THE STATE OF SOUTH CAROLINA
In the South Carolina Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2020-000710

Jeanne Beverly, Individually and on behalf of others similarly situated	……..	Respondent,
	v.	
Grand Strand Regional, Medical Center, LLC	……	Petitioner.

RECEIVED
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S.C. SUPREME COURT

RESPONDENT JEANNE BEVERLY'S RETURN TO PETITIONER GRAND STRAND REGIONAL MEDICAL CENTER, LLC'S PETITION FOR WRIT OF CERTIORARI

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1. Whether the Court of Appeals correctly applied South Carolina contract interpretation principles to find a contract that made express promises to Ms. Beverly was intended to provide her direct benefits.

2. Whether the Court of Appeals properly determined the contract's purported third-party beneficiary exclusion included an express exception for Ms. Beverly's claims.

3. Whether the Court of Appeals correctly applied South Carolina law in holding Ms. Beverly may plead breach of contract and unjust enrichment as alternative theories of relief.

STATEMENT OF THE CASE

This case is about whether a hospital can intentionally ignore its patient's health insurance to increase its revenues and then shrug off litigation when the patient later learns of the hospital's deception. Respondent Jeanne Beverly provided proof of her status as a member in Blue Cross Blue Shield of South Carolina's ("BCBS") preferred provider organization ("PPO") before she was treated by Petitioner Grand Strand Regional Medical Center, LLC ("Grand Strand"). But, a patient seeking diagnostic tests and a few stiches is not particularly profitable for Grand Strand, at least not when she is insured. That's because insured patients get the benefit of the insurance network their monthly premiums pay for, including the discount rate for medical services BCBS negotiates with providers like Grand Strand and the piece of mind of knowing Grand Strand will bill BCBS directly for all of an insured patient's medical care. In short, Ms. Beverly would have been a more profitable customer for Grand Strand if she was not a BCBS member and so Grand Strand pretended she was not. Gran Strand sent an undiscounted bill directly to Ms. Beverly. Grand Strand's response to her lawsuit has been that it cannot be sued for such claims. Grand Strand now argues a unanimous panel of the Court of Appeals erred in finding Ms. Beverly could pursue contract and equitable claims for the money Grand Strand took from her.

As alleged in her complaint, Ms. Beverly was injured in an auto accident caused by another driver on September 6, 2012. (R. p. 141 ¶ 12). On that same day, she presented to Grand Strand's emergency room for diagnosis and treatment of her injuries. (R. p. 141 ¶ 13). Ms. Beverly was evaluated by an emergency room physician, and Grand Strand personnel treated a wound she suffered in the accident. (R. pp. 141-42 ¶¶ 13, 22). A short time later, Grand Strand mailed Ms. Beverly an unexpected $8,000 bill for emergency room services. (R. p. 142 ¶ 22). The bill was unexpected because Ms. Beverly previously purchased a health insurance policy from BCBS that made her a BCBS "member" and granted her access to BCBS's PPO. (R. p. 141 ¶ 14). The PPO was a network of hospitals and medical practices marketed to Blue Cross members as "preferred" providers. (R. pp. 141-45 ¶¶ 16, 41-43; Agreement § 11.2). Ms. Beverly was supposed to benefit from the PPO because PPO providers like Grand Strand were prohibited from billing her. (R. pp. 141-44 ¶¶ 17, 34; Agreement §§ 6.1-6.2).

In the Institutional Agreement ("the Agreement"), Grand Strand became a PPO provider in exchange for a promise to bill BCBS directly for medical services to Blue Cross members. (R. pp. 141-45 ¶¶ 17, 34, 43; Agreement §§ 6.2-6.3). Grand Strand also promised to accept from BCBS a discount reimbursement rate for these services. (R. pp. 141-45 ¶¶ 17, 34; Agreement § 6.4). Specifically, the Agreement[1] prohibited Grand Strand from "solicit[ing] any payment from [BCBS] Members" and required Grand Strand to "accept the reimbursement terms and rates" BCBS established for the PPO. (Agreement §§ 6.1, 6.4). After signing the Agreement in 2005, Grand Strand began marketing itself to BCBS members as a "preferred" provider. (R. p. 145 ¶¶ 41-43). Ms. Beverly was aware of Grand Strand's "preferred" provider status and expected

[1] The Complaint alleges Ms. Beverly, as a BCBS member, is a third-party beneficiary of the Institutional Agreement. (R. p. 142 ¶ 25).
[2] Ms. Beverly did not file a petition for rehearing regarding the Court of Appeals' ruling on her

Grand Strand to function accordingly when she sought out the hospital after her auto accident. (R. p. 146 ¶ 45).

