

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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JUN 27 2011

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

SC Court of Appeals

William H. Seals, Jr., Circuit Court Judge
Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-00835 & 00836

Ann Coleman, Individually, and as Personal Representative of the Estate of Mary
Brinson, ... Respondent,

v.

✓Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, ✓Mariner Health Care Management Company, ✓Mariner Health Central, Inc., ✓Mariner Health Group, Inc., ✓MHC Holding Company, ✓MHC Florida Holding Company, ✓MHC Gulf Coast Holding Company, ✓MHC MidAmerica Holding Company, ✓MHC Rocky Mountain Holding Company, ✓MHC Northeast Holding Company, ✓MHC West Holding Company, ✓MHC Texas Holding Company, ✓MHC MidAtlantic Holding Company, ✓Living Centers-Southeast, Inc., ✓Grancare South Carolina, Inc., Individually and d/b/a/ Faith Health Care Center, SavaSeniorCare Management, LLC, ✓SavaSeniorCare Administrative Services, LLC, ✓SavaSeniorCare, LLC, ✓SavaSeniorCare, Inc., National Senior Care, Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Ask Holdings, LLC, ✓Leonard Grunstein, an Individual, ✓Murray Forman, and Individual, ✓Boyd P. Gentry, an Individual, ✓Abraham Shaulson a/k/a Abraham Shavison a/k/a A. Shawson a/k/a Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, SC Faith, LLC, and John Does 1-26.

of whom,

✓Mariner Health Care Management Company, ✓Mariner Health Central, Inc., ✓Grancare South Carolina, Inc., Individually and d/b/a/ Faith Health Care Center, ✓Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, ✓Mariner Health Group, Inc., ✓MHC Holding Company, ✓MHC Florida Holding Company, ✓MHC Gulf Coast Holding Company, ✓MHC MidAmerica Holding Company, ✓MHC Rocky Mountain Holding Company, ✓MHC Northeast Holding Company, ✓MHC West Holding Company, ✓MHC Texas Holding Company, ✓MHC MidAtlantic Holding Company, ✓Living Centers-Southeast, Inc., ✓SavaSeniorCare Administrative Services, LLC, ✓SavaSeniorCare, LLC, ✓SavaSeniorCare, Inc., ✓National Senior Care, Inc., ✓Leonard Grunstein, an Individual, ✓Boyd P. Gentry, an Individual, and ✓Murray

Forman, an Individual are
..... Appellants.

NOTICE OF APPEAL

Appellants appeal the following Orders and/or Judgments:

Appellants Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., Individually and d/b/a/ Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, Boyd P. Gentry, and Murray Forman received written notice of entry of the following Orders of the Honorable Michael G. Nettles on March 31, 2011:

1. Order denying Defendants' Motion to Stay Action and Compel Arbitration (Wrongful Death) dated March 18, 2011, filed March 25, 2011, and received by counsel on March 31, 2011;
2. Order denying Defendants' Motion to Stay Action and Compel Arbitration (Survival) dated March 18, 2011, filed March 25, 2011, and received by counsel on March 31, 2011.

Appellants Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., Individually and d/b/a/ Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, Boyd P. Gentry, and Murray Forman timely moved the Court to Alter or Amend these Orders on April 4, 2011. Appellants received written notice of entry of the following Orders of the Honorable Michael G. Nettles - ruling on the Motions to Alter or Amend - on June 10, 2011:

3. Order Denying Defendants' Motion to Alter or Amend Judgment (Wrongful Death) dated and filed June 6, 2011 and received by counsel on June 10, 2011;
4. Order Denying Defendants' Motion to Alter or Amend Judgment (Survival) dated and filed June 6, 2011 and received by counsel on June 10, 2011.

Further, an appellate court "may, as a matter of discretion, consider an unappealable order along with an appealable issue where such a ruling will avoid unnecessary litigation." Morris v. Anderson County, 349 S.C. 607, 610, 564 S.E.2d 649, 651 (2002).

Appellant SavaSeniorCare, Inc., therefore appeals the following Orders and Judgments of the Honorable William H. Seals, Jr., of which it received written notice of entry on December 6, 2010:

5. Order and Judgment entering Order denying Defendant SavaSeniorCare, Inc.'s Motion to Dismiss for Insufficient Service of Process (Wrongful Death), judgment dated December 2, 2010 and received by counsel on December 6, 2010;
6. Order and Judgment entering Order denying Defendant SavaSeniorCare, Inc.'s Motion to Dismiss for Insufficient Service of Process (Survival), judgment dated December 2, 2010 and received by counsel on December 6, 2010.

Appellant SavaSeniorCare, Inc. timely moved the Court to Alter or Amend these Orders on December 13, 2010. Appellant SavaSeniorCare, Inc. received written notice of entry of the following Judgment and Order of the Honorable William H. Seals, Jr. on February 3, 2011;

7. Order and Judgment entering Order denying Defendants' Motion to Alter or Amend the Order on Motion to Dismiss for Insufficient Service of Process (Wrongful Death and Survival) dated January 31, 2011 and received by counsel on February 3, 2011.

Appellants Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, Boyd P. Gentry, and Murray Forman also appeal the following Orders and Judgments of the Honorable Michael G. Nettles, of which they received written notice of entry on February 24, 2011:

8. Order and Judgment entering Order denying Defendants' Motion to Dismiss for Lack of Personal Jurisdiction (Wrongful Death), judgment dated February 16, 2011 and received by counsel on February 24, 2011;
9. Order and Judgment entering Order denying Defendants' Motion to Dismiss for Lack of Personal Jurisdiction (Survival Action), judgment dated February 16, 2011 and received by counsel on February 24, 2011.



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June 24, 2011

Other Counsel of Record:

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge
Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-00835 & 00836

Ann Coleman, Individually, and as Personal Representative of the Estate of Mary
Brinson, ... Respondent,
v.

Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a/ Faith Health Care Center, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein, an Individual, Murray Forman, an Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a Abraham Shavilson a/k/a A. Shawson a/k/a Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, SC Faith, LLC, and John Does 1-26,

of whom,

Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., Individually and d/b/a/ Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, and Murray Forman, an Individual are Appellants.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the following parties by depositing a copy of it in the United States Mail, postage prepaid, on June 24, 2011, addressed to the attorneys of record listed below:

Matthew W. Christian, Esquire
Christian & Davis, LLC
Post Office Box 332
Greenville, South Carolina 29602
Attorneys for Plaintiff

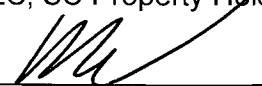
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June 24, 2011



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Stacey Campbell Davis
Special Counsel

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Horace L. Bomar, 1912-1994

June 24, 2011

The Honorable Tanya Gee
Clerk of the S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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JUN 27 2011

SC Court of Appeals

RE: Ann Coleman, Individually and as Personal Representative of the Estate of
Mary Brinson v. Mariner Health Care, Inc., et al.
Case Nos. 2010-CP-21-00835 & 00836
Our File No. 10963

Dear Ms. Gee:

Enclosed please find for filing an original and one copy of the Notice of Appeal and Proof of Service, as well as copies of the following orders appealed from:

1. Order denying Motion to Stay Action and Compel Arbitration (Wrongful Death);
2. Order denying Motion to Stay Action and Compel Arbitration (Survival);
3. Order Denying Motion to Alter or Amend Judgment (Wrongful Death);
4. Order Denying Motion to Alter or Amend Judgment (Survival);
5. Order and Judgment entering Order denying Motion to Dismiss for Insufficient Service of Process (Wrongful Death);

The Honorable Tanya Gee
Clerk of the S.C. Court of Appeals
June 24, 2011
Page 2

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JUN 27 2011

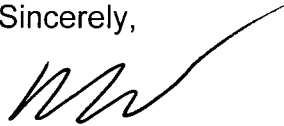
SC Court of Appeals

6. Order and Judgment entering Order denying Motion to Dismiss for Insufficient Service of Process (Survival);
7. Order and Judgment entering Order denying Motion to Alter or Amend the Order on Motion to Dismiss for Insufficient Service of Process (Wrongful Death and Survival);
8. Order and Judgment entering Order denying Motion to Dismiss for Lack of Personal Jurisdiction (Wrongful Death);
9. Order and Judgment entering Order denying Motion to Dismiss for Lack of Personal Jurisdiction (Survival Action).

Appellants also enclose the \$100 filing fee, and a postage paid return envelope for copies of the filed pleadings.

Thank you in advance for your cooperation, and please do not hesitate to contact with me any questions.

Sincerely,

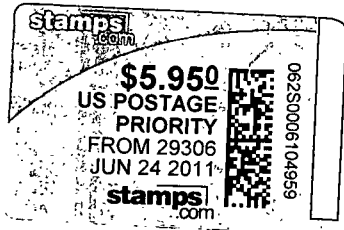


W. McElhaney White

WMW/lf
Enclosures

cc: The Honorable Connie Reel-Shearin
Florence County Clerk of Court (w/letter, Notice of Appeal and Proof of Service)
Matthew Christian, Esq. (w/ letter and enclosures)
Marion Fowler, Esq. (w/letter and enclosures)
R. Gerald Chambers, Jr., Esq. (w/letter and enclosures)
William "Sonny" Barnes, Esq. (w/ letter and enclosures)
Michael Bernstein, Esq. (w/letter and enclosures)

FIRST CLASS



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STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Ann Coleman, Individually, and as Personal
Representative of the Estate of Mary
Brinson,

Plaintiff,

v.

Mariner Health Care, Inc. f/k/a Mariner
Post-Acute Network, LLC, Mariner Health
Care Management Company, Mariner
Health Central, Inc., Mariner Health Group,
Inc., MHC Holding Company, MHC
Florida Holding Company, MHC Gulf
Coast Holding Company, MHC
MidAmerica Holding Company, MHC
Rocky Mountain Holding Company, MHC
Northeast Holding Company, MHC West
Holding Company, MHC Texas Holding
Company, MHC MidAtlantic Holding
Company, Living Centers-Southeast, Inc.,
GranCare South Carolina, Inc., Individually
and d/b/a Faith Health Care Center,
SavaSeniorCare Management, LLC,
SavaSeniorCare Administrative Services,
LLC, SavaSeniorCare, LLC,
SavaSeniorCare, Inc., National Senior Care,
Inc., Palmetto Health Care, LLC, Palmetto
Faith Operating, LLC, Individually and
d/b/a Faith Health Care Center, Ask
Holdings, LLC, Leonard Grunstein, an
Individual, Murray Forman, an Individual,
Boyd P. Gentry, an Individual, Abraham
Shaulson a/k/a Abraham Shavlson a/k/a A.
Shawson a/k/a Abraham Shawson, an
Individual, Avi Klein, an Individual, SC
Property Holdings, LLC, SC Faith, LLC,
and John Does 1-26.,

Defendant(s).

IN THE COURT OF COMMON PLEAS

FILED

C.A. No.: 2010-CP-14315

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CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

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JUN 27 2011

SC Court of Appeals

ORDER DENYING DEFENDANTS
MARINER HEALTH CARE
MANAGEMENT COMPANY,
MARINER HEALTH CENTRAL, INC.,
GRANCARE SOUTH
CAROLINA, INC., INDIVIDUALLY
AND d/b/a FAITH HEALTH CARE
CENTER, MARINER HEALTH CARE,
INC. f/k/a MARINER POST ACUTE
NETWORK, LLC, MARINER
HEALTH GROUP, INC., MHC
HOLDING COMPANY, MHC
FLORIDA HOLDING COMPANY,
MHC GULF COAST HOLDING
COMPANY, MHC MIDAMERICA
HOLDING COMPANY, MHC ROCKY
MOUNTAIN HOLDING COMPANY,
MHC NORTHEAST HOLDING
COMPANY, MHC WEST HOLDING
COMPANY, MHC TEXAS HOLDING
COMPANY, MHC MIDATLANTIC
HOLDING COMPANY, LIVING
CENTERS-SOUTHEAST, INC.,
SAVASENIORCARE
ADMINISTRATIVE SERVICES, LLC,
SAVASENIORCARE, LLC,
SAVASENIORCARE INC.,
NATIONAL SENIOR CARE, INC.,
LEONARD GRUNSTEIN, BOYD P.
GENTRY, AND MURRAY FORMAN
MOTION TO STAY ACTION AND
COMPEL ARBITRATION
(WRONGFUL DEATH ACTION)

CERTIFIED: A TRUE COPY

Connie Reel Shearin

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

PROCEDURAL

This matter came before the Court on the motion of Defendants Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., individually and d/b/a Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, Boyd P. Gentry and Murray Forman, to stay the action and compel arbitration and was heard on January 6, 2011. All parties were represented by counsel and provided oral arguments and also submitted written memoranda and exhibits supporting their positions. The Court hereby denies Defendants' Motion to Stay Action and Compel Arbitration for the reasons set forth below.

BACKGROUND

Mary Brinson, deceased, was admitted to Faith Health Care Center on June 2, 2006 where she remained until September 16, 2006. She was then readmitted to Faith Health Care Center on December 13, 2006 and resided there until December 26, 2006. When Mary Brinson was admitted on June 2, 2006, the licensee was Grancare South Carolina, Inc., and when she was admitted on December 13, 2006, the licensee was Palmetto Faith Operating, LLC.

Ann Coleman is the Personal Representative of the estate of Mary Brinson. Ann Coleman is the sister of Mary Brinson, deceased. When Mary Brinson was admitted to Faith Health Care Center on June 2, 2006 and on December 13, 2006, no one had a Power of Attorney for Mary Brinson. Furthermore, at that time no one had a conservatorship and no one had been

appointed guardian for Mary Brinson during these times. Despite the fact that Ann Coleman did not have a Power of Attorney for her sister, Faith Health Care Center requested that Ann Coleman sign an Arbitration Agreement during the admission process when Mary Brinson was admitted on both occasions. It is from the June 1, 2006, Arbitration Agreement which these Defendants seek to enforce.

DISCUSSION

1. **The Arbitration Agreement is not enforceable because Ann Coleman lacked the capacity to contract on behalf of her sister.**

The Arbitration Agreement is not enforceable because Ann Coleman lacked the capacity to contract on behalf of her sister. South Carolina law recognizes that arbitration agreements are contracts. The interpretation and enforcement of arbitration agreements are scrutinized using contract principles of law. The Defendants' own Admissions Agreement also recognizes that the Arbitration Agreement is a contract. It is a basic tenant of contract law that the parties to the contract must have the capacity to contract.

"The first element of a contract is that the parties have the capacity to contract... Further, capacity to contract relates to the status of the person rather than to circumstances surrounding the contract." (17 C.J.S. Contracts §32) Ann Coleman did not have that authority. Furthermore, Defendants admit that they are not aware of any Power of Attorney held by Ann Coleman on behalf of Mary Brinson at the time that the Arbitration Agreement was signed (Defendants Answers to Interrogatories—Mariner Interrogatory 24 and Grancare Interrogatory 32).

Defendants rely upon the South Carolina Adult Health Care Consent Act (S.C. Code Ann. §44-66-10 *et seq*) and the South Carolina Bill of Rights for Residents of Long-Term Care Facilities (S.C. Code Ann. §44-81-10 *et seq*) as granting authority to Ann Coleman to enter into the Arbitration Agreement on behalf of her sister, Mary Brinson. S.C. Code Ann. §44-66-30

notes that "(A) Where a patient is unable to consent, decisions concerning his health care may be made by the following persons in order of priority: ... (6) an adult sibling...of the patient..."

S.C. Code Ann. §44-66-20(1) provides the definition of "health care" as meaning "a procedure to diagnose or treat a human disease, ailment, defect, abnormality, or complaint, whether of physical or mental origin. It also includes the provision of intermediate or skilled nursing care; services for the rehabilitation of the injured, disabled, or sick persons; and the placement in or removal from a facility that provides these forms of care." It says nothing that could be construed as conferring the ability to enter into a separate legal document waiving an individual's rights to due process under the law for another individual. Clearly, this act does not confer legal authority to enter into contracts for another person.

It is admitted by all parties that Mary Brinson did not have the capacity to contract for herself. The Defendants admit that Ms. Brinson was incompetent by virtue of their responses to Plaintiff's Request to Admit in addition to the fact that the medical director at the Faith Healthcare Center facility certified that Ms. Brinson was unable to consent to or make her own healthcare decisions.

While the South Carolina Adult Healthcare Consent Act does grant Ms. Coleman the authority to make "healthcare decisions" on behalf of her sister, consent for medical treatment for someone unable to consent is not the same as binding an incompetent person to a legally binding contract such as an arbitration agreement without the authority to do so.

Defendants also rely on S.C. Code Ann. §44-81-10 *et seq* to argue that Ms. Coleman has the legal authority to bind her sister to a contract and waive her sister's rights under the law. This Court declines to adopt this application of this Act. The Bill of Rights for long-term care facilities sets out the rights given to a long term care resident or resident's representative under the law; however, these rights are, once again, rights concerning the resident's access to

healthcare and to be free from abuse and does not purport to grant others authority to enter into contracts for the resident. The Bill does not contemplate the resident's or the resident's representative's rights under the law for the authority or capacity to contract. The Bill defines representative as "a resident's legal guardian, committee, or next of kin or other person acting as agent of a resident who does not have a legally appointed guardian." The fact that the authors of this Bill felt it necessary to note that the resident may not have a guardian appointed under the law affirms their intentions that the Bill was designed to protect an individual's right of access to healthcare whether or not the individual has appointed a representative under the law. The Bill does not allow for an individual without any authority from the resident to be imbued with the legal authority to enter a contract waiving a resident's rights under the law.

The courts in North Carolina have recently decided an issue similar to the one at hand, finding that the authority granted by a state's Health Care Consent Act does not grant legal authority for the purpose of entering binding contracts. *Munn v. Haymount Rehabilitation & Nursing Center, Inc., et. al.*, No. COA 10-105 (NC Ct.App., Filed 21 Dec. 2010). In fact, in *Munn*, the Court specifically notes that "consent for medical care for another person who is unable to consent is a completely different issue than being an agent who has the authority to enter into a contract such as an arbitration agreement." Therefore, with similar reasoning this Court finds that Ann Coleman did not have actual authority to enter into the Arbitration Agreement on behalf of Mary Brinson.

The Defendants further argued that Ann Coleman acted as Mary Brinson's apparent agent. South Carolina case law on this issue is well established. Defendants argue that an agent's implied authority can be circumstantially provided by evidence and conduct and in doing so, rely on *Heil-Quaker v. Swindler*, 255 F.Supp. 445 (D.S.C. 1966), and *WDI Meredith & Co., v. American Telesis, Inc.*, 359 S.C. 474, 597 S.E.2d 885 (Ct.App. 2004). This reliance is

misplaced. *Heil-Quaker* and *WDI Meredith & Co.* hold that apparent agency is based upon the principal holding the agent out or allowing the agent to hold himself or herself out with the alleged authority. "Apparent authority is the authority that the principal intended the agent to have or such power that a principal holds his agent as possessing or permits him to exercise." *Heil-Quaker v. Swindler*, 255 F.Supp. 445 (D.S.C. 1966). Because Mary Brinson was incompetent, she was incapable of granting the power to Ann Coleman and incapable of making a decision to allow Ann Coleman to hold herself out as Mary Brinson's agent. Therefore, Mary Brinson as the principal did never and could never exercise such an intent. If a person does not possess the capacity to make their own healthcare decisions, they would not possess the capacity to convey their rights under the law to another individual. Furthermore, even if such an individual could convey such rights in such circumstances, there is no evidence that Mary Brinson exhibited such an intent.

The Defendants further rely on *WDI Meredith & Co., v. American Telesis, Inc.*, 359 S.C. 474, 597 S.E.2d 885 (Ct.App. 2004) for the proposition that "to establish apparent authority, either the principal must intend to cause the third person to believe the agent is authorized to act for him, or he should realize that his conduct is likely to create such belief". As the court also noted in *WDI Meredith*, "an agency may not, however, be established solely by the declarations and conduct of an alleged agent." (citing *Muller v. Myrtle Beach Golf & Yacht Club*, 303 S.C. 137, 142-143, 399 S.E.2d at 433 (Ct.App. 1990) overruled on other grounds by *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868 (2000)). An incompetent individual such as Mary Brinson would be unable to possess this intent or realize that any conduct would create such a belief.

The Defendants also rely on *Carraway v. Beverley Enterprises Alabama, Inc.* 978 So. 2d 27 (Aa. 2007). In this Alabama case, the Plaintiff was a brother of a resident of a nursing home

facility who executed a number of documents on his sister's behalf on her admission to the facility, including an arbitration agreement. The brother of the plaintiff did not have a Power of Attorney. Shortly after his sister's admission, a Power of Attorney was executed naming the brother as her attorney-in-fact. The fact that the sister provided a Power of Attorney shortly after her admission indicates that she was indeed competent, unlike the present case with Mary Brinson. Therefore, the sister could have allowed or exhibited the intent for her brother to be held out as her representative unlike Mary Brinson. Furthermore, in *Carraway* the sister in essence ratified the representation by the brother by shortly thereafter naming him as her power of attorney by her own decision. This court finds the reasoning of *Munn* to be on point and applicable. Therefore, since Mary Brinson, the principal, was incapable of making any decisions or demonstrating any intentions conveying any authority to Ann Coleman, Ann Coleman did not have the apparent authority to contract or to enter into a binding contractual agreement such as an arbitration agreement on behalf of Mary Brinson.

Furthermore, according to the Defendants' admission documents, they were aware that Ann Coleman did not have a Power of Attorney. The face sheet from the admissions documents as well as other documents indicate that Ann Coleman did not have any other legal oversight, durable power of attorney or healthcare proxy. The Defendants are sophisticated individuals and corporations which are accustomed to dealing with arbitration provisions and understand the implications of a Power of Attorney. (*Small v. HCF of Perrysburg, Inc.*, 159 Ohio App.3d 66, 823 N.E.2d 19 at 24 {¶29}). The Defendants cannot reasonably assert that Ann Coleman was the apparent agent of Mary Brinson when they had the knowledge to understand the meaning of a Power of Attorney and the fact that Ann Coleman did not have one. The fact that the Defendants have a form which would allow for the documentation of some form of authority indicates that they knew that there are certain requirements which much be met before an

individual can be imbued with the authority to act as an agent, and further demonstrates that they knew that none of the documents which would give Ann Coleman such authority existed at the time that Mary Brinson was admitted to their facility.

Therefore, Ann Coleman had neither actual nor apparent authority to act on behalf of Mary Brinson and to sign away her right to a jury trial by entering into the arbitration agreement. As a result, the arbitration agreement is null and void because Ann Coleman lacked the capacity and authority to ever execute it on behalf of Mary Brinson.

2. The Arbitration Agreement is not enforceable against the statutory beneficiaries.

The agreement to arbitrate explicitly specifies that it is “an agreement to arbitrate any dispute that might arise between Mary Brinson (“Resident”) and/or _____ (“Legal Representative”) and Faith Healthcare (“Facility”)...”. The agreement clearly allowed for the application of the agreement to extend to a resident’s representative and, in this instance, was not so applied. Even if so applied, in the current actions, Ann Coleman has filed both a wrongful death and a survival action. While this court finds independently that Ann Coleman lacked the authority to enter into the contract on behalf of Mary Brinson and is therefore, null and void, this court also finds that the arbitration agreement cannot be enforced because it cannot apply to statutory beneficiaries who are not parties to the agreement. This principal has been specifically upheld in other jurisdictions. (*Woodall v. Avalon Care Center-Federal Way, LLC*, 155 Wash.App. 919, 231 P.3d 1252 (2010). *Small v. HCF of Perrysburg, Inc.*, 159 Ohio App.3d 66, 823 N.E.2d 19).

While Ann Coleman did not have authority to waive the rights of Mary Brinson, even if she did, she did not have the authority to waive the right to statutory beneficiaries under the arbitration agreement at hand. South Carolina law is clear that a wrongful death claim exists for the statutory beneficiaries. Because the statutory beneficiaries are not parties to the contract, and

because the statutory beneficiaries have not conveyed any power to the signatory to the agreement, their claims could not be waived and any attempt to apply the agreement to them would be null and void.

3. The Arbitration Agreement is procedurally and substantively unconscionable and impossible to enforce.

The Defendants acted in a manner inconsistent with their own policies and procedures. The facility policy in effect at the time of Mary Brinson's admission clearly required that a member of the admissions staff explain the admissions and financial documents to the person signing them. This includes the Arbitration Agreement at issue here. Specifically, the policy states its purpose as intended to "provide an informative environment that should reduce the fears and anxieties of the resident and family during the admissions process" and requires that "the Administrator, through the Admissions Staff, is responsible for ensuring that the facility and the resident follow the established admission policy, as it may apply." Additionally, the policy requires that "the Admission staff will explain and offer an Arbitration Agreement to the resident or responsible party (emphasis added)". On the basis of the Affidavit of Ann Coleman and the admission of the Defendants that the Arbitration Agreement was presented as part of a larger admissions package, the Court finds that these documents were not explained to Ms. Coleman, nor was it made clear to her that the Arbitration Agreement was voluntary and not a requirement for Mary Brinson's admission to the facility.

Additionally, it is the finding of this Court that, even were the Arbitration Agreement valid, it can not be construed to apply to all claims at issue in the case at hand. An Arbitration Agreement, or any contract, for that matter, applies only to claims arising which would be made by someone standing in the shoes of the contractor, in this case, Mary Brinson, and cannot be construed so as to apply to those claims which may be brought on behalf of others with standing

to a claim. Claims that have been made on behalf of Ann Coleman and the other statutory beneficiaries of Mary Brinson's estate are not and were not parties to the Arbitration Agreement and cannot retroactively be joined to the contract.

Moreover, not all of the Defendants to this case have moved for arbitration—specifically, there are five defendants to the case at hand who are not currently seeking to enforce arbitration. In fact, one of these defendants, Palmetto Health Care, LLC, had previously moved for enforcement and has subsequently withdrawn its petition. Parties who are not seeking arbitration cannot be forced to arbitrate a matter any more than individuals who are not party to the agreement can. As a result, this Court is faced with the possibility that, if the Arbitration Agreement is deemed valid portions of the claims along with some of the parties would be subject to arbitration while other portions of the claims and different parties to this action would be subject to trial by jury. Should this be allowed, the very real possibility of conflicting rulings on common issues of law and fact may result.

Instructive on this issue is the matter of *Birl v. Heritage Care, LLC*, 172 Cal.App.4th 1313, 91 Cal.Rptr.3d 777. In *Birl* a case was brought by the family of a deceased patient against a hospital, physicians, and a nursing facility and the nursing facility sought to compel arbitration. Of relevance, the Court here noted that “(1) the hospital and physicians with no arbitration agreement were involved in the same transaction as the nursing facility; (2) all defendants were involved in a series of related transactions with the patient; (3) there was a possibility of conflicting rulings on common issues of law or fact; and (4) patient's family members were third parties to the patient's arbitration agreement.” In its ruling denying the nursing facility's motion to compel arbitration, California's Appellate Court noted that “the trial court properly noted the possibility of conflicting rulings on common issues of law or fact if defendant Heritage was not

joined to the court action with the other defendants...Different triers of fact in different proceedings could come to different conclusions..." *Id.* at 1321.

The Court in *Birl* also took note that the Plaintiffs in that action asserted claims "not just as successors in interest, but also individually and as surviving heirs" (*Id.* at 1321), just as Ms. Coleman has done in the cases at issue now, and that such claims for "wrongful death and emotional distress were brought by plaintiffs in their individual capacities" and not as persons who had stepped into the shoes of the decedent. It was the conclusion of the *Birl* Court that the possibility of conflicting rulings on a common issue of law or fact was real and that "different triers of fact could reach different conclusions as to which party was at fault, the cause of any injuries, and the apportionment of liability—unless all the parties are jointed to one action" (*Id.* at 1322). Based on such a finding, the Court determined that it was proper to deny the nursing facility's motion to compel arbitration.

While the circumstances of the current actions differ slightly from those of *Birl*, it remains consistent that compelling arbitration of certain claims but not of others and compelling arbitration with respect to some defendants but not others will result in the conflicting rulings as contemplated in *Birl*. Furthermore, such a division of the cases would result in an unreasonable hardship for Plaintiff, as she and the other statutory beneficiaries of Ms. Brinson's estate would be effectively forced to litigate claims arising from the same or related events in two separate forums. Therefore, to uphold the Arbitration Agreement would not only pose a potential impossibility, it is also unreasonable and unconscionable to force a Plaintiff to prosecute her claims in such a fashion, especially when this issue was not explained to her. Our Courts have discussed and recognized that it is proper to deny Arbitration Agreements with impossibility of enforcement. (*Grant v. Magnolia Manor-Greenwood, Inc.*, 383 SC 125, 678 S.E.2d 435 (S.C. 2009)).

It is the finding of this Court that the Arbitration Agreement was presented to Ms. Coleman as part of a larger admissions packet and the meaning of the Arbitration Agreement was not explained; that Ms. Coleman was not informed that her signature on the Arbitration Agreement was optional and not a prerequisite for her sister to receive care; that the current conditions are that most, but not all of the defendants are seeking to compel arbitration; and compelling arbitration of Plaintiff's claims while not compelling arbitration to some claims against other Defendants, or by statutory beneficiaries who are not seeking either arbitration or were not parties to the contract makes the Arbitration Agreement as a whole impossible, unconscionable and therefore, unenforceable.

4. The Defendants' delay has effectively nullified the agreement and waived any right the Defendants may have had to force Arbitration.

The Plaintiff's Notice of Intent was filed in July of 2009, providing the Defendants with notice of impending litigation. The Notice of Intent stage took a usual course and, in fact, was extended beyond the normal time frame due to the substantial number of defendants in the case. The parties completed the required pre-suit mediation in January of 2010 which was unsuccessful in reaching a resolution. The Plaintiff filed the Summons and Complaint in March of 2010. Defendants began filing their Answers in May of 2010, and it was at this time that Plaintiff was provided with the first notice of the existence of an Arbitration Agreement and the Defendants' allegation that the issues and incidents addressed by Plaintiff's Complaint were governed by said Arbitration Agreement only by virtue of one of the Defendants' affirmative defenses. Even in light of said notice, Defendants did not move to seek enforcement of the Arbitration Agreement until August of 2010, more than a year after they had been first placed on notice of pending litigation and had been served with the Notice of Intent to Sue. This was also well after Plaintiff had served Discovery and filed a Motion to Compel.

The Courts in South Carolina have long recognized the act of abandonment as a valid basis for an exception to a contract's enforceability:

Generally, no-damage-for-delay provisions are valid and enforceable so long as they meet ordinary rules governing the validity of contracts. *See Annot., Validity and Construction of "No Damage Clause" with Respect to Delay in Building or Construction Contract*, 74 A.L.R.3d 187 §2[a] (1976). A certain majority of jurisdictions, however, recognize certain exceptions to such clauses. *Id.* Among the recognized exceptions are (a) delay caused by fraud, misrepresentation, or other bad faith... (c) delay which has extended such an unreasonable length of time that the party delayed would have been justified in abandoning the contract... *U.S. f/u/b/a Williams Electric Company, Inc. v. Metric Constructors, Inc.* 325 S.C. 129, 480 S.E.2d 447 (1997).

The contract at issue here is, of course, the Arbitration Agreement. First, the Agreement does not contain a "no-damage-for-delay" provision, and, as such, had Defendants intended to rely upon the Agreement, they should have acted promptly upon the first notice of a civil action. Secondly, and being generous to Defendants, they waited a full nine months after Plaintiff's first filings to make any mention of an Arbitration Agreement and an additional three months more before moving to enforce said Agreement.

"[I]n South Carolina, there exists in every contract an implied obligation of good faith and fair dealing." *Id.* citing *Adams v. Creel*, 320 S.C. 274, 465 S.E.2d 84 (1995); *Parker v. Byrd*, 309 S.C. 189, 420 S.E.2d 850 (1992); *Tharpe v. G.E. Moore*, 254 S.C. 196, 174 S.E.2d 397 (1970). Continuing, "A number of courts recognize an exception to a no-damage clause where delays are so unreasonable in length or duration that they amount to an abandonment of the contract..." *U.S. f/u/b/a Williams Electric* at 134-135 citing 74 A.L.R.3d at 226-230 §7(i). "An abandonment need not be express but may be inferred from the conduct of the parties and attendant circumstances." *Quality Concrete Products, Inc., v. Thomason*, 253 S.C. 579, 172

S.E.2d 297 (1970). "Abandonment of a contract by one party is the giving up of the right of benefit due from the other party." *Ro-Lo Enterprises v. Hicks Enterprises*, 294 S.C. 111, 362 S.E.2d 888 (Ct. App. 1987). "As with the above mentioned exceptions, an abandonment of the contract involves a breach of the implied obligation of good faith and fair dealing. Accordingly, we adopt this exception and find that if a party abandons the contract, they also abandon their right to rely on a no damage for delay clause." *U.S. f/w/b/a Williams Electric* at 135. Likewise, South Carolina Courts have previously considered and found that significant delay is tantamount to abandonment and constitutes a sufficient basis to support a finding of abandonment with respect to an arbitration agreement. (See also *Evans v. Accent Manufactured Homes, Inc.*, 352 S.C. 544, 575 S.E.2d 74 (S.C. App. 2003), *Deloitte & Touche, LLP v. Unisys Corp*, 358 S.C. 179, 594 S.E.2d 523).

As previously discussed, the Arbitration Agreement the Defendants now seek to enforce does not contain a no-damage-for-delay clause, which make the performance under the Agreement an even more time-sensitive issue. The Defendants delayed almost a year before notifying Plaintiff of such an agreement and waited more than a year before moving for the enforcement of the Agreement. During the entire length of their delay, they conducted themselves in a manner consistent with parties that intended to proceed with litigation through the confines of the judicial process. It is the ruling of this Court that, the Defendants, through their actions and delay, abandoned any rights they may have been afforded to force this matter to arbitration. To allow the Defendants to now insist on adherence to the Arbitration Agreement which was the subject of the Motion before this Court, not only amounts to an unconscionable act, but it is also in disagreement with established precedent—precedent that finds contracts far more lenient on the issue of delay than the one at hand to have been abandoned in the face of acts such as those displayed by the Defendants here.

5. **Excepting GranCare South Carolina, Inc., Mariner Health Care Management Company, and Mariner Health Central, Inc., the Defendants bringing this motion have argued in a manner inconsistent with the parties who have standing to enforce an Arbitration Agreement.**

GranCare South Carolina, Inc., was the operator of Faith Healthcare Center at the time of Mary Brinson's June 2006 admission, and all of the other defendants bringing this motion have alleged elsewhere that they do not operate nursing homes, do not have any ties to Faith Healthcare Center, have never transacted business in South Carolina, do not own property in South Carolina, and have never had any influence over the operations of Faith Healthcare Center. In fact, simultaneous to the hearing of this Motion to Compel Arbitration, these same Defendants argued a Motion to Dismiss for Lack of Personal Jurisdiction. Yet despite these protestations, these Defendants have sought to enforce an Arbitration Agreement between a facility they contend they have no interest in or control over, in a state they do not transact business in, in an industry in which they do not participate, and that this Court holds no jurisdiction over them. It cannot be rationally argued that all of these Defendants are parties to this contract, while at the same time argue that they have never contracted in South Carolina, never conducted business in South Carolina or are not tied in with the operation of the nursing facility. If the Defendants' arguments were accepted as true, then they would not have standing to enforce the Arbitration Agreement and the impossibility of prosecuting the claims in two separate forums becomes even more significant as discussed hereinabove.

6. **The Defendants' argument that Mary Brinson was a third party beneficiary to the contract is illogical and premised on the rights of Ann Coleman as signatory, which said rights do not exist.**

Defendants' have sought to argue that Mary Brinson was the third party beneficiary to the Admissions and Arbitration Agreements. While this Court concedes that it was Ms. Brinson's admission into Faith Healthcare Center that was contemplated by the Admissions Agreement, the

Defendants' extension of this argument that seeks to cast Ms. Brinson as a third party beneficiary of said agreements is misplaced as it assumes that Ann Coleman had the right to contract on behalf of Ms. Brinson. As this Court has already discussed at length, while Ann Coleman did have the right under the Adult Health Care Consent Act to consent to medical treatment, she did not have the right to commit her sister to a legally binding contract that agreed to the removal of Ms. Brinson's rights under the law. Because Ann Coleman did not have the right to contract on behalf of her sister, Mary Brinson cannot possibly be a third party beneficiary as the contract itself was never valid.

7. The Defendants' argument that Plaintiff should be equitably estopped from denying the existence of an enforceable Arbitration Agreement is rejected.

As with the argument concerning the third party beneficiary status of Mary Brinson, the Court finds that the Defendants' argument with respect to the Arbitration Agreement and estoppel of the Plaintiff is, once again, misguided and assumes a premise which this Court has previously rejected.

The principle of estoppel in equity stands on the very foundation of right and fair dealing. It considers and weighs the conduct of men in their dealings with each other and gives that effect and meanings to their actions which common sense and justice dictate. The essential elements of equitable estoppel are ignorance of the party invoking the estoppel of the truth as to the facts in question and a misrepresentation or deceptive conduct of the party against whom estoppel is sought to be applied, which in fact misleads the person asserting the estoppel to rely on the misrepresentation or conduct to change his position prejudicially as a result of the reliance. *SCJur* "Estoppel" §4.

The Defendants' estoppel argument is not only misguided, it misses the true nature of estoppel. As this Court has previously discussed, it was Faith Healthcare Center's failure to explain the Arbitration Agreement in accordance with the Defendants' policies and procedures coupled with the manner in which the Arbitration Agreement was presented to Ann Coleman that

caused and contributed to Ms. Coleman not understanding the true nature of the document she was signing. The unconscionability of this process as described hereinabove serves as an additional sustaining ground for the finding that the Arbitration Agreement is not valid. The Defendants could not reasonably rely on the contract/agreement when they knew that Ann Coleman lacked the authority to enter into such a contract/agreement. The Defendants are assuming that it is the representation of the agent and not the principal that is the determinant of apparent authority and an establishment of agency when, as this Court has already discussed, it is the actions of the principal. As such, this Court rejects the Defendants' argument for equitable estoppel.

Furthermore, the Defendants have argued that Plaintiff cannot deny the validity of the Arbitration Agreement yet rely on the Admissions Agreement in alleging that the Defendants' were in breach of contract with respect to their contractual obligation to provide appropriate medical care to Mary Brinson. It is the Defendants' contention that the Arbitration Agreement and the Admissions Agreement are part of the same agreement between the parties and, as such, Plaintiff cannot disclaim the Arbitration Agreement. Defendants further argued that the Arbitration Agreement was part of the entire agreement between the parties and that the Plaintiff should not be able to argue that the Arbitration Agreement is invalid while asserting claims arising out of the relationship between the parties and that the Plaintiff should be equitably estopped from doing so. Plaintiff opposed these contentions. The errors in this argument have already been discussed. The Defendants again assume that the Arbitration Agreement and Admissions Agreement are on the same footing. As this Court has stated before, they are not. An agreement concerning the provision of health care is a far different matter than an agreement to waive legal and constitutional rights. As such, the Defendants' argument concerning estoppel is rejected.

CONCLUSION

This Court declines to enforce the Arbitration Agreement. Ann Coleman lacked the authority to bind her sister to any contract which removed her rights under the law and the Constitution. That she has the statutory authority to assist in making decisions regarding the treatment and care on behalf of her sister is irrelevant to the determination of whether she had the authority to contract on behalf of her sister in a separate legal agreement. The determination of agency is made based upon the principal and not the agent, and the Defendants' own documents demonstrate that they were aware that Mary Brinson was incapable of demonstrating any such intention or making any such representation. The Defendants cannot now reasonably argue that they thought Ms. Coleman had "apparent" authority, as they were aware of the legal requirements governing arbitration agreements.

Likewise, the Arbitration Agreement does not apply to all parties to this suit as it governs neither the claims brought on behalf of Mary Brinson's statutory beneficiaries, nor a portion of the Defendants who have not sought to force arbitration. Such circumstances give rise to the possibility of conflicting findings based on the same facts depending on the forum in which the issues are heard. These circumstances render the Arbitration Agreement unconscionable and impossible. Adding to the Agreement's unconscionability is Faith Healthcare Center's failure to adequately and appropriately inform Ms. Coleman as to the nature of the documents she was signing. She was not advised of the meaning of the Arbitration Agreement, nor was she advised that her signature on said Agreement was voluntary and that a refusal to sign would have no affect on her sister's admission to the facility.

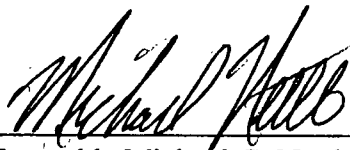
The Arbitration Agreement was further abandoned by the Defendants through their delay. The Defendants proceeded to engage in the litigation process with Plaintiff, allowing this case to

more forward for more than a year after the filing of the Notice of Intent before they sought any enforcement of the Arbitration Agreement. South Carolina precedent is clear that, had the Defendants intended to seek enforcement of the Agreement, they should have done so at the outset of this matter, not more than a year after its genesis. And while it has been the finding of this Court in a separate Order that the Plaintiff has made a sufficient showing for jurisdiction over Defendants in this case, the myriad of issues discussed previously preclude any finding in favor of their Motion to Compel Arbitration, as they have argued inconsistent and irreconcilable positions.

Finally, it is the belief of this Court that the Defendants' arguments concerning the third party beneficiary status of Mary Brinson and the argument concerning equitable estoppel are misguided and are rejected by the Court.

Therefore, it is the finding of this Court that the Plaintiff did not have the legal authority to execute the Arbitration Agreement on behalf of her sister; the Arbitration Agreement does not apply to all parties to this suit, giving rise to the possibility of divergent outcomes premised on the same facts; that the Arbitration Agreement itself is impossible and unconscionable; and that the Defendants abandoned the Agreement through their delay in seeking its enforcement. As such, Defendants' Motion to Stay Action and Compel Arbitration is denied in its entirety.

IT IS SO ORDERED.



The Honorable Michael G. Nettles
Twelfth Circuit of the State of South Carolina

Florence, South Carolina

Date: 3-18-11

2011 MAR 25 PM 4:02
JONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

FILED

Rec 3-31-11

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Ann Coleman, Individually, and as Personal
Representative of the Estate of Mary
Brinson,

Plaintiff,

v.

Mariner Health Care, Inc. f/k/a Mariner
Post-Acute Network, LLC, Mariner Health
Care Management Company, Mariner
Health Central, Inc., Mariner Health Group,
Inc., MHC Holding Company, MHC
Florida Holding Company, MHC Gulf
Coast Holding Company, MHC
MidAmerica Holding Company, MHC
Rocky Mountain Holding Company, MHC
Northeast Holding Company, MHC West
Holding Company, MHC Texas Holding
Company, MHC MidAtlantic Holding
Company, Living Centers-Southeast, Inc.,
GranCare South Carolina, Inc., Individually
and d/b/a Faith Health Care Center,
SavaSeniorCare Management, LLC,
SavaSeniorCare Administrative Services,
LLC, SavaSeniorCare, LLC,
SavaSeniorCare, Inc., National Senior Care,
Inc., Palmetto Health Care, LLC, Palmetto
Faith Operating, LLC, Individually and
d/b/a Faith Health Care Center, Ask
Holdings, LLC, Leonard Grunstein, an
Individual, Murray Forman, an Individual,
Boyd P. Gentry, an Individual, Abraham
Shaulson a/k/a Abraham Shavlson a/k/a A.
Shawson a/k/a Abraham Shawson, an
Individual, Avi Klein, an Individual, SC
Property Holdings, LLC, SC Faith, LLC,
and John Does 1-26.,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C.A. No. 2011-00000-CP-21-836

2011 MAR 25 PM 4:00
CONNIE REEL-SHEARIN
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

FILED RECEIVED

JUN 27 2011

SC Court of Appeals

**ORDER DENYING DEFENDANTS
MARINER HEALTH CARE
MANAGEMENT COMPANY,
MARINER HEALTH CENTRAL, INC.,
GRANCARE SOUTH
CAROLINA, INC., INDIVIDUALLY
AND d/b/a FAITH HEALTH CARE
CENTER, MARINER HEALTH CARE,
INC. f/k/a MARINER POST ACUTE
NETWORK, LLC, MARINER
HEALTH GROUP, INC., MHC
HOLDING COMPANY, MHC
FLORIDA HOLDING COMPANY,
MHC GULF COAST HOLDING
COMPANY, MHC MIDAMERICA
HOLDING COMPANY, MHC ROCKY
MOUNTAIN HOLDING COMPANY,
MHC NORTHEAST HOLDING
COMPANY, MHC WEST HOLDING
COMPANY, MHC TEXAS HOLDING
COMPANY, MHC MIDATLANTIC
HOLDING COMPANY, LIVING
CENTERS-SOUTHEAST, INC.,
SAVASENIORCARE
ADMINISTRATIVE SERVICES, LLC,
SAVASENIORCARE, LLC,
SAVASENIORCARE INC.,
NATIONAL SENIOR CARE, INC.,
LEONARD GRUNSTEIN, BOYD P.
GENTRY, AND MURRAY FORMAN
MOTION TO STAY ACTION AND
COMPEL ARBITRATION
(SURVIVAL ACTION)**

CERTIFIED: A TRUE COPY
Connie Reel-Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

PROCEDURAL

This matter came before the Court on the motion of Defendants Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., individually and d/b/a Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, Boyd P. Gentry and Murray Forman, to stay the action and compel arbitration and was heard on January 6, 2011. All parties were represented by counsel and provided oral arguments and also submitted written memoranda and exhibits supporting their positions. The Court hereby denies Defendants' Motion to Stay Action and Compel Arbitration for the reasons set forth below.

BACKGROUND

Mary Brinson, deceased, was admitted to Faith Health Care Center on June 2, 2006 where she remained until September 16, 2006. She was then readmitted to Faith Health Care Center on December 13, 2006 and resided there until December 26, 2006. When Mary Brinson was admitted on June 2, 2006, the licensee was Grancare South Carolina, Inc., and when she was admitted on December 13, 2006, the licensee was Palmetto Faith Operating, LLC.

Ann Coleman is the Personal Representative of the estate of Mary Brinson. Ann Coleman is the sister of Mary Brinson, deceased. When Mary Brinson was admitted to Faith Health Care Center on June 2, 2006 and on December 13, 2006, no one had a Power of Attorney for Mary Brinson. Furthermore, at that time no one had a conservatorship and no one had been

appointed guardian for Mary Brinson during these times. Despite the fact that Ann Coleman did not have a Power of Attorney for her sister, Faith Health Care Center requested that Ann Coleman sign an Arbitration Agreement during the admission process when Mary Brinson was admitted on both occasions. It is from the June 1, 2006, Arbitration Agreement which these Defendants seek to enforce.

DISCUSSION

- 1. The Arbitration Agreement is not enforceable because Ann Coleman lacked the capacity to contract on behalf of her sister.**

The Arbitration Agreement is not enforceable because Ann Coleman lacked the capacity to contract on behalf of her sister. South Carolina law recognizes that arbitration agreements are contracts. The interpretation and enforcement of arbitration agreements are scrutinized using contract principles of law. The Defendants' own Admissions Agreement also recognizes that the Arbitration Agreement is a contract. It is a basic tenant of contract law that the parties to the contract must have the capacity to contract.

"The first element of a contract is that the parties have the capacity to contract... Further, capacity to contract relates to the status of the person rather than to circumstances surrounding the contract." (17 C.J.S. Contracts §32) Ann Coleman did not have that authority. Furthermore, Defendants admit that they are not aware of any Power of Attorney held by Ann Coleman on behalf of Mary Brinson at the time that the Arbitration Agreement was signed (Defendants Answers to Interrogatories—Mariner Interrogatory 24 and Grancare Interrogatory 32).

Defendants rely upon the South Carolina Adult Health Care Consent Act (S.C. Code Ann. §44-66-10 *et seq*) and the South Carolina Bill of Rights for Residents of Long-Term Care Facilities (S.C. Code Ann. §44-81-10 *et seq*) as granting authority to Ann Coleman to enter into the Arbitration Agreement on behalf of her sister, Mary Brinson. S.C. Code Ann. §44-66-30

notes that "(A) Where a patient is unable to consent, decisions concerning his health care may be made by the following persons in order of priority: ... (6) an adult sibling...of the patient..."

S.C. Code Ann. §44-66-20(1) provides the definition of "health care" as meaning "a procedure to diagnose or treat a human disease, ailment, defect, abnormality, or complaint, whether of physical or mental origin. It also includes the provision of intermediate or skilled nursing care; services for the rehabilitation of the injured, disabled, or sick persons; and the placement in or removal from a facility that provides these forms of care." It says nothing that could be construed as conferring the ability to enter into a separate legal document waiving an individual's rights to due process under the law for another individual. Clearly, this act does not confer legal authority to enter into contracts for another person.

It is admitted by all parties that Mary Brinson did not have the capacity to contract for herself. The Defendants admit that Ms. Brinson was incompetent by virtue of their responses to Plaintiff's Request to Admit in addition to the fact that the medical director at the Faith Healthcare Center facility certified that Ms. Brinson was unable to consent to or make her own healthcare decisions.

While the South Carolina Adult Healthcare Consent Act does grant Ms. Coleman the authority to make "healthcare decisions" on behalf of her sister, consent for medical treatment for someone unable to consent is not the same as binding an incompetent person to a legally binding contract such as an arbitration agreement without the authority to do so.

Defendants also rely on S.C. Code Ann. §44-81-10 *et seq* to argue that Ms. Coleman has the legal authority to bind her sister to a contract and waive her sister's rights under the law. This Court declines to adopt this application of this Act. The Bill of Rights for long-term care facilities sets out the rights given to a long term care resident or resident's representative under the law; however, these rights are, once again, rights concerning the resident's access to

healthcare and to be free from abuse and does not purport to grant others authority to enter into contracts for the resident. The Bill does not contemplate the resident's or the resident's representative's rights under the law for the authority or capacity to contract. The Bill defines representative as "a resident's legal guardian, committee, or next of kin or other person acting as agent of a resident who does not have a legally appointed guardian." The fact that the authors of this Bill felt it necessary to note that the resident may not have a guardian appointed under the law affirms their intentions that the Bill was designed to protect an individual's right of access to healthcare whether or not the individual has appointed a representative under the law. The Bill does not allow for an individual without any authority from the resident to be imbued with the legal authority to enter a contract waiving a resident's rights under the law.

The courts in North Carolina have recently decided an issue similar to the one at hand, finding that the authority granted by a state's Health Care Consent Act does not grant legal authority for the purpose of entering binding contracts. *Munn v. Haymount Rehabilitation & Nursing Center, Inc., et. al.*, No. COA 10-105 (NC Ct.App., Filed 21 Dec. 2010). In fact, in *Munn*, the Court specifically notes that "consent for medical care for another person who is unable to consent is a completely different issue than being an agent who has the authority to enter into a contract such as an arbitration agreement." Therefore, with similar reasoning this Court finds that Ann Coleman did not have actual authority to enter into the Arbitration Agreement on behalf of Mary Brinson.

The Defendants further argued that Ann Coleman acted as Mary Brinson's apparent agent. South Carolina case law on this issue is well established. Defendants argue that an agent's implied authority can be circumstantially provided by evidence and conduct and in doing so, rely on *Heil-Quaker v. Swindler*, 255 F.Supp. 445 (D.S.C. 1966), and *WDI Meredith & Co., v. American Telesis, Inc.*, 359 S.C. 474, 597 S.E.2d 885 (Ct.App. 2004). This reliance is

misplaced. *Heil-Quaker* and *WDI Meredith & Co.* hold that apparent agency is based upon the principal holding the agent out or allowing the agent to hold himself or herself out with the alleged authority. "Apparent authority is the authority that the principal intended the agent to have or such power that a principal holds his agent as possessing or permits him to exercise." *Heil-Quaker v. Swindler*, 255 F.Supp. 445 (D.S.C. 1966). Because Mary Brinson was incompetent, she was incapable of granting the power to Ann Coleman and incapable of making a decision to allow Ann Coleman to hold herself out as Mary Brinson's agent. Therefore, Mary Brinson as the principal did never and could never exercise such an intent. If a person does not possess the capacity to make their own healthcare decisions, they would not possess the capacity to convey their rights under the law to another individual. Furthermore, even if such an individual could convey such rights in such circumstances, there is no evidence that Mary Brinson exhibited such an intent.

The Defendants further rely on *WDI Meredith & Co., v. American Telesis, Inc.*, 359 S.C. 474, 597 S.E.2d 885 (Ct.App. 2004) for the proposition that "to establish apparent authority, either the principal must intend to cause the third person to believe the agent is authorized to act for him, or he should realize that his conduct is likely to create such belief". As the court also noted in *WDI Meredith*, "an agency may not, however, be established solely by the declarations and conduct of an alleged agent." (citing *Muller v. Myrtle Beach Golf & Yacht Club*, 303 S.C. 137, 142-143, 399 S.E.2d at 433 (Ct.App. 1990) overruled on other grounds by *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868 (2000)). An incompetent individual such as Mary Brinson would be unable to possess this intent or realize that any conduct would create such a belief.

The Defendants also rely on *Carraway v. Beverley Enterprises Alabama, Inc.* 978 So. 2d 27 (Aa. 2007). In this Alabama case, the Plaintiff was a brother of a resident of a nursing home

facility who executed a number of documents on his sister's behalf on her admission to the facility, including an arbitration agreement. The brother of the plaintiff did not have a Power of Attorney. Shortly after his sister's admission, a Power of Attorney was executed naming the brother as her attorney-in-fact. The fact that the sister provided a Power of Attorney shortly after her admission indicates that she was indeed competent, unlike the present case with Mary Brinson. Therefore, the sister could have allowed or exhibited the intent for her brother to be held out as her representative unlike Mary Brinson. Furthermore, in *Carraway* the sister in essence ratified the representation by the brother by shortly thereafter naming him as her power of attorney by her own decision. This court finds the reasoning of *Munn* to be on point and applicable. Therefore, since Mary Brinson, the principal, was incapable of making any decisions or demonstrating any intentions conveying any authority to Ann Coleman, Ann Coleman did not have the apparent authority to contract or to enter into a binding contractual agreement such as an arbitration agreement on behalf of Mary Brinson.

