STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON	IN THE COURT OF COMMON PLEAS FOR THE FOURTH JUDICIAL CIRCUIT
Michelle Glass as PR for the Estate of Sanford Earl Glass, Plaintiff, vs. Mike's Landscaping Service, Inc., Stephanie Ann Smith, UIG Infrastructure Group, Inc., and South Carolina Department of Transportation, Defendants.	Case Number 2020-CP-16-00507 **Order Denying Third Party Defendants' Motion to Alter or Amend Judgment and for a New Trial Nisi Remittitur or, in the Alternative, for a New Trial Absolute**
Mike's Landscaping Service, Inc. and Stephanie Ann Smith, Third-Party Plaintiffs, vs. Richard Jones and Jones & Taylor Insurance, Inc., d/b/a Jones & Taylor Insurance, Third-Party Defendants.	

THIS MATTER came before the Court on June 5, 2023, for hearing on Third Party Defendants Richard Jones ("Mr. Jones") and Jones & Taylor Insurance Inc.'s ("J&T") Motion to Alter or Amend Judgment and for a New Trial Nisi Remittitur or, in the Alternative, for a New Trial Absolute. After reviewing and considering the parties' written submissions, exhibits, oral arguments, and the entire record before it, the Court hereby DENIES the Motion for the following reasons.

Evidence at Trial

This matter came before the Court on April 17, 2023, for a non-jury trial in Darlington County, South Carolina. Present at the trial were Plaintiff Michelle Glass as PR for the Estate of Sanford Earl Glass and Defendants Mikes Landscaping Service, Inc. ("MLS") and Stephanie Ann Smith. Ms. Glass, MLS, and Mrs. Smith were all represented by counsel. The Third-Party Claims asserted against Third-Party Defendants Richard Jones and Jones & Taylor Insurance, Inc. were bifurcated and will be tried at a later date in Darlington County on or after October 2, 2023. However, by agreement of all parties, counsel for Mr. Jones and J&T participated in the trial pursuant to Rule 14(a) of the South Carolina Rules of Civil Procedure. Sufficient evidence supports that MLS is liable to Plaintiff for negligence and the wrongful death of Mr. Sanford Earl Glass. Sufficient evidence also supports the actual damages and punitive damages awarded to Plaintiff.

MLS is a company that performs erosion control work on highway projects. In October 2019, MLS hired an employee named Kenneth Cogdell. When it hired Mr. Cogdell, MLS did not check his driving record. If it had checked his driving record, MLS would have discovered that Mr. Cogdell had multiple traffic violations, had been in multiple wrecks, and had his driving license suspended at least once.

A month after he was hired by MLS, Mr. Cogdell's driver's license was suspended on November 16, 2019, and was not reinstated until January 10, 2020. Mr. Cogdell drove a tanker truck known as a hydroseeder for MLS. The hydroseeder was used to spray a grass seed mixture for erosion control on highway projects. The only training MLS gave Mr. Cogdell for the hydroseeding truck was having him observe other employees drive it and then having someone

observe him drive it for a short period of time before he started driving it by himself. There are no written records concerning Mr. Cogdell's training.

On March 11, 2020, MLS sent Mr. Cogdell on a hydroseeding job in Darlington County. The project involved the replacement of three bridges on Lamar Highway. Because the bridges were closed, Mr. Cogdell had to take secondary roads to drive from one side of the jobsite to the other. Mr. Cogdell was not familiar with the area. MLS did not give him directions or take any steps to familiarize him with the area. Instead, MLS told him and his passenger known as the "navigator" to use a cell phone to find their way from one side of a bridge to another. The cell phone that the navigator was using did not have good service and the map feature kept malfunctioning. Mr. Cogdell and his navigator became lost once they turned off of Lamar Highway.

