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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

Case No. 2015-CP-04-00667
Appellate Case No. 2020-000070

Ex Parte: Donald L. Smith,
In Re: Greg Battersby,

Appellant,
Plaintiff

v.

J. Kirkman Moorehead, Krause, Moorhead &
Draisen, P. A., Allstate Insurance Company,
And Allstate Northbrook Indemnity Company,

Defendants,

J. Kirkman Moorehead, Krause, Moorhead &
Draisen, P. A.,

Respondents.

RECORD ON APPEAL

Anderson, SC
August 30, 2021

s/Donald L. Smith

Donald L. Smith (Bar No.: 6699)

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Attorney for Respondents

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BATTERSBY vs. MOORHEAD, ET AL

ORDER GRANTING RESPONDENTS' MOTION TO ENTER MONETARY SANCTIONS IN THE JUDGMENT ROLLS December 16, 2019

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Gregg Battersby,

Plaintiff,

v.

J. Kirkman Moorhead, Krause, Moorhead &
Draisen, P.A., Allstate Insurance Company,
and Allstate Northbrook Indemnity
Company,

Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2015-CP-04-00667

**ORDER GRANTING DEFENDANTS
MOTION TO ENTER MONETARY
SANCTIONS IN THE JUDGMENT ROLLS**

THIS MATTER comes before me pursuant to a Motion to Enter Monetary Sanctions in the Judgment Roll against the attorney for the Plaintiff, Donald Loren Smith, Esquire.

The Defendants J. Kirkman Moorhead and the Law Firm of Krause, Moorhead & Draisen, PA were present and represented by Steven M. Krause of the Law Firm of Krause, Moorhead & Draisen, PA.

Donald Loren Smith, Esquire was present.

At the call of the case, the Court inquired if the Motion was merely ministerial and what arguments, evidence or law would be pertinent.

The Defendants, J. Kirkman Moorhead and Krause, Moorhead & Draisen, PA concurred with the Court's rationale. Further, the only reason the Motion was filed was that Mr. Smith was not a named defendant and therefore the previous Order of the Court filed on February 4, 2016 awarding monetary sanctions against Mr. Smith is not listed or recorded in the Judgment Roll.

The Court listened to argument from Mr. Smith which centered upon the fact that the Form Order which was filed on April 22, 2016 denying his Motion for Reconsideration did not contain a formal order denying such reconsideration. Accordingly, he maintains that this Motion is not proper.

The Court does not concur with Mr. Smith's logic but will utilize this Order to again deny his Motion for Reconsideration, even though the Court feels it to be redundant.

In addition, the Court finds that the Motion for Monetary Sanctions previously granted by this Court should be entered as a judgment in the Judgment Roll of Anderson County against Donald Loren Smith, Esquire in the amount of \$11,206.20.

Further, the Clerk of Court is directed to do so.

IT IS SO ORDERED.

R. LAWTON MCINTOSH, JUDGE
TENTH JUDICIAL CIRCUIT

Anderson, South Carolina

_____, 2019



Anderson Common Pleas

Case Caption: Gregg Battersby VS J Kirkman Moorhead , defendant, et al

Case Number: 2015CP0400667

Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2019-12-16 14:11:39 page 3 of 3

**FORM 4,
DENYING APPELLANT'S
MOTION FOR RECONSIDERATION
April 21, 2016**

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

FORM 4

JUDGMENT IN CIVIL CASE

FILED-CLERK'S OFFICE
ANDERSON SC

CASE NO. 2015-CP-04-667



Gregg Battersby

J Kirkman Moorhead, et al

2016 APR 22 AM 8:35

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

COMMON PLEAS AND
GENERAL SESSIONS

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

PLAINTIFF'S MOTION TO RECONSIDER DENIED.

prepare formal order.

MR Krause to

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

Judge Code

Date

This judgment was entered on the 22nd day of April, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 25th day of April, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

**ORDER GRANTING RESPONDENTS'
MOTION FOR SANCTIONS
February 3, 2016**

2015

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

FILED-CLERK'S OFFICE

ANDERSON, SC

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

FILED - OCT 2 2015

Gregg Battersby,

Plaintiff,

v.

J. Kirkman Moorhead, Krause, Moorhead &
Draisen, P.A., Allstate Insurance Company,
and Allstate Northbrook Indemnity
Company,

Defendants.

COMMON PLEAS AND
GENERAL SESSIONS

CIVIL ACTION NO.: 2015-CP-04-00667

**ORDER GRANTING J. KIRKMAN
MOORHEAD AND KRAUSE,
MOORHEAD, & DRAISEN, P.A.'S
MOTION FOR SANCTIONS**

THIS MATTER comes before the Court on Defendants J. Kirkman Moorhead and Krause, Moorhead and Draisen, P.A., (hereinafter referred to collectively as "Attorneys") motion for sanctions pursuant to Rule 11, SCRCP, and The South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 (the "Frivolous Proceedings Act"). Attorneys bring this Motion subsequent to a July 10, 2015 order (hereinafter "Order") of this Court granting summary judgment in Attorneys favor as to all of Plaintiff's claims. After due notice, a hearing was held in this matter on October 2, 2015. Plaintiff was represented by Donald L. Smith, Esq., and Attorneys were represented by Steven M. Krause, Esq., of Krause, Moorhead, and Draisen, P.A. Having carefully considered the Order, arguments and evidence submitted by counsel, the Court grants Attorneys' Motion and sanctions the attorney for the Plaintiff under Rule 11, SCRCP. The Court does not sanction the Plaintiff as a party or find any violation of the Frivolous Proceedings Act.

As an initial matter, Plaintiff objected to the Court's jurisdiction over the sanctions motion. Plaintiff's objection came only after this Court rendered its initial decision on January 8, 2016 communicated via email to all parties, and instructed Attorneys to prepare an order

granting the motion for sanctions. In a memorandum filed on January 27, 2016, Plaintiff argued that the Attorney's post-trial motion for sanctions was filed more than ten days after the filing of the Order and therefore this Court is divested of jurisdiction. Plaintiff misunderstands the law governing the timely filing of post-trial motions. In accordance with Rule 59(e), SCRCP, "[a] motion to alter or amend the judgment shall be served not later than 10 days *after receipt of written notice of the entry of the order.*" *In re Beard*, 359 S.C. 351, 357, 597 S.E.2d 835, 838 (Ct. App. 2004). A motion for sanctions must be filed within ten days of the *notice* of entry of judgment. *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 20, 633 S.E.2d 722, 730 (2006), *Pitman v. Republic Leasing Co., Inc.*, 351 S.C. 429, 432, 570 S.E.2d 187, 189 (Ct. App. 2002).

On January 29, 2016, Attorneys filed with the court a verified memorandum attesting that they received the Order on July 23, 2015. A true copy of the Order filed July 10, 2015 from the clerk of court stamped July 23, 2015 was included with the verified memorandum. The Motion for Sanctions was filed with the clerk of court the next day, July 24, 2015. Based upon the Attorney's representations, this Court finds that the Motion was timely filed and therefore this Court has retained jurisdiction. *See USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008)(upholding trial court's finding that a motion to reconsider was timely filed after counsel, an officer of the court bound by the ethical and professional rules of this state, informed the court that she did not receive written notice of the order until more than a month after final judgment was entered).

Turning to the merits of the Motion, under Rule 11(a), SCRCP, a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. *Runyon v. Ex parte Gregory*, 378 S.C. 430, 437-38, 663 S.E.2d 46, 50-51 (2008) citing *Wright*, 322 S.C. 15, 471 S.E.2d 160 (1996). The party and/or attorney may also be

sanctioned for filing a pleading, motion, or other paper in bad faith whether or not there is good ground to support it. *Id.* It is irrefutable that a lawyer owes their client zealous advocacy, but that zeal must be constrained within the bounds placed upon them as an officer of the court and under the court's rules. Specifically, Rule 11, SCRCP, expressly sets forth the outer boundaries of acceptable attorney conduct by requiring that there be good ground to support any pleading filed before the court. Thus, that rule prohibits a lawyer from asserting claims or legal positions that are not supported by fact, well-founded under existing law, or through the modification, extension, or expansion of existing law.

Plaintiff brought a complaint alleging that Attorneys are liable to Plaintiff for damages arising out of Attorneys' performance of professional activities as attorneys for a client. Plaintiff asserted seven causes of action against Attorneys. The seven causes of action are: (1) false imprisonment; (2) defamation; (3) intentional infliction of emotional distress ("IIED"); (4) malicious prosecution; (5) conspiracy; (6) fraud; and (7) abuse of process.

At the outset of the hearing on the summary judgment motion, Plaintiff stipulated that Attorneys were entitled to summary judgment on all causes of action except civil conspiracy. (Order p. 2; Hr'g Tr. p. 16 ll. 9-19). The Plaintiff conceded that the law in this state is that an attorney is generally immune from liability to third person arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client. *See Pye v. Estate of Fox*, 369 S.C. 55, 564, 633 S.E.2d 505, 509 (2006). It is apparent to this Court that Plaintiff's counsel filed the claims without researching the law on attorney immunity to determine whether the claims were viable and supported by law. Plaintiff's counsel made no argument to the contrary. This Court finds that no reasonable attorney would have brought the

Plaintiff's claims against Attorneys given the well-established case law on attorney immunity and the facts of the case.

Regarding Plaintiff's conspiracy cause of action, this Court finds that Plaintiff's claim was based upon mere suspicion without any supporting evidence. Moreover, after reviewing Plaintiff's counsel arguments in support of the conspiracy cause of action, this Court finds that counsel alleged conspiracy to "throw it against the wall and see if it sticks". The Plaintiff made several arguments in an attempt to give some cognizable basis for his conspiracy claim, none of which this court finds are supported by law or fact.

First, the Plaintiff argued to the Court at the summary judgment hearing that the Attorneys stepped out of the scope of the representation of their client when they advised their client to report possible criminal acts to the police and further advised their client to recommend to another alleged victim that she also report her own, similar encounters with the Plaintiff. More troubling, is that plaintiff's counsel also argued that an attorney is not acting in his capacity as an attorney when assisting a client filing a complaint before a state administrative agency. The Plaintiff argued that Attorneys stepped outside their role as attorneys when they assisted their client with an online complaint against Plaintiff filed with the South Carolina Department of Labor, Licensing, and Regulation because the client did not need an attorney to file the complaint nor were the Attorneys representing the client when they completed the complaint form. (Order p. 2; Summ. J. Hr'g Tr. pp. 19-20, ll. 10-2). The Court found that "there is simply no cognizable basis in law or fact to conclude these acts fall outside the scope of Attorneys' representation of Client." (Order p. 2).

Second, the Court rejected the Plaintiff's argument that Attorneys created, embellished or made up better facts to strengthen their client's claims, and therefore conspired with their client

because Attorney's would share in any judgment obtained as a result of the suit because such an allegation is contrary to well-established law. (Order p. 5). The Court found that Plaintiff presented no evidence to support its bald assertions that Attorneys made up or embellished facts to strengthen their client's case. (Order p. 6). The Court also found, that in accordance with case law, an attorney does not act outside of the scope their representation simply by collecting a fee. (Order p. 5 citing *Gaar v. Myrtle Beach Realty Co., Inc.*, 287 S.C 525, 529, 339 S.E. 2d 888 (holding that an attorney normally conducts the litigation solely in his professional capacity and he has no personal interest in the suit)). The Court then found that there is no evidence here that Attorneys had any personal interest in their representation of their client. (Order p. 5).

Third, Plaintiff argued that Attorneys violated Rule 3.3 Candor Toward the Tribunal of the South Carolina Rules of Professional Conduct and that the rule also imposed a duty on Attorney to Plaintiff. The Court dismissed Plaintiff's argument that Rule 3.3 imposed Attorneys a duty to the Plaintiff, finding that the plain language of the rule creates no such duty. (Order p. 6). The Court also found that even if a duty was owed, the Plaintiffs breached no such duty. Plaintiff alleged that Attorneys should have recognized their client was lying when she informed them that Plaintiff was wearing a robe during the incident, but then later reported to law enforcement that Plaintiff was wearing a towel. The Court found that "these are subtle difference of no material distinction, both figuratively and literally, to put Attorneys on notice that Client may be lying." *Id.* Second, the Court found that the police report which contained the allegedly different descriptions of Plaintiff's attire was not created until after Attorney's advised their client to report to the police. Therefore, the Court found that Attorneys "would not have had the benefit of the very report Plaintiff claims should have put them on notice."

Plaintiff's argument is not reasonably supported by the facts. Plaintiff counsel's theory is on its face factually implausible.

Based upon the foregoing, this Court finds that sanctions are warranted against Plaintiff's counsel under Rule 11, SCRPC. A sanction under Rule 11, SCRPC, may include an order to pay the reasonable costs and attorney's fees incurred by the party or parties defending against the frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith. *Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996). Further, if appropriate under the facts of the case, the court may order a party and/or the party's attorney to pay a reasonable monetary penalty to the party or parties defending against the frivolous action or action brought in bad faith. Rule 11(a), SCRPC.

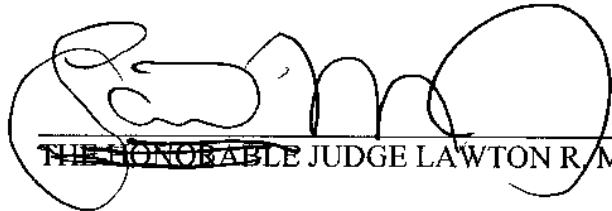
Given the facts and circumstances of this case, I am imposing as a monetary sanction which I calculate based upon the Attorneys' fees and costs for defending the underlying lawsuit and bringing this sanctions motion. Attorneys were forced to notify their malpractice carrier and retain outside counsel. Attorneys also contributed considerably to the defense of the professional association.¹ I find that counsel is responsible for the reasonable expenses, including attorney's fees. Based upon the Affidavits of Attorneys' counsel, I find that the total costs of defending this action of \$11,206.20 are reasonable. Plaintiff's counsel is required to pay to Attorneys \$11,206.20 as a monetary sanction.

¹ Attorneys did not submit and this Court did not consider any time expended by Mr. Moorhead as he is a party to this action. However, this Court notes that it could have ordered Plaintiff's counsel reimburse Attorneys for Mr. Moorhead's time because I decided to impose a monetary sanction.

LeB

Plaintiff's counsel is ordered to pay to Attorneys \$11,206.20 for violating Rule 11, SCRPC. This amount shall be paid within thirty days of the filing date of this order.

AND IT IS SO ORDERED.


~~THE HONORABLE~~ JUDGE LAWTON R. MCINTOSH

Anderson, South Carolina

2-3, 2016

FILED-CLERK'S OFFICE
ANDERSON, SC
JUL 17 - 4 PM 2016
COMMON PLEAS AND
GENERAL SESSIONS

FORM 4
GRANTING APPELLANT'S MOTION
TO BE RELIEVED AS COUNSEL
October 2, 2015

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-04-00667

RCB

Gregg Battersby

J Kirkman Moorhead, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

MR. SMITH'S MOTION TO BE RELIEVED AS COUNSEL GRANTED

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 8th day of Oct., 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 9th day of Oct., 2015 to attorneys of record or to parties (when appearing pro se) as follows:

leB

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FILED CLERK'S OFFICE
RECEIVED
OCT 15 2015
11:57 AM
CLERK OF COURT

**ORDER DENYING
ALL STATE INSURANCE'S
MOTION FOR SANCTIONS
August 20, 2015**

FILED-CLERK'S OFFICE
STATE OF SOUTH CAROLINA ANDERSON SC IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON TENTH JUDICIAL CIRCUIT

2015 AUG 20 AM 9:46

Gregg Battersby,

Plaintiff,

v.

J. Kirkman Moorehead; Krause, Moorehead &
Draisen, P.A.; Allstate Insurance Company;
and Allstate Northbrook Indemnity Company,

Defendants.

COMMON PLEAS AND
GENERAL SESSIONS

CIVIL ACTION NO.: 2015-CP-04-00667

ORDER

PRESIDING JUDGE: R. Scott Sprouse
DATE OF HEARING: July 28, 2015
PLAINTIFF'S ATTORNEY: Donald L. Smith
DEFENDANT'S ATTORNEY: A. Johnston Cox
COURT REPORTER: Renee Tollison

This matter was before the Court pursuant to the Defendant Allstate Insurance Company and Allstate Northbrook Indemnity Company ("Defendant Allstate")'s Motion for Sanctions under Rule 11 of the South Carolina Rules of Civil Procedure. The Defendant Allstate also seeks attorney fees and costs. The basis for the motion is that the Defendant was granted summary judgment by this Court and that the Plaintiff and his attorney should have known that the Plaintiff had no viable cause of action against the Defendant Allstate prior to filing the action.

The Defendant Allstate is an insurance liability carrier who tendered payment to a claimant through her attorney, Tom Dunaway. The Plaintiff was a chiropractor who had treated the claimant and had an outstanding bill for that treatment. Dunaway did not pay the Plaintiff when he disbursed the funds in his client's personal injury settlement. The Plaintiff brought suit against the Defendant Allstate under the theory that, since the Defendant Allstate had notice of the Plaintiff's outstanding bill, it was under a duty to protect the Plaintiff when tendering payment. Plaintiff's counsel relied on an out-of-state case to advance this theory. The Court ultimately rejected the Plaintiff's theory and granted summary judgment in favor of the Defendant Allstate.

After careful consideration of the pleadings and the explanation of Plaintiff's counsel, the Court declines to impose sanctions. However, the Court notes that the Plaintiff's theory of the case was tenuous, making it a close question as to whether sanctions are appropriate. The Court

Feb

has considered the evidence in a light most favorable to Plaintiff's counsel, reaching this decision after much contemplation. While the Court has decided not to sanction Plaintiff's counsel, the Court cautions him to carefully research the law when evaluating whether or not he has a viable cause of action in future cases. Suspicion without supporting evidence will not sustain a cause of action.

Accordingly, the Defendant Allstate's Motion for Sanctions is denied.

August 13, 2015
Walhalla, SC


R. Scott Sprouse, Judge
Tenth Judicial Circuit

FILED-CLERK'S OFFICE
ANDERSON SC
2015 AUG 20 AM 9:46
COMMON PLEAS AND
GENERAL SESSIONS

FORM 4
GRANTING MOTION TO
WITHDRAW ALL PLEADINGS
July 8, 2015

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

FORM 4
FILED-CLERK'S OFFICE
ANDERSON SC

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP040667
2015

Gregg Battersby

2015 JUL 10 AM 9:42
COMMON PLEAS AND
GENERAL SESSIONS

Allstate Northbrook
Indemnity Co., et al

RCB

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☒ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

Judge Code

2155
Date
7/8/2015

For Clerk of Court Office Use Only

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

LCB

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Richard A. Shirley

Court Reporter

Richard A. Shirley - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Plaintiff's motion to withdraw all pleadings granted. No formal order to follow.

FILED-CLERK'S OFFICE
ANDERSON SC
JUL 10 AM 9:42
COMMON PLEAS AND
GENERAL SESSIONS

**FORMAL ORDER GRANTING
RESPONDENTS' MOTION FOR
SUMMARY JUDGMENT AND
MOTION TO DISMISS
July 8, 2015**

FILED-CLERK'S OFFICE
ANDERSON SC

LOB

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

2015 JUN 10 AM 9:47 IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Gregg Battersby,

COMMON PLEAS AND
GENERAL SESSIONS

CIVIL ACTION NO.: 2015-CP-04-00667

Plaintiff,

v.

J. Kirkman Moorhead, Krause, Moorhead &
Draisen, P.A., Allstate Insurance Company,
and Allstate Northbrook Indemnity
Company,

**ORDER GRANTING J. KIRKMAN
MOORHEAD AND KRAUSE,
MOORHEAD, & DRAISEN, P.A.'S
MOTION FOR SUMMARY JUDGMENT
AND MOTION TO DISMISS**

Defendants.

THIS MATTER comes before the Court on a Motion to Dismiss Plaintiff's Second Amended Complaint ("Complaint") against Defendants J. Kirkman Moorhead and Krause, Moorhead and Draisen, P.A., (hereinafter referred to collectively as "Attorneys"), pursuant to South Carolina Rule of Civil Procedure 12(b)(6). After due notice, a hearing was held in this matter on June 4, 2015. Plaintiff was represented by Donald L. Smith, Esq., and Attorneys were represented by Eric K. Englehardt, Esq., of Turner Padgett Graham and Laney, P.A. At the hearing the Motion was converted to a Motion for Summary Judgment at the request of Plaintiff and consent of Attorneys. (Hr'g. Tr. p. 3 ll. 17-23). Having carefully considered the allegations in the Plaintiff's Complaint and arguments and evidence submitted by counsel, the Court grants Attorneys' Motion for Summary Judgment and holds that Attorneys are not liable to Plaintiff under any of the causes of action brought in the Complaint.

BACKGROUND AND FINDINGS OF FACT

Plaintiff brings his Complaint alleging Attorneys are liable to Plaintiff for damages arising out Attorneys' performance of professional activities as attorneys for a client, namely Jan Morton (hereinafter referred to as "Client"). Plaintiff's Complaint also names Allstate Insurance

Company and Allstate Northbrook Insurance Company as Defendants based upon acts arising out of wholly separate transactions from those complained of against Attorneys.¹

The Complaint alleges Attorneys have an attorney-client relationship with Client. (Complaint ¶ 11). In particular, Attorneys are providing legal representation to Client in a separate civil action brought by the Plaintiff against Client. (Ex. 3 to Plaintiff's Memorandum). The Complaint alleges Attorneys and Client conspired to concoct a story that Plaintiff indecently exposed himself to Client, and that Attorneys advised Client to report the incident to the Anderson County Sheriff's Office. (Complaint ¶¶ 12-13). Client did report the incident, and Plaintiff was arrested by the Sheriff on August 2, 2013 and subsequently charged by the Solicitor. (Complaint ¶¶ 14, 17, 27). The Complaint alleges Attorneys knew Client's statements were false, and that Attorneys conspired with Client to use the criminal charges to strengthen a civil case against Plaintiff. (Complaint ¶¶ 16, 28). Additionally, the Complaint alleges Attorneys assisted Client by filing an administrative complaint with South Carolina Department of Labor, Licensing and Regulation ("LLR") regarding the incident. (Complaint ¶ 25).

Plaintiff's Complaint asserts seven causes of action against Attorneys for acts arising out of Attorneys' representation of Client: (1) false imprisonment; (2) defamation; (3) intentional infliction of emotional distress ("IIED"); (4) malicious prosecution; (5) conspiracy; (6) fraud; and (7) abuse of process. At the hearing, Plaintiff stipulated Attorneys were entitled to summary judgment on all causes of action except civil conspiracy. (Hr'g. Tr. p. 16 ll. 9-19). Even if Plaintiff had not stipulated to summary judgment of the other six causes of action in Attorneys' favor, this Court finds that the grounds outlined below for granting summary judgment of the

¹ The causes of action against Allstate and Northbrook were dismissed pursuant to a separate order of this Court under the same Civil Action Number.

conspiracy claim in Attorneys' favor, namely attorney immunity, also warrant summary judgment of those causes of action in Attorneys' favor.

LEGAL STANDARD

At the hearing, Plaintiff submitted a portion of Morton's deposition transcript in support of his arguments, and presented arguments based upon the exhibits attached to his Memorandum in Opposition to Defendant's Motion to Dismiss. When a court is considering a motion to dismiss and matters outside the pleadings are presented to and not excluded by the court, "the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Rule 12(b), SCRCP; *Martin v. Companion Healthcare Corp.*, 357 S.C. 570, 574, 593 S.E.2d 624, 627 (Ct. App. 2004).

Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. *Knight v. Austin*, 396 S.C. 518, 521-22, 722 S.E.2d 802, 804 (2012); Rule 56(c), SCRCP. "The evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002) (internal citations omitted).

DISCUSSION AND ORDER

Considering the facts in the light most favorable to Plaintiff, Attorneys were at all times acting within the within the scope of their representation of Client and owed no duty to the third-party, non-client Plaintiff. "Generally, an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client." *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 509

(2006) (quoting *Gaar v. N. Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986)). Because an attorney normally conducts litigation solely in his professional capacity, the attorney “has no personal interest in the suit” and cannot be held liable to third-party non-clients “for injury allegedly arising out of the performance of his professional activities.” *Id.* at 529, 339 S.E.2d at 889. Further, an attorney owes no duty to a non-client unless he “breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client.” *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 400, 697 S.E.2d 551, 554 (2010). (quoting *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)).

Plaintiff failed to allege and the evidence does not show Attorneys ever stepped outside the scope of their representation of Client. Plaintiff argues Attorneys stepped outside of the scope of their representation of Client when they advised Client to report her allegations to the police and further advised Client to recommend to another alleged victim that she also report her own, similar encounters with the Plaintiff. In addition, Plaintiff argues Attorneys stepped outside their role as attorney when they assisted Client with an online complaint form filed with LLR because Client did not need an attorney to file an LLR complaint and nor were Attorneys representing Client when they completed the complaint form. (Hr’g. Tr. pp. 19-20, ll. 10-2). This Court finds this argument unpersuasive. At all times alleged in the Complaint, Attorneys were acting on behalf of and as attorneys for the Client in all the acts complained of by Plaintiff. There is simply no cognizable basis in either law or fact to conclude these acts fall outside the scope of Attorneys’ representation of Client. See *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 23, 567 S.E.2d 881, 893 (Ct. App. 2002). (“The absolute privilege covers anything that may be

said in relation to the matter at issue, whether it be in the pleadings, in affidavits, or in open court.”)

Plaintiff also argues Attorneys acted outside of the scope of their representation and in their own personal interest when they allegedly created, embellished or made up better facts to strengthen Client’s claims. (Hr’g. Tr. pp. 21-24, ll. 15-2). Plaintiff argued at the hearing and in his memorandum that Attorneys conspired with Client because Attorneys would share in any judgment obtained as a result of the suit. (Hr’g. Tr. pp. 21-22, ll. 15-19). Despite Plaintiff’s claims, an attorney has an ethical obligation to zealously to pursue any lawful claim of his client and properly represent and support his client. *Gaar*, 287 S.C. at 529-30 (citing former Rule 32, Canon 7, Rules of Practice in the Supreme Court of South Carolina). And, no different than any other profession, an attorney obtains a fee as compensation for professional services rendered. The fee, which may be paid out of proceeds from a judgment, is directly tied to the representation of the client, and therefore falls squarely within the scope of representation. See *Gaar*, 287 S.C. at 529 (holding that an attorney normally conducts the litigation solely in his professional capacity and he has no personal interest in the suit). This Court finds there is no evidence Attorneys had any personal interest in their representation of Client.

Regarding Plaintiff’s allegations that Attorneys conspired with Client to make up or embellish certain facts to strengthen Client’s claims, Plaintiff points to Client’s deposition testimony that the number of times the LLR complaint states she visited the Plaintiff for treatment was wrong. (Hr’g. Tr. pp. 22-23, ll. 11-20). The relevant portion of Client’s Deposition, as cited at the hearing by Plaintiff, is as follows:

Q: “Dr. Battersby had been treating me for several issues once a week for 20 weeks.” Is that true?

A: "No. The 20 weeks is wrong."

Q: "And can you estimate -- I believe you said earlier that you thought you may have started with Dr. Battersby back in April."

A: "I thought I did, but I went back and looked. It was May 2nd":

Q: "What did you look at?"

A: "The cancelled check from my first visit."

(Dep. of Jan Morton, June 18, 2014, p. 76, ll. 6-17). Contrary to Plaintiff's assertions, this deposition testimony clearly shows Client was mistaken in her original estimation stated in the LLR complaint, and the number was not an embellishment or number otherwise made up by Attorneys. This Court therefore finds there is no evidence Attorneys conspired with Client to makeup or embellish facts to strengthen Client's case.

Turning to the other exception to the general rule of attorney immunity, Plaintiff's Complaint does not allege, and this Court finds that Attorneys owed no duty to the Plaintiff. The Plaintiff is not a client of Attorneys. At the hearing and in his memorandum, Plaintiff argues that Rule 3.3 Candor Toward the Tribunal of the South Carolina Rules of Professional Conduct imposes a duty on Attorneys to Plaintiff. In particular, Plaintiff argued that Attorneys owed Plaintiff a duty of advising their Client not to report her allegations to law enforcement. Rule 3.3 mandates that a lawyer not knowingly make false statements or present evidence the lawyer knows to be false to a tribunal, fail to correct the past representations later discovered to be false, or knowingly permit a client to engage in fraudulent conduct without taking remedial measures or disclosing to the tribunal. By its plain language, this Court finds that Rule 3.3 does not impose upon Attorneys a duty to Plaintiff. Therefore, this Court finds Attorneys are entitled to summary judgment in their favor on all of Plaintiff's claims.

LCB

Assuming *arguendo* Attorneys owed a duty to Plaintiff, this Court finds Attorneys breached no such duty. Plaintiff alleges Attorneys should have recognized Client was lying when she informed them Plaintiff was wearing a robe during the alleged incident, but then reported later to law enforcement that Plaintiff was wearing a towel. First, the Court finds these are subtle differences of no material distinction, both figuratively and literally, so as to put Attorneys on notice that Client may be lying. Second, the police report which contains the allegedly different descriptors of Plaintiff's attire was not created until *after* Attorneys advised Client to report to the police – the very act Plaintiff claims Attorneys should have advised their Client against doing. The Attorneys therefore would not have had the benefit of the very report Plaintiff claims should have put them on notice.

CONCLUSION

For the foregoing reasons, it is hereby ordered that Attorneys' Motion for Summary Judgment is GRANTED. There being no just reason for delay, FINAL JUDGMENT is hereby entered against the Plaintiff and in favor of the Defendants J. Kirkman Moorhead and Krause, Moorhead and Draisen, P.A.

AND IT IS SO ORDERED.



R. LAWTON MCINTOSH, JUDGE

Anderson, South Carolina

7-8, 2015

FILED-CLERKS OFFICE
ANDERSON SC
2015 JUL 10 AM 9:42
COMMON PLEAS AND
GENERAL SESSIONS

ORDER/FORM 4
GRANTING ALL STATE INSURANCE's
MOTION TO DISMISS

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

FILED-CLERK'S OFFICE FORM 4
ANDERSON SC

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP0400667



Gregg Battersby

2015 JUN -5 PM 1:22

COMMON PLEAS AND
GENERAL SESSIONS

Carrie Neal et al

Kirk Moorhead, et c

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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☐ Rule 43(k), SCRPC (Settled); ☒ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
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- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

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

Circuit Court Judge

2155
Judge Code

6/4/2015
Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Richard A. Shirley

Court Reporter

Richard A. Shirley - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Defendant Allstate's motion for summary judgement granted as to negligence and gross negligence. Allstate's motion to dismiss civil conspiracy cause of action granted. In the event Plaintiff refiles his claim for civil conspiracy it shall be under a separate case number with a new filing fee paid, service must be perfected pursuant to statute and or rules of procedure. Mr. Cox to prepare formal order.

Defendants J. Kirkman Moorehead individually, Krause, Moorehead & Draisen P.A. motions to dismiss converted to summary judgement with consent to the parties. Motion for summary judgment granted as to all causes of action based upon attorney immunity and upon such grounds as presented by Mr. Englehardt in his memoranda and at oral argument. Mr. Englehardt to prepare formal order.

**SECOND
AMENDED COMPLAINT
March 31, 2015**

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

FILED-CLERK'S OFFICE
ANDERSON SC
2015 MAR 31 P 3:44

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Gregg Battersby,

Plaintiff,

-vs-

J. Kirkman Moorhead,
Krause, Moorhead & Draisen, P.A.,
Allstate Insurance Company,
Allstate Northbrook Indemnity Company
Defendants.

COMMON PLEAS AND
GENERAL SESSIONS

SECOND AMENDED COMPLAINT
(JURY TRIAL DEMANDED)
C.A. No.: 2015-CP-00667

2015

Plaintiff, complaining of the Defendants herein, would respectfully allege and show unto the Court that:

Jurisdictional Allegations

1. The Plaintiff is a citizen and resident of the County of Anderson, State of South Carolina.
2. The individual Defendant, J. Kirkman Moorhead, is a citizen and resident of the County of Anderson, State of South Carolina.
3. Upon information and belief, Defendant Krause, Moorhead & Draisen, P.A. is a business organized and existing under the laws of the State of South Carolina, having its primary place of business in the County of Anderson, State of South Carolina.
4. The Defendant, Allstate Northbrook Indemnity Company (Allstate), is an insurance company doing business in the State of South Carolina.
5. The facts and circumstances alleged herein and giving rise to the Plaintiff's Complaint occurred in the County of Anderson, State of South Carolina.

6. All events occurred within the last two years.
7. This action is brought for damages and other appropriate relief pursuant to the statutory and common law of the State of South Carolina.
8. Jurisdiction and venue are proper in this judicial circuit pursuant to South Carolina Code Ann. § 15-7-30(B).

Count One Factual Allegations

9. Plaintiff is a chiropractor practicing out of his home.
10. Defendant J. Kirkman Moorhead is a partner at Defendant Krause, Moorhead & Draisen, P.A.
11. Defendant J. Kirkman Moorhead has a client named Jan Morton.
12. Defendant J. Kirkman Moorhead and Morton conspired to concoct a story claiming Plaintiff indecently exposed himself to Morton on June 1, 2013.
13. Defendant J. Kirkman Moorhead instructed Morton to file criminal charges against Plaintiff with the Anderson County Sheriff's Office (ACSO).
14. Morton initially claimed that Plaintiff was wearing a men's robe and no sexual contact, then 10 days later she claimed Plaintiff was wearing a towel and he was rubbing his "stuff" on her back.
15. Defendant J. Kirkman Moorhead instructed Morton to get a friend of hers, Carrie Neal, to file a similar criminal complaint with the ACSO.
16. This was done to help strengthen their false claims.
17. Plaintiff was arrested by ACSO, on or about August 2, 2013, based on Defendants, Moorhead and Krause, Moorhead & Draisen, P.A. and Morton's false statement.

18. Defendants, Moorhead and Krause, Moorhead & Draisen, P.A., and Morton knew the statement was false and intended for the ACSO to act on their false statement.

19. The ACSO relied on Defendants, Moorhead and Krause, Moorhead & Draisen, P.A., and Morton's statement to be truthful and had no knowledge of its falsity.

20. The ACSO had every right to rely on Defendants, Moorhead and Krause, Moorhead & Draisen, P.A., and Morton's statement.

21. Plaintiff was restrained against his will as a result of Defendants, Moorhead and Krause, Moorhead & Draisen, P.A., and Morton's false statement.

22. The restraint lacked probable cause and was unlawful.

23. This was done to make their stories more believable.

24. Defendants, J. Kirkman Moorhead and Krause, Moorhead & Draisen, P.A. have fostered and facilitated defamatory, fraudulent claims against Plaintiff.

25. Defendants J. Kirkman Moorhead and Krause, Moorhead & Draisen, P.A., filed a complaint with the South Carolina Department of Labor, Licensing and Regulation (LLR) on behalf of Morton.

26. Defendants, Moorhead and Krause, Moorhead & Draisen, P.A., and Morton have filed multiple contradictory statements with different agencies.

27. The criminal charges were dismissed on April 24, 2014 by the Anderson County Solicitor.

28. Defendants, Moorhead and Krause, Moorhead & Draisen, P.A. knew or should have known that the stories of Morton were false.

29. Defendants, Moorhead and Krause, Moorhead & Draisen, P.A., and Morton made

these defamatory statements to the ACSO, LLR, and others, claiming Plaintiff indecently exposed himself to Morton.

30. Defendants, Moorhead and Krause, Moorhead & Draisen, P.A., and Morton caused the arrest and loss of livelihood of Plaintiff.

31. Defendants, Moorhead and Krause, Moorhead & Draisen, P.A. lacked probable cause in conspiring with Morton to file criminal charges against Plaintiff.

32. These actions were done with malice and intent to harm Plaintiff.

33. Defendants Moorhead and Krause, Moorhead & Draisen, P.A. acted with Morton with the sole intention of perpetuating a fraudulent civil action against Plaintiff.

34. Plaintiff suffered damages, financial, physical and emotional, as a result of Defendants', Moorhead and Krause, Moorhead & Draisen, P.A., actions.

Count Two Factual Allegations

35. Defendant Allstate was the automobile insurance carrier for Carrie Neal.

36. Defendant Allstate knew that Neal had an outstanding balance owed to Plaintiff in the amount of \$12,100.00 for treatment relating to an automobile accident.

37. Around August of 2013, Neal reached a settlement with Defendant Allstate.

38. Defendant Allstate failed to pay Plaintiff for the care given to Neal.

39. Neal failed to pay Plaintiff.

40. Defendant Allstate knew Plaintiff had a medical lien on the outstanding balance that directed Defendant Allstate to pay Plaintiff directly. Defendant Allstate owed a duty to Plaintiff to assure his bill was paid and Defendant Allstate breached that duty.

41. Defendant Allstate and Neal conspired to deny payment to Plaintiff.

42. Plaintiff has been damaged by Defendant Allstate's failure to pay his bill.

FOR A FIRST CAUSE OF ACTION

43. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 42 above.

44. The aforementioned actions, conduct and/or omissions of the Defendants resulted in Plaintiff being falsely arrested and imprisoned and/or deprived of his liberty against his will without justification or probable cause.

45. As a direct and proximate result of the Plaintiff's false arrest and imprisonment by the Anderson County Sheriff's Department on behalf of Defendants, its agents, servants, and/or employees, the Plaintiff has been damaged, both actual damages and punitive damages, for which damages the Defendants are liable.

FOR A SECOND CAUSE OF ACTION

46. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 45 above.

47. The aforementioned actions, conduct and/or omissions of the Defendants expressly or by implication gave Plaintiff's colleagues, patients, and/or others the impression that Plaintiff was engaging in wrongful or illegal activity.

48. The aforementioned insinuation, and/or inference of wrongdoing, constitutes a publication of defamatory matter that was defamatory to the Plaintiff.

49. As a direct and proximate result of the Defendants' defamation of the Plaintiff, Plaintiff has been damaged, for which compensatory, special and punitive damages the Defendants are liable.

FOR A THIRD CAUSE OF ACTION

50. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 49 above.

51. Defendants intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct.

52. Defendants' conduct was so extreme and outrageous so as to exceed all possible bounds of decency and must be regarded as atrocious, and utterly intolerable in a civilized community.

53. The actions of the defendant caused plaintiff's emotional distress; and the emotional distress suffered by the plaintiff was severe such that no reasonable man could be expected to endure it.

54. The aforementioned actions, conduct and/or omissions of the Defendants constitute intentional infliction of emotional distress.

55. The Plaintiff has suffered actual damage as a direct and proximate result of the intentional infliction of emotional distress at the instigation of the Defendants.

56. The Plaintiff is entitled to recover actual and punitive damages from the Defendants in an amount to be determined by the jury.

FOR A FOURTH CAUSE OF ACTION

57. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 56 above.

58. The aforementioned actions, conduct and/or omissions of the Defendants constitute malicious prosecution.

59. The Plaintiff has suffered actual damage as a direct and proximate result of the malicious prosecution at the instigation of the Defendants.

60. The Plaintiff is entitled to recover actual and punitive damages from the Defendants in an amount to be determined by the jury.

FOR A FIFTH CAUSE OF ACTION

61. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 60 above.

62. The aforementioned actions, conduct and/or omissions of the Defendants constitute conspiracy.

63. The Plaintiff has suffered actual damage as a direct and proximate result of the conspiracy at the instigation of the Defendants.

64. The Plaintiff is entitled to recover actual, special, and punitive damages from the Defendants in an amount to be determined by the jury.

FOR A SIXTH CAUSE OF ACTION

65. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 64 above.

66. The aforementioned actions, conduct and/or omissions of the Defendants constitute fraud.

67. The Plaintiff has suffered actual damage as a direct and proximate result of the fraud at the instigation of the Defendants.

68. The Plaintiff is entitled to recover actual, special, and punitive damages from the Defendants in an amount to be determined by the jury.

FOR A SEVENTH CAUSE OF ACTION

69. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 68 above.

70. Defendants had the ulterior motive of filing the criminal complaint and complaint with the LLR to seek monetary damages from Plaintiff in a civil suit.

71. Defendants' willful act in the use of the process that was not proper in the regular conduct of the proceeding.

72. The aforementioned actions, conduct and/or omissions of the Defendants abuse of process.

73. The Plaintiff has suffered actual damage as a direct and proximate result of the abuse of process at the instigation of the Defendants.

74. The Plaintiff is entitled to recover actual and punitive damages from the Defendants in an amount to be determined by the jury.

FOR THE EIGHTH CAUSE OF ACTION

75. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 74 above.

76. The aforementioned actions, conduct and/or omissions of the Defendant Allstate and Neal constitute conspiracy.

77. The Plaintiff has suffered actual damage as a direct and proximate result of the conspiracy at the instigation of the Defendant Allstate and Neal.

78. The Plaintiff is entitled to recover actual, special, and punitive damages from the Defendant Allstate in an amount to be determined by the jury.

FOR THE NINTH CAUSE OF ACTION

79. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 78 above.

80. The aforementioned actions, conduct and/or omissions of the Defendant Allstate constitute negligence.

81. The Plaintiff has suffered actual damage as a direct and proximate result of the negligence at the instigation of the Defendant Allstate.

82. The Plaintiff is entitled to recover actual, special, and punitive damages from the Defendant Allstate in an amount to be determined by the jury.

FOR THE TENTH CAUSE OF ACTION

83. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 82 above.

84. The aforementioned actions, conduct and/or omissions of the Defendant Allstate constitute gross negligence. Defendant Allstate acted without slight care as to the affect of their actions.

85. The Plaintiff has suffered actual damage as a direct and proximate result of the gross negligence at the instigation of the Defendant Allstate.

86. The Plaintiff is entitled to recover actual, special, and punitive damages from the Defendant Allstate in an amount to be determined by the jury.

WHEREFORE, the Plaintiff demands a trial by jury pursuant to Rule 38(b) of the South Carolina Rules of Civil Procedure (SCRCPP), and pray for judgment against the Defendants, for

actual, special, and punitive damages in an amount to be determined by the jury which Plaintiff alleges to be in excess of Twenty-five Thousand and No/100 (\$25,000.00) Dollars actual and special damages, such allegation being made for the purpose set forth in Rule 30(h) of the SCRCF, for the costs of this action, and for such other and further relief as this court may deem just and proper.



Donald L. Smith
ATTORNEY FOR PLAINTIFF
122 N. Main St.
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Anderson, South Carolina
March 31, 2015

**RESPONDENT MOORHEAD, ET AL.'s
MOTION TO DISMISS
March 31, 2015**

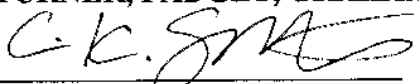
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	
	)	
Gregg Battersby,	)	
	)	Civil Action No. 2015-CP-04-00667
Plaintiff,	)	
	)	
vs.	)	
	)	MOTION TO DISMISS
J. Kirkman Moorhead, Krause,	)	
Moorhead & Draisen, PA.,	)	
Allstate Insurance Company,	)	
	)	
Defendants.	)	

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ANDERSON SC
2015 MAR 31 AM 9:56
COMMON PLEAS AND
GENERAL SESSIONS

TO: GREGG BATTERSBY AND HIS ATTORNEY DONALD L. SMITH, ESQUIRE:

YOU WILL PLEASE TAKE NOTICE that Defendants, J. Kirkman Moorhead and Krause, Moorhead & Draisen, PA hereby move the Court pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for an order dismissing the Plaintiff's Complaint against said Defendants. These defendants are entitled to this relief on the grounds that each cause of action of the Complaint fails to set forth facts sufficient to constitute a claim for relief against these Defendants. This Motion is based on the Complaint in this matter, together with the applicable legal authorities in the State of South Carolina and any such brief or memorandum of law which may be filed prior to the hearing on this matter.

TURNER, PADGET, GRAHAM & LANEY, P.A.


Eric K. Englehardt (S.C. Bar# 12892)
P.O. Box 1509
Greenville, South Carolina 29602
864-552-4600
eenglehardt@turnerpadget.com
Attorneys for Defendants, J. Kirkman Moorhead and Krause,
Moorhead & Draisen

Greenville, South Carolina
Dated: March 26, 2015

**LETTER RE: SECOND
AMENDED COMPLAINT**

April 6, 2015

TURNER PADGET

TURNER PADGET GRAHAM & LANEY PA.

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CHARLESTON
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2015 APR -4 PM 4:43

COMMON PLEAS AND
GENERAL SESSIONS



Eric K. Englehardt
Attorney at Law
Certified Mediator

Admitted in NC and SC
EEnglehardt@TurnerPadget.com
Writer's Direct Dial: (864) 552-4624
Direct Fax: (864) 552-4620

April 2, 2015

The Honorable Richard A. Shirley
Anderson County Clerk of Court
PO Box 8002
Anderson, SC 29622-8002

Re: Gregg Battersby v. J. Kirkman Moorhead, Krause, Moorhead & Draisen, PA
and Allstate Insurance Company
2015-CP-04-00667

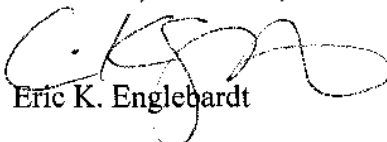
Dear Richard:

My clients have been served with a Second Amended Complaint in this matter by Mr. Smith on behalf of Plaintiff. I have reviewed this document and it appears the allegations against my clients are identical to those in the initial complaint. As a result we do not plan on filing another Motion to Dismiss. We will be relying on the motion previously filed as our responsive pleading and ask that same be scheduled for hearing. If you have any questions, please do not hesitate to let me know.

With kind regards, I remain

Very truly yours,

TURNER, PADGET, GRAHAM & LANEY, P.A.


Eric K. Englehardt

EKE/pls
Enclosure
cc: Donald Smith
J. Kirkman Moorhead

BUSINESS • LITIGATION • SOLUTIONS

200 East Broad Street • Suite 250 (29601) • PO Box 1509 • Greenville, SC 29602
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**ALL STATE INSURANCE's
MOTION TO DISMISS**

April 30, 2015

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
Case No. 2015-CP-04-667

MOTION FEE PAID



Gregg Battersby,

Plaintiff,

vs.

J. Kirkman Moorhead; Krause, Moorhead
& Draisen, P.A.; Allstate Insurance
Company; and Allstate Northbrook
Indemnity Company,

Defendants.

**DEFENDANTS ALLSTATE INSURANCE
COMPANY AND ALLSTATE NORTHBROOK
INDEMNITY COMPANY'S
MOTION TO DISMISS**

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ANDERSON SC
2015 APR 30 PM 1:12
COMMON PLEAS AND
GENERAL SESSIONS

TO: DONALD L. SMITH, ESQUIRE, ATTORNEY FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that Defendants Allstate Insurance Company and Allstate Northbrook Indemnity Company (hereinafter sometimes collectively "Allstate" or "these Defendants") hereby give notice of their intent to move, and do so move, before the Presiding Judge of the Tenth Judicial Circuit, at such time and place as may be set by the Court, for an Order dismissing the Second Amended Complaint filed by Plaintiff against these Defendants in the above-entitled action, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure based on the following grounds:

1. Plaintiff has failed to state facts sufficient to constitute a cause of action against Defendant Allstate Insurance Company.
2. Plaintiff has failed to state facts sufficient to constitute any cause of action against Defendant Allstate Northbrook Indemnity Company under Plaintiff's First through Seventh Causes of Action.
3. Plaintiff has failed to state facts sufficient to constitute a cause of action for Conspiracy against the Plaintiff.

4. Plaintiff has failed to state facts sufficient to constitute a cause of action for Negligence and Gross Negligence against Defendant Allstate Northbrook Indemnity Company.

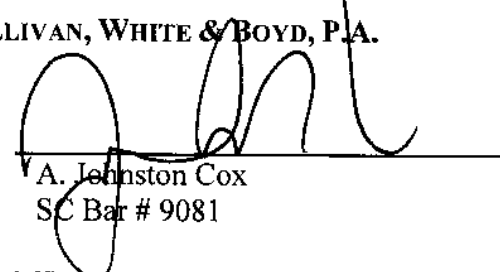
5. Plaintiff's claims must also fail, as Defendant Allstate Insurance Company had no duty to the Plaintiff.

6. In addition, the Complaint should be dismissed pursuant to Rules 18, 20 and 21 of the South Carolina Rules of Civil Procedure for misjoinder of parties, as the allegations against Allstate do not arise out of the same transaction, occurrence or series of transaction recurrences, and do not have any questions of law or fact in common with the allegations against the remaining Defendants.

7. This action should be dismissed pursuant to Rule 19 of the South Carolina Rules of Civil Procedure because Carrie Neal is an indispensable party to the action.

This Motion is based upon the pleadings in the case, rules of Court and the laws of the State of South Carolina. Allstate specifically reserves the right to supplement this Motion.

GALLIVAN, WHITE & BOYD, P.A.

By: 

A. Johnston Cox
SC Bar # 9081

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Columbia, SC 29202
Email: jcox@gwblawfirm.com
(803) 779-1833 Ofc
(803) 779-1767 Fax

*Attorney for Defendants Allstate Insurance
Company and Allstate Northbrook Indemnity
Company*

April 26, 2015

**MEMORANDUM IN SUPPORT OF
ALL STATE INSURANCE's
MOTION TO DISMISS
June 4, 2015**

FILED-CLERK'S OFFICE
ANDERSON SC
STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
2015 JUN -4 PM 3:25

Gregg Battersby, COMMON PLEAS AND
GENERAL SESSIONS

Plaintiff,

v.

J. Kirkman Moorhead Krause, Moorhead &
Draisen, P.A., Allstate Insurance Company,
Allstate Northbrook Indemnity Company,

Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2015-CP-04-00667

DEFENDANTS ALLSTATE INSURANCE
COMPANY AND ALLSTATE
NORTHBROOK INDEMNITY
COMPANY'S MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO DISMISS

Defendants Allstate Insurance Company ("Allstate") and Allstate Northbrook Indemnity Company ("Northbrook") move pursuant to South Carolina Rule of Civil Procedure 12(b)(6) for dismissal of the Second Amended Complaint ("Complaint") of Plaintiff Gregg Battersby ("Plaintiff"), because Plaintiff's Complaint fails to allege facts sufficient to constitute a cause of action against Allstate and Northbrook.

In addition, Allstate and Northbrook move to dismiss Plaintiff's Complaint pursuant to South Carolina Rules of Civil Procedure 18, 20, and 21 because Plaintiff's have improperly joined the parties in this lawsuit. The allegations against Allstate and Northbrook do not arise out of the same transaction, occurrence, or series of transactions or occurrences and have no questions of law or fact in common with the allegations against the other Defendants, J. Kirkman Moorhead Krause and Moorehead & Draisen, P.A. (collectively "Remaining Defendants").

I. FACTUAL BACKGROUND

In his Complaint, Plaintiff has impermissibly joined two separate lawsuits involving separate groups of defendants into one.¹ With regard to Allstate and Northbrook, which Plaintiff

¹ Plaintiff also includes causes of action against the Remaining Defendants for false imprisonment, defamation, intentional or reckless infliction of emotional distress, malicious prosecution,

has singularly referred to as "Allstate" throughout his Complaint, Plaintiff contends that Allstate was the automobile insurance carrier for his patient, Carrie Neal ("Neal"). (Complaint ¶ 35) Plaintiff alleges that he treated Neal following an automobile accident and that Neal had an outstanding balance of \$12,100.00 following the treatment, which she did not pay. (Complaint ¶¶ 36, 39) Allstate and Neal settled her claim in August 2013. (Complaint ¶ 37) Plaintiff contends that Allstate knew that Plaintiff had a medical lien for the outstanding balance and that Allstate did not pay Plaintiff the money due. (Complaint ¶¶ 40, 38) Plaintiff contends that "Allstate and Neal conspired to deny payment to Plaintiff." (Complaint ¶ 41)

Plaintiff includes three causes of action against Allstate: 1) conspiracy, 2) negligence, and 3) gross negligence. With regard to the conspiracy cause of action, Plaintiff alleges that the actions of Allstate and Neal "constitute conspiracy" and that he "has suffered actual damage as a direct and proximate result of the conspiracy at the instigation of the Defendant Allstate and Neal." (Complaint ¶¶ 76, 77) In support of his negligence cause of action, Plaintiff alleges that Allstate's actions "constitute negligence" and that he "has suffered actual damage as a direct and proximate result of the negligence at the instigation of the Defendant Allstate." (Complaint ¶¶ 80, 81) Finally, with regard to his gross negligence cause of action, Plaintiff contends that "Allstate acted without slight care as to the affect [sic] of their actions" and that he "has suffered actual damage as a direct and proximate result of the gross negligence at the instigation of the Defendant Allstate." (Complaint ¶ 84) With regard to each of the three causes of action against Allstate and Northbrook, Plaintiff seeks "actual, special, and punitive damages." (Complaint ¶¶ 78, 82, 86)

conspiracy, fraud, and having an ulterior motive. Because neither Allstate nor Northbrook were involved in anything related to the claims of indecent exposure raised against Plaintiff and Plaintiff has included no allegations suggesting they were involved, Allstate does not address those causes of action included in Plaintiff's Complaint.

II. ARGUMENT

A. Motion to Dismiss Standard

Pursuant to Rule 12(b)(6), SCRCP, a court may dismiss a claim when the defendant demonstrates that the plaintiff has “fail[ed] to state facts sufficient to constitute a cause of action in the pleadings filed with the Court.” Rule 12(b)(6), SCRCP; *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 121, 634 S.E.2d 5, 6 (Ct. App. 2006). A Rule 12(b)(6) motion will be sustained if the alleged facts and resulting reasonable inferences do not entitle the plaintiff to relief on any theory of the case. *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602-03 (1995) (citing *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987)). In entertaining a motion to dismiss, a court must only base its ruling upon the allegations as they are set forth on the face of the complaint. *Baird v. Charleston County*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999).

Here, the allegations of Plaintiff’s Complaint do not entitle him to relief on any theory of the case. Plaintiff has failed to properly plead a claim for conspiracy as required under South Carolina law and has failed to demonstrate that either Allstate or Northbrook owe him any duties with regard to the payment for the services he rendered to Neal. Furthermore, Plaintiff has improperly joined his causes of action against the Remaining Defendants with the causes of action he alleges against Allstate and Northbrook. For all of these reasons, Plaintiff’s Complaint should be dismissed.

B. Plaintiff has failed to properly plead a claim for conspiracy.

Plaintiff has failed to plead that either Allstate or Northbrook were involved in a conspiracy with regard to the payment of Neal’s medical bills. Plaintiff has failed to satisfy the requirements of bringing a valid cause of action for conspiracy, and this failure is fatal to Plaintiff’s cause of action.

“The elements of civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, and (3) which causes special damages.” *Pye v. Fox*, 369 S.C. 555, 566-567, 633 S.E.2d 505, 511 (2006) (citations omitted). “A claim for civil conspiracy must allege additional acts in furtherance of a conspiracy rather than reallege other claims within the complaint.” *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009) (citation omitted). “[T]he failure to properly plead such acts will merit the dismissal of the claim.” *Hackworth*, 385 S.C. at 116, 682 S.E.2d at 875. *See also Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 611, 538 S.E.2d 15, 31 (Ct. App. 2000) (“Because [the third-party plaintiff] ... merely realleged the prior acts complained of in his other causes of action as a conspiracy action but failed to plead additional acts in furtherance of the conspiracy, he was not entitled to maintain his conspiracy cause of action.”). “Because the quiddity of a civil conspiracy claim is the damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action.” *Pye*, 369 S.C. at 568, 633 S.E.2d at 511.

In *Hackworth*, the court granted the plaintiffs’ motion to dismiss the counterclaim because the defendant failed to allege a conspiracy. The plaintiffs brought suit against the defendant for damages arising out of a dispute regarding the placement of a road and easement. In the answer to the plaintiffs’ complaint, the defendant included a counterclaim for, among other things, civil conspiracy. The plaintiffs moved to dismiss the civil conspiracy cause of action and argued that the defendant failed to allege the required elements for such a cause of action. *Hackworth*, 385 S.C. at 114, 682 S.E.2d at 874. The trial court granted the plaintiffs’ motion and dismissed the cause of action because the defendant “simply repeated verbatim the

allegations and damages from its breach of contract claim in its civil conspiracy claim.” *Id.* at 114, 682 S.E.2d at 874. The defendant appealed.

On appeal, the court affirmed the trial court’s determination. The court explained:

In this case, [the defendant] has reiterated verbatim the allegations contained in its cause of action for breach of contract accompanied by fraudulent act in its civil conspiracy claim. Specifically, paragraph 46, which lists the fraudulent acts for the breach of contract action, contains the exact same acts alleged in paragraph 49, which is part of the civil conspiracy cause of action. As these two paragraphs and their subparts are identical, nothing in the civil conspiracy claims informs the [plaintiffs] what acts in furtherance of the alleged conspiracy they are being accused of. Accordingly, we do not believe [the defendant] has adequately alleged acts in furtherance of a civil conspiracy.

Id. at 116, 682 S.E.2d at 875. In addition, the court determined that the defendant failed to adequately allege special damages:

In this case, [the defendant] has repeated verbatim the same damages in its civil conspiracy claim as are alleged in its claim for breach of contract accompanied by a fraudulent act. Nothing in the claim informs the [plaintiff]s what special damages are alleged as part of [the defendant]’s civil conspiracy claim. Accordingly, we believe under the case law cited above, [the defendant] failed to properly plead its civil conspiracy cause of action, and therefore, the trial court did not error in dismissing the claim.

Id. at 117, 682 S.E.2d at 876 (citing *Vaught v. Waites*, 300 S.C. 201, 209, 387 S.E.2d 91, 95 (Ct. App. 1989); *Charleston Aluminum, Inc. v. Samuel, Son & Co., Inc.*, No. 3:05-02337-MBS, 2006 WL 2370292, *3 (D.S.C. Aug. 15, 2006); and *Doe v. Erskine Coll.*, No. 8:04-23001RBH, 2006 WL 1473853, *17 (D.S.C. May 25, 2006)).

The same result should be reached here. Plaintiff has incorporated all of the allegations of the Complaint into each of the causes of action, including into the conspiracy cause of action. *Compare* Complaint ¶ 76 (“The aforementioned actions, conduct and/or omissions of the Defendant Allstate and Neal constitute conspiracy”) with Complaint ¶ 81 (“The aforementioned actions, conduct and/or omissions of the Defendant Allstate constitute negligence.”) and Complaint ¶ 84 (“The aforementioned actions, conduct and/or omissions of the Defendant

Allstate constitute gross negligence.”). Plaintiff’s Complaint includes no separate allegations that inform Allstate and Northbrook of “what acts in furtherance of the alleged conspiracy they are being accused of.” *Hackworth*, 385 S.C. at 116, 682 S.E.2d at 875.

In addition, Plaintiffs have failed to adequately allege any special damages. Plaintiff merely contends that he is entitled to “actual, special, and punitive damages” in connection with each cause of action alleged as to Allstate and Northbrook. *See* (Complaint ¶¶ 78, 82, 86) This is insufficient, and Plaintiff’s Complaint should be dismissed.

C. Plaintiff has failed to demonstrate that either Allstate or Northbrook owed a duty to Plaintiff to support either his cause of action for negligence or gross negligence.

Plaintiff contends that Allstate and Northbrook were negligent and grossly negligent with respect to not paying him pursuant to the medical lien he had with regard to the medical treatment he provided to Neal. Plaintiff further contends that somehow Allstate and Northbrook “owed a duty to Plaintiff to assure his bill was paid” and that “Allstate breached that duty.” *See* (Complaint ¶ 40) Such a duty does not exist under South Carolina law, and Plaintiff’s causes of action for negligence and gross negligence should be dismissed.

Notably, Plaintiff does not bring a cause of action titled “breach of contract,” because, undoubtedly, he realizes that such a cause of action does not exist because he is not in privity with either Allstate or Northbrook. *See Gray v. State Farm Auto Ins. Co.*, 327 S.C. 646, 651, 491 S.E.2d 272, 275 (Ct. App. 1997) (“The pleadings give rise only to a contract between Appellants and their patients, which their patients breached by failing to pay them. No contract between Appellants and Nationwide could have been created because the terms of the purported assignment did not apply to third-party insurance carriers.”) and *Tranick v. USAA Ins. Co.*, 354 S.C. 549, 581 S.E.2d 858 (2003) (“However, *Gray* does not provide that contractual privity is established merely by including third-party insurance claims in the assignment.”) Therefore, in

an attempt to circumvent this insurmountable hurdle, Plaintiff seeks to establish a duty where none exists. However, “[b]are allegations of negligence cannot convert a breach of contract action into an action in tort.” *Seebaldt v. First Fed. Savings & Loan Assoc.*, 269 S.C. 691, 693, 239 S.E.2d 726, 727 (1977).

Under South Carolina law, “[w]hen it is questionable whether an action is plead on contract or in tort, doubt is generally resolved in favor of regarding the action to be on contract.” *Seebaldt*, 269 S.C. at 693, 239 S.E.2d at 727 (citations omitted). Here, there is no question that any obligation on the part of either Allstate or Northbrook with regard to treatment Neal received arises under the contract of insurance with *her*. As explained above, Plaintiff is not a party to the insurance contract, and therefore, Allstate and Northbrook owe no duty or obligation to Plaintiff to pay the outstanding balance. Therefore, Plaintiff’s Complaint should be dismissed.

D. Plaintiff’s claims against Allstate/Northbrook and the Remaining Defendants are improperly joined under Rule 20(a), SCRPC because they do not arise out of the same transaction or occurrence, nor do they implicate common questions of law or fact.

South Carolina Rule of Civil Procedure 20(a) governs the permissive joinder of claims and provides that “[a]ll persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.” The notes to Rule 20(a) provide that the rule “is substantially the same as the Federal Rule.” Therefore, in addition to South Carolina law, this Court should consider federal law in determining whether Allstate/Northbrook and the Remaining Defendants are properly joined defendants in this case.

The requirements for joinder under Rule 20 “is cumulative, and the plaintiff must show a right to relief presenting common questions of law or fact *and* involving the same transaction,

occurrence or series of transactions or occurrences.” *Philadelphia Dressed Beef Co. v. Wilson & Co.*, 19 F.R.D. 198, 200 (E.D.Pa. 1956) (italics in original). Plaintiff’s Complaint satisfies neither of these requirements.

Plaintiff’s allegations against the Remaining Defendants all relate to their alleged actions in making false statements that gave rise to Plaintiff’s criminal arrest. However, Plaintiff’s causes of action against Allstate and Northbrook arise out of the alleged failure to pay a medical bill. Any claims that Allstate and Northbrook have an obligation to pay the medical bill are “wholly distinct in character from the events leading to [the false statement and subsequent criminal arrest] and would be tested under distinct legal standards.” *See Pollock v. Goodwin*, C/A No. 3:07-3983-CMC, 2008 WL 216381, at *3 (D.S.C. Jan. 23, 2008). These claims arise out of separate transactions or occurrences and should not be joined. Thus, applying the requirements of Rule 20(a), it is clear that Plaintiff improperly joined his claims against Allstate and Northbrook with his claims against the Remaining Defendants—the claims against the Remaining Defendants do not arise out of the same transaction or occurrence as the claims against Allstate and Northbrook, nor do these claims involve common questions of law or fact.

E. Plaintiff’s claims are also improperly joined under Rule 21, SCRPC.

Pursuant to South Carolina Rule of Civil Procedure 21, which governs “Misjoinder . . . of Parties,” this Court has broad discretionary power to “drop[] or add[] [parties] by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just.” Further, the rule provides that “[a]ny claim against a party may be severed and proceeded with separately.” The discretion to sever is broad. *See Saval v. BL Ltd.*, 710 F.2d 1027, 1031-32 (4th Cir. 1983). Although Rule 21 does not describe a standard for determining misjoinder, “[c]ourts have routinely held that parties are misjoined when either of the preconditions set forth in Rule 20(a) have not been satisfied.” *Hard Drive Prods., Inc. v. Does 1-*

30, No. 2:11cv345, 2011 WL 4915551, at *2 (E.D. Va. Oct. 17, 2011). As with Rule 20, the Notes to South Carolina Rule 21 indicate: “This Rule 21 is the same as the Federal Rule.”

“[T]he cases make it clear that misjoinder of parties arises when they fail to satisfy any of the conditions of permissive joinder under Rule 20(a), [and t]hus, Rule 21 applies when the claims asserted do not arise out of the same transaction or occurrence or do not present some common question of law or fact.” *Am. Fid. Fire Ins. Co. v. Construcciones Werl, Inc.*, 407 F. Supp. 164, 190 (D.C. Virgin Islands 1975) (citations omitted). As demonstrated above, Plaintiffs’ claims against Allstate/Northbrook and Remaining Defendants do not arise out of the same transaction or occurrence and do not present common questions of law or fact. If these claims are allowed to proceed as joined in the Complaint, the risk of confusion is great – the fact the Complaint contains different claims based upon different alleged obligations to Plaintiff - illustrates the need for severance of these claims.

Accordingly, this Court should exercise its broad discretion under Rule 21 to dismiss this action as to Allstate and Northbrook because the joined claims fail to meet the Rule 20(a) joinder standard and because justice requires it.

F. Plaintiff’s claims are also improperly joined under Rule 18(c), SCRCF because they are independent and/or disassociated.

South Carolina Rule of Civil Procedure 18(c) gives the Court discretionary power to sever the claims against Allstate and Northbrook from the claims against the Remaining Defendants in this case. Rule 18(c) provides that “[t]he court may make such orders as will prevent a party from being [] delayed or put to unnecessary expense by the joinder of independent or disassociated claims, and may order separate trials....” In addition, the Notes to Rule 18 explain that “[u]nder Rule 18(c), the court does have power to grant separate trials on the different claims when it would be more convenient or fair.”

The claims against the Remaining Defendants and whether they made any false statements that resulted in the criminal charges against Plaintiff have nothing at all to do with the payment of the medical bills. The claims against these defendants are separate and distinct, and the Court should order separate trials to prevent confusion of the issues and to avoid the likelihood of unnecessary expense in allowing these claims to remain joined.

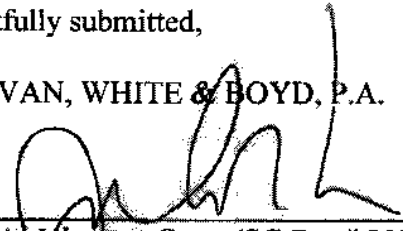
III. CONCLUSION

As demonstrated above, Plaintiff has failed to bring valid causes of action against Allstate and Northbrook for conspiracy, negligence, or gross negligence. Therefore, Allstate and Northbrook respectfully requests that this Court enter an Order dismissing Plaintiff's Complaint against them.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

BY:



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Janice Holmes (SC Bar # 75038)
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P.O. Box 7368
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Attorneys for Defendants Allstate Insurance
Company, Allstate Northbrook Indemnity Company

Columbia, South Carolina
June 1, 2015

**APPELLANT'S
MEMORANDUM IN OPPOSITION TO
ALL STATE INSURANCE's
MOTION TO DISMISS
June 4, 2015**

FILED-CLERK'S OFFICE
ANDERSON SC

STATE OF SOUTH CAROLINA -4 PM 3 26 IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON TENTH JUDICIAL CIRCUIT

COMMON PLEAS AND
GENERAL SESSIONS

Gregg Battersby,

Plaintiff,

-VS-

J. Kirkman Moorhead,
Krause, Moorhead & Draisen, P.A.,
Allstate Insurance Company,
Allstate Northbrook Indemnity Company
Defendants.

MEMORANDUM IN OPPOSITION
TO DEFENDANTS ALLSTATE
INSURANCE COMPANY AND
ALLSTATE NORTHBROOK INDEMNITY'S
MOTION TO DISMISS
C.A. No.: 2015-CP-00667

Plaintiff files this Memorandum in Opposition to Defendants, Allstate Insurance and Allstate Northbrook Indemnity's, Civil Rule 12(b)(6) Motion to Dismiss, in support of which he presents the following:

INTRODUCTION

Plaintiff filed this Second Amended Complaint against Defendants, Allstate Insurance and Allstate Northbrook Indemnity (Defendants), for negligence, gross negligence, and civil conspiracy for their involvement with Carrie Neal in the failure to pay Plaintiff for services rendered to Neal relative to an automobile accident. Defendants knew that Plaintiff had an equitable assignment of benefits on the settlement proceeds and conspired with Neal to deny Plaintiff payment (See Exhibit 1).

ARGUMENT

In order for Defendants' Motion to succeed, they must show that Plaintiff is not entitled to relief on the facts alleged in the Second Amended Complaint. Defendants fail to do so. "In considering a motion to dismiss pursuant to Rule 12(b)(6), SCRCP, the circuit court must base its ruling solely upon the allegations set forth on the face of the complaint. *Doe v.*

Greenville County Sch. Dist., 375 S.C. 63, 66–67, 651 S.E.2d 305, 307 (2007). The motion may not be sustained if the facts alleged in the complaint and the inferences drawn therefrom would entitle the plaintiff to relief under any theory. *Id.* “[P]leadings in a case should be construed liberally and the Court must presume all well pled facts to be true so that substantial justice is done between the parties.” *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005) (citing *Stroud v. Riddle*, 260 S.C. 99, 102, 194 S.E.2d 235, 237 (1973)).” See *Charleston County Sch. Dist. v. Harrell*, 393 S.C. 552, 713 S.E.2d 604, 270 Ed. Law Rep. 357 (S.C., 2011).

For the civil conspiracy cause of action, Plaintiff must plead certain elements. “In contrast, the tort of civil conspiracy contains three elements: (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. *Pye v. Estate of Fox*, 369 S.C. 555, 566–67, 633 S.E.2d 505, 511 (2006)” See *City of Hartsville v. S.C. Mun. Ins. & Risk Financing Fund*, 677 S.E.2d 574, 382 S.C. 535 (S.C., 2009). Defendants and Neal conspired to withhold payment to Plaintiff for services he rendered to Neal. Defendants have refused to honor medical liens by Plaintiff and other chiropractors in the past. If Defendants had paid Plaintiff directly, as the assignment of benefits stipulated, there would not have been the opportunity for the defendants to withhold payment, regardless of how they went about it. However, Plaintiff was denied payment for his services, which totaled \$12,100.00, and lost his livelihood as fallout from the conspiracy. These constitute special damages. “Special damages are those elements of damages that are the natural, but not the necessary or usual, consequence of the defendant's conduct. *Loeb v. Mann*, 39 S.C. 465, 469, 18 S.E. 1, 2 (1893).” See *Hackworth v. Greywood at Hammett, LLC*, 682 S.E.2d 871, 385 S.C. 110 (S.C. App., 2009). Special damages are determined by adding together all of Plaintiff's quantifiable financial losses. These

losses consist of the \$12,100.00 and the loss of his livelihood as a result of Neal's filing criminal charges against him. Neal concocted her story in order to avoid paying the \$12,100.00 that she owed Plaintiff. Neal even testified to that fact. The total amount of special damages will be determined in discovery. Plaintiff has met all of the elements of civil conspiracy.

Defendants also seek to have this action dismissed to Rules 18, 20 and 21 of the South Carolina Rules of Civil Procedure, alleging misjoinder of parties. However, Rule 21 expressly provides that a misjoinder of a party, assuming misjoinder has been committed, is not grounds for the dismissal of an action. Defendants further claim that Plaintiff failed to name Neal as an indispensable party. Plaintiff originally filed suit in this court against Neal and other parties in *Battersby v. Neal, et. al.*, C.A. No.: 2014-CP-04-1121. Pursuant to the gathering of discovery in the Neal matter, the Plaintiff attempted to join Defendants in that action. However, they contested the joinder and the court has yet to add them. Plaintiff had also attempted to add the other Defendants, Moorhead and Krause, Moorhead & Draisen, P.A., to the prior action and was also challenged. In an effort to minimize the already crowded docket, Plaintiff combined the parties. These Defendants are all associated with the prior action under a common nexus of operative facts. In addition, Defendants' actions were a separate and distinct Count in the Second Amended Complaint. They also have separate causes of action.

However, it is not essential to any of the causes of action for Neal to be a party. A civil conspiracy action can be undertaken without the co-conspirators being party defendants. "It is clear in the criminal context that alleged co-conspirators need not be joined in the same action. See *United States v. Obialo*, 23 F.3d 69, 72 (3d Cir. 1994) ("The failure of the government to be able to name and personally identify the other conspirator is not fatal to a conspiracy conviction."). Courts have applied this same rule to civil conspiracy claims. See US

Investigations Servs., LLC v. Callihan, Civ. 11-0355, 2012 WL 933069, at *2 (W.D. Pa. Mar. 19, 2012) ("In order for one member of a civil conspiracy to be liable, not all members of the conspiracy need be named as defendants or joined as defendants."); Stillwagon v. Innsbrook Golf & Marina, LLC, Civ. 11-1338, 2013 WL 1180312, at *13 (W.D. Pa. Mar. 20, 2013) (same)."

