

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-1163
Appellant Case No. 2018-001842
MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Helma R. Garrick)
Plaintiff,)
vs.)
Dr. George H. Rhoney, Bon Secours)
Roger St. Francis W. Ashley)
Defendant.)

Plaintiff's Attorney: <u>Pro Re</u> Bar No. _____ Address: <u>195 Crescent Oaks Ct.</u> <u>Orangeburg, S.C. 29115</u> Phone: _____ Fax: <u>803-534-9912</u> E-mail: _____ Other: _____	Defendant's Attorney: <u>Young Clement Rivers, LLP</u> Bar No. <u>Attorney for Respondent</u> Address: <u>25 Calhoun, Suite 400,</u> <u>Charleston, S.C. 29401</u> Phone: _____ Fax: <u>(P.O. Box 992, 29402)</u> <u>843-544-4000</u> E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: <u>Motion to include medical information / overview</u> Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO <u>for case pending</u>	
SECTION II: Motion/Order Type <input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. <u>Helma R. Garrick</u> <u>10-28-20</u> Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant Date submitted	
SECTION III: Motion Fee <input checked="" type="checkbox"/> PAID - AMOUNT: \$ <u>50.00</u> <input type="checkbox"/> EXEMPT: (check reason) <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> 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: _____ <input type="checkbox"/> Other: <u>Clerk - Ms. Jenny A. Kitchings</u>	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

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SC Court of Appeals

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

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NOV 02 2020
SC Court of Appeals

Thelma R. Garrick

Appellant

v

Dr. George H. Khoury and Bon
Secours Roper St. Francis W. Ashley

Respondents

MOTION DATED 10-28-20 TO BE INCLUDED
INTO RECORD ON APPEAL AND
SUPPLEMENTAL RECORD ON APPEAL
Request of October 28, 2020

New information on FDA notification of 2008 regarding life threatening complications; and an overview of combined documents, in order, to make case No. 2018-CP-10-163 more easily accessible.

Thelma R. Garrick, Appellant
195 Crescent Oaks Court
Orangeburg, South Carolina 29115
803-534-9912

Attorneys for Respondents
Young Clement Rivers, LLP
Stephen L. Brown
Joseph J. Tierney, Jr.
Russell G. Hines
25 Calhoun St., Suite 400
Charleston, S. C. 29401
P. O. Box 993 (29402)
843-577-4000

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS

RE: Information of a serious nature known by respondents before surgery on Appellant

New information that FDA issued in 2008 a Public Health Notification to health care providers and surgeons regarding serious, even life-threatening complications arising from the unapproved (off-label) use of InFuse in cervical (upper back) spinal fusion.

The Respondents had this information with facts from the FDA in 2008, and proceeded to cut my spine into and insert this BMP Infuse devise that has caused all kinds of complications, pain and more pain. Please realize this is only one of the implants. The second implant is the cage in the upper back.

The Isomed pain distribution port in the lower spine, the rod has broken into. Appellant has learned that doctors have tried to remove 14 and 14 people have died.

Also MRIs have shown loose screws and loose bone fragments in back, as Well as abnormal bone growth.

Appellant is enclosing two articles as evidence; and would appreciate you studying them so that you know what I have to deal with every day. The Respondents have taken twelve good years of my life (and I hope I do not live the other ten like the other women in my family. (90, 96, 97, 99,100+1 wk, 102, Grandmother 107)

Appellant is in more pain than necessary because she does not want to

become addicted to the pain medication (the only thing I have been told will help the pain). I must keep a clear head until this case is over, and then I will not care. I was 78 (was told I looked 58) but now due to constant pain Appellant looks her age. Was in excellent shape with exception of pain in the left sciatic nerve. (A Lawyer informed me that I did not need surgery.) Appellant looked back at MRI and he was correct. Respondent said only way to get rid of pain was to relieve pressure on the left sciatic nerve.

Appellant has searched for a patient who has had more than one implant but have not been able to do so. From all the Appellant's research and inhumane pain she endured, she can only arrive at the conclusion that the Respondents did not expect her to live but God had other plans. The testing of the Medtronic Robotic Arm and financial gain was more important.

Appellant has tried to diligently to handle her case with competence, and zeal, but always with an obligation to the law. Justice, honesty, and avoid any obstructive conduct.

Appellant thanks the Honorable Judges and Court.


Thelma R. Garrick, Attorney, Pro se
10-25-20

Attachments: 2 articles regarding Infuse



INFUSE LAWSUITS & MEDTRONIC DEFECT INJURY SETTLEMENTS

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**Cincinnati, Ohio product liability lawyer and medical
device defect attorney reviewing Continuing Risks with
Medtronic's InFUSE Bone Graft System**

It is estimated that several thousand people have been
injured by Medtronic's InFUSE Bone Graft system since it
was approved by the US Food and Drug Administration
(FDA) in 2002.

The controversial product has been deemed ineffective
and dangerous, and officials
([http://www.mprnews.org/story/2013/06/17/business/medtronic-
infuse](http://www.mprnews.org/story/2013/06/17/business/medtronic-infuse)) at Yale University, after studying data and credible
research, have said the InFUSE device offers little to no
benefit.

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Early clinical studies, including those reviewed by the FDA, show the InFUSE procedure has the potential to inflame nearby tissues and bone. 15 to 20 percent of people who have had the InFUSE surgery report (<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3717531/>) regular pain, primarily in the legs and back.

There is also mounting evidence that the graft procedure stimulates cancer growth, and that higher doses of InFUSE carry a greater risk for developing cancer.

Many thousands of InFUSE recipients, and also most surgeons, were unaware of these possible risks at the time of operation. As a result, ongoing legal action (<https://theyonfirm.com/practice-areas/medical-device-litigation/>) holds Medtronic accountable for intentionally hiding adverse effects from doctors and their patients.

What are InFUSE Bone Grafts?

Bones grafts are pieces of bone or bone substitute that can replace damaged or diseased bone in a number of joints and bones in the body. The vast majority of InFUSE bone graft operations involve the spine. In spinal fusion, doctors surgically fuse together individual vertebrae, which is meant to eliminate the irritation of nerves in the spine.

Medical implant companies like Medtronic have developed synthetic concentrated protein, called bone morphogenetic protein (BMP), which are injected into the spine to help the body form cartilage and bone, ostensibly to alleviate pain.

This pump is used to insert an InFuse BMP pump that pumps medication into the spine to grow bones. (vs abnormal bones covering spine)

2 of 5

ADDITIONAL MEDICAL DEVICE LITIGATION PRACTICE AREAS

Medical Device Litigation
(<https://theyonfirm.com/practice-areas/medical-device-litigation/>)

Surgical Staple Injury & Surgical Stapler Lawsuits
(<https://theyonfirm.com/practice-areas/medical-device-litigation/surgical-staple-injury/>)

Defective Catheters & Medical Device Lawsuits
(<https://theyonfirm.com/practice-areas/medical-device-litigation/defective-catheters-lawsuits/>)

Da Vinci Surgery Lawsuits & DaVinci Injury
(<https://theyonfirm.com/practice-areas/medical-device-litigation/da-vinci-surgery-lawsuits/>)

Dayton Medical Device Lawyer Reviews Defects & Recalls
(<https://theyonfirm.com/practice-areas/medical-device-litigation/dayton-medical-device-lawyer/>)

Cleveland Medical Device Lawyer
(<https://theyonfirm.com/practice-areas/medical-device-litigation/cleveland-medical-device-lawyer/>)

While advancements in synthetic bone graft technology play a welcome role in modern medicine, they can cause a myriad of problems, in some cases even, sterility (http://www.nytimes.com/2011/05/25/business/25spine.html?_r=1), cancer and death. Bone Graft surgeries are not to be taken lightly.

They should be reserved as a last-resort solution to a degenerative spinal condition. In recent years, there have been reports (<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3717531/>) of patients being offered "unnecessary" spinal surgery for pain alone, without significantly abnormal radiographic findings.

