THE STATE OF SOUTH CAROLINA
In the Court Of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Steven H. John, Circuit Court Judge

Appellate Case No. 2020-000046
Case No. 2011-CP-26-7403

Mark Green, as Personal Representative of the Estate of Randall M. Green and Ann Green,..... Respondents,

v.

Wayne B. Bauerle, M.D. and Wayne B. Bauerle, M.D., P.C..... Appellants.

APPENDIX TO THE RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
Randall M. Green and Ann Green, Plaintiffs,	)	Civil Action No.: 2011-CP-26-7403
vs.	)	**PLAINTIFFS' MEMORANDUM OF LAW**
Wayne B. Bauerle, MD and Wayne B. Bauerle MD, PC	)	
Defendants.	)	

FACTS AND PROCEDURAL BACKGROUND

After a car wreck on April 17, 2004, Randy Green was taken to Grand Strand Regional Medical Center ("GSRMC") with hip injuries and an arm laceration. He was stable, alert, and talkative with no signs of head injury. The ER doctor, Dr. Lintz, called the on-call orthopedic surgeon, Dr. Bauerle about the hip injuries. Two hours later, Randy had developed more injuries and serious conditions. He was **urgently** taken to the Pre-Operative area ("Pre-Op") (Pl. Exs. 2, 3, 4, 8, 22) Lintz called Bauerle again to tell him Randy had to go to Pre-Op- there was no time for a hip CT. He noted Bauerle was "pretty adamant about getting the CAT scan of the hip first."(Tr. 91:23-25, 92:13-14) Bauerle testified about their disagreement stating, "*I* had no disagreement, I knew exactly what needed to be done, it's what I did." [1] (Tr. 488:15-20)

When Bauerle arrived, he took Randy out of Pre-Op for the CT *despite* Lintz's protest and *despite* vital signs warning he was on the verge of a cardiac arrest. (Pl. Exs. 4, 22) Experts testified it was a "dramatic" deviation from the standard of care to take a "totally unstable" patient out of Pre-Op where his vital signs were being closely monitored and controlled by an anesthesiologist (Dr. Peters) who could prevent and stop a cardiac arrest. Bauerle conceded he wouldn't have removed Randy if he had been aware of his condition (T. 524) His own expert agreed he should have looked at Randy's vital signs and chart, and stated that a doctor shouldn't issue orders without being aware of a patient's condition *or* argue with the doctor looking at the patient. (T. 578-580)

While away from Pre-Op, Randy's heart stopped. This was discovered by Lintz, who "happened" to be passing by. He first paged Dr. Peters, who had to run over to the ER from Pre-Op. While waiting for Dr. Peters to arrive and insert arterial lines, Lintz intubated Randy and began CPR. Randy's other treating surgeons ran in and began operating in the middle of the ER. Bauerle

[1] At oral arguments before the Supreme Court, Justice Hearn questioned the equity of the size of the benefit given to Bauerle by the previous setoff calculation as he was "arguably the most culpable party" in a series of multiple "horrific" acts of negligence.

was present but stated "I don't run code. . . I watched." They struggled to get his heart beating for 26 minutes. (Pl. Exs. 4, 8) He was transferred to MUSC in Charleston the following night and spent months there being treated for many injuries before being discharged to a rehab facility. (Pl. Ex. 5)

Randy and Ann Green filed a medical malpractice and loss of consortium lawsuit against Bauerle on May 30, 2005. GSRMC was added two years later and settled with the Greens for a single joint payment of $2M in May 2013. A stipulation of dismissal was filed by consent of all. The joint settlement was paid equally to the Greens via a single joint check and didn't otherwise allocate the funds. They maintained the funds jointly in both of their names and used it for their joint expenses. At the time of settlement, they had discussed that Ann had provided $1,209,600.00 worth of skilled care and that she intended to continue doing so. (Aff. Ann Green; Tr. 166, 180-181, 182; Pl. Exs. 13, 15) She became trained and qualified to do this. (Tr. 166; 180-181; 182)