See *Adami v. Cardo Windows, Inc.* (D.N.J., 2014). "Nonetheless, the same rationale holds true in the civil context of conspiracy. In order for one member of a civil conspiracy to be liable, not all members of the conspiracy need be named defendants or joined as defendants. See *Alexander & Alexander, Inc. v. B. Dixon Evander & Assocs., Inc.*, 596 A.2d 687, 698 (Md. App. 1991) ("the law permits a plaintiff to recover against any one or more of the conspirators without naming them all as defendants"). Thus, a conspiracy may be maintained against only one conspirator. See *Rose Hall, Ltd. v. Chase Manhattan Overseas Banking Corp.*, 494 F. Supp. 1139, 1147 (D. Del. 1980) ("A conspiracy is a tort for which the conspirators are jointly and severally liable, and a case cannot be dismissed for nonjoinder even though only one conspirator is subject to the jurisdiction of the court."). Here, sufficient evidence in the record supports the jury's verdict that Giddens conspired with another to violate plaintiff's rights." See *Jacobs v. Pennsylvania Dep't of Corr.* (W.D. Pa., 2011). "Furthermore, not all members of a conspiracy need be named defendants for one member to be found liable. We find no authority requiring that co-conspirators be joined. The defendants correctly assert that conspiracy is a derivative tort. *May v. Santa Fe Trail Transportation Co.*, 189 Kan. 419, 370 P.2d 390 (1962)." See *Rowland v. Union Hills Country Club*, 157 Ariz. 301, 757 P.2d 105 (Ariz. App., 1988). The negligence and gross negligence causes of action can be maintained without Neal since it is the actions of the Defendants that are at issue, not Neal's.

For the gross negligence of action, Plaintiff must plead certain elements. "Gross

negligence is the intentional, conscious failure to do something which one ought to do or the doing of something one ought not to do. *Hollins v. Richland County Sch. Dist. One*, 310 S.C. 486, 427 S.E.2d 654 (1993). It is the failure to exercise slight care. *Clyburn v. Sumter County Sch. Dist. # 17*, 317 S.C. 50, 451 S.E.2d 885 (1994). Where a person is so indifferent to the consequences of his conduct as not to give slight care to what he is doing, he is guilty of gross negligence. *Jackson v. South Carolina Dep't of Corrections*, 301 S.C. 125, 390 S.E.2d 467 (Ct. App.1989), *aff'd*, 302 S.C. 519, 397 S.E.2d 377 (1990). Gross negligence is a mixed question of law and fact and should be presented to the jury unless the evidence supports only one reasonable inference. *Clyburn*, 317 S.C. 50, 451 S.E.2d 885." See *Hollins v. Richland County School Dist. One*, 427 S.E.2d 654, 310 S.C. 486 (S.C. 1993). Defendants knew that Plaintiff had an assignment of benefits on the settlement to pay for the services rendered to Neal. Defendants intentionally and consciously refused to pay Plaintiff directly; instead they paid the money to Neal. This was done without the slightest care as to consequences of their actions.

For a negligence action, Plaintiff must plead certain elements. "To establish a cause of action for negligence, a plaintiff must prove the following three elements: (1) a duty owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damages proximately resulting from the breach. *Hubbard v. Taylor*, 339 S.C. 582, 588, 529 S.E.2d 549, 552 (Ct.App.2000). "An essential element in a cause of action for negligence is the existence of a legal duty of care owed by the defendant to the plaintiff." *Bishop [351 S.C. 41] v. S.C. Dep't of Mental Health*, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998)." See *Shaw v. City of Charleston*, 567 S.E.2d 530, 351 S.C. 32 (S.C.App. 2002). Defendants owed a duty to pay Plaintiff because he had an assignment of benefits from Neal that stipulated Defendants were required to pay Plaintiff

directly out of the settlement proceeds. Defendants breached that duty by failing to pay Plaintiff. Plaintiff suffered the loss of \$12,100.00 and the associated loss of his livelihood.

Defendants' duty was established in two manners. The first being the duty established in the assignment of benefits and the second being the assumption of duty when they sent Neal's lawyer a letter with the settlement funds directing him to obtain a satisfaction of lien from Plaintiff before disbursing the funds (See Exhibit 2). Plaintiff never executed a satisfaction of lien, thus Defendants never should have paid Neal. Defendants merely passed the obligation to obtain the satisfaction of lien from themselves to Neal's lawyer. Defendants were in no position to do so. "Under the common law, even where there is no duty to act but the defendant voluntarily undertakes the act, the defendant assumes a duty to use due care. *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1991); *Sherer v. James*, 290 S.C. 404, 351 S.E.2d 148 (1986)." See *Goode v. St. Stephens United Methodist Church*, 329 S.C. 433, 494 S.E.2d 827 (S.C. App., 1998). "The common law ordinarily imposes no duty on a person to act; however, where an act is voluntarily undertaken, the actor assumes the duty to use due care. *Carson v. Adgar*, 326 S.C. 212, 486 S.E.2d 3 (1997); *Roundtree Villas Ass'n, Inc. v. 4701 Kings Corp.*, 282 S.C. 415, 321 S.E.2d 46 (1984)." See *Miller v. City of Camden*, 329 S.C. 310, 494 S.E.2d 813 (S.C., 1995).

It is uniformly established in many courts that an assignment of benefits executed by an insured imposes liability on the insurance carrier to honor the assignment. "Similarly, when the party that pays a sum to the accident victim in disregard of an assignment to a health care provider is an insurer, the assignee health care provider may bring an action against the insurer. See, e.g., *Reddy v. Zurich Gen. Acc. & Liability Ins. Co.*, 171 Misc. 69, 11 N.Y.S.2d 88, 91 (N.Y.Sup.Ct.1939). There, the court went on to note the nature of the action was not altered by

the fact [the insurer] has already paid the fund to [the accident victim] in violation of the rights of plaintiff's assignor. As an incident of this action to enforce the lien, [the insurer] may be required to account for, and pay over, to plaintiff, the amount covered by the lien, though theretofore distributed by them and thus dissipated." See *Midtown Chiropractic v. Ill. Farmers Ins. Co.*, 812 N.E.2d 851 (Ind. App., 2004). "The assignment was only an equitable assignment until the settlement fund came into being (*Williams v. Ingersol*, 89 N.Y. 508; *Kellogg v. Michaels*, 31 Misc.2d 156, 219 N.Y.S.2d 913). However, when the negligence action was settled and the settlement fund came into existence, the equitable assignment became a legal assignment. It effectuated a transfer of title to that portion of the fund assigned to the doctor and Allstate was obligated to immediately turn over that portion to him (*Matter of Gruner*, 295 N.Y. 510, 68 N.E.2d 514, 167 A.L.R. 628; *Goldwater v. Fisch*, 261 App.Div. 226, 25 N.Y.S.2d 84; *Reddy v. Zurich General Accident & Liability Ins. Co.*, 171 Misc. 69, 11 N.Y.S.2d 88)." See *Bernstein v. Allstate Ins. Co.*, 56 Misc.2d 341, 288 N.Y.S.2d 646 (N.Y. City Civ.Ct., 1968). The equitable assignment of benefits ripens to a legal assignment upon the settlement of Neal's personal injury claim. Since Defendants were party to *Bernstein* they have no excuse for not knowing their duty to pay Plaintiff. "Under the common law governing assignments, a litigant may, while an action is pending, assign any recovery he may obtain. The assignee becomes the equitable owner of the claim and is entitled to an assignment of the judgment when it is entered. *Fertilizer Works v. Newbern*, 210 N.C. 9, 185 S.E. 471 (1936). A debtor with notice of an assignment has a duty to make payment to the assignee. *Lipe v. Bank*, 236 N.C. 328, 331, 72 S.E.2d 759, 761 (1952)." See *North Carolina Baptist Hospitals, Inc. v. Mitchell*, 374 S.E.2d 844, 323 N.C. 528 (N.C., 1988). Plaintiff spoke with the claims representative for Defendants, Nettie Gass, and told her

about the assignment of benefits executed by Neal. It was at that time that Ms. Gass told Plaintiff it was not their policy to pay providers directly.

In addition, Plaintiff sent a copy of the assignment of benefits to Defendants prior to the settlement of the claim. "Nevertheless, the court held that the assignment of the proceeds of such a cause of action, prior to its settlement or adjudication, was valid and effectual as an equitable assignment against the assignor and his attaching creditor, and that such an assignment was not against public policy. The legal distinction thus made has been consistently followed (*Reddy v. Zurich General Accident & Liability Ins. Co.*, 171 Misc. 69, 11 N.Y.S.2d 88; *Richard v. National Transportation Co.*, 158 Misc. 324, 285 N.Y.S. 870; see 3 N.Y.Jur., Assignments, §§ 16, 17, pp. 273-5)." See *Grossman v. Schlosser*, 244 N.Y.S.2d 749, 19 A.D.2d 893 (N.Y.A.D. 2 Dept., 1963). "An assignment is a formal transfer of property or property rights from one person (the assignor) to another (the assignee). *Hinshaw v. Wright*, 105 N.C.App. 158, 164, 412 S.E.2d 138, 143 (1992). Principles of general contract law determine whether an assignment is valid. *Martin v. Ray Lackey Enterp., Inc.*, 100 N.C.App. 349, 354, 396 S.E.2d 327, 330 (1990). When the parties use clear and unambiguous terms, the contract should be given its plain meaning, and the court can determine the parties' intent as a matter of law. *Id.* Here, the assignment provided, in pertinent part, as follows:

I hereby authorize and direct any and all insurance carriers, attorneys, agencies, governmental departments, Companies, individuals, and/or other legal ("payers"), which may elect or be obligated to pay, provide, or distribute benefits to me for any medical conditions, accidents, injuries, or illnesses, past, present, or future ("condition") to pay directly and exclusively in the name of Alaimo Chiropractic such sums as may be owing to Alaimo Chiropractic for charges incurred by me at the office relating to my condition, with such payment to be made exclusively in the name of Alaimo Chiropractic. I further grant a lien to Alaimo Chiropractic with respect to my charges. This lien shall apply to all payers and to full extent permitted by law. For the purposes of this document (herein, "Assignment and Lien"), "benefits" shall include, but not be limited to, proceeds from any settlement, judgment or verdict, as well as, any proceeds relating to commercial

health or group insurance, attorney retainer agreements, medical payments benefits, personal injury protection, no-fault coverage, uninsured and underinsured motorist coverage, third party liability distributions, disability benefits, and any other benefits or proceeds payable for me for the purposes stated herein.

The parties dispute whether the assignment is unambiguous and, correspondingly, whether it can be given its plain meaning.

In *Charlotte-Mecklenburg Hospital Authority v. First of Georgia Insurance Co.*, our Supreme Court upheld an assignment that provided: "[T]he undersigned hereby assigns to the Hospital Authority and each of its facilities that provides services to the patient all right, title and interest in and to any compensation or payment in any form that the undersigned received or shall receive as a result of or arising out of the injuries sustained by the patient...." [T]he undersigned hereby authorizes and directs any person or corporation having notice of this assignment to pay to the Hospital Authority directly the amount of the indebtedness owed to the Hospital Authority in connection with services rendered to the patient. 340 N.C. 88, 91-92, 455 S.E.2d 655, 657, reh'g denied, 340 N.C. 364, 458 S.E.2d 186 (1995). These provisions, the Court explained, "should alleviate any doubt that the assignment required the defendants to pay the assigned money to the plaintiff." *Id.* at 92, 455 S.E.2d at 657. Thus, the liability carrier was required to pay the disputed amount to the assignee. *Id.*, 455 S.E.2d at 658." See *ALAIMO CHIROPRACTIC v. Allstate Ins. Co.*, 574 S.E.2d 496, 155 NC App. 194 (N.C. App., 2002). The wording of the assignment in *ALAIMO* is similar to Plaintiff's assignment. It is clear and unambiguous. In that action, the insurance carrier was liable to the plaintiff for the money paid to the insured.

CONCLUSION

Plaintiff has proven that his Second Amended Complaint has stated a claim that shows he

is entitled to relief. It is for these reasons that Defendant's Motion to Dismiss must be denied.



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Anderson, South Carolina
June 4, 2015

**MEMORANDUM IN SUPPORT OF
RESPONDENTS' MOTION TO DISMISS
June 4, 2015**

FILED-CLERK'S OFFICE
ANDERSON SC
STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON 2015 JUN -4 AM 10:20)

Gregg Battersby,

Plaintiff,

-vs-

J. Kirkman Moorhead
Krause, Moorhead & Draisen, P.A.,
Allstate Insurance Company,

Defendants.

FILED-CLERK'S OFFICE
ANDERSON SC
IN THE COURT OF COMMON PLEAS)
TENTH JUDICIAL CIRCUIT 2015 JUN -4 PM 3:24)

COMMON PLEAS AND
GENERAL SESSIONS

MEMORANDUM IN SUPPORT
OF MOTION TO DISMISS
C.A. No.: 2015-CP-04-00667

The Defendants, Krause, Moorhead & Draisen, P.A. and J. Kirkman Moorhead (collectively, "KMD"), hereby file this memorandum in support of KMD's motion to dismiss. Gregg Battersby ("Battersby") filed this underlying action against KMD and Allstate, asserting various claims relating to his arrest and prosecution.

Factual Background¹

KMD had an attorney-client relationship with Jan Morton ("Morton"). Morton told KMD that Battersby "wore a robe" and engaged in inappropriate behavior. As a result, KMD advised its client to report the incident to the Anderson County Sheriff's Office. Morton reported the claim and Battersby was arrested on August 2, 2013, based on Morton's report. The Solicitor filed charges against Battersby.

The complaint alleges Morton and KMD knew the statement was false and conspired to use the criminal charges to strengthen their civil case against Battersby. KMD filed a complaint with the South Carolina Department of Labor, Licensing and Regulation ("LLR") on behalf of Morton. Eventually, the criminal charges against Battersby were dismissed on April 24, 2014, by the Anderson County Solicitor's Office.

¹ KMD disputes the facts alleged in the complaint, but for the purpose of this motion and pursuant to SCRCP 12(b)(6), adopts and recites here the facts as alleged in the complaint and will show they fail to state a claim.

Standard of Review

“Under Rule 12(b)(6), SCRPC, a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action.” *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). “In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint.” *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007).

Discussion

Immunity - Battersby asserts seven causes of action against KMD: (1) false imprisonment; (2) defamation; (3) intentional infliction of emotional distress (“IIED”); (4) malicious prosecution; (5) conspiracy; (6) fraud; and (7) abuse of process. While each of these specific claims is without merit (and each will be addressed herein), the court can rest a decision to dismiss this action based solely on an attorney’s general immunity from suits arising out of the representation of a client.

“Generally, ‘an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client.’” *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 509 (2006) (quoting *Gaar v. N. Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986)). The South Carolina Supreme Court has created a limited exception for civil conspiracy claims when either: (1) the attorney breached an independent duty to the plaintiff; or (2) the attorney acted outside the scope of his representation of the client in order to further his own personal interest. *Id.* at 564, 633 S.E.2d at 510 (citing *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)).

Examining the allegations of the complaint, the claims against KMD are based entirely on its representation of Morton and were within KMD's representation of Morton. As a result, KMD is immune from suit and this matter should be dismissed against KMD. *See id.*

Individual Causes of Action – Even if KMD was not entitled to dismissal based on an attorney's immunity from suit, the case should be dismissed based on the failures of the substantive claims of the suit.

1. False Imprisonment

Battersby's first cause of action against KMD is for false imprisonment. He claims that he was arrested by the sheriff's office on behalf of KMD. Under South Carolina law, Battersby must prove that: (1) the defendant restrained the plaintiff; (2) the restraint was intentional; and (3) the restraint was unlawful. *Andrews v. Piedmont Air Lines*, 297 S.C. 367, 371-72, 377 S.E.2d 127, 130 (Ct. App. 1989). "In false imprisonment, the essence of the tort consists in depriving the plaintiff of his liberty without lawful justification." *Thomas v. Colonial Stores, Inc.*, 236 S.C. 95, 99, 113 S.E.2d 337, 339 (1960).

Battersby has failed to allege any facts which indicate that KMD falsely imprisoned him. At best, the complaint alleges Battersby was falsely imprisoned by the sheriff's office, not by KMD. Under well-established South Carolina precedent, when someone "is lawfully arrested by lawful authority, an action for false imprisonment cannot be maintained against the party causing the arrest." *Watkins v. Mobil Oil Corp.*, 281 S.C. 79, 80, 313 S.E.2d 641, 642 (Ct. App. 1984) (citing *Bushardt v. United Investment Company*, 121 S.C. 324, 113 S.E. 637 (1922)). In addition, the complaint fails to allege how KMD deprived Battersby of his liberty or that KMD restrained him. *See Andrews*, 297 S.C. at 371-72, 377 S.E.2d at 130. Therefore, Battersby's false imprisonment claim is without merit and should be dismissed.

2. Defamation

Battersby's next cause of action is for defamation. Battersby asserts KMD "expressly or by implication gave Plaintiff's colleagues, patients, and/or others the impression that Plaintiff was engaging in wrongful or illegal activity." He claims these defamatory statements consisted of "fraudulent claims" being filed by KMD to LLR and other agencies. To successfully assert a claim for defamation, Battersby must prove: "(1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." *Murray v. Holnam, Inc.*, 542 S.E.2d 743, 748 (S.C. Ct. App. 2001) (citations omitted).

Assuming that KMD somehow "defamed" Battersby by filing complaints and claims on behalf of its client, KMD is entitled to absolute immunity. "South Carolina has long recognized that relevant pleadings, even if defamatory, are absolutely privileged." *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 23, 567 S.E.2d 881, 893 (Ct. App. 2002). "The absolute privilege covers anything that may be said in relation to the matter at issue, whether it be in the pleadings, in affidavits, or in open court." *Id.* at 22, 567 S.E.2d at 892 (citation omitted). Accordingly, even assuming that KMD defamed Battersby, KMD is entitled to absolute immunity and this cause of action should be dismissed.

3. Intentional Infliction of Emotional Distress ("IIED")/Outrage

Battersby's third cause of action against KMD is for IIED or outrage. He claims KMD's actions caused him emotional distress which exceeded all reasonable bounds. To prove a claim of outrage under South Carolina law, a plaintiff must establish four elements:

- (1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his

conduct; (2) the conduct was so 'extreme and outrageous' as to exceed 'all possible bounds of decency' and must be regarded as 'atrocious, and utterly intolerable in a civilized community;' (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was 'severe' so that 'no reasonable man could be expected to endure it.'

Ford v. Hutson, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981) (quoting Restatement (Second) of Torts § 46 (1965)). The South Carolina Court of Appeals has stated the limited types of cases in which the tort of outrage is actionable:

First, a pre-existing legal relationship between the parties has existed, typically a debtor-creditor, insured-insurer, landlord-tenant, physician-patient or employer-employee relationship. Second, the defendant's conduct has involved excessive self-help in asserting a legal right or avoiding a legal obligation flowing out of the relationship, or coercive and oppressive abuse of an employee by the employer. Third, the evidence has clearly shown that the defendant calculatedly inflicted suffering or heedlessly and contemptuously disregarded the plaintiff's present emotional suffering either to force the plaintiff to accede to the defendant's wishes or to punish the plaintiff for prior failure to comply.

Todd v. S. Carolina Farm Bureau Mut. Ins. Co., 283 S.C. 155, 169-70, 321 S.E.2d 602, 610-11 (Ct. App. 1984), *rev'd on other grounds*, 287 S.C. 190, 336 S.E.2d 472 (1985). No pre-existing legal relationship existed between the parties (nor was one alleged), nor did KMD engage in any self-help. Moreover, Battersby cannot assert a claim of IIED against an attorney for actions arising out of his representation of another party. See *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 402, 697 S.E.2d 551, 555 (2010). Therefore, Battersby's claim for IIED is without merit and should be dismissed.

4. Malicious Prosecution

Battersby's fourth cause of action is for malicious prosecution. He alleges that KMD's advice to Morton to report her criminal claim to the sheriff's office was malicious and without probable cause. He further relies on the fact that the charges were dropped nearly a year later to bolster his claim. There are six elements a plaintiff must establish:

(1) the institution or continuation of original judicial proceedings, either civil or criminal; (2) by or at the instance of, the defendant; (3) the termination of such proceedings in plaintiff's favor; (4) malice in instituting the proceedings; (5) want of probable cause for the proceeding; and (6) the suffering of injury or damages as a result of the action or prosecutions complained of.

Prosser v. Parsons, 245 S.C. 493, 501, 141 S.E.2d 342, 346-47 (1965).

In *Gaar v. N. Myrtle Beach Realty Co.*, the court held that:

"In our opinion, the better rule is that an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client. Accordingly, an attorney who acts in good faith with the authority of his client is not liable to a third party in an action for malicious prosecution. See *W.D.G., Inc. v. Mutual Mfg. & Supply Co.*, 5 Ohio Op.3d 397 (1976). Such a suit is properly brought against the party to the original action, not the attorney representing him. The attorney normally conducts the litigation solely in his professional capacity. He has no personal interest in the suit. In his professional capacity the attorney is not liable, except to his client and those in privity with his client, for injury allegedly arising out of the performance of his professional activities." *Id.*

Gaar v. N. Myrtle Beach Realty Co., 287 S.C. 525, 528-29, 339 S.E.2d 887, 889 (Ct. App. 1986).

The facts alleged in the complaint show KMD acted within the scope of its duties representing Morton when it advised its client and filed the claims with LLR.

In addition, the complaint never alleges that KMD told police Battersby should be criminally prosecuted. The complaint only alleges that KMD advised its client that she should talk with police about the case. Therefore, the complaint fails to allege how Battersby was arrested at the insistence of KMD. Accordingly, the malicious prosecution claim is without merit and should be dismissed.

5. Conspiracy

Battersby's fifth cause of action is for civil conspiracy. This claim is based on the work KMD performed on behalf of Morton. There are three elements of civil conspiracy: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which

causes him special damage. *Lee v. Chesterfield Gen. Hosp., Inc.*, 289 S.C. 6, 10, 344 S.E.2d 379, 382 (Ct. App. 1986). “[A]n attorney may be held liable for conspiracy where, in addition to representing his client, he breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client. *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995).

In this case, it is clear KMD did not owe an independent duty to Battersby. He was not their client, nor did they have a contractual agreement. In addition, the complaint alleges actions that occurred within the scope of KMD’s representation of Morton. Therefore, KMD is entitled to immunity. For all these reasons this cause of action should be dismissed.

6. Fraud

Battersby’s next claim against KMD is for fraud. As an initial point, Battersby’s pleading of fraud is deficient. Under South Carolina Rule of Civil Procedure 9(b), “the circumstances constituting fraud” must be stated in the complaint “with particularity.” As is evident by the pleadings, Battersby fails to state with particularity the elements of fraud.

His inability to plead fraud may stem from the problem that the complaint fails to allege any statement that could reasonably warrant an assertion of fraud. To prove fraud, Battersby would need to show:

- (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; (9) the hearer's consequent and proximate injury.

M. B. Kahn Const. Co. v. S.C. Nat'l Bank of Charleston, 275 S.C. 381, 384, 271 S.E.2d 414, 415 (1980). Battersby’s complaint fails to allege that KMD made any representation to him. Moreover, it is highly unlikely that, even if such a false statement was made, Battersby would

have relied on it. Indeed, Battersby's whole claim is that he has been "innocent" the entire time, which indicates that he did not believe whatever statement was said. Thus, the fraud cause of action is without merit and should be dismissed.

7. Abuse of Process

Battersby's final claim is for abuse of process. He alleges KMD's purpose in filing a complaint with LLR and advising Morton to file criminal charges was to strengthen Morton's civil case against Battersby. In South Carolina there are two essential elements of abuse of process: (1) an ulterior purpose, and (2) a willful act in the use of process not proper in the regular conduct of the proceeding. *Rycroft v. Gaddy*, 281 S.C. 119, 125, 314 S.E.2d 39, 43 (Ct. App. 1984) (citing *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 153 S.E.2d 693 (1967)). "Some definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of process is required." *Id.* The focus in the abuse of process action is on the improper use of process after it has been issued. *Scott v. McCain*, 275 S.C. 599, 600, 274 S.E.2d 299, 300 (1981). For example, offering to drop criminal charges in return for payment of "restitution." See *Johnson v. Paynor*, 279 S.C. 390, 307 S.E.2d 860 (1983).

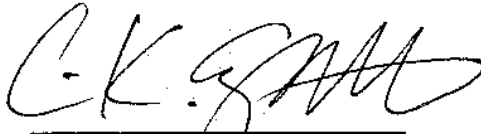
Battersby alleges no such action on the part of KMD. At best, he alleges KMD acted in bad faith. There is no allegation that KMD ever threatened Battersby or that KMD ever used the complaint to LLR or the arrest as a means to extort Battersby. Therefore, this claim for abuse of process is without merit.

Conclusion

For the reasons stated above, this honorable court should grant the 12(b)(6) Motion.

Respectfully submitted,

TURNER, PADGET, GRAHAM & LANEY, P.A.



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Attorney for Defendants

Greenville, South Carolina
Dated: June 1, 2015

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GENERAL SESSIONS

**APPELLANT'S
MEMORANDUM IN OPPOSITION TO
RESPONDENTS' MOTION TO DISMISS
June 4, 2015**

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) COMMON PLEAS AND TENTH JUDICIAL CIRCUIT
GENERAL SESSIONS

Gregg Battersby,

Plaintiff,

-vs-

J. Kirkman Moorhead,
Krause, Moorhead & Draisen, P.A.,
Allstate Insurance Company,
Allstate Northbrook Indemnity Company
Defendants.

MEMORANDUM IN OPPOSITION
TO DEFENDANTS MOORHEAD
AND KRAUSE, MOORHEAD &
DRAISEN'S MOTION TO DISMISS

C.A. No.: 2015-CP-00667

Plaintiff files this Memorandum in Opposition to Defendants, Moorhead and Krause, Moorhead and Draisen's, Civil Rule 12(b)(6) Motion to Dismiss, in support of which he presents the following:

INTRODUCTION

Plaintiff filed this Second Amended Complaint against Defendants, Moorhead and Krause, Moorhead and Draisen, P.A, for fraud, civil conspiracy, malicious prosecution, false imprisonment, defamation, intentional infliction of emotional distress, and abuse of process for their involvement with Jan Morton (Morton) in the filing of a criminal complaint and a complaint with the South Carolina Board of Chiropractic Examiners (Board) against Plaintiff. Defendants, Moorhead and Krause, Moorhead and Draisen, P.A, knew the allegations of Morton were without merit due to the multiple versions of her story yet they facilitated Morton in the perpetuation of her fraud. These actions were done for monetary reasons and nothing else.

ARGUMENT

In order for Defendants' Motion to succeed, they must show that Plaintiff is not entitled to relief on the facts alleged in the Second Amended Complaint. Defendants fail to do so.

"In considering a motion to dismiss pursuant to Rule 12(b)(6), SCRPC, the circuit court must base its ruling solely upon the allegations set forth on the face of the complaint. Doe v. Greenville County Sch. Dist., 375 S.C. 63, 66-67, 651 S.E.2d 305, 307 (2007). The motion may not be sustained if the facts alleged in the complaint and the inferences drawn therefrom would entitle the plaintiff to relief under any theory. Id. "[P]leadings in a case should be construed liberally and the Court must presume all well pled facts to be true so that substantial justice is done between the parties." Overcash v. S.C. Elec. & Gas Co., 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005) (citing Stroud v. Riddle, 260 S.C. 99, 102, 194 S.E.2d 235, 237 (1973))." See *Charleston County Sch. Dist. v. Harrell*, 393 S.C. 552, 713 S.E.2d 604, 270 Ed. Law Rep. 357 (S.C., 2011).

Defendants claim they are immune from liability because they were acting on behalf of their client, Morton. Defendants told Morton to go to the Anderson County Sheriff's Office to report the incident. She filed an incident report on July 8, 2013. Morton told the deputy that Plaintiff was wearing a "men's robe" and that no sexual contact occurred. (Exhibit 1) Morton had to have told Defendants that version of her story in order for them to tell her to file the incident report. Morton told the detective that Defendants wanted her to get her friend Carrie Neal to also file a complaint. On August 28, 2013, Defendants filed an online complaint with the Board for Morton. In that complaint, Plaintiff was accused of wearing a bath towel and that he rubbed his penis on her back. (Exhibit 2) She told the deputy that she was treated on two treatment tables and her online complaint with the Board stated she was on three treatment tables. These are drastic differences that if Defendants had acted in good faith they would have known that these stories conflicted. Instead, Defendants continued to press the issue with their client. Defendants were motivated by greed. They intended to file suit against Plaintiff on

behalf of Morton. (Exhibit 3) They would have shared in any judgment if one was obtained.

Defendants had a duty to disclose these false statements to the Anderson County Sheriff's Office as well as refusing to file the online complaint to the Board. This is a direct violation of the South Carolina Rules of Professional Conduct.

Rule 3.3 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

As a result, Defendants were acting in bad faith and outside of their scope of practice. Filing the online complaint with the Board is not a part of the attorney-client relationship. Defendants stepped outside that role when they were actively involved in drafting and filing the online complaint. "A number of jurisdictions recognize that an attorney may be held liable where he acts in bad faith or for his own personal motivations. See generally Annotation 97 ALR 3rd 688 (attorney's liability for abuse of process); Annotation 46 ALR 4th 249 (attorney's liability for malicious prosecution). See also RESTATEMENT (SECOND) OF TORTS § 674, comment d (attorney who acts without probable cause for an improper purpose is subject to same liability for the wrongful use of civil proceedings as any other person). Moreover, several courts have held

that an attorney may be held liable arising out of a conspiracy with his client. See e.g., *Wolfrich Corp. v. U.S. Automobile Assn.*, 149 Cal.App.3d 1206, 197 Cal.Rptr. 446 (1983) (attorneys may be liable for participation in tortious acts with their clients, and such liability may rest on a conspiracy); *Doctors' Co. v. Superior Court*, 49 Cal.3d 39, 260 Cal.Rptr. 183, 775 P.2d 508 (1989); *Fraidin v. Weitzman*, 93 Md.App. 168, 611 A.2d 1046 (1992) (attorney liable for conspiracy if actively involved in wrongful conduct). Additionally, attorneys have been held liable for fraud and conversion in conjunction with their representation of clients. See, e.g., *L & H Airco, Inc. v. Rapistan Corp.*, 446 N.W.2d 372 (Minn.1989) (attorney who makes affirmative misrepresentations to an adversary or conspires with his or her client may be held liable for fraud); *Pew v. First National Bank*, 827 F.2d 1488 (11th Cir.1987); *Bongard v. Winter*, 516 So.2d 27 (Fla.App.1987); *Guillebeau v. Jenkins*, 182 Ga.App. 225, 355 S.E.2d 453 (1987) (implying that an attorney may be sued by an adversary for fraud); *LaBarre v. Gold*, 520 So.2d 1327 (Miss.1987) (attorney liable for conversion for improperly paying real estate proceeds only to his client).” See *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (S.C., 1995). It is apparent that Defendants were actively involved with Morton to harm Plaintiff.

For the fraud cause of action, Plaintiff must plead certain elements. “The elements of an action for fraud based on a representation include: (1) a representation; (2) falsity; (3) its materiality; (4) knowledge of the falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance upon the truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *First State Sav. & Loan v. Phelps*, 299 S.C. 441, 385 S.E.2d 821 (1989); *Moorhead v. First Piedmont Bank & Trust Co.*, 273 S.C. 356, 256 S.E.2d 414 (1979).” See *Redwend Ltd. Partnership v. Edwards*, 354 S.C. 459, 581 S.E.2d 496 (S.C. App., 2003).

Defendants aided Morton in making false statements to the Anderson County Sheriff's Office (ACSO) and Board claiming Plaintiff indecently exposed himself to Morton on June 1, 2013. Those statements were material to the arrest of Plaintiff and suspension of his chiropractic license. Defendants knew the statements were false because Morton's story changed each time she told it. Defendants intended the ACSO to act on the false statements and arrest Plaintiff and have the Board suspend Plaintiff's chiropractic license to aid them in a future civil action against Plaintiff. The ACSO and Board relied on the false statements to be truthful and had no knowledge of their falsity. The ACSO and Board had every right to rely on Defendants statements because they would never think anyone would lie about such a serious matter. Plaintiff was damaged as a result. Plaintiff has satisfied the elements of fraud.

For the civil conspiracy cause of action, Plaintiff must plead certain elements. "In contrast, the tort of civil conspiracy contains three elements: (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. *Pye v. Estate of Fox*, 369 S.C. 555, 566-67, 633 S.E.2d 505, 511 (2006)" See *City of Hartsville v. S.C. Mun. Ins. & Risk Financing Fund*, 677 S.E.2d 574, 382 S.C. 535 (S.C., 2009). Defendants and Morton filed the criminal complaint and a complaint with the Board to have Plaintiff arrested and have his chiropractic license suspended. Morton testified that Defendants composed the online complaint and filed it with the Board. Defendants and Morton were then going to sue Plaintiff for damages. Defendants owed a duty to Plaintiff, the Board, and the ACSO to disclose Morton's lies. It is his duty under the Code of Professional Responsibility. As a result, Plaintiff was arrested and lost his livelihood. Plaintiff met all the elements of civil conspiracy.

It is not essential to any of the causes of action for Morton to be a party. A civil conspiracy action can be undertaken without the co-conspirators being party defendants. "It is

clear in the criminal context that alleged co-conspirators need not be joined in the same action. See *United States v. Obialo*, 23 F.3d 69, 72 (3d Cir. 1994) ("The failure of the government to be able to name and personally identify the other conspirator is not fatal to a conspiracy conviction."). Courts have applied this same rule to civil conspiracy claims. See *US Investigations Servs., LLC v. Callihan*, Civ. 11-0355, 2012 WL 933069, at *2 (W.D. Pa. Mar. 19, 2012) ("In order for one member of a civil conspiracy to be liable, not all members of the conspiracy need be named as defendants or joined as defendants."); *Stillwagon v. Innsbrook Golf & Marina, LLC*, Civ. 11-1338, 2013 WL 1180312, at *13 (W.D. Pa. Mar. 20, 2013) (same). See *Adami v. Cardo Windows, Inc.* (D.N.J., 2014). "Nonetheless, the same rationale holds true in the civil context of conspiracy. In order for one member of a civil conspiracy to be liable, not all members of the conspiracy need be named defendants or joined as defendants. See *Alexander & Alexander, Inc. v. B. Dixon Evander & Assocs., Inc.*, 596 A.2d 687, 698 (Md. App. 1991) ("the law permits a plaintiff to recover against any one or more of the conspirators without naming them all as defendants"). Thus, a conspiracy may be maintained against only one conspirator. See *Rose Hall, Ltd. v. Chase Manhattan Overseas Banking Corp.*, 494 F. Supp. 1139, 1147 (D. Del. 1980) ("A conspiracy is a tort for which the conspirators are jointly and severally liable, and a case cannot be dismissed for nonjoinder even though only one conspirator is subject to the jurisdiction of the court."). Here, sufficient evidence in the record supports the jury's verdict that Giddens conspired with another to violate plaintiff's rights." See *Jacobs v. Pennsylvania Dep't of Corr.* (W.D. Pa., 2011). "Furthermore, not all members of a conspiracy need be named defendants for one member to be found liable. We find no authority requiring that co-conspirators be joined. The defendants correctly assert that conspiracy is a derivative tort. *May v. Santa Fe Trail Transportation Co.*, 189 Kan. 419, 370 P.2d 390 (1962)." See *Rowland v.*

Union Hills Country Club, 157 Ariz. 301, 757 P.2d 105 (Ariz. App., 1988). For the malicious prosecution cause of action, Plaintiff must plead certain elements. "[T]o maintain an action for malicious prosecution, a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage." *Parrott v. Plowden Motor Co.*, 246 S.C. 318, 321, 143 S.E.2d 607, 608 (1965); *Eaves v. Broad River Elec. Co-op., Inc.*, 277 S.C. 475, 477, 289 S.E.2d 414, 415 (1982). An action for malicious prosecution fails if the plaintiff cannot prove each of the required elements by a preponderance of the evidence, including malice and lack of probable cause. *Parrott*, 246 S.C. at 322, 143 S.E.2d at 609." See *Law v. South Carolina Dept. of Corrections*, 629 S.E.2d 642, 368 S.C. 424 (S.C., 2006). Defendants and Morton instituted and continued the criminal prosecution of Plaintiff. The criminal charges were dismissed.

Defendants acted with malice in instituting and continuing the criminal prosecution of Plaintiff for the sole reason of instituting a fraudulent civil action. Defendants lacked probable cause due to the multiple contradictory statements made to different agencies. Plaintiff was arrested and lost his livelihood. Plaintiff has met all the elements of malicious prosecution.

For the false imprisonment cause of action, Plaintiff must plead certain elements. "The essence of the tort of false imprisonment consists of depriving a person of his liberty without lawful justification. *Jones v. City of Columbia*, 301 S.C. 62, 389 S.E.2d 662 (1990); *Thomas v. Colonial Stores, Inc.*, 236 S.C. 95, 113 S.E.2d 337 (1960). To prevail on a claim for false imprisonment, the plaintiff must establish: (1) the defendant restrained the plaintiff, (2) the restraint was intentional, and (3) the restraint was unlawful. *Gist v. Berkeley County Sheriff's Dep't*, 336 S.C. 611, 521 S.E.2d 163 (Ct.App.1999); *Jones by Robinson v. Winn-Dixie*

Greenville, Inc., 318 S.C. 171, 456 S.E.2d 429 (Ct.App.1995); *Caldwell v. K-Mart Corp.*, 306 S.C. 27, 410 S.E.2d 21 (Ct. App.1991); see also *Jones*, 301 S.C. at 64, 389 S.E.2d at 663." See *Law v. South Carolina Dept. of Corrections*, 629 S.E.2d 642, 368 S.C. 424 (S.C., 2006).

Defendants and Morton had Plaintiff arrested and restrained against his will. Defendants acted intentionally in the restraint because they assisted Morton in filing the criminal complaint. The restraint lacked probable cause due to the multiple contradictory statements. Plaintiff has met all the elements of false imprisonment.

For the defamation cause of action, Plaintiff must plead certain elements. "The tort of defamation permits a plaintiff to recover for injury to her reputation as the result of the defendant's communications to others of a false message about the plaintiff. *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998). To prove defamation, the plaintiff must show (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). "The publication of a statement is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." *Id.*" See *McBride v. Sch. Dist. of Greenville Cnty.*, 389 S.C. 546, 698 S.E.2d 845, 259 Ed. Law Rep. 918 (S.C. App., 2010). Defendants and Morton made false and defamatory statements to the ACSO and Board as well as others that Plaintiff indecently exposed himself to Morton. The statements were unprivileged. Defendants were at fault for making the statements. Plaintiff was arrested and lost his livelihood as a result of Defendants defamatory statements. Plaintiff has met all the elements of defamation.

Defendants claim they have absolute immunity because they were involved in the filing of the criminal complaint and the Board complaint. Complaining witnesses have no absolute immunity when filing a complaint. Defendants' actions were done with malice because they acted with reckless disregard of the law and Plaintiff's rights. There was no justification or excuse for their wrongful act. They lacked probable cause because Morton's stories changed each time she told it. "Although we have previously held that police officers sued under § 1983 for false arrest are qualifiedly immune, *Pierson v. Ray*, 386 U.S. 547, 557 (1967), petitioner ? urges that he should be absolutely immune because his function in seeking an arrest warrant was similar to that of a complaining witness. The difficulty with this submission is that complaining witnesses were not absolutely immune at common law. In 1871, the generally accepted rule was that one who procured the issuance of an arrest warrant by submitting a complaint could be held liable if the complaint was made maliciously and [341] without probable cause. 3. Given malice and the lack of probable cause, the complainant enjoyed no immunity. The common law thus affords no support for petitioner." See *Malley v. Briggs*, 475 U.S. 335, 340-346, 106 S. Ct. 1092, 1096-1099, 89 L. Ed. 2d 271, 278-281, 1986 U.S. LEXIS 29, 10-20, 54 U.S.L.W. 4243 (U.S. 1986). "The police officer seeking an arrest warrant is not too unlike a complaining witness who, unlike a prosecutor, was not absolutely immune at common law. *Id.* at 340-41." See *Ehrlich v. Giuliani*, 910 F.2d 1220, 1223-1224, 1990 U.S. App. LEXIS 13555, 12-13 (4th Cir. Va. 1990). "Absolute immunity does not apply to actions taken in the capacity of a complaining witness. *Kalina v. Fletcher*, 522 U.S. 118, 129-30, 118 S. Ct. 502, 139 L. Ed. 2d 471 (1997) (prosecutor); *Malley v. Briggs*, 475 U.S. 335, 340-45, 106 S. Ct. 1092, 89 L. Ed. 2d 271 (1986) (officer). A complaining witness has historically referred to one who "procured an arrest and initiated a criminal prosecution." *Rehberg v. Paulk*, 132 S. Ct. 1497, 1507, 182 L. Ed. ?

2d 593 (2012). A statement must be sworn to qualify as the act of a complaining [689] witness, see *Adams*, 656 F.3d at 408-09, but not all testimony or sworn statements are actions taken in the role of a complaining witness, see *Rehberg*, 132 S. Ct. at 1507 (grand jury witness is not complaining witness). It is the act of personally vouching for the truth of the facts that provide the evidentiary support for a finding of probable cause that is not protected by absolute immunity. *Kalina*, 522 U.S. at 129-31; see also *Humphrey v. Sapp*, 462 F. App'x 528, 532-33 (6th Cir. 2012); *Beltran v. Santa Clara Cnty.*, 514 F.3d 906, 908 (9th Cir. 2008) (en banc) (social worker).” See *Young v. Vega*, 574 Fed. Appx. 684, 688-689, 2014 U.S. App. LEXIS 14754, 9-10, 2014 FED App. 0574N (6th Cir.), 2014 WL 3733599 (6th Cir. Tenn. 2014). Defendants cannot hide behind an absolute immunity defense.

For the intentional infliction of emotional distress cause of action, Plaintiff must plead certain elements. “To establish the tort of intentional infliction of emotional distress, or outrage, the plaintiff must establish the following: (1) the defendant intentionally or recklessly inflicted severe emotional distress, or knew that distress would probably result from his conduct; (2) the defendant's conduct was so extreme and outrageous that it exceeded all possible bounds of decency and was furthermore atrocious, and utterly intolerable in a civilized community; (3) the actions of the defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it. Initially, the trial court determines whether the defendant's conduct was extreme and outrageous enough to permit recovery; the judge should submit the issue to the jury only where reasonable persons might differ on this issue. *Shupe v. Settle*, --- S.C. ---, 445 S.E.2d 651 (Ct.App.1994) (citing *Holtzscheiter v. Thomson Newspapers, Inc.*, 306 S.C. 297, 411 S.E.2d 664 (1991)).” See *Gattison v. South Carolina State College*, 318 S.C. 148, 456 S.E.2d 414 (S.C. App., 1994).

Defendants, by conspiring with Morton to file false criminal charges and false statements with the Board, intentionally or recklessly inflicted severe emotional distress or was certain that such distress would result. The conduct was extreme and outrageous and utterly intolerable in a civilized community. It is very rare for civilized people to make such claims against others for the sole purpose of monetary gain. Defendants' actions caused Plaintiff to suffer emotional distress. The emotional distress was so severe such that no reasonable man could be expected to endure it. The threat of losing one's liberty and in fact losing one's livelihood over false accusations would cause anyone to suffer emotionally. Plaintiff has met all the elements of intentional infliction of emotional distress.

Defendants wrongly assert that only a legal relationship can support a cause of action for intentional infliction of emotional distress. Defendants conveniently leave out the first sentence of the citation. It does not limit IIED to a legal relationship. It merely states that the vast majority of cases involve a legal relationship. "In the vast majority of cases where liability has been found, the common thread has been the existence of three factors. First, a pre-existing legal relationship between the parties has existed, typically a debtor-creditor, insured-insurer, landlord-tenant, physician-patient or employer-employee relationship. Second, the defendant's conduct has involved excessive self-help in asserting a legal right or avoiding a legal obligation flowing out of the relationship, or coercive and oppressive abuse of an employee by the employer. Third, the evidence has clearly shown that the defendant calculatedly inflicted suffering or heedlessly and [283 S.C. 170] contemptuously disregarded the plaintiff's present emotional suffering either to force the plaintiff to accede to the defendant's wishes or to punish the plaintiff for prior failure to comply. *Id.* at 63-64." See *Todd v. South Carolina Farm Bureau Mut. Ins. Co.*, 283 S.C. 155, 321 S.E.2d 602 (S.C. App., 1984).

For the abuse of process cause of action, Plaintiff must plead certain elements. "The essential elements of abuse of process are an ulterior purpose and a willful act in the use of the process not proper in the conduct of the proceeding. *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 153 S.E.2d 693 (1967). Some definite act or threat not authorized by the process or aimed at an object not legitimate in the use of the process is required. There is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions. *Id.*; *Rycroft v. Gaddy*, 281 S.C. 119, 314 S.E.2d 39 (Ct.App.1984); *Hubbard & Felix*, *supra* at 382-383. The improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself. *Id.* Abuse of process requires both an ulterior purpose and a willful act not [328 S.C. 137] proper in the regular course of the proceeding. See *Sierra v. Skelton*, 307 S.C. 217, 414 S.E.2d 169 (Ct.App.1992)." See *Hainer v. American Medical Intern., Inc.*, 492 S.E.2d 103, 328 S.C. 128 (S.C., 1997).

Defendants and Morton filed false criminal charges and a false complaint with the Board against Plaintiff. This was done for ulterior purpose to use such proceedings against Plaintiff in a future civil lawsuit. Defendants and Morton have filed for damages against Plaintiff. The filing of the statements with the ACSO and Board was not proper in the regular course of the proceedings because they were false. Plaintiff has met all the elements of abuse of process.

CONCLUSION

Plaintiff has proven that his Second Amended Complaint has stated a claim that shows he is entitled to relief. It is for these reasons that Defendant's Motion to Dismiss must be denied.



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Anderson, South Carolina
June 9, 2015

**ALL STATE NORTHBROOK INDEMNITY's
MOTION FOR SANCTIONS
June 25, 2015**



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Gregg Battersby,

CIVIL ACTION NO.: 2015-CP-04-00667

Plaintiff,

**ALLSTATE NORTHBROOK INDEMNITY
COMPANY'S MOTION FOR SANCTIONS**

v.

J. Kirkman Moorhead, Krause, Moorhead &
Draisen, P.A., Allstate Insurance Company,
Allstate Northbrook Indemnity Company,

Defendants.

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COMMON PLEAS AND
GENERAL SESSIONS

TO: DONALD L. SMITH:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for Defendant Allstate Northbrook Indemnity Company (Northbrook") hereby moves for sanctions pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 (the "Frivolous Proceedings Act") and Rule 11 of the South Carolina Rules of Civil Procedure. In support of this Motion, Allstate state as follows:

I. Sanctions are Warranted Under the Frivolous Proceedings Act

In accordance with § 15-36-10(D) of the Frivolous Proceedings Act, Northbrook hereby "notif[ies] the court and all parties of the [following] conduct constituting a violation of the [above-referenced] provisions" and "explain the basis for the potential sanction imposed." S.C. Code Ann. § 15-36-10(D):

A. Plaintiff Filed a Complaint that Improperly Joined Allstate in an Action with Other Defendants Even Though the Claims Asserted did not Arise Out of the Same Transaction or Occurrence and did not Present Some Common Question of Law or Fact.

In this action, Plaintiff included three causes of action against Northbrook: 1) conspiracy, 2) negligence, and 3) gross negligence – all arising out of Carrie Neal's

failure to pay for chiropractic services he provided following her involvement in an automobile accident. In the same action, he sued J. Kirkman Moorhead, Krause, Moorhead & Draisen, P.A., for false arrest, defamation, outrage, conspiracy and other causes of action arising out of legal advice given to Jan Morten that lead to his arrest for indecent exposure. Northbrook filed a motion to sever the claims under SCRCP 21, Improper Joinder.

In its Order granting Northbrook's motion, the Court stated,

It is patently clear from the Second Amended Complaint that the Plaintiff's allegations against Northbrook and Defendants Moorhead and Krause, Moorhead & Draisen, do not arise out of the same transaction or occurrence and do not present any common questions of law or fact. Plaintiff counsel admitted at the hearing that the causes of action against the defendants were separate. Under no circumstances should Northbrook have been included in the same action with the other defendants.

The claims against Northbrook and the other defendants have nothing at all to do with one another. A reasonable attorney under the same circumstances would have understood that combining the claims against these defendants was frivolous.

B. Plaintiff filed a complaint that stated no viable cause of action against Northbrook.

As previously stated, the Plaintiff's complaint contained causes of action including conspiracy, negligence and gross negligence against Northbrook. Northbrook filed a motion to dismiss all causes of action pursuant to Rule 12(b)(6), because the complaint failed to state any viable cause of action against Northbrook. Northbrook's motion was granted.

When asked by the Court to identify the allegations in the Complaint that properly alleged the elements of conspiracy, Plaintiff's counsel was unable to do so. When the Court asked what duty existed in negligence for Northbrook to pay Battersby's

chiropractic bill directly, counsel for the plaintiff admitted that no such duty exists under South Carolina law. Rather, he stated that his goal in filing the action against Northbrook was to eventually attempt to consolidate this case with another case that was already pending – a case in which his attempt to add Allstate as a defendant had already been denied due to his failure to attend a hearing on the matter.

C. Northbrook is Entitled to an Award of Sanctions Because it has been Forced to Defend Against These Frivolous Claims.

Section 15-36-10(A)(4)(a) of the Frivolous Proceedings Act authorizes this Court to impose sanctions against an attorney for filing a frivolous pleading if:

...

(ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or

(iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based.

S.C. Code Ann. § 15-36-10(A)(4)(a)(ii)-(iv). Sanctions are warranted because a reasonable attorney would not have, in good faith, initiated or maintained Plaintiff's claims against Northbrook, because those claims were procedurally and factually insufficient under South Carolina law. In accordance with § 15-36-10(D) of the Frivolous Proceedings Act, Northbrook seeks sanctions for the above-referenced violations, to include Northbrook's reasonable costs and attorney's fees" including "the time required of the prevailing party by the frivolous proceeding, and travel expenses, mileage, parking,

costs of reports, and any additional reasonable consequential expenses of the prevailing party resulting from the frivolous proceeding.” S.C. Code Ann. §15-36-10(G)(1). In determining whether a violation of the Frivolous Proceedings Act has occurred, the court may consider any factors that are just, equitable, or appropriate under the circumstances, as well as, among other things, the number of parties, the complexity of the claims and defenses, the time available to investigate and conduct discovery, and information obtained during discovery. S.C. Code Ann. §15-36-10(E).

II. Sanctions are Warranted Pursuant to Rule 11, SCRPC

Additionally or alternatively, this Court should sanction Plaintiff and/or Plaintiff’s counsel pursuant to Rule 11, SCRPC, which provides in pertinent part:

(a) Every pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name.... The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.... If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney’s fee.

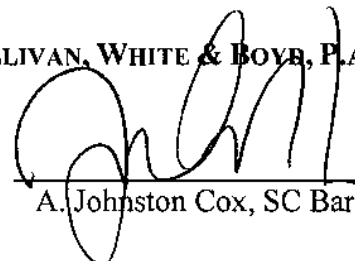
Rule 11(a), SCRPC. Under both the Frivolous Proceedings Act and Rule 11, an award of attorney’s fees and costs is an appropriate sanction. S.C. Code Ann. § 15-36-10(G)(1); Rule 11(a), SCRPC.¹ For all of the reasons outlined above, Rule 11 sanctions additionally and/or alternatively are warranted against Plaintiff and/or Plaintiff’s counsel.

¹ Prior to the 2005 revisions to the Frivolous Proceedings Act, the standard for sanctions under Rule 11 was essentially the same as that under the Act. *Father v. S.C. Dep’t of Soc. Servs.*, 353 S.C. 254, 262, 578 S.E.2d 11, 15 (2003) (comparing the standard for a Rule 11 sanction - a frivolous filing or argument, or bad faith filing - with the Frivolous

For all of these reasons, Northbrook urges this Court to impose sanctions against Plaintiff's counsel as authorized by the Frivolous Proceedings Act, Rule 11, or both. Northbrook will submit an affidavit regarding the amount of fees, costs, and expenses incurred to date in the defense of this litigation.

This Motion is based upon the pleadings and proceedings in this case, the rules of Court, the exhibits hereto, affidavits, a memorandum of law to be filed at a later date, and such other matters as may be properly presented to the Court at the time of the hearing.

GALLIVAN, WHITE & BOYD, P.A.

By: 

A. Johnston Cox, SC Bar #9081

PO Box 7368
Columbia, SC 29202
jcox@gwblawfirm.com
(803) 779-1833 Ofc
(803) 779-1767 Fax

*Attorneys for Defendants
Allstate Insurance Company and Allstate
Northbrook Indemnity Company*

June 22, 2015

Proceedings Act's standard of frivolity). To be entitled to sanctions under Rule 11, the aggrieved party has to show that the party sought to be sanctioned acted frivolously. *See Site Prep, LLC v. Atl. Coast Builders & Contractors, LLC*, 394 S.C. 97, 108, 713 S.E.2d 650, 655-56 (Ct. App. 2011). Although the revised Frivolous Proceedings Act now employs a "reasonable attorney" standard, Rule 11 still employs the frivolity standard. *Id.*

AFFIDAVIT OF JOHN COX
June 25, 2015

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
Case No. 2015-CP-04-667



Gregg Battersby,

Plaintiff,

vs.

J. Kirkman Moorhead; Krause,
Moorhead & Draisen, P.A.; Allstate
Insurance Company; and Allstate
Northbrook Indemnity Company,

Defendants.

**AFFIDAVIT OF A. JOHNSTON COX
IN SUPPORT OF ALLSTATE
NORTHBROOK INDEMNITY
COMPANY'S MOTION FOR
SANCTIONS**

COMMON PLEAS AND
GENERAL SESSIONS

2015 JUN 29 AM 11:17

FILED-CLERK'S OFFICE
ANDERSON SC

PERSONALLY APPEARED BEFORE ME, A. Johnston Cox, who first being duly sworn, deposes and states that he is a shareholder of the law firm of Gallivan, White & Boyd, P.A. ("GWB"), and that he represents Defendant Allstate Northbrook Indemnity Company ("Northbrook") in the above captioned case.

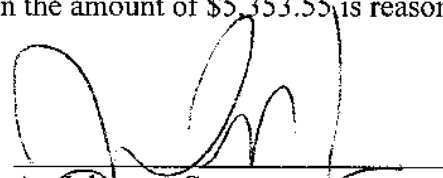
1. I have been a practicing attorney since 1995. Since that time, a large percentage of my practice has been spent in defending insurance companies in actions brought directly against them. I have an AV rating from Martindale Hubbell. I have been primarily responsible for the defense of this matter for GWB.

2. On behalf of Northbrook, GWB investigated the lawsuit filed by Plaintiff, communicated with Plaintiff's counsel regarding the case, drafted responsive pleadings, drafted a memorandum in support of its motion to dismiss, attended the hearing on the motion to dismiss; drafted a proposed order for the motion to dismiss; and prepared this motion for sanctions.

3. As a result of the frivolous pleadings filed by Plaintiff, GWB billed Northbrook \$5,134.50 in attorney fees. In addition, GWB billed costs incurred, including filing fees, postage, copies and mileage. The costs associated with providing legal services to Northbrook total \$219.05.

4. Accordingly, the total amount of money spent by Northbrook for the above-captioned action is *at least* \$5,353.55.

5. I have reviewed the six factors set forth in *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 384-85, 377 S.E.2d 296, 297 (1989), and am informed and believe than an award for costs and attorney's fees in the amount of \$5,353.55 is reasonable.



A. Johnston Cox
Gallivan, White & Boyd, P.A.

SWORN to and subscribed before me
This 25th day of June, 2015.



(L.S.)
NOTARY PUBLIC OF SOUTH CAROLINA
MY COMMISSION EXPIRES: 07/16/2017

A. JOHNSTON COX
Direct Dial: 803.724.1728
jcox@gwblawfirm.com



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

REPLY TO: Columbia Office
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Post Office Box 7368
Columbia, SC 29202-7368
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June 25, 2015

The Honorable Richard A. Shirley
Anderson County Clerk of Court
PO Box 8002
Anderson, SC 29622-8002

Re: *Gregg Battersby v. J. Kirkman Moorhead; Krause, Moorhead
& Draisen, P.A.; Allstate Insurance Company; and Allstate
Northbrook Indemnity Company*
Anderson County Case No. 2015-CP-04-667
Date of Loss: 06/01/2013
GWB File No. 8300-209

FILED-CLERK'S OFFICE
ANDERSON SC
2015 JUN 29 AM 11:17
COMMON PLEAS AND
GENERAL SESSIONS

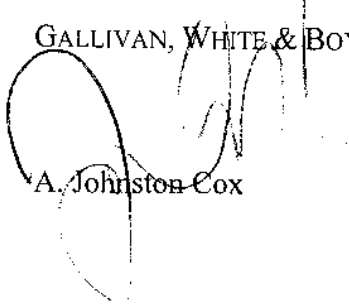
Dear Mr. Shirley:

Enclosed for filing with your office is the original and one copy of my Affidavit in Support of Allstate Northbrook Indemnity Company's Motion for Sanctions in the above matter. I would appreciate your filing the original and returning a clocked copy to me in the envelope provided for your convenience. By copy of this letter, I am serving the Affidavit upon counsel of record.

With kind regards, I am

Very truly yours,

GALLIVAN, WHITE & BOYD, P.A.


A. Johnston Cox

AJC:keh

Enclosures

cc: Donald L. Smith, Esquire
Eric K. Englehardt, Esquire
Terry Skipper (0256081043.1)

**APPELLANT'S MOTION
TO WITHDRAW ALL
PLEADINGS
June 30, 2015**

ACTION FEE PAID



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Gregg Battersby,

Plaintiff,

-vs-

MOTION TO WITHDRAW PLEADING

C.A. No.: 2015-CP-04-00667

J. Kirkman Moorhead,
Krause, Moorhead & Draisen, P.A.,
Allstate Insurance Company,
Allstate Northbrook Indemnity Company

Defendants.

FILED-CLERK'S OFFICE
ANDERSON SC
2015 JUN 30 PM 2:29
COMMON PLEAS
GENERAL COURT

COMES NOW Donald L. Smith, attorney for Plaintiff, and moves this Court for an Order permitting Plaintiff to withdraw all pleadings, motions, and other documents associated with Civil Action Number 2015-CP-04-00667.

At a recent hearing in this matter, it became clear that these defendants should not have been named together in the same action. The undersigned now seeks to withdraw the action to allow Plaintiff to pursue other avenues through which to bring his rights to an investigation.

Respectfully submitted,

Donald L. Smith (#6699)
ATTORNEY FOR PLAINTIFF
122 N. Main St.
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Anderson, South Carolina
June 30, 2015

**APPELLANT'S RESPONSE TO
ALL STATE INSURANCE's
MOTION FOR SANCTIONS
June 30, 2015**

FILED-CLERK'S OFFICE
ANDERSON SC



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

2015 JUN 30 PM 2:34
IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Gregg Battersby,

COMMON PLEAS AND
GENERAL

Plaintiff,

-vs-

RESPONSE TO DEFENDANT'S
MOTION FOR SANCTIONS

C.A. No.: 2015-CP-00667

J. Kirkman Moorhead,
Krause, Moorhead & Draisen, P.A.,
Allstate Insurance Company,
Allstate Northbrook Indemnity Company
Defendants.

COMES NOW Donald L. Smith, attorney for Plaintiff, and responds to Defendant

Allstate Northbrook Indemnity Company's Motion for Sanctions as follows:

MEMORANDUM

**I. SANCTIONS ARE NOT WARRANTED UNDER THE FRIVOLOUS
PROCEEDINGS ACT**

An attorney participating in a civil action may be sanctioned for filing a frivolous pleading if (1) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law; (2) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or (3) a reasonable attorney presented with the same circumstances would believe the pleading is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based. S.C. Code Ann. § 15-36-10(A)(4)(a)(ii)-(iv). Before the

imposition of sanctions, the attorney who allegedly violated subsection (A)(4) has thirty days to respond to the allegations as that person considers appropriate including, but not limited to, by filing a motion to withdraw the pleading, motion, document, or argument or by offering an explanation of mitigation. S.C. Code Ann. § 15-36-10(D). In determining whether sanctions are appropriate or the severity of a sanction, the court shall consider previous violations of the provisions of this section. S.C. Code Ann. § 15-36-10(F).

A. The undersigned made a good faith argument for the payment of a lien held by Plaintiff.

Plaintiff was a medical provider to a third-party in a separate, unrelated action that was involved in an automobile accident. Allstate Northbrook Indemnity Company (Northbrook) signed an agreement with the attorney in that action in which the attorney agreed to pay all medical liens out of the settlement proceeds. The undersigned argued that, while no statutory duty existed that required Northbrook to ensure that Plaintiff's lien was satisfied, Northbrook voluntarily undertook such a duty when it reached its agreement with the attorney in the separate action. Liability for the breach of a voluntarily undertaken duty is fundamental principle of tort law and the common law of South Carolina. Although this Court disagreed with the undersigned's argument, the undersigned maintains that the argument was reasonable and made in good faith. In fact, other jurisdictions have held insurers responsible for the payment of medical liens; some jurisdictions even go as far as to hold the insurer responsible for the satisfaction of a lien, even if it has already paid the settlement fund to the accident victim. *See Bernstein v. Allstate Ins. Co.*, 288 N.Y.S.2d 646 (N.Y. City Civ. Ct. 1968) (holding that assignee medical provider is entitled to enforce the assignment against Allstate, the insured); *see also Alaimo Family Chiropractic v. Allstate Ins. Co.*, 574 S.E.2d 496 (N.C. Ct. App. 2002) (holding that defendant liability carrier was required to pay the assigned money to the plaintiff medical

provider).

B. A reasonable attorney would not believe that the procurement, initiation, continuation, of the action was intended merely to harass or injure Northbrook.

As stated above, the undersigned made a good faith argument in an effort to recover payment for an unsatisfied lien. The action was not initiated for the purpose of harassing or injuring Northbrook. Rather, the action was initiated to recover over \$12,000 pursuant to a medical lien. Northbrook reached a written agreement with the attorney in the action that produced the lien that it would be satisfied using settlement funds. Based on the good faith argument that Northbrook undertook the duty to ensure that the lien was satisfied, Plaintiff and the undersigned had a legitimate interest in bringing the claims against Northbrook.

C. A reasonable attorney would not believe that the pleading was frivolous, interposed for delay, or brought for any purpose other than adjudication of plaintiff's claims.

The subject pleading was not frivolous, as the undersigned made a good faith argument that Northbrook should be responsible for the medical lien held by Plaintiff. A reasonable attorney would not believe that the pleading was interposed for delay; clearly, Plaintiff would have preferred that the lien had been satisfied without resorting to filing a lawsuit. The pleading was filed for the sole purpose of adjudicating plaintiff's good faith claims.

D. The undersigned has filed a motion to withdraw the pleading.

Pursuant to S.C. Code Ann. § 15-36-10(D), the undersigned has thirty days to respond to a Motion for Sanctions before sanctions can be imposed. While the undersigned would maintain that his argument to hold Northbrook responsible for the medical lien was made in good faith, he understands and respects the position of the Court, which stated that Northbrook owed no duty to ensure that the lien was satisfied. Further, after the hearing for Northbrook's motion to sever the

claims under SCRCP 21, it became clear that Northbrook should not have been included as a defendant in this particular action. As such, the undersigned has filed a Motion to Withdraw. Because the undersigned has agreed to withdraw the subject action, he should not be subject to sanctions.

E. The undersigned has not previously violated the provisions of S.C. Code Ann. § 15-36-10, whether in this action or in others.

In determining whether sanctions are appropriate or the severity of a sanction, the court shall consider previous violations of the provisions of this section. S.C. Code Ann. § 15-36-10(F). In *Holmes v. E. Cooper Cmty. Hosp., Inc.*, the court held that the respondent was appropriately sanctioned because she continued the lawsuit despite previous rulings dismissing the suit, and despite earlier receiving sanctions for continuing to assert the same allegations. *Holmes v. E. Cooper Cmty. Hosp., Inc.*, 758 S.E.2d 483, 489 (S.C. 2014). The *Holmes* case is distinguishable from the present case, in that the undersigned has neither attempted to continue the lawsuit, nor has he been found to have violated provisions of § 15-36-10 in the past. While the undersigned disagrees with the court's decision, he respects and accepts it, and Plaintiff will pursue other avenues to recover on his lien. Because the undersigned has not previously violated the provisions of § 15-36-10, and because he has not attempted to continue the lawsuit, sanctions under the Frivolous Proceedings Act would be inappropriate.

In conclusion, the undersigned made a good faith argument that Northbrook had voluntarily undertaken a duty to ensure satisfaction of Plaintiff's lien. Other jurisdictions have decided the issues raised by Plaintiff in the subject pleading, and adjudicated them in favor of the position held by the undersigned. A reasonable attorney would not believe that the pleading was filed to harass or injure Northbrook; Plaintiff had a legitimate interest, based on the good faith belief that Northbrook had undertaken a duty, in bringing claims against Northbrook. Further,

the undersigned has agreed to withdraw the pleading, and has not attempted to continue the lawsuit or otherwise violated the provisions of § 15-36-10 in the past. Therefore, sanctions under § 15-36-10 are inappropriate, this Court should deny Northbrook's Motion for Sanctions.

II. SANCTIONS ARE NOT WARRANTED UNDER SOUTH CAROLINA RULE OF CIVIL PROCEDURE ELEVEN.

Under Rule 11, an attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. *Burns v. Universal Health Servs.*, 532 S.E.2d 6, 9 (S.C. Ct. App. 2000). The attorney may also be sanctioned for filing a pleading, motion, or other paper in bad faith. *Id.* The signature of an attorney constitutes a certificate that he has read the pleading; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay. Rule 11(a), SCRCP.

A. The undersigned made a good faith argument to hold Northbrook responsible for the unpaid lien.

As stated above, the undersigned made a good faith argument based on his belief that Northbrook voluntarily assumed a duty to ensure satisfaction of the lien held by Plaintiff. The undersigned based his good faith argument on his belief that the basic principle of tort law of the voluntary assumption of duty applied in this instant case. The subject pleading was not interposed for delay; to the contrary, the subject pleading was filed in response to Plaintiff and Northbrook's inability to amicably resolve the unsatisfied lien.

In conclusion, sanctions under SCRCP Rule 11 are not warranted. The undersigned made a good faith argument, based on his belief that the principle of voluntary assumption of duty applied in the instant case. Further, the subject pleading was not interposed for delay. Therefore, this Court should deny Defendant Northbrook's Motion for Sanctions.

CONCLUSION

The undersigned made a good faith argument based on his reasonable belief that Northbrook had voluntarily undertaken a duty to ensure satisfaction of a medical lien held by Plaintiff. Other jurisdictions have adopted the undersigned's argument, and held insurers responsible for satisfying assignments with settlement funds. The subject pleading was not filed merely to harass or injure Northbrook, or to cause delay. The undersigned has not attempted to continue the lawsuit, nor has he violated the Frivolous Proceedings Act or SCRCF Rule 11 in the past. In fact, since the Court ruled that Northbrook should not have been named as a defendant in this particular action, the undersigned has filed a Motion to Withdraw Pleading. Therefore, the imposition of sanctions in connection with the subject pleading is unwarranted.

WHEREFORE, the undersigned prays this Court deny Defendant Northbrook's Motion for Sanctions.

Respectfully submitted,


Donald L. Smith (#6699)

ATTORNEY FOR PLAINTIFF
122 N. Main St.
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Anderson, South Carolina
June 30, 2015

**APPELLANT'S MOTION TO BE
RELIEVED AS COUNSEL
July 1, 2015**

MOTION FEE PAID

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Gregg Battersby,

Plaintiff,

-vs-

J. Kirkman Moorhead,
Krause, Moorhead & Draisen, P.A.,
Allstate Insurance Company,
Allstate Northbrook Indemnity Company)
Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

MOTION TO BE RELIEVED
AS COUNSEL

C.A. No.: 2015-CP-00667



COMMON PLEAS AND
GENERAL SESSIONS

2015 JUL -1 PM 3:13

FILED-CLERK'S OFFICE
ANDERSON SC

COMES NOW Donald L. Smith, attorney for Plaintiff, and moves the Court for an Order relieving him as counsel of record.

Plaintiff and the undersigned have reached an impasse in the undersigned's representation. The undersigned respectfully requests that a hearing be set as expeditiously as possible so that the attorney/client relationship can be severed.

Plaintiff has been unwilling to execute a consent order. However, Plaintiff has filed pleadings on his own behalf and attempted to contact opposing counsel in a number of actions. It is imperative that Plaintiff be free to represent his interests without the entanglement of the undersigned's presence preventing opposing counsel from interacting with him.

Respectfully submitted,

Donald L. Smith (#6699)
ATTORNEY FOR PLAINTIFF
122 N. Main St.
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Anderson, South Carolina
July 1, 2015

RESPONDENTS'
MOTION FOR SANCTIONS
July 24, 2015



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

MOTION FEE PAID
IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Gregg Battersby,

Plaintiff,

v.

J. Kirkman Moorhead; Krause, Moorhead &
Draisen, P.A.; Allstate Insurance Company;
and Allstate Northbrook Indemnity
Company,

Defendants.

CIVIL ACTION NO.: 2015-CP-04-00667

**DEFENDANTS J. KIRKMAN
MOORHEAD AND KRAUSE,
MOORHEAD AND DRAISEN, P.A.'S
MOTION FOR SANCTIONS**

TO: GREGG BATTERSBY AND HIS ATTORNEY, DONALD L. SMITH, ESQ.

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for Defendants J. Kirkman Moorhead and Krause, Moorhead, & Draisen, P.A., hereby move that this Court sanction the Plaintiff and his Attorney pursuant to the South Carolina Frivolous Proceedings Act, S.C. Code Ann 15-36-10 (the "Frivolous Proceedings Act") and Rule 11 of the South Carolina Rules of Civil Procedure. The Movants are seeking as sanctions their costs and attorney's fees in defending against the Plaintiff's Complaint. A copy of the Court's Order granting summary judgment in Defendants' favor as to all of the Plaintiff's causes of actions and dismissing Plaintiff's Complaint is attached hereto.

This Motion is based upon the pleadings and proceedings in this case, the laws and Rules of Civil Procedure of this state, the exhibits attached hereto, affidavits, a memorandum of law to be filed at a later date, and such other matters as may be properly presented to the Court at the time of the hearing.

Respectfully submitted,

Steven M. Krause (SC Bar No. 3571)
Timothy A. Nowacki (SC Bar No. 100967)
KRAUSE MOORHEAD & DRAISEN, P.A.
207 East Calhoun Street
Anderson, South Carolina 29621
Phone (864) 225-4000
skrause@kmdlawyers.com
tnowacki@kmdlawyers.com
*Attorneys for Defendants J. Kirkman Moorhead and
Krause, Moorhead, and Draisen, P.A.*

FILED-CLERK'S OFFICE
ANDERSON SC

2015 JUL 24 PM 3:07

COMMON PLEAS
GENERAL JUDGE

July 24, 2015
Anderson, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Gregg Battersby,

Plaintiff,

v.

J. Kirkman Moorhead, Krause, Moorhead &
Draisen, P.A., Allstate Insurance Company,
and Allstate Northbrook Indemnity
Company,

Defendants.

FILED-CLERK'S OFFICE
ANDERSON SC

2015 JUL 10

COMMON PLEAS AND
GENERAL SESSIONS

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

CLERK OF COURT

A TRUE COPY

JUL 23 2015



CIVIL ACTION NO.: 2015-CP-04-00667

**ORDER GRANTING J. KIRKMAN
MOORHEAD AND KRAUSE,
MOORHEAD, & DRAISEN, P.A.'S
MOTION FOR SUMMARY JUDGMENT
AND MOTION TO DISMISS**

THIS MATTER comes before the Court on a Motion to Dismiss Plaintiff's Second Amended Complaint ("Complaint") against Defendants J. Kirkman Moorhead and Krause, Moorhead and Draisen, P.A., (hereinafter referred to collectively as "Attorneys"), pursuant to South Carolina Rule of Civil Procedure 12(b)(6). After due notice, a hearing was held in this matter on June 4, 2015. Plaintiff was represented by Donald L. Smith, Esq., and Attorneys were represented by Eric K. Englehardt, Esq., of Turner Padgett Graham and Laney, P.A. At the hearing the Motion was converted to a Motion for Summary Judgment at the request of Plaintiff and consent of Attorneys. (Hr'g. Tr. p. 3 ll. 17-23). Having carefully considered the allegations in the Plaintiff's Complaint and arguments and evidence submitted by counsel, the Court grants Attorneys' Motion for Summary Judgment and holds that Attorneys are not liable to Plaintiff under any of the causes of action brought in the Complaint.

BACKGROUND AND FINDINGS OF FACT

Plaintiff brings his Complaint alleging Attorneys are liable to Plaintiff for damages arising out Attorneys' performance of professional activities as attorneys for a client, namely Jan Morton (hereinafter referred to as "Client"). Plaintiff's Complaint also names Allstate Insurance

Company and Allstate Northbrook Insurance Company as Defendants based upon acts arising out of wholly separate transactions from those complained of against Attorneys.¹

The Complaint alleges Attorneys have an attorney-client relationship with Client. (Complaint ¶ 11). In particular, Attorneys are providing legal representation to Client in a separate civil action brought by the Plaintiff against Client. (Ex. 3 to Plaintiff's Memorandum). The Complaint alleges Attorneys and Client conspired to concoct a story that Plaintiff indecently exposed himself to Client, and that Attorneys advised Client to report the incident to the Anderson County Sheriff's Office. (Complaint ¶¶ 12-13). Client did report the incident, and Plaintiff was arrested by the Sheriff on August 2, 2013 and subsequently charged by the Solicitor. (Complaint ¶¶ 14, 17, 27). The Complaint alleges Attorneys knew Client's statements were false, and that Attorneys conspired with Client to use the criminal charges to strengthen a civil case against Plaintiff. (Complaint ¶¶ 16, 28). Additionally, the Complaint alleges Attorneys assisted Client by filing an administrative complaint with South Carolina Department of Labor, Licensing and Regulation ("LLR") regarding the incident. (Complaint ¶ 25).

