

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

ORIGINAL

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Steven H. John, Circuit Court Judge

Case No. 2011-CP-26-7403

Randall M. Green and Ann Green,..... Respondents-Appellants,

v

Wayne B. Bauerle, M.D. and

Wayne B. Bauerle, M.D., P.C.,.....Appellants-Respondents.

SUPPLEMENTAL RECORD ON APPEAL

Andrew F. Lindemann
Davidson & Lindemann, P.A.
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

John B. McCutcheon, Jr.
Lisa A. Thomas
Thompson & Henry, P.A.
Post Office Box 1740
Conway, South Carolina 29528
(843) 248-5741

O. Grady Query
Query Sautter Forsythe, LLC
The Wappoo Centre, Suite 202
147 Wappoo Creek Drive
Charleston, South Carolina 29412
(843) 795-9500

L. Morgan Martin
Law Offices of L. Morgan Martin, P.A.
1121 Third Avenue
Conway, South Carolina 29526
(843) 248-3177

Cristin A. Uricchio
Uricchio Law Firm
147 Wappoo Creek Drive, Suite 205
Charleston, South Carolina 29412
(843) 795-9300

RECEIVED

MAR 19 2015

SC Court of Appeals

Counsel for Appellants/Respondents
Wayne B. Bauerle, M.D. and
Wayne B. Bauerle, M.D., P.C.

Counsel for Respondents/Appellants
Randall M. Green and Ann Green

INDEX

Order Granting Defendant Grand Strand Regional Medical Center's Motion for Partial Summary Judgment, filed May 1, 2013	1
Stipulation of Dismissal with Prejudice as to Defendant Grand Strand Regional Medical Center, filed June 11, 2013	16
Order Granting in Part and Denying in Part Defendants' Motion for Set-Off, filed October 17, 2013	18
Order Denying Defendant's Motion to Alter or Amend Order Granting Partial Set-Off, filed February 13, 2014.....	24
Order Denying Plaintiffs' Motion to Alter or Amend Order Granting Partial Set-Off, filed February 13, 2014.....	25
Judgment, filed September 16, 2013.....	26
Verdict Forms, filed September 16, 2013.....	28
Fourth Amended Complaint, filed October 15, 2012	32
Memorandum of Law in Support of Defendants' Motion for Set Off, filed September 23, 2013	45
Plaintiffs' Motion and Supporting Memorandum in Opposition to Defendants' Motion for Setoff, dated September 30, 2013	49
Plaintiffs' Motion to Alter or Amend Order Granting Partial Set-Off, filed October 30, 2013.....	92
Defendants' Motion to Alter or Amend Order, filed November 8, 2013.....	100
Trial Transcript	102
Preliminary Jury Instruction	104
Opening Statement by Mr. Martin	108

Lee D. Cranberg, M.D. (by deposition).....	111
Scott Lintz, M.D. (by deposition).....	115
Douglas E. Norcross, M.D. (by deposition)	124
Edd Price Chariker, M.D. (by deposition).....	126
Annette Slate	
Direct Examination by Mr. Martin.....	127
Jonathan Mark Green	
Direct Examination by Mr. Query	134
Cross-Examination by Ms. Thomas	141
Lynette Green Graham	
Direct Examination by Mr. Query	143
Sarah Lustig	
Direct Examination by Mr. Sautter	149
Cross-Examination by Ms. Thomas	168
Oliver G. Wood, Jr., Ph.D.	
Direct Examination by Mr. Sautter	175
Cross-Examination by Mr. Thomas	180
Re-Direct Examination by Mr. Sautter.....	181
James Garner, M.D. (by deposition).....	183

Ann Green

Direct Examination by Mr. Martin	184
--	-----

Richard Matza, M.D.

Direct Examination by Mr. Query	193
---------------------------------------	-----

Cross-Examination by Mr. McCutcheon	203
---	-----

Re-Direct Examination by Mr. Query	215
--	-----

Re-Cross Examination by Mr. McCutcheon	219
--	-----

Randall M. Green

Direct Examination by Mr. Query	220
---------------------------------------	-----

George B. Nicholson, Jr., M.D.

Direct Examination by Mr. McCutcheon	229
--	-----

Cross-Examination by Mr. Martin	245
---------------------------------------	-----

Re-Direct Examination by Mr. McCutcheon	254
---	-----

Re-Cross Examination by Mr. Martin	255
--	-----

Ralph Foster Cozart, M.D.

Direct Examination by Mr. McCutcheon	256
--	-----

Cross-Examination by Mr. Martin	272
---------------------------------------	-----

Re-Direct Examination by Mr. McCutcheon	289
---	-----

Wayne B. Bauerle, M.D.