The MLS truck driven by Mr. Cogdell ended up traveling north on High Hill Road towards the intersection of High Hill Road and Green Street. At the intersection, High Hill Road has a stop sign and stop line. There is no stop sign on Green Street. The intersection is surrounded by fields that, at the time, had nothing growing in them. There were no obstructions that would have impeded Mr. Cogdell from seeing the stop sign. Ms. Glass' accident investigation expert, Bryan Durig, testified that Mr. Cogdell would have been able to see the stop sign one-half-mile before the intersection. Mr. Cogdell, however, was lost and distracted. He ran the stop sign at a rate of speed that caused a violent collision on Green Street.

At the time the MLS truck ran the stop sign, Sanford Earl Glass entered the intersection heading west on Green Street. Bryan Durig testified that skid marks and gouges in the highway show that Mr. Glass attempted to take evasive action and that he tried to turn right immediately before the collision to avoid the MLS truck. However, he was unable to avoid it. The MLS truck

struck Mr. Glass' Hyundai with such force that it altered Mr. Glass' vehicle's direction and pushed it 175 feet north up High Hill Road. The damage to Mr. Glass' vehicle was extensive. Mr. Glass was later pronounced dead at the scene by the Darlington County Coroner, Todd Hardee, who also testified at trial.

When highway patrol arrived, the MLS employees told the trooper that Mr. Glass ran the stop sign and was at fault. These statements made by the MLS employees were false because Mr. Glass had the right-of-way. Stephanie Smith testified that Mr. Cogdell and the navigator were acting within the scope of their employment at the time of the collision.

At the time of his death, Mr. Glass was 80 years old with a life expectancy of at least 7.49 more years at the time of his death under S.C. Code Ann. §19-1-150. He had two biological adult daughters, Michelle Glass who was 51 years old and Melissa Glass who was 56 years old. Michelle and Melissa's future life expectancies under Section 19-1-150 are 31.79 years and 27.41 years, respectively.

Mr. Glass worked part-time at Michelle Glass' law firm. On the day of the wreck, Mr. Glass was returning from visiting Michelle Glass at her home in Jacksonville, Florida. He was returning home to attend an evening service at his church. Michelle Glass and Pastor Randy James, who is the pastor at Mr. Glass' church, testified that Mr. Glass was planning to put his home on the market and move to Jacksonville to live with Michelle Glass. Both testified that he would have moved there earlier, but he stayed in Darlington to raise his grandson, Mikey Glass, over whom he had custody. Mikey Glass had recently turned 18 and moved out of Mr. Glass' home a few weeks before the wreck.

Michelle Glass testified that her father was her best friend and that his loss negatively impacts her life every day. Michelle spoke with her father every day, and he visited her at least

once a month. He helped her run her law firm and also helped to take care of her house. Shortly before his death, she renovated her condo so that he would have his own room when he moved there. She was looking forward to him living with her in Jacksonville and has been deprived of his championship. She was shocked by his sudden death and is still grieving his loss.

Michelle Glass and Pastor Randy James also testified at length as to how Mr. Glass supported Melissa by raising her son Mikey Glass. Michelle Glass testified that Mr. Glass loved Melissa and that they maintained a relationship with one another. MLS and Third Party Defendants offered no evidence to contradict these facts and relies merely on their counsel's own speculation as to the relationship between them. With Mr. Glass' death, Melissa has lost his support, love and affection.

MLS and Third Party Defendants stipulated to the authenticity and admissibility of all exhibits introduced into evidence by Plaintiff at trial. Neither MLS nor Third Party Defendants raised any objections to Plaintiff's questioning of witnesses or to the testimony provided by the witnesses at trial.

After considering all evidence submitted at trial, the Court held that MLS was liable for negligence and the wrongful death of Mr. Glass. The Court further held that Plaintiff had shown by clear and convincing evidence, including MLS' failure to check its employees' driving record, its failure to train or provide directions or GPS equipment to its employees, and its employees' attempt to falsely blame Mr. Glass for the wreck, that MLS' misconduct was willful, wanton, or with reckless disregard for Mr. Glass' rights. Therefore, Plaintiff was entitled to punitive damages. The Court then awarded Plaintiff actual damages in the amount of $6,750,000 and punitive damages in the amount of $2,000,000.

