.

Based on the foregoing, Respondent contends that the Supreme Court of South Carolina's decision in *Marshall v. Dodds* is a pertinent and significant authority to the secondary issue on appeal and is therefore a proper supplemental citation under Rule 208(b)(7), SCACR. Respondent formally contends that the Supreme Court's decision in *Marshall v. Dodds* supports a ruling in Respondent's favor on the secondary issue on appeal in this matter.

By copy hereof, I am serving this letter upon counsel for Petitioners via U.S. Mail and electronic transmission.

Sincerely yours,



Jon B. Asbill

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THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.  
Circuit Court Judge Charleston County

Opinion No. 5535 (S.C. Ct. App. filed February 7, 2018)  
Appellate Case No.: 2015-001463

South Carolina Supreme Court Case No.: 2018-000914

Clair Craver Johnson . . . . . Respondent

v.

John Roberts, M.D. . . . . Petitioner

And

Clair Craver Johnson . . . . . Respondent

v.

Medical University of South Carolina . . . . . Petitioner

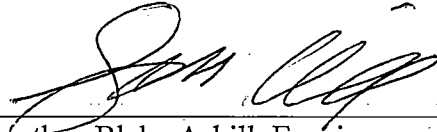
**PROOF OF SERVICE**

I, Jonathan Blake Asbill, of Baker, Ravenel & Bender, L.L.P., counsel for Respondent Clair Craver Johnson, hereby certify that, on this 3<sup>rd</sup> day of April, 2019, I have served the foregoing Supplemental Citation Letter on all other parties to this matter by depositing same in the United States Mail, postage pre-paid and return address clearly indicated on said envelope to counsel at the following addresses:

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