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May 7, 2021

Via Email: supctfilings@sccourts.org

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

RE: Poly-Med, Inc. v. Novus Scientific Pte. Ltd., et al.
Appellate Case No.: 2021-000027
Fourth Circuit Appeal No. 19-1957

Dear Mr. Shearouse:

Please find enclosed the Brief of Defendants in the above-referenced matter and Proof of Service of same to all parties. These documents are being filed by electronic means pursuant to Rule 262(a)(3) of the South Carolina Appellate Court Rules and paragraph (c)(6) of the South Carolina Supreme Court's Order entitled *RE: Operation of the Appellate Courts During the Coronavirus Emergency (As Amended May 29, 2020)*.

By copy of this letter to counsel for Plaintiff, we are notifying them of same.

Sincerely,

Jennifer Mallory

JLM:jlt
Enclosure
cc: Stephen L. Brown, Esq.
Russell G. Hines, Esq.
Marwan S. Zubi, Esq.
Paul Peter Nicolai, Esq.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIFIED QUESTION
From the United States Court of Appeals
For the Fourth Circuit

King, Keenan, and Harris, Circuit Judges

Appellate Case No. 2021-000027
Fourth Circuit Appeal No. 19-1957

Poly-Med, Inc.;

Plaintiff,

v.

Novus Scientific Pte. Ltd.;
Novus Scientific, Inc.;
Novus Scientific AB,

Defendants.

BRIEF OF DEFENDANTS

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I. INTRODUCTION

South Carolina has not adopted the continuing breach theory. South Carolina law has not altered the breach of contract three-year statute of limitations to carve out executory contracts from its application. South Carolina law has not held that a plaintiff can fail to act within three years' notice of alleged wrongful conduct in breach of an agreement and maintain a later claim for the same type of alleged wrongful conduct. South Carolina has not abandoned the discovery rule and South Carolina has been loath to embrace continuing-tort type theories.

Consequently, to answer the first part of the certified question in the affirmative, the Supreme Court would have to effect a complete change in the law, neutering the three-year statute of limitations selected by the General Assembly for breach of contract claims and judicially replacing the statutory bar with a mere limitation of the period for recovery of damages to three years before suit is filed.

Regarding the second part of the certified question, South Carolina law has long recognized that it does matter if breaches are of the same character or type as previous breaches now barred. Consequently, to answer the second part of the certified question in the negative, the Supreme Court would have to overrule decades of discovery rule jurisprudence in South Carolina and hold instead that the statute of limitations for breach of contract claims no longer begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct.

In this case, completely changing the law would allow breach of contract claims to proceed even when those claims are based on the same contract interpretation dispute and the same kind of alleged wrongful conduct that Plaintiff Poly-Med, Inc. ("PMI") has known about and specifically chose not to do anything about until long after the three-year statute of limitations expired. This

cannot reasonably be disputed. In fact, before the district court, PMI did not dispute its knowledge of the Novus Defendants' alleged conduct by 2010. Before the court of appeals, PMI offered only lawyer argument disputing knowledge and then walked away from the argument when challenged by the facts. *Poly-Med, Inc. v. Novus Scientific Pte Ltd.*, Appeal No. 19-1957, Doc. 45-2, at 8 (4th Cir. Jan. 5, 2021) (hereinafter "Certification Order"). Consequently, both the district court and the court of appeals held "that viewed in the light most favorable to Poly-Med, as required in this summary judgment posture, the record establishes that Poly-Med was on notice of both the patent-application and the hernia-only contract claims against Novus by 2010." *Id.* at 8; (J.A. 1660, 1676.)[1]

Moreover, the complete change would not be limited to this case. Instead, PMI and future plaintiffs would be authorized to hold the threat of litigation over defendants after the expiration of the statutory three-year limitations period, gutting "[t]he cornerstone policy consideration underlying statutes of limitation [which] is the laudable goal of law to promote and achieve finality

[1] In this Response, Novus Defendants cite to certain court orders, exhibits, and other materials originally filed at the district court and which are included in the Joint Appendix (also referred to as "J.A.") from Appeal No. 19-1957 at the Fourth Circuit Court of Appeals. The Joint Appendix comprises nine (9) volumes, of which Volumes I-VI are publicly available on the Fourth Circuit's PACER docket. Volumes VII-IX are sealed. For this Court's ease of reference, and where possible, Novus Defendants have cited to materials that are found in publicly-available volumes of the Joint Appendix. Additionally, Novus Defendants have cited to certain memoranda of law and exhibits that are publicly-available on the district court's PACER docket. These documents are indicated by the prefix: "ECF No. __."

The brief does not cite to any document in which the information needed to support the cited proposition is redacted.

If the Court desires additional context beyond the cited statements, per Rule 244(b) of the South Carolina Appellate Court Rules, Novus Defendants note that fully unredacted versions of both the cited declarations and the cited PMI documents from the underlying litigation can be found in the sealed version of the Joint Appendix filed with the Fourth Circuit Court of Appeals or accessed through the district court. Fully unredacted versions of the cited memoranda of law from the underlying litigation can be accessed through the district court.

in litigation." *Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 175, 609 S.E.2d 548, 552 (Ct. App. 2005) (Kittredge, J.) (Beatty, J., concurring). Because this result would be contrary to the "reasoning that would best comport with the law and public policies of the state as well as the Court's sense of law, justice, and right," *Shaw v. Psychmedics Corp.*, 426 S.C. 194, 197, 826 S.E.2d 281, 282 (2019), and in light of the undisputed and egregious facts of this case, the Novus Defendants respectfully request that the Court answer the first part of the certified question in the negative and, if necessary, the second part of the certified question in the affirmative.

II. THIS CASE DOES NOT INVOLVE "FRESH" BREACHES

Contrary to PMI's arguments, this case does not present the Court with "discrete, independently actionable wrongs" or "fresh" claims. Instead, as described more fully below in this section, it involves two contract interpretation disputes that PMI knew about for more than four years before it brought suit.

PMI's efforts to inject an entirely new theory of law into South Carolina jurisprudence for the sole purpose of reviving its untimely claims should not be allowed to obscure all of the ways that this Court would have to change the law if it adopted PMI's continuing breach theory. To illustrate, under PMI's continuing breach theory,

- a party would be able to decide not to exercise reasonable diligence when on notice of wrongful conduct;
- a contracting party would be empowered to choose, on its own, not to trigger the statute of limitations, but to wait—wait for more than three years or even longer, before deciding to trigger the statute of limitations for the same conduct that has been ongoing for more than three years;
- the mere operation of time would result in different claims for the same conduct or the same dispute;
- a contract plaintiff would be within its rights to dress up the same wrongful conduct as "distinct" acts simply because the wrongful conduct occurred in a different month or a different year;

- there would be no requirement to exercise reasonable diligence and the discovery rule would be eviscerated.

Allowing a contract interpretation dispute between private parties that existed for more than four years before the plaintiff filed suit and has no impact on the public to lead to a seismic change in South Carolina law would conflict with the Court's role and the Court's commitment to adopting reasoning that comports with the law, public policy, justice, and right. Such a seismic change should not be allowed under these circumstances. Rather, this case should be decided on the law as it exists and upon the facts that show the statute of limitations has long expired for the hernia only and patent application claims that PMI is trying to revive.

A. PMI's "Hernia Only" Claims Are Not "Fresh" Breaches.

1. PMI's "Hernia Only" Breach of Contract Allegations.

In the Second Amended Complaint, PMI asserts that the Novus Defendants had a contractual duty under the 2005 Sale of Materials and License Agreement (the "2005 Agreement") not to use, manufacture, and/or sell the mesh for purposes other than hernia repair and/or cause the mesh to be manufactured, used, and/or sold for purposes other than hernia repair. (*See* J.A. 1169, 1177, 1179, and 1182, at ¶¶ 34, 91, 106, 117.) PMI further asserts that the Novus Defendants breached that contractual duty when the Novus Defendants made, used, and/or sold the mesh and/or caused the mesh to be manufactured, used, and/or sold for applications other than "hernia mesh only," such as for TRAM flap/breast reconstruction surgery. (J.A. 1171-72, 1177, 1180, and 1182, at ¶¶ 47–53, 92, 107, and 118.)

The "hernia only" dispute in this case is not whether the Novus Defendants had or have the ability to manufacture mesh or to have the mesh manufactured. Rather, the dispute relates to the use for which the Novus Defendants can make, use, or sell the mesh or have the mesh made, used,

or sold. (*See* J.A. 1169, at ¶ 34 (citing 2005 Agreement § 6(c)); J.A. 1670-71, 1676 n.11 (finding that each of PMI's claims related to promotion, manufacture, and sale of mesh relate to "hernia only").) In short, is the mesh contractually authorized only for hernia repair or is the mesh contractually authorized for non-hernia applications as well?

