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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Darlington County
Court of Common Pleas
Paul M. Burch, Circuit Court Judge
Patrick J. McLaughlin, Special Referee

Appellate No. 2023-001016

Samantha Joanne Carwile, individually and as the Personal Representative of the Estate of Marlayna Joan Carwile, Respondent,

vs.

Chris Anderson and Danielle Anderson, Appellants.

RECORD ON APPEAL

VOLUME 2 (pp. 478-754)

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STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS
                        :
COUNTY OF DARLINGTON    ) CASE NO. 2020-CP-16-00299




SAMANTHA JOANNE CARWILE,)
Individually and as the )
PERSONAL REPRESENTATIVE )
of THE ESTATE OF        )
MARLAYNA JOAN CARWILE,  )
                        )
            Plaintiff,  )   HEARING POST-TRIAL MOTIONS
                        )
       vs.              )
                        )
CHRIS ANDERSON AND      )
DANIELLE ANDERSON,      )
                        )
            Defendants. )
------------------------
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BEFORE
SPECIAL REFEREE: Patrick J. McLaughlin, Esquire

DATE: Friday, December 15, 2023

TIME: 1:04 p.m.

LOCATION: Yarborough & Applegate, LLC
291 East Bay Street, Floor 2
Charleston, South Carolina

REPORTER: Margaret F. Barnett
Court Reporter and Notary Public

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I N D E X

E-X-H-I-B-I-T-S

Defendants'	Description
No. 1	Order deny MTD 7.17.23
No. 2	Rule 53_SCRCP
No. 3	S.C. Code Ann_14-11-60
No. 4	S.C. Code Ann_14-17-250
No. 5	S.C. Const. Ann Art. V_1
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No. 7	6.29.20 Motion to Set Aside Entry of Default
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No. 16	Excessiveness or Adequacy of Damages for

1 MR. McLAUGHLIN: We are on the record in
2 the case of Samantha Joanne Carwile, Individually and
3 as the Personal Representative of The Estate of
4 Marlayna Joan Carwile, Plaintiff, versus Chris
5 Anderson and Danielle Anderson. We are here today for
6 the purposes of a hearing on Defendants' post-trial
7 motions. At this time, I will ask all the parties to
8 identify themselves beginning with the plaintiff.
9 MR. ANDREWS: Ryan Andrews. I represent
10 the Carwiles in this action.
11 MR. YARBOROUGH: David Yarborough and
12 Reynolds Blankenship, also present for the Carwile
13 Plaintiff.
14 MR. HOOD: Jamie Hood for the defendants,
15 and I've got with me Alex Boone and Hill Kirkland.
16 MR. McLAUGHLIN: Listen, guys, for the
17 purposes of this hearing, I'll just let y'all know,
18 I've obviously read everybody's filings. It's
19 obviously an important case. It involves a death and
20 it involves a large judgment that's been awarded. I
21 want everybody to have a chance to make their record
22 how they want to make it. So I tell you that to tell
23 you this: You don't have to re-plow things that you
24 argued in motion, but whatever you want to do, I'm
25 here to let you do that, and if you have anything that

1 you need to add, either for your motions, Jamie, or
2 for your responses, Ryan, y'all let me know, let's get
3 it in on the record, and we will go from there.
4 Since they are Jamie's motions, I'll
5 recognize you, and you can take them in whatever order
6 you want to.
7 MR. HOOD: All right, thank you. As I
8 mentioned, Jamie Hood on behalf of the defendants.
9 Before we get started, I do want to just indicate that
10 we've raised a jurisdictional argument, and my
11 argument today is not a waiver of that argument; it's
12 in furtherance of it and in preservation of it. We
13 also had filed a notice of appeal. The Court of
14 Appeals took jurisdiction of the case. There's a
15 motion to dismiss. Then there was an order denying
16 that motion to dismiss from the Court of Appeals. I
17 have attached that with some other things that are all
18 -- most all part of the record in here and things that
19 we'll discuss.
20 But I bring that up, because from a
21 jurisdictional standpoint, I think this Court of
22 Appeals Order requires this hearing to go forward,
23 because they specifically indicated that jurisdiction
24 was coming back for the purpose of hearing and ruling
25 upon these motions. So we're here because we filed

1 motions and the Court of Appeals told us to be here.
2 So I've got some jurisdictional arguments
3 that I want to make, and that's why I'm connected to
4 the screen here, and it has to do with the order of
5 reference process. What I'd like to do, and I think
6 this is really going to be applicable to both of the
7 arguments and the jurisdiction running throughout, I'm
8 going to just -- if you guys bear with me for just a
9 second, I'm going to walk y'all through my perception
10 and perspective of why this case needs to go back to
11 the circuit court.
12 So we've got, typically, this sort of
13 three-pronged approach to jurisdiction. Everyone is
14 familiar with personal jurisdiction, subject matter
15 jurisdiction, and the third is the power of the court.
16 That was really most clearly announced in the
17 Limehouse v. Hulsey case which was cited by, I think,
18 the plaintiff in this case to support some of their
19 positions. Incidentally, that was my case, and so I'm
20 familiar with it in pretty good detail.
21 In the Court of Appeals, Judge Few wrote a
22 dissenting opinion that ultimately became the basis of
23 the State Supreme Court's opinion reversing a default
24 judgment, remanding the case back to state court for a
25 trial on the merits, and what they talked about was

1 this third prong of jurisdiction, this power of the
2 court. And there's no dispute and I don't contend --
3 this has nothing to do with personal jurisdiction,
4 and, really, it doesn't have anything to do with
5 subject matter jurisdiction. The circuit court or a
6 reference could be appropriate for subject matter
7 jurisdiction. Frankly, it doesn't really matter what
8 we think about subject matter jurisdiction anyway,
9 because, ultimately, that's going to be something
10 somebody else looks at. But what I think does matter
11 is the power of the court, and that's the power of the
12 court to actually determine at issue: Do they have
13 the legal ability to do it.
14 And so when you look at the Hulsey case,
15 and Few talked about that power, the majority opinion,
16 if you go back and read the Court of Appeals case, was
17 not very receptive to Justice Few's -- then-judge,
18 now-Justice Few's argument about this power of the
19 court. But the Supreme Court adopted it, and what
20 they talk about is a court's ability to grant the
21 relief that a party is seeking. And that's really
22 what I'm challenging right now with respect to this
23 order of reference. So to do that, and I put the
24 statutes and the provisions that I'm going to refer to
25 in this binder, because everyone has them, but I just

1 wanted you to have them in their entirety so that, if
2 there's something on the screen, you can go back to
3 the actual documents themselves.
4 So we look at the order of reference, and
5 everybody's seen this, what we see here is that,
6 according to the order, the court hereby appoints the
7 special referee. And this isn't an aspersion on the
8 special referee; this is about the steps that the
9 court took, that I don't think the court was following
10 the appropriate steps. So when we say the court,
11 though, what we're actually talking about is the Clerk
12 of Court Scott Suggs. That's who bears the order, who
13 signed the order. This is not an order of reference
14 signed by a presiding circuit court judge, which
15 becomes significant when you read Rule 53 in
16 conjunction with the applicable statutes.
17 So now I want to jump to Rule 53. We're
18 all familiar with this. Obviously, the special
19 referee is; otherwise, you wouldn't be here. But
20 what's interesting is when you look at the term or the
21 words under Rule 53(a), it defines a special referee
22 as a member of the South Carolina Bar to whom a matter
23 has been referred under South Carolina Code Statute
24 14-11-60. So to figure out who that is, you then have
25 to jump over to 14-11-60, and when you get there,

1 14-11-60 says: In case of a vacancy in the office of
2 the master-in-equity or in case of a disqualification
3 or disability of the master-in-equity from interest or
4 any other reason for which cause can be shown the
5 presiding court -- excuse me, presiding circuit court
6 judge, upon agreement of the parties, may appoint a
7 special referee in any case who as to the case has all
8 the powers of a master-in-equity.
9 So the significance there is that in order
10 to comply with the definition of a special referee
11 from Rule 53(a), as referred in 53 to this specific
12 statute, there must be an order from the presiding
13 circuit court judge. There isn't. So when you go
14 back and you compare this to Rule 53(b), it may create
15 in some minds some confusion, because 53(b) of the
16 South Carolina Rules of Civil Procedure says -- makes
17 reference to appointment by order of a circuit judge
18 or the clerk of court.
19 So there's another caveat in there which
20 talks about the consent of the parties, and the South
21 Carolina Supreme Court has dispatched with the consent
22 of the parties provision where a party is in default;
23 and the Supreme Court of South Carolina has said, when
24 you're in default, as a defaulting party, you don't
25 have the ability to nonconsent to avoid the reference.

1 So then the question becomes, under 63(b), is a clerk
2 of court able to provide an appointment without an
3 order of a presiding judge; and the answer is no, for
4 a couple of reasons:
5 One, it doesn't comply with 14-11-60;
6 number two, the circuit court or a clerk of court
7 doesn't have the authority to enter a judgment and
8 can't give away power it doesn't have, as just a
9 general premise; and, three, for the clerk of court to
10 delegate authority that is constitutional under
11 Article V of the South Carolina Constitution reserved
12 to the judiciary is in violation of the South Carolina
13 Constitution.
14 I don't think this provision creates any
15 uncertainty or a conflict between the statute and the
16 rules, because where you have circumstances where a
17 special referee is not being used but a
18 master-of-equity is getting the referral, the clerk of
19 court can do that, and these rules support it, and an
20 interpretation of Rule 53 supports that. But, where
21 you're using the special referee, there's only one
22 path, and that path has to be through an order signed
23 by the presiding circuit court judge, which we don't
24 have in this case.
25 If you did interpret these two provisions

1 as creating a conflict, the South Carolina Supreme
2 Court has explained to us, pretty clearly, how we deal
3 with conflicts between statutes and rules. Probably,
4 the best case for that was a 2010 case with the
5 Supreme Court, Grazia, where they talked about where
6 if there's a conflict between a statute and a court
7 rule, it's resolved in favor of the statute. And what
8 that means as applied here is, if you are to determine
9 that there is some confusion or conflict between 53(b)
10 and 14-11-60, then, according to this case and the
11 case law and this point of law, the statute prevails
12 over the rule, in which case, if there is a conflict,
13 again, we go back to requiring a circuit court order.
14 So we don't have one.
15 And that's the extent of what I wanted to
16 show you on the slide deck.
17 MR. YARBOROUGH: Wow. Thank you.
18 MR. HOOD: I'm going to talk about some of
19 the other things that are applicable here, because
20 they're raised in our motion. I'm not going to go
21 through them all. You've already explained that
22 you've reviewed the material. But from a
23 jurisdictional standpoint, we're going to preserve --
24 I mean, I think, that issue, whether the appointment
25 was correct, is going to permeate through its

1 entirety. If you look at it and you go back and look
2 at the cases that we're talking about and you agree
3 that it requires a court order, then the actions that
4 have been taken would be void and would go back to the
5 circuit court.
6 So let's move to my first of two motions,
7 post-trial motions, which was a Rule 59(e) motion.
8 Just to make sure we're on the same page, we filed two
9 post-trial motions; one was a 59(e) and one is a Rule
10 52 motion. The 59(e) motion was asking you, the
11 special referee, to reconsider the denial of the 55(c)
12 motion. Procedurally, the counsel before me raised a
13 Rule 55(c) motion challenging the order entering
14 default by Judge Burch that was raised during y'all's
15 damages hearing; and from reading the transcript, it
16 appears that, because everyone was present, your
17 preference, the special referee's preference, was to
18 go ahead and hear the testimony; and then, if the
19 parties want to deal with the motion, deal with the
20 motion, or come back and deal with it later.
21 MR. McLAUGHLIN: That's correct.
22 MR. HOOD: It was dealt with at the end of
23 that motion. And, ultimately, it was denied. A
24 couple of things specific as to that motion on
25 jurisdiction. Because one circuit court judge can't

1 overrule another circuit court judge, there wasn't
2 really an avenue for a special referee to have
3 jurisdiction to overrule a presiding circuit court
4 judge. That would be and is another jurisdictional
5 problem with the order of reference. So, you know, it
6 was doomed from the beginning. I think when you look
7 at Rule 55, there was a question raised in the
8 briefing. We argued Rule 55 before you during that
9 original hearing of the damages timeframe. Counsel
10 for the plaintiff argued that Rule 55 wasn't the
11 appropriate standard and Rule 59 should have been used
12 at that point in time.
13 We cited in our briefing for this case law
14 that supports that the use of 55(c) at that time was a
15 viable option. You had alternative grounds, that
16 wasn't the only basis for your denial of 55(c), but we
17 think that using 55 to challenge -- Rule 55 to
18 challenge the court's order entering default, whether
19 by sanction or any other reason, is appropriate, and
20 there's no case law in South Carolina that requires
21 that challenge to be through Rule 59.
22 So let's look at some of the specific
23 areas that we claim were error in our briefing. One
24 has to do with judicial estoppel. It's our position
25 that judicial estoppel is not applicable to the

1 circumstances of this case, as it was argued and as is
2 contained in the court's order. We don't think the
3 scenarios are comparable. In fact, one of the things
4 that I included in here are the affidavits of Danielle
5 Anderson, and that's tab No. 8.
6 When you look at what was said in that
7 affidavit, particularly in the end of the first
8 paragraph and continuing into the second paragraph,
9 she talks about notifying Allstate of a claim; that
10 she communicated with someone from Allstate who told
11 her that they didn't have a policy and they didn't
12 have coverage; so she immediately contacts American
13 Modern Insurance Company; and it goes on from there.
14 And I'm just summarizing. The affidavit is attached.
15 The basis of the original setting aside of
16 default wasn't simply because she immediately notified
17 Allstate. It was because she took that pleading
18 seriously, notified -- according to her affidavit,
19 notified Allstate; according to her affidavit, then
20 notified the other insurance company and explained
21 that -- the insurance company wrote a letter back to
22 Plaintiff's counsel and she was waiting for a
23 response. All of that together was the basis that the
24 presiding trial judge relied upon to indicate in that
25 order setting aside the first entry of default, that

1 there was a good cause. It wasn't simply that
2 Allstate was contacted immediately. That was just one
3 of the many parts of that.
4 So when attorney MacLeod argued that he
5 had just recently been retained by Allstate to
6 represent the Andersons, I don't think it's a fair
7 inference that the good cause was limited to
8 interpreting his entry at that moment as the sole
9 basis of good cause. So when we look at trying to
10 figure out whether you're taking two different legal
11 positions, they're just two different factual
12 scenarios that are happening. One is Ms. Anderson is
13 explaining what she did in the front end, and what
14 Mr. McLeod argued during his hearing was the timeline
15 of his involvement. Incidentally, that's culminated,
16 you know, in part, a lawsuit that the Andersons have
17 now brought against Allstate and Defendant Brooker as
18 well. So there's been a lawsuit filed by the
19 Andersons in circuit court.
20 MR. McLAUGHLIN: In the Fourth Circuit
21 State Court or in Federal Circuit Court?
22 MR. HOOD: In State Court. A copy of that
23 is in these documents as well. That's going to be
24 your tab No. 12, is the Anderson Complaint.
25 MR. McLAUGHLIN: Okay.

1 MR. HOOD: So in terms of judicial
2 estoppel, it doesn't apply to the circumstances that
3 we're talking about here. They're not using two
4 different positions in order to achieve the same
5 results, as the court previously or the special
6 referee previously concluded.
7 Looking at page 10, the plaintiff's
8 briefing and opposition on this point, they point out
9 that the first default was lifted because the
10 Andersons immediately called Allstate. Well, as I
11 mentioned earlier, well, that is part of the reason,
12 but that's not all the order states. The order goes
13 on to state that they contacted Allstate, who denied
14 coverage, instructed her to call the current carrier,
15 which she did. That carrier wrote a letter to the
16 plaintiff's counsel and copied the Andersons. And the
17 court concluded all that to indicate how seriously the
18 Andersons took it, to suggest that there was good
19 cause to set it aside, and that when you're looking at
20 the Wham factors, that it was prompt to action.
21 So I maintain that when this court or in
22 the previous proceeding this court looked at Rule
23 55(c), it concluded that because of the judicial
24 estoppel argument, it wasn't necessary -- there wasn't
25 good cause and it wasn't necessary to evaluate the

1 Wham factors. I disagree. You know, in terms of good
2 cause, the good cause issue is best summarized in one
3 word, and that is: abandonment. And when the
4 Andersons came before the special referee asking to be
5 relieved from default, they had been the victims of an
6 attorney who literally abandoned them.
7 He had not presented -- he filed an
8 answer. He didn't respond to discovery. He didn't
9 respond to phone calls from counsel. He didn't appear
10 at hearings. He didn't respond to court orders. He
11 didn't do anything. He's going to have to account for
12 that in the malpractice case that's part of that
13 action, that's behind Exhibit No. 12.
14 The reality for the Andersons was is they
15 were left in the lurch, and this is beyond negligent;
16 this is lawyer abandonment. When you look at the case
17 law that we cited in our papers where our court is
18 consistent that the negligence of an insurer or a
19 lawyer is not good cause, where it rises to the level
20 of abandonment, it does, and that's a different
21 standard. And, I think, that we get to that point
22 based off the egregious behavior as outlined in the
23 complaint that the Andersons have filed as Exhibit No.
24 12 and was catalogued before the court at a hearing on
25 the default judgment hearing.

1 So I maintain that there is good cause
2 because there was abandonment, and that would
3 necessitate evaluation of the case under the Wham
4 factors. The Wham factors were met previously, and
5 those same Wham factors and the same analysis applies.
6 We don't really need to go back through it. Nothing
7 has substantively changed at that juncture. And if
8 the court had agreed that good cause was present,
9 looked at the Wham factors, it would be appropriate,
10 if this court concludes that it has jurisdiction, to
11 reconsider its ruling denying the 55(c) and grant the
12 55(c) relief setting aside the entry of default and
13 allowing the Andersons to, you know, have their answer
14 restored and participate in a contested jury trial.
15 In terms of those Wham factors, I don't --
16 they are all laid out previously. I'm not going to go
17 back through them, but there are legal defenses and
18 factual defenses that the Andersons have about the
19 allegations of the complaint. All those still exist.
20 You know, in terms of the timing of
21 relief, the abandonment wasn't known and appreciated
22 until it happened. At that point, you know, the
23 Andersons did get help. Then, when they got help, he
24 immediately files and asks for relief from the entry
25 of default. So in terms of likelihood, you know,

1 meritorious defense, that was already raised. Those
2 were the factual issues about whether there was a duty
3 owed, whether there was permission to come across the
4 street or not, a bunch of factual issues that we don't
5 need to get into here, but are legitimate meritorious
6 defenses that they would be entitled to raise at a
7 trial.
8 We've talked about jurisdiction. We've
9 talked about judicial estoppel. We've talked about
10 good cause and Wham factors and the abandonment issue.
11 And as I laid out in support of the abandonment
12 argument, that counsel failed to respond to discovery,
13 failed to respond to correspondence, failed to respond
14 to motions, failed to comply with the court orders and
15 even failed to show up for court hearings, that to me
16 meets whatever operative definition you have for
17 abandonment.
18 And the last point on this Rule 59(e)
19 motion has to do with the heightened standard. We
20 raise that in our briefing about Davis v. Parkview
21 Apartments, that case, where the South Carolina
22 Supreme Court looked at what needed to be established
23 in order to have a sanction or any kind of relief that
24 had the effect of entering default or striking
25 pleadings and things of that nature. And what they

1 concluded was a party has to show bad faith, willful
2 disobedience or gross indifference. We maintain that
3 wasn't done. And this would have been a Judge Burch
4 issue on his entry of the sanctions order culminating
5 in the default. That order itself didn't contain that
6 finding, didn't contain that type of analysis.
7 The plaintiff has indicated that we've
8 waived that argument because we're making it for the
9 first time here today. I disagree. I don't think
10 that a party is obligated to inform the court of the
11 standard the court is supposed to use. Using the
12 standard is the standard. So when it fails to use the
13 standard, the right thing to do once that's occurred,
14 is like we have here, is to raise it before you and
15 give you the opportunity to fix it.
16 I've got my Rule 52 motion. If you want
17 me to pause and let them respond to 59(e), we can.
18 MR. McLAUGHLIN: Well, I'm fine either
19 way. I would imagine, it may be easier to follow if
20 Ryan says, Yeah, I'll go now, and then we can start
21 over again, because you just went through a lot of
22 stuff.
23 MR. HOOD: I did.
24 MR. McLAUGHLIN: I feel like it may be
25 easier for him to respond to. It will be easier for

1 me to follow, but I'll leave it up to you.
2 MR. ANDREWS: Sure. Thank you for coming
3 all the way from Florence for this. Just to respond
4 briefly, again, we filed very thorough memorandums of
5 law on these issues, and we stand by those briefs, but
6 just to touch on a few issues counsel discussed.
7 First, I think it's important for the
8 court to recognize that at our hearing in April,
9 counsel for the Andersons were present. He didn't
10 object to you hearing the rule to set aside default at
11 that hearing. In fact, it appeared he submitted it to
12 you for your review. And now, after you denied it,
13 they are saying -- they are arguing that you did not
14 have authority to hear that. Well, we'd submit that
15 they've waived any and all arguments regarding that.
16 Defense has not filed any motions
17 whatsoever for your order of reference. The order of
18 reference, I believe, was filed in February of this
19 year, and there's been no Rule 59(e) motions in that
20 regard, no timely ones. It's our position that any of
21 those arguments have been waived, and I do think that
22 that would be waivable. This is not a question of
23 subject matter jurisdiction. This is a power of a
24 court and the authority of a court to assign a special
25 referee. I believe it would be waivable. We all know

1 subject matter jurisdiction can be brought at any
2 time, but this obviously does not have to do with the
3 subject matter jurisdiction, and defense conceded the
4 same. So I think it's important for the court to
5 realize that this is brought up for the first time now
6 and the first time in these 59(e) motions.
7 Regarding the abandonment issue that the
8 defense counsel touched on and how that would be
9 interpreted as good cause, other than what's in the
10 record about failing to respond to discovery, failing
11 to show up to the hearings, there's been no other
12 evidence that the defense has brought that Mr. Brooker
13 did, in fact, abandoned the Andersons. The cases
14 cited by the defense, the court usually -- there was
15 one case that the court found that an attorney
16 abandoned them, but they required an affirmative act
17 by that attorney. The affirmative act was a letter to
18 their client, telling them they were resigning as
19 their attorney and left them, for lack of better
20 words, high and dry at a summary judgment hearing.
21 The court in their opinion said that that
22 affirmative response shows that that was an
23 abandonment. Here, we don't have any evidence from
24 the defense other than counsel's argument. There is
25 no affidavits from Mr. Brooker, from the Andersons,

1 about their agreement and the scope, so I would argue
2 that you should not consider abandonment as a reason
3 for good cause in reconsidering your well-thought-out
4 order denying their motion to be relieved from
5 default.
6 And just to reemphasize, it's our position
7 that Defense Counsel or Defendants have affirmatively
8 waived any of these arguments, as they failed to put
9 forth any of these on the record at our original
10 hearing, and in fact, it appears, submitted them to
11 you for approval to rule upon. So we'd ask that you
12 deny their motion to set aside -- we'd ask that you
13 deny their 59(e) motion and affirm your order denying
14 their motion for relief from default.
15 MR. McLAUGHLIN: Jamie?
16 MR. HOOD: Just real briefly. On the
17 waiver issue about the power of the clerk of court to
18 sign an order of reference in these circumstances.
19 The reason I put a copy of that Hulsey case in the
20 binder is because -- maybe I should get going into
21 some more details on that. So, in Hulsey, the
22 plaintiff sued the defendant in state court, and the
23 defendant was a lawyer. His name is Paul Hulsey, a
24 lawyer in Charleston. He was actually suing the other
25 party in federal court on a RICO claim. The premise

1 of the lawsuit was, in the pendency of that suit, he
2 had what they considered was a press conference, and
3 they sued him for defamation in state court.
4 So Mr. Hulsey removed the case to federal
5 court, the defamation case to federal court. The best
6 I can tell, his working theory was that the federal
7 court already had jurisdiction with the RICO and it
8 must be related to that. Federal court disagreed, and
9 on a motion for remand, remanded the case back to the
10 circuit court. It came back to the circuit court, and
11 Mr. Hulsey was held in default for failing to timely
12 answer. So there's an entry of default; there was a
13 motion to set aside the entry of default, which was
14 denied; and then there was a default damages judgment
15 hearing, which we participated in; and there was a
16 trial on damages and a jury award. And then,
17 post-trial, for the first time, this issue of whether
18 there was a certified remand order came up and was
19 raised.
20 So we presented that issue in a similar
21 timing to the issue that's being presented here. It
22 wasn't -- it wasn't raised originally before, after
23 the entry of default. And what that technical issue
24 is, you might not be familiar with it, I clearly
25 wasn't, otherwise, I would have raised it earlier in

1 that case, but in order for there to be a remand from
2 federal court back to state court, the federal statute
3 says that it shall be a certified order of remand. So
4 when we finished that --
5 MR. McLAUGHLIN: I was not aware of that.
6 MR. HOOD: So we finished the jury trial.
7 We came back to a conference room like this, and we
8 had just gotten our tail whipped, and we were sitting
9 here trying to figure out what in the world just
10 happened. My father says, I'm going to the
11 courthouse. I'm going to see if there's a certified
12 order. I was like, This is stupid. We're going to
13 win this case on how unfair the default process is.
14 So he came back and said, There is not a
15 certified order in there. So he made that his deal,
16 and we fought it on the default damages process. You
17 can see, when you read the opinion, I squarely lose on
18 the default damages process, and despite how I feel
19 about how unfair it is, our Supreme Court says you
20 don't go into default.
21 But they did bite ahold of and took
22 control over this technicality, and they said, you
23 know, we may -- we are in fact elevating form over
24 substance. And, understanding, there were two cases
25 at this point, they were consolidated, and they

1 reversed both of them and sent it back. Why it
2 matters here is that technical issue had to do with
3 the power of the court that was raised to the court in
4 a similar timing. It wasn't waived. They didn't
5 indicate that it was a waivable. Certainly, that was
6 argued by counsel for the Limehouses, that this
7 argument we asserted on the certified order had been
8 waived.
9 So when you go back and you look at the
10 case, you'll see they're talking about procedural and
11 substantive. And because it had to do with the power
12 of the court to actually do something, it was
13 substantive, not procedural; and if it's substantive,
14 it can't be waived. Same thing here. Under the
15 process of signing an order of reference, gives you
16 the power to rule like a sitting master-in-equity. It
17 doesn't have -- it's not procedural; it is
18 substantive. And for that reason, it can't be waived.
19 It wasn't waived in Limehouse and it's not waived
20 here.
21 So we believe that when you look at and
22 you go back and you take a look at the court's
23 opinion, well-reasoned opinion about elevating the
24 form over substance, it wasn't waived. The waiver was
25 argued. They found that the power of the court issue

1 was substantive, and they ruled on it and ruled that
2 failure to comply with the certified requirement
3 resulted in everything happening thereafter being
4 void. We're basically in the same scenario, just
5 following a different scheme.
6 Then, moving on, you talked about no
7 evidence of abandonment. I think the record before I
8 got involved had plenty of evidence of abandonment in
9 it in terms of the steps that had not been taken, the
10 court's order entering the sanction for default,
11 striking the answer. So the court already made those
12 findings about the things that counsel failed to do,
13 so that's already part of the record.
14 I did add in here the complaint that has
15 been filed by the Andersons which includes the
16 allegations that Mr. Brooker was negligent, and I
17 included for you what was Exhibit F, which is the
18 affidavit of the esteemed counsel Ben Joyce, who
19 concludes that Mr. Brooker's conduct was not in
20 compliance with the standard required for a South
21 Carolina lawyer. So to the extent that additional
22 evidence was needed, that has been provided, but I
23 don't think that was necessary.
24 And then on the affirmative action that's
25 required, I don't agree with that as being the

1 proposition or the standard, that there has to be an
2 affirmative action for a lawyer to abandon their
3 client. What happened here is worse than affirmative
4 action. It's a series of omissions that culminates in
5 this massive exposure for my clients that they didn't
6 even have the opportunity to defend.
7 So I disagree, and I think that you can
8 make an independent assessment of whether the
9 Andersons were or were not abandoned such that
10 Mr. Brooker's conduct was so egregious and willful and
11 beyond the pale that the normal analysis of the
12 neglect or inadvertence or mistake of counselor and a
13 carrier, which is well-established in South Carolina,
14 is not the appropriate standard, but the abandonment
15 is. So, thank you.
16 MR. ANDREWS: Very briefly. We just again
17 submit they waived by not filing a motion to
18 reconsider when the special referee order was entered.
19 I'd say that the order remanded from federal court is
20 a little bit different than what's here before us.
21 Again, this is not a subject matter jurisdiction
22 argument. This is a power of the court to submit a
23 special referee. We do believe that, we argue that,
24 it is waived. Again, the Rule 53(b) specifically
25 permits and allows a clerk of court to enter a special

1 referee.
2 Regarding the abandonment, should you
3 determine that they are abandonment, we'd argue that
4 the Wham factors now are in the Carwiles' favor for
5 denying the motion for entry of default, especially
6 the factor regarding prejudice. They were let out of
7 default almost a couple years ago, and nothing has
8 gone on in this lawsuit because of the inactions of
9 the Andersons. And we submit that that boat is in the
10 Carwiles' favor regarding they be severely prejudiced
11 should you let the Andersons be relieved from default
12 and attempt to defend this action now.
13 In any event, before the action was filed
14 -- before the separate declaratory judgment and legal
15 malpractice case was filed in Darlington County,
16 Allstate filed a declaratory judgment action in
17 federal court. In that federal court, they're asking
18 that coverage not be afforded to the Andersons for
19 this case. So, in effect, Allstate has taken
20 different positions in which they are attempting to
21 abandon the Andersons themselves, so we'd argue that
22 you should not even consider the abandonment argument
23 for relief for good cause in this matter. We'd ask
24 that you deny their motion.
25 MR. McLAUGHLIN: Jamie?

1 MR. HOOD: I don't represent Allstate. I
2 represent the Andersons. I'd like to think I hadn't
3 abandoned them based on what I'm doing right now.
4 If you're ready, let's talk about Rule 52
5 motion?
6 MR. McLAUGHLIN: That's fine, if y'all are
7 ready to move on to that.
8 MR. HOOD: At a certain point you can only
9 whip a horse so much.
10 MR. McLAUGHLIN: I appreciate it. I would
11 like, and we can just do it via airdrop, would you
12 mind airdropping me your PowerPoint slide that you did
13 earlier?
14 MR. HOOD: Yeah.
15 MR. McLAUGHLIN: We can do that
16 afterwards.
17 MR. HOOD: Okay. So Rule 52, like the 59
18 motion, has been fully briefed and we would
19 incorporate, you know, all the arguments that we've
20 made, that you've already graciously agreed to do for
21 both sides. I'm not going to go through it verbatim.
22 There are a few things that I do want to touch base on
23 now that we have the opportunity, and I'll run through
24 those, and then I'd like to come back and just sort of
25 affirmatively address what they responded to in their

1 briefing so that they can have the chance to respond
2 to it all.
3 So, first, the first two points I raise in
4 the Rule 52 motion have to do with the order of
5 reference, the jurisdictional issues, and for the
6 reasons I've already argued, that the reference was
7 not valid. It didn't comply with South Carolina
8 statute. The clerk can't grant more power than he
9 has. The statute doesn't support the reference and
10 it's in violation of the South Carolina Constitution.
11 For all of those reasons, as more fully discussed, I
12 believe that the Rule 52 motion should be granted on
13 the jurisdictional issues as well.
14 I assume, you don't want me to go back
15 into that argument in its entirety?
16 MR. McLAUGHLIN: No. We don't need to.
17 MR. HOOD: All right. So looking, then,
18 at some of the other substantive arguments that we
19 raised, the next subject that I raised had to do with
20 the misapprehension of the 55(c) motion. Again, we
21 have argued that extensively in the preceding motion,
22 and I would adopt all of those arguments here. Now we
23 get to the arguments dealing basically with the size
24 of the verdict and some of the evidence.
25 So as an initial position, we maintain

1 that a verdict for $30 million, collectively, or 15
2 million to each parent, is against the greater weight
3 of the evidence and is grossly excessive. We provided
4 a range of recoveries in our reply brief. I think
5 there's compelling case law that says ranges of
6 recoveries can be useful, but there's also compelling
7 case law that says each case needs to be looked at
8 individually. I agree with both. We're providing
9 that range of recoveries as almost a reference point
10 in terms of comparable judgments for wrongful death
11 claims.
12 I also in, I think, tab No. 16 in the
13 binder that I provided you, I just pulled an ALR
14 citation on excessiveness or adequacy of damages for
15 personal injuries resulting in the death of a minor
16 just to provide additional references and ranges from
17 various states. They cite to most of the states and
18 South Carolina that are included in my range. I
19 think, if you go back and you look at South Carolina
20 cases and try to figure out, you know, where we are
21 for ranges, I mean, it's broad. Recognizing cases in
22 the '70s and '80s and '90s aren't 2023. You know, we
23 tried a rudimentary inflation calendar or calculator
24 there to say, you know, a million dollars in 1993 is
25 worth how much today or whatever the math was.

1 I think the top end of that range, I would
2 argue, is probably from the Hurd case, which was 1999.
3 That was a bench trial in front of Dave Norton, a
4 maritime case, involving the death of, I think, three
5 individuals, two of whom were children, and they
6 awarded -- he awarded, I think, it was $6 million on
7 the wrongful death claims. That was affirmed by the
8 Fourth Circuit Court of Appeals. I think that
9 represents the high end. I think there are plenty of
10 other cases that have been cited in my materials that
11 would support a more conservative evaluation of what
12 the wrongful death numbers are, but 30 million
13 certainly is an outlier.
14 And, I think, it's probably important that
15 we move away from valuing the life of a child because
16 that's not what we're charged with doing, like they
17 are in Georgia, for example, that has huge wrongful
18 death verdicts. There, their standard is to value the
19 life of the decedent, as impossible as that may be.
20 So, here, we're stuck looking at, you know, the harm
21 as defined by South Carolina law on the individuals or
22 the statutory beneficiaries. I think when we look at
23 some of the testimony that was considered and we look
24 at some of the evidence that was presented and then it
25 found its way into the special referee's order, I

1 believe there was error in considering some of those
2 aspects of damages. For example, consideration of the
3 parents' wages and diminished earning capacity, I
4 think, is inappropriate.
5 In South Carolina, pecuniary loss is an
6 element under the wrongful death statute for recovery.
7 So then the question becomes: Whose pecuniary loss
8 are we talking about? When you go back and you look
9 at the reported cases in South Carolina that are cited
10 in our papers, it talks about the economic benefit
11 that the beneficiaries likely would expect to receive
12 from the decedent; and in the instance of a child,
13 rarely are there, because the child isn't working,
14 especially a young child. They're all minors, all
15 children are, but a three-year-old, for example, is
16 different. There are circumstances where you could,
17 you know, have a, you know, child that's old enough to
18 help out around the house or do chores or work on a
19 farm or things like that where you could assign a
20 loss.
21 Interestingly, there's no South Carolina
22 common law saying pecuniary loss is limited to only
23 what the statutory beneficiaries would receive. It's
24 never been affirmatively established or not
25 established. So, I think, the reasonable inference

1 from our case law, when you go back and read how the
2 courts have evaluated and awarded pecuniary damages in
3 a wrongful death statute, a wrongful death case
4 pursuant to the statute, they look at the pecuniary
5 loss that the beneficiaries reasonably could have
6 expected to receive; for example, if the father dies
7 and the father was a breadwinner in the family, how
8 much was he making and how much of that was coming
9 back. And then you got to take out personal
10 consumption, and then you're left with a number.
11 That's typical where you have a breadwinner.
12 So, I think, the reasonable inference from
13 the South Carolina case law that we have where the
14 pecuniary damage is not a wage claim or earning
15 capacity claim for the statutory beneficiaries, is
16 that you focus on what they could have expected to
17 receive. In this case, that number would be zero. I
18 think, when you look at the mock trial -- the mock,
19 not trial, but mock case, if I got that correct, that
20 was a case where the court recognized there is a
21 presumption pecuniary loss where you're talking about
22 a child who loses a parent but not necessarily a
23 pecuniary presumption where a parent loses a child.
24 So our position is that evaluating the parents' claim
25 for wages, diminished earning capacity, is

1 inappropriate.
2 Also inappropriate, we'd consider, is the
3 consideration of the parents' emotional trauma outside
4 of the wounded feelings and sorrow associated with the
5 loss of their child. For example, there's testimony
6 about alienation of their own relationship. That's
7 not properly recoverable. There's consideration of
8 emotional impact testimony of the death on the child's
9 brother who is not a statutory beneficiary for this,
10 and so that's inappropriate. The impact of the -- the
11 emotional impact for the brother to the parents is
12 not, we'd consider, appropriate evidence. The
13 brother's future need for counseling is not
14 appropriate.
15 All of those items are set forth in our
16 briefing much more specifically, and in response to
17 essentially each of them, they've raised a
18 preservation argument saying that counsel didn't
19 object to the evidence when it came in. And, I
20 suspect, we'll hear that again today.
21 So in response to the preservation
22 argument, a couple of things. Number one is, at the
23 time of the testimony being presented, the plaintiffs
24 had not yet withdrawn their bystander and their other
25 claims. And under those claims, some of these

1 damages, arguably, are recoverable, because economic
2 harm or the emotional trauma from a bystander claim is
3 a different measure and a different focus and priority
4 than under the wrongful death statute. So, then, the
5 question becomes: Does that mean that when those
6 actions were withdrawn at the end of the hearing that
7 they should have filed a motion and asked the court to
8 not consider it? I don't believe that's required at
9 that point. I mean, the testimony has come in, and it
10 came in without an objection.
11 But when you look at the authority of the
12 court, and especially a court sitting without a jury,
13 you know, our Supreme Court in Brown v. Allstate back
14 in 2000, or 2001, excuse me, weighed in on this
15 subject and they said -- this was in reversing the
16 Court of Appeals. They said the majority adopts a new
17 -- this is talking about the majority of the Court of
18 Appeals. The majority, essentially, adopts a new rule
19 for trial judges sitting without a jury according to
20 the majority. If incompetent evidence is admitted on
21 the ultimate issue of the trial, the trial judge must
22 affirmatively reject this evidence even if it's clear
23 that he is making a judgment based on competent
24 evidence in the record.
25 He would go on to say: We reject this

1 rule because it would require trial judges to rule on
2 all admitted evidence in a bench trial. A trial
3 judge's role -- this is the important part for my
4 argument. The trial judge's role in a bench trial is
5 to admit all evidence and then evaluate it in a
6 non-jury setting.
7 So we think that under the guidance
8 provided in this Brown v. Allstate, it's important for
9 you to consider -- to admit all the evidence and then
10 as the evaluation of it and consideration of what
11 evidence are you going to look at to support the
12 claims that have been asserted. So my position is
13 that a special referee, the evidence that was
14 admitted, doesn't have to be considered if it's not
15 appropriate for the elements of the damages that are
16 being pursued at the time you're writing your opinion.
17 So by considering all of those other
18 items, the relationship information, the wages, the
19 emotional impact of the death based on the brother,
20 the future counseling needs, all of that which is
21 contained in the special referee's report, suggests
22 that that did weigh in and impact the award that was
23 granted, and, therefore, the award should be reversed
24 for those evidentiary reasons.
25 With respect to the excessiveness of the

1 award, a couple of things. I mean, one goes back to
2 the similar argument which is where the award
3 contemplates elements that aren't permitted, it's, by
4 definition, excessive. If you can't consider
5 pecuniary loss of wages and it's in there, then,
6 whatever the number that has that, is excessive, by
7 definition. You know, I have provided a basis that
8 supports the argument that it's grossly excessive.
9 I think, going back to the pecuniary loss,
10 I don't need to reargue that, but, I think, that's
11 pretty compelling. Otherwise, we're talking about
12 sort of a new branch of damages in all wrongful death
13 cases, really. I mean, anybody who is a statutory
14 beneficiary would have lost wages. You go to a
15 funeral, you miss a day of work, whatever it is, I
16 mean, arguably, those either have been recoverable and
17 no one has ever thought to do it, or they're not
18 recoverable and they shouldn't be considered here.
19 All right. So, I think, I've gone through
20 the evidentiary errors that we raised that I wanted to
21 cover in the hearing, and then anything else, I've
22 already -- I think we've covered in the briefing. So
23 with that, I'll let Ryan respond to that Rule 52
24 motion.
25 MR. ANDREWS: Can we take a quick five

1 minutes?
2 MR. McLAUGHLIN: Yeah, that's fine.
3 (A recess transpired.)
4 MR. McLAUGHLIN: Back on the record.
5 Ryan, go ahead.
6 MR. ANDREWS: Thank you. Very briefly.
7 One thing that we agree with with opposing counsel is
8 each case does stand on its own, and, we submit, that
9 we provided appropriate and significant and compelling
10 testimony regarding this verdict and regarding this
11 judgment, and we ask that you deny their motion to set
12 that aside.
13 MR. McLAUGHLIN: Jamie, do you have
14 anything? That was pretty short. I don't know that
15 you would have anything to reply to that. I did have
16 one or two questions I wanted to ask.
17 So in response to the defense's argument
18 about the power of the court, the plaintiff was
19 arguing that that would be waivable. What's the
20 defense's position on whether or not that's waivable?
21 MR. HOOD: Well, I think I'd go right back
22 to Hulsey and go look at that case. What happened
23 there was the issue of waiver was raised, and that was
24 a primary argument against it. That's where the
25 argument came over whether this was subject matter

1 jurisdiction or personal jurisdiction. And, really,
2 the distinction there was, you know, personal
3 jurisdiction is waivable, subject matter jurisdiction
4 is not; and that's where Few in his dissent went into,
5 well, there's this third type of jurisdiction, which
6 is the power of the court; and that's what we're
7 dealing with. And so the power of the court, which is
8 what we're dealing with here, is not waivable, and,
9 therefore, it hasn't been waived.
10 I think when you go back and you read the
11 Hulsey case, it's instructive for that very point,
12 whether issues to -- jurisdictional issues based on
13 the power of the court can be raised now or not, and
14 the answer in Hulsey was that, yes, they could.
15 MR. McLAUGHLIN: Does the plaintiff have a
16 response to that answer, that response to my question?
17 MR. ANDREWS: Yeah. I would argue that
18 the Hulsey case is not on point with what we're
19 dealing with. By counsel's explanation of the case,
20 it's dealing with a case in federal court and a
21 certified copy of a remand order not being received by
22 state court. That's jurisdictional in nature and not
23 what we have here. We concede subject matter
24 jurisdiction is not waivable. That's how we'd
25 respond, and we do believe that, we do argue that the

1 defendants did waive any arguments they had for a
2 special referee appointment.
3 MR. McLAUGHLIN: Go ahead.
4 MR. HOOD: It's not a subject matter
5 jurisdiction argument in Hulsey. That wasn't the
6 issue. It was whether the circuit court had the power
7 to entertain the proceedings and enter the default
8 judgment without a certified order, and the court
9 determined that is a substantive issue. That is not
10 subject matter jurisdiction; that is not personal
11 jurisdiction; that is a power of the court. That's
12 the third prong of jurisdiction, and that's what we're
13 dealing with here.
14 MR. ANDREWS: Our Supreme Court has
15 distinguished authority for jurisdiction and, we'd
16 argue, that this was subject -- I mean a power of a
17 state court to hear a case that they didn't have
18 jurisdiction, would be subject matter jurisdiction
19 rather than the separate authority, and argue that
20 defendants have waived that.
21 MR. HOOD: If it's subject matter
22 jurisdiction like he's arguing now, it can't be
23 waived.
24 MR. ANDREWS: Well, I'm not arguing that
25 it's subject matter jurisdiction. I'm arguing that it

1 appears in the case that the case that you're relying
2 on is subject matter.
3 MR. HOOD: Oh, I gotcha. So y'all's
4 contention is that Hulsey is a subject matter
5 jurisdiction?
6 MR. ANDREWS: Yeah, and not applicable to
7 this case.
8 MR. HOOD: Okay. That's fine. That's
9 just not legally accurate. Instead of arguing, I
10 would just encourage you to read the actual case.
11 That's why it's in the binder. What I'll do is I'll
12 give the court reporter my binder so that everything
13 that was presented to you --
14 MR. McLAUGHLIN: We'll mark that as an
15 exhibit.
16 MR. HOOD: Any other questions?
17 MR. McLAUGHLIN: Yeah. One other question
18 I had, and I want both sides to respond to this, is
19 the idea about the elements of damages that were
20 inappropriate to consider. If we have a case like
21 this one where you have a child that dies, and we know
22 that it's appropriate to consider pecuniary loss, and
23 we know that it's appropriate to consider emotional
24 grief and sorrow, I'd like for both of you to respond
25 to the idea that if you have, for example, you got a

1 parent who is so -- obviously, the loss of a child is
2 probably the worst thing that can happen to people,
3 and people are going to recover and react to that
4 differently. If you have a parent who it impacts them
5 so significantly that they lost their job, does that
6 not speak to the emotional trauma or the grief and
7 sorrow of the parent; that they are, for lack of a
8 better way to say it, so wrecked that they can't go on
9 in life, right, and they lose their job by it.
10 In a case where evidence is presented
11 about that, not necessarily specific evidence about, I
12 lost my job, I made X amount per year, this is how
13 long I would live, that's this amount, we want you to
14 award us that much in lost wages, but would it not be
15 appropriate for that to be considered as just a factor
16 in weighing the grief and sorrow of the parent from
17 the loss of the child.
18 I'll give you the chance first to respond
19 to that, Jamie, and then let Ryan respond for the
20 plaintiff.
21 MR. HOOD: Sure. I think the answer to
22 your question is that how it impacted the parent would
23 be admissible to show evidence to support their claim
24 for the wounded feelings and the grief and sorrow. I
25 think you can describe that. When you start to

1 quantify and talk about it in terms of supporting a
2 pecuniary loss, I think you can't. And you have a
3 case like this where there really was no challenge to
4 any of the evidence that was presented in terms of the
5 emotional harm. I think when they included items and
6 elements about -- or details about work, earning
7 capacity, taking a reduction in his job and things
8 like that, and that's referenced in the order, it's
9 now supporting the pecuniary claim, is the way the
10 order reads, it's got to be excessive. And that's
11 just a function from my perspective of how the case
12 was presented and how the order is written and how
13 those items support it.
14 It sort of begs the other question, and I
15 know you didn't ask me this: If you can't recover
16 that kind of pecuniary loss, what can you recover? I
17 thought about that, too, because as I read their
18 argument that Reynolds wrote, I could tell, it was a
19 well-written argument, and I was reading it and I was
20 like, you know, why does our -- why do all of our
21 cases talk about pecuniary loss, and, you know, yet
22 here we are talking about it, and there's not some
23 clear definition of it?
24 I think in the context of a child where
25 there's not some kind of, you know, help around the

1 house or work or some kind of reliance like that, you
2 know, things like medical bills, funeral damages, all
3 of those sorts of things, the financial things that
4 the parents have -- the beneficiaries would have had
5 to incur, would become recoverable. So I think there
6 are standalone pecuniary things that potentially
7 could, obviously, that pale in comparison to the death
8 of the child, but that's how at least in my mind I can
9 understand why that item would be included for claims
10 that are brought on behalf of minors.
11 MR. McLAUGHLIN: For the plaintiff?
12 MR. ANDREWS: I'd argue that it would be
13 permissible to look at a parent's lost wages as a
14 pecuniary loss in and of itself as that is a
15 permissible wrongful death damage. As opposing
16 counsel pointed out, there is the law that says there
17 is a presumption that when a child loses its parents,
18 there's some sort of pecuniary loss regarding lost
19 wages but not vice versa, and at the same time,
20 there's no case law out there saying that this is not
21 a recoverable damage.
22 In any event, while we did present
23 evidence of Mr. Baxter being out of a job for a number
24 of months and back at a job about a third of what he
25 was making normally, and Ms. Carwile out of her job

1 for a number of months, you didn't quantify it. There
2 was no number saying -- no number -- specific number
3 awarded for loss of earning capacity. We'd suggest it
4 just goes to show how much and how compounded
5 Ms. Carwile and Mr. Baxter's grief, their sorrow,
6 their wounded feelings were. And so we think -- we'd
7 argue that the testimony regarding those particular
8 damages goes to show and goes to prove their
9 significant wounded feelings, grief and sorrow.
10 MR. McLAUGHLIN: The two orders that wound
11 up with this case being before me, so the order from
12 Judge Burch striking the answer and the order of
13 reference, are those immediately appealable and are
14 they immediately appealable orders that have to be
15 appealed; and if they aren't, does that waive it?
16 MR. HOOD: Got it. So we address that in
17 our briefing, and thanks for asking that question. I
18 think Lenk disposes of that issue, which says that
19 they can be immediately appealed but they don't have
20 to be.
21 MR. McLAUGHLIN: Plaintiff?
22 MR. ANDREWS: Well, in any event, whether
23 it's immediately appealable or not, I believe that
24 such orders would need a Rule 59(e) motion to
25 reconsider timely filed and none of that was done in

1 this case. I do think, from the law, that they would
2 be immediately appealable.
3 MR. HOOD: I think there's support that
4 they could be. It's just the question becomes must
5 they be. So if you take the position that they have
6 to be, then you're going to bring everything to a
7 screeching halt every time there is a sanction order.
8 And a lot of times that's a reason why people don't
9 want to file for sanctions, because if it is
10 immediately appealable, it stops everything,
11 potentially, if they choose to do so. So that's why,
12 when you read the two statutes that are cited in Lenk,
13 when you read them together, they are appealable, but
14 they're not mandatorily appealable because you can
15 wait until the final disposition.
16 MR. McLAUGHLIN: A, thank y'all for
17 showing up today, and B, thank you for your arguments.
18 Is there anything else that either side wants to get
19 on the record before we close it?
20 MR. ANDREWS: Nothing from the plaintiffs.
21 MR. HOOD: The only thing that I haven't
22 already put in there, and I think just a point of
23 clarification, is that when you issued your award, it
24 was an award for $30 million. Above that, you
25 indicated it was for each of the parents, 15 for each.

1 Typically, under South Carolina law, you're going to
2 take pro rata at your level, so 30 would be divided by
3 two for two parents. To the extent that the 30 was
4 reached because you independently determined Mom's
5 damages and Dad's damages and added them together, I
6 think that would be erroneous. I can't tell if you
7 did that or not, the way the order was written.
8 And if you are revising an order, I would
9 encourage you to think about how the damages are
10 asserted, because it would be impossible for Mom and
11 Dad, given the difference in the testimony, to come to
12 the exact same numerical award; but if your reason for
13 including it was just because statutorily and under
14 South Carolina common law, without finding to the
15 contrary, they're entitled to 50 percent each, then,
16 so be it.
17 MR. McLAUGHLIN: If that's all, what I
18 probably would ask is for -- I don't know how y'all
19 want to do it, get together for the transcript, or one
20 of y'all get the transcript, then I'd like to get the
21 transcript and review it before I decide anything
22 else.
23 MR. HOOD: Okay.
24 MR. McLAUGHLIN: Thank you very much. And
25 if that's it, we'll go off the record.

1 (Defendants Exhibits 1-16, Binder, was
2 marked for identification.)
3 (The hearing was concluded at 2:19 p.m.)
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1 CERTIFICATE OF REPORTER

2

3 I, Margaret F. Barnett, Professional Court

4 Reporter and Notary Public for the State of South

5 Carolina at Large, do hereby certify that the

6 foregoing transcript is a true, accurate, and complete

7 record of the hearing taken before me.

8 I further certify that I am neither related to

9 nor counsel for any party to the cause pending or

10 interested in the events thereof.

11 Witness my hand, I have hereunto affixed my

12 official seal this 27th day of September, 2023 at

13 Charleston, Charleston County, South Carolina.

14

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17 ______________________________

18 Margaret F. Barnett
Notary Public
My Commission expires

19 February 25, 2030

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Samantha Joanne Carwile, individually and as the Personal Representative of the Estate of Marlayna Joan Carwile v. Chris Anderson and Danielle Anderson

C/A No. 2020-CP-16-00299, Darlington CP

Hearing Post-Trial Motions

September 15, 2019

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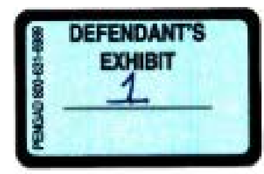


The South Carolina Court of Appeals

Samantha Joanee Carwile, individually and as the Personal Representative of the Estate of Marlayna Joan Carwile, Respondent,

v.

Chris Anderson and Danielle Anderson, Appellants.

Appellate Case No. 2023-001016

ORDER

Appellants filed this appeal on June 22, 2023. Appellants stated they filed timely post-trial motions on June 2, 2023. Appellants asked this court to hold this appeal in abeyance pending resolution of their post-trial motions. In the alternative, Appellants asked this court to dismiss the appeal without prejudice. Respondent moved to dismiss the appeal due to Appellants' premature filing. In the alternative, Respondent asked this court to hold the appeal in abeyance and remand to allow the Special Referee to rule on the pending post-trial motions.

After careful consideration, we deny Respondent's motion to dismiss. We grant the motion to hold the appeal in abeyance and remand to the Special Referee for the limited purpose of ruling upon the post-trial motions. Appellants shall provide this court with status updates every thirty days. Failure to file status updates may result in dismissal of this appeal.

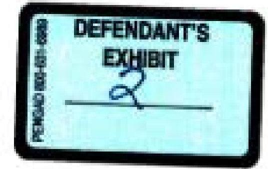
FOR THE COURT

Columbia, South Carolina

FILED
Jul 17 2023

cc:

James Bernard Hood, Esquire
Andrew James MacLeod, Esquire
Deborah Harrison Sheffield, Esquire
Ryan Christopher Andrews, Esquire
Douglas Edmund Jennings, Esquire
David Butler Yarborough, Jr., Esquire
Reynolds H. Blankenship, Jr., Esquire
Kathleen Chewning Barnes, Esquire



Rule 53, SCRCP

This document reflects changes received through September 1, 2023

SC - South Carolina State & Federal Court Rules > SOUTH CAROLINA RULES OF CIVIL PROCEDURE > VI. TRIALS

RULE 53. MASTERS AND SPECIAL REFEREES

(a) Master and Special Referee Defined

. The term "master" means the master-in-equity for the county. The term "special referee" means a member of the South Carolina Bar to whom a matter has been referred under *S.C. Code Ann. § 14-11-60*.

(b) References

. In an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court. In all other actions, the circuit court may, upon application of any party or upon its own motion, direct a reference of some or all of the causes of action in a case. Any party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury and, upon the filing of a jury demand, the matter shall be returned to the circuit court. A case shall not be referred to a master or special referee for the purpose of making a report to the circuit court. The clerk shall promptly provide the master or special referee with a copy of the order of reference.

(c) Powers

. Once referred, the master or special referee shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter.

(d) Compensation of Special Referees

. The compensation of the special referee shall be paid by the parties in such amount as shall be set by the special referee, subject to review by the circuit court upon objection by any party within ten (10) days of receipt of the order.

(e) Appeals

. When a matter has been referred, any appeal from any order or judgment issued by the master or special referee shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Note:

This Rule 53 follows the Federal Rule as to form but is considerably modified to conform to State practice and needs. References in Federal Courts are rare, but absolutely necessary in State Courts, particularly to handle a large volume of State litigation such as foreclosures, partitions, and other equity matters. The State practice allowing judgment to be entered on the master's report in appropriate cases is preserved, as is the allowance of 10 days to file exceptions to the report. Other post-trial motions, such as a motion to amend judgment under Rule 52(b), would apply when the order of reference directs that judgment be entered on the master's report, just as they apply in actions tried by the court.

Note to 1986 Amendment:

Rule 53(c) is amended to make clear that the master has the same powers as a court sitting without a jury unless the order of reference limits his authority. Changes in that paragraph as well as Rule 53(d) leave the scheduling of the time and place of the hearings to the master. Rule 53(e)(1) is amended to remove the need for filing the transcript of proceedings if one has not been prepared, but Rule 53(e)(2) allows any party to obtain the transcript of proceedings before any hearing on exceptions to the master's report. Rule 53(e)(5) now authorizes the master to request briefs or proposed orders from counsel.

Note to 1994 Amendment:

This Rule 53(b) amendment clarifies the authority of the clerk of court to issue orders of reference in default cases and where all the parties consent.

Note to 1999 Amendment:

This amendment substantially revises this rule. It eliminates the practice of referring a matter for the purpose of making a report to the circuit court. Under the revised rule, the master or special referee will enter final judgment on any matter which is referred and any appeal from a decision of the master or special referee is to the Court of Appeals or the Supreme Court as provided by the South Carolina Appellate Court Rules. The detailed discussion of the powers of masters and special referees, and the procedure to be followed in matters pending before them, has been eliminated as unnecessary since the master or special referee has all the powers that a circuit court judge sitting without a jury would have in the matter and the procedure is that provided by the South Carolina Rules of Civil Procedure.

Note to 2001 Amendment:

Rule 53(d) is amended to provide that fees for special referees are set by the special referee subject to review by the circuit court if a party timely objects.

Note to 2002 Amendment

The 2002 amendment permits referral of foreclosure cases to the master-in-equity by order of the clerk of court. If there are counterclaims requiring a jury trial, any party may file a demand for a jury under Rule 38 and the case will be returned to the circuit court.

Last Amended by Order effective September 1, 2002.

South Carolina Court Rules

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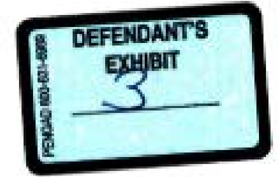

S.C. Code Ann. § 14-11-60

This document is current through 2023 Regular Session Act No. 66, and Act No. 68, not including changes and corrections made by the Code Commissioner.

South Carolina Code of Laws Annotated by LexisNexis® > Title 14. Courts (Chs. 1 — 31) > Chapter 11. Masters and Referees (Arts. 1 — 3) > Article 1. General Provisions (§§ 14-11-10 — 14-11-190)

§ 14-11-60. Appointment of special referee.

In case of a vacancy in the office of master-in-equity or in case of the disqualification or disability of the master-in-equity from interest or any other reason for which cause can be shown the presiding circuit court judge, upon agreement of the parties, may appoint a special referee in any case who as to the case has all the powers of a master-in-equity. The special referee must be compensated by the parties involved in the action.

History

1962 Code § 15-1811; 1952 Code § 15-1811; 1942 Code § 3684; 1932 Code § 3691; Civ. C. '22 § 2228; Civ. C. '12 § 1379; Civ. C. '02 § 972; G. S. 789; R. S. 843; 1840 (11) 154 § 2; 1885 (19) 89; 1979 Act No. 164 Part II § 7, eff July 1, 1979; 1988 Act No. 678, Part II, § 6, eff January 1, 1989.

Annotations

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Case Notes

Civil Procedure: Judicial Officers: Magistrates: Trial by Consent & Appeal

Civil Procedure: Judicial Officers: Masters: General Overview

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Civil Procedure: Appeals: Appellate Jurisdiction: State Court Review

Governments: Courts: Judges

Civil Procedure: Judicial Officers: Magistrates: Trial by Consent & Appeal

In a slip and fall case where the owner of the premises failed to timely answer or defend, reference of a damages hearing to a magistrate in the absence of an agreement of the owner was reversed because the owner ahd made an appearance, and under both S.C. R. Civ. P. 53(b) and *S.C. Code Ann. § 14-11-60*, reference could not be made

without agreement of a party who ahd entered an appearance in the case. Roche v. Young Bros., 326 S.C. 488, 485 S.E.2d 110, 1997 S.C. App. LEXIS 47 (S.C. Ct. App. 1997), rev'd, 332 S.C. 75, 504 S.E.2d 311, 1998 S.C. LEXIS 103 (S.C. 1998).

Civil Procedure: Judicial Officers: Masters: General Overview

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In a foreclosure proceeding, special referee was not disqualified by the provisions of S.C. Code Ann. § 14-11-60, which entitled him to compensation from the parties in the action because the referee was entitled to compensation regardless of how he ruled. First Sav. Bank v. McLean, 314 S.C. 361, 444 S.E.2d 513, 1994 S.C. LEXIS 111 (S.C. 1994).

Statute which allowed a direct appeal to the Supreme Court of South Carolina or the Court of Appeals of South Carolina from any final judgment entered by a special master, was not applicable to a final judgment issued by a special referee; although a special referee appointed pursuant to S.C. Code Ann. § 14-11-60 or S.C. Code Ann. § 15-31-150 had the powers of a master, the right to appeal was not given to a master but was conferred upon a party. Luck v. Pencar, Ltd., 282 S.C. 643, 320 S.E.2d 711, 1984 S.C. App. LEXIS 544 (S.C. Ct. App. 1984), overruled, Boardman v. Lovett Enterprises, Inc., 287 S.C. 303, 338 S.E.2d 323, 1985 S.C. LEXIS 551 (S.C. 1985).

Civil Procedure: Judicial Officers: References

In a personal injury action where a personal representative filed suit against the motel where her husband had fallen, the motel was deemed to have conceded liability were a default judgment was entered against it, therefore the motel was not entitled to challenge the appointment of a referee to determine damages under S.C. Code Ann. § 14-11-60 and S.C. R. Civ. P. 53(b). Roche v. Young Bros., 332 S.C. 75, 504 S.E.2d 311, 1998 S.C. LEXIS 103 (S.C. 1998).

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Civil Procedure: Appeals: Appellate Jurisdiction: State Court Review

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Governments: Courts: Judges

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Research References & Practice Aids

LAW REVIEWS

20 S. Carolina Lawyer 26, ARTICLE: MASTER OF HIS DOMAIN: THE EQUITY COURT—YESTERDAY AND TODAY, By H. Guyton Murrell and Reginald P. Corley, March, 2009, Copyright (c) 2009 South Carolina Bar South Carolina Lawyer.

26 S. Carolina Lawyer 30, FEATURE: SERVING THE MASTER: CHALLENGING THE AUTHORITY, POWER OR JURISDICTION OF THE MASTER-IN-EQUITY, By Bruce Wallace, January, 2015, Copyright (c) 2015 South Carolina Bar South Carolina Lawyer.

Hierarchy Notes:

S.C. Code Ann. Title 14, Ch. 11

State Notes

Notes

Effect of Amendment

The 1979 amendment changed the designation from "special master" to "special referee."

The 1988 amendment rewrote this section.

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DEFENDANT'S EXHIBIT 4
PENGAD 800-631-6989

S.C. Code Ann. § 14-17-250

This document is current through 2023 Regular Session Act No. 66, and Act No. 68, not including changes and corrections made by the Code Commissioner.

South Carolina Code of Laws Annotated by LexisNexis® > Title 14. Courts (Chs. 1 — 31) > Chapter 17. Clerks of Courts (Arts. 1 — 7) > Article 3. General Duties and Powers (§§ 14-17-210 — 14-17-370)

§ 14-17-250. General powers of clerks; proceedings under orders to be filed.

Clerks may administer oaths and take depositions, affidavits and renunciations of dower. The clerk of any county in which the office of master does not exist may, by consent of parties, sign orders of reference in vacation and may also, upon proper proceedings filed, grant orders for the partition of real or personal estate and for the admeasurement of dower in cases where the right of partition or dower is not contested or the same has been ascertained by a decree of the court. All proceedings under such orders shall be filed at the next succeeding term of the court for the adjudication of the presiding judge, until which adjudication all equities of the parties shall be reserved.

History

1962 Code § 15-1726; 1952 Code § 15-1726; 1942 Code § 3590; 1932 Code § 3590; Civ. C. '22 § 2134; Civ. C. '12 § 1313; Civ. C. '02 § 915; G. S. 736; R. S. 787; 1839 (11) 112 § 32; 1884 (19) 835.

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DEFENDANT'S EXHIBIT 5

S.C. Const. Ann. Art. V, § 1

This document is current through the November 8, 2016 General Election.

South Carolina Constitution of Laws Annotated by LexisNexis® > The Constitution of the State of South Carolina > Article V. The Judicial Department

§ 1. Judicial power vested in certain courts.

The judicial power shall be vested in a unified judicial system, which shall include a Supreme Court, a Court of Appeals, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by general law.

History

1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.

Annotations

LexisNexis® Notes

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Torts: Public Entity Liability: Liability: State Tort Claims Acts: Jurisdiction

Torts: Public Entity Liability: Liability: State Tort Claims Acts: Venue

Bankruptcy Law: Discharge & Dischargeability: Nondischarge of Individual Debts: Embezzlement & Fraud

Decision by the South Carolina Supreme Court finding that debtor should be disbarred for misappropriation of funds that were given to the attorney to be held in trust, in violation of S.C. App. Ct. R. 407:8.4 and 407:1.15, was given res judicata effect in a subsequent bankruptcy proceeding for non-dischargeability in which the Lawyers' Fund for Client Protection sought to have the reimbursement obligation to it ruled non-dischargeable under *11 U.S.C.S. § 523(a)(4)*. *Supreme Court v. Sipes (In re Sipes), 2007 Bankr. LEXIS 3996 (Bankr. D.S.C. Nov. 8, 2007)*.

Civil Procedure: Jurisdiction: Subject Matter Jurisdiction: Jurisdiction Over Actions: General Overview

Although *S.C. Code Ann. § 15-78-100(b)* established subject matter jurisdiction for actions arising under the South Carolina Tort Claims Act in the circuit court throughout the state, because the actions were properly instituted, a vehicle driver, as a third-party defendant, had no right to request a change of venue from the county where a vehicle accident occurred on a road maintained by the State of South Carolina to the county of her residence, based on an allegation that the actions were brought in an improper venue. *Jeter v. S.C. DOT, 369 S.C. 433, 633 S.E.2d 143, 2006 S.C. LEXIS 216 (S.C. 2006)*.

There is but one Circuit Court in South Carolina, with uniform subject matter jurisdiction throughout the state. *Dove v. Gold Kist, 314 S.C. 235, 442 S.E.2d 598, 1994 S.C. LEXIS 70 (S.C. 1994)*.

Civil Procedure: Parties: Self-Representation: General Overview

Corporation's president, a non-lawyer, was prohibited from representing his corporation in either circuit or appellate court proceeding because it was an unauthorized practice of law, and because any interpretation that would expand state supreme court decisions regarding the practice of law would violate the separation of powers provision of *S.C. Const. art. 5, § 1*, *S.C. Code § 40-5-320(A)(1)*, which purported to authorize certain classes to practice law, was not controlling. A layperson could only represent a corporation in a civil magistrate proceeding under S.C. App. Ct. R. 405. *Renaissance Enters., Inc. v. Summit Teleservices, Inc., 334 S.C. 649, 515 S.E.2d 257, 1999 S.C. LEXIS 66 (S.C. 1999)*.

Civil Procedure: Pretrial Matters: Continuances

Legislature cannot assume to itself the exercise of judicial powers. The judicial power is vested, under S.C. Const. art. 5, § 1, in the unified judicial system. The authority to determine whether a continuance should be granted or denied is inherent in the exercise of this judicial power, and cannot be exercised by the legislative branch of the government. Therefore, S.C. Code § 2-1-150, in so far as it attempts to exercise the ultimate authority to determine when, and under what circumstances, lawyer-legislators may be exempt from court appearances, is unconstitutional as violative of the principle of separation of powers. *Williams v. Bordon's, Inc., 274 S.C. 275, 262 S.E.2d 881, 1980 S.C. LEXIS 295 (S.C. 1980)*.

Civil Procedure: Judgments: Preclusion & Effect of Judgments: Res Judicata

Decision by the South Carolina Supreme Court finding that debtor should be disbarred for misappropriation of funds that were given to the attorney to be held in trust, in violation of S.C. App. Ct. R. 407:8.4 and 407:1.15, was given res judicata effect in a subsequent bankruptcy proceeding for non-dischargeability in which the Lawyers' Fund for Client Protection sought to have the reimbursement obligation to it ruled non-dischargeable under *11 U.S.C.S. § 523(a)(4)*. *Supreme Court v. Sipes (In re Sipes), 2007 Bankr. LEXIS 3996 (Bankr. D.S.C. Nov. 8, 2007)*.

Constitutional Law: The Judiciary: General Overview

In a *42 U.S.C.S. § 1983* case in which the complaint challenged a probate court decision to apply common law filial loss of consortium for the benefit to daughters and not to the son, pursuant to *S.C. Const. art. V, § 1*, the federal district court was not an appellate court within the South Carolina unified judicial system. *Knight v. Episcopal Church of the United States, 2010 U.S. Dist. LEXIS 74776 (D.S.C. July 23, 2010)*, aff'd, *402 Fed. Appx. 787, 2010 U.S. App. LEXIS 24200 (4th Cir. S.C. 2010)*.

Constitutional Law: The Judiciary: Case or Controversy: Constitutionality of Legislation: General Overview

S.C. Const. art. 5, § 1, does not deprive the General Assembly of the power to create the Court of Appeals by legislation. *State ex rel. Riley v. Martin, 274 S.C. 106, 262 S.E.2d 404, 1980 S.C. LEXIS 257 (S.C. 1980)*.

Legislature cannot assume to itself the exercise of judicial powers. The judicial power is vested, under S.C. Const. art. 5, § 1, in the unified judicial system. The authority to determine whether a continuance should be granted or denied is inherent in the exercise of this judicial power, and cannot be exercised by the legislative branch of the government. Therefore, S.C. Code § 2-1-150, in so far as it attempts to exercise the ultimate authority to determine when, and under what circumstances, lawyer-legislators may be exempt from court appearances, is unconstitutional as violative of the principle of separation of powers. *Williams v. Bordon's, Inc., 274 S.C. 275, 262 S.E.2d 881, 1980 S.C. LEXIS 295 (S.C. 1980)*.

Constitutional Law: Separation of Powers

Corporation's president, a non-lawyer, was prohibited from representing his corporation in either circuit or appellate court proceeding because it was an unauthorized practice of law, and because any interpretation that would expand state supreme court decisions regarding the practice of law would violate the separation of powers provision of *S.C. Const. art. 5, § 1*, *S.C. Code § 40-5-320(A)(1)*, which purported to authorize certain classes to practice law, was not controlling. A layperson could only represent a corporation in a civil magistrate proceeding under S.C. App. Ct. R. 405. *Renaissance Enters., Inc. v. Summit Teleservices, Inc., 334 S.C. 649, 515 S.E.2d 257, 1999 S.C. LEXIS 66 (S.C. 1999)*.

Legislature cannot assume to itself the exercise of judicial powers. The judicial power is vested, under S.C. Const. art. 5, § 1, in the unified judicial system. The authority to determine whether a continuance should be granted or

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Constitutional Law: Bill of Rights: Fundamental Rights: Criminal Process: Right to Jury Trial

Where a magistrate picked a person to select a jury, and the person had an almost unbridled authority to find 18 "respectable voters" from whom a jury of six would be selected, defendant was not assured of a fair cross-section of the community in his jury. *State v. Warren, 273 S.C. 159, 255 S.E.2d 668, 1979 S.C. LEXIS 386 (S.C. 1979)*.

Criminal Law & Procedure: Discovery & Inspection: Discovery by Defendant: General Overview

Whether a discovery rule promulgated by the Thirteenth Judicial Circuit (South Carolina), which required the names of witnesses to be included on the witness list supplied by a solicitor to defense counsel, had been violated or not during the course of defendant's trial for murder, housebreaking, and petty larceny was of no consequence because the local rule was unconstitutional and void under the authority of *S.C. Const. art. V, § 1* and *S.C. Const. art. V, § 4*, which provided that circuit court's were not permitted to promulgate their own rules governing practice and procedure. *State v. Duncan, 274 S.C. 379, 264 S.E.2d 421, 1980 S.C. LEXIS 308 (S.C. 1980)*.