Plaintiff's Complaint asserts seven causes of action against Attorneys for acts arising out of Attorneys' representation of Client: (1) false imprisonment; (2) defamation; (3) intentional infliction of emotional distress ("IIED"); (4) malicious prosecution; (5) conspiracy; (6) fraud; and (7) abuse of process. At the hearing, Plaintiff stipulated Attorneys were entitled to summary judgment on all causes of action except civil conspiracy. (Hr'g. Tr. p. 16 ll. 9-19). Even if Plaintiff had not stipulated to summary judgment of the other six causes of action in Attorneys' favor, this Court finds that the grounds outlined below for granting summary judgment of the

¹ The causes of action against Allstate and Northbrook were dismissed pursuant to a separate order of this Court under the same Civil Action Number.

conspiracy claim in Attorneys' favor, namely attorney immunity, also warrant summary judgment of those causes of action in Attorneys' favor.

LEGAL STANDARD

At the hearing, Plaintiff submitted a portion of Morton's deposition transcript in support of his arguments, and presented arguments based upon the exhibits attached to his Memorandum in Opposition to Defendant's Motion to Dismiss. When a court is considering a motion to dismiss and matters outside the pleadings are presented to and not excluded by the court, "the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Rule 12(b), SCRPC; *Martin v. Companion Healthcare Corp.*, 357 S.C. 570, 574, 593 S.E.2d 624, 627 (Ct. App. 2004).

Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. *Knight v. Austin*, 396 S.C. 518, 521-22, 722 S.E.2d 802, 804 (2012); Rule 56(c), SCRPC. "The evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002) (internal citations omitted).

DISCUSSION AND ORDER

Considering the facts in the light most favorable to Plaintiff, Attorneys were at all times acting within the within the scope of their representation of Client and owed no duty to the third-party, non-client Plaintiff. "Generally, an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client." *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 509

(2006) (quoting *Gaar v. N. Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986)). Because an attorney normally conducts litigation solely in his professional capacity, the attorney “has no personal interest in the suit” and cannot be held liable to third-party non-clients “for injury allegedly arising out of the performance of his professional activities.” *Id.* at 529, 339 S.E.2d at 889. Further, an attorney owes no duty to a non-client unless he “breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client.” *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 400, 697 S.E.2d 551, 554 (2010). (quoting *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)).

Plaintiff failed to allege and the evidence does not show Attorneys ever stepped outside the scope of their representation of Client. Plaintiff argues Attorneys stepped outside of the scope of their representation of Client when they advised Client to report her allegations to the police and further advised Client to recommend to another alleged victim that she also report her own, similar encounters with the Plaintiff. In addition, Plaintiff argues Attorneys stepped outside their role as attorney when they assisted Client with an online complaint form filed with LLR because Client did not need an attorney to file an LLR complaint and nor were Attorneys representing Client when they completed the complaint form. (Hr’g. Tr. pp. 19-20, ll. 10-2). This Court finds this argument unpersuasive. At all times alleged in the Complaint, Attorneys were acting on behalf of and as attorneys for the Client in all the acts complained of by Plaintiff. There is simply no cognizable basis in either law or fact to conclude these acts fall outside the scope of Attorneys’ representation of Client. See *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 23, 567 S.E.2d 881, 893 (Ct. App. 2002). (“The absolute privilege covers anything that may be

said in relation to the matter at issue, whether it be in the pleadings, in affidavits, or in open court.”)

Plaintiff also argues Attorneys acted outside of the scope of their representation and in their own personal interest when they allegedly created, embellished or made up better facts to strengthen Client’s claims. (Hr’g. Tr. pp. 21-24, ll. 15-2). Plaintiff argued at the hearing and in his memorandum that Attorneys conspired with Client because Attorneys would share in any judgment obtained as a result of the suit. (Hr’g. Tr. pp. 21-22, ll. 15-19). Despite Plaintiff’s claims, an attorney has an ethical obligation to zealously to pursue any lawful claim of his client and properly represent and support his client. *Gaar*, 287 S.C. at 529-30 (citing former Rule 32, Canon 7, Rules of Practice in the Supreme Court of South Carolina). And, no different than any other profession, an attorney obtains a fee as compensation for professional services rendered. The fee, which may be paid out of proceeds from a judgment, is directly tied to the representation of the client, and therefore falls squarely within the scope of representation. See *Gaar*, 287 S.C. at 529 (holding that an attorney normally conducts the litigation solely in his professional capacity and he has no personal interest in the suit). This Court finds there is no evidence Attorneys had any personal interest in their representation of Client.

Regarding Plaintiff’s allegations that Attorneys conspired with Client to make up or embellish certain facts to strengthen Client’s claims, Plaintiff points to Client’s deposition testimony that the number of times the LLR complaint states she visited the Plaintiff for treatment was wrong. (Hr’g. Tr. pp. 22-23, ll. 11-20). The relevant portion of Client’s Deposition, as cited at the hearing by Plaintiff, is as follows:

Q: “Dr. Battersby had been treating me for several issues once a week for 20 weeks.” Is that true?

A: "No. The 20 weeks is wrong."

Q: "And can you estimate -- I believe you said earlier that you thought you may have started with Dr. Battersby back in April."

A: "I thought I did, but I went back and looked. It was May 2nd":

Q: "What did you look at?"

A: "The cancelled check from my first visit."

(Dep. of Jan Morton, June 18, 2014, p. 76, ll. 6-17). Contrary to Plaintiff's assertions, this deposition testimony clearly shows Client was mistaken in her original estimation stated in the LLR complaint, and the number was not an embellishment or number otherwise made up by Attorneys. This Court therefore finds there is no evidence Attorneys conspired with Client to makeup or embellish facts to strengthen Client's case.

Turning to the other exception to the general rule of attorney immunity, Plaintiff's Complaint does not allege, and this Court finds that Attorneys owed no duty to the Plaintiff. The Plaintiff is not a client of Attorneys. At the hearing and in his memorandum, Plaintiff argues that Rule 3.3 Candor Toward the Tribunal of the South Carolina Rules of Professional Conduct imposes a duty on Attorneys to Plaintiff. In particular, Plaintiff argued that Attorneys owed Plaintiff a duty of advising their Client not to report her allegations to law enforcement. Rule 3.3 mandates that a lawyer not knowingly make false statements or present evidence the lawyer knows to be false to a tribunal, fail to correct the past representations later discovered to be false, or knowingly permit a client to engage in fraudulent conduct without taking remedial measures or disclosing to the tribunal. By its plain language, this Court finds that Rule 3.3 does not impose upon Attorneys a duty to Plaintiff. Therefore, this Court finds Attorneys are entitled to summary judgment in their favor on all of Plaintiff's claims.

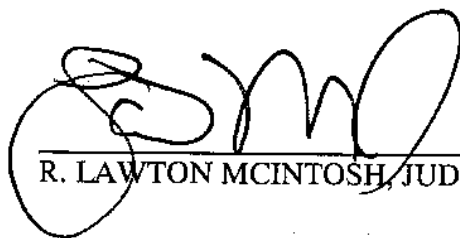
LCB

Assuming arguendo Attorneys owed a duty to Plaintiff, this Court finds Attorneys breached no such duty. Plaintiff alleges Attorneys should have recognized Client was lying when she informed them Plaintiff was wearing a robe during the alleged incident, but then reported later to law enforcement that Plaintiff was wearing a towel. First, the Court finds these are subtle differences of no material distinction, both figuratively and literally, so as to put Attorneys on notice that Client may be lying. Second, the police report which contains the allegedly different descriptors of Plaintiff's attire was not created until *after* Attorneys advised Client to report to the police – the very act Plaintiff claims Attorneys should have advised their Client against doing. The Attorneys therefore would not have had the benefit of the very report Plaintiff claims should have put them on notice.

CONCLUSION

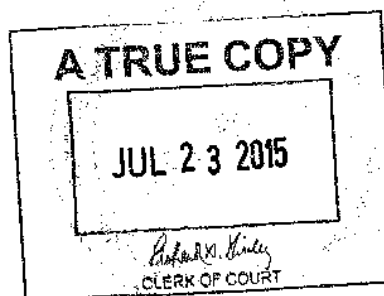
For the foregoing reasons, it is hereby ordered that Attorneys' Motion for Summary Judgment is GRANTED. There being no just reason for delay, FINAL JUDGMENT is hereby entered against the Plaintiff and in favor of the Defendants J. Kirkman Moorhead and Krause, Moorhead and Draisen, P.A.

AND IT IS SO ORDERED.


R. LAWTON MCINTOSH, JUDGE

Anderson, South Carolina

7-8, 2015



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COMMON PLEAS AND
GENERAL SESSIONS

**APPELLANT'S MEMORANDUM IN
OPPOSITION TO RESPONDENTS'
MOTION FOR SANCTIONS
September 23, 2015**



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Gregg Battersby,

Plaintiff,

-vs-

J. Kirkman Moorhead,
Krause, Moorhead & Draisen, P.A.,
Allstate Insurance Company,
Allstate Northbrook Indemnity Company

Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

MEMORANDUM IN OPPOSITION TO
REQUEST FOR SANCTIONS BY
DEFENDANTS MOORHEAD AND KRAUSE,
MOORHEAD & DRAISEN

C.A. No.: 2015-CP-00667

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ANDERSON SC

COMMON PLEAS AND
GENERAL SESSIONS
SEP 23 PM 4:36

Plaintiff files this Memorandum in Opposition to Defendants, Moorhead and Krause,
Moorhead and Draisen's, Motion for Sanctions, in support of which he presents the following:

INTRODUCTION

Plaintiff brought the action this against Defendants, Moorhead and Krause, Moorhead and Draisen, P.A, for fraud, civil conspiracy, malicious prosecution, false imprisonment, defamation, intentional infliction of emotional distress, and abuse of process for their involvement with Jan Morton (Morton) in the filing of a criminal complaint and a complaint with the South Carolina Board of Chiropractic Examiners (Board) against Plaintiff. Plaintiff learned of the fact that there were more parties behind the allegations made against him than just the two women who made them initially.

Plaintiff had a pending action in federal court against the South Carolina Board of Chiropractic, *Battersby v. Carew, et al.*, 8:14CV761-HMH. In furtherance of his claims, it was necessary to depose the two women who had accused him of indecent exposure. Carrie Neal was served with a subpoena for her deposition on May 27, 2014. (Exhibit 1). Michael Moske, a private investigator from Buford, Georgia, served her by chance.

Mr. Moske had business affairs to attend to in Anderson SC, and stopped by the office of Plaintiff's counsel. In an effort to produce more opportunities for his business, On the Watch, LLC, Mr. Moske offered his private investigation services. Based on the need to serve subpoenas on both Carrie Neal and Jan Morton, counsel retained him for the purpose of serving the subpoenas. Upon being served with a subpoena for her deposition, Carrie Neal offered a statement which was solicited by the server. Mr. Moske had no independent knowledge of the case, and was unaware of basis for the action. Ms. Neal told Mr. Moske: "I'm not the only one. There are other guys." (Exhibit 2). Plaintiff took the depositions with the intent of finding out the other parties to the conspiracy.

COMES NOW Donald L. Smith, attorney for Plaintiff, and responds to Defendant Allstate Northbrook Indemnity Company's Motion for Sanctions as follows:

MEMORANDUM

I. SANCTIONS ARE NOT WARRANTED UNDER THE FRIVOLOUS PROCEEDINGS ACT

An attorney participating in a civil action may be sanctioned for filing a frivolous pleading if (1) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law; (2) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or (3) a reasonable attorney presented with the same circumstances would believe the pleading is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based. S.C. Code Ann. § 15-36-10(A)(4)(a)(ii)-(iv). Before the

imposition of sanctions, the attorney who allegedly violated subsection (A)(4) has thirty days to respond to the allegations as that person considers appropriate including, but not limited to, by filing a motion to withdraw the pleading, motion, document, or argument or by offering an explanation of mitigation. S.C. Code Ann. § 15-36-10(D). In determining whether sanctions are appropriate or the severity of a sanction, the court shall consider previous violations of the provisions of this section. S.C. Code Ann. § 15-36-10(F).

A. A reasonable attorney would not believe that the pleading was frivolous, interposed for delay, or brought for any purpose other than adjudication of plaintiff's claims.

The subject pleading was not frivolous, as the undersigned made a good faith argument that Moorhead was a conspirator. The undersigned illustrated that Moorhead had fostered and facilitate a complaint with the LLR that included false information that bolstered the credibility of his client. His client admitted that she had seen Plaintiff four times, while Mr. Moorhead had completed the complaint for her instructing the LLR that she had seen Plaintiff twenty (20) times.

It was shown that Jan Morton and Mr. Moorhead had been meeting to solidify Morton's claims against Plaintiff. Moorhead continued with this prosecution, despite the many inconsistencies that had been displayed. Mr. Moorhead maintained his representation of Morton despite the fact that she said that she had not misrepresented her treatment with Plaintiff, and that Mr. Moorhead had promoted the inaccurate information.

The pleading was filed based on the statement of Carrie Neal to the Private Investigator, and the subsequent discovery that illustrated a plan to seek damages from Plaintiff for accusations that had already been dismissed by the Solicitor. Plaintiff made good faith claims against Mr. Moorhead given information that was elicited during discovery.

B. The undersigned has filed a motion to withdraw the pleading.

Pursuant to S.C. Code Ann. § 15-36-10(D), the undersigned has thirty days to respond to a Motion for Sanctions before sanctions can be imposed. While the undersigned did not have the ability to continue with the discovery related to the claim, he understands and respects the position of the Court, which stated that Summary Judgment should be granted on behalf of Mr. Moorhead and his firm. As such, the undersigned has filed a Motion to Withdraw. Because the undersigned has agreed to withdraw the subject action, he should not be subject to sanctions.

C. The undersigned has not previously violated the provisions of S.C. Code Ann. § 15-36-10, whether in this action or in others.

In determining whether sanctions are appropriate or the severity of a sanction, the court shall consider previous violations of the provisions of this section. S.C. Code Ann. § 15-36-10(F). In *Holmes v. E. Cooper Cmty. Hosp., Inc.*, the court held that the respondent was appropriately sanctioned because she continued the lawsuit despite previous rulings dismissing the suit, and despite earlier receiving sanctions for continuing to assert the same allegations. *Holmes v. E. Cooper Cmty. Hosp., Inc.*, 758 S.E.2d 483, 489 (S.C. 2014). The *Holmes* case is distinguishable from the present case, in that the undersigned has neither attempted to continue the lawsuit, nor has he been found to have violated provisions of § 15-36-10 in the past. While the undersigned disagrees with the court's decision, he respects and accepts it. Because the undersigned has not previously violated the provisions of § 15-36-10, and because he has not attempted to continue the lawsuit, sanctions under the Frivolous Proceedings Act would be inappropriate.

In conclusion, Plaintiff had a legitimate interest, based on the good faith belief that Mr. Moorhead and Ms. Morton had brought certain actions against him to recover money damages. Further, the undersigned has agreed to withdraw the pleading, and has not attempted to continue

the lawsuit or otherwise violated the provisions of § 15-36-10 in the past. Therefore, sanctions under § 15-36-10 are inappropriate, this Court should deny Mr. Moorhead's Motion for Sanctions.

II. SANCTIONS ARE NOT WARRANTED UNDER SOUTH CAROLINA RULE OF CIVIL PROCEDURE ELEVEN.

Under Rule 11, an attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. *Burns v. Universal Health Servs.*, 532 S.E.2d 6, 9 (S.C. Ct. App. 2000). The attorney may also be sanctioned for filing a pleading, motion, or other paper in bad faith. *Id.* The signature of an attorney constitutes a certificate that he has read the pleading; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay. Rule 11(a), SCRPC.

A. The undersigned made a good faith argument to hold Northbrook responsible for the unpaid lien.

As stated above, the undersigned made a good faith argument based on his belief that Mr. Moorhead and Ms. Morton had set out to recover money damages for something that did not occur. The undersigned based his good faith argument on statements made by Mr. Moorhead's client, as well as her testimony derived from a deposition. The subject pleading was not interposed for delay; to the contrary, the subject pleading was filed in response to information gleaned from discovery pursuant to the South Carolina Rules of Civil Procedure.

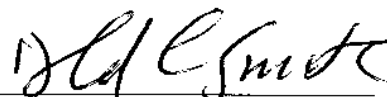
In conclusion, sanctions under SCRPC Rule 11 are not warranted. The undersigned made a good faith argument, based on his belief that the principle of voluntary assumption of duty applied in the instant case. Further, the subject pleading was not interposed for delay. Therefore, this Court should deny Defendant Northbrook's Motion for Sanctions.

CONCLUSION

The undersigned made a good faith argument based on his reasonable belief that J. Kirkman Moorhead was in the process of pursuing a claim against Plaintiff for damages related to a non-occurrence. The undersigned has not attempted to continue the lawsuit, nor has he violated the Frivolous Proceedings Act or SCRPC Rule 11 in the past. In fact, since the Court ruled that Mr. Moorhead was granted Summary Judgment, the undersigned has filed a Motion to Withdraw Pleading. Therefore, the imposition of sanctions in connection with the subject pleading is unwarranted.

WHEREFORE, the undersigned prays this Court deny Defendant Moorhead's Motion for Sanctions.

Respectfully submitted,



Donald L. Smith (#6699)
ATTORNEY FOR PLAINTIFF
122 N. Main St.
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Anderson, South Carolina
September 23, 2015

**LETTER RE: RESPONDENTS'
MOTION FOR SANCTIONS
October 7, 2015**

ATTORNEY OFFICE OF DONALD SMITH

122 N. Main St.
Anderson SC 29621
attorneydonaldsmith@gmail.com

Donald L. Smith, Esquire

Telephone: (864) 642-9284
Facsimile: (864) 642-9285

October 7, 2015

The Honorable R. Lawton McIntosh
Circuit Court Judge for the 10th Judicial Circuit
P O Box 8002
Anderson SC 29622

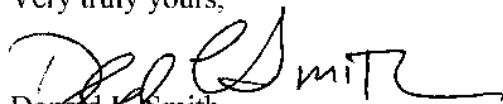
**RE: Gregg Battersby v. J. Kirkman Moorhead, Krause, Moorhead & Draisen,
P.A., Allstate Insurance Company, and Allstate Northbrook Indemnity
Company
C.A. No.: 2015-CP-04-00667**

Dear Judge McIntosh:

I am in receipt of Mr. Krause's attempt to add additional fees to the amount that was already in front of the Court. It is his contention that he can add to what is in front of the Court because the Court has permitted Dr. Battersby *and* opposing counsel an additional ten (10) days to respond to his plea for sanctions. It was my understanding that the Court "out of an abundance of caution" was providing Dr. Battersby the opportunity to respond Mr. Krause's motion since he had not been served with same.

I was not given, nor did I request, additional time to respond. Mr. Krause had the opportunity to provide the subject attorney fee affidavit at the hearing on the merits. He failed to put it before the Court at the appropriate time and, since the Court did not keep the record open for additional submissions from the counsel of record, it is my belief that this should be denied.

With highest regards, I am
Very truly yours,



Donald L. Smith
DLS/ds

Cc: Steven M. Krause, Esquire (via e-mail)
Dr. Gregg Battersby (via e-mail)

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COMMON PLEAS AND
GENERAL SESSIONS

**RESPONDENTS'
MEMORANDUM IN SUPPORT
OF MOTION FOR SANCTIONS**

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Gregg Battersby,

Plaintiff,

-vs-

J. Kirkman Moorhead
Krause, Moorhead & Draisen, P.A.,
Allstate Insurance Company,

Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

MEMORANDUM IN SUPPORT
OF MOTION FOR SANCTIONS
C.A. No.: 2015-CP-04-00667

TO: DONALD L. SMITH, ESQ.

The Defendants, Krause, Moorhead & Draisen, P.A. and J. Kirkman Moorhead (collectively, "Attorneys"), hereby file this memorandum in support of KMD's motion for sanctions pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 (the "Frivolous Proceedings Act") and Rule 11 of the South Carolina Rules of Civil Procedure.

BACKGROUND

Plaintiff brought a complaint alleging that Attorneys are liable to Plaintiff for damages arising out of Attorneys' performance of professional activities as attorneys for a client. Plaintiff asserted seven causes of action against Attorneys, to include false arrest, defamation, outrage, and conspiracy. Following a hearing, summary judgment was granted in favor of the Attorneys in an order of this Court on July 10, 2015(hereinafter, the "Order"). A copy of the Order is attached hereto and incorporated by reference. In its Order, the Court found that Plaintiff's arguments had no basis in either law or fact. For brevity's sake, direct references to the Order will be made and discussed below.

ARGUMENT

The South Carolina Frivolous Civil Proceedings Sanction Act provides for liability for attorney fees and costs of frivolous suits. South Carolina Code Ann. § 15–36–10 (2005) provides that any person who takes part in the procurement, initiation, and continuation of any civil proceeding is subject to being assessed for payment of all or a portion of the attorney fees and court costs of the other party if (1) he does so primarily for a purpose other than that of securing the proper adjudication of the claim upon which the proceedings are based, and (2) the proceedings have terminated in favor of the person seeking an assessment of the fees and costs. Section § 15–36–20(A)(4) of the Frivolous Proceeding Act authorizes this Court to impose sanctions against an attorney for participating in a frivolous proceeding if:

...

(a)(ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

...

(a)(iv) *a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous*, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;

(b) *making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts*; or

(c) *making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.*

(emphasis added). The Frivolous proceedings act, as amended in 2005, includes a “reasonable attorney” standard to determine whether sanctions are warranted. *Se. Site Prep, LLC v. Atl. Coast Builders & Contractors, LLC*, 394 S.C. 97, 105, 713 S.E.2d 650, 654 (Ct. App. 2011)

Under Rule 11(a), SCRCP, a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. *Runyon v. Ex parte Gregory*, 378 S.C. 430, 437-38, 663 S.E.2d 46, 50-51 (2008) citing *Wright*, 322 S.C. 15, 471 S.E.2d 160 (1996). The party and/or attorney may also be sanctioned for filing a pleading, motion, or other paper in bad faith whether or not there is good ground to support it. *Id.* The sanction may include an order to pay the reasonable costs and attorney fees incurred by the party or parties defending against the frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith. *Id.* Further, if appropriate under the facts of the case, the court may order a party and/or the party's attorney to pay a reasonable monetary penalty to the party or parties defending against the frivolous action or action brought in bad faith. *Id.* A court imposing sanctions under Rule 11 should, in its order, describe the conduct determined to constitute a violation of the Rule and explain the basis for the sanction imposed. *Id.*

As the Court found in its Order, none of the Plaintiff's claims against Attorneys were based in law or supported by fact. Moreover, it is readily apparent that no reasonable attorney would have brought the Plaintiff's claims against Attorneys. At the outset of the hearing, Plaintiff stipulated that Attorneys were entitled to summary judgment on all cause of action except civil conspiracy. (Order p. 2; Hr'g Tr. p. 16 ll. 9-19). When doing so, the Plaintiff conceded that the law in this state is that an attorney is generally immune from liability to third person arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client. See *Pye v. Estate of Fox*, 369 S.C. 55, 564, 633 S.E.2d 505, 509

(2006). See The Court's Order addressed the Plaintiff's arguments in support of the conspiracy cause of action against Attorneys.

The Plaintiff made several arguments in an attempt to give some cognizable basis for his conspiracy claim, all of which were rejected by the court outright. First, the Plaintiff argued to the Court that the Attorneys stepped out of the scope of the representation of their client when they advised their client to report possible criminal acts to the police and further advised their client to recommend to another alleged victim that she also report her own, similar encounters with the Plaintiff. In addition, the Plaintiff argued that Attorneys stepped outside their role as attorneys when they assisted their client with an online complaint against Plaintiff filed with the South Carolina Department of Labor, Licensing, and Regulation because the client did not need an attorney to file the complaint and nor were the Attorneys representing the client when they completed the complaint form. (Order p. 2; Hr'g Tr. pp. 19-20, ll. 10-2). The Court found that "there is simply no cognizable basis in law or fact to conclude these acts fall outside the scope of Attorneys' representation of Client." (Order p. 2).

Second, the Court rejected the Plaintiff's argument that Attorneys created, embellished or made up better facts to strengthen their client's claims, and therefore conspired with their client because Attorney's would share in any judgment obtained as a result of the suit because such an allegation is contrary to well-established law. (Order p. 5). The Court found that there was no evidence to make up or embellish facts to strengthen their client's case. (Order p. 6). The Court also found, that in accordance with case law, an attorney does not act outside of the scope their representation simply by collecting a fee. (Order p. 5 citing *Gaar v. Myrtle Beach Realt Co., Inc.*, 287 S.C 525, 529, 339 S.E. 2d 888 (holding that an attorney normally litigates solely in his professional capacity and he has no personal interest in the suit)). The Court then found that

there is no evidence here that Attorneys had any personal interest in their representation of their client. (Order p. 5).

Third, Plaintiff argued that Attorneys violated Rule 3.3 Candor Toward the Tribunal of the South Carolina Rules of Professional Conduct and that the rule also imposed a duty on Attorney to Plaintiff. The Court dismissed Plaintiffs argument that Rule 3.3 imposed Attorneys a duty to the Plaintiff, finding that the plain language of the rule creates no such duty. (Order p. 6). The Court also found that even if a duty was owed, the Plaintiffs breached no such duty. Plaintiff alleged that Attorneys should have recognized their client was lying when she informed them that Plaintiff was wearing a robe during the incident, but then later reported to law enforcement that Plaintiff was wearing a towel. The Court found that “these are subtle difference of no material distinction, both figuratively and literally, to put Attorneys on notice that Client may be lying.” Second, the Court found that the police report which contained the allegedly different descriptors of Plaintiff’s attire was not created until after Attorney’s advised their client to report to the police. Therefore, the Court found that Attorneys “would not have had the benefit of the very report Plaintiff claims should have put them on notice.” Plaintiff’s argument is not reasonably supported by the facts.

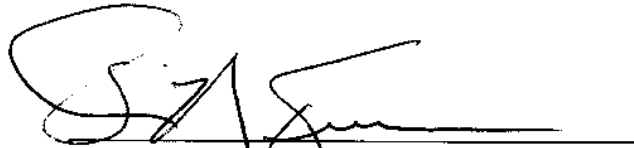
Attorneys have obtained judgment in their favor. (See Order generally). In order to do so, Attorneys have incurred legal fees and costs. In accordance with the Rule 11 and the Frivolous Proceedings Act, Attorneys are entitled to their legal fees and costs in both defending against the Plaintiff’s complaint and obtaining sanctions.

CONCLUSION

For the foregoing reasons, Attorneys respectfully request that the Court award the their legal fees and costs in both defending against the Plaintiff's complaint and obtaining sanctions.

Respectfully submitted,

KRAUSE, MOORHEAD & DRAISEN, P.A.

A handwritten signature in black ink, appearing to read 'S. M. Krause', is written over a horizontal line.

STEVEN M. KRAUSE, SC BAR# 03571

207 East Calhoun Street
Anderson, South Carolina 29621
(864) 225-4000

October 1, 2015.

**Attorney for the Defendants, J. Kirkman Moorhead
and Krause, Moorhead and Draisen, PA**

**GREGG BATTERSBY' MEMORANDUM
IN OPPOSITION TO RESPONDENTS'
MOTION FOR SANCTIONS
October 8, 2015**

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STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

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IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

ReB

Gregg Battersby,

Plaintiff,

-vs-

J. Kirkman Moorhead, et. al.
Defendants.

COMMON PLEAS AND
GENERAL SESSIONS

MEMORANDUM IN OPPOSITION
TO DEFENDANTS', MOORHEAD AND
KRAUSE, MOORHEAD & DRAISEN, P.A.,
MOTION FOR SANCTIONS

C.A. No.: 2015-CP-00667

Plaintiff files this Memorandum in Opposition to Defendants Moorhead and Krause,
Moorhead & Draisen, P.A. Motion for Sanctions. In support of which he presents the following:

MEMORANDUM

Plaintiff filed a complaint against Jan Morton, a client of Defendants, on May 30, 2014. The case number is 2014-CP-04-1121. The complaint is based on Morton filing a false report to the Anderson County Sheriff's Office (ACSO) on July 8, 2013. Morton alleged that Plaintiff indecently exposed himself to her on June 2, 2013. Upon discovery, Plaintiff found that Moorhead was directing Morton in furtherance of her fraud against Plaintiff. Morton made numerous contradictory statements in various legal proceedings that would have caused any reasonable lawyer to recognize her scam.

INCIDENT REPORT JULY 8, 2013:

Morton said I was wearing a men's robe, she was on 2 tables laying face up on the first table, She said I used the vibrator on the 2nd table, she said that I attempted no sexual contact. She got up to leave and I dropped my robe to the floor with an erect penis. She felt that if she didn't leave I may try to assault her. She said I was calling her for 3 weeks prior to July 8, 2013.

AUDIO STATEMENT JULY 18, 2013:

Morton said I was wearing a towel, she was on 3 tables with the first one laying face up, she said I used the vibrator on the 3rd table, she said I was rubbing my penis on her, she mentioned nothing about fear of assault, she's laying face down and looks up to see me nude, she said I was calling and texting her the following Monday, June 3, 2013 not the 3 weeks prior to July 8. She claimed 15 visits before June 1.

BOARD ONLINE COMPLAINT AUG. 28, 2013:

Morton said I was wearing a bath towel, she was on 3 tables the first one laying face up, she said I used the vibrator on the 3rd table, she said I was rubbing my penis on her back, she's laying face down and raises up to see me nude with an erect penis, no mention of calling and texting after June 1. She claimed I treated her for 20 weeks when I only treated her 4 weeks.

REEVES EMAIL NOV. 21, 2013:

From: Kristin W. Reeves [mailto:kreeves@solil0th.com]

Sent: Thursday, November 21, 2013 2:48 PM

To: Sarah Drawdy

Subject: RE: Gregg Battersby

Simma down now. ☐

What I meant was, she knows he didn't try to rape her or anything. And she's not looking to put him in jail or ruin his life. She's just concerned about what he could do to the next lady. If he does have this evaluation, can you share it with me? Might help, if he "passes".

DEPOSITION JUNE 18, 2014:

Morton said I was wearing a towel, she was laying face up on the first table, she said she was on 3 tables then she said 4 tables, she said I used the vibrator on the 4th table, she believed I was rubbing my penis on her, on 4th table she sat up and I was nude, no mention of fearing assault or calls and texts after June 1. She said the incident report filed with the sheriff was not hers and that she wrote a report out. Deputy Marter testified that there was no written report by her and that he wrote the report.

COUNTERCLAIM NOV. 20, 2014:

Morton said I was wearing a towel, she was laying face down on the first and only table she was on for the entire visit. she said I used the vibrator on the first and only table. that I placed my erect penis on her back. she raised her head and turned to look to find me nude, no mention of calls or texts, she denied having an incident report of her own that she testified to having filed with the sheriff.

CHIROPRACTIC BOARD HEARING Feb. 11. 2015:

Page 99

19 Q. And did you feel anything on you other than the
20 machine?

21 A. I felt something over here on my side. but I don't
22 know if it was his hand or what it was.

Defendants were privy to or were present at all these events. Moorhead was present at her deposition in which she claimed the incident report she filed with the ACSO was not her statement and that she wrote a statement out. Deputy Marter, the deputy that took her incident report, testified that she did not give a hand written

statement and the incident report was what she told him. Instead of withdrawing representation of Morton, Defendants continued pursuing her frivolous allegations that caused Plaintiff to lose his livelihood for two years.

Plaintiff attempted to join Defendants to the complaint against Morton but was denied by the Court. On March 20, 2015, Plaintiff filed this Complaint against Defendants for their role in perpetrating Morton's fraud.

On April 24, 2014, the criminal charges were dismissed. In citing the reason for the dismissal, Anderson County Solicitor Chrissy Adams stated "there were substantial issues with the facts" as relayed by Neal and Morton. In essence, Morton was lying. The only "facts" in the possession of the solicitor were the incident report of July 8, 2013 and the audio statement taken 10 days later. The solicitor did not feel that these were subtle differences of no material distinction as Defendants assert. On August 13, 2015, the South Carolina Board of Chiropractic Examiners (Board) issued a final order dismissing Morton's allegations with prejudice and removed the suspension as of the date it was issued. In spite of these findings that Morton's allegations were without merit, Defendants still pursue her counterclaim against Plaintiff. Their actions violate South Carolina Rules of Professional Conduct Rule 3.3(a)(1)(3) and (b) by failing to disclose to the ACSO, solicitor, Board and this Court the fraud being perpetrated. Defendants owed a duty to disclose Morton's fraud to these entities, especially this Court. By doing so, Defendants are acting outside of their attorney-client relationship. "A number of jurisdictions recognize that an attorney may be held liable where he acts in bad faith or for his own personal motivations. See generally Annotation 97 ALR 3rd 688 (attorney's liability for abuse of process); Annotation 46 ALR 4th 249 (attorney's liability for malicious prosecution). See also RESTATEMENT (SECOND) OF TORTS § 674, comment d (attorney who acts without

probable cause for an improper purpose is subject to same liability for the wrongful use of civil proceedings as any other person). Moreover, several courts have held that an attorney may be held liable arising out of a conspiracy with his client. See e.g., *Wolfrich Corp. v. U.S. Automobile Assn.*, 149 Cal.App.3d 1206, 197 Cal.Rptr. 446 (1983) (attorneys may be liable for participation in tortious acts with their clients, and such liability may rest on a conspiracy); *Doctors' Co. v. Superior Court*, 49 Cal.3d 39, 260 Cal.Rptr. 183, 775 P.2d 508 (1989); *Fraidin v. Weitzman*, 93 Md.App. 168, 611 A.2d 1046 (1992) (attorney liable for conspiracy if actively involved in wrongful conduct). Additionally, attorneys have been held liable for fraud and conversion in conjunction with their representation of clients. See, e.g., *L & H Airco, Inc. v. Rapistan Corp.*, 446 N.W.2d 372 (Minn.1989) (attorney who makes affirmative misrepresentations to an adversary or conspires with his or her client may be held liable for fraud); *Pew v. First National Bank*, 827 F.2d 1488 (11th Cir.1987); *Bongard v. Winter*, 516 So.2d 27 (Fla.App.1987); *Guillebeau v. Jenkins*, 182 Ga.App. 225, 355 S.E.2d 453 (1987) (implying that an attorney may be sued by an adversary for fraud); *LaBarre v. Gold*, 520 So.2d 1327 (Miss.1987) (attorney liable for conversion for improperly paying real estate proceeds only to his client)." See *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (S.C., 1995). It is clear that lawyers can be sued for conspiracy and fraud in their representation of a client. Defendants were acting in bad faith by conspiring with Morton. These are all good grounds to support Plaintiff's causes of action.

Defendants failed to produce a separate representation agreement for each action Morton was involved in, i.e. sheriff, Board, defense in Plaintiff's action, and counterclaim against Plaintiff. The complaint Morton filed with the LLR was not signed by Moorhead as would be required if he was representing her yet she testified that he

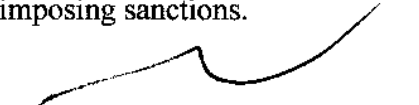
filed the complaint for her. This would be an action outside the attorney-client relationship.

Defendants argued at the sanctions hearing that a reasonable attorney would have known that filing suit against them was frivolous. Plaintiff is not a lawyer. Defendants did not address Plaintiff being personally liable for damages. This Complaint was dismissed and formally withdrawn by Plaintiff long before removal of Plaintiff's counsel occurred. To make an ex post facto ruling that Plaintiff was acting pro se at the time of the litigation and liable for damages violates the tenant of the law. A reasonable attorney would find Defendants' actions in the representation of Morton very suspicious. It appears that Defendants are only seeking damages from Plaintiff's counsel.

If this Court does impose sanctions, any monetary damages should be limited to actual legal fees paid to Defendants' counsel and not for legal work performed on their own behalf. Plaintiff finds it curious that Defendants proposed having their counsel submit a fee bill to incorporate the work done by Defendants. This would constitute a fraudulent billing. Defendants presented affidavits from Atty. Timothy Kowacki, Atty. Steven LeFevere, and Atty. Steven Krause. All these attorneys are engaged in the practice of law with Defendant, Krause, Moorhead & Draisen, P.A. Defendants presented no bills from the attorney of record, Atty. Eric Englehardt. Atty. Krause admitted at the sanctions hearing that he was good friends with Atty. Englehardt. Plaintiff cannot be liable for these alleged expenditures. No cancelled checks to Atty. Englehardt were produced. The \$5,848.70 invoice was on Defendant, Krause, Moorhead & Draisen's, P.A., own client account. The \$1,635.00 invoice was from Atty. Krause. The \$1,732.50 invoice was from Atty. Kowacki. The \$1,000.00 invoice was from Atty. LeFevere. After the hearing, Defendants, not Atty. Englehardt, filed an invoice from Atty. Englehardt for

\$1,000.00 dated August 28, 2015. This invoice was in Defendants possession well before the hearing yet they failed to enter it at the hearing. The invoice shows that Atty. Englehardt merely reviewed the pleadings drafted by Defendants. Defendants admitted at the hearing that they did the work for Atty. Englehardt. Atty. Englehardt was merely a straw man for Defendants. Atty. Englehardt was not even present at the sanctions hearing to argue the case. In essence, Defendants did not need Atty. Englehardt. "The court began its analysis by noting that *Calhoun v. Calhoun*, 339 S.C. 96, 100, 529 S.E.2d 14, 17 (2000), held a pro se litigant could not recover attorney's fees because "a pro se litigant, whether an attorney or layperson, does not become 'liable for or subject to fees charged by an attorney.'" 343 S.C. at 306, 540 S.E.2d at 457." See *Williamson v. Middleton*, 649 S.E.2d 57, 374 S.C. 419 (S.C. App., 2007). Defendants cannot claim monetary damages.

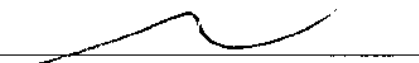
Plaintiff feels confident that he could have proven the bad faith actions of Defendants if this case wasn't dismissed prematurely. It is for these reasons that this Court must rule against imposing sanctions.



Dr. Gregg N. Battersby, pro se
7800 Hwy. 81 South
Starr, SC 29684
Telephone: (864) 570-0077
Email: greggbattersby@gmail.com

CERTIFICATE OF SERVICE

Plaintiff served this Memorandum in Opposition to Defendants Moorhead and Krause, Moorhead & Draisen, P.A. Motion for Sanctions on Defendants' attorney by regular U.S. Mail on October 8, 2015.



Dr. Gregg N. Battersby

**NOTICE FOR
LACK OF JURISDICTION
January 27, 2016**

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ANDERSON, SC

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Gregg Battersby,

Plaintiff,

-vs-

J. Kirkman Moorhead, et. al.

Defendants.

NOTICE FOR LACK OF JURISDICTION
OVER DEFENDANTS' MOTION FOR
SANCTIONS

C.A. No.: 2015-CP-00667

Plaintiff files this Notice to the Court for lack of jurisdiction over Defendants' Motion for Sanctions. In support of which he presents the following:

MEMORANDUM

On July 10, 2015, a Final Judgment was entered by the clerk of courts on the above-referenced case. Defendants filed their Motion for Sanctions on July 24, 2015. A judge loses jurisdiction over a case 10 days after an entry of final judgment by the clerk of courts. "Motions made pursuant to the FCPSA are post-trial motions. See S.C. Code Ann. 15-36-10(C)(1) (Supp.2012) ("At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous.").

In other words, a party has ten days after the filing of a court order to file a motion pursuant to the FCPSA. See *In re Beard*, 359 S.C. 351, 357, 597 S.E.2d 835, 838 (Ct.App.2004) (referring to motions made under the FCPSA as "post-trial motions for sanctions" and finding that the general ten-day limitation for post-trial motions applies to motion made pursuant to the FCPSA); *Pitman v. Republic Leasing Co.*, 351 S.C. 429, 432-33, 570 S.E.2d 187, 189-90 (Ct.App.2002) ("Absent specific statutory language vesting the trial judge with continuing

jurisdiction, we refuse to hold that a trial judge retains jurisdiction to consider a motion for sanctions beyond ten days after entry of the judgment. Such an interpretation would run counter to our established case law that a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed.”); *Rutland v. Holler, Dennis, Corbett, Ormond & Garner (Law Firm)*, 371 S.C. 91, 96, 637 S.E.2d 316, 319 (Ct.App.2006) (“[B]ecause a trial judge retains jurisdiction pursuant to Rule 59(e), SCRCP, to alter or amend a judgment within ten days of its issuance, a motion for sanctions would be timely if filed within ten days of judgment.” (alteration in original)).” See *Holmes v. E. Cooper Cmty. Hosp., Inc.*, 408 S.C. 138, 758 S.E.2d 483 (S.C., 2014).

“Generally, a trial judge loses jurisdiction over a case when the time to file post-trial motions has elapsed. *Ex parte Beard*, 359 S.C. 351, 358, 597 S.E.2d 835, 838 (Ct.App.2004). An order is not final until it is entered by the clerk of court; and until the order or judgment is entered by the clerk of court, the judge retains control of the case. *Upchurch v. Upchurch*, 367 S.C. 16, 22, 624 S.E.2d 643, 646 (2006). As a result, a motion for sanctions must be filed within ten days of the notice of entry of judgment. *Pitman v. Republic Leasing Co., Inc.*, 351 S.C. 429, 432, 570 S.E.2d 187, 189 (Ct.App.2002).” See *Russell v. Wachovia Bank, N.A.*, 633 S.E.2d 722, 370 S.C. 5 (S.C., 2006). Defendants’ Motion for Sanctions was not timely filed. As such, this Court lacks jurisdiction over the Motion. Plaintiff respectfully requests this Court withdraw its Order granting sanctions to Defendants.

Date: January 27, 2016.



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**MEMORANDUM IN SUPPORT OF
COURT'S PROPER EXERCISE OF
JURISDICTION OVER RESPONDENTS'
MOTION FOR SANCTIONS
January 29, 2016**

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ANDERSON SC

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

2016 JAN 29 AM 11:31

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Gregg Battersby,

COMMON PLEAS AND
GENERAL SESSIONS



Plaintiff,

-vs-

J. Kirkman Moorhead
Krause, Moorhead & Draisen, P.A.,
Allstate Insurance Company,

MEMORANDUM IN SUPPORT OF THE
COURT'S PROPER EXERCISE OF
JURISDICTION OVER DEFENDANTS'
MOTION FOR SANCTIONS

C.A. No.: 2015-CP-04-00667

Defendants.

The Defendants, Krause, Moorhead & Draisen, P.A. and J. Kirkman Moorhead (collectively, "Attorneys"), hereby file this memorandum in opposition to Plaintiff's Notice arguing the court lacked jurisdiction to hear Attorneys' motion for sanctions pursuant to *both* the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 (the "Frivolous Proceedings Act") and Rule 11 of the South Carolina Rules of Civil Procedure. Attorneys' submit that their motion was properly filed in accordance with Rule 59(e), SCRCPP, because it was filed within ten (10) days from the date Attorneys received written notice of entry of the court's order. Plaintiff did not raise this issue at the hearing to allow the court to address the issue of receipt of notice of the final order, but now does so after the court has requested Defendants prepare an order sanctioning Plaintiff under Rule 11 but not the FCPSA.

Plaintiff is mistaken in his assertion that Attorneys only had ten days after the filing of the final order to file their motion for sanction. Plaintiff fails to fully and accurately state the case law discussing the timing for the filing of post-trial motions, nor does he address the governing South Carolina Rule of Civil Procedure. Rather, in accordance with Rule 59(e), SCRCPP, "[a] motion to alter or amend the judgment shall be served not later than 10 days *after receipt of written notice of the entry of the order.*" *In re Beard*, 359 S.C. 351, 357, 597 S.E.2d

835, 838 (Ct. App. 2004). A motion for sanctions must be filed within ten days of the *notice* of entry of judgment. *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 20, 633 S.E.2d 722, 730 (2006), *Pitman v. Republic Leasing Co., Inc.*, 351 S.C. 429, 432, 570 S.E.2d 187, 189 (Ct.App.2002).

Our courts have held that a motion made pursuant to the Frivolous Civil Proceedings Sanction Act is subject to the ten day filing requirement. *Id.* However, our courts distinguish between the FCPSA and the Rule 11 sanctions. *Russell*, 370 S.C. at 20, 633 S.E.2d at 730. In a footnote in *Russell*, the court stated:

There is no requirement that a motion for sanctions made pursuant to Rule 11 be made within ten days from notice of entry of judgment. See *Ex parte Beard*, 359 S.C. at 359–60, 597 S.E.2d at 839 (holding that a motion for sanctions pursuant to the FCPSA must be filed within ten days of notice of entry of judgment but not a motion under Rule 11). As a result, we decline to address what time limit is proper with regard to the Rule 11 sanctions because the issue is not before us.

Id. n.11. The court went on to observe that if an FCPSA motion is timely filed it is only logical that a Rule 11 motion was timely according to *Ex parte Beard*. *Id.*, citing *The Father v. South Carolina Dep't of Soc. Servs.*, 345 S.C. 57, 72, 545 S.E.2d 523, 531 (Ct.App.2001) (stating that criteria for Rule 11 sanctions are essentially the same as those for sanctions under the FCPSA).

Here, Attorneys' filed their motion well within ten days from their receipt of notice of the entry of judgment. The Final Judgment was entered by the clerk of court in the above captioned case on Friday, July 10, 2015. The clerk of court records indicate it mailed a copy of the order to counsel for the Attorneys on July 10, 2015¹. The order was mailed over a weekend, and the earliest it would have arrived was Monday, July 13, 2015. The order however was never received via mail.² On July 23, Attorneys checked the clerk of court's website, found an entry

¹ The clerk of court records the date orders are sent by making a notation on the back of the original order maintained in the court's file. Unless otherwise noted, all orders are sent by first class US mail. The order was mailed to Eric Englehardt, Esq., former counsel for Attorneys.

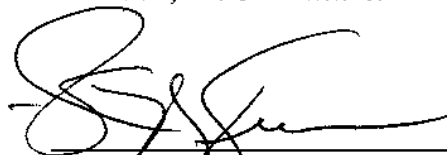
² If the court requests, Attorneys will provide an Affidavit from Mr. Englehardt, Esq, or Mr. Krause, Esq.

that the order had been filed, and immediately obtained a copy from the clerk's office. See attached Order (the true copy stamp is dated July, 23, 2015). Attorneys filed the motion for sanctions the next day, July 24, 2015. Therefore, the Attorneys timely filed their motion within ten days of receipt of notice. See *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008)(upholding trial court's finding that a motion to reconsider was timely filed after counsel, an officer of the court bound by the ethical and professional rules of this state, informed the court that she did not receive written notice of the order until more than a month after final judgment was entered).

For the foregoing reasons, Attorneys respectfully request that the Court deny the Plaintiff's motion, for fees and costs, and for such other relief the court deems proper.

Respectfully submitted,

KRAUSE, MOORHEAD & DRAISEN, P.A.



STEVEN M. KRAUSE, SC BAR# 03571

207 East Calhoun Street

Anderson, South Carolina 29621

(864) 225-4000

**Attorney for the Defendants, J. Kirkman Moorhead
and Krause, Moorhead and Draisen, PA**

January 28, 2016

VERIFICATION

January 29, 2016

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Gregg Battersby,

Plaintiff,

-vs-

J. Kirkman Moorhead
Krause, Moorhead & Draisen, P.A.,
Allstate Insurance Company,

Defendants.

VERIFICATION

C.A. No.: 2015-CP-04-00667



The undersigned, being duly sworn, states that the facts set forth in the Defendants J. Kirkman Moorhead and Krause, Moorhead, & Draisen, P.A.'s Memorandum in Support of the Court's Proper Exercise of Jurisdiction over the Defendants' Motion for Sanctions are true to the best of the undersigned's knowledge, information, and belief.

STEVEN M. KRAUSE, SC BAR# 03571
Attorney for the Defendants, J. Kirkman Moorhead
and Krause, Moorhead and Draisen, PA

January 28, 2016

SWORN to before me this 28th day
of January 2016.

Notary Public for South Carolina

My Commission Expires: 3-29-20

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ANDERSON SC
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COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Gregg Battersby,

Plaintiff,

v.

J. Kirkman Moorhead, Krause, Moorhead &
Draisen, P.A., Allstate Insurance Company,
and Allstate Northbrook Indemnity
Company,

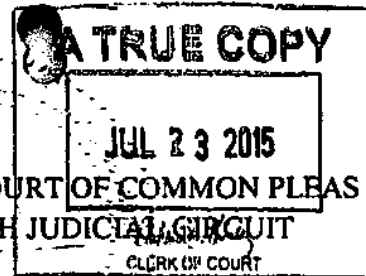
Defendants.

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ANDERSON SC

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COMMON PLEAS AND
GENERAL SESSIONS

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT



CIVIL ACTION NO.: 2015-CP-04-00667

**ORDER GRANTING J. KIRKMAN
MOORHEAD AND KRAUSE,
MOORHEAD, & DRAISEN, P.A.'S
MOTION FOR SUMMARY JUDGMENT
AND MOTION TO DISMISS**

THIS MATTER comes before the Court on a Motion to Dismiss Plaintiff's Second Amended Complaint ("Complaint") against Defendants J. Kirkman Moorhead and Krause, Moorhead and Draisen, P.A., (hereinafter referred to collectively as "Attorneys"), pursuant to South Carolina Rule of Civil Procedure 12(b)(6). After due notice, a hearing was held in this matter on June 4, 2015. Plaintiff was represented by Donald L. Smith, Esq., and Attorneys were represented by Eric K. Englehardt, Esq., of Turner Padgett Graham and Laney, P.A. At the hearing the Motion was converted to a Motion for Summary Judgment at the request of Plaintiff and consent of Attorneys. (Hr'g. Tr. p. 3 ll. 17-23). Having carefully considered the allegations in the Plaintiff's Complaint and arguments and evidence submitted by counsel, the Court grants Attorneys' Motion for Summary Judgment and holds that Attorneys are not liable to Plaintiff under any of the causes of action brought in the Complaint.

BACKGROUND AND FINDINGS OF FACT

Plaintiff brings his Complaint alleging Attorneys are liable to Plaintiff for damages arising out Attorneys' performance of professional activities as attorneys for a client, namely Jan Morton (hereinafter referred to as "Client"). Plaintiff's Complaint also names Allstate Insurance

Company and Allstate Northbrook Insurance Company as Defendants based upon acts arising out of wholly separate transactions from those complained of against Attorneys.¹

The Complaint alleges Attorneys have an attorney-client relationship with Client. (Complaint ¶ 11). In particular, Attorneys are providing legal representation to Client in a separate civil action brought by the Plaintiff against Client. (Ex. 3 to Plaintiff's Memorandum). The Complaint alleges Attorneys and Client conspired to concoct a story that Plaintiff indecently exposed himself to Client, and that Attorneys advised Client to report the incident to the Anderson County Sheriff's Office. (Complaint ¶¶ 12-13). Client did report the incident, and Plaintiff was arrested by the Sheriff on August 2, 2013 and subsequently charged by the Solicitor. (Complaint ¶¶ 14, 17, 27). The Complaint alleges Attorneys knew Client's statements were false, and that Attorneys conspired with Client to use the criminal charges to strengthen a civil case against Plaintiff. (Complaint ¶¶ 16, 28). Additionally, the Complaint alleges Attorneys assisted Client by filing an administrative complaint with South Carolina Department of Labor, Licensing and Regulation ("LLR") regarding the incident. (Complaint ¶ 25).

Plaintiff's Complaint asserts seven causes of action against Attorneys for acts arising out of Attorneys' representation of Client: (1) false imprisonment; (2) defamation; (3) intentional infliction of emotional distress ("IIED"); (4) malicious prosecution; (5) conspiracy; (6) fraud; and (7) abuse of process. At the hearing, Plaintiff stipulated Attorneys were entitled to summary judgment on all causes of action except civil conspiracy. (Hr'g. Tr. p. 16 ll. 9-19). Even if Plaintiff had not stipulated to summary judgment of the other six causes of action in Attorneys' favor, this Court finds that the grounds outlined below for granting summary judgment of the

¹ The causes of action against Allstate and Northbrook were dismissed pursuant to a separate order of this Court under the same Civil Action Number.

conspiracy claim in Attorneys' favor, namely attorney immunity, also warrant summary judgment of those causes of action in Attorneys' favor.

LEGAL STANDARD

At the hearing, Plaintiff submitted a portion of Morton's deposition transcript in support of his arguments, and presented arguments based upon the exhibits attached to his Memorandum in Opposition to Defendant's Motion to Dismiss. When a court is considering a motion to dismiss and matters outside the pleadings are presented to and not excluded by the court, "the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Rule 12(b), SCRPC; *Martin v. Companion Healthcare Corp.*, 357 S.C. 570, 574, 593 S.E.2d 624, 627 (Cl. App. 2004).

Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. *Knight v. Austin*, 396 S.C. 518, 521-22, 722 S.E.2d 802, 804 (2012); Rule 56(c), SCRPC. "The evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002) (internal citations omitted).

DISCUSSION AND ORDER

Considering the facts in the light most favorable to Plaintiff, Attorneys were at all times acting within the within the scope of their representation of Client and owed no duty to the third-party, non-client Plaintiff. "Generally, an attorney is immune from liability to third persons arising from the performance of his professional activities as an attorney on behalf of and with the knowledge of his client." *Pye v. Estate of Fox*, 369 S.C. 555, 564, 633 S.E.2d 505, 509

(2006) (quoting *Gaar v. N. Myrtle Beach Realty Co., Inc.*, 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986)). Because an attorney normally conducts litigation solely in his professional capacity, the attorney “has no personal interest in the suit” and cannot be held liable to third-party non-clients “for injury allegedly arising out of the performance of his professional activities.” *Id.* at 529, 339 S.E.2d at 889. Further, an attorney owes no duty to a non-client unless he “breaches some independent duty to a third person or acts in his own personal interest, outside the scope of his representation of the client.” *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 400, 697 S.E.2d 551, 554 (2010). (quoting *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)).

Plaintiff failed to allege and the evidence does not show Attorneys ever stepped outside the scope of their representation of Client. Plaintiff argues Attorneys stepped outside of the scope of their representation of Client when they advised Client to report her allegations to the police and further advised Client to recommend to another alleged victim that she also report her own, similar encounters with the Plaintiff. In addition, Plaintiff argues Attorneys stepped outside their role as attorney when they assisted Client with an online complaint form filed with LLR because Client did not need an attorney to file an LLR complaint and nor were Attorneys representing Client when they completed the complaint form. (Hr’g. Tr. pp. 19-20, ll. 10-2). This Court finds this argument unpersuasive. At all times alleged in the Complaint, Attorneys were acting on behalf of and as attorneys for the Client in all the acts complained of by Plaintiff. There is simply no cognizable basis in either law or fact to conclude these acts fall outside the scope of Attorneys’ representation of Client. See *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 23, 567 S.E.2d 881, 893 (Ct. App. 2002). (“The absolute privilege covers anything that may be

said in relation to the matter at issue, whether it be in the pleadings, in affidavits, or in open court.”)

Plaintiff also argues Attorneys acted outside of the scope of their representation and in their own personal interest when they allegedly created, embellished or made up better facts to strengthen Client’s claims. (Hr’g. Tr. pp. 21-24, ll. 15-2). Plaintiff argued at the hearing and in his memorandum that Attorneys conspired with Client because Attorneys would share in any judgment obtained as a result of the suit. (Hr’g. Tr. pp. 21-22, ll. 15-19). Despite Plaintiff’s claims, an attorney has an ethical obligation to zealously to pursue any lawful claim of his client and properly represent and support his client. *Gaar*, 287 S.C. at 529-30 (citing former Rule 32, Canon 7, Rules of Practice in the Supreme Court of South Carolina). And, no different than any other profession, an attorney obtains a fee as compensation for professional services rendered. The fee, which may be paid out of proceeds from a judgment, is directly tied to the representation of the client, and therefore falls squarely within the scope of representation. See *Gaar*, 287 S.C. at 529 (holding that an attorney normally conducts the litigation solely in his professional capacity and he has no personal interest in the suit). This Court finds there is no evidence Attorneys had any personal interest in their representation of Client.

Regarding Plaintiff’s allegations that Attorneys conspired with Client to make up or embellish certain facts to strengthen Client’s claims, Plaintiff points to Client’s deposition testimony that the number of times the LLR complaint states she visited the Plaintiff for treatment was wrong. (Hr’g. Tr. pp. 22-23, ll. 11-20). The relevant portion of Client’s Deposition, as cited at the hearing by Plaintiff, is as follows:

Q: “Dr. Battersby had been treating me for several issues once a week for 20 weeks.” Is that true?

A: "No. The 20 weeks is wrong."

Q: "And can you estimate -- I believe you said earlier that you thought you may have started with Dr. Battersby back in April."

A: "I thought I did, but I went back and looked. It was May 2nd":

Q: "What did you look at?"

A: "The cancelled check from my first visit."

(Dep. of Jan Morton, June 18, 2014, p. 76, ll. 6-17). Contrary to Plaintiff's assertions, this deposition testimony clearly shows Client was mistaken in her original estimation stated in the LLR complaint, and the number was not an embellishment or number otherwise made up by Attorneys. This Court therefore finds there is no evidence Attorneys conspired with Client to makeup or embellish facts to strengthen Client's case.

Turning to the other exception to the general rule of attorney immunity, Plaintiff's Complaint does not allege, and this Court finds that Attorneys owed no duty to the Plaintiff. The Plaintiff is not a client of Attorneys. At the hearing and in his memorandum, Plaintiff argues that Rule 3.3 Candor Toward the Tribunal of the South Carolina Rules of Professional Conduct imposes a duty on Attorneys to Plaintiff. In particular, Plaintiff argued that Attorneys owed Plaintiff a duty of advising their Client not to report her allegations to law enforcement. Rule 3.3 mandates that a lawyer not knowingly make false statements or present evidence the lawyer knows to be false to a tribunal, fail to correct the past representations later discovered to be false, or knowingly permit a client to engage in fraudulent conduct without taking remedial measures or disclosing to the tribunal. By its plain language, this Court finds that Rule 3.3 does not impose upon Attorneys a duty to Plaintiff. Therefore, this Court finds Attorneys are entitled to summary judgment in their favor on all of Plaintiff's claims.

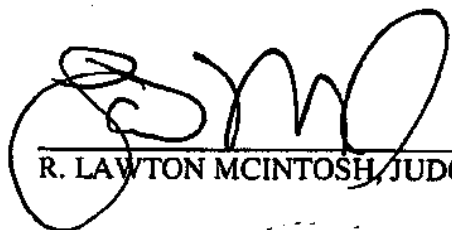
LCB

Assuming arguendo Attorneys owed a duty to Plaintiff, this Court finds Attorneys breached no such duty. Plaintiff alleges Attorneys should have recognized Client was lying when she informed them Plaintiff was wearing a robe during the alleged incident, but then reported later to law enforcement that Plaintiff was wearing a towel. First, the Court finds these are subtle differences of no material distinction, both figuratively and literally, so as to put Attorneys on notice that Client may be lying. Second, the police report which contains the allegedly different descriptors of Plaintiff's attire was not created until *after* Attorneys advised Client to report to the police – the very act Plaintiff claims Attorneys should have advised their Client against doing. The Attorneys therefore would not have had the benefit of the very report Plaintiff claims should have put them on notice.

CONCLUSION

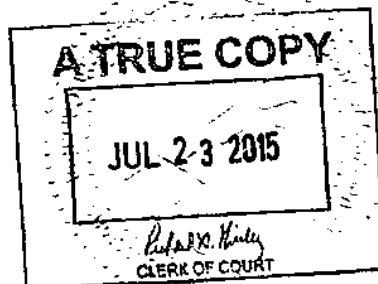
For the foregoing reasons, it is hereby ordered that Attorneys' Motion for Summary Judgment is GRANTED. There being no just reason for delay, FINAL JUDGMENT is hereby entered against the Plaintiff and in favor of the Defendants J. Kirkman Moorhead and Krause, Moorhead and Draisen, P.A.

AND IT IS SO ORDERED.


R. LAWTON MCINTOSH, JUDGE

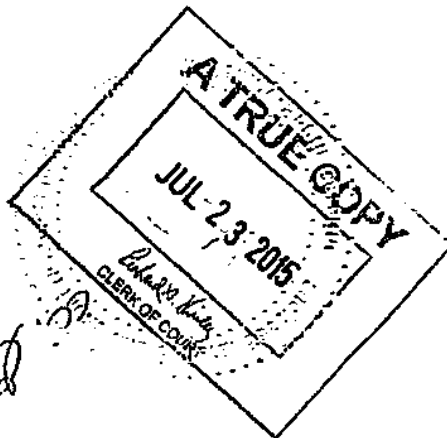
Anderson, South Carolina

7-8, 2015



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ANDERSON SC
2015 JUL 10 AM 9:42
COMMON PLEAS AND
GENERAL SESSIONS

51-01-L
Copy of
Sandra Smith (Jill)
Honeydew



**APPELLANT'S MOTION FOR
RECONSIDERATION
February 18, 2016**



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Gregg Battersby,

MOTION TO RECONSIDER

Respondent,

-VS-

C.A. No.: 2015-CP-00667

J. Kirkman Moorhead, et. al.

Petitioners.

TO: THE HONORABLE R. LAWTON MCINTOSH. AND PETITIONERS J. KIRKMAN MOORHEAD, STEVE KRAUSE, AND DANIEL DRAISDEN, ATTORNEYS AT LAW:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the

Respondent will move before the Honorable R. Lawton McIntosh, on the 21st day of April, 2016 for an Order vacating the Order Granting Sanctions was signed on February 3, 2016, and filed on February 8, 2016. The order was served electronically on February 9, 2016. Respondent hereby files this Motion to Reconsider on this 16th day of February, 2016, pursuant to Rule 52(b), Rule 59(e) and Rule 60(b).

COMMON PLEAS AND
GENERAL SESSIONS
ANDERSON COUNTY

2016 FEB 18 PM 4:10

FILED-CLERK'S OFFICE
ANDERSON SC

FACTS

The undersigned began representing the Respondent in December of 2014. Prior to that, the Respondent had been represented by Sarah Drawdy, Esquire. The undersigned, a sole practitioner, began providing representation for the Respondent in General Sessions, in an action against the LLR in Federal Court and in Administrative Court, in an action in Federal Court against the Anderson County Sheriff's Department, in an action against the alleged victims of "exposure" and Tommy Dunaway, Esquire, in the Court of Common Pleas, and, in an action against J. Kirkman Moorhead, Esquire, and Allstate Northland in the Court of Common Pleas.

Discovery completed in the actions against the LLR provided the opportunity to see how specious the claims of the victims were. Based on the findings of said discovery, it became readily apparent that the claims of the victims were fabricated. Upon learning of an audio taped interview

that the sheriff's office had conducted, but failed to produce, a specific request was made for audio tape. The State begrudgingly provided the tape after a Motion to Compel had been filed and served.

The audio tape illustrated various discrepancies in relation to the Incident and Supplementary Reports, which had been completed ten days before the interview. The many discrepancies were pointed out to the State. As a result, the Solicitor dismissed the case. However, the Temporary Suspension continued, depriving Dr. Battersby of the opportunity to earn a living.

The client was steadfast in his resolve to address what he considered the egregious wrong that had been done. He had been by-passed by counsel when it came to resolving the accident case which brought the parties together in the first place. More importantly, the combined efforts of the "victims" led to the suspension of his chiropractic license, which spanned greater than two years, only to essentially be dismissed.

The undersigned did not include the Respondents in any litigation until a lengthy amount of time had elapsed. I was privy to a great deal of discovery/information that the Court did not have before it. My past is well-chronicled. I mind my own business. I most certainly don't do things that will raise any court's eyebrows. It was my belief that all of the things that I had before me provided me with "probable cause" to move forward in the manner that I did. Once the Court granted Summary Judgment to the Respondents, the undersigned immediately prayed for a dismissal of the claim. It is my contention now, and shall remain that way, that I did have a reasonable belief that the actions filed by my client were based on logical deductions from someone who has practiced since 1994.

PRAYER

With regard to the imposition of sanctions, I had never been sanctioned-or been up for sanctions for that matter, prior to this litigation. My practice focuses on the have-nots and, as a result, I have not. I have attached my 2014 tax return to this Motion to Reconsider in an effort to illustrate my inability to pay the sanctions. Given the fact that the undersigned has never been

sanctioned, nor sued for malpractice, at any point in his career, the undersigned prays that the monetary aspect of the sanctions be vacated.

My zealous advocacy for my client was the source of my signature being applied to the Complaint that was filed. But for the failure of counsel to address the outstanding lien with the chiropractor, prior to disbursement, the undersigned wouldn't have been part of this litigation. Furthermore, the reasoning behind the failure to take care of the lien for which there was an express prohibition against the disbursement of the proceeds, was that my client had been suspended. The LLR complaint created by counsel (according to the client) was never amended in any way. The complaints to the LLR cost my client his license.

I was zealously advocating for my client with the evidence that I had before me. There was no bad faith. There was no intent to delay. There was no intent to harass. I pray that these things are taken into account, when reconsidering the assessment of greater than \$11,000.00 in sanctions. The penalty of these sanctions will have more than a teaching element. They will cause financial ruin, as well as causing a significant chilling effect on the aforementioned zealous advocacy. I pray for the vacation of the monetary aspect of the sanctions.

Date: February 18, 2016.


Donald L. Smith
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

**RESPONDENTS' MOTION TO
ENTER MONETARY SANCTIONS
IN THE JUDGMENT ROLL
October 15, 2019**

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Gregg Battersby,

Plaintiff,

-vs-

J. Kirkman Moorhead
Krause, Moorhead & Draisen, P.A.,
Allstate Insurance Company,

Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

MOTION TO ENTER
ORDER FOR MONETARY SANCTIONS
IN THE JUDGMENT ROLLS

C/A: 2015-CP-04-00667

TO: DONALD L. SMITH, ESQ.

The Defendant, J. Kirkman Moorhead and Krause, Moorhead and Draisen, PA, by and through their undersigned counsel, will move before this Honorable Court within ten (10) days hereof, or as soon thereafter as he may be heard, for an Order directing that the Court's Order filed in this case on February 4, 2016 and granting monetary sanctions against Donald L. Smith, Esq., be reduced to judgment and entered into the judgment rolls and indexes for Anderson County, South Carolina.

The Order for Sanctions in this case was entered for Eleven Thousand Two Hundred and Six and 20/100s (\$11,206.20) Dollars on February 4, 2016 and ordered paid by Donald Loren Smith to J. Kirkman Moorhead and Krause, Moorhead and Draisen, PA within 30 days. Thereafter, on February 18, 2016, Donald Loren Smith moved for Reconsideration of the Order for Sanctions. The Plaintiff's Motion for Reconsideration was denied by Order of this Court filed April 22, 2016. Since that time, there has been no further action by any party to the case or counsel of record in the case.

Donald Loren Smith has made no attempt to pay any portion or the monetary sanction.

It has come to the attention of the Movants that despite the Court's Order awarding monetary sanctions, the Order does not appear in the indexes or rolls for judgments in Anderson County. In the absence of the same, the Movants do not benefit from the protections afforded other judgment creditors in that the existence of the judgment cannot be similarly searched because (1) while Donald Loren Smith was ordered to pay sanctions, he is counsel of record and not a party to the case and (2) while the Order clearly states that Donald Loren Smith is ordered to pay money, an electronic search of the County Records, the contemporary manner of searching for judgments by party name, does not reveal the Order.

Therefore, the Movants respectfully request that the Order for Sanctions ordering Donald Loren Smith to pay to J. Kirkman Moorhead and Krause, Moorhead and Draisen, PA the sum of Eleven Thousand Two Hundred and Six and 20/100s (\$11,206.20) be entered in the judgment rolls or indexes against Donald Loren Smith in the same manner in which other civil judgments are customarily entered in the County, utilizing the name of the Judgment debtor, Donald Loren Smith. Movants are entitled to post-judgment interest at the legal rate from February 4, 2016.

To the extent that the Court views this as an administrative matter, the Movant requires no hearing.

Respectfully submitted,

KRAUSE, MOORHEAD & DRAISEN, P.A.

s/ Steven M. Krause

STEVEN M. KRAUSE, SC BAR# 03571

207 East Calhoun Street

Anderson, South Carolina 29621

(864) 225-4000

**Attorney for the Defendants, J. Kirkman Moorhead
and Krause, Moorhead and Draisen, PA**

October 10, 2019.

**EXCERPTS OF HEARING TRANSCRIPT
ON MOTION TO ENTER MONETARY
SANCTION IN THE JUDGMENT ROLLS
December 5, 2019**

1 State of South Carolina
2 County of Anderson In the Court of Common Pleas

3
4 Gregg Battersby,)
5 Plaintiff,) 2015-CP-04-00667
6 -vs-) December 5, 2019
7 J. Kirkman Moorhead,)
8 Krause, Moorhead and)
Draisen, P.A., et al.,)
9 Defendants.)
10 _____) Transcript of Record

11
12 B E F O R E:

13 The Honorable R. Lawton McIntosh, Judge
14

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

16 Donald L. Smith, Esquire
Attorney for Plaintiff

17 Steven M. Krause, Esquire
18 Attorney for Defendants

19
20
21 Reported by:
22 Diane L. Marcengill, RPR, CRR, CRC
23 Circuit Court Reporter
24
25

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 2:27 p.m.)

4 THE COURT: Mr. Moorhead, this is a motion to have
5 sanctions ordered permitted to the judgment rolls.

6 Quite frankly, I think it's just administrative.

7 MR. KRAUSE: Your Honor, I'll appear on behalf of
8 the firm since Mr. Moorhead was a party. And I agree
9 with the Court. I think it's a ministerial function.
10 That's what we attempted to do. In defense of the
11 clerk, the issue is Mr. Smith was not a party to this
12 action for the order, so there was no way that the
13 clerk's office could hold him to a judgment because
14 he's not a party.

15 So the only mechanism that we knew of was to file
16 this motion asking the Court to order that the previous
17 order of the Court requiring the sanctions and the
18 monetary fine be reduced to a judgment and filed in the
19 civil judgment roll.

20 THE COURT: Anything in response, Mr. Smith?

21 MR. SMITH: Absolutely, your Honor. You can
22 correct me if I'm wrong, but I believe when you denied
23 my motion for reconsideration, you said Mr. Krause was
24 to prepare a formal order, and I have not seen that
25 formal order, at least from a filing standpoint. It's

1 not clocked or anything, so I don't have anything to
2 appeal on, and that's what I'm seeking. I don't have
3 that order to appeal. It says here, right here,
4 "Mr. Krause to prepare a form order."

5 THE COURT: Just denying the motion for
6 reconsideration.

7 What did my motion for reconsideration state?

8 MR. KRAUSE: It denied it, your Honor.

9 THE COURT: Well, I think you do need to probably
10 prepare a short order denying the motion for
11 reconsideration and then order -- you can do it in the
12 same thing -- order the clerk to register it as a
13 judgment.

14 MR. KRAUSE: All right, sir. I'll prepare an
15 order denying the reconsideration request and ordering
16 the clerk to enter a --

17 THE COURT: It's going to be like any other
18 judgment order under appeal.

19 Mr. Smith, if I -- let me say, if you were to get
20 judgment against me for \$100 and it's registered in the
21 clerk's office, it's still indexed, but it shows -- you
22 can look at it and see it's under appeal so it's not
23 there. It's going to be the same thing in this case.

24 (WHEREUPON, proceedings concluded at 2:31 p.m.)

25 ***END OF REQUESTED TRANSCRIPT OF RECORD***

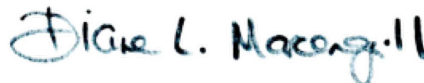
Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter
for the Tenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate, and complete transcript of record of a
portion of the proceedings had and evidence introduced
in the trial of the captioned case, relative to appeal,
in the Circuit Court for Anderson County, South
Carolina, on the 5th day of December 2019.

This transcript may contain quoted material. Such
material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

February 8, 2020



Diane L. Marcengill, RPR, CRR, CRC
Circuit Court Reporter

NOTICE OF APPEAL
January 13, 2020

**FORM 1
NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

Case No.: 2015-CP-04-00667

Donald L. Smith, Esq.,

Appellants,

v.

J. Kirkman Moorhead, Krause, Moorhead &
Draisen, P.A.,

Respondents.

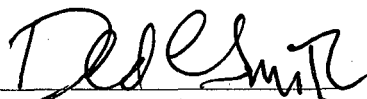
RECEIVED

JAN 16 2020

SC Court of Appeals

NOTICE OF APPEAL

The undersigned counsel respectfully appeals Judge R. Lawton McIntosh's challenged Orders, including : Order, dated July 10, 2015; Order/Form 4, dated October 8, 2015; Order, dated February 4, 2016; Order/Form 4, dated April 22, 2016; Form 4, dated December 6, 2019; and, Order, December 16, 2019, in the case of Gregg Battersby v. J. Kirkman Moorhead, et.al., C.A. No. 2015-CP-04-00667.



Donald L. Smith (Bar #: 6699)

Attorney for Appellants

122 N. Main Street

Anderson SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

attorneydonaldsmith@gmail.com

Anderson, SC
January 13, 2020.

