STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG Se'Anne Davis (Personal Representative for the Estate of Adrianne Branton), Plaintiff, v. The Regional Medical Center of Orangeburg and Calhoun Counties, Defendant.	)	IN THE COURT OF COMMON PLEAS FIRST JUDICIAL CIRCUIT CIVIL ACTION NO.: 2021-CP-38-01138 **ORDER DENYING DEFENDANT'S MOTION FOR JNOV; GRANTING DEFENDANT'S MOTION FOR REMITTITUR AND SET-OFFS; AND PARTIALLY GRANTING PLAINTIFF'S MOTION FOR COSTS AND OFFER OF JUDGMENT INTEREST**

This matter is before the Court for consideration of Defendant the Regional Medical Center of Orangeburg and Calhoun Counties' (TRMC) Motion for JNOV or Judgment as a Matter of Law or, in the Alternative, for a New Trial Absolute or, in the Alternative, for Remittitur of Verdict and Set-Off, and for consideration of Plaintiff Se'Anne S. Davis, as Personal Representative of the Estate of Adrianne T. Branton's Motion for Costs and Interest. After careful review of the filings submitted by all parties and the relevant law, the Court rules as follows:

I. Defendant's Motion for JNOV or Judgment as a Matter of Law or, in the Alternative, for a New Trial Absolute

a. Occurrences

As this Court noted during trial, Plaintiff pled multiple occurrences at Paragraph 10 of her Complaint and in subsection (a) of Plaintiff's prayer for relief of her Complaint. In addition, Plaintiff's Complaint incorporates a sworn expert affidavit by reference which clearly sets forth the evidentiary basis for a finding of multiple occurrences. TRMC did not argue or present any evidence that it was surprised or prejudiced by Plaintiff presenting multiple occurrences at trial,

since these facts were revealed throughout discovery in this case. TRMC is not able to set forth any South Carolina case to support its proposition that actions involving evidence of multiple occurrences call for heightened or specific pleading requirements beyond those required of Rule 8(a), SCRCP. Even if there were such a requirement, Rule 15(b), SCRCP, provides that pleadings may be amended at any time to conform to the evidence, but "failure so to amend does not affect the result of the trial of these issues." Defendant was given notice of the evidentiary support Plaintiff intended to offer into evidence at the time Defendant was initially served with the Complaint and attached affidavit of expert Dr. David Husted. At trial, Dr. Husted set forth a specific evidentiary basis from which the jury could find up to four separate occurrences, and the jury properly made a finding of two separate occurrences based on the evidence before it. The expert testimony introduced by Defendant's expert witness, Dr. Susan Hardesty, highlighted "systematic failures" throughout the TRMC system, as well as separate discharge errors committed by TRMC.

Defendant's assertion that Plaintiff had a burden to show that "a different 'loss' arose from each of the multiple occurrences claims during trial" is directly contrary to the South Carolina Supreme Court's ruling in Boiter v. South Carolina Department of Transportation.[1] The Boiter Court indicated that multiple occurrences can combine to cause a single injury, and that it is up to the finder-of-fact to determine whether the acts of negligence were separate or were part of the same unfolding sequence of events.[2]

The South Carolina Supreme Court held in Boiter that "the circuit court erred in tying the number of occurrences to the number of injuries sustained by the [plaintiffs]."[3] The Boiter Court

[1] Boiter v. S.C. Dep't of Transp., 393 S.C. 123, 712 S.E.2s 401 (2011).
[2] Id. at 133–34, 712 S.E.2d at 406.
[3] Id. at 134, 712 S.E.2d at 406.

further explained there was "no indication that the [defendants'] actions combined to form a single act of negligence."[4] In this case, after being instructed on the definition of occurrence, the jury affirmatively answered special interrogatories specifically identifying two occurrences of negligence. The evidence before the jury clearly supported its finding that separate and distinct acts of negligence combined to cause Mrs. Branton's death.

TRMC's argument as to the verdict form is unavailing. Plaintiff requested the jury be provided with a line on which to write in the number of occurrences. In response, TRMC specifically asked that the verdict form be fashioned in the format that was ultimately provided to the jury. With the input of both parties, this Court drafted language which would allow the jury to make a finding of up to three separate occurrences which allegedly combined to cause the death of Adrianne Branton based upon the specific evidence presented at trial. The special interrogatories properly summarized the evidence of record, and the jury made a specific finding that two independent acts of negligence combined to cause the death of Adrianne Branton.

