Exhibit “D”

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON Renee S. Beach, as Personal Representative of the Estate of Mallory Beach, Plaintiff, v. Gregory M. Parker, Inc. d/b/a Parker's Corporation, Richard Alexander Murdaugh, Richard Alexander Murdaugh, Jr., John Marvin Murdaugh, as P.R. of the Estate of Margaret Kennedy Branstetter Murdaugh, and Randolph Murdaugh, IV, as P.R. of the Estate of Paul Terry Murdaugh, Defendants.	IN THE COURT OF COMMON PLEAS Civil Action No. 2019-CP-25-00111 **PLAINTIFF'S MOTION FOR RECONSIDERATION AND MEMORANDUM IN SUPPORT**

YOU WILL PLEASE TAKE NOTICE that Plaintiff, through her undersigned counsel, hereby moves the Court pursuant to Rule 59(e), SCRCP, to reconsider its Order Granting Parker's Motion to Sever in which the Court, relying on Rule 20(b), SCRCP, granted Parker's Motion to Sever and ordered a separate trial of Plaintiff's claims against Parker's to begin on January 9, 2023.

ARGUMENT

The Order Granting Parker's Motion to Sever abrogates the law of joint and several liability and denies the Beach family substantial rights in this case. During the hearing, the Court suggested a hypothetical scenario in which a jury returns a greater verdict in the second trial against the

Murdaugh Defendants, suggesting that Parker's would be responsible for that second verdict even though not a party. The answer is no; that is not how joint and several liability works. Parker's will not, under any circumstances, be bound by the second verdict. Rather, the jury's pronouncement of actual damages in the first trial will forever determine the amount of actual damages the Beach family can collect. Because of the astronomical net worth of Parker's, there is likely no verdict that Parker's cannot satisfy. Importantly, this means that the Murdaugh Defendants will never pay a penny for the Beach family's actual damages if the Court insists on severing these claims. Therefore, the Order has the effect not only of eliminating joint and several liability but most critically of essentially directing a verdict for the Murdaugh Defendants on actual damages and possibly completely dismissing them.[1] The irony is that Parker's motion to sever protects the Murdaughs, the people they have been screaming about for the past three years. This Order effects substantial prejudice to the Plaintiff and denies her a right to a jury trial against the Murdaugh Defendants. The Order further creates actual prejudice to the Plaintiff that outweighs any potential prejudice to Parker's and has the potential risk of creating even more substantial prejudice. All of these harms can be avoided by the mere delay of this case for a very short period of time.

I. SEVERANCE DOES NOT PREVENT DELAY.

The severance of Plaintiff's claims is not warranted and there will be no indefinite delay. In light of the fact the Court cannot set any trial until January 9, 2023, severance of the cases does

[1] Allowing this outcome violates the "sound policy to deter all wrongdoers by reducing the likelihood that any [joint tortfeasor] will entirely escape liability." *Northwest Airlines, Inc. v. Transp. Workers Union*, 451 U.S. 77, 87–88, 101 S.Ct. 1571, 67 L.Ed.2d 750 (1981) (footnotes omitted). Th

not prevent any real delay. In fact, a January 9th trial date undermines every finding of delay made by the Court. Further, although this should not be the basis of any delay for the reasons argued against Alex Murdaugh's motion to stay, in January the murder charges will be tried against Alex Murdaugh according to his criminal lawyers. As such, this will not prevent Plaintiff from trying all of her claims. Moreover, by early February 2023, just days later, the new attorneys who appeared for the Murdaugh Estate Defendants will have been in the case for 180 days.[2]

Significantly, if the Court severs Plaintiff's claims, Plaintiff will be left with no choice but to appeal this Order. An appeal will certainly add more delay and expense than will otherwise occur. The reality of the delay from the appeal makes the Court's Order have the effect of creating substantial delay. In addition, severing the case against Parker's will greatly hinder the Receiver's as well as Plaintiff's ability to settle any portion of the case as trial gets closer because certain Murdaugh Defendants will "wait and see what happens". While they wait and see, the Estate assets are continuously being devoured by attorney fees from the Estates' lawyers.[3]

II. PARKER'S WILL NOT INCUR ADDITIONAL EXPENSE BUT THE PLAINTIFF WILL BE FORCED TO INCUR SUBSTANTIAL ADDITIONAL EXPENSES, DELAY AND EXCESSIVE EMOTIONAL DISTRESS BY TWO LENGTHY TRIALS OVER HER DAUGHTER'S DEATH.

Additional expenses will not be incurred by Parker's if the claims are not severed. In actuality, there is no evidence that a single trial of all parties would be more expensive than the

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[2] The Plaintiff disputes the new attorneys are "entitled" to the 180 days afforded to new parties, since both estates have been parties for more than 180 days. Maggie's Estate and Paul's Estate were added February 23, 2022. Nonetheless, the new lawyers certainly do not get more time than the "new" lawyers of a newly joined party under the applicable Rule. Further, none of the new lawyers have expressed that they need time beyond January.

