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STATE OF SOUTH CAROLINA

In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
DEADRA L. JEFFERSON, Circuit Court Judge

Case No. 2015-CP-10-5000
Appellate Case No. 2019-000640

Jim Washington, ...Appellant,
v.
Trident Medical Center, LLC.....Respondent.

PETITION FOR SUPERSEDEAS/STAY

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INDEX

Petition for supersedeas/stay.....	pp. 1-17
Verification.....	pp. 18
Circuit Court order dated 2/14/19.....	pp. 19-22
Circuit Court order dated 3/18/19.....	pp. 23-24
Notice of Appeal.....	pp. 27-32
Respondent's Response in Opposition to Motion to Reconsider.....	pp. 34-38
Respondent's proposed order dated 2/12/19.....	pp. 39-42
Respondent's response in opposition to motion to vacate judgment.....	pp. 43-49
Transcript of circuit court hearing dated 2/7/19.....	pp.50-67
Appellant motion to reconsider conclusion dated 7/6/18.....	pp. 68-133
Appellant's motion to vacate judgment and motion to amend the pleadings.....	pp. 134-156
Appellant's memorandum of law in support of motion to vacate judgment.....	pp. 157-198
Appellant's motion to reconsider/motion to vacate dated 2/22/19.....	pp. 199-223

Appellant, Jim Washington ("Washington") move this honorable Court to grant an order pursuant to SCACR Rule 241 for Writ of Supersedeas/Stay to revive the terms of the prior order/decision and to supersedeas/stay the matters decided in the two pending orders now on appeal on the grounds stated in the facts and arguments in this petition for Writ of Supersedeas/Stay.

FACTS

On or about 6/15/18 Appellant spoke by phone with Judge Dennis law clerk to inquire when would his pending motions filed in the circuit court on 1/27/16 would be schedule for a hearing and was told that Judge Dennis would make a decision on the matter and contact Appellant by mail. On 6/22/18 Judge Dennis and wrote Appellant stating " Mr. Washington: The above reference matter has been closed. Enclosed is a copy of the Court of Appeals' opinion affirming my order and concluding all motions filed. Please contact my law clerk if you have any further questions." { Motion To Reconsider Conclusion, R___; Exhibits, P. 80-88}. On 6/25/18 the circuit court mailed Judge Dennis decision to Appellant which was received by Appellant on 6/27/18. On 7/6/18 Appellant filed in the circuit court a Motion to Reconsider Conclusion under SCRCR Rules 59(e), 60(b)(1) and (b)(3) requesting Judge Dennis to reconsider his decision that all motions were concluded. { Motion To Reconsider Conclusion, filed 7/6/18, Rpp. 68-79; Exhibits, p. 80-88}. On several occasions after filing the 7/6/18 motions Appellant followed Judge Dennis instruction to contact his law clerk for further question on the matter and it was eventually determine that a hearing would be held with both parties to the action present. On 10/25/18 Appellant filed in the circuit court a motion to vacate judgment and motion to amend the pleadings seeking relief. { motion to vacate judgment and motion to amend the pleadings, pp. 134-146 }. On 2/4/19 Appellant filed in the circuit court his memorandum of law in support of motion to vacate judgment and motion to amend the pleadings with exhibits included. { memorandum of law in support of motion to vacate judgment and motion to amend the pleadings, 157-179; Exh. A, pp. 180-

185}. On 2/7/19 a hearing was held on the motions in the circuit court. The circuit court ruled it lacked jurisdiction and authority to grant relief to Appellant and that Appellant could file a SCRCR Rule 59(e) motion to reconsider her final order if the court was in error, overlooked, fail to rule on an issue or misinterpret the law in the final order. {Transcript , p. 52, line 1-64, line 11}. Respondent's attorneys e-mailed their proposed order on 2/12/19 to Judge Jefferson, the presiding 2/7/19 hearing Judge and forward a copy to Appellant. {Respondent's propose order, 39-42 }. On 2/14/19 the circuit court issued its order denying Appellant motion to vacate judgment and motion to amend the pleadings stating it lack jurisdiction to grant relief because motion was untimely and seek relitigation of issues affirmed on appeal and no evidence of extrinsic fraud was shown entitling relief from judgment. {order dated 2/14/19 denying Appellant motion to vacate judgment and motion to amend the pleading, pp. 19-22}. On 2/22/19 Appellant filed in the circuit court a motion to reconsider/motion to vacate on the grounds : (a) the circuit court overlooked and fail to rule on Judge Dennis decision dated 6/22/18 instructing Appellant to contact his law clerk if there were further question on all post trial motion matter which were issues raised in Appellant's 7/6/18 motion to reconsider conclusion on pp. 68-78; exhibit, p. 80-82 in deciding the issues of untimely motion to vacate judgment and motion to amend the pleadings and jurisdiction of the court to grant relief (b) the circuit court overlooked and fail to make a part of the record Appellant memorandum of law in support of motion to vacate judgment and motion to amend the pleadings,, p. 157-185 filed in the circuit court on 2/4/19 to reconsider its 2/14/19 order on the issues of relitigation, jurisdiction, burden of proof extrinsic fraud , invalid contract consent agreement . {order denying motion to alter/amend judgment, dated 3/18/19,pp. 23-24; motion to reconsider/motion to vacate, pp. 199-213}. On 3/7/19 Respondent filed Response in Opposition to Motion To Reconsider. {Respondent Response in Opposition To Motion To Reconsider,34-38 }. On 3/18/19 the circuit court issued its order denying Appellant motion to alter/amend judgment referencing citation of authorities that issues raised in Appellant's Rule 59(e) SCRCR motion were

untimely and should have been raised prior to the Courts' 2/14/19 order. {order denying motion to alter/amend judgment, filed on 3/18/19, pp. 23-24}. This appeal followed, Exhibits, pp.27-32.

ARGUMENTS

For the following grounds Appellant move for this court to issue an order granting a writ of supersedeas/stay **before** the appeal is heard to preserve the status quo of the jurisdiction of this Court and to prevent the contested issue from becoming **moot** on appeal which will cause Appellant to suffer immediate irreparable injury to his right to mediation to be awarded damages relief because: (1) the circuit court orders shows that Appellant claims for relief did not receive a full investigation on the merits. On 6/22/18 Judge Dennis wrote Appellant in which he made a decision **stating**: " Mr. Washington: The above referenced matter has been closed. Enclosed is a copy of the Court of Appeals' opinion affirming my order and concluding all motions filed. Please contact my law clerk if you have any further questions." {motion to reconsider conclusion, filed 7/6/18, pp. 80-82}. Appellant, thereafter followed Judge Dennis instruction by contacting his law clerk on several occasions and it was finally determined that a hearing would be held with both parties in attending the hearing to rule on Appellant pending motions filed on 1/27/16 in the circuit court. A hearing was held on 2/7/19. {Transcript of hearing dated 2/7/19, p. 50-p. 67, line 25}. The circuit court orders dated 2/14/19 and 3/18/19 did not rule on Appellant's **request to dispose of the motion to vacate judgment and motion to amend the pleadings, filed on 10/25/18, p.136, lines 1-15 together with the matter in his motion to reconsider conclusion, filed on 7/6/18, Exhibits, pp. 80-90** concerning Judge Dennis decision dated 6/22/18 and Judge Dennis subsequent decision to grant a show cause hearing. {order denying motion to alter/amend judgment, filed 3/18/19, pp. 23-24; order denying motion to vacate judgment and motion to amend the pleadings, filed 2/14/19, pp. 19-22}. Appellant, raised this issue in his 2/22/19 motion to reconsider/motion to vacate, pp. 199-202, line 14 concerning the issue in Judge Dennis decision dated 6/22/18 that Appellant's memorandum of law in support of motion to vacate judgment and motion to

amend the pleadings, filed in the circuit court on 2/4/19, p. 157, line 1-p. 185 raised these issues prior to the Courts' 2/14/19 order of invalid contract consent agreement . {motion to reconsider/motion to vacate, filed 2/22/19, pp. 199-213}. However, the Court misinterpreted Appellant's argument in its 3/18/19 order and ruled that the issues were untimely. {order denying motion to alter/amend judgment, pp. 23-24}. Accordingly, Appellant argues that he will suffer immediate irreparable injury if this Court does issue the supersedeas/stay before the appeal is heard because the issues will moot and this Court will be without jurisdiction over this issue in the 3/18/19 order and Appellant would be left with no adequate remedy to mediate for damages. See Curtis v. State, 345 S.C. 557, 567-570, 549 S.E.2d 591(2001)(Same)(citations omitted)(quotations omitted); See also Wingate v. Wingate, 289 S.C. 574, 575, 347 S.E.2d 878(1985)(Same); See Smith v. D.R. Horton, Inc., 417 S.C. 42, 46-50(2016)(Same)(citations omitted)(quotations omitted); See also Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 22-37, 644 S.E.2d 663(2007)(Same)(citations omitted)(quotations omitted); See Lancaster v. Georgia-Pacific Corp., 403 S.C. 136, 137-138, 742 S.E.2d 867(2013)(Same); See also Zabinski v. Brite Acres Association, 346 S.C. 580, 596-603, 553 S.E.2d 110(2001)(Same)(citations omitted)(quotations omitted). However, the above issues **do not affect matters on appeal**. See SCACR Rules 205 and 241. {orders dated 3/18/19 and 2/14/19, pp. 19-24; motion to vacate judgment and motion to amend the pleadings, filed on 10/25/18, p. 136, lines 1-15; motion to reconsider conclusion filed on 7/6/18,Rp.80-82; motion to reconsider/motion to vacate, filed on 2/22/19, pp. 199-204, line12}. See Tillman v. Oakes, 398 S.C. 245, 254-257, 728 S.E.2d 45(Ct. App. 2012)(Same)(citations omitted, quotation omitted); See Stokes-Craven Holding Corp. v. Robinson, 416 S.C. 517, 532-536(2016)(Same)(citations omitted)(quotations omitted); Lancaster v. Georgia-Paciific Corporation, 403 S.C. 136, 137-138, 742 S.E.2d 867(2013)(Same); Wingate v. Wingate, 289 S.C. 574, 575, 347 S.E.2d 878(1985)(Same); Anal v. Frazier, 371 S.C. 512, 518-523, 641 S.E.2d 419(2007)(Same)(citation omitted)(quotations omitted); See Southeastern Housing Foundation v. Smith, 380 S.C. 621, 639-641, 670 S.E.2d 680(Ct. App. 2008)(Same)(citations omitted)(quotations

omitted); Johnson v. Sonoco Products Co., 381 S.C. 172, 174-175, 672 S.E.2d 567(2009); See Narruhn v. Alea of London Ltd., 404 S.C. 337, 340-341, 745 S.E.2d 90(2013)(finding challenged motion was timely filed and that the circuit court also had jurisdiction over the issues that were separate matter and does not violate the rule on one circuit court judge overruling on matter of another circuit court judge)(citation omitted); Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573-574, 743 S.E.2d 778(2013)(Same)(citation omitted, quotation omitted). Therefore, based upon the above facts and circumstances as a whole in support of the arguments in ground one, Appellant, has met **SCACR Rule 241(d)(1) extraordinary circumstances** requirements under that rule because the circuit court never ruled on Appellant's **request** to consider Judge Dennis decision dated 6/22/18 in his { motion to reconsider conclusion, Exhibits A, pp. 80-82} **as an issue** on the matter of jurisdiction of the circuit court. Thus, Appellant do hereby move for leave of this court to **remand** this matter to the circuit court and grant an order of supersedeas/stay of the decision in those orders to **enforce and revive** the terms of Judge Dennis **subsequent** decision after his 6/22/18 decision whereby the circuit court at that point **reacquired jurisdiction** under the holdings of Jackson v. Speed, 326 S.C. 289, 311, 486 S.E.2d 750(1997)(Same)(citations omitted) and Narruhn v. Alea of London, Ltd., 404 S.C. 337, 340-341, 745 S.E.2d 90(2013)(Same)(citations omitted)(quotation omitted) to preserve the jurisdiction of the circuit court.{order denying motion to alter/amend judgment, filed 3/18/19, pp. 23-23; motion to reconsider/motion to vacate, filed on 2/22/19, p. 199-204, line 12}. See also Ross v. Waccamaw Community Hospital, 404 S.C. 56, 62-63, 744 S.E.2d 547(2013)(Appellant argues the circuit court erred by granting Respondents' motion to dismiss. We agree and hold that the circuit court retained jurisdiction after the expiration of the 120-day mediation period. We further hold that under the facts presented and motions before the circuit, the court should have granted Appellant's motion to compel mediation).

Therefore, this Court should issue an order of supersedeas/stay before this appeal is heard to **remand the matter back to the circuit court preserve the status quo** and the jurisdiction of this Court and the Circuit Court ; and, to **prevent** the contested issues from becoming **moot** on this appeal ;and, to **prevent** Appellant from suffering immediate irreparably injury to his rights to **mediation** for loss of damages for medical malpractice which cause permanent impairments and loss of future income from work if this Court does not issue the supersedeas/stay before this appeal is heard. See Wingate v. Wingate, 289 S.C. 574, 575, 347 S.E.2d 878(1985)(Same); See also Lancaster v. Georgia-Pacific Corp., 403 S.C. 136, 138, 742 S.E.2d 867(2013)(Same); Zabinski v. Brite Acres Associates, 346 S.C. 580, 599-602, 553 S.E.2d 110(2001)(Same)(citations omitted)(quotation omitted); See also Jackson Mills, Inc. v. BT Capital Corp., 440 S.E.2d 877, 878(1994)(Same)(Same)(citations omitted)(quotation omitted).

Appellant, also would be left with **no adequate remedy at law** if this court does not issue a supersedeas/stay of the circuit court orders filed on 3/18/19 and 2/14/19 before this appeal is heard and **remand the matter back to the circuit court** to enforce Appellant's **rights** to rely on the 9/30/12 **contract consent agreement to be the valid enforceable agreement but not the 10/25/12 contract agreement as invoked by respondent in its filings in the circuit court** requesting the circuit court to **strike/dismiss the accompanying documents on the basis** the court lacked subject matter jurisdiction over accompanying documents attached to the complaint because the parties decided to **arbitrate their dispute in another forum at a later date** in their motion to dismiss under SCRCF Rule 12(b)(1) and in the propose order and other pleadings in seeking the 2/5/16 final judgment, See{ motion to reconsider conclusion, filed on 7/6/18, pp. 105-112; pp. 117-119; memorandum of law in support of motion to vacate judgment and motion to amend the pleadings, filed 2/4/19, Exhibits A, pp. 181-185}, because the 10/25/12 contract agreement is **unconscionable and thus unenforceable which provides no remedy to arbitrate the medical malpractice action for damages**. However, the 9/30/12 **contract consent agreement is valid and enforceable** to do a second MRI diagnosis to determine if there is any extension

of the CVA injury since discharged from **Trident** and treat the injury and “ could be used as an affidavit sworn and signed under oath as his own representative to compel mediation for settlement disputes for claims for damages” as applicable under S.C. Codes Statutes 15-79-125(F) which **requires at least one mediation** and S.C. Code Statutes 15-32-210 through 15-32-530 for noneconomic compensatory damages, economic damages for loss of wages and ability to work and punitive damages. See Smith v. D.R. Horton, Inc., 417 S.C. 42, 46-50(2016)(Same)(citations omitted)(quotations omitted); See also Simpson v. D.R. Horton, Inc., 373 S.C. 14, 23-37, 644 S.E.2d 663(2007)(Same)(citations omitted)(quotations omitted); See Catawba Indian Nation v. State of S.C., 407 S.C. 526, 531-543, 756 S.E.2d 900(2014)(Same)(citations omitted)(quotations omitted); See also Robinson v. Asbill, 328 S.C. 450, 451-454, 492 S.E.2d 400(Ct. App. 1997)(Same)(citations omitted)(quotations omitted). SCACR Rule 241(d)(6)(A). See Zabinski v. Bright Acres Associates, 346 S.C. 580, 600-602, 553 S.E.2d 110(2001)(Same)(citations omitted)(quotations omitted); See Manios v. Nelson Mullins Riley, 389 S.C. 126, 138-146, 697 S.E.2d 644(Ct. App. 2010)(Same)(citations omitted)(quotations omitted); See also Peek v. Spartanburg Regional Healthcare Systems, 367 S.C. 450, 455-457, 626 S.E.2d 34(Ct. App. 2005)(Same)(citations omitted)(quotations omitted); See Brazell v. Windsor, 384 S.C. 512, 517-519, 682 S.E.2d 824(2009)(Same)(citation omitted)(quotation omitted); See also Dean v. Heritage Healthcare of Ridgeway, 408 S.C. 371, 382-388, 759 S.E.2d 727(2014)(Same)(citations omitted)(quotations omitted).

However, if this Court would grant the order supersedeas/stay of the circuit court orders dated 3/18/19 and 2/14/19 and remand this matter back to the circuit court then the **parties would be in the same position** because Respondent attorney in his proposed order to circuit court,{ motion to reconsider/motion to vacate, dated 2/22/19, pp. 219-223} **concedes** that Appellant did filed a motion to reconsider conclusion with the circuit court prior to the 2/7/19 hearing. However, at the 2/7/19 hearing, See{ transcript, p. 52, line 1-p. 67, line 1}, Respondent agrees with the circuit court that the court lack jurisdiction and further states that by implication Judge Dennis would have denied Appellant’s

post-trial motion. However, Appellant argues Respondent is now raising **inconsistent factual position** in the circuit court than the **facts** raised in the **prior appeal in this Court and Certiorari** in the S.C. Supreme Court, See { motion to reconsider conclusion, filed 7/6/18, Exhibits, pp. 92-104}, whereby Respondents stated that “ after a hearing, the trial court granted Respondent’s motion to dismiss via a Form 4 Order and noted that a formal order would follow. Petitioner filed a motion to reconsider the Form 4 order. The trial court, however, confirmed dismissal in its formal order, again finding that Petitioner failed to comply with the necessary pre-suit requirements for a medical malpractice action.” Furthermore, Appellant argues that Respondents **failed** to inform the circuit court that Judge Dennis **did decide** on 6/22/18 that Appellant should contact his law clerk in which Appellant did speak with his law clerk whom informed Appellant that a hearing would be scheduled with both parties attending and that he would be notified by mailed what date the hearing would be held. Appellant, did object to Respondent argument and the circuit findings at the 2/7/19 that the Court lack jurisdiction on pending post trial motion after the remittitur issued relying on Ex Parte Carter, 422 S.C. 623, 626-632, 813 S.E2d 686(2018), See{ transcript of 2/7/19 hearing, p. 53, line, 5-p. 64, line 2}, that based upon the facts and circumstances of the case at the time of the hearing he was in the same situation or circumstances as Ex Parte Carter and that the circuit court retained jurisdiction to grant relief based upon Ex Parte Carter. Accordingly, Appellant argues that under the above facts and circumstances the above issues are preserved for this Courts’ review because it was the **final ruling** of the circuit court on the issues of jurisdiction. See State v. Kromah, 401 S.C. 340, 349-353, 737 S.E.2d 490(2013)(Same)(citations omitted)(quotations omitted) See also State v. Mueller, 460 S.E.2d 409, 410-411(Ct. App. 1995)(Same)(citations omitted)(quotations omitted). Likewise, Appellant argues that the above issues **does not affect matters pending on** relying on Tillman v. Oakes, 398 S.C. 245, 254-256, 728 S.E.2d 45(Ct. App. 2013)(Same)(citations omitted)(quotations omitted) and also Stokes-Craven Holding Corp. v. Robinson, 416 S.C. 517, 531-536(2016)(Same)(citations omitted)(quotations omitted); See Jackson v.

Speed, 326 S.C. 289, 311, 486 S.E.2d 750(1997)(Same)(citations omitted); See also Narruhn v. Alea London Limited, 404 S.C. 337, 340-341, 745 S.E.2d 90(2013)(Same)(citations omitted)(quotations omitted) **as authorities** based on Judge Dennis 6/22/18 decision and Respondent's misconduct at the 2/4/19 hearing and its subsequent misconduct in its proposed order to the circuit court after the hearing improperly seeking the circuit court to deny Appellant's motion to vacate judgment and motion to amend the pleadings . Therefore, based upon **all of the above**, Appellant do hereby **request this court to consider and address the merits** of the above issues in the interest of judicial economy. See State v. Hewins, 409 S.C. 93, 113-117, 760 S.E.2d 814(2014)(Same)(citations omitted)(questions omitted); See also State v. Kromah, 401 S.C. 340, 349-353, 737 S.E.2d 490(2013)(Same)(citations omitted)(quotations omitted); Cf. Higgins v. Medical University of S.C., 326 S.C. 592, 599 S.E.2d 602(Ct. App. 1997).

Accordingly, Appellant do hereby **request** this Court to apply the **doctrine of judicial estoppel** to preserve the integrity of this Court to Respondent's propose order inconsistent statements that" First, Plaintiff Jim Washington ("Plaintiff") filed a " Motion To Reconsider Conclusion on 7/6/18. Then, while the motion to reconsider conclusion was still pending, Plaintiff filed a motion to vacate judgment and motion to amend the pleadings on 10/25/18" and further states in the propose order " At the hearing, Plaintiff also argued that he filed a Rule 59(e)/Rule 60(b) motion after Judge Dennis entered the Form 4 Order that was not ruled on. Plaintiff, however, never made Judge Dennis or the Court of Appeals aware of this issue." [pp. 219-223]. Id. However, Appellant argues Respondent failed to inform the circuit court at the 2/7/19 hearing of the **fact** that Judge Dennis actually **signed the final order on 1/27/16 which is the same day Appellant filed the motion to reconsider on 1/27/16 and the fact that when Judge Dennis filed the final order on 2/5/16** it was only on the basis of the records he had before him at that point not on the basis of that Appellant filed a 1/27/16 motion to reconsider. {memorandum of law in support of motion to vacate judgment and motion to amend the pleadings, filed on 2/7/14; Exhibits A, pp. 186-198}.

However, Respondent on appeal to the Court of Appeals and Certiorari in the S.C. Supreme Court raised an **inconsistent position** which is that Judge Dennis **reaffirmed the Form 4 order on the basis of Appellant's 1/27/16 motion to reconsider**. See {motion to reconsider conclusion, filed 7/6/18, p. 73, second para., line 1-p. 78; memorandum of law in support of motion to vacate judgment and motion to amend the pleadings, filed on 2/4/19, Exhibits A, pp. 92-104; motion to reconsider/motion to vacate, filed on 2/22/19, p. 199-205, line 16; transcript of hearing, dated 2/7/19, p. 52, line 1-p. 63, line 19}. Furthermore, as a **factual** matter, immediately after the remittitur was received in the circuit court Appellant **did make Judge Dennis aware of the fact** that there were two pending Rule 60(b) pending not rule on. That Judge Dennis **thereafter on 6/22/18 made a decision** for Appellant to "contact his law clerk if there were further question concerning the matter and that Appellant did contact his law clerk and that Judge Dennis eventually granted the hearing of 2/7/19 based on same facts there were pending post trial Rules 60(b)(1) and 60(b)(3) motions not ruled on that required a hearing." {motion to reconsider conclusion, filed on 7/6/18, Exhibits, p. 80}. Finally, as a **factual** matter based on the above facts the motion to vacate judgment and motion to amend the pleadings, filed on 10/25/18 were ruled on/or a decision was made by Judge Dennis to hold the hearing **After** Appellant filed the 10/25/18 motion to vacate judgment and motion to amend the pleadings and the **fact that** Judge Deadra L. Jefferson at the 2/7/19 hearing and in the 2/14/19 Order only rendered a decision based upon Appellant filing a motion to vacate Judgment and motion to amend the pleadings, filed on 10/25/18 **but not on the basis that there was also a motion to reconsider conclusion filed in the circuit court on 7/6/18 nor considered nor ruled on the 2/4/19 memorandum of law in support of motion to vacate judgment and motion to amend the pleadings**. See { Transcript of hearing, dated 2/7/19, p. 52, line 1-p. 55, line 22; motion to reconsider/motion to vacate, filed on 2/22/19, 200-213; order denying motion to vacate judgment and motion to amend the pleadings, filed on 2/14/19, pp. 215-218}. Furthermore, as a **factual** matter the circuit court orders dated 2/14/19 and 3/18/19 confirms this **fact** because these

orders **do not even mention** that Appellant filed a motion to reconsider conclusion, filed on 7/6/18 nor denying Appellant's motions on that basis. {order denying motion to vacate judgment and motion to amend the pleadings, filed 2/14/19, pp. 19-22; order denying motion alter/amend judgment, pp. 22-24}.

In the interest of judicial economy Appellant, do hereby **request that this Court to also take into consideration** of the facts that: (a) **Respondent** in its Response in Opposition To Motion To Reconsider, dated 3/6/19 was intentionally **arguing two inconsistent position** to mislead the Court by **implicitly** conceding the fact that " After the remittitur came down from the Court of Appeals , Plaintiff **also** filed a motion to reconsider conclusion, filed on 7/6/18 in which Judge Dennis **was aware of and did ruled on prior to the 2/7/hearing to grant the 2/7/19 hearing** for the Court to have jurisdiction to entertain Appellant's motion to vacate judgment and motion to amend the pleadings, filed on 10/25/18." in comparison to: (b) Respondent's inconsistent position **that implicitly states** the circuit court had already considered, ruled on and denied in the Courts' 2/14/19 order **that Appellant** filed a memorandum of law in support of motion to vacate the judgment and motion to amend the pleadings, filed on 2/4/19, p. 157, line 1-p. 179; Exhibits A, pp. 181-185 raising the issue of invalid contract consent agreement dated 10/25/12. Therefore, Appellant argues the above statements by Respondent are intentionally inconsistent with Respondent position with intent to mislead the court by **stating** "The Honorable Deadra L. Jefferson held a hearing on these motions on 2/7/19, and issued a well-reasoned order denying Plaintiff's motions. Plaintiff now files **yet another** motion to reconsider reiterating the **same** arguments about the merits of his claims and a purported "extrinsic fraud" on the Court. The Court has already considered and denied these arguments and, therefore, this motion is patently frivolous." {Respondent's Response in Opposition To Motion to Reconsider, pp. 34-38; motion to reconsider/motion to vacate, filed on 2/22/19, p. 200, line 1-p. 213; Exhibits, 219-223}. See Staubes v. City of Folly Beach, 339 S.C. 406, 413-414, 529 S.E.2d 543(2000); Cothran v. Brown, 350 S.C.352, 358-371, 566 S.E.2d 548(Ct. App. 2002). **However**, the circuit court in response to Appellant's 2/22/19 motion to

reconsider/motion to vacate and Respondent's 3/7/19 Opposition to Motion to Reconsider in its 3/18/19 order **stated** " The Plaintiff presented no novel facts, arguments , or theories in support of the Motion to Reconsider/Vacate the Judgment. The Defendants have not highlighted any portions of the record this Court may have misunderstood, failed to fully consider, or perhaps fail to rule on. Accordingly, the Motion to Alter/Amend Judgment is denied." {Order denying motion to alter/amend judgment, filed on 3/18/19, pp. 23-24}. Accordingly, Appellant argues that based upon the above **repeated** inconsistent position in Respondent's statements filed in the Court for the circuit court to be taken as true they were **intentionally made**. See Allen v. Zurich Inc. Co., 667 F.2d 1162, 1166-1168(4th Cir. 1982); See also Haynes Federal Credit Union v. Bailey, 327 S.C. 242, 251-252, 489 S.E.2d 472(1997)(Same)(citations omitted)(quotations omitted). Accordingly, Respondent has improperly obtain the 2/14/19 final judgment and 3/18/19 order by undermining the truth-seeking function of the judicial process because the circuit court in its 3/18/19 order ruled that the above issues were untimely because they should have been raised prior to the 2/14/19 order but were not. {order denying motion to alter/amend judgment, filed on 3/18/19, pp. 23-24; motion to reconsider conclusion, filed 7/6/18, Exhibits, pp. 34-38}. See Haynes Federal Credit Union v. Bailey, 327 S.C. 242, 251-252, 489 S.E.2d 472(1997)(Same). Furthermore, Respondent has now improperly benefited from a second final order a second time because of their prior inconsistent statement in this Court in the prior appeal and Certiorari in S.C. Supreme Court stating " **After a hearing, the trial court granted Respondent's motion to dismiss via a Form 4 Order and noted a formal order would follow. Petitioner, filed a motion to reconsider the Form 4 Order. The trial court, however, confirmed dismissal in its formal order, again finding that Petitioner failed to comply with the necessary pre-suit requirements for a medical malpractice action.**" {motion to reconsider conclusion, filed 7/6/18;Exhibits A, pp. 92-104}. However, Appellant argues as a factual matter as mentioned earlier above in this petition that the circuit court in its 2/5/16 order only confirmed the Form 4 order in its final order but not on the basis that there was a

pending motion to reconsider before him but based on the files he had before him to confirm not **again confirm as Respondent represented to this Court and the S.C. Supreme Court.** {order denying motion to alter/amend judgment, filed 3/18/19, 23-24; motion to reconsider conclusion, filed 7/6/18, Exhibits, pp. 92-104}. See Hayne Federal Credit Union v. Bailey, 327 S.C. 242, 251-252, 489 S.E.2d 472(1997)(Same)(citations omitted)(quotations omitted); See also Carrigg v. Carrigg, 347 S.C. 75, 82-84, 552 S.E.2d 767(Ct. App. 2001)(collecting cases)(citations omitted)(quotations omitted); See Allen v. Zurich Ins. Co., 667 F.2d 1162, 1166-1168(4th Cir. 1982)(Same)(citations omitted)(quotations omitted); See also Quinn v. The Sharon Corporation, 343 S.C. 411, 414-423, 540 S.E.2d 474(Ct. App. 2000)(majority and concurring opinion)(Same)(citations omitted)(quotation omitted). Therefore, Appellant do hereby **request** this Court to apply **judicial estoppel** to preserve the integrity of this Court based upon all of the above inconsistent statements of Respondent. **Id.** Furthermore, the above issues do not **affect matters pending on appeal.** See Tillman v. Oakes, 398 S.C. 245, 254-357, 728 S.E.2d 45(Ct. App. 2012)(Same)(citations omitted)(quotations omitted); See also Stokes-Craven Holding Corp. v. Robinson, 416 S.C. 517, 532-536(2016)(Same)(citations omitted)(quotations omitted); See Jackson v. Speed, 326 S.C. 289, 311, 486 S.E.2d 750(1997)(Same)(citations omitted); See also Narruhn v. Alea London Limited, 404 S.C. 337, 340-341, 745 S.E.2d 90(2013)(Same)(citations omitted)(quotations omitted).

Finally, Appellant do hereby **request** that this Court to apply SCACR Rules 261(b), 261(c), 261(d) and 241(c)(1) and (c)(4) or other appropriate SCACR to **all of the above** matters and that based upon all of the facts and circumstances as a whole if this Court grants the supersedeas/stay Appellant **would likely succeed on the merits** under the following authorities: See Wingate v. Wingate, 289 S.C. 574, 575, 347 S.E.2d 878(1985)(Same); See also Lancaster v. Georgia-Pacific Corporation, 403 S.C. 136, 137-138, 742 S.E.2d 867(2013)(to stay all time lines in this Court and remand to the Circuit Court to allow both parties to reach a settlement agreement); See Dean v. Heritage Healthcare of Ridgeway, 408 S.C. 371, 387-401, 759 S.E.2d 727(2014)(remanding to compel mediation and for the circuit court upon remand

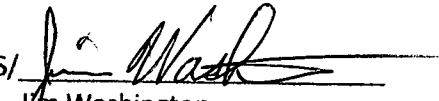
to determine the remaining arguments concerning Respondent's authority to sign the Agreement and was there a meeting of the minds between the parties prior to deciding whether to compel arbitration between the parties). See also Zabinski v. Bright Acres Associates, 346 S.C. 580, 603, 553 S.E.2d 110(2001)(Same); See also Smith v. D.R. Horton, Inc., 417 S.C. 42, 46-50(2016)(finding that party lacked a meaningful choice in their ability to negotiate the arbitration agreement clause in the agreement. Moreover, in considering the actual provisions in the agreement the other party attempt to disclaim implied warranty claims and prohibits and monetary damages are clearly one-sided and oppressive. Finding there is no remedy at all allowing for monetary damages and holding the arbitration provision unconscionable and thus unenforceable)(citations omitted); See Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 22-37, 644 S.E.2d 663(2007)(Same)(citations omitted)(quotations omitted); See also Jackson Mills, Inc. v. BT Capital Corp., 440 S.E.2d 877, 878(1994)(Same)(citations omitted)(quotation omitted); See Staubes v. City of Folly Beach, 339 S.C. 406, 414, 529 S.E.2d 543(2000)(citing cases and holding by conceding at trial that the complaint was, in part, under the Tort Claims Act, the party could not argue on appeal that the case was not under the Tort Claims Act. Further holding a party may not complain about an error induced by the party's own conduct)(citations omitted); See also White v. J.M. Brown Amusement Co., Inc., 360 S.C. 366, 371-374, 601 S.E.2d 342(2004)(citing cases holding that parties must arrange and conduct their business affairs under the law as it presently exist, regardless of the hope the law will later changed or be invalidated. Further, relying on prior precedent but declining to overrule it where the Court had to evaluate the parties present rights and duties in light of the void statutes)(citations omitted); See Denman v. City of Columbia, 387 S.C. 131, 140-141, 691 S.E.2d 465(2010)(Same)(Citations omitted)(quotations omitted); See also Boyce v. U.S., 948 F. Supp.2d 577, 581-588(Dist. Ct. D.S.C. 2012)(Applying S.C. Code Statute 15-32-220 Noneconomic Damages Award Act of 2005)(citations omitted)(quotations omitted); See Curtis v. State, 345 S.C. 557, 567-570, 549 S.E.2d 591(2001)(Same)(citations omitted)(quotations omitted); See also Manios v. Nelson Mullins Riley, 389

S.C. 126, 138-146, 697 S.E.2d 644(Ct. App. 2010)(Same)(citations omitted)(quotations omitted); See Stokes-CRAVEN HOLDING CORP. v. Robinson, 416 S.E.2d 517, 532-539 n. 5(2016)(injury and damage accrue after adverse verdict and claim was timely after the remittitur was issued. After the service of the notice of appeal any party may move for lower court, administrative tribunal, appellate court, or judge or justice of the appellate court for an order lifting the automatic stay in cases that involve the general rule. Rule 241(c)(1), SCACR “ an action on a settlement may not be taken by the lower court, except with regard to matters not affected by the appeal, while the matter is pending before this court. The parties must first seek to have the matter remanded to the lower court”)(citation omitted); Tillman v. Oakes, 398 S.C. 245, 254-257, 728 S.E.2d 45(Ct. App. 2012)(same); Lancaster v. Georgia-Pacific Corp., 403 S.C. 136, 137-138, 742 S.E.2d 867(2013)(same); See Haynes Federal Credit Union v. Bailey, 327 S.C. 242, 251-252, 489 S.E.2d 472(1997)(Adopting judicial estoppel to preserve the integrity of the judicial process for party inconsistent position of facts)(citations omitted); See also Allen v. Zurich Inc. Co., 667 F.2d 1162, 1166-1168(4th Cir. 1982)(Same)(citations omitted)(quotations omitted); See Jackson v. Speed, 326 S.C. 289, 311, 486 S.E.2d 750(1997)(Same)(Although service of the notice of intent to appeal divests the lower court of jurisdiction over the order appealed, the lower court retains jurisdiction over matters not affected by the appeal. Rule 204, SCACR. Initially, we note this was not raised to the trial judge. Instead, at the hearing, appellants argued that Rule 54(d) prevented the Court from holding the hearing. On the merit prior to appeal the jury verdict the jacksons’ request attorney’s fee. Appellant did not appeal the propriety of awarding attorney fee pursuant to the statute. Therefore, the award of attorney’s fees and costs was not affected by the appea); See also Narruhn v. Alea London Limited, 404 S.C. 337, 340-341, 745 S.E.2d 90(2013)(Same)(citations omitted)(quotations omitted).

Accordingly, Appellant, has met all of SCACR Rule 241 requirements because the above authorities supports all issues raised and as cited therein to the above issues in this petition. Thus, this Court should grant the supersedeas/stay and remand the matters to the circuit court.

CONCLUSION

For the above reasons this Court should issue an order granting a writ of supersedeas/stay and remand the matter to the circuit court to take action in accordance with this Courts' order.

S/ 
Jim Washington
209 Signet Drive
Eutawville, S.C. 29048
WTS Transport, LLC@yahoo.com
803-496-4655
Appellant, Pro Se

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No. 2015-CP-10-5000
Appellate Case No. 2019-000460

Jim Washington,.....Appellant,
v.
Trident Medical Center, LLC,.....Respondent.

VERIFICATION

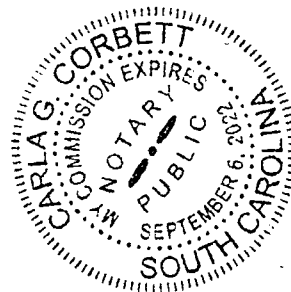
Jim Washington being duly sworn upon my oath, depose and say that I have subscribed to the foregoing Petition for Supersedeas/Stay; that I know the contents thereof; that it includes every ground known to me for the issuance of an order granting the Supersedeas/Stay staying of the circuit court orders filed on 3/18/19 and 2/14/19 in petition; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me
this 25th day of October
2019.

Carla A. Corbett
NOTARY PUBLIC

My Commission Expires: 9/6/2022

Jim Washington



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

Jim Washington,

Plaintiff,

vs.

Trident Medical Center, LLC,

Defendant.

Civil Action No. 2015-CP-10-5000

**ORDER DENYING PLAINTIFF'S
MOTIONS TO VACATE JUDGMENT
AND MOTION TO AMEND PLEADINGS**

FILED
2019 FEB 14 PM 12:55
JULIE J. BARTON
CLERK OF COURT

Presiding Judge: Hon. Deadra L. Jefferson
Plaintiff's Attorneys: *Pro Se*
Defendants' Attorneys: Blake Williams, Esq.
Dave Batten, Esq.
Date of Hearing: February 7, 2019
Court Reporter: Melissa Singletary

This matter came before the Court on February 7, 2019 upon Plaintiff's Motion to Vacate Judgment and Motion to Amend the Pleadings, filed October 25, 2018. Plaintiff Jim Washington ("Plaintiff") appeared *pro se*. Blake Williams, Esq. and Dave Batten, Esq. appeared on behalf of Defendant Trident Medical Center, LLC ("Defendant"). Having considered Plaintiff's Motion, the various interests balanced by the Court at the time of the ruling, and the applicable law, the Plaintiff's Motion is hereby DENIED.

PROCEDURAL HISTORY

This action, filed September 11, 2015, is one for medical malpractice arising out of medical treatment rendered to Mr. Washington at Trident Medical Center between September 23 and 26, 2012. On October 16, 2015, the Defendant filed a Motion to Dismiss pursuant to S.C. Code Ann. Sections 15-79-125 and 15-36-100, as well as Rules 12(b)(1), 12(b)(6), and 12(c) of the South Carolina Rules of Civil Procedure. The Motion to Dismiss was fully briefed and heard

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before the Honorable Judge R. Markley Dennis on January 7, 2016. On January 14, 2016, Judge Dennis entered a Form 4 Order dismissing the action for failure to comply with the pre-suit requirements for a medical malpractice action provided by S.C. Code Ann. § 15-79-125(a). Judge Dennis entered a formal written order of dismissal on February 5, 2016. Thereafter, Plaintiff appealed to the Court of Appeals by filing a Notice of Appeal on March 4, 2016. Through an Opinion dated January 10, 2018, the Court of Appeals affirmed Judge Dennis' Order granting Defendant's Motion to Dismiss. Plaintiff then moved for a rehearing, which the Court of Appeals denied by Order dated February 22, 2018. Plaintiff then filed a petition for a writ of certiorari to the Supreme Court of South Carolina, which denied the petition on May 25, 2018. The remittitur from the Court of Appeal was issued on May 30, 2018, and filed with the Charleston County Clerk of Court's office on June 1, 2018.

CONCLUSIONS OF LAW

After the remittitur, the Circuit Court "acquires jurisdiction to *enforce* the judgment and take any action *consistent* with the appellate court's ruling." Martin v. Paradise Cove Marina, Inc., 348 S.C. 379, 385, 559 S.E.2d 348, 351-52 (Ct. App. 2001) (emphasis added); See also Muller v. Myrtle Beach Golf & Yacht Club, 313 S.C. 412, 415, 438 S.E.2d 248, 250 (1993). As the Court of Appeals has explained, matters decided by the appellate court "cannot be reheard, reconsidered, or relitigated in the trial court, even under the guise of a different form," and the "decision of the appellate court is *final as to all questions decided*." Ackerman v. McMillan, 324 S.C. 440, 443, 477 S.E.2d 267, 268 (Ct. App. 1996) (emphasis added). Thus, "[i]t is the duty of the trial court to follow the decision of the appellate court." Id. Accordingly, the Court lacks jurisdiction to rehear any of Plaintiff's arguments about the merits of his claims or whether he complied with the pre-

2 2/14
[Signature]

suit requirements for filing a medical malpractice action. After thorough review of Plaintiff's motions, the Court finds that they improperly seek relitigation of these issues.¹

Moreover, "[o]ne Circuit Court Judge does not have the authority to set aside the order of another." Enoree Baptist Church v. Fletcher, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986). The undersigned further lacks jurisdiction because Judge Dennis entered the original order of dismissal, and the undersigned cannot set aside or modify the order of another trial judge. See also State ex rel. Medlock v. Love Shop, Ltd., 286 S.C. 486, 488, 334 S.E.2d 528, 529 (Ct. App. 1985) ("It is settled that one circuit judge does not have the power to review, modify, affirm or reverse the findings of another circuit judge.").

At the hearing, Plaintiff also argued that he filed a Rule 59(e), SCRPC and Rule 60(b), SCRPC motion after Judge Dennis entered the Form 4 Order that was not ruled upon. Plaintiff, however, never made Judge Dennis or the Court of Appeals aware of this issue. Instead, Plaintiff chose to proceed with filing the notice of appeal and briefing the appeal on the merits. By failing to raise this issue on appeal, it was abandoned. See, e.g., Cannon v. Cannon, 321 S.C. 44, 54, 467 S.E.2d 132, 138 (Ct. App. 1996) (holding an issue not argued in the appellant's brief is deemed abandoned on appeal); First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (holding appellant was deemed to have abandoned issues on appeal, where he failed to provide any argument or supporting authority). This argument is improper at this stage and is not a proper ground warranting relief from the judgment.

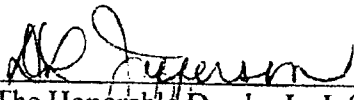
Finally, Plaintiff's Rule 60(b) motion asserts that the judgment should be set aside due to extrinsic fraud on the Court. The Court has thoroughly reviewed Plaintiff's filings and finds that

¹ At the hearing, the Plaintiff also argued for a change of venue, but the Court does not reach this issue because the other grounds upon which Plaintiff has moved to vacate Judge Dennis' Order are dispositive, and as stated herein, the Court lacks jurisdiction on issues not decided on appeal.

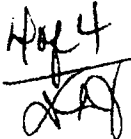
there is no evidence of any fraud. The standard under Rule 60(b) is "rigorous" and requires a "particularized showing." Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009). To obtain relief from a judgment on the basis of fraud, a party must show that extrinsic fraud occurred. See Raby Const., L.L.P. v. Orr, 358 S.C. 10, 20, 594 S.E.2d 478, 483 (2004); See also Chewning v. Ford Motor Co., 354 S.C. 72, 81 579 S.E.2d 605, 610 (2003) (noting that extrinsic fraud "induces a person not to present a case or deprives a person of the opportunity to be heard."). Intrinsic fraud, which is fraud that "misleads a court in determining issues and induces the court to find for the party perpetrating the fraud," is not sufficient to warrant relief under Rule 60(b). Raby Const., 358 S.C. at 20, 594 S.E.2d at 483. After reviewing the record, the Court finds that Plaintiff has failed to meet his burden of making a particularized showing of extrinsic fraud. See Lanier v. Lanier, 364 S.C. 211, 215, 612 S.E.2d 456, 458 (Ct. App. 2005) ("A party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence entitling him to the requested relief.").

Therefore, for the aforementioned reasons, Plaintiff's "Motion to Vacate Judgment and Motion to Amend the Pleadings" is heard and respectfully **DENIED**.

IT IS SO ORDERED.


The Honorable Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

12th day of Feb. 2019
Charleston, SC

22. 

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Jim Washington,

Plaintiff,

vs.

Trident Medical Center, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Civil Action No. 2015-CP-10-5000

**ORDER DENYING PLAINTIFF'S
MOTION TO ALTER/AMEND
JUDGMENT**

Presiding Judge:
Plaintiff's Attorney:
Defendants' Attorneys:

Hon. Deadra L. Jefferson
Pro Se
Blake Williams, Esq.
Dave Batten, Esq.