InFUSE Bone Grafts Complications

Appellant's Complications

(Every day is different)

Bone Grafts are risky, and are associated with dangerous side effects. By spring 2011, the FDA had received hundreds of reports of adverse reactions associated with InFUSE Bone Grafts. Patients have reported the following:

- ✓ *Persistent neck and back pain*
- Back and Leg Pain ✓
- Infection
- Male sterility
- Sexual dysfunction
- Respiratory failure *(short of breath)*
- Excessive bleeding
- Fetal development problems
- Nerve damage ✓
- Urinary problems ✓
- Possible increased cancer risk ✓
- Inflammatory reactions
- Implant displacement and failure ✓
- weakness at times ✓*
- Spasms ✓*
- Constant pain ✓*

Mirena Lawyer Reviewing IUD & Birth Control Injury
(<https://thelyonfirm.com/practice-areas/medical-device-litigation/mirena-iud-injury-lawyer/>)

Medical Device Recalls
(<https://thelyonfirm.com/practice-areas/medical-device-litigation/medical-device-recalls/>)

Essure Birth Control Devices Posed Serious Complications
(<https://thelyonfirm.com/practice-areas/medical-device-litigation/essure-birth-control/>)

Knee Implant Recall Lawyer & Injury Settlement
(<https://thelyonfirm.com/practice-areas/medical-device-litigation/knee-implant-recall-lawyer/>)

Breast Implant Lymphoma Lawsuits
(<https://thelyonfirm.com/practice-areas/medical-device-litigation/breast-implants-lymphoma-risk/>)

Zimmer Biomet Shoulder Implants & Device Injury Lawsuits
(<https://thelyonfirm.com/practice-areas/medical-device-litigation/zimmer-biomet-shoulder-implants/>)

- Retrograde ejaculation
- Osteolysis (degeneration of bone tissue) ✓
- Abnormal bone formation ✓

These represent a large range of health issues. Many complications even require a second surgery to correct. Some studies (<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3717531/>) suggest a 40 percent reoperation rate for patients over the age of 65, with a 20 percent non-age specific reoperation rate.

The evidence is now clear how risky these procedures can be. However, since Medtronic and its well-compensated research team misled the public, most of these adverse events were unpublished. The full story (http://www.nytimes.com/2011/06/29/business/29spine.html?_r=0) was not clear until 2011, when independent doctors came forward with their own observations and studies.

(<https://i1.wp.com/thelyonfirm.com/wp-content/uploads/2019/05/accident-adult-african-1539678.jpg?ssl=1>)

Hernia Mesh Injury & Product Recalls
(<https://thelyonfirm.com/practice-areas/medical-device-litigation/hernia-mesh-injury/>)

Stryker Recalls Defective Shoulder Implant
(<https://thelyonfirm.com/practice-areas/medical-device-litigation/stryker-recalls-shoulder-implant/>)

LivaNova Heater-Cooler Devices Injury Lawsuits
(<https://thelyonfirm.com/practice-areas/medical-device-litigation/livanova/>)

Hip Implant Defect Lawsuits & Hip Replacement Injury
(<https://thelyonfirm.com/practice-areas/medical-device-litigation/hip-implant-defect/>)

CareFusion AVEA Ventilators
(<https://thelyonfirm.com/practice-areas/medical-device-litigation/carefusion-avea-ventilators/>)

InFUSE Lawsuits & Medtronic Defect Injury Settlements
(<https://thelyonfirm.com/practice-areas/medical-device-litigation/medtronic-infuse-defects/>)

Transvaginal Mesh Implants
(<https://thelyonfirm.com/practice-areas/medical-device-litigation/transvaginal-mesh-implants/>)

Medical Device Corruption

In recent years, Medtronic has faced increased scrutiny for the InFUSE Bone Graft system. In addition to harming thousands of patients with their product, Medtronic is accused of intentionally hiding dangerous side effects. Also, since its FDA approval, there are multiple reports of clinical investigators receiving generous "consulting" payments from the medical product industry, including Medtronic.

In June 2011, the U.S. Senate launched an investigation into these allegations, and revealed that a number of the researchers received royalties and consulting fees from Medtronic.

With the help of an incriminating article published in The Spine Journal ([http://www.thespinejournalonline.com/article/S1529-9430\(13\)00542-1/abstract](http://www.thespinejournalonline.com/article/S1529-9430(13)00542-1/abstract)), the official journal of the North American Spine Society, investigators found that researchers were paid millions to exaggerate the products' benefits and grossly understate the risks.

The Spine Journal report observed that in multiple industry-sponsored trials, patients reported ZERO complications or adverse effects attributed to their own products. However, documents from FDA documents and other published data reveals a large gap in adverse reactions, and exposes the industry's "internal inconsistencies," which ultimately disregarded patient safety for profit.

IVC Filter Lawsuit
(<https://thelyonfirm.com/practice-areas/medical-device-litigation/ivc-filter-lawsuit/>)

It is estimated that Medtronic's InFUSE system is used in about 25 percent of the 432,000 spinal fusion procedures a year in the United States. In 2010, they generated almost \$900 million in sales.

Medtronic has a horrific ethical track record. In fact, the US Department of Justice (DOJ) has investigated (<https://www.justice.gov/opa/pr/minnesota-based-medtronic-inc-pay-99-million-resolve-claims-company-paid-kickbacks-physicians>) Medtronic several times. In another incident, Medtronic paid \$40 million to settle a case where the DOJ accused the company of paying kickbacks to doctors as an incentive to use InFUSE and other similar products.

Unapproved Use of the InFUSE System

The only InFUSE Bone Graft surgical technique that is FDA-approved is a procedure that operates through the abdomen. This procedure minimizes injury to the back muscles and nerves. Even so, Doctors have inadvisably used InFUSE in procedures not approved ("off-label") by the FDA. Complications (<http://www.ncbi.nlm.nih.gov/pubmed/21297932>) are so prevalent in some procedures, that many surgeons who once performed these operations no longer recommend it.

In 2008, the FDA issued a Public Health Notification to health care providers and surgeons regarding serious, even life-threatening complications arising from the unapproved ("off-label") use of InFUSE in cervical (upper-back) spinal fusion. The FDA received dozens of reports of

Case #2018-001842

serious complications, including swelling of neck and throat tissue, which resulted in compression of the airway, and neurological structures in the neck.

7 of 8

emergency medical intervention. Patients who suffered these events needed respiratory support, or even a tracheotomy. The FDA reiterated that "safety and effectiveness" have not been demonstrated and "these products are not approved for this use."

Case # 2018-001842

Medtronic Lawusits

https://i1.wp.com/thelyonfirm.com/wp-content/uploads/2015/08/shutterstock_282701687-e1447423230546.jpg

If you or a loved one have suffered the side effects of a faulty InFuse system, and have questions about the legal remedies available to improve quality of life and medical care in Ohio, contact The Lyon Firm at (800) 513-2403. You will speak directly with Mr. Lyon, and he will help you answer these critical questions.

8 of 8

Article 2

Case #2018-001842

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SEARCH

Dangers of the Medtronic Infuse Bone Graft

The Medtronic Infuse Bone Graft has been used off label in a number of procedures and has caused serious complications including cancer, neck swelling, airway compression, difficulty breathing, nerve damage, and other life threatening complications.



Infuse Side Effects: Difficulty Breathing, airway compression, neck swelling, respiratory depression, nerve damage, cancer, male sterility, death

Numerous publications have recently reported that the use of the Medtronic Infuse Bone Graft has been associated with major injuries and damages. Bone growth can become rapid and uncontrolled. This bone graft has also been associated with many types of cancer. Off-label use can also result in severe neck swelling, difficulty breath, swallowing and speaking because of airway compression. The bone growth may cause nerve injuries or severe pain in the extremities. Some patients have reported infertility as a result of the implant. 1,2

Recent investigations have discovered that these bone grafts have been used for off-label use and serious complications have resulted. The off-label use involves implantation in the lumbar or cervical spine. Further, surgeons with significant financial ties to Medtronic allegedly failed to disclose these complications in clinical trials and studies. 1,2

FIND MORE LEGAL ARTICLES

Type any word(s)

SEARCH

Both congressional subcommittees of Congress and the US Department of Justice have issued subpoenas to Medtronic relating to off-label use of the Medtronic Infuse Bone Graft. Chairman of The Senate Finance Committee, Senator Baucus and Senator Grassley wrote a letter to Medtronic in June 2011 stating: -

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"Last year, the Milwaukee Journal Sentinel reported that a Medtronic-funded study published in 2004

found that 75% of bone morphogenetic protein 2 (BMP-2) patients experienced ectopic bone growth, where potentially harmful bone growth occurs outside of the fusion area. The authors, who had financial ties to Medtronic, 'concluded that although not desirable,' the ectopic bone growth 'did not appear to have an ill effect on the patients.' However, in a separate 2008 study conducted by physicians without financial ties to Medtronic, "neurological impairment occurred" in five patients who had the same ectopic bone formation.