Furthermore, according to the Defendants' admission documents, they were aware that Ann Coleman did not have a Power of Attorney. The face sheet from the admissions documents as well as other documents indicate that Ann Coleman did not have any other legal oversight, durable power of attorney or healthcare proxy. The Defendants are sophisticated individuals and corporations which are accustomed to dealing with arbitration provisions and understand the implications of a Power of Attorney. (*Small v. HCF of Perrysburg, Inc.*, 159 Ohio App.3d 66, 823 N.E.2d 19 at 24 {¶29}). The Defendants cannot reasonably assert that Ann Coleman was the apparent agent of Mary Brinson when they had the knowledge to understand the meaning of a Power of Attorney and the fact that Ann Coleman did not have one. The fact that the Defendants have a form which would allow for the documentation of some form of authority indicates that they knew that there are certain requirements which much be met before an

individual can be imbued with the authority to act as an agent, and further demonstrates that they knew that none of the documents which would give Ann Coleman such authority existed at the time that Mary Brinson was admitted to their facility.

Therefore, Ann Coleman had neither actual nor apparent authority to act on behalf of Mary Brinson and to sign away her right to a jury trial by entering into the arbitration agreement. As a result, the arbitration agreement is null and void because Ann Coleman lacked the capacity and authority to ever execute it on behalf of Mary Brinson.

2. The Arbitration Agreement is not enforceable against the statutory beneficiaries.

The agreement to arbitrate explicitly specifies that it is “an agreement to arbitrate any dispute that might arise between Mary Brinson (“Resident”) and/or _____ (“Legal Representative”) and Faith Healthcare (“Facility”)...”. The agreement clearly allowed for the application of the agreement to extend to a resident’s representative and, in this instance, was not so applied. Even if so applied, in the current actions, Ann Coleman has filed both a wrongful death and a survival action. While this court finds independently that Ann Coleman lacked the authority to enter into the contract on behalf of Mary Brinson and is therefore, null and void, this court also finds that the arbitration agreement cannot be enforced because it cannot apply to statutory beneficiaries who are not parties to the agreement. This principal has been specifically upheld in other jurisdictions. (*Woodall v. Avalon Care Center-Federal Way, LLC*, 155 Wash.App. 919, 231 P.3d 1252 (2010). *Small v. HCF of Perrysburg, Inc.*, 159 Ohio App.3d 66, 823 N.E.2d 19).

While Ann Coleman did not have authority to waive the rights of Mary Brinson, even if she did, she did not have the authority to waive the right to statutory beneficiaries under the arbitration agreement at hand. South Carolina law is clear that a wrongful death claim exists for the statutory beneficiaries. Because the statutory beneficiaries are not parties to the contract, and

because the statutory beneficiaries have not conveyed any power to the signatory to the agreement, their claims could not be waived and any attempt to apply the agreement to them would be null and void.

3. The Arbitration Agreement is procedurally and substantively unconscionable and impossible to enforce.

The Defendants acted in a manner inconsistent with their own policies and procedures. The facility policy in effect at the time of Mary Brinson's admission clearly required that a member of the admissions staff explain the admissions and financial documents to the person signing them. This includes the Arbitration Agreement at issue here. Specifically, the policy states its purpose as intended to "provide an informative environment that should reduce the fears and anxieties of the resident and family during the admissions process" and requires that "the Administrator, through the Admissions Staff, is responsible for ensuring that the facility and the resident follow the established admission policy, as it may apply." Additionally, the policy requires that "the Admission staff will explain and offer an Arbitration Agreement to the resident or responsible party (emphasis added)". On the basis of the Affidavit of Ann Coleman and the admission of the Defendants that the Arbitration Agreement was presented as part of a larger admissions package, the Court finds that these documents were not explained to Ms. Coleman, nor was it made clear to her that the Arbitration Agreement was voluntary and not a requirement for Mary Brinson's admission to the facility.

Additionally, it is the finding of this Court that, even were the Arbitration Agreement valid, it can not be construed to apply to all claims at issue in the case at hand. An Arbitration Agreement, or any contract, for that matter, applies only to claims arising which would be made by someone standing in the shoes of the contractor, in this case, Mary Brinson, and cannot be construed so as to apply to those claims which may be brought on behalf of others with standing

to a claim. Claims that have been made on behalf of Ann Coleman and the other statutory beneficiaries of Mary Brinson's estate are not and were not parties to the Arbitration Agreement and cannot retroactively be joined to the contract.

Moreover, not all of the Defendants to this case have moved for arbitration—specifically, there are five defendants to the case at hand who are not currently seeking to enforce arbitration. In fact, one of these defendants, Palmetto Health Care, LLC, had previously moved for enforcement and has subsequently withdrawn its petition. Parties who are not seeking arbitration cannot be forced to arbitrate a matter any more than individuals who are not party to the agreement can. As a result, this Court is faced with the possibility that, if the Arbitration Agreement is deemed valid portions of the claims along with some of the parties would be subject to arbitration while other portions of the claims and different parties to this action would be subject to trial by jury. Should this be allowed, the very real possibility of conflicting rulings on common issues of law and fact may result.

Instructive on this issue is the matter of *Birl v. Heritage Care, LLC*, 172 Cal.App.4th 1313, 91 Cal.Rptr.3d 777. In *Birl* a case was brought by the family of a deceased patient against a hospital, physicians, and a nursing facility and the nursing facility sought to compel arbitration. Of relevance, the Court here noted that “(1) the hospital and physicians with no arbitration agreement were involved in the same transaction as the nursing facility; (2) all defendants were involved in a series of related transactions with the patient; (3) there was a possibility of conflicting rulings on common issues of law or fact; and (4) patient's family members were third parties to the patient's arbitration agreement.” In its ruling denying the nursing facility's motion to compel arbitration, California's Appellate Court noted that “the trial court properly noted the possibility of conflicting rulings on common issues of law or fact if defendant Heritage was not

joined to the court action with the other defendants...Different triers of fact in different proceedings could come to different conclusions..." *Id.* at 1321.

The Court in *Birl* also took note that the Plaintiffs in that action asserted claims "not just as successors in interest, but also individually and as surviving heirs" (*Id.* at 1321), just as Ms. Coleman has done in the cases at issue now, and that such claims for "wrongful death and emotional distress were brought by plaintiffs in their individual capacities" and not as persons who had stepped into the shoes of the decedent. It was the conclusion of the *Birl* Court that the possibility of conflicting rulings on a common issue of law or fact was real and that "different triers of fact could reach different conclusions as to which party was at fault, the cause of any injuries, and the apportionment of liability—unless all the parties are jointed to one action" (*Id.* at 1322). Based on such a finding, the Court determined that it was proper to deny the nursing facility's motion to compel arbitration.

While the circumstances of the current actions differ slightly from those of *Birl*, it remains consistent that compelling arbitration of certain claims but not of others and compelling arbitration with respect to some defendants but not others will result in the conflicting rulings as contemplated in *Birl*. Furthermore, such a division of the cases would result in an unreasonable hardship for Plaintiff, as she and the other statutory beneficiaries of Ms. Brinson's estate would be effectively forced to litigate claims arising from the same or related events in two separate forums. Therefore, to uphold the Arbitration Agreement would not only pose a potential impossibility, it is also unreasonable and unconscionable to force a Plaintiff to prosecute her claims in such a fashion, especially when this issue was not explained to her. Our Courts have discussed and recognized that it is proper to deny Arbitration Agreements with impossibility of enforcement. (*Grant v. Magnolia Manor-Greenwood, Inc.*, 383 SC 125, 678 S.E.2d 435 (S.C. 2009)).

It is the finding of this Court that the Arbitration Agreement was presented to Ms. Coleman as part of a larger admissions packet and the meaning of the Arbitration Agreement was not explained; that Ms. Coleman was not informed that her signature on the Arbitration Agreement was optional and not a prerequisite for her sister to receive care; that the current conditions are that most, but not all of the defendants are seeking to compel arbitration; and compelling arbitration of Plaintiff's claims while not compelling arbitration to some claims against other Defendants, or by statutory beneficiaries who are not seeking either arbitration or were not parties to the contract makes the Arbitration Agreement as a whole impossible, unconscionable and therefore, unenforceable.

4. The Defendants' delay has effectively nullified the agreement and waived any right the Defendants may have had to force Arbitration.

The Plaintiff's Notice of Intent was filed in July of 2009, providing the Defendants with notice of impending litigation. The Notice of Intent stage took a usual course and, in fact, was extended beyond the normal time frame due to the substantial number of defendants in the case. The parties completed the required pre-suit mediation in January of 2010 which was unsuccessful in reaching a resolution. The Plaintiff filed the Summons and Complaint in March of 2010. Defendants began filing their Answers in May of 2010, and it was at this time that Plaintiff was provided with the first notice of the existence of an Arbitration Agreement and the Defendants' allegation that the issues and incidents addressed by Plaintiff's Complaint were governed by said Arbitration Agreement only by virtue of one of the Defendants' affirmative defenses. Even in light of said notice, Defendants did not move to seek enforcement of the Arbitration Agreement until August of 2010, more than a year after they had been first placed on notice of pending litigation and had been served with the Notice of Intent to Sue. This was also well after Plaintiff had served Discovery and filed a Motion to Compel.

The Courts in South Carolina have long recognized the act of abandonment as a valid basis for an exception to a contract's enforceability:

Generally, no-damage-for-delay provisions are valid and enforceable so long as they meet ordinary rules governing the validity of contracts. See Annot., *Validity and Construction of "No Damage Clause" with Respect to Delay in Building or Construction Contract*, 74 A.L.R.3d 187 §2[a] (1976). A certain majority of jurisdictions, however, recognize certain exceptions to such clauses. *Id.* Among the recognized exceptions are (a) delay caused by fraud, misrepresentation, or other bad faith... (c) delay which has extended such an unreasonable length of time that the party delayed would have been justified in abandoning the contract... *U.S. f/w/b/a Williams Electric Company, Inc. v. Metric Constructors, Inc.* 325 S.C. 129, 480 S.E.2d 447 (1997).

The contract at issue here is, of course, the Arbitration Agreement. First, the Agreement does not contain a "no-damage-for-delay" provision, and, as such, had Defendants intended to rely upon the Agreement, they should have acted promptly upon the first notice of a civil action. Secondly, and being generous to Defendants, they waited a full nine months after Plaintiff's first filings to make any mention of an Arbitration Agreement and an additional three months more before moving to enforce said Agreement.

"[I]n South Carolina, there exists in every contract an implied obligation of good faith and fair dealing." *Id.* citing *Adams v. Creel*, 320 S.C. 274, 465 S.E.2d 84 (1995); *Parker v. Byrd*, 309 S.C. 189, 420 S.E.2d 850 (1992); *Tharpe v. G.E. Moore*, 254 S.C. 196, 174 S.E.2d 397 (1970). Continuing, "A number of courts recognize an exception to a no-damage clause where delays are so unreasonable in length or duration that they amount to an abandonment of the contract..." *U.S. f/w/b/a Williams Electric* at 134-135 citing 74 A.L.R.3d at 226-230 §7(i). "An abandonment need not be express but may be inferred from the conduct of the parties and attendant circumstances." *Quality Concrete Products, Inc., v. Thomason*, 253 S.C. 579, 172

S.E.2d 297 (1970). "Abandonment of a contract by one party is the giving up of the right of benefit due from the other party." *Ro-Lo Enterprises v. Hicks Enterprises*, 294 S.C. 111, 362 S.E.2d 888 (Ct. App. 1987). "As with the above mentioned exceptions, an abandonment of the contract involves a breach of the implied obligation of good faith and fair dealing. Accordingly, we adopt this exception and find that if a party abandons the contract, they also abandon their right to rely on a no damage for delay clause." *U.S. f/w/b/a Williams Electric* at 135. Likewise, South Carolina Courts have previously considered and found that significant delay is tantamount to abandonment and constitutes a sufficient basis to support a finding of abandonment with respect to an arbitration agreement. (See also *Evans v. Accent Manufactured Homes, Inc.*, 352 S.C. 544, 575 S.E.2d 74 (S.C. App. 2003), *Deloitte & Touche, LLP v. Unisys Corp*, 358 S.C. 179, 594 S.E.2d 523).

As previously discussed, the Arbitration Agreement the Defendants now seek to enforce does not contain a no-damage-for-delay clause, which make the performance under the Agreement an even more time-sensitive issue. The Defendants delayed almost a year before notifying Plaintiff of such an agreement and waited more than a year before moving for the enforcement of the Agreement. During the entire length of their delay, they conducted themselves in a manner consistent with parties that intended to proceed with litigation through the confines of the judicial process. It is the ruling of this Court that, the Defendants, through their actions and delay, abandoned any rights they may have been afforded to force this matter to arbitration. To allow the Defendants to now insist on adherence to the Arbitration Agreement which was the subject of the Motion before this Court, not only amounts to an unconscionable act, but it is also in disagreement with established precedent—precedent that finds contracts far more lenient on the issue of delay than the one at hand to have been abandoned in the face of acts such as those displayed by the Defendants here.

- 5. Excepting GranCare South Carolina, Inc., Mariner Health Care Management Company, and Mariner Health Central, Inc., the Defendants bringing this motion have argued in a manner inconsistent with the parties who have standing to enforce an Arbitration Agreement.**

GranCare South Carolina, Inc., was the operator of Faith Healthcare Center at the time of Mary Brinson's June 2006 admission, and all of the other defendants bringing this motion have alleged elsewhere that they do not operate nursing homes, do not have any ties to Faith Healthcare Center, have never transacted business in South Carolina, do not own property in South Carolina, and have never had any influence over the operations of Faith Healthcare Center. In fact, simultaneous to the hearing of this Motion to Compel Arbitration, these same Defendants argued a Motion to Dismiss for Lack of Personal Jurisdiction. Yet despite these protestations, these Defendants have sought to enforce an Arbitration Agreement between a facility they contend they have no interest in or control over, in a state they do not transact business in, in an industry in which they do not participate, and that this Court holds no jurisdiction over them. It cannot be rationally argued that all of these Defendants are parties to this contract, while at the same time argue that they have never contracted in South Carolina, never conducted business in South Carolina or are not tied in with the operation of the nursing facility. If the Defendants' arguments were accepted as true, then they would not have standing to enforce the Arbitration Agreement and the impossibility of prosecuting the claims in two separate forums becomes even more significant as discussed hereinabove.

- 6. The Defendants' argument that Mary Brinson was a third party beneficiary to the contract is illogical and premised on the rights of Ann Coleman as signatory, which said rights do not exist.**

Defendants' have sought to argue that Mary Brinson was the third party beneficiary to the Admissions and Arbitration Agreements. While this Court concedes that it was Ms. Brinson's admission into Faith Healthcare Center that was contemplated by the Admissions Agreement, the

Defendants' extension of this argument that seeks to cast Ms. Brinson as a third party beneficiary of said agreements is misplaced as it assumes that Ann Coleman had the right to contract on behalf of Ms. Brinson. As this Court has already discussed at length, while Ann Coleman did have the right under the Adult Health Care Consent Act to consent to medical treatment, she did not have the right to commit her sister to a legally binding contract that agreed to the removal of Ms. Brinson's rights under the law. Because Ann Coleman did not have the right to contract on behalf of her sister, Mary Brinson cannot possibly be a third party beneficiary as the contract itself was never valid.

7. The Defendants' argument that Plaintiff should be equitably estopped from denying the existence of an enforceable Arbitration Agreement is rejected.

As with the argument concerning the third party beneficiary status of Mary Brinson, the Court finds that the Defendants' argument with respect to the Arbitration Agreement and estoppel of the Plaintiff is, once again, misguided and assumes a premise which this Court has previously rejected.

The principle of estoppel in equity stands on the very foundation of right and fair dealing. It considers and weighs the conduct of men in their dealings with each other and gives that effect and meanings to their actions which common sense and justice dictate. The essential elements of equitable estoppel are ignorance of the party invoking the estoppel of the truth as to the facts in question and a misrepresentation or deceptive conduct of the party against whom estoppel is sought to be applied, which in fact misleads the person asserting the estoppel to rely on the misrepresentation or conduct to change his position prejudicially as a result of the reliance. *SCJur* "Estoppel" §4.

The Defendants' estoppel argument is not only misguided, it misses the true nature of estoppel. As this Court has previously discussed, it was Faith Healthcare Center's failure to explain the Arbitration Agreement in accordance with the Defendants' policies and procedures coupled with the manner in which the Arbitration Agreement was presented to Ann Coleman that

caused and contributed to Ms. Coleman not understanding the true nature of the document she was signing. The unconscionability of this process as described hereinabove serves as an additional sustaining ground for the finding that the Arbitration Agreement is not valid. The Defendants could not reasonably rely on the contract/agreement when they knew that Ann Coleman lacked the authority to enter into such a contract/agreement. The Defendants are assuming that it is the representation of the agent and not the principal that is the determinant of apparent authority and an establishment of agency when, as this Court has already discussed, it is the actions of the principal. As such, this Court rejects the Defendants' argument for equitable estoppel.

Furthermore, the Defendants have argued that Plaintiff cannot deny the validity of the Arbitration Agreement yet rely on the Admissions Agreement in alleging that the Defendants' were in breach of contract with respect to their contractual obligation to provide appropriate medical care to Mary Brinson. It is the Defendants' contention that the Arbitration Agreement and the Admissions Agreement are part of the same agreement between the parties and, as such, the Plaintiff can not disclaim the Arbitration Agreement. Defendants further argued that the Arbitration Agreement was part of the entire agreement between the parties and that the Plaintiff should not be able to argue that the Arbitration Agreement is invalid while asserting claims arising out of the relationship between the parties and that the Plaintiff should be equitably estopped from doing so. Plaintiff opposed these contentions. The errors in this argument have already been discussed. The Defendants again assume that the Arbitration Agreement and Admissions Agreement are on the same footing. As this Court has stated before, they are not. An agreement concerning the provision of health care is a far different matter than an agreement to waive legal and constitutional rights. As such, the Defendants' argument concerning estoppel is rejected.

CONCLUSION

This Court declines to enforce the Arbitration Agreement. Ann Coleman lacked the authority to bind her sister to any contract which removed her rights under the law and the Constitution. That she has the statutory authority to assist in making decisions regarding the treatment and care on behalf of her sister is irrelevant to the determination of whether she had the authority to contract on behalf of her sister in a separate legal agreement. The determination of agency is made based upon the principal and not the agent, and the Defendants' own documents demonstrate that they were aware that Mary Brinson was incapable of demonstrating any such intention or making any such representation. The Defendants cannot now reasonably argue that they thought Ms. Coleman had "apparent" authority, as they were aware of the legal requirements governing arbitration agreements.

Likewise, the Arbitration Agreement does not apply to all parties to this suit as it governs neither the claims brought on behalf of Mary Brinson's statutory beneficiaries, nor a portion of the Defendants who have not sought to force arbitration. Such circumstances give rise to the possibility of conflicting findings based on the same facts depending on the forum in which the issues are heard. These circumstances render the Arbitration Agreement unconscionable and impossible. Adding to the Agreement's unconscionability is Faith Healthcare Center's failure to adequately and appropriately inform Ms. Coleman as to the nature of the documents she was signing. She was not advised of the meaning of the Arbitration Agreement, nor was she advised that her signature on said Agreement was voluntary and that a refusal to sign would have no affect on her sister's admission to the facility.

The Arbitration Agreement was further abandoned by the Defendants through their delay. The Defendants proceeded to engage in the litigation process with Plaintiff, allowing this case to

more forward for more than a year after the filing of the Notice of Intent before they sought any enforcement of the Arbitration Agreement. South Carolina precedent is clear that, had the Defendants intended to seek enforcement of the Agreement, they should have done so at the outset of this matter, not more than a year after its genesis. And while it has been the finding of this Court in a separate Order that the Plaintiff has made a sufficient showing for jurisdiction over Defendants in this case, the myriad of issues discussed previously preclude any finding in favor of their Motion to Compel Arbitration, as they have argued inconsistent and irreconcilable positions.

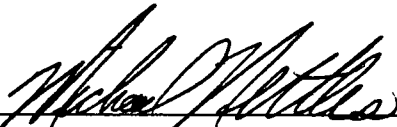
Finally, it is the belief of this Court that the Defendants' arguments concerning the third party beneficiary status of Mary Brinson and the argument concerning equitable estoppel are misguided and are rejected by the Court.

Therefore, it is the finding of this Court that the Plaintiff did not have the legal authority to execute the Arbitration Agreement on behalf of her sister; the Arbitration Agreement does not apply to all parties to this suit, giving rise to the possibility of divergent outcomes premised on the same facts; that the Arbitration Agreement itself is impossible and unconscionable; and that the Defendants abandoned the Agreement through their delay in seeking its enforcement. As such, Defendants' Motion to Stay Action and Compel Arbitration is denied in its entirety.

IT IS SO ORDERED.

Florence, South Carolina

Date: 3-18-11


The Honorable Michael G. Nettles
Twelfth Circuit of the State of South Carolina

CONNIE REED SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

2011 MAR 25 PM 4:00

FILED

STATE OF SOUTH CAROLINA **FILED** IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE 2011 JUN -6 PM 4:42 C.A. No.: 2010-CP-21-00835

Ann Coleman, Individually, and as **ANNE REED-SHEARIN**
Personal Representative of the Estate of CP & GS
Mary Brinson, FLORENCE COUNTY, SC

RECEIVED

JUN 27 2011

SC Court of Appeals

Plaintiff,

v.

Mariner Health Care, Inc. f/k/a Mariner
Post-Acute Network, LLC, Mariner
Health Care Management Company,
Mariner Health Central, Inc., Mariner
Health Group, Inc., MHC Holding
Company, MHC Florida Holding
Company, MHC Gulf Coast Holding
Company, MHC MidAmerica Holding
Company, MHC Rocky Mountain
Holding Company, MHC Northeast
Holding Company, MHC West Holding
Company, MHC Texas Holding
Company, MHC MidAtlantic Holding
Company, Living Centers-Southeast,
Inc., GranCare South Carolina, Inc.,
Individually and d/b/a Faith Health Care
Center, SavaSeniorCare Management,
LLC, SavaSeniorCare Administrative
Services, LLC, SavaSeniorCare, LLC,
SavaSeniorCare, Inc., National Senior
Care, Inc., Palmetto Health Care, LLC,
Palmetto Faith Operating, LLC,
Individually and d/b/a Faith Health Care
Center, Ask Holdings, LLC, Leonard
Grunstein, an Individual, Murray
Forman, an Individual, Boyd P. Gentry,
an Individual, Abraham Shaulson a/k/a
Abraham Shavlson a/k/a A. Shawson
a/k/a Abraham Shawson, an Individual,
Avi Klein, an Individual, SC Property
Holdings, LLC, SC Faith, LLC, and John
Does 1-26.,

Defendant(s).

**ORDER DENYING
DEFENDANTS MARINER
HEALTH CARE, INC. f/k/a/
MARINER POST ACUTE NETWORK,
LLC, MARINER HEALTH CARE
MANAGEMENT COMPANY,
MARINER HEALTH CENTRAL, INC.,
MARINER HEALTH GROUP, INC.,
MHC HOLDING COMPANY, MHC
FLORIDA HOLDING COMPANY,
MHC GULF COAST HOLDING
COMPANY, MHC MIDAMERICA
HOLDING COMPANY, MHC ROCKY
MOUNTAIN HOLDING COMPANY,
MHC NORTHEAST HOLDING
COMPANY, MHC WEST HOLDING
COMPANY, MHC TEXAS HOLDING
COMPANY, MHC MIDATLANTIC
HOLDING COMPANY, LIVING
CENTERS-SOUTHEAST, INC.,
GRANCARE SOUTH CAROLINA,
INC., Individually and d/b/a FAITH
HEALTH CARE CENTER,
SAVASENIORCARE
ADMINISTRATIVE SERVICES, LLC,
SAVASENIORCARE, LLC,
SAVASENIORCARE, INC.,
NATIONAL SENIOR CARE, INC.,
LEONARD GRUNSTEIN, BOYD P.
GENTRY, AND MURRAY FORMAN'S
MOTION TO ALTER OR AMEND
JUDGMENT
(Wrongful Death)**

CERTIFIED: A TRUE COPY

Annia Reed Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

PROCEDURAL

This matter came before the Court on the motion of Defendants Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., GranCare South Carolina d/b/a Faith Health Care Center, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, Boyd P. Gentry, and Murray Forman, and was heard on April 29, 2011. All parties were represented by counsel and provided oral arguments and also submitted written memoranda and exhibits supporting their positions. The Court hereby denies Defendants' Motion to Alter or Amend Judgment for the reasons set forth below.

BACKGROUND

Mary Brinson, deceased, was admitted to Faith Health Care Center on June 2, 2006 where she remained until September 16, 2006. She was then readmitted to Faith Health Care Center on December 13, 2006 and resided there until December 26, 2006. When Mary Brinson was admitted on June 2, 2006, the licensee was Grancare South Carolina, Inc., and when she was admitted on December 13, 2006, the licensee was Palmetto Faith Operating, LLC.

Ann Coleman is the Personal Representative of the estate of Mary Brinson. Ann Coleman is the sister of Mary Brinson, deceased. When Mary Brinson was admitted to Faith Health Care Center on June 2, 2006 and on December 13, 2006, no one had, held or

had been appointed as a Power of Attorney for Mary Brinson. Furthermore, no one had a conservatorship and no one had been appointed guardian for Mary Brinson during these times. Despite the fact that Ann Coleman did not have a Power of Attorney for her sister, Faith Health Care Center had Ann Coleman sign an Arbitration Agreement during the admission process when Mary Brinson was admitted on both occasions. It is from the Arbitration Agreement signed by Ann Coleman on June 1, 2006 which these Defendants seek to enforce.

DISCUSSION

1. The Federal Arbitration Act (FAA) does not govern the Agreement for Arbitration as the Agreement is void.

This Court has already heard argument and given consideration to the validity of the Arbitration Agreement at issue in this case. This was discussed at length in this Court's previous order which was filed with the Clerk of Court on March 25, 2011. Briefly, it was the finding of this Court that the Agreement for Arbitration is void for multiple reasons, including that not only did Mary Brinson not sign the Agreement, but also that the individual who did sign said Agreement, Ann Coleman, lacked the authority to legally contract on behalf of the resident, Mary Brinson. As evidenced by the medical records and the findings of the physicians at the Defendants' facility, Ms. Brinson not only did not sign the agreement, she also lacked the mental capacity to contract; as such, she also lacked the capacity to appoint or otherwise designate a legal representative or agent to act on her behalf and none had previously been appointed by her.

It is well established that implied authority of an agent must be based on the actions of the principal and not the agent (*Heil-Quaker v. Swindler*, 255 F.Supp. 445 (D.S.C. 1966); *WDI Meredith & Co. v. American Telesis, Inc.*, 359 S.C. 474, 597 S.E.2d

885 (Ct.App. 2004); see also *Dickerson v. Longoria*, 414 Md. 419, 995 A.2d 721 (2009)).

As Ms. Brinson lacked the mental capacity to designate an agent, it is also not possible that she could have acted in such a manner that a reasonable person could argue that she demonstrated any intent to have Ms. Coleman act as her agent. As such, Ms. Coleman lacked the legal authority to enter into the Agreement to Arbitrate. Because she lacked the authority to enter into such a contract, the Agreement to Arbitrate is null and void—in effect, it is as if the Agreement to Arbitrate never existed. If the Agreement to Arbitrate is null and void, then there is no basis for the application of the FAA. Quite simply, the defendants have sought to apply a rule to a contract which does not exist. Such an application is without logic, and for this reason, a discussion of the FAA's applicability was omitted from the previous Order.

2. **While it is the express finding of this Court that the Agreement to Arbitrate is void, even if the FAA were to preempt the voiding of said Agreement, the general nature of this contract for nursing home care does not contemplate interstate commerce.**

The South Carolina Supreme Court, in the matter of *Tims v. Greene*, 310 S.C. 469, 427 S.E.2d 642 (1993), held that a contract between a nursing home and a resident lacked sufficient relationship with interstate commerce to render the Federal Arbitration Act applicable to the controversy. In *Tims* the nursing home facility alleged that it was a division of a Delaware Partnership, marketed its services to persons residing outside the state, hired employees from outside the state, purchased the majority of its goods, equipment, and supplies outside the state, and contemplated payment in part by Medicare and Medicaid—not entirely unlike the Defendants moving herein. In finding that the contractual provision for arbitration did not affect interstate commerce, the South Carolina Supreme Court cited a four prong test for determining the applicability of the

FAA, the second and relevant prong of which requires that “the contract evidences a transaction involving commerce.” *Id* at 472. The court then went on to state “[i]n determining whether the contract on its face evidences commerce, we are required to look to the entire contract document.” *Id* at 472. The court held that, in a personal injury action arising out of a nursing home relationship, “the contract for patient-residential service with the Center is obscure, if not devoid, of any basis for holding that commerce was involved in the transaction between the parties. Interstate commerce is a necessary basis for application of the Federal Act, and a contract or agreement not so predicated must be governed by State Law.” *Id* at 472, citing *Shearson Hayden Stone, Inc., v. Liang* 493 F.Supp. 104 (N.D. Ill. 1980) and *Varley v. Terry Town Assoc., Inc.*, 477 F.2d 208 (2d. Cir. 1973).

The *Tims* court went on to note that the Defendant nursing home filed an affidavit alleging that it engaged in interstate commerce in the above-referenced ways. The court found that the relationship of these factors to the arbitration agreement between the nursing home and the resident was insufficient to form the basis of the contract between the parties and therefore the FAA was inapplicable. *Supra* at *Tims v. Greene*, 310 S.C. 469, 427 S.E.2d 642 (1993). As the circumstances surrounding the Defendants in the current case are remarkably similar to those previously contemplated in *Tims*, and as the Defendants have submitted an affidavit that also alleges an engagement in interstate commerce in a same or similar manner as that previously considered by the *Tims* Court, it is the finding of this Court that, while the Agreement for Arbitration is null and void, if it were not, the precedent of *Tims* would apply.

The Defendants argued that because the Agreement for Arbitration from the first admission states that interstate commerce was affected that the FAA applies or is

controlling. While this Court still finds that this agreement between this South Carolina resident and this South Carolina company for residential services does not contemplate interstate commerce, this Court also finds that it was not the holding nor the intent of *Tims* that a facility may simply write into the agreement that interstate commerce is affected so as to satisfy the interstate commerce requirement. Merely stating in a document that it affects interstate commerce does not make it so. Further, Defendants also argued that *Tims* was no longer good law. This Court finds that *Tims* has not been overturned, therefore this Court recognizes *Tims* as still controlling in this case and rejects the Defendants' argument.

Therefore, this Court finds that interstate commerce is not affected by the arbitration provisions contemplated in this agreement for residential services between this South Carolina resident and this South Carolina company and is not contemplated in the Agreement for Arbitration. As such, it is the finding of this Court that the FAA is inapplicable to the current case.

3. Defendants' Argument that Plaintiff waived her argument as to the Applicability of the FAA is without merit.

Defendants contend that Plaintiff waived her right to argue against the application of the FAA. Defendants cite *Kiawah Property Owners Group v. Public Service Commission of South Carolina*, 359 S.C. 105, 597 S.E.2d 145 (2004), in support of their argument. This reliance is misplaced. Defendants have failed to appreciate that, in *Kiawah*, the party seeking to introduce a new argument was the moving party, not the responding party. In the case at hand, Defendants are the moving party and Plaintiff is responding. Plaintiff is entitled to bring to the Court's attention law controlling the issue at hand for a motion which she is being forced to "defend."

Moreover, as this Court has already discussed herein, Plaintiff has argued in her memoranda, at the original motion hearing, and set forth evidence proving that the Agreement for Arbitration was never valid due to a lack of capacity to contract. Once again, arguing against the application of the FAA to a contract that never existed is illogical; therefore, Defendants' contention that Plaintiff's failed to previously argue against the application of the FAA was not an omission so much as it was a recognition that the application of an Act that would govern a contract that did not exist was a redundancy that was neither appropriate nor necessary.

CONCLUSION

It is the finding of this Court that the FAA does not apply. As has previously been discussed, Ann Coleman lacked the authority to bind her sister to any contract that would serve as a removal of her rights under the law and the Constitution. While Ms. Coleman may have been the next of kin to Mary Brinson, this in no way authorizes her to enter into legally binding contracts on Brinson's behalf. As such, the Agreement for Arbitration is null and void. Because the Agreement has been deemed void, there is no contract to which the Federal Arbitration Act could be reasonably applied.

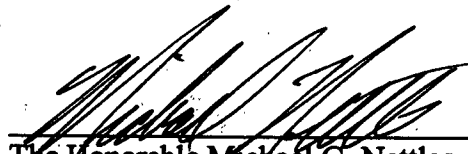
While it has been made abundantly clear that this Court finds the Agreement to Arbitrate to be null and void, if, for the sake of argument, said Agreement were deemed to exist, the precedent set forth by the *Tims* Court would most certainly apply and, again, prevent the application of the FAA to the current action, as the general nature of this contract for nursing home care does not contemplate or affect interstate commerce.

Finally, The Plaintiff's argument against the application of the FAA on the basis of interstate commerce and the precedent of *Tims* is appropriate as she did not waive her

right to make said argument. As such, this Court finds Plaintiff's argument not only appropriate, but on point.

Therefore, it is the finding of this Court that the Agreement for Arbitration is null and void; that even if the Agreement for Arbitration were deemed to exist, the application of the FAA to the contract is still inappropriate on the basis of *Tims* ; and that Plaintiff did not waive argument as to the correct applicable law for the present Motion against her. As such, Defendants' Motion to Alter or Amend Judgment is denied in its entirety.

IT IS SO ORDERED.


The Honorable Michael G. Nettles
Twelfth Circuit of the State of South Carolina

Florence, South Carolina

Date: 6-6-11

FILED
2011 JUN -6 PM 4:42
JONNE REEL-SHEARIN
COP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Ann Coleman, Individually, and as
Personal Representative of the Estate of
Mary Brinson,

Plaintiff,

v.

Mariner Health Care, Inc. f/k/a Mariner
Post-Acute Network, LLC, Mariner
Health Care Management Company,
Mariner Health Central, Inc., Mariner
Health Group, Inc., MHC Holding
Company, MHC Florida Holding
Company, MHC Gulf Coast Holding
Company, MHC MidAmerica Holding
Company, MHC Rocky Mountain
Holding Company, MHC Northeast
Holding Company, MHC West Holding
Company, MHC Texas Holding
Company, MHC MidAtlantic Holding
Company, Living Centers-Southeast,
Inc., GranCare South Carolina, Inc.,
Individually and d/b/a Faith Health Care
Center, SavaSeniorCare Management,
LLC, SavaSeniorCare Administrative
Services, LLC, SavaSeniorCare, LLC,
SavaSeniorCare, Inc., National Senior
Care, Inc., Palmetto Health Care, LLC,
Palmetto Faith Operating, LLC,
Individually and d/b/a Faith Health Care
Center, Ask Holdings, LLC, Leonard
Grunstein, an Individual, Murray
Forman, an Individual, Boyd P. Gentry,
an Individual, Abraham Shaulson a/k/a
Abraham Shavlson a/k/a A. Shawson
a/k/a Abraham Shawson, an Individual,
Avi Klein, an Individual, SC Property
Holdings, LLC, SC Faith, LLC, and John
Does 1-26.,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-21-00836

**ORDER DENYING
DEFENDANTS MARINER
HEALTH CARE, INC. f/k/a/
MARINER POST ACUTE NETWORK,
LLC, MARINER HEALTH CARE
MANAGEMENT COMPANY,
MARINER HEALTH CENTRAL, INC.,
MARINER HEALTH GROUP, INC.,
MHC HOLDING COMPANY, MHC
FLORIDA HOLDING COMPANY,
MHC GULF COAST HOLDING
COMPANY, MHC MIDAMERICA
HOLDING COMPANY, MHC ROCKY
MOUNTAIN HOLDING COMPANY,
MHC NORTHEAST HOLDING
COMPANY, MHC WEST HOLDING
COMPANY, MHC TEXAS HOLDING
COMPANY, MHC MIDATLANTIC
HOLDING COMPANY, LIVING
CENTERS-SOUTHEAST, INC.,
GRANCARE SOUTH CAROLINA,
INC., Individually and d/b/a FAITH
HEALTH CARE CENTER,
SAVASENIORCARE
ADMINISTRATIVE SERVICES, LLC,
SAVASENIORCARE, LLC,
SAVASENIORCARE, INC.,
NATIONAL SENIOR CARE, INC.,
LEONARD GRUNSTEIN, BOYD P.
GENTRY, AND MURRAY FORMAN'S
MOTION TO ALTER OR AMEND
JUDGMENT
(Survival Action)**

CERTIFIED: A TRUE COPY

Connie R. Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

RECEIVED

JUN 27 2011

SC Court of Appeals

FILED
JUN -6 PM 4:12
FLORENCE COUNTY, S.C.

PROCEDURAL

This matter came before the Court on the motion of Defendants Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., GranCare South Carolina d/b/a Faith Health Care Center, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, Boyd P. Gentry, and Murray Forman, and was heard on April 29, 2011. All parties were represented by counsel and provided oral arguments and also submitted written memoranda and exhibits supporting their positions. The Court hereby denies Defendants' Motion to Alter or Amend Judgment for the reasons set forth below.

BACKGROUND

Mary Brinson, deceased, was admitted to Faith Health Care Center on June 2, 2006 where she remained until September 16, 2006. She was then readmitted to Faith Health Care Center on December 13, 2006 and resided there until December 26, 2006. When Mary Brinson was admitted on June 2, 2006, the licensee was Grancare South Carolina, Inc., and when she was admitted on December 13, 2006, the licensee was Palmetto Faith Operating, LLC.

Ann Coleman is the Personal Representative of the estate of Mary Brinson. Ann Coleman is the sister of Mary Brinson, deceased. When Mary Brinson was admitted to Faith Health Care Center on June 2, 2006 and on December 13, 2006, no one had, held or

had been appointed as a Power of Attorney for Mary Brinson. Furthermore, no one had a conservatorship and no one had been appointed guardian for Mary Brinson during these times. Despite the fact that Ann Coleman did not have a Power of Attorney for her sister, Faith Health Care Center had Ann Coleman sign an Arbitration Agreement during the admission process when Mary Brinson was admitted on both occasions. It is from the Arbitration Agreement signed by Ann Coleman on June 1, 2006 which these Defendants seek to enforce.

DISCUSSION

- 1. The Federal Arbitration Act (FAA) does not govern the Agreement for Arbitration as the Agreement is void.**

This Court has already heard argument and given consideration to the validity of the Arbitration Agreement at issue in this case. This was discussed at length in this Court's previous order which was filed with the Clerk of Court on March 25, 2011. Briefly, it was the finding of this Court that the Agreement for Arbitration is void for multiple reasons, including that not only did Mary Brinson not sign the Agreement, but also that the individual who did sign said Agreement, Ann Coleman, lacked the authority to legally contract on behalf of the resident, Mary Brinson. As evidenced by the medical records and the findings of the physicians at the Defendants' facility, Ms. Brinson not only did not sign the agreement, she also lacked the mental capacity to contract; as such, she also lacked the capacity to appoint or otherwise designate a legal representative or agent to act on her behalf and none had previously been appointed by her.

It is well established that implied authority of an agent must be based on the actions of the principal and not the agent (*Heil-Quaker v. Swindler*, 255 F.Supp. 445 (D.S.C. 1966); *WDI Meredith & Co. v. American Telesis, Inc.*, 359 S.C. 474, 597 S.E.2d

885 (Ct.App. 2004); see also *Dickerson v. Longoria*, 414 Md. 419, 995 A.2d 721 (2009)).

As Ms. Brinson lacked the mental capacity to designate an agent, it is also not possible that she could have acted in such a manner that a reasonable person could argue that she demonstrated any intent to have Ms. Coleman act as her agent. As such, Ms. Coleman lacked the legal authority to enter into the Agreement to Arbitrate. Because she lacked the authority to enter into such a contract, the Agreement to Arbitrate is null and void—in effect, it is as if the Agreement to Arbitrate never existed. If the Agreement to Arbitrate is null and void, then there is no basis for the application of the FAA. Quite simply, the defendants have sought to apply a rule to a contract which does not exist. Such an application is without logic, and for this reason, a discussion of the FAA's applicability was omitted from the previous Order.

2. **While it is the express finding of this Court that the Agreement to Arbitrate is void, even if the FAA were to preempt the voiding of said Agreement, the general nature of this contract for nursing home care does not contemplate interstate commerce.**

The South Carolina Supreme Court, in the matter of *Tims v. Greene*, 310 S.C. 469, 427 S.E.2d 642 (1993), held that a contract between a nursing home and a resident lacked sufficient relationship with interstate commerce to render the Federal Arbitration Act applicable to the controversy. In *Tims* the nursing home facility alleged that it was a division of a Delaware Partnership, marketed its services to persons residing outside the state, hired employees from outside the state, purchased the majority of its goods, equipment, and supplies outside the state, and contemplated payment in part by Medicare and Medicaid—not entirely unlike the Defendants moving herein. In finding that the contractual provision for arbitration did not affect interstate commerce, the South Carolina Supreme Court cited a four prong test for determining the applicability of the

FAA, the second and relevant prong of which requires that "the contract evidences a transaction involving commerce." *Id* at 472. The court then went on to state "[i]n determining whether the contract on its face evidences commerce, we are required to look to the entire contract document." *Id* at 472. The court held that, in a personal injury action arising out of a nursing home relationship, "the contract for patient-residential service with the Center is obscure, if not devoid, of any basis for holding that commerce was involved in the transaction between the parties. Interstate commerce is a necessary basis for application of the Federal Act, and a contract or agreement not so predicated must be governed by State Law." *Id* at 472, citing *Shearson Hayden Stone, Inc., v. Liang* 493 F.Supp. 104 (N.D. Ill. 1980) and *Varley v. Terry Town Assoc., Inc.*, 477 F.2d 208 (2d. Cir. 1973).

The *Tims* court went on to note that the Defendant nursing home filed an affidavit alleging that it engaged in interstate commerce in the above-referenced ways. The court found that the relationship of these factors to the arbitration agreement between the nursing home and the resident was insufficient to form the basis of the contract between the parties and therefore the FAA was inapplicable. *Supra* at *Tims v. Greene*, 310 S.C. 469, 427 S.E.2d 642 (1993). As the circumstances surrounding the Defendants in the current case are remarkably similar to those previously contemplated in *Tims*, and as the Defendants have submitted an affidavit that also alleges an engagement in interstate commerce in a same or similar manner as that previously considered by the *Tims* Court, it is the finding of this Court that, while the Agreement for Arbitration is null and void, if it were not, the precedent of *Tims* would apply.

The Defendants argued that because the Agreement for Arbitration from the first admission states that interstate commerce was affected that the FAA applies or is

controlling. While this Court still finds that this agreement between this South Carolina resident and this South Carolina company for residential services does not contemplate interstate commerce, this Court also finds that it was not the holding nor the intent of *Tims* that a facility may simply write into the agreement that interstate commerce is affected so as to satisfy the interstate commerce requirement. Merely stating in a document that it affects interstate commerce does not make it so. Further, Defendants also argued that *Tims* was no longer good law. This Court finds that *Tims* has not been overturned, therefore this Court recognizes *Tims* as still controlling in this case and rejects the Defendants' argument.

Therefore, this Court finds that interstate commerce is not affected by the arbitration provisions contemplated in this agreement for residential services between this South Carolina resident and this South Carolina company and is not contemplated in the Agreement for Arbitration. As such, it is the finding of this Court that the FAA is inapplicable to the current case.

3. Defendants' Argument that Plaintiff waived her argument as to the Applicability of the FAA is without merit.

Defendants contend that Plaintiff waived her right to argue against the application of the FAA. Defendants cite *Kiawah Property Owners Group v. Public Service Commission of South Carolina*, 359 S.C. 105, 597 S.E.2d 145 (2004), in support of their argument. This reliance is misplaced. Defendants have failed to appreciate that, in *Kiawah*, the party seeking to introduce a new argument was the moving party, not the responding party. In the case at hand, Defendants are the moving party and Plaintiff is responding. Plaintiff is entitled to bring to the Court's attention law controlling the issue at hand for a motion which she is being forced to "defend."

Moreover, as this Court has already discussed herein, Plaintiff has argued in her memoranda, at the original motion hearing, and set forth evidence proving that the Agreement for Arbitration was never valid due to a lack of capacity to contract. Once again, arguing against the application of the FAA to a contract that never existed is illogical; therefore, Defendants' contention that Plaintiff's failed to previously argue against the application of the FAA was not an omission so much as it was a recognition that the application of an Act that would govern a contract that did not exist was a redundancy that was neither appropriate nor necessary.

CONCLUSION

It is the finding of this Court that the FAA does not apply. As has previously been discussed, Ann Coleman lacked the authority to bind her sister to any contract that would serve as a removal of her rights under the law and the Constitution. While Ms. Coleman may have been the next of kin to Mary Brinson, this in no way authorizes her to enter into legally binding contracts on Brinson's behalf. As such, the Agreement for Arbitration is null and void. Because the Agreement has been deemed void, there is no contract to which the Federal Arbitration Act could be reasonably applied.

While it has been made abundantly clear that this Court finds the Agreement to Arbitrate to be null and void, if, for the sake of argument, said Agreement were deemed to exist, the precedent set forth by the *Tims* Court would most certainly apply and, again, prevent the application of the FAA to the current action, as the general nature of this contract for nursing home care does not contemplate or affect interstate commerce.

Finally, The Plaintiff's argument against the application of the FAA on the basis of interstate commerce and the precedent of *Tims* is appropriate as she did not waive her

right to make said argument. As such, this Court finds Plaintiff's argument not only appropriate, but on point.

Therefore, it is the finding of this Court that the Agreement for Arbitration is null and void; that even if the Agreement for Arbitration were deemed to exist, the application of the FAA to the contract is still inappropriate on the basis of *Tims* ; and that Plaintiff did not waive argument as to the correct applicable law for the present Motion against her. As such, Defendants' Motion to Alter or Amend Judgment is denied in its entirety.

IT IS SO ORDERED.


The Honorable Michael G. Nettles
Twelfth Circuit of the State of South Carolina

Florence, South Carolina
Date: 6-6-11

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CLERK
CCCP & GS
FLORENCE COUNTY, SC

Rec 12-6-10
unw

FILED

STATE OF SOUTH CAROLINA
2010 DEC -2 PM 12:05
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS DCCP & GS
FLORENCE COUNTY, SC

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP2100835

RECEIVED

JUN 27 2011

Ann Coleman vs. Mariner Health Care Inc

SC Court of Appeals

CHECK ONE:

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Florence, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 2nd day of December, 2010, and a copy mailed first class this 2nd day of December, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

M. W. Christian P.O. Box 332 Greenville, SC 29602

M. S. Fowler III P.O. Box 1719 Lake City, SC 29560

C. S. Mauney P.O. Box 10589 Greenville, SC 29603

P. D. Boulter P.O. Box 1897 Spartanburg, SC 29304

W. C. Barnes Jr. P.O. Box 5478 Florence, SC 29502

W. M. White P.O. Box 1897 Spartanburg, SC 29304

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Connie Reel-Shearin

Clerk of Court

CERTIFIED: A TRUE COPY
Clerk of Court
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Ann Coleman, Individually, and as Personal
Representative of the Estate of Mary
Brinson,

v.

Mariner Health Care, Inc. f/k/a Mariner
Post-Acute Network, LLC, Mariner Health
Care Management Company, Mariner
Health Central, Inc., Mariner Health Group,
Inc., MHC Holding Company, MHC
Florida Holding Company, MHC Gulf
Coast Holding Company, MHC
MidAmerica Holding Company, MHC
Rocky Mountain Holding Company, MHC
Northeast Holding Company, MHC West
Holding Company, MHC Texas Holding
Company, MHC MidAtlantic Holding
Company, Living Centers-Southeast, Inc.,
GranCare South Carolina, Inc., Individually
and d/b/a Faith Health Care Center,
SavaSeniorCare Management, LLC,
SavaSeniorCare Administrative Services,
LLC, SavaSeniorCare, LLC,
SavaSeniorCare, Inc., National Senior Care,
Inc., Palmetto Health Care, LLC, Palmetto
Faith Operating, LLC, Individually and
d/b/a Faith Health Care Center, Ask
Holdings, LLC, Leonard Grunstein, an
Individual, Murray Forman, an Individual,
Boyd P. Gentry, an Individual, Abraham
Shaulson a/k/a Abraham Shavlson a/k/a A.
Shawson a/k/a Abraham Shawson, an
Individual, Avi Klein, an Individual, SC
Property Holdings, LLC, SC Faith, LLC,
and John Does 1-26.,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-21-835

**ORDER DENYING
DEFENDANT SAVASENIORCARE,
INC.'S MOTION TO DISMISS
FOR INSUFFICIENT SERVICE
OF PROCESS
(WRONGFUL DEATH)**

CERTIFIED: A TRUE COPY
Connie R. L. Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

2010 DEC -2 AM 11:31
FILED
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

This matter came before the Court on motion of the Defendant Savaseniorcare, Inc. to dismiss Plaintiff's suit against it for insufficient service of process. For the reasons that follow, the motion of Defendant Savaseniorcare, Inc. is denied.

FACTURAL BACKGROUND

This is an action of wrongful death with allegations of corporate neglect, corporate mismanagement, negligent care, and negligent treatment of the Plaintiff's decedent while she was a nursing home patient at Faith Health Care Center in Florence County, South Carolina. Plaintiff has named numerous Defendants associated with the facility and Plaintiff argues that these corporate and individual Defendants are either shell corporations designed to shield liability and protect their assets or these were persons and entities involved with the decision making regarding issues which directly affected care at the defendant nursing home.

Defendants have filed this Motion to Dismiss for insufficiency of service on Defendant Savaseniorcare, Inc. arguing that the Defendant was never served with the Summons and Complaint. In support of their argument, the Defendants filed an affidavit of Harry Grunstein. Mr. Grunstein's affidavit asserts, among other things, that he was President of Savaseniorcare, Inc., which is a Delaware limited liability company with its principal place of business in Atlanta, Georgia. He further states that Savaseniorcare, Inc. was an entity that never conducted any business and which he created but never utilized. He further states that it never had offices, employees, or business operations in South Carolina and never maintained an address or phone listing in South Carolina. He further states that it never performed business in South Carolina, never owned property in South Carolina, never maintained agents or servants in South Carolina, and never exercised control over Faith Health Care Center or GranCare South Carolina, Inc. (the Defendant nursing home facility). He further states that Savaseniorcare, Inc., has never been served with the Summons and Complaint in this action.

In response to Defendant's motion, Plaintiff filed a memorandum in opposition to same together with numerous exhibits. Plaintiff argued that Defendant had been properly served with the South Carolina Secretary of State under statutory authority for same.

DISCUSSION

South Carolina Rules of Civil Procedure, Rule 4(d)(3) specifies that service of process may be had:

“Upon a corporation or partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the Summons and Complaint to an officer, managing or general agent, or to any other agent authorized by a appointment or by law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the Defendant”

It is undisputed among the parties that when Plaintiff filed the Notice of Intent as required for nursing home neglect claims, that she served CT Corporation in Delaware, the registered agent of Defendant Savaseniorcare, Inc. Defense counsel's firm appeared on behalf of Savaseniorcare, Inc., at the Notice of Intent stage. Plaintiff requested at the pre-litigation mediation that Defense counsel accept service on behalf of Defendants. Defendants' counsel declined to accept service on behalf of their clients. After Plaintiff filed the Summons and Complaint in this action, Plaintiff attempted to serve Defendant Savaseniorcare, Inc.'s registered agent in Delaware again on April 12, 2010. However, Plaintiff was notified by this registered agent that they were no longer the registered agent for Defendant Savaseniorcare, Inc., on April 12, 2010.

Plaintiff then moved forward with service under South Carolina Code §15-9-245(a)(b) which states that:

(a) Every foreign business or nonprofit corporation which is not authorized to do business in this State, by doing in this State, either itself or through an agent, any business including any business activity for which authority need to be obtained... it is considered to have designated the Secretary of State as its agent

upon whom process against it may be served in any action or proceeding arising in any court in this State out of or in connection with the doing of any business in this State.

(b) Service of process is made by delivering to an leaving with the Secretary of State, or with any person designated by him to receive such service, duplicate copies of the process, notice, or demand. The Secretary of State immediately shall cause one of the copies to be forwarded by certified mail, addressed to the corporation either at its registered office in the jurisdiction of its incorporation, its principal place of business in the jurisdiction, or at the last address of the foreign business or nonprofit corporation known to the plaintiff, in that order.

On or about July 1, 2010, Plaintiff received the notice from the Secretary of State's Office that they had accepted service on behalf of Savaseniorecare, Inc. on May 2, 2010, and that they had mailed the Summonses and Complaint to the last known business address of the Defendant, One Ravinia Drive, Suite 1500, Atlanta, Georgia 30346, on May 12, 2010. Furthermore, the Secretary of State's Office indicated that, as of July 1, 2010, the pleadings had not been returned. On July 7, 2010, defense counsel filed an Answer on behalf of this Defendant.

Counsel for Defendant Savaseniorecare, Inc., argued at the hearing that his client had not been properly served. Among other things, counsel for the defendant argued that the Plaintiff could not serve Defendant Savaseniorecare, Inc. through the Secretary of State under South Carolina Code §15-9-245(a) and (b) because Defendant Savaseniorecare, Inc. asserted that it did not do business in South Carolina. Counsel for the Defendant's position was that Savaseniorecare, Inc. did not do business in this state and that doing business in this state is a prerequisite for a Plaintiff to be able to serve a corporate defendant through the Secretary of State under the §15-9-245.

In addition to the numerous exhibits and documents submitted by the Plaintiff in this Memorandum in Opposition to Defendant's Motion, Plaintiff's counsel also directed the court to documents and exhibits which had been filed with the court with Plaintiff's Memorandum in Opposition to this Defendant's Motion to Dismiss for Lack of Personal Jurisdiction.

These exhibits included, among other things, proxy statements to the SEC which were filed by Co-Defendants Mariner Health Care, Inc. which managed Savaseniorcare, deposition testimony from corporate officers with knowledge of the corporate structure of these defendants, and letters and memoranda from Co-Defendants involved in the creation and operation of Savaseniorcare. The information and documents provided to the Court reflect that Savaseniorcare, Inc. was in the business of or involved with operating nursing home facilities. Furthermore, the nursing home facility where the Plaintiff's decedent was a patient was known as Faith Health Care Center which was a wholly owned subsidiary of Mariner Health Care entities and a chain affiliate of Mariner Health Care, Inc. Furthermore, these documents reflect that Savaseniorcare, Inc. was an affiliate of National Senior Care that was involved with substantially all of Mariner Health Care, Inc.'s skilled nursing facilities.

