

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELY COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Appellate Case No. 2023-001124
Lower Court Case No. 2020-CP-08-02455

Rita R. Greenawalt and
James M. Greenawalt,

Appellants,

v.

Nissan North America, Inc.,

Respondent.

Appellants' Petition for Rehearing *en banc*

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QUESTIONS PRESENTED

1. Did the panel err in affirming the lower court's June 12, 2023 order on fees?
2. Did the panel err in affirming the lower court's July 25, 2023 order on Appellants' Motion to Reconsider?

Procedural Background

Appellants were successful on all four claims they brought.¹ Each allows for awards of attorneys' fees to prevailing plaintiffs. The lower court judge found every *Jackson v. Speed* factor to weigh in favor of Appellants' fee request. Nevertheless, he reduced the award by nearly half from the requested amount with no explanation for the reduction other than his gut feeling that the award "is still reasonable and generous." He overlooked 9.9 hours of attorney time, and then held—citing federal case law which conflicts with South Carolina's—that Rule 59 did not allow him to correct the error or offer additional explanation. When fees related to the Rule 59 motion are included, the reduction was 54.44% of the request. The panel affirmed, reasoning that the trial court's explanation was "more than sufficient" and that he did not mean what he wrote.

The panel's unpublished *per curiam* opinion, No. 2025-UP-173 filed May 28, 2025, overlooks and misapprehends Appellants' arguments in the following particulars.

I. The Panel Overlooks a Crucial Procedural Fact.

It would be one thing if the lower court had found two factors weigh against Appellants. Then the Court might infer, "He weighed those two against the others, and cut the award by 40%." But here, he found ALL the factors weigh in favor of Appellants.² So what is he weighing the

¹ The claims are under the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 et seq., the Enforcement of Motor Vehicle Express Warranties Act ("Lemon Law"), S.C. Code Ann. § 56-28-10 et seq., the Unfair Trade Practices Act ("UTPA"), S.C. Code Ann. § 39-5-10 et seq., and the Regulation of Manufacturers, Distributors and Dealers Act ("Dealers Act"), S.C. Code Ann. § 56-15-10 et seq.

² (Brief of Appellant 6) (citing R. pp. 12-16). As summarized in the Reply Brief on page 10, quoting the fees Order,

factors against?

The panel's opinion overlooks this point.

II. The Panel Misapprehends Appellants' Core Argument.

The panel writes, *id.* p. 2, "Appellants argue this was error because they are statutorily entitled to all hours 'actually expended,' or 'full compensation.'" Appellants, however, stated, "This does not mean a lower court must blindly accept the amount a plaintiff requests for her attorney fees." (Br. of Appellant 33); (Reply 7) (stating, "Perhaps because Nissan refuses to address the arguments Appellants' brief makes, Nissan instead attacks an argument of its own creation—that lower courts must always award all the fees a prevailing plaintiff seeks—which is not Appellants' argument."); *id.* n.8 (describing that argument as a "straw man"); *id.* p. 8 ("Appellants agree that no statute mandates an amount or requires trial courts to award all fees sought.").

Appellants' actual argument is much more sensible. As to the Lemon Law and the Magnuson-Moss Warranty Act, which each require an award of fees to be "based on" actual time expended, Appellants' position is just that: Any awards must be *based on* the hours actually expended. This does not mean a simple multiplication of hours times rate. It means it must be based on the hours actually expended. If the circuit court chooses to cut significant numbers of hours, it must explain why.³

"This factor weighs in Plaintiffs' favor." (R. p. 13) (Order p. 8) (First factor).

"This factor weighs in Plaintiffs' favor." (*Id.*) (Second factor).

"This factor weighs in favor of Plaintiffs." (R. p. 15) (Third factor).

"This factor weighs in favor of Plaintiffs." (*Id.*) (Fourth factor).

"This factor weighs in favor of Plaintiffs." (R. p. 16) (Fifth factor).

"This factor weighs in favor of Plaintiffs." (*Id.*) (Sixth factor).