Date of Hearing:
Court Reporter:

February 7, 2019
Melissa Singletary

THIS MATTER comes before this Court by way of Plaintiff's Motion to Reconsider and "Motion to Vacate" asking this Court to alter or amend its Order Denying Plaintiff's Motion to Vacate Judgment and Motion to Amend Pleadings, filed February 14, 2019. Plaintiff served and filed its Motion to Reconsider/Vacate on February 22, 2019. The Defendant served its response in opposition to the Motion on March 7, 2019, and it was subsequently filed on March 8, 2019. Having considered the Plaintiff's Motion, as well as the various interests balanced by the Court at the time of the ruling, the Defendants' Motion to Reconsider/Vacate is hereby denied.¹

"The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an

¹ This Motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRCP; Pollard v. City of Florence, 314 S.C. 397, 401-402, 444 S.E.2d 534, 536 (Ct. App. 1994).

argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). “A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not.” Anderson Memorial Hosp., Inc. v. Hagen, 313 S.C. 497, 498, 443 S.E. 2d 399, 400 (Ct. App. 1994) (citing C.A.H. v. L.H., 315 S.C. 389, 434 S.E. 2d 268 (1993)); See also Arnold v. State, 309 S.C. 157, 172–73, 420 S.E.2d 834, 842 (1992).

The Plaintiff presented no novel facts, arguments, or theories in support of the Motion to Reconsider/Vacate the Judgment. The Defendants have not highlighted any portions of the record this Court may have misunderstood, failed to fully consider, or perhaps failed to rule on. Accordingly, the Motion to Alter/Amend Judgment is hereby DENIED.

IT IS SO ORDERED.


Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

14th day of March, 2019
Charleston, South Carolina

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court Of Common Pleas

RECEIVED

MAY 01 2019

DEADRA L. JEFFERSON, Circuit Court Judge
SC Court of Appeals

Civil Action No. 2019-000640

Jim Washington,.....Appellant,

v.

Trident Medical Center, LLC.....Respondent.

NOTICE OF APPEAL

Jim Washington
209 Signet Drive
Eutawville, S.C. 29048
WTS Transport, LLC@yahoo.com
803-496-4655
Appellant, Pro Se

To: Honorable Jenny Abbott Kitchings, Clerk.

RE: Correction of deficiencies per your letter to me dated April 23, 2019.

I, Jim Washington do hereby certify that Pursuant to SCACR Rule 203(d)(1)(B) and SCACR Rule 203(e)(1)(C) the notice of appeal was filed in the trial court on April 15, 2019. The notice of entry of judgment of the trial court denying Appellant Motion To Alter or Amend Judgment was entered on March 18, 2019 and notice mailed to Appellant on March 19, 2019 and received by him on March 21, 2019. The judgment of the trial court denying Motion To Vacate Judgment And Amend The Pleadings was entered on February 14, 2019 and mailed to him on February 15, 2019 which he received on February 19, 2019. The notice of appeal was filed in the South Carolina Court of Appeals on April 15, 2019. RE: Civil Action No. 2019-000460.

s/ 
Jim Washington
209 Signet Drive
Eutawville, S.C. 29048
WTS Transport, LLC@yahoo.com
803-496-4655
Appellant, Pro Se

May 2, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Civil Action No. 2015-CP-10-5000
	)	Honorable Deadra L. Jefferson, Circuit Court Judge
Jim Washington,	)	
Plaintiff,	)	
V.	)	NOTICE OF APPEAL
Trident Medical Center, LLC	)	
<u>Defendant.</u>	)	

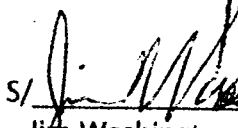
Plaintiff Jim Washington, do hereby serve this **NOTICE OF APPEAL** the orders of the Honorable Deadra L. Jefferson, docketed entry dated March 18, 2019 and February 14, 2019 in the Court of Common Pleas in its entirety to The South Carolina Court Of Appeals in the above action.

Defendant Attorneys of Record have been served a copy of this **NOTICE OF APPEAL** to the following Addresses:

C. Mitchell Brown, Esquire
 Blake T. Williams, Esquire
 Nelson Mullins Riley & Scarborough LLP
 P. O. Box 11070
 Columbia, S.C. 29211-1070
 803-799-2000

David H. Batten, Esquire
 4141 Parklake Ave., Suite 350
 Raleigh, N.C. 27612
 919-439-2221
 Attorneys for Defendant

April 18, 2019

FILED
 2019 APR 15 AM 9:48
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY 
 S/ Jim Washington
 209 Signet Drive
 Eutawville, S.C. 29048
 WTS Transport, LLC@Yahoo.com
 803-496-4655
 Plaintiff, Pro Se

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258

RETURN SERVICE REQUESTED



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41



JIM WASHINGTON
209 SIGNET DR
EUTAWVILLE SC 29048-9140

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order Denying Plaintiffs Motion to Alter or Amend Judgment

CASE NO: 2015CP1005000

Jim Washington VS Trident Medical Center

This judgment was entered on the 18th day of March, 2019, and notice mailed first class on Tuesday, March 19, 2019, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED



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71



JIM WASHINGTON
209 SIGNET DR
EUTAWVILLE SC 29048-9140

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order Denying Motion to Vacate Judgment & Amend Pleadings

CASE NO: 2015CP1005000

Jim Washington VS Trident Medical Center

This judgment was entered on the 14th day of February, 2019, and notice mailed first class on Friday, February 15, 2019, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

THE STATE OF SOUTH CAROLINA
Court of Common Pleas, Charleston County

HONORABLE DEADRA L. JEFFERSON, Circuit Court Judge

Civil Action No. 2015-CP-10-5000

Jim Washington,.....Plaintiff,
v.
Trident Medical Center, LLC.....Defendant.

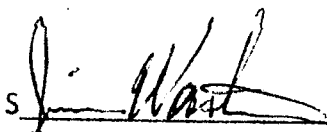
PROOF OF SERVICE

I, the undersigned do hereby certify that I have served all attorneys of record this action with a copy of this **NOTICE OF APPEAL** by mailing a copy of the same in a prepaid wrapper deposited in a U.S. Post Office to the following addresses:

C. Mitchell Brown, Esquire
Blake T. Williams, Esquire
Nelson Mullins Riley & Scarborough LLP
P.O. Box 11070
Columbia, S.C. 29211-1070
803-799-2000

David H. Batten, Esquire
4141 Parklake Ave., Suite 350
Raleigh, N.C. 27612
919-439-2221
Attorneys for Defendant

April 18, 2019


s. Jim Washington
209 Signet Drive
Eutawville, S.C. 29048
WTS Transport, LLC@yahoo.com
803-496-4655
Plaintiff, Pro Se

FILED
APR 16 AM 9:48
JULIE J. ARMSTRONG
CLERK OF COURT

PROOF OF SERVICE

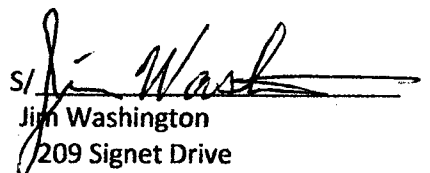
The undersigned hereby certifies that on this date a copy of the foregoing documents to the South Carolina Court of Appeals address to the honorable Jenny Abbott Kitchings, Clerk was duly served upon each party to this cause Civil Action No. 2019-000640 by depositing same in a prepaid wrapper in a post office or official depository under the exclusive care and custody of the U.S. Postal Services, **VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED**, properly address as follows:

C. Mitchell Brown, Esquire
Blake T. Williams, Esquire
Nelson Mullins Riley & Scarborough, LLP
P.O. Box 11070
Columbia, S.C. 29211-1070
803-799-2000

David H. Batten, Esquire
4141 Parklake Ave., Suite 350
Raleigh, N.C. 27612
919-439-2221
Attorneys for Respondent

May 2, 2019

RECEIVED
MAY 01 2019
SC Court of Appeals


Jim Washington
209 Signet Drive
Eutawville, S.C. 29048
WTS Transport, LLC@yahoo.com
803-496-4655
Appellant, Pro Se

PROOF OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing documents to the South Carolina Court of Appeals address to the honorable Jenny Abbott Kitchings, Clerk was duly served upon each party to this cause Civil Action No. 2019-000640 by depositing same in a prepaid wrapper in a post office or official depository under the exclusive care and custody of the U.S. Postal Services, **VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED**, properly address as follows:

C. Mitchell Brown, Esquire
Blake T. Williams, Esquire
Nelson Mullins Riley & Scarborough, LLP
P.O. Box 11070
Columbia, S.C. 29211-1070
803-799-2000

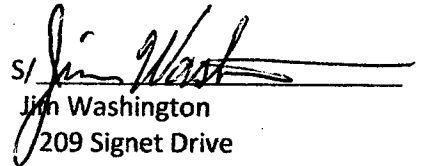
David H. Batten, Esquire
4141 Parklake Ave., Suite 350
Raleigh, N.C. 27612
919-439-2221
Attorneys for Respondent

May 2, 2019

RECEIVED

MAY 01 2019

SC Court of Appeals

SI 
Jim Washington
209 Signet Drive
Eutawville, S.C. 29048
WTS Transport, LLC@yahoo.com
803-496-4655
Appellant, Pro Se

EXHIBITS A



NELSON MULLINS

NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW

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March 6, 2019

The Honorable Julie J. Armstrong
Clerk of Court
Charleston County Courthouse
100 Broad Street, Suite 106
Charleston, SC 29401

RE: Jim Washington v. Trident Medical Center
Civil Action No. 2015-CP-10-05000
Appellate Case No. 2016-000495
Our File No. 27979/01501

Dear Ms. Armstrong:

Enclosed are the original and one copy of Trident Medical Center, LLC's Response in Opposition to Motion to Reconsider in the above-referenced matter. We would appreciate it if you would file the original and return a clocked copy to us in the return envelope provided.

By copy of this letter to all counsel, we are hereby serving them with copies of the above referenced pleading.

Very truly yours,

Blake T. Williams

BTW:eh

Enclosures

cc: Mr. Jim Washington

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

Jim Washington,) Civil Action No. 2015-CP-10-5000

Plaintiff,)

vs.)

Trident Medical Center, LLC,)

Defendant.)

**Trident Medical Center, LLC's
Response in Opposition to Motion
to Reconsider**

This matter is concluded. Plaintiff Jim Washington ("Plaintiff") filed this medical malpractice action on September 11, 2015. Defendant Trident Medical Center, LLC ("Trident") moved to dismiss, contending that Plaintiff failed to comply with the presuit requirements for a medical malpractice action detailed in S.C. Code Ann. § 15-79-125(a). The Court agreed that Plaintiff failed to meet these statutory requirements, and thus entered an Order dismissing Plaintiff's complaint. Plaintiff appealed, pursuing his appeal through the Court of Appeals—which affirmed—and Supreme Court—which denied his petition for a writ of certiorari. After the remittitur came down from the Court of Appeals, Plaintiff filed a motion to reconsider and a motion to vacate with the trial court. The Honorable Deadra L. Jefferson held a hearing on these motions on February 7, 2019, and issued a well-reasoned order denying Plaintiff's motions. Plaintiff now files *yet another* motion to reconsider reiterating the *same* arguments about the merits of his claims and a purported "extrinsic fraud" on the Court. The Court has already considered and denied these arguments and, therefore, this motion is patently frivolous. Quite simply, there are no more bites at the apple available to the Plaintiff, and this motion should be denied. *Cf. In re Wallace*, 179 S.C. 480, 184 S.E. 849, 851 (1936) ("It must be conceded that litigation in any given case must eventually end.").

Furthermore, in light of Plaintiff's continued filings despite the conclusion of this matter, Trident notes that it will have no choice but to file a motion seeking Rule 11 sanctions if filings continue. Particularly so if Plaintiff continues to make patently false accusations that defense counsel perpetuated a fraud on the Court without any evidentiary support. Under Rule 11, a party may be sanctioned for filing a frivolous motion or making a frivolous argument, or for filing a motion in bad faith. *Ex parte Gregory*, 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008). The Court may impose sanctions including, but not limited to:

an order to pay the reasonable costs and attorney fees incurred by the party or parties defending against the frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith.

See id. at 437-38, 663 S.E.2d at 50.

Trident respectfully requests the Court caution Plaintiff that any further attempts to relitigate matters previously decided by this Court and affirmed on appeal, or any additional unsupported accusations leveled against defense counsel, could result in one or more of these sanctions.

For the reasons stated above, the Court should deny Plaintiff's "Motion to Reconsider Motion to Vacate" and warn Plaintiff that any future filings could result in sanctions.

Signature on Following Page

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Blake T. Williams

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(919) 439-2223

Attorneys for Trident Medical Center

Columbia, South Carolina

March 6, 2019

CERTIFICATE OF SERVICE

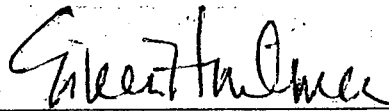
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Trident Medical Center, LLC, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

**Trident Medical Center, LLC's Response in
Opposition to Motion to Reconsider**

Counsel Served:

Mr. Jim Washington
209 Signet Drive
Eutawville, SC 29048



Eileen Hindman
Administrative Assistant

3/6

, 2019

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

Jim Washington,) Civil Action No. 2015-CP-10-5000

Plaintiff,)

vs.)

ORDER

Trident Medical Center, LLC,)

Defendant.)

This matter comes before on Plaintiff's motions pending before the court. First, Plaintiff Jim Washington ("Plaintiff") filed a "Motion to Reconsider Conclusion" on July 6, 2018. Then, while the Motion to Reconsider was still pending, Plaintiff filed a "Motion to Vacate Judgment and Motion to Amend the Pleadings" on October 25, 2018. The Court held a hearing on these motions on February 7, 2019. Plaintiff Jim Washington ("Plaintiff") appeared *pro se*. Blake Williams, Esq. and Dave Batten, Esq. appeared on behalf of Defendant Trident Medical Center, LLC ("Defendant"). After careful reflection and having fully considered the parties' respective arguments and filings, the Court **DENIES** Plaintiff's motions.

Plaintiff filed this action on September 11, 2015. Defendant moved to dismiss. The issue was fully briefed and heard by Judge R. Markley Dennis. On January 14, 2016, Judge Dennis entered a Form 4 Order dismissing the action for failure to comply with the pre-suit requirements for a medical malpractice action provided by S.C. Code Ann. § 15-79-125(a). Judge Dennis entered a formal written order of dismissal on February 5, 2016. Plaintiff appealed to the Court of Appeals, which affirmed via Opinion dated January 10, 2018. Plaintiff moved for rehearing, which the Court of Appeals denied via Order dated February 22, 2018. Plaintiff then

filed a petition for a writ of certiorari to the Supreme Court of South Carolina, which denied the petition on May 25, 2018. The remittitur issued on May 30, 2018.

In light of the remittitur, the issues raised and ruled upon by Judge Dennis and affirmed by the Court of Appeals have been fully and finally determined. After the remittitur, the Circuit Court “acquires jurisdiction to **enforce** the judgment and take any action **consistent** with the appellate court’s ruling.” *Martin v. Paradise Cove Marina, Inc.*, 348 S.C. 379, 385, 559 S.E.2d 348, 351–52 (Ct. App. 2001) (emphasis added); *see also Muller v. Myrtle Beach Golf & Yacht Club*, 313 S.C. 412, 415, 438 S.E.2d 248, 250 (1993) (same). As the Court of Appeals has explained, matters decided by the appellate court “cannot be reheard, reconsidered, or relitigated in the trial court, even under the guise of a different form,” and the “decision of the appellate court is **final as to all questions decided**.” *Ackerman v. McMillan*, 324 S.C. 440, 443, 477 S.E.2d 267, 268 (Ct. App. 1996) (emphasis added). Thus, “[i]t is the duty of the trial court to follow the decision of the appellate court.” *Id.* (emphasis added).

The Court, therefore, lacks jurisdiction to rehear any of Plaintiff’s arguments about the merits of his claims or whether he complied with the pre-suit requirements for filing a medical malpractice action. After thorough review of Plaintiff’s motions, the Court finds that they improperly seek relitigation of these issues.

Additionally, the undersigned further lacks jurisdiction because Judge Dennis, not the undersigned, entered the original order of dismissal. The undersigned cannot set aside or modify the order of another trial judge. *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986) (“One Circuit Court Judge does not have the authority to set aside the order of another.”); *see also State ex rel. Medlock v. Love Shop, Ltd.*, 286 S.C. 486, 488, 334

S.E.2d 528, 529 (Ct. App. 1985) ("It is settled that one circuit judge does not have the power to review, modify, affirm or reverse the findings of another circuit judge.").

At the hearing, Plaintiff also argued that he filed a Rule 59(e)/Rule 60(b) motion after Judge Dennis entered the Form 4 Order that was not ruled on. Plaintiff, however, never made Judge Dennis or the Court of Appeals aware of this issue. Instead, Plaintiff chose to proceed with filing the notice of appeal and briefing the appeal on the merits. By failing to raise this issue on appeal, it was abandoned. *See, e.g., Cannon v. Cannon*, 321 S.C. 44, 54, 467 S.E.2d 132, 138 (Ct. App. 1996) (holding an issue not argued in the appellant's brief is deemed abandoned on appeal); *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (holding appellant was deemed to have abandoned issues on appeal, where he failed to provide any argument or supporting authority). This argument is improper at this stage and is not a proper ground warranting relief from the judgment.

Finally, Plaintiff's Rule 60(b) motion asserts that the judgment should be set aside due to extrinsic fraud on the Court. The Court has thoroughly reviewed Plaintiff's filings and finds that there is no evidence of any fraud. The standard under Rule 60(b) is "rigorous" and requires a "particularized showing." *Sundown Operating Co. v. Intedg Indus., Inc.*, 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009). To obtain relief from a judgment on the basis of fraud, a party must show that extrinsic fraud occurred. *See Raby Const., L.L.P. v. Orr*, 358 S.C. 10, 20, 594 S.E.2d 478, 483 (2004); *see also Chewning v. Ford Motor Co.*, 354 S.C. 72, 81 579 S.E.2d 605, 610 (2003) (noting that "extrinsic" fraud "induces a person not to present a case or deprives a person of the opportunity to be heard"). Intrinsic fraud, which is fraud that "misleads a court in determining issues and induces the court to find for the party perpetrating the fraud," is not sufficient to warrant relief under Rule 60(b). *Raby Const.*, 358 S.C. at 20, 594 S.E.2d at 483.

After reviewing the record, the Court finds that Plaintiff has failed to meet his burden. *See Lanier v. Lanier*, 364 S.C. 211, 215, 612 S.E.2d 456, 458 (Ct. App. 2005) (“A party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence entitling him to the requested relief.”).

Therefore, for all these reasons, Plaintiff’s “Motion to Reconsider Conclusion” and “Motion to Vacate Judgment and Motion to Amend the Pleadings” are **DENIED**.

IT IS SO ORDERED.

The Honorable Deadra L. Jefferson
Presiding Judge, Ninth Judicial Circuit

_____, 2019



NELSON MULLINS

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blake.williams@nelsonmullins.com

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February 1, 2019

The Honorable Julie J. Armstrong
Clerk of Court
Charleston County Courthouse
100 Broad Street, Suite 106
Charleston, SC 29401

RE: Jim Washington v. Trident Medical Center
Civil Action No. 2015-CP-10-05000
Appellate Case No. 2016-000495
Our File No. 27979/01501

Dear Ms. Armstrong:

Enclosed are the original and one copy of Trident Medical Center, LLC's Response in Opposition to Motion to Vacate Judgment in the above-referenced matter. We would appreciate it if you would file the original and return a clocked copy to us in the return envelope provided.

By copy of this letter to all counsel, we are hereby serving them with copies of the above referenced pleading.

Very truly yours,

A handwritten signature in cursive script that reads "Blake T. Williams".

Blake T. Williams

BTW:ls
Enclosures
cc: Mr. Jim Washington

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)

Jim Washington,) Civil Action No: 2015-CP-10-5000
)
Plaintiff,)
)
vs.) **Trident Medical Center, LLC's**
) **Response in Opposition to Motion**
Trident Medical Center, LLC;) **to Vacate Judgment**
)
Defendant.)

This matter is concluded. Plaintiff Jim Washington ("Plaintiff") filed this medical malpractice action on September 11, 2015. Defendant Trident Medical Center, LLC ("Trident") moved to dismiss, contending that Plaintiff failed to comply with the presuit requirements for a medical malpractice action detailed in S.C. Code Ann. § 15-79-125(a). The Court agreed that Plaintiff failed to meet these statutory requirements, and thus entered an Order dismissing Plaintiff's complaint. Plaintiff moved to reconsider and, after that motion was denied, appealed to the Court of Appeals. After a full round of briefing, the Court of Appeals issued a per curiam opinion affirming the lower court. Plaintiff then petitioned the Supreme Court for a writ of certiorari, which the court denied. The Court of Appeals issued the remittitur on May 30, 2018, which ended the matter.

Nevertheless, the Plaintiff proceeded to file what was styled as a "Motion to Reconsider Conclusion" on July 6, 2018. Plaintiff then submitted a letter on August 30, 2018 requesting that the Court hold a hearing on the Motion to Reconsider. Although the Court had not ruled on the Motion to Reconsider or set a hearing, Plaintiff proceed to file a "Motion to Vacate Judgment and Motion to Amend the Pleadings" on October 25, 2018. The Court set this motion for a hearing on February 7, 2019.

Plaintiff's post-remittitur filings seek to relitigate the merits of his claims, which the Court already fully considered and dismissed. Quite simply, as Trident has explained throughout the course of the proceedings, Plaintiff failed to comply with the presuit requirements for filing a medical malpractice. Specifically, Plaintiff did not file a Notice of Intent to File Suit or attach an expert witness affidavit supporting his claims. Moreover, he failed to demonstrate any exception to these requirements applied. Therefore, in light of Plaintiff's failure to satisfy the statutory prerequisites, the Court properly dismissed the Complaint. After the issue was fully briefed to the Court of Appeals, it correctly affirmed this dismissal.

In light of the remittitur, this matter is concluded because the issues raised and ruled upon by this Court and affirmed by the Court of Appeals have been fully and finally determined. After the remittitur, the Circuit Court "acquires jurisdiction *to enforce the judgment* and take any action *consistent with the appellate court's ruling.*" *Martin v. Paradise Cove Marina, Inc.*, 348 S.C. 379, 385, 559 S.E.2d 348, 351-52 (Ct. App. 2001) (emphasis added); *see also Muller v. Myrtle Beach Golf & Yacht Club*, 313 S.C. 412, 415, 438 S.E.2d 248, 250 (1993) (same). This Court does not acquire jurisdiction to rehear issues that it previously considered and ruled on, and that were affirmed on appeal. As the Court of Appeals has explained, matters decided by the appellate court "cannot be reheard, reconsidered, or relitigated in the trial court, even under the guise of a different form," and the "decision of the appellate court is *final as to all questions decided.*" *Ackerman v. McMillan*, 324 S.C. 440, 443, 477 S.E.2d 267, 268 (Ct. App. 1996) (emphasis added). Thus, "[i]t is the *duty* of the trial court to follow the decision of the appellate court." *Id.* (emphasis added).

Therefore, the Court has no discretion—it must deny Plaintiff’s motions to the extent they are attempting to relitigate this Court’s judgment dismissing this lawsuit and the appellate courts’ affirmance thereof.

Plaintiff’s motions predominantly attempt to reargue the merits of his claims. However, he also requests relief from judgment on the basis of “fraud.” To support this argument, Plaintiff’s motions make inflammatory accusations against defense counsel that are totally unsubstantiated by any evidentiary support. Essentially, Plaintiff argues that defense counsel’s legal arguments in this case perpetuated a “fraud” upon the Court and constituted deliberate misrepresentations. This is a highly frivolous argument lacking *any* factual or evidentiary support. Such allegations should not be lightly made, particularly where they lack any evidentiary support, and in light of the obligations imposed on attorneys and pro se litigants by Rule 11 of the South Carolina Rules of Civil Procedure. This alone warrants denial.

However, even if Plaintiff’s fraud argument had any underlying factual support, it would still be insufficient to obtain relief from judgment. The standard under Rule 60(b) is “rigorous” and requires a “particularized showing.” *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009). To obtain relief from a judgment on the basis of fraud, a party must show that *extrinsic* fraud occurred. *See Raby Const., L.L.P. v. Orr*, 358 S.C. 10, 20, 594 S.E.2d 478, 483 (2004); *see also Chewning v. Ford Motor Co.*, 354 S.C. 72, 81 579 S.E.2d 605, 610 (2003) (noting that “extrinsic” fraud “induces a person not to present a case or deprives a person of the opportunity to be heard”). Plaintiff has, at most, alleged intrinsic fraud, which is fraud that “misleads a court in determining issues and induces the court to find for the party perpetrating the fraud.” *Id.* at 19, 594 S.E.2d at 483. This is insufficient to warrant relief under Rule 60(b). Therefore, Plaintiff has failed to meet his burden. *See Lanier v. Lanier*, 364 S.C. 211,

215, 612 S.E.2d 456, 458 (Ct. App. 2005) (“A party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting *evidence* entitling him to the requested relief.” (emphasis added)).

Under Rule 11, a party may be sanctioned for filing a frivolous motion or making a frivolous argument, or for filing a motion in bad faith. *Ex parte Gregory*, 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008). Defendant requests the Court to caution Plaintiff that any further attempts to relitigate matters previously decided by this Court and affirmed on appeal, or any additional unsupported accusations leveled against defense counsel, could result in sanctions. *See id.* at 437-38, 663 S.E.2d at 50 (noting that sanctions that the Court may impose include “an order to pay the reasonable costs and attorney fees incurred by the party or parties defending against the frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature designed to deter the party or the party’s attorney from bringing any future frivolous action or action in bad faith”).

For the reasons stated above, the Court should deny Plaintiff’s “Motion to Reconsider Conclusion,” and “Motion to Vacate Judgment and Motion to Amend the Pleadings.”

Signature on Following Page

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Blake T. Williams

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(919) 439-2223

Attorneys for Trident Medical Center

Columbia, South Carolina

February 1, 2019

CERTIFICATE OF SERVICE

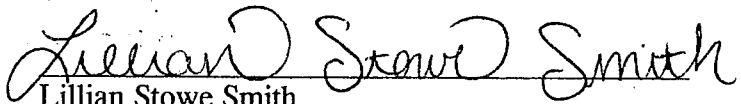
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Trident Medical Center, LLC, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Trident Medical Center, LLC's Response in Opposition to
Motion to Vacate Judgment

Counsel Served:

Mr. Jim Washington
209 Signet Drive
Eutawville, SC 29048


Lillian Stowe Smith
Administrative Assistant

February 1, 2019

State of South Carolina.,)

In the Circuit Court

County of Charleston)

Case No.: 2015-CP-10-500

Jim Washington,)

Plaintiff,)

vs.)

Trident Medical Center,)
LLC,)

Defendant.)

February 7, 2019
Charleston, SC

B E F O R E:

The Honorable Deidre Jefferson, Presiding Judge.

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

Drake Williams, Esquire
David Batten, Esquire
Attorney for Trident Medical Center, LLC

Mr. Jim Washington
Pro Se, Plaintiff

Melissa R. Singletary, CVR-M
Family Court Reporter
Ninth Judicial Circuit
Berkeley and Charleston Counties

I-N-D-E-X

Court Reporter Certificate Page 17

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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(There were no exhibits marked during this hearing)

1 The Court: This is the case of Jim Washington
2 vs. Trident Medical Center, LLC. Case Number 2015-CP-10-
3 5000. It's before the Court on Trident Medical Center --
4 - I need the Motion to Vacate the Judgment.

5 Now, according to my record, Judge Dennis
6 granted a Motion to Dismiss on 10-16-15. Well, no the
7 motion was filed 10-16-15 but the Motion to Dismiss was
8 granted 1-7-16.

9 Mr. Williams: That's correct, Your Honor.

10 The Court: Then it went up to the Court of
11 Appeals. And it was signed 1-7 but it was filed on 1-14-
12 16. Then it went up to the Court of Appeals, which ...

13 Mr. Washington: Your Honor ...

14 The Court: Wait one second for me, sir.

15 Mr. Washington: Yes.

16 The Court: It went up to the Court of Appeals
17 and Judge Dennis' opinion was affirmed. That was done
18 Appellant Number 2016-000495, an unpublished opinion
19 2018-UP-006 submitted 11-1-17 filed January 10th of 2018.
20 It was a Per curiam decision. Then a motion for
21 rehearing must have been filed and that was denied. That
22 Order was filed on February 22 of 2018.

23 Then subsequently it appears that on October
24 25, 2018, Mr. Washington filed a Motion to Vacate and a
25 Motion to Amend Pleadings.

1 Sir, I don't think this Court has any
2 jurisdiction to do anything more with this file. So, I'm
3 a little confused. Did you not understand the appellant
4 proceedings that you initiated?

5 Mr. Washington: My point is, Your Honor, when
6 Judge Dennis signed the final Order

7 The Court: Yes, sir.

8 Mr. Washington: There was a pending Rule 60(b)
9 (1) and (b)(3) motion rule pending that was never ruled
10 on.

11 The Court: But did you bring that to their
12 attention?

13 Mr. Washington: I filed it after. That's part
14 of the reason for me filing a Rule 60(b) motion now
15 because that one was never ruled on.

16 The Court: But see what happens is ...

17 Mr. Washington: That was ...

18 The Court: Once you filed an appeal you should
19 have brought all of that to their attention because you
20 can't come back behind it and have it heard.

21 Mr. Washington: No, I'm not. The Rule 60
22 Motion I'm filing based on extrinsic evidence. That was
23 pending still. Judge Dennis never ruled on that at all.
24 That was ...

25 The Court: Now, you filed something called a

1 Motion to Vacate the Judgment.

2 Mr. Washington: Right.

3 The Court: Where you are asking me to vacate
4 the Court of Appeals judgment . I can't ...

5 Mr. Washington: On February 27th ...

6 The Court: do that.

7 Mr. Washington: ... 2016.

8 The Court: Yes.

9 Mr. Washington: That's when this, the first
10 original Rule 60 Motion was filed. That was never ruled
11 on at all.

12 The Court: But what I'm saying is it is your
13 responsibility to bring that to the attention of the
14 Court of Appeals and when you didn't do it there is
15 nothing I can do about that now.

16 Mr. Washington: According to ex parte --- once
17 the remittitur is remand back to the Supreme Court you
18 all still have jurisdiction ...

19 The Court: The case is ...

20 Mr. Washington: ... to rule on any pending
21 matter ...

22 The Court: That's something that would have
23 affected your appeal. You can't sort of come back around
24 and then ask --- it was your responsibility to have
25 brought to the Court of Appeals attention that it had not

1 been ruled on and to ...

2 Mr. Washington: The rule ...

3 The Court: ...ask that your appeal be stayed
4 until it was ruled on.

5 Mr. Washington: The Rule 60 motion is based on
6 fraud. The appeal was based on a different issue
7 altogether. That was based on a 1980 medical malpractice
8 action. This here is based on fraud on the Court itself
9 to secure that judgment.

10 The Court: That's not how you captioned it.
11 You're asking me to vacate the Court of Appeals decision.

12 Mr. Washington: No, I'm not asking you to
13 vacate the ...

14 The Court: What are you asking me to do?

15 Mr. Washington: I'm asking to vacate Judge
16 Dennis final Order.

17 The Court: I can't vacate Judge Dennis' Order,
18 only he can vacate his Order. He and I have current
19 jurisdiction. We are like this, we have the same
20 authority. I can't act as an appellant court over him
21 and do something to his Orders. Only the Court of Appeals
22 can do that.

23 Mr. Washington: Only the Court of Appeals.
24 Even if I had a pending Motion before the court?

25 The Court: You should have brought it to Judge

1 Dennis attention that he had not ruled on it and you
2 should have brought it to the Court of Appeals attention
3 ...

4 Mr. Washington: That's the reason ...

5 The Court: You should have brought it to the
6 Court of Appeals attention that it had not been ruled on
7 and asked them to stay your appeal until Judge Dennis
8 ruled on his Order. By virtue ...

9 Mr. Washington: Say that again, please.

10 The Court: ... of your going forward ...
11 What you should have done was once you filed your appeal
12 and you realized that your Motion regarding Judge Dennis
13 Order had not been ruled on, you should have brought it
14 to their attention because once you file the appeal we
15 don't have any jurisdiction to do anything. It's solely
16 their prerogative what they do with your case. And, once
17 you realized that it wasn't ruled on during that
18 appellate process you should have said I need to bring to
19 your attention that I filed a Motion regarding Judge
20 Dennis Order and I would like for that to be ruled on
21 before you hear my appeal. They would have stayed the
22 appeal, they would have remanded it back to us, meaning
23 the circuit court, give Judge Dennis the ability to rule
24 on this motion and then they would have restarted, not
25 restarted, they would have resumed the appeal process

1 once he ruled on his Order and you didn't do that. So,
2 basically what happens, is when you don't do that then
3 the Appeals Court assumes you have no interest in that
4 motion being heard.

5 You can't come back around later after the
6 Court of Appeals has already ruled on it and say by the
7 way I want my Rule 60 Motion ruled on because it
8 substantially affects the facts and circumstances of how
9 they ruled on your appeal.

10 Mr. Washington: That is not how the Supreme
11 Court decisions are made. That's not ... based on their
12 ruling, that is not what they say. It's a (speaker is
13 not clear) altogether.

14 The Court: Sir, if you filed a Rule 60 Motion
15 with Judge Dennis Order and it was pending during the
16 appeal, then you should have brought to their attention
17 that it needed to be ruled on and that your appeal ...

18 Mr. Washington: I did ...

19 The Court: ... needed to be ...

20 Mr. Washington: I did ask them and the Clerk
21 of Court asked the Judge, the clerk, law clerk, were they
22 going to rule on it but nobody else said anything.

23 The Court: Well, that's your responsibility to
24 pursue it and to be diligently about it and make sure
25 that it got ruled on and you got a hearing on it if Judge

1 Dennis wanted to have a hearing on it. But, I can't
2 vacate Judge Dennis' Order.

3 Mr. Washington: Well, either way there is a
4 year time in between when ...

5 The Court: Let's just say for argument sake,
6 sir, everything you are saying is correct. I can't vacate
7 Judge Dennis Order. He has to hear any Rule 60 Motions
8 that you file regarding his Order. Did you ever bring it
9 to his attention. Did you ever serve him with the
10 Motion. That's the first part of the inquiry. Did you
11 ever serve him with any reconsideration regarding his
12 order bringing to his attention that he ...

13 Mr. Washington: I filed a Rule 59 and a Rule
14 60 motion.

15 The Court: But did you serve it on him?
16 That's your responsibility.

17 Mr. Washington: No, I filed it with the
18 Clerk.

19 The Court: Well, you know. One piece of
20 paper looks like another piece of paper to them. They
21 don't know what it means. It's your responsibility to
22 bring it to the Court's attention that there is a pending
23 Motion. The rules require that you serve the Court with
24 your Motion.

25 Mr. Washington: Can I request a change of

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2 vacate Judge Dennis' Order.

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20 paper looks like another piece of paper to them. They
21 don't know what it means. It's your responsibility to
22 bring it to the Court's attention that there is a pending
23 Motion. The rules require that you serve the Court with
24 your Motion.

25 Mr. Washington: Can I request a change of

1 venue, Your Honor?

2 The Court: I'm sorry, I can't hear you.

3 Mr. Washington: Can I request a change of
4 venue?

5 The Court: You are asking for a change of
6 venue?

7 Mr. Washington: Yes.

8 The Court: For what purpose?

9 Mr. Washington: Because your ruling is not
10 ...

11 The Court: I haven't made a ruling, sir. I'm
12 just asking you some basic questions so that I can
13 understand what you are trying to accomplish.

14 Mr. Washington: I'm trying to get a hearing to
15 have the Rule 60 motion to have the final Order of
16 Judge Dennis vacated based on fraud on the court, by the
17 attorneys, the Trident Medical Center attorneys.

18 The Court: Okay. Would y'all like to respond.
19 Who wants to respond? Who is appearing on behalf of who?

20 Mr. Williams: Sure. Blake Williams on behalf
21 of Trident and this is David Batten.

22 The Court: All right. I'll be glad to hear
23 from you and then Mr. Washington I'll let you respond.

24 Mr. Williams: Very briefly. We agree with
25 everything that you have said, Your Honor, about

1 jurisdiction and to rehear these arguments. This has
2 been exclusively established on appeal with regard to the
3 merits and Judge Dennis' Order and even if there was a
4 pending Motion, like you said, once it's gone on, it's
5 too late and I think he entered the formal Order after
6 that Motion was filed so even by implication he would
7 have denied it anyway. He entered a formal Order after
8 the Form 4 Order.

9 To the extend there is an allegation of fraud
10 on the Court. I understand Mr. Washington's frustration,
11 but his allegation of fraud; it's a serious allegation
12 against counsel and it's basically premise on the fact
13 that he disagrees with our legal arguments and I
14 understand that but that's not fraud and it's certainly
15 not an extrinsic fraud such that it deprived him of his
16 day in Court which is what's required under the rule, if
17 that is even proper for, Your Honor, to hear.

18 The Court: Just so the record is clear, Judge
19 Dennis did a Form 4 on 1/7 and this was filed on 1/14.
20 He then did a more detailed Order signed 1/27 of 16,
21 which was filed ...

22 Mr. Washington: It's the same thing ...

23 The Court: Sir, don't interrupt the Court when
24 I am speaking.

25 Mr. Washington: Sorry.

1 The Court: ... which was then filed on
2 February 5th of 2016. I will never cut you off, I will
3 ...

4 Mr. Washington: I'm sorry.

5 The Court: ... let you speak as much as you
6 would like. I know you get anxious but I just need you
7 not to speak over me. Okay?

8 Mr. Washington: Yes.

9 The Court: Now, would you like to respond to
10 Mr. Williams argument?

11 Mr. Washington: Yes. According to the Ex
12 Parte Carter, which was recently used by the Supreme
13 Court, I'm sorry, the South Carolina Supreme Court
14 decision, once the remittitur sent if any pending motion
15 is still pending in the Circuit Court they can still hear
16 that Rule 60 motion based on extrinsic fraud, which is
17 the same situation that I am in right now. This is a 2018
18 decision right here. I'm in the same situation as this
19 Order right here.

20 The Court: Mr. Williams, if you would ... No,
21 I'm directing to Mr. Williams now.

22 Mr. Washington: Oh, okay.

23 The Court: Mr. Williams, if you would provide
24 the Court with a proposed Order regarding Mr.
25 Washington's arguments and please specifically address

1 his argument of extrinsic fraud that contention as well
2 as the lack of this court's jurisdiction.

3 Sir, you would have to file a written motion
4 for change of venue but I don't know that, you really
5 still want to --- you would have to file a Motion.
6 Although, at this point, I don't know that there is any
7 basis for a change in venue. I think you've sort of
8 forth gone that at this point.

9 Do you have an email address that you would
10 like Mr. Williams to send you a copy of that Order when
11 he sends it to the Court?

12 Mr. Washington: What a proposed Order?

13 The Court: Yes, sir.

14 Mr. Washington: Denying my motion?

15 The Court: He's going to send me a proposed
16 Order so that I can think about it for a minute.

17 Mr. Washington: Do I get a chance to object or
18 oppose the Order?

19 The Court: That's why I am asking you if you
20 want him to have an email address so that he can send you
21 the Order at the same time he sends it to me.

22 Mr. Washington: Well, he can send it to my
23 mailing address.

24 The Court: Do you have an email address, sir?

25 Mr. Washington: Yes, I do.

1 The Court: Do you want to get it at the same
2 time I get it?

3 Mr. Washington: Well, I can try to pull it up.
4 Sometime I have a problem with my email address.

5 The Court: Well, it's your option. You can
6 have it mailed to you or you can have it emailed. I'll
7 give you the option. Whichever one you want.

8 Mr. Washington: How many days?

9 The Court: He's going to submit it to me, I'm
10 hoping, within the next five days.

11 Mr. Williams: That's fine, Your Honor.

12 The Court: And he's going to send it to me by
13 email. That's why I asked you if you want it to come by
14 email.

15 Mr. Williams: I will send it to you as soon as
16 I send it to her by email but if I send it by mail it
17 will take a couple of days.

18 Mr. Washington: And do I have a chance to
19 object. That's my point.

20 The Court: I'm not going to have another
21 hearing, no, but if you want to file some written
22 response to his Order, that's why I asked if you want to
23 have a email address. It makes it more expedient for you
24 to respond if you have something you want to respond to.

25 Mr. Washington: It sounds like, you know, it

1 sounds like a constitutional ... because I'm not going to
2 get a chance ...

3 The Court: Sir, I've given you the option. Do
4 you want to receive it by email or do you want to receive
5 it by mail. If you have a problem with the Order you can
6 file a Motion for Reconsideration, which gives you the
7 opportunity to be heard if there is something the Court
8 failed to rule on. You've already told me what your
9 disagreement is as to the basis of the relief but if
10 there is something that you feel some legal argument or
11 otherwise you feel the court did not rule on or otherwise
12 you certainly have options available to you to contest
13 it.

14 Mr. Washington: Yeah, what I'm saying it's
15 extrinsic fraud, he is saying it's extrinsic fraud under
16 Rule 60 motion doesn't grant relief for that.

17 Mr. Williams: There's no fraud at all, Your
18 Honor.

19 Mr. Washington: There is literally ...

20 The Court: Whether there is or not I just
21 don't think the Court has jurisdiction to deal with it
22 anymore.

23 Mr. Washington: So you are ruling ... you're
24 not ruling on extrinsic ...

25 The Court: Sir, I'm ruling on everything

1 you've raised and I still need an answer to the question.
2 Do you want it sent by email or do you want it sent by
3 regular mail?

4 Mr. Washington: Well, you can send it by
5 email. I don't get ...

6 The Court: Do you have a email address that
7 you would like them to use.

8 Mr. Washington: It's already on the court
9 record.

10 Mr. Williams: I'm not sure I have that. If
11 you have ...

12 The Court: I'm looking right now to see if I
13 have a email. We don't have a email address listed, sir.
14 All we have is your mailing address.

15 Mr. Washington: wtstransportllc ...

16 The Court: Oh, he does. Here it is right
17 here, wtstransportllc@yahoo.com.

18 Mr. Williams: Okay.

19 The Court: Sir, what will happen is when Mr.
20 Williams sends me the Order he will send it to you at the
21 same time. You will be copied on it. You need to send
22 that to djeffersonsc@sccourts.org in word format.

23 Thank you all very much for your patience.

24 Y'all have a great afternoon. Sir, I wish you the same.

25 (End of Hearing)

THE STATE OF SOUTH CAROLINA
In The Court of Common Pleas, Charleston County

R. MARKLEY DENNIS, Jr., Circuit Court Judge

Civil Action No. 2015-CP-10-5000

Jim Washington,.....Plaintiff,

V.

Trident Medical Center, LLC.....Defendant.

MOTION TO RECONSIDER CONCLUSION

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Pro Se/ Plaintiff

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Raleigh, N.C. 27612
(919) 439-2221
Attorneys For Defendant Trident Medical Center, LLC

The Plaintiff, above-named, complaining of the Defendant herein, would respectfully show unto this Honorable Court:

1. That the Plaintiff is a citizen and resident of the County of Orangeburg, State of South Carolina.

2. That the Defendant is a corporation in the state of South Carolina maintaining offices, agents and servants for the purposes of carrying on its business in the County of Charleston, State of South Carolina.