Direct Examination by Mr. McCutcheon	290
--	-----

Cross-Examination by Mr. Martin	298
Charlie Dorn Smith, III, M.D.	
Direct Examination by Mr. McCutcheon.....	310
Cross-Examination by Mr. Martin	319
Re-Direct Examination by Mr. McCutcheon.....	328
Re-Cross Examination by Mr. Martin	329
Jack Stewart Haskin, M.D.	
Cross Examination by Mr. Martin	330
Verdict Form Discussion.....	331
Jury Charge Discussion	333
Charging of the Jury	334
Post-Trial Matters.....	338
Plaintiffs' Trial Exhibit #1	341
Plaintiffs' Trial Exhibit #2	343
Plaintiffs' Trial Exhibit #3	345
Plaintiffs' Trial Exhibit #4	346
Plaintiffs' Trial Exhibit #5	348
Plaintiffs' Trial Exhibit #6	357
Plaintiffs' Trial Exhibit #8	361
Plaintiffs' Trial Exhibit #9	367

Plaintiffs' Trial Exhibit #10	368
Plaintiffs' Trial Exhibit #12	369
Plaintiffs' Trial Exhibit #13	370
Plaintiffs' Trial Exhibit #15	391
Plaintiffs' Trial Exhibit #18	417
Plaintiffs' Trial Exhibit #19	418
Plaintiffs' Trial Exhibit #22	419
Plaintiffs' Trial Exhibit #23	420
Plaintiffs' Trial Exhibit #27	422
Plaintiffs' Trial Exhibit #29	423
Plaintiffs' Trial Exhibit #30	427
Plaintiffs' Trial Exhibit #31	429
Defendants' Trial Exhibit #6A.....	431
Deposition Excerpts of Scott Lintz, M.D.	432
Deposition Excerpts of Douglass E. Norcross, M.D.	449
Deposition Excerpts of Edd Price Chariker, M.D.	456
Deposition Excerpts of Lee David Cranberg, M.D.	480
Deposition Excerpts of James S. Garner, IV, M.D.	493
Defendant Bauerle's Amended Answer to Defendant Grand Strand Regional Medical Center Request to Admit, dated March 4, 2008	501
Covenant Not to Sue and Covenant Not to Prosecute or Execute	

Judgment, May 31, 2013 (To Be Filed Under Seal)	505
Respondents/Appellants' Notice of Appeal, filed March 17, 2014	506
Certificate of Counsel	516
Certificate of Compliance	517
Covenant Not to Sue and Covenant Not to Prosecute or Execute	
Judgment, May 31, 2013	518
Certificate of Counsel	523

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

Randall M. Green and Ann Green,

Plaintiffs,

Docket No.: 2011-CP-26-7403

v.

Wayne B. Bauerle, MD, Wayne B.
Bauerle, MD, PC, and Grand Strand
Regional Medical Center, LLC,

**COVENANT NOT TO SUE AND
COVENANT NOT TO
PROSECUTE OR EXECUTE
JUDGMENT**

Defendants.

On April 17, 2004, Randall Green was a patient in the Emergency Room at Grand Strand Regional Medical Center as a result of a motor vehicle accident. It is alleged a delay in treatment caused further permanent injury to the Plaintiff.

An action has been instituted in the Court of Common Pleas for Horry County against Wayne Baurle, MD, Wayne Bauerle, MD, PC, and Grand Strand Regional Medical Center, LLC with the allegations of negligence and damage set forth in the Fourth Amended Complaint.

Randall M. Green and Ann Green, for and in consideration of a lump sum payment of Two Million and 00/100 (\$2,000,000.00) Dollars, paid on behalf of Grand Strand Regional Medical Center, LLC (hereinafter known as "Payer"), receipt whereof is hereby acknowledged, do hereby irrevocably bind themselves at no time or place to commence or prosecute any action or suit, or execute on any judgment on account of any claim for personal injury or negligence or any other claim or claims, actions or causes of action, including medical expenses, against the Payer, by reason of the alleged negligence in Mr. Green's treatment, specifically including but not limited to the lawsuit presently

pending in the Court of Common Pleas for Horry County, Civil Action number 2011-CP-26-7403.

It is further expressly agreed and covenanted that this instrument may be pleaded as a defense and as a bar of any action or proceeding or judgment have been or that may be brought, instituted or taken by the undersigned, the heirs or beneficiaries at law of Randall Green or on his behalf against Grand Strand Regional Medical Center, LLC, and that this instrument shall forever be a complete bar to the commencement or prosecution of any action or proceeding or judgment whatever against the Payer, on account of the injuries, treatment and damages of the said Payee as well as any future claims for damages of any kind whatsoever.

It is further agreed and understood that the payment of the consideration herein mentioned shall in no way bar or affect any action against any person other than the Payer arising out of the incident hereinbefore mentioned, that the consideration herein expressed is paid solely for this Covenant Not to Sue and Covenant not to Prosecute or Execute Judgment against the Payer and that the right to sue other persons including Wayne B. Bauerle, MD and Wayne B. Bauerle, MD, PC are hereby expressly reserved.

