



BLUESTEIN · NICHOLS · THOMPSON · DELGADO LLC
ATTORNEYS AT LAW

64282

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 17, 2012

RECEIVED
MAY 17 2012
SC Court of Appeals

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 seven (7) copies of a *Motion for Extension* in regards to this case. I have also enclosed a proof of service of this document on counsel for the Appellants and a \$25.00 check for filing this motion. 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

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

RECEIVED
MAY 17 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, ... 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

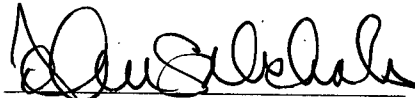
2/12

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.

MOTION FOR EXTENSION

This motion is filed pursuant to Rule 240 (motions and petitions generally) of the South Carolina Appellate Court Rules. The Respondent requests a 30-day extension of the deadline for filing their initial brief in this appeal. The current deadline is May 21, 2012. This is the second request for an extension of this deadline.

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)
jsnichols@bntdlaw.com

Attorney for Respondent

May 17, 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

RECEIVED
MAY 17 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, ... 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, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center are, . . Appellants.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Appellants with a copy of the *Motion for Extension* 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
Turner Padget Graham & Laney, P.A.
P.O. Box 1473
Columbia, SC 29202

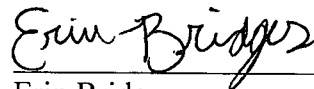
William C. Barnes, Esquire
Turner Padget Graham & Laney, P.A.
P.O. Box 5478
Florence, SC 29502

Sandra L. W. Miller, Esquire
Womble Carlyle Sandridge & Rice, LLP
550 South Main St., Suite 400
P.O. Box 10208
Greenville, SC 29603

W. McElhaney White, Esquire
Perry D. Boulter, Esquire
Holcombe Bomar, P.A.
P.O. Box 1897
Spartanburg, SC 29304

Michael I Bernstein, Esquire
1688 Meridian Avenue, Suite 418
Miami Beach, FL 33139

May 17, 2012
Columbia, South Carolina



Erin Bridges
Paralegal
BLUESTEIN, NICHOLS, THOMPSON
& DELGADO, LLC



BLUESTEIN · NICHOLS · THOMPSON · DELGADO LLC
ATTORNEYS AT LAW

64606

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.

June 18, 2012

VIA HAND DELIVERY

The Honorable Jenny Kitchings
Clerk of Court
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 seven (7) copies of a *Motion for Extension* in regards to this case. I have also enclosed a proof of service of this document on counsel for the Appellants and a \$25.00 check for filing this motion. 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

RECEIVED

JUN 18 2012

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-21-00835 & -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

RECEIVED
JUN 18 2012
SC Court of Appeals

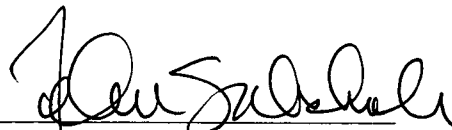
272

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.

MOTION FOR EXTENSION

This motion is filed pursuant to Rule 240 (motions and petitions generally) of the South Carolina Appellate Court Rules. The Respondent requests a 30-day extension of the deadline for filing their initial brief in this appeal. The current deadline is June 20, 2012. This is the third request for an extension of this deadline.

Respectfully submitted,



John S. Nichols
SC Bar No. 004210
BLUESTEIN, NICHOLS,
THOMPSON & DELGADO
Post Office Box 7965
Columbia, South Carolina 29202
(803) 779-7599
(803) 779-8995 (facsimile)
jsnichols@bntdlaw.com

Attorney for Respondent

June 18, 2012

6460e

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

RECEIVED
JUN 18 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, ... 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, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center are, . . Appellants.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Appellants with a copy of the *Motion for Extension* 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
Turner Padget Graham & Laney, P.A.
P.O. Box 1473
Columbia, SC 29202

William C. Barnes, Esquire
Turner Padget Graham & Laney, P.A.
P.O. Box 5478
Florence, SC 29502

Sandra L. W. Miller, Esquire
Womble Carlyle Sandridge & Rice, LLP
550 South Main St., Suite 400
P.O. Box 10208
Greenville, SC 29603

W. McElhaney White, Esquire
Perry D. Boulter, Esquire
Holcombe Bomar, P.A.
P.O. Box 1897
Spartanburg, SC 29304

Michael I Bernstein, Esquire
1688 Meridian Avenue, Suite 418
Miami Beach, FL 33139

June 18, 2012
Columbia, South Carolina



Erin Bridges
Paralegal
BLUESTEIN, NICHOLS, THOMPSON
& DELGADO, LLC

Ce4626

**VERIFIED APPLICATION FOR ADMISSION *PRO HAC VICE*
IN THE STATE OF SOUTH CAROLINA**

Ann Coleman et al.

Plaintiff

2010-CP-21-00835 & 00836

Case No.

Court of Appeals

Court

vs.

Mariner Health Care, Inc., et al.

Defendant

Mailing Address of Court: South Carolina Cour of Appeals
PO Box 11629
Columbia, SC 29211

Comes now Kenneth W. Zeller, applicant herein, and respectfully represents the following:

RECEIVED

JUN 19 2012

SC Court of Appeals

1. Applicant resides at:

8842 Woodland Dr

Street Address

Silver Spring

City

Montgomery

County

MD

State

20910

Zip Code

301-587-1959

Telephone

2. Applicant is an attorney and a member of the law firm of (or practices law under the name of) AARP

Foundation Litigation, with offices at, at

601 E Street, NW

Street Address

Washington

City

County

DC

State

20049

Zip Code

202-434-2138

Telephone

202-434-6424

Fax Number

3. Applicant has been retained personally or as a member of the above named law firm by NA 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 of 2009, applicant has been, and presently is, a member in good standing of the bar of the highest court of the District of Columbia or the State of _____ 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:

US Circuit Court of Appeals, DC Circuit	1979
US Circuit Court of Appeals, 6 th Circuit	1979
US Circuit Court of Appeals, 9 th Circuit	2010
US District Courts, ED & WD KY	1978
US District Court, D AZ	2008
US District Court, ND CA	2009
Supreme Court of Kentucky	1978

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.)

NA

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):

NA

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):

NA

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):

NA

9. Local counsel of record associated with applicant in this case is Raymond Mullman Jr., of the Poliakoff & Associates law firm, which has offices at:

215 Magnolia Street
Street Address

Spartanburg
County City

SC
State

29304
Zip Code

864-582-5472

Telephone

If applicable list all other firms/attorneys you are associated with in this matter

NA

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).

NA

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 18TH day of jUNE, 2012.

Kenneth W. Zeller
APPLICANT

VERIFICATION

STATE OF Washington, D.C.

COUNTY OF _____

I, Kenneth W. Zeller, 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.

Kenneth W. Zeller
APPLICANT/AFFIANT

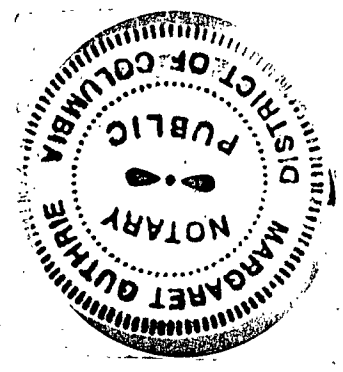
Subscribed and sworn to before me this 18th day of June, 2012.

Margaret Guthrie

Notary Public for the State of DC

My Commission Expires: _____

Margaret Guthrie
Notary Public, District of Columbia
My Commission Expires 11/14/2013



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 _____ day of _____, 20____.

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, PO Box 11330, Columbia, SC 29211, accompanied by payment of the \$250 filing fee payable to the South Carolina Supreme Court on this 18th day of June, 2012.

Kenneth W. Zeller
APPLICANT/AFFIANT

Kenneth W. Zeller
APPLICANT

VERIFICATION

STATE OF Washington, D.C.

COUNTY OF _____

I, Kenneth W. Zeller, 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.

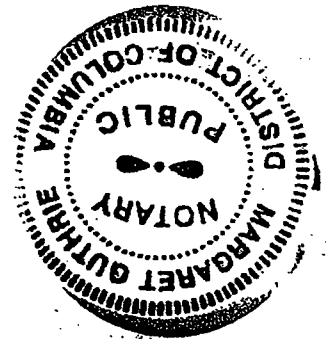
Kenneth W. Zeller
APPLICANT/AFFIANT

Subscribed and sworn to before me this 18th day of June, 2012.

Margaret Guthrie
Notary Public for the State of DC.

My Commission Expires: _____

Margaret Guthrie
Notary Public, District of Columbia
My Commission Expires 11/14/2013



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.

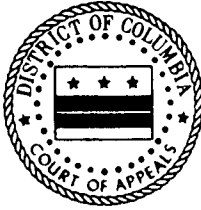
DATED this 18 day of JUNE, 2012.

Raymond Mullman Jr.
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, PO Box 11330, Columbia, SC 29211, accompanied by payment of the \$250 filing fee payable to the South Carolina Supreme Court on this 18th day of June, 2012.

Kenneth W. Zeller
APPLICANT/AFFIANT



District of Columbia Court of Appeals
Committee on Admissions
430 E 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

KENNETH WAYNE ZELLER

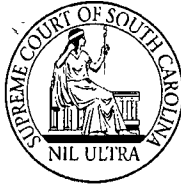
was on the 6TH *day of* MARCH, 2009

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 June 18, 2012.

JULIO A. CASTILLO
Clerk of the Court

By: *Brenda Hancock*
Deputy Clerk



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

June 27, 2012

Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Ann Coleman et al v. Mariner Health Care, Inc., et al
Case No. 2010-CP-21-00835 & 00836

Dear Clerk of Court:

I certify that the Office of Bar Admissions has received a verified application requesting Kenneth W. Zeller be admitted *pro hac vice* in the above matters. The \$250 filing fee for each case for the above applicant has been paid.

Yours truly,

Deputy Clerk for Bar Admissions

GBW/st

RECEIVED
JUN 28 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

RECEIVED

JUL 25 2012

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, MCH 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 I-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., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunsztejn, 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 LEAVE TO
APPEAR *PRO HAC VICE***

Pursuant to SCACR Rule 404, Kenneth W. Zeller hereby moves this Court for an order allowing him to appear *pro hac vice* for the purpose of filing of an *amicus* brief in support of respondent. Kenneth W. Zeller represents that he has previously filed an application with this Court and the South Carolina Supreme Court complying with all the requirements of SCACR Rule 404(c) including the signature of Raymond Mullman Jr., 215 Magnolia St., Spartanburg, S.C. 29304, (864) 582-5472, local counsel of record.

Dated:

Respectfully submitted,



KENNETH W. ZELLER

AARP Foundation Litigation
601 E Street, NW
Washington, DC 20049
(202) 434-2138



601 E Street NW • Washington, DC 20049 • 1-888-687-2277 TTY 1-877-434-7598 • aarpfoundation.org

July 24, 2012

Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RECEIVED
JUL 25 2012
SC Court of Appeals

Re: Case Nos: 2010-CP-21-0085, 2010-CP-21-00836

Dear Sir or Madam:

Enclosed please find the original and a copy of the Brief, *Amicus Curiae* of AARP, the original and a copy of the Motion for Leave to File Brief *Amicus Curiae* of AARP In Support of Respondent and Affordance and the original and a copy of the Motion for Leave to Appear *Pro Hac Vice*. Also enclosed is an addressed stamped envelope for our file stamped copy. If you have any questions please do not hesitate to contact me at the above number.

Sincerely,

Kenneth Zeller / by permission
Kenneth W. Zeller m. morshedi
Senior Attorney

**MOTION FOR LEAVE TO FILE BRIEF
AMICUS CURIAE OF AARP IN SUPPORT
OF RESPONDENT AND AFFIRMANCE**

Pursuant to SCACR Rule 213, *amicus curiae* AARP hereby moves this Court for an order allowing the filing of an *amicus* brief in support of respondent's argument that the trial court was correct in denying the petitioner's motion to compel arbitration. *Amicus* believe that its brief will aid the Court in its determination of the pending appeal by providing additional context on the detrimental impact that reversing the trial court's ruling would have for older persons.

INTEREST OF AMICUS

AARP is a nonpartisan, non-profit membership organization for people 50 and over, with nearly 40 million members nationwide. AARP advocates for health and economic security for everyone and in particular for vulnerable people of all ages, including low-income persons and persons with disabilities. AARP supports access to and expansion of quality health care through publicly administered health insurance programs, including Medicaid, an essential safety net program that provides coverage for those who otherwise would be denied health care.

AARP Foundation provides legal representation to individuals and files *amicus curiae* briefs in cases of high social impact to its members. Access to courts for the redress of the rights of individuals is an issue of high importance to AARP.

FILING AN *AMICUS* BRIEF IS DESIRABLE AND RELEVANT

Filing this *amicus* brief is desirable and relevant because *amicus* has a strong interest in the affirmance of the trial court's opinion. Further, filing an *amicus* brief is desirable and relevant because *amicus* can provide the Court with valuable information in deciding this appeal by offering a broader perspective on the Nursing Home programs and the impact the trial court's opinion would have on low-income older persons.

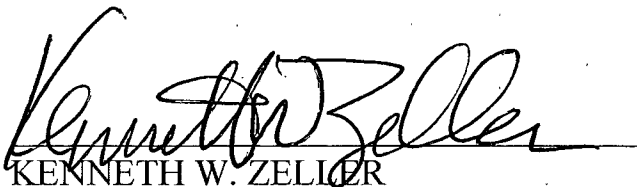
Because this brief would serve the "classic role" of "bring[ing] relevant matter to the attention of the Court that has not already been brought to its attention by the parties," *amice's* motion should be granted.

CONCLUSION

For these reasons, *amicus* respectfully submit that the Court should grant this Motion for Leave to File the Amicus Brief included herewith.

Dated:

Respectfully submitted,



KENNETH W. ZELLER
AARP Foundation Litigation
601 E Street, NW
Washington, DC 20049
202-434-2138

PROOF OF SERVICE

I, Kenneth W. Zeller, of AARP Foundation Litigation, do hereby certify that a copy of Motion for Leave to File the Amicus Brief was served on all other parties to this matter by depositing a copy of the same in the United States Mail, postage prepaid, on July 24, 2012, addressed as follows to counsel of record:

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

D. Jay Davis, Jr., Esq.
William L. Howard, Esq.
YOUNG CLEMENT RIVERS, LLP
P.O. Box 993
Charleston, SC 29402

Lori D. Proctor, Esq.
JOHNSON, TRENT, WEST, & TAYLOR, LLP
919 Milam Street
Suite 1700
Houston, TX 77002

Walter McElhaney White, Esq.
Ginger D. Goforth, Esq.
Perry D. Boulter, Esq.
Holcombe, Bomar, Gunn & Bradford, PA
P.O. Box 1897
Spartanburg, SC 29304

William C. Barnes, Esq.
Turner, Padgett, Graham & Laney, P.A.
P.O. Box 5478
Florence, SC 29502

Michal I. Bernstein, P.A., Esq.
A1A Title Services, LLC
1688 Meridian Avenue, Suite 418
Miami Beach, FL 33139

R. Gerald Chambers, Jr.
Turner Padgett Graham & Laney, PA
P.O. Box 1473
Columbia, SC 29202


KENNETH W. ZELLER
AARP Foundation Litigation

Counsel for *Amicus Curiae*

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, MCH 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 I-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., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunzstein, 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.



BLUESTEIN · NICHOLS · THOMPSON · DELGADO LLC
ATTORNEYS AT LAW

64939

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.

July 23, 2012

RECEIVED
JUL 23 2012
SC COURT of Appeals

VIA HAND DELIVERY

The Honorable Jenny Kitchings
Clerk of Court
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 seven (7) copies of a *Motion for Extension* in regards to this case. I have also enclosed a proof of service of this document on counsel for the Appellants and a \$25.00 check for filing this motion. 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

PROOF OF SERVICE

I, Kenneth W. Zeller, of AARP Foundation Litigation, do hereby certify that a copy of Brief of *Amicus Curiae* AARP was served on all other parties to this matter by depositing a copy of the same in the United States Mail, postage prepaid, on

July 24, 2012, addressed as follows to counsel of record:

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

D. Jay Davis, Jr., Esq.
William L. Howard, Esq.
YOUNG CLEMENT RIVERS, LLP
P.O. Box 993
Charleston, SC 29402

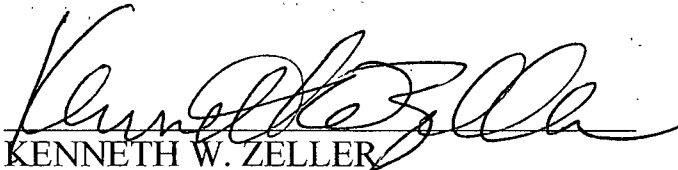
Lori D. Proctor, Esq.
JOHNSON, TRENT, WEST, & TAYLOR, LLP
919 Milam Street
Suite 1700
Houston, TX 77002

Walter McElhaney White, Esq.
Ginger D. Goforth, Esq.
Perry D. Boulter, Esq.
Holcombe, Bomar, Gunn & Bradford, PA
P.O. Box 1897
Spartanburg, SC 29304

William C. Barnes, Esq.
Turner, Padgett, Graham & Laney, P.A.
P.O. Box 5478
Florence, SC 29502

Michal I. Bernstein, P.A., Esq.
A1A Title Services, LLC
1688 Meridian Avenue, Suite 418
Miami Beach, FL 33139

R. Gerald Chambers, Jr.
Turner Padgett Graham & Laney, PA
P.O. Box 1473
Columbia, SC 29202



KENNETH W. ZELLER
AARP Foundation Litigation

Counsel for *Amicus Curiae*

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

RECEIVED

JUL 23 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, ... Defendants,

of whom,

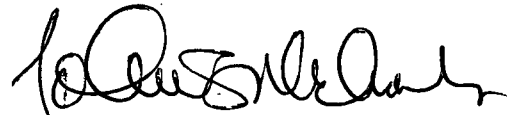
Mariner Health Care, Inc. f/k/a Mariner Post-Acute Network, LLC,
Mariner Health Care Management Company, Mariner Health
Central, Inc., Mariner Health Group, Inc., MHC Holding
Company, MHC Florida Holding Company, MHC Gulf Coast

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, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center are, . . Appellants.

MOTION FOR EXTENSION

Pursuant to Rule 240, SCACR, Respondent requests a 30-day extension of the deadline for filing Respondent's Initial Brief and Designation of Matter to be Included in the Record on Appeal. The current deadline is July 23, 2012. This is the fourth request for an extension of this deadline.

Respectfully submitted,



John S. Nichols
SC Bar No. 004210
BLUESTEIN, NICHOLS,
THOMPSON & DELGADO
Post Office Box 7965
Columbia, South Carolina 29202
(803) 779-7599
(803) 779-8995 (facsimile)
jsnichols@bntdlaw.com

Attorney for Respondent

July 23, 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

RECEIVED

JUL 23 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, ... 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, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center are, . . Appellants.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Appellants with a copy of the *Motion for Extension* by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

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

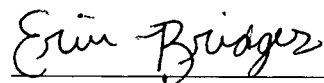
William C. Barnes, Esquire
Turner Padget Graham & Laney, P.A.
P.O. Box 5478
Florence, SC 29502

Sandra L. W. Miller, Esquire
Womble Carlyle Sandridge & Rice, LLP
550 South Main St., Suite 400
P.O. Box 10208
Greenville, SC 29603

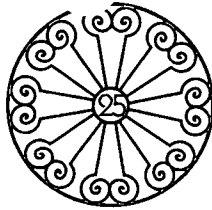
W. McElhaney White, Esquire
Perry D. Boulter, Esquire
Holcombe Bomar, P.A.
P.O. Box 1897
Spartanburg, SC 29304

Michael I Bernstein, Esquire
1688 Meridian Avenue, Suite 418
Miami Beach, FL 33139

July 23, 2012
Columbia, South Carolina



Erin Bridges
BLUESTEIN, NICHOLS,
THOMPSON & DELGADO, LLC



YCR LAW
Young Clement Rivers, LLP

Russell G. Hines

Direct Dial: (843) 720-5488
Direct Fax: (843) 579-1327
E-mail: RHines@yclaw.com

August 3, 2012

VIA US MAIL

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, et al.*

Case No.: 2010-CP-21-835; 836
Case Tracking Number: 2011194946
YCR File: 14264-20110818

Dear Ms. Kitchings:

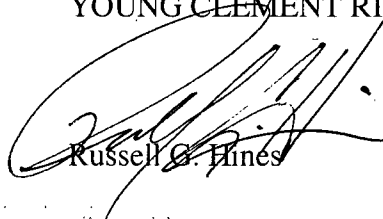
I write to request a ten-day extension of time to serve/file any return on behalf of these Appellants¹ to the Motion for Leave to File Brief *Amicus Curiae* of AARP in Support of Respondent and Affirmance in the above-referenced matter. With the extension requested herein, any return by these Appellants will be due on or before August 13, 2012. I have enclosed our firm's check in the amount of \$25.00 to cover the cost of this request. If a more formal motion is needed for the Court to act on this request, please let me know.

Thank you, in advance, for your assistance with this matter.

With best wishes and kindest regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP



Russell G. Hines

RECEIVED
AUG 06 2012

SC Court of Appeals

¹ 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

RGH/ero

cc: (via US Mail and E-mail)
Kenneth W. Zeller, Esquire, AARP Foundation Litigation
John S. Nichols, Esquire, Bluestein Nichols Thompson & Delgado, LLC
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
Lori D. Proctor, Esquire, Serpe, Jones, Andrews, Callender & Bell, PLLC

RECEIVED
AUG 06 2012
SC Court of Appeals



550 South Main Street
Suite 400
Greenville, SC 29601

Mailing Address:
Post Office Box 10208
Greenville, SC 29603
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

August 3, 2012

RECEIVED

AUG 06 2012

SC Court of Appeals

The Honorable Jenny Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter St.
Columbia, SC 29201

Re: 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, MCH 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 Joes Does 1-26, *Appellants*,
C.A. Nos. 2010-CP-21-00835, 2010-CP-21-00836.