As Faith Health Care Center is and/or was one of Mariner's skilled nursing facilities, as Savaseniorcare, Inc. was involved with the operation of substantially all of Mariner's facilities per Defendants' documents, several of which are located in South Carolina, it stands to reason, and this Court finds, that Savaseniorcare, Inc. did in fact transact business, have business operations in, or supply services within the State of South Carolina.

Therefore, because this Court finds that Savaseniorcare, Inc., did do business in this state, either itself or through an agent, it is considered to have designated the Secretary of State as its agent upon whom process against it may be served in any action arising in this state, including this action. Therefore, under South Carolina Code §15-9-245(b) service of process was made on the Defendant by delivering the Summons and Complaint to the South Carolina Secretary of State.

CONCLUSION

Because Savaseniorcare, Inc., did business in the State of South Carolina, either through itself or through an agent, and maintained no registered agent in the State of South Carolina, the South Carolina Secretary of State is the agent upon whom process may be served for the

Defendant. Under South Carolina Code §15-9-245(b), service of process was made on the Defendant by the Plaintiff, by delivering to and leaving with the Secretary of State these Summonses and Complaints. Therefore, because the Plaintiff did effectuate service upon the Defendant as prescribed by this Statute, Defendant's Motion to Dismiss for Insufficiency of Service of Process is denied.

AND IT IS SO ORDERED.



Honorable William H. Seals, Jr.
Circuit Court Judge

CERTIFIED: A TRUE COPY
Amiee April Seals
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Marion, South Carolina

Date: November 15, 2010

FILED
2010 DEC -2 AM 11:31
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

Rec 12-6-10
(mw)

FILED

STATE OF SOUTH CAROLINA

2010 DEC -2 AM 11:48

JUDGMENT IN A CIVIL CASE

COUNTY OF FLORENCE

CASE NO: 2010CP2100836

IN THE COURT OF COMMON PLEAS

CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

RECEIVED

JUN 27 2011

Ann Coleman vs. Mariner Health Care Inc

SC Court of Appeals

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a),
SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ 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; ☐ Statement of Judgment by the Court:

Dated at Florence, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 2nd day of December, 2010, and a copy mailed first class this 2nd day of December, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Matthew W. Christian P.O. Box 332 Greenville, SC
29602

Marion Stephenson Fowler III P.O. Box 1719 Lake
City, SC 29560

Perry D. Boulter P.O. Box 1897 Spartanburg, SC
29304

William Clyde Barnes Jr P.O. Box 5478 Florence,
SC 29502

Charles Stuart Mauney P.O. Box 10589 Greenville,
SC 29603

Walter McElhaney White P.O. Box 1897
Spartanburg, SC 29304

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Connie Reel-Shearin

Clerk of Court

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.
Connie Reel-Shearin

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Ann Coleman, Individually, and as Personal
Representative of the Estate of Mary
Brinson,

v.

Mariner Health Care, Inc. f/k/a Mariner
Post-Acute Network, LLC, Mariner Health
Care Management Company, Mariner
Health Central, Inc., Mariner Health Group,
Inc., MHC Holding Company, MHC
Florida Holding Company, MHC Gulf
Coast Holding Company, MHC
MidAmerica Holding Company, MHC
Rocky Mountain Holding Company, MHC
Northeast Holding Company, MHC West
Holding Company, MHC Texas Holding
Company, MHC MidAtlantic Holding
Company, Living Centers-Southeast, Inc.,
GranCare South Carolina, Inc., Individually
and d/b/a Faith Health Care Center,
SavaSeniorCare Management, LLC,
SavaSeniorCare Administrative Services,
LLC, SavaSeniorCare, LLC,
SavaSeniorCare, Inc., National Senior Care,
Inc., Palmetto Health Care, LLC, Palmetto
Faith Operating, LLC, Individually and
d/b/a Faith Health Care Center, Ask
Holdings, LLC, Leonard Grunstein, an
Individual, Murray Forman, an Individual,
Boyd P. Gentry, an Individual, Abraham
Shaulson a/k/a Abraham Shavlson a/k/a A.
Shawson a/k/a Abraham Shawson, an
Individual, Avi Klein, an Individual, SC
Property Holdings, LLC, SC Faith, LLC,
and John Does 1-26.,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-21-836

**ORDER DENYING
DEFENDANT SAVASENIORCARE,
INC.'S MOTION TO DISMISS
FOR INSUFFICIENT SERVICE
OF PROCESS
(SURVIVAL ACTION)**

FILED
2010 DEC -2 AM 11:30
CLERK OF COURT
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Crisie Ral Spence
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

This matter came before the Court on motion of the Defendant Savaseniorcare, Inc. to dismiss Plaintiff's suit against it for insufficient service of process. For the reasons that follow, the motion of Defendant Savaseniorcare, Inc. is denied.

FACTURAL BACKGROUND

This is a survival action with allegations of corporate neglect, corporate mismanagement, negligent care, and negligent treatment of the Plaintiff's decedent while she was a nursing home patient at Faith Health Care Center in Florence County, South Carolina. Plaintiff has named numerous Defendants associated with the facility and Plaintiff argues that these corporate and individual Defendants are either shell corporations designed to shield liability and protect their assets or these were persons and entities involved with the decision making regarding issues which directly affected care at the defendant nursing home.

Defendants have filed this Motion to Dismiss for insufficiency of service on Defendant Savaseniorcare, Inc. arguing that the Defendant was never served with the Summons and Complaint. In support of their argument, the Defendants filed an affidavit of Harry Grunstein. Mr. Grunstein's affidavit asserts, among other things, that he was President of Savaseniorcare, Inc., which is a Delaware limited liability company with its principal place of business in Atlanta, Georgia. He further states that Savaseniorcare, Inc. was an entity that never conducted any business and which he created but never utilized. He further states that it never had offices, employees, or business operations in South Carolina and never maintained an address or phone listing in South Carolina. He further states that it never performed business in South Carolina, never owned property in South Carolina, never maintained agents or servants in South Carolina, and never exercised control over Faith Health Care Center or GranCare South Carolina, Inc. (the Defendant nursing home facility). He further states that Savaseniorcare, Inc., has never been served with the Summons and Complaint in this action.

In response to Defendant's motion, Plaintiff filed a memorandum in opposition to same together with numerous exhibits. Plaintiff argued that Defendant had been properly served with the South Carolina Secretary of State under statutory authority for same.

DISCUSSION

South Carolina Rules of Civil Procedure, Rule 4(d)(3) specifies that service of process may be had:

"Upon a corporation or partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the Summons and Complaint to an officer, managing or general agent, or to any other agent authorized by a appointment or by law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the Defendant"

It is undisputed among the parties that when Plaintiff filed the Notice of Intent as required for nursing home neglect claims, that she served CT Corporation in Delaware, the registered agent of Defendant Savaseniorcare, Inc. Defense counsel's firm appeared on behalf of Savaseniorcare, Inc., at the Notice of Intent stage. Plaintiff requested at the pre-litigation mediation that Defense counsel accept service on behalf of Defendants. Defendants' counsel declined to accept service on behalf of their clients. After Plaintiff filed the Summons and Complaint in this action, Plaintiff attempted to serve Defendant Savaseniorcare, Inc.'s registered agent in Delaware again on April 12, 2010. However, Plaintiff was notified by this registered agent that they were no longer the registered agent for Defendant Savaseniorcare, Inc., on April 12, 2010.

Plaintiff then moved forward with service under South Carolina Code §15-9-245(a)(b) which states that:

(a) Every foreign business or nonprofit corporation which is not authorized to do business in this State, by doing in this State, either itself or through an agent, any business including any business activity for which authority need to be obtained... it is considered to have designated the Secretary of State as its agent

upon whom process against it may be served in any action or proceeding arising in any court in this State out of or in connection with the doing of any business in this State.

(b) Service of process is made by delivering to an leaving with the Secretary of State, or with any person designated by him to receive such service, duplicate copies of the process, notice, or demand. The Secretary of State immediately shall cause one of the copies to be forwarded by certified mail, addressed to the corporation either at its registered office in the jurisdiction of its incorporation, its principal place of business in the jurisdiction, or at the last address of the foreign business or nonprofit corporation known to the plaintiff, in that order.

On or about July 1, 2010, Plaintiff received the notice from the Secretary of State's Office that they had accepted service on behalf of Savaseniorcare, Inc. on May 2, 2010, and that they had mailed the Summonses and Complaint to the last known business address of the Defendant, One Ravinia Drive, Suite 1500, Atlanta, Georgia 30346, on May 12, 2010. Furthermore, the Secretary of State's Office indicated that, as of July 1, 2010, the pleadings had not been returned. On July 7, 2010, defense counsel filed an Answer on behalf of this Defendant.

Counsel for Defendant Savaseniorcare, Inc., argued at the hearing that his client had not been properly served. Among other things, counsel for the defendant argued that the Plaintiff could not serve Defendant Savaseniorcare, Inc. through the Secretary of State under South Carolina Code §15-9-245(a) and (b) because Defendant Savaseniorcare, Inc. asserted that it did not do business in South Carolina. Counsel for the Defendant's position was that Savaseniorcare, Inc. did not do business in this state and that doing business in this state is a prerequisite for a Plaintiff to be able to serve a corporate defendant through the Secretary of State under the §15-9-245.

In addition to the numerous exhibits and documents submitted by the Plaintiff in this Memorandum in Opposition to Defendant's Motion, Plaintiff's counsel also directed the court to documents and exhibits which had been filed with the court with Plaintiff's Memorandum in Opposition to this Defendant's Motion to Dismiss for Lack of Personal Jurisdiction.

These exhibits included, among other things, proxy statements to the SEC which were filed by Co-Defendants Mariner Health Care, Inc. which managed Savaseniorcare, deposition testimony from corporate officers with knowledge of the corporate structure of these defendants, and letters and memoranda from Co-Defendants involved in the creation and operation of Savaseniorcare. The information and documents provided to the Court reflect that Savaseniorcare, Inc. was in the business of or involved with operating nursing home facilities. Furthermore, the nursing home facility where the Plaintiff's decedent was a patient was known as Faith Health Care Center which was a wholly owned subsidiary of Mariner Health Care entities and a chain affiliate of Mariner Health Care, Inc. Furthermore, these documents reflect that Savaseniorcare, Inc. was an affiliate of National Senior Care that was involved with substantially all of Mariner Health Care, Inc.'s skilled nursing facilities.

As Faith Health Care Center is and/or was one of Mariner's skilled nursing facilities, as Savaseniorcare, Inc. was involved with the operation of substantially all of Mariner's facilities per Defendants' documents, several of which are located in South Carolina, it stands to reason, and this Court finds, that Savaseniorcare, Inc. did in fact transact business, have business operations in, or supply services within the State of South Carolina.

Therefore, because this Court finds that Savaseniorcare, Inc., did do business in this state, either itself or through an agent, it is considered to have designated the Secretary of State as its agent upon whom process against it may be served in any action arising in this state, including this action. Therefore, under South Carolina Code §15-9-245(b) service of process was made on the Defendant by delivering the Summons and Complaint to the South Carolina Secretary of State.

CONCLUSION

Because Savaseniorcare, Inc., did business in the State of South Carolina, either through itself or through an agent, and maintained no registered agent in the State of South Carolina, the South Carolina Secretary of State is the agent upon whom process may be served for the

Defendant. Under South Carolina Code §15-9-245(b), service of process was made on the Defendant by the Plaintiff, by delivering to and leaving with the Secretary of State these Summonses and Complaints. Therefore, because the Plaintiff did effectuate service upon the Defendant as prescribed by this Statute, Defendant's Motion to Dismiss for Insufficiency of Service of Process is denied.

AND IT IS SO ORDERED.



Honorable William H. Seals, Jr.
Circuit Court Judge

CERTIFIED: A TRUE COPY
Christa K. Spain
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Marion, South Carolina

Date: November 15, 2010

FILED
2010 DEC -2 AM 11:30
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

ec. 2-3-11

(www)

FILED

RECEIVED

JUN 27 2011

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS

2011 JAN 31 PM 2:27

CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP2100835 & 00836

SC Court of Appeals

Ann Coleman vs. Mariner Health Care Inc

CLERK OF COURT C.P. & GS
FLORENCE COUNTY, SC
JAN 31 2011
CERTIFIED A TRUE COPY

CHECK ONE:

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Florence, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 31st day of January, 2011, and a copy mailed first class this 1st day of February, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Matthew W. Christian Christian & Davis P.O. Box
332 Greenville, SC 29602
Marion Stephenson Fowler III Fowler Law Firm,

Charles Stuart Mauney Gallivan White & Boyd, PA
P.O. Box 10589 Greenville, SC 29603
Perry D. Boulter Holcombe Bomar Gunn &

PC P.O. Box 1719 Lake City, SC 29560

ATTORNEY(S) FOR THE PLAINTIFF(S)

Bradford, PA P.O. Box 1897 Spartanburg, SC 29304
William Clyde Barnes Jr. Turner Padgett Graham &
Laney, PA P.O. Box 5478 Florence, SC 29502
Walter McElhaney White Holcombe Bomar Gunn
& Bradford, PA P.O. Box 1897 Spartanburg, SC
29304

ATTORNEY(S) FOR THE DEFENDANT(S)

Connie Reel-Shearin

Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Ann Coleman, Individually, and as
Personal Representative of the Estate of
Mary Brinson,

Plaintiff,

v.

Mariner Health Care, Inc. f/k/a Mariner
Post-Acute Network, LLC, Mariner
Health Care Management Company,
Mariner Health Central, Inc., Mariner
Health Group, Inc., MHC Holding
Company, MHC Florida Holding
Company, MHC Gulf Coast Holding
Company, MHC MidAmerica Holding
Company, MHC Rocky Mountain
Holding Company, MHC Northeast
Holding Company, MHC West Holding
Company, MHC Texas Holding
Company, MHC MidAtlantic Holding
Company, Living Centers-Southeast, Inc.,
GranCare South Carolina, Inc.,
Individually and d/b/a Faith Health Care
Center, SavaSeniorCare Management,
LLC, SavaSeniorCare Administrative
Services, LLC, SavaSeniorCare, LLC,
SavaSeniorCare, Inc., National Senior
Care, Inc., Palmetto Health Care, LLC,
Palmetto Faith Operating, LLC,
Individually and d/b/a Faith Health Care
Center, Ask Holdings, LLC, Leonard
Grunstein, an Individual, Murray Forman,
an Individual, Boyd P. Gentry, an
Individual, Abraham Shaulson a/k/a
Abraham Shavlson a/k/a A. Shawson
a/k/a Abraham Shawson, an Individual,
Avi Klein, an Individual, SC Property
Holdings, LLC, SC Faith, LLC, and John
Does 1-26.,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-21-00835 & 00836

ORDER

CERTIFIED A TRUE COPY
J. M. Reed - Spaw
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED
2011 JAN 31 PM 2:27
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

This matter came before the Court on the written record on a Motion To Alter Or Amend Judgment filed by Savaseniorecare, Inc. ("Sava"). Having reviewed the memoranda submitted by the Defendant and the Plaintiff, the Order of this Court filed December 2, 2010 is hereby amended to read as follows:

This matter came before the Court on Motion of the Defendant Savaseniorecare, Inc. to Dismiss Plaintiff's suit against it for insufficient service of process. For the reasons *infra*, the motion of Sava is denied.

Factual Background

These are actions for wrongful death and survival with allegations of corporate neglect, corporate mismanagement, negligent care, and negligent treatment for the Plaintiff's decedent while she was a nursing home patient at the Faith Health Care Center in Florence County, South Carolina. Plaintiff has brought these actions against numerous Defendants alleging that these corporations and individuals are either shell corporation created to shield liability and protect assets or these are the persons and entities involved in with the decision making regarding issues which directly affected care at the Faith Health Care Center.

Defendants have filed this Motion to Dismiss for insufficiency of service on Defendant Savaseniorecare, Inc. arguing that the Defendant was never served with the Summonses and Complaints. In support of their argument, the Defendant filed an affidavit of Harry Grunstein. Mr. Grunstein's affidavit asserts, among other things, that he was President of Savaseniorecare, Inc., which is a Delaware limited liability company with its principal place of business in Atlanta, Georgia. He further states that Savaseniorecare, Inc. was an entity that never conducted any business and which he created but never utilized. He further states that it never had offices, employees, or business operations in South Carolina and never maintained an address or phone

listing in South Carolina. He further states that it never performed business in South Carolina, never owned property in South Carolina, never maintained agents or servants in South Carolina, and never exercised control over Faith Health Care Center or GranCare South Carolina, Inc. (the Defendant nursing home facility). He further states that Savaseniorcare, Inc., has never been served with the Summonses and Complaints in these actions.

In response to Defendant's motion, Plaintiff filed a memorandum in opposition to the same along with numerous exhibits. Plaintiff's exhibits included an invitation to attend a stockholders meeting for Mariner Healthcare to adopt a plan of merger among Mariner, NationalSenior Care, Inc., and NCAREAcquisition Corp. The invitation was attached to a proxy statement filed with the SEC. In the invitation, it states that, once the merger is complete, the nursing homes previously operated by Mariner would be operated by Sava Senior Care, Inc., an affiliate of National Senior Care. The nursing home facility where the Plaintiffs decedent was a patient was known as Faith Health Care Center which appears to be a subsidiary of Mariner Health Care entities and a chain affiliate of Mariner Health Care, Inc. Furthermore, the documents reflect that Savaseniorcare, Inc. was an affiliate of National Senior Care that was involved with substantially all of Mariner Health Care, Inc.'s skilled nursing facilities.

Plaintiff further provided the court with the deposition of Boyd Gentry. Mr. Gentry stated in his deposition that the merger among Mariner, NationalSenior Care, Inc., NCAREAcquisition Corp. took place as described in the proxy statement. Mr. Gentry testified that "Sava" became the tenant of the nursing homes as stated in the proxy statement. While Mr. Gentry conceded he did not necessarily know the structure of the many "Sava" entities, his testimony deferred to the proxy statement. Plaintiff argued that Defendant had been properly served with the South Carolina Secretary of State under statutory authority for same.

DISCUSSION

South Carolina Rules of Civil Procedure, Rule 4(d)(3) specifies that service of process may be had:

“Upon a corporation or partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the Summons and Complaint to an officer, managing or general agent, or to any other agent authorized by a appointment or by law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the Defendant”

It is undisputed among the parties that when Plaintiff filed the Notice of Intent as required for nursing home neglect claims, that she served CT Corporation in Delaware, the registered agent of Defendant Savaseniorcare, Inc. Defense counsel's firm appeared on behalf of Savaseniorcare, Inc., at the Notice of Intent stage. Plaintiff requested at the pre-litigation mediation that Defense counsel accept service on behalf of Defendants. Defendants' counsel declined to accept service on behalf of their clients. After Plaintiff filed the Summonses and Complaints in this action, Plaintiff attempted to serve Defendant Savaseniorcare, Inc.'s registered agent in Delaware again on April 12, 2010. However, Plaintiff was notified by this registered agent that they were no longer the registered agent for Defendant Savaseniorcare, Inc., on April 12, 2010.

Plaintiff then moved forward with service under South Carolina Code §15-9-245(a)(b) which states that:

(a) Every foreign business or nonprofit corporation which is not authorized to do business in this State, by doing in this State, either itself or through an agent, any business, including any business activity for which authority need not be obtained... is considered to have designated the Secretary of State as its agent upon whom process against it may be served in any action or

proceeding arising in any court in this State out of or in connection with the doing of any business in this State.

(b) Service of process is made by delivering to and leaving with the Secretary of State, or with any person designated by him to receive such service, duplicate copies of the process, notice, or demand. The Secretary of State immediately shall cause one of the copies to be forwarded by certified mail, addressed to the corporation either at its registered office in the jurisdiction of its incorporation, its principal place of business in the jurisdiction, or at the last address of the foreign business or nonprofit corporation known to the plaintiff, in that order.

Under this code section, service is effective upon delivery to the Secretary of State. *Holman v. Warwick Furnace Co.*, 318 S.C. 201, 456 S.E.2d 894 (1995).

On or about July 1, 2010, Plaintiff received the notice from the Secretary of State's Office that they had accepted service on behalf of Savaseniorecare, Inc. on May 2, 2010, and that they had mailed the Summonses and Complaints to the last known business address of the Defendant, One Ravinia Drive, Suite 1500, Atlanta, Georgia 30346, on May 12, 2010. Furthermore, the Secretary of State's Office indicated that, as of July 1, 2010, the pleadings had not been returned. On July 7, 2010, defense counsel filed Answers on behalf of this Defendant.

Counsel for Defendant Savaseniorecare, Inc., argued at the hearing that his client had not been properly served. Among other things, counsel for the defendant argued that the Plaintiff could not serve Defendant Savaseniorecare, Inc. through the Secretary of State under South Carolina Code §15-9-245(a) and (b) because Defendant Savaseniorecare, Inc. asserted that it did not do business in South Carolina. Counsel for the Defendant's position was that Sava did not do business in this state and that doing business in this state is a pre-requisite for a Plaintiff to be able to serve a corporate defendant through the Secretary of State under the §15-9-245.

Plaintiff's counsel directed the court to documents and exhibits which had been filed with the court with Plaintiffs Memorandum in Opposition to this Defendant's Motion to Dismiss for Lack of Personal Jurisdiction.

After considering the filings and arguments of counsel, I find Savaseniorcare, Inc. did transact business in South Carolina and, by way of statute, is considered to have designated the Secretary of State as its agent upon whom process against it may be served in these actions. Therefore, under South Carolina Code §15-9-245(b) service of process was made on the Defendant by delivering the Summons and Complaint to the South Carolina Secretary of State.

CONCLUSION

The South Carolina Secretary of State is the agent upon whom process may be served for the Defendant Savaseniorcare, Inc. Under South Carolina Code §15-9-245(b), service of process was made on the Defendant by the Plaintiff, by delivering to and leaving with the Secretary of State these Summonses and Complaints. Therefore, because the Plaintiff did effectuate service upon the Defendant as prescribed by this Statute, Defendant's Motions to Dismiss for Insufficiency of Service of Process are denied.

AND IT IS SO ORDERED.


Honorable William H. Seals, Jr.
Circuit Court Judge

Florence, South Carolina

Date: January 31, 2011

FILED
2011 JAN 31 PM 2:27
CONNIE REEL-SHEARIN
CCJP & GS
FLORENCE COUNTY, SC

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

FILED

2011 FEB 22 AM 7:57

CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

And **Coleman vs. Mariner Health Care Inc**

JUDGMENT IN A CIVIL CASE
CASE NO: 2010CP2100835

RECEIVED
JUN 27 2011

SC Court of Appeals
I have verified a TRUE COPY
Clerk of Court C.P. & G.S.
FLORENCE COUNTY, S.C.

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a),
SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ 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; ☐ Statement of Judgment by the Court:

Dated at Florence, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 16th day of February, 2011, and a copy mailed first class this 22nd day of February, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Matthew W. Christian P.O. Box 332 Greenville, SC
29602
Marion Stephenson Fowler III P.O. Box 1719 Lake
City, SC 29560

Charles Stuart Mauney P.O. Box 10589 Greenville,
SC 29603
William Clyde Barnes Jr. P.O. Box 5478 Florence,
SC 29502
Walter McElhaney P.O. Box 1897 Spartanburg, SC
29304

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Connie Reel-Shearin

Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Ann Coleman, Individually, and as Personal
Representative of the Estate of Mary
Brinson,

Plaintiff,

v.

Mariner Health Care, Inc. f/k/a Mariner
Post-Acute Network, LLC, Mariner Health
Care Management Company, Mariner
Health Central, Inc., Mariner Health Group,
Inc., MHC Holding Company, MHC
Florida Holding Company, MHC Gulf
Coast Holding Company, MHC
MidAmerica Holding Company, MHC
Rocky Mountain Holding Company, MHC
Northeast Holding Company, MHC West
Holding Company, MHC Texas Holding
Company, MHC MidAtlantic Holding
Company, Living Centers-Southeast, Inc.,
GranCare South Carolina, Inc., Individually
and d/b/a Faith Health Care Center,
SavaSeniorCare Management, LLC,
SavaSeniorCare Administrative Services,
LLC, SavaSeniorCare, LLC,
SavaSeniorCare, Inc., National Senior Care,
Inc., Palmetto Health Care, LLC, Palmetto
Faith Operating, LLC, Individually and
d/b/a Faith Health Care Center, Ask
Holdings, LLC, Leonard Grunstein, an
Individual, Murray Forman, an Individual,
Boyd P. Gentry, an Individual, Abraham
Shaulson a/k/a Abraham Shavlson a/k/a A.
Shawson a/k/a Abraham Shawson, an
Individual, Avi Klein, an Individual, SC
Property Holdings, LLC, SC Faith, LLC,
and John Does 1-26.,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-21-835

Wm. Reel-Shearin
CERTIFIED A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

**ORDER DENYING DEFENDANTS
MARINER HEALTH CARE, INC.
f/k/a MARINER POST ACUTE
NETWORK, LLC, MARINER
HEALTH GROUP, INC., MHC
HOLDING COMPANY, MHC
FLORIDA HOLDING COMPANY,
MHC GULF COAST HOLDING
COMPANY, MHC MIDAMERICA
HOLDING COMPANY, MHC ROCKY
MOUNTAIN HOLDING COMPANY,
MHC NORTHEAST HOLDING
COMPANY, MHC WEST HOLDING
COMPANY, MHC TEXAS HOLDING
COMPANY, MHC MIDATLANTIC
HOLDING COMPANY, LIVING
CENTERS-SOUTHEAST, INC.,
SAVASENIORCARE
ADMINISTRATIVE SERVICES, LLC,
SAVASENIORCARE, LLC,
SAVASENIORCARE, INC.,
NATIONAL SENIOR CARE, INC.,
LEONARD GRUNSTEIN, BOYD P.
GENTRY, AND MURRAY FORMAN'S
MOTION TO DISMISS FOR LACK OF
PERSONAL JURISDICTION
(WRONGFUL DEATH)**

FILED
2011 FEB 16 PM 2:01
CONNIE REEL-SHEARIN
CCJP & GS
FLORENCE COUNTY, SC

This matter came before the Court on motions of Defendants Mariner Health Care, Inc. f/k/a Mariner Post-Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, Murray Forman, and Boyd P. Gentry to dismiss Plaintiff's suit against them for lack of personal jurisdiction. For the reasons stated below, these motions are denied.

BACKGROUND

This is an action of wrongful death with allegations of corporate neglect, corporate mismanagement, negligent care, and negligent treatment of the Plaintiff's decedent while she was a nursing home patient at Faith Health Care Center in Florence County, South Carolina. Plaintiff has named numerous Defendants and the Plaintiff argues that these corporate and individual Defendants are either shell corporations designed to shield liability and protect their assets or these were persons and entities involved with the decision making regarding issues which directly affected care at the Defendant nursing home.

The above-referenced Defendants filed this motion to dismiss on the argument that there was no personal jurisdiction over these Defendants. In opposition to these motions, Plaintiff has filed the affidavit of Plaintiff's expert, Bruce Engstrom, and filed numerous other documents asserting that this information was sufficient to show that Plaintiff had met the necessary *prima facie* showing for this Court to maintain jurisdiction over these Defendants. Plaintiff has

asserted in her argument, in the exhibits, and in the complaint that not only did these Defendants transact business in South Carolina or maintain sufficient minimum contacts with the State of South Carolina, but also through their decision making to underfund, under-staff, and inappropriately operate/manage the nursing home facility where the Plaintiff resided caused tortious injury to the Plaintiff in Florence County, South Carolina, and have submitted themselves to the jurisdiction of this court.

DISCUSSION

In ruling on a Motion to Dismiss, the Court must first determine whether the Plaintiff has established a *prima facie* case of personal jurisdiction over the Defendants. "South Carolina Case Law has settled that 'at the pre-trial stage of the proceedings, the Plaintiff need only make a *prima facie* showing by pleadings and affidavits.'" Mid-State Distribs. v. Century Imps., 310 S.C. 330 332 (S.C. 1993).

S.C. Code Ann. §36-2-801 *et. seq.* specifies that a "person" includes any individuals or "corporation, partnership, association, or any other legal or commercial entity, whether or not a citizen or domiciliary of this State and whether or not organized under the laws of this State." Moreover, section 803(A) of the statute states that the Court may:

Exercise personal jurisdiction over a person who acts directly or by an agent as to the cause of action arising from the person's: (1) transacting any business in this State; (2) contracting to supply services or things in the State; (3) commission of a tortious act in whole or in part in this State; (4) causing tortious injury or death in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this State; (5) having an interest in, using, or possessing real property in this State; (6) contracting

to insure any person, property, or risk located within this State at the time of contracting; (7) entry into a contract to be performed in whole or in part by either party in this State; (8) production, manufacture, or distribution of goods with the reasonable expectation that those goods will be used or consumed in this State and are so used or consumed. (*emphasis added*)

Furthermore, in *Moosaly v. W.W. Norton & Company, Inc.* (358 S.C. 320, 594 S.E. 2d 878), our Courts have held that "Our long-arm statute, which affords broad power to exercise personal jurisdiction over causes of action arising from tortious injuries in South Carolina, has been construed to extend to the outer limits of the due process clause" (citing *Meyer v. Paschal*, 330 S.C. 175, 498 S.E.2d 635 (1998); *Hammond v. Cummins Engine Co.*, 287 S.C. 200, 336 S.E.2d 867 (1985); see also *Cozi Investments v. Schneider*, 272 S.C. 354, 252 S.E.2d 116 (1979) (stating that South Carolina's long arm statute has been construed as a grant of jurisdiction as broad as constitutionally permissible; hence parameters of statute are restricted only by due process limitations). The Court in *Moosaly* also held that "The due process requirement mandates the defendant possess sufficient minimum contacts with the forum state, so that he could reasonably anticipate being haled into court there." *Id.* at 330 (citing *World-Wide Volkswagen Corp., v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980); *Atlantic Soft Drink Co. v. South Carolina Nat'l Bank*, 287 S.C. 228, 336 S.E.2d 876 (1985).

In deciding whether a finding of minimum contact comports with the due process requirements of traditional notions of fair play and substantial justice, the court must consider: (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the non-resident's acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction." *Id.* at 331, citing *Clark v. Key*, 304 S.C. 497, 405 S.E.2d 599 (1991); *Colite Indus., Inc. v. G.W. Murphy*

Contr. Co., 297 S.C. 426, 337 S.E.2d 321 (1989), *South Carolina Dep't of Soc. Servs. V. Basnight*, 346 S.C. 241, 551 S.E.2d 274 (Ct.App. 2001).

A court may also exercise general jurisdiction over a defendant who has an enduring relationship with the forum state and with systematic and continuous contacts.

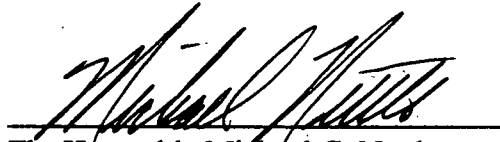
The Court finds that Plaintiff has established a *prima facie* case to satisfy the requirements as to the above-referenced Defendants which have filed this motion. Due to the allegations in the complaint, the filed expert affidavit, and documents submitted by the Plaintiff, the Plaintiff has made a sufficient showing to move beyond the threshold level of Defendants' Rule 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction. This Court's decision is that the Plaintiff has made a sufficient showing to overcome Defendants' Motion to Dismiss for Lack of Personal Jurisdiction, however, the Court's ruling is not a dispositive determination of these Defendants' liability in this action.

CONCLUSION

Because Plaintiff has met the threshold requirements to overcome Defendants' Rule 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction and because Plaintiff has made a *prima facie* showing to satisfy the requirements of personal jurisdiction, the Motion to Dismiss by Defendants Mariner Health Care, Inc. f/k/a Mariner Post-Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc.,

National Senior Care, Inc., Leonard Grunstein, Murray Forman, and Boyd P. Gentry IS
HEREBY DENIED.

IT IS SO ORDERED.


The Honorable Michael G. Nettles
Twelfth Circuit of the State of South Carolina

Florence, South Carolina

Date: 2-7-11

STATE OF SOUTH CAROLINA

FILED

JUDGMENT IN A CIVIL CASE

COUNTY OF FLORENCE

2011 FEB 22 AM 7:57 CASE NO: 2010CP2100836

IN THE COURT OF COMMON PLEAS

CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

Ann Coleman vs. Mariner Health Care Inc

CHECK ONE:

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Florence, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 16th day of February, 2011, and a copy mailed first class this 22nd day of February, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Matthew W. Christian Christian & Davis P.O. Box
332 Greenville, SC 29602
Marion Stephenson Fowler III Fowler Law Firm,
PC P.O. Box 1719 Lake City, SC 29560

William Clyde Barnes Jr. Turner Padgett Graham &
Laney, PA P.O. Box 5478 Florence, SC 29502
Charles Stuart Mauney Gallivan White & Boyd, PA
P.O. Box 10589 Greenville, SC 29603
Walter McElhaney White Holcombe Bomar Gunn
& Bradford, PA P.O. Box 1897 Spartanburg, SC
29304

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Connie Reel-Shearin

Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Ann Coleman, Individually, and as Personal
Representative of the Estate of Mary
Brinson,

Plaintiff,

v.

Mariner Health Care, Inc. f/k/a Mariner
Post-Acute Network, LLC, Mariner Health
Care Management Company, Mariner
Health Central, Inc., Mariner Health Group,
Inc., MHC Holding Company, MHC
Florida Holding Company, MHC Gulf
Coast Holding Company, MHC
MidAmerica Holding Company, MHC
Rocky Mountain Holding Company, MHC
Northeast Holding Company, MHC West
Holding Company, MHC Texas Holding
Company, MHC MidAtlantic Holding
Company, Living Centers-Southeast, Inc.,
GranCare South Carolina, Inc., Individually
and d/b/a Faith Health Care Center,
SavaSeniorCare Management, LLC,
SavaSeniorCare Administrative Services,
LLC, SavaSeniorCare, LLC,
SavaSeniorCare, Inc., National Senior Care,
Inc., Palmetto Health Care, LLC, Palmetto
Faith Operating, LLC, Individually and
d/b/a Faith Health Care Center, Ask
Holdings, LLC, Leonard Grunstein, an
Individual, Murray Forman, an Individual,
Boyd P. Gentry, an Individual, Abraham
Shaulson a/k/a Abraham Shavlson a/k/a A.
Shawson a/k/a Abraham Shawson, an
Individual, Avi Klein, an Individual, SC
Property Holdings, LLC, SC Faith, LLC,
and John Does 1-26.,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-21-836

**ORDER DENYING DEFENDANTS
MARINER HEALTH CARE, INC.
f/k/a MARINER POST ACUTE
NETWORK, LLC, MARINER
HEALTH GROUP, INC., MHC
HOLDING COMPANY, MHC
FLORIDA HOLDING COMPANY,
MHC GULF COAST HOLDING
COMPANY, MHC MIDAMERICA
HOLDING COMPANY, MHC ROCKY
MOUNTAIN HOLDING COMPANY,
MHC NORTHEAST HOLDING
COMPANY, MHC WEST HOLDING
COMPANY, MHC TEXAS HOLDING
COMPANY, MHC MIDATLANTIC
HOLDING COMPANY, LIVING
CENTERS-SOUTHEAST, INC.,
SAVASENIORCARE
ADMINISTRATIVE SERVICES, LLC,
SAVASENIORCARE, LLC,
SAVASENIORCARE, INC.,
NATIONAL SENIOR CARE, INC.,
LEONARD GRUNSTEIN, BOYD P.
GENTRY, AND MURRAY FORMAN'S
MOTION TO DISMISS FOR LACK OF
PERSONAL JURISDICTION
(SURVIVAL ACTION)**

FILED
2011 FEB 16 PM 2:07
CONNIE REEL-SHEARIN
COP & GS
FLORENCE COUNTY, SC

CERTIFIED A TRUE COPY
Wm. J. Fel - J. J. J. J.
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

This matter came before the Court on motions of Defendants Mariner Health Care, Inc. f/k/a Mariner Post-Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, Murray Forman, and Boyd P. Gentry to dismiss Plaintiff's suit against them for lack of personal jurisdiction. For the reasons stated below, these motions are denied.

BACKGROUND

This is a survival action with allegations of corporate neglect, corporate mismanagement, negligent care, and negligent treatment of the Plaintiff's decedent while she was a nursing home patient at Faith Health Care Center in Florence County, South Carolina. Plaintiff has named numerous Defendants and the Plaintiff argues that these corporate and individual Defendants are either shell corporations designed to shield liability and protect their assets or these were persons and entities involved with the decision making regarding issues which directly affected care at the Defendant nursing home.

The above-referenced Defendants filed this motion to dismiss on the argument that there was no personal jurisdiction over these Defendants. In opposition to these motions, Plaintiff has filed the affidavit of Plaintiff's expert, Bruce Engstrom, and filed numerous other documents asserting that this information was sufficient to show that Plaintiff had met the necessary *prima facie* showing for this Court to maintain jurisdiction over these Defendants. Plaintiff has

asserted in her argument, in the exhibits, and in the complaint that not only did these Defendants transact business in South Carolina or maintain sufficient minimum contacts with the State of South Carolina, but also through their decision making to underfund, under-staff, and inappropriately operate/manage the nursing home facility where the Plaintiff resided caused tortious injury to the Plaintiff in Florence County, South Carolina, and have submitted themselves to the jurisdiction of this court.

DISCUSSION

In ruling on a Motion to Dismiss, the Court must first determine whether the Plaintiff has established a *prima facie* case of personal jurisdiction over the Defendants. "South Carolina Case Law has settled that 'at the pre-trial stage of the proceedings, the Plaintiff need only make a *prima facie* showing by pleadings and affidavits.'" Mid-State Distribs. v. Century Imps., 310 S.C. 330 332 (S.C. 1993).

S.C. Code Ann. §36-2-801 *et. seq.* specifies that a "person" includes any individual or "corporation, partnership, association, or any other legal or commercial entity, whether or not a citizen or domiciliary of this State and whether or not organized under the laws of this State." Moreover, section 803(A) of the statute states that the Court may:

Exercise personal jurisdiction over a person who acts directly or by an agent as to the cause of action arising from the person's: (1) transacting any business in this State; (2) contracting to supply services or things in the State; (3) commission of a tortious act in whole or in part in this State; (4) causing tortious injury or death in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this State; (5) having an interest in, using, or possessing real property in this State; (6) contracting

to insure any person, property, or risk located within this State at the time of contracting; (7) entry into a contract to be performed in whole or in part by either party in this State; (8) production, manufacture, or distribution of goods with the reasonable expectation that those goods will be used or consumed in this State and are so used or consumed. (*emphasis added*)

Furthermore, in *Moosaly v. W.W. Norton & Company, Inc.* (358 S.C. 320, 594 S.E. 2d 878), our Courts have held that "Our long-arm statute, which affords broad power to exercise personal jurisdiction over causes of action arising from tortious injuries in South Carolina, has been construed to extend to the outer limits of the due process clause" (citing *Meyer v. Paschal*, 330 S.C. 175, 498 S.E.2d 635 (1998); *Hammond v. Cummins Engine Co.*, 287 S.C. 200, 336 S.E.2d 867 (1985); see also *Cozi Investments v. Schneider*, 272 S.C. 354, 252 S.E.2d 116 (1979) (stating that South Carolina's long arm statute has been construed as a grant of jurisdiction as broad as constitutionally permissible; hence parameters of statute are restricted only by due process limitations). The Court in *Moosaly* also held that "The due process requirement mandates the defendant possess sufficient minimum contacts with the forum state, so that he could reasonably anticipate being haled into court there." *Id.* at 330 (citing *World-Wide Volkswagen Corp., v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980); *Atlantic Soft Drink Co. v. South Carolina Nat'l Bank*, 287 S.C. 228, 336 S.E.2d 876 (1985).

In deciding whether a finding of minimum contact comports with the due process requirements of traditional notions of fair play and substantial justice, the court must consider: (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the non-resident's acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction." *Id.* at 331, citing *Clark v. Key*, 304 S.C. 497, 405 S.E.2d 599 (1991); *Colite Indus., Inc. v. G.W. Murphy*

Contr. Co., 297 S.C. 426, 337 S.E.2d 321 (1989), *South Carolina Dep't of Soc. Servs. V. Basnight*, 346 S.C. 241, 551 S.E.2d 274 (Ct.App. 2001).

A court may also exercise general jurisdiction over a defendant who has an enduring relationship with the forum state and with systematic and continuous contacts.

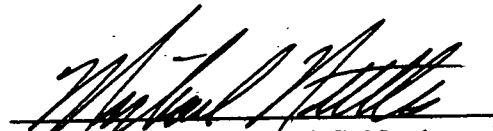
The Court finds that Plaintiff has established a *prima facie* case to satisfy the requirements as to the above-referenced Defendants which have filed this motion. Due to the allegations in the complaint, the filed expert affidavit, and documents submitted by the Plaintiff, the Plaintiff has made a sufficient showing to move beyond the threshold level of Defendants' Rule 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction. This Court's decision is that the Plaintiff has made a sufficient showing to overcome Defendants' Motion to Dismiss for Lack of Personal Jurisdiction, however, the Court's ruling is not a dispositive determination of these Defendants' liability in this action.

CONCLUSION

Because Plaintiff has met the threshold requirements to overcome Defendants' Rule 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction and because Plaintiff has made a *prima facie* showing to satisfy the requirements of personal jurisdiction, the Motion to Dismiss by Defendants Mariner Health Care, Inc. f/k/a Mariner Post-Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc.,

National Senior Care, Inc., Leonard Grunstein, Murray Forman, and Boyd P. Gentry IS
HEREBY DENIED.

IT IS SO ORDERED.


The Honorable Michael G. Nettles
Twelfth Circuit of the State of South Carolina

Florence, South Carolina

Date: 2-7-11



Holcombe Bomar, P.A.

COPY

100 Dunbar Street, Suite 200
Spartanburg, SC 29306
P.O. Box 1897
Spartanburg, SC 29304

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fax (864) 585-3844

www.holcombebomar.com

mwhite@holcombebomar.com
Direct Dial: (864) 594-5309

RECEIVED

JUL 01 2011

SC Court of Appeals

June 30, 2011

William U. Gunn
Koger M. Bradford
Perry D. Boulter
William B. Darwin, Jr.
Robert M. Barrett
Ginger D. Goforth
W. McElhaney White
A. Todd Darwin
J. Hayes Walsh
Nathaniel P. Mark
Joshua T. Thompson
Stacey Campbell Davis
Special Counsel
Neville Holcombe, 1902-1983
Horace L. Bomar, 1912-1994

Ms. Elizabeth Harris
414 Autumn Circle
Columbia, South Carolina 29206

RE: Ann Coleman, Individually and as Personal Representative of the Estate of
Mary Brinson v. Mariner Health Care, Inc., et al.
Case Nos. 2010-CP-21-00835 & 00836
Our File No. 10963

Dear Ms. Harris:

I represent the Appellants in the above-captioned matter. We have appealed the result of a hearing held before the Honorable Michael G. Nettles on April 29, 2011. Please accept this letter as our formal request for a copy of the transcript of that hearing. We will of course pay all customary charges for your services upon receiving your invoice.

We appreciate your cooperation and assistance in this matter.

Sincerely,

W. McElhaney White

/rr

c: Matthew W. Christian, Esq.
Marion S. Fowler, III, Esq.
R. Gerald Chambers, Esq.
William "Sonny" Barnes, Esq.
Michael I. Bernstein, Esq.

Rosalyn Frierson, S.C. Court Administration
Tanya Gee, S.C. Court of Appeals ✓



Holcombe Bomar, P.A.

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J. Hayes Walsh
Nathaniel P. Mark
Joshua T. Thompson
Stacey Campbell Davis
Special Counsel
Neville Holcombe, 1902-1983
Horace L. Bomar, 1912-1994

June 30, 2011

RECEIVED

JUL 01 2011

SC Court of Appeals

Ms. Keshia Reed
Post Office Box 12190
Florence, South Carolina 29504-2190

RE: Ann Coleman, Individually and as Personal Representative of the Estate of
Mary Brinson v. Mariner Health Care, Inc., et al.
Case Nos. 2010-CP-21-00835 & 00836
Our File No. 10963

Dear Ms. Reed:

I represent the Appellants in the above-captioned matter. We have appealed the result of hearings held before the Honorable William H. Seals, Jr. on November 3, 2010 and the Honorable Michael G. Nettles on January 6, 2011. Please accept this letter as our formal request for a copy of the transcripts of those hearings. We will of course pay all customary charges for your services upon receiving your invoice.

We appreciate your cooperation and assistance in this matter.

Sincerely,

W. McElhaney White

/rr

c: Matthew W. Christian, Esq.
Marion S. Fowler, III, Esq.
R. Gerald Chambers, Esq.
William "Sonny" Barnes, Esq.

Michael I. Bernstein, Esq.
Roselyn Frierson, S.C. Court Administration
Tanya Gee, S.C. Court of Appeals ✓

1
2
3

TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

Carmelo B. Sammataro

E-mail: SSammataro@TurnerPadget.com

Writer's Direct Dial: (803) 227-4253

Writer's Direct Fax: (803) 400-1532

July 5, 2011

VIA HAND DELIVERY

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RECEIVED

JUL 05 2011

SC Court of Appeals

Re: Ann Coleman v. Mariner Health Care, Inc. et al.
Case Nos.: 2010-CP-21-835 and 836
TPGL File No.: 11034.101

Dear Ms. Gee:

Enclosed please find the originals and one copy each of the Notice of Appeal and Proof of Service regarding the above-referenced matter. Also enclosed are the following:

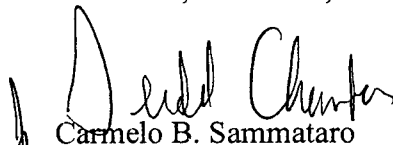
1. Copies of the orders which are to be challenged on appeal; and
2. Our check for the \$100.00 filing fee;
3. Copies of our June 30, 2011, letters requesting the hearing transcripts.

It would be greatly appreciated if you would please file the original Notice of Appeal and Proof of Service and return clocked copies of these filings to me via our office courier. Thank you for your assistance with this matter, and please contact me if you have any questions.

With kind regards, I am

Very truly yours,

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


Carmelo B. Sammataro

BUSINESS • LITIGATION • SOLUTIONS

Bank of America Plaza • 17th Floor • 1901 Main Street (29201) • PO Box 1473 • Columbia, SC 29202
Phone (803) 254-2200 • Fax (803) 799-3957 • turnerpadget.com

July 5, 2011
Page 2

CBS/tj

Enclosures

cc: Matthew W. Christian, Esquire
Marion S. Fowler, III, Esquire
Perry D. Boulier, Esquire
W. McElhaney White, Esquire
William C. Barnes, Esquire
Michael I. Bernstein, Esquire
(w/enc.)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court Of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-835 and 836

RECEIVED

JUL 05 2011

SC Court of Appeals

Ann Coleman, Individually, and as Personal Representative of the
Estate of Mary Brinson Respondent,

v.

Mariner Health Care, Inc. f/k/a Mariner Post-Acute Network, LLC,
Mariner Health Care Management Company, Mariner Health
Central, Inc., Mariner Health Group, Inc., MHC Holding
Company, MHC Florida Holding Company, MHC Gulf Coast
Holding Company, MHC MidAmerica Holding Company, MHC
Rocky Mountain Holding Company, MHC Northeast Holding
Company, MHC West Holding Company, MHC Texas Holding
Company, MHC MidAtlantic Holding Company, Living Centers-
Southeast, Inc., GranCare South Carolina, Inc., Individually and
d/b/a Faith Health Care Center, SavaSeniorCare Management,
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SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care,
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Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a
Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an
Individual, Avi Klein, an Individual, SC Property Holdings, LLC,
SC Faith, LLC and John Does 1-26,

of Whom,

Mariner Health Care Management Company, Mariner Health
Central, Inc., GranCare South Carolina, Inc., Individually and d/b/a
Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner
Post-Acute Network, LLC, Mariner Health Group, Inc., MHC
Holding Company, MHC Florida Holding Company, MHC Gulf
Coast Holding Company, MHC MidAmerica Holding Company,

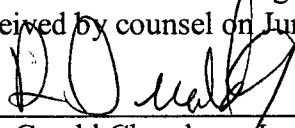
MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, Murray Forman, an Individual, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center are.....Appellants.

NOTICE OF APPEAL

Pursuant to Rules 201 and 203 of the South Carolina Appellate Court Rules, Appellant Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center hereby appeals the following Orders of the Court of Common Pleas:

- 
1. Order Denying Motion to Stay Action and Compel Arbitration (Wrongful Death) dated March 18, 2011, filed March 25, 2011, and received by counsel on March 31, 2011;
 2. Order denying Motion to Stay Action and Compel Arbitration (Survival) dated March 18, 2011, filed March 25, 2011, and received by counsel on March 31, 2011;
 3. Order Denying Motion to Alter or Amend Judgment (Wrongful Death) dated and filed June 6, 2011 and received by counsel on June 10, 2011;
 4. Order Denying Motion to Alter or Amend Judgment (Survival) dated and filed June 6, 2011 and received by counsel on June 10, 2011.

July 5, 2011

By: 

R. Gerald Chambers, Jr.
Carmelo B. Sammataro
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ATTORNEYS FOR APPELLANT PALMETTO
FAITH OPERATING, LLC, INDIVIDUALLY
AND D/B/A FAITH HEALTH CARE CENTER

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court Of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-835 and 836

Ann Coleman, Individually, and as Personal Representative of the
Estate of Mary Brinson Respondent,

v.

Mariner Health Care, Inc. f/k/a Mariner Post-Acute Network, LLC,
Mariner Health Care Management Company, Mariner Health
Central, Inc., Mariner Health Group, Inc., MHC Holding
Company, MHC Florida Holding Company, MHC Gulf Coast
Holding Company, MHC MidAmerica Holding Company, MHC
Rocky Mountain Holding Company, MHC Northeast Holding
Company, MHC West Holding Company, MHC Texas Holding
Company, MHC MidAtlantic Holding Company, Living Centers-
Southeast, Inc., GranCare South Carolina, Inc., Individually and
d/b/a Faith Health Care Center, SavaSeniorCare Management,
LLC, SavaSeniorCare Administrative Services, LLC,
SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care,
Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC,
Individually and d/b/a Faith Health Care Center, Ask Holdings,
LLC, Leonard Grunstein, an Individual, Murray Forman, an
Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a
Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an
Individual, Avi Klein, an Individual, SC Property Holdings, LLC,
SC Faith, LLC and John Does 1-26,

of Whom,

Mariner Health Care Management Company, Mariner Health
Central, Inc., GranCare South Carolina, Inc., Individually and d/b/a
Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner
Post-Acute Network, LLC, Mariner Health Group, Inc., MHC
Holding Company, MHC Florida Holding Company, MHC Gulf
Coast Holding Company, MHC MidAmerica Holding Company,

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SC Court of Appeals

MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, Murray Forman, an Individual, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center are Appellants.

PROOF OF SERVICE

The undersigned certifies that a true and correct copy of Appellant Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center's NOTICE OF APPEAL was served this 5th day of July 2011, via First Class U.S. Mail, upon the following counsel for the parties in interest:

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PALMETTO HEALTHCARE, LLC**

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ATTORNEYS FOR RESPONDENT

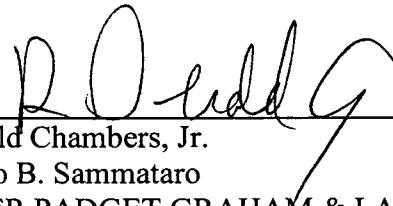
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Spartanburg, SC 29304

**ATTORNEYS FOR DEFENDANT
ABRAHAM SHAULSON**

ATTORNEYS FOR CO-APPELLANTS

(Signature page to follow.)

By:



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Carmelo B. Sammataro

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ATTORNEYS FOR APPELLANT PALMETTO
FAITH OPERATING, LLC, INDIVIDUALLY
AND D/B/A FAITH HEALTH CARE CENTER

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Ann Coleman, Individually, and as
Personal Representative of the Estate of
Mary Brinson,

Plaintiff,

v.

Mariner Health Care, Inc. f/k/a Mariner
Post-Acute Network, LLC, Mariner
Health Care Management Company,
Mariner Health Central, Inc., Mariner
Health Group, Inc., MHC Holding
Company, MHC Florida Holding
Company, MHC Gulf Coast Holding
Company, MHC MidAmerica Holding
Company, MHC Rocky Mountain
Holding Company, MHC Northeast
Holding Company, MHC West Holding
Company, MHC Texas Holding
Company, MHC MidAtlantic Holding
Company, Living Centers-Southeast,
Inc., GranCare South Carolina, Inc.,
Individually and d/b/a Faith Health Care
Center, SavaSeniorCare Management,
LLC, SavaSeniorCare Administrative
Services, LLC, SavaSeniorCare, LLC,
SavaSeniorCare, Inc., National Senior
Care, Inc., Palmetto Health Care, LLC,
Palmetto Faith Operating, LLC,
Individually and d/b/a Faith Health Care
Center, Ask Holdings, LLC, Leonard
Grunstein, an Individual, Murray
Forman, an Individual, Boyd P. Gentry,
an Individual, Abraham Shaulson a/k/a
Abraham Shavlson a/k/a A. Shawson
a/k/a Abraham Shawson, an Individual,
Avi Klein, an Individual, SC Property
Holdings, LLC, SC Faith, LLC, and John
Does 1-26.,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-21-00835

**ORDER DENYING
DEFENDANT PALMETTO FAITH
OPERATING, LLC d/b/a FAITH
HEALTH CARE CENTER'S MOTION
TO ALTER OR AMEND ORDER
(Wrongful Death)**

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SC Court of Appeals

CONNIE REED-SHEARIN
CLERK OF COURT
FLORENCE COUNTY, SC

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FILED

CERTIFIED: A TRUE COPY

Connie Reed-Shearin

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

PROCEDURAL

This matter came before the Court on the motion of Defendant Palmetto Faith Operating, LLC d/b/a Faith Health Care Center and was heard on April 29, 2011. All parties were represented by counsel and provided oral arguments and also submitted written memoranda and exhibits supporting their positions. The Court hereby denies Defendant's Motion to Alter or Amend Order for the reasons set forth below.