Bauerle refused to settle. The five day trial began September 9, 2013. The Greens presented evidence that (1) Bauerle was negligent in removing Randy from Pre-Op; (2) His removal from Pre-Op caused the cardiac arrest; and (3) The cardiac arrest caused infarction (death) of specific spinal nerve cells causing loss of leg, bowel, bladder, and sexual function. (Dep. Edd Chariker p. 22, 26; Dep. Lee Cranberg p.17, 20-22) **Each injury was supported by evidence of distinct damages. There was conflicting evidence as to whether some injuries resulted from the cardiac arrest.**

The jury awarded Randy a verdict of $2.3M for Medical Malpractice and Ann a verdict of $550K for Loss of Consortium. **The verdict form indicated that Bauerle's negligence caused "injuries," but didn't say which injuries or damages were included.** In order to apply a setoff, this Court allocated the joint settlement based on percentages derived by combining the amounts of the separate verdicts. The Supreme Court vacated the Order's method of calculating the setoff, finding that it was arbitrary and remanded this issue, directing the Court to "convene a hearing to consider all relevant circumstances." The Remittur vacating this Court's prior settlement allocation was filed on June 17, 2019. Randy passed away on June 22, 2019.

ARGUMENTS

"A defendant who fails to bargain is not rewarded with the privilege of fashioning and ultimately extracting a benefit from the decisions of those who do." Riley v. Ford, 414 S.C. 185, 197, 777 S.E.2d 824, 831 (2015). Plaintiffs assert that the verdicts should have been reduced by equal amounts because (1) The settlement involved a single joint payment, and they intended to and did receive and own the funds equally; (2) Their agreement can't be modified because it can't be shown to be an unreasonable fraud or sham *nor* could it have caused a double recovery; and (3) The verdicts are an arbitrary and inequitable method of applying a setoff as it impossible to determine which injuries they included, and the method gave Ann's verdict a grossly unjust effect.

The Supreme Court has made clear that courts may not modify good faith settlements.

> A plaintiff who enters into a settlement with a defendant gains a position of control and acquires leverage in relation to a nonsettling defendant. This posture is reflected in the plaintiff's ability to apportion the settlement proceeds in the manner most advantageous to it. Settlements are not designed to benefit nonsettling third parties. They are instead created by the settling parties in the interests of these parties. If the position of a nonsettling party is worsened by the terms of a settlement, this is a consequence of the refusal to settle. A defendant who fails to bargain is not rewarded with the privilege of fashioning and ultimately extracting a benefit from the decisions of those who do.

Riley v. Ford, 414 S.C. 185, 197, 777 S.E.2d 824, 831 (2015)(quoting Lard v. AM/FM Ohio, 901 N.E.2d 1006 (Ill. App. 2009)(citing Muro v. Abel Freight Lns., 669 N.E.2d 1217 (Ill. App. 1996)).

1. **The settlement agreement clearly provided for a single joint and equal payment, and the Greens intended to receive and own the funds jointly and equally.**

The Greens' settlement with GSRMC was a **joint** settlement which they intended to, and did, receive and share equally. (Aff. Ann Green) This is clear from the terms of the agreement, their testimony, their acts subsequent to the settlement, and the surrounding circumstances. Settlement agreements are contracts. Pee Dee Stores Inc. v. Doyle, 381 S.C. 234, 672 S.E.2d 799 (Ct.App.2009); Pruitt v. S.C. Med. Mal. Liab. Jt. Underwriting Ass'n, 343 S.C. 335, 540 S.E.2d 843 (2001); Mattox v. Cassady, 289 S.C. 57, 344 S.E.2d 620 (Ct. App. 1986). An action to construe a contract is an action at law. Silver v. Abstract Pools & Spas, Inc., 376 S.C. 585, 658 S.E.2d 539 (Ct.App.2008).

