THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2020-000838
Case No. 2016-CP-46-3181

Rita Pratt, Individually and as the Personal Representative of the Estate of William Pratt, Deceased,..... Respondent,

v.

Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center; Jaleesa Heyward, RN; South Carolina Emergency Physicians, LLC; Jonas Varaly, DO; Rock Hill Radiology Associates, LLC; and Geoffrey T. Gilleland, MD, ... Defendants,

Of Which, Rock Hill Radiology Associates, LLC, and Geoffrey T. Gilleland, MD are ..... Appellants.

PETITION FOR REHEARING

The Appellants Rock Hill Radiology Associates, LLC, and Geoffrey T. Gilleland, M.D. petition the South Carolina Court of Appeals for a rehearing of the Court's recent decision in *Pratt v. Amisub of SC, Inc.*, Op. No. 6096 (S.C. Ct. App. filed January 15, 2025).

The grounds for the Appellants' petition for rehearing are addressed in detail in the supporting memorandum filed herewith and incorporated herein.

The Appellants' petition for rehearing is based on the Court's decision in *Pratt v. Amisub of SC, Inc.*, Op. No. 6096 (S.C. Ct. App. filed January 15, 2025); the supporting memorandum filed herewith; the briefs and Record on Appeal; Rule 221(a), SCACR; Rule 240, SCACR; and other rules of court.

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January 30, 2025

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Of Which, Rock Hill Radiology Associates, LLC, and Geoffrey T. Gilleland, MD are ..... Appellants.

MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

The Appellants Rock Hill Radiology Associates, LLC, and Geoffrey T. Gilleland, MD have petitioned this Court for a rehearing of the recent decision in *Pratt v. Amisub of SC, Inc.*, Op. No. 6096 (S.C. Ct. App. filed January 15, 2025). The Appellants respectfully submit that the following points were overlooked or misapprehended by this Court:

I.

The Court respectfully overlooked or misapprehended that the Appellants presented *alternative* arguments related to the impact of the defense verdict on the wrongful death claim on the verdict on the survival and loss of consortium claims. Alternatively, the Appellants argued that, in the event the Court concludes that the defense verdict on the wrongful death claim is not based on the absence of proximate cause, then the Court should grant a new trial absolute because the verdict is ambiguous and shows jury confusion. In its opinion, the Court did not address these alternative positions and treated the argument as an assertion of an "inconsistent verdict," which the Court rejected because it was not raised prior to the discharge of the jury.

To recap, as her theory of liability, the Respondent argued that the Appellants were negligent for Dr. Geoffrey Gilleland's failure to call in the discrepancies he found when he overread the decedent's chest CT scan and noted non-displaced rib fractures on March 2, 2015. The Respondent contends a reporting of those discrepancies should have resulted in the decedent being hospitalized on that day. Most importantly, the jury ultimately returned a defense verdict on the wrongful death claim. (R. 4). The Respondent's theory of liability was that the decedent developed pneumonia because of the delay in hospitalizing him and the pneumonia then proximately caused his death. (R. 384-385). However, with its defense verdict, the jury actually found that the Appellants' breach of the standard of care *did not result in the decedent's death*. Thus, it logically follows that the Appellants' alleged negligence did not cause the pneumonia that resulted in his death.

There is no other logical way to interpret the defense verdict on the wrongful death claim. In the trial court, the Respondent posited that the defense verdict on the wrongful death claim could be explained by suggesting that the jury concluded that the Respondent failed to prove damages for the wrongful death. However, the Appellants showed that this made no sense and is not a viable explanation for the defense verdict. Specifically, as the Appellants argued, the jury

was charged as to the elements of damages recoverable for wrongful death. Likewise, the jury was charged that the damages must be sustained by the statutory beneficiaries. (R. 767, 769). Many of those elements of damages are the same as may be claimed by the spouse during the decedent's lifetime as part of the consortium claim. (R. 771). The jury found a loss of consortium by Rita Pratt prior to her spouse's death, and as a result, it would not be logical to then conclude that the Respondent failed to prove a similar loss of society, support, and companionship after death. In sum, based on the record, it is illogical to conclude that the Respondent individually proved a loss of society, support, and companionship but then, as the Personal Representative, that she failed to prove damages for the same elements as well as grief and sorrow. That interpretation of the verdict defies common sense and the evidence in the record. Instead, the only logical explanation for the jury's verdict is a defense verdict based on the issue of proximate cause. In effect, the jury found that the breach of the standard of care did not proximately cause the decedent's death.

