

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2007–CP–23–2347

Ex parte TLC Laser Eye Centers (Piedmont/Atlanta) LLC; and
TLC The Laser Center (Institute), Inc. Appellants,

In re:

John Hollman Respondent,

v.

Dr. Jonathan Woolfson, Individually;
Dr. Michael A. Campbell, Individually;
Optical Solutions, Inc.; and Optical
Solutions of Bluffton, LLC Defendants.

Case No. 2007–CP–23–8364

Ex parte TLC Laser Eye Centers (Piedmont/Atlanta) LLC; and
TLC The Laser Center (Institute), Inc. Appellants,

In re:

Danielle Hollman Respondent,

v.

Dr. Jonathan Woolfson, Individually;
Dr. Michael A. Campbell, Individually;
Optical Solutions, Inc.; and Optical
Solutions of Bluffton, LLC Defendants.

**APPELLANTS' RETURN
TO RESPONDENTS' MOTION TO DISMISS**

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

Pursuant to Rule 240(e), SCACR, Appellants respectfully submit this Return to Respondents' Motion to Dismiss the appeal. Respondents have raised two grounds as to why the appeal should be dismissed: first, that the appeal is moot; and second, that Appellants did not file a motion for reconsideration in a timely fashion. However, neither of these grounds provides Respondents with a basis for dismissal, and therefore, the motion should be denied.

I. BACKGROUND¹

This matter arises out of LASIK surgeries performed on Respondent John Hollman by Defendant Dr. Woolfson at Appellants' facilities between 1999 and 2001. As a result of these surgeries and subsequent treatment, lawsuits were brought against Appellants and other Defendants by Respondent John Hollman, C.A. No. 2007–CP–23–2347, and his wife, Respondent Danielle Hollman, C.A. No. 2007–CP–23–8364. Respondent John Hollman's claim consisted of actions for negligence, battery, breach of contract, and fraud. Mrs. Hollman's claim was for loss of consortium. These actions were never formally consolidated in the circuit court; however, discovery was pursued on a consolidated basis, and the orders at issue in this appeal feature a consolidated caption.

In the Complaint, Respondent John Hollman alleged that he underwent LASIK surgery and consequently developed a condition known as ectasia, which

¹ The representations of underlying procedural facts and material circumstances presented in this Return are taken from Appellants' Motion to Certify the Case for Review by the Supreme Court, which was filed pursuant to Rule 204(b), SCACR, and which is still pending.

generally describes the condition of corneal instability associated with worsening visual acuity. It was Respondents' theory that Appellants knew or should have known that such surgeries were contraindicated for patients with ocular topographies like Respondent John Hollman's because of the risk associated with developing post-surgical complications. Furthermore, it was alleged that after Respondent John Hollman's complications appeared, Appellants deliberately misled him into believing that his condition was or would be treatable, specifically to avoid malpractice liability. This formed the basis of the fraud claim.

On June 5, 2008, Respondents filed a motion to compel against Appellants seeking the production of treatment information regarding patients with ocular topographies like Respondent John Hollman's. Some of the information requested was stored in the form of a database. Appellants did not believe that information pertaining to other patients or to database information generally was discoverable since this information is not relevant or necessary to Respondents' claims; even if it were relevant or necessary, such information as it existed in the database was subject to the protections of the doctrine of work product, the privileges for attorney/client communications and self-critical analysis, and the interests of Appellants' legitimate risk management purposes and other similar uses. Furthermore, Appellants were concerned that Respondents would attempt to use database information to contact third-party patients. For all these reasons, Appellants actively resisted production.

A hearing on Respondents' motion was held June 30, 2008, at which time the circuit court ordered Appellants to produce responsive material for in camera inspection. Before the circuit court had ruled, Respondents filed a second motion to

compel against Appellants, seeking additional third-party confidential health information. A hearing on the second motion was held October 14, 2008. One month later, on November 14, 2008, the circuit court resolved all outstanding discovery motions by issuing two orders. One was an order granting Respondents' motion to compel. The other was a Protective Order (attached hereto as Exhibit A), which provides in relevant part:

. . . The Court hereby prohibits the dissemination of Confidential Health Information beyond the parameters established by this Order or use of Confidential Health Information for any purpose other than the prosecution or defense of this litigation.

. . . .

2. The term "Confidential Health Information," means . . . any document or information supplied that identifies an individual or subscriber in any manner and relates to the past, present, or future payment for the provision of health care to such individual or subscriber. The term "Confidential Health Information" specifically includes "protected health information" as such term is defined by the Standards for Privacy of Individually Identifiable Health Information, 45 CFR parts 160 and 164, promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996. See 45 C.F.R. sections 164.501 ("protected health information") and 160.103 ("individually identifiable health information"). "Confidential Health Information" includes all notes, summaries, compilations, extracts, abstracts, or oral communications that contain, are based on, or are derived from Confidential Health Information. . . .

. . . .

8. Except as may be provided by subsequent Order of this Court: 1) Confidential Health Information shall be used for no purpose other than this litigation; 2) No person who receives, pursuant to this or other Orders of this Court, Confidential Health Information concerning persons who are not parties to the captioned lawsuits (hereinafter "Third Parties") shall directly or indirectly contact or attempt contact with Third Parties or their medical providers

Subject to the protections established by the Protective Order, Appellants produced the unredacted database as instructed by the circuit court.

On February 17, 2009, Respondents filed a motion to modify the Protective Order to allow counsel for Respondents to contact and interview third-party patients identified through database information. Respondents' motion was granted by order dated April 17, 2009. On May 6, 2009, Appellants filed a petition for writ of certiorari with the Supreme Court, asking the Court to exercise its original jurisdiction on the basis of exceptional circumstances and review the circuit court's decision. The petition was granted, and by decision dated May 28, 2009, the Supreme Court reversed the order of April 21, 2009 and remanded the case for further proceedings to determine if contacting third-party patients was relevant and necessary to Respondents' claims. The circuit court made such determinations in the affirmative by supplemental order dated July 7, 2009.

On July 16, 2009, Appellants filed a second petition for writ of certiorari with the Supreme Court, also on the basis of exceptional circumstances. The petition was granted, and by decision dated September 21, 2009, the circuit court's order of April 21 was vacated. Hollman v. Woolfson, 384 S.C. 571, 683 S.E.2d 495 (2009). The Supreme Court held that the treatment received by third-party patients is not relevant to establish any elements of Respondents' causes of action for medical malpractice or fraud. Id., 384 S.C. at 579–80, 683 S.E.2d at 499 (“Whether [Appellants] breached the standard of care with any patients other than [R]espondents is irrelevant to whether [Appellants] were negligent in their treatment of [R]espondents. . . . Whether other patients were similarly treated does not prove any of the elements required to

show fraudulent conduct by [Appellants] toward [R]espondents.”). The Supreme Court also held that third-party patient interviews were not necessary to establish a cause of action for violation of the Unfair Trade Practices Act. Id., 384 S.C. 580, 683 S.E.2d at 500. Furthermore, the Supreme Court held that “it would be inequitable to allow [R]espondents to obtain non-party patient information from [Appellants] with the understanding the patients would not be contacted, only to subsequently permit [R]espondents to contact the patients.” Id., 384 S.C. at 581, 683 S.E.2d at 500. Accordingly, Respondents were prohibited from contacting third-party patients identified through information derived from the database or deposition testimony based on database information.

On March 17, 2010, while Hollman was still pending against Appellants in circuit court, Respondent John Hollman filed a complaint against Appellants and a number of other defendants in the United States District Court for the District of South Carolina, Greenville Division.² The complaint was styled as a class action and was purportedly brought under the federal civil RICO statute, 18 U.S.C. § 1962(c). Throughout the complaint, Respondents referred extensively to information derived from the database or deposition testimony based on database information. In some cases, the information pertained to Respondent John Hollman; in other cases, the information pertained to other patients who were alleged to be members of the putative class. Respondents attempted to place the database into the evidentiary

² A copy of the federal class action complaint is attached hereto as Exhibit B.

record.³ Had the class been certified, Respondents would have been able to contact individuals identified in the database under the guise of notifying the putative class.⁴ Fed. R. Civ. P. 23(c) (requiring notice be given to putative class members upon certification). There is little doubt that the federal class action was calculated to be an end-run around the limitations established by the Supreme Court in Hollman v. Woolfson.⁵

Based on the filing of the federal class action and other conduct which violated the Protective Order, on April 9, 2010, Appellants filed a motion in state court for an order and rule to show cause against Respondents. A hearing on the motion was never held. On May 5, 2010, Appellants entered into an oral settlement agreement with Respondents. The agreement was eventually reduced to writing and formally executed on June 16, 2010. In relevant part, the Settlement Agreement provides as follows:

Pursuant to the terms of the Protective Order entered in the State Action on November 14, 2008, each party to the State Action receiving Confidential Health Information shall return or destroy all copies of such Confidential Health Information to the producing party in accordance with the Protective Order. At the conclusion of the State action, counsel for the Hollmans shall comply with the terms of

³ On the same day that Respondent John Hollman filed the class action, he also filed motions in federal court for the entry of a protective order and to submit the database under seal for in camera inspection. Appellants filed a motion to strike the procedural relief sought by Appellants.

⁴ Respondents' federal case was dismissed on February 3, 2011 without ever having been certified as a class action. Therefore, Respondents were never put in a position to contact putative class members.

⁵ To quote Mr. Patrick: "[T]he federal court case is designed to notify these [database] patients so that they no longer suffer the irreparable harm that they are suffering. . . . [T]hat's the federal court case." (Hr'g Tr. 61, July 26, 2010, attached hereto as Exhibit C.)

the Protective Order as it exists or as modified by subsequent Court Order by returning all such discovery materials including all records of patients other than John Hollman and the Complex Case and Advocacy databases, and certifying the data, any hard copies, or any work-product containing names of patients and private healthcare information (hereinafter “Protected Information”): (1) Has not been disseminated to any third parties, including clients, consultants, co-counsel, or experts; and, if it has, identifying all third parties, in what form the information was disseminated and what measures were taken to assure destruction; . . . (3) Will not be used for any purpose, except those as permitted by Court Order.

(Settlement Agreement, ¶ 15, attached hereto as Exhibit D.)

The Settlement Agreement terminated only Respondents’ claims against Appellants; Respondents’ claims against the remaining Defendants in the state court action continued. As to the federal class action, Respondent John Hollman withdrew as the class representative, but the pleading was not withdrawn. Instead, Respondents substituted a stranger to the Protective Order—Charles Benjamin Dickerson—as the named plaintiff and continued the litigation.⁶ As a result, Appellants were forced to actively oppose the use of database information in the federal RICO case, as well as the Hollman state court case, which required Appellants to intervene in the action

⁶ The Settlement Agreement provided that “[t]he Hollmans further agree that they shall withdraw their claims and John Hollman shall forever withdraw as class representative and member of the putative class action currently pending in [federal court]. John Hollman shall either dismiss the putative class action or cause an amended complaint to be filed to substitute another person for him as class representative within twenty-one (21) days.” (Ex. D.) There was nothing in the Settlement Agreement to suggest that either Respondent John Hollman or Dickerson had any right or authority to carry on litigation in federal court based on database information, although admittedly, this was not explicitly addressed in the Settlement Agreement.

even though they had just been dismissed.⁷ On July 8, 2010, Appellants intervened in the state court proceedings, even though they had been recently dismissed, and filed another motion for an order and rule to show cause to enforce the Protective Order. A hearing on Appellants' state court motion was held on July 26, 2010, at which time the court took Appellant's motion under advisement. Two days later, on July 28, 2010, there was a hearing in federal court on substantially the same issues. At that time, Judge Hendricks held that since the Protective Order had been issued by the state court, she would defer to the state court as to matters of interpretation and enforcement. Shortly thereafter, by order dated August 17, 2010, the circuit court issued an order which held that none of Respondents' actions constituted violations of the Protective Order. (Aug. 17, 2010 Order, attached hereto as Exhibit E.)

Appellants subsequently filed a motion pursuant to Rule 59, SCRCP, requesting that the circuit court alter or amend its judgment. A hearing on Appellants' motion was held November 23, 2010, at which time the circuit court indicated that the motion would be denied. (Hr'g Tr. 59–60, Nov. 23, 2010, attached hereto as Exhibit F.) The circuit court instructed Respondents' counsel to prepare an appropriate order. (Id. 62.)

On December 7, 2010, two new actions arising from LASIK surgery were filed in the Circuit Court of Greenville County. In one action, the plaintiff is Charles

⁷ This is necessary because Hollman is the case through which the Protective Order was entered. Jurisdictionally, it is the case through which the Protective Order should be enforced.

Benjamin Dickerson;⁸ in the other, Michael Chad Luce.⁹ Both Dickerson and Luce are represented by Mr. Douglas F. Patrick and Mr. Stephen R.H. Lewis, both of whom also represent Respondents. Initially, Dickerson's and Luce's complaints were filed as ordinary medical malpractice actions. However, on February 3, 2011, the federal court dismissed Respondents' class action complaint. The following month Dickerson's and Luce's state court complaints were amended to include causes of action for fraud, civil conspiracy, and violation of the Unfair Trade Practices Act. The allegations set out in the state court complaints are substantially the same as the allegations set out in the federal class action complaint, which were themselves improperly based in large part on database information.

By spring 2011, Respondents' counsel had not prepared an order from the November 23, 2010 hearing. However, a letter from Respondents' counsel dated April 20, 2011 acknowledged that an order was needed and would be prepared.¹⁰ Then, on May 2, 2011, Respondents dismissed all claims pending in state court against the remaining Defendants.

⁸ Charles Benjamin "Ben" Dickerson *et ux.* v. TLC The Laser Center (Institute), Inc. *et al.*, 2010-CP-23-9954, attached hereto as Exhibit G.

⁹ Michael "Chad" Luce v. TLC The Laser Center (Institute), Inc. *et al.*, 2010-CP-23-9956, attached hereto as Exhibit H.

¹⁰ By its own terms, the letter of April 20, 2011 (which is attached hereto as Exhibit I) was sent to confirm a prior telephone conversation among counsel. Respondents' counsel has taken the position that during this phone conversation, an agreement was reached that an order arising from the November 23, 2010 hearing was unnecessary. This is unambiguously contradicted by the letter of April 20, which was authored by Respondents.

By late September 2011, Respondents' counsel had still not prepared an order from the November 23, 2010 hearing. After an exchange of correspondence among counsel for Appellants and Respondents, Respondents advised that they no longer believed a final written order for the November 23 hearing was necessary and that they would not be preparing an order.¹¹ Accordingly, Appellants filed a motion to compel Respondents to prepare an order as directed by the circuit court, or in the alternative, to request the circuit court to issue its own order.

A hearing on Appellants' motion was held on November 21, 2011, at which time the circuit court indicated that the motion would be denied and instructed Respondents' counsel to prepare an order. By order dated January 12, 2012, the circuit court denied Appellants' motion on the basis of lack of subject matter jurisdiction, (attached hereto as Exhibit L). On February 10, Appellants filed a motion under Rule 59, SCRCP, to alter or amend the judgment; however, this was denied by order dated March 2, 2012, (attached hereto as Exhibit M). This appeal followed and is based on the following orders: (1) the order dated August 17, 2010, (Ex. E); (2) the order dated January 12, 2012, (Ex. L); and (3) the order dated March 2, 2012, (Ex. M).

¹¹ This has caused Appellants a great deal of confusion. Initially, Respondents' counsel claimed that there would be some delay in preparing the order because a transcript of the hearing would be necessary. However, according to newly discovered information from the court reporter at the hearing on November 23, 2010, Respondents' counsel never contacted her to request a transcript of the proceeding, and to her knowledge, a transcript of the hearing had never been prepared until April 2012. (Email Exchange between Margaret Woods (Court Reporter) and Cheryl Rogers (Paralegal for Appellants), April 18, 2012, attached hereto as Exhibit J; Email Exchange between Margaret Woods and Cheryl Rogers, April 27, 2012, attached hereto as Exhibit K.)

II. Appellants timely filed the Motion for Reconsideration of the Order of August 17, 2010.

Rule 59, SCRCP, provides that “[i]n non-jury actions the motion [to alter or amend] shall be made not later than 10 days after the receipt of written notice of the entry of judgment.” In the instant case, Respondents’ counsel has called into question the timing of Appellants’ motion to reconsider the order of January 12, 2012. Appellants did not receive any notice of the entry of the order, written or otherwise, until February 2, 2012.¹² The first day that Appellants received written notice was February 3, when Appellants visited the Clerk of Court’s office to obtain a copy of the order.¹³ Appellants subsequently filed the Motion for Reconsideration on February 10, 2012. Therefore, under the express provisions of Rule 59(e), Appellants’ motion is timely filed.

Appellants’ motion is also timely filed under the holding of USAA Property & Casualty Insurance Co. v. Clegg, 377 S.C. 643, 661 S.E.2d 791 (2008). In that case, defense counsel received an adverse ruling from the circuit court through a written decision dated April 8, 2005. However, counsel was not aware that a written order had been entered until the plaintiff’s attorney contacted her on May 16, 2005. Defense counsel promptly filed her motion for reconsideration on May 26, 2005, and the plaintiff’s attorney did not make an objection as to timeliness or otherwise

¹² See Letter of W. Howard Boyd, Jr. to Greenville County Clerk of Court, Feb. 6, 2012, attached hereto as Exhibit N. Despite the insinuations of Respondents’ counsel, even the Clerk of Court’s office has acknowledged that, due to procedural circumstances, Appellants were not mailed a copy of the January 12 Order when it was entered. (Letter from Clerk of Court to W. Howard Boyd, Jr., May 14, 2012, attached hereto as Exhibit Q.)

¹³ Letter of W. Howard Boyd, Jr., Ex. N.

introduce evidence to the circuit court that the motion was untimely. The circuit court subsequently denied counsel's motion for reconsideration, though it did not explain the basis for its ruling and did not make any findings of fact as to timeliness or otherwise.

Under these circumstances, the Supreme Court held that appellant's motion for reconsideration had been timely filed. 377 S.C. at 652–53, 661 S.E.2d at 795–96. One of the most critical aspects of the Court's analysis was that the circuit court did not make any findings of fact about timeliness in the order denying the motion for reconsideration. Because of the circuit court's silence, it appeared as though the motion had been denied on its merits, as opposed to some more specific procedural basis. Furthermore, it was presumed that appellant's counsel was acting in good faith in representing that she never received a copy of the order from which she was moving for reconsideration. There was no credible evidence to the contrary, and it was her opposing counsel's obligation to build an appropriate record before the circuit court showing a lack of timeliness. In the absence of such a factual record, the Supreme Court concluded that appellant's motion for reconsideration had been filed in a timely fashion.

There are obvious similarities between the instant case and Clegg. In this case, due to internal procedural reasons, the Clerk of Court's office did not forward a copy of the January 12 Order to Appellants. (Letter from Clerk's Office, Ex. O.) In fact, Appellants did not receive a copy of the January 12 Order until February 3, when Appellants went to the Clerk of Court's office personally to obtain a copy of the Order. Appellants thereafter filed a motion for reconsideration on February 10, which

was denied by order dated March 2, 2012. The March 2 Order does not suggest that Appellants' motion was denied because of untimeliness; it simply states that "TLC's motion to alter or amend judgment or for reconsideration of the Order of January 12, 2012 is DENIED." (Mar. 2, 2012 Order, Ex. M.) The circuit court did not make any findings of fact regarding the timeliness of Appellants' motion. (*Id.*) Furthermore, Respondents' counsel did not object to the filing of the motion for reconsideration on any basis, let alone the basis of timeliness. Therefore, the issue is not preserved for review. And even if it had been preserved, Appellants' motion for reconsideration was timely filed under the express language of Rule 59(e), SCRCP, as well as the precedent of USAA Property & Casualty Ins. Co. v. Clegg, 377 S.C. 643, 661 S.E.2d 791 (2008).

III. The issues presented in this appeal are real, concrete, and justiciable.

Fundamentally, Respondents' mootness argument is based on the flawed premise that the lifespan of a court-issued protective order is identical to the lifespan of the litigation in which the order was entered. To the contrary, protective orders are continuing injunctions as to collateral issues, see Public Citizen v. Liggett Group, Inc., 858 F.2d 775, 781–82 (1st Cir. 1988); see also Eli Lilly & Co. v. Gottstein, 617 F.3d 186, 195 (2d Cir. 2010); United States v. Pollard, 416 F.3d 48, 59 (D.C. Cir. 2005); Gambale v. Deutsche Bank AG, 377 F.3d 133, 141 (2d Cir. 2004); Poliquin v. Garden Way, Inc., 989 F.2d 527, 535 (1st Cir. 1993); United Nuclear Corp. v. Cranford Ins. Co., 905 F.2d 1424, 1427 (10th Cir. 1990), such as the protection of sensitive discoverable information. As long as there is a need to protect the sensitivity of such information, courts have the inherent authority to enforce their

protective orders regardless of any settlement, termination, or dismissal of the underlying action. See, e.g., Ex parte Jackson, 381 S.C. 253, 258, 672 S.E.2d 585, 587 (Ct. App. 2009) (discussing the inherent authority of courts to enforce orders and judgments); see Miller v. Miller, 375 S.C. 443, 453–54, 652 S.E.2d 754, 759–60 (Ct. App. 2007) (same); see also Rogers v. Citizens & S. Bank of S.C., 220 S.C. 264, 268, 66 S.E.2d 873, 874 (1951) (“[A] court has the inherent power, necessarily an adjunct to the effectiveness of its rulings, to enforce such findings and judgments issued by it.”). If this were not so, then upon the end of merits-based litigation, courts would be powerless to provide any meaningful protection to sensitive, confidential information, even if there are outstanding issues regarding such information, and even though the need for continuing protection would be just as compelling.