It is further agreed and understood that the payment of the Two Million and 00/100 Dollars (\$2,000,000.00) to the Payee is not and shall not be construed to be full compensation for the injuries or damages of the Payee or heirs at law or beneficiaries as set forth or could have been set forth in the Fourth Amended Complaint. Any liability or responsibility on the part of Grand Strand Regional Medical Center, LLC is expressly denied and disputed, but the money is paid and received solely as consideration for this Covenant on behalf of Grand Strand Regional Medical Center, LLC on account of the

treatment allegedly resulting in the alleged damages, known or unknown, to Randall Green, his heirs at law or beneficiaries.

The undersigned agrees to indemnify and hold the Payer harmless from any and all claims, if any, which have been or may hereinafter be made by any private insurance company, Medicare, Medicaid, or any branch of the United States Government by way of subrogation or otherwise for medical, drug, hospital or other services afforded Randall Green in connection with this alleged negligent and improper treatment and care. The undersigned agree that any such claims or liens will be satisfied out of the proceeds of the settlement.

CONFIDENTIALITY

The parties mutually agree that neither they nor their attorneys nor representatives shall reveal to anyone, other than as may be mutually agreed to in writing or required by a Court of law, any of the terms of this Covenant and Agreement, or any of the amounts, numbers, terms or conditions of any sums payable to Payee as set forth.

NATURE OF PAYMENTS

All sums set forth in this Covenant constitute damages on account of personal injuries in a case involving physical injury and potential claims for death arising from the accident, casualty or event stated in Paragraph 1 of this agreement.

REPRESENTATION BY PAYEE

Payee states that they have carefully read this agreement in its entirety, has conferred with their attorneys, and know and understand the contents of this Agreement. Payee further understands and acknowledges that this Agreement has been negotiated by the parties through their respective counsel. Payee represents that they are not relying on

the advice of these Defendant, Payer, or anyone associated with these Defendant or Payer concerning the legal or tax consequences of this agreement, nor is this Agreement contingent upon any favorable tax determination. Accordingly, Payee hereby Covenants not to Sue, further Prosecute this action or Execute any Judgment and agrees to hold harmless Payer, its counsel from any claim of any kind which Payee may assert because of any unforeseen consequences of this Covenant Not to Sue or Prosecute or Execute.

ADDITIONAL DOCUMENTS

All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full effect to the basic terms and intent of this Agreement.

ENTIRE AGREEMENT

This Covenant Not to Sue or Prosecute or Execute contains the entire agreement between Payee and Payer on behalf of this Defendant pertaining to the matter set forth and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns and beneficiaries of each.

GOVERNING LAW

This Covenant Not to Sue shall be construed and interpreted in accordance with the law of the State of South Carolina.

IN WITNESS WHEREOF, the undersigned has hereunto set their hands and seal this 31st day of May 2013.

WITNESSES:



E. Brook Hunt



Randall Green

WITNESSES:

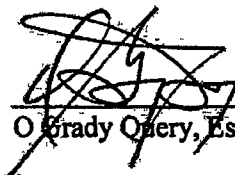


E. Brooke Hunt



Ann Green

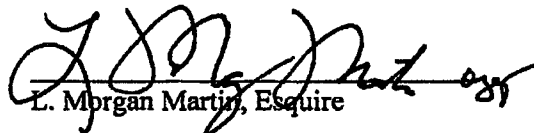
We, the undersigned attorneys for the Payee, hereby certify that the contents, meanings and effects of the foregoing Covenant Not to Sue or Prosecute or Execute have been carefully and fully explained to them by us and we have recommended that they execute this Covenant Not to Sue or Prosecute or Execute for the consideration herein expressed.



O. Grady Query, Esquire



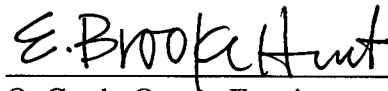
Cristin Uricchio, Esquire



L. Morgan Martin, Esquire

CERTIFICATE OF COUNSEL

The undersigned Counsel for Respondents/Appellants, Randall M. Green and Ann Green, certifies that the Supplemental Record on Appeal contains only material proposed to be included by any of the parties and whose inclusion is ordered by the South Carolina Court of Appeals and not any other material.



O. Grady Query, Esquire
Michael W. Sautter, Esquire
Michèle Patrão Forsythe, Esquire
Elizabeth Brooks Hurt, Esquire
Query Sautter Forsythe, LLC
147 Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412
(843) 795-9500

L. Morgan Martin, Esquire
L. Morgan Martin, PA
1121 Third Avenue
Conway, South Carolina 29526
(843) 248-3177

Cristin Uricchio, Esquire
Uricchio Law Firm
The Wappoo Centre
147 Wappoo Creek Drive, Suite 205
Charleston, South Carolina 29412
(843) 795-9300
Counsel for Respondents/Appellants

Charleston, South Carolina

March 16, 2015