

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

	)	Civil Action No.: 4:20-cv-
Thuy N. Gasser, individually and on behalf of other	)	
similarly situated,	)	
	)	<b>NOTICE OF REMOVAL</b>
Plaintiffs,	)	
	)	
v.	)	
	)	
ACS Primary Care Physicians-Southeast, P.C.,	)	
	)	
Defendant.	)	
<hr/>	)	

Defendant ACS Primary Care Physicians-Southeast, P.C. (“ACS”), by and through its undersigned counsel, and pursuant to 28 U.S.C. § 1446, hereby gives notice that it has removed from the Horry County Court of Common Pleas the action titled *Thuy N. Gasser, individually and on behalf of other similarly situated v. ACS Primary Care Physicians-Southeast, P.C.*, Case No. 2020-CP-26-03169, to this Court, the United States District Court for the District of South Carolina, Florence Division. The removal is based on the following grounds:

**A. Timeliness of Removal**

1. On or about May 21, 2020, Plaintiff Thuy N. Gasser (“Plaintiff”) commenced this putative class action in Horry County Court of Common Pleas by filing a Summons and Complaint.
2. On May 26, 2020, Plaintiff served the Summons and Complaint on ACS. Removal is timely as it was effected within 30 days of the service of the Summons and Complaint on Defendant. 28 U.S.C. § 1446(b)(2)(B).

**B. Federal Question Jurisdiction**

3. This Court has original jurisdiction over this action by virtue of 28 U.S.C. § 1331 because it involves claims arising under the laws of the United States; namely, the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. § 1001, *et seq.*, due to the fact that Plaintiff’s allegations relate to putative class members’ employer-sponsored health insurance plans.

4. Specifically, the Complaint asserts claims, on behalf of a class of all persons in South Carolina insured by Blue Cross Blue Shield (BCBSSC”), for breach of contract and unjust enrichment, alleging that ACS unlawfully billed class members for services that should have been billed to BCBSSC directly and in amounts that were greater than should have been billed. The putative class includes individuals whose BCBSSC plan is an employer-sponsored health insurance plan that is governed by ERISA (the “Plans”). Thus, Plaintiff’s state law claims fall within, and are completely preempted by, ERISA § 502(a), including but not limited to §§ 502(a)(1)(B), 502(a)(2), and 503(a)(3), such that the assertion of these state law claims are, in actuality, the assertion of ERISA claims. *See Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 65-66 (1987) (noting that state-law claims that fall within the scope of ERISA § 502(a)(2) are “necessarily federal in character”); *Singh v. Prudential Health Care Plan, Inc.*, 335 F.3d 278, 283 (4th Cir. 2003).

5. Consequently, this Court has federal question jurisdiction under 28 U.S.C. §§ 1331 and 1367, and this action may be removed to this Court by Defendant pursuant to 28 U.S.C. § 1441.

6. Accordingly, the case set forth above, Case No. 2020-CP-26-03169, filed in the Court of Common Pleas for Horry County, South Carolina could have been brought before this

Court pursuant to 28 U.S.C. §§ 1331, 1332(d) and 1367, and may be removed by ACS pursuant to 28 U.S.C. § 1441.

7. Under 28 U.S.C. § 1441(a), venue of the removed action is proper in this Court as the district and division embracing the place where the state action was pending.

8. Pursuant to 28 U.S.C. § 1446(a), ACS has attached herewith, and incorporated by reference, a copy of the Summons and Complaint filed in this action. (*See Exhibit A.*)

9. Written notice of the filing of this Notice of Removal will be given to Plaintiff as required by law.

10. A true copy of this Notice of Removal is being filed with the Court of Common Pleas for Horry County, South Carolina as required by law.

WHEREFORE, ACS respectfully requests that the action now pending in the State of South Carolina, Horry County, Court of Common Pleas, as Case No. 2020-CP-26-03169, proceed before this Court as an action properly removed.