The court must determine the intentions of the parties to a settlement as far as possible from the terms, and such intentions must be given effect. Id. "**The courts in attempting to ascertain this intention, will endeavor to determine the situation of the parties, as well as their purposes at the time the contract was entered.**" Mattox, 289 S.C. at 61. "The intention of the parties should be determined from the surrounding circumstances, as well as from the testimony of all the witnesses; and **subsequent acts are relevant** to show whether a contract was intended." (emphasis added) Caulder v. Knox, 251 S.C. 337, 345, 162 S.E.2d 262 (1968).

First, it is undisputed that the agreement was for a *single* payment which was made jointly to the Greens and did *not* allocate the funds unequally. The intention to receive the funds jointly and equally are clear from the terms. This must be given effect. Mattox, 289 S.C. at 61.

Second, the funds were kept jointly in both of their names. This subsequent conduct is further evidence of their intentions. Caulder, 251 S.C. 337. Also, S.C. Code § 62-6-203(c) states that ownership of money deposited in an account in the husband and wife's name is **legally presumed to be intended as joint with right of survivorship in absence of clear and convincing evidence otherwise**. During life, each of them legally owned an amount **in proportion to the contribution of each to the net sum on deposit.** S.C. Code § 62-6-201(a). Their contributions were equal.

Third, the circumstances at settlement also show their intentions. "The court should put itself, as best it can, in the same position occupied by the parties when they made the contract. In doing

so, the court is able to avail itself of the same light which the parties possessed when the agreement was entered into so that it may judge the meaning of the words and the correct application of the language." Klutts Resort Realty v. Down'round Dev. Corp., 268 S.C. 80, 89, 232 S.E.2d 20 (1982).

This case is unusual in that it involves **extraordinary** consortium damages that could reasonably be argued to even exceed the damages of the physically injured spouse. Randy testified that Ann "is sacrificing her life for what is left of mine." (Tr. 335) He further testified that she had a serious health condition that "she won't go get fixed because she won't leave me." (Tr. 335) Placing oneself in his position, it is difficult to imagine he intended to receive more than her.

From the day Randy came home in 2004 until his death in 2019, Ann alone provided his 24-hour care, spending very few hours a day doing things for herself or sleeping more than a few hours at a time. (Tr. 165, 234) She had done all of this for nine (9) years at the time of the GSRMC settlement.[2] She was forced to give up a very active social life, and experts testified that she was "supremely tired" and suffering from anxiety, depression, and caregiver role strain. (Tr. 166-169) Experts testified that this was a "family tragedy," and that Ann needed psychological treatment as a result. (Tr. 176) Her children tearfully testified that she refused to leave his side long enough to receive treatment for a heart condition. (Tr. 109-113, 167, 225) For fifteen (15) years, she catheterized her husband five to six times a day, requiring her to set an alarm to wake up at midnight *every night*. (Tr. 231, 233-234) She lived with the knowledge that if she failed to do this even once, he would die. (Tr. 163-164, 234) She manually evacuated his bowels. (Tr. 158-159, 241) She physically lifted him, bathed him, prepared his meals, helped him eat, and took care of all the household chores. (Tr. 167:14-19, 242) She couldn't leave the house for any length of time, stating "I can't go far. I don't go far. Time is my enemy now." (Tr. 225:7-8) She testified that she intended to provide all his future care, stating "[h]e would do the same for me and I will do it until I die . . . He has taken care of me all these years, it's my turn and I will do it until I can't." (Tr. 245:1-9) When asked if the above testimony accurately represented everything she did for him, Randy testified, "In my opinion it is not. I think she omitted an awful lot of it." (Tr. 335: 7-11)

The Greens had a Life Care Plan prepared in 2011. At settlement, they knew Ann had provided $1,209,600.00 worth of skilled care and that she intended and agreed to continue caring for him. (Aff. Ann Green; Pl. Exs. 13, 15; Tr. 165:12-18, 182-183) She became trained and qualified to do this. (Tr. 166, 180-183). Her sacrifices and lost time were immense. Sullivan v. Davis, 317 S.C. 462, 454 S.E.2d 907 (Ct.App.1995)(wife entitled to consortium damages where her schedule was disrupted and he was dependent on her to bathe him, dress him, and care for his colostomy); Davis v. Tripp, 525 S.E.2d 528 (Ct. App. 1999)(wife entitled to consortium damages where her schedule was disrupted and she had to wait on him hand and foot for months).

