

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

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MAY 14 2012

SC Court of Appeals

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' REPLY IN SUPPORT OF
THE MOTION FOR AN EXPEDITED APPEAL**

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

Respondents' counsel has suggested that, through this appeal, TLC is inviting the Court to render an "advisory opinion." In a certain sense, Respondents' counsel is absolutely right. Respondents' counsel should be advised that they must observe the terms and conditions of the Protective Order.¹ Furthermore, because the Supreme Court's decision in Hollman v. Woolfson prohibits irrelevant and unnecessary third-party medical information from being used to sustain non-party claims, 384 S.C. 571, 683 S.E.2d 495 (2009), Respondents' counsel should be advised that they cannot use database information—obtained in Hollman—in furtherance of Dickerson, Luce, or the federal class action, which they are actively doing. These issues are real, concrete, and justiciable, and because they arise from a final, appealable order of the circuit court, they are ripe for decision.²

Notably, a close reading of Respondents' counsel's Return shows little substantive opposition to the relief Appellants have requested; instead, the Return is addressed more to the merits of the underlying appeal than to the propriety of Appellants' request. The central themes of Appellants' position—(1) that there is good cause to support an expedited disposition, (2) that in the absence of expediting

¹ A copy of the Protective Order is attached hereto as Exhibit A.

² To the say the least, the procedural circumstances of this case are extraordinary. Respondents' counsel violated the Protective Order, which was issued under Hollman, by using database information to bring Dickerson, Luce, and the federal class action, which have now spawned Holley. Therefore, while the issues in this appeal have a substantive effect upon these four cases, the critical issue—the enforcement of the Protective Order—must be brought under Hollman, even though the underlying merits of Hollman have been resolved.

the appeal, Appellants will incur prejudice, and (3) that an expedited appeal serves the best interests of justice and judicial economy—are largely undisputed. It is also undisputed that the database disclosed in Hollman is a central aspect of the ongoing litigation in Dickerson, Luce, Holley, and the federal class action. Therefore, it is at least reasonably possible—if not likely—that the disposition of this appeal will have a significant impact on the course and scope of discovery in each of those cases. Frankly, with the certainty this appeal is likely to provide, Respondents’ counsel should be just as interested in obtaining an expedited disposition as Appellants are.³

Although the threshold issue on appeal is whether the circuit court has subject matter jurisdiction to enforce a protective order after the underlying case has been resolved,⁴ the more substantive issues are whether the circuit court properly construed the Protective Order in this case and, more critically, whether the database information disclosed in Hollman is relevant and necessary to the claims of any other

³ However, Respondents’ counsel is strongly opposed to the appellate courts’ consideration, expedited or otherwise, of any issues arising from or related to the Hollman Protective Order and their use of database information. This is most likely because Respondents’ counsel’s use of database information is impermissible under the Supreme Court’s decision in Hollman v. Woolfson, and constitutes a violation of the clear, unambiguous terms of the Protective Order.

⁴ Which, of course, it does. It is essentially a matter of black-letter law that the court which issues a protective order retains the authority to enforce it, even after resolution of the underlying litigation. See, e.g., 8A Charles Alan Wright et al., Federal Practice & Procedure: Civil § 2044.1 (3d ed.). If this were not so, protective orders could be violated flagrantly without recourse, a proposition which is offensive to the guiding principles of order, justice, and equity. The “authority” cited for the contrapositive by Respondents’ counsel, Ex parte Doe, 393 S.C. 147, 711 S.E.2d 892 (2011), is simply inapposite. Doe addresses the question of a party’s residual rights to maintain merits-based litigation after the execution of a settlement agreement, as opposed to the instant question, which addresses the court’s continuing jurisdiction to enforce a protective order—essentially a continuing injunction on a collateral issue—after the termination of underlying litigation.

individual. In 2008, over strenuous objections,⁵ Appellants were compelled to produce the very database which is at issue in this appeal. Notably, the circuit court never made any determination about whether database information was “specifically relevant” or “necessary” to any matters at issue in Hollman.⁶ 384 S.C. 571, 578–79, 581, 683 S.E.2d 495, 498–99, 500 (2009) (“Petitioners’ treatment of other patients is not necessary to establish any element of respondents’ causes of action.”). However, because Appellants were given assurances of protection against unauthorized use and disclosure of database information, Appellants decided against taking an immediate appeal to the Supreme Court and provided database information to Respondents’ counsel. In hindsight, Appellants should have taken the immediate appeal, because for the last four years, the database has proven to be nothing more than a true-life Pandora’s Box, having become the centerpiece of issues in Hollman, Dickerson, Luce, Holley, and the federal class action; the merits of these cases have become mere afterthoughts.⁷

⁵ Appellants have consistently opposed production of database information on the basis of irrelevance, lack of necessity, privilege as attorney/client communications, and protection as attorney work product and self-critical analysis, despite Respondents’ counsel’s specious claims of waiver, (Resp’ts Return 6).

⁶ In light of the decision in Hollman, it appears reasonably certain that production of the database should not have been compelled, certainly not without a showing of specific relevance and necessity.

⁷ For example, in Dickerson and Luce, it is undisputed that the last relevant medical procedure for the purposes of each plaintiff’s claim occurred in 1999. Their lawsuits were not filed until 2010. As a matter of simple mathematics, under South Carolina Code § 15-3-545(A), each plaintiff’s claim was time-barred by the statute of repose long before their suits were ever filed. Yet the circuit court denied TLC’s motions to dismiss in Dickerson and Luce on the basis of the statute of repose, ostensibly because of confusion due to the injection of database issues. (See Order Den. TLC’s Mot. Dismiss, Dickerson, Sept. 1, 2011, attached hereto as Exhibit B (the order

And there is no end in sight to the vexatious database litigation. On April 25, 2012, Respondents' counsel filed motions to compel against TLC in Dickerson and Luce—in which they are also plaintiffs' counsel of record—seeking the production of all database information for each and every of TLC's patients, as well as their charts. Ostensibly, Respondents' counsel intends to use Dickerson and Luce as vehicles for litigating medical malpractice, fraud, and UTPA actions against TLC on behalf of hundreds of patients, regardless of whether Respondents' counsel has a claim, a client, or even standing.⁸ This is astonishing in its own right, but even more so since the Supreme Court has already addressed the very same issues in Hollman, and frankly, could not have been clearer. 384 S.C. 571, 683 S.E.2d 495 (2009).⁹

denying the Motion to Dismiss in Luce is substantially the same).) This decision has a high probability of being appealed.