However, the Complaint alleges Grand Strand chose to disregard its contractual duties for Ms. Beverly and similarly situated patients. (R. p. 144 ¶¶ 33-36). Emergency room services for auto accident victims are a poor economic performer for Grand Strand, especially given the discount reimbursement rate Grand Strand agreed to accept from BCBS. (R. p. 142 ¶ 19). By charging Ms. Beverly directly and for an amount exceeding the Agreement's reimbursement rate, Ms. Beverly alleges Grand Strand acted in its own economic interest and in violation of its contractual duties. (R. pp. 142-46 ¶¶ 21, 22, 24, 46-49). Ms. Beverly demanded damages for Grand Strand's breach of contractual and fiduciary duties and, in the alternative, an equitable recovery to remedy Grand Strand's unjust enrichment. (R. pp. 144-47 ¶¶ 36, 50, 56).

Instead of an answer, Grand Strand filed a motion to dismiss pursuant to Rule 12(b)(6), SCRCP. Based on the parties' written submissions and oral arguments to the circuit court, the Honorable Benjamin H. Culbertson granted Grand Strand's motion, finding Ms. Beverly was not an intended third-party beneficiary of the Agreement and dismissing all of her legal and equitable claims. Ms. Beverly filed and served a timely notice of appeal on July 19, 2016. (R. p. 223). The Court of Appeals heard arguments on November 8, 2018. On January 15, 2020, the Court of Appeals reversed the circuit court's ruling as to Ms. Beverly's breach of contract and unjust enrichment/quantum meruit claims and affirmed dismissal of Ms. Beverly's "bad faith"/fiduciary duty claim. Beverly v. Grand Strand Reg'l Med. Ctr., LLC, 429 S.C. 502, 839 S.E.2d 468 (Ct. App. 2020).

On the contract claim, the Court of Appeals found that, while Ms. Beverly was not one of the Agreement's name parties, "the Agreement's language, structure, and purpose directly

benefit" her and allowed her to enforce the Agreement's promises to her as a third-party beneficiary. Id. at 512, 839 S.E.2d at 473. Additionally, the Court of Appeals rejected the notion that an isolated sentence in the Agreement could exclude Ms. Beverly from enforcing the Agreement when the very next sentence unambiguously "carv[ed] out" Ms. Beverly's claims from any purported exclusion. Id. at 509, 839 S.E.2d at 472. Grand Strand filed a timely petition for rehearing that was denied on March 31, 2020[2], and filed a timely petition for writ of certiorari on April 30, 2020.

ARGUMENT

Grand Strand's quest in this appeal has been to get a court to hold that a hospital that intentionally disregards its billing obligations in a health insurance program to pad its profits can face no legal or equitable claims from the patient it has misled for the money it should not have taken. A unanimous panel of the Court of Appeals rejected that argument, applying several traditional contract interpretation principles to find Grand Strand's explicit contractual promise to "not solicit any payment from" Ms. Beverly was intended to directly benefit her. That finding was wholly reasonable, well supported by the pertinent contractual language, and necessary to keep the PPO system from unraveling. Grand Strand's petition misrepresents the Court of Appeals' ruling, asks the Court to reduce a twenty-page contract to just a couple paragraphs, and does not credibly claim any of the Rule 242(b), SCACR considerations support further review.

1. The Court of Appeals did not "Ignore the Controlling Law" in Finding Ms. Beverly was an Intended Beneficiary of the Agreement's Direct Promises to Her.

Grand Strand first suggests the Court should grant its petition because the Court of Appeals applied the wrong standards when interpreting the Agreement. Grand Strand argues the

[2] Ms. Beverly did not file a petition for rehearing regarding the Court of Appeals' ruling on her "bad faith"/breach of fiduciary duty claim.

Court of Appeals "ignored the controlling law," (Pet. at 5, 8, 10) but all of the legal principles Grand Strand insists were ignored were actually cited and applied in the Court of Appeals' ruling.