The Court never addresses this analysis of the defense verdict on the wrongful death claim and its impact on the remaining claims. If the jury concluded – as it clearly did – that the Respondent did not prove that the Appellants' alleged negligence did not cause the pneumonia, then that same conclusion must be applied to the other causes of action. Like the Respondent, this Court focused only on the evidence that Pratt's pulmonary conditions worsened, but that is immaterial because the jury rejected that theory. Also like the Respondent, this Court ignores the real issue – whether the rib injury would have been treated differently from March 2-4, 2015 if Pratt had been hospitalized on March 2nd. The Court identifies that issue (Slip Op. at 8), but then never addresses it, just as the Respondent sidestepped it in her brief. Instead, the Court proceeds to discuss the evidence showing a deterioration in Pratt's pulmonary condition – but again that is immaterial because the jury rejected that argument. The focus must be on the rib injury and how

that would have been treated differently during the alleged two-day delay in hospitalizing Pratt. This Court never addresses that issue. To reiterate, there may be evidence that Pratt's pulmonary condition worsened, but the jury rejected the theory that the Appellants' alleged negligence proximately caused the deterioration in the pulmonary conditions. Logically speaking, if the jury had found proximate cause as to the pulmonary condition, it would have returned a verdict for the Respondent on the wrongful death claim. That did not occur. While there may have been evidence, as this Court discusses, of the "causal connection between the delayed treatment of Pratt's acute rib injuries and his developing pneumonia" (Slip Op. at 10), the Court refuses to discuss and credit the jury's determination that the Appellants' alleged negligence *did not cause* Pratt's death, and there is no other logical explanation for that defense verdict on the wrongful death claim. The Court is requested on rehearing to find that a JNOV should have been entered on the survival claim.[1]

II.

The Court also overlooked or misapprehended that the Appellants have not argued that there was an "inconsistent verdict." That is not precisely what the Appellants have argued. Instead, the Appellants argue that, in the event the Court concludes that the defense verdict on the wrongful death claim is not based on the absence of proximate cause, then the Court should grant a new trial absolute because the verdict is ambiguous and shows jury confusion.

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[1] In addition, the Court did not address the Appellant's argument for JNOV on the consortium claim. To recap, because the trial court should have granted a JNOV on the survival claim, the loss of consortium claim fails as well. In *Creighton v. Coligny Plaza Limited Partnership*, 334 S.C. 96, 512 S.E.2d 510, 523 (Ct. App. 1999), the Court of Appeals explained that "[i]n order to prevail in an action for loss of consortium, a plaintiff must prove the defendant's *liability* for the spouse's injuries, as well as damages to the plaintiff resulting from the spouse's injury." 512 S.E.2d at 523. (Emphasis added). Similarly, in *Lee v. Bunch*, 373 S.C. 654, 647 S.E. 2d 197 (2007), the Supreme Court held that "[g]enerally, a plaintiff spouse's claim for loss of consortium fails if the impaired spouse's claim fails, whether the claim is considered separate and independent from the impaired spouse's claim or derivative in nature." 647 S.E.2d at 202. Thus, because the Respondent failed to prove the Appellants were liable on the injured spouse's claim, Rita Pratt's individual claim for loss of consortium fails on that same basis.

As the Supreme Court explained in *Vinson v. Jackson*, 327 S.C. 290, 491 S.E.2d 249, 250 (1997), "[a] jury verdict should be upheld when it is possible to do so and carry into effect the jury's clear intention. However, when a verdict is so confused that the jury's intent is unclear, the safest and best course is to order a new trial." 491 S.E.2d at 250. *See also*, *Anderson v. Aetna Cas. & Sur. Co.*, 175 S.C. 254, 178 S.E. 830 (1934) ("But when the verdict is so confused that it is not absolutely clear what was intended, the court should order a new trial").