Dear Ms. Kitchings:

On or about July 24, 2012, AARP filed a Motion for Leave to File Brief *Amicus Curiae* of AARP in Support of Respondent and Affirmance (“**Motion for Leave to File Amicus Brief**”). However, in violation of Rules 240(d) and 262(b) of the South Carolina Appellate Court Rules, AARP did not serve a copy of its motion on Appellants Leonard Grunstein and Murray Forman’s current attorney.¹ In fact, Mr. Grunstein and Mr. Forman were entirely

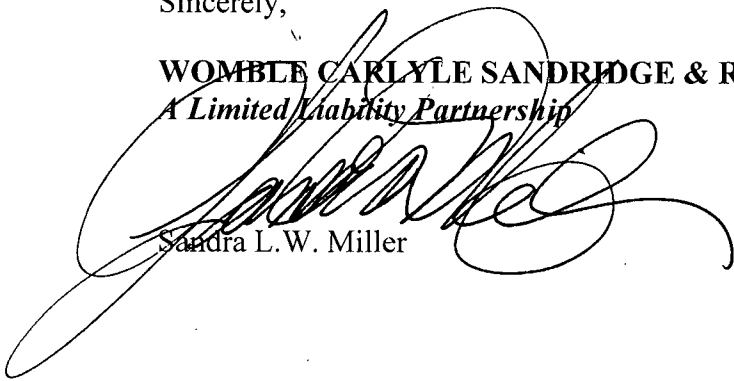
¹ On or about January 9, 2012, the Court granted Mr. Grunstein and Mr. Forman’s motion to substitute Womble Carlyle Sandridge & Rice for Holcombe Bomar, P.A. as their counsel. Since that date, Womble Carlyle and the undersigned attorney have represented these Appellants in the above-captioned case. Nonetheless, it appears that AARP may have ineffectively and improperly served its July 2012 Motion on Holcombe Bomar, Mr. Grunstein and Mr. Forman’s prior counsel.

unaware of AARP's motion until August 1, 2012, when another Appellant's counsel incidentally called the undersigned and mentioned it. By copy of this letter, Mr. Grunstein and Mr. Forman notify AARP's attorney that their undersigned counsel will accept service of the Motion for Leave to File Amicus Brief.

However, Mr. Grunstein and Mr. Forman, who expressly reserve all objections to AARP's proposed Amicus Brief, respectfully request that the Court delay its ruling on AARP's Motion until after: (1) AARP properly serves their undersigned attorney with the Motion, and (2) they have filed a return and/or their time for filing a return to the Motion has lapsed, see Rule 240, SCACR ("Any party opposing a motion or petition shall have ten (10) days from the date of service thereof to file an original and six (6) copies of his return with the clerk").

Sincerely,

WOMBLE CARLYLE SANDRIDGE & RICE
A Limited Liability Partnership


Sandra L.W. Miller

cc:

Matthew W. Christian, Esq.
Marion S. Fowler, III, Esq.
D. Jay Davis, Jr., Esq.
William L. Howard, Esq.
Lori D. Proctor, Esq.
William C. Barnes, Esq.
Michal I. Bernstein, Esq.
R. Gerald Chambers, Jr., Esq.
Kenneth W. Zeller, Esq.

Enclosure

65121-25



Holcombe Bomar, P.A.

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

phone (864) 594-5300
fax (864) 585-3844

www.holcombebomar.com

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

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
Kyle T. Clelland
Neville Holcombe, 1902-1983
Horace L. Bomar, 1912-1994

August 6, 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 v. Mariner Health Care, Inc., et al.
Case Nos. 2010-CP-21-00835 & 00836
Case Tracking Number: 2011194946
Our File No: 10963

Dear Ms. Kitchings:

I write to request a ten day extension of time to serve/file any return on behalf of Appellants SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, and SavaSeniorCare, Inc. to the Motion for Leave to File Brief *Amicus Curiae* of AARP in Support of Respondent and Affirmance in the above-referenced matter. With the extension requested herein, any return by these Appellants will be due on or before August 13, 2012. I have enclosed our firm's check in the amount of \$25.00 to cover the costs of this request. If a more formal motion is needed for the Court to act on this request, please let me know.

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

RECEIVED
AUG 08 2012
SC Court of Appeals

cc: Kenneth W. Zeller, Esq. (w/ letter and enclosures via US Mail and Email)
John S. Nichols, Esq. (w/ letter and enclosures via US Mail and Email)
Matthew Christian, Esq. (w/ letter and enclosures via US Mail and Email)
Marion Fowler, Esq. (w/ letter and enclosures via US Mail and Email)
R. Gerald Chambers, Jr., Esq. (w/ letter and enclosures via US Mail and Email)
William "Sonny" Barnes, Esq. (w/ letter and enclosures via US Mail and Email)
Michael Bernstein, Esq. (w/ letter and enclosures via US Mail and Email)
Carmelo B. Sammataro, Esq. (w/ letter and enclosures via US Mail and Email)
Sandra L. W. Miller, Esq. (w/ letter and enclosures via US Mail and Email)
Malcolm J. Harkins, III, Esq. (w/ letter and enclosures via US Mail and Email)
Lori D. Proctor, Esq. (w/ letter and enclosures via US Mail and Email)
Russell G. Hines, Esq. (w/ letter and enclosures via US Mail and Email)
D. Jay Davis, Jr., Esq. (w/ letter and enclosures via US Mail and Email)

RECEIVED
AUG 08 2012
SC Court of Appeals



601 E Street NW • Washington, DC 20049 • 1-888-687-2277 TTY 1-877-434-7598 • aarpfoundation.org

August 8, 2012

The Honorable Jenny Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumpter Street
Columbia, SC 29201

RECEIVED

AUG 10 2012

Re: Case Nos: 2010-CP-21-00835 and 00836

SC Court of Appeals

Dear Ms. Kitchings:

Enclosed please find a copy of the previously filed Motion for Leave to File Brief *Amicus Curiae* of AARP in Support of Respondent and Affirmance with an amended proof of service showing service on Appellants Leonard Grunstein and Murray Forman by their attorney, Sandra L. W. Miller. These parties were inadvertently omitted from service of the motion received by the Court on July 25, 2012.

In her letter of August 3, 2012 Ms. Miller agreed to accept service of the motion and requested the Court delay its ruling on AARP's motion until her clients have had the requisite ten (10) days from the date of service and/or their time for filing a return has lapsed. AARP has no objection to such extension.

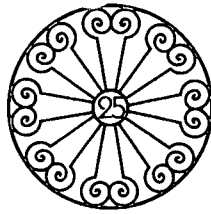
Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth W. Zeller".

Kenneth W. Zeller
Attorney for AARP
Direct Dial (202) 434-2138
kzeller@aarp.org

Encl.

Cc: Sandra L.W. Miller (w/encl)



YCR LAW
Young Clement Rivers, LLP

Elizabeth Riley O'Neil
Paralegal

Direct Dial: (843) 724-6658
Direct Fax: (843) 579-2936
E-mail: coneil@ycrlaw.com

August 13, 2012

VIA US MAIL

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, et al.*

Case No.: 2010-CP-21-835; 836
Case Tracking Number: 2011194946
YCR File: 14264-20110818

Dear Ms. Kitchings:

Enclosed for filing in the above matter please find the original and seven (7) copies of a Motion for Extension, as well as our firm check in the amount of \$25.00 to cover the cost of filing this motion. Also enclosed are the original and two (2) copies of a Proof of Service concerning same.

Kindly return one (1) clocked copy of each document to us in the self-addressed, stamped envelope provided.

Thank you, in advance, for your assistance.

Respectfully yours,

YOUNG CLEMENT RIVERS, LLP

Elizabeth R. O'Neil
Paralegal

RECEIVED

AUG 15 2012

RGH/ero

cc: (via US Mail and E-mail)

Kenneth W. Zeller, Esquire, AARP Foundation Litigation
John S. Nichols, Esquire, Bluestein Nichols Thompson & Delgado, LLC
Matthew W. Christian, Esquire, Christian & Davis LLC

SC Court of Appeals

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
Lori D. Proctor, Esquire, Serpe, Jones, Andrews, Callender & Bell, PLLC

RECEIVED

AUG 15 2012

SC Court of Appeals

65195
25

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, and Murray Forman, an Individual are,

RECEIVED Appellants.
AUG 15 2012
SC Court of Appeals

MOTION FOR EXTENSION OF TIME

HOLCOMBE BOMAR, P.A.

Perry D. Boulrier

W. McElhaney White

Ginger Goforth

P.O. Box 1897

Spartanburg, South Carolina 29304

(864) 594-5300

YOUNG CLEMENT RIVERS, LLP

D. Jay Davis, Jr.

William L. Howard

P.O. Box 993

Charleston, South Carolina 29402

(843) 577-4000

SERPE, JONES, ANDRES, CALLENDER & BELL,
PLLC

Lori D. Proctor

America Tower

2929 Allen Parkway, Suite 1600

Houston TX 77019

(713) 452-4400

*ATTORNEYS FOR APPELLANTS**

* Appellants for purposes of this motion include only those appellants identified as represented by counsel in the signature block below. Specifically, those appellants are: 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 (all of whom are represented by Young Clement Rivers, LLP) as well as SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, and SavaSeniorCare, Inc. (all of whom are represented by Holcombe Bomar, P.A.).

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

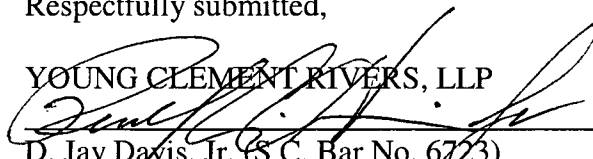
COME NOW the Appellants, by and through their undersigned counsel, pursuant to Rule 263(b), SCACR, and move this Honorable Court for an additional extension of ten (10) days' time to serve/file any return to the Motion for Leave to File Brief Amicus Curiae of AARP in Support of Respondent and Affirmance (the "Amicus Motion") in this matter.

On July 24, 2012, the AARP filed its Amicus Motion. By separate correspondence, counsel for the Appellants have previously asked the Court to extend the deadline for any return from their respective clients to the Amicus Motion through today, August 13, 2012. Although these prior requests have not yet been acted on by the Court, on account of work-related and other time commitments, the Appellants now ask for an additional extension of time to file any return to the Amicus Motion. At present, the Appellants anticipate filing a joint return to the Amicus Motion. Respectfully, the Appellants' counsel do not believe that the Court's grant of the requested relief will work any undue prejudice upon the AARP or any party.

WHEREFORE, the Appellants ask that the Court grant them an additional ten (10) days' time to file/serve any return to the AARP's Amicus Motion. By the Appellants' calculations, with the requested extension, any return to the Amicus Motion by the Appellants would be due on or before August 23, 2012. Additionally, the Appellants would ask that the Court hold the current deadline for any such return in abeyance pending the Court's action on the instant motion for extension.

<SIGNATURE BLOCK TO FOLLOW>

Respectfully submitted,


YOUNG CLEMENT RIVERS, LLP

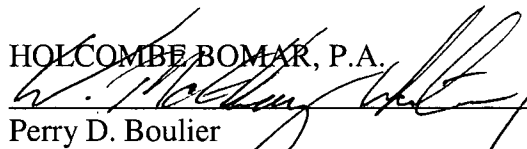
D. Jay Davis, Jr. (S.C. Bar No. 6723)
William L. Howard (S.C. Bar No. 1967)
P.O. Box 993
Charleston, South Carolina 29402
(843) 577-4000
Email: jdavis@ycrlaw.com
bhoward@ycrlaw.com

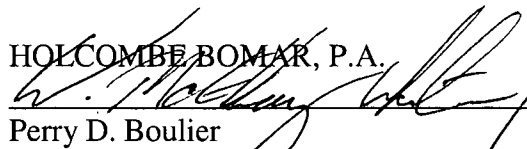
-and-

SERPE, JONES, ANDRES, CALLENDER & BELL,
PLLC

Lori D. Proctor
America Tower
2929 Allen Parkway, Suite 1600
Houston TX 77019
(713) 452-4400

*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*


HOLCOMBE BOMAR, P.A.


Perry D. Boulieu
W. McElhaney White
Ginger Goforth
P.O. Box 1897
Spartanburg, South Carolina 29304
(864) 594-5300
Email: pboulieu@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

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

HOLCOMBE BOMAR, P.A.

Perry D. Boulrier

W. McElhaney White

Ginger Goforth

P.O. Box 1897

Spartanburg, South Carolina 29304

(864) 594-5300

YOUNG CLEMENT RIVERS, LLP

D. Jay Davis, Jr.

William L. Howard

P.O. Box 993

Charleston, South Carolina 29402

(843) 577-4000

SERPE, JONES, ANDRES, CALLENDER & BELL,
PLLC

Lori D. Proctor

America Tower

2929 Allen Parkway, Suite 1600

Houston TX 77019

(713) 452-4400

*ATTORNEYS FOR APPELLANTS**

* Appellants for purposes of this motion include only those appellants identified as represented by counsel in the signature block below. Specifically, those appellants are: 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 (all of whom are represented by Young Clement Rivers, LLP) as well as SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, and SavaSeniorCare, Inc. (all of whom are represented by Holcombe Bomar, P.A.).

I, Russell G. Hines, do hereby certify that a copy of the Appellants' **Motion for Extension of Time** was sent to all counsel via United States Mail, postage pre-paid on August 13, 2012 addressed as follows:

Bluestein Nichols Thompson Delgado, LLC
John S. Nichols, Esquire
P. O. Box 7965
Columbia, SC 29202

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

Turner Padgett Graham & Laney, P.A.
William C. Barnes, Jr., Esquire
P.O. Box 5478
Florence, SC 29502

Womble Carlyle Sandridge & Rice, PLLC
Sandra L. W. Miller, Esquire
P.O. Box 10208
Greenville, SC 29601

Holcombe Bomar, P.A.
W. McElhaney White, Esquire
Perry D. Boulter, Esquire
P.O. Box 1897
Spartanburg, SC 29304

Michael I. Bernstein, Esquire
1688 Meridian Avenue, Suite 418
Miami Beach, FL 33139

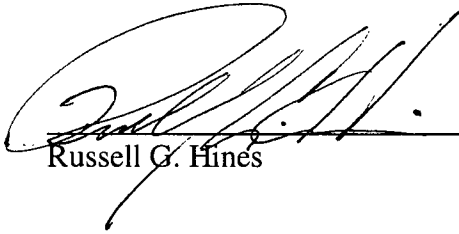
Proskauer Rose LLP
Malcolm J. Harkins III, Esquire
1001 Pennsylvania Avenue, N.W.
Suite 400 South
Washington, D.C. 20004

Serpe, Jones, Andres, Callender & Bell, PLLC
Lori D. Proctor, Esquire
America Tower
2929 Allen Parkway, Suite 1600
Houston TX 77019

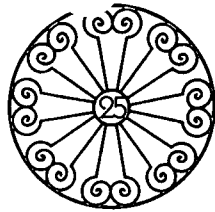
AARP Foundation Litigation
Kenneth W. Zeller, Esquire
601 E Street, NW
Washington, DC 20049

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP



Russell G. Hines



YCR LAW
Young Clement Rivers, LLP

Elizabeth Riley O'Neil
Paralegal

Direct Dial: (843) 724-6658
Direct Fax: (843) 579-2936
E-mail: coneil@ycrlaw.com

August 14, 2012

VIA US MAIL

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, et al.*

Case No.: 2010-CP-21-835; 836
Case Tracking Number: 2011194946
YCR File: 14264-20110818

Dear Ms. Kitchings:

Enclosed for filing in the above matter please find the original and two (2) copies of an Amended Proof of Service. Although they were served with the motion for extension filed yesterday, through inadvertence, Messrs. Christian and Fowler were excluded from the Proof of Service.

Kindly return one (1) clocked copy to us in the self-addressed, stamped envelope provided.

Thank you, in advance, for your assistance.

Respectfully yours,

YOUNG CLEMENT RIVERS, LLP

Elizabeth R. O'Neil
Paralegal

RECEIVED
AUG 17 2012
SC Court of Appeals

RGH/ero

cc: (via US Mail and E-mail)

Kenneth W. Zeller, Esquire, AARP Foundation Litigation
John S. Nichols, Esquire, Bluestein Nichols Thompson & Delgado, LLC
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
Lori D. Proctor, Esquire, Serpe, Jones, Andrews, Callender & Bell, PLLC

**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, and Murray Forman, an Individual are,

Appellants.

RECEIVED
AUG 17 2012
SC Court of Appeals

AMENDED PROOF OF SERVICE

HOLCOMBE BOMAR, P.A.
Perry D. Boulrier
W. McElhaney White
Ginger Goforth
P.O. Box 1897
Spartanburg, South Carolina 29304
(864) 594-5300

YOUNG CLEMENT RIVERS, LLP
D. Jay Davis, Jr.
William L. Howard
P.O. Box 993
Charleston, South Carolina 29402
(843) 577-4000

SERPE, JONES, ANDRES, CALLENDER & BELL,
PLLC
Lori D. Proctor
America Tower
2929 Allen Parkway, Suite 1600
Houston TX 77019
(713) 452-4400

*ATTORNEYS FOR APPELLANTS**

RECEIVED
AUG 17 2012
SC Court of Appeals

* Appellants for purposes of this motion include only those appellants identified as represented by counsel in the signature block below. Specifically, those appellants are: 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 (all of whom are represented by Young Clement Rivers, LLP) as well as SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, and SavaSeniorCare, Inc. (all of whom are represented by Holcombe Bomar, P.A.).

I, Russell G. Hines, do hereby certify that a copy of the Appellants' **Motion for Extension of Time** was sent to all counsel via United States Mail, postage pre-paid on August 13, 2012 addressed as follows:

Bluestein Nichols Thompson Delgado, LLC
John S. Nichols, Esquire
P. O. Box 7965
Columbia, SC 29202

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

Turner Padgett Graham & Laney, P.A.
William C. Barnes, Jr., Esquire
P.O. Box 5478
Florence, SC 29502

Womble Carlyle Sandridge & Rice, PLLC
Sandra L. W. Miller, Esquire
P.O. Box 10208
Greenville, SC 29601

Holcombe Bomar, P.A.
W. McElhaney White, Esquire
Perry D. Boulter, Esquire
P.O. Box 1897
Spartanburg, SC 29304

Michael I. Bernstein, Esquire
1688 Meridian Avenue, Suite 418
Miami Beach, FL 33139

Proskauer Rose LLP
Malcolm J. Harkins III, Esquire
1001 Pennsylvania Avenue, N.W.
Suite 400 South
Washington, D.C. 20004

Serpe, Jones, Andres, Callender & Bell, PLLC
Lori D. Proctor, Esquire
America Tower
2929 Allen Parkway, Suite 1600
Houston TX 77019

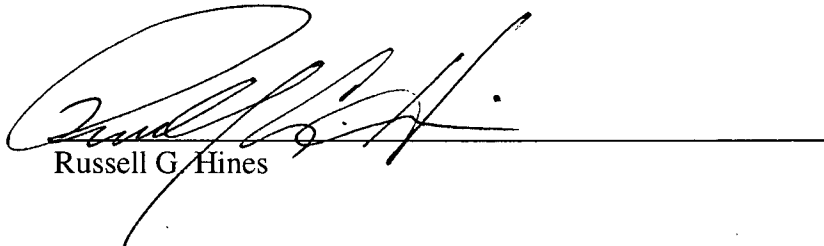
AARP Foundation Litigation
Kenneth W. Zeller, Esquire
601 E Street, NW
Washington, DC 20049

Christian & Davis LLC
Matthew W. Christian, Esquire
P. O. Box 332
Greenville, SC 29602

Fowler Law Firm, P.C.
Marion S. Fowler, III, Esquire
P. O. Box 1719
Lake City, South Carolina 29560

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP



Russell G. Hines

Charleston, South Carolina

Dated: 8/14/12

RECEIVED
AUG 17 2012
SC Court of Appeals



BLUESTEIN · NICHOLS · THOMPSON · DELGADO LLC
ATTORNEYS AT LAW

65 290

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.

August 22, 2012

VIA HAND DELIVERY

The Honorable Jenny Kitchings
Clerk of Court
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 seven (7) copies of a *Motion for Extension* in regards to this case. I have also enclosed a proof of service of this document on counsel for the Appellants and a \$25.00 check for filing this motion. 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

Enclosures

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

RECEIVED
AUG 22 2012
SC Court of Appeals

Sandra L.W. Miller, Esquire
Lori D. Proctor, Esquire
D. Jay Davis, Jr., 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-21-00835 & -00836

RECEIVED
AUG 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 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

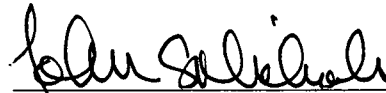
Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., GranCare South Carolina, Inc., Individually and d/b/a Faith Health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

MOTION FOR EXTENSION

Pursuant to Rule 240, SCACR, Respondent requests a 30-day extension of the deadline for filing Respondent's Initial Brief and Designation of Matter to be Included in the Record on Appeal. The current deadline is August 22, 2012. This is the fifth request for an extension of this deadline.