The parties agree Grand Strand's motion to dismiss Ms. Beverly's legal claim implicates contract interpretation principles. Grand Strand cites five such principles it claims the Court of Appeals "ignored." First, Grand Strand contends the Court of Appeals failed to acknowledge the bedrock principle that intent drives contract interpretation (Pet. at 5), but the Court of Appeals noted and applied this "cardinal rule." Beverly, 429 S.C. at 508, 839 S.E.2d at 471 (quoting Whitlock v. Stewart Title Guar. Co., 399 S.C. 610, 614, 732 S.E.2d 626, 628 (2012)). Second, Grand Strand claims the Court of Appeals failed to acknowledge South Carolina generally presumes contract enforcement is limited to contract parties. Pet. at 5. (citing Touchberry v. City of Florence, 295 S.C. 47, 48-49, 367 S.E.2d 149, 150 (1988)). However, the Court of Appeals expressly cited the presumption and quoted Touchberry. Beverly, 429 S.C. at 508, 839 S.E.2d at 471. The Court of Appeals simply noted the presumption is not irrebuttable, a concession made by the cases on which Grand Strand relies. Id.; see also Touchberry, 295 S.C. at 48-49, 367 S.E.2d at (finding plaintiff was an intended third-party beneficiary after noting "[t]he presumption that the contract is not enforceable by an individual may be overcome . . ."); Ancrum v. Camden Water, Light & Ice Co., 82 S.C. 284, 64 S.E. 151, 155 (1909) (stating that a third party could enforce a contract if she shows "it was intended that she should be the direct beneficiary" of the contract's key provisions).

Third, Grand Stand asserts that the Court of Appeals failed to acknowledge intended third-party beneficiaries are limited to those receiving direct benefits from the contract. Pet. at 5-6. Here again, however, the Court of Appeals noted the distinction between direct and indirect

benefits to third parties before finding Ms. Beverly's benefits were direct since explicitly provided in the Agreement's terms. Beverly, 429 S.C. at 507, 839 S.E.2d at 470-71 (citing Kingman v. Nationwide Mut. Ins. Co., 243 S.C. 405, 412, 134 S.E.2d 217, 221 (1964) and Jennings v. First of Ga. Underwriters Co., 283 S.C. 455, 457, 322 S.E.2d 694, 695 (Ct. App. 1984)). Fourth, Grand Strand accuses the Court of Appeals of overlooking the rule requiring courts to interpret rather than rewrite contracts. Pet. at 9. This is another principle the Court of Appeals specifically noted when reaching its decision. Beverly, 429 S.C. at 508, 839 S.E.2d at 471 (quoting USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 655, 661 S.E.2d 791, 797 (2008)). Finally, Grand Strand claims the Court of Appeals ignored rules requiring a contract to be interpreted as a unit rather than focusing on or disregarding any subset of its provisions. Pet. at 9 (citing Stevens Aviation, Inc. v. DynCorp Int'l, LLC, 407 S.C. 407, 417, 756 S.E.2d 148, 153 (2014) and Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC, 374 S.C. 483, 498, 649 S.E.2d 494, 502 (Ct. App. 2007)). But, the Court of Appeals was careful to recognize its duty was to "examin[e] the entire contract" rather than accepting Grand Strand's invitation to "review isolated portions." Beverly, 429 S.C. at 508, 839 S.E.2d at 471 (quoting Williams v. Gov't Emps. Ins. Co. (GEICO), 409 S.C. 586, 595, 762 S.E.2d 705, 710 (2014)).

In sum, Grand Strand errs in arguing the Court of Appeals "ignored" South Carolina contract interpretation principles in rejecting Grand Strand's proposed interpretation of the Agreement because each principle Grand Strand points to was expressly used in the Court of Appeals' reasoning. Grand Strand does not fault the Court of Appeals' analytical framework, it just disagrees with the outcome. As discussed below, that outcome is reasonable, just, and requires no additional review.

2. Grand Strand Takes an Unreasonably Narrow View of the Agreement and Suggests an Unnatural Reading of its Provisions.

While alleging the Court of Appeals failed to credit all of the Agreement's provisions, it is actually Grand Strand that makes little effort to reconcile all of the key terms. Where the Agreement makes direct promises to BCBS members like Ms. Beverly, Grand Strand's petition is noticeably silent. Even for the one provision for which Grand Strand offers an interpretation, it is facially incomplete. Grand Strand insists the Agreement excludes the possibility Ms. Beverly could qualify as an intended third-party beneficiary but gives little consideration to a crucial exception to the exclusion in the same paragraph.