BACKGROUND

Mary Brinson, deceased, was admitted to Faith Health Care Center on June 2, 2006 where she remained until September 16, 2006. She was then readmitted to Faith Health Care Center on December 13, 2006 and resided there until December 26, 2006. When Mary Brinson was admitted on June 2, 2006, the licensee was Grancare South Carolina, Inc., and when she was admitted on December 13, 2006, the licensee was Palmetto Faith Operating, LLC.

Ann Coleman is the Personal Representative of the estate of Mary Brinson. Ann Coleman is the sister of Mary Brinson, deceased. When Mary Brinson was admitted to Faith Health Care Center on June 2, 2006 and on December 13, 2006, no one had, held or had been appointed as a Power of Attorney for Mary Brinson. Furthermore, no one had a conservatorship and no one had been appointed guardian for Mary Brinson during these times. Despite the fact that Ann Coleman did not have a Power of Attorney for her sister, Faith Health Care Center had Ann Coleman sign an Arbitration Agreement during the admission process when Mary Brinson was admitted on both occasions. It is from the Arbitration Agreement signed by Ann Coleman on December 13, 2006 which this Defendant seeks to enforce.

DISCUSSION

1. The Federal Arbitration Act (FAA) does not govern the Agreement for Arbitration as the Agreement is void.

This Court has already heard argument and given consideration to the validity of the Arbitration Agreement at issue in this case. This was discussed at length in this Court's previous order which was filed with the Clerk of Court on March 25, 2011. Briefly, it was the finding of this Court that the Agreement for Arbitration is void for multiple reasons, including that not only did Mary Brinson not sign the Agreement, but also that the individual who did sign said Agreement, Ann Coleman, lacked the authority to legally contract on behalf of the resident, Mary Brinson. As evidenced by the medical records and the findings of the physicians at the Defendant's facility, Ms. Brinson not only did not sign the agreement, she also lacked the mental capacity to contract; as such, she also lacked the capacity to appoint or otherwise designate a legal representative or agent to act on her behalf and none had previously been appointed by her.

It is well established that implied authority of an agent must be based on the actions of the principal and not the agent (*Heil-Quaker v. Swindler*, 255 F.Supp. 445 (D.S.C. 1966); *WDI Meredith & Co. v. American Telesis, Inc.*, 359 S.C. 474, 597 S.E.2d 885 (Ct.App. 2004); see also *Dickerson v. Longoria*, 414 Md. 419, 995 A.2d 721 (2009)). As Ms. Brinson lacked the mental capacity to designate an agent, it is also not possible that she could have acted in such a manner that a reasonable person could argue that she demonstrated any intent to have Ms. Coleman act as her agent. As such, Ms. Coleman lacked the legal authority to enter into the Agreement to Arbitrate. Because she lacked the authority to enter into such a contract, the Agreement to Arbitrate is null and void—in

effect, it is as if the Agreement to Arbitrate never existed. If the Agreement to Arbitrate is null and void, then there is no basis for the application of the FAA. Quite simply, the defendant has sought to apply a rule to a contract which does not exist. Such an application is without logic, and for this reason, a discussion of the FAA's applicability was omitted from the previous Order.

2. **While it is the express finding of this Court that the Agreement to Arbitrate is void, even if the FAA were to preempt the voiding of said Agreement, the general nature of this contract for nursing home care does not contemplate interstate commerce.**

The South Carolina Supreme Court, in the matter of *Tims v. Greene*, 310 S.C. 469, 427 S.E.2d 642 (1993), held that a contract between a nursing home and a resident lacked sufficient relationship with interstate commerce to render the Federal Arbitration Act applicable to the controversy. In *Tims* the nursing home facility alleged that it was a division of a Delaware Partnership, marketed its services to persons residing outside the state, hired employees from outside the state, purchased the majority of its goods, equipment, and supplies outside the state, and contemplated payment in part by Medicare and Medicaid—not entirely unlike the Defendant moving herein. In finding that the contractual provision for arbitration did not affect interstate commerce, the South Carolina Supreme Court cited a four prong test for determining the applicability of the FAA, the second and relevant prong of which requires that “the contract evidences a transaction involving commerce.” *Id* at 472. The court then went on to state “[i]n determining whether the contract on its face evidences commerce, we are required to look to the entire contract document.” *Id* at 472. The court held that, in a personal injury action arising out of a nursing home relationship, “the contract for patient-residential service with the Center is obscure, if not devoid, of any basis for holding that commerce

was involved in the transaction between the parties. Interstate commerce is a necessary basis for application of the Federal Act, and a contract or agreement not so predicated must be governed by State Law." *Id* at 472, citing *Shearson Hayden Stone, Inc., v. Liang* 493 F.Supp. 104 (N.D. Ill. 1980) and *Varley v. Terry Town Assoc., Inc.*, 477 F.2d 208 (2d. Cir. 1973).

The *Tims* court went on to note that the Defendant nursing home filed an affidavit alleging that it engaged in interstate commerce in the above-referenced ways. The court found that the relationship of these factors to the arbitration agreement between the nursing home and the resident was insufficient to form the basis of the contract between the parties and therefore the FAA was inapplicable. *Supra* at *Tims v. Greene*, 310 S.C. 469, 427 S.E.2d 642 (1993). As the circumstances surrounding the Defendant in the current case are remarkably similar to those previously contemplated in *Tims*, and as the Defendant has submitted an affidavit that also alleges an engagement in interstate commerce in a same or similar manner as that previously considered by the *Tims* Court, it is the finding of this Court that, while the Agreement for Arbitration is null and void, if it were not, the precedent of *Tims* would apply.

While the Defendant has argued that interstate commerce was affected and that the FAA applies or is controlling, this Defendant's Arbitration Agreement does not contain any language that mentions interstate commerce activities. Even if this contract did state that interstate commerce was affected, this Court finds that an agreement between this South Carolina resident and this South Carolina company for residential services does not contemplate interstate commerce. Furthermore, this Court finds that it was not the holding nor the intent of *Tims* that a facility may simply write into the agreement that interstate commerce is affected so as to satisfy the interstate commerce

requirement. Merely stating in a document that it affects interstate commerce does not make it so. Further, Defendant also argued that *Tims* was no longer good law. This Court finds that *Tims* has not been overturned, therefore this Court recognizes *Tims* as still controlling in this case and rejects the Defendant's argument.

Therefore, this Court finds that interstate commerce is not affected by the arbitration provisions contemplated in this agreement for residential services between this South Carolina resident and this South Carolina company and is not contemplated in the Agreement for Arbitration. As such, it is the finding of this Court that the FAA is inapplicable to the current case.

3. Defendant's Argument that Plaintiff waived her argument as to the Applicability of the FAA is without merit.

Defendant contends that Plaintiff waived her right to argue against the application of the FAA. Defendant cites *Kiawah Property Owners Group v. Public Service Commission of South Carolina*, 359 S.C. 105, 597 S.E.2d 145 (2004), in support of their argument. This reliance is misplaced. Defendant has failed to appreciate that, in *Kiawah*, the party seeking to introduce a new argument was the moving party, not the responding party. In the case at hand, Defendant is the moving party and Plaintiff is responding. Plaintiff is entitled to bring to the Court's attention law controlling the issue at hand for a motion which she is being forced to "defend."

Moreover, as this Court has already discussed herein, Plaintiff has argued in her memoranda, at the original motion hearing, and set forth evidence proving that the Agreement for Arbitration was never valid due to a lack of capacity to contract. Once again, arguing against the application of the FAA to a contract that never existed is illogical; therefore, Defendant's contention that Plaintiff's failed to previously argue

against the application of the FAA was not an omission so much as it was a recognition that the application of an Act that would govern a contract that did not exist was a redundancy that was neither appropriate nor necessary.

CONCLUSION

It is the finding of this Court that the FAA does not apply. As has previously been discussed, Ann Coleman lacked the authority to bind her sister to any contract that would serve as a removal of her rights under the law and the Constitution. While Ms. Coleman may have been the next of kin to Mary Brinson, this in no way authorizes her to enter into legally binding contracts on Brinson's behalf. As such, the Agreement for Arbitration is null and void. Because the Agreement has been deemed void, there is no contract to which the Federal Arbitration Act could be reasonably applied.

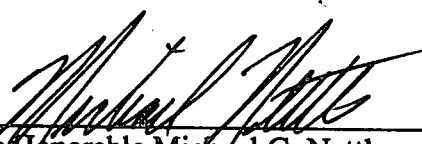
While it has been made abundantly clear that this Court finds the Agreement to Arbitrate to be null and void, if, for the sake of argument, said Agreement were deemed to exist, the precedent set forth by the *Tims* Court would most certainly apply and, again, prevent the application of the FAA to the current action, as the general nature of this contract for nursing home care does not contemplate or affect interstate commerce.

Finally, The Plaintiff's argument against the application of the FAA on the basis of interstate commerce and the precedent of *Tims* is appropriate as she did not waive her right to make said argument. As such, this Court finds Plaintiff's argument not only appropriate, but on point.

Therefore, it is the finding of this Court that the Agreement for Arbitration is null and void; that even if the Agreement for Arbitration were deemed to exist, the application of the FAA to the contract is still inappropriate on the basis of *Tims* ; and that Plaintiff

did not waive argument as to the correct applicable law for the present Motion against her. As such, Defendant's Motion to Alter or Amend Judgment is denied in its entirety.

IT IS SO ORDERED.



The Honorable Michael G. Nettles
Twelfth Circuit of the State of South Carolina

Florence, South Carolina

Date: 6-6-11

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CLERK OF DISTRICT COURT
CCCP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Ann Coleman, Individually, and as
Personal Representative of the Estate of
Mary Brinson,

Plaintiff,

v.

Mariner Health Care, Inc. f/k/a Mariner
Post-Acute Network, LLC, Mariner
Health Care Management Company,
Mariner Health Central, Inc., Mariner
Health Group, Inc., MHC Holding
Company, MHC Florida Holding
Company, MHC Gulf Coast Holding
Company, MHC MidAmerica Holding
Company, MHC Rocky Mountain
Holding Company, MHC Northeast
Holding Company, MHC West Holding
Company, MHC Texas Holding
Company, MHC MidAtlantic Holding
Company, Living Centers-Southeast,
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Services, LLC, SavaSeniorCare, LLC,
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Care, Inc., Palmetto Health Care, LLC,
Palmetto Faith Operating, LLC,
Individually and d/b/a Faith Health Care
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Grunstein, an Individual, Murray
Forman, an Individual, Boyd P. Gentry,
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Abraham Shavlson a/k/a A. Shawson
a/k/a Abraham Shawson, an Individual,
Avi Klein, an Individual, SC Property
Holdings, LLC, SC Faith, LLC, and John
Does 1-26.,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-21-00836

**ORDER DENYING
DEFENDANT PALMETTO FAITH
OPERATING, LLC d/b/a FAITH
HEALTH CARE CENTER'S MOTION
TO ALTER OR AMEND ORDER
(Survival Action)**

RECEIVED
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SC Court of Appeals

FILED
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CORRIGAN, J. SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY

Ann R. Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

PROCEDURAL

This matter came before the Court on the motion of Defendant Palmetto Faith Operating, LLC d/b/a Faith Health Care Center and was heard on April 29, 2011. All parties were represented by counsel and provided oral arguments and also submitted written memoranda and exhibits supporting their positions. The Court hereby denies Defendant's Motion to Alter or Amend Order for the reasons set forth below.

BACKGROUND

Mary Brinson, deceased, was admitted to Faith Health Care Center on June 2, 2006 where she remained until September 16, 2006. She was then readmitted to Faith Health Care Center on December 13, 2006 and resided there until December 26, 2006. When Mary Brinson was admitted on June 2, 2006, the licensee was Grancare South Carolina, Inc., and when she was admitted on December 13, 2006, the licensee was Palmetto Faith Operating, LLC.

Ann Coleman is the Personal Representative of the estate of Mary Brinson. Ann Coleman is the sister of Mary Brinson, deceased. When Mary Brinson was admitted to Faith Health Care Center on June 2, 2006 and on December 13, 2006, no one had, held or had been appointed as a Power of Attorney for Mary Brinson. Furthermore, no one had a conservatorship and no one had been appointed guardian for Mary Brinson during these times. Despite the fact that Ann Coleman did not have a Power of Attorney for her sister, Faith Health Care Center had Ann Coleman sign an Arbitration Agreement during the admission process when Mary Brinson was admitted on both occasions. It is from the Arbitration Agreement signed by Ann Coleman on December 13, 2006 which this Defendant seeks to enforce.

DISCUSSION

1. **The Federal Arbitration Act (FAA) does not govern the Agreement for Arbitration as the Agreement is void.**

This Court has already heard argument and given consideration to the validity of the Arbitration Agreement at issue in this case. This was discussed at length in this Court's previous order which was filed with the Clerk of Court on March 25, 2011. Briefly, it was the finding of this Court that the Agreement for Arbitration is void for multiple reasons, including that not only did Mary Brinson not sign the Agreement, but also that the individual who did sign said Agreement, Ann Coleman, lacked the authority to legally contract on behalf of the resident, Mary Brinson. As evidenced by the medical records and the findings of the physicians at the Defendant's facility, Ms. Brinson not only did not sign the agreement, she also lacked the mental capacity to contract; as such, she also lacked the capacity to appoint or otherwise designate a legal representative or agent to act on her behalf and none had previously been appointed by her.

It is well established that implied authority of an agent must be based on the actions of the principal and not the agent (*Heil-Quaker v. Swindler*, 255 F.Supp. 445 (D.S.C. 1966); *WDI Meredith & Co. v. American Telesis, Inc.*, 359 S.C. 474, 597 S.E.2d 885 (Ct.App. 2004); see also *Dickerson v. Longoria*, 414 Md. 419, 995 A.2d 721 (2009)). As Ms. Brinson lacked the mental capacity to designate an agent, it is also not possible that she could have acted in such a manner that a reasonable person could argue that she demonstrated any intent to have Ms. Coleman act as her agent. As such, Ms. Coleman lacked the legal authority to enter into the Agreement to Arbitrate. Because she lacked the authority to enter into such a contract, the Agreement to Arbitrate is null and void—in

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2. **While it is the express finding of this Court that the Agreement to Arbitrate is void, even if the FAA were to preempt the voiding of said Agreement, the general nature of this contract for nursing home care does not contemplate interstate commerce.**

The South Carolina Supreme Court, in the matter of *Tims v. Greene*, 310 S.C. 469, 427 S.E.2d 642 (1993), held that a contract between a nursing home and a resident lacked sufficient relationship with interstate commerce to render the Federal Arbitration Act applicable to the controversy. In *Tims* the nursing home facility alleged that it was a division of a Delaware Partnership, marketed its services to persons residing outside the state, hired employees from outside the state, purchased the majority of its goods, equipment, and supplies outside the state, and contemplated payment in part by Medicare and Medicaid—not entirely unlike the Defendant moving herein. In finding that the contractual provision for arbitration did not affect interstate commerce, the South Carolina Supreme Court cited a four prong test for determining the applicability of the FAA, the second and relevant prong of which requires that “the contract evidences a transaction involving commerce.” *Id* at 472. The court then went on to state “[i]n determining whether the contract on its face evidences commerce, we are required to look to the entire contract document.” *Id* at 472. The court held that, in a personal injury action arising out of a nursing home relationship, “the contract for patient-residential service with the Center is obscure, if not devoid, of any basis for holding that commerce

was involved in the transaction between the parties. Interstate commerce is a necessary basis for application of the Federal Act, and a contract or agreement not so predicated must be governed by State Law.” *Id* at 472, citing *Shearson Hayden Stone, Inc., v. Liang* 493 F.Supp. 104 (N.D. Ill. 1980) and *Varley v. Terry Town Assoc., Inc.*, 477 F.2d 208 (2d. Cir. 1973).

The *Tims* court went on to note that the Defendant nursing home filed an affidavit alleging that it engaged in interstate commerce in the above-referenced ways. The court found that the relationship of these factors to the arbitration agreement between the nursing home and the resident was insufficient to form the basis of the contract between the parties and therefore the FAA was inapplicable. *Supra* at *Tims v. Greene*, 310 S.C. 469, 427 S.E.2d 642 (1993). As the circumstances surrounding the Defendant in the current case are remarkably similar to those previously contemplated in *Tims*, and as the Defendant has submitted an affidavit that also alleges an engagement in interstate commerce in a same or similar manner as that previously considered by the *Tims* Court, it is the finding of this Court that, while the Agreement for Arbitration is null and void, if it were not, the precedent of *Tims* would apply.

While the Defendant has argued that interstate commerce was affected and that the FAA applies or is controlling, this Defendant’s Arbitration Agreement does not contain any language that mentions interstate commerce activities. Even if this contract did state that interstate commerce was affected, this Court finds that an agreement between this South Carolina resident and this South Carolina company for residential services does not contemplate interstate commerce. Furthermore, this Court finds that it was not the holding nor the intent of *Tims* that a facility may simply write into the agreement that interstate commerce is affected so as to satisfy the interstate commerce

requirement. Merely stating in a document that it affects interstate commerce does not make it so. Further, Defendant also argued that *Tims* was no longer good law. This Court finds that *Tims* has not been overturned, therefore this Court recognizes *Tims* as still controlling in this case and rejects the Defendant's argument.

Therefore, this Court finds that interstate commerce is not affected by the arbitration provisions contemplated in this agreement for residential services between this South Carolina resident and this South Carolina company and is not contemplated in the Agreement for Arbitration. As such, it is the finding of this Court that the FAA is inapplicable to the current case.

3. Defendant's Argument that Plaintiff waived her argument as to the Applicability of the FAA is without merit.

Defendant contends that Plaintiff waived her right to argue against the application of the FAA. Defendant cites *Kiawah Property Owners Group v. Public Service Commission of South Carolina*, 359 S.C. 105, 597 S.E.2d 145 (2004), in support of their argument. This reliance is misplaced. Defendant has failed to appreciate that, in *Kiawah*, the party seeking to introduce a new argument was the moving party, not the responding party. In the case at hand, Defendant is the moving party and Plaintiff is responding. Plaintiff is entitled to bring to the Court's attention law controlling the issue at hand for a motion which she is being forced to "defend."

Moreover, as this Court has already discussed herein, Plaintiff has argued in her memoranda, at the original motion hearing, and set forth evidence proving that the Agreement for Arbitration was never valid due to a lack of capacity to contract. Once again, arguing against the application of the FAA to a contract that never existed is illogical; therefore, Defendant's contention that Plaintiff's failed to previously argue

against the application of the FAA was not an omission so much as it was a recognition that the application of an Act that would govern a contract that did not exist was a redundancy that was neither appropriate nor necessary.

CONCLUSION

It is the finding of this Court that the FAA does not apply. As has previously been discussed, Ann Coleman lacked the authority to bind her sister to any contract that would serve as a removal of her rights under the law and the Constitution. While Ms. Coleman may have been the next of kin to Mary Brinson, this in no way authorizes her to enter into legally binding contracts on Brinson's behalf. As such, the Agreement for Arbitration is null and void. Because the Agreement has been deemed void, there is no contract to which the Federal Arbitration Act could be reasonably applied.

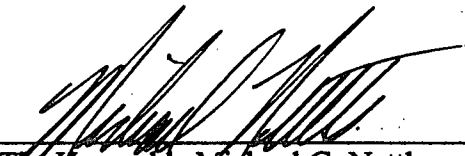
While it has been made abundantly clear that this Court finds the Agreement to Arbitrate to be null and void, if, for the sake of argument, said Agreement were deemed to exist, the precedent set forth by the *Tims* Court would most certainly apply and, again, prevent the application of the FAA to the current action, as the general nature of this contract for nursing home care does not contemplate or affect interstate commerce.

Finally, The Plaintiff's argument against the application of the FAA on the basis of interstate commerce and the precedent of *Tims* is appropriate as she did not waive her right to make said argument. As such, this Court finds Plaintiff's argument not only appropriate, but on point.

Therefore, it is the finding of this Court that the Agreement for Arbitration is null and void; that even if the Agreement for Arbitration were deemed to exist, the application of the FAA to the contract is still inappropriate on the basis of *Tims* ; and that Plaintiff

did not waive argument as to the correct applicable law for the present Motion against her. As such, Defendant's Motion to Alter or Amend Judgment is denied in its entirety.

IT IS SO ORDERED.



The Honorable Michael G. Nettles
Twelfth Circuit of the State of South Carolina

Florence, South Carolina

Date: 6-6-11

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FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Ann Coleman, Individually, and as
Personal Representative of the Estate of
Mary Brinson,

Plaintiff,

v.

Mariner Health Care, Inc. f/k/a Mariner
Post-Acute Network, LLC, Mariner
Health Care Management Company,
Mariner Health Central, Inc., Mariner
Health Group, Inc., MHC Holding
Company, MHC Florida Holding
Company, MHC Gulf Coast Holding
Company, MHC MidAmerica Holding
Company, MHC Rocky Mountain
Holding Company, MHC Northeast
Holding Company, MHC West Holding
Company, MHC Texas Holding
Company, MHC MidAtlantic Holding
Company, Living Centers-Southeast, Inc.,
GranCare South Carolina, Inc.,
Individually and d/b/a Faith Health Care
Center, SavaSeniorCare Management,
LLC, SavaSeniorCare Administrative
Services, LLC, SavaSeniorCare, LLC,
SavaSeniorCare, Inc., National Senior
Care, Inc., Palmetto Health Care, LLC,
Palmetto Faith Operating, LLC,
Individually and d/b/a Faith Health Care
Center, Ask Holdings, LLC, Leonard
Grunstein, an Individual, Murray Forman,
an Individual, Boyd P. Gentry, an
Individual, Abraham Shaulson a/k/a
Abraham Shavlson a/k/a A. Shawson
a/k/a Abraham Shawson, an Individual,
Avi Klein, an Individual, SC Property
Holdings, LLC, SC Faith, LLC, and John
Does 1-26.,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-21-00836

ORDER DENYING
DEFENDANTS PALMETTO
HEALTHCARE, LLC and PALMETTO
FAITH OPERATING d/b/a FAITH
HEALTHCARE CENTER'S MOTION
TO DISMISS AND COMPEL
ARBITRATION, OR
ALTERNATIVELY, TO STAY THE
ACTION PENDING ARBITRATION
(of whom PALMETTO HEALTHCARE,
LLC has withdrawn its motion)
(SURVIVAL ACTION)

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SC Court of Appeals

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CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

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CERTIFIED: A TRUE COPY

Connie Reel-Shearin

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

PROCEDURAL

This matter came before the Court on the motion of Defendants Palmetto Healthcare, LLC and Palmetto Faith Operating, LLC d/b/a Faith Healthcare Center's Motion to Dismiss and Compel Arbitration or, alternatively to Stay Action Pending Arbitration, of whom Defendant Palmetto Healthcare, LLC, withdrew its motion prior to hearing, and was heard on January 6, 2011. All parties were represented by counsel and provided oral arguments and also submitted written memoranda and exhibits supporting their positions. The Court hereby denies Defendant's Motion to Dismiss and Compel Arbitration or, alternatively Stay Action Pending Arbitration for the reasons set forth below.

BACKGROUND

Mary Brinson, deceased, was admitted to Faith Health Care Center on June 2, 2006 where she remained until September 16, 2006. She was then readmitted to Faith Health Care Center on December 13, 2006 and resided there until December 26, 2006. When Mary Brinson was admitted on June 2, 2006, the licensee was Grancare South Carolina, Inc., and when she was admitted on December 13, 2006, the licensee was Palmetto Faith Operating, LLC.

Ann Coleman is the Personal Representative of the estate of Mary Brinson. Ann Coleman is the sister of Mary Brinson, deceased. When Mary Brinson was admitted to Faith Health Care Center on June 2, 2006 and on December 13, 2006, no one had a Power of Attorney for Mary Brinson. Furthermore, at this that no one had a conservatorship and no one had been appointed guardian for Mary Brinson during these times. Despite the fact that Ann Coleman did not have a Power of Attorney for her sister,

Faith Health Care Center requested that Ann Coleman sign an Arbitration Agreement during the admission process when Mary Brinson was admitted on both occasions. It is from the December 13, 2006, Arbitration Agreement which this Defendant seeks to enforce.

DISCUSSION

1. **The Arbitration Agreement is not enforceable because Ann Coleman lacked the capacity to contract on behalf of her sister.**

The Arbitration Agreement is not enforceable because Ann Coleman lacked the capacity to contract on behalf of her sister. South Carolina law recognizes that arbitration agreements are contracts. The interpretation and enforcement of arbitration agreements are scrutinized using contract principles of law. The Defendant's own Admissions Agreement also recognizes that the Arbitration Agreement is a contract. It is a basic tenant of contract law that the parties to the contract must have the capacity to contract.

"The first element of a contract is that the parties have the capacity to contract... Further, capacity to contract relates to the status of the person rather than to circumstances surrounding the contract." (17 C.J.S. Contracts §32). Ann Coleman did not have the authority. Furthermore, Defendant admitted that it was not aware of any Power of Attorney held by Ann Coleman on behalf of Mary Brinson at the time that the Arbitration Agreement was signed (Defendant's Response to Request to Admit 1 and Answer to Interrogatory 32).

Defendant relies upon the South Carolina Adult Health Care Consent Act (S.C. Code Ann. §44-66-10 *et seq*) and the South Carolina Bill of Rights for Residents of Long-Term Care Facilities (S.C. Code Ann. §44-81-10 *et seq*) as granting authority to Ann Coleman to enter into the Arbitration Agreement on behalf of her sister, Mary

Brinson. S.C. Code Ann. §44-66-30 notes that "(A) Where a patient is unable to consent, decisions concerning his health care may be made by the following persons in order of priority:... (6) an adult sibling... of the patient..." S.C. Code Ann. §44-66-20(1) provides the definition of "health care" as meaning "a procedure to diagnose or treat a human disease, ailment, defect, abnormality, or complaint, whether of physical or mental origin. It also includes the provision of intermediate or skilled nursing care; services for the rehabilitation of the injured, disabled, or sick persons; and the placement in or removal from a facility that provides these forms of care." It says nothing that could be construed as conferring the ability to enter into a separate legal document waiving an individual's rights to due process under the law for another individual. Clearly, this act does not confer legal authority to enter into contracts for another person.

It is admitted by all parties that Mary Brinson did not have the capacity to contract for herself. The Defendant admits that Ms. Brinson was incompetent by virtue of its responses to Plaintiff's Requests to Admit in addition to the fact that the medical director at Faith Healthcare Center certified that Ms. Brinson was unable to consent to make her own healthcare decisions.

While the South Carolina Adult Healthcare Consent Act does grant Ms. Coleman the authority to make "healthcare decisions" on behalf of her sister, consent for medical treatment for someone unable to consent is not the same as binding an incompetent person to a legally binding contract such as an arbitration agreement without the authority to do so.

Defendant also relies on S.C. Code Ann. §44-81-10 *et seq* to argue that Ms. Coleman has the legal authority to bind her sister to a contract and waive her sister's

rights under the law. This Court declines to adopt this application of this Act. The Bill of Rights for long-term care facilities sets out the rights given to a long term care resident or resident's representative under the law; however, these rights are, once again, rights concerning the resident's access to healthcare and to be free from abuse and does not purport to grant others authority to enter into contracts for the resident. The Bill does not contemplate the resident's or the resident's representative's rights under the law for the authority or capacity to contract. The Bill defines representative as "a legal guardian, committee, or next of kin or other person acting as agent of a resident who does not have a legally appointed guardian." The fact that the authors of this Bill felt it necessary to note that the resident may not have a guardian appointed under the law affirms their intentions that the Bill was designed to protect an individual's right of access to healthcare whether or not the individual has appointed a representative under the law. The Bill does not allow for an individual without any authority from the resident to be imbued with the legal authority to enter a contract waiving a resident's rights under the law.

The courts in North Carolina have recently decided an issue similar to the one at hand, finding that the authority granted by a state's Health Care Consent Act does not grant legal authority for the purpose of entering binding contracts. *Munn v. Haymount Rehabilitation & Nursing Center, Inc., et. al.*, No. COA 10-105 (NC Ct.App., Filed 21 Dec. 2010). In fact, in *Munn*, the Court specifically notes that "consent for medical care for another person who is unable to consent is a completely different issue than being an agent who has the authority to enter into a contract such as an arbitration agreement."

Therefore, with similar reasoning this Court finds that Ann Coleman did not have actual authority to enter into the Arbitration Agreement on behalf of Mary Brinson.

The Defendant further argued that Ann Coleman acted as Mary Brinson's apparent agent. South Carolina case law on this issue is well established. Defendant argues that an agent's implied authority can be circumstantially provided by evidence and conduct and in doing so, relies *WDI Meredith & Co., v. American Telesis, Inc.*, 359 S.C. 474, 597 S.E.2d 885 (Ct.App. 2004). This reliance is misplaced. *WDI Meredith & Co.* holds that apparent agency is based upon the principal holding the agent out or allowing the agent to hold himself or herself out with the alleged authority. "A principal creates apparent authority as to a third person by the principal's written or spoken words or any other conduct which 'reasonably interpreted causes the third person to believe the principal consents to have the act done on his behalf by the person purporting to act for him'." *Id* at 478 citing *Muller v. Myrtle Beach Golf & Yacht Club*, 303 S.C. 137, 142, 399 S.E.2d 430, 433 (Ct.App.1990) overruled on other grounds by *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868 (2000). Because Mary Brinson was incompetent, she was incapable of granting the power to Ann Coleman and incapable of making a decision to allow Ann Coleman to hold herself out as Mary Brinson's agent. Therefore, Mary Brinson as the principal did never and could never exercise such an intent. If a person does not possess the capacity to make their own healthcare decisions, they would not possess the capacity to convey their rights under the law to another individual. Furthermore, even if such an individual could convey such rights in such circumstances, there is no evidence that Mary Brinson exhibited such an intent.

The Defendant further relies on *WDI Meredith & Co.* for the proposition that “to establish apparent authority, either the principal must intend to cause the third person to believe the agent is authorized to act for him, or he should realize that his conduct is likely to create such belief”. As the court also noted in *WDI Meredith*, “an agency may not, however, be established solely by the declarations and conduct of an alleged agent.” (citing *Muller v. Myrtle Beach Golf & Yacht Club*, 303 S.C. 137, 142-143, 399 S.E.2d at 433 (Ct.App. 1990) overruled on other grounds by *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868 (2000)). An incompetent individual such as Mary Brinson would be unable to possess this intent or realize that any conduct would create such a belief. This Court finds the reasoning of *Munn* to be on point and applicable. Therefore, since Mary Brinson, the principal, was incapable of making any decisions or demonstrating any intentions conveying any authority to Ann Coleman, Ann Coleman did not have the apparent authority to contract or to enter into a binding contractual agreement such as an arbitration agreement on behalf of Mary Brinson.

Furthermore, according to the Defendant’s admissions documents on June 2, 2006, it was aware that Ann Coleman did not have a Power of Attorney. The face sheet from June 2, 2006 the admissions documents as well as other documents indicate that Ann Coleman did not have any other legal oversight, durable power of attorney or healthcare proxy. There does not appear to be such a face sheet for Ms. Brinson’s December 13, 2006 admission; however, the face sheet from the June admission was incorporated as part of the chart for the December admission. The Defendant is a sophisticated corporation that is accustomed to dealing with arbitration provisions and understands the implications of a Power of Attorney. (*Small v. HCF of Perrysburg, Inc.*,

159 Ohio.App.3d 66, 823 N.E.2d 19 at 24 {¶29}). The Defendant cannot reasonably assert that Ann Coleman was the apparent agent of Mary Brinson when it had the knowledge to understand the meaning of a Power of Attorney and the fact that Ann Coleman did not have one. The fact that the Defendant has a form which would allow documentation of some form of authority indicates that it knew that there are certain requirements which must be met before an individual can be imbued with the authority to act as an agent, and further demonstrates that it knew that none of the documents which would give Ann Coleman such authority existed at the time that Mary Brinson was admitted to its facility on June 2, 2006, and that no changes were documented since that June admission..

Therefore, Ann Coleman had neither actual nor apparent authority to act on behalf of Mary Brinson and sign away her right to a jury trial by entering into an arbitration agreement. As a result, the arbitration agreement is null and void because Ann Coleman lacked the capacity and authority to ever execute it on behalf of Mary Brinson.

2. The Arbitration Agreement is not enforceable against the statutory beneficiaries.

The agreement to arbitrate explicitly specifies that “[t]his agreement is made between Faith Healthcare Center (“Facility”) and Mary Brinson (“Resident” or “Resident’s Authorized Representative”)...” The agreement clearly allowed for the application of the agreement to extend to a resident’s representative and recognized that such a representative would need some form of authorization. Ann Coleman’s exclusion from this agreement demonstrates the Defendant’s knowledge of her lack of authority. Yet, even if she had such authority, the current actions contemplate both a wrongful death and a survival action. While the Court finds independently that Ann Coleman lacked the

authority to enter into the contract on behalf of Mary Brinson and is therefore null and void, the Court also finds that the arbitration agreement cannot be enforced because it cannot apply to statutory beneficiaries who are not parties to the agreement. This principal has been specifically upheld in other jurisdictions. (*Woodall v. Avalon Care Center-Federal Way, LLC*, 155 Wash.App. 919, 231 P.3d 1252 (2010). *Small v. HCF of Perrysburg, Inc.*, 159 Ohio.App.3d 66, 823 N.E.2d 19).

While Ann Coleman did not have the authority to waive the rights of Mary Brinson, even if she did, she did not have the authority to waive the rights of the statutory beneficiaries under the arbitration agreement at hand. South Carolina law is clear that a wrongful death claim exists for the statutory beneficiaries. Because the statutory beneficiaries are not parties to the contract, and because the statutory beneficiaries have not conveyed any power to the signatory of the agreement, their claims could not be waived and any attempt to apply the agreement to them would be null and void.

3. The Arbitration Agreement is procedurally and substantively unconscionable and impossible to enforce.

The Defendant acted in a manner inconsistent with its own policies and procedures. The facility policy in effect at the time of Mary Brinson's admission clearly required that a member of the admissions staff explain the admissions and financial documents to the person signing them. This includes the Arbitration Agreement at issue here. Specifically, its policy states its purpose as intended to "[p]rovide an informative environment that should reduce the fears and anxieties of the resident and family during the admission process" and requires that "the Admissions staff will explain and offer an Arbitration Agreement to the resident or responsible party" [emphasis added]. On the basis of the Affidavit of Ann Coleman and the admission of the Defendant that the

Arbitration Agreement was presented as part of a larger admissions package, the Court finds that these documents were not explained to Ms. Coleman, nor was it made clear to her that the Arbitration Agreement was voluntary and not a requirement for Mary Brinson's admission to the facility.

Additionally, it is the finding of this Court that, even were the Arbitration Agreement valid, it cannot be construed to apply to all claims at issue in the case at hand. An Arbitration Agreement, or any contract, for that matter, applies only to claims arising which would be made by someone standing in the shoes of the contractor, in this case, Mary Brinson, and cannot be construed so as to apply to those claims which may be brought on behalf of others with standing to a claim. Claims that have been made on behalf of Ann Coleman and other statutory beneficiaries of Mary Brinson's estate are not and were not parties to the Arbitration Agreement and cannot retroactively be joined to the contract.

Moreover, not all of the Defendants to this case have moved for arbitration—specifically, there are five defendants to the case at hand who are not currently seeking to enforce arbitration. In fact, one of these defendants, Palmetto Health Care, LLC, had previously moved for enforcement and has subsequently withdrawn its petition. Parties who are not seeking arbitration cannot be forced to arbitrate a matter any more than individuals who are not party to the agreement can. As a result, this Court is faced with the possibility that, if the Arbitration Agreement is deemed valid, portions of the claim along with some of the parties would be subject to arbitration while other portions of the claims and different parties to this action would be subject to trial by jury. Should this be

allowed, the very real possibility of conflicting rulings on common issues of law and fact may result.

Instructive on this issue is the matter of *Birl v. Heritage Healthcare, LLC*, 172 Cal.App.4th 1313, 91 Cal.Rptr.3d 777. In *Birl* a case was brought by the family of a deceased patient against a hospital, physicians, and a nursing facility and the nursing facility sought to compel arbitration. Of relevance, the Court here noted that “(1) the hospital and physicians with no arbitration agreement were involved in the same transaction as the nursing facility; (2) all defendants were involved in a series of related transactions with the patient; (3) there was a possibility of conflicting rulings on common issues of law or fact; and (4) patient’s family members were third parties to the patient’s arbitration agreement.” In its ruling denying the nursing facility’s motion to compel arbitration, California’s Appellate Court noted that “the trial court properly noted the possibility of conflicting rulings on common issues of law or fact if defendant Heritage was not jointed to the court action with the other defendants... Different triers of fact in different proceedings could come to different conclusions...” *Id.* at 1321.

The Court in *Birl* also took note that the Plaintiffs in that action asserted claims “not just as successors in interest, but also individually and as surviving heirs.” (*Id.* at 1321), just as Ms. Coleman has done in the cases at issue now, and that such claims for “wrongful death and emotional distress were brought by plaintiffs in their individual capacities” and not as persons who had stepped into the shoes of the decedent. It was the conclusion of the *Birl* Court that the possibility of conflicting rulings on a common issue of law or fact was real and that “different triers of fact could reach different conclusions as to which party was at fault, the cause of any injuries, and the apportionment of

liability—unless all the parties are joined to one action” (*Id.* at 1322). Based on such finding, the Court determined that it was proper to deny the nursing facility’s motion to compel arbitration.

While the circumstances of the current actions differ slightly from those of *Birl*, it remains consistent that compelling arbitration of certain claims but not of others and compelling arbitration with respect to some defendants but not others will result in the conflicting rulings as contemplated in *Birl*. Furthermore, such a division of the cases would result in an unreasonable hardship for Plaintiff, as she and the other statutory beneficiaries of Ms. Brinson’s estate would be effectively forced to litigate claims arising from the same or related events in two separate forums. Therefore, to uphold the Arbitration Agreement would not only pose a potential impossibility, it is also unreasonable and unconscionable to force a Plaintiff to prosecute her claims in such a fashion, especially when this issue was not explained to her. Our Courts have also discussed and recognized that it is proper to deny Arbitration Agreements with the impossibility of enforcement. (*Grant v. Magnolia Manor-Greenwood, Inc.*, 383 S.C. 125, 678 S.E.2d 435 (S.C. 2009)). Therefore, based upon the above reasons, the Court finds the Arbitration Agreement to be impossible to enforce and unconscionable.

4. The Defendant’s delay has effectively nullified the agreement and waived any right the Defendant may have had to force Arbitration.

The Plaintiff’s Notice of Intent was filed in July of 2009, providing the Defendant with notice of impending litigation. The Notice of Intent stage took a usual course and, in fact, was extended beyond the normal time frame due to the substantial number of defendants in the case. The parties completed the required pre-suit mediation in January of 2010 which was unsuccessful in reaching a resolution. The Plaintiff filed the

Summons and Complaint in March of 2010. Defendant filed its Answer on May 19, 2010, and it was at this time that Plaintiff was provided with the first notice of the existence of an Arbitration Agreement and the Defendant's allegation that the issues and incidents addressed by Plaintiff's Complaint were governed by said Arbitration Agreement, and then only by virtue of one of Defendant's affirmative defenses. Even in light of said notice, Defendant did not move to seek enforcement of the Arbitration Agreement until August of 2010, more than a year after they had been first placed on notice of pending litigation and had been served with the Notice of Intent to Sue. This was also well after Plaintiff had served Discovery.

The Courts in South Carolina have long recognized the act of abandonment as a valid basis for an exception to a contract's enforceability:

Generally, no-damage-for-delay provisions are valid and enforceable so long as they meet ordinary rules governing the validity of contracts. *See Annot., Validity and Construction of "No Damage Clause" with Respect to Delay in Building or Construction Contract*, 74 A.L.R.3d 187 §2[a] (1976). A certain majority of jurisdictions, however, recognize certain exceptions to such clauses. *Id.* Among the recognized exceptions are (a) delay caused by fraud, misrepresentation, or other bad faith... (c) delay which has extended such an unreasonable length of time that the party delayed would have been justified in abandoning the contract... *U.S. f/w/b/a Williams Electric Company, Inc. v. Metric Constructors, Inc.* 325 S.C. 129, 480 S.E.2d 447 (1997).

The contract at issue here is, of course, the Arbitration Agreement. First, the Agreement does not contain a "no-damage-for-delay" provision, and, as such, had Defendant intended to rely upon the Agreement, it should have acted promptly upon the first notice of a civil action. Secondly, and being generous to the Defendant, it waited a full nine months after Plaintiff's first filings to make any mention of an Arbitration

Agreement and an additional three months more before moving to enforce said Agreement.

“[I]n South Carolina, there exists in every contract an implied obligation of good faith and fair dealing.” *Id.* citing *Adams v. Creel*, 320 S.C. 274, 465 S.E.2d 84 (1995); *Parker v. Byrd*, 309 S.C. 189, 420 S.E.2d 850 (1992); *Tharpe v. G.E. Moore*, 254 S.C. 196, 174 S.E.2d 397 (1970). Continuing, “A number of courts recognize an exception to a no-damage clause where delays are so unreasonable in length or duration that they amount to an abandonment of the contract...” *U.S. f/w/b/a Williams Electric* at 134-135 citing 74 *A.L.R.3d* at 226-230 §7(i). “An abandonment need not be express but may be inferred from the conduct of the parties and attendant circumstances.” *Quality Concrete Products, Inc. v. Thomason*, 253 S.C. 579, 172 S.E.2d 297 (1970). “Abandonment of a contract by one party is the giving up of the right of benefit due from the other party.” *Ro-Lo Enterprises v. Hicks Enterprises*, 294 S.C. 111, 362 S.E.2d 888 (Ct.App.1987). “As with the above mentioned exceptions, an abandonment of the contract involves a breach of the implied obligation of good faith and fair dealing. Accordingly, we adopt this exception and find that if a party abandons the contract, they also abandon their right to rely on a no damage for delay clause.” *U.S. f/w/b/a Williams Electric* at 135. Likewise, South Carolina Courts have previously considered and found that significant delay is tantamount to abandonment and constitutes a sufficient basis to support a finding of abandonment with respect to an arbitration agreement. (See also *Evans v. Accent Manufactured Homes, Inc.*, 352 S.C. 544, 575 S.E.2d 74 (S.C.App.2003), *Deloitte & Touche, LLP v. Unisys Corp*, 358 S.C. 179, 594 S.E.2d 523).

As previously discussed, the Arbitration Agreement the Defendant now seeks to enforce does not contain a no-damage-for delay clause, which makes the performance under the Agreement an even more time-sensitive issue. The Defendant delayed almost a year before moving for the enforcement of the Agreement. During the entire length of its delay, it conducted itself in a manner consistent with a party that intended to proceed with litigation through the confines of the judicial process. It is the ruling of this Court that, the Defendant, through its actions and delay, abandoned any rights it may have been afforded to force this matter to arbitration. To allow the Defendant to now insist on adherence to the Arbitration Agreement which was the subject of the Motion before this Court, not only amounts to an unconscionable act, but is also in disagreement with established precedent—precedent that finds contracts far more lenient on the issue of delay than the one at hand to have been abandoned in the face of acts such as those displayed by the Defendant here.

5. The Defendant's argument that Mary Brinson was a third party beneficiary to the contract is illogical and premised on the rights of Ann Coleman as signatory, which said rights do not exist.

Defendant has sought to argue that Mary Brinson was the third party beneficiary to the Admissions and Arbitration Agreements. While this Court concedes that it was Ms. Brinson's admission into Faith Healthcare Center that was contemplated by the Admissions Agreement, the Defendant's extension of this argument that seeks to cast Ms. Brinson as a third party beneficiary of said agreements is misplaced as it assumes that Ann Coleman had the right to contract on behalf of Ms. Brinson. As this Court has already discussed at length, while Ann Coleman did have the right under the Adult Health Care Consent Act to consent to medical treatment, she did not have the right to

commit her sister to a legally binding contract that agreed to the removal of Ms.

Brinson's rights under the law. Because Ann Coleman did not have the right to contract on behalf of her sister, Mary Brinson cannot possibly be a third party beneficiary as the contract itself was never valid.

6. **The Defendant's argument that Plaintiff should be equitably estopped from denying the existence of an enforceable Arbitration Agreement is rejected.**

As with the argument concerning the third party beneficiary status of Mary Brinson, the Court finds that the Defendant's argument with respect to the Arbitration Agreement and estoppel of the Plaintiff is, once again, misguided and assumes a premise which this Court has previously rejected.

The principle of estoppel in equity stands on the very foundation of right and fair dealing. It considers and weighs the conduct of men in their dealings with each other and gives that effect and meanings to their actions which common sense and justice dictate. The essential elements of equitable estoppel are ignorance of the party invoking the estoppel of the truth as to the facts in question and a misrepresentation or deceptive conduct of the party against whom estoppel is sought to be applied, which in fact misleads the person asserting the estoppel to rely on the misrepresentation or conduct to change his position prejudicially as a result of the reliance. *SCJur* "Estoppel" §4.

The Defendant's estoppel argument is not only misguided, it misses the true nature of estoppel. As this Court has previously discussed, it was Faith Healthcare Center's failure to explain the Arbitration Agreement in accordance with the Defendant's policies and procedures coupled with the manner in which the Arbitration Agreement was presented to Ann Coleman that caused and contributed to Ms. Coleman not understanding the true nature of the document she was signing. The unconscionability of this process as described hereinabove serves as an additional sustaining ground for the

finding that the Arbitration Agreement is not valid. The Defendant could not reasonably rely on the contract/agreement when they knew that Ann Coleman lacked the authority to enter into such a contract/agreement. The Defendant is assuming that it is the representation of the agent and not the principal that is the determinant of apparent authority and an establishment of agency when, as this Court has already discussed, it is the actions of the principal. As such, this Court rejects the Defendant's argument for equitable estoppel.

Furthermore, the Defendant has argued that Plaintiff cannot deny the validity of the Arbitration Agreement yet rely on the Admissions Agreement in alleging that the Defendant's were in breach of contract with respect to their contractual obligation to provide appropriate medical care to Mary Brinson. It is the Defendant's contention that the Arbitration Agreement is part of the Admissions Agreement and, as such, a denial of the validity of the Arbitration Agreement also negates the Admissions Agreement, thus precluding any claim by the Plaintiff for breach of Contract. The errors in this argument have already been discussed. The Defendant again assumes that the Arbitration Agreement and Admissions Agreement are on the same footing. As this Court has stated before, they are not. An agreement concerning the provision of health care is a far different matter than an agreement to waive legal and constitutional rights. As such, the Defendant's argument concerning estoppel is rejected.

CONCLUSION

This Court declines to enforce the Arbitration Agreement. Ann Coleman lacked the authority to bind her sister to any contract which removed her rights under the law and the Constitution. That she has the statutory authority to assist in making healthcare

decisions regarding the treatment and care on behalf of her sister is irrelevant to the determination of whether she had the authority to contract on behalf of her sister in a separate legal document. The determination of agency is made based upon the principal and not the agent, and the Defendant's own documents demonstrate that they were aware that Mary Brinson was incapable of demonstrating any such intention or making any such representation. The Defendant cannot now reasonably argue that they thought Ms. Coleman had "apparent" authority, as they were aware of the legal requirements governing arbitration agreements.

Likewise, the Arbitration Agreement does not apply to all parties to this suit as it governs neither the claims brought on behalf of Mary Brinson's statutory beneficiaries, nor a portion of the Defendants who have not sought to force arbitration. Such circumstances give rise to the possibility of conflicting findings based on the same facts depending on the forum in which the issues are heard. These circumstances render the Arbitration Agreement unconscionable and impossible. Adding to the Agreement's unconscionability is Faith Healthcare Center's failure to adequately and appropriately inform Ms. Coleman as to the nature of the document she was signing. She was not advised of the meaning of the Arbitration Agreement, nor was she advised that her signature on said Agreement was voluntary and that a refusal to sign would have no affect on her sister's admission to the facility.

The Arbitration Agreement was further abandoned by the Defendant through its delay. The Defendant proceeded to engage in the litigation process with Plaintiff, allowing this case to move forward for more than a year after the filing of the Notice of Intent before it sought any enforcement of the Arbitration Agreement. South Carolina

precedent is clear that, had the Defendant intended to seek enforcement of the Agreement, it should have done so at the outset of this matter, not more than a year after its genesis.

Finally, it is the belief of this Court that the Defendant's arguments concerning the third party beneficiary status of Mary Brinson and the argument concerning equitable estoppel are misguided and premised on "facts" which this Court has determined are false. As such, this Court rejects the Defendant's arguments on these issues.

Therefore, it is the finding of this Court that the Plaintiff did not have the legal authority to execute the Arbitration Agreement on behalf of her sister, the Arbitration Agreement does not apply to all parties to this suit, giving rise to the possibility of divergent outcomes premised on the same facts; that the Arbitration Agreement itself is impossible and unconscionable; and that the Defendant abandoned the Agreement through its delay in seeking its enforcement. As such, Defendant's Motion to Dismiss and Compel Arbitration, or Alternatively, to Stay the Action Pending Arbitration is denied in its entirety.

IT IS SO ORDERED.


The Honorable Michael G. Nettles
Twelfth Circuit of the State of South Carolina

Florence, South Carolina
Date: 3-18-11

CONNIE REEL-SHEARIN
CCCP 8835
FLORENCE COUNTY, SC

2011 MAR 25 PM 3:58

FILED

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

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IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-21-00835

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HEALTHCARE CENTER'S MOTION
TO DISMISS AND COMPEL
ARBITRATION, OR
ALTERNATIVELY, TO STAY THE
ACTION PENDING ARBITRATION
(of whom PALMETTO HEALTHCARE,
LLC has withdrawn its motion)
(WRONGFUL DEATH ACTION)**

RECEIVED

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SC Court of Appeals

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CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

FILED

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Connie Reel Shearin

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

PROCEDURAL

This matter came before the Court on the motion of Defendants Palmetto Healthcare, LLC and Palmetto Faith Operating, LLC d/b/a Faith Healthcare Center's Motion to Dismiss and Compel Arbitration or, alternatively to Stay Action Pending Arbitration, of whom Defendant Palmetto Healthcare, LLC, withdrew its motion prior to hearing, and was heard on January 6, 2011. All parties were represented by counsel and provided oral arguments and also submitted written memoranda and exhibits supporting their positions. The Court hereby denies Defendant's Motion to Dismiss and Compel Arbitration or, alternatively Stay Action Pending Arbitration for the reasons set forth below.

BACKGROUND

Mary Brinson, deceased, was admitted to Faith Health Care Center on June 2, 2006 where she remained until September 16, 2006. She was then readmitted to Faith Health Care Center on December 13, 2006 and resided there until December 26, 2006. When Mary Brinson was admitted on June 2, 2006, the licensee was Grancare South Carolina, Inc., and when she was admitted on December 13, 2006, the licensee was Palmetto Faith Operating, LLC.

Ann Coleman is the Personal Representative of the estate of Mary Brinson. Ann Coleman is the sister of Mary Brinson, deceased. When Mary Brinson was admitted to Faith Health Care Center on June 2, 2006 and on December 13, 2006, no one had a Power of Attorney for Mary Brinson. Furthermore, at this that no one had a conservatorship and no one had been appointed guardian for Mary Brinson during these times. Despite the fact that Ann Coleman did not have a Power of Attorney for her sister,

Faith Health Care Center requested that Ann Coleman sign an Arbitration Agreement during the admission process when Mary Brinson was admitted on both occasions. It is from the December 13, 2006, Arbitration Agreement which this Defendant seeks to enforce.

DISCUSSION

- 1. The Arbitration Agreement is not enforceable because Ann Coleman lacked the capacity to contract on behalf of her sister.**

The Arbitration Agreement is not enforceable because Ann Coleman lacked the capacity to contract on behalf of her sister. South Carolina law recognizes that arbitration agreements are contracts. The interpretation and enforcement of arbitration agreements are scrutinized using contract principles of law. The Defendant's own Admissions Agreement also recognizes that the Arbitration Agreement is a contract. It is a basic tenant of contract law that the parties to the contract must have the capacity to contract.

"The first element of a contract is that the parties have the capacity to contract... Further, capacity to contract relates to the status of the person rather than to circumstances surrounding the contract." (17 C.J.S. Contracts §32). Ann Coleman did not have the authority. Furthermore, Defendant admitted that it was not aware of any Power of Attorney held by Ann Coleman on behalf of Mary Brinson at the time that the Arbitration Agreement was signed (Defendant's Response to Request to Admit 1 and Answer to Interrogatory 32).

Defendant relies upon the South Carolina Adult Health Care Consent Act (S.C. Code Ann. §44-66-10 *et seq*) and the South Carolina Bill of Rights for Residents of Long-Term Care Facilities (S.C. Code Ann. §44-81-10 *et seq*) as granting authority to Ann Coleman to enter into the Arbitration Agreement on behalf of her sister, Mary

Brinson. S.C. Code Ann. §44-66-30 notes that "(A) Where a patient is unable to consent, decisions concerning his health care may be made by the following persons in order of priority:... (6) an adult sibling... of the patient..." S.C. Code Ann. §44-66-20(1) provides the definition of "health care" as meaning "a procedure to diagnose or treat a human disease, ailment, defect, abnormality, or complaint, whether of physical or mental origin. It also includes the provision of intermediate or skilled nursing care; services for the rehabilitation of the injured, disabled, or sick persons; and the placement in or removal from a facility that provides these forms of care." It says nothing that could be construed as conferring the ability to enter into a separate legal document waiving an individual's rights to due process under the law for another individual. Clearly, this act does not confer legal authority to enter into contracts for another person.

It is admitted by all parties that Mary Brinson did not have the capacity to contract for herself. The Defendant admits that Ms. Brinson was incompetent by virtue of its responses to Plaintiff's Requests to Admit in addition to the fact that the medical director at Faith Healthcare Center certified that Ms. Brinson was unable to consent to make her own healthcare decisions.

While the South Carolina Adult Healthcare Consent Act does grant Ms. Coleman the authority to make "healthcare decisions" on behalf of her sister, consent for medical treatment for someone unable to consent is not the same as binding an incompetent person to a legally binding contract such as an arbitration agreement without the authority to do so.