The verdict form was clear and unambiguous, and the jury charges provided sufficient instruction and guidance as to their duties. Defendant TRMC correctly notes that it is Plaintiff's burden to prove separate "occurrences," and Plaintiff met that burden at trial by providing a record of separate and distinct acts and omissions which combined to cause Mrs. Branton's death. As noted above, TRMC's own expert provided evidence of two distinct acts of negligence on cross examination.

Defendant's final position, as it relates to the issue of multiple occurrences, asks this Court to weigh issues of material fact that were in dispute at the trial of this matter. While the jury was free to conclude that Mrs. Branton's death was not proximately caused by any negligent act of the

[4] Id.

Defendant, or was proximately caused by only one single act negligence by the Defendant, the jury, after being charged on the law of occurrences, weighed the evidence and determined that Mrs. Branton's death was proximately caused by two separate and distinct acts of negligence. The South Carolina Tort Claims Act (Tort Claims Act) defines an "occurrence" as "an unfolding sequence of events which proximately flow from a single act of negligence."[5] An occurrence is something that flows from "a *single* act of negligence" and not something that flows from a combination of multiple acts of negligence.[6] The jury found two separate and distinct occurrences of negligence, as was permissible based upon the record before the jury.

The South Carolina Supreme Court has held that state entities can be subject to *multiple* caps under the Tort Claims Act, even in situations in which independent acts of negligence result in a *single injury*.[7] In Boiter, the Supreme Court reviewed a case involving allegations of independent acts of negligence by the South Carolina Department of Transportation and the South Carolina Department of Public Safety stemming from a single car accident caused by the red bulb burning out on a stoplight.[8] The Supreme Court reversed the trial court's finding that each separate act of negligence claimed by the Plaintiffs was "part of the *same 'unfolding sequence of events'* that resulted in the Boiters' damages."[9] Instead, the Court held "that two independent and separate acts of negligence occurred here."[10] In rejecting this argument, the Supreme Court held that it was error to attempt to tie the number of occurrences to the number of injuries sustained.[11]

While Boiter involved allegations against two separate governmental entities, the Boiter Court discussed a prior South Carolina case involving allegations of multiple occurrences against

[5] S.C. Code Ann. § 15-78-30(g).
[6] Id. (emphasis added).
[7] See Boiter, 393 S.C. at 134, 712 S.E.2d at 406.
[8] Id. at 126, 712 S.E.2d at 402.
[9] Id. at 133, 712 S.E.2d at 406 (emphasis added).
[10] Id. at 134, 712 S.E.2d at 406.
[11] Id.

a *single* entity.[12] The Supreme Court's decision in Chastain v. AnMed Health Foundation has been widely cited over the last 12 years as the basis for requiring that the jury be properly instructed on the law regarding occurrences and be required to make a finding of fact in cases involving evidence of multiple, distinct acts of negligence.[13] In Chastain, the plaintiffs had filed claims against several nurses and their employer, Defendant AnMed Health Foundation, which was protected under the South Carolina Solicitation of Charitable Funds Act (Charitable Funds Act) pursuant to S.C. Code Ann. § 33-56-180(A).[14] The Charitable Funds Act incorporates the Tort Claims Act damages caps and "occurrence" definition for non-governmental, charitable medical facilities.[15] The jury found Defendant AnMed liable for the negligent acts of its nurses.[16] On appeal, the Supreme Court discussed the issue of occurrences in the context of multiple, distinct acts of negligence within a single charitable entity.[17] The Chastain Court held that a finding of multiple occurrences must be clearly indicated on the jury form, and after the jury is properly instructed on the definition of "occurrence."[18]

The Boiter Court also briefly mentioned Williamson v. South Carolina Insurance Reserve Fund, a case in which the plaintiffs alleged independent acts of negligence by representatives of a single governmental entity resulting in a single injury.[19] In Williamson, the circuit court made a specific finding that, by establishing the minor child's injury was caused by two independent acts of negligence by two separate physicians employed by a *single* governmental defendant, the