Ms. Beverly's breach of contract claim alleged three improper actions by Grand Strand: (1) failing to bill BCBS for her medical services; (2) charging her directly for those services; (3) seeking payment in the unwarranted bill in excess of the discount reimbursement rate Grand Strand agreed to accept. Ms. Beverly alleged these as contract breaches because they violate Grand Strand's express promises in the Agreement:

- Grand Strand "shall seek payment for Covered Services solely from [BCBS]." (Agreement § 6.1)
- Grand Strand "will not solicit any payment from [BCBS] Members" except for deductibles and copays. (Agreement § 6.1)
- Grand Strand "shall accept the reimbursement terms and rates for Covered Services" that are attached to the Agreement and provide a discount to BCBS for services rendered to its members (Agreement § 6.4)

See also Beverly, 429 S.C. at 509, 839 S.E.2d at 472 (finding Ms. Beverly's contract claim viable because "pursuant to the terms of the agreement, Grand Strand agreed to bill BCBS and to accept a discounted reimbursement for Member Beverly's benefit"). But, a reader would never know about these provisions from reviewing Grand Strand's petition. While claiming the Court

of Appeals misinterpreted the Agreement, Grand Strand does not even acknowledge these operative terms.

For a petitioner whose primary grievance seems to be that the lower court did not give effect to the whole contract, Grand Strand is remarkably unwilling to engage with the Agreement's terms. In the course of its 17 pages, Grand Strand's petition references a grand total of two of the Agreement's more than one hundred numbered provisions. Petition at 2-3, 7-9 (discussing Agreement § 16.16); at 11 (citing Agreement § 3.2). What is most telling are the provisions Grand Strand chooses to disregard. They include recitals in which Grand Strand acknowledged the PPO it was joining was "for the benefit of [BCBS] Members" like Ms. Beverly (Agreement § 1.1) and the substantive provisions quoted above in which Grand Strand made direct promises to BCBS Members like Ms. Beverly. (Agreement § 6.1). The petition's contents only further validate the Court of Appeals' finding that Grand Strand and the circuit court erred by interpreting portions of the Agreement "in isolation." Beverly, 429 S.C. at 509, 839 S.E.2d at 471.

Grand Strand focuses all of its attention on the Agreement's section 16.16 but does not even offer a complete or coherent interpretation of its terms. Section 16.16 reads in pertinent part:

> This agreement is not intended to, and shall not be construed to, make any person or entity a third-party beneficiary. Notwithstanding the preceding, nothing in this section shall affect . . . a Member's right to receive Covered Services pursuant to the terms of this Agreement.

Grand Strand argues the first sentence ends Ms. Beverly's contract claim. However, stopping there was the specific error the Court of Appeals identified. Section 16.16 must be interpreted as a whole, not by focusing on a single sentence. Beverly, 429 S.C. at 509, 839 S.E.2d at 471-72. The second sentence shows the purported third-party beneficiary exclusion is limited as applied

to BCBS Members like Ms. Beverly and its "pursuant to"[3] language incorporates the Agreement's earlier provisions including Grand Strand's promise not to bill BCBS members and to accept discounted reimbursements for services to Ms. Beverly. Id. (interpreting sentence two to "carv[e] out related claims from any purported third-party beneficiary exclusion").

Grand Strand does not offer a viable alternative interpretation of the crucial second sentence. Instead, Grand Strand dismisses it by arguing the second sentence "does not alter" the first. Petition at 8. But, that argument does not respect the Agreement's unambiguous language. A "notwithstanding" clause signals that the following provision limits or modifies the preceding one. Goodman v. Heritage Builders, Inc., 390 P.3d 398, 402 (Colo. 2017) (citing Lanahan v. Chi Psi Fraternity, 175 P.3d 97, 102 (Colo. 2008) (finding "notwithstanding" means "excluding, in opposition to, or in spite of other statutes"); In re Cody C., 71 A.3d 733, 734 (N.H. 2013) (finding that, since "notwithstanding" means "in spite of," "the legislature intended that paragraph V apply regardless of whether paragraph III is also applicable"); Record Town, Inc. v. Sugarloaf Mills Ltd. P'ship of Ga., 687 S.E.2d 640, 643 (Ga. App. 2009) (defining "notwithstanding" to mean "without prevention or obstruction from"). The Court of Appeals construing sentence two as a carve out of sentence one is the only reasonable way to interpret a clause starting with "notwithstanding." See e.g., Wells Fargo Bank, Minnesota, N.A. v. North Cent. Plaza, L.P., 194 S.W.3d 723, 728 (Tex. App. 2006) (finding "notwithstanding" clause in contract meant items following clause "will not be subject to the obligations imposed by" the preceding clause"); Waliczek v. Retirement Bd. of Firemen's Annuity & Benefit Fund of