Defendant also relies on S.C. Code Ann. §44-81-10 *et seq* to argue that Ms. Coleman has the legal authority to bind her sister to a contract and waive her sister's

rights under the law. This Court declines to adopt this application of this Act. The Bill of Rights for long-term care facilities sets out the rights given to a long term care resident or resident's representative under the law; however, these rights are, once again, rights concerning the resident's access to healthcare and to be free from abuse and does not purport to grant others authority to enter into contracts for the resident. The Bill does not contemplate the resident's or the resident's representative's rights under the law for the authority or capacity to contract. The Bill defines representative as "a legal guardian, committee, or next of kin or other person acting as agent of a resident who does not have a legally appointed guardian." The fact that the authors of this Bill felt it necessary to note that the resident may not have a guardian appointed under the law affirms their intentions that the Bill was designed to protect an individual's right of access to healthcare whether or not the individual has appointed a representative under the law. The Bill does not allow for an individual without any authority from the resident to be imbued with the legal authority to enter a contract waiving a resident's rights under the law.

The courts in North Carolina have recently decided an issue similar to the one at hand, finding that the authority granted by a state's Health Care Consent Act does not grant legal authority for the purpose of entering binding contracts. *Munn v. Haymount Rehabilitation & Nursing Center, Inc., et. al.*, No. COA 10-105 (NC Ct.App., Filed 21 Dec. 2010). In fact, in *Munn*, the Court specifically notes that "consent for medical care for another person who is unable to consent is a completely different issue than being an agent who has the authority to enter into a contract such as an arbitration agreement."

Therefore, with similar reasoning this Court finds that Ann Coleman did not have actual authority to enter into the Arbitration Agreement on behalf of Mary Brinson.

The Defendant further argued that Ann Coleman acted as Mary Brinson's apparent agent. South Carolina case law on this issue is well established. Defendant argues that an agent's implied authority can be circumstantially provided by evidence and conduct and in doing so, relies *WDI Meredith & Co., v. American Telesis, Inc.*, 359 S.C. 474, 597 S.E.2d 885 (Ct.App. 2004). This reliance is misplaced. *WDI Meredith & Co.* holds that apparent agency is based upon the principal holding the agent out or allowing the agent to hold himself or herself out with the alleged authority. "A principal creates apparent authority as to a third person by the principal's written or spoken words or any other conduct which 'reasonably interpreted causes the third person to believe the principal consents to have the act done on his behalf by the person purporting to act for him'." *Id* at 478 citing *Muller v. Myrtle Beach Golf & Yacht Club*, 303 S.C. 137, 142, 399 S.E.2d 430, 433 (Ct.App.1990) overruled on other grounds by *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868 (2000). Because Mary Brinson was incompetent, she was incapable of granting the power to Ann Coleman and incapable of making a decision to allow Ann Coleman to hold herself out as Mary Brinson's agent. Therefore, Mary Brinson as the principal did never and could never exercise such an intent. If a person does not possess the capacity to make their own healthcare decisions, they would not possess the capacity to convey their rights under the law to another individual. Furthermore, even if such an individual could convey such rights in such circumstances, there is no evidence that Mary Brinson exhibited such an intent.

The Defendant further relies on *WDI Meredith & Co.* for the proposition that “to establish apparent authority, either the principal must intend to cause the third person to believe the agent is authorized to act for him, or he should realize that his conduct is likely to create such belief”. As the court also noted in *WDI Meredith*, “an agency may not, however, be established solely by the declarations and conduct of an alleged agent.” (citing *Muller v. Myrtle Beach Golf & Yacht Club*, 303 S.C. 137, 142-143, 399 S.E.2d at 433 (Ct.App. 1990) overruled on other grounds by *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868 (2000)). An incompetent individual such as Mary Brinson would be unable to possess this intent or realize that any conduct would create such a belief. This Court finds the reasoning of *Munn* to be on point and applicable. Therefore, since Mary Brinson, the principal, was incapable of making any decisions or demonstrating any intentions conveying any authority to Ann Coleman, Ann Coleman did not have the apparent authority to contract or to enter into a binding contractual agreement such as an arbitration agreement on behalf of Mary Brinson.

Furthermore, according to the Defendant’s admissions documents on June 2, 2006, it was aware that Ann Coleman did not have a Power of Attorney. The face sheet from June 2, 2006 the admissions documents as well as other documents indicate that Ann Coleman did not have any other legal oversight, durable power of attorney or healthcare proxy. There does not appear to be such a face sheet for Ms. Brinson’s December 13, 2006 admission; however, the face sheet from the June admission was incorporated as part of the chart for the December admission. The Defendant is a sophisticated corporation that is accustomed to dealing with arbitration provisions and understands the implications of a Power of Attorney. (*Small v. HCF of Perrysburg, Inc.*,

159 Ohio.App.3d 66, 823 N.E.2d 19 at 24 {¶29}). The Defendant cannot reasonably assert that Ann Coleman was the apparent agent of Mary Brinson when it had the knowledge to understand the meaning of a Power of Attorney and the fact that Ann Coleman did not have one. The fact that the Defendant has a form which would allow documentation of some form of authority indicates that it knew that there are certain requirements which must be met before an individual can be imbued with the authority to act as an agent, and further demonstrates that it knew that none of the documents which would give Ann Coleman such authority existed at the time that Mary Brinson was admitted to its facility on June 2, 2006, and that no changes were documented since that June admission..

Therefore, Ann Coleman had neither actual nor apparent authority to act on behalf of Mary Brinson and sign away her right to a jury trial by entering into an arbitration agreement. As a result, the arbitration agreement is null and void because Ann Coleman lacked the capacity and authority to ever execute it on behalf of Mary Brinson.

2. The Arbitration Agreement is not enforceable against the statutory beneficiaries.

The agreement to arbitrate explicitly specifies that “[t]his agreement is made between Faith Healthcare Center (“Facility”) and Mary Brinson (“Resident” or “Resident’s Authorized Representative”)...” The agreement clearly allowed for the application of the agreement to extend to a resident’s representative and recognized that such a representative would need some form of authorization. Ann Coleman’s exclusion from this agreement demonstrates the Defendant’s knowledge of her lack of authority. Yet, even if she had such authority, the current actions contemplate both a wrongful death and a survival action. While the Court finds independently that Ann Coleman lacked the

authority to enter into the contract on behalf of Mary Brinson and is therefore null and void, the Court also finds that the arbitration agreement cannot be enforced because it cannot apply to statutory beneficiaries who are not parties to the agreement. This principal has been specifically upheld in other jurisdictions. (*Woodall v. Avalon Care Center-Federal Way, LLC*, 155 Wash.App. 919, 231 P.3d 1252 (2010). *Small v. HCF of Perrysburg, Inc.*, 159 Ohio.App.3d 66, 823 N.E.2d 19).

While Ann Coleman did not have the authority to waive the rights of Mary Brinson, even if she did, she did not have the authority to waive the rights of the statutory beneficiaries under the arbitration agreement at hand. South Carolina law is clear that a wrongful death claim exists for the statutory beneficiaries. Because the statutory beneficiaries are not parties to the contract, and because the statutory beneficiaries have not conveyed any power to the signatory of the agreement, their claims could not be waived and any attempt to apply the agreement to them would be null and void.

3. The Arbitration Agreement is procedurally and substantively unconscionable and impossible to enforce.

The Defendant acted in a manner inconsistent with its own policies and procedures. The facility policy in effect at the time of Mary Brinson's admission clearly required that a member of the admissions staff explain the admissions and financial documents to the person signing them. This includes the Arbitration Agreement at issue here. Specifically, its policy states its purpose as intended to "[p]rovide an informative environment that should reduce the fears and anxieties of the resident and family during the admission process" and requires that "the Admissions staff will explain and offer an Arbitration Agreement to the resident or responsible party" [emphasis added]. On the basis of the Affidavit of Ann Coleman and the admission of the Defendant that the

Arbitration Agreement was presented as part of a larger admissions package, the Court finds that these documents were not explained to Ms. Coleman, nor was it made clear to her that the Arbitration Agreement was voluntary and not a requirement for Mary Brinson's admission to the facility.

Additionally, it is the finding of this Court that, even were the Arbitration Agreement valid, it cannot be construed to apply to all claims at issue in the case at hand. An Arbitration Agreement, or any contract, for that matter, applies only to claims arising which would be made by someone standing in the shoes of the contractor, in this case, Mary Brinson, and cannot be construed so as to apply to those claims which may be brought on behalf of others with standing to a claim. Claims that have been made on behalf of Ann Coleman and other statutory beneficiaries of Mary Brinson's estate are not and were not parties to the Arbitration Agreement and cannot retroactively be joined to the contract.

Moreover, not all of the Defendants to this case have moved for arbitration—specifically, there are five defendants to the case at hand who are not currently seeking to enforce arbitration. In fact, one of these defendants, Palmetto Health Care, LLC, had previously moved for enforcement and has subsequently withdrawn its petition. Parties who are not seeking arbitration cannot be forced to arbitrate a matter any more than individuals who are not party to the agreement can. As a result, this Court is faced with the possibility that, if the Arbitration Agreement is deemed valid, portions of the claim along with some of the parties would be subject to arbitration while other portions of the claims and different parties to this action would be subject to trial by jury. Should this be

allowed, the very real possibility of conflicting rulings on common issues of law and fact may result.

Instructive on this issue is the matter of *Birl v. Heritage Healthcare, LLC*, 172 Cal.App.4th 1313, 91 Cal.Rptr.3d 777. In *Birl* a case was brought by the family of a deceased patient against a hospital, physicians, and a nursing facility and the nursing facility sought to compel arbitration. Of relevance, the Court here noted that “(1) the hospital and physicians with no arbitration agreement were involved in the same transaction as the nursing facility; (2) all defendants were involved in a series of related transactions with the patient; (3) there was a possibility of conflicting rulings on common issues of law or fact; and (4) patient’s family members were third parties to the patient’s arbitration agreement.” In its ruling denying the nursing facility’s motion to compel arbitration, California’s Appellate Court noted that “the trial court properly noted the possibility of conflicting rulings on common issues of law or fact if defendant Heritage was not jointed to the court action with the other defendants... Different triers of fact in different proceedings could come to different conclusions...” *Id.* at 1321.

The Court in *Birl* also took note that the Plaintiffs in that action asserted claims “not just as successors in interest, but also individually and as surviving heirs.” (*Id.* at 1321), just as Ms. Coleman has done in the cases at issue now, and that such claims for “wrongful death and emotional distress were brought by plaintiffs in their individual capacities” and not as persons who had stepped into the shoes of the decedent. It was the conclusion of the *Birl* Court that the possibility of conflicting rulings on a common issue of law or fact was real and that “different triers of fact could reach different conclusions as to which party was at fault, the cause of any injuries, and the apportionment of

liability—unless all the parties are joined to one action” (*Id.* at 1322). Based on such finding, the Court determined that it was proper to deny the nursing facility’s motion to compel arbitration.

While the circumstances of the current actions differ slightly from those of *Birl*, it remains consistent that compelling arbitration of certain claims but not of others and compelling arbitration with respect to some defendants but not others will result in the conflicting rulings as contemplated in *Birl*. Furthermore, such a division of the cases would result in an unreasonable hardship for Plaintiff, as she and the other statutory beneficiaries of Ms. Brinson’s estate would be effectively forced to litigate claims arising from the same or related events in two separate forums. Therefore, to uphold the Arbitration Agreement would not only pose a potential impossibility, it is also unreasonable and unconscionable to force a Plaintiff to prosecute her claims in such a fashion, especially when this issue was not explained to her. Our Courts have also discussed and recognized that it is proper to deny Arbitration Agreements with the impossibility of enforcement. (*Grant v. Magnolia Manor-Greenwood, Inc.*, 383 S.C. 125, 678 S.E.2d 435 (S.C. 2009)). Therefore, based upon the above reasons, the Court finds the Arbitration Agreement to be impossible to enforce and unconscionable.

4. The Defendant’s delay has effectively nullified the agreement and waived any right the Defendant may have had to force Arbitration.

The Plaintiff’s Notice of Intent was filed in July of 2009, providing the Defendant with notice of impending litigation. The Notice of Intent stage took a usual course and, in fact, was extended beyond the normal time frame due to the substantial number of defendants in the case. The parties completed the required pre-suit mediation in January of 2010 which was unsuccessful in reaching a resolution. The Plaintiff filed the

Summons and Complaint in March of 2010. Defendant filed its Answer on May 19, 2010, and it was at this time that Plaintiff was provided with the first notice of the existence of an Arbitration Agreement and the Defendant's allegation that the issues and incidents addressed by Plaintiff's Complaint were governed by said Arbitration Agreement, and then only by virtue of one of Defendant's affirmative defenses. Even in light of said notice, Defendant did not move to seek enforcement of the Arbitration Agreement until August of 2010, more than a year after they had been first placed on notice of pending litigation and had been served with the Notice of Intent to Sue. This was also well after Plaintiff had served Discovery.

The Courts in South Carolina have long recognized the act of abandonment as a valid basis for an exception to a contract's enforceability:

Generally, no-damage-for-delay provisions are valid and enforceable so long as they meet ordinary rules governing the validity of contracts. *See Annot., Validity and Construction of "No Damage Clause" with Respect to Delay in Building or Construction Contract*, 74 A.L.R.3d 187 §2[a] (1976). A certain majority of jurisdictions, however, recognize certain exceptions to such clauses. *Id.* Among the recognized exceptions are (a) delay caused by fraud, misrepresentation, or other bad faith... (c) delay which has extended such an unreasonable length of time that the party delayed would have been justified in abandoning the contract... *U.S. f/u/b/a Williams Electric Company, Inc. v. Metric Constructors, Inc.* 325 S.C. 129, 480 S.E.2d 447 (1997).

The contract at issue here is, of course, the Arbitration Agreement. First, the Agreement does not contain a "no-damage-for-delay" provision, and, as such, had Defendant intended to rely upon the Agreement, it should have acted promptly upon the first notice of a civil action. Secondly, and being generous to the Defendant, it waited a full nine months after Plaintiff's first filings to make any mention of an Arbitration

Agreement and an additional three months more before moving to enforce said Agreement.

“[I]n South Carolina, there exists in every contract an implied obligation of good faith and fair dealing.” *Id.* citing *Adams v. Creel*, 320 S.C. 274, 465 S.E.2d 84 (1995); *Parker v. Byrd*, 309 S.C. 189, 420 S.E.2d 850 (1992); *Tharpe v. G.E. Moore*, 254 S.C. 196, 174 S.E.2d 397 (1970). Continuing, “A number of courts recognize an exception to a no-damage clause where delays are so unreasonable in length or duration that they amount to an abandonment of the contract...” *U.S. f/w/b/a Williams Electric* at 134-135 citing 74 *A.L.R.3d* at 226-230 §7(i). “An abandonment need not be express but may be inferred from the conduct of the parties and attendant circumstances.” *Quality Concrete Products, Inc. v. Thomason*, 253 S.C. 579, 172 S.E.2d 297 (1970). “Abandonment of a contract by one party is the giving up of the right of benefit due from the other party.” *Ro-Lo Enterprises v. Hicks Enterprises*, 294 S.C. 111, 362 S.E.2d 888 (Ct.App.1987). “As with the above mentioned exceptions, an abandonment of the contract involves a breach of the implied obligation of good faith and fair dealing. Accordingly, we adopt this exception and find that if a party abandons the contract, they also abandon their right to rely on a no damage for delay clause.” *U.S. f/w/b/a Williams Electric* at 135. Likewise, South Carolina Courts have previously considered and found that significant delay is tantamount to abandonment and constitutes a sufficient basis to support a finding of abandonment with respect to an arbitration agreement. (See also *Evans v. Accent Manufactured Homes, Inc.*, 352 S.C. 544, 575 S.E.2d 74 (S.C.App.2003), *Deloitte & Touche, LLP v. Unisys Corp*, 358 S.C. 179, 594 S.E.2d 523).

As previously discussed, the Arbitration Agreement the Defendant now seeks to enforce does not contain a no-damage-for delay clause, which makes the performance under the Agreement an even more time-sensitive issue. The Defendant delayed almost a year before moving for the enforcement of the Agreement. During the entire length of its delay, it conducted itself in a manner consistent with a party that intended to proceed with litigation through the confines of the judicial process. It is the ruling of this Court that, the Defendant, through its actions and delay, abandoned any rights it may have been afforded to force this matter to arbitration. To allow the Defendant to now insist on adherence to the Arbitration Agreement which was the subject of the Motion before this Court, not only amounts to an unconscionable act, but is also in disagreement with established precedent—precedent that finds contracts far more lenient on the issue of delay than the one at hand to have been abandoned in the face of acts such as those displayed by the Defendant here.

5. (The Defendant's argument that Mary Brinson was a third party beneficiary to the contract is illogical and premised on the rights of Ann Coleman as signatory, which said rights do not exist.

Defendant has sought to argue that Mary Brinson was the third party beneficiary to the Admissions and Arbitration Agreements. While this Court concedes that it was Ms. Brinson's admission into Faith Healthcare Center that was contemplated by the Admissions Agreement, the Defendant's extension of this argument that seeks to cast Ms. Brinson as a third party beneficiary of said agreements is misplaced as it assumes that Ann Coleman had the right to contract on behalf of Ms. Brinson. As this Court has already discussed at length, while Ann Coleman did have the right under the Adult Health Care Consent Act to consent to medical treatment, she did not have the right to

commit her sister to a legally binding contract that agreed to the removal of Ms.

Brinson's rights under the law. Because Ann Coleman did not have the right to contract on behalf of her sister, Mary Brinson cannot possibly be a third party beneficiary as the contract itself was never valid.

6. The Defendant's argument that Plaintiff should be equitably estopped from denying the existence of an enforceable Arbitration Agreement is rejected.

As with the argument concerning the third party beneficiary status of Mary Brinson, the Court finds that the Defendant's argument with respect to the Arbitration Agreement and estoppel of the Plaintiff is, once again, misguided and assumes a premise which this Court has previously rejected.

The principle of estoppel in equity stands on the very foundation of right and fair dealing. It considers and weighs the conduct of men in their dealings with each other and gives that effect and meanings to their actions which common sense and justice dictate. The essential elements of equitable estoppel are ignorance of the party invoking the estoppel of the truth as to the facts in question and a misrepresentation or deceptive conduct of the party against whom estoppel is sought to be applied, which in fact misleads the person asserting the estoppel to rely on the misrepresentation or conduct to change his position prejudicially as a result of the reliance. *SCJur* "Estoppel" §4.

The Defendant's estoppel argument is not only misguided, it misses the true nature of estoppel. As this Court has previously discussed, it was Faith Healthcare Center's failure to explain the Arbitration Agreement in accordance with the Defendant's policies and procedures coupled with the manner in which the Arbitration Agreement was presented to Ann Coleman that caused and contributed to Ms. Coleman not understanding the true nature of the document she was signing. The unconscionability of this process as described hereinabove serves as an additional sustaining ground for the

finding that the Arbitration Agreement is not valid. The Defendant could not reasonably rely on the contract/agreement when they knew that Ann Coleman lacked the authority to enter into such a contract/agreement. The Defendant is assuming that it is the representation of the agent and not the principal that is the determinant of apparent authority and an establishment of agency when, as this Court has already discussed, it is the actions of the principal. As such, this Court rejects the Defendant's argument for equitable estoppel.

Furthermore, the Defendant has argued that Plaintiff cannot deny the validity of the Arbitration Agreement yet rely on the Admissions Agreement in alleging that the Defendant's were in breach of contract with respect to their contractual obligation to provide appropriate medical care to Mary Brinson. It is the Defendant's contention that the Arbitration Agreement is part of the Admissions Agreement and, as such, a denial of the validity of the Arbitration Agreement also negates the Admissions Agreement, thus precluding any claim by the Plaintiff for breach of Contract. The errors in this argument have already been discussed. The Defendant again assumes that the Arbitration Agreement and Admissions Agreement are on the same footing. As this Court has stated before, they are not. An agreement concerning the provision of health care is a far different matter than an agreement to waive legal and constitutional rights. As such, the Defendant's argument concerning estoppel is rejected.

CONCLUSION

This Court declines to enforce the Arbitration Agreement. Ann Coleman lacked the authority to bind her sister to any contract which removed her rights under the law and the Constitution. That she has the statutory authority to assist in making healthcare

decisions regarding the treatment and care on behalf of her sister is irrelevant to the determination of whether she had the authority to contract on behalf of her sister in a separate legal document. The determination of agency is made based upon the principal and not the agent, and the Defendant's own documents demonstrate that they were aware that Mary Brinson was incapable of demonstrating any such intention or making any such representation. The Defendant cannot now reasonably argue that they thought Ms. Coleman had "apparent" authority, as they were aware of the legal requirements governing arbitration agreements.

Likewise, the Arbitration Agreement does not apply to all parties to this suit as it governs neither the claims brought on behalf of Mary Brinson's statutory beneficiaries, nor a portion of the Defendants who have not sought to force arbitration. Such circumstances give rise to the possibility of conflicting findings based on the same facts depending on the forum in which the issues are heard. These circumstances render the Arbitration Agreement unconscionable and impossible. Adding to the Agreement's unconscionability is Faith Healthcare Center's failure to adequately and appropriately inform Ms. Coleman as to the nature of the document she was signing. She was not advised of the meaning of the Arbitration Agreement, nor was she advised that her signature on said Agreement was voluntary and that a refusal to sign would have no affect on her sister's admission to the facility.

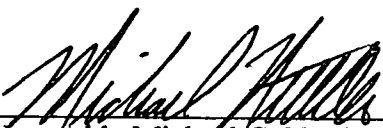
The Arbitration Agreement was further abandoned by the Defendant through its delay. The Defendant proceeded to engage in the litigation process with Plaintiff, allowing this case to move forward for more than a year after the filing of the Notice of Intent before it sought any enforcement of the Arbitration Agreement. South Carolina

precedent is clear that, had the Defendant intended to seek enforcement of the Agreement, it should have done so at the outset of this matter, not more than a year after its genesis.

Finally, it is the belief of this Court that the Defendant's arguments concerning the third party beneficiary status of Mary Brinson and the argument concerning equitable estoppel are misguided and premised on "facts" which this Court has determined are false. As such, this Court rejects the Defendant's arguments on these issues.

Therefore, it is the finding of this Court that the Plaintiff did not have the legal authority to execute the Arbitration Agreement on behalf of her sister, the Arbitration Agreement does not apply to all parties to this suit, giving rise to the possibility of divergent outcomes premised on the same facts; that the Arbitration Agreement itself is impossible and unconscionable; and that the Defendant abandoned the Agreement through its delay in seeking its enforcement. As such, Defendant's Motion to Dismiss and Compel Arbitration, or Alternatively, to Stay the Action Pending Arbitration is denied in its entirety.

IT IS SO ORDERED.


The Honorable Michael G. Nettles
Twelfth Circuit of the State of South Carolina

Florence, South Carolina
Date: 3-18-11

CONNIE REEL-SHEARIN
JUDGE & CLERK
FLORENCE COUNTY, SC

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FILED



The South Carolina Court of Appeals

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July 11, 2011

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Re: Coleman, Ann v. Mariner Health Care
Case Tracking #: 2011194946

Dear Counsel:

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/ec

cc: Marion Stephenson Fowler, III, Esquire
Matthew W. Christian, Esquire
The Honorable Connie Reel-Shearin



The South Carolina Court of Appeals

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Re: Coleman, Ann v. Mariner Health Care
Case Tracking #: 2011194946

Dear Counsel:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten (10) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the

transcript) with the Court Reporter for furnishing the transcript. You are reminded of the notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

NOTE: If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S.C. Code Ann. Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases:

- 1) any final judgment from the circuit court which includes a sentence of death;
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58;
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance;
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state;
- 5) any final judgment from the circuit court pertaining to elections and election procedure;
- 6) any order limiting an investigation by a State Grand Jury under S.C. Code Ann. Section 14-7-1630;
- 7) any order of the family court relating to an abortion by a minor under S.C. Code Ann. Section 44-41-33.

Very truly yours,
Tanya A. Gee
CLERK

TAG/ec

cc: Marion Stephenson Fowler, III, Esquire
Matthew W. Christian, Esquire
The Honorable Connie Reel-Shearin



Holcombe Bomar, P.A.



COPY

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A. Todd Darwin
J. Hayes Walsh
Nathaniel P. Mark
Joshua T. Thompson
Stacey Campbell Davis
Special Counsel
Neville Holcombe, 1902-1983
Horace L. Bomar, 1912-1994

July 11, 2011

RECEIVED

JUL 14 2011

Ms. Frances A. Bakis-Ray
555 Jeffries Lane
Florence, South Carolina 29505-2733

SC Court of Appeals

RE: Ann Coleman, Individually and as Personal Representative of the Estate of
Mary Brinson v. Mariner Health Care, Inc., et al.
Case Nos. 2010-CP-21-00835 & 00836
Our File No. 10963

Dear Ms. Bakis-Ray:

I represent the Appellants in the above-captioned matter. We have appealed the result of a hearing held before the Honorable Michael G. Nettles on April 29, 2011. We mistakenly sent a transcript request to the wrong court reporter on June 30, 2011 (a copy of that letter is enclosed) but would appreciate you accepting this letter as our formal request for a copy of the transcript of that hearing. We will of course pay all customary charges for your services upon receiving your invoice.

We appreciate your cooperation and assistance in this matter.

Sincerely,

W. McElhaney White

/rr

Enclosure

c: Matthew W. Christian, Esq.
Marion S. Fowler, III, Esq.
R. Gerald Chambers, Esq.
Roselyn Frierson, S.C. Court Administration
Tanya Gee, S.C. Court of Appeals

TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
COLUMBIA
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GREENVILLE
MYRTLE BEACH

Carmelo B. Sammataro

E-mail: SSammataro@TurnerPadget.com

Writer's Direct Dial: (803) 227-4253

Writer's Direct Fax: (803) 400-1532

July 5, 2011

Ms. Frances A. Bakis-Ray
555 Jeffries Lane
Florence, SC 29505-2733

Re: Ann Coleman v. Mariner Health Care, Inc. et al.
Case Nos.: 2010-CP-21-835 and 836
TPGL File No.: 11034.101

RECEIVED
JUL 05 2011
SC Court of Appeals

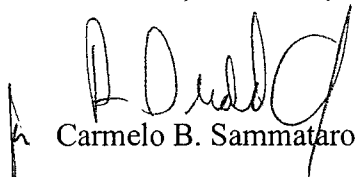
Dear Ms. Bakis-Ray :

On April 29, 2011, a motion hearing regarding the above-referenced matters was held before the Honorable Michael G. Nettles in Florence County. The court's website indicates that you were the court reporter for these cases. I request that you provide me with a copy of the entire transcript of the proceedings. I agree to pay the per page charge for this transcript as provide by Rule 607, SCACR. Thank you for your assistance with this matter, and please do not hesitate to call me if you have any questions.

With kind regards, I am

Very truly yours,

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


Carmelo B. Sammataro

CBS/tj

cc: Matthew W. Christian, Esquire
Marion S. Fowler, III, Esquire
Perry D. Boulter, Esquire
W. McElhaney White, Esquire
William C. Barnes, Esquire
Michael I. Bernstein, Esquire
Clerk, South Carolina Court of Appeals

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July 5, 2011

Ms. Keshia T. Reed
Post Office Box 12190
Florence, SC 29504-2190

Re: Ann Coleman v. Mariner Health Care, Inc. et al.
Case Nos.: 2010-CP-21-835 and 836
TPGL File No.: 11034.101

RECEIVED
JUL 05 2011
SC Court of Appeals

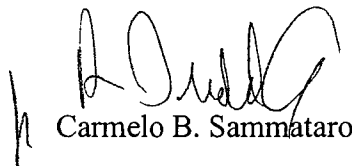
Dear Ms. Reed:

On January 6, 2011, a motion hearing regarding the above-referenced matters was held before the Honorable Michael G. Nettles in Florence County. The court's website indicates that you were the court reporter for these cases. I request that you provide me with a copy of the entire transcript of the proceedings. I agree to pay the per page charge for this transcript as provide by Rule 607, SCACR. Thank you for your assistance with this matter, and please do not hesitate to call me if you have any questions.

With kind regards, I am

Very truly yours,

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


Carmelo B. Sammataro

CBS/tj

cc: Matthew W. Christian, Esquire
Marion S. Fowler, III, Esquire
Perry D. Boulter, Esquire
W. McElhaney White, Esquire
William C. Barnes, Esquire
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The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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July 21, 2011

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R. Gerald Chambers, Jr., Esquire
Carmelo B. Sammataro, Esquire
Turner, Padgett, Graham
& Laney, P.A.
P O Box 1473
Columbia, SC 29202

Re: Coleman, Ann v. Mariner Health Care
Case Tracking #: 2011194946

Dear Counsel:

We have received a Notice of Appeal from each of you in the above matter. Unless notified by you to the contrary, these appeals will be consolidated for consideration by the Court under the South Carolina Appellate Court Rules, and we anticipate receiving one Record on Appeal.

In this consolidated appeal, the party filing the first Notice of Appeal, Mariner Health Care, et al, has been designated as the primary appellant and is responsible for serving and filing the Record on Appeal. The party filing the second Notice of Appeal, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, has been designated as the secondary appellant. Under Appellate Court Rules 206 and 207, the primary appellant must order the transcript within ten (10) days after the date of service of the Notice of Appeal. **The primary appellant shall notify this Court in writing as soon as the transcript is delivered by the court reporter.**

The briefing schedule for this consolidated appeal shall be as set forth in Appellate Court Rules 208 and 209 of the South Carolina Appellate Court Rules.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/ec

cc: Marion Stephenson Fowler, III, Esquire
Matthew W. Christian, Esquire



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August 2, 2011

The Honorable Tanya Gee
Clerk of the S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
AUG 03 2011
SC Court of Appeals

RE: Ann Coleman, Individually and as Personal Representative of the Estate of
Mary Brinson v. Mariner Health Care, Inc., et al.
Case Nos. 2010-CP-21-00835 & 00836
Our File No. 10963

Dear Madam Clerk:

This letter is to apprise the Court of the status of the transcripts of record in this case. Appellants timely ordered the three relevant hearing transcripts on June 30, 2011. On July 29, 2011, Appellants received a copy of the April 29, 2011 transcript from court reporter Frances Bakis-Ray. The transcripts from November 30, 2011 and January 6, 2011, requested from court reporter Keshia Reed, are still outstanding.

These two outstanding transcripts are not late, but counsel wanted to inform the Court of the status of the multiple transcripts, so that the receipt of the single transcript did not trigger the running of the thirty day period for filing of Appellants' Initial Brief and Designation of Matter to be Included in the Record on Appeal. This period, as counsel understands, will run from receipt of the last transcript ordered.

The Honorable Tanya Gee
Clerk of the S.C. Court of Appeals
Page 2
August 2, 2011

Please do not hesitate to contact me with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Ginger D. Goforth". The signature is fluid and cursive, with the first name "Ginger" being more prominent.

Ginger D. Goforth

GDG/jg

cc: Rosalyn Frierson, S.C. Court Administration
Matthew Christian, Esq. (w/ letter and enclosures)
Marion Fowler, Esq. (w/letter and enclosures)
R. Gerald Chambers, Jr., Esq. (w/letter and enclosures)



RECEIVED
AUG 26 2011
SC Court of Appeals

August 25, 2011

The Honorable Tanya Gee
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

**RE: Ann Coleman, Individually, and as Personal Representative of the Estate of
Mary Brinson v. Mariner Health Care, Inc., et al
C.A. Nos: 2010-CP-21-00835 (Wrongful Death) & 00836 (Survival)**

Dear Ms. Gee:

Please find enclosed for filing the original plus seven (7) copies of the Respondent's Motion to Strike Issues on Appeal and the original plus seven (7) copies of the Respondent's Memorandum in Support of Motion to Strike Issues on Appeal, along with this firm's check in the amount of twenty five dollars (\$25.00) for the filing of same. I would appreciate your returning one clocked copy to me in the enclosed return envelope.

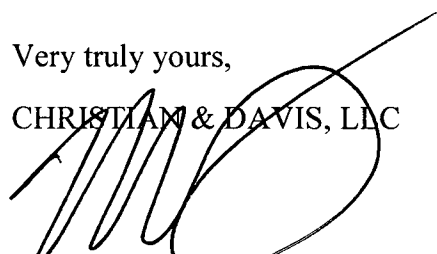
By copy of this correspondence, I am serving Appellant with same. Additionally, I am providing copies of these documents to all other counsel of record in this matter.

Thank you for your assistance in this matter. Should you have any questions or concerns, please do not hesitate to contact me.

With kindest regards, I am

Very truly yours,

CHRISTIAN & DAVIS, LLC


Matthew W. Christian
Attorney at Law

MC/kch

Enclosures

CC: Perry D. Boulter, W. McElhaney White & Ginger D. Goforth
William C. Barnes
Michael I. Bernstein
R. Gerald Chambers, Jr.
Marion S. Fowler, III, MD

W. Harold Christian, Jr.

Richard V. Davis

Matthew W. Christian

Joshua D. Christian

Workers' Compensation

Auto & Truck Collisions

Insurance Litigation

Social Security Disability

Serious Personal Injury

Medical & Nursing
Home Negligence

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge
Michael G. Nettles, Circuit Court Judge

RECEIVED
AUG 26 2011
SC COURT OF APPEALS

Case Nos.: 2010-CP-21-00835
2010-CP-21-00836

Ann Coleman, Individually, and as Personal Representative
of the Estate of Mary Brinson, ... Respondent,

v.

Mariner Health Care, Inc., f/k/a Mariner Post Acute Network, LLC,
Mariner Health Care Management Company, Mariner Health Central,
Inc., Mariner Health Group, Inc., MHC Holding Company, MHC
Florida Holding Company, MHC Gulf Coast Holding Company, MHC
MidAmerica Holding Company, MHC Rocky Mountain Holding
Company, MHC Northeast Holding Company, MHC West Holding
Company, MHC Texas Holding Company, MHC MidAtlantic Holding
Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc.,
Individually and d/b/a Faith Health Care Center, SavaSeniorCare
Management, LLC, SavaSeniorCare Administrative Services, LLC,
SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc.,
Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually
and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein,
an Individual, Murray Forman, an Individual, Boyd P. Gentry, an Individual,
Abraham Shaulson a/k/a Abraham Shavlson a/k/a A. Shawson a/k/a
Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property
Holdings, LLC, SC Faith, LLC, and John Does 1-26,

of Whom,

Mariner Health Care, Inc., f/k/a Mariner Post Acute Network, Mariner
Health Care Management Company, Mariner Health Central, Inc.,
Mariner Health Group, Inc., MHC Holding Company, MHC Florida
Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica
Holding Company, MHC Rocky Mountain Holding Company, MHC
Northeast Holding Company, MHC West Holding Company, MHC

Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, and Murray Forman, an Individual are..... Appellants.

RESPONDENT'S MOTION TO STRIKE ISSUES ON APPEAL

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Attorneys for the Appellant

Other Counsel of Record:

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Attorney for Appellants noted above

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(843) 662-9008
Attorney for Defendants ASK Holdings,
LLC, Palmetto Health Care, LLC, SC
Property Holdings, LLC and SC Faith, LLC

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Admitted *Pro Hac* as co-counsel to
William C. Barnes

R. Gerald Chambers, Jr.
Turner Padget Graham & Laney, PA
PO Box 1473
Columbia, SC 29202
(803) 227-4201
Attorney for Defendant Palmetto Faith
Operating d/b/a Faith Health Care Center

YOU WILL PLEASE TAKE NOTICE that the Respondent herein moves this Court as follows:

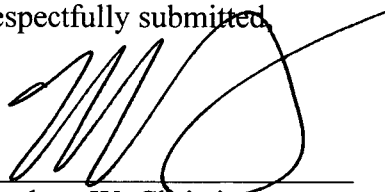
Appellants have provided Notice that they seek to appeal the decisions of the lower court as follows:

1. The Orders denying Defendants' Motion to Stay Action and Compel Arbitration (Survival and Wrongful Death) issued on March 18, 2011 by the Honorable Michael G. Nettles;
2. The Orders denying Defendants' Motion to Alter or Amend Judgment (Survival and Wrongful Death) issued on June 6, 2011 by the Honorable Michael G. Nettles;
3. The Orders and Judgments entering Order denying Defendant SavaSeniorCare, Inc.'s Motion to Dismiss for Insufficient Service of Process (Survival and Wrongful Death) issued December 2, 2010 by the Honorable William H. Seals, Jr.;
4. The Orders and Judgments entering Order denying Defendants' Motion to Alter or Amend the Order on Motion to Dismiss for Insufficient Service of Process (Survival and Wrongful Death) issued January 31, 2011 by the Honorable William H. Seals, Jr.; and
5. The Orders and Judgments denying Defendants' Motion to Dismiss for Lack of Personal Jurisdiction (Survival and Wrongful Death) issued on February 16, 2011 by the Honorable William H. Seals, Jr..

While Respondent acknowledges that the Orders denying the Defendants/Appellants' Motion to Stay Action and Compel Arbitration (and, necessarily the Orders denying the reconsideration of same) are appealable issues, the remainder of the issues proposed for appeal by the Appellant are not appealable. Orders denying dismissal of a party are interlocutory matters. "The motion to dismiss has the effect of asserting that respondent has failed to state a cause of action. The denial of such a motion is not immediately appealable under S.C. Code Ann. §14-33-330..." *McLendon v. South Carolina Department of Highways and Public Transportation*, 313 S.C. 525, 443 S.E.2d 539 (1994). As such, Respondent now moves before this Court that Appellants be prohibited from arguing any issues in connection with their

Motions to Dismiss as such matters are not proper for appeal at this time, and that Appellants be permitted to proceed with their appeal solely as it pertains to the decisions rendered on the issue of Arbitration.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'M. Christian', written over a horizontal line.

Matthew W. Christian

SC Bar No.: 70516

Post Office Box 332

Greenville, SC 29602

(864) 232-7363

Marion S. Fowler, III, MD, SC Bar No.: 11816

Fowler Law Firm, PC

P.O. Box 1719

Lake City, SC 29560

(843) 374-4444

Attorneys for the Appellant

Greenville, South Carolina

August 25, 2011

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge
Michael G. Nettles, Circuit Court Judge

Case Nos.: 2010-CP-21-00835
2010-CP-21-00836

Ann Coleman, Individually, and as Personal Representative
of the Estate of Mary Brinson, ... Respondent,

v.

Mariner Health Care, Inc., f/k/a Mariner Post Acute Network, LLC,
Mariner Health Care Management Company, Mariner Health Central,
Inc., Mariner Health Group, Inc., MHC Holding Company, MHC
Florida Holding Company, MHC Gulf Coast Holding Company, MHC
MidAmerica Holding Company, MHC Rocky Mountain Holding
Company, MHC Northeast Holding Company, MHC West Holding
Company, MHC Texas Holding Company, MHC MidAtlantic Holding
Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc.,
Individually and d/b/a Faith Health Care Center, SavaSeniorCare
Management, LLC, SavaSeniorCare Administrative Services, LLC,
SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc.,
Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually
and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein,
an Individual, Murray Forman, an Individual, Boyd P. Gentry, an Individual,
Abraham Shaulson a/k/a Abraham Shavlson a/k/a A. Shawson a/k/a
Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property
Holdings, LLC, SC Faith, LLC, and John Does 1-26,

of Whom,

Mariner Health Care, Inc., f/k/a Mariner Post Acute Network, Mariner
Health Care Management Company, Mariner Health Central, Inc.,
Mariner Health Group, Inc., MHC Holding Company, MHC Florida
Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica
Holding Company, MHC Rocky Mountain Holding Company, MHC
Northeast Holding Company, MHC West Holding Company, MHC

Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, and Murray Forman, an Individual are..... Appellants.

RESPONDENT'S MEMORANDUM IN SUPPORT OF
MOTION TO STRIKE ISSUES ON APPEAL

Matthew W. Christian, SC Bar No.: 07516
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Attorneys for the Appellant

Other Counsel of Record:

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Attorney for Appellants noted above

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Attorney for Defendants ASK Holdings,
LLC, Palmetto Health Care, LLC, SC
Property Holdings, LLC and SC Faith, LLC

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(803) 227-4201
Attorney for Defendant Palmetto Faith
Operating d/b/a Faith Health Care Center

TABLE OF CONTENTS

Table of Authorities.....	ii
Brief Statement of the Case and Procedural History.....	1
Arguments	
I. THE ONLY MATTERS PROPERLY BEFORE THE COURT ON APPEAL ARE THOSE PERTAINING TO THE ARBITRATION ISSUE.....	2
II. INCLUSION OF THE MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND MOTION TO DISMISS FOR INSUFFICIENT SERVICE OF PROCESS WILL CREATE AN UNNECESSARY BURDEN ON THE COURT	4
III. APPELLANTS' ARGUMENT ON THE BASIS OF <i>MORRIS V. ANDERSON COUNTY</i> , 349 S.C. 607, 564 S.E.2d 649 (2002) IS MISGUIDED AND NOT APPLICABLE TO THE MATTER AT HAND	4
Conclusion.....	5

TABLE OF AUTHORITIES

State Statutes

S.C Code §14-3-330	4

State Cases

<i>Brown v. County of Berkley</i> , 366 S.C. 354, 622 S.E.2d 533 (2005)	7
<i>Mid-State Distributors, Inc. v. Century Importers, Inc.</i> , 310 S.C. 330, 426 S.E.2d 777 (1993)	5, 6
<i>MORRIS V. ANDERSON COUNTY</i> , 349 S.C. 607, 564 S.E.2D 649 (2002)	6, 7

BRIEF STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The facts giving rise to the suit surround substandard care provided at the facility known to the public as Faith Health Care Center which is located in Florence, South Carolina. The true ownership of the facility has been obscured by the Defendants' use of multiple holding companies, management companies and other shell corporations in an effort to obscure both which parties bear responsibility for the operations of the facility and to hide the monetary value and other assets of the facility. Further complicating the matter, the facility underwent a change of ownership during the residency of the decedent.

The suit giving rise to the instant appeals was filed on March 22, 2010. The Defendants were served in a timely manner. As of the date of this appeal, no depositions have been taken and only an extremely limited amount of discovery has been exchanged, and that at the order of the Court. Of pertinence to the matters now before this Court:

- Defendant SavaSeniorCare, Inc. filed a Motion to Dismiss for Insufficient Service of Process which was heard by the Honorable William H. Seals, Jr., on November 3, 2010. This Motion was denied, and the Defendant moved for reconsideration which was also denied.
- Defendants Mariner Health Care f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, Boyd P.

Gentry, and Murray Forman filed a Motion to Dismiss filed a Motion to Dismiss for Lack of Personal Jurisdiction which was heard by the Honorable Michael G. Nettles on January 6, 2011. This Motion was denied, and no Motion for Reconsideration was made.

- Defendants Mariner Health Care f/k/a Mariner Post Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, Boyd P. Gentry, and Murray Forman filed a Motion to Stay Action and Compel Arbitration which was heard by the Honorable Michael G. Nettles on January 6, 2011. This Motion was denied and Defendants filed their Motion to Alter or Amend Judgment which was heard by the Honorable Michael G. Nettles on April 29, 2011. This Motion was denied.

ARGUMENT

I. THE ONLY MATTERS PROPERLY BEFORE THE COURT ON APPEAL ARE THOSE PERTAINING TO THE ARBITRATION ISSUE

S.C Code §14-3-330 specifies that:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in any court of common pleas and general sessions, brought there by original

process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from; (2) an order affecting a substantial right made in an action when such order (1) in effect determines the action and prevents judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial, or (c) strikes out an answer or any part thereof or any pleading in any action... (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

At issue here is the Appellant's Notice of Appeal with regard to the Motion to Dismiss for Insufficient Service of Process and the subsequently denied Motion to Alter or Amend concerning same, and the Motion to Dismiss for Lack of Personal Jurisdiction for which no Motion to Alter or Amend was ever filed.

While the denial of a Motion to Stay an Action and Compel Arbitration does fall within the category of non-final orders that are immediately appealable, it should not be considered a final order because it does not end the litigation on the basis of merit leaving only an execution of judgment for the Court's consideration. Instead, the denial of Appellant's Motion concerning Arbitration merely permits the case to proceed on the merits. As our own Supreme Court has previously noted, "A party who is denied a dismissal under Rule 12 has forfeited nothing, they must simply continue to trial... There is no finality in a denial of the motion to dismiss for lack of personal jurisdiction [or insufficient service of process]. Just as with a denial of a 12(b)(6), the prima facie showing will succeed or fail at trial." *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993). Because no final disposition has been reached at this time, the inclusion of the Motions to Dismiss for Lack of Personal Jurisdiction and Insufficient Service of Process are improper.

II. INCLUSION OF THE MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND MOTION TO DISMISS FOR INSUFFICIENT SERVICE OF PROCESS WILL CREATE AN UNNECESSARY BURDEN ON THE COURT

Despite the fact that the case giving rise to the instant appeal was filed more than a year ago, it is still in its infancy. As of the time of this filing, no depositions have been taken and only the most minimal of discovery has been exchanged (and that, at the order of the lower court in an effort to clarify specific issues set for hearing). The underlying case is an extremely complex issue involving multiple defendants who have consciously and deliberately created an elaborate web of businesses and corporations in a high-stakes game of follow-the-card. These issues were before the lower court in oral arguments which lasted nearly four hours due to the complexity of the issues and the massive volume of exhibits produced. The lower court, having reviewed and considered the evidence and arguments before it, found sufficient evidence to allow the case to proceed against the moving defendants. There was no error of law on the part of the lower court; therefore, revisiting these issues on appeal will do little more than occupy more of the court's time and further delay progress in this case. Moreover, our Courts have previously considered issues analogous to the ones involved here and have held that "[t]he prima facie showing of personal jurisdiction at the pre-trial stage is all that is required to continue the civil action...

There is no finality in a denial of the motion dismiss for lack of personal jurisdiction." *Mid-State Distributors, Inc., v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993)

III. APPELLANTS' ARGUMENT ON THE BASIS OF *MORRIS V. ANDERSON COUNTY*, 349 S.C. 607, 564 S.E.2D 649 (2002) IS MISGUIDED AND NOT APPLICABLE TO THE MATTER AT HAND

While *Morris v. Anderson County* does note that an appellate court "may, as a matter of discretion, consider an unappealable order along with an appealable issue where such a ruling will avoid unnecessary litigation," Appellant has failed to include in its argument that the *Morris*

Court declined to address the issue in that case as consideration of the issue was not necessary to the resolution of the appeal before the Court. Similarly, the Supreme Court in *Brown v. County of Berkley*, 366 S.C. 354, 622 S.E.2d 533 (2005) noted that:

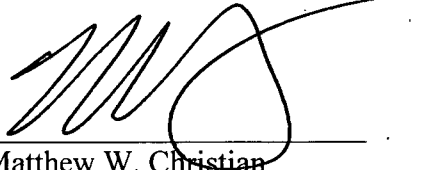
Courts have made a practice of accepting appeals of denials of interlocutory orders not ordinarily appealable when these appeals are companion issues to issues that are reviewable... In the instant case, however, the two issues argued on appeal (the denial of a preliminary injunction preventing a special audit and the denial of a motion to dismiss claims for defamation *per se*, and intentional infliction of emotional distress) lacks a sufficient nexus or companionship to justify the Court's exercise of immediate appellate review. (FN5).

It cannot be rationally argued that the lower court's decisions regarding personal jurisdictional and service of process issues are in any way necessary for the Appellate Court to reach a resolution of an appeal pertaining to an arbitration issue. It also cannot be rationally argued that these decisions of the lower court give rise to a sufficient companionship justifying the Court's exercise of immediate appellate review. As such, the Appellants' argument on the basis of *Morris* is both misguided and misleading.

CONCLUSION

For the reasons stated herein, Respondent would respectfully request that this Court strike from Appellants' Notice the issues concerning the Motion to Dismiss for Lack of Personal Jurisdiction and the Motion to Dismiss for Insufficient Service of Process. These matters have been improperly included in the instant appeal as the Order concerning arbitration has not ended the litigation on the basis of merit; the inclusion of these matters would waste the Court's time and resources; and their inclusion will in no way assist the Court in reaching a decision, nor do they demonstrate a sufficient companionship to the appealed issue concerning arbitration. As such, Appellant should be barred from arguing these issues on appeal at this time.

Respectfully submitted,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Matthew W. Christian

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Attorneys for the Appellant

Greenville, South Carolina

August 25, 2011

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge
Michael G. Nettles, Circuit Court Judge

Case Nos.: 2010-CP-21-00835
2010-CP-21-00836

Ann Coleman, Individually, and as Personal Representative
of the Estate of Mary Brinson, ... Respondent,

v.

Mariner Health Care, Inc., f/k/a Mariner Post Acute Network, LLC,
Mariner Health Care Management Company, Mariner Health Central,
Inc., Mariner Health Group, Inc., MHC Holding Company, MHC
Florida Holding Company, MHC Gulf Coast Holding Company, MHC
MidAmerica Holding Company, MHC Rocky Mountain Holding
Company, MHC Northeast Holding Company, MHC West Holding
Company, MHC Texas Holding Company, MHC MidAtlantic Holding
Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc.,
Individually and d/b/a Faith Health Care Center, SavaSeniorCare
Management, LLC, SavaSeniorCare Administrative Services, LLC,
SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc.,
Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually
and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein,
an Individual, Murray Forman, an Individual, Boyd P. Gentry, an Individual,
Abraham Shaulson a/k/a Abraham Shavlson a/k/a A. Shawson a/k/a
Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property
Holdings, LLC, SC Faith, LLC, and John Does 1-26,

of Whom,

Mariner Health Care, Inc., f/k/a Mariner Post Acute Network, Mariner
Health Care Management Company, Mariner Health Central, Inc.,
Mariner Health Group, Inc., MHC Holding Company, MHC Florida
Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica
Holding Company, MHC Rocky Mountain Holding Company, MHC
Northeast Holding Company, MHC West Holding Company, MHC

Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, and Murray Forman, an Individual are..... Appellants.

PROOF OF SERVICE

I certify that I have served the Respondent's Motion to Strike Issues on Appeal and Respondent's Memorandum in Support of Motion to Strike Issues on Appeal on the Appellants by depositing a copy of it in the United States Mail, postage prepaid on August 25, 2011, addressed to their attorney of record, Perry D. Boulter, W. McElhaney White, Ginger D. Goforth, Holcombe Bomar, P.A., P.O. Box 1897, Spartanburg, South Carolina 29304.

Date:

8-25-11



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AUG 26 2011

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge
Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-00835 & 00836

RECEIVED
SEP 06 2011
SC Court of Appeals

Ann Coleman, Individually, and as Personal Representative of the Estate of Mary
Brinson, ... Respondent,
v.

Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a/ Faith Health Care Center, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein, an Individual, Murray Forman, an Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, SC Faith, LLC, and John Does 1-26,

of whom,

Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., Individually and d/b/a/ Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, and Murray Forman, an Individual are Appellants.

RETURN TO RESPONDENTS' MOTION TO STRIKE ISSUES ON APPEAL

Respondents have moved the Court to strike Appellants' appeal of five of the eight orders listed in its notice of appeal, including the following:

1. Order and Judgment entering Order denying Defendant SavaSeniorCare, Inc.'s Motion to Dismiss for Insufficient Service of Process (Wrongful Death), judgment dated December 2, 2010 and received by counsel on December 6, 2010;
 2. Order and Judgment entering Order denying Defendant SavaSeniorCare, Inc.'s Motion to Dismiss for Insufficient Service of Process (Survival), judgment dated December 2, 2010 and received by counsel on December 6, 2010.
 3. Order and Judgment entering Order denying Defendants' Motion to Alter or Amend the Order on Motion to Dismiss for Insufficient Service of Process (Wrongful Death and Survival) dated January 31, 2011 and received by counsel on February 3, 2011.
 4. Order and Judgment entering Order denying Defendants' Motion to Dismiss for Lack of Personal Jurisdiction (Wrongful Death), judgment dated February 16, 2011 and received by counsel on February 24, 2011;
 5. Order and Judgment entering Order denying Defendants' Motion to Dismiss for Lack of Personal Jurisdiction (Survival Action), judgment dated February 16, 2011 and received by counsel on February 24, 2011.
- I. **The orders denying Appellants' Motion to Stay Action and Compel Arbitration are subject to immediate appeal.**

Respondents do not dispute that the orders denying, and denying reconsideration of, Appellants' Motion to Stay Action and Compel Arbitration are immediately appealable and properly before the court.

II. Appellants did not misconstrue the holding in Morris.

In Morris v. Anderson County, 349 S.C. 607, 610, 564 S.E.2d 649 (2002), the court held that an appellate court “may, as a matter of discretion, consider an unappealable order along with an appealable issue where such a ruling will avoid unnecessary litigation.” Id. at 651. Respondents contend that Appellants have misconstrued this very clear and unambiguous dictate, and that they “failed to include in its argument” certain information about the case. As to the latter, Appellants made no “arguments” in its Notice of Appeal. It was a Notice of Appeal, not a memorandum of law. Second, Appellants did not misconstrue the holding in Morris, which is very clear.

In Morris - one of many cases standing for the proposition that the appellate court has discretion to entertain attendant interlocutory appeals - the probate court issued a detention order for Rodney Bowman. Bowman was not found. A few days after the order was issued, Bowman caused a fatal car accident. The estate administrators sued for gross negligence under the South Carolina Tort Claims Act for failure to detain Bowman under the order. Both parties moved for summary judgment. Defendants’ motion for summary judgment based on the public duty rule was granted. Plaintiffs’ motion for summary judgment based upon the alleged unconstitutionality of the Tort Claims Act caps was denied. Plaintiffs appealed both rulings.

On appeal, the court held that the grant of summary judgment in favor of Defendants was immediately appealable, and upheld that ruling. In addressing Plaintiffs’ caps arguments on the denial of summary judgment, the court acknowledged that it had the authority to consider an unappealable order along with an appealable order where such a ruling would avoid unnecessary litigation. It declined to exercise this discretion as to the

Plaintiffs' caps arguments because it involved an advisory ruling on its constitutionality, which would violate its policy of refusing to address constitutional issues unless they were necessary to the resolution of the appeal. The court's rationale for not exercising its discretion to hear the attendant interlocutory appeal has no bearing on Appellants' attendant motions to dismiss, which do not involve constitutional issues.

