THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Alex Kinlaw, Jr., Circuit Court Judge

Case No. 2015-CP-10-2191
App. Case No. 2019-001403

Karrie Gurwood & Howard Gurwood ..... *Appellants*

v.

GCA Services Group, Inc. & GCA Services Group of North Carolina, Inc. ..... *Respondents.*

APPELLANTS' FINAL BRIEF

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STATEMENT OF THE CASE

Appellants Karrie and Howard brought this action for negligence and loss of consortium claims against Respondents arising out of injuries Appellant Karrie Gurwood sustained as the result of a fall which occurred on a freshly waxed floor on or about August 5, 2012. R. 27. Respondents are the maintenance company charged with cleaning and maintenance of the premises where the fall occurred. At trial, the Respondents disputed liability and damages, and proffered two (2) affirmative defenses of assumption of the risk and comparative negligence. R. 37.

During Appellants' case in chief, Respondents' employee, Ms. Bonnie Every, testified that she was responsible for waxing the floors on the date of the incident. R. 216. Ms. Every testified that she knew the freshly waxed floor was extremely slippery and dangerous to walk on and that warnings were necessary to prevent people from being injured by the dangerous condition. R. 223. Ms. Every testified that she was aware that Respondents had policies, procedures and rules in place, and that these rules were in place to keep people safe. R.224. Ms. Every conceded that the she did not use signage as required by the Respondents' own policies and procedures. R. 236. Further, Ms. Every admitted that Respondents did not supply her with most of the safety equipment and warnings that she was required to use as set forth in the Respondent's training manuals. R. 225–226.

Evidence was presented regarding which signs, if any, were allegedly present on the date of the incident. R. 237–256. It is uncontradicted that Ms. Every testified to several different versions of the events leading up and including the date of the incident. R. 247. Further, she admitted that the neither the placement of two paper signs nor the complete failure to place any signs would have complied with the safety policies and procedures of the Respondents. *Id.*

During the trial, Appellants proffered extensive testimony regarding the past, present, and future damages sustained by each of them as a direct and proximate cause of Respondents' negligence.

See, generally, R. 399–487; 526–557. Both Appellants provided extensive testimony as to Appellant Karrie Gurwood's injuries and the profound impact they have had on her life as a result of the uncontradicted pain and suffering, mental anguish, loss of enjoyment of life, diminished capacity and other injurious effects of Respondent's negligent conduct on both Appellants' lives in the past, present, and future. *Id.* This uncontradicted testimony included the significant adverse impact that the injuries sustained by Karrie Gurwood had had on the Appellants' marriage and lives. *Id.*

Appellant Karrie Gurwood presented evidence regarding the disabling medical condition that was caused by the incident. *See, generally*, R. 399-487. Karrie was diagnosed with Complex Regional Pain Syndrome ("CRPS") by an internationally renowned expert in the field, Dr. Timothy Lubenow. Dr. Lubenow performed an independent medical examination ("IME") on Appellant, whereby he confirmed the diagnosis of CRPS. R. 336; R. 391. Further, Appellant called Respondents' expert witness, Dr. Robert Blackwell, who also confirmed and opined that Appellant Karrie Gurwood suffered from CRPS, and that the CRPS was directly and proximately caused by the August 5, 2012 incident. R. 711. Both doctors testified that Karrie's CRPS is a permanent, disabling condition that will require future medical treatment to manage her condition. R. 337–338; R. 673.

Dr. Lubenow testified regarding the mechanism of injury that occurs with CRPS patients, and explained, in detail, the debilitating, injurious and painful nature and effect of CRPS. R. 321–325; R. 338–340. Further, Dr. Lubenow testified regarding the extent and frequency of future necessary medical treatment, including the cost of said treatment. R. 363–367. He testified that the present-day value of that treatment totaled $776,660.00. R. 367. Dr. Lubenow is one of the world's leading experts in the diagnosis and treatment of CRPS. R. 325–328. His testimony regarding Karrie Gurwood's future medical care needs was based on his extensive international experience in developing and performing the procedures designed to effectively treat CRPS, and his extensive research into the costs of

necessary medications and procedures. R. 325–328; 342–343. The evidence before the jury regarding the total projected future medical bills for Gurwood's future medical care was uncontradicted at trial.[1]

Dr. Lubenow opined that Karrie Gurwood is unable to work and will be unable to work in the future due to her permanent, debilitating condition. R. 297; R. 340. Testimony was also elicited from Appellant during cross-examination by Respondents regarding a permanent impairment rating assigned to Appellant Karrie Gurwood. R. 432. Respondents were allowed, over Appellants' objection, to cross-examine Appellant as to the existence of health insurance coverage. R. 475–480.

Appellant presented testimony from Dr. Zdenek Hejzlar, an expert in engineering and safety, who testified regarding the safety hierarchy. R. 573. The hierarchy provides that the hazard should be eliminated if possible; if the hazard cannot be eliminated, it should be guarded; and if guarding is not available or effective, warnings should be utilized. *Id.*

Dr. Hejzlar testified regarding his extensive, hands-on experience with the United States military and most of the major cruise lines regarding specific steps he had previously developed and that have been successfully utilized on numerous prior occasions to identify, reduce and/or eliminate slip, trip, and fall hazards that are created when floors are waxed. R. 612–616; R. 563; R. 574; R. 589. This is the precise situation and condition that existed at the time of the incident which forms the basis of this lawsuit, i.e. a waxed and slippery floor surface. R. 27.

Dr. Hejzlar testified regarding his extensive hands-on experience with the product that was used on the date of the incident, iShine, and his extensive experience in developing and applying a process to address and reduce or eliminate the hazard created by freshly waxed floors. R. 612–616; R. 563; R. 574; R. 589; R. 614. Dr. Hejzlar's testimony was uncontradicted – he had developed and implemented specific processes in the past for the United States Military and numerous cruise lines

[1] Respondents' expert, Dr. Blackwell, was not permitted to testify as to his basis for estimating the cost of Appellants future medical care, although, that evidence was proffered on the record. R. 687–708. Importantly, Dr. Blackwell did not dispute that Appellant required future medical treatment as a result of her injuries, only the cost of same. R. 1507–1521.

whereby he was able to effectively reduce or eliminate the slipping hazard caused by freshly waxed floors. R. 612–616; R. 563; R. 574; R. 589; R. 614. In other words, he had developed and utilized proven processes based upon recognized scientific methods to effectively reduce or eliminate the precise slip hazard that existed in this case from a freshly waxed floor. *Id.*

When Dr. Hejzlar was asked to articulate his opinions on how these processes could have and should have been used on the date of the incident to reduce or eliminate the hazard that caused Karrie Gurwood's incident and injuries, he was not permitted to do so by the Court. R. 629–637; R. 644–652. This was despite the fact that an appropriate, detailed foundation had been established which provided the appropriate, evidentiary basis for his opinions. *See, generally*, R. 512–629.