[3] The Agreement does not define "pursuant to," and the phrase must be given its plain and ordinary meaning. Bardsley v. Gov't Employees Ins. Co., 405 S.C. 68, 76, 747 S.E.2d 436 (2013). "Pursuant to" means "in compliance with" or "in accordance with." Black's Law Dictionary 1272 (8th ed. 1999).

Chicago, 741 N.E.2d 272, 275 (Ill. App. 2000) (interpreting "notwithstanding" clause as "an exception" to previous statutory provision).

Finally, Grand Strand errs in its claim that reading sentence two as an exception "effectively delete[s]" sentence one. Petition at 8. Ms. Beverly never claimed to be a party to the Agreement with rights to enforce all of its provisions. She does not, for example, claim power to challenge Grand Strand's conduct in the operation of the "Utilization Management Program," through which Grand Strand and BCBS address the medical necessity of various services offered to BCBS members. (Agreement §§ 7.1-7.10). Ms. Beverly only seeks to enforce those promises made directly to her (e.g. Grand Strand "will not solicit any payment from [BCBS] Members") or that directly benefit her (e.g. Grand Strand "shall seek payment for Covered Services solely from [BCBS]").

Thus, reading section 16.16 to include an exception was the only way for the Court of Appeals to correctly apply the contract interpretation principles Grand Strand cites in its petition. Finding the Agreement imposed a blanket third-party beneficiary exclusion fails to read the Agreement as a whole and does not even credit all of terms in section 16.16. In contrast, finding section 16.16 includes a carve out for Ms. Beverly's claims is faithful to section 16.16's language and provides an essential enforcement mechanism for section 6.1's promise from Grand Strand directly to Ms. Beverly.

3. The Court of Appeals' Finding that the Agreement Directly Benefits Ms. Beverly is Supported by the Agreement's Language, Structure and Purpose.

Grand Strand's final argument on the contract claim is that, if Ms. Beverly derives any benefit from the Agreement, it is incidental rather than direct and intended. The petition faults the Court of Appeals for not recognizing this distinction, but Grand Strand ignores a whole section of the opinion listing the Agreement's terms that provided Ms. Beverly direct benefits.

Grand Strand also overlooks several of the considerations South Carolina law applies to determine contractual intent. Finally, the primary case Grand Strand offers to show "indirect" benefits is distinguishable in ways that only support the Court of Appeals' ruling.

Grand Strand first faults the Court of Appeals for allegedly failing to show its work, arguing the opinion lacks specifics on where the Agreement directly benefits Ms. Beverly. Petition at 10-11. However, the Court of Appeals referenced at least four Agreement provisions that supported its conclusion that Ms. Beverly's benefits were direct and intended rather than incidental:

- "From its opening provision, the Agreement acknowledges its core objective is to support a PPO created 'for the benefit of its Members." (quoting Agreement § 1.1);
- "The Agreement defines PPO as 'a network of providers under contract with [BCBS] whereby Benefit Contracts contain financial incentives for Members to seek Covered Services from such providers." (quoting Agreement § 2.16);
- "These financial incentives are made explicit later in the [Agreement] where Grand Strand agreed to accept reimbursement for its services for BCBS Members at a discounted rate." (referencing Agreement § 6.4);
- "In clear terms, Grand Strand agreed it would not solicit any payment from Members." (referencing Agreement § 6.1);
- "Indeed, the Agreement conferred an additional practical benefit on Members by placing on preferred providers such as Grand Strand the obligation to submit the Members' bills to BCBS." (referencing Agreement §§ 6.1-6.2).

Beverly, 429 S.C. at 512, 839 S.E.2d at 473.