This Court, like the Respondent in the court below, found that a challenge to an "inconsistent" verdict must be raised before the jury is discharged. To reiterate, the Appellants are not arguing that the verdict is "inconsistent," but rather, the verdict may be deemed ambiguous in the event the Court construes the verdict differently than the Appellants. Importantly, the Respondent has the same obligation as the Appellants to make certain that a verdict is not inconsistent before the jury is discharged. The Respondent then is saddled with the same ambiguous verdict. Here, the Respondent did not ask for clarification of the verdict form before the jury was discharged to fully understand the impact of the jury's decision to leave the wrongful death blank on question number 3 of the Verdict Form. (R. 4). In addition, the Respondent, who has the burden of requesting a verdict form to demonstrate that she prevailed on the elements of her claims, did not ask for a verdict form that expressly asked whether the jury found that the Appellants' negligence proximately caused the decedent's death. To the contrary, the only special interrogatory directed at the issue of proximate cause only permitted the jury to find that the breach of the standard of care "was the proximate cause of Mr. William Pratt's *injuries*." (R. 3). The jury was never asked and thus did not find that the breach of the standard of care was the proximate cause of Mr. Pratt's *death*. The deficiency in the verdict form is not the fault of the Appellants for they have no obligation to ensure that the verdict form

demonstrates each element of the Respondent's claims. That obligation is solely that of the Respondent.

In short, while any challenge to an inconsistent verdict has been waived by the discharge of the jury, that would be true for both sides. The Respondent must live with the defense verdict on the wrongful death claim, including the inevitable and only reasonable conclusion that the jury found an absence of proximate cause for the decedent's death. Yet, as an alternative and in the interest of due process and fundamental fairness, this Court has the power to order a new trial absolute where the verdict "is so confused that the jury's intent is unclear [and] the safest and best course is to order a new trial." *Vinson v. Jackson*, 327 S.C. 290, 491 S.E.2d 249, 250 (1997). On rehearing, the Court is asked to follow the dictates of *Vinson* and to order a new trial absolute.

III.

In its opinion, the Court affirmed the denial of the Appellants' directed verdict and JNOV motions as to whether there was clear and convincing evidence that Dr. Gilleland acted with recklessness or conscious indifference. The Court's error is three-fold.

First, the Court did not evaluate the evidence of recklessness by a "clear and convincing evidence" standard. The Verdict Form, to which the Respondent did not object, asked the following: "Do you find that the plaintiffs have proven by *clear and convincing evidence* that the defendants acted recklessly, willfully, or wantonly in their care and treatment for William Pratt?" (R. 5). (Emphasis added). Hence, that was the standard applied by the trial court, and that is – right or wrong – the law of the case. *See*, *Atlantic Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 730 S.E.2d 282, 285 (2012) ("an unappealed ruling, right or wrong, is the

law of the case").[2]

Second, the Court overlooked or misapprehended that the evidence established that the decision to not call the rib findings to the emergency room was based on Dr. Gilleland's clinical judgment that the findings were not clinically significant and thus did not need to be called to the attention of the Emergency Department. (R. 664). Radiology Department policy, as established by the Respondent's witness, Bruce Leonard, M.D., who was Chief of Radiology in 2015, provided that radiologists were allowed to make threshold decisions of clinical significance when deciding what findings needed to be noted or called in. Dr. Leonard explained that the rib fractures, if believed to be acute, should have been called in by Dr. Gilleland. But if there is no sign that the rib fractures are acute, Dr. Leonard indicated that hospital policy did not require them to be called in. (R. 822). Dr. Gilleland did not interpret the rib fractures as acute, and there was supporting evidence for that conclusion given the absence of edema, swelling, and bruising to the soft tissue surrounding the ribs. (R. 661). Likewise, Anthony Lupetin, M.D., the Respondent's expert radiologist, agreed that chronic (i.e., not acute) rib deformities did not need to be reported. (R. 204). Dr. Lupetin also confirmed in his testimony that there were no cracks in any rib, no fracture lines in any rib, no breaks or separation in any cortical line of any rib, and no bone separation in any rib. (R. 204-207). Hence, it was, at worst, simple negligence that Dr. Gilleland interpreted the rib fractures as non-acute findings, particularly where the radiologist believes, as here, that the patient would not receive any different care or treatment. Certainly, there was not *clear and convincing evidence* of recklessness – even though it does not appear that this Court applied the clear and convincing standard, as required by the law of the case.