[12] Id. at 132–33, 712 S.E.2d at 406.
[13] Chastain v. AnMed Health Found., 388 S.C. 170, 694 S.E.2d 541 (2010).
[14] Id. at 172, 694 S.E.2d at 542.
[15] Id. at 172–73, 694 S.E.2d at 542–43 (quoting S.C. Code Ann. § 33-56-180(A)).
[16] Id. at 172, 694 S.E.2d at 542.
[17] Id. at 173–74, 694 S.E.2d at 543–44.
[18] Id. at 174, 694 S.E.2d at 543–44.
[19] Boiter, 393 S.C. at 132 n.2, 712 S.E.2d at 406 n.2 (citing Williamson v. S.C. Ins. Rsrv. Fund, 355 S.C. 420, 586 S.E.2d 115 (2003)).

plaintiffs "had established two separate 'occurrences' for purposes of the TCA."[20] The South Carolina Supreme Court declined to address the circuit court's finding on appeal.[21]

More recently, United States District Judge Cameron McGowan Currie noted in a trial court order:

> The South Carolina Supreme Court has held in Chastain that a plaintiff who alleges multiple occurrences, that is, there was more than one single act of negligence from which proximately flowed an unfolding sequence of events, bears the burden of proving each occurrence. This court is unable to find as a matter of law there was a single act of negligence here. If Plaintiff presents evidence at trial to support more than one act of negligence, the jury will be instructed on the definition of occurrence and asked to determine whether Plaintiff has proven more than one occurrence.[22]

In 2014, the Honorable R. Markley Dennis, Jr. similarly held:

> Our Supreme Court has determined that the burden to prove more than one occurrence rests on the plaintiff to be submitted to the jury through appropriate jury charges and the verdict form, and, accordingly, whether Plaintiff's claims involve a single occurrence or multiple occurrences is a question for the jury and not an appropriate determination to be made at summary judgment.[23]

This Court properly held that the evidence presented at trial required the issue of occurrences be submitted to the jury, and the submission was made by way of special interrogatories on the verdict form. At the specific request of TRMC, the special interrogatories summarized the alleged occurrences rather than inviting the jury to simply write out the number of occurrences proven. As such, there is no basis for this Court to overturn the jury's factual finding that two separate and distinct occurrences resulted in the injuries to the Plaintiff.

The jury was properly charged as to the elements of negligence, the burden of proof to show negligence, and the definition of occurrence under the Tort Claims Act. At the request of

---

[20] Williamson, 355 S.C. at 423, 586 S.E.2d at 116.
[21] Id. at 426, 586 S.E.2d at 118.
[22] Knox v. United States, No. 0:17-cv-36-CMC, 2018 WL 3241931, at *6 (D.S.C. July 3, 2018) (citing Chastain, 388 S.C. at 174, 694 S.E.2d at 543–44).
[23] Doe 2 v. The Citadel, No. 2012CP1001858, 2014 WL 8727884, at *30 (S.C. Com. Pl. Dec. 9, 2014) (citing Chastain, 388 S.C. at 174, 694 S.C.2d at 543).

TRMC, detailed special interrogatories were included on the verdict form in lieu of a simplified verdict form which would have allowed the jury to write in the number of separate occurrences. The jury heard the evidence and made a specific finding, based on the evidence and the definition of occurrence as defined by the General Assembly, of two occurrences.

Finally, the South Carolina Court of Appeals has recently affirmed a verdict in which "the jury found two occurrences of gross negligence" by the Horry County School District.[24] The independent acts both took place over the course of the same football game and combined to cause a single brain injury to a student athlete.[25] Thus, the contention that the holding in Boiter is only applicable to cases filed against multiple state entities has already been rejected by the Court of Appeals. In June 2023, the South Carolina Court of Appeals affirmed the trial court's 2022 decision to allow the issue of occurrences to go to the jury, and confirmed that multiple occurrences could be returned against a single state entity when multiple acts of negligence committed by the same state entity combined to form a single injury.[26] In August of 2023, the Court of Appeals denied the defendant's request for a rehearing.