Dated: June 25, 2020

GORDON & REES LLP

By *s/Josh Dixon*

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*Attorneys for ACS Primary Care  
Physicians-Southeast, P.C.*

# EXHIBIT A

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )  
 )

Thuy N. Gasser, individually and )  
on behalf of other similarly )  
situated, )  
 )

Plaintiffs, )

v. )  
 )

ACS Primary Care Physicians - )  
Southeast, P.C., )  
 )

Defendant. )  
 )  
\_\_\_\_\_ )

**SUMMONS**  
(Jury Trial Demanded)

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action. A copy of the Complaint is attached to this Summons and is herewith served upon you. Your answer must be in writing and signed by you or by your attorney and must state your address or the address of your attorney if signed by your attorney. Your answer must be served upon the undersigned attorneys for the Plaintiff within thirty (30) days after the service hereof, exclusive of the day of service at 12019 Ocean Highway, Post Office Box 1885, Pawleys Island, South Carolina 29585.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.

**MORRIS LAW LLC**

*s/ Ian A. Taylor*

\_\_\_\_\_  
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*s/ William E. Hopkins, Jr.*

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(843) 314-9365 – Facsimile

*Attorneys for Plaintiff*

Surfside Beach, South Carolina  
May 21, 2020

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Thuy N. Gasser, individually and )  
on behalf of other similarly )  
situated, )

Plaintiffs, )

v. )

**CLASS ACTION COMPLAINT**  
(Jury Trial Demanded)

ACS Primary Care Physicians - )  
Southeast, P.C., )

Defendant. )

\_\_\_\_\_ )

Plaintiff Thuy N. Gasser, individually and on behalf of others similarly situated, alleges and states the following claims for relief against Defendant ACS Primary Care Physicians – Southeast, P.C.

**NATURE OF THE ACTION**

1. Plaintiff Thuy N. Gasser, and those similarly situated, were patients who received medical services from Defendant arising from motor vehicle accidents. At the time of treatment, Defendant refused to process or submit bills to Plaintiffs’ health insurance provider and rather required or demanded Plaintiffs to pay medical bills out of pocket.

2. Ms. Gasser and the class she seeks to represent were named "insureds" or “Members” under existing insurance policies with Blue Cross Blue Shield Insurance Company (hereinafter "BCBS").

3. Defendant is a preferred provider in the BCBS network and previously agreed, pursuant to a contract, to accept scheduled rates of payment for BCBS's insureds

or Members as a condition of being a preferred provider.

4. Ms. Gasser and the class she seeks to represent are third-party beneficiaries to the preferred provider contract between Defendant and BCBS, and therefore have a right to enforce the contract between Defendant and BCBS.

5. Defendant's decision to refuse to submit claims to BCBS was based on monetary gain. By not submitting claims through BCBS, Defendant was able to increase its cash flow by charging insureds the full price of services instead of the contracted price previously negotiated with BCBS for BCBS's insureds and Members. Defendant's actions ignored its contractual obligations to both BCBS, Plaintiff, and other class members.

6. Defendant's conduct deprived Ms. Gasser and other class members of the benefit of their insurance coverage and premiums.

#### **PARTIES AND JURISDICTION**

7. Plaintiff Thuy N. Gasser is a citizen and resident of Myrtle Beach, South Carolina. Plaintiff was a patient of Defendant ACS Primary Care Physicians – Southeast, P.C. who, like the class members she seeks to represent, was denied the right to have her medical claims processed and submitted to her insurance carrier for payment at the agreed upon rate by Defendant.

8. Defendant ACS Primary Care Physicians-Southeast, P.C. is a professional corporation organized under the laws of the state of Georgia that provides medical services in South Carolina, maintains a registered agent in Richland County, South Carolina, and transacts significant business in South Carolina.

9. The jurisdiction of this Court is founded upon S.C. Const. Art. V § 11, which grants the circuit court general jurisdiction over civil actions.



10. This Court has personal jurisdiction over Defendant because Defendant conducts business in South Carolina and/or has the requisite minimum contacts with South Carolina necessary to constitutionally permit the Court to exercise jurisdiction, with such jurisdiction also being within the contemplation of the South Carolina "long arm" statute, S.C. Code Ann. § 36-2-803 as amended.