Third Party Defendants now seek to alter or amend judgment, a new trial nisi remittitur,

and/or a new trial absolute. They contend that the awards of actual and punitive damages were excessive.

STANDARD OF REVIEW

Motion to Alter or Amend

Upon motion of a party made not later than 10 days after receipt of written notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly, and the motion may be made with a timely motion for a new trial." Rule 52(b), SCRCP. "When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made a motion to amend them or amotion for judgment." *Id.*

"[W]here a law case is tried by judge without a jury, his findings of fact have the force and effect of a jury verdict upon the issues, and are conclusive upon appeal when supported by competent evidence." *Chapman v. Allstate Ins. Co.*, 263 S.C. 565, 567, 211 S.E.2d 876, 878 (1975). "It is not appropriate to raise an issue for the first time in a Rule 52(b) motion that could have been raised at trial." *McMillan v. S.C. Dept. of Agriculture*, 364 S.C. 60, 70, 611 S.E.2d 323, 328 (Ct. App. 2005), *reversed on other grounds by* 380 S.C. 212, 670 S.E.2d 368 (2008).

Motion for new trial absolute or new trial nisi remittitur

"'When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice.'" *Edwards v. Scapa Waycross, Inc.*, 437 S.C. 396, 419, 878 S.E.2d 696, 708 (Ct. App. 2022) (quoting *Riley v. Ford Motor Co.*, 414 S.C. 185, 192, 777 S.E.2d 824, 828 (2015)). "'The trial [court that] heard

the evidence and is more familiar with the evidentiary atmosphere at trial possesses a better-informed view of the damages than [an appellate court.]'" *Id.* (quoting *Vinson v. Hartley*, 324 S.C. 389, 405, 477 S.E.2d 715, 723 (Ct. App. 1996).

"On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment." Rule 59(a), SCRCP. Only if the verdict is so grossly inadequate or excessive that it shocks the conscience of the court and clearly indicates the amount was the result of passion, caprice, prejudice, partiality, corruption or some other improper motive, may the trial judge grant a new trial absolute. *Cock-N-Bull Steak House v. Generali Ins. Co.*, 321 S.C. 1, 9, 466 S.E.2d 727, 731 (1996).

If a verdict is excessive, the trial court may reduce it by granting a new trial nisi remittitur. *Id.* The reduced verdict is a suggested settlement figure, which the plaintiff may accept, or reject and request a new trial. Ruling on a new trial nisi remittitur "requires the court to consider the adequacy of the verdict in light of the evidence presented." *Waring v. Johnson*, 341 S.C. 248, 256, 533 S.E.2d 906, 910 (Ct. App. 2000).

The denial of a motion for a new trial absolute or for new trial nisi remittitur "is within the trial court's discretion, and absent an abuse of discretion, it will not be reversed on appeal." *Cock-N-Bull Steak House*, 321 S.C. at 9, 466 S.E.2d at 731. "A party cannot for the first time raise an issue by way of a Rule 59(e) motion." *Patterson v. Reid,* 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995).

ANALYSIS

I. The compensatory damages award will not be amended, altered, or reduced.

Third Party Defendants contend that the award of $6,750,000 in actual damages on Plaintiff's wrongful death claim was excessive. They seek an order amending the award, or in the alternative a new trial nisi remittitur, asking that the award be reduced to no more than $254,271.41. Given the substantial evidence that Mr. Glass' family has suffered enormously from his death, the Court does not find the award of actual damages to be excessive or unduly liberal, and it finds no compelling reason to reduce it.