Family Law: Marital Termination & Spousal Support: Dissolution & Divorce: Jurisdiction: General Overview

The court held that by reason of the mandates of *S.C. Const. art. V, § 1* et seq., a family court could not adopt its own rules of administration or practice and procedure because such local, non uniform rules were inconsistent with both the provisions and purpose of the constitutional mandate and were therefore unconstitutional and void; as such, the court found that the family court judge was without authority to institute his own administrative rules and then hold an attorney in contempt for failing to follow them when she did not wilfully disobey the rules or act disrespectfully toward the court. *Spartanburg County Dep't of Social Services v. Padgett, 296 S.C. 79, 370 S.E.2d 872, 1988 S.C. LEXIS 82 (S.C. 1988)*.

Governments: Courts: Creation & Organization

Drunk-driving defendant was unsuccessful in a constitutionality challenge to the municipal court system, which was authorized by *S.C. Code Ann. § 14-25-5*, because § 14-25-5 provided in unambiguous language that the municipal courts were included within the unified judicial system and the municipal courts in the state possessed uniform jurisdiction in compliance with the requirement of *S.C. Const. art. V, § 1*. *Pickens v. Schmitz, 297 S.C. 253, 376 S.E.2d 271, 1989 S.C. LEXIS 5 (S.C. 1989)*.

S.C. Const. art. V, § 1, which provides that the judicial power shall be vested in an unified judicial system, does not provide authority for the applicability of the Rules of Practice for the Circuit Courts to be applicable to the magistrate's courts even though both courts have concurrent jurisdiction in ejectment actions. *Greenville Housing Authority v. Massey, 281 S.C. 618, 316 S.E.2d 722, 1984 S.C. App. LEXIS 473 (S.C. Ct. App. 1984)*.

S.C. Code Ann. § 14-11-30 is unconstitutional insofar as it empowers the several counties to establish the amount of compensation for masters-in-equity; it contravenes *S.C. Const. art. V, § 1*, and art. VIII, § 14. *Kramer v. County Council for Dorchester County, 277 S.C. 71, 282 S.E.2d 850, 1981 S.C. LEXIS 478 (S.C. 1981)*.

S.C. Const. art. 5, § 1, does not deprive the General Assembly of the power to create the Court of Appeals by legislation. State ex rel. Riley v. Martin, 274 S.C. 106, 262 S.E.2d 404, 1980 S.C. LEXIS 257 (S.C. 1980).

Whether a discovery rule promulgated by the Thirteenth Judicial Circuit (South Carolina), which required the names of witnesses to be included on the witness list supplied by a solicitor to defense counsel, had been violated or not during the course of defendant's trial for murder, housebreaking, and petty larceny was of no consequence because the local rule was unconstitutional and void under the authority of S.C. Const. art. V, § 1 and S.C. Const. art. V, § 4, which provided that circuit court's were not permitted to promulgate their own rules governing practice and procedure. State v. Duncan, 274 S.C. 379, 264 S.E.2d 421, 1980 S.C. LEXIS 308 (S.C. 1980).

Legislation establishing disparate fee schedules for magistrate courts across the state conflicts with the uniformity requirements of S.C. Const. art. V, § 1 and former S.C. Const. art. V, §23 (now S.C. Const. art. V, § 26). The general assembly is empowered to provide for the jurisdiction of magistrates in a uniform manner only. The exercise of such jurisdiction is materially affected by the fees allowed to be charged or assessed, and since the fees for magistrate courts affect the exercise of jurisdiction, they must be enacted on a uniform basis. State ex rel. McLeod v. Crowe, 272 S.C. 41, 249 S.E.2d 772, 1978 S.C. LEXIS 378 (S.C. 1978).

S.C. Const. art. V, §§ 1 and 23 require that the jurisdiction of magistrates be uniform throughout the state. Such uniformity can only be accomplished through legislation which grants all magistrates uniform countywide jurisdiction. State ex rel. McLeod v. Crowe, 272 S.C. 41, 249 S.E.2d 772, 1978 S.C. LEXIS 378 (S.C. 1978).

Magistrates' Courts are a part of the unified judicial system, mandated by S.C. Const. art. V, § 1 and, therefore, are included within the requirements for uniformity prescribed by that article. State ex rel. McLeod v. Crowe, 272 S.C. 41, 249 S.E.2d 772, 1978 S.C. LEXIS 378 (S.C. 1978).

Governments: Courts: Judges

S.C. Code Ann. § 14-11-30 is unconstitutional insofar as it empowers the several counties to establish the amount of compensation for masters-in-equity; it contravenes S.C. Const. art. V, § 1, and art. VIII, § 14. Kramer v. County Council for Dorchester County, 277 S.C. 71, 282 S.E.2d 850, 1981 S.C. LEXIS 478 (S.C. 1981).

Former S.C. Code Ann. § 22-2-180, which provided that the magistrates of the several counties received compensation as fixed by the governing body of the county, violated S.C. Const. art. V, § 1, which established the design of the unified judicial system; magistrates were judicial officers under the constitution. Douglas v. McLeod, 277 S.C. 76, 282 S.E.2d 604, 1981 S.C. LEXIS 477 (S.C. 1981).

Governments: Courts: Rule Application & Interpretation

The purpose of the mandates in S.C. Const. art. V, § 1 et seq., and the development of a South Carolina Court Register was, among other things, to insure that each participant in the judicial system, be he litigant, lawyer or judge, could find in the Constitution, statutes and rules of the South Carolina Supreme Court a court system which was the same in each county of the state. Spartanburg County Dep't of Social Services v. Padgett, 296 S.C. 79, 370 S.E.2d 872, 1988 S.C. LEXIS 82 (S.C. 1988).

The court held that by reason of the mandates of S.C. Const. art. V, § 1 et seq., a family court could not adopt its own rules of administration or practice and procedure because such local, non uniform rules were inconsistent with both the provisions and purpose of the constitutional mandate and were therefore unconstitutional and void; as such, the court found that the family court judge was without authority to institute his own administrative rules and then hold an attorney in contempt for failing to follow them when she did not wilfully disobey the rules or act disrespectfully toward the court. Spartanburg County Dep't of Social Services v. Padgett, 296 S.C. 79, 370 S.E.2d 872, 1988 S.C. LEXIS 82 (S.C. 1988).

S.C. Const. art. V, § 1, which provides that the judicial power shall be vested in an unified judicial system, does not provide authority for the applicability of the Rules of Practice for the Circuit Courts to be applicable to the magistrate's courts even though both courts have concurrent jurisdiction in ejectment actions. *Greenville Housing Authority v. Massey, 281 S.C. 618, 316 S.E.2d 722, 1984 S.C. App. LEXIS 473 (S.C. Ct. App. 1984)*.

Governments: Legislation: Enactment

S.C. Const. art. 5, § 1, does not deprive the General Assembly of the power to create the Court of Appeals by legislation. *State ex rel. Riley v. Martin, 274 S.C. 106, 262 S.E.2d 404, 1980 S.C. LEXIS 257 (S.C. 1980)*.

Governments: Local Governments: Employees & Officials

Former S.C. Code Ann. § 22-2-180, which provided that the magistrates of the several counties received compensation as fixed by the governing body of the county, violated *S.C. Const. art. V, § 1*, which established the design of the unified judicial system; magistrates were judicial officers under the constitution. *Douglas v. McLeod, 277 S.C. 76, 282 S.E.2d 604, 1981 S.C. LEXIS 477 (S.C. 1981)*.

Governments: State & Territorial Governments: Relations With Governments

S.C. Code Ann. § 14-11-30 is unconstitutional insofar as it empowers the several counties to establish the amount of compensation for masters-in-equity; it contravenes *S.C. Const. art. V, § 1*, and art. VIII, § 14. *Kramer v. County Council for Dorchester County, 277 S.C. 71, 282 S.E.2d 850, 1981 S.C. LEXIS 478 (S.C. 1981)*.

Legal Ethics: Unauthorized Practice of Law

Corporation's president, a non-lawyer, was prohibited from representing his corporation in either circuit or appellate court proceeding because it was an unauthorized practice of law, and because any interpretation that would expand state supreme court decisions regarding the practice of law would violate the separation of powers provision of *S.C. Const. art. 5, § 1*, *S.C. Code § 40-5-320(A)(1)*, which purported to authorize certain classes to practice law, was not controlling. A layperson could only represent a corporation in a civil magistrate proceeding under S.C. App. Ct. R. 405. *Renaissance Enters., Inc. v. Summit Teleservices, Inc., 334 S.C. 649, 515 S.E.2d 257, 1999 S.C. LEXIS 66 (S.C. 1999)*.

Torts: Public Entity Liability: Liability: State Tort Claims Acts: Jurisdiction

Although *S.C. Code Ann. § 15-78-100(b)* established subject matter jurisdiction for actions arising under the South Carolina Tort Claims Act in the circuit court throughout the state, because the actions were properly instituted, a vehicle driver, as a third-party defendant, had no right to request a change of venue from the county where a vehicle accident occurred on a road maintained by the State of South Carolina to the county of her residence, based on an allegation that the actions were brought in an improper venue. *Jeter v. S.C. DOT, 369 S.C. 433, 633 S.E.2d 143, 2006 S.C. LEXIS 216 (S.C. 2006)*.

Torts: Public Entity Liability: Liability: State Tort Claims Acts: Venue

Although *S.C. Code Ann. § 15-78-100(b)* established subject matter jurisdiction for actions arising under the South Carolina Tort Claims Act in the circuit court throughout the state, because the actions were properly instituted, a vehicle driver, as a third-party defendant, had no right to request a change of venue from the county where a

vehicle accident occurred on a road maintained by the State of South Carolina to the county of her residence, based on an allegation that the actions were brought in an improper venue. *Jeter v. S.C. DOT, 369 S.C. 433, 633 S.E.2d 143, 2006 S.C. LEXIS 216 (S.C. 2006)*.

Notes to Unpublished Decisions

Constitutional Law: The Judiciary: Jurisdiction: General Overview

Constitutional Law: Separation of Powers

Governments: Courts: Rule Application & Interpretation

Constitutional Law: The Judiciary: Jurisdiction: General Overview

Unpublished decision: State Supreme Court, not the legislature, was vested with the authority to make rules regarding the practice and procedure of law in the courts of the state of South Carolina. *In re Circuit Court Role 102, 1982 S.C. LEXIS 483 (S.C. Aug. 31, 1982)*.

Constitutional Law: Separation of Powers

Unpublished decision: State Supreme Court, not the legislature, was vested with the authority to make rules regarding the practice and procedure of law in the courts of the state of South Carolina. *In re Circuit Court Role 102, 1982 S.C. LEXIS 483 (S.C. Aug. 31, 1982)*.

Governments: Courts: Rule Application & Interpretation

Unpublished decision: State Supreme Court, not the legislature, was vested with the authority to make rules regarding the practice and procedure of law in the courts of the state of South Carolina. *In re Circuit Court Role 102, 1982 S.C. LEXIS 483 (S.C. Aug. 31, 1982)*.

State Notes

Notes

Editor's Note

For similar provisions in Constitution of 1868, see Const 1868, Art IV, § 1.

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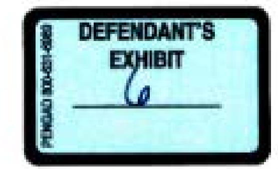

S.C. Const. Ann. Art. V, § 11

This document is current through the November 8, 2016 General Election.

South Carolina Constitution of Laws Annotated by LexisNexis® > The Constitution of the State of South Carolina > Article V. The Judicial Department

§ 11. Jurisdiction of Circuit Court.

The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law.

History

1972 (57) 3176; 1973 (58) 161; 1985 Act No. 9.

Annotations

LexisNexis® Notes

Case Notes

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Civil Procedure: Removal: Postremoval Remands: Jurisdictional Defects

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Criminal Law & Procedure: Grand Juries: Procedures: Return of Indictments: General Overview

Criminal Law & Procedure: Accusatory Instruments: Indictments: General Overview

Criminal Law & Procedure: Accusatory Instruments: Superseding Instruments: General Overview

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Although *S.C. Code Ann. § 15-78-100(b)* established subject matter jurisdiction for actions arising under the South Carolina Tort Claims Act in the circuit court throughout the state, because the actions were properly instituted, a vehicle driver, as a third-party defendant, had no right to request a change of venue from the county where a vehicle accident occurred on a road maintained by the State of South Carolina to the county of her residence, based on an allegation that the actions were brought in an improper venue. *Jeter v. S.C. DOT, 369 S.C. 433, 633 S.E.2d 143, 2006 S.C. LEXIS 216 (S.C. 2006)*.

Civil Procedure: Jurisdiction: Subject Matter Jurisdiction: Jurisdiction Over Actions: General Jurisdiction

In a defamation case, upon remand after removal, the state circuit court did not act without subject matter jurisdiction, and the defendant was not otherwise prejudice by the federal clerk's failure to send a certified copy of the remand order. *Limehouse v. Hulsey, 397 S.C. 49, 723 S.E.2d 211, 2011 S.C. App. LEXIS 171 (S.C. Ct. App. 2011)*.

Civil Procedure: Removal: Postremoval Remands: Jurisdictional Defects

In a defamation case, upon remand after removal, the state circuit court did not act without subject matter jurisdiction, and the defendant was not otherwise prejudice by the federal clerk's failure to send a certified copy of the remand order. *Limehouse v. Hulsey, 397 S.C. 49, 723 S.E.2d 211, 2011 S.C. App. LEXIS 171 (S.C. Ct. App. 2011)*.

Constitutional Law: The Judiciary: Jurisdiction

Because the plain language of *S.C. Code Ann. § 27-32-130* makes clear that the authority of the South Carolina Real Estate Commission does not limit the right of a purchaser or lessee to bring a private suit to enforce the provisions of the South Carolina Vacation Time Sharing Plans Act, the Commission does not have exclusive jurisdiction to determine whether a violation has occurred, nor is its determination of a violation a condition precedent to bringing a private enforcement action. *Fullbright v. Spinnaker Resorts, Inc., 420 S.C. 265, 802 S.E.2d 794, 2017 S.C. LEXIS 129 (S.C. 2017)*; *Fullbright v. Spinnaker Resorts, Inc., 420 S.C. 265, 802 S.E.2d 794, 2017 S.C. LEXIS 129 (S.C. 2017)*; *Fullbright v. Spinnaker Resorts, Inc., 420 S.C. 265, 802 S.E.2d 794, 2017 S.C. LEXIS 129 (S.C. 2017)*.

Because the Attorney General's delegation of prosecutorial authority to a solicitor investigating public corruption limited the scope of the probe, expanding it was unauthorized. A perjury conviction was valid because the solicitor had authority to call defendant to testify before the State Grand Jury, which has jurisdiction as to crimes involving

public corruption, and the circuit court's subject matter jurisdiction was unaffected; however, misconduct in office charges had to be set aside. State v. Harrison, 432 S.C. 448, 854 S.E.2d 468, 2021 S.C. LEXIS 2 (S.C. 2021).

Constitutional Law: Bill of Rights: Fundamental Rights: Procedural Due Process: Scope of Protection

Defendant's conviction for criminal domestic violence of a high and aggravated nature (CDVHAN) was affirmed because the circuit court did not lack subject matter jurisdiction due to the circuit court's granting an amendment of the indictment prior to trial by the solicitor, as the body and caption of the original indictment provided adequate notice to defendant that he faced a charge of CDVHAN. Thus, the amendment of the indictment proposed by the solicitor and approved by the judge, as well as defendant's statement that he was prepared to defend a charge of CDVHAN, were both superfluous and of no import in the case. State v. Means, 367 S.C. 374, 626 S.E.2d 348, 2006 S.C. LEXIS 29 (S.C. 2006).

Criminal Law & Procedure: Search & Seizure: General Overview

Trial court's order suppressing evidence obtained through discovery orders allowed by 18 U.S.C.S. § 2703(d) was error because, contrary to the trial court's findings, the issuing courts, South Carolina circuit courts, were courts of competent jurisdiction for purposes of § 2703(d); S.C. Code Ann. § 17-29-30(A)(2) allowed a law enforcement officer of South Carolina to apply for a pen register from any circuit court. Further, neither § 2703(b) nor § 2703(c) called for the issuance or use of pen registers and/or trap and trace devices, and, thus, S.C. Code Ann. § 17-29-20(A) et seq., addressing pen registers, did not establish that § 2703(d) orders were prohibited by South Carolina law. State v. Odom, 382 S.C. 144, 676 S.E.2d 124, 2009 S.C. LEXIS 73 (S.C. 2009).

Criminal Law & Procedure: Grand Juries: Investigative Authority: Courts

Circuit court acted well within its statutory authority in assessing the jurisdiction of the state grand jury beyond the impanelment stage; the statute contemplates assessment of jurisdiction by the presiding judge beyond the impanelment stage and discharging the state grand jury as a possible outcome. Harrell v. AG of the State (In re State Grand Jury Investigation), 409 S.C. 60, 760 S.E.2d 808, 2014 S.C. LEXIS 257 (S.C. 2014).

Criminal Law & Procedure: Grand Juries: Procedures: Return of Indictments: General Overview

The subject matter jurisdiction of the circuit court and the sufficiency of an indictment are two distinct concepts. Evans v. State, 363 S.C. 495, 611 S.E.2d 510, 2005 S.C. LEXIS 108 (S.C. 2005).

Criminal Law & Procedure: Accusatory Instruments: Indictments: General Overview

Defendant's conviction for criminal domestic violence of a high and aggravated nature (CDVHAN) was affirmed because the circuit court did not lack subject matter jurisdiction due to the circuit court's granting an amendment of the indictment prior to trial by the solicitor, as the body and caption of the original indictment provided adequate notice to defendant that he faced a charge of CDVHAN. Thus, the amendment of the indictment proposed by the solicitor and approved by the judge, as well as defendant's statement that he was prepared to defend a charge of CDVHAN, were both superfluous and of no import in the case. State v. Means, 367 S.C. 374, 626 S.E.2d 348, 2006 S.C. LEXIS 29 (S.C. 2006).

Criminal Law & Procedure: Accusatory Instruments: Superseding Instruments: General Overview

Defendant's conviction for criminal domestic violence of a high and aggravated nature (CDVHAN) was affirmed because the circuit court did not lack subject matter jurisdiction due to the circuit court's granting an amendment of the indictment prior to trial by the solicitor, as the body and caption of the original indictment provided adequate notice to defendant that he faced a charge of CDVHAN. Thus, the amendment of the indictment proposed by the solicitor and approved by the judge, as well as defendant's statement that he was prepared to defend a charge of CDVHAN, were both superfluous and of no import in the case. *State v. Means, 367 S.C. 374, 626 S.E.2d 348, 2006 S.C. LEXIS 29 (S.C. 2006)*.

Criminal Law & Procedure: Discovery & Inspection: Discovery by Defendant: General Overview

The subject matter jurisdiction of the circuit court and the sufficiency of an indictment are two distinct concepts. *Evans v. State, 363 S.C. 495, 611 S.E.2d 510, 2005 S.C. LEXIS 108 (S.C. 2005)*.

Criminal Law & Procedure: Jurisdiction & Venue: Jurisdiction

Circuit court has subject matter jurisdiction over the crimes charged against defendant. *State v. Sheppard, 391 S.C. 415, 706 S.E.2d 16, 2011 S.C. LEXIS 28 (S.C. 2011)*.

Recommendation from the probation office had no relevance to a circuit court's subject matter jurisdiction to hear cases involving the early termination of probation. *Johnson v. S.C. Dep't of Prob., 372 S.C. 279, 641 S.E.2d 895, 2007 S.C. LEXIS 69 (S.C. 2007)*.

District court had jurisdiction over defendants' driving under the influence (DUI) case because the punishment for DUI was a fine of $ 200 or 30 days in jail, *S.C. Code Ann. § 22-3-540* only granted jurisdiction to a magistrate in cases where the punishment did not exceed a fine of $ 100 or 30 days in jail, and the district courts had genera criminal jurisdiction unless exclusive jurisdiction had been given to an inferior court. *State v. Leonard, 287 S.C. 462, 339 S.E.2d 159, 1986 S.C. App. LEXIS 262 (S.C. Ct. App. 1986)*, rev'd, *292 S.C. 133, 355 S.E.2d 270, 1987 S.C. LEXIS 241 (S.C. 1987)*.

Criminal Law & Procedure: Sentencing: Alternatives: Probation: General Overview

Recommendation from the probation office had no relevance to a circuit court's subject matter jurisdiction to hear cases involving the early termination of probation. *Johnson v. S.C. Dep't of Prob., 372 S.C. 279, 641 S.E.2d 895, 2007 S.C. LEXIS 69 (S.C. 2007)*.

Criminal Law & Procedure: Appeals: Appellate Jurisdiction: Jurisdiction

Where a motorist appealing from a driving under the influence conviction timely served her notice of appeal on the municipal court, the motorist met the procedural requirements of *S.C. Code Ann. § 14-25-95*; her failure to obtain a bond or pay the court ordered fine did not divest the circuit court of appellate jurisdiction obtained pursuant to *S.C. Code Ann. § 14-5-340* and *S.C. Const. art. V, § 11*. *Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 713 S.E.2d 278, 2011 S.C. LEXIS 218 (S.C. 2011)*.

Criminal Law & Procedure: Appeals: Procedures: Notice of Appeal

Where a motorist appealing from a driving under the influence conviction timely served her notice of appeal on th municipal court, the motorist met the procedural requirements of *S.C. Code Ann. § 14-25-95*; her failure to obtain a bond or pay the court ordered fine did not divest the circuit court of appellate jurisdiction obtained pursuant to *S.C.*

Code Ann. § 14-5-340 and S.C. Const. art. V, § 11. Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 713 S.E.2d 278, 2011 S.C. LEXIS 218 (S.C. 2011).

Governments: Courts: General Overview

Trial court's order suppressing evidence obtained through discovery orders allowed by 18 U.S.C.S. § 2703(d) was error because, contrary to the trial court's findings, the issuing courts, South Carolina circuit courts, were courts of competent jurisdiction for purposes of § 2703(d); S.C. Code Ann. § 17-29-30(A)(2) allowed a law enforcement officer of South Carolina to apply for a pen register from any circuit court. Further, neither § 2703(b) nor § 2703(c) called for the issuance or use of pen registers and/or trap and trace devices, and, thus, S.C. Code Ann. § 17-29-20(A) et seq., addressing pen registers, did not establish that § 2703(d) orders were prohibited by South Carolina law. State v. Odom, 382 S.C. 144, 676 S.E.2d 124, 2009 S.C. LEXIS 73 (S.C. 2009).

Governments: Courts: Creation & Organization

Circuit court has subject matter jurisdiction over the crimes charged against defendant. State v. Sheppard, 391 S.C. 415, 706 S.E.2d 16, 2011 S.C. LEXIS 28 (S.C. 2011).

Torts: Public Entity Liability: Liability: State Tort Claims Acts: Jurisdiction

Although S.C. Code Ann. § 15-78-100(b) established subject matter jurisdiction for actions arising under the South Carolina Tort Claims Act in the circuit court throughout the state, because the actions were properly instituted, a vehicle driver, as a third-party defendant, had no right to request a change of venue from the county where a vehicle accident occurred on a road maintained by the State of South Carolina to the county of her residence, based on an allegation that the actions were brought in an improper venue. Jeter v. S.C. DOT, 369 S.C. 433, 633 S.E.2d 143, 2006 S.C. LEXIS 216 (S.C. 2006).

Torts: Public Entity Liability: Liability: State Tort Claims Acts: Venue

Although S.C. Code Ann. § 15-78-100(b) established subject matter jurisdiction for actions arising under the South Carolina Tort Claims Act in the circuit court throughout the state, because the actions were properly instituted, a vehicle driver, as a third-party defendant, had no right to request a change of venue from the county where a vehicle accident occurred on a road maintained by the State of South Carolina to the county of her residence, based on an allegation that the actions were brought in an improper venue. Jeter v. S.C. DOT, 369 S.C. 433, 633 S.E.2d 143, 2006 S.C. LEXIS 216 (S.C. 2006).

State Notes

Notes

Editor's Note

Provisions similar to those which formerly appeared at Art. V § 11 may now be found at Art. V § 15.

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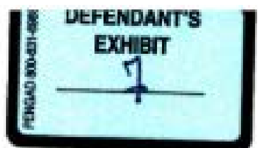

ELECTRONICALLY FILED - 2020 Jun 29 3:29 PM - DARLINGTON - COMMON PLEAS - CASE#2020CP1600299

IN THE STATE OF SOUTH CAROLINA	:	COURT OF COMMON PLEAS FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	:	Case No.: 2020-CP-16-00299
Samatha Joanne Carwile, individually and as The Personal Representative of the Estate of Marlayna Joan Carwile, Plaintiffs, Vs. Chris Anderson and Danielle Anderson, Defendants.	:	**NOTICE AND MOTION TO SET ASIDE ENTRY OF DEFAULT AGAINST DEFENDANT CHRIS ANDERSON AND DANIELLE ANDERSON, PURSUANT TO RULE 55(C)**

TO: RYAN C. ANDREWS, ATTORNEY FOR PLAINTIFFS:

PLEASE TAKE NOTICE THAT the Defendants, Chris Anderson and Danielle Anderson (collectively "Defendants"), hereby moves to set aside entry of default against Defendants and to allow Defendants to file an Answer to Plaintiffs' causes of action in the above-captioned case before a presiding judge of the Fourth Judicial Circuit Court of Common Please, 1 Public Square, Darlington, SC 29532 in ten (10) days after the service of this notice and motion, or as soon thereafter as possible, on the ground that there is good cause.

Defendant's motion is made on, but not limited to, the following grounds:

1. On or about March 17, 2020, Plaintiffs initiated the current action against the Defendants by the filing a summons and complaint with the Darlington County Clerk of Courts.

2. On or about April 6 the summons and complaint were served on Defendants at their residence.

3. Once the Defendants received the summons and complaint, they contacted Allstate Insurance Company, whom had homeowners cover on the Defendants' premises at the time of the accident that is the subject of the summons and complaint. Defendants were

informed by an Allstate representative that Allstate would not provide coverage because Defendants didn't currently have a policy with Allstate and that Defendants' should contact their currently insurance provider, American Modern Home Insurance Company. (See, Affidavit of Danielle Anderson, dated 06/23/2020, attached hereto and incorporate herein as Exhibit A).

4. Defendant immediately summited the summons and complaint to American Home Insurance Company for coverage and defense.

5. On or about April 20, 2020, American Modern Home Insurance Company mailed a letter to Rayan C. Andrews, attorney for Plaintiff's, advising Mr. Andrews that the accident predated American Home Insurance Company's coverage and that it would not be defending the Defendants in the action. (See, American Modern Home Insurance Company Letter, dated 04/20/2020, attached hereto and incorporated herein as Exhibit B).

6. Defendants, unfamiliar with the law, was waiting on a response from Mr. Andrews to the letter from American Modern Home Insurance Company.

7. On June 19, 2020, the Defendants received a letter in the mail from Mr. Andrews containing an order for an entry of default.

8. On June 23, 2020 Defendants presented to the Brooker Law Firm, seeking legal advice and assistance with the entry of default.

9. Defendants believes that good cause exist to set aside the entry for default.

10. Furthermore, Defendants immediately obtained legal counsel and filed a motion to set aside the entry of default within 10 days of received notice of entry of default.

11. Defendant has a meritorious defends to the Plaintiff's cause of action, in that the minor decedent:

ELECTRONICALLY FILED - 2020 Jun 29 3:29 PM - DARLINGTON - COMMON PLEAS - CASE#2020CP1600299

a. entered the property of the Defendants uninvited, and was accompanied by a chaperone;

b. Defendants declined the company of the minor decedent and chaperone, and request that they return home;

c. the minor was struck by the a vehicle as he was crossing the road with his chaperone.

12. Plaintiff's would not suffer any prejudice should the entry of default is set aside and the action proceed on the merits.

The undersigned certifies that he has attempted to communicate with opposing counsel prior filing this action or that communication with opposing counsel would serve no useful purpose.

With kindest regard, I am

BROOKER LAW FIRM

/s/ Thurmond Brooker

Thurmond Brooker, Esq,
Bar No.: 16225
P. O. Box 1450
Florence, SC 29503-1450
(843) 679-0056

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CERTIFICATE OF MAILING

The undersigned hereby certifies that a true copy of the above referenced Notice and Motion to Set Aside Entry of Default Against Defendant Chris Anderson and Danielle Anders Pursuant to Rule 55(C), by depositing the same in the U.S. Mail, with sufficient postage attached thereto, on this 28th day of February 2011 to the following:

Ryan C. Andrews
Cobb Dill & Hammett, LLC
222 W. Coleman Blvd.
Mt. Pleasant, SC 29464

/s/ Thurmond Brooker
Thurmond Brooker, Esq.

Florence, SC

June 29, 2020

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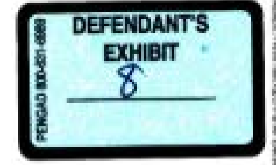

Affidavit

My name is Danielle Anderson and around April 10th 2020 I was served papers from Ryan C. Andrews with Cobb Dill & Hammett, LLC on behalf of his client, Samantha Joanne Carwile. The accusations in the complaint were all completely false so I immediately contacted Allstate to file a claim with them since they were the insurance provider that I had coverage with at the time of the incident dating back to December 6, 2017. I was then told that because I no longer had a policy with them that I would not be able to file a claim with them and that I need to file a claim with my current homeowners insurance company, American Modern Home Insurance Company.

I immediately filed a claim with American Modern Insurance Company. American Modern then sent a letter on April 20th 2020 to Mr. Andrews advising him that they had been made aware of the lawsuit against myself and my husband Chris Anderson, but that the date of the incident predated coverage with American Modern and as a result, they would be unable to defend us. At that point, I was waiting on a response from Mr. Andrews on what to do next because I was unknowledgeable in these types of legal matters. I never received a response until I received a letter from Mr. Andrews on June 19th 2020 containing an Order holding myself and my husband in default for lawsuit.

Instead of going back and forth with the insurance companies, I immediately obtained my own legal council with Thurmond Brooker because trusting my insurance company was why I was in default in the first place. Mr. Brooker informed me of how Allstate had not properly handled the situation, but that we first needed to get out of default and he would do all that he could to help us make that happen. I hope and pray that the judge assigned to this case will understand that we have never been negligent on our part and will see that we should be pulled out of default in this case and have a chance to prove our innocence.

I declare that, to the best of my knowledge and belief, the information herein is true, correct and complete.

X [signature]
Danielle Anderson 06-23-2020

Sworn before me this
23rd day of June 2020
[signature]
South Carolina Notary Public
My Commission Expires 3/30/2021

ELECTRONICALLY FILED - 2021 May 26 11:50 AM - DARLINGTON - COMMON PLEAS - CASE#2020CP1600299

IN THE STATE OF SOUTH CAROLINA : COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

COUNTY OF DARLINGTON :

Case No.: 2020-CP-16-00299

Samantha Joanne Carwile, individually and as The Personal Representative of the Estate of Marlayna Joan Carwile,

Plaintiffs,

Vs.

Chris Anderson and Danielle Anderson,

Defendants.

ORDER SETTING ASIDE ENTRY OF DEFAULT

This action is before the court on motion of Defendants, seeking relief from an entry of default. On December 6, 2017, a three-year-old child, Marlayna Joan Carwile (the "Decedent"), was struck by a vehicle and killed as she attempted to cross a highway separating Decedent's home and the Defendants' home. On March 17, 2020, Samantha Joanne Carwile ("Carwile"), the mother of the Decedent, filed a wrongful death action (the "Complaint"), individually and as personal representative of the estate of the Decedent (the "Plaintiffs"), against the Defendants alleging failure to properly supervise the Decedent.

On April 6, 2020, the Complaint was served on the Defendants at their home. The Defendants contacted Allstate Insurance Company ("Allstate"), who provided coverage for the Defendants' property on the date of the Decedent's accident. Allstate denied coverage and referred Defendants to their homeowner's carrier at the time the Complaint was filed, American Modern Home Insurance Company ("American Modern"). The Defendants immediately presented the Complaint to American Modern for defense.

American Modern sent a letter directed to Plaintiffs' attorney dated April 20, 2020 advising him that it would not be providing courage for the claim nor defending Defendants in

connection with the lawsuit. The Defendants were notified of American Modern's letter to Plaintiffs' attorney by carbon copy, and they waited on a response from Plaintiffs' attorney to the letter. On June 19, 2020, Defendants received a letter from Plaintiffs' attorney accompanied by an entry of default against them.

On June 23, 2020 Defendants attended a scheduled appointment with an attorney seeking legal counsel. On June 29, 2020, Defendants file a motion to set aside the entry of default, by and through legal counsel. On August 3, 2020, Defendant's filed affidavits in support of their motion to set aside entry of default prior to a schedule hearing on the motion.

An entry of default granted under Rule 55(a) of the Rule of Civil Procedure, can be set aside pursuant to Rule 55(c). *Sundown v. Intedge Industries*, 682 S.E.2d 885, 888, 383 S.C. 601 (SC 2009). "The standard for granting relief from an entry of default under Rule 55(c) is mere 'good cause.' This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of entry of the default would serve the interest of justice. Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted." *Id.*, *see also, Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct.App.1989).

The Decision to set aside an entry of default lies solely within the sound discretion of the trial court, and that decision will not be disturbed on appeal unless a clear showing of abuse of discretion is proven. *Sundown v. Intedge Industries*, 681 S.E.2d at 888 (SC 2009). An abuse of discretion occurs when the judge issuing the order was controlled by an error of law, or the order was void of evidentiary support. *Id.* A party moving is not entitled to an entry of default by

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right, even if a defendant is technically in default. *Ricks v. Weinrauch*, 293 S.C. 372, 375, 360 S.E.2d 535, 536(S.C. App. 1987) "Public policy favors the disposition of cases 'on their merits rather than on technicalities.'" *Bage, LLC v. Southeastern Roofing*, 646 S.E.2d 153, 160, 373 S.C. 457 (S.C. App. 2007), *quoting*, *Mictronics, Inc. v. South Carolina Department of Revenue*, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (S.C. App.2001). "Rule 55(c) should be 'liberally construed to promote justice and dispose of case on the merits." *Id.*, *quoting*, *Dixon v. Besco Eng'g*, 328 S.C. 174, 178, 463 S.E.2d 636, 638 (S.C App. 1995).

Here, the Defendants received service of the Complaint in this action on April 6, 2020. They immediately contacted Allstate insurance, whom was the Defendants' homeowner's insurance carrier at the time of the accident in December 2017. Allstate referred the Defendants to their then current homeowner's carrier, American Modern. The Defendants immediately submitted a copy of the Complaint to American Modern for defense. By letter dated April 20, 2020, American Modern directly notified Plaintiffs' attorney that it was not the Defendants' carrier on the date of the accident and would not be defending the action. A copy of the letter was forwarded to the Defendants.

I find that Defendants conducts suggest they took the Complaint seriously once it was served on them and made reasonable attempts to address the Complaint. Within fourteen (14) days of receiving the Complaint, Defendants had contacted Allstate and American Modern insurance companies in attempts to address the Complaint. Although both Allstate and American Modern declined coverage, Defendants' behavior was otherwise swift and appropriate. Furthermore, when Defendants received a copy of the letter sent to Plaintiffs' attorney by American Modern, they believed they would receive a response from Plaintiffs' attorney and waited for such response. Although Defendants decision to wait for a reply from Plaintiffs'

attorney was a mistake, their conduct never appeared callus or suggest a reckless inferenced to obligation generated by the Complaint. Defendants failed to timely file an answer to the complaint was the product of mistake, inadvertence, and excusable neglect.

When Defendants finally received a letter from Plaintiff's attorney on June 19, 2020, it was accompanied by an entry of default. Defendants immediately contacted and met with an attorney with four (4) days of receiving notice of the entry of default, and filed their motion seeking to set aside the entry of default within ten (10) days. Again, Defendants demonstrated the appropriated level of seriousness expected after receiving notice of an entry of default.

I further find that Defendants have a meritorious defense to the action. Defendants allege in an affidavit filed with the court the Decedent child came to their home with a chaperone of teen age, without notice and invitation, and that the Decedent child and chaperone was in their front yard when they returned home from grocery shopping. Defendants immediately informed the chaperone and Decedent child that they were not accepting guests and needed to return to their own home. The Decedent child was struck by a vehicle and killed while crossing the highway that separated the homes of the parties with the chaperone. If Defendants account is accurate, they may bear no liability for the accident.

Finally, I find that Plaintiffs would suffer no prejudice if the entry of default is set aside. Plaintiffs filed the complaint twenty-seven (27) months after the accident, and no credible argument was made that setting aside the default would amount compromise the Plaintiffs' ability to present their case on the merits or otherwise prejudice the Plaintiffs.

WHEFORE IT IS ORDED AND ADJUDGE THAT the entry of default is set aside, and the Defendants shall file and served an answer to the Plaintiff's Complaint within ten (10) days of entry of this order.

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IT IS SO ORDERED

______________________, 2021 ______________________________
HONORABLE ROGER E. HENDERSON
______________________, SC JUDGE, FOURTH JUDICIAL CIRCUIT

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Darlington Common Pleas

Case Caption:	Samantha Joanne Carwile , plaintiff, et al VS Chris Anderson , defendant, et al
Case Number:	2020CP1600299
Type:	Order/Set Aside Judgment

So Ordered

s/Roger E. Henderson 2754

Electronically signed on 2021-05-26 09:33:29 page 6 of 6

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ELECTRONICALLY FILED - 2023 Feb 10 9:59 AM - DARLINGTON - COMMON PLEAS - CASE#2020CP1600299

DEFENDANT'S EXHIBIT 10

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	) FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)
Samantha Joanne Carwile, individually and as the Personal Representative of the Estate of Marlayna Joan Carwile,	) C/A No. 2020-CP-16-00299
Plaintiff,	)
vs.	) **ORDER OF REFERENCE TO SPECIAL REFEREE**
Chris Anderson and Danielle Anderson,	)
Defendants.	)

This matter comes before the Court on Plaintiff's motion for referral to a special referee pursuant to Rule 53, SCRCP. The motion is granted.

On November 29, 2022, the Court entered an Order holding both Defendants in default. Neither Defendant filed a motion to reconsider that Order, and the time to file such a motion has passed.

Pursuant to Rule 53, SCRCP, the Court hereby appoints as Special Referee attorney Patrick J. McLaughlin of Wukela Law Firm in Florence, South Carolina, who has consented to serve in this role. Mr. McLaughlin shall have the full power and authority of this Court, and he shall rule on any motion for default judgment; hold a damages hearing and take all testimony and other evidence; and enter and enforce final judgment. He shall have and retain jurisdiction over any motions related to the appointment of him as special referee; any motions related to the entry of default, including but not limited to motions pursuant to Rule 55, SCRCP; any motions related to the entry of default judgment, including but not limited to motions pursuant to Rules 59 and 60, SCRCP; and any motions to intervene pursuant to Rule 24, SCRCP. Mr. McLaughlin will also have and retain jurisdiction over any supplemental proceedings in connection with this matter. All Orders of the Special Referee shall be filed with the Clerk of Court for Darlington County.

The Special Referee shall have the authority to hold any hearing virtually or at any location that he may choose.

The Special Referee shall be compensated at a rate of $500.00 per hour. The Special Referee's fees and costs shall be paid by Plaintiff, with the provision that if a Defendant appears to participate in any of the proceedings, through counsel or otherwise, then the Special Referee's fees and costs shall be equally divided among all parties who have participated.

IT IS SO ORDERED.

[electronic signature page follows]

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ELECTRONICALLY FILED - 2023 Feb 10 9:59 AM - DARLINGTON - COMMON PLEAS - CASE#2020CP1600299

Darlington Common Pleas

Case Caption:	Samantha Joanne Carwile , plaintiff, et al VS Chris Anderson , defendant, et al
Case Number:	2020CP1600299
Type:	Order/Referred to Master or Special Referee

So Ordered

s/Scott B. Suggs by JEG

Electronically signed on 2023-02-10 09:59:25 page 3 of 3

STATE OF SOUTH CAROLINA	:	IN THE FAMILY COURT
COUNTY OF DARLINGTON	:	TWELFTH JUDICIAL CIRCUIT CASE NO.: 2020-CP-16-00299
Samantha Joanne Carwile, individually and As the Personal Representative of the Estate of Marlayna Joan Carwile,	:	
Plaintiff,	:	
v.	:	SECOND AFFIDAVIT OF DANIELLE ANDERSON
Chris Anderson and Danielle Anderson	:	
Defendant.	:	

I, Danielle Anderson, being duly deposed and sworn, states the following as my true and lawful statement:

1. In December 2017 I, my husband Chris Anderson, and our children lived at [redacted] [redacted], South Carolina.

2. The Samantha Carwile and her family (the "Carwiles") rented a home across the street from our home.

3. The Carwiles had a small child, Marlayna, whom would sometimes cross the street and come to our home, with her seven (7) year old brother, to play with our children.

4. Marlayna was very young, about three (3) years of age.

5. One day before the December 6, 2017 accident, Marlayna crossed the street and appeared at our house unaccompanied by anyone. We were very concerned because she was only 3 years of age and the highway between our home and the Carwile's was a very busy road with a lot of car and truck traffic. My husband and my children walked

Marlayna across the street and back home, and my husband talked with Mrs. Carwile regarding the danger of allowing Marlayna to crossing the road alone. After that day Marlayna was always walked across the street by her uncle, a young boy I believe to be about 15 years of age, when she came to our house to play with our children.

6. On December 6, 2017, the day of the accident, it was late in the afternoon and we were coming home from grocery shopping. As I was pulling up to our house, I saw Marlayna, her 7 year old brother, and their Uncle playing in the front yard of their home. When we pulled up in the yard, I started to unload the groceries from the car. Marlayna, her 7 year old brother, and her uncle walked up and asked if Marlayna and her brother could play with our kids. The children were carrying toys in their hands. I told them that it was too late and that it looked as if it was about to rain. The kids then ask if they could show my children their new toys before they leave. I told them they could quickly show my children their toys and then they need to return home. I continued to unload groceries from the vehicle. Shortly thereafter, I heard one of my daughter's scream. My daughter had seen the accident. Marlayna had been hit by a car as she was crossing the road to go back home with her brother and uncle. I ran to Marlayna to try to save her live. We performed CPR and did what we could.

7. Later I talked with my daughter about how the accident happened because she witnessed the events. She told me that Marlayna's uncle crossed the road before she did; when Marlayna attempted to cross the road to join her uncle on the other side of the road, he told her to wait because a car was approaching. Once the car pass Marlayna ran out into the road, but another car coming from the opposite direction was coming and struck Marlayna.

8. When police arrived we talked with the police and answered all questions they asked. We were also contact by DSS. We told DSS how the accident happened and the history of the children not being watched by any adults. It is also my understand that may neighbors contacted DSS to tell them about the history of the children not being supervised by Mrs. Carwile or any adult on many occasions before the accident.

DANIELLE ANDERSON

Sworn To Before Me This
3rd Day of August, 3, 2020

Notary Public of South Carolina
My Commission Expires: 3/30/2021

ELECTRONICALLY FILED - 2023 Aug 25 12:40 PM - DARLINGTON - COMMON PLEAS - CASE#2023CP1600616

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	
Chris Anderson, Danielle Anderson, and Samantha Joanne Carwile, individually and as Personal Representative of the Estate of Marlayna Joan Carwile,	)	
Plaintiffs,	)	
vs.	)	**SUMMONS**
Allstate Vehicle and Property Insurance Company, William Christian Durham, Durham Specialty Insurance LLC, Thurmond Brooker, and Brooker Law Firm,	)	
Defendants.	)	

DEFENDANT'S EXHIBIT 12

TO: THE ABOVE-NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED and required to plead in response to the Complaint in this action, a copy of which is served herewith upon you, and to serve a copy of your responsive pleading on Plaintiffs' undersigned counsel at their respective offices located at 291 East Bay Street, Floor 2, Charleston, South Carolina 29401, and 222 W. Coleman Boulevard, Mt. Pleasant, SC 29464, within thirty (30) days after the service hereof, exclusive of the date of service. If you fail to serve a responsive pleading within that time, then Plaintiffs will have default entered against you and apply to the Court for all damages sought in the Complaint.

[signatures follow]

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Respectfully submitted,

YARBOROUGH APPLEGATE, LLC

s/ *David B. Yarborough, Jr.*

David B. Yarborough, Jr.
Reynolds H. Blankenship, Jr.
291 East Bay Street, Floor 2
Charleston, South Carolina 29401
843-972-0150 office
843-277-6691 fax
david@yarboroughapplegate.com
reynolds@yarboroughapplegate.com

August 25, 2023

Attorneys for Plaintiffs
Chris and Danielle Anderson

and

COBB DILL & HAMMET, LLC

s/ *Ryan C. Andrews*

Ryan C. Andrews
222 W. Coleman Blvd.
Mt. Pleasant, SC 29464
(843) 936-6680 office
randrews@cdhlawfirm.com

Attorney for Plaintiff
Samantha Joanne Carwile, individually and as
Personal Representative of the Estate of
Marlayna Joan Carwile

August 25, 2023

ELECTRONICALLY FILED - 2023 Aug 25 12:40 PM - DARLINGTON - COMMON PLEAS - CASE#2023CP1600616

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	
Chris Anderson, Danielle Anderson, and Samantha Joanne Carwile, individually and as Personal Representative of the Estate of Marlayna Joan Carwile,	)	
Plaintiffs,	)	
vs.	)	**COMPLAINT** (Jury Trial Requested)
Allstate Vehicle and Property Insurance Company, William Christian Durham, Durham Specialty Insurance LLC, Thurmond Brooker, and Brooker Law Firm,	)	
Defendants.	)	

Plaintiffs Chris Anderson and Danielle Anderson hereby complain of Defendants Allstate Vehicle and Property Insurance Company, William Christian Durham, Durham Specialty Insurance LLC, Thurmond Brooker, and Brooker Law Firm as follows. Plaintiff Samantha Joanne Carwile, individually and as Personal Representative of the Estate of Marlayna Joan Carwile, is a plaintiff solely as to the cause of action for declaratory judgment against Allstate Vehicle and Property Insurance Company.

PARTIES, JURISDICTION, AND VENUE

1. This is a civil action for damages arising out of Defendants' acts and omissions related to a civil action filed against Plaintiffs Chris Anderson and Danielle Anderson in this Court, *Samantha Joanne Carwile, individually and as Personal Representative of the Estate of Marlayna Joan Carwile v. Chris Anderson and Danielle Anderson*, Civil Action No. 2020-CP-16-00299 ("the underlying action").

ELECTRONICALLY FILED - 2023 Aug 25 12:40 PM - DARLINGTON - COMMON PLEAS - CASE#2023CP1600616

2. Plaintiffs Chris Anderson and Danielle Anderson are both residents of Darlington County, South Carolina.

3. Plaintiff Samantha Joanne Carwile was a resident of Darlington County, South Carolina, at the time of the incident out of which the underlying action arose, but she is now a resident of Florida.

4. The Darlington County Probate Court appointed Samantha Joanne Carwile as the Personal Representative of the Estate of Marlayna Joan Carwile, who was Ms. Carwile's minor daughter.

5. As Personal Representative of the Estate, Ms. Carwile has an interest in the cause of action for declaratory judgment set forth herein as a judgment creditor.

6. Upon information and belief, Defendant Allstate Vehicle and Property Insurance Company ("Allstate") is incorporated in Illinois and also has its principal place of business in Illinois.

7. Allstate does business in South Carolina; is registered with the South Carolina Department of Insurance; and issued the subject homeowners' insurance policy to Chris and Danielle Anderson for their home in Darlington County, South Carolina.

8. Upon information and belief, Defendant William Christian Durham is a resident of Florence County, South Carolina.

9. Defendant Durham Specialty Insurance LLC is organized in South Carolina and has its principal place of business in Florence County, South Carolina.

10. Upon information and belief, Defendant Thurmond Brooker is a South Carolina licensed attorney and a resident of Florence County, South Carolina.

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11. Upon information and belief, Defendant Brooker Law Firm is a sole proprietorship owned and operated by Defendant Thurmond Brooker, and it is a resident of Florence County, South Carolina.

12. As set forth below, the Anderson Plaintiffs assert causes of action against Allstate for declaratory judgment, insurance bad faith, and breach of contract.

13. As set forth below, the Anderson Plaintiffs assert causes of action against Defendants William Christian Durham and Durham Specialty Insurance LLC (collectively, "Durham") for professional negligence.

14. As set forth below, Anderson Plaintiffs assert causes of action against Defendants Thurmond Brooker and Brooker Law Firm (collectively, "Brooker") for legal malpractice and breach of contract.

15. Each Defendant's acts and omissions related directly to the underlying action, which proceeded (and continues to proceed) in this Court in Darlington County.

16. The most substantial part of Brooker's acts and omissions occurred in Darlington County.

17. The loss at issue was insured by Allstate and occurred in Darlington County.

18. This Court has personal jurisdiction over the subject matter and the parties, and venue is proper in this Court pursuant to South Carolina Code sections 15-7-30(C)(2) and 15-7-70.

FACTS

19. The underlying action arose out of an incident in which Samantha Joanne Carwile and Justin Baxter's minor daughter, Marlayna, was hit by a car and killed on December 6, 2017.

20. Marlayna and her family lived across the street from the Andersons in Darlington County, and she was walking across the street to go back home when she was struck by the car.

21. As personal representative of the estate of her daughter, Ms. Carwile alleged that her daughter was in the care of Chris and Danielle Anderson, her neighbors across the street.

22. As personal representative of the estate of her daughter, Ms. Carwile asserted claims for survival and wrongful death against Chris and Danielle Anderson predicated on multiple causes of action, including: (A) Breach of Fiduciary Duty and Assumed Duty *In Loco Parentis*; (B) Negligence/Gross Negligence/Negligence *Per se*; (C) Negligent Infliction of Emotional Distress; and (D) Loss of Services and Companionship. For further detail, see the Complaint filed in the underlying action, attached as **Exhibit A**.

23. The Summons and Complaint in the underlying action were personally served upon Chris and Danielle Anderson on April 6, 2020.

24. As of December 2017 when the incident occurred, the Andersons had a homeowners' insurance policy with Allstate. *See* Allstate Policy No. 990 698 206, attached as **Exhibit B**.

25. The policy period was July 11, 2017, through July 11, 2018, which encompassed the date of the subject incident, December 6, 2017.

26. As of April 2020 (almost three years after the underlying incident) when the Andersons were served, the Andersons had a new insurance agent, Durham, and they had homeowners' coverage with a different insurer, American Modern Home Insurance Company ("American Modern").

27. Promptly after being served, Danielle Anderson called Allstate's customer service phone number and spoke with a representative.

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28. Danielle Anderson informed the Allstate representative of the lawsuit against the Andersons and that the subject incident had occurred on December 6, 2017. *See* Affidavit of Danielle Anderson, dated June 23, 2020, and attached as **Exhibit C**, which was filed in the underlying action.

29. The Allstate representative falsely informed Danielle Anderson that because Allstate no longer had coverage on the Andersons' home, Allstate could not open a claim to defend or indemnify the Andersons.

30. On April 9, 2020, Danielle Anderson called her insurance agent, Durham.

31. Danielle Anderson informed Durham of the lawsuit against the Andersons; that the subject incident had occurred in December 2017; that the Andersons had homeowners' coverage with Allstate at the time of the incident; and that Allstate had refused to open a claim to defend and indemnify the Andersons because the Andersons no longer had a policy with Allstate.

32. Durham agreed to help and undertook the task of helping the Andersons submit a claim to their then-current insurer, American Modern.

33. As a professional insurance agent/agency, Durham knew or should have known that Allstate was, in fact, the proper insurer to which the Andersons needed to submit their claim.

34. Durham knew or should have known that the Allstate representative had incorrectly refused to open a claim for the Andersons.

35. Durham should have but failed to advise the Andersons that they needed to go back to Allstate to submit the claim again, as Allstate was the proper insurer with coverage since its policy was in place at the time of the incident.

36. If Durham had so advised the Andersons, then they would have gone back to Allstate to ensure Allstate opened the claim and provided a defense.

37. American Modern denied the claim because it did not have a policy with the Andersons at the time of the incident.

38. Having improperly refused to even open a claim, Allstate never retained defense counsel to defend the Andersons and timely serve an answer to the complaint.

39. After no answer was served or filed by the deadline, this Court entered the Andersons' default in the underlying action on June 15, 2020.

40. The Andersons received notice of the default via a letter from Ms. Carwile's attorney in June 2020.

41. Within only days of receiving notice of the default, the Andersons hired attorney Thurmond Brooker and his firm, Brooker Law Firm (again, collectively, "Brooker"), to serve as their personal counsel and defend them in the underlying action.

42. Through Brooker, the Andersons filed a motion to set aside the entry of default.

43. On May 26, 2021, the Court granted the motion and set aside the entry of default, finding that the Andersons' "conduct suggest[ed] they took the Complaint seriously once it was served on them and made reasonable attempts to address the Complaint," and further finding that the Andersons' "behavior was…swift and appropriate." *See* Order Setting Aside Entry of Default, entered May 26, 2021, at 3.

44. On March 9, 2022, Ms. Carwile's attorney served Brooker with discovery requests to the Andersons.

45. Unlike insurance defense counsel who are regularly hired by insurers like Allstate to defend insureds in civil litigation, Mr. Brooker was apparently unfamiliar with defending clients in personal injury civil actions like the underlying action.

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46. Brooker failed to take any steps to respond to the discovery requests or even make the Andersons aware of the requests.

47. After Brooker failed to respond to Rule 11 correspondence, Ms. Carwile's attorney filed a motion to compel.

48. On July 21, 2022, the Court entered an order granting the motion and compelling the Andersons to respond to Ms. Carwile's discovery requests.

49. Contrary to what an insurance defense lawyer hired by Allstate would have done, Brooker did not take steps to ensure that the Andersons were aware of the Court's order or ensure that timely discovery responses were served within the time specified in the order.

50. After the Andersons unknowingly failed to comply with the order, Ms. Carwile's attorney filed a motion for sanctions pursuant to Rule 37, SCRCP.

51. Although the Clerk of Court provided notice of the hearing scheduled for October 31, 2022, Mr. Brooker failed to appear at the hearing.

52. A lawyer vetted and retained by Allstate would not have failed to appear at the hearing for no good reason.

53. On November 17, 2022, the Court entered an order granting the motion for sanctions and striking the Andersons' answer to the complaint.

54. In the order striking the answer, the Court set forth that it would enter default against the Andersons upon motion by Ms. Carwile.

55. Ms. Carwile's attorney filed the motion for entry of default, and on November 29, 2022, the Court entered an order placing the Andersons back into default.

56. On February 10, 2023, the Court entered an order referring the underlying action to a special referee.

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57. The special referee scheduled a damages hearing on April 13, 2023.

58. The day before the hearing, insurance defense counsel, finally hired by Allstate, appeared and filed a motion to set aside the entry of default.

59. The special referee heard arguments on the motion on the same day as the scheduled damages hearing.

60. The special referee ultimately denied the Andersons' motion to set aside the entry of default.

61. Consequently, the Andersons were unable to defend themselves on the issue of liability.

62. After the damages hearing, the special referee entered a default judgment against the Andersons in the amount of $30 million. *See* Order of Default Judgment, entered May 23, 2023, and attached as **Exhibit D**, in which the referee sets forth in detail the losses of the parents.

63. In sum, Allstate's negligence in failing to honor the claim and defend the Andersons set in motion a series of unfortunate, foreseeable events that caused the Andersons to be defenseless in a case in which they had valid, viable defenses on liability; Durham's professional negligence compounded Allstate's negligence; and Brooker's legal malpractice in abandoning the Andersons further compounded the negligence of Allstate and Durham. *See* **Exhibit E**, Second Affidavit of Danielle Anderson, setting forth the Andersons' defenses as to liability.

64. If not for Allstate's wrongful refusal to defend the Andersons, they would have been represented by vetted, competent insurance defense counsel who knew how to defend clients in civil personal injury litigation.

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65. While post-trial motions remain pending and an appeal has already been filed, the Andersons have already sustained damages as a result of the acts and omissions of Allstate, Durham, and Brooker.

66. If the default judgment is upheld, then the post-judgment interest will add millions of dollars to the $30 million judgment.

67. The Andersons own a logging business together, and such a large judgment will severely hinder their ability to obtain credit, both personally and for their business.

FIRST CAUSE OF ACTION
(DECLARATORY JUDGMENT AS TO ALLSTATE ON BEHALF OF ALL PLAINTIFFS)

68. Pursuant to South Carolina Code Title 15, Chapter 53, the Andersons and Ms. Carwile seek a declaratory judgment that the Andersons' Allstate Policy No. 990 698 206, attached as **Exhibit B**, did require Allstate to defend and indemnify the Andersons in the underlying action.

69. The Andersons and Ms. Carwile also seek a declaratory judgment that no exclusion in the Andersons' Allstate policy applied to either exclude or limit Allstate's duty to defend and indemnify the Andersons in the underlying action.

70. The Andersons and Ms. Carwile also seek a declaratory judgment that all conditions precedent to Allstate's duty to defend and indemnify the Andersons were met.

71. This is the only cause of action in this Complaint to which Ms. Carwile is a party.

SECOND CAUSE OF ACTION
(INSURANCE BAD FAITH AS TO ALLSTATE ON BEHALF OF THE ANDERSONS)

72. At the time of the subject incident, December 6, 2017, the Andersons and Allstate had a mutually binding, valid, and enforceable contract for insurance, Policy Number 990 698 206. *See* **Exhibit B**.

73. Pursuant to the insurance policy, Allstate owed the Andersons a duty of good faith and fair dealing.

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74. As set forth above, Allstate breached its duty of good faith and fair dealing and was negligent or reckless in numerous particulars, including but not limited to:

a. failing to recognize that the claim reported by the Andersons in April 2020 was a covered claim;

b. failing to open the claim;

c. failing to hire competent insurance defense counsel in a timely manner to defend the Andersons;

d. failing to secure an extension to answer or ensure that an answer was timely served; and

e. otherwise failing to act as a reasonable insurer would have under the circumstances to prevent its insureds from being placed into default.

75. As additional evidence of its bad faith toward the Andersons, Allstate has recently filed an action in federal court for declaratory judgment in which Allstate is making the frivolous claim that coverage for the subject incident was excluded under the policy because the policy excludes claims of negligent supervision "arising out of" the use of a motor vehicle, when the policy clearly refers to claims of negligent supervision involving the Andersons' own vehicle, not a claim involving some stranger's use of the stranger's vehicle.

76. Also as additional evidence of its bad faith toward the Andersons, Allstate has alleged in both the underlying action and the declaratory judgment action that its first notice of the Carwile claim was when undersigned counsel served a subpoena on Allstate in March 2023. Allstate is aware of Mrs. Andersons' affidavit in which she stated under oath that she had called Allstate promptly after being served with the Carwile suit papers in April 2020. *See* Exhibit C. Allstate has essentially called its insured, Mrs. Anderson, a liar.

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77. As a direct and proximate result of Allstate's acts and omissions, the Andersons have sustained actual, consequential, and incidental damages, including but not limited to the $30 million judgment, post-judgment interest, attorney fees, and damaged credit.

78. The Andersons are entitled to a judgment against Allstate for all of their actual, consequential, and incidental damages.

79. The Andersons are entitled to an award of punitive damages against Allstate.

80. The Andersons are entitled to an award of prejudgment interest against Allstate.

THIRD CAUSE OF ACTION
(BREACH OF CONTRACT AS TO ALLSTATE ON BEHALF OF THE ANDERSONS)

81. At the time of the subject incident, December 6, 2017, the Andersons and Allstate had a mutually binding, valid, and enforceable contract for insurance, Policy Number 990 698 206. *See* **Exhibit B**.

82. Allstate breached that contract of insurance in numerous regards, including but not limited to:

a. failing to recognize that the claim reported by the Andersons in April 2020 was a covered claim;

b. failing to open the claim;

c. failing to hire competent insurance defense counsel in a timely manner to defend the Andersons;

d. failing to secure an extension to answer or ensure that an answer was timely served; and

e. otherwise failing to act as a reasonable insurer would have under the circumstances to prevent its insureds from being placed into default.

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83. As a direct and proximate result of Allstate's breach of contract, the Andersons have sustained actual, consequential, and incidental damages, including but not limited to the $30 million judgment, post-judgment interest, attorney fees, and damaged credit.

84. The Andersons are entitled to a judgment against Allstate for all of their actual, consequential, and incidental damages.

85. Because Allstate breached the contract in bad faith as set forth above, the Andersons are entitled to an award of attorney fees and costs against Allstate pursuant to South Carolina Code section 38-59-40.

86. The Andersons are entitled to an award of prejudgment interest against Allstate.

FOURTH CAUSE OF ACTION
(PROFESSIONAL NEGLIGENCE AS TO DURHAM DEFENDANTS ON BEHALF OF THE ANDERSONS)

87. Mr. Durham and Durham Specialty Insurance LLC (again, collectively, "Durham") voluntarily undertook a duty to the Andersons when Durham agreed to advise and help them after Allstate had wrongfully refused to open the claim.

88. Durham undertook a duty to give reasonable, competent advice regarding which insurance company likely had insurance coverage for the underlying action.

89. As a professional insurance agent/agency, Durham undertook a duty to give the type of advice that a reasonable, competent professional insurance agent/agency would give under similar circumstances.

90. Durham knew or should have known that Allstate was the insurance company with coverage and an obligation to defend the Andersons, because Allstate was the insurance company that had an active policy on the Andersons' home at the time of the subject incident.

91. Durham breached his/its duty in failing to recognize Allstate's error in refusing to open the claim and provide a defense and coverage to the Andersons.

92. Durham breached his/its duty in failing to inform the Andersons of the same and advising them to go back to Allstate to submit the claim.

93. In breaching his/its duty to the Andersons, Durham was negligent or reckless.

94. As a direct and proximate result of Durham's acts and omissions, the Andersons have sustained actual, consequential, and incidental damages, including but not limited to the $30 million judgment, post-judgment interest, attorney fees, and damaged credit.

95. The Andersons are entitled to a judgment against Durham for all of their actual, consequential, and incidental damages.

96. The Andersons are entitled to an award of punitive damages against Durham.

97. The Andersons are entitled to an award of prejudgment interest against Durham.

FIFTH CAUSE OF ACTION
(LEGAL MALPRACTICE AS TO BROOKER DEFENDANTS ON BEHALF OF THE ANDERSONS)

98. The Andersons had an attorney-client relationship with Mr. Brooker and Brooker Law Firm (again, collectively, "Brooker").

99. Brooker agreed to represent the Andersons in the underlying action, and in exchange the Andersons paid Brooker $10,000.00.

100. Brooker's scope of representation in the underlying action was not limited to the initial motion to set aside the entry of default.

101. The Court never relieved Brooker as counsel for the Andersons, and therefore his duties to the Andersons remained intact throughout the litigation.

102. As their attorney, Brooker had a fiduciary duty to the Andersons to act in their best interests.

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103. Brooker had a duty to represent the Andersons competently pursuant to Rule 1.1, RPC, Rule 407, SCACR.

104. Pursuant to Rule 1.3, RPC, Rule 407, SCACR, Brooker had a duty to act with reasonable diligence and promptness in representing the Andersons.

105. Pursuant to Rule 1.4, RPC, Rule 407, SCACR, Brooker had a duty to reasonably communicate with the Andersons about what was happening in the underlying action.

106. Brooker breached his/its duties to the Andersons by utterly failing to respond to or communicate with the Andersons about Ms. Carwile's discovery requests, Rule 11 consultations, motion to compel, motion for sanctions, and motion for entry of default.

107. Brooker breached his/its duty to the Andersons by failing to properly comply with the order compelling the Andersons to respond to discovery and by failing to attend the hearing on the motion for sanctions.

108. In breaching his/its duties to the Andersons, Brooker was negligent or reckless.

109. As a direct and proximate result of Brooker's acts and omissions, the Andersons have sustained actual, consequential, and incidental damages, including but not limited to the $30 million judgment, post-judgment interest, attorney fees, and damaged credit.

110. The Andersons are entitled to a judgment against Brooker for all of their actual, consequential, and incidental damages.

111. The Andersons are entitled to an award of punitive damages against Brooker.

112. The Andersons are entitled to an award of prejudgment interest against Brooker.

113. Pursuant to South Carolina Code section 15-36-100(B), this cause of action is supported by the affidavit of South Carolina attorney Benjamin Houston Joyce, attached as **Exhibit F**.

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SIXTH CAUSE OF ACTION
(BREACH OF CONTRACT AS TO BROOKER DEFENDANTS ON BEHALF OF THE ANDERSONS)

114. The Andersons had a valid, enforceable contract with Brooker pursuant to which Brooker agreed to represent the Andersons in the underlying action, and in exchange the Andersons paid Brooker $10,000.00.

115. The contract contained implied terms that Brooker would perform competently and diligently, and that he would reasonably communicate with the Andersons about the litigation.

116. The contract also contained an implied term that Brooker would not abandon the Andersons and cause them to have their answer stricken as a Rule 37 sanction.

117. Brooker violated those terms of the contract and thus materially breached the contract.

118. As a direct and proximate result of Brooker's breach of contract, the Andersons have sustained actual, consequential, and incidental damages, including but not limited to the $30 million judgment, post-judgment interest, attorney fees, and damaged credit.

119. The Andersons are entitled to a judgment against Brooker for all of their actual, consequential, and incidental damages.

120. The Andersons are entitled to an award of prejudgment interest against Brooker.

121. Pursuant to South Carolina Code section 15-36-100(B), this cause of action is supported by the affidavit of South Carolina attorney Benjamin Houston Joyce, attached as **Exhibit F**.

WHEREFORE, having fully pleaded against Defendants, all Plaintiffs respectfully pray for a declaratory judgment against Allstate as set forth above; for the costs of this action; and for such other and further relief as the Court deems just and proper.

In addition, the Anderson Plaintiffs respectfully pray for judgment against Defendants, jointly and severally, for all actual, consequential, and incidental damages caused by Defendants' acts and omissions; for an award of prejudgment interest against Defendants; for an award of punitive damages against each Defendant; and for an award of attorney fees against Allstate.

Respectfully submitted,

YARBOROUGH APPLEGATE, LLC

s/ *David B. Yarborough, Jr.*
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August 25, 2023

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and

COBB DILL & HAMMET, LLC

s/ *Ryan C. Andrews*
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Attorney for Plaintiff
Samantha Joanne Carwile, individually and as
Personal Representative of the Estate of
Marlayna Joan Carwile

August 25, 2023

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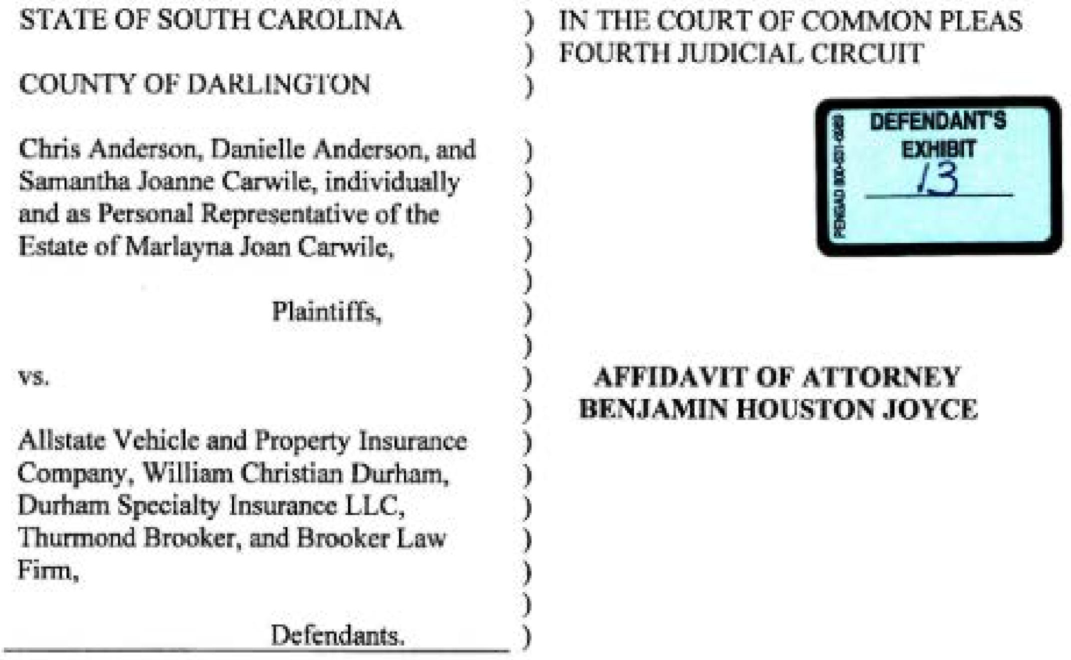

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	
Chris Anderson, Danielle Anderson, and Samantha Joanne Carwile, individually and as Personal Representative of the Estate of Marlayna Joan Carwile,	)	
Plaintiffs,	)	
vs.	)	**AFFIDAVIT OF ATTORNEY BENJAMIN HOUSTON JOYCE**
Allstate Vehicle and Property Insurance Company, William Christian Durham, Durham Specialty Insurance LLC, Thurmond Brooker, and Brooker Law Firm,	)	
Defendants.	)	

DEFENDANT'S EXHIBIT 13

PERSONALLY APPEARED BEFORE ME, Benjamin Houston Joyce, who after being duly sworn deposes and says:

1. I am an attorney at law with an active litigation practice at Lesemann & Associates in Charleston, South Carolina.

2. I earned my juris doctorate degree from the Charleston School of Law in 2012.

3. I became licensed to practice law in South Carolina on May 13, 2013.

4. As a practicing litigator with more than ten years of continuous experience, I am qualified to give expert testimony on the standard of care and professional responsibilities of a South Carolina attorney representing clients in South Carolina courts.

5. I have reviewed the Complaint in this civil action, particularly the Plaintiffs' allegations against Defendant Thurmond Brooker and Brooker Law Firm (collectively, "Brooker").

Plaintiff EXHIBIT F

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6. The Complaint sets forth multiple acts and omissions by Brooker that constitute professional negligence.

7. As Chris and Danielle Anderson's lawyer in the civil action brought against them by Ms. Carwile, Brooker owed the Andersons a fiduciary duty to act with the utmost care for the Andersons and in furtherance of their best interests.

8. Brooker owed the Andersons a duty to act as a competent attorney. *See* Rule 1.1, RPC, Rule 407, SCACR. "In South Carolina, attorneys are required to render services with the degree of skill, care, knowledge, and judgment usually possessed and exercised by members of the profession." *Holy Loch Distributors, Inc. v. Hitchcock*, 340 S.C. 20, 27, 531 S.E.2d 282, 285 (2000) (citing *Norris v. Alexander*, 246 S.C. 14, 142 S.E.2d 214 (1965)).

9. Brooker also owed the Andersons a duty to act with reasonable diligence and promptness. *See* Rule 1.3, RPC, Rule 407, SCACR.

10. Brooker owed the Andersons a duty to reasonably communicate with the Andersons and keep them updated as to the status of the case as it was progressing. *See* Rule 1.4, RPC, Rule 407, SCACR.

11. All of these duties form the standard of care for an attorney in South Carolina.

12. In my opinion, in the Complaint the Andersons set forth numerous factual allegations that, if proven, demonstrate that Brooker violated each of the duties identified above and failed to adhere to the standard of care. In other words, Brooker committed numerous acts and omissions that constituted professional negligence.

13. My opinion is based on the following factual allegations:

A. Brooker failed to respond to Ms. Carwile's interrogatories or requests for production, and Brooker failed to communicate with the Andersons about the requests and the need to respond to them in timely fashion.

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B. Brooker failed to respond to Ms. Carwile's Motion to Compel.

C. Brooker failed to comply with the Court's order compelling the Andersons to respond to the discovery requests, and Brooker failed to reasonably communicate with the Andersons about the need to comply with the order.