Other Counsels:

Mr. Steven M. Krause, Esq.
Krause Moorhead & Draisen, P.A.
207 E Calhoun St, Anderson, SC 29621

Mr. Timothy Alan Nowacki, Esq.
Clardy Law Firm, P.A.
1001 E Washington St, Greenville, SC 29601

Attorneys for Respondent J. Kirkman Moorhead

FORM 7
PROOF OF SERVICE
FILING NOTICE OF APPEAL
THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

Case No. 2015-CP-04-00667

Donald L. Smith,

v.

J. Kirkman Moorehead, Krause, Moorhead &
Draisen, P. A.,

Appellant,

Respondents.

PROOF OF SERVICE

I certify that I have served the following documents:

- a) Appellant's Notice of Appeal;
- b) Copies of Judge McIntosh's challenged Orders in the case of Gregg Battersby v. J. Kirkman Moorhead, et al., C.A. No. 2015-CP-04-00667:
 - a. Order, dated July 10, 2015;
 - b. Order/Form 4 dated October 8, 2015;
 - c. Order, dated February 4, 2016;
 - d. Order/Form 4, dated April 22, 2016;
 - e. Order/Form 4, dated December 6, 2019; and,
 - f. Order, dated December 16, 2019
- c) Copies of Transcript Request Forms for Court Reporters Dianne Marcengill and Vivian Cross and South Carolina Court Administration Office, and,
- d) Proof of Service of same,

upon The Honorable Jenny Abbott Kitchings, Clerk of Court South Carolina Court of Appeals, at PO Box 11629, Columbia SC 29211, and Respondents, by and through their counsel of record, Mr. Steven M. Krause, Esq. Krause Moorhead & Draisen, P.A., located at 207 E Calhoun St, Anderson, SC 29621, and Mr. Timothy Alan Nowacki, Esq. at Clardy Law Firm, P.A. located at

1001 E Washington St, Greenville, SC 2960, by depositing a copy of same in the United States Mail, postage prepaid, on January 13, 2020.

Anderson, South Carolina
January 13, 2020


Donald L. Smith (SC Bar#6699)
122 N. Main Street
Anderson, SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Appellant

EXHIBITS

**PROOF PLAINTIFF HAD
EQUITABLE ASSIGNMENT OF
BENEFITS ON SETTLEMENT
PROCEEDS FROM CARRIE NEAL**

EXHIBIT 1

5/16/2014 3:20 PM Central sw kathy from atty dunaway's of ... Injury Nettie J. Gass Carrie Neal

sw kathy from atty dunaway's office ... kathy stated that she is aware of dr battersby's atty. donald smith, attempt to collect on his lien ... kathy stated that after dr battersby incident exposure charges, the chiro left town for approx 7 mos and was not responding to atty dunaway's attempts to contact him to discuss the lien ... kathy stated that atty dunaway is addressing all correspondence with dr battersby's atty and atty dunaway is aware that he would be responsible for the lien ...

Subpoena recd from law firm of ... Correspondence Kim D. Eargle Carrie Neal

**LETTER OF SETTLEMENT AND
DISBURSEMENT INSTRUCTIONS
FROM ALL STATE NORTHBROOK
TO ATTORNEY DUNAWAY**

EXHIBIT 2

September 09, 2013

PHONE NUMBER: 803-213-3637
FAX NUMBER: 866-467-2763
OFFICE HOURS: Mon - Fri 8:00 am - 5:30 pm,
Sat 8:00 am - 4:00 pm

I am pleased that we have been able to settle this claim in an amicable manner. You will find enclosed the release for your client's signature. The check for your client will be mailed under separate cover.

The check is being delivered to you in trust on the express condition that no funds be disbursed until the fully and properly executed release has been returned to me, and on further express condition that no funds be dispersed to your client until any and all liens, medical, Medicare, Medicaid, legal or otherwise, have been satisfied.

Thank you for your assistance in resolving this case.

Sincerely,

NETTIE GASS

NETTIE GASS
803-213-3637
Northbrook Indemnity Company

0256081043 RNG

LLR ONLINE COMPLAINT

10 1 of 1 100% Find | Next

LLR Online Complaint

Complaint:

CHIROPRACT
IC

Confirmation Number: 240-3493681078

Received: 8/28/2013 11:17:19 AM

Complainant:

Jan Gantner

201 Centerville Rd
Anderson, SC 29625-2648

Phone Number: 8642022821

Cell Number: 8642022821

Email: jangantner@live.com

Date of Birth: 11/25/1976

Respondent:

Dr. Gregg Newton Battersby

DC -3011-DC

Detail:

On or about June 1, 2013, I contacted Dr. Battersby to see if I might see him that day due to significant neck and shoulder pain that I had been dealing with for a number of months. Dr. Battersby had been treating me for cervical issues about once a week for approximately 20 weeks. On this day he agreed to see me, asking me to come right away. It took me about fifteen minutes to get to his office. When I arrived, I rang the doorbell and waited for about a minute for him to answer. He answered the door wearing a bath towel wrapped around his waist and no shirt or shoes. I wasn't aware whether he had on anything beneath the towel. He told me to come in and I came in and sat on the examination table. Dr. Battersby was in the foyer adjacent to the examination room. From the foyer, he asked about my symptoms and told me to lie down and relax. I lay down and told him that I was in lots of pain, I was anxious, my hands were shaking, and I was sweating and cold with pain stabbing into my stomach from my left rib cage. (Incidentally, it turned out that the symptoms were the result of shingles). I told him to take his time assuming he would put something on. I had closed my eyes and after a few seconds opened them to find him over me. He began pressing on my stomach. He began adjustments while wearing the towel. This lasted a matter of

30-40 seconds. He went to pop my neck and I stopped him because of the circumstances making me nervous. I told him I was anxious and couldn't relax. He began massaging the back of my neck, then quickly popped it anyway. I was upset and didn't feel well, he told me to lay there for a moment and breathe. He asked me to sit up and walk to another table and lay down on my stomach. He manipulated my legs and feet and pressed on my lower back / hips. He asked me to move to a third table that was hinged in the middle. I did. He moved my lower body left and right, up and down. I had never done this before. He cut on a vibration machine and placed it on my mid to upper back and went up and down from my neck to lower back, then he moved to my lower buttocks in the area of the crease of my thighs. He didn't go back up, but stayed on my rear end for maybe 30 seconds. It made me anxious and uncomfortable because I had never had this done and I couldn't understand what reason he would have to treat my rear end when we thought my problems were cervical in nature. He shut the machine off and I then felt something on my right lower middle back. In retrospect, I believe this was his penis. He asked if it felt good in sort of a low voice. Because these sort of out-of-the-ordinary things, I raised up and looked around to find him nude and with an erect penis. I jumped up and got out the door quickly. There was no conversation or exclamations. I just left quickly. I did not pay. I initially did not tell anyone. I didn't tell my husband because I was scared he might physically confront Battersby. I finally told my husband around June 22 when we had dropped off the kids in Tennessee to stay with their grandmother. I knew that we would have the rest of the weekend in Tennessee so he could cool off during that time. He told me either I could report it to the police or he was going to handle it. Within a day of returning to South Carolina, I reported the incident to the Anderson County Sheriff's Office. I later spoke to my friend who had initially referred me to Dr. Battersby. I found out that she had also had an experience where he was nude in front of her when she was at his office on chiropractic business.

8/28/2013 12:19:18 PM

SUPPLEMENTARY REPORT
CASE NO.: 2013-33674

Exhibit 2

AGENCY I.D.
SC0040000

SUPPLEMENTARY REPORT

CASE NUMBER

2,0,1,3, - 3,3,6,7,4

NO. EXD.

N N

☐ ORIGINAL REPORT	☒ SUPPLEMENTAL REPORT	☐ LOCATION WORKS	☐ ADDITIONAL SYD/CH PROPERTY	PAGE 1
☐ MODIFIED ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENSES	☐ ADDITIONAL RESOURCES PROPERTY	

CONT-FROM-PG-1 RESTRICTED TO INVESTIGATIONS

On 7-8-13 Deputy Marter received a report of sexual indecent exposure. I spoke with the victim whom advised that while arriving at the office which is also Battersby's residence he had answered the door in a men's robe. He asked her in and disappeared for a few minutes. Upon returning he was still in his robe, but had her get onto the exam table as he started to do chiropractic adjustments in her neck area. He then used a mechanical massager to work upon her neck area. After completing this he then asked her to move to the other table and she lied face down and he began to use the same item to massage her lower extremities. She stated this was not normal and felt that it was inappropriate as he was moving lower towards her bottom area and he was way too close to her while doing this. She stated that she felt very uncomfortable and wanted to leave the office. As the victim got up to leave, Battersby had dropped his robe to the floor and was very close to her with a fully erect penis. She felt like if she did not leave he may try and assault her. There was no explanation for his behavior nor did he attempt any sexual contact of her at that moment. She quickly left the location without further incident. She further advised that the subject has been calling her over the last three weeks attempting to get her back in the office so far she had declined and wont return.

SUBJECT IDENTIFIED ☐ YES ☒ NO	SUBJECT LOCATED ☐ YES ☒ NO	☒ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED	☐ ARRESTED SUBJECT IN ☒ ARRESTED IS AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR IS AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH, 2. ☐ NO PROSECUTION, 3. ☐ EXTRADITION ORDER, 4. ☐ VICTIM DECLINES COOPERATION, 5. ☐ JUVENILE - NO CUSTODY				
REPORTING OFFICER(S) MARTER, P. D.	DATE 07/08/13	UNIT NUMBER	APPROVING OFFICER SGT. WILLIAMSON, GREG	DATE 07/09/13
FOLLOWUP INVESTIGATION		APPROVING OFFICER ASHLEY, S. W.		

**JAN MORTON'S
ANSWER AND COUNTERCLAIM
November 20, 2014**

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	Case No.: 2014-CP-04-1121
 Gregg Battersby	)	
Plaintiff	)	
v.	)	DEFENDANT, JAN MORTON'S ANSWER AND
	)	COUNTERCLAIM TO PLAINTIFF'S SECOND
Carrie Neal, Jan Morton and Tom W.	)	AMENDED COMPLAINT
Dunaway, III	)	
	)	
Defendants	)	
_____	)	

The Defendant, Jan Morton (aka Jan Morton Gantner), answering the Second Amended Complaint of the Plaintiff herein, hereby responds, alleges and says as follows:

- 1) All allegations of the Plaintiff's Second Amended Complaint not hereinafter admitted, modified or explained are hereby denied and strict proof demanded thereof.

FOR A FIRST DEFENSE

- 2) This Defendant admits the allegations of Paragraphs 1, 2 and 3 of the Plaintiff's Second Amended Complaint.
- 3) Paragraph 4 of the Plaintiff's Second Amended Complaint calls for a legal conclusion and therefore requires no response.
- 4) This Defendant admits the allegations of Paragraphs 5 and 6 of the Plaintiff's Second Amended Complaint.
- 5) This Defendant, having insufficient information, denies the allegations of Paragraphs 7, 8, 9 and 10 of the Plaintiff's Second Amended Complaint.
- 6) As to Paragraph 11 of the Plaintiff's Second Amended Complaint, this Defendant is unclear as to which matters the Plaintiff is referencing, and therefore denies the same.
- 7) This Defendant, having insufficient information, denies the allegations of Paragraphs 12 and 13 of the Plaintiff's Second Amended Complaint.
- 8) This Defendant denies Paragraph 14 of the Plaintiff's Second Amended Complaint.

- 9) As to Paragraph 15 of the Plaintiff's Second Amended Complaint, this Defendant, without characterizing the nature of the communication, admits communicating with the Defendant Neal between May and July 2013.
- 10) This Defendant denies the allegations of Paragraph 15 of the Plaintiff's Second Amended Complaint.
- 11) As to Paragraph 16 of the Plaintiff's Second Amended Complaint, this Defendant, admits making a report to the Anderson County Sheriff's Office. The remaining allegations of this Paragraph are denied.
- 12) This Defendant, having insufficient information, denies the allegations of Paragraphs 17 and 18 of the Plaintiff's Second Amended Complaint.
- 13) As to Paragraph 19 of the Plaintiff's Second Amended Complaint, this Defendant, without characterizing the nature of the communication, admits communicating with the Defendant Neal between May and July 2013.
- 14) This Defendant denies the allegations of Paragraph 20 of the Plaintiff's Second Amended Complaint.
- 15) This Defendant, having insufficient information, denies the allegations of Paragraphs 21 of the Plaintiff's Second Amended Complaint.
- 16) This Defendant denies the allegations of Paragraph 22 of the Plaintiff's Second Amended Complaint.
- 17) As to Paragraphs 23 of the Plaintiff's Second Amended Complaint, this Defendant denies the allegations and notes that she does not have an "incident report" of her own and acknowledges that the incident report of the Anderson County Sheriff's Office includes inaccuracies in her statement.
- 18) This Defendant, having insufficient information, denies the allegations of Paragraphs 24 and 25 of the Plaintiff's Second Amended Complaint.
- 19) This Defendant admits the allegations of Paragraph 26 upon information and belief.

20) This Defendant, having insufficient information, denies the allegations of Paragraphs 27 to 35, inclusive, of the Plaintiff's Second Amended Complaint.

21) This Defendant denies the allegations of Paragraph 36 of the Plaintiff's Second Amended Complaint.

22) This Defendant denies the allegations of Paragraphs 38, 39, 41, 42, 43, 45, 46, 47, 49, 50, 51, 53, 54, 55, 57, 58, 59, 61, 62 and 63 of the Plaintiff's Second Amended Complaint.

FOR A SECOND DEFENSE

23) The Plaintiff fails to state a claim upon which relief may be granted. The claims should be dismissed pursuant to SCRCivP 12(b)(6).

FOR A THIRD DEFENSE

24) As to the Plaintiff's Claim of False Imprisonment and false arrest, this Defendant asserts the defenses of lawful arrest and authorization.

FOR A FOURTH DEFENSE

25) The Plaintiff fails to state his claim for defamation with specificity.

FOR A FIFTH DEFENSE

26) This Defendant pleads truth as a defense to defamation.

FOR A SIXTH DEFENSE

27) This Defendant pleads qualified immunity/privilege and /or conditional immunity/privilege in her report of unlawful activity to law enforcement as a defense to defamation.

FACTUAL ALLEGATIONS BY WAY OF COUNTERCLAIM

28) On or about June 1, 2013, this Defendant presented at the office of the Plaintiff for the purposes of receiving chiropractic care.

29) Upon her arrival, she found the Plaintiff to apparently be clad solely in a bath towel secure around the Plaintiff's waist, despite his having approximately 15 minutes notice of her arrival.

- 30) Believing that the Plaintiff was intending to clothe himself further, this Defendant took a place facedown on a therapy table at the Plaintiff's instruction.
- 31) The therapy thereafter began, and at some point, this Defendant became aware that the Plaintiff was still clad only in a towel. This made this Defendant uncomfortable, but because of this Defendant's pain, discomfort and illness (later determined to have been caused by shingles) she continued the chiropractic treatment.
- 32) As this Defendant lay face down on the therapy table, the Plaintiff began to utilize a device that vigorously massaged this Defendant's back. The Plaintiff manipulated the device lower on this Defendant until the device was vigorously massaging this Defendant's lower buttocks. The device was shut down and this Defendant felt a sensation of touch on her lower right back area, above where the vigorous massaging had been taking place.
- 33) This Defendant, confused by receiving therapy to her lower back and buttocks to address issues in the area of her upper back, raised her head and turned to look at the Plaintiff. She was alarmed to find the Plaintiff, inches away from her, fully nude with his penis in an erect state.
- 34) The Plaintiff, on information and belief of this Defendant, was utilizing the massaging device to attempt to sexually stimulate this Defendant and thereafter placed his erect penis on the small of her back.
- 35) Immediately upon discovering this state of affairs, this Defendant rose from the therapy table, grabbed her belongings and fled the premises.

FOR A SEVENTH DEFENSE BY WAY OF COUNTERCLAIM

- 36) This Defendant realleges the prior allegations of this Answer and Counterclaim, to the extent they are not inconsistent herewith.
- 37) The intentional actions of the Plaintiff placed this Defendant in reasonable apprehension of an offensive touching and/or constituted an offensive touching without consent of this Defendant.

38) As a direct result of the actions of the Plaintiff, this Defendant has suffered an invasion of her peace of mind, a sense of being violated, intrusion into her personal space and mental disturbance.

39) This Defendant is entitled to recover damages, both actual and punitive from the Plaintiff as a result of Plaintiff's assault and battery of her.

FOR AND EIGHTH DEFENSE BY WAY OF COUNTERCLAIM

40) This Defendant realleges the prior allegations of this Answer and Counterclaim, to the extent they are not inconsistent herewith.

41) The actions of the Plaintiff were extreme and outrageous and exceeded all bounds of decency. They were atrocious and utterly intolerable in a civilized society.

42) The actions of the Plaintiff have caused this Defendant emotional upset, mental disturbance, loss of peace of mind and left her feeling violated. No person should or could be expected to endure it.

43) The Plaintiff did so in an intentional manner.

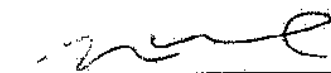
44) This Defendant is entitled to recover damages, both actual and punitive from the Plaintiff as a result of Plaintiff's outrageous conduct.

WHEREFORE, having fully responded to the Second Amended Complaint of the Plaintiff, this Defendant prays that the Plaintiff's Second Amended Complaint be dismissed, with costs awarded to this Defendant.

FURTHERMORE, this Defendant prays for an award of damages from the Plaintiff, both actual and punitive, on her Counterclaims against the Plaintiff and for such other relief as this Honorable Court may deem just and proper.

(Signature page following)

Respectfully Submitted,



J. Kirkman Moorhead, Esquire
KRAUSE, MOORHEAD & DRAISEN, PA
SC Bar ID: 7039
207 East Calhoun Street
Anderson, South Carolina 29621
(864) 225-4000
kmoorhead@kmdlawyers.com

Anderson, South Carolina
November 20, 2014

SUBPOENA FOR CARRIE NEAL

UNITED STATES DISTRICT COURT

for the
District of South Carolina

Gregg Battersby

Plaintiff

v.

Dr. Joseph Carew, Dr. Richard Heavner, Dr. Brian
Hughes, Dr. Jeanne McDaniel-Green, et al

Defendant

Civil Action No. 8:14CV761-HMH

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Carrie Neal

(Name of person to whom this subpoena is directed)

☒ **Testimony:** YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: Attorney Office of Donald Smith
122 N. Main St.
Anderson SC 29621

Date and Time:

06/03/2014 10:30 am

The deposition will be recorded by this method: Audio recording/transcription

☒ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: A complete copy of your file, including, but not limited to: emails, contemporaneous notes, settlement documentation, all correspondence with any and all insurance companies, etc, that materialized from the automobile accident for which Gregg Battersby provided you chiropractic treatment, and for which Tom Dunaway represented you.

The following provisions of Fed. R. Civ. P. 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/27/2014

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Gregg Battersby, who issues or requests this subpoena, are: Donald L. Smith, 122 N. Main St., Anderson SC 29621, attorneydonaidsmith@gmail.com, 864-642-9284

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 8:14CV761-HMH

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for (name of individual and title, if any) CARRIE NEAL
on (date) 5/27/2014.

☒ I served the subpoena by delivering a copy to the named individual as follows: CARRIE NEAL,
4145 HWY 29S, ANDERSON SC
on (date) 5/27/2014 ; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____

My fees are \$ — for travel and \$ 35.00 for services, for a total of \$ 35.00

I declare under penalty of perjury that this information is true.

Date: 5/27/14

[Signature]
Server's signature
MICHAEL MOSIER OWNER
Printed name and title ON THE WAY LLC

2000 DEER CREEK TRAIL, BUFORD, GA 30514
Server's address

Additional information regarding attempted service, etc.:

AFFIDAVIT OF MICHAEL MOSKE
August 11, 2015

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Gregg Battersby,

Plaintiff,

-vs-

AFFIDAVIT OF MICHAEL MOSKE

J. Kirkman Moorhead,
Krause, Moorhead & Draisen, P.A.,
Allstate Insurance Company,
Allstate Northbrook Indemnity Company

Defendants.

C.A. No.: 2015-CP-00667

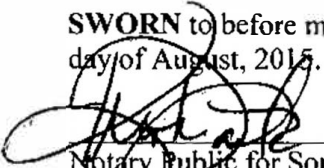
PERSONALLY appeared before me, Michael Moske, who being duly sworn, deposes and says that he is writing this affidavit regarding his service of a subpoena for the deposition of Carrie Neal in another action the plaintiff was prosecuting, and the following is based upon personal belief and knowledge:

I currently reside in Gwinnett County, Georgia. I offered my services while in Anderson for another assignment May of 2013. Mr. Smith offered me the opportunity to serve two individuals, Jan Morton and Carrie Neal, with subpoenas for their respective depositions. I accepted the offer and served them.

When I served Carrie Neal, she made a comment that was unsolicited. She said, "I'm not the only one. There are other guys." Since I did not ask her anything regarding the case, and had no independent knowledge of same, I took note of the statement. I left the residence soon after serving her with the subpoena.


Michael Moske

SWORN to before me this 11th
day of August, 2015.


Notary Public for South Carolina
My Commission Expires: 4/4/17

**APPELLANT'S 2014
1040- INCOME TAX RETURNS**

For the year Jan. 1-Dec. 31, 2014, or other tax year beginning , 2014, ending , 20 See separate instructions.

Your first name and initial DONALD L	Last name SMITH	Your social security number -3987
If a joint return, spouse's first name and initial	Last name	Spouse's social security number

Home address (number and street), Apt. no. **▲** Make sure the SSN(s) above and on line 6c are correct.

City, town or post office, state, and ZIP code. If you have a foreign address, also complete spaces below (see instructions).

ANDERSON SC 29625

Foreign country name Foreign province/state/country Foreign postal code

Filing Status

1 ☒ Single
2 ☐ Married filing jointly (even if only one had income)
3 ☐ Married filing separately. Enter spouse's SSN above
4 ☐ Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here.
5 ☐ Qualifying widow(er) with dependent child

Check only one box. and full name here. ▶

Exemptions

6a ☒ Yourself. If someone can claim you as a dependent, do not check box 6a
b ☐ Spouse

c Dependents:

(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) Chk if child under age 17 qualifying for child tax credit (see instructions)
				☐
				☐
				☐
				☐

If more than four dependents, see instructions and check here ☐

d Total number of exemptions claimed 1

Boxes checked on 6a and 6b: 1
No. of children on 6c who:
• lived with you
• did not live with you due to divorce or separation (see instructions)
Dependents on 6c not entered above
Add numbers on lines above ▶ 1

Income

Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.

If you did not get a W-2, see instructions.

7 Wages, salaries, tips, etc. Attach Form(s) W-2	7	
8a Taxable interest. Attach Schedule B if required	8a	
b Tax-exempt interest. Do not include on line 8a	8b	
9a Ordinary dividends. Attach Schedule B if required	9a	
b Qualified dividends	9b	
10 Taxable refunds, credits, or offsets of state and local income taxes	10	
11 Alimony received	11	
12 Business income or (loss). Attach Schedule C or C-EZ	12	18,397
13 Capital gain or (loss). Attach Schedule D if required. If not required, check here	13	
14 Other gains or (losses). Attach Form 4797	14	
15a IRA distributions	15a	
b Taxable amount	15b	
16a Pensions and annuities	16a	
b Taxable amount	16b	
17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	17	
18 Farm income or (loss). Attach Schedule F	18	
19 Unemployment compensation	19	
20a Social security benefits	20a	
b Taxable amount	20b	
21 Other income	21	
22 Combine the amounts in the far right column for lines 7 through 21. This is your total income	22	18,397

Adjusted Gross Income

23 Educator expenses	23	
24 Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ	24	
25 Health savings account deduction. Attach Form 8889	25	
26 Moving expenses. Attach Form 3903	26	
27 Deductible part of self-employment tax. Attach Schedule SE	27	1,300
28 Self-employed SEP, SIMPLE, and qualified plans	28	
29 Self-employed health insurance deduction	29	
30 Penalty on early withdrawal of savings	30	
31a Alimony paid b Recipient's SSN ▶	31a	
32 IRA deduction	32	
33 Student loan interest deduction	33	2,500
34 Tuition and fees. Attach Form 8917	34	
35 Domestic production activities deduction. Attach Form 8903	35	
36 Add lines 23 through 35	36	3,800
37 Subtract line 36 from line 22. This is your adjusted gross income	37	14,597

Tax and Credits

38	Amount from line 37 (adjusted gross income)	38	14,597
39a	Check ☐ You were born before January 2, 1950, ☐ Blind. } Total boxes ☐ if: ☐ Spouse was born before January 2, 1950, ☐ Blind. checked 39a ☐		
b	If your spouse itemizes on a separate return or you were a dual-status alien, check here 39b ☐		
40	Itemized deductions (from Schedule A) or your standard deduction (see left margin)	40	6,200
41	Subtract line 40 from line 38	41	8,397
42	Exemptions. If line 38 is \$152,525 or less, multiply \$3,950 by the number on line 6d. Otherwise, see instructions	42	3,950
43	Taxable income. Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-	43	4,447
44	Tax (see instructions). Check if any from: a ☐ Form(s) 8814 b ☐ Form 4872 c ☐	44	443
45	Alternative minimum tax (see instructions). Attach Form 6251	45	
46	Excess advance premium tax credit repayment. Attach Form 8962	46	
47	Add lines 44, 45, and 46	47	443
48	Foreign tax credit. Attach Form 1116 if required	48	
49	Credit for child and dependent care expenses. Attach Form 2441	49	
50	Education credits from Form 8863, line 19	50	
51	Retirement savings contributions credit. Attach Form 8880	51	
52	Child tax credit. Attach Schedule 8812, if required	52	
53	Residential energy credit. Attach Form 5695	53	
54	Other credits from Form: a ☐ 3800 b ☐ 8801 c ☐	54	
55	Add lines 48 through 54. These are your total credits	55	
56	Subtract line 55 from line 47. If line 55 is more than line 47, enter -0-	56	443
57	Self-employment tax. Attach Schedule SE	57	2,599
58	Unreported social security and Medicare tax from Form: a ☐ 4137 b ☐ 8919	58	
59	Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required	59	
60a	Household employment taxes from Schedule H	60a	
b	First-time homebuyer credit repayment. Attach Form 5405 if required	60b	
61	Health care: individual responsibility (see instructions) Full-year coverage ☐	61	
62	Taxes from: a ☐ Form 8959 b ☐ Form 8960 c ☐ Instructions; enter code(s)	62	
63	Add lines 56 through 62. This is your total tax	63	3,042

Other Taxes**Payments**

If you have a qualifying child, attach Schedule EIC.

64	Federal income tax withheld from Forms W-2 and 1099	64	
65	2014 estimated tax payments and amount applied from 2013 return	65	
66a	Earned income credit (EIC)	66a	
b	Nontaxable combat pay election 66b ☐		
67	Additional child tax credit. Attach Schedule 8812	67	
68	American opportunity credit from Form 8863, line 8	68	
69	Net premium tax credit. Attach Form 8962	69	
70	Amount paid with request for extension to file	70	
71	Excess social security and tier 1 RRTA tax withheld	71	
72	Credit for federal tax on fuels. Attach Form 4136	72	
73	Credits from Form: a ☐ 2439 b ☐ Reserved c ☐ Reserved d ☐	73	
74	Add lines 64, 65, 66a, and 67 through 73. These are your total payments	74	0

Refund

Direct deposit? See instructions.

75	If line 74 is more than line 63, subtract line 63 from line 74. This is the amount you overpaid	75	
76a	Amount of line 75 you want refunded to you . If Form 8888 is attached, check here ☐	76a	
b	Routing number	c	Type: ☐ Checking ☐ Savings
d	Account number		
77	Amount of line 75 you want applied to your 2015 estimated tax	77	

Amount You Owe

78	Amount you owe. Subtract line 74 from line 63. For details on how to pay, see instructions	78	3,043
79	Estimated tax penalty (see instructions)	79	1

Third Party Designee

Do you want to allow another person to discuss this return with the IRS (see instructions)? ☒ **Yes. Complete below.** ☐ **No**

Designee's name **JAMES H LINDLEY CPA** Phone no. **864-224-9230** Personal identification number (PIN) **55550**

Sign Here

Joint return? See instructions. Keep a copy for your records.

Your signature 23987	Date 07-01-2015	Your occupation	Daytime phone number
Spouse's signature. If a joint return, both must sign.	Date	Spouse's occupation	Identity Protection PIN (see inst.)

Paid Preparer Use Only

Preparer's signature JAMES H LINDLEY CPA	Date 07-01-2015	Check ☒ self-employed ☐ PTIN P00820481
Print/Type preparer's name JAMES H LINDLEY CPA	Firm's name Lindley & Tompkins LLP	Firm's EIN 57-1112994
Firm's address 1907 N Main Street Anderson, SC 29621	Phone no. 864-224-9230	

**AFFIDAVIT OF ATTORNEY'S
FEES AND COSTS
STEVEN KRAUSE, ESQUIRE**

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Gregg Battersby ,

Plaintiff,

-vs-

**J. Kirkman Moorhead, Krause, Moorhead
and Draisen, PA, et al,**

Defendants.

COURT OF COMMON PLEAS

**AFFIDAVIT FOR ATTORNEYS' FEES
AND COSTS**

C/A No. 2015-CP-04-00667

PERSONALLY APPEARED BEFORE ME, Steven M. Krause, Attorney at Law, who being first duly sworn, and joined herein by his client, states as follows:

1. That he is one of the attorneys for the Defendant Krause, Moorhead and Draisen, PA.
2. That he is a member of the South Carolina Bar engaged in the practice of law at the Law Offices of Krause, Moorhead and Draisen, PA of Anderson, South Carolina. He has primarily been engaged in the practice of law for 37 years.
3. That he is and has been a member of the South Carolina Bar Association, the American Bar Association, and the Anderson County Bar. That he is a member and has served as President of the South Carolina Association of Justice and is a member of the American Association of Justice. That he has served on the Committee of Lawyer Discipline for over twenty years. That he is Board Certified as a Civil Trial Specialist. That he is a member of the American Board of Trial Advocates. That he has served on numerous Boards and Committees for the South Carolina Bar, American Association of Justice and South Carolina Association of Justice.
4. That he and members of his firm have represented the Defendants J. Kirkman Moorhead and Krause, Moorhead and Draisen, PA personally in the proceedings which have been pending before the Court. That this Affidavit is filed in support of motion on behalf of his client for attorneys' fees and costs.

5. That he incorporates herein Rule 1.5, South Carolina Rules of Professional Conduct, which contains the Canons of Ethics concerning the settling of attorney's fees. That he further calls the attention of the Court to the plethora of case law decisions by the Supreme Court of South Carolina concerning the factors and criteria which should be considered in the setting of attorneys' fees. That he relies upon the discretion of this Court in the determination of the amount of fees based, among other things, upon the Court's files herein and the Court's knowledge of the litigation between these parties, which reflects the difficulty of the services rendered, the time necessarily expended, the result accomplished, the fact that there is no contingency of compensation, and the other factors which are set forth in the Canons of Ethics and the case law decisions of this State.

6. That he is informed and believes that the time spent in these matters as set forth more fully hereinafter was necessary to the protection of his client's interests and in order to make as concise and clear presentation to the Court of the issues as possible.

7. That the undersigned, in accordance with his time and expense records, states to the Court that he has expended 5 hours, 45 min. prior to the hearing on October 2, 2015, to be billed at \$300.00 per hour, (\$1,635.00). Attached hereto is a list of time put into the case.

8. That as of October 2, 2015, expenditures have been made through the undersigned and by his client in the total approximate sum of \$5,848.70. It being the information and belief of the undersigned that said expenditures should be added into any fees which this Court may hereinafter award.

9. That the foregoing time and expenditures have been computed as of October 2, 2015.

10. That based not only upon the time necessarily devoted to this case, but also upon the criteria which have been held to be relevant in setting of attorneys' fees and costs, the undersigned, on behalf of his client, requests that this Court review the file herein, together with this Affidavit, and grant judgement in favor of the undersigned Defendants' counsel in a sum which may be determined by the Court to be reasonable as attorney's fees, costs and suit money, and that the Plaintiff be required to pay the same within a reasonable time as may be determined by the Court.

SERVICES RENDERED

<u>DATE</u>	<u>NAME</u>	<u>DESCRIPTION</u>	<u>HOURS</u>
03/20/15	SMK	Review Complaint. Phone conference w/ALPS	0.30
04/01/15	SMK	Phone conference and e-mail to Englebardt	0.15
04/02/15	SMK	Meet w/Voisin re: research on immunity	0.15
04/22/15	SMK	Review Voisin memo & e-mails	0.30
04/23/15	SMK	E-mail w/memo to Englebardt	0.15
04/29/15	SMK	E-mail and discussion w/JKM	0.15
04/29/15	SMK	E-mail Englebardt and JKM	0.15
05/01/15	SMK	E-mail Englebardt and JKM	0.15
06/04/15	SMK	Hearing	2.00
07/06/15	SMK	E-mail	0.15
07/06/15	SMK	Review proposed Order w/Englebardt/JKM/TAN	0.45
07/23/15	SMK	Review Judge McIntosh's Order	0.15

TOTAL HOURS

5.45

TOTAL FEE

\$1,635.00

FURTHER AFFIANT SAYETH NOT.



STEVEN M. KRAUSE, SC BAR# 03571

SWORN TO AND ACKNOWLEDGED BEFORE ME
this 1st day of October, 2015.

 (L.S.)

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: April 14, 2018

CLIENT COSTS

All Transactions

10/01/15

Date	Num	Source Name	Memo	Paid Amount
Moorhead, Kirk (Battersby)				
04/27/2015	5303	Tory M.D. Voisin, Esq.	Battersby vs KMD and J. Kirkma...	600.00
06/12/2015	5318	ALPS	Battersby v Moorhead	982.50
07/14/2015	5406	ALPS	Battersby v Moorhead	757.80
07/16/2015	5413	Diane L. Marcengill, ...	Transcript	117.00
07/24/2015	5621	Anderson County Cl...	Filing Fee	25.00
08/19/2015	5509	ALPS	Battersby v Moorhead	320.00
08/21/2015	5734	Anderson County Cl...	Filing fee	25.00
09/24/2015	5572	ALPS	Battersby v Moorhead	3,021.40
Total Moorhead, Kirk (Battersby)				5,848.70
TOTAL				5,848.70

**AFFIDAVIT OF ATTORNEY'S
FEES AND COSTS
STEVEN LEVFRE ESQUIRE**

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Gregg Battersby ,

Plaintiff,

-VS-

**J. Kirkman Moorhead, Krause, Moorhead
and Draisen, PA, et al,**

Defendants.

COURT OF COMMON PLEAS

**AFFIDAVIT FOR ATTORNEYS' FEES
AND COSTS**

C/A No. 2015-CP-04-00667

PERSONALLY APPEARED BEFORE ME, Steven B. LeFevre, Attorney at Law, who being first duly sworn, and joined herein by his client, states as follows:

1. That he is one of the attorneys for the Defendant Krause, Moorhead and Draisen, PA.
2. That he is a member of the South Carolina Bar engaged in the practice of law at the Law Offices of Krause, Moorhead and Draisen, PA of Anderson, South Carolina. He has primarily been engaged in the practice of law for 10 years.
3. That he is and has been a member of the South Carolina Bar Association, the American Bar Association, and the Anderson County Bar.
4. That he and members of his firm have represented the Defendants J. Kirkman Moorhead and Krause, Moorhead and Draisen, PA personally in the proceedings which have been pending before the Court. That this Affidavit is filed in support of motion on behalf of his client for attorneys' fees and costs.
5. That he incorporates herein Rule 1.5, South Carolina Rules of Professional Conduct, which contains the Canons of Ethics concerning the settling of attorney's fees. That he further calls the attention of the Court to the plethora of case law decisions by the Supreme Court of South Carolina concerning the factors and criteria which should be considered in the setting of attorneys' fees. That he relies upon the discretion of this Court in the determination of the amount of fees

based, among other things, upon the Court's files herein and the Court's knowledge of the litigation between these parties, which reflects the difficulty of the services rendered, the time necessarily expended, the result accomplished, the fact that there is no contingency of compensation, and the other factors which are set forth in the Canons of Ethics and the case law decisions of this State.

6. That he is informed and believes that the time spent in these matters as set forth more fully hereinafter was necessary to the protection of his client's interests and in order to make as concise and clear presentation to the Court of the issues as possible.

7. That the undersigned, in accordance with his time and expense records, states to the Court that he has expended 5 hours prior to the hearing on October 2, 2015, to be billed at \$200.00 per hour, (\$1,000.00). Attached hereto is a list of time put into the case.

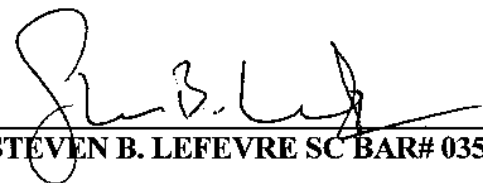
8. That the foregoing time and expenditures have been computed as of October 2, 2015.

9. That based not only upon the time necessarily devoted to this case, but also upon the criteria which have been held to be relevant in setting of attorneys' fees and costs, the undersigned, on behalf of his client, requests that this Court review the file herein, together with this Affidavit, and grant judgement in favor of the undersigned Defendants' counsel in a sum which may be determined by the Court to be reasonable as attorney's fees, costs and suit money, and that the Plaintiff be required to pay the same within a reasonable time as may be determined by the Court.

SERVICES RENDERED

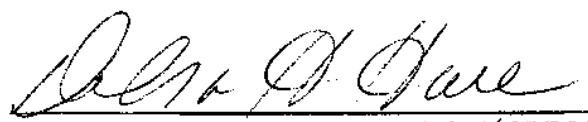
<u>DATE</u>	<u>NAME</u>	<u>DESCRIPTION</u>	<u>HOURS</u>
02/05/15	SBL	Review Complaint. Review Motions. Research	3.00
02/06/15	SBL	Prepare for oral argument at Motion to Add party Filed by Don Smith	1.50
02/06/15	SBL	Attend Motion to Add J. Kirkman Moorhead as Party filed by Don Smith	0.50
TOTAL HOURS			5.00
TOTAL FEE			\$1,000.00

FURTHER AFFIANT SAYETH NOT.



STEVEN B. LEFEVRE SC BAR# 03571

SWORN TO AND ACKNOWLEDGED BEFORE ME
this 1st day of October, 2015.



NOTARY PUBLIC FOR SOUTH CAROLINA (L.S.)
My Commission Expires: 4/14/2018

**AFFIDAVIT OF ATTORNEY'S
FEES AND COST
MR. TIMOTHY NOWACKI,
ESQUIRE**

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Gregg Battersby ,

Plaintiff,

-vs-

**J. Kirkman Moorhead, Krause, Moorhead
and Draisen, PA, et al,**

Defendants.

COURT OF COMMON PLEAS

**AFFIDAVIT FOR ATTORNEYS' FEES
AND COSTS**

C/A No. 2015-CP-04-00667

PERSONALLY APPEARED BEFORE ME, Timothy A. Nowacki, Esq., who being first duly sworn, and joined herein by his client, states as follows:

1. That he is one of the attorneys for the Defendant Krause, Moorhead and Draisen, PA.
2. That he is a member of the South Carolina Bar engaged in the practice of law at the Law Offices of Krause, Moorhead and Draisen, PA of Anderson, South Carolina. He has primarily been engaged in the practice of law for 3 years.
3. That he is and has been a member of the South Carolina Bar Association, the American Bar Association, and the Anderson County Bar. That he is a member of the South Carolina Association of Justice and the American Association of Justice.
4. That he and members of his firm have represented the Defendants J. Kirkman Moorhead and Krause, Moorhead and Draisen, PA personally in the proceedings which have been pending before the Court. That this Affidavit is filed in support of motion on behalf of his client for attorneys' fees and costs.
5. That he incorporates herein Rule 1.5, South Carolina Rules of Professional Conduct, which contains the Canons of Ethics concerning the settling of attorney's fees. That he further calls the attention of the Court to the plethora of case law decisions by the Supreme Court of South Carolina concerning the factors and criteria which should be considered in the setting of attorneys'

fees. That he relies upon the discretion of this Court in the determination of the amount of fees based, among other things, upon the Court's files herein and the Court's knowledge of the litigation between these parties, which reflects the difficulty of the services rendered, the time necessarily expended, the result accomplished, the fact that there is no contingency of compensation, and the other factors which are set forth in the Canons of Ethics and the case law decisions of this State.

6. That he is informed and believes that the time spent in these matters as set forth more fully hereinafter was necessary to the protection of his client's interests and in order to make as concise and clear presentation to the Court of the issues as possible.

7. That the undersigned, in accordance with his time and expense records, states to the Court that he has expended 9 hours, 54 min. prior to the hearing on October 2, 2015, to be billed at \$175.00 per hour, (\$1732.50) and approximately 1 1/2 hours at the hearing to be billed at \$175.00 per hour (\$262.00) for a total of \$1994.50. Attached hereto is a list of time put into the case.

8. That the foregoing time and expenditures have been computed as of October 2, 2015.

9. That based not only upon the time necessarily devoted to this case, but also upon the criteria which have been held to be relevant in setting of attorneys' fees and costs, the undersigned, on behalf of his client, requests that this Court review the file herein, together with this Affidavit, and grant judgement in favor of the undersigned's client against the Plaintiff in a sum which may be determined by the Court to be reasonable as attorney's fees, costs and suit money, and that the

Plaintiff be required to pay the same within a reasonable time as may be determined by the Court.

FURTHER AFFIANT SAYETH NOT.



TIMOTHY A. NOWACKI, SC BAR# 100967

SWORN TO AND ACKNOWLEDGED BEFORE ME
this 1st day of October, 2015.

 (L.S.)

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: April 14, 2018

<u>Battersby vs. KMD</u>		TAN time	Billed in 6 mins	
<u>Date</u>	<u>Activity</u>		<u>Attorney</u>	<u>Paralegal</u>
6/54/2015	Hearing		2	
6/25/2015	Research/Draft Order		2.1	
6/30/2015	Review Transcript and Draft Order		1.7	
7/6/2015	Revise Draft Order		1.3	
7/24/2015	Draft and File Sanctions Motions		0.4	
7/27/2015	Attend sanctions hearing Allstate		1	
10/1/2015	Sanctions Memo		3.4	

Fee - Krause Moorhead and Draisen, PA

9.90	
x 175/hour	
	0.00
	x 100/hour
1732.50	
	0.00
	1732.50

TOTAL FEE

BATTERSBY vs. NEAL, ET AL.

**ORDER DENYING APPELLANT'S
MOTION TO ADD MOORHEAD AS
PARTY DEFENDANTS
February 27, 2017**

STATE OF SOUTH CAROLINA

CLERK'S OFFICE

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

FILED A 9 28

Gregg Battersby,

CLERK OF COURT AND
GENERAL SERVICES

PLAINTIFF,

ORDER

-vs-

CASE NO.: 2014-CP-04-1121

Carrie Neal, Jan Morton and Tom W.
Dunaway, III,

DEFENDANTS.

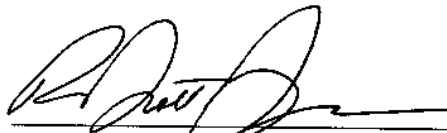
This matter comes before the Court on the Plaintiff's motion to add John Kirkman Moorhead, Esquire and Allstate Insurance as party Defendants to this action. In addition, Plaintiff's motion to compel Allstate Insurance to comply with a subpoena was scheduled to be heard. A hearing was held on February 6, 2015. The Defendants' counsel, as well as counsel for Allstate Insurance were present. The Plaintiff was not present after being properly notified of this hearing. After considering the pleadings and Plaintiff's failure to appear for his own motions, I dismiss the Plaintiff's motions for failure to prosecute as set forth below.

Our Supreme Court, in *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 493 S.E.2d 826 (1997), enlightened that Rule 41 additionally provides for dismissal of counterclaims, cross-claims, and third-party claims for failure to prosecute. *See id.* at 211, 493 S.E.2d at 832 ("Rule 41(c), SCRCP, allows a trial judge to dismiss an action, upon a party's motion, for the other party's failure to prosecute a counterclaim, cross-claim, or third-party claim."). The *Crestwood* court further observed that the authority to dismiss for failure to prosecute emanates both from Rule 41, and from the inherent power of the court:

[T]his Court has held that trial judges possess the inherent power to dismiss actions *sua sponte* for a party's failure to prosecute the relevant claims. *See, e.g., Small v. Mungo*, 254 S.C. 438, 442, 175 S.E.2d 802, 803 (1970) (noting that "it is within the inherent power of the court to dismiss an action for failure to prosecute."); *see also* 24 Am.Jur.2d *Dismissal, Discontinuance, and Nonsuit* 48 (1983) ("Provision is made in federal and state statutes or rules of practice for dismissal of civil actions for failure of prosecution by the plaintiff. However, the power of trial courts to dismiss a case for failure to prosecute with due diligence is generally considered inherent and independent of any statute or rule of court. Such power is deemed to be necessarily vested in trial courts to manage their own affairs so as to achieve orderly and expeditious disposition of cases.").

IT IS THEREFORE ORDERED that Plaintiff's motion to add John Kirkman Moorhead, Esquire and Allstate Insurance as party Defendants to this action, as well as Plaintiff's motion to compel Allstate Insurance to comply with a subpoena are hereby dismissed for failure to prosecute.

IT IS SO ORDERED!



R. Scott Sprouse
Presiding Circuit Court Judge
Tenth Judicial Circuit

Anderson, South Carolina

March 24, 2015

VERDICT FORM
January 27, 2017

II. AS TO THE PLAINTIFF'S DEFAMATION CLAIM AGAINST CARRIE NEAL

A) We the jury find in favor of the Plaintiff DR. BATTERSBY and against the Defendant CARRIE NEAL

RP Yes

_____ No

B) If we answered 'Yes' above, we the jury award actual damages in favor of DR. BATTERSBY and against CARRIE NEAL in the amount of

\$ 62,100 SIXTY TWO THOUSAND + ONE HUNDRED DOLLARS + ⁰⁰/₁₀₀
(please indicate in numbers AND in writing)

(go to the next page)

FILED-CLERK'S OFFICE
ANDERSON SC
2017 JUN 27 PM 1:41
COMMON PLEAS AND
GENERAL SESSIONS

III. AS TO THE DEFENDANT JAN MORTON-GANTNER'S COUNTERCLAIM FOR BATTERY AGAINST DR. BATTERSBY

A) We the jury find in favor of the Defendant JAN MORTON-GANTNER and against the Plaintiff DR. BATTERSBY

_____ Yes

 for No

B) If we answered "Yes" above, we the jury award actual damages in favor of JAN MORTON-GANTNER and against DR. BATTERSBY in the amount of

\$ _____
(please indicate in numbers AND in writing)



FOREMAN

JANUARY 25, 2017

FILED-CLERKS OFFICE
MIDDESEX CO
2017 JAN 27 PM 4:41
COMMON PLEAS AND
GENERAL SESSIONS

FORM 4 (JURY VERDICT)
January 26, 2017

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER **2014CP0401121**

Gregg Battersby		Carrie Neal	Jan Morton

PLAINTIFF(S)	DEFENDANT(S)
Submitted by: Docket	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Other: _____
- ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
- ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

FILED-CLERK'S OFFICE
ANDERSON SC
2017 FEB 27 AM 11:18
COMMON PLEAS AND
GENERAL SESSIONS

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Gregg Battersby	Jan Morton-Gantner	\$50,000.00
Gregg Battersby	Carrie Neal	\$62,100.00

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

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2167

Judge Code

1/26/2017

Date

For Clerk of Court Office Use Only

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

Gregg Battersby 7800 Hwy 81 South Starr, SC 29684

William Norman Epps III PO Box 2167 Anderson, SC 29622

John Kirkman Moorhead 207 E. Calhoun St. Anderson, SC 29621

Todd W. Pructte 113 North Main Street Anderson, SC 29621

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter: Dianne Marcengill

Richard A. Shirley - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

**FILED-CLERK'S OFFICE
ANDERSON SC
2017 FEB 27 AM 11:16
COMMON PLEAS AND
GENERAL SESSIONS**

SECOND AMENDED COMPLAINT
September 29, 2014

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Gregg Battersby,

Plaintiff,

-vs-

Carrie Neal, Jan Morton, and Thomas
Dunaway, Esquire

Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

SECOND AMENDED COMPLAINT
C.A. No.: 2014-CP-04-01121

LCB

Plaintiff, complaining of the Defendants herein, would respectfully allege and show unto the Court that:

Jurisdictional Allegations

1. The Plaintiff is a citizen and resident of the County of Anderson, State of South Carolina.
2. The Defendants are citizens and residents of the County of Anderson, State of South Carolina.
3. The facts and circumstances alleged herein and giving rise to the Plaintiff's Complaint occurred in the County of Anderson, State of South Carolina
4. This action is brought for damages and other appropriate relief pursuant to the statutory and common law of the State of South Carolina.
5. Jurisdiction and venue are proper in this judicial circuit pursuant to South Carolina Code Ann. § 15-7-30(B).

Factual Allegations

6. Defendants Neal and Morton received chiropractic treatment from the Plaintiff..
7. Defendant Carrie Neal treated with Plaintiff 87 times from September 5, 2012 to May 8, 2013.
8. Defendant Neal has an outstanding balance of \$12,100.00 owed to Plaintiff for chiropractic services rendered.
9. Defendant Dunaway's practice provided him with the opportunity to learn of matters pertaining to Dr. Gregg Battersby that were not within his jurisdiction and, more importantly, not relevant to the treatment of Carrie Neal.
10. Defendant Dunaway shared this information with Defendant Neal based on his difficulty in resolving Ms. Neal's personal injury case due to Dr. Battersby's considerable outstanding bill.
11. Defendant Neal shared this information with Defendant Morton.
11. Defendant Neal utilized this information provided by Defendant Dunaway to manufacture claims of indecent exposure against Dr. Battersby.
12. Defendant Dunaway took the resulting suspension of Dr. Batterby to justify the nonpayment of fees earned by Dr. Battersby, and included in the demand for which the defendants received benefit, and disbursement of settlement proceeds.
13. The Defendant Dunaway instituted a sham personal injury claim on behalf of Carrie Neal that has injured Dr. Batterby's practice, and life in general.
14. The Defendants conspired to cause these palpable injuries.
15. Defendant Neal referred her friend, Defendant Jan Morton, to Plaintiff for

chiropractic treatment on May 2, 2013.

16. On or about July 8, 2013, Defendant Morton reported an incident of indecent exposure to the Anderson County Sherriff's office. The incident had allegedly occurred on June 1, 2013.

17. On or about July 25, 2013, Defendant Neal reported an incident of indecent exposure to the Anderson County Sherriff's office. The incident had allegedly occurred on or about May 23, 2013.

18. According to Defendant Neal's cellphone records, she was never within range of the cell phone tower that services Plaintiff's area on May 23, 2013.

19. There was frequent communication between the Defendants between the months of May and July.

20. Despite this frequent communication between the Defendants, Defendant Neal never told Defendant Morton of the incident that allegedly occurred on May 23, 2013.

21. According to cell phone records, the Defendants' spoke most frequently on the days the reports were made.

22. In the incident report that was filed, Defendant Morton stated that she feared Plaintiff was going to assault her; however, she later told prosecutors that she "knew (Plaintiff) wasn't going to rape (me) or anything."

23. In her incident report, Defendant Morton stated that Plaintiff had been calling her repeatedly over the prior three weeks to try to convince her to return to the office

24. Phone records show that Plaintiff did not place a single telephone call to Defendant Morton in the three weeks prior to the filing of her incident report.

25. The Defendants both gave several statements to a number of officials, each with varying accounts of the alleged incidents.

26. Defendant Dunaway, represented Defendant Neal in a separate personal injury case for a motor vehicle accident in which she was involved, which is what brought the parties together.

27. In Defendant Neal's separate personal injury litigation, Plaintiff, Dr. Gregg Battersby entered into an agreement on November 12, 2012, with Defendant Dunaway in which Attorney Dunaway signed a medical lien that would allow the plaintiff to treat Defendant Neal for injuries related to the car accident, and Plaintiff's bill for medical treatment would be satisfied upon settlement of that litigation.

28. The medical lien agreement entered into by the plaintiff, and Defendant Dunaway, directs the attorney "to withhold such sums from any settlement, judgment or verdict as may be necessary to adequately protect" Plaintiff.

29. The medical lien agreement further states that the Plaintiff has a lien on Ms. Neal's case "against any and all proceeds of my settlement, judgment or verdict which may be paid" to Defendant, Attorney Thomas Dunaway.

30. That separate litigation was settled according to paperwork provided by the insurance company in September 2013.

31. Defendant Dunaway placed the settlement proceeds in trust and, subsequently disbursed the funds to all of the providers except Dr. Battersby in that litigation for her pain and suffering incurred by the car accident.

32. Defendant Dunaway did not make any contact with the Plaintiff, in order to address the outstanding bill which the defendants used to resolve the claim.

33. The Defendant Neal utilized information provided by her attorney, Thomas Dunaway, in order to manufacture false claims of indecent exposure against the Plaintiff, Dr. Gregg Battersby, in an attempt to avoid payment of her outstanding medical bills that were due to the Plaintiff.

34. The plaintiff's chiropractic license was subsequently suspended due the allegations made by Defendants Neal and Morton.

35. As a result of Defendants' collusion and conspiracy, Plaintiff's chiropractic license was indefinitely suspended.

36. As a direct and proximate result of the false accusations, and his unlawful detention and/or false arrest, Plaintiff was humiliated, embarrassed, and shocked, suffered great and lasting mental anguish, and the revocation of his professional license, and was thereby injured and damaged in his good name and reputation, and as a proximate result thereof, he has been damaged, for which damages the Defendants are liable.

FOR A FIRST CAUSE OF ACTION

37. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 23 above.

38. The aforementioned actions, conduct and/or omissions of the Defendants resulted in Plaintiff being falsely arrested and/or deprived of his liberty against his will without justification or probable cause.

39. As a direct and proximate result of the Plaintiff's false arrest by the Anderson County Sheriff's Department on behalf of Defendants, its agents, servants, and/or employees, the Plaintiff has been damaged, both actual damages and punitive damages, for which damages the Defendants

are liable.

FOR A SECOND CAUSE OF ACTION

40. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 26 above.

41. The aforementioned actions, conduct and/or omissions of the Defendants expressly or by implication gave Plaintiff's colleagues, patients, and/or others the impression that Plaintiff was engaging in wrongful or illegal activity.

42. The aforementioned insinuation, and/or inference of wrongdoing, constitutes a publication of defamatory matter that was defamatory to the Plaintiff.

43. As a direct and proximate result of the Defendants' defamation of the Plaintiff, Plaintiff has been damaged, for which damages the Defendants are liable.

FOR A THIRD CAUSE OF ACTION

44. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 31 above.

45. The aforementioned actions, conduct and/or omissions of the Defendants constitute false arrest.

46. The Plaintiff has suffered actual damage as a direct and proximate result of the false arrest at the instigation of the Defendants.

47. The Plaintiff is entitled to recover actual and punitive damages from the Defendants in an amount to be determined by the jury.

FOR A FOURTH CAUSE OF ACTION

48. Plaintiff re-alleges and incorporates herein by reference the allegations contained in

paragraphs 1 through 33 above.

49. The aforementioned actions, conduct and/or omissions of the Defendants constitute malicious prosecution.

50. The Plaintiff has suffered actual damage as a direct and proximate result of the malicious prosecution at the instigation of the Defendants.

51. The Plaintiff is entitled to recover actual and punitive damages from the Defendants in an amount to be determined by the jury.

FOR A FIFTH CAUSE OF ACTION

52. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 37 above.

53. The aforementioned actions, conduct and/or omissions of the Defendants constitute conspiracy.

54. The Plaintiff has suffered actual damage as a direct and proximate result of the conspiracy at the instigation of the Defendants.

55. The Plaintiff is entitled to recover actual and punitive damages from the Defendants in an amount to be determined by the jury.

FOR A SIXTH CAUSE OF ACTION

56. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 41 above.

57. The aforementioned actions, conduct and/or omissions of the Defendants constitute fraud.

58. The Plaintiff has suffered actual damage as a direct and proximate result of the fraud

at the instigation of the Defendants.

59. The Plaintiff is entitled to recover actual and punitive damages from the Defendants in an amount to be determined by the jury.

FOR A SEVENTH CAUSE OF ACTION

60. Plaintiff re-alleges and incorporates herein by reference the allegations contained in paragraphs 1 through 53 above.

61. The aforementioned actions, conduct, and/or omissions of the Defendants constitute breach of contract.

62. The Plaintiff has suffered actual damage as a direct and proximate result of the breach of contract instigated by the Defendants.

63. The Plaintiff is entitled to recover actual and punitive damages from the Defendants in an amount to be determined by the jury.

WHEREFORE, the Plaintiff demands a trial by jury pursuant to Rule 38(b) of the South Carolina Rules of Civil Procedure (SCRCP), and pray for judgment against the Defendants, for actual and punitive damages in an amount to be determined by the jury for the costs of this action, and for such other and further relief as this court may deem just and proper.

Anderson, South Carolina
September 26, 2014


Donald L. Smith
ATTORNEY FOR PLAINTIFF
122 N. Main St.
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

**TOM DUNAWAY'S
ANSWER AND COUNTERCLAIM
October 30, 2014**

STATE OF SOUTH CAROLINA CLERK'S OFFICE
ANDERSON SC IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON 2014 OCT 30 P 3:51



Gregg Battersby,

PLAINTIFF,

-vs-

Carrie Neal, Jan Morton and Tom W.
Dunaway, III,

DEFENDANTS.

COMMON PLEAS AND
GENERAL SESSIONS

ANSWER and COUNTERCLAIM
Jury trial demanded

CASE NO.: 2014-CP-04-1121

COMES NOW the Defendant, Tom W. Dunaway, III, would respectfully show unto the Court and allege the following:

FOR A FIRST DEFENSE AND BY WAY OF MOTION TO DISMISS
(South Carolina Rules of Civil Procedure 12(b)(6))

1. Your Defendant, upon information and belief, would show unto the Court that the Complaint fails to state a cause of action against the Defendant, Tom W. Dunaway, III ("Defendant") for which relief can be granted and that the Complaint should be dismissed as to this Defendant pursuant to SCRPC Rule 12(b)(6) on the grounds that the allegations of the Plaintiff's Second Amended Complaint fails to state a cause of action against the Defendant, Dunaway for which relief can be granted.

FOR A SECOND DEFENSE AND BY WAY OF ANSWER

2. That the Defendant denies each and every allegation of the Complaint, not hereinafter admitted, modified or changed, and demands strict proof thereof.
3. The Defendant admits the allegations contained in Paragraph one of the Complaint.
4. Your Defendant admits the allegations contained in Paragraphs two, three, four and five of the Complaint.
5. Your Defendant admits Paragraph six that the Defendant Neal received chiropractic treatment from the Plaintiff and upon information and belief that the Defendant Morton received said treatment.

6. The Defendant having insufficient information, denies the allegations contained in Paragraph seven of the Complaint.
7. The Defendant denies the allegations contained in Paragraph eight of the Complaint and demands strict proof thereof. The Defendant Dunaway attempted to obtain the bill from the Plaintiff for chiropractic services, however the Plaintiff could not be located and/or refused to provide the bill. The Defendant Neal subsequently went to the Plaintiff's home/chiropractic office to obtain the bill and the Plaintiff did deliver said bill to the Defendant Neal while buck naked. That further the Defendant disputes the reasonableness of the charges for the services allegedly rendered and demands strict proof thereof. The Defendant is unclear on the process wherein the Plaintiff billed said Defendant Neal, disputes the accuracy of the amounts in the Plaintiff's billing and whether the Plaintiff followed appropriate billing procedures.
8. The Defendant emphatically denies Paragraphs nine, ten, eleven, and eleven (sic) and demands strict proof thereof. Upon information and belief the Plaintiff provided chiropractic services to the Defendant Morton during which he assaulted Morton by laying his erect penis on the small of her back. The Defendant would show that the Plaintiff was arrested on August 2, 2013, charged and indicted on two counts of indecent exposure on November 19, 2013. Said indictments were not pressed by the 10th Circuit Solicitor's Office on April 24, 2014.
9. The Defendant emphatically denies the defamatory statements and allegations contained in Paragraphs twelve, thirteen, and fourteen and demands strict proof thereof.
10. The Defendant upon information and belief admits the allegations contained in Paragraphs fifteen, sixteen and seventeen of the Complaint.
11. The Defendant is without information to admit or deny the allegations contained in Paragraphs eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four and twenty-five of the Complaint, therefore said allegations are denied and demands strict proof thereof.
12. The Defendant admits so much of Paragraph twenty-six as alleges that he represented Defendant Neal in a separate personal injury case for a motor vehicle accident in which she was involved and denies the remaining allegation of Paragraph twenty-six and demands strict proof thereof.
13. The Defendant admits so much of Paragraph twenty-seven, twenty-eight and twenty-nine that alleges that the Defendant did sign a medical lien on November 21, 2012 and the language contained in said lien. The Defendant Dunaway attempted to obtain the bill from the Plaintiff for chiropractic services, however the Plaintiff could not be located and/or refused to provide the bill. The Defendant Neal subsequently went to the

Plaintiff's home/chiropractic office to obtain the bill and the Plaintiff did deliver said bill to the Defendant Neal while buck naked. That further the Defendant disputes the reasonableness and validity of the charges for the services allegedly rendered and demands strict proof thereof. The Defendant is unclear on the process wherein the Plaintiff billed said Defendant Neal, disputes the accuracy of the amounts in the Plaintiff's billing and whether the Plaintiff followed appropriate billing procedures. The Plaintiff further engaged in misconduct toward the Defendant Neal, when she attempted to get a copy of the bill and Plaintiff was lawfully arrested. As such the Defendant Neal instructed this Defendant to not honor the Plaintiff's lien and Defendant Neal would be responsible for same.

14. The Defendant admits the allegations of Paragraph thirty and thirty-one of the Complaint. The Plaintiff engaged in misconduct toward the Defendant Neal, when she attempted to get a copy of the bill and Plaintiff was lawfully arrested. As such the Defendant Neal instructed this Defendant to not honor the Plaintiff's lien and Defendant Neal would be responsible for same.
15. The Defendant denies the allegations contained in Paragraph thirty-two and demands strict proof thereof.
16. The Defendant emphatically denies the defamatory statements and allegations contained in Paragraph thirty-three and demands strict proof thereof.
17. The Defendant admits so much of Paragraph thirty-four that alleges that the Plaintiff's chiropractic license was suspended when he was lawfully arrested.
18. The Defendant emphatically denies the defamatory statements and allegations contained in Paragraph thirty-five and thirty-six and demands strict proof thereof.
19. The Defendant emphatically denies the allegations contained in Paragraphs thirty-seven through sixty-three and demands strict proof thereof.

FOR A THIRD DEFENSE
(Lawful Arrest and Authorization)

20. The Defendant reiterates and incorporates the allegations of the first and second defenses and make them a part herein by reference.
21. The Plaintiff's claims for false Imprisonment and false arrest are barred in whole by the defense of lawful arrest and authorization.

FOR A FOURTH DEFENSE

22. The Defendants reiterate and incorporate the allegations of the first, second, and third defenses and make them a part herein by reference.
23. The Plaintiff's claim for defamation are barred in whole in that Plaintiff fails to state his claim for defamation with specificity and the Defendant pleads truth as a defense to defamation.

FOR A FIFTH DEFENSE
(Waiver)

24. The Defendant reiterates and incorporates the allegations of the first, second, third, and fourth defenses and makes them a part herein by reference.
25. The Plaintiff's claim as to breach of contract is barred in whole or in part by the doctrine of waiver.

FOR A SIXTH DEFENSE
(Unclean Hands)

26. The Defendant reiterates and incorporates the allegations of the first, second, third, fourth, and fifth defenses and makes them a part herein by reference.
27. The Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.

FOR A SEVENTH DEFENSE

28. The Defendant reiterates and incorporates the allegations of the first, second, third, fourth, fifth, and sixth defenses and makes them a part herein by reference.
29. The Defendant pleads qualified immunity/privilege and/or conditional immunity/privilege as a defense to defamation.

FOR AN EIGHTH DEFENSE
(Probable Cause)

30. The Defendant reiterates and incorporates the allegations of the first, second, third, fourth, fifth, sixth and seventh defenses and makes them a part herein by reference.
31. The Plaintiff's claim for malicious prosecution is barred in whole by the defense of lawful arrest and probable cause. The Defendant would show that the Plaintiff was arrested on August 2, 2013, charged and indicted on two counts of indecent exposure on November 19, 2013.

FOR A NINTH DEFENSE

32. The Defendant reiterates and incorporates the allegations of the first, second, third, fourth, fifth, sixth, seventh and eighth defenses and makes them a part herein by reference.
33. The Plaintiff's claim for fraud is barred in whole by the Plaintiff's failure to state the nine elements of fraud with particularity.

FOR A TENTH DEFENSE AND BY WAY OF COUNTERCLAIM (Defamation)

34. The Defendant reiterates and incorporates the allegations of the first, second, third, fourth, fifth, sixth, seventh, eighth and ninth defenses and makes them a part herein by reference.
35. The Defendant is informed and believes that the Plaintiff through written and spoken means, communicated to certain third parties, including but not limited to the filing of the Plaintiff's Second Amended Complaint and the defamatory statements contained therein, that the Defendant acted in derogation from his ethical responsibilities and/or acted with impropriety or inadequacy in performing his profession. The Plaintiff knows that these statements are false and has acted with malice and exceeded the bounds of privilege.
36. That because of said publication of defamatory information by the Plaintiff, it has harmed the Defendant's reputation and caused said third parties to question his responsibility, his credibility and his character, and is libelous and slanderous *per se*.
37. That as a result of the actions and the slanderous and libelous statements made by the Plaintiff, the Defendant's ability to earn a living has been threatened and it has damaged his reputation and good standing in the community. That as a result of the willful and malicious acts of the Plaintiff, the Defendant has suffered embarrassment, mental anguish, loss of income, loss of business and economic opportunity in an amount for both actual and punitive damages in an amount to be determined at the trial of this case.

FOR A ELEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM (South Carolina Frivolous Civil Proceedings Sanctions Act)

38. The Defendant reiterates and incorporates the allegations of the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth and tenth defenses and makes them a part herein by reference.
39. The Defendant upon information and belief asserts that Plaintiff filed this action in violation of the South Carolina Frivolous Civil Proceedings Sanctions Act, S. C. Code

Ann. § 15-36-10, et. seq. That the Plaintiff's causes of action, specifically, the first, second, third, fourth, fifth and sixth were filed and amended to harass and injure this Defendant. That Plaintiff's Second Amended Complaint, as set forth herein is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based.

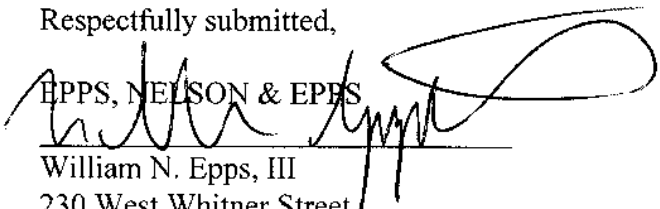
40. Therefore, the Defendant moves for his reasonable costs and attorney's fees, to include, but not be limited to, the following: the time required of the prevailing party by the frivolous proceeding, and travel expenses, mileage, parking, costs of reports, and any additional reasonable consequential expenses of the prevailing party resulting from the frivolous proceeding and any other sanction pursuant to said Act.

WHEREFORE, having answered the Second Amended Complaint of the Plaintiff, the Defendant, Tom W. Dunaway, III respectfully prays as follows:

1. That the Plaintiff's complaint be dismissed with costs; and
2. Judgment on all Counterclaims against the Plaintiff in an amount deemed just and proper including, but not limited to, actual, compensatory, special, consequential, and punitive damages in a sum to be determined by a jury at the trial of this case, plus costs and interest; and
3. Judgment be entered against the Plaintiff for an award of costs and reasonable attorney's fees and appropriate sanctions, pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act, S. C. Code Ann. § 15-36-10, et. seq.; and
4. For such other and further relief as this Court deems just and proper.

JURY TRIAL DEMANDED!

Respectfully submitted,


EPPS, NELSON & EPPS

William N. Epps, III

230 West Whitner Street

Post Office Box 2167

Anderson, South Carolina 29622

(864) 224-2111

ATTORNEYS FOR THE DEFENDANT

TOM W. DUNAWAY, III

October 30, 2014

Anderson, South Carolina

**APPELLANT'S
MOTION TO JOIN A PARTY
November 7, 2014**

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Gregg Battersby,

Plaintiff,

-vs-

Carrie Neal, Jan Morton, and
Tom W. Dunaway, III

Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

MOTION TO JOIN A PARTY

C.A. No.: 2014-CP-04-11

COMMON PLEAS AND
GENERAL SESSIONS

2014 NOV -7 PM 4:22

FILED-CLERK'S OFFICE
ANDERSON SC

TO ALL COUNSEL OF RECORD:

The Plaintiff, by and through his attorney, Donald L. Smith, hereby moves the Court for an Order joining defendant(s) to this action pursuant to Rule 19(a) (1) of the South Carolina Rules of Civil Procedure. This motion is made upon the grounds that 19(a) mandates that a party shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties.

Discovery has revealed that there are additional defendants from which damages are sought. Specifically, it is alleged that counsel for Defendant Morton, furthered her claim by altering facts that she relayed to him. It is the contention of the plaintiff that Kirk Morehead, Esquire, along with the staff at his firm directed defendant Morton to file a fictitious claim with the South Carolina Department of Labor, Licensing and Regulation to bolster her claim for damages. Moreover, Mr. Morehead's staff completed the online complaint for Morton. Defendant Morton's complaint stated that she had been treated by the plaintiff on twenty (20) occasions over the course of four months. Morton actually treated only four times prior to leveling her heinous accusation against the plaintiff. Morton testified in her deposition that she

did not tell Mr. Morehead of the quantity of visits that was alleged on her complaint to the LLR. The belief of Mr. Morehead's complicity to this conspiracy is furthered by defendant Neal's admission that there were "more guys involved" than just her upon service of a subpoena for her deposition.

Kirk Morehead, Esquire, and his firm are subject to service of process. Their joinder will not deprive the court of jurisdiction over the subject matter of the action. And, the current defendants in this action will not be prejudiced by such an amendment. The addition of the defendants will allow the plaintiff to have an adjudication that renders more complete relief, and provides for judicial economy. .

Based on the circumstances outlined above, and the fact that Rule 19(a) requires joinder of parties whose absence will prevent the complete adjudication of the claims by the associated parties, Plaintiff respectfully requests an Order permitting the plaintiff to join the parties to the action.

Respectfully submitted,



Donald L. Smith (SC Bar # 6699)
Attorney for Plaintiff
122 N. Main Street
Anderson SC 29621
(864) 642-9284 (telephone)
(864) 642-9285 (facsimile)
attorneydonaldsmith@gmail.com

Anderson, South Carolina
Dated: November 6, 2014.

**APPELLANT'S REPLY TO
TOM DUNAWAY III's
ANSWER AND COUNTERCLAIM
November 20, 2014**



FILED CLERK'S OFFICE
STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON TENTH JUDICIAL CIRCUIT

Gregg Battersby,

Plaintiff,

vs.

Carrie Neal, Jan Morton and,
Tom W. Dunaway, III.,

Defendants.

**REPLY TO TOM W. DUNAWAY, III's,
ANSWER AND COUNTERCLAIM**

Jury Trial Demanded

C.A. No.: 2014-CP-04-1121

**THE PLAINTIFF, GREGG BATTERSBY, BY AND THROUGH HIS ATTORNEY,
DONALD L. SMITH, ESQUIRE, IS REPLYING TO THE ANSWER AND
COUNTERCLAIM OF DEFENDANT TOM W. DUNAWAY, III., HEREIN ALLEGES:**

1. That the allegations not specifically admitted or otherwise qualified are denied and strict proof demand thereof.

2. That the allegations contained in paragraphs one (1) through four (4) are denied and strict proof demand thereof.

WHEREFORE, having fully replied to Defendant Tom W. Dunaway, III's Answer and Counterclaim herein, the plaintiff prays:

1. That Defendant Tom W. Dunaway, III's Answer and Counterclaim be dismissed in its entirety;
2. That Defendant Tom W. Dunaway, III., be required to pay the costs incurred as a result of having to defend this action, and,
3. For such other and further relief that the Court may deem just and appropriate.

Battersby v. Neal, Morton and Dunaway
C.A. No.: 2014-CP-04-1121

1



Donald L. Smith

ATTORNEY FOR PLAINTIFF

122 N. Main Street

Anderson SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

attorneydonaldsmith@gmail.com

Anderson, South Carolina

November 19, 2014.

**APPELLANT'S MOTION TO COMPEL
ALL STATE INSURANCE TO
PRODUCE SUBPOENA MATERIALS
November 24, 2014**



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

Gregg Battersby,

Plaintiff,

-vs-

Carrie Neal, Jan Morton, and
Tom W. Dunaway, III,

Defendants.