[2] Moreover, this finding by the jury also demonstrates that the jury was never asked to make a finding on gross negligence, and as a result, the verdict cannot be read as finding that the Appellants acted with gross negligence.

Third, the trial court erred in permitting Dr. Lupetin to testify over objection that the Appellants' conduct constitutes "recklessness," which is a legal conclusion drawn by applying law to the facts. (R. 202). The expert witness should not have been permitted to testify that the Appellants' conduct rose to the level of recklessness as that was the ultimate decision for the jury. The expert witness may testify as to the standard of care and whether a defendant's conduct breached that standard of care, but whether such conduct constitutes recklessness, based on the legal standard, is not appropriate testimony from an expert witness. Citing on this Court's decision in *Hamilton v. Regional Medical Center*, 440 S.C. 605, 891 S.E.2d 682 (Ct. App. 2024), this Court correctly ruled that the question posed to Dr. Lupetin "seeks an inadmissible legal conclusion." (Slip Op. at 15). Nonetheless, this Court found "no reversible error here" on the premise that the "Appellants have failed to establish the required resulting prejudice." (Slip Op. at 15).

However, the requisite prejudice is clearly demonstrated by the jury's conclusion as stated in the Verdict Form that "the Plaintiffs have proven by clear and convincing evidence that the Defendants acted recklessly, willfully or wantonly in their care and treatment of William Pratt." (R. 5). The finding of recklessness, willfulness, or wantonness greatly prejudices the Appellants because, if allowed to stand, they lose the benefit of the non-economic damages cap. *See*, S.C. Code Ann. § 15-32-220(E) ("The limitations for noneconomic damages rendered against any health care provider or health care institution do not apply if the jury or court determines that the defendant was grossly negligent, willful, wanton, or reckless, and such conduct was the proximate cause of the claimant's noneconomic damage*s*"). Contrary to this Court's suggestion, the defense verdict on punitive damages did not undo that prejudice; it simply did not exacerbate the prejudice. In sum, this Court has overlooked the fact that the issue of recklessness was for the jury to make based solely on the law as charged by the trial court. It was

not the proper subject of an expert opinion, and as the jury's verdict reflects, prejudicial error resulted. In effect, the expert witness was allowed to usurp the jury's role, and that opinion obviously carried great weight with the jury which found that the Appellants were reckless, willful or wanton. On rehearing, the Court is respectfully asked to grant a new trial absolute.

IV.

As to the excessiveness of the loss of consortium verdict of $640,000, the Court misapprehended the Appellants' position. The Appellants did not argue that the loss of consortium was necessarily limited to two days. Instead, as the Appellants explained, based upon the Respondent's theory of liability, the Appellants' actions led to an approximate two-day delay in the decedent being hospitalized. During those two days, Mr. Pratt was at home. The evidence from the family indicated that he laid down for those two days; he would not get up to use the bathroom or eat or drink. If the alleged negligence had not occurred, the Respondent contends that Mr. Pratt would have been hospitalized on March 2, 2015. He was thereafter hospitalized from March 4, 2015, through March 23, 2015, when he died. The Respondent has not pointed to any evidence of loss of consortium that was proximately caused by the approximate two-day delay in hospitalizing Mr. Pratt. Importantly, the Respondent would have lost the same consortium had Mr. Pratt been hospitalized two days earlier. The Court does not address this argument.