Respectfully submitted,

August 22, 2012



John S. Nichols
SC Bar No. 004210
BLUESTEIN, NICHOLS,
THOMPSON & DELGADO
Post Office Box 7965
Columbia, South Carolina 29202
(803) 779-7599
(803) 779-8995 (facsimile)
jsnichols@bntdlaw.com

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

RECEIVED

AUG 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 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, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center are, . . Appellants.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Appellants with a copy of the *Motion for Extension* by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

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

William C. Barnes, Esquire
Turner Padgett Graham & Laney, P.A.
P.O. Box 5478
Florence, SC 29502

Sandra L. W. Miller, Esquire
Womble Carlyle Sandridge & Rice, LLP
550 South Main St., Suite 400
P.O. Box 10208
Greenville, SC 29603

W. McElhaney White, Esquire
Perry D. Boulter, Esquire
Ginger D. Goforth, Esquire
Holcombe Bomar, P.A.
P.O. Box 1897
Spartanburg, SC 29304

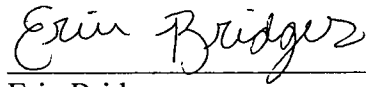
Michael I Bernstein, Esquire
1688 Meridian Avenue, Suite 418
Miami Beach, FL 33139

Lori D. Proctor, Esquire
Serpe, Jones, Andrews, Callender & Bell,
PLLC
America Tower
2929 Allen Parkway, Suite 1600
Houston, TX 77019

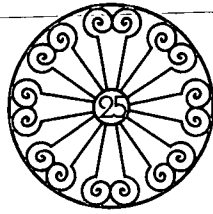
D. Jay Davis, Jr., Esquire
William L. Howard, Esquire
Young Clement Rivers, LLP
P.O. Box 993
Charleston, SC 29402

Malcolm J. Harkins III, Esquire
Proskauer Rose, LLP
1001 Pennsylvania Avenue, N.W.
Suite 400 South
Washington, D.C. 20004

August 22, 2012
Columbia, South Carolina



Erin Bridges
BLUESTEIN, NICHOLS,
THOMPSON & DELGADO, LLC



YCR LAW
Young Clement Rivers, LLP

Jennifer L. Anderson
Secretary

Direct Dial: (843) 720-5488
Direct Fax: (843) 579-1369
E-mail: janderson@ycrlaw.com

August 23, 2012

Jenny Abbott Kitchings, 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 vs. Mariner Health Care, Inc., f/k/a Mariner Post-Acute Network, LLC, et al.
Case No.: 2010-CP-21-835; 836
Case Tracking Number: 2011194946
YCR File: 14264-20110818

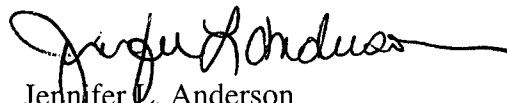
Dear Ms. Kitchings:

Enclosed for filing in the above matter please find the original and seven (7) copies of Appellants' Return to Motion For Leave to File Brief Amicus Curiae of AARP in Support of Respondent and Affirmance. Also enclosed are the original and two (2) copies of a Proof of Service concerning same. Kindly return one clocked copy of each document to us in the self-addressed, stamped envelope provided.

With best wishes and kindest regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP


Jennifer L. Anderson
Secretary

RECEIVED
AUG 27 2012
SC Court of Appeals

JLA/jla

Enclosures

cc: Kenneth W. Zeller, Esquire
John S. Nichols, Esquire
Matthew W. Christian, Esquire
Marion S. Fowler, III, Esquire
Carmelo B. Sammataro, Esquire
William C. Barnes, Jr., Esquire
Gerald R. Chambers, Jr., Esquire

Michael I. Bernstein, Esquire
Perry D. Boulier, Esquire
Ginger D. Goforth, Esquire
W. McElhaney White, Esquire
Sandra L.W. Miller, Esquire
Malcom J. Harkins, III, 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,

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 are,

Appellants.

RECEIVED
AUG 27 2012
CLERK OF COURT

**APPELLANTS' RETURN TO MOTION FOR LEAVE TO FILE BRIEF *AMICUS*
CURIAE OF AARP IN SUPPORT OF RESPONDENT AND AFFIRMANCE**

HOLCOMBE BOMAR, P.A.
Perry D. Boulter
W. McElhaney White
Ginger Goforth
P.O. Box 1897
Spartanburg, South Carolina 29304
(864) 594-5300

YOUNG CLEMENT RIVERS, LLP
D. Jay Davis, Jr.
William L. Howard
Russell G. Hines
P.O. Box 993
Charleston, South Carolina 29402
(843) 577-4000

SERPE, JONES, ANDRES, CALLENDER & BELL,
PLLC
Lori D. Proctor
America Tower
2929 Allen Parkway, Suite 1600
Houston, Texas 77019
(713) 452-4400

*ATTORNEYS FOR APPELLANTS**

* Appellants for purposes of this return include only those appellants identified as represented by counsel in the signature block below. Specifically, those appellants are: 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 (all of whom are represented by Young Clement Rivers, LLP and Lori Proctor) as well as SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, and SavaSeniorCare, Inc. (all of whom are represented by Holcombe Bomar, P.A.).

As set forth herein, the Appellants respectfully oppose the AARP's motion for leave to file an amicus brief in this appeal.

ARGUMENT

I. It is procedurally improper, or, at least, undesirable, for the AARP to be granted leave to file an amicus brief before the Respondent has submitted her brief.

Rule 213, SCACR, addresses amicus curiae briefing, and provides as follows:

A brief of an amicus curiae may be filed only by leave of the appellate court granted on motion, or at the request of the appellate court. The brief may be conditionally filed with the motion for leave to file. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. The brief shall be limited to argument of the issues on appeal as presented by the parties and shall comply with the requirements of Rules 208(b) and 211. If leave to file an amicus curiae brief is granted, the appellate court will specify the period in which a response to the brief may be filed.

The Appellants would draw the Court's attention to language in the Rule limiting amicus briefs "to argument of the issues on appeal **as presented by the parties . . .**" (emphasis added). The plain language of the Rule, therefore, does not contemplate consideration of amicus briefing before the submission of briefs by all parties. Here, the AARP has requested leave to file an amicus brief and conditionally filed its brief before the Respondent has filed her brief. Accordingly, the Appellants submit that the AARP's motion and conditional amicus brief are, at best, premature.

Moreover, it is not in the interest of justice or judicial economy/efficiency for leave to be granted to the AARP under these circumstances. Because the Respondent has not yet submitted her brief, to the extent that the AARP's conditional brief contains any substantive argument that the Respondent believes to be persuasive, the same can simply be included in the Respondent's own brief and, thereafter, replied to by the Appellants, if they desire to do so. According to the

AARP, its motion should be granted because “its brief would serve the ‘classic role’ of bring[ing] relevant matter to the attention of the Court that has not already been brought to its attention by the parties’” (AARP Mot. p. 2.) Under the circumstances, where all parties have not presented briefs, it is simply not possible to determine if the AARP’s conditional amicus brief does indeed bring relevant matter to the attention of the Court that has not already been brought to its attention by the parties. The proposed amicus briefing may be wholly cumulative and redundant to the Respondent’s future briefing.

II. The AARP’s conditional amicus brief is, on its face, not helpful to the Court’s decision-making process in this appeal.¹

The AARP’s conditionally amicus brief sets forth three arguments, each of which is patently without merit, irrelevant, and/or improper.

A. The AARP’s argument that South Carolina law does not permit a surrogate to enter legally binding contracts on behalf of an incapacitated person is fatally flawed because it is predicated on an unduly self-serving and, indeed, patently erroneous citation to the subject statute.

The AARP’s conditional amicus brief recognizes that “South Carolina law grants third parties the express right to ‘make decisions concerning health care’ on behalf of their incapacitated relatives,” but contends that the statutory definition of “‘health care’” is limited to “‘a procedure to diagnose or treat a human disease, ailment, defect, abnormality, or complaint” (AARP Brief pp. 3-4) (citing S.C. Code Ann. §§ 44-66-30 and -20(1).) The AARP’s citation to the definition of “health care” set forth in § 44-66-20(1) is obviously and materially (and conspicuously) incomplete. The complete statutory definition set forth in § 44-66-20(1) is as follows: “‘Health care’ means a procedure to diagnose or treat a human disease, ailment, defect,

¹ Although it touches upon the matters presented in the AARP’s conditional amicus brief, the Appellants make this argument in opposition to the AARP’s motion for leave to file its amicus brief. To the extent that the Court may ultimately see fit to grant such leave to the AARP, the Appellants reserve and do not waive any and all rights to respond fully to the merits of the AARP’s amicus brief.

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 injured, disabled, or sick persons; and the placement in or removal from a facility that provides these forms of care.**” (emphasis added). The AARP’s conditional amicus brief never acknowledges or analyzes this language and, failing to do so, the AARP’s brief is not helpful to the Court’s decision-making process in this appeal. Likewise unhelpful is the AARP’s citation to extra-jurisdictional case law that is based upon different surrogacy statutes.

B. The AARP’s apparent authority argument is wholly irrelevant because apparent authority is not an issue on appeal.

The AARP’s argument about apparent authority is not helpful to the Court’s decision-making process and, indeed, wholly irrelevant, because the Appellants have not argued apparent authority on appeal.

C. The AARP’s argument about the alleged inadequacy of the regulatory enforcement process with respect to nursing facilities improperly injects into these appellate proceedings matters outside the bounds of the record below.

According to the AARP, regulatory protection of nursing facility residents’ rights is inadequate, and the ability to vindicate these rights is therefore “even more vital,” so “third parties should not be allowed to execute arbitration agreements that waive a residents’ right to due process without an express power of attorney to do so.” (AARP Br. pp. 10-11.) Assuming, *arguendo*, the validity of the AARP’s premise about the inadequacy of regulatory protection, this argument is patently specious, and at odds with the recent decision of the Supreme Court of the United States in Marmet Health Care Center, Inc. v. Brown, ___ U.S. ___, 132 S.Ct. 1201, 182 L.Ed.2d 42 (2012), wherein a unanimous Court emphatically rejected West Virginia’s categorical prohibition of predispute agreements to arbitrate personal-injury or wrongful-death claims against nursing homes. It is therefore unnecessary and unhelpful for this Court to accept

the AARP's invitation to debate whether it would be better public policy to relieve nursing-home plaintiffs of their contractual duties to arbitrate so that they can litigate their claims in court, because that question was already decided by the Marmet Court in the negative. In so doing, the Marmet Court noted the "“emphatic federal policy in favor of arbitral dispute resolution.”" Id. (citing KPMG LLP v. Cocchi, 565 U.S. ___, ___, 132 S.Ct. 23, 25, 181 L.Ed.2d 323 (2011) (quoting Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 105 S.Ct. 3346, 87 L.Ed.2d 444 (1985).); *see also* Grant v. Magnolia Manor-Greenwood, Inc., 383 S.C. 125, 129, 678 S.E.2d 435, 437-38 (2009) ("We observe at the outset that it is the policy of this state to favor the arbitration of disputes."). Even if the AARP's premise about the inadequacy of regulatory enforcement is true, arbitration plainly provides an avenue for the vindication of rights that is, indeed, favored in both the federal and state court systems.

Moreover, the AARP argues that its amicus brief is desirable because it offers "additional context" on the supposed "detrimental impact that reversing the trial court's ruling would have for older persons." (AARP Mot. p. 1.) A reading of the AARP's conditional amicus brief shows that this context comes from matters outside the record below in the form of general reference to the allegedly high incidence of elder maltreatment. Injection of such "facts" into this appellate proceeding, which are not part of the record below, is patently improper. Rule 210(c) and (h), SCACR (providing that the Record on Appeal shall not include matter that was not presented to the lower court or tribunal below and that the appellate court will not consider any fact which does not appear in the Record on Appeal); *see also* McQueen v. S.C. Coastal Council, 340 S.C. 65, 530 S.E.2d 628 (2000), *vacated on other grounds*, 533 U.S. 943 (2001) (amici curiae are limited to arguing those issues that the parties presented to the lower court). Further still, by providing such general context, which does not pertain the particular parties in this litigation, the

AARP invites the Court to decide the issues between these particular parties on an improper and unduly prejudicial basis outside the bounds of this litigation. The Appellants respectfully submit that such context is neither helpful nor justly considered in resolving the dispute now before this Court.

WHEREFORE, the Appellants respectfully ask this Honorable Court to deny the AARP's motion for leave to file an amicus brief in this matter.

<SIGNED ON THE FOLLOWING PAGE>

Respectfully submitted,

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
(843) 577-4000

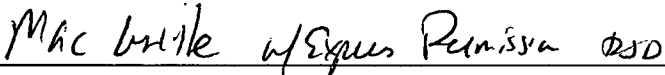
-and-

SERPE, JONES, ANDRES, CALLENDER & BELL,
PLLC

Lori D. Proctor (S.C. Bar No. 80117)
919 Milam Street, Suite 1700
Houston, Texas 77002
(713) 860-0585

*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*

HOLCOMBE BOMAR, P.A.



Perry D. Boulter
W. McElhaney White
Ginger Goforth
P.O. Box 1897
Spartanburg, South Carolina 29304
(864) 594-5300
*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

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

HOLCOMBE BOMAR, P.A.

Perry D. Boulrier

W. McElhaney White

Ginger Goforth

P.O. Box 1897

Spartanburg, South Carolina 29304

(864) 594-5300

YOUNG CLEMENT RIVERS, LLP

D. Jay Davis, Jr.

William L. Howard

P.O. Box 993

Charleston, South Carolina 29402

(843) 577-4000

SERPE, JONES, ANDRES, CALLENDER & BELL,
PLLC

Lori D. Proctor

America Tower

2929 Allen Parkway, Suite 1600

Houston TX 77019

(713) 452-4400

*ATTORNEYS FOR APPELLANTS**

* Appellants for purposes of this motion include only those appellants identified as represented by counsel in the signature block below. Specifically, those appellants are: 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 (all of whom are represented by Young Clement Rivers, LLP) as well as SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, and SavaSeniorCare, Inc. (all of whom are represented by Holcombe Bomar, P.A.).

I, D. Jay Davis, do hereby certify that a copy of the **Appellants' Return To Motion For Leave To File Brief *Amicus Curiae* Of AARP In Support Of Respondent And Affirmance** as sent to all counsel via United States Mail, postage pre-paid on August 23, 2012 addressed as follows:

Bluestein Nichols Thompson Delgado, LLC
John S. Nichols, Esquire
P. O. Box 7965
Columbia, SC 29202

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

Turner Padget Graham & Laney, P.A.
William C. Barnes, Jr., Esquire
P.O. Box 5478
Florence, SC 29502

Womble Carlyle Sandridge & Rice, PLLC
Sandra L. W. Miller, Esquire
P.O. Box 10208
Greenville, SC 29601

Holcombe Bomar, P.A.
W. McElhaney White, Esquire
Perry D. Boulter, Esquire
P.O. Box 1897
Spartanburg, SC 29304

Michael I. Bernstein, Esquire
1688 Meridian Avenue, Suite 418
Miami Beach, FL 33139

Proskauer Rose LLP
Malcolm J. Harkins III, Esquire
1001 Pennsylvania Avenue, N.W.
Suite 400 South
Washington, D.C. 20004

Serpe, Jones, Andres, Callender & Bell, PLLC
Lori D. Proctor, Esquire
America Tower
2929 Allen Parkway, Suite 1600
Houston TX 77019

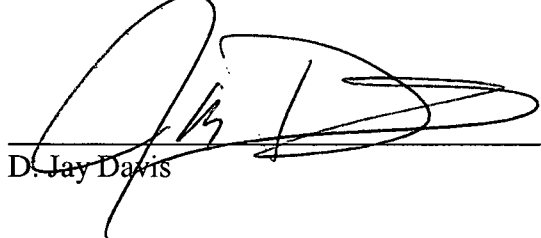
AARP Foundation Litigation
Kenneth W. Zeller, Esquire
601 E Street, NW
Washington, DC 20049

Christian & Davis LLC
Matthew W. Christian, Esquire
P. O. Box 332
Greenville, SC 29602

Fowler Law Firm, P.C.
Marion S. Fowler, III, Esquire
P. O. Box 1719
Lake City, South Carolina 29560

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP



D. Jay Davis

Charleston, South Carolina

Dated: 8/23/12

The South Carolina Court of Appeals

Ann Coleman, inidividually, 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.

Appellate Case No. 2011-194946

ORDER

Respondent has filed several motions for an extension to serve and file Respondent's Initial Brief and Designation of Matter. After careful consideration, Respondent's motion is granted. Respondent shall serve and file Respondent's Initial Brief and Designation of Matter within thirty days. No further extensions will be granted absent a showing of extraordinary circumstances.

Mr. Kenneth Zeller has filed a motion to appear pro hac vice. Mr. Zeller's motion is granted.

AARP has filed a motion for leave to file an *amicus curiae* brief in support of Respondent. In response, Appellants have filed several motions for an extension to serve and file a joint return. After careful consideration, Appellants' motion is granted. Appellants shall serve and file a return within ten days. No further extensions will be granted absent a showing of extraordinary circumstances.


FOR THE COURT

Columbia, South Carolina

FILED

Eartha 9/11/12

cc:

Marion Stephenson Fowler, III

Ginger D. Goforth

William L. Howard, Sr.

Matthew W. Christian

Carmelo Barone Sammataro

Lori Diane Proctor

Robert Gerald Chambers, Jr.

Sandra L. Miller

Donald Jay Davis, Jr.

W. McElhaney White

Perry D. Boulrier

John S. Nichols

Russell Grainger Hines

WOMBLE
CARLYLE
SANDRIDGE
& RICE
A LIMITED LIABILITY
PARTNERSHIP

550 South Main Street
Suite 400
Greenville, SC 29601

Mailing Address:
Post Office Box 10208
Greenville, SC 29603
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

September 21, 2012

The Honorable Jenny Abbott Kitchings
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 Nos. 2010-CP-21-00835 & 00836
Case Tracking No. 2011-1

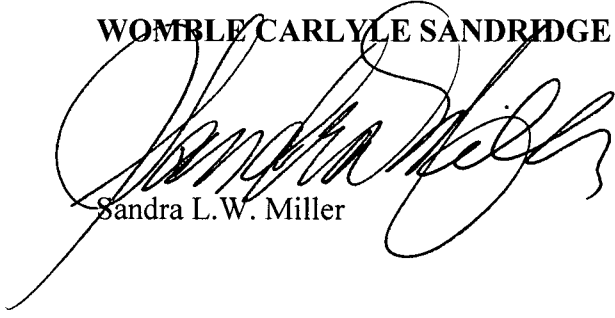
Dear Ms. Kitchings:

Enclosed are the original and seven copies of Appellants Leonard Grunstein and Murray Forman's Return In Opposition to AARP's Motion For Leave To File *Amicus Curiae* Brief in Support Of Respondent And Affirmance, along with a Proof of Service.

Please file these documents 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;dhy
Enclosures
c/enc: Counsel of Record

RECEIVED

SEP 24 2012

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-21-00835 & 00836

RECEIVED

SEP 24 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.

**APPELLANTS LEONARD GRUNSTEIN AND MURRAY FORMAN'S RETURN
IN OPPOSITION TO AARP'S MOTION FOR LEAVE TO FILE *AMICUS*
CURIAE BRIEF IN SUPPORT OF RESPONDENT AND AFFIRMANCE**

In compliance with the Court's September 11, 2012, Order, Appellants Leonard Grunstein ("**Grunstein**") and Murray Forman ("**Forman**"), whom AARP has never served with its Motion for Leave to File an Amicus Brief in Support of Respondent and Affirmance ("**the AARP Motion**"), submit the following Return in Opposition to the AARP Motion.

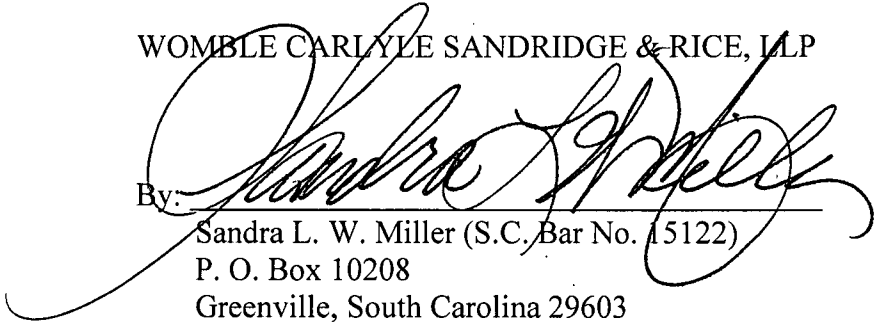
On or about August 3, 2012, Grunstein and Forman notified the Court and AARP that AARP had not served a copy of its Motion on them or their attorney, and that their counsel would accept service of the Motion. See Exhibit A. However, as of September 18, 2012, AARP, in violation of South Carolina Appellate Court Rules 208, 213, 240(d) and 262(b), still has not served Grunstein and Forman with its Motion. As a result of AARP's disregard of the Appellate Court Rules and apparent lack of interest in ensuring that it is providing proper notice to all parties in this appeal, the Court should deny AARP's Motion.

Separate and apart from this failure to follow the Appellate Court Rules, Grunstein and Forman respectfully request that the Court deny AARP's Motion because: (1) it is procedurally improper and undesirable for AARP to file an amicus brief before the Respondent has submitted her brief, and (2) AARP's conditional, proposed amicus brief is, on its face, not helpful to the Court's decision-making process in this appeal. In support of this Return, Grunstein and Forman

adopt the Return in Opposition to AARP's Motion that their fellow Appellants¹ filed on or about August 23, 2012, and which is attached and incorporated as **Exhibit B**.

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

¹ These Appellants include: 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.; Boyd P. Gentry; SavaSeniorCare Administrative Services, LLC; SavaSeniorCare, LLC; and SavaSeniorCare, Inc.

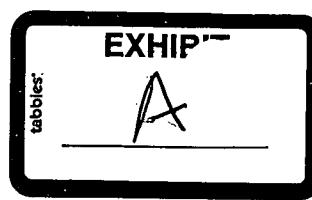
WOMBLE
CARLYLE
SANDRIDGE
& RICE

A LIMITED LIABILITY
PARTNERSHIP



550 South Main Street
Suite 400
Greenville, SC 29601

Mailing Address:
Post Office Box 10208
Greenville, SC 29603
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

August 3, 2012

The Honorable Jenny Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter St.
Columbia, SC 29201

Re: 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, MCH 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 Joes Does 1-26, *Appellants*,
C.A. Nos. 2010-CP-21-00835, 2010-CP-21-00836.

Dear Ms. Kitchings:

On or about July 24, 2012, AARP filed a Motion for Leave to File Brief *Amicus Curiae* of AARP in Support of Respondent and Affirmance (“**Motion for Leave to File Amicus Brief**”). However, in violation of Rules 240(d) and 262(b) of the South Carolina Appellate Court Rules, AARP did not serve a copy of its motion on Appellants Leonard Grunstein and Murray Forman’s current attorney.¹ In fact, Mr. Grunstein and Mr. Forman were entirely

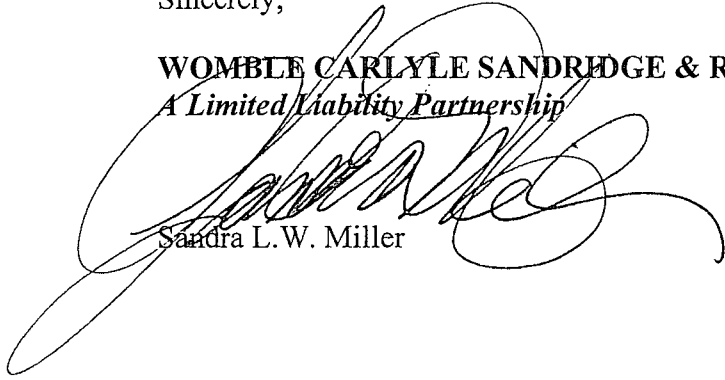
¹ On or about January 9, 2012, the Court granted Mr. Grunstein and Mr. Forman’s motion to substitute Womble Carlyle Sandridge & Rice for Holcombe Bomar, P.A. as their counsel. Since that date, Womble Carlyle and the undersigned attorney have represented these Appellants in the above-captioned case. Nonetheless, it appears that AARP may have ineffectively and improperly served its July 2012 Motion on Holcombe Bomar, Mr. Grunstein and Mr. Forman’s prior counsel.

unaware of AARP's motion until August 1, 2012, when another Appellant's counsel incidentally called the undersigned and mentioned it. By copy of this letter, Mr. Grunstein and Mr. Forman notify AARP's attorney that their undersigned counsel will accept service of the Motion for Leave to File Amicus Brief.

