

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**S.C. SUPREME COURT**

APPEAL FROM YORK COUNTY  
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Supreme Court Case No. 2025-000563

Rita Pratt, Individually and ..... Respondent,  
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, ..... Defendants,

Of which Rock Hill Radiology  
Associates LLC and Geoffrey T.  
Gilleland, MD are the ..... Petitioners.

**RETURN TO PETITION FOR WRIT OF CERTIORARI**

Chad A. McGowan (SC Bar No. 9943)  
Ashley White Creech  
Eve S. Goodstein  
Jay F. Wright (SC Bar No. 78738)  
Jordan C. Calloway (SC Bar No. 78728)  
McGowan, Hood, Felder & Phillips, LLC  
1539 Health Care Drive  
Rock Hill, SC 29732  
(803) 327-7800  
Attorneys for Respondent

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## COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Whether the circuit court and court of appeals correctly determined expert testimony was competent evidence to support the jury's proximate cause finding on Ms. Pratt's survival and loss of consortium claims.
2. Whether Rock Hill Radiology and Dr. Gilleland may challenge the clarity of a verdict to which they did not timely object and, alternatively, whether the circuit court and court of appeals correctly determined a verdict is not inconsistent when it awards damages on only some of Ms. Pratt's claims.
3. Whether Rock Hill Radiology can argue it should not have been listed separately from Dr. Gilleland on the verdict form when its attorney conceded at trial Ms. Pratt could argue Virtual Radiology's error was Rock Hill Radiology's responsibility.
4. Whether the circuit court and court of appeals properly concluded Rock Hill Radiology and Dr. Gilleland failed to show the jury's loss of consortium award was "shockingly disproportionate" to Ms. Pratt's injuries.
5. Whether the circuit court and court of appeals correctly determined the expert radiology testimony and Dr. Gilleland's admissions were competent evidence to support the jury's finding that Rock Hill Radiology and Dr. Gilleland acted with recklessness or gross negligence.
6. Whether Rock Hill Radiology and Dr. Gilleland can invoke a statutory noneconomic damages limitation since the jury found their conduct amounted to recklessness or gross negligence.
7. Whether the circuit court properly conducted post-verdict setoff proceedings by considering a suggested allocation of settlement funds by the settling parties and objections from Rock Hill Radiology and Dr. Gilleland (non-settling defendants) but making its own discretionary judgment on a reasonable allocation.

## STATEMENT OF THE CASE

Rita Pratt initiated this medical malpractice action by filing an October 25, 2016, complaint alleging survival, loss of consortium, and wrongful death claims against Petitioners Rock Hill Radiology Associates, LLC (“Rock Hill Radiology”) and Geoffrey T. Gilleland, MD. (R. p. 28-29 ¶¶ 15-20).<sup>1</sup> Ms. Pratt’s claims, asserted in both her individual capacity and as the personal representative of her husband William Pratt’s estate, arose out of medical care Mr. Pratt received while a Piedmont Medical Center (“PMC”) patient in March 2015.

Ms. Pratt’s claims were tried before a jury and the Honorable Daniel D. Hall on February 3-10, 2020. During the trial Ms. Pratt reached a settlement with PMC and agreed to dismiss her claims against Nurse Heyward. (R. p. 565). On February 10, 2020, the jury entered a verdict with the following findings:

- The preponderance of the evidence showed Rock Hill Radiology and Dr. Gilleland (but not Dr. Varaly) deviated from the standard of care (R. p. 3, Question No. 1);
- Rock Hill Radiology and Dr. Gilleland’s deviations from the standard of care proximately caused Mr. Pratt’s injuries with 90% attributed to Dr. Gilleland’s conduct and 10% attributed to Rock Hill Radiology’s conduct (R. pp. 3-4, Question No. 2);
- Ms. Pratt was entitled to \$ 360,000 for her survival claim and \$ 640,000 for her loss of consortium claim (R. p. 4, Question No. 3);
- Rock Hill Radiology and Dr. Gilleland both acted with recklessness or gross negligence in their treatment of Mr. Pratt (R. p. 4, Question No. 4); and
- Rock Hill Radiology and Dr. Gilleland’s reckless, willful, and wanton misconduct was proved by clear and convincing evidence (R. p. 5, Question No. 5).

In a second deliberation, the jury declined to award punitive damages. (R. p. 5).

Following the trial, the circuit court approved Ms. Pratt’s settlement with PMC on February 20, 2020 (R. pp. 7-11), granting a set-off of \$ 83,333.33 for each of the survival and loss of

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<sup>1</sup> Ms. Pratt’s action was later consolidated with claims against PMC, one of its emergency room nurses (Jaleesa Heyward, RN), the emergency room physician who treated Mr. Pratt at PMC (Jonas Varaly, DO) and the medical practice for whom he worked (South Carolina Emergency Physicians, LLC). (R. pp. 18-24). None of these former defendants are parties to the appeal.

consortium claims. (R. pp. 12-14). Rock Hill Radiology and Gilleland’s post-trial motions were largely denied. The South Carolina Court of Appeals heard oral arguments on March 5, 2024, and affirmed the circuit court’s order in a reported opinion filed on January 15, 2025. Pratt v. Amisub of S.C., Inc., 445 S.C. 199, 912 S.E.2d 268 (Ct. App. 2025).

### **STATEMENT OF THE FACTS**

William “Bill” Pratt fell down a flight of stairs at his daughter’s Rock Hill home on March 2, 2015. (R. pp. 335-36). Rushed by ambulance to PMC’s emergency room, Mr. Pratt was initially treated by emergency room physician Dr. Jonas Varaly (of South Carolina Emergency Physicians, LLC) and PMC nurse Jaleesa Heyward. (R. pp. 480-81). Since Mr. Pratt was suffering from lower back, right shoulder, and bilateral rib pain, a number of diagnostic tests were ordered including a chest CT scan. (R. p. 481).