[2] The settlement agreement was entered into a few months before trial.

It is **undisputed** that they intended to receive and share the funds equally. The prior setoff should have reduced each verdict by equal $1M amounts. At the time of this Court's prior ruling, it did not have the benefit of a Supreme Court decision decided during this case's appeal and clarifying that it is error to disturb the terms of a settlement solely to benefit a non-settling defendant unless the terms are shown to be fraudulent or a sham. Riley, 414 S.C. 185.

2. **The agreement can't be modified because there is evidence to support equal $1M amounts for each claim *and* this could not result in a double recovery.**

S.C. Code §15-38-50 doesn't authorize modification of good faith settlements. A court may **consider** modification after finding that the settling parties' agreement (1) is unreasonable because there is **no** evidence to reasonably support the **dollar amount** apportioned to a claim ***and*** (2) it would unfairly result in a double recovery. *See* Riley. In cases allowing reallocation, *no evidence* existed to support the dollar amount allocated to an individual claim, so these settlements were frauds or shams. Rutland v. S.C. Dep't Transp., 400 S.C. 2019 (2012) (instant death involved no suffering or medical expenses so any allocation to survival action was clearly unreasonable); Welch v. Epstein, 342 S.C. 279 (Ct. App. 2000)(no evidence of suffering so allocating more than medical expenses to survival action was clearly unreasonable). These were also death cases.

Allocating a joint settlement among multiple parties in a case with multiple divisible injuries and causes of action in order to apply a setoff is not standard procedure. It has only been done in cases involving a single death or objective economic loss.

> [T]he party seeking departure from the application of standard set-off rules bears the burden of proof . . . particularly where 'there is an executed contract between [the parties] which is not contested between them but which is sought to be invalidated by third parties.'

Riley, 414 S.C. 185, 196-197 (quoting In re Wells, 43 S.C. 477, 21 S.E. 334, 337 (1895)). A party must first *request* modification. Only after meeting its burden is it entitled to have the court *consider* it. Riley at 191,196-198. "Such motions are addressed to the discretion of the court- a discretion which should not be arbitrarily or capriciously exercised." Welch, 342 S.C. at 313.

In Riley, the Court found that it was error to modify the settlement on the basis that the court didn't view the amounts paid to each claim to be "proportionately reasonable." Rather, the court should have considered whether the individual "dollar amount" paid to the claim was reasonable. It is error to disturb a settlement to make it more beneficial to a nonsettling defendant. "Settling parties are naturally going to allocate settlement proceeds in a manner that serves their best interests." Id. at 197. The Court noted that the lower court didn't discuss evidence as to *why* the settlement was unreasonable ***or*** *why* it would cause a double recovery. Id. at 196-197.

First, there is no evidence that the joint settlement was an unreasonable fraud or sham. In fact, it would have been reasonable to allocate *more* than $1M to Ann. Consistent with Riley, the Greens had the right to negotiate favorable settlement terms personal to their marriage and

impacting legal rights and future inheritance issues. They negotiated terms reflecting their love, values, decades of marriage, obligations to each, and Ann's incredible sacrifices. This is **not** evidence of bad faith intent to deprive Bauerle of a larger benefit. Expert testimony labeled this as a "tragedy" for Ann. There is **overwhelming** evidence that she suffered horribly. The value of the care she had provided at the time of settlement even lends objective reasonable support for her $1M share. (Pl. Exs. 13, 15) There is ample evidence to support the decision. It was not an unreasonable fraud or sham. Riley.

Second, applying an equal $1M to each verdict **could not** have resulted in a double recovery. It would have reduced Ann's verdict by $1M and would **wipe out Bauerle's entire liability to her.** It would allow her to retain her more valuable ownership interest in the settlement. Reducing Randy's verdict by this amount would give him a total recovery of $2.3M; **the exact amount that the jury awarded him.**[3] It is objectively clear that applying the settlement funds equally to each spouse would not have resulted in a double recovery to either.