FACTUAL ALLEGATIONS

3. Attorneys for the Defendant as officers of the court did commit extrinsic fraud upon this court to scheme by misrepresenting documents with intent to prevent plaintiff from presenting his case to the court to have a full and fair opportunity to be heard and also was a scheme intent to mislead to conceal from the Court and misrepresent the pre-suit pleadings in the complaint which related back to the verified complaints and statements between Plaintiff and expert witnesses at TRMC that "Plaintiff says he woke and noticed he could not move, was prior admitted and diagnose at Trident with CVA stroke and discharged and the symptoms were similar to the symptoms he had now" to subvert the integrity of this Court itself as an institution so that the judicial machinery could not perform in the usual manner its impartial task of adjudging this case that was presented for adjudication and admitting the documents of pre-suit notice of intent and expert witness affidavit read together with the complaint pleadings of these pre-suit statutes as a whole as timely filed. (a) the attorneys perjury and misrepresent statements in documents filed that plaintiff pleadings in the complaint were all filed as litigation pleadings of statutes 15-79-125 (A) and 15-36-100 and signed as litigation pleadings and

same statutes pleadings cited on the affidavit were totally absent of required statutory and wholly defective (b) attorney perjury and misrepresented statement in documents filed and orally at hearing that plaintiff has yet to present a qualified expert witness statement that defendant breached any applicable standard of care (c) by attorney schemed and misrepresentation with intent to prevent plaintiff from fairly presenting his claim and deprived of an opportunity to be heard and designed to subvert the integrity of the court itself so that the judicial machinery could not perform in the usual manner it's impartial task of adjudging the case that was presented for adjudication of taking judicial notice on the issue of pre-suit notice of intent to file suit by the attorneys for the defendant withholding and concealing from this Court Plaintiff filed Interrogatory and Request For Production documents signed as part of the statutory required pleadings for pre-suit Notice of Intent to file suit which timely cured any defect in the pleadings and further filed motion for the court to strike all accompanying documents thereby committing extrinsic fraud upon the court (d) Attorneys for defendant filed in this Court motion to dismiss and memorandum of law and requesting the Court to strike and or dismiss all of plaintiff accompanying documents in support of pleadings (e) attorneys for defendant misrepresentation in memorandum of law document filed and orally argued at the hearing that anticoagulation claim in complaint was not a common knowledge issue but required expert witness testimony because the amount, type and doses are beyond the understanding of a jury. This was another instance of the attorneys presenting extrinsic fraud upon the court with a deceitful scheme intended to effectively prevent plaintiff claim to be fairly presented to the court and designed to subvert the integrity of the court itself as an institution so that the judicial machinery could not perform in the usual

manner its impartial task of adjudging this case that was presented for adjudication of statutory qualification requirements of the expert witnesses opinion on the acts or omissions claimed to exist and the factual basis to admit their opinions into evidence because of defendant's attorneys as an officers of the court filed perjury statements misrepresenting that the subject matter of anticoagulation was separate issue alleged claim in plaintiff complaint and did schemed to separate and totally omitted the radiologist expert witness opinion concerning the MRI results diagnosis of embolism for the Court's consideration from treatment of anticoagulation Heparin for embolism issue from being joined to prevent plaintiff from fully and fairly presenting his claims that breach the standard of care by the radiologist omission to diagnose embolism on MRI and omission by the Hospitalist to treat the embolism with anticoagulation was a common knowledge issue that can be inferred by a jury that the standard of care was breached in diagnosis and treatment for embolism; then changed the subject matter from evidence needed to show breach the standard of care by expert witness evidence for anticoagulation treatment for embolism as required according to expert witnesses opinion in the affidavits which stated " defendant Trident did not show documented evidence that they diagnose the source of plaintiff injury on MRI or on work-up but showed a small stroke and also stated I did order a Heparin drip given embolism is a possibility, consulted Neurology to treat the injury with anticoagulation per Neurology protocols " ; then changed the subject matter from breach the standard of care for diagnosis and treatment of embolism to the amount, type and doses evidence proof needed to show proximate cause to prevent future clots and embolism by an expert witness schemed and plan to Misrepresent to present perjury statements and possible future perjury witness

testimony by presenting extrinsic fraud upon the Court itself with intent to deceive the Court and Conceal from the Court the evidence of test results; aspirin treatment was repeatedly given aspirin treatment instead of anticoagulation treatment with intent to harm in reckless disregard of his right Plaintiff to be warned that aspirin 325 mg doses was not a blood thinner and was not designed to prevent blood clots or strokes to consent to aspirin treatment and was given a prescription for refill of aspirin to be taken after discharge from the Hospital. Defendant's liable for compensatory and punitive damages were also issues to adjudicate which stated claims for which relief could be granted that defendant Trident fail to diagnose embolism and treat with anticoagulation was a breach of the standard of care and repeatedly and recklessly treated with aspirin with intent to harm or reasonable foreseen to likely cause harm. However, defendant's attorneys intentionally scheme to misrepresented to conceal Trident true treatment of care to present extrinsic fraud upon the court in his memorandum of law stating: "Plaintiff was discharged from Trident on September 26, 2012 in stable condition with instructions and prescriptions for anticoagulation therapy in an effort to prevent future blood clots." The attorney intentionally scheme to Misrepresent Plaintiff true condition on discharge; intentionally scheme to misrepresent to concealed the true negligent medical treatment and diagnosis at Trident; intentional scheme to misrepresent to conceal the qualified expert witnesses opinions of the doctors at The Regional Medical Center that they received documentation from Trident and concluded Trident was negligent omission on MRI then or on work-up diagnosis to show the source of Plaintiff injury which suggest embolism of a cardiac source and prior hemorrhage and negligent not to order treatment with anticoagulation ; intentionally scheme to misrepresent the test results as showing

Plaintiff discharged in stable condition. All of the above misconducts by defendant's attorneys were designed with intent to scheme to present extrinsic fraud upon the court in filing its memorandum of law documents in the Court and at oral arguments at the hearing to subvert the Court's integrity itself so that the judicial machinery could not perform in the usual manner its impartial task of adjudging the case at the 1/7/16 show cause hearing that was presented for adjudication to prevent the Court itself to allow Plaintiff a full and fair opportunity to present the claims of timely filed pre-suit notice of intent to filed suit and expert witnesses affidavits; breached the standard of care in diagnosis and treatment; aspirin treatment was repeatedly and recklessly done with intent to harm or reasonably foreseen would likely cause harm and which deprived Plaintiff of his rights to be warned to consent to receive reasonable medical care and liable for compensatory and punitive damages. {See reference documents}.

DISCUSSION

4. All of the above allegations are evidence of extrinsic fraud upon the court with documented evidence in support of the allegation therein, which are shown by clear and convincing evidence and as ground for this Court to exercise its discretion to hold a show cause hearing which was timely filed and specifically requested by plaintiff on January 27, 2016 under SCRCP RULE 60(b) to collateral attack on the Form 4 judgment which was on the same date this Honorable Court signed its final order dismissing the action on January 27, 2016. {See reference documents}. Therefore, procedurally no adjudication of the motion was concluded by this court before the final order was signed on the same date and remain pending. Plaintiff filed a direct appeal of this Court's Form

4 Judgment and Final Order of dismissal to the South Carolina Court of Appeals not a collaterally attacking the denial of a Motion under Rule 60(b), SCRCRCP validity of obtaining the Judgment and Order for fraud upon the court but only appeal the Form 4 Judgment and January 27, 2016 final order for errors of law on issues raised and ruled on in the circuit court at the January 7, 2016 in court oral hearing affecting the Form 4 Judgment and the January 27, 2016 final order. Specifically, the appeals grounds were limited to the timely filing and sufficiency of the pleadings of the pre-suit Notice of Intent to file suit and Expert Witnesses Affidavits and amendment of the complaint. The Court of Appeals order itself affirmed the circuit court order on the above grounds and under SCRAP Rule 220 (b) only which allows to affirm on other reason appearing in the records. Defendant's attorneys raised four(4) grounds to affirm the circuit court order(1) Plaintiff failed to file pre-suit Notice of Intent before filing complaint (2) Plaintiff fail to file pre-suit Expert Witness Affidavit (3) Anticoagulation Treatment is not a common knowledge issue but requires expert witness testimony (4) Plaintiff fail to attend mandatory mediation. Therefore, to affirm a SCRCRCP Rule 60(b) motion requesting a show cause hearing for extrinsic fraud upon the court would be an error because defendant's attorney only limited it's request to affirm on the above four(4) stated grounds only. Nothing appeared in the records under SCACR Rule 220(b) to affirm the circuit court January 27, 2016 order which indicated that the circuit court reopen the records to make new finding of facts and new conclusion of law to reconsider any new motions filed on January 27, 2016 which is actually the same date the order was signed for the Court of Appeals conclude that circuit court denials of a show cause hearing seeking relief under SCRCRCP Rule 60(b) for extrinsic fraud upon the court was ruled on in

circuit court denying the hearing. Therefore, affirm of the circuit court order under SCRAP Rule 220(b) for denial of a motion under SCRPC Rule 60(b) would be improper and error. See Ex Parte Carter, South Carolina Supreme Court, Opinion No. 27786, filed on March 21, 2018(Same). {See reference documents}. Accordingly, the Court of Appeals order did not or could not rest it's conclusion to affirm the dismissal on a ground not ruled upon in circuit court the request for a show cause hearing which also have a meritorious defense of mistakes and extrinsic fraud upon the court. Ex Parte Carter, supra; McClurg v. Deaton, 395 S.C. 85, 86-88, 716 S.E.2d 887(2011)(Relief to set aside Rule 60(b) motion requires a meritorious defense); Davis v. Davis, 236 S.C. 277, 280-282, 113 S.E.2d 819(1960)(Holding extrinsic fraud upon the court, notice affidavit of witnesses, prevent opportunity to be heard, amendment of complaint); Ray v. Ray, 374 S.C. 79, 86-87, 647 S.E.2d 237(2007)(Holding extrinsic fraud upon the court shown by misrepresentation couple with deliberate intentional scheme to conceal documents delay the payment by CVS until after the divorce); Chewning v. Ford Motor Company, 354 S.C. 72, 84-86, 579 S.E.2d 605(2003)(Where an attorney embarks on a scheme to suborn perjury and intentionally conceal documents, extrinsic fraud on the court. Attorney scheme to conceal unfavorable test results and scheme introduce perjury test results as stable and falsely testify for a substantial sum of money and knowing these withheld critical documents would prevent plaintiff from presenting his case is sufficient allegations of extrinsic fraud upon the court and if proven by clear and convincing evidence).

Defendant's attorneys in their briefs before the Court of Appeals and in the South

Carolina Supreme Court on Petition for Writ of Certiorari, stated: “ After a hearing, the circuit court granted the motion to dismiss and noted that a formal order would follow(Form 4 Order). Washington filed a motion to reconsider the Form 4 Order. Thereafter, the circuit court confirmed dismissal of the complaint because Washington did not comply with the pre-suit requirements”, “ After a hearing, the trial court granted Respondent’s motion to dismiss via Form 4 Order and noted that a formal order would follow.

Petitioner filed a motion to reconsider the Form 4 Order. The trial court, however, confirmed dismissal in it’s formal order, again finding that Petitioner failed to comply with the necessary pre-suit requirements for a medical malpractice action”. Likewise, the only conclusions and mistakes appearing in the records that needs correction is the January 27, 2016 order itself and that of the defendant’s own attorneys briefs because the circuit court final order only reaffirmed it’s 1/7/16 Form 4 Judgment on the materials before him for consideration without reopening the order to make additional new findings of facts and new additional conclusions of law to indicate it was considering any new materials filed beyond the date concluding the oral hearing itself to support a ground to affirm the circuit court denial of a request for a Rule 60(b) Motion, SCRCF. Page one(1) of the order itself clearly confirms by reference what limited materials that were being considered to grant the order to dismiss. Therefore, the January 27, 2016 SCRCF Rule 60(b) motion remains open and pending and a hearing should be held. See Ex Parte Carter, Opinion No. 27786, South Carolina Supreme Court, Filed March 21, 2018(Same, issued writ of certiorari to review court of appeal’s unpublished decision affirming the family court’s denial of Petitioner’s motion to set aside the final adoption decree pursuant to Rule 60(b), SCRCF. Because Petitioner’s Rule 60(b) motion was timely filed and

sufficiently alleged extrinsic fraud, we reverse and remand this matter to the family court for further proceedings without ruling on the merit of the validity of withdrawal of consent for final adoption). Therefore, Ex Parte Carter is controlling and binding precedent on the issue that the Rule 60(b) Motion, SCRPC alleging extrinsic fraud upon the court remains open and pending under the facts and procedural circumstances in this case and requires a hearing. Id.

Accordingly, Plaintiff request this Honorable Court to reconsider it's June 22, 2018 conclusion that all motions were concluded, closed and affirmed by Court of Appeals and to set aside it's conclusion under Motion Rule 60(b), SCRPC and to hold a hearing on the merits of the above allegations of extrinsic fraud on the court timely filed on January 27, 2016 Rule 60(b) Motion, SCRPC. The reference documents were mailed by this Court on June 25, 2018 and received by Plaintiff on June 27, 2018. {See reference documents}.

CONCLUSION

Wherefor, Plaintiff prays for this Honorable Court to reconsider it's June 22, 2018 conclusion and grant relief to hold a show cause hearing on the merits under SCRPC Rule 60(b) motion.

S. 
Jim Washington
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(803) 496-4655
E Mail Address:
WTS Transport, LLC @
Yahoo.com
Plaintiff/ Pro Se

THE BTATE OF SOUTH CAROLINA
Court of Common Pleas, Charleston County

R. MARKLEY DENNIS, Jr., Circuit Court Judge

Case No. 2015-CP-10-5000

Jim Washington,.....Plaintiff,
V.
Trident Medical Center, LLC.....Defendant.

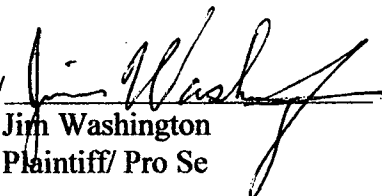
2018 JUL -6 AM 11:48
JULIUS DENNIS, JR.
CLERK OF COURT

PROOF OF SERVICE

I, the undersigned do hereby certify that I have served all attorneys of record in this
action with a copy of this **Motion To Reconsider Conclusion** by mailing a copy of the
same in a prepaid wrapper deposited in a U.S. Post Office to the folowing addresses:

C. Mitchell Brown, Esquire
Blake T. Williams, Esquire
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(803) 799-2000

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(919) 439-2221
Attorneys For Defendant Trident Medical Center, LLC

S/ 
Jim Washington
Plaintiff/ Pro Se

July 6, 2018

REFERENCE DOCUMENTS

- | | |
|---|------------|
| 1. Judge conclusion Court of Appeals Affirm order. All motions closed. | Page 13-16 |
| 2. Plaintiff Rule 60(b) motion, January 27, 2016 | page 17-24 |
| 3. Notice of Appeals, filed March 4, 2016 | page 25-26 |
| 4. Respondent's(Defendant) Initial Brief, August 1, 2016 Court of Appeals | |
| page 27-34 | |
| 5. Respondent's(Defendant) Return(brief) S.C. Supreme Court, 8/23/ 18 | page 35-38 |
| 6. Plaintiff Complaint, Attach and Incorporated NOI and Expert Affidavits | page 39-67 |
| 7. Plaintiff Interrogatories and Request For Production | page 68-71 |
| 8. Defendant's Motion To Dismiss | page 72-74 |
| 9. Defendant's Memorandum of Law | page 75-81 |
| 10. Transcript of Hearing, January 7, 2016 | page 82-87 |



State of South Carolina
The Circuit Court of the Ninth Judicial Circuit

R. Markley Dennis, Jr.
Judge

Charleston County Judicial Center
100 Broad Street, Suite 439
Charleston, SC 29401
Phone: (843) 719-4434
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MDennisJ@sccourts.org

June 22, 2018

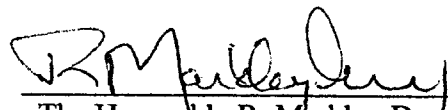
Jim Washington
209 Signet Drive
Eutawville, SC 29048

Re: *Jim Washington v. Trident Medical Center*, Case No. 2015-CP10-05000

Mr. Washington:

The above referenced matter has been closed. Enclosed is a copy of the Court of Appeals' opinion affirming my order and concluding all motions filed. Please contact my law clerk if you have any further questions.

Sincerely,


The Honorable R. Markley Dennis, Jr.
Judge, 9th Circuit

Enclosure

CC: C. Mitchell Brown, Esquire
David H. Batten, Esquire
Caroline Leonard, Charleston County Common Pleas Docket Manager

2015-CP-10-5000

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Jim Washington, Appellant,

v.

Trident Medical Center, Respondent.

Appellate Case No. 2016-000495

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

Unpublished Opinion No. 2018-UP-006
Submitted November 1, 2017 – Filed January 10, 2018

AFFIRMED

Jim Washington, of Eutawville, pro se.

C. Mitchell Brown, of Nelson Mullins Riley &
Scarborough, LLP, of Columbia; and David H. Batten, of
Batten Lee PLLC, of Raleigh, North Carolina, all for
Respondent.

PER CURIAM: Jim Washington appeals an order from the circuit court granting Trident Medical Center's motion to dismiss for failure to comply with the presuit requirements in section 15-79-125(A) of the South Carolina Code (Supp. 2017). On appeal, Washington argues the circuit court erred by (1) granting Trident's

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2018 JUN -1 AM 10:59

FILED

motion to dismiss because he filed a timely Notice of Intent to File Suit and a contemporaneous expert witness affidavit as required by section 15-79-125(A), and (2) denying him leave to amend his complaint to state a second theory of recovery. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the circuit court erred in dismissing Washington's complaint pursuant to Rule 12(b)(6), SCRCR: *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009) ("On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the [circuit] court."); *id.* ("That standard requires the [c]ourt to construe the complaint in a light most favorable to the nonmovant and determine if the 'facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.'" (quoting *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 446, 499 (Ct. App. 2001))); S.C. Code Ann. § 15-79-125(A) ("Prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in [s]ection 15-36-100 . . .").

2. As to whether the circuit court erred in denying Washington leave to amend his complaint: *Lee v. Bunch*, 373 S.C. 654, 660, 647 S.E.2d 197, 200 (2007) ("A motion to amend is addressed to the sound discretion of the [circuit court], and the party opposing the motion has the burden of establishing prejudice."); S.C. Code Ann. § 15-36-100(F) (Supp. 2017) ("If a plaintiff fails to file an affidavit as required by this section, and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleadings, the complaint is not subject to renewal after the expiration of the applicable period of limitation unless a court determines that the plaintiff had the requisite affidavit within the time required pursuant to this section and the failure to file the affidavit is the result of a mistake."); S.C. Code Ann. § 15-3-545(A) (2005) ("[A]ny action . . . to recover damages for injury to the person arising out of any medical, surgical, or dental treatment, omission, or operation by any licensed health care provider . . . must be commenced within three years from the date of treatment, omission, or operation giving rise to the cause of action . . .").

AFFIRMED.

SHORT, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

The Hon. R. Markley Dennis
Charleston County Judicial Center
100 Broad Street, Suite 450
Charleston, SC 29401

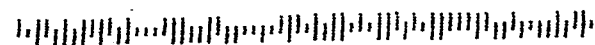
CHARLESTON SC 294

25 JUN 2018 PM 2 L



Jim Washington
209 Signet Drive
Eutawville, SC 29048

29048+9140



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Jim Washington

☒ Plaintiff

v.

Trident Medical Center, LLC

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2015-CP-10-5000

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Jim Washington, Pro Se, Bar No.

Address:

209 Signet Drive

Eutawville, SC 29048

phone: (803) 496-4655

e-mail: other:

Defendant's Attorney:

David H. Batten, Bar No. 74531

Address:

Batten Lee PLLC

4141 Parklake Avenue, Suite 350

Raleigh, NC 27612

phone: 919-439-2221 fax: 919-780-5382

e-mail: dbatten@battenlee.com other:

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☒ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Jim Washington
Signature of Attorney for ☒ Plaintiff / ☐ Defendant

Jan. 27, 2016

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$25.00**

☐ **EXEMPT:** ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ **MOTION FEE COLLECTED:** _____

84

Motion To Reconsider

Plaintiff, Jim Washington file under SCRP rule 59(e) motion for reconsideration of the court order granting relief to defendant Trident and dismissal of the action. Plaintiff also move this court for leave to alter or amend the judgment and open the judgment, make additional findings of facts and conclusions of law or make new findings and conclusions, and direct entry of a new judgment. Based on plaintiff grounds raised in opposition to motion to dismiss filed dated November 12, 2015 that on September 11, 2015 he was filing a NOTICE OF INTENT under S.C. STATUTES 15-79-125(a) which cited on the complaint and was also filing the COMPLAINT at the same date under S.C. STATUTE 15-79-125(E) due the statute of limitation was soon due to expire and was filing 2 expert affidavit naming at least one negligent act or omission by Trident. Further, Plaintiff allege in the opposition to motion dismiss he met all of the other conditions as required to meet S.C. STATUTE 125-79-125(a) NOTICE OF INTENT and that the two affidavits met the requirements under S.C. STATUTE 15-36-100 therefore all STATUTE OF LIMITATIONS were TOLLED. Plaintiff, raised all of the above grounds in his OPPOSITION TO MOTION TO DISMISS filed in this court dated NOVEMBER 12, 2015. See OPPOSITION TO MOTION TO DISMISS.

Plaintiff, in his MEMORANDUM OF LAW filed on January 4, 2016 raised these grounds seeking leave of the court to cure any defect(s) in the NOTICE OF INTENT citing S.C. SUPREME COURT case law that was applicable to prelitigation and post litigation under the same circumstances which required to stay the of the post litigation proceeding and to proceed with mediation as the solution rather than dismissal of the action citing FLORIDA case laws and SOUTH CAROLINA legislative intent. Plaintiff, further sought leave of the court to amend the complaint as additional ground to not dismiss the action. Furthermore, plaintiff seek leave of this court to reconsider the EXPERT AFFIDAVITS as admissible evidence. Counsel for Trident concedes that the amount, type of anticoagulant require expert testimony by relying on the very same documents to say Plaintiff has not filed the required affidavits under S.C. STATUTE 15-36 100. Plaintiff, allege and continued to argue that these two VERIFIED COMPLAINTS by the experts who prepared then were AFFIDAVITS and admissible in evidence because they name the negligent acts omissions of Trident diagnosis and treat of hemorrhage and embolism. Finally, plaintiff seeks leave of this court for MOTION FOR RELIEF FROM JUDGMENT OR ORDER filed under SCRPC Rule 60 (b)(3). The order or judgment of this court was entered on January 14, 2016 and mail mail by the clerk of court to plaintiff on January 19, 2016 and received by plaintiff on January 22, 2016 by mail at his address. Plaintiff also received a copy of the proposed order from Trident Counsel requesting this court to sign the order granting Trident dismissal of CIVIL ACTION: No. 2015-CP-10-5000 with prejudice. The ground for requesting relief under SCRPC Rule 60(b)(1), (b)(3), (b)(3) and SCRPC RULE 12(b)(6) is the trial court generally must base its ruling solely upon the allegations set forth on the face of the complaint. Plaintiff pleadings on the face of the complaint is filed under S.C. STATUTE 15-79-125(a) NOTICE OF INTENT, S.C. STATUTE 15-79-125(E)(2) FILING OF COMPLAINT DUE TO STATUTE OF LIMITATION PRIOR TO MEDIATION and S.C. STATUTE 15-36-100 EXPERT WITNESS AFFIDAVITS COMMON KNOWLEDGE EXCEPTION BASED ON THE AFFIDAVITS. NEGLIGENT ACTS AND OMISSIONS MENTIONED IN THE AFFIDAVITS allegedly committed by Trident in its diagnosis and treatments. Therefore, based upon the above cited rules, statutes and allegation in the pleadings on the face of the complaint therefore any mistakes, inadvertence, of defects in filing and or pleading is excusable neglect and Defendant is not surprised or prejudiced in their defense. Trident through its counsel has repeatedly misrepresented by fraud and deceit to this court Plaintiff pleading, evidentiary submitted by plaintiff, merit of the claims for relief, expiration of the statute of limitation and all any and all other grounds plaintiff is legally entitled to relief in the pleadings and evidentiary submitted. Trident by and through its counsel has conceded in its pleadings, arguments and conclusions that in fact plaintiff has satisfied the requirement for NOTICE OF INTENT and EXPERT WITNESS AFFIDAVIT then changes position and say the requirements are not satisfied. These conflicts by Trident's counsel presents issues to be resolved by a jury. Trident, has not based upon the reasoning demonstrated the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleading filed with the court meeting the standard for dismissal.

In deciding whether the trial court properly granted the motion, court must consider whether the complaint, viewed in the light most favorable to the plaintiff, and with all doubts resolved in his behalf states a valid claim for relief. A motion to dismiss not be granted if the facts alleged and the inferences reasonable deductible therefrom would entitle the plaintiff to relief on any theory of the case. Plaintiff pleading on the face of the complaint viewed in light most favorable to him stated facts he was filing the matter under S.C. STATUTE 15-79-125(A) which is NOTICE OF INTENT requesting MEDIATION and filing INTERROGATORY and REQUEST FOR PRODUCTION with EXPERT WITNESS AFFIDAVIT meeting the qualifications under S.C. STATUTE 15-36-100(A)(1) and (A)(2) and the subsections, and that these AFFIDAVITS MET THE COMMON KNOWLEDGE EXCEPTION requirement in S.C. STATUTE 15-36-100 because the negligent acts and omissions with reasonable deductible inference from the AFFIDAVITS stated facts of Tridents negligent acts and omission in diagnosis and treatment which can be inferred from THE REGIONAL MEDICAL CENTER, HOSPITALIST statements in the medical records. Therefore, the AFFIDAVITS are admissible under S.C. STATUTE 15-36-100 because Trident's HOSPITALIST negligent conduct could be judge by THE REGIONAL MEDICAL CENTER HOSPITALIST qualification and THE REGIONAL MEDICAL CENTER, RADIOLOGIST could judge the conduct of TRIDENT'S RADIOLOGIST under the same or similar circumstances and like condition the generally recognized and accepted practice and procedure of a reasonable prudent person in his/her profession. Alternatively, S.C. STATUTE 15-36-100(A)(3) would be met based on the the individual study, experience or both which may assist the trier of fact in understanding the evidence and determining a fact or issue in this case. Since, plaintiff has met all the requirements for the NOTICE OF INTENT and AFFIDAVITS and based on the pleading it cannot be said plaintiff is not entitle to relief under any theory. Therefore, dismissal was not warranted under the standard for dismissal under SCRCR Rule 12(b)(6). Plaintiff, motion for leave of the court to grant the relief from judgment under SCRCR Rule 59(e) and SCRCR Rule 60(b)(1) and (b)(3). Finally, dismissal was an error of law and also without factual or evidentiary support under the standard for dismissal. Plaintiff, was prejudiced by these errors because these critical evidence were excluded and goes to merit of Plaintiff theories for relief of the claims and dismissal with prejudice end the action not allowing amendment of complaint.

WHEREFORE, for the reasons stated above and in any Memoranda of Law in Support of this Motion, *Plaintiff Jim Washington, Pro Se*, respectfully moves the Court for entry of an Order *Denying dismissal of this action*, for costs expended herein including fees, and for any further relief which the Court deems appropriate.

This *27th* day of *Jan.*, 2016.

By:

Jim Washington
Jim Washington, Pro Se
209 Signet Drive
Eutawville, S.C. 29048
(803) 496-4655

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing document was duly served upon each party to this cause by depositing same in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the U.S. Postal Service, VIA **CERTIFIED MAIL RETURN RECEIPT REQUESTED**, properly addressed as follows:

This 27th day of Jan., 2016.

By: _____

Jim Washington

FILED
2016 JAN 27 AM 11:56
JULIE J. BRISTOL
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-10-5000

FILED

Jim Washington

Trident Medical Center

2016 JAN 14 AM 11:08

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

JULIE L. ARMSTRONG
CLERK OF COURT

Attorney for: ☐ Plaintiff ☐ Defendant
OR
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion to Dismiss, filed on 10/1615, is GRANTED; Formal order to follow.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2060

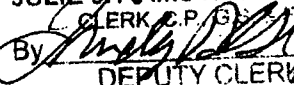
Judge Code

1/7/16

Date

For Clerk of Court Office Use ONLY

ATTEST: A TRUE COPY
JULIE L. ARMSTRONG (SEAL)
CLERK, C.P. & G.C.

By 
DEPUTY CLERK

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. MARKLEY DENNIS, Jr., Circuit Court Judge

Case No. 2015-CP-10-5000

Jim Washington,

Appellant,

V.

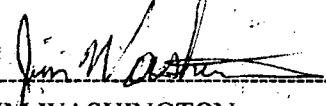
Trident Medical Center, LLC

Respondent.

NOTICE OF APPEAL

Jim Washington appeals the judgment of the Honorable R. MARKLEY DENNIS Jr. entered on February 5, 2016 and the underlying order signed on January 27, 2016 and entered by the Clerk of Court on February 5, 2016 and also the underlying FORM 4 judgment entered on January 14, 2016 by the Clerk of Court signed on January 7, 2016 by the Honorable R. MARKLEY DENNIS, Jr. .

March 4, 2016

s/ 

JIM WASHINGTON
209 SIGNET DRIVE
EUTAWVILLE, S. C. 29048
(803) 496-4655
Attorney for Appellant / Pro Se

David H. Batten
4141 PARKLAKE AVENUE, SUITE 350
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(919) 439-2221
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. MARKLEY DENNIS, Circuit Court Judge

Case No. 2015-CP-10-5000

Jim Washington,

Appellant,

V.

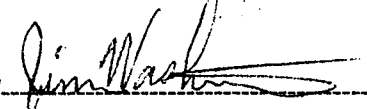
Trident Medical Center, LLC

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Trident Medical Center, LLC by depositing a copy of it in the United States Mail, postage prepaid, on March 4, 2016, addressed to it's attorney of record, David H. Batten, 4141 PARKLAKE AVENUE, SUITE 350, RALEIGH, N. C. 27612 on March 4, 2016.

March 4, 2016

s/ 
JIM WASHINGTON
209 SIGNET DRIVE
EUTAWVILLE, S. C. 29048
(803) 496-4655
Attorney for Appellant / Pro Se

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2015-CP-10-5000
Appellate Case No. 2016-000495

RECEIVED
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SC Court of Appeals

Jim Washington, ... Appellant.

v.

Trident Medical Center, LLC, ... Respondent.

Initial Brief of Respondent

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Michael J. Anzelmo
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Post Office Box 11070
Columbia, South Carolina 29211-1070

David H. Batten
Batten Lee, PLLC
4141 Parklake Avenue, Suite 350
Raleigh, North Carolina 27612

Attorneys for Respondent Trident Medical Center, LLC

TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal	1
Statement of the Case and Facts	2
Standard of Review	3
Argument	3
I. The circuit court correctly dismissed the complaint because Washington failed to file a pre-litigation Notice of Intent to File Suit prior to filing his complaint.	5
II. The circuit court also correctly dismissed the complaint because Washington did not comply with the pre-litigation affidavit requirements.	6
III. This Court should also affirm because Washington failed to initiate the required pre-suit mediation.	9
Conclusion.....	10

TABLE OF AUTHORITIES

	Page(s)
 Cases	
<u>Buist v. Huggins</u> , 367 S.C. 268, 625 S.E.2d 636 (2006)	4
<u>CFRE, LLC v. Greenville Cnty. Assessor</u> , 395 S.C. 67, 716 S.E.2d 877 (2011)	6
<u>Cole Vision Corp. v. Hobbs</u> , 394 S.C. 144, 714 S.E.2d 537 (2011)	3
<u>D.R. Horton, Inc. v. Wescott Land Co., LLC</u> , 398 S.C. 528, 730 S.E.2d 340 (Ct. App. 2012)	9
<u>Dawkins v. Union Hosp. Dist.</u> , 408 S.C. 71, 758 S.E.2d 501 (2014)	8
<u>Doe v. Marion</u> , 373 S.C. 390, 645 S.E.2d 245 (2007)	3
<u>Gordon v. Phillips Utils., Inc.</u> , 362 S.C. 403, 608 S.E.2d 425 (2005)	4
<u>Ranucci v. Crain</u> , 409 S.C. 493, 763 S.E.2d 189 (2014)	5, 7
<u>State v. Corey D.</u> , 339 S.C. 107, 529 S.E.2d 20 (2000)	4
<u>Steinke v. S. Carolina Dep't of Labor, Licensing & Regulation</u> , 336 S.C. 373, 520 S.E.2d 142 (1999)	6
 Rules	
South Carolina Rules of Civil Procedure Rule 12(b)(6)	3
South Carolina Rules of Civil Procedure Rule 220(c)	10
 Statutes	
South Carolina Code Ann. § 15-36-100(B)	6
South Carolina Code Ann. § 15-36-100(C)(1)	7
South Carolina Code Ann. § 15-79-125(A)	3, 4, 5, 6
South Carolina Code. Ann. § 15-79-125(C)	6, 10
South Carolina Code Ann. § 15-79-125(E)	6
South Carolina Code § 15-36-100	2, 3, 6

South Carolina Code § 15-36-100(C).....	7
South Carolina Code § 15-36-100(C)(2)	8
South Carolina Code § 15-79-125.....	2, 3, 7, 9
South Carolina Code § 15-79-125(A).....	2, 7

Statement of Issues on Appeal

- I. The circuit court correctly dismissed the complaint because Washington failed to file a pre-litigation Notice of Intent to File Suit prior to filing his complaint.
- II. The circuit court also correctly dismissed the complaint because Washington did not comply with the pre-litigation affidavit requirements.
- III. This Court should also affirm because Washington failed to initiate the required pre-suit mediation.

Statement of the Case and Facts¹

In this medical malpractice action, Appellant Jim Washington ("Washington") appeals the order granting the motion to dismiss of Respondent Trident Medical Center, LLC ("Trident") based on Washington's failure to comply with the pre-suit requirements mandated by Sections 15-79-125 and 15-36-100 of the South Carolina Code. {Order granting Motion to Dismiss, R. ____}. Washington filed a complaint alleging medical malpractice against Trident pursuant to Sections 15-79-125 and 15-36-100. {Complaint dated September 11, 2015, R. ____}. Trident moved to dismiss the complaint because Washington (1) failed to file the pre-suit Notice of Intent to File Suit ("Notice of Intent") required by Section 15-7-125(A) and (2) did not submit an expert witness affidavit to testify that Trident violated any applicable standard of care. {Motion to Dismiss, R. ____}.

After a hearing, the circuit court granted the motion to dismiss and noted that a formal order would follow. {Form 4 Order, R. ____}. Washington filed a motion to reconsider the Form 4 order. {Motion to Reconsider, R. ____}. Thereafter, the circuit court confirmed dismissal of the complaint because Washington failed to comply with the pre-suit requirements necessary to maintain a medical malpractice action. {Order granting Motion to Dismiss, R. ____}. The circuit court dismissed the action because Washington did not file a Notice of Intent

¹ Trident combines the statement of the case and statement of the facts for ease of reference and to eliminate repetition in this appeal from the granting of a motion to dismiss the complaint.

prior to filing the complaint and because he did not submit the required expert affidavit. {Order granting Motion to Dismiss, R. ____}. This appeal followed. {Notice of Appeal, R. ____}.²

Standard of Review

The appellate court applies the same standard of review as the circuit court in reviewing the dismissal of an action pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). "The question is whether, in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Cole Vision Corp. v. Hobbs, 394 S.C. 144, 149, 714 S.E.2d 537, 539 (2011).

Argument

By initiating a medical malpractice action prior to filing a Notice of Intent to File Suit and an expert affidavit, Washington failed to comply with the mandatory pre-suit requirements imposed by Section 15-79-125(A). Thus, the circuit court properly granted Trident's motion to dismiss.

Section 15-79-125 of the South Carolina Code, titled in pertinent part as "Notice of Intent to File Suit as prerequisite to filing action . . ." controls the requirements necessary prior to the initiation of a medical malpractice action and provides:

Prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100, in a county in which venue would be proper for filing or initiating the civil action.

² Any facts or statements in this brief are taken from the allegations of the complaint for purposes of the appeal of the granting of Trident's motion to dismiss. As such, such usage should not be construed as an admission by Trident of the veracity of those allegations.

prior to filing the complaint and because he did not submit the required expert affidavit. {Order granting Motion to Dismiss, R. ____}. This appeal followed. {Notice of Appeal, R. ____}.²

Standard of Review

The appellate court applies the same standard of review as the circuit court in reviewing the dismissal of an action pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). "The question is whether, in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Cole Vision Corp. v. Hobbs, 394 S.C. 144, 149, 714 S.E.2d 537, 539 (2011).

Argument

By initiating a medical malpractice action prior to filing a Notice of Intent to File Suit and an expert affidavit, Washington failed to comply with the mandatory pre-suit requirements imposed by Section 15-79-125(A). Thus, the circuit court properly granted Trident's motion to dismiss.

Section 15-79-125 of the South Carolina Code, titled in pertinent part as "Notice of Intent to File Suit as prerequisite to filing action . . ." controls the requirements necessary prior to the initiation of a medical malpractice action and provides:

Prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100, in a county in which venue would be proper for filing or initiating the civil action.

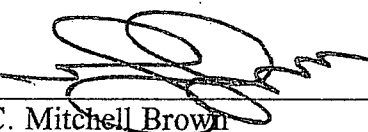
² Any facts or statements in this brief are taken from the allegations of the complaint for purposes of the appeal of the granting of Trident's motion to dismiss. As such, such usage should not be construed as an admission by Trident of the veracity of those allegations.

S.C. Code Ann. § 15-79-125(C). Washington did not participate in a mediation conference within the deadline imposed by the statute. Thus, this Court can affirm the dismissal of the complaint on that basis alone. See Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal").

Conclusion

Based on the foregoing, this Court should affirm the order granting Trident's motion to dismiss.

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Attorneys for Trident Medical Center, LLC

Columbia, South Carolina

August 1, 2016

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APR 23 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. MARKLEY DENNIS, Jr., Circuit Court Judge

Case No. 2018-000489

Jim Washington, ... Petitioner,

v.

Trident Medical Center, LLC, ... Respondent.

RESPONDENT'S RETURN IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

C. Mitchell Brown
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Raleigh, North Carolina 27612

Attorneys for Respondent Trident Medical Center, LLC

INTRODUCTION

In *Washington v. Trident Medical Center, LLC*, Op. No. 2018-UP-006 (S.C. Ct. App. filed Jan. 10, 2018), the South Carolina Court of Appeals correctly affirmed the circuit court's order dismissing this action. In the order, the circuit court granted Respondent's Motion to Dismiss for failure to comply with the presuit requirements for medical malpractice actions detailed in Section 15-79-125(a) of the South Carolina Code. The trial court properly dismissed the action in light of Petitioner's: (1) failure to file a Notice of Intent to File Suit pursuant to S.C. Code Ann. § 15-79-125(A); and (2) failure to file an expert witness affidavit specifying at least one negligent act or omission claimed to exist pursuant to S.C. Code Ann. § 15-79-125(A) and S.C. Code Ann. § 15-30-100(B). The trial court also correctly found that this medical malpractice action did not qualify for the "common knowledge" exception to the expert witness affidavit requirement pursuant to S.C. Code Ann. § 15-79-100(C)(2) and that Plaintiff was not subject to the protections afforded by the "safe harbor" provisions of S.C. Code Ann. § 15-79-100(C)(1).

Petitioner Jim Washington ("Petitioner") now petitions this Court for certiorari. As shown herein, none of the factors in Rule 242(b), SCACR exist to justify the issuance of the writ. There is no novel question of law, dissenting opinion in the Court of Appeals, conflict with this Court's precedent, constitutional issue, or conflict with the United States Supreme Court on any question of federal law. Petitioner merely reiterates arguments made to and rejected by the Court of Appeals both in its initial Order and its Order denying rehearing without identifying any issues warranting certiorari. The petition should be denied.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY¹

Petitioner initiated this action by filing a complaint alleging medical malpractice against Respondent Trident Medical Center ("Respondent") pursuant to Sections 17-79-125 and 15-36-100 of the South Carolina Code. (App. 229-30.)² Respondent moved to dismiss the complaint because Washington: (1) failed to file the pre-suit Notice of Intent to File Suit ("Notice of Intent") required by Section 15-7-125(A) and (2) did not submit an expert witness affidavit stating that Trident violated any applicable standard of care as required by Sections 15-79-125(A) and 15-30-100(B). (App. 18-22, 62-71.)

After a hearing, the trial court granted Respondent's motion to dismiss via Form 4 Order and noted that a formal order would follow. (App. 9.) Petitioner filed a motion to reconsider the Form 4 Order. The trial court, however, confirmed dismissal in its formal order, again finding that Petitioner failed to comply with the necessary pre-suit requirements for a medical malpractice action. (App. 4-8.)

This appeal followed. The issues raised by Petitioner were fully briefed before the Court of Appeals. The Court of Appeals determined that oral argument would not aid it in resolving the issues, and issued its well-reasoned Opinion affirming the trial court. (App. 229-30.) Petitioner then filed a petition for rehearing, which the court also denied in a well-reasoned Order. (App. 230.) The Court of Appeals explained that Petitioner failed to identify any material fact or

¹ Any facts or statements in this brief are taken from the allegations of the complaint for purposes of the appeal of the granting of Respondent's motion to dismiss. As such, such usage should not be construed as an admission by Respondent of the veracity of those allegations.

² The Appendix filed by Petitioner did not include consecutive pagination. Therefore, Respondent's page number references are to the pages of the PDF of the Appendix available on C-Track.

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Attorneys for Trident Medical Center

Columbia, South Carolina

April 23, 2018

WHOSE Records to be Disclosed

NAME (First, Middle, Last)

JIM Washington

SSN

Birthdate
(mm/dd/yyyy)Form Approved
OMB No. 0900-0023

AUTHORIZATION TO DISCLOSE INFORMATION TO THE SOCIAL SECURITY ADMINISTRATION (SSA)

" PLEASE READ THE ENTIRE FORM, BOTH PAGES, BEFORE SIGNING BELOW "

I voluntarily authorize and request disclosure (including paper, oral, and electronic interchange):

OF WHAT: All my medical records, also education records and other information related to my ability to perform tasks. This includes specific permission to release:

- All records and other information regarding my treatment, hospitalization, and outpatient care for my impairment(s) including, and not limited to:
 - Psychological, psychiatric or other mental impairment(s) (exclusion "psychotherapy notes" as defined in 45 CFR 164.501)
 - Drug abuse, alcoholism, or other substance abuse
 - Stickle cell anemia
 - Records which may indicate the presence of a communicable or noncommunicable disease; and tests for or records of HIV/AIDS
 - Gene-related impairments (including genetic test results)
- Information about how my impairment(s) affects my ability to complete tasks and activities of daily living, and affects my ability to work.
- Copies of educational tests or evaluations, including individualized Educational Programs, triennial assessments, psychological and speech evaluations, and any other records that can help evaluate function; also teachers' observations and evaluations.
- Information created within 12 months after the date this authorization is signed, as well as past information.

FROM WHOM

- All medical sources (hospitals, clinics, labs, physicians, psychologists, etc.) including mental health, correctional, addiction treatment, and VA health care facilities
- All educational sources (schools, teachers, records administrators, counselors, etc.)
- Social workers/rehabilitation counselors
- Consulting examiners used by SSA
- Employers, insurance companies, workers' compensation programs
- Others who may know about my condition (family, neighbors, friends, public officials)

THIS BOX TO BE COMPLETED BY SSA/DOS (as needed) Additional information to identify the subject (e.g., other names used), the specific source, or the material to be disclosed:

REGIONAL MED CTR-ORRURG/CALHOUN
3000 ST MATTHEWS ROAD
ORRURG SC 29115

From 09/01/11 to present

TO WHOM

The Social Security Administration and to the State agency authorized to process my case (usually called "disability determination services"), including contract copy services, and doctors or other professionals consulted during the process. (Also, for international claims, to the U.S. Department of State Foreign Service Post.)

PURPOSE

Determining my eligibility for benefits, including looking at the combined effect of any impairments that by themselves would not meet SSA's definition of disability; and whether I can manage such benefits.

☐ Determining whether I am capable of managing benefits ONLY (check only if this applies)

EXPIRES WHEN

This authorization is good for 12 months from the date signed (below my signature).

- I authorize the use of a copy (including electronic copy) of this form for the disclosure of the information described above.
- I understand that there are some circumstances in which this information may be redisclosed to other parties (see page 2 for details).
- I may write to SSA and my source to revoke this authorization at any time (see page 2 for details).
- SSA will give me a copy of this form if I ask; I may ask the source to allow me to inspect or get a copy of material to be disclosed.
- I have read both pages of this form and agree to the disclosures above from the types of sources listed.

PLEASE SIGN USING BLUE OR BLACK INK ONLY

INDIVIDUAL authorizing disclosure

SIGN

Date Signed

10/25/12

Street Address

Phone Number (with area code)

City

State

ZIP

IF not signed by subject of disclosure, specify basis for authority to sign

☐ Parent of minor ☐ Guardian ☐ Other personal representative (explain)

(Parent/guardian/personal representative sign here if two signatures required by State law)

WITNESS

I know the person signing this form or am satisfied of this person's identity:

SIGN

Phone Number (or Address)

F0594

IF needed, second witness sign here (e.g., if signed with 'X' above)

SIGN

Phone Number (or Address)

This general and special authorization to disclose was developed to comply with the provisions regarding disclosure of medical, educational, and other information under P.L. 104-191 ("HIPAA"); 45 CFR parts 160 and 164; 42 U.S. Code section 260dd-2; 42 CFR part 2; 38 U.S. Code section 7332; 38 CFR 1.475; 20 U.S. Code section 1232g ("FERPA"); 34 CFR parts 69 and 300; and State law.

Form SSA-827 (4-2008) of (04-2008) Use 2-2003 and Later Editions Until Supply is Exhausted

Page 1 of 2

TOTAL P.002

Explanation of Form SSA-827,**"Authorization to Disclose Information to the Social Security Administration (SSA)"**

We need your written authorization to help get the information required to process your claim, and to determine your capability of managing benefits. Laws and regulations require that sources of personal information have a signed authorization before releasing it to us. Also, laws require specific authorization for the release of information about certain conditions and from educational sources.

You can provide this authorization by signing a form SSA-827. Federal law permits sources with information about you to release that information if you sign a single authorization to release all your information from all your possible sources. We will make copies of it for each source. A covered entity (that is, a source of medical information about you) may not condition treatment, payment, enrollment, or eligibility for benefits on whether you sign this authorization form. A few States, and some individual sources of information, require that the authorization specifically name the source that you authorize to release personal information. In those cases, we may ask you to sign one authorization for each source and we may contact you again if we need you to sign more authorizations.

You have the right to revoke this authorization at any time, except to the extent a source of information has already relied on it to take an action. To revoke, send a written statement to any Social Security Office. If you do, also send a copy directly to any of your sources that you no longer wish to disclose information about you; SSA can tell you if we identified any sources you didn't tell us about. SSA may use information disclosed prior to revocation to decide your claim.