**MOTION TO COMPEL
ALLSTATE INSURANCE
TO PRODUCE SUBPOENA MATERIALS**

C.A. No.: 2014-CP-04-1

FILED-CLERK'S OFFICE
ANDERSON SC
NOV 24 AM 9:03
COMMON PLEAS AND
GENERAL SESSIONS

PLEASE TAKE NOTICE that the Plaintiff will move before the Presiding Judge of the

Anderson County Court of Common Pleas for the Tenth Judicial Circuit, on the 9th day of

January ²⁰¹⁵ ~~2014~~ at 2:00 P.m., pursuant to *Rule 37 of the South Carolina Rules of Civil*

Procedure, that at such time and place as may be set by the Court, to compel Allstate Insurance to provide a complete copy of the contents of Claim File # 0256081043 which was subpoenaed by the undersigned on September 11, 2014. The Subpoena was properly served upon Allstate Insurance, by and through the Registered Agent of Service, CT Corporation, located at, 2 Office Park Court, Suite 103, Columbia South Carolina 29223. As a courtesy, a copy of said Subpoena was also sent to an Allstate Insurance Company Legal Department Representative, Nettie Gass. As of this date, the only response to the properly served subpoena was that of the legal department representative, Nettie Gass stating, "Allstate will not provide the materials contained within that file."

The undersigned is of the belief the materials contained within the file are those which

would implicate and include the insurance company's involvement in the conspiracy of the failure to pay Dr. Battersby for services that were rendered for chiropractic treatment provided.

WHEREFORE, the immediate production of the materials contained within Claim File #0256081043 ordered to be provided to the plaintiff and that sanctions should be awarded to Plaintiff for Allstate Insurance Company's defiance of not one, but two properly served subpoenas issued by an officer of the court. Furthermore, Allstate Insurance Company should be ordered to pay the plaintiff's attorney fees and litigation costs for necessitating this action to be filed.



Donald L. Smith, (SC Bar #6699)
Attorney for Plaintiff
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Anderson, South Carolina
November 21, 2014

ATTORNEY OFFICE OF DONALD SMITH

122 N. Main St.
Anderson SC 29621
attorneydonaldsmith@gmail.com

Donald L. Smith, Esquire

Telephone: (864) 642-9284
Facsimile: (864) 642-9285

September 11, 2014

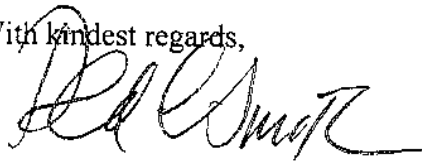
Registered Agent
CT Corporation
2 Office Park Court, Suite 103
Columbia SC 29223

RE: Gregg Battersby v. Carrie Neal, Jan Morton, Tom W. Dunaway, III
CA No. 2014-CP-04-1121

Dear Sir or Madam:

Please find enclosed herewith, a subpoena that I am serving on Allstate Insurance Company through you as their registered agent, in reference to the above captioned matter. I have sent a courtesy copy of this correspondence to the legal department of Allstate Insurance Company. Should you have any question or comment regarding any matter set forth herein, please feel free to contact my office. I

With kindest regards,



Donald L. Smith
DLS/ac
Enclosures

CC: Allstate Insurance Company
ATTN: Hattie Booth
2775 Sanders Road
Northbrook, IL 62062

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF ANDERSON

GREGG BATTERSBY, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

CARRIE NEAL & JAN MORTON, Defendant

Case Number: 2014-CP-0401121

Pending in ANDERSON County

TO: Allstate Insurance Company by and through its registered agent, CT Corporation, 2 Office Park Court, Suite 103, Columbia SC 29223

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

Any and all documents relating to Claim Number 0256081043 Plaintiff Carrie Neal, including, but not limited to: Correspondence with Tom Dunaway, Esquire, any and all medical providers, law enforcement, the chiropractic board, etc.

PLACE Attorney Office of Donald Smith 122 N. Main St. Anderson SC 29621	DATE AND TIME September 11, 10:00 AM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Donald Smith

DATE 9/11/2014.

ATTORNEY/ISSUING OFFICER'S SIGNATURE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

CLERK OF COURT/ISSUING OFFICER SIGNATURE

DATE

PRINT NAME

SCCA 254 (10/04)

PROOF OF SERVICE

SERVED	DATE September 11, 2014	FEES AND MILEAGE TENDERED TO WITNESS
	PLACE 2 Office Park Court, ste. 103	☐ YES ☐ NO AMOUNT \$
SERVED ON CT CORPORATION		MANNER OF SERVICE CERTIFIED MAIL
SERVED BY DONALD L. SMITH, ESQUIRE		TITLE ATTORNEY

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on September 11, 2014

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.
- (2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.
- (B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.
- (3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:
 - i. fails to allow reasonable time for compliance; or
 - ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
 - iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
 - iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature X ☐ Agent ☐ Addressee
1. Article Addressed to: CT Corporation 2 office Park Ct. Suite 103 Columbia SC 29223	B. Received by (Printed Name) C. Date of Delivery <i>Matthew Delmonico</i> SEP 15 2014 D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No
2. Article Numl (Transfer fro) 7014 0510 0002 3931 5535	3. Service Type ☒ Certified Mail® ☐ Priority Mail Express™ ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ Collect on Delivery 4. Restricted Delivery? (Extra Fee) ☐ Yes

PS Form 3811, July 2013

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature ☒ Pam Johnson ☐ Agent ☐ Addressee	
1. Article addressed to: Allstate Insurance Company Attn: Hattie Booth 2775 Sanders Rd. Northbrook IL 60062		B. Restricted Delivery (Name) ☒ Date of Delivery 9-15-11	
		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
		3. Service Type ☒ Certified Mail® ☐ Priority Mail Express™ ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ Collect on Delivery	
		4. Restricted Delivery? (Extra Fee) ☐ Yes	
2. Article (Transit) 7014 0510 0002 3931 5542			
PS Form 3811, July 2013 Domestic Return Receipt			

STATE OF SOUTH CAROLINA

ISSUED BY THE GENERAL SESSIONS COURT IN THE COUNTY OF ANDERSON

STATE OF SOUTH CAROLINA, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

GREGG BATTERSBY, Defendant

Case Number: 2013A0410900191, 2013A0410100898

Pending in ANDERSON County

TO: Allstate Insurance Company Attention: Nettie Gass P.O. Box 7068 Columbia SC 29202

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME , AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects:

Any and all documents relating to Claim Number 0256081043 Plaintiff Carrie Neal, including, but not limited to: Correspondence with Tom Dunaway, Esquire, any and all medical providers, law enforcement, the chiropractic board, etc.

PLACE
Attorney Office of Donald Smith
122 N. Main St. Anderson SC 29621

DATE AND TIME April 24, 2014, 10:00 AM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Del Smith

DATE 4/15/2014

ATTORNEY/ISSUING OFFICER'S SIGNATURE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

CLERK OF COURT/ISSUING OFFICER SIGNATURE

DATE

PRINT NAME

Wendy Greenway 4/15/14

PROOF OF SERVICE

SERVED	DATE APRIL 15, 2014	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$
	PLACE DUNAWAY LAW OFFICE	
SERVED ON TOM DUNAWAY, ESQUIRE		MANNER OF SERVICE CERTIFIED MAIL
SERVED BY DONALD L. SMITH, ESQUIRE		TITLE ATTORNEY

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on APRIL 15, 2014

SIGNATURE OF SERVER [Signature]

ADDRESS OF SERVER 122 N. Main St. Anderson SC 29621

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. - Print your name and address on the reverse so that we can return the card to you. - Attach this card to the back of the mailpiece, or on the front if space permits.		Signature <i>[Signature]</i> ☐ Agent ☐ Addressee B. Received by (Printed Name) <i>Abbie Brock</i> C. Date of Delivery D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No APR 24 2014	
1. Article Addressed to: <i>Allstate Insurance Company</i> <i>Attn: Nettie Gass</i> <i>PO Box 7068</i> <i>Columbia SC 29202</i>		3. Service Type ☐ Certified Mail® ☐ Priority Mail Express™ ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ Collect on Delivery	
2. Article Number (Transfer from service label) PS Form 3811, July 2013		4. Restricted Delivery? (Extra Fee) ☐ Yes 7014 0510 0002 3936 1945 Domestic Return Receipt	

7014 0510 0002 3936 1945

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Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.98

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Sent To *Allstate Insurance Co. Nettie Gass*

Street, Apt. No., or PO Box No. *PO Box 7068*

City, State, ZIP+4 *Columbia SC 29202*

PS Form 3800, August 2006 See Reverse for Instructions

**CARRIE NEAL'S ANSWER AND
COUNTERCLAIM TO SECOND
AMENDED COMPLAINT**

June 2, 2015

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ANDERSON SC

STATE OF SOUTH CAROLINA)

2015 JUN -2) PM 3: IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON)

COMMON PLEAS AND
GENERAL SESSION



Gregg Battersby,)

Plaintiff,)

v.)

**DEFENDANT, CARRIE NEAL'S ANSWER
AND COUNTERCLAIM TO PLAINTIFF'S
SECOND AMENDED COMPLAINT**

Carrie Neal, Jan Morton and)

Tom W. Dunaway, III,)

Defendant.)

Case No.: 2014-CP-04-1121

The Defendant, Carrie Neal, answering the Second Amended Complaint of the Plaintiff herein, hereby responds, alleges and says follows:

1) All allegations of the Plaintiff's Second Amended Complaint not hereinafter admitted, modified or explained are hereby denied and strict proof demanded thereof.

**FOR A FIRST DEFENSE
(AFFIRMATIVE DEFENSES)**

2) The Defendant, Carrie Neal admits the allegations of the paragraphs one (1) through five (5).

3) Defendant admits the allegations of Paragraph six (6) and seven (7) in as much as she was previously treated by the Plaintiff for a fee of \$25.00 per visit. In an attempt to clarify the bill of the Plaintiff the Defendant went to the Plaintiff's office to obtain the bill and the Plaintiff indecently exposed himself to the Defendant. Plaintiff lacks the standard to enforce a fee if not licensed under the laws of the State of South Carolina.

5) Defendant denies the allegations of paragraph eight (8).

6) Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph nine (9) and therefore denies same.

7) Defendant denies the allegations of paragraph ten (10) through fourteen (14).

8) Defendant admits the allegations of paragraph fifteen (15) but is unsure of the date that she referred Jan Morton to the Plaintiff.

9) Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph sixteen (16) and therefore denies same.

10) As to paragraph sixteen (17) the Defendant reported this incident to the Anderson County Sheriff's Office. In researching the Plaintiff, the Defendant discovered that the Plaintiff had engaged in a pattern of similar instances in other states which have resulted in the Plaintiff's license being suspended or revoked. Plaintiff's license was revoked in Arizona on October 23, 2008. Plaintiff's license was revoked in Ohio on August 12, 2008 by the Board in both states. The Defendant is informed and believes that the Plaintiff's license has been suspended in South Carolina and as such the Plaintiff is unable to bring a civil action for collection for fees if he is not a licensed chiropractor under the laws of the State of South Carolina.

11) Defendant lacks sufficient knowledge to admit or deny the allegations of paragraph eighteen (18) and therefore denies same.

12) As to paragraph (19), the Defendant, without characterizing the nature of the communication, admits communicating with the Defendant Morton between May and July 2013.

13) Defendant denies the allegations of paragraph twenty (20).

14) Defendant lacks sufficient knowledge to admit or deny the allegations of paragraphs twenty-one (21) through twenty-five (25) and therefore denies same.

15) Defendant admits paragraph twenty-six (26).

16) Defendant lacks sufficient knowledge to admit or deny the allegations of paragraphs twenty-seven (27) through thirty-two (32) and therefore denies same.

- 17) Defendant denies allegations of paragraph thirty-three (33).
- 18) Defendant lacks sufficient knowledge to admit or deny the allegations of paragraphs thirty-four (34) and thirty-five (35) and therefore denies same.
- 19) Defendant denies the allegations of paragraph thirty-six (36).
- 20) Paragraph thirty-seven (37) does not require a response.
- 21) Defendant denies the allegations of paragraph thirty-eight (38) through sixty-three (63).

FOR A SECOND DEFENSE

- 22) As to the Plaintiff's Claim of False Imprisonment and false arrest, Defendant asserts the defenses of lawful arrest and authorization.

FOR A THIRD DEFENSE

- 23) The Plaintiff fails to state his claim for defamation with specificity.

FOR FOURTH DEFENSE

- 24) Defendant pleads truth as a defense to defamation.

FOR FIFTH DEFENSE

- 25) Defendant pleads qualified immunity/privilege and/or conditional immunity/privilege in her report of unlawful activity to law enforcement as a defense to defamation.

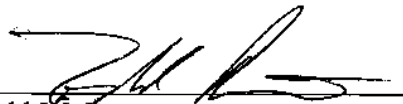
FOR SIXTH DEFENSE BY WAY OF COUNTERCLAIM

- 26) The Plaintiff has issued false, malicious, and defamatory statements against the Defendant, Carrie Neal. Statements by the Plaintiff were issued in public forum with the intention of casting Defendant in libelous light and were issued on purpose to defame the defendant and they were false. Defendant has been damaged for a total sum of \$75,000.00.

WHEREFORE, the Defendant Carrie Neal having full answered the Complaint of the Plaintiff would pray as follows:

- 1) That Plaintiff's Complaint be dismissed with prejudice;
- 2) For judgment by the Defendant against the Plaintiff in the amount of \$75,000.00;
- 3) For Defendant's attorney fees and costs in this matter; and
- 4) For such other and further relief as to this Court seems just and proper.

Respectfully submitted,



Todd W. Pruetto
Attorney for Defendant, Carrie Neal
Goodwin & Pruetto, Attorneys at Law, LLC
113 North Main Street
Anderson, SC 29621
(O) (864) 375-0909
(F) (864) 375-9488
todd@mjgoodwin.com

June 2, 2015
Anderson, South Carolina

**GREGG BATTERSBY'S REMOVAL
OF COUNSEL AND MOTION FOR A
DEFINITE STATEMENT**

June 29, 2015

IN THE COMMON PLEAS COURT
ANDERSON, SOUTH CAROLINA

[Handwritten signature/initials]

Dr. Gregg Battersby
Plaintiff,

Carrie Neal, Jan Morton and
Tom Dunaway
Defendants.

) Case No.: 2014-CP-04-1121

)
)
) REMOVAL OF COUNSEL AND
) MOTION FOR A
) MORE DEFINITE STATEMENT
) FROM DEFENDANTS NEAL
) AND DUNAWAY
) (Civil Rule 12(e))

COMMON PLEAS AND
GENERAL SESSIONS
ANDERSON, SOUTH CAROLINA

2015 JUN 29 AM 9:35

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ANDERSON SC

INTRODUCTION

Plaintiff, Dr. Gregg N. Battersby, files this Removal of Counsel and Motion for a More Definite Statement (Civil Rule 12(e)) in the above referenced Second Amended Complaint on Defendants Neal and Dunaway's Counterclaims, in support of which he presents the following:

MEMORANDUM

Plaintiff has chosen to remove Don Smith as his legal counsel regarding this matter. Plaintiff felt it was in his best interest to do so. Plaintiff is actively pursuing replacement representation.

Plaintiff filed this Second Amended Complaint against Defendants. Defendant Neal filed an Answer and Counterclaim against Plaintiff. Defendant Neal filed a Counterclaim alleging Plaintiff "issued false, malicious, and defamatory statements" against her in a public forum. The Counterclaim does not state what Plaintiff allegedly said, when it was said, and to whom it was said.

Defendant Dunaway filed an Answer and Counterclaim alleging Plaintiff issued defamatory statements about Dunaway through written and spoken word. Dunaway cited this Second Amended Complaint as the example of the defamatory statement. The allegations in the

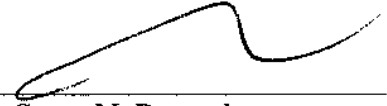
Second Amended Complaint are privileged communications regarding defamation. “South Carolina has long recognized that relevant pleadings, even if defamatory, are absolutely privileged.” See *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 567 S.E.2d 881 (S.C. App., 2002). “Therefore, it was correctly held that the statements contained in the complaint were privileged and could not furnish a defense, or the basis for an action in libel.” See *Mckesson & Robbins Inc v. Newsome Et Ux*, 206 S.C. 269, 33 S.E.2d. 585 (S.C., 1945).

It is imperative for Plaintiff to know what was said in order to develop a proper defense. “But even under notice pleading, a plaintiff must still set out the operative facts of the claim. Indeed, hornbook law stresses the necessity of including the alleged defamatory statement in the complaint. See, e.g., 53 C.J.S. §§ 128-163; 9 Indiana Practice §§ 28.3-28.14. There is sound reason for this policy, as the absence of a statement in the complaint works a detriment on both the court and the defendant. The court is handicapped without the statement since, without it, the court cannot actually determine if the statement is legally defamatory. *Journal-Gazette Co., v. Bandido's Inc.*, 712 N.E.2d 446, 457 (Ind. 1999). The defendant is placed on an unfair footing since the absence of the statement denies her the opportunity to prepare appropriate defenses.” See *Trail v. Boys & Girls Clubs of N.W.* in, 845 N.E.2d 130 (Ind., 2006). “As noted in the majority opinion, when defendants moved for a more definite statement under C.R.C.P. 12(e), the trial court granted the motion, observing that “the defendants' motion is requesting a more definite statement as [to] which individual defendant posted which specific defamatory comment and approximately when it occurred,” and finding that the “complaint lacks sufficient definiteness and particularity to enable the defendants to respond to and defend against each alleged wrong-doing.” See *Giduck v. Niblett*, 2014 COA 86 (Colo. App., 2014).

Plaintiff cannot give a responsive pleading and a proper defense because the Counterclaims are so vague and ambiguous. Plaintiff requests Defendants Neal and Dunaway indicate what non-privileged communication Plaintiff allegedly said, when it was said, and to whom it was said.

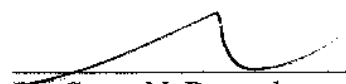
CONCLUSION

Plaintiff respectfully requests this Court GRANT this Motion for a More Definite Statement.


Dr. Gregg N. Battersby, pro se
PLAINTIFF
7800 Hwy. 81 South
Starr, SC 29621
Telephone: (864) 570-0077
greggbattersby@gmail.com

CERTIFICATE OF SERVICE

Plaintiff served this Removal of Counsel and Motion for a More Definite Statement on Defendants Neal and Dunaway's attorneys by regular U.S. Mail on June 25, 2015.


Dr. Gregg N. Battersby



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COMMON PLEAS AND
GENERAL SESSIONS

**EXCERPTS OF CARRIE NEAL'S
DEPOSITION TRANSCRIPT
June 3, 2014**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION
CASE NO. 8:14-CV-761-HMH

DR. GREGG BATTERSBY,
Plaintiff,
vs.
DR. JOSEPH CAREW, in his
individual and official
capacities, et al.,
Defendants.

DEPOSITION OF CARRIE LYNN NEAL

DATE TAKEN: June 3, 2014
TIME BEGAN: 10:30 a.m.
TIME ENDED: 12:58 p.m.
LOCATION: Law Office of Donald Smith
122 North Main Street
Anderson, South Carolina

REPORTED BY: Eileen Thompson, CCR
EveryWord, Inc.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

1 And I seen Dr. Battersby, and I can't tell you
2 exactly how long, but for the first amount of time,
3 maybe a month or two, I seen him six days a week,
4 then it went down to five days a week, then it was
5 three days a week, then it was two days a week, then
6 it was one day a week. And I was also under the
7 assumption that it was \$25 a visit. And I was never
8 told otherwise.

9 And I also didn't understand where the
10 \$12,100 had come from. And in the papers I was
11 served saying that I went eight -- even if I went
12 100 times at \$25 a visit, that's -- you know, does
13 not come up to \$12,100. I did have questions about
14 that.

15 But during -- after Dr. Battersby released
16 me from his care, he said that he didn't think that
17 there was anything else that could be done that he
18 hadn't done with adjusting my back and my hip, he
19 sent the bill to my attorney, who was representing
20 me in the automobile case, and it came to \$12,100,
21 which seemed excessive. And I -- my attorney asked
22 me to get an itemized bill, and I had called Dr.
23 Battersby. He said he was not home at the time,
24 that he would be home later that afternoon, and I
25 could come by that afternoon, but just to call first

1 to make sure he was home, which I did.

2 And when I called, he was home. He said
3 he had made a copy, and that I could come by at any
4 time. I did, I went to his house, I parked where I
5 always parked, went to the back door, which is where
6 I always had and seen other patients go. He
7 answered the -- the door is -- his screen door, the
8 top part is screen, and the bottom part is not.
9 It's whatever -- you can't see through it, but he
10 did not have a shirt on when I was walking up the
11 stairs. And I said, "Hey, I'm here to get that
12 itemized bill," and he said, "Okay, yeah. Let me go
13 grab that for you. Come on in."

14 Well, I opened the door, stood in the
15 laundry room, which is right there when you first
16 walk into his home, and when he came back in, he was
17 completely naked and holding the bill in between us.
18 He explained several things I think about the bill,
19 but I was pretty shocked. I didn't know why he was
20 naked, or if he did this regularly. You know, it
21 had never happened before, but again, I don't
22 normally go to any doctors' offices or any other
23 place of businesses and have the person I'm seeing
24 naked. So I don't -- at that point in time, I can't
25 -- I couldn't even tell you what -- because he was

1 explaining -- or trying to explain something about
2 the bill, and I did not --

3 Q. So your bills were \$17,000 all told, is
4 that right?

5 MR. MATTHEWS: Object to the form. Please
6 answer.

7 THE WITNESS: I'm not -- I don't -- I'm
8 not positive. It was around that.

9 EXAMINATION RESUMED BY MR. SMITH:

10 Q. And so without the \$12,100, that would
11 leave \$5,000 in bills and you settled for \$15,500,
12 right?

13 A. I don't have that information.

14 Q. Plaintiff's Exhibit 2.

15 A. Okay. Yes.

16 Q. So the bills got \$5,000, you got 5,000,
17 Mr. Dunaway got \$5,000?

18 MR. DUNAWAY: She's already testified she
19 doesn't know the answer to that. Asked and
20 answered.

21 EXAMINATION RESUMED BY MR. SMITH:

22 Q. Was that addressed in August of last year?

23 MR. MATTHEWS: Object to the form. Please
24 answer.

25 THE WITNESS: I don't know the exact date.

1 Q. When you and Ms. Morton discussed it, what
2 did you talk about?

3 A. I mean, I don't remember exactly, you
4 know, at all, because her and I talk mainly about
5 her health, you know, her problems that she was
6 having. She was having dizzy spells and all that.
7 I told her that I was hoping to be able to get my --
8 reach a settlement with my insurance company, that
9 Dr. Battersby had released me, and that it had been
10 it seemed to me like a couple weeks since I had last
11 seen Dr. Battersby, but the bill was excessive, and
12 my lawyer had requested an itemized copy, and it was
13 weird that when I went to get it, it just so
14 happened he answered the door naked.

15 Q. And you spoke to her on a daily basis, is
16 that right?

17 A. When she got sick, she was in -- like I
18 said, she's got family in Tennessee, and she was
19 back and forth in Tennessee, and she was in and out
20 of the hospital. I didn't -- I wasn't talking to
21 her so much when she got sick.

22 Q. When did you warn her of what had occurred
23 to you?

24 A. I never -- I didn't warn her. I told -- I
25 asked her if she was still seeing Dr. Battersby. I

1 asked her if she was still going there.

2 Q. And what was your understanding?

3 A. She was -- at the time, I believe she was
4 in Tennessee. She said no. She said, "I'm seeing a
5 chiropractor here in Tennessee." And I believe she
6 had also gone to Florida after she was in Tennessee
7 and saw a chiropractor in Florida. And so it was my
8 understanding that she was not -- did not -- or was
9 not seeing Dr. Battersby anymore, because she was in
10 Tennessee seeing a chiropractor there and then in
11 Florida.

12 Q. So correct me if I'm wrong, it was my
13 understanding that her incident was on June 1st?

14 A. I have no idea when her incident happened.

15 Q. If it did, eight days later, you didn't
16 talk to her in the interim, the time between your
17 incident and that?

18 A. I can't -- I'm not -- I don't know. My
19 son's birthday is June 15th, so, you know, and I'm
20 sure that I -- like now I'm planning, you know -- or
21 trying to plan a birthday party for him, and also
22 still trying to deal with my sister, who was in my
23 home. She was having to go through treatment
24 programs, having to go to court, I was having to
25 take her to DSS to visit her -- so her son's father

1 getting that reaction from a lot of people that I've
2 served today. And he told me -- he told me that I
3 should dress nicely, I should not dress casually, or
4 that I should dress as though I was going to court.

5 Q. What did you tell him regarding the other
6 people that are involved?

7 A. I didn't tell him anything.

8 Q. You don't recall telling him that there
9 were other guys involved?

10 MR. MATTHEWS: Object to form.

11 THE WITNESS: (Witness shaking head.)

12 MR. FEIN: You need to speak up. She
13 can't translate your head.

14 THE WITNESS: I'm sorry. No, I do -- wait
15 a minute. I'm sorry. Let me take that back.
16 I asked him if -- that there were in the
17 newspaper article that I had read regarding
18 this case -- I asked him if he was familiar
19 with this case, and he said no. And I said,
20 would anybody at this deposition be -- would I
21 be able to ask anyone at this deposition
22 questions regarding this case, and he said,
23 "Yes, you can ask his attorney."

24 EXAMINATION RESUMED BY MR. SMITH:

25 Q. Was there any discussion about the

1 possibility of making money because of this
2 incident?

3 A. No, sir.

4 MR. MATTHEWS: Object to form. Please
5 answer.

6 EXAMINATION RESUMED BY MR. SMITH:

7 Q. Ms. Morton been in any trouble, to your
8 knowledge?

9 A. No. She had had -- all I know is that
10 she's had problems with her driver's license. That
11 she was -- it was suspended and it shouldn't have
12 been.

13 Q. Do you remember where you found the
14 information on Dr. Battersby?

15 A. I don't.

16 Q. Did you have any follow-up contact with
17 him following the May 23rd incident?

18 A. Yes, I did.

19 Q. When?

20 A. He had told me that I could -- if I wanted
21 to try to file with my health insurance, because he
22 did not -- he wasn't a participant with my health
23 insurance. And to begin with, told me that I was
24 not -- I cannot file under my health insurance,
25 because it was an automobile accident, and it would

1 be paid for by the other person's insurance company.
2 Then he said it might be easier if I had a claim
3 form. He said, "I usually have those on hand, but I
4 don't at this time." And he called me back, I don't
5 know if it was that day, or the next day. He told
6 me he was going to be doing yard work, and he had
7 found a claim form. If I happened to be in the area
8 and I wanted to pick one up, I could.

9 Q. And did you do that?

10 A. I did do that. I made sure he was out in
11 the yard, and I also took a couple friends with me.

12 Q. What's their names?

13 A. Tammy, my sister, and Wanda Langley.

14 Q. You didn't ask him to mail it to you?

15 A. No, I didn't. I wanted to get this taken
16 care of. And if I could have my health insurance
17 pay for a \$12,000 bill, I certainly wanted that to
18 happen, and I wanted to get this taken care of
19 instead of waiting to get it through the mail. I --
20 like I said, he only lives a couple miles from my
21 house.

22 Q. What was the nature of the treatment that
23 Dr. Battersby provided you with?

24 A. There were -- he cracked my neck, he
25 cracked my back, and there's a spot where he said

1 MR. MATTHEWS: Object to the form. Please
2 answer.

3 THE WITNESS: She said that it was -- that
4 he rarely called her, that he would normally
5 text her, and that it got to the point where it
6 was almost like -- she felt that he was
7 stalking her, because she received so many
8 texts from him. And she -- like I said, she
9 was -- there were times she was in Tennessee,
10 she wasn't even in the state, and he was almost
11 lecturing her saying that, you know, I provided
12 you care, and this is what the procedure that I
13 wanted you to follow, and, you know, you're not
14 doing that, and I am not comfortable -- I feel
15 like you should be, you know, coming on your
16 appointment days. And she -- I don't know why
17 she had to go to Tennessee. I know that, like
18 I said, her husband has family there, so I know
19 that she went back and forth to Tennessee.
20 It's not a very long car ride for her.

21 And she said that she had an early morning
22 appointment, she went -- he answered the door
23 in a bathrobe and led her to -- no, in a towel,
24 I'm sorry, a bath towel, and went to -- led her
25 to the room where the chiropractor equipment

1 is, and said he would be right back. She
2 assumed that he was going to get dressed, and
3 he did not. He returned and he -- she had not
4 -- or he had not.

5 Q. Did Ms. Morton start seeing Dr. Battersby
6 after you found out about your bill?

7 A. No.

8 Q. What were those days?

9 MR. MATTHEWS: Object to form. Please
10 answer.

11 THE WITNESS: That she started seeing him?

12 EXAMINATION RESUMED BY MR. SMITH:

13 Q. Yes.

14 A. I really don't know.

15 Q. But you know that she started seeing him
16 before you knew about the bill?

17 A. Yes, because she was seeing him at the
18 same time I was. So I obviously wasn't released
19 from treatment from him, and, you know, I wouldn't
20 have known about the bill until after he released me
21 from treatment.

22 Q. Is it your contention that Dr. Battersby
23 exposed himself to you on May 23rd?

24 A. I -- on or around, I don't know. I would
25 have to, you know, like I said, speak to my

1 attorney.

2 Q. Is it your contention that Jan Morton is
3 your dear friend?

4 MR. MATTHEWS: Object to the form.

5 THE WITNESS: She's a good friend.

6 EXAMINATION RESUMED BY MR. SMITH:

7 Q. So is it your contention that you did not
8 alert her of what had occurred to you between May
9 23rd and June 1st when she went to see him again?

10 A. No. I thought she was in Tennessee, like
11 I said, because she was back and forth and was real
12 sick. She didn't -- I would text her, and she
13 wouldn't answer me. And when she wouldn't answer
14 me, I would assume that she wasn't either feeling
15 well, or she was busy, or whatever. So I didn't --
16 I wouldn't go forward -- or I wouldn't keep
17 bothering her, because I knew she wasn't feeling
18 well.

19 Q. You treated for eight months without
20 issue, is that right?

21 A. Yes.

22 Q. And the issue arose after you found out
23 about the bill?

24 MR. MATTHEWS: Object to form. Please
25 answer.

1 your attorney?

2 A. Yes, sir.

3 Q. Well, you mentioned that there were other
4 fees attached to the bill. Did Dr. Battersby ever
5 explain to you in any other way that he was charging
6 you in addition to the \$25 a visit?

7 A. No.

8 Q. When he handed you the bill, did he
9 attempt to explain to you what the charges were?

10 A. No, not that I recall. I was a little
11 shocked.

12 Q. Because he was naked?

13 A. Right.

14 Q. Prior to that date, had he ever been naked
15 around you before?

16 A. No.

17 Q. Now, I believe -- speaking of dates, I
18 believe you said that you received a bill. I'm
19 going to ask you to turn to Exhibit 1, which appears
20 to be a complaint form that was filed with LLR. On
21 the first page of the complaint form, is it true
22 your name is Carrie Lynn Neal?

23 A. Yes.

24 Q. And is it true your address is 4145
25 Highway 29 South --

1 when you met with the investigator, or could that
2 have been later?

3 A. No, because -- yeah, that had to have been
4 the day that I met with him, because I -- like I
5 said, I didn't go there. I didn't -- I didn't ever
6 know what the LLR was. He brought this with him.
7 And I -- he asked me, you know, several questions.
8 And I answered them. And then I signed this.

9 Q. Okay. So you made your police report.
10 And then met with the investigator on the 6th?

11 A. Yes.

12 Q. Now, let me turn your attention to Exhibit
13 Number 2. Now, the date on this exhibit -- now, the
14 exhibit here is an e-mail from you to a Mr. Sym
15 Singh --

16 A. Uh-huh.

17 Q. -- on August 27th? My confusion is this.
18 It appears that -- well, let me ask the question
19 like this. Did you contact him -- or did you
20 contact Mr. Sym Singh first prior to meeting him?

21 A. Uh-uh.

22 Q. So you met first, and then sent him this
23 e-mail?

24 A. He contacted me and said he was getting
25 ready to have a meeting -- go into a meeting

**EXCERPTS OF JAN MORTON'S
DEPOSITION TRANSCRIPT
June 18, 2014**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION
CASE NO. 8:14CV761-HMH

Dr. Gregg Battersby,
Plaintiff,
vs.
Dr. Joseph Carew, et al,
Defendants.

DEPOSITION OF JAN MORTON GANTNER

DATE TAKEN: June 18, 2014
TIME BEGAN: 1:12 p.m.
TIME ENDED: 3:54 p.m.
LOCATION: Law Office of Donald Smith
122 North Main Street
Anderson, Carolina
REPORTED BY: Traci L. Barr, RPR

1 A. 6097.

2 Q. Who do you live with?

3 A. My family.

4 Q. Who does that consist of?

5 A. My husband and two children.

6 Q. Are your children below 18?

7 A. Yes.

8 Q. What is your husband's name?

9 A. Jonathan Gantner.

10 Q. How long have you been married?

11 A. Over 12 years.

12 Q. How old are your children?

13 A. Five and 10.

14 Q. Do you recall the date that you allege Dr.

15 Battersby exposed himself to you?

16 MR. MOORHEAD: I'm object to the form. Just

17 ambiguous.

18 THE DEPONENT: I think it was -- it was the 1st of

19 June.

20 EXAMINATION RESUMED

21 BY MR. SMITH:

22 Q. Do you remember what you said on the police

23 report? What did you tell the police about it?

24 A. I don't recall exactly what I -- I don't recall

25 exactly what I said to them.

1 Q. Okay. Why don't you tell me what happened?

2 A. On I think it was June 1st I texted Dr.

3 Battersby and asked him -- I told him that I

4 had come back from my vacation early and asked

5 him if he had any openings. He messaged me

6 back and said, yes, and could I come now. I

7 told him I would be on my way.

8 I drove to his house, rang the doorbell. He

9 came to the door in a towel. He walked me in.

10 I walked to the -- his office, the examination

11 room. During our walk, I told him the problems

12 I was having, and he told me to go in and sit

13 down on the table -- or lay down on the table

14 and relax, so I did.

15 I looked up and Dr. Battersby was standing over

16 me and still in his towel. From there, he --

17 because we had discussed the pain, the same

18 pain that I had been having. He stood over me.

19 And the pain is right below my sternum. And he

20 -- the first thing he did was push very hard

21 right there. Anyway, after that he did the

22 adjustments. Went around to my neck. That was

23 the last thing he did, and I asked him not to

24 do my neck. He told me to breathe and calm

25 down, because I told him I was very nervous.

1 At that point he actually adjusted my neck and
2 then told me to lay there and calm down. I
3 did. Then he moved me to another table where
4 actually instead of laying on my back I was
5 face down, and he did the adjustments on that
6 table. This is -- pretty much other than the
7 pushing on my sternum, this is the way it
8 always is. Go to that table, he does the
9 adjustments. Then he moves me to the next
10 table and does the adjustments. Normally, I
11 leave that after, but on this particular day he
12 moved me to the very next table and wanted to
13 do something different, and that's when he
14 placed the -- I don't know what it is or what
15 it's called, but it's some sort of machine.
16 I've had it used on me before. He put it on my
17 back, my upper back, and then he moved it down
18 to my rear and seemed to focus there.
19 At that point I was wondering what was going on
20 and why, because I had had -- previous that
21 week I had this type of thing done, and they
22 always left it sitting on my upper back by my
23 neck. So I decided to look over and kind of
24 see what was going on, and that's when I seen
25 him.

1 Q. Seen him how so?

2 A. He was standing there without a towel in the
3 nude.

4 Q. What side of the table was he on?

5 A. He was on -- I was laying down, so he was on my
6 right-hand side.

7 Q. What color was the towel?

8 A. It was a -- almost like a burnt orange or
9 brown, like an orangish brown, dark color.

10 Q. About how long had he been in a towel at this
11 point?

12 A. I don't know. During -- I don't know. During
13 the entire thing from the time he opened the
14 door.

15 Q. So how far have we progressed with your
16 treatment? I mean, 20 minutes, half hour?

17 A. I don't know. No, I don't think it was a half
18 hour. Treatment is usually fairly quickly.
19 You get in and out of that in I'd say 15, 20
20 minutes, but on that particular day we went an
21 additional table over.

22 Q. How many tables does he have?

23 A. I think he had four against that wall, and then
24 the table we started on, which is on the other
25 side of the room.

1 Q. This incident happened June 1st.

2 when did you go to the police with it?

3 A. After I came back from Tennessee.

4 Q. What date was that?

5 A. I don't know. I came back that night, and the
6 next day I went to the police.

7 Q. So how long had passed do you think?

8 A. I don't know.

9 (Exhibit Number 1 marked for identification.)

10 EXAMINATION RESUMED

11 BY MR. SMITH:

12 Q. What I'm showing you here is Plaintiff's
13 Exhibit 1, which is the Incident Report that I
14 believe that you were the storyteller.

15 As you read the Incident Report, is there
16 anything that's not right?

17 A. Through all pages or the first --

18 Q. Just read that one paragraph on the front.

19 A. Oh. Yes, that's --

20 Q. Actually, if you would turn to the third page,
21 it's a little bit more detailed. If you could
22 review that, please.

23 A. Okay. Okay.

24 Q. To the best of your knowledge, did Deputy
25 Marter take that report right then?

- 1 A. No.
- 2 Q. When did he create this?
- 3 A. I don't know.
- 4 Q. So he didn't have a robe on?
- 5 A. No. This entire -- I don't know what this is.
- 6 This is not the statement that I gave. It's --
- 7 Q. So this is not what you told him?
- 8 A. No.
- 9 Q. This Incident Report was created July 8th.
- 10 Does that sound about right?
- 11 A. I believe so.
- 12 Q. Why did it take you five weeks to report this?
- 13 A. Well, one, I wasn't in the state. Two, I had
- 14 to tell my husband what had happened. And I
- 15 wasn't sure I was going to go to the police.
- 16 My husband gave me that ultimatum. And I had
- 17 been sick.
- 18 Q. How long were you in Tennessee?
- 19 A. I'm not sure. I was very sick during that
- 20 period.
- 21 Q. What were you troubled by?
- 22 A. Shingles and just some other issues.
- 23 Q. What are you currently having difficulty with?
- 24 A. My adrenal -- I'm having adrenal issues,
- 25 secondary Addison's, on top of the Addison's.

1 my glands. It's a lot more complicated than
2 blood tests. The things that I'm sick with are
3 not very common.

4 Q. Yes, ma'am. So the Incident Report, is it part
5 right, is it all wrong?

6 A. It's like a revised edition of what I just told
7 you. I actually went in and wrote down what
8 happened for them. They made me write it. And
9 I don't know what this is.

10 Q. When did you hand write the story, your
11 version?

12 A. The day that I went into the police department.

13 Q. So July 8th?

14 A. I don't know.

15 Q. Who did you give that to?

16 A. I wrote it down at the desk with the officer.

17 Q. What officer did you give it to?

18 A. I don't know.

19 Q. Was it W. Ashley or Officer Ashley?

20 A. No. I hadn't met him at that point.

21 Q. He wasn't the same individual that did your
22 interview, right? The person that you gave the
23 statement, handwritten statement to, he was not
24 the person that interviewed you; is that right?

25 A. Interviewed me when?

1 Q. whenever you gave an interview to Detective
2 Ashley, I believe.

3 A. No, he was not the same person.

4 Q. And the Incident Report, was he different than
5 those two?

6 MR. MATTHEWS: Object to the form.

7 EXAMINATION RESUMED

8 BY MR. SMITH:

9 Q. Was the person that did the Incident Report
10 either the person who interviewed you or the
11 person you gave the statement to?

12 MR. MOORHEAD: Just for the sake of making it easier,
13 the name is on the Incident Report.

14 Could you go by names so we could have a little
15 bit more clarity in the question?

16 EXAMINATION RESUMED

17 BY MR. SMITH:

18 Q. Did Officer Marter take a statement?

19 A. I don't know who the officer's name was. I'm
20 not sure who Marter is either.

21 Q. What is your educational background?

22 A. I've been to college.

23 Q. Where did you go?

24 A. I went to Spartanburg, I went to UT.

25 Q. What did you amass or what did you get while

1 actually could get me in that day.

2 Q. Are you a student or were you a student?

3 A. Not now, no.

4 Q. So was the first visit May 2nd?

5 A. Yes.

6 Q. What did you -- what were your difficulties
7 that you were having?

8 A. I was having pain in my neck. I'm not sure on
9 that particular day. It was my upper back.
10 And I don't know if during treatment I had the
11 pain start on my side or if it had already
12 started on the first visit. I don't recall
13 that.

14 Q. What was Ms. Neal's -- what were her
15 observations of Dr. Battersby when she referred
16 you?

17 A. She didn't say much. She was just desperate to
18 help me. She suggested I go see a
19 chiropractor.

20 Q. How many times -- how long prior to -- when you
21 actually went to Dr. Battersby, how long had it
22 been that she had been discussing it with you?

23 A. The day I went, I think.

24 Q. What did the first visit consist of
25 treatment-wise?

- 1 A. I don't recall. Like all the other visits,
2 three tables.
- 3 Q. Did you have an arrangement price-wise?
4 How much was it costing you?
- 5 A. I'm not sure. The first visit was -- I'm not
6 sure. I think it was \$50 or something. I'm
7 not sure. And then after that it was, 25, I
8 believe and then he -- if I did -- if I
9 referred people to him, my price would stay at
10 25. If not, it would go up, but I don't
11 remember what it would go up to.
- 12 Q. How many times do you think you saw him all
13 total?
- 14 A. I don't know.
- 15 Q. How often did you see him?
- 16 A. He wanted me to come every day.
- 17 Q. And how many times a week would you say you
18 did?
- 19 A. I don't know.
- 20 Q. How long have you known Carrie Neal?
- 21 A. I'm not sure. Maybe seven years.
- 22 Q. How did you meet her?
- 23 A. I met her through her -- I met her -- I knew
24 her boyfriend.
- 25 Q. How did you meet him?

1 A. He did work on my car.
2 Q. How would you assess your relationship with Ms.
3 Neal?
4 A. What do you mean?
5 Q. What kind of relationship is it?
6 A. What kind?
7 Q. Close friends, is she your best friend?
8 A. We're good friends.
9 Q. How often do you see her?
10 A. Not as much in the past year as I would have
11 seen her before, before I got sick.
12 Q. How often do you talk to her?
13 A. I don't know. A good bit.
14 Q. Do you talk to her every day?
15 A. Sometimes.
16 Q. When is the last time you talked to her?
17 A. Yesterday.
18 Q. You didn't talk to her this morning?
19 A. Uh-uh.
20 MR. MATTHEWS: Ma'am, just please say yes or no.
21 THE DEPONENT: Oh, I'm sorry.
22 MR. MATTHEWS: It's not a problem. The court
23 reporter needs to take down a verbal answer.
24 It's not a problem.
25 THE DEPONENT: Okay.

1 EXAMINATION RESUMED

2 BY MR. SMITH:

3 Q. Do you have a file on Dr. Battersby?

4 A. What?

5 Q. A file.

6 A. I don't --

7 Q. Containing your research.

8 A. No, I don't have a file.

9 Q. Did you do any research on Dr. Battersby on the
10 Internet?

11 A. Have I done research?

12 Q. Yes.

13 A. I've looked him up, yes.

14 Q. What all sites did you look on?

15 A. I don't know. I don't think I've been to
16 sites. I read like the newspaper articles,
17 things like that.

18 Q. What did you read?

19 A. Like what was in the paper yesterday. I really
20 don't know. I didn't read the whole thing. I
21 was just told to read it.

22 Q. In your research on the Internet, what did you
23 read?

24 A. I wouldn't say I did research on the Internet.
25 I just read the newspaper articles like on the

1 Anderson Independent.

2 Q. Did you read anything about Ohio?

3 A. Well, yes, I have. I have read -- there is not
4 much on there.

5 Q. What happened in Ohio?

6 A. I really don't know.

7 Q. What did you read about Ohio?

8 A. I don't know. I don't recall.

9 Q. Was what happened in Ohio similar to what
10 happened here?

11 MR. MATTHEWS: Object to the form.

12 Please answer.

13 THE DEPONENT: I don't know. I don't really know
14 what happened in Ohio. I just know something
15 happened. I don't know what.

16 EXAMINATION RESUMED

17 BY MR. SMITH:

18 Q. What does Dr. Battersby specialize in?

19 MR. MATTHEWS: Object to the form.

20 Please answer.

21 THE DEPONENT: I don't know. What do you --

22 EXAMINATION RESUMED

23 BY MR. SMITH:

24 Q. Have you ever -- in your research, did you see
25 that he's a specialist in pediatrician or

1 pediatric chiropractic I guess?

2 A. I don't know. I don't know what he specializes
3 in.

4 Q. Do you remember your interview with Detective
5 Ashley?

6 A. I guess. I don't know.

7 Q. Do you recall telling him that Dr. Battersby's
8 a specialist in pediatric chiropractic?

9 MR. MATTHEWS: Object to the form.

10 Please answer.

11 THE DEPONENT: Someone told me that he specialized in
12 pediatrics, but I don't know that for sure.

13 EXAMINATION RESUMED

14 BY MR. SMITH:

15 Q. Who was that?

16 A. I don't recall.

17 Q. When you went to Dr. Battersby on May 2nd, how
18 did you get there?

19 A. I drove.

20 Q. Was your license under suspension at that time?

21 A. Yes.

22 Q. Is Ohio the only state that Dr. Battersby has
23 had trouble with?

24 A. I don't know.

25 Q. You don't know or you don't remember?

1 MR. MATTHEWS: Object to the form.

2 Please answer.

3 THE DEPONENT: I don't recall. I know he's got a
4 sketchy past. I'm not sure exactly what he's
5 done.

6 EXAMINATION RESUMED

7 BY MR. SMITH:

8 Q. When did you talk with Ms. Neal about his
9 sketchy past?

10 MR. MOORHEAD: Object to the question.

11 THE DEPONENT: I don't recall.

12 EXAMINATION RESUMED

13 BY MR. SMITH:

14 Q. This was a pretty traumatic experience?

15 MR. MATTHEWS: Object to the form.

16 Please answer.

17 EXAMINATION RESUMED

18 BY MR. SMITH:

19 Q. Was it a traumatic experience to you?

20 A. Yes.

21 Q. Do you recall vividly?

22 A. Do I recall vividly?

23 Q. What happened.

24 A. Yes.

25 Q. The Incident Report that we see in Plaintiff's

1 Exhibit 1 talks about the fact that he did not
2 approach you in an aggressive sexual manner; is
3 that correct?

4 A. This Incident Report is not correct at all.

5 Q. So did he make a move on you?

6 MR. MATTHEWS: Object to the form.

7 MR. MOORHEAD: Object to the form.

8 THE DEPONENT: What do you mean?

9 EXAMINATION RESUMED

10 BY MR. SMITH:

11 Q. Did he touch you other than chiropractic care?

12 A. Yes.

13 Q. How did he touch you?

14 A. First, with the machine because that wasn't
15 appropriate, the machine that was vibrating my
16 rear end.

17 Q. And then?

18 A. And then something else touched me. I don't
19 know exactly what it was.

20 Q. Touched you where?

21 A. On my -- you've got to understand this machine
22 vibrates very hard, and it makes you kind of
23 feel numb, and so my body was -- the sensation
24 of my body is not what it is right now just
25 sitting here. I felt something on my side and

1 A. We didn't.

2 Q. Did you do a complaint?

3 A. Yes.

4 (Exhibit Number 3 marked for identification.)

5 EXAMINATION RESUMED

6 BY MR. SMITH:

7 Q. What I'm showing you is Plaintiff's Exhibit 3.

8 It's what I understand to be your online

9 complaint?

10 A. Uh-huh.

11 MR. MOORHEAD: You have to speak an answer, yes or

12 no.

13 THE DEPONENT: Oh, yes.

14 EXAMINATION RESUMED

15 BY MR. SMITH:

16 Q. Is there a reason you used Jan Gantner on this

17 one, not Jan Morton?

18 A. Yes.

19 Q. Why is that?

20 A. My attorney had typed that information in.

21 Q. Did you see Mr. Moorhead before July 8th or

22 after July 8th?

23 A. Oh, I don't know. I don't recall.

24 Q. Who told you to call the LLR?

25 MR. MOORHEAD: Object to the form. It's privileged.

1 A. I don't recall dates.

2 Q. Who did you talk to with the Anderson County
3 Sheriff's Department?

4 A. I don't know.

5 Q. Did you talk to the solicitor?

6 A. Oh, yes.

7 Q. What did you talk to her about?

8 A. I don't -- Dr. Battersby, the incident.

9 Q. Why didn't they pursue their case?

10 MR. MATTHEWS: Object to the form.

11 MR. MOORHEAD: Object to the form.

12 THE DEPONENT: I don't know.

13 EXAMINATION RESUMED

14 BY MR. SMITH:

15 Q. She didn't tell you?

16 A. Well, she sent me a letter.

17 Q. What did the letter say?

18 A. The letter stated that it was a he said/she
19 said incident and that the cases would be tried
20 in front of two different juries, and then in
21 the next paragraph it said that Dr. Battersby
22 was claiming conspiracy.

23 Q. Did the exposure that occurred to you happen
24 first or did Ms. Neal's happen first?

25 MR. MATTHEWS: Object to the form.

1 THE DEPONENT: No, her -- whatever happened to her
2 happened I think in May.

3 EXAMINATION RESUMED

4 BY MR. SMITH:

5 Q. And were you talking to her every day at that
6 time?

7 A. I don't recall.

8 Q. At what point did you talk about exposure with
9 Ms. Neal, if you did at all?

10 A. I don't recall. I don't know.

11 Q. Did Ms. Neal ever -- did you bring it up or did
12 she bring it up?

13 MR. MATTHEWS: Object to the form.

14 THE DEPONENT: I knew she had something to tell me,
15 but I didn't know what she had to tell me.

16 EXAMINATION RESUMED

17 BY MR. SMITH:

18 Q. How did you know that?

19 A. She told me she had something to tell me.

20 Q. On what medium did she say she had something to
21 tell you? Was that in person?

22 A. No, that was on the phone.

23 Q. Via text or --

24 A. We were speaking.

25 Q. And so she could not tell you on the phone?

- 1 A. No.
- 2 Q. When do you believe that conversation took
3 place?
- 4 A. Huh?
- 5 Q. When do you believe that conversation took
6 place?
- 7 A. I don't recall.
- 8 Q. When did you have the opportunity to actually
9 speak to her about whatever happened?
- 10 A. I don't remember.
- 11 Q. When she did tell you, what did she tell you
12 happened?
- 13 A. She -- I don't remember. She said that she had
14 went to see -- to get -- I don't know. She was
15 talking about her insurance, something about
16 papers. I don't know.
- 17 Q. What did she tell you occurred? What did he
18 do, according to her?
- 19 A. I really don't know exactly what happened. I
20 just know something happened. I don't know any
21 details of what happened.
- 22 Q. Did you tell her to go to the police?
- 23 A. Yes. I didn't tell her to. I told her what
24 the officer told me.
- 25 Q. What did he tell you?

1 A. Huh?

2 Q. You know that?

3 A. Do I know what?

4 Q. Talking to Detective Ashley.

5 MR. MOORHEAD: Object to the form of the question.

6 It's a little ambiguous.

7 THE DEPONENT: I'm not sure what you're asking me.

8 EXAMINATION RESUMED

9 BY MR. SMITH:

10 Q. How many times did you talk to Detective
11 Ashley?

12 A. I don't know how many times.

13 Q. But you did that day; is that right?

14 A. Yeah, I think I was in the office talking with
15 him on that day. But see, I also spoke with
16 his partner, and I'm not sure if that was the
17 day I spoke with him or I spoke with his
18 partner.

19 Q. His partner is who?

20 A. I don't know. It's a lady.

21 Q. Detective Hendricks?

22 A. I don't know.

23 Q. Did Detective Ashley come to you or did you go
24 to Detective Ashley?

25 A. The first time he came to me.

1 Q. How many times was it then?
2 A. I told you I don't recall.
3 Q. More than one?
4 A. Well, I seen him at least twice.
5 Q. Phone records say you talked to Ms. Neal seven
6 times on July 25th, the day she filed her
7 police report. Is that right?
8 MR. MATTHEWS: Object to the form.
9 THE DEPONENT: I don't know.
10 MR. MOORHEAD: Object to the form.
11 what records are you referencing?
12 MR. SMITH: The phone records of Ms. Neal.
13 MR. MOORHEAD: Do you have those?
14 MR. SMITH: Yes, I do.
15 MR. MOORHEAD: Do you want to let her review those
16 before she testifies in reference to those?
17 MR. SMITH: She said she couldn't remember.
18 MR. MOORHEAD: She's never seen them.
19 MR. SMITH: I was just asking her if she had talked
20 to her.
21 THE DEPONENT: That was a year ago. I don't
22 remember.
23 EXAMINATION RESUMED
24 BY MR. SMITH:
25 Q. Yes, ma'am. You said you had no criminal

1 record; is that right?

2 A. Not that I'm aware of.

3 Q. Have you ever been in trouble for fraud?

4 A. No.

5 Q. A check?

6 A. Yeah. That wasn't fraud.

7 Q. In your interview, tell me if this is right,

8 you told Detective Ashley that you had a file

9 with stuff in the file on Dr. Battersby?

10 A. I don't know what you're --

11 Q. So you did not?

12 A. Not that I'm aware of, no. I don't have a

13 file.

14 Q. Yes, ma'am. Did you make -- did you print

15 anything off the Internet about what you found?

16 A. No, never.

17 Q. Do you have the Internet?

18 A. I do now.

19 Q. When did you get it?

20 A. When I went to Charter. I don't know. Eight

21 months ago. I'm not sure.

22 Q. Do you know where -- withdraw that.

23 Can you remember who told you about the

24 pediatric aspect of his practice?

25 A. I don't know. It had to have been somebody at

1 the police department.

2 Q. Did you have an outstanding balance with Dr.
3 Battersby?

4 A. No. I don't know if I paid the day that I
5 left.

6 Q. What time did your incident with Dr. Battersby
7 occur?

8 A. I don't recall. After 1:00 p.m.

9 Q. Did you have a belief as to whether or not Dr.
10 Battersby would touch you or would attempt to
11 contact you sexually?

12 A. I don't know. I was panicking. I was freaking
13 out. I'm not sure. I had a lot of things
14 going through my mind at that moment. I just
15 knew I needed to leave.

16 Q. Did you talk to Carrie Neal about her
17 deposition?

18 A. I know she did one.

19 Q. Did you talk to her?

20 A. A little bit, yes.

21 Q. What did you talk about?

22 A. Nothing. She just -- she told me she had
23 cried. I don't know why she cried. I knew she
24 was upset, but I don't know why.

25 Q. Did you tell Carrie Neal what happened in your

1 A. No.

2 what do you mean by inappropriate? I mean --

3 Q. whatever you deem inappropriate.

4 A. I don't recall.

5 Q. Did you attempt to treat with Dr. Battersby on
6 June 2nd because you were in pain?

7 A. Do what, now?

8 Q. Did you attempt to treat with Dr. Battersby on
9 June 2nd because you were in pain?

10 MR. MATTHEWS: Object to the form.

11 Please answer.

12 THE DEPONENT: I don't think so, no.

13 EXAMINATION RESUMED

14 BY MR. SMITH:

15 Q. If I told you that Ms. Neal claims May 23rd was
16 her date of incident, would that sound right?

17 A. I don't know.

18 Q. If that's what the Incident Report says, that's
19 eight days before June 1st, right?

20 A. If you say so.

21 Q. Did you talk at any time regarding what
22 happened with Dr. Battersby with Ms. Neal
23 during that time?

24 A. Between?

25 Q. May 23rd and June 1st.

1 around the clock. He's Monday through Friday
2 and then some.

3 Q. When you reported the incident to the police
4 July 8th, did you talk to Ms. Neal?

5 A. I don't recall. Well, I say I don't recall. I
6 had to have because I think the officer told me
7 to call her. I can't remember.

8 Q. Are you pursuing a tortious action against Dr.
9 Battersby?

10 MR. MATTHEWS: Object to the form.

11 EXAMINATION RESUMED

12 BY MR. SMITH:

13 Q. Are you seeking money from Dr. Battersby for
14 what happened to you?

15 MR. MATTHEWS: Object to the form.

16 MR. MOORHEAD: To the extent it asks her to disclose
17 any discussion she's had with me, those are
18 privileged.

19 MR. SMITH: Certainly.

20 THE DEPONENT: Yes.

21 EXAMINATION RESUMED

22 BY MR. SMITH:

23 Q. How much did your husband make last year?

24 A. Probably -- I'm not sure, but roughly around
25 75.

1 Q. Did you know about Ohio -- did you -- had you
2 learned of Ohio before your incident occurred
3 or after?

4 A. After.

5 Q. Ms. Neal didn't warn you about this incident,
6 about the problems she had?

7 MR. MATTHEWS: Object to the form.

8 THE DEPONENT: No.

9 EXAMINATION RESUMED

10 BY MR. SMITH:

11 Q. You're good friends?
12 Are you good friends?

13 A. Yeah.

14 Q. Did you tell Ms. Reeves that you knew Dr.
15 Battersby wasn't going to do anything to you?

16 A. Did I tell who?

17 Q. Ms. Reeves.

18 A. Who is that?

19 Q. Solicitor.

20 A. I don't recall.

21 Q. Have you talked to anybody else about this
22 incident besides the investigator from the LLR?
23 Have you talked to the solicitor's office?

24 MR. MOORHEAD: Object to the form.

25 THE DEPONENT: Okay. Rephrase.

1 EXAMINATION RESUMED

2 BY MR. SMITH:

3 Q. Did you talk to anybody from the solicitor's
4 office regarding your claims?

5 A. Oh, yes.

6 Q. Who did you talk to?

7 A. The solicitor. I don't know her name.

8 Q. Did you talk to Ms. Reeves in person?

9 A. Yes.

10 Q. How many times?

11 A. I think I only spoke with her in person one
12 time.

13 Q. And you're certain that the Incident Report
14 that was created by Deputy Marter is not your
15 statement?

16 MR. MOORHEAD: Object to the form.

17 THE DEPONENT: No, that's not my statement.

18 EXAMINATION RESUMED

19 BY MR. SMITH:

20 Q. And you don't recall who you gave the
21 handwritten statement to?

22 A. Who I did the report with. I don't know his
23 name.

24 MR. SMITH: Off the record one minute.

25 (Recess taken.)

1 EXAMINATION RESUMED

2 BY MR. SMITH:

3 Q. Ms. Morton, did Ms. Neal tell you that she had
4 something to tell you before your incident or
5 after?

6 MR. MATTHEWS: Object to the form.

7 THE DEPONENT: It had to have been after because I
8 was out of town.

9 EXAMINATION RESUMED

10 BY MR. SMITH:

11 Q. Who filled out the online complaint to the LLR?

12 A. I did that with my attorney.

13 Q. How many times did you see Dr. Battersby?

14 A. I don't recall.

15 Q. When was the first day you saw him?

16 MR. MATTHEWS: Object to the form.

17 THE DEPONENT: I think it was May 2nd, I believe.
18 I'm not sure.

19 EXAMINATION RESUMED

20 BY MR. SMITH:

21 Q. In this complaint it says that you've been
22 treating with Dr. Battersby once a week for
23 about 20 weeks.

24 A. Where is it?

25 Q. It's in the LLR complaint, first paragraph,

1 third sentence, I think.

2 MR. MATTHEWS: Are you talking about Exhibit 3?

3 MR. SMITH: Yes, sir.

4 THE DEPONENT: No, it wasn't 20 weeks. I didn't see
5 him until May 2nd, I believe.

6 EXAMINATION RESUMED

7 BY MR. SMITH:

8 Q. So who made that mistake?

9 A. That must have been a typo, an error.

10 Q. What should it have been?

11 A. I don't know. I seen him -- I started seeing
12 him on May 2nd, right, and he wanted to see me
13 daily, but due to life and children and not
14 feeling well, I couldn't see him daily. So I'm
15 not sure how many times -- I don't even know
16 how many times a week I saw him.

17 Q. But you didn't see him for 20 weeks?

18 A. No, I did not see him for 20 weeks.

19 Q. Dr. Battersby was in a towel when he answered
20 the door; is that right?

21 A. Yes.

22 Q. And you went in why?

23 A. I don't know. I assumed he was going to get
24 clothed.

25 Q. I'm going to play the recording of Detective

1 Ashley's interview with you.

2 A. Okay.

3 Q. We'll discuss it after you've had an
4 opportunity to speak to your lawyer about it.

5 (Exhibit Number 4 marked for identification.)

6 (The CD marked as Exhibit Number 4 was played and
7 then transcribed as follows:

8 MR. ASHLEY: I've been assigned a case where you went
9 to Dr. Battersby. We'll step over here.

10 MS. MORTON: I would invite y'all in, but my dogs are
11 in here.

12 MR. ASHLEY: No. I saw that. I rolled up and said,
13 Lord, have mercy. Somebody left a bone --

14 MS. MORTON: That's my babies.

15 MR. ASHLEY: Hey, I know. I've got them myself.
16 This is Michelle Hendricks. This is my
17 partner.

18 MS. MORTON: He had written your name down for me.

19 MR. ASHLEY: Well, then you want to take over the
20 case then? I'm going to let you go in and see
21 Dr. Battersby.

22 MS. HENDRICKS: That's all right.

23 MS. MORTON: This is stressing me out so bad I can't
24 stand it.

25 MR. ASHLEY: I'm taping this, and it's 1333674. It's

1 14:32 hours. Here with Ms. Morton, the victim,
2 and Michelle Hendricks, detective. Stan
3 Ashley, detective. We're at 201 Centerville
4 Road. I have this instead of having to write
5 everything.

6 MS. MORTON: Okay. Do you want to sit on the deck?

7 MR. ASHLEY: It don't matter. We're good right here
8 if you are.

9 MS. MORTON: I'm fine.

10 MR. ASHLEY: Are you fine, Michelle? She gets tired
11 easy.

12 MS. MORTON: If you want to sit down, we can.

13 MR. ASHLEY: She's been yawning all day.

14 How often have you been to Dr. Battersby?

15 MS. MORTON: I usually -- he wanted me to come every
16 single day, but I have two children. I was
17 sick. I've been sick with the shingles for
18 months.

19 MR. ASHLEY: Yeah.

20 MS. MORTON: And it's a long drive to his office. So
21 I wasn't capable of going as often as he
22 wanted. He actually got really upset with me
23 because I couldn't come as often.

24 MR. ASHLEY: How many times prior to the last -- I
25 assume the last time --

1 MS. MORTON: That was the last visit, yes.

2 MR. ASHLEY: That was the last visit?

3 MS. MORTON: Yes.

4 MR. ASHLEY: How many times before that had you been?

5 MS. MORTON: I don't know. More than five. Maybe
6 15. I'm not sure.

7 MR. ASHLEY: Okay. I don't have to have exact
8 numbers.

9 MS. MORTON: I was seeing him for -- let's see.
10 Before -- okay. I know I was in the hospital
11 on May 5th, and he actually called me on May
12 5th as I was pulling out of the hospital
13 parking lot, fussing at me to come in.
14 I'm like, Dr. Battersby, I just got out of the
15 hospital.
16 He knew I was having problems. He's very
17 demanding. He doesn't take no for an answer
18 for anything. Very difficult to deal with.
19 So I was seeing him on May 5th, and I was
20 seeing him before that. So I had to have been
21 -- I was seeing him in April, but I'm not sure
22 how soon. Because, see, with the shingles, it
23 affected my vision. It affected everything.

24 MR. ASHLEY: Really?

25 MS. MORTON: Yeah.

1 MR. ASHLEY: How did you find out about him? Were
2 you referred?
3 MS. MORTON: Yes, I was referred.
4 MR. ASHLEY: By a friend?
5 MS. MORTON: A friend of mine, yeah.
6 MR. ASHLEY: Since this has happened, have you heard
7 from anybody else who has had similar
8 experiences that you have?
9 MS. MORTON: I have. I have. A friend of mine. I'm
10 supposed to go down and talk with her because
11 she didn't want anybody to know about it. But
12 yeah, a friend of mine had a problem.
13 MR. ASHLEY: That would kind of help to talk to her
14 and see if she will call.
15 MR. MORTON: I will. I had talked to Mr. -- I can't
16 think of his name. Moore -- Moorhead, Mr.
17 Moorhead. He had told me to talk with her and
18 I just --
19 MR. ASHLEY: You know, I'm glad you came because
20 there's no telling --
21 MS. MORTON: My husband was so upset when I told him.
22 He gave me two choices. He said, well, you can
23 either go to the police, he said, or I will
24 become a new patient.
25 which my husband didn't like him from the

1 get-go just because of the message -- he had
2 sent me this text message that if I can't keep
3 my appointments and continue -- this was the
4 beginning of it. He sent me this the day after
5 I got out of the hospital. I need to continue
6 with the way he sees fit for my appointments or
7 it's going to give him a bad name. He's just
8 very difficult to deal with.

9 MR. ASHLEY: I mean, if you talk to her, you stress
10 the thing that we don't want this happening to
11 somebody else.

12 MS. MORTON: Right.

13 MR. ASHLEY: And it has happened.

14 MS. MORTON: Right. That's what I've heard. I heard
15 that.

16 MR. ASHLEY: Yeah. He had his license in Arizona
17 revoked. His license in Ohio, he couldn't run
18 from Ohio for some reason. It's still in place
19 in South Carolina.

20 MS. MORTON: How is he allowed to practice in South
21 Carolina after what he's done?

22 MR. ASHLEY: He got a license in South Carolina.
23 He's still allowed to practice in Ohio, but for
24 some reason, he left from there.
25 But, you know, if we get him on anything, it's

1 just a misdemeanor.

2 MS. MORTON: Right.

3 MR. ASHLEY: I say, just, but it's just -- indecent
4 exposure is out in the public. I went across
5 the bridge yesterday and at a city park there
6 was a dude sitting out there in front of God
7 and everybody urinating, and I'm thinking it's
8 indecent exposure because he's on the roadway
9 or whatever.

10 He's in his home, so I don't know.

11 MS. MORTON: Somebody like that -- okay. Like, we've
12 had these horrible storms. And I have these
13 dogs, and I should feel safe and secure. I
14 have a security system. But one of my front
15 screens -- my husband, we just had our house
16 sprayed for bugs. There were no screens left.
17 This has nothing to do with him. This is the
18 way my mind is going right now. I sit up to
19 two, three o'clock in the morning, and I'm an
20 eight, nine, ten o'clock person. Ten o'clock
21 is late to me. I'm having trouble sleeping. I
22 didn't know if y'all had talked with him yet.
23 I'm panicky. I don't know what's this man
24 going to do.

25 MR. ASHLEY: He hasn't shown any propensity or any

1 kind of -- it's not in his record. It's not
2 there.

3 MS. MORTON: I read in the court document that he
4 had, I don't know if it was Arizona or Ohio,
5 and I don't know if it was the judge, I was
6 just skimming over it, but said that he had
7 shown signs or something of anger and agitation
8 as -- I don't know what case it was, but as it
9 continued.

10 MR. ASHLEY: I didn't see it. I'll have to read over
11 it again. I just got it last week.

12 MS. MORTON: I don't want to be a statistic. My
13 husband, he's wanting me to get my concealed
14 weapons permit.

15 MR. ASHLEY: Listen, I don't know.

16 MS. MORTON: Talking about --

17 MR. ASHLEY: You're probably in more danger going to
18 the mall. You know what I mean?

19 MS. MORTON: I don't know. That man to do what he
20 did, it took a lot of nerve.

21 MR. ASHLEY: Well, let's get to that. So was this a
22 morning visit appointment?

23 MS. MORTON: It was afternoon. I had sent him a
24 message. I cut my trip short. My husband and
25 I had our 11-year anniversary. I had an

1 appointment scheduled for that Monday, and this
2 was on Saturday. And I sent him a text message
3 and asked him if he had any availabilities for
4 that day, that he wasn't feeling well. He text
5 me back and he said, can you come now.

6 MR. ASHLEY: What was he treating you for?

7 MS. MORTON: It was supposed to be upper, like for my
8 shoulder blades up.

9 MR. ASHLEY: Up?

10 MS. MORTON: And my neck was -- what the doctor said,
11 it was either shingles or a cervical spine,
12 which apparently this is your cervical, yeah.
13 So anyway, he asked me if I could come now, and
14 I said yes and I thanked him. I said, thank
15 you for fitting me in in such short notice.
16 I drove down there, and I rang the doorbell.
17 It was cracked. And I knocked because he
18 didn't come to the door. He came to the door.
19 He had a towel on.

20 MR. ASHLEY: He had a towel on?

21 MS. MORTON: He had a towel, yes, sir. It was like a
22 brownish, reddish color.

23 And he came in and he apologized for taking so
24 long, and I said, it's okay. I said, I rang
25 the doorbell.

1 He said, it doesn't work.

2 So he told me to come on in. Because his home

3 -- his office is inside his house.

4 MR. ASHLEY: Yeah.

5 MS. MORTON: And I came in, and I walked straight to

6 the office and sat down on the examination

7 table where I always sit. And he stood outside

8 of the doorway. It's like a double doorway. I

9 don't know if there is French doors there or

10 not. I think there are because I think they're

11 open. He sat on the outside of the doorway but

12 talked to me.

13 MR. ASHLEY: Was there anybody else in the room at

14 the time that you know of?

15 MS. MORTON: Not that I know of.

16 MR. ASHLEY: He doesn't have a secretary or

17 something?

18 MS. MORTON: See, I don't really know. I don't even

19 know if he has a girlfriend or he's married.

20 I've been there one time and there was a lady

21 there cleaning, but that's the only time. I've

22 been there and there be a patient there. I

23 think that was my very first visit. But I

24 don't recall ever seeing anyone other than his

25 dog.

1 MR. ASHLEY: Okay. So you're for your examination --

2 MS. MORTON: I'm sitting there, and he's on the

3 outside of the doorway and he's asking me what

4 all my issues are. All I can think about is

5 why is he in his towel. And so I just babbled

6 to him. I don't know what I said to him.

7 Probably a repeat of the same thing I tell him

8 every time; vision, back, you know, not feeling

9 well. My skin was sore to the touch. That was

10 the shingles.

11 And, anyway, so he told me -- I told him I was

12 extremely nervous, shaky, and I held out my

13 hands and I showed him. And he told me to lay

14 back and relax on the table. He still had not

15 entered that office room. He was still in like

16 the outside. Like if this was the doorway, he

17 was on the opposite end of the doorway. So I

18 told him -- he told me to lay back and relax.

19 I said, take your time, I'm in no hurry.

20 I laid back, closed my eyes. I look up, and

21 he's standing over me with still a towel on. I

22 thought he was going to get dressed, but that's

23 not what happened. I didn't feel good.

24 Anyway, so he was standing on my right side.

25 He just -- he took his hands or fingers and he

1 see about going after his license.

2 MS. MORTON: Yeah. He doesn't need to be practicing.

3 MR. ASHLEY: And save some other young lady the pain.

4 It's obvious you're not getting over this

5 anytime soon. I hope you do.

6 MS. MORTON: It's scary.

7 MR. ASHLEY: I gotcha.

8 MS. MORTON: And I think that he -- he specializes in

9 pediatrics, so that's really what --

10 MR. ASHLEY: Yeah, the idea of a young girl or

11 whatever.

12 MS. MORTON: Yeah. It's --

13 MR. ASHLEY: Well, I don't know what you did with my

14 pen. You lost it. You're going to have to

15 quit losing my pen like that.

16 MS. MORTON: Are y'all partners?

17 MR. ASHLEY: Yeah, we're partners.

18 MS. HENDRICKS: Can't you tell?

19 MS. MORTON: Yeah.

20 MR. ASHLEY: Well, I'll get back with you.

21 MS. MORTON: Okay.

22 MR. ASHLEY: I'll let you know. I'm going to see

23 what we can do.

24 MS. MORTON: Yeah, please do.

25 MR. ASHLEY: I'm going to see what we can do about

1 THE DEPONENT: He didn't provide me with anything. I
2 just saw it.

3 EXAMINATION RESUMED

4 BY MR. SMITH:

5 Q. You talked about Dr. Battersby showing signs of
6 anger.

7 where did you get that?

8 A. He did show signs of anger when dealing with
9 him.

10 Q. No, you were talking about what you read that
11 said showed signs of anger.

12 A. Oh, I don't remember exactly what I read. I
13 don't know.

14 Q. when he answered in this towel and continued to
15 stay in this towel, did you ever say you felt
16 uncomfortable?

17 A. No. Well, I told him I was uncomfortable. I
18 told him I was nervous from the time I walked
19 into the door.

20 Q. You said he specialized in pediatrics.
21 Do you have any recollection of where you got
22 that?

23 A. I don't recall where I got that.

24 Q. Do you still contend that you did not do any
25 research on Dr. Battersby?

1 MR. MATTHEWS: Object to the form.

2 THE DEPONENT: Before or after?

3 EXAMINATION RESUMED

4 BY MR. SMITH:

5 Q. Before this came to light, your issue.

6 A. Before I found out -- I'm not sure what you're
7 asking me.

8 Q. I'll rephrase it.

9 when did you start doing research on Dr.
10 Battersby?

11 A. I have never done research --

12 MR. MOORHEAD: Object to the form.

13 THE DEPONENT: -- on Dr. Battersby.

14 EXAMINATION RESUMED

15 BY MR. SMITH:

16 Q. So the court documents that you read would not
17 be considered research?

18 MR. MATTHEWS: Object to the form.

19 Please answer.

20 THE DEPONENT: I didn't do that. I didn't -- I don't
21 --

22 MR. SMITH: I don't have anything further at this
23 point.

24 EXAMINATION

25 BY MR. MATTHEWS:

1 might see him that day due to significant neck
2 and shoulder pain that I have been dealing with
3 for a number of months.