That ***PMI disagreed*** with the Novus Defendants' interpretation of the 2005 Agreement's alleged hernia only provisions ***in 2010 but decided to allow the Novus Defendants' conduct related to the "hernia only" dispute to continue for more than four years*** exposes the fundamental flaw in PMI's argument. The "hernia only" dispute in this case does not involve "discrete, independently actionable wrongs." Rather, it involves a single conflict over whether the contract is limited to "hernia only" or not. ***The resulting alleged wrongful conduct all arises out of the contract interpretation dispute that arose at least by 2010 and could have been resolved within three years of PMI's notice, if only PMI had chosen to act.***

2. PMI's Knowledge Demonstrates that the Hernia Only Breach of Contract Claims Are Not "Fresh" Breaches.

While PMI filed suit asserting its hernia only breach of contract claims on May 8, 2015 (*see* J.A. 10), PMI does not and cannot dispute that it knew or had reason to know that its hernia only breach of contract claims existed at least by 2010. To illustrate, PMI produced documents in the litigation that confirm PMI's knowledge of the hernia only breach of contract claims as early as 2010:

- On September 27, 2010, Waleed Shalaby (PMI Chief Science Officer) advised David Shalaby (PMI President) that the TIGR® Matrix Surgical Mesh ("mesh") was being used for TRAM flap with breast reconstruction and directed David Shalaby to contact PMI's attorney to discuss if the Novus Defendants breached the 2005 Agreement. (J.A. 1660, 1664 (discussing ECF No. 209-1); J.A. 1805.)

- On September 30, 2010, PMI's business consultant advised PMI and David Shalaby that "it could be inferred from the Novus website that the company is indicating its use for 'soft tissue repair'" and that "if Novus is indeed promoting its use beyond hernia repair, it could be argued that they have violated the terms of the license agreement and it could thus be terminated." (J.A. 1660, 1664-1665 (discussing ECF No. 209-2); ECF No. 271-6, at pp. 6-7.)

- On December 22, 2010, PMI Vice-President of Manufacturing sent a letter to the Novus Defendants, copying David Shalaby (PMI President), and asserted that the Novus Defendants "commercialized the TIGR hernia mesh as a 'surgical' mesh when our agreement clearly identifies product licensure by Novus as a 'hernia' mesh only. We believe this is a serious issue that needs to be addressed by Novus immediately." (J.A. 1660, 1665 (quoting ECF No. 209-3); ECF No. 271-7, at pp. 1, 5.)

- On October 17, 2011, PMI employee Rebecca Ogburn (PMI's Manufacturing Systems Coordinator) stated that "Mrs. Dr. Shalaby adamantly informed me that we are to stick with WK6 in our documents because it was important to note that we only manufacture for hernia use despite what Novus markets for." (J.A. 1660, 1669 & n.7 (quoting ECF No. 209-4); J.A. 1811.)

- On November 29, 2011, David Shalaby recognized that while the Novus Defendants had gained FDA clearance of the mesh for "reinforcement of soft tissue where weakness exists," his position was that the contract limited the Novus Defendants to use for hernia repair but he did not "want to make an issue" of that. (*See* J.A. 1660, 1669 & n.8 (quoting ECF No. 209-5); J.A. 1813.)

The Novus Defendants do not make this point to tout allegedly breaching behavior. Instead, the Novus Defendants make this point to show that PMI's own documents demonstrate that, by 2010, PMI determined that the Novus Defendants were making, selling, and using and/or having made, sold, and used the mesh for uses other than hernia repair. PMI knew or had reason to know about the Novus Defendants' alleged hernia only conduct, but PMI chose to allow the limitations period to expire. Thus, PMI's hernia only breach of contract claims are not "fresh" breaches.

B. PMI's "Patent Application" Claims are Not "Fresh" Breaches.

1. PMI's "Patent Application" Breach of Contract Allegations.

PMI asserts that the Novus Defendants had a contractual duty under the 2005 Agreement not to file mesh patent applications without notice to PMI, without putting the mesh patent applications in PMI's name, without advising or consulting PMI regarding the mesh patent applications, and without assigning or transferring the mesh patent applications to PMI. (*See* J.A. 1173-75, 1177, 1180, and 1182, at ¶¶ 55, 58, 62-75, 93, 108, 119.) PMI asserts that the Novus Defendants breached that contractual duty by filing mesh patent applications without notice to PMI, without putting the mesh patent applications in PMI's name, without advising or consulting PMI regarding the mesh patent applications, and without assigning or transferring the mesh patent applications to PMI. (*See* J.A. 1173-75, 1177-78, 1180-83, at ¶¶ 59-75, 94-96, 98, 109-112, 120-122.)

As with the hernia only dispute, the "patent application" dispute in this case does not involve "discrete, independently actionable wrongs." Rather, it involves a contract interpretation dispute regarding whether the Novus Defendants had a contractual duty under the 2005 Agreement not to file mesh patent applications without notice to PMI, without putting the mesh patent applications in PMI's name, without advising or consulting PMI regarding the mesh patent applications, and without assigning or transferring the mesh patent applications to PMI. (*See* J.A. 1169-70, at ¶¶ 37, 38 (citing 2005 Agreement §§ 7(a), 8); J.A. 1670-71, 1676 n.11 (finding that each of PMI's claims related to patent applications fall into the "patent application" category)). PMI knew about the Novus Defendants' "patent application" conduct under the 2005 Agreement by at least 2010.

That ***PMI disagreed*** with the Novus Defendants' interpretation of and conduct under the 2005 Agreement's alleged patent application provisions at least ***by 2010 but decided to allow the Novus Defendants' conduct related to the patent application dispute to continue for more than four years*** thereafter again exposes the fundamental flaw in PMI's argument. ***The Novus Defendants' resulting alleged wrongful "patent application" conduct all arises out of the same contract interpretation dispute that arose at least by 2010 and could have been resolved within three years of PMI's notice—if only PMI had chosen to act.***

2. PMI's Knowledge Demonstrates that the Patent Application Breach of Contract Claims Are Not "Fresh" Breaches.

As with the hernia only breach of contract claims, PMI has produced documents in the litigation that confirm PMI's knowledge of the patent application breach of contract claims as early as 2005 and into 2010:

- In May 2005, PMI executed a Joint R&D Agreement with Radi Medical Systems, AB ("Radi") that included specific written notice to PMI of Radi's prior filing of the 2004 Radi Portfolio's patent application. (*See* J.A. 1669 (discussing ECF No. 209-6); ECF No. 209, at 2; J.A. 1167 at n.* (stating that "[s]ince one of the Novus entities is the operative party under the Agreement, references to RADI AB in the quoted text of the Agreement are substituted with NOVUS for ease of reference.").)

- After August 2010, David Shalaby "learned that Defendants had secretly filed patent applications with respect to the Select Absorbable Composite Mesh in their own name and on their own behalf in violation of the Hernia Mesh Agreement. In fact, the Defendants filed four such patent applications within eight months after my father's death." (J.A. 128, 143, at ¶ 63.)

- In a meeting in or around September 2010, David Shalaby "told Engstrom and Archetto that Poly-Med believed the patents filed by the Defendants were in conflict with the terms of the Hernia Mesh Agreement and that the Defendants were trying to push Poly-Med to agree to a broader license, beyond hernia repair." (J.A. 128, 145-46 at ¶ 73.)

- On September 22, 2010, David Shalaby (PMI President) sent two emails to Waleed Shalaby (PMI Chief Science Officer), Joanne Shalaby (PMI Secretary-Treasurer), and Shawn Peniston (PMI Manager, Product and Process Development), discussing the Novus Defendants' patent applications and PMI's strategy to challenge the Novus Defendants' ownership of those patent applications. (*See* J.A. 1677, 1703:20-1704:13.)

- On October 15, 2010, the Novus Defendants put PMI on written notice that the Novus Defendants had filed patent applications regarding mesh in Defendant's name, not in PMI's, and identified the patent applications by number. (*See* J.A. 1660, 1669-70 (discussing ECF No. 209-8); J.A. 479, 486; *see generally* J.A. 479-481 (discussing transfer of Radi's rights under 2005 Sale of Materials and License Agreement to Novus Scientific Pte., Ltd).)

The Novus Defendants do not make this point to tout allegedly breaching behavior. Instead, the Novus Defendants make this point to show that PMI's own documents demonstrate that, at least by 2010, PMI determined that the Novus Defendants were engaged in "patent application" conduct that PMI believed breached the 2005 Agreement. Specifically, PMI was on notice and had reason to know that Radi and then the Novus Defendants had filed and were filing mesh patent applications, in the Novus Defendant's name, without PMI's consent, without advising or consulting PMI, and without assigning or transferring the mesh patent applications to PMI. Despite this knowledge, PMI chose to allow the limitations period to expire. Thus, PMI's patent application breach of contract claims are not "fresh" breaches.

C. The District Court and the Fourth Circuit Determined that PMI had Knowledge of the Hernia Only and Patent Application Breach of Contract Claims by 2010.

The district court determined that PMI was on notice of the hernia only and patent application breach of contract claims by 2010:

> based on the evidence viewed in the light most favorable to Poly-Med, the court concludes that Poly-Med should have known through the exercise of reasonable diligence that its "hernia only" and "patent application" breach of contract claims existed in September 2010 and October 2010, respectively. However, Poly-Med did not file its "hernia only" and "patent application" breach of contract claims until May 8, 2015, almost five (5) years later. For this reason, the court finds that Novus Defendants are entitled to summary judgment on Poly-Med's "hernia only" and "patent application" breach of contract claims because these claims are barred by the three (3) year statute of limitations found in S.C. Code Ann. § 15-3-530(1) (2017).

(J.A. 1660, 1676 (internal citations omitted).) The district court further found that "***all nine of the breaches alleged by Poly-Med fall into one of these two categories***. In this regard, the unavailability of information regarding the later occurring breaches alleged by Poly-Med does not delay the running of the limitations period under South Carolina law." (J.A. 1676, at n.11 (emphasis added).)