However, Mr. Grunstein and Mr. Forman, who expressly reserve all objections to AARP's proposed Amicus Brief, respectfully request that the Court delay its ruling on AARP's Motion until after: (1) AARP properly serves their undersigned attorney with the Motion, and (2) they have filed a return and/or their time for filing a return to the Motion has lapsed, see Rule 240, SCACR ("Any party opposing a motion or petition shall have ten (10) days from the date of service thereof to file an original and six (6) copies of his return with the clerk . . .).

Sincerely,

WOMBLE CARLYLE SANDRIDGE & RICE
A Limited Liability Partnership



Sandra L.W. Miller

cc:

Matthew W. Christian, Esq.
Marion S. Fowler, III, Esq.
D. Jay Davis, Jr., Esq.
William L. Howard, Esq.
Lori D. Proctor, Esq.
William C. Barnes, Esq.
Michal I. Bernstein, Esq.
R. Gerald Chambers, Jr., Esq.
Kenneth W. Zeller, Esq.

Enclosure



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, and Murray Forman, an Individual are,

Appellants.

**APPELLANTS' RETURN TO MOTION FOR LEAVE TO FILE BRIEF *AMICUS*
CURIAE OF AARP IN SUPPORT OF RESPONDENT AND AFFIRMANCE**

HOLCOMBE BOMAR, P.A.

Perry D. Boulier

W. McElhaney White

Ginger Goforth

P.O. Box 1897

Spartanburg, South Carolina 29304

(864) 594-5300

YOUNG CLEMENT RIVERS, LLP

D. Jay Davis, Jr.

William L. Howard

Russell G. Hines

P.O. Box 993

Charleston, South Carolina 29402

(843) 577-4000

SERPE, JONES, ANDRES, CALLENDER & BELL,
PLLC

Lori D. Proctor

America Tower

2929 Allen Parkway, Suite 1600

Houston, Texas 77019

(713) 452-4400

*ATTORNEYS FOR APPELLANTS**

* Appellants for purposes of this return include only those appellants identified as represented by counsel in the signature block below. Specifically, those appellants are: 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 (all of whom are represented by Young Clement Rivers, LLP and Lori Proctor) as well as SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, and SavaSeniorCare, Inc. (all of whom are represented by Holcombe Bomar, P.A.).

As set forth herein, the Appellants respectfully oppose the AARP's motion for leave to file an amicus brief in this appeal.

ARGUMENT

I. It is procedurally improper, or, at least, undesirable, for the AARP to be granted leave to file an amicus brief before the Respondent has submitted her brief.

Rule 213, SCACR, addresses amicus curiae briefing, and provides as follows:

A brief of an amicus curiae may be filed only by leave of the appellate court granted on motion, or at the request of the appellate court. The brief may be conditionally filed with the motion for leave to file. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. The brief shall be limited to argument of the issues on appeal as presented by the parties and shall comply with the requirements of Rules 208(b) and 211. If leave to file an amicus curiae brief is granted, the appellate court will specify the period in which a response to the brief may be filed.

The Appellants would draw the Court's attention to language in the Rule limiting amicus briefs "to argument of the issues on appeal **as presented by the parties . . .**" (emphasis added). The plain language of the Rule, therefore, does not contemplate consideration of amicus briefing before the submission of briefs by all parties. Here, the AARP has requested leave to file an amicus brief and conditionally filed its brief before the Respondent has filed her brief. Accordingly, the Appellants submit that the AARP's motion and conditional amicus brief are, at best, premature.

Moreover, it is not in the interest of justice or judicial economy/efficiency for leave to be granted to the AARP under these circumstances. Because the Respondent has not yet submitted her brief, to the extent that the AARP's conditional brief contains any substantive argument that the Respondent believes to be persuasive, the same can simply be included in the Respondent's own brief and, thereafter, replied to by the Appellants, if they desire to do so. According to the

AARP, its motion should be granted because “its brief would serve the ‘classic role’ of bring[ing] relevant matter to the attention of the Court that has not already been brought to its attention by the parties’” (AARP Mot. p. 2.) Under the circumstances, where all parties have not presented briefs, it is simply not possible to determine if the AARP’s conditional amicus brief does indeed bring relevant matter to the attention of the Court that has not already been brought to its attention by the parties. The proposed amicus briefing may be wholly cumulative and redundant to the Respondent’s future briefing.

II. The AARP’s conditional amicus brief is, on its face, not helpful to the Court’s decision-making process in this appeal.¹

The AARP’s conditionally amicus brief sets forth three arguments, each of which is patently without merit, irrelevant, and/or improper.

A. The AARP’s argument that South Carolina law does not permit a surrogate to enter legally binding contracts on behalf of an incapacitated person is fatally flawed because it is predicated on an unduly self-serving and, indeed, patently erroneous citation to the subject statute.

The AARP’s conditional amicus brief recognizes that “South Carolina law grants third parties the express right to ‘make decisions concerning health care’ on behalf of their incapacitated relatives,” but contends that the statutory definition of “‘health care’” is limited to “‘a procedure to diagnose or treat a human disease, ailment, defect, abnormality, or complaint” (AARP Brief pp. 3-4) (citing S.C. Code Ann. §§ 44-66-30 and -20(1).) The AARP’s citation to the definition of “health care” set forth in § 44-66-20(1) is obviously and materially (and conspicuously) incomplete. The complete statutory definition set forth in § 44-66-20(1) is as follows: “‘Health care’ means a procedure to diagnose or treat a human disease, ailment, defect,

¹ Although it touches upon the matters presented in the AARP’s conditional amicus brief, the Appellants make this argument in opposition to the AARP’s motion for leave to file its amicus brief. To the extent that the Court may ultimately see fit to grant such leave to the AARP, the Appellants reserve and do not waive any and all rights to respond fully to the merits of the AARP’s amicus brief.

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 injured, disabled, or sick persons; and the placement in or removal from a facility that provides these forms of care.**" (emphasis added). The AARP's conditional amicus brief never acknowledges or analyzes this language and, failing to do so, the AARP's brief is not helpful to the Court's decision-making process in this appeal. Likewise unhelpful is the AARP's citation to extra-jurisdictional case law that is based upon different surrogacy statutes.

B. The AARP's apparent authority argument is wholly irrelevant because apparent authority is not an issue on appeal.

The AARP's argument about apparent authority is not helpful to the Court's decision-making process and, indeed, wholly irrelevant, because the Appellants have not argued apparent authority on appeal.

C. The AARP's argument about the alleged inadequacy of the regulatory enforcement process with respect to nursing facilities improperly injects into these appellate proceedings matters outside the bounds of the record below.

According to the AARP, regulatory protection of nursing facility residents' rights is inadequate, and the ability to vindicate these rights is therefore "even more vital," so "third parties should not be allowed to execute arbitration agreements that waive a residents' right to due process without an express power of attorney to do so." (AARP Br. pp. 10-11.) Assuming, *arguendo*, the validity of the AARP's premise about the inadequacy of regulatory protection, this argument is patently specious, and at odds with the recent decision of the Supreme Court of the United States in Marmet Health Care Center, Inc. v. Brown, ___ U.S. ___, 132 S.Ct. 1201, 182 L.Ed.2d 42 (2012), wherein a unanimous Court emphatically rejected West Virginia's categorical prohibition of predispute agreements to arbitrate personal-injury or wrongful-death claims against nursing homes. It is therefore unnecessary and unhelpful for this Court to accept

the AARP's invitation to debate whether it would be better public policy to relieve nursing-home plaintiffs of their contractual duties to arbitrate so that they can litigate their claims in court, because that question was already decided by the Marmet Court in the negative. In so doing, the Marmet Court noted the "“emphatic federal policy in favor of arbitral dispute resolution.”" Id. (citing KPMG LLP v. Cocchi, 565 U.S. ___, ___, 132 S.Ct. 23, 25, 181 L.Ed.2d 323 (2011) (quoting Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 105 S.Ct. 3346, 87 L.Ed.2d 444 (1985).); *see also* Grant v. Magnolia Manor-Greenwood, Inc., 383 S.C. 125, 129, 678 S.E.2d 435, 437-38 (2009) ("We observe at the outset that it is the policy of this state to favor the arbitration of disputes."). Even if the AARP's premise about the inadequacy of regulatory enforcement is true, arbitration plainly provides an avenue for the vindication of rights that is, indeed, favored in both the federal and state court systems.

Moreover, the AARP argues that its amicus brief is desirable because it offers "additional context" on the supposed "detrimental impact that reversing the trial court's ruling would have for older persons." (AARP Mot. p. 1.) A reading of the AARP's conditional amicus brief shows that this context comes from matters outside the record below in the form of general reference to the allegedly high incidence of elder maltreatment. Injection of such "facts" into this appellate proceeding, which are not part of the record below, is patently improper. Rule 210(c) and (h), SCACR (providing that the Record on Appeal shall not include matter that was not presented to the lower court or tribunal below and that the appellate court will not consider any fact which does not appear in the Record on Appeal); *see also* McQueen v. S.C. Coastal Council, 340 S.C. 65, 530 S.E.2d 628 (2000), *vacated on other grounds*, 533 U.S. 943 (2001) (amici curiae are limited to arguing those issues that the parties presented to the lower court). Further still, by providing such general context, which does not pertain the particular parties in this litigation, the

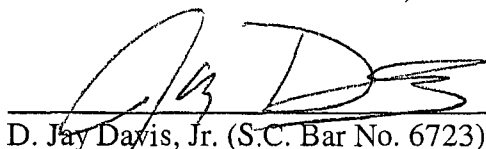
AARP invites the Court to decide the issues between these particular parties on an improper and unduly prejudicial basis outside the bounds of this litigation. The Appellants respectfully submit that such context is neither helpful nor justly considered in resolving the dispute now before this Court.

WHEREFORE, the Appellants respectfully ask this Honorable Court to deny the AARP's motion for leave to file an amicus brief in this matter.

<SIGNED ON THE FOLLOWING PAGE>

Respectfully submitted,

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
(843) 577-4000

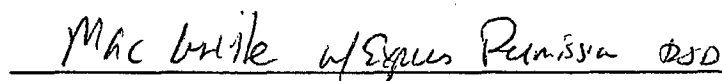
-and-

SERPE, JONES, ANDRES, CALLENDER & BELL,
PLLC

Lori D. Proctor (S.C. Bar No. 80117)
919 Milam Street, Suite 1700
Houston, Texas 77002
(713) 860-0585

*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*

HOLCOMBE BOMAR, P.A.



Perry D. Boulier
W. McElhaney White
Ginger Goforth
P.O. Box 1897
Spartanburg, South Carolina 29304
(864) 594-5300

*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

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

HOLCOMBE BOMAR, P.A.

Perry D. Boulter

W. McElhaney White

Ginger Goforth

P.O. Box 1897

Spartanburg, South Carolina 29304

(864) 594-5300

YOUNG CLEMENT RIVERS, LLP

D. Jay Davis, Jr.

William L. Howard

P.O. Box 993

Charleston, South Carolina 29402

(843) 577-4000

**SERPE, JONES, ANDRES, CALLENDER & BELL,
PLLC**

Lori D. Proctor

America Tower

2929 Allen Parkway, Suite 1600

Houston TX 77019

(713) 452-4400

ATTORNEYS FOR APPELLANTS*

* Appellants for purposes of this motion include only those appellants identified as represented by counsel in the signature block below. Specifically, those appellants are: 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 (all of whom are represented by Young Clement Rivers, LLP) as well as SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, and SavaSeniorCare, Inc. (all of whom are represented by Holcombe Bomar, P.A.).

I, D. Jay Davis, do hereby certify that a copy of the **Appellants' Return To Motion For Leave To File Brief *Amicus Curiae* Of AARP In Support Of Respondent And Affirmance** as sent to all counsel via United States Mail, postage pre-paid on August 23, 2012 addressed as follows:

Bluestein Nichols Thompson Delgado, LLC
John S. Nichols, Esquire
P. O. Box 7965
Columbia, SC 29202

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

Turner Padget Graham & Laney, P.A.
William C. Barnes, Jr., Esquire
P.O. Box 5478
Florence, SC 29502

Womble Carlyle Sandridge & Rice, PLLC
Sandra L. W. Miller, Esquire
P.O. Box 10208
Greenville, SC 29601

Holcombe Bomar, P.A.
W. McElhaney White, Esquire
Perry D. Boulter, Esquire
P.O. Box 1897
Spartanburg, SC 29304

Michael I. Bernstein, Esquire
1688 Meridian Avenue, Suite 418
Miami Beach, FL 33139

Proskauer Rose LLP
Malcolm J. Harkins III, Esquire
1001 Pennsylvania Avenue, N.W.
Suite 400 South
Washington, D.C. 20004

Serpe, Jones, Andres, Callender & Bell, PLLC
Lori D. Proctor, Esquire
America Tower
2929 Allen Parkway, Suite 1600
Houston TX 77019

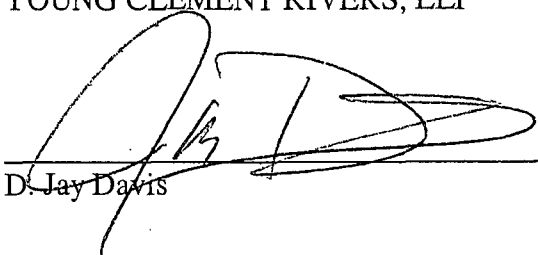
AARP Foundation Litigation
Kenneth W. Zeller, Esquire
601 E Street, NW
Washington, DC 20049

Christian & Davis LLC
Matthew W. Christian, Esquire
P. O. Box 332
Greenville, SC 29602

Fowler Law Firm, P.C.
Marion S. Fowler, III, Esquire
P. O. Box 1719
Lake City, South Carolina 29560

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP



D. Jay Davis

Charleston, South Carolina

Dated: 8/23/12

**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-21-00835 & 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 **Appellants Leonard Grunstein and Murray Forman's Return In Opposition to AARP's Motion For Leave To File *Amicus Curiae* Brief** was served on all other parties to this matter by depositing a copy of the same in the United States Mail, postage prepaid, on September 21, 2012, addressed as follows to counsel of record:

Matthew W. Christian, Esq.
CHRISTIAN & DAVIS, LLC
P. O. Box 332
Greenville, SC 29602

Marion S. Fowler, III, Esq.
FOWLER LAW FIRM, PC
P. O. Box 1719
Lake City, SC 29560

D. Jay Davis, Jr., Esq.
William L. Howard, Esq.
Russ Hines, Esq.
YOUNG CLEMENT RIVERS, LLP
P. O. Box 993
Charleston, SC 29402

Lori D. Proctor, Esq.
SERPE, JONES, ANDRES, CALLENDER & BELL
America Tower
2929 Allen Parkway, Suite 1600
Houston, TX 77019

William C. Barnes, Esq.
TURNER, PADGET, GRAHAM & LANEY, P.A.
P. O. Box 5478
Florence, SC 29502

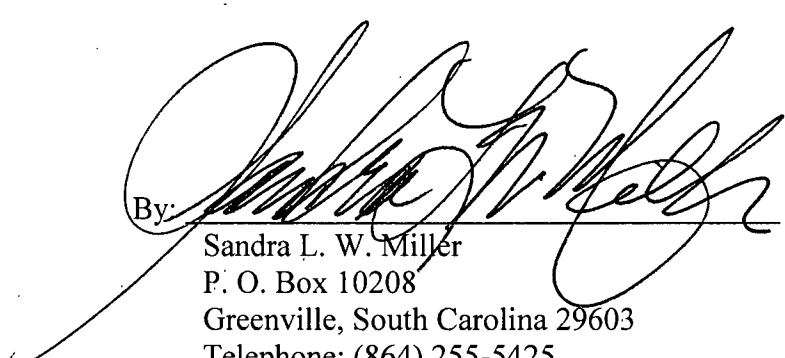
R. Gerald Chambers, Jr., Esq.
Carmelo B. Sammataro, Esq.
TURNER PADGET GRAHAM & LANEY, P.A.
P. O. Box 1473
Columbia, SC 29202

Michael I. Bernstein, P.A., Esq.
AIA TITLE SERVICES, LLC
1688 Meridian Avenue, Suite 418
Miami Beach, FL 33139

Kenneth W. Zeller
AARP FOUNDATION LITIGATION
601 E. Street NW
Washington, DC 20049

Walter McElhaney White, Esq.
Ginger D. Goforth, Esq.
Perry D. Boulter, Esq.
HOLCOMBE, BOMAR, GUNN &
BRADFORD, PA
P. O. Box 1897
Spartanburg, SC 29304

John S. Nichols, Esq.
BLUESTEIN, NICHOLS, THOMPSON & DELGADO, LLC
1614 Taylor Street
P. O. Box 7965
Columbia, SC 29202

By: 

Sandra L. W. Miller
P. O. Box 10208
Greenville, South Carolina 29603
Telephone: (864) 255-5425
Fax: (864) 239-5851
Email: samiller@wcsr.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

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.

RESPONDENT'S MOTION FOR THE COURT TO ACCEPT
THE INITIAL BRIEF AND DESIGNATION OF ADDITIONAL MATTER OUT OF TIME

Pursuant to Rules 240 and 263(b), SCACR, Respondent hereby moves this Court to accept for filing out of time the Initial Brief and Designation of Additional Matter. The Initial Brief of Respondent and Designation of Additional Matter were due to be filed on October 11, 2012.

The Initial Brief of Respondent and Designation of Additional Matter are conditionally filed with this motion and are served on all other parties.

/Signature page attached

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John S. Nichols", written over a horizontal line.

John S. Nichols

SC Bar No. 004210

BLUESTEIN, NICHOLS, THOMPSON &
DELGADO, LLC

Post Office Box 7965

Columbia, SC 29202

(803) 779-7599

Matthew W. Christian, Esquire

SC Bar No. 70516

Christian and Davis, LLC

P.O. Box 332

Greenville, SC 29602

(864) 232-7363

Marion S. Fowler, III, Esquire

SC Bar No. 11816

Fowler Law Firm, PC

P.O. Box 1719

Lake City, SC 29560

(843) 374-4444

Attorneys for Respondent

October 15, 2012



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.
Rebecca Cagle Patrick

October 15, 2012

RECEIVED
OCT 15 2012
SC Court of Appeals

VIA HAND DELIVERY

The Honorable Jenny Kitchings
Clerk of Court
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 Initial Brief of Respondent and Designation of Additional Matter to be Included in the Record on Appeal in regards to this case, along with the original and seven (7) copies of a motion requesting that the Court accept this brief out of time. I have enclosed a proof of service for the motion, the conditionally filed brief, and the \$25.00 filing fee for the motion. Please return the additional filed copies to me via my firm's 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

Enclosures

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
Lori D. Proctor, Esquire
D. Jay Davis, Jr., 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-21-00835 & -00836

RECEIVED
OCT 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, ... 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, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center are, . . Appellants.

DESIGNATION OF ADDITIONAL MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

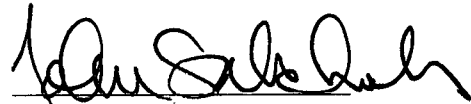
Respondent proposes the following additional matter be included in the Record on Appeal:

1. Letter of 4/19/12 from Carmelo B. Sammataro to Clerk Jenny Kitchings on behalf of Palmetto Faith Operating, LLC, individually and d/b/a Faith Health Care Center advising the Court that Palmetto Faith would not be filing a separate Brief or Designation of Matter.

I certify that this designation contains no matter which is irrelevant to this appeal.

October 15, 2012

Respectfully submitted,



John S. Nichols

SC Bar No. 004210

BLUESTEIN, NICHOLS, THOMPSON &
DELGADO, LLC

Post Office Box 7965

Columbia, SC 29202

(803) 779-7599

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

RECEIVED
OCT 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, ... 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

RECEIVED

OCT 15 2012

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.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel of record with a copy of the *Motion for the Court to Accept the Initial Brief and Designation of Additional Matter out of Time* and the conditionally filed *Initial Brief of Respondent and Designation of Additional Matter to be Included in the Record on Appeal* by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

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

William C. Barnes, Esquire
Turner Padgett Graham & Laney, P.A.
P.O. Box 5478
Florence, SC 29502

W. McElhaney White, Esquire
Perry D. Boulter, Esquire
Ginger D. Goforth, Esquire
Holcombe Bomar, P.A.
P.O. Box 1897
Spartanburg, SC 29304

Michael I Bernstein, Esquire
1688 Meridian Avenue, Suite 418
Miami Beach, FL 33139

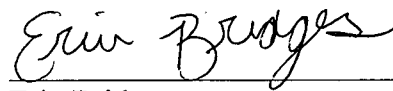
Sandra L. W. Miller, Esquire
Womble Carlyle Sandridge & Rice, LLP
550 South Main St., Suite 400
P.O. Box 10208
Greenville, SC 29603

D. Jay Davis, Jr., Esquire
William L. Howard, Esquire
Young Clement Rivers, LLP
P.O. Box 993
Charleston, SC 29402

October 15, 2012
Columbia, South Carolina

Lori D. Proctor, Esquire
Serpe, Jones, Andrews, Callender & Bell,
PLLC
America Tower
2929 Allen Parkway, Suite 1600
Houston, TX 77019

Malcolm J. Harkins III, Esquire
Proskauer Rose, LLP
1001 Pennsylvania Avenue, N.W.
Suite 400 South
Washington, D.C. 20004



Erin Bridges
BLUESTEIN, NICHOLS,
THOMPSON & DELGADO, LLC

WOMBLE
CARLYLE
SANDRIDGE
& RICE

A PROFESSIONAL LIMITED
LIABILITY COMPANY

550 South Main Street, Suite 400
Greenville, SC 29601

Mailing Address:
Post Office Box 10208
Greenville, SC 29603-0208
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

October 22, 2012

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
OCT 24 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)
Appellate Case No. 2011-194946

Dear Ms. Kitchings:

On behalf of the Non-Palmetto Appellants (as defined in the motion), enclosed are the original and seven copies of a Motion for Extension of Time, requesting an extension to November 30, 2012, in which to file their Initial Reply Brief, along with the requisite filing fee. Counsel for Respondent has consented.