Further, the Parties in this matter stipulated that should the jury find that Appellants were entitled to lost wages, lost earning capacity and loss of household services, the amount of these two elements of damages was stipulated and agreed to be $967,079.00 and $710,316.00. R. 1101.

During juror deliberations, the jury communicated multiple questions to the trial judge including: 1. "Did [Appellant] file a worker's compensation claim?"; 2. "If not, why isn't the school district a party to the case?"; 3. "Can we have a copy of the charging definitions?"; 4. "Can we have the charging definitions for negligence and comparative negligence?"; and, 5. "If [Appellant] is more than 50% at fault, does that mean there is no award to [Appellant]?" R. 1425–1426.

After trial and deliberations, the jury ultimately returned a verdict in favor of the Appellant in the exact amount of her past medical bills, $170,610.29, indicating that the jury believed the medical treatments received by Appellant were reasonable and necessary and directly and proximately caused by the Respondents' negligence. R. 19.

However, the jury failed to make any award of any other damages including past, present, and future pain and suffering, mental anguish, loss of enjoyment of life, diminished earning capacity, permanent disfigurement, and loss of household services, including the amounts stipulated to by all

Parties. R. 19. Appellants filed post-trial motions with the court, seeking a new trial as to the issue of damages only, a new trial *nisi*, or a new trial absolute. R. 1. The trial court denied the motions, and Appellants filed the present appeal. *Id.*

SUMMARY OF LEGAL ARGUMENTS

I. The trial court erred in denying Appellants' Motion for New Trial where the verdict returned by the jury was inconsistent with the evidence presented at trial and reflects the jury's confusion.

II. The trial court erred in granting Respondents' Motion for directed verdict as to punitive damages where evidence was presented that there was a willful disregard for safety rules that were in place to prevent injury to others.

III. The trial court abused its discretion in allowing Respondents' liability expert, Dr. Leah Hartman, to testify and present scientific testimony regarding Appellant's alleged awareness of the dangerous condition based upon a methodology which lacked any indicia of reliability

IV. The trial court abused its discretion in excluding testimony by Appellants' expert, Dr. Zdenek Hejzlar, as to the manner in which the dangerous condition at issue could have been eliminated or guarded against.

V. The trial court abused its discretion in allowing Respondents to introduce evidence of collateral sources to impeach Appellant.

VI. The trial court abused its discretion in denying Appellants' motion for directed verdict and charging the jury on assumption of the risk where there was no competent evidence presented that satisfied the second and third elements of the assumption of the risk defense.

STANDARD OF REVIEW

"A [circuit court]'s order granting or denying a new trial upon the facts will not be disturbed unless [its] decision is wholly unsupported by the evidence[ ] or the conclusion was controlled by an error of law." *Ralph v. McLaughlin*, 428 S.C. 320, 339–40, 834 S.E.2d 213, 223 (Ct. App. 2019), *reh'g denied* (Nov. 15, 2019) (*citing Curtis v. Blake*, 392 S.C. 494, 500, 709 S.E.2d 79, 82 (Ct. App. 2011)): *Folkens v. Hunt*, 300 S.C. 251, 254–55, 387 S.E.2d 265, 267 (1990)). "The trial judge alone has the power to grant a new trial *nisi* when he finds the amount of the verdict to be merely inadequate or excessive." *O'Neal v. Bowles*, 314 S.C. 525, 526–27, 431 S.E.2d 555, 556 (1993) (*citing Easler v. Hejaz Temple*, 285 S.C. 348, 329 S.E.2d 753 (1985)). The [grant or] denial of a motion for a new trial *nisi* is within the trial judge's discretion and will not be reversed on appeal absent an abuse of discretion. *Id. Mickle v. Blackmon*, 252 S.C. 202, 166 S.E.2d 173 (1969); *Zorn v. Crawford*, 252 S.C. 127, 165 S.E.2d 640 (1969).

Qualification of an expert and the admission or exclusion of his testimony is a matter within the sound discretion of the trial court. *Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 25–26, 609 S.E.2d 506, 509 (2005) Similarly, the admission or exclusion of evidence in general is within the sound discretion of the trial court. *Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Communities, Inc.*, 397 S.C. 348, 360, 725 S.E.2d 112, 119 (Ct. App. 2012); *Whaley v. CSX Transp., Inc.*, 362 S.C. 456, 483, 609 S.E.2d 286, 300 (2005); *State v. Gaster*, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002).

In both instances, the trial court's decision will not be disturbed on appeal absent an abuse of discretion. *Pike v. S.C. Dept. of Transp.*, 343 S.C. 224, 234, 540 S.E.2d 87, 92 (2000); *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 252, 487 S.E.2d 596, 598 (1997); *Means v. Gates*, 348 S.C. 161, 166, 558 S.E.2d 921, 923 (Ct.App.2001).

An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support. *Carlyle v. Tuomey Hosp.*, 305 S.C. 187, 193, 407 S.E.2d 630, 633 (1991); *Fontaine v. Peitz*, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987). A trial court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion when the ruling is manifestly arbitrary, unreasonable, or unfair. *Means*, 348 S.C. at 166, 558 S.E.2d at 924.