[3] Just last week one of the Maggie Murdaugh Estate lawyers filed seeking the approval of $57,713 in attorney fees—many of which purport to be a result of **talking** to the Estate's other lawyer. Since preservation of assets was one of the main justifications of this Court in finding that the appointment of a receiver was appropriate, the Court should take notice of the fact that the bulk of assets is being depleted by the disincentives of the Court's abrogation of joint and several liability.

multiweek trial Parker's is proposing because Parker's argues all the same issues that will ultimately be argued in Plaintiff's claims against the Murdaugh Defendants. For example, Parker's denies Paul was the driver of the boat; Parker's asserts that intervening negligence of other parties caused the crash; Parker's claims it was not the proximate cause of the crash; and so forth and so on. Conversely, significant additional expense is a certainty for the Plaintiff if she is forced into two full-blown multiweek trials with identical evidence and witnesses.[4] The relative prejudice of additional expense is much greater for the Beaches and essentially non-existent for Parker's.

III. THE ISSUES ARE NOT SEPARATE AND DISTINCT.

The Court should reconsider its Order because the claims against Parker's are not separate and distinct from the other claims. In fact, during the hearing on Parker's Motion to Sever, the Court recognized that Rule 42(b) is inapplicable because the issues are overlapping and the claims are not separate, distinguishing it from the ability to sever the cases under Rule 20. Therefore, the Court focused its attention on Rule 20(b). However, if it is not proper under Rule 42(b), ordering separate trials under Rule 20(b) is likewise not proper. As commentators consistently explain, the same requirement of separate issues that applies to Rule 42(b) also applies to Rule 20(b), and in fact, Rule 20(b) is regarded as being **narrower** than Rule 42(b):

> Rule 20(b) allows the Court to order separate trials "to protect a party against embarrassment, delay, expense, or other prejudice from including a person against whom the party asserts no claim and who asserts no claim against the party." Lastly, under Rule 42(b) the Court may, "for convenience, to avoid prejudice, or to expedite and economize . . . order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third party claims." **The authority granted the Court under Rule 20(b) is a limited version of the same broad grant of discretion to provide for separate trials that is provided in Rule 42(b).**

[4] Again, these monetary costs are slight in comparison to the cost that will be placed on the Beach family by forcing them to endure two full blown trials.

Federal Trial Handbook: Civil, § 9:8. Bifurcating the issues; separate trials, October 2021 Update, (2021-2022 ed.). South Carolina law is clear that ordering separate trials is appropriate **only** if the specific claim or issue meets the "distinct issues" requirement.

> [A] trial may be bifurcated only if the issues are **so distinct that a trial of each alone would not result in injustice.** The very purpose of this principle is to cover cases in which separate juries decide separate issues. If SCRCP 42(b) [or 20(b)] contemplated bifurcation before the same jury only, there would be no need for the requirement that **the issues be distinct.** Indeed, it has been expressly recognized that the **"distinct issues"** requirement "'is dictated for the very practical reason that **if separate juries are allowed to pass on issues involving overlapping legal and factual questions the verdicts rendered by each could be inconsistent.'"**

Fortune v. Gibson, 304 SC 270 (Ct.App. 1991)(emphasis added); see also, Creighton v. Coligny Plaza, 334 S.C. 96.

Here, the issues are **not** distinct, since every factual and legal issue is overlapping. After all, Plaintiff will present the same evidence and testimony through the same witnesses in her claims against Parker's as well as in her claims against the Murdaugh Defendants. Of utmost importance is the fact that Plaintiff's damages are **indivisible** and necessarily will be proven through the same evidence and testimony in all claims. The overlapping factual and legal issues create a risk of inconsistent verdicts and result in the denial of the Plaintiff's right to a jury trial against the Murdaugh Defendants in a subsequent trial.

As the Fortune court explained, the critical rationale underlying the requirement of distinct or non-overlapping issues, is the **risk of inconsistent verdicts.** This risk is nearly a certainty, where all the same factual and legal issues pertaining to joint tortfeasors and indivisible damages are present. If a separate trial goes forward against Parker's, the Plaintiff, under principles of nonmutual collateral estoppel, will be bound by the jury's verdict on all issues while the Murdaugh Defendants will not. For example, in its Answer, Parker's claims Paul was not the driver of the