It is SSA's policy to provide service to people with limited English proficiency in their native language or preferred mode of communication consistent with Executive Order 13166 (August 11, 2000) and the Individuals with Disabilities Education Act. SSA makes every reasonable effort to ensure that the information in the SSA-827 is provided to you in your native or preferred language.

IMPORTANT INFORMATION, INCLUDING NOTICE REQUIRED BY THE PRIVACY ACT

All personal information collected by SSA is protected by the Privacy Act of 1974. Once medical information is disclosed to SSA, it is no longer protected by the health information privacy provisions of 45 CFR part 164 (mandated by the Health Insurance Portability and Accountability Act (HIPAA)). SSA retains personal information in strict adherence to the retention schedules established and maintained in conjunction with the National Archives and Records Administration. At the end of a record's useful life cycle, it is destroyed in accordance with the privacy provisions, as specified in 36 CFR part 1228.

SSA is authorized to collect the information on form SSA-827 by sections 205(a), 223(d)(5)(A), 1614(a)(3)(H)(i), 1631(d)(1) and 1631(e)(1)(A) of the Social Security Act. We use the information obtained with this form to determine your eligibility, or continuing eligibility, for benefits, and your ability to manage any benefits received. This use usually includes review of the information by the State agency processing your case and quality control people in SSA. In some cases, your information may also be reviewed by SSA personnel that process your appeal of a decision, or by investigators to resolve allegations of fraud or abuse, and may be used in any related administrative, civil, or criminal proceedings.

Signing this form is voluntary, but failing to sign it, or revoking it before we receive necessary information, could prevent an accurate or timely decision on your claim, and could result in denial or loss of benefits. Although the information we obtain with this form is almost never used for any purpose other than those stated above, the information may be disclosed by SSA without your consent if authorized by Federal laws such as the Privacy Act and the Social Security Act. For example, SSA may disclose information:

1. To enable a third party (e.g., consulting physicians) or other government agency to assist SSA to establish rights to Social Security benefits and/or coverage;
2. Pursuant to law authorizing the release of information from Social Security records (e.g., to the Inspector General, to Federal or State benefit agencies or auditors, or to the Department of Veterans Affairs (VA));
3. For statistical research and audit activities necessary to ensure the integrity and improvement of the Social Security programs (e.g., to the Bureau of the Census and private concerns under contract with SSA).

SSA will not redisclose without proper prior written consent information: (1) relating to alcohol and/or drug abuse as covered in 42 CFR part 2, or (2) from educational records for a minor obtained under 34 CFR part 99 (Family Educational Rights and Privacy Act (FERPA)), or (3) regarding mental health, developmental disability, AIDS or HIV.

We may also use the information you give us when we match records by computer. Matching programs compare our records with those of other Federal, State, or local government agencies. Many agencies may use matching programs to find or prove that a person qualifies for benefits paid by the Federal government. The law allows us to do this even if you do not agree to it.

Explanations about possible reasons why information you provide us may be used or given out are available upon request from any Social Security Office.

PAPERWORK REDUCTION ACT

This information collection meets the requirements of 44 U.S.C. § 3507, as amended by Section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget control number. We estimate that it will take about 10 minutes to read the instructions, gather the facts, and answer the questions. **SEND OR BRING IN THE COMPLETED FORM TO YOUR LOCAL SOCIAL SECURITY OFFICE.** The office is listed under U. S. Government agencies in your telephone directory or you may call Social Security at 1-800-772-1213. You may send comments on our time estimate above to: SSA, 6401 Security Blvd., Baltimore, MD 21235-6401. Send only comments relating to our time estimate to this address, not the completed form.

7/11/12

The Regional Medical Center
3000 St. Matthews Road
Orangeburg, SC 29115

DISCHARGE SUMMARY

PATIENT: Washington, Jimmie ROOM #: 3E 33451
MEDICAL RECORD #: 0000104270
DATE OF BIRTH: 10/14/1953
ADMISSION #: 1000602689
DICT PHYSICIAN: M.K. Greene, M.D.
ADMIT PHYSICIAN: B.S. Khokhar, M.D.
ADMITTED: 09/30/2012
DISCHARGED: 10/01/2012

DD: 10/02/2012 DT: 4:22 P TD: 10/05/2012 TT: 11:44 A

Regional Medical Center
Orangeburg, South Carolina

DISCHARGE SUMMARY

PRIMARY CARE PHYSICIAN: Family Health Center in St. Matthews.

Please see Dr. Khokhar's history and physical for full details regarding the admission history and physical.

HISTORY OF PRESENT ILLNESS: Briefly, the patient is a 58 year-old African American male who presented to the Regional Medical Center emergency room with a one day history of right-sided weakness. The patient reports that he work up and noticed that the right side of his body was difficult to move. He reports that his symptoms were similar to a stroke he had 1-1/2 weeks prior to admission when he was discharged from Trident Hospital with the diagnosis of CVA three days prior. The patient reported that he did not take medications as prescribed after discharge because he did not get them right away.

LABORATORY AND IMAGING DATA: On admission head CT showed no acute process. Creatinine 0.8, glucose 129, white blood cell count 10.5, hemoglobin 16.

HOSPITAL COURSE:

1. Acute cerebrovascular accident with brain infarction. The patient was admitted to telemetry on hospital day #1 which was the day of discharge. I was called by the nurse around 10 a.m. stating that the patient wanted to go home. I convinced the patient to stay for the MRI of his

DISCHARGE SUMMARY

PATIENT: Washington, Jimmie
MEDICAL RECORD #: 0000104270
ADMISSION #: 1000602689
PHYSICIAN: B.S. Khokhar, M.D.

brain which he did undergo but the patient did not want to stay for the results and therefore I obliged the patient and discharged him to home. I informed the patient that I would follow-up the results of the MRI. After reading the MRI last night, the radiologist called Dr. Khokhar and informed Dr. Khokhar that the patient had multiple foci of restricted diffusion in the left parietal lobe with evidence of hemosiderin deposition suggesting prior cortical hemorrhage of uncertain chronicity. Given the multifocality it was suggested that the acute cerebrovascular accident was due to a cardioembolic phenomenon. In addition there were additional areas of chronic ischemic changes in the left occipital lobe. Today, I called the patient at home instructing him of the likely source of his CVA was cardioembolic and that he needed to come back to the hospital to be placed on anticoagulation. The patient reported to me that today is not a good day as he had errands to do. He states that he was willing to come back tomorrow for anticoagulation. Of note we did receive documentation from Trident which showed a small acute stroke but no evidence of a cardioembolic source on MRI then or during his work-up.

2. Hypertension.
3. Dyslipidemia.
4. Nicotine dependence. The patient reported that he quit smoking with the stroke approximately 1-1/2 weeks ago.

FINAL DISCHARGE DIAGNOSIS:

1. Acute cerebrovascular accident with brain infarction likely cardioembolic source.
2. Hypertension.
3. Dyslipidemia.
4. History of nicotine abuse.
5. Old cortical hemorrhage of uncertain chronicity.

DISCHARGE SUMMARY

PATIENT: Washington, Jimmie
MEDICAL RECORD #: 0000104270
ADMISSION #: 1000602689
PHYSICIAN: B.S. Khokhar, M.D.

M.K. Greene, M.D.

000516286:cd

cc: St. Matthews FHC Center
M.K. Greene, M.D.

DISCHARGE SUMMARY

000104270

PATIENT: Washington, Jimmie
MEDICAL RECORD #: 0000104270
ADMISSION #: 1000602689
PHYSICIAN: B.S. Khokhar, M.D.

M.K. Greene, M.D.

000516286:cd

cc: St. Matthews FHC Center
M.K. Greene, M.D.

PATIENT: PRINTED BY: OS92361 DATE 10/11/2012 ROOM #:
Washington, Jimmie
MEDICAL RECORD #: 0000104270
ADMISSION #: 1000605553
DATE OF BIRTH: 03/12/1954
DICT PHYSICIAN: M.K. Greene, M.D.
ADMITTED: 10/03/2012

DD: 10/03/2012 DT: 5:34 P TD: 10/03/2012 TT: 5:48 P

Regional Medical Center
Orangeburg, South Carolina

HISTORY AND PHYSICAL EXAMINATION

PRIMARY CARE PHYSICIAN: Family Health Center - St. Matthews

HISTORY OF PRESENT ILLNESS: The patient is a 58-year-old, African American male that I discharged on 10/01/2012. The patient presented to the Regional Medical Center emergency room the day before with right-sided symptoms consistent with an acute stroke. The patient actually presented to Trident about a week and a half ago with similar symptoms where he was admitted. He had a workup which showed a small stroke. Carotid Dopplers and echocardiogram were normal. On 10/01/2012 before the patient got his MRI of the brain he wanted to leave. As I got a call by the patient's nurse, Hillary, at 10:00, I convinced the patient to stay for the MRI. After the MRI was done, the patient wanted to leave even though the results were not back as his symptoms had resolved and I reluctantly agreed to let the patient go.

The next day I reviewed the MRI results which showed multiple small foci of restricted diffusion in the high left parietal lobe and evidence of hemosiderin deposition suggesting prior cortical hemorrhage of uncertain chronicity. It was noted that given the multifocality the appearance was suggestive of an embolic phenomenon. In addition, there were areas of chronic ischemic changes in the left occipital lobe. Because of these findings, I called the patient at home yesterday requesting him to come back to the hospital regarding the need for possible anticoagulation given the possibility of embolic stroke. The patient reported that he had a lot of business to take care of and that he would come back today. Again, I called the patient at home today and he obliged and came back to the hospital for admission.

REVIEW OF SYSTEMS: The patient reports that he still has some right lower extremity residual weakness. Otherwise, review of systems is negative.

PAST MEDICAL HISTORY: Hypertension, recent CVA as above, hypercholesterolemia.

ALLERGIES: NO KNOWN DRUG ALLERGIES.

MEDICATIONS:

1. Aspirin 325 milligrams daily.
2. Norvasc 10 milligrams daily.
3. Pravastatin 20 milligrams at bedtime.

FAMILY HISTORY: PRINTED BY: OS92361 DATE 10/11/2012
Noncontributory.

SOCIAL HISTORY: The patient reports he quit smoking after his most recent stroke. There is no history of alcohol or illicit drug use.

PHYSICAL EXAMINATION:

GENERAL APPEARANCE: In general, the patient is awake, alert, conversant, in no apparent distress, sitting up on the edge of the bed.

VITAL SIGNS: Temperature 36.4, heart rate 54, respiratory rate 20, blood pressure 137/74. Oxygen saturation 99% on room air.

HEENT: Normocephalic, atraumatic. Sclerae are anicteric. Oropharynx is clear with moist mucous membranes.

Neck: No lymphadenopathy, no JVD, no thyromegaly, no carotid bruits.

Lungs: Clear to auscultation bilaterally. There is no increased work of breathing.

Cardiovascular exam: Normal S1 and S2 without murmurs, rubs or gallops.

Abdomen: Thin, soft, nontender, nondistended. There are normoactive bowel sounds.

Extremities: No edema.

ASSESSMENT AND PLAN: A 58-year-old, African American male presenting with embolic CVA with brain infarction.

1. Embolic CVA with brain infarction. The patient is placed in telemetry. Neurology has been consulted. I did order a Heparin drip per Neurology protocol for anticoagulation given the possibility of embolic CVA. In addition, the patient is being continued on his statin. Neuro checks every four hours. PT/OT. Further recommendations to follow.
2. Hypertension.
3. Dyslipidemia.
4. Recent tobacco cessation.

M.K. Greene, M.D.

000516661:ab

cc: M.K. Greene, M.D.

Discharge Summary-Physician

Washington, Jimmie - 0000104270

* Final Report *

* Final Report *

Discharge Summary

Patient: Washington, Jimmie MRN: 0000104270 FIN: 1000605553
 Age: 58 years Sex: Male DOB:
 Associated Diagnoses: None
 Author: Ludington MD, Sarah Anne

Admitting Physician: Michael Green
 Discharging Physician: Sarah Ludington

Date of Admission: 10/3/2012
 Date of Discharge: 10/8/2012

Diagnosis on Admission:

- 1.) Cardioembolic stroke
- 2.) HTN
- 3.) HLD

Diagnosis on Discharge:

- 1.) Cardioembolic Stroke
- 2.) Intra-atrial thrombus
- 3.) HLD

Results Review

WBC	7.0	(OCT 06)	7.5	(OCT 03)	
Hgb	15.4	(OCT 06)	15.2	(OCT 03)	
Hct	43.0	(OCT 06)	43.3	(OCT 03)	
Plt	H 404	(OCT 07)	376	(OCT 06)	348 (OCT 04) H 407
(OCT 03)					
Na	137	(OCT 06)	139	(OCT 04)	
K	4.2	(OCT 06)	4.2	(OCT 04)	
Cl	103	(OCT 06)	105	(OCT 04)	
Cr	0.9	(OCT 06)	0.9	(OCT 04)	
BUN	17	(OCT 06)	15	(OCT 04)	

Result type: Discharge Summary-Physician
 Result date: 08 October 2012 7:46 EDT
 Result status: Auth (Verified)
 Result title: Discharge Summary
 Performed by: Ludington MD, Sarah Anne on 08 October 2012 7:49 EDT
 Verified by: Ludington MD, Sarah Anne on 08 October 2012 12:19 EDT
 Encounter info: 1000605553, RMC, Inpatient, 10/03/2012 - 10/08/2012

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113

Page 1 of 5
 (Continued)

Exhibit-1

Discharge Summary-Physician

Washington, Jimmie - 0000104270

* Final Report *

Glucose	98	(OCT 06)	93	(OCT 04)		
Ca	9.2	(OCT 06)	L 9.0	(OCT 04)		
PT	18.9	(OCT 07)	14.7	(OCT 06)	12.9	(OCT 05) 13.4
(OCT 04)						
INR	H 1.75	(OCT 07)	H 1.44	(OCT 06)	1.20	(OCT 05) 1.25
(OCT 04)						
PTT	H 39.1					
(OCT 07)	H 61.9	(OCT 06)	H 74.3			
(OCT 06)	H 38.7	(OCT 06)				

INR: 2 on 10/8

MRI:

IMPRESSION:

- Multiple small foci of restricted diffusion in the high left parietal lobe with evidence of hemosiderin deposition suggesting prior cortical hemorrhage of uncertain chronicity. Given the multifocality the appearance is suggestive of an embolic phenomenon. Additional areas of chronic ischemic changes are seen in the left occipital lobe.
- Normal circle of Willis MRA.

Physical Examination VS/Measurements

Vitals Signs (last 24 hrs)	Last Charted	Minimum	Maximum	
Temp	35.6 (OCT 08 00:26)	35.6 (OCT 08 00:26)	L 35.5	(OCT 07 11:11)
Heart Rate	L 58 (OCT 08 00:26)	L 52 (OCT 07 11:11)	68	(OCT 07 15:44)
Resp Rate	20 (OCT 07 15:44)	20 (OCT 07 11:11)	20	(OCT 07 11:11)
SBP	H 145 (OCT 08 00:26)	127 (OCT 07 19:05)	H 145	(OCT 08 00:26)
DBP	75 (OCT 08 00:26)	64 (OCT 07 19:05)	75	(OCT 08 00:26)

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114

Page 2 of 5
 (Continued)

Exhibit-2

* Final Report *

SpO2 100 (OCT 08 00:26) 98 (OCT 07 11:11) 100 (OCT 08 00:26)

General: Alert and oriented, No acute distress.

Eye: Pupils are equal, round and reactive to light.

HENT: Normocephalic.

Neck: Supple, Non-tender, No carotid bruit.

Respiratory: Lungs are clear to auscultation, Respirations are non-labored, Symmetrical chest wall expansion.

Cardiovascular: Normal rate, Regular rhythm, No murmur, Good pulses equal in all extremities.

Gastrointestinal: Soft, Non-tender, Non-distended, Normal bowel sounds, No organomegaly.

Musculoskeletal

Normal range of motion. Normal strength. No swelling.

Neurologic: Alert, Oriented, Normal deep tendon reflexes.

Psychiatric: Appropriate mood & affect.

Hospital Course

HPI (as taken from H&P)

HISTORY OF PRESENT ILLNESS: The patient is a 58-year-old, African American male that I discharged on 10/01/2012. The patient presented to the Regional Medical Center emergency room the day before with right-sided symptoms consistent with an acute stroke. The patient actually presented to Trident about a week and a half ago with similar symptoms where he was admitted. He had a workup which showed a small stroke. Carotid Dopplers and echocardiogram were normal. On 10/01/2012 before the patient got his MRI of the brain he wanted to leave. As I got a call by the patient's nurse, Hillary, at 10:00, I convinced the patient to stay for the MRI. After the MRI was done, the patient wanted to leave even though the results were not back as his symptoms had resolved and I reluctantly agreed to let the patient go.

The next day I reviewed the MRI results which showed multiple small foci of restricted diffusion in the high left parietal lobe and evidence of hemosiderin deposition suggesting prior cortical hemorrhage of uncertain chronicity. It was noted that given the multifocality the appearance was suggestive of an embolic phenomenon. In addition, there were areas of chronic ischemic changes in the left occipital lobe. Because of these

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Printed by: Shivers, Oneather
Printed on: 11/28/2012 11:54 EST

115

Page 3 of 5
(Continued)

Exhibit-3

* Final Report *

findings, I called the patient at home yesterday requesting him to come back to the hospital regarding the need for possible anticoagulation given the possibility of embolic stroke. The patient reported that he had a lot of business to take care of and that he would come back today. Again, I called the patient at home today and he obliged and came back to the hospital for admission.

REVIEW OF SYSTEMS: The patient reports that he still has some right lower extremity residual weakness. Otherwise, review of systems is negative.

PAST MEDICAL HISTORY: Hypertension, recent CVA as above, hypercholesterolemia.

Hospital Course:

Patient admitted and atrial thrombus detected on TEE. Was placed on heparin gtt to transition to coumadin.

Discharge Plan

Condition on DC: stable

Activity: as tolerated

Follow Up: INR in 2 days with adjustments made by PCP; needs follow up with PCP in 1-2 weeks.

Discharge Medications:

amlodipine 10mg Daily

ASA 81mg Daily

Pravastatin 20mg Daily

Warfarin 5mg Daily

Sarah Ludington MD

Completed Action List:

- * Perform by Ludington MD, Sarah Anne on 08 October 2012 7:49 EDT
- * Modify by Ludington MD, Sarah Anne on 08 October 2012 9:33 EDT
- * Modify by Ludington MD, Sarah Anne on 08 October 2012 12:19 EDT
- * Sign by Ludington MD, Sarah Anne on 08 October 2012 12:19 EDT
- * VERIFY by Ludington MD, Sarah Anne on 08 October 2012 12:19 EDT

Result type: Discharge Summary-Physician
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Page 4 of 5
(Continued)

116

Exhibit-4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-10-5000

JIM WASHINGTON,

Plaintiff,

v.

TRIDENT MEDICAL CENTER,

Defendant.

MOTION TO DISMISS

TO: Jim Washington
209 Signet Drive
Eutawville, SC 29048
VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

You will please take notice that the Defendant Trident Medical Center (correct corporate name "Trident Medical Center, LLC")(hereinafter "Trident"), by and through its undersigned counsel, respectfully moves the Court to dismiss the above-referenced action pursuant to S.C. Code Ann. §§ 15-79-125, 15-36-100, as well as Rules 12(b)(1), 12(b)(6), and 12(c) of the South Carolina Rules of Civil Procedure.

The basis of said motion is that the Plaintiff in this alleged medical malpractice action failed to file a Notice of Intent to File Suit ("NOI") and an accompanying expert witness affidavit. By statute and by case law, such an omission by the Plaintiff and failure to file an NOI requires dismissal of the present action as well as the accompanying documents. This matter should also be dismissed because the Plaintiff has failed to support a claim upon which relief can be granted and the requisite statute of limitations has expired.

FILED
2015 OCT 16 PM 12:04
CLERK OF COURT
BY J. ARHSTRONG

WHEREFORE, for the reasons stated above and in any Memoranda of Law in Support of this Motion, Defendant Trident Medical Center, LLC respectfully moves the Court for entry of an Order dismissing this action with prejudice, for costs expended herein including attorney's fees, and for any further relief which the Court deems appropriate.

This 14th day of October, 2015.

BATTEN LEE PLLC

By: 

David H. Batten (SC Bar No. 74531)
Randolph L. Lee (SC Bar No. 74532)
William H. Harkins, Jr. (SC Bar No. 77651)
Attorneys for Defendant
4141 Parklake Avenue, Suite 350
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(919) 439-2221
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2015-CP-10-5000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing document was duly served upon each party to this cause by depositing same in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the U.S. Postal Service, VIA **CERTIFIED MAIL RETURN RECEIPT REQUESTED**, properly addressed as follows:

Jim Washington
209 Signet Drive
Eutawville, SC 29048

This 14th day of October, 2015.

BATTEN LEE PLLC

By: 

David H. Batten (SC Bar No. 74531)
Randolph L. Lee (SC Bar No. 74532)
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4812-6410-4489, v. 1

FILED
2015 OCT 16 PM 12:03
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-10-5000

JIM WASHINGTON,

Plaintiff,

v.

TRIDENT MEDICAL CENTER,

Defendant.

**MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO DISMISS**

FILED
2016 JAN -5 AM 11:57
JULIE J. ARMSTRONG
CLERK OF COURT
BY ap

TO: Jim Washington
209 Signet Drive
Eutawville, SC 29048
VIA FEDEX

NOW COMES the Defendant Trident Medical Center (correct corporate name "Trident Medical Center, LLC")(hereinafter "Defendant" or "Trident") and submits this Memorandum of Law in support of its Motion to Dismiss.

PROCEDURAL BACKGROUND

In this matter, the *pro se* Plaintiff Jim Washington filed a pleading styled as a "Complaint" on September 11, 2015 alleging medical negligence against Trident. *See* Summons and Complaint, attached hereto as Exhibit "A." Plaintiff's Civil Coversheet indicated, among other things, that this matter was filed as a medical malpractice action. *Id.* The Civil Coversheet was signed and dated by Plaintiff. *Id.* Both the Summons and Complaint were styled as "medical malpractice" pleadings, and Plaintiff indicated that these documents were being filed pursuant to S.C. Code §§ 15-79-125 and 15-36-100. *Id.*

Plaintiff's "Complaint" alleges that Plaintiff received medical treatment at Trident Medical Center between September 23-26, 2012 and that various health care providers were negligent in their respective treatment of Plaintiff. See Complaint, Exhibit "A." Plaintiff filed his "Complaint" on September 11, 2015, twelve (12) days before the three-year statute of limitations expired. *Id.*

Plaintiff never issued or filed the required pre-suit Notice of Intent to File Suit ("NOI") pursuant to S.C. Code § 15-79-125(A) and has yet to submit an affidavit from any qualified expert witness willing to testify that Trident breached any applicable standard of care. *Id.* Instead of filing the required expert affidavit, Plaintiff submitted to the Court as follows: "Verified Complaint Treated As a Affidavit of Expert Witness §§ 15-79-125(A) and 15-36-100." Trident submits that the pleadings filed by Plaintiff herein are defective for the total absence of the statutorily-required NOI and expert witness affidavit as a prerequisite to filing the instant medical malpractice action.

MEDICAL BACKGROUND

According to Plaintiff's "Complaint" herein, he alleges that on September 23, 2012 he suffered "stroke like symptoms" while at his home and was taken by private car to Trident for treatment. Physical exam revealed right-sided weakness, and various testing was performed at Trident, including carotid ultrasound and echocardiogram. Plaintiff was discharged from Trident on September 26, 2012 in stable condition with instructions and prescriptions for anticoagulation therapy in an effort prevent future blood clots.

Following discharge from Trident, it appears that Plaintiff first sought treatment on September 30, 2012 at The Regional Medical Center ("TRMC") in Orangeburg, South Carolina. By way of history, Plaintiff self-reported that upon discharge from Trident "he did not take

medications as prescribed . . . because he did not get them right away.” See Exhibit “A.” On his first day of admission at TRMC, Plaintiff wanted to leave that facility but was convinced to stay to undergo a brain MRI. *Id.* Plaintiff was discharged from TRMC the following day on October 1, 2012 prior to receiving the results of the brain MRI. *Id.* Plaintiff reported that he did not want to return to TRMC to begin anticoagulation therapy and discuss the results of the brain MRI because “today is not a good day as he had errands to do. *Id.*

It appears that two days later, Plaintiff again presented to TRMC for admission and monitoring. Plaintiff was treated at TRMC for hypertension, stroke, and thrombus, and he was ultimately discharged from TRMC in stable condition on October 8, 2012. *Id.* He was instructed to follow up with his primary physician in 1-2 weeks. *Id.* It does not appear that Plaintiff received any further treatment at Trident following the September 23-26, 2012 admission, and his allegations of medical malpractice against Trident appear to be limited to that time period.

DISCUSSION

- 1. Plaintiff’s failure to file a Notice of Intent and an expert affidavit should result in the dismissal of the lawsuit.**

As part of the Tort Reform Act of 2005, the Legislature enacted S.C. Code § 15-79-125. This statute states that prior to initiating a civil action alleging personal injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness. S.C. Code § 15-79-125(A). S.C. Code § 15-36-100 mandates that in any action involving professional negligence, “the plaintiff must file [an] affidavit of an expert witness which must specify at least one action or omission claimed to exist and the factual basis for each claim.” S.C. Code § 15-36-100(B).

Plaintiff has failed to comply with mandatory statutory pre-suit requirements. He did not file an NOI, he did not submit an expert affidavit, and he did not initiate a pre-suit mediation. Instead, he simply filed a pleading styled a "Complaint" and issued Summons. This failure and defect contravenes the purpose of the Tort Reform Act, which in part was intended to discourage frivolous and unsupported claims. Further, by failing to file an NOI and not qualifying for any safe harbor provisions of the Tort Reform Act, Plaintiff's three-year statute of limitations has now expired.

Pursuant to express statutory pre-suit requirements regarding the filing of a medical malpractice action, Plaintiff must first file an NOI with a supporting expert witness affidavit. S.C. Code § 15-79-125(A). Thereafter, the parties engage in discovery. S.C. Code § 15-79-125(B). Within 90-120 days from service of the NOI, the parties are required to participate in a mediation conference. S.C. Code § 15-79-125(C). If mediation is not successful, the Plaintiff may then initiate a civil action by filing a Summons and Complaint. S.C. Code § 15-79-125(E). Plaintiff has blatantly disregarded the statutory requirements imposed on professional negligence actions. Accordingly, the failure to file a NOI in a lawsuit alleging medical malpractice requires dismissal of the present action.

2. Plaintiff's failure to file a Notice of Intent did not result in a tolling of the statute of limitations.

Plaintiff herein did not file a Notice of Intent at all, much less an allegedly defective NOI without an expert affidavit. See Ranucci I and II. There can be no argument by Plaintiff that he should be entitled to the benefit of the safe-harbor provisions of S.C. Code § 15-36-100(C)(1) when he took no steps whatsoever to follow the Tort Reform Act of 2005 and file a NOI prior to filing suit:

The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, **within ten days of the date of filing** and, because of the time constraints, **the plaintiff alleges that an affidavit of an expert could not be prepared**. In such a case, the plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with the affidavit.

§ 15-36-100(C)(1) (emphasis added). Plaintiff filed the present "Complaint" on September 11, 2015 regarding alleged medical malpractice that occurred on September 23-26, 2015. Thus, Plaintiff's statute of limitations would have run twelve (12) days after filing. Further, nowhere in Plaintiff's "Complaint" did he allege that an expert affidavit could not be timely prepared due to time constraints. See Exhibit "A." Accordingly, Plaintiff does not satisfy either of the preconditions of the safe harbor provision even assuming, *arguendo*, that safe harbor was applicable in the absence of an NOI.

Indeed, one needs to look no further than the statute itself to see that Plaintiff is not entitled to the benefit of tolling the statute of limitations where the plain language states: "Filing the Notice of Intent to File Suit tolls all applicable statutes of limitations." S.C. Code § 15-79-125(A). Even assuming, *arguendo*, that Plaintiff did file an NOI with a statement to the effect that "time constraints" prevented him from filing a contemporaneous expert affidavit, the 45-day safe harbor provision has long since expired. To date, Plaintiff still has not filed an NOI or a supporting expert affidavit. Where there has been no filing of a NOI whatsoever, there can be no tolling of the statute of limitations and no safe harbor protection.

Our courts have consistently held with regard to the statute of limitations:

Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system. Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. One purpose of a statute of limitation is to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights. Another

purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation.

Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996) (internal citations and quotations omitted). Plaintiff has slept on his rights, and Trident is entitled to dismissal of this action for failure to follow and blatant disregard of the proper pre-suit filing requirements.

3. Plaintiff's allegation that anti-coagulation therapy to prevent blood clots qualifies for the "common knowledge" exception is without merit.

In this admitted medical malpractice action, Plaintiff has alleged that he was inappropriately treated with anticoagulants at Trident Medical Center between September 23-26, 2015. See Exhibit "A." As noted above, Plaintiff did not file an NOI. In addition, Plaintiff to date has neither filed an expert witness affidavit supporting his allegations of medical negligence nor sought refuge in the safe harbor provisions allowing additional time to file the required affidavit. Instead, Plaintiff has argued that anticoagulation therapy and protocols are "subject matter that lies within the ambit of common knowledge and experience" such that no expert testimony is needed. § 15-36-100(C)(2).

This argument is without merit and should not be considered by the Court. The amount, dosage, administration, and choice of anticoagulation medication to help prevent future blood clots are all issues requiring special learning and expert testimony.

CONCLUSION

The South Carolina Tort Reform Act and Notice of Intent requirement were intended to aid in keeping frivolous lawsuits out of the court system. Statutes governing professional negligence require the filing of a Notice of Intent to File Suit and other pre-suit procedural requirements prior to filing the Complaint because it helps keep meritless complaints from being litigated. Plaintiff's "Complaint" failed to comply with either of these gatekeeping requirements

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing document was duly served upon each party to this cause by depositing same in a postpaid wrapper in a post office or official depository under the exclusive care and custody of the U.S. Postal Service, VIA FEDEX properly addressed as follows:

Jim Washington
209 Signet Drive
Eutawville, SC 29048

This 4th day of January, 2016.

BATTEN LEE PLLC

By: 

David H. Batten (SC Bar No. 74531)
Randolph L. Lee (SC Bar No. 74532)
William H. Harkins, Jr. (SC Bar No. 77651)
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FILED
2016 JAN -5 AM 11:57
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

1 THE COURT: All right, sir, you are Jim Washington?

2 MR. WASHINGTON: Jim Washington.

3 THE COURT: All right. Thank you, sir. And you
4 are ---

5 MR. HARKINS: Good afternoon, Your Honor.

6 THE COURT: And you are?

7 MR. HARKINS: I am Will Harkins, Your Honor, ---

8 THE COURT: Thank you, Mr. Harkins.

9 MR. HARKINS: --- for the defendant. Yes, sir.

10 THE COURT: Okay. You have a motion to dismiss?

11 MR. HARKINS: I do, Your Honor. May I proceed?

12 THE COURT: You may, sir.

13 MR. HARKINS: Yes, sir. Your Honor, this is a 12(b)(6)

14 motion to dismiss, Your Honor, regarding Mr. Washington's
15 complaint which was filed September 11th of last year. It
16 is a medical malpractice case, Your Honor.

17 THE COURT: Yes, sir.

18 MR. HARKINS: From what I can glean from the actual
19 complaint itself I have a vague understanding of what I
20 believe the allegations to be, and they sort of globally
21 involve allegations of a wrong dosage or administration of
22 anticoagulants to prevent blood clots, my global
23 understanding of the medical malpractice nature of the case.

24 In any event, Your Honor, Mr. Washington failed to file
25 a notice of intent ---

1 THE COURT: Yes.

2 MR. HARKINS: --- under 15-79-125. He also has not
3 produced an expert witness affidavit. Again, from what I
4 can understand from the pleadings that have been filed, Mr.
5 Washington has asked the court to do two things as I
6 understand it.

7 One is he wants to sort of bypass the expert witness
8 affidavit requirement and classify this case as a common
9 knowledge exception to that. And I think I have explained
10 the anticoagulation issue.

11 THE COURT: Well, I have reviewed the complaint. It is
12 not a common knowledge situation. That is clear from my
13 reading of it, and I would so find.

14 MR. WASHINGTON: Can I speak, Your Honor?

15 THE COURT: I will be happy to hear from you, but it is
16 not a common knowledge. I have read your complaint.

17 MR. WASHINGTON: No, what I am raising is that based
18 upon the doctor treating -- doctor at the Regional Medical
19 Center based upon what he said breaching the standard of
20 care it is a matter that the jury can infer ---

21 THE COURT: Yeah, I appreciate that. But you know what
22 the problem you have is twofold. Number one, you can't get
23 to the jury first until you get your action properly filed.
24 And in this case you have to -- because it is not a common
25 knowledge you -- in order to proceed you have to have an

1 expert -- aside from the other issues of -- basically
2 there's a procedure outlined in the statute and questionable
3 as to whether that is dismissible or not, but clearly it
4 requires an affidavit to be contemporaneously filed.

5 MR. WASHINGTON: And I filed an affidavit ---

6 THE COURT: Well, you haven't filed an affidavit
7 from -- you have a competent expert?

8 MR. WASHINGTON: From the doctor's statement I am
9 using ---

10 THE COURT: No, sir.

11 MR. WASHINGTON: Based upon Dawkins versus Fields,
12 South Carolina Supreme Court case law, it says that a
13 verified complaint is sufficient as an affidavit.

14 THE COURT: Okay, yeah, but that may be sufficient as
15 an affidavit for the purpose -- some purposes; but it is not
16 sufficient for an affidavit in a medical malpractice case.

17 MR. WASHINGTON: Well, the Supreme Court didn't
18 specify ---

19 THE COURT: Well, that is fine. And you can -- you can
20 argue that to the Supreme Court again and maybe they will
21 change their mind.

22 The motion is granted. Thank you, sir.

23 MR. HARKINS: Thank you, Your Honor. Would you
24 like ---

25 THE COURT: Your case is over. Now you -- now the

1 next step is you can take that to Columbia and they will --
2 and if you want to -- and maybe you can expand some law. I
3 appreciate it.

4 MR. HARKINS: Would you like me to ---

5 MR. WASHINGTON: So I -- what I am saying is ---

6 THE COURT: Sir, I heard what you are saying. You
7 filed everything you are saying right now, because I have
8 read it.

9 MR. WASHINGTON: I filed a notice of intent also.

10 THE COURT: That is fine. But you didn't comply with
11 the statute. You don't have an expert witness, sir. It is
12 that simple.

13 MR. WASHINGTON: I am trying to explain that now so if
14 I ---

15 THE COURT: Well, you just told me that you are using
16 it as a verified complaint based on the doctor himself.

17 MR. WASHINGTON: I am saying based upon his statement.
18 What I am saying is when I filed a complaint I filed it
19 under 15-79-125(A). That is on the face of the complaint.
20 And I ----

21 THE COURT: I hear you. I understand. That is what --
22 you are reading from what I just read from. That is before
23 the Supreme Court. Now I am granting the motion. Thank
24 you, sir.

25 MR. HARKINS: Thank you, Your Honor.

1 THE COURT: If you will prepare an appropriate order.

2 MR. HARKINS: I will be glad to. Yes, sir.

3 MR. WASHINGTON: Can I make an exception to that, Your
4 Honor?

5 THE COURT: Sure. You can file an appeal from it. You
6 will get a copy of it. Thank you, sir. You don't need to
7 except from it. Okay. Thank you, sir.

8 MR. HARKINS: Thank you, sir.

9 THE COURT: Good luck with the Supreme Court, sir. I
10 am looking forward -- I appreciate any expansion of the law
11 in that regard. I really do. And I wish you great success
12 in that endeavor.

13 MR. WASHINGTON: What about the other issues I
14 raised -- I filed a memorandum ---

15 THE COURT: The memorandum is nothing more than your
16 opposition to a -- it is stiled and captioned as a motion in
17 opposition to the motion to dismiss. That is what -- that
18 is what ---

19 MR. WASHINGTON: I also asked for to ask for a motion
20 to amend my complaint.

21 THE COURT: Well, that is fine. Your motion is denied
22 because I granted -- I granted the motion to dismiss. Thank
23 you, sir.

24 MR. WASHINGTON: So I mean you are ruling separately on
25 all the issues that I raised?

1 THE COURT: I am ruling that the action wasn't properly
2 commenced, sir. And that ends the action. It is over,
3 okay. Now you can get -- if you get an appeal and they send
4 it back you get to start again. Thank you, sir.
5 (WHEREUPON, the hearing concluded.)

THE BTATE OF SOUTH CAROLINA
Court of Common Pleas, Charleston County

R. MARKLEY DENNIS, Jr., Circuit Court Judge

Case No. 2015-CP-10-5000

Jim Washington,.....Plaintiff,

V.

Trident Medical Center, LLC.....Defendant.

PROOF OF SERVICE

I, the undersigned do hereby certify that I have served all attorneys of record in this action with a copy of this **Motion To Reconsider Conclusion** by mailing a copy of the same in a prepaid wrapper deposited in a U.S. Post Office to the folowing addresses:

C. Mitchell Brown, Esquire
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Columbia, S.C. 29211-1070
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Attorneys For Defendant Trident Medical Center, LLC

S/ 
Jim Washington
Plaintiff/ Pro Se

July 6, 2018

2018 JUL -6 AM 11:49
CLERK OF COURT

STATE OF SOUTH CAROLINA
In The Court of Common Pleas, Charleston County

R. MARKLEY DENNIS, Jr., Circuit Court Judge

Civil Action No. 2015-CP-5000

Jim Washington,-----Plaintiff,

v.

Trident Medical Center, LLC,-----Defendant.

**MOTION TO VACATE JUDGMENT AND
MOTION TO AMEND THE PLEADINGS**

Jim Washington
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REFERENCE OF DOCUMENTS AND EXHIBITS

- | | |
|---|---------------|
| 11. Disability Determination Explanation | pages 1-10 |
| 12. Trident Medical Records | pages 21-55 |
| 13. Plaintiff Memorandum of Law | pages 97-107 |
| 14. Plaintiff Opposition To Motion To Dismiss | pages 108-120 |
| 15. Circuit Court Final Order | pages 1-5 |
| 16. Defendant's attorneys propose final order | pages 1-7 |
| 17. Plaintiff Motion To Vacate Judgment And Motion To Amend Pleadings | pages 1-14 |

Plaintiff do hereby serve on this honorable court this "motion to vacate judgment and motion to amend the pleadings" after judgment to conform to the evidence below in the FACTUAL ALLEGATIONS under SCRCF Rules 15 (b) and relation back under 15(c) and in the interest of justice under S.C. Code Statute 15-36-100(E) amendment of expert witness affidavit. Plaintiff request and seek leave of this court to consider these additional factual allegations in these motions together with the pending MOTION TO RECONSIDER CONCLUSIONS filed on 1/6/18 seeking relief under SCRCF Rules 60 (b)(1) for mistakes of the court and (b)(3) for extrinsic fraud upon the court by Defendant attorneys as applicable under Robinson v. Estate of Harris, 391 S.C. 114, 117-132, 705 S.E.2d 41(2011)(Majority and Dissenting Opinion); Aaron v. Mahl, 381 S.C. 585, 592-596, 674 S.E.2d 482(2009)(Majority and Dissenting Opinion); Ray v. Ray, 374 S.C. 79, 82-86, 647 S.E.2d 237(2007); Chewning v. Ford Motor Company, 354 S.C. 72; 76-86, 579 S.E.2d 605(2003); Ex Parte Carter, S.C. Supreme Court, Opinion No. 27786(2018) Heard January 31, 2018 –Filed March 21, 2018 Withdrawn, Substituted, and Refiled April 11, 2018(After Remittitur); Graham v. Town of Loris, 272 S.C. 442, 445-454, 248 S.E.2d 594(1978); McClurg V. Deaton, 395 S.C. 85, 86-99, 716 S.E.2d 887(2011)(Majority and Dissenting Opinion).

FACTUAL ALLEGATIONS

Plaintiff alleges that the Defendant's attorneys intentionally misrepresent to the court that Plaintiff pre-suit pleadings in the 9/11/15 complaint were filed as litigation pleadings filed under S.C. Code Statutes 15-79-125(A) and 15-36-100 while simultaneously scheming to conceal from the Court that Plaintiff pleadings also included S.C. Code Statute 15-79-125(E)(2) as allowed under S.C. Code Statute 15-79-125(A) to file a civil action when mediation has begun but the mediation is not completed due the mediator delay up until 3/1/2020 before making a final determination on the issue whether the injury to the claim was permanent impairments or not permanent impairments is discovered but the 3 years statute of limitation is about to expire to file a medical malpractice action was a deliberated plan scheme by Defendant attorneys to present extrinsic fraud upon the court to bar the pre-suit statutory pleadings cited in the complaint to considered with the pre-suit statutory pleadings cited in the documents attached to the expert witness affidavit dated and signed on 10/25/12 by Plaintiff to be considered together to be sufficient pre-suit pleadings to meet S.C. Code Statute 15-79-125(A) requirements and allow filing the action as allowed under S.C. Code Statute 15-79-125(A). {Rec. Doc., pp. 19-21; pp. 41-55; pp. 75-76; pp. 82-87; Exhibits-Plaintiff Memorandum of Law, pp. 97-98; Exhibits-Disability Determination Explanation, pp. 1-10; Exhibits-Trident Medical Records, pp. 21-23}. Plaintiff further alleges that Defendant's attorneys also intentionally engaged in a scheme to misrepresent to the court Plaintiff claim of negligent treatment of aspirin 325mg which met the common knowledge exception to affidavit requirement as negligent treatment of anticoagulation with intent to defraud the court that Plaintiff did not state a claim for relief because Plaintiff fail to file an expert witness affidavit to support his claim and deliberately plan and

scheme to misrepresent the claims as alleging only medical malpractice in treatment to conceal from the court altogether Plaintiff claim of negligent diagnosis on MRI supported by expert witness affidavit with intent to prevent Plaintiff to have a full and fair hearing and to have the court improperly bar the action and the documents on the issues of pre-suit pleadings which were incorporated into the additional pre-suit pleadings filed under S.C. Code Statutes 15-79-125(A) and 15-36-100 dated and sign on 10/25/12 and amended and refilled on 9/11/15 and attached to the expert witness affidavits then incorporated into the complaint. Plaintiff alleges that these pleadings were issues presented for the court's consideration were critical pre-suit statutory evidence as part of the claim seeking relief to meet the pre-suit statutory requirements prior to filing the complaint needed for a full and fair hearing that **Plaintiff filed the action under S.C. Code Statute 15-79-125(E)(2))** as cited in the complaint **itself only to allege in his pleadings that mediation had begun but not completed because the mediator left an open date up until 3/1/2020 to discover whether the injury was permanent impairment or not a permanent impairment but the 3 years statute of limitation was about expire** which must be considered together as whole with the other documents incorporated into the complaint citing the same two pre-suit statutory pleadings under S.C. Code Statutes 15-79-125(A) and 15-36-100 which would then allow S.C. Code Statute 15-79-125(E)(2) to become applicable to file the complaint on 9/11/15 as timely and properly filed because Plaintiff had already filed the Notice of Intent to file the claim on 10/25/12 with the Social Security Administration. { Rec. Doc., pp. 19-21; pp. 41-43; pp. 47-55; pp. 72-76; pp. 82-87; Exhibits-Plaintiff Memorandum of Law, pp. 97-98; Exhibits-Trident Medical Records, pp. 21-23 ; Disability Determination Explanation, pp. 1-10}. Therefore, Plaintiff alleges that S.C. Code Statute 15-79-125(E)(2) pleadings were applicable and critical for the court's consideration to determine Plaintiff civil action as timely and properly filed and would have changed the outcome at the hearing and final judgment on the merits to grant Plaintiff relief because the Social Security Administration mediators/adjudicator on 4/30/12 determined that mediation was not viable or that an impasse existed to determine permanent impairment issue at that time but would be determined later with a close diary date shown as up until 3/1/2020. Therefore, Plaintiff alleges that the 3years statute of limitation for filing the action is toll until mediation of permanent impairments are determined between the parties are completed or should end on 3/1/2020 and the 6 years discovery rule under S.C. Code Statute 15-3-545(A) would apply to filing the complaint prior to the expiration of the statute of limitation which ever is later as allowed under S.C. Code Statute 15-79-125(E)(2). { Rec. Doc., 19-21; pp. 41-43; pp. 82-87; Exhibits-Plaintiff Memorandum of Law, pp. 97-98; p. 102}. Therefore , Plaintiff alleges that the two pre-suit statutory pleadings filed under S.C. Code Statutes 15-79-125(A)NOI to file suit and 15-36-100 expert witness affidavit with the complaint related back to 10/25/12 under SCRCP Rule 15(C) the date Plaintiff signed the original pre-suit Notice of Intent to file the claim with the Social Security Administration authorizing Defendant Trident to release all medical records regarding treatments, hospitalization, x-rays, discharge summary and outpatient care to the Social Security Administration for mediation/determination of Plaintiff permanent impairments claim which is incorporated into the complaint pre-suit pleadings filed 9/11/15 under S.C. Code Statutes 15-79-125(A) NOI to file suit and 15-36-100(C)(2) expert witness affidavit exception along with the complaint litigation pleadings filed under S.C. Code Statute 15-79-125(E)(2) in the circuit court and served on Defendant Trident seeking damages for allegations of negligent in diagnosis on MRI by the radiologist and negligent

in treatment by the Hospitalist both acts of negligence were reckless causing a second stroke and permanent impairments from medical malpractice by Defendant Trident. { Rec. Doc., pp. 19-21; pp. 41-55; pp. 82-87; Exhibits-Plaintiff Memorandum of Law, pp. 97-98; Exhibits-Trident Medical Records, pp. 21-23}.