According to the New York Times, a recent study 'found that men treated with Infuse developed a condition that causes temporary or permanent sterility at a far higher rate than men who received a bone graft.' This link to sterility was not reported in the original Medtronic-funded study. In addition, the Milwaukee Sentinel Journal reports that one author of the original study, Thomas A Zdeblick, an orthopedic surgeon at the University of Wisconsin School of Medicine and Public Health, received 'more than \$23 million in various royalty payments from Medtronic since 2002.' In addition, Zdeblick also is the editor of the journal where two of the Infuse papers that failed to mention the link [to sterility] were published.'

We are also concerned that other severe side-effects of Infuse and similar bone-growth products developed by Medtronic may have been unreported or under-reported in clinical literature. Reports have linked Infuse to potentially *fatal swelling in the neck and throat* and *radiating leg pain*. Concerns have also been expressed about a potential link to cancer." 2,3

The Committee went on to request a score of documents and payment records. Rudolph F.X. Migliore, P.C. is investigating cases of patients who received a Medtronic Infuse Bone Graft off-label and have suffered serious side-effects including neck swelling, airway compression, many types of cancer, uncontrolled bone growth, arm and leg pain and male infertility. If you or a loved one have had a bone graft and suffered complications contact our office today for a free case evaluation at 631-543-3663 and visit migliorelaw.com/dangerous-medical/medtronic-infuse-bone-graph.

With over three decades of experience, the law firm of Rudolph F.X. Migliore, P.C. is well positioned to help victims of Medtronic Infuse Bone Graft. The firm has handled over 1,200 product liability cases and works with co-counsel to obtain major verdicts.

Rudolph F.X. Migliore, P.C.
353 Veterans Memorial Highway
Commack, NY 11725
(631)-543-3663
MiglioreLaw.com


1. online.wsj.com/article/SB10001424052702303627104576413663395567784.html
2. pharmalot.com/2011/06/spinal-tap-congress-investigates-medtronic/
3. finance.senate.gov/newsroom/chairman/release/?id=a7e974b6-b4b6-4e2c-a738-edefac30fcb6

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS

RE: Overview of Case No. 2018-001842, attachments enclosed.

Appellant has incorporated into this Motion (Motion to include Medical Information and Overview) most of the events that lead up to the Dismissal in the Lower Court, Case No. 2018-CP-10-1163. I trust with this overview of the case it will help to have access in one place during the decision making process..

Respectfully submitted,


Thelma R. Garrick, Appellant, Pro se

trg/October 29, 2020

Please Note: Appellant's records submitted are already on file.

Page 1 of 11

APPENDIX(es)

1. **Motion to Dismiss YCR File 3810-20180252**
2. **Motion, Rebuttal to YCR 3810-20180252**
3. **Notice of Motion Scheduling**
4. **Motion and Order Information form and cover sheet**
5. **Proof of Delivery**
6. **Continuance Request SCCA233 June 30, 2018**
7. **Transcript of Record**
8. **YCR letter to Judge including Defendants/Respondents
Order to Dismiss**
9. **Expert Witness**

Page 1 of 1

**Please Note: Records above are nothing new. They are already a part of
Case No. 2018-001842.**

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)

IN THE COURT OF COMMON PLEAS
9th JUDICIAL CIRCUIT

CASE NO: 2018-CP-10-1163

Thelma R. Garrick)
Plaintiff,)

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

vs.)
Dr. George H. Khoury, Bow)
Secours St Francis, West Ashley)
Defendant.)

Motion To Dismiss
YCR File: 3810-20180252

Plaintiff's Attorney: <u>Pro Se</u> , Bar No. _____ Address: <u>195 Crescent Oaks Ct.</u> <u>Orangeburg, SC 29115</u> Phone: <u>803-544-9112</u> Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: <u>Joseph J. Tierney, Jr.</u> , Bar No. <u>SC</u> Address: <u>Young Clement Rivers, LLP</u> <u>PO Box 993, Charleston, SC 29402-0993</u> Phone: <u>843-724-5400</u> Fax <u>843-579-1318</u> E-mail: _____ Other: _____
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- 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: Motion To Dismiss YCR 3810-20180252 motion To Dismiss
 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.

Thelma R. Garrick _____ April 3, 2018
 Signature of Attorney for Plaintiff / Defendant Date submitted

- SECTION III: Motion Fee
- PAID - AMOUNT: \$ _____
 - EXEMPT: (check reason)
 - Rule to Show Cause in Child or Spousal Support
 - 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 <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____, 20____
------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------

CLERK'S VERIFICATION
 Collected by: _____ Date Filed: _____, 20____

- MOTION FEE COLLECTED: \$ _____
- CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

Page 1 of 1

Page 39

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
THELMA R. GARRICK,)
PLAINTIFF,

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2018-CP-10-1163

2018 APR -3 PM
JULIE J. HARRIS
CLERK OF COURT

Vs.

REBUTTAL TO YCR 3810-20180252

DR. GEORGE H. KHOURY, BON)
SECOURS ST. FRANCIS, WEST)
ASHLEY)
DEFENDANTS.

MOTION TO DISMISS

TO: MR. JOSEPH I. TIERNEY, JR., ATTORNEY FOR DEFENDANTS

Mr. Tierney states that I have not proved professional negligence. (Plaintiff has not used Professional etiquette or legal verbiage but have used verbose).

The only negligence in this case is Dr. Khoury, Defendant, neglected to tell Plaintiff he had changed the operation from a fusion to relieve pressure on the left sciatic nerve to using Plaintiff as a "guinea pig", used in biological experiments. I believe I have proven this and will again in this Rebuttal.

Defendant's actions, again, were without my knowledge or permission. (He knew I would never agree. See Operative Report included in Summons and Complaint.) With premeditation, knowingly, willingly, and with intent to harm (because without Plaintiff being in pain Defendant could not successfully test the distribution port implanted in the Lumbar) proceeded with his experimentation.

Page 40

The Plaintiff has been accused by Mr. Tierney that she did not notify the Defendants that she was going to file suit against Defendants. The Defendants knew Plaintiff was very unhappy and researching records at the Hospital. Debra Jones, Risk Manager/ CALM Department sent her the RSFH Grievance form but it was too late before filing date. The Plaintiff believes notification was accomplished by forwarding a copy of the Summons and Complaint. Other than receipt of the Motion to Dismiss Plaintiff has not heard anything from the Defendants or their attorney. The Plaintiff took this action of Dismissal like you would swat a spot or fly because of their annoyance or insignificance. There has been no contact for mediation.

The Plaintiff has in her possession all medical records, that were given to her over time, some contradictory from earlier reports. I also know the person who gave me the shot to drug me when I first got to the hospital, and is the same one who witnessed my signature and was not even there.

The medications listed drugs Plaintiff is allergic to and was given during her stay in the hospital. If she had verified the allergies she would have added: Steroids including xylocaine, Gabapentin, Ambien, Zolpiden, and Tramadol. Five of which were used during my hospital stay, possibly six.

Plaintiff would also like to correct a statement made in the Summons and Complaint about the person who witnessed her signature, pages 4 of 31, paragraph 4, with new evidence. Plaintiff in her drugged state on the way to the operating room thought the two scheduled to take her to surgery said that "Donnell" would witness because they would not. After checking with the employees at the Hospital who said

(Page 2 of 6)

Page 41

they did not nor had they ever had a Donnell, I went back to the release and realized that the person was actually MacDonald, signed as Donald/Mrs. The two employees (names withheld) knew the surgery I was supposed to have because I had asked them what was all the writing at top they wanted me to initial when all I was supposed to have was a fusion to relieve the left sciatic nerve.

When a Hearing date is given I would like to Subpoena the following employees of Bon Secours St. Francis, West Ashley: Melanie MacDonald, Circulator; Donna Hughes, Admitting nurse; Chris Hensley, Cert. Reg. Nurse Anesthesia; Dr. Rex Gerding, Anesthesia; and Summer Landers, P.A. Also question defendant, Dr. George H. Khoury.