Finally, the terms of the good faith settlement offered the **simplest and most objective method** available for applying the setoff. There is no equitable *or* legal basis to modify the settlement or apply a setoff inconsistent with its terms. "If the position of a nonsettling party is worsened by the terms of a settlement, this is a consequence of the refusal to settle. A defendant who fails to bargain is not rewarded with the privilege of fashioning and ultimately extracting a benefit from the decisions of those who do." Riley, 414 S.C. at 197.

"[C]ontractual or property rights [are] matters in which predictability and stability are of prime importance." Bradley v. School Board of City of Richmond, 416 U.S. 696, 711 (1974). The Greens had a right to legitimate expectations regarding their settled transactions. Modification of the settlement would completely unravel their settled plans. It would deprive Randy of the basic right to die with knowledge of the extent and nature of his own property to which his heirs would succeed. "Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted." Landgraf v. USI Film Products, 511 US 244 (1994).

3. **The verdicts are an arbitrary, impermissible, and unjust method of applying a setoff.**

The issue of proximate cause is a question for the jury if there is a fair difference of opinion as to whose act caused the injury. Ballou v. Sigma Nu Fraternity, 291 S.C. 140, 147-148, 352 S.E.2d 488, 493 (Ct. App. 1986). "The facts at trial, not the allegations of a party's pleading, control liability." Griffin v. Van Norman, 302 S.C. 520, 526, 397 S.E.2d 378 (Ct. App. 1990).

a. ***There is no way to know which injuries and damages were included in the verdicts.***

"The law rather forbids [the] court assuming to take upon itself the powers, duties, rights,

[3] As set forth further below, this verdict **can't** be shown to represent full compensation for all injuries. Bauerle was not liable for "all or none."

and privileges of a jury." Anderson v. Aetna Cas. & Sur. Co., 175 S.C. 254, 282, 178 S.E. 819, 829 (1934). The jury could have found that Bauerle was liable for some but not all injuries alleged. As set forth below, holding otherwise would gravely invade the jury's province. Id.

Cases where settlement agreements were modified to reallocate funds are very different from this case. They involved only a **single death**. Potential damages in the settlement and verdicts ***had*** to correlate ***exactly***.[4] Even so, the reallocations were ***still*** not based on the verdicts but on whether there was *any* evidence as to specific objective amounts. *See* Rutland; Welch. Here, there is no evidence the verdicts correlated exactly with the settlement, and they are an arbitrary and inequitable method to determine a fair division of the funds.

Plaintiffs alleged the cardiac arrest caused infarction (death) of specific spinal nerve cells resulting in loss of leg, bowel, bladder, and sexual function. (Dep. Edd Chariker p. 22, 26; Dep. Lee Cranberg p. 17-18, 20-22). **Each injury was supported by evidence of unique and distinct damages.** (Id.; Pl. Exs. 13, 15; Tr. 103-112, 114-116, 118-120, 127, 132-133, 157-168, 174-180, 182-183, 184-192, 199-202, 211, 213, 225, 231, 234, 241-245, 388-390) It was undisputed that the timing of an injury determined whether it was caused by the cardiac arrest. (Tr. 384; 488; 565; Dep. Lee Cranberg p.15-18). Experts testified these injuries would be apparent within *minutes*. In contrast, swelling from the car accident could cut off blood supply enough to kill nerve cells *days later*. (Tr. 565) There was evidence Randy was still able to move his legs the *following night*, and his bladder was still working at discharge from MUSC *months* later. (Tr. 384; Dfnt. Ex.1; Pl. Ex. 5).

