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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Maité Murphy, Circuit Court Judge

Appellate Case No. 2024-000443
Case No. 2021-CP-38-1138

Se'Anne Davis (Personal Representative for the
Estate of Adrianne Branton) ……...…… Respondent,

v.

The Regional Medical Center of Orangeburg and Calhoun Counties …… Appellant.

FINAL BRIEF OF RESPONDENT

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COUNTERSTATEMENT OF ISSUES ON APPEAL

I. Did the trial court properly apply the South Carolina Tort Claims Act's "per occurrence" limit in charging the jury on the applicable law, submitting a factual question about occurrences to the jury, and entering a reduced judgment of $2.4 million against TRMC based on the jury's verdict and the applicable statutory limits?

II. Did the trial court properly award interest on the reduced verdict against TRMC based on TRMC's failure to accept the Offer of Judgment filed pursuant to Rule 68, SCRCP, where the rule awards interest to the filer in the event the verdict is at least as favorable as the offer?

STATEMENT OF THE CASE

This is an appeal from the trial court's denial of JNOV to The Regional Medical Center of Orangeburg and Calhoun Counties ("TRMC") on February 16, 2024. (Notice of Appeal). TRMC filed the Motion for JNOV after the jury awarded Se'Anne Davis, as the Personal Representative of her mother's estate, $5 million on wrongful death and survival actions against TRMC.

Adrianne Branton, Ms. Davis's mother, died of overexposure to heat and sun in a boarding house yard on October 3, 2019. A mere day before her death, TRMC had treated and discharged Ms. Branton. The Complaint, filed September 27, 2021, alleged TRMC and its employees had committed multiple acts of medical negligence that caused Ms. Branton to suffer injury and ultimately pass away and sought to recover damages for each occurrence of negligence under the South Carolina Tort Claims Act (hereinafter "SCTCA").[1] (R. pp. 16-27). On August 15, 2023, Ms. Davis filed an Offer of Judgment for $1.2 million pursuant to Rule 68, SCRCP, which expired without being accepted. (R. p. 48).

At trial on October 9 through 13, 2023, TRMC argued there was only one occurrence as a matter of law and moved for directed verdict. The trial court denied its motion, finding that whether there were multiple occurrences was an issue of fact for the jury. The trial court charged the jury on the law pertaining to "occurrences," listed three of the four-plus alleged-and-argued occurrences in a special interrogatory on the verdict form, and asked the jury to determine whether each of them was proven. (R. p. 825, line 19-p. 826, line 3; R. pp. 14-15). The jury made factual findings of two instances of negligence; namely that TRMC, through its employees, breached the standard of care in two separate and distinct ways: (1) negligently failing to stabilize Ms. Branton while she was under TRMC's care, and (2) negligently discharging Ms. Branton to a facility

[1] Because TRMC is a state-owned hospital, the action is governed by the Tort Claims Act.

unequipped to handle her medical needs. (R. pp. 14-15). The jury awarded $5 million for damages caused by TRMC's failures. (*Id.*).

TRMC filed post-trial motions arguing, *inter alia*, that the issue of occurrences should have been reserved for the court as a matter of law and that the evidence did not support a finding of more than one occurrence. (R. pp. 76, 77-78, and 81-85). TRMC also moved for a reduced verdict that reflected adjustments for set-offs and the per occurrence limit under the SCTCA. (R. pp. 73-74 and 89-91). Ms. Davis filed a post-trial motion for costs and offer of judgment interest pursuant to Rules 54(e) and 68(b). (R. pp. 92-96).

In an Order entered on February 16, 2024, the trial court denied TRMC's Motion for JNOV on the occurrences issues, but granted TRMC's motion to reduce the verdict, and, accounting for set-offs, entered judgment for $2.4 million, reflecting the SCTCA's $1.2 million per occurrence limit and the jury's finding of two occurrences. (R. p. 10). The trial court also partially granted Ms. Davis's motion, awarding her $31,035.62 in offer of judgment interest pursuant to Rule 68(b) and $2,434.41 in costs pursuant to Rule 54(e), SCRCP. (R. pp. 10-11).

Following the court's February 16, 2024 order, TRMC filed its Notice of Appeal on March 15, 2024, contesting the $1.2 million award for the second occurrence as well as the court's award of $31,035.62 in interest pursuant to Rule 68(b). (Notice of Appeal).

STATEMENT OF FACTS

For approximately nineteen years leading up to early 2019, Adrianne Branton lived happily and with almost complete independence in Columbia, South Carolina, not far from where her daughter, son-in-law, and three grandchildren lived. (R. p. 452, lines 12-24; R. p. 552, lines 6-25). Prior to 2000, Ms. Branton had significant struggles with her mental health, but even then, she was able to maintain a relationship with her daughter, Se'Anne Davis. Ms. Davis was raised in

Columbia by her grandfather (Ms. Branton's father), who was an elementary school teacher, a World War II Army veteran, and a retired Lieutenant Colonel, and throughout Ms. Davis's childhood, the family welcomed Ms. Branton home for weeks at a time when she was healthy enough to be out of the hospital. (R. p. 548, line 15-p. 549, line 15).

Management of Ms. Branton's chronic mental health condition was heavily dependent on the use of psychotropic medications. When dealing with the powerful medications used to treat serious psychiatric conditions, physicians must engage in some level of "trial and error," as different drug combinations are tested and different dosages of these drugs are titrated up and down to determine the proper levels. Indeed, Ms. Branton required five inpatient psychiatric hospitalizations leading up to 2003 before her physicians were finally able to hone a combination of drugs and their respective dosages that would allow Ms. Branton to function at her baseline. (R. p. 453, lines 2-6; R. p. 476, lines 12-18). With treatment and the aid of these medications, Ms. Branton was finally able to achieve a happy and independent life for 19 years, spending time with family and friends, babysitting her great-grandchildren, and enjoying the normal rhythms of daily life. (R. p. 452, lines 12-24). During those nineteen years, Ms. Branton occasionally had "episodes" of acute mental illness, but these were rare and could be addressed with adjustments to her medications. (R. p. 552, lines 8-25).

In May of 2018, Ms. Branton tragically lost her boyfriend. (R. p. 453, lines 20-24). As can be common with psychiatric patients, this significant loss triggered a recurrence of Ms. Branton's mental illness, most likely caused by an unwillingness to take her medications regularly. (R. p. 453, line 23-p. 454, line 3). From July of 2018 through November of 2018, Ms. Branton was committed to the Bryan Psychiatric Hospital, where she underwent significant medication

adjustments under the supervision of physicians. (R. p. 454, lines 6-21). She then returned to her baseline for several months. (R. p. 454, line 22-p. 455, line 13).

In early 2019, however, Ms. Branton's mental illness shifted again, and she struggled with medication regulation and behavioral modulation. (R. p. 455, line 17-p. 456, line 15; R. pp. 475-79). On May 18, 2019, Ms. Branton was involuntarily committed to Three Rivers Behavioral Health for a period of over two months. (R. p. 456, line 14-p. 457, line 7). Ms. Branton again underwent significant medication adjustments under the careful observation of physicians. (R. p. 457, lines 3-21). In August and September 2019, Ms. Branton was hospitalized two additional times, once at Three Rivers Behavioral Health and once at Mary Black Hospital in Spartanburg. In the periods between hospitalizations, Ms. Branton briefly resided at the iKare Boarding Home in Orangeburg, under the purported care of its proprietor, Estelle Hutchinson. (R. p. 278, lines 5-18; R. p. 562, line 25-p. 563, line 13). Ms. Davis tried to visit her mother multiple times while she resided at iKare, but she was always rebuffed by Ms. Hutchinson. (R. p. 417, line 24-p. 418, line 23; R. p. 563, line 20-p. 564, line 9).

On October 2, 2019, Ms. Branton suffered a severe psychiatric episode, prompting Ms. Hutchinson to call 911 and resulting in Ms. Branton being transported to TRMC by ambulance. (R. p. 378, lines 5-3; R. p. 381, lines 4-7; R. p. 992). Dr. Steven Burkholz, an emergency room physician working under contract at TRMC that day, was the first physician to evaluate Ms. Branton. He described her as "agitated . . . unstable . . . depressed . . . paranoid . . . upset . . . [and] psychotic," and initiated involuntary commitment to the TRMC Behavioral Health Unit "based on . . . symptoms and examples of behavior which indicate mental illness and probable risk of harm." (R. p. 248, line 1-p. 250, line 2; R. p. 254, lines 5-12). Dr. Burkholz, acting on behalf of TRMC, went so far as to execute a "petition for involuntary commitment," which he described as

something "not at all" taken lightly, and only to be utilized in circumstances where there is an indication that the patient is in danger. (R. p. 252, line 23-p.253, line 13; R. p. 269, lines 17-21). The petition indicated that, in Dr. Burkholz's assessment, Ms. Branton was at risk for both self-harm and self-neglect. (R. p. 254, lines 5-12).

Ms. Branton was then evaluated by Dr. Alberto Gonzalez, the psychiatrist with whom TRMC had contracted to provide psychiatric services in its emergency department. At Dr. Burkholz's request, Dr. Gonzalez physically examined and interviewed Ms. Branton and affirmed and expanded upon all of Dr. Burkholz's prior findings and concerns. Dr. Gonzalez ultimately recommended that Ms. Branton be prescribed medication for stabilization and be admitted to the Behavioral Health Unit within TRMC. (R. p. 260, line 23-p. 262, line 1). Dr. Gonzalez recognized that, as a psychiatric patient who was acutely psychotic, Ms. Branton needed a minimum of seven to ten days in the psychiatric hospital to allow a physician to adjust Ms. Branton's anti-psychotic medications one by one. (R. p. 311, lines 4-24). Also recognizing that Ms. Branton had a difficult time taking oral medications, Dr. Gonzalez formulated a treatment plan that would incorporate the use of long-acting injections of anti-psychotic medications to assist in ensuring compliance with the new medication regimen once it was perfected within the unit. (R. p. 474, line 16-p. 476, line 11). Importantly, Dr. Burkholz and his colleague, Dr. Gonzalez—who both had the opportunity to examine and interview Ms. Branton on behalf of TRMC—came to the same conclusion: she was mentally unstable and required treatment to be stabilized. (R. p. 259, line 22-p. 262, line 10).