"When reviewing the trial court's ruling on a motion for a directed verdict ... this Court must apply the same standard as the trial court...." *Shenandoah Life Ins. Co. v. Smallwood*, 402 S.C. 29, 34–35, 737 S.E.2d 857, 859–60 (Ct. App. 2013) (*citing RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331, 732 S.E.2d 166, 171 (2012). Viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party, the trial court must deny a motion for a directed verdict if the evidence yields more than one reasonable inference." *Id.* "On appeal from an order granting a motion for a directed verdict, therefore, the appellate court must determine whether it would have been reasonably possible for the jury to return a verdict for the party opposing the motion." *Erickson v. Jones St. Publishers, L.L.C.*, 368 S.C. 444, 463, 629 S.E.2d 653, 663 (2006).

LEGAL ARGUMENTS:

I. The trial court erred in denying Appellants' Motion for New Trial where the verdict returned by the jury was inconsistent with the evidence presented at trial and reflects the jury's confusion.

"Motions for a new trial on the ground of either excessiveness or inadequacy are addressed to the sound discretion of the trial judge." *Graham v. Whitaker*, 282 S.C. 393, 401, 321 S.E.2d 40, 45 (1984). "[Their] exercise of such discretion, however, is not absolute..." *Id.* Under the "thirteenth juror" doctrine, a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict. This ruling has also been termed a granting of a new trial upon the fact. *See,Gastineau v. Murphy*, 323 S.C. 168, 181, 473 S.E.2d 819, 827 (Ct. App. 1996); *S.C. Highway Dept. v. Townsend*, 265 S.C. 253, 217 S.E.2d 778 (1975). The trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts in the case. *Graham*, 282 S.C. 393, 321 S.E.2d 40 (1984).

Traditionally, in South Carolina, circuit court judges have the authority to grant a new trial upon the judge's finding that justice has not prevailed. *Todd v. Owen Indus. Prods., Inc.*, 315 S.C. 34, 431 S.E.2d 596 (Ct. App. 1993). Similarly, the judge may grant a new trial if the verdict is inconsistent and reflects the jury's confusion. *Johnson v. Parker*, 279 S.C. 132, 303 S.E.2d 95 (1983). *See also, Johnson v. Hoechst Celanese Corp.*, 317 S.C. 415, 453 S.E.2d 908 (Ct. App. 1995) (under "thirteenth juror doctrine," trial court may grant new trial if judge believes verdict is unsupported by evidence and, similarly, new trial may be granted if verdict is inconsistent and reflects jury's confusion). The trial judge must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives. *See,Cock-n-Bull Steak House, Inc. v. Generali Ins. Co.*, 321 S.C. 1, 466 S.E.2d 727 (1996); *McCourt by and Through McCourt v. Abernathy*, 318

S.C. 301, 457 S.E.2d 603 (1995); *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 431 S.E.2d 557 (1993); *O'Neal v. Bowles*, 314 S.C. 525, 431 S.E.2d 555 (1993);

When the jury's verdict is "merely inadequate or excessive, the trial judge has the discretionary power to grant a new trial *nisi*." *See,Waring v. Johnson*, 533 S.E.2d 906, 341 S.C. 248 (Ct. App. 2000); *Bailey v. Peacock*, 318 S.C. 13, 455 S.E.2d 690 (1995); *McCourt by and through McCourt v. Abernathy*, 318 S.C. 301, 457 S.E.2d 603 (1995) (trial judge alone has power to grant new trial nisi when he finds amount of verdict to be merely inadequate or excessive).

Our State's courts have held as a matter of law that where a jury has found a plaintiff's medical expenses to be reasonable and necessary, they are required to award pain and suffering, and may not simply award just the exact amount of the medical bills. *See,generally*, *Howard v. Roberson*, 376 S.C. 143, 157, 654 S.E.2d 877, 884 (Ct. App. 2007), *See,also*, *Waring v. Johnson,* 341 S.C. 248, 258, 533 S.E.2d 906, 911 (Ct. App. 2000) (failure to award damages for pain and suffering is grounds for a new trial *nisi additur*).

In the case at bar, the trial judge abused their discretion in denying Appellants' Motions for New Trial and New Trial Nisi. The jury's verdict of damages only for past medical bills incurred is clearly inconsistent with the evidence presented and reflects the jury's confusion. In reaching their verdict, the jury found the Respondents liable to Appellants for their negligence and awarded Appellants damages in the exact amount of past medical bills incurred by Karrie Gurwood. R. 19. A plain reading of the jury's verdict indicates that the jury came to the following conclusions:

1. Respondents owed Appellant a duty, subsequently breached that duty, and this breach was the direct and proximate cause of Appellant Karrie Gurwood's injuries.
2. The medical care received to date by Appellant for her injuries, including her Complex Regional Pain Syndrome (CRPS), was reasonable, necessary and

related to the injuries she sustained as a direct and proximate result of the Respondents' negligence.

3. Despite finding that Appellant was diagnosed with and received treatment for CRPS, a pain syndrome, the jury found that she was not entitled to an award of damages for pain and suffering.

4. Despite the uncontroverted diagnosis and testimony by both Appellant and Respondents' experts as to the permanency of the pain syndrome and the medical necessity of future medical care, the jury found that Appellant was not entitled to an award for future pain and suffering or for future medical expenses related to this injury.

5. Despite uncontradicted testimony and evidence regarding the adverse effect the CRPS has had on Appellant's life, including her inability to work; inability to perform even basic tasks at home; inability to enjoy the activities and things she once could enjoy; restrictions on her mobility and activity (which were clearly visible at trial); her permanent impairments and disfigurement, including hair loss which was clearly visible at trial; her suffering from the injurious side-effects of the medications[2] she is currently forced to take; and, the detrimental effects her injuries have had on her mental well-being, including driving Appellant to the point of suicidal ideation, the jury still found that Appellant was not entitled to any damages for past, present, or future loss of earning capacity, loss of enjoyment of life, permanent disfigurement, or mental anguish.

[2] Medications which the jury found were reasonably related to her injuries by awarding her compensation for previous expenditures on same. R. 19.

6. Finally, despite finding that Appellant's injuries have resulted in a permanent medical condition, requiring extensive past and future medical treatment, and despite extensive testimony regarding the limitations placed on Appellant's life, the jury found that has not resulted in any detriment or impact on Appellant Howard Gurwood's life, or the Appellants' marriage, such that Appellant Howard Gurwood is not entitled to an award of damages for loss of consortium.