Moreover, at most, the loss of consortium award of $640,000 covers a total of 21 days, from March 2, 2015 through the date of death on March 23, 2015. Importantly, the jury found for the Appellants on the wrongful death claim, which would be inclusive of consortium-type damages, i.e., the loss of services, society, and companionship, that accrued after the spouse's death. Therefore, at most, the loss of consortium covers a total of 21 days, meaning the Respondent has received an award in excess of $30,000 per day.

The Court, like the Respondent, cited no case law to support a $30,000 per day consortium award. The Court cited only to *Keene v. CAN Holdings, LLC*, 426 S.C. 357, 827 S.E.2d 183 (Ct. App. 2019), but the opinion does not explain whether the consortium claim was for pre-death loss or after-death loss. In effect, the opinion provides no explanation to support that award, other than to point out that the wife had "47 years of marriage to her best friend." 827 S.E.2d at 198. The only other case cited by this Court was a survival action verdict for a juvenile and is not persuasive.

In evaluating whether the $640,000 award is grossly excessive, the Court did not consider the fact that that consortium award is almost twice the amount awarded to the decedent for his pain and suffering over the same period of time. The decedent received $360,000 for 21 days of pain, suffering, and other non-economic harm. That alone shows that the loss of consortium award is exorbitantly high and must be based on considerations beyond the evidence. Moreover, while the Respondent argues that the decedent could not provide "aid, comfort, and support" while he lay on the couch at home for two days, there is no evidence that he would have provided any greater degree of such care to his wife had he been hospitalized beginning on March 2, 2015. The loss of "aid, comfort, and support" while hospitalized was not proximately caused by the Appellants' conduct, but by the fact that the decedent had been injured in a fall down a set of stairs, was already in declining health for unrelated reasons, and was required to be hospitalized.

V.

The Appellants contend that the trial court committed reversible error in requiring the jury to allocate fault between Rock Hill Radiology Associates and Dr. Geoffrey Gilleland and, more importantly, in upholding an allocation of ten percent fault to the practice which may only be held vicariously at fault based on this record. This Court rejects that argument because the Appellants did not object to the verdict form. However, the verdict form notwithstanding, the

Appellants may certainly argue in post-trial motions and on appeal for a new trial absolute because the ten percent allocation of fault to Rock Hill Radiology Associates is unsupported by the evidence or the law of the case.

This Court overlooked that the controlling law of the case is fully dispositive of this issue. The Respondent did not plead a direct liability claim against Rock Hill Radiology Associates. There are no allegations in the Complaint of any negligence by Virtual Radiology or that Virtual Radiology was the agent of Rock Hill Radiology Associates or that the practice is liable for Virtual Radiology under a non-delegable duty theory. (R. 25-30). Instead, to justify the verdict after the fact, the Respondent relied entirely on a non-delegable duty theory as recognized in *Simmons v. Tuomey Regional Medical Center*, 341 S.C. 32, 533 S.E.2d 312 (2000). The Respondent claimed that Rock Hill Radiology Associates is liable for the acts and omissions of a different radiology provider, Virtual Radiology, based a non-delegable duty and a principle-agent relationship. The Respondent pointed to excerpts from the transcript where her counsel continuously tried to argue that the practice was liable for the acts and omissions of Virtual Radiology. The trial court, however, never ruled that the Respondent could pursue an agency or non-delegable duty claim. In fact, the trial court ruled there was no such claim. (R. 139). And each time the issue arose -- even as an objection to the jury instructions -- the trial judge consistently disallowed that theory of liability to be pursued. (R. 780). The trial court even sustained objections on the issue during closing argument. (R. 752). There should be no question that the Respondent's attempt to assert a direct liability claim presented an ongoing struggle throughout the trial as the Respondent's counsel repeatedly disregarded the court's rulings, and there were also colloquy between counsel that demonstrated confusion on the issue.