³ Some language in the opening brief can be taken out of context to suggest Appellants argued all hours incurred must be compensated, e.g., Br. of Appellant 30-31 (emphasis added) ("A prevailing plaintiff under these acts is entitled to compensation for all the hours his attorney 'actual[ly] expended,' not limited to hours devoted to countering litigation misconduct by the opposing party, nor to those hours for which

Alternatively, Appellants argue, under the Dealers Act and the UTPA, which each mandate attorneys' fees for successful plaintiffs, the amount of an award should be based on a lodestar, again with a reasoned explanation of any deviance. (Br. of Appellant 31-32).

Again in the alternative, Appellants maintain the six *Jackson v. Speed* factors should similarly control. "The Parties Agree the Six *Jackson* Factors and the Findings thereon Are Determinative." (Reply Br. 9.) (*See also* Br. of Appellant 31-32, 34, Reply Br. 9-13).

III Discretion Is Not Whim. The Analysis Must Be Explained.

"Discretion is not whim[.]" *Jordan v. Hartford Fin. Grp., Inc.*, 435 S.C. 501, 505–06, 868 S.E.2d 400, 402 (Ct. App. 2021) (quoting *Martin v. Franklin Cap. Corp.*, 546 U.S. 132, 139, 126 S.Ct. 704, 163 L.Ed.2d 547 (2005)). Rather, "The American tradition of rule of law has recognized from its earliest days that a 'motion to [a court's] discretion is a motion, not to its inclination, but to its judgment; and *its judgment is to be guided by sound legal principles.*'" *Id.* (alteration in original) (emphasis added) (quoting *United States v. Burr*, 25 F. Cas. 30, 35 (C.C.D. Va. 1807) (Marshall, C.J.)).

Five months before the lower court issued its order here, the Supreme Court had re-emphasized the need for lower courts to, in effect, show their work.

The exercise of discretion is not to simply make a decision. The *exercise* of discretion requires first that the trial court recognize it has the responsibility of discretion. . . . The exercise of discretion is then to follow a thought process that begins with the trial court's clear understanding of the applicable law, continues with the court's sound analysis of the situation before it in light of the law, and ends with the trial court's ruling that follows the law and is supported by the facts and circumstances. . . . The trial court's recognition of its responsibility to exercise discretion will be apparent when the record indicates the court followed such a thought process.

Morris v. BB&T Corp., 438 S.C. 582, 587, 885 S.E.2d 394, 397 (January 25, 2023) (alterations in

payment by the defendant is needed to discourage litigation misconduct."). That simply meant hours should not be deducted on grounds the amount was unneeded to compensate for or deter litigation misconduct.

original) (emphasis in original) (footnote omitted) (citing *Jordan*). “[T]he ‘discretion’ standard . . . requires the analysis be explained.” *Id.* at 588, 885 S.E.2d at 398 (emphasis added).⁴

Here, the lower court provided its gut conclusion,

But gut feelings are not enough; if the district court is going to make substantial cuts to a winning lawyer’s fee request, it needs to explain why with sufficient specificity that the lawyer can meaningfully object and we can meaningfully review the objection. . . . [I]f all the district court offers is a conclusory statement that a fee request is too high, then we can’t tell if the court is applying its superior knowledge to trim an excessive request or if it is randomly lopping off chunks of the winning lawyer’s reasonably billed fees.

Moreno v. City of Sacramento, 534 F.3d 1106, 1115–16 (9th Cir. 2008) (emphasis added).

The order explains in depth why all six *Jackson* factors support Appellants. (R. pp. 12-16). Upon finishing the *Jackson* analysis, one would expect the full request of \$131,220 (R. p. 734) to be awarded. The order then demolishes additional arguments by Nissan, with not a single good thing to say about those arguments. (R. pp.16-19). It then finds that “Defendant was playing whack-a-mole,” and demolishes another argument raised by Nissan. (R. p. 18-20). Then seemingly out of the blue it reduces the award by 42.75% from the request. (R. pp. 20) (\$75,000 awarded).