The third and final physician to see Ms. Branton that day was Dr. Bryan West. As the Director of Psychiatry for TRMC, Dr. West was the "gatekeeper" for the 15-bed behavioral health

unit at the hospital. (R. p. 1259, line 21-p. 1260, line 5;[2] *see also* R. p. 266, lines 5-21 (Dr. Burkholz did not have admitting privileges and could only *recommend* admittance)). Ms. Branton's TRMC chart clearly indicated that she presented with a psychiatric problem, was not taking her prescribed medication, and had been discharged from a mental hospital in Spartanburg just one day prior. (R. p. 476, line 19-p. 477, line 14; R. p. 868; R. p. 1224, line 21-p. 1225, line 19; R. pp. 874 and 878). The notation of her recent hospitalization was significant because this type of information serves as an indication to a doctor that he should be concerned with the patient's mental health or, at the very least, that further investigation is needed. (R. p. 478, line 9-p. 479, line 4).

Dr. West also had access to Dr. Burkholz's and Dr. Gonzalez's evaluations and recommendations in the chart. (R. p. 317, lines 4-15). However, Dr. West missed or ignored all this important information and instead erroneously concluded that Ms. Branton was in the hospital simply because one of her medications was causing her some dizziness. (R. p. 491, lines 4-11). Dr. West then countermanded the recommendations two colleagues had just made *on behalf of TRMC* and *reversed* the petition for involuntary commitment, even though it had already been submitted to the Probate Court for Orangeburg County. (R. p. 493, lines 10-20). Dr. West gave an instruction that Ms. Branton should discontinue Clonazepam, an anti-anxiety medication, while simply continuing with the rest of her medications (which she had admittedly not been taking), and he specifically noted that she could return to the boarding home where she had been staying. (R. p. 1238, lines 7-9; R. p. 1302, lines 11-25; R. p. 489, lines 2-18).

Thus, based on Dr. West's actions, Ms. Branton was discharged back into the care of Ms. Hutchinson less than seven hours after Ms. Hutchinson had called emergency services, with

[2] Dr. West did not appear at trial. His deposition testimony was played for the jury by video. (R. p. 621, lines 9-15).

nothing having been done to address Ms. Branton's mental instability or the well-documented concern that she was not taking her prescribed medication. (R. p. 381, lines 8-12; R. p. 387, lines 13-15; R. p. 425, line 22-p. 426, line 3; R. p. 992 (EMS onset time 8:39am); R. p. 929 (TRMC discharge time 3:03pm)). Although Dr. West's only recommendation was that Ms. Branton discontinue the Clonazepam that he believed was making her dizzy, TRMC discharged Ms. Branton with instructions that her medications be "**continue[d] with no changes**." (R. p. 909 (emphasis added); *see also* R. p. 790, lines 16-19).

At discharge, TRMC staff apparently told Ms. Hutchinson that Ms. Branton had a UTI, gave her Ms. Branton's discharge instructions, and told her to bring Ms. Branton back if UTI symptoms worsened.[3] (R. p. 383, line 8-p. 384, line 25). Because Ms. Branton indicated she did not want to go back with Ms. Hutchinson to the iKare Boarding Home, Ms. Hutchinson sought to take Ms. Branton to Ms. Brenda Williams at the Heavenly Living Boarding Home in Orangeburg. (R. p. 389, lines 3-7; R. p. 639, lines 2-5; R. p. 641, lines 9-24; R. p. 643, lines 1-8). However, Ms. Branton was still exhibiting clear signs of mental instability: she appeared irate and agitated, resisted going inside, and even tried to jump out of the vehicle after leaving the hospital. (R. p. 641, line 19-p. 642, line 10; R. p. 430, lines 17-25). Believing she could not take Ms. Branton back to the hospital for mental health concerns, Ms. Hutchinson called 911, and police responded. (R. p. 430, lines 2-16; R. p. 394, line 23-p. 395, line 4). After speaking with Ms. Branton, the responding officer was able to persuade her to spend one night in the home. (R. p. 395, lines 2-13; R. p. 643, line 20-p. 644, line 16).

[3] Oddly, the records do not indicate Ms. Branton was diagnosed with or treated for a UTI. (R. pp. 906-909).

Neither iKare Boarding Home nor Heavenly Living Boarding Home were DHEC-licensed residential care facilities, and ***neither were staffed to provide medical assistance or medication administration.*** (R. p. 645, line 25-p. 646, line 1; R. p. 662, lines 3-5). Unfortunately, failing to get the care and medication she needed, Ms. Branton refused offers to take her anywhere the next day, and instead spent much of the day outside wearing her late father's heavy wool military coat, in spite of heat-index temperatures reaching 103 degrees. (R. p. 523, lines 4-7; R. p. 653, lines 16-19; R. p. 658, lines 18-19). Boarding house staff eventually found her late that afternoon, unresponsive, sitting in a chair in the yard still wearing her father's coat. (R. p. 522, lines 4-13; R. p. 523, lines 2-7; R. p. 658, lines 9-15). According to Dr. Rose, the forensic pathologist who performed the autopsy on Ms. Branton, the cause of death was "nonexertional hyperthermia with hypotonic dehydration due to prolonged exposure to elevated environmental temperatures," which is "medical speak for a heat stroke." (R. p. 525, lines 12-21).

On September 27, 2021, Ms. Branton's daughter, Ms. Davis, filed this action against TRMC and other associated entities, asserting wrongful death and survival claims. Because TRMC is a state-owned hospital, the case falls under the SCTCA, which limits a state-employed physician's liability to $1.2 million per "loss arising from a single occurrence." S.C. Code Ann. § 15-78-120(a)(3).

In her Complaint, Ms. Davis alleges that TRMC's "acts and omissions" were negligent (R. p. 22, ¶ 26) and identifies eleven unique instances of alleged negligence (R. pp. 22-23, ¶ 29). These eleven individual allegations include (1) "failing to exercise reasonable care to treat and stabilize" Ms. Branton and (2) "failing . . . to appropriately plan [her] discharge" from the hospital "due to insufficient knowledge of placement." (*Id.*). These allegations are precisely the bases on which the jury ultimately found TRMC liable for Ms. Branton's death, indicating in the special

interrogatories on the Verdict Form that TRMC both (1) "fail[ed] to stabilize Adrianne Branton" and (2) "discharg[ed] Adrianne Branton to an environment unequipped to handle her medical needs." (R. p. 15). Ms. Davis's Complaint also incorporates the affidavit of medical expert David S. Husted, M.D., M.S., attached as Exhibit 1, which delineated numerous breaches in more detail. (R. p. 23, ¶ 29(k); R. p. 39, ¶ 9 ("The reasonably prudent clinician would have recognized an individual such as Ms. Branton . . . will be at great risk when being discharged [to a boarding home]. Sadly, in a marked deviation from the standard of care, Dr. West failed to do so.")).

Dr. Husted was deposed during pre-trial discovery, as was TRMC's expert, Dr. Susan Hardesty. (R. p. 997; R. p. 1054). Both depositions addressed and further developed the claims for multiple occurrences of negligence Ms. Davis alleged. (*See generally* R. pp. 997-1186).

On September 28, 2023, Ms. Davis served TRMC with a pretrial brief indicating she would ask for a special interrogatory regarding the number of occurrences to be included on the verdict form. (R. p. 1564; R. pp. 53-58). Presumably in response to this, on the eve of trial, TRMC submitted a Motion *in Limine* requesting that Ms. Davis "not be allowed to characterize this as 'multiple occurrences.'" (R. pp. 64-66, quote on p. 66). The court heard arguments, took the motion under advisement overnight, and ultimately ruled that the issue of multiple occurrences is "a question of fact for the jury to determine." (R. pp. 138-143; *see also* R. p. 731).

Judge Maité Murphy tried the case before a jury from October 9-13, 2023. At trial, Dr. Husted testified that TRMC and its employee, Dr. West, breached the applicable standard of care multiple times, including the three breaches identified by the special interrogatories on the Verdict Form: (1) by failing to stabilize Ms. Branton, (2) by failing to admit her to the Behavioral Health

Unit, and (3) by releasing her to a boarding house unable to assist her with her medications.[4] (R. p. 498, lines 1-13).

First, as the jury found, the preponderance of the evidence showed that TRMC negligently failed to stabilize Ms. Branton. The standard of care required that Ms. Branton be stabilized before being discharged. (R. p. 313, lines 8-14; R. p. 498, lines 6-9). When Dr. West evaluated her, Ms. Branton was "actively psychotic." (R. p. 490, lines 5-8). To be stabilized, Ms. Branton would have required a seven-to-ten-day admission to a psychiatric unit wherein the patient's medications could be adjusted one by one and long-acting injectables could be incorporated to address the non-compliance issues which had arisen after the patient's most recent involuntary commitments. (R. p. 261, line 4-p. 262, line 10; R. p. 310, line 9-p. 312, line 4; R. p. 492, line 20-p. 493, line 9). Failing to stabilize her was dangerous, and the harm she sustained was foreseeable, because, as

[4] In addition to the three breaches on the Verdict Form, Ms. Davis argued that TRMC also breached the standard of care by failing to communicate about Ms. Branton's recent hospitalization, by making instructional errors in the discharge paperwork, and by Dr. West failing to confer with other treating doctors prior to rescinding the petition for involuntary commitment. (*See, e.g.*, R. pp. 76-79 and 744-755 (argument and presentation of additional negligent acts alleged)). In fact, TRMC's own expert witness, Dr. Hardesty, admitted TRMC erred in issuing inaccurate discharge instructions (R. p. 790, line 16-p. 791, line 8) and "missed some things that they should have possibly looked at . . . . [S]pecifically for the Medical Center was the fact that they weren't aware of the Spartanburg admission from the day before and [knowing this] *might have changed their decisions*" (R. p. 756, lines 3-9) (emphasis added). This was in spite of it being documented in Ms. Branton's chart that she had been hospitalized in Spartanburg until the day before. (R. p. 477, lines 7-14; R. p. 868). Dr. Hardesty testified that the failure of Dr. West and others within TRMC to grasp this key piece of information was a "*systems failure"* that could have been prevented with better training by Defendant TRMC. (R. p. 1081, line 21-p. 1083, line 6; R. p. 1092, line 1-p. 1093, line 4; R. p. 1123, line 14-p. 1124, line 18; R. p. 1126, line11-p. 1127, line 5; R. p. 744, line 16-p.745, line 3; R. p. 746, lines 9-24; R. p. 755, line 18-p.756, line 21). Much of this deposition testimony was played for the jury during Dr. Hardesty's cross examination, although the impeachment testimony is not recorded in the transcript. (R. p. 736, line 16-p. 737, line 21). Even beyond these admissions, in opposing TRMC's Motion for Directed Verdict, Ms. Davis's Counsel argued Dr. Husted's testimony alone supported "at least four separate occurrences." (R. p. 618, lines 6-12). However, because the jury only found two occurrences, this factual summary focuses on the evidence that supports those occurrences.