In addition to the court’s inherent, continuing jurisdiction to enforce protective orders, in this case, the Protective Order expressly contemplates survival after the termination of the underlying action. Paragraph 12 states that “[w]ithin sixty (60) days after the conclusion of trial and all appeals or any other termination of this action, all discovery materials designated as Confidential Health Information, including copies, extracts, and summaries thereof, shall be returned to the producing party or destroyed.” (Protective Order, Ex. A, ¶ 12.) Furthermore, the Protective Order expressly prohibits the use and disclosure of information subject to its terms and conditions, without any limitation as to time. Taking the Protective Order as a whole, it is abundantly clear that if Respondents’ counsel does not comply with the Order by returning or destroying private health information at the conclusion of litigation (as they did not do), and/or that they violate the Order by using such

information in other litigation (as they have done), the circuit court has continuing jurisdiction to hear and decide matters relating to the enforcement of the Protective Order, regardless of any underlying merits-based settlement, termination, or dismissal. However, under Respondents' counsel's specious theory, the court should be impotent when it comes to enforcing these provisions of the Protective Order, now that the underlying litigation has settled.

Respondents' counsel also argues that Appellants should be barred from pursuing their statutory appellate rights because all of the conduct implicated by this appeal was known to at the time of settlement. This is demonstrably false. It is true that by July 2010, Respondents' counsel had violated the Protective Order by using the database to bring a federal class action against TLC, which was calculated as a means of contacting Appellants' patients in a way that would evade the Supreme Court's review. Cf. Hollman v. Woolfson, 384 S.C. 571, 683 S.E.2d 495 (2009) (prohibiting Respondents' counsel from contacting Appellants' patients). This was the basis of the initial motion for an order for a rule to show cause. However, when Respondents settled their claims with TLC, Respondents' counsel committed separate, additional breaches of the Protective Order. First, they continued to use database information in the context of the federal class action; second, they shared database information with a stranger to the Protective Order, Charles Benjamin Dickerson, who had no right to use or possess database information. Respondents' counsel refused to correct these violations, which forced Appellants to bring a second motion for an order for a rule to show cause, which is being appealed. Additional violations of substantially the same nature were committed in the Dickerson and Luce

state court cases, specifically by the fact that Dickerson and Luce were amended to include allegations based explicitly on database information, and such information was shared with individuals who were not parties to the Protective Order. However, these actions did not occur until March 2011, after Judge Childs had already indicated that Respondents' counsel's federal RICO claim would be dismissed.

Furthermore, the argument posited by Respondents' counsel that the Hollman Settlement Agreement released any ability that Appellants may have had to enforce the Protective Order is simply unavailing. In addition to the fact that protective orders are collateral injunctions subject to the court's continuing jurisdiction, the Settlement Agreement does not purport to release any rights or claims that Appellants may have had against Respondents or Respondents' counsel, or to enforce the Protective Order. To the contrary, the applicable provisions of the Settlement Agreement state only that Respondents agree to release their claims against Appellants. (Settlement Agreement, Ex. D, ¶¶ 1, 4.) Cf. Ex parte Doe, 393 S.C. 147, 711 S.E.2d 892 (2011) (holding that party who expressly waived rights through release could not subsequently exercise those rights against the released party).¹⁴ Notably, the Settlement Agreement states that the Protective Order will remain in full force and effect. (Settlement Agreement, Ex. D, ¶ 15.) It also requires Respondents

¹⁴ Ex parte Doe was cited by Respondents' in support of their motion to dismiss. However, Doe is completely inapposite to the circumstances presented by this appeal. First, Doe involved the construction of a release negotiated by private parties, not a protective order issued by the court. Second, the Doe release affected the rights implicated in underlying merits-based litigation, as opposed to matters presented only in collateral litigation. Third, as noted in the parenthetical above, Doe pertained only to a party's ability to pursue merits-based litigation on its own behalf after that party has executed a settlement agreement which expressly waives and releases its rights.

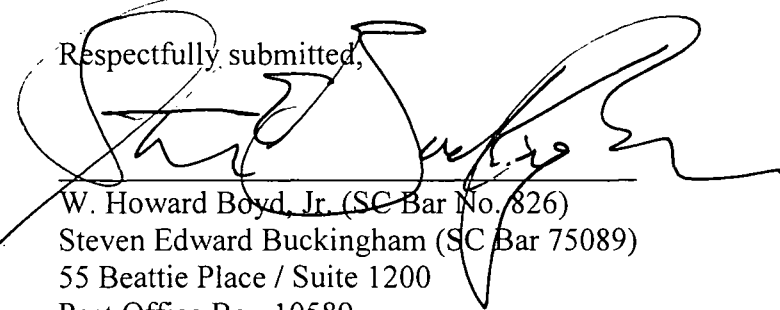
and their counsel to refrain from using information subject to the Protective Order “for any purpose,” or to disseminate such information to any third party. (Id.) These provisions are identical to the restrictions imposed by the Protective Order that were breached.¹⁵ In any event, the Settlement Agreement does not present any bar whatsoever to Appellants’ right to pursue enforcement of the Protective Order. Because Respondents’ counsel has violated the Protective Order, and continues to violate the Protective Order, the issues in this appeal arising from and related to the enforcement of the Order are real, concrete, and justiciable, and present a live controversy which is ripe for the Court’s disposition.

IV. CONCLUSION

For the foregoing reasons, Respondents’ Motion to Dismiss must be denied. This request is based on the Notice of Appeal, the pleadings in the underlying case of Hollman v. Woolfson, all documents attached to or incorporated into this Return, and all documents which Appellants have filed with the Court of Appeals in connection with this case.

¹⁵ And were similarly violated by Respondents’ counsel.

Respectfully submitted,



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EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

John Hollman,

Plaintiff,

vs.

Dr. Jonathan Woolfson, individually, et al,

Defendants.

AND

Danielle Hollman,

Plaintiff,

vs.

Dr. Jonathan Woolfson, individually, et al,

Defendants.

AND

George E. Carter, Jr. and Jean Carter,

Plaintiffs,

vs.

William T. Nimmons, OD, et al

Defendants.

PROTECTIVE ORDER

C.A. No. 2007-CP-23-2347

C.A. No.: 2007-CP-23-8364

C.A. No. 2007-CP-23-7587

Pursuant to Rule 26 (c) of the South Carolina Rules of Civil Procedure and with the
consent of the parties, IT IS HEREBY ORDERED that:



WHEREAS, discovery materials or information otherwise provided or disclosed by any party to this action may contain confidential, trade secret and/or sensitive proprietary information.

WHEREAS, by separate Order the Court has ordered the production of documents containing health information that may be deemed confidential under applicable law.

WHEREAS, the parties acknowledge and agree that it is appropriate for the Court to provide proper safeguards to protect confidential, trade secret and/or sensitive proprietary information, Confidential Health Information (as defined in paragraph 2 below), which may be disclosed and used for purposes of this action;

WHEREAS, the Court recognizes that requests for the disclosure of documents or other information containing Confidential Health Information necessarily implicate the privacy rights of individuals not parties to this litigation;

WHEREAS, such privacy interests must be protected under applicable federal statutes, rules, regulations, and common law principles (collectively "Governmental Regulations"), including, but not limited to, the privacy regulations promulgated pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and privacy statutes, rules, regulations, and common law principles promulgated under South Carolina law (collectively "State Laws");

WHEREAS, the Court finds that the disclosure and use of certain information and documents containing such Confidential Health Information is essential to the litigation of the claims being asserted. The Court further finds that it is not practicable, given the scope of this action, either to give notice of the discovery requests (or an opportunity to consent or object to disclosure) to each and every patient or individual whose health information may be the subject



of the discovery requests or to conduct an in camera review of the requested Confidential Health Information. The Court further finds that it would be unduly burdensome and would further deprive the parties of meaningful access to information if the parties were to attempt to redact all medically related and payment related information that could potentially be used to identify an individual;

WHEREAS, this Order requires that any use or disclosure of Confidential Health Information be made consistent with the terms of this Order and the requirements of the South Carolina Rules of Civil Procedure;

WHEREAS, certain limited categories of Confidential Health Information that pertain to certain types of medical conditions or treatment (including, without limitation, records of diagnosis or treatment of alcohol or substance abuse, certain sexually transmitted diseases such as HIV/AIDS, mental health and certain information pertaining to genetic testing) are afforded heightened protection under applicable Governmental Regulations or State Laws, and generally may not be produced under such applicable Governmental Regulations or State Laws even with a qualified protective order absent consent of the parties involved, a good cause determination by a court of competent jurisdiction, and/or other procedural safeguards set forth under the applicable Governmental Regulations or State Laws. The Court finds that the procedures set forth herein for the disclosure and use of Confidential Health Information are reasonable and appropriate to protect against the improper disclosure or unauthorized use of such sensitive Confidential Health Information;

WHEREAS, the public interest outweighs any minimal risk attendant to the disclosure and use of Confidential Health Information in the manner set forth herein;

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WHEREAS, the Court further finds that the procedures set forth herein are adequate to safeguard against the unauthorized use, disclosure, or subsequent dissemination of Confidential Health Information. The Court hereby prohibits the dissemination of Confidential Health Information beyond the parameters established by this Order or use of Confidential Health Information for any purpose other than the prosecution or defense of this litigation;

PROTECTIVE ORDER

1. This Stipulation and Protective Order shall apply to all information or discovery materials produced by any party or their agents during the course of discovery in this action, all information derived therefrom, and extracts, copies, excerpts, or summaries thereof, including, without limitation, documents produced pursuant to Rule 33(c) or Rule 34 of the South Carolina Rules of Civil Procedure, answers to requests for admissions, answers to interrogatories, documents subpoenaed in connection with depositions and deposition transcripts (hereinafter referred to collectively as "discovery materials"). The term "documents" as used herein is intended to be comprehensive and includes any and all materials in the broadest sense contemplated by Rule 34 of the South Carolina Rules of Civil Procedure, and shall include all written, oral, recorded, or graphic material, however produced or reproduced, including, but not limited to: all written or printed matter of any kind, including the originals and all nonidentical copies thereof; computer data, all graphic or manual records or representations of any kind; electronic, mechanical, or electric records or representations of any kind.

2. The term "Confidential Health Information," means, without regard to whether the material has been designated confidential generally or "Confidential Health Information" specifically, any document or information supplied that identifies an individual or subscriber in any manner and relates to the past, present, or future payment for the provision of health care to



such individual or subscriber. The term "Confidential Health Information" specifically includes "protected health information" as such term is defined by the Standards for Privacy of Individually Identifiable Health Information, 45 CFR parts 160 and 164, promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996. See 45 C.F.R. sections 164.501 ("protected health information") and 160.103 ("individually identifiable health information"). "Confidential Health Information" includes all notes, summaries, compilations, extracts, abstracts, or oral communications that contain, are based on, or are derived from Confidential Health Information. All documents and all transcripts, exhibits, and videotapes of any deposition or testimony containing Confidential Health Information shall be treated in accordance with this Order without regard to any designation.

3. Confidential Health Information may be disclosed only to the following, and pursuant to the terms and conditions set forth in this Order:

- a. the Court and all persons assisting the Court in this action, including court reporters and necessary stenographic and clerical personnel thereof;
- b. the parties, the parties' counsel and their partners, associates, paralegals, and clerical and support personnel.
- c. persons retained as consultants or experts for any party and principals and employees of the firms with which consultants or experts are associated;
- d. persons other than consultants or experts who are retained to provide purely administrative assistance to counsel for any party for the purpose of this action, including litigation support services and outside copying services;
- e. the persons listed on the document as authors or recipients (including persons copied on or forwarded the document);



- f. any person who may testify as a witness at a deposition, hearing, mediation, trial, or other proceeding in this action, and for the purpose of assisting in the preparation or examination of the witness; and
- g. any other person hereafter designated by written stipulation of the parties or by further order of the Court.

4. No Confidential Health Information may be disclosed to any person pursuant to the provisions of paragraph 4 of this Order unless counsel first informs such person that pursuant to this Order the material to be disclosed may only be used for purposes of preparing and presenting evidence in this litigation and must be kept confidential. No Confidential Health Information may be disclosed to any person identified in subparagraphs 4 (c) through (g) of this Order unless such person first is given a copy of this Order and advised that the information contained in the document is Confidential Health Information and informed that an unauthorized disclosure of their information may constitute a contempt of this Court. Each person to whom Confidential Health Information is disclosed pursuant to Paragraph 4 (c), (d), (f) and (g) of this Order shall execute an Acknowledgement in the form attached hereto as "Exhibit A" and shall agree to be bound by this Order prior to receiving any Confidential Health Information. Copies of the executed Acknowledgements, and a current log of the materials disclosed to each person executing an Acknowledgement shall be retained by counsel for the party or parties who disclosed the Confidential Health Information to such persons. Copies of all Acknowledgements executed pursuant to this paragraph shall be disclosed to the party who produced or supplied the Confidential Health Information (a) within 30 days after the final resolution of this action (including resolution of all appellate proceedings); (b) within 30 days after settlement with the producing party, or (c) on good cause shown.

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5. Counsel for a party may show documents containing Confidential Health Information to a witness during a deposition, hearing, trial or other proceeding without providing prior notice to the party producing the Confidential Health Information. Before doing so, however, the witness shall be shown a copy of this Order and advised that the information contained in the document is Confidential Health Information and informed that an unauthorized disclosure of such information may constitute a contempt of this Court. The only exception to this requirement is if the witness has previously been authorized to receive Confidential Health Information as specified in paragraph 3. Persons present at a deposition or mediation who are not entitled to receive Confidential Health Information pursuant to the provisions of this Order may be excluded from the room while such deposition or mediation is occurring.

6. Notwithstanding any other provision of this Order, nothing in this Order shall limit: (a) the ability of any party to disclose to any person Confidential Health Information that is a business record of that party; (b) any defendant's ability to disclose Confidential Health Information that is a business record of that defendant to other defendants or their counsel or to others as the defendant may mutually agree; (c) any named plaintiff's ability to disclose Confidential Health Information of that plaintiff to other named plaintiffs in this action or their counsel or to others.

7. No person, firm, corporation, or other entity subject to this Order shall give, show, disclosures, make available, or communicate Information to any person, firm, corporation, or other entity not expressly authorized by this Order to receive such Confidential Health Information. A party's use for any purpose of its own documents and information which it produces or discloses in this litigation shall not be considered a violation of this Order.



8. Except as may be provided by subsequent Order of this Court: 1) Confidential Health Information shall be used for no purpose other than this litigation; 2) No person who receives, pursuant to this or other Orders of this Court, Confidential Health Information concerning persons who are not parties to the captioned lawsuits (hereinafter "Third Parties") shall directly or indirectly contact or attempt contact with Third Parties or their medical providers (except those who are parties to these actions); and, 3) No discovery shall be directed to such Third Parties or their medical providers (except those who are parties to these actions) by means of subpoena, request for production, deposition or otherwise.

9. A party shall not be obligated to challenge the classification or propriety of a designation of material as Confidential Health Information or other action under the terms of this Order at the time made, and any failure to do so shall not preclude or act as a waiver of a subsequent challenge thereto. In the event that any party to this lawsuit disagrees at any point in these proceedings with the designation by the producing party of any information as Confidential Health Information or other action under the terms of this Order, the parties shall try first to resolve such dispute in good faith on an informal basis. If the dispute cannot be resolved in this manner, the objecting party may seek appropriate relief from the Court and the producing party asserting confidentiality or defending an action under this Order shall have the burden of proving same to the Court.

10. All documents of any nature, including briefs, motions, appendices, etc., which are filed with the Court for any purpose and which contain information which have been designated Confidential Health Information, shall be filed in sealed envelopes or containers marked with the title of the action and bearing a statement substantially in the following form:

CONFIDENTIAL HEALTH INFORMATION



Filed under seal pursuant to Protective Order governing the confidentiality of documents and information obtained during the course of this litigation. This envelope is not to be opened nor the contents thereof displayed or revealed except by or to qualified persons or by Court order.

11. This Order shall not prevent any discovery materials designated as Confidential Health Information from being used by the Court or counsel of record in any hearing in this action, or from being received into evidence at trial, subject to such confidentiality measures as the Court may then prescribe.

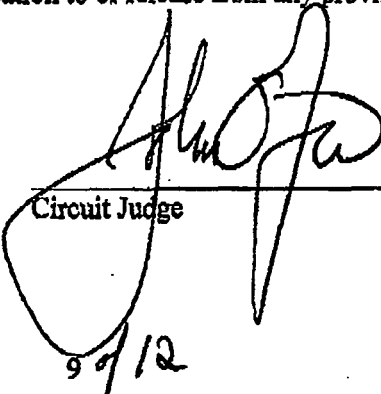
12. Within sixty (60) days after the conclusion of trial and all appeals or any other termination of this action, all discovery materials designated as Confidential Health Information, including copies, extracts, and summaries thereof, shall be returned to the producing party or destroyed. If such materials are destroyed, the party destroying such materials shall execute a certificate in the form attached hereto as "Exhibit B" certifying such destruction. Additionally, each party shall destroy all work product materials, as such are defined at law, containing or referring to Confidential Health Information, in whatever form, stored or reproduced.

13. Nothing in this Order shall bar or otherwise restrict any attorney representing any of the parties to this lawsuit from rendering advice to his or her client with respect to this lawsuit and in the course thereof relying upon his or her examination of Confidential Health Information.

14. The provisions of this Order are without prejudice to any application by any party at any time, upon notice, to seek a modification to or release from any provisions of this Order.

AND IT IS SO ORDERED.

Dated at Greenville, SC
this 14 day of November, 2008.


Circuit Judge

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EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

) IN THE COURT OF COMMON PLEAS

John Hollman,

Plaintiff,

vs.

Dr. Jonathan Woolfson, et al,

Defendants.

**AGREEMENT TO ABIDE BY
PROTECTIVE ORDER
GOVERNING CONFIDENTIAL
HEALTH INFORMATION**

C.A. No. 2007-CP-23-2347

AND

Danielle Hollman,

Plaintiff,

vs.

Dr. Jonathan Woolfson, et al,

Defendants

C.A. No. 2007-CP-23-8364

AND

George E. Carter, Jr. and Jean Carter,

Plaintiffs,

vs.

William T. Nimmons, OD, et al,

Defendants.

C.A. No. 2007-CP-23-7587

I hereby acknowledge that I have read the stipulation and protective order entered in this action, that I have had the terms thereof explained to me by counsel, that I fully understand such terms and that compliance with these procedures is a condition of receipt of confidential health information, that I agree to be bound by such terms and that I voluntarily hereby submit to the



jurisdiction of this court for purposes of this order, which court may impose civil and criminal sanctions against me if I violate this protective order in any way.

Dated: _____



EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

John Hollman,

Plaintiff,

vs.

Dr. Jonathan Woolfson, et al,

Defendants.

AND

Danielle Hollman,

Plaintiff,

vs.

Dr. Jonathan Woolfson, et al,

Defendants

AND

George E. Carter, Jr. and Jean Carter,

Plaintiffs,

vs.

William T. Nimmons, OD, et al,

Defendants.

IN THE COURT OF COMMON PLEAS

CERTIFICATE OF COMPLIANCE

C.A. No. 2007-CP-23-2347

C.A. No. 2007-CP-23-8364

C.A. No. 2007-CP-23-7587

I, _____, counsel for Plaintiff(s), pursuant to the stipulation and protective order entered in this action by the Greenville County Court of Common Pleas, hereby certify that all Confidential Health Information produced by the Defendants have been destroyed.

Dated: _____



EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

JOHN HOLLMAN, on behalf of himself and
all others similarly situated,

Plaintiff,

vs.

TLC LASIK Centers:

TLC The Laser Eye Center (Institute), Inc.;
TLC The Laser Center (Carolina), Inc.;
TLC The Laser Center (Madison), Inc.;
TLC The Laser Center (Institute), Inc.
d/b/a TLC Denver; TLC The Laser Center
(Institute), Inc. d/b/a TLC Atlanta;
TLC Laser Eye Centers Oklahoma City;
TLC The Laser Center (Tri-Cities), Inc.;
TLC The Laser Center (Massachusetts), Inc.;
TLC The Laser Center (Brea), Inc.; TLC Laser
Eye Centers Cleveland; TLC Laser Eye Centers
Columbus; TLC The Laser Center
(Boca Raton), Inc.; TLC Laser Eye Centers
(Pittsburgh); TLC Laser Eye Centers (Fargo);
Valley Laser Eye Center, LLC; TLC The Laser
Center (Institute), Inc. d/b/a TLC Manhattan;
TLC The Laser Center (Institute), Inc. d/b/a
TLC Garden City; TLC The Laser Center
(Institute), Inc. d/b/a TLC Torrance; TLC The
Laser Center (Northeast), Inc. d/b/a
TLC North Jersey; TLC Laser EyeCenters Tulsa;
TLC Laser Center (Northeast), Inc. d/b/a
TLC Rockville; TLC The Laser Center (Institute)
Inc. d/b/a TLC White Plains; TLC Midwest Eye
Laser Center, Inc. d/b/a TLC Chicagoland;
TLC The Laser Center (Northeast), Inc. d/b/a
TLC Big Sky; TLC The Laser Center (Institute),
Inc. d/b/a TLC Charleston; TLC The Laser
Center (Institute), Inc. d/b/a TLC San Antonio;
TLC Laser Eye Centers Edina; TLC The Laser
Center (Indiana), LLC; TLC The Laser Center
(Institute), d/b/a TLC Ft. Lauderdale; TLC The
Laser Center (Institute), d/b/a TLC Tampa;

Case No.: 6 : 10 - 685 - RBH

**COMPLAINT
(Jury Trial Demanded)**

CLASS ACTION

TLC Clinical Directors:

Jo Angeles, O.D.; Kristen Brown, O.D.;
 E. Edward Carmen, O.D.; Phillip Cuva, O.D.;
 Despina Fikaris, O.D.; J. Christopher Freeman,
 O.D.; Jeffrey J. Genos, O.D.; Lee Ann Gertz,
 O.D.; Rhonda Kerzner, O.D.; David Kohler,
 O.D.; William Bruce Laurie, Jr., O.D.; Michael
 Mariano, O.D.; Elizabeth M. McLemore, O.D.;
 Melissa Melott, O.D.; Andrew S. Morgenstern,
 O.D.; Debbie Pian, O.D.; Mary J. Rauch, O.D.;
 Carl J. Roth, O.D.; Susan Shin, O.D.; Stephen
 Siegel, O.D.; Mark A. Slosar, O.D.; Thomas
 Spetalnick, O.D.; Derek Van Veen, O.D.;
 Cynthia Yaeger, O.D.; Individually and in their
 capacity as Clinical Director for TLC The Laser
 Eye Center (Institute), Inc.;

TLC LASIK Surgeons:

Jodi Abramson, M.D.; Alberto Aran, M.D.;
 Robert Arffa, M.D.; David K. Aymond, M.D.;
 David Boes, M.D.; Stan Braverman, M.D.;
 Stephen Brint, M.D.; Barry Concool, M.D.;
 Charles Davis, M.D.; Eric Donnenfeld, M.D.;
 Martin Fox, M.D.; David Hunter, M.D.;
 Scott Jaben, M.D.; Jeffrey Machat, M.D.;
 Peter Mogyordy, M.D.; John Oster, M.D.;
 George Pardos, M.D.; Edward Perraut, M.D.;
 Louis Probst, M.D.; Randall Rabon, M.D.;
 Jeff Robin, M.D.; Roy Rubinfeld, M.D.;
 Stephen Slade, M.D.; Mark Speaker, M.D.;
 Robert Spector, M.D.; Nancy Tanchel, M.D.;
 Brad Taylor, M.D.; Gregory Temas, M.D.;
 Stewart Terry, M.D.; Mark E. Whitten, M.D.;
 Larry Womack, M.D.; Wendell Wong, M.D.;
 Jonathan Woolfson, M.D.;

TLC Management

Brian Andrew, Esq.; Stacey Anne Lerum;
 Bob May, Esq.; John Potter, M.D.,

Defendants.