But what is not confusing in the record and what this Court overlooked is the jury charge itself. That demonstrates beyond dispute that the trial judge did not allow a direct liability claim

against Rock Hill Radiology Associates to go to the jury. There are no instructions to the jury on a non-delegable duty theory. There are likewise no instructions on principle-agency law. The jury was not given any guidance as to any direct liability claim against the practice. The reason for that is obvious -- there was no such claim pled or tried or charged to the jury for its adjudication. In short, an unpled claim that the trial court did not allow to proceed and on which no instructions were given cannot be used after the fact to justify the verdict returned against Rock Hill Radiology Associates. The trial court thus erred in refusing to reverse the direct liability verdict and allocation of fault to Rock Hill Radiology Associates and to grant a new trial absolute. This Court is requested to so rule on rehearing.

VI.

The Appellants also argued that the trial court erred in failing to reduce the verdict based on the non-economic damages cap as set forth in S.C. Code Ann. § 15-32-220. The trial court presumably refused to apply the non-economic damages cap based on the jury's finding that the Appellants "were reckless or grossly negligent in their care and treatment of William Pratt." (R. 5). Because the Appellants were entitled to a JNOV on the issue of recklessness or gross negligence, they are also entitled to a cap of $431,865 on the non-economic damages. For the reasons discussed above, the evidence does not support a finding of recklessness or gross negligence by clear and convincing evidence.

Nonetheless, even if this Court upholds the jury's finding of recklessness or gross negligence, the Appellants argued that does not alone preclude the application of the non-economic damages cap in this case. This Court failed to even address this issue. S.C. Code Ann. § 15-32-220(E) provides: "The limitations for noneconomic damages rendered against any health care provider or health care institution do not apply if the jury or court determines that the defendant was grossly negligent, willful, wanton, or reckless, *and such conduct was the*

proximate cause of the claimant's noneconomic damages." S.C. Code Ann. § 15-32-220(E). (Emphasis added).

The application of the non-economic damages cap is self-executing. In *Parker v. Spartanburg Sanitary Sewer District*, 362 S.C. 276, 607 S.E.2d 711 (Ct. App. 2005), this Court examined the application of a similar type of monetary statutory cap under the Tort Claims Act. Using mandatory language, this Court wrote: "We conclude that the monetary statutory cap is self-executing and the court is required to apply the monetary statutory cap to any jury verdict exceeding $300,000." 607 S.E.2d at 716. Thus, the burden falls on a plaintiff to prove the exception contained in S.C. Code Ann. § 15-32-220(E). *See*, *Chastain v. AnMed Health Foundation,* 388 S.C. 170, 694 S.E.2d 541 (2010) (Supreme Court ruled that a plaintiff bears the burden of proving facts to justify a judgment in excess of the $300,000 monetary cap).

As the highlighted language demonstrates, the exception to the cap found in S.C. Code Ann. § 15-32-220(E) requires a finding that "such conduct was the proximate cause of the claimant's noneconomic damages." However, the Respondent did not sustain her burden on this element of the statutorily-mandated analysis. The jury's findings as contained in Questions 4 and 5 of the Verdict Form do not address causation of the non-economic damages. In fact, none of the special interrogatories address proximate cause with respect to any of the loss of consortium damages -- all of which are non-economic damages. The Respondent bears the burden of proving the exception contained in S.C. Code Ann. § 15-32-220(E), a burden she clearly did not satisfy given the verdict form returned by the jury.

Because the non-economic damages cap applies to this case, the Court is asked to determine what is the cap applicable to this case as well as whether one cap should apply consistent with the arguments that the Appellants previously asserted and which this Court did not reach. The Court on rehearing is asked to apply the cap on non-economic damages in the

amount of $431,865.00 which represents the cap in effect in March 2015, when the Respondent's cause of action accrued.

VII.