4 Is that true?

5 A. Yes.

6 Q. Dr. Battersby had been treating me for cervical
7 issues about once a week for approximately 20
8 weeks.

9 Is that true?

10 A. No. The 20 weeks is wrong.

11 Q. And can you estimate -- I believe you said
12 earlier that you thought you may have started
13 with Dr. Battersby in April?

14 A. I thought I did, but I went back and looked.
15 It was May 2nd.

16 Q. What did you look at?

17 A. The cancelled check from my first visit.

18 Q. Do you remember how much that check was?

19 A. I think it was like \$55. It was in that
20 neighborhood.

21 Q. I think you said later that the charge was \$25
22 a visit?

23 A. Correct. The first visit was more.

24 Q. Do you know why?

25 A. No.

**EXCERPTS OF DEPOSITION
TRANSCRIPT ON MOTION
FOR SUMMARY JUDGMENT
June 14, 2015**

1 State of South Carolina
 2 County of Anderson In the Court of Common Pleas

3
 4 Gregg Battersby,)
 5 Plaintiff,) 2014-CP-04-01121
 6 -vs-) June 4, 2015
 7 Thomas W. Dunaway, III,)
 8 Jan Morton, Carrie Neal,)
 9 Defendants.) Transcript of Record
 10 -----)

11 B E F O R E:

12 The Honorable R. Lawton McIntosh, Judge
 13

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

15 Donald L. Smith, Esquire
 16 Attorney for Plaintiff

17 Steven M. Krause, Esquire
 18 Attorney for Defendant

19 William Norman Epps, III, Esquire
 Attorney for Defendant

20 Todd W. Pruetten, Esquire
 21 Attorney for Defendant

22 Eric K. Englehardt, Esquire
 Attorney for Defendant

23
 24 Diane L. Marcengill, RPR, CRR
 25 Circuit Court Reporter

1 2014-1121. The motion that is presently before me is
2 under case number 2015-667.

3 MR. PRUETTE: Yes, your Honor. So I don't have
4 any dealings with that case, no, your Honor.

5 THE COURT: All right. And the motion to
6 reinstate the motion was denied, okay, under case
7 number 2014-1121.

8 So anything further from you with regard to case
9 number 1121?

10 MR. PRUETTE: No, your Honor, not as far as the
11 reinstatement of the motions.

12 THE COURT: Okay. Mr. Epps, anything further from
13 you?

14 MR. EPPS: Just, your Honor, that motion to
15 reinstate was filed with the Court on February 19th,
16 2015. That was filed prior to the order, the written
17 order dismissing his motion for failure to prosecute
18 filed in March.

19 MR. PRUETTE: Your Honor, if I may, it will
20 actually be -- the filing of that motion will be a part
21 of my argument for the defense against the default as
22 well, but I'll bring that up then.

23 THE COURT: That's not before me today that I'm
24 aware of. The only thing I had before me was
25 Allstate's motions and Mr. Krause's motions. If it is

1 MR. ENGLEBARDT: I'm sorry, your Honor. I want to
2 make sure I'm clear. Do you want me to go any further
3 into the immunity argument?

4 THE COURT: No. I'm going to -- here's what I'm
5 doing. I've granted your motion for summary judgment
6 at this juncture based on attorney immunity with the
7 only admitted exception to be to civil conspiracy.

8 I also want you to go forward for the record to
9 argue your other bases for dismissal set forth in your
10 brief, although it's not a 12(b)(6) now, as to each
11 cause of action. Then we'll come back and visit the
12 conspiracy at the end under immunity and your motion to
13 dismiss. Okay? That way we have a clear record.

14 MR. ENGLEBARDT: The first cause of action would
15 be the false imprisonment cause of action, and that's a
16 fairly simple argument for us. There's no allegation
17 that my clients imprisoned anyone. If there was any
18 imprisonment done, it was by law enforcement of
19 Anderson County. There was no deprivation of liberty
20 on the part -- by the actions of the defendants, and so
21 simply that cause of action fails.

22 There's also -- since we're under a Rule 56 motion
23 as well, there was probable cause found, which I think
24 also protects my clients.

25 THE COURT: Let me stop you right there.

1 Mr. Smith, I have made a general ruling as to the
2 immunity being applicable to all your causes of action
3 except for conspiracy, but I want to go further and
4 make a further record as to whether or not I should,
5 based on the individual causes of action, they should
6 be dismissed or summary judgment granted.

7 What is your response to the argument for false
8 imprisonment, please?

9 MR. SMITH: As I said, your Honor, I'm in
10 agreement that the only thing that applies to them is
11 civil conspiracy.

12 THE COURT: So do you agree to dismiss with
13 prejudice or to summary judgment being granted as to
14 all causes of action except for conspiracy?

15 MR. SMITH: Yes, except for conspiracy.

16 THE COURT: Okay. All right. Then enough said.
17 He agreed that that is appropriate. He agreed that
18 that is what's going to happen.

19 So let's go back to conspiracy.

20 MR. ENGLEBARDT: Yes, sir, your Honor.

21 THE COURT: Let me ask, Mr. Smith, under the
22 general immunity statute, how in your case do you fit
23 under any of the exceptions to the general immunity
24 afforded to attorneys?

25 MR. SMITH: May it please the Court.

1 THE COURT: Yes, sir.

2 MR. SMITH: May I approach, your Honor?

3 THE COURT: I've got your memorandum. I've read
4 it.

5 MR. SMITH: This is the deposition testimony of
6 Ms. Morton, Mr. Moorhead's client.

7 THE COURT: Do you have that?

8 MR. ENGLEBARDT: Yes, sir, your Honor.

9 THE COURT: Okay, sir. Go ahead.

10 MR. SMITH: Your Honor, in that deposition
11 testimony, Ms. Morton, his client, who visited
12 Dr. Battersby maybe four times, five times, the LLR
13 complaint says it's 20 times. Says, "My attorney
14 filed -- my attorney wrote this for me."

15 MR. ENGLEBARDT: Your Honor, if he could, instead
16 of being general, speak to specific line items and
17 pages.

18 THE COURT: That's agreed.

19 MR. SMITH: Page 76, line 10.

20 THE COURT: Just one second, please.

21 76, line 10, says, "Dr. Battersby has been
22 treating me for several issues once a week for
23 20 weeks."

24 "Is that true?"

25 "No. The 20 weeks is wrong."

1 11, "Can you estimate? I believe you said earlier
2 that you thought you may have started back in April."

3 "I thought I did, but I went back and looked. It
4 was May 2nd."

5 "What did you look at?"

6 "Cancelled check."

7 So where on that page, on page 76, does it say
8 that my attorney told me --

9 MR. SMITH: Page 27. But in that it supports that
10 argument saying, "That's wrong. 20 visits is wrong.
11 It was four visits."

12 THE COURT: Gotcha.

13 MR. ENGLEBARDT: If your Honor doesn't mind, can I
14 ask where is it in the record about the four visits?
15 He's using a number of four visits. I don't believe
16 that exists in the record. I'm asking if it's in the
17 record, where is it.

18 MR. SMITH: She said May 2nd as to when she saw
19 him, and she testifies that she sees him once a week,
20 and I did the math.

21 THE COURT: So you extrapolated from line 15 "May
22 2nd"?

23 MR. SMITH: Yes.

24 THE COURT: Okay. All right.

25 Go ahead.

1 Mr. Englehardt?

2 MR. ENGLEBARDT: No, sir.

3 THE COURT: All right. I'm granting the motion
4 for summary judgment as to all causes of action.
5 There's no genuine issue of material fact that immunity
6 would apply to cause of action for false imprisonment,
7 defamation, intentional infliction of emotional
8 distress, malicious prosecution, fraud or abuse of
9 process.

10 In addition, I would incorporate the arguments
11 made by you in your memoranda as to additional
12 supporting grounds. Although that was at the point of
13 being a motion to dismiss, those grounds would be
14 appropriate for granting summary judgment in this case
15 as well.

16 As to malicious prosecution, there is no
17 independent duty owed by Mr. Moorhead under the facts
18 of this case. What I understand Mr. Smith to say is
19 apparently some extrapolation of ethical rules creates
20 an independent duty to his client, and that is not
21 appropriate in this case. Even so, there's been no
22 showing of a breach of duty that was owed.

23 Also the fact that the allegations that
24 Mr. Moorhead acted outside the scope of his
25 representation, all the activities that we just

1 discussed on the record that are discussed in the
2 complaint are clearly within the duties and the scope
3 of representation of an attorney. The fact that
4 Mr. Moorhead allegedly helped her fill out some form
5 with the LLR does not take it outside that scope. The
6 fact that Mr. Moorhead may have asked his client or
7 advised his client to go to law enforcement is further
8 within the scope.

9 In addition, the evidence showing that
10 Mr. Moorhead acted outside the scope pointed to by
11 Mr. Smith has to do with a report where she gave --
12 there is an incident report where she alleged that
13 Dr. Battersby was in a robe, and then there was a
14 subsequent investigative report, incident report by law
15 enforcement where she said robe as opposed to towel --
16 excuse me. Towel first, robe later. The point being
17 Mr. Moorhead wouldn't have the benefit of any report if
18 he advised her because he's the one who told her to go
19 to law enforcement. I just don't see that that is
20 evidence of anything but minor discrepancies in the
21 story. I don't find them to have any significance at
22 all. I'm granting the motion, and I want you to
23 incorporate your further arguments on civil conspiracy
24 as well.

25 If you would prepare me an order and submit it to

1 Mr. Smith before you turn it in to me and also turn it
2 in to me and my clerk by e-mail. Okay, sir?

3 MR. ENGLEBARDT: Thank you, your Honor.

4 THE COURT: Now, with that being said, what
5 motions do you guys have in front of me? I didn't
6 realize, Mr. Epps. Which motion do you have?

7 MR. EPPS: I don't have a motion. It's
8 Mr. Smith's motion against -- along with that motion to
9 reinstate, he also filed --

10 THE COURT: This is under case number 1121?

11 MR. EPPS: Yes, sir.

12 MR. ENGLEBARDT: Your Honor, may we be excused?

13 THE COURT: Yes.

14 MR. ENGLEBARDT: Thank you, your Honor.

15 THE COURT: Mr. Smith, what motion do you have in
16 2015 -- excuse me -- 2014-1121, other than your motion
17 to reinstate the motion?

18 MR. SMITH: Motion of default against Neal, and
19 then I have a motion for summary judgment, I believe,
20 on Mr. Dunaway as far as Mr. Epps.

21 THE COURT: Let me look at that while everybody is
22 kind of milling about.

23 MR. PRUETTE: Your Honor, if I may, I have a
24 memorandum for the default. I have given him a copy.

25 THE COURT: Mr. Smith, you have a motion for

1 summary judgment. I've read your motion. Basically is
2 your motion based on the fact that Ms. Morton made
3 different -- had different versions of the alleged
4 facts that occurred; is that it?

5 MR. SMITH: She has a totally different story,
6 sir, so that goes to the fact --

7 THE COURT: Like four different stories.

8 MR. SMITH: Like she doesn't understand herself.

9 THE COURT: How does that create a genuine issue
10 of material fact such that summary judgment is
11 warranted?

12 MR. SMITH: It's undisputed that her credibility
13 is lacking. That's --

14 THE COURT: Credibility is inherently a question
15 of fact for the jury.

16 MR. SMITH: I understand that. She doesn't have
17 any credibility. And she's not consistent at all. She
18 has four different stories, as your Honor pointed out.
19 I mean, that -- that doesn't reach the jury because --

20 THE COURT: Are you saying that because these
21 differences in her versions of the events that
22 allegedly occurred, that it amounts to an issue of law
23 that the Court should grant summary judgment as to
24 credibility?

25 MR. SMITH: I do. I do.

1 THE COURT: I will not do that. It is a question
2 of fact for the jury.

3 Any other grounds for the motion for summary
4 judgment other than credibility amounting to a question
5 of law?

6 MR. SMITH: No, sir.

7 THE COURT: Okay. Thank you.

8 You have a motion for default judgment.

9 MR. SMITH: I do.

10 THE COURT: Let me find that motion.

11 MR. PRUETTE: Your Honor, just to clarify, I don't
12 believe there was actually a motion filed. I believe
13 the plaintiff filed an affidavit. The Court refused to
14 sign the order of default and set this motion itself.
15 I don't think the plaintiff filed a motion.

16 THE COURT: Mr. Dunaway, Mr. Smith answered the
17 original complaint. I'm just looking through this
18 file.

19 MR. SMITH: He did?

20 THE COURT: He did. And he was Ms. Neal's
21 attorney, even though he was a named defendant in this
22 case.

23 MR. SMITH: Yes.

24 MR. PRUETTE: Your Honor, just to clarify,
25 Mr. Dunaway wasn't listed as an original defendant. It

1 was just Ms. Neal and Ms. Morton, and then subsequently
2 he filed an amended --

3 THE COURT: Added Mr. Dunaway to the case?

4 MR. PRUETTE: Yes, your Honor. He filed an
5 amended complaint that crossed Mr. Dunaway's answer and
6 counterclaim from Ms. Neal. I believe it was filed
7 prior to Mr. Smith being served, and then he filed --
8 Mr. Smith filed a second subsequent amended complaint
9 pursuant to the court order.

10 THE COURT: So you're seeking to have Ms. Neal
11 held in default, right?

12 MR. SMITH: Yes, your Honor.

13 THE COURT: Okay. Do you disagree with the facts
14 Mr. Pruette just said?

15 MR. SMITH: I do not, your Honor. The one that
16 allowed the amendment to bring in Mr. Dunaway, so
17 that's how that occurred.

18 THE COURT: All right. I'm going to deny your
19 motion for default.

20 Are -- at this point are the pleadings joined?

21 MR. PRUETTE: Your Honor, I filed pleadings on the
22 2nd, so I believe Tuesday, and I can serve those on the
23 parties, on Mr. Smith and the parties.

24 THE COURT: Well, I thought that Ms. Neal had
25 already answered the counterclaim.

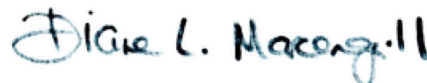
Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Anderson County, South Carolina, on the 4th day of June 2015.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 30, 2015



Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

EXHIBITS

**ORDER OF TEMPORARY
SUSPENSION
IN THE MATTER OF GREGG
NEWTON BATTERSBY
(SCDLLR)**

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE STATE BOARD OF CHIROPRACTIC EXAMINERS**

In the Matter of:

GREGG NEWTON BATTERSBY, D.C.,
License No. DC.3011

OIE #2013-24

Respondent.

ORDER OF
TEMPORARY SUSPENSION

PUBLIC

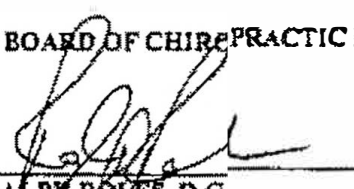
WHEREAS, the Office of General Counsel has provided probable cause warranting an Order of the South Carolina Board of Chiropractic Examiners (hereinafter "the Board"), to temporarily suspend Respondent from practice in accordance with the Board's Practice Act (S.C. Code of Laws Ann., § 40-9-10, *et seq.*, as amended),¹ § 1-23-370(c), and Regulation 25-1, *et seq.*

THEREFORE, IT IS ORDERED THAT, in accordance with §§ 40-9-10 and 1-23-370(c) and Reg. 25-6(A), Respondent's license to practice chiropractic in this State is hereby temporarily suspended, effective immediately, pending further order of the Board.

AND IT IS SO ORDERED.

STATE BOARD OF CHIROPRACTIC EXAMINERS

BY:


RALPH ROLES, D.C.
Vice Chairman of the Board

Date: 8-20, 2013.

¹ Further reference to the South Carolina Code of Laws and South Carolina Code of Regulations shall be by code section only.

Exhibit A

BATTERSBY v. AVATAR
Appeal No. C-030774
First Appellate District of Ohio

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{¶1} Plaintiff-appellant, Dr. Gregg N. Battersby, appeals from the judgment of the Hamilton County Court of Common Pleas dismissing his complaint against defendants-appellees, Avatar, Inc., Connie Coleman, and Michelle LaTorre (collectively “Avatar”¹), in a lawsuit alleging the wrongful denial of payment for chiropractic services. For the following reasons, we affirm the trial court’s judgment.

{¶2} Battersby is a licensed chiropractor. According to his complaint, he had signed a provider agreement with the Ohio Bureau of Workers’ Compensation (“BWC”) in which he had agreed not to separate, or “unbundle,” procedure codes when billing BWC or any managed-care organization. Avatar is a managed-care organization that processes claims for medical services, including chiropractic procedures.

{¶3} According to Battersby, Avatar had withheld payment for certain services that he had rendered because there had not been prior approval for the procedures. In his complaint, Battersby alleged that Avatar had not required prior approval for non-chiropractic procedures. He further alleged that, by the time he had resubmitted requests for payment using separate procedure codes as required by Avatar, Avatar had refused payment on the basis that the requests were untimely.

{¶4} Battersby’s complaint included causes of action for extortion, economic coercion, fraud, racketeering, conspiracy, discrimination, theft, malicious prosecution, and infliction of emotional distress. Avatar filed a motion to dismiss pursuant to Civ.R. 12(B)(6), and in an entry journalized September 17, 2003, the trial court dismissed Battersby’s claims in their entirety.

¹ Coleman and LaTorre were employees of Avatar.

{¶5} Battersby now appeals, asserting four assignments of error. In his first assignment of error, he argues that the trial court erred in dismissing his claims under Civ.R. 12(B)(6). A dismissal under Civ.R. 12(B)(6) should be granted only if it appears beyond doubt from the complaint that the plaintiff can prove no set of facts that would entitle him to relief.² This court reviews the granting of a Civ.R. 12(B)(6) motion de novo, and, like the trial court, we are constrained to take all of the allegations in the complaint as true, drawing all reasonable inferences in the plaintiff's favor.³

{¶6} Battersby first argues that the trial court erred in dismissing his claim for discrimination. In support of his argument, he cites only R.C. 4121.441 as the basis for the claim. R.C. 4121.441 provides the following:

“(A) The administrator of workers’ compensation, with the advice and consent of the workers’ compensation oversight commission, shall adopt rules under Chapter 119. of the Revised Code for the health care partnership program administered by the bureau of workers’ compensation to provide medical, surgical, nursing, drug, hospital, and rehabilitation services and supplies to an employee for an injury or occupational disease that is compensable under this chapter or Chapter 4123., 4127., or 4131. of the Revised Code.

“(B) The rules shall include, but are not limited to, the following: * * *

“(2) Prohibitions against any discrimination against any category of health care providers * * *.”

{¶7} As is evident from the plain language of R.C. 4121.441, the statute merely requires the administrator of BWC to promulgate rules concerning the health-care-

² *O'Brien v. Univ. Community Tenants Union, Inc.* (1975), 42 Ohio St.2d 242, 327 N.E.2d 753, syllabus.

³ *Tri-State Computer Exchange, Inc. v. Burt*, 1st Dist. No. C-020345, 2003-Ohio-3197, at ¶ 11.

partnership program. It does not provide a health-care provider with a cause of action against a managed-care organization or any other party. Thus, even if we accept as true Battersby's allegations that Avatar had discriminated against him on the basis that he is a chiropractor, he did not state a claim under R.C. 4121.441, and he did not allege a violation of any other statutory or administrative provision. Although Battersby seems to suggest that he stated a claim under some unspecified common-law prohibition against discrimination, we find no support in the law for such a proposition. Accordingly, we hold that the trial court properly dismissed the discrimination cause of action.

{¶8} Battersby's only remaining argument under the first assignment of error is that the trial court erred in dismissing what he terms causes of action "similar in name to criminal causes of action." He does not specify which of his asserted causes of action would fall within that rubric or in what manner the trial court erred in dismissing the claims. Although we review the trial court's dismissal of the claims de novo, it is incumbent upon Battersby, as appellant, to demonstrate the error of which he complains.⁴ His conclusory statements concerning these causes of action are insufficient in that regard, and we hold that the trial court did not err in dismissing the remaining causes of action.⁵

{¶9} In his third assignment of error, Battersby contends that the trial court erred in dismissing his claim that he was denied equal protection under the United States and Ohio Constitutions. Although Battersby did not separately plead a violation of equal protection, he suggests that the claim was related to his discrimination cause of action

⁴ App.R. 16.

⁵ See id. See, also, *Hamilton Cty. Bd. of Commrs. v. Cincinnati*, 154 Ohio App.3d 504, 2003-Ohio-5089, 797 N.E.2d 1027, fn. 1, jurisdictional motion overruled, 101 Ohio St.3d 1424, 2004-Ohio-123, 802 N.E.2d 154 (holding that errors not argued in a brief will be deemed abandoned).

and therefore properly before the trial court. For the sake of argument, we accept that contention.

{¶10} The constitutional guarantee of equal protection applies in general only to action by the government.⁶ In the case at bar, Battersby alleged merely that Avatar was certified as a managed-care organization under the Ohio workers' compensation health-care-partnership program. He did not allege that Avatar was a governmental entity or an agent of the state. Therefore, we agree with Avatar that equal-protection guarantees were not implicated by Avatar's alleged wrongdoing and that the trial court did not err in dismissing the equal protection claim. The third assignment of error is accordingly overruled.

{¶11} In his second assignment of error, Battersby argues that the trial court erred in denying him leave to amend his complaint, or, in the alternative, in failing to inform him that leave of court was not required. Battersby contends that, because he sought to amend his complaint before Avatar had filed a responsive pleading, he should have been permitted to do so as a matter of right.

{¶12} Battersby is correct in stating that, under Civ.R. 15(A), a plaintiff is permitted to amend his complaint once as a matter of course and without leave of court before a responsive pleading is served. Nonetheless, we are persuaded that any error on the part of the trial court in the case at bar was harmless. The amendment that Battersby proposed in his motion did not substantively change the nature of the pleading. As Battersby himself stated in his memorandum in support of the motion for leave to amend, he merely sought, in his proposed amendment, to "more clearly show the chronology" of

⁶ See *Edmonson v. Leesville Concrete Co., Inc.* (1991), 500 U.S. 614, 619, 111 S.Ct. 2077, citing *Natl. Collegiate Athletic Assn. v. Tarkanian* (1988), 488 U.S. 179, 191, 109 S.Ct. 454.

the facts that he had asserted in his complaint. As part of our de novo review of the trial court's dismissal, we have scrutinized the proposed clarification and have concluded that it did not materially affect the allegations of the complaint. Therefore, we find no prejudicial error in the trial court's rejection of the amendment, and the second assignment of error is overruled.

{¶13} In his fourth and final assignment of error, Battersby argues that the trial court erred in refusing to recuse itself. In support of the assignment, Battersby states that the law firm representing Avatar had contributed to the court's campaign.

{¶14} We find no merit in the assignment. The proper avenue of redress for a party seeking recusal is the filing of an affidavit of bias and prejudice with the Chief Justice of the Supreme Court of Ohio.⁷ A litigant may not raise the issue for the first time on appeal.⁸ The fourth assignment of error is overruled, and the judgment of the trial court is affirmed.

Judgment affirmed.

GORMAN and SUNDERMANN, JJ., concur.

⁷ See, e.g., *Nickerson v. Nickerson* (May 22, 1998), 1st Dist. No. C-970431.

⁸ *Id.*

**MULQUEENY v. MENTOR
CHIROPRACTIC CENTER, INC.
2002-Ohio-1687**

Mulqueeny v. Mentor Chiropractic Center, Inc., (Ohio 2002)

1. [Cite as Mulqueeny v. Mentor Chiropractic Center, Inc., 2002-Ohio-1687.]

COURT OF APPEALS

ELEVENTH DISTRICT

LAKE COUNTY, OHIO

J U D G E S

DONNA POHTO MULQUEENY, HON. DONALD R. FORD, P.J.,

HON. JUDITH A. CHRISTLEY, J.,

Plaintiff-Appellee, HON. DIANE V. GRENDELL, J.

- vs ACCELERATED

CASE NO. 2001-L-034 MENTOR CHIROPRACTIC

CENTER, INC.,

O P I N I O N

Defendant-Appellant.

CHARACTER OF PROCEEDINGS: Civil Appeal from the Willoughby Municipal Court Case No. 00 CVH 01433

JUDGMENT: Affirmed.

- 1 -

ATTY. GLENN E. FORBES ATTY. MICHAEL P. GERMANO COOPER & FORBES ATTY.
GEOFFREY W. WEAVER 166 Main Street WILES AND RICHARDS Painesville, OH 44077
Centre Plaza South

35350 Curtis Boulevard, #530 (For Plaintiff-Appellee) Eastlake, OH 44095

(For Defendant-Appellant)

GRENDELL, J.

Defendant-appellant. Mentor Chiropractic Center, Inc. ("appellant"), appeals from the order of the Willoughby Municipal Court allowing the execution of a judgment against both appellant and Dr. Gregg N. Battersby in a garnishment proceeding.

On November 3, 2000, Donna Pohio Mulqueeny ("Mulqueeny") filed a notice of garnishment with the Willoughby Municipal Court, naming appellant as judgment debtor. Earlier, Mulqueeny had brought a complaint against appellant and Dr.

Battersby. The parties then entered into a settlement agreement whereby appellant agreed to pay Mulqueeny fifteen thousand dollars (\$15,000). Mulqueeny released and discharged appellant and Dr. Battersby from any further claims or demands, including all claims asserted in the complaint. The case was dismissed with prejudice. Appellant did not pay its debt to Mulqueeny.

On November 22, 2000, the magistrate in the garnishment proceeding issued its report, finding appellant was the alter ego of Dr. Battersby and recommending that Mulqueeny's garnishment be sustained against appellant and Dr. Battersby. The trial

- 2 -

court approved the magistrate's decision on November 28, 2000. Appellant and Dr.

Battersby filed objections to the Magistrate's decision on December 5, 2000. Appellant objected to the finding that it was merely an alter ego of Dr. Battersby. Appellant asked the trial court to dismiss the garnishment against Dr. Battersby and to proceed with the garnishment against it, a defunct corporation with no assets. Dr. Battersby filed an affidavit with the objections in which he stated the only evidence presented to the Magistrate at the hearing was Mulqueeny's trial brief. The matter was set for hearing before a different magistrate. The second magistrate recommended overruling the objections.

Appellant and Dr. Battersby filed objections to the second magistrate's decision. Appellant again objected to Mulqueeny collecting from Dr. Battersby because he was not a party to the settlement agreement. On February 1, 2000, the trial court overruled the objections. Appellant has appealed from this decision.

Appellant's assignments of error will be addressed together as similar issues are involved. First, appellant asserts Dr. Battersby was deprived of due process of law because Mulqueeny only asserted the argument regarding piercing the corporate veil orally during the garnishment proceeding. Appellant contends Dr. Battersby is being held personally liable for a corporate debt without receiving notice and an opportunity to appear and defend himself.

In this appeal, appellant is presenting arguments on Dr. Battersby's behalf, which are contrary to its own interests. If Dr. Battersby is not liable for the judgment

- 3 -

debt, then appellant, a defunct corporation, would be responsible. Dr. Battersby was not a party to the garnishment proceedings. He never sought to intervene below and is not a party before this court. We must address appellant's standing to pursue an appeal on the behalf of a non-party.

An appeal is permitted only to correct errors injuriously affecting an appellant. *Ohio Contract Carriers Assn., Inc. v. Pub. Util. Comm.* (1942), Ohio St. 160, syllabus. An appellant usually does not have standing to argue issues affecting another person. *In re Leo D.* (Mar. 15, 2002),

Lucas App. No. L-01-1452, unreported, 2002 Ohio App. LEXIS 1148.

Standing prevents a person from bringing a case to protect the rights of a third party. *State ex rel. Rien Constr. Co. v. Rice* (May 7, 1999), Trumbull App. No. 99- T-0025, unreported, 1999 Ohio App. LEXIS 2101. Similarly, a party generally may not prosecute an appeal to protect the rights of a third party. An appellant may not assign errors committed against a non-appealing party, unless the errors are prejudicial to the rights of the appellant. *In re Smith* (1991), 77 Ohio App.3d 1, 13. An appealing party is not permitted to vicariously assert that a non-party's constitutional due process rights were violated. *In re Spencer Children* (Mar. 22, 1999), Butler App. No. CA98-05-103, unreported, 1999 Ohio App. LEXIS 1129.

Appellant only asserts arguments in both its assignments of error regarding Dr. Battersby and never asserts the judgment of the trial court adversely affected its interests. The errors complained on appeal are not prejudicial to appellant's rights,

- 4 -

preventing appellant from presenting the issues on appeal. Appellant therefore lacks standing to bring this appeal on Dr. Battersby's behalf.

We further note that, even if appellant had standing to prosecute the appeal based upon the arguments raised before this court, appellant did not provide the trial court with a transcript of the hearing held before the magistrate. Without a transcript of the hearing before the magistrate, it cannot be determined whether appellant or Dr. Battersby had an opportunity to defend below on the issue of piercing the corporate veil.

A party objecting to a magistrate's decision must support the objections with a transcript of all the evidence relevant to the disputed fact or an affidavit of that evidence if a transcript is not available. Civ.R. 53(E)(3)(b); *Yancy v. Haehn* (Mar. 3, 2000), Geauga App. No. 99-G-2210, unreported, 2000 Ohio App. LEXIS 788. The failure to support objections advanced under Civ.R. 53 precludes any argument on appeal of the factual determinations. *Dintino v. Dintino* (Dec. 31, 1997), Trumbull App. No. 97-T- 0047, unreported, 1997 Ohio App. LEXIS 6027. Appellant cannot now contend Dr.

Battersby was denied due process of law because no transcripts of the magistrates' hearings were provided to the trial court.

Appellant also asserts that the procedures for garnishment set forth in R.C. 2716.11 were not followed below and that it was prejudiced by the trial court remanding its objections for hearing before a second magistrate. Appellant never raised either argument below. A reviewing court will not consider any error a party did not bring to the trial court's attention at a time when the error could have been avoided or corrected by the

- 5 -

court. *Martin v. St. Vincent Med. Ctr.* (2001), 142 Ohio App.3d 347. A party cannot assert new legal theories for the first time on appeal. The failure to raise the issue below results in waiver. *Nozik v. Kanaga* (Dec. 1, 2000), Lake App. No. 99-L-193, unreported, 2000 Ohio App. LEXIS

5615. Appellant did not raise these issues at the trial court level and has waived the assertion of any error on appeal.

The real party in interest is not before this court in this appeal. We therefore must presume regularity in the proceedings below. Appellant's assignments of error are overruled. The judgment of the Willoughby Municipal Court is affirmed.

JUDGE DIANE V. GRENDALL

FORD, P.J.,

CHRISTLEY, J.,

concur.

- 6 -

**IN THE MATTER OF GREGG
NEWTON BATTERSBY
BOARD'S ORDER ADOPTING AND
MODIFYING FINDING OF FACTS
Arizona State Board of Chiropractic
Examinees**

1 Based on Findings of Fact 22, the Board modifies paragraph 11, page 15 as follows:
2 The Ohio Board did suspend Dr. Battersby's Ohio license. The Board therefore has established
3 grounds under A.R.S. § 32-924(A)(14) to discipline his Arizona license

4 **IT IS FURTHER ORDERED that:**

- 5 1.) License number 3544 issued to Gregg N. Battersby, D.C. is **REVOKED**.
6 2.) Respondent reimburse the Board for all costs associated with the investigation
7 and the formal hearing in this matter, to be paid within one hundred and twenty (120) days of
8 receiving the invoice from the Board. Payment for these costs shall be made to the Board either
9 by certified check or cashier's check.
10 3.) This Order shall become effective as of the date stated below.

11
12
13 DATED this 27 day of October, 2008.

14 ARIZONA STATE BOARD OF
15 CHIROPRACTIC EXAMINERS

16 [SEAL]

17 By 
18 P. Dianne Haydon, D.C., Chairperson
19 Arizona State Board of
Chiropractic Examiners

20 **NOTICE:** This Order constitutes a formal decision and order of the Board. If the
21 Respondent desires to challenge the Order, Respondent shall file a written motion for rehearing
22 with the Board's Executive Director within thirty (30) days after service of the Order. Service of
23 the Order is effective on personal service or five days after the date of mailing to Respondent.
24 Under A.A.C. R4-7-305(C), the motion for rehearing must state with specificity the grounds for
25 rehearing. Failure to file a motion for rehearing or review has the effect of prohibiting judicial
26 review of the Board's Order, according to A.R.S. § 41-1092.09 (B) and A.R.S. § 12-904 *et seq.*

1 COPY of the foregoing
2 mailed by U.S. Certified Mail
3 (return receipt requested)
4 and regular U.S. Mail
5 this 27 day of October, 2008

6 Gregg Battersby, D.C.
7 8560 Billings Rd.
8 Kirtland, OH 44094
9 Respondent

10 COPY of the foregoing
11 mailed by regular U.S. Mail this
12 27 day of October, 2008

13 Mark Harris
14 Assistant Attorney General
15 Civil Division
16 Office of the Attorney General
17 1275 West Washington
18 Phoenix, AZ 85007

19 Christopher Munns, D.C.
20 Assistant Attorney General
21 Solicitor General's Section
22 Office of the Attorney General
23 1275 West Washington
24 Phoenix, AZ 85007

25 Copy of the foregoing
26 hand delivered this
27 27 day of October 2008

28 Diane Mihalsky
29 Administrative Law Judge
30 Office of Administrative Hearings
31 1400 W. Washington, #101
32 Phoenix, AZ 85007

33 
34 Board Operations

**STATE OF OHIO v. GREGG N.
BATTERSBY
Case No. 2007-L-023
Eleventh Appellate District, Ohio**

THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO

STATE OF OHIO,	:	OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2007-L-023
GREGG N. BATTERSBY,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Mentor Municipal Court, Case No. 06 CRB 0970.

Judgment: Affirmed.

Lisa M. Klammer, Mentor City Prosecutor, 8500 Civic Center Boulevard, Mentor, OH 44060
(For Plaintiff-Appellee).

Paul H. Hentemann, Northmark Office Building, 35000 Kaiser Court, #305, Willoughby, OH
44094 (For Defendant-Appellant).

DIANE V. GRENDELL, P.J.

{¶1} Defendant-appellant, Gregg N. Battersby, appeals the judgment of the Mentor Municipal Court, denying his motion to vacate his guilty plea to one count of Public Indecency, and imposing a sentence of thirty days in jail, with three days "credit" for the time Battersby spent doing community service. For the following reasons, we affirm the judgment of the lower court.

{¶2} On June 22, 2006, Battersby was arrested and charged with one count of Public Indecency, a misdemeanor of the fourth degree, in violation of R.C.

2907.09(A)(1). The charges arose from an incident occurring in Battersby's home, in which he exposed himself to a cleaning woman. On June 27, 2006, Battersby appeared for his arraignment, and entered a plea of not guilty to the charge.

{¶3} On October 16, 2006, a hearing was held, during which time, Battersby changed his plea of not guilty to a plea of no contest. At the hearing, the judge reviewed the rights Battersby was waiving by entering his plea, as well as the the rights form Battersby had signed, and accepted his plea. Battersby's attorney informed the court of a psychological evaluation that Battersby had submitted to the court, and requested that a pre-sentence investigation report be completed prior to the imposition of his sentence, "for the ultimate recommendation of a diversion if [Battersby] adequately completes everything that Mr. Dragar [his probation officer] is looking for him to do."

{¶4} Subsequent to the plea hearing, and pursuant to Dragar's recommendation, Battersby performed three of four recommended days of community service, and made a donation to the Mentor Public Library, in lieu of completing the fourth day.

{¶5} The matter proceeded to sentencing on January 12, 2007. Prior to the hearing, Battersby retained new counsel and filed a "Motion to Enforce a Diversion Program." Battersby's former counsel, Mr. Zicarelli, filed a motion to withdraw.

{¶6} At the hearing, both attorneys appeared with Battersby. Prior to sentencing, the court addressed the pending motions before it. The court granted Zicarelli's motion to withdraw, and, after hearing testimony from Zicarelli, Dragar, and the victim's advocate, denied Battersby's Motion to Enforce a Diversion Program.

{¶7} After denial of this motion, Battersby's new attorney made an oral motion to withdraw the plea, which was denied. The court subsequently imposed a sentence of thirty days, with three days credit for community service that Battersby had performed, and a fine of \$250.00. Execution of the sentence was stayed, pending this appeal.

{¶8} In the instant appeal, Battersby raises three assignments of error for our review:

{¶9} "[1.] The Trial Court erred to the prejudice of the Defendant-Appellant, Gregg Battersby, in refusing to accept the diversion program.

{¶10} "[2.] The Defendant-Appellant, Greg Battersby's, double jeopardy rights were violated by the Trial Court's refusal to grant diversion.

{¶11} "[3.] The Trial Court Erred to the prejudice of the Defendant-Appellant, Gregg Battersby, by denying his motion for a new trial."

{¶12} For discussion purposes, Battersby's assignments of error will be addressed out of order.

{¶13} In his first assignment of error, Battersby contends that his performance of community service at the suggestion of the probation officer and his completion of a psychological evaluation, constituted a "de facto" completion of a Diversion Program, which required the prosecutor to recommend, and the trial court to accept, diversion in lieu of imposing sentence. We disagree.

{¶14} Battersby premises his argument that the prosecution was required to recommend, and the trial court required to accept, diversion in lieu of sentencing on R.C. 2935.36(D), which states:

{¶15} "If the accused satisfactorily completes the diversion program, the prosecuting attorney shall recommend to the trial court that the charges against the

accused be dismissed, and the court, upon the recommendation of the prosecuting attorney, shall dismiss the charges.”

{¶16} Put another way, R.C. 2935.36(D) provides that a defendant’s successful completion of a diversion program shall result in a recommendation by the prosecutor of a nolle prosequi of the charges against him, and the acceptance of that recommendation by the court. See, e.g., *Daher v. Cleveland* (Mar. 28, 1985), 8th Dist. No. 48579, 1985 Ohio App. LEXIS 7511, at *5.

{¶17} “R.C. 2935.36 permits the county prosecutor to operate a pretrial diversion program pursuant to written standards approved by the court.” *State v. Sneed* (Jan. 8, 1986), 2nd Dist. No. CA 8837, 1986 Ohio App. LEXIS 5234, at *5 (citation omitted). “[T]he statute provides for prosecuting attorney discretion with regard to the establishment of the terms and conditions of such a diversion program.” *State v. Wallace*, 5th Dist. No. 2006 CA 00024, 2007-Ohio-65, at ¶40. That said, the statute also “requires the participation of the court in the admission of persons into such program.” *Sneed*, 1986 Ohio App. LEXIS 5234, at *5-*6 (emphasis added).

{¶18} Battersby argues that his “de facto” completion of Probation Officer Dragar’s recommendations, along with the mandatory language of R.C. 2935.36(D), compels this court to order the lower court to grant his motion for diversion. However, this argument ignores several other relevant provisions of the statute.

{¶19} R.C. 2935.36(A), *additionally* provides:

{¶20} “The prosecuting attorney may require, as a condition of the accused’s participation in the program, the accused to pay a reasonable fee for supervision services that include, but are not limited to, monitoring and drug testing. The programs shall be operated pursuant to written standards approved by journal entry by the

presiding judge or, in courts with only one judge, the judge of the court of common pleas ***.” R.C. 2935.36(A).

{¶21} Moreover, R.C. 2935.36(B) further provides that, “[a]n accused who enters a diversion program *shall do all of the following*:

{¶22} “(1) Waive, *in writing and contingent upon the accused’s successful completion of the program*, the accused’s right to a speedy trial, the preliminary hearing, *** and arraignment, unless the hearing, *** or arraignment has already occurred;

{¶23} “(2) Agree, *in writing*, to the tolling while in the program of all periods of limitation established by statutes or rules of court, that are applicable to the offense with which the accused is charged *and to the conditions of the diversion program established by the prosecuting attorney*;

{¶24} “(3) Agree, *in writing*, to pay any reasonable fee for supervision services *established by the prosecuting attorney*.” (Emphasis added); accord *State v. Washington* (Apr. 26, 1995), 2nd Dist. No. 14559, 1995 Ohio App. LEXIS 1700, at *6. (Emphasis added).

{¶25} In the case sub judice, there is no evidence in the record describing how the diversion program is conducted in Lake County. However, based upon the statutes and relevant case law, what is apparent is there must *always* be some affirmative evidence in the record, in the form of a signed and journalized Diversion Agreement *between the defendant and the prosecutor* satisfying the aforementioned statutory requirements, and setting forth *any other conditions* imposed by the agreement, as well as a journalized order granting diversion. See *Jackson v. Friley*, 4th Dist. No. 07CA1, 2007-Ohio-6755, at ¶28 (“relevant diversion documents” are “the Prosecutor’s Diversion Program Stipulation and Agreement” and “the [court’s] Diversion Entry”); *Strickland v.*

Ohio Bur. Motor Vehicles (1994), 92 Ohio App.3d 755, 757 ("the terms and conditions of Diversion Program *** set up by *** Diversion Agreement"); *Wallace*, 2007-Ohio-65, at ¶¶32-34 ("Stipulation/Agreement" entered into between defendant and prosecuting attorney, allowing the defendant to participate in the diversion program and imposing "general conditions for participation"); *State v. Swank*, 5th Dist. No. 02CA14-2, 2002-Ohio-3833, at ¶10 (appellant argued that he failed to complete the diversion program because he "did not sign [the] diversion agreement in the presence of [defense counsel]").

{¶26} A review of the record reveals no evidence of any Diversion Agreement executed between Battersby and the prosecuting attorney, nor any evidence that the court journalized an order granting diversion based upon any such agreement.

{¶27} Battersby's "agreement" with his probation officer for the completion of thirty-two hours community service, and his subsequent contribution to the Mentor Public Library, in lieu of completing the final day of recommended community service, though part of the record, fail, as a matter of law, to establish his "de facto completion" of a diversion program, since this alleged "agreement" was not made with a *prosecuting attorney or court approval*. *Sneed*, 1986 Ohio App. LEXIS 5234, at *7 ("[T]he approval of the court is required for *** admission into the diversion program.").

{¶28} Contrary to Battersby's assertions, there can be no "de facto completion" of a diversion program that does not meet the aforementioned formalities.

{¶29} Appellant's first assignment of error is without merit.

{¶30} In his third assignment of error, Battersby argues that the trial court erred to his prejudice by denying his oral motion for a new trial. A review of his argument

reveals that he is actually challenging the trial court's denial of his motion to withdraw his guilty plea.

{¶31} Battersby argues that the court erred in not granting his pre-sentence motion to withdraw his guilty plea, since his plea of no contest rested "in [a] significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration." *Santobello v. New York* (1971), 404 U.S. 257, 262. We find no merit to this argument.

{¶32} Crim.R. 32.1 governs withdrawal of pleas and states "[a] motion to withdraw a plea of guilty or no contest may be made only before sentence is imposed; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his or her plea."

{¶33} "Pre-sentence motions to withdraw a plea should be liberally granted, provided the movant provides a reasonable and legitimate basis for the withdrawal." *State v. Hall*, 2nd Dist. No. 21449, 2006-Ohio-6116, at ¶11 (citations omitted); *State v. Glavic* (11th Dist. 2001), 143 Ohio App.3d 583, 587, citing *State v. Xie* (1992), 62 Ohio St.3d 521, 526. However, "[o]ne who enters a guilty [or no contest] plea has no right to withdraw it. It is within the sound discretion of the trial court to determine what circumstances justify granting such a motion." *Xie*, 62 Ohio St.3d at 526 (citations omitted). Accordingly, "the trial court's decision on a motion to withdraw will only be reversed when an abuse of discretion has occurred." *State v. Mitchell* (June 30, 1995), 11th Dist. No. 94-P-0070, 1995 Ohio App. LEXIS 2803, at *3 (citation omitted).

{¶34} The court acts within its discretion in denying a motion to withdraw a guilty plea when the record demonstrates that "(1) the defendant was represented by highly competent counsel; (2) prior to accepting the plea, the trial court conducted a full

hearing on the matter, pursuant to Crim.R. 11; (3) the trial court conducted a full and impartial hearing on the motion to withdraw; and (4) the trial court gave full and fair consideration to the motion before denying it." *Id.* at *3 (citations omitted); *Glavic*, 143 Ohio App.3d at 588, citing *State v. Peterseim* (1980), 68 Ohio App. 2d 211, 214; *State v. Powell*, 10th Dist. No. 01AP-891, 2002-Ohio-1725, 2002 Ohio App. LEXIS 1673, at *7 (citations omitted).

{¶35} Our review of the record reveals that all four of these conditions were met.

{¶36} We note, at the outset, that Battersby entered his plea of no contest on October 16, 2006, which was *prior to* his performance of the alleged agreement between himself and Dragar, the probation officer. There was no evidence in the record of any promises made by the prosecutor prior to the entry of Battersby's plea. "[A] guilty plea is not required by the statute as a condition for admission into a diversion program." *State v. Curry* (1999), 134 Ohio App.3d 113, 118.

{¶37} A review of the hearing transcript reveals that the trial court satisfied the first two elements of the *Peterseim* test. Prior to the entry of Battersby's plea, the trial court explained the maximum penalties for the charges. Battersby then consulted with his counsel, an experienced attorney, and entered a plea of no contest. Upon initial entry of this plea, Battersby was informed of the rights that he was waiving by entering a plea of no contest. The trial court explained the legal effect of a no contest plea. Battersby was asked if he understood his rights or if he had any questions regarding the rights he was waving. Battersby indicated that he understood and that he had no questions. The court subsequently made a finding that Battersby's plea was knowing and voluntary. Following entry of his plea, Battersby waived the taking of evidence and consented to a finding of guilty on the charge. The trial court then heard from the

victim's advocate, who testified that she wanted no reduction in his possible sentence, and would possibly require restitution, since she sought counseling after the incident.

{¶38} Battersby's counsel informed the court that Battersby had voluntarily submitted to a psychological evaluation and requested that the court request a "pre-sentence report for the ultimate recommendation of a diversion." The trial court ended the hearing, indicating that it would order a pre-sentence report and take all of these matters under advisement in order to "give [Battersby] the proper sentence." At no time during this hearing did the trial court mention the possibility of diversion as an option.

{¶39} At the sentencing hearing of January 12, 2007, the court conducted a hearing for the purposes of sentencing. Battersby's new attorney argued his "Motion to Enforce the Diversion Agreement," stating there was "some disagreement by some of the parties in this matter as to whether or not a diversion program was in effect or would be considered by [the] court, as well as by the Prosecutor's Office."

{¶40} The court then heard the testimony of Mr. Zicarelli, Battersby's former attorney, who testified, in relevant part, as follows, regarding the possibility of diversion:

{¶41} "Mr. Zicarelli: ***

{¶42} "The pretrial recommendation was with [Prosecutor] Lisa Klammer. She did not recommend diversion. She never, in my experience, has never recommended diversion because it's always up to the Court.

{¶43} "And I recall being in front of the Court at the time of the plea, mentioning and requesting diversion at that time.

{¶44} "Then the court indicated it would be referred for pre-sentence report, and that it would consider everything that was --- the Court would consider everything at the

time of sentencing. And the Court didn't indicate that it would grant diversion, but the court did hear our request for diversion ***.

{¶45} "The Court: Did you make any promises to Mr. Battersby that, 'Hey, this is in the bag. You're going to get diversion.'

{¶46} "Mr. Zicarelli: Judge, I – no, I did not.

{¶47} "The Court: Okay.

{¶48} "Mr. Zicarelli: I can't, because it's always up to the Court. And it's always been that way. It's always been that way for all the cases.

{¶49} "But I did tell him that Lisa did not object to diversion."

{¶50} Battersby's new attorney then raised the issue that Battersby had submitted to a psychological evaluation, and acknowledged that Battersby had done so voluntarily and without a court order. He then argued that diversion was appropriate, since Battersby had paid "all of the fees that would normally be associated with the diversion program." The trial court informed him that it had not yet decided whether diversion was appropriate, and that, Battersby had neither completed diversion, nor paid any fees associated with such a program.

{¶51} Mr. Dragar, the probation officer, clarified that Battersby had done a "three day option in community service," and "did a donation to the library because we couldn't get the community service completed."

{¶52} Following Dragar's testimony, the court clarified that Battersby "did not do anything to pay any diversion costs or anything along those lines. That's at the end of the case – after the court has granted the diversion and the person follows through with everything, there's a \$300 fee that's paid at the end, and none of that has taken place

***"

{¶53} Dragar spoke again, and made his recommendations, arguing that although Battersby had done a community service option, he had also had a prior civil complaint against him for sexual harassment, arising from a "like situation," and therefore, recommended that a jail term was appropriate. The victim's advocate argued on behalf of the victim that "the case not be diverted and the defendant receive a conviction," and also requested restitution for the medication she was taking as a result of the incident; and that a no contact order remain in place.

{¶54} Battersby's new attorney then formally raised an oral motion to vacate his prior plea, on the grounds that Battersby "misunderstood what he thought was going to happen," and thought that "the entire disposition would land up in a diversion situation."

{¶55} The trial court reminded him of the testimony of Battersby's former attorney who stated there were "no promises and he never told [Battersby] he was going to get diversion."

{¶56} While acknowledging this fact, Battersby's counsel stated that "nevertheless, for one reason or another, my client perceived this based upon the fact that he obtained psychological help and that in addition to doing the three days [community service] that he paid for -- "

{¶57} The court stated it considered these things "very good mitigating circumstances," but declined to vacate the plea on these grounds.

{¶58} The foregoing demonstrates that the court gave a full and fair hearing and fully considered Battersby's motion to withdraw his plea before denying it. It is undisputed that the prosecution did not recommend, nor did the trial court make, any orders for Battersby to perform community service or secure a psychological evaluation prior to sentencing. It is also undisputed that the fees normally associated with

diversion were to be paid only *after* diversion had been granted, and that Battersby had not paid any such fees. It was further undisputed that the prosecutor never made any recommendation for diversion, although it was indicated that she would not object were the court to impose it. It is a well-settled principle of law that “a *nolle prosequi* can be entered only with the affirmative consent of the prosecution,” and a court cannot “enter a *nolle prosequi* over the prosecutor’s objection.” *Cleveland v. Mosquito* (1983), 10 Ohio App.3d 239, 241 (citation omitted); accord, *Cleveland v. Buchanan* (July 7, 1983), 8th Dist. No. 46046, 1983 Ohio App. LEXIS 12825, at *8 (citation omitted). Finally, although the defense asked for diversion prior to the sentencing hearing, Battersby’s former counsel testified that the grant of diversion was always a matter reserved to the court and thus, he made no promises to Battersby that diversion was forthcoming.

{¶59} With regard to pre-sentencing motions to withdraw pleas, “[a] defendant is not entitled to withdraw his *** plea merely because he has changed his mind or because he has learned that he will receive a harsher sentence than he had subjectively expected.” *Powell*, 2002 Ohio App. LEXIS 1673, at *9, citing *State v. Lambros* (1988), 44 Ohio App.3d 102, at paragraph three of the syllabus; accord, *Mitchell*, 1995 Ohio App. LEXIS 2803, at *6. “Otherwise, defense counsel merely has to allege that the defendant’s plea was induced by some underlying ‘mistaken belief’ that the defendant would receive probation and the plea would be vacated.” *Lambros*, 44 Ohio App.3d at 103 (citation omitted).

{¶60} Based upon the foregoing, the trial court did not abuse its discretion in denying Battersby’s motion to withdraw his plea.

{¶61} Battersby’s third assignment of error is without merit.

{¶62} In his second assignment of error, Battersby argues that his sentence of twenty-seven days in jail, following his compliance with “all of the Trial Court’s and the Probation Department’s mandates for diversion,” violated his right not to be subject to double jeopardy for the same offense. We disagree.

{¶63} “The Double Jeopardy Clauses of the Ohio and United States Constitutions protect the accused from (1) multiple prosecutions for the same offense and (2) multiple punishments for the same offense.” *State v. Wyand* (Apr. 25, 1997), 11th Dist. No. 96-P-0211, 1997 Ohio App. LEXIS 1709, at *11 (citations omitted). “These protections stem from the underlying premise that a defendant should not be twice tried or punished for the same offense.” *Id.*, quoting *Schiro v. Farley*, (1994), 510 U.S. 222, 229.

{¶64} With regard to sentencing, a “consideration implicit in the guarantee against multiple punishments is ‘akin to that *** served by the doctrine of *res judicata* and collateral estoppel – to preserve the finality of judgments.’” *Id.* at *14, quoting *Crist v. Bretz* (1978), 437 U.S. 28, 33. Thus, “a court violates a defendant’s right to be free from double jeopardy when it attempts to enhance a defendant’s sentence after he acquires a legitimate and reasonable expectation of finality in the severity of his sentence. *Id.* at *16 (citation omitted).

{¶65} In the instant matter, Battersby acquired no such “legitimate and reasonable expectation of finality.” “Under the multiple punishment component of the Double Jeopardy Clause, *** the inquiry focuses upon whether the accused has been (1) punished twice for (2) the same offense by (3) *separate proceedings*.” *State v. Musick* (11th Dist.1997), 119 Ohio App.3d 361, 372 (citations omitted) (emphasis added).

{¶66} Even if we were to accept, for the sake of argument, that Battersby's community service and donation to the library were "punishment" for the purposes of the Double Jeopardy Clause, the fact remains that neither of these sanctions were imposed by the court in *any* proceeding, let alone separate proceedings. The record plainly indicates that Battersby's assumption of these "punishments," including obtaining a psychological evaluation, participating in three days of community service, and making the donation were strictly voluntary.

{¶67} Moreover, although the trial court inartfully stated it was giving Battersby three days jail time "credit" for his community service and the donation, this was not a reduction of sentence for "prior confinement" as is contemplated by R.C. 2949.08. Nor was his payment directly to the public library was a "fine," since, according to R.C. 2949.111(B), such payments must be made directly to the clerk of the court. There is simply nothing in the record to lead us to conclude otherwise, and thus, we agree with the trial court's conclusion that these were "mitigating factors" to be considered during sentencing, rather than prior punishments imposed by the court.

{¶68} Appellant's second assignment of error is without merit.

{¶69} For the foregoing reasons, we affirm the judgment of the Mentor Municipal Court. Costs to be taxed against appellant.

CYNTHIA WESTCOTT RICE, J., concurs,

COLLEEN MARY O'TOOLE, J., concurs in judgment only.

**IN THE MATTER OF
GREGG N. BATTERSBY
No. 07F-085-CEA
Administrative Law Judge Decision**

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 07F-085-CEA

GREGG N. BATTERSBY, D.C.

**ADMINISTRATIVE
LAW JUDGE DECISION**

Holder of License No. 3544
for the Practice of Chiropractic
in the State of Arizona,

Respondent.

HEARING: July 28, 2008 at 9:00 a.m.

APPEARANCES: Respondent Gregg N. Battersby, D.C. appeared telephonically on his own behalf; the Arizona Board of Chiropractic Examiners appeared through Melissa Cornelius, Esq., Assistant Attorney General.

ADMINISTRATIVE LAW JUDGE: Diane Mihalsky

FINDINGS OF FACT

BACKGROUND AND PROCEDURE

1. The Arizona State Board of Chiropractic Examiners ("the Board") is the duly constituted authority for licensing and regulating the practice of chiropractic in the State of Arizona.

2. The Board issued License No. 3544 to Respondent Gregg N. Battersby, D.C. to practice as a chiropractor in Arizona ("the Arizona license").

3. At all times relevant to the complaint in this matter, Dr. Battersby was living in Kirtland, Ohio and practicing chiropractic in Mentor, Ohio under License No. 914 ("the Ohio License") issued by the Ohio State Chiropractic Board ("the Ohio Board").

4. In accordance with A.R.S. § 41-1092 *et seq.*, on June 2, 2008, the Board referred the matter to the Office of Administrative Hearings and requested a hearing date.

5. On June 5, 2008, the Board issued a Complaint and Notice of Hearing against Dr. Battersby's Arizona license, which charged that Dr. Battersby had committed

Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, Arizona 85007
(602) 542-9828

1 unprofessional conduct as defined by A.R.S. §§ 32-924(A)(5) (including specifically
2 A.A.C. R4-7-902(13)), (14), (15), (16), and (17), and 32-3208, which furnished cause to
3 revoke or suspend his Arizona license under A.R.S. § 32-924(G).

4 6. A hearing was held on July 28, 2008. The Board presented the testimony of
5 Deputy Director Charles Brown and had admitted into evidence 12 exhibits. Dr. Battersby
6 testified on his own behalf and had admitted into evidence three exhibits. He also
7 provided 16 additional exhibits, which were neither offered nor admitted into evidence.

8 HEARING EVIDENCE

9 Dr. Battersby's Application to Renew his Arizona License

10 7. On December 26, 2006, the Board received Dr. Battersby's 2007 License
11 Renewal Application.¹

12 8. On the 2007 License Renewal Application, Dr. Battersby answered "no" to the
13 question, "[H]as any licensing board other than the Arizona Board of Chiropractic
14 Examiners initiated or taken any disciplinary action against any of your licenses since you
15 last applied for renewal of this license?"

16 9. On the 2007 License Renewal Application, Dr. Battersby answered "yes" to the
17 question, "Pursuant to A.R.S. § 32-3208(A), in the last 12 months, have you been
18 arrested, charged with indicted for, or under investigation for a misdemeanor or felony,
19 requiring resolution by the courts?"

20 10. On the 2007 License Renewal Application, Dr. Battersby answered "yes" to
21 the question, "Pursuant to A.R.S. § 32-924(A)6 and § 32-3208(A), have you been
22 charged with, convicted of or pled guilty or pled nolo contendere to a misdemeanor or a
23 felony since you last applied for renewal of this license?"

24 11. Dr. Battersby attached the following explanation of his affirmative answers to
25 his 2007 License Renewal Application: "I was charged with a fourth degree
26 misdemeanor. I successfully completed a diversion program which will result in dismissal
27 of the charge as well as expungement from the record. We are waiting on a motion to
28 dismiss to be ruled on."
29
30

¹ See the Board's Ex. 1.

Dr. Battersby's Conviction for Indecent Exposure

12. On June 18, 2006, the Mentor Police Department received a report from Jennifer Rowles that two days earlier, on June 16, 2006, Dr. Battersby had responded to Ms. Rowles' advertisement for house-cleaning services.² According to the police report, Ms. Rowles at the time was 23 years old.

13. When Ms. Rowles went to Dr. Battersby's house to discuss house-cleaning services, her boyfriend waited in the car. Dr. Battersby was wearing only a pair of swimming trunks when he appeared at the front door. After Dr. Battersby had shown Ms. Rowles the parts of the house that were located above ground level and she was preparing to leave, he told her that the house also had a finished basement. The police report continued:

Jennifer said she followed Gregg down the steps. Once at the bottom, Gregg stated: "I'm a nudist." Jennifer was shocked by his comment, and said she responded by telling him that it was ok, but he couldn't do those types of things in front of the public. Gregg then immediately took off his shorts, fully exposing his private parts. He then said: "I'm going to get comfortable, do you want a beer?"

Jennifer said she was in shock at this point. Gregg then sat down on the couch and, again, asked if she wanted a beer? Jennifer said she was afraid of what his reaction might have been if she began to run or scream (i.e. attack her, etc.) so she began to dial her boyfriend's phone number with her cell phone that was hidden in her hand. As she was doing so, Jennifer, in an attempt to deflect his question, said that she couldn't have a beer because her boyfriend was in the car. According to Jennifer, Gregg was startled when she indicated that her boyfriend was in the car. He quickly stood up and then said that she should go. Jennifer indicated that she now felt safe, so she ran up the steps and into the car. They then left the area. She indicated that she was too scared to call the police because she provided Gregg with her business card. She felt that he might find and attack her if she called the police. However, after speaking with family and friends, she decided to file this report.

² The police report and court records are the Board's Ex. 2.

1 14. On June 22, 2006, Mentor police contacted Dr. Battersby about the incident.
2 According to the supplemental police report, he said that, when Ms. Rowles came by his
3 house to provide an estimate for cleaning work, he had "warned her that he is a 'nudist'
4 and may be naked. He claims she said that was ok. He said while at the house he did in
5 fact remove all of his clothes."

6 15. After Mentor police contacted Dr. Battersby, on June 23, 2006, they again
7 contacted Ms. Rowles. At that time, she provided a supplemental statement that "when
8 he said 'I'm a nudist' I assumed he meant he painted nude potraits [sic]. When he took
9 his shorts off – I was socked and scared."

10 16. On June 23, 2006, Dr. Battersby was charged with public indecency, in that
11 he had "recklessly and under circumstances in which his conduct was likely to be viewed
12 by and affront others not members of his household, exposed his private parts or
13 engaged in masturbation," in Mentor Municipal Court Case No. 06-CRB0970.

14 17. According to the single-page record of this criminal proceeding that was
15 admitted into evidence, on June 27, 2006, Dr. Battersby entered a plea of not guilty to the
16 charge and posted a \$250 bond.

17 18. On October 16, 2006, however, Dr. Battersby changed his plea to no contest,
18 was found guilty, and was sentenced to probation, whose duration was not specified in
19 this record but whose terms included a psychological evaluation and payment of
20 unspecified restitution.

21 The Ohio Board's Action against Dr. Battersby's Ohio License

22 19. On December 8, 2006, the Ohio Board issued a notice to Dr. Battersby that
23 informed him of his right to request a hearing on the Ohio Board's possible discipline
24 against his Ohio license based on his criminal conviction for public indecency, a fourth
25 degree misdemeanor in Case No. 2007 CHR 020.³

26 20. On February 22, 2007, the Ohio Board held a hearing on the possible
27 discipline against Dr. Battersby's Ohio license.⁴ Because Dr. Battersby had not submitted
28 a timely request for hearing, he was not allowed to testify or offer evidence at the hearing.
29

30 ³ See the Board's Ex. 4.

⁴ The transcript of the public portion of this hearing is part of the Board's Ex. 5.

1 21. On March 21, 2007, the Ohio Board issued its Adjudication Order, which
2 concluded that Dr. Battersby's conviction of Public Indecency was a misdemeanor
3 involving moral turpitude and furnished cause to sanction his Ohio license under
4 applicable Ohio statute.⁵

5 22. As a result, the Ohio Board suspended Dr. Battersby's Ohio license for ten
6 days and required him to "submit to a psychological assessment and evaluation with the
7 Center for Marital and Sexual Health to determine if he is a danger to himself or the
8 public" at his own expense and prior to the conclusion of the ten-day suspension.

9 23. On April 2, 2007, Dr. Battersby filed a Notice of Appeal of the Ohio Board's
10 Adjudication Order.⁶ The result of that appeal was not included in the record of this
11 matter. No psychological assessment of Dr. Battersby pursuant to the Ohio Board's
12 Adjudication Order is included in the record of this matter.

13 24. According to the Ohio Board's website, on July 16, 2008, Dr. Battersby's Ohio
14 license was inactive and still subject to discipline.⁷

15 **The Arizona Board's Initiation and Investigation of its Complaint**
16 **against Dr. Battersby's Arizona License**

17 25. Mr. Brown testified at the hearing that all licensees' disclosure of possible
18 issues on license renewal forms submitted to the Board are held after the first of the year
19 so that the Board can handle the disclosures at the same time. The extent of the Board's
20 investigation depends on the seriousness of the issue and the additional evidence
21 uncovered during the investigation.

22 26. After the Board's receipt of Dr. Battersby's license renewal application, Mr.
23 Brown contacted Dr. Battersby and enquired about the nature of the criminal offense with
24 which he had been charged. Dr. Battersby disclosed that the charge was for public
25 indecency.

26 27. On March 20, 2007, Mr. Brown sent an e-mail to the Board, informing its
27 members that Dr. Battersby had disclosed that he had been charged with public
28

29 ⁵ The Ohio Board's Adjudication Order was part of the Board's Ex. 5.

30 ⁶ See the Board's Ex. 6.

⁷ See *id.*

1 indecency and that the matter was before the Board for its consideration of whether to
2 open a complaint.⁸

3 28. On March 20, 2007, Mr. Brown also sent a letter to Dr. Battersby, requesting
4 copies of all court records for the criminal case and informing him that the Board would
5 consider whether to open a complaint against his license at its April 19, 2005 meeting.⁹

6 29. The Board voted to open a complaint against Dr. Battersby's license. On
7 April 24, 2007, Mr. Brown sent a letter to Dr. Battersby, informing him of the complaint
8 and requesting his written response. On April 25, 2007, the Board issued a subpoena to
9 Dr. Battersby for the documents relating to the criminal charge for public indecency.¹⁰

10 30. On October 17, 2007, Mr. Brown sent a letter to Dr. Battersby, informing him
11 that the Board would consider the complaint that it had opened against him at it
12 November 15, 2007 meeting. Mr. Brown enclosed with his letter a subpoena to secure
13 Dr. Battersby's presence at the meeting.¹¹

14 31. Before the November 15, 2007 meeting, Mr. Brown prepared a Board brief,
15 which summarized his investigation into the complaint, for the Board's consideration. Mr.
16 Brown summarized Dr. Battersby's response to the complaint, which was that Ms. Rowles
17 had wrongfully accused him, that he had been promised diversion as a condition of
18 entering the plea of no contest to the public indecency charge, and that he never would
19 have entered the plea if he had known that it would affect his licenses to practice
20 chiropractic.¹²

21 32. At the Board's November 15, 2007 meeting, the Board discussed requiring
22 Dr. Battersby to undergo a psychosexual evaluation before deciding whether to discipline
23 his Arizona license. Dr. Battersby had referred to an earlier evaluation, which the Board
24 did not have before it.

25 33. On November 27, 2007, Mr. Brown provided to Board members the
26 evaluation that Dr. Battersby had provided. The evaluation was performed by Roger N.
27 Hess, Ph.D., a psychologist in South Euclid, Ohio, was dated October 6, 2006, and was

28 ⁸ See the Board's Ex. 2.

29 ⁹ See *id.*

30 ¹⁰ See *id.*

¹¹ See the Board's Ex. 7.

¹² See *id.*

1 addressed to Mark A. Zicarelli, Dr. Battersby's attorney in the criminal case in Mentor
2 Municipal Court.¹³ Mr. Brown pointed out that the evaluation was performed before Dr.
3 Battersby had been convicted pursuant to his no contest plea of public indecency and
4 before the Ohio Board had started its investigation. Dr. Battersby had not been evaluated
5 as a practicing chiropractor, although Dr. Hess had noted his occupation in the report.
6 Mr. Brown informed the Board that it was not required to rely on the evaluation but,
7 instead, could order its own evaluation.

8 34. Mr. Brown pointed out at the hearing that Dr. Hess' report had noted that the
9 results of the MMPI-2 clinical profile were marginally valid because "the client may have
10 attempted to present an unrealistically favorable picture of his personal virtue and moral
11 values." In addition, Dr. Hess noted several test results that suggested aggressiveness,
12 none of which rose to any level of pathology and "some of which are typically seen with
13 various types of medical specialists and physicians generally."

14 35. Dr. Hess' report concluded that, based on the tests he administered and
15 observation of Dr. Battersby, "there does not appear to be any basis for any conclusion
16 indicating pathology." The signs of aggressive style and modest signs of agitation "do not
17 rise to a level of any diagnosable or pathological condition." As a consequence, "it can be
18 stated with reasonable scientific certainty that Dr. Gregg Battersby is unlikely to act out in
19 any pathological manner that would be considered diagnosable, nor likely to aggressively
20 impose unwanted behavior upon others. And no diagnosis of any kind can be offered."

21 36. Mr. Brown testified that a psychosexual examination would include tests
22 specifically designed to elicit sexual preferences and the potential effect of any sexual
23 proclivities on the doctor's professional practice and interaction with patients. The Board
24 in the past has required such evaluation when the licensee has been convicted of a crime
25 that involved a possible sexual motivation or aberration.

26 37. On December 24, 2007, the Board issued an interim order, requiring Dr.
27 Battersby to submit to a psychosexual evaluation by a Board-approved psychologist or
28 psychiatrist within 45 days and to schedule such evaluation within fourteen days.¹⁴
29

30 ¹³ See the Board's Ex. 8.

¹⁴ See the Board's Ex. 9.

1 38. Mr. Brown testified at the hearing that, as of the date of the hearing, Dr.
2 Battersby had not submitted any names of evaluators for the Board's approval and had
3 not scheduled or undergone a psychosexual evaluation to comply with the Board's
4 December 24, 2007 interim order.

5 39. On the November 27, 2007 memorandum, Mr. Brown also requested that the
6 Board charge Dr. Battersby with a violation of A.R.S. § 32-924(A)(17), because he had
7 steadfastly refused to place "D.C." after his name in his correspondence with Board staff.
8 Mr. Brown testified at the hearing that the legislature has required doctors of chiropractic
9 to use the initials "D.C." after their name to differentiate themselves from other doctors,
10 such as medical doctors (who use "M.D.") and osteopathic doctors (who use "D.O.").

11 40. Mr. Brown at the hearing accurately described Dr. Battersby's
12 correspondence as becoming longer, more emphatic, and more argumentative as time
13 progressed.

14 41. The Board had admitted into evidence copies of Dr. Battersby's letters dated
15 March 26, 2007; May 1, 2007; November 9, 2007; November 19, 2007; and January 12,
16 2008. All of these letters bore the letterhead "Mentor Chiropractic Center." The Board
17 also had admitted into evidence a letter from Dr. Battersby dated February 21, 2008
18 bearing the letterhead "Dr. Gregg N. Battersby." The signature line on all of these letters
19 was "Dr. Gregg N. Battersby." The initials "D.C." did not appear on any of the letters.¹⁵

20 42. In the May 1, 2007 letter, Dr. Battersby informed the Board that, "[s]everal
21 days after the Oct. 16, 2006 hearing, I received a visit from Rex Waldenmyer, an
22 investigator for the Ohio State Chiropractic Board," who informed Dr. Battersby that the
23 Ohio Board was investigating the criminal charge.

24 43. On January 16, 2008, Mr. Brown sent a letter to Dr. Battersby, informing him
25 that the Board would consider his failure to comply with the interim order at its meeting
26 scheduled for February 7, 2008. On that date, the Board issued a subpoena for Dr.
27 Battersby's telephonic appearance at the meeting.

28 44. At the Board's February 7, 2008 meeting, it voted to forward the matter to the
29 Office of Administrative Hearings for a formal administrative hearing. Mr. Brown testified
30

¹⁵ See the Board's Ex. 12.

1 that, initially, the Board had decided to conduct a formal interview of Dr. Battersby under
2 A.R.S. § 32-924(C) and (F) and, if it determined that grounds existed to discipline Dr.
3 Battersby license, to impose lesser discipline than suspension or revocation, but changed
4 its mind.

5 45. On February 12, 2008, the Board's executive director sent via certified mail a
6 letter to Dr. Battersby, informing him that the Board had voted the matter to formal
7 hearing and that he would receive a Notice of Hearing.

8 46. Dr. Battersby did not contest any of the facts that the Board alleged at the
9 hearing. Rather, in his correspondence with the Board and in his testimony he raised
10 several affirmative defenses, which the Administrative Law Judge summarizes as follows:

11 46.1 Ms. Rowles had lied to the police. He had pled no contest to the charge of
12 indecent exposure based the prosecutor's false promise of diversion. Although he
13 successfully completed the diversion program, the court refused to dismiss the charge
14 after a derogatory article appeared in the *Cleveland Plain Dealer*.

15 46.2 The alleged public indecency did not involve his chiropractic practice. He
16 has never had any complaints involving his practice. His preference to be nude at home
17 is none of the Board's business.

18 46.3 A.R.S. § 32-934(G) required the Board to hold a formal hearing within 180
19 days after notifying him of the complaint, which Dr. Battersby argued was on April 24,
20 2007. The July 28, 2008 hearing had been held 461 days after the Board notified him it
21 had opened the complaint.

22 46.4 A.R.S. § 41-1092.05(A)(2) required the Board to schedule a hearing within
23 sixty days after the agency's request for hearing, which he argued had occurred on
24 February 12, 2008. The hearing was held 167 days after the Board notified him that it had
25 voted the matter to formal hearing.

26 46.5 The applicable statute of limitations is the one-year period established by
27 A.R.S. § 12-541(5) for a liability created by statute. Because the Board did not
28 immediately initiate formal suspension or revocation proceedings after receiving Dr.
29 Battersby's license renewal application, it cannot now discipline his license.
30

1 46.6 The full-faith-and-credit clause of the United States Constitution requires the
2 Board to accept Dr. Hess' psychological evaluation and prevents the Board from requiring
3 another evaluation.

4 46.7 He was not required to use the initials "D.C." after his name in his
5 correspondence with the Board's staff because they already knew he was a doctor of
6 chiropractic.

7 47. In addition, Dr. Battersby testified that he could not afford a psychosexual
8 evaluation. As a result of Ms. Rowles' complaint, he has been "ruined." His wife divorced
9 him and he had to close his practice in Mentor.

10 APPLICABLE LAW

11 1. A.R.S. § 32-924 provides in relevant part as follows:

12 Grounds for disciplinary action; hearing; civil penalty;
13 definition

14 A. The following are grounds for disciplinary action,
15 regardless of where they occur:

16 * * * *

17 5. Unprofessional or dishonorable conduct of a character
18 likely to deceive or defraud the public or tending to
19 discredit the profession.

20 * * * *

21 14. Refusal, revocation or suspension of a license by any
22 other state or country, unless it can be shown that the
23 action was not taken for reasons that relate to the
24 ability to safely and skillfully practice chiropractic or to
25 any act of unprofessional conduct.

26 15. Any conduct or practice contrary to recognized
27 standards in chiropractic or any conduct or practice
28 that constitutes a danger to the health, welfare or
29 safety of the patient or the public or any conduct,
30 practice or condition that impairs the ability of the
 licensee to safely and skillfully practice chiropractic.