Plaintiff alleges that based upon the above allegations and pleadings he presented to the court for consideration Defendant attorneys then engaged in a further scheme to present extrinsic fraud upon the court itself as an institution to intentionally misrepresent to the court that [**Plaintiff at the hearing regarding the instant motion to dismiss on 1/7/16, Plaintiff did not produce or tender an expert witness affidavit for the court's consideration, and he did not move the court orally or in briefing for an extension of time to file an expert affidavit.**] and further misrepresented to the court that [**Plaintiff alleges medical negligence arising out treatment he received at Trident Medical Center between September 23-26, 2012. Medical malpractice action are subject to a three-year statute of limitations. The Court finds that there are no allegations by Plaintiff that would trigger the "discovery rule" and nothing in the pleadings filed by Plaintiff would otherwise toll the statute of limitations. Accordingly, the three-year statute of limitations on Plaintiff's medical malpractice claims has expired.**] { Exhibits-Circuit Court final order}. Accordingly, Plaintiff alleges that the above acts by Defendant's attorneys was a deliberately designed plan and scheme to commit extrinsic fraud with intent to prevent a full and fair adjudication of the issues to conceal from the Court's consideration at the hearing and final judgment that Plaintiff's attached documents to the expert witnesses affidavits must be considered as part of the pleadings under SCRPC Rule 12(b)(6) and briefing in the Memorandum of Law and Motion in Opposition To Dismiss the action tendered moving the Court to take judicial notice to consider the pre-suit NOI and expert affidavits Plaintiff tendered to the court for consideration along with Plaintiff request to complete mediation because of time constraints prevented mediation to be completed before filing the complaint under S.C. Code Statute 15-79-125(E)(2). Plaintiff in his briefing also move the court for leave to amendment of the complaint pleadings to relate back to the original filing of the Notice of Intent to file the claim on 10/25/12 to name Defendant Trident as the proper party under SCRPC Rule 15(c) tolling the statute of limitation. Plaintiff alleges that he had met the pre-suit statutory requirements under S.C. Code Statutes under S.C. Code Statutes 15-79-125(A) and 15-36-100 because both parties had engaged in limited discovery and mediation with the Social Security Administration based on the same MRI medical records filed on 10/25/12 related to the claim of permanent impairments prior to filing the complaint pleadings under S.C. Code Statute 15-79-125(E)(2) on 9/11/15 alleging (1) Defendant Trident negligent omission in diagnosis on MRI which made no evidentiary findings to show the source of the(CVA) cerebrovascular accident as cortical hemorrhage and embolism of a cardiac source under the same or similar circumstances as The Regional Medical Center radiologist on MRI which is the generally recognized and accepted practice and procedure of a radiologist with supporting qualified expert witness opinion under S.C. Code Statute 15-36-100(A)(3) of the Hospitalist because of his experience as an expert in treating patients with the same or similar evidentiary findings on MRI as Plaintiff and his personal knowledge of the history of the case stating [**The patient presented to the Regional Medical Center emergency room the day before with right-sided symptoms consistent with an acute stroke. The patient actually presented to Trident about a week and a half ago with similar symptoms where he was admitted. He had a workup which showed**

a small stroke. Carotid Dopplers and echocardiogram were normal. On 10/1/12 before the patient got his MRI of the brain he wanted to leave. As I got a call by nurse, Hillary, at 10:00, I convinced the patient to stay for the MRI. After the MRI was done, the patient wanted to leave even though the results were not back as his symptoms had resolved and I reluctantly agreed to let the patient go. The next day I reviewed the MRI results which showed multiple small foci of restricted diffusion in the high left parietal lobe and evidence of hemosiderin deposition suggesting prior cortical hemorrhage of uncertain chronicity. It was noted that given the multifocality the appearance was suggestive of an embolic phenomenon. In addition, there were areas of chronic ischemic changes in the left occipital lobe. Because of these findings, I called the patient at home instructing him of the likely source of his CVA was cardioembolic and requesting him to come back to the hospital regarding the need for possible anticoagulation given the possibility of embolic stroke. Of note we did not receive documentation from Trident. Trident failed to make an evidentiary finding on MRI to show the source of the cerebrovascular accident on MRI or on work-up as cortical hemorrhage and embolism of a cardiac source under the same or similar circumstances. Embolic CVA with brain infarction. The patient is placed in telemetry. Neurology has been consulted. I did order a Heparin drip per Neurology protocol for anticoagulation given the possibility of embolic CVA and further stated upon discharge instructions [Patient admitted and atrial thrombus detected on TEE. Was placed on heparin gtt to transition to Coumadin. Discharge Plan: condition on discharge is stable. Activity as tolerated. Follow up INR in 2 days with adjustments made by PCP; needs further follow with PCP within 1 to 2 weeks thereafter for adjustments of INR]. (2) Plaintiff also alleges that he met the pre-suit statutory requirements under S.C. Code Statutes 15-79-125(A) and 15-36-100(C)(2) because he alleged that Defendant Trident was negligent to treat and reckless to continue to treat the injury with aspirin 325mg from 9/25/12 up until discharge knowing the second EKG on 9/25/12 warned the treating Hospitalist at Trident that Plaintiff's heart condition had become abnormally worsened with (Bradycardia) slow heart rate and (Ischemia) slow blood flow within the heart since the first EKG on 9/23/12 and recommend further testing was needed but Trident knowingly failed to do further testing nor change treatment before or upon discharge. Plaintiff alleged that Defendant Trident was negligent to treat with aspirin 325mg for prevention of future clots or strokes because Defendant Trident knew from the manufacturer package insert that aspirin 325mg was not a blood thinner anticoagulation medication at all and was known not to be effective to prevent future clots or strokes and was recommended by the manufacturer of the pill for usage by the general population household in America for treating pain, headache, swelling, cold and other ailments which did not require special medical knowledge to take or monitor for adjustment by PCP the aspirin 325mg and did not require expert witness testimony because a jury could infer Defendant Trident was negligent and reckless in treatment of aspirin 325mg to prevent future clots and strokes caused Plaintiff to suffer a second stroke and additional permanent impairments. (3) Plaintiff, further alleged that since the expert witness affidavit from The Regional Medical Center already stated in his opinion that [Trident was negligent in diagnosis on MRI because Trident did not make an evidentiary finding to show the source of the cerebrovascular accident as cortical hemorrhage and embolism of a cardiac source and further stated that when embolism is a

possibility the standard of care required immediate treatment of anticoagulation Heparin then transition to Coumadin with discharge instruction to follow up with PCP for adjustments]. Therefore, based upon the above expert witnesses affidavits in support of Plaintiff pre-suit pleadings Plaintiff alleged in his briefings in the Memorandum of Law and in his Opposition To Motion To Dismiss and orally at the hearing that this evidence from the expert witness was **sufficient to meet the pre-suit requirements under S.C. Code Statutes 15-79-125(A) and 15-36-100** relying on S.C. Supreme Court controlling case laws Ranucci v. Crain, 409 S.C. 493, 507-509, 763 S.E.2d 189(2014) for the proposition that Plaintiff affidavits were not defective and that the expert was qualified to give an opinion on Defendant Trident negligent on MRI because like Ranucci the affidavit Plaintiff submitted is facially sufficient given it is sworn and identifies a potentially meritorious medical malpractice claim that Defendant Trident was negligent in diagnosis on MRI. Moreover, there is no factual basis in the record to challenge either the expert's qualifications or the content of the affidavit, Ranucci (quoting Poch v. Bayshore Concrete Prods. /S.C., Inc., 405 S.C. 359, 378 n. 13, 747 S.E.2d 757, 767 n. 13 (2013)) declining to reject affidavit presented as proof of worker's compensation insurance as there was "no basis for which to reject the affidavit as it is by its very nature a sworn statement intended as documentary evidence in a legal proceeding") and relying on Br  uwer v. SISTERS OF CHARITY PROVIDENCE HOSPITALS, 409 S.C. 514, 521-523, 763 S.E.2d 200(2014) for the proposition the a jury with common knowledge could infer Defendant Trident negligent and reckless because Defendant Trident knew Plaintiff was allergic to aspirin but continued to treat him with aspirin 325mg even after Defendant Trident was warned by their own doctor on the second EKG that Plaintiff condition had become abnormally worsen since the first EKG with slow heart beats (bradycardia) and slow blood flow(ischemia) within the heart and recommend further testing but Defendant Trident took no corrective action even upon discharge and the manufacturer package insert warn consumers to inform doctors if they are allergic to aspirin before taking it which Plaintiff did warn Defendant Trident that he was allergic to aspirin. Therefore, Plaintiff alleges a jury could infer Defendant Trident was reckless with intent to cause harm or was reasonable foreseen would likely cause harm and did cause a second stroke and additional permanent impairments entitled him to punitive damages under S.C. Code Statutes 15-32-510 through 15-32-530 **Title South Carolina Noneconomic Awards Act of 2005** relying on Taylor v. Medenica , 479 S.E.2d 35, 46(1996)(Dr. Medenica argues there was no clear and convincing evidence demonstrating he intentionally or willfully injured Mrs. Taylor. We disagreed. The record contains clear and convincing evidence that Dr. Medenica fail to exercise due care in treating Mrs. Taylor. This evidence includes, among others, the following: 1) knowingly fail to treat Mrs. Taylor with the standard adjuvant chemotherapy for primary breast cancer; 2) choosing to treat Mrs. Taylor with MMC even though there were no studies or literature supporting its use for adjuvant chemotherapy for breast cancer ; 3) failing to inform Mrs. Taylor of the full extent of risk associated with MMC and failing to obtain Mrs. Taylor's informed consent to treatment with MMC; 4) failing to recognize Mrs. Taylor had contracted HUS until late February 1992; 5)ordering unnecessary and/or excessive tests, some of which caused Mrs. Taylor discomfort and 6) billing Mrs. Taylor for unnecessary tests)in Plaintiff Memorandum of Law for the proposition that Defendant Trident was aware of the risk of using aspirin 325mg to prevent future clots and strokes and aware Plaintiff condition had change and needed immediately corrective action and fail to instruct Plaintiff upon discharge to seek immediate treatment of anticoagulation. Plaintiff further alleges that Defendant Trident knowing aspirin 325mg is not an anticoagulation blood thinner

medication at all based upon the manufacturer package insert which warns the consumers that this medication is ineffective for usage to prevent future clots and stroke and that its usage by the general population in America is for relieving pain, swelling, headaches, common cold, fever, muscle aches, toothaches and other ailments which do not require special medical knowledge for usage nor required medical experts to monitor its usage nor required expert testimony but could be used by the general population for self treatment. Therefore, Plaintiff pre-suit pleadings of aspirin 325mg treatment to prevent future clots and strokes for negligent met S.C. Code Statute 15-36-100(C)(2) common knowledge exception and Brouwer was applicable to his claim wherein the S.C. Supreme Court held [We find the substance of Brouwer's allegation , i.e., that the negligent exposure of a patient to latex with a known allergy can result in an allergic reaction in that patient, is a matter of common knowledge or experience so that no special learning is needed to evaluate Respondents' conduct at the pre-litigation stage and cites other applicable common knowledge cases]. { Rec. Doc., pp. 19-21; pp. 41-43; p. 45; pp. 47-55; p. 66; pp. 82-87; Exhibits-Plaintiff Memorandum of Law, pp. 97-105; Exhibits- Trial Court final order, pp. 1-5; Exhibits-Trident Medical Records, pp. 21-23; pp. 30-31; pp. 34-35; p. 40; p. 45; pp. 54-55 ; Exhibits-Disability Determination Explanation, pp. 1-10}. Therefore, Plaintiff alleges that based upon all of the above pre-suit pleadings Plaintiff **complied with S.C. Code Statute 15-79-125 (A) which states [Prior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100, in a county where venue would be proper for filing or initiating the civil action. Filing the Notice of Intent to File Suit tolls all applicable statutes of limitations]** and met the requirements to be awarded economic, noneconomic compensatory and punitive damages under S.C. Code Statutes 15-32-210 through 15-32-530 Titled South Carolina Noneconomic Awards Act of 2005.

Plaintiff alleges that all of the above grounds to show good cause were conceal from the court's consideration in Defendant's attorneys propose final order sent to the judge to sign the final order based on the Defendant's attorneys well designed plan and scheme on 10/16/15 in their Motion To Dismiss pursuant to SCRPC Rule 12(b)(1) that the court lack subject matter jurisdiction over the documents dated 10/25/12 and SCRPC Rule 12(c) judgment on the pleadings and on 1/5/16 in their Memorandum of Law to allege " Plaintiff never issued or filed the required pre-suit Notice of Intent to File Suit pursuant to S.C. Code Statute 15-79-125(A) and Plaintiff has yet to submit an affidavit from any qualified expert witness willing to testify that Trident breached any applicable standard of care" with deliberate plan and scheme to defraud the court itself that Plaintiff did not file the NOI and that the affidavit pursuant to S.C. Code Statute 15-36-100(A)(3) expert witness stating Trident was negligent in treatment by challenging that the expert was not qualified to render his opinion under S.C. Code Statute 15-36-100(A)(3) and that the affidavits were **defective for a total absence of the statutorily-required NOI and expert witness affidavit as a prerequisite to filing the instant medical malpractice action** but deliberately planned and schemed to misrepresent Plaintiff's claims with intent to concealing from the court that Plaintiff also alleged negligence in diagnosis on MRI with intent to prevent a full and fair hearing on the subject matter of negligence in diagnosis on MRI which stated a claim for relief supported by qualified expert witness affidavit under S.C. Code Statute 15-36-100(A)(3) and would have change the outcome at the hearing and final order based upon the above qualified expert witness

opinion and pre-suit NOI to file Suit document dated 10/25/12 filed under S.C. Code Statute 15-79-125(A). { Rec. Doc., pp. 19-21; pp. 41-43; pp. 75-76; pp. 82-85; Exhibits-Plaintiff Memorandum of Law, pp. 100-101}. Defendant attorneys then changed grounds at the final judgment proceeding in the proposed order alleging [Plaintiff fail to file a Notice of Intent to File Suit as a prerequisite to filing a medical malpractice action pursuant to S.C. Code Statute 15-79-125(A) and Plaintiff fail to file an expert witness affidavit specifying at least one negligent act or omission claimed to existed pursuant to S.C. Code Statutes 15-79-125(A) and 15-36-100(B)] which requires filing an affidavit prior to filing the complaint and filing an affidavit as part of the complaint or a second affidavit which Plaintiff did precisely that by filing pre-suit NOI to File Suit and affidavit prior to filing the complaint on 10/25/12 and filing the affidavit as part of the complaint by incorporating the affidavit dated and signed 10/25/12 into the complaint under S.C. Code Statutes 15-79-125(A) and 15-36-100 but the Clerk of Court refused Plaintiff repeated request to attach the pre-suit expert witnesses affidavits pleadings to the complaint stating " he was not allowed to file these documents together and that under their procedure his assignment was to file the affidavits documents separate as an exhibit" which Plaintiff alleges showed good cause and or excusable neglect, mistakes under SCRCP Rule 60(b)(1) and extraordinary circumstances beyond Plaintiff control justifying relief under SCRCP Rule 60(b)(6) why the pre-suit Notice of Intent to File Suit pleadings and expert witness affidavit pleadings were not attached but should be considered as filed prior to filing the complaint and filed as part of the complaint. Plaintiff raise the above ground in his briefing to the Court in the Memorandum of Law and in his Motion in Opposition To The Motion To Dismiss relying on S.C. Supreme Court controlling case law Wilkinson v. East Cooper Community Hosp., 410 S.C. 163, 172, 763 S.E.2d 426(2014)(quoting Fisher v. Pelstring, 817 F. Supp. 2d 791, 807 n. 8 (D.S.C.2011) analyzing procedures for initiating medical malpractice claims under 15-79-125 and 15-36-100 on this issue concerning the Clerk of Court filing the pre-suit Notice of Intent to File Suit and expert witnesses affidavits filed, signed and dated 10/25/12 from the Social Security Administration separately from the 9/11/15 complaint pre-suit pleadings to show the Court merit to Plaintiff filing and the Clerk of Court action were of no consequence because in Wilkinson the Court held under the same factual circumstances as above like Plaintiff that [Under this filing procedure Wilkinson action are considered timely filed under the medical malpractice statutes and toll the statute of limitation applicable to a defendant against whom no medical malpractice claim is asserted when that defendant is joined in a civil action with a defendant against whom a medical malpractice claim is asserted. As a threshold matter, we disagree with any contention that the clerk of court's assignment of separate Common Pleas case number to the NOI and Complaint converted Wilkinson's medical malpractice case into two civil cases that required two expert affidavits. The assignment of a different case number to the pre-litigation pleadings and the litigation pleadings is of no consequence because they both comprise a single medical malpractice claim]. Wilkinson (quoting Fisher) further held that [section 15-79-125 also does not include any language indicating that the case number under which a Notice of Intent is served on a defendant must be the same as the case number assigned to the complaint served on that defendant if a civil action is ultimately initiated]. { Rec. Doc., pp. 19-21; pp. 41-55; pp. 82-87; Exhibits-Plaintiff Memorandum of Law, pp. 97-98; Exhibits-Plaintiff's Motion in Opposition to the Motion to Dismiss, pp. 108-109}. Plaintiff attempted to have a full and fair hearing on these issues orally at the hearing concerning the issues in Plaintiff Memorandum of Law and objected to the propose order itself on these grounds but Defendant attorneys deliberately plan and scheme to

misrepresent and to conceal these grounds from the Court's consideration at the hearing and in their propose order to the judge with intent to present extrinsic fraud upon the court to prevent the court to admit these documents as relevant, material and admissible evidence to deprive Plaintiff of an opportunity to be heard to determine the validity of the original pre-suit Notice of intent and supporting expert witness affidavits to file the claim of permanent impairments with the Social Security Administration dated 10/25/12 and refilled on 9/11/15 under S.C. Code Statutes 15-79-125(A) and 15-36-100 with the court for consideration of the issues under the procedures approved under Wilkinson quoting Fisher which is controlling authority and applicable to Plaintiff action [that the original pre-suit Notice of Intent to file the claim for permanent impairments was filed with the Social Security Administration on 10/25/12 with both parties participated in mediation with Social Security Administration mediators to determine Plaintiff permanent impairments but that the mediators fail to make a final determination of permanent impairments and left the issue open for a final determination to be made at a later date up until 3/1/2020].

Therefore, based upon the above circumstances that mediation to determine monetary damages was not viable and the fail mediation attempt on the issue of permanent impairments injury was left open up until 3/1/2020 this court had subject matter jurisdiction over the action and the action was properly filed. Accordingly, Plaintiff alleges that based upon Wilkinson he filed the action on 9/11/15 as allowed under S.C. Code Statute 15-79-125(E) which states [If the matter cannot be resolved through mediation, the plaintiff may initiate the civil action by filing a summons and complaint pursuant to the South Carolina Rules of Civil Procedure. The action must be filed: (1) within sixty days after the mediator determines that mediation is not viable, that an impasse exists, or that the mediation should end: or (2) prior to the expiration of the statute of limitation, which ever is later]. Therefore, Plaintiff alleges that based upon the above circumstances he met the statutory requirements and filed the action on 9/11/15 under S.C. Code Statute 15-79-125(E)(2) twelve-days prior to the 3 years expiration of the statute of limitation which ever is later to complete mediation after the action is filed to determine damages. Plaintiff in his Memorandum of Law relying on S.C. Code Statute 15-79-125(F) which requires participation in at least one mediation after the civil action is filed and S.C. Supreme Court case law Ross v. WACCAMAW COMMUNITY HOSPITAL, 404 S.C. 56, 59-66, 744 S.E.2d 547(2013) for the proposition that the circuit court had subject matter jurisdiction for the medical malpractice action seeking damages and could compel ADR mediation between Plaintiff and Defendant Trident after the 120 days deadline for good cause in the courts discretion and that completion of mediation within the 120 days deadline is a non-jurisdictional defect and may consider principles of estoppels and waiver to excuse noncompliance. Ross (quoting Skinner v. Westinghouse Elec. Corp., 380 S.C. 91, 93-94, 668 S.E.2d 795, 796)(2008) and Mende v. Conway Hosp., 304 S.C. 313, 315, 404 S.E.2d 33, 34 (1991). However, Plaintiff alleges that due to Defendant attorneys scheme and plan to present extrinsic fraud upon the court to misrepresent that Plaintiff did not filed the pre-suit NOI and expert witness affidavit nor participated in mediation in their Memorandum of Law, at the hearing and in the propose final order he was denied a full and fair hearing on the subject matter of pre-suit mediation which would have change the outcome in the final order. Therefore, Plaintiff alleges this Court is justified in granting him equitable relief under SCRPC Rules 60(b)(1) and (b)(3) for mistakes of the Court and extrinsic fraud upon the court by Defendant attorneys. Furthermore, this Court is justified to compel both parties to participate in at least one ADR mediation under S.C. Code Statute 15-79-125(F).

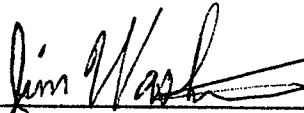
misrepresent and to conceal these grounds from the Court's consideration at the hearing and in their propose order to the judge with intent to present extrinsic fraud upon the court to prevent the court to admit these documents as relevant, material and admissible evidence to deprive Plaintiff of an opportunity to be heard to determine the validity of the original pre-suit Notice of intent and supporting expert witness affidavits to file the claim of permanent impairments with the Social Security Administration dated 10/25/12 and refilled on 9/11/15 under S.C. Code Statutes 15-79-125(A) and 15-36-100 with the court for consideration of the issues under the procedures approved under Wilkinson quoting Fisher which is controlling authority and applicable to Plaintiff action [**that the original pre-suit Notice of Intent to file the claim for permanent impairments was filed with the Social Security Administration on 10/25/12 with both parties participated in mediation with Social Security Administration mediators to determine Plaintiff permanent impairments but that the mediators fail to make a final determination of permanent impairments and left the issue open for a final determination to be made at a later date up until 3/1/2020**].

Therefore, based upon the above circumstances that mediation to determine monetary damages was not viable and the fail mediation attempt on the issue of permanent impairments injury was left open up until 3/1/2020 this court had subject matter jurisdiction over the action and the action was properly filed. Accordingly, Plaintiff alleges that based upon Wilkinson he filed the action on 9/11/15 as allowed under S.C. Code Statute 15-79-125(E) which states [if the matter cannot be resolved through mediation, the plaintiff may initiate the civil action by filing a summons and complaint pursuant to the South Carolina Rules of Civil Procedure. The action must be filed: (1) within sixty days after the mediator determines that mediation is not viable, that an impasse exists, or that the mediation should end: or (2) prior to the expiration of the statute of limitation, which ever is later]. Therefore, Plaintiff alleges that based upon the above circumstances he met the statutory requirements and filed the action on 9/11/15 under S.C. Code Statute 15-79-125(E)(2) twelve-days prior to the 3 years expiration of the statute of limitation which ever is later to complete mediation after the action is filed to determine damages. Plaintiff in his Memorandum of Law relying on S.C. Code Statute 15-79-125(F) which requires participation in at least one mediation after the civil action is filed and S.C. Supreme Court case law Ross v. WACCAMAW COMMUNITY HOSPITAL, 404 S.C. 56, 59-66, 744 S.E.2d 547(2013) for the proposition that the circuit court had subject matter jurisdiction for the medical malpractice action seeking damages and could compel ADR mediation between Plaintiff and Defendant Trident after the 120 days deadline for good cause in the courts discretion and that completion of mediation within the 120 days deadline is a non-jurisdictional defect and may consider principles of estoppels and waiver to excuse noncompliance. Ross(quoted Skinner v. Westinghouse Elec. Corp., 380 S.C. 91, 93-94, 668 S.E.2d 795, 796)(2008) and Mende v. Conway Hosp., 304 S.C. 313, 315, 404 S.E.2d 33, 34 (1991). However, Plaintiff alleges that due to Defendant attorneys scheme and plan to present extrinsic fraud upon the court to misrepresent that Plaintiff did not filed the pre-suit NOI and expert witness affidavit nor participated in mediation in their Memorandum of Law, at the hearing and in the propose final order he was denied a full and fair hearing on the subject matter of pre-suit mediation which would have change the outcome in the final order. Therefore, Plaintiff alleges this Court is justified in granting him equitable relief under SCRCR Rules 60(b)(1) and (b)(3) for mistakes of the Court and extrinsic fraud upon the court by Defendant attorneys. Furthermore, this Court is justified to compel both parties to participate in at least one ADR mediation under S.C. Code Statute 15-79-125(F).

Finally, Plaintiff alleges that Defendant's attorneys deliberately planned and schemed to misrepresent to court that the accompanying documents were not relevant nor admissible as evidence in the medical malpractice action under SCRCP Rule 12(b)(1) for lack of subject matter jurisdiction with intent to prevent the documents from the expert witnesses to be admitted as evidence on Plaintiff behalf to deprive him of a full and fair opportunity to be heard on the subject matter of Defendant Trident's negligence to diagnose and treat. Plaintiff relying on Elledge v. RICHLAND/LEXINGTON SCHOOL DISTRICT FIVE, 352 S.C. 179, 182-189, 573 S.E.2d 789(2002) in his Memorandum of Law and at the hearing argued that the documents from the expert witnesses affidavits were relevant and admissible as evidence to the issues of standard of care and duty of care negligent acts or omissions which Defendant attorneys misrepresented that no expert witness stated Defendant Trident breached any applicable standard of care. Elledge was relied on for the proposition that [Evidence is relevant and admissible if it has tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Rule 401, 402, SCRE. In our opinion, Respondents' proffered evidence was relevant to, and admissible on, the first required element of negligent-the District's duty of care to respondents and also not cumulative because the evidence went to different elements of negligence]. Therefore, Plaintiff alleges that due to Defendant's attorneys extrinsic fraud upon the court the documents were not admitted as evidence in his behalf and deprived him of a full and fair opportunity to be heard on the subject matter of Defendant Trident's negligence which if admitted would have changed the outcome at the hearing and final judgment order , which stated [Memorandum of Law were submitted by all parties and incorporated into the record, and oral arguments were entertained by the Court. After having reviewed the pleadings and considered arguments and legal memoranda of the parties, the Court hereby **GRANTS** Defendant's Motion To Dismiss on the grounds that (1) Plaintiff fail to file a Notice of Intent to File Suit as a Prerequisite to filing a medical malpractice action pursuant to S.C. Code Statute 15-79-125(A); (2) Plaintiff fail to file an expert witness affidavit specifying at least one negligent act or omission claimed to exist pursuant to S.C. Code Statutes 15-79-125(A) and 15-36-100(B); (3) This medical malpractice action did not qualify for the "Common knowledge" exception to an expert witness affidavit pursuant to S.C. Code Statute 15-36-100(C)(2); and (4) Plaintiff was not subject to protections afforded by the "safe harbor" provisions of S.C. Code Statute 15-36-100(C)(1). Plaintiff alleges medical malpractice arising out of medical treatment he received at Trident Medical Center between September 23-26, 2012. Medical Malpractice actions are subject to a three-year statute of limitations. The Court finds that there are no allegations by Plaintiff herein that would trigger the "discovery rule" and nothing in the pleadings filed by Plaintiff which would otherwise toll the statute of limitations. Accordingly, the three-year statute of limitations on Plaintiff's medical malpractice claims has expired. Now, therefore based on the foregoing it is **ORDERED** that Defendant's Motion to Dismiss be **GRANTED** and this action be **DISMISSED** with prejudice]. { Rec. Doc., pp. 19-21; pp. 41-43; pp. 47-55; pp. 72-80; pp. 82-87; Exhibits-Circuit Court final order, pp. 1-5; Exhibits-Plaintiff Memorandum of Law, pp. 97-98; pp. 101-105; Exhibits-Trident Medical Records, pp. 21-23; p. 40; p. 45; p. 54-55; Exhibits-Disability Determination Explanation, pp. 1-10}.

Accordingly, because of the court's mistakes in findings and conclusions were an abuse of discretion due the Defendant's attorneys extrinsic fraud upon the court this court is justified in the interest of

justice in granting Plaintiff equitable relief from final judgment under SCRCR Rule 60 (b)(1) and (b)(3) and to hold a new hearing with both parties in attendance and or compel ADR mediation. Finally, res judicata and collateral estoppels principles does not apply to bar re-litigation for extrinsic fraud.

s/ 
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November 26, 2012

RLA TRIDENT MEDICAL CENTER
ATTN: MEDICAL RECORDS
900 MEDICAL PLAZA DRIVE
CHARLESTON SC 29406

NAME: JIM WASHINGTON
AKA: WASHINGTON, JIMMIE
ADD: 209 SIGNET DRIVE
E FLAWVILLE SC 29048
Ref. No: N00485
DOB: -

RECEIVED NOV 27 2012

This patient has applied for disability benefits under the Social Security Act. We need the following information:
Treatment Records: 09/01/2011 TO PRESENT

Admission/discharge summaries

X-rays

Emergency room records

Out patient treatment records

See attached page for instructions on returning your report to the DDS. We pay \$25.00 for a copy of treatment records. Out of State requests will be compensated according to that state's established fee schedule. If payment is required please sign on the line for "Provider's Signature" page and include that page as the TOP document with your report with this letter underneath. You may fax your records using the 2D Bar Code Coversheet to our toll free medical fax number. Thank you.

Sincerely,

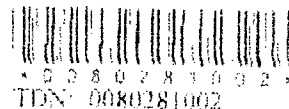
Leresa Miller

Leresa Miller, Disability Examiner

PLEASE INCLUDE THIS LETTER AS PAGE 2 OF YOUR REPORT.

ENCLOSURE Release
326/TMI

Claim No. N00485
LS (8/12, mdp)
DMA: Y



DUU40519282

"S.M. Higgins."

CONFIDENTIAL

153

* PLEASE READ THE ENTIRE FORM, BOTH PAGES, BEFORE SIGNING BELOW.

OF WHAT All my medical records are shared.

OF WHAT

1. All records and other information regarding my treatment, hospitalization, and outpatient care for my impairment(s) including, but not limited to:
- * Psychological, psychiatric or other mental impairments (include "psychochemicals" as defined in 42 CFR 104.501)
 - * Drug abuse, alcoholism, or other substance abuse
 - * Sexual cell enable
 - * Records which may indicate the presence of a communicable or noncommunicable disease; and tests for or records of HIV/AIDS
 - * Gene-related impairments (including genetic test results)
2. Information about how my impairment(s) affects my ability to complete tasks and activities of daily living, and affects my ability to work.
3. Copies of educational tests or evaluations, including individualized Educational Programs, triennial assessments, psychological and speech evaluations, and any other records that can help evaluate function; also teachers' observations and evaluations.
4. Information created within 12 months after the date this authorization is signed, as well as past information.

all medical sources (hospitals, clinics, labs, physicians, psychologists, etc.) including mental health, correctional, addiction treatment, and VA health care facilities
All educational sources (colleges, universities, research administration, counseling, etc.)
Social work and rehabilitation sources
Criminology journals used by SSA
Employers, insurance companies, workers' compensation programs
Others who may know about my condition (family, neighbors, friends, public officials)

THIS BOX TO BE COMPLETED BY READERS (BE DESIGNED) Additional information to identify the subject (e.g., other names used), the specific source, or the material to be disclosed

HCA TRIDENT MEDICAL CENTER
 9310 MEDICAL PLAZA DRIVE
 CHARLESTON SC 29406

From 09/01/11 to present

PURPOSE This document is to be used by the State agency and the State agency authorized to process my case (including on and off duty personnel) for the purpose of providing information to the State agency authorized to process my case (including on and off duty personnel). (Also, for information only, to the U.S. Department of State Foreign Service Post.)

☐ Determining whether I am capable of managing benefits ONLY (check only if this applies)

1. RENTING The use of a conveyance for hire.

- I have read both pages of this form and agree to the disclosures above from the date signed below my signature.

PLEASE SIGN USING BLUE OR BLACK INK

INDIVIDUAL authorizing disclosure

☐ Parent of minor ☐ Guardian ☐ Other personal representative (type in)

SIGN

248 512 200

2199: Addition

Phone Number (with area code)

15

1948

170

WITNESS

Know the person signing this form or am satisfied of this person's identity.

SIGN

1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26

1940

IF needed, second witness sign here (e.g. "Signed with 'X' above")
SIGN:

Phone Number (or Address)

This general and specific authorization to disclose was developed in 1977, and the provisions regarding disclosure of medical, educational, and other information under P.L. 104-181 ("HIPAA"), 45 CFR parts 160 and 164; 42 U.S. Code sections 262(a)(2), 42 CFR part 2, 30 U.S. Code section 1732; 38 CFR 1.476, 26 U.S. Code section 1232; ("FERPA"); 34 CFR parts 89 and 300; and State law.

TRIDENT MEDICAL CENTER
9330 MEDICAL PLAZA DRIVE
CHARLESTON, SC 29406

NAME: WASHINGTON, JIM
UNIT #: D000584759
Physician: TINA BOTELHO
Report Name: HISTORY AND PHYSICAL

ROOM #: D.613-A
ACCT #: D00040519282
Pt. Location: D.T6FL

DATE OF ADMISSION: 09/23/2012

REASON FOR ADMISSION: CVA, right eye incomplete hemiparesis, uncontrolled hypertension, hyperglycemia, and leukocytosis.

HISTORY OF PRESENT ILLNESS: This is the 58-year-old black male with history of hypertension and smoking who actually quit smoking a couple years ago who has also been noncompliant with his and hypertensive therapy. The patient presents after waking this morning with weakness in his right leg and right arm. Symptoms have been stable throughout the day have not worsened or resolved. The patient denies any associated symptoms. No double vision, difficulty swallowing, or incontinence. He has no chest pain or shortness of breath. No cardiac history.

REVIEW OF SYSTEMS: 12-point review of systems otherwise entirely negative.

PAST MEDICAL HISTORY: Hypertension and tobacco abuse.

SOCIAL HISTORY: The patient lives in St. Matthew's and goes to the family health center there. He admits to drinking excessive alcohol and reports having quit smoking a few years ago.

FAMILY HISTORY: The patient does not know of any early coronary disease, diabetes or other significant medical history within first degree relatives.

ALLERGIES: ASPIRIN. REACTION IS NOT SPECIFIED.

MEDICATIONS: The patient reports to be on atenolol 50 mg as presumed daily and Lopressor 100 mg presumed daily. Nitroglycerin 0.4 mg sublingual q. 5 minutes p.r.n. for chest pain, although of note, the patient cannot recall last he saw a physician or when he took his medications last.

PHYSICAL EXAMINATION: VITAL SIGNS: On exam temperature is 98, pulses 64, respiratory rate 16, blood pressure 170s to 190 systolic and 80s to 90s diastolic. O2 sats 97% on room air.

HEENT: Normocephalic, atraumatic. Pupils equally round and reactive to light. Extraocular muscles intact. Oral mucosa clear. No lesions or thrush.

NECK: Supple. No lymphadenopathy or thyromegaly.

CARDIOVASCULAR: Distant heart sounds. Regular rate and rhythm. No appreciable murmurs, gallops or rubs. No JVD. There is no edema.

EXTREMITIES: Peripheral pulse 1 to 2+ bilaterally and symmetrical.

PULMONARY: Normal breathing.

LUNGS: Clear to auscultation bilaterally. There are no wheezes, rales or rhonchi.

Patient Name: WASHINGTON, JIM

Account #: D00040519282

Exhibit - 6

TRIDENT REGIONAL MEDICAL CNTR
9330 MEDICAL PLAZA DRIVE
CHARLESTON, SC 29406

PHONE #: 843-847-4900
FAX #: 843-847-4363

Name: WASHINGTON, JIM
Phys: ROTELHO, TINA
DOB: Age: Sex: M
Acct: D00040519282 Loc: D.613 A
Exam Date: 09/24/2012 Status: ADM IN
Radiology No:
Unit No: D000584759

EXAMS:
003080818 MRI BRAIN W/NO CONTRAST

EXAM REASON::

HISTORY:
Right-sided weakness

COMPARISON:
Head CT from September 23, 2012

TECHNIQUE:
Multiplanar multi-sequence MR imaging of the brain was performed before and after the uneventful intravenous administration of 20 mL of Magnevist contrast.

FINDINGS:
Multi focal patchy restricted diffusion is present within the right parietal lobe and posterior left frontal lobe which appears to involve the cortex and subcortical white matter. This extends into the left centrum semiovale. There is minimal associated edema with this abnormality. No significant mass effect is present. There is no associated intracranial hemorrhage. Postcontrast imaging demonstrates serpentine enhancement within the abnormality.

The ventricles are normal in size and position. No midline shift or mass effect. No mass lesions. The posterior fossa and brainstem are unremarkable. Normal flow voids are present. The orbits are unremarkable. The paranasal sinuses and mastoid air cells are clear.

IMPRESSION:
Acute infarct within the posterior left frontal lobe, left parietal lobe, and left centrum semiovale as detailed above.

** Electronically Signed by M.D. Aron D. Rosenthal **
** on 09/24/2012 at 1333 **
Reported and signed by: Aron D. Rosenthal, M.D.

PAGE 1

Signed Report

(CONTINUED)

Patient: WASHINGTON, JIM

MRN: D000584759 Encounter: D00040519282

Page 1 of 2

Exhibit-16

TRIDENT REGIONAL MEDICAL CNTR
9330 MEDICAL PLAZA DRIVE
CHARLESTON, SC 29406

PHONE #: 843-847-4900
FAX #: 843-847-4563

Name: WASHINGTON, JIM
Phys: BOTEHO TINA
DOB: 09/11/54 Age: 58 Sex: M
Acct: D00040519282 Loc: D.613 A
Exam Date: 09/24/2012 Status: ADM IN
Radiology No:
Unit No: D000584759

EXAMS:
003080818 MRI BRAIN W/NO CONTRAST
<Continued>

EXAM REASON::

CC: TINA BOTEHO

Dictated Date/Time: 09/24/2012 (1333)
Technologist: SUSAN R. WHITE, R.T.
Transcribed Date/Time: 09/24/2012 (1333)
Prepared By: PHY.ROSARI
Electronic Signature Date/Time: 09/24/2012 (1333)
Orig Print D/T: S: 09/24/2012 (1337)
BATCH NO: N/A

PAGE 2

Signed Report

Patient: WASHINGTON, JIM

MRN: D000584759

Encounter: D00040519282

Page 2 of 2

Exhibit-17

EKG Report
Trident Special Testing
9330 Medical Plaza Dr
Charleston, SC 29406

Patient: WASHINGTON, JIM
Unit #: D000584759

Service Date: 09/25/12
Service Time: 0652

Test Reason :

Blood Pressure : ***/*** mmHG

Vent. Rate : 049 BPM Atrial Rate : 049 BPM

P-R Int : 146 ms QRS Dur : 088 ms

QT Int : 450 ms P-R-T Axis : 036 005 030 degrees

QTc Int : 406 ms

Marked sinus bradycardia

Minimal voltage criteria for LVH, may be normal variant

ST and T wave abnormality, consider anterolateral ischemia

Abnormal ECG

When compared with ECG of 23-SEP-2012 15:39,

Nonspecific T wave abnormality now evident in inferior leads

Referred By: TINA BOTELHO

Overread By: MARK COXER MD

Electronically Signed by MARK A COXER on 09/25/12 at 1049

Patient Name: WASHINGTON, JIM

Account #: D00040519282

South Carolina PCI *LIVE* (PCI: OE Database COCTR)

Run: 11/27/12-13:30 by PADGETT, CAROLYN

Exhibit-11
152

Page 1 of 1

PROMISED: 11:30
02-01-20
Scripts:

#5555 Ph: 803.854-2824



27 1047044 003 000 00 000018

Date: 02/01/2013 DA
Rx: 1047044 0:

INS: \$0.00

PAY: \$1.89

Cap:

WA
02/01/2013

3910 OLD HIGHWAY 6, P.O. BOX 411
BOX 411
Santee, SC
29142

WASHINGTON, JIMMIE
209 SINGNET DR, EUTAWVILLE, SC 298480000
Ph: 000.000.0000 DOB: 10-54
ASPIRIN EC 325 MG TABLET

1 TABLET BY ORAL ROUTE 1 TIME PER DAY

NDC:00536-3313-01 Days Supply: 30 Refills: 0 Qty:30 EA
Prescriber: ANNA BRUNSON PRICE
TP: 22670
AUTH#: 3890430872
SIMPLE SAVINGS CARD

CVS/pharmacy

The Pharmacy Team has information to share with you, please read below.

Message Center
Please verify your preferred contact number with your pharmacy staff

3910 OLD HIGHWAY 6, P.O. BOX 411
Santee, SC
29142

#5555 Ph: 803.854-2824
WWW.CVS.COM

WASHINGTON, JIMMIE

209 SINGNET DR
EUTAWVILLE, SC 290480000
Ph: 000.000.0000

02/01/2013
Prescriber: ANNA BRUNSON PRICE
Refills: 0

IF YOU HAVE ANY QUESTIONS ABOUT YOUR MEDICATION
PLEASE CONTACT YOUR PHARMACIST:
David P Shuler Jr, RPh.

ASPIRIN EC 325 MG TABLET

1 TABLET BY ORAL ROUTE 1 TIME PER DAY

This is an ORANGE, ROUND-shaped TABLET imprinted with T on the front.

ASPIRIN - ORAL - (AS-pir-in)
COMMON BRAND NAME(S):

Aspirin, Ecotrin, Empirin

USES:

Aspirin is used to reduce fever and relieve mild to moderate pain from conditions such as muscle aches, toothaches, common cold, and headaches. It may also be used to reduce pain and swelling in conditions such as arthritis. Aspirin is known as a salicylate and a nonsteroidal anti-inflammatory drug (NSAID). It works by blocking a certain natural substance in your body to reduce pain and swelling. Consult your doctor before treating a child younger than 12 years. Your doctor may direct you to take a low dose of aspirin to prevent blood clots. This effect reduces the risk of stroke and heart attack. You have recently had surgery on clogged arteries (such as bypass surgery, carotid endarterectomy, coronary stent), your doctor may direct you to use aspirin in low doses as a "blood thinner" to prevent blood clots.

HOW TO USE:

If you are taking this medication for self-treatment, follow all directions on the product package. If you are uncertain about any of the information, consult your doctor or pharmacist. If your doctor has directed you to take this medication, take it exactly as prescribed. Take this medication by mouth. Drink a full glass of water (8 ounces/240 milliliters) with it unless your doctor tells you otherwise. Do not lie down for at least 10 minutes after you have taken this drug. If stomach upset occurs while you are taking this medication, you may take it with food or milk. Swallow enteric-coated tablets whole. Do not crush or chew enteric-coated tablets. Doing so can increase stomach upset. Do not crush or chew extended-release tablets or capsules. Doing so can release all of the drug at once, increasing the risk of side effects. Also, do not split extended-release tablets unless they have a score line and your doctor or pharmacist tells you to do so. Swallow the whole or split tablet without crushing or chewing. The dosage and length of treatment are based on your medical condition and response to treatment. Read the product label to find recommendations on how many tablets you can take in a 24-hour period and how long you may self-treat before seeking medical advice. Do not take more medication or take it for longer than recommended unless directed by your doctor. Consult your doctor or pharmacist if you have any questions. If you are taking this medication for self-treatment of headache, seek immediate medical attention if you also have slurred speech, weakness on one side of the body, or sudden vision changes. Before using this drug, consult a doctor or pharmacist if you have headaches caused by head injury, coughing, or bending, or if you have a headache with persistent/severe vomiting, fever, and stiff neck. If you are taking this medication as needed (not on a regular schedule), remember that pain medications work best if they are used as the first signs of pain occur. If you wait until the pain has worsened, the medicine may not work as well. Aspirin with a special coating (enteric coating) or slow release may take longer to stop pain because it is absorbed more slowly. Ask your doctor or pharmacist to help select the best type of aspirin for you. You should not take this medication for self-treatment of pain for longer than 10 days. You should not use this drug to self-treat a fever that lasts longer than 3 days. In these cases, consult a doctor because you may have a more serious condition. Tell your doctor promptly if you develop ringing in the ears or difficulty hearing. If your condition persists or worsens (such as new or unusual symptoms, redness/swelling of the painful area, pain/fever that does not go away or gets worse) or if you think you may have a serious medical problem, tell your doctor promptly.