Appellants think the lower court erroneously limited the award to the amount needed “to deter the automotive dealers from the conduct they displayed in refusing to settle until after protracted efforts by the Plaintiffs’ attorney forced them to settle.” (R. p. 20; Br. of App. 1-2, 13-14, 30, 34-35, 37-38, 44; Reply Br. 12, 13, 25). The panel disagrees. The panel does not mention

⁴ The Supreme Court reversed the unpublished Court of Appeals decision, and “publish[ed] this decision to clarify” 438 S.C. 582, 585, 885 S.E.2d 394, 396. *See also Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 184-85, 332 S.E.2d 539, 541 (Ct. App. 1985) (“A decision is arbitrary if it is . . . without adequate determining principles, or is governed by no fixed rules or standards.”); *Daufuskie Island Util. Co. v. S.C. Off. of Regul. Staff*, 427 S.C. 458, 832 S.E.2d 572 (2019) (similar); *Turbeville v. Morris*, 203 S.C. 287, 315, 26 S.E.2d 821, 832 (1943) (similar); *Hatcher v. S.C. Dist. Council of Assemblies of God, Inc.*, 267 S.C. 107, 117, 226 S.E.2d 253, 258 (1976) (similar).

the procedural games the order called out.⁵

But if the award was not limited to the amount needed to deter such litigation tactics, very little remains to explain the denial of approximately half the request. Other than that “\$126,000 multiplied by a 1.5 multiplier” “seems ‘too much’, all things considered,” what remains—with ellipses standing in for material about Nissan’s conduct— is, “This Court finds that a fee of \$75,000 is reasonable and necessary to achieve the outcome At the same time, an award of \$75,000 is a lot less than the amount Plaintiffs claim, but it is still reasonable and generous. . . .” (R. p. 20) (emphasis added).

Stripped of its references to Respondent’s improper litigation conduct and of “This Court finds” and “At the same time”, the order states only that “\$75,000 is reasonable and necessary to achieve the outcome still reasonable and generous. . . .” (*Id.*). This is simply an unexplained, gut-level conclusion. Why is the amount “reasonable?” The order does not say. On what basis does the order conclude that cutting half the request is “generous”? It does not say. When all factors favor Plaintiffs, why is it “reasonable” to reduce the award by half? It does not say.

What are the “sound legal principles” that guide the lower court’s dramatic reduction in the amount of the award? Certainly not the six *Jackson* factors—those factors all are in favor of Appellants. Not the lodestar—that supports a full award. Not the hours actually expended: those support a full award. The decision here appears to be, rather, a gut-level feeling or inclination.⁶

⁵ Among these were that “Defendant was playing whack-a-mole” (R. p. 19); “Nissan then says since Plaintiffs did not accept those insufficient offers, Plaintiffs’ counsel’s fees should be limited to the time when those offers were made. These arguments put Plaintiffs in an unwinnable bind where they would lose no matter what they chose to do.” (R. p. 14); “Nissan agreed to put the issue of attorney’s fees before the Court for determination. It was not until the day of the hearing that Nissan informed Plaintiffs it would claim that, since there is no jury verdict, Plaintiffs were not entitled to fees. This is a classic ‘gotcha’ moment that the Court will not suffer.” (R. p. 10); and that “Nissan relies on part of a sentence” from its own document to argue the document means the opposite of what it states (R. pp. 16-17).

⁶ The panel writes (Op. 3),

In *Horton v. Jasper County School District*, 423 S.C. 325, 331, 815 S.E.2d 442, 445 (2018), as here, “every finding the circuit court made appears to support [Plaintiffs].”

Nevertheless, the circuit court awarded attorneys’ fees at a rate of \$100 per hour, rather than the hourly rate presented by Horton—\$295 for Twombly and \$250 for Campbell. The court provided no explanation and cited no evidence in the record to support its conclusion that \$100 per hour was reasonable.

Id. The Supreme Court therefore reversed. There, the lower court at least explained which factor he was relying on to reduce the award. The lower court here did less than that.