Dr. Burkholz explained at trial, patients in Ms. Branton's condition may "have no intent of killing themselves" and yet still "[do not] have the sensibility to know that [actions such as] jumping out in front of cars is life threatening." (R. p. 255, lines 1-3). This concern that Ms. Branton was susceptible to self-harm or self-neglect was the basis for Dr. Burkholz seeking involuntary commitment for Ms. Branton. (R. p. 254, lines 5-12). Ultimately, this concern proved to be justified because, as Dr. Burkholz confirmed, wearing a heavy wool jacket in the hot sun would also be an example of conduct that is not suicidal, but still constitutes self-harm, as this conduct is "not reasonable . . . based on the environment" and, in this case, "caused a serious medical problem." (R. p. 255, lines 4-8). In sum, Ms. Branton died because she was never stabilized and the risk of self-neglect was never addressed.

Second, the jury concluded it was negligent to discharge Ms. Branton to a boarding house when she was "not capable of managing her own medication" because a boarding house "can't make sure she takes her meds." (R. p. 483, lines 21-22; R. p. 489, line 24-p. 490, line 4; R. p. 498, lines 1-5). Although Ms. Branton *required* assistance in managing her medications and in completing the basic activities of daily living, she was specifically discharged to a facility that was *legally prohibited* from providing any such assistance. (R. p. 1102, line 8-p. 1104, line 11;[5] R. p. 483, lines 10-24). Dr. Gonzalez, the first psychiatrist to evaluate Ms. Branton at TRMC, provided extensive testimony explaining why it was a breach of the standard of care to discharge Ms. Branton back into the care of a boarding home proprietor. (R. p. 312, line 15-p. 319, line 12; R. p. 348, lines 1-20). When asked about the "discharge meeting" held when Ms. Hutchinson came to TRMC to retrieve Ms. Branton, Dr. Gonzalez testified, "***I don't know what they were thinking*** . .

[5] As noted above, Dr. Hardesty's deposition testimony was played to the jury on cross examination. (*See, e.g.*, R. p. 736, lines 20-23; R. p. 737, line 13).

. it's not a good idea to send a patient back to the same environment that brought her here without changing anything." (R. p. 318, lines 9-18 (emphasis added); *see also* R. p. 489, line 24-p. 490, line 8 (Dr. Husted testifying Ms. Branton was "actively psychotic" and "not capable of managing her own medication")). Dr. Gonzalez further explained, "the patient is my responsibility until I give [her] to someone who accepts that responsibility and says, 'Okay, I can handle it from here.'" (R. p. 350, lines 12-18). "[Y]ou don't want to send somebody back to the same environment that sent them to you with no changes." (R. p. 312, lines 15-17). Unfortunately, Dr. West did just that. In a blatant disregard for the standard of care, ***Dr. West entered an order for Ms. Branton's discharge to a boarding house that could not legally provide the care and assistance her life depended on.*** (R. p. 314, lines 14-17 ("[I]f they could not enforce her medications, and she needs her medications to function[, then] that's why I think they were having those problems."); R. p. 324, line 25-p. 325, line 8 (admitting Ms. Branton to the Behavioral Health Unit would have avoided the tragedy of her death); R. p. 540, lines 2-8 (Dr. Rose testifying that Ms. Branton would not have died if she had been admitted)).

At the close of Plaintiff's case on Wednesday, TRMC moved for a directed verdict on the issue of occurrences, arguing that, even considering the evidence in the light most favorable to Ms. Davis, "[a]s a matter of law, [TRMC] cannot see how the hospital could be liable for more than one occurrence." (R. p. 613, lines 22-24). And, further, "[i]t's just not a jury issue." (R. p. 614, lines 4-5). The court denied the motion, however, finding that "[t]here [was] evidence of independent acts of negligence by the Defendant," which were "questions of fact for the jury to determine." (R. p. 619, lines 7-10).

The following day, the court held a working lunch with counsel for the purpose of going through proposed jury instructions and the verdict form. (R. p. 671, lines 11-15; *see also* R. p. 801,

lines 3-4 (Counsel for TRMC refers to "the issue of special interrogatory and verdict form," asking whether "we ever settle[d] on that," indicating the verdict form was also discussed during lunch.)). At this point, the court had ruled twice that there was evidence of multiple occurrences sufficient to create an issue of fact that would be placed in the hands of the jury, and Ms. Davis had requested a special interrogatory be used on the verdict form to allow the jury to make this determination. As noted in the trial court's order denying JNOV:

> Plaintiff requested the jury be provided with a line on which to write in the number of occurrences. In response, TRMC specifically asked that the verdict form be fashioned in the format that was ultimately provided to the jury.

(R. p. 3). The format ultimately provided to the jury—as proposed and consented to by the parties—included a special interrogatory describing three of the occurrences Ms. Davis claimed and presented evidence on at trial and asking the jury to determine whether each had occurred. (R. p. 15). At the close of trial on Thursday, the court provided all parties with the proposed jury charges and verdict form, instructing counsel to let the court know if anyone had any proposed changes or edits. (R. p. 803, line17-p.804, line 8).

Friday morning, the final day of trial, the court held "a charge conference in chambers to review the proposed jury instructions," after which the court went on the record outside the presence of the jury **specifically to allow TRMC to note its objections**. (R. p. 805, lines 3-7). TRMC again argued at length that rather than submit the question to the jury, the court should find as a matter of law that there was only one occurrence in this case, and therefore, that the jury should not be charged on the law of occurrences at all. (R. p. 805, line 11-p. 811, line 6). Summarizing his argument, Counsel concluded,

> [A]gain, we would take the position that it is improper to leave that decision to the jury that that is a matter of law that the Court has to determine. And based on those authorities and position, that's why

> we would take exception with the charging of the jury about the occurrence.

(R. p. 810, line 25-p. 811, line 6). The court disagreed, ruling "the evidence presented has established questions of fact as to separate occurrences in this matter." (R. p. 812, lines 18-20). While TRMC noted they had the "same objections" to presenting the question of occurrences to the jury on the verdict form, **TRMC made no objections to the substance or phrasing of the special interrogatories included on the verdict form.** (R. p. 813, lines 19-22).

The jury charges explained, in relevant part, that a "physician is answerable" for the negligent failure to "attend and treat a patient at a time when the need of treatment is known to the physician," and further,

> To recover for the lack of diligence of a physician in attending a patient, the Plaintiff must show that such lack of diligence was a proximate cause of the injury for which the redress is sought. . . . Negligence is the failure to do what an ordinarily careful doctor in the Defendant's field of medicine would have done under the same or similar circumstances or the doing of something that an ordinarily careful doctor would not have done under the same or similar circumstances. . . . ***Your decision on the issue of professional negligence must result from resolving whether any of the Defendants . . . deviated from the standard of care required of each of them. . . .*** Occurrence means an unfolding sequence of events which proximately flow from a single act of negligence. The Plaintiff has alleged multiple occurrences of negligence in this case. . . . ***The Plaintiff has the burden of proving that each act of negligence was separate and independent in order for you to find that more than one occurrence occurred***.

(R. p. 821, lines 7-15; R. p. 822, lines 4-10; R. p. 824, lines 20-25 (emphasis added); R. p. 825, lines 19-22; R. p. 825, line 25-p. 826, line 3 (emphasis added)).

Following the jury charges, TRMC noted the "same objections that [it] raised earlier for the same reasons," namely, that the court should have granted its Motion for Directed Verdict on the grounds that, as a matter of law, there could only be one occurrence. (R. p. 834, lines 14-15).

Once again, there were no objections to the special interrogatories used on the verdict form. (R. p. 834, lines 14-19).

After hours of deliberation, the jury returned a verdict for Ms. Davis. (R. p. 836, line 4). The jury awarded $4 million on the survival claim and $1 million on the wrongful death claim. (R. p. 14). In addition, the jury answered "yes" to two out of three special interrogatories, indicating that, "[h]aving been charged on the law of occurrences," the jury unanimously found "(a) [t]hat the Defendant breached the standard of care by failing to stabilize Adrianne Branton, who was actively psychotic," and "(c) [t]hat the Defendant breached the standard of care by discharging Adrianne Branton to an environment unequipped to handle her medical needs." (R. p. 15).

Following the verdict, TRMC filed a JNOV motion on several grounds, including the occurrence issue, making many of the same arguments now presented on appeal.[6] (R. pp. 72-91). Notably, this post-trial motion was the ***first time*** TRMC argued the language used on the verdict form was insufficient to support the entry of a judgment for multiple occurrences, even in the event the jury found two separate and independent breaches occurred. (R. pp. 79-81).