SIDE EFFECTS:

Upset stomach and heartburn may occur. If either of these effects persist or worsen, tell your doctor or pharmacist promptly. If your doctor has directed you to use this medication, remember that he or she has judged that the benefit to you is greater than the risk of side effects. Many people using this medication do not have serious side effects. Tell your doctor immediately if any of these unlikely but serious side effects occur: easy bruising/bleeding, difficulty hearing, ringing in the ears, change in the amount of urine, persistent or severe nausea/vomiting, unexplained tiredness, dizziness, dark urine, yellowing of eyes/skin. This drug may rarely cause serious bleeding from the stomach/intestine or other areas of the body. If you notice any of the following rare but very serious side effects, seek immediate medical attention: black/tarry stools, persistent or severe stomach/abdominal pain, vomit that looks like coffee grounds, slurred speech, weakness on one side of the body, sudden vision changes or severe headache. A very serious allergic reaction to this drug is rare. However, seek immediate medical attention if you notice any symptoms of a serious allergic reaction, including: rash, itching/swelling (especially of the face/tongue/throat), severe dizziness, trouble breathing. This is not a complete list of possible side effects. If you notice other effects not listed above, contact your doctor or pharmacist. In the US - Call your doctor for medical advice about side effects. You may report side effects to FDA at 1-800-FDA-1088. In Canada - Call your doctor for medical advice about side effects. You may report side effects to Health Canada at 1-866-234-2345.

PRECAUTIONS:

Before taking aspirin, tell your doctor or pharmacist if you are allergic to it, or to other salicylates (such as choline salicylate), or to other pain relievers or fever reducers (NSAIDs such as ibuprofen, naproxen, or if you have any other allergies. This product may contain inactive ingredients, which can cause allergic reactions or other problems. Talk to your pharmacist for more details. This medication should not be used if you have certain medical conditions. Before using this medicine, consult your doctor or pharmacist if you have: bleeding/bruise-clotting disorders (such as hemophilia, vitamin K deficiency, low platelet count). If you have any of the following health problems, consult your doctor or pharmacist before using this medication: kidney disease, liver disease, diabetes, stomach problems (such as ulcers, heartburn, stomach pain), aspirin-sensitive asthma (a history of worsening breathing with runny/stuffy nose after taking aspirin or other NSAIDs), growths in the nose (nasal polyps), gout, certain enzyme deficiencies (pyruvate kinase or G6PD deficiency). This medicine may cause stomach bleeding. Daily use of alcohol and tobacco, especially when combined with this product, may increase your risk for this side effect. Limit alcoholic beverages, and stop smoking. Check with your doctor or pharmacist for more information. Before having surgery, tell your doctor or

Exhibit-31

153

Continued on reverse side.

dentist that you are taking this medication. Children and teenagers should not take aspirin if they have chickenpox, flu, or any undiagnosed illness or if they have recently received a vaccine. In these cases, taking aspirin increases the risk of Reye's syndrome, a rare but serious illness. Tell your doctor promptly if you see changes in behavior with nausea and vomiting. This may be an early sign of Reye's syndrome. Older adults may be more sensitive to the side effects of this drug, especially stomach ulcers. Aspirin is not recommended for use during pregnancy. Consult your doctor before using this medication if you are or think you may be pregnant. Tell your doctor immediately if you become pregnant while taking this medication. Do not use this medication during the last 3 months of pregnancy because of possible harm to the unborn baby or problems during delivery. Aspirin passes into breast milk and may harm the nursing infant. Breast-feeding while using this drug is not recommended. Consult your doctor before breast-feeding.

DRUG INTERACTIONS:

If you are taking this product under your doctor's direction, your doctor or pharmacist may already be aware of possible drug interactions and may be monitoring you for them. Before you start taking this medication for self-treatment, consult your doctor or pharmacist if you are also using any prescription and nonprescription medications. Do not start, stop, or change the dosage of any medicine before checking with your doctor or pharmacist first. This drug should not be used with the following medication because very serious interactions may occur: mifepristone. If you are currently using any of these medications, tell your doctor or pharmacist before starting aspirin. Before using this product, consult your doctor if you have recently received certain live vaccines (such as varicella vaccine, live flu vaccine). Before using this medication, tell your doctor or pharmacist of all prescription and nonprescription products you may use, especially of: acetazolamide, "blood thinners" (such as warfarin, heparin), corticosteroids (such as prednisone), methotrexate, pemetrexed, valproic acid, herbal medications such as ginkgo biloba. Check all prescription and nonprescription medicine labels carefully since many medications contain pain relievers/fever reducers known as NSAIDs (non-steroidal anti-inflammatory drugs such as ibuprofen, ketorolac, naproxen). To prevent an overdose of aspirin, read the labels carefully before taking other pain relievers or cold products to make sure they do not contain aspirin. Ask your pharmacist about using these products safely. Daily use of NSAIDs (such as ibuprofen) may decrease aspirin's ability to prevent heart attack/stroke. If you are taking low-dose aspirin for prevention of heart attack/stroke, consult your doctor or pharmacist for more details and to discuss other possible treatments (such as acetaminophen) for your pain/fever. This medication may interfere with certain laboratory tests (including certain urine sugar tests), possibly causing false test results. Make sure laboratory personnel and all your doctors know you are taking this medication. This document does not contain all possible interactions. Therefore, before using this product, tell your doctor or pharmacist of all the products you use. Keep a list of all your medications with you, and share the list with your doctor and pharmacist.

OVERDOSE:

If overdose is suspected, contact your local poison control center or emergency room immediately. US residents can call the US National Poison Hotline at 1-800-222-1222. Canada residents can call a provincial poison control center. Symptoms of overdose may include: burning pain in the throat/stomach, confusion, mental/mood changes, fainting, weakness, ringing in the ears, fever, rapid breathing, change in the amount of urine, seizures, loss of consciousness.

NOTES:

If you use this medication regularly or at high doses, laboratory and/or medical tests (such as liver and kidney function tests, blood count, salicylate level) may be performed to monitor your progress or check for side effects. Consult your doctor for more details. There are many different aspirin products. Some have special coatings and some are long-acting. Ask your doctor or pharmacist to recommend the best product for you.

MISSED DOSE:

If your doctor directs you to take this drug on a regular schedule (not just "as needed") and you miss a dose, take it as soon as you remember. If it is near the time of the next dose, skip the missed dose and resume your usual dosing schedule. Do not double the dose to catch up.

STORAGE:

Store at room temperature between 59-86 degrees F (15-30 degrees C) away from moisture and light. Do not store above 104 degrees F (40 degrees C). Different brands of this medication may have different storage needs. Check the product package for instructions on how to store your brand, or ask your pharmacist. Do not store in the bathroom. Do not use any aspirin product that has a strong vinegar-like smell. Keep all medications away from children and pets. Do not flush medications down the toilet or pour them into a drain unless instructed to do so. Properly discard this product when it is expired or no longer needed. Consult your pharmacist or local waste disposal company for more details about how to safely discard your product.

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EXhibit-32

Run Date/Time: 09/26/12 1237		TRIDENT HEALTH SYSTEM Discharge - Patient Med List		Printed By: DNUR.KXG02	
Height: 165.10 cm (65 inches)		WASHINGTON, JIM		Acct# D00040519282 MR# D000584759	
ALLERGIES: aspirin ADRS: *** No ADR's Entered ***					
Discharge Medications					
GENERIC NAME (TRADE NAME) DOSE		ROUTE		FREQUENCY	
				QTY/DAYS	
				LAST DOSE DATE/TIME	
Updated Home Medication List					
AMLODIPINE BESYLATE (TRADE NAME: NORVASC) 10 MG		ORAL (by mouth)		DAILY	
				09/26/12	
ASPIRIN (TRADE NAME: ASPIRIN) 325 MG		ORAL (by mouth)		DAILY	
				09/26/12	
NICOTINE (TRADE NAME: NICODERM CQ) 14 MG		TRANSDERMAL		DAILY	
LAST TAKEN DOSE: UNKNOWN		RX Cmt: FOR FOUR WEEKS			
PRAVASTATIN SODIUM (TRADE NAME: PRAVASTATIN SODIUM) 20 MG		ORAL (by mouth)		DAILY	
LAST TAKEN DOSE: UNKNOWN					

*** Your hospital doctor wants you to take the drugs on this list when you go home. If you take any drugs that are not on this list, Call and tell your doctor. Throw away all old drug lists and give this new list to your doctors and your pharmacy. ***

WASHINGTON, JIM

Acct# D00040519282
MR# D000584759

DOB:
Adm/Svc: 09/23/12

Age: 58 Sex: M
Attend MD: BOTELHO, TINA

LOC: D.613-A
(843)718-2856

Patient Signature

Date/Time

155



PINS

Exhibit - 30

Page: 1 of 1 (FINAL)



D00040519282A

THE STATE OF SOUTH CAROLINA
In The Court of Common Pleas, Charleston County

R. MARKLEY DENNIS, Jr., Circuit Court Judge

Civil Action No. 2015-CP-10-5000

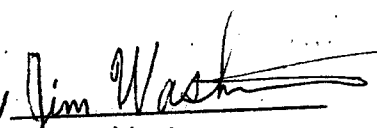
Jim Washington, ...Plaintiff,
v.
Trident Medical Center, LLC.....Defendant.

PROOF OF SERVICE

I, the undersigned do hereby certify that I have served all attorneys of record in this action with a copy of this **motion to vacate judgment and motion to amend the pleadings** by mailing a copy of the same in a prepaid wrapper deposited in a U.S. Post Office to the following addresses:

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Blake T. Williams, Esquire
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s/ 
Jim Washington
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Pro Se / Plaintiff

October 26, 2018

FILED
2018 OCT 25 PM 12:06
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE No. 2015-CP-10-5000

Jim Washington,

Plaintiff,

v.

Trident Medical Center, LLC

Defendant.

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO VACATE JUDGMENT AND
MOTION TO AMEND THE PLEADINGS**

FILED
2019 FEB -4 AM 10:02
JIM WASHINGTON
CLERK OF COURT

NOW COMES the Plaintiff Jim Washington and submits this Memorandum of Law in support of his Motion To Vacate Judgment and Motion To Amend The Pleadings which incorporates the Motion To Reconsider Conclusions.

PROCEDURAL BACKGROUND

In this matter, Plaintiff Jim Washington filed under SCRCR Rule 60 (b)(1) and (b)(3) a motion on 1/27/16 seeking a show cause hearing as grounds for the court to reopen its judgment and make new findings and to vacate the 1/7/16 judgment filed on 1/14/16 and final order entered on 2/5/16 based upon Plaintiff Rule 60 (b) motion alleging extrinsic fraud upon the court by Defendant attorneys whom repeatedly engaged in a scheme with deliberate intent to conceal and misrepresent Plaintiff claims and pleadings with deliberate intent to present extrinsic fraud upon the court that Plaintiff did not file a pre-suit Notice of Intent to file suit, an expert witness affidavit nor engaged in pre-suit mediation as required under S.C. Code Statutes 15-79-125(A) and 15-36-100 prior to filing the complaint and that anticoagulation treatment is not a matter of common knowledge but required expert witness testimony. (See id., at- Motion

to Reconsider Conclusion, pp. 17-21; 72-87}. Plaintiff alleged in the Rule 60 motion that the above misconducts by Defendant's attorneys (1) was a repeated plan and scheme designed with deliberate intent to misrepresent Plaintiff pleadings pre-suit to present extrinsic fraud upon the court to dismiss the Complaint as pleading litigation but not pre-suit pleadings to deliberately and intentionally scheme to render Plaintiff pre-suit pleadings under S.C. Code Statute 15-79-125(E)(2) which is the **more specific statute time limitation the legislative intent which is the best evidence a Plaintiff may file the Complaint against a defendant** as inapplicable for the court's adjudication to the pre-suit Pleadings under S.C. Code Statutes S.C. Code Statutes 15-79-125(A) and 15-36-100 knowing that the Complaint was incorporated by reference into the pre-suit statutes pleadings in the accompanying documents to the Complaint which render the Complaint being timely filed after mediation attempt had failed to make a final determination of sufficient number of jobs available for Plaintiff to return to work up until 3/1/2020 a close date that a determination must be made therefore the **specific statute must prevail over the general statute under S.C. Code Statutes 15-79-125(A) and 15-79-125(E)(2) dealing with same subject matter of time limitation when the action could be filed against a defendant**. { See id., at-Complaint and Accompanying documents; See id., at- Motion To Vacate Judgment And Motion To Amend The Pleadings-Disability Determination Explanation, pp. 1-10}. Plaintiff further alleges that aforementioned misconduct by Defendant Trident attorneys was a deliberate and intentional scheme with intent to subvert the integrity of the court itself as an institution to adjudication the issues presented for adjudication of pre-suit Notice of Intent to file suit, expert witness affidavit and mediation in the usual impartial manner which effectively prevented Plaintiff a full and fair opportunity to be heard on the issues of pre-suit Notice of Intent to file suit, expert witness affidavit and mediation on the merits, and (2) scheming with deliberate intent to present extrinsic fraud upon the court to misrepresent the claims as an anticoagulation treatment issue only to separate the two claims which are related to conceal from the court Plaintiff theory of pleading negligent in diagnosis on MRI by Defendant Trident failure to make an evidentiary finding of the source of Plaintiff cerebrovascular accident to show hemorrhage and cardioembolism as the source of Plaintiff injury, and (a) stated a claim for which relief could be granted, and (b) satisfied the qualified expert witness pre-suit

requirement under S.C. Code Statute 15-36-100(A)(3) because of his experience and personal knowledge of the case which effectively deprive Plaintiff of a full opportunity to be heard on these issues and effectively prevent Plaintiff of the opportunity to have the accompanying documents admitted into evidence to present his case to support his claims and defenses , and (3) deliberately scheme with intent to present extrinsic fraud upon the court to misrepresent to the court Plaintiff theory of the claims of reckless and negligent treatment of aspirin 325 mg as negligent treatment of anticoagulation with intent to subvert the integrity of the court to adjudicate the issues presented for adjudication in the usual impartial manner to improperly influence the court's decision (a) that anticoagulation is not a matter of common knowledge but required expert witness testimony knowing the issue was aspirin 325mg treatment which is not an anticoagulation at all which does not require expert testimony, and (b) that [no qualified expert witness was willing to testify that Defendant Trident breach any applicable standard of care] deliberately scheming with intent to present extrinsic fraud upon the court (1) to improperly influence the court decision that the court lack subject matter jurisdiction over the accompanying documents, and (2) to deliberately scheme with intent to present extrinsic fraud upon to misrepresent to the court to conceal from the court Plaintiff claim and defense of the expert witness affidavit statements that Defendant Trident was negligence on MRI : diagnosis by [failing to make an evidentiary finding on MRI to show the source of patient (Plaintiff) cerebrovascular accident as embolism of a cardiac source]. Therefore, Plaintiff alleges that the aforementioned misconduct by Defendant Trident attorneys was a scheme to deliberately and intentionally misrepresent and conceal with intent to present extrinsic fraud upon the court knowing that Plaintiff claims were based on the expert witness opinion in the accompanying documents incorporated by reference into the Complaint filed on 9/11/15 which did give an opinion that Defendant Trident breached the standard of care on diagnosis on MRI and treatment which the court had jurisdiction over the subject matter because the consent agreement Defendant Trident attorneys relied on from the Social Security Administration was not valid to make the final determination on Plaintiff medical condition for permanent impairment because The Regional Medical Center doctors on 9/30/12 had already made the decision to decide Plaintiff medical condition prior to Plaintiff signing the Social Security

Administration documents on 10/25/12 which Defendant Trident attorneys knew this or should have known this by the exercise of reasonable due diligence from the accompanying documents which stated [please see Dr. Khokhar's history and physical for full details regarding the admission history and physical. And further states I informed the patient I would follow up the results of the MRI. Dr. Khokhar's report states Transient ischemic attack (TIA) I believe this secondary to the patient not taking his medications. We will obtain a repeat MRI to make sure that there has been no further extension of CVA. We will obtain records from Trident] and knowing or should have known by the exercise of reasonably due diligence that Plaintiff would have to sign for the release of his medical record and Plaintiff did sign for the release on 9/30/12 and knew from the plain language of the documents on page 2 of 2 paragraph three which states [You a right to revoke this authorization at any time, except to the extent a source of information has already relied on it to take action] of which Defendant Trident attorneys relied on dated 10/25/12 (See id., at- Ref . Doc., Motion To Reconsider Conclusions; pp. 49-55 and pp. 63-66 and compare with Motion To Vacate Judgment And Motion To Amend Pleadings- Exhibits-Trident Medical Records, MRI of the brain report findings and Impression) ; and (c) that the court lack subject matter jurisdiction over the accompanying documents Plaintiff submitted with the Complaint, and (d) that Plaintiff fail to support a claim with a qualified expert witness affidavit which relief could be granted, and (e) Plaintiff fail to state facts sufficient to constitute a cause of action, and (f) Plaintiff pleadings were defective entitling Defendant to judgment on the pleadings, and (g) the requisite 3 years statute of limitations applied to the action and had expired. { See id., at- Motion To Reconsider Conclusions, pp. 17-21; pp. 41-67; 72-87}.

II

Plaintiff further alleged in the SCRPC Rule 60 (b) Motion that all of the aforementioned misconducts by Defendant's attorneys was a deliberate planned scheme to misrepresent Plaintiff pre-suit pleadings in the Complaint as litigation medical malpractice statutory pleadings with deliberate intent to scheme to construe the accompanying documents pre-suit statutes pleadings separately rather than together as a whole dealing with the same subject matter was

a scheme with intent to present extrinsic fraud upon the court itself and with deliberate intent to scheme to subvert the integrity of the court to adjudicate these issues presented for adjudication in the usual impartial manner which did effectively denied Plaintiff a full and fair hearing and in the final order granting Defendant Trident Motion To Dismiss the action and the accompanying documents with prejudice, and (1) which effectively prevented Plaintiff a full and fair opportunity to be heard to present his case on his motion to amend the Complaint to state a intentional tort claim theory of relief because the court ruled it was denying Plaintiff motion to amend the Complaint for the same reason the court dismiss the action which effectively prevented Plaintiff a full and fair opportunity to be heard to present his case that Defendant Trident was liable for economic damages, compensatory and punitive damages under S.C. Code Statutes 15-32-210 through 15-32-530 titled the South Carolina Non Economic Damage Award Act of 2005 as alleged in Plaintiff Memorandum of Law with documented evidence in support of his motion to compel mediation requested in Plaintiff Memorandum of Law and orally requested at the hearing which the court rule was irrelevant, immaterial and inadmissible to issues being discuss to dismiss the action which was an abuse of the court discretion and its factual basis not supported by the evidence and control by error of law that the Memorandum of Law was irrelevant , immaterial and inadmissible to the issues being discuss to dismiss the action because The Regional Medical Centers had already stated Trident was negligent in diagnosis on MRI and treatment which affect the anticoagulation and common knowledge issue and breach the standard of care and damage issues and compel mediation, and (2) prevented Plaintiff a full and fair opportunity on the medical malpractice action to present the accompanying documents to be heard on his claims and defenses with controlling citations of authority that he had followed the procedures to complied with S.C. Code Statutes 15-79-125(A) and 15-36-100 pre-suit statutes requirements when Defendant Trident was joined as a defendant in the Complaint which must be construed together as a whole dealing with the same subject matter rather than separately (a) because Plaintiff pre-suit pleadings are based on factual allegations that his treating physician at The Regional Medical Center first ordered release of his medical records from Defendant Trident on 9/30/12 and did receive these documentation which are the accompanying documents statutory pre-suit pleadings which

incorporates the same pre-suit pleadings in the Complaint and form the bases of his expert witness opinion which occurred prior to Plaintiff filing the notice of the claim for disability for permanent impairments on 10/25/12 with the Social Security Administration therefore the circuit court had subject matter jurisdiction over the accompanying documents, and (b) Plaintiff engaged in pre-suit mediation with the Social Security Administration on 4/30/13 on the same claims of permanent impairments prior to filing the complaint on 9/11/15 under S.C. Code Statute 15-79-125(E)(2) therefore the discovery rule applied so the six years statute of limitation was applicable to the issue of permanent impairments jobs available for Plaintiff to return to work. { See id., at-Ref. Doc.-Motion to Reconsider Conclusions, pp. 2-10; pp. 17-21; pp. 41-66; pp. 72-81; pp. 82-87}.

Defendant Trident participated in this pre-suit mediation process but mediation attempt fail to determine would Plaintiff permanent impairments prevent Plaintiff to return to work in the future therefore the discovery rule applies to plaintiff claim of permanent impairments. { See id., at-Motion To Vacate Judgment And Motion To Amend The Pleadings, Exhibits- Disability Determination Explanation, pp. 1-10; pp. 20-55(Trident Medical Records)}.

Plaintiff sought leave of the court in the 1/27/16 SCRPC Rule 60 (b) motion to reopen its judgment make new findings of facts and conclusions because he was denied a full and fair opportunity to present his claims and defenses at the hearing on the subject matter in Plaintiff Memorandum of Law and in Motion in Opposition To Dismiss to compel mediation and amendment of his Complaint. { Ref. Doc., Motion To Reconsider Conclusions, pp. 86-87}. Plaintiff alleged in the 1/27/16 SCRPC Rule 60 motion that relief should be granted because of Defendant's attorneys deliberately and repeatedly scheme to misrepresent and conceal Plaintiff's pre-suit pleadings of his claims and defenses in the complaint and the accompanying documents (1) knowing that Plaintiff medical records documentation from Defendant Trident Medical Center had originally been ordered on 9/30/12 by his treating physician at The Regional Medical Center to determine the extent, nature, source, cause and history of his injury and medical care that was provided at Trident prior to admission at The Regional Medical Center and the need for further MRI diagnosis to make sure that there has been no further

extension of his CVA since discharge from Trident which did find additional chronic ischemic changes in the left occipital lobe and treatment as follow-up care and services, and (2) that Defendant Trident attorneys knew that the Release Authorization agreement that Plaintiff signed on 10/25/12 with the Social Security Administration clause stipulated on page 2 of 2 third paragraph that: "Plaintiff had a right to revoke this authorization at any time, except to the extent another source of information has already relied on it to take action, and also stated that the Social Security Administration may use information disclosed prior to revocation to decide your claim. { See id., at- Motion To Reconsider Conclusion, pp. 19-21; pp. 41- 46; pp. 49-55; pp. 62-65; pp. 72- 87}. Therefore, Plaintiff allege in his [SCRCR Rule 60(b)(1) and (b)(3) motion, in his Motion To Reconsider Conclusions and in his Motion To Vacate Judgment And Motion To Amend The Pleadings] relying on McClurg v. Deaton, 395 S.C. 85, 86-99, 716 S.E.2d 887(2011)(Majority and Dissenting Opinion); Chewning v. Ford Motor Company, 354 S.C. 72, 76-86, 579 S.E.2d 605 (2003) and Davis v. Davis, 236 S.C. 277, 280-285, 113 S.E.2d 819(1960) for the proposition that it is reasonable inferable by clear and convincing evidence that his claims and defenses are meritorious (1) that Plaintiff followed the proper procedure in filling the Complaint and was not bound by the Social Security Administration policy and procedures source of information already relied on by Plaintiff and the doctors at The Regional Medical Center whom received documentation from Defendant Trident whom is the other sources of information [stating that Defendant Trident was negligent in diagnosis and treatment] prior to the date 10/25/12 when Plaintiff signed the [notice of intent to file a claim for disability to have the medical records release to the Social Security Administration and Defendant Trident was served a copy of same release documents from the Social Security Administration after The Regional Medical Center release form was sent to Defendant Trident] therefore Plaintiff [Verified Complaint treated as affidavit of an expert witness] incorporated into the Complaint pre-suit pleadings under the same statutes was sufficient to meet the pre-suit statute pleadings requirements when Defendant Trident was joined as a defendant in the Complaint and the requisite statute of limitation was toll, and (2) that Defendant Trident attorneys knew this from the documents plain language which includes the documents from The Regional Medical Center medical records which contained the instruction to please see Dr. Khohkar's history and

physical for a detail for admission which incorporate by reference Dr. Khohkar's physical and history which includes Plaintiff consent to order Trident medical records to make sure no further extensions of the CVA occur since discharge from Trident and need to do a repeat MRI to verify it which was signed by Plaintiff but Defendant Trident attorneys deliberately and intentional scheme with intent to misrepresent this information to the court to present extrinsic fraud upon the court that the court lack subject matter jurisdiction over the accompanying documents file with the Complaint with deliberate intent to subvert the integrity of the court to adjudicate the issues presented for adjudication in the usual impartial manner (1) that the court had subject matter jurisdiction over the accompanying documents for all allegations of medical malpractice issues which are incorporated into Plaintiff Complaint against Defendant Trident, and (2) pre-suit mediation attempt had determined that Plaintiff was disable to return to his former line of work, his medical impairments were severe and not expected to improve therefore considered permanently disable according to their rules and could rely on other sources to give an opinion as a policy matter but in weighing the evidence determine there did not appear to be any opinion evidence, but that there were potential work Plaintiff skills could potentially be transferable but that there were insufficient number of jobs available in the job market. See Exhibits-"A" Plaintiff Memorandum of Law in Support of Motion To Vacate Judgment And Motion To Amend The Pleadings- TRMC-doctor report and consent Plaintiff signed dated 9/30/12; See id., at-Motion To Vacate Judgment And Motion To Amend Pleadings, Exhibits-Disability Det. Explanation, pp.1-10.

Plaintiff allege in his Memorandum of Law, orally at the hearing and in his SCRPC Rule 60(b)(1) and (b)(3) motion that mediation attempt fail to make final determination of Plaintiff future work availability which affects Plaintiff prayer for relief in the Complaint for actual and consequential damages, and punitive damages and for such other and further relief that this court deem just and equitable which affects damages for past, present and future economic loss of income from employment, noneconomic damages for loss of enjoyment of life and physical impairments which affects Plaintiff actual damages because Defendant Trident was liable for medical malpractice negligence in diagnosis on MRI and Negligence treatment of aspirin 325mg causing Plaintiff injury and negligent failure to warn on discharge to seek

immediate follow-up care for anticoagulation treatment affect consequential damages for causing a second stroke and additional permanent impairments, and affects punitive damages for Defendant Trident reckless conduct to not take correct action but continued to treat with aspirin 325mg up until discharge and after discharge for continue treatment of aspirin 325 mg all of which Plaintiff prayed for damages relief in the Complaint and for such other and further relief as this court may deem just and equitable. { See id., at-Motion to Reconsider Conclusions, 19-21; p. 46-51; pp. 82-87; See id., at-Exhibits-Motion to Vacate Judgment And Motion To Amend The Pleadings, pp. 97-98 and 100-106}.

Therefore, Plaintiff allege and sought leave of the court in his Memorandum of Law and orally at the hearing (1) for the court to compel ADR mediation after the Complaint was file under S.C. Code Statute 15-79-125 (F), and (2) sought leave of the court to allow Plaintiff to Amend the Complaint to state a second theory of recovery for damage relief, and (3) Plaintiff Pleadings satisfied all the medical malpractice statutory pre-suit requirements when Defendant Trident was join as a Defendant to the Complaint therefore the requisite statute of limitation was toll, and (4) that Plaintiff supported a claim for which relief could be granted that Defendant Trident was Negligent in diagnosis on MRI and negligent and reckless in treatment of aspirin 325 mg, and (5) that aspirin treatment was a common knowledge issue, but because of Defendant attorneys deliberate scheme and repeated misconduct of extrinsic fraud upon the court he was effectively deprive of a full and fair opportunity to present evidence and be heard on his claims and defenses that the expert witness was qualified to give an opinion on the standard of care under S.C. Code Statute 15-36-100 (A)(3) and the expert affidavit supported a claim which relief could be granted because the expert witness stated: Of note we did receive documentation from Trident and that Trident was negligent in diagnosis by failing to make an evidentiary finding on MRI of the source of Plaintiff injury to show cardioembolism as the source of the cerebrovascular accident. { See id.,at- Motion To Reconsider Conclusion, pp. 19-21; pp. 41-53; pp.62-67; pp. 72-87; See id., at- Motion To Vacate Judgment And Motion To Amend Pleadings-Disability Determination Explanation-Exhibits, pp. 1-10 and Plaintiff Memorandum of Law, pp. 97-98 and pp.100-106; See Plaintiff Memorandum of Law in Support of Motion To Vacate Judgment And Motion To Amend The Pleadings-Exhibits A "propose final order"}.

Plaintiff also allege in the SCRCR Rule 60(b) motion that Defendant Trident attorneys scheme with deliberate intent to defraud the court itself by misrepresenting Plaintiff pleadings as a whole and specifically scheme with deliberate intent to misrepresented to the court in their propose order at the final order proceeding that Plaintiff consented with the Social Security Administration to complete to mediate in that forum to make the final determination of Plaintiff permanent impairments medical condition knowing Plaintiff had already consented with the treating physicians at The Regional Medical Center to make the final determination of his medical condition on 9/30/12 to deliberately and intentionally scheme to present extrinsic fraud upon the court to attempt to render the court without subject matter jurisdiction relying on the Social Security Administration Determination documents Disability Determination Explanation which was not made a part of record which stated [the case is not closed until 3/1/2020 to determine if sufficient amount of available jobs this applicant skill could be transferable] to present extrinsic fraud upon the court citing Doe v. Marion, 361 S.C. 463, 469, 605 S.E.2d 556, 559(Ct. App. 2004), 'aff'd, 373 S.C. 390, 645 S.E.2d 245(2007) and Ashley River Properties, I, LLC v. Ashley River Properties II, LLC, 374 S.C. 271, 277, 648 S.E.2d 295, 298(Ct. APP. 2007) with deliberate intent to scheme to subvert the integrity of the court itself as an institution to function in the usual impartial manner to adjudication Plaintiff pre-suit pleadings in the Complaint along with accompanying documents which did effectively deprive Plaintiff of a full and fair opportunity to be heard (1) on the subject matter of pre-suit mediation and amendment of the Complaint at the hearing and at the final order proceeding, and (2) six-years discovery rule applied on filing the complaint prior to the expiration of the statute of limitation whichever is later, therefore the pre-suit Notice of Intent to file suit pleadings in the accompanying documents and verified Complaint treated as an expert witness affidavit pleadings filed under S.C. Code Statutes 15-79-125(A) and 15-36-100 were sufficient tolling the statute of limitation when Defendant Trident was joined as a party in the Complaint and the Complaint was timely file [which was a meritorious defense of the court factual conclusion that Plaintiff did not follow the procedure to file action and not supported by the evidence and control by an error of law] under the three (3) medical malpractice statutes cited by Plaintiff supported by controlling citations of authority and was relevant, material and admissible as

evidence to the action and needed to be adjudicated by the court before [a determination was made by the court at the hearing, on the form-4 judgment and in the finally order that Plaintiff fail to follow the procedure with the pre-suit statutory requirements prior to filing the complaint and that the court lacked subject matter jurisdiction over the accompanying documents filed with the Complaint]. {See id., at- Motion To Reconsider Conclusions, pp. 19-21; pp. 41-46; pp. 49-55; pp. 62-66; pp. 72-87; See id., at- Motion To Vacate Judgment And Motion To Amend The Pleadings-Plaintiff Memorandum of Law, pp. 97-98}.

Furthermore, Plaintiff did attempt to argue to the court (1) that he followed the pre-suit and litigation procedures approved under Wilkinson v. East Cooper Community Hospital, 410 S.C. 163, 172-173, 763 S.E.2d 426(2014)(quoting Fisher v. Pelstring, 817 F. Supp.2d 791, 807 n. 8 (D.S.C. 2011)), and (2) the pre-suit mediation issue and request the court to compel mediation between the parties, and (3) request to amend the Complaint in his Memorandum of Law and orally at the hearing. { See id., at- Ref. Doc., Motion To Reconsider Conclusions, pp. 82-87; See id., at-Motion To Vacate Judgment And Motion To Amend The Pleadings-Plaintiff Memo. of Law, pp. 97-98}.

Plaintiff attempt to argue before the court (a) that Plaintiff did attempt to mediate the claim that he was disable to work prior to filing the action and Defendant Trident did participate in the mediation process and mediation did determine Plaintiff impairments were severe, medical improvement not expected, cannot walk or stand for a long period of time because legs would swell up and that he was disable to work but failed to make a final determination on the issues of whether Plaintiff permanent impairments would prevent Plaintiff ability to return to work in the future all of which are elements of Plaintiff prayer for damage relief in the Complaint affecting future economic damages, actual, compensatory and punitive damages and for such other and further relief as this court may deem just and equitable. Therefore, the six-year discovery rule applied as allowed under S.C. Code Statute 15-79-125(E)(2) to file the Complaint when mediation attempt has fail prior to filing the Complaint prior to the expiration of the statute of limitation which ever is later, and (b) that the pre-suit Notice of Intent to file suit is sufficient tolling the statute of limitation when Defendant Trident

was join as a party in the Complaint and the circuit court had subject matter jurisdiction over the medical malpractice action for damage relief, relying on Wilkinson v. East Cooper Community Hospital(quoting Fisher v. Perlstring)(same) and Ross v. Waccamaw Community Hospital, 404 S.C. 56, 744 S.E.2d 547(2013)(same) was a meritorious claim and defense. { See id., at-Mot. To Recons. Conclus., pp. 82-87; Motion To Vacate Judgment And Motion To Amend The Pleadings-Plaintiff Memorandum of Law, pp. 97-98}. However, the court again concluded that Plaintiff Fail to follow the procedure required under the medical malpractice before filing his action. Plaintiff had asked the court was there being a ruling separately on all the issues he had raised? The court stated [I am ruling that the action wasn't properly commenced, sir. And that ends the action. It is over, okay. Now you can - - if you get an appeal and they send it back you get to start again. Thank you, sir. (WHEREUPON, the hearing concluded)]. The court ruled Plaintiff would have to appeal to the S.C. Supreme Court to seek a change in the law first and get reversed back to the circuit court. The court ruled that Plaintiff Memorandum of Law seeking to compel mediation claims and defense to deny Defendant Trident Motion to Dismiss the action was not relevant or material to the issues before the court on pre-suit Notice of Intent to file suit, expert witness affidavit, and denied Plaintiff Motion to Amend the Complaint for the same reasons he dismiss the action which was (1) that Plaintiff did not follow the procedure to commence the action by filing a pre-suit Notice of Intent to file suit, and (2) Plaintiff did not file an expert witness affidavit, and (3) Plaintiff treating physician statements could not be used to qualify as an expert witness affidavit under the statute therefore not admissible as evidence to show a breach of the standard of care to support a claim for which damages relief could be granted, and (4) anticoagulation is not a common knowledge issue and excluded Plaintiff documents in support of his claims for relief. { See id., at- Motion To Reconsider Conclusions, pp. 82-87}.

Plaintiff allege in his Motion To Vacate Judgment And Motion To Amend The Pleadings under SCRCP Rule 60 (b)(1) and (b)(3) that the courts factual conclusions were mistakes not supported by the evidence in the record and control by error of law therefore was an abuse of the court's discretion which entitles Plaintiff for equitable relief from the final order under SCRCP Rule 60(b)(1) and (b)(3). {See id., at pp. 3-12}.

The court granted Defendant Trident Motion To Dismiss and granted Defendant attorneys request to prepare an appropriate propose order to be submitted to the court for signing a final order to dismiss the action. Plaintiff objected to the propose order but the court ruled Plaintiff did not have to object to the propose order but could file an appeal to the S.C. Supreme Court to the final order all of which was an a abuse of the court's discretion and deprived Plaintiff of a full and fair opportunity to be heard at the hearing and at the final judgment proceeding to présent his meritorious pre-suit pleadings, claims and defenses under the procedures approved under Wilkinson(quoted Fisher v. Pelstring) along with other citation of authorities dealing with medical malpractice statutes and on the subject matters of (1) participating in pre-suit mediation prior to filing the complaint under S.C. Code Statute 15-79-125(E)(2) on 9/11/15 tolling the statute of limitation and the six-year discovery rule applied, and (2) the pre-suit Notice of Intent to file suit and expert witness affidavit pleadings in the accompanying documents were sufficient when the defendant Trident was join as a party in the Complaint was filed tolling the statute of limitation was a meritorious claim and defense, and (3) reckless and negligent treatment of aspirin 325mg was a common knowledge issue, and (4) negligent in diagnosis on MRI of the brain by Defendant Trident failure to make an evidentiary findings of the cerebralvascular accident as hemorrhage and embolism of a cardiac source, and (5) It was just and appropriate under circumstances for the court to allow Plaintiff to Amendment of the Complaint pleadings to conform to the evidence to state a second theory of recovery with a meritorious defense for intentional tort against Defendant Trident in his claim for economic damages, actual damages, compensatory and punitive damages relief, because (1) the Notice of Intent to file suit was sufficient when Defendant Trident was joined as a defendant in the Complaint and requisite statute of limitation was toll, and (2) the repeated and continuous treatment of aspirin 325 mg which was provided to Plaintiff with intent to cause harm and reasonable foreseeable likely to cause when Defendant Trident knew Plaintiff condition had worsen by their own medical doctor report on the second EKG but recklessly and intentionally fail to take corrective action but instead continue to treat with aspirin 325 mg which they knew was not a blood thinner at all with intent to cause harm and did cause a second stroke and additional permanent impairment which they knew from the manufacturer package insert that

aspirin 325 mg was inadequate to treat for stroke prevention and was design to treat general common illnesses in the general population without need for medical expert supervision or knowledge. Therefore, aspirin 325 treatment was a matter of common knowledge without need of an expert witness to meet the pre-suit statutory requirement in Plaintiff prayer for damage relief in the Complaint. Therefore, Amendment of the Complaint was appropriate under the circumstances. Therefore, the court's decision to deny amendment of the Complaint [for the same reason that the action was dismissed] was not supported by the evidence and control by an error of law which was an abuse of the court's discretion entitling Plaintiff to equitable relief to vacate the final order: { See id., at -Motion to Reconsider Conclusion, pp. 17-21; pp. 41-67; pp. 75-81; pp. 82-87; See id., at Ref. Doc., Motion to Vacate Judgment And Motion to Amend The Pleadings-Exhibits, Disability Determination Explanation, pp. 1-10; See id., Exhibits-Trident Medical Records, pp. 20-55; See id., at- Exhibits- Plaintiff Memorandum of Law, pp. 97-98; pp. 98-107 }.

DISCUSSION

Whether to grant or deny a motion under SCRCR Rule 60(b) lies within the sound discretion of the court. Coleman v. Dunlap, 306 S.C. 491, 494, 413 S.E.2d 15, 17 (1992). An abuse of discretion arises in a case in which: (1) the judge issuing the order was controlled by some error of law; or (2) where the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support. Ledford v. Pennsylvania Life Ins. Co., 267 S.C. 671, 675-677, 230 S.E.2d 900(1976); Stewart v. Floyd, 274 S.C. 437, 440-446, 265 S.E.2d 254(1980); South Carolina Department of Social Services v. Durham, 274 S.C. 222, 224, 262 S.E.2d 49(1980). Therefore, the standard of review of the court is limited to determine whether there was an abuse of discretion by the court in granting Defendant Trident Motion to Dismiss in the court's final order factual basis was support by evidence where Plaintiff had meritorious defense or the order was controlled by an error of law. South Carolina Department of Social Services v. Durham, 274 S.C. 222, 224, 262 S.E.2d 49(1980); Thompson v. Hammond, 299 S.C. 116, 118-123, 382 S.E.2d 900(1989); Coleman v. Dunlap, 306 S.C. 491, 495-496, 413 S.E.2d 15(1992); Kiriakides v. The School District of Greenville County, 382 S.C. 8, 20-22, 675 S.E.2d 439(2009).

Plaintiff, in this SCRPC Rule 60(b)(1) and (b)(3) motion seeks relief from judgment (1) alleging that the court abuse it's discretion in several factual conclusions not supported by the evidence in the final order and were controlled by errors of law as alleged in the above Motion To Vacate Judgment And Motion To Amend The Pleadings as allege in part I through part III, and (2)(a) the above factual allegations in part I through part III in this Motion To Vacate Judgment And Motion To Amend The Pleadings were repeated and deliberate schemes with intent to misrepresent and conceal Plaintiff pleadings, claims, defenses to present extrinsic fraud upon the court by Defendant Trident attorneys to secure the final order, and (b) also were repeated and deliberate scheme with intent to subvert the integrity of the court itself to adjudicate Plaintiff pre-suit pleadings of his claims and defenses presented for adjudication in the usual impartial manner on the above subject matters by Defendant Trident attorneys in securing the judgment granting dismissal of the action and dismissal of the accompanying documents with prejudice depriving Plaintiff of a full and fair opportunity to be heard on his claims and defenses on the merit. { See id., at- Plaintiff Memorandum of Law in Support of Motion To Vacate Judgment And Motion To Amend The Pleadings, Exhibits "A" final order granting motion to dismiss, pp. 1-6; See id., at- Ref. Doc., Motion To Reconsider Conclusions, pp. pp. 19-21; pp. 72-87}. Davis v. Davis, 236 S.C. 277, 279-284, 113 S.E.2d 819(1960); Chewning v. Ford Motor Company, 354 S.C. 72, 80-81, 579 S.E.2d 605(2000); Ex Parte Carter, 422 S.C. 623, 631(2018).

In order to secure equitable relief on the basis of fraud, the fraud must be extrinsic. Chewning v. Ford Motor Company, 354 S.C. 72, 80-81, 579 S.E.2d 605(2000)(quoting Bryan v. Bryan, 220 S.C. 164, 66 S.E.2d 609(1951)(extrinsic fraud is necessary in order to secure equitable relief vacating a prior judgment). Extrinsic fraud is "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action. Chewning V. Ford Motor Company, 354 S.C. 72, 81, 579 S.E.2d 605(2000)(citing Hilton Head Ctr.

of South Carolina v. Public Serv. Comm'n., 294 S.C. 9, 11; 362 S.E.2d 176, 177(1987); Ex Parte Carter, 422 S.C. 623, 630(2018). The extrinsic fraud allege must also be proven by clear and convincing evidence to warrant relief from judgment. United Business Communications, Inc. v. Racal-Milgo, Inc., 591 F. Supp. 1172,1175-1187(Dist. Court, D. Kansas 1984)(same); Hagy v. Pruitt, 339 S.C. 425, 432-434, 529 S.E.2d 714(2000); Chewning v. Ford Motor Company, 354 S.C.72, 82-86, 579 S.E.2d 605(2003).

MERITS

In this SCRCF Rule 60 (b)(3) Motion To Vacate Judgment And Motion To Amend The Pleadings Plaintiff have proven to the court by clear and convincing evidence in the above pleadings for relief from final judgment that the final judgment was procured by Defendant Trident attorneys who engaged in a series of deliberate and intentional schemes of misconducts (1) that Plaintiff did not comply with S.C. Code Statutes 15-79-125(A) and 15-36-100 pre-suit statutory requirements to commence the action, and (2) that the court lack subject matter jurisdiction over the accompanying documents file with the Complaint, and (3) the anticoagulation treatment was not a common knowledge issue but required expert witness testimony knowing with deliberate intent to scheme to misrepresent Plaintiff allegation in the Complaint to present extrinsic fraud upon the court. (a) Plaintiff alleges that Defendant Trident attorneys deliberately and intentionally engage in a scheme with intent to present extrinsic fraud upon the court that Plaintiff did not comply with the pre-suit statutory prior to filing the action by deliberately and intentionally engaging in a scheme to misrepresent to the court Plaintiff stated he was filing the Complaint as litigation pleading knowing that Plaintiff filings were filed to cited the statutes in the Complaint only to meet pre-suit Notice of Intent to file suit and expert witness affidavit pre-suit statutory pleadings requirements which relates back and incorporated by reference to accompanying documents pre-suit statutory pleadings dated 10/25/12 citing the same statutes which must be read together as a whole dealing with the same subject matter and the more **specific statute of when a Plaintiff could file the action and which statute of limitation apply when mediation has fail to make a final determination prior to expiration of statute of limitation whichever is later a Plaintiff could file the action**

against a defendant when the legislative intent is for the more specific statute should apply and prevail over the general statute on the same subject matter and that these attorneys knew this because Plaintiff pleading on the face of the Complaint was that he was filing the Complaint on 9/11/15 under S.C. Code Statute 15-79-125(E)(2) because mediation attempt had fail and the three (3) years statute of limitation was soon to expire for filing the action. Wilder v. S.C. State Hwy. Dept., 228 S.C. 448, 451-457, 90 S.E.2d 635(1955)(same); Denman v. City of Columbia, 387 S.C. 131, 138-140, 691 S.E.2d 465(2010)(same); Ranucci v. Crain, 409 S.C. 493, 500-501, 763 S.E.2d 189(2014)(same). Therefore, Plaintiff allege that Defendant Trident attorneys engaged in the above misconduct was deliberate and intentional scheme to present extrinsic fraud upon the court to misrepresent, separate and conceal the true nature of pre-suit pleadings also with deliberate and intentionally scheme to misrepresent to the court that the court lack subject over the accompanying documents file with the Complaint to present extrinsic fraud upon the court knowing that Social Security Administration consent agreement was not valid because Plaintiff and doctors at (TRMC) The Regional Medical Center on 9/30/12 with the Plaintiff consent had already agree to make the final decision concerning medical condition and that Defendant Trident attorneys knew this from the doctors instruction in the accompanying documents but repeatedly and deliberately scheme to misrepresent to the court that it lack subject matter jurisdiction over these relying on 10/25/12 signed document and the 4/30/13 determination of future job availability knowing the consent was not valid because Social Security Administration consent agreement accompanying documents on page 2 of 2 paragraph three (3) plain language explicitly states [you the applicant (Plaintiff) have a right to revoke your consent except to the extent another source has already rely on this information to take action] which these attorneys knew that The Regional Medical Center had already consented to take action to determine Plaintiff medical condition on 9/30/12 which is prior to Plaintiff signing the consent agreement with the Social Security Administration on 10/25/12 was not valid to enforce to prevent the court to be without subject matter jurisdiction over the medical malpractice action. { See id., at-Ref. Doc., Motion To Reconsider Conclusions, pp. 49-50; pp. 51-55; pp. 61-66 ; See id., at- Motion To Vacate Judgment And Motion To Amend The Pleadings-Plaintiff Memorandum of Law In Support "Exhibits-A", Regional Medical Center

consent agreement to order document from Trident to determine Plaintiff Medical condition }. Therefore, the above evidence clear and convincingly proves that Defendant Trident attorneys knew that the court had subject matter jurisdiction over the accompanying but repeatedly and deliberately and intentionally scheme to misrepresented and conceal from the court this information in their motion to dismiss, in their memorandum, at the hearing and in the propose order to the court to present extrinsic upon the court to dismiss the accompanying documents which supported Plaintiff theory of compliance with the pre-suit statutory requirements which effectively deprive Plaintiff to present his case and effectively deprive Plaintiff of a full opportunity to be heard on all the aforementioned issues at the hearing and final order proceeding , and (c) effectively deprive Plaintiff to present his case on the issue of negligence and effectively deprive Plaintiff a full opportunity to be heard that Defendant Trident was negligent in diagnosis on MRI and effectively deprive Plaintiff of a full and fair opportunity to present his case and be heard on the issue of common knowledge that aspirin 325mg treatment not anticoagulation treatment which was he was never given at all was reckless and negligent and was a common knowledge issue based on his treating physician statements in the accompanying documents which stated [the standard of care when embolism is a possibility is to order a heparin drip ,consult Neurology treat per Neurology protocol and to discharge on Coumadin with INR adjustment to be made by PCP within 2 days that Trident was negligent in diagnosis on MRI support Plaintiff claim for relief] because Plaintiff was never treated with any anticoagulation he met the pre-suit statutory pleadings requirements under S.C. Code Statutes 15-36-100 (A)(3) and 15-36-100(C)(2) because a jury could infer negligent. The manufacturer package insert made aspirin 325mg a common knowledge issue because it states aspirin was a common treatment for the general population for common illnesses such as common cold, headaches, pains muscle aches etc etc without a need for medical supervision needed to be taken but ineffective to treat for blood clots for stroke prevention. Plaintiff had allege in the Complaint that Trident knew he was allergic to aspirin but continue to treat with it was negligent and reckless met the pre-suit expert witness affidavit requirements of common knowledge. Brouwer v. Sisters of Charity Providence Hospitals, 409 S.C. 514, 519-523, 763

S.E.2d 200(2014)(same); Cox v. Lund, 286 S.C. 410, 414-417, 334 S.E.2d 116(1985)(same); Eades v. Palmetto Cardiovascular And Thoracic, 422 S.C. 196, 199-204, 810 S.E.2d 848(2018)(same).