Plaintiff has been advised by two surgeons that they cannot help her because removing the part would be worse than putting it in. The second opinion surgeon greeted me by saying, "I thought you would be in a wheel chair. They cut you in half, split you open and altered your whole back." Then he introduced himself. He told me he could not help me that removing the implant would be worse than putting it in. Thinking, not believing, a doctor had not informed me said, "For her to believe that she would be pain free after such a massive procedure is simply unfounded." Proof of pain.

The second would not make me an appointment after studying the X-rays and MRI's. He had his nurse call and said there was no need to make an appointment because he could not help me.

The third is affiliated with the Defendants. (I did not know this until I returned home from North Carolina and looked at the pre-op package Dr. Khoury's nurse had handed me when I left his office on 4-18-16 after reminding me that Dr. Khoury wanted

(Page 3 of 6)

Page 1/2

me to get back to them within twenty-four hours with a date to operate.) Breach of trust here because he had contacted Dr. Khoury before my visit?

This surgeon gave me four options:
No. 1) Go back to Dr. George H. Khoury, 2.) Let him give me the shot (to see if the port works), 3,) Get me an attorney and sort it out. Or, 4.) Go home and learn to live with the pain. (Even though in his report he said I did not seem in distress according to his evaluation that he did not do.) I have a witness who will testify.

The Plaintiff's PA is in the process of making an appointment with another neurosurgeon and a Pain Clinic. (The Pain Management Clinic in Sumter only gave me prescriptions for pain; the Low Country Pain Clinic of Orangeburg, Dr. Gunta, would not even see me even though I had an appointment. I was told that he was not taking anymore patients who had to be treated with medications and that I was in this category. I do not look for any help because of Dr. Khoury's surgery.)

The Defendant, Dr. Khoury, on February 26, 2018 left a message on my answering machine that indicates that I did not know of the surgery. It is going to be put on a tape recorder to bring to Court. The message: "Hey, Ms. Garrick this is Dr. Khoury calling back regarding your surgery. I can tell you what implants you have if you want to give me a call back. If you want the reports from the hospital they are probably available, just give me a call and let me know what you want."

The Defendant did not wait for a call. He called back that afternoon and we had a long discussion. I will not go into everything but I did make notes. He denied what he had done to me, tried to make me believe that my memory was bad that I just did not remember, that everything I remembered did not happen, that I reminded him of his

(Page 4 of 6)

Page 43

mother and wanted us back on friendly terms, and wanted me to come talk to him that his nurse would call me back for an appointment. He said he wanted me to come in and let him give me the shot. He also said that he could relieve my pain by removing a couple of screws. He used soft persuasive words, psychology trying to intimidate the Plaintiff. Plaintiff told him she could never trust him again but he acted like he did not hear and told her he would have his nurse call and make me an appointment.

Dr. Khoury's nurse, Sherry, called twice. The first call I missed, message left was for me to call and gave number. The second time she called on March 26, 2018, she said she had called for Dr. Khoury to make me an appointment. My answer was that I felt it "was not wise at this time". The answer was not taken well because I had to repeat it twice.

Plaintiff has all x-rays and MRI's, CT scan, even a copy of the one showed to me on 4-18-16 in lieu of the 3-3-16 MRI. Also copies of all reports.

The x-ray at Duke Health showed something out of alignment but the doctor shrugged it off. The jolt to my spine that causes extreme pain when I turn over at night or if I forget and stretch indicates that the weight of the device is deteriorating the bones where the screws are in place and it is shifting and the weight of this thing is pressing even more on the nerves that is causing constant pain. The pain I endure every day I would not wish on my worst enemy. I fight every day not to lose hope. I ask myself every day why did Dr. Khoury choose me and why did God allow this to happen? I trust and have faith that some good will come from my suffering.

(Page 5 of 6)

Page 4/

This is not a normal case and prayerfully will be treated within the law as such.

It is about a Doctor who took control of me, my body and put me in a state where I had no choice in any thing he did with it. I feel violated like a rape victim must feel; I do not know exactly what was done to my body. Dr. Khoury said he only put in a rod and two screws during his telephone call to me. If he did not operate any more than that who or what did he turn my body over too for this massive surgery?

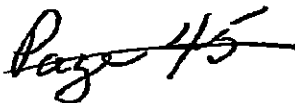
THELMA R. GARRICK, PRO SE PLAINTIFF
195 Crescent Oaks Court
Orangeburg, South Carolina 29115
Telephone: 803-534-9912



/tg
Attachments: Plaintiff's Exhibit Summary

CERTIFICATE OF MAILING: Thereby certify that a copy of the foregoing rebuttal is being sent by mail to Counsel for the Defendants this 5th day of April, 2018

(Page 6 of 6)



MOTION TO DISMISS

Immediately after filing Summons and Complaint for Respondents their Attorney filed a Motion to Dismiss. (Copy enclosed)

Copy of Rebuttal and Motion to Dismiss their motion also enclosed. Clearly the Attorney misinterpreted reason for filing.

Page 1 of 1

Appendix 1

Common Pleas
Charleston County Judicial Center
100 Broad Street - Suite 106
Charleston, SC 29401-9401

STATE OF
SOUTH CAROLINA



Thelma R Garrick
195 Crescent Oaks Court

Orangeburg, SC 29115

NOTICE OF MOTION SCHEDULING

June 13, 2018

Motion "MDISMS - Pltffs Rebuttal Motion to Dismiss" for Case: 2018CPI001163 - Thelma R Garrick VS Dr George H Khoury , defendant, et al has been added to the following

Motions Roster:

285 - MOTIONS ROSTER - JUDGE GOODSTEIN

This hearing of this motion has been scheduled for 7/12/2018 at 10:00 AM.

HEARINGS WILL BE BEFORE JUDGE GOODSTEIN IN COURTROOM 3E
PLEASE SUBMIT ALL MEMOS THREE DAYS PRIOR TO THE HEARING.
- THE DEADLINE FOR CONTINUANCE REQUESTS IS TUESDAY, JULY
3rd at 5PM

PLEASE CONTACT CAROLINE LEONARD, NON JURY DOCKET COORDINATOR AT
cleonard@charlestoncounty.org IF YOU HAVE QUESTIONS.

*25th term call
7-17-18 10 AM*

Mail Notice To:
Thelma R Garrick 195 Crescent Oaks Court Orangeburg, SC 29115

Court Info:
Common Pleas Charleston County Judicial Center 100 Broad Street - Suite 106 Charleston, SC 29401-9401

If you have any questions regarding the scheduling of this motion, please contact the courts at:

(843)958-5000

Respectfully,

Julie Armstrong
Clerk of Court

Appendix 3

STATE OF SOUTH CAROLINA
 COUNTY OF Charleston

IN THE COURT OF COMMON PLEAS
 9th JUDICIAL CIRCUIT

CASE NO: 2018-CP-10-1163

Thelma R. Carrick
 Plaintiff
 vs.
Dr. George H. Khoury and Bud Secours St. Francis West Ashley
 Defendant

MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET

Plaintiff's Attorney: <u>(David Tolson)</u> Pro SE Bar No. or Collects Address: <u>195 Crescent Oaks Ct.</u> <u>Durham, S.C. 29115</u> Phone: <u>803-534-4112 Fax</u> E-mail: <u>Other</u>	Defendant's Attorney: <u>Joseph T. Perry, Jr., Esq.</u> Es. Christina K. Toprak, Esq. Bar No. Address: <u>James M. Clements LLC, P.O. Box 993</u> <u>Charleston, SC 29403</u> Phone: <u>843-720-5146 Fax 843-379-1818</u> E-mail: <u>Other</u>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

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 requested
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.

Thelma R. Carrick June 30, 2018
 Signature of Attorney for Plaintiff / Defendant Date submitted

SECTION III: Motion Fee

PAID - AMOUNT: \$25.00
 EXEMPT: (check reason)

- Rule to Show Cause in Child or Spousal Support
- 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 Motion To Extend Time of hearing 7-2-18

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
 Other: _____

RIDGE CODE
Judge Goodstein
 Date: _____, 20

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____, 20

MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

Appendix

Exhibit E
(Pages 48-50)

CONTINUANCE REQUEST SCCA233 June 30, 2018

Appellant, according to instructions from the Notice of Motion Scheduling document, filed for a continuance to the Court following the guidelines to do so and sending the fee to have it recorded. This was done within the timeframe allowed and was received by the Court within the timeframe. (Copies enclosed)

This request has never been acknowledged by the Court of Common Pleas. The Respondents Attorneys indicated in their brief that Appellant did not have a good reason for the requested continuance and did not have a bearing on the case.