D. Brooker failed to respond to Ms. Carwile's attempts to resolve the matter without further Court intervention.

E. Brooker failed to respond to Ms. Carwile's Motion for Sanctions, and even failed to appear at the hearing.

14. All of these breaches of the Rules of Professional Conduct and the standard of care, identified above, caused the Andersons to be placed back into default.

15. Being placed into default caused the Andersons to lose their ability to defend themselves on the issue of liability.

16. But for the numerous negligent acts and omissions of Brooker identified in the Complaint and above, the Andersons would not have a $30 million default judgment against them.

17. I have reviewed the fee agreement between Brooker and the Andersons.

18. The fee agreement did not limit Brooker's role in the litigation such that he should be excused for any of the acts or omissions above.

19. I hold all of these opinions to a reasonable degree of legal certainty.

20. I have been retained as an expert witness for the Andersons.

21. These opinions are subject to expansion and moderation as further evidence or issues develop.

Further this affiant sayeth not.

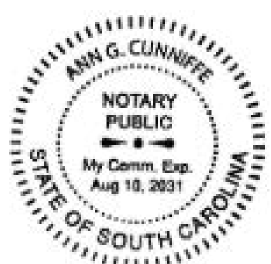
[signature follows]

AFFIDAVIT OF BENJAMIN HOUSTON JOYCE
[Signature Page]

Benjamin Houston Joyce

SWORN TO AND SUBSCRIBED before me
This 25 day of August 2023.

Notary Public for the State of South Carolina
My Commission Expires: 8/10/31



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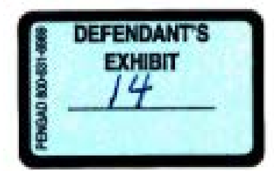

Limehouse v. Hulsey

Supreme Court of South Carolina

March 6, 2013, Heard; June 26, 2013, Filed

Opinion No. 27279

Reporter

404 S.C. 93 *; 744 S.E.2d 566 **; 2013 S.C. LEXIS 157 ***; 2013 WL 3200608

Lawton Limehouse, Sr., Respondent, v. Paul H. Hulsey and The Hulsey Litigation Group, LLC, Petitioners. and Lawton Limehouse, Jr., Respondent, v. Paul H. Hulsey and The Hulsey Litigation Group, LLC, Appellants.

Prior History: [*1]** Appeals From Charleston County. Appellate Case No. 2011-196246, Appellate Case No. 2010-151573. Daniel F. Pieper, Circuit Court Judge, Roger M. Young, Circuit Court Judge.

Limehouse v. Hulsey, 397 S.C. 49, 723 S.E.2d 211, 2011 S.C. App. LEXIS 171 (S.C. Ct. App., 2011)

Disposition: REVERSED, VACATED, AND REMANDED.

Core Terms

state court, federal court, remand order, mailing, default, damages, Appeals, proceedings, certified copy, removal, cases, entry of default, punitive damages, district court, subject matter jurisdiction, cross-examination, courts, notice, tolled, circuit court, pleadings, resuming, federal law, parties, void, lack of subject matter jurisdiction, court's jurisdiction, actual damage, post-default, divested

Case Summary

Overview

HOLDINGS: [1]- As the federal court's order remanding a case back to state court was not certified, as required by 28 U.S.C.S. § 1447(c), the state court proceedings conducted after the federal court's entry of the remand order were void; therefore, the default judgments the state court entered in favor of respondents and against appellant could not stand; [2]-The 30-day time period for appellant to file an answer was tolled until the state court resumed jurisdiction; [3]-Pursuant to Howard v. Holiday, Inns, Inc., which remained good law after the enactment of S.C. R. Civ. P. 55(b)(2), the trial court properly precluded the defaulting appellant from engaging in discovery and limited his participation in the hearing on damages to cross-examination and objection to respondent one's evidence.

Outcome

The judgments were reversed.

LexisNexis® Headnotes

Civil Procedure > ... > Removal > Postremoval Remands > General Overview

Civil Procedure > Preliminary Considerations > Removal > General Overview

HN1[] **Removal, Postremoval Remands**

28 U.S.C.S. § 1446(d) provides that after an action has been removed to federal court, the state court shall proceed no further unless and until the case is remanded.

Civil Procedure > ... > Jurisdiction > Subject Matter Jurisdiction > General Overview

Governments > Courts > Authority to Adjudicate

Civil Procedure > ... > Removal > Postremoval Remands > Jurisdictional Defects

HN2[] **Jurisdiction, Subject Matter Jurisdiction**

A remand order that is based on lack of subject matter jurisdiction is governed by 28 U.S.C.S. § 1447(c). Section 1447(c), entitled "Procedure after removal generally," provides that a motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under 28 U.S.C.S. § 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the state court. The state court may thereupon proceed with such case. § 1447(c).

Civil Procedure > Preliminary Considerations > Jurisdiction > General Overview

Governments > Courts > Authority to Adjudicate

Civil Procedure > ... > Jurisdiction > In Rem & Personal Jurisdiction > General Overview

Civil Procedure > ... > Jurisdiction > Subject Matter Jurisdiction > General Overview

HN3[] Preliminary Considerations, Jurisdiction

Jurisdiction is generally defined as the authority to decide a given case one way or the other. Without jurisdiction, a court cannot proceed at all in any cause; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause. Specifically, jurisdiction is composed of three elements: (1) personal jurisdiction; (2) subject matter jurisdiction; and (3) the court's power to render the particular judgment requested.

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > Concurrent Jurisdiction

Governments > Courts > Authority to Adjudicate

Civil Procedure > Preliminary Considerations > Jurisdiction > General Overview

Civil Procedure > Preliminary Considerations > Federal & State Interrelationships > General Overview

HN4[] Jurisdiction Over Actions, Concurrent Jurisdiction

Although federal and state courts form one system of jurisprudence, federal courts have no general supervisory power over the state courts, and there is nothing a state court can do to affect federal practice and procedure. The courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent.

Civil Procedure > Preliminary Considerations > Removal > General Overview

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview

HN5[] Preliminary Considerations, Removal

A case filed in state court may be removed to federal court only when the case originally could have been filed in federal court. 28 U.S.C.S. § 1441(a) authorizes a defendant to remove any civil action brought in a state court of which the district courts of the United States have original jurisdiction. Only state-court actions that originally could have been filed in federal court may be removed to federal court by the defendant.

Civil Procedure > ... > Diversity Jurisdiction > Amount in Controversy > General Overview

Civil Procedure > ... > Subject Matter Jurisdiction > Federal Questions > General Overview

HN6[] Diversity Jurisdiction, Amount in Controversy

A federal court has subject matter jurisdiction over primarily two types of cases: (1) those involving federal question jurisdiction, which arise under the Constitution, laws, or treaties of the United States; and (2) those involving diversity jurisdiction, which include parties who are residents of different states and the amount in controversy exceeds $ 75,000. 28 U.S.C.S. §§ 1331, 1332.

Civil Procedure > Preliminary Considerations > Removal > General Overview

Civil Procedure > ... > Jurisdiction > Subject Matter Jurisdiction > General Overview

HN7[] Preliminary Considerations, Removal

Removal proceedings impact the jurisdiction of the state court in that removal of a state case to federal court divests the state court of jurisdiction. Although most cases speak in terms of "divesting" the state court of jurisdiction during removal proceedings, the more accurate terminology is a "suspension" of the state court's jurisdiction.

Civil Procedure > ... > Jurisdiction > Subject Matter Jurisdiction > General Overview

HN8[] Jurisdiction, Subject Matter Jurisdiction

Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong.

Civil Procedure > ... > Pleadings > Complaints > General Overview

Civil Procedure > ... > In Rem & Personal Jurisdiction > In Personam Actions > General Overview

Civil Procedure > ... > Service of Process > Service of Summons > General Overview

HN9[] Pleadings, Complaints

A court acquires personal jurisdiction over the parties once the action is commenced by the filing and service of the summons and complaint.

Civil Procedure > Remedies > General Overview

Governments > Courts > Authority to Adjudicate

Civil Procedure > ... > Jurisdiction > Subject Matter Jurisdiction > General Overview

Civil Procedure > Preliminary Considerations > Equity > Relief

HN10[] Civil Procedure, Remedies

"Power" refers to the court's ability, when it has subject matter jurisdiction, to grant equitable and legal relief to a party.

Civil Procedure > Preliminary Considerations > Removal > General Overview

Governments > Legislation > Interpretation

Governments > Legislation > Types of Statutes

HN11[] Preliminary Considerations, Removal

Because removal proceedings encroach upon a state court's jurisdiction, removal statutes must be strictly construed and any doubts are to be resolved in favor of state court jurisdiction and remand. The removal statute, which is nationwide in its operation, was intended to be uniform in its application, unaffected by local law definition or characterization of the subject matter to which it is to be applied. Hence the Act of Congress must be construed as setting up its own criteria, irrespective of local law, for determining in what instances suits are to be removed from the state to the federal courts.

Governments > Legislation > Interpretation

HN12[] Legislation, Interpretation

As the rules of statutory construction dictate, it is necessary for courts to consider the legislative history in order to effectuate the purpose of the statute. Where the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of the act itself.

Civil Procedure > ... > Removal > Postremoval Remands > General Overview

HN13[] Removal, Postremoval Remands

The history and plain language of 28 U.S.C.S. § 1447(c) leave no doubt that Congress made the mailing of a

certified copy of the remand order the determinable jurisdictional event after which the state court can exercise control over the case without fear of further federal interference. Congress purposefully included the mailing of a certified order as a jurisdictional requirement and, thus, the mere entry of an order is not self-executing as to the jurisdiction of the state court. A *§ 1447(c)* order of remand is not self-executing. This provision creates legal significance in the mailing of a certified copy of the remand order in terms of determining the time at which the district court is divested of jurisdiction. On that basis, the federal court is not divested of jurisdiction until the remand order, citing the proper basis under *§ 1447(c)*, is certified and mailed by the clerk of the district court.

Governments > Legislation > Interpretation

Governments > Courts > Judicial Precedent

HN14[] **Legislation, Interpretation**

While a state court is bound only by the United States Supreme Court, if the lower federal courts are uniform on their interpretation of a federal statute, the state court, in the interest of preserving unity, will give considerable weight to those courts' interpretations of federal law and find them to be highly persuasive. However, if the federal courts are split, the state court may elect to follow those decisions it believes to be better reasoned.

Civil Procedure > ... > Default & Default Judgments > Default Judgments > Entry of Default Judgments

Civil Procedure > ... > Service of Process > Methods of Service > General Overview

HN15[] **Default Judgments, Entry of Default Judgments**

See S.C. R. Civ. P. 77(d).

Civil Procedure > Pleading & Practice > Pleadings > Answers

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview

Civil Procedure > Preliminary Considerations > Removal > General Overview

Civil Procedure > ... > Removal > Postremoval Remands > General Overview

Civil Procedure > ... > Pleadings > Time Limitations > General Overview

HN16[] **Pleadings, Answers**

Once a case is removed to federal court, the state court's jurisdiction is suspended or held in abeyance until the case is properly remanded. When the state court resumes jurisdiction, it has a duty to proceed as though no removal had been attempted. Thus, the time for filing an answer is tolled until the state court resumes jurisdiction.

Civil Procedure > Pleading & Practice > Pleadings > Answers

Civil Procedure > Preliminary Considerations > Removal > General Overview

Civil Procedure > ... > Pleadings > Time Limitations > General Overview

HN17[] **Pleadings, Answers**

Removal of a state court case to federal court tolls the time period for filing responsive pleadings.

Civil Procedure > ... > Pretrial Judgments > Default & Default Judgments > Default Judgments

Civil Procedure > Remedies > Damages > General Overview

HN18[] **Default & Default Judgments, Default Judgments**

S.C. R. Civ. P. 55(b)(2) provides that, in cases where default has been entered and the plaintiff's damages are not a sum certain, a trial judge may schedule a hearing on damages if it would enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to

make an investigation of any other matter.

Civil Procedure > ... > Pretrial Judgments > Default & Default Judgments > Default Judgments

Civil Procedure > Remedies > Damages > General Overview

***HN19*[] Default & Default Judgments, Default Judgments**

The Supreme Court of South Carolina has assessed three approaches as to how a defaulting defendant can contest the issue of damages. It has noted that it could allow damages to be determined: (1) in an ex parte proceeding, denying the defendant any right to participate; (2) after a full adversary contest, including the right of the defendant to produce evidence in rebuttal or in mitigation; or (3) with defense counsel's participation limited to cross-examination and objection to plaintiff's evidence. The supreme court has found the third approach to be the proper one and has approved it for use in the courts of South Carolina.

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Frank M. Cisa, of The Law Firm of Cisa & Dodds, LLP, of Mt. Pleasant, for Respondents.

Judges: JUSTICE BEATTY. TOAL, C.J., HEARN, J., and Acting Justice James E. Moore, concur. KITTREDGE, J., concurring in result only.

Opinion by: BEATTY

Opinion

[*95] [567] JUSTICE BEATTY:** Lawton Limehouse, Sr. ("Father") and Lawton Limehouse, Jr. ("Son") separately sued Paul Hulsey, an attorney, and Hulsey's law practice (collectively, "Hulsey") for defamation arising out of statements Hulsey **[**568]** made regarding L&L Services, LLC ("L&L"), a staffing agency owned and operated by Father and Son. Hulsey removed the case to federal court based on an underlying RICO action[1] involving the **[*96]** operation of L&L. The federal court remanded **[***2]** the case to state court on the ground it lacked federal question jurisdiction over the issues presented. After the remand, the state court clerk of court entered a default against Hulsey.

Following a damages hearing, a jury awarded Father $2.39 million in actual damages and $5 million in punitive damages. The Court of Appeals affirmed. ***Limehouse v. Hulsey**, 397 S.C. 49, 723 S.E.2d 211 (Ct. App. 2011)*. While the appeal in Father's case was pending, a damages hearing was held for Son's case. A jury awarded Son $1 million in actual damages and $2.6 million in punitive damages.

This Court granted Hulsey's petition for a writ of certiorari to review the opinion of the Court of Appeals. Subsequently, this Court issued an order certifying the appeal in Son's case pursuant to *Rule 204(b), SCACR*. Because the dispositive issue in each case is identical, we consolidated the matters for oral argument and for the purpose of this opinion.[2] As will be discussed, we find the state court proceedings are void as the lack of a certified remand order precluded the state court from resuming jurisdiction **[***3]** over the cases. Accordingly, we reverse the decision of the Court of Appeals, vacate the state court proceedings, and remand to the circuit court to recommence the cases from the procedural point at which the state court received a certified remand order from the federal court.

I. Factual/Procedural History

Father and Son owned and operated an employment staffing agency known as L&L Services, LLC, which was located in Charleston County. Between February 11, 2004, and February 24, 2004, *The Post and Courier* published four articles concerning housing raids performed on homes rented by L&L and fines assessed for overcrowding, inadequate heating and plumbing, and running illegal boarding houses. On Sunday, March 21, 2004, *The Post and Courier* published a front page

[1] "RICO" is an acronym for the Racketeer Influenced and Corrupt Organizations Act. *18 U.S.C.A. §§ 1961-1968*.

[2] *See* *Rule 214, SCACR* ("Where there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated.").

article entitled, "The Hidden Economy, Local company accused of trafficking in illegal immigrant labor." Several of L [*97] &L's employees were interviewed and quoted [***4] in the article. The employees admitted they were undocumented and accused L&L of selling them false citizenship documents and failing to pay for overtime work.

On April 23, 2004, Hulsey filed a class action lawsuit in federal court on behalf of former employees of L&L, alleging violations of the RICO Act and other state and federal laws (the "RICO case"). Hulsey named Father, Son, and L&L as defendants in the RICO case. In the Complaint, it was alleged that defendants hired undocumented workers and exploited them under the threat of deportation by failing to pay overtime wages, manufacturing and providing false identification and immigration documents and reports, and harboring them in substandard housing.[3]

On April 24, 2004, *The Post and Courier* printed an article entitled, "Lawsuit Targets Staffing Agency." The article quoted Hulsey as stating:

(1) L&L engaged in a "classic racketeering scheme";
(2) L&L's conduct set "the community back 150 years";
(3) L&L engaged in "a blatant case of indentured servitude"; and
(4) L&L "created a perfect racketeering enterprise, just like Tony Soprano."

Neither Father [***5] nor Son was mentioned by name in the article. Evidence was presented that the estimated readership for *The Post & Courier* on April 24, 2004 was 237,952.

[**569] On April 19, 2006, Father and Son, separately but with identical pleadings, initiated the current defamation action against Hulsey in state court, alleging the statements in the article were false and damaged their reputation, health, and business. Hulsey's law practice was served with a copy of the Complaint on April 20, 2006, and Hulsey was served individually on April 21, 2006. On May 5, 2006, before Hulsey's Answer was due in state court, Hulsey filed a notice of removal to federal district court. On June 2, 2006, Father and Son filed a motion to remand the cases to state court.

[*98] By order dated July 19, 2006, the federal district court remanded the cases to state court on the ground that federal question jurisdiction was not present. The federal court electronically transmitted the order to counsel on July 20, 2006; however, the electronic copy was neither manually embossed nor did it contain an electronic seal. The Charleston County Clerk of Court received an uncertified copy of the remand order on July 21, 2006, which it filed the [***6] same day. On July 27, 2006, the clerk mailed notice of the filing to the parties.

On August 21, 2006, Father and Son moved for entry of default in state court on the ground Hulsey failed to timely file an Answer to the Complaint. The Charleston County Clerk of Court entered default on August 21, 2006, and filed it on August 22, 2006. The clerk mailed the Form 4 order to all parties on August 24, 2006, noticing the entry of default. On August 29, 2006, upon receipt of the Form 4 order, Hulsey filed an Answer and a motion to set aside the entry of default pursuant to Rule 55(c), SCRCP. Following a hearing, then Circuit Court Judge Daniel F. Pieper issued a written order denying the motion.

On February 4-6, 2008, Circuit Court Judge Roger M. Young presided over the damages hearing involving Father's case. Because Hulsey was deemed in default, Judge Young limited Hulsey's participation in the hearing to cross-examination and objection to Father's evidence. The jury returned a verdict against Hulsey for $2.39 million in actual damages and $5 million in punitive damages. On February 15, 2008, Hulsey filed several post-trial motions, including a motion to dismiss for lack of subject matter [***7] jurisdiction after discovering the Charleston County Clerk of Court had not received a certified copy of the remand order from the federal court. Following a hearing, Judge Young denied Hulsey's post-trial motions. Hulsey appealed to the Court of Appeals.

In a divided opinion, the Court of Appeals affirmed. ***Limehouse v. Hulsey***, *397 S.C. 49, 723 S.E.2d 211 (Ct. App. 2011)*. In so ruling, the majority held: (1) the circuit court had subject matter jurisdiction over the action upon remand as the mailing of a certified order is a procedural, rather than jurisdictional, requirement; (2) Judge Pieper properly denied [*99] Hulsey's motion to set aside the entry of default as Hulsey's explanation for the untimely Answer did not support a finding of good cause; (3) Judge Young properly limited Hulsey's participation in the damages hearing to cross-examination and objection to Father's evidence; (4) Judge Young did not comment on the facts of the case when he responded to a question posed by the jury

[3] The RICO case was never certified as a class action and ultimately settled for $20,000.

during deliberations; (5) Judge Young properly submitted to and instructed the jury on the issue of punitive damages; and (6) the award of punitive damages was supported by the evidence. *Id. at 60-80, 723 S.E.2d at 217-28.*

In **[***8]** contrast, the dissent found the circuit court was without jurisdiction over the proceeding as the federal court's failure to mail a certified copy of the remand order precluded jurisdiction from re-vesting in the state court. *Id. at 81, 723 S.E.2d at 228-32.* Alternatively, the dissent believed Judge Pieper erred in ruling on Hulsey's motion to set aside the entry of default in light of this Court's decision in *Sundown Operating Co. v. Intedge Industries, Inc., 383 S.C. 601, 681 S.E.2d 885 (2009)*. Because the dissent believed *Sundown* changed the analytical framework for ruling on "good cause," the dissent would have reversed Judge Pieper's order and remanded the case for a determination of whether good cause existed under *Sundown. Id. at 89-94, 723 S.E.2d at 233-35.*

[570]** This Court granted Hulsey's petition for a writ of certiorari to review the decision of the Court of Appeals.

While the appeal of Father's case was pending before the Court of Appeals, Judge Young presided over a jury trial for damages in Son's case on November 9-13, 2009.[4] Because Hulsey was deemed in default, Judge Young again limited Hulsey's participation in the hearing to cross-examination and objection to Son's evidence. **[***9]** The jury returned a verdict in favor of Son in the amount of $1 million actual damages and $2.6 million in punitive damages. Hulsey appealed to the Court of Appeals.

After granting the writ of certiorari to review the Court of Appeals' decision in ***Limehouse v. Hulsey**, 397 S.C. 49, 723 [*100] S.E.2d 211 (Ct. App. 2011)*, this Court certified the appeal in Son's case pursuant to *Rule 204(b), SCACR*. We now consider the consolidated matters.

II. Discussion

A. Jurisdiction of the State Court

Hulsey asserts the circuit court was without subject matter jurisdiction over the proceedings as the federal removal statutes require the state court to receive a *certified* order for jurisdiction to be re-vested.

HN1 Section 1446(d) of the United States Code provides that after an action has been removed to federal court, "the State court shall proceed no further unless and until the case is remanded." *28 U.S.C.A. § 1446(d) (West 2013)*. ***HN2*** A remand order that is based on lack of subject matter jurisdiction is governed by *section 1447(c)*. *Section 1447(c)*, **[***10]** entitled "Procedure after removal generally," provides in relevant part:

> (c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under *section 1446(a)*. If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded . . . *A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.*

Id. § 1447(c) (emphasis added).

In ruling on this issue, a majority of the Court of Appeals focused on whether *mailing* was required to divest the federal court of jurisdiction. *Limehouse, 397 S.C. at 60, 723 S.E.2d at 217*. Although the court recognized that "a majority of federal circuits take the position that the finality of the remand and the accompanying loss of federal jurisdiction requires both entry of the order with the federal clerk of court *and* a certified copy being mailed to the state court," it adopted the minority view espoused by the Fourth Circuit Court of Appeals. *Id. at 60, 723 S.E.2d at 217.*

Relying on the reasoning **[***11]** of *In re Lowe, 102 F.3d 731 (4th Cir. 1996)*,[5] the majority of **[**571]** the

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[4] Hulsey filed a motion to stay the trial of Son's case due to the pending appeal in Father's case. Judge Young, however, denied this motion and set the matter for a damages trial.

[5] In *Lowe*, Katherine Lowe sued her employer, "Wal-Mart Stores", and two Wal-Mart managers in North Carolina state court. *Lowe, 102 F.2d at 732*. After Wal-Mart removed the case to federal court, Lowe moved to remand the case to state court based on a lack of diversity jurisdiction. *Id. at 733*. The remand order was entered on the district court docket on August 25, 1995. *Id.* The federal court mailed a copy of the order to the state court. However, the state court's copy of the remand order lacked the blue backing necessary to show the order was certified. *Id.* Wal-Mart moved before the federal

Court of Appeals concluded that **[*101]** mailing of the certified remand order is not a jurisdictional requirement, but instead the federal court lost jurisdiction when the remand order was *entered*. Limehouse, 397 S.C. at 61-62, 723 S.E.2d at 217-18.

In analyzing whether jurisdiction re-vested in the state court upon mailing of the remand order to the clerk, the majority noted the state court's jurisdiction is general as it is derived exclusively from our state constitution and not federal law. *Id. at 62, 723 S.E.2d at 218.* The majority proceeded to compare the general jurisdiction of the state court to the limited jurisdiction of the federal court and found the state court's jurisdiction is limited only by the federal court's proper exercise of jurisdiction over a case pursuant to a congressional act, "which according to Fourth Circuit jurisprudence in *Lowe*, ceased upon entry of the remand order." *Id. at 63, 723 S.E.2d at 218.*

[*102] Because the majority found jurisdiction transferred to the state court upon entry of the order in federal court, the court believed it was unnecessary to determine whether the federal court had to mail a certified order. *Id. at 62, 723 S.E.2d at 218.* The court, however, found that since the issue of mailing was procedural and not jurisdictional, it was not preserved for appellate review as Hulsey failed to make a timely objection. *Id. at 65, 723 S.E.2d at 220.* Additionally, the court noted **[***14]** that to warrant reversal on procedural grounds, Hulsey was required to show that he was prejudiced by the fact that the Charleston County Clerk of Court did not receive a certified copy of the order. *Id. at 66, 723 S.E.2d at 220.* Because Hulsey received personal notice of the remand order, the majority found that Hulsey failed to demonstrate he was prejudiced by the procedural defect. *Id. at 67, 723 S.E.2d at 221.*

In contrast, the dissent found the plain language of section 1447(c) requires that a certified copy of the remand order be mailed before the state court is re-vested with jurisdiction. *Id. at 81, 723 S.E.2d at 228.* Because a certified copy of the remand order was never mailed to the state court clerk, the dissent concluded the state court had no power to proceed. *Id.* The dissent explained that "[b]ecause the state court acted when federal law prohibited it from doing so, the resulting judgment was void." *Id.* Accordingly, the dissent found the trial court's failure to grant relief from the judgment was error and warranted reversal. *Id.*

In reaching its ultimate conclusion, the dissent rejected the majority's reliance on *Lowe*. *Id. at 82, 723 S.E.2d at 228-29.* The dissent found **[***15]** *Lowe* distinguishable from the instant case as the Fourth Circuit considered the point in time when the federal court's decision to remand becomes unreviewable. *Id. at 83-84, 723 S.E.2d at 229.* The dissent further contended that whether the mailing requirement was procedural or jurisdictional was irrelevant because the prohibition contained in section 1447(c), which provides that a state court cannot proceed until a certified copy of the remand order is mailed to it, cannot be avoided by labeling the mailing requirement procedural. *Id. at 84, 723 S.E.2d at 230.* Additionally, the dissent believed the majority incorrectly relied on the Fourth Circuit's decision in *Bryan* because the remand order in that **[*103]** case was not based on lack of subject matter jurisdiction and, thus, was governed by another clause of section 1447(c). *Id. at 86-87, 723 S.E.2d at 231.*

Although the dissent acknowledged that a plain reading of section 1447(c) creates a brief period of time in which neither the federal court nor the state court has the power to act, i.e., a "jurisdictional hiatus," it concluded that a certified copy of a remand order based on lack of subject matter jurisdiction must be mailed to the state **[***16]** court before the state court can proceed. *Id. at 88, 723 S.E.2d at 232.*

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court for reconsideration of its remand order. *Id.* Ultimately, the federal court reinstated the case to the federal docket. *Id.* Lowe filed a petition for a writ of mandamus in the Fourth Circuit Court of Appeals asking the court to order the district court to return her case to the state court. *Id.* **[***12]** In analyzing whether the district court had jurisdiction when it reconsidered the remand order, the Fourth Circuit was required to determine the point at which the district court lost jurisdiction over the case. Id. at 734. Lowe claimed the district court lost jurisdiction when it entered the remand order. In contrast, Wal-Mart asserted the district court retained jurisdiction until it mailed a certified copy of the remand order to the state court. *Id.* The Fourth Circuit ruled in favor of Lowe. In so ruling, the court found that "[l]ogic . . . indicates that it should be the action of a court (entering an order of remand) rather than the action of a clerk (mailing a certified copy of the order) that should determine the vesting of jurisdiction.'" Id. at 735 (quoting Van Ryn v. Korean Air Lines, 640 F. Supp. 284, 285 (C.D. Cal. 1985)). The court stated that to "hold otherwise would impermissibly elevate substance over form." *Id.*

Our Court of Appeals also referenced the Fourth Circuit case of Bryan v. BellSouth Communications, Inc., 492 F.3d 231 (4th Cir. 2007), wherein the court stated in a footnote that a remand order based on lack of subject matter jurisdiction is effective when entered. **[***13]** Id. at 235 n.1.

Undoubtedly, there is support for both positions espoused by the Court of Appeals as the federal and state courts are divided on **[**572]** the jurisdictional implications of section 1447(c).[6] See 14C Charles A. Wright, Arthur R. Miller, Edward H. Cooper & Joan E. Steinman, *Federal Practice and Procedure* § 3739 (4th ed. 2013) (discussing section 1447(c) and outlining state and federal court decisions applying this provision). **[*104]** Thus, we are now confronted with definitively deciding when jurisdiction resumes in the state court following the federal court's entry of an order of remand.

In answering this question, it is instructive to consider the concept of jurisdiction in general as well as the jurisdictional distinctions between state and federal courts. The word "jurisdiction" does not in every context connote subject matter jurisdiction, but rather, is "a word of many, too many, meanings." Rockwell Int'l Corp. v. U.S., 549 U.S. 457, 467, 127 S. Ct. 1397, 167 L. Ed. 2d 190 (2007) (citing Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998)).

HN3[] Jurisdiction is generally defined as "the authority to decide a given case one way or the other. Without jurisdiction, a court cannot proceed at all in any cause; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause." 32A Am. Jur. 2d Federal Courts § 581 (2007) (footnotes omitted). Specifically, "[j]urisdiction is composed of three elements: (1) personal jurisdiction; (2) subject matter jurisdiction; and (3) the court's power to render the particular judgment requested." Indep. Sch. Dist. No. 1 of Okla. County v. Scott, 2000 OK CIV APP 121, 15 P.3d 1244, 1248 (Okla. Civ. App. 2000).

HN4[] "Although **[***19]** federal and state courts form one system of jurisprudence, federal courts have no general supervisory power over the state courts, and there is nothing a state court can do to affect federal practice and procedure." 21 C.J.S. *Courts* § 274 (Supp. 2013). The United States Supreme Court ("USSC") has explained that "the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent." Haywood v. Drown, 556 U.S. 729, 735, 129 S. Ct. 2108, 173 L. Ed. 2d 920 (2009) (quoting Claflin v. Houseman, 93 U.S. 130, 136-37, 23 L. Ed. 833 (1876)).

HN5[] A case filed in state court may be removed to federal court only when the case originally could have been filed in federal court. 28 U.S.C.A. § 1441(a) (West 2013) (authorizing a defendant to remove "any civil action brought in a State court of **[*105]** which the district courts of the United States have original jurisdiction"); Caterpillar, Inc. v. Williams, 482 U.S. 386, 392, 107 S. Ct. 2425, 96 L. Ed. 2d 318 (1987) ("Only state-court actions that originally could have been filed in federal court may be removed to federal court by the defendant.").

HN6[] **[**573]** A federal court has subject matter jurisdiction over primarily two types **[***20]** of cases: (1) those involving "federal question jurisdiction," which "aris[e] under the Constitution, laws, or treaties of the United States"; and (2) those involving "diversity jurisdiction," which include parties who are residents of different states and the amount in controversy exceeds

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[6] In addition to *Lowe*, a few federal and state courts have held that jurisdiction transfers back to the state court upon entry of the order of remand. *See, e.g.*, Whiddon Farms, Inc. v. Delta & Pine Land Co., 103 F. Supp. 2d 1310 (S.D. Ala. 2000); Van Ryn v. Korean Air Lines, 640 F. Supp. 284 (C.D. Cal. 1985); Health for Life Brands, Inc. v. Powley, 203 Ariz. 536, 57 P.3d 726 (Ariz. Ct. App. 2002); Citizens Bank & Trust Co. v. Carr, 583 So. 2d 864 (La. Ct. App. 1991); State ex rel. Vill. of Los Ranchos de Albuquerque v. City of Albuquerque, 1993- NMCA 147, 119 N.M. 169, 889 P.2d 204 (N.M. Ct. App. 1993), **[***17]** *aff'd*, 1994- NMSC 126, 119 N.M. 150, 889 P.2d 185 (N.M. 1994); Int'l Lottery, Inc. v. Kerouac, 102 Ohio App. 3d 660, 657 N.E.2d 820 (Ohio Ct. App. 1995).

However, the majority of courts considering this issue have held that the federal court is not divested of jurisdiction until a certified copy of the remand order is mailed to the state court. *See, e.g.*, Fed. Deposit Ins. Corp. v. Santiago Plaza, 598 F.2d 634 (1st Cir. 1979); Trans Penn Wax Corp. v. McCandless, 50 F.3d 217 (3d Cir. 1995); Browning v. Navarro, 743 F.2d 1069 (5th Cir. 1984); Seedman v. U.S. Dist. Court for the Cent. Dist. of Cal., 837 F.2d 413 (9th Cir. 1988); Yarbrough v. Blake, 212 F. Supp. 133 (W.D. Ark. 1962); Cook v. J.C. Penney Co., 558 F. Supp. 78 (N.D. Iowa 1983); Louisiana v. Sprint Commc'ns Co., 899 F. Supp. 282 (M.D. La. 1995); Hubbard v. Combustion Eng'g, Inc., 794 F. Supp. 221 (E.D. Mich. 1992); City of Jackson, Miss. v. Lakeland Lounge of Jackson, Inc. 147 F.R.D. 122 (S.D. Miss. 1993); Campbell v. Int'l Bus. Machs., 912 F. Supp. 116 (D. N.J. 1996); Rosenberg v. GWV Travel, Inc., 480 F. Supp. 95, 97 n.3 (S.D.N.Y. 1979); **McManus v. Glassman's Wynnefield, Inc., 710 F. Supp. 1043 (E.D. Pa. 1989)**; Blazer Elec. Supply Co. v. Bertrand, 952 P.2d 857 (Colo. Ct. App. 1998); **[***18]** State v. Lehman, 203 Neb. 341, 278 N.W.2d 610 (Neb. 1979); Quaestor Invs., Inc. v. State of Chiapas, 997 S.W.2d 226 (Tex. 1999).

$75,000. 28 U.S.C.A. §§ 1331, 1332 (West 2013).

HN7[] Removal proceedings impact the jurisdiction of the state court in that removal of a state case to federal court "divests" the state court of jurisdiction. *See* Michael J. Kaplan, Annotation, *Effect, on Jurisdiction of State Court, of 28 U.S.C.A. § 1446(e), Relating to Removal of Civil Case to Federal Court*, 38 A.L.R. Fed. 824 (1978 & Supp. 2013) (analyzing jurisdictional and procedural implications of removal of state court case to federal court).

Although most cases speak in terms of "divesting" the state court of jurisdiction during removal proceedings, we believe the more accurate terminology is a "suspension" of the state court's jurisdiction. Here, the circuit court had subject matter jurisdiction over the defamation claims and acquired personal jurisdiction over the parties upon the filing and service of their pleadings. *See* Skinner v. Westinghouse Elec. Corp., 380 S.C. 91, 93, 668 S.E.2d 795, 796 (2008) **[***21]** (HN8[] "Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong." (citations omitted)); *Brown v. Evatt, 322 S.C. 189, 470 S.E.2d 848 (1996)* (citing Rule 3(a), SCRCP, and recognizing that circuit HN9[] court acquires personal jurisdiction over the parties once the action is commenced by the filing and service of the summons and complaint); Boan v. Jacobs, 296 S.C. 419, 421, 373 S.E.2d 697, 698 (Ct. App. 1998) ("The concept of jurisdiction refers to the authority of a court over a particular person (personal jurisdiction) or the authority of a court to entertain a particular action (subject matter jurisdiction).").

[*106] Neither of these jurisdictional elements was affected by Hulsey's motion to remove the case to federal court.[7] Instead, the remaining element, i.e., the state court's *power* to render the particular judgment requested, was suspended or held in abeyance until a determination was made as to whether the cases involved a federal question more appropriately decided by the federal court. *See* Sioux Honey Ass'n v. Hartford Fire Ins. Co., 672 F.3d 1041, 1052 (Fed. Cir. 2012) (HN10[] "'Power' refers to the court's ability, when **[***22]** it has subject matter jurisdiction, to grant equitable and legal relief to a party.").

HN11[] Because removal proceedings encroach upon a state court's jurisdiction, removal statutes must be strictly construed and any doubts are to be resolved in favor of state court jurisdiction and remand. Brierly v. Alusuisse Flexible Packaging, Inc., 184 F.3d 527, 534 (6th Cir. 1999); Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). The USSC has explained:

> The removal statute[,] which is nationwide in its operation, was intended to be uniform in its application, unaffected by local law definition or characterization of the subject matter to which it is to be applied. Hence the Act of Congress must be construed as setting up its own criteria, irrespective of local law, for determining in what instances suits are to be removed from the state to the federal courts.

Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 104, 61 S. Ct. 868, 85 L. Ed. 1214 (1941). Furthermore, HN12[] as the rules of statutory **[***23]** construction dictate, it is also necessary for courts to consider the legislative history in order to effectuate the purpose of the statute. *See* Kennedy v. S.C. Ret. Sys., 345 S.C. 339, 348, 549 S.E.2d 243, 247 (2001) (stating that where "the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of the act itself").

Applying these rules, the California Court of Appeal explained:

> **[**574] [*107]** Before 1948, the statute governing remand stated in relevant part, "Whenever any cause shall be removed from any State court into any district court of the United States, and the district court shall decide that the cause was improperly removed, and order the same to be remanded to the State court from whence it came, *such remand shall be immediately carried into execution*, and no appeal . . . from the decision of the district court so remanding such cause shall be allowed." (Judicial Code § 28 (1911), italics added; *see also* 28 U.S.C. § 71 (1940).) In 1948, Congress revised title 28 of the United States Code, and placed the procedures governing remand in section 1447. In doing so, Congress deleted the former provision **[***24]** stating that the "remand shall be immediately carried into execution," replacing it with a command that the district court clerk mail a certified copy of the remand order to the state court clerk, and providing that "[t]he state court may thereupon proceed with [the] case." (§ 1447, as

[7] Indeed, if a state court was divested of personal jurisdiction and subject matter jurisdiction following removal proceedings, the parties would have to re-file a lawsuit each time a federal court issued an order remanding the case to state court.

> enacted June 25, 1948, ch. 646, 62 Stat. 939.) Although some courts—including the Ninth Circuit—had interpreted even the former provision as requiring a certified copy of the remand order to be filed with the clerk of the state court before jurisdiction was transferred (see, e.g., Bucy v. Nevada Const. Co. (9th Cir. 1942) 125 F.2d 213, 217), the new statutory language makes that requirement explicit.

Spanair S.A. v. McDonnell Douglas Corp., 172 Cal. App. 4th 348, 357, 90 Cal. Rptr. 3d 864 (Cal. Ct. App. 2009). Although the California Court of Appeal recognized its interpretation appeared to elevate "form over substance," it emphasized ***HN13*** "the history and plain language of section 1447(c), leave no doubt that Congress made the mailing of a certified copy of the remand order the 'determinable jurisdictional event after which the state court can exercise control over the case without fear of further federal interference.'" *Id.* (quoting **[***25]** Trans Penn Wax Corp. v. McCandless, 50 F.3d 217, 225 (3d Cir. 1995)). Despite legitimate concerns over the wisdom of this rule, the court declined to "second-guess Congress by rewriting the statute." *Id.*

As evidenced by the language in Spanair, Congress purposefully included the mailing of a certified order as a jurisdictional requirement and, thus, the mere entry of an order is not self-executing as to the jurisdiction of the state **[*108]** court. *See* Arnold v. Garlock, Inc., 278 F.3d 426, 437-38 (5th Cir. 2001) ("A § 1447(c) order of remand is not self-executing . . . This provision creates *legal significance* in the mailing of a certified copy of the remand order in terms of determining the time at which the district court is divested of jurisdiction. On that basis, the federal court is not divested of jurisdiction until the remand order, citing the proper basis under § 1447(c), is certified and mailed by the clerk of the district court." (emphasis added) (citation omitted)).

We believe the reasoning for this inclusion is sound. As explained by the Missouri Court of Appeals:

> Requiring the state to wait to proceed with the case until after a certified remand order has been sent ensures that the **[***26]** federal court has indeed ceased to exercise jurisdiction over the merits of the case. Under the case law of most circuits, federal courts have the power to review, alter, or reverse an erroneous order of remand during the short period between the signing of a remand order and the certification and mailing to the state court. Thus, a rule making clear that jurisdiction to proceed does not immediately revert back to the state court upon the signing of the order allows a civil defendant to retain the right to assert that the order of remand was improvidently entered. Because remands are not appealable, 28 U.S.C. § 1447(d), it makes sense to allow the federal district court an opportunity to correct any error or misunderstanding before the remand order is final. A clear rule avoids confusing litigants about where jurisdiction may lie when one of the parties is attempting to obtain an order setting aside of the order of remand.

State ex rel. Nixon v. Moore, 108 S.W.3d 813, 818 (Mo. Ct. App. 2003) (citation omitted). Furthermore, we do not believe the fear of a brief jurisdictional hiatus between the federal and state court should dictate a result that is **[**575]** clearly contrary to the plain terms **[***27]** of the statute.

Based on the foregoing, we conclude that Judge Young and, in turn, the Court of Appeals erred in finding the state court had jurisdiction to conduct the proceedings as the absence of the certified order precluded jurisdiction from resuming in the state court. Although this Court often defers to **[*109]** Fourth Circuit decisions interpreting federal law, which in the instant case would be *Lowe*, it is not obligated to do so in view of the lack of uniformity amongst the federal circuits. *See* State Bank of Cherry v. CGB Enters., 2013 IL 113836, 984 N.E.2d 449, 459, 368 Ill. Dec. 503 (Ill. 2013) (***HN14*** "While we are *bound* only by the United States Supreme Court, if the lower federal courts are uniform on their interpretation of a federal statute, this court, in the interest of preserving unity, will give *considerable weight* to those courts' interpretations of federal law and find them to be highly persuasive. However, if the federal courts are split, we may elect to follow those decisions we believe to be better reasoned." (citation omitted)); Cash Distrib. Co. v. Neely, 947 So. 2d 286, 294-95 (Miss. 2007) (declining to follow Fifth Circuit's minority position and stating, "While this Court often defers to Fifth Circuit **[***28]** decisions interpreting federal law, we are under no obligation to do so").

Admittedly, this conclusion appears to elevate form over substance and, in turn, may be viewed as harsh considering the significant verdicts. However, we believe it is legally correct and consistent with this Court's position on other jurisdictional issues, such as the effect of the issuance of a remittitur. *See* Rule 221(b), SCACR ("The remittitur shall contain a copy of

the judgment of the appellate court, shall be *sealed with the seal and signed by the clerk of the court*, and unless otherwise ordered by the court shall not be sent to the lower court or administrative tribunal until fifteen (15) days have elapsed (the day of filing being excluded) since the filing of the opinion, order, judgment, or decree of the court finally disposing of the appeal." (emphasis added)); *Wise v. S.C. Dep't of Corrs., 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007)* ("When the remittitur has been *properly* sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter." (emphasis added)).

Because the absence of a certified order precluded jurisdiction from resuming in the state court, we **[***29]** hold the state court proceedings conducted after the federal court's entry of the remand order are void. As a result, we reverse the decision of the Court of Appeals, vacate both judgments, and remand the cases to recommence in the state court from the procedural point at which the Charleston County Clerk of Court received **[*110]** a certified copy of the federal court's remand order.[8] *See Davis v. Davis, 267 S.C. 508, 229 S.E.2d 847 (1976)* (concluding that all orders issued by state court after proceeding was removed to federal court were void); *Peoples Trust & Sav. Bank v. Humphrey, 451 N.E.2d 1104 (Ind. Ct. App. 1983)* (noting that, during the pendency of the removal petition, any proceedings by the state trial court are void until remand by the federal court); 77 C.J.S. *Removal of Cases* § 154 (Supp. 2013) ("Proceedings in the state court after the requirements for removal are met are not merely erroneous, but null and void. No subsequent pleadings can be filed in the state court." (footnotes omitted)).

Although this **[***30]** ruling would be dispositive of both appeals, we believe the bench and bar would benefit from a definitive ruling on certain remaining issues. Specifically, we address: (1) the computation of time for filing responsive pleadings following the state court's receipt of a certified remand order; and (2) the level to which a defendant may participate in a post-default damages hearing.

B. Time for Filing an Answer Following a Properly Filed Remand Order

Here, Father and Son served their Complaints on Hulsey's law firm on April 20, 2006, and on Hulsey individually on April 21, 2006. On May 5, 2006, Hulsey removed the case to federal court. The remand order was dated July 19, 2006, and Hulsey's counsel **[**576]** was given electronic notice of the remand order on July 20, 2006. The Charleston County Clerk of Court filed the uncertified copy of the remand order on July 21, 2006, and mailed notice of the filing on July 27, 2006, pursuant to *Rule 77, SCRCP*.[9] Father's and Son's motions for **[*111]** entry of default, which were dated August 9, 2006, were filed on August 21, 2006, and Hulsey was found in default that same day. The entry of default was filed on August 22, 2006.

On August 29, 2006, Hulsey filed an Answer and moved to set aside the entry of default. During the hearing before Judge Pieper, Hulsey stated that he believed he had thirty days from service of notice of the remand order from the Charleston County Clerk of Court to file an Answer to the Complaint in state court. Because the state court noticed him of the remand order, he believed he had an additional five days to Answer. Based on these beliefs, Hulsey claimed his Answer was timely made as it was not due until August 31, 2006. Additionally, Hulsey asserted he had a meritorious **[***32]** defense to the action and that the Limehouses would suffer no prejudice if the entry of default was set aside.

Judge Pieper denied Hulsey's motion to set aside the entry of default. In so ruling, Judge Pieper analyzed the threshold question of when the "30 day time period for the defendants to file an answer began to run and what effect the removal of the case and its subsequent remand had on that time period." Noting that this issue was a matter of first impression in this state, Judge Pieper ruled that any unexpired portion of the thirty-day time period to answer was tolled during the time the

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[8] On March 5, 2009, the Charleston County Clerk of Court received the certified remand order from the federal district court. Hulsey filed and served his Answer on March 13, 2009.

[9] *Rule 77(d), SCRCP*, provides in relevant **[***31]** part:

> *HN15*[↑] Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by first class mail upon every party affected thereby who is not in default for failure to appear, and shall make a note in the case file or docket sheet of the mailing. Such mailing shall not be necessary to parties who have already received notice. Such mailing is sufficient notice for all purposes for which notice of the entry of an order or judgment is required by these rules; but any party may in addition serve a notice of entry on any other party in the manner provided in Rule 5 for the service of such papers.

case was removed to federal court. Therefore, Hulsey had until August 5, 2006,[10] to file an Answer to the Complaint. Judge Pieper found it unnecessary to decide whether Hulsey was entitled to five additional days for mailing pursuant to Rule 6(e), SCRCP because Hulsey's Answer was filed twenty-four days outside of the tolled time frame. Accordingly, Judge Pieper found the entry of default was proper.[11] He **[*112]** further ruled that "there was no good reason presented by the defendants for their failure to file a timely answer other than attorney confusion about the deadline for when an answer was due." **[***33]** Judge Pieper found "no reasonable basis for defense counsel's assumption that the 30 day time to file answer starts completely anew upon remand from the federal court." Thus, Judge Pieper declined to set aside the entry of default.

The majority of the Court of Appeals affirmed Judge Pieper's decision, finding there was no authority in this state to support Hulsey's position that a removing party is entitled to a fresh thirty days to answer a Complaint upon remand. Limehouse, 397 S.C. at 68-69, 723 S.E.2d at 221-22. After reviewing state and federal rules of procedure,[12] the majority declined to adopt a new rule that extended the time for filing beyond the thirty-day limit. *Id. at 69, 723 S.E.2d at 222.*

Although there is authority from other jurisdictions to support Hulsey's claim that the time for filing began anew after the case was **[**577]** properly remanded to state court,[13] we agree with the Court of Appeals and decline to adopt such a rule.

As previously discussed, **HN16**[] once the case was removed to federal court, the state court's jurisdiction was suspended or held in abeyance until the case was properly remanded. When the state court resumed jurisdiction, it had a duty "to proceed as though no removal had been attempted." *State v. Columbia Ry., Gas & Elec. Co., 112 S.C. 528, 537, 100 S.E.* **[*113]** *355, 357 (1919)*. Thus, the time for filing an Answer was tolled until the state court resumed jurisdiction.

Notably, other jurisdictions have reached a similar conclusion. *See* Lucky Friday Silver-Lead Mines Co. v. Atlas Mining Co., 88 Idaho 11, 395 P.2d 477, 480 (Idaho 1964) ("While the cause is before the Federal court, the state court has no jurisdiction or authority to receive any pleadings in the cause nor can it issue any orders concerning the cause. . . . Thus the period of time the cause is before the Federal court, cannot be considered in computing the time within which the appellant had to appear and plead to the cause."); Peoples Trust & Sav. Bank v. Humphrey, 451 N.E.2d 1104, 1109 (Ind. Ct. App. 1983) (finding removal of action to federal court tolled ten-day time limit to apply for change of venue and stating **[***36]** that "tolling the time period eliminates uncertainty, preserves the status quo, and is easily applied"); Jatczyszyn v. Marcal Paper Mills, Inc., 422 N.J. Super. 123, 27 A.3d 213 (N.J. Super. Ct. App. Div. 2011) (concluding that discovery period established by state court rules is tolled during the time a motion to remand is pending before the federal court); *see also* Gen. Elec. Credit Corp. v. Smith, 484 So. 2d 75 (Fla. Dist. Ct. App. 1986) (holding that time for filing appeal was tolled during period when case was removed to federal court); Hartlein v. Illinois Power Co., 151 Ill. 2d 142, 601 N.E.2d 720, 176 Ill. Dec. 22 (Ill. 1992) (finding removal of action to federal court tolled time limit on petition for leave to appeal circuit court's grant of preliminary injunction).

Based on the foregoing, we hold that **HN17**[] removal of a state court case to federal court tolls the time period for filing responsive pleadings.

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[10] Because Hulsey removed the case fourteen days after he was served, Judge Pieper found Hulsey had sixteen days following the remand order to file his Answer.

[11] In support of his method of time computation, Judge Pieper relied on ***Cotton v. Federal Land Bank of Columbia, 246 Ga. 188, 269 S.E.2d 422 (Ga. 1980)***, and Dauenhauer v. Superior Court In and For Sonoma County, 149 Cal. App. 2d 22, 307 P.2d 724 (Cal. Ct. App. 1957), wherein the appellate courts tolled the time for filing during removal.

[12] The majority considered Rule 12(a), SCRCP **[***34]** (stating, "A defendant shall serve his answer within 30 days after the service of the complaint upon him"), and Fed. R. Civ. P. 81(c)(2) (providing a defendant twenty-one days to file an Answer after a civil action is removed from a state court).

[13] *See* Ark. R. Civ. P. 12(a)(3) (West 2013) (providing an adverse party with thirty days from receipt of notice that the remand order was filed in state court to file an Answer); Cal. Code Civ. Proc. § 430.90 (West 2013) (providing thirty days from the state court's receipt of the order of remand to file an Answer); ***Iowa Code Ann. § 1.441(7)*** (West 2013) (providing that the time for pleadings shall begin anew after a remand order is filed in the state court); N.C. Gen. Stat. Ann. § 1A-1, Rule 12(a)(2) (West 2013) (providing thirty days to file an Answer from the date a remand order is filed in the state court); Tex. R. Civ. P. 237a (West 2013) (providing fifteen days to file an answer after notice that a remand **[***35]** order was filed in state court).

C. Defaulting Defendant's Limited Participation in Damages Hearings

Hulsey contends Judge Young erred in imposing unduly restrictive limitations on evidence presented at the damages hearings. In support of this contention, Hulsey claims this Court's ruling in Howard v. Holiday, Inns, Inc., 271 S.C. 238, 246 S.E.2d 880 (1978), which **[***37]** limits the defendant's ability to participate in the damages hearing, is no longer applicable as it pre-dates the 1985 adoption of Rule 55. Specifically, Hulsey urges this Court to re-examine *Howard* in light of the language **[*114]** of Rule 55(b)(2), which requires the trial court "to establish the truth of any averment of evidence or to make an investigation of any other matter."[14]

Prior to and throughout the damages hearings, Hulsey sought to call witnesses and present evidence. In Son's case, Hulsey also sought to engage in discovery so that he could fully prepare for cross-examination. Based on *Howard*, Judge Young limited Hulsey's participation to cross-examination and objection to the plaintiffs' evidence. The Court of Appeals agreed with Judge Young's ruling **[***38]** and specifically declined to "diverge from longstanding rules established by" this **[**578]** Court. *Limehouse, 397 S.C. at 72-73, 723 S.E.2d at 223-24*.

This case presents an opportunity for this Court to re-examine our decision in *Howard* in conjunction with *Rule 55(b)(2), SCRCP*. As will be more thoroughly discussed, we reaffirm our decision in *Howard* and the procedures adopted therein.

In 1978, under the former statutes governing default proceedings,[15] ***HN19***[🡅] this Court issued its decision in *Howard*, wherein it assessed three approaches as to how a defaulting defendant could contest the issue of damages. Howard, 271 S.C. at 241, 246 S.E.2d at 882. Specifically, this Court noted that it could allow damages to be determined: (1) in an ex parte proceeding, denying the defendant any right to participate; (2) after a full adversary contest, including the right of the defendant to produce evidence in rebuttal or in mitigation; or (3) with defense counsel's participation limited to cross-examination and objection to plaintiff's evidence. *Id.* This Court found the third approach was the proper one and approved it for use in the courts of this state. *Id.*

For the past thirty-five years, our appellate courts have consistently adhered to the decision in *Howard*. *See, e.g.*, **[*115]** *Roche v. Young Bros., Inc., of Florence, 332 S.C. 75, 504 S.E.2d 311 (1998)*; *Solley v. Navy Fed. Credit Union, 397 S.C. 192, 723 S.E.2d 597 (Ct. App. 2012)*. Although our courts have scrutinized default judgments involving punitive damages in order to prevent harsh results, we have declined to expand a defendant's participation in these hearings beyond what was approved of in *Howard*. *See* *Lewis v. Congress of Racial Equality and/or C.O.R.E., Inc., 275 S.C. 556, 274 S.E.2d 287 (1981)* (citing *Howard* and raising the issue of the amount of damages *ex mero motu* where plaintiff obtained a default judgment for $150,000 in actual damages and $100,000 in punitive damages in an unliquidated claim and remanding to trial court for a *de novo* hearing on damages).

However, in an apparent reaction to juries awarding significant verdicts of actual and punitive damages, other jurisdictions have allowed defendants to call witnesses and present evidence. *See* B. Finberg, Annotation, *Defaulting Defendant's Right to Notice and Hearing as to Determination of Amount of Damages*, 15 A.L.R.3d 586, **[***40]** § 5 (1967 & Supp. 2013) (identifying state cases where defaulting defendant had the right to cross-examine plaintiff's witnesses and to introduce affirmative testimony on his own behalf in mitigation of the damages); *46 Am. Jur. 2d Judgments § 299* (2006) (citing state cases where courts have approved varying levels of defendant's participation in post-default proceedings); *Payne v. Dewitt, 1999 OK 93, 995 P.2d 1088, 1094-95 (Okl. 1999)* (recognizing defaulting defendant's statutory right to cross-examine witnesses and introduce evidence and stating, "The trial court must leave to a meaningful inquiry the *quantum of actual and punitive damages* without stripping the party in default of basic forensic devices to test the truth of the plaintiff's evidence").[16]

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[14] ***HN18***[🡅] *Rule 55(b)(2), SCRCP*, provides more fully that, in cases where default has been entered and the plaintiff's damages are not a sum certain, a trial judge may schedule a hearing on damages if it would "enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter."

[15] S.C. Code Ann. §§ 15-35-310 & -320 **[***39]** (1976) (repealed 1985).

[16] In reaching this conclusion, the court in *Payne* relied on the following authorities: *J&P Constr. Co. v. Valta Constr. Co., 452 So. 2d 857 (Ala. 1984)*; *Dungan v. Superior Court In and For*

[*116] Despite these concerns and the authority from other jurisdictions, we adhere to the procedures adopted in *Howard*. If our courts were to allow a defaulting defendant to fully participate in a post-default hearing, we believe there would be no consequence of **[**579]** default. *See* Roche v. Young Bros., Inc., of Florence, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998) ("It is **[***42]** well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability."). Furthermore, unlike Hulsey, we discern no basis in the language of Rule 55(b)(2) that would require us to depart from *Howard*.

Finally, we note there are due process safeguards for cases involving punitive damages. It is well established that the relief granted in a default judgment is limited to that supported by the allegations in the Complaint and the proof submitted at the damages hearing. Jackson v. Midlands Human Res. Ctr., 296 S.C. 526, 529, 374 S.E.2d 505, 506 (Ct. App. 1988) ("In a default case, the plaintiff must prove by competent evidence the amount of his damages, and such proof must be by a preponderance of the evidence. Although the defendant is in default as to liability, the award of damages must be in keeping not only with the allegations of the complaint and the prayer for relief, but also with the proof that has been submitted. A judgment for money damages must be warranted by the proof of the party in whose favor it is rendered." (citations omitted)). Moreover, trial judges and appellate courts conduct **[***43]** a review of the award to ensure the verdict is not excessive and is supported by the evidence. *See* *Mitchell v. Fortis Ins. Co., 385 S.C. 570, 686 S.E.2d 176 (2009)* (discussing the history of due process limitations on punitive damages awards and identifying guideposts for post-judgment review of punitive damages awards).

Having found that *Howard* still governs post-default proceedings, we hold that Judge Young correctly precluded Hulsey **[*117]** from engaging in discovery and limited his participation to cross-examination and objection to the plaintiff's evidence.

III. Conclusion

Based on the foregoing, we hold the lack of a certified remand order precluded jurisdiction from resuming in the state court. Accordingly, we reverse the decision of the Court of Appeals and vacate the state court proceedings. We remand the cases to recommence from the procedural point at which the Charleston County Clerk of Court received the federal court's certified remand order. Additionally, we find the time for filing responsive pleadings was tolled during the removal proceedings as no subsequent pleadings could be filed in state court until jurisdiction resumed. Finally, we reaffirm our decision in *Howard* wherein **[***44]** we limited a defendant's participation in a post-default hearing to cross-examination and objection to the plaintiff's evidence as we find this effectuates the purpose of default proceedings and is consistent with Rule 55(b)(2).

REVERSED, VACATED, AND REMANDED.

TOAL, C.J., HEARN, J., and Acting Justice James E. Moore, concur. KITTREDGE, J., concurring in result only.

Pinal County, 20 Ariz. App. 289, 512 P.2d 52 (Ariz. Ct. App. 1973); *Kohlenberger, Inc. v. Tyson's Foods, Inc., 256 Ark. 584, 510 S.W.2d 555 (Ark. 1974)*; *Pittman v. Colbert, 120 Ga. 341, 47 S.E. 948 (Ga. 1904)*; *Stewart v. Hicks, 182 Ind. App. 308, 395 N.E.2d 308 (Ind. Ct. App. 1979)*; *Greer v. Ludwick, 100 Ill. App. 2d 27, 241 N.E.2d 4 (Ill. App. Ct. 1968)*; **[***41]** *Howard v. Fountain, 749 S.W.2d 690 (Ky. Ct. App. 1988)*; *Bissanti Design/Build Group v. McClay, 32 Mass. App. Ct. 469, 590 N.E.2d 1169 (Mass. App. Ct. 1992)*; *Lindsey v. Drs. Keenan, Andrews & Allred, 118 Mont. 312, 165 P.2d 804 (Mont. 1946)*; *Gallegos v. Franklin, 1976- NMCA 019, 89 N.M. 118, 547 P.2d 1160 (N.M. Ct. App. 1976)*; *Napolitano v. Branks, 128 A.D.2d 686, 513 N.Y.S.2d 185 (N.Y. App. Div. 1987)*; *Bashforth v. Zampini, 576 A.2d 1197 (R.I. 1990)*; *Adkisson v. Huffman, 225 Tenn. 362, 469 S.W.2d 368 (Tenn. 1971)*; *Ne. Wholesale Lumber, Inc., v. Leader Lumber, Inc., 785 S.W.2d 402 (Tex. Ct. App. 1989)*; *Synergetics By and Through Lancer Indus., Inc. v. Marathon Ranching Co., 701 P.2d 1106 (Utah 1985)*; *Midwest Developers v. Goma Corp., 121 Wis. 2d 632, 360 N.W.2d 554 (Wis. Ct. App. 1984)*.

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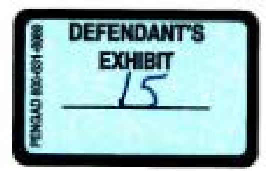

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Davis v. Parkview Apts.

Supreme Court of South Carolina

November 13, 2012, Heard; August 6, 2014, Filed

Opinion No. 27429

Reporter
409 S.C. 266 *; 762 S.E.2d 535 **; 2014 S.C. LEXIS 329 ***; 2014 WL 3844074

Laurance H. Davis, Jr., Mary Jane R. Pike, Eva Marie Reynolds, and Rhoda G. Rentz, individually and in their capacities as the Limited Partners of Parkview Apartments, a South Carolina Limited Partnership, Appellants, v. Parkview Apartments, a South Carolina Limited Partnership, Apartment Investment and Management Company a/k/a AIMCO, Insignia Financial Group, Incorporated, AmReal Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John Doe, a generic designation for a party or parties whose true identity is unknown, Respondents.Laurance H. Davis, Jr., Marvin D. McCarthy, James W. Ivey and Erin E. Ivey, individually and in their capacities as the Limited Partners of Palmetto Apartments, a South Carolina Limited Partnership, Appellants, v. Palmetto Apartments, a South Carolina Limited Partnership, Apartment Investment and Management Company a/k/a AIMCO, Insignia Financial Group, Incorporated, AmReal Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John Doe, a generic designation for a party or parties whose true identity is unknown, Respondents.Laurance H. Davis, Jr., Rhoda G. Rentz, Mortimer M. Weinberg, Jr., Hodge Land Company, Incorporated, and Anna Trotter, individually and in their capacities as the Limited Partners of Roosevelt Gardens, a South Carolina Limited Partnership, Appellants, v. Roosevelt Gardens, a South Carolina Limited Partnership, Apartment Investments and Management Company a/k/a AIMCO, Insignia Financial Group, Incorporated, AmReal Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John Doe, a generic designation for a party or parties whose true identity is unknown, Respondents.Carolina Management Corporation of Beaufort, James B. Jackson, Whaley R. Hinnant, Jr., Mary Gasser Rawl, and Rhoda G. Rentz, individually and in their capacities as the Limited Partners of Pinewood Park Apartments, a South Carolina Limited Partnership, Appellants, v. Pinewood Park Apartments, a South Carolina Limited Partnership, Apartment Investment and Management Company a/k/a AIMCO, Insignia Financial Group, Incorporated, AmReal Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John Doe, a generic designation for a party or parties whose true identity is unknown, Respondents.Rhoda G. Rentz, Mary Jane Pike, Eva Marie Reynolds, and Joanne O. Mercy, individually and in their capacities as the Limited Partners of Orleans Gardens, a South Carolina Limited Partnership, Appellants, v. Orleans Gardens, a South Carolina Limited Partnership, Apartment Investment and Management Company a/k/a AIMCO, Insignia Financial Group, Incorporated, AmReal Corporation a/k/a and f/k/a USS Corporation a/k/a and f/k/a U.S. Shelter Corporation, ISTC Corporation, N. Barton Tuck, Jr., and John Doe, a generic designation for a party or parties whose true identity is unknown, Respondents.

Subsequent History: As Amended September 11, 2014.

Rehearing denied by *Davis v. Parkview Apts., 2014 S.C. LEXIS 414 (S.C., Sept. 11, 2014)*

Prior History: [*1]** Appeals From Beaufort, Charleston and Orangeburg Counties. Doyet A. Early III, Circuit Court Judge. Appellate Case No. 2010-180666. Appellate Case No. 2010-180087. Appellate Case No. 2010-180086. Appellate Case No. 2010-180088. Appellate Case No. 2010-176826.

Disposition: AFFIRMED.

Core Terms

Appellants', discovery order, discovery, cases, recusal, circuit court, contempt, sanctions, Respondents', documents, responses, attorney-client, circuit judge, orders, motions, privilege log, privileged, waived,

disqualification, communications, disqualify, disclose, statute of limitations, noncompliance, discovery request, refuse to comply, recusal motion, supplemental, parties, contempt of court

Case Summary

Overview

HOLDINGS: [1]- The trial judge did not abuse his discretion in dismissing appellants' actions and awarding respondents fees and costs as sanctions under S.C. R. Civ. P. 37(b)(2)(C) for appellants' refusal to comply with his discovery rulings; the sanctions were not unduly harsh, as the judge gave appellants ample opportunity to amend their discovery responses, but they willfully and repeatedly failed to comply with his orders in any meaningful way; [2]-Under S.C. App. Ct. R. 501, Canon 3(E)(1), the judge had not been not required to disclose mere social relationships between him or his family members and respondents' counsel or their family members, nor to recuse himself , because other than adverse rulings, appellants did not present any evidence that he was prejudiced or biased against them.

Outcome

The judgment was affirmed.

LexisNexis® Headnotes

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Civil Procedure > Discovery & Disclosure > Disclosure > Sanctions

Civil Procedure > Judicial Officers > Judges > Discretionary Powers

***HN1*[]** **Standards of Review, Abuse of Discretion**

The imposition of sanctions is generally entrusted to the sound discretion of the trial court. Therefore, an appellate court will not interfere with a trial court's exercise of its discretionary powers with respect to sanctions imposed in discovery matters unless the court abuses its discretion.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Evidence > Burdens of Proof > Allocation

***HN2*[]** **Standards of Review, Abuse of Discretion**

An abuse of discretion may be found by the appellate court where the appellant shows that the conclusion reached by the lower court was without reasonable factual support, resulted in prejudice to the right of appellant, and, therefore, amounted to an error of law. The appealing party bears the burden of demonstrating that the lower court abused its discretion.

Civil Procedure > Discovery & Disclosure > Disclosure > Sanctions

***HN3*[]** **Disclosure, Sanctions**

See S.C. R. Civ. P. 37(b)(2)(C).

Civil Procedure > Dismissal > Involuntary Dismissals > Failure to Comply

Civil Procedure > Discovery & Disclosure > Disclosure > Sanctions

Civil Procedure > ... > Pretrial Judgments > Default & Default Judgments > General Overview

***HN4*[]** **Involuntary Dismissals, Failure to Comply**

In the context of a party's failure to obey an order to provide or permit discovery, when the court orders default or dismissal, or the sanction itself results in default or dismissal, the end result is harsh medicine that should not be administered lightly. Thus, where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction.

Civil Procedure > ... > Judges > Inability to Proceed > Disqualification & Recusal

Legal Ethics > Judicial Conduct

HN5[] **Inability to Proceed, Disqualification & Recusal**

See S.C. App. Ct. R. 501, Canon 3(E)(1).

Civil Procedure > ... > Judges > Inability to Proceed > Disqualification & Recusal

Legal Ethics > Judicial Conduct

HN6[] **Inability to Proceed, Disqualification & Recusal**

The South Carolina judicial canons provide direction as to when disqualification may be necessary, including but not limited to, instances where: (1) the judge holds personal bias or prejudice towards a litigant or counsel or has personal knowledge of evidentiary facts in dispute in the proceeding; (2) the judge either worked on the case as a lawyer, a lawyer with whom the judge previously practiced law worked on the case while the judge was associated with the lawyer's firm, or the judge has been a material witness concerning the case; (3) the judge knows that he or a member of his family (spouse, parent, or child) has more than a de minimus economic interest in the litigation and the litigation will substantially affect that interest; or (4) the judge or his spouse or a person within the third degree of relationship to them (or the spouse of such a person) is either a party or the officer, director, or trustee of a party, is a lawyer in the case, known to have more than a de minimus interest that could be substantially affected by the litigation, or, to the judge's knowledge, is likely to be a material witness in the proceeding. S.C. App. Ct. R. 501, Canon 3(E)(1)(a)-(d).

Civil Procedure > ... > Judges > Inability to Proceed > Disqualification & Recusal

Evidence > Burdens of Proof > Allocation

Civil Procedure > Appeals > Standards of Review > Reversible Errors

HN7[] **Inability to Proceed, Disqualification & Recusal**

Under South Carolina law, if there is no evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal. Appellate courts accord great weight to the trial judge's assurance of his own impartiality. It is the movant's responsibility to provide some evidence of the existence of the judge's impartiality.

Civil Procedure > ... > Judges > Inability to Proceed > Disqualification & Recusal

Legal Ethics > Judicial Conduct

HN8[] **Inability to Proceed, Disqualification & Recusal**

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

Civil Procedure > ... > Judges > Inability to Proceed > Disqualification & Recusal

HN9[] **Inability to Proceed, Disqualification & Recusal**

The fact that a trial judge ultimately rules against a litigant is not proof of prejudice by the judge, even if it is later held the judge committed errors in his rulings.

Civil Procedure > ... > Judges > Inability to Proceed > Disqualification & Recusal

HN10[] **Inability to Proceed, Disqualification & Recusal**

Mere conjecture cannot support a recusal motion. Allegations of facts that are merely frivolous or fanciful will not support a motion to disqualify on the ground of prejudice, nor will conclusory statements, conjecture, or innuendo be sufficient to support a motion for disqualification.

Civil Procedure > ... > Judges > Inability to Proceed > Disqualification & Recusal

Civil Procedure > Pleading & Practice > Motion Practice > Time Limitations

HN11[] **Inability to Proceed, Disqualification & Recusal**

Timeliness is essential to any recusal motion. To be timely, a recusal motion must be made at counsel's first opportunity after discovery of the disqualifying facts.

Counsel: Thomas A. Pendarvis, of Pendarvis Law Offices, P.C., of Beaufort, and Joel D. Bailey, of The Bailey Law Firm, P.A., of Beaufort, for Appellants.

Ellis M. Johnston II, of Haynsworth Sinkler Boyd, P.A., of Greenville, and Calvin Theodore Vick, Jr., of Harper Lambert & Brown, P.A., of Greenville, for Respondents.

Judges: CHIEF JUSTICE TOAL. BEATTY, KITTREDGE and HEARN, JJ., concur. PLEICONES, J., concurring in part and dissenting in part in a separate opinion.

Opinion by: TOAL

Opinion

[*270] [537] CHIEF JUSTICE**: Appellants appeal the circuit court's decision dismissing these related cases and awarding sanctions against Appellants. We affirm.

FACTS/PROCEDURAL BACKGROUND

Appellants are limited partners in five separate limited partnerships and have asserted legal claims in five separate actions against their general partners, Respondents.[1] Each of the limited partnerships owned separate apartment complexes in one of the three counties—Beaufort, Orangeburg, and Charleston. On appeal, each of the cases **[***2]** involves a different **[*271]** grouping of limited partners,[2] different properties, and different facts.

In essence, the limited partnerships were formed in the 1960s to construct and operate the properties at issue, affordable housing projects for low-income citizens in the three **[**538]** counties. Respondents became general partners around 1975, and from that point forward, Appellants took no part in the management or business affairs of the complexes. In 1984, Respondents notified Appellants that they had contracted to sell the properties to Boston Financial Group (BFG). The terms of the sale called for a small amount to be paid upfront but the majority would be paid in 1999 in a "balloon" payment with accruing interest. However, BFG defaulted on the payment, and sold the properties without intervention **[***3]** from the partnerships. All of the claims stem from Respondents' roles in selling the properties and their actions in the aftermath of BFG's default.

On April 22, 2003, certain Appellants filed the complaint in ***Davis v. Parkview Apartments*** (the *Parkview* case). On July 7, 2003, Respondents filed various motions, including a motion to dismiss certain claims against certain Respondents and a motion to strike or make more specific allegations contained in Appellants' complaint. The circuit court denied the motions. Appellants filed an amended complaint on March 23, 2004, alleging causes of action at law for damages, including, *inter alia*, breach of fiduciary duty and causes of action for equitable relief. On April 9, 2004, Respondents filed an Answer, setting forth a general denial and affirmative defenses, including, *inter alia*, the statute of limitations. On April 13, 2004, Respondents filed a motion to dismiss and other related motions. By order dated February 11, 2005, the court dismissed one cause of action, styled "bad faith," but denied the motion to dismiss as to the remaining causes of action.