Based on established precedent of this State, the Court will not grant TRMC's motion based on charging the jury on "occurrences" and presenting these questions on the jury form, and the Court finds that sufficient evidence was presented to the jury to support its finding of multiple occurrences in this case.

b. Photos and Video Were Properly Admitted into Evidence

This Court finds the photographs admitted into evidence were not overly graphic. On instructions from the Court, the Plaintiff culled a select few photographs from the dozens of

[24] Wood v. Horry Cnty. Sch. Dist., No. 2021-000535, 2023 WL 4105395, at *1 (Ct. App. June 21, 2023).
[25] Pls.' Compl. ¶ 6–9 (filed Oct. 11, 2017); Verdict Form (filed May 13, 2021).
[26] Wood, at *1.

photographs produced by both parties in discovery to offer into evidence. The photographs that were selected were not overly prejudicial but instead depicted the scene of Mrs. Branton's death without focusing on the graphic details of her death.

Further, the video of Mrs. Branton's grandson speaking at her funeral does not constitute hearsay as it was not offered for the truth of the matter asserted. "[A] statement that is not offered to prove the truth of the matter asserted should not be excluded as hearsay."[27]

The brief video played for the jury depicted a grandson recalling memories of his grandmother's love of preparing food and finding a way to visit with family and friends despite the fact that she never had a driver's license. The video was introduced simply to provide some context as to the daily life of Mrs. Branton when her mental health condition was at its baseline, and to show the strong affection her family had for her. It was not introduced as proof that she enjoyed cooking and visiting family members. None of these facts were in dispute, and TRMC was not prejudiced by its inability to cross-examine O'Maury Davis—who had died unexpectedly prior to the start of trial—about these undisputed facts.

c. Defendant is Not Entitled to a New Trial Based Upon the Thirteenth Juror Doctrine

Defendant is not entitled to a new trial based upon the thirteenth juror doctrine. "South Carolina's thirteenth juror doctrine allows the circuit court judge to grant a new trial absolute when the judge finds the evidence does not justify the verdict."[28] "As the 'thirteenth juror,' the trial judge can hang the jury by refusing to agree to the jury's otherwise unanimous verdict."[29]

---

[27] Deep Keel, LLC v. Atl. Priv. Equity Grp., LLC, 413 S.C. 58, 69, 773 S.E.2d 607, 613 (Ct. App. 2015) (quoting R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 439, 540 S.E.2d 113, 121 (Ct. App. 2000)).
[28] First S. Bank v. S. Causeway, LLC, 414 S.C. 434, 452, 778 S.E.2d 493, 502 (Ct. App. 2015) (quoting Trivelas v. S.C. Dep't of Transp., 357 S.C. 545, 551, 593 S.E.2d 504, 507 (Ct. App. 2004).
[29] Norton v. Norfolk S. Ry. Co., 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002) (citing Folkens v. Hunt, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (1990)).

The record contains an abundance of evidence that TRMC acted with both negligence and gross negligence on multiple, separate occurrences. When combined with the evidence presented to the jury in the Plaintiff's case and chief, the evidence of separate occurrences of negligence by TRMC is overwhelming. As such, the unanimous verdict of the jury should not be disturbed.

d. The Jury's Verdict was Not Excessive

"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."[30] The trial court must set aside a verdict only when it is shockingly disproportionate to the injuries suffered and thus indicates that passion, caprice, prejudice, or other considerations not reflected by the evidence affected the amount awarded.[31] In other words, to warrant a new trial absolute, the verdict reached must be so "grossly excessive" as to clearly indicate the influence of an improper motive on the jury.[32]

This case involved the allegedly preventable and painful death of a woman who was denied an additional 17 years of life, according to the South Carolina life expectancy tables. Defendant TRMC did not present any suggested damages amount to the jury or respond to Plaintiff's damages model, despite the opportunity to do so at trial. Further, Defendant failed to offer any objection to the arguments made by Plaintiff's counsel as to suggested damages ranges. Based upon the evidence of record before the jury, the Court does not find that the damages awarded were excessive.

[30] Allstate Ins. Co. v. Durham, 314 S.C. 529, 530–31, 431 S.E.2d 557, 558 (1993) (citing Easler v. Hejaz Temple, 285 S.C. 348, 356, 329 S.E.2d 753, 758 (1985)).
[31] Vinson v. Hartley, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (Ct. App.1996).
[32] Rush v. Blanchard, 310 S.C. 375, 379–80, 426 S.E.2d 802, 805 (1993) (citing Brabham v. S. Asphalt Haulers, Inc., 223 S.C. 421, 76 S.E.2d 301 (1953)).