III. Brown v. County of Berkeley does not preclude consideration of Appellants' motions to dismiss.

Respondents also argue that Brown v. County of Berkeley, 366 S.C. 354, 622 S.E.2d 533 (2005) prohibits the Court of Appeals' consideration of the five interlocutory orders in this case. It does not. In Brown, county council formally requested documentation from Brown, the clerk of court, regarding county bank and credit card accounts. Brown refused, citing noncompliance with the FOIA and claiming defamation. Council then ordered a special audit. Brown sought a preliminary injunction prohibiting the audit. The circuit court denied the preliminary injunction, and also denied the council members' motion to dismiss the defamation claim based on immunity. Both parties appealed.

On appeal, the court held that the denial of the preliminary injunction was immediately appealable, but properly denied by the circuit court. The court held that the denial of the motion to dismiss the individual council members was interlocutory. The court recognized that "[c]ourts have made a practice of accepting appeals of denials of interlocutory orders not ordinarily immediately appealable when these appeals are companion to issues that are reviewable." Id. at 362; Pitts v. Jackson Nat'l Life Ins. Co., 352 S.C. 319, 338, 574 S.E.2d 502 (Ct. App. 2002). The court then exercised the very

discretion granted by Morris (and the long line of cases granting broad appellate discretion) to decline to hear the interlocutory issues rising from the defamation claims. The court, in its discretion, felt that Brown's defamation claims lacked a sufficient companionship to the preliminary injunction issue.

However, the fact that the court in Brown declined to exercise its jurisdiction to entertain an attendant interlocutory issue on appeal does not mean that the Court of Appeals must decline jurisdiction of Appellants' five interlocutory issues. It certainly does not nullify the Court's case by case discretion.

IV. The orders denying Appellants' Motions to Dismiss for Lack of Personal Jurisdiction and Insufficient Service of Process are subject to immediate appeal because they have been raised along with an immediately appealable order.

Morris was neither the first nor the last in a long line of case law that establishes the appellate courts' broad discretion to accomplish judicial economy by hearing interlocutory orders when an appealable issue is raised.

In Briggs v. Richardson, 273 S.C. 376, 256 S.E.2d 544 (1979), the court held generally that issues "not normally appealable" are within the jurisdiction of the appellate court if accompanied by an appealable issue. In Southeastern Housing Foundation v. Smith, 380 S.C. 621, 670 S.E.2d 680 (Ct. App. 2008), the lower court granted summary judgment on Plaintiff's legal malpractice claim against Smith. This issue was immediately appealable. The lower court also denied Smith's Rule 60(b) motion based on newly discovered evidence. The court, citing the long history of case law in support of hearing attendant interlocutory claims, heard both issues on appeal. See also Edge v. State Farm Mut. Auto Ins. Co., 366 S.C. 511 (2005) (the court can consider an unappealable order

where an appealable order is before the court and hearing the unappealable order would avoid a future appeal); and Tate v. Oxner, 236 S.C. 313, 114 S.E.2d 225, 225 (1960) (“where there is an appealable issue before the Court, an Order refusing a motion to strike may also be considered in order to avoid unnecessary litigation.”).

Courts have, in fact, specifically entertained interlocutory appeals from motions to dismiss. In QZO, Inc. v. Moyer, 358 S.C. 246, 594 S.E.2d 541 (Ct. App. 2004), the court heard an appeal from the denial of Appellant’s pre-trial motion to dismiss based on lack of personal jurisdiction because it was paired with an appealable issue, to wit, the granting of a temporary restraining order and attendant sanctions. In FOC Lawshe Ltd. Partnership v. International Paper Co., 352 S.C. 408, 574 S.E.2d 228 (Ct. App. 2002), the court heard FOC’s appeal from the denial of a motion to dismiss because it was brought up with an appeal from the denial of a motion for injunctive relief. Id. at 231; citing Cox v. Woodmen of the World Ins., 347 S.C. 460, 556 S.E.2d 397, 402 (Ct. App. 2001).

At bottom, the Court of Appeals has authority, discretion, and jurisdiction to hear Appellants’ appeals from the denials of their motions to dismiss. No holding based upon the specific facts of any past case alters this discretion in any way.

V. Respondents’ own arguments demonstrate that consolidating consideration of Appellants’ motions to dismiss in this appeal will serve judicial economy, not burden the Court.

Respondents claim that consideration of the jurisdictional issues in this case at this juncture will somehow create an “unnecessary burden.” They argue that the underlying case is complex and has multiple defendants, and that the hearing on the motions to dismiss lasted in excess of four hours and involved numerous exhibits. Respondents then

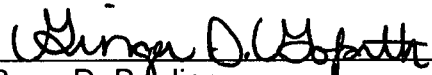
baldly assert that "there was no error of law on the part of the lower court." That is exactly what Appellants are asking the Court of Appeals to decide. Assuming for purposes of this argument that the identity of the allegedly responsible Defendants in the action below is both complicated and crucial to Plaintiffs'/Respondents' recovery, then the personal jurisdiction and service issues are of paramount importance to the case proceeding smoothly and economically.

Respondent reasserts that the motions to dismiss are interlocutory, which is true. However, they are companion appeals whose review is both allowable and warranted in this situation.

CONCLUSION

The Court of Appeals has both the power and discretion to entertain interlocutory orders when taken up with immediately appealable issues. Case law firmly supports this authority, including the authority to hear and rule upon denials of motions to dismiss. Appellants therefore respectfully submit that in the interest of judicial economy and avoiding numerous appeals, the Court of Appeals should exercise its discretion to rule upon all of the issues brought before it in this case.

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September ____, 2011

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge
Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-00835 & 00836

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SEP 06 2011

SC Court of Appeals

Ann Coleman, Individually, and as Personal Representative of the Estate of Mary
Brinson, ... Respondent,
v.

Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a/ Faith Health Care Center, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein, an Individual, Murray Forman, an Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, SC Faith, LLC, and John Does 1-26,

of whom,

Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., Individually and d/b/a/ Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, and Murray Forman, an Individual are Appellants.

PROOF OF SERVICE

I certify that I have served the Return to Respondents' Motion to Strike Issues on Appeal on the following parties by depositing a copy of it in the United States Mail, postage prepaid, on September 1, 2011, addressed to the attorneys of record listed below:

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Attorney for Palmetto Faith Operating, LLC d/b/a Faith
Healthcare Center

September 1, 2011



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Joshua T. Thompson
Stacey Campbell Davis
Special Counsel
Neville Holcombe, 1902-1983
Horace L. Bomar, 1912-1994

September 1, 2011

The Honorable Tanya Gee
Clerk of the S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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SEP 06 2011

SC Court of Appeals

RE: Ann Coleman, Individually and as Personal Representative of the Estate of
Mary Brinson v. Mariner Health Care, Inc., et al.
Case Nos. 2010-CP-21-00835 & 00836
Our File No. 10963

Dear Ms. Gee:

Enclosed please find for filing an original and seven copies of the Return to Respondents' Motion to Strike Issues on Appeal and Proof of Service. Please return a filed copy in the enclosed postage paid return envelope.

Thank you in advance for your cooperation, and please do not hesitate to contact with me any questions.

Sincerely,

Ginger D. Goforth

GDG/jg
Enclosures

cc: Matthew Christian, Esq. (w/ letter and enclosures)
Marion Fowler, Esq. (w/letter and enclosures)
R. Gerald Chambers, Jr., Esq. (w/letter and enclosures)



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Horace L. Bomar, 1912-1994

September 9, 2011

South Carolina Court Administration
Tammy Brown
1015 Sumter Street, Suite 200
Columbia, South Carolina 29201

RE: Ann Coleman, Individually and as Personal Representative of the Estate of Mary
Brinson v. Mariner Health Care, Inc., et al.
Case Nos. 2010-CP-21-00835 & 00836
Our File No. 10963

Dear Ms. Brown:

Pursuant to Rule 207(a)(5), SCACR, Appellants hereby advise the Office of Court Administration, the clerk of the appellate court, and Ms. Keshia Reed that Appellants have not received copies of the transcripts requested from Ms. Keshia Reed in this case within the 60 day period provided by this rule. Neither have Appellants received any notification of an extension. The requests were made in writing on June 30, 2011.

Sincerely,

Ginger D. Goforth

GDG/jg

cc: Matthew Christian, Esq. (w/ letter and enclosures)
Marion Fowler, Esq. (w/letter and enclosures)
R. Gerald Chambers, Jr., Esq. (w/letter and enclosures)
✓ Tanya Gee, S.C. Court of Appeals
Keshia Reed

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SEP 12 2011
SC Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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October 13, 2011

Matthew W. Christian, Esquire
Christian Moorhead & Davis
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Greenville, SC 29602

Re: Coleman, Ann v. Mariner Health Care
Case Tracking #: **2011194946**
2010-CP-21-00835
2010-CP-21-00836

Dear Counsel:

Enclosed is a copy of an Order of the Court regarding your Motion in the above case.

The orders denying appellants' motion to dismiss and the corresponding orders denying reconsideration have been dismissed:

2010-CP-21-00835 Orders dated November 15, 2011, January 31, 2011, and February 7, 2011
2010-CP-21-00836 Orders dated November 15, 2011, January 31, 2011, and February 7, 2011

The remittitur will be sent according to the South Carolina Appellate Court Rules.

The orders denying Appellants' motions to compel arbitration and the corresponding orders denying reconsideration shall proceed.

2010-CP-21-00835 Orders dated March 18, 2011 and June 6, 2011
2010-CP-21-00836 Orders dated March 18, 2011 and June 6, 2011

The Appellant is to notify this Court and the opposing party of the date the transcripts are received.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc: Perry D. Boulter, Esquire
W. McElhaney White, Esquire
Ginger D. Goforth, Esquire
R. Gerald Chambers, Jr., Esquire
Carmelo B. Sammataro, Esquire
Marion Stephenson Fowler, III, Esquire
The Honorable Connie Reel-Shearin

The South Carolina Court of Appeals

Ann Coleman, individually, and as
Personal Representative of the Estate of
Mary Brinson,

Respondent,

v.

Mariner Health Care, Inc. f/k/a Mariner
Post Acute Network, LLC, Mariner
Health Care Management Company,
Mariner Health Central, Inc., Mariner
Health Group, Inc., MHC Holding
Company, MHC Florida Holding
Company, MHC Gulf Coast Holding
Company, MHC MidAmerica Holding
Company, MHC Rocky Mountain
Holding Company, MHC Northeast
Holding Company, MHC West Holding
Company, MHC Texas Holding
Company, MHC MidAtlantic Holding
Company, Living Centers-Southeast,
Inc., Grancare South Carolina, Inc.,
Individually and d/b/a Faith Health
Care Center, SavaSeniorCare
Management, LLC., SavaSeniorCare
Administrative Services, LLC,
SavaSeniorCare, LLC, SavaSeniorCare,
Inc., National Senior Care, Inc.,
Palmetto Health Care, LLC, Palmetto
Faith Operating, LLC, Individually and
d/b/a Faith Health Care Center, Ask
Holdings, LLC, Leonard Grunstein, an
Individual, Murray Forman, an
Individual, Boyd P. Gentry, an
Individual, Abraham Shaulson a/k/a
Abraham Shavlson a/k/a A. Shawson
a/k/a Abraham Shawson, an Individual,
Avi Klein, an Individual, SC Property
Holdings, LLC, SC Faith, LLC, and
John Does 1-26,

Defendants,

Of whom Mariner Health Care, Inc.
f/k/a Mariner Post Acute Network,
LLC, Mariner Health Care
Management Company, Mariner Health
Central, Inc., Mariner Health Group,
Inc., MHC Holding Company, MHC
Florida Holding Company, MHC Gulf
Coast Holding Company, MHC
MidAmerica Holding Company, MHC
Rocky Mountain Holding Company,
MHC Northeast Holding Company,
MHC West Holding Company, MHC
Texas Holding Company, MHC
MidAtlantic Holding Company, Living
Centers-Southeast, Inc., Grancare
South Carolina, Inc., Individually and
d/b/a Faith Health Care Center,
SavaSeniorCare Administrative
Services, LLC, SavaSeniorCare, LLC,
SavaSeniorCare, Inc., National Senior
Care, Inc., Leonard Grunstein, an
Individual, Murray Forman, an
Individual, Boyd P. Gentry, an
Individual, are Appellants.

The Honorable Michael G. Nettles
The Honorable William H. Seals, Jr.
The Honorable Michael G. Nettles
The Honorable William H. Seals, Jr.

Florence County

Trial Court Case No. 2010-CP-21-00835

2010-CP-21-00835

2010-CP-21-00836

2010-CP-21-00836

ORDER

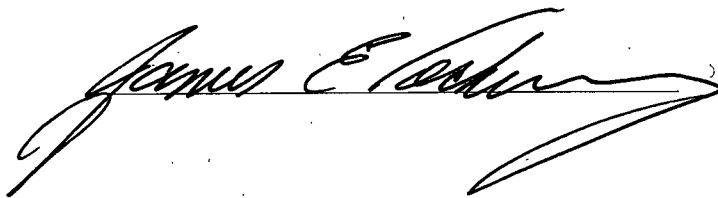
Appellants filed a notice of appeal from six orders relating to the circuit court's denial of
their motions to dismiss on for lack of personal jurisdiction and insufficient service of process.

Appellants also filed a notice of appeal from four orders relating to the circuit court's denial of their motion to compel arbitration. Respondents filed a motion with this court, requesting this Court to prohibit Appellants from arguing any issues in connection with the orders relating to Appellants' motions to dismiss because those orders are not immediately appealable. Appellants filed a return.

An order denying a motion to dismiss is not immediately appealable. See Brown v. Cnty. of Berkeley, 366 S.C. 354, 361, 622 S.E.2d 533, 537 (2005); McLendon v. S.C. Dep't of Highways and Pub. Transp., 313 S.C. 525, 443 S.E.2d 539 (1994) ("The motion to dismiss has the effect of asserting that respondent has failed to state a cause of action. The denial of such a motion is not immediately appealable . . ."). Accordingly, Appellants' appeal of the orders denying Appellants' motions to dismiss and the corresponding orders denying reconsideration is hereby dismissed because they are not immediately appealable. However, this appeal shall proceed as to Appellants' appeal of the orders denying Appellants' motions to compel arbitration and the corresponding orders denying reconsideration.

IT IS SO ORDERED.

Columbia, South Carolina



cc: Perry D. Boulter, Esquire
W. McElhaney White, Esquire
Ginger D. Goforth, Esquire
R. Gerald Chambers, Jr., Esquire
Carmelo B. Sammataro, Esquire
Marion Stephenson Fowler, III, Esquire
Matthew W. Christian, Esquire

FILED
10/13/11



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J. Hayes Walsh
Nathaniel P. Mark
Joshua T. Thompson
Kyle T. Clelland
Stacey Campbell Davis
Special Counsel
Neville Holcombe, 1902-1983
Horace L. Bomar, 1912-1994

October 12, 2011

South Carolina Court Administration
Tammy Brown
1015 Sumter Street, Suite 200
Columbia, South Carolina 29201

RE: Ann Coleman, Individually and as Personal Representative of the Estate of Mary
Brinson v. Mariner Health Care, Inc., et al.
Case Nos. 2010-CP-21-00835 & 00836
Our File No. 10963

Dear Ms. Brown:

Pursuant to Rule 207(a)(5), SCACR, Appellants hereby advise the Office of Court Administration, the clerk of the appellate court, and Ms. Keshia Reed that Appellants have not received copies of the transcripts requested from Ms. Reed in this case within the extension granted by the Court of Appeals, which expired on October 2, 2011. Neither have Appellants received any notification of an additional extension.

Sincerely,

Ginger D. Goforth

GDG/jg

cc: Matthew Christian, Esq.
Marion Fowler, Esq.
R. Gerald Chambers, Jr., Esq.
Carmelo B. Sammataro, Esq.
✓ Tanya Gee, S.C. Court of Appeals
Keshia Reed

RECEIVED
OCT 14 2011
SC Court of Appeals

TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

Carmelo B. Sammataro

E-mail: SSammataro@TurnerPadget.com

Writer's Direct Dial: (803) 227-4253

Writer's Direct Fax: (803) 400-1532

October 20, 2011

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

RECEIVED

OCT 21 2011

SC Court of Appeals

Re: Ann Coleman v. Mariner Health Care, Inc. et al.
Case Nos.: 2010-CP-21-835 and 836
TPGL File No.: 11034.101

Dear Ms. Gee:

Please be advised Appellant Palmetto Faith Operating, LLC received the transcript of the January 6, 2011 motion hearing from Ms. Keishia Reed this morning. As both requested transcripts have now been received, we will calendar thirty days from today's date as the deadline to file our Initial Brief and Designation of Matter To Be Included In The Record On Appeal. Please file the original of this letter and return a clocked copy to me via the enclosed envelope. Thank you for your assistance with this matter, and please contact me if you have any questions.

With kind regards, I am

Very truly yours,

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



Carmelo B. Sammataro

CBS/tj

Enclosures

cc: Matthew W. Christian, Esquire
Marion S. Fowler, III, Esquire
Perry D. Boulter, Esquire
W. McElhaney White, Esquire
William C. Barnes, Esquire
Michael I. Bernstein, Esquire
(w/enc.)

BUSINESS • LITIGATION • SOLUTIONS

Bank of America Plaza • 17th Floor • 1901 Main Street (29201) • PO Box 1473 • Columbia, SC 29202

Phone (803) 254-2200 • Fax (803) 799-3957 • turnerpadget.com



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX: (803) 734-1839
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November 7, 2011

Perry D. Boulter, Esquire
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Ginger D. Goforth, Esquire
Holcombe Bomar, P.A.
P. O. Drawer 1897
Spartanburg, SC 29304

R. Gerald Chambers, Jr., Esquire
Carmelo B. Sammataro, Esquire
Turner, Padgett, Graham
& Laney, P.A.
P O Box 1473
Columbia, SC 29202

Re: Coleman, Ann v. Mariner Health Care
Case Tracking #: 2011194946

Dear Counsel:

We have received correspondence from both of you regarding the transcript in this matter. Unfortunately, the Court cannot set time for service of the Appellant's Initial Brief and Designation of Matter until we receive confirmation from Ms. Goforth.

Therefore, counsel from Holcombe Bomar, PA, are requested to immediately inform this Court of the date the transcript was received from the Court Reporter so that timelines may be set accordingly.

Very truly yours,

Tanya A. Gee
CLERK

TAG/ec

cc: Marion Stephenson Fowler, III, Esquire
Matthew W. Christian, Esquire

The South Carolina Court of Appeals

Ann Coleman, individually, and as
Personal Representative of the Estate of
Mary Brinson,

Respondent,

v.

Mariner Health Care, Inc. f/k/a Mariner
Post Acute Network, LLC, Mariner
Health Care Management Company,
Mariner Health Central, Inc., Mariner
Health Group, Inc., MHC Holding
Company, MHC Florida Holding
Company, MHC Gulf Coast Holding
Company, MHC MidAmerica Holding
Company, MHC Rocky Mountain
Holding Company, MHC Northeast
Holding Company, MHC West Holding
Company, MHC Texas Holding
Company, MHC MidAtlantic Holding
Company, Living Centers-Southeast,
Inc., Grancare South Carolina, Inc.,
Individually and d/b/a Faith Health
Care Center, SavaSeniorCare
Management, LLC., SavaSeniorCare
Administrative Services, LLC,
SavaSeniorCare, LLC, SavaSeniorCare,
Inc., National Senior Care, Inc.,
Palmetto Health Care, LLC, Palmetto
Faith Operating, LLC, Individually and
d/b/a Faith Health Care Center, Ask
Holdings, LLC, Leonard Grunstein, an
Individual, Murray Forman, an
Individual, Boyd P. Gentry, an
Individual, Abraham Shaulson a/k/a
Abraham Shavlson a/k/a A. Shawson
a/k/a Abraham Shawson, an Individual,
Avi Klein, an Individual, SC Property
Holdings, LLC, SC Faith, LLC, and
John Does 1-26,

Defendants,

Of whom Mariner Health Care, Inc.
f/k/a Mariner Post Acute Network,
LLC, Mariner Health Care
Management Company, Mariner Health
Central, Inc., Mariner Health Group,
Inc., MHC Holding Company, MHC
Florida Holding Company, MHC Gulf
Coast Holding Company, MHC
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MHC West Holding Company, MHC
Texas Holding Company, MHC
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Centers-Southeast, Inc., Grancare
South Carolina, Inc., Individually and
d/b/a Faith Health Care Center,
SavaSeniorCare Administrative
Services, LLC, SavaSeniorCare, LLC,
SavaSeniorCare, Inc., National Senior
Care, Inc., Leonard Grunstein, an
Individual, Murray Forman, an
Individual, Boyd P. Gentry, an
Individual, are

Appellants.

The Honorable Michael G. Nettles
The Honorable William H. Seals, Jr.
Florence County
Trial Court Case No. 2010-CP-21-00835
2010-CP-21-00836

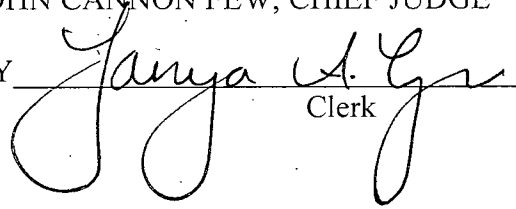
REMITTITUR

No Petition for Reinstatement having been filed since issuance of this Court's Order dated
October 13, 2011,

IT IS ORDERED that the appeal of the orders dated November 15, 2010; January 31, 2011
and February 7, 2011, case numbers 2010-CP-21-00835 and 2010-CP-21-00836 be and hereby is
remitted to the Clerk of Court for Florence County.

JOHN CANNON FEW, CHIEF JUDGE

BY


Clerk

Columbia, South Carolina

Original to: The Honorable Connie R. Bell

cc: Perry D. Boulier, Esquire
W. McElhaney White, Esquire
Ginger D. Goforth, Esquire
R. Gerald Chambers, Jr., Esquire
Carmelo B. Sammataro, Esquire
Marion Stephenson Fowler, III, Esquire
Matthew W. Christian, Esquire



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J. Hayes Walsh
Nathaniel P. Mark
Joshua T. Thompson
Kyle T. Clelland

Stacey Campbell Davis
Special Counsel

Neville Holcombe, 1902-1983
Horace L. Bomar, 1912-1994

November 7, 2011

The Honorable Tanya Gee
Clerk of the S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Ann Coleman, Individually and as Personal Representative of the Estate of
Mary Brinson v. Mariner Health Care, Inc., et al.
Case Nos. 2010-CP-21-00835 & 00836
Our File No. 10963

Dear Ms. Gee:

Please accept this letter as confirmation that Appellants received copies of the final two transcripts, from November 3, 2010 and January 6, 2011, on October 20, 2011.

Sincerely,

Ginger D. Goforth

GDG/jg

cc: Matthew Christian, Esq.
Marion Fowler, Esq.
R. Gerald Chambers, Jr., Esq.
Tammy Brown, S.C. Court Administration

RECEIVED
NOV 09 2011
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge
Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-00835 & 00836

RECEIVED
NOV 16 2011
SC Court of Appeals

Ann Coleman, Individually, and as Personal Representative of the Estate of Mary
Brinson, ... Respondent,

v.

Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a/ Faith Health Care Center, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein, an Individual, Murray Forman, and Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, SC Faith, LLC, and John Does 1-26,

of whom,

Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., Individually and d/b/a/ Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, and Murray

11-21-11 154
12-21-11

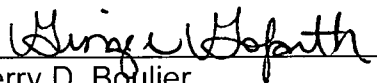
Forman, an Individual are
..... Appellants.

**MOTION TO EXTEND TIME TO FILE INITIAL BRIEF AND
DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL**

Appellants request a 30 day extension of time to file their Initial Brief and Designation of Matter to Be Included in the Record on Appeal. The current filing deadline is November 19, 2011. Appellants require a thirty day extension of time in order to fully and adequately prepare their brief and record. This motion is not interposed for delay, and will not prejudice Respondent.

Appellants therefore respectfully request that the Court grant their motion for a 30 day extension of time to file their Initial Brief and Designation of Matter to be Included in the Record on Appeal, making such filings due on or before December 19, 2011.

HOLCOMBE BOMAR, P.A.


Perry D. Boulrier
W. McElhaney White
Ginger D. Goforth
Post Office Drawer 1897
Spartanburg, SC 29304
(864) 594-5300

Attorneys for Appellants

November 11, 2011

Other Counsel of Record:

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Christian & Davis, LLC
Attorneys for Plaintiff
Post Office Box 332
Greenville, South Carolina 29602

Marion S. Fowler, III, Esquire
Fowler Law Firm, PC
Attorneys for Plaintiff
Post Office Box 1719
Lake City, South Carolina 29560

R. Gerald Chambers, Jr., Esquire
Turner Padgett Graham & Laney, PA
Attorney for Palmetto Faith Operating, LLC d/b/a Faith Healthcare Center
P.O. Box 1473
Columbia, SC 29202

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge
Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-00835 & 00836

Ann Coleman, Individually, and as Personal Representative of the Estate of Mary
Brinson, ... Respondent,

v.

Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a/ Faith Health Care Center, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein, an Individual, Murray Forman, an Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, SC Faith, LLC, and John Does 1-26,

of whom,

Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., Individually and d/b/a/ Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, and Murray Forman, an Individual are Appellants.

PROOF OF SERVICE

I certify that I have served the Motion to Extend Time to File Initial Brief and Designation of Matter to be Included in Record on Appeal on the following parties by depositing a copy of it in the United States Mail, postage prepaid, on November 11, 2011, addressed to the attorneys of record listed below:

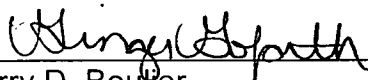
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SC Court of Appeals

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Lake City, South Carolina 29560
Attorneys for Plaintiff

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Turner Padgett Graham & Laney, PA
P.O. Box 1473
Columbia, SC 29202
Attorney for Palmetto Faith Operating, LLC d/b/a Faith
Healthcare Center

November 11, 2011



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Ginger D. Goforth
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P.O. Box 1897
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(864) 594-5300
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Stacey Campbell Davis
Special Counsel

Neville Holcombe, 1902-1983
Horace L. Bomar, 1912-1994

November 11, 2011

The Honorable Tanya Gee
Clerk of the S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Ann Coleman, Individually and as Personal Representative of the Estate of
Mary Brinson v. Mariner Health Care, Inc., et al.
Case Nos. 2010-CP-21-00835 & 00836
Our File No. 10963

Dear Ms. Gee:

Enclosed please find for filing an original and seven copies of the Motion to Extend Time to File Initial Brief and Designation of Matter to be Included in Record on Appeal and Proof of Service, along with our firm's check in the amount of \$25.00 for applicable filing fees. Please return a filed copy of the Motion in the enclosed postage paid return envelope.

Thank you in advance for your cooperation, and please do not hesitate to contact with me any questions.

Sincerely,

Ginger D. Goforth

GDG/lf
Enclosures

RECEIVED

NOV 16 2011

cc: - Matthew Christian, Esq. (w/ letter and enclosures)
Marion Fowler, Esq. (w/letter and enclosures)
R. Gerald Chambers, Jr., Esq. (w/letter and enclosures)

SC Court of Appeals

The South Carolina Court of Appeals

Ann Coleman, individually, and as
Personal Representative of the Estate of
Mary Brinson,

Respondent,

v.

Mariner Health Care, Inc. f/k/a Mariner
Post Acute Network, LLC, Mariner Health
Care Management Company, Mariner
Health Central, Inc., Mariner Health
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Northeast Holding Company, MHC West
Holding Company, MHC Texas Holding
Company, MHC MidAtlantic Holding
Company, Living Centers-Southeast, Inc.,
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and d/b/a Faith Health Care Center,
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SavaSeniorCare Administrative Services,
LLC, SavaSeniorCare, LLC,
SavaSeniorCare, Inc., National Senior
Care, Inc., Palmetto Health Care, LLC,
Palmetto Faith Operating, LLC,
Individually and d/b/a Faith Health Care
Center, Ask Holdings, LLC, Leonard
Grunstein, an Individual, Murray Forman,
an Individual, Boyd P. Gentry, an
Individual, Abraham Shaulson a/k/a
Abraham Shavlson a/k/a A. Shawson a/k/a
Abraham Shawson, an Individual, Avi
Klein, an Individual, SC Property
Holdings, LLC, SC Faith, LLC, and John
Does 1-26,

Defendants,

Of whom Mari Health Care, Inc. f/k/a
Mariner Post Acute Network, LLC,
Mariner Health Care Management
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Mariner Health Group, Inc., MHC Holding
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MHC Texas Holding Company, MHC
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Carolina, Inc., Individually and d/b/a Faith
Health Care Center, SavaSeniorCare
Administrative Services, LLC,
SavaSeniorCare, LLC, SavaSeniorCare,
Inc., National Senior Care, Inc., Leonard
Grunstein, an Individual, Murray Forman,
an Individual, Boyd P. Gentry, an
Individual, are

Appellants.

The Honorable Michael G. Nettles
The Honorable William H. Seals, Jr.
Florence County
Trial Court Case No. 2010-CP-21-00835
2010-CP-21-00836

ORDER

For good cause having been shown, the time for serving and filing the Appellants' Initial Brief and
Designation of Matter in the above entitled matter is hereby extended until December 21, 2011.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE
For the Court

BY V. Cloire Allen, Deputy
CLERK

Columbia, South Carolina
cc: Perry D. Boulter, Esquire
W. McElhaney White, Esquire
Ginger D. Goforth, Esquire
R. Gerald Chambers, Jr., Esquire
Carmelo B. Sammataro, Esquire
Marion Stephenson Fowler, III, Esquire
Matthew W. Christian, Esquire

FILED

Carter 11/17/11

Carmelo B. Sammataro

E-mail: SSammataro@TurnerPadget.com

Writer's Direct Dial: (803) 227-4253

Writer's Direct Fax: (803) 400-1532

November 21, 2011

VIA HAND DELIVERY

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RECEIVED
NOV 21 2011
SC Court of Appeals

Re: Ann Coleman v. Mariner Health Care, Inc. et al.
Case Nos.: 2010-CP-21-835 and 836
TPGL File No.: 11034.101

Dear Ms. Gee:

On behalf of Appellant Palmetto Faith Operating, LLC, individually and d/b/a Faith Health Care Center, I write to respectfully request a thirty-day extension of time to file and serve an Initial Brief and Designation of Matter in the above-referenced action. A thirty-day extension of the original November 21, 2011 deadline would establish the new deadline for service and filing as December 21, 2011. Our check for the \$25.00 filing fee is enclosed. It would be greatly appreciated if you would return a clocked copy of this letter to me via our office courier. Thank you for your attention to this matter, and please contact me if you have any questions.

With kind regards, I am

Very truly yours,

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


Carmelo B. Sammataro

CBS/tj

November 21, 2011

Page 2

cc: Matthew W. Christian, Esquire
Marion S. Fowler, III, Esquire
Perry D. Boulier, Esquire
W. McElhaney White, Esquire
William C. Barnes, Esquire
Michael I. Bernstein, Esquire
(via regular mail)

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge
Michael G. Nettles, Circuit Court Judge

RECEIVED
NOV 23 2011
SC Court of Appeals

Case Nos. 2010-CP-21-00835 & 00836

Ann Coleman, Individually, and as Personal Representative of the Estate of Mary
Brinson,

Respondent,

v.

Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein, an Individual, Murray Forman, an Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, SC Faith, LLC, and John Does 1-26,

of whom,

Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd

P. Gentry, an Individual, and Murray Forman, an Individual are,

Appellants.

PETITION FOR WITHDRAWAL AND SUBSTITUTION OF COUNSEL

YOUNG CLEMENT RIVERS, LLP

D. Jay Davis, Jr.

William L. Howard

P. O. Box 993

Charleston, South Carolina 29402

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and

JOHNSON, TRENT, WEST & TAYLOR, LLP

Lori D. Proctor

919 Miliam Street, Suite 1700

Houston, Texas 77002

Telephone: (713) 977-7070

Email: ldproctor@proctor-law.com

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

COME NOW D. Jay Davis, Jr. and William L. Howard, of Young Clement Rivers, LLP, and Lori D. Proctor, of Johnson, Trent, West & Taylor, LLP, with the express consent of Holcombe Bomar, P.A., and petition this Honorable Court for withdrawal and substitution of counsel as follows:

1. At present, Holcombe Bomar, P.A. is counsel of record before this Court for all of the Appellants, such appellants being set forth in the above caption.

2. The instant Petition pertains to and is intended to affect only those Appellants expressly identified in paragraph 3 below, with no change whatsoever with respect to the representation of any Appellant not expressly identified in paragraph 3 below.

3. With respect to Appellants Mariner Health Care, Inc., f/k/a Mariner Post-Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., GranCare South Carolina, Inc. individually and d/b/a Faith Health Care Center, National Senior Care, Inc., and Boyd Gentry, such Appellants have requested that Holcombe Bomar, P.A., be permitted to withdraw as their counsel and that the law firms of Young Clement Rivers, LLP and Johnson, Trent, West & Taylor, LLP be substituted as counsel of record in place of Holcombe Bomar, P.A. to assume representation of their interests before this Court.

4. The undersigned represent and attest to the Court that the withdrawal and substitution of counsel requested herein is with due notice to and consent of the affected clients, indeed, it is upon their express request.

5. The undersigned respectfully submit that justifiable cause exists to grant the within request for withdrawal and substitution of counsel, and that D. Jay Davis, Jr. and William L. Howard, of Young Clement Rivers, LLP, and Lori D. Proctor, of Johnson, Trent, West & Taylor, LLP, are all members of the South Carolina Bar in good standing, with the capabilities and resources necessary to represent the affected clients' interests before this Court.

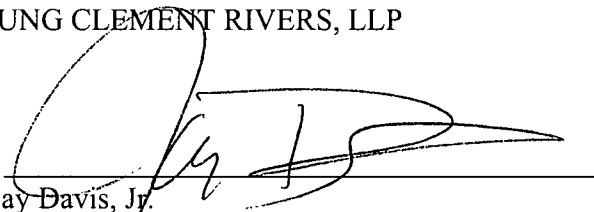
6. Due notice of this Petition is being provided to all counsel of record.

WHEREFORE, in accordance with the wishes of the Appellants affected hereby, with the consent of Holcombe Bomar, P.A., and upon justifiable cause shown, the undersigned move for an order of this Court permitting Holcombe Bomar, P.A. to withdraw as counsel for Appellants Mariner Health Care, Inc., f/k/a Mariner Post-Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., GranCare South Carolina, Inc. individually and d/b/a Faith Health Care Center, National Senior Care, Inc., and Boyd Gentry, with D. Jay Davis, Jr. and William L. Howard, of Young Clement Rivers, LLP, and Lori D. Proctor, of Johnson, Trent, West & Taylor, LLP, being substituted as counsel of record

for these Appellants in place of Holcombe Bomar, P.A. to assume representation of their interests before this Court.

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: 
D. Jay Davis, Jr.
William L. Howard
P. O. Box 998
Charleston, South Carolina 29402
Telephone: (843) 720-5488
Facsimile: (843) 579-1327
Email: jdavis@ycrlaw.com
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and

JOHNSON, TRENT, WEST & TAYLOR, LLP
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Telephone: (713) 977-7070
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Email: ldproctor@proctor-law.com

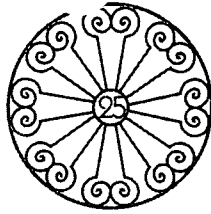
Charleston, South Carolina

Dated: 11/18/11

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: V. Claire Allen
(Clerk) (Deputy Clerk)

*filed
12/5/11
granted*



YCR LAW
Young Clement Rivers, LLP

Elizabeth R. O'Neil
Paralegal

Direct Dial: (843) 724-6658
Direct Fax: (843) 579-2936
E-mail: coneil@ycrlaw.com

November 21, 2011

VIA US MAIL

The Honorable Tanya A. Gee
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: *Ann Coleman, Individually and as Personal Representative of the Estate of Mary Brinson vs. Mariner Health Care, Inc., et al.*
Case No.: 2010-CP-21-835; 836
YCR File: 14264-20110818

Dear Ms. Gee:

Enclosed for filing in the above-referenced case are the original and seven (7) copies of a Petition for Withdrawal and Substitution of Counsel, and the original and two (2) copies of a Proof of Service. Also enclosed is our firm check in the amount of \$25.00 to cover the cost of filing same. Kindly return one clocked copy of each document to use in the self addressed stamped envelope provided.

Thank you, in advance, for your assistance with this matter.

Respectfully yours,

YOUNG CLEMENT RIVERS, LLP

Elizabeth R. O'Neil
Paralegal

ERO/ero
Enclosures

cc: Matthew W. Christian, Esquire
Marion S. Fowler, III, Esquire
R. Gerald Chambers, Jr., Esquire
William C. Barnes, Jr., Esquire
Michael I. Bernstein, Esquire
Perry D. Boulter, Esquire
W. McElhaney White, Esquire
Ginger D. Goforth, Esquire

RECEIVED
NOV 23 2011
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge
Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-00835 & 00836

RECEIVED
NOV 23 2011
SC Court of Appeals

Ann Coleman, Individually, and as Personal Representative of the Estate of Mary Brinson,

Respondent,

v.

Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein, an Individual, Murray Forman, an Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, SC Faith, LLC, and John Does 1-26,

of whom,

Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd

P. Gentry, an Individual, and Murray Forman, an Individual are,

Appellants.

PROOF OF SERVICE

YOUNG CLEMENT RIVERS, LLP

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William L. Howard

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and

JOHNSON, TRENT, WEST & TAYLOR, LLP

Lori D. Proctor

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Telephone: (713) 977-7070

Email: ldproctor@proctor-law.com

I, Russell G. Hines, of Young Clement Rivers, LLP, do hereby certify that a copy of the **Petition for Withdrawal and Substitution of Counsel** was served on all other parties to this matter by depositing a copy of the same in the United States Mail, postage prepaid, on November 21, 2011, addressed as follows to counsel of record:

HOLCOMBE BOMAR, P.A.
Perry D. Boulter, Esquire
W. McElhaney White, Esquire
Ginger D. Goforth, Esquire
P.O. Box 1897
Spartanburg, SC 29304
Attorneys for Appellants

CHRISTIAN & DAVIS, LLC
Matthew W. Christian, Esquire
P.O. Box 332
Greenville, SC 29602
Attorneys for Respondent

FOWLER LAW FIRM, PC
Marion S. Fowler, III, Esquire
P.O. Box 1719
Lake City, SC 29560
Attorneys for Respondent

TURNER PADGET GRAHAM & LANEY, PA
R. Gerald Chambers, Jr., Esquire
P.O. Box 1473
Columbia, SC 29202
***Attorneys for Palmetto Faith Operating, LLC
d/b/a Faith Healthcare Center***

TURNER PADGET GRAHAM & LANEY, PA
William C. Barnes, Jr., Esquire
P.O. Box 5478
Florence, SC 29502
***Attorneys for Ask Holdings, LLC, Palmetto Faith Health Care, LLC,
SC Property Holdings, LLC, and SC Faith, LLC***

Michael I. Bernstein, Esquire
1688 Meridian Avenue, Suite 418
Miami Beach, FL 33139
*Attorney for Ask Holdings, LLC, Palmetto Faith Health Care, LLC,
SC Property Holdings, LLC, and SC Faith, LLC*

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: _____

Charleston, South Carolina

Dated: 11/21/11

The South Carolina Court of Appeals

Ann Coleman, individually, and as
Personal Representative of the Estate of
Mary Brinson,) Respondent,

v.

Mariner Health Care, Inc. f/k/a Mariner
Post Acute Network, LLC, Mariner Health
Care Management Company, Mariner
Health Central, Inc., Mariner Health
Group, Inc., MHC Holding Company,
MHC Florida Holding Company, MHC
Gulf Coast Holding Company, MHC
MidAmerica Holding Company, MHC
Rocky Mountain Holding Company, MHC
Northeast Holding Company, MHC West
Holding Company, MHC Texas Holding
Company, MHC MidAtlantic Holding
Company, Living Centers-Southeast, Inc.,
Grancare South Carolina, Inc., Individually
and d/b/a Faith Health Care Center,
SavaSeniorCare Management, LLC.,
SavaSeniorCare Administrative Services,
LLC, SavaSeniorCare, LLC,
SavaSeniorCare, Inc., National Senior
Care, Inc., Palmetto Health Care, LLC,
Palmetto Faith Operating, LLC,
Individually and d/b/a Faith Health Care
Center, Ask Holdings, LLC, Leonard
Grunstein, an Individual, Murray Forman,
an Individual, Boyd P. Gentry, an
Individual, Abraham Shaulson a/k/a
Abraham Shavlson a/k/a A. Shawson a/k/a
Abraham Shawson, an Individual, Avi
Klein, an Individual, SC Property
Holdings, LLC, SC Faith, LLC, and John
Does 1-26,

Defendants,

Of whom Mar Health Care, Inc. f/k/a
Mariner Post Network, LLC,
Mariner Health Care Management
Company, Mariner Health Central, Inc.,
Mariner Health Group, Inc., MHC Holding
Company, MHC Florida Holding
Company, MHC Gulf Coast Holding
Company, MHC MidAmerica Holding
Company, MHC Rocky Mountain Holding
Company, MHC Northeast Holding
Company, MHC West Holding Company,
MHC Texas Holding Company, MHC
MidAtlantic Holding Company, Living
Centers-Southeast, Inc., Grancare South
Carolina, Inc., Individually and d/b/a Faith
Health Care Center, SavaSeniorCare
Administrative Services, LLC,
SavaSeniorCare, LLC, SavaSeniorCare,
Inc., National Senior Care, Inc., Leonard
Grunstein, an Individual, Murray Forman,
an Individual, Boyd P. Gentry, an
Individual, are

Appellants.

The Honorable Michael G. Nettles
The Honorable William H. Seals, Jr.
Florence County
Trial Court Case No. 2010-CP-21-00835
2010-CP-21-00836

ORDER

For good cause having been shown, the time for serving and filing the Appellant's Initial Brief and Designation of Matter of Appellant Faith Health Care Center in the above entitled matter is hereby extended until December 21, 2011.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE
For the Court

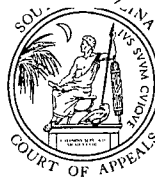
BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc: Perry D. Boulter, Esquire
W. McElhaney White, Esquire
Ginger D. Goforth, Esquire
R. Gerald Chambers, Jr., Esquire
Carmelo B. Sammataro, Esquire
Marion Stephenson Fowler, III, Esquire
Matthew W. Christian, Esquire

FILED

W. Carter 12/2/11



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

December 5, 2011

D. Jay Davis, Jr., Esquire
William L. Howard, Esquire
Young Clement Rivers, LLP
P O Box 993
Charleston, SC 29402

Re: Coleman, Ann v. Mariner Health Care
Case Tracking #: 2011194946

Dear Counsel:

The following Order has been endorsed on your "Petition for Withdrawal and Substitution of Counsel" in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

December 05, 2011."

Please be advised we have updated our records to show that Holcombe Bomar, P.A. will continue to represent Sava Senior Administrative Serves, LLC, SavaSenior Care, LLC, SavaSenior Care, Inc., Leonard Grunstein and Murray Forman. You are further advised that D. Jay Davis, Jr., William L. Howard, and Lori D. Proctor will be representing all remaining Appellants in this matter and should be copied on all future correspondence.

All parties are reminded that all Appellants' Initial Briefs and Designations of Matter must be served and filed on or before December 21, 2011.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/ec

cc: Lori Diane Proctor, Esquire
Perry D. Boulter, Esquire
W. McElhaney White, Esquire
Ginger D. Goforth, Esquire
R. Gerald Chambers, Jr., Esquire
Carmelo B. Sammataro, Esquire
Marion Stephenson Fowler, III, Esquire
Matthew W. Christian, Esquire

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge
Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-00835 & 00836

Ann Coleman, Individually, and as Personal Representative of the Estate of Mary Brinson,

Respondent,

v.

Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein, an Individual, Murray Forman, an Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, SC Faith, LLC, and John Does 1-26,

of whom,

Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC,

RECEIVED

DEC 05 2011

SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual,
Boyd P. Gentry, an Individual, and Murray Forman, an Individual are,

Appellants.

PETITION FOR WITHDRAWAL AND SUBSTITUTION OF COUNSEL

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

Sandra L. W. Miller (S.C. Bar No. 15122)

P. O. Box 10208

Greenville, South Carolina 29603

Telephone: (864) 255-5425

Email: samiller@wcsr.com

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

COMES NOW Sandra L. W. Miller of Womble Carlyle Sandridge & Rice, LLP, with the express consent of Holcombe Bomar, P.A., and petition this Honorable Court for withdrawal and substitution of counsel as follows:

1. At present, Holcombe Bomar, P.A. is counsel of record before this Court for Murray Forman and Leonard Grunstein, such appellants being set forth in the above caption.

2. The instant Petition pertains to and is intended to affect only Appellants Murray Forman and Leonard Grunstein, with no change whatsoever with respect to the representation of any other Appellant.

3. With respect to Appellants Murray Forman and Leonard Grunstein, such Appellants have requested that Holcombe Bomar, P.A., be permitted to withdraw as their counsel and that the law firm of Womble Carlyle Sandridge & Rice, LLP, be substituted as counsel of record in place of Holcombe Bomar, P.A. to assume representation of their interests before this Court.

4. The undersigned represents and attests to the Court that the withdrawal and substitution of counsel requested herein is with due notice to and consent of the affected clients, indeed, it is upon their express request.

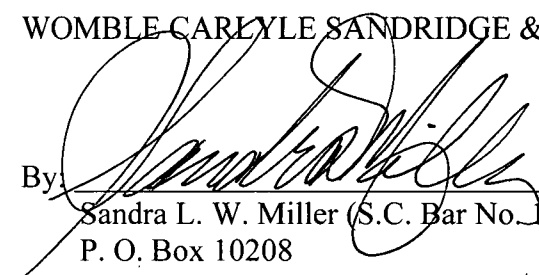
5. The undersigned respectfully submit that justifiable cause exists to grant the within request for withdrawal and substitution of counsel, and that Sandra L. W. Miller is a member of the South Carolina Bar in good standing, with the capabilities and resources necessary to represent the affected clients' interests before this Court.

6. Due notice of this Petition is being provided to all counsel of record.

WHEREFORE, in accordance with the wishes of the Appellants affected hereby, with the consent of Holcombe Bomar, P.A., and upon justifiable cause shown, the undersigned move for an order of this Court permitting Holcombe Bomar, P.A. to withdraw as counsel for Appellants Murray Forman and Leonard Grunstein with Sandra L. W. Miller of Womble Carlyle Sandridge & Rice, LLP, being substituted as counsel of record for these Appellants in place of Holcombe Bomar, P.A. to assume representation of their interests before this Court.

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: 

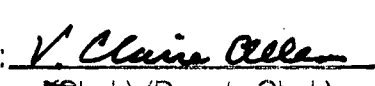
Sandra L. W. Miller (S.C. Bar No. 15122)
P. O. Box 10208
Greenville, South Carolina 29603
Telephone: (864) 255-5425
Fax: (864) 239-5851
Email: samiller@wcsr.com

Greenville, South Carolina

Dated: 12/2/11

GRANTED

JOHN CANNON FEW, C.J.
FOR THE COURT

By: 

(Clerk) (Deputy Clerk)

[CONSENT ON FOLLOWING PAGE]

filed 1/9/12
clerk

WE CONSENT:

HOLCOMBE BOMAR, P.A.

By: _____

Perry D. Boulrier

W. McElhaney White

Ginger D. Goforth

P.O. Box 1897

Spartanburg, South Carolina 29304

Telephone: (864) 594-5300

Email: pboulrier@holcombebomar.com

mwhite@holcombebomar.com

ggoforth@holcombebomar.com

Attorneys for Appellants Murray Forman and Leonard Grunstein

Spartanburg, South Carolina

Dated: 11.28.11

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge
Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-00835 & 00836

RECEIVED

DEC 05 2011

SC Court of Appeals

Ann Coleman, Individually, and as Personal Representative of the Estate of Mary Brinson,

Respondent,

v.

Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein, an Individual, Murray Forman, an Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, SC Faith, LLC, and John Does 1-26,

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Appellants.

PROOF OF SERVICE

I, Sandra L. W. Miller, of Womble Carlyle Sandridge & Rice, LLP, do hereby certify that a copy of the **Petition for Withdrawal and Substitution of Counsel** was served on all other parties to this matter by depositing a copy of the same in the United States Mail, postage prepaid, on December 2, 2011, addressed as follows to counsel of record:

Perry D. Boulter, Esquire
W. McElhaney White, Esquire
Ginger D. Goforth, Esquire
HOLCOMBE BOMAR, P.A.
P.O. Box 1897
Spartanburg, SC 29304

Matthew W. Christian, Esquire
CHRISTIAN & DAVIS, LLC
P.O. Box 332
Greenville, SC 29602

Marion S. Fowler, III, Esquire
FOWLER LAW FIRM, PC
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Lake City, SC 29560

R. Gerald Chambers, Jr., Esquire
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LANEY, PA
P.O. Box 1473
Columbia, SC 29202

William C. Barnes, Jr., Esquire
TURNER PADGET GRAHAM &
LANEY, PA
P.O. Box 5478
Florence, SC 29502

Michael I. Bernstein, Esquire
1688 Meridian Avenue, Suite 418
Miami Beach, FL 33139

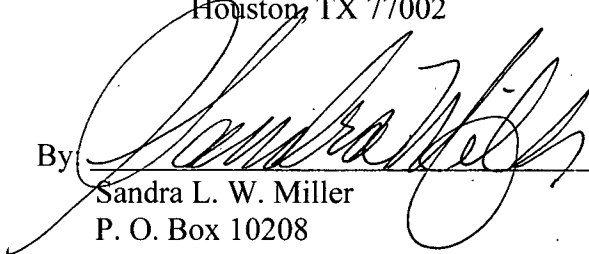
D. Jay Davis, Jr., Esquire
William L. Howard, Esquire
YOUNG CLEMENT RIVERS, LLP
P.O. Box 993
Charleston, SC 29402

Lori D. Proctor, Esquire
JOHNSON, TRENT, WEST &
TAYLOR, LLP
919 Milam Street, Suite 1700
Houston, TX 77002

RECEIVED

DEC 05 2011

SC Court of Appeals

By 

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WOMBLE
CARLYLE
SANDRIDGE
& RICE

A PROFESSIONAL LIMITED
LIABILITY COMPANY

550 South Main Street, Suite 400
Greenville, SC 29601

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Telephone: (864) 255-5400
Fax: (864) 255-5440
www.wcsr.com

Sandra L.W. Miller
Direct Dial: (864) 255-5425
Direct Fax: (864) 239-5851
E-mail: samiller@wcsr.com

December 2, 2011

The Honorable Tonya Gee
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: *Ann Coleman, Individually, and as Personal Representative of the Estate of Mary
Brinson v. Mariner Health Care, Inc., et al.*
Civil Action No. 2011-CP-21-835 (Wrongful Death Action)
and
*Ann Coleman, Individually, and as Personal Representative of the Estate of Mary
Brinson v. Mariner Health Care, Inc., et al.*
Civil Action No. 2011-CP-21-836 (Survival Action)

Dear Ms. Gee:

Enclosed for filing are an original and six copies of our Petition for Withdrawal and Substitution of Counsel in the above matters, including our \$25 filing fee. Please return the extra clocked copy to me in the envelope provided.

Thank you for your assistance.

Sincerely,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

Sandra L.W. Miller

SLWM:yf

Enclosures

c/enc: Perry D. Boulter, Esquire
W. McElhaney White, Esquire
Ginger D. Goforth, Esquire
Matthew W. Christian, Esquire

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SC Court of Appeals

Marion S. Fowler, III, Esquire
R. Gerald Chambers, Jr., Esquire
William C. Barnes, Jr., Esquire
Michael I. Bernstein, Esquire
D. Jay Davis, Jr., Esquire
William L. Howard, Esquire
Lori D. Proctor, Esquire

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Florence County
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge
Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-00835 & 00836

Ann Coleman, Individually, and as Personal Representative of the Estate of Mary Brinson,

Respondent,

v.

Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein, an Individual, Murray Forman, an Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, SC Faith, LLC, and John Does 1-26,

of whom,

Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, and Murray Forman, an Individual are,

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DEC 16 2011

SC Court of Appeals

Appellants.

12-21-11
11/20/11

MOTION FOR EXTENSION OF TIME

YOUNG CLEMENT RIVERS, LLP
D. Jay Davis, Jr. (S.C. Bar No. 6723)
William L. Howard (S.C. Bar No. 1967)
P.O. Box 993
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Email: jdavis@ycrlaw.com
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and,

JOHNSON, TRENT, WEST & TAYLOR, LLP
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ggoforth@holcombebomar.com

Pursuant to Rule 263(b), S.C.A.C.R., all Appellants move this Court for an order granting an extension of time in which to file Appellants' Initial Brief, on the grounds stated below:

1. Appellants' Initial Brief in the above-styled matter is presently due to be served and filed on December 21, 2011.

2. All Appellants intend to join in a single Appellants' Initial Brief.

3. Recent substitutions of counsel for certain Appellants have caused a need for additional time to coordinate the drafting of Appellants' Initial Brief. Specifically, on December 2, 2011, a Motion for Substitution was filed to substitute Sandra L.W. Miller as counsel for Leonard Grunstein and Murray Forman. This motion remains pending as of the filing of the present motion for extension of time. Additionally, on December 5, 2011, the Court granted a Motion for Substitution to substitute D. Jay Davis, William L. Howard, and Lori D. Proctor as counsel for Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, National Senior Care, Inc., and Boyd P. Gentry.

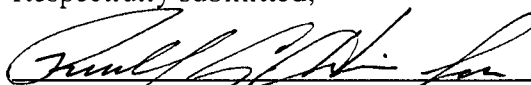
4. All Appellants submit that this motion is founded upon good cause and will not work any undue prejudice upon any party to this appeal.

5. Respondent's counsel has been contacted and does not object to the extension of the filing deadline.

WHEREFORE, Appellants, pursuant to S.C.A.C.R. Rule 263(b), request that they be granted an extension of time in which to file Appellants' Initial Brief. Appellants respectfully request that this extension be for a period of thirty (30) days after the due date, or until January 20, 2012. Additionally, Appellants request that the Court hold the filing deadline of December 21, 2011 in abeyance until the Court has issued a ruling on this Motion.