The Plaintiff, on behalf of himself and all others similarly situated, allege upon information and belief as follows:

Parties and Jurisdiction

1. Plaintiff John Hollman is a citizen and resident of the County of Beaufort, State of South Carolina.

2. That the Defendants TLC LASIK Centers as listed above, (hereinafter collectively referred to as TLC LASIK Centers) are corporations organized and existing under the laws of various states within the United States who individually and through their respective agents, servants, employees, and/or in combination with independent contractor surgeons perform 1) ophthalmology, 2) optometry, and 3) LASIK surgery; that further the LASIK Eye Centers are, upon information and belief, direct or indirect wholly owned subsidiaries of TLC Vision Corporation¹ through which TLC Vision Corp operates and conducts the business described above.

3. That the Defendants TLC Clinical Directors as listed above (hereinafter collectively referred to as Clinical Directors) are doing business in the TLC LASIK Centers using and operating equipment owned, upon information and belief, by the TLC LASIK Centers and, upon information and belief, engaging in doctor patient relationships with patients of TLC LASIK Centers; that further, TLC Clinical Directors are optometrists licensed and residing in the various states of the United States, including South Carolina.

4. That all TLC LASIK Surgeons as listed above (hereinafter collectively referred to as

¹ TLC Vision Corp has not been sued as named defendant in this case due, in whole or in part, to the automatic stay of 11 U.S.C. §362 arising out of their Chapter 11 cases pending in the United State Bankruptcy Court for the District of Delaware. Plaintiffs presently intend to move the Bankruptcy Court for relief from that stay in order to amend the Complaint in this case to include the parent corporations as named defendants and proceed against them at that time. Currently, though, the automatic stay is in effect and nothing in this Complaint or any other document filed by Plaintiffs is intended or shall be deemed to be an action against the corporate parent debtors, their bankruptcy estates, or their property or property of their estates.

TLC LASIK Surgeons) are doing business in the TLC LASIK Centers by using equipment owned, upon information and belief, by the TLC LASIK Centers and engaging in the practice of medicine including ophthalmology and LASIK surgery; that further, TLC Lasik Surgeons are citizens and residents of various states of the United States, including South Carolina.

5. That Dr. John Potter, Stacey Anne Lerum, Bob May, and Brian Andrew (collectively referred to as TLC Management) were involved in various aspects of post surgery patient eye care and risk management for TLC LASIK Centers, TLC Clinical Directors and/or TLC LASIK Surgeons. That further during relevant times, these members of TLC Management held the following positions:

- a) Dr. John Potter - Vice President Clinical Services and Vice President for Patient Services;
- b) Stacey Anne Lerum - Director of Clinical Services and Quality Assurance;
- c) Bob May and Brian Andrew - Corporate General Counsel

6. The Plaintiff brings this action individually and on behalf of the class individuals whose commonality is more specifically described later herein, but includes:

- a) All patients of TLC Vision Corp or any of its direct or indirect subsidiaries;
- b) who had LASIK surgery;
- c) approved by TLC Clinical Director and;
- d) Performed by a TLC LASIK Surgeon;
- e) when the surgery was a breach of applicable standard of care;
- f) that resulted in serious eye injury; and,
- g) who were then subjected to an institutional fraudulent scheme designed to protect the assets of the at-fault parties at the expense of the patients who are members of the class.

7. This Federal District Court has subject matter jurisdiction over this action because the amount in controversy exceeds the sum or value of \$75,000 in the aggregate, exclusive of interest and costs, and at least one member of the class of plaintiffs is a citizen of a state different from any defendant.

8. This Court maintains personal jurisdiction over Defendants in this action because Defendants regularly transact business in South Carolina, including the practice of medicine, through performance of eye surgery and eye care and the entering into contracts with individuals within this state.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391©) and 15 U.S.C. § 22 because Defendants reside, are licensed to do business, and/or transact business in this District. Defendants are subject to personal jurisdiction in this District.

10. Plaintiffs demand a jury trial.

Factual Background

11. Scientific discoveries concerning the use of lasers to facilitate and improve eye surgery revolutionized surgical techniques that allowed for the correction of visual acuity problems.

12. As a result, ophthalmologist surgeons were able to offer elective surgeries to improve a patient's vision and exclude the need for prescription glasses or contact lenses, but because this surgery via laser was done on the outside of the cornea, it was painful and had immediate potential side effects that limited its use to those patients with more serious eye disorders/problems.

13. As technology improved, a laser technique known as LASIK for eyesight correction became available first in other parts of the world and then subsequently in the United States.

14. LASIK surgery combined the use of a laser to re-shape the cornea with a process for peeling back a layer of the cornea so that the laser could do correction within the middle of the cornea

rather than on the outside. The result was a laser eye correction surgery (LASIK) that was relatively pain free and had minimal immediate side effects.

15. This opened up the potential for elective eyesight corrective surgery to a large class of people which also greatly increased the financial benefits to those people and entities offering such service.

16. TLC Vision Corp, through its predecessor corporation founded in Canada, moved into the United States when LASIK surgery was approved by the FDA and ultimately TLC Vision Corp, a United States corporation organized and existing under the laws of one of the states other than South Carolina, was founded to provide LASIK surgery and attendant eye care to citizens of the United States.

17. In order to facilitate the delivery of LASIK surgery and eye care services, TLC Vision Corp set up TLC LASIK Surgery Centers (referred to as TLC LASIK Centers) in various locations within the United States.

18. Initially, each TLC LASIK Center was separately incorporated within the state in which it conducted LASIK surgery; thereafter, TLC Vision Corp created TLC Laser Eye Centers (Institute), Inc., a Delaware corporation and merged a substantial number of the individual TLC LASIK Surgery Centers into that single corporate entity.

19. To conduct the business of providing LASIK surgery and attendant eye care TLC Vision Corp and/or TLC LASIK Centers hired licensed optometrists and ophthalmologist surgeons.

20. The licensed optometrists were hired in the capacity known as Clinical Directors (referred to as TLC Clinical Directors) and maintained control over the business operation of the Center and provided medical services to patients seeking LASIK surgery.

21. The role of the TLC Clinical Director in providing medical services consisted of

overseeing and directing the taking of patient information (patient history), all diagnostic tests, and performing examinations on patients to determine if the patient was a suitable candidate for LASIK surgery.

22. In all patients at each TLC LASIK Surgery Center, the TLC Clinical Director made the medical decision of whether to perform LASIK surgery based on the patient history, diagnostic tests and patient examinations on behalf of TLC Vision Corp and/or the TLC LASIK Centers.

23. The role of the ophthalmologist/surgeons (referred to as TLC LASIK Surgeons), was to perform the LASIK surgeries on its patients and provide limited follow-up care.

24. For all patients cleared for surgery by the TLC Clinical Directors at the TLC LASIK Centers, the TLC LASIK Surgeon made a separate decision concerning whether performing LASIK surgery was appropriate and within the accepted standard of care.

25. In order to locate potential patient/customers, TLC Vision Corp contacted independent optometrists throughout the United States and entered into arrangements called Co-Managing Agreements wherein the optometrist would refer patients to TLC Vision Corp for LASIK surgery and, if approved and performed, the optometrist would receive a portion of the surgery fee for: 1) the referral and, 2) could also agree for additional portion of the fee to provide post surgery eye care.

26. As a further inducement for prospective patients TLC LASIK Centers, TLC Clinical Directors, and TLC LASIK Surgeons offered, for a fee, contractual benefits to surgery patients known as the Lifetime Commitment Contract (hereinafter referred to as LTC).

27. For the additional fee paid by the patient under the LTC, all TLC LASIK Centers, all TLC Clinical Directors, and all TLC Surgeons agreed to provide lifetime vision care for the patients to include any additional LASIK surgery needed and any treatment for vision related problems associated with or caused by the LASIK surgery performed under the LTC.

28. LASIK surgeries performed by all TLC LASIK Centers, all TLC Clinical Directors, all TLC LASIK Surgeons were controlled by accepted and recognized standards of care for optometrists and ophthalmologists.

29. In that regard, there existed a recognized standard of care for determining which patients were appropriate candidates for LASIK surgery.

30. A number of pre-surgery eye conditions were recognized as contraindications of LASIK surgery. These conditions included keratoconus, subclinical keratoconus, forme fruste keratoconus and inferior asymmetrical steepening of the cornea.

31. Keratoconus is a condition at all times relevant in which the cornea of the eye takes on an elliptical shape rather than the normal circular or round shape. Due to the abnormality shape, the cornea has significant deviation in thickness. These changes initially are found in the back of the eye. Therefore, diagnosis of keratoconus requires diagnostic tests, microscopic exams and patient history.

32. Subclinical keratoconus and/or Forme Fruste Keratoconus and/or inferior asymmetric shaping are conditions at all times relevant known to be potential pre-cursors to keratoconus or other eye disorders. The diagnosis of these conditions is made using cornea topography in which color mapping of the outside surface of the cornea show areas of flatness and steepness. Areas of steepness normally, but not exclusively, in the inferior or lower half of the cornea shown on the topography as red/yellow colors demonstrates these conditions.

33. At all times relevant, the existence of any of these conditions were recognized and accepted contraindications to the performance of LASIK surgery.

34. Performing LASIK on patients with these pre-surgery contraindicated conditions put the patient at risk for developing serious post surgery complications including, but not limited to,

because of the expiration of the statute of limitation governing the patient's claim. The Defendants' fraudulently and/or negligently misrepresented facts to induce the class members to use their laser facility. First, the Defendants;

- a. Represented to the class members that they had established a standard setting policy to ensure continued ocular health care throughout the lifetime of the patient; that
- b. Those representations were false and never intended to be upheld;
- c. The aforementioned representations were material to the class members' decision to obtain LASIK surgery and establish a physician patient relationship with the Defendants;
- d. Defendants knew that they would never honor the commitment for lifetime care, or in the alternative were reckless in promising to do so;
- e. Defendants knew that the class members were relying on those representations in making their decision to obtain LASIK surgery from the Defendants and were unaware of the falsity of those representations;
- f. As a result, the class members did in fact rightfully rely on the Defendants' representations the decision to choose their respective surgery care centers and physicians; and finally,
- g. That the Plaintiffs proximately suffered great physical and economic damage as a result of the Defendants fraudulent misrepresentations.

In furtherance of their efforts to hide the underlying malpractice claims, the Defendants:

- a. Represented to the class members that they had good ocular health, that new equipment and procedures were being approved in the immediate future which would resolve their condition and further concealed that the various visual disorders were surgically created;
- b. That those representations were false and made with the specific intent to placate and deceive the class members so to prevent them from seeking legal redress;
- c. The aforementioned representations were material to the class

members' decision not to seek intervening medical treatment or seek legal remedies;

- d. Defendants knew that they were harming the patients by misrepresenting or concealing their medical condition, or in the alternative were reckless in doing so;
- e. Defendants knew that the class members were relying on those representations in making their decision to remain in the Defendants medical care and not seek legal remedies and that those class members were unaware of falsity of the representations;
- f. As a result, the class members did in fact rightfully rely on those representation and chose not to seek intervening medical treatment or seek legal remedies; and finally,
- g. That the class members proximately suffered great physical and economic damage as a result of the Defendants fraudulent misrepresentations.

Class Action Allegations

51. Plaintiff brings this action on behalf of himself and all others similarly situated, as members of the proposed Plaintiffs' classes. The proposed classes are initially defined as follows:

- a) Hollman's claims are typical of the Proposed Class A, which consists of all persons who were patients of some or all of the named Defendants, whom during the course of their medical treatment, entered in a contract with the Defendants commonly referred to as the TLC Lifetime Commitment Contract ("LTC"). Further that a reasonable interpretation of the contract, based both on the plain language of the document and its implementation and representation by the Defendants, would require the named Defendants to offer or be financially responsible for the class members' lifetime ocular health care related to any and all conditions which were either created and/or exacerbated by the surgical treatment administered by the named Defendants. Determination of all potential class members requires production of TLC contracts but a combined list of patients who have suffered ocular problems post LASIK surgery has been produced in other litigation and will be provided to this court under seal in a separate filing subsequent to the filing of this Complaint.
- b) Plaintiff Hollman's claims are also typical of the Proposed Class B, which consists of all persons suffering from surgically created ocular conditions, including but not limited to ectasia, keratoconus, thinning corneas, inferior

steepening, decentration, loss of best correct vision or other corneal disorders. These proposed class members all developed these diseases/conditions as a result of the negligent, reckless and willful action/inactions of the Defendants. These proposed class members were all subsequently placed in a database as described in paragraphs 43(a & b) and 45, 46, 47 and 48, that was designed to limit the Defendants' malpractice liability exposure all while masking and further exacerbating the known medical disorders of the patient class members. These class member patients and/or a substantial number of them are identified in the data referenced in paragraph 51(a) which is being provided to this court under seal subsequent to the filing of this Complaint.

c) Some patients will be members of both of the two proposed classes.

52. Excluded from any of the proposed classes are any of the named Defendants, any entity in which any of these entities has a controlling interest, any employees, officers, directors, legal representative, heirs, successors, and assigns of TLC Vision Corp or any of its subsidiaries .

53. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and as otherwise alleged herein, the Defendants have acted or refused to act on grounds generally applicable to all members of each proposed class, thereby making final injunctive relief or declaratory relief concerning each proposed class as a whole appropriate.

54. This action is properly brought as a class action under Rule 23 of the Federal Rules of Civil Procedure for the following reasons:

a) [Rule 23(a)(1)] The members of each proposed class are so numerous that separate joinder of each member is impracticable. Although a more precise number of class members will be better established as part of class notification, upon information and belief, the number of potential members of Class A is likely tens of thousands as it represents nearly all the Defendants' patients for the past 12 years. Class B consists of potentially 1600 patients who were entered into a known database, of which the Plaintiff has confirmed a least 181, and likely many times that number, have the same or similar condition which precipitated their inclusion in the fraudulent database. (see paragraph 51 which refers to providing this database to the court) Class members may be notified of the pendency of this action by regular mail and also by published notice if the Court determines that published notice is a necessary supplement.

- b) [Rule 23(a)(1)] There are questions of law and facts common to each proposed class which predominate over any questions affecting individual members.

These common factual and legal questions include:

- i. Determination of the interpretation of the scope and meaning of the Lifetime Commitment Contract as it relates to the requirement for the named Defendants to provide or be financially responsible for lifetime ocular health needs of those patients afflicted with surgically created conditions caused by the Defendants' acts or omissions.
 - ii. Determination of the facts and implications concerning the Defendants' ability to assert affirmative defenses, in particular the respective statutes of limitations and statutes of repose, against those class members of which it actually engaged in fraud and deception in an effort to conceal the malpractice.
 - iii. Determination of insurance coverages available to the injured class members.
 - iv. Determination of whether and the extent to which injunctive relief should be entered.
 - v. Determination of the named Defendants' liability.
- a) [Rule 23(a)(3)] The claims asserted by Plaintiffs are typical of the claims of the members of each proposed class in that their claims involve the same facts as otherwise alleged herein, arise from the same practices or course of conduct that gives rise to the claims of all other class members, and are based on the same legal theories.
- b) [Rule 23(a)(4)] Plaintiffs are adequate representatives of their proposed classes because their interests do not conflict with the interests of the members of the proposed classes that they seek to represent, they adequately and truly represent the interests of the other proposed members, they have common claims with each proposed class member based on the same essential facts which are the predicate for malpractice and fraud, they have retained counsel competent and experienced in class action and complex mass tort litigation, and they intend to prosecute this action vigorously. The interests of the class will be fairly and adequately protected by Plaintiffs and their counsel.
- c) [Rule 23(a)(4)] Each proposed class, as defined, involves only class members for whom the amount in controversy exceeds one hundred dollars (\$100.00).

55. This class action may be maintained under Rule 23 of the Federal Rules of Civil Procedure as common questions of fact and law relating to liability predominate over any questions affecting only individual class members. The questions concerning the interpretation of the Lifetime Commitment Contract require universal and consistent application amongst the class member. Furthermore, the Defendants common course of alleged conduct, including the repetitive nature of the malpractice which created the community of injured patients and the individual and institutional fraud implemented to conceal and curtail liability for malpractice, common issues of the Defendants' alleged liability therefor, the availability of insurance coverage for those actions, and common questions of contractual interpretation of the Defendants duties pursuant to the LTC, all predominate over any individualized issues. In addition, the predominance of common issues is further supported by the value of class trial of common questions of injunctive and declarative relief. Moreover, class action treatment is a superior method for the fair and efficient adjudication of the controversy. The members of the class have little or no interest in individually controlling the prosecution of separate claims. It is highly desirable from the standpoint of manageability and resources to concentrate the litigation pertaining to the class claims in a single forum within South Carolina District Court. To the extent that class members have to try individual damages cases, this can be done in small group trial settings, far more efficiently and economically if class-wide issues, such as liability, are first resolved on a large group basis, i.e., through class trial. Whatever difficulties may exist in the management of the class action will be greatly outweighed by the class action procedure, including, but not limited to:

- a) Given the size of individual Class members claims, few, if any, Class members could afford to seek legal redress individually for the wrongs the Defendants have committed against them and the other proposed class members have no substantial interest in individually controlling the prosecution of individual actions;

- b) Other available means of adjudicating the claims of Plaintiffs and other members of each proposed class, such as thousands of individual actions brought separately and pursued independently in state or federal courts, are impracticable and inefficient;
- c) This action will cause an orderly and expeditious administration of the class claims, economics of time, effort and expense will be fostered and uniformity of decisions will be insured;
- d) Without a class action, the proposed class members will continue to suffer damages and Defendants' tortious and wrongful conduct, and possible continuing harm to class members, will proceed without remedy while Defendants continue to retain and reap the proceeds and profits of its wrongful conduct;
- e) Management of this action poses no unusual difficulties that would impede its management by the Court as a class action; and,
- f) The claims brought by Plaintiffs and other members of the proposed classes are not now, nor have they been, the subject of another class action to the best of Plaintiff's knowledge.

Causes of Action

FOR A FIRST CAUSE OF ACTION

Breach of Contract

Class A Members

56. Plaintiff incorporates by reference all previous allegations not inconsistent herewith as if realleged and recited verbatim herein.

57. That the class members, in addition to establishing a physician patient relationship with their respective health care providers, were uniformly offered and entered into a binding contractual agreement with the Defendants. The substance of that agreement was to provide lifetime ocular health care to each class member for any needs that were caused, associated with, exacerbated by or otherwise necessitated by any complications, conditions, disorders or other ocular maladies resulting from the LASIK surgery. Further, the parties had a meeting of the minds over the parameters of the contract, consideration was exchanged and at all times herein the Plaintiff and class

members fulfilled their obligations under the agreement.

58. That the Defendants have failed to consistently abide by their contractual obligations and choose to fulfill their duties to provide continuing health care based only upon the immediate liability exposure. The Defendants have breached the following provisions, including, but not limited to:

- a) breaching their “precedent setting vision care policy that gives assurance of continued care to patients throughout their lifetime”;
- b) misrepresenting that “99% of all patients [will] be eligible for The TLC Lifetime Commitment Program;
- c) failing to adhere to their commitment and “intention [sic] to help maintain the best possible vision throughout [each patients’] life”.

59. The Defendants designed, marketed and continuously represented to prospective patients their guarantee of lifetime, continuous care so as to induce the class members to choose their vision care facility.

60. That the members of Class A have incurred substantial medical expenses in treating and mitigating the surgically created ocular disorders. Further, that the class members have continuing future medical needs, including but not limited to corneal transplant surgery, specialized contact lenses, riboflavin treatments and continuing eye care.

61. That the Defendants are in breach of said contract and are liable to the class for actual damages, including, but not limited to, past, present and future medical expenses and the costs and expenses of this lawsuit.

FOR A SECOND CAUSE OF ACTION
Breach of Contract with Fraudulent Intent
Class A Members

62. Plaintiff incorporates by reference all previous allegations not inconsistent herewith as if realleged and recited verbatim herein.

63. That Defendants, with fraudulent intent, breached the Lifetime Commitment contractual agreements with the class members.

64. That the fraudulent intent was material and instrumental in breaching said contract and not merely in its making; and that Defendants' misrepresentations constitute a fraudulent act accompanying their breach of contract.

65. That Class A members suffered injury as a direct and proximate result of Defendants' fraud and are entitled to an award of actual and punitive damages.

FOR A THIRD CAUSE OF ACTION
Violation of the Federal Racketeer Influenced and Corrupt Organizations Act ("RICO")
18 U.S.C. §1962(c)
Class A and B Members

66. Plaintiff incorporates by reference all previous allegations not inconsistent herewith as if realleged and recited verbatim herein.