The court of appeals agreed with the district court. First, it noted that while "Poly-Med appeared to question the district court's application of the discovery rule, and the court's holding that Poly-Med knew or should have known of its contract claims against Novus by 2010," "[a]t oral argument, however, Poly-Med clarified that it is challenging only the district court's rejection of the continuing breach theory." Certification Order, at 8. Having established that PMI does not dispute its knowledge of the alleged hernia only and patent application breaches by at least 2010, the court of appeals stated

> we agree with the district court that viewed in the light most favorable to Poly-Med, as required in this summary judgment posture, the record establishes that Poly-Med was on notice of both the patent-application and the hernia-only contract claims against Novus by 2010….

Id.

III. ARGUMENT

A. The South Carolina Supreme Court Would Have to Change the Law to Find that PMI's Continuing Breach Theory Applies.

The first part of the certified question asks:

> Under a contract with continuing rights and obligations, does South Carolina law recognize the continuing breach of contract theory in applying the statute of limitations to breach-of-contract claims, such that claims for separate breaches that occurred (or were only first discovered) within the statutory period are not time-barred, notwithstanding the prior occurrence and/or discovery of breaches as to which the statute of limitations has expired?

The answer to the first part of the certified question should be no.

As detailed below, there is no statute in South Carolina that has recognized the continuing breach of contract theory as an exception to the three-year statute of limitations. There is no statute in South Carolina that has carved out contracts with continuing rights and obligations as needing a different statute of limitations. There is no case in South Carolina that has held that the continuing breach of contract theory is an exception to the three-year statute of limitations for breach of contract claims. There is no case in South Carolina that has held that a separate statute of limitations would apply to contracts with continuing rights and obligations as contrasted with other contracts.

The only way to change these facts about the state of the law in South Carolina would be to change the law.

1. The Three-Year Statute of Limitations Does Not Create An Exception for Executory Contracts.

In South Carolina, a breach of contract claim must be brought within three (3) years after the plaintiff knew or reasonably should have known that the alleged breach occurred. *See* S.C. Code Ann. § 15-3-530(1) (2005). That statute provides:

> Within three years:
>
> (1) an action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520….

Id.

In enacting the statute, the General Assembly determined that only certain types of contracts should be carved out of the three-year statute of limitations. First, the General Assembly identified "a bond or other contract in writing secured by a mortgage of real property" and "a sealed instrument, other than a sealed note and personal bond for the payment of money only whereon the period of limitation is the same as prescribed in Section 15-3-530, except that a sealed

contract for sale or an offer to buy or sell goods whereon the period of limitation is the same as prescribed in Section 36-2-725" as contracts that merit differential treatment. *See id.* at § 15-3-520(a)-(b). As a result, the General Assembly enacted a statute subjecting those contracts to a twenty-year statute of limitations, rather than the three-year statute. *Id*.

Second, the General Assembly referred to Section 36-2-725 as an exception to the general three-year statute of limitations. *See id.* In that section of South Carolina's Uniform Commercial Code, the General Assembly selected a statute for sales contracts different from the general three-year breach of contract statute of limitations. Specifically, the statute of limitations for sales contracts provides that "[a]n action for breach of any contract for sale must be commenced within six years after the cause of action has accrued." S.C. Code Ann. § 36-2-725(1) (2003).

The General Assembly did not identify any other exceptions in connection with the general three-year statute of limitations for breach of contract claims. The express language of Sections 15-3-530(1), 15-3-520, and 36-2-725(1) confirms that the General Assembly is the body that has the authority to treat different contracts in different ways and to subject those contracts to different statutory bars.

No such exception has been made for executory contracts or contracts with continuing rights and obligations. The only way to make such an exception would be to change the law.

2. The Three-Year Statute of Limitations Applicable to Breach of Contract Claims Does Not Include a Statute of Repose Such as the Statute Involved in *Marshall v. Dodds*.

Likewise, the General Assembly did not include a repose period in the three-year statute of limitations applicable to breach of contract claims. A statute that includes a repose period "creates a substantive right in those protected to be free from liability after a legislatively-determined period of time." *See Langley v. Pierce*, 313 S.C. 401, 404, 438 S.E.2d 242, 243 (1993)

(internal citations omitted). The General Assembly knew that it could include a repose period because it did exactly that in the statute of limitations applicable to Actions for Medical Malpractice. *See* S.C. Code Ann. § 15-3-545(A) (2005). That statute provides:

> 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.

Id. (emphasis added).

The medical malpractice statute does not only include a requirement that an action be commenced within three years. It also includes a six-year repose period that any medical malpractice action must be commenced within a period "not to exceed six years from date of occurrence." *Id.* Recently, in *Marshall v. Dodds*, 426 S.C. 453, 460-61, 827 S.E.2d 570, 574 (2019), this Court was asked to consider the statute and decide the triggering date of the repose portion of the medical malpractice statute of limitations. As part of the analysis, the majority focused on the specific words that the General Assembly used in the statute: "not to exceed six years from date of occurrence." *Id.* at 461, 827 S.E.2d at 574.

The majority stated that "the statute clearly sets forth the triggering date as the 'date of occurrence.' However, we note what this provision does not say—the date of the *first* occurrence." *Id.* The *Marshall* majority was not willing to ignore the legislative intent and change the language of the statute by importing the word "first" to modify the word "occurrence." *Id.* at 466, 827 S.E.2d at 576-77. As a result, the majority determined that the six-year repose period is not triggered only by the first occurrence of medical malpractice. *Id.* at 466, 827 S.E.2d at 577. Instead, considering the express words of the statute, the Court found the repose period begins to

run with each occurrence of medical malpractice. *Id.* at 467, 827 S.E.2d at 577. The Court's finding is limited to the repose period built into the medical malpractice statute of limitations. *See id.* at 460-61, 467, 827 S.E.2d at 574, 577.

In contrast, the case at bar relates to the breach of contract statute of limitations. As a result, this case does not involve a statute of repose or otherwise involve a statutorily-mandated repose period. When the General Assembly enacted a three-year statute of limitations for breach of contract claims, it passed into law a statute of limitations that is purely a procedural limitation. *See Langley*, 313 S.C. at 403-04, 438 S.E.2d at 243. It did not include a substantive right that could have been conferred by a statute of repose. *See id.*

The *Marshall* majority's commitment to hew closely to the parameters imposed by the express language in the medical malpractice statute reveals that PMI has misapplied *Marshall* to this case. The three-year breach of contract statute of limitations that applies to this case is missing the very statutory language regarding a repose period that drove the *Marshall* majority's opinion. *Compare* section 15-3-545(A) *with* section 15-3-530(1). Importing a substantive right, similar to a right of repose, that would allow the three-year breach of contract statute of limitations to run with each occurrence of the same allegedly wrongful conduct of which a plaintiff had notice would undermine the very foundation on which the *Marshall* majority rested its opinion: that it had no choice but to find as it did because the statutory language compelled the result. *See Marshall*, 426 S.C. at 466, 827 S.E.2d at 576-77.

The breach of contract statute of limitations does not include a statute of repose. The only way to change that fact would be to change the law.

3. The Three-Year Statute of Limitations Applicable to Breach of Contract Claims Does Not Include a "Per Violation" Provision Such as the Statute Involved in *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharmaceuticals, Inc*.

Likewise, the General Assembly did not include a "per violation" provision in the three-year statute of limitations applicable to breach of contract claims. The General Assembly knew that it could include a "per violation" provision that impacts the statute of limitations because it did exactly that in the South Carolina Unfair Trade Practices Act. *See* S.C. Code Ann. § 39-5-110(a) (1985). That statute provides:

> If a court finds that any person is willfully using or has willfully used a method, act or practice declared unlawful by § 39-5-20, the Attorney General, upon petition to the court, may recover on behalf of the State a civil penalty of not exceeding five thousand dollars ***per violation***.

Id. (emphasis added). The statute further provides:

> No action may be brought under this article more than three years after discovery of the unlawful conduct which is the subject of the suit.

Id. § 39-5-150.

Thus, SCUTPA does not simply include a requirement that an action be commenced within three years. It also includes a per violation provision. When this Court was asked to consider the statute and decide which labeling claims regarding the risks associated with atypical antipsychotics would be barred by the statute of limitations, the Court concentrated on the specific words that the General Assembly used in the statute: "per violation." *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharmaceuticals, Inc.*, 414 S.C. 33, 79, 777 S.E.2d 176, 200 (2015).

The Court focused on legislative intent, stating:

> the language of SCUTPA itself contemplates that an unlawful method, act, or practice may result in multiple statutory violations, and it is the violations themselves that cause the statute of limitations to begin to run…

Id. The Court was not willing to ignore the legislative intent evidenced by the words "per violation." As a result, the Court adhered to the statutory language and adopted

> the view that aligns with legislative intent as reflected in section 39-5-110, a common sense approach recognizing that the SCUTPA statute of limitations begins to run anew with each violation. Thus, where a claim involves a series of ongoing violations, recovery is limited to a period coextensive with the applicable statute of limitations.

Id.