⁸ As the Court can well imagine, litigating the issues of healthcare provided to individuals other than the plaintiff is not only unnecessary and irrelevant, it is also unreasonably invasive upon personal privacy rights, as well as administratively impracticable, if not impossible. To do so would require discovery as to each non-party patient's personal health information, depositions of each non-party patient to discuss their personal health information, and mini-trials as to the representations and quality of care provided to each non-party patient. Yet, throughout the Return, this is the very type of litigation contemplated by Respondents' counsel.

⁹ With regard to medical malpractice claims, the Supreme Court has held that “[t]he evidence relating to treatment of the nonparty patients is irrelevant . . . in that it cannot be used to show petitioners breached the standard of care with a particular patient.” Hollman, 384 S.C. at 579, 683 S.E.2d at 499. With regard to fraud claims, the Supreme Court has held that “[t]he treatment received by the nonparty patients is irrelevant Whether other patients were similarly treated does not prove any of the elements required to show fraudulent conduct by petitioners toward respondents.” 384 S.C. at 580, 683 S.E.2d at 499. With regard to UTPA claims, the Supreme Court has held that access to third-party private health information “is not necessary for respondents to establish that cause of action.” 384 S.C. at 580, 683 S.E.2d at 500. The Court went on to hold that “[Appellants’] treatment of other patients is not necessary to establish any element of respondents’ causes of action. In fact, no information obtained in the interviews could establish whether petitioners breached

Regardless, it is incontrovertible that in the context of Dickerson, Luce, and perhaps Holley,¹⁰ Respondents' counsel will try to contact Appellants' patients whose private health information is set out in the database. In part, this assertion is based on the history of Respondents' counsel's conduct. In February 2009, just three months after having received the database, Respondents' counsel was requesting to contact Appellants' non-party patients, which was expressly prohibited by the plain, unambiguous language of the Protective Order.¹¹ It took nothing less than the Supreme Court's intervention—twice—to stop this from happening. Hollman v. Woolfson, 384 S.C. 571, 683 S.E.2d 495 (2009). As the Court observed, it would have been inequitable “to allow [R]espondents to obtain nonparty patient information

the standard of care when treating respondents or committed fraud on respondents.” 384 S.C. at 581, 683 S.E.2d at 500. If database information was not relevant and necessary to sustain medical malpractice, fraud, and UTPA claims in Hollman, by the greater force of simple logic, there is no reason to believe they would be relevant or necessary in Dickerson, Luce, Holley, or the federal class action.

¹⁰ The federal class action was dismissed for failure to state a claim for which relief can be granted. Fed. R. Civ. P. 12(b)(6). Respondents' counsel has appealed the disposition to the United States Court of Appeals for the Fourth Circuit, where it remains pending.

¹¹ In relevant part, the Order “prohibits the dissemination of Confidential Health Information beyond the parameters established by th[e] Order or use of Confidential Health Information for any purpose other than the prosecution or defense of this litigation.”¹¹ (Protective Order, attached hereto as Exhibit A, 4.) “No person, firm, corporation, or other entity subject to this Order [is authorized to] give, show, disclosure [sic], make available, or communicate [Confidential Health] Information to any person, firm, corporation, or other entity not expressly authorized by this Order to receive such Confidential Health Information.” (Protective Order, Ex. A, ¶ 7.) Furthermore, “[e]xcept as may be provided by subsequent Order of this Court: 1) Confidential Health Information shall be used for no purpose other than this litigation; [and] 2) No person who receives, pursuant to this or other Orders of the 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)” (Protective Order, Ex. A, ¶ 8.)

from [Appellants] with the understanding the patients would not be contacted, only to subsequently permit [R]espondents to contact the patients.”¹² Id., 384 S.C. at 581–82, 683 S.E.2d at 500.

Then, less than six months after the Supreme Court’s decision, Respondents’ counsel tried to make an end-run around Hollman by filing a federal class action against TLC. The putative plaintiff class members were the very patients the Supreme Court prohibited Respondents’ counsel from contacting. There is no mistaking the intentions of Respondents’ counsel in bringing the class action. 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.) Even in their Return to this Motion, Respondents’ counsel candidly admits that “had the class been certified, Respondents[’ counsel] would have been required to notify the putative class.” (Resp’ts Return 8)(emphasis in original).

Respondents’ counsel’s plans for using database information are also revealed by their statements of prospective intentions. Mr. Edward Bell, Esq., who is among counsel of record in the class action, stated to the federal court as follows: “[W]e believe there are people out there still today that can be helped today if told about this. We felt like after finding or after seeing these several cases that we had individually, that this is the reason why we brought this class action. We think these

¹² The Supreme Court’s decision was also driven out of respect for patient privacy. “[N]o protective device can limit the invasion of the nonparty patients’ privacy once contact with them is permitted. The nonparty patients have a valid and legitimate expectation that their medical information will remain confidential” Hollman, 384 S.C. at 578, 683 S.E.2d at 498–99.

people need to have these records. We think these people need to be told about the problem.” (Hr’g Tr. 82–83, Dec. 29, 2010, attached hereto as Exhibit D.) For some reason, Respondents’ counsel continues to believe that, after Hollman, the database of private health information continues to be “specifically relevant” and “necessary” to the claims asserted in Dickerson, Luce, and the federal class action, which is plainly incorrect under Hollman.¹³ 384 S.C. 571, 683 S.E.2d 495 (2009). Therefore, Appellants reasonably anticipate that Respondents’ counsel intends to renew their efforts to contact non-party patients through at least Dickerson and Luce in the very near future.