In denying TRMC's Motion for JNOV, the trial court held there was no deficiency in the pleadings; that Dr. Husted, Ms. Davis's expert, properly "set forth a specific evidentiary basis from which the jury could find up to four separate occurrences;" and that "the verdict form was clear and unambiguous, and the jury charges provided sufficient instruction and guidance as to [the jury's] duties." (R. pp. 1-3). The court applied set-offs and reduced Ms. Davis's damages from

[6] Grounds for TRMC's Motion for JNOV that have been abandoned on appeal include (1) the trial court erred in admitting certain photographs and videos into evidence (R. pp. 85-87); (2) the court should grant a new trial pursuant to the "thirteenth juror" doctrine (R. pp. 87-88); and (3) the court should grant a new trial nisi remittitur. (R. pp. 88-89).

$5,000,000 to $2,400,0000, consistent with the jury's finding of two occurrences, and entered judgment accordingly. (R. pp. 10-11).

Ms. Davis filed a Motion for Costs and Interest based on an Offer of Judgment for $1.2 million filed on August 15, 2023. (R. pp. 92-96). The court granted this motion in part, awarding interest pursuant to Rule 68, SCRCP, based on TRMC's failure to accept the offer within 20 days of filing. (R. pp. 10-11).

STANDARD OF REVIEW

Appellant TRMC's brief identifies two issues: (1) the denial of its motion for JNOV and (2) the partial grant of Davis's Motion for Costs and Interest under Rule 68, SCRCP. Both the question regarding the award of interest and the denied JNOV, to the extent the denial was based on statutory interpretations, are reviewed de novo. *See, e.g., Wells v. Vetech, LLC*, 437 S.C. 428, 431, 879 S.E.2d 6, 7 (Ct. App. 2022) ("Because interpreting offers made under Rule 68 involves construing a contract and a court rule—both questions of law—our review is de novo."); *Smalling v. Maselli*, 438 S.C. 588, 593, 884 S.E.2d 510, 512 (Ct. App. 2022) ("Statutory interpretation is a question of law, which this court reviews de novo."). Reviewing a denied JNOV motion, however, is unique:

> In ruling on motions for directed verdict and JNOV, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions and to deny the motions where either the evidence yields more than one inference or its inference is in doubt. **The trial court can only be reversed by this Court when there is not evidence to support the ruling below.**

Creech v. S.C. Wildlife & Marine Res. Dep't, 328 S.C. 24, 28-29, 497 S.E.23d 571, 573 (1997) (internal quotation marks omitted). "In an action at law, on appeal of a case tried by a jury, the jurisdiction of the appellate court extends merely to the correction of errors of law, and **a factual finding by the jury will not be disturbed unless a review of the record discloses no evidence that reasonably supports the jury's findings.**" *Wright v. Craft*, 372 S.C. 1, 18, 640 S.E.2d 486, 495 (Ct. App. 2006) (emphasis added). In the case of JNOV motions, "neither the trial court nor the appellate court has the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence, but must "view[] the evidence and all reasonable inferences in the light

most favorable to the nonmoving party." *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331-32, 732 S.E.2d 166, 171 (2012).

ARGUMENT

I. The trial court properly charged the jury on the governing sections of the South Carolina Tort Claims Act, submitted all questions of fact to the jury, and entered judgment for $2.4 million based on the jury's verdict.

Because this case was brought pursuant to the South Carolina Tort Claims Act ("SCTCA") and alleges negligence against a physician, Ms. Davis is limited to a recovery of $1.2 million dollars per occurrence for the damages sustained.[7] S.C. Code Ann. § 15-78-120(a)(3) ("No person may recover in any action or claim brought hereunder against any governmental entity and caused by the tort of any licensed physician or dentist, employed by a governmental entity and acting within the scope of his profession, a sum exceeding one million two hundred thousand dollars **because of loss arising from a single occurrence** regardless of the number of agencies or political subdivisions involved."). The SCTCA defines "occurrence" as "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. Code Ann. § 15-78-30(g). In the case of medical or professional negligence, finding an act of negligence requires finding a deviation from the standard of care. *Brouwer v. Sisters of Charity Providence Hosps.*, 409 S.C. 514, 521, 763 S.E.2d 200, 203 (2014).

TRMC argues that the trial court should have limited Ms. Davis's recovery to one occurrence for essentially three reasons: (1) that multiple occurrences were insufficiently pled; (2) that the verdict form used was insufficient to support an award of two occurrences; and (3) that as a matter of law, there was only one occurrence in this case. For the reasons set forth herein,

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[7] Appellant's discussion of *Parker v. Spartanburg Sanitary Sewer District*, 362 S.C. 276, 607 S.E.3d 711 (Ct. App. 2005) and *Campbell v. City of North Charleston* 431 S.C. 454, 848 S.E.2d 788 (Ct. App. 2020), addressed on Page 10 of its Initial Brief, is unnecessary. Taking it as true that the cap is mandatory and self-executing, the trial court appropriately applied the cap to the verdict awarded in this case, entering judgment for $2,400,000 rather than the $5,000,000 that was awarded based on the jury finding two occurrences.

TRMC's arguments are without merit, and the trial court's Order and Judgment should be affirmed.

A. TRMC's arguments regarding the sufficiency of the verdict form are <u>not preserved</u> for appeal.

TRMC's basis for claiming the trial judge erred in entering a judgment for two occurrences is that the jury was only asked to find "breaches of the standard of care," and that there was no finding that the breaches were "separate and independent," as opposed to a single unfolding sequence of events, nor a finding of separate losses for each breach. (Appellant's Brief, Argument I (Initial Brief pp.12-17)). In other words, TRMC asserts that the special interrogatory used on the verdict form does not sufficiently support a jury determination that there were two occurrences. This issue was not preserved for appeal, however, as TRMC not only failed to object to the special interrogatory language used on the verdict form, but also **consented to the verdict form** at trial.[8]

"It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial [court] to be preserved for appellate review." *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). Under our preservation rules, a "losing party must first try to convince the lower court it has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred." *I'On, LLC v. Town of Mount Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). "This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments." *Id*.

[8] In support of its argument, TRMC cites to the jury charge regarding occurrences, arguing that it misstates the law and is illustrative of the trial court's error. (Appellant's Brief, Argument I, n.6). Like the language on the verdict form, however, TRMC made no objection to the language of this charge at trial.

"A contemporaneous objection is required to properly preserve an error for appellate review." *Doe v. S.B.M.*, 327 S.C. 352, 356, 488 S.E.2d 878, 880 (Ct. App. 1997) (citing *State v. Hoffman,* 312 S.C. 386, 440 S.E.2d 869 (1994)). "The duty is on the litigant to make a timely objection in order to preserve the right of review." *Doe*, 327 S.C. at 356, 440 S.E.2d at 880 (citing *Parks v. Morris Homes Corp.,* 245 S.C. 461, 141 S.E.2d 129 (1965)). In addition, "an objection should be sufficiently specific to bring into focus the precise nature of the alleged error so it can be reasonably understood by the trial judge." *State v. Prioleau*, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001). A specific, contemporaneous objection is imperative "to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000).

Therefore, "**a party may not argue one ground for objection at trial and another ground on appeal**." *McCall v. IKON*, 380 S.C. 649, 661, 670 S.E.2d 695, 701 (Ct. App. 2008) (emphasis added); *see also Taylor v. Medenica*, 324 S.C. 200, 216, 479 S.E.2d 35, 43 (1996) (holding the issue was not preserved for appeal where the party objected to witness testimony regarding prior convictions as collateral and irrelevant at trial, but then argued on appeal that the convictions were obtained without due process of law); *State v. Hudgins*, 319 S.C. 233, 237, 460 S.E.2d 388, 390 (1995) (finding the issue was not preserved for appeal where a criminal defendant objected to photographs being admitted into evidence at trial on Rule 403 grounds but argued on appeal that his due process rights were violated). This is true even when a party's failure to object is based on acquiescence with a ruling from the trial court because "**a party cannot acquiesce to an issue at trial and then complain on appeal**." *State v. Rios*, 388 S.C. 335, 342, 696 S.E.2d 608, 612 (Ct. App. 2010) (holding a party's request for a jury charge was abandoned when the judge indicated he was not inclined to include a requested charge and the party acquiesced) (emphasis

added); *see also State v. Wright*, 416 S.C. 353, 371, 785 S.E.2d 479, 488 (Ct. App. 2016) (finding an issue "unpreserved because [the defendant] acquiesced in the trial court's ruling and failed to object to the curative instruction the trial court gave to the jury."); *McKissick v. J.F. Cleckley & Co.*, 325 S.C. 327, 350, 479 S.E.2d 67, 79 (Ct. App. 1996) (**holding a party may not complain on appeal when it receives what it asked for at trial**).

Where the appeal is from the denial of a JNOV Motion, the Court must look to the arguments counsel makes in support of its motion for directed verdict because "[a] motion for a JNOV is merely a renewal of the directed verdict motion." *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331, 732 S.E.2d 166, 171 (2012) (citing *Wright v. Craft,* 372 S.C. 1, 20, 640 S.E.2d 486, 496 (Ct. App. 2006)). "Only the grounds raised in the directed verdict motion may properly be reasserted in a JNOV motion." *RFT Mgmt. Co.*, 399 S.C. at 331, 732 S.E.2d at 170-71.

Because TRMC did not object or otherwise raise any issue pertaining to the format or language of the special interrogatories on the verdict form at trial, they are precluded from doing so on appeal. TRMC contended at trial that there was only one occurrence as a matter of law. (R. p. 808, lines 5-8). However, once the trial court refused to make that finding as a matter of law and ruled the question of occurrences would go to the jury, TRMC acquiesced to the question being included on the verdict form as a special interrogatory that presented three alleged occurrences for the jury to consider. (R. p. 3; *see generally* R. pp. 727-732 (defense counsel made no objections to the verdict form)). TRMC did not object to the format, language, or phrasing of the verdict form, nor to the specific language used to charge the jury on negligence or occurrences. *Id.*

TRMC's only, fleeting mention of the verdict form was made after arguing at length that the court should determine the number of occurrences rather than submitting the issue to the jury.