One might speculate that the lower court meant the results did not justify the requested fees. That is the theme of Respondent’s Brief. (Br. of Respondent 10-11) (arguing the award “is consistent with factor (5) of the *Jackson* analysis, the ‘beneficial results obtained.’”), (*id.* 20) (arguing that “the attorney’s fee award was reasonable, particularly in light of the actual benefit Appellants obtained through those fees—which was not much.”). But the order states, “Nissan’s brief also argues that the fees are simply too high in proportion to Plaintiffs’ recovery. Our Supreme Court has rejected this argument” (R. p. 19) (emphasis added) (citing cases). The order also finds that counsel obtained “**very** beneficial results.” “Mr. and Ms. Greenawalt have received very beneficial results caused by employing Mr. Moskos.” (R. 16). Some explanation was in order if the reduction was based on that factor. And one should not have to speculate as to which factor(s) the judge relied on to reduce the award. Proper jurisprudence “requires the analysis be explained.”

[W]e read the circuit court’s order as explaining the court found \$75,000 to be a reasonable amount of fees based on the history of the case, the ultimate outcome, and the purpose of the statutes—to protect consumers and . . . reduce the problem of businesses not playing fair[.] Assuming, *arguendo*, that what the panel wrote is accurate, the order does not explain what about the history of the case and ultimate outcome led the judge to conclude the award should be cut by half, what guidelines the lower court used to determine the amount, how he weighed the interests to come up with the amount—or anything other than “it’s so because I say so.” Similarly, in noting what it calls “the thorough analysis in the original order and our agreement with that analysis” (Op. p. 3), the panel conflates the lower court’s analysis of how each *Jackson* factor supports an award, which was “evaluated in detail” (*id.*), with the missing analysis of the reasons for cutting the award, which was not.

Morris, 438 S.C. at 588, 885 S.E.2d at 398.

At a minimum, the Court should remand for explanation of what factor(s) the trial judge relied on to reduce the award so that this Court may properly review its reasoning. It is not enough to go through the *Jackson* analysis and then pick a number out of the blue, when that number is half what the *Jackson* factors produce.

Better would be to restore the amount cut. In *Horton*, the Supreme Court further held,

[T]here is no evidence in the record that supports the circuit court’s reduction of the hourly rate. Thus, we find a remand unnecessary. *See Sloan*, 393 S.C. at 158-59, 711 S.E.2d at 898 (reversing the circuit court’s award of attorneys’ fees under the FOIA and modifying the fee award “[r]ather than delay the matter further by remand”).

423 S.C. at 331-32, 815 S.E.2d at 445. This Court should do similarly—especially as Appellants here asked the lower court to explain its reduction, and Respondent opposed (R. p. 758).⁷

IV. *Hensley* and its Progeny Cut Against the Panel’s Point.

[A] lodestar analysis is the proper method for determining an award of “reasonable” attorneys’ fees under the state action statute. A lodestar figure is designed to reflect the reasonable time and effort involved in litigating a case, and is calculated by multiplying a reasonable hourly rate by the reasonable time expended.

Layman v. State, 376 S.C. 434, 457, 658 S.E.2d 320, 332 (2008) (emphasis added). The panel writes, “[L]ooking at the hours expended multiplied by the attorney’s rate may be a ‘useful starting point,’ *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983), that number is only part of the analysis,

⁷ *See also Johnson v. Johnson*, 296 S.C. 289, 303-04, 372 S.E.2d 107, 115 (Ct. App. 1988). The party opposing fees had “rendered the case more difficult” and “further increased the time and expense of litigation.” *Id.* The Court held,

Despite these facts, the [lower] court, without giving any reason to justify its action, refused to award full fees. A decision lacking a discernible reason is arbitrary and constitutes an abuse of discretion. *See Turbeville v. Morris*, 203 S.C. 287, 26 S.E.2d 821 (1943). We hold that the court abused its discretion in awarding attorney’s fees in an amount less than actually incurred.

Id. Here, the lower court did not give any reason to reduce the fees, other than its feelings that the amount is reasonable, necessary, and generous. But those are conclusions, not reasons.

not the end of the analysis.” (Op. 3). The lodestar is much more important than that.