"Whenever the death of a person shall be caused by the wrongful act, neglect or default of another and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, the person who would have been liable, if death had not ensued, shall be liable to an action for damages." S.C. Code Ann. § 15–51–10. "The general elements of damages recoverable [for wrongful death] are: (1) pecuniary loss, (2) mental shock and suffering, (3) wounded feelings, (4) grief and sorrow, (5) loss of companionship, and (6) deprivation of the use and comfort of the intestate's society, including the loss of his experience, knowledge, and judgment in managing the affairs of himself and of his beneficiaries." *Burroughs v. Worsham*, 352 S.C. 382, 406, 574 S.E.2d 215, 227 (Ct. App. 2002).

"Unlike a number of other states, South Carolina's Wrongful Death Act has been interpreted by [the Supreme Court] to extend beyond pecuniary damages to beneficiaries." *Garner v. Houck*, 312 S.C. 481, 487-88, 435 S.E.2d 847, 850 (1993); *see also Clark v. S.C. Dept. of Pub. Safety*, 362 S.C. 377, 387, 608 S.E.2d 573, 579 (2005) (emphasizing that "pecuniary loss is only one of six elements to be considered in awarding damages in a wrongful death action"). Intangible

losses such as shock, grief, loss of companionship, pain, suffering, and mental distress are just as compensable as pecuniary loss, though they "cannot be determined by any fixed measure." *Knoke v. S.C. Dept. of Parks, Rec. and Tourism*, 324 S.C. 136, 142, 478 S.E.2d 256, 258–59 (1996).

On the day of the wreck, Mr. Glass was returning from visiting Michelle Glass at her home in Jacksonville, Florida. He was returning home to attend an evening service at his church. It was Paster Randy James who identified Mr. Glass at the scene and prayed over his body and the paramedics. Pastor James testified about the active role Mr. Glass played in the church and community and how he constantly brought his daughters, granddaughters, and others to service with him. At the time of the accident, his car was loaded with donations for the church, which he was delivering for Michelle. Michelle spoke with Mr. Glass just a few minutes before the collision and was in shock and disbelief when Pastor Randy called and told her that her father was dead.

At the age of seventy, Mr. Glass took on the role of raising Melissa Glass' youngest son, Mikey Glass. Mr. Glass raised Mikey by himself, providing both emotional and financial support, from the time Mikey was ten until after he was eighteen. Mr. Glass made sure that Mikey got an education. When Mikey graduated, he presented Mr. Glass with a ceremonial yellow rose, which signified that Mikey credited Mr. Glass more than anyone else in his life for helping him earn a diploma. In addition to his own biological children, he raised several other children as his own, including Evelynn Hough and Donald Alton.

At the time of his death, Mr. Glass was planning to put his home on the market and move to Jacksonville to live with Michelle Glass. Michelle Glass and Pastor Randy testified that he would have moved there earlier but stayed behind to raise Mikey. Michelle Glass testified that her father was her best friend and that his loss negatively impacts her life every day. Michelle spoke with her father every day, and he visited her at least once a month. He helped her run her

law firm and also helped to take care of her house. Shortly before his death, she had renovated her condo so that he would have his own room when he moved there. She was looking forward to him living with her in Jacksonville and has been deprived of his championship. She was shocked by his sudden death and is still grieving his loss, which was evidenced by her tearful and compelling testimony.

Michelle Glass and Pastor Randy James also testified at length as to how Mr. Glass supported Melissa by raising her son Mikey Glass. Michelle Glass testified that Mr. Glass loved Melissa and that they maintained a relationship with one another. MLS and Third Party Defendants offered no evidence to contradict these facts and rely merely on their counsel's own speculation as to the relationship between them. With Mr. Glass' death, Melissa has lost his support, love and affection.

If Mr. Glass had not been killed in the collision, he would have had a life expectancy of 7.49 more years. The evidence shows that his children and grandchildren were exceptionally close to him, even as adults, and that the continued to value his love, comfort, advice, and support up until the time of his death. Michelle Glass has a future life expectancy of 37.79 years, and Melissa Glass has a future life expectancy of 27.41 years. Michelle Glass testified that one of the hardest things about losing her father and best friend is that she will have to live so long without ever seeing him again and knowing that he died alone without her having the chance to tell him goodbye. The award of $6,750,000 in actual damages is supported by the evidence in this case.