The Appellant followed the law, the court did not. We all make mistakes but in this case a mistake is very important. You do not assume or choose the value of a mistake. And, as you can see from the Attorneys documents they do not even know why or reason Appellant is filing a lawsuit against Respondents.

Appendix B

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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Court of Common Pleas
Case No. 2018-CP-10-1163

THELMA R. GARRICK,

Plaintiff,

vs.

Transcript of Record

DR. GEORGE H. KHOURY and
BON SECOURS ROPER ST. FRANCIS,

Defendant.

DATE: July 12, 2018

B E F O R E:

THE HONORABLE DIANE S. GOODSTEIN

A P P E A R A N C E:

JOSEPH J. TIERNEY, JR.
Attorney for the Defendants

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

ORIGINAL

Pages 1 of 5
Page 1 of 5

Appendix Page 61

1 MR. TIERNEY: Good morning, Your Honor.

2 THE COURT: Good morning. Give me one second. All
3 right. Now, you are here alone?

4 MR. TIERNEY: I apparently am here alone.

5 THE COURT: All right. And this is No. 59; is that
6 right?

7 Okay. All right. And this is a pro se plaintiff, Ms.
8 Garrick. Do we know that Ms. Garrick received notice of
9 today's hearing?

10 THE CLERK: She did.

11 THE COURT: Ms. Garrick, are you present? I'm looking
12 for Thelma R. Garrick. Okay. She did receive notice?

13 THE CLERK: She did.

14 THE COURT: Listening to you.

15 MR. TIERNEY: Thank you, Your Honor. First of all, by
16 way of introduction, my name is Joe Tierney. I represent
17 Dr. George Khoury, who is a neurosurgeon here in town. And I
18 also represent St. Francis Hospital in this matter filed by
19 Thelma Garrick.

20 In addition to notice being provided to Ms. Garrick,
21 she also filed several responsive pleadings in this matter and
22 was aware of the fact that a motion hearing was going to take
23 place today.

24 The issue of the case is as follows. Ms. Garrick has
25 alleged professional negligence, medical malpractice against

1 Dr. Khoury and against St. Francis Hospital. She actually
 2 filed complaint in this matter. Rather than file an answer on
 3 behalf of the hospital and Dr. Khoury, we filed a 12(b) (1)
 4 motion to dismiss because Mrs. Garrick has alleged in her
 5 complaint some highly technical issues that had to do with
 6 neurosurgery, in particular, cervical surgery that Dr. Khoury
 7 performed. We filed a motion to dismiss based on the Medical
 8 Malpractice Reform Act, or Section 15-79-125 of the South
 9 Carolina Code, which states that if you are going to file a
 10 professional negligence action, you have to do the affidavit.
 11 You have to do the notice of intent. You have to jump through
 12 all the hoops.

13 THE COURT: She did not do that?

14 MR. TIERNEY: She did not do that. I sent her a copy
 15 of the statute and told her this is the reason for the
 16 argument. Because in her rebuttal filings -- I understand
 17 she's a layperson -- she states, well, there is negligence, and
 18 she goes A, B and C. And I told her, no, but you have to
 19 follow the statute and then you can make all those arguments.

20 So that's why I'm here today seeking a dismissal of
 21 the case for lack of jurisdiction for her failure to follow the
 22 statute.

23 THE COURT: Very well. The statute is not optional.
 24 It is mandatory. You must have an affidavit. You must file
 25 your notice of intent. And you must have that initial

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mediation. And I gather none of that has occurred.

MR. TIERNEY: None of that has occurred, Your Honor.

THE COURT: Very well. Then dismissal is then appropriate. If you will prepare an order for me.

MR. TIERNEY: I will. Thank you, Your Honor.

THE COURT: And be sure you put in there for me, Mr. Tierney, that the plaintiff was notified and did not appear.

MR. TIERNEY: Yes, Your Honor.

THE COURT: And that despite that, that this matter was not dismissed on the basis of her failure to appear, but you went forward and argued your motion and merits of that motion, so that it is clear that this matter has been dismissed on the merits.

MR. TIERNEY: Yes, I will do that.

THE COURT: Merits meaning the procedural --

MR. TIERNEY: Procedural requirements of the statute, yes. Thank you, Your Honor.

THE COURT: Thank you.

(Whereupon, proceedings are adjourned.)

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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina at
Large, do hereby certify that the foregoing transcript is a
true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in the
events thereof.


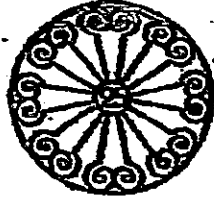

Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

Exhibit G
(Pages 66-69)



YCR LAW

Christine Kent Toporek
Partner

Direct Dial: (843) 729-6412
Direct Fax: (843) 579-2946
E-mail: ctoporek@ycrlaw.com

July 16, 2018

Via e-mail (dgoodstein@sccourts.org) and US Mail
Honorable Diane S. Goodstein
First Judicial Circuit Court of Common Pleas
P.O. Box 234
St. George, SC 29477

Re: Thelma R. Garrick v. Dr. George H. Khoury, Bon Secours St. Francis West
Ashley
Case No.: 2018-CP-10-1163
YCR File: 3810-20180252

Dear Judge Goodstein:

Enclosed please find a proposed Order Granting Defendants' Motion to Dismiss in regards to the above referenced matter. We do not have an e-mail address for Ms. Garrick and therefore she is being sent a copy of this proposed Order at her last known address.

If this Order meets your approval, please sign where indicated and return to me for filing with the court. I have enclosed a postage paid return envelope for your convenience.

Please contact me should you have any questions or concerns regarding this matter. Thank you in advance for your consideration.

With kindest regards, I am

Sincerely,

Young Clement Rivers, LLP

Christine Kent Toporek
Partner

CKT and
Enclosure(s)

cc: Thelma R. Garrick (via US Mail)

Appending to

Page 66 (pages) 9/7

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

THELMA R. GARRICK,

CASE NO. 2018-CP-10-1163

PLAINTIFF,

vs.

DEFENDANTS' ORDER GRANTING
MOTION TO DISMISS

DR. GEORGE H. KHOURY AND BON
SECOURS ST. FRANCIS WEST
ASHLEY,

DEFENDANTS.

2018 JUL 25 PM 19
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

This matter was before the court on July 12, 2018 on a Motion to Dismiss filed on behalf of Defendants George H. Khoury, M.D. ("Dr. Khoury") and Bon Secours St. Francis Xavier Hospital ("BSSF") (hereinafter collectively referred to as "Defendants"). Present at the hearing was Joseph J. Tierney, Jr., counsel for the Defendants. The Plaintiff, Thelma R. Garrick, was provided notice of the date and time of the hearing but was not present at the hearing. After considering the pleadings, arguments of counsel, and relevant South Carolina statutes and case law, I hereby GRANT the Defendants' Motion to Dismiss.

Factual and Procedural Background

On March 5, 2018, the Plaintiff filed a Summons and Complaint in which she asserts allegations of medical negligence the Defendants. The allegations in the Complaint relate to a back surgery performed by Dr. Khoury and allegedly negligent care and treatment provided by the nurses and other non-physician staff at BSSF. The Plaintiff alleges that she has sustained injuries and suffered damages as a result of the actions of the Defendants.

On March 22, 2018 the Defendants filed a Motion to Dismiss the Plaintiff's Complaint for failure to comply with S.C. Code Ann. §15-79-125. In pertinent part, S.C. Code Ann. §15-79-125(A) provides that "[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." (emphasis added) Section 15-36-100(C) provides, in pertinent part, that "[i]f an affidavit is not filed within the period specified in this subsection...and the defendant against whom an affidavit should have been filed alleges, by motion to dismiss...that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim." The Plaintiff filed a pleading entitled *Rebuttal to YCR 3810-20180252 Motion to Dismiss* on April 3, 2018.

Findings of Fact and Conclusions of Law

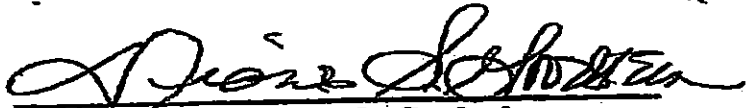
I find that the Plaintiff's Complaint alleges medical negligence against the Defendants and as such the Plaintiff is required to comply with S.C. Code Ann. §15-79-125. S.C. Code Ann. §15-79-125(A) provides, in part, that "[p]rior to filing or initiating a civil action alleging injury or death as a result 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."