To be fair, Respondents’ counsel appears to believe in good faith that it is not a violation of the Protective Order to use database information for other lawsuits if they merely remove the name of the individual patient. However, this interpretation is plainly inconsistent with the Protective Order. Under the Order, information subject to protection is called “Confidential Health Information,” and it cannot be used, disseminated, or possessed for any purpose unrelated to Hollman v. Woolfson. (Protective Order, Ex. A, ¶¶ 3, 7, 8.) Confidential Health Information is defined by the Protective Order in two ways. First, it is information that is at least reasonably capable of identifying an individual, and which relates either to the provision of health care to the individual, or the individual’s past, present, or future physical or mental health or condition. (Protective Order, Ex. A, ¶ 2.) Second, it is information that includes “all notes, summaries, compilations, extracts, abstracts, or oral

¹³ Notably, despite Hollman, it appears the circuit court also believes that database information continues to be relevant and necessary to the claims of unrelated individuals. Consequently, guidance regarding permissible uses and limitations as to database information will be as helpful to the circuit court as it is to the litigants.

communications that contain, are based on, or are derived from Confidential Health Information.” (Id.) Therefore, quite explicitly, the Protective Order safeguards individually identifying health information, as well as information based on or derived therefrom.

That being said, in the order of August 17, 2010, the circuit court inexplicably held that “Confidential Health Information” does not include information “based on” or “derived from” Confidential Health Information. (See Aug. 17, 2010 Order, attached hereto as Exhibit E.) This order essentially authorized Respondents’ counsel to use or disseminate as much database information as they wanted, so long as they did not disclose patient names, which is an egregious misconstruction of the Protective Order. Appellants intended to seek immediate review of the decision through the ordinary appellate process, and to that end, promptly filed a motion for reconsideration in September 2010. After a great deal of delay, due primarily to Respondents’ counsel’s failure to prepare an order as instructed,¹⁴ the circuit court held in January 2012 that it lacked subject matter jurisdiction to enforce the Protective Order. (See Jan. 12, 2012 Order, attached hereto as Exhibit F.)

¹⁴ Appellants are confused about the relevant chain of events. At a hearing on November 23, 2010, Respondents’ counsel was instructed to prepare a brief written order denying Appellants’ motion for reconsideration. Respondents’ counsel initially stated that a copy of the transcript would be necessary, but later advised that the transcript had been received by April 2011. (Resp’ts Return 4–5.) However, according to newly discovered information from the court reporter, Respondents’ counsel never requested a transcript, and therefore, a transcript could not have been received. (Email Exchange between Margaret Woods (Court Reporter) and Cheryl Rogers (Paralegal for Appellants), April 18, 2012, attached hereto as Exhibit G; Email Exchange between Margaret Woods and Cheryl Rogers, April 27, 2012, attached hereto as Exhibit H.) Therefore, it is not clear whether Respondents’ counsel was ever in a position to prepare an order as instructed.

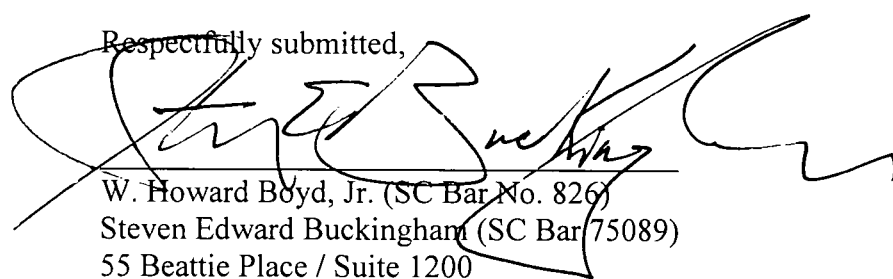
Consequently, the Protective Order has been gutted of any meaningful protections against the use and disclosure of database information, which has caused Appellants to incur a substantial amount of prejudice.

In any event, the appellate court's final word is necessary to put these tired database issues to rest. Appellants have been litigating about the database for nearly four years straight. The Protective Order is not providing any meaningful protection at all. Respondents' counsel has become obsessed with talking to third-parties about their personal health information. The cancer of unnecessary litigation is metastasizing. All things considered, it is high time that the unyielding cycle of database litigation is brought mercifully to an end.

For these reasons, and for the reasons set out in the Motion to Expedite the Appeal, Appellants are requesting an expedited disposition of this case pursuant to Rule 263(b), SCACR, so that finality to the litigation of database-related issues may be brought about more swiftly.¹⁵ Until Respondents' counsel is prohibited, once and for all, from using the database to fuel their litigation against TLC in violation of the Protective Order, Appellants will be battling the same issues, on the same fronts, with the same, disappointing results: the Protective Order upon which Appellants relied in disclosing the database to Respondents' counsel will continue to provide no protection at all. This request is based on the Notice of Appeal, the pleadings in the underlying case of Hollman v. Woolfson, and all documents attached to or incorporated into the motion, the memorandum in support, and this reply.

¹⁵ By way of information only, while this Motion is pending before the Court of Appeals, Appellants have also filed a Motion to Certify the Case for Review by the Supreme Court pursuant to Rule 204(b), SCACR. That Motion also remains pending.

Respectfully submitted,



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Greenville, SC
May 10, 2012

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

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

2008 NOV 14 P 12:00
FILED CLERK OF COURT
GREENVILLE CO. S.C.
WICKENS/MEP

John Hollman,

Plaintiff,

PROTECTIVE ORDER

vs.

Dr. Jonathan Woolfson, individually, et al,

Defendants.

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

AND

Danielle Hollman,

Plaintiff,

vs.

Dr. Jonathan Woolfson, individually, 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

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;

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

9/12

EXHIBIT A

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	
)	
John Hollman,)	
	)	AGREEMENT TO ABIDE BY
	)	PROTECTIVE ORDER
Plaintiff,	)	GOVERNING CONFIDENTIAL
vs.	)	HEALTH INFORMATION
)	
Dr. Jonathan Woolfson, et al,)	
)	
Defendants.	)	C.A. No. 2007-CP-23-2347
)	
AND)	
)	
Danielle Hollman,)	
)	
Plaintiff,)	
vs.)	
)	
Dr. Jonathan Woolfson, et al,	)	C.A. No. 2007-CP-23-8364
)	
Defendants)	
)	
AND)	
)	
George E. Carter, Jr. and Jean Carter,)	
)	
Plaintiffs,)	
vs.)	
)	
William T. Nimmons, OD, et al,	)	C.A. No. 2007-CP-23-7587
)	
Defendants.)	