Having considered the filings of the parties in connection with the relevant law, Defendant's Motion for JNOV or Judgment as a Matter of Law or, in the Alternative, for a New Trial Absolute is hereby **DENIED**.

II. Defendant's Motion for Remittitur and Set-Off

Defendant's Motions for Remittitur and Set-Off Amounts are **GRANTED**. The set-off amounts are to be assessed prior to imposing the statutory cap.[33]

Two settlements were reached prior to the present case. Combined, those resulted in $75,000.00 towards Plaintiff's Survival Claim and $75,000.00 towards Plaintiff's Wrongful Death Claim. Applying those set-offs to the jury's verdict, the Survival Claim Verdict is thus reduced from $4,000,000.00 to $3,925,000.00, and the Wrongful Death Claim is reduced from $1,000,000.00 to $925,000.00. The total amount after set-offs is $4,850,000.00.

Based on the jury's finding of two occurrences, the damages are to be capped at $2,400,000.00.[34] Using the process laid out in Smalls,[35] the Court finds the $925,000.00 Wrongful Death Claim award does not exceed the statutory cap and is therefore undisturbed. The Survival Claim, however, is reduced to $1,475,000.00. Therefore, after set-offs and the Tort Claims Act cap, the Plaintiff is awarded $2,400,000.00 in damages.

III. Plaintiff's Motion for Costs and Interest

Plaintiff's Motion for Costs and Interest is **PARTIALLY GRANTED**. As conceded by the Defendant, Plaintiff is entitled to costs pursuant to Rule 54(e), SCRCP, in the amount of

[33] Smalls v. S.C. Dep't of Educ., 339 S.C. 208, 222, 528 S.E.2d 682, 689 (Ct. App. 2000).
[34] S.C. Code Ann. § 15–78–120(a)(3), (4).
[35] Smalls, 339 S.C. at 222, 528 S.E.2d at 689.

$2,434.41. The motion as to these costs is **GRANTED**.

The court costs under Rule 68(b), SCRCP, being strictly construed, do not permit recovery for witness fees, deposition transcripts, or travel and accommodation.[36] As such, Plaintiff's request for costs under Rule 68(b) is **DENIED**.

The eight-percent offer-of-judgment interest is distinct from prejudgment interest and thus is not barred by the Tort Claims Act.[37] The eight-percent interest is to be assessed on the final $2,400,000.00 award and not on the jury's original $5,000,000.00 verdict.[38] Furthermore, the eight-percent interest is to be assessed only "from the date of the offer to the entry of judgment."[39] In this case, the offer of judgment was made August 15, 2023, and the judgment was rendered on October 13, 2023, for a period of 59 days. Thus, the total offer-of-judgment interest is $31,035.62.00. Plaintiff's motion for offer-of-judgment interest in this amount is **GRANTED**.

The applicable costs and interest together equal $33,470.03, and are to be awarded in addition to the verdict of $2,400,000.00.[40] This holding is in tune with the plain language and intent behind Rule 68, SCRCP, and § 15-35-400(B), which exist to encourage settlement and reduce unnecessary litigation efforts.[41]

IT IS SO ORDERED.

_____
The Honorable Maité Murphy
South Carolina Circuit Court Judge

February ___, 2024
Orangeburg, South Carolina

[36] Black v. Roche Biomedical Lab'ys, 315 S.C. 223, 230, 433 S.E.2d 21, 25 (Ct. App. 1993) (citing Steinert v. Lanter, 284 S.C. 65, 66, 325 S.E.2d 532, 533 (1985)).
[37] Garrison v. Target Corp., 435 S.C. 566, 587, 869 S.E.2d 797, 809 (2022).
[38] O'Shields v. Columbia Auto., LLC, 435 S.C. 319, 344, 867 S.E.2d 446, 459–60 (Ct. App. 2021).
[39] Rule 68(b)(2), SCRCP.
[40] See Oliver v. SC Dep't of Highways & Transp., 309 S.C. 313, 320, 422 S.E.2d 128, 132 (1992).
[41] See Black, 315 S.C. at 227, 433 S.E.2d at 24.

Orangeburg Common Pleas

Case Caption: Se'Anne Davis VS Orangeburg County, South Carolina , defendant, et al

Case Number: 2021CP3801138

Type: Order/JNOV

So Ordered

s/ Maite Murphy 2166