As to the set-off issue, as the Court acknowledges, the Respondent concedes that "[w]hen the settlement was announced to the Court during trial, the parties suggested the settlement funds might be allocated with 90% apportioned to the loss of consortium claim and 5% allocated respectively to the survival and wrongful death claims." (R. 97). However, on February 20, 2020, which was ten days after the trial ended and the judgment was entered, the Respondent petitioned the trial court to approve the settlement with Amisub using a different allocation of the $250,000 settlement amount among the three claims than the allocation that was conveyed to the court and the parties during the trial. The Respondent claimed an allocation of one-third to each claim. That would reduce the set-off for the loss of consortium action from $225,000 to $83,333.33 and increase the set-off for the survival action from $12,500 to $83,333.33. That would also increase the set-off for the wrongful death action from $12,500 to $83,333.33; yet, that change was made after the Respondent learned the jury returned a defense verdict on the wrongful death claim. During the hearing, the trial court acknowledged that "at the time the settlement was agreed upon during the course of the trial that was made a part of the record." (R. 907). The trial court then applied the set-offs as requested by the Respondent. (R. 907).

This Court found no error because a “settlement allocation hearing” may not take place until after the jury verdict. The Court, however, appears to be conflating the “settlement allocation hearing,” which correctly must occur after the trial, with a settlement approval hearing where a court approves a death settlement. The Supreme Court in *Jolly v. Fisher Controls International, LLC.*, 443 S.C. 511, 905 S.E.2d 380 (2024), did not hold that a settlement approval hearing must await the completion of trial. In effect, the *Jolly* case does not require a Court to

await trial to approve the settling parties' own allocation of the settlement amount between wrongful death, survival, and loss of consortium claims. In this case, the set-offs should have been applied based on the settling parties' original agreement as addressed *at the time the settlement was announced to the trial cour*t, and the parties should be bound by that agreement. The Court is asked to so rule on rehearing.

CONCLUSION

Based on the foregoing discussion, the Appellants Rock Hill Radiology Associates, LLC, and Geoffrey T. Gilleland, M.D. respectfully request that the Court rehear its decision in this case as argued herein.

Respectfully submitted,

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January 30, 2025

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Daniel D. Hall, Circuit Court Judge

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Of Which, Rock Hill Radiology Associates, LLC, and Geoffrey T. Gilleland, MD are ..... Appellants.

CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court's Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024), the undersigned employee of Lindemann Law Firm, P.A., counsel for the Appellants Rock Hill Radiology Associates, LLC, and Geoffrey T. Gilleland, MD, does hereby certify that service of the **Petition for Rehearing** and the **Memorandum in Support of Petition for Rehearing** in the above-captioned matter was made upon all counsel of record by email only this the 30th day of January 2025 as follows:

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January 30, 2025

Via Email Only
The Honorable Jenny Abbott Kitchings
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RE: Rita Pratt, Individually and as the Personal Representative of the Estate of William Pratt, Deceased v. Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center, Jaleesa Heyward, RN, South Carolina Emergency Physicians, LLC; Jonas Varaly, DO; Rock Hill Radiology Associates, LLC; and Geoffrey T. Gilleland, MD
Appellate Case Number: 2020-000838
Civil Action Number: 2016-CP-46-3181
Our File Number: 22.20277

Dear Ms. Kitchings:

Pursuant to Section (b)(2) of the Supreme Court's Order RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (as Amended April 24, 2024), please find enclosed for filing the **Petition for Rehearing** and the **Memorandum in Support of Petition for Rehearing** in the above referenced matter. In accordance with Section (d)(1) of this same Order, I am hereby serving copies on all counsel of record. The $50.00 filing fee will be sent to the Court via U.S. Mail.

If you have any questions, please advise.

Sincerely,

LINDEMANN LAW FIRM, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosures

cc: Chad A. McGowan, Esquire *(w/ Enclosures, Via Email Only)*
Ashley White Creech, Esquire *(w/ Enclosures, Via Email Only)*
Eve S. Goodstein, Esquire *(w/ Enclosures, Via Email Only)*
Jordan C. Calloway, Esquire *(w/ Enclosures, Via Email Only)*
Jay F. Wright, Esquire *(w/ Enclosures, Via Email Only)*
Matthew H. Henrikson, Esquire *(w/ Enclosures, Via Email Only)*