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: _____

ASD

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

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT
 Charles Benjamin "Ben" Dickerson and) C.A. No. 2010-CP-23- 9954
 Gale M. Dickerson,)
)
 Plaintiffs,)
 vs.)
) ORDER DENYING
) MOTIONS TO DISMISS
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 Defendants, TLC The Laser Center (Institute), Inc., Cynthia Wike Yeager, O.D., and Jonathan Potter, M.D., have moved to dismiss all claims asserted against them in the First Amended Complaint [hereinafter referred to as FAC] by Plaintiffs Charles Benjamin "Ben" Dickerson and Gale M. Dickerson. For the reasons set forth herein, Defendants' Motions are DENIED.

STATEMENT OF FACTS

For the purpose of considering Defendants' Motions to Dismiss, the following statement of facts is taken from Plaintiffs' First Amended Complaint, and all allegations of fact contained therein shall be viewed in the light most favorable to Plaintiffs and must be accepted as true.

ENTERED COMPUTER

The Defendant TLC The Laser Center (Institute), Inc. (hereinafter "TLC") is a corporation authorized to do business in South Carolina and, at all times relevant to this action, was doing business in Greenville, South Carolina. The Defendants Cynthia Wike Yeager, O.D. and John Potter, M.D. were treating and/or monitoring physician/optometrists of Mr. Dickerson who at all times pertinent to the FAC were employed by TLC and acting within the scope of their employment.

Plaintiff Ben Dickerson appeared at the offices of TLC in Greenville, South Carolina on or about April 17, 1998 to determine if he was a candidate for the laser surgery procedure offered by TLC known as LASIK surgery. Patient evaluation and testing showed that Plaintiff was not a candidate for surgery. Additionally, the topographical study revealed that Ben Dickerson had form fruste keratoconus / keratoconus, which was an absolute contraindication for LASIK surgery. The topographical study, standing alone, eliminated Ben Dickerson as a candidate for laser correction of his vision.

On April 30, 1998, despite being a poor candidate for LASIK surgery, the various TLC agents and employees cleared Plaintiff Dickerson for the initial surgery that was performed by Defendant Woolfson.¹ Following the surgery, the Defendants provided Mr. Dickerson with post-surgery medical care. Defendants' agents and employees who participated in Plaintiff's treatment and post-surgery conduct relating to Plaintiff included Dr. Wike/Yeager and Dr. John Potter.

¹ The Defendant Jonathan Woolfson, M.D. is a Georgia citizen and resident. The Defendant Jeffrey Machat, M.D. is a citizen of Canada who not only performed the enhancement surgery but also participated in and directed medical care on Mr. Dickerson performed in South Carolina. Both are TLC employees who acted in the scope of their employment at all times pertinent to this FAC. (FAC, para. 4, 32).

In the time period immediately subsequent to the initial surgery, Ben Dickerson had improved vision. However, as time passed, Ben Dickerson's visual acuity worsened. As a result, Plaintiff then had an enhancement surgery performed by Defendant Machat in Windsor, Canada on or about August 25, 1999.

Mr. Dickerson developed corneal ectasia as a result of the surgeries. Ectasia is a progressive thinning of the cornea that can lead to a continuous decrease in visual acuity and ultimately the need for corneal transplants. The effects of ectasia can be greatly mitigated, however, by prompt treatment. At least by 2005 ectasia could be treated by "riboflavin-ultraviolet type A rays induced cross-linking of corneal collagen." TLC employees reviewed Plaintiff's records in 2005 and recognized Plaintiff's surgically-induced ectasia. However, the Defendants – and other employees of TLC - failed to disclose to him that he had developed this disease despite their actual knowledge of his ever-worsening condition.

TLC entered into a contract with Plaintiff, referred to as the "TLC Lifetime Commitment" pursuant to which TLC promised as follows:

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.

(FAC, para. 21). TLC also promised more generally to

...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.

(FAC, misnumbered para. 63). According to Plaintiffs, TLC breached its commitments made to Mr. Dickerson and the implied covenant of good faith and fair dealing, by failing to stand behind his vision results for Plaintiff's lifetime and by Defendants' conduct otherwise referenced in Plaintiffs' Complaint.

By 2002, the Defendants and other TLC employees all 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. The Defendants recognized that this posed a tremendous liability risk to the entire TLC enterprise as well as to each individual Defendant. In response, the Defendants developed a plan to avoid responsibility for their respective acts of malpractice.

The Defendants realized that, because of the slow progression of the visual instability created by the improper LASIK surgery, the patients would not realize that they had been injured for years and might not connect their decreasing vision with the surgery. Plaintiffs further allege that Defendants consequently formulated a plan to conceal the true facts from these patients until their medical malpractice claims were time barred. As alleged in the FAC, this fraudulent plan included the following features:

- 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 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

(FAC, para. 53).

Plaintiffs allege that Defendants accordingly concealed from Mr. Dickerson his serious and correctable decreasing vision problem by taking the following steps:

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.

(FAC, para. 54).

In order to further this plan of institutional fraud and deceit, the 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. (FAC, para. 55). 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. (FAC, para. 56).

The Defendants used Complex Case forms to gather medical data and continue updating patient conditions without patient 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 the patient's knowledge. (FAC, para. 57).

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 the true purpose. This permitted integration of patient medical information for improper purposes and internal discussion and collaboration about patients was designed to harm rather than help the patients. (FAC, para. 58).

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. (FAC, para. 59).

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. Plaintiffs further allege that 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 [sic] 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.

(FAC, para, 60).

In 2005, the Defendants reviewed Mr. Dickerson's medical records. This review confirmed that he suffered from ectasia in 2000. However, the Defendants – and other TLC employees - still failed to inform him of his true diagnosis. (FAC, para. 43).

This failure to inform Mr. Dickerson of his true diagnosis was particularly harmful because new technology had been developed that would have greatly mitigated the effects of his ectasia. As alleged in paragraph 37:

37. As a result of the conduct of the Defendants both individually and by and through their agents and employees, in connection

with the 1998 and 1999 surgeries 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, Ben Dickerson 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.

(FAC, para. 37).