December 15, 2011

Respectfully submitted,

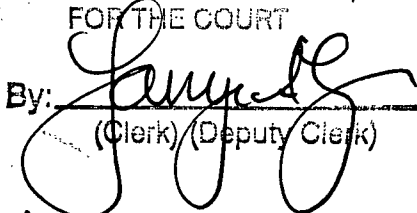


D. Jay Davis, Jr. (S.C. Bar No. 6723)
William L. Howard (S.C. Bar No. 1967)
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*Attorneys for Appellants Mariner Health Care, Inc.
f/k/a Mariner Post Acute Network, LLC, Mariner
Health Care Management Company, Mariner
Health Central, Inc., Mariner Health Group, Inc.,
MHC Holding Company, MHC Florida Holding
Company, MHC Gulf Coast Holding Company,
MHC MidAmerica Holding Company, MHC Rocky
Mountain Holding Company, MHC Northeast
Holding Company, MHC West Holding Company,
MHC Texas Holding Company, MHC MidAtlantic
Holding Company, Living Centers-Southeast, Inc.,
Grancare South Carolina, Inc., Individually and
d/b/a Faith Health Care Center, National Senior
Care, Inc., and Boyd P. Gentry*

GRANTED

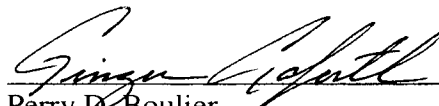
JOHN CANNON FEW, C.J.
FOR THE COURT

By: 

(Clerk) (Deputy Clerk)

filed

*1-10-12
ecarter*

 (by *Paul G. White*
with *express permission*)

Perry D. Boulrier

W. McElhaney White

Ginger Goforth

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*Attorneys for Appellants SavaSeniorCare
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LLC, and SavaSeniorCare, Inc., Murray Forman
and Leonard Grunstein*

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Florence County
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge
Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-00835 & 00836

Ann Coleman, Individually, and as Personal Representative of the Estate of Mary Brinson,

Respondent,

v.

Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein, an Individual, Murray Forman, an Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, SC Faith, LLC, and John Does 1-26,

of whom,

Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, and Murray Forman, an Individual are,

Appellants.

PROOF OF SERVICE

YOUNG CLEMENT RIVERS, LLP
D. Jay Davis, Jr. (S.C. Bar No. 6723)
William L. Howard (S.C. Bar No. 1967)
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and,

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mwhite@holcombebomar.com
ggoforth@holcombebomar.com

I, Russell G. Hines, of Young Clement Rivers, LLP, do hereby certify that a copy of the foregoing **Motion for Extension of Time** was served on all other parties to this matter by depositing a copy of the same in the United States Mail, postage prepaid, on December 15, 2011, addressed as follows to counsel of record:

HOLCOMBE BOMAR, P.A.
Perry D. Boulter, Esquire
W. McElhaney White, Esquire
Ginger D. Goforth, Esquire
P.O. Box 1897
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SavaSeniorCare, LLC, and SavaSeniorCare, Inc., Murray Forman and Leonard
Grunstein*

CHRISTIAN & DAVIS, LLC
Matthew W. Christian, Esquire
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Greenville, SC 29602
Attorneys for Respondent

FOWLER LAW FIRM, PC
Marion S. Fowler, III, Esquire
P.O. Box 1719
Lake City, SC 29560
Attorneys for Respondent

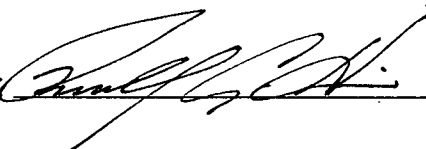
TURNER PADGET GRAHAM & LANEY, PA
R. Gerald Chambers, Jr., Esquire
P.O. Box 1473
Columbia, SC 29202
*Attorneys for Palmetto Faith Operating, LLC
d/b/a Faith Healthcare Center*

TURNER PADGET GRAHAM & LANEY, PA
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*Attorneys for Ask Holdings, LLC, Palmetto Faith Health Care, LLC,
SC Property Holdings, LLC, and SC Faith, LLC*

Michael I. Bernstein, Esquire
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Miami Beach, FL 33139
*Attorney for Ask Holdings, LLC, Palmetto Faith Health Care, LLC,
SC Property Holdings, LLC, and SC Faith, LLC*

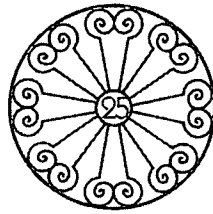
Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP

By: _____

Charleston, South Carolina

Dated: 12/15/11



YCR LAW
Young Clement Rivers, LLP

Elizabeth R. O'Neil
Paralegal

Direct Dial: (843) 724-6658
Direct Fax: (843) 579-2936
E-mail: eoel@ycrlaw.com

December 15, 2011

VIA US MAIL

The Honorable Tanya A. Gee
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: *Ann Coleman, Individually and as Personal Representative of the Estate of Mary Brinson vs. Mariner Health Care, Inc., et al.*
Case No.: 2010-CP-21-835; 836
YCR File: 14264-20110818

Dear Ms. Gee:

Enclosed for filing in the above-referenced case are the original and seven (7) copies of a Motion for Extension of Time, and the original and two (2) copies of a Proof of Service. Also enclosed is our firm check in the amount of \$25.00 to cover the cost of filing same. Kindly return one clocked copy of each document to use in the self addressed stamped envelope provided.

Thank you, in advance, for your assistance with this matter.

Respectfully yours,

YOUNG CLEMENT RIVERS, LLP

Elizabeth R. O'Neil
Paralegal

ERO/ero
Enclosures

cc: Matthew W. Christian, Esquire
Marion S. Fowler, III, Esquire
R. Gerald Chambers, Jr., Esquire
William C. Barnes, Jr., Esquire
Michael I. Bernstein, Esquire
Perry D. Boulter, Esquire
W. McElhaney White, Esquire
Ginger D. Goforth, Esquire
Sandra L. Miller, Esquire

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court Of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-835 and 836

RECEIVED
DEC 21 2011
SC Court of Appeals

Ann Coleman, Individually, and as Personal Representative of the
Estate of Mary Brinson Respondent,

v.

Mariner Health Care, Inc. f/k/a Mariner Post-Acute Network, LLC,
Mariner Health Care Management Company, Mariner Health
Central, Inc., Mariner Health Group, Inc., MHC Holding
Company, MHC Florida Holding Company, MHC Gulf Coast
Holding Company, MHC MidAmerica Holding Company, MHC
Rocky Mountain Holding Company, MHC Northeast Holding
Company, MHC West Holding Company, MHC Texas Holding
Company, MHC MidAtlantic Holding Company, Living Centers-
Southeast, Inc., GranCare South Carolina, Inc., Individually and
d/b/a Faith Health Care Center, SavaSeniorCare Management,
LLC, SavaSeniorCare Administrative Services, LLC,
SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care,
Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC,
Individually and d/b/a Faith Health Care Center, Ask Holdings,
LLC, Leonard Grunstein, an Individual, Murray Forman, an
Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a
Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an
Individual, Avi Klein, an Individual, SC Property Holdings, LLC,
SC Faith, LLC and John Does 1-26,

of Whom,

Mariner Health Care Management Company, Mariner Health
Central, Inc., GranCare South Carolina, Inc., Individually and d/b/a
Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner
Post-Acute Network, LLC, Mariner Health Group, Inc., MHC
Holding Company, MHC Florida Holding Company, MHC Gulf
Coast Holding Company, MHC MidAmerica Holding Company,

12-21-11
1-20-12

MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, Murray Forman, an Individual, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center are Appellants.

APPELLANT PALMETTO FAITH OPERATING,
LLC, INDIVIDUALLY AND D/B/A FAITH HEALTH
CARE CENTER'S MOTION FOR EXTENSION OF
TIME TO FILE ITS INITIAL BRIEF AND
DESIGNATION OF MATTER TO BE INCLUDED IN
THE RECORD ON APPEAL

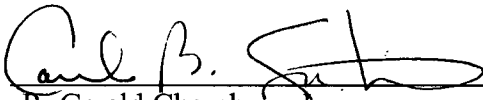
Pursuant to Rule 224 of the South Carolina Rules of Appellate Practice, Appellant PALMETTO FAITH OPERATING, LLC, INDIVIDUALLY AND D/B/A FAITH HEALTH CARE CENTER (hereinafter "Appellant Palmetto Faith") hereby moves this Court for an Order granting an extension of time during which to file its Initial Brief and Designation Of Matter To Be Included In The Record On Appeal. For the reasons set forth below, Appellant Palmetto Faith requests an additional period of thirty days from December 21, 2011, during which to file these documents.

The additional time requested, beyond the extension of time previously granted by the Court, is warranted given the complexity of the legal issues presented. The thirty-day extension will not prejudice Respondent or co-Appellants or affect their legal rights.

Appellant Palmetto Faith intends to work diligently and to file its Initial Brief and Designation Of Matter as soon as practicable. However, for the reasons stated above, Appellant Palmetto Faith respectfully requests that the Court grant a thirty-day extension of time during which it may file its Initial Brief and Designation Of Matter.

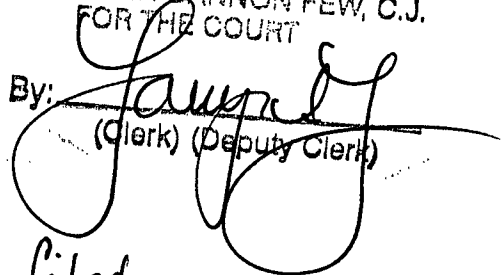
TURNER PADGET GRAHAM & LANEY P.A.

December 21, 2011

By: 
R. Gerald Chambers, Jr.
Carmelo B. Sammataro
Post Office Box 1473
Columbia, SC 29202
Phone: (803) 254-2200
Fax: (803) 799-3957

ATTORNEYS FOR APPELLANT PALMETTO
FAITH OPERATING, LLC, INDIVIDUALLY
AND D/B/A FAITH HEALTH CARE CENTER

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: 
(Clerk) (Deputy Clerk)

filed

1-10-12

ECarter

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court Of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-835 and 836

Ann Coleman, Individually, and as Personal Representative of the
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LLC, SavaSeniorCare Administrative Services, LLC,
SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care,
Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC,
Individually and d/b/a Faith Health Care Center, Ask Holdings,
LLC, Leonard Grunstein, an Individual, Murray Forman, an
Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a
Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an
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SC Faith, LLC and John Does 1-26,

of Whom,

Mariner Health Care Management Company, Mariner Health
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Post-Acute Network, LLC, Mariner Health Group, Inc., MHC
Holding Company, MHC Florida Holding Company, MHC Gulf
Coast Holding Company, MHC MidAmerica Holding Company,

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SC Court of Appeals

MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, Murray Forman, an Individual, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center are.....Appellants.

PROOF OF SERVICE

The undersigned certifies that a true and correct copy of APPELLANT PALMETTO FAITH OPERATING, LLC, INDIVIDUALLY AND D/B/A FAITH HEALTH CARE CENTER'S MOTION FOR EXTENSION OF TIME TO FILE ITS INITIAL BRIEF AND DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL was served this 21st day of December 2011, via First Class U.S. Mail, upon the following counsel for the parties in interest:

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**ATTORNEYS FOR CO-APPELLANTS
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AND SAVASENIORCARE, LLC,
SAVASENIORCARE, INC.**

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Womble Carlyle Sandridge & Rice, LLP
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LEONARD GRUNSTEIN AND
MURRAY FORMAN**

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William L. Howard, Esquire
Young Clement Rivers, LLP
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Charleston, SC 29402

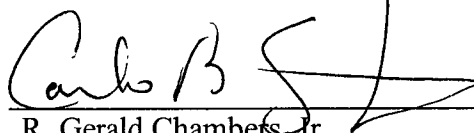
Lori D. Proctor, Esquire
Johnson, Trent, West & Taylor, LLP
919 Miliam Street, Suite 1700
Houston, TX 77002

**ATTORNEYS FOR CO-APPELLANTS
MARINER HEALTH, ET AL.**

TURNER PADGET GRAHAM & LANEY P.A.

December 21, 2011

By:



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Carmelo B. Sammataro
Post Office Box 1473
Columbia, SC 29202
Phone: (803) 254-2200
Fax: (803) 799-3957

**ATTORNEYS FOR APPELLANT PALMETTO
FAITH OPERATING, LLC, INDIVIDUALLY
AND D/B/A FAITH HEALTH CARE CENTER**

TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

Carmelo B. Sammataro

E-mail: SSammataro@TurnerPadget.com

Writer's Direct Dial: (803) 227-4253

Writer's Direct Fax: (803) 400-1532

December 21, 2011

VIA HAND DELIVERY

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: Ann Coleman v. Mariner Health Care, Inc. et al.
Case Nos.: 2010-CP-21-835 and 836
TPGL File No.: 11034.101

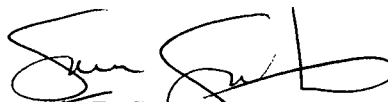
Dear Ms. Gee:

Enclosed please find the original and seven copies of Appellant Palmetto Faith Operating, LLC, Individually And D/B/A Faith Health Care Center's Motion For Extension Of Time To File Its Initial Brief And Designation Of Matter To Be Included In The Record On Appeal regarding the above-referenced matter. Also enclosed are the original and one copy of the Proof of Service and our check for the filing fee. Please file the original filings and return clocked copies to me via our office courier. Thank you for your assistance with this matter, and please contact me if you have any questions.

With kind regards, I am

Very truly yours,

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


Carmelo B. Sammataro

CBS/tj
Enclosure

BUSINESS • LITIGATION • SOLUTIONS

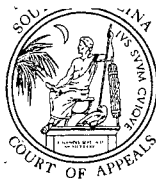
Bank of America Plaza • 17th Floor • 1901 Main Street (29201) • PO Box 1473 • Columbia, SC 29202
Phone (803) 254-2200 • Fax (803) 799-3957 • turnerpadget.com

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DEC 21 2011
SC Court of Appeals

December 21, 2011

Page 2

cc: Matthew W. Christian, Esquire
Marion S. Fowler, III, Esquire
Perry D. Boulter, Esquire
W. McElhaney White, Esquire
William C. Barnes, Esquire
Michael I. Bernstein, Esquire
Sandra L. W. Miller, Esquire
D. Jay Davis, Jr., Esquire
William L. Howard, Esquire
Lori D. Proctor, Esquire
(w/enc.)



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

January 6, 2012

D. Jay Davis, Jr., Esquire
William L. Howard, Esquire
Young Clement Rivers, LLP
P O Box 993
Charleston, SC 29402

Lori Diane Proctor, Esquire
Johnson, Trent, West & Taylor, LLP
919 Milam St.
Ste. 1700
Houston, TX 77002

Re: Coleman, Ann v. Mariner Health Care
Case Tracking #: 2011194946

Dear Counsel:

The following Order has been endorsed on your "Petition for Withdrawal and Substitution of Counsel" in the above entitled case on appeal.

"Granted.

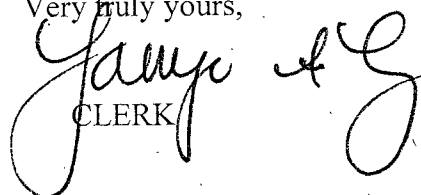
John Cannon Few C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

January 06, 2012."

Please be advised the Court's records have been updated to show that Holcombe Bomar, P.A. has been removed as counsel in this matter and the law firms of Young Clement Rivers, LLP and Johnson, Trent, West & Taylor, LLP are substituted as counsel of record for the affected clients' interests in this matter.

Very truly yours,


CLERK

TAG/ec



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

January 09, 2012

Sandra L. Miller, Esquire
Womble Carlyle Sandridge
& Rice, LLP
PO Box 10208
Greenville, SC 29603

Re: Coleman, Ann v. Mariner Health Care
Case Tracking #: 2011194946

Dear Counsel:

The following Order has been endorsed on your "Petition for Withdrawal and Substitution of Counsel" in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

January 09, 2012."

Please be advised the Court's records have been update to show Sandra L.W.Miller, Esquire, as counsel for the Appellants, Leonard Grunstein and Murray Forman. All parties are advised that the Court's letter of January 6, 2012 was sent in error and should be disregarded. We apologize for any confusion this error may have caused any of the parties.

Very truly yours,

V. Claire Allen, Deputy
CLERK

cc: D. Jay Davis, Jr., Esquire
William L. Howard, Esquire
Lori Diane Proctor, Esquire
Perry D. Boulter, Esquire
W. McElhaney White, Esquire
Ginger D. Goforth, Esquire
R. Gerald Chambers, Jr., Esquire
Carmelo B. Sammataro, Esquire
Marion Stephenson Fowler, III, Esquire
Matthew W. Christian, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
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January 10, 2012

D. Jay Davis, Jr., Esquire
William L. Howard, Esquire
Young Clement Rivers, LLP
P O Box 993
Charleston, SC 29402

R. Gerald Chambers, Jr., Esquire
Carmelo B. Sammataro, Esquire
Turner, Padgett, Graham
& Laney, P.A.
P O Box 1473
Columbia, SC 29202

Re: Coleman, Ann v. Mariner Health Care
Case Tracking #: 2011194946

Dear Counsel:

The following Order has been endorsed on Mr. Davis's "Motion for Extension of Time" in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ Tanya A. Gee
Clerk

"January 10, 2012."

The following Order has been endorsed on "Appellant Palmetto Facility Operating, LLC; Individually and d/b/a Faith Health Care Center's Motion for Extension of Time to File its Initial Brief and Designation of Matter to be Included in the Record on Appeal" in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ Tanya A. Gee
Clerk

January 10, 2012."

Please be advised all Appellants' Initial Briefs and Designations of Matter must be served and filed on or before January 20, 2012.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/ec

cc: Lori Diane Proctor, Esquire
Perry D. Boulter, Esquire
W. McElhaney White, Esquire
Ginger D. Goforth, Esquire
Sandra L. Miller, Esquire
Marion Stephenson Fowler, III, Esquire
Matthew W. Christian, Esquire

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Florence County
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge
Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-00835 & 00836

Ann Coleman, Individually, and as Personal Representative of the Estate of Mary Brinson,

Respondent,

v.

Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein, an Individual, Murray Forman, an Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, SC Faith, LLC, and John Does 1-26,

of whom,

Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, and Murray Forman, an Individual are,

Appellants.

RECEIVED

JAN 12 2012

SO COURT OF APPEALS

1-20-12 3/12
2-20-12 3/12

MOTION FOR EXTENSION OF TIME

YOUNG CLEMENT RIVERS, LLP
D. Jay Davis, Jr. (S.C. Bar No. 6723)
William L. Howard (S.C. Bar No. 1967)
P.O. Box 993
Charleston, South Carolina 29402
Telephone: (843) 577-4000
Email: jdavis@ycrlaw.com
bhoward@ycrlaw.com

and,

JOHNSON, TRENT, WEST & TAYLOR, LLP
Lori D. Proctor (S.C. Bar No. 80117)
919 Milam Street, Suite 1700
Houston, Texas 77002
Telephone: (713) 860-0585
Email: ldproctor@proctor-law.com

HOLCOMBE BOMAR, P.A.
Perry D. Boulrier
W. McElhaney White
Ginger Goforth
P.O. Box 1897
Spartanburg, South Carolina 29304
Telephone: (864) 594-5300
Email: pboulrier@holcombebomar.com
mwhite@holcombebomar.com
ggoforth@holcombebomar.com

WOMBLE CARLYLE SANDRIDGE & RICE, LLP
Sandra L.W. Miller
P.O. Box 10208
Greenville, South Carolina 29601
Telephone: (864) 255-5400
Email: samiller@wcsr.com

Pursuant to Rule 263(b), S.C.A.C.R., all Appellants move this Court for an order granting an extension of time in which to file Appellants' Initial Brief, on the grounds stated below:

1. Appellants' Initial Brief in the above-styled matter was originally due to be served and filed on November 21, 2011.

2. Appellants have been granted two extensions of time in which to file Appellants' Initial Brief. The filing deadline is now set for January 20, 2012.

3. All Appellants intend to join in a single Appellants' Initial Brief.

4. Appellants originally requested an extension because recent substitutions of counsel for certain Appellants caused a need for additional time to coordinate the drafting of Appellants' Initial Brief. Specifically, on January 9, 2012, the Court granted a Motion for Substitution to substitute Sandra L.W. Miller as counsel for Leonard Grunstein and Murray Forman. Additionally, on December 5, 2011, the Court granted a Motion for Substitution to substitute D. Jay Davis, William L. Howard, and Lori D. Proctor as counsel for Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, National Senior Care, Inc., and Boyd P. Gentry.

5. The above-referenced substitutions continue to require additional time to coordinate the drafting of the Initial Brief.

6. All Appellants submit that this motion is founded upon good cause and will not work any undue prejudice upon any party to this appeal.

7. Respondent's counsel and Appellants' co-counsel have been contacted and do not object to the extension of the filing deadline.

WHEREFORE, Appellants, pursuant to S.C.A.C.R. Rule 263(b), request that they be granted an extension of time in which to file Appellants' Initial Brief. Appellants respectfully request that this extension be for a period of thirty-one (31) days after the due date, or until February 20, 2012. Appellants request an extension of 31 days because a 30-day extension would fall on Sunday, February 19, 2012. Additionally, Appellants request that the Court hold the filing deadline of January 20, 2012 in abeyance until the Court has issued a ruling on this Motion.

January 11, 2012

Respectfully submitted,

A handwritten signature in cursive script, reading "Sandra Miller / SPA", written over a horizontal line.

Sandra L.W. Miller (S.C. Bar No. 15122)
WOMBLE CARLYLE SANDRIDGE & RICE, LLP
P.O. Box 10208
Greenville, South Carolina 29601
Telephone: (864) 255-5400
Email: samiller@wcsr.com
Attorney for Murray Forman and Leonard Grunstein

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: V. Claude Allen
~~(Clerk)~~ (Deputy Clerk)

D. Jay Davis, Jr. (S.C. Bar No. 6723)
William L. Howard (S.C. Bar No. 1967)
YOUNG CLEMENT RIVERS, LLP
P.O. Box 993
Charleston, South Carolina 29402
Telephone: (843) 577-4000
Email: jdavis@ycrlaw.com
bhoward@ycrlaw.com
and,

Lori D. Proctor (S.C. Bar No. 80117)
JOHNSON, TRENT, WEST & TAYLOR, LLP
919 Milam Street, Suite 1700
Houston, Texas 77002
Telephone: (713) 860-0585
Email: ldproctor@proctor-law.com
*Attorneys for Appellants Mariner Health Care, Inc.
f/k/a Mariner Post Acute Network, LLC, Mariner
Health Care Management Company, Mariner Health
Central, Inc., Mariner Health Group, Inc., MHC
Holding Company, MHC Florida Holding Company,
MHC Gulf Coast Holding Company, MHC
MidAmerica Holding Company, MHC Rocky
Mountain Holding Company, MHC Northeast
Holding Company, MHC West Holding Company,
MHC Texas Holding Company, MHC MidAtlantic
Holding Company, Living Centers-Southeast, Inc.,
Grancare South Carolina, Inc., Individually and
d/b/a Faith Health Care Center, National Senior
Care, Inc., and Boyd P. Gentry*

Perry D. Boulrier
W. McElhaney White
Ginger Goforth
HOLCOMBE BOMAR, P.A.
P.O. Box 1897
Spartanburg, South Carolina 29304
Telephone: (864) 594-5300
Email: pboulrier@holcombebomar.com
mwhite@holcombebomar.com
ggoforth@holcombebomar.com
*Attorneys for Appellants SavaSeniorCare
Administrative Services, LLC, SavaSeniorCare, LLC,
and SavaSeniorCare, Inc.*

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Florence County
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge
Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-00835 & 00836

Ann Coleman, Individually, and as Personal Representative of the Estate of Mary Brinson,

Respondent,

v.

Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein, an Individual, Murray Forman, an Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a Abraham Shavlsion a/k/a A. Shawson a/k/a Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, SC Faith, LLC, and John Does 1-26,

of whom,

Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, and Murray Forman, an Individual are,

Appellants.

PROOF OF SERVICE

I, Sandra L. W. Miller, of Womble Carlyle Sandridge & Rice, LLP, do hereby certify that a copy of the **MOTION FOR EXTENSION OF TIME** was served on all other parties to this matter by depositing a copy of the same in the United States Mail, postage prepaid, on January 11, 2012, addressed as follows to counsel of record:

Perry D. Boulter, Esquire
W. McElhaney White, Esquire
Ginger D. Goforth, Esquire
HOLCOMBE BOMAR, P.A.
P.O. Box 1897
Spartanburg, SC 29304

Matthew W. Christian, Esquire
CHRISTIAN & DAVIS, LLC
P.O. Box 332
Greenville, SC 29602

Marion S. Fowler, III, Esquire
FOWLER LAW FIRM, PC
P.O. Box 1719
Lake City, SC 29560

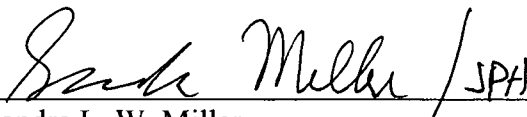
R. Gerald Chambers, Jr., Esquire
TURNER PADGET GRAHAM &
LANEY, PA
P.O. Box 1473
Columbia, SC 29202

William C. Barnes, Jr., Esquire
TURNER PADGET GRAHAM &
LANEY, PA
P.O. Box 5478
Florence, SC 29502

Michael I. Bernstein, Esquire
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Miami Beach, FL 33139

D. Jay Davis, Jr., Esquire
William L. Howard, Esquire
YOUNG CLEMENT RIVERS, LLP
P.O. Box 993
Charleston, SC 29402

Lori D. Proctor, Esquire
JOHNSON, TRENT, WEST &
TAYLOR, LLP
919 Milam Street, Suite 1700
Houston, TX 77002

By:  /JPA
Sandra L. W. Miller
P. O. Box 10208
Greenville, South Carolina 29603
Telephone: (864) 255-5425
Fax: (864) 239-5851
Email: samiller@wcsr.com

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SANDRIDGE
& RICE
A PROFESSIONAL LIMITED
LIABILITY COMPANY

550 South Main Street, Suite 400
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Mailing Address:
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Greenville, SC 29603-0208
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www.wcsr.com

Sandra L.W. Miller
Direct Dial: (864) 255-5425
Direct Fax: (864) 239-5851
E-mail: samiller@wcsr.com

January 11, 2012

The Honorable Tonya Gee
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: *Ann Coleman, Individually, and as Personal Representative of the Estate of Mary Brinson v. Mariner Health Care, Inc., et al.*
Civil Action No. 2011-CP-21-835 (Wrongful Death Action)
and
Ann Coleman, Individually, and as Personal Representative of the Estate of Mary Brinson v. Mariner Health Care, Inc., et al.
Civil Action No. 2011-CP-21-836 (Survival Action)

Dear Ms. Gee:

On behalf of Appellants Murray Forman and Leonard Grunstein, and with the consent of opposing counsel, enclosed for filing in the above matters are the original and six copies of a Motion for Admission *Pro Hac Vice*, along with the Verified Application for Admission and Affidavit of Malcolm J. Harkins III and filing fee. We are also sending a copy of these documents and requisite filing fee to the Clerk of the South Carolina Supreme Court, Office of Bar Admissions.

In addition, on behalf of all Appellants, and with the consent of all parties, enclosed are the original and six copies of a Motion for Extension of Time, requesting an extension in which to file the Initial Brief and Designation of Matter to February 19, 2012.

RECEIVED
JAN 12 2012
SC Court of Appeals

Please file these documents and return the extra file-stamped copy of each motion to me in the enclosed envelope. Thank you for your assistance.

Sincerely,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

A handwritten signature in black ink, appearing to read "Sandra L.W. Miller / JPH".

Sandra L.W. Miller

SLWM:yf

Enclosures

c/enc: Perry D. Boulter, Esquire
W. McElhaney White, Esquire
Ginger D. Goforth, Esquire
Matthew W. Christian, Esquire
Marion S. Fowler, III, Esquire
R. Gerald Chambers, Jr., Esquire
William C. Barnes, Jr., Esquire
Michael I. Bernstein, Esquire
D. Jay Davis, Jr., Esquire
William L. Howard, Esquire
Lori D. Proctor, Esquire

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge
Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-00835 & 00836

RECEIVED

JAN 12 2012

SC Court of Appeals

Ann Coleman, Individually, and as Personal Representative of the Estate of Mary Brinson,

Respondent,

v.

Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein, an Individual, Murray Forman, an Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a Abraham Shavlsion a/k/a A. Shawson a/k/a Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, SC Faith, LLC, and John Does 1-26,

of whom,

Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC,

SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual,
Boyd P. Gentry, an Individual, and Murray Forman, an Individual are,

Appellants.

MOTION FOR ADMISSION *PRO HAC VICE*

WOMBLE CARLYLE SANDRIDGE & RICE, LLP
Sandra L. W. Miller (S.C. Bar No. 15122)
P. O. Box 10208
Greenville, South Carolina 29603
Telephone: (864) 255-5425
Email: samiller@wcsr.com

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

COMES NOW Sandra L. W. Miller of Womble Carlyle Sandridge & Rice, LLP, as counsel of record for Appellants Murray Forman and Leonard Grunstein, and hereby moves for the admission *pro hac vice* of Malcolm J. Harkins III, an attorney with the law firm of Proskauer Rose LLP, 1001 Pennsylvania Avenue, N.W. Suite 400, South, Washington, D.C. 2004. In support of this motion, Appellants Forman and Grunstein show the following:

1. Mr. Harkins is a member in good standing of the Bar of the District of Columbia and is admitted to practice before that district's court of last resort and the United States District Court for the Southern District of California, the Eastern District of Pennsylvania, and the Eastern District of Wisconsin;

2. Mr. Harkins' appearance in this matter will be in association with the undersigned, a member in good standing of the bar of this State;

3. The undersigned represents that she has consulted with counsel for Respondent, and that he has no objection to this motion;

4. In further support of this motion, Appellants Forman and Grunstein submit the Verified Application for Admission *Pro Hac Vice* of Malcolm J. Harkins III as Exhibit A.

WHEREFORE, Appellants Forman and Grunstein request that the Court admit Malcolm J. Harkins III *pro hac vice* in this matter for purposes of this lawsuit only.

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: *Sandra L. W. Miller* / SPA
Sandra L. W. Miller (S.C. Bar No. 15122)
P. O. Box 10208
Greenville, South Carolina 29603
Telephone: (864) 255-5425
Fax: (864) 239-5851
Email: samiller@wcsr.com

Greenville, South Carolina

Dated: *January 11, 2012*

GRANTED

JOHN CANNON FEW, C.J.
FOR THE COURT

By: *V. Claire Allen*
(Clerk) (Deputy Clerk)

Fied
3/7/12 Carter

EXHIBIT A

**VERIFIED APPLICATION FOR ADMISSION *PRO HAC VICE*
IN THE STATE OF SOUTH CAROLINA**

Ann Coleman, Individually and as Personal
Representative of the Estate of Mary
Brinson,

Plaintiff,

2010-CP-21-00835 & -36

Case No.

South Carolina Court of
Appeals

Court

vs.

Mariner Health Care, Inc. f/k/a Mariner
Post Acute Network, LLC et al.
(additional named defendants listed on
attached page),

Defendants.

Mailing Address of Court: P.O. Box 11629
Columbia, SC 29211

Comes now Malcolm J. Harkins III, applicant herein, and respectfully represents the following:

1. Applicant resides at:

22 Masters Ct.
Street Address

Potomac
City

Montgomery
County

MD
State

20854
Zip Code

(301) 983-0103
Telephone

2. Applicant is an attorney and a member of the law firm of (or practices law under the name of) Proskauer
Rose LLP, with offices at:

1001 Pennsylvania Ave., N.W., Suite 400 South
Street Address

Washington
City

County

D.C.
State

20004
Zip Code

(202) 416-5803
Telephone

(202) 416-6899
Fax Number

3. Applicant has been retained personally or as a member of the above named law firm by defendants
Leonard Grunstein and Murray Forman to provide legal representation in connection with the above case now pending
before the above named court of the State of South Carolina.

4. Since March 23 of 1978, applicant has been, and presently is, a member in good standing of the bar of the
highest court of the District of Columbia where applicant regularly practices law. Attached is a certificate of good
standing.

5. Applicant has been admitted to practice before the following courts: (List all of the following courts applicant has been admitted to practice before: United States District Courts; United States Circuit Courts of Appeals; the Supreme Court of the United States; and courts of other states or the District of Columbia.)

Court:	Date Admitted:
The Supreme Court of the United States	1983
U.S. District Court, California, Southern District	1983
U.S. District Court, Pennsylvania, Eastern District	1977
U.S. District Court, Wisconsin, Eastern District	1985
U.S. Court of Federal Claims	1979
U.S. Court of Appeals, District of Columbia Circuit	1979
U.S. Court of Appeals, Second Circuit	2010
U.S. Court of Appeals, Fifth Circuit	1983
U.S. Court of Appeals, Sixth Circuit	1996
U.S. Court of Appeals, Seventh Circuit	1983
U.S. Court of Appeals, Ninth Circuit	1981
U.S. Court of Appeals, Tenth Circuit	2010
U.S. Court of Appeals, Eleventh Circuit	2001

Applicant is presently a member in good standing of the bars of those courts listed above, except as listed below:
(List any court named in the preceding paragraph that applicant is no longer admitted to practice before.)

6. Applicant presently is not subject to any suspension or disbarment proceedings, and has not been formally notified of any complaints pending before a disciplinary agency, except as provided below (give particulars, e.g., jurisdiction, court, date):

7. Applicant never has had any application for admission *pro hac vice* in this or any other jurisdiction denied or any *pro hac vice* admission revoked, except as provided below (give particulars, e.g., date, court, docket number, judge, circumstances; attach a copy of any order of denial or revocation):

8. Applicant never has had any certificate or privilege to appear and practice before any administrative body suspended or revoked, except as provided below (give particulars, e.g., date, administrative body, date of suspension and reinstatement):

9. Local counsel of record associated with applicant in this case is Sandra Louise Weikel Miller, of the Womble Carlyle Sandridge & Rice LLP law firm, which has offices at:

550 S. Main St., Suite 400
Street Address

Greenville
County

Greenville
City

SC
State

29601
Zip Code

(864) 255-5425
Telephone

If applicable list all other firms/attorneys you are associated with in this matter.

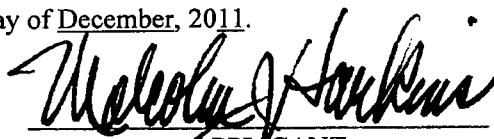
W. McElhaney White,
Holcombe Bomar, P.A.
P.O. Box 1897
Spartanburg, SC 29304
Telephone: (864) 594-5309

10. Applicant has previously filed an application to appear *pro hac vice* in the following South Carolina cases (give case name and status of litigation, date of application, local counsel of record in each case, and state whether application is pending or was granted).

11. Applicant agrees to comply with the applicable statutes, laws and rules of the State of South Carolina and will familiarize him/herself with and comply with the South Carolina Rules of Professional Conduct. Applicant consents to the jurisdiction of the South Carolina courts and Commission on Lawyer Conduct.

12. Applicant respectfully requests to be admitted to practice in the above named court for this case only.

DATED this 16th day of December, 2011.

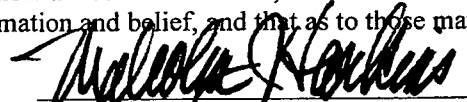


APPLICANT

VERIFICATION

DISTRICT OF COLUMBIA

I, Malcolm J. Harkins III, do hereby swear or affirm under penalty of perjury that I am the applicant in the above styled matter; that I have read the foregoing application and know the contents thereof; and that the contents are true of my own knowledge, except as to those matters stated on information and belief, and that as to those matters I believe them to be true.

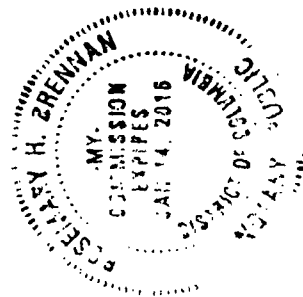


APPLICANT/AFFRANT

Subscribed and sworn to before me this 16th day of December, 2011.

Reemay A. Brennan
Notary Public for the District of Columbia

My Commission Expires: 1/14/16



LOCAL COUNSEL CONSENT

I hereby consent, as local counsel of record, to the association of applicant in this cause pursuant to Rules Governing Admission *Pro Hac Vice* to the South Carolina Bar.

DATED this 11th day of January, 2012.

[Signature]
LOCAL COUNSEL OF RECORD

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this application upon the South Carolina Supreme Court by mail addressed to: South Carolina Supreme Court Office of Bar Admissions, P.O. Box 11330, Columbia, SC 29211, accompanied by payment of the \$250 filing fee payable to the South Carolina Supreme Court on this 11th day of January, 2012.

[Signature]
APPLICANT/AFFIANT



District of Columbia Court of Appeals
Committee on Admissions
430 F Street, N.W. — Room 123
Washington, D. C. 20001
202 / 879-2710

I, JULIO A. CASTILLO, Clerk of the District of Columbia Court of Appeals, do hereby certify that

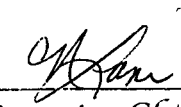
MALCOLM J. HARKINS, III

was on the 23TH day of MARCH, 1978

duly qualified and admitted as an attorney and counselor entitled to practice before this Court and is, on the date indicated below, an active member in good standing of this Bar.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of this Court at the City of Washington, D.C., on December 7, 2011.

JULIO A. CASTILLO
Clerk of the Court

By: 
Deputy Clerk

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Florence County
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge
Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-00835 & 00836

Ann Coleman, Individually, and as Personal Representative of the Estate of Mary Brinson,

Respondent,

v.

Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein, an Individual, Murray Forman, an Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, SC Faith, LLC, and John Does 1-26,

of whom,

Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, and Murray Forman, an Individual are,

Appellants.

PROOF OF SERVICE

I, Sandra L. W. Miller, of Womble Carlyle Sandridge & Rice, LLP, do hereby certify that a copy of the **MOTION FOR ADMISSION *PRO HAC VICE*** was served on all other parties to this matter by depositing a copy of the same in the United States Mail, postage prepaid, on January 11, 2012, addressed as follows to counsel of record:

Perry D. Boulter, Esquire
W. McElhaney White, Esquire
Ginger D. Goforth, Esquire
HOLCOMBE BOMAR, P.A.
P.O. Box 1897
Spartanburg, SC 29304

Matthew W. Christian, Esquire
CHRISTIAN & DAVIS, LLC
P.O. Box 332
Greenville, SC 29602

Marion S. Fowler, III, Esquire
FOWLER LAW FIRM, PC
P.O. Box 1719
Lake City, SC 29560

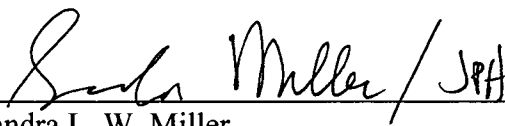
R. Gerald Chambers, Jr., Esquire
TURNER PADGET GRAHAM &
LANEY, PA
P.O. Box 1473
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William C. Barnes, Jr., Esquire
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William L. Howard, Esquire
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Lori D. Proctor, Esquire
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TAYLOR, LLP
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By: 
Sandra L. W. Miller
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Greenville, South Carolina 29603
Telephone: (864) 255-5425
Fax: (864) 239-5851
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**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Florence County
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge
Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-00835 & 00836

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of whom,

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Appellants.

RECEIVED
JAN 20 2012
SC Court of Appeals

*Amended Reg.
per "Primary App's"*

AMENDED MOTION FOR EXTENSION OF TIME

YOUNG CLEMENT RIVERS, LLP
D. Jay Davis, Jr. (S.C. Bar No. 6723)
William L. Howard (S.C. Bar No. 1967)
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Charleston, South Carolina 29402
Telephone: (843) 577-4000
Email: jdavis@ycrlaw.com
bhoward@ycrlaw.com

and,

JOHNSON, TRENT, WEST & TAYLOR, LLP
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WOMBLE CARLYLE SANDRIDGE & RICE, LLP
Sandra L.W. Miller
P.O. Box 10208
Greenville, South Carolina 29601
Telephone: (864) 255-5400
Email: samiller@wcsr.com

Pursuant to Rule 263(b), S.C.A.C.R., Appellants Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, and Murray Forman, an Individual (collectively “the Non-Palmetto Appellants”) move this Court for an order granting an extension of time in which to file their Initial Brief. The purpose of this amendment is to clarify the moving parties for this Motion. The grounds for the Motion are stated below:

1. The Initial Brief in the above-styled matter was originally due to be served and filed on November 21, 2011.
2. The Non-Palmetto Appellants have been granted two extensions of time in which to file their Initial Brief. The filing deadline is now set for January 20, 2012.
3. The Non-Palmetto Appellants intend to join in a single Initial Brief.
4. The Non-Palmetto Appellants originally requested an extension because recent substitutions of counsel for certain Appellants caused a need for additional time to coordinate the drafting of their Initial Brief. Specifically, on January 9, 2012, the Court granted a Motion for Substitution to substitute Sandra L.W. Miller as counsel for Leonard Grunstein and Murray Forman. Additionally, on December 5, 2011, the Court granted a Motion for Substitution to

substitute D. Jay Davis, William L. Howard, and Lori D. Proctor as counsel for Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, National Senior Care, Inc., and Boyd P. Gentry.

5. The above-referenced substitutions continue to require additional time to coordinate the drafting of the Initial Brief.

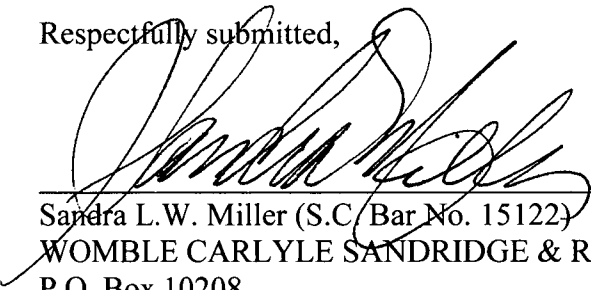
6. The Non-Palmetto Appellants submit that this motion is founded upon good cause and will not work any undue prejudice upon any party to this appeal.

7. Respondent's counsel and the Non-Palmetto Appellants' co-counsel have been contacted and do not object to the extension of the filing deadline.

WHEREFORE, the Non-Palmetto Appellants, pursuant to S.C.A.C.R. Rule 263(b), request that they be granted an extension of time in which to file their Initial Brief. The Non-Palmetto Appellants respectfully request that this extension be for a period of thirty-one (31) days after the due date, or until February 20, 2012. The Non-Palmetto Appellants request an extension of 31 days because a 30-day extension would fall on Sunday, February 19, 2012. Additionally, the Non-Palmetto Appellants request that the Court hold the filing deadline of January 20, 2012 in abeyance until the Court has issued a ruling on this Motion.

January 19, 2012

Respectfully submitted,



Sandra L.W. Miller (S.C. Bar No. 15122)

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f/k/a Mariner Post Acute Network, LLC, Mariner
Health Care Management Company, Mariner Health
Central, Inc., Mariner Health Group, Inc., MHC
Holding Company, MHC Florida Holding Company,
MHC Gulf Coast Holding Company, MHC
MidAmerica Holding Company, MHC Rocky
Mountain Holding Company, MHC Northeast
Holding Company, MHC West Holding Company,
MHC Texas Holding Company, MHC MidAtlantic
Holding Company, Living Centers-Southeast, Inc.,
Grancare South Carolina, Inc., Individually and
d/b/a Faith Health Care Center, National Senior
Care, Inc., and Boyd P. Gentry*

Perry D. Boulrier
W. McElhaney White
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mwhite@holcombebomar.com
ggoforth@holcombebomar.com

*Attorneys for Appellants SavaSeniorCare
Administrative Services, LLC, SavaSeniorCare, LLC,
and SavaSeniorCare, Inc.*

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Florence County
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge
Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-00835 & 00836

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Respondent,

v.

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of whom,

Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, and Murray Forman, an Individual, and Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center are,

Appellants.

PROOF OF SERVICE

I, Sandra L. W. Miller, of Womble Carlyle Sandridge & Rice, LLP, do hereby certify that a copy of the **AMENDED MOTION FOR EXTENSION OF TIME** was served on all other parties to this matter by depositing a copy of the same in the United States Mail, postage prepaid, on January 19, 2012, addressed as follows to counsel of record:

Perry D. Boulter, Esquire
W. McElhaney White, Esquire
Ginger D. Goforth, Esquire
HOLCOMBE BOMAR, P.A.
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R. Gerald Chambers, Jr., Esquire
Carmelo B. Sammataro, Esquire
TURNER PADGET GRAHAM &
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Columbia, SC 29202

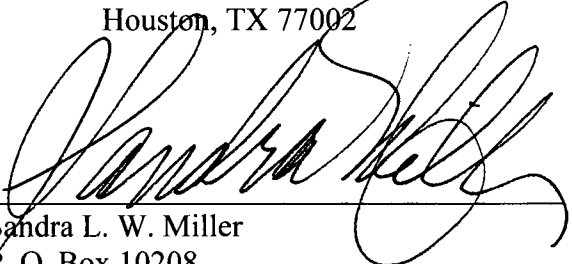
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LANEY, PA
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Houston, TX 77002

By: _____


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JAN 20 2012
SC Court of Appeals

WOMBLE
CARLYLE
SANDRIDGE
& RICE

A PROFESSIONAL LIMITED
LIABILITY COMPANY

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Direct Fax: (864) 239-5851
E-mail: samiller@wcsr.com

January 19, 2012

The Honorable Tonya Gee
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: *Ann Coleman, Individually, and as Personal Representative of the Estate of Mary Brinson v. Mariner Health Care, Inc., et al.*
Civil Action No. 2011-CP-21-835 (Wrongful Death Action)
and
Ann Coleman, Individually, and as Personal Representative of the Estate of Mary Brinson v. Mariner Health Care, Inc., et al.
Civil Action No. 2011-CP-21-836 (Survival Action)

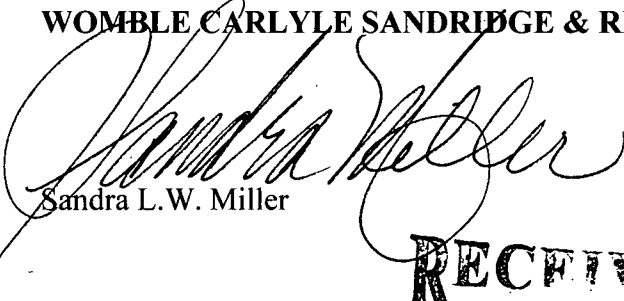
Dear Ms. Gee:

Enclosed are the original and six copies of an Amended Motion for Extension of Time, requesting an extension in which to file the Initial Brief and Designation of Matter to February 19, 2012. The purpose of this amendment is to clarify the moving parties for the motion.

Please file these documents and return the extra file-stamped copy of this amended motion to me in the enclosed envelope. Thank you for your assistance.

Sincerely,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP


Sandra L.W. Miller

SLWM:yf

Enclosures

c/enc: Perry D. Boulter, Esquire
W. McElhaney White, Esquire
Ginger D. Goforth, Esquire

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JAN 20 2012

SC Court of Appeals

Matthew W. Christian, Esquire
Marion S. Fowler, III, Esquire
R. Gerald Chambers, Jr., Esquire
William C. Barnes, Jr., Esquire
Michael I. Bernstein, Esquire
D. Jay Davis, Jr., Esquire
William L. Howard, Esquire
Lori D. Proctor, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court Of Common Pleas

Michael G. Nettles, Circuit Court Judge

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Mariner Health Care, Inc. f/k/a Mariner Post-Acute Network, LLC,
Mariner Health Care Management Company, Mariner Health
Central, Inc., Mariner Health Group, Inc., MHC Holding
Company, MHC Florida Holding Company, MHC Gulf Coast
Holding Company, MHC MidAmerica Holding Company, MHC
Rocky Mountain Holding Company, MHC Northeast Holding
Company, MHC West Holding Company, MHC Texas Holding
Company, MHC MidAtlantic Holding Company, Living Centers-
Southeast, Inc., GranCare South Carolina, Inc., Individually and
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Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an
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Post-Acute Network, LLC, Mariner Health Group, Inc., MHC
Holding Company, MHC Florida Holding Company, MHC Gulf
Coast Holding Company, MHC MidAmerica Holding Company,

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JAN 20 2012

SC Court of Appeals

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MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, Murray Forman, an Individual, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center are.....Appellants.

APPELLANT PALMETTO FAITH OPERATING,
LLC, INDIVIDUALLY AND D/B/A FAITH HEALTH
CARE CENTER'S MOTION FOR EXTENSION OF
TIME TO FILE ITS INITIAL BRIEF AND
DESIGNATION OF MATTER TO BE INCLUDED IN
THE RECORD ON APPEAL

Pursuant to Rule 224 of the South Carolina Rules of Appellate Practice, Appellant PALMETTO FAITH OPERATING, LLC, INDIVIDUALLY AND D/B/A FAITH HEALTH CARE CENTER (hereinafter "Appellant Palmetto Faith") hereby moves this Court for an Order granting an extension of time during which to file its Initial Brief and Designation Of Matter To Be Included In The Record On Appeal. For the reasons set forth below, Appellant Palmetto Faith requests an additional period of thirty days from January 20, 2012, during which to file these documents.

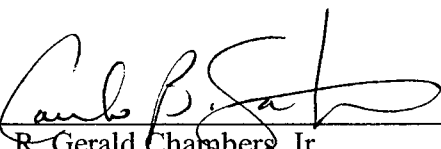
The additional time requested, beyond the extension of time previously granted by the Court, is warranted given the complexity of the legal issues presented. The thirty-day extension will not prejudice Respondent or co-Appellants or affect their legal rights.

Appellant Palmetto Faith intends to work diligently and to file its Initial Brief and Designation Of Matter as soon as practicable. However, for the reasons stated above, Appellant Palmetto Faith respectfully requests that the Court grant a thirty-day extension of time during which it may file its Initial Brief and Designation Of Matter.

TURNER PADGET GRAHAM & LANEY P.A.

January 20, 2012

By:


R. Gerald Chambers, Jr.

Carmelo B. Sammataro

Post Office Box 1473

Columbia, SC 29202

Phone: (803) 254-2200

Fax: (803) 799-3957

ATTORNEYS FOR APPELLANT PALMETTO
FAITH OPERATING, LLC, INDIVIDUALLY
AND D/B/A FAITH HEALTH CARE CENTER

GRANTED

JOHN CANNON FEW, C.J.
FOR THE COURT

By:



(Clerk) (Deputy Clerk)

FILED

 2/6/12

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court Of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-835 and 836

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SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care,
Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC,
Individually and d/b/a Faith Health Care Center, Ask Holdings,
LLC, Leonard Grunstein, an Individual, Murray Forman, an
Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a
Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an
Individual, Avi Klein, an Individual, SC Property Holdings, LLC,
SC Faith, LLC and John Does 1-26,

of Whom,

Mariner Health Care Management Company, Mariner Health
Central, Inc., GranCare South Carolina, Inc., Individually and d/b/a
Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner
Post-Acute Network, LLC, Mariner Health Group, Inc., MHC
Holding Company, MHC Florida Holding Company, MHC Gulf
Coast Holding Company, MHC MidAmerica Holding Company,

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JAN 20 2012

SC Court of Appeals

MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, Murray Forman, an Individual, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center are.....Appellants.

PROOF OF SERVICE

The undersigned certifies that a true and correct copy of APPELLANT PALMETTO FAITH OPERATING, LLC, INDIVIDUALLY AND D/B/A FAITH HEALTH CARE CENTER'S MOTION FOR EXTENSION OF TIME TO FILE ITS INITIAL BRIEF AND DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL was served this 20th day of January 2012, via First Class U.S. Mail, upon the following counsel for the parties in interest:

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Fowler Law Firm, PC
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AND SAVASENIORCARE, LLC,
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Greenville, SC 29603

**ATTORNEYS FOR CO-APPELLANTS
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MURRAY FORMAN**

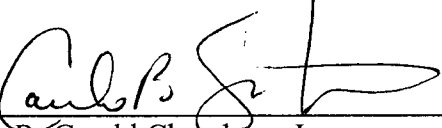
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**ATTORNEYS FOR CO-APPELLANTS
MARINER HEALTH, ET AL.**

TURNER PADGET GRAHAM & LANEY P.A.

January 20, 2012

By: 

R. Gerald Chambers, Jr.
Carmelo B. Sammataro
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Fax: (803) 799-3957

**ATTORNEYS FOR APPELLANT PALMETTO
FAITH OPERATING, LLC, INDIVIDUALLY
AND D/B/A FAITH HEALTH CARE CENTER**

TURNER PADGET

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CHARLESTON
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MYRTLE BEACH

Carmelo B. Sammataro

E-mail: CSammataro@TurnerPadget.com

Writer's Direct Dial: (803) 227-4253

Writer's Direct Fax: (803) 400-1532

January 20, 2012

VIA HAND DELIVERY

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: Ann Coleman v. Mariner Health Care, Inc. et al.
Case Nos.: 2010-CP-21-835 and 836
TPGL File No.: 11034.101

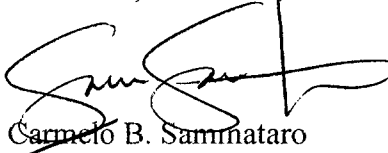
Dear Ms. Gee:

Enclosed please find the original and seven copies of Appellant Palmetto Faith Operating, LLC, Individually And D/B/A Faith Health Care Center's Motion For Extension Of Time To File Its Initial Brief And Designation Of Matter To Be Included In The Record On Appeal regarding the above-referenced matter. Also enclosed are the original and one copy of the Proof of Service and our check for the filing fee. Please file the original filings and return clocked copies to me via our office courier. Thank you for your assistance with this matter, and please contact me if you have any questions.

With kind regards, I am

Very truly yours,

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


Carmelo B. Sammataro

CBS/tj
Enclosure

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JAN 20 2012
SC Court of Appeals

BUSINESS • LITIGATION • SOLUTIONS

Bank of America Plaza • 17th Floor • 1901 Main Street (29201) • PO Box 1473 • Columbia, SC 29202
Phone (803) 254-2200 • Fax (803) 799-3957 • turnerpadget.com

January 20, 2012

Page 2

cc: Matthew W. Christian, Esquire
Marion S. Fowler, III, Esquire
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W. McElhaney White, Esquire
William C. Barnes, Esquire
Michael I. Bernstein, Esquire
Sandra L. W. Miller, Esquire
D. Jay Davis, Jr., Esquire
William L. Howard, Esquire
Lori D. Proctor, Esquire
(w/enc.)