As a Harvard Neurologist, Dr. Lee Cranberg, testified: An event causing a severe enough lack of blood, such as cardiac arrest, can cause infarction. This is when spinal nerve cells die, and the functions **those** cells were responsible for are permanently lost within *minutes*. (Dep. Cranberg 14-16) Leg paralysis is "common" but is not the only injury that can result from an infarction. This depends on which spinal nerve cells die. (Dep. Cranberg 17-19) "Those nerve cells are not coming back; and that means that the function **those** nerve cells are responsible for, that function is lost." (Dep. Cranberg 16:16-19) There was no evidence that, if one of the alleged injuries was caused by infarction during the cardiac arrest, they *all* had to be. Dr. Cranberg based his opinion as to the cause of Randy's injuries on *when* he believed they occurred. (Dep. Cranberg 18).

As to the bladder injury, there was evidence that Randy was urinating "without difficulty" on discharge from MUSC months later. (Pl. Ex. 5) The jury might not have included damages for this injury in the verdicts. This injury caused unique damages to each Plaintiff. The cost of catheters was $393,214.50. (Pl. Ex. 13, 15; Tr. 163-166, 181, 421-422, 762) Ann's damages from this injury are huge relative to other injuries, including the value of catheterizing him six times a day. It kept her from sleeping a full night for 15 years, made her a prisoner in her home, and caused

[4] Survival actions allow **only two damages;** objective past medical expenses and subjective suffering.

unfathomable fear as Randy would die if she failed to do this even once.

As to the leg paralysis, there was conflicting evidence as to when it happened as well as other possible causes. (Tr. 384: 399: 488) Bauerle testified it could have resulted from the dislocated hip injuring nerves that control leg movement. (Tr. 488:4-11) He introduced evidence Randy was still moving his legs after the cardiac arrest during transport to MUSC *the following night*. (Tr. 384)[5] The jury might not have awarded damages for this injury. This is made more likely if Randy's verdict is compared to the future medical costs clearly related only to the leg paralysis. Subtracting the costs of wheel chairs ($153,000.00), transportation ($13,930.00), and home modifications ($39,975.00) from the present value of his future medical expenses ($2,515,218.00) equals $2,308,313.00. (Tr. 181, 208; Pl. Exs. 13, 15) This is **very** close to his $2,300,000.00 verdict.

Of note, Plaintiffs requested that the verdict form permit the jury to indicate how much they awarded for different damages. However, when **this request was declined**, Bauerle did not object. (Tr. 644) It was Bauerle's burden to demonstrate the settlement and verdicts compensated the same injuries. He didn't object to the verdict form or seek clarification as to the verdicts' contents prior to the jury's dismissal. Riley, 414 S.C. 185; In re Wells, 43 S.C. 477, 21 S.E. 334, 337 (1895) (party seeking to depart from standard set-off rules bears burden of proof); Rourk v. Selvey, 252 S.C. 25, 164 S.E. 2d 909 (1968) ("The defendant's counsel made no attempt to find out what the jury intended, and their objections come too late. It was [counsel's] business to clarify and ask for a correction and reformation of the verdict before the jury were [sic] discharged.")

In light of all circumstances now known to the court, and in light of Riley, the ratios of the two verdicts are an arbitrary and inequitable method of determining the setoff amounts in this case. The settlement expressly included past medical expenses, but they weren't presented at trial and couldn't have been included in the verdicts. (Tr. 209) The settlement stated it wasn't limited to injuries and damages pending against Bauerle, and the jury could have found him liable for some but not all alleged injuries. The testifying Economist told the jury that the Life Care Plan was flexible and divisible, advising if they "don't like it, take it out." (Tr. 206-207) There were multiple other negligent acts causing many injuries over **weeks**. There was even a *second* arrest at MUSC.

b. The previous allocation inflicted an extreme injustice on Ann.

Finally, Ann had to prove Bauerle's liability for her husband's injuries, *as well as* the damages she sustained as a result. Creighton v. Coligny Plaza Ltd., 334 S.C. 96, 512 S.E.2d 510 (Ct. App. 1998); Cook v. Atlantic Coast Ln. R.R., 196 S.C. 230, 243, 13 S.E.2d 1 (1941). **Randy and Ann did not carry identical burdens of proof at trial.** Therefore, the *relative* amounts of their separate verdicts shouldn't have been used to determine their respective rights to the settlement *or* their

[5] Dr. Cranberg testified that cell death occurs within a few minutes without a blood supply. (Dep. Lee Cranberg p. 15)

verdicts. "Each Litigant was entitled to a verdict based on the law and the evidence." Page v. Crisp, 303 S.C. 117, 119, 399 S.E.2d 161, 162 (Ct. App. 1990).