Decisions of the Supreme Courts of South Carolina and the United States interpreting *Hensley* make that clear. Deviations from the lodestar are permissible only in exceptional circumstances. “There is a ‘**strong presumption** that the lodestar’ is the proper amount under ‘the intended purpose’ of *most fee-shifting statutes*.” (Br. of Appellant 32) (quoting *Layman*, 376 S.C. at 458, 658 S.E.2d at 332) (italics added);⁸ “[T]here is a ‘strong presumption’ that the lodestar figure is reasonable. . . .” (*id.*) (quoting *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 554, 130 S. Ct. 1662, 1673 (2010)). “A court may properly depart from the lodestar amount only . . . ‘in those **rare circumstances** in which the lodestar does not adequately take into account a factor that may properly be considered in determining a reasonable fee.’” (*Id.*) (italics added) (quoting *Perdue*, 559 U.S. at 554, 130 S. Ct. at 1673. ¹⁰

Because of “the strong presumption that the lodestar approach is the most accurate determination of reasonable attorneys’ fees in light of the intended purpose of the usual fee-shifting statute,” *Layman*, *id.* at 458, 658 S.E.2d at 332, the Supreme Court in *Layman* repeatedly explained that its large divergence from the lodestar was due to the “exceptional” aspects of the case. 376 S.C. at 460, 658 S.E.2d at 334 (“necessary to reflect the exceptional circumstances of this case”); *id.* at 462, 658 S.E.2d at 335 (“the exceptional circumstances of this case”); *id.* at 463, 658 S.E.2d at 365 (“to reflect the exceptional circumstances of the case”); specifically including “the

⁸ See also 376 S.C. at 333-32, 658 S.E.2d at 458 (emphasis added) (favorably citing an Arizona appellate case as “finding the lodestar calculation to be the appropriate method of awarding reasonable attorneys’ fees where a settlement agreement established [the] fee-shifting” scenario).

⁹ See also Br. of Appellant 33 (providing examples of things included in the lodestar); Reply Br. 5-6, 11-13, 20, 25 (discussing the importance of the lodestar amount).

¹⁰ Respondent had argued below a point virtually identical to the panel’s point (heading entitled “The lodestar analysis is but a starting point” and accompanying text) (R. pp. 758-60). After Appellants’ opening brief rebutted the point, Respondent abandoned it. (Reply Br. 5-6).

extraordinary sum of money returned to the TERI participants,” *id.* at 461, 658 S.E.2d at 334. The panel does not suggest this is such a “rare” or “exceptional” case, or if it is, why the lower court is exempted from explaining what makes it rare or exceptional.¹¹

The point of *Hensley*, like *Jordan*, *Moreno*, and the other cases cited in note 4, is to force judges to follow the law when exercising discretion and, like *Morris*, *Moreno*, and *Horton*, to permit meaningful judicial review. “[T]he lodestar calculation is ‘objective,’ *Hensley, supra*, at 433, 103 S.Ct. 1933, and thus *cabins the discretion of trial judges, permits meaningful judicial review*, and produces reasonably predictable results.” *Perdue*, 559 U.S. at 552, 130 S. Ct. at 1672. In contrast, departing from the lodestar in unexceptional cases does the opposite.

The panel overlooked Appellants’ argument. Because the lower court dramatically departed from the lodestar in an unexceptional case, with nothing more than its feeling that a reduced amount felt right, the Court should rehear and reverse the reduction.

V. The Opinion Attributes to Appellants Another Argument Appellants Do Not Make.

The Court writes, Op. 2 (*italics in original, underscoring added*),

Appellants argue, among other things, the federal Warranty Act and state Lemon Law each mandate a fee award be ‘based on actual time expended’ and that they were therefore entitled to *all* hours submitted in this case unless Nissan demonstrated certain time included in the request was clearly unrelated. We disagree.

Appellants made no such argument. The question of “relatedness” is not at issue in this case. There was no work that was unrelated to the statutory claims here, “clearly” or otherwise. Here, all the claims were under fee-shifting statutes.