The Court also does not find the award to be unduly excessive or liberal. Each verdict "must be evaluated as an individual one, within the framework of its distinctive facts." *Lucht v. Youngblood*, 266 S.C. 127, 136, 221 S.E.2d 854, 858 (1976); *see also Jimenez v. Chrysler Corp.*, 74 F.Supp.2d 548, 573 (D.S.C. 1999) (reversed on other grounds) (observing that the South

Carolina Supreme Court has declined to adhere to a "comparison approach" in evaluating whether a verdict is excessive). Consequently, our Supreme Court has held that whether a verdict is the largest ever in the county is not persuasive on the issue of excessiveness. *Cabler v. L.V. Hart, Inc.*, 251 S.C. 576, 581, 164 S.E.2d 574, 576–77 (1968) (acknowledging "[t]he difficulty in drawing comparisons with prior awards, in order to determine excessiveness," especially because noneconomic damages such as pain and suffering are "seldom, if ever, alike in any two cases") (citations omitted).

A survey of other wrongful death cases shows there are numerous verdicts that are similar to, and in many cases exceed, the one entered in this case when converted to present day dollars. *See Bannister v. Columbia Urological Assoc., P.A.*, No. 2015-CP-40-4794 ($12,236,776); *Keene v. CNA Holdings, LLC*, 426 S.C. 357, 827 S.E.2d 183 (Ct. App. 2019) ($6,345,412); *Weist v. Kraft Heinz Co.*, No. 2020-CP-40-01597 ($11,003,463.24); *Givens v. Samkharadze*, No. 2020-CP-23-03411 ($28,256,083); *Huff v. XPO Express, Inc.*, No. 2:16-cv-01254 ($8,369,753); *Bales v. Martinez*, 2010-CP-10-08631 ($6,451,803); *Williams v. CSX Transp.*, App. No. 2007-MO-001 ($7,341,957); *Weswaet Abel v. Lack's Beach*, No. 2019-CP-26-07075 ($10,187,663); *Reeves v. Town of Cottageville*, 2:12-cv-02765 ($9,534,353); *Burroughs v. Worsham*, No. 1998-CP-1280 ($6,170,713); *Cross v. XPO*, No. 2:15-cv-02480 ($5,998,617); *Clark v. S.C. Dept. of Pub. Safety*, 353 S.C. 291, 578 S.E.2d 16 (2002) ($6,550,260.42); *Dial v. Toyota Motor Corp.*, No. 2013-CP-04-01483 ($7,198,340); *Hurd v. U.S.*, No. 2:99-cv-00243 ($10,278,184).

Third Party Defendants argue that when a "per beneficiary per year" formula is applied to these verdicts, it shows that the verdict in this case exceeds each of the foregoing. Third Party Defendants fail to cite any authority for the use of their formula. They have also failed to provide any compelling reason to reduce the wrongful death award. The Court must decide this case based

on its individual facts—not the facts of other cases that are not before it. As set forth above, Plaintiff presented sufficient evidence to support the award of $6,750,000. The verdict is not excessive in its own right or when compared with other wrongful death verdicts in South Carolina. The verdict will not be altered, amended, or reduced.

II. Third Party Defendants are not entitled to a new trial absolute.

Third Party Defendants seek a new trial absolute on the grounds that the $6,750,000 wrongful death verdict is "grossly excessive and unsupported by the evidence, clearly indicating that the award was the result of considerations outside the evidence." They base this argument on two references made during Plaintiff's closing argument: (1) that Mr. Glass' beneficiaries would have rejected a hypothetical offer of $1M if it meant losing him for a year and (2) that Plaintiff argued that the Court should "disregard defense counsel's suggestion that 'the life of a twenty-year-old is more valuable than the life of an eighty year-old.'" For the reasons above, the Court holds that the verdict is supported by the evidence and is not grossly excessive. Additionally, the Court disagrees that either statement made in closing arguments was improper or grounds for a new trial absolute.