After the judge again rejected TRMC's argument, Counsel for TRMC noted it "would have the **same objections** to the verdict form as well." (R. p. 813, lines 19-22) (emphasis added). By asserting it had the "same objections" to the verdict form, TRMC only preserved for appeal its position that the jury should not be given the opportunity to make any factual findings related to occurrences. This objection did not ask the trial judge to rule on whether the language used in the special interrogatory accomplished its intended purpose of allowing the jury to determine the number of occurrences in this case, and therefore, it was not raised and ruled upon. This failure to preserve this issue for appeal is clearest when one considers TRMC *specifically requested* that the special interrogatory be formatted as it was, which the trial judge pointed out in her order denying TRMC's Motion for JNOV:

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

(R. p. 3) (emphasis added). As noted in *McKissick*, a party who "got what it asked for at trial" cannot complain on appeal. 325 S.C. at 350, 479 S.E.2d at 79. The verdict form in this case was crafted at TRMC's request and with its substantial and specific input during trial, and TRMC made no objection or directed verdict argument that could even arguably preserve this issue for appeal. It was only after the jury issued its verdict and was dismissed that TRMC concocted an argument that the special interrogatories were insufficient to make a finding of multiple occurrences. Its

failure to raise this argument prior to its Motion for JNOV means the objection is forever waived. Because TRMC's only objections at trial were to the jury determining the number of occurrences in general and *not* to the wording of how the jury was asked to determine the number of occurrences, TRMC did not properly preserve any issues pertaining to what it now deems the jury finding "only" breaches of the standard of care, rather than "occurrences." Thus, the Court should not consider any such arguments in Appellant's Brief.

B. There is no special pleading requirement for multiple occurrences under the Tort Claims Act, and the Complaint in this case properly set forth a cause of action for medical negligence with multiple occurrences.

TRMC asserts on pages nine and ten of its brief that the trial court erred in entering an award for two occurrences because the Complaint did not properly allege multiple occurrences. TRMC complains, without plainly asserting error, that Ms. Davis "did not properly allege nor plead 'multiple occurrences'" but "merely mentioned" the existence of multiple occurrences; that the physician affidavit supporting the action "does not use the terminology 'multiple occurrences[;]'" and that the Complaint does not contain "any specific incidents, including date and time," or any "'loss' specifically arising from any purported 'occurrences.'" (Appellant's Brief, Argument I (Initial Brief pp. 9-10)). Appellant's argument is, first, misleading as to the contents of the Complaint, and second, meritless because Appellant cannot point to any authority indicating that anything more is required. There is no heightened or special pleading requirement for occurrences under the SCTCA. Further, TRMC cannot show any surprise or prejudice that resulted from the alleged pleading failure. Thus, the trial court made no error in allowing Ms. Davis to present evidence of multiple occurrences at trial, and this Court cannot reverse on this ground.

The South Carolina Rules of Civil Procedure require that a Complaint set forth "a short and plain statement of the facts showing that the pleader is entitled to relief," and "a prayer or demand for judgment for the relief to which he deems himself entitled." Rule 8(a), SCRCP. "The purpose of a pleading is fair notice to the opponent and the court." *Watts v. Metro Sec. Agency*, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001). In the absence of a statutory or rule-based special pleading requirement for a particular cause of action, nothing more than the "ultimate facts" on which a claim is based is required. *Id.* TRMC cannot cite to **any** authority supporting its proposition that there are any heightened or specific pleading requirements beyond those required of Rule 8(a), SCRCP for actions in which there is evidence of multiple occurrences. Even if there were such a requirement, Rule 15(b), SCRCP provides that pleadings may be amended at any time to conform to the evidence, but "failure so to amend does not affect the result of the trial of these issues." *Id.* In other words, because TRMC had fair notice of the numerous occurrences of negligence being alleged against it and Dr. West, the pleadings were sufficient to allow Ms. Davis to present evidence of multiple occurrences to the jury during the trial of this case.

As against TRMC and Dr. West, Ms. Davis's Complaint alleges that Dr. West "evaluated Ms. Branton," made no changes to her care other than advising she discontinue a single medication, "deemed her stable for discharge, and reversed the petition for involuntary admission." (R. p. 20, ¶ 16). The Complaint goes on to allege that Defendants breached the standard of care by, among other breaches, "failing to exercise reasonable care to treat and stabilize Decedent's mounting mental health emergency, . . . discharging the Decedent despite knowledge that she was psychiatrically unstable, . . . failing to exercise reasonable care to appropriately plan discharge" for Decedent, and in all ways "set forth in the affidavit of medical expert David S. Husted, M.D., M.S., attached as Exhibit 1 and incorporated by reference." (R. p. 22, ¶ 29). Finally, in her Demand

for Jury Trial, Ms. Davis specifically sought judgment against Defendants for "actual and consequential damages as to each independent cause of action **for each occurrence** against the Defendants." (R. p. 27, ¶ a) (emphasis added).

Undoubtedly, TRMC was well-aware of the ultimate facts being alleged and the evidentiary support Plaintiff intended to offer when it was initially served with the Complaint and Expert Affidavit of Dr. Husted. These facts were echoed, explored, and developed through Dr. Husted's deposition on December 16, 2022 (10 months before trial), and even through the deposition testimony of TRMC's medical expert, Dr. Hardesty. Five days *before* Dr. Hardesty was deposed, Ms. Davis served TRMC with her pretrial brief, clearly setting out that she would be asking for a special interrogatory that would require the jury to determine the number of occurrences at trial. Any contention that TRMC did not have notice of Ms. Davis's multiple occurrence claim sufficient to allow it to prepare a defense is baseless. It follows that the trial court rightly allowed Ms. Davis to present evidence of multiple occurrences so the jury could make a factual finding based on that evidence. Any argument to the contrary is unconvincing, and this Court should refuse to overturn the jury's verdict on these grounds as well.

C. The trial court properly submitted questions of fact to the jury and entered judgment for $2.4 million under the South Carolina Tort Claims Act's damages caps based on the jury's factual findings and damages award.

TRMC has argued that the number of occurrences under the SCTCA is strictly a question of law for the court, alleging the trial court erred in presenting this question to the jury. (R. p. 810, line 25-p. 811, line 3 ("[W]e would take the position that it is improper to leave that decision to the jury [and] that [] is a matter of law that the Court has to determine . . . ."); Appellant's Brief, Argument I (Initial Brief p. 10) ("The Appellant TRMC further argued that the issue relating to the number of occurrences would be a question of law . . . .")). However, in South Carolina, a

"trial court [does] not err in finding the jury [can] determine the number of occurrences because **applying the facts of a case to the statutory definition of 'occurrence' [under the SCTCA] is a question of fact for the jury.**" *Wood v. Horry Cty. Sch. Dist.*, Op. No. 2023-UP-244, 2023 WL 4105395 at *2 (S.C. Ct. App. June 21, 2023) (*citing Boggero v. S.C. Dep't of Revenue*, 414 S.C. 277, 280, 777 S.E.2d 842, 843 (Ct. App. 2015) ("Whether the facts of a case were correctly applied to a statute is a question of fact.")). Further, to the extent the question of occurrences presents a mixed question of law and fact, which was not argued below and therefore not preserved for appeal, TRMC's argument still fails as set forth below.

Our appellate courts have addressed the issue of occurrences under the SCTCA only a few times. In *Chastain v. Anmed Health Found.*, 388 S.C. 170, 694 S.E.2d 541 (2010), Ms. Chastain filed suit against a nursing home facility where she had been admitted, asserting that the facility and its nurses were negligent in allowing her to develop a large sacral pressure sore, which then became infected and required debridement. *Id.* at 171-72, 694 S.E.2d at 542. The jury returned a verdict of $2.2 million and found that Ms. Chastain was contributorily negligent, attributing 30% of the liability to her. *Id.* at 172, 694 S.E.2d at 542. There were no other questions or special interrogatories included on the verdict form. *Id.* at 174, 694 S.E.2d at 543 (referencing a general verdict form). Pursuant to the Charitable Funds Act, which provides that awards against charitable entities shall be limited to the same extent set forth in the SCTCA, AnMed moved to reduce the verdict to the SCTCA's cap for one occurrence, which is $300,000. *Id.* at 172, 694 S.E.2d at 542. In that case, Ms. Chastain's expert testified that there were 2,372 deviations from the standard of care, but the jury was not charged on the law of occurrences, and the verdict form did not inquire of the jury how many nurses rendered negligent care or how many times the standard of care was breached. *Id.* at 173-74, 694 S.E.2d at 543. The trial judge, reasoning that it "was impossible to

conclude that the jury found more than one occurrence," granted the remittitur. *Id.* at 174, 694 S.E.2d at 543. In affirming the trial court's ruling, our supreme court held,

> If [the plaintiff] alleges multiple occurrences, that is, that there was more than one single act of negligence from which proximately flowed an unfolding sequence of events, she bears the burden of proving each occurrence. Here, the jury was never instructed on the definition of occurrence, nor was it asked to determine whether there was more than one occurrence, either in the instructions or in its verdict.