67. The "enterprise" described below and as set forth in detail in the preceding paragraphs operated separately and distinct from each individual Defendant. The enterprise consisted of a scheme of institutional and individual fraud designed to conceal class members' actual medical conditions and underlying malpractice claims so as to limit liability. This enterprise which manifested itself in both the implementation of and contribution to an illegal, subverted database for a period of at least eight years, with both the enterprise and database being implemented through the use of mail and wire fraud, involving hundreds and potentially thousands of victims. The above

scheme amounted to a pattern of racketeering activity and continues to pose a threat of continued criminal activity. A second prong of the scheme used to facilitate the concealment of the patient's surgically created condition, was the marketing and implementation of the Lifetime Commitment Contract. The enterprise purported to offer lifetime guarantees to the class members, however the enterprise merely offered benefits to the extent it would prolong or prevent the patients from discovering the surgically created conditions.

68. The enterprise was engaged in interstate commerce in that, *inter alia*, the individual patients which were the subject of the scheme were residents of numerous states as were the individual and corporate Defendants who engaged in the fraudulent activity which included the illegal dissemination of medical records across state lines and by mail and wire in violation of 18 U.S.C. § 1341 and 18 U.S.C. § 1343. Further, fees and revenues generated and maintained by the scheme were distributed amongst enterprise members across state lines.

69. The enterprise had an organizational structure or chain of command, established standard operating procedures for gathering and covertly disseminating the medical records, required the actors to repeatedly violate HIPPA and a patient's privacy rights, included specific instructions and protocols for hiding the actual medical condition of the Plaintiff and even included procedures to destroy portions of the medical records so as to avoid documentation of one of the main principal's interaction with individual patients. The Defendants repeatedly implemented and used identical or similar methods for ensuring the success of the enterprise.

70. The Plaintiff and proposed members of Class B is a "person" within the meaning of 18 U.S.C. §§ 1961(3) and 1964(c).

71. The named Defendants are "persons" within the meaning of 18 U.S.C. §§ 1961(3) and 1964(c).

72. The association in fact as described in the preceding paragraphs was an “enterprise” within the meaning of 18 U.S.C. §§ 1961(4) and 1962(a), with said enterprise engaged in activities affecting interstate commerce.

73. The Defendants were each associated with the enterprise and participated in its management and operation by directing its affairs and by conducting business with each other as assisting in the scheme.

74. The activities of the “association in fact” form a pattern, continuous in nature, which consists of numerous unlawful and fraudulent individual acts directed to the Plaintiff and members of the Class. The named individual Defendants not only contributed to and monitored their patients through the illegal databases, but also allowed it to dictate inappropriate medical care and false diagnoses to the class members. Each of the named Defendants’ participation in both the operation and management of the scheme was essential to its success. In addition to creating a system that directed detrimental medical care to patients in an effort to limit liability, the enterprise made repeated fraudulent misrepresentations in furtherance of its unlawful purpose. Specifically, the Defendants:

- a) represented to the Class B members that they had good ocular health, that new equipment and procedures were being approved in the immediate future which would resolve their condition and further concealed that the various visual disorders which were surgically created;
- b) those representations were false and made with the specific intent to placate and deceive the class members so to prevent them from seeking legal redress;
- c) the aforementioned representations were material to the class members’ decision not to seek intervening medical treatment or seek legal remedies;
- d) Defendants knew that they were harming the patients by misrepresenting or concealing their medical condition, or in the alternative were reckless in doing so;
- e) Defendants knew that the class members were relying on those representations in making their decision to remain in the Defendants’ medical care and not

seek legal remedies and that those class members were unaware of the falsity of the representations;

- f) As a result, the class members did in fact rightfully rely on those representation and chose not to seek intervening medical treatment or seek legal remedies; and finally,
- g) that the class members proximately suffered great physical and economic damage as a result of the Defendants fraudulent misrepresentations.

75. These activities of the Defendants entailed multiple instances of mail fraud including but not limited to the authorized distribution of patient medical records for purpose of establishing and monitoring the scheme in clear violation of HIPPA, disseminating communications to the individual Defendants on how to hide and conceal the enterprise activity from the class members, instructions on what information would be distributed to the class members, instructions on how to obtain false medical opinions to further mislead and induce the class members to avoid their seeking legal redress, all in violation of 18 U.S.C. §§ 1341, 1343.

76. The Defendants each participated, directly and indirectly, in the conduct of the enterprises' affairs through a pattern of unlawful activity under 18 U.S.C. §§ 1961(i)(b), 1961(5) and 1962(c), to wit:

- a) Multiple acts of mail fraud, in violation of 18 U.S.C. § 1341;
- b) Multiple instances of wire fraud, in violation of 18 U.S.C. § 1343;
- c) Multiple instances of the collection of unlawful debts in violation of RICO.

77. The Plaintiff and each member of the Class suffered injury to their property, within the meaning of 18 U.S.C. 1964(c). Specifically, should the Court determine that the Defendants are not equitably estopped from asserting varying statute of repose and statute of limitation defenses to the underlying malpractice claims, the enterprise will have unlawfully deprived the Plaintiffs of the economic recovery through tort litigation.

FOR A FOURTH CAUSE OF ACTION

Civil Conspiracy

Class A and B Members

78. Plaintiffs herein incorporate by reference the allegations of the preceding paragraphs consistent herewith.

79. Defendants, as described herein, acting in concert combined for the purpose of defrauding Plaintiff and class members out of their ability to seek legal remedies.

80. As a direct result of Defendants' unlawful conspiracy, Plaintiffs have suffered special damages including personal injuries suffered as a result of Defendants malpractice and medical expenses past and future.

FOR A FIFTH CAUSE OF ACTION

Declaratory Relief

Class A Members

81. Plaintiff incorporates by reference all previous allegations not inconsistent herewith as if realleged and recited verbatim herein.

82. Plaintiff and the members of proposed Class A respectfully request an Order of and the Court setting forth the rights and obligations of the parties to the Lifetime Commitment Contract, to wit:

- a) The obligations of the Defendants to provide lifetime ocular health care or to be otherwise responsible for all costs and expenses necessarily incurred and required as a result of any surgically created condition;
- b) An establishment of a fund or method of securing payment for past medical expenses and future probable medical expenses for the members of the class.

83. Granting the requested declaratory relief will serve a useful purpose in clarifying the legal relations in issue and will further terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.

FOR A SIXTH CAUSE OF ACTION

Declaratory Relief

Class B Members

84. Plaintiff incorporates by reference all previous allegations not inconsistent herewith as if realleged and recited verbatim herein.

85. Plaintiff and the members of proposed Class B respectfully request an Order of and the Court setting forth the following based upon the facts alleged herein, to wit:

- a) That any and all statute of limitation or statute of repose defenses to any and all medical negligence claims are hereby waived, or in the alternative, equitably tolled as based upon the following findings:
 - i. The Plaintiff and class members exercised due diligence to discover the medical negligence cause of action prior to the running of any applicable statute of limitations or repose, and
 - ii. The Defendants affirmative acts of fraudulent concealment frustrated discovery of the medical negligence cause of action notwithstanding the Plaintiff and class members' diligence.
- b) That the Plaintiff and class members are entitled to a full and complete disclosure of all medical records, including but not limited to all the medical opinions and findings regarding their individual medical condition generated and hidden by the Defendants through the use of the illegal databases.
- c) An Order enjoining and restraining the Defendants from any further use of the fraudulent database.
- d) An Order restraining and enjoining the Defendants from any further and continuous violations of HIPPA, specifically the unauthorized dissemination of their medical records amongst the Defendants without the members' consent.

86. Granting the requested declaratory relief will serve a useful purpose in clarifying the legal relations in issue and will further terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.

FOR A SEVENTH CAUSE OF ACTION
Declaratory Relief as to Existence and Applicability of Insurance Coverages of the
Defendants
Class A & B Members

87. Some or all of the Defendants may have liability insurance coverages applicable to some or all of the causes of action seeking monetary relief.

88. Some or all of the Defendants may have no fault or medical payments insurance coverage applicable to payment of claims for Class A members as those claims relate to medical expenses incurred past and future.

89. In the event this court grants declaratory relief for the tolling of statutes of limitation or repose defenses, some or all of the Defendants may have medical malpractice insurance coverage which may be applicable to the underlying malpractice claims of Class B members.

90. The existence of insurance coverage and the applicability of those coverage creates a justiciable controversy between the Plaintiff Class A and B members and the Defendants.

Jury Demand and
Ad Damnum

WHEREFORE, Plaintiff, individually and on behalf of the proposed class members, hereby demands trial by struck jury on all of the issues that have been or may hereafter be raised in any of the pleadings, whether filed by or on behalf of Plaintiffs or the named Defendants. Plaintiffs further demand judgment for the following relief:

- I. Certification of the two proposed classes;
- II. Injunctive and Declaratory relief as follows:
 - A. An Order of the Court setting forth the rights and obligations of the parties to the Lifetime Commitment Contract, to wit:
 - i. That the Defendants are required to provide lifetime ocular health care or to be otherwise responsible for all costs and expenses necessarily incurred and required as a result of any surgically created conditions;

- ii. That the Defendants must establish of a fund or method of securing payment for past medical expenses and future probable medical expenses for the members of the class.

B. An Order of and the Court declaring, to wit:

- i. That any and all statute of limitations or statute of repose defenses to any and all medical negligence claims are hereby waived, or in the alternative, equitably tolled.
- ii. That the Plaintiff and class members are entitled to a full and complete disclosure of all medical records, including but not limited to, all the medical opinions and findings regarding their individual medical condition generated and hidden by the Defendants through the use of the Complex Case and Advocacy Log databases.
- iii. That the Defendants are enjoined and restrained from any further use of the fraudulent databases.
- iv. That the Defendants are restrained and enjoined from any further and continuous violations of HIPPA, specifically the unauthorized dissemination of the Class Members medical records amongst the Defendants without the members' consent.

C. An Order of the Court declaring, to wit;

- i. Requiring disclosure by the Defendants of the existence of all insurance coverage owned by or insuring to the benefit or each Defendant;
- ii. The applicability of all insurance coverage owned by or insuring the benefit of the Defendants to each cause of action filed by the Plaintiff Class A and B members;
- iii. The applicability of the malpractice coverage of the Defendants to the underlying claims of class action Plaintiff Class B members based on the tolling of applicable statute of limitations or repose or the imposition of equitable estoppel barring the Defendants from raising defenses of statute of limitation or repose as to the claims of malpractice of Class B members, and;
- iv. For such other and further relief as necessary to provide the declarations of the existence of insurance coverages by the Defendants and the applicability of those coverages to all relief requested by the Plaintiffs Class A and B members.

- III. Compensatory damages in an amount to be assessed by the jury as just and proper, but including, without limitation:
 - A. All expenses and economic losses;
 - B. All actual damages, including but not limited to; past, present and future medical bills; pain and suffering; loss of use or quality of life,
 - C. Loss of income;
 - D. Damages for temporary and permanent impairment; and,
 - E. All other reasonable and just actual and consequential damages proximately caused by the underlying malpractice and concealment actions which further exacerbated and harmed the Plaintiffs.
- IV. Punitive damages in an amount to be assessed by the jury as just and proper and in an amount sufficient to punish the Defendants and to deter future misconduct; and
- V. Appropriate attorney fees, statutorily trebled damages and costs and expenses incurred in connection with the litigation of this matter;
- VI. Such other and further relief as this honorable Court deems just and proper.

Respectfully submitted,

s/ Douglas F. Patrick

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Dated: March 17, 2010
Greenville, South Carolina

EXHIBIT C

State of South Carolina

County of Greenville

In the Court of Common Pleas

John Hollman

Plaintiff,

-vs-

2007-23-CP-2347

Dr. Jonathan Woolfson, individually,
TLC Laser Eye Centers
(Piedmont/Atlanta) LLC, and TLC
The Laser Center (Institute), Inc.,
Dr. Michael A. Campbell,
individually; Optical Solutions,
Inc., and Optical Solutions of
Bluffton, LLC,

Defendants.

AND

Danielle Hollman,

Plaintiff,

-vs-

2007-23-CP-8364

Dr. Jonathan Woolfson, individually,
TLC Laser Eye Centers
(Piedmont/Atlanta) LLC, and TLC
The Laser Center (Institute), Inc.,
Dr. Michael A. Campbell,
individually; Optical Solutions,
Inc., and Optical Solutions of
Bluffton, LLC

Defendants.

Transcript of Record

July 26, 2010

BEFORE:

The Honorable Edward W. Miller, Judge

APPEARANCES:

Douglas Patrick, Esquire
Stephen Lewis, Esquire
Attorneys for the Plaintiff

W. Howard Boyd, Esquire
James M. Dedman IV, Esquire
Ron Tate, Esquire
Attorneys for Defendant

Shelton W. Haile, Esquire
Attorney for Defendant Woolfson
Jack G. Gresh, Esquire
Attorney for Defendant Campbell & Optical Solutions

Renee Tollison
Circuit Court Reporter

1 filed that document four specific cases in which the
2 patient has suffered irreparable harm. And we know that
3 there are at least a hundred and eighty-one other
4 patients who have a similar diagnosis in this database
5 that most likely don't even know what their diagnosis is.
6 Now, that's the federal court case. So the federal court
7 case is designed to notify these patients so that they no
8 longer suffer the irreparable harm that they are
9 suffering. They can make decisions what they want to do
10 with that. Now, that's the federal court case.

11 T.L.C. is here because they know they've got to stop
12 this so that they continue this hiding of patient
13 information from patients. And so they're trying to sell
14 you with an idea that they have some kind of right to
15 protect this database. We're going to discuss this in
16 more detail. There are three real essential issues that
17 we want to talk about. The first is that they have no
18 standing. Because of the settlement, they have
19 absolutely no standing to be in front of you. They're
20 not asking for modification to the protective order.
21 They're asking for sanctions and relief under the
22 protective order, and they have no standing.

23 The next though is even more important. And that is
24 not only do they have no standing, they have no
25 meritorious argument. Their argument is that any use of

EXHIBIT D

Exhibit "A"

STATE OF SOUTH CAROLINA	)	
	)	SETTLEMENT AGREEMENT
COUNTY OF GREENVILLE	)	

This Settlement Agreement is entered into as of this 16th day of June, 2010, by and among John Hollman and Danielle Hollman (hereinafter collectively referred to as "The Hollmans") and TLC The Laser Center (Institute), Inc. (hereinafter referred to as "TLC"):

WHEREAS, John Hollman requested refractive surgery at a TLC refractive surgical center on July 8, 1999, and surgery was performed by a licensed medical doctor using the facilities of TLC, and subsequent surgical procedures were performed at TLC on November 22, 1999 and June 26, 2001; and

WHEREAS, John Hollman alleges he subsequently experienced vision problems and corneal disorders that he alleges were attributable to negligent and wrongful acts on the part of his surgeon and TLC and which he alleges caused him to undergo further medical treatment and ocular procedures resulting therefrom; and

WHEREAS, John Hollman filed an action in October 2006 in Richland County, South Carolina against TLC and other defendants, which action bore Civil Action No. 2006-CP-40-6027; and

WHEREAS, John Hollman's Complaint was subsequently amended to include causes of actions for gross negligence/negligence, lack of informed consent/battery, breach of contract, and fraud, which causes of action were contained in the Amended Complaint filed in the Court of Common Pleas for Greenville County bearing Civil Action No. 2007-CP-23-2347; and

WHEREAS, Danielle Hollman filed a Complaint asserting causes of action against TLC for, among other things, loss of consortium, in December 2007 in the Court of Common Pleas for Greenville County bearing Civil Action No. 2007-CP-23-8364; and

WHEREAS, after the filing of the above-referenced lawsuits, TLC Vision (USA), TLC Management Services, Inc. and TLC Vision Corp. (Canada) ("Debtors") filed bankruptcy in the United States Bankruptcy Court for the District of Delaware. TLC did not file for bankruptcy but was a wholly owned subsidiary of TLC Vision (USA).

WHEREAS, TLC Vision (USA), TLC Management Services, Inc. and TLC Vision Corp. (Canada) filed a Plan of Reorganization which provided that all medical claimants be limited in payment of claims to available insurance coverage. That plan would have applied to any claims of John or Danielle Hollman as to the parent company of TLC, TLC Vision (USA) Inc. Further, liability insurance coverage of TLC applicable to the Hollman's claims would have been procured and paid for by TLC Vision (USA), Inc.

WHEREAS, it was determined and confirmed by all parties to this release that as to the Hollman claim, no liability insurance coverage existed insuring either TLC or TLC Vision (USA), Inc.

WHEREAS, the Hollmans later filed claims in the United States Bankruptcy Court for the District of Delaware against TLC Vision (USA), Inc., TLC Management Services, Inc. and TLC Vision Corp. (Canada) objecting to Plan Confirmation and asserting proofs of claim against those entities in the bankruptcy proceedings; and,

WHEREAS, as a result of the determination of the lack of insurance coverage applicable to the Hollman's claims, either in Bankruptcy Court or the State action, the Hollman's claims, if proven, would receive no or minimal recovery.

WHEREAS, John Hollman filed an action as putative class representative in the class action currently pending in the United State District Court for the District of South Carolina

styled John Hollman, on behalf of himself and all others similarly situated, Plaintiff, vs. TLC Lasik Centers, et al., C.A. No. 6:10-cv-685; and

WHEREAS, the Hollmans and TLC have reached an agreement under which TLC will pay or cause to be paid to the Hollmans, jointly, the sum of [REDACTED] [REDACTED] thereby fully and finally resolving the Hollmans' claims in the Bankruptcy Court and under which the claims against TLC in the above-captioned actions pending in the Court of Common Pleas for Greenville County and in the United States District Court for the District of South Carolina will be settled and resolved as against TLC; and

WHEREAS, it is a material term of this Settlement that the terms of the settlement shall remain confidential and that there shall be no public announcement of this settlement except to the extent that statements are reasonably required to be made in on-the-record judicial proceedings;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. John Hollman and Danielle Hollman fully and unconditionally release and forever discharge TLC The Laser Center (Institute), Inc., TLC Vision (USA), Inc., TLC Management Services, Inc., TLC Vision Corp., their predecessors, successors and assigns, and their affiliates, parents, subsidiaries, employees, employers, attorneys, agents, servants, independent contractors, clinical directors, officers or directors, shareholders or joint venturers, (hereinafter referred to as "Released Parties") except for Dr. Jonathan Woolfson and Dr. Michael A. Campbell and their respective medical practices who remain defendants in the above-referenced litigations and who are not a party to this settlement, for the consideration of

[REDACTED] in hand, the receipt of which is acknowledged herewith. This full and unconditional release applies to the Hollmans and their personal representatives, successors and assigns. It is the intent of the Hollmans to fully and completely release and forever discharge the Released Parties of and from any and all manner of actions, causes of action, suits, debts, accounts, judgments, claims and demands whatsoever, in law or equity, in tort or in contract, from the beginning of the world to the date hereof, including those resulting from any and all personal injuries and/or economic losses and/or property damages of any type whatsoever sustained by the Hollmans as a result of, or in any way connected with the performance of surgery on John Hollman at TLC refractive surgery centers on July 8, 1999, November 22, 1999 and June 26, 2001 including all prior and subsequent medical, optical or refractive testing or procedures, consultations and office visits, and any and all representations, warranties and guarantees, (including specifically without limitation the "TLC Lifetime Commitment"), medical expenses, treatment, pain and suffering, mental anguish, loss of consortium and any and all other damages to the person or property of the Hollmans resulting from any cause whatsoever, including without limitation all those claims set forth in the lawsuits referred to hereinabove pending in the Court of Common Pleas for Greenville County and in the proofs of claim asserted by the Hollmans in the United States Bankruptcy Court for the District of Delaware Case Number 09-14473, for which damages have claimed the Released Parties to be legally liable, which liability is and was expressly denied. This release is not intended to release or discharge Dr. Jonathan Woolfson, Dr. Michael A. Campbell, individually, Optical Solutions, Inc. or Optical Solutions of Bluffton, LLC ("Unreleased Parties"), and it is the intent of the parties hereto that the litigation against the Unreleased Parties may continue to be prosecuted subject to the terms and conditions herein.

2. In further consideration of the settlement amount recited hereinabove, the Hollmans withdraw their proofs of claim, objections to plan confirmation, and agree to cease and desist from taking any future action against Debtors or any other creditors or parties in the referenced bankruptcy case.

3. The Hollmans shall have the right to continue to prosecute the above-referenced lawsuits in the Court of Common Pleas for Greenville County against the Unreleased Parties and prosecute same to final judgment; provided, however, that no affiliated employees or representatives, past or present of TLC (except Unreleased Parties), no affiliated optometrist or other medical staff or personnel (except Unreleased Parties), past or present, and no other TLC entity shall be joined as defendants in such litigation or any other action or proceeding, and the Hollmans further agree that they shall refrain from taking any discovery, whether by depositions, subpoenas or otherwise, against any such past or present employees, representatives, optometrists, medical personnel, surgeons or affiliates (except for the Unreleased Parties) and the Hollmans agree that the only TLC's employees or staff members that they may call as a witness at the trial of the state actions will be Dr. Derek Van Veen and that the only TLC deponents' testimony that they shall offer at the trial of the case is the deposition testimony of Dr. John Potter.

4. The Hollmans further agree that they shall withdraw their claims and John Hollman shall forever withdraw as class representative and member of the putative class action currently pending in the United States District Court for the District of South Carolina styled John Hollman, on behalf of himself and all others similarly situated, Plaintiff, vs. TLC Lasik Centers, et al., C.A. No. 6:10-cv-685. John Hollman shall either dismiss the putative class

action or cause an amended complaint to be filed to substitute another person for him as class representative within twenty-one (21) days.

5. The Hollmans agree, as a consideration and inducement for this Settlement Agreement, to satisfy all liens of any type whatsoever that might exist as a result of injuries alleged. The Hollmans represent and warrant that any and all subrogation interests and lien interests have been or will be extinguished upon the execution of this agreement, that no claims for Medicare or Medicaid benefits have been made as a result of the alleged damages and that no claims for such benefits are expected to be paid in the future. The Hollmans agree to defend, hold harmless and indemnify TLC for and against any and all claims, demands, suits, causes of action or judgments of any type whatsoever which have been or may be brought by any third parties asserting an interest in the settlement proceeds paid hereunder, including any action brought by any third party asserting any type of medical lien, Medicare lien, Medicaid lien, medical assignment, subrogation claim, Worker's Compensation lien, or any other lien, assignment or claim of any type whatsoever, and the Hollmans agree that they will indemnify TLC, its successors, assigns and attorneys for any amounts paid by them in connection with the assertion of any third-party claims whether these amounts are paid for settlement, verdict, defense costs, attorneys fees or otherwise.