On October 13, 2005, certain Appellants filed complaints in *Davis v. Palmetto Apartments* ***[***4]*** (the *Palmetto* case) and *Carolina Management Corporation of Beaufort v. Pinewood Park* ***[*272]*** *Apartments* (the *Pinewood Park* case), and on October 17, 2005, certain Appellants then filed complaints in *Rentz v. Orleans Gardens* (the *Orleans Gardens* case) and *Laurance Davis v. Roosevelt Gardens* (the *Roosevelt Gardens* case). In each of these cases, the groups of Appellants alleged causes of action at law for damages, including, *inter alia*, a claim for breach of fiduciary duty, and causes of action for equitable relief. Respondents answered on January 17, 2006, setting forth a general denial and affirmative defenses, including the statute of limitations.

By administrative order dated March 7, 2006, all five of the cases were assigned to Circuit Judge Doyet A. Early

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[1] All Appellants and Respondents are successors in interest to either the original limited partners (except for Laurance Davis) or original general partners.

[2] In other words, some of the limited partners held interests in more than one of the limited partnerships, and some held an interest in only one of the limited partnerships, but none of the limited partners held interests in all of the partnerships.

III "to hear and decide all pre-trial motions and other matters pertaining to these cases, including the trial and post-trial motions." The purpose of assigning the cases to a single circuit court judge was to "promote the effective and expeditious disposition of this litigation by uniform rulings and [to] conserve the resources of the parties, their counsel, and the judiciary." However, these cases have never been consolidated.

The Record **[***5]** in this case is voluminous, and illustrates the complex and, at times, contentious nature of these proceedings. The circuit judge presided over numerous motion hearings and issued numerous orders over the course of this litigation. However, this appeal concerns a final order, dated April 9, 2010, and entitled "Order Granting Defendants' Two Motions for Sanctions, Finding Plaintiffs in Contempt of Court, and Dismissing the Above-Captioned Actions as Sanctions for Plaintiffs' Contempt" (the Dismissal Order), in which the circuit judge dismissed all of the cases and awarded fees and costs to Respondents as sanctions for Appellants' continued refusal to comply with his previous discovery rulings. In addition, Appellants appeal the judge's failure to disqualify himself at the outset of this litigation and late refusal to recuse himself.

From the outset, the statute of limitations emerged as an important issue in this case. On January 17, 2006, Respondents moved for summary judgment in the *Palmetto, Orleans Gardens*, and *Roosevelt Gardens* cases based on the affirmative defense that Appellants' legal claims in these cases were barred by the statute of limitations.[3] In support of the **[**539]** motion **[*273]** for **[***6]** summary judgment, Respondents served Appellants with Requests for Admission in order to ascertain the point at which Appellants became aware of the alleged injuries that they claimed. On February 13, 2007, the court denied the motion, granting Respondents leave to raise the statute of limitations defense again after the commencement of discovery in the cases.

Respondents again moved for summary judgment with respect to the statute of limitations issue in the *Palmetto, Orleans Gardens*, and *Roosevelt Gardens* cases. The judge held a hearing on the motion on November 19, 2007. On June 17, 2008, the circuit court denied Respondents' motion because "a genuine issue exists as to material facts involving the statute of limitations."[4]

[*274] On August 28, 2008, Respondents served Appellants with supplemental discovery requests. After granting Appellants additional time to file their responses, on November 6, 2008, Respondents filed a motion to compel Appellants to respond to their discovery requests. Appellants served their initial discovery responses on November 14, 2008, but Respondents chose to proceed with their motion to compel, claiming Appellants failed to answer their discovery requests completely. Respondents specifically sought to compel Appellants to provide full **[***9]** and complete responses to Respondents' interrogatories and the production of all documents in Appellants' possession responsive to Respondents' requests for production. The court held a hearing on the motions on

[3] Respondents contend that all of the legal claims alleged in the complaints center on Respondents' business judgment in 1999 when they concluded the properties at issue had no value above the HUD mortgages (with the exception of the *Pinewood Park* case), and that repossessing the apartments was not in the best interests of the limited partnerships. However, Respondents also contend that Appellants allege injury to the limited partnerships as far back as the early 1980s in each case, including, *inter alia*, Respondents' alleged: failure to entertain other offers to purchase the properties in the 1980s, misrepresentations of the purchaser's financial solvency, sale of the properties to an entity created by BFG, instead of BFG, failure to forward appropriate documentation of the sale, failure to properly secure the notes, and undervaluation **[***7]** of the properties in order to acquire various limited partnership interests. Appellants asserted that Respondents were estopped from asserting their statute of limitations argument because all parties agreed to postpone discovery in the *Parkview* case and the filing of additional related cases in an attempt to resolve all of the cases through mediation, including those that had not yet been filed. On the other hand, Respondents contend they agreed to postpone discovery in the *Parkview* case only, but did not agree to stay the statute of limitations applicable in any other cases Appellants had not yet brought. Ultimately, the mediation fell through. Appellants contend that mediation was cancelled because the jointly retained independent appraiser failed to complete the appraisals in time. Regardless of the reason for the failure of the mediation to go forward, Respondents point out in their brief that the mediation and surrounding negotiations fell through as of July 26, 2004, but Appellants did not file the remaining cases until October 2005. Therefore, Respondents contend, whether or not they were estopped from asserting the statute of limitations during that period, Appellants' claims **[***8]** are still time-barred.

[4] During a later hearing, the circuit judge stated: "[T]here's some significant issues in this case from day one when I first got in it dealing with the statute of limitations problem. And I found that it was an issue of fact. And I still stuggle with that somewhat . . . ."

December 9, 2008.

On January 29, 2009, Appellants served their Supplemental Responses to the Discovery Requests, expressly providing that the responses were made only by Appellants in the *Parkview* action, and that Appellants in the other actions would supplement their responses "at a later date." Moreover, the *Parkview* Appellants only additionally produced the financial statements of Appellant Laurance Davis. Much of the remainder of the responses was identical to the previous responses.

By order dated March 3, 2009, entitled "Order Granting Defendants' Motion to Compel, dated November 6, 2008" (the Discovery Order), the circuit court granted Respondents' motion to compel, specifically finding that all of the Appellants were required to "provide full and complete responses" and "produce all documents in their possession, custody or control, which [were] responsive to" the discovery requests. The court took issue with Appellants' blanket method of objecting to the requests, "mak[ing] **[***10]** it impossible for [Respondents] to know if responsive information and/or documents [were] being withheld, and, if so, based on which specific grounds." In addition, the court specifically ordered Appellants to provide more information in their answers to interrogatories concerning Appellants' proposed expert witnesses and contents of their testimony. The **[**540]** court also required Appellants to provide sufficient identifying information in their privilege log, so that **[*275]** Respondents could recognize which documents Appellants were withholding on the basis of the attorney-client privilege and assess the applicability of the privilege to those documents. Finally, the court mandated the disclosure of pertinent discovery responses in all five cases (not just the *Parkview* case), and by all of the Appellants, stating "[e]ach and every [Appellant] is required to provide all information reasonably available to him or her, which would be responsive to any of the Interrogatories," and "each and every [Appellant] is required to produce all documents in his or her possession, custody or control, which would be responsive to any of the Requests for Production."[5] The Discovery Order required Appellants' compliance within thirty days.[6] To date, Appellants have not complied with the Discovery Order.

Simultaneous to the discovery response dispute, the parties also disagreed regarding what materials were protected from disclosure by the attorney-client privilege. Approximately one month after the court denied Respondents' summary judgment motion, counsel for Respondents indicated to the court that Appellants failed to produce a complete privilege log. The court allowed Appellants thirty days to produce a complete privilege log. On July 28, 2008, Appellants produced a new privilege log (the 7/28/08 privilege log) containing 90 documents, created between 1998 and 2004, for the first time in the litigation. In their 7/28/08 privilege log, Appellants only included a description of the date, author, and recipient of each document, and the classification of each document, *i.e.* fax, letter, or memorandum. At the December 9, 2008, hearing, Respondents also argued for the production of certain documents contained in Appellants' privilege log. Likewise, Appellants took issue with Respondents' claims of privilege.

Therefore, on December 30, 2008, the court, with the consent of all of the parties, ordered Gary Clary to serve **[***12]** as special master for the purpose of conducting an *in camera* **[*276]** review of the so-called "privileged" documents at issue and to "make his ruling as to whether each such document is subject to discovery and production should be compelled."[7] The order required the special master to provide the circuit judge with a report setting forth his findings and conclusions. On December 31, 2008, Appellants provided a more descriptive privilege log (the 12/31/08 privilege log), which forms the basis of the current dispute over privilege.

Upon the special master's issuance of his reports on April 14 and 22, 2009, the circuit judge issued an order on June 2, 2009, adopting the special master's findings *in toto*, yet still permitting the parties to object to the findings and conclusions contained therein by the filing of a Rule 59(e) motion to alter or amend the judgment. Both Appellants and Respondents filed timely Rule 59(e) motions on June 11, 2009, and June 15, 2009,

[5] By order dated June 16, 2009, the circuit court denied Appellants' Rule 59(e) motion with respect to this ruling.

[6] On the same date the court issued the Discovery Order, it also issued an order, entitled "Order Granting in Part and Denying in Part Plaintiffs' Motion to Compel, Dated July 29, 2005." In that order, the circuit court found that certain of Appellants' discovery requests **[***11]** were overly broad and unduly burdensome and restricted those requests.

[7] The circuit judge subsequently amended the order twice to increase the number of documents for the special master to review.

respectively. On July 6, 2009, the circuit judge held a hearing on the motions.

By order dated July 28, 2009, entitled "Order Amending **[***13]** Court's Order Dated June 2, 2009" (the Privilege Order), the circuit judge denied the Rule 59(e) motions in part, granted the motions in part, and amended his order adopting the findings and conclusion of the special master. Specifically, the court ordered Appellants to disclose 96 documents identified in their privilege log. The court found 32 of the allegedly privileged documents were not privileged because they had been disclosed to third parties, and the privilege had been waived with respect to the remaining 64 documents because, by filing suit, Appellants had placed the statute of limitations at issue in this case. To date, **[**541]** Appellants have still not complied with the court's order.[8]

Due to Appellants' continued noncompliance with the court's discovery orders, Respondents filed a motion for sanctions on July 24, 2009, for failure to comply with the Discovery Order and on August 10, 2009, for failure to comply with the Privilege Order. The circuit court held a hearing on Respondents' motions on August 24, 2009. At the hearing, Appellants **[*277]** represented to the court **[***14]** that they were filing supplemental discovery responses that same day, and that their responses would be in compliance with the courts orders.[9] The court admonished Appellants that their non-compliance, coupled with the looming January 2010 trial date in the *Parkview* case,[10] could elicit the court's dismissal of the case: "It's [the *Parkview* case] going to be tried in January, whenever it's set for. If they don't get the discovery I'm going to throw the case out." In addition, the court noted that the materials were relevant to the statute of limitations issue and Appellants had not produced a legitimate reason for not complying with the Discovery Order.[11] At the hearing, counsel for Appellants stated their clients were weighing their options as to whether to appeal the court's rulings. Despite stating that he was strongly leaning towards dismissing the cases, the circuit court decided to hold Respondents' motion in abeyance pending Appellants' decision to appeal, which provided Appellants with even more time to comply with the court's orders.[12]

Upon receipt of Appellants' supplemental responses, Respondents filed another supplemental motion for sanctions on August 27, 2009, claiming that Appellants had still not complied with the Discovery Order. Due to Appellants' attempts to appeal the Privilege Order,[13] the court did not hold a **[*278]** hearing on Respondents' supplemental motion to compel until January 14, 2010, at this point slightly over a week prior to the *Parkview* trial date. Appellants had still not provided Respondents with the discovery information **[***16]** concerning their experts' testimony. However, Appellants stated they were planning to provide the expert information on the day before trial. The court was not satisfied with this response: "This case has been going on for seven years, a long time. And don't hand me this about getting an expert on Friday. This is not an expert-to-be-given-on-Friday case." The court then addressed Appellants' continued noncompliance. One excuse Appellants gave for their failure to disclose the expert information is that they only had preliminary reports from the experts. Again, the court was not satisfied with this answer: "How can you not have a final opinion? . . . . [I]f you wanted to know what my expert's opinion was in a particular case,

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[8] Respondents were also ordered to produce certain documents previously deemed to be privileged, which they produced on August 3, 2009.

[9]

> [The Court:] As an officer of the court you're telling me it's in full compliance with my order dealing with that area of discovery?
>
> [Appellants' Correct, **[***15]** your Honor, to the extent this stuff is Counsel:] information known to my clients. We've got it and it's being delivered.

[10] The circuit court had already continued the trial date in the *Parkview* case from its May 2009 trial date due to the ongoing discovery dispute.

[11] In fact, counsel for Appellants at one point went so far as to admit Appellants did not want to disclose the discovery because it went to the statute of limitations issue:

> [The Court:] Mr. Bailey, you don't like it [the Privilege Order] because it's opened up wide open the issue of the statute of limitations.
>
> [Appellants' That's certainly one reason, Judge. Counsel:]

[12] The circuit court never placed this decision in writing.

[13] On September 10, 2009, Appellants filed a Notice of Appeal in the court of appeals. On December 2, 2009, the court of appeals dismissed Appellants' appeal as premature and issued remittitur on December 17, 2009. On November 19, 2009, this Court denied Appellants' petition for writ of prohibition and certiorari after they appealed **[***17]** the court's discovery rulings. In addition, on October 6, 2009, Appellants applied for entry into the Business Courts, which was also denied on November 3, 2009.

I would have to tell you. You would expect me to tell you. I expect you to tell them. I've ordered you to tell them, and you refuse to do so."

On January 25, 2010, *after* the trial date in the *Parkview* case, Appellants served Respondents with their Third Supplemental Responses, **[**542]** which again only addressed the *Parkview* case. Respondents again took issue with the adequacy of Appellants responses, especially as to the responses dealing with the substance of the expert testimony.

On February 22, 2010, Appellants filed a motion for protective order. Under the protective order, Appellants sought to submit the requested discovery under seal, conditioned upon the court allowing them to redact portions Appellants argued were privileged.

Around that time, Appellants began to question their lawyers concerning the judge's impartiality based on disclosures he made throughout the case concerning his social relationships with counsel of record for Respondents and their family members. To substantiate these claims, Appellants sought additional discovery concerning financial information from the **[*279]** judge and records from a resort on Fripp Island, where the judge officiated in the wedding **[***18]** of Ann Ross Rosen, counsel of record for Respondents from 2007-09, to refute claims made by the judge concerning his relationship with Rosen.

At a hearing (granted to discuss Appellants' discovery requests and protective order) on March 29, 2010, the judge disclosed on the record his relationships with Respondents' counsel. Appellants again attempted to argue the reasons the judge should vacate his prior discovery orders and presented reasons the court should not sanction Appellants for failing to comply with these orders. Furthermore, counsel orally moved for the judge to recuse himself, which he denied. The judge memorialized his verbal denial of the recusal motion and reasons in an ensuing order dated October 7, 2010 (the Recusal Order), wherein the judge again outlined his relationships with Respondents' counsel, and decided not to recuse himself, noting that despite the fact that Appellants were "disappointed with some of the rulings of the [c]ourt . . . . such disappointment cannot form the basis for recusal."

Because Appellants still refused to comply with his orders, the court issued the Dismissal Order on April 9, 2010, finding Appellants were in contempt of court. As sanctions for **[***19]** Appellants' continued "willful" noncompliance with his discovery rulings, the court dismissed all five cases with prejudice and found Respondents were entitled to reasonable attorney's fees and costs incurred in connection with pursuing Appellants' compliance with the court's orders (to be determined at a later date). The court granted Appellants the opportunity to purge the contempt by complying with the Discovery Order and the Privilege Order within 25 days of the date of the Dismissal Order.

On September 16, 2010, the circuit court denied Appellants' Rule 59(e) motion to alter or amend the Dismissal Order. On October 25, 2010, the court denied Appellant's motion for protective order, holding that it was in effect an untimely Rule 59(e) motion disguised as a Rule 26(c) motion because it merely sough to amend the Privilege Order. On November 8, 2010, Appellants filed a Rule 59(e) motion seeking to amend the court's order, claiming they were denied due process **[*280]** because the court signed the proposed order submitted by Respondents, which the court denied.

Appellants served their Notice of Appeal on January 28, 2011, in the court of appeals. By order dated March 9, 2011, this Court certified these cases for review pursuant to **[***20]** Rule 204(b), SCACR.

ISSUES

I. Whether the circuit judge erred in dismissing Appellants' claims and requiring them to pay costs and attorney's fees to Respondents as sanctions for Appellants' noncompliance with the court's discovery rulings?

II. Whether the circuit judge erred in refusing to recuse himself?

ANALYSIS

I. Sanctions

Appellants contend the circuit court erred in making the various discovery rulings in this case.[14] As a matter of

[14] In addition to arguments concerning the Privilege Order, Appellants take issue with circuit court orders relating to privilege and dated December 17, 2008; March 3, 2009; June 2, 2009; June 16, 2009; July 28, 2009; April 6, 2010; September 16, 2010; October 22, 2010; and December 11,

procedure, we [**543] note that Appellants have only appealed the order awarding sanctions to Respondents, the Dismissal Order. As such, the merits of the underlying discovery orders, including the Privilege Order and the Discovery Order, are not before us for consideration.

Throughout the course of the litigation, the circuit court issued numerous discovery rulings. The Record makes clear that Appellants considered an appeal of one or more of those orders, at one time even seeking review of the Privilege Order in the court of appeals, which was held to be interlocutory. However, to challenge the specific rulings of the discovery orders, the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding. *See, e.g.*, *Ex [*281] parte Whetstone, 289 S.C. 580, 347 S.E.2d 881, 882 (1986)* ("An order directing a party to participate in discovery is interlocutory and not directly appealable . . . . Instead of appealing immediately, a non-party has two alternatives. He may either comply with the discovery order and waive any right to challenge it on appeal, or refuse to comply with the order and appeal after he is held in contempt for his failure to comply.") (internal citations omitted). Appellants did not follow that route here. Rather, they continued along in the litigation, attempting to divert the implementation of the court's rulings by providing incomplete responses and causing delay through other tactics while they decided whether or not to surrender to the possibility [***22] of being held in contempt of court. However, during this time, Appellants continued to accept the circuit court's formulation of discovery. Right or wrong, these decisions form the law of the case, and Appellants are bound by them now. *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997)*. Only after Respondents filed a motion for sanctions, and Appellants were found to be in contempt of court as part of those sanctions, did they appeal. While this was a final order for purposes of appellate review, as it ordered dismissal of the case, the merits of the underlying discovery orders are not before this Court on appeal. Thus, despite Appellants' vehement objections to the Privilege Order and Discovery Order, the only reviewable question before this Court is whether the sanctions were properly awarded.[15]

HN1[] "The imposition of sanctions is generally entrusted to the sound discretion of the [***23] Circuit Court." *Downey v. Dixon, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987)*. Therefore, an appellate court will not interfere with "a trial court's exercise of its discretionary powers with respect to sanctions imposed in discovery matters" unless the court abuses its discretion. *Karppi v. Greenville Terrazzo Co., Inc., 327 S.C. 538, 542, 489 S.E.2d 679, 681 (Ct. App. 1997)* (citation [*282] omitted). ***HN2***[] "An 'abuse of discretion' may be found by this Court where the appellant shows that the conclusion reached by the lower court was without reasonable factual support, resulted in prejudice to the right of appellant, and, therefore, amounted to an error of law." *Dunn v. Dunn, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989)* (citation omitted). The appealing party bears the burden of demonstrating that the lower court abused its discretion. *Id.* (citation omitted).

Appellants argue the circuit court abused its discretion in awarding unduly harsh sanctions in this case. Specifically, Appellants contend the court abused its discretion by dismissing these cases under the facts, particularly because (1) less "draconian" punishments were available to the court; (2) Appellants agreed to receive a less harsh sanction and "took extraordinary steps to avoid dismissal"; (3) the judge consistently espoused Respondents' arguments as evidence constituting a factual basis to support his decisions; [**544] and (4) the judge deviated [***24] from South Carolina law to effect dismissal.

Rule 37(b)(2)(C), SCRCP, provides:

> ***HN3***[] If a party . . . fails to obey an order to provide or permit discovery, . . . the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:
>
> . . .
>
>> An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

2010. Moreover, Appellants base their other discovery arguments on the Discovery Order, and other related discovery orders issued by the circuit court and dated December 17, 2008; March 3, 2009; March 3, 2009 (granting in part, denying [***21] in part); and April 6, 2010.

[15] While the parties certainly mention the Privilege Order and Discovery Order and the various intermediate orders on which they are based in their brief, Appellants only raise general issues with those orders. Without specific objections to each item of discovery deemed discoverable by the circuit judge, the specific discovery findings are unreviewable on appeal.

However, HN4[↑] "when the court orders default or dismissal, or the sanction itself results in default or dismissal, the end result is harsh medicine that should not be administered lightly." Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co., 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999) (citing Orlando v. Boyd, 320 S.C. 509, 466 S.E.2d 353 (1996)). Thus, "[w]here the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." Id. at 198-199, 511 S.E.2d at 718-19 (citing Baughman v. AT & T Co., 306 S.C. 101, 410 S.E.2d 537 [*283] (1991)); see also Samples v. Mitchell, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997) (stating when deciding the severity of sanctions "for failure to disclose evidence during the discovery process, the trial court should weigh the nature of the interrogatories, the discovery posture of the case, willfulness, and the degree of prejudice") (citations omitted).

We disagree **[***25]** with Appellants' claim that the sanctions imposed here were unduly harsh. With respect to the discovery orders regarding privileged documents, the circuit court made every effort to ensure that no privileged documents were compelled, and Appellants refused to comply merely because these rulings had adverse implications on their cases. We also note that the circuit judge provided Appellants ample opportunity to amend their discovery responses both before and after he issued the Discovery Order, and Appellants willfully and repeatedly failed to comply with the circuit court's orders in any meaningful way. Thus, in our view, Appellants' failure to comply with the various orders of the court was willful and deliberate and caused unnecessary delay of this case and prejudice to Respondents. Accordingly, we hold the circuit court did not err in issuing the Dismissal Order as a sanction for Appellants' noncompliance with the court's orders.[16]

II. Disqualification and Recusal

Appellants argue that the circuit judge was not legally qualified to accept or retain his assignment to preside **[***26]** over these cases at the time the cases were assigned to him. Specifically, Appellants contend that the judge violated his duty to fully disclose the full nature of his and his family's long-term relationships with Respondents' counsel, Ellis Johnston, and members of his family. Moreover, Appellants argue that the circuit judge violated his continuing duty to fully disclose additional relationships between him and members of his family with Johnston and members of his family, which developed following his acceptance of the assignment of this case, and the full nature of his relationships with attorneys Anne Ross Rosen and Marvin Infinger after they became counsel of record for Respondents. Thus, Appellants contend, **[*284]** this Court should vacate the order assigning the circuit judge to preside over these cases, and reassign them to a fair and impartial judge. Appellants contend that because a judge must disqualify himself and recusal motions are rare and unlikely to be overturned on appeal, an atmosphere exists "whereby, as in the present appeal, judges recognize the probable outcome of a recusal request and take advantage of that reality, to the undeserving prejudice of litigants with legitimate **[***27]** grounds for recusal." We disagree and find that the circuit judge was not disqualified from hearing **[**545]** this case and had no duty to recuse himself.

Pursuant to Canon 3(E)(1) of the Judicial Code of Conduct, HN5[↑] "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned . . . ." Canon 3(E)(1), Rule 501, SCACR. HN6[↑] The judicial canons provide direction as to when disqualification may be necessary, including but not limited to, instances where: (1) the judge holds personal bias or prejudice towards a litigant or counsel or has personal knowledge of evidentiary facts in dispute in the proceeding; (2) the judge either worked on the case as a lawyer, a lawyer with whom the judge previously practiced law worked on the case while the judge was associated with the lawyer's firm, or the judge has been a material witness concerning the case; (3) the judge "knows" that he or a member of his family (spouse, parent, or child) has more than a *de minimis* economic interest in the litigation and the litigation will "substantially affect[]" that interest; or (4) the judge or his spouse or a person within the third degree of relationship to them (or the spouse of such a person) **[***28]** is either a party or the officer, director, or trustee of a party, is a lawyer in the case, known to have more than a *de minimis* interest that could be substantially affected by the litigation, or, to the judge's knowledge, is likely to be a material witness in the proceeding. Canon 3(E)(1)(a)-(d).

HN7[↑] "Under South Carolina law, if there is no evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal." Patel v. Patel, 359 S.C. 515, 524, 599 S.E.2d 114, 118 (2004)

[16] We note that Appellants have the opportunity to purge the contempt by complying with the court's discovery rulings.

(citation omitted); Simpson v. Simpson, 377 S.C. 519, 522, 660 S.E.2d 274, 276 (Ct. App. 2008); *see also* Ellis v. Procter & Gamble Distrib. Co., 315 S.C. 283, 285, 433 S.E.2d 856, 857 (1993) ("In cases involving a violation **[*285]** of Canon 3, this Court will affirm a trial judge's failure to disqualify himself only if there is no evidence of judicial prejudice.") (citations omitted). Appellate courts "accord great weight to the trial judge's assurance of his own impartiality." *Id.* It is the movant's responsibility to provide some evidence of the existence of the judge's impartiality. Lyvers v. Lyvers, 280 S.C. 361, 367, 312 S.E.2d 590, 594 (Ct. App. 1984) (citation omitted).

At the hearing on Appellants' recusal motion on March 29, 2010, and in the ensuing Recusal Order, the circuit judge revealed the following information concerning his relationships with Respondents' counsel of record:

> (1)Johnston's wife's ex-husband was a fraternity brother of the judge 40 years ago;
>
> (2)Infinger **[***29]** spent the night at the judge's lake house 30 years ago after both attended the wedding of another Haynsworth shareholder who is not affiliated with this case;
> (3) the judge's son and Johnston's son were fraternity brothers in college 14 years ago, went to Europe together 13 years ago, and have stayed in contact since then;
> (4) the judge and his son accepted an invitation to go fishing with Johnston's brother;
> (5) the judge officiated at Rosen's wedding in 2007, and the Rosen family provided him with accommodations at Fripp Island for the wedding;[17]
> (6) Rosen's father, a surgeon, performed a medical procedure on the judge;
> (7) Rosen's parents once lived in Bamberg, South Carolina, but the judge did not see them socially; and
> (8) the judge has been a member of a social club that holds an annual white tie dance for approximately ten years, and in 2009, Johnston was invited to join the club.[18]

[*286] The court found that the mere fact that Appellants were "disappointed with some of **[**546]** the rulings of the [c]ourt . . . , such disappointment cannot form the basis for recusal." Moreover, the court stated:

> Plaintiffs have no evidence proving bias or prejudice against them or for the Defendants. Instead, they argue that the [c]ourt ruled against them on several motions without basis in law or fact, and reason that the [c]ourt's relationship with [d]efense counsel is the sole cause of these rulings. Their Motion for Recusal is made without basis or justification, with the sole purpose of polluting the record and intimidating me into recusal. I refuse to comply. I have addressed this issue repeatedly, openly, and unabashedly, and though Plaintiffs continue to harass and prod me to recuse myself, the law does not justify said action, and thus I refuse to do so.
>
> This litigation is now over five years old. Many, many hours have been devoted by the judiciary and court personnel in getting this case ready to try and both sides [] have incurred substantial attorney's fees. To start a new [sic], absent any bias or prejudice, would be a colossal waste of time, effort[,] **[***31]** and expense.
> If I thought for one moment my prior involvement with any of the lawyers had an influence on any of my decisions, I would step aside. I practiced law for thirty years, attended school in South Carolina, have been active in social, civic, family and bar organizations, clubs and events all of my adult life and thankfully have formed many types of relationships with many people, a lot who are lawyers who practice in my court on an everyday basis. I am cognizant of these relationships, but if I recused myself when that happened, I could not hold court.

Accordingly, the court denied Appellants' motion for recusal.[19]

None of the disqualification situations outlined by Canon 3(E) were present here. Rather, **[***32]** Appellants' allegations concern **[*287]** mere social relationships

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[17] As stated, *supra*, Appellants subpoenaed the Fripp Island resort where the wedding was held to determine the length of the judge's stay.

[18] The judge disclosed his relationship with Rosen and that he had been on the fishing trip with Johnston's brother when the case was assigned to him. He disclosed his son's relationship **[***30]** with Johnston's son via conference call on February 13, 2008.

[19] At the March 29, 2010, hearing, the judge revealed that he has known Appellants' attorney, Joel Bailey, for 36 years and they have "shared a lot of social time together over the years." Furthermore, the judge stated on the record he "maintained what I considered to be a very cordial social relationship" with Appellants' counsel, Thomas Pendarvis. Both of the judge's sons worked with Pendarvis at another law firm while they were in school, and both maintained friendships with him.

between the circuit judge or his family members and Respondents' counsel of record or their family members. Some of these relationships, such as Rosen's father's physician-patient relationship with the judge, are tenuous. Thus, we find that, under the Rules, the circuit judge was not required to disclose any of these relationships with counsel, nor recuse himself. *See* Commentary, Canon 3(E) (***HN8***[↑] "A judge *should* disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification." (emphasis added)).

If anything, the judge's decision to disclose these relationships during the course of the litigation demonstrates his sensitivity to assuaging any concerns about his impartiality. *See Simpson, 377 S.C. at 525, 660 S.E.2d at 277* (finding the judge's "remarks about her concern for not disclosing the information at the beginning of the hearing do not show any bias or prejudice but instead show her sensitivity to any apprehension each side might have in her ability to make a fair and impartial ruling in the case"); *Doe v. Howe, 367 S.C. 432, 441, 626 S.E.2d 25, 29 (Ct. App. 2005)* ("Because Doe made **[***33]** no showing of actual prejudice, we find no abuse of discretion in the trial judge's refusal to disqualify himself. If anything, the trial judge demonstrated sensitivity toward any concerns Doe might have had regarding his impartiality by voluntarily making full disclosure of his and his law clerk's contacts with Howe and Howe's counsel."). Furthermore, if friendship or social interactions became the standard for disqualification, then as the judge stated in the Recusal Order, members of the judiciary would rarely be able to hold court in this state.[20] Obviously, there could be circumstances **[**547]** where an extremely close friendship could rise to the level of disqualification, as **[*288]** the Canons do not limit disqualification to the scenarios listed under Canon 3(E)(1). However, under the facts of this case, the relationships and interactions that occurred in this lawsuit did not require the judge's recusal.

Importantly, Appellants have also failed to prove that they suffered any prejudice as a result of the judge's refusal to recuse himself in this case. Other than adverse rulings, Appellants have not presented any evidence of prejudice or bias against them. *See Mortg. Elec. Sys., Inc. v. White, 384 S.C. 606, 616, 682 S.E.2d 498, 503 (Ct. App. 2009)* (***HN9***[↑] "The fact [that] a trial judge ultimately rules against a litigant is not proof of prejudice by the judge, even if it is later held the judge committed errors in his rulings.") (citation omitted). ***HN10***[↑] Mere conjecture cannot support a recusal motion. *See 46 Am. Jur. 2d Judges § 208* (1994) ("Allegations of facts that are merely frivolous or fanciful will not support a motion to disqualify on the ground of prejudice, nor will conclusory statements, conjecture, or innuendo be sufficient to support a motion for disqualification."). If anything, the trial judge bent over backwards to provide Appellants an opportunity to be heard, from denying Respondents' motion for summary judgment early in the case, to providing Appellants numerous opportunities to cure their noncompliance and allowing for numerous hearings on discovery matters.

In addition, the Record supports all of the court's orders in this **[***35]** case, including the Discovery Order and the Privilege Order. *See Burgess v. Stern, 311 S.C. 326, 331, 428 S.E.2d 880, 884 (1993)* (finding "an objective view of the record and circumstances surrounding the convoluted proceedings in [that] case lead[] to the conclusion that [the judge's order], and the ensuing orders [were] supported by the evidence" and concluding that no prejudice arose from the alleged impartial acts); *Ellis, 315 S.C. at 285, 433 S.E.2d at 857* (finding a judge's impartiality might reasonably be questioned "when his factual findings are not supported by the record" and holding that the judge's factual findings in that case were not supported by the record). Thus, Appellants have not proven they suffered any prejudice from the judge's alleged bias again them.

[*289] Finally, the timeliness of the motion is questionable. *See Duplan Corp. v. Milliken, 400 F. Supp. 497, 510 (D.S.C. 1975)* (***HN11***[↑] "Timeliness is essential to any recusal motion. To be timely, a recusal motion must be made at counsel's first opportunity after discovery of the disqualifying facts.").The Appellants were well-aware that the judge planned to issue the Dismissal Order when they raised their concerns regarding the judge's impartiality and moved for recusal on the eve of the Dismissal Order, nearly two years after the judge disclosed the bulk of these relationships. Therefore, **[***36]** the recusal motion appears to be nothing more than a last-ditch effort to delay the Court's filing of that order. Thus, we also find Appellants' motion

[20] As the judge stated at the hearing on the matter, "[F]rom day one, because I had 30 years of practice practically every lawyer that come[s] before me . . . I have socialized with, I have been friends with . . . and I have never ever allowed any personal friendships, past acquaintances, children's relationships **[***34]** with other people's children to influence anything that I've done."

for recusal untimely.

Based on the foregoing, we hold that the judge was not required to recuse himself under the circumstances. Furthermore, the frivolous nature and questionable timing of this motion only serve to lend further support to the sanctions imposed in the Dismissal Order.[21]

CONCLUSION

In conclusion, we make clear that we do not hold Appellants' able, competent, and experienced counsel at fault for Appellants' discovery abuses. Appellants' counsel diligently and professionally pursued these claims on behalf **[***37]** of their clients. Unfortunately, Appellants have brought about the **[**548]** dismissal of their claims by their continued refusal to comply with the court's orders, and they have only themselves to blame for this harsh result.

Therefore, for the foregoing reasons, we affirm the circuit court's dismissal of this case and remand this case to the circuit court for further proceedings.

AFFIRMED.

[*290] BEATTY, KITTREDGE and HEARN, JJ., concur. PLEICONES, J., concurring in part and dissenting in part in a separate opinion.

Concur by: PLEICONES (In Part)

Dissent by: PLEICONES (In Part)

Dissent

JUSTICE PLEICONES: I concur in part and dissent in part. I concur in the majority's affirmance of the recusal ruling but dissent from its affirmance of the contempt/sanctions issue. In my view, this appeal requires we review the merits of the Privilege Order as well as the Dismissal Order. As explained below, I find the Privilege Order is affected by an error of law and would reverse the Dismissal Order's contempt findings related to that order. Further, I would hold the findings of fact cited in the Dismissal Order in support of the conclusion that appellants were in contempt of the Discovery Order are woefully inadequate and would therefore reverse **[***38]** that contempt holding. Finally, I would reverse the Dismissal Order's sanctions as the contempt findings cannot stand.

I begin with the majority's erroneous limitation of the scope of appellant's appeal. The Dismissal Order begins:

> This matter comes before the Court on [Respondents'] two Motions for Sanction . . . For the reasons set forth below, the Court grants [Respondents'] motions. The Court finds and hereby declares that [Appellants] are in contempt of court as a result of their willful failure to comply with the Court's order dated July 28, 2009 [the Privilege Order] and dismiss each of the above captioned actions with prejudice as sanctions for such contempt . . . The Court further finds and declares that [Appellants] are in contempt of court for the separate and additional reason that they have willfully disobeyed the Court's Order dated March 3, 2009 [the Discovery Order].

It is well-settled that a *party*[22] can obtain review of the merits of a discovery order only after refusing to comply and being held in contempt. On appeal from the contempt order, the contemnor may argue that the contempt finding must be reversed because the underlying discovery order was itself **[*291]** improper. *E.g.* **[***39]** *Grosshuesch v. Cramer, 377 S.C. 12, 659 S.E.2d 112 (2008)*.

The majority acknowledges that appellants have done exactly what is required of them but concludes that our review is somehow limited. I quote from the majority's opinion:

> Throughout the course of the litigation, the circuit court issued numerous discovery rulings . . . [T]o challenge the specific rulings of the discovery orders, the normal course is to refuse to comply,

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[21] Appellants further argue the circuit court erred in failing to ensure that Appellants received a fair and impartial forum in which to litigate their claims, thereby depriving them of their right to due process of law under the United States and South Carolina constitutions. Because this issue is tied to whether or not the court erred in refusing to recuse himself and we find that he did not, we need not reach this issue. *See Wilkinson ex rel. Wilkinson v. Palmetto State Transp. Co., 382 S.C. 295, 307, 676 S.E.2d 700, 706 (2009)* (appellate court need not discuss remaining issues when determination of prior issue is dispositive).

[22] I note the majority cites the non-party discovery appeal rule from *Ex parte Whetstone, 289 S.C. 580, 347 S.E.2d 881 (1986)*.

> suffer contempt, and appeal from the contempt finding . . . Only after Respondents filed a motion for sanctions and Appellants were found to be in contempt of court as part of those sanctions, did they appeal. While this was a final order for purposes of appellate review, as it ordered dismissal of the case [sic], the merits of the underlying discovery orders are not before this Court on appeal.

The majority is simply wrong to hold that appellants are now foreclosed from arguing that the discovery orders upon which the Dismissal Order's contempt findings and sanctions rest were erroneous. Further, I disagree with the majority's representation that appellants have only raised a general challenge to the Privilege and Discovery Orders. *See* fn. 15, **[***40]** *supra*. Each of the five appellants' briefs argue the merits of the Privilege Order and the Discovery Order. In each brief, the argument regarding the flaws in the Privilege Order begins on page 12, and of those in the Discovery Order begins on page 27. Appellants' ability to **[**549]** challenge the specifics of the Discovery Order is limited by the circuit court's inadequate factual findings.

I fundamentally disagree with the majority's decision to limit its review of these consolidated appeals.

A. Privilege Order

Appellants contend, and I agree, that the circuit court erred in finding them in contempt for violating the Privilege Order. The Privilege Order was largely predicated on the circuit court's determination that appellants had waived their attorney-client privilege, applying the test for waiver derived from *Hearn v. Rhay, 68 F.R.D. 574 (E.D. Wash. 1975)*. The circuit court found the statute of limitations "was a major issue in this case" and held that by putting the statute in issue, **[*292]** appellants "implicitly waived their claims of privilege with respect to documents dated (i.e. created) more than three years prior to the filing of this lawsuit."

Appellants contend the circuit court erred in adopting the *Hearn* "at-issue" waiver theory in **[***41]** the Privilege Order and that this error requires that we reverse the contempt findings that are based on *Hearn* as well as the sanctions in the Dismissal Order. I agree.

In my view, the circuit court erred in adopting the *Hearn* at-issue waiver test because this test substantially diminishes the attorney-client privilege without regard to the important public interests that privilege is designed to advance.

South Carolina has long recognized the attorney-client privilege. *See, e.g., Clary v. Blackwell, 160 S.C. 142, 149, 158 S.E. 223, 226 (1931)*. The privilege is grounded

> upon a wise public policy that considers that the interests of society are best promoted by inviting the utmost confidence on the part of the client in disclosing his secrets to his professional advisor, under the pledge of the law that such confidence shall not be abused by permitting disclosure of such communications.

South Carolina Highway Dept. v. Booker, 260 S.C. 245, 254, 195 S.E.2 615, 619-20 (1973); *see also State v. James, 34 S.C. 49, 57, 12 S.E. 657, 660 (1891)* ("[T]he rule of evidence which holds as inviolable professional communications between attorney and client is one of the most important, and in all forms must be maintained in all its integrity."). The attorney-client privilege is not absolute, rather, its traditional contours balance competing public interests. For example, courts have traditionally held it **[***42]** does not extend to communications in furtherance of criminal, tortious, or fraudulent conduct. *Ross v. Medical University of South Carolina, 317 S.C. 377, 384, 453 S.E.2d 880, 884-85 (1994)*.

While the client may waive the privilege, *Drayton v. Industrial Life & Health Ins., 205 S.C. 98, 108, 31 S.E.2d 148, 152 (1944)*, the rule in South Carolina has been that such a "waiver must be distinct and unequivocal[,]" and we have held that a claim of implied waiver should be treated with caution. *State v. Thompson, 329 S.C. 72, 76-77, 495 S.E.2d 437, 439 (1998)*. Notwithstanding that caution must be exercised in finding **[*293]** waiver, it is widely recognized that a client impliedly waives the privilege when he relies on confidential *communications* with his attorney to make out a claim or defense. *See Savino v. Luciano, 92 So.2d 817, 819 (Fla. 1957)* ("[W]hen a party has filed a claim, based upon a matter ordinarily privileged, the proof of which will necessarily require that the privileged matter be offered in evidence, we think that he has waived his right to insist . . . that the matter is privileged."); *Pennsylvania v. Harris, 612 Pa. 576, 32 A.3d 243 (Pa. 2011)* ("In-issue waiver occurs when the privilege-holder asserts a claim or defense, and attempts to prove that claim or defense by reference to the otherwise privileged material."); *see also, e.g., Sedco Int'l S.A. v. Cory, 683 F.2d 1201, 1206 (8th Cir. 1982)* (courts find waiver by implication when a

client testifies about the attorney-client communication, places the attorney-client relationship at issue, or cites the attorney's advice as part of a claim [***43] or defense). *Hearn* alters this traditional implied waiver standard.

Hearn summarized the factors common to the exceptions to the rule of privilege as

> (1) assertion of the privilege was a result of some affirmative act, such as filing suit, [**550] by the asserting party; (2) through this affirmative act, the asserting party put the protected information at issue by making it relevant to the case; and (3) application of the privilege would have denied the opposing party access to information vital to his defense.

68 F.R.D. at 581. This statement of the factors for finding implied waiver dramatically expands the traditional rule. Because the existence of privilege for attorney-client communications has significance only when the information sought to be protected is relevant to a case, and when the opposing party believes access to the information is vital to his defense, factors two and three operate merely to limit waiver of the privilege to the most sensitive of the client's communications.

The first factor of the *Hearn* test requires that assertion of the privilege be the result of an affirmative act on the part of the person asserting the privilege, such as by filing suit. As used by the *Hearn* court and as [***44] applied by the circuit court in this case, this factor expands the circumstances in which a party impliedly waives his attorney-client privilege. Rather [*294] than being limited to situations in which the client inserts the privileged *communications* into the controversy, waiver is expanded to situations in which the client raises any *issue* to which the privileged communications are relevant. As explained below, *Hearn* has been rejected by most courts and many commentators.

Adoption of the *Hearn* test virtually eliminates attorney-client privilege in a wide range of cases without taking into account the public policy on which attorney-client privilege is grounded or that the well-settled contours of the attorney-client privilege already balance the competing public interests. *See, e.g.*, *In re County of Erie, 546 F.3d 222, 227-29 (2d Cir. 2008)* discussing *Hearn* and its critics, rejecting the *Hearn* test, and holding that when good faith is asserted as a defense, waiver is implied only when the client relies on privileged advice to establish good faith); Kevin Bennardo, *At Issue Waiver of the Attorney-Client Privilege in Illinois: An Exception in Need of a Standard*, *30 N. Ill. U. L. Rev. 553, 561 (2010)* ("By focusing on relevancy and fairness, the Hearn test seeks to remedy the 'problem' [***45] caused by the truth-suppressing effect of the attorney-client privilege. The anticipatory waiver test, on the other hand, seeks to address the problem created by one party selectively relying on a privileged communication while attempting to shield other privileged communications--thereby 'garbling' the truth. It is only in this 'truth-garbling' scenario, rather than the truth-suppressing scenario (a scenario inherent in all privileges), that waiver of the privilege should be found." (internal footnote omitted)); Note, *Developments in the Law: Privileged Communications*, *98 Harv. L. Rev. 1450, 1641-42 (1985)* (*Hearn* concept of unfairness refers to incompleteness of evidence rather than traditional concept in privilege context of unfairness as abuse of a privilege; logic of *Hearn* leads to "outrageous" results).[23]

[*295] Moreover, particularly in the context of a statute of limitations defense, adoption of the *Hearn* test produces the result that

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[23] For additional criticism of *Hearn* and its progeny, see *Remington Arms Co. v. Liberty Mut. Ins. Co., 142 F.R.D. 408, 413 (D. Del. 1992)* ("The core problem, according to this line of reasoning [criticizing *Hearn*], is that expansive language for determining implied waiver leads to a type of ad hoc determination that ignores the system-wide role of the attorney-client privilege and undermines any confidence that parties can place in that privilege. These authorities contend that extremely liberal [***46] waiver rules increase litigation costs and judicial time spent on discovery disputes, favor the wealthiest litigants, undermine the values served by the privilege rules, and vary according to the identity of the litigants and their purported need for privileged information." (internal citations omitted)); *Trustees of Elec. Workers Local No. 26 Pension Trust Fund v. Trust Fund Advisors, Inc., 266 F.R.D. 1 (D.D.C. 2010)*; *United States v. Ohio Edison Co., No. C2-99-1181, 2002 U.S. Dist. LEXIS 14290, 2002 WL 1585597 (S.D. Ohio July 11, 2002)*; *Mortgage Guar. & Title Co. v. Cunha, 745 A.2d 156 (R.I. 2000)*; *Public Service Co. of New Mexico v. Lyons, 2000- NMCA 077, 129 N.M. 487, 10 P.3d 166 (N.M. Ct. App. 2000)*; *Wisconsin v. Hydrite Chem. Co., 220 Wis. 2d 51, 582 N.W.2d 411 (Wis. Ct. App. 1998)*; *Wardleigh v. Second Jud. Dist. Ct., 111 Nev. 345, 891 P.2d 1180 (Nev. 1995)*; *Aranson v. Schroeder, 140 N.H. 359, 671 A.2d 1023 (N.H. 1995)*; *Rhone-Poulenc Rorer Inc. v. Home Indem. Co., 32 F.3d 851, 864 (3d Cir. 1994)*; *Hewlett-Packard Co. v. Bausch & Lomb, Inc., 115 F.R.D. 308 (N.D. Cal. 1987)*; and *Smith v. Kavanaugh, Pierson & Talley, 513 So.2d 1138 (La. 1987)*.

> [**551] [i]n virtually every case in which the statute of limitations . . . is pleaded as a defense and the client relies on the discovery rule to overcome the limitation period, the opposing party would be able to inquire of the client's counsel: Did your client tell you anything in confidence about what he or she knew that differs from or contradicts what he or she stated in responses to discovery?

Darius v. City of Boston, 433 Mass. 274, 741 N.E.2d 52, 57 (Mass. 2001). I agree with the *Darius* court that "[t]o permit that kind of inquiry would pry open the attorney-client relationship and strike at the very core of the privilege." Id. at 56-57

Because in my view the *Hearn* at-issue waiver rule sweeps far too broadly, eviscerating the attorney-client privilege without regard to the weighty public **[***47]** interest it serves, the circuit court erred in adopting it in the Privilege Order. The circuit court ordered appellants to produce documents that would have been privileged but for the court's application of the *Hearn* at-issue test. It found that appellants had waived attorney-client and "any otherwise applicable privilege" in documents created more than three years before the lawsuit was filed that contained appellants' litigation and trial strategies "through their actions (e.g. the allegations in the . . . Complaints)." The circuit court's determination in the Dismissal Order that appellants were contumacious in refusing to produce these documents and that the sanctions of dismissal **[*296]** and attorneys' fees were appropriate depended in part on its determination that appellants had waived all privileges in these documents merely by filing suit. Because the circuit court's ruling was based on an error of law, i.e. *Hearn*, I would reverse and remand for the circuit court to consider whether appellants' other violations of the Privilege Order warrant a finding of contempt. This remand necessarily requires reconsideration of the scope of any sanctions.

B. Discovery Order

Appellants also contend **[***48]** they should not have been found in contempt and sanctioned for violations of the Discovery Order. I agree with appellants that the flaws in the Dismissal Order finding appellants in violation of the Discovery Order require we reverse the Dismissal Order on this ground as well.

I agree with appellants that the trial judge's specifications of deficiencies in their compliance with the Discovery Order are simply too vague, and rely too heavily on mere references to memoranda prepared by respondents' counsel,[24] to support the finding of contempt. Moreover, the decision to dismiss the cases and impose other sanctions for noncompliance with discovery "should be imposed only in cases involving bad faith, willful disobedience, or gross indifference to the opposing party's rights." McNair v. Fairfield Cty., 379 S.C. 462, 466, 665 S.E.2d 830, 832 (Ct. App. 2008) (internal citations omitted). Here, the circuit court's findings that appellants' conduct rose to this level are inexorably tied to its findings regarding disobedience of the wrongfully decided Privilege Order.

I would reverse the Dismissal Order and remand, but affirm the recusal ruling as I find no evidence of judicial prejudice in this record. State v. Howard, 384 S.C. 212, 682 S.E.2d 42 (Ct. App. 2009). It is patent that these cases have been pending far too long, and that appellants share in the responsibility for the delay. I am optimistic that the parties and trial judge will work diligently to bring these cases to speedy and appropriate resolutions upon remand.

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[24] Each of the five findings of contempt in the Dismissal Order is supported only by citation to a memorandum prepared by respondents. *See* Higgins v. Med. Univ. of South Carolina, 326 S.C. 592, 486 S.E.2d 269 (Ct. App. 1997) (cautioning against reliance on factual statements in memoranda submitted **[***49]** by counsel).

Excessiveness or Adequacy of Damages for Personal Injuries Resulting in Death of Minor

Reporter
70 A.L.R.7th 6 *

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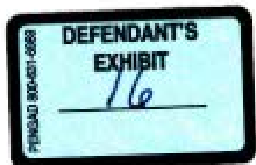

Author: Jay M. Zitter, J.D.

JURISDICTIONAL TABLE OF STATUTES AND CASES

TABLE OF REFERENCES

ARTICLE OUTLINE

Text

Preliminary Matters

[*1] Scope

In addition to the plaintiff parent, sibling, or other relative of a child who has died having to prove the liability of the defendant for such wrongful death, the plaintiff must adduce evidence of the amount of damages from the loss of the child. Accordingly, this article [1] collects and discusses the state and federal cases [2] considering the adequacy or excessiveness of awards of compensatory damages for the wrongful death of a minor child from birth [3] up to the child's 21st birthday. [4]

This article includes cases in which the amount of the verdict is attacked as excessive, those in which the amount is fixed by the court in the case being reported, and those cases in which the verdict is attacked as inadequate. Rulings of excessiveness based upon such factors as consideration by the jury of improper elements of damages are not included, the scope being limited to those cases where it is charged that the amount awarded represents an excessive valuation of the injuries proved.

**** Note:

Some opinions discussed in this article may be restricted by court rule as to publication and citation in briefs; readers are cautioned to check each case for restrictions. A number of jurisdictions may have rules, regulations,

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[1] The present article supersedes the one at *49 A.L.R.4th 1076*, entitled Excessiveness and adequacy of damages for personal injuries resulting in death of minor.

[2] The article includes cases since and including the year 1960.

[3] Accordingly, the article does not discuss damages for death of unborn children.

[4] Cases are included regardless of whether the child in question was emancipated or not or whether the particular jurisdiction set the age of majority at an earlier age.

constitutional provisions, or legislative enactments directly bearing upon this subject. These provisions are discussed herein only to the extent and in the form that they are reflected in the court opinions that fall within the scope of this article. The reader is consequently advised to consult the appropriate statutory or regulatory compilations to ascertain the current status of all statutes discussed.

[*2] Background and summary

Perhaps the most tragic civil cases are those that involve actions by parents for damages for the death of a child. The parents will carry their memories of their child for the rest of their lives, and may never fully recover from their loss. While no amount of money can truly compensate for the death of a child, the legal system has determined that the defendant must pay compensatory damages to the child's survivors.[5]

There are two types of causes of action that can be brought for recovery of compensatory damages for an injury resulting in death. A survival action allows for the recovery of damages for an injury suffered by the deceased up to the time of death, while a wrongful death action covers the time after death, and addresses the injury suffered by the next of kin due to the loss of the deceased rather than the injuries personally suffered by the deceased prior to death.[6]

As to survival actions, there can be a recovery of damages for the decedent's pain and suffering if the decedent was partially conscious between the time of the injury and the time of death, and thus damages for pain and suffering may be awarded where death or unconsciousness did not occur instantaneously. Whether the decedent endured any conscious pain and suffering before dying is a question of fact, and an award for pain and suffering is sustainable on the smallest amount of evidence of pain.[7]

Wrongful death statutes vary as to the types of damages recoverable. In addition to pecuniary damages that are available in a wrongful death action, such as medical and funeral bills, some statutes also allow for nonpecuniary or noneconomic damages, such as loss of companionship and mental anguish, sustained by the survivors on account of the decedent's death. Some statutes make the surviving relatives' emotional loss and familial ties relevant to the damages available, and some statutes require a showing of physical injury to recover damages for mental anguish or emotional distress arising out of a statutory wrongful death claim.[8]Thus, many jurisdictions allow allowing damages for the loss of consortium, companionship, society, comfort, love, affection, attention, care, and protection for the death of a child regardless of the fact that they cannot be accurately calculated.[9]

In general, the amount awarded may not satisfy either the plaintiff or the defendant, and in many cases the parties dispute whether the amount awarded was in fact correct. It may be asked whether the amount was shockingly high or low, and whether the trier of fact properly took into account the numerous factors involved in the proceedings.

The trier of fact, the judge or jury, is given great discretion in its assessment of quantum, both general and special damages.[10]Because the discretion vested in the trier of fact is so great, and even described as vast, an appellate court should rarely disturb an award on review.[11]Accordingly, only after making a finding that the lower court abused its wide discretion can the appellate court disturb the award, and then only to

[5] Lens, Children, Wrongful Death, and Punitive Damages, 100 B.U. L. Rev. 437 (2020).

[6] Am. Jur. 2d, Death § 190.

[7] Stein on Personal Injury Damages § 3:59 (3d ed.).

[8] Am. Jur. 2d, Death § 190.

[9] Am. Jur. 2d, Death § 207.

[10] La. Civ. Code Ann. art. 2324.1.

[11] Deligans v. Ace American Ins. Co., 86 So. 3d 109 (La. Ct. App. 3d Cir. 2012).

the extent of lowering it, or raising it, to the highest or lowest point which is reasonably within the discretion afforded that court. [12]For example, only if a damages award is so outrageous as to indicate that the jury was motivated by passion, prejudice, partiality, or consideration of improper evidence, will the award be found excessive. [13]

Despite such high burden of proof for challenges to the amount of awards for damages for physical injuries, a great number of cases have dealt with the question of the propriety of such awards for the death of a child. Many of these cases have involved vehicular accidents. Accordingly, depending on the particular circumstances, the courts have variously held that awards of compensatory damages for the death in a vehicular accident of a child under seven years of age were not excessive (§ 4), excessive (§ 5), adequate (§ 7), or inadequate (§ 8), or have fixed the amount of damages (§ 6). Likewise, where the decedent who was killed in an accident was between seven and 14 years of age, courts have found awards of compensatory damages to be not excessive (§ 9), excessive (§ 10), adequate (§ 12), or inadequate (§ 13), or have fixed the amount of damages (§ 11). Similarly, as to recovery of compensatory damages for the deaths of older children, from ages 14 until 21, in vehicular accidents, the courts have found awards of compensatory damages to be not excessive (§ 14), excessive (§ 15), adequate (§ 17), or inadequate (§ 18), or have fixed the amount of damages (§ 16). In addition, where the age of the deceased children was not specified, courts have variously found awards of compensatory damages to be not excessive (§ 19), excessive (§ 20), adequate (§ 22), or inadequate (§ 23), or have fixed the amount of damages (§ 21).

Other cases in which parties have challenged the amounts of awards for the death of children have involved cases in which the death came about through medical malpractice, defective medical or pharmaceutical products, or the like. Accordingly, in a number of cases the courts, depending on the particular circumstances, have variously determined that awards of compensatory damages for the death from medical malpractice or related treatment or medication claims of a child age seven years old or younger were not excessive (§ 24), excessive (§ 25), adequate (§ 27), or inadequate (§ 28), or have fixed the amount of damages (§ 26). Likewise, as to challenges to awards of compensatory damages for death from medical malpractice or related treatment or medication claims of a child from seven through 13 years old, courts have variously decided that damages were not excessive (§ 29), excessive (§ 30), adequate (§ 31), or inadequate (§ 32). Furthermore, where the deceased child had been from 14 until 21 years of age, courts have variously determined that damages were not excessive (§ 33), excessive (§ 34), or adequate (§ 36), or have fixed the amount of damages (§ 35). Furthermore, additional courts have held that awards of compensatory damages for malpractice or similar actions causing death of a child whose age was unspecified were excessive (§ 37).

Other cases have involved challenges to the propriety of awards of compensatory damages for the death of a child, where the cause of death was other than vehicular accidents or malpractice. For instance, these have involved drownings, electrocution, accidental shootings, falls, assaults, and a wide variety of other causes. Thus, where the child in question was under seven years old at the time of death, the courts, depending on the particular circumstances, have found awards of compensatory damages to be not excessive (§ 38), excessive (§ 39), adequate (§ 41), or inadequate (§ 42), or have fixed the amount of damages (§ 40). Similarly, where the child who died was between the ages of seven and 13, courts have variously determined that awards of compensatory damages for such death were not excessive (§ 43), excessive (§ 44), adequate (§ 46), or inadequate (§ 47), or have fixed the amount of damages (§ 45). Likewise, where at the time of death the child was from 14 until 21 years of age, the courts have reached a variety of determinations as to the propriety of particular awards of compensatory damages for such death, such as not excessive (§ 48), excessive (§ 49), adequate (§ 51), or inadequate (§ 52), or the courts have fixed the amount of damages (§ 50). In addition, under the particular circumstances of the cases presented, while some courts have held that awards of compensatory damages for the death of a child whose age was unspecified, from causes other than vehicular accidents or malpractice, were not excessive (§ 53), other courts have found such damages to be excessive (§ 54) or adequate (§ 56), and still other courts have fixed the amount of damages (§ 55).

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[12] *Deligans v. Ace American Ins. Co., 86 So. 3d 109 (La. Ct. App. 3d Cir. 2012).*

[13] C.J.S., Damages § 458.

[*3] Practice notes

For purposes of a survival action, proof that there had been conscious pain and suffering can be shown by testimony of a parent to hearing the child gasp or moan at an accident scene. [14] Likewise, consciousness can be shown by being responsive in the hospital to a parent, such as having movement with fingers or head, or opening eyes. [15] Parents can testify as to inability to comfort their dying child due to ongoing medical efforts despite the child requesting such comforting. [16] In any event, recovery for fear of impending death can be shown based on expert testimony as to how long a drowning child would stay conscious. [17] It can also be shown that the pain and suffering were great because of the amount and type of injuries. [18]

Parents and siblings can testify as to their feelings where they were present at the time of injury and death. The parents can testify as to their emotional pain while the child lingered after injury and before death. [19]

In order to show damages for grief and loss the plaintiff can show that the parents and child were very close. [20] For example, it can be shown that the family ate dinner together every night, attended church together as a family at least three times per week, and visited with the children's grandparents, aunts, uncles, and cousins, as a family, generally, each Sunday. [21] The parent can show that they organized their life around the child's care and activities, [22] or that the child would do certain activities with the parent such as fishing. [23] The plaintiff can show that the child kept up this closeness even if they were away at school. [24] In general, the parents can testify as to the emotional toll on them after the child's death. [25] A parent can testify that they were unable to return to work for months after the child's death in an accident.

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[14] Smalls v. South Carolina Dept. of Educ., 339 S.C. 208, 528 S.E.2d 682, 144 Ed. Law Rep. 435 (Ct. App. 2000).

[15] Smalls v. South Carolina Dept. of Educ., 339 S.C. 208, 528 S.E.2d 682, 144 Ed. Law Rep. 435 (Ct. App. 2000); Luna v. Southern Pacific Transp. Co., 724 S.W.2d 383 (Tex. 1987).

[16] Hutto v. McNeil-PPC, Inc., 79 So. 3d 1199 (La. Ct. App. 3d Cir. 2011), writ denied, ***86 So. 3d 628 (La. 2012)***.

[17] Maracallo v. Board of Educ. of City of New York, 2 Misc. 3d 703, 769 N.Y.S.2d 717, 184 Ed. Law Rep. 505 (Sup 2003).

[18] Leary v. State Farm Mut. Auto. Ins. Co., 978 So. 2d 1094 (La. Ct. App. 3d Cir. 2008), writ denied, ***983 So. 2d 900 (La. 2008)***.

[19] Louisville SW Hotel, LLC v. Lindsey, 2019 WL 2147355 (Ky. Ct. App. 2019), review granted, (Mar. 18, 2020) and aff'd in part, rev'd in part on other grounds, 2021 WL 5984855 (Ky. 2021); Leary v. State Farm Mut. Auto. Ins. Co., 978 So. 2d 1094 (La. Ct. App. 3d Cir. 2008), writ denied, ***983 So. 2d 900 (La. 2008)***.

[20] Hennefer v. Blaine County School Dist., 158 Idaho 242, 346 P.3d 259, 316 Ed. Law Rep. 565 (2015).

[21] Hebert v. Rapides Parish Police Jury, 934 So. 2d 912 (La. Ct. App. 3d Cir. 2006), writ granted, ***941 So. 2d 29 (La. 2006)*** and writ granted, ***941 So. 2d 29 (La. 2006)*** and judgment rev'd on other grounds, ***974 So. 2d 635 (La. 2007)***, on reh'g, (Jan. 16, 2008).

[22] Rideau v. State Farm Mut. Auto. Ins. Co., 970 So. 2d 564 (La. Ct. App. 1st Cir. 2007), writ denied, ***972 So. 2d 1168 (La. 2008)***.

[23] Adams v. Parish of East Baton Rouge, 804 So. 2d 679 (La. Ct. App. 1st Cir. 2001), writ denied, ***813 So. 2d 1090 (La. 2002)***.

[24] Poppe v. Siefker, 274 Neb. 1, 735 N.W.2d 784 (2007).

[25] Brown v. State ex rel. Dept. of Transp. and Development, 166 So. 3d 1197 (La. Ct. App. 3d Cir. 2015), writ denied, ***179 So. 3d 601 (La. 2015)***.

[26]Evidence, including expert testimony, can show that a parent's preexisting medical problems intensified after the child's death. [27]Likewise, such testimony can show that the parent suffered from mental issues such as posttraumatic stress disorder or, major depressive disorder, and that the parent would need a significant amount of intensive psychotherapy and psychiatric care. [28]In this connection, a parent could testify that therapy and medication had not helped to ease the pain, [29]and that the parent continued to visit the child's grave. [30]It could also be shown that the death caused the parents marital problems. [31]Furthermore, the parent's demeanor while testifying about finding the child's body could also support a finding of grief and thus damages. [32]However, the defense can argue that the testimony of a grief counselor should not be admitted. It can be argued that the expert would not testify as to anything that was outside of the common experience, or common sense, of the jury, as many if not most of the jurors had also experienced the death of a loved one in the past. Since the expert would add nothing beyond what the plaintiffs themselves and other witnesses testified to as to the close relationships involved, and the loss felt by them after the death, such expert testimony can be unfairly prejudicial because of the possibility that the jury would give such testimony, coming as it did from an expert, undue weight. [33]

As to pecuniary value of services which the decedent provided the plaintiff parent, it should be noted that many jurisdictions allow recovery for the child's companionship, including their advice and guidance, as the parents grow older. [34]In this connection, siblings can testify that the decedent was the one whom the parents turned to for help or advice. [35]Moreover, the plaintiff can adduce testimony as to the child's employment, and can argue that even without proof that some of this income was transferred to the parent, the jury could reasonably infer that the child would have made such contributions and that the parent was likely to have accepted them. [36]Even if a child was unemployed, the parent can testify that child helped his parent around house by cooking, cleaning, and doing maintenance work. [37]In addition, as to pecuniary value, the plaintiff can prove that the child had an active lifestyle with many friends. [38]The plaintiff can adduce testimony and school records to show that the child was excelling in school and was

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[26] Morga v. Fedex Ground Package System, Inc., 2018-NMCA-039, 420 P.3d 586 (N.M. Ct. App. 2018).

[27] Morga v. Fedex Ground Package System, Inc., 2018-NMCA-039, 420 P.3d 586 (N.M. Ct. App. 2018).

[28] Brown v. State ex rel. Dept. of Transp. and Development, 166 So. 3d 1197 (La. Ct. App. 3d Cir. 2015), writ denied, **179 So. 3d 601 (La. 2015)**; Morga v. Fedex Ground Package System, Inc., 2018-NMCA-039, 420 P.3d 586 (N.M. Ct. App. 2018).

[29] Hutto v. McNeil-PPC, Inc., 79 So. 3d 1199 (La. Ct. App. 3d Cir. 2011), writ denied, **86 So. 3d 628 (La. 2012)**.

[30] Martinez v. Graves, 2003 WL 21466962 (Tex. App. San Antonio 2003).

[31] Taylor v. Clement, 832 So. 2d 1089 (La. Ct. App. 3d Cir. 2002), writ denied, **840 So. 2d 571 (La. 2003)** and (abrogated on other grounds by, Colvin v. Louisiana Patient's Compensation Fund Oversight Bd., 947 So. 2d 15 (La. 2007)).

[32] Plasencia v. Burton, 440 S.W.3d 139 (Tex. App. Houston 14th Dist. 2013).

[33] Angrand v. Key, 657 So. 2d 1146 (Fla. 1995).

[34] Carey v. Lovett, 132 N.J. 44, 622 A.2d 1279 (1993).

[35] Dutton v. Rando, 458 N.J. Super. 213, 204 A.3d 284 (App. Div. 2019).

[36] Dutton v. Rando, 458 N.J. Super. 213, 204 A.3d 284 (App. Div. 2019).

[37] North Slope Borough v. Brower, 215 P.3d 308 (Alaska 2009).

[38] Abruzzo v. City of Park Ridge, 2013 IL App (1st) 122360, 378 Ill. Dec. 259, 3 N.E.3d 824 (App. Ct. 1st Dist. 2013).

completing or would be getting a high school or college degree in a particular profession, [39] and that the child had clear career goals and was in good health. [40] In order to determine loss of earnings from a child, expert testimony may be admissible as to the use of a "productivity factor," which takes into account an individual's ability to influence his rate of income earning power over time by considering objective criteria such as age, maturity, education, and skill. Even though this factor is likely not to be available directly from the child, the parent's abilities could be taken into account as a reasonable predictor of what the child's future abilities would have been. [41]

The defense can attempt to counter claims by one or both of the parents that they had a close emotional connection with the child by pointing out that the parent in fact abandoned the child to the custody of a relative, [42] or that the child did not visit the parent in the parent's home. [43] Likewise, it can be shown by testimony or police records that the parent was abusive to the child and other siblings to the extent that the child did not want to live with this parent. [44] It could be argued that where a parent had neglected the child and lost custody of the child, the parent could not establish the existence of circumstances to indicate that the parent had a reasonable expectation of future assistance from the child. [45] The defense can also stress that the jury had to deduct past and future costs of raising the child from any award, and can point out that this should be a significant sum where the parents has an active lifestyle and upscale standard of living. [46]

On appeal, the defense can assert that a very large verdict far exceeded the range of fair and reasonable compensation and should be overturned because it resulted from the jury's passion and prejudice against the defendants. [47] However, the plaintiff can point out that the trial court issued model jury charges on wrongful death damages, which directed the jurors not to consider plaintiff's "emotional distress" or "emotional loss" in their deliberations. [48]

Propriety of Particular Awards

[*A] Death from Vehicular Accident

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[39] Stevens v. Strauss, 147 Colo. 547, 364 P.2d 382 (1961); Leary v. State Farm Mut. Auto. Ins. Co., 978 So. 2d 1094 (La. Ct. App. 3d Cir. 2008), writ denied, ***983 So. 2d 900 (La. 2008)***.

[40] ***Miller v. Young Men's Christian Ass'n Of America, 690 N.W.2d 464 (Iowa Ct. App. 2004)***.

[41] Greer v. Bryant, 423 Pa. Super. 608, 621 A.2d 999 (1993).

[42] Davis v. U.S., 2010 WL 2331094 (S.D. Fla. 2010) (applying Florida law).

[43] Rideau v. State Farm Mut. Auto. Ins. Co., 970 So. 2d 564 (La. Ct. App. 1st Cir. 2007), writ denied, ***972 So. 2d 1168 (La. 2008)***.

[44] Davis v. U.S., 2010 WL 2331094 (S.D. Fla. 2010) (applying Florida law).

[45] Estate of Pesante ex rel. Pesante v. Mundell, 37 A.D.3d 1173, 829 N.Y.S.2d 390 (4th Dep't 2007).

[46] Heimlicher v. Steele, 615 F. Supp. 2d 884 (N.D. Iowa 2009) (applying Iowa and federal law). The defense can also stress that for purposes of future damages, the parents' life expectancies could be affected by health problems. Poppe v. Siefker, 274 Neb. 1, 735 N.W.2d 784 (2007).

[47] ***Glabman v. De La Cruz, 954 So. 2d 60 (Fla. 3d DCA 2007)***; Kolodziej v. Justice Park District, 2020 IL App (1st) 191032-U, 2020 WL 5250261 (Ill. App. Ct. 1st Dist. 2020).

[48] Dutton v. Rando, 458 N.J. Super. 213, 204 A.3d 284 (App. Div. 2019).

[*4] From birth through age six - Not excessive

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death in a vehicular accident of a child under seven years of age were not excessive, such as awards of --

-- $ 150,000 awarded to father for loss of four-year-old daughter who died in an airplane crash; father had been a happy family man, vigorous in his life and in his work but was crushed by this sudden tragedy, which also claimed his wife and another daughter. Winbourne v. Eastern Airlines, Inc., 758 F.2d 1016 (5th Cir. 1984).

-- $ 300,000 to each parent and $ 200,000 to each of two surviving siblings for mental anguish caused by death of two-year-old in automobile-truck accident; psychologists testified in detail as to ways in which each member of family manifested greater than normal grief over child's death; evidence of gruesomeness of child's death and serious effect of his death upon surviving members of family. Potts v. Benjamin, 882 F.2d 1320 (8th Cir. 1989) (applying Arkansas law).

-- $ 1.2 million for wrongful death of mother's 10-year-old daughter and $ 800,000 for wrongful death of her three-year-old daughter, and $ 500,000 to three-year-old's father, where train hit crossing car driven by mother; rejected trial court's remittiturs of $ 500,000 from verdict for mother and $ 250,000 from verdict for father, or a new trial on damages; mother had received extensive psychiatric counseling after accident, missed months of work, and was still on medication at time of trial; father had been attentive and loving father and was deeply grieved by daughter's death; jury could form reasoned and substantiated judgment about relationships within this family and grievous loss. Hawk v. Seaboard System R.R., Inc., 547 So. 2d 669 (Fla. 2d DCA 1989).

-- $ 900,000 (which included $ 500,000 to mother and $ 400,000 to father) where six-year-old girl killed by county garbage truck; described as bright, alert, beautiful, obedient, happy, and loving; traumatic effect on 27-year-old parents. Metropolitan Dade County v. Dillon, 305 So. 2d 36 (Fla. 3d DCA 1974).

-- $ 30 million for four-year-old child passenger's wrongful death and $ 10 million for his pain and suffering, after remittitur from awards of $ 120 million and $ 30 million, in action against manufacturer where vehicle's gas tank exploded after rear-end collision; proof that he might have lived up to a minute while being burnt to death. Chrysler Group, LLC v. Walden, 339 Ga. App. 733, 792 S.E.2d 754, Prod. Liab. Rep. (CCH) P 19948 (2016), aff'd but criticized on other grounds, 303 Ga. 358, 812 S.E.2d 244 (2018) and cert. granted.