Plaintiff alleged that all of the above allege misconducts by Defendant Trident attorneys rises to the level of extrinsic fraud to procure the judgment because it was deliberately and intentionally designed to scheme to defraud the court itself as an institution which effectively deprive Plaintiff of a full and fair opportunity to present the accompanying documents Plaintiff filed with the Complaint to be admitted as evidence to present his case and because it effectively deprive Plaintiff of a full and fair opportunity to be heard on the merits at the hearing and the final order proceeding (1) that he did comply with the statutory pre-suit requirements of S.C. Code Statutes 15-79-125(A), 15-36-100 and 15-79-125(E)(2) when Defendant Trident was join as a party to the Complaint under the procedure approved under Wilkinson v. East Cooper Community Hospital, Inc., 410 S.C. 163, 172-175, 763 S.E.2d 426(2014)(quoting Fisher V. Perlstring, 817 F. Supp.2d 791, 807 n. 8(D.S.C. 2011)(analyzing procedures for initiating medical malpractice claims under 15-79-125), and (2) the court had subject matter jurisdiction over accompanying documents because Plaintiff consent in the accompanying documents was not valid for the Social Security Administration to make the final determination of Plaintiff medical condition but was to be made by the doctors at The Regional Medical Center who ordered Plaintiff medical records from Defendant Trident on 9/30/12 prior to signing the consent with Social Security Administration on 10/25/12, and aspirin 325mg was a common knowledge issue met the pre-suit statutory pleadings requirements, and (4) the expert witness affidavit supported a claim for which relief can be granted . {See id., at- Ref. Doc., Mot. To Recons. Conclus., pp. 41-55; pp. 61-66; pp. 82-87; See id., at- Motion To Vacate Judgment And Motion To Amend The Pleadings, propose order and final order; Plaintiff Memorandum of Law, pp. 97-98}. Chewning v. Ford Motor Company, 354 S.C. 72, 81-86, 579 S.E.2d 605(2003)(same); Ray v. Ray, 374 S.C. 79, 84-87, 647 S.E.2d 237(2007); Aaron v. Mahl, 381 S.C. 585, 596, 674 S.E.2d 482(2009)(Chief Justice, Toal, dissenting)(same); Ex Parte Carter, 422 S.C. 623, 625-631, 813 S.E.2d 686(2018)(same).

Therefore, all of the above allegations is proven by clear and convincing evidence that Defendant Trident attorneys did engaged in a series of misconducts that was deliberate and intentional scheme rising to level of extrinsic fraud upon the court with deliberate intent to subvert the integrity of the court itself as an institution to adjudicate the issues presented in the usual impartial manner to procure the final order. Aaron v. Mahl, S.C. 585, 595-596, 674 S.E.2d 482(2009)(Chief Justice, Toal dissenting); United Business Communications, Inc. v. Racial-Milgo, Inc., 591 F. Supp. 1172, 1175-1187(Dist. Court, D. Kansas 1984)(same); Hagy v. Pruitt, 339 S.C. 425, 432-434, 529 S.E.2d 714(2000)(same); Chewning v. Ford Motor Company, 354 S.C. 72, 84-86, 579 S.E.2d 605(2003)(same); In re Estate of Pallister, 383 S.C. 437, 446-453, 611 S.E. 2d 250(2005)(same); Ex Parte Carter, 422 S.C. 623, 625-631, 813 S.E.2d 686(2018)(same).

Therefore, the important benefits achieved by the preservation in this court for finality of judgment must yield to the interest of justice to the public to justify equitable relief be granted to Plaintiff and vacate the final order. Chewning v. Ford Motor Company, 354 S.C. 72, 78-79, 579 S.E.2d 605(2003)(citing cases). Finally, because Plaintiff had a meritorious defense the final order should be vacated because the court abused its discretion in its factual conclusion that Plaintiff did not follow the pre-suit procedure to commence the action against Defendant Trident and was control by an error of law. State v. Hawes, 411 S.C. 188, 191, 767 S.E.2d 707, 708(2015)(quoting Sample v. Mitchell, 329 S.C. 105, 114, 495 S.E.2d 213, 218(Ct. App. 1997).

Plaintiff has also shown in this SCRPC Rule 60(b)(1) Motion To Vacate Judgment And Motion To Amend The Pleadings by the above pleadings that the court made several mistakes in its factual conclusions which is not supported by the evidence and control by errors of law which was an abuse of the court discretion to deny Plaintiff request to be allowed Amendment of the Complaint for the same reason he dismiss the action. (1) Plaintiff sought leave to amend the Complaint because he had a meritorious defense to allege that mediation attempt with the Social Security Administration had fail which left open the available jobs plaintiff skills was potentially transferable in the job market up until March of the year 2020 which affect Plaintiff economic damages from loss of income from work and noneconomic damages for loss

of enjoyments of life, and (2) Plaintiff also sought to amend the Complaint to allege an intentional tort as second theory of recovery because Defendant Trident was liable for economic damages, actual, compensatory and punitive damages relief under S.C. Code Statutes 15-32-210 through 15-32-530 titled the South Carolina Non Economic Damages Award Act of 2005 as alleged in Plaintiff Complaint and in his Memorandum of Law and orally at the hearing that he had a meritorious defense because (1) aspirin 325mg treatment not anticoagulation treatment was a common knowledge issue not requiring expert witness testimony, and (2) that Defendant Trident was negligent and reckless to treat him with aspirin 325mg for prevention of future clots for stroke secondary stroke which could be infer by the expert statements and knowing from the manufacturer package insert that aspirin 325mg was not a blood thinner such as Heparin and Coumadin anticoagulation and was not recommended for treatment for stroke prevention because it is ineffective and does not require expert medical supervision or testimony. { See id., at-Motion To Vacate Judgment And Motion To Amend Pleadings, Exhibits-Trident Medical Records, pp. 54-55 aspirin 325mg prescription refill insert}. Mcgee v. Bruce Hospital System, 468 S.E.2d 633(1996); Rosario v. U.S., 824 F. Supp. 268, 281(D. Mass. 1993).

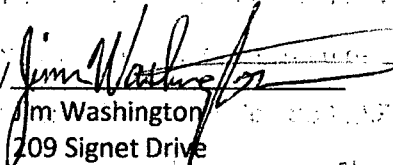
Therefore, Plaintiff allege the court factual conclusion that the anticoagulation is not a common knowledge issue is not supported by the evidence and controlled by error of law because the qualified expert witness affidavit did state and show Defendant Trident was negligent in diagnosis on MRI and negligent not warn or treat with anticoagulation and manufacturer package insert clearly state aspirin 325mg does not require medical expert supervision. Cox v. Lund, 286 S.C. 410, 414-417, 334 S.E.2d 116(1985)(same); Brouwer v. Sisters of Charity Providence Hospitals, 409 S.C. 514, 518-523, 763 S.E.2d 200(2014)(same);

Therefore, Plaintiff allege that the above evidence shows that the court conclusions were an abuse of the court discretion because Plaintiff stated a claim for which relief could be granted that he was entitled to actual, consequential and punitive damages, and (3) Plaintiff further allege that court abuse its discretion to deny Amendment of the Complaint to state a second theory of recovery for an intentional tort was not supported by the evidence and control by an error of law because the evidence showed Defendant Trident intended to cause

Plaintiff injury because Defendant Trident was aware Plaintiff condition had worsen since admission on 9/23/12 when the second EKG was performed which warned on 9/25/12 that Plaintiff blood flow in his heart need further investigation but that Defendant Trident took no corrective action but intentionally continued treating Plaintiff with aspirin 325mg knowing this treatment would cause Plaintiff harm or foreseeable was likely to cause harm and did cause Plaintiff a second stroke an fail to warn on discharge to seek immediate anticoagulation treatment caused additional permanent impairments in Plaintiff left occipital lobe which is supported by the expert witness affidavit which stated a claim for which relief could be granted under S.C. Code Statutes 15-32-210 through 15-32-530. Taylor v. Medenica, 479 S.E.2d 35, 46(1996)(Record provide clear and convincing evidence Dr. Medenica intentionally or willfully injured Mrs. Taylor); Borosavage v. U.S., 677 F. Supp.2d 208, 211-213(Dist. Mass. 2009); Marshall v. Dodds, 417 S.C. 196, 202-209, 789 S.E.2d 88(2016). Plaintiff object to the court's denial of his request to Amendment of the Complaint and conclusions concerning Plaintiff Memorandum of Law but the court stated Plaintiff did not have to object but could file an appeal to the S.C. Supreme Court seeking a change in the law and that if the case gets reverse Plaintiff would get to start over again which effectively deprive Plaintiff of a full and fair opportunity to present his case on his claim and meritorious defense on the theory of an intentionally tort at the hearing and at the final order proceeding and effectively deprive Plaintiff of a full and fair opportunity to be heard on his claims and meritorious defenses on his theory of an intentional tort at the hearing and final order proceeding which warrant this court to grant Plaintiff equitable relief to vacate the final order.{See id., at- Ref. Doc. Mot. To Recon. Conclus., pp. 41-43; pp. 82-87;See id.,- Motion To Vacate Judgment And Motion To Amend The Complaint, Exhibits- Plaintiff Memorandum of Law, pp. 97-98 and pp. 100-107; Trident Med. Records-EKGs}. South Carolina Department of Social Services v. Durham, 274 S.C. 222, 224, 262 S.E.2d 491(1980)(same); Thompson v. Hammond, 299 S.C. 116, 118-123, 382 S.E.2d 900(1989)(same); Coleman v. Dunlap, 306 S.C. 491, 495-496, 413 S.E.2d 15(1992)(same); Tanner v. Florence County Treasurer, 336 S.C. 552, 560, 521 S.E.2d 123(1999)(same); McClurg v. Deaton, 395 S.C. 85, 89-99, 716 S.E.2d 887(2001)(Chief Justice, Toal, dissenting)(same); Patton v. Miller, 420 S.C. 471, 489-499, 804 S.E.2d 252(2017)(citing cases).

CONCLUSIONS

Therefore, because the final order was obtain through Defendant Trident attorneys extrinsic fraud upon the court equitable relief should be granted to vacate the final order under SCRPC Rule 60 (b)(3). The final order also should be vacated under SCRPC Rule 60(b)(1) because the court abuse its discretion entitling Plaintiff to equitable relief.

S/ 
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WTS TRANSPORT, LLC @yahoo.com
(803) 496-4655
Plaintiff, Pro Se

EXHIBITS A



the Regional Medical Center

WASHINGTON, DISTRICT OF COLUMBIA
DOB: _____ M
DOS: 09/30/2012 22:38
ATT: _____
FIN: 1000602689 Rm: _____

**Regional Medical Center
Emergency Department**Last Name: Washington First Name: Jim Middle Initial: _____Date of Birth: _____ Primary Care Physician: Family Health CenterReason for Visit: Prior Stroke RecurrenceSocial Security # _____ Telephone # 803/490-4635**CONSENT TO HOSPITAL ADMISSION AND MEDICAL TREATMENT:**

I, suffering from a condition requiring hospital services, hereby consent to rendering of such care, which may include routine diagnostic procedures and such medical treatment as the attending physician(s), Nurse Practitioner functioning under the direction and supervision of the attending physician(s) and performing those services that such Nurse Practitioner is authorized to perform by the State of South Carolina, or others of the hospital's medical staff considered to be necessary. To protect myself, and others, I also give permission to have blood drawn and tested for infectious diseases including, but not limited to HIV (AIDS virus) and Hepatitis B. I understand the results of the test will be treated with respect and confidentiality and will be made available to my physician. If my blood tests positive for any reportable disease such as HIV or Hepatitis, the results will be reported to the state health department (SCDHEC) according to South Carolina law.

I understand that the practice of medicine and surgery is not an exact science and that diagnosis and treatment may involve risk of injury, or even death. I acknowledge that no guarantees have been made to me as to the results of examination or treatment in this hospital.

I understand that (a) Except in the case of an emergency or extraordinary circumstances, that no substantial procedures are performed upon a patient unless and until he or she has had an opportunity to discuss with the physician or other health professional to the patient's satisfaction. (b) Each patient has the right to consent, or to refuse consent, to any proposed procedure or therapeutic course.

Patient Signature: Jim WashingtonDate: 9/30/12

THE REGIONAL MEDICAL CENTER
Of Orangeburg & Calhoun Counties
TERMS OF ADMISSION/TREATMENT

CONSENT TO HOSPITAL ADMISSION AND MEDICAL TREATMENT. I, suffering, from a condition requiring hospital services, hereby consent to the rendering of such care, which may include routine diagnostic procedures and such medical treatment as the attending physician(s), Nurse Practitioner functioning under the direction and supervision of the attending physician(s) and performing those services that such Nurse Practitioner is authorized to perform by the State of South Carolina, or others of the hospital's medical staff consider to be necessary. To protect myself, and others, I also give permission to have blood drawn and tested for infectious diseases including, but not limited to, HIV (AIDS virus) and Hepatitis B. I understand the results of the test will be treated with respect and confidentiality and will be made available to my physician. If my blood tests positive for any reportable disease, such as HIV or Hepatitis, the results will be reported to the state health department (SCDHEC) according to South Carolina law.

I understand that the practice of medicine and surgery is not an exact science and that diagnosis and treatment may involve risks of injury, or even death. I acknowledge that no guarantees have been made to me as to the result of examination or treatment in this hospital.

I understand that (a) Except in the case of an emergency or extraordinary circumstances, that no substantial procedures are performed upon a patient unless and until he or she has had an opportunity to discuss them with the physician or other health professional to the patient's satisfaction. (b) Each patient has the right to consent, or to refuse consent, to any proposed procedure or therapeutic course.

RELEASE OF INFORMATION/MEDICAL RECORDS. I authorize the hospital and attending physicians to release any information concerning this hospitalization and treatment for processing of my insurance, Medicare, Medicaid, Workman's Compensation and other third party payors, and to parties requiring such information for my further medical treatment or discharge planning. I hold such personnel harmless as to the release of such information. I authorize my treating physicians to direct copies of my medical records to other physicians and healthcare workers as needed for continuity of care. In accordance with federal law and regulations, I hereby authorize the release of my Social Security number to the manufacturer and/or governmental agency to locate me, if needed regarding a medical device.

MEDICARE/MEDICAID. Where Medicare or Medicaid benefits are applicable, I certify that the information given by me in applying for payment under Title XVIII or XIX of the Social Security Act is correct. I request payment of authorized benefits be made on my behalf.

ASSIGNMENT OF INSURANCE BENEFITS. I/we authorize payment directly to the hospital and physician(s) accepting this assignment of benefits and assign all my rights under any policy of insurance or employee welfare benefit plan, including, but not limited to, an employee welfare benefit plan as defined by section 3(1) of the Employee Retirement Income Security Act, 29 U.S.C. § 1002(1), major medical insurance, hospital benefits, sick benefits, injury benefits due to me because of liability of a third party, such as auto insurance or workmen's compensation insurance, and/or minimum medical, hospital and disability payments, and the proceeds of all claims resulting from the liability of the third party payable by any person, employer or insurance company to or for the patient up to the full amount of the hospital bill. In addition, I/we further warrant and represent that any insurance which we assign is valid insurance and in effect and that I/we have the right to make this assignment. In the event that a claim for payment submitted by The Regional Medical Center to my insurance carrier is denied, I hereby authorize The Regional Medical Center to seek an administrative review of the disputed claim in accordance with the applicable provision(s) of my plan or policy. If my plan or policy is provided pursuant to the Federal Employees Health Benefits Act, 5 U.S.C. § 8901 et seq., this review process will include, but is not limited to, a review by the Office of Personnel Management.

As a participant/beneficiary of an employee welfare benefit plan governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. Section 1001 et seq., I designate The Regional Medical Center as my authorized representative and grant The Regional Medical Center the authority to act on my behalf in pursuing and appealing a benefit determination under the plan. Such authority shall include the right to request and receive a copy of the plan description and/or summary plan description."

PAYMENT GUARANTEE. The undersigned agrees, whether he signs as agent or as patient, that in consideration of the services to be rendered to the patient, the undersigned individually obligates himself to pay the account of the hospital in accordance with the regular rates and terms of the hospital. Furthermore, the undersigned is obligated to make weekly or monthly payments, if requested. Should the account be turned over to a collection agency or an attorney for collection, the undersigned shall pay all collection fees and reasonable attorney's fees. All delinquent accounts bear interest at the legal rate.

I understand that I am responsible to the hospital and physician(s) for reasonable charges incurred by me and not paid for by third party benefits.

RULES/REGULATIONS. I agree to adhere to the rules and regulations of the Hospital.

INSURANCE COLLECTIONS - In order for The Regional Medical Center to file your insurance for you; a copy of your insurance card (front and back) is required.

The Regional Medical Center will submit the standard UB-92 billing form to your insurer. If your employer/insurance carrier requires other claim forms, these must be submitted completely filled out, and signed. (You are always responsible for the entire amount of the charges. Coinsurance and deductibles are due upon discharge.)

Any questions regarding the filing of your claim should be directed to Admitting/Registration before discharge and Patient Account Services after discharge. Without this information you will be considered self-pay. **ALL CHARGES QUOTED ARE ESTIMATES AND DO NOT INCLUDE PROFESSIONAL FEES OR SERVICES!**

TRMC will not accept insurance unless it is assigned to TRMC. Assignment of benefits from third parties to the hospital is not considered to be payment for the claim and the patient is responsible for any unpaid balance.

Any balance past due from the date of discharge may be referred to a collection agency, attorney and/or credit reporting agency for collections.

The above information does not reflect any lack of confidence in the patient's intent or ability to pay all hospital charges. It is provided based upon hospital policy and South Carolina Law.

PATIENT NAME/ACCOUNT #

Washington, Jimmie 1000 602689

BLOOD RESPONSIBILITY - If during treatment here at TRMC you receive, or your physician orders, blood or a blood derivative, a blood charge is incurred. Blood can be replaced pint for pint canceling the charge per pint fee. If someone donates blood in your name, it must be donated within Sixty (60) days of the date of discharge to be considered a replacement pint. After Sixty (60) days from the date of discharge, no credit will be given to your account.

State, Federal or PPC Blue Cross and Medicaid MAY not pay for the following service _____

If you are covered by Medicare, examples of non-covered services include, but are not limited to: (1) drugs and biologicals that can be self-administered, (2) most routine physical examinations and tests directly related to such examinations, (3) most routine foot care and dental care, (4) examinations for prescribing or fitting eyeglasses or hearing aids, (5) hearing aids, (6) most immunizations, (7) most prescription drugs and (8) cosmetic surgery, unless it is needed because of accidental injury or to improve the function of a malformed part of the body.

SERVICES NOT MEDICALLY NECESSARY - If you are enrolled in a medical plan, (DIS, PPC, Companion, HMO or an HMO and/or other authorized agents) the services you are about to receive may be determined by your agent not to be medically necessary and, therefore, not covered under its contract with TRMC.

PLEASE NOTE: YOU WILL BE RESPONSIBLE PERSONALLY FOR ANY SERVICES NOT COVERED BY YOUR INSURANCE POLICY OR DETERMINED TO BE NOT MEDICALLY NECESSARY. YOUR SIGNATURE TO THIS DOCUMENT MEANS THAT YOU HAVE AGREED TO PAY FOR SUCH SERVICE.

CHARGES QUOTED ARE ESTIMATES ONLY. THEY DO NOT INCLUDE PROFESSIONAL CHARGES FOR READING OR INTERPRETING X-RAY FILMS, ELECTROCARDIOGRAMS, TEST REPORTS, ETC.

VALUABLES. All valuables are the responsibility of the patient and should be left at home prior to admission. It is the responsibility of the patient/patient's family to assure that dentures, eyeglasses, & hearing aids are placed in protective containers, since the hospital will not be responsible for the breakage or loss of such articles.

I acknowledge that I have read or had read to me all of the above document; I understand it and I agree that you may bill me and that I will pay for non-covered services or services determined to be not medically necessary. I have received a copy of TRMC's Patient Rights and Responsibilities.

I hereby acknowledge receipt of TRMC's Notice of Privacy Practices & Securement of Valuables, Patient Visitation Rights, Advance Directive Information, Lewis Blackman Patient Safety Act Information.

Signature

Date

Witness

Patient Signature or Name

Date

Contact Phone Number

803-496-4658

Witness

Designee

Relationship

Date

Guarantor

Relationship

Date

PATIENT: PRINTED BY: OS92361 DATE 10/11/2012
Washington, Jimmie ROOM #: 3E 33451
MEDICAL RECORD #: 0000104270
ADMISSION #: 1000602689
DATE OF BIRTH:
DICT PHYSICIAN: B.S. Khokhar, M.D.
ADMITTED: 09/30/2012

DD: 10/01/2012 DT: 2:23 A TD: 10/01/2012 TT: 4:31 A

Regional Medical Center
Orangeburg, South Carolina

HISTORY AND PHYSICAL EXAMINATION

PRIMARY CARE PHYSICIAN: Family Health Center in St. Matthews.

CHIEF COMPLAINT: Right-sided weakness.

HISTORY OF PRESENT ILLNESS: This is a 58-year-old African-American male who presents with one day of right-sided weakness that has resolved at this time. He states he woke up and noticed that the right side of his body was difficult to move. He states it is similar to his stroke he had just a week and a half ago. He was discharged from Trident Hospital with diagnosis of CVA three days ago. Patient admits to not taking his medications after discharge. He denies any syncope. He denies any visual, hearing or taste changes. He denies any headaches. He denies any chest pain, shortness of breath. He denies any nausea, vomiting, diarrhea, constipation, blood in the stools or dark or tarry stools. The patient states he took his medications yesterday for the first time. He states that his symptoms have resolved. They state that they still come and go at times since discharge from the hospital but this time it seemed like it persisted longer than usual.

REVIEW OF SYSTEMS: As per HPI. All systems were reviewed and otherwise negative.

PAST MEDICAL HISTORY:

1. Hypertension.
2. CVA.
3. Dyslipidemia.

ALLERGIES: No known drug allergies.

MEDICATIONS: Outpatient medications -

1. Aspirin 325 milligrams daily.
2. Norvasc 10 milligrams daily.
3. Pravastatin 20 milligrams at bedtime.

FAMILY HISTORY: Noncontributory.

SOCIAL HISTORY: The patient states he quit smoking after his stroke. He denies use of alcohol or illicit.

PHYSICAL EXAMINATION:

PRINTED BY: OS92361 DATE 10/11/2012
Vital Signs: Temperature 36.4, heart rate 85, respirations 18, blood pressure 193/98, 100% on room air.

General Appearance: He is awake, alert and oriented times three in no acute distress.

HEENT: Pupils are equal and reactive to light and accommodation. Extraocular eye movements were intact.

Neck: Supple. No JVD. No bruits.

Cardiovascular: Regular rate and rhythm.

Lungs: Clear to auscultation bilaterally.

Abdomen: Soft, nontender, nondistended. Bowel sounds are positive.

Extremities: No edema, cyanosis or clubbing.

Neurological: Cranial nerves II through XII are grossly intact. Strength 5/5 in all four extremities. Sensation intact.

Rectal: Deferred.

Genitourinary: Deferred.

Skin: Warm, dry and intact without any evidence of rashes.

IMAGING: CT of brain without contrast showed no evidence of intracranial hemorrhage.

LABS: Sodium 138, potassium 3.7, chloride 120, CO2 26, BUN 16, creatinine 0.8, glucose 129, calcium 9.7. WBC 10.5, hemoglobin 16.4, hematocrit 45.1, platelets 375,000.

ASSESSMENT AND PLAN:

1. Transient ischemic attack (TIA). I believe this is secondary to the patient not taking his medications. We will obtain a repeat MRI to make sure that there has been no further extension of his CVA. We will obtain records from Trident. We will continue his aspirin and statin. He will receive neuro checks. He will receive PT, OT.
2. Hypertension. We will restart his Norvasc.
3. Dyslipidemia. We will continue his statin.
4. Nicotine dependence. This was recently quit. He uses nicotine patches.

B.S. Khokhar, M.D.

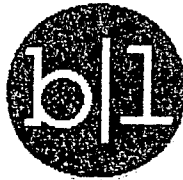
000515874:rj

cc: B.S. Khokhar, M.D.

*Family Health Center; St. Matthews, SC

Exhibit-4
185

4141 Parklake Avenue #350
Raleigh NC 27612
Phone 919.439.2221
Fax 919.780.5382
www.battenlee.com



Cecily S. Hughes | Paralegal
Direct Dial 919.439-2235
Direct Fax 919-890-0319
chughes@battenlee.com

January 20, 2016

The Honorable R. Markley Dennis, Jr.
P O Box 1800
300 B California Avenue
Moncks Corner, SC 29461-1800

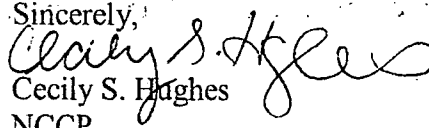
RE: Jim Washington v. Trident Medical Center
Court Docket No.: 2015-CP-10-5000
Our File No.: 57.993278

Dear Judge Dennis:

Please find enclosed the original proposed Order granting Defendant Trident Medical Center's Motion to Dismiss in the above-referenced matter. Please review the proposed Order and, should everything appear acceptable, sign and return it to me in the envelope provided so that I may file the Order with the clerk.

Thank you for your assistance. Please have your law clerk contact us should you have any questions.

Sincerely,


Cecily S. Hughes
NCCP

/csh
Enclosures

cc (w/enc.): Jim Washington (via Certified Mail- Return Receipt)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-10-5000

JIM WASHINGTON,

Plaintiff,

v.

TRIDENT MEDICAL CENTER,

Defendant.

ORDER

This matter came before the Court on the Motion to Dismiss filed by the Defendant Trident Medical Center, LLC. A hearing was held on January 7, 2016. The Plaintiff, Jim Washington, appeared *pro se*. William H. Harkins, Jr. appeared on behalf of the Defendant Trident Medical Center, LLC.

Memoranda of law were submitted by all parties and incorporated into the record, and oral arguments were entertained by the Court. After having reviewed the pleadings and having considered arguments and legal memoranda of the parties, the Court hereby **GRANTS** Defendant's Motion to Dismiss on the grounds that (1) Plaintiff failed to file a Notice of Intent to File Suit as a prerequisite to filing a medical malpractice action pursuant to S.C. Code § 15-79-125(A); (2) Plaintiff failed to file an expert witness affidavit specifying at least one negligent act or omission claimed to exist pursuant to S.C. Code §§ 15-79-125(A) and 15-36-100(B); (3) This medical malpractice action did qualify for the "common knowledge" exception to an expert witness affidavit pursuant to S.C. Code § 15-36-100(C)(2) ; and (4) Plaintiff was not subject to protections afforded by the "safe harbor" provisions of § 15-36-100(C)(1).

FACTS

The Plaintiff filed a Summons and "Complaint" on September 11, 2015 alleging medical negligence arising out of medical treatment rendered to Mr. Washington at Trident Medical Center between September 23-26, 2012. Plaintiff wholly failed to file a Notice of Intent to File Suit as required by S.C. Code § 15-79-125(A). Further, Plaintiff failed to file an expert witness affidavit specifying at least one negligent act or omission claimed to exist pursuant to S.C. Code §§ 15-79-125(A) and 15-36-100(B). There was no allegation by Plaintiff that time constraints prevented him from filing the required expert witness affidavit. *See* S.C. Code § 15-36-100(C)(1). Further, the determination of the merits of this medical malpractice action against Trident Medical Center exceed the bounds of common knowledge such that that exception to the need for an expert witness affidavit is inapplicable. S.C. Code § 15-36-100(C)(2).

Defendant Trident Medical Center filed a Motion to Dismiss Plaintiff's Summons and Complaint based on his failure to file a Notice of Intent to File Suit and an expert witness affidavit supporting his claims of medical negligence.

STANDARD OF DISMISSAL

"Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint." Doe v. Marion, 361 S.C. 463, 469, 605 S.E.2d 556, 559 (Ct.App. 2004), *aff'd*, 373 S.C. 390, 645 S.E.2d 245 (2007). "A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court." Ashley River Properties I, LLC v. Ashley River Properties II, LLC, 374 S.C. 271, 277, 648 S.E.2d 295, 298 (Ct.App. 2007).

PROCEDURAL REQUIREMENTS FOR MEDICAL MALPRACTICE ACTIONS

This is a medical malpractice action and therefore is governed by the procedural requirements set forth in S.C. Code §§ 15-79-125 and 15-36-100. Section 15-79-125 controls the portion of the process that commences with the filing of the Notice of Intent to File Suit and ends with the pre-litigation mediation. If the parties are unable to resolve their dispute through pre-litigation mediation, section 15-36-100 guides the parties through the process of filing the Summons and Complaint. In the instant case, Plaintiff failed to comply with the filing requirements of S.C. Code §§ 15-79-125 and 15-36-100.

SOUTH CAROLINA CODE SECTION 15-79-125 BARS THIS ACTION

South Carolina Code § 15-79-125 establishes the pre-litigation requirements for medical malpractice actions. Section 15-79-125(A) provides in pertinent part as follows: “[p]rior to filing or initiating a civil action alleging injury or death as a result of medical malpractice, the plaintiff shall contemporaneously file a Notice of Intent to File Suit and an affidavit of an expert witness, subject to the affidavit requirements established in Section 15-36-100.” *Id.* Here, Plaintiff failed to file a Notice of Intent to File Suit. Plaintiff also did not file an expert witness affidavit in support of his claims of medical negligence. § 15-79-125(A). The Court finds this deficiency and failure to file both a Notice of Intent to File Suit and an expert affidavit sufficient to dismiss this action.

The Court recognizes that 15-79-125 incorporates the expert witness affidavit requirements of 15-36-100. However, Section § 15-36-100(C)(1) provides an exception to the affidavit requirement when the applicable statute of limitations will expire within ten (10) days of filing of the complaint and the plaintiff alleges, because of time constraints, that an expert

affidavit could not be prepared. Section § 15-36-100(C)(1) allows the plaintiff forty-five (45) days to supplement the complaint with an expert affidavit.

In the instant action, the Court finds the Plaintiff failed to satisfy the pre-litigation requirements of § 15-79-125. The Court further finds that the "safe harbor" provisions of § 15-36-100(C)(1) are inapplicable. The Plaintiff filed a Summons and Complaint on September 11, 2015, alleging medical negligence arising out of medical treatment Mr. Washington received at Trident Medical Center between September 23-26, 2012. Accordingly, the applicable 3-year statute of limitations would not have expired within ten (10) days of filing. Further, Plaintiff did not allege in any of his pleadings that an expert witness affidavit could not be prepared due to time constraints. S.C. Code § 15-36-100(C)(1).

At the hearing regarding the instant Motion to Dismiss on January 7, 2016, Plaintiff did not produce or tender an expert witness affidavit for the Court's consideration, and he did not move the Court orally or in briefing for an extension of time to file an expert affidavit. Pursuant to the safe harbor provisions of Section § 15-36-100(C)(1), Plaintiff has forty-five (45) days or longer "as the court determines justice requires" to supplement his filing with an expert affidavit. *Id.*

Assuming the safe harbor provisions are applicable here, the 45 days to supplement with an expert affidavit have expired since Plaintiff's filing date of September 11, 2015. Plaintiff has not moved the Court for an extension of time to file an expert affidavit, and the Court finds no good cause to allow additional time past the 45-day safe harbor to allow Plaintiff to supplement with an expert affidavit. Further, the Court finds no merit in Plaintiff's argument that his verified "Complaint" will suffice in lieu of an expert witness affidavit.

Section § 15-36-100(C)(2) provides an additional exception to the affidavit requirement when the allegation of negligence in the complaint involves subject matter “that lies within the ambit of common knowledge and experience.” *Id.* Based upon the Summons and Complaint filed by the Plaintiff herein, the Court finds that the Plaintiff’s allegations of medical negligence are outside the realm of common knowledge and experience. The amount, dosage, administration, and choice of anticoagulation medication to help prevent future blood clots are all issues requiring special learning and expert testimony and the determination of the merits herein exceeds the bounds of common knowledge.

Plaintiff alleges medical negligence arising out of medical treatment he received at Trident Medical Center between September 23-26, 2012. Medical malpractice actions are subject to a three-year statute of limitations. The Court finds that there are no allegations by Plaintiff herein that would trigger the “discovery rule” and nothing in the pleadings filed by Plaintiff which would otherwise toll the statute of limitations. Accordingly, the three-year statute of limitations on Plaintiff’s medical malpractice claims has expired.

Now, therefore, based on the foregoing it is **ORDERED** that Defendant’s Motion to Dismiss be **GRANTED** and this action be **DISMISSED** with prejudice

Judge R. Markley Dennis, Jr.

_____, 2016
Charleston, South Carolina

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batten|lee

February 3, 2016

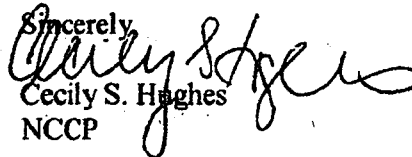
Ms. Julie J. Armstrong
Clerk of Court
106 Judicial Center
100 Broad Street
Charleston, SC 29401

RE: Jim Washington v. Trident Medical Center
Court Docket No.: 2015-CP-10-5000
Our File No.: 57.993278

Dear Ms. Armstrong:

Please find enclosed the original and one copy of the Order granting Defendant's Motion to Dismiss, which has been signed by Judge Dennis, for filing in the above-referenced matter. Please return a filed copy to me in the envelope provided.

Thank you for your assistance. If you should have any questions, please do not hesitate to call me.

Sincerely,

Cecily S. Hughes
NCCP

/csh
Enclosures

cc (w/enc.): Jim Washington

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-10-5000

JIM WASHINGTON,

Plaintiff,

v.

TRIDENT MEDICAL CENTER,

Defendant.

ORDER

This matter came before the Court on the Motion to Dismiss filed by the Defendant Trident Medical Center, LLC. A hearing was held on January 7, 2016. The Plaintiff, Jim Washington, appeared *pro se*. William H. Harkins, Jr. appeared on behalf of the Defendant Trident Medical Center, LLC.

Memoranda of law were submitted by all parties and incorporated into the record, and oral arguments were entertained by the Court. After having reviewed the pleadings and having considered arguments and legal memoranda of the parties, the Court hereby **GRANTS** Defendant's Motion to Dismiss on the grounds that (1) Plaintiff failed to file a Notice of Intent to File Suit as a prerequisite to filing a medical malpractice action pursuant to S.C. Code § 15-79-125(A); (2) Plaintiff failed to file an expert witness affidavit specifying at least one negligent act or omission claimed to exist pursuant to S.C. Code §§ 15-79-125(A) and 15-36-100(B); (3) This medical malpractice action did qualify for the "common knowledge" exception to an expert witness affidavit pursuant to S.C. Code § 15-36-100(C)(2) ; and (4) Plaintiff was not subject to protections afforded by the "safe harbor" provisions of § 15-36-100(C)(1).

FACTS

The Plaintiff filed a Summons and "Complaint" on September 11, 2015 alleging medical negligence arising out of medical treatment rendered to Mr. Washington at Trident Medical Center between September 23-26, 2012. Plaintiff wholly failed to file a Notice of Intent to File Suit as required by S.C. Code § 15-79-125(A). Further, Plaintiff failed to file an expert witness affidavit specifying at least one negligent act or omission claimed to exist pursuant to S.C. Code §§ 15-79-125(A) and 15-36-100(B). There was no allegation by Plaintiff that time constraints prevented him from filing the required expert witness affidavit. *See* S.C. Code § 15-36-100(C)(1). Further, the determination of the merits of this medical malpractice action against Trident Medical Center exceed the bounds of common knowledge such that that exception to the need for an expert witness affidavit is inapplicable. S.C. Code § 15-36-100(C)(2).

Defendant Trident Medical Center filed a Motion to Dismiss Plaintiff's Summons and Complaint based on his failure to file a Notice of Intent to File Suit and an expert witness affidavit supporting his claims of medical negligence.

STANDARD OF DISMISSAL

"Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint." Doe v. Marion, 361 S.C. 463, 469, 605 S.E.2d 556, 559 (Ct.App. 2004), *aff'd*, 373 S.C. 390, 645 S.E.2d 245 (2007). "A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court." Ashley River Properties I, LLC v. Ashley River Properties II, LLC, 374 S.C. 271, 277, 648 S.E.2d 295, 298 (Ct.App. 2007).

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affidavit could not be prepared. Section § 15-36-100(C)(1) allows the plaintiff forty-five (45) days to supplement the complaint with an expert affidavit.

In the instant action, the Court finds the Plaintiff failed to satisfy the pre-litigation requirements of § 15-79-125. The Court further finds that the "safe harbor" provisions of § 15-36-100(C)(1) are inapplicable. The Plaintiff filed a Summons and Complaint on September 11, 2015 alleging medical negligence arising out of medical treatment Mr. Washington received at Trident Medical Center between September 23-26, 2012. Accordingly, the applicable 3-year statute of limitations would not have expired within ten (10) days of filing. Further, Plaintiff did not allege in any of his pleadings that an expert witness affidavit could not be prepared due to time constraints. S.C. Code § 15-36-100(C)(1).

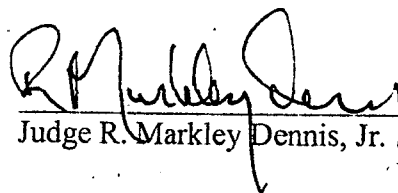
At the hearing regarding the instant Motion to Dismiss on January 7, 2016, Plaintiff did not produce or tender an expert witness affidavit for the Court's consideration, and he did not move the Court orally or in briefing for an extension of time to file an expert affidavit. Pursuant to the safe harbor provisions of Section § 15-36-100(C)(1), Plaintiff has forty-five (45) days or longer "as the court determines justice requires" to supplement his filing with an expert affidavit. *Id.*

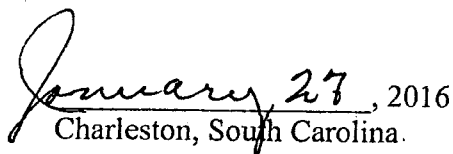
Assuming the safe harbor provisions are applicable here, the 45 days to supplement with an expert affidavit have expired since Plaintiff's filing date of September 11, 2015. Plaintiff has not moved the Court for an extension of time to file an expert affidavit, and the Court finds no good cause to allow additional time past the 45-day safe harbor to allow Plaintiff to supplement with an expert affidavit. Further, the Court finds no merit in Plaintiff's argument that his verified "Complaint" will suffice in lieu of an expert witness affidavit.

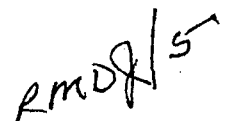
Section § 15-36-100(C)(2) provides an additional exception to the affidavit requirement when the allegation of negligence in the complaint involves subject matter "that lies within the ambit of common knowledge and experience." *Id.* Based upon the Summons and Complaint filed by the Plaintiff herein, the Court finds that the Plaintiff's allegations of medical negligence are outside the realm of common knowledge and experience. The amount, dosage, administration, and choice of anticoagulation medication to help prevent future blood clots are all issues requiring special learning and expert testimony and the determination of the merits herein exceeds the bounds of common knowledge.

Plaintiff alleges medical negligence arising out of medical treatment he received at Trident Medical Center between September 23-26, 2012. Medical malpractice actions are subject to a three-year statute of limitations. The Court finds that there are no allegations by Plaintiff herein that would trigger the "discovery rule" and nothing in the pleadings filed by Plaintiff which would otherwise toll the statute of limitations. Accordingly, the three-year statute of limitations on Plaintiff's medical malpractice claims has expired.

Now, therefore, based on the foregoing it is **ORDERED** that Defendant's Motion to Dismiss be **GRANTED** and this action be **DISMISSED** with prejudice


Judge R. Markley Dennis, Jr.


January 27, 2016
Charleston, South Carolina.



THE STATE OF SOUTH CAROLINA
Court of Common Pleas, Charleston County

JUDGE DEADRA L. JEFFERSON, Circuit Court Judge

Case No. 2015-CP-10-5000

Jim Washington, ...Plaintiff,
v.
Trident Medical Center, LLC..... Defendant.

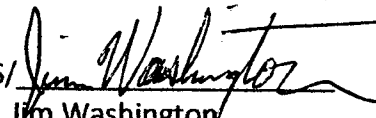
FILED
2019 FEB -4 AM 10:02
JULIE J. ARMSTRONG
CLERK OF COURT

PROOF OF SERVICE

I, the undersigned do hereby certify that I have served all attorneys of records in this action with a copy of this **MEMORANDUM OF LAW IN SUPPORT OF THE MOTION TO VACATE JUDGMENT AND MOTION TO AMEND THE PLEADINGS** with the Attachments Documents included by mailing a copy of the same in a prepaid wrapper deposited in a U.S. Post Office to the following addresses:

C. Mitchell Brown, Esquire
Blake T. Williams, Esquire
Nelson Mullins Riley & Scarborough LLP
P.O. Box 11070
Columbia, S.C. 29211-1070
803- 799-2000

David H. Batten, Esquire
4141 Parklake Ave. Suite 350
Raleigh, N.C. 27612
919- 439-2221
Attorneys For Defendant

S/ 
Jim Washington
WTS Transport, LLC @yahoo.com
Plaintiff, Pro Se
803-496-4655

Feb. 4, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Common Pleas, Charleston County

DEADRA L. JEFFERSON, Circuit Court Judge

Civil Action No. 2015-CP-10-5000

Jim Washington, ...Plaintiff,
v.
Trident Medical Center, LLC, ...Defendant.

**MOTION TO RECONSIDER
MOTION TO VACATE**

Jim Washington
209 Signet Drive
Eutawville, S.C. 29048
(803) 496-4655
WTS TransportLLC@yahoo.com
Plaintiff, Pro Se

C. Mitchell Brown, Esquire
Blake T. Williams, Esquire
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803-799-2000

David H. Batten, Esquire
4141 Parklake Ave., Suite 350
Raleigh, N.C. 27612
919-439-2221
Attorneys For Defendant

FILED
2019 FEB 22 AM 10:27
JULIE J. ANASTROPOUS
CLERK OF COURT

FACTUAL AND PROCEDURAL HISTORY

Plaintiff do submit to this honorable court this **Motion To Reconsider And Motion To Vacate** this court order filed 2/14/19 based upon the factual basis for its decision at the hearing on 2/7/19 which orally (1) authorized Defendant Trident attorneys to file a propose order because the court was of the opinion the court lack jurisdiction or uncertain this court could take further action on Plaintiff Motion To Vacate Judgment And Motion To Amend The Pleadings after the S.C. Supreme Court issued its remittitur send to S.C. Court of Appeals which was subsequently send to this Court without affording Plaintiff a full and fair equal opportunity to submit briefing the issue of jurisdiction to the court for adjudication before a decision is render by the court is without factual evidence support in the record and controlled by error of law which is an abuse of this court discretion and warrant relief from judgment. {Ref. Doc. ,Plaintiff Motion To Reconsider And Motion To Vacate-Exhibits}.