6. The Hollmans represent and warrant that to their knowledge no other person or entity has, or has had, any interest in the claims, demands, obligations or causes of action referred to herein. They further represent and warrant that to their knowledge they have the sole right and exclusive authority to execute this settlement agreement and receive the sums specified herein and that they have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to and being

resolved in connection herewith. They further represent and warrant that they possess the legal capacity to enter into this settlement agreement.

7. This Agreement shall be deemed to be jointly drafted between the parties hereto and the fact that one party initiated the drafting of same shall not be considered as evidence in the event of any dispute concerning construction of its terms. In entering this Settlement Agreement, the Hollmans represent that they have relied upon the advice of attorneys of their choosing concerning the legal and income tax consequences of this Agreement, that the terms of the Agreement have been completely read and explained to them and that the terms are fully understood and voluntarily accepted.

8. The parties hereto agree that this is the complete agreement among the parties, that no agreements or understandings have been made among the parties except as expressed herein, that the terms of this document are contractual in nature and not a mere recital and that all provisions and terms hereof shall be binding on the parties hereto, their subrogees, representatives, successors, heirs, assigns, officers, employees, agents, servants and attorneys.

9. The parties hereto expressly recognize and agree that the payments made hereunder are in partial settlement and satisfaction of disputed claims and that TLC, its employees, officers, directors and related entities admit no liability in any respect, that the payments made hereunder are not intended as nor should they be construed as an admission of liability and that all liability was and is denied.

10. The undersigned agree that this Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of South Carolina.

11. The Hollmans further agree, as a material consideration and inducement to the other parties for this compromise settlement, that they and their counsel will keep the terms,

amounts and reasons for entering into this Settlement Agreement absolutely confidential, other than the fact that the case was settled, and they will not discuss, reveal or publicize any information concerning the settlement to anyone other than financial or legal advisors as may be necessary to carry out financial or legal affairs, provided, however, that the Hollmans shall inform those advisors that the settlement is confidential and that the release of any information about the terms and conditions thereof is prohibited. Notwithstanding any other provision of this Agreement, it shall not be a breach of the confidentiality provisions of this agreement for any party or their counsel to state that the dispute which is the subject of this Agreement has been settled and that the terms of the agreement are confidential. Subject to the limitations of the State Court Protective Order and the terms of this Agreement as to the settlement terms, it is agreed that nothing contained within these confidentiality provisions shall prevent the Hollmans from providing information and/or witness testimony concerning the facts and circumstances of the LASIK surgeries performed on John Hollman or the pre or post surgery events and/or the Hollman's injuries. The Hollmans acknowledge that this confidentiality requirement is a material term of the settlement.

12. The parties agree to cooperate fully, execute any and all supplemental documents, and take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement. This Agreement may be executed in multiple counterparts. Facsimiles and electronically scanned copies shall be valid as originals.

13. The parties agree that, if any part or parts of this Agreement are held to be invalid or unenforceable, the Court shall nevertheless uphold and enforce the remaining provisions and construe the invalid portion(s), if any, as severable from the remaining terms of the Agreement.

14. The parties further agree that TLC Vision (USA), Inc., TLC Management Services, Inc. and Vision Corp. (Canada) and other related entities are expressly intended to be, and are, third-party beneficiaries with rights to enforce this Agreement.

15. Pursuant to the terms of the Protective Order entered in the State Action on November 14, 2008, each party to the State Action receiving Confidential Health Information shall return or destroy all copies such Confidential Health Information to the producing party in accordance with the Protective Order. At the conclusion of the State action, counsel for the Hollmans shall comply with the terms of the Protective Order as it exists or as modified by subsequent Court Order by returning all such discovery materials including all records of patients other than John Hollman and the Complex Case and Advocacy databases, and certifying that the data, any hard copies, or any work-product containing names of patients and private healthcare information (hereinafter "Protected Information"): (1) Has not been disseminated to any third parties, including clients, consultants, co-counsel, or experts; and, if it has, identifying all third parties, in what form the information was disseminated and what measures were taken to assure return and destruction; (2) Has been destroyed (in the case of hard-copies) and permanently deleted (e-data) from all electronic storage devices that counsel and the plaintiffs control or have access to; and (3) Will not be used for any purpose, except those as permitted subject to Court Order. However, nothing herein precludes the Hollmans from complying with the terms of any order issued in the Federal Class Action or precludes counsel to request the production of Protected Information in the pending class action under such terms and protective orders as the federal courts may require. Further, nothing herein precludes TLC from filing motions or petitions with the Circuit Court to modify or vacate the applicable orders to seek return of Protected Information at an earlier date.

Witnesses:

Maia Herman

John Hollman
John Hollman

Maia Herman

Maia Herman

Danielle Hollman
Danielle Hollman

MARIA Herman

TLC The Laser Center (Institute), Inc.

By: _____

Title: _____

EXHIBIT E

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

TLC Laser Eye Centers (Piedmont/
Atlanta) LLC; TLC The Laser
Center (Institute), Inc.)

IN RE:)

John Hollman,)

Civil Action No. 2007-CP-23-2347

Plaintiff,)

vs.)

ORDER

Dr. Jonathan Woolfson, indivi-
dually; Dr. Michael A. Campbell,
individually; Optical Solutions, Inc.;)
and Optical Solutions of Bluffton,
LLC,)

Defendants.)

Danielle Hollman,)

Civil Action No. 2007-CP-23-8364

Plaintiff,)

vs.)

Dr. Jonathan Woolfson, indivi-
dually; Dr. Michael A. Campbell,
individually; Optical Solutions, Inc.;)
and Optical Solutions of Bluffton,
LLC,)

Defendants.)

This matter came before the court on a Motion by TLC Laser Eye Centers
(Piedmont/Atlanta) LLC; TLC The Laser Center (Institute), Inc. (hereinafter referred to as TLC)
for an Order and Rule to Show Cause, To Modify Protective Order, and Sanctions. These

Handwritten initials

motions were filed after TLC was dismissed from the present lawsuit pursuant to a settlement agreement. By agreement of the parties at the hearing, the caption has been changed to more accurately reflect TLC's status as a non-party. TLC contends it is entitled to file this motion based on paragraph 15 of the Settlement Agreement which permits a petition by TLC to modify or vacate the existing Protective Order filed in this litigation. In response to TLC's motion, the Plaintiffs, John and Danielle Hollman (hereinafter referred to as Hollman) filed a Motion to Enforce the Settlement Agreement, including a request for sanctions and a Motion for Sanctions based on TLC's alleged spoliation of evidence. A hearing on all issues was held on July 26, 2010 at which time all parties presented extensive oral argument.

Based on a review of all evidence submitted and the arguments of the parties, the Court makes the following rulings:

1. The Protective Order filed November 14, 2008, is clear and unambiguous in its definition of the information to be protected and does not need to be modified;
2. The Settlement Agreement permits TLC to request modification of the Protective Order following settlement, but no post settlement events exist that would permit or require the modifications sought by TLC and, therefore, the request is premature; and,
3. The parties' cross motions for sanctions need not be decided at this time and should be deferred until the conclusion of this case.

PROTECTIVE ORDER

In order to more fully understand this Court's Order, a brief review of the extensive history of this litigation as it relates to the filing of the Protective Order is necessary. Hollman originally filed a medical malpractice suit but later amended to include allegations of fraud and breach of contract. The fraud allegations contended that the Defendants, inclusive of TLC, had

intentionally deceived Hollman to prevent his discovery of his malpractice claim until the expiration of the statute of limitations. Initial discovery revealed that Hollman had been placed into TLC's Complex Case system and Advocacy log. Hollman sought discovery in connection with TLC's formation and use of Complex Case and Advocacy and the data stored therein including Hollman's data as well as that of other patients. TLC objected, claiming that the Complex Case system and Advocacy log as well as the data were prepared in anticipation of litigation and, therefore, work product. TLC did not make any other objections to discovery and this Court overruled the anticipation of litigation position. At the time these matters were heard, the Court conducted an in-camera review of the database collective under Complex Case and Advocacy and concluded that it was discoverable but contained the confidential health information of other patients which needed to be protected as permitted by existing HIPAA regulations.¹ The concern, as enunciated by this Court and confirmed by the parties, was that these patients' confidential health information needed protection from dissemination to the public. This was the purpose and scope of the Protective Order.

Paragraph 2 of this Order defines "confidential health information" in clear and unambiguous terms. The term is defined as "any information or document supplied that identifies an individual" inclusive of "protected health information" as defined by HIPAA in 45 CFR Parts 160 and 164. Reference to these sections confirms that for information to be "confidential health information" it must include both the health information and the identity of the patient.² The conduct of the parties following imposition of this Protective Order confirms

¹ In addition to the database of Complex Case and Advocacy, the Court also permitted a review of the medical records of TLC patients who were found within these systems. These records, as well as the database, mandated a Protective Order.

² 45 CFR §160.103

"Individually identifiable health information" is defined as follows:

this interpretation. All litigants filed subsequent briefs and engaged in discovery depositions which extensively referred to health information contained either in the collective databases or individual medical records or patients without referring to the identity of those patients. The use of this information in this manner was not prohibited by the Protective Order and such use did not constitute a violation. As an example, TLC contended that Hollman violated the terms of the Protective Order by filing a Federal Class Action lawsuit wherein reference to the Complex Case and Advocacy systems and the data contained therein was extensively made. Upon the mutual request of both parties, this Court has reviewed both the original and amended Federal Class Action complaints which were attached as Exhibits to TLC's motions. I find no violation of the terms of the Protective Order. This finding is based on the fact that nothing contained within those documents identifies patients and health information such that the combination of the two would violate a patients privacy rights or be considered Confidential Health Information as defined in the Protective Order or HIPPA. Both parties did present to the Court specific instances in which, through inadvertence, confidential health information (patient identity included) was disclosed. In each instance, the violation was discovered and corrected and neither party has produced evidence of harm which would require the imposition of sanction. All of the

"Individually identifiable health information" is information that is a sub-set of health information, including demographic information collected from an individual, and:

(1) Is created or received by a healthcare provider, health plan, employer or healthcare clearing house; and

(2) Relates to the past, present or future physical or mental health or condition of an *individual*; the provision of healthcare to an *individual*; or the past, present or future payment for the provision of healthcare to an *individual*; and

(i) That *identifies the individual*;

violations claimed to have occurred pre-dated the Settlement Agreement and, in accord with the Court's further ruling, would not constitute a predicate upon which TLC could request a modification of the Protective Order.

SETTLEMENT AGREEMENT

TLC contends that the Settlement Agreement permits it to move for an enforcement and modification of the Protective Order post settlement. It acknowledges that the present motion is based solely on events that preceded settlement and, in fact, were before the Court on TLC's Motion for Sanctions which was pending at the time of settlement. As a result of the settlement, TLC dismissed this motion and, correspondingly, Hollman dismissed motions for sanctions due to alleged spoliation of evidence by TLC. After the Settlement Agreement and TLC's dismissal from the action, TLC essentially re-filed its pre-settlement motion changing it to request modification of the Protective Order as it asserts is permitted under the terms of the Settlement Agreement.³

TLC and Hollman entered into a settlement agreement which resulted in TLC's dismissal from this litigation. Within the terms of this agreement issues with regard to the Protective Order are fully addressed in Paragraph 15. This paragraph specifically references language with Protective Order that provides for a return of "confidential health information" at the conclusion of the pending State Court litigation (Protective Order specifically requires such action within sixty (60) days of the conclusion of litigation, inclusive of appeals). Paragraph 15 also specifically references the pending Federal Class Action and provides that nothing prevents Hollman from being bound by orders promulgated in that litigation. Also, Paragraph 15

³ Hollman has sought sanctions for what it contends is an improper motion based on TLC's alleged deception of dismissing the pre-settlement sanction motion to induce settlement and then re-instituting it after it received settlement protection. As will be addressed later herein, the Court defers ruling on this issue until the conclusion of this case.

recognizes the right of the litigants in the class action to request the production of confidential health information in that case which would further support this court's interpretation of the terms of the Protective Order. Finally, paragraph 15 extends to TLC the right to seek modification or vacation of the Protective Order. TLC contends this gave it the right to essentially re-file its pre-settlement motion for sanctions and/or to use the pre-settlement conduct of Hollman to claim a right of modification of the Protective Order to require immediate return of the database. The Court has already dealt with the allegations of violation of the Protective Order in its rulings on the interpretation of the term "confidential health information". However, to determine if TLC has grounds for modification under the terms of the Settlement Agreement, paragraph 15 requires this Court's interpretation. The language, when viewed in its entirety, is clear and unambiguous. TLC's right to request modification must be based on events or conduct that occurs after the entry of the Settlement Agreement. In that regard, its present Motion is premature and, based on allegations, not proper for modification. For these reasons, TLC's Motion for Modification is denied.

SANCTIONS

Both parties have moved for Sanctions. TLC contends that Hollman's pre-settlement conduct in violating the Protective Order requires sanctions. Hollman contends that TLC's pre-settlement conduct in spoliating the evidence and post settlement conduct in bringing the motion for modification mandates the imposition of sanctions. The Court retains the inherent power to sanction parties before it for improper conduct. This is true, both as to Hollman and TLC. However, consistent with the courts rulings as stated above, this Court declines to address the issues of sanctions at this time. The Court specifically retains jurisdiction of these matters and will address issues of sanctions at the conclusion of this pending litigation.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED, that:

1. The Protective Order entered into on November 14, 2008, governs the use of "confidential health information" which is defined as health information inclusive of patient identity. The use of discovery, including documents and databases that reveals health information but not patient identity is not a violation of the Protective Order;
2. TLC's Motion for Modification of the Protective Order is denied;
3. TLC's Motions for Sanctions and Hollman's Motions for Sanctions are retained by this Court to be addressed, if necessary, at the conclusion of the pending litigation.

IT IS SO ORDERED.


Judge, Thirteenth Judicial Circuit

Greenville, South Carolina
Dated: August 17, 2010

EXHIBIT F

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS
3
4 John Hollman,)
5 Plaintiff,) TRANSCRIPT OF RECORD
6 -vs-) 2007-CP-23-2347
7 Dr. Jonathan Woolfson,)
8 et al.,)
9 Defendants.) November 23, 2010
10) Greenville, South Carolina

11 B E F O R E:
12
13 HONORABLE EDWARD W. MILLER, JUDGE
14

15 A P P E A R A N C E S:
16
17 DOUGLAS F. PATRICK, ESQ.
18 Attorney for Plaintiff Hollman
19
20 JAMES W. FAYSSOUX, JR. ESQ.
21 WILLIAM W. WILKINS, ESQ.
22 Attorneys for Plaintiff Dickerson
23
24 W. HOWARD BOYD, JR., ESQ.
25 CHRISTOPHER B. MAJOR, ESQ.
 RONALD G. TATE, JR., ESQ.
 Attorneys for the Defendants

Margaret A. Woods
Circuit Court Reporter

1 gonna be in federal court over this database, it might've been
2 a whole different kettle a fish.

3 THE COURT: Well I I would assume that the plaintiff's
4 counsel didn't anticipate they'd be in federal court either
5 until they actually got the database, examined it and
6 discovered that they thought they had a a cause of action
7 which might have filed to get there so no one anticipated it
8 at the time the protective order was issued because I presume
9 it was issued bring prior to the disclosure of the database,
10 correct?

11 MR. BOYD: It was.

12 THE COURT: Okay. So I, ya know, nobody's -- well first,
13 I -- anything else anybody wanna say?

14 (No response.)

15 THE COURT: Okay. First thing I wanna do is compliment
16 the attorneys, all the attorneys involved for their passionate
17 advocacy on behalf of their clients and as well-argued,
18 well-reasoned, they are presenting their positions with
19 intelligence and passion and in some cases an incredible
20 baritone, we'll acknowledge that on the record.

21 (Laughter.)

22 THE COURT: So having said that and and and certainly the
23 interest of their clients are very desperate in this matter
24 and which explains some of the passion that's involved so
25 having said that I am going to deny your 59(e) motion. I I've

1 gone through the protective order again, I find it to be
2 narrow -- narrowly focused on disclosure on on protection of
3 disclosure confidential health informations and that is
4 defined in paragraph 2 of the protective order pursuant to the
5 what's commonly known as "HIPAA" or the "Health Insurance
6 Portability and Accountability Act of 1996". I would like to
7 and and in light of the fact I will put on the record that and
8 if you disagree, Mr. Boyd or Mr. Tate, please tell me, that
9 that they are withdrawing request for sanctions with respect
10 to attorneys other than Mr. Patrick and Mr. Lewis and they
11 have confirmed to me that they will not in the future seek
12 sanctions for any of the issues that have been raised in this
13 hearing, would that be a correct statement?

14 MR. BOYD: That's correct, Your Honor.

15 THE COURT: Okay, and I am going to find that sanctions,
16 again I reiterate, would not be appropriate with respect to
17 Mr. Patrick and Mr. Lewis because I don't find that there has
18 been a violation of the protective order. Anything else we
19 need to talk about?

20 MR. PATRICK: Your Honor, one one other matter. I
21 referenced the database on Mr. *Dickerson* and I I think probly
22 as an overabundance of caution since it's an in camera
23 proceeding I'd like to put this into the record, this court
24 would not have this, since we referenced what Mr. *Dickerson's*
25 information was.

1 THE COURT: Okay, and I'd ask ya'll to prepare a brief
2 order, it doesn't have to be terribly long, to submit to the
3 Court which would include the denial of the 59(e) motion and
4 and the fact and the agreement of defense counsel not to seek
5 sanctions with respect to any of the, as we outlined here in
6 the hearing and with respect to Mr. Patrick and Mr. Lewis I
7 stand by my prior or I find that sanctions are not
8 appropriate.

9 MR. BOYD: That that's fine, Your Honor. We would simply
10 ask that Mr. Patrick and Mr. Lewis faithfully reflect in the
11 order what the Court ruled and and, uh, ---

12 THE COURT: Oh, I'm sure they will.

13 MR. BOYD: --- avoid the seven, eight-page dissertation
14 we got the last time. Thank you, Your Honor.

15 THE COURT: Alright, and of course share the proposed
16 order with Mr. Boyd first, he can interpose any objections and
17 to the wording of the order that he would like and then if
18 there's a -- ya'll can't agree then I'll be happy to review it
19 and make a decision, okay?

20 MR. BOYD: Thank you, Your Honor.

21 MR. PATRICK: And for the record that's what we did last
22 time, Your Honor, ---

23 THE COURT: Right.

24 MR. PATRICK: --- I I'm not sure if that parting shot was
25 just one more impropriety by ---

EXHIBIT G

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

2011 MAR 22 PM 2:54

C.A. No. 2010-CP-23-9954

Charles Benjamin "Ben" Dickerson and
Gale M. Dickerson,

FILED-CLERK OF COURT
GREENVILLE CO SC
PAUL R. WICKENS

Plaintiffs,

vs.

FIRST AMENDED
COMPLAINT
(Jury Trial Demanded)

TLC Corporate

TLC The Laser Center (Institute), Inc., f/k/a
TLC The Laser Center (Piedmont), Inc.,

TLC Physicians

Jonathan Woolfson, M.D., Jeffery Machat, M.D.
Derek P. Van Veen, O.D., Cynthia Wike
Yeager, O.D., John Potter, M.D., and David
Kohler, O.D.,

Defendants.

The Plaintiffs, Ben Dickerson and Gale Dickerson, by and through their counsel,
complaining of the Defendants herein, respectfully allege and show unto this Honorable Court as
follows:

JURISDICTIONAL FACTS

1. At all times relevant hereto, Plaintiffs were citizens and residents of Anderson County, South Carolina.
2. The Defendant TLC The Laser Center (Institute), Inc., f/k/a TLC The Laser Center (Piedmont), Inc. (hereinafter "TLC") is, upon information and belief, a corporation authorized to do business in the state of South Carolina, and at all times relevant hereto, was doing business in Greenville, South Carolina.

authorized to do business in the state of South Carolina, and at all times relevant hereto, was doing business in Greenville, South Carolina.

3. Defendants Kohler, Van Veen, Yeager, and Potter were treating and/or monitoring physicians/optometrists of the Plaintiff and upon information and belief and citizens and residents of Greenville, South Carolina and some other state within the United States.

4. Defendants Woolfson was the surgeon who performed the initial LASIK surgery on the Plaintiff and upon information and belief is a citizen and resident of Atlanta, Georgia. Defendant Machat performed a subsequent surgical enhancement on the Plaintiff and upon information and belief is a citizen and resident of Ontario, Canada. Furthermore, Defendant Machat participated in and directed medical care performed within the State of South Carolina.

FACTUAL GROUNDS FOR RELIEF

5. Scientific discoveries concerning the use of lasers to facilitate and improve eye surgery revolutionized surgical techniques that allowed for the correction of visual acuity problems.

6. As a result, ophthalmologist surgeons were able to offer elective surgeries to improve a patient's vision and exclude the need for prescription glasses or contact lenses, but because this surgery via laser was done on the outside of the cornea, it was painful and had immediate potential side effects that limited its use to those patients with more serious eye disorders/problems.

7. As technology improved, a laser technique known as LASIK for eyesight correction became available first in other parts of the world and then subsequently in the United States.

8. LASIK surgery combined the use of a laser to re-shape the cornea with a process for peeling back a layer of the cornea so that the laser could perform a correction within the middle of the cornea rather than on the outside. The result was a laser eye correction surgery (LASIK) that was relatively pain free and had minimal immediate side effects.

9. This opened up the potential for elective eyesight corrective surgery to a large class of people which also greatly increased the financial benefits to those people and entities offering such service.

10. TLC Vision Corp, through its predecessor corporation founded in Canada, moved into the United States when LASIK surgery was approved by the FDA and ultimately TLC Vision Corp, a United States corporation organized and existing under the laws of one of the states other than South Carolina, was founded to provide LASIK surgery and attendant eye care to citizens of the United States.

11. In order to facilitate the delivery of LASIK surgery and eye care services, TLC Vision Corp set up TLC LASIK Surgery Centers (referred to as TLC LASIK Centers) in various locations within the United States.