boat. If the jury finds that Paul was the driver, the Murdaugh Defendants can still relitigate that issue in the second trial with a different jury. However, if the jury in the Parker's trial finds that Paul was not the driver, the Plaintiff will be collaterally estopped from relitigating that issue in a second trial. The potential examples of inconsistent verdicts are endless, but they all have one thing in common: **the Plaintiff is the only party who bears that risk of prejudice and suffers tremendous prejudice as a result.** In short, the risk of inconsistent verdicts is the reason the issues and claims must be separate and distinct in order to justify separate trials. They are not separate and distinct here. There is simply no way to apply joint and several liability against these tortfeasors if separate trials take place. Again, if the jury returns a relatively small verdict against Parker's, the Murdaugh Defendants can hold the Plaintiff to the jury's decision on damages by raising a defense of collateral estoppel or satisfaction. On the other hand, if the jury returns a very large verdict against Parker's, the Murdaugh Defendants will not be bound because they were not parties to the trial against Parker's and the identity of parties requirement for collateral estoppel to apply will not be met. Rather, in that event, the Murdaugh Defendants could force Plaintiff to relitigate the amount of damages since a jury verdict against Parker's would have no collateral effect on their right to defend themselves before a jury of their own since they were not parties to the trial against Parker's.[5]

This demonstrates the prejudice from the order severing Parker's and the denial of Plaintiff's right to joint and several liability. The conundrum created for the Plaintiff by separate

[5] As noted above, due to Parker's net worth there is little likelihood of any verdict against any Murdaugh. The Beaches have the right to hold the Murdaughs accountable. If they were not interested in that, the Beaches could have simply accepted payment of the Murdaughs' insurance which has been offered the entire time this case has been pending.

trials is illustrated in Garner v. Wyeth Laboratories, Inc., 585 F.Supp. 189 (D.S.C. 1984)[6], a products liability case in which a wife and husband claimed personal injuries as the result of the wife being prescribed a contraceptive medication. The plaintiff first brought suit pursuant to the Federal Tort Claims Act against the United States of America, the employer of the prescribing physician. That case was tried without a jury and resulted in judgments for actual damages of $175,000 for the wife and $40,000 for the husband. The wife and husband then brought a separate action against the manufacturers of the medication for the same injuries. The manufacturer defendants immediately moved for summary judgment on their defense of satisfaction, relying on the "simple hornbook proposition: a plaintiff is entitled to but *one* compensation for his loss." Id. As the court explained, "[s]ince the plaintiffs fully litigated and received compensation for all compensable injuries, the defendants conclude that they are barred from filing a second suit premised upon the same injuries." Id. Conversely, the plaintiffs argued under the Restatement (Second) of Torts § 886 (1979) that "[t]he discharge of a judgment against one of several tortfeasors each of whom is liable for a single harm is treated like a release or covenant not to sue given to one of several tortfeasors for a claim not reduced to judgment'" Id. (citing Restatement (Second) of Torts (1979). Although, the court recognized that under South Carolina law "[a]n injured party is not precluded from bringing a subsequent action merely because one tortfeasor obtained a covenant not to sue or a release" and that "[a]n amount paid by one tortfeasor in

[6] Because the South Carolina Supreme Court had not yet answered the question presented, the district court sitting in diversity had to predict the determination the Supreme Court would reach. In the subsequent case of McGee vv. Bruce Hosp. System, 344 S.C. 466, 545 S.E.2d 286 (2001), the Supreme Court reviewed the issue of whether the satisfaction of an actual damages judgment precluded a subsequent action against a joint tortfeasor for punitive damages. In determining this issue, the Court noted that the district court predicted this particular issue on punitive damages incorrectly in Garner, but the remaining portion of Garner discussed above was not criticized by the Court in McGee.

consideration of a covenant not to sue or a release is regarded [merely] as satisfaction, *pro tanto*, so as to reduce the amount of damages recoverable against other tortfeasors," it concluded "satisfied judgments obtained as a result of a single injury prevent subsequent lawsuits.' Id. (citing Pendleton v. Columbia Ry. Gas and Electric Co., 133 S.C. 326, 131 S.E. 265 (1926). In other words,

> An injured person can sue any one or all of several tortfeasors whose negligent acts or omissions unite to produce an injury. Tortfeasors may be sued separately and a judgment rendered against each. If this is the case, the plaintiff must elect which judgment to collect. It is clear, however that a plaintiff is entitled to only one satisfaction. Once a judgment is satisfied, the injured party is precluded as a matter of law from bringing another action.

Id. (other citations omitted). The court focused on the **indivisible** nature of the injury and the effect of joint and several liability:

> Under South Carolina law, either tortfeasor is liable for the entire[7] loss sustained even though the acts of one concurred or combined with those of another to produce the result. This principle of liability, rests upon the simple rule that a defendant is liable for all consequences proximately cause by his wrongful conduct.
>
> The injuries which form the basis of the present lawsuits are *identical* to those adjudicated and compensated in the prior lawsuits. To put it another way, plaintiffs want two bites at the apple. The law, however, only gives them one.

Id. Even though the court concluded that the South Carolina Supreme Court would not adopt Section 886 of the Restatement as the plaintiffs advocated, the court noted that even if Section 886 were adopted, comment (b) would yield the same inevitable conclusion that the plaintiffs' claims against the manufacturer were precluded:

> If the adjudication of the loss has the effect of delimiting the injured party's entitlement to redress on the ground that the actual litigation

[7] "Liability" assumes the party is a defendant; if no Murdaugh is a defendant they will never be "liable" for actual damages and may never be "liable", period.