Second, Grand Strand discounts many of the considerations South Carolina courts use to determine contractual intent. In Ecclesiastes Production Ministries v. Outparcel Associates, LLC, a case cited by Grand Strand (Petition at 9), the Court of Appeals held that, in determining the parties' intent when forming a contract, courts must consider "the subject matter, the surrounding circumstances, the situation of the parties, and the object in view and intended to be

accomplished by the parties." 374 S.C. 483, 499, 649 S.E.2d 494, 502 (Ct. App. 2007) (quoting Brady v. Brady, 222 S.C. 242, 246-47, 72 S.E.2d 193, 195 (1953)). Grand Strand does not devote any of its petition to addressing these important considerations. Grand Strand never explains how barring patients from enforcing the Agreement's mandatory claim submission requirement, payment solicitation restriction, or reimbursement rate cap is consistent with the "object in view" when the Agreement was formed.

The Agreement's "subject matter" is clear from its terms—adding Grand Strand as a PPO provider for a PPO "established . . . for the benefit of [BCBS] Members" like Ms. Beverly. Beverly, 429 S.C. at 512, 839 S.E.2d at 473; Agreement §§ 1.1-1.2. The Court of Appeals also carefully noted "the surrounding circumstances" for the Agreement's specific promises. As part of a PPO, the Agreement's structure inherently recognizes three groups of actors making promises to, and receiving benefits from, one another. Beverly, 429 S.C. at 512, 839 S.E.2d at 473 (quoting Drs. Steur & Latham, P.A. v. Nat'l Med. Enters., Inc., 672 F. Supp. 1489, 1513 (D.S.C. 1987)). An insurer like BCBS gets cost control and the ability to offer its members a variety of covered medical providers within its geographical area. Hospitals like Grand Strand get access to the insurer's sizable membership base. BCBS Members like Ms. Beverly get to avoid all bills from hospitals beyond deductibles and copays. Beverly, 429 S.C. at 513, 839 S.E.2d at 473. Along with the Agreement's express promises to Ms. Beverly, the Court of Appeals was correct to find she was a direct, intended beneficiary because the court recognized that if you remove any of these parties' benefits (or the ability to protect them through litigation where necessary), the purpose underlying the Agreement is defeated.

Plus, the Court of Appeals' ruling stands in good company among other jurisdictions considering the issue. The opinion cites cases from five jurisdictions holding that an insurance

customer may be an intended third-party beneficiary of her insurer's contract with a medical provider. Beverly, 429 S.C. at 510-11, 839 S.E.2d at 472-73. Two of these cases interpreted contracts involving Blue Cross entities[4], and two others found customers were intended third-party beneficiaries despite general contract language purporting to exclude them.[5] The Court of Appeals' list is not exhaustive. See Cates v. Integris Health, Inc., 412 P.3d 98, 103 (Okla. 2018) ("we have no trouble inferring that a PPO agreement is made for the express benefit of the insurance beneficiaries receiving services under it"). Grand Strand claims the Court of Appeals' use of these authorities shows this case presents a novel issue for the Court to address. Petition at 4-5. But, the Court of Appeals did not decide the contract question "exclusively by reliance on authority from other jurisdictions." Id. As discussed above, the opinion used the Agreement's plain language and the contract interpretation principles Grand Strand touts to find Ms. Beverly may enforce the Agreement's promises to her. Additionally, the petition does not cite cases taking a different view than the half dozen jurisdictions cited above. In fact, the number of jurisdictions agreeing with the Court of Appeals' conclusion is growing. Scroggins v. LifePoint Health, Inc., Case No. 2:16-cv-338-ALB, 2020 WL 1126172, at * 3 (M.D. Ala. Mar. 6, 2020) ("As an intended beneficiary of her health insurance company's contract with the hospital, [an insured car accident victim] almost certainly has a breach of contract claim against the hospital").

[4] Benton v. Vanderbilt Univ., 137 S.W.3d 614 (Tenn. 2004); Nahom v. Blue Cross & Blue Shield of Ariz., Inc., 885 P.2d 1113, 1117 (Ariz. App. 1994) (finding requirement that hospital accept a discount reimbursement rate from an insurer an "intentional and direct" benefit to patient).

[5] Aetna Life Ins. Co. v. Huntingdon Valley Surgical Ctr., Civil Action No. 13-03101, 2015 WL 1954287 (E.D. Pa. Apr. 30, 2015); Dorr v. Sacred Heart Hosp., 597 N.W.2d 462, 475 (Wis. App. 1999).