12. Initially, each TLC LASIK Center was separately incorporated within the state in which it conducted LASIK surgery; thereafter, TLC Vision Corp created TLC Laser Eye Centers (Institute), Inc., a Delaware corporation and merged a substantial number of the individual TLC LASIK Surgery Centers into that single corporate entity.

13. To conduct the business of providing LASIK surgery and attendant eye care, TLC LASIK Centers hired licensed optometrists and ophthalmologist surgeons.

- i) By performing surgery which should not have been performed because of the thinness of Plaintiff's corneas;
- j) In failing to obtain informed consent from Plaintiff to perform the surgeries by:
 - 1) not accurately describing the surgical procedures Plaintiff was to undergo;
 - 2) not properly advising the Plaintiff of the conditions or results caused by the surgery;
 - 3) not recommending appropriate medical treatment following surgery;
 - 4) not advising Plaintiff that he faced a significant risk of visual problems as a result of the surgery, including halos, double vision, ghosting, smearing, and starbursts;
 - 5) not advising the Plaintiff that he faced a significant risk of developing ectasia;
 - 6) not advising Plaintiff that the surgical procedure Plaintiff was to undergo was contraindicated because of the shape of the Plaintiff's eyes;
 - 7) not advising Plaintiff that the surgical procedure Plaintiff was to undergo was contraindicated because of the Plaintiff's thin cornea; and
 - 8) not advising the Plaintiff of the risks of multiple LASIK surgeries.
- k) In such other and further particulars as may be shown in the attached affidavits and through discovery in this case.

41. Defendants reviewed Plaintiff's medical records in 2000 which confirmed that Plaintiff suffered from ectasia, and Defendants had a duty to advise Plaintiff of his condition, inform him of treatments available to mitigate the damage, and aid him in obtaining treatment to correct the condition or otherwise mitigate his damages.

42. This decision not to initially inform the patient of this condition was deliberate and made with no regard to patient safety.

43. Defendants reviewed Plaintiff's medical records in 2005 which again confirmed that Plaintiff suffered from ectasia in 2000 and had a duty at that time to advise Plaintiff of his

condition, inform him of treatments available to mitigate the damage, and aid him in obtaining treatment to correct the condition or otherwise mitigate his damages.

44. Defendants breached their duty to Plaintiff and were negligent, grossly negligent, and reckless by failing to inform Plaintiff of the surgically-created condition and falsely informing Plaintiff that Defendants expected certain treatments to be approved which would correct his condition or otherwise mitigate his damages, all for the purpose of delaying the matter beyond the statutes of limitation and repose or to otherwise avoid liability.

45. Defendants' breach in each of the aforementioned particulars was negligent, grossly negligent, careless, and reckless in their failure to exercise that degree of knowledge, skill and care customarily exercised by similarly-trained healthcare providers under the same or similar circumstances. Defendants' care and treatment of Plaintiff Ben Dickerson did not conform to the applicable standard of care required of such professionals.

46. As a direct and proximate result of Defendant's acts and/or omissions, Plaintiffs have suffered damages in an amount to be determined by the jury.

FOR A SECOND CAUSE OF ACTION
(Loss of Consortium)

47. Each and every allegation set forth above is fully incorporated herein.

48. Plaintiffs Ben Dickerson and Gale Dickerson were at times relevant to this action, and are presently, husband and wife.

49. As a direct and proximate result of the acts and/or omissions of Defendants, Plaintiff Ben Dickerson sustained severe and permanent injuries, thereby causing Plaintiff Gale Dickerson the loss of comfort, services, companionship, and society of her husband.

FOR A THIRD CAUSE OF ACTION
(Fraud/Negligent Misrepresentation)

50. Each and every allegation set forth above is fully incorporated herein.

51. The decision to hide the Plaintiff's actual diagnose was a conscious one made exclusively to protect corporate assets and done at the absolute peril of the patient. This conduct is both criminal and shameful and continues to this day. By 2002, the named Defendants recognized that a substantial number of patients were affected with surgery induced vision injuries emanating from the breach of standard of care in the performance of LASIK surgery on those with substantially similar LASIK surgical contraindications.

52. TLC LASIK Centers, TLC Clinical Directors, and TLC LASIK Surgeons recognized the significant risk these patients posed to their respective financial assets and, in response, developed a plan to avoid responsibility for their respective acts of malpractice.

53. This plan of institutional and individual fraud and deception included the following:

- a) Creation of a system to identify these patients subjected to substandard LASIK surgeries without informing the patient of his/her condition or cause;
- b) Use of that system to monitor the patients' condition without the knowledge and/or consent of the patient.
- c) Maintenance of a separate file for each patient outside of the typical medical records of the patients for purposes of identification, monitoring and/or control of these patients and the risk posed to the Defendants' assets;
- d) Delay both in treatment of and discovery by the patient of his/her medical conditions;
- e) Communication of false representations to the patients concerning the use of new LASIK equipment and surgeries to enhance or correct vision in the patients when the Defendants knew the patients were not candidates for LASIK surgery;

- f) The periodic scheduling, canceling and rescheduling of the LASIK surgery described above in order to create delay and buy time until the expiration of patients' rights;
- g) Misrepresentation of the patient true medical condition and cause;
- h) Withholding of the information and diagnosis of known surgery induced eye condition from the patient;
- i) Use of the Lifetime Commitment Contract to cover costs of treatments, examinations, glasses, contact lenses and medicines as a method to keep patients at TLC facilities and physicians, along with representations that such conduct would continue for the life of the patient.
- j) Predetermined decision by Defendants that the LTC contract benefits described above would be withdrawn or discontinued when patients' risk to the Defendants expired.
- k) Creating and perpetuating a separate file on the patients which included medical diagnosis, treatment options and risk information not contained in the patients' medical records;
- l) Ongoing efforts by the Defendants to keep patients at TLC facilities and physicians by discouraging outside consultations or physician intervention;
- m) Obtaining releases for nominal consideration for some patients after the expiration of the patients' rights, with said expiration caused by the actions of the Defendants.
- n) Intentional misrepresentation of the patients' true medical conditions through misleading diagnosis and dissemination of medical information and advice and/or the omission of necessary medical information, advice and/or diagnosis.

54. With regards to Ben Dickerson, the Defendants:

- a) Created a separate file of medical information and used this file to communicate information about him without his knowledge or consent and for purposes contrary to his best medical treatment and patient rights;
- b) Failed to disclose his medical diagnosis and cause until after expiration of his right to bring a claim and further specifically hid the actual diagnosis of ectasia thereby exacerbating the disease and causing additional injury;

- c) Failed to treat his known surgery induced condition in order to delay discovery until the expiration of his right to bring a claim;
- d) Advised to Ben Dickerson that he was a LASIK surgery candidate when they knew such representation was false;
- e) Repeated scheduling, canceling and rescheduling of Ben Dickerson for LASIK surgery upon representing that new technology existed and without disclosing their real reasons for such tactics and, in particular, without disclosing to him that he was not a candidate for LASIK surgery;
- f) Failed to disclose Ben Dickerson's correct medical condition to him and placing erroneous or misleading medical information in his medical records;
- g) Paid for cost of medical treatment, glasses and contact lenses and agreeing to pay for travel and associated expenses under the Lifetime Commitment Contract program while repeatedly representing that these types of benefits would continue for life;
- h) Following the expiration of Dickerson's right to pursue a claim, discontinuing his lifetime commitment benefits and he was no longer viewed as a risk to company assets.
- i) Forever hiding his true diagnosis in an effort to mitigate potential malpractice suits.
- j) Illegally and without the patient's permission, disseminating his medical records to physicians and risk managers throughout the county in furtherance of the fraud and scheme.

55. In order to further this plan of institutional fraud and deceit, the named Defendants utilized an existing system created and used by all TLC LASIK Centers, all TLC Clinical Directors, and all TLC Management, called the Complex Case System.

56. The original purpose of the Complex Case System was to provide additional diagnostic and treatment options for the TLC patients with post-surgery complications. The Complex Case System required patient consent, and all actions were part of the patient's medical care and records.

57. The named Defendants used Complex Case forms to gather medical data and continue updating patient conditions without Ben Dickerson's consent and/or knowledge, thereby creating a separate file and database in which patient medical information was surreptitiously placed so the Defendants could freely monitor, control, and delay without his knowledge.

58. In addition, in order to manage certain patient risks that required more aggressive measures or for which the Defendants believed a threat of litigation might exist, the Defendants created an Advocacy Program where active intervention with the patient could occur without disclosing to the patient its true purpose. This permitted integration of patient medical information for improper purposes and internal discussion and collaboration about patients was for purposes designed to harm rather than help the patients.

59. For patients still under active treatment, monitoring, and/or control, the Defendants would, after the expiration of claim rights, nullify or void the Lifetime Commitment Contract, advise the patient of his/her condition, advise the patient that no claim could be brought and based on those circumstances offer nominal settlements and/or close the separate files and discontinue monitoring of the patient.

60. All actions by the Defendants were designed to hide the patients' (inclusive of Plaintiff) true conditions and to manage their expectations until Defendants believed they no longer posed a risk to their assets because of the expiration of the statute of limitation governing the patient's claim. The Defendants fraudulently and/or negligently misrepresented facts to induce Plaintiff to use their laser facility. Specifically:

- a) Defendants represented to the Plaintiff that they had established a standard setting policy to ensure continued ocular health care throughout the lifetime of the patient;

- b) Those representations were false and never intended to be upheld;
- c) The aforementioned representations were material to the Ben Dickerson's decision to obtain LASIK surgery and establish a physician-patient relationship with the Defendants;
- d) Defendants knew that they would never honor the commitment for lifetime care, or in the alternative were reckless in promising to do so;
- e) Defendants knew that patients were relying on those representations in making their decision to obtain LASIK surgery from the Defendants and were unaware of the falsity of those representations;
- f) As a result, Ben Dickerson did in fact rightfully rely on the Defendants' representations the decision to choose their respective surgery care centers and physicians; and finally,
- g) Plaintiffs proximately suffered great physical and economic damage as a result of the Defendants' fraudulent misrepresentations.

In furtherance of their efforts to hide the underlying malpractice, the Defendants:

- a) Represented to the Ben Dickerson that he had good ocular health, that new equipment and procedures were being approved in the immediate future which would resolve their condition and further concealed that the various visual disorders were surgically created;
- b) That those representations were false and made with the specific intent to placate and deceive the Plaintiff so to prevent him from seeking legal redress;
- c) The aforementioned representations were material to his decision not to seek intervening medical treatment or seek legal remedies;
- d) Defendants knew that they were harming the Plaintiff by misrepresenting or concealing his medical condition, or in the alternative were reckless in doing so;
- e) Defendants knew that the Plaintiff was relying on those representations in making his decision to remain in the Defendants medical care and not seek legal remedies and that he was unaware of falsity of the representations;
- f) As a result, the Plaintiff Ben Dickerson did in fact rightfully rely on those representation and chose not to seek intervening medical treatment or seek legal remedies; and finally,

- g) Plaintiffs Ben and Gale Dickerson proximately suffered great physical and economic damage as a result of the Defendants' fraudulent misrepresentations.

FOR A FOURTH CAUSE OF ACTION
(Civil Conspiracy)

50. Each and every allegation set forth above is fully incorporated herein.
51. That the above named Defendants, as set forth in detail in the preceding paragraphs, combined and conspired together for the purpose of injuring the Plaintiffs, thereby causing special damages, including but not limited to loss of vision, increased medical expenses, additional pain and suffering caused by the delay in notification of his actual diagnosis and inoperable conditions of his eyes.

FOR A FIFTH CAUSE OF ACTION
(Unfair Trade Practice Violations)

52. Each and every allegation set forth above is fully incorporated herein.
53. Defendant sought to profit, and did profit, by performing surgery on Plaintiff Dickerson when it was known, or would have been known through the exercise of reasonably care, that Plaintiff was not a candidate for surgery.
54. Post-surgery, Defendants engaged in deceitful conduct by concealing the surgically-created condition and falsely informing Plaintiff that Defendants expected certain treatments to be approved which would correct his condition or otherwise mitigate his damages, all for the purpose of delaying the matter beyond the statutes of limitation and repose or to otherwise avoid liability. Further, that the Defendants lied, misrepresented and actively concealed the Plaintiff's actual diagnosis in an attempt to protect corporate assets and hide their initial malpractice.

55. Defendant negligently, carelessly, recklessly, willfully, and/or wantonly engaged in unfair or deceptive acts in the conduct of trade or commerce which are prohibited by S.C. Code Ann. § 39-5-20, et seq. ("South Carolina Unfair Trade Practices Act").

56. Defendants' unfair or deceptive acts are capable of repetition and affect and concern the public interest.

57. As a direct and proximate result of Defendant's unfair or deceptive acts, which are in violation of the South Carolina Unfair Trade Practices Act, Plaintiffs have suffered damages in an amount to be determined by the jury in addition to treble damages and attorney's fees as authorized by statute.

FOR A SIXTH CAUSE OF ACTION
(Breach of Contract)

58. Each and every allegation set forth above is fully incorporated herein.

59. The Defendant entered into a contract with Plaintiff, referred to as the "TLC Lifetime Commitment" ("Commitment"). The Plaintiff was eligible for, and qualified for, the TLC Lifetime Commitment. Pursuant to the terms of the Commitment, TLC would:

...stand behind your vision results for life because we have confidence in our surgeons and in our stability of our patient's long-term results. Our intention is to help you maintain the best possible vision throughout your life.

60. In addition to the written terms of the Commitment, Defendant orally informed Plaintiff that it would "stand behind him" and that "new technology may help him in the future".

61. The Defendant breached its commitments made to Plaintiff, and the implied covenant of good faith and fair dealing, by failing to stand behind his vision results for the lifetime of the Plaintiff and by Defendant's conduct otherwise referenced in this Complaint.

62. Upon information and belief, the costs for the treatment of Plaintiff's condition, including corneal transplants and lifetime follow-up care will be extremely expensive and costly to Plaintiff.

63. As a direct and proximate result of Defendant's breach, Plaintiffs have suffered damages in an amount to be determined by the jury.

DAMAGES

64. Each and every allegation set forth above is fully incorporated herein.

65. As a direct and proximate result of Defendants' conduct as described herein, Plaintiffs have been injured and have suffered, and will in the future suffer, physical injury, mental and emotional distress, loss of income and earning capacity, and loss of enjoyment of life. Plaintiff Ben Dickerson has required and will in the future require treatment for the loss of his visual acuity, including, but not limited to, repeated trips to eye specialists, treatments, and corneal transplants.

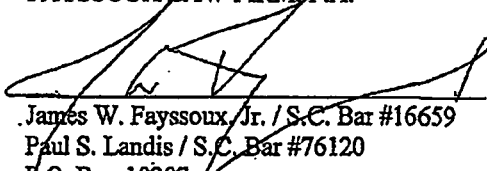
66. As a further direct and proximate result of the Defendants' conduct, Plaintiff Ben Dickerson has incurred medical expenses and will incur medical expenses in the future.

67. As a further direct and proximate result of the Defendants' conduct, Plaintiff Ben Dickerson has lost income and has a diminished earning capacity. Plaintiff will lose future income and earning capacity because of his condition.

68. Plaintiffs accordingly are entitled to recover compensatory damages from the Defendants in an amount to be proven at trial.

69. Plaintiffs are also entitled to recover punitive damages from the Defendants in an amount to be proven at trial.

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Attorneys for Plaintiffs

March 22, 2011
Greenville, South Carolina

EXHIBIT H

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

2011 MAR 22 P 2:54 No. 2010-CP-23-9956

Michael "Chad" Luce,

Plaintiff,

vs.

TLC Corporate

TLC The Laser Center (Institute), Inc., f/k/a
TLC The Laser Center (Piedmont), Inc.,

TLC Physicians

Jonathan Woolfson, M.D., Derek P. Van Veen,
O.D., Cynthia Wike Yeager, O.D., and
John Potter, M.D.,

Defendants.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
MAR 22 2011

**FIRST AMENDED
COMPLAINT
(Jury Trial Demanded)**

The Plaintiff, Chad Luce, by and through his counsel, complaining of the Defendants herein, respectfully allege and show unto this Honorable Court as follows:

JURISDICTIONAL FACTS

1. At all times relevant hereto, Plaintiff was a citizen and resident of South Carolina.
2. The Defendant TLC The Laser Center (Institute), Inc., f/k/a TLC The Laser Center (Piedmont), Inc. (hereinafter "TLC") is, upon information and belief, a corporation authorized to do business in the state of South Carolina, and at all times relevant hereto, was doing business in Greenville, South Carolina.

3. Defendants Van Veen, Wike Yeager, and John Potter were treating and/or monitoring physicians/optometrists of the Plaintiff and upon information and belief and citizens and residents of Greenville, South Carolina and treated patients in Greenville, South Carolina.

4. Defendant Woolfson was the surgeon who performed the initial LASIK surgery on the Plaintiff and upon information and belief is a citizen and resident of Atlanta, Georgia.

FACTUAL GROUNDS FOR RELIEF

5. Scientific discoveries concerning the use of lasers to facilitate and improve eye surgery revolutionized surgical techniques that allowed for the correction of visual acuity problems.

6. As a result, ophthalmologist surgeons were able to offer elective surgeries to improve a patient's vision and exclude the need for prescription glasses or contact lenses, but because this surgery via laser was done on the outside of the cornea, it was painful and had immediate potential side effects that limited its use to those patients with more serious eye disorders/problems.

7. As technology improved, a laser technique known as LASIK for eyesight correction became available first in other parts of the world and then subsequently in the United States.

8. LASIK surgery combined the use of a laser to re-shape the cornea with a process for peeling back a layer of the cornea so that the laser could perform a correction within the middle of the cornea rather than on the outside. The result was a laser eye correction surgery (LASIK) that was relatively pain free and had minimal immediate side effects.

9. This opened up the potential for elective eyesight corrective surgery to a large class of people which also greatly increased the financial benefits to those people and entities offering such service.

10. TLC Vision Corp, through its predecessor corporation founded in Canada, moved into the United States when LASIK surgery was approved by the FDA and ultimately TLC Vision Corp, a United States corporation organized and existing under the laws of one of the states other than South Carolina, was founded to provide LASIK surgery and attendant eye care to citizens of the United States.

11. In order to facilitate the delivery of LASIK surgery and eye care services, TLC Vision Corp set up TLC LASIK Surgery Centers (referred to as TLC LASIK Centers) in various locations within the United States.

12. Initially, each TLC LASIK Center was separately incorporated within the state in which it conducted LASIK surgery; thereafter, TLC Vision Corp created TLC Laser Eye Centers (Institute), Inc., a Delaware corporation and merged a substantial number of the individual TLC LASIK Surgery Centers into that single corporate entity.

13. To conduct the business of providing LASIK surgery and attendant eye care, TLC LASIK Centers hired licensed optometrists and ophthalmologist surgeons.

14. The licensed optometrists were hired in the capacity known as Clinical Directors and maintained control over the business operation of the Center and provided medical services to patients seeking LASIK surgery.

15. The role of the TLC Clinical Director in providing medical services consisted of overseeing and directing the taking of patient information, all diagnostic tests, and performing examinations on patients to determine if the patient was a suitable candidate for LASIK surgery.

16. In all patients at each TLC LASIK Surgery Center, the TLC Clinical Director made the medical decision of whether to perform LASIK surgery based on the patient history, diagnostic tests and patient examinations on behalf of the TLC LASIK Centers.

17. The role of the ophthalmologist surgeons was to perform the LASIK surgeries on its patients and provide limited follow-up care.

18. For all patients cleared for surgery by the TLC Clinical Directors at the TLC LASIK Centers, the TLC LASIK Surgeon made a separate decision concerning whether performing LASIK surgery was appropriate and within the accepted standard of care.

19. In order to locate potential patients/customers, the various centers contacted independent optometrists throughout the United States and entered into arrangements called Co-Managing Agreements wherein the optometrist would refer patients to that particular center for LASIK surgery and, if approved and performed, the optometrist would receive a portion of the surgery fee for: 1) the referral and, 2) could also agree for additional portion of the fee to provide post surgery eye care.

20. As a further inducement for prospective patients TLC Institute (Piedmont), TLC Clinical Directors, and TLC LASIK Surgeons offered, for a fee, contractual benefits to surgery patients known as the Lifetime Commitment Contract (hereinafter referred to as LTC),

21. For the additional fee paid by the patient under the LTC, all TLC LASIK Centers, all TLC Clinical Directors, and all TLC Surgeons agreed to provide lifetime vision care for the patients to include any additional LASIK surgery needed and any treatment for vision-related problems associated with or caused by the LASIK surgery performed under the LTC.

22. LASIK surgeries performed by all TLC LASIK Centers, all TLC Clinical Directors, all TLC LASIK Surgeons were controlled by accepted and recognized standards of care for optometrists and ophthalmologists.

23. In that regard, there existed a recognized standard of care for determining which patients were appropriate candidates for LASIK surgery.

24. A number of pre-surgery eye conditions were recognized as contraindications of LASIK surgery. These conditions included keratoconus, subclinical keratoconus, forme fruste keratoconus, and inferior asymmetrical steepening of the cornea.

25. Keratoconus is a condition in which the cornea of the eye takes on an elliptical shape rather than the normal circular or round shape. Due to the abnormal shape, the cornea has significant deviations in thickness. These changes initially are found in the back of the eye. Therefore, diagnosis of keratoconus requires diagnostic tests, microscopic exams and patient history.

26. Subclinical keratoconus and/or Forme Fruste Keratoconus and/or inferior asymmetric shaping are conditions at all times relevant known to be potential pre-cursors to keratoconus or other eye disorders. The diagnosis of these conditions is made using cornea topography in which color mapping of the outside surface of the cornea show areas of flatness and steepness. Areas of steepness normally, but not exclusively, in the inferior or lower half of the cornea shown on the topography as red/yellow colors demonstrates these conditions.

27. At all times relevant, the existence of any of these conditions were recognized and accepted contraindications to the performance of LASIK surgery.

28. Performing LASIK on patients with these pre-surgery contraindicated conditions put the patient at risk for developing serious post surgery complications including, but not limited to, ectasia, vision instability, and loss of best corrected visual acuity.