Id. at 174, 694 S.E.2d at 543-44. Implicit in this holding is that a jury can, and where appropriate, should, be instructed on the definition of occurrence and asked to determine whether there was more than one. The foundation of the court's affirmation of the reduced verdict in that case was that the jury was ***not*** given instructions or special interrogatories related to the occurrence issue. *Id.* It follows that when it is clear from the jury instructions and verdict form that the jury **did** make a determination that there was more than one occurrence, the court should enter judgment based on the jury's findings.[9]

Our supreme court next considered the law of occurrences in the context of a jury trial in *Boiter v. S.C. Dep't of Transp.*, 393 S.C. 123, 134, 712 S.E.2d 401, 407 (2011), where it held that the plaintiffs carried their burden of proving two occurrences each because the jury found two independent and separate acts of negligence occurred. *Id.* at 134, 712 S.E.2d at 407. In that case, Mr. and Mrs. Boiter were both injured in an auto collision after being hit by another vehicle

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[9] Other South Carolina courts have followed *Chastain's* holding in this way. *See Knox v. United States*, C/A No. 0:17-cv-36-CMC, 2018 U.S. Dist. LEXIS 111445, at *15 (D.S.C. July 3, 2018) ("If Plaintiff presents evidence at trial to support more than one act of negligence, the jury will be instructed on the definition of occurrence and asked to determine whether Plaintiff has proven more than one occurrence."); *Doe 2 v. The Citadel*, Case No. 2012-CP-10-01858, 2014 WL 8727884, *30 (S.C. Com. Pl. Dec. 9, 2014) (finding that, under *Chastain*, "[t]he jury must be instructed on the definition of occurrence and asked to determine whether there [was] more than one occurrence, either in the jury charges or in the verdict form").

because of a failed bulb in a stop light. They filed suit against the South Carolina Department of Transportation ("SCDOT") and South Carolina Department of Public Safety ("SCDPS"). The jury found "SCDOT was negligent in not having a re-lamping policy in place, and SCDPS was negligent in not following its own policy to notify a SCDOT technician when a light had burned out." *Id.* at 134, 712 at 407. However, instead of entering judgment for two occurrences based on the jury's findings, the trial court "equated occurrence with the number of injuries sustained" and reduced the verdict to the limit for one occurrence. *Id.* at 133, 712 at 406. The supreme court reversed, however, focusing instead on "the number of negligent acts," and holding that a single injury may support a finding of multiple occurrences. *Id.* at 134, 712 S.E.2d at 406-07. The court emphasized that the negligent acts of SCDOT and SCDPS were "separate and independent," pointing out that one act of negligence did not cause the other, and there was "no indication that the Respondents' actions combined to form a single act of negligence." *Id.* at 134, 712 S.E.2d at 406-07. Although Appellant correctly points out that the *Boiter* court did not "adopt a bright line test based on the existence of multiple acts of negligence," the court clearly held that there were two occurrences *because* there were two "separate wrongful act[s]."[10] *Id.* at 133-34, 712 S.E.2d at 406. It also specifically noted that it was the **jury's finding** of **separate** negligent acts that necessitated the entry of judgment based on two occurrences. *Id.* at 134, 712 S.E.2d at 407 ("As found by the jury, SCDOT was negligent . . . and SCDPS was negligent . . . ."). Thus, the *Boiter*

[10] The court states at the outset that the prevailing party, the Boiters, "urge this court to focus on **the number of negligent acts**," in contrast with the number of injuries. *Boiter*, 393 S.C. at 133, 712 S.E.2d at 406 (emphasis added). It notes that the state departments' "wrongful acts" were "separate and distinct" and holds that there are two occurrences because "two independent and separate acts of negligence occurred here." *Id.* The court then refers to "two separate and independent acts of negligence" or "two separate and distinct acts of negligence" an additional three times in the short opinion. *Id.* at 133-34, 712 S.E.2d at 406-07. The court is clearly focused on the number of **separate** negligent acts.

court established both that a single injury could be the result of multiple occurrences *and* that the factual question of the number of occurrences should be decided by the jury. *Id.*

Finally, and most recently, this Court had the opportunity to decide almost the exact issue at hand today when it heard *Wood v. Horry County School District* less than two years ago. Op. No. 2023-UP-244, 2023 WL 4105395 (S.C. Ct. App. June 21, 2023). Apparently deciding the law on this point was already clear, the Court issued an unpublished opinion[11] holding that "[t]he trial court did not err in finding the jury could determine the number of occurrences **because applying the facts of a case to the statutory definition of 'occurrence' is a question of fact for the jury.**" *Wood*, 2023 WL 4105395 at *2 ("Whether the facts of a case were correctly applied to a statute is a question of fact." (*citing Boggero v. S.C. Dep't of Revenue*, 414 S.C. 277, 280, 777 S.E.2d 842, 843 (Ct. App. 2015))). The South Carolina Supreme Court evidently agreed with this holding, as it initially granted writ of certiorari in *Wood*, but, after oral arguments, dismissed the appeal as improvidently granted. *Wood v. Horry Cty. Sch. Dist.*, Op. No. 2024-MO-023, 2024 WL 4448787 (October 9, 2024) (dismissing the appeal); *see also, e.g.*, *Am. Sur. Co. v. Royall*, 160 S.C. 1, 8-9, 158 S.E. 127, 130 (1931) (holding where a "memorandum decision does not disclose the reasons for the Court's ruling, . . . in the absence of proof to the contrary, the legitimate inference is that the writ was denied because the Court was satisfied with the decision of the Court below").

In the *Wood* case, the plaintiff sustained a traumatic brain injury from concussions suffered during a high school football game, and he and his family alleged three occurrences of negligence against Horry County School District ("HCSD"): (1) carelessness in how district employees allowed the game to be played, (2) district employees' failure to monitor Logan during the game,

[11] Although the opinion was not published, *Wood* is worthy of serious consideration in the present case because its facts and issues are essentially identical to the facts and issues presented here.

and (3) the district's failure to train staff. (*Wood v. Horry Cty. Sch. Dist.*, Civ. Act. No. 2017-CP-26-06643, Verdict Form filed May 13, 2021, available on Horry County Public Index at sccourts.org). The plaintiffs presented evidence of the occurrences at trial, the jury was charged on the law of occurrences, and the verdict form included special interrogatories listing the three occurrences alleged and asking the jury whether HCSD had committed each. *Wood*, 2023 WL 4105395 at *2. The jury answered affirmatively on two of the three questions, and the trial court accordingly entered judgment against HCSD for twice the statutory per occurrence limit. *Id*. The government defendant (like the one in the current case)[12] sought to reduce the judgment to the single occurrence limit by asking the courts to intervene as a matter of law. Nonetheless, this Court upheld the trial court's entry of judgment for two occurrences:

> "The trial court did not err in finding the jury could determine the number of occurrences because applying the facts of a case to the statutory definition of 'occurrence' is a question of fact for the jury . . . . Moreover, evidence in the record supported the trial court's determination that the jury found two occurrences of gross negligence. The jury was instructed on the definition of occurrence and that each alleged act of gross negligence had to be 'separate and independent' in order to find more than one occurrence. Additionally, the jury checked 'yes' to two separate acts of gross negligence on the verdict form."

Wood, 2023 WL 4105395 at *2 (internal citations omitted). Although *Boiter* had already established the law on this issue, *Wood* made plain that a jury should be charged on the law of occurrences and allowed to apply the law to the evidence presented at trial to decide the number of occurrences proven. Thus, the trial court in the present case properly submitted this question to the jury.

[12] Appellant's counsel in this case was also the appellant's counsel in the *Wood* case.

In the case at bar, the trial court crafted special interrogatories based on the evidence presented at trial so that the jury, having been charged on negligence and the law of occurrences, could apply the law to the facts of this case and determine the number of occurrences proven. (R. pp. 14-15). The jury, having been charged that "the plaintiff has the burden of proving that each act of negligence was separate and independent in order for [it] to find that more than one occurrence occurred," affirmatively answered special interrogatories, specifically identifying two separate and independent breaches committed by TRMC. (R. p. 825, line 25-p.826, line 3; R. pp. 14-15). The evidence before the jury clearly supported its finding that separate and distinct acts of negligence had occurred, each of which was a proximate cause of Ms. Branton's death. (R. p. 3). The trial court then properly entered judgment based on the jury's findings of fact.

TRMC's assertion that the Plaintiff had a burden to show "a different 'loss' arose from each of the multiple occurrences claims during trial" is directly contrary to the South Carolina Supreme Court's ruling in *Boiter*.[13] The entire premise of the *Boiter* decision is that multiple acts of negligence or gross negligence can combine to cause a single injury, and it is up to the finder-

[13] Notably, counsel now representing TRMC recently made this precise argument on behalf of another client in *Gifford v. Horry Cty. Police Dept.*, Civ. Act. No. 4:16-cv-03136-MGL, 2023 U.S. Dist. LEXIS 55056 (D.S.C. Mar. 29, 2023). In that case, sexual assault victim Jessica Gifford alleged multiple occurrences of negligence against Horry County Police Department ("HCPD") related to its failure to discover and stop the sexual misbehavior of one of its detectives. *Id.* at *5. The jury awarded $500,000 against HCPD and found, via special interrogatory, three occurrences of negligence. *Id.* at *2. In a post-trial motion, HCPD argued the verdict had to be reduced to a single per-occurrence limit because "the verdict form does not reflect what portion of the $500,000 verdict is attributable to what 'occurrence' and what 'loss' [and] . . . it [was] possible that all of the damages were caused by just one of the three 'occurrences' found by the jury." *Id.* at *13. Judge Mary Geiger Lewis rejected this argument and denied the defendant's motion, explaining, "HCPD fails, however, to cite to any binding authority that has adopted this approach to jury verdicts in cases such as this. *And, the Court has searched in vain to find one*." *Id.* at *14 (emphasis added). Although HCPD appealed the ruling, the Fourth Circuit affirmed all findings of the District Court, upheld the $500,000 verdict and, later, denied HCPD's petition for rehearing. *Gifford v. Horry Cty. Police Dep't*, No. 23-1471, 2024 U.S. App. LEXIS 32225 (4th Cir. Dec. 19, 2024), *reh'g denied*, No. 23-1471 (4th Cir. Jan. 14, 2025).

of-fact to determine whether the acts of negligence were separate or were part of the same unfolding sequence of events. *Id.*, 393 S.C. at 134, 712 S.E.2d at 407 (discussing the jury's findings and concluding, "we do not believe that these two separate and independent acts of negligence constituted an unfolding sequence of events which injured the [plaintiffs]"). As established in *Boiter*, proving that there was more than one occurrence in this case required that Ms. Davis show multiple separate and independent acts of negligence that led to her mother's death; it did not require the jury to apportion damages between the occurrences. *Id.*