Finally, Grand Stand's reliance on Windsor Green Owners Ass'n, Inc. v. Allied Signal, Inc., 362 S.C. 12, 605 S.E.2d 750 (Ct. App. 2004), is misplaced. Petition at 11-13. Windsor Green refused a homeowners association's attempt to enforce a provision in a lease agreement between a condo owner and its tenant but is distinguishable in several ways. First, the association's third-party beneficiary claim was substantially weakened by the fact that it was "not mentioned" in the contract it sought to enforce. Id. at 15, 605 S.E.2d at 751. It is far more difficult to argue a contract intended to benefit a person if that person does not make it into the contract's language. In contrast, the Agreement references BCBS "Members" like Ms. Beverly **more than seventy times** in twenty pages. Second, Windsor Green focused on the fact that the pertinent contract made no direct promises to the homeowners association attempting to enforce it. While there was a promise by the tenant to pay for damages to the condo complex's common areas, that promise was made solely by the tenant to its landlord, not to the association. Id. at 20, 605 S.E.2d at 754. Here, however, the Agreement includes a promise by Grand Strand directly and exclusively to BCBS Members like Ms. Beverly. (Agreement § 6.1) ("[Grand Strand] will not solicit any payment from Members . . .").

In sum, the Court of Appeals correctly determined Ms. Beverly was promised direct benefits in the Agreement because the Agreement made direct promises to her. Moreover, the Agreement as a whole consistently contemplated and intended to benefit BCBS Members like Ms. Beverly as part of the PPO Grand Strand was agreeing to join, and the PPO cannot function effectively if Grand Strand is permitted to ignore its Agreement obligations.

4. Ms. Beverly May Pursue Contract and Equitable Claims at the Pleading Stage Even Though She May Not Recover on Both Claims.

Ms. Beverly's complaint alleged both a legal claim for breach of contract and, in the alternative, an equitable claim for unjust enrichment/quantum meruit. The parties agree South

Carolina law does not allow Ms. Beverly to *recover* for both claims. However, Grand Strand's argument that Ms. Beverly may not *plead* both claims (Petition at 13-16) is contrary to South Carolina law cited in the Court of Appeals' opinion.

Breach of contract and unjust enrichment can be "alternative rather than inconsistent remedies." JASDIP Props. SC, LLC v. Estate of Richardson, 395 S.C. 633, 639, 720 S.E.2d 485, 488 (Ct. App. 2011). As Grand Strand argues, Ms. Beverly may not recover on both claims. Petition at 14 (quoting Swanson v. Stratos, 350 S.C. 116, 122, 564 S.E.2d 117, 120 (Ct. App. 2002)). Grand Strand then goes a step further and, relying mainly on persuasive authority, argues Ms. Beverly cannot plead unjust enrichment as an alternative theory of relief. However, South Carolina allows parties to plead alternative theories of relief on the same facts. Brown v. Felkel, 320 S.C. 292, 294, 465 S.E.2d 93, 95 (Ct. App. 1995) (citing Save Charleston Foundation v. Murray, 286 S.C. 170, 333 S.E.2d 60 (Ct. App. 1985)). Moreover, the Court of Appeals addressed this issue in its opinion. Beverly, 429 S.C. at 515, 839 S.E.2d at 475 (citing Williams Carpet Contractors, Inc. v. Skelly, 400 S.C. 320, 327-28, 734 S.E.2d 177, 181 (Ct. App. 2012)). Williams considered Swanson but still held that both theories were proper at early procedural stages. 400 S.C. at 329, 734 S.E.2d at 182 (allowing quantum meruit claim to continue because case law only "bars *recovery* under both theories") (emphasis in original). Thus, while Grand Strand could raise this issue if Ms. Beverly attempted to collect on both a contract and unjust enrichment claim, the Court of Appeals followed the law in allowing alternative theories of relief at the 12(b)(6) stage of this litigation.

CONCLUSION

Based on the arguments stated above, Ms. Beverly respectfully requests the Court deny Grand Strand's petition for writ of certiorari. The Court of Appeals properly applied South

Carolina contract interpretation principles to conclude Ms. Beverly was a direct, intended third-party beneficiary of a contract that made express promises to her. Grand Strand's reliance on a purported third-party beneficiary exclusion is misplaced because Grand Strand fails to credit the entire provision or to recognize its place within the contract as a whole. Finally, the Court of Appeals followed precedent in allowing Ms. Beverly to pursue alternative theories of relief at the pleading stage of this litigation.

Respectfully submitted,

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