In awarding wrongful death damages, the Court was tasked with determining the amount of damages caused to Mr. Glass' beneficiaries by his death. Michelle Glass testified that her father's life was invaluable to her. In closing, her attorneys went over that testimony as well as other evidence that was presented. They also provided a hypothetical that if a man offered $1M to both Michelle and her sister, but they could not see or communicate with their dad for a year, they would reject that offer. These statements were in the context of the value of the loss of Mr. Glass to his family. Further, they were supported by the facts in evidence. Therefore, they were proper under South Carolina law. *See Kenne v. CNA Holdings, LLC*, 426 S.C. 357, 827 S.E.2d

183 (Ct. App. 2019).

Third Party Defendants' second point concerns a statement made by their own attorney comparing the life of a twenty-year-old to that of an eighty-year-old. Third Party Defendants offered no evidence or authority to support this contention. Further, it is unclear how asking the Court to disregard something that Third Party Defendants themselves argued placed an improper issue before the Court. The Court rejects this argument.

Finally, and significantly, Third Party Defendants waived the ability to object to the content of Plaintiff's closing argument by failing to contemporaneously object.[1] "The general rule is that the lack of a contemporaneous objection to an improper argument acts as a waiver." *Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 263, 442 S.E.2d 611, 615 (1994). The very narrow exception to this rule is that "even in the absence of a contemporaneous objection, a new trial motion should be granted in flagrant cases where a vicious inflammatory argument results in clear prejudice." *Dial v. Niggel Assocs., Inc.*, 333 S.C. 253, 256, 509 S.E.2d 269, 271 (1998) (quoting *Toyota of Florence*). In *Dial*, the Supreme Court made clear that the "vicious inflammatory argument" contemplated in the exception must be an argument that "constitutes abuse of a party or witness." *Id.* at 259, 509 S.E.2d at 272. In *Toyota of Florence*, the Court found that racist posters about the party opponent that counsel used as props in a closing argument met this narrow exception. 314 S.C. at 263, 442 S.E.2d at 615. However, an argument deemed possibly racial but not racist was found not to meet the narrowly construed exception in *Dial*, 333 S.C. at 260, 509 S.E.2d at 272.

Here, Plaintiff asking the Court to think about the value of the loss of Mr. Glass' life to his

[1] While Rule 52(b), SCRCP, allows a party to question the sufficiency of evidence following a non-jury trial even if that objection was not made in trial, it does not preserve all objections, including ones to improper evidence or statements in closing arguments.

beneficiaries does not meet the very limited *Toyota/Dial* exception to the contemporaneous-objection rule. Plaintiff's closing argument cannot be construed as an "abuse" of Third Party Defendants' witnesses at trial. Therefore, their failure to object constitutes a complete waiver of its arguments about Plaintiff's closing statement. Third Party Defendants have failed to establish grounds for a new trial absolute.

III. Third Party Defendants are not entitled to a new trial absolute or to a new trial nisi remittitur on the issue of punitive damages.

"In order to receive an award of punitive damages, the plaintiff has the burden of proving by clear and convincing evidence the defendant's misconduct was willful, wanton, or with reckless disregard for the plaintiff's rights." *Welch v. Epstein*, 342 S.C. 279, 301, 536 S.E.2d 408, 419 (Ct. App. 2000). "A conscious failure to exercise due care constitutes willfulness." *Mishoe v. QHG of Lake City, Inc.*, 366 S.C. 195, 201, 621 S.E.2d 363, 366 (Ct. App. 2005). "When evidence exists that suggests a defendant is aware of a dangerous condition and does not take action to minimize or avoid the danger, sufficient evidence exists to create a jury issue as to whether there is clear and convincing evidence of willfulness." *Id.* Violation of a statute is "evidence that the defendant acted recklessly, willfully, and wantonly." *Wise v. Broadway*, 315 S.C. 273, 276, 433 S.E.2d 857, 859 (1993).