29. Ectasia, a progressive thinning of the cornea, was a severe complication as its progression could lead to a continuous decrease in visual acuity and ultimately the need for corneal transplants.

30. Plaintiff Chad Luce appeared at the offices of TLC in Greenville, South Carolina on or about May 27, 1999 for LASIK surgery, after being screened by Defendants and approved for the same.

31. On May 27, 1999, surgery was performed by Defendant Woolfson, despite Plaintiff being a poor candidate for LASIK surgery.

32. At all material times, Defendants held themselves out as having expertise in the delivery of optometry and/or ophthalmological services, including, but not limited to, enhancement and/or correction of eyesight problems or difficulties, and the performance of eye surgeries including LASIK (laser-in-situ keratomileusis) eye surgery. Furthermore, at all material times, Defendants' agents and employees who participated in Plaintiff's treatment and post-surgery conduct relating to Plaintiff, including, but not limited to, Dr. Wike/Yeager, Dr. Derek Van Veen, Dr. Jonathon Woolfson, and Dr. John Potter, were acting in the course and scope of their employment with Defendants TLC Vision and TLC Institute.

33. At all material times, Plaintiff Luce was a patient of the Defendants, and in a physician-patient relationship with each of the Defendants.

34. In the time period immediately subsequent to the initial surgery, Plaintiff Luce had improved vision. However, as time passed, Chad Luce's visual acuity worsened. As a result

of the surgery, the Plaintiff developed corneal ectasia in both eyes. To date, the Defendants have refused to inform the Plaintiff of his actual diagnosis of this debilitating disease despite their knowledge of the same:

35. As a result of the conduct of the Defendants both individually and by and through their agents and employees, in connection with the 1999 surgery and subsequent concealment of Plaintiff's condition, the Plaintiff has developed worsening and unstable visual acuity and ectasia, and was deprived of measures such as "riboflavin-ultraviolet type A rays induced cross-linking of corneal collagen" which would have mitigated Plaintiff's damages. As a direct result of Defendant's acts and/or omissions, Chad Luce has suffered irreparable damage to his eyes and vision. The damage to his vision has directly impacted his professional, personal, and social life significantly and permanently. Due to Defendants' collective conduct, Plaintiff lost critical opportunities for surgical intervention, thereby further exacerbating the condition.

36. This Court has jurisdiction over all parties and controversies in this action and venue is proper in Greenville County.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence)

37. Each and every allegation set forth above is fully incorporated herein.

38. At the time of Plaintiff Chad Luce's surgery, Defendants had a duty to meet the applicable standard of care in the course of providing medical services to Plaintiff, which duty Defendants breached in one or more of the following particulars:

- a) By holding themselves out as having expertise on the delivery of services and treatment of eye and eyesight problems, ophthalmologic services and

the performance of eye surgeries, including LASIK eye surgery, when, in fact, they are not so qualified;

- b) By recommending the Plaintiff undergo LASIK eye surgery on May 27, 1999, when the Defendants knew or should have known such surgery was contraindicated.
- c) By failing to properly evaluate the Plaintiff's eyes and condition before recommending and performing surgery;
- d) By performing such surgery on the Plaintiff's eyes when the Plaintiff was not a proper candidate for the surgery;
- e) By performing surgery which should not have been performed because of the irregular shape and thinness of Plaintiff's corneas;
- f) By failing to engage in reasonable medical care and treatment following the surgery of May 27, 1999;
- g) By failing to inform Plaintiff of his specific medical condition;
- h) By failing to inform Plaintiff of his specific medical condition and appropriate medical treatment upon the review of his medical chart in 2005 and thereafter;
- i) By performing surgery which should not have been performed because of the abnormality and thinness of Plaintiff's corneas;
- j) In failing to obtain informed consent from Plaintiff to perform the surgeries by:
 - 1) not accurately describing the surgical procedures Plaintiff was to undergo;

- 2) not properly advising the Plaintiff of the conditions or results caused by the surgery;
- 3) not recommending appropriate medical treatment following surgery;
- 4) not advising Plaintiff that he faced a significant risk of visual problems as a result of the surgery, including halos, double vision, ghosting, smearing, and starbursts;
- 5) not advising the Plaintiff that he faced a significant risk of developing ectasia;
- 6) not advising Plaintiff that the surgical procedure Plaintiff was to undergo was contraindicated because of the shape of the Plaintiff's eyes; and
- 7) not advising Plaintiff that the surgical procedure Plaintiff was to undergo was contraindicated because of the Plaintiff's abnormal and thin corneas; and

k) In such other and further particulars as may be shown in the attached affidavits and through discovery in this case.

39. Defendants reviewed Plaintiff's medical records in 2003 which confirmed that Plaintiff suffered from ectasia, and Defendants had a duty to advise Plaintiff of his condition, inform him of treatments available to mitigate the damage, and aid him in obtaining treatment to correct the condition or otherwise mitigate his damages.

40. This decision not to initially inform the patient of this condition was deliberate and made with no regard to patient safety.

41. Defendants reviewed Plaintiff's medical records in 2005 which again confirmed that Plaintiff suffered from ectasia and had a duty at that time to advise Plaintiff of his condition, inform him of treatments available to mitigate the damage, and aid him in obtaining treatment to correct the condition or otherwise mitigate his damages.

42. Defendants breached their duty to Plaintiff and were negligent, grossly negligent, and reckless by failing to inform Plaintiff of the surgically-created condition and falsely informing Plaintiff that Defendants expected certain treatments to be approved which would correct his condition or otherwise mitigate his damages, all for the purpose of delaying the matter beyond the statutes of limitation and repose or to otherwise avoid liability.

43. Defendants' breach in each of the aforementioned particulars was negligent, grossly negligent, careless, and reckless in their failure to exercise that degree of knowledge, skill and care customarily exercised by similarly-trained healthcare providers under the same or similar circumstances. Defendants' care and treatment of Plaintiff Chad Luce did not conform to the applicable standard of care required of such professionals.

44. As a direct and proximate result of Defendants' acts and/or omissions, Plaintiff has suffered damages in an amount to be determined by the jury.

FOR A SECOND CAUSE OF ACTION
(Fraud/Negligent Misrepresentation)

45. Each and every allegation set forth above is fully incorporated herein.

46. The decision to hide the Plaintiff's actual diagnose was a conscious one made exclusively to protect corporate assets and done at the absolute peril of the patient. This conduct is both criminal and shameful and continues to this day. By 2002, the named Defendants recognized that a substantial number of patients were affected with surgery induced vision

injuries emanating from the breach of standard of care in the performance of LASIK surgery on those with substantially similar LASIK surgical contraindications.

47. TLC LASIK Centers, TLC Clinical Directors, and TLC LASIK Surgeons recognized the significant risk these patients posed to their respective financial assets and, in response, developed a plan to avoid responsibility for their respective acts of malpractice.

48. This plan of institutional and individual fraud and deception included the following:

- a) Creation of a system to identify these patients subjected to substandard LASIK surgeries without informing the patient of his/her condition or cause;
- b) Use of that system to monitor the patients' condition without the knowledge and/or consent of the patient.
- c) Maintenance of a separate file for each patient outside of the typical medical records of the patients for purposes of identification, monitoring and/or control of these patients and the risk posed to the Defendants' assets;
- d) Delay both in treatment of and discovery by the patient of his/her medical conditions;
- e) Communication of false representations to the patients concerning the use of new LASIK equipment and surgeries to enhance or correct vision in the patients when the Defendants knew the patients were not candidates for LASIK surgery;
- f) The periodic scheduling, canceling and rescheduling of the LASIK surgery described above in order to create delay and buy time until the expiration of patients' rights;
- g) Misrepresentation of the patient true medical condition and cause;
- h) Withholding of the information and diagnosis of known surgery induced eye condition from the patient;
- i) Use of the Lifetime Commitment Contract to cover costs of treatments, examinations, glasses, contact lenses and medicines as a method to keep

patients at TLC facilities and physicians, along with representations that such conduct would continue for the life of the patient.

- j) Predetermined decision by Defendants that the LTC contract benefits described above would be withdrawn or discontinued when patients' risk to the Defendants expired.
- k) Creating and perpetuating a separate file on the patients which included medical diagnosis, treatment options and risk information not contained in the patients' medical records;
- l) Ongoing efforts by the Defendants to keep patients at TLC facilities and physicians by discouraging outside consultations or physician intervention;
- m) Obtaining releases for nominal consideration for some patients after the expiration of the patients' rights, with said expiration caused by the actions of the Defendants.
- n) Intentional misrepresentation of the patients' true medical conditions through misleading diagnosis and dissemination of medical information and advice and/or the omission of necessary medical information, advice and/or diagnosis.

49. With regard to Plaintiff Chad Luce, the Defendants:

- a) Created a separate file of medical information and used this file to communicate information about him without his knowledge or consent and for purposes contrary to his best medical treatment and patient rights;
- b) Failed to disclose his medical diagnosis and cause until after expiration of his right to bring a claim and further specifically hid the actual diagnosis of ectasia thereby exacerbating the disease and causing additional injury;
- c) Failed to treat his known surgery induced condition in order to delay discovery until the expiration of his right to bring a claim;
- d) Advised to Chad Luce that he was a LASIK surgery candidate when they knew or should have known such representation was false;
- e) Failed to disclose Chad Luce's correct medical condition to him and placing erroneous or misleading medical information in his medical records;
- f) Paid for cost of medical treatment, glasses and contact lenses and agreeing to pay for travel and associated expenses under the Lifetime Commitment

Contract program while repeatedly representing that these types of benefits would continue for life;

- g) Following the time at which Defendants believed Luce's right to pursue a claim had expired, discontinuing his lifetime commitment benefits and he was no longer viewed as a risk to company assets.
- h) Forever hiding his true diagnosis in an effort to mitigate potential malpractice suits.
- i) Illegally and without the patient's permission, disseminating his medical records to physicians and risk managers throughout the county in furtherance of the fraud and scheme.

50. In order to further this plan of institutional fraud and deceit, the named Defendants utilized an existing system created and used by all TLC LASIK Centers, all TLC Clinical Directors, and all TLC Management, called the Complex Case System.

51. The original purpose of the Complex Case System was to provide additional diagnostic and treatment options for the TLC patients with post-surgery complications. The Complex Case System required patient consent, and all actions were part of the patient's medical care and records.

52. The named Defendants used Complex Case forms to gather medical data and continue updating patient conditions without Chad Luce's consent and/or knowledge, thereby creating a separate file and database in which patient medical information was surreptitiously placed so the Defendants could freely monitor, control, and delay without his knowledge.

53. In addition, in order to manage certain patient risks that required more aggressive measures or for which the Defendants believed a threat of litigation might exist, the Defendants created an Advocacy Program where active intervention with the patient could occur without disclosing to the patient its true purpose. This permitted integration of patient medical

additional pain and suffering caused by the delay in notification of his actual diagnosis and inoperable conditions of his eyes.

FOR A FOURTH CAUSE OF ACTION
(Unfair Trade Practice Violations)

59. Each and every allegation set forth above is fully incorporated herein.

60. Defendant sought to profit, and did profit, by performing surgery on Plaintiff Dickerson when it was known, or would have been known through the exercise of reasonably care, that Plaintiff was not a candidate for surgery.

61. Post-surgery, Defendants engaged in deceitful conduct by concealing the surgically-created condition and falsely informing Plaintiff that Defendants expected certain treatments to be approved which would correct his condition or otherwise mitigate his damages, all for the purpose of delaying the matter beyond the statutes of limitation and repose or to otherwise avoid liability. Further, that the Defendants lied, misrepresented and actively concealed the Plaintiff's actual diagnosis in an attempt to protect corporate assets and hide their initial malpractice.

62. Defendant negligently, carelessly, recklessly, willfully, and/or wantonly engaged in unfair or deceptive acts in the conduct of trade or commerce which are prohibited by S.C. Code Ann. § 39-5-20, et seq. ("South Carolina Unfair Trade Practices Act").

63. Defendants' unfair or deceptive acts are capable of repetition and affect and concern the public interest.

64. As a direct and proximate result of Defendants' unfair or deceptive acts, which are in violation of the South Carolina Unfair Trade Practices Act, Plaintiffs have suffered damages in an amount to be determined by the jury in addition to treble damages and attorney's fees as authorized by statute.

FOR A FIFTH CAUSE OF ACTION
(Breach of Contract)

65. Each and every allegation set forth above is fully incorporated herein.

66. The Defendant entered into a contract with Plaintiff, referred to as the "TLC Lifetime Commitment" ("Commitment"). The Plaintiff was eligible for, and qualified for, the TLC Lifetime Commitment. Pursuant to the terms of the Commitment, TLC would:

...stand behind your vision results for life because we have confidence in our surgeons and in our stability of our patient's long-term results. Our intention is to help you maintain the best possible vision throughout your life.

67. In addition to the written terms of the Commitment, Defendant orally informed Plaintiff that it would "stand behind him" and that "new technology may help him in the future".

68. The Defendant breached its commitments made to Plaintiff, and the implied covenant of good faith and fair dealing, by failing to stand behind his vision results for the lifetime of the Plaintiff and by Defendant's conduct otherwise referenced in this Complaint.

69. Upon information and belief, the costs for the treatment of Plaintiff's condition, including corneal transplants and lifetime follow-up care will be extremely expensive and costly to Plaintiff.

70. As a direct and proximate result of Defendant's breach, Plaintiffs have suffered damages in an amount to be determined by the jury.

DAMAGES

71. Each and every allegation set forth above is fully incorporated herein.

72. As a direct and proximate result of Defendants' conduct as described herein, Plaintiff has been injured and has suffered, and will in the future suffer, physical injury, mental

and emotional distress, loss of income and earning capacity, and loss of enjoyment of life.

Plaintiff Chad Luce has required and will in the future require treatment for the loss of his visual acuity, including, but not limited to, repeated trips to eye specialists, treatments, and corneal transplants.

73. As a further direct and proximate result of the Defendants' conduct, Plaintiff Chad Luce has incurred medical expenses and will incur medical expenses in the future.

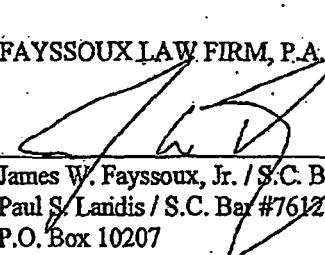
74. As a further direct and proximate result of the Defendants' conduct, Plaintiff Luce has lost income and has a diminished earning capacity. Plaintiff will lose future income and earning capacity because of his condition.

75. Plaintiff accordingly is entitled to recover compensatory damages from the Defendants in an amount to be proven at trial.

76. Plaintiff is also entitled to recover punitive damages from the Defendants in an amount to be proven at trial.

WHEREFORE, the Plaintiff prays for judgment against the Defendants in a fair and reasonable amount, for actual and punitive damages, for attorneys' fees, for the costs and disbursements of this action, and for such further and other relief as this Honorable Court may deem just and equitable, all in an amount to be determined by a jury.

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Attorneys for Plaintiff

March 22, 2011

Greenville, South Carolina

EXHIBIT I

COVINGTON, PATRICK, HAGINS, STERN, LEWIS, P.A.

Eugene C. Covington, Jr.
Douglas F. Patrick
John A. Hagins, Jr.*
T. S. Stern, Jr.
Stephen R. H. Lewis

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*Of Counsel

Writer's Direct E-Mail: slewis@covpatlaw.com
Direct Dial: (864) 240-5518

April 20, 2011

Ronald G. Tate, Jr.
Gallivan, White & Boyd, P.A.
P.O. Box 10589
Greenville, SC 29603

RE: *John Hollman v. Dr. Jonathan Woolfson, Individually, et al.*
Case No. 2007-CP-23-2347

Dear Ron:

I am writing to confirm our telephone conversation of last week in which I advised you that we have settled Mr. Hollman's case against Dr. Woolfson and Dr. Campbell. In light of the settlement, I had called to discuss with you whether we needed to submit a proposed Order to Judge Miller regarding the Motion to Reconsider you filed several months ago.

I have now received copies of the transcripts from the previous hearings and am prepared to draft a proposed Order should your client feel it to be necessary considering the fact that this case will be dismissed soon. We also discussed our intention to comply with the Judge's Order regarding the return of the database, however, as you know, we have filed two additional lawsuits against Dr. Woolfson and TLC employees and will soon be submitting discovery requests seeking discovery of the database. My suggestion was to file the database we currently have under seal with the Court until any discovery issues involving the production of the database can be addressed by the Court.

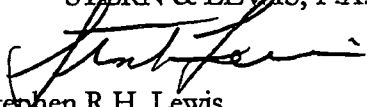
As I understand it, you were going to talk with your client about these two issues and get back to me. It appears we will receive checks and releases within the next week, and after the execution of the releases and the filing of the Stipulation of Dismissal, we have 60 days in which to return the database.

April 20, 2011
Page Two

I look forward to hearing from you within that time period with regard to your client's position on these two issues.

Sincerely,

COVINGTON, PATRICK, HAGINS,
STERN & LEWIS, P.A.



Stephen R.H. Lewis

SRHL:dcb

cc: Douglas F. Patrick

EXHIBIT J

Steven Buckingham

From: Cheryl Rodgers
Sent: Thursday, April 19, 2012 10:13 AM
To: 'Woods, Margaret'
Subject: RE: John Hollman V. Dr. Jonathan Woolfson, et al.

Margaret, in light of this information and due to the requirements of the appeal process, we are requesting that you expedite preparation of the transcript. We understand there is typically an additional fee for expedited transcripts. Again, if you can forward your invoice, we will process it for payment to move this along. Thanks for your help in this matter.

Cheryl Rodgers
Paralegal
GALLIVAN, WHITE & BOYD, P.A.
P.O. Box 10589
Greenville, SC 29603
864.271.5409 (Direct)
864.271.7502 (Fax)
crodgers@gwblawfirm.com
www.gwblawfirm.com

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-----Original Message-----

From: Woods, Margaret [mailto:mwoods@scccourts.org]
Sent: Thursday, April 19, 2012 9:38 AM
To: Cheryl Rodgers
Subject: RE: John Hollman V. Dr. Jonathan Woolfson, et al.

It has never been prepared. It was never requested by anyone.

Margaret A. Woods
Circuit Court Reporter
Seventh Judicial Circuit At-Large

From: Cheryl Rodgers [CRodgers@gwblawfirm.com]
Sent: Thursday, April 19, 2012 9:11 AM
To: Woods, Margaret
Subject: RE: John Hollman V. Dr. Jonathan Woolfson, et al.

We were assuming this transcript had already prepared, given the time that has passed since the date of the hearing. Is that not the case?

Cheryl Rodgers
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-----Original Message-----

From: Woods, Margaret [mailto:mwoods@sccourts.org]
Sent: Wednesday, April 18, 2012 10:18 PM
To: Cheryl Rodgers
Subject: RE: John Hollman V. Dr. Jonathan Woolfson, et al.

Cheryl, the only estimate I can give you right now is about three weeks and it could be a little earlier.

Margaret A. Woods
Circuit Court Reporter
Seventh Judicial Circuit At-Large

From: Cheryl Rodgers [CRodgers@gwblawfirm.com]
Sent: Wednesday, April 18, 2012 10:42 AM
To: Woods, Margaret
Subject: RE: John Hollman V. Dr. Jonathan Woolfson, et al.

Margaret, I am writing again to follow up on our request for a copy of the transcript of a hearing held in the Hollman matter on 11/23/10. As indicated previously, we are requesting the transcript in conjunction with an appeal. Please let me know when we can expect to receive the copy. If you'd like to email me the invoice, we can expedite the check for same.

Cheryl Rodgers
Paralegal
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-----Original Message-----

From: Woods, Margaret [mailto:mwoods@sccourts.org]
Sent: Wednesday, April 11, 2012 6:54 PM
To: Cheryl Rodgers
Subject: RE: John Hollman V. Dr. Jonathan Woolfson, et al.

Okay, thanks!

Margaret A. Woods
Circuit Court Reporter
Seventh Judicial Circuit At-Large

From: Cheryl Rodgers [CRodgers@gwblawfirm.com]
Sent: Wednesday, April 11, 2012 5:07 PM
To: Woods, Margaret
Subject: RE: John Hollman V. Dr. Jonathan Woolfson, et al.

Sorry for my delayed response.

I am requesting on behalf of Howard Boyd of our firm. We have intervened on behalf of TLC in this matter. This matter is now on appeal. Under the SC Court of Appeals Rules, we are required to obtain transcripts pertaining to the order(s) being challenged. See the attached Proof of Service. Please let me know if you need anything

further.

Cheryl Rodgers
Paralegal
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-----Original Message-----

From: Woods, Margaret [mailto:mwoods@sccourts.org]
Sent: Monday, April 09, 2012 6:34 PM
To: Cheryl Rodgers
Subject: John Hollman V. Dr. Jonathan Woolfson, et al.

Dear Ms. Rodgers,

I received your request for this transcript. Please let me know who the attorney is that you are ordering it for and if he was involved in the hearing. If he wasn't involved, I will need to know the reason why he needs the transcript and then I will have to obtain permission from the judge to release it to him. Thank you.

Sincerely,

Margaret A. Woods
Circuit Court Reporter
Seventh Judicial Circuit At-Large

EXHIBIT K

Steven Buckingham

From: Cheryl Rodgers
Sent: Friday, April 27, 2012 11:39 AM
To: 'Woods, Margaret'
Subject: RE: John Hollman v. Dr. Jonathan Woolfson, et al., C.A. No.: 2007-CP-23-2347

Yes, thanks very much.

Cheryl Rodgers
Paralegal
GALLIVAN, WHITE & BOYD, P.A.
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-----Original Message-----

From: Woods, Margaret [mailto:mwoods@sccourts.org]
Sent: Friday, April 27, 2012 11:37 AM
To: Cheryl Rodgers
Subject: RE: John Hollman v. Dr. Jonathan Woolfson, et al., C.A. No.: 2007-CP-23-2347

Cheryl,

Thanks for sending the check so quick. I was the court reporter at the hearing on 11.23.10 and I typed it for your firm. It had never been prepared before so no one had ordered it before you. I hope this answers your questions.