> of the issue of damages results in the injured person's being **precluded** from relitigating the damages question, … a payment in full of the judgment has the effect of satisfying in full the injured party's claim against any of the tortfeasors and there is no longer an enforceable claim.

Id. (citing Restatement (Second) of Torts § 886, Comment b (1979)). Moreover, the court noted that Comment (d), § 50 Restatement (Second) of Judgments (1983), was consistent:

> The adjudication of the amount of the loss also has the effect of establishing the limit of the injured party's entitlement to redress whoever the obligor may be. This is because the determination of the amount of the loss resulting from actual litigation of the issue of damages results in the injured person's being precluded from relitigating the damages question … Therefore when a judgment is based on actual litigation of the measure of a loss, and the judgment is thereafter paid in full, the injured party has no enforceable claim against any other obligor who is responsible for the same loss.

Id. Ultimately, relying on these principles, the court granted the defendants' motion for summary judgment on the grounds that the satisfaction of the prior judgment ended the plaintiffs' claims against other tortfeasors.

Applying these principles here, the Plaintiff will almost surely be bound to the amount of any judgment determined in the first trial. When the judgment is paid in full, that ends all claims against the Murdaughs.[8] In the unlikely event the whole judgment is not paid, then the Plaintiff could continue in a trial against the Murdaugh Defendants to establish negligence but would be limited to the amount determined in the first trial.[9] The only way the Beach family will get their right to have a jury determine all the issues, including damages, in a jury trial against the Murdaugh Defendants is a joint trial with all parties.

[8] There is no set of circumstances under which Parker's cannot satisfy any verdict.
[9] If the second verdict is less, again issues on appeal will occur allowing Parker's to argue the first verdict was motivated by passion, caprice or prejudice.

By creating a situation where the Plaintiff is bound by collateral estoppel but the remaining Defendants are not, the Order in fact denies the Plaintiff her right to a jury trial on the issues against the Murdaugh Defendants in violation of the Seventh Amendment. In Dodgeland, the court explained how separate trials can result in stripping the Plaintiff of this significant right:

> This factor [of separability] constitutes a threshold inquiry because bifurcation raises the possibility that any delay between separate trials may result in the loss of one or more jurors which would require the selection of a new jury. **In that instance, if the issues were not truly separable, the result would be that different juries would have considered the same issue, in violation of the Seventh Amendment.** *See* Wright, *supra* at 512 (p. 110, 1999 Pocket Part), *citing* *Matter of Rhone-Poulenc Rorer, Inc.,* 51 F.3d 1293, 1303 (7th Cir. 1995), *cert. denied,* 516 U.S. 867, 116 S.Ct. 184, 133 L.Ed.2d 122 (1995); *Castano v. American Tobacco Co.,* 84 F.3d 734 (5th Cir. 1996). Consequently, the issues must be truly separable before separate trials can be ordered without the risk of untoward consequences. Even if the issues are separable for purposes of the Seventh Amendment, a court will likely decline to bifurcate if there will be a significant overlap of evidence at the two trials which would make **separation inefficient and inexpedient**. Further, bifurcation is "improper where the issues are so closely interwoven that plaintiff would have to present the same evidence twice in separate trials. In such circumstances, judicial economy is fostered by a single trial." 8 Moore's Federal Practice 3d § 42.20[7][c].

Dodgeland of Columbia, Inc. v. Federated Mutual Ins. Co., 2009 WL 10710815 (D.S.C. 2009)(emphasis added). Here, in claims involving indivisible damages caused by the actions of joint tortfeasors who are jointly and severally liable, separate trials result in stripping the Plaintiff of her right to a jury trial of all the issues against the Murdaugh Defendants, as well as creating a situation where different juries will pass judgment on the same evidence. All of these things are in violation of Plaintiff's Seventh Amendment rights. The Court should reconsider its decision.

IV. SEVERANCE STRIPS PLAINTIFF OF HER SUBSTANTIAL RIGHT TO CHOOSE HER DEFENDANTS.

Of particular importance in illustrating why the Court should reconsider its Order Granting Parker's Motion to Sever is the case of Morrow v. Fundamental Long-Term Care Holdings, LLC, 412 S.C. 534, 773 S.E.2d 144 (2015). In Morrow, a nursing home resident and his wife brought an action against the nursing home operator and the corporate parent companies as a result of personal injuries. The plaintiffs alleged that the corporate entities were not only vicariously liable for the negligence of the nursing home operator but also directly negligent in underfunding the facility which led to understaffing that ultimately caused Plaintiff to suffer injuries. The corporate parent companies moved the trial court pursuant to Rule 42(b) to bifurcate the corporate negligence claims from the nursing home negligence claims arguing that the plaintiffs could proceed on the corporate negligence claims only if they were first successful in establishing negligence against the nursing home operator. Calling it an order of bifurcation, the trial court agreed and granted the motion, ordering separate trials of the claims. The plaintiffs appealed the order, but the Court of Appeals dismissed the appeal on the grounds that the order of "bifurcation" was not immediately appealable. On writ of certiorari, the Supreme Court disagreed, holding that the characterization of the order as one of "bifurcation" was not binding and it was immediately appealable because it affected the substantial right of the plaintiffs to be the architects of their lawsuit.