These tests were ordered and conducted during the overnight hours and, as a result, they were not read onsite. In March 2015, PMC had an exclusive services contract tasking Rock Hill Radiology with providing all radiology services for PMC patients 24 hours per day, 7 days per week. (R. p. 145). Rather than assigning its own radiologists to work overnight hours, Rock Hill Radiology procured teleradiology services from Virtual Radiology for PMC radiology studies presented for interpretation between the hours of 11 p.m. and 7 a.m. (R. p. 656). Thus, Mr. Pratt’s March 2nd chest CT was initially read remotely by a Virtual Radiologist physician who, in describing the bones in Mr. Pratt’s chest, erroneously reported “[n]o acute fracture.” (R. p. 887). In reliance on this inaccurate report, Dr. Varaly discharged Mr. Pratt without any treatment. (R. pp. 538-40).

When Gilleland arrived at PMC a few hours later, he too read Mr. Pratt’s chest CT. His report documented four “nondisplaced left lateral . . . rib fractures” and five “right side anterior . .

. rib fractures.” (R. p. 880). Gilleland’s interpretation represented a substantial discrepancy from the initial Virtual Radiology report. (R. pp. 175-76). Pursuant to established PMC practice, such a substantial discrepancy must be called in by the radiologist to the emergency room so that a patient can be summoned back to the hospital to treat his acute injury. (R. pp. 186-87). Gilleland refused to make that call. He reasoned that he understood the implications of Mr. Pratt’s rib fractures better than Dr. Varaly could and that, due to a preexisting cancer diagnosis, Mr. Pratt was headed toward hospice care anyway. (R. pp. 678-80).

For the next two days, Mr. Pratt suffered immensely. After paramedics transported him home, Mr. Pratt was essentially immobile, moaning, and barely able to communicate. Tr. 321; 548-49). He could not rise to use the restroom, and his breathing became increasingly labored. (Tr. 339, 357, 500). His wife of thirty-plus years looked on in horror as Mr. Pratt’s condition deteriorated. With Mr. Pratt’s condition continuing to decline on March 4, 2015, an ambulance was called to transport him to CMC-Pineville. (R. pp. 486-87). There, another chest CT was performed and properly identified the nine non-displaced rib fractures Rock Hill Radiology and Gilleland failed to properly communicate. (R. p. 487). Mr. Pratt was transferred almost immediately to CMC’s main facility in Charlotte. (Tr. 557). Despite weeks of inpatient care, Mr. Pratt passed away on March 23, 2015. (R. p. 900).

During the March 2020 trial, a number of experts explained how Rock Hill Radiology and Gilleland’s errors led to such a tragic outcome. Radiologist Dr. Anthony Lupetin testified that Mr. Pratt’s rib injury was overt, acute, and simply cannot be missed by any competent radiologist. (R. pp. 180-84). Moreover, since this was such an acute injury and stood in such sharp contrast to the erroneous initial Virtual Radiology report, both PMC policy and the standard of care demanded Gilleland make a call to the emergency room. (R. pp. 185-92). Emergency medicine expert Dr.

Michael Chansky testified that emergency room physicians depend on radiologists to bring discrepancies between initial and final radiology reports to their attention. (R. p. 258). Dr. Chansky's testimony was supported by Dr. Varaly, who told jurors, had he known of Mr. Pratt's rib injury, Mr. Pratt would have been admitted rather than sent home. (R. p. 555).

While Mr. Pratt got a proper diagnosis and high quality care two days after these March 2nd errors, experts also explained why the delay was so costly. Dr. Hiren Shah, Ms. Pratt's internal medicine and hospitalist expert, told jurors broken ribs make breathing very painful and, if left untreated, a patient will be unable to breathe deeply. (R. pp. 366-68). As a result, mucus will build up in the patient's lungs, and he will become vulnerable to infections including pneumonia. Instead of receiving oxygen and respiratory treatments in a trauma hospital, Mr. Pratt was sent home to suffer—all because his acute rib injury was not properly identified, reported, and communicated to his treatment providers. (R. pp. 372-84). Lying immobile without treatment for the following two days made the situation worse, a fact evidenced by negative changes in Mr. Pratt's vital signs between his PMC discharge on March 2nd and his CMC-Pineville visit on March 4th. (R. p. 378).

Following a six-day trial, Ms. Pratt's claims were submitted to the jury on February 10, 2020. When the verdict form was discussed and submitted, Rock Hill Radiology and Gilleland raised no on-the-record objection to its contents. (Tr. 706, 780). In light of the evidence summarized above, the jury returned a verdict against Rock Hill Radiology and Gilleland. Each was found to have acted with recklessness or gross negligence and proximately caused much of the damages sought in Ms. Pratt's claims. (R. pp. 3-4). Although Ms. Pratt's attorneys sought \$ 5 million in damages (R. p. 167), the jury awarded a total of \$ 1 million with \$ 360,000 allocated to the survival and \$ 640,000 to compensate Ms. Pratt for her loss of consortium. (R. p. 4). After the verdict was entered, Rock Hill Radiology and Gilleland raised no objections and failed to make a

motion to resubmit the matter for further deliberation. Accordingly, the jury was discharged and judgment was entered in Ms. Pratt's favor. This appeal followed.