R. 19. The jury's verdict is manifestly illogical, inconsistent with the evidence presented, and insufficient as a matter of law and reflects the jury's confusion as to the proper application of the facts to the law. Accordingly, there are compelling reasons for the trial court to invoke the "13th juror doctrine" and ensure that justice prevails in this matter. *Johnson v. Parker*, 279 S.C. 132, 303 S.E.2d 95 (1983); *Johnson v. Hoechst Celanese Corp.*, 317 S.C. 415, 453 S.E.2d 908 (Ct.App.1995); *Waring*, 341 S.C. 248, 258, 533 S.E.2d 906, 911 (Ct. App. 2000). Appellants sought either a new trial *nisi*, or in the alternative, a new trial absolute as to all issues or as to the issue of damages only, yet the trial court denied all requests. R. 1.

Appellants submit that the verdict's inconsistency warrants, at the least, an additur by the trial court as it reflects confusion by the jury, inadequately compensates Appellants for their injuries, and does not comport with the law as instructed by the Court nor the laws of this State. Further, Appellants contend that the verdict rendered was so grossly inadequate and inconsistent with the evidence that it ought to have shocked the conscience of the court as it was clearly the result of passion, caprice, prejudice, partiality, corruption or some other improper motives which resulted from the interjection of improperly admitted expert testimony and evidence of collateral sources. (Each of these issues are more fully addressed herein.)

A failure to invoke the Court's inherent power when faced with such a manifest injustice is an abuse of discretion by the trial court tantamount to an error of law and warrants a REVERSAL of the trial court's order and a REMAND for further proceedings.

II. The trial court erred in granting Respondents' Motion for directed verdict as to punitive damages where evidence was presented that there was a willful disregard for safety rules that were in place to prevent injury to others.

"The purposes of punitive damages are to punish the wrongdoer and deter the wrongdoer and others from engaging in similar reckless, willful, wanton, or malicious conduct in the future." *Wimberly v. Barr*, 359 S.C. 414, 423, 597 S.E.2d 853, 858 (Ct. App. 2004). "Recklessness implies the doing of a negligent act knowingly'; it is a 'conscious failure to exercise due care." *Berberich v. Jack*, 392 S.C. 278, 287, 709 S.E.2d 607, 612 (2011). "If a person of ordinary reason and prudence would have been conscious of the probability of resulting injury, the law says the person is reckless or willful and wanton, all of which have the same meaning—the conscious failure to exercise due care." *Id.* "A jury may award punitive damages even when the wrongdoer does not actually realize that he is invading the rights of another, provided the act is committed in such a manner that a person of ordinary prudence would say that it was a reckless disregard of another's rights." *Fairchild v. S.C. Dep't of Transp.*, 385 S.C. 344, 353–54, 683 S.E.2d 818, 823 (Ct. App. 2009).

"When ruling on a directed verdict motion as to punitive damages, 'the circuit court must view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the nonmoving party." *Hollis v. Stonington Dev., LLC*, 394 S.C. 383, 394, 714 S.E.2d 904, 910 (Ct. App. 2011). "It is not the duty of the [circuit] court to weigh the testimony in ruling on a motion for a directed verdict." *Fairchild*, 398 S.C. at 99, 727 S.E.2d at 411. Rather, "[t]he issue of punitive damages must be submitted to the jury if more than one reasonable inference can be drawn from the evidence as to whether the defendant's behavior was reckless, willful, or wanton." *Hollis*, 394 S.C. at 394, 714 S.E.2d at 910 (emphasis added); *See,also Burnett v. Family Kingdom, Inc.*, 387 S.C. 183, 188, 691 S.E.2d

170, 173 (Ct. App. 2010) ("The trial court must deny a directed verdict motion where the evidence yields more than one inference or its inference is in doubt.") (emphasis added); *Thomasko v. Poole*, 561 S.E.2d 597, 349 S.C. 7 (S.C., 2002); *In re Matthews*, 345 S.C. 638, 550 S.E.2d 311 (2001); *Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 514 S.E.2d 126 (1999).

The Supreme Court's analysis in *Fairchild* is instructive in the present matter. 398 S.C. 90, 101–02, 727 S.E.2d 407, 413 (2012). In *Fairchild*, the defendant was operating a commercial sized truck, with a twenty-eight-foot trailer attached in an area he knew to be "where a lot of accidents happen", and that traffic in the area was "crazy", and that travelling speeds could suddenly and unexpectedly change. The defendant acknowledged that he was aware of the need to maintain a safe stopping distance for such a large vehicle. Despite his knowledge of this safety rule, the defendant acknowledged that he maintained a steady speed to avoid "giving distance" that would let other vehicles cross into his lane ahead of him. Noting that "it is not the duty of a trial court to weigh the evidence" the *Fairchild* court held that based upon these admissions, there is evidence sufficient that the defendant violated applicable statutes, and that there was an inference that the violations of these statutes were the proximate cause of the accident. Accordingly, the plaintiff's claim for punitive damages should have been submitted to the jury.

Appellants proffered testimony and evidence that could lead to multiple inferences, including the reasonable inference that there was a reckless, wanton and willful disregard by Respondents for safety rules in place to prevent injury to others. R. 223; R. 225–226; R. 236. While the present matter does not involve the per se violation of a statute, it does involve the violation of safety rules, including Respondents' own policies and procedures. Our State's courts have found that willful violation of a company's internal policies and procedure can be sufficient evidence of reckless behavior. *Cody P. v. Bank of Am., N.A.*, 395 S.C. 611, 627–28, 720 S.E.2d 473, 482 (Ct. App. 2011).