Count One asserts a claim against all Defendants for negligence in failing to comply with the standard in the diagnosis and treatment of Mr. Dickerson from April of 1998 to 2005 and thereafter. (FAC, para. 40(h)). This count also alleges that the Defendants failed to obtain the Plaintiff's informed consent prior to the two surgeries.

(FAC, para. 40(j)).

Count Two asserts a claim for loss of consortium by Plaintiff Gale M. Dickerson. This count alleges that the Plaintiffs were married at all times relevant to this action and that the Defendants' negligence has proximately deprived her of the loss of the services, society, and companionship of her husband.

Count III asserts a claim for fraud arising from the Defendants' failure to disclose - and their active concealment of - Mr. Dickerson's ineligibility for laser surgery, his subsequent development of ectasia, and the new technology - viz., "riboflavin-ultraviolet type A rays induced cross-linking of corneal collagen" - that would have greatly mitigated this condition and perhaps made a corneal transplant unnecessary.

Count V asserts a claim for violation of the South Carolina Unfair and Deceptive Trade Practices Act. Count VI asserts a claim for breach of contract.

The Plaintiffs filed the original Complaint in this action on December 7, 2010.

The Plaintiffs filed the FAC on March 22, 2011 and served it on the Defendants.

CONCLUSIONS OF LAW

I. THE MOTION TO DISMISS MAY NOT BE GRANTED ON GROUNDS THAT THE SIX YEAR "STATUTE OF REPOSE" CONTAINED IN S.C. CODE ANN. § 15-3-545(A) BARS THIS ACTION

Defendants initially contend that the six-year statute of repose governing medical malpractice actions requires the Court to dismiss this action under Rule 12(b)(1), SCRPC, for lack of subject matter jurisdiction. This statute provides:

(A) In any action, other than actions controlled by subsection (B), to recover damages for injury to the person arising out of any medical, surgical, or dental treatment, omission, or operation by any licensed health care provider as defined in Article 5, Chapter 79, Title 38 acting within the scope of his profession must be commenced within three years from the date of the treatment, omission, or operation giving rise to the cause of action or three years from date of discovery or when it reasonably ought to have been discovered, not to exceed six years from date of occurrence, or as tolled by this section.

S.C. Code Ann. § 15-3-545 (A). The Defendants contend that the Plaintiffs filed the Complaint in this action more than six years from the "date of occurrence" within the meaning of this statute and, therefore, that all claims are time-barred. However, this contention fails.

A. The FAC does not contain facts showing that the "date of occurrence" was more than six years prior to December 7, 2010, the date of the filing of the Complaint.

Count I seeks damages for medical malpractice. The Court may not dismiss these counts pursuant to S.C. Code Ann. § 15-3-545(A) because the pleading does not contain allegations showing the "date of occurrence" for these causes of action. Furthermore,

S.C. Code Ann. § 15-3-545(A) does not define the “date of occurrence” for purposes of the six year repose provision.

Aside from the allegations that malpractice occurred in the first two surgeries, Plaintiffs allege that Defendants committed a new and distinct breach of the applicable standard of care in 2005 when they reviewed Mr. Dickerson’s medical records and formally diagnosed him with ectasia yet hid this fact from the Plaintiff. The date of occurrence for this instance of medical malpractice could be no earlier than 2005 and accordingly, *this claim* may not be dismissed under the statute of repose given that the lawsuit was filed in 2010.

The Defendants’ argument that the second surgery, which took place in 1999, is the “date of occurrence” for the other counts is also rejected. Count II asserts a claim for loss of consortium by Gale Dickerson. Mrs. Dickerson did not have a cause of action for loss of consortium until she first began to lose her husband’s society, companionship, and services as a result of the Defendants’ malpractice. Mrs. Dickerson would not likely have lost her husband’s society, companionship, and services the minute he returned from the second surgery. FAC paragraph 49 alleges that Mrs. Dickerson lost her husband’s society, companionship, and services as a result of the severe and permanent injuries he suffered. Mr. Dickerson presumably had to know, or have a reason to know, he was injured before he could change his conduct so as to deprive his wife of a husband’s normal society, companionship, and services. Hence, the date the loss of consortium claim arose was not likely to precede the date Mr. Dickerson had actual knowledge of his injuries and then changed his marital conduct so as to deprive his wife of his society,

companionship, and services. The FAC contains no allegations as to when this occurred. Count II accordingly cannot be dismissed on the pleading.

Similarly, the "date of occurrence" for Count VII – which alleges that TLC entered into a contract with Plaintiff, referred to as the "TLC Lifetime Commitment" contract – cannot begin before this contract was formed and breached. The FAC does not allege the dates either occurred. Further, Mr. Dickerson obviously could not have demanded treatment for injuries caused by the two surgeries until he knew he had been injured. The date that his ectasia produced discernible symptoms accordingly is also crucial to determining the date of occurrence for this count. Thus, none of the counts may be dismissed as time-barred by the statute of repose because the FAC does not contain factual allegations that enable the Court to determine the date of occurrence for each count.

B. The statute of repose is tolled by the fraud of the Defendants and the Defendants are estopped from asserting the repose provision

The South Carolina Supreme Court has recognized that fraudulent concealment will toll S.C. Code Ann. § 15-3-545(A)'s statute of limitations for an adult patient, so long as a doctor-patient relationship exists, and even after if the defendant withholds or alters the patient's records:

Next, Plaintiff claims that the Medical School fraudulently concealed the negligent follow-up treatment of the Plaintiff. "[T]he practically universal rule is that deliberate acts of deception by a defendant calculated to conceal from a potential plaintiff that he has a cause of action, thereby inducing him to postpone institution of suit will be held to toll the statute." ... The fraudulent concealment defense to the statute of limitations flows from the patient-physician relationship. When the relationship ends, the duty to disclose, which is the basis of fraudulent concealment claim, ceases to exist absent extenuating circumstances such as the withholding or altering of plaintiff's medical records. ... O'Neal v. Throop, 596 N.E.2d 984 (Ind.Ct.App. 1992) (when physician-patient

relationship terminates, the constructive fraud terminates and the statute of limitations begins to run).