I find that the Plaintiff has not filed a Notice of Intent to File Suit or the affidavit of an expert witness as required by S.C. Code Ann. §15-79-125(A) and therefore I find that the Plaintiff's Complaint is subject to dismissal in accordance with S.C. Code Ann. § 15-36-100(C) and Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

Page 68
3

WHEREFORE, it is hereby ORDERED that the Plaintiff's Complaint is hereby dismissed ~~with~~ ^{without} prejudice in accordance S.C. Code Ann. §15-36-100(C) and Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to comply with §15-79-125(A). Defendants' Motion to Dismiss is hereby GRANTED.

AND IT IS SO ORDERED.


The Honorable Diane Schaefer Goodstein
Presiding Judge, Ninth Judicial Circuit


South Carolina

Dated: 7-25-18

EXPERT WITNESS

Respondents Attorneys also indicated that she had no Expert Witness to prove her medical condition. Appellant still continues to seek an Independent Medical Opinion but no one wants to get involved in a lawsuit to date. She hopes by the time of the hearing she will either have an expert witness present or an affidavit to substantiate her condition resulting from this experimental surgery.

Appellant is enclosing three documents from three well-known and respected neurosurgeons. Two are honest in their opinions and a non-medical person can see Appellant was put in constant pain from the surgery. The third is a (Medtronic) neurosurgeon who lists an even larger experimental surgery as how to help the Appellant.

1. Dr. Drye, neurosurgeon now evaluates patients before sending them to a surgeon on staff. When he saw Appellant he exclaimed, "I thought you would be in a wheel chair, they cut you in half, split you open and altered your entire spine". In his report to my medical doctor he could not imagine a doctor doing the kind of operation Appellant had without patient knowing and indicated so in the diagnosis. He also told Appellant he could not help her and would not see her again for her to even ask questions on how to care for herself. Also in this report he said she should have known I would be in pain. (Verification of constant pain.)
2. Dr. Friedman, neurosurgeon, The Guy L. Odom Professor of Neurological Surgery, Department of Neurosurgery, Duke University stated after studying all the x-rays, CT scan and MRIs said, "I cannot tell you whether further intervention will be of any benefit to you". This was before the broken rod and knowledge of the Infuse device. (An appointment was made with Dr. Richardson, Orthopedic surgeon. An affidavit of that visit by a witness is enclosed.)
3. Dr. Gunter, neurosurgeon at Lexington Brain and Spine Clinic said he could help me with a seven-hour operation. Assessment: "Complex patient with advanced degenerative changes and

Appendix 9

1 of 13

4. **instrumentation failure with a pseudoarthrosis."**

**"I have reviewed in detail the risks, benefits, and alternatives."
(He really did not, Appellant found out from this report.)**

"I have informed the patient and family of the fact that not all medical procedures and techniques have been studied for FDA 'approval', and by necessity some procedures and devices may be used in a manner that has not been studied (considered "off label"). I have specifically discussed with the patient and family the risks of worsening neurologic function, even death, infection, significant bleeding including injury to surrounding structures. These injuries may lead to the need for additional surgery or treatment. I have informed them that artificial devices or products from animal, human, or inanimate origin may be used. I have instructed them that the devices that may be used are subject to mechanical failure and may need to be replaced or revised. I have fully described the expected procedure and some possible deviations that may occur by necessity."

Plan:

"Revision thoracolumbar fusion with removal of previous instrumentation, Left sided transforaminal lumbar interbody fusion L2-3 possible L1-2 thoracolumbar fusion T 11-S1 right sided transforaminal lumbar interbody fusion L5-S1 specifically with the use of infuse bone morphogenic protein and other levels and procedures as indicated."

Dr. Gunter sent my records over to Lexington Hospital to one of the Medtronic Technicians who was in the operating room on August 20, 2015 doing most of Appellant's surgery, and training.

Appellant would no more agree to this surgery than she would have Dr. Khoury's experimental surgery. Appellant is in a royal fix with pain and other problems but at least I am not dead yet.

**(Enclosed three doctors signed opinions,
An affidavit of a witness and
Certain risks of the Infuse Device)**



05/19/2016

Spine & Neurological Surgery

Thomas Roberts, FRCGS
William Rambo, FRCGS
Kathleen G. Drye, MD
Ken Brumby, MD

Pain Medicine
Eva J. Boud, MD
Steven B. Strick, MD

All Offices:
(803) 256-4187 or (803) 794-3700

Office Locations:
1910 Manning St.
Columbia, SC 29201

1013 Lake Murray Blvd.
Columbia, SC 29163

114 Gateway Corp. Blvd., Suite 110
Columbia, SC 29203

2919 Sunset Blvd.
West Columbia, SC 29169

Surgery Center
(803) 461-4740
1930 Manning St.
Columbia, SC 29201

Occupational Therapy
(803) 256-4187 Ext. 6163
1910 Manning St.
Columbia, SC 29201

(803) 256-4187 Ext. 7140
1013 Lake Murray Blvd.
Columbia, SC 29163

www.columbiacrosurgical.com or
www.columbiacrosurgical.com

Dr. James H. Branson
1170 Blvd. St.
Orangeburg, SC 29115

Dr. Thelma Garrick
DOB: 01/12/1937

Dear Dr. Branson:
Our mutual patient, Thelma Garrick, was evaluated in the office on 05/17/2016. I have copied my evaluation and plan below.

Assessment/Plan
Ms. Garrick and I have spent well beyond one hour together through a very difficult session. Her history is quite complicated and the events of her last surgery which resulted in a disappointing outcome are not abundantly clear to me. I have no records of that surgery, what was actually proposed or what was expected at the time of her operation. I certainly believe there was serious miscommunication in so much as her expectations are and remain entirely unrealistic. I see no evidence of any bony erosions, metallic fracture or massive hardware loosening that would suggest a rejection of the implants or infectious process. As I explained to her, the instrumentation was likely placed for stabilization purposes. To remove them would be neither advisable nor is it medically indicated at this time. I see no justification for additional surgery as her ongoing symptoms are not unexpected, not out of line with the magnitude of her surgery, particularly with a history of multiple surgical procedures prior. She however clearly feels otherwise. While expressing that she is grateful for my opinion, she is adamantly insisting upon a third opinion regarding removal of the instrumentation. She has asked if I might arrange a consultation with Dr. William Rambo whom she knows through reputation. I have agreed to this referral only in an attempt to appease her and perhaps allow her to move forward. She states a full understanding, acceptance and agreement with this referral as well as being released from my care as I have nothing further to offer.

Thank you very much for allowing us to participate in the care of your patient. Please do not hesitate to contact us if further questions arise.

Sincerely,

Electronically Signed By: RANDALL G. DRYE, MD

On spine

There were only three surgeries, all performed by Dr. George H. R. Houry:

Spinal Stenosis
Ruptured disk and

the experimental surgery on 2-20-15.

T. Garrick

Slah 3
JB

March 14, 2018

Dr. Randall G. Drye, MD
Midlands Spine & Neurosurgical surgery
1930 Blanding St.
Columbia, South Carolina 29201

Reference: Your comments and report
of my visit of May 17, 2016

Dear Dr. Drye:

I am still astonished when I read your report to my doctor dated May 19, 2016. Your assumptions without concrete evidence were unbelievable. My multiple operations were a spinal stenosis surgery (referred by my medical doctor, Dr. James H. Brunson, Jr. who has retired); and the second was to repair a ruptured disk almost immediately after the spinal stenosis surgery that still left a problem with the left sciatic nerve; and the third surgery was after suffering with the left pinched nerve for approximately four years went back to the same surgeon for some type of treatment. (I believe people make mistakes and have always given doctors this out all of my life.) For six months I tried, even things I was allergic to, to keep from having surgery but the surgeon said surgery was the only way to correct. I went into the hospital thinking I was finally going to get relief.

And, yes, with the surgery I thought I was having I had hoped to be pain free. It has taken me over two years to piece together what this surgeon did to me, with the latest being January 4, 2018.