It is significant to note that the evidence was ***uncontradicted*** that certain safety rules, regulations, policies and procedures had been developed and published by the Respondents in a Manual provided to all employees, including the caretaker, Ms. Bonnie Every responsible for creating the hazardous condition. R. 223; R. 225–226; R. 236. Further, it is ***uncontradicted*** that all employees, including Ms. Every, were required to read, understand and follow all such safety rules, regulations, policies and procedures. *Id.* Finally, it is ***uncontradicted*** that the purpose of these safety rules, regulations, policies and procedures was to reduce or eliminate the risk of accidents and injuries, including serious injuries, from hazards caused by waxing a floor. *Id.*

Despite the existence of these very specific rules, regulations, policies and procedures and the Respondents' requirement that these rules, regulations, policies and procedures be followed by all employees, Ms. Every testified that many of the safety devices and warnings that she was required to use were not provided to her by her employer, the Respondents. R. 225–226. Ms. Every was the ***only*** representative of the Respondents to testify and her testimony that she was not provided with the referenced safety devices and warnings is also ***uncontradicted.*** This uncontradicted evidence (i.e. the Respondents failure to provide the safety devices and warnings that their employee ***was required to use by the Respondents to prevent accidents and injuries*** and Ms. Every's testimony that the warnings she claims to have placed did not comply with these standards, provides a clear evidentiary foundation for the jury to reach an alternative reasonable inference that the Appellants were entitled to an award of punitive damages.

Further, taking the evidence in a light most favorable to Appellants, and all reasonable inferences therefrom, there was clearly an evidentiary basis and foundation for an award of punitive damage: (1) Respondents willfully failed to provide their employees with the ***required*** safety equipment and warnings to their employee, Ms. Every; (2) Ms. Every left the dangerous condition she knew and understood had been created by her waxing the floor unattended, despite the fact that she

knew and understood that the required safety devices and warnings were not in place in the precise area where Karrie Gurwood's incident occurred. R. 223; R. 225–226; R. 236. Finally, there are conflicting accounts by different witnesses as to whether **any** signage or warnings were in place at the time of the incident. A reasonable juror could infer that Ms. Every willfully chose to leave this dangerous condition unattended while failing to place any warnings around the area.

The mere presence of the alternative reasonable inferences that can easily be drawn from this uncontradicted evidence required that the issue be submitted to the jury for their consideration. The trial court's failure to allow the issue to be submitted to the jury is a clear error of law warranting a new trial for Appellants in this matter. *Ralph v. McLaughlin*, 428 S.C. 320, 354, 834 S.E.2d 213, 231 (Ct. App. 2019), *reh'g denied* (Nov. 15, 2019).

III. The trial court abused its discretion in allowing Respondents' liability expert, Dr. Leah Hartman, to testify and present testimony regarding Appellant's alleged awareness of the dangerous condition based upon a methodology which lacked any indicia of reliability.

The admission of expert testimony is governed by Rule 702, SCRE, which provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

"Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge." *Watson v. Ford Motor Co.*, 389 S.C. 434, 445–47, 699 S.E.2d 169, 175–76 (2010). "Expert testimony receives additional scrutiny relative to other evidentiary decisions." *Id.* In executing its gatekeeping duties, the trial court must make three key preliminary findings before the jury may consider expert testimony: (1) the subject matter is beyond the ordinary knowledge of the jury and requires an expert to explain the matter to the jury; (2) the proffered expert has acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter;

and, (3) after evaluation of the substance of the testimony, the Court must determine whether it is reliable. *Id., citing State v. Douglas*, 380 S.C. 499, 671 S.E.2d 606 (2009); *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 252–53, 487 S.E.2d 596, 598 (1997); *State v. Council*, 335 S.C. 1, 20, 515 S.E.2d 508, 518.

Expert testimony is not admissible unless it satisfies all three requirements with respect to subject matter, expert qualifications, and reliability. *Watson v. Ford Motor Co.*, 389 S.C. 434, 445–47, 699 S.E.2d 169, 175–76 (2010). A person may be qualified as an expert in a particular area based upon knowledge, skill, experience, training or education. Rule 702, SCRE. In determining a witness's qualifications as an expert, the trial court should not have a solitary focus, but rather, should make an inquiry broad in scope. *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 555, 658 S.E.2d 80, 85 (2008). The test for qualification of an expert is a relative one that is dependent on the particular witness's reference to the subject. *Wilson v. Rivers*, 357 S.C. 447, 452, 593 S.E.2d 603, 605 (2004). The qualification of a witness as an expert is within the trial court's discretion and may not be reversed absent an abuse of discretion. *Fields*, 376 at 555, 658 S.E.2d at 85.

The trial court erred in allowing Respondents' liability expert, Dr. Leah Hartman, to present testimony regarding Appellant's alleged awareness of the dangerous condition based upon a methodology ***that fails the fundamental foundational requirement*** for the admission of expert opinion testimony. Dr. Hartman was permitted to testify to an unpublished technique that had no quality control procedures or testing and was therefore lacking the required foundation for the admission of expert testimony.

Respondents sought to have Dr. Leah Hartman admitted to, for all intents and purposes, act as a "human lie detector". R. 171; R. 892. Appellant had already previously testified, under oath, that there were no warnings present at the time of the incident, and that she was unaware the floor contained wet wax prior to walking into the room. R. 367. Dr. Hartman opined to the jury that Appellant's behavior in the surveillance footage indicated that she had some form of awareness [of

the existence of a dangerous condition]." R. 853. Appellants sought to exclude Dr. Hartman, both by way of a motion *in limine*, and after the *voir dire* of her conducted by Appellants counsel at trial. R. 171; R. 892.

At her deposition[3], Dr. Hartman had testified that she was unfamiliar with, and unable to even name, for Appellants' counsel, the computer program which used to create the measurements upon which she based her findings. *See,Court's Exhibit 5, Deposition of Leah Hartman, PhD.* Dr. Hartman admitted that she could not provide any definite or accurate margin of error for her results, and admitted she had no baseline or control sample from which to compare the subject surveillance footage when forming her opinions as to whether Appellant Karrie Gurwood's movements evidenced an altered gait due to knowledge of a condition. *Id.*

During cross-examination at trial, Dr. Hartman was questioned regarding her methodology and approach in forming her opinions. In testifying, Dr. Hartman revealed the complete lack of reliability in her analysis and opinions:

> Q. Okay. Isn't it true, Dr. Hartman, that you never observed Karrie Gurwood walking before?
> A. Not prior to the incident, no.

R. 853.

> Q. You have never spoken to Karrie Gurwood, have you?
> A. No.
> Q. And you have never spoken with anyone who knows Karrie Gurwood; true?
> A. I have not.