In ordering separate trials, the trial court ruled that the plaintiffs' claims against the corporate entities could go forward only if the plaintiffs were firskt successful in proving negligence against the nursing home operator. In other words, the trial court had, in severing the case, effectively granted or potentially granted the corporate entities summary judgment on the direct negligence claims, in contrast to the vicarious liability claims asserted by the plaintiffs against them due to negligence of the nursing home operator. While the trial court was correct that to proceed with the vicarious liability claims, the plaintiffs must first prove underlying negligence

against the nursing home operator, the same was not true with the claims of direct negligence against the corporate parent companies. The Supreme Court explained:

> We therefore find that the trial court's order misapprehended the nature of the Morrows' claims against the Fundamental Entities. The order treats these claims as based solely on vicarious liability that can be tried only after a finding of negligence on the part of Magnolia Place, when instead they are grounded in direct corporate liability which follows independent, albeit interconnected, duties owed to the Morrows. By considering the Morrow's claims against the Fundamental Entities as dependent upon their claim against Magnolia Place, the trial court's order effectively grants the Fundamental Entities potential summary judgment on the issues of direct corporate liability.
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> Accordingly, we find the trial court's order fits neatly within the statutory provision allowing immediate appeals where a substantial right is implicated. S.C.Code Ann. § 14–3–330(2)(a). **The effect of this order is to prevent the Morrows from being architects of their own complaint, and deprives them of bringing their case against the defendant of their own choosing.** *See Neeltec Enters., Inc., v. Long,* 397 S.C. 563, 566, 725 S.E.2d 926, 928 (2012) (**"The right of the plaintiff to choose her defendant is a substantial right within the meaning of [section 14–3330(2)(a)]"**). To prevent the Morrows from appealing the order immediately would encourage piecemeal litigation and limit their appellate remedies after the first trial on nursing home negligence and its subsequent appeal.

Morrow v. Fundamental Long-Term Care Holdings, LLC, 412 S.C. 534, 538–39, 773 S.E.2d 144, 146–47 (2015). As to the argument that an order for separate trials under Rule 42(b) was not immediately appealable, the Court responded:

> We decline the Fundamental Defendants' invitation to base our decision on the manner in which the motion was characterized—one of bifurcation. Our review of trial court orders is not constrained by how the order is styled. *See Thornton v. S.C. Elec. & Gas Corp.,* 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct.App.2011) ("[A]n appellate court should look to the effect of an interlocutory order to determine its appealability.").
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> The trial court's order is quite distinct from other orders of bifurcation which have come before this Court. *See e.g., Flagstar*

Corp. v. Royal Surplus Lines, 341 S.C. 68, 533 S.E.2d 331 (2000) (holding order bifurcating issue of exclusion under insurance contract from issue of occurrence was not appealable); *Senter v. Piggly Wiggly Carolina Co.,* 341 S.C. 74, 533 S.E.2d 575 (2000) (holding order bifurcating issues in contract case between liability and damages was not immediately appealable); *see also Durham v. Vinson,* 360 S.C. 639, 602 S.E.2d 760 (2004) (encouraging bifurcation of issues of actual and punitive damages in complex medical malpractice cases). We are therefore free to evaluate the trial court's order as what it is—not merely what it appears to be—and hold that it is one which is immediately appealable.[10]

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[10] This distinction between bifurcation and severance is significant and blurred in the Court's Order here. As commentators consistently explain,

> Three rules inform a district court's power to sever or bifurcate claims or issues, and to order separate trials: Federal Rules of Civil Procedure 20(b), 21, and 42(b). **Rule 20(b)**, in the context of a permissive joinder of parties, allows the court to issue orders, including an order for **separate trials**, "to protect a party against embarrassment, delay, expense, or other prejudice that arises from including a personal against whom the party asserts no claim and who asserts no claim against the party." **Rule 21** allows the court to "**sever** any claim against a party" where there has been a **misjoinder** of parties. **Rule 42(b)** permits the court to order a **separate trial** of one or more separate issues or claims (including cross-claims, counterclaims, or third-party claims) when bifurcation is necessary for "convenience, to avoid prejudice, or to expedite and economize" the civil action.
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> A separate trial under Rules 20(b) and 42(b) is **not** synonymous to severing a claim under Rule 21.
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> Granting a separate trial under Rule 42(b) and severing a claim under Rule 21 are **not** synonymous procedures, as "**separate trials of claims originally sued upon together usually will result in the entry of one judgment, but severed claims become entirely independent actions to be tried, and judgment entered thereon, independently**."
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> Thus, two claims severed under Rule 21 will result in two actions. Bifurcation under [Rule 20(b)] or Rule 42(b) does not so operate.

