

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Grace Gilchrist Knie, Circuit Court Judge

Case No. 2017CP4203523
Appellate Case No. 2023-001735

Shannon P. Green and Darrell Russell,Plaintiffs.

v.

Edward C. McGee and David Hudgins,Defendants.

Of whom Shannon P. Green is the Respondent,

And

Of whom David Hudgins is the Petitioner.

PETITIONER'S REPLY TO RESPONDENTS' BRIEFS

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In her brief, Ms. Green concedes the following:

Ms. Green is aware of *Smith v. Widener*, 397 SC 468, 748 SE2d 188 (2012). There this Court¹ held that when an injury is caused by joint tortfeasors, and a plaintiff seeks actual and punitive damages, §15-38-50(1) requires a setoff that applies to all damages arising from “the same claim”, including punitive damages.²

(Ms. Green’s Brief, p. 10). In other words, Ms. Green concedes that when – as here – there is no dispute the settlement is for the same injury as a matter of law, setoff must be applied according to the dictates of § 15-38-50(1). *Id.*³ Ms. Green, however, misrepresents the unambiguous and clear dictates of S.C. Code § 15-38-50(1) as unclear and ambiguous and then improperly attempts to rewrite the statute under the guise of offering another “reasonable construction.”

S.C. Code § 15-38-50(1) states:

When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

(1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount

¹ Ms. Green misattributes the *Smith v. Widener* opinion to this Court. That opinion was issued by the Court of Appeals, not this Court.

² Thereafter, Ms. Green disingenuously states “*Smith v. Widener* was heard *before* the effective date of the Non-Economic Damages Act in 2012 and without analyzing the impact of § 15-32-52(G).” While the case was heard by the Court of Appeals on June 7, 2011 and the Non-Economic Damages Act took effect on January 1, 2012, the Court of Appeals *decided* the case nearly three months later on March 28, 2012.

³ Ms. Green has also conceded that the jury’s 40/60 fault allocation for actual damages was not appealed. *See* Ms. Green’s Return to Mr. Hudgins’ Petition for a Writ of Certiorari, p. 10 (“It should be recognized both [Mr.] McGee and [Mr.] Hudgins are 100% liable (pure joint and several liability) for [Ms.] Green’s actual damages. ***This matter was not addressed by the trial court or the Court of Appeals.***”) (emphasis added) (internal parentheses omitted). The jury’s 40/60 fault allocation for actual damages thus is indisputably the law of the case. *See First Union Nat. Bank of South Carolina v. Soden*, 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct. App. 1998) (holding that an “unchallenged ruling, right or wrong, is the law of the case and requires affirmance”).

stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater.

The statute defines “tortfeasors” for the purpose of setoff as “persons liable in tort for the same injury or the same wrongful death,” *id.*, of which there are only two in this case: Mr. McGee and Mr. Hudgins. And, once Ms. Green gave one of those two tortfeasors – Mr. McGee – a covenant not to execute in exchange for a \$100,000.00 settlement payment from Mr. McGee’s liability carrier, the only “other[tortfeasor]” allegedly “liable in tort for the same injury” and therefore entitled to setoff was Mr. Hudgins.⁴

The straightforward application of the plain language of § 15-38-50(1) yields only one result here. The covenant not to execute given to Mr. McGee, one of two tortfeasors, “reduces the claim against the *other*[tortfeasors],” here Mr. Hudgins, and it does so “to the extent of any amount stipulated by the release or the covenant [\$100,000.00 here], or in the amount of the consideration paid for it [\$100,000.00 here], whichever is greater [both are \$100,000].” S.C. Code § 15-38-50(1)(emphasis added). The statutory language leaves no room for interpretation and “grants the court no discretion in determining the equities involved in applying a set-off” when – as here – “a release has been executed in good faith between the plaintiff and one of several joint tortfeasors.” *Ellis v. Oliver*, 335 S.C. 106, 113, 515 S.E.2d 268, 272 (Ct. App. 1999).⁵

⁴ Mr. Hudgins is the only “other tortfeasor” whose claim can be reduced by the settlement proceeds under the plain, unambiguous language of the statute, as neither Mr. McGee nor Ms. Green’s UIM carrier qualifies as an “other[tortfeasor]” under the statutory definition. Mr. McGee by exclusion cannot be the “other[tortfeasor],” because he is the initial tortfeasor identified in § 15-38-50(1) in whose favor the covenant not to execute was given by Ms. Green. Her UIM carrier too fails to qualify: Although her UIM carrier may be *contractually and/or statutorily liable* for the verdict against Mr. McGee, it is not “liable *in tort* for the same injury” as the statute requires. (emphasis added).

⁵ Ms. Green implies Chief Justice Kittredge’s dissent in *Jolly v. Fisher Controls International, LLC*, 443 S.C. 511, 905 S.E.2d 380 (2024) supports her position. It does not. The difficulties Chief

At bottom, Ms. Green believes S.C. Code § 15-38-50(1) could have been drafted better. Ms. Green may or may not be right about the statute’s drafting. Even if she is though, an unintended result of the statute’s strict application “is a matter for the legislature to correct if [the court’s] interpretation is contrary to its intent.” *Ellis*, 335 S.C. at 113–14, 515 S.E.2d at 272 (Ct. App. 1999).⁶

The Court of Appeals’ settlement reallocation and Respondents’ arguments to this Court hinge on erroneous interpretations of the plain language of S.C. Code § 15-38-50(1). The unambiguous dictates of the statute only allow for a credit to Mr. Hudgins – the only non-settling “other tortfeasor” – for the full \$100,000.00 paid in exchange for a covenant not to execute against his joint tortfeasor Mr. McGee. Such credit offsets in its entirety the jury’s verdicts against Mr. Hudgins.⁷

Justice Kittredge addressed in his dissent – that the allocation of settlement funds be “stipulated by the release” and the “whichever is greater” language – are not at issue in this appeal.

⁶ Indeed, Chief Justice Kittredge’s dissent in *Jolly* supports this: “I authored the majority opinion in *Smith* [*v. Widener*], and I continue to believe that decision honored the rules of statutory construction in interpreting unambiguous statutory language. The legislature remains free to amend the Act.” *Jolly*, 443 S.C. 511 at 542, 905 S.E.2d 380, 397 (2024).

⁷ Both the Circuit Court and Court of Appeals properly used the jury’s 40/60 fault allocation for actual damages – which was not appealed by Ms. Green and therefore is the law of the case – to determine Mr. Hudgins bore responsibility for 40% of the jury’s \$88,546.78 actual damages award. *Compare* Appx. p. 649 (noting the Circuit Court “allocated 60/40 between them according to the fault assigned by the jury”) with p. 655 (finding “Hudgins’ forty percent share of the actual damages award comes to \$35,418.71”). As the Court of Appeals correctly noted, Mr. Hudgins bears responsibility for \$35,418.71 in actual damages and \$35,000.00 in punitive damages, for a total of \$70,418.71. (*Id.*). Accordingly, Mr. Hudgins’ total liability to Ms. Green would be setoff in its entirety by the \$100,000 in settlement paid to Ms. Green on Mr. McGee’s behalf. And, even if Ms. Green had appealed the propriety of an allocation in light of the jury’s finding of reckless, willful, and wanton conduct, the maximum amount for which Mr. Hudgins could possibly be responsible after setoff is \$23,546.78 (\$88,546.78 total actual damages award + \$35,000.00 punitive damages award - \$100,000.00 setoff = \$23,546.78).

Date: February 18, 2025

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