R. 854.

> Q. All right. Dr. Hartman, you have no idea what Karrie Gurwood's normal gait is on a normal day-by-basis; true?
> A. I did not know what her gait was at the time of the fall, her daily gait. I did see her gait in the video, yes.

R. 862.

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[3] The opinions and testimony from Dr. Hartman's deposition were referenced by Appellants in their arguments on the motion *in limine* to exclude her testimony and were also made a court's exhibit during trial. R. 171; R. 892; R. 1321.

Q. Okay. You have not seen any evidence of how Karrie normally moves or what her normal gait is; true?
A. True.
Q. You have never spoken with Karrie or Howard before, correct?
A. True.
Q. You don't know how she normally walks when she slows down; true?
A. True.
Q. You don't know how she normally walks when she speeds up; correct?
A. Correct.

R. 863.

Q. My question is very simple, Dr. Hartman. You can't say when Karrie Gurwood walked into that hallway those three steps before she fell that that was not her normal gait; isn't that true?
A. True.

R. 867.

Q: Okay. And just so I am clear, again, this particular method that you are using has not been used before?
A: I have not seen -- I don't think that is accurate. We have utilized a CAD program in order to gain useful insight into the environments that we are looking at that we do not have any other for of creating. So we have utilized that on different cases. Has anyone specifically done this before, I haven't seen research on it. I am looking forward to publishing on it though.

R. 872.

Dr. Hartman's entire analytical framework is rife with errors, estimations, or outright guesses which result in a complete and utter lack of reliability in her opinion testimony. Her failure to use a baseline of the subject's movements under normal conditions, or even a control group of other subjects, was inconsistent with the very studies she testified that she relied upon in forming her opinions and is inconsistent with generally accepted principals of scientific testing and procedures. See, R. 865; R. 874–R. 875. *State v. Council*, 515 S.E.2d 508, 335 S.C. 1 (1999) ("In considering the admissibility of scientific evidence... the Court looks at several factors, including: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the

method with recognized scientific laws and procedures."); *See also*, *Watson v. Ford Motor Co.*, 389 S.C. 434, 699 S.E.2d 169 (2010) (holding that the trial court erred in admitting an expert's testimony where testimony lacked any indicia of reliability in that expert's theory had not been peer reviewed; expert had never published papers on theory and expert had never tested theory). This methodology that lacked the most fundamental evidentiary foundation provided an inappropriate basis to adversely impact the jurors' decisions regarding comparative negligence.

Respondents claim that *State v. Council* should not apply to Dr. Hartman's testimony because it was "non-scientific." R. 896. As a preliminary matter, Appellants dispute this characterization in that it is wholly inconsistent with the subject matter of Dr. Hartman's testimony. *Id. cf.* R. 904; 907; R.910–918; R. 921. Specifically, what can be ascertained by human body movements, including the physical manifestations of awareness of hazardous conditions based upon subconscious reactions and accompanying reaction times. *Id.* Dr. Hartman opined on various scientific studies in support of same contentions. *Id.* Further, Dr. Hartman attempted to present scientific data presented to the jury in the form of taking and analyzing gait pattern measurements. *Id.*

To the extent that her testimony was not scientific, then she ought to have been prevented from testifying to the jury regarding her own personal observations of the video. Such testimony does not "assist the trier of fact" but rather, invades the province of the jury and ought to have been excluded on that basis alone. However, even if the court were to find that it was "non-scientific" expert testimony, such testimony is still required be reliable to be admissible. *State v. Chavis*, 412 S.C. 101, 771 S.E.2d 336 (S.C., 2015). Under either the *Council* factors, or the reliability requirement as stated in *Chavis*, Dr. Hartman's testimony fails to satisfy the reliability requirement in that the results of her "analysis" have zero indicia of reliability. R. 874–875; 892–895; 898–899; R. 925–926; R. 935–937; R. 942.

Returning to the factors under *State v. Council*, it is clear that this type of expert testimony should not have been put in front of the jury. It did not contain or utilize published or peer-reviewed methodology. Dr. Hartman could not testify to any prior application of this methodology to the type of evidence in this case. R. 872; 932–933. There were no quality control procedures in place, there was no way to tell what her margin of error was in taking measurements, and several measurements were collected based upon her own estimation of Appellants physical location in the video. R. 877; R. 1391–1394. Such estimations result in **completely unreliable data** upon which to base her conclusions in that she based her opinion on measurements including the difference of **a couple of inches** (with gait pattern analysis), or worse in **milliseconds** (reaction times).

Every study cited by Dr. Hartman in support of her opinions state that measurements of reaction times or gait patterns must be compared with a baseline to accurately determine the change in same due to external influences. R. 892. Dr. Hartman opined to the jury what effect the awareness of a condition would have on Ms. Gurwood's gait and reaction times, despite having never seen Ms. Gurwood walk prior to this incident nor measured her physical reaction times. R. 867; R. 873; R. 904–917. Further, by her own admission, Dr. Hartman's opinions did not take into account the effects of these external parameters, including injury to Ms. Gurwood, the exigency of a sounding alarm, walking through a doorway, nor the effect of carrying a handbag would have on Ms. Gurwood's gait. R. 926–930. R. 1351–R.1358 Such failure to account for critical factors, along with the absolute and total lack of a baseline measurement strips her testimony of any sort of indicia of reliability such that it would be improper to place before a jury.

Accordingly, it was wholly improper and an abuse of discretion, for the trial judge in his gatekeeping capacity to allow Dr. Hartman to testify before the jury using a methodology which had never before been utilized, in complete disregard for generally accepted scientific and academic principles. Her testimony ought to have been excluded as invading the province of the jury, or as being

too unreliable to be put before the jury. Allowing Respondents to elicit testimony from her unfairly prejudiced Appellant as was ultimately evidenced by the comparative verdict entered by the jury, as this was the only evidence proffered that Appellant acted negligently in entering the premises.

IV. The trial court abused its discretion in excluding testimony by Appellants' expert, Dr. Zdenek Hejzlar, as to the manner in which the dangerous condition at issue could have been eliminated or guarded against.