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
Carmelo B. Sammataro, Esquire
William C. Barnes, Jr., Esquire
Michael I. Bernstein, Esquire
D. Jay Davis, Jr., Esquire
William L. Howard, Esquire
Russ Hines, Esquire
Lori D. Proctor, Esquire
Kenneth W. Zeller, Esquire
John S. Nichols, Esquire

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

OCT 24 2012

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, 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.

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

SERPE, JONES, ANDRES, CALLENDER &
BELL, PLLC
Lori D. Proctor (S.C. Bar No. 80117)
America Tower
2929 Allen Parkway, Suite 1600
Houston, TX 77019
Telephone: (713) 452-4400
Email: lproctor@serpejones.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

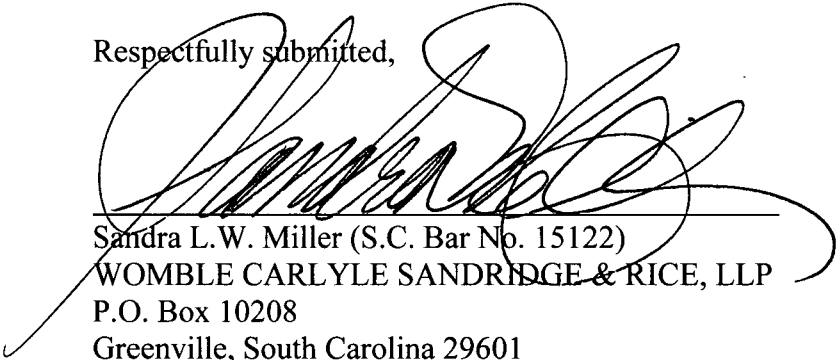
WOMBLE CARLYLE SANDRIDGE & RICE, LLP
Sandra L.W. Miller (S.C. Bar No. 15122)
P.O. Box 10208
Greenville, South Carolina 29601
Telephone: (864) 255-5400
Email: samiller@wcsr.com

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 Reply Brief. The current deadline is October 26, 2012. This extension will grant the Non-Palmetto Appellants until November 30, 2012, to file their Initial Reply Brief.

Counsel for Respondent consents to this request for an extension of the filing deadline.

Respectfully submitted,

October 22, 2012



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

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)
SERPE, JONES, ANDRES, CALLENDER &
BELL, PLLC
America Tower
2929 Allen Parkway, Suite 1600
Houston, TX 77019
Telephone: (713) 452-4400
Email: lproctor@serpejones.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

RECEIVED
OCT 24 2012
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, 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 October 22, 2012, addressed as follows to counsel of record:

Matthew W. Christian, Esq.
CHRISTIAN & DAVIS, LLC
P. O. Box 332
Greenville, SC 29602

Marion S. Fowler, III, Esq.
FOWLER LAW FIRM, PC
P. O. Box 1719
Lake City, SC 29560

D. Jay Davis, Jr., Esq.
William L. Howard, Esq.
Russ Hines, Esq.
YOUNG CLEMENT RIVERS, LLP
P. O. Box 993
Charleston, SC 29402

Lori D. Proctor, Esq.
SERPE, JONES, ANDRES, CALLENDER & BELL
America Tower
2929 Allen Parkway, Suite 1600
Houston, TX 77019

William C. Barnes, Esq.
TURNER, PADGET, GRAHAM & LANEY, P.A.
P. O. Box 5478
Florence, SC 29502

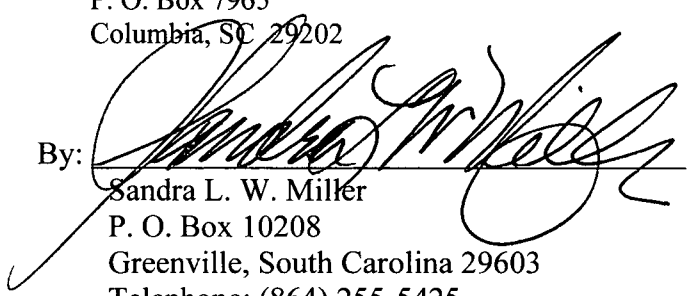
R. Gerald Chambers, Jr., Esq.
Carmelo B. Sammataro, Esq.
TURNER PADGET GRAHAM & LANEY, P.A.
P. O. Box 1473
Columbia, SC 29202

Michael I. Bernstein, P.A., Esq.
AIA TITLE SERVICES, LLC
1688 Meridian Avenue, Suite 418
Miami Beach, FL 33139

Kenneth W. Zeller
AARP FOUNDATION LITIGATION
601 E. Street NW
Washington, DC 20049

Walter McElhaney White, Esq.
Ginger D. Goforth, Esq.
Perry D. Boulrier, Esq.
HOLCOMBE, BOMAR, GUNN &
BRADFORD, PA
P. O. Box 1897
Spartanburg, SC 29304

John S. Nichols, Esq.
BLUESTEIN, NICHOLS, THOMPSON &
DELGADO, LLC
P. O. Box 7965
Columbia, SC 29202

By: 

Sandra L. W. Miller
P. O. Box 10208
Greenville, South Carolina 29603
Telephone: (864) 255-5425
Fax: (864) 239-5851
Email: samiller@wcsr.com

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, and Boyd P. Gentry, an Individual, are Appellants.

Appellate Case No. 2011-194946

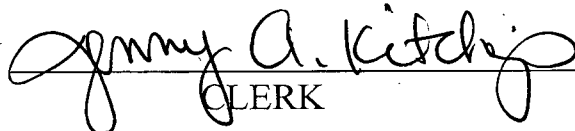
The Honorable William H. Seals, Jr., Michael G. Nettles,
William H. Seals, Jr., Michael G. Nettles
Florence County
Trial Court Case No. 2010CP2100836, 2010CP2100835

ORDER

Respondent's motion for the Court to accept the initial brief and designation of matter out of time is granted. The respondent's initial brief and designation of matter are now accepted as filed. Additionally, the appellants' motion for an extension of time to file an initial reply brief is also granted. The time for serving and filing the appellants' initial reply brief is hereby extended until November 30, 2012.

FOR THE COURT

BY


CLERK

FILED

EC 11/7/12

Columbia, South Carolina

cc:

Marion Stephenson Fowler, III

Ginger D. Goforth

William L. Howard, Sr.

Matthew W. Christian

Carmelo Barone Sammataro

Lori Diane Proctor

Robert Gerald Chambers, Jr.

Sandra L. Miller

Donald Jay Davis, Jr.

W. McElhaney White

Perry D. Boulter

John S. Nichols

Russell Grainger Hines

Kenneth W. Zeller, Esq

November 30, 2012

The Honorable Jenny Abbott Kitchings
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 Nos. 2010-CP-21-00835 & 00836
Case Tracking No. 2011-1

Dear Ms. Kitchings:

In connection with the above-referenced case, we are enclosing the following for filing:

1. An original and one copy of the Reply Brief of Appellants, along with a Proof of Service; and
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.

Please file these documents and return the extra file-stamped copy of each to me in the enclosed envelope. Thank you for your assistance.

Sincerely,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

Sandra L.W. Miller

SLWM;dhy
Enclosures
cc/enc: Counsel of Record

RECEIVED

DEC 03 2012

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-21-00835 & 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 **Reply 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 November 30, 2012, addressed as follows to counsel of record:

Matthew W. Christian, Esq.
CHRISTIAN & DAVIS, LLC
P. O. Box 332
Greenville, SC 29602

Marion S. Fowler, III, Esq.
FOWLER LAW FIRM, PC
P. O. Box 1719
Lake City, SC 29560

D. Jay Davis, Jr., Esq.
William L. Howard, Esq.
Russ Hines, Esq.
YOUNG CLEMENT RIVERS, LLP
P.O. Box 993
Charleston, SC 29402

Lori D. Proctor, Esq.
SERPE, JONES, ANDRES, CALLENDER & BELL
America Tower
2929 Allen Parkway, Suite 1600
Houston, TX 77019

William C. Barnes, Esq.
TURNER, PADGET, GRAHAM & LANEY, P.A.
P.O. Box 5478
Florence, SC 29502

R. Gerald Chambers, Jr., Esq.
Carmelo B. Sammataro, Esq.
TURNER PADGET GRAHAM & LANEY, P.A.
P. O. Box 1473
Columbia, SC 29202

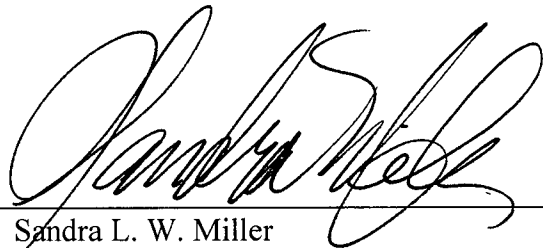
Michael I. Bernstein, P.A., Esq.
AIA TITLE SERVICES, LLC
1688 Meridian Avenue, Suite 418
Miami Beach, FL 33139

Kenneth W. Zeller
AARP FOUNDATION LITIGATION
601 E. Street NW
Washington, DC 20049

Walter McElhaney White, Esq.
Ginger D. Goforth, Esq.
Perry D. Boulter, Esq.
HOLCOMBE, BOMAR, GUNN &
BRADFORD, PA
P. O. Box 1897
Spartanburg, SC 29304

John S. Nichols, Esq.
BLUESTEIN, NICHOLS, THOMPSON & DELGADO, LLC
1614 Taylor Street
P. O. Box 7965
Columbia, SC 29202

By: _____



Sandra L. W. Miller
Womble Carlyle Sandridge & Rice, LLP
P. O. Box 10208
Greenville, South Carolina 29603
Telephone: (864) 255-5425
Fax: (864) 239-5851
Email: samiller@wcsr.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

RECEIVED

DEC 03 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.

**DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

RECEIVED

DEC 03 2012

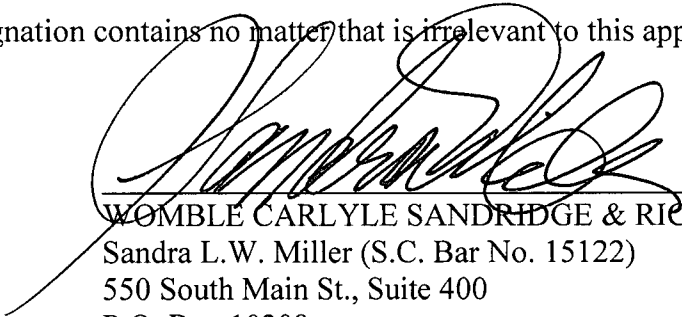
SC Court of Appeals

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.



WOMBLE CARLYLE SANDRIDGE & RICE, LLP

Sandra L.W. Miller (S.C. Bar No. 15122)
550 South Main St., Suite 400
P.O. Box 10208
Greenville, SC 29603
(864) 255-5400
Email: samiller@wcsr.com

PROSKAUER ROSE LLP
Malcolm J. Harkins III (admitted *pro hac vice*)
1001 Pennsylvania Avenue, N.W.
Suite 400 South
Washington, D.C. 20004
202) 416-5803
Email: mharkins@proskauer.com

HOLCOMBE BOMAR, P.A.
Perry D. Boulrier (S.C. Bar No. 9833)
W. McElhaney White (S.C. Bar No. 08552)
Ginger Goforth (S.C. Bar No. 6904)
P.O. Box 1897
Spartanburg, SC 29304
(864) 594-5300
Email: pboulrier@holcombebomar.com
mwhite@holcombebomar.com
ggoforth@holcombebomar.com

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, SC 29402
(843) 577-4000
Email: jdavis@ycrlaw.com
bhoward@ycrlaw.com

JOHNSON, TRENT, WEST & TAYLOR, LLP
Lori D. Proctor (S.C. Bar No. 80117)
919 Milam St., Suite 1700
Houston, TX 77002
(713) 860-0585
Email: ldproctor@proctor-law.com

Attorneys for Appellants

Dated: November 30, 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,

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 **Designation of Matter to be Included in the Record on Appeal** 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 30, 2012, addressed as follows to counsel of record:

Matthew W. Christian, Esq.
CHRISTIAN & DAVIS, LLC
P. O. Box 332
Greenville, SC 29602

Marion S. Fowler, III, Esq.
FOWLER LAW FIRM, PC
P. O. Box 1719
Lake City, SC 29560

D. Jay Davis, Jr., Esq.
William L. Howard, Esq.
Russ Hines, Esq.
YOUNG CLEMENT RIVERS, LLP
P. O. Box 993
Charleston, SC 29402

Lori D. Proctor, Esq.
SERPE, JONES, ANDRES, CALLENDER & BELL
America Tower
2929 Allen Parkway, Suite 1600
Houston, TX 77019

William C. Barnes, Esq.
TURNER, PADGET, GRAHAM & LANEY, P.A.
P. O. Box 5478
Florence, SC 29502

R. Gerald Chambers, Jr., Esq.
Carmelo B. Sammataro, Esq.
TURNER PADGET GRAHAM & LANEY, P.A.
P. O. Box 1473
Columbia, SC 29202

RECEIVED

DEC 03 2012

SC Court of Appeals

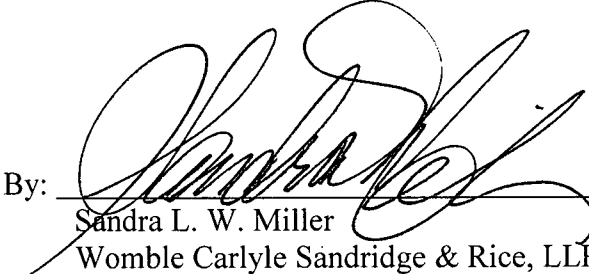
Michael I. Bernstein, P.A., Esq.
AIA TITLE SERVICES, LLC
1688 Meridian Avenue, Suite 418
Miami Beach, FL 33139

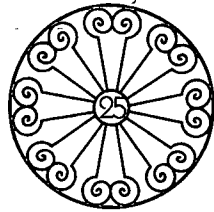
Kenneth W. Zeller
AARP FOUNDATION LITIGATION
601 E. Street NW
Washington, DC 20049

Walter McElhaney White, Esq.
Ginger D. Goforth, Esq.
Perry D. Boulter, Esq.
HOLCOMBE, BOMAR, GUNN &
BRADFORD, PA
P. O. Box 1897
Spartanburg, SC 29304

John S. Nichols, Esq.
BLUESTEIN, NICHOLS, THOMPSON & DELGADO, LLC
1614 Taylor Street
P. O. Box 7965
Columbia, SC 29202

By: _____


Sandra L. W. Miller
Womble Carlyle Sandridge & Rice, LLP
P. O. Box 10208
Greenville, South Carolina 29603
Telephone: (864) 255-5425
Fax: (864) 239-5851
Email: samiller@wcsr.com



YCR LAW
Young Clement Rivers, LLP

Russell G. Hines
Associate

Direct Dial: (843) 720-5488
Direct Fax: (843) 579-1327
E-mail: RHines@ycrlaw.com

December 21, 2012

666097
666098

VIA FACSIMILE AND U.S. MAIL

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Coleman, Ann v. Mariner Health Care
Circuit Case Nos.: 2010-CP-21-835 and -836
Appellate Case No.: 2011-194946
YCR File No.: 14264-20110818

RECEIVED

DEC 27 2012

SC Court of Appeals

Dear Ms. Kitchings:

The Appellants' initial reply brief was served on November 30, 2012. Accordingly, by my calculations, under Rule 210(a), SCACR, the Appellants' deadline for service of the Record on Appeal is presently December 31, 2012. On behalf of all Appellants responsible for serving/filing the Record on Appeal in this matter, please allow this letter to serve as the Appellants' request for an extension of 30 days' time (running from December 31, 2012) to serve the Record on Appeal. Such relief will be helpful to counsel for the Appellants as they coordinate preparation of the Record on Appeal among their various offices. Such allowance will be particularly helpful in light of the holiday season. Prior to making this request, I consulted with John S. Nichols, Esquire, counsel for the Respondent, and he has kindly authorized me to represent to the Court that he has no objection. By my calculations, if the extension requested herein is granted, the new deadline for service of the Record on Appeal will be January 30, 2012. Our firm's check in the amount of \$25 is enclosed to cover the cost of this request. If a motion is required to consider this matter, please let me know, and I will promptly submit the same. In any event, I would respectfully ask that the Court hold the present deadline for service of the Record on Appeal in abeyance until it has acted upon the Appellants' request for an additional 30 days' time.

Additionally, I am somewhat confused as to the proper appellate caption. I believe that the most recent order of the Court in this matter was filed on November 7, 2012. A copy of that order is attached for reference as Exhibit A. The attached order does not appear to identify Palmetto Faith Operating, LLC, individually and d/b/a Faith Health Care Center as an appellant. Although our firm does not represent this party (it is represented by R. Gerald Chambers, Jr., Esquire, and Carmelo B. Sammataro, Esquire, of Turner Padgett's Columbia office), I believe that the appellate caption should reflect Palmetto Faith Operating, LLC, individually and d/b/a Faith Health Care Center as an appellant. A copy of Palmetto Faith Operating, LLC,

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
December 21, 2012
Page 2 of 2

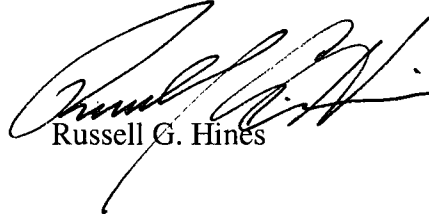
individually and d/b/a Faith Health Care Center's Notice of Appeal is attached for reference as Exhibit B. In any event, before the Record on Appeal is bound and final briefs are filed, I wanted to make sure that I had the correct appellate caption. Please allow this letter to serve as my request for guidance as to the correct appellate caption (i.e., whether the caption on the Court's November 7, 2012 order should be used or if Palmetto Faith Operating, LLC, individually and d/b/a Faith Health Care Center should be added to that caption as an appellant) and for leave (to the extent such is required) to file final briefs with the correct appellate caption regardless of how initial briefs were captioned. Should it be necessary, our firm's check in the amount of \$25 is enclosed to cover the cost of this request. If a motion is required to entertain this request, please let me know, and I will promptly submit the same.

Of course, if you have any questions or concerns, please let me know.

With best wishes and kindest regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP



Russell G. Hines

RGH/rg
Enclosures

cc: (all via email and U.S. Mail)
Kenneth W. Zeller, Esquire
John S. Nichols, Esquire
Matthew W. Christian, Esquire
Marion S. Fowler, III, Esquire
Carmelo B. Sammataro, Esquire
William C. Barnes, Jr., Esquire
Gerald R. Chambers, Jr., Esquire

Michael I. Bernstein, Esquire
Perry D. Boulter, Esquire
Ginger D. Goforth, Esquire
W. McElhaney White, Esquire
Sandra L.W. Miller, Esquire
Malcom J. Harkins, III, Esquire
Lori D. Proctor, 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 MidAmerica Holding Company, MHC Rocky

RECEIVED

DEC 27 2012

Exhibit A

SC Court of Appeals

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, and Boyd P. Gentry, an Individual, are Appellants.

Appellate Case No. 2011-194946

The Honorable William H. Seals, Jr., Michael G. Nettles,
William H. Seals, Jr., Michael G. Nettles
Florence County
Trial Court Case No. 2010CP2100836, 2010CP2100835

ORDER

Respondent's motion for the Court to accept the initial brief and designation of matter out of time is granted. The respondent's initial brief and designation of matter are now accepted as filed. Additionally, the appellants' motion for an extension of time to file an initial reply brief is also granted. The time for serving and filing the appellants' initial reply brief is hereby extended until November 30, 2012.

FOR THE COURT

BY Jimmy A. Kitching
CLERK

FILED

EC 11/7/12

Exhibit A

Columbia, South Carolina

cc:

Marion Stephenson Fowler, III

Ginger D. Goforth

William L. Howard, Sr.

Matthew W. Christian

Carmelo Barone Sammataro

Lori Diane Proctor

Robert Gerald Chambers, Jr.

Sandra L. Miller

Donald Jay Davis, Jr.

W. McElhaney White

Perry D. Boulter

John S. Nichols

Russell Grainger Hines

Kenneth W. Zeller, Esq

Exhibit A

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,

Exhibit B

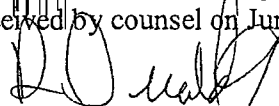
MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., 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
TURNER PADGET GRAHAM & LANEY P.A.
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

RECEIVED

DEC 27 2012

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., Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Leonard Grunstein, an Individual, Murray Forman, an Individual, and Boyd P. Gentry, an Individual, are Appellants.

Appellate Case No. 2011-194946

The Honorable William H. Seals, Jr., Michael G. Nettles,
William H. Seals, Jr., Michael G. Nettles
Florence County
Trial Court Case No. 2010CP2100836, 2010CP2100835

ORDER

Appellant filed a motion requesting the Court correct the caption for this matter and requesting an extension for serving the record on appeal. The caption for this matter has been corrected to include Palmetto Faith Operating, LLC.

The time for serving the record on appeal and filing the proof of service with the Court is hereby extended until January 30, 2013.

FOR THE COURT

BY

V. Claire Allen, Deputy
CLERK

FILED

EC 1/17/13

Columbia, South Carolina

cc:

Marion Stephenson Fowler, III

Ginger D. Goforth

William L. Howard, Sr.

Matthew W. Christian

Carmelo Barone Sammataro

Lori Diane Proctor

Robert Gerald Chambers, Jr.

Sandra L. Miller

Donald Jay Davis, Jr.