11. Venue in this Court is proper pursuant to the Rules of the South Carolina Supreme Court and the South Carolina Code.

12. Plaintiff and all class members have suffered damages in an amount of at least \$100.

**GENERAL FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS**

13. Upon information and belief, Ms. Gasser was involved in a motor vehicle collision on December 9, 2019, in which she sustained serious injuries.

14. Ms. Gasser received treatment at Grand Strand Regional Medical Center where a physician employee of Defendant provided medical services for her injuries.

15. At the time of the collision and treatment, Ms. Gasser was covered by a health insurance policy issued by BCBS. Ms. Gasser obtained this health insurance coverage for the purpose of defraying medical expenses.

16. Ms. Gasser's insurance information was provided to Defendant at the time of her admission and treatment.

17. At all relevant times, Defendant was a preferred provider in the BCBS network.

18. As a preferred provider, Defendant agreed to accept BCBS insurance and provide services for BCBS's insureds at reduced cost.

19. Despite these contractual relationships and Ms. Gasser's presentment of her insurance coverage, Defendant and its representatives refused to submit Ms. Gasser's bills related to the vehicle collision to BCBS for payment.

20. Medical claims of motor vehicle collision victims in a hospital's emergency room represent the worst performing revenue streams for a hospital.

21. By refusing to accept insurance coverage for motor vehicle accidents, Defendant can generate a significant increase in cash flow by receiving payment immediately and in an amount that far exceeds the negotiated rate with BCBS.

22. Defendant demanded payment in full from Ms. Gasser despite her insurance coverage.

23. Defendant claimed an amount due of \$1,622.00 for medical treatment.

24. Ms. Gasser was not aware at the time of treatment of Defendant's systematic refusal to honor its contractual obligations regarding emergency room physician bills for insured patients and did not learn of this information until a later date.

25. Defendant ignored its contractual arrangement with BCBS in an attempt to avoid the discounts it voluntarily negotiated and agreed to in order to become a preferred provider for BCBS. By not submitting Ms. Gasser's bills, BCBS unfairly profited from Ms. Gasser and others similarly situated.

26. Ms. Gasser is a third-party beneficiary of the agreements between Defendant and BCBS.

### **CLASS ACTION ALLEGATIONS**

27. All above allegations are incorporated herein as if realleged and restated in full verbatim.

28. Pursuant to Rule 23, SCRPC, Plaintiff brings this action on behalf of herself and all other similarly situated persons. Plaintiff seeks to represent the class defined as follows:

All persons (or estates of persons) in South Carolina or persons (or estates of person) who have jurisdiction with a South Carolina Court under the Door Closing Statute) insured by BCBS receiving services from Defendant in any medical facility from **December 9, 2016 to present** for whom Defendant failed to submit the bill for medical services to BCBS and instead obtained recovery from the person.

29. Upon information and belief, the class includes a substantial number of Defendant's patients and is so numerous that joinder of all members is impractical.

30. There are questions of fact or law common to the class predominating over questions affecting only individual class members, including without limitation:

- a. Whether Defendant's contract with BCBS requires submission of emergency room claims for payment by the insurer rather than the patient;
- b. Whether Defendant's pursuit of payment from class members rather than from class members' insurer was permitted by law; and
- c. Whether Defendant's retention of money for medical expenses paid by class members is just.

31. Plaintiff's claims are typical of the absent class members in that all allege financial losses and other damages attributable to Defendant's process of charging and collecting medical expenses from insured emergency room patients.

32. Plaintiff will fairly and adequately protect the interests of the other class members.

33. Plaintiff's counsel is experienced in handling class action claims. Neither Plaintiff nor Plaintiff's counsel has any interests adverse to or in conflict with the absent class members.

34. The amount in controversy for all class members exceeds one hundred dollars.

**FOR A FIRST CAUSE OF ACTION**  
(Breach of Contract)

35. All above allegations are incorporated herein as if realleged and restated in full verbatim.

36. Plaintiff and the other class members entered into a contractual agreement with BCBS, whereby Plaintiff and the other class members agreed to pay monthly premiums to BCBS for the benefit of health insurance.