The previous setoff rendered the effect of obtaining a verdict against **Bauerle far more penalizing to Ann than it was to the actual tortfeasor.** It took from her a settlement amount which was **even greater than her verdict against Bauerle**, and *then* she was further deprived of most of her verdict. It unfairly reduced Randy's verdict. Further, the prior allocation was arbitrary without knowing *which* injuries and damages impacted the proportions between the verdicts.

CONCLUSION

Applying the joint settlement equally each of the Plaintiffs' verdicts is the most efficient, concise, objective, and just method to apply a setoff in this case. This is consistent with the terms of the settlement and the parties' intentions which must be given effect unless proven to be so unreasonable that it is fraudulent or a sham. This case is unusual in that Ann's damages are **extraordinary.** Her husbands' physical injuries also destroyed *her* life. The joint settlement was highly reasonable. In contrast, using the jury verdicts to modify and allocate the settlement unequally is arbitrary and inequitable here because there is no way to show that the exact same injuries and damages were compensated in the verdicts. This also deprived Ann of a settlement ownership interest even greater than her verdict against Bauerle before her verdict was even reduced. This rendered the effect of obtaining a verdict more costly to her than it was to Bauerle.

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August 20, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
Randall M. Green and Ann Green	)	Docket No.: 05-CP-26-2805
	)	
Plaintiffs,	)	
vs.	)	AFFIDAVIT OF ANN GREEN
	)	
Wayne B. Bauerle, MD and Wayne Bauerle MD, PC	)	
	)	
Defendants	)	

1. I, Ann Green, live at [redacted] I met my husband, Randall M. Green, when I was fourteen (14) years old.

2. My husband passed away on June 22, 2019 and, to my knowledge, did not have a will.

3. At the time of his death, we had been married for forty three years with three children.

4. On April 17, 2004, we were in a car accident. My husband was hospitalized for months.

5. After he returned home, he had many serious and permanent injuries and was unable to care for himself. I provided his 24-hour care for the rest of his life. For the rest of his life, speech was also difficult for him and frustrating for us.

6. In May 2013, my husband and I agreed to a settlement with Grand Strand Regional Medical Center in exchange for a single joint payment in the amount of $2,000,000.00.

7. The payment was made by a single joint $2,000,000.00 check which we both endorsed.

8. We also received a single joint check for the net proceeds which we used for our joint expenses or maintained as jointly held funds in both of our names.

9. At the time of settlement, I had been my husband's sole 24-hour caretaker for nine (9) years. We had discussed and agreed that I would keep doing this for the rest of his life, which I did.

10. Prior to this settlement, my husband and I had been informed that it would cost $15.00 per hour, or $134,400.00 per year to hire someone else to provide the care I provided. We had discussed this.

11. My husband and I agreed, intended, and did accept the settlement jointly and shared equal rights to the money.

Ann Green

Ann Green Date

SWORN to before me this 20 day of August, 2019.

Notary Public for South Carolina
My Commission expires: 5.20.24

RECEIVED
Dec 08 2020
SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned counsel for Respondents, Mark Green, as Personal Representative of the Estate of Randall M. Green, and Ann Green, certifies that the Appendix to the Record on Appeal contains the Plaintiffs' Memorandum of Law (with attachments) filed August 21, 2019 and not any other material.

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December 8, 2020

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SC Court of Appeals

CERTIFICATE OF COMPLIANCE

The undersigned counsel for Respondents, Mark Green, as Personal Representative of the Estate of Randall M. Green, and Ann Green, certifies that the Appendix to the Record on Appeal complies with the Supreme Court's Revised Order of April 15, 2014, regarding personal identifiers and sensitive information.

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December 8, 2020