VI. To the Extent the Opinion May Address the 9.9 Missing Hours, It Errs.

The lower court overlooked 9.9 hours. (Br. of Appellant 7) (citing R. pp. 732-35). These

¹¹ The divergence from the lodestar here is double the 25 percent divergence in *Layman*.

were requested on May 23, 2023 (*id.*), three weeks before the order issued (R. p. 6). Yet the order states, “Plaintiffs’ total of the attorney’s fees incurred through and including April 30, 2023 is \$126,765.00.” (R. p. 19) (emphasis added). “Plaintiffs’ total attorney’s fee request comes in at . . . \$126,000 multiplied by a 1.5 multiplier.” (*Id.* 15) (emphasis added). The fee request through May 23, 2023, three weeks before the order issued, was \$131,220.00. (Br. of Respondent 15; Reply Br. 4).

The panel seems at first to agree that the 9.9 hours were overlooked. “[T]hrough the process of briefing and arguing the fee request in the circuit court, the requested hourly fees increased to \$131,000.” (Op. 2). But it then writes, “It is evident the circuit court considered the hours expended . . .” (Op. 3). If the panel means that in writing he had considered “\$126,000” through “April 30” the lower court meant he had considered \$131,000 through May 23, 2023, it overlooks or misapprehends Appellants’ argument that the lower court judge meant what he wrote. The panel’s opinion otherwise overlooks the 9.9 hours entirely.¹²

The approximately five thousand dollar difference is significant. “In our view . . . \$5,100 is not an insubstantial sum.” *Hueble v. S.C. Dep’t of Nat. Res.*, 416 S.C. 220, 234, 785 S.E.2d 461, 468 (2016). If one concludes the error is harmless because the lower court would have made the same award even had he considered the 9.9 hours, it follows that the entire award is not “based on actual time expended” nor on the *Jackson* factors, and should be modified so it is consistent with those.

VII. The Opinion Misapprehends the Content of the Motion to Reconsider.

The opinion states that Appellants’ motion to reconsider “was nothing more than a request that the court reconsider arguments the court had already evaluated in detail.” (Op. 3). This is not

¹² It also overlooks the time spent on the motion for reconsideration, which is a separate issue discussed below in Part IX).

so. The Motion’s first request was that “the Court alter or amend its Order by considering and including in its award Plaintiffs’ third supplemental time records filed May 23, 2023.” (R. p. 746; Br. of Appellant 2, 8). It asked the lower court “to further explain its rationale for departing from the lodestar.” (Br. of Appellant 8). It asked the lower court to correct its erroneous statement that Respondent is a car dealer. It asked that the lower court clarify why the need to deter litigation conduct was mentioned as a factor in reducing the amount of the award.

The Motion for Reconsideration did more than ask the lower court to reconsider arguments the court had evaluated, and the Court’s opinion overlooks the rest in finding it did only that.

VIII. The Panel Misapprehends The Order on the Motion to Reconsider.

The Order Denying Plaintiff’s Rule 59 Motion to Alter or Amend quotes federal cases limiting the types of relief that may be granted under Rule 59. These federal quotations are the bulk of the order, and are contrary to South Carolina law. The Order begins with an introductory paragraph stating, “For the reasons set forth below, the motion to reconsider is DENIED.” (R. p. 22). The only “reasons set forth below” are in the “Standard of Review,” which begins (*id.*) (emphasis added),

Motions for reconsideration will not be granted absent “highly unusual circumstances.” *U.S. ex rel. Becker v. Washington Savannah River Co.*, 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court’s ruling will not support Rule 59(e) relief).¹ Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993).

This is directly contrary to South Carolina law. “[T]he wisdom of giving district courts the opportunity promptly to correct their own alleged errors is all the justification needed’ for the practice of freely allowing a motion for reconsideration.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C.