37. BCBS as a part of its service to Plaintiff and other class members, contracted with Defendant to provide payments for their insureds' services. Specifically, Defendant bargained and contracted with BCBS for discounted payments as satisfaction of patient's accounts. This arrangement entitled Defendant to a preferred provider status within the BCBS network and generated business for Defendant.

38. Defendant breached its contract with BCBS, Plaintiff, and the other class members, as third-party beneficiaries, by refusing to submit claims to BCBS. Defendant deprived Ms. Gasser of the benefits of the discounts and other provisions negotiated between BCBS and Defendant.

39. As a direct and proximate result of Defendant's breach, Plaintiff and the other class members have suffered damages, which include all payments collected by Defendant from Plaintiff and the other class members together with prejudgment interest.

**FOR A SECOND CAUSE OF ACTION**  
(Unjust Enrichment)

40. All above allegations are incorporated herein as if realleged and restated in

full verbatim.

41. Defendant was unjustly enriched through the collection of additional payments from Plaintiff and the other class members for payment of services at a higher value than contracted for with BCBS.

42. This conduct constitutes an unjust retention of a benefit to the detriment of Plaintiff and class members, and Defendant's retention of money is against the fundamental principles of justice and good conscience and is patently unfair.

43. It would be unconscionable for Defendant to retain the payments made by Plaintiff and other class members because those funds were received with complete disregard of available insurance coverage and in contradiction to the agreed upon price for services bargained for between Defendant and BCBS.

44. Equity demands that Defendant be compelled to return its ill-gotten gains.

45. As a direct and proximate result of Defendant's conduct, Plaintiff and other class members have suffered damages, and request an order be entered creating a constructive trust for any sums illegally collected by Defendant, for counsel fees and costs of suit, and any other relief this Court deems necessary or proper.

WHEREFORE, having fully stated her claims against the Defendant, Plaintiff respectfully prays that the Court certify a South Carolina class, award the relief as set forth above for actual damages, special and consequential damages, attorney's fees and costs, and for such other and further relief as the Court deems necessary and proper. Plaintiff demands a jury trial on all actions so triable.

**MORRIS LAW LLC**

*s/ Ian A. Taylor*

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*Attorneys for Plaintiff*

Surfside Beach, South Carolina  
May 21, 2020

STATE OF SOUTH CAROLINA )  
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IN THE COURT OF COMMON PLEAS  
 FOR THE FIFTEENTH JUDICIAL CIRCUIT  
 CIVIL ACTION NO.: 2020-CP-26-03169

**AFFIDAVIT OF SERVICE**

I, Kathryn Y. Roberts, of Hopkins Law Firm, LLC, served the Summons and Complaint in the above captioned action on the Defendant **ACS Primary Care Physicians – Southeast, P.C.** by mailing copies of the same, via certified mail, return receipt, to its Registered Agent, **Corporation Service Company, 1703 Laurel Street, Columbia, South Carolina 29201.** Service was accepted on May 26, 2020 as evidenced by the attached return receipt.

HOPKINS LAW FIRM, LLC

*Kathryn Roberts*

Kathryn Y. Roberts, Paralegal

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[kathy@hopkinsfirm.com](mailto:kathy@hopkinsfirm.com)

Pawleys Island, South Carolina

SWORN to before me this 29<sup>th</sup>  
Day of May, 2020.

*[Signature]*  
\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: 1-10-2024

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<p>2. Article Number (Transfer from service label)                  7018 0680 0000 3484 5606</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes                  If YES, enter delivery address below: <input type="checkbox"/> No</p>																
<p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>	<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input checked="" type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</td> <td></td> </tr> </table> <p>Domestic Return Receipt</p>	<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input checked="" type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Insured Mail		<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
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Feedback

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action: ACS Primary Care Physicians-Southeast Charges BCBS Members Full Price Despite Preferred Provider Agreement](#)

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