Strong v. University Of S.C., 316 S.C. 189, 447 S.E.2d 850 (1994). It is crucial to note that the court made this ruling notwithstanding the express language of S.C. Code Ann. § 15-3-545(A) which provides that both the three year statute of limitations and the six year repose period apply, unless tolled by the statute itself. The statute does not contain a fraudulent concealment tolling provision except for minors; hence, the court was willing to toll the statute of limitations for adults as a matter of common law.

While the South Carolina Supreme Court has held on several occasions that the statute of repose “constitutes an outer limit beyond which a medical malpractice claim is barred, regardless of whether it has or should have been discovered,” our Courts have not addressed the statute of repose issue in the context of fraudulent concealment and deceit by a treating physician. The only reasonable construction of Strong is that the statute of repose is likewise tolled by fraud during the doctor-patient relationship, or when records are withheld or altered. These are precisely the allegations in this case and for purposes of Defendants’ motions must be deemed as true.

Additional support for this conclusion can be found by looking at other jurisdictions. Courts in the great majority of jurisdictions which have addressed this issue have ruled that fraudulent concealment either tolls the statute of repose or estops the wrongdoer from asserting the statute of repose as a defense. Annot., “Effect of Fraudulent or Negligent Concealment of Patient’s Cause of Action on Timeliness of Action Under Medical Malpractice Statute of Repose,” 19 A.L.R. 6th 475 (2006). Of the twenty-six jurisdictions which have addressed the issue, twenty-three of them have ruled

that fraudulent or negligent concealment either tolls the statute of repose or estops a defendant from raising it as a defense.

Construing the facts in a light most favorable to Plaintiffs, the Lifetime Commitment Contract establishes that a doctor-patient existed between Mr. Dickerson and TLC for all times pertinent to this action. In addition, the FAC alleges that TLC altered and withheld Mr. Dickerson's true medical records as part of the Complex Case system fraud. This Court accordingly may not grant the motion to dismiss on statute of repose grounds as the fraud alleged would toll the statute of repose until within six years of December 7, 2010, the date of the filing of the Complaint.

Assuming arguendo that the Court concludes that S.C. Code Ann. § 15-3-545 contains the exclusive grounds under which the statute of repose may be *tolled*, the Court alternatively finds the Defendants are equitably *estopped* from asserting the statute of repose. The doctrine of equitable estoppel has been routinely applied in South Carolina courts. See Dillon v. Sheet Metal Works, Inc., 286 S.C. 207, 332 S.E.2d 555 (Ct. App. 1985); Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 (1994); Holy Loche Distributors, Inc. v. R.L. Hitchcock, 332 S.C. 247, 503 S.E.2d 787 (Ct. App. 1998). Courts in five other states have concluded that that fraudulent or negligent concealment estops the wrongdoer from raising the statute of repose as a defense.

In North Carolina, estoppel is a recognized defense to both the statute of limitations and the statute of repose. Blizzard Bldg. Supply v. Smith, 77 N.C. App. 594, 595, 335 S.E.2d 762, 763 (1985), cert. denied, 315 N.C. 389, 339 S.E.2d 410 (1986); Duke Univ. v. St. Paul Mercury Ins. Co., 95 N.C. App. 663, 673, 384 S.E.2d 36, 42 (1989). Based on South Carolina appellate courts' consistent opinions with regard to the

impact fraud and deceit have on a wrongdoer's ability to hide behind a limitations period, it is likely that when presented with this novel issue, South Carolina would follow the other jurisdictions which have estopped the wrongdoing party from asserting a statute of repose as a defense. At the very least, this issue should not be decided on Plaintiffs' Complaint alone and prior to the completion of discovery. Accordingly, the parties should have the opportunity to develop a full record in this case, and Defendants' motion to dismiss must be denied.

Defendants' motions to dismiss essentially seek a ruling from this Court on issues of public policy without giving it the opportunity to hear all of the facts and circumstances surrounding the allegations in the complaint. Langley v. Pierce, 313 S.C. 401, 438 S.E.2d 242 (1993) and Nash v. Tindall Corp., 375 S.C. 36, 650 S.E.2d 81 (1997) are not to the contrary. The Nash court stated that the effect of the statute of repose "is not only for the convenience of society but also due to necessity. At that point (when the statute has expired), society is secure and stable." Nash, 375 S.C. 42. In understanding the *Nash* decision, this Court must note that the South Carolina Court of Appeals, under a choice of law analysis, was determining if a North Carolina statute of repose for actions alleging defective or unsafe condition of an improvement to real property barred the plaintiff's claims. In addition, Nash did not involve any allegations of fraud or deceit. It is compelling to this Court that North Carolina is one of the jurisdictions cited above which has ruled that a practitioner's or facility's fraudulent concealment of a patient's cause of action does not toll the running of the statute of repose but, instead, estops the party from asserting the statute of repose as a defense.

This is a novel question of law in South Carolina, but the other jurisdictions to consider the issue have overwhelmingly ruled in favor of crafting an exception to the statute of repose in cases of fraudulent concealment or have otherwise ruled that wrongdoing defendants are equitably estopped from raising the statute of repose as a defense. Accepting Plaintiffs' allegations as true for purposes of Defendants' motions, this Court believes that South Carolina's appellate courts, if faced with this issue, will side with the strong majority of jurisdictions and will find: (1) an exception to the statute of repose exists when defendants engage in conduct which is specifically calculated to defraud known plaintiffs and prevent them from discovering and therefore bringing a cause of action; and/or (2) a defendant who engages in conduct specifically calculated to defraud known plaintiffs and prevent them from discovering a cause of action will be equitably estopped from raising the statute of repose as a defense. Accordingly, Defendants' motions must be denied.

II. BECAUSE THE FAC DOES NOT SHOW THAT THE STATUTE OF LIMITATIONS EXPIRED PRIOR TO THE FILING OF THIS LAWSUIT, THE MOTION TO DISMISS MAY NOT BE GRANTED ON STATUTE OF LIMITATIONS GROUNDS.