As in the *Marshall* majority's opinion, the Court hewed closely to the "per violation" language peculiar to SCUTPA when it decided that the SCUTPA statute of limitations would begin to run with each violation. Thus, the Court's opinion is grounded in the language of SCUTPA and does not invite expansive reimagining or rewriting of other statutes in a manner different from that enacted by the General Assembly. Likewise, the language selected by the Court recognizes that the holding pertains to the SCUTPA statute of limitations alone: "***the SCUTPA statute of limitations*** begins to run anew with each violation." *Id*. (emphasis added). The Court did not expand the application to all statutes of limitations. Instead, the Court limited the holding to the SCUTPA statute of limitations at issue in that case.

The breach of contract statute of limitations is different from the provisions of SCUTPA. It does not include a "per violation" provision that could convert each breach of the same character into a separate breach, triggering a new statute of limitations. The only way to change that fact would be to change the law.

4. South Carolina Cases Have Not Contradicted the Legislative Mandate.

The "discovery rule," under which the statute of limitations begins to run when a cause of action reasonably ought to have been discovered, applies to breach of contract actions. *Prince v. Liberty Life Ins. Co.*, 39 S.C. 166, 169, 700 S.E.2d 280, 282 (Ct. App. 2010). South Carolina

courts have determined that the discovery rule does not convert a breach of contract claim into a "continuing violation." *See Center for Legal Reform v. Rakowsky*, 2014 WL 6389709, at *4 (D.S.C. Nov. 14, 2014) (holding that Plaintiff's attempt "to advance the continuing tort doctrine as a means of tolling the statute" as to Plaintiff's breach of contract claim was "unavailing" under South Carolina law) (Anderson, J.); *Wellin v. Wellin*, 2014 WL 234216, at *3 n.1 (D.S.C. Jan. 22, 2014) (noting that South Carolina does not appear to have adopted continuing tort rule with respect to, among other claims, breach of contract); *Maher v. Tietex Corp.*, 331 S.C. 371, 384, 500 S.E.2d 204, 211 (Ct. App. 1998) ("The objective test in South Carolina's discovery rule is sufficient to allow plaintiffs the opportunity to discover and act upon the original breach, without need for application of the 'continuing wrong' doctrine in this situation."); *Dillon Cty. Sch. Dist. No. Two v. Lewis Sheet Metal Works, Inc.*, 286 S.C. 207, 216-17, 332 S.E.2d 555, 560-61 (Ct. App. 1985) ("As far as we can determine, the Supreme Court of this state has never applied, at least not in a case involving either negligence, breach of warranty, or strict liability, the so-called 'continuous treatment' exception to the general rule governing the accrual of a cause of action. We doubt if the Supreme Court would do so, especially since the 'discovery' rule is applicable in South Carolina and is itself an exception to the traditional rule of accrual. Indeed, our research discloses no case adopting the 'continuous treatment' exception where the 'discovery' rule is in effect."), *overruled on other grounds by Atlas Food Sys. & Servs., Inc. v. Crane National Vendors Div. of Unidynamics Corp.*, 319 S.C. 556, 559, 462 S.E.2d 858, 860 (1995); *CoastalStates Bank v. Hanover Homes of S.C., LLC*, 408 S.C. 510, 517, 759 S.E.2d 152, 156 (Ct. App. 2014) ("The discovery rule applies to breach of contract actions.").

South Carolina relies on the discovery rule as an exception to the traditional rule of accrual of a claim for purposes of the statute of limitations. *See Dillon*, 286 S.C. at 216-17, 332 S.E.2d at

560-61. No South Carolina case has determined that a breach of contract claim should be converted into a continuing-tort type claim in order to avoid or alter application of the three-year statute of limitations. The district court recognized the importance of the discovery rule as an exception to the traditional rule of accrual and declined to transform the time-barred breach of contract claims into continuing-tort type claims that could survive PMI's decision to ignore what it knew or should have known. (*See* J.A. 1675-76.)

PMI's position is not enhanced by the opinions in *Fairfield Elec. Coop. v. DR Horton, Inc.*, 2013 WL 5409143, at *3 (D.S.C. Sept. 25, 2013) (Anderson, J.) (applying landlord-tenant legal principle that a new cause of action accrues each time a rent payment is due to residential occupancy dispute, and relying on parties' agreement regarding close date of each home); *Richland-Lexington Airport Dist. v. Am. Airlines, Inc.*, 306 F. Supp. 2d 548 (D.S.C. 2002) (Anderson, J.) (applying landlord-tenant legal principle that a new cause of action accrues each time a rent payment is due to lease dispute); *Estate of Livingston v. Livingston*, 404 S.C. 137, 744 S.E.2d 203 (Ct. App. 2013) (finding each USDA application was for a fixed duration and required separate renewal each year). Brief of Plaintiff, at 14–15. Neither the *Fairfield Elec. Coop.* nor the *Richland-Lexington Airport Dist.* opinion even discussed a "continuing breach" theory. To the extent there was any question whether these opinions adopted a "continuing breach of contract" theory, Judge Anderson's later opinion in *Center for Legal Reform* put that speculation to rest. *See* 2014 WL 6389709, at *4.

Likewise, in *Estate of Livingston*, the South Carolina Court of Appeals did not adopt a "continuing breach" theory. Rather, the Court of Appeals decided that the scoundrel brother entered into separate annual agreements with the USDA. *Estate of Livingston*, 404 S.C. at 147,

744 S.E.2d at 209. Consequently, the court found the statute of limitations had run on earlier annual agreements, but not the later annual agreements. *Id.* at 147-48, 744 S.E.2d at 209.

PMI also suggests that the holding in *Companion Property & Casualty Insurance Company v. Wood*, 2017 WL 4168526 (D.S.C. Sept. 20, 2017), should encourage the Court to adopt a continuing breach theory. *See* Brief of Plaintiff, at 17-18. The posture and facts of *Companion* undermine PMI's argument. First, the district court's order concerned defendants' motion to dismiss, not a motion for summary judgment. *Companion*, 2017 WL 4168526, at *1. As a result, the district court could grant the motion "only if, after accepting all well-pleaded allegations in the complaint as true, it appears certain the plaintiff cannot prove any set of facts in support of its claims that entitles it to relief." *Id*. at *3. The *Companion* plaintiff's complaint alleged breaches of contract that occurred within the three-year period before plaintiff filed suit. *Id.* at *8. Thus, because the standard that applies to Rule 12(b)(6) "preclud[es] dismissal unless it is certain the plaintiff is not entitled to relief under any legal theory that plausibly could be suggested by the facts alleged," *id.* at *3, the district court was constrained to deny the part of the motion to dismiss based on the statute of limitations, *see id.* at *8. Second, the *Companion* court did not hold that a breach of contract claim should be converted into a continuing-tort type claim in order to avoid or alter the three-year statute of limitations. The district court's order was limited to the motion to dismiss, and the case settled shortly thereafter.

None of these cases determined that a breach of contract claim should be converted into a continuing-tort type claim in order to avoid application of the three-year statute of limitations.

B. <u>Changing the Law would be Contrary to Public Policy as Illustrated by the Facts of this Case</u>.

It is undisputed that PMI knew or had reason to know about the conduct underlying its claims more than four (4) years before filing suit. (J.A. 1676; Certification Order, at 8.) It knew

about the conduct and chose not to act because PMI believed it would be commercially advantageous to wait. (*See* J.A. 1011, 1033:2-25, 1037:19-22; 1130, 1134; 1677, 1686:17-1689:14; 1660, 1669 n.8.) South Carolina law does not and has not recognized the continuing breach theory in applying the statute of limitations to breach of contract claims. Changing the law based on the facts of this case would be abhorrent to any "reasoning [that] would best comport with the law and public policies of the state as well as the Court's sense of law, justice, and right." *Shaw*, 426 S.C. at 197, 826 S.E.2d at 282. This is not a case where sympathies would cause many to "applaud the alteration of the statute…necessary to permit the instant action to proceed" or one that would cause the court "sorrow over [the law's] rigor…." *Marshall*, 426 S.C. at 467, 474, 827 S.E.2d at 577, 581 (James, J., dissenting).

Rather, the evidence of PMI's knowledge and notice and PMI's voluntary decision to delay acting is overwhelming, was not disputed by PMI in the district court with evidence, and was recognized as established facts by both the district court and the court of appeals.

1. PMI's Admitted Knowledge and Notice of the Hernia Only Breach of Contract Claims in 2010 Demonstrate that Changing the Law Based on these Facts Would Not Comport with the Law or Public Policy.

To illustrate, on September 27, 2010, Waleed Shalaby (PMI's Chief Science Officer) notified David Shalaby (PMI's President) that he believed the Novus Defendants were making, selling, and/or using and/or having made, sold, and used the mesh for TRAM flap/breast reconstruction surgery—which PMI alleges is an application other than hernia repair. (J.A. 1660, 1664 (discussing ECF No. 209-1); J.A. 1805; J.A. 1172, at ¶¶ 51–52.) Waleed Shalaby suggested that David Shalaby contact a lawyer to discuss the Novus Defendants' activities. (*See* J.A. 1660, 1664 (discussing ECF No. 209-1); J.A. 1805.) At this point, the facts and circumstances indicated that a claim for breach of contract might exist and, pursuant to the discovery rule, PMI was required

to act promptly to investigate the existence of a claim. *Brooks v. GAF Materials Corp.*, 284 F.R.D. 352, 357–58 (D.S.C. 2012), *amended in part*, 2012 WL 5195982 (D.S.C. 2012) (Childs, J.). Despite being put on notice of the Novus Defendants' alleged breach, PMI did not file suit against the Novus Defendants at that time or within three (3) years.