Just as in Morrow, the Court's Order Granting Parker's Motion to Sever is fatally flawed. First, "it is based on a material misunderstanding" of the connection between Plaintiff's claims against Parker's and the other defendants arising out of the concepts of indivisible damages and joint and several liability. Id. Second, "the effect of this order is to prevent the [Plaintiff] from being architect[] of [her] own complaint, and deprives [her] of bringing [her] case against the defendant[s] of [her] own choosing." Id. Third, while the Order purports to be made pursuant to Rule 20(b) which allows bifurcation and is typically not immediately appealable, the Order actually severs the Plaintiff's claim against Parker's abrogating the law of joint and several liability applicable to this case, thereby stripping the Plaintiff of her substantial right to choose her defendants as architect of her claim, denying her right to avoid the risk of inconsistent verdicts and collateral estoppel, and stripping her right to a jury trial against the Murdaugh Defendants. Just as in Morrow, the effect of the order of separate trials in effect grants summary judgment against the Plaintiff in her claims against the Murdaugh Defendants. This result is not allowed under Morrow,

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Federal Trial Handbook: Civil, § 9:8. Bifurcating the issues; separate trials, October 2021 Update, (2021-2022 ed.)(citations omitted). In other words, severance, which results in two separate actions with free-standing final judgments, is only permitted under Rule 21. Rule 21 is applicable only in cases of **misjoinder.** Here, Parker's was properly joined as a joint tortfeasor who is subject to joint and several liability. Rule 20(a) is the rule that allowed Plaintiff to properly join Parker's and the other defendants in one action because they are joint tortfeasors and Plaintiff has asserted claims against them, jointly and severally, a right to relief arising out of the same series of transactions or occurrences and there are questions of law and fact common to all defendants. While Plaintiff could have chosen to bring separate actions, she chose to join Parker's with the other defendants as joint tortfeasors. After all, under the longstanding law of South Carolina, the Plaintiff, as the master of her complaint, gets to choose which tortfeasors to sue. There is simply no question that Parker's is properly joined under Rule 20(a). Therefore, Rule 21 does not apply because Parker's is not misjoined and severance is improper. Here, the Court has essentially severed the claims under Rule 21 which will in theory result in separate judgments, just as the trial court did in Morrow, even though the Order purports to be pursuant to Rule 20(b). The Court's reasoning is in error.

under our Supreme Court's pronouncement in that case, or under the Constitution. Further, this reality renders the Order Granting Parker's Motion to Sever immediately appealable.

This same sentiment of appreciating the substantial right a plaintiff has in choosing which tortfeasors to join in her suit is reflected in Smith v. Tiffany, where our Supreme Court was faced with a similar issue involving the application of 15-38-15. Smith, 419 S.C. 548, 799 S.E.2d 479 (2017). In Smith, the converse fact pattern developed in which the joint tortfeasors sued by the plaintiff sought to have other joint tortfeasors added as defendants pursuant to Rules 14 and 19, SCRCP. The Court quickly recognized that the existing defendants, through application of the SCRCP, were attempting to have the Court usurp the authority of the legislature exercised by the enactment of section 15-38-15, that contemplates both situations where a plaintiff may choose not to name all tortfeasors as well as situations where a plaintiff may choose to name all tortfeasors, but also the well-established common law making the plaintiff master of her lawsuit.[11] As to the trial court's abrogation of the statute, the Court explained:

> The most prominent obstacle to Appellants' approach is separation of powers, for we must defer to the will of the legislature as expressed in the Act. If the policy balance struck by the legislature in [the] Act is to be changed, that prerogative lies exclusively within the province of the Legislative Branch.
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> . . .
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> The point remains—absent a constitutional prohibition, where the General Assembly has spoken and established policy, separation of powers demands that courts honor the legislative policy determination. Moreover, Appellants' proposed result, advanced by the dissent, would turn the Act on its head to benefit nonsettling defendants at the expense of plaintiffs and those who do settle. That is not the balance the General Assembly struck in the Act. In honoring separation of powers, we adhere to the principle that a court must not reject the legislature's policy determinations merely

[11] By granting the severance, the Court misunderstood the significance of the Plaintiff's right to "sue" in one lawsuit the people of her choosing and denied her of this right.

> because the court may prefer what it believes is a more equitable result.