"The purpose 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." *Keene*, 426 S.C. at 385, 827 S.E.2d at 198 (affirming $2M punitive damages award). "Punitive damages also serve to vindicate a private right of the injured party by requiring the wrongdoer to pay money to the injured party." *Id.* When conducting a post judgment-judgment review of punitive damages, courts look at reprehensibility, ratio, and comparative penalty awards. *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 588, 686 S.E.2d 176, 185-86 (2009).

The following evidence submitted at trial is relevant punitive damages award and the issue of reprehensibility:

1. MLS is a company that performs erosion control work on highway projects.

2. In October 2019, MLS hired an employee named Kenneth Cogdell.

3. When it hired Mr. Cogdell, MLS did not check his driving record.

4. If it had checked his driving record, MLS would have discovered that Mr. Cogdell had multiple traffic violations, had been in multiple wrecks, and had his driving license suspended at least once.

5. A month after he was hired by MLS, Mr. Cogdell's driver's license was suspended on November 16, 2019, and was not reinstated until January 10, 2020.

6. Mr. Cogdell drove a truck known as a hydroseeder for MLS.

7. The hydroseeder was used to spray a grass seed mixture for erosion control on highway projects.

8. The only training MLS gave Mr. Cogdell for the hydroseeding truck was having him observe other employees drive it and then having someone observe him drive it for a short period of time before he started driving it by himself.

9. There are no written records concerning Mr. Cogdell's training.

10. On March 11, 2020, MLS sent Mr. Cogdell on a hydroseeding job in Darlington County.

11. The project involved the replacement of three bridges on Lamar Highway.

12. Because the bridges were closed, Mr. Cogdell had to take secondary roads to drive from one side of the jobsite to the other.

13. Mr. Cogdell was not familiar with the area.

14. MLS did not give him directions or take any steps to familiarize him with the area.

15. Instead, MLS told him and his passenger known as the "navigator" to use a cell phone to find their way from one side of a bridge to another.

16. The cell phone that the navigator was using did not have good service and the map feature kept malfunctioning.

17. Mr. Cogdell and his navigator became lost once they turned off of Lamar Highway.

18. The MLS truck driven by Mr. Cogdell ended up traveling north on High Hill Road towards the intersection of High Hill Road and Green Street.

19. At the intersection, High Hill Road has a stop sign and stop line.

20. There is no stop sign on Green Street.

21. The intersection is surrounded by fields that, at the time, had nothing growing in them.

22. There were no obstructions that would have impeded Mr. Cogdell from seeing the stop sign.

23. Ms. Glass' accident investigation expert, Bryan Durig, testified that Mr. Cogdell would have been able to see the stop sign one-half-mile before the intersection.

24. Mr. Cogdell, however, was lost and distracted.

25. He ran the stop sign at a rate of speed that caused a violent collision on Green Street.

26. At the time the MLS truck ran the stop sign, Sanford Earl Glass entered the intersection heading west on Green Street.

27. Bryan Durig testified that skid marks and gouges in the highway show that Mr. Glass attempted to take evasive action and that he tried to turn right immediately before the collision to avoid the MLS truck.

28. However, he was unable to avoid it.

> 29. The MLS truck struck Mr. Glass' Hyundai with such force that it altered Mr. Glass' vehicle's direction and pushed it 175 feet north up High Hill Road.
>
> 30. The damage to Mr. Glass' vehicle was extensive.
>
> 31. Mr. Glass was later pronounced dead at the scene by the Darlington County Coroner, Todd Hardee, who also testified at trial.
>
> 32. When highway patrol arrived, the MLS employees told the trooper that Mr. Glass ran the stop sign and was at fault.
>
> 33. These statements made by the MLS employees were false because Mr. Glass had the right-of-way.
>
> 34. Stephanie Smith testified that Mr. Cogdell and the navigator were acting within the scope of their employment at the time of the collision.