### ARGUMENT

The \$ 1 million a York County jury awarded Ms. Pratt for losses related to her late husband's medical care stems from a sad story of a radiology error made exponentially worse by a self-assured radiologist (Gilleland) who caught the initial error but flatly refused to address it. The jury quite reasonably found Gilleland grossly negligent and quite conservatively awarded Ms. Pratt only one-fifth of what she requested for Mr. Pratt's suffering and her loss of consortium. Since that verdict finds substantial support in the evidence and South Carolina law, the circuit court denied post-trial motions, and the court of appeals affirmed in full.

Rock Hill Radiology and Gilleland's fast-and-loose approach to the appeal continues in the Petition. Some of the alleged errors they cite shows they did not read the record or court of appeals' opinion very closely. They repeatedly claim the jury never found Gilleland grossly negligent when Question 4 on the verdict form plainly shows otherwise. Compare Pet. at 11 n. 1 and 19 n. 2 with R. p. 4. They then accuse the court of appeals of skipping crucial arguments when those arguments were in fact explicitly considered and rejected. Compare Pet. at 9 (arguing the court of appeals did not address argument that the verdict was ambiguous and the jury was confused) with Pratt, 445 S.C. at 222, 912 S.E.2d at 280 (explaining in detail why "[w]e do not view the jury's verdicts as ambiguous or indicative of jury confusion").

Beyond that, Rock Hill Radiology and Gilleland seek either to resurrect arguments they waived at trial or to press arguments grounded in baseless speculation. Rock Hill Radiology argues Ms. Pratt should not have been able to fault it for the initial radiology error of Virtual Radiology—Rock Hill Radiology's hand-selected after-hours radiology provider (Pet. at 17-18)—even though

their attorney expressly conceded that argument was viable during trial. (R. p. 471, line 3) (“They can argue that”). Rock Hill Radiology and Gilleland continue to insist an award for Mr. Pratt’s suffering is inconsistent with an award of zero damages on wrongful death (Pet. at 8) even though they skipped the essential step of raising this argument before the jury was discharged. See Ex Parte Travelers Home & Marine Ins. Co. v. Stringfellow, 427 S.C. 238, 242, 830 S.E.2d 718, 720 (Ct. App. 2019) (“[s]ome post-trial motions—such as those seeking to correct or clarify an inconsistent verdict—must for practical reasons be made before the jury is discharged, or they are forever lost.”). Then, as the focal point for their petition, Rock Hill Radiology and Gilleland suggest what the jury said is not what it really meant. They point to the blank line on the verdict form’s wrongful death damages question and spin out a convoluted narrative for how this blank somehow shows they were entitled to a directed verdict on the survival and loss or consortium claims. (Pet. at 6-8).

In sum, the court of appeals correctly concluded the verdict was unambiguous, supported by the evidence, and awarded a reasonable sum to compensate Ms. Pratt for her losses. Rock Hill Radiology and Gilleland point to no novel issue, no conflict with this Court’s precedents, and no other basis for further appellate review.

**1. The jury’s survival and loss of consortium verdicts were well supported by the evidence.**

Rock Hill Radiology and Gilleland take a strange path to concluding they were entitled to a directed verdict on the survival and loss of consortium claims—they point to the jury’s wrongful death verdict. (Pet. at 6-9). Any attempt to reverse the denial of directed verdict/JNOV motions would seemingly have to begin with the evidence the circuit court cited when submitting the disputed claims to a jury. Curcio v. Caterpillar, Inc., 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003) (“[t]he jury’s verdict must be upheld unless no evidence reasonably supports the jury’s findings”).

Yet, nowhere in their petition do Rock Hill Radiology and Gilleland grapple with the medical evidence depicting Mr. Pratt's suffering or Ms. Pratt's testimony lamenting the resulting damage to her thirty-five-year marriage. Instead, Rock Hill Radiology and Gilleland latch onto one line from the verdict form, draw a false conclusion on its meaning, and hopscotch their way to a place where somehow it does not matter Gilleland refused to report discrepancies in Mr. Pratt's CT scans to his treating physicians. Citing long-settled precedent and uncontested evidence, the court of appeals correctly rejected this argument.

The trouble starts with the first in Rock Hill Radiology and Gilleland's series of attenuated assumptions. They conclude the blank line on the verdict form's wrongful death damages line means there was actually no evidence of proximate cause for Mr. Pratt's losses (asserted in the survival claim) or Ms. Pratt's losses (asserted in her loss of consortium claim) because the blank line meant the jury found the medical errors did not cause Mr. Pratt's death. (Pet. at 7). But, challenging a verdict is not as easy as conceiving some way to make it favorable to the challenger. The task is to show the verdict as stated could have no logical basis. Rhodes v. Winn-Dixie Greenville, Inc., 249 S.C. 526, 530, 155 S.E.2d 308, 310 (1967). Here, it is perfectly logical to conclude the jury's verdict on wrongful death damages is about damages, not some veiled rejection of causation.