When I came to you I knew nothing other than what the surgeon was saying, "Your body is rejecting what I put in you". That was when he showed me the distribution port (still do not know the exact name) and explained how it worked. He said, "I need to remove it but you will have to take a shot first." The shot being steroids that I am highly allergic to. An appointment was made for me to come back on April 18, 2016. When I kept this appointment the surgeon staged the biggest cover-up I had ever seen. He showed me an MRI (not the one actually done on 3-3-16 of which you did not get a correct copy either) and when I argued back and forth with him about it not being the correct MRI because I only had the lower lumbar done on 3-3 he would shrug and say, "this is all I have". I really think he thought because I was old he could talk me into anything. There is so much more to this, like the hypodermic needle quietly slipped into my IV port before any of my family was called back. Before the nurse answered my question about what she was giving me I was out. They had me sign the release on the way to the operating room under sedation. Also no medical report lists any medicine before going to the operating room but there is nothing wrong with my memory.

Page 73
4/2/18

Anyway, during the back and forth with the surgeon, and he wanting me to give him a date for surgery something told me to get a second opinion. Thus my coming to Midlands.

You gave me the first hint that there was more to the surgery than the surgeon had told me. You, and spasms and cramps below my shoulders. So very discouraged one day I thought about what you had said when you entered the waiting room, before you even introduced yourself to me. You said, "I thought you would be in a wheelchair, they cut you in half, split you open and altered your whole back with the massive surgery." I sat there stunned and shocked again and I failed to ask you questions. I did not even know what to ask at that point.

I thought, what did he mean cut me in half? I remembered where I could get some answers and contacted Medicare asking them to forward the verbiage from the surgeon's billing. From this report I learned that my spine had been severed but could not find a reason. Now I was more in shock than ever. The surgeon who did not care about me at all wanted to give me shots to test the port, and if that did not work remove this port from my body no matter the damage. (A navigation system – Robotic arm – was used in this surgery I learned the latter part of 2017.)

A few months later I contacted a surgeon that was a friend in North Carolina and made an appointment with the orthopedic surgeon. I did not know nor was told they were affiliated with my doctor and hospital. He had contacted the surgeon without my permission before I arrived. He took x-rays of my entire spine, and that is when I found out I had a cage around the area where the spine was severed. Now I know I have a port, a cage, and my spine was severed. But severing the spine and just grafting it back together did not make sense to me.

This surgeon in N. C. gave me four options (witnessed by my niece):

1. Go back to the surgeon.
2. Let him give me the shot.
3. Get me a lawyer and sort it out or
4. Go home and learn to live with the pain.

Another disappointment. They got caught but are determined to test the port or remove it no matter what happens to me. That is another fear for me.

I still was not satisfied so I started looking further and this led me to two reporters who had issued a report on the manufacturer. There was litigation and massive lawsuit of over 6,000 people over the use of "Infuse" (information attached) that includes a genetically engineered protein that causes bones to fuse rapidly after lower back pain surgery. Thousands of patients claimed permanent, debilitating injuries. I prayed this had not happened to me but why pray after the fact? The manufacturer admitted to me on January 4, 2018 that "Infuse" had been used on my spine.

Page 74
SEP 13

Dr. Drye, as God is my witness I never agreed to this massive surgery. This surgeon called me at my home last week and wanted me to come in and talk, let him give me a shot, and talk about surgery. I told him I would never trust him but he still had his nurse call to set up an appointment. He even said that he had only put one rod and two screws into my body. He denied severing my spine and grafting it back together. He indicated that the screws were causing my pain and could be removed. (Is he talking about the three screws stabilizing the part?) I asked him how he could use the "Infuse" on me knowing the outcome for so many? He said, "I use it all of the time." I wonder how many people out there that are having problems and do not even know the reason?

I will not even discuss the pain! It is so much worse than when I came to you. Life as I knew it is over. But I tell myself there are those who are much worse off than you are. At least you have a good mind.

The reason I am writing to you I am not sure why after reading over your report. But two consecutive nights in the middle of the night I have awakened with the thought I should write to you. So to get this off my mind I am doing what I have been told. If you really looked at the MRI you know that the instrumentation was not for stabilization. I have found the surgeon had a four-year agreement with the manufacturer to insert their devices into patients and also found where he was paid to do so.


Will you look at the CT Scan and see if the screws being removed would be advisable or can they be removed?

I need also for you to send me a statement of your exclamation when you entered the room and first saw me because I feel it was an honest one. Quote (I have an excellent memory as did my grandmother at the age of 106.) "I thought you would be in a wheelchair, they cut you in half, split you open and altered your whole back with a massive surgery." Knowing the truth will you do the right thing?

Thank you Dr. Drye for at least putting me on the right trail of what all was done to me in a surgery that was without my knowledge and without my permission. What they did to me was a crime, premeditated, willingly, knowingly with intent to harm so that they could test experimental devices.

This case is about honesty and integrity so I will tell you that I am pursuing this case representing myself. I know I am not an attorney nor do I claim to be but someone has to stop wicked people who do harm because of greed. I am asking the judge to make a decision in this case, not a jury. He may even throw out the case. I expect nothing but pray for closing and peace. May your good heart allow you to do the right thing?

Yours truly,


Thelma Garrick
1915 Crescent Oaks Ct.
Orangeburg, S. C. 29115

Page 75
6-13-13

DUKE NEUROSURGERY

Allan H. Friedman, M.D.

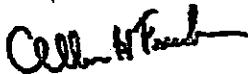
July 19, 2016 -

Ms. Thelma Garrick
1913 Francis Street NE
Orangeburg, SC 29118

Dear Ms. Garrick,

Thanks for your note. It looks to me as if your spine situation is extremely complicated. My strong suggestion is that you see one of our spine experts here at Duke. Dr. Richardson certainly falls in that category. Two other names would be Dr. Isaac Kanikari and Dr. Robert Isaacs. These folks do nothing but spine surgery and would probably be the best to figure out what's going on. From looking at your scans, I cannot tell you whether further intervention will be of any benefit to you.

Be well,



Allan H. Friedman, M.D.
The Guy L. Odom Professor of Neurological Surgery
Department of Neurosurgery
Duke University Health System
Durham, NC 27710

AHF/tpc

Page 76

7-17-16

To Whom it may Concern

May 28, 2019

On 8-31-2016 I accompanied my Aunt, Helma Strick, to Duke Medical Center in Durham, NC to see Dr. William Richardson. The purpose of this trip was to get Dr. Richardson's opinion on a device in my left leg and if anything could be done to alleviate my acute extreme pain and discomfort following a massive surgical procedure done by Dr. David H. Hoenig on August 20, 2015. Even though there was no mention of Dr. Hoenig during our procedure, it was evident, Dr. Richardson already knew who had performed the surgery.

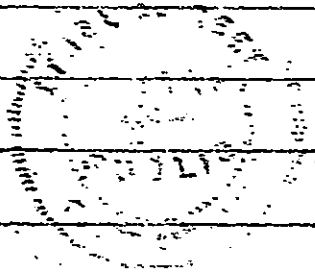
Dr. Richardson looked at x-rays they had taken there and wanted to give her a steroid shot. Aunt Helma told her, you previously steroid shot had affected her. He offered to do another surgical procedure to remove the device in her leg but my Aunt was not receptive to another surgery. Upon her refusal Dr. Richardson became quite angry and gave her four things she could do:

- 1- Go back to Dr. Hoenig
 - 2- Let him give her shots to see how long any relief would last
 - 3- Get a lawyer and sue it out
 - 4- Go home and learn to live with the pain
- Upon saying this he obviously dismissed her by getting

up to leave the room. As he approached she drove the
turn and said to give him a call if she wanted
him to give her the steroid shot.