MLS is a hydroseeding company that works on State highway projects. Therefore, their acts and omissions directly place the general public at risk. As set forth above, they hired an employee whose driver's license was suspended. They gave him no training to drive the 4.5-ton truck that is at issue. They then failed to give him adequate GPS equipment or even familiarize him with the work zone. The MLS employee also lied to the police after the accident.

MLS violated a statute by running a stop sign. Further, because MLS continues to operate today, it poses a risk to the general driving public. Its conduct was reprehensible and punitive damages are appropriate to both deter future wrongdoing and to provide some small measure of vindication to Plaintiff for the loss of her father. *See Burroughs*, 352 S.C. at 406, 574 S.E.2d at 227.

Third Party Defendants have also failed to show that the punitive damages award was improper under the remaining *Mitchell* factors. They concede that the ratio of actual damages ($6.5M) to punitive damages ($2M) is appropriate under South Carolina law and that challenging

it would be a "fruitless exercise." (Mot. p. 27); *see also Mitchell*, 385 S.C. at 591, 686 S.E.2d 187 (suggesting that punitive damages awards of up to a 9:1 ratio are permissible).

As to the comparative penalty award factor, the only case they cite is one where $30,000,000 in punitive damages were awarded when the actual damages were only $1,656,785.35. (Mot. at p. 27-28 & Ex. A (citing *Bales v. Martinez*, No. 2010-CP-10-08631 (S.C. Comm. Pl. May 14, 2014).) Unlike in *Bales*, where the punitive damages were nearly 30 times *greater* than the actual damages, here, the Court awarded punitive damages that are 3 times *less* than the actual damages. Further, *Bales* did not involve the same level of reprehensible conduct. There, it appears an individual ran a stop sign. (Mot. p. 28.) Here, we have a corporate defendant who continues to work on South Carolina highways. It hired an employee with a bad driving record, including several license suspensions, failed to train that employee, and then did nothing when its employee tried to cover up his wrongdoing and blame Mr. Glass. When conduct is as reprehensible as it is here, our appellate courts have approved much higher punitive damages awards. *See Mitchell*, 385 S.C. at 594, 686 S.E.2d at 188 (approving $10M punitive damages award where actual damages were $1,081,189.40); *see also Mackela v. Bentley*, 365 S.C. 44, 614 S.E.2d 648 (Ct.App.2005) (upholding a 3.75 to 1 ratio); *Austin v. Specialty Transp. Services, Inc.*, 358 S.C. 298, 594 S.E.2d 867 (Ct.App.2004) (upholding a 2.54 to 1 ratio); *Collins Entertainment Corp. v. Coats & Coats Rental Amusement*, 355 S.C. 125, 584 S.E.2d 120 (Ct.App.2003) (upholding a 9.96 to 1 ratio); *Cock–N–Bull Steak House, Inc. v. Generali Ins. Co.*, 321 S.C. 1, 466 S.E.2d 727 (1996) (upholding a 28 to 1 ratio). Third Party Defendants have failed to establish grounds to alter or amend the punitive damages award, for a new trial absolute, or for a new trial nisi remittitur.

NOW, THEREFORE, Third Party Defendants' Motion to Alter or Amend Judgment and

for a New Trial Nisi Remittitur or, in the Alternative, for a New Trial Absolute is **DENIED**.

IT IS SO ORDERED.

[Electronic Signature on Following Page]

Darlington Common Pleas

Case Caption: Michelle Glass Personal Representative , plaintiff, et al VS Mikes Landscaping Service Inc , defendant, et al

Case Number: 2020CP1600507

Type: Order/Other

So Ordered

s/Paul M. Burch, Judge #2048