-- $ 155,000 where six-year-old girl killed while riding bicycle. Woods v. Andersen, 145 Ga. App. 492, 243 S.E.2d 748 (1978).

-- $ 1,250 for death of each of two minors, aged two and three, respectively; awarded to sole next of kin, an 11-month-old brother; automobile accident case. Thomas v. Cagwin, 43 Ill. App. 2d 336, 193 N.E.2d 233 (2d Dist. 1963).

-- $ 5,000 for 14-month-old girl killed when struck by motor vehicle; driver of vehicle failed to stop when he heard sound of vehicle hitting child. Morris v. Musick, 188 Kan. 197, 362 P.2d 68 (1961).

-- $ 1.83 million to estate of 10-month-old decedent killed in automobile-truck collision, for destruction of his power to earn money, and $ 1.475 million to father for the loss of baby's affection and companionship; plaintiffs' expert economist testified to several different calculations that he performed to project decedent's future income, based on scenarios including level of education completed, ranging from $ 1.9 to $ 4.2. million; while defense stressed limited education and modest incomes of parents, court noted amount awarded was less than expert's lowest projection. Estate of Embry v. GEO Transp. of Indiana, Inc., 478 F. Supp. 2d 914 (E.D. Ky. 2007) (applying Kentucky law).

-- $ 8,000 to estate of six-year-old killed in automobile accident; well and healthy; life expectancy of 46.77 years. George v. Evans, 405 S.W.2d 285 (Ky. 1966).

-- $ 150,000 to mother of three-year-old boy hit and killed by truck, after reduction from $ 325,000; lowered amount was appropriate where mother, a single mother, testified to great loss she felt as result of death of her son; received psychiatric care at because she was depressed and suicidal from the death and from witnessing boy's crushed body immediately after accident. Anderson v. New Orleans Public Service, Inc., 583 So. 2d 829 (La. 1991).

-- $ 35,000 in damages for pain and suffering suffered by two-year-old before he died after one-car accident, assertedly the fault of defective road; child was conscious for some time after he was initially injured, and coroner's diagnosis indicated child had depressed fracture of skull, contusions of lungs, lacerated liver, multiple lacerations, abrasions, and contusions. Harvey v. State, Dept. of Transp. and Development, 799 So. 2d 569 (La. Ct. App. 4th Cir. 2001), writ denied, *811 So. 2d 910 (La. 2002)*.

-- $ 250,000 -- $ 125,000 to each parent of six-year-old victim of motorcycle accident; close relationship with parents. Pawlak v. Brown, 430 So. 2d 1346 (La. Ct. App. 3d Cir. 1983), writ denied, *439 So. 2d 1072 (La. 1983)* and writ denied, *439 So. 2d 1072 (La. 1983)*.

-- $ 106,085 to parents of three-month-old infant killed in car accident; infant semiconscious 1.5 hours after accident; died eight hours later; family deeply affected by loss of youngest child. Searcy v. Porter, 381 So. 2d 540 (La. Ct. App. 2d Cir. 1980).

-- $ 75,000 (included $ 35,000 awarded to father; $ 40,000 to mother); five-year-old girl killed in automobile accident; described as leader in kindergarten class; in custody of mother but saw both parents on daily basis. *Anding v. Southwestern Ins. Co., 358 So. 2d 690 (La. Ct. App. 3d Cir. 1978)*, writ denied, *360 So. 2d 1179 (La. 1978)*.

-- $ 12,500 to mother for death of five-year-old daughter killed in same automobile accident as father; court noting size of awards in similar cases. *Renz v. Texas & P. Ry. Co., 138 So. 2d 114 (La. Ct. App. 3d Cir. 1962)*.

-- $ 15,000 including $ 7,500 to each parent of 19-month-old boy hit and killed by truck; robust and healthy; one of 11 children. Boyd v. Sutton, 120 So. 2d 350 (La. Ct. App. 2d Cir. 1960).

-- $ 15,721.40 (which included $ 10,000 for loss of future services to parents, $ 4,650 for loss of investment, and $ 1,071.40 for funeral expenses); five-year-old boy about to enter school killed in collision; in good health at time of death; loving and affectionate son; bright and intelligent. Dauer's Estate v. Zabel, 19 Mich. App. 198, 172 N.W.2d 701 (1969).

-- $ 7,500 (included hospital and funeral expenses of $ 5,033); awarded to unmarried parents of 3 1/2-year-old girl killed by uninsured motorist; child survived by parents and her three siblings; father and mother lived together for several years; both contributed toward support of household, love and discipline of children. Cobb v. State Sec. Ins. Co., 576 S.W.2d 726 (Mo. 1979).

-- $ 10,000 for death of two-year-old child in train-automobile collision. Van Buskirk v. Missouri-Kansas-Texas R. Co., 349 S.W.2d 68 (Mo. 1961).

-- $ 3.3 million to each of three wrongful death claims where drunk driver killed parents and their four-month-old daughter; driver failed to address factors relevant to assessing compensatory damages; did not properly consider or apply precedents as to excessiveness of awards. Henderson v. Fields, 68 S.W.3d 455 (Mo. Ct. App. W.D. 2001).

-- $ 15,195 to father for death of five-year-old son when hit by garbage truck in crosswalk; court noting size of awards in similar cases. Wyant v. Dunn, 140 Mont. 181, 368 P.2d 917 (1962).

-- $ 61 million to estate of four-year-old child killed in vehicle accident between vehicle in which child was passenger and shipping company's truck; evidence presented regarding several aspects of child's life and her relationship with her family. Morga v. Fedex Ground Package System, Inc., 2018-NMCA-039, 420 P.3d 586 (N.M. Ct. App. 2018).

-- $ 12,725 where 22-month-old child killed when hit by milk truck; driver of truck admitted seeing children playing before the accident. Gough v. Anson's Dairy, 11 A.D.2d 859, 202 N.Y.S.2d 847 (3d Dep't 1960).

-- $ 118,000 in favor of estate of 10-month-old child who was killed in automobile accident; no evidence of abuse of discretion. Chaney v. Young, 122 N.C. App. 260, 468 S.E.2d 837 (1996).

-- $ 4,500 wrongful death of four-year-old girl killed in automobile accident. Nelson v. Horton, 31 Ohio App. 2d 159, 60 Ohio Op. 2d 246, 287 N.E.2d 108 (1st Dist. Clermont County 1971).

-- $ 4,500 to 18-month-old girl killed when struck by truck; described as healthy, bright, and intelligent; survived by parents and two sisters and a brother. Mitchell v. Reinhardt, 114 Ohio App. 175, 19 Ohio Op. 2d 59, 181 N.E.2d 53 (4th Dist. Brown County 1960).

-- $ 82,500 to estate of five-year-old girl fatally injured in accident involving defective van; fright, pain, and suffering after injuries; child likely to have gone to college and to have assisted missionary parents. Weaver v. Ford Motor Co., 382 F. Supp. 1068 (E.D. Pa. 1974), aff'd, 515 F.2d 506 (3d Cir. 1975) and aff'd, 515 F.2d 507 (3d Cir. 1975) (applying Pennsylvania law).

-- $ 75,000 where two-year-old girl killed in automobile accident; father employed as sales engineer; mother to return to work when youngest of three remaining children reached school age; deceased described as normal and healthy; parents had anticipated child would have had college degree; award based on parents' background and station in life. Slavin v. Gardner, 274 Pa. Super. 192, 418 A.2d 361 (1979).

-- $ 25,000 wrongful death of six-year-old girl killed in automobile accident while walking home from school at which she was a first grader. Reid v. Swindler, 249 S.C. 483, 154 S.E.2d 910 (1967).

-- $ 10,000 to father and mother for death of their four-year-old child killed in automobile accident. Williams v. Kitchin, 316 F.2d 310 (6th Cir. 1963) (applying Tennessee law).

-- $ 17,500 to parent for death of three-year-old son killed when backed over by truck. J. W. Owen, Inc. v. Bost, 51 Tenn. App. 79, 364 S.W.2d 499 (1961).

-- $ 1.3 million to father for future loss of companionship and mental anguish for loss of his three-year-old daughter in automobile accident; award not contrary to reason. Vogler v. Blackmore, 352 F.3d 150, 62 Fed. R. Evid. Serv. 1439 (5th Cir. 2003) (applying Texas law).

-- $ 50,000 in damages for the conscious pain and mental anguish suffered by four-year-old before his death from railroad crossing collision; child lived approximately two weeks after accident; child was completely paralyzed and generally unresponsive; however, father testified that when he would visit child, child would open his eyes. Luna v. Southern Pacific Transp. Co., 724 S.W.2d 383 (Tex. 1987).

[*5] From birth through age six - Excessive

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death in a vehicular accident of a child under seven years of age were excessive, such as awards of --

-- $ 500,000 (reduced to $ 250,000) for loss of love and affection of five-year-old daughter killed in plane crash; husband killed in same crash and mother would probably not have more children; award had been double highest amount court had previously approved for death of child. Transco Leasing Corp. v. U.S., 896 F.2d 1435 (5th Cir. 1990), amended on other grounds on reh'g in part by, *905 F.2d 61 (5th Cir. 1990)* (applying Louisiana law).

-- $ 49,200 (plus funeral expenses); awarded to nonnegligent father for mental anguish, reduced by 75% which was amount of negligence attributed by jury to mother, who received $ 0, where four-year-old girl killed when struck

by truck as she attempted to cross highway. Stull v. Ragsdale, 273 Ark. 277, 620 S.W.2d 264, 26 A.L.R.4th 385 (1981).

-- $ 25,000 where six-year-old girl killed in accident, survived by father and mother and eight living brothers and sisters; decedent spent last two years living with relatives; new trial granted on issue of damages. Herbertson v. Russell, 150 Colo. 110, 371 P.2d 422 (1962).

-- $ 28,000 (new trial ordered unless remittitur of $ 16,000 made) awarded to estate of child slightly less than six years of age; obedient; A grade in school, healthy, second of four children; killed while alighting from school bus. Hurtig v. Bjork, 258 Iowa 155, 138 N.W.2d 62 (1965).

-- $ 325,000 to mother of three-year-old boy hit and killed by truck, reduced to $ 150,000; lowered amount was appropriate where mother, a single mother, testified to great loss she felt as result of death of her son; received psychiatric care at because she was depressed and suicidal from the death and from witnessing boy's crushed body immediately after accident. Anderson v. New Orleans Public Service, Inc., 583 So. 2d 829 (La. 1991).

-- $ 2 million to each parent for wrongful death in automobile accident of their two-year-old child; while parents' loss was great, that decedent was parents' only child and mother's medical condition did not permit any more children, mother not able to attend child's funeral due to injuries sustained in the accident, and parents would never see their child grow up, reviewing prior awards, highest amount reasonably within jury's discretion was $ 7 million to each parent. Tingle v. American Home Assur. Co., 40 So. 3d 1169 (La. Ct. App. 3d Cir. 2010), writ denied, *48 So. 3d 1095 (La. 2010)* and writ denied, *48 So. 3d 1095 (La. 2010)* and writ denied, *48 So. 3d 1095 (La. 2010)* and writ denied, *48 So. 3d 1096 (La. 2010)* and writ denied, *48 So. 3d 1096 (La. 2010)*.

-- $ 30,000 (ordered reduced to $ 10,000) awarded to three-year-old boy for death of his 5 1/2-year-old sister in automobile accident. *Clair v. Gaudet, 144 So. 2d 638 (La. Ct. App. 4th Cir. 1962)* (overruled on other grounds by, Lewis v. Till, 395 So. 2d 737 (La. 1981)).

-- $ 20,000 (reduced to $ 12,500) awarded to trustee for heirs of 2 1/2-year-old girl killed in automobile accident; child, while healthy and bright, was not shown to possess any unique quality or interest in an objective sense. Palmer v. Haluplzok, 294 F. Supp. 489 (D. Minn. 1969) (applying Minnesota law).

-- $ 75,000 to mother and infant sister of five-year-old adopted girl killed in automobile-truck collision; remittitur of $ 35,000 ordered on pain of new trial; daughter an intelligent, lovable, and beautiful girl; strong bond of affection existing between her and her adopted mother. Bush Const. Co. v. Walters, 250 Miss. 384, 164 So. 2d 900 (1964).

-- unspecified sum reduced per remittitur to $ 12,000 where four-year-old killed in accident; nothing in record on which damage could be based other than apparent good health of infant; award as reduced was still generous. *Burke v. City of New York, 28 A.D.2d 665, 280 N.Y.S.2d 633 (1st Dep't 1967)*.

-- $ 9.5 million for mental distress to parents of two boys age two and five who were killed by truck on city street; award reduced to $ 2.5 million; mother witnessed violent death of two of her children; wrongful death verdicts reduced from $ 5 million for each child to $ 100,000 per child; $ 5 million loss of consortium reduced to $ 200,000. Delosovic v. City of New York, 143 Misc. 2d 801, 541 N.Y.S.2d 685 (Sup 1989), judgment aff'd, *174 A.D.2d 407, 572 N.Y.S.2d 857 (1st Dep't 1991)*.

-- $ 118,800 where four-year-old boy run over and instantly killed by mail truck; amount excessive as compensatory damages; trial court instructed to attempt to measure compensation by loss of companionship and society of infant. D'Ambra v. U. S., 481 F.2d 14, 25 A.L.R. Fed. 168 (1st Cir. 1973) (applying Rhode Island law).

-- $ 200,000 for three-year-old child's conscious pain and mental anguish prior to her death in motor vehicle accident, where there was absolutely no evidence to suggest that child, secured in her child restraint seat directly behind mother, had any hint of impending disaster. Vogler v. Blackmore, 352 F.3d 150, 62 Fed. R. Evid. Serv. 1439 (5th Cir. 2003) (applying Texas law).

[*6] From birth through age six - Amount fixed by court

Under the particular circumstances of the following cases the courts fixed the appropriate amounts of awards of compensatory damages for the death in a vehicular accident of a child under seven years of age, determining sums such as --

-- $ 75,000 where two sons, aged two and three years, of young couple, drowned when ship hit bridge and sent car into water; father drowned trying to rescue one son. *Complaint of Farrell Lines Inc., (S. S. African Neptune), 389 F. Supp. 194, 1976 A.M.C. 1684 (S.D. Ga. 1975).*

-- $ 55,000 to parents of two-year-old girl killed in automobile collision. *Dugal v. Commercial Standard Ins. Co., 456 F. Supp. 290 (W.D. Ark. 1978)* (applying Arkansas law).

-- $ 850,000 for death of each daughter, ages three years and 18 months, when car his wife was driving went off Navy pier due to Navy's failure to make pier safe for vehicular traffic. *Grayson v. U.S., 748 F. Supp. 854 (S.D. Fla. 1990)*, aff'd in part, vacated in part without opinion, *953 F.2d 650 (11th Cir. 1992)* (applying Florida law).

-- $ 1.343 million for six-year-old child killed in collision, growing up in good home which emphasized family, church, school, and community; had excellent relationship with her mother, father, and extended family, as well as her friends at school, at church, and at Girl Scouts; had also shown promise as student and as a person; mother and father never married and did not live together; being reared in single-parent home by working mother and with her father living significant distance away in another state. *Childs v. U.S., 923 F. Supp. 1570 (S.D. Ga. 1996)* (applying Georgia law).

-- $ 1.85 million in damages for loss of services, love, and companionship where five-year-old wandered onto tracks and was killed by freight train; father's life expectancy at time of trial was 27.1 years and mother's life expectancy was 32 years. *Olaniyan v. CSX Transp., Inc., 483 F. Supp. 2d 688 (N.D. Ill. 2007)* (applying Indiana law).

-- $ 200,000 for wrongful death to each parent of six-year-old first grader killed trying to board school bus which was stopped to pick him up on opposite side of road from his house; decedent was parents' youngest biological child; they loved him dearly; born with cleft palate, had undergone several major operations for its correction; had slight hearing loss in right ear; was parents' only child at home; additional $ 50,000 awarded each parent for severe, debilitating, and foreseeable mental anguish or emotional distress where mother heard impact and she and father rushed outside to behold mutilated body of their son; scene was so horrible that school bus driver wisely drove away to avoid exposure of children on bus to its view. *Dunn v. Gentry, 653 So. 2d 783*, 99 Ed. Law Rep. 1164 (La. Ct. App. 3d Cir. 1995), writ denied, *655 So. 2d 335 (La. 1995)*.

-- $ 200,000 to mother of six-year-old son killed when struck in intersection by automobile, where mother had close and loving relationship with son, who was affectionate child, "mamma's boy," who often kissed her, sat on her lap, and brought her flowers almost every day; helped with his two-year-old sister; mother underwent weekly psychotherapy sessions with social worker for 10 months to cope with her grief; was "real nervous" since child's death; half-brother entitled to $ 15,000 in damages for trauma he experienced where he was walking with child at time of accident and had to jump out of way to avoid being hit by car; became withdrawn, and experienced sleeping problems as well as intense guilt feelings; treated by child psychologist weekly for almost a year. *Barnes v. Bott, 615 So. 2d 1337*, 81 Ed. Law Rep. 1219 (La. Ct. App. 4th Cir. 1993), on reh'g, (Mar. 23, 1993) and writ denied, *619 So. 2d 546 (La. 1993)*.

-- $ 50,000 -- $ 25,000 to each parent of four-year-old girl struck by automobile; award for loss of love and affection. *Gonzales v. Xerox Corp., 329 So. 2d 818 (La. Ct. App. 1st Cir. 1976)*.

-- $ 60,000, with $ 15,000 per parent per child for children, aged two and three, killed in one-vehicle accident. *Cain v. Houston General Ins. Co., 327 So. 2d 526 (La. Ct. App. 2d Cir. 1976)*.

-- $ 20,472 ($ 10,000 to each parent, plus $ 472 special damages) awarded to parents of six-year-old boy killed when struck by automobile. Cheramie v. Great Am. Ins. Co., 198 So. 2d 726 (La. Ct. App. 1st Cir. 1967), writ refused, 251 La. 25, 202 So. 2d 649 (1967).

-- $ 1,500 each to mother and father for death of their four-year-old son in accident; evidence showed that mother and father had been separated many times and deceased child did not live with either; $ 317.50 also awarded father for funeral expenses. Maryland v. Allstate Ins. Co., 162 So. 2d 226 (La. Ct. App. 1st Cir. 1964), writ refused, *246 La. 351, 164 So. 2d 352 (1964).*

-- $ 8,500 ($ 1,000 for conscious pain and suffering, and $ 7,500 to parents for death of young girl between two and three years old); automobile accident. Corratti v. State, 20 A.D.2d 166, 245 N.Y.S.2d 561 (3d Dep't 1963).

-- $ 12,500 to administratrix of estate of four-year-old girl run down by automobile and killed instantly; action was brought by administratrix for the benefit, in instant case, of decedent's mother who was the sole beneficiary; trial court refused to consider pecuniary loss of mother as proper element of damages, but included wounded feelings, grief and sorrow, loss of companionship, and loss of love and affection of her daughter. Gregg v. Coleman, 235 F. Supp. 237 (E.D. S.C. 1964) (applying South Carolina law).

[*7] From birth through age six - Adequate

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death in a vehicular accident of a child under seven years of age were adequate, such as awards of --

-- $ 1.4 million (reduced by remittitur from $ 2 million) for wrongful death of each of two boys, aged six and seven, killed when automobile burst into flames after being struck from behind by another car. General Motors Corp. v. Edwards, 482 So. 2d 1176, Prod. Liab. Rep. (CCH) P 10888 (Ala. 1985).

-- $ 50,000 for survival action where six-year-old was caught in school bus door and run over by bus; evidence that child was conscious while being dragged between one and four seconds; no proof to support father's claim that incident lasted 30 seconds or that child ever regained consciousness; $ 25,000 for wrongful death to father also adequate although father alleged close relationship between himself and child including testimony that they, along with mother, lived together as family for three to four years before his relationship with mother ended, and that he saw child on regular basis thereafter; conflicting evidence regarding amount of time father saw child; father admitted that, in two years prior to death, he saw child no more than two or three times per month for no more than 30 minutes at a time, and that he had not seen child at all during month prior to death. Miller v. Thibeaux, 184 So. 3d 856, 327 Ed. Law Rep. 1055 (La. Ct. App. 3d Cir. 2016), writ denied, *191 So. 3d 1035 (La. 2016).*

-- $ 40,000 (which included $ 20,000 to each parent); wrongful death of three-year-old son in driving off road into bayou; loss of love, affection, and companionship. Lopitz v. Louisiana Dept. of Highways, 268 So. 2d 269 (La. Ct. App. 4th Cir. 1972).

-- $ 15,000 including $ 7,500 to each parent; 19-month-old boy hit by truck, robust and healthy; one of 11 children. Boyd v. Sutton, 120 So. 2d 350 (La. Ct. App. 2d Cir. 1960).

-- $ 18,000 to father for death of three-year-old in automobile collision with school bus. Peters v. Independent School Dist. No. 657, Morristown, 477 N.W.2d 757, 71 Ed. Law Rep. 921 (Minn. Ct. App. 1991).

-- $ 0 to father as administrator of his son's estate; child was two years and three months old when killed in an automobile collision; normal child mentally and physically; father 26 years old with live expectancy of 44 years at time of his son's death. Wright v. Hoover, 329 F.2d 72 (8th Cir. 1964) (applying Nebraska law).

-- $ 2,500 where five-year-old girl killed in automobile accident; survived by parents. Mathies v. Kittrell, 1960 OK 62, 350 P.2d 951, 80 A.L.R.2d 1221 (Okla. 1960).

-- $ 700,000 wrongful death of five-year-old killed in truck accident; although expert testimony that value of child's life was $ 1.16 million, where expert, who based his conclusion on parents' education and on money income figures published by Department of Commerce, added fringe benefits and omitted personal maintenance costs. Thurmon v. Sellers, 62 S.W.3d 145 (Tenn. Ct. App. 2001).

-- $ 17,500 awarded to parent for death of three-year-old son killed when backed over by truck. J. W. Owen, Inc. v. Bost, 51 Tenn. App. 79, 364 S.W.2d 499 (1961).

[*8] From birth through age six - Inadequate

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death in a vehicular accident of a child under seven years of age were inadequate, such as awards of --

-- $ 1,520 (in addition to $ 25,000 to mother individually) to mother as administratrix of estate of five-year-old son killed in automobile accident; child was bright, healthy, and attractive and was being raised in wholesome family environment with his fortunes on rise; administratrix entitled to some damages for loss of decedent's prospective estate; new trial granted. Perez v. American Mut. Liability Ins. Co., 288 So. 2d 541 (Fla. 2d DCA 1973).

-- $ 5,000 to estate of four-year-old child passenger killed in train-van collision; $ 2,116 of award covered amount spent by estate for child's funeral and burial expenses; evidence that decedent was intelligent, vivacious child who brought love and joy to her father; presumption of pecuniary loss was in force and was unrebutted. Carter v. Chicago & Illinois Midland Ry. Co., 168 Ill. App. 3d 652, 119 Ill. Dec. 194, 522 N.E.2d 856 (4th Dist. 1988) (overruled on other grounds by, In re Estate of Finley, 151 Ill. 2d 95, 176 Ill. Dec. 1, 601 N.E.2d 699 (1992)).

-- $ 1,500 (of which $ 595.90 was for medical, hospital, and burial expenses; new trial ordered as to both liability and damages) awarded to administrator of estate of 18-month-old boy killed by backing truck; recovery permitted for grief, anguish, and loss of companionship, as well as for pecuniary loss to parents. Corman v. WEG Dial Tel., Inc., 194 Kan. 783, 402 P.2d 112 (1965).

-- $ 0 to father of 7 1/2-year-old son, raised to $ 50,000 as lowest reasonable amount for death from accident while child was riding all-terrain vehicle; where although parents divorced and child lived with his mother, child and father enjoyed close and continuing relationship. Antley v. Yamaha Motor Corp., U.S.A., 539 So. 2d 696, Prod. Liab. Rep. (CCH) P 12203 (La. Ct. App. 3d Cir. 1989).

-- $ 15,850 (which included $ 8,350 to father and $ 7,500 to mother), increased to $ 25,850 ($ 13,350 to father and $ 12,500 to mother); five-year-old girl killed when struck by truck. Yates v. Kimble, 256 So. 2d 303 (La. Ct. App. 1st Cir. 1971).

-- $ 1,500 (increased to $ 5,000 divided between parents); death of child of expectant mother injured in automobile accident; child lived for an hour after delivery; parents had one other child, aged 10; parents did not see child. Bell v. Sparrow, 220 So. 2d 729 (La. Ct. App. 1st Cir. 1969).

-- $ 18,884.40 ($ 9,884.40 to father and $ 9,000 to mother), increased to $ 21,428.90 ($ 11,428.90 to father and $ 10,000 to mother), for death of daughter aged six years, 10 months, and eight days; struck by automobile. Keller v. Louque, 159 So. 2d 347 (La. Ct. App. 4th Cir. 1964).

-- $ 2,500 to each parent, increased to $ 7,500 to each parent; 2 1/2-year-old deaf and dumb child killed by being run over by automobile. Burnaman v. LaPrairie, 140 So. 2d 710 (La. Ct. App. 3d Cir. 1962).

-- $ 7,000 to parents of 22-month-old child killed in automobile accident; hospital, doctors', funeral and cemetery expenses of $ 2,732.80; life expectancy of 74.8 years; net value of life estimated at $ 129,89

new trial ordered unless additur of $ 13,000 accepted by defendants. Warren v. Allgood, 344 So. 2d 151 (Miss. 1977).

-- $ 500 to mother for death of her seven-month-old illegitimate child; automobile accident; reversed and remanded on issue of damages. *Hinton v. Delcher Bros. Moving & Storage Co., 250 Miss. 535, 160 So. 2d 694 (1964)*, suggestion of error sustained, *250 Miss. 535, 162 So. 2d 651 (1964)* and opinion amended on other grounds, *167 So. 2d 813 (Miss. 1964)*.

-- $ 5,000 for death of six-year-old child in automobile accident; although recognizing verdict as inadequate, court refused to grant a new trial on damage issue alone, where jury's verdict was possibly a compromise verdict because of close question as to liability. *Barton v. Griffith, 253 F. Supp. 774 (D.S.C. 1966)* (applying South Carolina law).

-- $ 2,000 new trial ordered; five-year-old twin boy fatally injured in automobile-pedestrian accident; medical and funeral expenses totaled $ 1,452, leaving only $ 548 for pecuniary loss, grief, and suffering, and loss of companionship, society, and love; some evidence verdict was result of compromise following close question on liability. *Lanning v. Schulte, 82 S.D. 528, 149 N.W.2d 765 (1967)*.

-- $ 3,000 for death of 20-month-old boy who was run over by his uncle; special damages totaled $ 2,951.31, leaving little for grief, solace, and loss of companionship; inadequate as matter of law. *Hall v. Hall, 240 Va. 360, 397 S.E.2d 829 (1990)*.

[*9] From seven through 13 years old - Not excessive

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death in a vehicular accident of a child from seven through 13 years old were not excessive, such as awards of --

-- $ 150,000 awarded to father of eight-year-old girl who died in an airplane crash; father had been a very happy family man, vigorous in his life and work, but was crushed by this sudden tragedy, which also claimed his wife and another daughter, and remained lost and disturbed. *Winbourne v. Eastern Airlines, Inc., 758 F.2d 1016 (5th Cir. 1984)*.

-- $ 75,000 compensatory damages where seven-year-old died when his grandmother's new pickup truck stalled and was struck by tractor trailer truck. *General Motors Corp. v. Johnston, 592 So. 2d 1054*, Prod. Liab. Rep. (CCH) P 13074 (Ala. 1992).

-- $ 35,000 to estate of 11-year-old girl killed in railroad crossing accident; honor roll student; extremely good health; well-adjusted socially; fine relationship with family. *Southern Pac. Co. v. Barnes, 3 Ariz. App. 483, 415 P.2d 579 (1966)*.

-- $ 65,000 -- $ 50,000 to parents and $ 7,500 each to a brother and sister of an eight-year-old boy who was killed when an automobile in which he was a passenger was struck by train. *Scoville v. Missouri Pac. R. Co., 458 F.2d 639 (8th Cir. 1972)* (applying Arkansas law).

-- $ 35,000 (including $ 2,000 funeral expenses) awarded to administratrix of estate of 12-year-old girl struck by automobile and killed instantly; decedent was good student and possessed unusual musical talent; mother required medical attention because of resulting mental anguish; decedent had helped with housework. *Norman v. Gray, 238 Ark. 617, 383 S.W.2d 489 (1964)*.

-- $ 25,000 awarded to father and mother for mental anguish, plus $ 664.52 funeral expenses; automobile collision killing 10-year-old girl. *Tiner v. Tiner, 238 Ark. 222, 379 S.W.2d 425 (1964)*.

-- $ 5 million past and $ 10 million future damages to each parent of 13-year-old son who was 98% burned in automobile accident and died two hours after reaching hospital. *General Motors Corp. v. McGee, 837 So. 2d 1010*, Prod. Liab. Rep. (CCH) P 16477 (Fla. 4th DCA 2002), as modified on clarification, (Mar. 5, 2003).

-- $ 1.2 million for wrongful death of mother's 10-year-old daughter and $ 800,000 for wrongful death of her three-year-old daughter, and $ 500,000 to three-year-old's father, where train hit crossing car driven by mother; rejected trial court's remittiturs of $ 500,000 from verdict for mother and $ 250,000 from verdict for father, or a new trial on damages; mother had received extensive psychiatric counseling after accident, missed months of work, and was still on medication at time of trial; father had been attentive and loving father and was deeply grieved by daughter's death; jury could form reasoned and substantiated judgment about relationships within this family and grievous loss. Hawk v. Seaboard System R.R., Inc., 547 So. 2d 669 (Fla. 2d DCA 1989).

-- $ 25,000 awarded to mother of 7 1/2-year-old boy killed by truck while crossing an intersection. *Ryder Truck Rental, Inc. v. Cooper, 159 So. 2d 254 (Fla. 2d DCA 1963).*

-- $ 8 million in product liability action for full value of 11-year-old car crash victim's life, $ 1 million for conscious pain and suffering, and $ 3,000 for funeral expenses, was not excessive; death from postcollision fire and heat. Mason v. Ford Motor Co., Inc., 307 F.3d 1271, Prod. Liab. Rep. (CCH) P 16431, 53 Fed. R. Serv. 3d 1330 (11th Cir. 2002) (applying Georgia law).

-- $ 1.2 million to parents of seven-year-old child killed in multiple car collision; court stating that while no earning capacity had been established, value of child's life could be established by the enlightened conscience of an impartial jury as applied to the evidence in the case, including testimony as to the child's age, life expectancy, precocity, health, mental and physical development, and family circumstances. Reliance Ins. Co. v. Bridges, 168 Ga. App. 874, 311 S.E.2d 193, 49 A.L.R.4th 1047 (1983).

-- $ 80,000 awarded to mother of 12-year-old girl killed in crossing collision between automobile and train; performed services around home in efficient manner; obedient person of average intelligence, and determined individual. Seaboard Coast Line R. Co. v. Duncan, 123 Ga. App. 479, 181 S.E.2d 535 (1971).

-- $ 55,000 general damages to estate and parents, plus $ 7,315.52 special damages, less 20% for fault of 10-year-old child who was struck and killed while crossing a road, in or near crosswalk. Wiegand v. Colbert, 68 Haw. 472, 718 P.2d 1080 (1986).

-- $ 35,000 for wrongful death of 11-year-old girl in automobile accident; court noting size of awards in similar cases. Kinney v. Smith, 95 Idaho 328, 508 P.2d 1234 (1973).

-- $ 75,000 (including $ 50,000 punitive damages); 12-year-old boy killed when attempting to board bus; oldest of four children, he did all outside family chores, repaired watches and television sets and was employed by newspaper; contributed to family purchases; assisted parents in caring for children; planned to go to college. Mattyasovszky v. West Towns Bus Co., 21 Ill. App. 3d 46, 313 N.E.2d 496 (2d Dist. 1974), judgment aff'd, 61 Ill. 2d 31, 330 N.E.2d 509 (1975).

-- $ 10,000 to mother as administratrix of estate of deceased 11-year-old girl struck after alighting from double-parked taxi in which she had been a passenger; mother, nine-year-old sister, and 14-year-old brother survived. Shanowat v. Checker Taxi Co., 48 Ill. App. 2d 81, 198 N.E.2d 573 (1st Dist. 1964).

-- $ 1,250 to sole next of kin, an 18-month-old boy for death of his eight-year-old brother in automobile accident. Thomas v. Cagwin, 43 Ill. App. 2d 336, 193 N.E.2d 233 (2d Dist. 1963).

-- $ 160,000 (included $ 100,000 awarded to father as administrator); seven-year-old boy killed when accelerator stuck on automobile in school yard; described as very intelligent with unusual talent for drawing cartoons; portion of award based on value of estate that would have accumulated had child lived out normal life span; survived by parents. Haumersen v. Ford Motor Co., 257 N.W.2d 7 (Iowa 1977).

-- $ 25,000 for wrongful death of 10-year-old pedestrian hit by car; good student; attractive; in apparent good health; pleasing countenance; life expectancy 60 years. Leger v. Watkins, 449 S.W.2d 423 (Ky. 1970).

-- $ 350,000 for mental anguish and $ 125,000 for loss of consortium to each parent where 12-year-old daughter killed in van-train collision; they witnessed their oldest daughter lying at accident scene; mother had continual feelings of guilt over not driving girls to church herself; close family before accident and they always did some type of activity together; strain placed on marriage by accident; parents also confronted with severe quadriplegic injuries sustained by other sibling, which complicated their grieving process because family lived with accident daily. Duncan v. Kansas City Southern Railway Co., 773 So. 2d 670 (La. 2000).

-- $ 897,400 in general damages to parent of 12-year-old son killed in accident in wrongful death suit, in light of evidence of parent and son's pain, suffering, and distress. Scarbrough v. O.K. Guard Dogs, 879 So. 2d 239 (La. Ct. App. 1st Cir. 2004), writ denied, *882 So. 2d 1127 (La. 2004)*.

-- $ 150,000 for mental anguish, and $ 350,000 wrongful death, to mother of 11-year-old who died in accident where one of mother's last memories of her daughter was looking over at her after accident and noticing her head was half-missing and that she was making gurgling sound; severe depression since accident, severe posttraumatic stress; still carried teddy bear daughter had been carrying; $ 150,000 in survival action high but not abuse of discretion where although daughter did not live long after accident she was obviously aware that she was hurt seriously; she could follow commands as she was able to squeeze reverend's hand on request; very probable that she saw bus just as it was about to directly impact side of car where she was seated; mother heard her gurgling. Cox v. Moore, 805 So. 2d 277 (La. Ct. App. 3d Cir. 2001), writ denied, *817 So. 2d 94 (La. 2002)*.

-- $ 272,000 to mother in general damages where 10-year-old daughter was killed in one-car rollover accident while mother driving, caused in part by defect in highway. Petre v. State ex rel. Dept. of Transp. and Development, 775 So. 2d 1252 (La. Ct. App. 3d Cir. 2000), writ granted, *793 So. 2d 171 (La. 2001)* and judgment aff'd on other grounds, 817 So. 2d 1107 (La. 2002).

-- $ 450,000 to each parent of 11-year-old child killed when struck by a car; trial court noted that this family was one of closest he had observed; child was active in school and dance which her parents always attended; well-rounded, creative person; loss of child devastating loss to family and friends; family had therapy including group therapy to handle their grief; father identified book that child's friends and classmates assembled about her; $ 50,000 not excessive for emotional distress to mother and brother where they saw her struck and killed as she crossed highway; brother had episodes of crying and illness; mother was still obtaining counseling and worked half days with minimum work load. *Craighead v. Preferred Risk Mut. Ins. Co., 769 So. 2d 112 (La. Ct. App. 2d Cir. 2000)*, writ denied, *777 So. 2d 1230 (La. 2000)*.

-- $ 175,000 to each parent for wrongful death of 11-year-old son in accident, and survival award of $ 7,500 for "pre-impact fear" experienced by son prior to death.; as to wrongful death, son and his parents experienced unusually close, loving relationship as older brothers were married so he was like an only child; mother took piano lessons so she could accompany her son during his violin lessons and recitals; parents completely devastated by son's death; mother had extensive counseling, went to son's grave twice daily for three years; as to pre-impact fear, reasonable for trial court to conclude that son was probably extremely frightened while being thrown around in truck as it overturned several times and as he was ejected from vehicle. Hood v. State Through Dept. of Transp. and Development, 587 So. 2d 755 (La. Ct. App. 2d Cir. 1991), writ denied, *590 So. 2d 81 (La. 1991)* and writ denied, *590 So. 2d 82 (La. 1991)* and writ denied, *590 So. 2d 82 (La. 1991)*.

-- $ 150,000 awarded to parents of 11-year-old girl killed when automobile she was riding in dropped off road onto shoulder and went out of control; girl described as being unusually gifted and intelligent, and as having close and loving relationship to mother and three-year-old brother. Knotts v. State, Dept. of Highways, 395 So. 2d 419 (La. Ct. App. 3d Cir. 1981), writ denied, *400 So. 2d 669 (La. 1981)* and writ denied, *400 So. 2d 670 (La. 1981)*.

-- $ 125,000 to mother of three children, age 15, 13, and 9 killed in truck accident; children had intimate and affectionate relationship with mother; did well in school, active and well adapted socially; two married daughters also killed. *Dixon v. Wiley, 325 So. 2d 653 (La. Ct. App. 3d Cir. 1975)*.

-- $ 80,000 which included $ 40,000 to each parent for death of 13-year-old child killed in automobile accident; loss of love and affection; helped parents with a business enterprise which included working with horses; close and

devoted family; exceptional student. Wright v. Romano, 279 So. 2d 735 (La. Ct. App. 1st Cir. 1973), writ denied, *281 So. 2d 757 (La. 1973)* and writ denied, *281 So. 2d 758 (La. 1973)*.

-- $ 30,000 ($ 15,000 to each parent) for death of 13-year-old boy; collision between automobile and motor bike; only child; well-rounded boy of whom parents could be proud. McConathy v. United Services Auto. Ass'n, 188 So. 2d 470 (La. Ct. App. 3d Cir. 1966).

-- $ 24,000 ($ 12,000 to each parent); 13 1/2-year-old boy of above average intelligence nit by automobile while riding his bicycle; close and affectionate family. Fontenot v. Wood, 140 So. 2d 34 (La. Ct. App. 3d Cir. 1962).

-- $ 1.145 million to administrator of 13-year-old boy's estate when he was hit and killed by city garbage truck; loss of society and companionship shown; left two parents and three siblings. May v. City of Grosse Pointe Park, 122 Mich. App. 295, 332 N.W.2d 411 (1982).

-- $ 10,000 for each of two eight-year-old children killed in train-automobile collision. Van Buskirk v. Missouri-Kansas-Texas R. Co., 349 S.W.2d 68 (Mo. 1961).

-- $ 15,000 for death of 13-year-old girl; car in which girl was riding hit rear end of truck just ahead which stopped without warning. Lafferty v. Wattle, 349 S.W.2d 519 (Mo. Ct. App. 1961).

-- $ 40,000 where 11-year-old girl killed when hit by pickup truck while riding bicycle at night; described as bright and companionable. Caradori v. Fitch, 200 Neb. 186, 263 N.W.2d 649 (1978).

-- $ 57,000 to parents of seven-year-old boy killed by automobile while riding bicycle; work life expectancy of 43.4 years; father's net average income of $ 4,978 used as basis for predicting earning capacity of son. *Wilson v. Wylie, 86 N.M. 5, 518 P.2d 1209 (1974)*.

-- $ 50,000 to parents of 12-year-old boy struck by automobile; court considering proof of age, character, and condition of youth. Parilis v. Feinstein, 49 N.Y.2d 984, 429 N.Y.S.2d 165, 406 N.E.2d 1059 (1980).

-- $ 20,750 awarded to father for death of 13 1/2-year-old son; father in poor health, and son showed evidence of industry and demonstrated inclination to help father; child died less than one hour after automobile accident and did not regain consciousness. *Bruck v. Meatto Trucking Corp., 20 A.D.2d 521, 245 N.Y.S.2d 232 (1st Dep't 1963)*.

-- $ 2.5 million in general damages, $ 20 in property damage, and $ 2,996.57 in funeral expenses for death of 10-year-old child in railroad crossing accident; damages for loss of 10-year-old girl not easily quantifiable, so court would not disturb jury's damage award. Sheets v. Norfolk S. Corp., 109 Ohio App. 3d 278, 671 N.E.2d 1364 (3d Dist. Seneca County 1996).

-- $ 50,000 (which was in addition to $ 1,568 award in death action) to estate of 8 1/2-year-old accident victim who was practically assured of lifetime employment in father's prosperous and growing business. Blisard v. Vargo, 185 F. Supp. 73 (E.D. Pa. 1960), judgment aff'd, *286 F.2d 169 (3d Cir. 1961)* (applying Pennsylvania law).

-- $ 35,000 ($ 6,000 consideration received for covenant not to sue driver offset against amount); nine-year-old girl struck by car when she ran out from behind defendant's truck. Truesdale v. South Carolina Highway Dept., 264 S.C. 221, 213 S.E.2d 740 (1975) (overruled on other grounds by, McCall by Andrews v. Batson, 285 S.C. 243, 329 S.E.2d 741, 25 Ed. Law Rep. 656 (1985))

-- $ 310,000 survival damages where eight-year-old daughter killed while crossing road; support for finding conscious pain and suffering where father testified that when he first arrived at accident, his daughter was gasping for air and moaning somewhat, and in hospital she had movement with her fingers. Smalls v. South Carolina Dept. of Educ., 339 S.C. 208, 528 S.E.2d 682, 144 Ed. Law Rep. 435 (Ct. App. 2000).

-- $ 16,500 to estate of seven-year-old girl for loss of companionship, society, advice, assistance, and protection; killed in automobile-pedestrian accident; bright, affectionate, kindly child who did well in school and church

activities; energetic, active, obedient, helpful child and integral part of close-knit family. Anderson v. Lale, 88 S.D. 111, 216 N.W.2d 152 (1974).

-- $ 75,000 where 11-year-old boy killed when struck by bus backing up street. Strother v. Lane, 554 S.W.2d 631 (Tenn. Ct. App. 1976).

-- $ 20,000 to parents of 11-year-old boy killed when struck by automobile; strong, healthy, intelligent, with above average grades in school. McBee v. Williams, 56 Tenn. App. 232, 405 S.W.2d 668 (1966).

-- $ 50,000 (reduced at suggestion of trial judge from $ 76,105 and accepted by plaintiff) to estate of nine-year-old boy with life expectancy of 60.8 years, killed in automobile-train collision; industrious with good personal habits. Southern Ry. Co. v. Sloan, 56 Tenn. App. 380, 407 S.W.2d 205 (1965).

-- $ 22,500 for the deaths of each of two girls; aged 11 and 13, when struck by train while crossing railroad bridge. Southern Ry. Co. v. Miller, 285 F.2d 202, 85 A.L.R.2d 842 (6th Cir. 1960) (applying Tennessee law).

-- $ 1.57 million total where seven-year-old hit by truck; award to mother of $ 100,000 for past loss of society, $ 300,000 for future loss of society, $ 200,000 for past mental anguish, and $ 200,000 for future mental anguish where she exhibited signs of paranoia, hysteria, and severe anger as result of her son's death; $ 60,000 for future loss of society and $ 100,000 for future mental anguish to father where good relationship with son; $ 600,000 conscious pain and mental anguish where testimony that he was moaning and screaming; felt severe pain for at least 15 minutes. Guzman v. Guajardo, 761 S.W.2d 506 (Tex. App. Corpus Christi 1988), writ denied, (June 14, 1989).

-- $ 9,500 awarded to father for death of son killed when boy fell from and was struck by employer's backing truck (included $ 4,500 for loss of son's services and contributions to family; $ 5,000 for son's mental anguish before death); 13-year-old boy was youngest of 5 children, had for past two years contributed to family income by picking watermelons full time during summer and by selling newspapers after school; since mother's death two years prior to fatal accident, boy willingly took responsibility for household chores, including cooking family meals; described as hard working and extraordinary. Green v. Hale, 590 S.W.2d 231 (Tex. Civ. App. Tyler 1979).

[*10] From seven through 13 years old - Excessive

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death in a vehicular accident of a child from seven through 13 years old were excessive, such as awards of --

-- $ 1.56 million where 13-year-old child died as result of automobile accident caused by uninsured motorist; repetitive, highly emotional testimony on mother's inability to cope with her son's death, and impermissible "golden rule" arguments made in closing argument so infected proceeding that jury's award had to be reversed as being product of passions and emotions rather than evidence presented. Harbor Ins. Co. v. Miller, 487 So. 2d 46 (Fla. 3d DCA 1986).

-- $ 20,000 remanded to trial court to enter appropriate remittitur or grant new trial on question of damages; award to administrator of estate of eight-year-old girl killed in automobile collision. Burch v. Gilbert, 148 So. 2d 289 (Fla. 1st DCA 1963).

-- $ 937,500 to husband upon death of wife, mother, and eight-year-old son; lump-sum verdict; death caused by airplane crash; court, in ordering remittitur or new trial on issue of damages stated that maximum that could be awarded for death of wife was $ 250,000 for emotional loss, apart from economic loss, maximum award for loss of mother was $ 150,000, and for loss of son was $ 225,000. Caldarera v. Eastern Airlines, Inc., 705 F.2d 778, 12 Fed. R. Evid. Serv. 1996 (5th Cir. 1983) (applying Louisiana law).

-- $ 237,500 (reduced to $ 178,125) awarded to 11-year-old boy; figure included damages for death in automobile accident of 43-year-old father and 44-year-old mother, who had been very close to him, and nine-year-old sister, to whom he was closely attached. *Thibodeaux v. Brown Oil Tools, Inc., 192 F. Supp. 495 (W.D. La. 1961)*, judgment aff'd, *307 F.2d 295 (5th Cir. 1962)* (applying Louisiana law).

-- $ 840,000 to mother and $ 360,000 to father for wrongful death of 10-year-old daughter hit by a truck as she crossed the street, reduced to $ 575,000 to mother and $ 250,000 to father, based on comparison with other cases in which damages had been awarded to parents for wrongful death of child; loss of child was emotionally traumatic to parents; however, while father visited child regularly and contributed to her support throughout her life, child did not live with him or visit him at his home, but child had lived with mother since birth and mother organized her life around child's care and activities. *Rideau v. State Farm Mut. Auto. Ins. Co., 970 So. 2d 564 (La. Ct. App. 1st Cir. 2007)*, writ denied, *972 So. 2d 1168 (La. 2008)*.

-- $ 6,581 (of which $ 581 was for burial expenses, doctors' bills, and ambulance charge; verdict set aside on instant appeal, and judgment of $ 3,581 entered) awarded to estate of 13-year-old child killed in automobile collision; life expectancy of 56.57 years; died a few hours after collision, never regaining consciousness; decedent was born with cerebral palsy, which affected her balance; had been unable to walk without aid of crutches or a walker; could not hear or talk, but could see; prior to accident only work performed was washing household dishes and helping with household chores. *Pierce v. Mowry, 106 N.H. 306, 210 A.2d 484 (1965)*.

-- $ 25,000 for conscious pain and suffering reduced to $ 15,000; also awarded $ 50,000 for wrongful death; 12-year-old boy killed when bicycle struck by automobile; remained conscious slightly over one hour after accident. *Parilis v. Feinstein, 71 A.D.2d 617, 418 N.Y.S.2d 138 (2d Dep't 1979)*, order aff'd, *49 N.Y.2d 984, 429 N.Y.S.2d 165, 406 N.E.2d 1059 (1980)*.

-- $ 65,000 for death in accident of child nearly 10 years old; highly intelligent; helpful and affectionate at home; remittitur to *$ 40,000. Lewis v. Mecca, 56 A.D.2d 716, 392 N.Y.S.2d 773 (4th Dep't 1977)*.

-- $ 3.2 million, with $ 2.3 million economic loss and $ 900,000 pain and suffering, where nine-year-old killed in accident, remittitur of pain and suffering award to $ 200,000; child died from third degree burns over 100% of his body; expert opinion that he was conscious for only several seconds after impact prior to his death. *Teamann v. Zafris, 811 A.2d 52 (Pa. Commw. Ct. 2002)* (abrogated on other grounds by, *McCreesh v. City of Philadelphia, 585 Pa. 211, 888 A.2d 664 (2005))*.

-- $ 1.25 million where 13-year-old pedestrian killed by vehicle; remittitur of $ 598,768 and total damage award of $ 651,232; no evidence of pain and suffering; no proof victim conscious after accident; expert testimony evidenced that pecuniary value of life was likely to have been *$ 645,000. Dunn v. Davis, 2007 WL 674652 (Tenn. Ct. App. 2007)*.

-- $ 35,000 reduced by $ 8,000, where 10-year-old girl killed as result of automobile accident; survived by parents, a sister aged 30, a brother aged 28, a brother aged 15, and a retarded brother aged 10; deceased helped care for retarded brother. *Denby v. Davis, 212 Va. 836, 188 S.E.2d 226 (1972)*.

[*11] Decedent from seven through 13 years old - Amount fixed by court

Under the particular circumstances of the following cases the courts fixed the appropriate amounts of awards of compensatory damages for the death in a vehicular accident of a child from seven through 13 years old years old, determining sums such as --

-- $ 175,000 to mother where seven-year-old bicycle rider was hit by a postal truck; child lived with his mother and they had close, loving relationship; $ 100,000 although child did not live with his father at time of his death, they had continued to see each other; father continued to take interest in his son's happiness and well-being. *Wilson v. U.S., 874 F. Supp. 128 (M.D. La. 1995)* (applying Louisiana law)

-- $ 28,668.98 where 13-year-old adopted daughter died in collision; lived with step father for approximately 10 years; close relationship; $ 5,000 damages awarded to natural mother who relinquished custody of daughter approximately seven years prior to accident; infrequent personal contact, but mother and daughter maintained communication through telephone calls and letters. *Chausse v. Southland Corp., 400 So. 2d 1199 (La. Ct. App. 1st Cir. 1981)*, writ denied, *404 So. 2d 278 (La. 1981)* and writ denied, *404 So. 2d 497 (La. 1981)* and writ denied, *404 So. 2d 498 (La. 1981)*.

-- $ 81,275.51 awarded to parents of 12-year-old child struck by automobile; $ 40,000 awarded to each parent and $ 1,275.51 awarded to father as special damages; affectionate child, athletic and outgoing; very close to parents. *Alizzi v. Employers Ins. of Wausau, 351 So. 2d 258 (La. Ct. App. 3d Cir. 1977)*, writ denied, *353 So. 2d 1037 (La. 1978)* and writ denied, *353 So. 2d 1037 (La. 1978)*.

-- $ 70,000 where 11-year-old boy injured in automobile accident at age 7; died during epileptic seizure four years later. *McMullan v. Travelers Ins. Co., 311 So. 2d 902 (La. Ct. App. 2d Cir. 1975)*, writ denied, *313 So. 2d 840 (La. 1975)*.

-- $ 31,726 (which included $ 15,000 to each parent and $ 1,726 funeral and burial expenses); 11-year-old boy killed instantly when bicycle he was riding collided with automobile; parents had a number of other children. *Boudreaux v. Allstate Ins. Co., 258 So. 2d 710 (La. Ct. App. 3d Cir. 1972)*.

-- $ 10,000 to mother for death of 10-year-old daughter killed in automobile accident. *Breaux v. Flithers, 144 So. 2d 574 (La. Ct. App. 4th Cir. 1962)*.

-- $ 14,152.59 ($ 4,152.59 special damages, $ 5,000 to surviving father, and $ 5,000 to surviving mother) where 11-year-old child killed when automobile in which he was riding collided at night with bull on highway. *Kennedy v. Frierson, 142 So. 2d 838 (La. Ct. App. 2d Cir. 1962)*.

[*12] From seven through 13 years old - Adequate

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death in a vehicular accident of a child from seven through 13 years old were adequate, such as awards of --

-- $ 1.4 million (reduced by remittitur from $ 2 million) for wrongful death of each of two boys, aged six and seven, killed when automobile burst into flames after being struck from behind by another car. *General Motors Corp. v. Edwards, 482 So. 2d 1176*, Prod. Liab. Rep. (CCH) P 10888 (Ala. 1985).

-- $ 12,000 awarded to parents of eight-year-old girl killed in automobile accident; burial expenses amounted to $ 1,01

court stating that the verdict did not present the gross inadequacy requiring an additur. *Hernandez v. State, 128 Ariz. 30, 623 P.2d 819 (Ct. App. Div. 2 1980)*.

-- $ 50,000 for past pain and suffering, and $ 100,000 for future pain and suffering, to noncustodial father of 11-year-old son who died in automobile accident. *Collins v. Douglass, 874 So. 2d 629 (Fla. 4th DCA 2004)*.

-- $ 50,000 -- $ 25,000 to each parent of eight-year-old girl killed when struck by automobile; found to be comparable to other awards in similar cases. *Dupuy v. Pierce, 285 So. 2d 321 (La. Ct. App. 3d Cir. 1973)*.

-- $ 11,000 where 7 1/2-year-old-girl killed when struck by automobile; had IQ of between 40 and 50; was able to bathe and dress herself; helped wash and dry dishes and made beds; neighbors testified that they loved the child and at times looked after her; parents resisted physician's suggestion that the child should be placed in special school; mother was divorced and sole support for child and her other two children. *Comeaux v. Dupuis, 254 So. 2d 687 (La. Ct. App. 3d Cir. 1971)*.

-- $ 1,500 each; 9- and 13-year-old children killed in automobile accident, children, whose parents were divorced, made no contribution of earnings other than to their own support and probably would not have done so in future. *Selders v. Armentrout, 192 Neb. 291, 220 N.W.2d 222 (1974)*.

-- $ 0 to father for death of 12-year-old daughter in accident; oldest of four children; no pecuniary loss said to have resulted to father from death of child. *Donlea v. Carpenter, 21 Wis. 2d 390, 124 N.W.2d 305 (1963)*.

[*13] From seven through 13 years old - Inadequate

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death in a vehicular accident of a child from seven through 13 years old were inadequate, such as awards of --

-- $ 1,000 to father of 12-year-old boy killed in automobile accident; bright student; in good health and active in sports; energetic and cooperative. *State v. Watson, 7 Ariz. App. 81, 436 P.2d 175 (1967)*.

-- $ 50,000 compensation for the mother's mental pain and suffering caused by 12-year-old daughter and elder child's death through negligent operation of van driven by father and mother's ex-husband; low amount due to defense counsel artfully injecting irrelevant and highly prejudicial and inflammatory issues of harm caused to father by accident; mother, not knowing extent of injury, was called to hospital where her daughter lay critically injured; let into her child's hospital room only to see her dying before her eyes; relationship between mother and daughter, who was universally described as fine and lovable child, was particularly close; award represented little more than $ 1,000 per year for mother's 44-year projected life expectancy. *Ballard v. American Land Cruisers, Inc., 537 So. 2d 1018 (Fla. 3d DCA 1988)*.

-- $ 40,000 (increased to $ 60,000 to each parent); for wrongful death of only daughter in automobile accident; close family relationship; normal amount of love and affection between parents and daughter. *Durrett v. State, 416 So. 2d 562 (La. Ct. App. 1st Cir. 1982)*, writ denied, *421 So. 2d 247 (La. 1982)* and writ denied, *421 So. 2d 251 (La. 1982)* and writ denied, *421 So. 2d 248 (La. 1982)*.

-- $ 26,276.35 which included $ 12,500 to each parent; increased by appellate court to $ 25,000 to each parent of 12-year-old boy killed in pedestrian-truck accident; only son among nine children; family group had close, religious association; child suffered massive injuries, living for approximately four hours and suffering considerable pain. *Jackson v. Jones, 288 So. 2d 432 (La. Ct. App. 4th Cir. 1974)*.

-- $ 4,500 awarded to parents of nine-year-old boy who was killed when hit by automobile after getting out of school bus; award also made to father for medical and funeral expenses; increased to $ 7,000 to each parent. *Sepulvado v. General Fire & Cas. Co., 146 So. 2d 428 (La. Ct. App. 3d Cir. 1962)*.

-- $ 5,000 (which included $ 2,430 for medical and burial expenses) to surviving family, which included parents, three brothers, and two sisters; deceased, struck by automobile, was 12-year-old, outgoing and enthusiastic, good, average sixth grade student, played piano and French horn in band, obedient and diligent worker at home; enjoyed horseback riding. *Burlingame v. Southwest Drug Stores of Miss., Inc., 203 So. 2d 74 (Miss. 1967)*.

-- $ 2,500 to parent for wrongful death of 11-year-old son in collision, described as friendly boy who helped parents at home and with farming; in good health except for having had kidney removed. *Toole v. Toole, 260 S.C. 235, 195 S.E.2d 389 (1973)*.

[*14] From 14 until 21 - Not excessive

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death in a vehicular accident of a child from 14 until 21 years old were not excessive, such as awards of --

-- $ 252,000 where 18-year-old college student killed in automobile accident; attended university on full scholarship and stood fourth in honors program; tentative plans to become attorney; outstanding athlete and accomplished scholar; survived only by mother who at time of accident was 41 years of age and in excellent health and had life expectancy of 35 years; evidence that son had voiced intention to support his mother as soon as he finished his education, so that she would not have to work. Hart v. Forchelli, 445 F.2d 1018 (2d Cir. 1971).

-- $ 50,000 to parents for each of two teenage boys killed by automobile while lying on highway. Dees v. Gilley, 339 So. 2d 1000 (Ala. 1976).

-- $ 50,000 for 18-year-old university student killed in automobile accident. Magnusson v. Swan, 291 Ala. 151, 279 So. 2d 422 (1973).

-- $ 1,564,071.40 for predeath pain and suffering and mother's past and future economic and noneconomic damages; where an 18-year-old snow machine operator was killed when he went into hole in ice; he was unemployed, but hunted and fished for Native subsistence foods that he shared with his mother; also helped his mother around house by cooking, cleaning, and doing maintenance work. North Slope Borough v. Brower, 215 P.3d 308 (Alaska 2009).

-- $ 72,500, with $ 60,000 to mother and $ 12,500 to sister of 18-year-old boy killed when automobile which he was driving was struck by train. Scoville v. Missouri Pac. R. Co., 458 F.2d 639 (8th Cir. 1972) (applying Arkansas law).

-- $ 500,000; there was considerable testimony concerning mental anguish suffered by parents due to loss of their 15-year-old son in motorcycle accident. Warhurst v. White, 310 Ark. 546, 838 S.W.2d 350 (1992).

-- $ 40,000, with $ 25,000 to mother and $ 15,000 to father of 17-year-old female passenger in automobile involved in intersectional collision; mental anguish during decedent's hospitalization and after her death; $ 2,179.28 awarded to decedent's estate. Pitts v. Greene, 238 Ark. 438, 382 S.W.2d 904 (1964).

-- $ 12,500 awarded to mother of 18-year-old boy killed when automobile he was riding in collided with trailer truck; normal boy with normal parent-child relationship. J. Paul Smith Co. v. Tipton, 237 Ark. 486, 374 S.W.2d 176 (1964).

-- $ 85,000 upon death of 17-year-old motorcyclist in cycling accident; $ 32,500 to each parent, $ 5,000 to each of two sisters, and $ 10,000 to brother; deceased had joined Marines prior to accident; close family. Vickers v. Gifford-Hill & Co., Inc., 534 F.2d 1311 (8th Cir. 1976) (applying Arkansas law).

-- $ 3.38 million to 17-year-old accident victim's mother and $ 3.12 million to father for past and future pain and suffering; rejected remittitur to $ 3 million. Hyundai Motor Co. v. Ferayorni, 842 So. 2d 905 (Fla. 4th DCA 2003).

-- $ 100,000, where 20-year-old student killed when struck by automobile; in good health; average student in school; Marine Corps reservist; hopeful of becoming attorney; award was for loss to prospective estate, medical treatment, and pain and suffering. McLeod v. Young, 257 So. 2d 605 (Fla. 4th DCA 1972).

-- $ 7,500 to father for loss of services of his 15-year-old son, accident victim, who was precocious, industrious, and hard working. Jordan v. Fowler, 104 Ga. App. 824, 123 S.E.2d 334 (1961).

-- $ 3.5 million where student driver died in motor vehicle accident in driver's education vehicle under supervision of school driver training instructor; relationship of parents to child was very close; jury's verdict unanimous; similar awards ranged from $ 250,000 to $ 9 million. Hennefer v. Blaine County School Dist., 158 Idaho 242, 346 P.3d 259, 316 Ed. Law Rep. 565 (2015).

-- $ 275,000 awarded to father of 16-year-old girl who died when struck by an automobile was not excessive even though the father had little contact with his daughter after entering prison two years before her death; family had been close before the father's imprisonment and he testified that he still prayed for his daughter and that he did not

contact her because he was ashamed to be in prison. Black v. Reynolds, 109 Idaho 277, 707 P.2d 388 (1985) (overruled on other grounds by, Stewart v. Rice, 120 Idaho 504, 817 P.2d 170 (1991)).

-- $ 188,000 where 19-year-old male college student operating motorcycle which collided with train; bright student who worked to support himself; left 53-year-old father; $ 188,000 to 17-year-old high school student who was passenger on motorcycle; healthy, active; hoped to become special education teacher; lived with 45-year-old parents. Baird v. Chicago, B. & Q. R. Co., 63 Ill. 2d 463, 349 N.E.2d 413 (1976).

-- $ 52,000 to parents of teenage boy killed in automobile accident. Newlin v. Foresman, 103 Ill. App. 3d 1038, 59 Ill. Dec. 735, 432 N.E.2d 319 (3d Dist. 1982).

-- $ 30,000 awarded to administrator for death of 20-year-old girl in automobile accident; excellent university student; earned about $ 70 per week in summer employment; extremely close and cooperative relationship with family. Goldstein v. Hertz Corp., 16 Ill. App. 3d 89, 305 N.E.2d 617 (1st Dist. 1973).

-- $ 30,000 to estate of 18-year-old girl killed in automobile accident; completed high school as average student and had also completed beautician's course; residing at home; employed, earning $ 50 per week; kind and helpful toward parents and disposed to be generous. Jung v. Schafer, 77 Ill. App. 2d 391, 222 N.E.2d 707 (2d Dist. 1966).

-- $ 2 million damage award to parents of 16-year-old passenger killed in accident; trial court properly instructed jury regarding elements to be considered in determining damages, and the life expectancy of the passenger's parents. Indian Trucking v. Harber, 752 N.E.2d 168 (Ind. Ct. App. 2001).

-- $ 11,000 to estate of 17-year-old boy killed in automobile accident; had not accumulated an estate and had not finished high school, but was physically fit, industrious, thrifty, dependable, of normal intelligence, well liked by associates, interested in mechanics, and gainfully employed; burial expense, $ 471. Marean v. Petersen, 259 Iowa 557, 144 N.W.2d 906 (1966) (holding modified on other grounds by, Anderson v. Miller, 559 N.W.2d 29 (Iowa 1997)).

-- $ 150,000 where 20-year-old high school graduate killed when struck by backing truck while he was spreading fine rock on highway; had worked for Department of Highways for two years; earned $ 3,600 per year; life expectancy 49.5 years; based on earnings at time of death would have earned $ 178,308 during lifetime; measure of damages stated to be the damage to estate by destruction of decedent's power to labor and earn money. W. L. Harper Co. v. Slusher, 469 S.W.2d 955 (Ky. 1971).

-- $ 75,000 suit by administrator of estate of 17-year-old boy killed in automobile accident; life expectancy of 52.3 years; good student; excellent health; worked out in spare time and did usual chores around home; attended church and had never been in any trouble. Webb Transfer Lines, Inc. v. Taylor, 439 S.W.2d 88 (Ky. 1968).

-- $ 200,000 to each parent of 17-year-old motorcyclist killed in collision for loss of love, affection, and companionship, and $ 100,000 each for grief and anguish. Hardy v. Augustine, 55 So. 3d 1019 (La. Ct. App. 3d Cir. 2011), writ denied, 62 So. 3d 92 (La. 2011) and (overruled on other grounds by, Rachal v. Brouillette, 111 So. 3d 1137 (La. Ct. App. 3d Cir. 2013)).

-- $ 560,000 in general damages and $ 5,088 in special damages to parents of 17-year-old who died in accident in which vehicle that he was driving lost control on curve, crossed center line into oncoming traffic, and struck another vehicle; driver had very loving and emotionally close relationship with family; parents arrived on scene of accident only to learn of their son's death, was very happy child who loved the outdoors and loved to hunt, participated in archery competitions together with his father, had older sister who was 10 years old when he was born, older sister was like second mother; about six months after accident, parents moved from their house because there were too many memories of him there; $ 560,000 in general damages and $ 4,328 in special damages to parents of 17-year-old passenger killed in accident who was described as center of his family; started helping his father in family's plumbing business at age

was oldest of three children; loved to fish with his father; was everything to his father, and family was not complete without him; awards had been lowered 20% based on allocation of fault. Adams v. Parish of East Baton Rouge, 804 So. 2d 679 (La. Ct. App. 1st Cir. 2001), writ denied, *813 So. 2d 1090 (La. 2002)*.

-- $ 30,000 in survival action by family of 17-year-old driver where evidence of eyewitnesses to driver having moaned at scene, indicating pain and suffering, and $ 275,000 to each parent for wrongful death where driver was their only child. Courteaux v. State ex rel. Dept. of Transp. and Development, 745 So. 2d 91 (La. Ct. App. 4th Cir. 1999), writ denied, *753 So. 2d 834 (La. 2000)*.

-- $ 300,000 to father of 21-year-old student killed in automobile accident; while father sent sporadic child support payments, was addicted to heroin, and spent time in federal prison, he reconnected with children who subsequently visited him in summer and on holidays; testified that daughter's death had been very difficult for him; since then had been moody and depressed; jury obviously found that child and her father had very close relationship, in spite of fact that they did not live together and in fact lived in different states. Bryant v. Solomon, 712 So. 2d 145 (La. Ct. App. 4th Cir. 1998).

-- $ 500,000 to parents of 15-year-old girl killed in car-train accident; parents were very close to daughter who brought them joy as result of her sweet and dutiful nature; parents had grief-stricken reaction due to untimely death of their teenaged daughter; award on high end. Corbello v. Southern Pacific Transp. Co., 586 So. 2d 1383 (La. Ct. App. 3d Cir. 1991), writ denied, *589 So. 2d 1052 (La. 1991)*.

-- $ 150,000 to each parent for each of two children, ages 16 and 17, killed in one-car accident; close-knit family; mother severely handicapped stroke victim; parents demonstrated that their emotional and physical dependency on children, largely due to health of mother, was beyond that of normal parent-teenager relationship. Llorence v. State, Dept. of Transp. and Development, 558 So. 2d 320 (La. Ct. App. 3d Cir. 1990), writ denied, *565 So. 2d 442 (La. 1990)* and writ denied, *565 So. 2d 443 (La. 1990)*.

-- $ 200,000 to parents of 19-year-old man who died in traffic accident partially caused by his intoxication; decedent was plaintiffs' youngest child and he maintained a close and loving relationship with both parents throughout his life. Lemire v. New Orleans Public Service Inc., 538 So. 2d 1151 (La. Ct. App. 4th Cir. 1989), writ denied, *543 So. 2d 2 (La. 1989)* and writ denied, *542 So. 2d 1383 (La. 1989)*.

-- $ 404,630 general damages to parents of 18-year-old driver killed in truck-car accident; $ 477,128 general damages to parents of 14-year-old passenger killed in same accident; $ 5,000 for pre-impact fear, conscious pain and suffering not abuse of discretion despite claim that she could not have experienced conscious pain due to decortication; evidence of her agonized sounds at scene of accident, and crying and squeezing of her sister's hand at hospital. Whittington v. American Oil Co., 508 So. 2d 180 (La. Ct. App. 4th Cir. 1987), writ denied, *512 So. 2d 436 (La. 1987)*.

-- $ 25,000 for pain and suffering of 19-year-old truck driver who despite being crushed between large machine and rear of trailer was able to tell other workers what happened, and who while being rushed to hospital lost consciousness and died shortly after arrival at facility; expert medical witnesses testified that decedent suffered most excruciating kind of tearing pain before death and was aware of fatal nature of his injuries; five to 30 minutes before he lost consciousness. Johnson v. Georgia Cas. & Sur. Co., 488 So. 2d 1306 (La. Ct. App. 3d Cir. 1986), writ denied, *493 So. 2d 1223 (La. 1986)* and writ denied, *493 So. 2d 1224 (La. 1986)*.

-- $ 110,000 awarded to mother of 19-year-old girl who was killed in an automobile accident which was partially caused by the faulty condition of the highway; in finding this award for loss of love and affection not to be excessive, the court noted the close relationship between the decedent and her mother. Holmes v. State Through Dept. of Highways, 466 So. 2d 811, 61 A.L.R.4th 379 (La. Ct. App. 3d Cir. 1985), writ denied, *472 So. 2d 31 (La. 1985)*.

-- $ 150,000 general damages awarded to mother of 18-year-old youth killed in automobile accident; mother suffered physical ailments following the death. Lang v. Prince, 447 So. 2d 1112 (La. Ct. App. 1st Cir. 1984), writ denied, *450 So. 2d 1309 (La. 1984)* and writ denied, *450 So. 2d 1311 (La. 1984)*.

-- $ 145,000 to mother of 20-year-old automobile accident victim; close relationship between mother and daughter. Johnson v. Folse, 438 So. 2d 1137 (La. Ct. App. 1st Cir. 1983).

-- $ 100,000, with $ 50,000 to each parent of 18-year-old child killed in automobile accident; loving and caring child. Bethea v. Louisiana Dept. of Transp. and Development, 415 So. 2d 535 (La. Ct. App. 1st Cir. 1982).

-- $ 40,000 to parents of 17-year-old killed in automobile accident; $ 20,000 to each parent; very close relationship existed between decedent and her parents, who suffered and continued to suffer great sense of loss and grief. Chaudoir v. Theriot, 400 So. 2d 730 (La. Ct. App. 3d Cir. 1981), writ denied, *409 So. 2d 611 (La. 1981)*.

-- $ 50,000, with $ 25,000 to each of parents of 19-year-old son killed in automobile accident; had been employed for short period at unspecified job before death. Weathersby v. Kersbergen, 356 So. 2d 498 (La. Ct. App. 1st Cir. 1977).

-- $ 40,000 to widowed mother of 18-year-old passenger killed in automobile accident; described as second mother to other six children; contributed social security benefits to family; senior in high school; planned to attend college. Youngblood v. Oil Well Chemical Co. of Louisiana, 352 So. 2d 316 (La. Ct. App. 4th Cir. 1977).

-- $ 50,000 to parents of 21-year-old boy killed in motorcycle accident; only child; resided with parents. Williams v. State Farm Mut. Auto. Ins. Co., 349 So. 2d 1275 (La. Ct. App. 1st Cir. 1977), writ denied, *351 So. 2d 175 (La. 1977)* and writ denied, *351 So. 2d 175 (La. 1977)*.

-- $ 80,000, with $ 40,000 to each parent for death of girl aged 14; killed in truck collision; intelligent, creative, and respectful; close and affectionate family relationship. *Gunter v. Wiley, 325 So. 2d 654 (La. Ct. App. 3d Cir. 1975)*.

-- $ 125,000 to mother of three children, age 15, 13, and 9 killed in truck accident; children had intimate and affectionate relationship with mother; did well in school, active and well adapted socially; two married daughters also killed. *Dixon v. Wiley, 325 So. 2d 653 (La. Ct. App. 3d Cir. 1975)*.