W. McElhaney White

Perry D. Boulter

John S. Nichols

Russell Grainger Hines

Kenneth W. Zeller, Esq.

**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 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,

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., Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Leonard Grunstein, an Individual, Murray Forman, an Individual, and Boyd P. Gentry, an Individual, are

Appellants.

**AMENDED 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, Murray Forman, an Individual, and Boyd P. Gentry, 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; and
18. Summons and Complaint in Plaintiff's Survival Action, filed March 22, 2010, with Affidavits of Service.

I certify that this designation contains no matter that is irrelevant to this appeal.

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, SC 29402
(843) 577-4000
Email: jdavis@ycrlaw.com
bhoward@ycrlaw.com

WOMBLE CARLYLE SANDRIDGE & RICE, LLP
Sandra L.W. Miller (S.C. Bar No. 15122)
550 South Main St., Suite 400
P.O. Box 10208
Greenville, SC 29603
(864) 255-5400
Email: samiller@wcsr.com

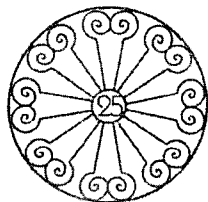
PROSKAUER ROSE LLP
Malcolm J. Harkins III (admitted *pro hac vice*)
1001 Pennsylvania Avenue, N.W.
Suite 400 South
Washington, D.C. 20004
202) 416-5803
Email: mharkins@proskauer.com

HOLCOMBE BOMAR, P.A.
Perry D. Boulrier (S.C. Bar No. 9833)
W. McElhaney White (S.C. Bar No. 08552)
Ginger Goforth (S.C. Bar No. 6904)
P.O. Box 1897
Spartanburg, SC 29304
(864) 594-5300
Email: pboulrier@holcombebomar.com
mwhite@holcombebomar.com
ggoforth@holcombebomar.com

SERPE, JONES, ANDRES, CALLENDER & BELL, PLLC
Lori D. Proctor (S.C. Bar No. 80117)
America Tower
2929 Allen Parkway, Suite 1600
Houston TX 77019
(713) 452-4400
Email: ldproctor@proctor-law.com

Attorneys for Appellants

Dated: January 18, 2013



YCR LAW
Young Clement Rivers, LLP

Russell G. Hines
Associate

Direct Dial: (843) 720-5488
Direct Fax: (843) 579-1327
E-mail: RHines@ycrlaw.com

January 18, 2013

VIA U.S. MAIL and FACSIMILE

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Coleman, Ann v. Mariner Health Care
Circuit Case Nos.: 2010-CP-21-835 and -836
Appellate Case No.: 2011-194946
YCR File No.: 14264-20110818

Dear Ms. Kitchings:

This letter concerns preparation of the Record on Appeal in the above-referenced matter. Attached, as Exhibits 1 and 1A, respectively, are the designations of matter filed by the Appellants (as used herein, "Appellants" refers to all Appellants except Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center) in this matter with their initial brief and initial reply brief. The designations are identical. Matter 19 in each of them is "Defendants' Answers to Plaintiff's Complaints, filed May-July 2010."

Upon further reflection, counsel for the Appellants do not believe that these answers are needed for inclusion in the Record on Appeal, and believe that the Court may adequately address all issues in this appeal without reference to them. As evidenced by their signatures below, counsel for the Respondents and for Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center agree. (Note that, in the interest of time, copies of these signatures are being provided herewith, the originals are being sent to you by counsel directly.) Omitting these answers will substantially shorten the Record on Appeal (all of these answers together total some 500 pages). Of course, should the Court at any time wish to have these answers for review, I am happy to provide them.

Because these answers have already been designated, and because Rule 210(g), SCACR requires the Appellants' counsel to certify "that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material," on behalf of the Appellants, I ask that the Court permit them to file (and prepare the Record on Appeal in conformity with) the enclosed Amended Designation of Matter to be Included in the Record on Appeal (along with proof of service for the same), which omits the answers, and which will take the place of both of the Appellants' prior designations. A check in the amount of \$25 is enclosed to cover the cost of this request. As indicated by their signatures below, counsel for the

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
January 18, 2013
Page 2 of 2

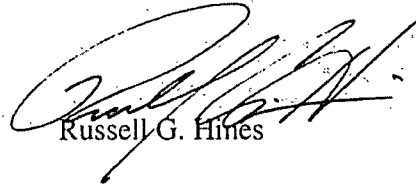
Respondents and for Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center have no objection to this request.

Of course, if you have any questions or concerns, or if a more formal motion is needed for this request to be considered, please let me know.

With best wishes and kindest regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP

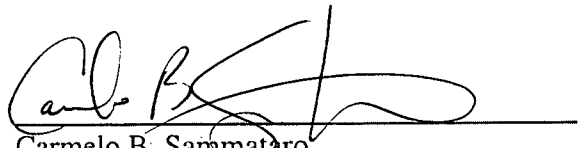


Russell G. Hines

I AGREE:

John S. Nichols
Counsel for Respondents

I AGREE:



Carmelo B. Sammataro
*Counsel for Palmetto Faith Operating, LLC,
Individually and d/b/a Faith Health Care
Center*

RGH/rg
Enclosures

cc: (all via U.S. Mail and email)
Kenneth W. Zeller, Esquire
John S. Nichols, Esquire
Matthew W. Christian, Esquire
W. McElhaney White, Esquire
Sandra L.W. Miller, Esquire
Malcom J. Harkins, III, Esquire
Lori D. Proctor, Esquire

Michael I. Bernstein, Esquire
Perry D. Boulter, Esquire
Marion S. Fowler, III, Esquire
Carmelo B. Sammataro, Esquire
William C. Barnes, Jr., Esquire
Gerald R. Chambers, Jr., 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 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, and Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center are,

Appellants.

Exhibit 1

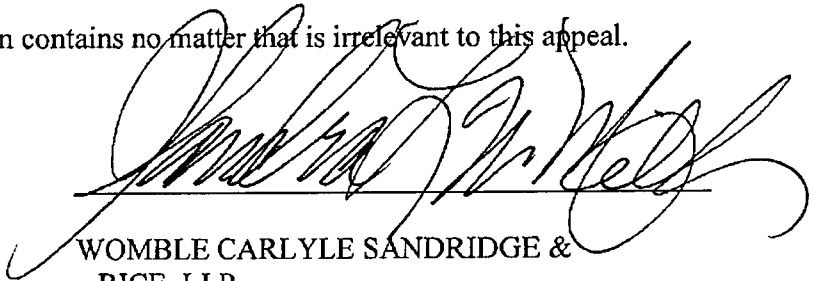
**DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

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.



WOMBLE CARLYLE SANDRIDGE &
RICE, LLP
Sandra L.W. Miller (S.C. Bar No. 15122)
550 South Main St., Suite 400
P.O. Box 10208
Greenville, SC 29603
(864) 255-5400
Email: samiller@wcsr.com

PROSKAUER ROSE LLP
Malcolm J. Harkins III (admitted *pro hac vice*)
1001 Pennsylvania Avenue, N.W.
Suite 400 South
Washington, D.C. 20004
202) 416-5803
Email: mharkins@proskauer.com

HOLCOMBE BOMAR, P.A.
Perry D. Boulrier (S.C. Bar No. 9833)
W. McElhaney White (S.C. Bar No. 08552)
Ginger Goforth (S.C. Bar No. 6904)
P.O. Box 1897
Spartanburg, SC 29304
(864) 594-5300
Email: pboulrier@holcombebomar.com

mwhite@holcombebomar.com
ggoforth@holcombebomar.com

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, SC 29402
(843) 577-4000
Email: jdavis@ycrlaw.com
bhoward@ycrlaw.com

JOHNSON, TRENT, WEST & TAYLOR, LLP
Lori D. Proctor (S.C. Bar No. 80117)
919 Milam St., Suite 1700
Houston, TX 77002
(713) 860-0585
Email: ldproctor@proctor-law.com

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,

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.

Exhibit 1A

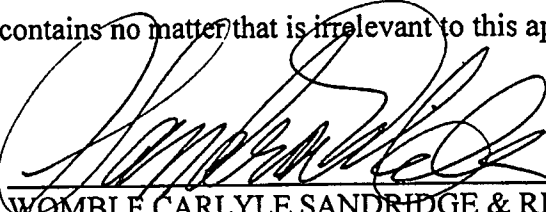
**DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

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.



WOMBLE CARLYLE SANDRIDGE & RICE, LLP

Sandra L.W. Miller (S.C. Bar No. 15122)
550 South Main St., Suite 400
P.O. Box 10208
Greenville, SC 29603
(864) 255-5400
Email: samiller@wcsr.com

PROSKAUER ROSE LLP
Malcolm J. Harkins III (admitted *pro hac vice*)
1001 Pennsylvania Avenue, N.W.
Suite 400 South
Washington, D.C. 20004
202) 416-5803
Email: mharkins@proskauer.com

HOLCOMBE BOMAR, P.A.
Perry D. Boulrier (S.C. Bar No. 9833)
W. McElhaney White (S.C. Bar No. 08552)
Ginger Goforth (S.C. Bar No. 6904)
P.O. Box 1897
Spartanburg, SC 29304
(864) 594-5300
Email: pboulrier@holcombebomar.com
mwhite@holcombebomar.com
ggoforth@holcombebomar.com

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, SC 29402
(843) 577-4000
Email: jdavis@ycrlaw.com
bhoward@ycrlaw.com

JOHNSON, TRENT, WEST & TAYLOR, LLP
Lori D. Proctor (S.C. Bar No. 80117)
919 Milam St., Suite 1700
Houston, TX 77002
(713) 860-0585
Email: ldproctor@proctor-law.com

Attorneys for Appellants

Dated: November 30, 2012

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

January 22, 2013

VIA HAND DELIVERY:

The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RECEIVED

JAN 22 2013

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

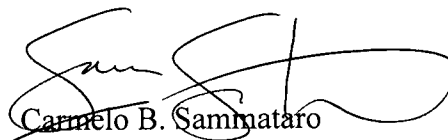
Dear Ms. Kitchings:

Pursuant to the request of Russell Hines, enclosed please find a copy of Mr. Hines's January 18, 2013 correspondence to the Court containing my original signature as counsel for Palmetto Faith Operating, LLC, Individually, and d/b/a Faith Health Care Center in the above-referenced matter. Please return a clocked copy of this letter to my attention 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

cc: Matthew W. Christian, Esquire
Marion S. Fowler, III, Esquire
John S. Nichols, Esquire
Perry D. Boulrier, Esquire

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

RECEIVED

JAN 22 2013

SC Court of Appeals

January 22, 2013

Page 2

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
Kenneth W. Zeller, Esquire
(via regular mail, w/enc.)



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.
Rebecca Cagle Patrick

January 23, 2013

VIA HAND DELIVERY

The Honorable Jenny Kitchings
Clerk of Court
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:

Pursuant to Russell Hines' request of January 18, 2013, regarding the Record on Appeal in the above referenced matter, please find enclosed John Nichol's original signature page as counsel for Respondent. Please return the additional filed copy to me via my firm's 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

Enclosures

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

RECEIVED

JAN 23 2013

SC Court of Appeals

Sandra L.W. Miller, Esquire
Lori D. Proctor, Esquire
D. Jay Davis, Jr., Esquire
Malcolm J. Harkins, III, Esquire

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
January 18, 2013
Page 2 of 2

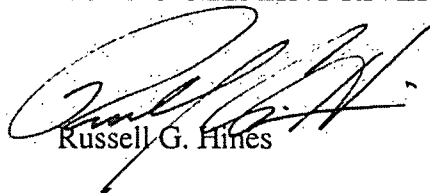
Respondents and for Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center have no objection to this request.

Of course, if you have any questions or concerns, or if a more formal motion is needed for this request to be considered, please let me know.

With best wishes and kindest regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP



Russell G. Hines

I AGREE:



John S. Nichols
Counsel for Respondents

I AGREE:

Carmelo B. Sammataro
*Counsel for Palmetto Faith Operating, LLC,
Individually and d/b/a Faith Health Care
Center*

RGH/rg.
Enclosures

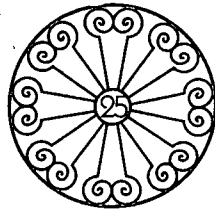
cc: (all via U.S. Mail and email)
Kenneth W. Zeller, Esquire
John S. Nichols, Esquire
Matthew W. Christian, Esquire
W. McElhaney White, Esquire
Sandra L.W. Miller, Esquire
Malcom J. Harkins, III, Esquire
Lori D. Proctor, Esquire

Michael I. Bernstein, Esquire
Perry D. Boulter, Esquire
Marion S. Fowler, III, Esquire
Carmelo B. Sammataro, Esquire
William C. Barnes, Jr., Esquire
Gerald R. Chambers, Jr., Esquire

RECEIVED

JAN 23 2013

SC Court of Appeals



YCR LAW
Young Clement Rivers, LLP

Russell G. Hines
Associate

Direct Dial: (843) 720-5488
Direct Fax: (843) 579-1327
E-mail: RHines@ycrlaw.com

24
January 18, 2013

VIA U.S. MAIL and FACSIMILE

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED

JAN 28 2013

Re: Coleman, Ann v. Mariner Health Care
Circuit Case Nos.: 2010-CP-21-835 and -836
Appellate Case No.: 2011-194946
YCR File No.: 14264-20110818

SC Court of Appeals

Dear Ms. Kitchings:

This letter concerns preparation of the Record on Appeal in the above-referenced matter. Attached, as Exhibits 1 and 1A, respectively, are the designations of matter filed by the Appellants (as used herein, "Appellants" refers to all Appellants except Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center) in this matter with their initial brief and initial reply brief. The designations are identical. Matter 19 in each of them is "Defendants' Answers to Plaintiff's Complaints, filed May-July 2010."

Upon further reflection, counsel for the Appellants do not believe that these answers are needed for inclusion in the Record on Appeal, and believe that the Court may adequately address all issues in this appeal without reference to them. As evidenced by their signatures below, counsel for the Respondents and for Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center agree. (Note that, in the interest of time, copies of these signatures are being provided herewith, the originals are being sent to you by counsel directly.) Omitting these answers will substantially shorten the Record on Appeal (all of these answers together total some 500 pages). Of course, should the Court at any time wish to have these answers for review, I am happy to provide them.

Because these answers have already been designated, and because Rule 210(g), SCACR requires the Appellants' counsel to certify "that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material," on behalf of the Appellants, I ask that the Court permit them to file (and prepare the Record on Appeal in conformity with) the enclosed Amended Designation of Matter to be Included in the Record on Appeal (along with proof of service for the same), which omits the answers, and which will take the place of both of the Appellants' prior designations. A check in the amount of \$25 is enclosed to cover the cost of this request. As indicated by their signatures below, counsel for the

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
January 18, 2013
Page 2 of 2 ²⁴

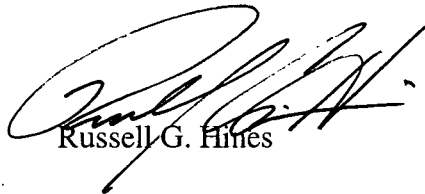
Respondents and for Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center have no objection to this request.

Of course, if you have any questions or concerns, or if a more formal motion is needed for this request to be considered, please let me know.

With best wishes and kindest regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP



Russell G. Hines

I AGREE:

I AGREE:

John S. Nichols
Counsel for Respondents

Carmelo B. Sammataro
*Counsel for Palmetto Faith Operating, LLC,
Individually and d/b/a Faith Health Care
Center*

RGH/rg
Enclosures

ce: (all via U.S. Mail and email)
Kenneth W. Zeller, Esquire
John S. Nichols, Esquire
Matthew W. Christian, Esquire
W. McElhaney White, Esquire
Sandra L.W. Miller, Esquire
Malcom J. Harkins, III, Esquire
Lori D. Proctor, Esquire

Michael I. Bernstein, Esquire
Perry D. Boulter, Esquire
Marion S. Fowler, III, Esquire
Carmelo B. Sammataro, Esquire
William C. Barnes, Jr., Esquire
Gerald R. Chambers, Jr., Esquire

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
January 18, 2013
Page 2 of 2

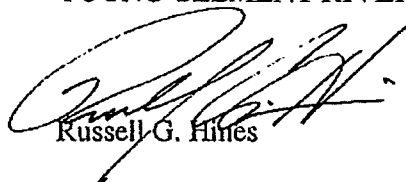
Respondents and for Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center have no objection to this request.

Of course, if you have any questions or concerns, or if a more formal motion is needed for this request to be considered, please let me know.

With best wishes and kindest regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP



Russell G. Hines

I AGREE:



John S. Nichols
Counsel for Respondents

I AGREE:

Carmelo B. Sammataro
*Counsel for Palmetto Faith Operating, LLC,
Individually and d/b/a Faith Health Care
Center*

RGH/rg
Enclosures

cc: (all via U.S. Mail and email)
Kenneth W. Zeller, Esquire
John S. Nichols, Esquire
Matthew W. Christian, Esquire
W. McElhaney White, Esquire
Sandra L.W. Miller, Esquire
Malcom J. Harkins, III, Esquire
Lori D. Proctor, Esquire

Michael I. Bernstein, Esquire
Perry D. Boulter, Esquire
Marion S. Fowler, III, Esquire
Carmelo B. Sammataro, Esquire
William C. Barnes, Jr., Esquire
Gerald R. Chambers, Jr., Esquire

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
January 18, 2013
Page 2 of 2

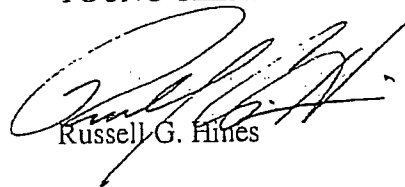
Respondents and for Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center have no objection to this request.

Of course, if you have any questions or concerns, or if a more formal motion is needed for this request to be considered, please let me know.

With best wishes and kindest regards, I am

Sincerely,

YOUNG CLEMENT RIVERS, LLP

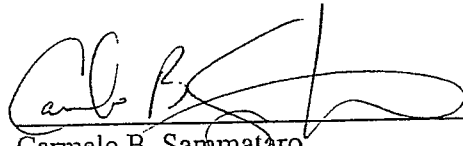


Russell G. Hines

I AGREE:

John S. Nichols
Counsel for Respondents

I AGREE:



Carmelo B. Sammataro
*Counsel for Palmetto Faith Operating, LLC,
Individually and d/b/a Faith Health Care
Center*

RGH/rg
Enclosures

cc: (all via U.S. Mail and email)
Kenneth W. Zeller, Esquire
John S. Nichols, Esquire
Matthew W. Christian, Esquire
W. McElhaney White, Esquire
Sandra L.W. Miller, Esquire
Malcom J. Harkins, III, Esquire
Lori D. Proctor, Esquire

Michael I. Bernstein, Esquire
Perry D. Boulier, Esquire
Marion S. Fowler, III, Esquire
Carmelo B. Sammataro, Esquire
William C. Barnes, Jr., Esquire
Gerald R. Chambers, Jr., Esquire

67035

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, and Murray Forman, an Individual, and Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center are,

Appellants.

Exhibit 1

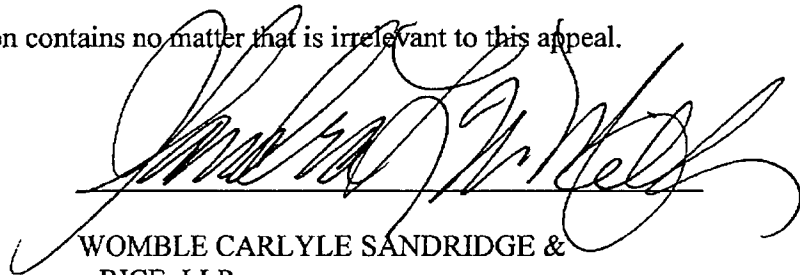
**DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

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.



WOMBLE CARLYLE SANDRIDGE &
RICE, LLP
Sandra L.W. Miller (S.C. Bar No. 15122)
550 South Main St., Suite 400
P.O. Box 10208
Greenville, SC 29603
(864) 255-5400
Email: samiller@wcsr.com

PROSKAUER ROSE LLP
Malcolm J. Harkins III (admitted *pro hac vice*)
1001 Pennsylvania Avenue, N.W.
Suite 400 South
Washington, D.C. 20004
202) 416-5803
Email: mharkins@proskauer.com

HOLCOMBE BOMAR, P.A.
Perry D. Boulrier (S.C. Bar No. 9833)
W. McElhaney White (S.C. Bar No. 08552)
Ginger Goforth (S.C. Bar No. 6904)
P.O. Box 1897
Spartanburg, SC 29304
(864) 594-5300
Email: pboulrier@holcombebomar.com

mwhite@holcombebomar.com
ggoforth@holcombebomar.com

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, SC 29402
(843) 577-4000
Email: jdavis@ycrlaw.com
bhoward@ycrlaw.com

JOHNSON, TRENT, WEST & TAYLOR, LLP
Lori D. Proctor (S.C. Bar No. 80117)
919 Milam St., Suite 1700
Houston, TX 77002
(713) 860-0585
Email: ldproctor@proctor-law.com

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,

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.

Exhibit 1A

**DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

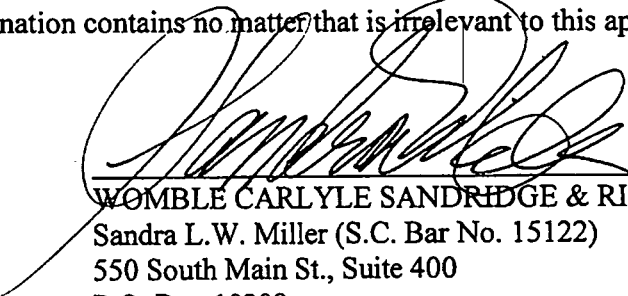
RECEIVED
JAN 28 2013
SC Court of Appeals

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, LLO, 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.