Margaret A. Woods
Circuit Court Reporter
Seventh Judicial Circuit At-Large

From: Cheryl Rodgers [CRodgers@gwblawfirm.com]
Sent: Friday, April 27, 2012 11:19 AM
To: Woods, Margaret
Subject: John Hollman v. Dr. Jonathan Woolfson, et al., C.A. No.: 2007-CP-23-2347

Margaret,

Yesterday, I mailed the check to you in payment for the expedited transcript of the hearing of 11.23.10 in the above matter. You should receive it today or tomorrow. Thank you for getting that to us so quickly.

Can you please clarify a couple of points for me regarding this hearing/transcript?

In requesting another hearing transcript, I understand that the the transcript was not prepared by the court reporter who was in the court room at the time of the hearing. Were

you actually present at the hearing? And would you confirm that no one had previously requested a transcript of the 11.23.10 hearing until we did so?

Cheryl Rodgers

Paralegal

GALLIVAN, WHITE & BOYD, P.A.

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Greenville, SC 29603

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This message is from the law firm Gallivan, White & Boyd, PA and may be a confidential and privileged legal communication to the named recipient(s). If you receive this message in error or are not the named recipient(s), please notify the sender and delete this email. Thank you.

EXHIBIT L

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

FILED-CLERK OF COURT
GREENVILLE, SOUTH CAROLINA
PAUL B. WICKENSIMER 2007-CP-23-2347

2017 JAN 12 A 11:42

TLC Laser Eye Centers (Piedmont/Atlanta),
LLC; TLC The Laser Center (Institute), Inc.,
Intervenor,

ORDER

IN RE:

John Hollman,

Plaintiff,

v.

Dr. Jonathan Woolfson, individually;
Dr. Michael A. Campbell, individually; Optical
Solutions, Inc.; and Optical Solutions of
Bluffton, LLC,

Defendants.

THIS MATTER comes before the Court on: 1) Intervenor TLC's Motion to Compel Plaintiff's Counsel to Prepare an Order for the Court as Directed by the Court; 2) TLC's Motion to Compel Observance of the Protective Order of November 14, 2008; and, 3) Plaintiff's Motion for Sanctions.

Intervenor TLC was represented by W. Howard Boyd, Jr., Esquire, and Stephen Buckingham, Esquire. Plaintiff was represented by Douglas F. Patrick, Esquire and Stephen R.H. Lewis, Esquire.

Both sides identified exhibits, including deposition testimony and prior hearing transcripts, in support of their arguments as well as engaged in lengthy oral arguments. Based on the exhibits, memoranda of law, arguments and authorities submitted by both parties, this Court denies Intervenor TLC's Motion to Compel Plaintiff's Counsel to Prepare an Order as Directed by the Court and denies

1
[Signature]
ENTERED COMPUTER

Plaintiff's Motion for Sanctions as to TLC's Motion to Compel Observance of the Protective Order. During the hearing, the parties agreed to a process for compliance with the provisions of the Protective Order regarding the return of certain documents. This agreement is included as a part of the Order.

The Court makes the following findings of fact as a basis for its rulings:

FINDINGS OF FACT

1. In 2006, John Hollman brought a claim for medical malpractice against TLC and other Defendants. Following initial discovery, Hollman amended his complaint to include a cause of action for fraud based on information received in discovery. As part of supplemental discovery requests, he sought additional documents and information relating to Complex Case and Advocacy Log databases created and maintained by TLC and sought production of medical records of other TLC patients.
2. Defendant TLC objected to the production of this material on the basis of work product privilege prepared in anticipation of litigation.
3. The Court granted the Plaintiff's discovery request and required production of the Complex Case and Advocacy databases as well as production of medical records of approximately 60 TLC patients.
4. In connection with the required production, upon concerns expressed by the parties as to non-litigant patient privacy, on November 14, 2008, the Court entered a Protective Order prohibiting the dissemination of confidential health information contained in the databases and other material produced pursuant to the Order.
5. Issues arose between the parties concerning the use of the database information and its alleged spoliation. In April 2010, TLC filed a Motion for Sanctions alleging violations of the Protective Order, and Hollman filed a Motion for Sanctions alleging intentional spoliation of the database evidence.

6. In June 2010, Hollman and TLC entered into a settlement agreement in which TLC was dismissed as a party to the litigation. As a result, all pending motions between the parties were dismissed. The terms and conditions of the Protective Order relating to return of the confidential materials remained in effect as well as any enforcement provisions for post settlement violations of the Order.

7. In July 2010, TLC filed a second Motion for Sanctions against Plaintiff's counsel which re-alleged the allegations contained in the previously dismissed Motion for Sanctions.

8. On July 26, 2010, this Court held a hearing on TLC's Motion for Sanctions. This Court issued an Order on August 17, 2010, denying Defendant's motion. This Court also made a finding interpreting the November 14, 2008, Protective Order prohibiting the dissemination of confidential health information which the Court defined as health information coupled with the identity or identifying information of the patient.

9. TLC filed a Motion for Reconsideration of the August 17th Order which was heard by this Court on November 23, 2010. This Court denied the motion and instructed Plaintiff's counsel to prepare a proposed Order consistent with its ruling.

10. On December 17, 2010, Plaintiff's counsel gave notice to the Court and TLC counsel that the proposed Order would be delayed pending the receipt of the transcripts of the three hearings relating to the issues involved.

11. In January 2011, prior to the receipt of the hearing transcripts, a mediation between Hollman and the remaining parties (surgeon and optometrist) was held and on March 25, 2011, Hollman and the remaining parties reached a settlement agreement ending with finality the Hollman litigation through a dismissal with prejudice.

12. On April 13, 2011, Plaintiff's counsel, Stephen Lewis, had a telephone conference with TLC defense counsel, Ron Tate, advising Mr. Tate the Hollman case had been settled and that the

settlement would end with prejudice the Hollman case. The purpose of the call was to discuss the pending issues with TLC concerning the database, its return, and outstanding Order denying reconsideration. Mr. Lewis advised Mr. Tate that if TLC wanted the proposed Order drafted and submitted to this Court, it should notify Plaintiff's counsel prior to the dismissal of the case with prejudice, which was imminent. In addition, Plaintiff's counsel discussed with TLC counsel the return of certain discovery materials pursuant to the aforementioned Protective Order and suggested that since additional lawsuits in the Dickerson and Luce¹ cases had been filed, and Plaintiff would seek discovery of the identical materials, the databases should be filed under seal with this Court until any discovery issues related to the production of the databases could be addressed by this Court. Plaintiff's counsel recited in Court that it was his understanding that TLC counsel agreed with this proposal.

13. On April 20, 2011, Plaintiff's counsel memorialized his conversation with TLC counsel and asked that TLC counsel get back to him regarding his client's decision on submitting the proposed Order and the sealing of the database prior to the dismissal of the case with prejudice, which, according to the letter, would occur within the next week.

14. TLC counsel did not reply to Plaintiff's counsel, and on May 2, 2011, Hollman was dismissed with prejudice. The dismissal was global and contained no language regarding any pending matters.

15. On June 9, 2011, the Court heard TLC's Motion to Dismiss the Dickerson and Luce lawsuits. Then, on July 1, 2011, the Court informed the parties it was denying TLC's Motion to Dismiss.

¹ The Dickerson and Luce cases are unrelated to the Hollman matter but involve similar allegations of malpractice, fraud, and unfair trade practice violations. Counsel for Hollman are also counsel in Dickerson and Luce and TLC counsel in Hollman are also counsel for TLC in Dickerson and Luce.

16. On August 19, 2011, four months following Plaintiff's counsel's letter of April 20, 2011, and shortly after TLC's Motions to Dismiss in the Dickerson/Luce cases were denied, TLC counsel made a demand to Plaintiff's counsel to file the proposed Hollman Order denying its Motion for Reconsideration.

COURT RULINGS

A. Proposed Order Denying Motion for Reconsideration

1. An action will be held to be ended when the parties agree upon a compromise and settlement of the cause of action and the terms of the agreement are complied with. W.T. Ferguson Lumbar Co. vs. Elliott, 171 S.C. 455, 172 S.E. 616 (1934). In Pryor vs. Newbold, 69 S.C. 426, 48 S.E. 275, the S.C. Supreme Court addressed whether a defendant could file a counterclaim against the Plaintiff after a case had been settled. The Court stated:

We consider first the defense of settlement, because, if it is found the parties themselves by contract ended the case, it would manifestly be not only unnecessary, but improper, for this Court to revive and discuss issues which the parties themselves had set at rest.

W.T. Ferguson Lumbar Co. vs. Elliott, 172 S.E. at 618, citing Pryor vs. Newbold, i.d.

In addition to entering into the Settlement Agreement, the parties also dismissed the Hollman case with prejudice. It is generally recognized that a dismissal with prejudice indicates an adjudication on the merits and precludes subsequent litigation to the same extent as if the action had been tried to a final adjudication. Jones vs. City of Folly Beach, 326 S.C. 360, 483 S.E.2d 770 (1997).

2. TLC contends it intended all along to have the proposed Order filed so it could appeal this Court's decision denying the Motion for Reconsideration. The Plaintiff contends, through his counsel, that this matter was discussed prior to the dismissal of Hollman, and TLC was aware it had an affirmative duty to request the Order be prepared prior to dismissal or the matter would be ended. Since no request was made by TLC, the case was dismissed with prejudice. The

record supports Plaintiff's position. This Court finds no evidence to support Defendant's position that it intended the Order to be filed. To the contrary, the facts support the finding that only after TLC's Motions to Dismiss in the Dickerson and Luce cases did TLC request the proposed Order be submitted. There is no indication in the record that TLC ever contacted Plaintiff's counsel after it received notice the case would be dismissed with prejudice to request the proposed Order be submitted or the issued be preserved or to object to Plaintiff's counsel proposal regarding filing the database under seal pending resolution of discovery matters in the Dickerson and Luce cases. There has been no evidence submitted by TLC to refute Plaintiff's counsel's position.

The Plaintiff rightly argues that due to the pending dismissal of the remaining parties, had TLC wanted to reserve its right to appeal the Court's denial of its Motion for Reconsideration, a special release would have been required to preserve their rights yet dismiss the other parties fully. Plaintiff's counsel stated at the hearing that they were ready, willing, and able to do so had TLC notified them of their desire to preserve their rights to appeal the Motion for Reconsideration. After receiving notice of the pending settlement, the burden was on TLC to advise Plaintiff's counsel of any request to have the proposed Order submitted so that Plaintiff's counsel could draft a release to address the protection of the settling parties. The dismissal of the Hollman case in May, 2011 terminated the Court's jurisdiction to issue an Order on TLC's Motion for Reconsideration.

The Court finds Hollman, in its entirety, was dismissed on May 2, 2011. This dismissal occurred with the knowledge of Intervenor TLC and serves to terminate the Intervenor's status with respect to a finding by the Court on its Motion for Sanctions. A dismissal with prejudice creates finality with respect to pending matters, and the Court lacks subject matter jurisdiction over TLC's request. Accordingly, TLC's Motion to Compel Plaintiff's counsel to prepare an Order on the Motion for Reconsideration is denied as is TLC's request for the Court to prepare and enter its own Order.

B. Return of the Database

1. All parties agree that the dismissal with prejudice did not deprive the Intervenor from moving this Court for an Order returning the database pursuant to the language of the November 14, 2008, Protective Order.

2. During the hearing, Plaintiff raised concerns regarding spoliation of evidence by TLC during the pendency of discovery matters in the Hollman case. While Plaintiff has offered to return the database to TLC counsel, they have sought assurances from TLC that the database would not be altered or modified in any way pending the litigation in Dickerson and Luce where production of the database has been requested. This Court orders that upon return of the database by Plaintiff, TLC counsel should retain the database and other information in their office pending the resolution of the discovery matters and/or final resolution of the Dickerson and Luce cases. The parties agreed this was a reasonable compromise.

An additional issue was raised about the Plaintiff's work product in rendering the database into usable form. The Court suggested that the Plaintiff file its work product under seal in the Dickerson and Luce cases. The parties found these conditions to be acceptable and consented to this procedure.²

3. Therefore, pursuant to an agreement of the parties, this Court grants Intervenor's Motion to Compel Observance of the Protective Order and return of the database with the following conditions consented to by the parties:

- a) Plaintiff's counsel will comply with Paragraph 12 of the November 14, 2008, Protective Order returning all discovery materials designated as Confidential Health Information to TLC counsel who will retain possession of the Confidential Health Information in its office here in Greenville.

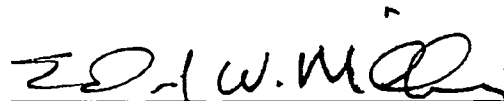
²The Court never ruled on Plaintiff's Motion for Sanctions Regarding Spoliation of Evidence filed in the Hollman case and does not need to reach the issue of spoliation because these matters were ended when the case was dismissed with prejudice.

- b) Plaintiff will file under seal with the Court its work-product derived from any Confidential Health Information obtained in the Hollman case. This work-product will remain under seal with the Court until further Order of the Court.

C. Order Denying Plaintiff's Motion for Sanctions

Plaintiff filed a Motion for Sanctions against TLC essentially alleging misconduct in filing the above Motions to Compel. After considering the memoranda in support of and in opposition to the Motions for Sanctions, this Court denies Plaintiff's Motion for Sanctions.

AND IT IS SO ORDERED.


Hon. Edward Miller

DATED: 1/12, 2012

Greenville, South Carolina

EXHIBIT M

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

FORM 4

JUDGMENT IN A CIVIL CASE

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
CASE NO. 2007 CP-23-2347

John Hollman,

Dr. Jonathan Woolfson, et al.,

2012 MAR -2 A 11:35

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: W. Howard Boyd, Jr.

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: TLC's motion to alter or amend judgment or for reconsideration of the Order of January 12, 2012 is **DENIED.**

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

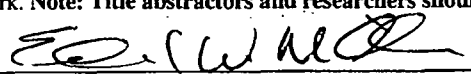
INFORMATION FOR THE PUBLIC INDEX

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

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

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

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


Circuit Court Judge

2130
Judge Code

2/28/12
Date

For Clerk of Court Office Use Only

This judgment was entered on the 2 day of Mar, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 2 day of Mar, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Douglas F. Patrick & Stephen R. H. Lewis.

Covington, Patrick Hagins, Stern, & Lewis, P.A.,

P.O. Box 2343, Greenville, SC 29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

W. Howard Boyd, Jr., Steven E. Buckingham

Gallivan, White, & Boyd, P.A.

P.O. Box 10589, Greenville, SC 29603

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter:

CLERK OF COURT

George Beighley
Kenneth Katrosh
Howard Boyd
Ronald Tate
Jack Gresh
Nichole Hair
Shelton Haile
Luanne Runge

EXHIBIT N

W. Howard Boyd, Jr.
Direct 864.271.5343
hboyd@gwblawfirm.com



Gallivan, White & Boyd, P.A.
ATTORNEYS AT LAW

55 Beattie Place, Suite 1200
Post Office Box 10589 (29603)
Greenville, South Carolina 29601
Telephone 864.271.9580
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www.gwblawfirm.com

February 6, 2012

Greenville County Clerk of Court
ATTN: JAN WHITE
Greenville County Courthouse
305 East North Street, Room 202
Greenville, SC 29601

Re: John Hollman v. Dr. Jonathan Woolfson, et al.
C.A. No.: 2007-CP-23-2347

Dear Jan:

This will confirm our discussion in the Clerk's office Monday morning in regard to the above-referenced matter, during which you advised that since Scott Katrosh, Ron Tate and I of our firm are all listed in the Clerk's records as "inactive" on this case, the notice of the Order issued by Judge Miller denying certain motions in this case that was filed in the Clerk's office on January 12 was not sent to us. We learned that the Order had been issued from Doug Patrick, one of the Plaintiff's attorneys, at a bar reception in Columbia on February 2, 2012, and obtained a copy of the notice and Order on Friday, February 3, 2012.

As you requested, I am writing to advise that I should be listed as active on this case, since we have intervened on behalf of the TLC Defendants in the case, and please also list Ronald G. Tate, Jr., Luanne Lambert Runge, and Steven E. Buckingham of our firm as active attorneys on this case. Scott Katrosh has left our firm, and is now serving with the United States Army in Afghanistan, and no longer needs to be listed as counsel of record for TLC in this case.

By copy of this letter to Judge Miller and Mr. Patrick and Mr. Lewis, we are advising them of our conversation, and the fact that we did not receive notice that the Court's order had been issued until last Thursday.

As always, we appreciate very much your assistance in connection with this matter, and

Greenville County Clerk of Court

February 6, 2012

Page 2

restoring all of us to the active list of attorneys on the case. Please let me know if you need any further information from me, or if you have any questions concerning this.

With kind regards,

Sincerely yours,

GALLIVAN, WHITE & BOYD, P.A.

W. Howard Boyd, Jr.

Direct Dial: (864) 271-5343

E-mail: hboyd@gwblawfirm.com

WHB,Jr/lrb

cc: The Hon. Edward W. Miller
Mr. Douglas F. Patrick
Mr. Stephen Lewis

EXHIBIT O



**Greenville
County**

Office of the Clerk of Court

**Paul B. Wickensimer
Clerk of Court for Greenville County
Greenville, South Carolina**

www.greenvillecounty.org

May 14, 2012

Gallivan, White & Boyd PA
Attorney At Law
P.O. Box 10589
Greenville, SC 29603

RE: 2007CP2302347

Dear Mr. Boyd,

According to our records, a Stipulation of Dismissal with prejudice as to your client TLC Inc, was processed on June 24, 2010 which made you an inactive attorney of record. The Clerk of Court office mails orders and notices to "active" counsel of record only and therefore, you would have not received a copy of the order dated January 12, 2012. After notification from your office, we have changed our record to reflect an "active" status.

We apologize for any confusion this may have caused your office. Should you have any further questions, please don't hesitate to contact our office.

Sincerely,

Sandra Mansel
Clerk of Court
Administrative Coordinator
Civil Records

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In The Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case Number 2007-CP-23-2347

RECEIVED

MAY 16 2012

SC Court of Appeals

Ex parte TLC Laser Eye Centers (Piedmont/Atlanta) LLC;
and TLC The Laser Center (Institute), Inc., ...Appellants,

In re:

John Hollman.....Respondent

v.

Dr. Jonathon Woolfson, Individually;
Dr. Michael A. Campbell, Individually;
Optical Solutions, Inc.; and
Optical Solutions of Bluffton, LLC.....Defendants

Case Number 2007-CP-23-8364

Ex parte TLC Laser Eye Centers (Piedmont/Atlanta) LLC;
and TLC The Laser Center (Institute), Inc., ...Appellants,

In re:

Danielle Hollman.....Respondent

v.

Dr. Jonathon Woolfson, Individually;
Dr. Michael A. Campbell, Individually;
Optical Solutions, Inc.; and
Optical Solutions of Bluffton, LLC.....Defendants

PROOF OF SERVICE

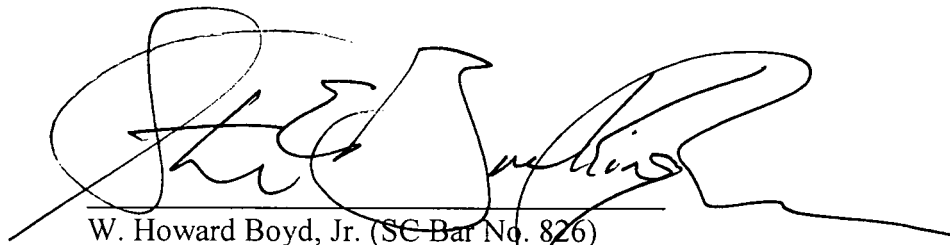
I certify that on the 14th day of May, 2012, I served a copy of the Appellants' Return to Respondents' Motion to Dismiss on counsel of record in the above-entitled matters by sending a copy of same by first-class mail addressed to the following:

Douglas F. Patrick, Esq.
Stephen R.H. Lewis, Esq.
Covington, Patrick, Hagins, Stern & Lewis, P.A.
P.O. Box 2343
Greenville, SC 29602
Counsel for Respondents

George C. Beighley, Esq.
Richardson Plowden Carpenter & Robinson, PA
P.O. Box 7788
Columbia, SC 29202
Counsel for Defendant Jonathan Woolfson

Jack G. Gresh, Esq.
Hall, Booth, Smith & Slover, P.C.
2113 Middle Street, Suite 305
Sullivan's Island, SC 29482
*Counsel for Defendants Michael A. Campbell,
Optical Solutions, Inc. and Optical Solutions of
Bluffton, LLC*

(signature on following page)



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Greenville, SC

May 14, 2012

Attorneys for the Defendants/Petitioners TLC

The Laser Center (Institute), Inc., and TLC

Laser Eye Centers (Piedmont/Atlanta) LLC

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A member of the South Carolina Bar
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May 14, 2012

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Calhoun State Office Building
1015 Sumter Street
Columbia, SC 29201

Ex parte TLC Laser Eye Centers (Piedmont/Atlanta) LLC; and
TLC The Laser Center (Institute), Inc., Intervenor

In re: John Hollman v. Dr. Jonathan Woolfson, et al.
C.A. No.: 2007-CP-23-2347

And

Ex parte TLC Laser Eye Centers (Piedmont/Atlanta) LLC; and
TLC The Laser Center (Institute), Inc., Intervenor

In re: Danielle Hollman v. Dr. Jonathan Woolfson, et al.
C.A. No.: 2007-CP-23-8364

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Appellants, TLC Laser Eye Centers (Piedmont/Atlanta) LLC and TLC The Laser Center (Institute), Inc. Return to Respondents' Motion to Dismiss and a Proof of Service showing that the Return has been served on all Respondents. Please return one copy of the Return, stamped as filed, in the enclosed self-addressed stamped envelope. Thank you for your assistance in this matter. Should you have any questions or concerns, please do not hesitate to contact me.

Respectfully,

GALLIVAN, WHITE & BOYD, P.A.

Steven Edward Buckingham

SEB/jws
Enclosures

The Honorable Jenny Abbott Kitchings

Page 2

May 14, 2012

cc: Douglas F. Patrick, Esquire (w/encl.)
Stephen R.H. Lewis, Esquire (w/encl.)
George C. Beighley, Esquire (w/encl.)
Jack G. Gresh, Esquire (w/encl.)

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