9, 22, 602 S.E.2d 772, 779 (2004) (alteration in original).¹³

The order then continues with additional quotations from federal cases that are also contrary to South Carolina case law (R. p. 22-23). It adds citations to two South Carolina cases for the proposition that Rule 59(e) cannot be used to present issues that could have been raised prior to judgment, a proposition that does not apply here. It then concludes, “After considering the issues raised in Plaintiffs’ motion, this Court hereby **DENIES** Plaintiffs’ Motion to Alter or Amend the Court’s June 12, 2023 Order.”

The order states the motion is denied “[f]or the reasons set forth below,” and the only reasons given below, other than the proposition that Rule 59(e) cannot be used to present issues that could have been raised prior to judgment, are the federal standards that bar relief except in “highly unusual circumstances” that are not present here.

The panel recognizes that the order cites improper cases, but suggests the lower court applied standards other than those he stated. But the lower court judge has ruled identically before, *Clemons v. Home Telecom Co.*, 2022 S.C. C.P. LEXIS 1062, 1; Order Denying Motion for Reconsideration Pursuant to Rule 59(e); (Berkeley Co. Ct. Sep. 20 2022); *Moran v. Locklear, et al.*, C/A No. 2019-CP-08-02639, Order Denying Motion to Reconsider (Berkeley Co. Ct. Jan. 4, 2021)),¹⁴ and reasonable minds might conclude it is kinder to suggest a judge was simply mistaken

¹³ “There is nothing inherently unfair in allowing a party one final chance not only to call the court’s attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument.” 361 S.C. at 22, 602 S.E.2d at 779. *See also id.* at 24, 602 S.E.2d at 780 (similar). It is “doubly important” that such motions be “freely allowed.” *Id.* at 25, 602 S.E.2d at 780.

The order’s footnote 1, curiously, cites to *Elam*, which is directly contrary to the order’s view of Rule 59 motions. The order does so for the proposition that “Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical,” ignoring the extent to which *Elam* and the order’s cases have very different views as to what is proper under Rule 59.

¹⁴ Each of these orders consist of an initial paragraph stating the name and date of the motion and that “For the reasons set forth below, the motion to reconsider is DENIED,” case law description identical to the current motion, and a final one-sentence paragraph stating, “After consideration of the issues raised in Plaintiff’s motion [or “on the parties’ memorandums], the Court hereby DENIES Plaintiff’s Motion[.]”

than to suggest he repeatedly emphasizes a set of standards he does not actually follow.

Appellants' discussions of the problems with the Order on the Rule 59 motion (e.g., Br. of Appellant 38-40) were overlooked or misapprehended.

IX. The Panel Overlooks Appellants' Request for Fees for Their Attorneys' Work on the Motion to Reconsider.

The panel overlooked Appellants' request for fees for their attorneys' work related to the motion to reconsider. Appellants' opening brief argued that it was reasonable for appellants to file a rule 59 motion, and that attorney fees should be awarded for reasonable work. Nissan did not dispute those claims, and that is enough to find those fees recoverable. *See* Reply Br. Heading G ("Nissan's 'II' Does Not Dispute that It Was Reasonable for Appellants to File a Rule 59 Motion, Nor that Attorney Fees Should Be Awarded for Reasonable Work. Accordingly, Fees Should Be Awarded for Work on that Motion.") (Reply Br. 23);

In sum, Respondent has not rebutted Appellants' argument that it was reasonable for them to file a Rule 59 motion and therefore attorneys' fees should be awarded for that work, under both *Jackson's* direction to consider the time expended and the Lemon Law's and MMWA's directive to base awards on the time reasonably expended on the case.

(*Id.* 24). *See also* Section X of Appellants' opening Brief and discussion on pages 38-42.

It was entirely reasonable to ask the lower court to correct its error as to the number of hours incurred, especially as two statutes require the award be based on that figure. *See Elam*, 361 S.C. at 22, 602 S.E.2d at 779 (the "wisdom of giving district courts the opportunity promptly to correct their own alleged errors is all the justification needed").

It was entirely reasonable to ask the lower court to explain how it decided on the amount to cut, and how the need to deter similar "litigation conduct" played into it, and which, if any, *Jackson* factors he was reducing.¹⁵

¹⁵ As discussed above re the first order, if one were to speculate that he meant the results did not justify the

It was entirely reasonable to ask for fees for that work.