 16. Violating or attempting to violate, directly or indirectly,
 or assisting in or abetting the violation of or conspiring
 to violate any of the provisions of this chapter or any
 board order.

1 17. Failing to sign the physician's name, wherever
2 required, in any capacity as "chiropractic doctor",
3 "chiropractic physician" or "doctor of chiropractic" or
4 failing to use and affix the initials "D.C." after the
5 physician's name.

6

7 B. The board on its own motion or on receipt of a complaint
8 may investigate any information that appears to show that
9 a doctor of chiropractic is or may be in violation of this
10 chapter or board rules or is or may be mentally or
11 physically unable to safely engage in the practice of
12 chiropractic. The board shall notify the licensee as to the
13 content of the complaint as soon as is reasonable. . . .

14 C. The board may require a licensee under investigation
15 pursuant to this section to be interviewed by the board or
16 its representatives. The board may require a licensee who
17 is under investigation pursuant to this section to undergo,
18 at the licensee's expense, any combination of medical,
19 physical or mental examination that the board finds
20 necessary to determine the licensee's competence.

21

22 F. The board may request a formal interview with the
23 licensee concerned If, after the formal interview, the
24 board finds that the information provided pursuant to this
25 section is true but is not of sufficient seriousness to merit
26 suspension or revocation of the license, it may take any of
27 the following actions:

- 28 1. Dismiss the complaint if in the board's opinion the
29 information is without merit or does not warrant
30 sanction of the licensee.
- 31 2. Issue an advisory letter. An advisory letter is a
32 nondisciplinary action and is a public document.
- 33 3. Issue an order to cease and desist.
- 34 4. Issue a letter of concern.
- 35 5. Issue an order of censure. An order of censure is an
36 official action against the licensee and may include a

requirement for restitution of fees to a patient resulting from a violation of this chapter or board rules.

6. Fix a period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the licensee. Any costs incidental to the terms of probation are at the licensee's own expense. Probation may include restrictions on the licensee's license to practice chiropractic.
 7. Impose a civil penalty of not more than one thousand dollars for each violation of this chapter.
 8. Refuse to renew a license.
 9. Issue a disciplinary or nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.
- G. If the board believes the charge is of such magnitude as to warrant suspension or revocation of the license, the board shall immediately initiate formal revocation or suspension proceedings pursuant to title 41, chapter 6, article 10. The board shall notify a licensee of the complaint and hearing by certified mail addressed to the licensee's last known address of record in the board's files. The notice of complaint and hearing is effective on the date of its deposit in the mail. The board shall hold a formal hearing within one hundred eighty days after that date.
-
- I. Any licensee who, after a hearing, is found to be in violation of this chapter or board rules or is found to be mentally or physically unable to safely engage in the practice of chiropractic is subject to a combination of those disciplinary actions identified in Subsection F or suspension or revocation of the license. In addition, the board may order the licensee to pay restitution or all costs incurred in the course of the investigation and formal hearing in the matter, or both.

2. A.R.S. § 32-3208 provides in relevant part:

1 A. A health care professional who has been charged with
2 a misdemeanor involving conduct that may affect patient
3 safety or a felony after receiving or renewing a license or
4 certificate must notify the health professional's regulatory
5 board in writing within ten days after the charge has been
6 filed.

7

8 D. A health professional who does not comply with the
9 notification requirements of this section commits an act of
10 unprofessional conduct. The health professional's regulatory
11 board may impose a civil penalty of not more than one
12 thousand dollars in addition to other disciplinary action it
13 takes.

14 E. The regulatory board may deny the application of an
15 applicant who does not comply with the notification
16 requirements of this section.

17 3. A.A.C. R4-7-902 defines unprofessional or dishonorable conduct under A.R.S.
18 § 32-924(A)(5) to include the following:

19 36. Violating a federal or state statute or rule or
20 regulation applicable to the practice of chiropractic.

21 CONCLUSIONS OF LAW

22 1. This matter lies within the Board's jurisdiction.¹⁶

23 2. The Board bears the burden of proof and must establish cause to penalize Dr.
24 Battersby's license for the practice of chiropractic by a preponderance of the evidence.¹⁷

25 3. "A preponderance of the evidence is such proof as convinces the trier of fact
26 that the contention is more probably true than not."¹⁸ A preponderance of the evidence is
27 "[t]he greater weight of the evidence, not necessarily established by the greater number of
28 witnesses testifying to a fact but by evidence that has the most convincing force; superior
29 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
30

¹⁶ See A.R.S. § 32-900 *et seq.*

¹⁷ See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119; see also *Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

¹⁸ Morris K. Udall, ARIZONA LAW OF EVIDENCE § 5 (1960).

doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other."¹⁹

4 GROUND S FOR DISCIPLINE

4 4. Dr. Battersby pled no contest to the crime of public indecency in Ohio, which
5 led to his conviction. His conviction in the criminal action precludes him from presenting
6 evidence or arguing in this administrative licensing matter that he did not commit the
7 acts that constitute public indecency or that his acts were not criminal.²⁰ If the
8 conviction was based in inadmissible evidence or improperly coerced, his remedy was
9 to appeal the conviction to a court of competent jurisdiction. He cannot raise these
10 matters in this administrative licensing proceeding.

11 5. The Arizona criminal code includes at A.R.S. § 13-1402 the crime of indecent
12 exposure, which is the equivalent to the crime of public indecency in Ohio.²¹

13 Commission of the crime of indecent exposure implicates the perpetrator's character
14 and fitness because it evidences a lack of respect not only for the victim but for social
15 conventions and morality:

16 Indecent exposure is not merely *malum prohibitum* but is
17 *malum in se*. . . . Its tendency is to outrage decency and
18 corrupt public morals. . . . Indecent exposure has been said
19 to be merely a form of obscene exhibition . . . and comes
20 under the head of what Hawkins and Blackstone call "open
21 and grossly scandalous lewdness." . . .²²

22 6. Arizona courts have repeatedly upheld licensing agencies' ability to consider
23 crimes committed by licensees and, where warranted, to discipline professional
24 licensees for commission of criminal acts outside the scope of their professional
25 practices to protect the public and the standing of the licensed profession in the eyes of

26 ¹⁹ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

27 ²⁰ See, e.g., *William Morris Arenstein v. California State Board of Pharmacy*, 265 Cal. App. 2d 179, 189-
28 90, 71 Cal. Rptr. 357, 363-64 (App. 1968); *Board on Law Enforcement Officer Standards and Training V.*
29 *Rushing*, 752 So. 2d 1085, 1090 (Miss. App. 1999); *New Jersey Dept. of Law & Public Safety v. Gonzalez*,
30 142 N.J. 618, 629-30, 667 A.2d 674, 690 (1995). The Administrative Law Judge cites these out-of-state
authorities as persuasive because she had been unable to find any published Arizona decision in which
the court considered a licensee's challenge to a criminal conviction in an administrative proceeding.

²¹ A person commits the crime of indecent exposure in Arizona "if he . . . exposes his . . . genitals . . . and
another person is present, and the defendant is reckless about whether the other person, as a reasonable
person, would be offended or alarmed by the act." A.R.S. § 13-1402(A).

²² *City Court v. Lee*, 16 Ariz. App. 449, 452, 494 P.2d 54 (1972).

1 the public.²³ Such discipline has been upheld where the crime reflects on the
2 professional's moral fitness to practice the profession for which he was licensed.²⁴

3 7. The Board has established that Dr. Battersby's conviction of public indecency
4 on October 16, 2006 furnished grounds for the Board to discipline his Arizona license
5 under A.R.S. § 32-924(A)(5) (as defined by A.A.C. R4-7-902(36)) and A.R.S. §
6 924(A)(15).

7 8. Dr. Battersby did not report to the Board that he had been charged with public
8 indecency in Mentor Municipal Court within ten working days of the charge having been
9 made. Therefore, the Board has established additional grounds to deny his application
10 to renew his Arizona license under A.R.S. § 32-3208.

11 9. Dr. Battersby admits that he did not use the initials "D.C." after his signature
12 and name in his correspondence with the Board. A.R.S. § 32-924(A)(17) does not
13 require that anyone have been misled for a violation to have occurred. Therefore, the
14 Board has established grounds under A.R.S. § 32-924(A)(17) to discipline his Arizona
15 license.

16 10. Dr. Battersby admits that he did not comply with the Board's December 24,
17 2007 interim order. Although his alleged inability to pay the cost of a psychosexual
18 examination might be considered a factor in mitigation of the penalty, this defense is
19 incidental to Dr. Battersby's vociferous legal and other objections to the order. In any
20 event, the Board has established grounds under A.R.S. § 32-924(A)(16) to discipline his
21 Arizona license.

22 11. The Ohio Board did not refuse, revoke, or suspend Dr. Battersby's Ohio
23 license. The Board therefore has not established grounds under A.R.S. § 32-
24 924(A)(14) to discipline his Arizona license.

25 AFFIRMATIVE DEFENSES

26 12. A.R.S. § 12-541(5) requires an action for liability created by statute to be
27 commenced within one year. This statute does not apply to an administrative

28 ²³ See, e.g., *Matter of Beren*, 178 Ariz. 400, 402, 874 P.2d 320, 322 (1994); *Bear v. Nicholls*, 142 Ariz.
29 560, 562, 691 P.2d 326, 328 (1984); *Howard v. Nicholls*, 127 Ariz. 383, 387, 621 P.2d 292, 296 (App.
1980); see also *In the Matter of Kindschi*, 52 Wash. 2d 8, 11, 319 P.2d 824, 825-26 (1958).

30 ²⁴ See *Schillerstrom v. Board of Chiropractic Examiners*, 180 Ariz. 468, 470-71, 885 P.2d 156, 158-59
(App. 1994).

1 proceeding before the Office of Administrative Hearings or the Board, however,
2 because such proceedings are not "actions."²⁵

3 13. A.R.S. § 32-924(G) provides that, if the Board believed that the complaint
4 was of such magnitude as to warrant suspension, it was required to initiate formal
5 proceedings under Title 41, chapter 6, article 5 (which contains the statutes relating to
6 the Office of Administrative Hearings) and to hold a hearing within 180 days. In this
7 matter, the Board did not take any action against Dr. Battersby's license immediately
8 but, instead, opened an investigation into the complaint it opened under A.R.S. § 32-
9 924(B) regarding criminal charge that he had self-reported on his license renewal
10 application. The Board as part of its investigation ordered Dr. Battersby to undergo a
11 psychosexual evaluation on December 24, 2007.

12 14. Until Dr. Battersby refused to comply with the Board's interim order, there is
13 no indication in the record that the Board had formed any belief that Dr. Battersby's
14 criminal conviction in Mentor Municipal Court warranted any discipline against his
15 license, much less suspension or revocation. The Board informed Dr. Battersby of its
16 decision to refer the matter to hearing by certified mail on February 12, 2008, which as
17 Dr. Battersby calculated was 167 days before the hearing. The Board complied with
18 A.R.S. § 32-924(G).

19 15. The Board requested that the Office of Administrative Hearings provide a
20 hearing date on June 2, 2008.²⁶ The hearing was scheduled and held within the time
21 limits set forth in A.R.S. § 41-1092.05(A)(2). The only statute that sets a time limit for
22 an agency to request a hearing date after informing a licensee that it has voted the
23 matter to hearing is A.R.S. § 32-924(G).

24 16. Although Dr. Hess noted Dr. Battersby's profession in passing in his report,
25 he did not analyze the potential impact of commission of the crime of public indecency
26 on Dr. Battersby's chiropractic practice or patients, who may be even more vulnerable
27 than a job applicant like Ms. Rowles. As pointed out by the Board, Dr. Hess did not
28 analyze or discuss Dr. Battersby's sexual proclivities or possible tendency to abuse his

29 ²⁵ See *Semple v. Tri-City Drywall, Inc.*, 172 Ariz. 608, 611-612, 838 P.2d 1369, 1372-73 (App. 1992)
30 (Prevailing party in administrative claim before Registrar of Contractors was not entitled to attorney's fees
from its opponent under A.R.S. § 12-341.01(A) because administrative hearing is not an "action").

²⁶ Dr. Battersby may view the docket at www.azsoah.com under this case number.

1 position of power as a healthcare provider. Dr. Hess only analyzed whether Dr.
2 Battersby in conducting his everyday affairs might pose a danger to others in the
3 general public. Dr. Hess' role in the criminal case apparently was to render an opinion
4 on whether public safety required Dr. Battersby to be incarcerated or monitored in
5 probation.

6 17. The Ohio Board also required a similar evaluation in its March 21, 2007
7 Adjudication Order, despite Dr. Hess' earlier evaluation, and there is no indication in
8 this record that Dr. Battersby ever complied with that portion of the Ohio Board's
9 Adjudication Order or had it overturned on appeal.

10 18. A.R.S. § 32-924(C) authorizes the Board to order Dr. Battersby to undergo
11 an examination. The Administrative Law Judge has not located any authorities holding
12 that, under these circumstances, the full faith and credit clause of the U.S. Constitution
13 requires the Board to accept Dr. Hess' report and prohibits it from performing further
14 investigation into Dr. Battersby personal and moral fitness to continue his practice of
15 chiropractic.

16 **FACTORS IN MITIGATION AND AGGRAVATION OF THE PENALTY**

17 19. The Board did not determine to discipline Dr. Battersby's Arizona license
18 based solely on the criminal conviction but, rather, first attempted to investigate the
19 significance of the conviction. Although the Board was warranted in opening a
20 complaint for investigation, the record in this matter does not include any act by Dr.
21 Battersby that would warrant immediate suspension or revocation.

22 20. In its investigation, the Board learned that Dr. Battersby had not disclosed
23 on his Arizona license renewal application that the Ohio Board had opened its own
24 investigation, even though he knew about the Ohio Board's investigation when he
25 submitted his Arizona license renewal application. In addition, Dr. Battersby continued
26 to insist that he had entered a diversionary program and would avoid conviction, when
27 the court records show that he was convicted of the crime of public indecency months
28 earlier. Dr. Battersby's lack of candor is a factor in aggravation of the penalty.

29 21. Ms. Rowles' statement to Mentor police indicates that, when Dr. Battersby
30 told her that he was a nudist, she may have told him it was alright because she thought
that nudists were people who painted pictures of naked people. Ms. Rowles' possible

1 consent to Dr. Battersby's nakedness is not a defense in an administrative license
2 discipline case because, as noted above, he has been convicted of the offense of
3 indecent exposure. But, if the behavior that led to Dr. Battersby's criminal conviction
4 was based on a mistake, a miscommunication, and a misunderstanding, that fact
5 should be a factor in mitigation of the penalty.

6 22. The Board's statutory mission, and the purpose of this administrative
7 proceeding, is to ascertain Dr. Battersby's moral fitness and professional competency to
8 practice chiropractic and to determine whether the protection of the public requires that
9 he be disciplined, suspended, or revoked.²⁷ Dr. Battersby's refusal to comply with the
10 Board's interim order and aggressive defense of this matter based primarily on
11 technical legal arguments calls into question whether he is willing to be regulated.

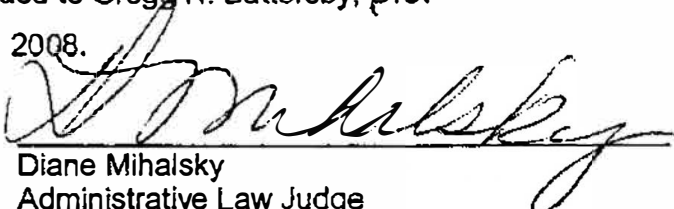
12 23. But, if Dr. Battersby's refusal to comply with the Board's interim order and
13 ill-conceived defenses were based on honest mistakes rather than character flaws and
14 he is willing to correct his mistakes, the Board may be able to continue to protect the
15 public even if it gives Dr. Battersby one last chance to salvage his professional career.

16 24. Probation might be indicated in this matter, conditioned on Dr. Battersby
17 undergoing a psychosexual examination/evaluation with terms of probation to reflect the
18 examiner's recommendations. Unfortunately, Dr. Battersby does not live or practice in
19 Arizona and the Administrative Law Judge cannot recommend that the Board attempt to
20 monitor Dr. Battersby's performance of any probation in Ohio or that it impose probation
21 when he is not actively practicing chiropractic.

22 RECOMMENDED ORDER

23 Based on the foregoing, it is recommended that the Board revoke License No.
24 3544, which it had previously issued to Gregg N. Battersby, D.C.

25 Done this day, August 12, 2008.

26 
27 Diane Mihalsky
28 Administrative Law Judge
29

30 ²⁷ See *Schillerstrom*, 180 Ariz. at 470-71, 885 P.2d at 158-59 (quoting *Matter of Rabideau*, 102 Wis. 2d 16, 26-27, 306 N.W.2d 1, 7 (1981)).

1 Original transmitted by mail this
2 14 day of August, 2008, to:

3 Board of Chiropractic Examiners
4 Patrice Pritzl, Executive Director
5 5060 North 19th Avenue, Suite 416
6 Phoenix, AZ 85015

7 By Chris Jackson
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**KELLY MCCORD v. MENTOR
CHIROPRACTIC CENTER INC et. al.
94CV000120 I**

94CV000120 MCCORD, KELLY vs . MENTOR CHIROPRACTIC CENTER INC et al

- Case Type:
- (CV) CIVIL
- Case Status:
- Closed
- File Date:
- 01/28/1994
- DCM Track:
-
- Action:
- MISCELLANEOUS
- Status Date:
- 01/28/1994
- Case Judge:
- JACKSON, JAMES W
- Next Event:
-

- [All Information](#)
- [Party](#)
- [Docket](#)

Party Information

MCCORD, KELLY

- Plaintiff

- - Disposition
 -
 - Disp Date
 -
- - Address
 - 7708 ROSELAWN

MENTOR, OH 44060

Alias

Party Attorney

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- MARY G BALAZS
- Address
- Attorney
- RICHER, DONALD A
- Address

MENTOR CHIROPRACTIC CENTER INC

- Defendant

-

- Disposition
 -
 - Disp Date
 -
- - Address
 - 8515 MENTOR AVENUE

MENTOR, OH 44060

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- Address
- Attorney
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- ROGER H WILLIAMS
- Address

BATTERSBY, DR GREGG N

- Defendant

- - Disposition
 -
 - Disp Date
 -
- - Address
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- Attorney
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- Attorney
- ROGER H WILLIAMS
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- Attorney
- THOMAS C PAVLIK
- Address

Docket Information

<u>Date</u>	<i>Docket Text</i>
01/01/1900 079013 10.00 19940128 1	CF
01/01/1900 079013 1.50 19940128 1	CL
01/01/1900 079013 55.00 19940128 1	DR
01/01/1900 079013 13.50 19940128 1	LA
01/01/1900 104398 6.50 19960205 1	CL
01/01/1900 104864 11.00 19960216 1	CL
01/01/1900 104882 6.00 19960220 1	CL
01/01/1900 104925 4.00 19960220 1	CL
01/01/1900 105101 2.00 19960223 1	CL
01/01/1900 105223 2.00 19960228 1	CL
01/01/1900 105477 1.00 19960305 1	CL
01/01/1900 105477 34.00 19960305 1	DR
01/01/1900 105478 10.00 19960305 1	CF
01/01/1900 105478 30.00 19960305 1	DR
01/01/1900 105788 4.50 19960313 1	CL
01/01/1900 105822 1.00 19960314 1	CL
01/01/1900 106584 6.50 19960403 1	CL
01/01/1900 109951 10.00 19960702 1	CF

<u>Date</u>	<i>Docket Text</i>
01/01/1900	109951 190.00 19960702 1 DR
01/01/1900	109952 10.00 19960702 1 CF
01/01/1900	109952 190.00 19960702 1 DR
01/01/1900	110263 12.00 19960711 1 CL
01/01/1900	079013 55.00 19960717 2 CL
01/01/1900	110496 1.00 19960718 1 CL
01/01/1900	110496 69.00 19960718 1 DR
01/01/1900	110497 10.00 19960718 1 CF
01/01/1900	110497 30.00 19960718 1 DR
01/01/1900	110606 99.02 19960719 1 DR
01/01/1900	105477 34.00 19960723 2 SU
01/01/1900	110606 1.98 19960723 2 CL
01/01/1900	110606 97.04 19960723 2 SU
01/01/1900	111084 10.00 19960802 1 CF
01/01/1900	111084 390.00 19960802 1 DR
01/01/1900	111234 10.00 19960807 1 CF
01/01/1900	111234 70.00 19960807 1 DR
01/01/1900	111882 1.00 19960823 1 CL
01/01/1900	111882 34.00 19960823 1 DR
01/01/1900	112151 10.00 19960830 1 CF
01/01/1900	112151 30.00 19960830 1 DR
01/01/1900	113745 16.50 19961016 1 CL
01/01/1900	115839 1.50 19961213 1 CL
01/01/1900	C02366 26.00 19980501 1 CL MB

<u>Date</u>	<i>Docket Text</i>
01/01/1900	C04125 22.50 19980617 1 CL MMB
01/01/1900	C05674 16.00 19980729 1 CL KW
01/01/1900	C26943 13.00 20000327 1 CL KW
01/01/1900	C26952 25.00 20000327 1 CL EJC
01/01/1900	ALL 883.50 20020409 2 CL GARNISHMENT O.T. AR
01/01/1900	ALL 23.60 20020409 2 LS GARNISHMENT O.T. AR
01/01/1900	ALL 10.00 20020409 2 CF GARNISHMENT O.T. AR
01/01/1900	ALL 115.90 20020409 2 SU GARNISHMENT O.T. AR
01/28/1994	COMPLAINT (JURY DEMAND ENDORSED HEREIN), TRIAL BY JURY DEMAN DED HEREIN), ATTACHMENT, CASE DESIGNATION SHEET, PRE-TRIAL O RDER, FILED. DD
01/31/1994	SUMMONS, COPY OF COMPLAINT AND ANY AND ALL ADDITIONAL PLEADI NGS LISTED ABOVE, ISSUED BY CERTIFIED MAIL RR# P912088278 TO MENTOR CHIROPRACTIC CENTER INC
01/31/1994	SUMMONS, COPY OF COMPLAINT AND ANY AND ALL ADDITIONAL PLEADI NGS LISTED ABOVE, ISSUED BY CERTIFIED MAIL RR# P912088279 TO DR GREGG N BATTERSBY
02/07/1994	CERTIFIED RETURN RECEIPT # P912088279 RETURNED AND FILED. SERVICE DATE: 02/04/94 TO: DR GREGG N BATTERSBY
02/16/1994	CERTIFIED RECEIPT #RR P912088278 RETURNED AND FILED (ON MENTOR CHIROPRACTIC CENTER INC , SIGNED 02/03/95); ATTO RNEY NOTIF
03/01/1994	JOURNAL ENTRY FILED: DEFENDANTS GRANTED AN ADDITION THIRTY (30) DAYS IN WHICH TO ANSWER OR OTHERWISE PLEAD TO PLAINTIFF 'S COMPLAINT (UNTIL MARCH 23, 1994). IT IS SO ORDERED. AR VOLUME # 955 PAGE # 973
03/23/1994	JOURNAL ENTRY FILED: DEFENDANTS HAVE LEAVE TO PLEAD TO ANSW ER THE COMPLAINT UNTIL MARCH 28, 1994. IT IS SO ORDERED. AR VOLUME # 959 PAGE # 510
03/28/1994	MOTION TO CONSOLIDATE, CERTIFICATE OF SERVICE, MEMORANDUM IN SUPPORT, FILED. (WILLIAMS) (COPY FILED IN 94CV000253) AR
03/28/1994	ANSWER OF DEFENDANTS (JURY DEMAND ENDORSED HEREON), JURY DEM AND, CERTIFICATE OF SERVICE, FILED. (WILLIAMS) A R

<u>Date</u>	<i>Docket Text</i>
03/28/1994	REQUEST FOR PRODUCTION OF DOCUMENTS, CERTIFICATE OF SERVICE, FILED. (WILLIAMS) AR
03/30/1994	NOTARY SUBPOENA RETURNED ENDORSED: RECEIVED THIS WRIT 3-24- 94, AND SERVED THE SAME ON THE WITHIN NAMED WITNESS, ANDREA MEO, AT 4:41 O'CLOCK P.M. ON 3-24-94 AT 111 GILLETTE BY DELI VERING TO AND LEAVING WITH, HIM PERSONALLY A TRUE AND CORREC T COPY HEREOF. PERSONAL. /S/ CAN 'T READ SIGNATURE-SEE RETURN AR
03/30/1994	NOTARY SUBPOENA RETURNED ENDORSED: RECIEVED THIS WRIT 3-24- 94 AND SERVED THE SAME ON THE WITHIN NAMED WITNESS, SHELLEY MACH, AT 3:25 O'CLOCK P.M. ON 3-24-94 AT 26151 LAKE SHORE BY DELIVERING TO, AND LEAVING WITH, HIM PERSONALLY A TRUE AND C ORRECT COPY HEREOF. RESIDENCE. /S/ CAN'T READ SIGNATURE-SEE RETURN AR
03/30/1994	NOTARY SUBPOENA RETURNED ENDORSED: RECEIVED THIS WRIT 3-24- 1994 AND SERVED THE SAME ON THE WITHIN NAMED WITNESS, DEBBIE SAVAGE AT 4:00 O'CLOCK P.M., ON 3-24-1994 AT 7640 JEREMY BY DELIVERING TO, AND LEAVING WITH, HIM PERSONALLY A TRUE AND C OREECT COPY HEREOF. /S/ CAN'T READ SIGNATURE-SEE RETURN AR
03/30/1994	NOTARY SUBPOENA RETURNED ENDORSED: RECEIVED THIS WRIT 3-24- 1994 AND SERVED THE SAME ON THE WITHIN NAMED WITNESS JEANNET TE STANZI AT 5:00 O'CLOCK P.M. ON 3-24 1994 AT 194 MENTOR A VE. BY DELIVERING TO, AND LEAVING WITH, HIM PERSONALLY A TRU E AND CORRECT COPY HEREOF. PERSONAL. /S/ CAN'T READ SIGNATUR E-SEE RETURN AR AR
03/30/1994	NOTARY SUBPOENA RETURNED ENDORSED: RECEIVED THIS WRIT 3-24- 1994, AND SERVED THE SAME ON THE WITHIN NAMED WITNESS, TAMMY STOER, AT 4:20 O'CLOCK P.M. ON 3-24-1994 AT 5001 GLEN LODGE BY DELIVERING TO, AND LEAVING WITH, HIM PERSONALLY A TRUE AN D CORRECT COPY HEREOF. PERSONAL. /S/ CAN'T READ SIGNATURE--SEE RETURN AR
03/31/1994	JOURNAL ENTRY FILED: DEFENDANT MENTOR CHIROPRACTIC CENTER, INC.'S MOTION TO CONSOLIDATE THE ABOVE CASE DENIED. IT IS S O ORDERED. (COPY OF JOURNAL FILED IN 94CV000253) AR VOLUME # 960 PAGE # 312
04/20/1994	JOURNAL ENTRY FILED: PLAINTIFF'S MOTION TO CONSOLIDATE CASE NO 94CV000253 WITH CASE NO 94CV000120 IS NOT WELL TAKEN AND IS DENIED. SEE JOURNAL. MB VOLUME # 962 PAGE # 473
08/04/1994	NOTICE TO TAKE VIDEO TAPED DEPOSITION (KELLY MCCORD), CERTIF ICATE OF SERVICE, FILED. (WILLIAMS) AR
09/29/1994	LETTER FROM MICHAEL P. GERMANO, ESQ. ADVISING THAT HE HAS BE EN RETAINED BY DR. GREGORY BATTERSBY AND MENTOR CHIROPRACTIC CENTER, FILED. AR

<u>Date</u>	<u>Docket Text</u>
10/14/1994	LETTER TO THE CLERK OF COURTS REGARDING NOTICE OF JURY TRIAL AND THAT ATTORNEY ROGER H. WILLIAMS IS STILL REPRESENTING DR . BATTERSBY AND THE CHIROPRACTIC CENTER, FILED. (GERMANO) AR
01/26/1995	NOTARY SUBPOENA WITH ATTACHMENT RETURNED ENDORSED: RECEIVED THIS WRIT 1-18, 1995 AND SERVED THE SAME ON THE WITHIN NAMED WITNESS, PAUL RENDINA, AT 5:00 O'CLOCK P.M., ON 1-18, 1995 A T 29339 EUCLID BY DELIVERING TO AND LEAVING WITH, HIM PERSON ALLY A TRUE AND CORRECT COPY HEREOF. PERSONAL. /S/ UNABLE TO READ SIGNATURE-SEE RETURN AR
03/16/1995	THE DEPOSITION OF LYNNE BRAVO ROSEWATER, PH.D., TUESDAY, NOV EMBER 15, 1994, FILED. (SEALED IN LARGE WHITE WINDOW ENVELO PE) AR
03/16/1995	DEPOSITION OF CANDACE GASH, WENESDAY, DECEMBER 14, 1994, FIL ED. (SEALED IN LARGE WHITE WINDOW ENVELOPE) AR
03/16/1995	DEPOSITION OF TIMOTHY MCCORD WEDNESDAY, DECEMBER 14, 1994, F ILED. (SEALED IN LARGE WHITE WINDOW ENVELOPE) AR
03/16/1995	DEPOSITION OF STEVE M. CIRINO WEDNESDAY, DECEMBER 14, 1994, FILED. (SEALED IN LARGE WHTE WINDOW ENVELOPE) AR
03/16/1995	DEPOSITION OF DONNA POHTO, FILED. (KATHRYN KINNEY FOXX COUR T REPORTERS) (SEALED IN LARGE GOLD ENVELOPE) AR
03/16/1995	DEPOSITION OF KELLY MCCORD, FILED. (KATHRYN KINNEY FOXX COU RT REPORTERS) (SEALED IN LARGE WHITE WINDOW ENVELOPE) A R
03/17/1995	DEPOSITION OF KATHLEEN WARD, FILED. (SEALED IN LARGE WHITE WINDOW ENVELOPE)
03/17/1995	DEPOSITION OF AMY L. VIRANT-BATTERSBY, FILED. (SEALED IN LA RGE WHITE WINDOW ENVELOPE) AR
03/17/1995	DEPOSITION OF DOUGLAS E. MEKINDA, FILED. (SEALED IN LARGE W HITE WINDOW ENVELOPE) AR
03/17/1995	DEPOSITION OF CONNIE J. HOOVER, FILED. (SEALED IN LARGE WHI TE WINDOW ENVELOPE) AR
03/21/1995	RETURN ON SUBPOENA: DEBBIE SAVAGE: RECEIVED THIS WRIT MARCH 14,1995 AND SERVED THE SAME ON THE WITHIN NAMED WITNESS AT 4 :00 P.M. ON 3-14-95 AT 7640 JEREMY BY DELIVERING TO AND LEAV ING WITH HIM PERSONALLY A TRUE AND CORRECT COPY HEREOF (PERS ONAL) CAN'T READ SIGNATURE. BJ

Date

Docket Text

03/21/1995 RETURN ON SUBPOENA: DR. JACK BATTERSBY: RECEIVED THIS WRIT O N 3-4-95 AND SERVED THE SAME ON THE WITHIN NAMED WITNESS AT 4:30 P.M. ON 3-14-95 AT 7386 EAGLE BY DELIVERING TO AND LEAV ING WITH HIM PERSONALLY A TRUE AND CORRECT COPY HEREOF. MRS. BATTERBY. CAN'T READ SIGNATURE. BJ

03/21/1995 RETURN ON SUBPOENA: DEBBIE SAVAGE. ON THE 17TH DAY OF MARCH, 1995 I SERVED THIS SUBPOENA ON THE WITHIN NAMED: DEBBIE SAVA GE AS FOLLOWS : PERSONAL. CAN'T READ SIGNATURE BJ

03/21/1995 RETURN ON SUBPOENA: TAMMY STOER: ON THE 17TH DAY OF MARCH, 1 995 I SERVED THE SUBPOENA ON THE WITHIN NAMED TAMMY STOER AS FOLLOWS: PERSONAL. CAN'T READ SIGNATURE. BJ

03/21/1995 RETURN ON SUBPOENA: PAUL RENDINA: ON THE 17TH DAY OF MARCH, 1995 I SERVED THE SUBPOENA ON THE WITHIN NAMED PAUL RENDINA AS FOLLOWS: MARY BALAZS CAN'T READ SIGNATURE BJ

03/23/1995 SUBPPOENA RETURNED ENDORSED: ON THE 17 DAY OF MARCH, 1995 I SERVED THIS SUBPOENA ON THE WITHIN REBECCA KUHN AS FOLLOWS: RESIDENCE. /S/ UNABLE TO READ SIGNATURE--S EE RETURN AR

03/23/1995 NOTARY SUBPOENA RETURNED ENDORSED: RECEIVED THIS WRIT 3/15, 1995, AND SERVED THE SAME ON THE WITHIN NAMED WITNESS, EILEE N HACHER), AT 1:00 O'CLOCK P.M., ON 3/16, 1995 AT HYDE BY DE LIVERING TO, AND LEAVING WITH HIM PERSONALLY A TRUE AND CORR ECT COPY HEREOF. UNABLE TO READ SIGNATURE- -SEE RETURN AR

03/23/1995 NOTARY SUBPOENA RETURNED ENDORSED: RECEIVED THIS WRIT 3/15, 1995, AND SERVED THE SAME ON THE WITHIN NAMED WITNESS, TAMMY STOER, AT 7:00 O'CLOCK PM., ON 3/15/1995 AT 5001 GLEN LODGE BY DELIVERING TO AND LEAVING WITH HIM PERSONALLY A TRUE AND CORRECT COPY HEREOF. UNABLE TO READ SIGNATURE--S EE RETURN AR

04/19/1995 NOTARY SUBPOENA RETURNED ENDORSED: RECEIVED THIS WRIT 3-31, 1995 AND SRVED THE SAME ON THE WITHIN NAMED WITNESS, PAYCHEC KS, INC., AT 3:35 O'CLOCK P.M., ON 3-31, 1995 AT 3755 ORANGE PL BY DELIVERING TO, AND LEAVING WITH MIKE QUAYLE. /S/ SEE RETURN--UNABLE TO READ SIGNATURE AR

07/25/1995 NOTICE OF DISCOVERY, PROOF OF SERVICE, FILED. (GERMANO) AR

08/10/1995 SUBPOENA RETURNED ENDORSED: ON THE 9TH DAY OF AUGUST, 1995, I SERVED THE ABOVE NAMED INDIVIDUAL, E. DAVID THOMAS, D.O., BY SERVICE UPON SECRETARY JANE E. FOXX CURT REPORTERS /S/ KATHRYN KINNEY FOXX AR

<u>Date</u>	<i>Docket Text</i>
08/10/1995	SUBPOENA RETURNED ENDORSED: ON THE 9TH DAY OF AUGUST, 1995, I SERVED THE ABOVE NAMED INDIVIDUAL, UNIVERSITY MEDNET-ATTN: RECORDS CUSTODIAN, BY SERVICE UPON JILL. FOXX COURT REPORTERS /S/ KATHRYN KINNEY FOXX AR
08/11/1995	TRIAL BRIEF OF PLAINTIFF, CERTIFICATE OF SERVICE, FILED. (BALAZS/PETRONELLI) AR
08/11/1995	MOTION TO QUASH SUBPOENA OF E. DAVID THOMAS, D.O., MEMORANDU M IN SUPPORT, CERTIFICATE OF SERVICE, FILED. (BALAZS/PETRON ELLI) AR
08/11/1995	SUBPOENA RETURNED ENDORSED: ON THE 7TH DAY OF AUG. 1995, I SERVED THE ABOVE NAMED INDIVIDUAL, LYNN WIRFEL, BY PERSONALL Y/RESIDENCE. /S/ UNABLE TO READ SIGNATURE-SEE RETURN AR
08/11/1995	SUBPOENA RETURNED ENDORSED: ON THE 7TH DAY OF AUG. 1995, I SERVED THE ABOVE NAMED INDIVIDUAL, DEBBIE SAVAGE, BY PERSONA LLY/RESIDENCE. /S/ UNABLE TO READ SIGNATURE-SEE RE TURN AR
08/11/1995	SUBPOENA RETURNED ENDORSED: ON THE 7TH DAY OF AUG 1995, I S ERVED THE ABOVE NAMED INDIVIDUAL, TAMMY STOER, BY PERSONALLY /RESIDENCE. /S/ UNABLE TO READ SIGNATURE-SEE RETURN AR
08/11/1995	SUBPOENA RETURNED ENDORSED: ON THE 7 DAY OF AUG 1995, I SER VED THE ABOVE NAMED INDIVIDUAL, CONNIE HOOVER, BY PERSONALLY /RESIDENCE. /S/ UNABLE TO READ SIGNATURE-SEE RETURN AR
08/11/1995	NOTARY SUBPOENA RETURNED ENDORSED: RECEIVED THIS WRIT AUG. 7, 1995 AND SERVED THE SAMED ON THE WITHIN NAMED WITNESS, LY NN WIRFEL, AT 2:00 O'CLOCK P.M., ON AUG. 7, 1995 AT 325 NORT H AVE., GENEVA, OH BY DELIVERING TO, AND LEAVING WITH, HIM P ERSONALLY A TRUE AND CORRECT COPY HEREOF. JPERSONALLY/RESID ENCE. /S/ UNABLE TO READ SIGNATURE-SEE RETURN AR
08/16/1995	SUBPOENA RETURNED ENDORSED: ON THE 8TH DAY OF AUG. 1995, I SERVED THE ABOVE NAMED INDIVIDUAL, DR. JACK BATTERSBY, BY PE RSONALLY WITH DUCES TECUM ATTACHED. /S/ UNABLE TO READ SIGNATURE-SEE RETURN AR
08/16/1995	SUBPOENA RETURNED ENDORSED: (FAILURE OF SERVICE) ON THE 15 TH DAY OF AUGUST 1995, I WAS UNABLE TO SERVE THE ABOVE NAMED INDIVIDUAL, GRAHAM KUTA - NO LONGER AT ADDRESS PER CURRENT R ESIDENT. FEES: \$4.30 /S/ DANIEL A DUNLAP SHERIFF O F LAKE COUNTY AR
08/28/1995	JOINT MOTION FOR CONTINUANCE, FILED (BALAZS, WILLIAMS, GERMA NO) LM

<u>Date</u>	<i>Docket Text</i>
08/29/1995	ON THE 9TH DAY OF AUGUST, 1995, I WAS UNABLE TO SERVE THE ABOVE NAMED INDIVIDUAL (GRAHAM KUTA) BY RESIDENCE SERVICE, DATED AUGUST 9 1995 BY KATHRYN KINNEY FOXX LM
08/29/1995	ON THE 14TH DAY OF AUGUST, 1995, I SERVED THE ABOVE NAMED INDIVIDUAL (ALAN L. PALGUT D.C.) BY SERVICE ON PAT. DATED AUGUST 15, 1995 BY KATHRYN KINNEY FOXX LM
09/01/1995	MOTION FOR CONTINUANCE, PROOF OF SERVICE, ATTACHMENT, FILED. (GERMANO) LM
01/29/1996	DEFENDANT'S TRIAL BRIEF, CERTIFICATE OF SERVICE, FILED. (WILLIAMS) DD
01/29/1996	DEFENDANTS' MOTION IN LIMINE, CERTIFICATE OF SERVICE, ATTACHMENTS, FILED. (WILLIAMS) DD
01/29/1996	DEFENDANTS' PROPOSED JURY INSTRUCTIONS, CERTIFICATE OF SERVICE, ATTACHMENTS, FILED. (WILLIAMS) DD
01/29/1996	MOTION IN LIMINE, MEMORANDUM IN SUPPORT, CERTIFICATE OF SERVICE, FILED. (BALAZS/PETRONELLI) AR
01/29/1996	PLAINTIFF'S PROPOSED JURY INSTRUCTIONS, ATTACHMENTS (34), FILED. (BALAZS/PETRONELLI) AR
01/29/1996	SUBPOENA RETURNED ENDORSED: ON THE 27TH DAY OF JANUARY 1996, I SERVED THE ABOVE NAMED INDIVIDUAL SUSAN MCCORD BY TAPING SUBPOENA TO DOORKNOB AFTER SPEAKING WITH UNIDENTIFIED FEMALE. DATED JANUARY 28TH, 1996 BY FOXX COURT REPORTERS. PS
01/29/1996	SUBPOENA RETURNED ENDORSED: ON THE 27TH DAY OF JANUARY 1996, I SERVED THE ABOVE NAMED INDIVIDUAL TIMOTHY MCCORD BY TAPING SUBPOENA TO DOORKNOB AFTER SPEAKING WITH UNIDENTIFIED FEMALE. DATED JANUARY 28TH, 1996 BY FOXX COURT REPORTERS. PS
01/29/1996	SUBPOENA RETURNED ENDORSED: ON THE 27TH DAY OF JANUARY 1996, I SERVED THE ABOVE NAMED INDIVIDUAL DET. LARRY FISHER BY PERSONAL SERVICE UPON E. HORACEK. FOXX COURT REPORTERS. DATED JANUARY 27TH, 1996. BY KATHRYN KINNEY FOXX. PS
01/29/1996	SUBPOENA RETURNED ENDORSED: ON THE 26TH DAY OF JANUARY 1996, I SERVED THE ABOVE NAMED INDIVIDUAL UNIVERSITY MEDNET BY PERSONAL SERVICE UPON RECORDS CUSTODIAN CAMILLE CLEEK. FOXX COURT REPORTERS. JANUARY 27TH, 1996 BY KATHRYN KINNEY FOXX. PS
01/29/1996	SUBPOENA RETURNED ENDORSED: ON THE 26TH DAY OF JANUARY 1996, I SERVED THE ABOVE NAMED INDIVIDUAL ALAN L. PALGUT D.C. BY PERSONAL SERVICE UPON HIS

Date

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SECRETARY PAT TASCH. FOXX COURT REPORTERS. DATED JANUARY 27, 1996. BY KATHRYN KINNEY FOXX. PS

01/30/1996 MOTION TO QUASH SUBPOENA OF UNIVERSITY MEDNET, MEMORANDUM IN SUPPORT OF MOTION TO QUASH SUBPOENA, CERTIFICATE OF SERVICE, EXHIBIT A, EXHIBIT B, FILED. (BRITTAIN/HUGHES) AR

01/31/1996 JOURNAL ENTRY FILED: THE MOTION TO QUASH SUBPOENA OF UNIVERSITY MEDNET GRANTED. IT IS SO ORDERED. AR VOLUME # 1044 PAGE # 1133

02/01/1996 SUBPOENA RETURNED ENDORSED: ON THE 31ST DAY OF JANUARY, 1996, I SERVED THE ABOVE NAMED INDIVIDUAL, ARIVA BOGDEN, BY RESIDENCE SERVICE, TAPING SUBPOENA TO DOOR. /S/ KATHRYN FOXX-FOXX COURT REPORTERS AR

02/01/1996 SUBPOENA RETURNED ENDORSED: ON THE 31ST DAY OF JANUARY, 1996, I SERVED THE ABOVE NAMED INDIVIDUAL, JEANNE BENNIEN, BY RESIDENCE SERVICE, TAPING SUBPOENA TO DOOR. /S/ KATHRYN FOXX-FOXX COURT REPORTERS AR

02/01/1996 SUBPOENA RETURNED ENDORSED: ON THE 31ST DAY OF JANUARY, 1996, I SERVED THE ABOVE NAMED INDIVIDUAL, DAVID BROOKS, BY RESIDENCE SERVICE UPON SON JOEY. /S/ KATHRYN FOXX-FOXX COURT REPORTERS AR

02/01/1996 SUBPOENA RETURNED ENDORSED: ON THE 31ST DAY OF JANUARY 1996, I SERVED THE ABOVE NAMED INDIVIDUAL, BETTY BOEHNLEIN, BY RESIDENCE SERVICE, TAPING SUBPOENA TO DOOR. /S/ KATHRYN FOXX AR

02/01/1996 SUBPOENA RETURNED ENDORSED: ON THE 31ST DAY OF JANUARY, 1996, I WAS UNABLE TO SERVE THE ABOVE NAMED INDIVIDUAL, STEVEN BATTLES, BECAUSE OF AN INCOMPLETE ADDRESS IN CONDO COMPLEX. /S/ KATHRYN FOXX-FOXX COURT REPORTERS AR

02/01/1996 SUBPOENA RETURNED ENDORSED: ON THE 31ST DAY OF JANUARY 1996 I SERVED THE ABOVE NAMED INDIVIDUAL, DAVID CASPELL, BY RESIDENCE SERVICE, TAPING SUBPOENA TO DOOR. /S/ KATHRYN FOXX-FOXX COURT REPORTERS AR

02/01/1996 SUBPOENA RETURNED ENDORSED: ON THE 30TH DAY OF JANUARY, 1996, I SERVED THE ABOVE NAMED INDIVIDUAL, GLORIA BROCKMAN, BY PERSONAL SERVICE. /S/ KATHRYN FOXX-FOXX COURT REPORTERS AR

02/01/1996 SUBPOENA RETURNED ENDORSED: ON THE 30TH DAY OF JANUARY, 1996, I WAS UNABLE TO SERVE THE ABOVE NAMED INDIVIDUAL, JON BAL AUSKY, BECAUSE RESIDENCE IS CURRENTLY OCCUPIED BY JACALYN NOGGY TELEPHONE #942-7129. KATHRYN FOXX COURT REPORTERS AR

<u>Date</u>	<i>Docket Text</i>
02/01/1996	SUBPOENA RETURNED ENDORSED: ON THE 30TH DAY OF JANUARY, 1996, I SERVED THE ABOVE NAMED INDIVIDUAL, REV. PAUL BERESFORD, BY RESIDENCE SERVICE, TAPED TO DOOR. /S/ KATHRYN FOXX -FOXX COURT REPORTERS AR
02/01/1996	PLAINTIFF'S MEMORANDUM OF LAW, CERTIFICATE OF SERVICE, FILED . (BALAZS/PETRONELLI) AR
02/01/1996	SUBPOENA RETURNED ENDORSED: ON THE 30TH DAY OF JANUARY 1996 , I SERVED THE ABOVE NAMED INDIVIDUAL, JOSEPH BALAZS, BY PERSONAL SERVICE. /S/ KATHERYN KINNEY FOXX-FOXX COURT REPORTERS AR
02/01/1996	SUBPOENA RETURNED ENDORSED: ON THE 30TH DAY OF JANUARY 1996 , I SERVED THE ABOVE NAMED INDIVIDUAL, PAUL ELLIOTT, BY PERSONAL SERVICE UPON DAUGHTER MICHELLE. /S/ KATHRYN KINNEY FOXX-FOXX COURT REPORTERS AR
02/01/1996	SUBPOENA RETURNED ENDORSED: ON THE 30TH DAY OF JANUARY, 1996, I SERVED THE ABOVE NAMED INDIVIDUAL, E. DAVID THOMAS, D.O ., BY PERSONAL SERVICE UPON HIS SECRETARY KAREN SPRINKS. /S/ KATHRYN KINNEYH FOXX-FOXX COURT REPORTERS AR
02/01/1996	SUBPOENA RETURNED ENDORSED: ON THE 31ST DAY OF JANUARY 1996 , I SERVED THE ABOVE NAMED INDIVIDUAL, LINDA B. AMICK, BY RESIDENCE SERVICE, TAPING SUBPOENA TO DOOR. /S/ KATHRYN FOXX-FOXX COURT REPORTERS AR
02/01/1996	PLAINTIFF'S SUPPLEMENTAL PROPOSED JURY INSTRUCTIONS, CERTIFICATE OF SERVICE, AGENCY, FILED. (ATTY JACK L PETRONELLI) RE
02/02/1996	LETTER TO THE HONORABLE JAMES JACKSON FROM JOHN C. KUEHNER, PLAIN DEAL STAFF WRITER, REQUESTING PERMISSION TO PHOTOGRAPH DR. GREGG N. BATTERSBY, FILED. AR
02/02/1996	INTERROGATORIES TO THE JURY, FILED. (BALAZS/PETONELLI) AR
02/06/1996	CERTIFICATE FOR COURT STENOGRAPHER'S FEES, FILED. (\$125.00 SHALL BE TAXED AS OTHER COSTS) AR
02/06/1996	REPORTER'S RECEIPT OF DEPOSITION IN EVIDENCE (DR. JANET BARRY FILED 2/1/96), FILED. (LUANNE M. DOLAN OFFICIAL COURT REPORTER) AR
02/06/1996	JOURNAL ENTRY FILED: ORDERS ON IMPANELING THE JURY. MON. 1/29/96 TRIAL COMMENCED-MOTION IN LIMINE, RESERVED RULING 3 MILLION DEMAND OFFER 0 JURY IMPANELED WITH ALTERNATE--OPENING STATEMENTS-PLAINTIFF PROCEEDS & CASE RECESSED UNTIL 9:30 1/20/96 (JURY DENISE JOHNSON WAS EXCUSED & REPLACED BY ALTERNATE PATRICIA COBB 1/30/96) TUES. 1/30/96 TRIAL CONTINUES-PLAINTIFF CONTINUES-TRIAL RECESSED UNTIL 9:30 A.M. 1/31/96 WED. 1/31/96 TRIAL CONTINUES-PLAINTIFF CONTINUES & RESTS- RULE 50 MOTION RULED ON -DEFENSE PROCEEDS & TRIAL RECESSED UNTIL 9:30 A.M 2/1/96 THURS. 2/01/96 TRIAL CONTINUES-DEFENSE CONTINUES

Date

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& TRIAL RECESSED UNTIL 9:30 A.M. 2/2/96 FRI. 2/02/96 TRIAL CONTINUES-DEFENSE CONTINUES & RESTS-NO REBUTTAL RULE 50 DENIED PLAINTIFF WITHDRAWS WHISTLE BLOWER COUNT-CLOSING ARGUMENTS & JURY INSTRUCTED. MON. 2/05/96 VERDICT-- FOR PLAINTIFF AGAINST MENTOR CHIROPRACTIC CTR & GREGG N. BATTERSBY COMPENSATORY DMG \$125,000 AG MENTOR CHIROPRACTIC CT. COMPENSATORY DMG \$125,000 AG GREGG N. BATTERSBY PUNITIVE DMG \$250,000 AG MENTOR CHIROPRACTIC CT. PUNITIVE DMG \$1,250,000 AG GREGG N. BATTERSBY AR VOLUME # 1045 PAGE # 876

02/06/1996 VERDICT FILED: FAVOR OF PLAINTIFF KELLY MCCORD. AR VOLUME # 1045 PAGE # 877-879

02/06/1996 VERDICT FILED: FAVOR PLAINTIFF KELLY MCCORD. AR VOLUME # 1045 PAGE # 880-882

02/06/1996 INTERROGATOIRES FILED: AR VOLUME # 1045 PAGE # 883-887

JOURNAL ENTRY FILED: PLAINTIFF KELLY MCCORD, TO RECOVER OF THE DEFENDANT, MENTOR CHIROPRACTIC CENTER, INC., THE SUM OF THREE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$375,000.00) WITH INTEREST AT THE RATE OF TEN PERCENT (10%) AS PROVIDED BY LAW, HER ATTORNEY FEES AND HER COSTS OF THIS ACTION. IT IS

02/20/1996 FURTHER ORDERED AND ADJUDGED THAT THE PLAINTIFF, KELLY MCCORD RECOVER OF THE DEFENDANT DR. GREGG BATTERSBY THE SUM OF ONE MILLION THREE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$1,375,000.00) WITH INTEREST AT THE RATE OF TEN PERCENT (10%) AS PROVIDED BY LAW, HER ATTORNEY FEES AND HER COSTS OF THIS ACTION. AR VOLUME # 1047 PAGE # 293-294

MOTION FOR ATTORNEY'S FEES, BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEY FEES, CERTIFICATE OF SERVICE, EXHIBIT "A" (12 PGS.), FILED. (BALAZS/PETRONELLI) AR

02/23/1996

MOTION FOR PREJUDGMENT INTEREST, MEMORANDUM IN SUPPORT OF MOTION FOR PREJUDGMENT INTEREST, CERTIFICATE OF SERVICE, FILED. (PETRONELLI)

02/23/1996

PRECIPE FOR CERTIFICATE OF JUDGMENT FOR LIEN, FILED. \$5.00 PD. ATTY JAMES A BUDZIK/JACK L PETRONELLI CRM

02/23/1996

CERTIFICATE OF JUDGMENT FOR LIEN ISSUED TO CLERK. CRM **JL71-144B**

02/23/1996

PRECIPE FOR CERTIFICATE OF JUDGMENT FOR LIEN, FILED. \$5.00 PD. ATTY JAMES A BUDZIK/JACK L PETRONELLI CRM

02/23/1996

CERTIFICATE OF JUDGMENT FOR LIEN ISSUED TO CLERK. CRM **JL71-145A**

02/23/1996

MOTION OF DEFENDANTS FOR JUDGMENT NOTWITHSTANDING THE VERDICT (INOV) OR IN THE ALTERNATIVE, MOTION FOR A NEW TRIAL (ORAL HEARING REQUESTED), CERTIFICATE OF SERVICE, BRIEF, FILED. (WILLIAMS) (GERMANO) AR

03/05/1996

<u>Date</u>	<i>Docket Text</i>
03/05/1996	MOTION OF DEFENDANTS FOR STAY OF PROCEEDINGS, CERTIFICATE OF SERVICE, FILED. (WILLIAMS) (GERMANO) AR
03/05/1996	MOTION FOR EXTENSION OF TIME, CERTIFICATE OF SERVICE, FILED. (WILLIAMS) (GERMANO) AR
03/05/1996	MOTION (PROCEEDINGS IN AID OF EXECUTION), FILED. (BALAZS)
03/05/1996	AFFIDAVIT (PROCEEDINGS IN AID OF EXECUTION), FILED. (BALAZS) AR
03/05/1996	PRECIPE FOR EXECUTION, INSTRUCTIONS TO SHERIFF, FILED. (\$1. 00 PAID) (BALAZS) AR
03/06/1996	COPY OF PRECIPE FOR EXECUTION AND INSTRUCTIONS TO SHERIFF FO R SERVICE, WRIT FOR EXECUTION, COPY OF NOTICE OF RIGHT TO CL AIM EXEMPTIONS, COPY OF REQUEST FOR HEARING ALONG WITH THE R EQUEST FOR HEARING, AND THE NOTICE OF RIGHT TO CLAIM EXEMPTI ONS ISSUED TO THE SHERIFF OF LAKE COUNTY FOR SERVICE ON GREG G N. BATTERSBY AND MENTOR CHIROPRACTIC ENTER, INC. AR
03/11/1996	JOURNAL ENTRY FILED: PURSUANT TO CIV. R. 72(A), ALL EXECUTI ON PROCEEDINGS AND GARNISHMENT REQUESTS FILED HEREIN ARE STA YED PENDING RESOLUTION OF THE MOTION FOR STAY FILED BY DEFEN DANT WHICH IS SCHEDULED FOR HEARING ON APRIL 4, 1996, AT 9:4 5 A.M. IT IS SO ORDERED. AR VOLUME # 1049 PAGE # 931
03/20/1996	MCCORD'S BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR JUDGM ENT NOTWITHSTANDING THE VERDICT OR IN THE ALTERNATIVE MOTIO N FOR A NEW TRIAL, CERTIFICATE OF SERVICE, FILED. (BALAZS/P ETRONELLI) AR
03/25/1996	SUPPLEMENTAL MOTION FOR EXTENSION OF TIME, CERTIFICATE OF SE RVICE, FILED. (WILLIAMS) (GERMANO) AR
03/29/1996	PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION F OR STAY OF EXECUTION, CERTIFICATE OF SERVICE, ATTACHMENTS (5 PGS), FILED. (PETRONELLI) AR
03/29/1996	PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' SUPPLEME NTAL MOTION FOR EXTENSION OF TIME, CERTIFICATE OF SERVICE, F ILED. (PETRONELLI) AR
04/04/1996	JOURNAL ENTRY FILED: DEFENDANTS' GRANTED TEN DAYS TO RESPON D TO ALL OUTSTANDING MOTIONS. THESE MOTIONS SHALL BE HEARD ON MAY 6, 1996, AT 1:30 P.M. DEFENDANTS GRANTED A STAY OF E XECUTION PENDING A RULING ON THE MOTIONS FOR NEW TRIAL AND J UDGMENT NOTWITHSTANDING THE VERDICT. THEREAFTER, DEFENDANTS' MOTION FOR STAY SHALL BE GRANTED UPON DEFENDANTS' POSTING WI TH THE LAKE COUTNY CLERK OF COURTS OF A SUPERSEDEAS BOND IN THE AMOUNT OF \$1,750,000. IT IS SO ORDERED. AR VOLUME # 1053 PAGE # 118

<u>Date</u>	<i>Docket Text</i>
04/15/1996	DEFENDANTS' BRIEF IN OPPOSITION TO MOTION FOR PREJUDGMENT IN TEREST (ORAL HEARING REQUESTED), CERTIFICATE OF SERVICE, BRIEF, FILED. (WILLIAMS) (GERMANO) AR
04/15/1996	DEFENDANTS' BRIEF IN OPPOSITION TO MOTION FOR ATTORNEY'S FEES (ORAL HEARING REQUESTED), CERTIFICATE OF SERVICE, BRIEF, FILED. (WILLIAMS)
04/24/1996	PLAINTIFF'S REPLY TO DEFENDANTS' BRIEF IN OPPOSITION TO MOTION FOR ATTORNEY'S FEES, CERTIFICATE OF SERVICE, FILED. (BALAZS/PETRONELLI)
04/25/1996	EXECUTION RETURNED ENDORSED: RECEIVED THIS WRIT ON THE 6TH DAY OF MARCH 1996 AT 2:05 O'CLOCK P.M.. WRIT RETURNED TO COURT THIS DATE, JUDGMENT NOT SATISFIED TO SHERIFF. RETURNED PER PLAINTIFF'S ATTORNEY. /S/ MARY ANN BUELL AR
05/06/1996	MOTION TO QUASH SUBPOENA/MOTION FOR PROTECTIVE ORDER, CERTIFICATE OF SERVICE, MEMORANDUM, AFFIDAVIT, FILED. (WILLIAMS/CARR) AR
05/06/1996	DEFENDANTS' REPLY TO PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT (JNOV) OR IN THE ALTERNATIVE MOTION FOR A NEW TRIAL, CERTIFICATE OF SERVICE, REPLY BRIEF, FILED. (WILLIAMS/CARR) (GERMANO) AR
05/07/1996	CERTIFICATE FOR COURT STENOGRAPHER'S FEES, FILED. \$25.00 SHALL BE TAXED AS OTHER COSTS. AR
05/10/1996	PLAINTIFF'S SURREPLY TO DEFENDANTS' BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR JUDGMENT NOT WITHSTANDING THE VERDICT OR IN THE ALTERNATIVE MOTION FOR A NEW TRIAL, CERTIFICATE OF SERVICE, FILED. (BALAZS) AR
06/17/1996	JOURNAL ENTRY FILED: DEFENDANTS' MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT OR ALTERNATIVELY FOR A NEW TRIAL DENIED. DEFENDANTS MOTION FOR REMITTUR OF THE JURY VERDICT IS ALSO DENIED. PLAINTIFF'S MOTION FOR PREJUDGMENT INTEREST DENIED. A HEARING ON PLAINTIFF'S MOTION FOR ATTORNEY FEES WAS CONDUCTED ON MAY 6, 1996. PLAINTIFF GRANTED ATTORNEY FEES CONSISTENT WITH THE CONTINGENCY FEE ARRANGEMENT ENTERED INTO BETWEEN PLAINTIFF AND HER COUNSEL. PLAINTIFF SHALL RECOVER TOTAL ATTORNEY FEES OF SEVEN HUNDRED THOUSAND DOLLARS (\$700,000) WITH INTEREST AT THE RATE OF TEN PERCENT (10%) AS PROVIDED BY LAW ACCRUING FROM FEBRUARY 20, 1996, THE DATE OF THIS COURT'S ORIGINAL JUDGMENT ENTRY. DEFENDANTS' MOTION FOR SUPERSEDES BOND IS GRANTED IN THE AMOUNT OF \$2,450,000 WHICH BOND SHALL BE POSTED NOT LATER THAN THREE DAYS FROM THE DATE OF THIS ENTRY. IT IS SO ORDERED. VOLUME # 1062 PAGE # 1047

<u>Date</u>	<u>Docket Text</u>
06/25/1996	JOURNAL ENTRY FILED: DEFENDANTS' OBLIGATION TO POST A SUPER SEDEAS BON IN THE AMOUNT OF TWO MILLION FOUR HUNDRED FIFTY T HOUSAND DOLLARS (\$2,450,000.00) EXTENDED UNTIL THE CLOSE OF BUSINESS ON TUESDAY, JUNE 25, 1996. IT IS SO ORDERED. AR VOLUME # 1063 PAGE # 642
06/25/1996	PRECIPE FOR CERTIFICATE OF JUDGMENT LIEN, FILED. (\$5.00 PD) RE
06/25/1996	PRECIPE FOR CERTIFICATE OF JUDGMENT LIEN, FILED. (\$5.00 PD) RE
06/26/1996	NOTICE OF SUBSTITUTION OF COUNSEL, CERTIFICATE OF SERVICE, F ILED. (CIANO/SATULLO) AR
06/26/1996	CERTIFICATE OF JUDGMENT ISSUED TO CLERK *** JLD 73-075A *** , FILED. RE
06/26/1996	CERTIFICATE OF JUDGMENT ISSUED TO CLERK ***JLD 73-075B*** FI LED. RE
06/28/1996	NOTICE OF APPEARANCE, CERTIFICATE OF SERVICE, FILED. (RICHE R) AR
07/02/1996	MOTION FOR ORDER OF GARNISHMENT OF PROPERTY OTHER THAN PERSONAL EARNINGS WITH EXHIBIT "A", FILED. AR
07/02/1996	AFFIDAVIT IN SUPPORT OF MOTION FOR GARNISHMENT OTHER THAN PERSONAL EARNINGS WITH EXHIBIT "A", FILED. A R
07/02/1996	PRAECIPE WITH EXHIBIT "A", FILED. AR
07/02/1996	JOURNAL ENTRY FILED: ORDER AND NOTICE OF GARNISHMENT OTHER THAN PERSONAL EARNINGS WITH EXHIBIT "A", FILED. SEE JOURNAL . AR VOLUME # 1064 PAGE # 807-809
07/02/1996	(3) CERTIFIED COPIES OF JOURNAL ENTRY, ANSWER OF GARNISHEE WITH EXHIBIT "A", COPY OF MOTION WITH EXHIBIT "A" AND AFFIDAVIT WITH EXHIBIT "A", CHECK IN THE AMOUNT OF \$1.00 ISSUED BY CERTIFIED MAIL RR# P 917 473 231 TO BANK ONE CLEVELAND NA RR# P 917 473 232 TO CHARTER ONE BANK RR# P 917 473 233 TO SOCIETY NATIONAL/KEY BANK RR# P 917 473 234 TO ANDOVER BANK RR# P 917 473 235 TO SECOND NATIONAL BANK RR# P 917 473 237 TO HORIZON SAVINGS BANK RR# P 917 473 238 TO FIRST MERIT BANK RR# P 917 473 239 TO NATIONAL CITY BANK RR# P 917 473 240 TO DOLLAR BANK RR# P 917 473 241 TO FIRST WESTERN BANK RR# P 917 473 242 TO GREAT LAKES BANK RR# P 917 473 243 TO SECURITY FEDERAL SAVINGS RR# P 917 473 244 TO COMMERCE EXCHANGE RR# P 917 473 245 TO HUNTINGTON NATIONAL BANK RR# P 917 473 246 TO THIRD FEDERAL S & L ASSOC. RR# P 917 473 247 TO MCDONALD AND CO. RR# P 917 473 249 TO STATE OF OHIO BUREAU OF WORKERS COMPENSATION RR# P 917 473 250 TO NATIONWIDE INSURANCE CO. RR# P 917 473 251 TO FIFTH THIRD BANK RR# P 917 473 252 TO FIRST NATIONWIDE BANK RR# P 912 681 679 TO A G EDWARDS & SONS

<u>Date</u>	<i>Docket Text</i>
	RR# P 912 681 680 TO MERRILL LYNCH RR# P 912 681 681 TO BLUE CROSS & BLUE SHIELD OF OHIO AR
07/02/1996	(2) COPIES NOTICE TO JUDGMENT DEBTOR AND REQUEST FOR HEARING WITH EXHIBIT "A" AND COPY OF MOTION WITH EXHIBIT "A" AND COPY OF AFFIDAVIT WITH EXHIBIT "A". (1) STAMPED SELF-ADDRESSED ENVELOPE ISSUED BY CERTIFIED MAIL RR# P 917 473 296 TO DR. GREGG N. BATTERSBY, 8143 LAKESHORE BLVD., MENTOR, OH 44060. AR
07/02/1996	MOTION FOR ORDER OF GARNISHMENT OF PROPERTY OTHER THAN PERSONAL EARNINGS WITH EXHIBIT "A", FILED. AR
07/02/1996	AFFIDAVIT IN SUPPORT OF MOTION FOR GARNISHMENT OTHER THAN PERSONAL EARNINGS WITH EXHIBIT "A", FILED. AR
07/02/1996	PRAECIPE WITH EXHIBIT "A", FILED. AR
07/02/1996	JOURNAL ENTRY FILED: ORDER AND NOTICE OF GARNISHMENT OTHER THAN PERSONAL EARNINGS WITH EXHIBIT "A", FILED. SEE JOURNAL. AR VOLUME # 1064 PAGE # 810-812
07/02/1996	(3) CERTIFIED COPIES OF JOURNAL ENTRY, ANSWER OF GARNISHEE WITH EXHIBIT "A", COPY OF MOTION WITH EXHIBIT "A", COPY OF AFFIDAVIT WITH EXHIBIT "A" AND CHECK IN THE AMOUNT OF \$1.00 ISSUED BY CERTIFIED MAIL RR# P 917 473 207 TO BANK ONE, CLEVELAND, NA RR# P 917 473 208 TO CHARTER ONE BANK RR# P 917 473 209 TO SOCIETY NATIONAL/KEY BANK RR# P 917 473 210 TO ANDOVER BANK RR# P 917 473 211 TO SECOND NATIONAL BANK RR# P 917 473 212 TO HORIZON SAVINGS BANK RR# P 917 473 213 TO FIRST MERIT BANK RR# P 917 473 215 TO NATIONAL CITY BANK RR# P 917 473 216 TO DOLLAR BANK RR# P 917 473 217 TO FIRST WESTERN BANK RR# P 917 473 219 TO GREAT LAKES BANK RR# P 917 473 220 TO SECURITY FEDERAL SAVINGS RR# P 917 473 221 TO COMMERCE EXCHANGE BANK RR# P 917 473 222 TO HUNTINGTON NATIONAL BANK RR# P 917 473 223 TO THIRD FEDERAL S & L ASSOC. RR# P 917 473 224 TO MCDONALD & CO. RR# P 917 473 225 TO STATE OF OHIO BUREAU OF WORKERS COMPENSATION RR# P 917 473 226 TO NATIONWIDE INSURANCE CO. RR# P 917 473 227 TO FIFTH THIRD BANK RR# P 917 473 228 TO FIRST NATIONWIDE BANK RR# P 917 473 229 TO A.G. EDWARDS & SONS RR# P 917 473 230 TO MERRILL LYNCH RR# P 917 473 200 TO BLUE CROSS & BLUE SHIELD OF OHIO AR
07/02/1996	(2) COPIES NOTICE TO JUDGMENT DEBTOR AND REQUEST FOR HEARING WITH EXHIBIT "A", (1) STAMPED SELF-ADDRESSED ENVELOPE ISSUED BY CERTIFIED MAIL RR# P 917 473 202 TO MENTOR CHIROPRACTIC CENTER INC., 8515 MENTOR AVE., MENTOR, OH 44060. AR
07/05/1996	CERTIFIED RECEIPT RR# P 917 473 217 TO FIRST WESTERN BANK ON CASE NO. 94CV000120 RETURNED AND FILED. AR

<u>Date</u>	<i>Docket Text</i>
07/05/1996	CERTIFIED RECEIPT RR# P 917 473 241 TO FIRST WESTERN BANK O N CASE NO. 94CV000120 RETURNED AND FILED. AR
07/08/1996	ANSWER OF GARNISHEE, ANDOVER BANK, STATES NO FUNDS AVAILABLE ON MENTOR CHIROPRACTIC CENTER INC. ET AL, FILED. (DANIEL J. SEBER, COLLECTOR)
07/08/1996	ANSWER OF GARNISHEE, ANDOVER BANK, STATES NO FUNDS AVAILABLE FOR MENOTR CHIROPRACTIC CENTER, INC. AND DR. GREGG N. BATTER SBY, FILED. (DANIEL J. WEBER, COLLECTOR) AR
07/08/1996	CERTIFIED RECEIPT P 917 473 202 TO MENTOR CHIROPRACTIC CENTE R INC. ON CASE NO. 94CV000120. A R
07/08/1996	CERTIFIED RECEIPT RR# P 917 473 210 TO ANDOVER BANK ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/08/1996	CERTIFIED RECEIPT RR# P 917 473 234 TO ANDOVER BANK ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/08/1996	CERTIFIED RECEIPT RR# P 917 473 232 TO CHARTER ONE BANK ON C ASE NO. 94CV000120 RETURNED AND FILED. AR
07/08/1996	CERTIFIED RECEIPT RR# P 917 473 208 TO CHARTER ONE BANK ON C ASE NO. 94CV000120 RETURNED AND FILED. AR
07/08/1996	CERTIFICED RECEIPT RR# P 917 473 227 TO FIFTH THIRD BANK ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/08/1996	CERTIFIED RECEIPT RR# P 917 473 251 TO FIFTH THIRD BANK ON C AE NO. 94CV000120 RETURNED AND FILED. AR
07/08/1996	CERTIFIED RECEIPT RR# P 917 473 242 TO GREAT LAKES BANK ON C ASE NO. 94CV000120 RETURNED AND FILED. AR
07/08/1996	CERTIFIED RECEIPT RR# P 917 473 219 TO GREAT LAKES BANK ON C ASE NO. 94CV000120 RETURNED AND FILED. AR
07/08/1996	CERTIFIED RECEIPT RR# P 917 473 215 TO NATIONAL CITY BANK ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/08/1996	CERTIFIED RECEIPT RR# P 917 473 239 TO NATIONAL CITY BANK ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/08/1996	CERTIFIED RECEIPT RR# P 917 473 245 TO HUNTINGTON NATIONAL B ANK ON CASE NO. 94CV000120 RETURND AND FILED. AR

<u>Date</u>	<i>Docket Text</i>
07/08/1996	CERTIFIED RECEIPT RR# P 917 473 222 TO HUNTINGTON NATIONAL BANK ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/08/1996	CERTIFIED RECEIPT RR# P 917 473 230 TO MERRILL LYNCH ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/08/1996	CERTIFIED RECEIPT RR# P 917 473 209 TO SOCIETY NATIONAL/KEY BANK ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/08/1996	CERTIFIED RECEIPT RR# P 912 681 679 TO A G EDWARDS & SONS ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/08/1996	CERTIFIED RECEIPT RR# P 917 473 207 TO BANK ONE, CLEVELAND, NA ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/08/1996	CERTIFIED RECEIPT RR# P 917 473 247 TO MCDONALD AND CO. ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/08/1996	CERTIFIED RECEIPT RR# P 917 473 228 TO FIRST NATIONWIDE BANK ON CASE NO. 94CV000120 RETURNED AND FILED. ****ATTEMPTED-UNKNOWN**** AR
07/08/1996	CERTIFIED RECEIPT RR# P 917 473 252 TO FIRST NATIONWIDE BANK ON CASE NO. 94CV000120 RETURNED AND FILED. ****REFUSED*** AR
07/09/1996	CERTIFIED RECEIPT RR# P 912 681 680 TO MERRILL LYNCH ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/09/1996	CERTIFIED RECEIPT RR# P 917 473 233 TO SOCIETY NATIONAL/KEY BANK ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/09/1996	CERTIFIED RECEIPT RR# P 917 473 229 TO A G EDWARDS & SONS ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/09/1996	CERTIFIED RECEIPT RR# P 917 473 220 TO SECURITY FEDERAL SAVINGS ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/09/1996	CERTIFIED RECEIPT RR# P 917 473 243 TO SECURITY FEDERAL SAVINGS ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/09/1996	NOTICE OF FAILURE OF SERVICE ON FIRST NATIONWIDE BANK AND CHECK NO. 8702 IN THE AMOUNT OF \$1.00 ISSUED TO ATTORNEY RICHER. COPY IN FILE. AR
07/09/1996	NOTICE OF FAILURE OF SERVICE ON FIRST NATIONWIDE BANK AND CHECK NUMBER 8703 ISSUED TO ATTORNEY DONALD A. RICHER. COPY IN FILE. AR