Rock Hill Radiology and Gilleland cite Ms. Pratt's individual recovery to reject this prospect out of hand, arguing the harm addressed in wrongful death and loss of consortium claims is too similar for damages to lie in the latter but not the former. Precedent has consistently rejected this argument. Wrongful death and loss of consortium are independent claims for which jurors can reasonably reach differing verdicts. Pratt, 445 S.C. at 213, 912 S.E.2d at 276 (citing Burroughs v. Worsham, 352 S.C. 382, 406-07, 574 S.E.2d 215, 227 (Ct. App. 2002) ("[A] ruling on one does

not bar, nor entitle, recovery on the other claim”)). Plus, while the court of appeals noted “[s]ome of the damages” available for wrongful death “may coincide” with loss of consortium damages, there are notable distinctions. Pratt, 445 S.C. at 212, 912 S.E.2d at 275. The standard charges (to which Rock Hill Radiology and Gilleland offered no pertinent objections) advised jurors that a loss of consortium claim covered “love,” “solace,” “sexual relations,” and “guidance,” with none of these words appearing in the description of wrongful death damages (R. p. 769, 771). Jurors were further told the loss of consortium claim was distinct because it “arises out of the special relationship” between spouses, and jurors were to apply their own “observations, experiences and knowledge” of that relationship when determining the relative value of the distinct harm of losing a spouse. (R. p. 771-72). Moreover, even if the blank line for wrongful death damages was a rejection of proximate cause for that claim, it is quite a stretch to say the jury intended to reject proximate cause on the other claims. The jury explicitly answered “Yes” when asked if Rock Hill Radiology and Gilleland’s errors were “the proximate or legal cause of Mr. William Pratt’s injuries.” (R. p. 3); Pratt, 445 S.C. at 213, 912 S.E.2d at 276.

Rock Hill Radiology and Gilleland resort to these leaps of logic because they cannot show the lack of evidence required to prevail on a DV/JNOV motion. They summarily conclude the delay caused by Gilleland’s refusal to make a phone call caused no harm because CMC-Pineville physicians diagnosed and began treating Mr. Pratt’s broken ribs two days later. (Pet. at 8). That assertion is neither reasonable nor consistent with the record. It is hard to imagine any reasonable person would conclude a person with broken ribs who is denied treatment for two days would endure no pain, suffering, or hindrance to his marriage in the interim. This jury was certainly not left with that impression. As the court of appeals recounted, Mr. Pratt’s attending physician testified that a call from Gilleland would have led to a trauma center admission. Pratt, 445 S.C. at

214-16, 912 S.E.2d at 276-77 (citing (R. pp. 554-55)). A hospital medicine expert reviewed the medical chart and concluded Mr. Pratt's vital signs were drastically worse when he arrived at CMC-Pineville than when he left PMC two days earlier. (R. pp. 375-79). An emergency room expert told jurors a properly informed emergency room physician immediately implements "very aggressive treatment" upon learning his patient has broken ribs. (R. p. 263). That treatment would have included intense breathing treatments, supplemental oxygen, nebulizers, and the use of a "cough assist" device to ensure Mr. Pratt was breathing properly through the pain of his broken ribs. (R. pp. 369-71).

Rock Hill Radiology and Gilleland do not contest any of this evidence. All of it was relevant, all of it supports Ms. Pratt's claims, and the court of appeals was correct in citing it to support the circuit court's denial of the DV/JNOV motions.

**2. Rock Hill Radiology and Gilleland have no basis for suggesting the verdict was ambiguous or the jury was confused.**

The Petition's ambiguity and confusion arguments suffer from factual, preservation, and legal deficiencies. For one, Rock Hill Radiology and Gilleland are simply wrong in the core premise. They contend the court of appeals "did not address" their verdict ambiguity and jury confusion arguments. (Pet. at 9). However, the court of appeals plainly states in its opinion, "We do not view the jury's verdict as ambiguous or indicative of jury confusion" and went on to explain its reasoning. Pratt, 445 S.C. at 222, 912 S.E.2d at 280. If Rock Hill Radiology and Gilleland seek to challenge this portion of the opinion, they should at least be fair to its text and take on the substance of its reasoning.

Beyond that, Rock Hill Radiology and Gilleland try unsuccessfully to evade a fatal preservation problem. This Court has long held the time for challenging an allegedly inconsistent verdict is at the time it is announced, and the challenge cannot be raised once the jury is discharged.

Dykema v. Carolina Emergency Physicians, P.C., 348 S.C. 549, 553, 560 S.E.2d 894, 896 (2002); see also Stringfellow, 427 S.C. at 242, 830 S.E.2d at 720. Rock Hill Radiology and Gilleland do not contest this rule. Pet. at 10 (admitting “any challenge to an inconsistent verdict has been waived by the discharge of the jury”). While they insist their appeal is about ambiguity and confusion rather than inconsistency, there is no escaping the argument’s true thrust. Rock Hill Radiology and Gilleland go to some lengths to explain what they think the blank line on the wrongful death damages line actually means. On its own, those arguments could yield them no remedy. There is no judgement against them on wrongful death. Whatever the basis for the jury’s actions on that claim, Rock Hill Radiology and Gilleland prevailed on it, and there is nothing for them to appeal there. However they now try to frame it, what Rock Hill Radiology and Gilleland are actually arguing is the Court should focus on the wrongful death defense verdict because it is inconsistent with the verdicts Ms. Pratt received on the other claims. (Pet. at 9) (asking Court to focus on “the impact of the wrongful death defense verdict on the survival and loss of consortium verdicts”). Whatever labels attached to it, this is just a verdict inconsistency argument repackaged in the hopes of avoiding its fate as an unpreserved argument raised months too late.