The Defendants alternatively ask the Court to dismiss all claims on statute of limitations grounds. S.C. Code Ann. § 15-3-545(A) (medical malpractice), S.C. Code Ann. § 15-3-530 (the general statute of limitations), and S.C. Code Ann. § 39-5-150 (unfair trade practices) all provide a three year limitation period, subject to the discovery rule. The Defendants contend that the FAC alleges facts which, even viewed in the light most favorable to Mr. Dickerson, show that Mr. Dickerson should have known by August 25, 1999 – the date of the enhancement surgery – that he had a malpractice claim against the Defendants and, therefore, the statute of limitations bars all claims.

The South Carolina Rules of Civil Procedure are very similar to the Federal Rules of Civil Procedure. In federal court, “[a] motion to dismiss based on the running of the statute of limitations period may be granted only ‘if the assertions of the complaint, read with the required liberality, would not permit the plaintiff to prove that the statute was tolled.’” Jablon v. Dean Witter & Co., 614 F.2d 677, 682 (9th Cir. 1980). Accord Supermail Cargo, Inc. v. United States, 68 F.3d 1204, 1206-07 (9th Cir. 1995). Tested against this standard, the motion to dismiss on limitations grounds must be denied. The FAC alleges facts which, if proved, would show that the statute of limitations was tolled both by the discovery rule and by the Defendants’ fraudulent concealment. Alternatively, the Defendants are equitably estopped from raising a limitations defense.

The Defendants’ argument that the FAC itself shows all claims are time-barred is based on three paragraphs in the pleading:

31. On April 30, 1998, despite being a poor candidate for LASIK surgery, the various TLC agents and employees cleared Plaintiff Dickerson for the initial surgery that was performed by Defendant Woolfson.

...

34. In the time period immediately subsequent to the initial surgery, Ben Dickerson had improved vision. However, as time passed, Ben Dickerson’s visual acuity worsened. As a result, Plaintiff then had an enhancement surgery performed by Defendant Machat in Windsor Canada on or about August 25, 1999.

...

37. As a result of the conduct of the Defendants both individually and by and through their agents and employees, in connection with the 1998 and 1999 surgeries and subsequent concealment of Plaintiff’s condition, the Plaintiff has developed worsening and unstable visual acuity and ectasia....,

(FAC, para. 31, 34, 37).

The Defendants argue that once Mr. Dickerson’s vision started deteriorating after the first surgery, he should have known that he had a malpractice claim. However, the

FAC alleges that the Defendants intentionally and fraudulently concealed that Mr. Dickerson was not a candidate for LASIK surgery and to this day have not disclosed that he suffers from ectasia. (FAC 36).² Paragraph 54 pleads the fraudulent concealment with specificity:

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;
 - ...
 - i) Forever hiding his true diagnosis in an effort to mitigate potential malpractice suits.

(FAC, para 54).

² As previously noted, the South Carolina Supreme Court has ruled that fraud will toll the statute of limitations. Strong v. University Of S.C., 316 S.C. 189, 447 S.E.2d 850 (1994).

Given these allegations, and viewing all of the allegations in the light most favorable to the Plaintiffs, the Court cannot conclude as a matter of law that Mr. Dickerson should have known he had a claim against the Defendants for medical malpractice, fraud, negligent misrepresentation, or unfair trade practices as of August 25, 1995, the date of the second surgery. Although he knew his vision was deteriorating notwithstanding the first surgery, Mr. Dickerson had a pre-existing condition of poor vision. Based on what the Defendants told Mr. Dickerson, Mr. Dickerson believed that he was a proper candidate for laser surgery and that the first surgery had been correctly performed but simply had been ineffective. On these allegations, Mr. Dickerson could have believed that his deteriorating vision was the natural progression of his pre-existing condition. The FAC does not allege what the Defendants told Mr. Dickerson about why his vision was declining or why he needed the second surgery. The allegations of concealment of the true facts implies that Mr. Dickerson reasonably believed for several years that his vision problems were not due to either unnecessary surgery or negligent performance of the surgery. Moreover, even assuming Mr. Dickerson should have known he had a claim against the Defendants for the first surgery on April 30, 1998, he obviously could not have known of his claim arising from the Defendants' breach of the standard of care that occurred in 2005.

Finally, the FAC does not allege when Mr. Dickerson contracted ectasia, or when the disease first manifested discernible symptoms. Based on the allegations of the FAC, this was not discovered until within three years of December 2010.³ The motions to

³ Judge Childs' ruling in the federal case does not permit a different result. The federal case was a RICO action seeking damages for injury to property. Mr. Dickerson did not seek personal injury recovery in that lawsuit but sought compensation for the conversion

dismiss the medical malpractice, fraud, negligent misrepresentation, and unfair trade practices accordingly must be denied to the extent they are based upon the statute of limitations.

With respect to Count II, the loss of consortium claim, the motions to dismiss must be denied because there are no allegations as to when Mrs. Dickerson lost the companionship, society, and services of her husband, as previously argued. Until this happened, her claim did not accrue, and it is therefore impossible to determine from the pleading if the claim is barred by the statute of limitations.

The same is true as to Count VI. Count VI alleges that TLC "entered into a contract with Plaintiff, referred to as the "TLC Lifetime Commitment," pursuant to which TLC promised as follows:

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.

(FAC, para. 21). TLC also promised more generally to

...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.

(FAC, misnumbered para. 63).

According to Plaintiffs, TLC breached its commitments made to Mr. Dickerson and the implied covenant of good faith and fair dealing by failing to stand behind his

of his medical records. Moreover, personal injury recovery is not permitted under RICO. Hence Judge Childs' ruling that Mr. Dickerson's claim accrued in 2005 is a ruling that his RICO claim occurred in that year and, furthermore, is subject to a pending motion for reconsideration.

vision results for the lifetime of the Plaintiff and by Defendants' conduct otherwise referenced in Plaintiffs' Complaint. (FAC, misnumbered para. 65). In this regard, it is a reasonable inference from the facts pled that TLC has refused to pay for the treatment Mr. Dickerson needs to treat his ectasia – viz., a corneal transplant and related follow-up care. (FAC, misnumbered para. 65).

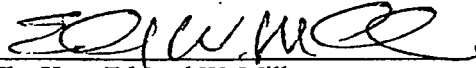
There are no allegations in the FAC as to when TLC and Mr. Dickerson entered into the TLC Lifetime Commitment; nor are there any allegations as to when TLC breached the contract or Mr. Dickerson discovered the breach; nor are there any allegations as to when he discovered that he had ectasia or incurred medical expenses for the same. Hence, the FAC lacks the allegations of facts needed to determine the merits of any limitations defense. Accordingly, Plaintiffs' claims may not be dismissed on limitations grounds, and Defendants' motions are denied.