-- $ 75,000 (including $ 35,000 to father not living with mother and daughter, and $ 40,000 to mother); 14-year-old deaf girl killed in truck collision; mother had special relationship with daughter; girl was cheerful, affectionate, helpful, and loving. *Ogaard v. Wiley, 325 So. 2d 642 (La. Ct. App. 3d Cir. 1975)*.

-- $ 30,000 to infant child of 18- and 19-year-old parents who were killed in an unexplained one-car accident. Callais v. Allstate Ins. Co., 308 So. 2d 342 (La. Ct. App. 1st Cir. 1975), writ issued, *310 So. 2d 849 (La. 1975)* and judgment aff'd, *334 So. 2d 692 (La. 1975)*.

-- $ 80,000 which included $ 40,000 to each parent for death 16-year-old child killed in auto accident; loss of love and affection; helped parents with a business enterprise which included working with horses; close and devoted family; exceptional student. Wright v. Romano, 279 So. 2d 735 (La. Ct. App. 1st Cir. 1973), writ denied, *281 So. 2d 757 (La. 1973)* and writ denied, *281 So. 2d 758 (La. 1973)*.

-- $ 35,000 for 19-year-old industrious man with bright future; killed in automobile accident; lived with divorced mother with whom he had an unusually close relationship; took mother hunting and fishing with him. Poston v. Firemen's Ins. Co. of Newark, N. J., 256 So. 2d 700 (La. Ct. App. 2d Cir. 1972), writ refused, 260 La. 1122, 258 So. 2d 376 (1972) and writ refused, 260 La. 1124, 258 So. 2d 377 (1972).

-- $ 12,500, in action by parents for wrongful death of 20-year-old son in automobile accident; son helped parents with work on their farm whenever he was not working elsewhere; parents felt great affection for him; court stated that while awards smaller than present one had been made in some cases for wrongful death, it could not say that present award was manifestly excessive. Miller v. Kinney, 213 So. 2d 124 (La. Ct. App. 3d Cir. 1968), writ refused, 252 La. 962, 215 So. 2d 129 (1968).

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-- $ 3 million for wrongful death of 15-year-old passenger in van, who died of fractured skull after she was partially ejected from van's middle side window. MacCuish v. Volkswagenwerk A.G., 22 Mass. App. Ct. 380, 494 N.E.2d 390, Prod. Liab. Rep. (CCH) P 11327 (1986), decision aff'd, 400 Mass. 1003, 508 N.E.2d 842 (1987).

-- $ 14,000 which was in addition to funeral expenses; 14-year-old boy who helped parents hit when automobile ran off road. Wycko v. Gnodtke, 361 Mich. 331, 105 N.W.2d 118 (1960).

-- $ 6 million for each of four occupants of vehicle, ages 20, 20, 19, and 17, who were killed when vehicle was struck at railway crossing by freight train, where signal lights and gates assertedly were not working; railroad argued that, because harm was identical for each decedent, but decedents' family situations were not identical, identical awards were improperly focused on railroad's conduct and therefore punitive, but court said jury might have reasonably decided that $ 6 million awards were appropriate for different reasons for each decedent. Frazier v. Burlington Northern Santa Fe Corp., 788 N.W.2d 770 (Minn. Ct. App. 2010), rev'd on other grounds, 811 N.W.2d 618 (Minn. 2012), as modified, (Apr. 19, 2012).

-- $ 55,000 man, aged 20, killed when automobile hit by train; left widowed mother and sisters and brothers who would have enjoyed his love, affection, and companionship for many years; could have contributed to support of mother over years. Illinois Cent. R. Co. v. Pilgrim, 220 So. 2d 598 (Miss. 1969).

-- $ 30,000 where 17-year-old girl killed in automobile accident; senior in high school, intending to enter college following graduation; conscientious student ranking in top 37% of her class and attentive to school regulations; active in school activities; physically attractive; had job at jewelry store under program where she attended school in morning and worked in the afternoons five days a week; also worked on Friday nights and on Saturdays; earned $ 941 from her work in period from May to December 1967 and had earned $ 264 in 1968 prior to her death on March 12; used money to purchase school lunches, and for her clothing and other personal needs. Mudd v. Quinn, 462 S.W.2d 757 (Mo. 1971).

-- $ 25,000 where 18-year-old pedestrian killed by automobile was unmarried and unemancipated; earned $ 1.10 an hour as receptionist. Hartz v. Heimos, 352 S.W.2d 596 (Mo. 1962).

-- $ 15,000 to father and mother for death of their 18-year-old son, killed when tractor he was operating fell into hole of collapsed bridge on farm; decedent earned $ 80 and room and board monthly in summer, had some business farm activity of his own, and aided father on father's farm; hard working thrifty boy. Nuckols v. Andrews Inv. Co., 364 S.W.2d 128 (Mo. Ct. App. 1962).

-- $ 36,797.80 (including $ 4,147.80 special damages), where 16-year-old boy killed when thrown from hay rack being pulled by tractor; unusual boy with great potential for bright and promising future, both athletically and scholastically; would have been source of great comfort and companionship to parents. Vandenberg v. Langan, 192 Neb. 779, 224 N.W.2d 366 (1974).

-- $ 500,000 pecuniary damages to mother where 19-year-old bicyclist killed by automobile, despite lack of expert testimony; jury could reasonably have found free services son was providing to his mother were equivalent to services provided by therapist or counselor, and could have inferred from closeness of familial bond that, as mother aged, decedent was likely to provide services equivalent to that provided by nursing home or caretaker. Dutton v. Rando, 458 N.J. Super. 213, 204 A.3d 284 (App. Div. 2019).

-- $ 35,000 damages for conscious pain and suffering where 16-year-old passenger partially ejected through rear window in collision and suffered serious head injuries, including a crushed skull, which caused her to subsequently lapse into coma and die three days after accident; jury could have reasonably inferred that passenger was conscious and suffered extensively for period of about 15 to 20 minutes before she lapsed into coma. Coffey v. Callichio, 136 A.D.2d 673, 523 N.Y.S.2d 1011 (2d Dep't 1988).

-- $ 110,000 (which included $ 55,000 for wrongful death and $ 55,000 for pain and suffering); 19-year-old college student who had been enrolled in accounting course; contributed 40% of earnings from summer and part-time employment to family; hospitalized several days and underwent surgery after accident. Largo v. Fundaro, 51 A.D.2d 769, 380 N.Y.S.2d 58 (2d Dep't 1976).

-- $ 51,860 where 14-year-old girl killed in highway accident; extremely intelligent girl with high average in school subjects; performed chores on father's farm. Quinn v. Sullivan County, 48 A.D.2d 965, 369 N.Y.S.2d 551 (3d Dep't 1975).

-- $ 98,000 wrongful death action by mother of 16-year-old boy killed when bicycle was struck by motor vehicle; mother was widow, and deceased was eldest son; he was highly intelligent, industrious, and talented individual; senior in high school; headed for premedical college and a dental career thereafter; health excellent; participated in sports; neither drank nor smoked; went to summer school to obtain better grades. Gary v. Schwartz, 72 Misc. 2d 332, 339 N.Y.S.2d 39 (Sup 1972), dismissed, *43 A.D.2d 562, 349 N.Y.S.2d 322 (2d Dep't 1973)*.

-- $ 7,462,500 wrongful death to parents and brother for three siblings ages 16, 17, 19 who were killed in car-train accident; testimony that family was very close knit whose members provided companionship, assistance, care, and counsel to each other; jury could determine that parents' divorce was direct result of deaths of their children; both testified that they were still severely emotionally damaged; neither ever able to reside in family home after deaths; all three sought psychological counseling. Grand Trunk Western R.R. v. Cothern, 1995 WL 112908 (Ohio Ct. App. 6th Dist. Lucas County 1995), opinion corrected on other grounds, 1995 WL 311369 (Ohio Ct. App. 6th Dist. Lucas County 1995).

-- $ 30,000 where 18-year-old boy killed in railroad crossing accident; described as industrious and bright with plans for attending college; worked part-time for father; assisted parents in care of mentally retarded younger brother. Minker v. St. Louis-S. F. Ry. Co., 574 F.2d 1056 (10th Cir. 1978) (applying Oklahoma law).

-- $ 20,000 awarded to estate of 18-year-old teacher training student killed while passenger in automobile; had earned in excess of $ 500 annually during summer vacations and was training for job which paid maximum of $ 5,400. Springer v. George, 403 Pa. 563, 170 A.2d 367 (1961).

-- $ 230,000 upon death of 18-year-old passenger killed in automobile accident; life expectancy of 51 years and would have had net earnings $ 132,182 over a 43-year period of working life expectancy; good worker, much concerned with helping his family. Com. v. Flynn, 295 Pa. Super. 513, 442 A.2d 256 (1982).

-- $ 25,200 (award of $ 2,000 for administrative expenses stricken) where 18-year-old college student killed instantly in route to summer job when head struck railroad bridge while he was riding on cab cover of loaded truck; youth was studying for degree in pharmacology; described as having good grades in college and in high school; also described as being thrifty and a steady worker having been employed since grade school. Marinelli v. Montour R. Co., 278 Pa. Super. 403, 420 A.2d 603 (1980).

-- $ 55,000 one-half each to father and mother of 20-year-old textile worker killed in automobile accident. Mann v. Bowman Transp., Inc., 300 F.2d 505 (4th Cir. 1962) (applying South Carolina law).

-- $ 103,000 where 17-year-old high school student killed in automobile accident; excellent grades; good habits, devoted and obedient toward her family; unemployed, but helped mother in home. Lucht v. Youngblood, 266 S.C. 127, 221 S.E.2d 854 (1976).

-- $ 100,000 (which included $ 75,000 actual damages and $ 25,000 punitive damages); wrongful death of 18-year-old son in railroad grade crossing collision; employed, was earning $ 2.25 per hour, and contributed to support of his mother and father. Smoak v. Seaboard Coast Line R. Co., 259 S.C. 632, 193 S.E.2d 594 (1972).

-- $ 40,000 where 18-year-old boy, plaintiffs' only son; killed in automobile accident; not doing too well in school. Lynch v. Alexander, 242 S.C. 208, 130 S.E.2d 563 (1963).

-- $ 450,000 in total compensatory damages to parents of 17-year-old driver who died in automobile accident that occurred after he had been drinking and had become intoxicated at topless bar; damage award was comprised of $ 100,000 to each parent in past damages, and $ 125,000 to each parent in future damages; parents testified about their close relationship to their son and how family missed his love and companionship. I-Gotcha, Inc. v. McInnis, 903 S.W.2d 829 (Tex. App. Fort Worth 1995), writ denied, (Feb. 9, 1996).

-- $ 18,000 (after remittitur from award of $ 36,082) which included $ 1,082 special damages where victim, 16-year-old high school boy who earned $ 10 to $ 22 per week and contributed various services to family, was killed in automobile-truck collision. North Tex. Producers Ass'n v. Stringer, 346 S.W.2d 500 (Tex. Civ. App. Fort Worth 1961), writ refused n.r.e., (Oct. 3, 1961)

-- $ 25,000 ($ 10,000 solatium, $ 1,700 funeral expenses, $ 13,300 pecuniary loss); 15 1/2-year-old boy died when motorcycle he was on crashed into rear of mail truck which was making left turn off highway; had helped family by running errands and doing household chores. Addair v. Bryant, 168 W. Va. 306, 284 S.E.2d 374 (1981).

-- $ 12,000 already reduced by trial court from $ 17,500; high school student accident victim, hard worker; only son on farm; father had to divest some of acreage. Nordahl v. Peterson, 68 Wis. 2d 538, 229 N.W.2d 682 (1975).

-- $ 4,000 (which included $ 3,000 for loss of society and companionship, and $ 1,000 for pecuniary loss of services) awarded to parents of 17-year-old automobile accident victim; award for loss of services not excessive since daughter had helped with housework and cooking, babysat, made purchases for family, and had done other household and family chores. Redepenning v. Dore, 56 Wis. 2d 129, 201 N.W.2d 580 (1972).

[*15] From 14 until 21 - Excessive

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death in a vehicular accident of a child from 14 until 21 years old were excessive, such as awards of --

-- $ 6.6 million general damages reduced to $ 500,000 where 17-year-old daughter killed in train-vehicle collision; highest reasonable amount that could have been awarded was $ 2 million, but statutory cap limited award against department of transportation to $ 500,000. Renfro v. Burlington Northern Santa Fe Ry. Co., 193 So. 3d 1192 (La. Ct. App. 3d Cir. 2016).

-- $ 300,000 to each parent for loss of 19-year-old son's love, affection and companionship where he was killed when would unloader machine pinned him between machine and truck; although there was close family relationship with only adopted son, did many things together, and parents suffered great loss on his demise, parents had not relied on child for emotional and/or financial support and produced no evidence of mental or physical illness caused by death; lowered to $ 125,000 each. Johnson v. Georgia Cas. & Sur. Co., 488 So. 2d 1306 (La. Ct. App. 3d Cir. 1986), writ denied, *493 So. 2d 1223 (La. 1986)* and writ denied, *493 So. 2d 1224 (La. 1986)*.

-- $ 150,000, with $ 75,000 to each parent of 17-year-old killed in automobile accident; reduced to $ 35,000 to each parent; court noting awards in similar cases. Parks v. Liberty Mut. Ins. Co., 291 So. 2d 505 (La. Ct. App. 2d Cir. 1974), writ denied, *292 So. 2d 240 (La. 1974)* and (overruled on other grounds by, Miller v. Chicago Ins. Co., 320 So. 2d 134 (La. 1975)).

-- $ 17,250 (reduced to $ 7,500 plus $ 2,016.96 for funeral expenses) awarded to father of 14-year-old girl killed in accident; was not living with father and saw father only occasionally. Little v. Safeguard Ins. Co., 137 So. 2d 415 (La. Ct. App. 3d Cir. 1962).

-- $ 45,000 ($ 35,000 to mother, reduced to $ 12,500; $ 10,000 to natural father, reduced to $ 500, described as merely nominal award) where 15-year-old girl who lived with mother and stepfather died in collision; healthy and

helpful in running farm; evidence indicated absence of any particular feeling between natural father and daughter. Palmer v. American General Ins. Co., 126 So. 2d 777 (La. Ct. App. 1st Cir. 1960).

-- $ 21,000 to parents for death of 18-year-old boy; automobile accident; new trial on issues of damage. Herbes v. Village of Holdingford, 267 Minn. 75, 125 N.W.2d 426 (1963).

-- $ 96,140, where court indicated that strong possibility existed that amount was excessive; case reversed on other grounds; high school girl killed in auto accident; no evidence that she would have remained in area after graduation from high school, what her future plans were so far as residence or school, or that she had ever given her family any pecuniary support or that she was motivated in that direction; very little evidence offered as to relationship between her and parents. Sanders v. Mount Haggin Livestock Co., 160 Mont. 73, 500 P.2d 397 (1972).

-- $ 50,000 where 17-year-old boy, unmarried and living at home on his father's farm; killed in automobile accident; had completed three years of high school and had started school in fall but had dropped out after one week; had been found to be delinquent child in juvenile proceeding; paroled to parents for one year; helped father with farm work and had worked for other farmers; was in good health; father testified that the deceased was to receive half interest in farm operation when he became of age and was to operate farm on partnership basis. Westring v. Schwanke, 185 Neb. 579, 177 N.W.2d 506 (1970).

-- $ 300,000 for wrongful death where 16-year-old passenger died three days after accident from head injuries, remittitur to $ 100,000; decedent, a student, did not contribute monetarily to her parents' household. Coffey v. Callichio, 136 A.D.2d 673, 523 N.Y.S.2d 1011 (2d Dep't 1988).

-- $ 200,000 jury verdict, as reduced to $ 88,000 due to decedent's contributory negligence of 56%, remittitur to $ 44,000, where 19-year-old died in automobile collision; decedent was college student and did not contribute any money to household; no evidence by which jury could determine that any future contributions would be made. *Brookman v. Public Service Tire Corp., 86 A.D.2d 591, 446 N.Y.S.2d 132 (2d Dep't 1982).*

-- $ 85,000 (reduced to $ 500,000); 18-year-old woman killed in automobile accident, earned $ 470 monthly and probably would have married. Livaccari v. Zafonte, 48 A.D.2d 20, 367 N.Y.S.2d 808 (2d Dep't 1975).

-- $ 55,000 (new trial ordered on damages); 15-year-old boy killed while walking on highway edge; average student, 10th grade, helpful around the house; no evidence that he had any specific ambition in life or that he had any area in which he was specially talented. Wishart v. Andress, 46 A.D.2d 998, 361 N.Y.S.2d 791 (4th Dep't 1974).

-- $ 45,000, with $ 35,000 for wrongful death, of which $ 500 was for funeral expenses, $ 10,000 for conscious pain and suffering; on appeal, award for conscious pain and suffering severed from wrongful death action, and former held excessive at least to extent of $ 6,500; 16-year-old boy killed in automobile-train collision at grade crossing; autopsy report indicated that decedent had lived for about 20 minutes after collision; decedent was conscious at scene of injury; at time of death was employed part-time at gas station owned by father; had contributed to family's support. *Rizzo v. Long Island R. Co., 23 A.D.2d 762, 258 N.Y.S.2d 576 (2d Dep't 1965).*

-- $ 86,000 reduced to $ 20,000; 16-year-old girl who had been married only three weeks killed in train-automobile collision, court noting absence of any evidence as to earning power. Stuck v. Western Maryland Ry. Co., 193 F. Supp. 533 (W.D. Pa. 1961) (applying Pennsylvania law).

-- $ 107,048 ($ 94,000 in survival action and $ 13,048 in death action); new trial ordered; 16-year-old boy of above average intelligence and good health, who had earned $ 30 weekly during vacation period, died in collision; planned to become veterinarian; did chores at home and helped father in construction work. Swartz v. Smokowitz, 400 Pa. 109, 161 A.2d 330 (1960).

-- $ 2,000 award for cost of administering estate of 18-year-old pharmacology student deemed excessive and disallowed; automobile accident. Marinelli v. Montour R. Co., 278 Pa. Super. 403, 420 A.2d 603 (1980).

-- $ 51,328.25 to 15-year-old retarded boy hit by train; 7 1/2-year-old mental age; court finding that jury had improperly computed future net earnings; new trial ordered. Jenkins v. Pennsylvania R. Co., 220 Pa. Super. 455, 289 A.2d 166 (1972).

-- $ 150,000 damages to mother for past pecuniary loss in the one year until trial where her 19-year-old son killed when all-terrain vehicle he was driving collided with automobile; while jury could have determined that decedent, in reasonable probability, would have contributed his paychecks to his mother, even if he had continued to earn as much as $ 300 a week until date of verdict and given it all to his mother, his contribution would not have totaled more than $ 15,000; while jurors could apply their knowledge and experience to estimate value of household services son rendered his mother, without proof of their value, no evidence suggested that nature or value of his services was out of ordinary, and no evidence supported estimated value even approaching $ 150,000 for period before verdict; new trial ordered. *Excel Corp. v. McDonald, 223 S.W.3d 506 (Tex. App. Amarillo 2006)*.

-- $ 30,000 (award was $ 10,000 for pain and suffering and $ 20,000 for pecuniary loss; award for pecuniary loss held excessive and remittitur of $ 2,500 ordered); 18-year-old boy killed in automobile accident; survived by mother and father; deceased was conscious from 50 to 55 minutes before death, suffering physical pain and mental anguish throughout that period; closely knit family; son helped in all phases of father's bait and fish business; quit school when he finished 10th grade and worked a number of odd jobs prior to death. *Collins v. Gladden, 466 S.W.2d 629 (Tex. Civ. App. Beaumont 1971)*, writ refused n.r.e., (July 21, 1971).

-- $ 80,000 reduced to $ 20,000; 20-year-old girl killed by truck while pedestrian; parents needed no assistance from her. *Gustafson v. Bertschinger, 12 Wis. 2d 630, 108 N.W.2d 273 (1961)*.

[*16] From 14 until 21 - Amount fixed by court

Under the particular circumstances of the following cases the courts fixed the appropriate amounts of awards of compensatory damages for the death in a vehicular accident of a child from 14 until 21 years of age, determining sums such as --

-- $ 300,000 to father of 17-year-old killed in accident; wrongful death action under Federal Tort Claims Act; award tempered by facts that father was alcoholic who effectively abandoned his son to care of aunt; alcoholism manifesting in violent, disruptive behaviors necessitating multiple police interventions; father bragged about drowning children's dog, father's drunken rages led a son to take to sleeping in his car; testimony that son deeply embarrassed by his father's behavior, and was running "countdown" to graduation day when he could escape household and "never come back"; father had no interest in raising his sons under his own roof until government discovered that he was usurping the boys' mother's death benefits for his own personal use. *Davis v. U.S., 2010 WL 2331094 (S.D. Fla. 2010)* (applying Florida law).

-- $ 80,000, with $ 40,000 to each parent of young high school graduate killed in automobile accident; award for parent's grief, anguish, and distress and for deprivation of companionship and affection for deceased daughter; daughter a straight A high school student with an IQ of 132, popular, talented, and devoted to her church and her parents. *Wall v. American Emp. Ins. Co., 377 So. 2d 369 (La. Ct. App. 2d Cir. 1979)*, writ granted, *378 So. 2d 1384 (La. 1980)* and judgment aff'd on other grounds, *386 So. 2d 79 (La. 1980)*.

-- $ 5,000 to father of 15-year-old boy killed while operating commercial motor vehicle he had been employed to drive; evidence showed that father never visited son, nor made contribution toward boy's support since divorce when boy was eight years of age. *Boyer v. Johnson, 366 So. 2d 192 (La. Ct. App. 2d Cir. 1978)*, writ denied, *367 So. 2d 1185 (La. 1979)*.

-- $ 40,000 -- $ 20,000 to each parent of 18-year-old boy killed in automobile accident; automobile in which youth was driving struck by that driven by trooper at 90 miles per hour without warning light or siren; youth a high school student, part-time employee. *Moore v. Travelers Indem. Co., 352 So. 2d 270 (La. Ct. App. 2d Cir. 1977)*, writ denied, *354 So. 2d 1049 (La. 1978)*.

-- $ 52,887 (which included $ 2,887 special damages and $ 25,000 to each parent) where 15-year-old boy killed in motor vehicle accident; industrious, conscientious young man who had close relationship with family; one of four sons. *Bailes v. Casualty Reciprocal Exchange, 279 So. 2d 255 (La. Ct. App. 2d Cir. 1973)*, writ denied, *281 So. 2d 747 (La. 1973)*.

-- $ 20,148 (which included $ 10,000 to each parent and $ 148 funeral expenses unpaid from other sources) where 17-year-old girl killed in automobile accident; employed, and contributed small amount to family from wages; however, family not dependent upon her. *Gayle v. Department of Highways, 205 So. 2d 775 (La. Ct. App. 1st Cir. 1967)*, writ refused, *251 La. 932, 207 So. 2d 538 (1968)* and writ refused, *251 La. 933, 207 So. 2d 539 (1968)*.

-- $ 132,000, with $ 66,000 to each parent of an 18-year-old youth killed in an automobile accident; $ 30,000 awarded for loss of support; $ 50,000 to each parent for loss of companionship, love, and affection, and $ 2,000 for pain and suffering. *Lapoint v. Breaux, 395 So. 2d 1377 (La. Ct. App. 1st Cir. 1981)*, writ denied, *399 So. 2d 611 (La. 1981)*.

-- $ 750,000 to each parent for wrongful death in single car accident of 17-year-old daughter who was oldest child living at home, helped significantly with household chores, and was close companion to her siblings; family close-knit; ate dinner together every night, attended church together as family at least three times per week, and visited with children's grandparents, aunts, uncles, and cousins, as family, generally, each Sunday; parents suffered from depression that was treated for years with antidepressant and antianxiety medications after daughter's death; sought extensive counseling for their marital problems caused by grief and stress; suffered difficulties on their jobs; $ 100,000 survival damages where victim was pinned in her vehicle after impact, suffered significant injuries, including broken neck and head injuries, and died some hours after being air-lifted to hospital. *Hebert v. Rapides Parish Police Jury, 934 So. 2d 912 (La. Ct. App. 3d Cir. 2006)*, writ granted, *941 So. 2d 29 (La. 2006)* and writ granted, *941 So. 2d 29 (La. 2006)* and judgment rev'd on other grounds, *974 So. 2d 635 (La. 2007)*, on reh'g, (Jan. 16, 2008).

-- $ 325,000 for each parent and $ 75,000 in survival damages where 18-year-old killed in one-car accident while 14-year-old driver spun out on gravel road; as to survival, testimony vividly described pain and suffering endured for approximately 15 minutes before death, as victim cried out in pain, asking for help because he could not breathe while he was pinned beneath vehicle, with weight of automobile on his body, deep wound having cut into his neck and shoulder; parents had close, loving relationship with decedent, that his death had caused them great loss, and that their lives had dramatically worsened as result of his death; he lived at home, often worked together at home with father and had completed home remodeling project; family camped together, and went on many fishing and hunting trips. *Hasha v. Calcasieu Parish Police Jury, 651 So. 2d 865 (La. Ct. App. 3d Cir. 1995)*, writ denied, *653 So. 2d 592 (La. 1995)* and writ denied, *653 So. 2d 593 (La. 1995)*.

-$ 125,000 in favor of mother of 21-year-old daughter who was killed in automobile accident; daughter had been raised by her mother and was still living with mother at time of her death; mother and daughter enjoyed close relationship. *Smith v. City of New Orleans, 616 So. 2d 1262 (La. Ct. App. 4th Cir. 1993)*, writ denied, *624 So. 2d 1232 (La. 1993)* and writ denied, *624 So. 2d 1232 (La. 1993)* and writ denied, *624 So. 2d 1233 (La. 1993)* and writ denied, *624 So. 2d 1233 (La. 1993)* and writ denied, *624 So. 2d 1234 (La. 1993)*.

-- $ 15,000 to each parent where 21-year-old son killed in collision; close, loving family; son lived with his parents and helped with family chicken farm when he came home after work in evening. *McLaughlin v. Fireman's Fund Ins. Co., 582 So. 2d 203 (La. Ct. App. 1st Cir. 1991)*, on reh'g, (June 5, 1991) and writ denied, *586 So. 2d 536 (La. 1991)*.

-- $ 75,000 where 17-year-old decedent passenger on motorcycle; quit school after ninth grade; raised by grandmother. *Cadierre v. Duet, 461 So. 2d 598 (La. Ct. App. 1st Cir. 1984)*.

-- $ 25,000 where 17-year-old unmarried high school junior killed in automobile accident; worked during off hours as babysitter; during summer gave music lessons and worked as lifeguard at local pool; sewed most of own clothes and helped around house; honor student and student leader; basis of recovery for wrongful death held to be value

of child's services to parents during minority. Koeper v. Farmers Ins. Co., Inc., 354 F. Supp. 93 (E.D. Mo. 1972) (applying Missouri law).

-- $ 75,000 less $ 9,000 received in compromise settlement; university student killed in automobile accident. Reynolds v. State, 35 Misc. 2d 757, 231 N.Y.S.2d 681 (Ct. Cl. 1962).

-- $ 125,000 where 19-year-old man killed in automobile accident; survived by father, mother, and younger brother and two sisters; was good student and was preparing to enroll in college; fine young man with unusual qualities. Adams v. Hunter, 343 F. Supp. 1284 (D.S.C. 1972), aff'd without opinion, 471 F.2d 648 (4th Cir. 1973) (applying South Carolina law).

-- $ 28,000 to parent of 17-year-old member of Job Corps killed in motor vehicle accident; one of family of 13 children; decedent lived with parents in rural area before joining Job Corps; had normal health, but had limited abilities, and dropped out of school in 9th grade; behaved himself and had good reputation; did odd jobs earning $ 1.25 per hour; life expectancy 52 years and work life expectancy 44 years; capable of working at manual labor or at jobs requiring limited skills. Scarbrough v. Murrow Transfer Co., 277 F. Supp. 92 (E.D. Tenn. 1967) (applying Tennessee law).

[*17] From 14 until 21 - Adequate

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death in a vehicular accident of a child from 14 until 21 years old were adequate, such as awards of --

-- $ 25,000 where 20-year-old man killed in automobile accident. Fabrizio v. Smith, 164 Conn. 385, 321 A.2d 467 (1973).

-- $ 20,000 where 18-year-old boy killed in automobile accident; mentally handicapped but enrolled in educable mental health program, earned $ 60 to $ 70 per week, most of which he gave to his mother. Prather v. Lockwood, 19 Ill. App. 3d 146, 310 N.E.2d 815 (4th Dist. 1974).

-- $ 5,000 where 17-year-old girl killed in automobile accident. Cassidy v. Quisenberry, 346 S.W.2d 304 (Ky. 1961).

-- $ 5,900 where 17-year-old college student of exceptional promise and ability killed in accident; court noting lack of any evidence of family contributions. Silverman v. Travelers Ins. Co., 277 F.2d 257 (5th Cir. 1960) (applying Louisiana law).

-- $ 350,000 to each parent of 18-year-old passenger killed when vehicle hit fire engine parked across road. Molina v. City of New Orleans, 830 So. 2d 994 (La. Ct. App. 4th Cir. 2002), writ denied, *840 So. 2d 573 (La. 2003)*.

-- $ 560,000 in general damages and $ 4,328 in special damages to parents of 17-year-old passenger killed in accident who was described as center of his family; started helping his father in family's plumbing business at age

was oldest of three children; loved to fish with his father; was everything to his father, and family was not complete without him; award had been lowered 20% based on allocation of fault. Adams v. Parish of East Baton Rouge, 804 So. 2d 679 (La. Ct. App. 1st Cir. 2001), writ denied, *813 So. 2d 1090 (La. 2002)*.

-- $ 275,000 each to father and mother of 18-year-old who was killed in automobile accident; parents lived separately, but both father and mother had close family relationship with their son; father stated that he taught son how to walk, ride bike, fish and hunt, play baseball, how to improve his basketball skills, and most of all how to respect his elders. Brown v. Louisiana Indem. Co., 693 So. 2d 270 (La. Ct. App. 3d Cir. 1997), writ granted, *701 So. 2d 139 (La. 1997)* and judgment aff'd in part, rev'd in part on other grounds, 707 So. 2d 1240 (La. 1998).

-- $ 150,000 general damages and special damage award of $ 7,937.64 where his 15-year-old son drowned when automobile driven into bayou; father had only one child; obtained full custody of his son when he was five years old;

raised his son as single parent; father and his son were close; father at accident site each day during the 17-day search for son's body; father was 49 years old at time of trial and rightly expected many years of enjoyment with his son; had lost hope of grandchildren. *Hill v. Morehouse Parish Police Jury, 653 So. 2d 244 (La. Ct. App. 2d Cir. 1995)*, writ granted, *656 So. 2d 1025 (La. 1995)* and writ not considered, *656 So. 2d 1029 (La. 1995)* and judgment rev'd on other grounds, *666 So. 2d 612 (La. 1996)*.

-- $ 240,000 ($ 115,000 to father and $ 125,000 to mother) to parents of 15-year-old son killed in car accident; loss of love, affection, and companionship, but no damages for loss of support; $ 5,000 for decedent's pre-impact fright and suffering also adequate where not proven that decedent was conscious for any period of time following accident, and no evidence indicating that decedent ever saw oncoming vehicle prior to collision. *Thibodeaux v. St. Landry Parish Police Jury, 561 So. 2d 163 (La. Ct. App. 3d Cir. 1990)*, writ not considered, *565 So. 2d 433 (La. 1990)* and writ denied, *565 So. 2d 447 (La. 1990)*.

-- $ 150,000 to each parent for each of two children, ages 16 and 17, killed in one-car accident; close-knit family; mother severely handicapped stroke victim; parents demonstrated that their emotional and physical dependency on children, largely due to health of mother, was beyond that of normal parent-teenager relationship. *Llorence v. State, Dept. of Transp. and Development, 558 So. 2d 320 (La. Ct. App. 3d Cir. 1990)*, writ denied, *565 So. 2d 442 (La. 1990)* and writ denied, *565 So. 2d 443 (La. 1990)*.

-- $ 40,000 with $ 20,000 to each parent of 18-year-old automobile accident victim; court noting that award comparable to others in similar cases. *Davila v. Southern Pacific Transp. Co., 444 So. 2d 1293 (La. Ct. App. 5th Cir. 1984)*, writ denied, *447 So. 2d 1079 (La. 1984)*.

-- $ 40,000 where 17-year-old high school student died as result of massive head injuries, immediately or shortly after accident; was close to parents; parents suffered great sense of loss and grief. *Chaudoir v. Theriot, 400 So. 2d 730 (La. Ct. App. 3d Cir. 1981)*, writ denied, *409 So. 2d 611 (La. 1981)*.

-- $ 35,000 to biological father only; 17-year-old boy killed while working on garbage truck; boy lived with biological father since infancy, no evidence that he saw biological mother socially. *Mitt v. Security Ins. Co., 361 So. 2d 465 (La. Ct. App. 4th Cir. 1978)*, writ denied, *362 So. 2d 1116 (La. 1978)*.

-- $ 76,000 boy killed when motorcycle struck unmarked cable; $ 38,000 to each parent. *Bourg v. Redden, 351 So. 2d 1300 (La. Ct. App. 1st Cir. 1977)*.

-- $ 51,190 for 14-year-old boy killed when struck by automobile while riding horse; $ 25,000 to each parent; $ 1,190 for funeral expenses. *Handy v. LeJeune, 341 So. 2d 1386 (La. Ct. App. 3d Cir. 1977)*, writ refused, *344 So. 2d 671 (La. 1977)*.

-- $ 500 for death of 16-year-old boy for loss of services; helped parents on family farm; struck by motor vehicle while bicycling. *State for Use of Miedzinski v. Gray, 227 Md. 318, 176 A.2d 867 (1962)*.

-- $ 5,000 awarded to mother of deceased, unmarried 18-year-old boy killed in accident; worked for cement company; had accumulated $ 1,000 savings; had high IQ and made satisfactory grades in high school; attended junior college in year of death; lived with parents. *Aubuchon v. LaPlant, 435 S.W.2d 648 (Mo. 1968)*.

-- $ 46,925.60 where 19-year-old killed in automobile accident; uncontroverted evidence of close and loving relationship between decedent and her parents; she was bright, considerate, dependable, and loving child who had variety of interests both in and out of school; she had moved away to attend school and although she kept in contact with her family and came home every weekend, her time with her parents was limited and was becoming increasingly so as result of many activities in her life; life expectancy of parents could be factor where each had history of health problems that could affect their life expectancies. *Poppe v. Siefker, 274 Neb. 1, 735 N.W.2d 784 (2007)*.

-- $ 1,500 for death of 15-year-old-child killed in automobile accident; child made no contribution of earnings other than to own support and probably would not have done so in future. Selders v. Armentrout, 192 Neb. 291, 220 N.W.2d 222 (1974).

-- $ 42,500 awarded to 15-year-old girl's estate for loss of earning capacity; death in automobile accident. Bouthielte v. Wiggin, 122 N.H. 774, 451 A.2d 368 (1982).

-- $ 15,410.28 (which included $ 2,098.28 for medical and funeral expenses, and $ 1,500 for decedent's conscious pain and suffering); 17-year-old boy killed when ejected from a speeding ambulance by the acts of a dangerous mental patient in the custody of the Veterans' Administration; survived by both parents. Jones v. U.S., 421 F.2d 835 (2d Cir. 1970) (applying New York law).

-- $ 15,000 to parents of 18-year-old girl; father retired; decedent did not live at home and was self-supporting; automobile accident. Jacobs v. Hanofee, 52 A.D.2d 1001, 383 N.Y.S.2d 442 (3d Dep't 1976).

-- $ 15,171 (which included $ 1,666 funeral expenses) awarded to estate of 16-year-old girl killed by runaway freight train while she was crossing railroad tracks; high school student; award held not inadequate, but new trial on damage issue ordered to correct instruction. McSparran v. Pennsylvania R. Co., 258 F. Supp. 130 (E.D. Pa. 1966) (applying Pennsylvania law).

-- $ 25,000 for 19-year-old male killed in automobile accident; college student. Bascelli v. Bucci, 244 Pa. Super. 347, 368 A.2d 754 (1976).

-- $ 50,000 for pain and suffering of 14-year-old boy who sustained fatal injuries when his motorcycle collided with pickup truck. Sanchez v. Schindler, 626 S.W.2d 871 (Tex. App. Corpus Christi 1981), writ granted, (June 30, 1982) and judgment rev'd in part on other grounds, 651 S.W.2d 249 (Tex. 1983).

-- $ 18,000 to 43-year-old father and 38-year-old mother for the death of their 17-year-old son in collision; was earning from $ 10 to $ 20 weekly. North Tex. Producers Ass'n v. Stringer, 346 S.W.2d 500 (Tex. Civ. App. Fort Worth 1961), writ refused n.r.e., (Oct. 3, 1961).

-- $ 0 where 18-year-old passenger killed in high-speed single car accident; although each of plaintiff family members testified to essentially loving and close relationship that existed between them all, on cross-examination it was revealed: that father had virtually never paid child support to mother for support of child; that child was sent by mother to live with his father and complete high school because she was unable to keep him in school and out of trouble; and that there had been only infrequent contact between child and his brother during years just preceding child's death; jury might have taken family members at their word when they testified that money was not object of suit, but rather they had brought suit to put out message about incredible price their son and brother had paid as result of drinking and driving; evidence that driver had been convicted in criminal proceedings arising out of accident and as result he was paying restitution to family. Woodbury v. Nichols, 797 P.2d 556 (Wyo. 1990).

-- $ 3,500 to estate of 14-year-old girl run down by automobile; some evidence of services by deceased in parents' store and in household, but extent of this work not indicated; jury charged that elements of damages included loss of comfort, care, advice, and society of decedent. McPike v. Scheuerman, 398 P.2d 71 (Wyo. 1965).

[*18] From 14 until 21 - Inadequate

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death in a vehicular accident of a child from 14 until 21 years old were inadequate, such as awards of --

-- $ 15,000 (additur of $ 135,000 or verdict would be set aside and new trial ordered); award included funeral expenses and ante-mortem of $ 4,981.09 for wrongful death of 18-year-old high school graduate killed in accident; good health; good social life; had participated in sports, and had shown great promise with mechanical aptitude. Barbieri v. Taylor, 37 Conn. Supp. 1, 426 A.2d 314 (Super. Ct. 1980).

-- $ 3 million remittitur amount, restored to jury awards of $ 3.38 million to mother and $ 3.12 million to father of 17-year-old killed in automobile accident, for past and future pain and suffering; rejecting trial court's consideration of older cases, court found that substantially higher verdicts had been approved in child wrongful death cases in recent years. Hyundai Motor Co. v. Ferayorni, 842 So. 2d 905 (Fla. 4th DCA 2003).

-- $ 105,000 to each parent of 15-year-old passenger killed in single-vehicle accident, increased to $ 450,000 each; ample testimony establishing close relationship between child and his parents, and devastating impact his tragic death had upon them; both parents required extensive psychiatric treatment to cope with their sorrow. Brown v. State ex rel. Dept. of Transp. and Development, 166 So. 3d 1197 (La. Ct. App. 3d Cir. 2015), writ denied, *179 So. 3d 601 (La. 2015)*.

-- $ 75,000, increased to $ 250,000 to each parent, where 20-year-old driver killed in accident on highway; had close and loving relationship with parents and extended family. Provost v. USA Truck, Inc., 901 So. 2d 1220 (La. Ct. App. 3d Cir. 2005), writ denied, *918 So. 2d 1042 (La. 2006)*.

-- $ 25,000 in wrongful death damages to each parent of 15-year-old killed in automobile accident, properly raised by trial court to $ 100,000 in j.n.o.v.; testimony concerning parents' relationship with child, type of child he was, and prior similar awards.Loveday v. Travelers Ins. Co., 585 So. 2d 597 (La. Ct. App. 3d Cir. 1991), writ denied, *590 So. 2d 65 (La. 1991)*.

-- $ 31,150.60 (increased to $ 50,165.60, which included $ 18,874.20 to father and $ 25,000 to mother); 18-year-old boy killed while bicycling on highway. Bascle v. Champagne, 303 So. 2d 848 (La. Ct. App. 1st Cir. 1974), writ issued, *307 So. 2d 625 (La. 1975)*.

-- $ 20,000 increased to $ 25,000; 18-year-old boy killed in automobile collision; college student studying petroleum engineering; active in community and church affairs, devoted to family. Borey v. Rood, 140 So. 2d 158 (La. Ct. App. 4th Cir. 1962).

-- $ 30,000 where 21-year-old decedent with 41.6-year life expectancy and projected annual earnings of $ 9,397 killed in collision; additur of $ 30,000 or new trial ordered. Dickey v. Parham, 331 So. 2d 917 (Miss. 1976).

-- $ 0 for loss of society to parents of 18-year-old son killed in collision where uncontroverted evidence of close and loving relationship between son and his parents; engaged in farming with his father, who described him as his "right-hand man" who was with him all the time and helped him with everything that needed to be done on farm; described him as "honest and loving kid" with whom he had "real good" relationship; regularly went to church and engaged in recreational activities with his parents and younger siblings; mother thought of loss of her son every day; parents had life expectancies of 39.74 and 34.51 years; in addition, where parties stipulated that medical and funeral bills were $ 33,747.72, award of $ 17,000 inadequate. Reiser v. Coburn, 255 Neb. 655, 587 N.W.2d 336 (1998).

-- $ 0, additur to $ 400,000, for loss of consortium to parents of 17-year-old passenger who was killed when pickup truck went off the road; abundance of uncontroverted evidence establishing that decedent was intelligent, supportive, humorous, and outgoing son to parents; was good student in adolescence, active member of his church, great lover of nature, Eagle Scout, and otherwise compassionate and loving son; uncontroverted evidence that his death triggered great grief and suffering in both parents; nothing in record justified award of zero damages. Donaldson v. Anderson, 109 Nev. 1039, 862 P.2d 1204 (1993).

-- $ 0 raised to $ 100,000 or new trial for pecuniary damages where 14-year-old daughter killed in automobile accident; had completed eighth grade with 85 average, had I.Q. of 125, was good student who aspired to professional career, played cello and guitar, was involved in Girl Scouts and other activities, was in good health with normal life expectancy, held part-time jobs, helped her parents with work-related tasks, and enjoyed close, loving relationship with both her parents. *Krueger v. Wilde, 204 A.D.2d 988, 614 N.Y.S.2d 88 (4th Dep't 1994)*.

-- $ 0 to mother where accident victim was 16-year-old high school senior with above average grades in Regents and advance placement classes; desired to pursue career in mechanical engineering; had been accepted to pursue university degree program in that career specialty; frequently performed chores around house to help mother; they enjoyed very close relationship; mother and her former husband, victim's father, were college graduates; mother unemployed, but received child support; expert testimony regarding life and work expectancies of mother and victim, as well as his earning capacity; evidence sufficient to support finding of pecuniary loss. *Petersen v. Owens, 186 A.D.2d 1029, 588 N.Y.S.2d 677 (4th Dep't 1992).*

-- $ 5,840 plus $ 1,000 for pain and suffering, awarded to parents of 16-year-old child killed in automobile accident; new trial ordered unless defendants accept additur to *$ 30,000. Franchell v. Sims, 73 A.D.2d 1, 424 N.Y.S.2d 959 (4th Dep't 1980).*

-- $ 3,000 for death of 19-year-old youth killed in automobile accident; new trial ordered unless defendant agreed to raise damages to *$ 25,000. Weiss v. New Hampshire Ins. Co., 73 A.D.2d 618, 422 N.Y.S.2d 458 (2d Dep't 1979).*

-- $ 2,756.85 (which included funeral, burial plot and ambulance expenses only); 17-year-old boy killed in single car accident; decedent was hard worker and helped his parents; death was due solely to defendant's reckless driving; reversed for new trial. *Brown v. Moore, 286 N.C. 664, 213 S.E.2d 342 (1975).*

-- $ 25,000 where 18-year-old killed in car accident; award so contrary to uncontroverted evidence as to necessitate new trial on damages; court relied on fact that uncontroverted testimony of plaintiff's expert established that net economic loss resulting from decedent's death ranged from $ 232,400 to $ 756,081 and that jury could not totally disregard only evidence presented on question of damages and settle on grossly inadequate figure. *Kiser v. Schulte, 538 Pa. 219, 648 A.2d 1 (1994).*

-- $ 3,689.20 (which included $ 2,689.20 under wrongful death action and $ 1,000 under survival action) where 15-year-old boy killed in automobile accident; above average IQ, exemplary character, and high propensity for work who contributed to his mother's support; new trial ordered on damage issue. *Prince v. Adams, 229 Pa. Super. 150, 324 A.2d 358 (1974).*

-- $ 0 for mental anguish in wrongful death action, where 19-year-old riding an ATV collided with a truck; while decedent left home three years before he died and only returned occasionally to visit his mother, and although jury could find he did not provide mother with care and attention, mother testified that her son's death caused loss of appetite, difficulty sleeping, and crying bouts at work; she felt empty because of loss of her son and continued to visit his grave. *Martinez v. Graves, 2003 WL 21466962 (Tex. App. San Antonio 2003).*

-- $ 0 where 20-year-old student killed in automobile accident; damages sought by 51-year-old parent; parents had automobile parts business in which son had worked since 11 years of age and which he planned to make his own business after graduation from college; worked after school in the store and seven days per week during summer; father in ill health and unable to manage the store alone and unable to secure adequate help after son's death, with resulting loss of earnings; new trial. *Montoya v. Nueces Vacuum Service, Inc., 471 S.W.2d 110 (Tex. Civ. App. Corpus Christi 1971)*, writ refused n.r.e., (Jan. 12, 1972).

-- $ 6,363 (which included $ 1,863 medical and funeral expenses and property damage) awarded to parents of 17-year-old school boy killed in motor vehicle accident; award held inadequate and verdict reversed and new trial ordered on ground that verdict, in addition to pecuniary loss, should have included damages for loss of companionship. *Lockhart v. Besel, 71 Wash. 2d 112, 426 P.2d 605 (1967).*

[*19] Decedent's age unspecified - Not excessive

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death in a vehicular accident of a child whose age was unspecified were not excessive, such as awards of --

-- $ 859,500 to father and $ 1,224,800 to mother where daughter killed by car while crossing boulevard; uncontradicted testimony of mother, father, and sister presented abundant evidence of closeness of family unit and of decedent's loving kindness and nature to both father and mother. *Dirosario v. Havens, 196 Cal. App. 3d 1224, 242 Cal. Rptr. 423 (2d Dist. 1987)*.

-- $ 1 million awarded to parents of girl fatally injured when train struck automobile; also awarded $ 1,775.86 in special damages; order for $ 500,000 remittitur and order for new trial reversed; remanded with directions to reinstate judgment. *Corbett v. Seaboard Coastline R. Co., 375 So. 2d 34 (Fla. 3d DCA 1979)*.

-- $ 10,000 to estate of infant killed as result of rear-end collision between automobile and tractor trailer truck; new trial granted by trial court on ground that verdict excessive set aside on instant appeal. *Holland Paving Co. v. Dann, 169 So. 2d 849 (Fla. 3d DCA 1964)*.

-- $ 60,000 award made to parents of girl killed in railway crossing accident on way to babysitting job. *Union Pac. R. Co. v. Jarrett, 381 F.2d 597 (9th Cir. 1967)* (applying Idaho law).

-- $ 51,387 to estate of minor killed in automobile accident; both parents also killed in same accident. *Amerco Marketing Co. of Memphis, Inc. v. Myers, 494 F.2d 904 (6th Cir. 1974)* (applying Kentucky law).

-- $ 20,000 for death of minor daughter in automobile accident; father also killed in accident. *Billiot v. Bourg, 338 So. 2d 1148 (La. 1976)*.

-- $ 500,000 to father and $ 350,000 to mother for loss of their minor son in an automobile accident; both parents had close relationship with their son, and suffered enormously after his death. *Monk v. State ex rel. DOTD, 908 So. 2d 688 (La. Ct. App. 3d Cir. 2005)*, writ granted, *925 So. 2d 1238 (La. 2006)*, order recalled, *940 So. 2d 642 (La. 2006)* and writ denied as improvidently granted, *940 So. 2d 642 (La. 2006)*.

-- $ 55,000 to family of boy killed in car accident while running away from home; described as troubled child but with close relationship to parents. *Boudreaux v. State Farm Mut. Auto. Ins. Co., 385 So. 2d 480 (La. Ct. App. 1st Cir. 1980)*, writ refused, *392 So. 2d 690 (La. 1980)* and writ refused, *392 So. 2d 691 (La. 1980)*.

-- $ 80,000 to parents of son killed in truck collision; only son of older parents; no prospects of having more children; close family relationship. *Polk v. Wiley, 325 So. 2d 658 (La. Ct. App. 3d Cir. 1975)*.

-- $ 50,000 ($ 25,000 to each parent for each child killed in automobile accident); children of unspecified age, killed while being brought to their homes in a station wagon from a private school. *Addison v. Travelers Ins. Co., 281 So. 2d 805 (La. Ct. App. 1st Cir. 1973)*.

-- $ 80,000 which included $ 40,000 to each parent for death child of unspecified age killed in automobile accident; loss of love and affection; helped parents with a business enterprise which included working with horses; close and devoted family; exceptional student; 16-year-old sister and 13-year-old sister also killed in accident. *Wright v. Romano, 279 So. 2d 735 (La. Ct. App. 1st Cir. 1973)*, writ denied, *281 So. 2d 757 (La. 1973)* and writ denied, *281 So. 2d 758 (La. 1973)*.

-- $ 15,751.35 which included $ 7,500 to each of surviving parents and $ 751.35 funeral expenses for minor son killed in accident. *Honeycutt v. Indiana Lumbermens Mut. Ins. Co., 130 So. 2d 770 (La. Ct. App. 3d Cir. 1961)*.

-- $ 3,000 including $ 1,000 for death of each of three infant children in collision; court noting substantial settlement with other tortfeasor. *Papillion v. Papillion, 124 So. 2d 586 (La. Ct. App. 3d Cir. 1960)*.

-- $ 1.1 million for each of three children killed in car-bus collision; rebuttable presumption that deceased child's income would have been equivalent of national average as set forth by *United States Department of Labor. Greyhound Lines, Inc. v. Sutton, 765 So. 2d 1269 (Miss. 2000)*.

-- $ 28,500 awarded to father of infant daughter killed in automobile accident; wife also killed in same accident. *McBride v. Cantero, 90 A.D.2d 979, 456 N.Y.S.2d 594 (4th Dep't 1982)*.

-- $ 3.5 million average amount for each of five teenagers killed in car accident. Mecca v. Lukasik, 366 Pa. Super. 149, 530 A.2d 1334 (1987).

-- $ 6 million damages to parents of three minor children who suffered fatal injuries in head-on collision between automobile and truck; not so shocking or monstrous as to require reversal. Ruiz Troche v. Pepsi Cola of Puerto Rico Bottling Co., 177 F.R.D. 82 (D.P.R. 1997), rev'd on other grounds, 161 F.3d 77, 50 Fed. R. Evid. Serv. 984 (1st Cir. 1998) (applying Puerto Rico law).

[*20] Decedent's age unspecified - Excessive

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death in a vehicular accident of a child whose age was unspecified were excessive, such as awards of --

-- $ 200,000 to mother of child killed in automobile accident; award exceeded that which would have been appropriate in case where parent and child lived together uninterrupted, and in case at hand mother and child frequently lived apart; $ 150,000 was highest amount within trial court's discretion. James v. State Farm Mut. Auto. Ins. Co., 597 So. 2d 555 (La. Ct. App. 1st Cir. 1992) (abrogated on other grounds by, Colvin v. Louisiana Patient's Compensation Fund Oversight Bd., 947 So. 2d 15 (La. 2007)).

-- $ 40,000 (reduced to $ 20,000); awarded to father for death of son in automobile accident; no evidence indicating nature of relationship between plaintiff and deceased son. *Meaux v. Wiley, 325 So. 2d 655 (La. Ct. App. 3d Cir. 1975).*

-- $ 15,000 ordered reduced to $ 7,500, awarded to father of girl killed in automobile accident; parents of other children killed in same accident only awarded $ 7,500. Dellihoue v. Continental Cas. Co. of Chicago, Ill., 159 So. 2d 13 (La. Ct. App. 3d Cir. 1963), writ issued, 245 La. 734, 160 So. 2d 596 (1964) and rev'd on other grounds, 246 La. 951, 169 So. 2d 60 (1964).

[*21] Decedent's age unspecified - Amount fixed by court

There is case law fixing the amount of compensatory damages for the death in a vehicular accident of a child whose age was unspecified, determining an award such as --

-- $ 21,000 which included $ 10,000 to each parent and $ 1,000 for conscious pain; minor child who survived automobile accident two hours with fractured pelvis and agonizing thirst from internal hemorrhages. Fullilove v. U. S. Cas. Co. of N. Y., 129 So. 2d 816 (La. Ct. App. 2d Cir. 1961).

[*22] Decedent's age unspecified - Adequate

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death in a vehicular accident of a child whose age was unspecified were adequate, such as awards of --

-- $ 5,000 for young woman killed in collision; worked part-time while attending school; sewed much of her own and her family's wardrobe, and contributed generously to her parents and family; court noting that wrongful death statute did not recompense a grieving family for the lost love, friendship, and charm of such a girl. Bohnen v. Wingereid, 80 Ill. App. 3d 232, 35 Ill. Dec. 254, 398 N.E.2d 1204 (1st Dist. 1979).

-- $ 40,000 -- $ 20,000 to each parent of minor killed in automobile accident; court noting that award more than insurance coverage. Hurston v. Dufour, 292 So. 2d 733 (La. Ct. App. 1st Cir. 1974), writ denied, *295 So. 2d 178 (La. 1974).*

-- $ 10,000 for minor son killed in automobile accident. Smith v. Indiana Lumbermens Mut. Ins. Co., 130 So. 2d 775 (La. Ct. App. 3d Cir. 1961).

-- $ 15,751.35 which included $ 7,500 to each of surviving parents and $ 751.35 funeral expenses; minor son killed in accident. Honeycutt v. Indiana Lumbermens Mut. Ins. Co., 130 So. 2d 770 (La. Ct. App. 3d Cir. 1961).

-- $ 15,000 for child killed in accident in which both parents and a sister were killed and another brother received numerous injuries. Barnes v. Smith, 305 F.2d 226 (10th Cir. 1962) (applying New Mexico law).

-- $ 36,274.13 where son killed by drunk driver; while parents complained that award only compensated them for medical and funeral expenses, while parents testified that they had maintained good relationship with their son, they were divorced, and as a result, son spent much time with his grandmother. *Wallis v. Carco Carriage Corp., Inc., 124 F.3d 218 (10th Cir. 1997)* (applying Oklahoma law).

[*23] Decedent's age unspecified - Inadequate

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death in a vehicular accident of a child whose age was unspecified were inadequate, such as awards of --

-- $ 8,000 where boy killed in automobile accident; described as healthy, athletic, intelligent, devoted; life expectancy of 54.2 years. Long v. Bennett, 55 Ill. App. 3d 50, 12 Ill. Dec. 823, 370 N.E.2d 627 (4th Dist. 1977).

-- $ 0 where bicycle rider hit by vehicle; jury had concluded that driver was 51% at fault. Hunter v. Byrd, 602 N.E.2d 1052 (Ind. Ct. App. 1992).

-- $ 0 where son killed in accident as passenger; uncontradicted testimony that son had close relationship with his parents and that his death resulted in emotional distress, pain, and anguish to them; mother had to take tranquilizers as result of increased nervousness, and that she broke down almost every day. Cornelison v. Aggregate Haulers, Inc., 777 S.W.2d 542 (Tex. App. Fort Worth 1989), writ denied, (Jan. 24, 1990).

Death from Malpractice, Improper Medication, or Similar Treatment

[*24] From birth through age six - Not excessive

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death from medical malpractice or related medication claims of a child age six years old or younger were not excessive, such as awards of --

-- $ 4 million awarded child's estate in survival action where child born with severe brain damage because of oxygen deprivation during delivery due to malpractice, and led debilitative life until he was 1 1/2 years old, when he died of respiratory failure, in light of nature and extent of child's injuries, which he endured over the 18 months he survived; $ 2.2 million wrongful death award likewise not excessive, where mother shown to be dedicated and devoted to child during his lifetime, and father and siblings, too, were denied opportunity of ever having relationship with child normally available to fathers and brothers. Jones v. Chicago Osteopathic Hosp., 316 Ill. App. 3d 1121, 250 Ill. Dec. 326, 738 N.E.2d 542 (1st Dist. 2000).

-- $ 1.6 million for parental loss of society resulting from death of infant minutes after birth due to improperly canceling emergency Caesarean section; parents are entitled to rebuttable presumption of substantial pecuniary loss upon death of child. Simmons v. University of Chicago Hospitals and Clinics, 247 Ill. App. 3d 177, 187 Ill. Dec. 70, 617 N.E.2d 278 (1st Dist. 1993), judgment aff'd on other grounds, 162 Ill. 2d 1, 204 Ill. Dec. 645, 642 N.E.2d 107 (1994).

-- $ 300,000 to father from compensation fund where mother died, assertedly from malpractice, when she collapsed in hospital restroom and was resuscitated and gave birth to child who died next day; parents planned to be primary caregivers for baby although they were not planning on living together; father purchased some "big" items for baby such as crib, but did not pay for any of mother's doctors' appointments or medical expenses; did not go to the doctor or hospital with mother; issues with father's subsequent marriage and relationship with his subsequent children. Randles v. Indiana Patient's Compensation Fund, 860 N.E.2d 1212 (Ind. Ct. App. 2007).

-- $ 500,000 for past loss of companionship and society where baby was stillborn because doctor and hospital failed to diagnose placental abruption, parents testified about their relationships with their other children, and about their plans for interacting with deceased child; also testified about their own background, interests, and personalities; this testimony provided jury with important evidence regarding what parents' relationship likely would have been with their deceased son. *Heimlicher v. Steele, 615 F. Supp. 2d 884 (N.D. Iowa 2009)* (applying Iowa law).

-- $ 2 million to each parent of infant daughter who died from acetaminophen toxicity, in action against manufacturer for inadequate warnings on label and against hospital for negligently prescribing excessive doses of product; parents unwittingly administered improper doses when, in mother's words, they were "supposed to take care of and protect" daughter, mother considered herself a disgrace and had not been helped by therapy or medication, and father testified he was depressed 99% of the time, had lost his religious faith, and was very upset that daughter was buried without her organs due to an autopsy; $ 1 million for survival damages not excessive where parents' testimony showed that daughter was in pain and suffered until near her death, that she was cognizant of them being present and wanted to be held and comforted by them, but they could not give her what she sought. *Hutto v. McNeil-PPC, Inc., 79 So. 3d 1199 (La. Ct. App. 3d Cir. 2011)*, writ denied, *86 So. 3d 628 (La. 2012)*.

-- $ 550,000 in general damages (reduced to $ 500,000 per statutory cap) for lost chance of survival where eight-month-old son who had high fever and chickenpox died of sepsis because emergency room physician failed to diagnose and treat him properly; evidence illustrated pain and suffering baby endured prior to his death, as well as damages suffered by his mother and father. *Raines v. Columbia Lakeland Medical Center, 923 So. 2d 170 (La. Ct. App. 4th Cir. 2006)*.

-- $ 250,000 past and future pain and suffering to each parent of infant who died after 24 days, assertedly because of malpractice; visited him frequently in hospital; subsequent problems in their relationship and marriage which occurred as result of grief; medical expenses $ 23,209.98, funeral expenses $ 587.68, burial expense $ 400, pharmacy $ 175.23; $ 100,000 to infant for pain, suffering, and disability from 24 days of life in acute distress; award reduced to $ 500,000 per malpractice claims cap. *Taylor v. Clement, 832 So. 2d 1089 (La. Ct. App. 3d Cir. 2002)*, writ denied, *840 So. 2d 571 (La. 2003)* and (abrogated on other grounds by, *Colvin v. Louisiana Patient's Compensation Fund Oversight Bd., 947 So. 2d 15 (La. 2007)*).

-- $ 500,000, as reduced from jury award of $ 1.45 million, for death of five-year-old from complications of juvenile diabetes including cerebral edema where physician failed to comply with appropriate standard of care, despite testimony that child's quality of life, had he survived, would have been poor. *Carey v. Rao, 828 So. 2d 53 (La. Ct. App. 4th Cir. 2002)*, writ denied, *831 So. 2d 986 (La. 2002)*.

-- $ 300,000 to each parent of six-year-old son who died of electrolyte imbalance due to dehydration due to gastroenteritis when doctor failed to provide large enough amounts of intravenous fluid; mother had tubal ligation after child's birth; child and sister were very close; mother underwent counseling for depression after death; child accompanied his father wherever he went; father was unable to participate in some activities that he shared with child. *Bourgeois v. Bailey, 817 So. 2d 240 (La. Ct. App. 5th Cir. 2002)*.

-- $ 50,000 for physical and mental pain and suffering of four and one-half year old who died of meningococcemia, septic shock, and possible meningitis, where on day before death emergency room doctors failed to take blood test, and mother testified that she was told that they had to give child medicine because she was in a lot of pain; $ 500,000 to mother, and, for past and future mental pain and suffering, past and future loss of love and society, and past and future loss of enjoyment of life, not excessive, where mother testified that child was a happy baby and that she had watched her always; after child died, she and anyone who had been in contact with child had to take medicine because illness was highly contagious, and anything child touched or wore had to be disposed of right away; mother and husband experienced problems with their relationship after death where husband wanted a family, but mother had undergone tubal ligation on day child born; $ 50,000 to father. *Etcher v. Neumann, 806 So. 2d 826 (La. Ct. App. 1st Cir. 2001)*, writ denied, *817 So. 2d 105 (La. 2002)*.

-- $ 500,000 general damages, per statutory cap, to parents of two-day-old child who died after emergency room physician and hospital failed to diagnose placental abruption in pregnant mother following automobile accident; parents were married for 13 years and expected their first male child, mother was unable to view child or attend funeral after having been placed in intensive care unit; and mother became depressed following loss of her child. Rebstock v. Hospital Service Dist. No. 1, 800 So. 2d 435 (La. Ct. App. 5th Cir. 2001), writ denied, *811 So. 2d 914 (La. 2002)*.

-- $ 500,000, maximum authorized under patient's compensation fund, where premature newborn died, assertedly because of use of CMV-contaminated blood product; newborn suffered for over two weeks from CMV infection that led to his death; underwent series of procedures related to complications and was repeatedly sedated; parents testified regarding child's sudden turn for the worse, their visits to hospital and attention to his condition, and hours before and after his death, and regarding impact and lasting effects of death. Fowler v. Bossano, 797 So. 2d 160 (La. Ct. App. 3d Cir. 2001).

-- $ 425,000 general damages awarded for four-and-a-half year-old's death from malpractice including $ 98,000 for child's conscious pain and suffering, $ 163,500 for mother's loss of love, affection, and consortium, and $ 163,500 for mother's past, present, and future grief and mental anguish; as to conscious pain and suffering, plaintiff noted that child had endured complications, suffering all the while, worsening over 62-hour period and ultimately resulting in her death; this could have led trial court to determine that young girl was aware of her discomforts; as to awards to mother, mother had been child's principal care giver, checking child's blood sugar and administering her insulin injections; was devoted, loving mother and friend, and the two were virtually inseparable, did everything together; mother had to witness her daughter's decline in health, and various traumatic episodes during hospitalization ending with having to choose to "pull the plug" on her daughter; mother had inevitable sense of loss of child who had been virtually joined at her mother's hip, and by guilt for not saving her life. Futch v. Attwood, 698 So. 2d 958 (La. Ct. App. 3d Cir. 1997), writ granted in part, *709 So. 2d 721 (La. 1998)*.

-- $ 400,000 to mother and $ 100,000 for wrongful death where due to inadequate care by hospital employees, baby delivered by Caesarean section suffered asphyxia which caused severe brain damage, kidney failure, and other complications, and child died day before her fifth birthday; findings of failure to monitor properly and notice signs of fetal distress; administration of Pitocin after finding of fetal distress; and delay in performing emergency C-section after fetal distress diagnosed. Conerly v. State, 690 So. 2d 980 (La. Ct. App. 2d Cir. 1997), writ granted in part, *712 So. 2d 859 (La. 1998)* and writ denied, *712 So. 2d 864 (La. 1998)* and rev'd on other grounds, 714 So. 2d 709 (La. 1998).

-- $ 500,000 where infant who had suffered severe hypoxic event during cesarean delivery died 24 days later, award consisted of $ 50,000 past medical expenses, $ 100,000 past and $ 50,000 future mental and emotional pain and suffering $ 150,000 to each parent loss of love, affection, and companionship: while infant lived only 24 days, felt no pain in his irreversible coma, was clinically brain dead when he was only 24 hours old, and remained on life support systems for almost all of his short life, parents had pain as this was their first baby; there was evidence of severe depression suffered by both parents; father testified as to infant looking terrible at birth, and that he visited infant every day; while had two daughters thereafter, mother testified that girls could not take place of their lost son. McCann v. ABC Ins. Co., 640 So. 2d 865 (La. Ct. App. 4th Cir. 1994).

-- $ 500,000 for survival and wrongful death damages, per statutory cap, where postsurgical two-year-old patient died, after suffering seizures, from cerebral edema with herniation of the brain tissue due to over-hydration; testimony as to whining and crying during first seizure, while during second seizure his back was arching, his teeth were clenched, his limbs were jerking, and his eyes were rolling to the side; family had invested great deal of time and effort into helping child overcome physical handicap; after death, mother became withdrawn and moody and eventually quit her job and quit teaching catechism; father stated that he and his wife had become over-possessive and overprotective of their remaining children as result of death; child was extraordinary child who had extremely close and loving relationship with his family. Prince v. Mattalino, 583 So. 2d 541 (La. Ct. App. 3d Cir. 1991).

-- $ 25,000 awarded for loss of love and affection of six-year-old girl who died as result of medical malpractice involving treatment of vaginal bleeding, although child was terminally ill from brain tumor and semicomatose before malpractice occurred; close relationship between child and her mother. Taylor v. Charity Hosp. of Louisiana in New Orleans, 466 So. 2d 736 (La. Ct. App. 4th Cir. 1985), judgment vacated on other grounds, *476 So. 2d 338 (La. 1985)* and writ denied, *476 So. 2d 341 (La. 1985)*.

-- $ 76,000 wrongful death of almost three years old child when pediatrician failed to timely attend or take action when child who was at home was running very high fever and could hardly move. *Kogan v. Dreifuss, 174 A.D.2d 607, 571 N.Y.S.2d 314 (2d Dep't 1991)*.

-- $ 8,401.75 to father as administrator of estate of his two-year-old daughter; physician at hospital turned decedent out of hospital at time she was acutely sick, after having been sent to hospital by family physician. Barcia v. Society of New York Hospital, 39 Misc. 2d 526, 241 N.Y.S.2d 373 (Sup 1963).

-- $ 800,000 against hospital where newborn died from hypovolemic shock caused by subgaleal hematoma probably result of improper forceps delivery; improper attendance and treatment; remittitur to $ 300,000 not warranted where amount was not outrageous and remittitur could not be based on judge's view that case against hospital was weak. Strubhart v. Perry Memorial Hosp. Trust Authority, 1995 OK 10, 903 P.2d 263 (Okla. 1995).

-- $ 1.5 million for loss of society and companionship; medical malpractice concerning delivery and subsequent death of 17-month-old who suffered hypoxic ischemic brain injury which caused cerebral palsy and associated respiratory and neurological conditions. Hatwood v. Hospital of the University of Pennsylvania, 2012 PA Super 217, 55 A.3d 1229 (2012).

-- $ 1.5 million to mother in wrongful death action where 19-month-old child died from brain swelling due to low blood sodium levels which doctor failed to monitor in hospital; mother cared greatly for child, stayed in his hospital room all night; summoned nurses next morning because of her concern for his condition; witnessed child's increasing disorientation to point he could not recognize her; evidence of conscious pain and suffering supported jury's award of $ 600,000 in actual damages in survival action; nurses' charts indicated that child was irritable and slept fretfully from midnight until approximately 5:45 a.m., he vomited and became combative, pulling at his monitors and fighting his mother, who was unable to console him, nurse overheard patient say, "Mommy, I no feel good. Hold me," and expert testified that brain continued to swell until it was forced through hole in base of skull. Scott v. Porter, 340 S.C. 158, 530 S.E.2d 389 (Ct. App. 2000).

-- $ 25,000 to parents for death, as result of malpractice of doctor and nurse, of their 22-month-old son, a bright, robust, and healthy child prior to death. Crowe v. Provost, 52 Tenn. App. 397, 374 S.W.2d 645 (1963).

-- $ 1.2 million consisting of $ 700,000 for pain and suffering for malpractice in death of 19-month-old child where jury could reasonably infer that child, in essence, slowly suffocated to deathand $ 500,000 for pecuniary loss resulting from death of child; plaintiffs showed life expectancy of child, life expectancy of mother, that child was healthy, and that in view of close and affectionate relationship between mother and child, jury could reasonably infer that he would be of great financial assistance to her in her advanced years or in event of her disability or economic hardship; one million exemplary damages. Mercy Hosp. of Laredo v. Rios, 776 S.W.2d 626 (Tex. App. San Antonio 1989), writ denied, (June 13, 1990).

-- $ 655,973.46, to parents of eight-day-old child who died because doctor's performance of fetal delivery by Caesarian section was conducted too late to avoid severe brain damage, in addition to medical expenses; evidence of sorrow, mental anguish, and solace fully sufficient to support jury's award. Jan Paul Fruiterman, M.D. and Associates, P.C. v. Waziri, 259 Va. 540, 525 S.E.2d 552 (2000).

-- $ 1.75 million to hospital where hospital nurse allegedly administered overdose of drug to two-year child who subsequently died, and where hospital claimed against manufacturer that drug's packaging and labeling was unclear, confusing, and misleading. CAMC also asserted that as a result of the unclear, confusing and misleading

labeling, patients who had received Cerebyx(r) had suffered injury; no proof of mistake or prejudice. Charleston Area Medical Center, Inc. v. Parke-Davis, 2002 WL 32943975 (N.D. W. Va. 2002) (applying West Virginia law).

-- $ 1.75 million for lost earnings of infant who died less than one day after his premature birth due to failure to treat preterm labor; economist testified as to his estimates of infant's lost future earnings, based upon three life scenarios, reduced to present value; jury's award was within range of estimated future earnings set forth by economist based upon four year college education; economist took educational background of parents into consideration in estimating his three scenarios; survival rate for babies such as infant in question was over 75%. Andrews v. Reynolds Memorial Hosp., Inc., 201 W. Va. 624, 499 S.E.2d 846 (1997).

[*25] From birth through age six - Excessive

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death from medical malpractice or related treatment of a child under seven years of age were excessive, such as awards of --

-- $ 2 million to parents of 21-month-old child in medical malpractice action against the United States; child died of iron poisoning; only evidence of damages mortality table and parents' testimony; no evidence regarding value of services or support. Johnson v. U.S., 780 F.2d 902, 19 Fed. R. Evid. Serv. 1434 (11th Cir. 1986) (applying Florida law).

-- $ 1.71 million in damages where baby was stillborn because doctor and hospital failed to diagnose placental abruption; aside from $ 500,000 award for consortium which was not excessive, since the jury deducted only $ 10,000 from total award for past expenses up to trial attributable to raising child, and deducted only $ 100,000 for such future expenses; parents described active lifestyle and upscale standard of living; federal estimates for annual cost of raising third child in area was $ 11,673; remittitur of deduction for past costs of raising child to $ 70,000, and appropriate deduction for future costs was $ 200,000; total damages thus lowered to $ 1.55 million. Heimlicher v. Steele, 615 F. Supp. 2d 884 (N.D. Iowa 2009) (applying Iowa and federal law).