An expert's opinion testimony may be based upon a hypothetical question. *Gazes v. Dillard's Dep't Store, Inc.*, 341 S.C. 507, 514–15, 534 S.E.2d 306, 310 (Ct. App. 2000) (*citing Gathers v. South Carolina Elec. and Gas Co.*, 311 S.C. 81, 82, 427 S.E.2d 687, 688 (Ct. App. 1993)). Even though the hypothetical question must be based on facts supported by the evidence, counsel may pose the hypothetical "on any theory which can reasonably be deduced from the evidence and select as a predicate for it such facts as the evidence proves or reasonably tends to prove." *Id.* at 82–83, 427 S.E.2d at 688. *See,also Brown v. La France Indus.*, 286 S.C. 319, 333 S.E.2d 348 (Ct. App. 1985) (*citing Young v. Tide Craft, Inc.*, 270 S.C. 453, 242 S.E. (2d) 671, 1 A.L.R. 4th 394 (1978) ("Opinion testimony of an expert witness may be based upon a hypothetical question. The hypothetical question, however, should be based upon facts supported by the evidence."))

While the admission or exclusion of expert testimony is soundly within the discretion of the trial court, the situation here presents a clear abuse of that discretion. In the present matter, the trial court excluded the expert testimony of Dr. Zdenek Hejzlar as to one of the key substantive issues addressed by his opinions, i.e. the specific manner in which the dangerous condition and hazard which caused Karrie Gurwood's injuries could have and would have been eliminated or reduced. R. 629–637; R. 644–652.

Dr. Hejzlar had detailed and extensive hands-on experience with the processes that he opined should have been used in this case to reduce or eliminate the hazard created by the waxed floor. R. 612–616; R. 563; R. 574; R. 589. He had successfully developed and successfully utilized the processes

on which he was basing and offering his opinions to reduce or eliminate the very hazard involved in the Gurwood incident in prior projects that he had handled for the United States Military and numerous cruise lines. R. 612–616; R. 563; R. 574; R. 589.

The processes that he opined that should have been used by the Respondents had previously been tested using recognized methods, had been accepted in the applicable scientific community and had successfully reduced or eliminated the very slip hazard from a waxed floor that was present in this case.

His experience establishes the precise foundational requirement for the admission of any expert testimony, i.e. a proven, reliable scientific process using methods recognized and accepted in the relevant scientific community generating known and reliable results. *See*, Rule 702, SCRE.

Respondents only objection to Dr. Hejzlar's testimony was that it was improper for him to testify as to "what could have been done differently." R. 630–R. 631. This is the essence of most expert opinions directed to any Defendant, i.e. what the Defendant could have done and should have done under the presenting circumstances to prevent the hazard and incident which forms the basis of the lawsuit. Dr. Hejzlar testified that his opinions were based upon the facts in evidence, based upon his own hands-on experience using reliable, scientific processes to reduce or eliminate the hazard, processes that are recognized and accepted in the relevant scientific community. More significantly, his testimony in this regard was ***totally uncontradicted.***

This is the methodology that the Respondents should have utilized with their own expert as opposed to offering testimony of an untested method without a baseline which was inconsistent with the content of the studies cited by the Respondents' expert to allegedly support her opinions. *See, supra.*

Appellants did exactly what any party should do with any expert. Appellants offered competent admissible evidence by a highly and duly qualified expert regarding steps that could have

and should have been taken in this case to present the hazard which caused the incident at issue. These articulated steps were steps that the Appellants' expert had developed and used on many prior occasions using recognized, reliable scientific processes that had previously been proven to reduce or eliminate the very hazard that existed in this case. There is no basis on which this testimony should be excluded. The failure to admit this testimony is a clear error of law amounting to an abuse of the trial court's discretion and warrants a new trial for the Appellants.

V. The trial court abused its discretion in allowing Respondents to introduce evidence of collateral sources to impeach Appellant.

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE. The collateral source rule provides "that compensation received by an injured party from a source wholly independent of the wrongdoer will not reduce the damages owed by the wrongdoer." *Citizens and S. Natl. Bank of South Carolina v. Gregory*, 320 S.C. 90, 92, 463 S.E.2d 317, 318 (1995). A tortfeasor cannot "take advantage of a contract between an injured party and a third person, no matter whether the source of the funds received is 'an insurance company, an employer, a family member, or other source." *Pustaver v. Gooden*, 350 S.C. 409, 413, 566 S.E.2d 199, 201 (Ct. App. 2002) The introduction of the compromised payments, unexplained, would in fact confuse the jury. *Covington v. George*, 359 S.C. 100, 103–04, 597 S.E.2d 142, 144 (2004). Conversely, any attempts on the part of the plaintiff to explain the compromised payments would necessarily lead to the existence of a collateral source. *Id.* Inevitably, the inquiry would lead to the introduction of matters such as contractual arrangements between health insurers and health care providers, resulting in the very confusion which the trial judge [seeks] to avoid in [properly applying] Rule 403, SCRE.

In the present matter, the trial court erred in allowing Respondents to introduce evidence of collateral sources before the jury to impeach Appellant by introducing evidence of her health

insurance. Appellant testified that she had not yet sought an additional procedure which could alleviate some of her pain due to the fact that she could not afford to obtain the treatment:

> Q. Karrie, Dr. Lubenow talked about a treatment plan that he would recommend for you and that he had discussed with you. Do you remember that?
>
> A. Yes.
>
> Q. Is there a reason why you have not followed that treatment plan to date?
> A. I would -- I would love to get that treatment immediately. And I would have loved to have gotten it as soon as he made the recommendation. But unfortunately we haven't had the money...

R. 422.

Respondents, over Appellants vigorous objection, sought to impeach Appellant by introducing evidence that she had health insurance coverage. As justification for the same, Respondents cited to the case of *Bonaparte v. Floyd*, 354 S.E.2d 40, 291 SC 247 (Ct. App. 1987) in which a defendant was permitted to impeach a witness regarding the existence of health insurance after the plaintiff testified that she failed to follow up with her medical providers as she was unable to afford the medical treatment prescribed by her doctors. As Counsel in the present matter explained to the Court, this case was highly distinguishable from *Bonaparte* in that Ms. Gurwood could not seek the required treatment locally. R. 465. The expense associated with the travel alone would prohibit Appellant from being able to facilitate the actual procedure, regardless of her health coverage. Id. Accordingly, the admission of the existence of her healthcare coverage would have little probative value and would serve only to unfairly prejudice Appellants by interjecting collateral source issues. R. 465–485.