Id. Ultimately, the Court "reject[ed] the implication that a rule of civil procedure somehow trumps the Act." Id. In addition to that sound basis, also underlying this holding was the Court's unwillingness "to abrogate two centuries of common law establishing a plaintiff's right to choose which tortfeasors, if any, she will sue":

> Throughout the years, this Court has offered various reasons for refusing to allow defendants to bring in alleged joint tortfeasors a plaintiff has opted not to sue. Perhaps most often cited is the 'plaintiff chooses' rule: 'one who is injured by the wrongful act of two or more joint tort-feasors has an election or option to sue each of such tort-feasors separately or to joint them as parties in a single action. The election or option referred to is given to the plaintiff and not to the defendant. To allow a defendant against the will of the plaintiff to bring in other joint tortfeasors as defendants would deny the plaintiff the right to name whom he should sue.' The 'plaintiff has the choice of designating the party who she claims committed the tort alleged in the complaint.' 'She should not be required to sue someone against whom she makes no claim.' Indeed, this right of the plaintiff to choose her defendant has been recognized in South Carolina jurisprudence for almost two hundred years.[12]

Id. (citing Simon v. Strock, 209 S.C. 134, 39 S.E.2d 209 (1946); Doctor v. Robert Lee, Inc., 215 S.C. 332, 55 S.E.2d 68 (1949); Little v. Robert G. Lassiter & Co., 156 S.C. 286, 153 S.E. 128 (1930). The same principles apply here where the Plaintiff chose to name multiple joint tortfeasors, in accordance with almost two hundred years of South Carolina jurisprudence, who are subject to pure joint and several liability, by virtue of the legislative pronouncement in S.C. section 15-38-15(F). By severing Plaintiff's claim against Parker's, the Court is allowing Parker's to escape the application of 15-38-15 through a reading of the SCRCP in a way that trumps legislative power to enact the law, as well as the common law. Simply put, severance of claims

[12] Plaintiff recognizes the Court reasoned that her right to sue who she wanted had not been denied, but the Court misunderstood the rule. The right to control the presentation of her claims is in fact the right to be the architect of whom she sues.

involving joint tortfeasors and indivisible damages where the plaintiff has chosen to name multiple joint tortfeasors is not appropriate. See, in Holsenbeck v. Bravo Carpenters, Inc., 2019 WL 652198 (D.S.C. 2019)(holding that because "the Rico Defendants are potential joint tortfeasors as to Plaintiff's underlying claims, [u]nder the relevant rules, it would be premature and inappropriate for the Court to find that a direct claim by Plaintiff against the Rico Defendants would be dispensable and subject to severance").

V. RULE 20(b) DOES NOT APPLY BECAUSE DEFENDANTS ARE ASSERTING CLAIMS AGAINST EACH OTHER.

The Court should reconsider its Order because of the difference between a "right to relief" and "claim" as used in Rule 20. A close reading of Rule 20 reveals that subsection (b) does not apply to these facts. Under Rule 20(b), "the court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts **no claim** and who asserts **no claim** against him, and may order **separate trials** or make other orders to prevent delay or prejudice." Rule 20(b), SCRCP (emphasis added). In contrast, subsection (a) of Rule 20 which allows joinder speaks in terms of a Plaintiff's "**right to relief**". The juxtaposition between "right to relief" and "claim" is significant and intentional; these terms can have different meanings under the rule. Under South Carolina law, rules of procedure are subject to the same rules that apply to statutory interpretation. As our Supreme Court has explained,

> It is axiomatic that statutory interpretation begins (and often ends) with the text of the statute in question. *See Timmons v. S.C. Tricentennial Comm'n*, 254 S.C. 378, 401, 175 S.E.2d 805, 817 (1970) ("If a statute is clear and explicit in its language, then there is no need to resort to statutory interpretation or legislative intent to determine its meaning."); *see also Transp. Ins. Co. v. S.C. Second Injury Fund*, 389 S.C. 422, 429, 699 S.E.2d 687, 690 (2010) ("The text of a statute as drafted by the legislature is considered the best evidence of the legislative intent or will." (citing *Hodges v.*

> *Rainey,* 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000))). Absent an ambiguity, there is nothing for a court to construe, that is, a court should not look beyond the statutory text to discern its meaning. "[T]here is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning" unless a statutory provision is ambiguous. *Paschal v. State Election Comm'n*, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995) (citing *Miller v. Doe,* 312 S.C. 444, 441 S.E.2d 319 (1994)); *see also Tilley v. Pacesetter Corp.*, 355 S.C. 361, 373, 585 S.E.2d 292, 298 (2003) (observing that unless a statute is ambiguous, "the application of standard rules of statutory interpretation is unwarranted"). Only "[w]here the language of an act gives rise to doubt or uncertainty as to legislative intent" may the construing court "search for that intent beyond the borders of the act itself." *Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 348, 549 S.E.2d 243, 247 (2001) (citing *Lite House, Inc. v. J.C. Roy Co.,* 309 S.C. 50, 53, 419 S.E.2d 817, 819 (Ct. App. 1992).