WOMBLE CARLYLE SANDRIDGE & RICE, LLP

Sandra L.W. Miller (S.C. Bar No. 15122)
550 South Main St., Suite 400
P.O. Box 10208
Greenville, SC 29603
(864) 255-5400
Email: samiller@wcsr.com

PROSKAUER ROSE LLP
Malcolm J. Harkins III (admitted *pro hac vice*)
1001 Pennsylvania Avenue, N.W.
Suite 400 South
Washington, D.C. 20004
202) 416-5803
Email: mharkins@proskauer.com

HOLCOMBE BOMAR, P.A.
Perry D. Boulrier (S.C. Bar No. 9833)
W. McElhaney White (S.C. Bar No. 08552)
Ginger Goforth (S.C. Bar No. 6904)
P.O. Box 1897
Spartanburg, SC 29304
(864) 594-5300
Email: pboulrier@holcombebomar.com
mwhite@holcombebomar.com
ggoforth@holcombebomar.com

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, SC 29402
(843) 577-4000
Email: jdavis@ycrlaw.com
bhoward@ycrlaw.com

JOHNSON, TRENT, WEST & TAYLOR, LLP
Lori D. Proctor (S.C. Bar No. 80117)
919 Milam St., Suite 1700
Houston, TX 77002
(713) 860-0585
Email: ldproctor@proctor-law.com

Attorneys for Appellants

Dated: November 30, 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

RECEIVED

JAN 28 2013

SC Court of Appeals

Case Nos. 2010-CP-21-00835 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,

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., Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Leonard Grunstein, an Individual, Murray Forman, an Individual, and Boyd P. Gentry, an Individual, are

Appellants.

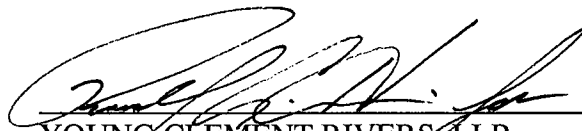
**AMENDED DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

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, Murray Forman, an Individual, and Boyd P. Gentry, 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; and
18. Summons and Complaint in Plaintiff's Survival Action, filed March 22, 2010, with Affidavits of Service.

I certify that this designation contains no matter that is irrelevant to this appeal.



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, SC 29402
(843) 577-4000
Email: jdavis@ycrlaw.com
bhoward@ycrlaw.com

WOMBLE CARLYLE SANDRIDGE & RICE, LLP
Sandra L.W. Miller (S.C. Bar No. 15122)
550 South Main St., Suite 400
P.O. Box 10208
Greenville, SC 29603
(864) 255-5400
Email: samiller@wcsr.com

PROSKAUER ROSE LLP
Malcolm J. Harkins III (admitted *pro hac vice*)
1001 Pennsylvania Avenue, N.W.
Suite 400 South
Washington, D.C. 20004
202) 416-5803
Email: mharkins@proskauer.com

HOLCOMBE BOMAR, P.A.
Perry D. Boulter (S.C. Bar No. 9833)
W. McElhaney White (S.C. Bar No. 08552)
Ginger Goforth (S.C. Bar No. 6904)
P.O. Box 1897
Spartanburg, SC 29304
(864) 594-5300
Email: pboulter@holcombebomar.com
mwhite@holcombebomar.com
ggoforth@holcombebomar.com

SERPE, JONES, ANDRES, CALLENDER & BELL, PLLC
Lori D. Proctor (S.C. Bar No. 80117)
America Tower
2929 Allen Parkway, Suite 1600
Houston TX 77019
(713) 452-4400
Email: ldproctor@proctor-law.com

Attorneys for Appellants

Dated: January 24, 2013

**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 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 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,

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., Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Leonard Grunstein, an Individual, Murray Forman, an Individual, and Boyd P. Gentry, an Individual, are

Appellants.

PROOF OF SERVICE

WOMBLE CARLYLE SANDRIDGE & RICE, LLP
Sandra L.W. Miller (S.C. Bar No. 15122)
550 South Main St., Suite 400
P.O. Box 10208
Greenville, SC 29603
(864) 255-5400

PROSKAUER ROSE LLP
Malcolm J. Harkins III (admitted *pro hac vice*)
1001 Pennsylvania Avenue, N.W.
Suite 400 South
Washington, D.C. 20004
(202) 416-5803

HOLCOMBE BOMAR, P.A.
Perry D. Boulier (S.C. Bar No. 9833)
W. McElhaney White (S.C. Bar No. 08552)
P.O. Box 1897
Spartanburg, SC 29304
(864) 594-5300

YOUNG CLEMENT RIVERS, LLP
D. Jay Davis, Jr. (S.C. Bar No. 6723)
William L. Howard, Sr. (S.C. Bar No. 6723)
P.O. Box 993
Charleston, SC 29402
(843) 577-4000

SERPE, JONES, ANDRES, CALLENDER & BELL, PLLC
Lori D. Proctor (S.C. Bar No. 80117)
America Tower
2929 Allen Parkway, Suite 1600
Houston TX 77019
(713) 452-4400

*Attorneys for Appellants**

* For the purpose of this filing, "Appellants" include 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

I, Russell G. Hines, of Young Clement Rivers, LLP, do hereby certify that the Appellants' **Amended Designation of Matter to be Included in the Record on Appeal** was served on all other parties to this matter by depositing a copy of the same in the United States Mail, postage pre-paid, on January 24, 2013 addressed as follows to counsel of record:

Bluestein Nichols Thompson Delgado, LLC
John S. Nichols, Esquire
P. O. Box 7965
Columbia, SC 29202

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

Turner Padgett Graham & Laney, P.A.
William C. Barnes, Jr., Esquire
P.O. Box 5478
Florence, SC 29502

Womble Carlyle Sandridge & Rice, PLLC
Sandra L. W. Miller, Esquire
P.O. Box 10208
Greenville, SC 29601

Holcombe Bomar, P.A.
W. McElhaney White, Esquire
Perry D. Boulter, Esquire
P.O. Box 1897
Spartanburg, SC 29304

Michael I. Bernstein, Esquire
1688 Meridian Avenue, Suite 418
Miami Beach, FL 33139

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, and Boyd P. Gentry, an Individual.

Proskauer Rose LLP
Malcolm J. Harkins III, Esquire
1001 Pennsylvania Avenue, N.W.
Suite 400 South
Washington, D.C. 20004

Serpe, Jones, Andres, Callender & Bell, PLLC
Lori D. Proctor, Esquire
America Tower
2929 Allen Parkway, Suite 1600
Houston TX 77019

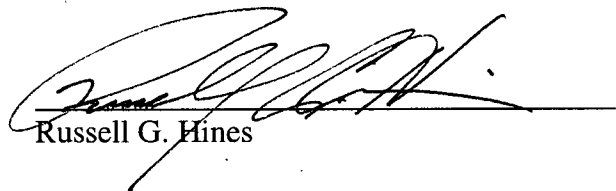
AARP Foundation Litigation
Kenneth W. Zeller, Esquire
601 E Street, NW
Washington, DC 20049

Christian & Davis LLC
Matthew W. Christian, Esquire
P. O. Box 332
Greenville, SC 29602

Fowler Law Firm, P.C.
Marion S. Fowler, III, Esquire
P. O. Box 1719
Lake City, South Carolina 29560

Respectfully submitted,

YOUNG CLEMENT RIVERS, LLP


Russell G. Hines

Charleston, South Carolina

Dated: 1/24/13

The South Carolina Court of Appeals

Ann Coleman, inidividually, 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., Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Leonard Grunstein, an Individual, Murray Forman, an Individual, and Boyd P. Gentry, an Individual, are Appellants.

Appellate Case No. 2011-194946

The Honorable William H. Seals, Jr., Michael G. Nettles,
William H. Seals, Jr., Michael G. Nettles
Florence County
Trial Court Case No. 2010CP2100836, 2010CP2100835

ORDER

Appellants filed a motion requesting the Court accept an amended designation of matter in lieu of the designations of matter previously filed by the appellants. Because all parties have consented to the filing of this amended designation, the motion is granted and the amended designation is accepted as filed.

The record on appeal must be served and proof of service filed no more than 30 days from the date of this order.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

FILED

EC 1/31/13

cc:

Marion Stephenson Fowler, III

Ginger D. Goforth

William L. Howard, Sr.

Matthew W. Christian

Carmelo Barone Sammataro

Lori Diane Proctor

Robert Gerald Chambers, Jr.

Sandra L. Miller

Donald Jay Davis, Jr.

W. McElhaney White

Perry D. Boulter

John S. Nichols

Russell Grainger Hines

Kenneth W. Zeller, Esq



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

March 26, 2013

The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Ann Coleman, etc. v. Mariner Health Care, Inc., et al.
Appellate Case No. 2011-194946

Dear Ms. Kitchings:

Pursuant to Rule 208(b)(7), SCACR, respondent Ann Coleman, Individually and as Personal Representative of the Estate of Mary Brinson, advises you of the following pertinent and significant authority that has come to the attention of Respondents' counsel after the briefs were filed in this case:

SSC Montgomery Cedar Quest Operating Co., LLC v. Bolding, Op. No. 1120122
(Ala. Sup. Ct. filed March 22, 2013) (2013 WL 1173975).

This citation pertains to Issue II on pages 21 through 32 of Appellant's Brief and Issue I on pages 9 through 24 of Respondent's Brief. The reason for the supplemental citation is that the citation was filed just last week and its holding may inform the Court regarding the central issue of Respondent Coleman's authority to bind decedent Brinson to the arbitration agreement in this case.

Thank you for your attention to this matter. Please pass this letter to the Court for its consideration.

RECEIVED

MAR 27 2013

SC Court of Appeals

Sincerely,

John S. Nichols
BLUESTEIN, NICHOLS, THOMPSON &
DELGADO, LLC

cc: Matt Christian, Esquire
Marion S. Fowler, III, Esquire
Carmelo B. Sammataro, Esquire
W. McElhaney White, Esquire
Russell G. Hines, Esquire
Michael I Bernstein, Esquire
Sandra L.W. Miller, Esquire
Lori D. Proctor, Esquire
D. Jay Davis, Jr., Esquire
Malcolm J. Harkins, III, Esquire

April 16, 2013

VIA U.S. MAIL

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED

APR 19 2013

Re: Coleman v. Mariner Health Care, Inc., et al.
Circuit Case Nos.: 2010-CP-21-835 and -836
Appellate Case No.: 2011-194946

SC Court of Appeals

Dear Ms. Kitchings:

Pursuant to Rule 208(b)(7), SCACR, Appellants¹ submit the following pertinent and significant authority that has come to their attention after briefing was completed in the above-referenced case.

In Laizure v. Avante at Leesburg, Inc., No. SC10-2132 (Fla. Sup. Ct. Feb. 14, 2013) (also cited at 2013 WL 535417), a copy of which is attached, the Supreme Court of Florida held that, under Florida's Wrongful Death Act, an arbitration provision in an otherwise valid contract binds the signatory's estate and heirs in a subsequent wrongful-death case. Appellants believe that Laizure is persuasive authority supportive of their position in light of similar language in the respective Wrongful Death Acts of Florida and South Carolina, and similar treatment of wrongful-death cases in the jurisprudence of both states. A copy of this decision is attached hereto.

Laizure is relevant to Argument IV.B. in Appellants' Final Brief and Argument II in their Reply Brief, both of which concern the issue of the binding effect of the subject arbitration agreement upon Ms. Brinson's statutory beneficiaries.

Please file this letter and return the extra file-stamped copy to me in the enclosed envelope. Thank you for your attention to this matter.

¹ As used herein, the term "Appellants" does not include Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center.

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: Cathenne Wrenn for

Sandra L.W. Miller

Enclosures

cc w/encl: Counsel of Record (via U.S. Mail)

2013 WL 535417

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

Supreme Court of Florida.

Debra LAIZURE, Petitioner,

v.

AVANTE AT LEESBURG, INC., et al., Respondents.

No. SC10-2132. | Feb. 14, 2013.

Synopsis

Background: Estate of deceased nursing home patient brought wrongful death action against owner and operators of nursing home. The Circuit Court, Lake County, William G. Law, Jr., J., granted owner and operators' motion to compel arbitration pursuant to an arbitration provision in patient's admission agreement. Estate appealed, and the District Court of Appeal, 44 So.3d 1254, affirmed and certified a question.

Holdings: The Supreme Court, Pariente, J., held that:

[1] arbitration agreement entered into between nursing home patient and nursing home covered wrongful death claims, and

[2] estate and statutory heirs were bound by the arbitration agreement.

Decision approved.

West Headnotes (7)

[1] **Appeal and Error**

⚡ Cases Triable in Appellate Court

Supreme Court reviews pure questions of law de novo.

[2] **Alternative Dispute Resolution**

⚡ Disputes and Matters Arbitrable Under Agreement

Arbitration agreement entered into between nursing home patient and nursing home covered wrongful death claims; the agreement expressly encompassed claims arising out of or relating to patient's stay at the facility, including negligence and malpractice, and was expressly binding upon and included claims brought by patient's heirs.

[3] **Statutes**

⚡ Intent

A court's purpose in construing a statute is to give effect to legislative intent, which is the polestar that guides the court in statutory construction.

[4] **Alternative Dispute Resolution**

⚡ Persons Affected or Bound

Estate and statutory heirs of deceased nursing home patient were bound by the arbitration agreement signed by patient to the same extent that patient would have been bound for purposes of wrongful death claims, and thus, they were required to arbitrate their wrongful death claims under the arbitration agreement.

[5] **Death**

⚡ Right of Action of Person Injured

The right of the survivors to recover is predicated in the Wrongful Death Act on the decedent's right to recover; in other words, recovery is precluded if the decedent could not have maintained an action and recovered damages if death had not ensued. West's F.S.A. § 768.19.

[6] **Death**

⚡ Right of Action of Person Injured

Death

⚡ Defenses

The nature of a wrongful death cause of action in Florida is derivative in the context of determining whether a decedent's estate and heirs are bound by the decedent's agreement to arbitrate; the estate and heirs stand in the shoes of the decedent for purposes of whether the defendant is liable and

are bound by the decedent's actions and contracts with respect to defenses and releases. West's F.S.A. § 768.19.

[7] Alternative Dispute Resolution

☞ Persons Affected or Bound

Execution of a nursing home arbitration agreement by a party with the capacity to contract binds the decedent's estate and statutory heirs in a subsequent wrongful death action arising from an alleged tort within the scope of an otherwise valid arbitration agreement.

Attorneys and Law Firms

Donald Paul McCaskill of David & Philpot, P.L., Maitland, FL, for Petitioner.

Kelly Bagby, AARP Foundation Litigation, Washington, District of Columbia and George Vaka of Vaka Law Group, P.L., Tampa, FL, for Amicus Curiae AARP.

Teresa A. Arnold-Simmons and Thomas A. Valdez of Quintairos, Prieto, Wood & Boyer, P.A., Tampa, FL, for Respondents Avante at Leesburg, Inc. and Avante Group, Inc.

Lisa Jean Augspurger of Bush & Augspurger, P.A., Orlando, FL, for Respondent Avante Care Ancillary Services, Inc.

Kari L. Aasheim of Mancuso & Dias, P.A., Tampa, FL, for Amicus Curiae Florida Health Case Association.

Opinion

PARIENTE, J.

*1 A nursing home patient, Harry Lee Stewart, signed an agreement providing for arbitration of disputes arising out of treatment and care at the nursing home. Stewart subsequently died, allegedly as a result of the nursing home's negligence. Through the personal representative, Debra Laizure, his survivors brought a cause of action in circuit court for deprivation of rights under the applicable nursing home statute and, alternatively, a wrongful death action. The issue in this case presented through the Fifth District's opinion in *Laizure v. Avante at Leesburg, Inc.*, 44 So.3d 1254 (Fla. 5th DCA 2010), is whether an arbitration agreement signed by

the decedent requires his estate and heirs to arbitrate their wrongful death claims. In its decision, the Fifth District Court of Appeal concluded that the estate and heirs were bound by the arbitration agreement signed by the patient, but certified the following question to be of great public importance:

DOES THE EXECUTION OF A NURSING HOME ARBITRATION AGREEMENT BY A PARTY WITH THE CAPACITY TO CONTRACT, BIND THE PATIENT'S ESTATE AND STATUTORY HEIRS IN A SUBSEQUENT WRONGFUL DEATH ACTION ARISING FROM AN ALLEGED TORT WITHIN THE SCOPE OF AN OTHERWISE VALID ARBITRATION AGREEMENT[?]

Id. at 1259. We have jurisdiction. *See* art. V, § 3(b)(4), Fla. Const.

This case requires us to examine the nature of wrongful death actions under Florida law and is not about the quality of care provided by nursing homes or other related policy issues. The question presented is whether an arbitration provision in an otherwise valid contract binds the signing party's estate and heirs in a subsequent wrongful death case. For the reasons more fully explained below, we hold that it does.¹ Our decision flows from the nature of wrongful death actions in Florida, which we conclude is derivative for purposes of the issue presented in this case. Because the signing party's estate and heirs are bound by defenses that could be raised in a personal injury suit brought by the decedent, as well as by releases signed by the decedent, it would be anomalous to conclude that they are not also bound by a choice of forum agreement signed by the decedent in a wrongful death action arising out of the treatment and care of the decedent. Accordingly, we answer the certified question in the affirmative and approve the Fifth District's decision.

FACTS AND BACKGROUND

Harry Lee Stewart died several days after he was admitted to Avante at Leesburg (AVL) in May 2006 for rehabilitation after surgery. Debra Laizure, as personal representative of Stewart's estate, filed a complaint in circuit court seeking damages in excess of \$15,000 against AVL, Avante Ancillary

Services, Inc., and Avante Group, Inc. (together "Avante"). Laizure asserted against each of the defendants a claim for deprivation or infringement of Stewart's statutory nursing home residents' rights pursuant to the Florida Nursing Home Residents' Rights Act (NHRRA), embodied in chapter 400, Florida Statutes (2008). Laizure pled in the alternative a claim against each of the defendants for wrongful death based on negligence.

*2 The defendants filed a motion to compel arbitration predicated on an arbitration agreement that Stewart signed on May 15, the day after his admission to AVL. The arbitration agreement was presented to Stewart as part of a packet of admissions paperwork and was entitled "ADDENDUM TO ADMISSION AGREEMENT." It provided in relevant part as follows:

The Facility and the Resident and/or Resident's Authorized Representative (hereinafter referred to collectively as the "Parties") understand and agree that any legal dispute, controversy, demand, or claim where the damages or other amount in controversy is/are alleged to exceed ten thousand dollars (\$10,000.00), and that arises out of or relates to the Resident Admission Agreement or is in any way connected to the Resident's stay at the Facility shall be resolved exclusively by binding Arbitration; and not by a lawsuit or resort to other court process. The parties understand that arbitration is a process in which a neutral third person or persons ("arbitrator(s)") considers the facts and arguments presented by the parties and renders a binding decision.

This agreement to arbitrate shall include, but is not limited to, any claim based on ... breach of contract, breach of fiduciary duty, fraud or misrepresentation, common law or statutory negligence, gross negligence, malpractice or a claim based on any departure from accepted standards of medical or nursing care (collectively "Disputes"), where the damages or other amount in controversy is/are alleged to exceed ten thousand dollars (\$10,000.00). This shall expressly include, without limitation, claims based on Chapter 400, Florida Statutes, which allege damages in excess of ten thousand dollars (\$10,000.00).

This agreement shall be binding upon, and shall include any claims brought by or against the Parties' representatives, agents, heirs, assigns, employees, managers, directors, shareholders, management companies, parent companies, subsidiary companies or related or affiliated business entities.

....

THE PARTIES UNDERSTAND AND AGREE THAT BY ENTERING THIS ARBITRATION AGREEMENT THEY ARE GIVING UP AND WAIVING THEIR CONSTITUTIONAL RIGHT TO HAVE ANY CLAIM OR DISPUTE THAT FALLS WITHIN THE SCOPE OF THIS AGREEMENT DECIDED IN A COURT OF LAW BEFORE A JUDGE AND JURY. IN THE EVENT A COURT OF COMPETENT JURISDICTION SHALL RULE THAT A DISPUTE BETWEEN THE PARTIES IS NOT SUBJECT TO ARBITRATION THEN RESIDENT AND FACILITY ACKNOWLEDGE AND AGREE TO WAIVE ALL RIGHTS TO A TRIAL BY JURY AND TO HAVE THEIR DISPUTE DECIDED ONLY BY A JUDGE OF A COURT OF COMPETENT JURISDICTION IN THE COUNTY AND STATE IN WHICH THE FACILITY IS LOCATED.

Finally, the Resident or his/her Authorized Representative understands that: (1) he/she has the right to seek legal counsel concerning this agreement; (2) he/she is not required to use the Facility for his/her healthcare needs and that there are numerous other health care providers in the State where Facility is located that are qualified to provide such care; and (3) this Arbitration Agreement may be rescinded by written notice to the Facility from the Resident or Authorized Representative within three (3) business days of signing the Agreement. If not rescinded within three (3) business days of signing, this Arbitration shall remain in effect for all care and services rendered at Facility subsequent to the date the agreement was signed, even if such care and services are rendered during a subsequent admission (i.e. following the Resident's discharge from and readmission to the Facility).

*3 Laizure opposed arbitration, contending that the arbitration agreement was procedurally and substantively unconscionable and that the wrongful death claims were not arbitrable. The trial court found that the arbitration agreement was valid, that the claims brought by Laizure were arbitrable issues, and that the beneficiaries of the estate were intended third-party beneficiaries of the agreement.

On appeal, the Fifth District affirmed the trial court's order. The Fifth District focused primarily on Laizure's argument that the arbitration agreement did not, and could not, encompass a wrongful death claim because the claim did not belong to Stewart, but rather was an independent claim

belonging to the estate and the statutory heirs. *Laizure*, 44 So.3d at 1257. The Fifth District observed that no Florida decision appears to have directly addressed the issue of whether a nursing home arbitration agreement executed by a patient is binding on his estate and heirs in a wrongful death action. *Id.*

The Fifth District began its discussion by reviewing this Court's decision in *Seifert v. U.S. Home Corp.*, 750 So.2d 633, 635 (Fla.1999), in which the Court held that a wrongful death claim was not arbitrable where the arbitration agreement contained in a homebuyer's purchase and sale contract did not require the arbitration of personal injury tort claims. *Laizure*, 44 So.3d at 1257–58. The Fifth District recognized, however, that this Court “did not hold that wrongful death claims are not arbitrable. Rather, it concluded that an arbitration provision in a homebuyer's contract, which did not refer to tort claims for personal injuries, did not require arbitration of such disputes.” *Id.* at 1258.