Just three days later, on September 30, 2010, a consultant hired by PMI after Dr. Shalaby's death, again raised the issue that a "hernia only" breach of contract claim might exist. (*See* J.A. 1660, 1664-65 (discussing ECF No. 209-2); ECF No. 271-6, at pp. 6-7.) Specifically, the consultant advised PMI and PMI President David Shalaby that "it could be inferred from the Novus website that the company is indicating its use for 'soft tissue repair'" and that "if Novus is indeed promoting its use beyond hernia repair, it could be argued that they have violated the terms of the license agreement and it could thus be terminated." (J.A. 1664-65 (discussing ECF No. 209-2); ECF No. 271-6, at pp. 6-7.) Despite being put on notice of the Novus Defendants' alleged making, selling, and/or using and/or having the mesh manufactured, used, or sold for an application other than hernia repair, PMI did not file suit against the Novus Defendants at that time or within three (3) years.

Shortly thereafter, on December 22, 2010, PMI sent a letter to the Novus Defendants, raising the hernia only argument:

> Novus has commercialized the TIGR hernia mesh as a 'surgical mesh' when our agreement clearly identifies product licensure by Novus as a 'hernia' mesh only. We believe this to be a serious issue that needs to be addressed by Novus immediately.

(J.A. 1660, 1665 (quoting ECF No. 209-3); ECF No. 271-7, at pp. 1, 5.) This letter confirms that PMI was on notice of the Novus Defendants' alleged making, selling, and/or using and/or having the mesh manufactured, used, and/or sold for an application other than hernia repair and that PMI believed the Novus Defendants' actions breached the 2005 Agreement. (*See id*.) This letter

constitutes an admission by PMI that it knew or had reason to know that the hernia only breach of contract claims accrued at least in 2010. (*Id*.) Despite that admission, PMI did not file suit against the Novus Defendants at that time or within three (3) years. (*See also* J.A. 128, 143, at ¶ 62 (admitting that PMI believed Novus Defendants were distributing the mesh for use outside of hernia repair between August and December 2010).)

The next year, on October 17, 2011, Rebecca Ogburn (PMI Manufacturing Systems Coordinator) contacted Shawn Peniston (PMI Manager, Product and Process Development) to discuss the alleged use outside of hernia by the Novus Defendants. (*See* J.A. 1660, 1669 & n.7 (quoting ECF No. 209-4); J.A. 1811.) Specifically, Ms. Ogburn stated that "Mrs. Dr. Shalaby adamantly informed me that we are to stick with WK6 in our documents because it was important to note that **we only manufacture for hernia use despite what Novus markets for**." (*Id*. (emphasis added).) Ms. Ogburn's email shows that PMI was on notice of the Novus Defendants' alleged making, selling, and/or using and/or having made, sold, and/or used the mesh for applications other than hernia repair. (*See id.*) Ms. Ogburn's email also demonstrates that PMI knowingly chose to ignore the alleged wrongful conduct, opting to wait more than four years before filing suit. (*Id*.)

The next month, on November 29, 2011, PMI President David Shalaby recognized that while the Novus Defendants had gained FDA clearance of the mesh for "reinforcement of soft tissue where weakness exists," his position was that the contract restricted the Novus Defendants to hernia repair only but he did not "want to make an issue" of that. (*See* J.A. 1660, 1669 & n.8 (quoting ECF No. 209-5); J.A. 1813.) PMI and its management, headed by David Shalaby, knew or had reason to know that its "hernia only" breach of contract claims were ripe in 2010. (*See* J.A. 1660, 1664-65 (discussing ECF Nos. 209-1, 209-2, 209-3); J.A. 1805; ECF No. 271-6, at pp. 6-7;

ECF No. 271-7, at pp. 1, 5.) More than a year later, PMI and its President David Shalaby decided to stay the course, continuing to collect royalties from the Novus Defendants for all uses and knowingly choosing to ignore the alleged breach. (*See* J.A. 1660, 1669 & n.8 (quoting ECF No. 209-5); J.A. 1813.) At that time, PMI did not file suit or take any action to stop the Novus Defendants' allegedly objectionable activities. Indeed, PMI did not file suit against the Novus Defendants within three (3) years, but waited until May 8, 2015, to file suit against the Novus Defendants and assert the "hernia only" breach of contract claims. (*See* J.A. 10.)

2. PMI's Admitted Knowledge and Notice of the Patent Application Breach of Contract Claims in 2010 Demonstrate that Changing the Law Based on these Facts Would Not Comport with the Law or Public Policy.

Likewise, PMI has produced documents in the litigation that confirm PMI's knowledge of the patent application breach of contract claims as early as 2005 and into 2010. To illustrate, on October 15, 2010, the Novus Defendants put PMI on written notice that the Novus Defendants, without consulting or advising PMI, had filed patent applications regarding mesh in the Novus Defendant's name and not in PMI's name. (*See* J.A. 1660, 1669-70 (discussing ECF No. 209-8); J.A. 479, 486.) Thus, in October 2010, PMI's original notice in 2005 of the Novus Defendant's patent portfolio was further enhanced, with the Novus Defendants identifying mesh patent applications in addition to the 2004 Radi Portfolio. *Id*. Consequently, PMI was on notice and had reason to know that the Novus Defendants had filed and were filing mesh patent applications. At that time, PMI knew that Radi and the Novus Defendants had not been keeping PMI advised of the mesh patent applications, that Radi and the Novus Defendants had not been consulting or advising PMI regarding the mesh patent applications, and that Radi and the Novus Defendants had not assigned or transferred the mesh patent applications to PMI. *See id.* Despite that knowledge, PMI continued to remain silent, waiting until long after the expiration of the three-year statute of

limitations to assert its patent application breach of contract claims. Thus, the 2010 notice is fatal to patent application breach of contract claims that languished for more than three (3) years before suit was filed in May 2015.

Moreover, during the preliminary injunction hearing, when questioned about PMI's knowledge related to the October 15, 2010, letter, PMI stated that "[t]here are some—with respect to the patent applications. Your Honor, you're right. Some of the patent applications that were filed years ago Poly-Med did find out about those." (*See* J.A. 1011, 1037:19-22.)

Further, PMI conceded that it knew or had reason to know that the patent application breach of contract claims existed more than four years before filing suit. Specifically, in paragraph 63 of David Shalaby's Declaration, PMI President David Shalaby states that, after his father's death in August 2010, he

> learned that the Defendants had secretly filed patent applications with respect to the Select Absorbable Composite Mesh in their own name and on their own behalf in violation of the Hernia Mesh Agreement. In fact, the Defendants filed four such patent applications within eight months after my father's death.

(J.A. 128, 143, at ¶ 63.) Also, in paragraph 73, David Shalaby states:

> After my father's death, Poly-Med then Vice President, William Matthews, and I met with Engstrom and Archetto. I told Engstrom and Archetto that Poly-Med believed the patents filed by the Defendants were in conflict with the terms of the Hernia Mesh Agreement and that the Defendants were trying to push Poly-Med to agree to a broader license, beyond hernia repair.

(J.A. 128, 145-46 at ¶ 73.) That meeting occurred in or around September 2010. (*See* J.A. 142-433, 145-46 at ¶¶ 57, 61, 73.)

Despite PMI's knowledge of the hernia only and patent application breach of contract claims, PMI waited until long after the expiration of the three-year statute of limitations to assert the breach of contract claims. Because PMI knowingly slept on its rights and delayed filing suit

until after the expiration of the statute of limitations, PMI's hernia only and patent application breach of contract claims should be barred by the statute of limitations.

3. PMI's Ability to Access the Same Relief Demonstrates that It Would Suffer No Real Consequences and that Changing the Law Based on these Facts Would Not Comport with the Law or Public Policy.

Before the district court, PMI claimed that its damages were not ascertainable. (*See, e.g.*, J.A. 1828, 1853-56; J.A. 106, 108, 115, 117-21 at ¶¶ 9, 38, 53, 57, 62, 67; J.A. 926-30.) Contrary to the suggestion in PMI's brief, as relief, PMI seeks non-monetary relief, including termination of the 2005 Agreement between the parties. (*See* ECF No. 268; ECF No. 268-1, at 2, 10-20.) PMI bases its request for that relief on the grounds that the Novus Defendants' conduct in alleged breach of the hernia only and patent application provisions of the 2005 Agreement constitutes material breach. (*See* J.A. 1163, 1175-76, at ¶¶ 81-82; J.A. 1828, 1842-43; ECF No. 268-1, at 10-13.) Termination is the same remedy that PMI could have sought had it brought its dispute within the three-year statute of limitations. (*Cf.* J.A. 1660, 1664-1665 (discussing PMI consultant's suggestion in 2010 that the 2005 Agreement could be terminated).) For all of these reasons, if PMI were allowed to proceed with its hernia only and patent application claims, PMI would suffer no real consequences from its decision to delay bringing suit. Therefore, PMI's suggestion that it does not intend to seek damages for the hernia only and patent application claims that took place more than three years before suit was filed is of no consequence. The Novus Defendants, on the other hand, would be severely prejudiced by their investment of millions of dollars in the business that would not have been spent but for PMI's decision to ignore the statute of limitations and sleep on its rights. (*See* J.A. 336, 343, at ¶ 27.) Such an outcome would not comport with law or public policy.