Finally, since Rock Hill Radiology and Gilleland incorrectly accuse the court of appeals of ignoring their argument, they offer no way to challenge the substantive reasons why it was rejected. In light of the evidence cited above, the court of appeals found the verdict form reads as would be expected for a jury expressing measured disdain for Gilleland’s callous conduct. Pratt, 445 S.C. at 222, 912 S.E.2d at 280-81. The jury found grossly negligent and reckless conduct but awarded no punitive damages and only one-fifth of the non-economic damages Ms. Pratt’s sought. Id. As discussed below, finding gross negligence and recklessness was fully supported by evidence of what Gilleland knew, what hospital policy required him to do, and what he consciously chose to

do instead. As for the determination and allocation of damages, that was a matter for the jury's prerogative overseen by the circuit court. The circuit court saw no error in the jury's damages findings and, at this point, that ruling is entitled to substantial deference. *Id.* (quoting *Vinson v. Hartley*, 324 S.C. 389, 405-06, 477 S.E.2d 715, 723 (Ct. App. 1996) (noting trial court has "better informed view of the damages" since it "heard the evidence and is more familiar with the evidential atmosphere at trial")). Thus, the Petition's ambiguity and confusion arguments offer no legitimate basis for further appellate review as they are grounded in factual and legal errors and were waived at trial.

**3. Since Gilleland knew Mr. Pratt's treating physicians had inaccurate information and Gilleland ignored hospital policy by withholding the truth, ample evidence supported the jury's finding that he was grossly negligent or reckless.**

A series of witnesses (including Gilleland himself) presented jurors with a disturbing picture of Gilleland's conduct after Mr. Pratt was discharged from PMC. Gilleland knew neither Mr. Pratt nor his treating physicians were aware he had suffered several broken ribs, but Gilleland consciously chose not to call the emergency room because he valued his own opinion too much and Mr. Pratt's life too little. All of this was in plain violation of hospital policy. This was more than enough evidence to present the issue of gross negligence and recklessness to the jury.

Rock Hill Radiology and Gilleland begin with a misguided procedural argument. They contend the court of appeals erred in failing to consider whether recklessness was proved by clear and convincing evidence. (Pet. at 11). That was not required to address the issues on appeal. In this context, a recklessness finding is legally significant for two reasons: (1) when proved by clear and convincing evidence, recklessness is a basis for awarding punitive damages (S.C. Code Ann. § 15-32-520(D)); (2) when proved by a preponderance of evidence, recklessness (or gross negligence) exempts a verdict from requirements imposed by the Uniform Contribution

Among Tortfeasors Act (S.C. Code Ann. § 15-38-15(F)) and a judgment from limitations imposed by the South Carolina Noneconomic Damage Award Act of 2005. S.C. Code Ann. § 15-32-220(E). While evidence summarized below meets the clear and convincing threshold, the reality is that the jury declined to award Ms. Pratt punitive damages (R. p. 6), and she did not appeal that verdict.

Recklessness as a damages limitation exception is a pertinent issue here, and the statute creating the exception (section 15-32-220(E)) does not impose a clear and convincing evidence requirement. There is also no merit to Rock Hill Radiology and Gilleland's "law of the case" argument. (Pet. at 11). The circuit court did not apply a clear and convincing evidence standard to recklessness as an exception to damages limitations. Verdict form question 4 asked about recklessness with no reference to a clear and convincing evidence requirement. Similarly, the Petition is just wrong in stating "the jury was never asked to make a finding on gross negligence." (Pet. at 11 n. 1). The jury checked "Yes" on Question 4 which asked, "Do you unanimously find that the Defendant(s) . . . were reckless *or grossly negligent* in their care and treatment of William Pratt." (R. p. 4) (emphasis added).

On the merits, Rock Hill Radiology and Gilleland miss the point of a DV/JNOV motion by touting their preferred evidence on the recklessness question. The court of appeals' task was to determine only whether there was any evidence to support a finding of recklessness. Curcio, 355 S.C. at 320, 585 S.E.2d at 274. The court of appeals cited several pieces of evidence to affirm the jury's verdict including:

1. Expert testimony from multiple witnesses describing Mr. Pratt's broken ribs as an "acute" injury and a "very significant" discrepancy from the initial interpretation of his CT scan;
2. PMC hospital policy requiring a call to the emergency room for discrepancies involving an acute injury or when the radiologist in Gilleland's position is "unsure of its acuity"; and

3. Gilleland’s past admission that he was unsure of the acuity of Mr. Pratt’s injury. Pratt, 445 S.C. at 216-17, 912 S.E.2d at 278. Rock Hill Radiology and Gilleland do not directly address any of this evidence. They also offer no response to the court of appeals’ citation to an extended portion of Gilleland’s own trial testimony in which he admitted a call to the ER was the only way Mr. Pratt’s treating physician would learn of the broken ribs. Id. at 217, 912 S.E.2d at 278 (citing R. p. 675). As Gilleland told jurors, he consciously decided not to make that call because he thought he knew better than the treating physicians whether the broken ribs were clinically significant. Pratt, 445 S.C. at 219, 912 S.E.2d at 279 (citing R. p. 678) (saying of Mr. Pratt’s attending physician, “He doesn’t know what I know”). Gilleland had an even more callous reason not to pick up the phone—he thought Mr. Pratt was too near death to warrant treatment for his broken ribs. Pratt, 445 S.C. at 221 n. 7, 912 S.E.2d at 280 n. 7 (citing R. p. 680). Under long-standing South Carolina law, these admissions of conscious indifference, along with proof of a hospital policy violation, provided a substantial evidentiary basis for a recklessness finding. McGee v. Bruce Hosp. Sys., 321 S.C. 340, 346, 468 S.E.2d 633, 637 (1996) (describing recklessness as the “conscious failure to exercise due care”). This evidence is also sufficient to show the lower culpability level of gross negligence, a matter for which Rock Hill Radiology and Gilleland offer no opposing argument. See e.g. Clark v. S.C. Dep’t of Public Safety, 362 S.C. 377, 384-85, 608 S.E.2d 573 (2005) (holding that trial court properly submitted gross negligence to jury based in part on an expert description of department policy).