Turning to this case, the Fifth District contrasted the arbitration agreement at issue here with the agreement in *Seifert*, stating that the arbitration agreement signed by Stewart was “broad, encompassing ‘any claim based on ... common law or statutory negligence, gross negligence, malpractice or a claim based on any departure from accepted standards of medical or nursing care.’ ” *Id.* Because the wrongful death claim was based on alleged negligence, the Fifth District concluded that it fell “squarely within the language of the arbitration agreement.” *Id.*

The Fifth District next addressed Laizure's argument that the very nature of a wrongful death cause of action places it outside the terms of the arbitration agreement. *Id.* The Fifth District disagreed, reasoning:

While we agree that a wrongful death action belongs to the survivors of the decedent, by statute, such an action is predicated on the “wrongful act, negligence, default or breach of contract or warranty” committed by the defendant which, as the result of the decedent's death, transformed a personal injury claim into one for wrongful death. *See* § 768.19, Fla. Stat. (2009). Consequently, courts generally agree that wrongful death claims are derivative in nature, at least in the sense that they are dependent on a wrong committed against the decedent. *Valiant Ins. Co. v. Webster*, 567 So.2d 408, 411 (Fla.1990).... The connection to the underlying tort also permits defenses that would have been available to a defendant had the decedent lived, to be equally available to a defendant in a wrongful death action.

See generally Thomas D. Sawaya, *Fla. Personal Injury Law & Practice with Wrongful Death Actions*, §§ 22.1–.11 (2008–2009 ed.).

*4 *Id.* The Fifth District noted that the conclusion that a wrongful death claim is within the scope of an arbitration agreement was at least “inferentially supported by” a case in which the Fourth District enforced a nursing home arbitration agreement in a wrongful death action. *Id.* at 1258 (citing *Consol. Res. Healthcare Fund I, Ltd. v. Fenelus*, 853 So.2d 500 (Fla. 4th DCA 2003)). The Fifth District observed that other jurisdictions have reached the same result. *Id.* at 1259 (citing *In re Labatt Food Serv., L.P.*, 279 S.W.3d 640 (Tex.2009); *Trinity Mission Health & Rehab. of Clinton v. Estate of Scott ex rel. Johnson*, 19 So.3d 735 (Miss.Ct.App.2008); *Briarcliff Nursing Home, Inc. v. Turcotte*, 894 So.2d 661 (Ala.2004); *Herbert v. Superior Court*, 169 Cal.App.3d 718, 215 Cal.Rptr. 477 (1985); *Ballard v. Sw. Detroit Hosp.*, 119 Mich.App. 814, 327 N.W.2d 370 (1982)).

After analyzing this issue, the Fifth District certified to this Court the question of whether a nursing home arbitration agreement signed by a nursing home resident, or his or her representative, binds the resident's estate and statutory heirs to arbitration in a subsequent wrongful death action arising from an alleged tort within the scope of an otherwise valid arbitration agreement. *Id.*

ANALYSIS

[1] In Florida, “there are three elements for courts to consider in ruling on a motion to compel arbitration of a given dispute: (1) whether a valid written agreement to arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitration was waived.” *Seifert*, 750 So.2d at 636. The certified question in this case—whether the arbitration agreement requires arbitration of the wrongful death claims brought by Laizure on behalf of Stewart's estate and heirs—relates to the first two elements. *See id.* The question presented is a pure question of law, and this Court's review is de novo. *See Sanders v. State*, 35 So.3d 864, 868 (Fla.2010) (“Pure questions of law are subject to de novo review.”).

We begin our analysis by addressing Laizure's argument that the wrongful death claims are not within the scope of the arbitration agreement. Then, we analyze the issue of whether a nursing home arbitration agreement signed by a nursing

home resident, or his or her representative, can bind the resident's estate and statutory heirs to arbitration. To analyze this issue, we first review Florida's Wrongful Death Act. Next we discuss the Florida Nursing Home Residents' Rights Act (NHRRA). Finally, we analyze the nature of wrongful death claims in Florida and answer the certified question in the affirmative.

I. The Scope of the Arbitration Agreement

[2] There is no question that the wrongful death claims under chapter 400 of the Florida Statutes fall within the language of the arbitration agreement in this case. In *Seifert v. U.S. Home Corp.*, 750 So.2d 633, 640–42 (Fla.1999), this Court held that an arbitration provision in a sales agreement for a home did not require arbitration of a wrongful death claim based on negligence where the contract did not mention any of the parties' rights in the event of personal injuries or death but rather referred only to the sale and purchase of the home and the tort action did not bear a significant relationship to the contract. Here, unlike the contract and claim in *Seifert*, there is a "significant relationship," *id.*, between the contract and the allegations in the complaint. Further, unlike *Seifert*, the terms of the arbitration agreement in this case specifically "contemplated the existence and arbitration of future tort claims for personal injuries based on a party's common law negligence." *Id.* The agreement expressly encompasses claims arising out of or relating to Stewart's stay at the facility, including negligence and malpractice, and is expressly binding upon and includes claims brought by Stewart's "heirs." As reflected in the terms of the arbitration agreement, it is clear that the contracting parties intended to include wrongful death claims such as those brought in this case.

*5 Laizure nevertheless contends that the wrongful death claims are not arbitrable because a wrongful death claim is an independent cause of action belonging to the survivors under Florida's Wrongful Death Act. We now turn to an examination of the Act.

II. Florida's Wrongful Death Act

[3] "A court's purpose in construing a statute is to give effect to legislative intent, which is the polestar that guides the court in statutory construction." *Gomez v. Vill. of Pinecrest*, 41 So.3d 180, 185 (Fla.2010). The Legislature has expressly

provided in the wrongful death statute that it is "the public policy of the state to shift the losses resulting when wrongful death occurs from the survivors of the decedent to the wrongdoer." § 768.17, Fla. Stat. (2008). Sections 768.16–26, Florida Statutes, known as the "Florida Wrongful Death Act," are remedial and are to be liberally construed. § 768.17, Fla. Stat.

The Act provides for a cause of action that may be brought by a decedent's personal representative when the decedent's death is caused by the wrongful act, negligence, default, or breach of contract or warranty of any person:

When the death of a person is caused by the wrongful act, negligence, default, or breach of contract or warranty of any person, including those occurring on navigable waters, and the event would have entitled the person injured to maintain an action and recover damages if death had not ensued, the person or watercraft that would have been liable in damages if death had not ensued shall be liable for damages as specified in this act notwithstanding the death of the person injured, although death was caused under circumstances constituting a felony.

§ 768.19, Fla. Stat. (2008) (emphasis added). The next section further provides:

The action shall be brought by the decedent's personal representative, who shall recover for the benefit of the decedent's survivors and estate all damages, as specified in this act, caused by the injury resulting in death. When a personal injury to the decedent results in death, no action for the personal injury shall survive, and any such action pending at the time of death shall abate.... A defense that would bar or reduce a survivor's recovery if she or he were the plaintiff may be asserted against the survivor, but shall not affect the recovery of any other survivor.

§ 768.20, Fla. Stat. (2008). The Act also provides for damages that may be recovered by the survivors, *see* § 768.21, Fla. Stat. (2008), and requires that “[t]he amounts awarded to each survivor and to the estate shall be stated separately in the verdict.” § 768.22, Fla. Stat. (2008).

Because this case also involves the Florida Nursing Home Residents' Rights Act, we briefly discuss that statutory scheme next.

III. Florida Nursing Home Residents' Rights Act

The purpose of the NHRRA is to provide for the “development, establishment, and enforcement of basic standards for: (1) the health, care, and treatment of persons in nursing homes and related health care facilities; and (2) the maintenance and operation of such institutions that will ensure safe, adequate, and appropriate care, treatment, and health of persons in such facilities.” § 400.011, Fla. Stat. (2008). The NHRRA sets forth the statutory rights of nursing home residents. § 400.022, Fla. Stat. (2008). The NHRRA includes a provision for civil enforcement that provides for a cause of action for negligence or a violation of the rights set forth in section 400.022. § 400.023, Fla. Stat. (2008). The action may be brought by the resident or his or her guardian, by a person or organization acting on behalf of a resident, or by the personal representative of the estate of a deceased resident regardless of the cause of death. *Id.* The NHRRA provides that the action may be brought in any court of competent jurisdiction and that the claimant may recover actual and punitive damages. *Id.*

*6 If the action alleges that negligence or a violation of the resident's rights caused the resident's death, the claimant is “required to elect either survival damages pursuant to s. 46.021 or wrongful death damages pursuant to s. 768.21.” *Id.*² Section 46.021 provides that “[n]o cause of action dies with the person. All causes of action survive and may be commenced, prosecuted, and defended in the name of the person prescribed by law.” § 46.021, Fla. Stat. (2008). Section 768.21 is part of Florida's Wrongful Death Act and provides for the damages that may be claimed by the decedent's estate and statutory heirs. § 768.21, Fla. Stat. (2008).

The ability of a claimant to elect between a survival action and a wrongful death action emanates from the NHRRA. When the NHRRA does not apply, the personal injury cause

of action abates upon the death of the injured party under the Wrongful Death Act, and the wrongful death cause of action becomes the only avenue for recovery. *See* § 768.20, Fla. Stat. (2008) (“When a personal injury to the decedent results in death, no action for the personal injury shall survive....”).

IV. Answering the Certified Question

[4] Although Florida's Wrongful Death Act has “long [been] characterized ... as creating a new and distinct right of action from the right of action the decedent had prior to death,” *Toombs v. Alamo Rent-A-Car, Inc.*, 833 So.2d 109, 111 (Fla.2002), courts have also characterized wrongful death actions as derivative because they are dependent on a wrong committed against the decedent. This Court has explained that “[w]hile the Wrongful Death Act creates independent claims for the survivors, these claims are also derivative in the sense that they are dependent upon a wrong committed upon another person. No Florida decision has allowed a survivor to recover under the wrongful death statute where the decedent could not have recovered.” *Valiant Ins. Co. v. Webster*, 567 So.2d 408, 411 (Fla.1990), *receded from on other grounds by Gov't Employees Ins. Co. v. Douglas*, 654 So.2d 118, 119–20 (Fla.1995).

[5] The right of the survivors to recover is predicated in the Act on the decedent's right to recover. In other words, recovery is precluded if the decedent could not have maintained an action and recovered damages if death had not ensued. Section 768.19, Florida Statutes (2008), provides for a cause of action “[w]hen the death of a person is caused by the wrongful act, negligence, default, or breach of contract or warranty of any person, ... and the event would have entitled the person injured to maintain an action and recover damages if death had not ensued.” (Emphasis added.) In *Variety Children's Hospital v. Perkins*, 445 So.2d 1010, 1011–12 (Fla.1983), this Court held that a wrongful death action was barred where the decedent, during his lifetime, had filed a personal injury action and had fully recovered, because “[a]t the moment of his death [the injured party] had no right of action against the tortfeasor because his cause of action had already been litigated, proved and satisfied.... Since there was no right of action existing at the time of death, under the statute no wrongful death cause of action survived the decedent.”

*7 More recently, in *Toombs*, this Court barred recovery for a wrongful death claim predicated upon the dangerous

instrumentality doctrine where the decedent had no right of action because she was a co-bailee of the vehicle. 833 So.2d at 118. This Court held that “no right of action originated in the decedent to which a wrongful death cause of action could attach” and concluded as follows:

Although we have long emphasized that an action for wrongful death is distinct from the decedent's action for personal injuries had he or she survived because it involves different rights of recovery and damages, the language of the Act makes clear a cause of action for wrongful death that is predicated on the decedent's entitlement to “maintain an action and recover damages if death had not ensued.” See *Valiant Ins. Co. v. Webster*, 567 So.2d 408, 411 (Fla.1990) (“While the Wrongful Death Act creates independent claims for the survivors, these claims are also derivative in the sense that they are dependent upon a wrong committed upon another person.”); *Celotex Corp. v. Meehan*, 523 So.2d 141, 147 (Fla.1988) (“[A] wrongful death action is derivative of the injured person's right, while living, to recover for personal injury.”). Accordingly, ... we hold that no cause of action for wrongful death survived the decedent in the instant case because she had no right of action at her death.

Id. at 118. Similarly, Florida cases have held that a general release executed by the decedent in resolution of a personal injury action bars any subsequent wrongful death action. See *Warren v. Cohen*, 363 So.2d 129, 131 (Fla. 3d DCA 1978) (holding that “the subsequently filed wrongful death action is barred by the release signed by the decedent prior to her death”); see also *Ryter v. Brennan*, 291 So.2d 55, 57 (Fla. 1st DCA 1974) (settlement and general release by decedent barred wife's subsequent wrongful death claims).

The above cases illustrate that in wrongful death actions in Florida, the defendant's liability flows from actions toward the decedent, and the ability of the estate and heirs to recover is predicated on the decedent's entitlement to maintain an action and recover damages if death had not ensued. As the Fifth District observed in this case:

While we agree that a wrongful death action belongs to the survivors of the decedent, by statute, such an action is predicated on the “wrongful act, negligence, default or breach of contract or warranty” committed by the defendant which, as the result of the decedent's death, transformed a personal injury claim into one for wrongful death. See § 768.19, Fla. Stat. (2009). Consequently, courts generally agree that wrongful death claims are derivative

in nature, at least in the sense that they are dependent on a wrong committed against the decedent.

Laizure, 44 So.3d at 1258 (emphasis added).

We acknowledge that courts in other states are split when considering the question of whether the estate and heirs are bound by an arbitration agreement signed by the decedent, even in states with provisions similar to Florida that predicate a wrongful death claim on the ability of the decedent to have brought suit and recover damages had he or she lived.³ We also acknowledge that the measure of damages for a wrongful death cause of action under Florida law is different than for a personal injury claim that could have been brought by the decedent.

*8 [6] Principled arguments exist on both sides of this issue. However, we ultimately conclude that the nature of a wrongful death cause of action in Florida is derivative in the context of determining whether a decedent's estate and heirs are bound by the decedent's agreement to arbitrate. The estate and heirs stand in the shoes of the decedent for purposes of whether the defendant is liable and are bound by the decedent's actions and contracts with respect to defenses and releases. See § 768.19, Fla. Stat. (2008) (requiring for a wrongful death cause of action that “the event would have entitled the person injured to maintain an action and recover damages if death had not ensued”); see also *Toombs*, 833 So.2d at 118; *Variety Children's Hosp.*, 445 So.2d at 1012. For example, if a decedent signs a release of liability in resolution of a personal injury action, the estate and heirs would be precluded from bringing a wrongful death cause of action based on the same conduct. We see no reason that a different result is compelled for the decedent's choice of forum, and it would be anomalous to give greater rights to the estate and heirs than to the decedent. Finally, we note that holding otherwise in the nursing home context would give the personal representative of an estate the strategic choice under the NHRRA, section 400.023, to elect to pursue a wrongful death claim, rather than a survivor action on behalf of the decedent, simply to avoid arbitration that was agreed to by the decedent.

In sum, the wrongful death claims in this case are clearly within the scope of the arbitration agreement. With respect to whether they are arbitrable, we conclude that the estate and statutory heirs are bound by the arbitration agreement to the same extent that Stewart would have been bound. Therefore,

they are required to arbitrate their wrongful death claims under the arbitration agreement signed by Stewart.

CONCLUSION

[7] For the foregoing reasons, we answer the certified question in the affirmative and hold that the execution of a nursing home arbitration agreement by a party with the capacity to contract binds the decedent's estate and statutory heirs in a subsequent wrongful death action arising from an alleged tort within the scope of an otherwise valid arbitration agreement. Accordingly, we approve the Fifth District's decision.

It is so ordered.

POLSTON, C.J., and LEWIS, QUINCE, CANADY, LABARGA, and PERRY, JJ., concur.

1. Laizure also argues that the arbitration agreement in this case is unconscionable, and the Respondents argue that the arbitration agreement binds the estate and statutory heirs because they are third-party beneficiaries to the agreement. We decline to address both of these arguments because they are outside the scope of, and unrelated to, the certified question before this Court. See *Major League Baseball v. Morsani*, 790 So.2d 1071, 1080 n. 26 (Fla.2001) (declining to address a claim "because it is outside the scope of the certified question"); *State v. Perry*, 687 So.2d 831, 831 (Fla.1997) ("We decline to review the second cross-appeal issue raised by respondent because the issue is unrelated to the certified question upon which this Court's jurisdiction is based.").

2. This provision was added in 2001. See ch.2001-45, Laws of Fla. At the same time, the Legislature amended section 400.023 to provide that "[s]ections 400.023-400.0238 provide the *exclusive remedy* for a cause of action for recovery of damages for the personal injury or death of a nursing home resident arising out of negligence or a violation of rights specified in s. 400.022. This section does not preclude theories of recovery not arising out of negligence or s. 400.022 which are available to a resident or to the agency." Ch.2001-45, Laws of Fla. (emphasis added).

3. Compare *Ruiz v. Podolsky*, 50 Cal.4th 838, 114 Cal.Rptr.3d 263, 237 P.3d 584, 593 (2010) (stating with respect to medical malpractice cases that "the

purpose behind the wrongful death statute, section 377.60, would not be undermined by construing section 1295[, which contemplates that all medical malpractice claims, including wrongful death claims, may be subject to arbitration agreements,] to permit the binding of wrongful death litigants to arbitration. Although a wrongful death claim is an independent action, wrongful death plaintiffs may be bound by agreements entered into by decedent that limits the scope of the wrongful death action."); *In re Labatt Food Serv., L.P.*, 279 S.W.3d at 644 ("[S]tatutory wrongful death beneficiaries' claims place them in the exact 'legal shoes' of the decedent, and they are subject to the same defenses to which the decedent's claims would have been subject."); *Cleveland v. Mann*, 942 So.2d 108, 118-19 (Miss.2006) ("[A] wrongful death beneficiary is only allowed to bring claims that the decedent could have brought if the decedent had survived.... Because Mann agreed to arbitrate, he could not have brought this claim ... even if death had not ensued. He would have been required to submit his claim to arbitration. Therefore, since Mann could not have brought this claim, neither can plaintiffs."); *Briarcliff Nursing Home, Inc.*, 894 So.2d at 664 (holding that the executor or administrator of the estate is bound by the arbitration provision entered into by the decedent); *Allen v. Pacheco*, 71 P.3d 375, 379 (Colo.2003) ("Because the plain language of the agreement in this case refers to 'all claims' including those brought for 'death,' and because we must apply a strong presumption in favor of arbitration, we find that the arbitration agreement applies to wrongful death claims."); *Ballard*, 327 N.W.2d at 371 ("[T]he wrongful death act establishes a cause of action where the defendant's negligence or wrongful act would 'if death had not ensued, have entitled the party injured to maintain an action and recover damages'. Therefore, the action brought by the personal representative is a derivative one, and the representative in effect stands in the shoes of the decedent." (citation omitted)); *with Woodall v. Avalon Care Center-Fed. Way, LLC*, 155 Wash.App. 919, 231 P.3d 1252, 1258 (2010) ("The wrongful death statutes 'create new causes of action' meant to compensate surviving relatives 'for losses caused to them by the decedent's death.' No benefits of a wrongful death claim flow to the estate. Nor did the cause of action ever belong to the decedent.... '[T]he action for wrongful death is derivative *only in the sense that it derives from the wrongful act causing the death*, rather than from the person of the deceased.'...."); *Lawrence v. Beverly Manor*, 273 S.W.3d 525, 529 (Mo.2009) ("A claim for wrongful death is not derivative from any claims [the decedent] might have had, and the damages are not awarded to the wrongful death plaintiffs on [the

decedent's] behalf. The arbitration agreement, therefore, cannot bind parties to the wrongful death suit."); *Bybee v. Abdulla*, 189 P.3d 40, 46 (Utah 2008) ("Utah has uniformly held that a wrongful death cause of action, while derivative in the sense that it will not lie without a viable underlying personal injury claim, is a separate claim that comes into existence upon the death of the injured person. The independent nature of the wrongful death cause of action ... means that ... the heirs in a wrongful death action stand in, at most, one shoe of the decedent." (citations omitted)); *Peters v. Columbus*

Steel Castings Co., 115 Ohio St.3d 134, 873 N.E.2d 1258, 1262 (2007) ("[The decedent] could not restrict his beneficiaries to arbitration of their wrongful-death claims, because he held no right to those claims; they accrued independently to his beneficiaries for the injuries they personally suffered as a result of the death.").

Parallel Citations

38 Fla. L. Weekly S102

End of Document

© 2013 Thomson Reuters. No claim to original U.S. Government Works.

PROOF OF SERVICE

I, Deborah P. Stout, of Womble Carlyle Sandridge & Rice, LLP, do hereby certify that a copy of the attached April 16, 2013 letter was served on all other parties to this matter by depositing a copy of the same in the United States Mail, postage prepaid, on April 16, 2013, addressed as follows to counsel of record:

Matthew W. Christian, Esq.
CHRISTIAN & DAVIS, LLC
P.O. Box 332
Greenville, SC 29602

Marion S. Fowler, III, Esq.
FOWLER LAW FIRM, PC
P.O. Box 1719
Lake City, SC 29560

D. Jay Davis, Jr., Esq.
William L. Howard, Esq.
Russ Hines, Esq.
YOUNG CLEMENT RIVERS, LLP
P.O. Box 993
Charleston, SC 29402

Lori D. Proctor, Esq.
SERPE, JONES, ANDREWS, CALLENDER & BELL, PLLC
2929 Allen Parkway, Suite 1600
Houston, TX 77019

R. Gerald Chambers, Jr., Esq.
Carmelo B. Sammataro, Esq.
TURNER PADGET GRAHAM & LANEY, P.A.
P.O. Box 1473
Columbia, SC 29202

Michael I. Bernstein, Esq.
Michael I. Bernstein, P.A.
1688 Meridian Avenue, Suite 418
Miami Beach, FL 33139

Kenneth W. Zeller, Esq.
AARP FOUNDATION LITIGATION
601 E. Street NW
Washington, DC 20049

Walter McElhaney White, Esq.
Perry D. Boulier, Esq.
HOLCOMBE, BOMAR, GUNN &
BRADFORD, PA
P.O. Box 1897
Spartanburg, SC 29304

John S. Nichols, Esq.
BLUESTEIN, NICHOLS, THOMPSON & DELGADO, LLC
1614 Taylor Street
P O. Box 7965
Columbia, SC 29202

By: Deborah P. Stout
Deborah P. Stout, Legal Assistant