C. Under South Carolina Law, Breaches of the Same Character or Type are Barred by the Three-Year Statute of Limitations.

Under South Carolina law, it does matter whether breaches are of the same character or type as the previous breaches now barred. As noted, South Carolina law does not recognize a continuing breach theory. Therefore, the concept that it matters that breaches are of the same character or type has not arisen in the continuing breach context in South Carolina decisions. Nonetheless, the concept is enshrined in South Carolina jurisprudence regarding statutes of limitations and the discovery rule.

It matters because South Carolina law focuses on the alleged wrongful conduct and when plaintiff was on notice of that alleged wrongful conduct. Thus, "the statute of limitations begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct." *True v. Monteith*, 327 S.C. 116, 119, 489 S.E.2d 615, 616 (1997). "South Carolina's discovery rule does not require actual notice of or knowledge of the full extent of damages or a claim…." *Brooks*, 284 F.R.D. at 357–58. In determining whether a plaintiff acted with reasonable diligence, courts will consider whether "the circumstances of the case would put a person of common knowledge and experience on notice that some right of his had been invaded, or that some claim against another party might exist." *Bayle v. S.C. Dep't of Transp.*, 344 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct. App. 2001) (internal citations omitted).

The district court considered South Carolina's discovery rule jurisprudence and determined that PMI was on notice of the Novus Defendants' alleged wrongful conduct related to the hernia only and patent application disputes more than four (4) years before PMI filed suit. (J.A. 1660, 1676.) Because all of the alleged breaches fell within those two (2) categories—hernia only and patent application—PMI's claims were time-barred. (*See id.* at 1676 n.11.)

PMI argues that district court's reasoning means that "a party must sue for any breach of contract—or else it waives its rights to sue for other future distinct breaches under the contract, including those which have not yet occurred." Brief of Plaintiff, at p. 18. However, this is a misstatement of the district court's holding. Contrary to PMI's argument, the district court held that PMI could not bring an action for hernia only and patent application breach of contract claims because PMI knew or had reason to know about the alleged wrongful hernia only and patent application conduct more than three years before suit was filed, PMI chose to ignore the alleged wrongful conduct, and the alleged wrongful conduct remained of the same character or type from at least 2010 until the time suit was filed more than four years later. (*See* J.A. 1660, 1669 & n.8, 1676 & n.11 ("The court is persuaded that all nine of the breaches alleged by Poly-Med fall into one of these two categories. (*See* ECF No. 216 at 1-2.) In this regard, the unavailability of information regarding the later occurring breaches alleged by Poly-Med does not delay the running of the limitations period under South Carolina law.").)

Again, there is no question, and PMI does not dispute, that PMI believed that, at least by 2010, the Novus Defendants had breached the Agreement by manufacturing, using, or selling, or having the mesh manufactured, used or sold for non-hernia purposes and by filing mesh patent applications without notice to PMI, without putting the patents in PMI's name, without advising or consulting PMI about the patent applications, and without assigning or transferring the patent applications to PMI. *See* Sections II.A.2, II.B.2, II.C, and III.B, *supra*. ***At that point, PMI knew or had reason to know that contract interpretation disputes regarding the hernia only and patent application provisions existed between PMI and the Novus Defendants***. PMI chose not to act because PMI deemed that to be the wiser commercial decision. (*See* J.A. 1011, 1033:2-25, 1037:19-22; 1130, 1134; 1677, 1686:17-1689:14; 1660, 1669 n.8.) Under South Carolina law,

PMI did not need to know the full extent of its claims or any damages. *See Brooks*, 284 F.R.D. at 357–58. PMI's belief that the Novus Defendants were engaged in wrongful hernia only and patent application conduct in breach of the 2005 Agreement was enough to start the clock running on the hernia only and patent application breach of contract claims.

All of PMI's claims arise out of contract interpretation disputes dating back to 2010. By deciding to allow the Novus Defendants to continue operating in a manner that PMI believed from 2010 going forward breached the Agreement, PMI created the predicament that it hopes this Court will resolve to PMI's advantage, despite PMI's dilatory and egregious behavior. If PMI had acted within three years after it had notice of the Novus Defendants' alleged wrongful conduct, this matter would not have reached the Court.

PMI's offhand argument regarding the 2005 Agreement's "no waiver" provision is not germane to the question before this Court. The parties agree, and the district court found, that the 2005 Agreement is governed by Swedish law. (*See, e.g.*, J.A. 1130, 1138, at ¶ 20.) While South Carolina law governs procedural matters, such as the statute of limitations, Swedish law governs substantive issues. *See Langley*, 313 S.C. at 403-04, 438 S.E.2d at 243. Because the "no waiver" provision is a substantive issue governed by Swedish law (*see* ECF No. 268-1, at 16), PMI's attempt to use it as a diversionary tactic should be ignored.

Consistent with the South Carolina discovery rule, it was incumbent upon PMI to investigate and take action in 2010, or within three years thereafter. PMI did not do that. It cannot revive its claims by ignoring its critical decision not to act when it had notice in 2010. Despite PMI's belief that the Novus Defendants were in breach in 2010, PMI decided it was better for PMI commercially not to take action against the Novus Defendants. PMI's claims should be barred by the three-year statute of limitations.

D. PMI Wants this Court to Adopt and Impose a Continuing-Tort Based Theory that PMI Has Created from Pieces and Parts of Laws from Different States That Would Rewrite South Carolina Jurisprudence Regarding Continuing Torts and the Discovery Rule.

In its brief, PMI does not direct the Court to a continuing breach of contract theory that a majority of courts have adopted. It does not because there is no such majority theory. Instead, PMI has cobbled together a continuing-tort based argument, using cases from a handful of courts, selecting pieces and parts from different theories of continuing breach, continuous accrual, continuing harm, and continuing tort, concerning a variety of claims including unfair trade practices, tortious interference, nuisance, leases, installment payments, labor relations, and breach of contract, that PMI hopes will resuscitate its time-barred claims. PMI takes this position without regard either to the manner in which the opinions of the different courts necessarily arose from and interact with the laws of the states in which those courts operate, or to the destructive impact on South Carolina jurisprudence if this Court were to adopt PMI's approach.

1. PMI Would Have the Court Embrace a Continuing-Tort Type Doctrine in Contravention of the Court's Longstanding Rejection of Such Doctrines as Contrary to the Policies Underlying Statutes of Limitations.

To support its continuing breach argument, PMI relies heavily on Maryland law, which has adopted a continuing-tort type doctrine referred to as the "continuing harm" or "continuous violation" doctrine that is antithetical to South Carolina statute of limitations jurisprudence and South Carolina's commitment to the discovery rule. Specifically, PMI points to the decision in *Dave & Buster's Inc. v. White Flint Mall, LLP*, 616 F. App'x 552, 558 (4th Cir. 2015) (applying Maryland law) and claims that the case is "analogous" to the one at bar. Brief of Plaintiff, at 24. Fundamental to the *Dave & Buster's* opinion is the continuing-tort type doctrine that Maryland courts describe as applying to "claims that are in the nature of a 'continuous tort.'" *MacBride v. Pishvaian*, 937 A.2d 233, 240 (Md. 2007), *abrogated on other grounds by Litz v. Maryland Dep't*

of Environment, 76 A.3d 1076, 1090 n.9 (Md. 2013). As the district court noted in its partial summary judgment opinion, Maryland courts use the doctrine to toll the statute of limitations ***regardless of a potential plaintiff's discovery of the wrong***. (*See* J.A. 1660, 1672-73 n.9 (citing *Chevron USA v. Apex Oil Company, Inc.*, 113 F. Supp. 3d 807, 820 (D. Md. 2015)).)

Specifically, under Maryland law, a plaintiff's

> contract claims are not barred by the three-year statute of limitations because the ***continuing harm doctrine***—which "***tolls the statute of limitations in cases where there are continuing violations***"—applies here. *Litz v. Maryland Dep't of Env't*, 434 Md. 623, 76 A.3d 1076, 1089 (Md.2013) (internal citation and quotation omitted); *see also Dave & Buster's, Inc. v. White Flint Mall, LLP*, 616 Fed.Appx. 552, 558 (4th Cir.2015) (applying continuing harm doctrine to breach of contract action). "The continuing harm ***doctrine tolls the statute of limitations regardless of a potential plaintiff's discovery of the wrong***." Id. at 647, 76 A.3d 1076, 1089 n. 9. Under this doctrine, "every repetition of the wrong creates further liability and creates a new cause of action, and a new statute of limitations begins to run after each wrong perpetuated." *Jones v. Speed*, 320 Md. 249, 577 A.2d 64, 69 n. 4 (Md.1990). Accordingly, "violations that are continuing in nature are not barred by the statute of limitations merely because one or more of them occurred earlier in time." *Litz*, 434 Md. at 646, 76 A.3d 1076 (internal quotations and citation omitted).

Chevron USA, 113 F. Supp. 3d at 820 (emphasis added). Maryland courts have applied the continuing harm doctrine to different types of claims, including breach of contract. *Id*.