Finally, Rock Hill Radiology and Gilleland argue all this evidence of recklessness should be disregarded and a new trial granted based on the following three lines from the 900-page trial transcript.

Q Doctor, would you consider the conduct in this case to be reckless?

A Yes.

(Pet. at 13) (citing R. p. 202). As an initial matter, Rock Hill Radiology and Gilleland again misrepresent the court of appeals' opinion by concluding the opinion found Ms. Pratt's counsel had asked her expert for an impermissible legal conclusion. (Pet. at 13). The court of appeals held only that direct questions about a defendant's alleged "reckless" conduct could be eliciting impermissible testimony "in certain instances." Pratt, 445 S.C. at 220, 912 S.E.2d at 279-80.

Even so, the real reason this argument failed was because Rock Hill Radiology and Gilleland could not show prejudice from any perceived error. Matter of Daily, 443 S.C. 557, 566, 905 S.E.2d 310, 315 (Ct. App. 2024) (quoting In re Gonzalez, 409 S.C. 621, 636, 763 S.E.2d 210, 217 (2014) ("A fundamental principle of appellate procedure is that a challenged decision must be both erroneous and prejudicial to warrant reversal")). The Petition largely skirts the prejudice issue arguing only that, in light of the damage limitation exception, recklessness is an important matter. (Pet. at 13). However, the prejudice analysis turns not on whether the perceived error concerns a material issue but whether the disputed evidence would likely alter the trial's outcome. Way v. State, 410 S.C. 377, 384, 764 S.E.2d 701, 705 (2014) (quoting Judy v. Judy, 384 S.C. 634, 646, 682 S.E.2d 836, 842 (Ct. App. 2009) ("appellate courts will not set aside judgments due to insubstantial errors not affecting the result"))).

Alleged errors over the admission of witness testimony are not prejudicial if the contested evidence is "cumulative to the testimony of several other witnesses." McKissick v. J.F. Cleckley & Co., 325 S.C. 327, 479 S.E.2d 67 (Ct. App. 1996); see also Rouse v. McCrory, 291 S.C. 218, 221, 353 S.E.2d 130, 132 (1986) (finding no reversible error in improper admission of legal document that was "merely cumulative" to other properly admitted testimony). A recklessness finding here was not dependent on one question during plaintiff's expert testimony. It was based

on a mountain of evidence of policy violations and Gilleland's testimony on his conscious disregard for Mr. Pratt in choosing not to call in the discrepancy to the emergency room. Plus, even if the evidence fell short of recklessness, the jury still reasonably found Gilleland's conduct was grossly negligent. That finding was equally sufficient to avoid all of the statutory limitations Rock Hill Radiology and Gilleland seek to apply, and their petition offers no argument for opposing the gross negligence verdict.

In sum, the court of appeals correctly affirmed the denial of a DV/JNOV motion on recklessness and gross negligence. That ruling is well supported by Gilleland's admission that he knowingly refused to make a vital phone call to the PMC emergency room and by multiple experts' testimony on the egregiousness of this decision and its violation of hospital policy. One question during an expert's testimony where counsel used the term "reckless" does not take away from the voluminous evidence of recklessness and gross negligence that preceded and followed it.

**4. Ms. Pratt's loss of consortium was real, and the jury award was not excessive.**

To throw out the jury's loss of consortium award, Rock Hill Radiology and Gilleland must demonstrate the verdict was "grossly . . . excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence" which they cannot do if the award is "supported by any rational view of the evidence." O'Neal v. Bowles, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993); Kunst v. Loree, 424 S.C. 24, 46-47, 817 S.E.2d 295, 306 (Ct. App. 2018). The court of appeals correctly determined \$ 640,000 for loss of consortium was not a product of prejudice but a rational analysis of Ms. Pratt's testimony and the medical evidence concerning her husband's medical treatment.

This section of the petition begins with its most disturbing argument. Rock Hill Radiology and Gilleland argue Ms. Pratt suffered zero loss of consortium because only two days elapsed

between the time he was sent home from PMC and when he began receiving care at CMC-Pineville. (Pet. at 14). That suggestion is not just cold, it is baseless. If Gilleland meets the standard of a reasonable radiologist by making the call to the emergency room, Mr. Pratt never leaves the hospital and immediately receives treatment. Thus, Ms. Pratt's losses "began when she watched [Mr.] Pratt suffer through the ambulance ride back to Daughter's house." Pratt, 445 S.C. at 223, 912 S.E.2d at 281. And, to assume Ms. Pratt's losses were no different here than in the hypothetical world where Gilleland met his professional duty, is to suggest Mr. Pratt's ability to offer his wife "love," "comfort," "solace," and "guidance" is the same lying in agony on a couch as it would be in a hospital actively receiving treatment for his injury.<sup>2</sup>

The court of appeals was equally correct in finding no basis for the claim that the amount awarded to Ms. Pratt was grossly excessive. Rock Hill Radiology and Gilleland makes two flawed arguments on this point. First, they offer a mathematical calculation dividing the total loss of consortium by the number of days Mr. Pratt lived, noting the award amounts to \$ 30,000/day. (Pet. at 15-16). This Court has long opposed attempts to reduce damages to a math problem. Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 43, 691 S.E.2d 135, 146 (2010) ("proof with mathematical certainty of the amount of loss or damage is not required"). For appellate purposes, the courts have viewed their role not as making an independent judgment on the amount of a spouse's loss, but rather considering whether the plaintiff presented evidence at trial to support the amount awarded. Keene v. CNA Holdings, LLC, 426 S.C. 357, 384, 827 S.E.2d 183, 198 (Ct. App.