Jessie F. Moore
435 Whisperwood Road
Cameron, SC 29030
803-823-2944 - Home
803-702-4007 - Cell

Notary of SC 5/28/2019
Ethel C Reed
Ethel C Reed
Expiration 1/24/22



Page 78

89 of 13

GARRICK, THELMA R (MRN # M000460300) UOB: 01/12/1937

*Feels
Oppression trying to
No more trying to
Get help! As usual to
wait until it becomes life
threatening!*

Lexington Brain and Spine Institute
155 N Hospital Dr,
Ste 200
West Columbia SC
29169-4800
Outpatient

Garrick, Thelma R
MRN: M000460300, DOB: 1/12/1937,
Sex: F
Encounter date: 6/27/2018

**LEXINGTON
Brain and Spine
INSTITUTE**
Advanced Spinal Care. Proven Results.

Garrick, Thelma R

MRN: M000460300
Description: 81 year old female

Office Visit 6/27/2018
Lexington Brain and Spine
Institute

Provider: Gunter, Brett C, MD (Neurosurgery)
Primary diagnosis: Stenosis of lateral recess of lumbar spine
Reason for Visit: Follow-up

Progress Notes

Gunter, Brett C, MD (Physician) - Neurosurgery

LEXINGTON BRAIN AND SPINE INSTITUTE FOLLOW UP VISIT

DATE OF SURGERY/PROCEDURE:

Lumbar Laminectomy 2011
Lumbar Fusion 8/2015 Dr. Khoury Charleston

Chief Complaint

Patient presents with

- Follow-up

MRI and CT review

SUBJECTIVE:

Thelma R Garrick is a 81 y.o. female seen today in follow up for evaluation of back and leg pain.

Low back: 60%. The patient describes diffuse axial back pain throughout her lower lumbar spine. Her symptoms generally present in worsening fashion with prolonged standing and walking. Mechanical activities such as bending, twisting, lifting, and basic housework also worsen her syndrome. She describes intermittent spasm of her back particularly with leaning forward. She is able to find some relief with sitting, although it takes a while for her pain ease off.

Bilateral legs: 40%. The patient describes LEFT greater than RIGHT pain and spasm. She describes about 90% of the pain in the LEFT, 10% on the RIGHT. She has a sensation of dysesthesias into her RIGHT thigh, however this is relatively manageable. She describes very reproducible radiating pain into her LEFT buttock into the LEFT lateral thigh to the anterior thigh to about the knee. Her symptoms are present primarily with standing and walking as well as mechanical type activities.

HPI

Review of Systems

OBJECTIVE:

Vitals:

*60 7/13
Page 1/3*

06/27/18 1050
BP: 153/82
Pulse: 62

PHYSICAL EXAM:

Vitals:
06/27/18 1050
BP: 153/82
Pulse: 62

GAIT: Ambulates without external stabilization
GENERAL: appropriate for age
HEAD: normocephalic
EYES: pupils equal and reactive, extraocular movements intact
EARS: external anatomy unremarkable
THROAT: oropharynx clear to visual inspection
LUNGS: clear to auscultation bilaterally
HEART: regular rate and rhythm
ABDOMEN: soft non-distended, nontender
EXTREMITIES: warm, moist, pulses present
BACK: unable to flex or extend

NEUROLOGICAL EXAM:

MENTAL STATUS: awake alert and oriented to person, place and time
SPEECH: fluent and conversant

POWER EXAM:

LOWER EXTREMITIES:
HIP FLEXORS: power 5/5 bilaterally
QUADRICEPS: power 5/5 bilaterally
HAMSTRINGS: power 5/5 bilaterally
ANTERIOR TIBIALIS: power 5/5 bilaterally
EXTENSOR HALLICUS LONGUS: power 5/5 bilaterally
GASTROSOLEUS: power 5/5 bilaterally

SENSORY EXAM:

LOWER EXTREMITIES: sensation intact to light touch
REFLEXES: lower extremity reflexes symmetric and intact

IMAGING:

CT scan of the lumbar spine demonstrates what appears to be fractured instrumentation at L2-3 where there is some sort of the construct connection. There is a presumed nonunion at L1-2 and L2-3. There is an apparent solid bony union at L2-3 and L3-4.
MRI of the lumbar spine demonstrates lateral recess stenosis at L2-3 and degenerative changes consistent with nonunion at this level. There are advanced degenerative changes at L5-S1.

ASSESSMENT:

Complex patient with advanced degenerative changes and instrumentation failure with a pseudoarthrosis.

Page Not 13

I have reviewed in detail the risks, benefits, and alternatives. I have informed the patient and family of the fact that not all medical procedures and techniques have been studied for FDA "approval", and by necessity, some procedures and devices may be used in a manner that has

Page 80
7-5-18

Para 4

not been studied (considered "off label") I have specifically discussed with the patient and family the risks of worsening neurologic function, even death, infection, significant bleeding including injury to surrounding structures. These injuries may lead to the need for additional surgery or treatment. I have informed them that artificial devices or products from animal, human, or inanimate origin may be used. I have instructed them that the devices that may be used are subject to mechanical failure and may need to be replaced or revised. I have fully described the expected procedure and some possible deviations that may occur by necessity. After this discussion they have instructed me to proceed. I have given them opportunity to ask questions. They have voiced an understanding of the risks, benefits, and alternatives.

*Para Clin
Color*

Paragraph 5

PLAN:
Revision thoracolumbar fusion with removal of previous instrumentation, LEFT sided transforaminal lumbar interbody fusion L2-3 possible L1-2 thoracolumbar fusion T11-S1 right-sided transforaminal lumbar interbody fusion L5-S1 specifically with the use of infuse bone morphogenic protein and other levels and procedures as indicated

Gunter, Brett C

This note was created with voice recognition software. Typographical and grammatical errors, as well as errors of content are related to the software capture, and every attempt is made to correct these prior to note submission.

Instructions

Return if symptoms worsen or fail to improve.

After Visit Summary (Automatic SnapShot taken 6/27/2018)

Additional Documentation

Vitals: BP 153/82 Pulse 62

Flowsheets: Custom Formula Data

Encounter Info: Billing Info, History, Allergies, Detailed Report, Reviewed This Encounter, Patient Report

Orders Placed

None

Medication Changes

As of 6/27/2018 11:56 AM

None

Visit Diagnoses

Stenosis of lateral recess of lumbar spine M48.061

2

June 30, 2018

Dr. Brett Gunter
Lexington Brain and Spine Institute
Lexington Medical Park 3
155 North Hospital Drive, Suite 200
West Columbia, S. C. 29169

Reference: Follow-up appointment
Thelma R. Garrick

Dear Dr. Gunter:

Thank you for seeing me and for the tests that gave me so much information to the why of my pain, and the devastating outcome of an experimental surgery gone bad, and performed without my knowledge or permission.

However, it seems you are involved with the Medtronic Company, one of their doctors. Not knowing of my extensive research, I caught you protecting this company, even saying I broke the rod attaching this experimental device to my spine instead of admitting the material of this implant is defective. The port is not titanium. Titanium as you know is used in molten steel, therefore, the fusion rod is as hard as steel.

I came to you for assistance in determining if there was any alternative to living with pain the rest of my life and for no other reason. Two other doctors did not recommend surgery and told me that removing the port would be worse than putting it in; and I almost died then. You did not tell me of any danger to my body from this broken rod; no instructions, no alternative to the surgery you explained you would perform. I heard loud and clear that with surgery there are no guarantees.

This experimental surgery has changed my entire life not only health wise but also monetarily, and there will be closure of some kind. They picked the wrong little ole lady this time for their experiments! People in South Carolina need to know of the experimentation on elderly people. They want to break a new frontier; I will make them famous!

Faith and trust in your doctor, after faith in God, is paramount to a patient's recovery. I had that kind of faith until 8-20-15. Therefore, I cannot be your patient. I wish you future success, and thank you again for seeing me.

Yours truly,

Thelma R. Garrick
/tg

Page 82

13-01-13

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Diane Schaffer Goodstein, Circuit Court Judge

Appellate Case No. 2018-001842
Circuit Court No. 2018-CP-10-1163

RECEIVED
NOV 02 2020
SC Court of Appeals

Thelma R. Garrick

Appellant

v

Dr. George H. Khoury and Bon
Secours Roper St. Francis W. Ashley

Respondents

Supplemental Record of Appellate Motions dated 10-28-20. Appellate requests that these two Motions be made a part of the Supplemental Records on Appeal, and has deposited a copy of the same in the United States Mail on October 30, 2020 addressed as follows:

PROOF OF SERVICE

Thelma R. Garrick, Appellant
195 Crescent Oaks Court
Orangeburg, South Carolina 29115
803-534-9912

Young Clement Rivers, LLP
Attorneys for the Respondents

Mr. Stephen L. Brown, Esquire
Mr. Joseph J. Tierney, Jr., Esquire
Mr. Russell G. Hines, Esquire
25 Calhoun St., Suite 400 (29401
P. O. Box 993, Charleston, S.C.
29402 (Telephone 843-577-4000)

Ms. Jenny A. Kitchings, Clerk
The S. C. Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

/tg