III. RES JUDICATA DOES NOT BAR THIS LAWSUIT

Under South Carolina law, "the application of res judicata and collateral estoppel principles are not matters of subject matter jurisdiction." Mr. T v. Ms. T, 378 S.C. 127, 133, 662 S.E.2d 413, 416 (Ct.App. 2008). Rather, "[t]he defense of preclusion by a former judgment is an affirmative defense which ordinarily must be specially pleaded." Wagner v. Wagner, 286 S.C. 489, 491, 335 S.E.2d 246, 247 (Ct.App. 1985). Because res judicata is an affirmative defense, the burden is on the Defendants to show that it bars this lawsuit.

Although Mr. Dickerson was the named plaintiff in Dickerson v. TLC The Laser Eye Center (Institute), Inc., et al, CA No. 6:10-685-HFF, United States District Court for the District of South Carolina, and the Honorable United States District Court Judge

Defendants' motions to dismiss. For the reasons stated, Defendants' motions to dismiss are DENIED.



The Hon. Edward W. Miller
Circuit Court Judge
Thirteenth Judicial Circuit

This 1 day of Sept, 2011
Greenville, South Carolina

EXHIBIT C

State of South Carolina

In the Court of Common Pleas

County of Greenville

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

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

CHARLES BENJAMIN DICKERSON,)	
on behalf of himself and all)	
others similarly situated,	)	6:10-685
Plaintiffs,)	
)	
-versus-	)	December 29, 2010
)	
TLC The Laser Eye Center)	
Institute, Inc., et al.,	)	Greenville, SC
Defendants.)	

TRANSCRIPT OF MOTION HEARING

BEFORE THE HONORABLE J. MICHELLE CHILDS
UNITED STATES DISTRICT JUDGE, presiding

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

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8000 Weston Pkwy., Ste. 340
Cary, NC 27513

Court Reporter:

KAREN E. MARTIN, RMR, CRR
300 E. Washington Street
Room 304
Greenville, SC 29601

The proceedings were taken by mechanical stenography and
the transcript produced by computer.

1 horrible financial risk of thousands of people out there
2 in the country who may have lawsuits or claims against
3 them. And they devised this scheme to cover that up.

4 And in so doing, they just didn't sit down with
5 their lawyers and figure it out, they sat down with
6 medical records that were different than those records in
7 their own -- the records they were showing the patients.
8 And can you imagine, Judge, if I have had a surgery with
9 TLC, most of these people are from way out of town,
10 Charleston, Hilton Head, they come to Greenville to have
11 this surgery. They go back home and they go see their
12 optometrist or their ophthalmologist. And they ride up
13 here to get their medical records. All they are getting
14 is ocular health good, no problem, nothing wrong with the
15 surgery. They don't put in there about the keratoconus.

16 The other file that they refuse to turn over
17 would have had that information. And these people, many
18 of them, many of them could have had surgery that could
19 have repaired and stopped the progression of this ectasia.

20 Judge, we believe there are people out there
21 still today that can be helped today if told about this.
22 We felt like after finding or after seeing these several
23 cases that we had individually, that this is the reason
24 why we brought this class action. We think these people
25 need to have these records. We think these people need to

1 be told about the problem. We think their doctors should
2 know. Their own treating doctors right now, Judge, cannot
3 get these records.

4 So if I was one of those patients and I had
5 gotten treated the way they treated me, and it was all
6 just against one doctor, I might have a malpractice claim.
7 But all of the sudden you have a corporate scheme, you
8 have the people -- they got all the managers, the
9 optometrists, they got everybody together and the evidence
10 will show and we have alleged it that they have set out a
11 scheme, do not tell these people, do not let them go, just
12 keep them under this program until the statute of
13 limitations is up. And then the closer will come in to
14 give hem the story.

15 Now, Judge, I can't imagine, and like I told you
16 before --

17 **THE COURT:** When you say the closer will give
18 them the story, are you meaning that after some point at
19 which you contend the statute of limitations ran, they
20 then find out about the diagnosis?

21 **MR. BELL:** A large -- some of the people did and
22 some did not.

23 **THE COURT:** How so?

24 **MR. BELL:** They hired this fellow.

25 **MR. PATRICK:** Your Honor, Mr. Bell was going to

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

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

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

FILED-CLERK OF COURT
GREENVILLE S.C. COURT OF COMMON PLEAS
PAUL B. WICKENSIMER 2007-CP-23-2347

2012 JAN 12 A 11:42

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

Intervenor,

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.

ORDER

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
EM

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.

¹The 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.

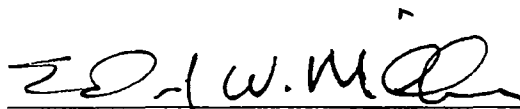
²The Court never ruled on Plaintiff's Motion for Sanctions Regarding Spoliation of Evidence filed in the Hollman case and does not need to reach the issue of spoliation because these matters were ended when the case was dismissed with prejudice.

- 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 G

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
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864.271.7502 (Fax)
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www.gwblawfirm.com

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

From: Woods, Margaret [mailto:mwoods@sccourts.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
Paralegal
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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
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-----Original Message-----

From: Woods, Margaret [mailto:mwoods@scccourts.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 H

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
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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

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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 14 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 10th day of May, 2012, I served a copy of the Appellants' Reply in Support of the Motion for an Expedited Appeal 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.
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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 10, 2012

Attorneys for the Defendants/Petitioners TLC
The Laser Center (Institute), Inc., and TLC
Laser Eye Centers (Piedmont/Atlanta) LLC

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

May 10, 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

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MAY 14 2012

SC Court of Appeals

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. Reply in Support of the Motion for an Expedited Appeal and a Proof of Service showing that the Reply has been served on all Respondents. Please return one copy of the Reply, 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

cc: Douglas F. Patrick, Esquire
Stephen R.H. Lewis, Esquire
George C. Beighley, Esquire
Jack G. Gresh, Esquire