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<sup>2</sup> Again, this is a place where Rock Hill Radiology and Gilleland misrepresent the court of appeals' opinion. They argue the opinion did not address the argument that Ms. Pratt's loss of consortium would have been the same regardless of Gilleland's errors. (Pet. at 15); but see Pratt, 445 S.C. at 223, 912 S.E.2d at 281 ("Appellants point to no evidence in the record to support their argument that the aid, comfort, and support [Mr.] Pratt was unable to provide Wife while she cared for him on the sofa would have been equally lacking had he been in a hospital setting receiving aggressive therapy to reduce his pain and improve his shallow breathing").

2019), *aff'd* 436 S.C. 1, 870 S.E.2d 156 (2021) (finding seven figure loss of consortium award not grossly excessive where record detailed wife's testimony concerning her productive decades-long marriage to decedent). Plus, the court of appeals did indulge Rock Hill Radiology and Gilleland's dollars-per-day damages proposition, citing precedent affirming a verdict awarding ten times the damages per day of loss at issue here. Pratt, 445 S.C. at 224, 912 S.E.2d at 282 (citing Scott v. Porter, 340 S.C. 158, 170-71, 530 S.E.2d 389, 395-96 (Ct. App. 2000) (affirming \$ 600,000 in damages for decedent's two days of pain and suffering)). Rock Hill Radiology and Pratt can only reply that awards for survival claims should not be used to evaluate loss of consortium awards without ever explaining why.

Second, Rock Hill Radiology and Gilleland argue a loss of consortium award is per se grossly excessive if greater than the amount awarded in a survival claim for a decedent's losses. (Pet. at 16). This argument is presented without citation and is directly contradicted by Keene, which affirmed a loss of consortium award (\$ 5 million) that was two-and-a-half times as large as the survival verdict (\$ 2 million). 426 S.C. at 384-85, 827 S.E.2d at 198. The Petition also makes no effort to show the jury acted out of prejudice or had other improper motivations when, as the court of appeals pointed out, the jury awarded Ms. Pratt only a fraction of the total damages requested and declined to award punitive damages even after finding clear and convincing evidence of reckless conduct. Pratt, 445 S.C. at 224, 912 S.E.2d at 282. Accordingly, there has been no showing the loss of consortium award was grossly excessive and no basis for invading the province of the jury in determining the value of an injured party's loss.

**5. Rock Hill Radiology cannot undo on appeal its intra-trial concession regarding Virtual Radiology's error.**

Rock Hill Radiology decries its appearance on the verdict form's fault allocation question and the circuit court affirming the jury's assignment of 10% fault to it, insisting it could only be

vicariously liable for Gilleland's error and not Virtual Radiology's initial misread of Mr. Pratt's chest CT. (Pet. at 17-18). In its misleading argument about pleadings and pre-trial rulings, Rock Hill Radiology ignores the crucial facts that form the basis for the court of appeals' ruling and that are fatal to its appeal.

According to Rock Hill Radiology, the court of appeals rejected its fault allocation argument based solely on its failure to object to the verdict form at trial. (Pet. at 17). That is false. The court of appeals certainly noted the unobjected to verdict form, and it is reasonable to conclude Rock Hill Radiology would have raised a contemporaneous objection if it sought to preserve a fault allocation issue for appeal. Pratt, 445 S.C. at 224, 912 S.E.2d at 282. However, there were multiple other reasons why the argument failed. Chief among them was that Rock Hill Radiology affirmatively waived the issue by conceding on the record during trial Ms. Pratt was free to argue it was liable for Virtual Radiology's errors. Id. at 224-25, 912 S.E.2d at 282 ("In our view, this concession fatally undermines [Petitioners'] argument"). The court of appeals also directly addressed Rock Hill Radiology's insistence that holding it liable for Virtual Radiology's error is at odds with Ms. Pratt's pleading. The rules of civil procedure consider a matter to be included in the pleadings if "tried by express or implied consent of the parties." Id. (quoting Rule 15(b), SCRPC). Counsel's admission that the claim against Rock Hill Radiology for Virtual Radiology errors was properly before the court provided the requisite consent. Id.

Finally, there is zero merit in the Petition's statement that the circuit court "ruled there was no such" claim. (Pet. at 17) (citing R. p. 139). The cited ruling said only that Ms. Pratt was not entitled to summary judgment on the claim. There is a big difference between denying a motion for summary judgment and ruling on the merits of the movant's position. Denying summary judgment simply refuses to take the issue away from the jury, it in no sense prevents a party from

presenting their argument to the jury. Ballenger v. Bowen, 313 S.C. 476, 443 S.E.2d 379, 380 (1994); see also Jean Hoefer Toal et al., Appellate Practice in South Carolina 162 (3d ed. 2016) (“The denial of summary judgment does not finally determine anything about the merits of the case” as the matter on which judgment was denied “may be raised again later in the proceedings”).

In sum, Rock Hill Radiology lost on its fault allocation argument for three valid reasons. First, it did not consider the issue sufficiently important to raise an objection to the verdict form. Second, it admitted on the record that its potential liability for Virtual Radiology errors was fair game at trial. Third, Ms. Pratt presented evidence to show Rock Hill Radiology was in fact at fault for Virtual Radiology’s misconduct. Pratt, 445 S.C. at 225, 912 S.E.2d at 282. These valid rulings, most of which the Petition ignores, need no further appellate review.