-- $ 50,000 awarded for pain and suffering of six-year-old girl who died as result of medical malpractice involving treatment of vaginal bleeding, where although child was terminally ill and in comatose state before malpractice occurred, trial court did not commit manifest error in determining that child sustained some sensation of pain; award reduced to $ 15,000. Taylor v. Charity Hosp. of Louisiana in New Orleans, 466 So. 2d 736 (La. Ct. App. 4th Cir. 1985), judgment vacated on other grounds, *476 So. 2d 338 (La. 1985)* and writ denied, *476 So. 2d 341 (La. 1985)*.

-- $ 100,000, lowered to $ 50,000, for the pain and suffering endured by six-year-old son who died of electrolyte imbalance due to dehydration due to gastroenteritis when doctor failed to provide large enough amounts of intravenous fluid; during hour and 41 minutes from time of malpractice to time of death; child was administered Insulin; when his heart rate began its terminal descent and arrhythmia, tube was placed in his throat, another tube was placed in his nose, and he was stuck with several needles, including at least two times through his chest wall into his heart; additional tube placed in vein in his neck; all of these were invasive procedures that would have caused severe pain. Bourgeois v. Bailey, 817 So. 2d 240 (La. Ct. App. 5th Cir. 2002).

-- $ 300,000, reduced to $ 150,000 for mother's own pain and suffering and $ 100,000, reduced to $ 50,000 for pain and suffering of child who died two days after birth, due to failures in attendance and treatment of obstetrician; mother's award predicated on suffering and lack of care sustained as result of absence of obstetrician during distress period of her labor as well as absence of obstetrical nurses; integral part of award based upon her anxiety and suffering resulting from child's death; award to mother limited where child only lived 36 hours; as to suffering sustained by infant, evidence lacking of prolonged pain, and only evidence was grandmother's testimony that when she visited child he did not appear to be conscious. Dent v. Perkins, 629 So. 2d 1354 (La. Ct. App. 4th Cir. 1993), writ denied, *634 So. 2d 853 (La. 1994)*.

-- $ 150,000, lowered to $ 30,000 where arrestee in 28th week of pregnancy claimed improper treatment by sheriff and by hospital where prematurely delivered infant lived only 36 hours and arrestee reluctantly saw child only once

during that time and only for brief period; while arrestee argued that she was handcuffed at time of delivery, and leg-cuffed to bed after delivery thus adding to her grief and personal loss, prior to her arrest she refused to seek medical attention and prenatal care, did not follow doctor's orders for further checkups and bed rest, and was treated for syphilis during fifth month of her pregnancy; only evidence establishing any mental pain or anguish was arrestee's own testimony. *Calloway v. City of New Orleans, 524 So. 2d 182, 6 A.L.R.5th 1108 (La. Ct. App. 4th Cir. 1988)*, writ denied, *530 So. 2d 84 (La. 1988)*.

-- $ 100,000 for one-month-old infant died as result of receiving intravenous feeding intended for adult; infant was premature with various health problems similar to those of older brother in infancy, described as having 95% chance of living normal, healthy life at time of accident. *Ahrenholz v. Hennepin County, 295 N.W.2d 645 (Minn. 1980)*.

-- $ 1 million for mother's emotional distress caused by medical malpractice in premature birth and death of infant after 10 days, and award of $ 500,000 for father's emotional distress; mother consulted psychologist 10 times and was found to have improved; no evidence of psychiatric hospitalization or significant interference with lifestyle or employment relationships of either parent; $ 550,000 for baby's pain and suffering during her 10-day life also excessive where doctor qualified his testimony by stating that baby likely experienced some pain, and other doctor concluded that although baby probably was experiencing "some pain," she probably was not feeling any pain as of sixth day; $ 450,000 verdict for baby's wrongful death; only evidence was that family was close, each member supporting others in various ways. *Carey v. Lovett, 132 N.J. 44, 622 A.2d 1279 (1993)*.

-- $ 12 million jury verdict, reduced to $ 750,000 (trial court's prior order had reduced award to $ 175,000), for infant's conscious pain and suffering in 12 days between birth and death; although infant might not have had high cognitive awareness of her impending death; infant was born in severe distress due to hospital's failure to timely monitor almost nine hours of fetal distress, and infant's compromised condition required constant invasive procedures, including intubation, placement in a heart-lung machine, and heart-lung machine treatment caused infant to die from secondary Candida infection. *Cepeda v. New York City Health and Hospitals Corp., 303 A.D.2d 173, 756 N.Y.S.2d 189 (1st Dep't 2003)*.

-- $ 1.05 million for conscious pain and suffering for death of almost three years old child when pediatrician failed to timely attend or take action when child who was at home was running very high fever and could hardly move; ample evidence of conscious pain and suffering between 2:00 a.m. telephone call and time child lapsed into coma, which amounted to some 50 hours; however, award deviated materially from reasonable compensation; reduced to *$ 350,000. Kogan v. Dreifuss, 174 A.D.2d 607, 571 N.Y.S.2d 314 (2d Dep't 1991)*.

-- $ 6,000 reduced to $ 3,500; award against state for wrongful death of six-year-old patient of state school who was mentally retarded, unable to eat by himself, could not speak or walk without help, and was a moderate spastic and subject to convulsions; no pecuniary loss proven; complete absence of evidence of conscious pain and suffering; received at school undernourished and died few weeks later of pneumonia and acute myocarditis assertedly due to poor care. *Santana v. State, 28 A.D.2d 576, 279 N.Y.S.2d 253 (3d Dep't 1967)*.

-- $ 50,000 where three-year-old infant died due to ruptured appendix resulting in acute peritonitis because of medical malpractice. *Spillman v. Forsyth Memorial Hospital, 30 N.C. App. 406, 227 S.E.2d 292 (1976)*.

-- $ 175,000 awarded to parents of six-year-old boy who died as result of pediatrician's failure to diagnose and treat Rocky Mountain spotted fever; court noted size of awards in similar cases. *Clark v. Ross, 284 S.C. 543, 328 S.E.2d 91 (Ct. App. 1985)* (abrogated on other grounds by, *Sherer v. James, 290 S.C. 404, 351 S.E.2d 148 (1986)*).

-- $ 1 million, remittitur of $ 400,000 where three-year-old died from failure to diagnose meningococcemia; no proof of pain and suffering; reasonable for jury to find that this child, who was healthy except for this illness, would have earning capacity of at least minimum wage between ages of 16 and 65 which would total $ 328,300, and could properly consider inflation, although this would not sustain entire verdict. Bradford for Use and Benefit of Estate of Bradford v. Swain, 1989 WL 1221 (Tenn. Ct. App. 1989).

-- $ 10 million where pediatrician performed biopsy on 2 1/2-year-old without parents' permission, and perforated child's colon and failed to report or treat this immediately; remittitur to $ 3 million where attorney improperly argued

that jurors had duty to place value on child's life, and that parents were entitled to that measure of damages. Roberts v. Stevens Clinic Hosp., Inc., 176 W. Va. 492, 345 S.E.2d 791 (1986).

[*26] From birth through age six - Amount fixed by court

Under the particular circumstances of the following cases the courts fixed the amount of an award of compensatory damages for the death from medical malpractice, other improper medical treatment, or related product medication claims of a child under seven years of age, determining sums such as --

-- $ 14,641.40 (including $ 891.40 for death and burial expenses); awarded to administrator of estate of three-year-old boy who was given grossly excessive dosage of medication while patient at defendant's medical dispensary; compensation to parents for deprivation of pecuniary benefits reasonably to have been expected had child survived. Dean v. U.S., 239 F. Supp. 167 (M.D. Ala. 1965) (applying federal and Canal Zone law).

-- $ 600,000 loss-of-life damages in medical malpractice action for 17-month-old infant's death, for failure to timely diagnosis child's bacterial endocarditis; more likely than not that child would have lived as long as 50 years despite his prior serious medical problems; child had protective, supportive, and loving home and extended family; child could have looked forward to employment opportunities, and would have likely experienced joys of married life and parenthood; $ 900,000 to mother and $ 800,000 to father for past and future mental anguish; only $ 10,000 conscious pain and suffering since while child had to undergo unnecessary heart operation, no evidence that operation itself occasioned conscious pain and suffering; probably suffered no more than child with severe flu symptoms. McMullin v. U.S., 515 F. Supp. 2d 914 (E.D. Ark. 2007), as revised, (Oct. 22, 2007) (applying Arkansas law).

[*27] From birth through age six - Adequate

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death from medical malpractice of a child age six years old or younger were adequate, such as awards of --

-- $ 425,000 general damages awarded for four-and-a-half year-old's death from malpractice including $ 98,000 for child's conscious pain and suffering, $ 163,500 for mother's loss of love, affection, and consortium, and $ 163,500 for mother's past, present, and future grief and mental anguish; as to conscious pain and suffering, plaintiff noted that child had endured complications, suffering all the while, worsening over 62 hour period and ultimately resulting in her death; this could have led trial court to determine that young girl was aware of her discomforts; as to awards to mother, mother had been child's principal care giver, checking child's blood sugar and administering her insulin injections; was devoted, loving mother and friend, and the two were virtually inseparable, did everything together; mother had to witness her daughter's decline in health in Crowley, and various traumatic episodes during hospitalization ending with having to choose to "pull the plug" on her daughter; mother had inevitable sense of loss of child who had been virtually joined at her mother's hip, and by guilt for not saving her life. Futch v. Attwood, 698 So. 2d 958 (La. Ct. App. 3d Cir. 1997), writ granted in part, *709 So. 2d 721 (La. 1998).*

-- $ 10,000 wrongful death to parents of 10-month-old who died from medical malpractice in treatment after child had fallen; parents separated approximately seven months after death; mother later gave birth to baby girl; mother blamed her husband for her son's death and claimed his personality changed after child's death, causing each to go separate ways; evidence might have caused jury to doubt that environment child would have been brought up in, had he survived, would have resulted in child providing significant services to parents in future. Frame v. Kothari, 218 N.J. Super. 537, 528 A.2d 86 (App. Div. 1987), judgment aff'd on other grounds, 115 N.J. 638, 560 A.2d 675 (1989).

-- $ 74,573.50 to parents of 15-month-old child who died as result of aspirin poisoning which was not diagnosed; average intelligence and good health; court noting that award was comparable to others. Rewis v. U.S., 536 F.2d 594 (5th Cir. 1976) (applying New Mexico law).

[*28] From birth through age six - Inadequate

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death from medical malpractice of a child six years old or younger were inadequate, such as awards of --

-- $ 0 to mother for loss of earnings by infant who died a few months after being born with irreversible brain damage due to doctor's failure to deliver the infant earlier; defense had countered vocational expert's opinion that infant lost earnings in excess of $ 500,000 by noting that family had little earnings, that father was convicted felon who died at an early age, and that mother recipient of food stamps and Medicaid and at times lived off largesse of family members; court termed repugnant as matter of law defense's argument that infant would never amount to anything because of his parents' values and life style, we find this argument repugnant as a matter of law; jury would be required on retrial to award some amount to compensate infant's estate for his destruction to earn money. *Reffitt v. Hajjar, 892 S.W.2d 599 (Ky. Ct. App. 1994).*

-- $ 25,000 medical expenses where premature newborn died, assertedly because of use of CMV-contaminated blood product; raised to $ 50,306.64 as that was only evidence of medical bills; jury apparently erroneously considered half the expenses to be attributable to care of decedent's living twin. *Fowler v. Bossano, 797 So. 2d 160 (La. Ct. App. 3d Cir. 2001).*

-- $ 175,000, as reduced per posttrial motion from jury verdict of $ 12 million, modified to $ 750,000, for infant's conscious pain and suffering in 12 days between birth and death; although infant might not have had high cognitive awareness of her impending death; infant was born in severe distress due to hospital's failure to timely monitor almost nine hours of fetal distress, and infant's compromised condition required constant invasive procedures, including intubation, placement in a heart-lung machine, and heart-lung machine treatment caused infant to die from secondary Candida infection. *Cepeda v. New York City Health and Hospitals Corp., 303 A.D.2d 173, 756 N.Y.S.2d 189 (1st Dep't 2003).*

[*29] From seven through 13 years old - Not excessive

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death from medical malpractice, other improper medical treatment, or related product claims of a child from seven through 13 years old were not excessive, such as awards of --

-- $ 2 million verdict to parents of 11-year-old hemophiliac who used blood concentrate manufactured by defendant, who was infected with Human Immunodeficiency Virus, which developed into Acquired Immune Deficiency Syndrome (AIDS), and who died of complications of AIDS; plaintiff's counsel argued strenuously during closing argument for a total of $ 3.2 million, while defense counsel never argued damages, but simply argued that manufacturer should not be found liable. *Walls v. Armour Pharmaceutical Co., 832 F. Supp. 1505*, Prod. Liab. Rep. (CCH) P 13795 (M.D. Fla. 1993), aff'd in part, rev'd in part on other grounds, *53 F.3d 1184 (11th Cir. 1995)* (applying Florida law).

-- $ 250,000 to mother of 13 1/2-year-old retarded boy killed from burns resulting when hot water bottle was placed on bare abdomen at nursing home; $ 150,000 pain and suffering and $ 100,000 for mother's loss of society and companionship. *Neal's Estate v. Friendship Manor Nursing Home, 113 Mich. App. 759, 318 N.W.2d 594 (1982).*

-- $ 1.5 million to father and sister for wrongful death of 11-year-old child, after remittitur, when child who had juvenile diabetes was treated by mother with Christian Science spiritual healing rather than modern medicine which could have saved him; evidence supporting trial court's findings that father was very loving father and that he had followed child's growth in great detail; evidence supported finding that sister had close, loving relationship with child. *Lundman v. McKown, 530 N.W.2d 807 (Minn. Ct. App. 1995).*

-- $ 650,000 medical malpractice award for conscious pain and suffering of infant who was in vegetative state throughout his short eight-year life; infant cried when he received painful stimuli and smiled and laughed at pleasurable stimuli; thus, had some level of awareness. *Walsh v. Staten Island Obstetrics & Gynecology Associates, P.C., 193 A.D.2d 672, 598 N.Y.S.2d 17 (2d Dep't 1993).*

-- $ 750,000 to each parent where negligence in diagnosis and treatment of appendicitis led to death of 11-year-old daughter; parents testified to loss of companionship and love for child, and effects of destruction of parent-child relationship; both suffered grief and used professional help to receive some relief from sense of loss; testified concerning child's suffering before her death; presented evidence on burial expenses, and estimated that about $ 100 per month had been spent on daughter's support. Currens v. Hampton, 1997 OK 58, 939 P.2d 1138 (Okla. 1997), as corrected, (Aug. 21, 1997).

-- $ 15,000 awarded to parents of nine-year-old boy; malpractice suit; death caused by explosion during tonsillectomy surgery performed by defendant, when electrical instrument was applied to throat of decedent after nurse had given ether as anesthetic; decedent's lungs were so severely burned that he died within few hours. McKinney v. Tromly, 386 S.W.2d 564, 12 A.L.R.3d 1011 (Tex. Civ. App. Tyler 1964), writ refused n.r.e., (Mar. 24, 1965) and (disapproved of on other grounds by, *Sparger v. Worley Hospital, Inc., 547 S.W.2d 582 (Tex. 1977)*).

-- $ 850,000 (which included $ 100,000 for parents' pecuniary loss, $ 500,000 for loss of companionship and society and for mental pain and anguish, and $ 250,000 for child's conscious physical and mental pain before death); nine-year-old boy, kicked in the stomach by another boy, died because of the negligence of hospital and physician in failing to provide proper treatment; oldest of five children; described as a healthy happy child who liked music and was always willing to help anybody. Brownsville Medical Center v. Gracia, 704 S.W.2d 68 (Tex. App. Corpus Christi 1985), writ refused n.r.e., (July 16, 1986).

[*30] From seven through 13 years old - Excessive

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death from medical malpractice, other improper medical treatment, or related product claims of a child from seven through 13 years old were excessive, such as awards of --

-- $ 9 million in noneconomic damages for wrongful death of 11-year-old child who had fatal asthma attack in school and where school assertedly did not adequately assist child during attack; mother testified she missed him running through house, playing with and arguing with other kids, his hugs and kisses and "everything about him"; testified they were never separated overnight except for one hospital stay; however, little evidence concerning specific nature of relationship between mother and son; little comparison of mother's life now to her life before child's death, and no testimony about impact death actually had on mother life or life of family; new trial ordered. Gonzalez v. Hanford Elementary School Dist., 2002 WL 1023719 (Cal. App. 5th Dist. 2002), unpublished/noncitable, (May 22, 2002).

-- $ 1.5 million for wrongful death of 11-year-old child, per remittitur, rather than $ 5.2 million awarded by jury, when child who had juvenile diabetes was treated by Christian Science spiritual healing rather than modern medicine which could have saved him. Lundman v. McKown, 530 N.W.2d 807 (Minn. Ct. App. 1995).

-- $ 131,342 where nine-year-old son of naval chief petty officer died as result of refusal of care by government hospital; damages computed by using probable earning period of 39 years, multiplying that figure by the median earning year of father ($ 6,708) and commuting this by using 4% interest table; held excessive on ground that father's earnings should have been reduced by necessary and ordinary living expenses. Williams v. U.S., 435 F.2d 804 (1st Cir. 1970) (applying Rhode Island law).

[*31] From seven through 13 years old - Adequate

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death from medical malpractice, other improper medical treatment, or related product claims of a child from seven through 13 years old were adequate, such as awards of --

-- $ 125,000 wrongful death where child died at age 13 from effects of diabetic ketoacidosis, allegedly as result of hospital's negligence. Havard v. Children's Clinic of Southwest Louisiana, Inc., 722 So. 2d 1178 (La. Ct. App. 3d Cir. 1998).

-- $ 10,000 to each parent of 10-year-old who died of complications from operation for acute appendicitis due in part to negligence of anesthetist; trial judge concluded that parents were only entitled to nominal amount of damages for loss of love and affection because of their failure to fulfill their parental responsibility of financial support, tutorship, welfare, and medical assistance, as well as leaving child to be raised by his grandmother; court found that amount of love and affection was not that of normal parent-child relationship. Pierre v. Lallie Kemp Charity Hosp., 515 So. 2d 614 (La. Ct. App. 1st Cir. 1987), writ denied, *515 So. 2d 1111 (La. 1987)*.

[*32] From seven through 13 years old - Inadequate

There is case law holding that awards of compensatory damages for the death from medical malpractice, other improper medical treatment, or related product claims of a child from seven through 13 years old were inadequate, such as an award of --

-- $ 15,000 for survival damages for final 32 hours of 13-year-old's life who died from effects of diabetic ketoacidosis, allegedly as result of hospital's negligence abuse of discretion, although evidence did not support finding that child had specific fear of death although she might have suffered anxiety; awards of "bystander" damages of $ 10,000 to mother and $ 15,000 to grandmother, who was legal custodian of child, also abuse of discretion, raised to $ 25,000 each. Havard v. Children's Clinic of Southwest Louisiana, Inc., 722 So. 2d 1178 (La. Ct. App. 3d Cir. 1998).

[*33] From 14 until 21 - Not excessive

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death from medical malpractice, other improper medical treatment, or related product claims of a child from 14 until 21 years old, were not excessive, such as awards of --

-- $ 259,375 pain and suffering, $ 778,125 for loss of normal life for 40 hours until death, and $ 1,556,250 for pecuniary loss to parents of 15-year-old patient who died from opiate overdose after city paramedics failed to take him to hospital in response to emergency services request; as to pecuniary loss, jury could presume that parents would have both benefitted from continuation of their son's life, in addition to having suffered "substantial" loss from his death; had active lifestyle, friends, and good relationship with family. Abruzzo v. City of Park Ridge, 2013 IL App (1st) 122360, 378 Ill. Dec. 259, 3 N.E.3d 824 (App. Ct. 1st Dist. 2013).

-- $ 1 million for pain and suffering and $ 250,000 for disability in medical malpractice survival action, based upon failure to diagnose and treat infection, in which 17-year-old patient suffered through beginning stages of shock prior to readmission to hospital; he experienced severe armpit pain, rising temperature, shock, renal failure, confusion, and loss of respiratory function, and he was conscious for about 26 hours while painful procedures were being performed on him; suffered significantly more than he would have if he had been diagnosed properly and the progression of infection to streptococcal toxic shock syndrome had been prevented. Pantaleo v. Our Lady of Resurrection Medical Center, 297 Ill. App. 3d 266, 231 Ill. Dec. 421, 696 N.E.2d 717 (1st Dist. 1998).

-- $ 450,000 for mother's loss of love, affection, services, companionship, and society as result of 14-year-old child's death from failure to promptly drain fluid after open heart surgery; child's life expectancy after heart operation would have been between 10 and 20 years; was mother's only son, had loving and emotionally close relationship; child was full of life and enjoyed normal active childhood; mother slept on cot in child's hospital room; $ 63,000 for mother's mental anguish over seeing deterioration and death also not excessive where he suffered developing respiratory distress from fluid buildup and fear that he was dying; $ 125,000 for child's pain and suffering prior to his death high but not abuse of discretion where he suffered before he died, not only from physical pain, but from mental pain and anguish; less than 24-hour period during which he suffered. In re Medical Review Panel Bilello, 621 So. 2d 6 (La. Ct. App. 4th Cir. 1993), writ denied, *629 So. 2d 1139 (La. 1993)*.

-- $ 150,000 wrongful death, plus $ 50,000 for pain and suffering of decedent, to mother of 20-year-old woman who died four days after attempting suicide by swallowing pills; malpractice action for failures in testing and diagnosing liver damage; as to decedent's pain and suffering, under full restraints she experienced vomiting, soiling

her bed with dark, foul-smelling urine and reddish-brown discharge from rectum; mentally regressing from violent hostility exhibited by screaming, hollering, and refusal of food and drink to a "passive" lack of response; high fever; although daughter was problem child, loss to caretaker mother could not be said to be not as great as it would have been in opposite situation; mother underwent difficult emotional phases during hospitalization. *Bourne v. Seventh Ward General Hosp., 546 So. 2d 197 (La. Ct. App. 1st Cir. 1989)*.

-- $ 28,000 where 18-year-old son killed as result of dental malpractice in operating room immediately following extraction of two wisdom teeth; in good health except for asthma; had been employed; was member of close family; father retired. *McKinley v. Vize, 563 S.W.2d 505 (Mo. Ct. App. 1978)*.

[*34] From 14 until 21 - Excessive

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death from medical malpractice, other improper medical treatment, or related product claims of a child from 14 until 21 years old, were excessive, such as awards of --

-- $ 12,000 for medical expenses of 14-year-old child who died from failure to promptly drain fluid after open heart surgery; while $ 26,803.50 was total hospital bill including original surgery; plaintiff did not point to any portion of that bill representing charges incurred as result of negligence of defendants in failing to properly treat the fluid buildup; award eliminated. *In re Medical Review Panel Bilello, 621 So. 2d 6 (La. Ct. App. 4th Cir. 1993)*, writ denied, *629 So. 2d 1139 (La. 1993)*.

-- $ 20,000 awarded to parents of 15-year-old girl who died as a result of an Army physician's negligence in misdiagnosing the decedent's condition and failing to admit her to the hospital; death was caused by diffuse myocarditis; $ 15,000 awarded for loss of future services and $ 5,000 awarded for the decedent's pain and suffering. *Poyser v. U.S., 602 F. Supp. 436 (D. Mass. 1984)* (applying Massachusetts law).

-- $ 4 million lowered to $ 1.2 million per remittitur for pain and suffering endured before death by decedent, a 15-year-old student, in medical malpractice and wrongful death action. *Johnson v. Queens-Long Island Medical Group, P.C., 272 A.D.2d 524, 708 N.Y.S.2d 134 (2d Dep't 2000)*.

-- $ 100,000 (new trial on issue of damages ordered unless plaintiff stipulated to reduce verdict to $ 25,000) where death of 17-year-old youth suffering from acute viral hepatitis hastened by negligence of hospital in replacing defective tubes on respirator. *Jones v. City of New York, 57 A.D.2d 429, 395 N.Y.S.2d 10 (1st Dep't 1977)*.

-- $ 400,000 to widow of deceased psychiatric patient who committed suicide after leaving psychiatric hospital without authorization or notice of staff; student in third year of college; suffering from acute and incapacitating mental illness; supported exclusively by widow; new trial ordered. *Lichtenstein v. Montefiore Hospital and Medical Center, 56 A.D.2d 281, 392 N.Y.S.2d 18 (1st Dep't 1977)*.

-- $ 25,000 reduced to $ 19,000, awarded to father as administrator of his 16-year-old deceased son's estate; death due to negligence of hospital and of doctor; deceased was an excellent student of exemplary habits, having never taken intoxicants, and was very active in church work. *Methodist Hospital v. Ball, 50 Tenn. App. 460, 362 S.W.2d 475 (1961)*.

[*35] From 14 until 21 - Amount fixed by court

There is case law in which the courts fixed the amount of an award of compensatory damages for the death from medical malpractice, other improper medical treatment, or related product claims of a child from 14 until 21 years old, determining sums such as --

-- $ 100,000 for damages up to decedent's overdose where mother warned doctor, who had prescribed medication over 19 months to 18-year-old daughter as method of controlling her weight while pursuing modeling career, that she was addicted to drugs and might be suicidal, but he nevertheless gave daughter another prescription and she overdosed and died one month later; her condition grew progressively worse, and dependency on drugs became

greater and greater so that commission of crime to sustain habit became necessary; physical health and mental condition became progressively worse; $ 75,000 for overdose and period of hospitalization; never did recover completely from comatose state in which she entered hospital; as to pain, deepness of coma differed; upon numerous occasions she would thrash about wildly and even attempt to detach some of tubes and other instruments, necessitating her being restrained physically by means of straps preventing her movement; made number of noises which to her mother sounded like moans and groans; factor of rendering daughter unconscious, causing her stay in hospital for month under extremely arduous conditions, and being deprived of her liberty and freedom for this period; $ 6,000 to each parent for wrongful death, where record amply demonstrated love and affection that these parents bore for their child as reflected in their numerous attempts to aid her; parents not only suffered during their daughter's drug addiction, but were forced to endure torment of her slow death in hospital; $ 11,124.65 special damages. *Argus v. Scheppegrell, 489 So. 2d 392 (La. Ct. App. 5th Cir. 1986)*, writ denied, *494 So. 2d 331 (La. 1986)*.

[*36] From 14 until 21 - Adequate

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death from medical malpractice, other improper medical treatment, or related product claims of a child from 14 until 21 years old, were adequate, such as awards of --

-- $ 127,679.73 where 14-year-old died of complications of staph infection stemming from ingrown toenails which medical center had misdiagnosed as tonsillitis and upper respiratory infection; award exactly equaled amount expert found for loss of household contributions, and plaintiff argued that this meant no award for loss of future earnings; expert's calculations for decedent's future earnings were premised upon conclusion that he would graduate from high school or obtain degree, but he had not yet obtained his high school diploma, and jurors were not required to believe that he would do so; if jury concluded that decedent would not graduate from high school, they could have used household contributions figure as approximation for his future earnings. *Stewart v. Medical Center of Central Georgia, Inc., 239 Ga. App. 90, 520 S.E.2d 747 (1999)*.

-- $ 8,000 to father and $ 86,000 to mother for general damages where 14-year-old mentally and physically disabled child died from hypoxia as result of nurses' negligence; awards low but adequate. *Odom v. State ex rel. Dept. of Health and Hospitals, 733 So. 2d 91 (La. Ct. App. 3d Cir. 1999)*.

-- $ 50,000 award in mother's wrongful death action against state hospital alleging hospital violated standard of care in providing psychiatric care for her 19-year-old daughter who committed suicide and had significant history of depression. *Mississippi State Hosp. v. Wood, 823 So. 2d 598 (Miss. Ct. App. 2002)*.

-- $ 50,000 to mother and $ 20,000 to father for wrongful death of their child, 15-year-old student who did not contribute monetarily to household of either parent; action for medical malpractice and wrongful death. *Johnson v. Queens-Long Island Medical Group, P.C., 272 A.D.2d 524, 708 N.Y.S.2d 134 (2d Dep't 2000)*.

[*37] Decedent's age unspecified - Excessive

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for malpractice or similar actions causing death of a child whose age was unspecified were excessive, such as awards of --

-- $ 8 million where teenaged daughter died from lupus which was misdiagnosed by doctor; damages, which were greater than requested by plaintiffs, were so excessive that they could only have been product of passion and emotion based on father's emotional testimony rather than result of record presented. *Glabman v. De La Cruz, 954 So. 2d 60 (Fla. 3d DCA 2007)*.

-- $ 450,000 where minor girl died as result of negligent injection of toxic drug in spine while undergoing chemotherapy for leukemia; lived for nine days after injection; parents told nothing could be done to prevent death; mental anguish; pain and suffering; trial court did not abuse its discretion when it ordered new trial on issue of damages. *Baptist Memorial Hospital, Inc. v. Bell, 384 So. 2d 145 (Fla. 1980)*.

Death from Other Causes

[*38] From birth through age six - Not excessive

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death of a child under seven years of age, from causes other than vehicular accidents or malpractice, were not excessive, such as awards of --

-- $ 1 million past and future pain and suffering to each parent of four-year-old son who drowned in amusement theme park's man-made waterway; unrebutted evidence that parents suffered almost complete, full personality changes since loss of son and that their grief was overwhelming, genuine, and crushing. *Walt Disney World Co. v. Goode, 501 So. 2d 622 (Fla. 5th DCA 1986)*.

-- $ 21.5 million in damages for drowning death of six-year-old summer camp attendee, with $ 6 million for past grief, sorrow and mental suffering; $ 5 million for future grief, sorrow and mental suffering; $ 5 million for past loss of society; $ 4 million for future loss of society; and $ 1.5 million for child's pain and suffering; jury heard evidence about loss suffered by two young parents and two sisters; one of decedent's sisters was his twin, and she was present at time of drowning; child's family suffered devastating loss in very tragic manner. *Kolodziej v. Justice Park District, 2020 IL App (1st) 191032-U, 2020 WL 5250261 (Ill. App. Ct. 1st Dist. 2020)*.

-- $ 25,000 awarded to parents of child who died four days after birth; pregnant mother fell on assertedly defective street causing premature birth; life expectancy of 72.03 years. *City of Louisville v. Stuckenborg, 438 S.W.2d 94, 40 A.L.R.3d 1213 (Ky. 1968)*.

-- $ 100,000 to each parent of five-year-old child who was electrocuted when he came into contact with energized metal skin of mobile home; was oldest son in family consisting of four other children; parents shared close and loving relationship with their son and were having difficult time accepting his death; were unable to return to mobile home; awards high but not abuse of discretion. *Calhoun v. Federated Rural Elec. Ins. Co., 571 So. 2d 672 (La. Ct. App. 3d Cir. 1990)*, writ denied, *577 So. 2d 14 (La. 1991)*.

-- $ 5,000 award on behalf of minor sister of three-month-old infant who died in apartment fire caused by defective electrical cord; had close relationship with infant. *Levine v. Live Oak Masonic Housing, Inc., 491 So. 2d 489*, 33 Ed. Law Rep. 972 (La. Ct. App. 3d Cir. 1986), writ denied, *495 So. 2d 303 (La. 1986)*.

-- $ 280,000 awarded for deaths of two-year-old and three-year-old children severely burned when propane gas tank exploded causing house to burn; mother received second and third-degree burns on face and arms, covering 36% of body; had three skin graft operations and required physical therapy; son lived only one day, daughter lived for one month. *Knockum v. Amoco Oil Co., 402 So. 2d 90 (La. Ct. App. 1st Cir. 1980)*, writ denied, *409 So. 2d 616 (La. 1981)* and writ denied, *409 So. 2d 616 (La. 1981)*.

-- $ 7,869.60 (representing $ 369.60 special damages, and $ 7,500 for loss of love and affection and for pain and suffering); four-year-old boy; decedent lived for a little more than seven hours after drinking weed killer on open premises owned by town, during which time he was violently and seriously ill; survived by mother and older brother. *Spears v. Travelers Ins. Co., 241 So. 2d 303 (La. Ct. App. 1st Cir. 1970)*.

-- $ 15 million in products liability wrongful death action to parents of four-year-old boy who was electrocuted when he touched a floor lamp at his home; award high but not abuse of discretion. *Foster v. Catalina Industries, Inc., 55 S.W.3d 385*, Prod. Liab. Rep. (CCH) P 16224 (Mo. Ct. App. S.D. 2001).

-- $ 5 million for pain and suffering before death when father fatally felled his six-year-old daughter with one blow of his hand, and then went out to dinner as she lay on bathroom floor losing consciousness over next eight to 10 hours; doctors at hospital where she was brought after she stopped breathing that night testified that her brain had been swelling for six to 12 hours before any medical treatment took place; eight to 10 hours must have seemed like eternity as child waited and wondered when someone would come to comfort her and help make pain go away.

Launders v. Steinberg, 39 A.D.3d 57, 828 N.Y.S.2d 36 (1st Dep't 2007), aff'd as modified on other grounds, 9 N.Y.3d 930, 845 N.Y.S.2d 215, 876 N.E.2d 901 (2007).

-- $ 100,000 where two-year-old accidentally shot by loaded shotgun while playing in office; while father did not testify about his relationship with child or about any future plans he had made with his son, he did testify to grisly details of discovering child's body; trial court had opportunity to observe father and assess his emotional demeanor during his testimony; this afforded some insight into his mental anguish. Plasencia v. Burton, 440 S.W.3d 139 (Tex. App. Houston 14th Dist. 2013).

-- $ 3.7 million plus $ 5,100 expenses associated with death of six-year-old who wandered away from his special education classroom and drowned in irrigation canal. *Hui v. Sunnyside School Dist. No. 201, 132 Wash. App. 1015, 2006 WL 775164 (Div. 3 2006).*

[*39] From birth through age six - Excessive

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death of a child under seven years of age, from causes other than vehicular accidents or malpractice, were excessive, such as awards of --

-- $ 20,000 (remittitur in amount of $ 2,500 ordered); four-year-old child killed when he fell into grain auger; no fixed criteria to measure damages for death of four-year-old child; remittitur within sound discretion of trial court. Spur Feeding Co. v. Fernandez, 106 Ariz. 143, 472 P.2d 12, 49 A.L.R.3d 925 (1970).

-- $ 250,000 to mother for wrongful death of six-year-old son shot by husband who was estranged from mother, for failure of police protection of mother and son; remittitur of damages in excess of $ 100,000 as no award in excess of $ 100,000 for death of child had been sustained. Raucci v. Town of Rotterdam, 902 F.2d 1050 (2d Cir. 1990) (applying New York law).

-- $ 500,000, lowered to $ 350,000, for four-year-old daughter's pain and suffering to mother, and $ 250,000 for future pecuniary loss for wrongful death when foster brother fell on child and caused lacerated and ruptured liver; child received no care and later became disoriented, fell down stairs, and was unconscious when brought to hospital; pecuniary loss award reversed where mother had neglected child and lost custody of her and other children, so mother failed to establish existence of circumstances to indicate that she had reasonable expectation of future assistance from child. Estate of Pesante ex rel. Pesante v. Mundell, 37 A.D.3d 1173, 829 N.Y.S.2d 390 (4th Dep't 2007).

-- $ 250,000 damages for pecuniary loss to four-year-old who died under undisclosed circumstances, reduced to $ 125,000 and award for parents' past and future psychological injury reduced from $ 1 million to $ 700,000. Meredith v. City of New York, 220 A.D.2d 563, 632 N.Y.S.2d 812 (2d Dep't 1995).

-- $ 602,345 (reduced to $ 39,845, which included $ 37,500 for wrongful death and $ 2,345 for stipulated expenses for funeral, and the like); five-year-old boy; unspecified cause of death. *Rivera v. Monticello Central School Dist., 51 A.D.2d 616, 377 N.Y.S.2d 822 (3d Dep't 1976).*

-- $ 125,000; reduced by trial court to $ 23,500 but increased on appeal to $ 35,000; four-year-old boy drowned when he fell through ice covering pool of water accumulated at construction site. *Amerman v. Lizza & Sons, Inc., 45 A.D.2d 996, 358 N.Y.S.2d 220 (2d Dep't 1974).*

-- $ 80,000 (reduced by remittitur to $ 35,000); 14-month-old girl drowned in pool at day nursery; estimated two minutes of pain and suffering. Landreth v. Reed, 570 S.W.2d 486 (Tex. Civ. App. Texarkana 1978).

-- $ 30,000 (divided $ 15,000 for loss of companionship and $ 15,000 for loss of services until infant attained 21 years of age); 20-month-old boy who drowned following break in irrigation ditch; affirmed as to $ 15,000 for loss of companionship; award reduced by $ 15,000 awarded for loss of services. Clark v. Icicle Irr. Dist., 72 Wash. 2d 201, 432 P.2d 541 (1967).

[*40] From birth through age six - Amount fixed by court

Under the particular circumstances of the following cases the courts fixed the appropriate amounts of awards of compensatory damages for the death of a child under seven years of age, from causes other than vehicular accidents or malpractice, determining sums such as --

-- $ 75,000 where two sons, aged two and three years, of young couple, drowned when ship hit bridge and sent car into water; father drowned trying to rescue one son. *Complaint of Farrell Lines Inc., (S. S. African Neptune), 389 F. Supp. 194, 1976 A.M.C. 1684 (S.D. Ga. 1975).*

-- $ 125,000 for pecuniary loss caused by wrongful death of three-year-old son of serviceperson who fell out of seventh-story window in military housing apartment; father claimed child had great potential; $ 100,000 for predeath pain and suffering where although unclear how long he remained conscious, he did endure some pain and suffering; $ 100,000 each parent for loss of consortium; father discussed difficulty in explaining to his other children why their brother had to die, and explained how he and his wife were still in mourning for their first born son. Benoit v. U.S., 2001 WL 567737 (Ct. Fed. Cl. 2001).

-- $ 1.8 million ($ 900,000 to each parent); wrongful death of child under age of five when concrete wall in United States Navy personnel housing area collapsed; mental pain and suffering of parents was real and intense and would remain part of their lives for many years. *Williams v. U.S., 681 F. Supp. 763 (N.D. Fla. 1988)* (applying Florida law).

-- $ 50,000, with $ 25,000 to each parent of two-year-old son who drowned in a sewerage oxidation pond located on appellees' property; interest added to award. *Guillot v. Fisherman's Paradise, Inc., 451 So. 2d 568 (La. Ct. App. 1st Cir. 1983)*.

-- $ 75,000 where six-year-old boy drowned in swimming pool of motel where he, mother and siblings lived; affectionate child. *Gault v. Tablada, 400 F. Supp. 136 (S.D. Miss. 1975)*, aff'd without opinion, *526 F.2d 1405 (5th Cir. 1976)* (applying Mississippi law).

-- $ 4.325 million consisting of $ 75,000 for wrongful death of 22-day-old infant when father threw her down and her head hit couch's wooden edge; $ 1 million for infant's conscious pain and suffering where she had some level of cognitive awareness of pain that continued for two weeks prior to her death; $ 250,000 for intentional infliction of emotional distress where mother testified about holding infant in hospital as she died, and $ 3 million in punitive damages. *Parker v. Jones, 70 Misc. 3d 1202(A), 135 N.Y.S.3d 807, 2020 WL 7550722 (N.Y. Sup. Ct. 2020).*

[*41] From birth through age six - Adequate

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death of a child under seven years of age, from causes other than vehicular accidents or malpractice, were adequate, such as awards of --

-- $ 700 to parents of three-year-old child found dead beneath 240-pound spot welder which had fallen on child; net pecuniary loss rule adhered to. *Kogul v. Sonheim, 150 Colo. 316, 372 P.2d 731 (1962)*.

-- $ 50,000 to father for wrongful death of 18-month-old son in fire; although father took care of child so that mother could go to work and was allegedly devastated by child's death, father had daughter that he neither visited nor supported and father essentially abandoned other son conceived and born after child's death. *LeBlanc v. Breaux, 777 So. 2d 532 (La. Ct. App. 5th Cir. 2000)*, writ denied, *788 So. 2d 428 (La. 2001).*

-- $ 2,500 to father where three-month-old infant and mother died in apartment fire caused by defective electrical cord; father had not enjoyed close relationship with his son; $ 5,000 award on behalf of five-year-old sister for infant's death also upheld. *Levine v. Live Oak Masonic Housing, Inc., 491 So. 2d 489*, 33 Ed. Law Rep. 972 (La. Ct. App. 3d Cir. 1986), writ denied, *495 So. 2d 303 (La. 1986).*

-- $ 15,000 awarded to mother of six-year-old child who was killed as a result of his foster parent's negligence in leaving a loaded pistol on a closet shelf where it was easily accessible to the child; award included $ 10,000 for the wrongful death claim and $ 5,000 for the survival claim; in finding the award to be adequate, the court noted that the child had spent only half his life with his mother. Cathey v. Bernard, 467 So. 2d 9 (La. Ct. App. 1st Cir. 1985).

-- $ 0 for children two and three years old, died in apartment fire; plaintiff stepfather never knew them or loved them or contributed to their support. Cosey v. Allen, 316 So. 2d 513 (La. Ct. App. 1st Cir. 1975).

-- $ 4,500 (which included $ 3,000 to mother for loss of son, and $ 1,500 for pain and suffering of son prior to death) where five-year-old boy beaten to death by foster mother with whom child was placed by the Department of Public Welfare. Vonner v. State Through Dept. of Public Welfare, 258 So. 2d 93 (La. Ct. App. 2d Cir. 1972), writ issued, 261 La. 455, 259 So. 2d 911 (1972) and judgment amended, 273 So. 2d 252 (La. 1973).

-- $ 7,869.60 (representing $ 369.60 for special damages, and $ 7,500 for loss of love and affection and for pain and suffering) for four-year-old boy who lived for a little more than seven hours after drinking weed killer, during which time he was violently and seriously ill; survived by mother and other brother. Spears v. Travelers Ins. Co., 241 So. 2d 303 (La. Ct. App. 1st Cir. 1970).

-- $ 4,200 where six-year-old drowned in neighbor's pool, even though the award, less 50% comparative negligence, would just cover funeral expenses. Death of Lofton v. Green, 1995 OK 109, 905 P.2d 790 (Okla. 1995).

[*42] From birth through age six - Inadequate

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death of a child under seven years of age, from causes other than vehicular accidents or malpractice, were inadequate, such as awards of --

-- $ 0 for destruction of decedent's power to earn where four-year-old child fell to his death from stairway at racetrack; jury was required to return some amount. Turfway Park Racing Ass'n v. Griffin, 834 S.W.2d 667 (Ky. 1992).

-- $ 0 for three claims: loss of power to labor and earn wages of five-year-old child who died in motel pool, child's pain and suffering, and loss of consortium to parents; inference exists in wrongful death actions that child would have had some earning power; prior to his drowning, child was healthy with no indication of any disability that would prevent him from earning wages during his lifetime; court rejected argument that jury could infer from his father's lack of education and employment history, that child would not labor and earn money in his life; as to pain and suffering, surveillance video showed that child was conscious prior to entering the water and struggled to stay afloat; expert testimony described suffering of drowning victim prior to reaching unconsciousness; certainly child felt water filling his lungs and, as evidenced by his struggle to stay above water, was aware that he was drowning; as to loss of consortium, parents testified regarding memories with child, emotional pain endured while child lingered on life support following drowning, and loss suffered after his death; evidence that father might had been less than attentive, such evidence went to amount of damages, not to entitlement to some damages for his loss; new trial ordered. Louisville SW Hotel, LLC v. Lindsey, 2019 WL 2147355 (Ky. Ct. App. 2019), review granted, (Mar. 18, 2020) and aff'd in part, rev'd in part on other grounds, 2021 WL 5984855 (Ky. 2021).

-- $ 50,000 jury verdict raised by trial court to $ 150,000 to mother for wrongful death of 18-month-old son in fire; mother had close relationship with son who was focus of her life, was devastated by son's death, and suffered from knowledge that people could hear son crying in fire. LeBlanc v. Breaux, 777 So. 2d 532 (La. Ct. App. 5th Cir. 2000), writ denied, 788 So. 2d 428 (La. 2001).

-- $ 23,500 which trial court had entered after jury had returned verdict of $ 125,000, increased on appeal to $ 35,000; four-year-old boy drowned when he fell through ice covering pool of water accumulated at construction site. *Amerman v. Lizza & Sons, Inc., 45 A.D.2d 996, 358 N.Y.S.2d 220 (2d Dep't 1974).*

[*43] From seven through 13 years old - Not excessive

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death of a child from seven through 13 years old, from causes other than vehicular accidents or malpractice, were not excessive, such as awards of --

-- $ 8,000 to administratrix of estate of 11-year-old boy who drowned at construction site; father and mother and one other child in family. Hankins v. Southern Foundation Corp., 216 F. Supp. 554 (D. D.C. 1963), judgment aff'd, 326 F.2d 693 (D.C. Cir. 1963) (applying District of Columbia law).

-- $ 75,000 ($ 20,000 to parents under wrongful death statute; $ 20,000 compensatory damages and $ 35,000 punitive damages under survival act); 13-year-old girl drowned in swimming pool when arm was caught in uncovered filter drainpipe at bottom of pool. Atlas Properties, Inc. v. Didich, 213 So. 2d 278 (Fla. 3d DCA 1968), aff'd on other grounds, 226 So. 2d 684 (Fla. 1969) (disapproved of on other grounds by, Lohr v. Byrd, 522 So. 2d 845 (Fla. 1988)).

-- $ 50,000 (which included $ 20,000 to estate and $ 30,000 to father for loss of services of sons aged eight and nine years); boys were drowned when swept into storm sewer. Pagitt v. City of Keokuk, 206 N.W.2d 700 (Iowa 1973).

-- $ 175,000 where nine-year-old who drowned in pool while on Girl Scout overnight at YMCA was an intelligent child who received excellent grades, with near perfect school attendance; loved science, was computer literate, and had already established career goals; was well liked by her peers and was in good health. *Miller v. Young Men's Christian Ass'n Of America, 690 N.W.2d 464 (Iowa Ct. App. 2004).*

-- $ 30,539.95 for 12-year-old boy drowned in swimming pool which was so murky that one could not see more than three feet below surface; no contributory negligence found. Burgert v. Tietjens, 499 F.2d 1 (10th Cir. 1974) (applying Kansas law).

-- $ 10,000 to mother of 12-year-old boy drowned in a municipally owned swimming pool. Honeycutt v. City of Monroe, 253 So. 2d 597 (La. Ct. App. 2d Cir. 1971).

-- $ 31,092.32 (which included $ 15,000 to each parent and $ 1,092.32 to father as special damages); seven-year-old boy drowned in deep pool in drainage ditch; defendant should have known of existence of hole and that small children would play in ditch, since they customarily did so when going to and from school. Tatum v. East Baton Rouge Parish, 244 So. 2d 913 (La. Ct. App. 1st Cir. 1971), writ refused, *258 La. 364, 246 So. 2d 683 (1971).*

-- $ 788,278.80 awarded to parents of 10-year-old boy who died from injuries suffered in fall from three-meter diving stand at school; malpractice action against architectural firm that designed swimming facility. Francisco v. Manson, Jackson & Kane, Inc., 145 Mich. App. 255, 377 N.W.2d 313 (1985).

-- $ 1,007,857.84 for drowning death of seven-year-old child while on school field trip, where child had close relationship with his parents and sister. Johnson v. Washington County, 518 N.W.2d 594, 92 Ed. Law Rep. 981 (Minn. 1994).

-- $ 1 million wrongful death claim as compensation for 13-year-old drowning victim's parents' and sister's loss of victim's guidance, support, and services; plaintiffs established both parent-child relationship and sibling relationship, which proofs were sufficient to permit damage award. Youn Wha Jung v. Village of Ridgewood, 2014 WL 7483599 (N.J. Super. Ct. App. Div. 2015).

-- $ 100,000 wrongful death and $ 100,000 for conscious pain and suffering where 10 year old drowned in creek; as to conscious pain and suffering, testimony that when child's body was recovered from creek his color was good, that witness detected pulse, and that child appeared to be "consciously vomiting," sufficed to permit reasonable conclusion that decedent consciously struggled for his life for as long as an hour; as to award for wrongful death, decedent left surviving mother, father, brother, and sister; was in fourth grade; after it was discovered that he suffered from dyslexia and this was treated, he showed marked improvement in his attitude toward school and in

his performance there; he demonstrated above average athletic ability. Cassar v. Central Hudson Gas & Elec. Corp., 134 A.D.2d 672, 521 N.Y.S.2d 337 (3d Dep't 1987).

-- $ 500,000 to estate of nine-year-old who was electrocuted by touching downed power line; 4,200 volts of electricity passed through his body; he spun in circle three times, violently shaking, unable to release wire, shouting, "Help me, help me"; for short time after being removed from wire he appeared to be jerking; chest and shoes were smoking; evidence that when someone comes in contact with power line there is period of time in which individual experiences pain; fingers and hands appeared to be melted away; was still on fire in ambulance; extreme burns over most of his body. Wilburn v. Cleveland Elec. Illum. Co., 74 Ohio App. 3d 401, 599 N.E.2d 301 (8th Dist. Cuyahoga County 1991).

-- $ 60,000 to mother of 10-year-old boy killed in fall in apartment building's elevator shaft; boy believed not contributorily negligent as to cause of accident; evidence showed that housing authority knew of frequent breakdowns of elevators including landing doors not closing causing elevators to stop between floors as well as children's habitual use of playing in and on roof of elevators. Bethay v. Philadelphia Housing Authority, 271 Pa. Super. 366, 413 A.2d 710 (1979).

-- $ 3 million in wrongful death action to recover for death of 12-year-old child, who was killed in fire at state park; although no evidence of pecuniary loss, both parents testified as to their grief, shock, and sense of loss. Knoke v. South Carolina Dept. of Parks, Recreation and Tourism, 324 S.C. 136, 478 S.E.2d 256 (1996).

-- $ 1.01 million to mother of 13-year-old child electrocuted; $ 500,000 mental anguish, $ 500,000 loss of society, and $ 10,000 pain and suffering; only child, close affectionate relationship with mother. Gulf States Utilities Co. v. Reed, 659 S.W.2d 849 (Tex. App. Houston 14th Dist. 1983), writ refused n.r.e., (Feb. 1, 1984).

[*44] From seven through 13 years old - Excessive

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death of a child from seven through 13 years old, from causes other than vehicular accidents or malpractice, were excessive, such as awards of --

-- $ 22,500 reduced to $ 15,000; 12-year-old girl with life expectancy of 53.68 years; in sixth grade in school; killed in fire. Tedrow v. Fort Des Moines Community Services, Inc., 254 Iowa 193, 117 N.W.2d 62 (1962).

-- $ 350,000 damages for pain and suffering to parents of 12-year-old boy who died of hypothermia due to sailboating accident while enrolled in summer camp which left him in icy water for almost an hour, reduced to *$ 200,000. Pollock v. Collipp, 124 A.D.2d 647, 508 N.Y.S.2d 34 (2d Dep't 1986).*

-- $ 31,000; new trial ordered unless plaintiff would stipulate to reduce verdict of $ 15,000, plus $ 959 special damages; eight-year-old boy drowned at camp for handicapped children; had been suffering from convulsions, diagnosed as grand mal epilepsy, had low normal IQ score, and was known as a stutterer; medical testimony that the disease probably could have been controlled had the boy lived. *Kelsey v. Camp Jened Foundation, Inc., 23 A.D.2d 717, 257 N.Y.S.2d 199 (3d Dep't 1965).*

[*45] From seven through 13 years old - Amount fixed by court

Under the particular circumstances of the following cases the courts fixed the appropriate amounts of awards of compensatory damages for the death of a child from seven through 13 years old, from causes other than vehicular accidents or malpractice, determining sums such as --

-- $ 135,000 where eight-year-old son killed when he fell down unprotected mine shaft. Jeffery v. U.S., 381 F. Supp. 505 (D. Ariz. 1974) (applying Arizona law).

-- $ 80,000 -- $ 40,000 each to parents of seven-year-old daughter who drowned in canal at edge of playground; only daughter of couple. Lewis v. Fireman's Fund Ins. Co., 342 So. 2d 244 (La. Ct. App. 4th Cir. 1977).

-- $ 3,250 (which included burial expenses), plus $ 500 for pain and suffering, to estate of 13-year-old boy inmate of state epileptic institution killed by heat exhaustion while in heating tunnel, where evidence showed some possibility that deceased would assume a normal place in society; father, mother, and 11 brothers and sisters surviving; $ 10,975 (which included burial expenses), plus $ 500 for pain and suffering awarded to estate of second 13-year-old inmate killed by heat exhaustion in heating tunnel; evidence showed deceased of normal intelligence and had good chance of assuming a place in normal society. Schreck v. State, 35 Misc. 2d 929, 231 N.Y.S.2d 563 (Ct. Cl. 1962).

-- $ 3,140 (of which $ 640 was for funeral expenses, and $ 2,500 was for pecuniary loss) awarded to parents of 10-year-old girl struck on head by boy swinging on suspended rope over swimming pool; death occurred on following day from resulting traumatic cerebral hemorrhage. Adams v. U.S., 239 F. Supp. 503 (E.D. Okla. 1965) (applying Oklahoma law).

-- $ 179,417.49 including $ 150,000 for lost future earning capacity, awarded to survivors of an eight-year-old boy who drowned as a result of the federal government's failure to guard or to warn of a dangerous condition. Rosa v. U.S., 613 F. Supp. 469 (M.D. Pa. 1985) (applying Pennsylvania law).

-- $ 6 million in nonpecuniary losses for each of two brothers ages 13 and 16, and cousin age 14, who drowned when their boat sank; inadequate rescue search by Coast Guard alleged; $ 43,761.69 for antidepressant medication to mother; $ 13,802.20 for funeral expenses; mother of brothers completely boys by deaths; $ 300,000 survival damages where boys undeniably were terrified by being stranded on sailboat as it gradually and eventually sank; physical struggles to save themselves were remarkable as they not only had to overcome wind, waves, and frigid ocean water, but were swimming against outgoing tide; physical and mental torture was severe. *Hurd v. U.S., 134 F. Supp. 2d 745, 2001 A.M.C. 1555 (D.S.C. 2001)*, judgment aff'd on other grounds, 34 Fed. Appx. 77, 2002 A.M.C. 1584 (4th Cir. 2002) (applying South Carolina law).

-- $ 3 million where 11-year-old dragged from his family's tent and killed by black bear; United States Forest Service employees knew of prior presence of and attack by aggressive bear at this campsite but did not warn or close campsite. Francis v. U.S., 2011 WL 1667915 (D. Utah 2011) (applying Utah law).

[*46] From seven through 13 years old - Adequate

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death of a child from seven through 13 years old, from causes other than vehicular accidents or malpractice, were adequate, such as awards of --

-- $ 201,648 to parents for loss of society, in wrongful death action against hotel arising from drowning of 13-year-son in swimming pool that had no lifeguard; evidence of son's close relationship with both parents from numerous witnesses, no evidence of specific amount of economic loss due to son's death; no indication in record that jury failed to consider any proven element of damages. Johnson v. Best Western Corp., 2012 IL App (1st) 111837-U, 2012 WL 6962576 (Ill. App. Ct. 1st Dist. 2012).

-- $ 110,000, with $ 70,000 to mother and $ 40,000 to father of nine-year-old drowning victim; child resided with mother; father lived outside of city and visited victim infrequently. Simmons v. Whittington, 444 So. 2d 1357 (La. Ct. App. 2d Cir. 1984), writ denied, *447 So. 2d 1071 (La. 1984)*.

-- $ 500 where 11-year-old girl died in apartment fire; plaintiff father never contributed to her support and never knew her well. Cosey v. Allen, 316 So. 2d 513 (La. Ct. App. 1st Cir. 1975).

[*47] From seven through 13 years old - Inadequate

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death of a child from seven through 13 years old, from causes other than vehicular accidents or malpractice, were inadequate, such as awards of --

-- $ 10,000 where 13-year-old child was electrocuted on grandparents' property when he touched chain that contacted ungrounded light fixture; undisputed evidence that child was good child and student, was obedient; no countervailing evidence that child in poor health and not expected to live normal life span. Williams v. Worsley, 235 Ga. App. 806, 510 S.E.2d 46 (1998) (disapproved of on other grounds by, Rockdale Hospital, LLC v. Evans, 306 Ga. 847, 834 S.E.2d 77 (2019)).

-- $ 40,000 total to parents where 12-year-old daughter who participated in parish basketball tournament drowned in hotel swimming pool; $ 15,000 lowest appropriate award for decedent's pain and suffering prior to her death where testimony that she asphyxiated and could have been conscious for time; as for wrongful death, $ 1,000 awarded to father who had distant relationship with his daughter, saw her infrequently, and never lived with her; $ 225,000 to mother who raised her daughter alone, without help from father; at hospital, was kept waiting for 45 minutes to see her child, and then she viewed her daughter's body with water coming out of her nose and mouth; daughter helped with her other children; theirs was evidently a close and loving relationship. Turner v. Parish of Jefferson Through Dept. of Recreation, 721 So. 2d 64 (La. Ct. App. 5th Cir. 1998), writ denied, *735 So. 2d 636 (La. 1999)* and writ denied, *735 So. 2d 638 (La. 1999)* and writ denied, *735 So. 2d 638 (La. 1999)*.

-- $ 4,854.50 pecuniary loss upon death of 13-year-old girl from carbon monoxide poisoning; girl in good health, receiving good grades; good worker, held babysitting job; new trial ordered on issue of damages. Windus v. Baker, 67 A.D.2d 833, 413 N.Y.S.2d 67 (4th Dep't 1979).

-- $ 3,504 (which included $ 504 funeral expenses); increased to $ 5,504, to surviving parents for wrongful death of nine-year-old boy; unspecified cause of death. *In re Manhattan Cas. Co., 29 A.D.2d 753, 287 N.Y.S.2d 748 (1st Dep't 1968)*.

[*48] From 14 until 21 - Not excessive

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death of a child from 14 until 21 years old, from causes other than vehicular accidents or malpractice, or from unspecified causes, were not excessive, such as awards of --

-- $ 27,748 (of which $ 2,000 was for decedent's conscious pain and suffering) awarded to administrator of estate of 20-year-old boy who drowned while working as member of fishing boat crew; decedent was unmarried and survived by both parents; had regularly contributed about $ 20 per week to support of parents; action under Grantham v. Quinn Menhaden Fisheries, Inc., 344 F.2d 590, 1965 A.M.C. 1481 (4th Cir. 1965).

-- $ 2.1 million to parents and siblings of 20-year-old man who died of sickle cell shock following beating by third person and mistreatment at hands of police who had been called in; decedent had close relationship with and made economic contributions to family; no proof that verdict result of passion or prejudice. Wright v. City of Los Angeles, 219 Cal. App. 3d 318, 268 Cal. Rptr. 309 (2d Dist. 1990).

-- $ 1.8 million for 15-year-old boy killed when airplane crashed into garage in which he was working for his father; another of parents' three sons was also killed; mother was speaking on telephone to son when crash occurred and father witnessed crash from outside garage; graduate of junior high school, intending to enter high school in fall; teacher testified that he stood head and shoulders above contemporaries; friendly, polite, warm, active, and religious; father had close relationship; mother required medical attention for depression and anguish following death. Compania Dominicana de Aviacion v. Knapp, 251 So. 2d 18 (Fla. 3d DCA 1971).

-- $ 1 million for pain and suffering and $ 2 million for wrongful death where 15-year-old juvenile offender placed in child caring institution was electrocuted by faulty wiring behind freezer where he was told to sweep; as to pain and suffering, expert testimony that decedent was conscious for up to 15 seconds while he was being electrocuted; as to wrongful death, while institution contended that his life could not be worth $ 2 million because he "invariably" would have ended up in prison, unrebutted expert testimony that he would have been expected to earn approximately $ 708,000 in his lifetime, even without high school diploma, and testimony as to his various positive

attributes. *Department of Human Resources v. Johnson, 264 Ga. App. 730, 592 S.E.2d 124 (2003)*, judgment aff'd on other grounds, *278 Ga. 714, 606 S.E.2d 270 (2004)*.

-- $ 113,000 ($ 13,000 in favor of father, $ 100,000 in favor of mother); death action by parents of 14-year-old student who drowned in defendant's swimming pool; student had above average intelligence. *Henry Grady Hotel Corp. v. Watts, 119 Ga. App. 251, 167 S.E.2d 205 (1969)* (disapproved of on other grounds by, *Vinson v. Howe Builders Ass'n of Atlanta, 233 Ga. 948, 213 S.E.2d 890 (1975)*).

-- $ 100,000 for pain and suffering prior to death of 17-year-old decedent who was accidentally shot by police officer with hollow-point ammunition during arrest, wrongly reduced by trial court to $ 50,000, where decedent was conscious, moaning, and still breathing for few minutes after shot until ambulance arrived. *Medina v. City of Chicago, 238 Ill. App. 3d 385, 179 Ill. Dec. 658, 606 N.E.2d 490 (1st Dist. 1992)*.

-- $ 300,000 to mother for wrongful death of 21-year-old son in shooting incident, although son was not living with mother at time of his death; mother's psychologist opined that mother was genuinely experiencing limitations due to her psychological problems resulting from son's death, and other witnesses, including mother's friends and family, testified as to closeness shared between mother and son, and as to how son's death had affected mother both at home and at work; $ 15,000 in survival action where victim lost consciousness approximately 30 seconds after being shot. *Harris v. Carter, 768 So. 2d 827 (La. Ct. App. 2d Cir. 2000)*, writ denied, *778 So. 2d 602 (La. 2001)*.

-- $ 350,000 per parent in wrongful death damages and $ 9,958.55 in special damages where 17 year old son was electrocuted when he picked up wire while working summer job; son was exemplary young man, student, son and member of community; did everything together with father; was only son; the two hunted, fished, worked on son's truck, and enjoyed a very close relationship; father sought therapy and prescribed medication for depression; son was "mama's boy" and was extremely close to his mother; mother lost significant amount of weight and was prescribed several medications for depression and to help her sleep; mental state following son's death precipitated her resigning from her job. *Dartlone v. Louisiana Power & Light Co., 763 So. 2d 779 (La. Ct. App. 2d Cir. 2000)*.

-- $ 275,000 wrongful death to each parent of 16-year-old Japanese foreign exchange student shot by homeowner by mistake, although homeowner asserted there was no evidence of unusually close relationship between student and his parents; student very caring, studious, and respectful youth who loved sports and had many friends both in Japan and in America; it was close-knit family under custom and culture of Japan; $ 85,000 survival action for student's pain and suffering until his death upheld, testimony overwhelming that he suffered immensely from gunshot wound until death, with moaning, groaning, and thrashing for almost 30 minutes; remained conscious and was in agony and fighting to stay alive. *Hattori v. Peairs, 662 So. 2d 509 (La. Ct. App. 1st Cir. 1995)*, writ denied, *666 So. 2d 322 (La. 1996)*.

-- $ 600,000 to parents of 18-year-old boy electrocuted while repairing air conditioner; youth had recently graduated from high school and was employed as maintenance worker. *Miller v. Lambert, 380 So. 2d 695 (La. Ct. App. 4th Cir. 1980)*.

-- $ 20,000 to posthumously born daughter for death by electrocution of her 19-year-old father employed by telephone company as linesman; widow did not file suit within statutory period. *Young v. Missouri Public Service Co., 374 S.W.2d 59 (Mo. 1964)*.

-- $ 25,000 for wrongful death of 16-year-old boy killed by poisonous chemicals used as corn spray while working on farm; father, aged 42, worked as part-time laborer and sharecropper on 20 acres of cotton and had six other children; deceased worked summers, earning $ 75 a week which he gave his mother to help maintain household. *Tripp v. Choate, 415 S.W.2d 808 (Mo. 1967)*.

-- $ 4.5 million in wrongful death action brought against natural gas supplier by homeowners whose only child, 20 years old, was killed as result of natural gas explosion in their home; child was severely injured and suffered from painful burns for 80 days before he died, he underwent painful medical treatments including debridement and

surgery; was on breathing machine, and endured sepsis, multiple organ system failure, and had to receive intravenous nutrition; family was close and often went camping together; child lived at home; was not working at time of accident but his parents might have relied on his future income as he was their only child; amount of award less than amount requested by counsel. *Coggins v. Laclede Gas Co., 37 S.W.3d 335 (Mo. Ct. App. E.D. 2000)*.

-- $ 53,370.06 (included $ 50,000 general damages, $ 3,570.06 special damages); 14-year-old boy fatally injured when struck by golf club in physical education class; boy died two days after accident without regaining consciousness; described as normal, healthy, and responsible. *Brahatcek v. Millard School Dist., School Dist. No. 17, 202 Neb. 86, 273 N.W.2d 680 (1979)*.

-- $ 32,500 to 47-year-old widowed mother of 15-year-old boy who drowned while swimming; decedent had IQ of 153 when he was seven or eight years old and at time of death IQ of 157; exceptionally gifted child; in top 1% of his class of 800 in high school. *Gluckauf v. Pine Lake Beach Club, Inc., 78 N.J. Super. 8, 187 A.2d 357 (App. Div. 1963)*.

-- $ 65,000 pecuniary loss where 20-year-old son died after receiving severe electrical shock when he entered lake that had become charged with electricity; evidence showed that decedent was faithful, loving, and caring son who had rendered valuable services without pay for one summer in his father's business and had caring relationship with his learning disabled brother, whom he tutored and assisted in school; $ 100,000 for conscious pain and suffering where student was alive under water for two or three minutes and contemplated death due to effect of electricity in his body which first rendered him unable to escape, then caused him to come into contact with more intense source. *Higgins v. State, 192 A.D.2d 821, 596 N.Y.S.2d 479*, 82 Ed. Law Rep. 608 (3d Dep't 1993).

-- $ 275,000 for conscious pain and suffering experienced in interval between injury and death where 15-year-old boy suffered burns over 75% of his body following electrocution caused by contact with 33,000 volts of electricity at substation; became "ball of fire" and remained engulfed in flames for several minutes until bystander was able to extinguish flames; survived five days during which he was conscious and suffered extensively from injuries and from painful burn treatments; while interval between injury and death was relatively short, and decedent's suffering might have been measured in days, it was ordeal of a lifetime. *Regan v. Long Island R.R. Co., 128 A.D.2d 511, 512 N.Y.S.2d 443 (2d Dep't 1987)*.

-- $ 40,000 -- $ 35,000 for wrongful death and $ 5,000 pain and suffering; 15-year-old youth drowned at school picnic. *Dillen v. Erie County, 101 A.D.2d 687, 475 N.Y.S.2d 677*, 17 Ed. Law Rep. 913 (4th Dep't 1984).

-- $ 30,341 where decedent 19 years of age at time of death from unspecified causes; working at time of death; earning capacity and expectancy supported verdict; remittitur to $ 2,000 rejected. *Sojo v. Hertz Corp., 40 A.D.2d 959, 338 N.Y.S.2d 455 (1st Dep't 1972)*.

-- $ 7.5 million ($ 6.1 million present value), where 17-year-old died from cardiac arrest after confrontation with police in which he was struck in chest by electrical current emitted from Taser; only methodology suggested by mother to aid jury's calculation of compensatory damages was counsel's suggestion that the jury take just some arbitrary, small, conservative number, like $ 1,000 for a week, but mother failed to present any evidence showing that child's services, care, and companionship had value approaching $ 1,000-$ 2,000 per week, per parent; no testimony concerning whether, and for what duration, parents reasonably expected child to continue providing services such as babysitting his younger siblings and assisting with house; nevertheless, proof of parents' close relationships with him, as well as his good character, showed that he had significant value to his parents to a substantial award for the loss of his services, care, and companionship. *Fontenot v. Taser Intern., Inc., 736 F.3d 318*, Prod. Liab. Rep. (CCH) P 19279 (4th Cir. 2013) (applying North Carolina law).

-- $ 6 million wrongful death action parents for death of 17-year-old son from defendants' negligent operation of bungee jumping site, upon remittitur from $ 12 million verdict; district court examined range of damages previously awarded by state's courts in similar cases and then considered provided a thoughtful and thorough analysis of the facts in this case, including evidence that son exemplary young man, who excelled in school and sports, and who was devoted to his parents, violent circumstances surrounding his death, and additional grief suffered by his parents as result of having watched him die in such terrible manner; district court reasonably concluded that these

factors called for award of damages significantly greater than any awards to date by state's courts in similar wrongful death actions. *Steinke v. Player, 145 F.3d 1325 (4th Cir. 1998)* (applying South Carolina law).

-- $ 1 million for conscious pain and suffering experienced prior to death by 14-year-old boy who was struck by automatic garage door and pinned underneath it, despite conflicting evidence as to whether he was conscious after hit by door; $ 1.225 million to boy's mother for her mental anguish and loss of society and companionship, where boy and his mother had very close relationship and fished, rode horses and shot firearms together; death had profound impact on mother, continuing to miss time from work, visiting his grave almost daily; $ 50,000 to mother for pecuniary loss due to boy's death where he regularly worked around the house, and fed and cared for the farm animals. *Wellborn v. Sears, Roebuck & Co., 970 F.2d 1420*, Prod. Liab. Rep. (CCH) P 13305 (5th Cir. 1992) (applying Texas law).

-- $ 28,000 (which included $ 10,000 for mental anguish of decedent before death) to mother of 14-year-old boy who drowned in public swimming pool when sucked into outlet; life expectancy 54 years; was male leader of family; earned $ 35 to $ 40 a month on paper route and helped mother financially; also helped to care for younger brother and sister. *City of Austin v. Selter, 415 S.W.2d 489 (Tex. Civ. App. Austin 1967)*, writ refused n.r.e., (Oct. 11, 1967).

[*49] From 14 until 21 - Excessive

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death of a child from 14 until 21 years old, from causes other than vehicular accidents or malpractice, were excessive, such as awards of --

-- $ 250,000 (reduced by remittitur to $ 150,000) to mother of emotionally disturbed 20-year-old man who was shot to death by police; victim had worked only sporadically for minimum wages; award of $ 75,000 for pain and suffering reduced to $ 25,000 since victim could have lived only a few minutes from time of injury until death; award of $ 150,000 for loss of companionship and society was not excessive. *Sharpe v. City of Lewisburg, Tenn., 677 F. Supp. 1362 (M.D. Tenn. 1988)*.

-- $ 67,586.91 wrongful death action brought under Federal Tort Claims Act because of accidental shooting of 15-year-old boy by an Army Corps of Engineers "fee ranger" at campground in reservoir management area; boy's negligence was 25% of proximate cause of fatal injury; damages awarded to parents; trial court used a higher discount rate in calculating award than was permitted by statute. *Harden v. U.S., 688 F.2d 1025 (5th Cir. 1982)* (applying Georgia law).

-- $ 75,000 (new trial unless remittitur filed of all verdicts in excess of $ 50,000) to estate of 18-year-old construction worker; life expectancy of 52 years; lived 2 1/2 hours after falling 80 feet from roof, suffering pain; graduated from high school, sixth in class; president of senior class; captain of football team; IQ 115; wanted to be doctor of veterinary medicine and had been accepted by state university. *Giarratano v. Weitz Co., 259 Iowa 1292, 147 N.W.2d 824 (1967)* (abrogated on other grounds by, *Van Fossen v. MidAmerican Energy Co., 777 N.W.2d 689, 29 I.E.R. Cas. (BNA) 1846 (Iowa 2009))*.

-- $ 10,000 (reduced to $ 4,000 original jury award); 18-year-old seaman, drowning victim; lived with parents and contributed to their support; both parents employed. *Standard Products, Inc. v. Patterson, 317 So. 2d 376 (Miss. 1975)*.

-- $ 4 million damages for wrongful death and $ 2 million damages for conscious pain and suffering arising out of drowning death of 16-year-old victim; evidence of conscious pain and suffering would support award of $ 50,000 in that while physical evidence showed that he had been conscious while drowning, experts from both sides indicated that victim would have lost consciousness within few minutes; amount of wrongful death damages was excessive to extent it exceeded $ 300,000 given reasonable value which could be assigned to victim's services and monetary support to family. *Dontas v. City of New York, 183 A.D.2d 868, 584 N.Y.S.2d 134 (2d Dep't 1992)*.