The Court should consider the overlooked request for an award of fees for the work on the motion to reconsider, especially as it was “actual time expended” and “reasonably incurred by the plaintiff for or in connection with the . . . prosecution of such action,” as the Lemon Law and Magnuson-Moss Act provide. To hold that there is an amount “for the case,” irrespective of additional work done, would be counter to both the requirements in two of the acts that fees be “based on” the hours expended *and* to *Jackson’s* recognition that the hours reasonably expended play a role in the determination of the award. It is wrong. It should be corrected.

The Court may remand for the trial court to determine the amount awarded for that reasonable work. It may spare the parties the time and expense of that litigation and direct an award for the full 74.2 hours incurred. Much of this work was necessitated by Respondent’s Opposition (R. pp. 756-64) citing many cases it had not previously mentioned, including the federal Rule 59 cases which were incorporated into the order, and which had to be read, analyzed, and Shepardized. But whether it is the \$33,390.00 requested, or only a thousand dollars, Appellants are entitled to *something* for that work. *See, e.g., Austin v. Stokes-Craven Holding Corp. (Austin II)*, 406 S.C. 187, 201, 750 S.E.2d 78, 85 (2013) (“appellate and post-appellate fees” are proper under the Dealers Act); *Renaissance Enters. v. Ocean Resorts*, 326 S.C. 460, 469, 483 S.E.2d 796, 801 (Ct. App. 1997) (“We find no reason that the [award] would not encompass fees incurred in this [later] proceeding, brought in order to determine the amount due from the [initial] proceeding.”).

Conclusion

amount of fees requested, explanation is in order because the judge held “Our Supreme Court has rejected this argument” and he found “very” beneficial results. (R. 16) (Reply Br.11). Moreover, as also explained there, one should not have to speculate as to which factor(s) the judge was relying on to reduce the award. Good jurisprudence “requires the analysis be explained.” *Morris*, 438 S.C. at 588, 885 S.E.2d at 398.

The lower court writes he considered \$126,000 incurred through April, which would be error. The panel holds that he meant \$131,000 through May. The lower court writes he is powerless to grant Rule 59 relief under stringent federal standards. The panel holds he felt free to employ the more generous South Carolina standards. Appellants write that an award must follow the *Jackson* factors; the panel finds that Appellants were discussing whether their attorney's work was related to the statutory claim. The panel holds the lodestar is only a starting point, after which a judge may pick whatever number seems right, contradicting both the state and federal Supreme Courts.

It erroneously holds that as long as a judge addresses the *Jackson* factors, he may then pick any number that seems reasonable to him, with no explanation of how he reasoned from those factors to his conclusion, contradicting a host of cases that hold the analysis must be explained.

It so holds even when the reduction removes the vast majority of time incurred.

It overlooks the crucial fact that all—not some, not most, all—*Jackson* factors were found in favor of Appellants.

The full Court should rehear. If it then remands for further consideration by the trial court, it should be for an initial consideration of the 9.9. hours overlooked in the initial order, and the hours incurred relating to reconsideration, and for explanation of which *Jackson* factors, if any, the lower court relied on in reducing the award and how it applied those factors, an explanation of why the lower court believes this to be an exceptional case requiring divergence from the lodestar and how it determined how deeply to diverge. Preferably, the Court will keep things simple and direct that that a supplemental award be entered for \$89,610.00.

Respectfully submitted,

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June 12, 2025

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELY COUNTY

Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Appellate Case No. 2023-001124
Lower Court Case No. 2020-CP-08-02455

Rita R. Greenawalt and
James M. Greenawalt,

Appellants,

v.

Nissan North America, Inc.,

Respondent.

Proof of Service

I certify that I electronically served Appellants' Petition for Rehearing *en banc* on Nissan North America, Inc., the Respondent in this matter, today, via email to its counsel of record, Blake T. Williams, at blake.williams@nelsonmullins.com.

A copy of the email is attached.

June 12, 2025

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