

FILED: 10 OCTOBER 2008

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, 187 N.C. App. \_\_\_, 653 S.E.2d 165 (2007), affirming an order entered 30 November 2005 denying plaintiff's motion for a new trial following a judgment entered 31 October 2005, both by Judge Richard D. Boner in Superior Court, Mecklenburg County. On 6 March 2008, the Supreme Court allowed plaintiff's petition for discretionary review of the unanimous portion of the same Court of Appeals opinion that reversed and remanded the trial court's denial of defendant Callaway's motion for directed verdict in its favor. Heard in the Supreme Court 11 September 2008.

*Ferguson, Stein, Gresham & Sumter, P.A., by S. Luke Largess, for plaintiff-appellant.*

*Parker Poe Adams & Bernstein LLP, by Harvey L. Cospers, Jr., Lori R. Keeton, and Leigh K. Hickman, for defendant-appellee Epifanio Rivera-Ortiz, M.D.*

*Shumaker, Loop & Kendrick, LLP, by Scott M. Stevenson and Tasha L. Winebarger, for defendant-appellee Callaway Associates, LLP, d/b/a ProMed of North Carolina, PLLC.*

PER CURIAM.

As to the issue on direct appeal based on the dissenting opinion, the decision of the Court of Appeals is affirmed. The petition for discretionary review as to an additional issue was improvidently allowed.

AFFIRMED IN PART; DISCRETIONARY REVIEW IMPROVIDENTLY  
ALLOWED.