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

January 27, 2012

Sandra L. Miller, Esquire
Womble Carlyle Sandridge
& Rice, LLP
PO Box 10208
Greenville, SC 29603

Re: Coleman, Ann v. Mariner Health Care
Case Tracking #: 2011194946

Dear Counsel:

The following Order has been endorsed on your "Motion for Extension of Time" in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ Tanya A. Gee
Clerk

January 26, 2012."

Please be advised the Appellants' Initial Brief and Designation of Matter must be served and filed on or before February 20, 2012.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/ec

cc: D. Jay Davis, Jr., Esquire
William L. Howard, Esquire
Lori Diane Proctor, Esquire
Perry D. Boulter, Esquire
W. McElhaney White, Esquire
Ginger D. Goforth, Esquire
R. Gerald Chambers, Jr., Esquire
Carmelo B. Sammataro, Esquire
Marion Stephenson Fowler, III, Esquire
Matthew W. Christian, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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February 6, 2012

R. Gerald Chambers, Jr., Esquire
Carmelo B. Sammataro, Esquire
Turner, Padgett, Graham
& Laney, P.A.
P O Box 1473
Columbia, SC 29202

Re: Coleman, Ann v. Mariner Health Care
Case Tracking #: 2011194946

Dear Counsel:

The following Order has been endorsed on "Appellant Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center's Motion for Extension of Time to File its Initial Brief and Designation of Matter to be Included in the Record on Appeal" in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ Tanya A. Gee
Deputy Clerk

February 06, 2012."

Please be advised the Appellants' Initial Brief and Designation of Matter for the parties listed above, must be served and filed on or before February 20, 2012.

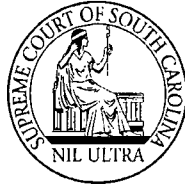
Very truly yours,

V. Claire Allen

CLERK

TAG/ec

cc: D. Jay Davis, Jr., Esquire
William L. Howard, Esquire
Lori Diane Proctor, Esquire
Perry D. Boulter, Esquire
W. McElhaney White, Esquire
Ginger D. Goforth, Esquire
Sandra L. Miller, Esquire
Marion Stephenson Fowler, III, Esquire
Matthew W. Christian, Esquire



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

February 13, 2012

Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Ann Coleman, Individually and as Personal Representative
of the Estate of Mary Brinson v. Mariner Health Care, Inc.,
et al
Case No. 2010-CP-21-00835 and 2010-CP-21-00836

Dear Clerk of Court:

I certify that the Office of Bar Admissions has received verified applications requesting Malcolm J. Harkins, III, be admitted *pro hac vice* in the above matters. The \$250 filing fee for each case for the applicant has been paid.

Yours truly,

Deputy Clerk for Bar Admissions

GBW/st

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FEB 14 2012
SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Florence County
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge
Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-00835 & 00836

RECEIVED
FEB 15 2012

SC Court of Appeals

Ann Coleman, Individually, and as Personal Representative of the Estate of Mary Brinson,

Respondent,

v.

Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein, an Individual, Murray Forman, an Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, SC Faith, LLC, and John Does 1-26,

of whom,

Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, and Murray Forman, an Individual, and Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center are,

Appellants.

3-5-12 419

MOTION FOR EXTENSION OF TIME

YOUNG CLEMENT RIVERS, LLP
D. Jay Davis, Jr. (S.C. Bar No. 6723)
William L. Howard (S.C. Bar No. 1967)
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and,

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ggoforth@holcombebomar.com

WOMBLE CARLYLE SANDRIDGE & RICE, LLP
Sandra L.W. Miller
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Pursuant to Rule 263(b), S.C.A.C.R., Appellants Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, and Murray Forman, an Individual (collectively “the Non-Palmetto Appellants”) move this Court for an order granting an extension of time in which to file their Initial Brief. The grounds for the Motion are stated below:

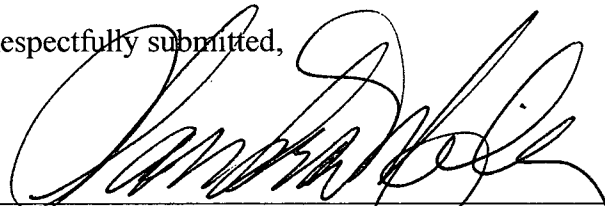
1. The Initial Brief in the above-styled matter was originally due to be served and filed on November 21, 2011.
2. The Non-Palmetto Appellants have been granted three extensions of time in which to file their Initial Brief. The filing deadline is now set for February 20, 2012.
3. The Non-Palmetto Appellants intend to join in a single Initial Brief.
4. The Non-Palmetto Appellants originally requested an extension because recent substitutions of counsel for certain Appellants caused a need for additional time to coordinate the drafting of their Initial Brief.
5. In addition to filing a Motion for Admission *Pro Hac Vice*, the Non-Palmetto Appellants are coordinating their Initial Brief among twenty-two appellants and need a modest extension of time in which to finalize their Initial Brief.

6. This will be the final extension requested by the Non-Palmetto Appellants.
7. The Non-Palmetto Appellants submit that this motion is founded upon good cause and will not work any undue prejudice upon any party to this appeal.
8. Respondent's counsel has been contacted regarding any objection to this extension, but a response has not yet been received. Non-Palmetto Appellants will supplement this Motion upon obtaining a response.
9. Non-Palmetto Appellants' co-counsel have been contacted and do not object to the extension of the filing deadline.

WHEREFORE, the Non-Palmetto Appellants, pursuant to S.C.A.C.R. Rule 263(b), request that they be granted an extension of time in which to file their Initial Brief. The Non-Palmetto Appellants respectfully request that this extension be for a period of fourteen (14) days after the due date, or until March 5, 2012. Additionally, the Non-Palmetto Appellants request that the Court hold the filing deadline of February 20, 2012 in abeyance until the Court has issued a ruling on this Motion.

February 14, 2012

Respectfully submitted,



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Attorney for Murray Forman and Leonard Grunstein

GRANTED

JOHN CANNON FEW, C.J.
FOR THE COURT

By: *V. Claire Allen*
(Clerk) (Deputy Clerk)

Filed
3/7/12 *cc Carter*

D. Jay Davis, Jr. (S.C. Bar No. 6723)
William L. Howard (S.C. Bar No. 1967)
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and,

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*Attorneys for Appellants Mariner Health Care, Inc.
f/k/a Mariner Post Acute Network, LLC, Mariner
Health Care Management Company, Mariner Health
Central, Inc., Mariner Health Group, Inc., MHC
Holding Company, MHC Florida Holding Company,
MHC Gulf Coast Holding Company, MHC
MidAmerica Holding Company, MHC Rocky
Mountain Holding Company, MHC Northeast
Holding Company, MHC West Holding Company,
MHC Texas Holding Company, MHC MidAtlantic
Holding Company, Living Centers-Southeast, Inc.,
Grancare South Carolina, Inc., Individually and
d/b/a Faith Health Care Center, National Senior
Care, Inc., and Boyd P. Gentry*

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*Attorneys for Appellants SavaSeniorCare
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and SavaSeniorCare, Inc.*

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Florence County
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge
Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-00835 & 00836

Ann Coleman, Individually, and as Personal Representative of the Estate of Mary Brinson,

Respondent,

v.

Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein, an Individual, Murray Forman, an Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, SC Faith, LLC, and John Does 1-26,

of whom,

Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, and Murray Forman, an Individual, and Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center are,

Appellants.

PROOF OF SERVICE

I, Sandra L. W. Miller, of Womble Carlyle Sandridge & Rice, LLP, do hereby certify that a copy of the **MOTION FOR EXTENSION OF TIME** was served on all other parties to this matter by depositing a copy of the same in the United States Mail, postage prepaid, on February 14, 2012, addressed as follows to counsel of record:

Perry D. Boulrier, Esquire
W. McElhaney White, Esquire
Ginger D. Goforth, Esquire
HOLCOMBE BOMAR, P.A.
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Spartanburg, SC 29304

Matthew W. Christian, Esquire
CHRISTIAN & DAVIS, LLC
P.O. Box 332
Greenville, SC 29602

Marion S. Fowler, III, Esquire
FOWLER LAW FIRM, PC
P.O. Box 1719
Lake City, SC 29560

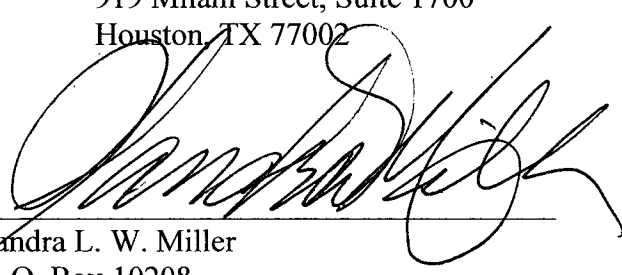
R. Gerald Chambers, Jr., Esquire
Carmelo B. Sammataro, Esquire
TURNER PADGET GRAHAM &
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Charleston, SC 29402

Lori D. Proctor, Esquire
JOHNSON, TRENT, WEST &
TAYLOR, LLP
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Houston, TX 77002

By: 

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& RICE
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LIABILITY COMPANY

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Sandra L.W. Miller
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Direct Fax: (864) 239-5851
E-mail: samiller@wcsr.com

February 14, 2012.

The Honorable Tonya Gee
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
FEB 15 2012
SC Court of Appeals

Re: *Ann Coleman, Individually, and as Personal Representative of the Estate of Mary Brinson v. Mariner Health Care, Inc., et al.*
Civil Action No. 2011-CP-21-835 (Wrongful Death Action)
and
Ann Coleman, Individually, and as Personal Representative of the Estate of Mary Brinson v. Mariner Health Care, Inc., et al.
Civil Action No. 2011-CP-21-836 (Survival Action)

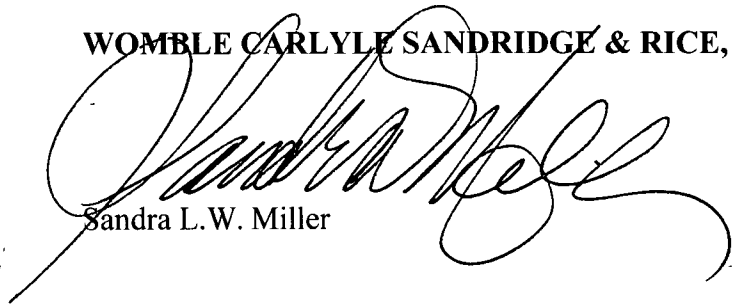
Dear Ms. Gee:

Enclosed are the original and seven copies of a Motion for Extension of Time, requesting an extension in which to file the Initial Brief and Designation of Matter to March 5, 2012. The purpose of this modest extension is to coordinate with twenty-two appellants to finalize a single Initial Brief.

Please file this motion and return the extra file-stamped copy to me in the enclosed envelope. Thank you for your assistance.

Sincerely,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP


Sandra L.W. Miller

SLWM:yf
Enclosures

c/enc: Perry D. Boulter, Esquire
W. McElhaney White, Esquire
Ginger D. Goforth, Esquire

Matthew W. Christian, Esquire
Marion S. Fowler, III, Esquire
R. Gerald Chambers, Jr., Esquire
William C. Barnes, Jr., Esquire
Michael I. Bernstein, Esquire
D. Jay Davis, Jr., Esquire
William L. Howard, Esquire
Lori D. Proctor, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court Of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-835 and 836

Ann Coleman, Individually, and as Personal Representative of the
Estate of Mary Brinson Respondent,

v.

Mariner Health Care, Inc. f/k/a Mariner Post-Acute Network, LLC,
Mariner Health Care Management Company, Mariner Health
Central, Inc., Mariner Health Group, Inc., MHC Holding
Company, MHC Florida Holding Company, MHC Gulf Coast
Holding Company, MHC MidAmerica Holding Company, MHC
Rocky Mountain Holding Company, MHC Northeast Holding
Company, MHC West Holding Company, MHC Texas Holding
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Southeast, Inc., GranCare South Carolina, Inc., Individually and
d/b/a Faith Health Care Center, SavaSeniorCare Management,
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Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an
Individual, Avi Klein, an Individual, SC Property Holdings, LLC,
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of Whom,

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Post-Acute Network, LLC, Mariner Health Group, Inc., MHC
Holding Company, MHC Florida Holding Company, MHC Gulf
Coast Holding Company, MHC MidAmerica Holding Company,

RECEIVED
FEB 21 2012

SC Court of Appeals

MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, Murray Forman, an Individual, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center are Appellants.

APPELLANT PALMETTO FAITH OPERATING,
LLC, INDIVIDUALLY AND D/B/A FAITH HEALTH
CARE CENTER'S MOTION FOR EXTENSION OF
TIME TO FILE ITS INITIAL BRIEF AND
DESIGNATION OF MATTER TO BE INCLUDED IN
THE RECORD ON APPEAL

Pursuant to Rule 224 of the South Carolina Rules of Appellate Practice, Appellant PALMETTO FAITH OPERATING, LLC, INDIVIDUALLY AND D/B/A FAITH HEALTH CARE CENTER (hereinafter "Appellant Palmetto Faith") hereby moves this Court for an Order granting an extension of time during which to file its Initial Brief and Designation Of Matter To Be Included In The Record On Appeal. For the reasons set forth below, Appellant Palmetto Faith joins in the Motion by the Non-Palmetto Faith Appellants to hold the current February 20, 2012, deadline in abeyance and for an extension until March 20, 2012, to file its Initial Brief and Designation Of Matter To Be Included In The Record On Appeal.

The additional time requested, beyond the extension of time previously granted by the Court, is warranted given the complexity of the legal issues presented. The extension will not prejudice Respondent or co-Appellants or affect their legal rights.

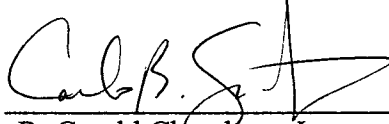
Appellant Palmetto Faith intends to work diligently and to file its Initial Brief and Designation Of Matter as soon as practicable. However, for the reasons stated above,

Appellant Palmetto Faith respectfully requests that the Court grant an extension of time during which it may file its Initial Brief and Designation Of Matter.

TURNER PADGET GRAHAM & LANEY P.A.

February 21, 2012

By:



R. Gerald Chambers, Jr.
Carmelo B. Sammataro
Post Office Box 1473
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Phone: (803) 254-2200
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ATTORNEYS FOR APPELLANT PALMETTO
FAITH OPERATING, LLC, INDIVIDUALLY
AND D/B/A FAITH HEALTH CARE CENTER

GRANTED

JOHN CANNON FEW, C.J.
FOR THE COURT

By:



(Clerk) (Deputy Clerk)

Filed

3/1/12 eClerks

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court Of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-835 and 836

Ann Coleman, Individually, and as Personal Representative of the
Estate of Mary Brinson Respondent,

v.

Mariner Health Care, Inc. f/k/a Mariner Post-Acute Network, LLC,
Mariner Health Care Management Company, Mariner Health
Central, Inc., Mariner Health Group, Inc., MHC Holding
Company, MHC Florida Holding Company, MHC Gulf Coast
Holding Company, MHC MidAmerica Holding Company, MHC
Rocky Mountain Holding Company, MHC Northeast Holding
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Southeast, Inc., GranCare South Carolina, Inc., Individually and
d/b/a Faith Health Care Center, SavaSeniorCare Management,
LLC, SavaSeniorCare Administrative Services, LLC,
SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care,
Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC,
Individually and d/b/a Faith Health Care Center, Ask Holdings
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Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an
Individual, Avi Klein, an Individual, SC Property Holdings, LLC,
SC Faith, LLC and John Does 1-26,

of Whom,

Mariner Health Care Management Company, Mariner Health
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Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner
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FEB 21 2012

SC Court of Appeals

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PROOF OF SERVICE

The undersigned certifies that a true and correct copy of APPELLANT PALMETTO FAITH OPERATING, LLC, INDIVIDUALLY AND D/B/A FAITH HEALTH CARE CENTER'S MOTION FOR EXTENSION OF TIME TO FILE ITS INITIAL BRIEF AND DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL was served this 21st day of February 2012, via First Class U.S. Mail, upon the following counsel for the parties in interest:

Matthew W. Christian, Esquire
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**ATTORNEYS FOR DEFENDANT
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FEB 21 2012
SC Court of Appeals

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**ATTORNEYS FOR CO-APPELLANTS
MARINER HEALTH, ET AL.**

TURNER PADGET GRAHAM & LANEY P.A.

February 21, 2012

By:



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AND D/B/A FAITH HEALTH CARE CENTER**

TURNER PADGET

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February 21, 2012

VIA HAND DELIVERY

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: Ann Coleman v. Mariner Health Care, Inc. et al.
Case Nos.: 2010-CP-21-835 and 836
TPGL File No.: 11034.101

Dear Ms. Gee:

Enclosed please find the original and seven copies of Appellant Palmetto Faith Operating, LLC, Individually And D/B/A Faith Health Care Center's Motion For Extension Of Time To File Its Initial Brief And Designation Of Matter To Be Included In The Record On Appeal regarding the above-referenced matter. Also enclosed are the original and one copy of the Proof of Service and our check for the filing fee. Please file the original filings and return clocked copies to me via our office courier. Thank you for your assistance with this matter, and please contact me if you have any questions.

With kind regards, I am

Very truly yours,

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



Carmelo B. Sammataro

CBS/tj
Enclosures

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FEB 21 2012

SC Court of Appeals

BUSINESS • LITIGATION • SOLUTIONS

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Phone (803) 254-2200 • Fax (803) 799-3957 • turnerpadget.com

February 21, 2012

Page 2

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W. McElhaney White, Esquire
William C. Barnes, Esquire
Michael I. Bernstein, Esquire
Sandra L. W. Miller, Esquire
D. Jay Davis, Jr., Esquire
William L. Howard, Esquire
Lori D. Proctor, Esquire
(w/enc.)



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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1015 SUMTER STREET
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March 1, 2012

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& Laney, P.A.
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Columbia, SC 29202

Sandra L. Miller, Esquire
Womble Carlyle Sandridge
& Rice, LLP
PO Box 10208
Greenville, SC 29603

Re: Coleman, Ann v. Mariner Health Care
Case Tracking #: 2011194946

Dear Counsel:

The following Order has been endorsed on "Appellant Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center's Motion for Extension of Time to File Its Initial Brief and Designation of Matter to be Included in the Record on Appeal" in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

March 01, 2012 ."

The following Order has been endorsed on Ms. Miller's Motion for Extension of Time in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

March 01, 2012 ."

The following Order has been endorsed on "Motion for Admission Pro Hac Vice" in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ V. Claire Allen
Deputy Clerk

March 01, 2012 ."

All parties are advised that initial briefs and designations of matter for all Appellants in this matter must be served and filed on or before March 20, 2012. All parties are further advised that Malcolm J. Harkins, III, Esquire, shall now be included as co-counsel for the Appellants currently represented by Sandra L. Miller, Esquire, and should be copied on all future correspondence in this matter.

Very truly yours,

V. Claire Allen

CLERK

TAG/ec

cc: D. Jay Davis, Jr., Esquire
William L. Howard, Esquire
Lori Diane Proctor, Esquire
Perry D. Boulter, Esquire
W. McElhaney White, Esquire
Ginger D. Goforth, Esquire
Marion Stephenson Fowler, III, Esquire
Matthew W. Christian, Esquire
Malcolm J. Harkins, III, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court Of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-835 and 836

Ann Coleman, Individually, and as Personal Representative of the
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Individually and d/b/a Faith Health Care Center, Ask Holdings,
LLC, Leonard Grunstein, an Individual, Murray Forman, an
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Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an
Individual, Avi Klein, an Individual, SC Property Holdings, LLC,
SC Faith, LLC and John Does 1-26,

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SC Court of Appeals

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MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, Murray Forman, an Individual, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center are.....Appellants.

APPELLANT PALMETTO FAITH OPERATING,
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CARE CENTER'S MOTION FOR EXTENSION OF
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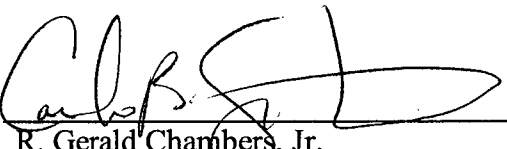
Pursuant to Rule 224 of the South Carolina Rules of Appellate Practice, Appellant PALMETTO FAITH OPERATING, LLC, INDIVIDUALLY AND D/B/A FAITH HEALTH CARE CENTER (hereinafter "Appellant Palmetto Faith") hereby moves this Court for an Order granting an extension of time during which to file its Initial Brief and Designation Of Matter To Be Included In The Record On Appeal. For the reasons set forth below, Appellant Palmetto Faith requests an additional period of thirty days from March 20, 2012, during which to file these documents.

The additional time requested, beyond the extension of time previously granted by the Court, is warranted given the complexity of the legal issues presented. The extension will not prejudice Respondent or co-Appellants or affect their legal rights.

Appellant Palmetto Faith intends to work diligently and to file its Initial Brief and Designation Of Matter as soon as practicable. However, for the reasons stated above, Appellant Palmetto Faith respectfully requests that the Court grant an extension of time during which it may file its Initial Brief and Designation Of Matter.

TURNER PADGET GRAHAM & LANEY P.A.

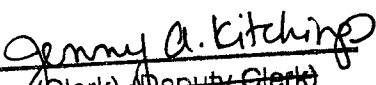
March 20, 2012

By: 

R. Gerald Chambers, Jr.
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Post Office Box 1473
Columbia, SC 29202
Phone: (803) 254-2200
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ATTORNEYS FOR APPELLANT PALMETTO
FAITH OPERATING, LLC, INDIVIDUALLY
AND D/B/A FAITH HEALTH CARE CENTER

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: 
(Clerk) ~~(Deputy Clerk)~~

FILED
ec 4/19/18

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court Of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-835 and 836

Ann Coleman, Individually, and as Personal Representative of the
Estate of Mary Brinson Respondent,

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Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an
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SC Court of Appeals

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PROOF OF SERVICE

The undersigned certifies that a true and correct copy of APPELLANT PALMETTO FAITH OPERATING, LLC, INDIVIDUALLY AND D/B/A FAITH HEALTH CARE CENTER'S MOTION FOR EXTENSION OF TIME TO FILE ITS INITIAL BRIEF AND DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL was served this 20th day of March 2012, via First Class U.S. Mail, upon the following counsel for the parties in interest:

Matthew W. Christian, Esquire
Christian & Davis, LLC
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Greenville, SC 29602

Marion S. Fowler, III, Esquire
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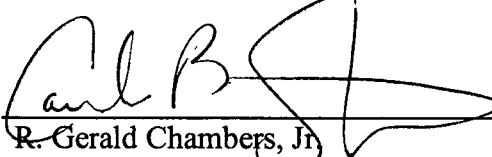
Lori D. Proctor, Esquire
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**ATTORNEYS FOR CO-APPELLANTS
MARINER HEALTH, ET AL.**

TURNER PADGET GRAHAM & LANEY P.A.

March 20, 2012

By:



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March 20, 2012

VIA HAND DELIVERY

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: Ann Coleman v. Mariner Health Care, Inc. et al.

Case Nos.: 2010-CP-21-835 and 836

TPGL File No.: 11034.101

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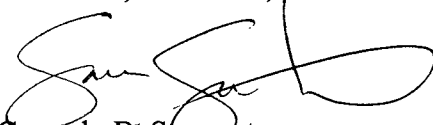
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With kind regards, I am

Very truly yours,

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


Carmelo B. Sammataro

CBS/tj
Enclosures

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March 20, 2012

Page 2

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Sandra L. W. Miller, Esquire
D. Jay Davis, Jr., Esquire
William L. Howard, Esquire
Lori D. Proctor, Esquire
(w/enc.)

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-00835 & 00836

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MAR 22 2012

SC Court of Appeals

Ann Coleman, Individually, and as Personal Representative of the Estate of Mary Brinson,

Respondent,

v.

Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein, an Individual, Murray Forman, an Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a Abraham Shavlsion a/k/a A. Shawson a/k/a Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, SC Faith, LLC, and John Does 1-26,

of whom,

Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, Murray Forman, an Individual, and Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center are,

Appellants.

MOTION FOR PERMISSION TO EXCEED BRIEFING PAGE LIMIT

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Lori D. Proctor
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Houston, TX 77002
(713) 860-0585

*Attorneys for Appellants**

* Appellants for purposes of this motion and the brief to which it corresponds do not include Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, which is represented by separate counsel. The Appellants' counsel are more particularly identified in the signature block below.

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

COME NOW the Appellants, by and through their undersigned counsel, pursuant to Rule 208(b)(5), SCACR, and respectfully request that this Honorable Court grant them permission to exceed the 50-page limit for their joint initial Appellants' brief in the above-captioned matter.

This request, which is made contemporaneously with the submission of the Appellants' initial brief, is made in good faith, and seeks but a modest allowance of additional pages because of the number of issues that reasonably need to be presented to the Court for its just consideration of this matter. Additionally, the subject brief is being filed jointly on behalf of more than 20 of the Appellants herein, which the undersigned submit is in the interest of judicial economy and favors the allowance now sought. Further, the undersigned submit that the requested extension is consistent with the interests of justice and is not unduly prejudicial to any other party.

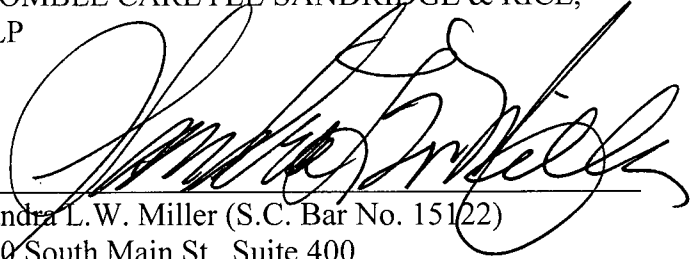
WHEREFORE, the Appellants respectfully move this Court to grant them permission to exceed the page limitation imposed by Rule 208(b)(5), and to accept for filing their joint initial brief submitted contemporaneously herewith, which brief the Appellants ask the Court to accept now as conditionally or provisionally filed until it has ruled upon the instant motion.

<SIGNATURE BLOCK TO FOLLOW>

March 20, 2012

Respectfully submitted,

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LLP


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*Attorneys for Appellants Mariner Health Care, Inc.
f/k/a Mariner Post Acute Network, LLC, Mariner
Health Care Management Company, Mariner
Health Central, Inc., Mariner Health Group, Inc.,*

GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT

By: Jenny A. Kitchings
(Clerk) (Deputy Clerk)

FILED

4/19/12

MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, National Senior Care, Inc., and Boyd P. Gentry

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**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Florence County
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-00835 & 00836

Ann Coleman, Individually, and as Personal Representative of the Estate of Mary Brinson,

Respondent,

v.

Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein, an Individual, Murray Forman, an Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, SC Faith, LLC, and John Does 1-26,

of whom,

Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, Murray Forman, an Individual, and Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center are,

Appellants.

PROOF OF SERVICE

I, Sandra L. W. Miller, of Womble Carlyle Sandridge & Rice, LLP, do hereby certify that a copy of the **MOTION FOR PERMISSION TO EXCEED BRIEFING PAGE LIMIT** was served on all other parties to this matter by depositing a copy of the same in the United States Mail, postage prepaid, on March 20, 2012, addressed as follows to counsel of record:

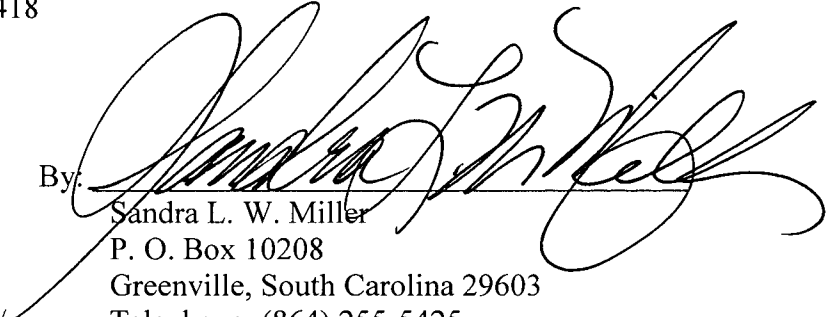
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March 20, 2012

The Honorable Tonya Gee
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
MAR 22 2012
SC Court of Appeals

Re: *Ann Coleman, Individually, and as Personal Representative of the Estate of Mary Brinson v. Mariner Health Care, Inc., et al.*
Case Nos. 2010-CP-21-00835 & 00836
Case Tracking No. 2011-1

Dear Ms. Gee:

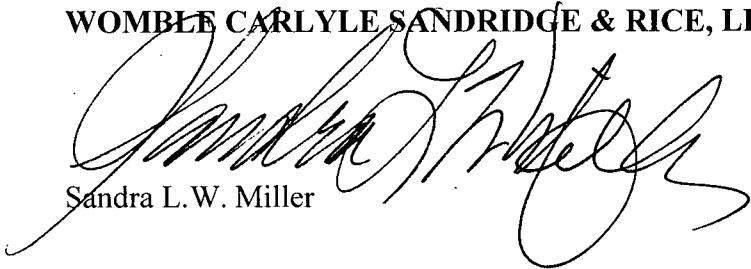
Enclosed please find the following for filing:

1. An original and seven copies of a Motion for Permission to Exceed Briefing Page Limit, along with a Proof of Service;
2. An original and one copy of the Designation of Matter to be Included in the Record on Appeal, along with a Proof of Service; and
3. An original and one copy of the Initial Brief of Appellants, along with a Proof of Service.

Please file these documents and return the extra file-stamped copy of each document to me in the enclosed envelope. Thank you for your assistance.

Sincerely,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP


Sandra L.W. Miller

SLWM:dhy
Enclosures

c/enc: Perry D. Boulier, Esquire
W. McElhaney White, Esquire
Ginger D. Goforth, Esquire
Matthew W. Christian, Esquire
Marion S. Fowler, III, Esquire
R. Gerald Chambers, Jr., Esquire
William C. Barnes, Jr., Esquire
Michael I. Bernstein, Esquire
D. Jay Davis, Jr., Esquire
William L. Howard, Esquire
Lori D. Proctor, Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Florence County
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-00835 & -00836

Ann Coleman, Individually and as Personal Representative of the Estate of Mary Brinson,

Respondent,

v.

Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein, an Individual, Murray Forman, an Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, SC Faith, LLC, and John Does 1-26,

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Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, and Murray Forman, an Individual, and Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center are,

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Appellants.
MAR 22 2012

SC Court of Appeals

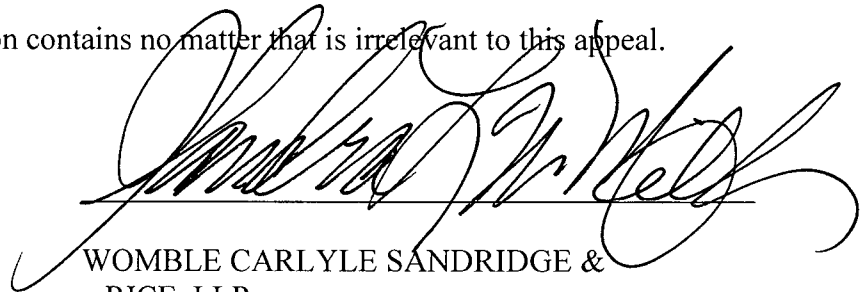
**DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

Appellants Mariner Health Care, Inc. f/k/a Mariner Post-Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, and Murray Forman, an Individual (“Defendants”), propose the following be included in the Record on Appeal:

1. Defendants’ Notice of Appeal, dated June 24, 2011;
2. Order entered March 25, 2011, dated March 18, 2011, denying Defendants’ Motion to Compel Arbitration and Stay the Action in Plaintiff’s Wrongful- Death Action;
3. Order entered March 25, 2011, dated March 18, 2011, denying Defendants’ Motion to Compel Arbitration and Stay the Action in Plaintiff’s Survival Action;
4. Order entered June 6, 2011, dated June 6, 2011, denying Defendants’ Motion to Alter or Amend the Judgment in Plaintiff’s Wrongful-Death Action;
5. Order entered June 6, 2011, dated June 6, 2011, denying Defendants’ Motion to Alter or Amend the Judgment in Plaintiff’s Survival Action;
6. Defendants’ Notice of Motion and Motion to Compel Arbitration and Stay the Actions, dated August 23, 2010;
7. Defendants’ Opening Memorandum of Law in Support of Motion to Compel Arbitration and Stay the Actions, with Exhibits, dated October 22, 2010;
8. Plaintiff’s Memorandum of Law in Opposition to Defendants’ Motion to Compel Arbitration and Stay the Actions, with Exhibits, dated January 4, 2011;
9. Defendants’ Reply Memorandum of Law in Further Support of Motion to Compel Arbitration and Stay the Actions, with Exhibit, dated January 6, 2011;
10. Defendants’ Notice of Motion and Motion to Alter or Amend the Judgment in the Actions, dated April 4, 2011;
11. Defendants’ Opening Memorandum of Law in Support of Motion to Alter or Amend the Judgment in the Actions, with Exhibit, dated April 27, 2011;
12. Plaintiff’s Memorandum of Law in Opposition to Defendants’ Motion to Alter or Amend the Judgment, dated April 15, 2011 (Wrongful-Death Action);

13. Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Alter or Amend the Judgment, dated April 15, 2011 (Survival Action);
14. Transcript of Hearing on Defendants' Motion to Compel Arbitration and Stay the Actions, dated January 6, 2011;
15. Plaintiff's Notice of Intent to File Suit, dated July 30, 2009 (Wrongful-Death Action);
16. Plaintiff's Notice of Intent to File Suit, dated July 14, 2009 (Survival Action);
17. Summons and Complaint in Plaintiff's Wrongful-Death Action, filed March 22, 2010, with Affidavits of Service;
18. Summons and Complaint in Plaintiff's Survival Action, filed March 22, 2010, with Affidavits of Service;
19. Defendants' Answers to Plaintiff's Complaints, filed May-July 2010;

I certify that this designation contains no matter that is irrelevant to this appeal.



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RICE, LLP

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Attorneys for Appellants

Dated: March 20, 2012

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Florence County
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-00835 & 00836

Ann Coleman, Individually, and as Personal Representative of the Estate of Mary Brinson,

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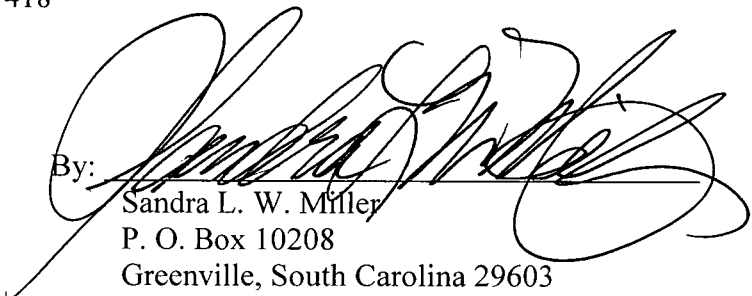
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THE STATE OF SOUTH CAROLINA
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RECEIVED

MAR 22 2012

SC Court of Appeals

Appellants.

PROOF OF SERVICE

I, Sandra L. W. Miller, of Womble Carlyle Sandridge & Rice, LLP, do hereby certify that a copy of the **INITIAL BRIEF OF APPELLANTS** was served on all other parties to this matter by depositing a copy of the same in the United States Mail, postage prepaid, on March 20, 2012, addressed as follows to counsel of record:

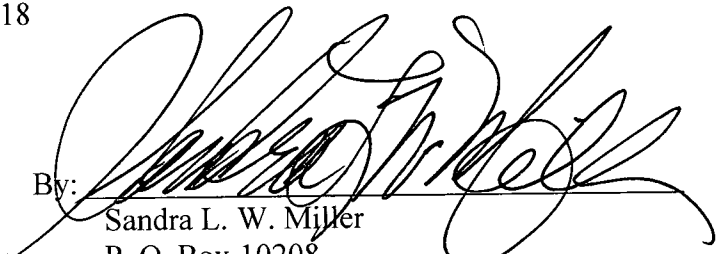
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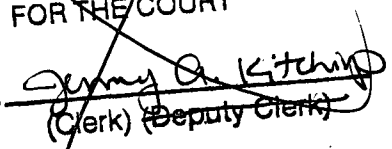
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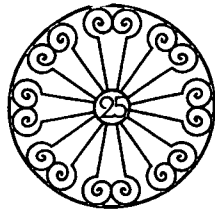
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Email: samiller@wcsr.com

~~GRANTED
JOHN CANNON FEW, C.J.
FOR THE COURT~~

By: 

~~(Clerk) (Deputy Clerk)~~



YCR LAW
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Russell G. Hines
Associate

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Direct Fax: (843) 579-1327
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March 21, 2012

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Ann Coleman, Individually and as Personal Representative of the Estate of Mary Brinson vs. Mariner Health Care, Inc., f/k/a Mariner Post-Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., GranCare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Palmetto Health Care, LLC, Palmetto Faith Operating LLC, Individually and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein, an Individual, Murray Forman, an Individual, Boyd P. Gentry, an Individual, Abraham Shaulson, a/k/a Abraham Shavlson, a/k/a A. Shawson, a/k/a Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, SC Faith, LLC and John Does 1-26
Case No.: 2010-CP-21-835;836
Case Tracking Number: 2011194946
YCR File: 14264-20110818

Dear Ms. Kitchings:

Yesterday, all Appellants in the above-referenced matter (except Appellant Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, which is represented by separate counsel) filed a joint Initial Brief of Appellants that was accompanied by a Motion for Permission to Exceed Briefing Page Limit. Although Appellants' counsel was not able to consult with counsel for the Respondent prior to making the aforementioned motion, consultation has since taken place, and I can now advise the Court that the Respondent's counsel does not object to the motion. If the Court has any questions or concerns, or needs anything further in this regard, please let me know.

RECEIVED
MAR 26 2012

With best wishes and kindest regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP



Russell G. Hines
Associate

RGH/jla

cc: (via US Mail and E-mail)
Matthew W. Christian, Esquire, Christian & Davis LLC
Marion S. Fowler, III, Esquire, Fowler Law Firm, P.C.
Carmelo B. Sammataro, Esquire, Turner Padget Graham & Laney, P.A.
William C. Barnes, Jr., Esquire, Turner Padget Graham & Laney, P.A.
Gerald R. Chambers, Jr., Esquire, Turner Padget Graham & Laney, P.A.
Michael I. Bernstein, Esquire

(via E-mail only)
Perry D. Boulter, Esquire, Holcombe Bomar, PA
Ginger D. Goforth, Esquire, Holcombe Bomar, PA
W. McElhaney White, Esquire, Holcombe Bomar, PA
Sandra L. W. Miller, Esquire, Womble Carlyle Sandridge & Rice, PLLC
Malcolm J. Harkins III, Esquire, Proskauer Rose LLP



April 03, 2012

The Honorable Tanya Gee
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RE: Coleman, Ann v. Mariner Health Care
Case Tracking #: 2011194946

Dear Ms. Gee:

Please find enclosed for filing the original plus seven (7) copies of the Respondent's Motion to Extend Time to File Reply Brief and Proof of Service along with this firm's check in the amount of twenty five dollars (\$25.00) for the filing of same. I would appreciate your returning one clocked copy to me in the enclosed return envelope.

By copy of this correspondence, I am serving Appellants with same. Additionally, I am providing copies of these documents to all other counsel of record in this matter.

Thank you for your assistance in this matter. Should you have any questions or concerns, please do not hesitate to contact me.

With kindest regards, I am

Very truly yours,

CHRISTIAN & DAVIS, LLC

Matthew W. Christian
Attorney at Law

RECEIVED
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SC. COURT OF APPEALS

MC/kch
Enclosures

W. Harold Christian, Jr.
Richard V. Davis
Matthew W. Christian
Joshua D. Christian

Workers' Compensation
Auto & Truck Collisions
Insurance Litigation
Social Security Disability
Serious Personal Injury
Medical & Nursing
Home Negligence

CC: Attorneys for Appellants:

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(843) 577-4000
Attorneys for Appellants

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Attorney for Appellants
Admitted *pro hac vice*

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(864) 255-5400
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Attorney for Appellants

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Ginger D. Goforth, Esq.
Perry D. Boulter, Esq.
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(864) 594-5300
Attorney for Appellants

Other Counsel of Record:

William C. Barnes, Esq.
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(843) 662-9008

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Admitted *Pro hac* as co-counsel to
William C. Barnes

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Marion S. Fowler, III, MD, Esq.
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(843) 374-4444
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge
Michael G. Nettles, Circuit Court Judge

Case Nos.: 2010-CP-21-00835
2010-CP-21-00836

Ann Coleman, Individually, and as Personal Representative
of the Estate of Mary Brinson, ... Respondent,

v.

Mariner Health Care, Inc., f/k/a Mariner Post Acute Network, LLC,
Mariner Health Care Management Company, Mariner Health Central,
Inc., Mariner Health Group, Inc., MHC Holding Company, MHC
Florida Holding Company, MHC Gulf Coast Holding Company, MHC
MidAmerica Holding Company, MHC Rocky Mountain Holding
Company, MHC Northeast Holding Company, MHC West Holding
Company, MHC Texas Holding Company, MHC MidAtlantic Holding
Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc.,
Individually and d/b/a Faith Health Care Center, SavaSeniorCare
Management, LLC, SavaSeniorCare Administrative Services, LLC,
SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc.,
Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually
and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein,
an Individual, Murray Forman, an Individual, Boyd P. Gentry, an Individual,
Abraham Shaulson a/k/a Abraham Shavlson a/k/a A. Shawson a/k/a
Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property
Holdings, LLC, SC Faith, LLC, and John Does 1-26,

of Whom,

Mariner Health Care, Inc., f/k/a Mariner Post Acute Network, Mariner
Health Care Management Company, Mariner Health Central, Inc.,
Mariner Health Group, Inc., MHC Holding Company, MHC Florida
Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica
Holding Company, MHC Rocky Mountain Holding Company, MHC
Northeast Holding Company, MHC West Holding Company, MHC

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Court of Appeals

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5-21-12

Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, and Murray Forman, an Individual are..... Appellants.

RESPONDENT'S MOTION TO EXTEND TIME TO FILE REPLY BRIEF

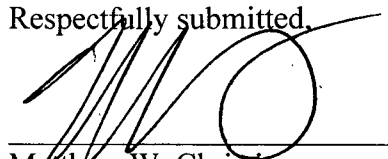
Matthew W. Christian, SC Bar No.: 07516
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(843) 374-4444
Attorneys for the Respondent

Respondent requests a thirty (30) day extension of time to file its Reply Brief. The current filing deadline is April 19, 2012. Respondents require a thirty day extension of time in order to fully and adequately prepare their reply to Appellants' Brief. This motion is not interposed for delay, and will not prejudice Appellants.

Respondent therefore respectfully requests that the Court grant its motion for a thirty day extension of time to file its Reply Brief, making such filing due on or before May 21, 2012.

April 3, 2012

Respectfully submitted,



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Attorney for Respondent

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919 Milam Street
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Houston, TX 77002
(713) 860-0585
Attorney for Appellants

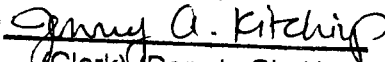
Malcom J. Harkins, III, Esq.
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Admitted *pro hac vice*
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Attorney for Appellant

Walter McElhaney White, Esq.
Ginger D. Goforth, Esq.
Perry D. Boulter, Esq.
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Spartanburg, SC 29304
(864) 594-5300
Attorney for Appellants

GRANTED

JOHN CANNON FEW, C.J.
FOR THE COURT

By: 
(Clerk) (Deputy Clerk)

Other Counsel of Record:

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Turner, Padgett, Graham & Laney, P.A.
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Admitted *Pro Hac* as co-counsel to
William C. Barnes

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge
Michael G. Nettles, Circuit Court Judge

Case Nos.: 2010-CP-21-00835
2010-CP-21-00836

Ann Coleman, Individually, and as Personal Representative
of the Estate of Mary Brinson, ... Respondent,

v.

Mariner Health Care, Inc., f/k/a Mariner Post Acute Network, LLC,
Mariner Health Care Management Company, Mariner Health Central,
Inc., Mariner Health Group, Inc., MHC Holding Company, MHC
Florida Holding Company, MHC Gulf Coast Holding Company, MHC
MidAmerica Holding Company, MHC Rocky Mountain Holding
Company, MHC Northeast Holding Company, MHC West Holding
Company, MHC Texas Holding Company, MHC MidAtlantic Holding
Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc.,
Individually and d/b/a Faith Health Care Center, SavaSeniorCare
Management, LLC, SavaSeniorCare Administrative Services, LLC,
SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc.,
Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually
and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein,
an Individual, Murray Forman, an Individual, Boyd P. Gentry, an Individual,
Abraham Shaulson a/k/a Abraham Shavlson a/k/a A. Shawson a/k/a
Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property
Holdings, LLC, SC Faith, LLC, and John Does 1-26,

of Whom,

Mariner Health Care, Inc., f/k/a Mariner Post Acute Network, Mariner
Health Care Management Company, Mariner Health Central, Inc.,
Mariner Health Group, Inc., MHC Holding Company, MHC Florida
Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica
Holding Company, MHC Rocky Mountain Holding Company, MHC
Northeast Holding Company, MHC West Holding Company, MHC

Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Boyd P. Gentry, an Individual, and Murray Forman, an Individual are..... Appellants.

PROOF OF SERVICE

I certify that I have served the Respondent's Motion to Extend time to File Reply Brief on the following parties by depositing a copy of it in the United States Mail, postage prepaid, on April 3, 2012, addressed to the attorneys of record listed below:

D. Jay Davis, Jr., Esq.
William L. Howard, Esq.
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(843) 577-4000
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Suite 400, South
Washington, DC 20004
(202) 416-5803
Attorney for Appellants
Admitted *pro hac vice*

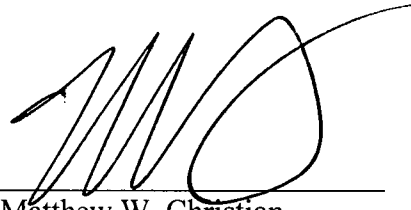
Sandra L.W. Miller, Esq.
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(864) 255-5400
Attorney for Appellants

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(713) 860-0585
Attorney for Appellants

Walter McElhaney White, Esq.
Ginger D. Goforth, Esq.
Perry D. Boulrier, Esq.
Holcombe, Bomar, Gunn & Bradford, PA
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Spartanburg, SC 29304
(864) 594-5300
Attorney for Appellants

April 3, 2012

A handwritten signature in black ink, consisting of stylized, overlapping loops and strokes, positioned above a horizontal line.

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Post Office Box 332
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(864) 232-7363
Attorney for Respondent

Other Counsel of Record:

William C. Barnes, Esq.
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R. Gerald Chambers, Jr.
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(803) 227-4201

Marion S. Fowler, III, MD, Esq.
Fowler Law Firm, PC
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(843) 374-4444
Attorney for Respondent



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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1015 SUMTER STREET
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April 19, 2012

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& Laney, P.A.
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& Rice, LLP
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Greenville, SC 29603

Matthew W. Christian, Esquire
Christian Moorhead & Davis
1007 E Washington St.
P O Box 332
Greenville, SC 29602

Re: Coleman, Ann v. Mariner Health Care
Case Tracking #: 2011194946

Dear Counsel:

The following Order has been endorsed on "Appellant Palmetto Faith Operating, LLC; Individually and D/B/A Faith Health Care Center's Motion for Extension of Time to file Its Initial Brief and Designation of Matter to be Included in the Record on Appeal" filed by Mr. Sammataro in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ Jenny Abbott Kitchings
Clerk

April 19, 2012."

The following Order has been endorsed on Ms. Miller's "Motion for Permission to Exceed the Page Limit" in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ Jenny Abbott Kitchings
Clerk

April 19, 2012."

The following Order has been endorsed on "Respondent's Motion to Extend Time to File [Respondent's Initial Brief]" in the above entitled case on appeal.

"Granted.

John Cannon Few C.J.
For the Court

By s/ Jenny Abbott Kitchings
Clerk

April 19, 2012."

Please be advised the Appellant's Initial Brief and Designation of Matter of all Appellants, excluding Faith Operating, has been received and is accepted as filed. The Respondent's Initial Brief and Designation of Matter must be served and filed on or before May 21, 2012. The Appellant's Initial Brief and Designation of Matter for Faith Operating must be served and filed on or before April 26, 2012.

Very truly yours,


CLERK

JAK/ec

cc: D. Jay Davis, Jr., Esquire
William L. Howard, Esquire
Lori Diane Proctor, Esquire
Malcolm J. Harkins, III, Esquire
Perry D. Boulter, Esquire
W. McElhaney White, Esquire
Ginger D. Goforth, Esquire
Marion Stephenson Fowler, III, Esquire

TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

Carmelo B. Sammataro

E-mail: SSammataro@TurnerPadget.com

Writer's Direct Dial: (803) 227-4253

Writer's Direct Fax: (803) 400-1532

April 19, 2012

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

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SC Court of Appeals

Re: Ann Coleman v. Mariner Health Care, Inc. et al.
Case Nos.: 2010-CP-21-835 and 836
TPGL File No.: 11034.101

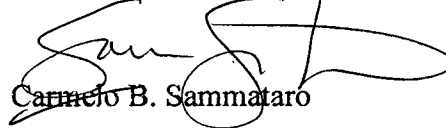
Dear Ms. Kitchings:

Please be advised that Appellant Palmetto Faith Operating, LLC, individually and d/b/a Faith Health Care Center, wishes to join in the Initial Brief and Designation Of Matter To Be Included In The Record On Appeal that were submitted by co-Appellants on March 20, 2012, and, therefore, will not be filing a separate Initial Brief or Designation of Matter. Thank you for your attention to this matter, and please do not hesitate to contact me if you have any questions.

With kind regards, I am

Very truly yours,

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


Carmelo B. Sammataro

CBS/tj

cc: Matthew W. Christian, Esquire
Marion S. Fowler, III, Esquire
Perry D. Boulter, Esquire
W. McElhaney White, Esquire
William C. Barnes, Esquire
Michael I. Bernstein, Esquire
Sandra L. W. Miller, Esquire
D. Jay Davis, Jr., Esquire
William L. Howard, Esquire
Lori D. Proctor, Esquire

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Phone (803) 254-2200 • Fax (803) 799-3957 • turnerpadget.com

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-00835 & -00836

Ann Coleman, Individually,
and as Personal Representative
of the Estate of Mary Brinson, ... Respondent,

v.

Mariner Health Care, Inc. f/k/a Mariner Post-Acute Network, LLC,
Mariner Health Care Management Company, Mariner Health
Central, Inc., Mariner Health Group, Inc., MHC Holding
Company, MHC Florida Holding Company, MHC Gulf Coast
Holding Company, MHC MidAmerica Holding Company, MHC
Rocky Mountain Holding Company, MHC Northeast Holding
Company, MHC West Holding Company, MHC Texas Holding
Company, MHC MidAtlantic Holding Company, Living Centers-
Southeast, Inc., GranCare South Carolina, Inc., Individually and
d/b/a Faith Health Care Center, SavaSeniorCare Management,
LLC, SavaSeniorCare Administrative Services, LLC,
SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care,
Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC,
Individually and d/b/a Faith Health Care Center, Ask Holdings,
LLC, Leonard Grunstein, an Individual, Murray Forman, an
Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a
Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an
Individual, Avi Klein, an Individual, SC Property Holdings, LLC,
SC Faith, LLC, and John Does 1-26, ... Defendants,

of whom,

Mariner Health Care, Inc. f/k/a Mariner Post-Acute Network, LLC,
Mariner Health Care Management Company, Mariner Health
Central, Inc., Mariner Health Group, Inc., MHC Holding
Company, MHC Florida Holding Company, MHC Gulf Coast

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SC Court of Appeals

Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., GranCare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, an Individual, Murray Forman, an Individual, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center are, . . Appellants.

NOTICE OF APPEARANCE

The undersigned respectfully requests that the Court note his appearance in this case as counsel for the Respondent, Ann Coleman, Individually, and as Personal Representative of the Estate of Mary Brinson.

Respectfully submitted,



John S. Nichols, SC Bar #4210

BLUESTEIN, NICHOLS,

THOMPSON & DELGADO

Post Office Box 7965

Columbia, South Carolina 29202

(803) 779-7599

(803) 779-8995 (facsimile)

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Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-00835 & -00836

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Ann Coleman, Individually,
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SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care,
Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC,
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LLC, Leonard Grunstein, an Individual, Murray Forman, an
Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a
Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an
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of whom,

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PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Appellants with a copy of the *Notice of Appearance* by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

Carmelo B. Sammataro, Esquire
R. Gerald Chambers, Jr., Esquire
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May 11, 2012
Columbia, South Carolina



Erin Bridges
Paralegal
BLUESTEIN, NICHOLS, THOMPSON
& DELGADO, LLC



BLUESTEIN · NICHOLS · THOMPSON · DELGADO LLC
ATTORNEYS AT LAW

Margaret Miles Bluestein
John Shannon Nichols
Stacy Elizabeth Thompson
John Dennis Delgado
Allison Paige Sullivan
Ashley Trout Thompson
Blake Alexander Hewitt

OF COUNSEL

O. Eugene Powell, Jr.

May 11, 2012

VIA HAND DELIVERY

The Honorable Jenny Kitchings
Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Ann Coleman, Individually and as Personal Representative of the Estate of
Mary Brinson v. Mariner Health Care, Inc., et al.
Case Nos.: 2010-CP-21-00835 and -00836

Dear Ms. Kitchings:

Please find enclosed for filing the original and one (1) copy of the *Notice of Appearance* in regards to this case. I have also enclosed a proof of service of this document on counsel for the Appellants. Please return the additional filed copy to me via our courier.

Thank you for your attention to this matter. If you need any additional information, please do not hesitate to contact me.

Sincerely,

Erin Bridges
Paralegal to John S. Nichols
BLUESTEIN, NICHOLS, THOMPSON &
DELGADO, LLC

/emb

cc: Matt Christian, Esquire
Marion S. Fowler, III, Esquire
Carmelo B. Sammataro, Esquire
W. McElhaney White, Esquire
William C. Barnes, Esquire
Michael I Bernstein, Esquire
Sandra L.W. Miller, Esquire

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