**6. By statute, the jury’s finding of reckless and grossly negligent conduct prevent reduction of the noneconomic damages award.**

The damage limitation Rock Hill Radiology and Gilleland advocate is governed by statute and does not apply to a verdict based on reckless or grossly negligent conduct. Pratt, 445 S.C. at 228, 912 S.E.2d at 284 (quoting S.C. Code Ann. § 15-32-220(E)). Since the jury found both in this case, the court of appeals correctly held the damage limitation does not apply here. As for the notion that Ms. Pratt somehow failed to prove proximate cause, the verdict form plainly states otherwise. (R. p. 3) (jury answering “yes” on proximate cause question).<sup>3</sup>

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<sup>3</sup> Rock Hill Radiology and Gilleland refer to their court of appeals’ briefing on arguments that they should be treated as a single entity for noneconomic damages purposes and that a hypothetical verdict reduction should be based on the damage limitation figure in effect on the date of injury rather than the date of judgment. (Pet. at 20 n. 3). Accordingly, Ms. Pratt hereby incorporates by reference her earlier arguments on these points. (Resp’t Final Br. at 35-40). As demonstrated there, Rock Hill Radiology and Gilleland’s preferred interpretation of the governing statutes cannot be reconciled with their unambiguous text.

**7. The Court of Appeals’ correctly determined the circuit court made a reasonable allocation of funds from Ms. Pratt’s settlement with PMC for setoff purposes.**

As the court of appeals’ determined, the setoff process in this case was conducted reasonably and in line with the governing principles this Court has imposed. Pratt, 445 S.C. at 229-32, 912 S.E.2d at 284-86. On the merits, the court of appeals was correct in holding the circuit court properly exercised its discretion in determining a reasonable allocation, and the Petition presents no basis for further review.

Rock Hill Radiology and Gilleland’s core argument here is that, because Ms. Pratt’s counsel referenced a suggested allocation when the PMC settlement was announced during trial, the circuit court was “bound” to accept that suggestion and required to allocate funds accordingly for purposes of a setoff. (Pet. at 22). This Court’s recent precedent rejects that contention. Just last year, this Court held the “[k]ey principle” governing allocation for settlement approval is that the setoff judge has a duty to determine a reasonable allocation through a process which considers but does not “blindly accept” a proposed allocation whether offered by the plaintiff alone or by a proposal in the plaintiff’s agreement with the settling party. Jolly v. Fisher Controls Int’l, LLC, 443 S.C. 511, 532, 905 S.E.2d 380, 391 (2024).

Rock Hill Radiology and Gilleland acknowledge Jolly but argue it was misapplied because the court of appeals read it to say the determination of settlement fund allocation for setoff purposes is a post-verdict proceeding. (Pet. at 22). Yet, that is precisely what Jolly says and for good reason. Regardless of what a plaintiff proposes, what a plaintiff and settling party agreed to, or even what a settlement approval judge signs off on, it remains the setoff judge’s duty to make a determination of the reasonable allocation. Jolly, 443 S.C. at 534, 905 S.E.2d at 392. The process of making that determination, as a matter of law, can only take place post-trial. For fairness sake, the party seeking a setoff must be afforded an opportunity to be heard on allocation. Since the right to setoff does

not exist until a verdict is entered against this party, the proceeding to determine a reasonable allocation must be a post-verdict hearing. Id. (“That hearing may take place only after the verdict because until then there is no issue to resolve”). As such, the court of appeals correctly applied Jolly on the timing and procedure for determining a reasonable allocation of settlement funds to apply for setoff purposes. Rock Hill Radiology and Gilleland are incorrect in suggesting the court of appeals’ opinion creates “confusion” or that Jolly requires “clarif[ication].” (Pet. at 22).

That is the sum total of Rock Hill Radiology and Gilleland’s argument on the setoff. They complain about timing and procedure but make no substantive argument that the circuit court abused its discretion in determining a reasonable allocation. It would be hard for them to raise a fairness argument here given that they were represented at the hearing where settlement allocation was discussed and given a full and fair opportunity to make their allocation argument. (R. pp. 905-07). Finally, Rock Hill Radiology and Gilleland fail to account for one other governing principle on allocation of settlement funds. As a nonsettling party, that process is not designed to work to their advantage. Riley v. Ford Motor Co., 414 S.C. 185, 197, 777 S.E.2d 824, 831 (2015) (“[s]ettlements are not designed to benefit nonsettling third parties” and “[i]f the position of a nonsettling defendant is worsened by the terms of a settlement, this is the consequence of a refusal to settle.”). Rock Hill Radiology and Gilleland were not entitled to a favorable allocation, and the court of appeals correctly determined the circuit court made a reasonable allocation.

**CONCLUSION**

Based on the arguments stated above, Ms. Pratt respectfully requests the Court deny Rock Hill Radiology and Gilleland’s petition for writ of certiorari. They cite no novel issue, conflict with precedent, or other matter meriting this Court’s discretionary review. The jury dutifully analyzed substantial evidence of reckless and grossly negligent medical errors that radically altered

Ms. Pratt's life. As the court of appeals' unanimous opinion correctly held, both the jury's verdict and the circuit court's rulings on post-trial motions were consistent with the evidence and South Carolina law.

Respectfully submitted,

/s/ Jordan C. Calloway

Chad A. McGowan (SC Bar No. 9943)

Ashley White Creech

Eve S. Goodstein

Jay F. Wright (SC Bar No. 78738)

Jordan C. Calloway (SC Bar No. 78728)

McGowan, Hood, Felder & Phillips, LLC

1539 Health Care Drive

Rock Hill, SC 29732

(803) 327-7800

cmcgowan@mcgowanhood.com

acreech@mcgowanhood.com

egoodstein@mcgowanhood.com

jaywright@mcgowanhood.com

jcalloway@mcgowanhood.com

Attorneys for Respondent

Rock Hill, SC  
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