Finally, even TRMC's unpreserved arguments, had they been preserved, would also fail. Although its exact argument is unclear, TRMC claims that the trial court was required to decide, as a matter of law, that the breaches found by the jury constitute separate "occurrences," and not a single unfolding sequence of events. TRMC further seems to assert that in order to accomplish this, the trial court was required to engage in some kind of legal analysis *after* the verdict was rendered to determine whether the "breaches" were also "occurrences."[14] However, this argument ignores that the trial court pre-determined what separate and independent acts of negligence would be presented on the verdict form. As recognized in Appellant's brief, Ms. Davis presented testimony that there were at least four occurrences at trial. (Appellant's Brief, Argument I, fn.1 ("As the record demonstrates . . . in the middle of the trial, [Ms. Davis] alleg[ed] the existence of four occurrences."); R. p. 618, lines 6-9). However, only three potential occurrences were included on the verdict form. (R. pp. 14-15). This distinction is indicative that the trial court found the breaches included on the verdict form, if proven to the jury, would constitute separate and

[14] As set forth above, Ms. Davis maintains that this argument is not preserved for appeal because TRMC failed to make a contemporaneous objection to the verdict form or to present this argument to the trial court. However, even if the Court were to address this issue on the merits, it fails as set forth here.

independent acts of negligence, and therefore, support a verdict for multiple occurrences. In addition, the trial court specifically charged the jury that in order to find for Ms. Davis, it must find that TRMC's conduct "was a proximate cause of the injury for which the redress is sought" and that each act of negligence must be "separate and independent . . . to find that more than one occurrence occurred." (R. p. 822, line 4-p. 826, line 3). Thus, the trial court plainly considered which alleged breaches were separate and independent acts of negligence and properly applied the applicable sections of the SCTCA, even absent TRMC making these arguments at trial.

As is clear from the legal precedent in South Carolina, it is proper for a trial court to charge the jury on the law of occurrences and allow the jury to apply that law to the facts of the case. Thus, as fully explained herein, the trial court did not err in determining which breaches could constitute occurrences as a matter of law, submitting those to the jury for consideration, charging the jury on the law, and entering judgment for $2.4 million based on the jury's finding of two occurrences and awarding of $5 million in damages.

D. The trial court properly denied TRMC's Motion for Directed Verdict, and subsequently, JNOV, because the jury's verdict is supported by testimony and evidence illustrating that Ms. Branton was not effectively stabilized while a patient at TRMC, that TRMC discharged her to an environment unequipped to handle her medical needs, and that these failures were each a proximate cause of her death.

TRMC's primary argument throughout this case has been that the number of occurrences is a question of law only suited for the court and that it should never be placed in the hands of any jury. As set forth in the previous section, TRMC's argument is contrary to South Carolina law and dismissive of the fact that the court made a legal determination of which occurrences would be before the jury. Given this posture, TRMC could only be entitled to directed verdict or judgment notwithstanding the verdict if there was **no evidence** presented at trial that could support finding

two occurrences in this case. As this was not the case, the trial court properly denied TRMC's motions.

"In ruling on a motion for a directed verdict, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motion." *All Saints Par. Waccamaw v. Protestant Episcopal Church*, 385 S.C. 428, 442, 685 S.E.2d 163, 170 (2009). "The trial court must deny a directed verdict motion when the evidence yields more than one inference or its inference is in doubt." *Burnett v. Family Kingdom, Inc.*, 387 S.C. 183, 188, 691 S.E.2d 170, 173 (Ct. App. 2010). Likewise, "[a] motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict." *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998). "An appellate court will reverse the trial court's ruling only if **no evidence** supports the ruling below." *Allegro, Inc. v. Scully*, 418 S.C. 24, 32, 791 S.E.2d 140, 144 (2016) (*citing Welch v. Epstein*, 342 S.C. 279, 300, 536 S.E.2d 408, 418 (Ct. App. 2000)) (emphasis added); *see also Jamison v. Hilton*, 413 S.C. 133, 144, 775 S.E.2d 58, 64 (Ct. App. 2015) (finding an expert witness's answer to a single question during trial was sufficient to support an inference in favor of the non-moving party and upholding the trial court's refusal to grant judgment notwithstanding the verdict).

As discussed *supra*, the SCTCA defines an "occurrence" as "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. Code Ann. § 15-78-30(g). "Words in the statute should be given their plain and ordinary meaning without resulting to forced or subtle construction." *Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles*, 380 S.C. 600, 608, 670 S.E.2d 674, 678 (Ct. App. 2008). Using this plain language, it is apparent that there is more than one occurrence in this case. An occurrence is something that **flows from "a single act of negligence"** and not something that flows from a combination of multiple acts of negligence.

S.C. Code Ann. § 15-78-30(g) (emphasis added). The jury here found two occurrences of negligence that are not causally connected to one another, and the trial court properly entered judgment based on the jury's findings.

In arguing the facts of the case, or, more specifically, that "a single medical encounter of seventy minutes on one date by a single physician" could not give rise to more than "one unfolding sequence of events," TRMC references the out-of-state cases the *Boiter* court reviews, arguing *Folz v. State*, 110 N.M. 457, 797 P.3d 246 (1990) is the most applicable. (Appellant's Brief, Argument I (Initial Brief pp. 17 (quoted language) and 19 (*Folz* discussion))). In *Folz*, however, the only two **alleged** occurrences of negligence were "failing to design and implement a traffic control plan." 110 N.M. at 460. Finding that the negligent failure to design and implement a plan is one "unfolding sequence of events" is entirely consistent with *Boiter* because the two acts of negligence are not separate and independent. The negligent implementation of a plan only comes after there is a plan; there cannot be a failure to design a plan **and** a failure to implement it. Either the plan was designed and not implemented or it was never even designed. Therefore, acts of negligence in that case—even taking all inferences in the light most favorable to the injured party—could not be separate and independent.

TRMC's contention that "a single medical encounter of seventy minutes on one date by a single physician" could not possibly give rise to more than "one unfolding sequence of events" disregards the evidence in the record, including that of TRMC's own contractors and expert. The allegations in this case, which the jury found to be proven by a preponderance of the evidence, were that (1) TRMC failed to stabilize Ms. Branton while she was under its care and (2) TRMC discharged Ms. Branton to an environment unequipped to handle her medical needs. (R. pp. 14-15). Irrespective of the length of the encounter or the number of physicians involved, each of these

failures constitutes a separate wrongful action taken, and either of these negligent acts could independently support the verdict in this case. *See Boiter,* at 134–35, 712 S.E.2d at 407.

Both the occurrence of TRMC's failure to stabilize Ms. Branton and the occurrence of discharging Ms. Branton to a boarding home that could not administer the medication she required were well supported by evidence at trial. TRMC's failure to comply with the standard of care in treating and stabilizing its patient did not "unfold" into its failure to discharge its unwell patient to a safe environment that could legally provide her with life-saving continued care. Had the jury not found TRMC negligent for failing to stabilize Ms. Branton's medical condition, the verdict for discharging Ms. Branton into an unsafe environment could still stand, and the converse is also true.

Testimony from Dr. Burkholz, Dr. Gonzalez, and Dr. Husted established that Ms. Branton was mentally unstable while in the TRMC Emergency Department and that the standard of care required stabilizing her. (R. p. 479, lines 17-18 ("Ms. Branton's there because she's got a severe mental illness that's not stable."); R. p. 248, line 5-p. 249, line 23; R. p. 254, lines 5-24; R. p. 259, line 24-p. 260, line 3; R. p. 260, line 23-p.262, line 1; R. p. 313, lines 8-14; R. p. 498, lines 6-9). Hospitals who accept a patient undergoing a medical emergency are required to provide competent treatment. For example, the standard of care requires a hospital accepting a patient with a ruptured appendix to arrange surgery to remove the burst appendix. Ms. Branton presented to TRMC on October 2, 2019 for her mental status to be evaluated and treated. Because she was "actively psychotic," (R. p. 490, lines 5-8), Ms. Branton was at risk for self-harm and self-neglect because she did not "have the sensibility to know" what actions might be "life threatening" (R. p. 254, line 13-p. 255, line 3). The standard of care, therefore, required that she be stabilized. (R. p. 313, lines 8-14 (treatment within the standard of care required modification of Ms. Branton's medications); R. p. 498, lines 6-9 (failing to stabilize the patient is a breach of the standard of care)).

Three doctors agreed that, in this situation, stabilization would require a seven-to-ten-day admission to a psychiatric unit wherein the patient's medications could be adjusted under the careful supervision of a physician, and where long-acting injectables could be incorporated to address the non-compliance issues which had arisen after the patient's most recent involuntary commitments. (R. p. 261, line 4-p. 262, line 10; R. p. 310, line 9-p. 312, line 4; R. p. 492, line 20-p. 493, line 9). Unfortunately, the evaluation and treatment Ms. Branton received fell well short of this standard. (R. p. 490, lines 5-20 (Dr. West did not correctly assess Ms. Branton as actively psychotic while at TRMC); R. p. 492, line 20-p. 493, line 20 (detailing the treatment which Ms. Branton required); R. p. 514, lines 20-25 (Dr. Gonzalez crafted a workable treatment plan that was not implemented); R. p. 474, line 16-p. 475, line 6 (detailing what was included in the "excellent" treatment plan formulated by Dr. Gonzalez which was ultimately abandoned)). TRMC's own contractors and experts testified at length regarding the deficiencies in her care. (R. p. 260, line 19-p. 262, line 10; R. p. 211, lines 4-24; R. p. 744, line 16 – p. 745, line 3 (Dr. Hardesty detailing the "systems failures" of her own client)). In short, Dr. West did nothing to stabilize Ms. Branton prior to her discharge, which led her to inflict the exact type of self-harm Dr. Burkholz identified as a risk when he recommended admission and involuntary commitment, and which tragically culminated in her death just one day later. (R. p. 252, line 23-p.255, line 8; R. p. 525, lines 12-21).