Smith v. Tiffany, 419 S.C. 548, 555–56, 799 S.E.2d 479, 483 (2017). In Smith, the Court, ironically enough, was examining the language of S.C. Code Section 15-38-15 found in the South Carolina Contribution Among Tortfeasors Act. In some places in 15-38-15, the legislature used the term "defendants", while in other places, the legislature used the term "potential tortfeasors". One of the parties argued that the word "defendants" was synonymous with the term "potential tortfeasors". However, the Supreme Court found that the text of the statute was clear and no interpretation was necessary:

> In light of these well-established rules of statutory interpretation, we are unwilling to accept Appellants' invitation to look outside the text of the Act to justify the assumption that the legislature's use of **differing terms**—"defendants" and "potential tortfeasors"—in section 15-38-15 was not deliberate or that those words mean anything other than what they say. *See Hodges*, 341 S.C. at 87, 533 S.E.2d at 582 ("If the legislature's intent is clearly apparent from the statutory language, a court may not embark upon a search for it outside the statute." (citing *Abell v. Bell,* 229 S.C. 1, 91 S.E.2d 548 (1956))); *see also CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) ("[T]he words found in the statute [must be given] their 'plain and ordinary meaning ' " and "if

> the words are unambiguous, we must apply their literal meaning." (quoting *Sloan v. Hardee,* 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007))).

Smith v. Tiffany, 419 S.C. 548, 556, 799 S.E.2d 479, 483 (2017).

Applying this same rationale to the language of Rule 20, "right to relief" and "claim" are differing terms. The drafters of the rules used differing terms for a reason, and it is improper to look any further than the language of the rule itself when the plain and ordinary meaning of the terms is clear. As a number of commentators have explained,

> Rule 20(b) provides that the court may order separate trials to prevent delay or prejudice when an existing party to an action has **no dispute** with new parties added by other litigants. Rule 42(b) subsumes Rule 20(b), and the standards and procedure for separation under the rules are the same. Rule 20 merely permits the court to order separate trials where there has been joinder of a party having **no dispute** with an existing party. Rule 42 permits this and other separation whenever it will promote economy or justice.

Fundamentals of Litigation Practice, Herr, Haydock & Stempel, § 24.5. Motions Affecting the Scope of the Litigation—Separate Trials, August 2022 Update (2021 ed.). The "dispute" need not be a claim for money damages as argued by Parker's. In other words, "claim" is broader than "right to relief". "Claim" is defined generally as "[a] statement that something yet to be proved is true; the assertion of existing right" while "relief" is defined generally as involving "payment", "aid or assistance", or "redress or benefit". Black's Law Dictionary. Our case law makes it clear that "right to relief" is determined from the Plaintiff's perspective. Smith v. Tiffany, 419 S.C. 548, 799 S.E.2d 479 (2017); Botchie v. O'Dowd, 299 S.C. 329, 384 S.E.2d 727 (Ct.App. 1989); S.C. Dept. of Health & Environmental Control v. Fed. Serv. Indus., Inc., 294 S.C. 33, 362 S.E.2d 311 (Ct.App. 1987); Wade v. Berkeley County, 348 S.C. 224, 559 S.E.2d 586 (2002). Accordingly, when a plaintiff asserts a "right to relief" against a defendant, she is asserting a right to payment of damages, a right to redress or benefit. Conversely, when a defendant asserts defenses against a

co-defendant that involve blaming the co-defendant, the defendant is not asserting a right to relief by payment of damages. Rather, the defendant is asserting a claim of an existing right to blame another defendant in order to disprove a right to relief asserted by the plaintiff. The claims or defenses asserted by Parker's are disputes that satisfy the meaning of "claim" under the rule because the defendant is asserting an existing right in the form of a defense against another defendant and is making a statement that something yet to be proved is true. Otherwise, the authors of the rule would have consistently used "right to relief" in both subsections of Rule 20. The authors did not. That necessarily means that "claim" is broader than "right to relief" and includes the assertion by one defendant that another defendant is to blame. Therefore, Rule 20(b) by its very terms is inapplicable to the facts of this case, thereby making separate trials inappropriate under Rule 20(b).

VI. THE NOTORIETY OF THE MURDAUGH DEFENDANTS IS NOT A PROPER CONSIDERATION IN GRANTING SEVERANCE.

The Court should not find that the "notoriety" surrounding the Murdaugh Defendants creates prejudice to Parker's that supports severance of the claims. That Parker's is "tethered" to the Murdaughs is a situation of their own making by **illegally selling alcohol to an underage Paul Murdaugh.** Parker's has no one to blame but itself for the situation in which it finds itself. Certainly, its wrongful conduct is not a basis to deny the Plaintiff of her rights as described above.

CONCLUSION

For each of these reasons, the Plaintiff respectfully request the Court's reconsideration of its Order Granting Parker's Motion to Sever which is immediately appealable and fraught with errors that will result in reversal and a gargantuan waste of money and judicial economy, not to mention the unfathomable and unnecessary emotional burden that will be endured by the Beach family—who happen to be the only victims in this saga.

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