-- $ 275,000 reduced to $ 100,000 where 15-year-old boy suffered burns over 75% of his body following electrocution caused by contact with 33,000 volts of electricity at substation; became "ball of fire" and remained engulfed in flames for several minutes until bystander was able to extinguish flames; high school student; neither supported parents nor contributed monetarily to household; award further reduced by 60% comparative fault. *Regan v. Long Island R.R. Co., 128 A.D.2d 511, 512 N.Y.S.2d 443 (2d Dep't 1987).*

-- $ 85,000 (reduced to $ 50,000); 17-year-old boy; lived with parents; worked summer jobs; contributed $ 30 per week to family; unspecified cause of accident. *Sadlon v. Newport Associates, Inc., 59 A.D.2d 860, 399 N.Y.S.2d 120 (1st Dep't 1977).*

-- $ 55,000 to estate, of which about $ 2,000 was for funeral, medical, and hospital expenses; 17-year-old boy who had worked summers and part-time during school year; decedent sometimes contributed towards household expenses, bought own clothes and had savings; new trial ordered unless verdict reduced by stipulation to $ 37,000, plus above noted special damages; unspecified cause of death. *LeBoeuf v. Newman, 21 A.D.2d 937, 251 N.Y.S.2d 72 (3d Dep't 1964).*

-- $ 6 million for conscious pain and suffering to estate of 14 year old who drowned in amusement park's wave pool while on eighth grade school field trip, where although decedent suffered most terrible and prolonged demise over period of approximately six minutes, during which he suffered physical pain, terror, and knowledge of his impending death, but award reduced to $ 2 million; as to award of $ 4 million to his mother for negligent infliction of emotional harm, court reasoned that $ 500,000 was just and fair compensation for her emotional injury during period of uncertainty regarding location of her missing son, ending with knowledge of his death, while $ 250,000 was appropriate compensation for emotional distress occasioned by her recollection of how lifeguards and school board mishandled her son's body. *Maracallo v. Board of Educ. of City of New York, 2 Misc. 3d 703, 769 N.Y.S.2d 717*, 184 Ed. Law Rep. 505 (Sup 2003).

[*50] From 14 until 21 - Amount fixed by court

Under the particular circumstances of the following cases the courts fixed the appropriate amounts of awards of compensatory damages for the death of a child from 14 until 21 years old, from causes other than vehicular accidents or malpractice, determining sums such as --

-- $ 25,748 ($ 5,360 past loss of contribution to parents' support, plus $ 18,388 future loss of contributions to parents' support, and $ 2,000 for conscious pain and suffering) where 20-year-old boy drowned while working as crew member on fishing boat; had been contributing about $ 20 per week to support of parents; father's life expectancy was 26.81 years, and mother's life expectancy was 27.62 years, at time of trial. *Grantham v. Fishing Boat Redwing, 234 F. Supp. 89 (E.D. S.C. 1964).*

-- $ 80,614 (which included $ 19,954 loss of support to parents, $ 50,000 loss of love and affection, $ 660 funeral expenses, and $ 10,000 for pain and suffering) where 19-year-old midshipman at merchant marine academy suffered extensive burns causing his death; parents were aged 56 and 55, in poor health, and in debt. *In re Farrell Lines, Inc., 339 F. Supp. 91 (E.D. La. 1971).*

-- $ 9,153.07 to administrator of decedent's estate; 18-year-old seaman killed when tugboat sank; survived by father, mother, and minor brother. *Petition of Midwest Towing Co., 203 F. Supp. 727, 1962 A.M.C. 2438 (E.D. Ill. 1962)*, judgment aff'd, *317 F.2d 270, 1963 A.M.C. 2376 (7th Cir. 1963).*

-- $ 100,000 where 19-year-old boy killed when boat on which he was working in employment of surveyor of navigable bodies of water capsized; salary $ 4,160; graduated from high school and attended junior college for short period; acknowledged father of illegitimate child; unmarried but helped to support the child with the aid of his parents, who actually kept the child in their home a great part of time; $ 15,000 awarded to estate of deceased, $ 45,000 for illegitimate child, $ 20,000 for mother of deceased, and $ 20,000 for father. *Spiller v. Thomas M. Lowe, Jr. & Associates, Inc., 328 F. Supp. 54, 1971 A.M.C. 2661 (W.D. Ark. 1971)*, judgment aff'd, *466 F.2d 903, 1972 A.M.C. 2510, 20 A.L.R. Fed. 89 (8th Cir. 1972).*

-- $ 100,000 to each parent where 16-year-old son drowned in swimming pool at graduation party; while parents lived separately, this arrangement was for work purposes; $ 15,000 for pain and suffering of son prior to his death. St. Hill v. Tabor, 549 So. 2d 870 (La. Ct. App. 5th Cir. 1989), writ denied, 556 So. 2d 1262 (La. 1990).

-- $ 41,634 (which included $ 20,000 to each parent and $ 1,634 special damages) where 16-year-old died from heatstroke from football practice; mature, well rounded, and intellectually superior boy; active in scouting, enjoyed sports, and, as eldest child, assisted parents with younger children. Mogabgab v. Orleans Parish School Bd., 239 So. 2d 456 (La. Ct. App. 4th Cir. 1970), writ refused, 256 La. 1152, 241 So. 2d 253 (1970).

-- $ 20,000 ($ 10,000 for each parent) where 15-year-old youth drowned in swimming pool when life guard refused aid; decedent one of four children in family; average intelligence; promoted to 10th grade in school; caused parents no disciplinary problem. *Williams v. City of Baton Rouge, 200 So. 2d 420 (La. Ct. App. 1st Cir. 1967)*, writ issued, 251 La. 43, 202 So. 2d 656 (1967) and writ issued, 251 La. 45, 202 So. 2d 656 (1967) and judgment aff'd and amended on other grounds, 252 La. 770, 214 So. 2d 138 (1968) (overruled on other grounds by, Turner v. Bucher, 308 So. 2d 270 (La. 1975)).

-- $ 12,000 to estate of 15-year-old inmate of state training school who committed suicide after being slapped by supervisory personnel and left unattended in hysterical condition; survived by mother. McBride v. State, 52 Misc. 2d 880, 277 N.Y.S.2d 80 (Ct. Cl. 1967), judgment aff'd, *30 A.D.2d 1025, 294 N.Y.S.2d 265 (3d Dep't 1968)*.

-- $ 48,000 to estate of 17-year-old boy killed by towboat while he was swimming in river; graduated from high school; average grades; popular, fun loving, and well disciplined; good health; intended to become X-ray or medical technologist; enrolled in junior college to learn that trade; life expectancy 54.3 years. In re Consolidation Coal Co., 296 F. Supp. 837 (W.D. Pa. 1968) (applying Pennsylvania law).

-- $ 6 million in nonpecuniary losses for each of two brothers ages 13 and 16, and cousin age 14, who drowned when their boat sank; inadequate rescue search by Coast Guard alleged; $ 43,761.69 for antidepressant medication to mother; $ 13,802.20 for funeral expenses; mother of brothers completely boys by deaths; $ 300,000 survival damages where boys undeniably were terrified by being stranded on sailboat as it gradually and eventually sank; physical struggles to save themselves were remarkable as they not only had to overcome wind, waves, and frigid ocean water, but were swimming against outgoing tide; physical and mental torture was severe. *Hurd v. U.S., 134 F. Supp. 2d 745, 2001 A.M.C. 1555 (D.S.C. 2001)*, judgment aff'd on other grounds, 34 Fed. Appx. 77, 2002 A.M.C. 1584 (4th Cir. 2002) (applying South Carolina law).

-- $ 6,164 (which included $ 3,500 to mother and $ 1,500 to adoptive father, and $ 1,164 to estate for funeral expenses) where 18-year-old prisoner, serving sentence on narcotics charge, hanged himself in county jail; had revealed psychotic condition and suicidal tendencies; had been transferred from hospital to jail prior to suicide. Logue v. U.S., 334 F. Supp. 322 (S.D. Tex. 1971), judgment rev'd on other grounds, 459 F.2d 408 (5th Cir. 1972), judgment vacated on other grounds, 412 U.S. 521, 93 S. Ct. 2215, 37 L. Ed. 2d 121 (1973) (applying Texas law).

[*51] From 14 until 21 - Adequate

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death of a child from 14 until 21 years old, from causes other than vehicular accidents or malpractice, were adequate, such as awards of --

-- $ 1,500 where 15-year-old beaten by police while in custody; court noting that evidence of damages vague. Jones v. Hildebrant, 191 Colo. 1, 550 P.2d 339 (1976) (overruled on other grounds by, Espinoza v. O'Dell, 633 P.2d 455 (Colo. 1981)).

-- $ 5,000 to parents of 16-year-old boy killed by target shooter. Harman v. Chase, 160 Colo. 449, 417 P.2d 784 (1966).

-- $ 5,200 where 16-year-old boy shot and killed by police while riding bicycle planted by police in effort to apprehend bicycle thieves; youngest of three sons; convicted for possession of narcotics one year prior to death; some difficulties in school; employed part-time for newspaper; employment prognosis deemed not promising. *Hughes v. Pender, 391 A.2d 259 (D.C. 1978)*.

-- $ 100,000 to mother for shooting death of her 17-year-old son; very troubled family on all levels; mother's psychological difficulties and her apparent lax supervision over victim and his activities could have caused jury to question strength of relationship. *Muse v. Dunbar, 716 So. 2d 110 (La. Ct. App. 3d Cir. 1998)*, writ denied, *727 So. 2d 448 (La. 1998)* and writ denied, *727 So. 2d 448 (La. 1998)*.

-- $ 5,000 awarded to father of 16-year-old girl who died by unspecified cause; parents had separated after 14 years of marriage; since separation, father made infrequent visits and showed little interest in children; relationship with family described as strained. *Kimble v. Bruza, 377 So. 2d 896 (La. Ct. App. 4th Cir. 1979)*.

-- $ 13,081.20, with mother receiving $ 1,500 for son's pain and suffering, and $ 1,500 for loss of love and companionship and father receiving $ 1,500 for son's pain and suffering, and $ 7,500 for loss of love and companionship, plus, $ 1,081.20 for burial expenses; 15-year-old boy who died from flogging administered by employees of state correctional institution in which boy was inmate; decedent's father and mother had not been living together for about 12 years, and during that period decedent had lived with father, who had great affection for the boy, as compared with mother, who had abandoned decedent as a small child; decedent was of less than ordinary intelligence, suffered from diabetes, and demonstrated considerably less than exemplary behavior. *Lewis v. State, Through State Bd. of Institutions, 176 So. 2d 718 (La. Ct. App. 1st Cir. 1965)*, writ refused, *248 La. 364, 178 So. 2d 655 (1965)*.

-- $ 8,000 where 17-year-old killed when accidentally shot at close range; while economist testified that net present value of decedent's life was $ 271,181, considerable evidence was presented to indicate that decedent was almost entirely responsible for bringing about his own death. *Lewis v. Hiatt, 683 So. 2d 937 (Miss. 1996)*.

-- $ 0 for mental anguish in past and future and $ 0 for loss of companionship and society of minor son where locksmiths picked locked trigger lock on bolt action 30.06 rifle, at minor's request, without parental permission, consent, or knowledge, and then returned operational rifle to minor who used it to commit suicide; father had sadness, crying, loss of appetite, difficulty sleeping, and early morning awakening; medication did not cure depression. *Perez v. Lopez, 74 S.W.3d 60 (Tex. App. El Paso 2002)*.

[*52] From 14 until 21 - Inadequate

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death of a child from 14 until 21 years old, from causes other than vehicular accidents or malpractice, were inadequate, such as awards of --

-- $ 4,500 including funeral expenses of $ 982.40; 16-year-old boy survived by parents aged 36 and 37, respectively; financially well disposed towards parents; new trial ordered unless defendant stipulated to increase verdict to $ 7,500; unspecified facts as to death. *Russell v. Cinillo, 17 A.D.2d 1005, 234 N.Y.S.2d 67 (3d Dep't 1962)*.

-- $ 858.90 (funeral expenses only); for death by drowning of each of two daughters, age 15 and 16, due to defendant's negligence; new trial ordered. *Kesner v. Trenton, 158 W. Va. 997, 216 S.E.2d 880, 86 A.L.R.3d 1009 (1975)*.

[*53] Decedent's age unspecified - Not excessive

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death of a child whose age was unspecified, from causes other than vehicular accidents or malpractice, were not excessive, such as awards of --

-- $ 300,000 already reduced by remittitur from $ 1 million; minor daughter beaten by mother; father brought action against child health care agency for not providing notice of beatings. Mammo v. State, 138 Ariz. 528, 675 P.2d 1347 (Ct. App. Div. 1 1983).

-- $ 400,000 where explosion and fire occurred in home after repairman repaired gas clothes dryer, and child died approximately two weeks later. Dotson v. Sears, Roebuck and Co., 157 Ill. App. 3d 1036, 110 Ill. Dec. 177, 510 N.E.2d 1208 (1st Dist. 1987).

-- $ 30,000 to administrator of estate of minor boy killed by explosion and fire resulting from gas main leak; amount was statutory maximum. American Nat. Bank & Trust Co. v. Peoples Gas Light & Coke Co., 42 Ill. App. 2d 163, 191 N.E.2d 628 (1st Dist. 1963).

-- $ 200,000 in survival action damages and $ 575,000 in wrongful death damages where child drowned in oxidation pond behind trailer park; as to survival action, autopsy report showed that child was alive during the drowning, so death was not without suffering; as to wrongful death, mother testified that she and her son were very close and did many things together; he suffered from epileptic seizures and required medications to control seizure incidents; mother had very hard time testifying about death of her son, crying as she tried to speak; she found her son in pond with his head down and his feet sticking up out of water, also assisted in recovering his body from pond; during attempt to revive child by use of CPR, she just screamed. Barton v. Hines, 884 So. 2d 1214 (La. Ct. App. 3d Cir. 2004), writ denied, 896 So. 2d 999 (La. 2005).

-- $ 925,000 where soccer goal fell over and killed a second-grade student during recess; of $ 6,386 funeral expenses; plaintiff's economist testified that net loss to decedent's estate as result of decedent's lost earning capacity was $ 707,246; plaintiff presented sufficient evidence regarding decedent's loss of life to support verdict of $ 925,000. Marcotte v. Timberlane/Hampstead School Dist., 143 N.H. 331, 733 A.2d 394, 136 Ed. Law Rep. 914 (1999).

-- $ 1.5 million in compensatory damages and $ 1.5 million in punitive damages where child playing with friends was electrocuted when he entered into electric company's unlocked cabinet in wooden area on neighbors' property line. Cole v. Duke Power Co., 81 N.C. App. 213, 344 S.E.2d 130 (1986).

[*54] Decedent's age unspecified - Excessive

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death of a child whose age was unspecified, from causes other than vehicular accidents or malpractice, were excessive, such as awards of --

-- $ 5,000 to widowed mother of minor son killed in gun accident; there was no evidence bearing upon pecuniary damage which plaintiff sustained; judgment reversed. Williams v. Dowling, 4 V.I. 465, 318 F.2d 642 (3d Cir. 1963) (applying Virgin Islands law).

-- $ 1 million for conscious pain and suffering of daughter, who was stabbed to death by another student on school grounds, where within five minutes of being stabbed, daughter collapsed and lost consciousness; less than one hour later, she was pronounced dead; reduced to $ 300,000. Givens v. Rochester City School Dist., 294 A.D.2d 898, 741 N.Y.S.2d 635, 164 Ed. Law Rep. 862 (4th Dep't 2002).

-- $ 1 million mental anguish to mother of mentally handicapped child who was shot and killed by police officer in response to call for help made by mother; evidence that mother was at times object of child's violent behavior and that mother was afraid of her son during these episodes and sought to have him removed from house; mother acknowledged that she was often unaware of her son's whereabouts during his frequent absences from her home; new trial properly granted. Fields v. Dailey, 68 Ohio App. 3d 33, 587 N.E.2d 400 (10th Dist. Franklin County 1990).

[*55] Decedent's age unspecified - Amount fixed by court

There is case law in which the courts fixed the amount of an award of compensatory damages for the death of a child whose age was unspecified, from unspecified causes or from causes other than vehicular accidents or malpractice, determining sums such as --

-- $ 1.13 million default judgment in survival action where child of unspecified age died from unspecified cause, research summary from Social Security Administration indicated $ 1.13 million as estimated lifetime earnings of male with less than high school education; amount did not account for medical, hospital, medication expenses, and emotional damages to parents. *Demello v. United States, 2018 WL 3625339 (W.D. Wash. 2018)*.

[*56] Decedent's age unspecified - Adequate

Under the particular circumstances of the following cases the courts held that awards of compensatory damages for the death of a child whose age was unspecified, from causes other than vehicular accidents or malpractice, were adequate, such as awards of --

-- $ 300,000 already reduced by remittitur from $ 1 million; minor daughter beaten by mother; father brought action against child health care agency for not providing notice of beatings; court, refusing to reinstate jury verdict, stated that trial court did not abuse its discretion when it reduced the award. *Mammo v. State, 138 Ariz. 528, 675 P.2d 1347 (Ct. App. Div. 1 1983)*.

-- $ 1,654,417.62 against general contractor hired to complete modifications to interchange where child drowned in pond near interchange after one-car accident; amount awarded against contractor was equal to, if not greater than, verdict against department of transportation; as to claim that jury determination as to funeral and burial expenses was unreasonably low, jury could review evidence available and make the award it deemed reasonable and just under circumstances. *Nevins v. Ohio Dept. of Transp., 132 Ohio App. 3d 6, 724 N.E.2d 433 (10th Dist. Franklin County 1998)*.

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10,000 conscious
271,181, considerable
6,000 consideration
600,000 conscious

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§ 6 From birth through age six - Amount fixed by court

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§ 51 From 14 until 21 - Adequate

§ 52 From 14 until 21 - Inadequate

§ 53 Decedent's age unspecified - Not excessive

§ 54 Decedent's age unspecified - Excessive

§ 55 Decedent's age unspecified - Amount fixed by court

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49 50 51 52

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[49] Some of the facts are taken from the remanding decision at Argus v. Scheppegrell, 472 So. 2d 573 (La. 1985).

[50] Some of the facts are taken from the related proceeding in Williams v. U.S., 674 F. Supp. 334 (N.D. Fla. 1987).

(2023)

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[51] Some of the facts are taken from the earlier decision at Guillot v. Fisherman's Paradise, Inc., 422 So. 2d 1194 (La. Ct. App. 1st Cir. 1982).

[52] Some of the facts are taken from the remanding decision in St. Hill v. Tabor, 542 So. 2d 499 (La. 1989).

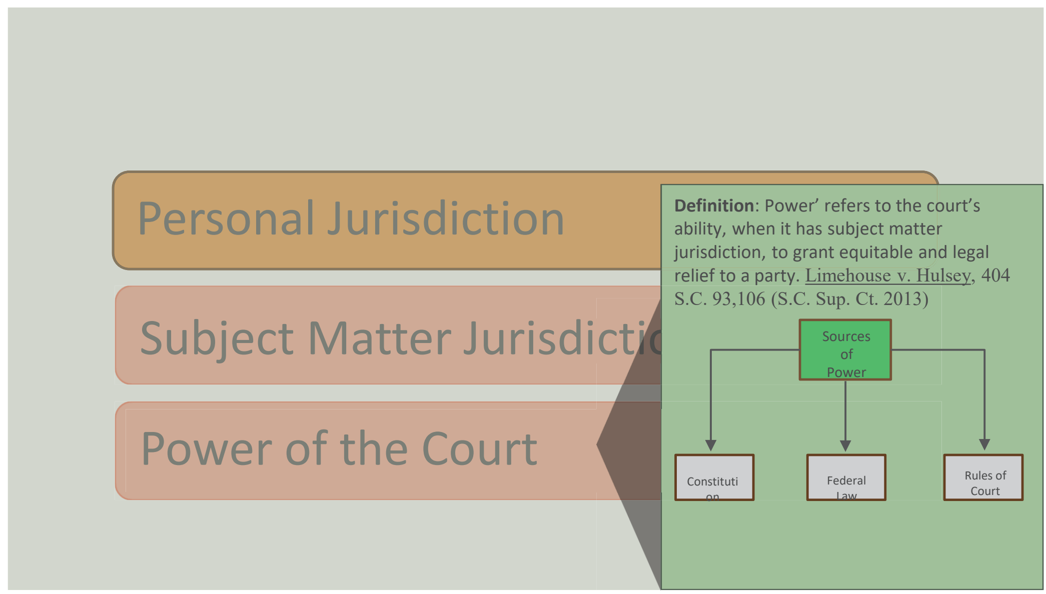
The Three Prongs of Jurisdiction

Personal Jurisdiction

Subject Matter Jurisdiction

Power of the Court

The Three Prongs of Jurisdiction



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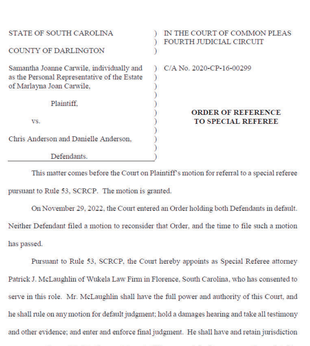


STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON)

Samantha Joanne Carwile, individually and as the Personal Representative of the Estate of Marlayna Joan Carwile,) C/A No. 2020-CP-16-00299

Plaintiff,

vs.) **ORDER OF REFERENCE TO SPECIAL REFEREE**

Chris Anderson and Danielle Anderson,

Defendants.

This matter comes before the Court on Plaintiff's motion for referral to a special referee pursuant to Rule 53, SCRCP. The motion is granted.

On November 29, 2022, the Court entered an Order holding both Defendants in default. Neither Defendant filed a motion to reconsider that Order, and the time to file such a motion has passed.

Pursuant to Rule 53, SCRCP, the Court hereby appoints as Special Referee attorney Patrick J. McLaughlin of Wukela Law Firm in Florence, South Carolina, who has consented to serve in this role. Mr. McLaughlin shall have the full power and authority of this Court, and he shall rule on any motion for default judgment; hold a damages hearing and take all testimony and other evidence; and enter and enforce final judgment. He shall have and retain jurisdiction over any motions related to the appointment of him as special referee; any motions related to

ELECTRONICALLY FILED - 2023 Feb 10 9:59 AM - DARLINGTON - COMMON PLEAS - CASE#2020CP1600299

Darlington Common Pleas

Case Caption: Samantha Joanne Carwile , plaintiff, et al VS Chris Anderson , defendant, et al
Case Number: 2020CP1600299
Type: Order/Referred to Master or Special Referee

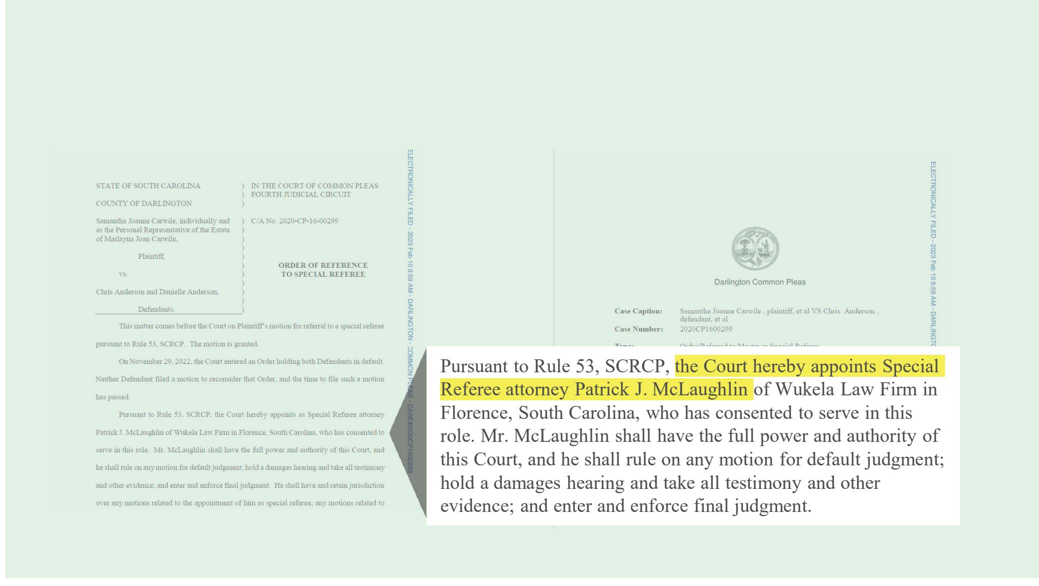
So Ordered

s/Scott B. Suggs by JEG

Electronically signed on 2023-02-10 09:59:25 page 3 of 3

ELECTRONICALLY FILED - 2023 Feb 10 9:59 AM - DARLINGTON - COMMON PLEAS - CASE#2020CP1600299

Order of Reference



ELECTRONICALLY FILED - 2023 Feb 10 9:59 AM - DARLINGTON - COMMON PLEAS - CASE#2020CP1600299

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	
Samantha Joanne Carwile, individually and as the Personal Representative of the Estate of Marlayna Joan Carwile,	)	C/A No. 2020-CP-16-00299
Plaintiff,	)	
vs.	)	**ORDER OF REFERENCE TO SPECIAL REFEREE**
Chris Anderson and Danielle Anderson,	)	
Defendants.	)	

This matter comes before the Court on Plaintiff's motion for referral to a special referee pursuant to Rule 53, SCRCP. The motion is granted.

On November 29, 2022, the Court entered an Order holding both Defendants in default. Neither Defendant filed a motion to reconsider that Order, and the time to file such a motion has passed.

Pursuant to Rule 53, SCRCP, the Court hereby appoints as Special Referee attorney Patrick J. McLaughlin of Wukela Law Firm in Florence, South Carolina, who has consented to serve in this role. Mr. McLaughlin shall have the full power and authority of this Court, and he shall rule on any motion for default judgment; hold a damages hearing and take all testimony and other evidence; and enter and enforce final judgment. He shall have and retain jurisdiction over any motions related to the appointment of him as special referee; any motions related to

ELECTRONICALLY FILED - 2023 Feb 10 9:59 AM - DARLINGTO

Darlington Common Pleas

Case Caption: Samantha Joanne Carwile , plaintiff, et al VS Chris Anderson , defendant, et al

Case Number: 2020CP1600299

Pursuant to Rule 53, SCRCP, the Court hereby appoints Special Referee attorney Patrick J. McLaughlin of Wukela Law Firm in Florence, South Carolina, who has consented to serve in this role. Mr. McLaughlin shall have the full power and authority of this Court, and he shall rule on any motion for default judgment; hold a damages hearing and take all testimony and other evidence; and enter and enforce final judgment.

Order of Reference

SCRCP Rule 53(a)

The term "special referee" means a member of the South Carolina Bar to whom a matter has been referred under S.C. Code Ann. § 14-11-60.

Rule 53
Masters and Special Referees
a) Master and Special Referee Defined. The term "master" means the master-in-equity for the county. The term "special referee" means a member of the South Carolina Bar to whom a matter has been referred under S.C. Code Ann. § 14-11-60.

S.C. Code Ann. §14-11-60

….the presiding circuit court judge, upon agreement of the parties, may appoint a special referee in any case who as to the case has all the powers of a master-in-equity.

SECTION 14-11-60. Appointment of special referee.

In case of a vacancy in the office of master-in-equity or in case of the disqualification or disability of the master-in-equity from interest or any other reason for which cause can be shown the presiding circuit court judge, upon agreement of the parties, may appoint a special referee in any case who as to the case has all the powers of a master-in-equity. The special referee must be compensated by the parties involved in the action.

HISTORY: 1962 Code Section 15-1811; 1952 Code Section 15-1811; 1942 Code Section 3684; 1932 Code Section 3691; Civ. C. '22 Section 2228; Civ. C. '12 Section 1379; Civ. C. '02 Section 972; G. S. 789; R. S. 843; 1840 (11) 154 Section 2; 1885 (19) 89; 1979 Act No. 164 Part II Section 7, eff July 1, 1979; 1988 Act No. 678, Part II, Section 6, eff January 1, 1989.

SCRP Rule 53(b)

all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court.

(b) References. In an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court. In all other actions, the circuit court may, upon application of any party or upon its own motion, direct a reference of some or all of the causes of action in a case. Any party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury and, upon the filing of a jury demand, the matter shall be returned to the circuit court. A case shall not be referred to a master or special referee for the purpose of making a report to the circuit court. The clerk shall promptly provide the master or special referee with a copy of the order of reference.

S.C. Code Ann. §14-11-60

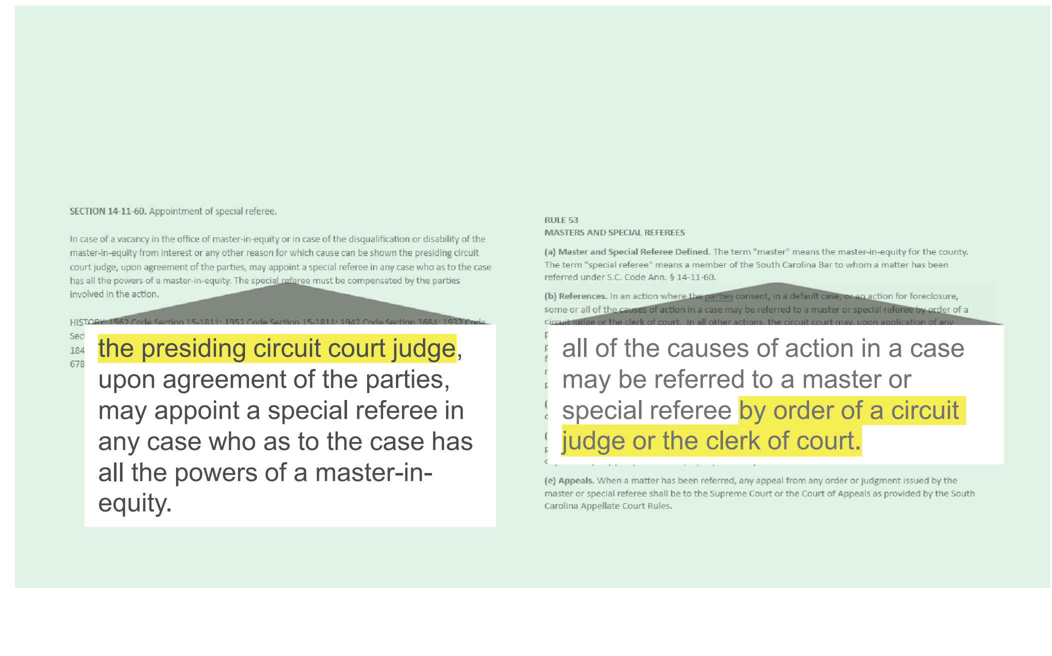
the presiding circuit court judge, upon agreement of the parties, may appoint a special referee in any case who as to the case has all the powers of a master-in-equity.

SECTION 14-11-60. Appointment of special referee.

In case of a vacancy in the office of master-in-equity or in case of the disqualification or disability of the master-in-equity from interest or any other reason for which cause can be shown the presiding circuit court judge, upon agreement of the parties, may appoint a special referee in any case who as to the case has all the powers of a master-in-equity. The special referee must be compensated by the parties involved in the action.

HISTORY: 1962 Code Section 15-1811; 1952 Code Section 15-1811; 1942 Code Section 3684; 1932 Code Section 3691; Civ. C. '22 Section 2228; Civ. C. '12 Section 1379; Civ. C. '02 Section 972; G. S. 789; R. S. 843; 1840 (11) 154 Section 2; 1885 (19) 89; 1979 Act No. 164 Part II Section 7, eff July 1, 1979; 1988 Act No. 678, Part II, Section 6, eff January 1, 1989.

If the rule conflicts with the statute



Any **conflict** between a **statute** and **court rule** must be resolved in favor of the **statute**. *See* S.C. Const., art. V, § 4 (2016) ("Subject to the statutory law, the Supreme **Court** shall make **rules** governing the practice and procedure in all such **courts**.")

Grazia v. S.C. State Plastering, LLC, 390 S.C. 562, 570 (S.C. Sup. Ct. 2010)

Jun 22 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Darlington County
Court of Common Pleas
Paul M. Burch, Circuit Court Judge
Patrick J. McLaughlin, Special Referee

Case No. 2020-CP-16-00299

Samantha Joanne Carwile, individually and
as the Personal Representative of the Estate
of Marlayna Joan Carwile,

Respondent,

vs.

Chris Anderson and Danielle Anderson,

Appellants.

NOTICE OF APPEAL

Chris Anderson and Danielle Anderson appeal from the Order of Default Judgment, issued by Patrick J. McLaughlin, Special Referee, filed and received on May 23, 2023, together with other interlocutory and post-trial orders, including:

1. Order of the Special Referee, denying Defendants' Rule 55 motion to set aside entry of default, filed and received on May 23, 2023.
2. Order of referral to Special Referee, of the Honorable Scott B. Suggs, Darlington County Clerk of Court, filed February 10, 2023;
3. Order for Entry of Default Against Defendants Chris Anderson and Danielle Anderson and Referral for Hearing on Damages, of the Honorable Scott B. Suggs, Darlington County Clerk of Court, filed November 29, 2022; and

4. Order of the Honorable Paul M. Burch, Circuit Court Judge, granting Plaintiff's motion for sanctions, filed November 17, 2022.

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June 22, 2023

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Trial Counsel for Defendants

CERTIFICATE OF SERVICE

The undersigned certifies that on this **22nd** day of **June, 2023**, a copy of the NOTICE OF APPEAL on behalf of Appellants Chris Anderson and Danielle Anderson was served by emailing a copy to the address listed below:

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June 22, 2023

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June 22, 2023

Via E-Filing and U.S. Mail
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Senate Street
Columbia, SC 29211

Re: Samantha Joanne Carwile, individually and as the Personal Representative of the Estate of Marlayna Joan Carwile v. Chris Anderson and Danielle Anderson
Appeal from Darlington County, Case No. 2020-CP-16-00299
HLF File No. 12.002

Dear Ms. Kitchings:

Today we have electronically filed and served a Notice of Appeal on behalf of Appellants/Defendants, Chris Anderson and Danielle Anderson, from multiple orders entered in the above referenced case. Enclosed is a duplicate copy of the Notice of Appeal together with our check for the $250 filing fee. We have electronically served all other Counsel of Record as indicated by our Certificate of Service which we electronically filed along with copies of all the orders from which appeal is taken. We have also filed a copy of the Notice of Appeal in the circuit Court as required by Rule 203(d), SCACR.

At this time, we also wish to advise the Court that there are motions still pending before the Special Referee. On June 2, 2023, the Defendants filed a Rule 59(e) motion to alter or amend, and/or reconsider the Special Referee's order (filed 5/23/23) denying the Defendants' Rule 55 motion to set aside entry of default. On that same date, the Defendants also filed a post-trial motion pursuant to Rule 52 and 59 from the Special Referee's (5/23/23) Order of Default Judgment. The Defendants are filing the Notice of Appeal at this time in an abundance of caution to avoid any potential argument that might be made that the Rule 59(e) motion from the Special Referee's May 23, 2023 order denying the Rule 55 motion could be considered a successive motion under the decision in Elam v. S.C. Dep't of Transp., 361 S.C. 9, 20, 602 S.E.2d 772, 778 (2004). Appellants/Defendants will advise the Court and file an amended notice of appeal upon receipt of orders from the Special Referee on the pending motions.

The Appellants/Defendants would also advise the Court at this time that we have already received the transcript of the default damages trial, and thus, the Appellants' initial brief and designations will be due in 30 days from the filing of this Notice of Appeal – July 21, 2023. Given the fact that there are motions still pending before the Special Referee, the Appellants/Defendants would ask the Court to hold the briefing schedule in abeyance until an amended notice of appeal is filed in due course. To the extent that this request may be considered an extension motion, we are providing a separate check for the $50 motion fee.

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Phone: (843) 577-4435 • Fax: (843) 722-1630 • Email: Info@hoodlaw.com
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Kind regards,

Yours truly,

/s/ James B. Hood

James B. Hood

JBH/spc
Enclosures
cc [***Via E-Mail***]:
Andrew J. MacLeod, Esquire
Ryan C. Andrews, Esquire
David B. Yarborough, Jr., Esquire
Douglas E. Jennings, Esquire
Reynolds H. Blankenship, Jr., Esquire
Patrick J. McLauglin, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Jun 26 2023

SC Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge
Patrick J. McLaughlin, Special Referee

Appellate Case No. 2023-001016

Samantha Joanne Carwile, individually and
as the Personal Representative of the Estate
of Marlayna Joan Carwile,,……………………………………....…………..……Respondent,

v.

Chris Anderson and Danielle Anderson,…………………….……………………..Appellants.

RESPONDENT'S MOTION TO DISMISS APPEAL OR REMAND

Respondent Samantha Joanne Carwile, individually and as the Personal Representative of the Estate of Marlayna Joan Carwile, moves the Court for an order dismissing the appeal as premature because Appellant's post-judgment motions are still pending before the special referee or remanding the appeal so that the special referee will have jurisdiction to rule on the motions.

This is an appeal from an Order of Default Judgment (and additional interlocutory orders) entered by a Special Referee on May 23, 2023. (Order of Default Judgment). On June 2, 2023, Appellants filed a (1) Motion to Alter or Amend, and/or Reconsider pursuant to Rule 59(e), SCRCP, and a (2) Motion to Amend, pursuant to Rule 52(b) and Rule 59(e), SCRCP, and/or in the alternative, Motion for a New Trial, pursuant to Rule 59(a), SCRCP.

Appellants did explain to the Court in their cover letter filed with the Notice of Appeal that their motions are still pending before the Special Referee and that they filed this appeal "in

an abundance of caution to avoid any potential argument that might be made that the Rule 59(e) motion from the Special Referee's May 23, 2023 order denying the Rule 55 motion could be considered a successive motion under the decision in *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 20, 602 S.E.2d 772, 778 (2004)." Appellants ask the Court to hold the briefing schedule in abeyance pending the special referee's ruling on their motions.

Respondent conferred with Appellants before filing this motion. Respondent believes that the notice of appeal was unnecessary because Rule 203(b)(1), SCACR, stays the time for filing a notice of appeal in this situation. More importantly, Respondent believes that Appellants' notice of appeal deprived the special referee of jurisdiction to rule on their motions. Under Rule 205, SCACR, "[u]pon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal." Appellants ask the Court to hold the appeal in abeyance while the special referee rules on their motions, but Respondent believes that their filing of the Notice of Appeal deprived the special referee of the jurisdiction to do that.

Further, our appellate courts have held that when a timely post-trial motion is pending before the lower court, any notice of appeal will be dismissed without prejudice as premature. *Hudson v. Hudson*, 290 S.C. 215, 216, 349 S.E.2d 341, 341-42 (1986) ("[I]n the event timely post-trial motions are filed under Rule 59, simultaneously with or subsequent to the filing of a Notice of Appeal, the appellant shall notify the Clerk of this Court in writing. Upon receipt of such notice, the appeal ***shall*** be dismissed without prejudice." (emphasis added)); *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 20 n.2, 602 S.E.2d 772, 778 n.2 (2004) (citing to *Hudson* for the holding that when a timely post-trial motion is pending before the lower court, any notice of appeal ***will*** be dismissed without prejudice as premature). Because the special referee has not rule on Appellants' motions, the Court should dismiss the appeal as premature and not immediately appealable.

In the alternative, Respondent asks the Court to remand the case to the special referee to rule on Appellants' motions and, most importantly, to ensure the special referee has jurisdiction to rule on them.

Respectfully submitted,

June 26, 2023

s/Kathleen C. Barnes
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Attorneys for Respondent

JAMES B. HOOD
Partner
DIRECT DIAL: (843) 577-1223
EMAIL: james.hood@hoodlaw.com

Jun 27 2023
SC Court of Appeals

June 27, 2023

Via E-Filing and E-Mail
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Senate Street
Columbia, SC 29211

Re: Samantha Joanne Carwile, individually and as the Personal Representative of the Estate of Marlayna Joan Carwile v. Chris Anderson and Danielle Anderson
Appeal from Darlington County, Case No. 2020-CP-16-00299
HLF File No. 12.002

Dear Ms. Kitchings:

We are in receipt of the Respondent's Motion to Dismiss Appeal or Remand grounded on the fact that there are, as we previously noted in our filing cover letter, post-trial motions still pending before the Special Referee. As we also explained in our filing cover letter, we served and filed the notice of appeal in an abundance of caution to avoid any potential argument that might be made that one of the post-trial motions arguably could be considered a successive motion under the decision in Elam v. S.C. Dep't of Transp., 361 S.C. 9, 602 S.E.2d 772 (2004).

In light of this procedural posture, we write to advise the Court that the Appellants have no objection to an order holding the appeal in abeyance and remanding to allow the Special Referee to rule on the pending post-trial motions, or in the alternative, an order of dismissal without prejudice that preserves our right to refile our appeal from all the orders after the Special Referee rules on the pending motions. We do not plan to file any formal return to the Respondent's motion unless the Court so directs.

Kind regards,

Yours truly,

/s/ James B. Hood

James B. Hood

JBH/spc
cc [***Via E-Mail***]:
Andrew J. MacLeod, Esquire
Ryan C. Andrews, Esquire
David B. Yarborough, Jr., Esquire
Douglas E. Jennings, Esquire
Reynolds H. Blankenship, Jr., Esquire
Patrick J. McLauglin, Esquire

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The South Carolina Court of Appeals

Samantha Joanee Carwile, individually and as the Personal Representative of the Estate of Marlayna Joan Carwile, Respondent,

v.

Chris Anderson and Danielle Anderson, Appellants.

Appellate Case No. 2023-001016

ORDER

Appellants filed this appeal on June 22, 2023. Appellants stated they filed timely post-trial motions on June 2, 2023. Appellants asked this court to hold this appeal in abeyance pending resolution of their post-trial motions. In the alternative, Appellants asked this court to dismiss the appeal without prejudice. Respondent moved to dismiss the appeal due to Appellants' premature filing. In the alternative, Respondent asked this court to hold the appeal in abeyance and remand to allow the Special Referee to rule on the pending post-trial motions.

After careful consideration, we deny Respondent's motion to dismiss. We grant the motion to hold the appeal in abeyance and remand to the Special Referee for the limited purpose of ruling upon the post-trial motions. Appellants shall provide this court with status updates every thirty days. Failure to file status updates may result in dismissal of this appeal.

FOR THE COURT

Columbia, South Carolina

FILED
Jul 17 2023

cc:

James Bernard Hood, Esquire
Andrew James MacLeod, Esquire
Deborah Harrison Sheffield, Esquire
Ryan Christopher Andrews, Esquire
Douglas Edmund Jennings, Esquire
David Butler Yarborough, Jr., Esquire
Reynolds H. Blankenship, Jr., Esquire
Kathleen Chewning Barnes, Esquire

Nov 13 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Darlington County
Court of Common Pleas
Paul M. Burch, Circuit Court Judge
Patrick J. McLaughlin, Special Referee

Case No. 2020-CP-16-00299
Appellate Case No. 2023-001016

Samantha Joanne Carwile, individually and
as the Personal Representative of the Estate
of Marlayna Joan Carwile,

Respondent,

vs.

Chris Anderson and Danielle Anderson,

Appellants.

AMENDED NOTICE OF APPEAL

Chris Anderson and Danielle Anderson appeal from the Amended Order of Default Judgment, issued by Patrick J. McLaughlin, Special Referee, filed and received on November 2, 2023, together with other interlocutory and post-trial orders, including:

1. Order on Defendants' June 2, 2023 Motions, issued by Patrick J. McLaughlin, Special Referee, filed and received on November 2, 2023;
2. Amended Order of Default Judgment, issued by Patrick J. McLaughlin, Special Referee, filed and received on November 2, 2023;
3. Order of Default Judgment, issued by Patrick J. McLaughlin, Special Referee, filed and received on May 23, 2023;
4. Order of the Special Referee, denying Defendants' Rule 55 motion to set aside entry of default, filed and received on May 23, 2023;

5. Order of referral to Special Referee, of the Honorable Scott B. Suggs, Darlington County Clerk of Court, filed February 10, 2023;
6. Order for Entry of Default Against Defendants Chris Anderson and Danielle Anderson and Referral for Hearing on Damages, of the Honorable Scott B. Suggs, Darlington County Clerk of Court, filed November 29, 2022; and
7. Order of the Honorable Paul M. Burch, Circuit Court Judge, granting Plaintiff's motion for sanctions, filed November 17, 2022.

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/s/ James B. Hood
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deborah.sheffield@hoodlaw.com

Attorneys for the Appellants
Chris Anderson and Danielle Anderson

November 13, 2023

Other Counsel of Record:

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FAX: (803) 782-2527
ajmacleod@wjcblaw.com

Trial Counsel for Defendants

CERTIFICATE OF SERVICE

The undersigned certifies that on this **13th** day of **November, 2023**, a copy of the AMENDED NOTICE OF APPEAL on behalf of Appellants Chris Anderson and Danielle Anderson was served by emailing a copy to the address listed below:

YARBOROUGH APPLEGATE LLC
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Attorneys for the Respondent Samantha Joanne Carwile

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Attorneys for the Appellants Chris Anderson and Danielle Anderson

November 13, 2023

Darlington County
Fourth Judicial Circuit
Public Index

Darlington County Home Page South Carolina Judicial Department Home Page SC.GOV Home Page

Switch View

Samantha Joanne Carwile , plaintiff, et al VS Chris Anderson , defendant, et al

Case Number:	**2020CP1600299**	**Court Agency:**	**Common Pleas**	**Filed Date:**	**03/17/2020**
Case Type:	**Common Pleas**	**Case Sub Type:**	**Premises Liab 330**	**File Type:**	**Mediator - Jury**
Status:	**Judgment**	**Assigned Judge:**	**Clerk Of Court C P, G S, And Family Court**		
Disposition:	**Judgment**	**Disposition Date:**	**05/23/2023**	**Disposition Judge:**	**Special Referee G S And C P**
Original Source Doc:		**Original Case #:**			
Judgment Number:	**2020CP1600299**	**Court Roster:**			

Case Parties

Click the icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Anderson, Chris	236 S Charleston Rd Darlington SC 29532				Defendant		06/05/2023
Anderson, Danielle	236 S Charleston Rd Darlington SC 29532				Defendant		05/24/2023
Andrews, Ryan Christopher	222 W. Coleman Blvd. Mt. Pleasant SC 29464				Plaintiff Attorney		03/17/2020
Blackwell, David Reese II(Inactive)	PO Box 2799 118 Shiloh Unity Road Lancaster SC 29721				Alternate Mediator		03/29/2022
Blankenship, Reynolds H. Jr.	291 East Bay Street Second Floor Charleston SC 29401				Plaintiff Attorney		02/09/2023
Brooker, Thurmond	238 Warley Street Florence SC 295031450				Defendant Attorney		03/29/2022
Carwile, Samantha Joanne					Plaintiff		05/24/2023
Carwile PR, Samantha Joanne					Plaintiff		03/17/2020
Carwile Estate of, Marlayna Joan					Plaintiff		11/10/2020
Hood, James Bernard	PO Box 1508 Charleston SC 294021508				Defendant Attorney		06/02/2023
Jennings, Douglas Edmund	291 East Bay Street Floor 2 Charleston SC 29401				Plaintiff Attorney		02/09/2023
MacLeod, Andrew James	3600 Forest Drive, Suite 204 Columbia SC 29204				Defendant Attorney		04/13/2023
McLaughlin, Patrick James	PO Box 13057 Florence SC 29504			1975	Special Referee/Master		02/10/2023
Sheffield, Deborah Harrison	117 Brook Valley Rd. Columbia SC 29223				Defendant Attorney		06/02/2023
Stoney, Thomas Porcher II(Inactive)	Stoney And Stoney, Attorneys PO Box 784 Linville NC 286460784				Mediator		03/29/2022
Yarborough, David Butler Jr.	291 East Bay Street Floor 2 Charleston SC 29401				Plaintiff Attorney		02/09/2023

Judgments

For:	Carwile, Samantha Joanne	Against:	Anderson, Chris	Judg. Amount:	$30,000,000.00	Judgment Date:	05/23/2023
Description:	Judgment/Default	Disposition:		Disp. Date:		Date Entered/Last Changed	05/24/2023 --
Notes:	Also costs and fees of $731.74 by order on 11/17/2022						

Judgment Details

Claims Code	Detail Desc.	Detail Amount	Detail Date
None			

For:	Carwile, Samantha Joanne	Against:	Anderson, Danielle	Judg. Amount:	$30,000,000.00	Judgment Date:	05/23/2023
Description:	Judgment/Default	Disposition:		Disp. Date:		Date Entered/Last Changed	05/24/2023 --
Notes:	Also costs and fees of $731.74 by order on 11/17/2022						

Judgment Details

Claims Code	Detail Desc.	Detail Amount	Detail Date
None			

Actions

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Anderson, Chris	NEF(11-13-2023 04:18:29 PM) Appeal/Notice of Appeal to C...	Filing		11/13/2023-16:33		
Anderson, Chris	Appeal/Amended Notice of Appeal to Court of Appeals	Filing		11/13/2023-16:18		
Carwile, Samantha Joanne	NEF(11-02-2023 10:05:21 AM) Master/Order/Other	Filing		11/02/2023-10:05		
Carwile, Samantha Joanne	Amended Order of Default Judgment	Order		11/02/2023-10:05		
Carwile, Samantha Joanne	NEF(11-02-2023 09:31:55 AM) Master/Order/Other	Filing		11/02/2023-09:32		
Carwile, Samantha Joanne	Order on Defendant's June 2, 2023 Motions	Order		11/02/2023-09:31		
Carwile, Samantha Joanne	NEF(08-31-2023 11:12:01 AM) Notice/Notice of Hearing and...	Filing		08/31/2023-11:27		
Carwile, Samantha Joanne	Notice/Notice of Hearing and Service	Filing		08/31/2023-11:12		
Anderson, Chris	NEF(08-02-2023 02:05:11 PM) Reply/Other	Filing		08/02/2023-14:30		
Anderson, Chris	NEF(08-02-2023 02:02:55 PM) Reply/Other	Filing		08/02/2023-14:30		
Anderson, Chris	Reply	Filing		08/02/2023-14:05		
Anderson, Chris	Reply	Filing		08/02/2023-14:02		
Carwile, Samantha Joanne	NEF(07-18-2023 09:21:14 AM) Memo/Memo in Opposition	Filing		07/18/2023-09:25		
Carwile, Samantha Joanne	Memo/Memo in Opposition	Filing		07/18/2023-09:21		
Carwile, Samantha Joanne	Memo/Memo in Opposition	Filing		07/18/2023-09:21		
Anderson, Chris	NEF(06-22-2023 12:16:06 PM) Appeal/Notice of Appeal to C...	Filing		06/22/2023-13:33		
Anderson, Chris	Appeal/Notice of Appeal to Court of Appeals	Filing		06/22/2023-12:16		

Anderson, Chris	NEF(06-02-2023 04:00:21 PM) Motion/Alter and/or Amend	Filing		06/05/2023-14:12		
Anderson, Chris	NEF(06-02-2023 03:52:47 PM) Motion/Alter and/or Amend	Filing		06/05/2023-14:05		
Anderson, Chris	Motion/Alter and/or Amend	Motion		06/02/2023-16:00		
Anderson, Chris	Motion/Alter and/or Amend	Motion		06/02/2023-15:52		
Anderson, Chris	NEF(06-02-2023 01:00:24 PM) Notice/Notice of Appearance	Filing		06/02/2023-13:00		
Anderson, Chris	Notice/Notice of Appearance	Filing		06/02/2023-13:00		
Carwile, Samantha Joanne	NEF(05-23-2023 04:09:32 PM) Order/Default	Filing		05/23/2023-16:12	05/23/2023-16:12	
Carwile, Samantha Joanne	Order/Default	Order		05/23/2023-16:09	05/23/2023-16:09	
Carwile, Samantha Joanne	NEF(05-23-2023 04:01:23 PM) Order/Other	Filing		05/23/2023-16:01	05/23/2023-16:01	
Carwile, Samantha Joanne	Order Denying Motion for Relief from Entry of Default	Order		05/23/2023-16:01	05/23/2023-16:01	
Carwile, Samantha Joanne	Judgment/Default	Judgment		05/23/2023-08:56	05/23/2023-08:56	
Carwile, Samantha Joanne	Judgment/Default	Judgment		05/23/2023-08:56	05/23/2023-08:56	
Anderson, Chris	NEF(04-12-2023 05:04:26 PM) Notice/Notice of Appearance	Filing		04/13/2023-08:42	05/23/2023-08:42	
Anderson, Chris	Notice/Notice of Appearance	Filing		04/12/2023-17:04	05/23/2023-17:04	
Anderson, Danielle	Motion/Set Aside Default	Motion		04/12/2023-17:04	05/23/2023-17:04	
Carwile, Samantha Joanne	NEF(03-08-2023 01:32:28 PM) Notice/Notice of Hearing and...	Filing		03/08/2023-14:07	05/23/2023-14:07	
Carwile, Samantha Joanne	Notice/Notice of Hearing and Service	Filing		03/08/2023-13:32	05/23/2023-13:32	
Carwile, Samantha Joanne	NEF(03-07-2023 03:06:39 PM) Motion/Damages	Filing		03/08/2023-09:55	05/23/2023-09:55	
Carwile, Samantha Joanne	Motion/Damages	Motion		03/07/2023-15:06	05/23/2023-15:06	
Carwile, Samantha Joanne	NEF(02-10-2023 09:59:58 AM) Order/Referred to Master or ...	Filing		02/10/2023-10:07	05/23/2023-10:07	
Carwile, Samantha Joanne	Order/Referred to Master or Special Referee	Order		02/10/2023-09:59	05/23/2023-09:59	
Carwile, Samantha Joanne	NEF(02-09-2023 04:00:48 PM) Motion/Refer to Master or Sp...	Filing		02/10/2023-09:57	05/23/2023-09:57	
Carwile, Samantha Joanne	NEF(02-09-2023 04:11:17 PM) Proposed Order/Referred to M...	Filing		02/10/2023-09:53	05/23/2023-09:53	
Carwile, Samantha Joanne	Order/Order Cover Sheet $25.00	Filing		02/09/2023-16:11	05/23/2023-16:11	
Carwile, Samantha Joanne	Motion/Refer to Master or Special Referee	Motion		02/09/2023-16:00	02/10/2023-16:00	
Carwile, Samantha Joanne	NEF(02-09-2023 12:48:08 PM) Notice/Notice of Appearance	Filing		02/09/2023-12:48	05/23/2023-12:48	

Carwile, Samantha Joanne	**Notice/Notice of Appearance**	**Filing**		**02/09/2023-12:48**	**05/23/2023-12:48**	
Carwile, Samantha Joanne	**NEF(02-09-2023 12:44:54 PM) Notice/Notice of Appearance**	**Filing**		**02/09/2023-12:45**	**05/23/2023-12:45**	
Carwile, Samantha Joanne	**Notice/Notice of Appearance**	**Filing**		**02/09/2023-12:44**	**05/23/2023-12:44**	
Carwile, Samantha Joanne	**NEF(02-09-2023 12:37:46 PM) Notice/Notice of Appearance**	**Filing**		**02/09/2023-12:42**	**05/23/2023-12:42**	
Carwile, Samantha Joanne	**Notice/Notice of Appearance**	**Filing**		**02/09/2023-12:37**	**05/23/2023-12:37**	
Carwile, Samantha Joanne	**NEF(11-29-2022 11:41:07 AM) Order/Entry of Default**	**Filing**		**11/29/2022-11:43**	**05/23/2023-11:43**	
Carwile, Samantha Joanne	**Order/Entry of Default**	**Order**		**11/29/2022-11:41**	**05/23/2023-11:41**	
Carwile, Samantha Joanne	**Damages Hearing**	**Motion**		**11/29/2022-11:41**	**02/10/2023-08:57**	
Carwile, Samantha Joanne	**NEF(11-28-2022 10:19:14 AM) Motion/Entry of Default**	**Filing**		**11/28/2022-15:04**	**05/23/2023-15:04**	
Carwile, Samantha Joanne	**Motion/Entry of Default**	**Motion**		**11/28/2022-10:19**	**02/10/2023-10:19**	
Carwile, Samantha Joanne	**Affidavit/Default**	**Filing**		**11/28/2022-10:19**	**05/23/2023-10:19**	
Carwile, Samantha Joanne	**Affidavit/Non Military Service**	**Filing**		**11/28/2022-10:19**	**05/23/2023-10:19**	
Carwile, Samantha Joanne	**NEF(11-17-2022 12:04:30 PM) Order/Sanctions**	**Filing**		**11/17/2022-12:04**	**05/23/2023-12:04**	
Carwile, Samantha Joanne	**Order/Sanctions**	**Order**		**11/17/2022-12:04**	**05/23/2023-12:04**	
Carwile, Samantha Joanne	**NEF(11-17-2022 12:03:41 PM) Order/Form 4**	**Filing**		**11/17/2022-12:04**	**05/23/2023-12:04**	
Carwile, Samantha Joanne	**Order/Form 4**	**Order**		**11/17/2022-12:03**	**05/23/2023-12:03**	
Carwile, Samantha Joanne	**NEF(11-01-2022 09:36:20 AM) Proposed Order/Form 4**	**Filing**		**11/01/2022-14:02**	**05/23/2023-14:02**	
Carwile, Samantha Joanne	**Order/Order Cover Sheet $25.00**	**Filing**		**11/01/2022-09:36**	**05/23/2023-09:36**	
Andrews, Ryan Christopher	**10/31/2022_MOTION_Roster/Notice of Motions Roster Publicatio**	**Action**		**10/04/2022-14:38**	**05/23/2023-14:38**	
Brooker, Thurmond	**10/31/2022_MOTION_Roster/Notice of Motions Roster Publicatio**	**Action**		**10/04/2022-14:38**	**05/23/2023-14:38**	
Carwile, Samantha Joanne	**NEF(09-28-2022 10:36:13 AM) Motion/Sanctions**	**Filing**		**09/28/2022-13:42**	**05/23/2023-13:42**	
Carwile, Samantha Joanne	**Motion/Sanctions**	**Motion**		**09/28/2022-10:36**	**10/31/2022-10:36**	
Carwile, Samantha Joanne	**NEF(07-21-2022 08:46:26 AM) Order/Compel**	**Filing**		**07/21/2022-08:48**	**05/23/2023-08:48**	

Carwile, Samantha Joanne	**Order/Compel**	**Order**		**07/21/2022-08:46**	**05/23/2023-08:46**	
Carwile, Samantha Joanne	**NEF(07-20-2022 08:41:02 AM) Proposed Master/Order/Form 4**	**Filing**		**07/20/2022-09:27**	**05/23/2023-09:27**	
Carwile, Samantha Joanne	**Order/Order Cover Sheet $25.00**	**Filing**		**07/20/2022-08:41**	**05/23/2023-08:41**	
Carwile, Samantha Joanne	**ADR/Notice of ADR**	**Action**		**06/27/2022-14:18**	**05/23/2023-14:18**	
Andrews, Ryan Christopher	**7/19/2022_MOTION_Roster/Notice of Motions Roster Publication**	**Action**		**06/24/2022-13:48**	**05/23/2023-13:48**	
Andrews, Ryan Christopher	**7/19/2022_MOTION_Roster/Notice of Motions Roster Publication**	**Action**		**06/24/2022-13:48**	**05/23/2023-13:48**	
Brooker, Thurmond	**7/19/2022_MOTION_Roster/Notice of Motions Roster Publication**	**Action**		**06/24/2022-13:48**	**05/23/2023-13:48**	
Brooker, Thurmond	**7/19/2022_MOTION_Roster/Notice of Motions Roster Publication**	**Action**		**06/24/2022-13:48**	**05/23/2023-13:48**	
Carwile, Samantha Joanne	**NEF(06-23-2022 01:19:44 PM) Motion/Compel**	**Filing**		**06/23/2022-13:36**	**05/23/2023-13:36**	
Carwile, Samantha Joanne	**Motion/Compel**	**Motion**		**06/23/2022-13:19**	**07/19/2022-13:19**	
Carwile, Samantha Joanne	**NEF(06-17-2022 11:56:49 AM) Motion/Compel**	**Filing**		**06/22/2022-08:18**	**05/23/2023-08:18**	
Carwile, Samantha Joanne	**Motion/Compel**	**Motion**		**06/17/2022-11:56**	**06/17/2022-11:56**	
Brooker, Thurmond	**5/23/2022_MOTION_Roster/Notice of Motions Roster Publication**	**Action**		**05/09/2022-08:37**	**05/23/2023-08:37**	
Andrews, Ryan Christopher	**5/23/2022_MOTION_Roster/Notice of Motions Roster Publication**	**Action**		**05/09/2022-08:37**	**05/23/2023-08:37**	
Carwile, Samantha Joanne	**NEF(03-29-2022 02:18:33 PM) ADR/Notice of ADR**	**Filing**		**03/29/2022-14:18**	**05/23/2023-14:18**	
Carwile, Samantha Joanne	**NEF(09-03-2021 01:12:41 PM) Order/Protection from Court ...**	**Filing**		**09/03/2021-13:12**	**05/23/2023-13:12**	
Carwile, Samantha Joanne	**Order/Protection from Court Appearance**	**Order**		**09/03/2021-13:12**	**05/23/2023-13:12**	
Carwile, Samantha Joanne	**NEF(09-03-2021 10:42:29 AM) Proposed Order/Protection fr...**	**Filing**		**09/03/2021-10:56**	**05/23/2023-10:56**	
Carwile, Samantha Joanne	**Order/Order Cover Sheet $25.00**	**Filing**		**09/03/2021-10:42**	**05/23/2023-10:42**	
Carwile, Samantha Joanne	**NEF(09-02-2021 10:51:40 AM) Letter/Letter**	**Filing**		**09/02/2021-10:59**	**05/23/2023-10:59**	
Carwile, Samantha Joanne	**Exhibit F to Motion/Alter or Amend**	**Filing**		**09/02/2021-10:51**	**05/23/2023-10:51**	
Anderson, Chris	**NEF(06-11-2021 03:55:46 PM) Answer/Answer**	**Filing**		**06/11/2021-16:01**	**05/23/2023-16:01**	
Anderson, Chris	**Answer/Answer**	**Filing**		**06/11/2021-15:55**	**05/23/2023-15:55**	
Carwile, Samantha Joanne	**NEF(06-04-2021 03:05:16 PM) Motion/Alter and/or Amend**	**Filing**		**06/04/2021-15:51**	**05/23/2023-15:51**	
Carwile, Samantha	**Motion/Alter and/or Amend**	**Motion**		**06/04/2021-15:05**	**02/10/2023-15:05**	

Joanne						
Anderson, Chris	NEF(05-26-2021 11:50:48 AM) Order/Set Aside Judgment	Filing		05/26/2021-11:59	05/23/2023-11:59	
Anderson, Chris	Order/Set Aside Judgment	Order		05/26/2021-11:50	05/23/2023-11:50	
Anderson, Chris	NEF(05-21-2021 08:37:50 AM) Order/Order Cover Sheet $25....	Filing		05/24/2021-08:30	05/23/2023-08:30	
Anderson, Chris	Order/Order Cover Sheet $25.00	Filing		05/21/2021-08:37	05/23/2023-08:37	
Carwile, Samantha Joanne	ADR/Alternative Dispute Resolution (Workflow)	Action		10/13/2020-13:21	06/27/2022-13:21	
Anderson, Chris	NEF(08-03-2020 11:06:06 AM) Affidavit/Affidavit of	Filing		08/03/2020-11:34	05/23/2023-11:34	
Anderson, Chris	NEF(08-03-2020 11:04:54 AM) Affidavit/Affidavit of	Filing		08/03/2020-11:33	05/23/2023-11:33	
Anderson, Chris	NEF(08-03-2020 11:02:31 AM) Affidavit/Affidavit of	Filing		08/03/2020-11:17	05/23/2023-11:17	
Anderson, Chris	Affidavit/Second Affidavit of Danielle Anderson	Filing		08/03/2020-11:06	05/23/2023-11:06	
Anderson, Chris	Affidavit/Affidavit of Danielle Anderson	Filing		08/03/2020-11:04	05/23/2023-11:04	
Anderson, Chris	Affidavit/Affidavit of Danielle Anderson	Filing		08/03/2020-11:02	05/23/2023-11:02	
Anderson, Chris	Affidavit/Second Affidavit of Danielle Anderson	Filing		08/03/2020-11:02	05/23/2023-11:02	
Carwile, Samantha Joanne	NEF(07-31-2020 02:52:11 PM) Memo/Memo in Opposition	Filing		07/31/2020-15:00	05/23/2023-15:00	
Carwile, Samantha Joanne	Memo/Memo in Opposition	Filing		07/31/2020-14:52	05/23/2023-14:52	
Brooker, Thurmond	8/5/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		07/06/2020-12:43	05/23/2023-12:43	
Brooker, Thurmond	8/5/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		07/06/2020-12:43	05/23/2023-12:43	
Andrews, Ryan Christopher	8/5/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		07/06/2020-12:43	05/23/2023-12:43	
Andrews, Ryan Christopher	8/5/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		07/06/2020-12:43	05/23/2023-12:43	
Andrews, Ryan Christopher	8/5/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		07/06/2020-12:38	05/23/2023-12:38	
Andrews, Ryan Christopher	8/5/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		07/06/2020-12:38	05/23/2023-12:38	
Brooker, Thurmond	8/5/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		07/06/2020-12:38	05/23/2023-12:38	
Brooker, Thurmond	8/5/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		07/06/2020-12:38	05/23/2023-12:38	
Brooker, Thurmond	8/5/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		07/06/2020-12:35	05/23/2023-12:35	
Brooker, Thurmond	8/5/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		07/06/2020-12:35	05/23/2023-12:35	
Andrews, Ryan Christopher	8/5/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		07/06/2020-12:35	05/23/2023-12:35	
Andrews, Ryan Christopher	8/5/2020_MOTION_Roster/Notice of Motions Roster Publication	Action		07/06/2020-12:35	05/23/2023-12:35	
Carwile, Samantha Joanne	Motion/Damages	Motion		06/29/2020-15:50	05/26/2021-15:50	
Anderson, Chris	NEF(06-29-2020 03:29:05 PM) Notice/Notice of Appearance	Filing		06/29/2020-15:49	05/23/2023-15:49	

Anderson, Chris	Notice/Notice of Appearance	Filing		06/29/2020-15:29	05/23/2023-15:29	
Anderson, Danielle	Motion/Set Aside Default	Motion		06/29/2020-15:29	08/05/2020-15:29	
Carwile, Samantha Joanne	NEF(06-15-2020 01:45:04 PM) Order/Entry of Default	Filing		06/15/2020-13:45	05/23/2023-13:45	
Carwile, Samantha Joanne	Order/Entry of Default and Damages Hearing	Order		06/15/2020-13:45	05/23/2023-13:45	
Carwile, Samantha Joanne	NEF(06-10-2020 04:05:47 PM) Motion/Entry of Default	Filing		06/11/2020-10:35	05/23/2023-10:35	
Carwile, Samantha Joanne	Affidavit/Default	Filing		06/10/2020-16:05	05/23/2023-16:05	
Carwile, Samantha Joanne	Affidavit/Non Military Service	Filing		06/10/2020-16:05	05/23/2023-16:05	
Carwile Estate of, Marlayna Joan	Motion/Entry of Default	Motion		06/10/2020-16:05	06/10/2020-16:05	
Carwile, Samantha Joanne	NEF(04-29-2020 05:34:04 PM) Service/Affidavit Of Service	Filing		04/30/2020-08:47	05/23/2023-08:47	
Carwile, Samantha Joanne	NEF(04-29-2020 05:34:53 PM) Service/Affidavit Of Service	Filing		04/30/2020-08:44	05/23/2023-08:44	
Carwile, Samantha Joanne	Service/Affidavit Of Service on Danielle Anderson	Filing		04/29/2020-17:34	05/23/2023-17:34	
Carwile, Samantha Joanne	Service/Affidavit Of Service on Chris Anderson	Filing		04/29/2020-17:34	05/23/2023-17:34	
Carwile, Samantha Joanne	Summons & Complaint	Filing		03/17/2020-13:21	05/23/2023-13:21	

Financials

Summary					
Fine/Costs:	$625.00	Total Paid for fine/costs:	$575.00	Balance Due:	$50.00

Costs				
Description	Cost Code	Amount	Charge Action	Disbursed Amount
Civil Filing Fee County 44%/100%	CVFFCN	$44.00		$44.00
Civil Filing Fee State 56%	CVFFST	$56.00		$56.00
SCJD Filing Fee Proviso $50 / $25	SCJDPV	$50.00		$50.00
Motion/Order Filing Fee $25	MOTION	$25.00		$24.97
Motion/Order Filing Fee $25	MOTION	$25.00		$24.97
Motion/Order Filing Fee $25	MOTION	$25.00		$24.94
Motion/Order Filing Fee $25	MOTION	$25.00		$24.89
Motion/Order Filing Fee $25	MOTION	$25.00		$24.77
Motion/Order Filing Fee $25	MOTION	$25.00		$24.54
Motion/Order Filing Fee $25	MOTION	$25.00		$24.07
Motion/Order Filing Fee $25	MOTION	$25.00		$23.15

Motion/Order Filing Fee $25	MOTION	$25.00		$21.29
Motion/Order Filing Fee $25	MOTION	$25.00		$17.59
Motion/Order Filing Fee $25	MOTION	$25.00		$17.59
Motion/Order Filing Fee $25	MOTION	$25.00		$13.89
Motion/Order Filing Fee $25	MOTION	$25.00		$8.34
Motion/Order Filing Fee $25	MOTION	$25.00		$25.00
Motion/Order Filing Fee $25	MOTION	$25.00		$25.00
Motion/Order Filing Fee $25	MOTION	$25.00		$25.00
Motion/Order Filing Fee $25	MOTION	$25.00		$25.00
Motion/Order Filing Fee $25	MOTION	$25.00		$25.00
Motion/Order Filing Fee $25	MOTION	$25.00		$25.00

Payments

Payment Date	Receipt Number	Entered By	Transaction Type Code	Payment Amount
06/05/2023	856433	C16JGLANZ	PY	$25.00
06/05/2023	856434	C16JGLANZ	PY	$25.00
04/13/2023	856158	C16JGLANZ	PY	$25.00
03/08/2023	855971	C16JGLANZ	PY	$25.00
02/10/2023	855802	C16JGLANZ	PY	$25.00
02/10/2023	855804	C16JGLANZ	PY	$25.00
11/28/2022	855430	C16JGLANZ	PY	$25.00
11/01/2022	855268	C16JGLANZ	WV	$25.00
09/28/2022	855072	C16JGLANZ	PY	$25.00
07/20/2022	854587	C16JGLANZ	WV	$25.00
06/23/2022	854469	C16JGLANZ	WV	$25.00
06/22/2022	854448	C16JGLANZ	PY	$25.00
09/03/2021	852720	C16JGLANZ	WV	$25.00
06/04/2021	852181	C16JGLANZ	PY	$25.00
05/24/2021	852115	C16JGLANZ	PY	$25.00
06/29/2020	850404	C16JGLANZ	PY	$25.00
06/11/2020	850323	C16JGLANZ	PY	$25.00
03/17/2020	849913	C16SHOWLE	PY	$150.00

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May 08 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Darlington County
Court of Common Pleas
Paul M. Burch, Circuit Court Judge
Patrick J. McLaughlin, Special Referee

Appellate No. 2023-001016

Samantha Joanne Carwile, individually and as the Personal Representative of the Estate of Marlayna Joan Carwile,

Respondent,

vs.

Chris Anderson and Danielle Anderson,

Appellants.

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material, and with all necessary redactions in compliance with Supreme Court Order 2014-04-14-02.

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May 8, 2024