In contrast to Maryland law, South Carolina courts have not adopted a continuing tort-type rule for breach of contract claims. *See, e.g.*, *Center for Legal Reform*, 2014 WL 6389709, at *4. Indeed, South Carolina has rejected the continuing tort doctrine outside of continuing trespass and nuisance claims. *See id.* (discussing cases). This Court's affirmation in *Marshall* of its earlier rejection of the continuing tort doctrine demonstrates that adopting and applying a continuing-tort type doctrine to breach of contract claims, such as Maryland's continuing breach theory applauded by PMI, would require a fundamental change in South Carolina law. *See Marshall*, 426 S.C. at 461-62 & n.1, 827 S.E.2d at 574 & n.1.

As discussed by the dissent in *Marshall*, "[t]he doctrine of continuing tort applies 'where any negligent or tortious act is of a continuing nature and produces injury in varying degrees over a period of time." *Id.* at 469, 827 S.E.2d at 578 (James, J., dissenting). "Under this theory, a limitations period does not begin to run 'until such time as the continued tortious act producing injury is eliminated." *Id*. at 469-70, 827 S.E.2d at 578. The continuing tort limitations period is not checked by the discovery rule—when the plaintiff knew or should have known about the alleged wrongful conduct.

Thus, Maryland's continuing-tort based theory, unchained from the discovery rule, is contrary to South Carolina law. As noted by the dissent in *Marshall*, the Court's reason for rejecting the doctrine of continuing tort "was to honor the public policy rationale behind the legislature's adoption of both the statute of limitations and the statute of repose…." *Id.* at 470, 827 S.E.2d at 578. The public policies underlying statutes of limitations are well-settled:

> ***Statutes of limitations*** embody important public policy considerations in that they ***stimulate activity, punish negligence, and promote repose by giving security and stability*** to human affairs. The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to ***promote and achieve finality in litigation***. Significantly, statutes of limitations ***provide potential defendants with certainty that after a set period of time***, they ***will not be hailed [sic] into court to defend time-barred claims***. Moreover, limitations periods ***discourage plaintiffs from sitting on their rights***. Statutes of limitations are, indeed, fundamental to our judicial system.

Carolina Marine Handling, 363 S.C. at 175, 609 S.E.2d at 552 (emphasis added).

If PMI's position were adopted, the policies underlying statutes of limitations would be left in tatters. A plaintiff who knew about defendants' conduct for more than three years before filing suit, specifically decided it be would in plaintiff's commercial interests not to raise the disputed conduct with defendants and therefore chose not to make an issue of defendants' conduct in order to satisfy plaintiff's commercial interests, admitted and conceded such knowledge before the

district court, lulled defendants into investing millions of dollars in the business, and then filed suit more than four years after knowledge of the conduct alleged in the complaint—that very plaintiff would be allowed to hale defendants into court to defend against time-barred claims raised by the plaintiff who intentionally sat on his rights.

Such an outcome is akin to a tolling principle because it would effect an extension of the statute of limitations with respect to plaintiff's initial notice of the alleged breaching conduct and the contract interpretation dispute. The same contract dispute involving the same kind of conduct, with the same relief available, should not acquire new limitations periods. Rather, pursuant to the three-year statute of limitations and the discovery rule, the clock should start running as to the contract dispute when the plaintiff knew or should have known about the alleged breaching conduct.

PMI's argument is a frontal attack on the Court's rejection of continuing-tort type doctrines and the policies underlying the three-year breach of contract statute of limitations. This Court has rejected the continuing tort doctrine and, consistent with that decision, respectfully, should decline to adopt Maryland's continuing tort-based doctrine in the breach of contract context. *See Marshall*, 426 S.C. at 461-62 & n.1, 827 S.E.2d at 574 & n.1.

2. PMI Would Have the Court Upend the Discovery Rule.

Also in support of its argument, PMI relies heavily on Virginia law, which has not adopted the discovery rule that is so fundamental to South Carolina statute of limitations jurisprudence. *Compare* Brief of Plaintiff, at 23-24, 30 (discussing *Am. Physical Therapy Ass'n v. Federation of State Boards of Physical Therapy*, 628 S.E.2d 928, 930 (Va. 2006); *Hampton Roads Sanitation District v. McDonnell*, 360 S.E.2d 841, 843 (1987); *Jones v. Morris Plan Bank of Portsmouth*, 191 S.E. 608, 609-10 (Va. 1937); *Hunter v. Custom Bus. Graphics*, 635 F. Supp. 2d 420, 431 (E.D.

Va. 2009)) *with CPM Virginia, L.L.C. v. Virginia Elec. & Power Co.*, 2017 WL 10966301, at *4 (Va. Cir. Ct. July 14, 2017) (stating "Virginia has never adopted the so-called 'discovery rule' for purposes of determining when a cause of action accrues for…breach of contract….") (quoting *Vaught v. Toothman*, 1992 WL 884578, at *4 (Va. Cir. Ct. Mar. 13, 1992) (citations omitted))). These cases are distinguishable on that ground. PMI, however, would prefer for this Court to overlook the impact of PMI's continuing breach argument on the discovery rule, contending without citation or support:

> the presence or absence of the discovery rule is immaterial here. While the presence or absence of the discovery rule may impact the date a cause of action accrues, it plays no role in allowing a plaintiff to bring suit for specific or distinct acts of wrongful conduct or separate breaches of contract that produce distinct damages within the applicable limitations period.

Brief of Plaintiff, at 24 n.12. PMI is wrong because, in South Carolina, the discovery rule permeates every aspect of when a breach of contract cause of action accrues for wrongful conduct in breach of an agreement and when a plaintiff must bring suit for that wrongful conduct or be barred for failure to timely act.

In South Carolina, litigants are not empowered to control the deadline by which they must pursue or forego litigation. Rather, "[t]he statute of limitations begins to run from the date the injured party either knows or should know, by the exercise of reasonable diligence, that a cause of action exists for the wrongful conduct." *True*, 327 S.C. at 119, 489 S.E.2d at 616. In South Carolina, litigants are not invited to be passive participants in the litigation process, but are required to exercise an ownership interest over causes of action for wrongful conduct. Thus, "South Carolina's discovery rule does not require actual notice of or knowledge of the full extent of damages or a claim; rather, the rule only requires a party to act promptly to investigate the

existence of a claim where facts and circumstances indicate that one might exist." *Brooks*, 284 F.R.D. at 357–58.

"The date on which a plaintiff should have discovered his cause or causes of action is an objective question." *Gentry Technology of S.C., Inc. v. Baptist Health South Florida, Inc.*, 2015 WL 1219251, at *12 (D.S.C. Mar. 17, 2015) (citing *Graham v. Welch, Roberts & Amburn, LLP*, 404 S.C. 235, 239, 743 S.E.2d 860, 862 (Ct. App. 2013)). Therefore, in South Carolina, a litigant is not allowed to ignore wrongful conduct and still preserve a claim for that conduct. On the contrary, "South Carolina's statute of limitations requires 'very little to start the clock.'" *Maher*, 331 S.C. at 380, 500 S.E.2d at 208. In determining whether a plaintiff acted with reasonable diligence, courts will consider whether "the circumstances of the case would put a person of common knowledge and experience on notice that some right of his had been invaded, or that some claim against another party might exist." *Bayle*, 344 S.C. at 123, 542 S.E.2d at 740 (internal citations omitted).

Yet, under PMI's argument, a plaintiff would not have to exercise reasonable diligence when on notice of wrongful conduct. A contracting party would not have to take action to interrupt wrongful conduct or seek help from the Court to resolve wrongful conduct. Instead, the contracting party could choose, on its own, not to trigger the statute of limitations, but to wait—wait for more than three years or even longer, before deciding to trigger the statute of limitations for the same conduct that has been ongoing for more than three years. The contracting party could do this because it would be empowered to assert, for example, that the operation of time resulted in different claims for the same conduct. Specifically, plaintiff would be authorized to dress up the same wrongful conduct as "distinct" acts simply because the acts occurred in a different month or a different year. That the acts reflect the same conduct based on the same contract interpretation

dispute, occurring and existing for more than three years, and regarding which plaintiff was on notice for more than three years, would be irrelevant to PMI's argument.

PMI's argument makes a mockery out of the discovery rule. For contracting parties, there would be no requirement to exercise reasonable diligence. Instead, a contracting party could wait for years to raise issues regarding wrongful conduct until it decides to yell breach at the moment of greatest leverage. For contracting parties, there would be no requirement to investigate wrongful conduct promptly. Instead, deciding whether to investigate would become just another bit of commercial strategy for a company to consider on a monthly or annual basis. For contracting parties, there would be no policy to promote and achieve finality in litigation. Instead, a contracting party would be incentivized to delay the onset and resolution of litigation until its moment of maximum power in the contractual relationship. For contracting parties, there would be no policy to promote security and stability in human affairs. Instead, contracting parties would be subjected to a policy of supreme insecurity and instability such that they would never know what issues that seemed settled might become fodder for litigation, year after year.

Adopting PMI's continuing breach argument would introduce fundamental disruption to contracts vital to the economic development and growth of South Carolina, including, just by way of some examples, manufacturing agreements, research and development agreements, clinical trial agreements, employment agreements, quality agreements, vendor agreements, partnership agreements, confidentiality agreements, and nondisclosure agreements. All of these would be disrupted and the public policy underlying statutes of limitations sacrificed in order to revive claims that, as determined by the district court and the court of appeals, and as demonstrated by documents within PMI's control, PMI knew or reasonably should have known existed more than

four years before filing suit. *See* Sections II.A.2, II.B.2, II.C, and III.B, *supra*. Such an outcome would not comport with the Court's sense of law, justice, and right.