<u>Date</u>	<i>Docket Text</i>
07/09/1996	CERTIFIED RECEIPT RR# P 917 473 238 TO FIRST MERIT BANK ON C ASE NO. 94CV000120 RETURNED AND FILED. AR
07/09/1996	CERTIFIED RECEIPT RR# P 917 473 296 TO DR. GREGG N. BATTERSB Y ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/09/1996	ANSWER OF GARNISHEE, KEY BANK, STATES NO FUNDS FOR MENTOR CH IROPRACTIC CENTER INC. ET AL, FILED. (J.G. OGUNMOLA/SPECIAL COURT CLAIMS DEPT.)
07/10/1996	CERTIFIED RECEIPT RR# P 917 473 211 TO SECOND NATIONAL BANK ON CASE NO. 94CV000120 RETURNED AND FILED. A R
07/10/1996	CERTIFIED RECEIPT RR# P 917 473 235 TO SECOND NATIONAL BANK ON CASE NO. 94CV000120 RETURNED AND FILED. A R
07/10/1996	CERTIFIED RECEIPT RR# P 917 473 240 TO DOLLAR BANK ON CASE N O. 94CV000120 RETURNED AND FILED. AR
07/10/1996	CERTIFIED RECEIPT RR# P 917 473 216 TO DOLLAR BANK ON CASE N O. 94CV000120 RETURNED AND FILED. AR
07/10/1996	CERTIFIED RECEIPT RR# P 917 473 225 TO THE STATE OF OHIO BUR EAU OF WORKERS COMPENSATION ON CASE NO. 94CV000120 RETURNED AND FILED.
07/10/1996	ANSWER OF GARNISHEE, FIRST NATIONAL BANK OF OHIO STATES, NO ACCOUNT FOR MENTOR CHIROPRACTIC CENTER, INC. FILED. (LORI LANZA-LEGAL SECRETARY) AR
07/10/1996	CERTIFIED RECEIPT RR# P 917 473 244 TO COMMERCE EXCHANGE BAN K ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/10/1996	CERTIFIED RECEIPT RR# P 917 473 221 TO COMMERCE EXCHANGE BAN K ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/10/1996	CERTIFIED RECEIPT RR# P 917 473 200 TO BLUE CROSS & BLUE SHE ILD OF OHIO ON CASE NO. 94CV000120 RETURNED AND FILED. A R
07/10/1996	CERTIFIED RECEIPT RR# P 912 681 681 TO BLUE CROSS & BLUE SHI ELD OF OHI ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/10/1996	ANSWER OF GARNISHEE, KEY BANK, STATES NO FUNDS AVAILABLE ON MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREGG N. BATTERSBY) , FILED. (J.G. OGUNMOLA/SPECIAL CLAIMS DEPT.) AR

<u>Date</u>	<i>Docket Text</i>
07/10/1996	ANSWER OF GARNISHEE, SECURITY FEDERAL SAVINGS & LOAN ASSOCIATION, STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREGG N. BATTERSBY, FILED. (BETHANY A. FIX, BRANCH MANAGER/ASSISTANT SECRETARY) AR
07/10/1996	ANSWER OF GARNISHEE, SECURITY FEDERAL SAVING & LOAN ASSOCIATION, STATES NO FUNDS AVAILABLE ON MENTOR CHIROPRACTIC CENTER, INC. ET AL, FILED. (BETHANY A. FIX, BRANCH MANAGER/ASSISTANT SECRETARY) AR
07/10/1996	ANSWER OF GARNISHEE, COMMERCE EXCHANGE BANK, STATES NO FUNDS AVAILABLE ON MENTOR CHIROPRACTIC CENTER, INC. ET AL, FILED. (LAVONNE POLLARD HEAD TELLER) AR
07/10/1996	ANSWER OF GARNISHEE, COMMERCE EXCHANGE BANK, STATES NO FUNDS ON MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREGG N. BATTERSBY, FILED. (LAVONNE POLLARD HEAD TELLER) AR
07/11/1996	ANSWER OF GARNISHEE, THIRD FEDERAL SAVINGS AND LOAN, STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC., FILED. (LA DONNA L. HARRIS-LEGAL DEPARTMENT) AR
07/11/1996	CERTIFIED RECEIPT RR# P 917 473 237 TO HORIZON SAVINGS BANK ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/11/1996	CERTIFIED RECEIPT RR# P 917 473 212 TO HORIZON SAVINGS BANK ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/11/1996	CERTIFIED RECEIPT RR# P 917 473 249 TO STATE OF OHIO BUREAU OF WORKERS COMPENSATION ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/11/1996	ANSWER OF GARNISHEE, HUNTINGTON NATIONAL BANK, STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. ET AL, FILED. (NOTHING UNDER NAME(s), ADDRESS OR SS#(s) GIVEN FOR DEFENDANT(s) (KAREN KEITH-LEGAL OPS) ar
07/11/1996	ANSWER OF GARNISHEE HUNTINGTON NATIONAL BANK, STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREGG N. BATTERSBY, FILED. (NOTHING UNDER NAMES(s), ADDRESS OR SS#(s) GIVEN FOR DEFENDANT(s). (KAREN KEITH-LEGAL OPS) AR
07/11/1996	ANSWER OF GARNISHEE, PEOPLES BANK, STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREGG N. BATTERSBY, FILED. (G.L. FLAKER, LEGAL ASSISTANT) AR
07/11/1996	ANSWER OF GARNISHEE, MCDONALD & COMPANY SECURITIES, INC., STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. ET AL, FILED. (HENRY V. KERR, SR. VP, GENERAL COUNSEL) AR

<u>Date</u>	<i>Docket Text</i>
07/11/1996	ANSWER OF GARNISHEE, MCDONALD & COMPANY SECURITIES, INC. STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREGG N. BATTERSBY, FILED. HENRY V. KERR, SR. VP, GENERAL COUNSEL. AR
07/11/1996	ANSWER OF GARNISHEE, FIRST WESTERN BANK, F.S.B., STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREGG N. BATTERSBY, FILED. (BARBARA J.AUSTIN, AVP/MGR DEPT OPER) AR
07/11/1996	ANSWER OF GARNISHEE, FIRST WESTERN BANK, F.S.B., STATES THE ACCOUNT IN QUESTION IS TITLED MENTOR CHIROPRACTIC CLINIC PENSION PLAN AND MAY BE EXEMPT FROM LEVY UNDER ERISA, FILED. (BARBARA J. AUSTIN, AVP/MGR DEPT OPER) AR
07/11/1996	ANSWER OF GARNISHEE, THIRD FEDERAL SAVINGS AND LOAN, STATES NO FUNDS AVAILABLE ON MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREGG N. BATTERSBY, FILED. (LA DONNA L. HARRIS-LEGAL DEPT.) AR
07/12/1996	ANSWER OF GARNISHEE, REPUBLIC SAVINGS BANK, STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREGG N. BATTERSBY, FILED. (KATHLEEN A. MOONEY, DEPOSIT ACCTS MGR) AR
07/12/1996	ANSWER OF GARNISHEE, REPUBLIC SAVINGS BANK, STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER INC. ET AL, FILED. (KATHLEEN A. MOONEY, DEPOSIT ACCTS MGR) AR
07/12/1996	ANSWER OF GARNISHEE, FIFTH THIRD BANK OF NW OHIO, STATES NO FUNDS FOUND FOR MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREGG N. BATTERSBY, FILED. (BEVERLY HACKER) AR
07/12/1996	ANSWER OF GARNISHEE, FIFTH THIRD BANK OF NW OHIO, STATES NO FUNDS FOUND FOR MENTOR CHIROPRACTIC CENTER, INC. ET AL, FILED. (BEVERLY HACKER) AR
07/12/1996	ANSWER OF GARNISHEE, NATIONAL CITY BANK, STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREGG N. BATTERSBY, FILED. (BETTY MANCINI) AR
07/12/1996	ANSWER OF GARNISHEE, NATIONAL CITY, STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. ET AL, FILED. (BETTY MANCINI)
07/15/1996	ANSWER OF GARNISHEE, A.G. EDWARDS & SONS, INC., STATES MENTOR CHIROPRACTIC CENTER INC., MAINTAINS A CORPORATE ACCOUNT (218-105599-060), TAXPAYER ID #34-1619243. HOWEVER, THE ACCOUNT DOES NOT CONTAIN ANY FUNDS AT THIS TIME AND A PENSION FUND ACCOUNT FOR THE MENTOR CHIROPRACTIC PENSION PLAN ACCOUNT (218-051955), TAXPAYER ID #34-1413423, WHICH EDWARDS DOES NOT BELIEVE IS SUBJECT TO THE GARNISHMENT, FILED. (STEPHEN G. SNEERINGER VICE PRESIDENT) AR

<u>Date</u>	<u>Docket Text</u>
07/15/1996	ANSWER OF GARNISHEE, SECOND NATIONAL BANK, STATES THEY MAINTAIN NO ACCOUNT IN THE NAME OF MENTOR CHIROPRACTIC CENTER, IN C. AND DR. GREGG N. BATTERSBY, FILED. (VERONICA STEINBECK, OPERATIONS CLERK) AR
07/15/1996	ANSWER OF GARNISHEE, SECOND NATIONAL BANK, STATES THEY MAINTAIN NO ACCOUNT IN THE NAME OF MENTOR CHIROPRACTIC ENTER, INC., FILED. (VERONICA STEINBECK, OPERATIONS CLERK) AR
07/15/1996	CERTIFIED RECEIPT RR# P 917 473 226 TO NATIONWIDE INSURANCE CO. ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/15/1996	NOTICE OF APPEAL, TP INFO (ORD TP), COURT REPORTER ACKNOWLEDGMENT (LUANNE DOLAN), J.E. OF 6/17/96, VERDICT, DOCKETING STATEMENT, CERTIFICATE OF SERVICE, LETTER WITH SERVICE INSTRUCTIONS FILED. (BRIAN SULLIVAN) *96L119**
07/15/1996	NOTICE OF APPEAL, ALL ACCOMPANYING DOCUMENTS ISSUED TO CLERK OF COURT OF APPEALS AND WARREN. **96L119**
07/15/1996	NOTICE, NOTICE OF APPEAL, ALL ACCOMPANYING DOCUMENTS ISSUED TO MARY BALAZS/JACK PETRONELLI AND JUDGE JACKSON. CERTIFICATE OF MAILING AND SIGNED RECEIPT IN FILE. (2) MZ
07/15/1996	CERTIFIED RECEIPT RR# P 917 473 224 TO MCDONALD & CO. ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/16/1996	ANSWER OF GARNISHEE, DOLLAR BANK, STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREG N. BATTERSBY, FILED. (CHERI HENSON, PARALEGAL) AR
07/16/1996	CERTIFIED RECEIPT RR# P 917 473 223 TO THIRD FEDERAL S & L ASSOC. ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/16/1996	CERTIFIED RECEIPT RR# P 917 473 231 TO BANK ONE CLEVELAND, NA ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/16/1996	CERTIFIED RECEIPT RR# P 917 473 246 TO THIRD FEDERAL S & L ASSOC. ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/17/1996	ANSWER OF GARNISHEE, NATIONWIDE INSURANCE CO., STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. ET AL, FILED. (DAVID L. WHITE, ATTY) AR
07/17/1996	ANSWER OF GARNISHEE, NATIONWIDE INSURANCE CO., STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREGG N. BATTERSBY, FILED. (DAVID L. WHITE, ATTY.) AR

<u>Date</u>	<i>Docket Text</i>
07/17/1996	MOTION FOR SPECIAL EXAMINATION OF GARNISHEE, CERTIFICATE OF SERVICE, FILED. (RICHER) AR
07/17/1996	INSTRUCTIONS FOR SERVICE, FILED. (RICHER) AR
07/17/1996	MOTION FOR SPECIAL EXAMINATION OF GARNISHEE, CERTIFICATE OF SERVICE, FILED. (RICHER) AR
07/17/1996	INSTRUCTIONS FOR SERVICE, FILED. (RICHER) AR
07/17/1996	MOTION (AID PROCEEDINGS), FILED. (RICHER) AR
07/17/1996	AFFIDAVIT (AID PROCEEDINGS), FILED. (RICHER) AR
07/17/1996	INSTRUCTIONS FOR SERVICE, FILED. (RICHER) AR
07/17/1996	PRECIPE FOR WRIT OF EXECUTION, EXHIBIT A ATTACHED, FILED. \$ 1.00 PD. ATTY DONALD A RICHER CRM
07/17/1996	PRECIPE FOR WRIT OF EXECUTION, EXHIBIT A ATTACHED, FILED. \$ 1.00 PD. ATTY DONALD A RICHER CRM
07/18/1996	COPY OF PRECIPE FOR EXECUTION WITH EXHIBIT A ATTACHED, WRIT OF EXECUTION, COPY OF NOTICE OF RIGHT TO CLAIM EXEMPTIONS, C OPY OF REQUEST FOR HEARING ALONG WITH THE NOTICE OF RIGHT TO CLAIM EXEMPTIONS AND THE REQUEST FOR HEARING ISSUED TO SHERIFF OF LAKE COUNTY FOR SERVICE ON MENTOR CHIROPRACTIC CENTER INC, LOCATED AT 8515 MENTOR AVE., MENTOR, OH. CRM
07/18/1996	COPY OF PRECIPE FOR WRIT OF EXECUTION WITH EXHIBIT A ATTACHE D, WRIT OF EXECUTION, COPY OF NOTICE OF RIGHT TO CLAIM EXEMPTIONS AND COPY OF REQUEST FOR HEARING ALONG WITH THE NOTICE OF RIGHT TO CLAIM EXEMPTIONS AND THE REQUEST FOR HEARING ISSUED TO LAKE COUNTY SHERIFF FOR SERVICE ON MENTOR CHIROPRACTIC CENTER INC, LOCATED AT 8515 MENTOR AVE., MENTOR, OH. CRM
07/18/1996	JOURNAL ENTRY FILED: GARNISHEE, FIRST WESTERN BANK, 56 LIBERTY ST., PAINESVILLE, OH 44077 BE AND APPEAR PERSONALLY BY AND THROUGH ONE OF ITS DULY AUTHORIZED OFFICERS BEFORE A JUDGE OF THIS COURT ON AUGUST 5, 1996 AT 9:00 A.M. IT IS FURTHER ORDERED THAT THE GARNISHEE SHALL BRING WITH HIM ALL RECORDS PERTAINING TO ANY AND ALL FUNDS WHICH IT HAS OR MAY HAVE IN HIS POSSESSION WHICH ARE OR MAY BE THE PROPERTY OF DEFENDANT, MENTOR CHIROPRACTIC CENTER, INC. AR VOLUME # 1066 PAGE # 0901
07/18/1996	NOTICE OF COURT ORDER, CERTIFIED COPY OF JOURNAL, COPY OF MOTION ISSUED BY CERTIFIED MAIL RR# P 917 473 335 TO FIRST WESTERN BANK, 56 LIBERTY ST., PAINESVILLE, OH 44077. AR

<u>Date</u>	<i>Docket Text</i>
07/18/1996	JOURNAL ENTRY FILED: GARNISHEE, A.G. EDWARDS & SONS BE AND APPEAR PERSONALLY BY AND THROUGH ONE OF ITS DULY AUTHORIZED OFFICERS BEFORE A JUDGE OF THIS COURT ON AUGUST 5, 1996 AT 9 :00 A.M. GARNISHEE SHALL BRING WITH HIM ALL RECORDS PERTAIN ING TO ANY AND ALL FUND WHICH IT HAS OR MAY HAVE IN HIS POSSESSIONS WHICH ARE OR MAY BE THE PROPERTY OF DEFENDANT, MENTOR CHIROPRACTIC CENTER, INC. AR VOLUME # 1066 PAGE # 1105
07/18/1996	ANSWER OF GARNISHEE BANK ONE, NO OPEN ACCOUNTS, FILED. (MICHAEL MCSHEPARD) RE
07/19/1996	NOTICE OF COURT ORDER, CERTIFIED COPY OF JOURNAL, COPY OF MOTION ISSUED BY CERTIFIED MAIL RR# P 917 473 336 TO A.G. EDWARDS & SONS, 8500 STATION ST., MENTOR, OH 44060. AR
07/19/1996	ANSWER OF GARNISHEE, BANK ONE, STATES FUNDS IN THE AMOUNT OF \$99.02 AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREGG N. BATTERSBY WITH CHECK ENCLOSED, FILED. (JENNIFER J. MEREDITH) AR
07/19/1996	CERTIFIED RECEIPT RR# P 917 473 213 TO FIRST MERIT BANK ON CASE NO. 94CV000120 RETURNED AND FILED. AR
07/22/1996	ANSWER OF GARNISHEE, MERRILL LYNCH, PIERCE, FENNER & SMITH INC., STATES NO ACCOUNTS FOUND FOR MENTOR CHIROPRACTIC CENTER, INC. AND/OR DR. GREGG N. BATTERSBY, FILED. (JOHN L. DEMONTE) AR
07/22/1996	JOURNAL ENTRY FILED: DR. GREGG N. BATTERSBY, TOGETHER WITH ALL OF THE DOCUMENTS MENTIONED IN THE ATTACHED EXHIBIT "A" BE AND APPEAR BEFORE THE HONORABLE JUDGE OF SAID COURT, AT HIS OFFICE IN PAINESVILLE OHIO, ON THE 5TH DAY OF AUGUST A.D. 1996, AT 9:00 O'CLOCK A.M. AR VOLUME # 1067 PAGE # 0087-0105
07/22/1996	NOTICE OF COURT ORDER, CERTIFIED COPY JOURNAL, COPY OF MOTION AND AFFIDAVIT (AID PROCEEDINGS) ISSUED BY CERTIFIED MAIL RR# P 917 473 395 TO DR. GREGG N. BATTERSBY, 8143 LAKESHORE BLVD., MENTOR, OH 44060. AR
07/22/1996	JOURNAL ENTRY FILED: THE CLERK SHALL DISBURSE TO PLAINTIFF IN CARE OF HER ATTORNEY, DONALD A. RICHER, 77 N. ST. CLAIR ST., SUITE 100, PAINESVILLE, OH 44077 THE SUM OF \$99.02 LESS POUNDAGE, AS SOON AS PRACTICABLE. AR VOLUME # 1067 PAGE # 106
07/22/1996	MOTION FOR PERMISSION TO ENTER UPON LAND FOR OTHER RELIEF, CERTIFICATE OF SERVICE, FILED. (RICHER) AR
07/23/1996	CERTIFIED RECEIPT #P 917 473 336, RETURNED AND FILED. (94CV000120 TO A.G. EDWARDS & SONS) MB

<u>Date</u>	<u>Docket Text</u>
07/23/1996	CERTIFIED RECEIPT #P 917 473 335, RETURNED AND FILED. (94CV0 00120 TO FIRST WESTERN BANK) MB
07/24/1996	AMENDED ANSWER OF GARNISHEE, FIRST WESTERN BANK, F.S.B, STAT ES THAT THE ACCOUNT TITLED "MENTOR CHIROPRACTIC CLINIC PENSI ON PLAN" TAX IDENTIFICATION NUMBER DOES NOT CORRESPOND WITH THE TAX IDENTIFICATION NUMBER OF THE DEFENDANT, MENTOR CHIRO PRACTICE CENTER, INC., WITH TAX IDENTIFICATION NO. 34-161924 3, FILED. (CONNIE KENNEDY DEPOSIT CONTRL SUPERVISOR) AR
07/25/1996	CERTIFIED RECEIPT RR# P 917 473 395 TO DR. GREGG N. BATTERSB Y ON CASE NO. 94CV000120 RETURNED AND FILED. A R
07/25/1996	NOTICE OF CROSS-APPEAL, CERTIFICATE OF SERVICE, J.E. OF 6/17 /96 (ATTACHED) FIELD. (PETRONELLI) **96L119**
07/25/1996	COPY OF NOTICE OF CROSS-APPEAL, ALL ACCOMPANYING DOCUMENTS I SSUED TO CLERK OF COURT OF APPEALS AND WARREN. **96L119**
07/25/1996	NOTICE, NOTICE OF CROSS-APPEAL, ISSUED TO BRIAN D. SULLIVAN AND JUDGE JACKSON. CERTIFICATE OF MAILING AND SIGNED RECEIPT IN FILE. **96L119** MZ
07/26/1996	ANSWER OF GARNISHEE, CHARTER ONE BANK, F.S.B., STATES NO FUN DS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. AND DR. GR EGG N. BATTERBY, FILED. (CHERYL SZCEPAHIK, SAVINGS OPERATIO NS SUPERVISOR)
07/26/1996	ANSWER OF GARNISHEE, CHARTER ONE BANK F.S.B., STATES NO FUND S AVAILABLE FOR MENTOR CHIROPRACTIC CENTER INC., FILED. (CH ERYL L. SZCZEPANIK, SAVINGS OPERATIONS SUPERVISOR) AR
07/29/1996	ANSWER OF GARNISHEE, GREAT LAKES BANK, STATES NO FUNDS AVAIL ABLE FOR MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREGG N. B ATTERSBY, FILED. (JOHN S. KATRONICK, AST. VICE PRESIDENT) AR
07/29/1996	ANSWER OF GARNISHEE, GREAT LAKES BANK, STATES NO FUNDS AVAIL ABLE FOR MENTOR CHIROPRACTIC CENTER, INC. ET AL, FILED. (JO HN S. KATRONICK, AST. VICE PRES.) AR
07/29/1996	MOTION TO INTERVENE AS NEW-PARTY DEFENDANT, CERTIFICATE OF S ERVICE, MEMORANDUM, EXHIBIT "A", EXHIBIT "B", FILED. (SUMME RS) AR
08/02/1996	MOTION FOR ORDER OF GARNISHMENT OF PROPERTY OTHER THAN PERSO NAL EARNINGS WITH EXHIBIT "A", FILED. AR
08/02/1996	AFFIDAVIT IN SUPPORT OF MOTION FOR GARNISHMENT OTHER THAN PE RSONAL EARNINGS WITH EXHIBIT "A", FILED.

Date

Docket Text

08/02/1996 PRAECIPE WITH EXHIBIT "A", ATTACHED AND FILED. (DR. GREGG N . BATTERSBY)

08/02/1996 JOURNAL ENTRY FILED: ORDER AND NOTICE OF GARNISHMENT OTHER THAN PERSONAL EARNINGS WITH EXHIBIT "A" ATTACHED. VOLUME # 1068 PAGE # 865-866A

08/02/1996 (3) CERTIFIED COPIES OF JOURNAL ENTRY, ANSWER OF GARNISHEE, COPY OF MOTION & AFFIDAVIT WITH EXHIBIT "A" ATTACHED, CHECK IN THE AMOUNT OF \$1.00 ISSUED BY CERTIFIED MAIL RR# P 912 681 781 TO BATTERSBY CHIROPRACTIC CENTER P 912 681 782 TO MENTOR CHIROPRACTIC CENTER P 912 681 783 TO JACK N. BATTERSBY P 912 681 784 TO NORMA R. BATTERSBY P 912 681 785 TO JACK N. BATTERSBY AS CO-TRUSTEE OF THE NR T RUST P 912 681 786 TO NORMA R. BATTERSBY AS CO-TRUSTEE OF TH E NR TRUST P 912 681 787 TO JANET M. BARRY P 912 681 788 TO JACQUELYN BOND P 912 681 789 TO AMY LYNN BATTERSBY P 912 681 790 TO WILES AND RICHARDS P 912 681 791 TO REMINGER & REMINGER P 912 681 792 TO AETNA INSURANCE CO. P 912 681 793 TO METROPOLITAN INSURANCE CO. P 912 681 794 TO ANTHEM BLUE CROSS AND BLUE SHIELD P 912 681 795 TO THE CINCINNATI COMPANIES P 912 681 796 TO ALLSTATE INSURANCE CO. P 912 681 797 TO NATIONWIDE MUTUAL INSURANCE COMPANY P 912 681 798 TO G.N.B. LEASING, INC. P 912 681 800 TO TRAVELERS INSURANCE CO. P 912 681 801 TO CIGNA INSURANCE CO. P 912 681 802 TO GREGG N. BATTERSBY D.C, INC. AR

08/02/1996 (2) COPIES NOTICE TO JUDGMENT DEBTOR AND REQUEST FOR HEARING WITH EXHIBIT "A", (1) STAMPED SELF-ADDRESSED ENVELOPE, COPY OF MOTION AND AFFIDAVIT WITH EXHIBIT "A" ATTACHED ISSUED BY CERTIFIED MAIL RR# P 912 681 777 TO DR. GREGG N. BATTERSBY. AR

08/02/1996 MOTION FOR ORDER OF GARNISHMENT OF PROPERTY OTHER THAN PERSONAL EARNINGS WITH EXHIBIT "A" ATTACHED AND FILED. AR

08/02/1996 AFFIDAVIT IN SUPPORT OF MOTION FOR GARNISHMENT OTHER THAN PERSONAL EARNINGS WITH EXHIBIT "A" ATTACHED AND FILED.

08/02/1996 PRAECIPE WITH EXHIBIT "A", FILED. (MENTOR CHIROPRACTIC CENTER INC.)

08/02/1996 JOURNAL ENTRY FILED: ORDER AND NOTICE OF GARNISHMENT OTHER THAN PERSONAL EARNINGS WITH EXHIBIT "A", FILED. SEE JOURNAL . AR VOLUME # 1068 PAGE # 867-869

08/02/1996 (3) CERTIFIED COPIES OF JOURNAL ENTRY, ANSWER OF GARNISHEE, COPY OF MOTION AND AFFIDAVIT WITH EXHIBIT "A", CHECK IN THE AMOUNT OF \$1.00 ISSUED BY CERTIFIED MAIL RR# P 912 681 805 TO BATTERSBY CHIROPRACTIC CENTER P 912 681 806 TO MENTOR CHIROPRACTIC CENTER P 912 681 807 TO JACK N. BATTERSBY P 912 681 808 TO NORMA R. BATTERSBY P 912 681 809 TO JACK N. BATTERSBY AS CO-TRUSTEE OF THE NR T RUST P 912 681 810 TO NORMA R. BATTERSBY AS CO-TRUSTEE OF TH E NR TRUST P 912 681 811 TO JANET M. BARRY P 912 681 812 TO JACQUELYN BOND P 912 681 813 TO AMY LYNN BATTERSBY P 912 681 814 TO WILES AND RICHARDS P 912 681 815 TO REMINGER &

Date***Docket Text***

REMININGER CO., LPA P 912 681 816 TO AETNA INSURANCE CO. P 912 681 803 TO METROPOLITAN INSURANCE CO. P 912 681 804 TO ANTHEM BLUE CROPS AND BLUE SHIELD P 912 681 817 TO THE CINCINNATI COMPANIES P 912 681 818 TO ALLSTATE INSURANCE CO. P 912 681 819 TO NATIONWIDE MUTUAL INSURANCE COMPANY C/O MEDICARE DIV. P 912 681 820 TO G.N.B. LEASING, INC. C/O GREGG N. BATTERSBY, STAT. AGENT P 912 681 821 TO TRAVELERS INSURANCE CO. P 912 681 822 TO CIGNA INSURANCE CO. P 912 681 823 TO GREGG N. BATTERSBY, D.C., INC. AR

- 08/02/1996 (2) COPIES NOTICE TO JUDGMENT DEBTOR AND REQUEST FOR HEARING WITH EXHIBIT "A", (1) STAMPED SELF-ADDRESSED ENVELOPE, COPY OF MOTION AND AFFIDAVIT WITH EXHIBIT "A" ISSUED BY CERTIFIED MAIL RR# P 912 681 824 TO MENTOR CHIROPRACTIC CENTER, INC. AR
- 08/02/1996 BRIEF IN OPPOSITION TO MOTION TO INTERVENE, CERTIFICATE OF SERVICE, FILED. (RICHER) AR
- 08/02/1996 JOURNAL ENTRY FILED: IN ACCORDANCE WITH CIV. R. 53(C), THE WITHIN CASE IS REFERRED TO MAGISTRATE KENNETH ROLL FOR THE PURPOSE OF ADDRESSING ALL GARNISHMENT OR AID IN EXECUTION ISSUES RAISED THEREIN. IT IS SO ORDERED. AR VOLUME # 1068 PAGE # 0870
- 08/05/1996 CERTIFIED RECEIPT RR# P 912 681 802 TO GREGG N.B. BATTERSBY, D.C., INC. ON CASE NO. 94CV000120 RETURNED AND FILED. AR
- 08/05/1996 CERTIFIED RECEIPT RR# P 912 681 798 TO G.N.B. LEASING, INC. ON CASE NO. 94CV000120 RETURNED AND FILED. AR
- 08/05/1996 CERTIFIED RECEIPT RR# P 912 681 805 TO BATTERSBY CHIROPRACTIC CENTER ON CASE NO. 94CV000120 RETURNED AND FILED. AR
- 08/05/1996 CERTIFIED RECEIPT RR# P 912 681 820 TO G.N.B. LEASING, INC. ON CASE NO. 94CV000120 RETURNED AND FILED. AR
- 08/05/1996 CERTIFIED RECEIPT RR# P 912 681 807 TO JACK N. BATTERSBY ON CASE NO. 94CV000120 RETURNED AND FILED. AR
- 08/05/1996 CERTIFIED RECEIPT RR# P 912 681 783 TO JACK N. BATTERSBY ON CASE NO. 94CV000120 RETURNED AND FILED. AR
- 08/05/1996 CERTIFIED RECEIPT RR# P 912 681 810 TO NORMA R. BATTERSBY AS CO-TRUSTEE OF THE NR TRUST ON CASE NO. 94CV000120 RETURNED AND FILED.
- 08/05/1996 CERTIFIED RECEIPT RR# P 912 681 786 TO NORMA R. BATTERSBY AS CO-TRUSTEE OF THE NR TRUST ON CASE NO. 94CV000120 RETURNED AND FILED.

<u>Date</u>	<i>Docket Text</i>
08/05/1996	CERTIFIED RECEIPT RR# P 912 681 808 TO NORMA R. BATTERSBY ON CASE NO. 94CV000120 RETURNED AND FILED. AR
08/05/1996	CERTIFIED RECEIPT RR# P 912 681 784 TO NORMA R. BATTERSBY ON CASE NO. 94CV000120 RETURNED AND FILED. AR
08/05/1996	CERTIFIED RECEIPT RR# P 912 681 785 TO JACK N. BATTERSBY AS CO-TRUSTEE OF THE NR TRUST ON CASE NO. 94CV000120 RETURNED A ND FILED. AR
08/05/1996	CERTIFIED RECEIPT RR# P 912 681 787 TO JANET M. BARRY ON CAS E NO. 94CV000120 RETURNED AND FILED. AR
08/05/1996	CERTIFIED RECEIPT RR# P 912 681 809 TO JACK N. ABTTERSBY AS CO-TRUSTEE OF THE NR TRUST ON CASE NO. 94CV000120 RETURNED A ND FILED. AR
08/05/1996	CERTIFIED RECEIPT RR# P 912 681 823 TO GREGG N. BATTERSBY, D .C., INC. ON CASE NO. 94CV000120 RETURNED AND FILED. AR
08/05/1996	CERTIFIED RECEIT RR# P 912 681 811 TO JANET M. BARRY ON CASE NO. 94CV000120 RETURNED AND FILED. AR
08/05/1996	CERTIFIED RECEIPT RR# P 912 681 806 TO MENTOR CHIROPRACTIC C ENTER ON CASE NO. 94CV000120 RETURNED AND FILED. AR
08/05/1996	CERTIFIED RECEIPT RR# P 912 681 782 TO MENTOR CHIROPRACTIC C ENTER ON CASE NO. 94CV000120 RETURNED AND FILED. AR
08/06/1996	CERTIFIED RR # S P 912 681 790 ISSUED TO WILES & RICHARDS P 912 681 795 ISSUED TO THE CINCINNATI COMPANIES P 912 681 801 ISSUED TO CIGNA INSURANCE CO P 912 681 814 ISSUED TO WILES & RICHARDS P 912 681 817 ISSUED TO CINCINNATI COMPANIES P 912 681 822 ISSUED TO CIGNA INSURANCE CO P 912 681 824 ISSUED TO MENTOR CHIROPRACTIC CENTER INC RETURNED AND FILED. LM
08/06/1996	CERTIFIED RR #S P 912 681 788 ISSUED TO JACQUELYN BOND P 912 681 793 ISSUED TO METROPOLITAN INSURANCE CO P 912 681 794 ISSUED TO ANTHEM BLUE CROSS AND BLUE SHIELD P 912 681 796 ISSUED TO ALLSTATE INSURANCE CO P 912 681 803 ISSUED TO METROPOLITAN INSURANCE CO P 912 681 804 ISSUED TO ANTHEM BLUE CROSS AND BLUE SHIELD P 912 681 812 ISSUED TO JACQUELYN BOND P 912 681 818 ISSUED TO ALLSTATE INSURANCE CO RETURNED AND FILED. NOTICE OF QUESTIONABLE SERVICE ISSUED TO ATTORNEY. LM
08/07/1996	NOTICE OF COURT ORDER, CERTIFIED COPY OF JOURNAL ENTRY WITH EXHIBIT "A", COPY OF MOTION AND AFFIDAVIT ISSUED TO SPECIAL PROCESS SERVER, DONALD A. RICHER FOR SERVICE ON TAMMY HAINES . AR

<u>Date</u>	<i>Docket Text</i>
08/07/1996	MOTION (AID PROCEEDINGS), FILED.
08/07/1996	AFFIDAVIT (AID PROCEEDINGS), FILED.
08/07/1996	JOURNAL ENTRY FILED: RANDAL H. HAINES TOGETHER WITH ALL OF THE PROPERTY AND DOCUMENTS MENTIONED IN THE ATTACHED EXHIBIT "A" BE AND APPEAR BEFORE THE HONORABLE JUDGE OF SAID COURT, AT HIS OFFICE IN PAINESVILLE OHIO, ON THE 13TH DAY OF AUGUST 1996, AT 10:00 O'CLOCK A.M. AR VOLUME # 1069 PAGE # 0339-0340
08/07/1996	MOTION TO APPOINT SPECIAL PROCESS SERVER, CERTIFICATE OF SERVICE, FILED. (RICHER) AR
08/07/1996	JOURNAL ENTRY FILED: DONALD A. RICHER APPOINTED AS SPECIAL PROCESS SERVER TO MAKE SERVICE UPON RANDAL H. HAINES OF A CERTAIN ORDER FOR EXAMINATION. AR VOLUME # 1069 PAGE # 0341
08/07/1996	INSTRUCTIONS FOR SERVICE, FILED. (RICHER) AR
08/07/1996	NOTICE OF COURT ORDER, CERTIFIED COPY OF JOURNAL WITH EXHIBIT "A", COPY OF MOTION AND AFFIDAVIT ISSUED TO SPECIAL PROCESS SERVER, DONALD A. RICHER FOR SERVICE ON RANDAL H. HAINES. AR
08/07/1996	DONALD A. RICHER PICKED UP PLEADINGS FOR DONALD A. RICHER, SPECIAL PROCESS SERVER, TO BE SERVED ON TAMMY HAINES & RANDAL H. HAINES, FILED. AR
08/07/1996	ANSWER OF GARNISHEE, JACQUELYN BOND, STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREGG N. BATTERSBY, FILED.
08/07/1996	ANSWER OF GARNISHEE, JACQUELYN BOND, STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC., FILED. AR
08/07/1996	CERTIFIED RECEIPT RR# P 912 681 821 TO TRAVELERS INSURANCE CO. ON CASE NO. 94CV000120 RETURNED AND FILED. AR
08/07/1996	CERTIFIED RECEIPT RR# P 912 681 800 TO TRAVELERS INSURANCE CO. ON CASE NO. 94CV000120 RETURNED AND FILED. AR
08/07/1996	CERTIFIED RECEIPT RR# P 912 681 791 TO REMINGER & REMINGER CO., LPA ON CASE NO. 94CV000120 RETURNED AND FILED. AR
08/07/1996	CERTIFIED RECEIPT RR# P 912 681 815 TO REMINGER & REMINGER CO., LPA ON CASE NO. 94CV000120 RETURNED AND FILED. AR

<u>Date</u>	<i>Docket Text</i>
08/07/1996	CERTIFIED RECEIPT RR# P 912 681 792 TO AETNA INSURANCE COMPA NY ON CASE NO. 94CV000120 RETURNED AND FILED.
08/07/1996	CERTIFIED RECEIT RR# P 912 681 816 TO AETNA INSURANCE CO. ON CASE NO. 94CV000120 RETURNED AND FILED. AR
08/07/1996	MOTION (AID PROCEEDINGS), FILED.
08/07/1996	AFFIDAVIT (AID PROCEEDINGS), FILED.
08/07/1996	JOURNAL ENTRY FILED: TAMMY HAINES TOGETHER WITH ALL OF THE PROPERTY AND DOCUMENTS MENTIONED IN THE ATTACHED EXHBIT "A" BE AND APPEAR BEFOE THE HONORABLE JUDGE OF SAID COURT, AT HI S OFFICE IN PAINESVILLE, OHIO, ON THE 13TH DAY OF AUGUST A.D . 1996, AT 9:30 O'CLOCK A.M. AR VOLUME # 1069 PAGE # 0336-0337
08/07/1996	MOTION TO APPOINT SPECIAL PROCESS SERVER, CERTIFICATE OF SER VICE, FILED. (RICHER) AR
08/07/1996	JOURNAL ENTRY FILED: DONALD A. RICHER APPOINTED AS SPECIAL PROCESS SERVER TO MAKE SERVICE UPON TAMMY HAINES OF A CERTA IN ORDER FOR EXAMINATION. AR VOLUME # 1069 PAGE # 0338
08/07/1996	INSTRUCTIONS FOR SERVICE, FILED. (RICHER) AR
08/08/1996	ANSWER OF GARNISHEE, REMINGER & REMINGER CO., L.P.A. STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREEG N. BATTERSBY, FILED. (MARIO C. CIANO) AR
08/08/1996	ANSWER OF GARNISHEE, REMINGER & REMINGER CO., L.P.A., STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC., FIL ED. (MARIO C. CIANO) AR
08/08/1996	CERTIFIED RECEIPT RR# P 912 681 819 TO NATIONWIDE MUTUAL INS RUANCE COMPANY ON CASE NO. 94CV000120 RETURNED AND FILED. AR
08/08/1996	CERTIFIED RECEIPT RR# P 912 681 797 TO NATIONWIDE MUTUAL INS URANCE COMPANY ON CASE NO. 94CV000120 RETURNED AND FILED. AR
08/09/1996	MOTION TO APPOINT RECEIVER, PROHIBIT TRANSFER OF PROPERTY AN D TO APPLY PROPERTY TO JUDGMENT, CERTIFICATE OF SERVICE, FIL E.D (RICHER) AR
08/09/1996	NOTICE OF COURT ORDER RETURNED ENDORSED: STATE OF OHIO LAKE COUNTY. RECEIVED THIS WRIT AUGUST 7, 1996 AT 3:30 O'CLOCK P. M., AND ON THE 8TH DAY OF AUGUST 1996, I SERVED THE SAMED ON THE WITHN NAMED TAMMY HAINES BY DELIVERING TO HER PERSONALL Y A TRUE COPY THEREOF BY DELIVERING IT TO HER

Date

Docket Text

HUSBAND RANDAL H. HAINES AT 1614 EAST 40TH ST #300, CLEVELAND, OH 44103. /S/ DONALD A. RICHER, SPECIAL PROCESS SERVER AR

08/09/1996 NOTICE OF COURT ORDER RETURNED ENDORSED: THE STATE OF OHIO LAKE COUNTY. RECEIVED THIS WRIT AUGUST 7, 1996 AT 3:30 O'CL OCK P.M., AND ON THE 8TH DAY OF AUGUST 1996, I SERVED THE SA ME ON THE WITHIN NAMED RANDAL H. HAINES BY DELIVERING TO HIM ERSONALLY A TRUE COPY THEREOF AT 1614 EAST 40TH ST. #300, CL EVELAND, OHIO 44103. /S/ DONALD A. RICHER, SPECIAL PROCESS SERVER AR

08/09/1996 CERTIFIED RECEIPT RR# P 912 681 781 TO BATTERSBY CHIROPRACTI C CENTER ON CASE NO. 94CV000120 RETURNED AND FILED. AR

08/12/1996 ANSWER OF GARNISHEE, JANET M. BARRY, STATES NO FUNDS AVAILAB LE FOR MENTOR CHIROPRACTIC CENTER, INC., FILED. AR

08/12/1996 ANSWER OF GARNISHEE, JANET M.BARRY, STATES NO FUNDS AVAILABL E FOR MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREGG N. BATT ERSBY, FILED.

08/12/1996 ANSWER OF GARNISHEE, ALLSTATE INSURANCE, STATES NO FUNDS AVA ILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. FILED. (SHEILA R. SPENCER) AR

08/12/1996 ANSWER OF GARNISHEE, ALLSTATE INSURANCE CO, STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREGG N. BATTERSBY, FILED (SHEILA R. SPENCER) AR

08/12/1996 ANSWER OF GARNISHEE, METRAHEALTH, ADMINISTRATORS FOR THE TRA VELERS AND METRAHEALTH, STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC., FILED. (CATHY A. ALLEN, LITIGATI ON MANAGER) AR

08/12/1996 ANSWER OF GARNISHEE, METRAHEALTH, ADMINISTRATORS FOR TRAVELE RS AND METRA HEALTH, STATES NO FUNDS AVAILABLE FOR MENTOR CH IROPRACTIC CENTER, INC. AND DR. GREGG N. BATTERSBY, FILED. (CATHY A. ALLEN, LITIGATION MANAGER) AR

08/12/1996 ANSWER OF GARNISHEE, CINCINNATI INSURANCE CO., STATES NO FUN DS AVAILABLE FOR MENTOR CHIROPRACTIC CENRER, INC. AND DR. GR EGG N. BATTERSBY, FILED. (LOUIS A. HELLE, SR. CLAIMS SPECIA LIST) AR

08/12/1996 ANSWER OF GARNISHEE, CINCINNATI INSURANCE CO., STATES NO FUN DS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC., FILED. (LOUIS A. HELLE SR. CLAIMS SPECIALIST) AR

08/12/1996 SUPPLEMENTAL ANSWER (A.G. EDWARDS & SONS, INC/GARNISHEE), CE RTIFICATE OF SERVICE, FILED. (GARVER) AR

<u>Date</u>	<u>Docket Text</u>
08/12/1996	ANSWER OF GARNISHEE, WILES AND RICHARDS AND/OR MICHAEL P. GERMANO, STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC., FILED. (MICHAEL P. GERMANO) AR
08/12/1996	ANSWER OF GARNISHEE, JACK W. BATTERSBY-CO TRUSTEE, STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. AND GREGG N. BATTERSBY, FILED. (JACK N.BATTERSBY) AR
08/12/1996	ANSWER OF GARNISHEE, NORMA BATTERSBY CO-TRUSTEE NR TRUST, STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREGG N. BATTERSBY, FILED. (NORMA R. BATTERSBY) AR
08/12/1996	ANSWER OF GARNISHEE, JACK N. BATTERSBY, STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC., FILED. (JACK N. BATTERSBY) AR
08/12/1996	ANSWER OF GARNISHEE, JACK W. BATTERSBY, STATES THREE GUNS DUE TO RESTRAINING ORDER FOR MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREGG N. BATTERSBY, FILED. (JACK W. BATTERSBY) AR
08/12/1996	ANSWER OF GARNISHEE, NORMA R. BATTERSBY, STATES THREE GUNS DUE TO RESTRAINING ORDER FOR MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREGG N. BATTERSBY, FILED. (NORMA R. BATTERSBY) AR
08/12/1996	ANSWER OF GARNISHEE, NORMA BATTERSBY, STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC., FILED. (NORMA BATTERSBY) AR
08/12/1996	ANSWER OF GARNISHEE, JACK N. BATTERSBY-CO TRUSTEE NR TRUST STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER INC. , FILED. (JACK N. BATTERSBY) AR
08/12/1996	ANSWER OF GARNISHEE, NORMA R. BATTERSBY, CO-TRUSTEE NR TRUST, STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC., FILED. (NORMA BATTERSBY) AR
08/13/1996	BRIEF OF DEFENDANT REGARDING EXEMPTIONS, CERTIFICATE OF SERVICE, ATTACHMENTS (3), FILED. (PAVLIK) AR
08/13/1996	ANSWER OF GARNISHEE, WILES AND RICHARDS AND/OR MICHAEL P. GERMANO, STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREGG N. BATTERSBY, FILED. (MICHAEL P GERMANO) AR
08/13/1996	MAGISTRATES'S DECISION, FILED. (KENNETH R. ROLL, MAGISTRATE) AR
08/13/1996	PROPERTY HELD PER AID EXAM (DIAMOND ROLEX MAN'S WATCH), FILED. (SEALED IN LARGE GOLD ENVELOPE/PLACED IN BOX IN SAFE) /S/ MAGISTRATE KEN ROLL AR

<u>Date</u>	<i>Docket Text</i>
08/14/1996	CERTIFIED RECEIPT RR# P 912 681 813 TO AMY LYNN BATTERSBY ON CASE NO. 94CV000120 RETURNED AND FILED. AR
08/14/1996	CERTIFIED RECEIPT RR# P 912 681 789 TO AMY LYNN BATTERSBY ON E CASE NO. 94CV000120 RETURNED AND FILED. AR
08/14/1996	CERTIFIED RECEIPT RR# P 912 681 777 TO DR. GREGG N. BATTERSBY ON CASE NO. 94CV000120 RETURNED AND FILED. AR
08/15/1996	ANSWER OF GARNISHEE, METLIFE, LAW DEPT. STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREGG N. BATTERSBY WITH DETAILED ANSWER ATTACHED AND FILED. (GABRIEL E PREWITT PARALEGAL) AR
08/15/1996	ANSWER OF METLIFE, LAW DEPT., STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER INC. WITH DETAILED ANSWER ATTACHED AND FILED. (GABRIELE PREWITT, PARALEGAL) AR
08/16/1996	ANSWER OF GARNISHEE, AMY LYNN BATTERSBY, STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREGG N. BATTERSBY, FILED. (LISA D. SUMMERS, ESQ.) AR
08/16/1996	ANSWER OF GARNISHEE, AMY LYNN BATTERSBY, STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC., FILED. (LISA D. SUMMERS, ESQ.)
08/16/1996	MOTION FOR SPECIAL EXAMINATION OF GARNISHEE (REMINER & REMINGER), CERTIFICATE OF SERVICE, FILED. (RICHER) AR
08/16/1996	MOTION FOR SPECIAL EXAMINATION OF GARNISHEE (WILES & RICHARDS), CERTIFICATE OF SERVICE, FILED. (RICHER) AR
08/16/1996	JOURNAL ENTRY FILED: PLAINTIFF'S MOTION FOR PERMISSION TO ENTER UPON LAND AND FOR OTHER RELIEF MOOT AND DENIED. THE MOTION OF AMY BATTERSBY TO INTERVENE IN THE POST-JUDGMENT PROCEEDINGS DENIED. IT IS SO ORDERED. AR VOLUME # 1070 PAGE # 1034
08/20/1996	INSTRUCTIONS FOR SERVICE (REMINER & REMINGER CO. LPA), FILED. (RICHER) AR
08/20/1996	INSTRUCTIONS FOR SERVICE (WILES & RICHARDS), FILED. (RICHER) AR
08/20/1996	SUBPOENA RETURNED ENDORSED: ON THE 20 DAY OF AUGUST 1996, I SERVED THE ABOVE NAMED INDIVIDUAL, CUSTODIAN OF RECORDS MORTGAGE PLACEMENT SERVICES, BY PERSONAL SERVICE ON DANIEL STOJOVICH, V.P. /S/ UNABLE TO READ SIGNATURE/ATTY FOR PLTF AR
08/22/1996	MOTION TO SHOW CAUSE, CERTIFICATE OF SERVICE, FILED. (RICHER)

<u>Date</u>	<i>Docket Text</i>
08/22/1996	BRIEF IN OPPOSITION FOR SPECIAL EXAMINATION OF GARNISHEE, CERTIFICATE OF SERVICE, FILED. (GERMANO) AR
08/22/1996	PLAINTIFF'S MEMORANDUM WITH RESPECT TO DEFENDANT'S EXEMPTIONS FROM EXECUTION, CERTIFICATE OF SERVICE WITH ATTACHMENTS, FILED. (RICHER)
08/22/1996	PRECIPE FOR WRIT OF EXEUCION, INSTRUCTIONS TO THE SHERIFF FOR EXECUTION, FILED. (\$1.00 PD.) AR
08/23/1996	***NOTICE***(HEARING SCHEDULED FOR 9/9/96 AT 11:00 A.M.), FILED. (KENENTH ROLL, MAGISTRATE) AR
08/26/1996	MOTION FOR EXTENSION OF TIME TO TRANSMIT RECORD, CERTIFICATE OF SERVICE, FILED. (SULLIVAN) AR (TWO (2) COPIES ISSUED TO COURT OF APPEALS NO. 96 L 119) AR
08/27/1996	JOURNAL ENTRY FILED: GARNISHEE, REMINGER & REMINGER CO., LPA BE AND APPEAR BEFORE A JUDGE OF THIS COURT ON SEPTEMBER 9, 1996 AT 2:30 P.M. IT IS FURTHER ORDERED THAT THE GARNISHEE, REMINGER & REMINGER CO., LPA BRING WITH HIM ALL OF THE GARNISHEE'S RECORDS PERTAINING TO ANY AND ALL FUNDS OR PROPERTY WHICH IT HAS OR MAY HAVE IN ITS POSSESSION WHICH ARE OR MAY BE THE PROPERTY OF DR. GREGG N.BATTERSBY OR MENTOR CHIROPRACTICE CENTER, INC. OR GREGG N. BATTERSBY, D.C., OR G.N.B. LEASING CO. OR GREGG BATTERSBY ENTERPRISES. AR VOLUME # 1071 PAGE # 1043
08/27/1996	NOTICE OF COURT ORDER, CERTIFIED COPY OF JOURNAL, COPY OF MOTION ISSUED BY CERTIFIED MAIL RR# P 917 473 593 TO REMINGER & REMINGER CO., LPA. AR
08/27/1996	NOTICE OF COURT ORDER, CERTIFIED COPY OF JOURNAL, COPY OF MOTION ISSUED BY REGULAR MAIL TO DR. GREGG N.BATTERSBY, 8143 LAKESHORE BLVD, MENTOR, OH 44060 AND MENTOR CHIROPRACTIC CENTER, INC., 8515 MENTOR AVE., MENTOR, OH 44060. CERTIFICATE OF MAILING IN FILE. AR
08/28/1996	JOURNAL ENTRY FILED: GARNISHEE, WILES & RICHARDS BE AND APPEAR PERSONALLY BY AND THROUGH ONE ITS DULY AUTHORIZED OFFICERS OR AGENTS BEFORE A JUDGE OF THIS COURT ON SEPTEMBER 9, 1996 AT 3:00 P.M. IT IS FURTHER ORDERED THAT THE GARNISHEE, WILES & RICHARDS SHALL BRING WITH HIM ALL OF THE GARNISHEE'S RECORDS PERTAINING TO ANY AND ALL FUND OR PROPERTY WHICH IT HAS OR MAY HAVE IN ITS POSSESSION WHICH ARE OR MAY BE THE PROPERTY OF DR. GREGG N. BATTERBY OR MENTOR CHIROPRACTIC CENTER, INC. OR GREGG N. BATTERSBY, D.C., INC. OR G.N.B. LEASING CO. O GREGG BATTERSBY ENTERPRISES. AR VOLUME # 1072 PAGE # 208
08/28/1996	NOTICE OF COURT ORDER, CERTIFIED COPY OF JOURNAL, COPY OF MOTION ISSUED BY CERTIFIED MAIL RR# P 917 473 594 TO WILES & RICHARDS.

<u>Date</u>	<i>Docket Text</i>
08/28/1996	NOTICE OF COURT ORDER, CERTIFIED COPY OF JOURNAL, COPY OF MOTION ISSUED BY REGULAR U.S. MAIL TO DR. GREGG N. BATTERSBY AT 8143 LAKESHORE BLVD., MENTOR, OH 44060 AND MENTOR CHIROPRACTIC CENTER, INC. AT 8515 MENTOR AVE., MENTOR, OH 44060. CERTIFICATE OF MAILING IN FILE. AR
08/28/1996	JOURNAL ENTRY FILED: DEFENDANTS-APPELLANTS GRANTED A 30 DAY EXTENSION OF TIME UNTIL SEPTEMBER 25, 1996, IN WHICH TO HAVE THE TRANSCRIPT OF PROCEEDINGS TRANSCRIBED AND TRANSMITTED TO THE COURT OF APPEALS. IT IS ORDERED. (TWO (2) COPIES ISSUED TO COURT OF APPEALS 96 L 119) A R VOLUME # 1072 PAGE # 209-210
08/28/1996	DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR EXAMINATION OF GARNISHEE AND REQUEST FOR ORAL HEARING, BRIEF IN SUPPORT, CERTIFICATE OF SERVICE FILED. (CIANO) MB
08/29/1996	BRIEF IN SUPPORT OF MOTIONS FOR SPECIAL EXAMINATIONS OF GARNISHEES CERTIFICATE OF SERVICE, FILED. (RICHER) AR
08/29/1996	COPY OF PRECISE FOR EXECUTION WITH INSTRUCTIONS TO THE SHERIFF OF LAKE COUNTY OHIO, WRIT FOR EXECUTION, COPY OF NOTICE OF RIGHT TO CLAIM EXEMPTIONS, COPY OF REQUEST FOR HEARING ALONG WITH THE REQUEST FOR HEARING AND THE NOTICE OF RIGHT TO CLAIM EXEMPTIONS ISSUED TO THE SHERIFF OF LAKE COUNTY FOR SERVICE ON DR. GREGG N. BATTERSBY.
08/29/1996	MOTION FOR ORDER OF GARNISHMENT OF PROPERTY OTHER THAN PERSONAL EARNINGS WITH EXHIBIT "A" ATTACHED AND FILED. AR
08/29/1996	AFFIDAVIT IN SUPPORT OF MOTION FOR GARNISHMENT OTHER THAN PERSONAL EARNINGS WITH EXHIBIT "A", FILED. AR
08/29/1996	PRAECIPE WITH EXHIBIT "A" ATTACHED AND FILED. A R
08/29/1996	JOURNAL ENTRY FILED: ORDER AND NOTICE OF GARNISHMENT OTHER THAN PERSONAL EARNINGS WITH EXHIBIT "A" ATTACHED AND FILED. SEE JOURNAL. VOLUME # 1072 PAGE # 667-668
08/30/1996	(3) CERTIFIED COPIES OF JOURNAL ENTRY, ANSWER OF GARNISHEE WITH EXHIBIT "A", COPY OF MOTION WITH EXHIBIT "A" AND AFFIDAVIT WITH EXHIBIT "A", CHECK IN THE AMOUNT OF \$1.00 ISSUED BY CERTIFIED MAIL RR# P 917 473 656 TO MANUFACTURER'S LIFE INSURANCE CO., RR# P 17 473 657 TO EDWIN STRAUSS INSURANCE AGENCY AND RR# P 917 473 658 TO RUBENSTEIN, NOVAK, EINBUND & PAVLIK.
08/30/1996	(2) COPIES NOTICE TO JUDGMENT DEBTOR AND REQUEST FOR HEARING WITH EXHIBIT "A", COPY OF MOTION WITH EXHIBIT "A" AND COPY OF AFFIDAVIT WITH EXHIBIT "A" (1)

<u>Date</u>	<i>Docket Text</i>
	STAMPED SELF-ADDRESSED ENVELOPE ISSUED BY CERTIFIED MAIL RR# P 917 473 659 TO DR. GREGG N. BATTERSBY. AR
09/03/1996	THIRD PARTY CLAIM AND MOTION TO RELEASE FUNDS, BRIEF IN SUPPORT, CERTIFICATE OF SERVICE, EXHIBIT A, A-1, FILED. (MAYO AND FLEMING) MB
09/03/1996	CERTIFIED RECEIPT RR #P 917 473 594 TO WILES & RICHARDS RETURNED AND FILED. AZ
09/04/1996	CERTIFIED RECEIPT RR#P917 473 656 TO MANUFACTURER'S LIFE INS CO, RETURNED AND FILED. DD
09/04/1996	CERTIFIED RECEIPT RR#P917 473 593 TO REMINGER & REMINGER CO LPA RETURNED AND FILED. DD
09/05/1996	CERTIFIED RR # P 917 473 658 ISSUED TO RUBENSTEIN, NOVAK, EINBUND AND PAVLIK, RETURNED AND FILED. LM
09/05/1996	CERTIFIED RR # P 917 473 657 ISSUED TO EDWIN STRAUSS INSURANCE AGENCY RETURNED AND FILED, NOTICE OF QUESTIONABLE SERVICE ISSUED TO ATTORNEY. LM
09/05/1996	BRIEF OF PLAINTIFF IN RESPONSE TO RELEASE AND EXEMPTION REQUESTED BY DEFT DR GREGG BATTERSBY AND THIRD PARTY CLAIM AND MOTION TO RELEASE FUNDS BY DR. JACK BATTERSBY, CERTIFICATE OF SERVICE, FILED. (BALAZS, PETRONELLI) LM
09/09/1996	ANSWER OF GARNISHEE, EDWIN A. STRAUSS JR., STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREGG N. BATTERSBY, FILED. (EDWIN A. STRAUSS JR., PRES) AR
09/11/1996	ANSWER OF GARNISHEE, RUBENSTEIN, NOVAK, EINBUND & PAVLIK, STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREGG N. BATTERSBY, FILED. (RONALD RUBENSTEIN) AR
09/11/1996	ANSWER OF GARNISHEE, RUBENSTEIN, NOVAK, EINBUND & PAVLIK, STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. AND DR. GREGG N. BATTERSBY, FILED. (RONALD M. RUBENSTEIN, PARTNER) (THIS IS THE SECOND ANSWER SENT IN BY THIS GARNISHEE ON THE SAME JUDGMENT DEBTOR) AR
09/11/1996	DECISION, CERTIFICATE OF MAILING, FILED. (ROLL) AR
09/11/1996	MOTION TO RELEASE PROPERTY AND TO ALLOW EXECUTION PROCEEDINGS TO CONTINUE, CERTIFICATE OF SERVICE, FILED. (RICHER) AR
09/12/1996	COPY OF THE DECISION FILED SEPTEMBER 11, 1996 ISSUED BY REGULAR MAIL TO DONALD RICHER, ESQ., JACK PETRONELLI, ESQ AND MARK ZICCARELLI, ESQ. CERTIFICATE OF MAILING IN FILE. AR

<u>Date</u>	Docket Text
09/13/1996	MOTION FOR EXTENSION OF TIME TO FILE REPLY TO REPLY TO PLAIN TIFF'S RESPONSE AND IN THE ALTERNATIVE MOTION FOR LEAVE TO P LEAD OF DEFENDANT DR. JACK BATTERSBY, CERTIFICATE OF SERVICE , FILED. (MAYO/FLEMING/ZIMON) AR
09/13/1996	LETTER FROM ATTORNEY ZIMON REQUESTING THAT HIS NAME BE ENTER ED AS ADDITONAL COUNSEL FOR DEFTS JACK N. AND NORMA BATTERSB Y, FILED.
09/16/1996	ANSWER OF GARNISHEE, OHIO BUREAU WORKERS COMP., STATES NO FU NDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. AND DR. G REGG N. BATTERSBY, FILED. (DEBORAH A. NEWELL, ACCT CLERK II) AR
09/16/1996	ANSWER OF GARNISHEE, OHIO BUREAU WORKERS COMP., STATES NO FU NDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC. ET AL, FI LED. (DEBORAH A NEWELL ACCT CLERK II) AR
09/16/1996	JOURNAL ENTRY FILED: UPON INDEPENDENTLY REVIEWING THE MAGIS TRATE'S DECISION, THE COURT CONCURS IN THE MAGISTRATE'S RECO MMENDATION THAT PLAINTIFF IS ENTITLED TO IMMEDIATE RELIEF. BASED ON THIS, THE COURT ADOPTS THE DECISION OF THE MAGISTRA TE AND ISSUES AN INTERIM ORDER PURSUANT TO CIV. R. 53(D)(4)(c). FOR FURTHER SEE JUDGMENT ENTRY. IT IS SO ORDERED. AR VOLUME # 1074 PAGE # 0676-0677
09/17/1996	JOURNAL ENTRY FILED: LEAVE GIVEN TO JACK & NORMA BATTERSY T O PELAD BY 9/20/96. AR VOLUME # 1074 PAGE # 0957
09/19/1996	CERTIFIED RECEIPT RR# P 917 473 659 TO DR. GREGG B. BATTERSB Y ON CASE NO. 94CV000120 RETURNED AND FILED. *****UNCLAIMED* *** AR
09/19/1996	NOTICE OF FAILURE OF SERVICE ON DR. GREGG N. BATTERSBY ISSUE D TO ATTORNEY RICHER. COPY IN FILE. AR
09/20/1996	REPLY BRIEF OF DR. JACK N. BATTERSBY AND NORMA BATTERSBY TO PLAINTIFF'S RESPONSE, CERTIFICATE OF SERVICE, EXHIBITS A THR OUGH G, FILED. (MAYO/LESNY/ZIMON) AR
09/24/1996	COPY OF MOTION FOR EXTENSION OF TIME TO TRANSMIT RECORD WITH CERTIFICATE OF SERVICE AND AFFIDAVIT OF COURT REPORTER RECEI VED FROM COURT OF APPEALS NO. 96 L 119 AND FILED. AR
10/10/1996	ANSWER OF GARNISHEE, THE MANUFACTURERS LIFE INSURANCE COMPAN Y, STATES NO FUNDS AVAILABLE FOR MENTOR CHIROPRACTIC CENTER, INC.AND DR. GREGG N. BATTERSBY, FILED. (EVELYN PECK, LEGAL ASSISTANT) AR
10/11/1996	JOURNAL ENTRY FILED: UPON AGREEMENT OF COUNSEL, CERTAIN ASS ETS IDENTIFIED AS BELONGING TO THE "MENTOR CHIROPRACTIC CENT ER, INC. DEFINED BENEFIT PENSION

Date***Docket Text***

PLAN", (FEI # 34-1413423)(THE PENSION PLAN) AS SHOWN IN THE ANSWERS OF THE GARNISHEES, A.G. EDWARDS & SONS, INC. AND FIRST WESTERN BANK, F.S.B. ARE HEREBY FOUND NOT TO BE ASSETS OF THE JUDGMENT DEBTORS HEREIN AND SAID GARNISHEES ARE EACH AND BOTH HEREBY RELEASED FROM ANY AND ALL LIABILITY WITH RESPECT TO THE PENSION PLAN UNDER THE COURT'S FORMER GARNISHMENT ORDER. PLAINTIFF FURTHER AGREES NOT TO ISSUE EXECUTION PROCEEDINGS AGAINST THE PENSION PLAN HEREAFTER. IT IS SO ORDERED. AR VOLUME # 1078 PAGE # 0471

10/11/1996 JOURNAL ENTRY FILED: UPON THE AGREEMENT OF COUNSEL FOR THE PARTIES HERETO, PLAINTIFF SHALL NOT ISSUE ANY NEW OR FURTHER EXECUTION PROCEEDINGS HEREIN BEFORE DECEMBER 12, 1996; ALL CURRENT EXECUTION PROCEEDINGS FILED HEREIN SHALL BE STAYED UNTIL AT LEAST DECEMBER 12, 1996 AND ANY HEARINGS OR BRIEFS CURRENTLY SCHEDULED IN REFERENCE TO ANY SUCH PENDING EXECUTION PROCEEDINGS SHALL BE CONTINUED AND RE-SCHEDULED TO A DATE ON OR AFTER DECEMBER 12, 1996 AS THE COURT'S SCHEDULE PERMITS. NOTHING HEREIN SHALL PROHIBIT PLAINTIFF FROM TAKING ANY AND ALL MEASURES NECESSARY OR APPROPRIATE AT ANY TIME TO DEFEND AND/OR ASSERT HER JUDGMENTS EITHER IN THE APPEAL NOW PENDING, OR IN THE EVENT THAT THE JUDGMENTS, OR THE PROPERTY ON WHICH THEY ARE A LIEN, BECOME SUBJECT TO ANY PROCEEDINGS COMMENCED BY DEFENDANTS OR ANY OTHER PERSON. IT IS SO ORDERED. VOLUME # 1078 PAGE # 0049

11/12/1996 COPY OF JOURNAL RECEIVED FROM COURT OF APPEALS NO. 96 L 119 AND FIELD. MOTION GRANTED TO FILE RECORD BY 1-3-97. AR

02/13/1997 COPY OF JUDGMENT RECEIVED FROM COURT OF APPEALS NO. 96 L 119 AND FILED. MOTION GRANTED TO FILE RECORD BY 3-20-97. AR

02/14/1997 EXECUTION RETURNED ENDORSED: RECEIVED THIS WRIT ON THE 30TH DAY OF AUGUST 1997 AT 1:50 O'CLOCK P.M. WRIT RETURNED TO COURT, NOTHING FOUND ON WHICH TO LEVY OR MAKE THE MONEY. JUDGMENT NOT SATISFIED TO SHERIFF. FEES: \$9.30 /S/ DANIEL A. DUNLAP, SHERIFF /S/ MARY ANN BUELL AR

02/14/1997 EXECUTION RETURNED ENDORSED: RECEIVED THIS WRIT ON THE 19TH DAY OF JULY 1997 AT 2:09 O'CLOCK P.M. WRIT RETURNED TO COURT HIS DATE, TIME EXPIRED. JUDGMENT NOT SATISFIED TO SHERIFF. IF FURTHER ACTION TO BE TAKEN BY SHERIFF, PLAINTIFF'S ATTORNEY MUST ISSUE ALIAS WRIT. FEES: \$5.00 /S/ DANIEL A. DUNLAP, SHERIFF /S/ MARY ANN BUELL AR

02/14/1997 EXECUTION RETURNED ENDORSED: RECEIVED THIS WRIT ON THE 19TH DAY OF JULY 1997 AT 2:09 O'CLOCK P.M. WRIT RETURNED TO COURT THIS DATE. TIME EXPIRED. JUDGMENT NOT SATISFIED TO SHERIFF. IF FURTHER ACTION TO BE TAKEN BY SHERIFF, PLAINTIFF'S

<u>Date</u>	<u>Docket Text</u>
	ATTONREY MUST ISSUE ALIAS WRIT. FEES: \$9.30 /S/ DANIEL A. DUNLAP, SHERIFF /S/ MARY ANN BUELL AR
02/28/1997	LETTER TO MAGISTRATE ROLL FROM DONALD A. RICHER REGARDING SP ECIAL EXAMINATIONS OF THE GARNISHEES, WILES AND RICHARDS AND REMINGER & REMINGER, FILED. FOR FURTHER SEE LETTER. A R
03/20/1997	TRANSCRIPT OF PROCEEDINGS FILED. (4 VOL'S TOTAL) HEARING DAT E OF 1/29/96. **VOL 4 IS EXHIBITS** MZ
03/20/1997	TRANSCRIPT OF DOCKET AND JOURNAL ENTRIES ISSUED TO COURT OF APPEALS 96L119. **THIS CASE PENDING IN LAKE CO COURT OF APPEALS** **WHERE IT IS CASE # 96L119** MKZ
05/09/1997	MAGISTRATE DECISION: UPON CONSIDERATION OF THE ABOVE, IT IS THIS WRITER'S DECISION THAT AN ORDER OF EXECUTION ISSUE ON T HE DIAMOND ROLEX WATCH, THAT THE SAME BE RELEASED BY THE CLE RK OF THE LAKE COUNTY COMMON PLEAS COURT TO THE LAKE COUNTY SHERIFF FOR APPRAISED BY THE LAKE COUNTY SHERIFF ADVERTISEME NT AND PUBLIC SALE FOR NO LESS THAN TWO-THIRDS OF THE APPRAI SED VALE. MMB
05/12/1997	COPY OF MAGISTRATE'S DECISION WAS ISSUED BY REGULAR MAIL TO DONALD RICHER, JACK PETRONELLI, MARK ZICCARELLI, THOMAS C PA VLIK. COPY OF MAILING CERTIFICATE IN FILE. MMB
05/28/1997	JOURNAL ENTRY FILED: PLAINTIFF'S REQUEST TO EXECUTE ON THE D IAMOND ROLEX WATCH IN PARTIAL SATISFACTION OF HER JUDGMENT I S GRANTED. THE LAKE COUNTY CLERK OF THE COMMON PLEAS COURT S HALL RELEASE THIS WATCH TO THE LAKE COUNTY SHERIFF WHO SHALL APPRAISE, ADVERTISE AND PUBLICLY SELL THE SAME FOR NO LESS T HAN TWO-THIRDS OF ITS APPRAISED VALUE, IN ACCORDANCE WITH TH E PRAECIPE FILED WITH THE CLERK OF COURT. SEE JOURNAL. MMB VOLUME # 1109 PAGE # 190-191
05/28/1997	CERTIFIED COPY OF OPINION & JUDGMENT ENTRY, DIAMOND ROLEX ME N'S WATCH (IN SEALED BROWN ENVELOPE) DELIVERED TO SHERIFF OF LAKE COUNTY. SIGNED RECEIPT IN FILE. MMB
08/26/1997	EXAMINATION OF LISA SLAPNICKER TAKEN ON MONDAY AUGUST 5TH, 1 996 AT 9:30 AM ON BEHALF OF PLAINTIFF, CERTIFICATE, FILED. MMB
05/07/1998	COPY OF JUDGMENT ENTRY REC'D FROM COURT OF APPEALS NO. 96-L-119. UPON THE REQUEST OF APPELLANTS/CROSS APPELLEES AND APPELLEE/CROSS-APPELLANT, THE APPEAL AND CROSS-APPEAL ARE DISMISSED. PURSUANT TO THIS ENTRY APPELLANTS' MOTON TO DISMISS APPEAL, FILED APRIL 15, 1998 IS OVERRULED AS MOOT.

<u>Date</u>	<i>Docket Text</i>
08/20/2004	LETTER REGARDING PICKING UP DEPOS ETC. OR HAVING THEM DESTROYED SENT TO MARIO C. CIANO. POSTAL CERTIFICATE IN FILE. (depos destroyed)
03/01/2005	JOURNAL ENTRY FILED: ORDER IN RE DISPOSAL OF DEPOS AND TRANSCRIPTS. SEE JOURNAL J#13 PG 1695. LT
03/01/2005	LETTER ISSUED TO DONALD A RICHER ATTY IN RE DISPOSAL OF TRANSCRIPT. CLERK'S CERTIFICATE OF MAILING IN FILE. LT
03/01/2005	LETTER ISSUED TO BRIAL SULLIVAN ATTY IN RE DISPOSAL OF TRANSCRIPT OF RECORD. CLERK'S CERTIFICATE OF MAILING IN FILE
03/07/2005	LETTE REC'D FROM BRIAN SULLIVAN TO DESTROY 4 VOL TRANSCRIPT OF THE RECORD. LT

**NEWS ARTICLE ON GREGG
BATTERSBY WINNING
DEFAMATION CASE**

Starr chiropractor wins \$112,100 jury verdict in defamation case

Kirk Brown, kirk.brown@independentmail.com Published 6:21 p.m. ET Jan. 27, 2017



(Photo: File)
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A jury decided this week that Starr chiropractor Gregg Battersby is entitled to collect a total of \$112,100 from two Anderson County women who accused him of indecent exposure.

Jurors awarded Battersby \$61,100 in damages from Carrie Neal and \$50,000 from Jan Morton-Ganter, court records show.

Battersby represented himself in the trial involving the defamation lawsuit that he filed against Neal and Morton-Ganter. He said the verdict represented a measure of vindication from the ordeal that he has endured since being arrested on two counts of indecent exposure in August 2013. The charges were dropped by the 10th Judicial Circuit Solicitor's Office in April 2014.

"It has been a living hell," said Battersby, adding that he struggled with depression.

Battersby said that he was falsely accused by the women, and in the suit he said that Neal owed him \$12,000 for past treatments and Neal and Morton-Ganter were friends.

His state chiropractor's license was suspended for nearly two years in connection with his arrest. Although his license was restored in August 2015, the South Carolina Board of Chiropractic Examiners publicly reprimanded Battersby for displaying a misleading banner outside his home office in Starr that said he charged \$25 for office visits.

Battersby said his practice has yet to recover.

"People tend to believe what they want," he said.

Judge Donald B. Hocker has given attorneys for Neal and Morton-Ganter 10 days to file post-trial motions in the case, Anderson County Clerk of Court Richard Shirley said.

ADVERTISING

Morton-Ganter's attorney, Anderson lawyer John Kirkman Moorhead, said he is considering options for a possible appeal.

"We respect the jury's verdict but we are disappointed," he said.

Neal did not attend the trial and her attorney did not return phone calls seeking comment.

Court records show that Neal pleaded guilty to methamphetamine possession last year. She received a three-year suspended sentence and was ordered to serve two years of probation.

Jurors in this week's trial were not told about Battersby's 2006 conviction in Ohio on a public indecency charge.

Battersby also has sued John Skipper, Anderson County sheriff at the time of his 2013 arrest. A judge dismissed the case but Battersby appealed the ruling. His case is pending before the South Carolina Court of Appeals, a clerk said. Skipper lost his re-election bid in November.

CERTIFICATE OF COUNSEL

RECEIVED

Aug 30 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Judge

Case No. 2015-CP-04-00667
Appellate Case No. 2020-000070

Ex Parte: Donald L. Smith,
In Re: Greg Battersby,

Appellant,
Plaintiff

v.

J. Kirkman Moorehead, Krause, Moorhead
& Draisen, P. A., Allstate Insurance
Company,
And Allstate Northbrook Indemnity Company,

Defendants,

J. Kirkman Moorehead, Krause, Moorhead &
Draisen, P. A.,

Respondents.

CERTIFICATE OF COUNSEL

The undersigned counsel hereby certify that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material, as provided under Rule 210(g) of SCACR. Exhibits that have been duplicated in motions filed by any of the parties were eliminated for conciseness.

Anderson, South Carolina
August 30, 2021

s/Donald L. Smith

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Pro Se