Turning to the second occurrence the jury found, the record is also replete with evidence that, separate from its failure to stabilize Ms. Branton, TRMC breached the standard of care by discharging Ms. Branton to a boarding house when she was unable to manage her own medications, complete activities of daily living, or comprehend risks to her own safety. In addition to providing treatment to stabilize a patient presenting with an emergency, a hospital is under a

duty to ensure that all patients are discharged to an appropriate environment.[15] (R. p. 498, lines 1-5; R. p. 313, lines 15-25; R. p. 773, lines 7-23 (TRMC's expert admitting that hospitals must discharge to the *appropriate care level facility*)). For example, a patient who lives alone and suffers a debilitating stroke during hospitalization, rendering him unable to care for himself, cannot simply be wheeled into the parking lot once his acute medical conditions are stabilized. The treating physician, often in concert with the social workers employed by a hospital whose entire role is to assist in discharge placement, has an independent duty to ensure that every patient discharged from the hospital is discharged into an environment equipped to deal with the patient's medical condition. (R. p. 313, line 15-p. 314, line 19 (Dr. Gonzalez confirming that the standard of care requires that a patient be discharged to a location capable of providing the care necessary); R. p. 315, lines 3-6 ("so the decision to send her back home to the same environment that brought her there, I thought was the wrong decision"); *see also* R. p. 1083, line 13-p.1084, line 3 (Ms. Branton should "definitely [have been] discharged to a facility and not to independent living"); R. p. 1084, line 8-p. 1085, line 2 (Dr. Hardesty admitting that Ms. Branton needed to be discharged to a facility that provided some level of medication management and personal services)). In explaining the importance of discharging a patient to an environment that can meet the patient's needs, Dr. Gonzalez testified that he has kept patients within the TRMC emergency department for as many as 165 days until he could locate a safe environment for discharge. (R. p. 348, lines 1-8; *see also* R. p. 318, line 2-p. 319, line 12 ("I don't know what they were thinking . . . maybe they

[15] Shockingly, TRMC's expert appeared to take the position that Ms. Branton's death was certain to occur based upon the fact that she lacked the funding to allow her to be placed into either assisted living or skilled nursing, though the record is devoid of any evidence that TRMC made any investigation into such placement or into Ms. Branton's sources of funding. (Hardesty Depo. p. 52, lines 14-21 (Dr. Hardesty taking the position that funding is what Ms. Branton truly needed to survive)).

thought that they could give her the medication"); R. p. 350, line 9-p. 351, line 2 ("that's why it was inconceivable to me that to send her back to the same place that says we can't handle her")). TRMC failed Ms. Branton and her family because Dr. West made no effort to ensure that his patient was discharged into a safe environment equipped to handle her medical needs.

The trial court took judicial notice of the rules governing a boarding home and correctly instructed the jury that a boarding house is specifically prohibited by state law from administering or assisting with a person's medication. (R. p. 198, lines 6-16; R. p. 204, line 18-p. 205, line 6). Further, it was clear from her medical chart that Ms. Branton required assistance with basic activities of daily living and managing a combination of medications that she was not capably managing herself. (R. p. 489, line 24-p. 490, line 4 (Ms. Branton was not capable of managing her own medications); R. p. 1103, line 3-p. 1105, line 3 (Dr. Hardesty admitting that Ms. Branton was not capable of functioning independently as required of boarding home residents)). Nevertheless, even knowing Ms. Branton required an extensive medication regimen and assistance, Dr. West specifically ordered that she be discharged to the very boarding house that had called emergency services for assistance with Ms. Branton just hours earlier. (R. p. 841; R. p. 489, lines 14-18 (Dr. Husted testifying that Dr. West was specifically aware that Ms. Branton was being discharged to a boarding house)). Once again, the evidence shows that this careless decision was one cause of Ms. Branton's untimely death. (R. p. 324, line 25-p. 325, line 8; R. p. 540, lines 2-8; R. p. 483, line 10-p. 484 line 3; R. p. 486, lines 11-18; R. p. 498, lines 1-5).

The jury's finding of multiple occurrences is thus firmly grounded in both law and fact. The temporal proximity of these breaches does not diminish their fundamental independence or their separate capacity to cause harm. Where, as here, the record contains substantial evidence supporting two separate and independent occurrences—each capable of causing harm in

isolation—the trial court's denial of TRMC's Motions for Directed Verdict and JNOV must be affirmed.

II. Based on the clear language of the rule, the trial court properly awarded offer of judgment interest on the reduced verdict pursuant to Rule 68, SCRCP, because TRMC failed to accept the Offer of Judgment, and the SCTCA does not exempt government entities from the rules of civil procedure.

TRMC argues the SCTCA's bar against interest prior to judgment precludes Ms. Davis from collecting interest awarded *post*-judgment based on the rejected Offer of Judgment.[16] (Appellant's Brief, Argument II (Initial Brief p. 21)). Pursuant to Rule 68, SCRCP, Ms. Davis filed an Offer of Judgment on August 15, 2023, for $1.2 million. TRMC rejected the offer by allowing it to expire, proceeding instead to a week-long jury trial that ended with a $5 million jury verdict against it. (R. pp. 14-15 and 48). After the verdict, the trial court properly reduced the verdict based on set-offs and statutory caps and awarded $31,035.62 in interest, calculated on the amount of the reduced verdict from the date the offer of judgment was filed, as required by Rule 68(b), SCRCP and S.C § 15-35-400.[17] The issue on appeal is whether the prejudgment interest barred by the SCTCA is the same thing as offer of judgement interest. According to the South Carolina Supreme Court, it is not.

Under the SCTCA, "[t]he State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained [in the act]." S.C. Code Ann. § 15-78-40. One such limitation is "[n]o

[16] The trial court also awarded $2,434.41 in costs pursuant to Rule 54(e), SCRCP, and denied Ms. Davis's Motion for additional costs pursuant to Rule 68(b). Neither of these rulings are issues on appeal.

[17] S.C. § 15-35-400 and Rule 68, SCRCP are identical to one another by 2005 and 2006 amendments, respectively.

award for **damages** under this chapter **shall include** . . . interest **prior to judgment.**" S.C. Code Ann. § 15-78-120(b) (emphasis added).

In South Carolina, "we have both a prejudgment interest statute and a separate statute awarding interest in the offer of judgment context." *Garrison v. Target Corp.*, 435 S.C. 566, 586, 869 S.E.2d 797, 808 (2022). The prejudgment interest statute provides:

> In all cases of accounts stated and in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum.

S.C. Code Ann. § 34-31-20(A) (2020). This interest, according to the statute, accrues based on the money being "due" prior to any judgment being entered. The statute governing offer of judgment, however, while still being nominally about the general topic of "interest," exists for an entirely different purpose:

> [Under] S.C. Code Ann. § 15-35-400(B) . . . when a plaintiff's offer of judgment is not accepted and she obtains a verdict or determination at least as favorable as her offer, she is entitled to receive eight percent interest on the amount of the verdict or award from the date of the offer.

Garrison v. Target Corp., 435 S.C. 566, 587, 869 S.E.2d 797, 809 (2022). According to the *Garrison* court, there is a distinction between prejudgment interest—which serves as plaintiff's compensation for defendant's possession and use of money that the plaintiff was entitled to from the moment the action accrued until the final judgment—and interest awarded in the offer of judgment context—which is a *post*-judgment interest award reflective of a defendant's choice to gamble with his fate (and judicial resources) by rolling the dice at trial. *Id*. (citing cases from Connecticut and Wisconsin to support its holding that prejudgment interest is distinguishable from interest awarded in the offer of judgment context).

Offer of judgment interest, then, is *not* prejudgment interest, as the South Carolina Supreme Court recognized in *Garrison*. The SCTCA exempts government defendants from paying pre-judgment interest or "interest prior to judgment." S.C. Code Ann. § 15-78-120(b). This is reflected in the very language of the prohibition on this interest, describing it as interest "prior to judgment" that might be included in the "award for damages," as the prejudgment interest statute allows. *See* § 15-78-120(b). It does not, however, exclude any interest, penalties, costs, or payments that might be assessed *after* damages are awarded, as is necessarily the case in the offer of judgment context. *See* Rule 68(b), SCRCP (indicating that interest is only awarded after "the offeror obtains a verdict or determination at least as favorable as the rejected offer") *and* S.C. Code Ann. § 15-35-400(B) (reflecting the same rule). Therefore, despite TRMC's arguments to the contrary, S.C. § 15-35-400 is not in conflict with the SCTCA, there is no provision of the SCTCA that precludes offer of judgment interest from being awarded, and TRMC is subject to the mandatory language of the South Carolina Rules of Civil Procedure, as well as S.C. § 15-35-400, "in the same manner and to the same extent as a private individual."[18] *See* § S.C. Code Ann. 15-78-40.

In sum, both S.C. § 15-35-400 and Rule 68, SCRCP are clear and unambiguous. Neither the statute nor the rule provides any exceptions for governmental entities, which means they apply even in the context of a Tort Claims Act case. Therefore, by rule, TRMC must pay $31,035.62 in

[18] Because there is nothing in a rule or statute to preclude offers of judgment from being utilized in cases involving a state entity, Rule 68 can be utilized like any other rule of civil procedure. Indeed, a cursory review of the various counties' public indexes in this state demonstrates that governmental entities carrying the liability shield of the SCTCA routinely utilize the statute and the rule to file their own offers of judgment. These entities include, but are in no way limited to, the: South Carolina Department of Public Safety, South Carolina Department of Transportation, South Carolina Department of Mental Health, South Carolina Department of Education, South Carolina School for the Deaf and Blind, Hampton County, Town of Fairfax Police Department, Town of Fairfax, and Richland County.

interest as the consequence of its decision to refuse Plaintiff's Offer of Judgment and gamble on the jury.

CONCLUSION

For the reasons set forth herein, the Court should affirm the decisions of the trial court to enter judgment for Se'Anne Davis in the amount of $2,433,470.03 for two occurrences of medical negligence plus costs and Offer of Judgment interest.

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