3. PMI Would Have the Court Adopt Snippets from Different Decisions of Foreign Courts Without Regard to the Context of those Decisions and the Consequences of Injecting Foreign Policy into South Carolina Law.

a. California Law is Based on Principles Antithetical to South Carolina's Rejection of Continuing-Tort Type Theories.

PMI references *Aryeh v. Canon Business Solutions, Inc.*, 292 P.3d 871 (Cal. 2013), which this Court cited in the *Ortho-McNeil-Janssen* opinion. *See* Brief of Plaintiff, at 15-16. As in *Ortho-McNeil-Janssen*, the *Aryeh* court was asked to determine what limitations period applied to each of defendant's acts that violated the Unfair Competition Law. *Aryeh*, 292 P.3d at 873. Both courts were presented with questions involving the unfair trade practice or unfair competition statutes. *Id.*; *see Ortho-McNeil-Jannsen*, 414 S.C. at 77-79, 777 S.E.2d at 199-200. Both courts were presented with alleged unfair acts that violated the statutes and that had been taking place over more than three years. *Areyh*, 292 P.3d at 881; *Ortho-McNeil-Jannsen*, 414 S.C. at 77, 777 S.E.2d at 199. As a result, it is understandable why this Court looked to the California Supreme Court's decision in a similar matter.

However, it does not make sense to extend this Court's citation of *Aryeh* to the breach of contract context. California jurisprudence fundamentally differs from that of South Carolina. To illustrate, in California, when a statute is silent regarding accrual of a claim, "[t]his silence triggers a presumption in favor of permitting settled common law accrual rules to apply." *Aryeh*, 292 P.3d 871, 876. California common law accrual rules that can be used to fill that silence include the common law "continuing violation doctrine [that] aggregates a series of wrongs or injuries for purposes of the statute of limitations, treating the limitations period as accruing for all of them upon commission or sufferance of the last of them" and the common law "theory of continuous

accrual, [under which] a series of wrongs or injuries may be viewed as each triggering its own limitation period, such that a suit for relief may be partially time-barred as to older events but timely as to those within the applicable limitations period." *Id*. at 875-76.

Unlike California, neither the continuing violation doctrine nor the continuous accrual theory are "settled common law accrual rules" in South Carolina. Indeed, this Court rejected the continuing violation doctrine in *Ortho-McNeil-Janssen* and *Marshall* and the continuous accrual theory has been applied only in the context of specific statutory provisions. *See Marshall*, 426 S.C. at 461-62 & n.1, 827 S.E.2d at 574 & n.1; *Ortho-McNeil-Janssen*, 414 S.C. at 78-79, 777 S.E.2d at 199.

PMI also relies on *DC Comics v. Pacific Pictures Corp.*, 938 F. Supp. 2d 941 (C.D. Cal. 2013). However, that is not a breach of contract case, but a tortious interference case. *Id.* at 948. Thus, it is inapposite.

b. Tenth Circuit and Seventh Circuit Decisions Applying Oklahoma and Illinois Law Do Not Control But Would Defeat PMI's Position.

PMI relies on *Paul Holt Drilling, Inc. v. Liberty Mut. Ins. Co.*, 664 F.2d 252 (10th Cir. 1981). There, the court of appeals found that even if the contract were capable of partial breaches, that same contract could be subject to "a single total breach by repudiation or by such a material failure of performance when due as to go 'to the essence' and to frustrate substantially the purpose for which the contract was agreed by the injured party." *Id.* at 255-56. PMI also relies on *Hi-Lite Products Co. v Am. Home Products Corp.*, 11 F.3d 1402 (7th Cir. 1993). There, the court of appeals found that the continuous contract "is capable not only of a series of partial breaches but also a single total breach by repudiation or a material failure of performance." *Id.* at 1409.

These opinions are entirely unhelpful for PMI because it repeatedly has asserted that the alleged hernia only and patent application conduct rise to the level of "material breaches." (*See,*

e.g., J.A. 1175-76, at ¶¶ 81-82 (stating that Novus Defendants materially breached the 2005 Agreement); ECF No. 268-1, at 10-13 (same).) Thus, if the Tenth and Seventh Circuit opinions were applicable, which they are not, then PMI's continuing breach argument still would fail because PMI did not file suit within three years after it knew about the alleged material breaches.

c. Installment Contract Cases are Inapposite.

PMI asserts that the Court should be persuaded to adopt a continuing breach theory because other courts have found that "[e]ach partial breach is actionable and subject to its own accrual date and limitations period." Brief of Plaintiff, at 22. In support, PMI cites out-of-state installment contract cases. *See id.* at 20-23 (citing *Medcap Corp. v. Betsy Johnson Health Care Sys., Inc.*, 16 Fed. App'x 180, 181 (4th Cir. 2001); *City of Quincy v. Womack*, 60 So. 3d 1076, 1078 (Fl. Dist. Ct. App. 2011); *Luminall Paints, Inc. v. La Salle Nat. Bank*, 581 N.E.2d 191, 194-95 (Ill. App. Ct. 1991); *Thread and Gage Co, Inc. v. Kucinski*, 451 N.E.2d 1292, 1296 (Ill. App. Ct. 1983); *Jones*, 191 S.E. at 610). However, PMI specifically admits that installment contract cases are distinguishable from the case at bar. *Poly-Med, Inc. v. Novus Scientific Pte Ltd.*, Appeal No. 19-1957, Doc. 17, at 27 n.9 (4th Cir. Oct. 29, 2019) (stating that this case does not involve "an installment contract requiring periodic payment").

South Carolina has its own law that has developed around and specifically pertains to payments and installments, including at least one case from 1904, as well as the provisions of its Uniform Commercial Code. *See, e.g.*, *Walker v. Cassels*, 70 S.C. 271, 49 S.E. 862, 863 (S.C. 1904) ("payment on the note was made by the direction of [defendant], and this necessarily prevented the bar of the statute"); *Zaks v. Elliott*, 106 F.2d 425, 426 (4th Cir. 1939) ("It is established in South Carolina that partial payment on a note within the six year period immediately preceding the bringing of an action therein will remove the bar of the statute."); S.C. Code Ann.

§ 36-2-612(1) (2003) (defining an "installment contract" as "one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause 'each delivery is a separate contract' or its equivalent"); *id.* at § 36-2-612(3) (stating "[w]henever nonconformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a nonconforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments").

This case does not involve installment contracts or partial payments on notes. Thus, these cases are not relevant.

IV. CONCLUSION

South Carolina law does not recognize a "continuing breach of contract." On the contrary, "South Carolina's statute of limitations requires 'very little to start the clock.'" *Maher*, 331 S.C. at 380, 500 S.E.2d at 208. PMI should not be allowed to resurrect its long-expired hernia only and patent application claims by invoking a "continuing breach" theory.

For the reasons stated herein, and as offered at any hearing in this matter, the Novus Defendants respectfully request that the Court answer the certified question as follows:

The first part of the certified question asks:

> Under a contract with continuing rights and obligations, does South Carolina law recognize the continuing breach of contract theory in applying the statute of limitations to breach-of-contract claims, such that claims for separate breaches that occurred (or were only first discovered) within the statutory period are not time-barred, notwithstanding the prior occurrence and/or discovery of breaches as to which the statute of limitations has expired?

The answer to the first part of the certified question should be no.

The second part of the certified questions asks:

Does it matter if the breaches are of the same character or type as the previous breaches now barred?

Because South Carolina does not recognize the continuing breach of contract theory, the answer to the first part respectfully should be no and the Court should not need to reach the second part of the certified question. However, if the Court were to reach the second part of the certified question, then the answer should be: yes, if breaches are of the same character or type as the previous breaches now barred, then those breaches remain barred even if the Court were to recognize the continuing breach of contract theory.

Respectfully Submitted,

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May 7, 2021

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIFIED QUESTION
From the United States Court of Appeals
For the Fourth Circuit

King, Keenan, and Harris, Circuit Judges

Appellate Case No. 2021-000027
Fourth Circuit Appeal No. 19-1957

Poly-Med, Inc.;

Plaintiff,

v.

Novus Scientific Pte. Ltd.;
Novus Scientific, Inc.;
Novus Scientific AB,

Defendants.

PROOF OF SERVICE

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I, the undersigned Attorney, of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendants Novus Scientific Pte. Ltd., Novus Scientific, Inc. and Novus Scientific AB, do hereby certify that I have on this day served the **BRIEF OF DEFENDANTS** on all parties to this action in the manner indicated below and as shown in the attached email.

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May 7, 2021

Robert McWilliams

From: Robert McWilliams
Sent: Friday, May 7, 2021 9:49 AM
To: 'sbrown@ycrlaw.com'; 'rhines@ycrlaw.com'; marwan.zubi@niclawgrp.com; paul.nicolai@niclawgrp.com
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Subject: Poly-Med, Inc. v. Novus Scientific Pte. Ltd., et al. - Appellate Case No. 2021-000027
Attachments: 2021.05.07 Brief of Defendants.pdf

Counsel:

Attached please find the Brief of Defendants in the above-referenced matter, which is hereby served upon you pursuant to paragraph (g)(3) of the South Carolina Supreme Court's Order entitled *RE: Operation of the Appellate Courts During the Coronavirus Emergency (As Amended May 29, 2020)*.

Sincerely,

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