This motion by Plaintiff is filed under SCRPC Rule 59(e); SCRPC Rule 60 (b)(1), 60 (b)(3) and 60(b)(5) showing that this court has jurisdiction to entertain and rule on the merits to Plaintiff Motion To Vacate Judgment And Motion To Amend The Pleadings which were also timely filed which the court overlooked in its decision; and (1) not supported by the evidence in the record nor the **cited case laws** in Defendant Trident Response in Opposition To Motion To Vacate Judgment **which actually supports Plaintiff position not Defendant Trident position by conceding that the court has jurisdiction on all post-trial motions then argues an inconsistent position** which in Plaintiff case would be the SCRPC Rule 60(b)(1) and 60(b)(3) motion allegations of extrinsic fraud upon the court and mistakes by the court in its factual conclusion and controlled by error of law was an abuse of court's discretion as grounds for equitable relief from judgment which were still pending in this court since 1/27/16 and also based on Judge Dennis decision on 6/22/18 instructing Plaintiff to contact his law clerk if Plaintiff have any further questions which Plaintiff did exactly what Judge Dennis instructed Plaintiff to do which it was ultimately determined that a show cause hearing should be held on the pending motions which is not inconsistent with the remittitur; and (2) controlled by errors of law which is an abused of this court's discretion warranting relief from its ruling cause by Defendant Trident attorney arguments submitted to deliberately and intentionally scheme to defraud the court which any further misconduct should be sanction by the court under SCRPC Rule 11 for making frivolous motion in bad faith and any other relief

this court deem just and appropriate. Holmes v. East Comm. Hosp., Inc., 408 S.C. 138, 145-170, 758 S.E.2d 483(2014).

The above aforementioned motions were never ruled on by this court but has been repeatedly with intent to deliberately misrepresented to the court to scheme to present extrinsic fraud upon the court and in furtherance of a scheme design with intent to attempt to subvert the integrity of the court itself as an institution to adjudicate the issue presented to be adjudicated in the usual impartial manner by Defendant Trident attorneys in their briefings to the Court of Appeals and to S.C. Supreme Court and finally to this Court in their briefings misrepresented to these courts that the motions were ruled upon and denied which has effectively deprive Plaintiff of full and fair opportunity to present his case and the opportunity to be heard on the issues he presented to the Courts to reach to merit. { Motion To Reconsider Conclusions, pp. 8-10; pp. 19-24; Motion To Vacate Judgment And Motion To Amend The Pleadings, pp. 3-12; Defendant Trident attorney - Response in Opposition to Motion to Vacate Judgment, p. 1; Ref. Doc., Plaintiff Motion To Reconsider and Motion To Vacate 2/7/19 propose order and order-Exhibits court case history}. The appeal was affirmed and rehearing denied. The S.C. Supreme Court denied certiorari. The circuit court filed the remittitur on 6/1/18. On or about 6/7/18 Plaintiff contacted this court by telephone and thereafter Inquiring why his 1/27/16 rule 60(b) motions were never decided to hold a show cause hearing as filed in this court requesting the hearing by Plaintiff. Thereafter on numerous occasions Plaintiff continued speak by telephone with various clerk of court personnel and was told that they did not know the reason. Eventually Plaintiff was referred to Judge Dennis law clerk who told Plaintiff he would speak to Judge Dennis and that Plaintiff would receive a response in writing addressing the matter. On 6/22/18 Judge Dennis wrote Plaintiff stating: **Mr. Washington, the above reference matter Re: Washington v. Trident Medical Center , civil action 2015-CP-10-5000 has been closed. Enclosed is a copy of the Court of Appeals' opinion affirming my order and concluding all motions filed. Please contact my law clerk if you have any further questions. {Ref. Doc., Motion To Reconsider Conclusions, pp. 13}. Plaintiff, on**

7/6/18 Plaintiff filed a Motion To Reconsider Conclusions requesting the court to reconsider its conclusions that all motions were concluded. Thereafter, Defendant Trident attorney David H. Batten wrote two letter to the Clerk of Court Julie Armstrong requesting her not to schedule a hearing because the matter was close and concluded. { Ref. Doc., Motion To Reconsider And Motion To Vacate-Exhibits}. Plaintiff in response file in the court a reply correspondence requesting the Clerk of Court Mrs. Armstrong to schedule a hearing because there were legal issues needed to be addressed by the court. {ref. Doc., Motion To Reconsider And Motion To Vacate-Exhibits}. Thereafter, Plaintiff spoke with Judge Dennis law clerk and was told a hearing would be scheduled and both parties would be notified in writing as to the date of the hearing. On 7/6/18 Plaintiff filed a Motion To Reconsider Conclusions to the court decision dated 6/22/18. {Ref. Doc., Motion To Reconsider Conclusions, p. 13}. On 10/25/18 Plaintiff file in this court a Motion To Vacate Judgment And Motion To Amend The Pleadings. On 2/4/19 Plaintiff filed his Memorandum of Law in Support of The Motion To Vacate Judgment And Motion To Amend The Pleadings. The hearing to these motion were held on 2/7/19.

DISCUSSION

Based upon the above factual evidence in the record and supported by Judge Dennis decision dated 6/22/18 instruction to contact his law clerk for any questions regarding the above reference matter which Plaintiff did precisely followed these instructions. Therefore it is very clear that Plaintiff has met his burden that eventhough you are not the original circuit court judge who rendered the original final order in this matter your Court has jurisdiction to adjudicate the SCRCF Rule 60(1) and 60(b)(3) ; and the pending post trial Motion To Vacate Judgment And Motion To Amend The Pleadings; and this court's 2/7/19 final order in this Court all of which are timely filed and does not violate the rule of one circuit court judge overruling another circuit court judge. Muller v. Myrtle Beach Golf & Yacht Club, 436 S.E.2d 248, 250(1993)(same); Cox v. Fleetwood Homes of Georgia, Inc., 334 S.C. 55, 57-58, 512 S.E.2d 498(1999)(same); Wachovia Bank of South Carolina, N.A. v. Player, 341 S.C. 424, 426-430, 535 S.E.2d 128(2000)(same); Brackenbrook North Charleston, LP v. County of Charleston, 366 S.C. 503, 507-509, 623 S.E.2d 91(2005)(same); Brandt v. Gooding, 368 S.C. 618, 625-626, 630 S.E.2d

259(2006)(same); Narruhn v. Alea London Limited, 404 S.C. 337, 340-341, 745 S.E.2d 90(2013)(same); Stokes-Craven Holding Corp. v. Robinson, 416 S.C. 517, 532-538(2016)(same); Ex Parte Carter, 422 S.C. 623, 625-632, 813 S.E.2d 686(2018)(same).

The S.C. Supreme Court has consistently held in all of above cited cases that the circuit court retains jurisdiction after the remittitur was issued to entertain and reach the merits of the post trial motions under the same circumstances as Plaintiff Washington in this case with the aforementioned supporting citation of authorities. Wold v. Funderburg, 250 S.C. 205, 208-211, 157 S.E.2d 180(1967)(same); Narruhn v. Alea London Limited, 404 S.C. 337, 340-341, 745 S.E.2d 90(2013)(we agree that the circuit court erroneously considered the date of the order of reference in calculating timeliness of the rule 60 motion, rather than the date of the challenged order. As to the issue of authority, we find the circuit court did have authority to rule on the motion. Because the rule 60(b) motion presents a separate matter, it does not run afoul of the general rule prohibiting one circuit court judge from overruling another); Jackson v. Speed, 326 S.C. 289, 311, 486 S.E.2d 750(1997)(same); Lee v. Chesterfield General Hospital, Inc., 289 S.C. 6, 344 S.E.2d 379(Ct. App. 1986)(court agree argument of conspiracy to further the acts with intent to injure Appellant Lee was a different matter for the court to have subject matter jurisdiction to hear claim on the merit); Ex Parte Carter, 422 S.C. 623, 625-632, 813 S.E.2d 686(2018)(finding Court of Appeal err in not finding sufficient allegation of extrinsic fraud upon the court and the statutory provision of the family court authority to set aside an adoption decree on that basis. Further finding sufficient allegation that the couple were misled and misguided and subsequent attempt to appear and be heard as to the validity of the consent were repeatedly thwarted by opposing counsel who also was not candid about the separate pending action. Remanding to order hearing on the merit after remittitur is issued. Also ruling the trial court abuse its discretion because appellant rule 60(b) motion was timely because appellant acted promptly to followed court instruction to file the motion).

Therefore, based on the above evidence it is clear this court's 2/14/19 order is without factual basis in the record to support this court's 2/14/19 findings and is controlled by error of

law that the court is without jurisdiction to adjudicate Plaintiff post trial motions for extrinsic fraud after the remittitur which were not affected by the issues on appeal and certiorari and that Plaintiff motions were untimely which is an abuse of this court's discretion and controlled by an error of law requiring equitable relief to vacate judgment and to hold a hearing on the merit. Jackson v. Speed, 326 S.C. 289, 311, 486 S.E.2d 750(1997)(same); Cox v. Fleetwood Homes of Georgia, Inc., 334 S.C. 55, 57-58, 512 S.E.2d 498(1999)(same); Nurruhn v. Alea London Limited, 404 S.C. 337, 340-341, 745 S.E.2d 90(2013)(quoting Wachovia Bank of S.C. v. Player, 341 S.C. 424, 535 S.E. 2d 128(2000))(holding where a matter had been referred to master with finality, but the master had not concluded all of his duties under the order of reference because he had directed a foreclosure yet still needed to conduct the sale and dispose of all surplus fund, the master had the authority to decide a party's Rule 60(b)(4)motion); Ex Parte Carter, 422 S.C. 623, 625-632, 813 S.E.2d 686(2018)(same).

Additionally, this court in granting Defendant Trident propose order is without factual support in the record and is controlled by an error of law. **Leave of an appellate court** under SCRPC Rule 60(b)(1) and 60(b)(3) motion filing requirements comes in play only when an appeal is already pending to pursue the motion for court to acquire jurisdiction over motion. However, in Plaintiff Washington circumstance his SCRPC Rule 59(e) and Rule 60(b)(1) and (3) motions were filed on 1/27/16 and no ruling was made on the rule 60 motion. Plaintiff did not appeal the rule 60 motion because the circuit instructed him to appeal to the S.C. Supreme Court on the issues of pre-suit statutory requirements. { Ref. Doc., Motion To Reconsider Conclusions, pp. 82-87}. The Rule 60 motion was filed on 1/27/16 when no appeal was filed or pending as a independent matter for fraud upon the court. On 2/5/16 Judge Dennis order of dismissal was entered on court's docket. On 3/4/16 the Court of Appeal docket Plaintiff notice of appeal of Judge Dennis order of dismissal rulings that Plaintiff failure to comply with pre-suit statutory requirement for medical malpractice. The court of common pleas docketing history shows there are no entry of any order ruling on Plaintiff Rule 60 motions filed on 1/27/16 and no Rule 60(b) motions challenges were made on appeal or certiorari and Judge Dennis final order confirms Plaintiff position because that order conclusively states that only

the issues adjudication at the hearing and briefs filed by the Parties were consider without making new findings of new motion to reopen the judgment to make new findings on a rule 60 motions or rule 59(e) motion after the hearing was concluded . {Ref. Doc.- final order, Motion To Vacate Judgment And Motion To Amend Pleadings, pp. 1-5 final order}. Therefore, under these factual circumstance only the SCRPC Rule 59(e) motion could be affected during the pendency of the appeal and after remittitur was issued; and (1) leave of an appellate court requirements are not applicable and does not affect the resolution of the Rule 60 motions after the remittitur was issued; and (2) the circuit court has jurisdiction over the Rule 60 motions during the pendency of the appeal because it is filed as an independent separate matter and the before the final order was issued before Plaintiff filed the appeal and are issues not affecting the appeal and certiorari. Lowe v. Clayton, 264 S.C. 75, 78-86, 212 S.E.2d 582(1975)(same); Jackson v. Speed, 326 S.C. 289, 311, 486 S.E.2d 750(1997)(same) ; Hudson v. South Carolina Department of Highways and Public Transportation, 478 S.E.2d 839, 840 fn. 1(1996)(citing cases); State ex rel. Medlock v. Nest Egg Society Today, Inc., 290 S.C. 124, 130, 348 S.E.2d 381(1986)(same); Andrick Development Corp. v. Maccaro, 280 S.C. 103, 105-106, 311 S.E.2d 95(1984)(same).

Furthermore, Plaintiff should have been afforded an equal opportunity to submit briefing on the jurisdictional issue of extrinsic fraud and also on the issues under 60(b)(1) all of which which affects the merit of Plaintiff claims and defenses on the jurisdictional issues and the mistakes of the court seeking relief from judgment. This court on 2/7/19 at the hearing stated it would not rule on the merit of Plaintiff allegation of extrinsic fraud but instead would allow Defendant Trident attorneys to submit a propose order addressing the jurisdictional issue only. However, in Defendant Trident propose order dated 2/12/19 [goes beyond this court decision and is seeking for the court to denied Plaintiff pending motions on the basis that the court has **thoroughly reviewed Plaintiff filing and finds that there is no evidence of fraud. Plaintiff has fail to meet his burden**]. {Propose Order, pp.3-4; Plaintiff Memorandum of Law in Support of Motion To Vacate Judgment And Motion To Amend The Pleadings, pp.17-20; pp. 20-23; pp. 24-29; Motion To Reconsider Conclusions, pp. 49-55 }. Therefore, Plaintiff alleges that the above misconduct by Defendant Trident's attorneys after fully knowing that the court's stipulated what matter the propose order should address deliberately and intentional exceeded the court directive with

intent to engage in a scheme to conceal the consent agreement date 9/30/12 between The Regional Medical Center and Plaintiff to order the medical records from Defendant Trident and do second MRI to determine if there was any increase extension of Plaintiff (CVA) cerebrovascular accident medical condition since discharged from Trident medical facility was a pattern of systematically knowing what is stated as true was false to intentionally misrepresent the facts to deliberately conceal these documents from the court. to defraud the court itself as an institution which effectively deprive Plaintiff of an opportunity to present his case warranting this court to modify its order to correct this mistake granting Defendant Trident relief on this basis. Hoffman v. Celebrezze, 405 F. 2d 833,835-837(Ct. of App. 8TH Cir. 1969)(same); United Business Communications v. Racal-Milgo, Inc., 591 F. Supp. 1172, 1187(D. Ct. of Kansas 1984)(systematic pattern rising to level of fraud upon the court); Evans v. Gunter, 294 S.C. 525, 526-529, 366 S.E.2d 44(Ct. App. 1988)(perjury and induce to sign an affidavit of acceptance waiving his right to answer, demur or otherwise plead or make an appearance before the court is sufficient allegation of extrinsic fraud. Further, Rule 60(b)(5) is based on the historical power of a court of equity to modify its decree in light of subsequent condition); Hagy v. Pruitt, 339 S.C. 429, 432-434, 529 S.E.2d 714(2000)(same); Ex Parte Carter, 422 S.C. 623, 625-632, 813 S.E.2d 686(2018)(Systematic pattern rising to the level of extrinsic fraud).

Plaintiff objected to this court recommended procedure at the hearing to allow Defendant Trident attorneys as the Defendant representative to brief the issues to make the determination on the issues without affording Plaintiff the same opportunity based on the fact that it would deny Plaintiff of an equal and fair opportunity to present his case and a denial of his constitutional right to due process of law Surgery Center V. Workers Compensation, 389 S.C. 380, 387-399, 699 S.E.2d 146(2010)(same); Garris v. The Governing Board of The South Carolina Reinsurance Facility, 333 S.C. 432, 441-447, 511 S.E.2d 48(1998)(same); Salmanson v. CGD, Inc., 377 S.C. 442, 456-460, 661 S.E.2d 81((2008)(Due Process required where issues not fully and fairly litigated.....citing Hospitality Mgmt. Assocs. v. Shell Oil Co., 356 S.C. 644, 654, 591 S.E.2d 611, 616(2004) because the evidence on file and case law cited clearly shows extrinsic fraud because the 10/25/12 consent agreement was collateral extrinsic evidence used by Defendant Trident attorneys used as an exhibit in support of their Memorandum of Law to procure the judgment on the ground that the court lack subject matter jurisdiction over the accompanying documents and the parties agreed to make a final determination of permanent

impairment and ability to work in the future in the Social Security Administration forum; and also grounds Plaintiff did comply with the pre-suit statutes prior to filing the Complaint. {Ref. Doc., Motion To Reconsider Conclusion, pp. 72-87; Motion To Vacate Judgment And Motion To Amend The Pleadings, Exhibits-Soc. Security Adm. -Disability Determination Explanation, pp. 1-10; final order dated 1/27/16, pp. 33-43}. Center v. Center, 269 S.C. 367, 371-373, 237 S.E.2d 491(1077)(quoting Bryan v. Bryan, 220 S.C.164, 66 S.E.2d 609(1951))(Generally speaking, in order to secure equitable relief, it must appear that the fraud must be extrinsic or collateral to the question examined and determined in the action in which the judgment was rendered); Hagy v. Pruitt, 331 S.C. 213, 220-227, 500 S.E.2d 168(Ct. App. 1998)(Howard J. concurring)(There is no doubt a fraudulent scheme which circumvents a party's right to notice in a proceeding "induces a person a person not to present a case or deprives a person of the opportunity to be heard.' As such it could provide a basis for finding extrinsic fraud, if established by the evidence. Further, ruling that a possible constitutional construction of a statute must prevail over an unconstitutional interpretation). Plaintiff seek relief in this Rule 60(b) motion to vacate judgment because the consent agreement Defendant Trident attorneys relied on used in the action at the hearing; and in their motion to dismiss; and Memorandum of Law; and Final order was invalid because the 9/30/12 consent authorization agreement was the valid consent agreement to do another MRI of the brain to determine if there was any extension of the CVA since Plaintiff discharge from Trident relying on Ex Parte Carter, supra , and that the court had jurisdiction after the remittitur, which is an abuse of this court discretion and a violation of Plaintiff constitutional right to due process of law to accept the findings of Defendant Trident attorneys decision that Plaintiff has made no showing of extrinsic fraud to meet his burden which effectively deprive Plaintiff of a full opportunity to be heard; and present his case requiring this court to reconsider its order and pass on as a discretionary matter Plaintiff Rule 60 motions that is now ripe for review. {Memorandum of Law in Support of Motion To Vacate Judgment And Motion To Amend The Pleadings, pp. 25-29; Motion To Reconsider Conclusions, pp. 49-55}. Klapprott v. United States, 335 U.S. 601, 602-631(1949)(same); Fontaine v. Peitz, 291 S.C. 536, 537-539, 354 S.E.2d 565(1987)(When the trial judge is vested with discretion, but his ruling reveals no discretion was , in fact, exercised, an error of law has occurred. Where a court is clothed with discretion, but rules as a matter of law, the appealing party is entitled to have the matter reconsidered and passed on as a discretionary matter); Davis v. Davis, 236 S.C. 277, 281-282, 113 S.E.2d 819(Extrinsic fraud found where an attorney in a divorce action did not file the opposing side's answer and then represented to the

court the opposing party was in default. Further, finding the court was influence by attorney representation); Hagy v. Pruitt, 339 S.C. 425, 432-434, 529 S.E.2d 714(2000)(same); Chewning v. Ford Motor Company, 354 S.C. 72, 84-86, 579 S.E.2d 605(2003)(finding extrinsic fraud where hired to testify falsely and deliberately concealing critical documents effectively prevented Chewning from fully exhibiting and presenting his case); Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573-574, 743 S.E.2d 778(2013)(Amended Complaint sufficiently put the City on notice of the third - party beneficiary claim theory. We find the order of Judge John and Judge Short are not law of the case to foreclose the Amended Complaint claim and can be reconsidered and corrected by the court before entering final judgment. Further stating even though this state has a long-standing rule that one circuit judge of the same circuit cannot overrule another did not apply to the fact and circumstances in that case because different subject matters needed to be adjudicate by the court citing Charleston Cnty. Dep't of Soc. Servs. v. Father, 317 S.C. 283, 288, 454 S.E.2d 307, 310(1995).

Plaintiff allegations of extrinsic fraud and meritorious defense is supported by the evidence in the record clearly proves that the consent agreement dated 10/25/12 from the Social Security Administration was not valid and that the 9/30/12 was the true valid consent agreement from The Regional Medical Center amounting to extrinsic fraud because the 10/25/12 consent agreement and the 4/30/13 Social Security Administration-Disability Determination Explanation decisions to determine Plaintiff ability to work in the future in that forum are collateral and extrinsic evidence to the question examined and determined in the action in which the judgment was rendered that Plaintiff failed to comply with the pre-suit medical malpractice statutes prior to filing to Complaint; and is consistent with the remittitur eventhough not expressly remanded that all post trial motions not affected on appeal and certiorari. Therefore, this court has jurisdiction over the rule 60(b) motion because the issues of fraud were not adjudicated on appeal nor on certiorari and therefore not conclusively determined in those courts on the issues now before this court for (1) extrinsic fraud in procuring the judgment by relying on invalid consent dated 10/25/12; and Disability Determination Explanation-that they would make final determination in that forum Plaintiff ability to return to work in the future. Center v. Center, supra. Therefore, this court ruling warrants vacating this court's order and to hold a hearing on the merit of Plaintiff post trial motions. {Memorandum of Law in Support of Motion To Vacate Judgment And Motion To Amend The Pleadings, pp.17-20; pp. 20-23; pp. 24-29; Motion To Reconsider Conclusions, pp. 49-55}.

Wold v. Funderburg, 250 S.C. 205, 208-211, 157 S.E.2d 180(1967)(same); Lowe v. Clayton, 264 S.C. 75, 78-86, 212 S.E.2d 582(1975)(same); Hamm v. Southern Bell Telephone And Telegraph Company, 305 S.C. 1, 3-6, 406 S.E.2d 157(1991)(same); Moore v. American Van Lines, 462 S.E.2d 275, 276(1995)(same); Hagy v. Pruitt, 339 S.C. 425, 432-434, 529 S.E.2d 714(2000)(same); Ex Parte Carter, 422 S.C. 623, 625-632, 813 S.E.2d 686(2018)(same).

Finally, because this court findings in its order dated 2/14/19 denying plaintiff **Motion To Vacate Judgment And Motion To Amend The Pleadings** on the basis that there is no extrinsic fraud to procure the judgment and that Plaintiff has fail to meet his burden is not supported by the evidence in the record that the 9/30/12 consent is valid and the 10/25/12 consent agreement is not valid to determine the doctors at The Regional Medical Center needed to do a second MRI of the brain to make a dtermination if there were any further extension of the CVA which is collateral and extrinsic to the question examined and determined that Plaintiff fail to comply with the pre-suit medical Malpractice statute requirements prior to filing the action; and is controlled by an error of law and abuse of this court's discretion warranting this court to **make new concise explicit statement of the underlying facts to support its findings it reached which is wholly insufficient and speculative as a reason to deny Plaintiff motion in which the S.C. Supreme Court has consistently remand to the trial court under the same circumstances as Plaintiff in this action and finding abuse of the trial discretion which was controlled by errors of law because the evidence did not support the courts findings in the record that appellant has not meet its burden.** Utility Services of South Carolina, Inc. v. The South Carolina Office Of Regulatory Staff, 392 S.C. 96, 104-113, 708 S.E.2d 755(2011)(we hold the PSC committed three errors of law in determining Utility failed to meet to meet its burden of proof. First, we hold the PSC was required to provide Utility with a meaningful opportunity to supplement its application with the information the PSC requested. Second, we hold the PSC erred in failing to accord Utility the presumption of reasonableness applicable to its expenses. Finally, we hold the PSC erred in denying the rate application as a whole where only some of Utility's expenditures were brought into question); In re Treatment and Care of Luckabaugh, 351 S.C. 122, 129-134, 568 S.E.2d 338(2002)(same); Kiawah Property Owners Groups v. P S C, 338 S.C. 92, 95-97, 525 S.E.2d 863(1999)(same); Heater of Seabrook Inc. v. The Public Service Commission of South Carolina, 332 S.C. 20, 24-30, 503 S.E.2d 739(1998)(same); Able Communications, Inc. v. The Public Service Comission of South Carolina,

290 S.C. 409, 351 S.E.2d 151(1986)(same); see also Carey v. Snee Farm Community Foundation, 388 S.C. 229, 230-232, 694 S.E.2d 244(Ct. App. 2010)(same); Doe v. Howe, 367 S.C. 432, 439-449, 626 S.E.2d 25(Ct. App. 2006)(same). Therefore, base upon these circumstances it is clear that the court made errors of laws in its 2/14/19 order in analyzing the evidence to find Plaintiff fail to meet his burden of proof to extrinsic fraud. Therefore, this court should make new findings on the issue that lack sufficient evidence to meet the burden of proof of extrinsic fraud and to vacate its order and to hold a hearing on the merit of the consent validity because the evidence in the record clearly shows the 9/30/12 consent was valid to do second MRI to determine if there was any increase extension of Plaintiff (CVA) cerebrovascular accident since discharge from Trident Medical Center; and because Defendant Trident attorneys obtain the judgment through extrinsic fraud on the court on the basis that the court lack subject matter jurisdiction over the 10/25/12 accompanying documents which is attached to 9/30/12 through 10/8/12 medical records and incorporated into the Complaint pre-suit pleadings to satisfy the pre-suit pleadings requirements prior to filing the complaint under the three cited statutes. {Memorandum of Law in Support of Motion To Vacate Judgment And Motion To Amend The Pleadings, pp. 14-23}. Plaintiff alleged in the Rule 60(b) motions that Defendant Trident attorneys set in motion a scheme to deliberately misrepresent and conceal the pleadings and documents in support of Plaintiff pre-suit pleadings in the complaint and the accompanying documents with intent to defraud the court that Plaintiff fail to comply with the pre-suit statutory requirements; and knowing that The Regional Medical Center had already took action on 9/30/12 to determine if there were further extension of the CVA since discharge from Trident and that the 10/25/12 consent agreement was not valid because the clause on page 2 of 2 paragraph 3 in the consent agreement stated that [you have a right to revoked this authorization at any time except to the extent another source has already took action on the information requested to be released prior to the 10/25/12 consent]. {Memorandum of Law in Support of Motion To Vacate Judgment And Motion To Amend The Pleadings, pp. 16-23; Ref. Doc., Motion To Reconsider Conclusion, pp. 49-55; pp. 72-76}. Hagy v. Pruitt, 331 S.C. 213, 220-227, 500 S.E.2d 168(1998)(Ct. App. 1998)(Howard J., concurring)(same). Therefore, Plaintiff alleges and the above evidence clear and convincing shows Defendant Trident attorneys knowing that another source had already took action on 9/30/12 to determine Plaintiff CVA extension after discharge from Trident repeatedly set in motion a scheme with deliberate

intent to misrepresent to court to defraud to court to obtain the judgment (1) that the court lacked subject matter jurisdiction over the consent documents and the Social Security Administration would make the final determination of Plaintiff future ability to work in that forum which is extrinsic evidence of fraud and collateral to the question examined and determined in the action of failure to comply with pre-suit statutes prior to filing the Complaint. Therefore, Plaintiff contents he has meet his burden of proof of showing the judgment was secure by extrinsic fraud upon the court because the above misconduct by Defendant Trident attorneys was a scheme set in motion with deliberate intent to defraud the court itself that Plaintiff fail to comply with the pre-suit statutory requirements and that the court lack subject matter jurisdiction over the accompanying documents due to consent agreement within the document from the Social Security Administration dated 10/25/12 which is collateral to the question examined and determined in the action in which the judgment was rendered that Plaintiff fail to comply with the pre-suit statutes requirements prior to filing the action and is clear and convincing evidence of extrinsic fraud . {Memorandum of Law in Support of Motion To Vacate Judgment And Motion To Amend The Pleadings, pp. 16-23; pp. 25-29}. Center v. Center, 269 S.C. 367, 367-373, 237 S.E.2d 491(1977)(quoting Bryan v. Bryan, 220 S.C. 164, 66 S.E.2d 609(1951))(in order to secure equitable relief, it must appear that the fraud was extrinsic or collateral to the question examined and determined in the action in which the judgment was rendered); Hagy v. Pruitt, 331 S.C. 213, 221-227, 500 S.E.2d 168(Ct. App. 1998)(Howard J., concurring); Davis v. Davis, 236 S.C. 277, 280-284, 113 S.E.2d 819(1960)(attorney in divorce action did not file the opposing side's answer and then represented to the court opposing party was in default. The court found this may reasonably may be held to have been extrinsic fraud upon her and the court. He had followed the proper procedure in filing to vacate judgment and verified complaint was sufficient as an affidavit and was sufficient allegation for extrinsic fraud upon the court. Further, holding he was deprived of an opportunity to amend the Complaint to cure any defects in pleadings); Bruce V. Blalock, 241 S.C. 155, 160-164, 127 S.E.2d 439(1962)(quoting Bethlehem Steel Co. v. Turner Construction Co., 2 N.Y. (2d) 456, 161 N.Y.S. (2d) 90, 141 N.E. (2d) 590, 63 A.L.R. (2d) 1331(an escalator clause, giving the producer of building materials the right to increase the price under the contract if it changed its prices generally, did not render the

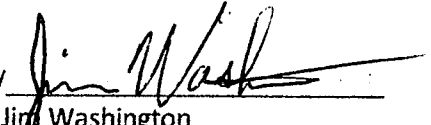
contract invalid for lack of mutuality); Thompson v. Hammond, 299 S.C. 116, 118-120, 382 S.E.2d 900(1989)(same); Gilliland v. Elmwood Properties, 391 S.C. 295, 298-302, 391 S.E.2d 577(1990)(We disagree. We have previously held that parol evidence is generally admissible to show fraud in the inducement of a writing); Coleman v. Dunlap, 306 S.C. 491, 493-496, 413 S.E.2d 15(1992)(same); Hagy v. Pruitt, 339 S.C. 425, 432-434, 529 S.E.2d 714(2000)(same); Ex Parte Carter, 422 S.C. 623, 625-632, 813 S.E.2d 686(same).

Therefore, the 10/25/12 consent was not valid to determine Plaintiff permanent impairment medical condition and to make a final determination of Plaintiff ability to work in the future in that forum is supported by the evidence in the record that Plaintiff has met his burden of proof by clear and convincing evidence that the fraud was collateral and extrinsic to the question presented and determined that Plaintiff fail to comply with the pre-suit medical malpractice statutes prior to filing the action. { Memorandum of Law in Support of Motion To Vacate Judgment And Motion To Amend The Pleadings, pp. 16-29}. Davis v. Davis, 236 S.C. 277, 280-284, 113 S.E.2d 819(1960)(same); United Business Communications v. Racal-Milgo, Inc., 591 F. Supp. 1172, 1186-1187(D. Ct. D. Kansas 1984)(same); Hagy v. Pruitt, 339 S.C. 429, 432-434, 529 S.E.2d 714(2000)(same); Chewning v. Ford Motor Company, 354 S.C. 72, 77-86, 579 S.E.2d 605(2003)(describing fraud upon the court as that species of fraud which does attempts to, subvert the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication citing H. Lightsey, J. Flanagan, and further holding the allegations were sufficiently pleaded for extrinsic fraud upon the court if the attorneys knowingly hired the expert witness which gave his opinion on the stability at the Bronco II trial including Chewning trial falsely and knowingly withheld critical documents would have effectively prevented Chewning from fully exhibiting and presenting his case warranting relief from finality of judgment if proven by clear and convincing evidence); Ex Parte Carter, 422 S.C. 623, 625-632, , 813 S.E.2d 686(2018)(same).

CONCLUSION

This court has jurisdiction to rule on Plaintiff SCRPC Rule 60(b) motions after the remittitur was received in this court. Also, because issues in the motions involve separate matter this court should make explicit concise statements of the underlying facts to support its

findings on the burden of proof was not met and vacate its 2/14/19 order and hold a hearing on the merit of the motions.

S/ 
Jim Washington
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Plaintiff, Pro Se

EXHIBITS

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
)

Jim Washington,

Plaintiff,

vs.

Trident Medical Center, LLC,

Defendant.

Civil Action No. 2015-CP-10-5000

**ORDER DENYING PLAINTIFF'S
MOTIONS TO VACATE JUDGMENT
AND MOTION TO AMEND PLEADINGS**

FILED
2019 FEB 14 PM 12:55
JULIE CLARK, CLERK
COURT

Presiding Judge:

Hon. Deadra L. Jefferson

Plaintiff's Attorneys:

Pro Se

Defendants' Attorneys:

Blake Williams, Esq.

Dave Batten, Esq.

Date of Hearing:

February 7, 2019

Court Reporter:

Melissa Singletary

This matter came before the Court on February 7, 2019 upon Plaintiff's Motion to Vacate Judgment and Motion to Amend the Pleadings, filed October 25, 2018. Plaintiff Jim Washington ("Plaintiff") appeared *pro se*. Blake Williams, Esq. and Dave Batten, Esq. appeared on behalf of Defendant Trident Medical Center, LLC ("Defendant"). Having considered Plaintiff's Motion, the various interests balanced by the Court at the time of the ruling, and the applicable law, the Plaintiff's Motion is hereby DENIED.

PROCEDURAL HISTORY

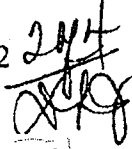
This action, filed September 11, 2015, is one for medical malpractice arising out of medical treatment rendered to Mr. Washington at Trident Medical Center between September 23 and 26, 2012. On October 16, 2015, the Defendant filed a Motion to Dismiss pursuant to S.C. Code Ann. Sections 15-79-125 and 15-36-100, as well as Rules 12(b)(1), 12(b)(6), and 12(c) of the South Carolina Rules of Civil Procedure. The Motion to Dismiss was fully briefed and heard



before the Honorable Judge R. Markley Dennis on January 7, 2016. On January 14, 2016, Judge Dennis entered a Form 4 Order dismissing the action for failure to comply with the pre-suit requirements for a medical malpractice action provided by S.C. Code Ann. § 15-79-125(a). Judge Dennis entered a formal written order of dismissal on February 5, 2016. Thereafter, Plaintiff appealed to the Court of Appeals by filing a Notice of Appeal on March 4, 2016. Through an Opinion dated January 10, 2018, the Court of Appeals affirmed Judge Dennis' Order granting Defendant's Motion to Dismiss. Plaintiff then moved for a rehearing, which the Court of Appeals denied by Order dated February 22, 2018. Plaintiff then filed a petition for a writ of certiorari to the Supreme Court of South Carolina, which denied the petition on May 25, 2018. The remittitur from the Court of Appeal was issued on May 30, 2018, and filed with the Charleston County Clerk of Court's office on June 1, 2018.

CONCLUSIONS OF LAW

After the remittitur, the Circuit Court "acquires jurisdiction to *enforce* the judgment and take any action *consistent* with the appellate court's ruling." Martin v. Paradise Cove Marina, Inc., 348 S.C. 379, 385, 559 S.E.2d 348, 351-52 (Ct. App. 2001) (emphasis added); See also Muller v. Myrtle Beach Golf & Yacht Club, 313 S.C. 412, 415, 438 S.E.2d 248, 250 (1993). As the Court of Appeals has explained, matters decided by the appellate court "cannot be reheard, reconsidered, or relitigated in the trial court, even under the guise of a different form," and the "decision of the appellate court is *final as to all questions decided*." Ackerman v. McMillan, 324 S.C. 440, 443, 477 S.E.2d 267, 268 (Ct. App. 1996) (emphasis added). Thus, "[i]t is the duty of the trial court to follow the decision of the appellate court." Id. Accordingly, the Court lacks jurisdiction to rehear any of Plaintiff's arguments about the merits of his claims or whether he complied with the pre-

2 
216

suit requirements for filing a medical malpractice action. After thorough review of Plaintiff's motions, the Court finds that they improperly seek relitigation of these issues.¹

Moreover, "[o]ne Circuit Court Judge does not have the authority to set aside the order of another." Enoree Baptist Church v. Fletcher, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986). The undersigned further lacks jurisdiction because Judge Dennis entered the original order of dismissal, and the undersigned cannot set aside or modify the order of another trial judge. See also State ex rel. Medlock v. Love Shop, Ltd., 286 S.C. 486, 488, 334 S.E.2d 528, 529 (Ct. App. 1985) ("It is settled that one circuit judge does not have the power to review, modify, affirm or reverse the findings of another circuit judge.").

At the hearing, Plaintiff also argued that he filed a Rule 59(e), SCRPC and Rule 60(b), SCRPC motion after Judge Dennis entered the Form 4 Order that was not ruled upon. Plaintiff, however, never made Judge Dennis or the Court of Appeals aware of this issue. Instead, Plaintiff chose to proceed with filing the notice of appeal and briefing the appeal on the merits. By failing to raise this issue on appeal, it was abandoned. See, e.g., Cannon v. Cannon, 321 S.C. 44, 54, 467 S.E.2d 132, 138 (Ct. App. 1996) (holding an issue not argued in the appellant's brief is deemed abandoned on appeal); First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (holding appellant was deemed to have abandoned issues on appeal, where he failed to provide any argument or supporting authority). This argument is improper at this stage and is not a proper ground warranting relief from the judgment.

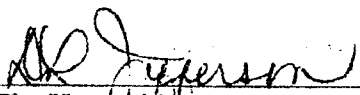
Finally, Plaintiff's Rule 60(b) motion asserts that the judgment should be set aside due to extrinsic fraud on the Court. The Court has thoroughly reviewed Plaintiff's filings and finds that

¹ At the hearing, the Plaintiff also argued for a change of venue, but the Court does not reach this issue because the other grounds upon which Plaintiff has moved to vacate Judge Dennis' Order are dispositive, and as stated herein, the Court lacks jurisdiction on issues not decided on appeal.

there is no evidence of any fraud. The standard under Rule 60(b) is "rigorous" and requires a "particularized showing." Sundown Operating Co. v. Intedgen Indus., Inc., 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009). To obtain relief from a judgment on the basis of fraud, a party must show that extrinsic fraud occurred. See Raby Const., L.L.P. v. Orr, 358 S.C. 10, 20, 594 S.E.2d 478, 483 (2004); See also Chewning v. Ford Motor Co., 354 S.C. 72, 81 579 S.E.2d 605, 610 (2003) (noting that extrinsic fraud "induces a person not to present a case or deprives a person of the opportunity to be heard."). Intrinsic fraud, which is fraud that "misleads a court in determining issues and induces the court to find for the party perpetrating the fraud," is not sufficient to warrant relief under Rule 60(b). Raby Const., 358 S.C. at 20, 594 S.E.2d at 483. After reviewing the record, the Court finds that Plaintiff has failed to meet his burden of making a particularized showing of extrinsic fraud. See Lanier v. Lanier, 364 S.C. 211, 215, 612 S.E.2d 456, 458 (Ct. App. 2005) ("A party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence entitling him to the requested relief.").

Therefore, for the aforementioned reasons, Plaintiff's "Motion to Vacate Judgment and Motion to Amend the Pleadings" is heard and respectfully **DENIED**.

IT IS SO ORDERED.


The Honorable Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

12th day of Feb. 2019
Charleston, SC

filed a petition for a writ of certiorari to the Supreme Court of South Carolina, which denied the petition on May 25, 2018. The remittitur issued on May 30, 2018.

In light of the remittitur, the issues raised and ruled upon by Judge Dennis and affirmed by the Court of Appeals have been fully and finally determined. After the remittitur, the Circuit Court “acquires jurisdiction to **enforce** the judgment and take any action **consistent** with the appellate court’s ruling.” *Martin v. Paradise Cove Marina, Inc.*, 348 S.C. 379, 385, 559 S.E.2d 348, 351–52 (Ct. App. 2001) (emphasis added); *see also Muller v. Myrtle Beach Golf & Yacht Club*, 313 S.C. 412, 415, 438 S.E.2d 248, 250 (1993) (same). As the Court of Appeals has explained, matters decided by the appellate court “cannot be reheard, reconsidered, or relitigated in the trial court, even under the guise of a different form,” and the “decision of the appellate court is **final as to all questions decided**.” *Ackerman v. McMillan*, 324 S.C. 440, 443, 477 S.E.2d 267, 268 (Ct. App. 1996) (emphasis added). Thus, “[i]t is the duty of the trial court to follow the decision of the appellate court.” *Id.* (emphasis added).

The Court, therefore, lacks jurisdiction to rehear any of Plaintiff’s arguments about the merits of his claims or whether he complied with the pre-suit requirements for filing a medical malpractice action. After thorough review of Plaintiff’s motions, the Court finds that they improperly seek relitigation of these issues.

Additionally, the undersigned further lacks jurisdiction because Judge Dennis, not the undersigned, entered the original order of dismissal. The undersigned cannot set aside or modify the order of another trial judge. *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986) (“One Circuit Court Judge does not have the authority to set aside the order of another.”); *see also State ex rel. Medlock v. Love Shop, Ltd.*, 286 S.C. 486, 488, 334

S.E.2d 528, 529 (Ct. App. 1985) ("It is settled that one circuit judge does not have the power to review, modify, affirm or reverse the findings of another circuit judge.").

At the hearing, Plaintiff also argued that he filed a Rule 59(e)/Rule 60(b) motion after Judge Dennis entered the Form 4 Order that was not ruled on. Plaintiff, however, never made Judge Dennis or the Court of Appeals aware of this issue. Instead, Plaintiff chose to proceed with filing the notice of appeal and briefing the appeal on the merits. By failing to raise this issue on appeal, it was abandoned. *See, e.g., Cannon v. Cannon*, 321 S.C. 44, 54, 467 S.E.2d 132, 138 (Ct. App. 1996) (holding an issue not argued in the appellant's brief is deemed abandoned on appeal); *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (holding appellant was deemed to have abandoned issues on appeal, where he failed to provide any argument or supporting authority). This argument is improper at this stage and is not a proper ground warranting relief from the judgment.

Finally, Plaintiff's Rule 60(b) motion asserts that the judgment should be set aside due to extrinsic fraud on the Court. The Court has thoroughly reviewed Plaintiff's filings and finds that there is no evidence of any fraud. The standard under Rule 60(b) is "rigorous" and requires a "particularized showing." *Sundown Operating Co. v. Intedger Indus., Inc.*, 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009). To obtain relief from a judgment on the basis of fraud, a party must show that extrinsic fraud occurred. *See Raby Const., L.L.P. v. Orr*, 358 S.C. 10, 20, 594 S.E.2d 478, 483 (2004); *see also Chewning v. Ford Motor Co.*, 354 S.C. 72, 81 579 S.E.2d 605, 610 (2003) (noting that "extrinsic" fraud "induces a person not to present a case or deprives a person of the opportunity to be heard"). Intrinsic fraud, which is fraud that "misleads a court in determining issues and induces the court to find for the party perpetrating the fraud," is not sufficient to warrant relief under Rule 60(b). *Raby Const.*, 358 S.C. at 20, 594 S.E.2d at 483.

After reviewing the record, the Court finds that Plaintiff has failed to meet his burden. *See Lanier v. Lanier*, 364 S.C. 211, 215, 612 S.E.2d 456, 458 (Ct. App. 2005) (“A party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence entitling him to the requested relief.”).

Therefore, for all these reasons, Plaintiff’s “Motion to Reconsider Conclusion” and “Motion to Vacate Judgment and Motion to Amend the Pleadings” are **DENIED**.

IT IS SO ORDERED.

The Honorable Deadra L. Jefferson
Presiding Judge, Ninth Judicial Circuit

_____, 2019

THE STATE OF SOUTH CAROLINA
Court of Common Pleas, Charleston County

DEADRA L. JEFFERSON, Circuit Court Judge

Case No. 2015-CP-10-5000

Jim Washington, ... Plaintiff,

v.

Trident Medical Center, LLC Defendant

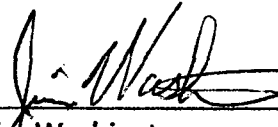
PROOF OF SERVICE

I, the undersigned do hereby certify that I have served all attorneys of records in this action with a copy of this **MOTION TO RECONSIDER AND MOTION TO VACATE** with exhibits included by mailing a copy of the same in a prepaid wrapper deposited in a U.S. Post Office to the following addresses:

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2/22/19

FILED
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JULIE J. ARMSTRONG
CLERK OF COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

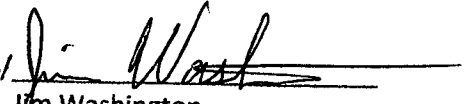
Case No. 2015-CP-10-5000
Appellate Case No. 2019-000640

RECEIVED
OCT 28 2019
SC Court of Appeals

Jim Washington,.....Appellant,
v.
Trident Medical Center, LLC,.....Respondent.

PROOF OF SERVICE

I, the undersigned, do hereby certify that I have served all counsel in this action with a copy of this **Petition For Supersedeas/Stay** herein below specified by mailing a copy of the same by United States Mail, postages prepaid, to the following addresses:

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