Further, Appellants were unfairly and unduly prejudiced as they could not rehabilitate the witness without inquiring as to whether such coverage actually pays for the future medical procedures, what amount of individual responsibility Appellant would have borne for same, the existence of Medicare Set Asides for any such award, etc. without going deeply into the prohibited topic of

collateral sources. R. 462; 465–466; R. 472–473. The existence of Appellants healthcare coverage, in a vacuum, does not give the jury any realistic idea as to whether there were copays, or whether there were uncovered additional charges, or whether the subject procedure was even covered. Essentially, all the Respondents' "impeachment" accomplished was to put before the jury that Appellant had third-party medical coverage. Respondents' counsel stated their intent in going into this line of inquiry was to prevent the jury from believing that Appellant would be personally responsible for her medical bills: "[T]he problem that has been created is now the jury believes that this lady is essentially destitute and will never have this treatment unless she wins this lawsuit..." R. 468–469. This is a clear violation of the stated intent of the collateral source doctrine—preventing a defendant from gaining an unfair windfall due to an aggrieved party's insurance coverage

Admission of this evidence was a clear violation of the collateral source doctrine. This is highlighted by the fact that the trial court refused to allow Respondents' own expert witness to testify as to his projected costs for Ms. Gurwood's medical care due to the fact that his numbers were based upon Medicare payments. The trial court was well aware that such evidence had no place before this jury, yet shockingly, allowed it in at this junction of the trial without sufficient justification and without due regard to the balancing test implicated by Rule 403, SCRE. The impact of this admission could be felt during the juror deliberations, as it became clear the subject of third-party payors played a role in their deliberations as to damages in the case.

Any probative value of this evidence, which would be slight at best, was clearly outweighed by its unduly and unfairly prejudicial effect to the Appellants and the danger of creating confusion in the jury, which is precisely what occurred here. The jury's verdict is clearly inconsistent with the evidence. Permitting the admission of references to the Appellant's insurance coverage under these

circumstances was unduly and unfairly prejudicial to the Appellants and provided an improper basis[4] on which a jury could and did reach a verdict that was clearly inconsistent with the evidence. This ruling alone provides the basis for a new trial.

VI. The trial court abused its discretion in denying Appellants' motion for directed verdict and charging the jury on assumption of the risk where there was no competent evidence presented that satisfied the second and third elements of the assumption of the risk defense.

Denying Appellants' motion for directed verdict and charging the jury on assumption of the risk where there was no competent evidence presented that satisfied the second and third elements of the assumption of the risk defense is error. *Davenport v. Cotton Hope Plantation*, 333 S.C. 71, 508 S.E.2d 565 (1998) (*citing Senn v. Sun Printing Co.*, 295 S.C. 169, 367 S.E.2d 456 (Ct. App. 1988) ("The plaintiff must have knowledge of the facts constituting a dangerous condition; **(2) the plaintiff must know the condition is dangerous; (3) the plaintiff must appreciate the nature and extent of the danger;** and (4) the plaintiff must voluntarily expose himself to the danger.") (**emphasis added**)

Appellant contends there was no evidence admitted at trial that Appellant Karrie Gurwood had any knowledge of the dangerous condition existing at the time of the fall, and certainly no evidence whatsoever that she appreciated the nature and extent of same. The complete and total lack of evidence as to a particular element is justification for granting a Motion for Directed Verdict. To the extent that Respondent would assert that Dr. Hartman's testimony regarding Appellant Gurwood's alleged state of mind at the time of the fall satisfies this element, Appellant would renew their argument that Dr. Hartman's testimony should be excluded, in toto, for the reasons previously stated herein.

[4] Appellants contend that either the jurors were led to believe Appellants were attempting to mislead them regarding the affordability of the procedure, or that all the bills and procedures were going to be covered regardless motivated the juror's ultimate verdict. Incitement of such passions, prejudice and improper considerations are clear grounds for a new trial, and the clear error of the court in admitting this evidence is sufficient grounds to require a new trial.

Further, there is no evidence proffered by Dr. Hartman which a reasonable juror could conclude that Appellant "appreciated the nature and extent of the danger." At best, Dr. Hartman's testimony could stand for the alleged proposition that Appellant was aware of "some dangerous condition." R. 904. Dr. Hartman by her own testimony stated she could not tell what was in Appellant's mind at the time of the fall. R. 866. Her testimony was only that that Appellant had "some awareness" of "a dangerous condition." There is no testimony that Appellant had "actual knowledge", "nor appreciated the extent and nature" of the dangerous condition existing at the time of the incident. However, nothing in Dr. Hartman's testimony nor her wholly unscientific analysis of surveillance footage, could be construed in any way to prove that Appellant actually knew and "appreciated the extent and nature of the dangerous condition" then and there existing.

The denial of this directed verdict prejudiced Appellant in that this affirmative defense should never have been charged to the jury, and the submission of same without the requisite evidentiary foundation was improper and was a clear error of law. The jury clearly believed that there was some form of awareness on the part of Ms. Gurwood, based solely upon the testimony by Dr. Hartman, and that fact impacted the jury's ultimate award in this matter. Accordingly, this issue provides a clear basis for a new trial.

CONCLUSION

Based upon the foregoing legal arguments, the Appellant respectfully prays this Court to **REVERSE** the trial court's Order, to **REMAND** this matter to the trial court for further proceedings

Respectfully submitted this **19th** day of **October, 2020.**

(Signature contained on the following page)

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Alex Kinlaw, Jr., Circuit Court Judge

Case No. 2015-CP-10-2191
App. Case No.: 2019-001403

Karrie Gurwood & Howard Gurwood ..... *Appellants*

v.

GCA Services Group, Inc. & GCA Services Group of North Carolina, Inc. ..... *Respondents.*

CERTIFICATE OF COUNSEL

COMES NOW, the undersigned Counsel for the Appellants, certifying that the foregoing submission to this honorable Court complies with Rule 211(b) of S. C. App. Ct. Rules.

Respectfully submitted this **19th** day of **October, 2020.**

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