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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM BERKELY COUNTY  
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

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Case No. 2023-001124

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Rita R. Greenawalt and  
James M. Greenawalt,

Petitioners,

v.

Nissan North America, Inc.,

Respondent.

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTION PRESENTED

Does the Court of Appeals’ opinion in this case conflict with this Court’s holdings in *Morris v. BB&T Corp.* or *Horton v. Jasper County School District*?

## OVERVIEW

(A) *Morris v. BB&T Corp.* held the discretion standard of review requires the analysis be explained. 438 S.C. 582, 588, 885 S.E.2d 394, 398 (2023) (“[T]he ‘discretion’ standard we employ for reviewing the commission’s analysis requires the analysis be explained.”). *Horton v. Jasper County School District* held that where every finding on the *Baron Data Systems* factors supports a fee request, a circuit court’s reduction of the amount must be “adequately explained with specific findings—as the law requires . . . .” 423 S.C. 325, 331, 815 S.E.2d 442, 445 (2018). Here, every finding on the *Jackson v. Speed* factors supports a full fee assessment, yet the circuit court reduced the assessment by half. The Court of Appeals affirmed. It reasoned that somewhere in the circuit court’s “overall sense” of the case, there must be unexplained reasons for the reduction. The opinion should be reversed, as it contradicts *Morris* and *Horton*.

(B) *Morris* also directs that “[r]eversal should follow” if “the trial court did not recognize its capacity to exercise discretion.” 438 S.C. at 587, 885 S.E.2d at 397. Here, the circuit court explicitly held it had no discretion to grant Petitioners’ Rule 59 requests. Those requests included that the circuit court address the 9.9 hours of attorney time the fees order had overlooked, explain the reasons it concluded the amount assessed is reasonable, and reconsider arguments addressed in the fees order. These are proper requests under this Court’s broad interpretation of Rule 59, SCACR. *See, e.g., Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 21-22, 602 S.E. 2d 772, 778-79 (2004). The circuit court instead followed federal cases narrowly interpreting the Federal Rule 59. Those cases conflict with the broad scope South Carolina affords the State Rule. Because the

circuit court “did not recognize its capacity to exercise discretion,” reversal “should follow” under *Morris*. Instead, the Court of Appeals held in effect that the circuit court must have had other, unexplained reasons for denying the motion. That again contradicts *Morris*.

## **SPECIAL REASONS TO GRANT THIS PETITION**

This Petition is squarely within Rule 242(b)(3), as the Court of Appeals’ opinion conflicts with prior decisions of the Supreme Court.

Moreover, these are not isolated errors. Although the Court “publish[ed] this decision [*Morris*] to clarify that no court is entitled to the deference associated with the discretion standard of review until that court has earned deference by fulfilling the responsibility of exercising its discretion according to law,” 438 S.C. at 585-86, 885 S.E.2d at 396, the Court of Appeals has more than once held that detailed discussions of *Jackson* or *Baron* factors suffice, even when the assessment is greatly at odds with the findings on those factors.

More than one lower court has been led astray by the similarity of the South Carolina and the Federal Rule 59, and by statements in both *Elam* and the first Note to the South Carolina Rule drawing attention to the near-identity of the two Rules. The two rules are “practically identical.” *Elam*, 361 S.C. at 21, 602 S.E.2d at 779. “This Rule 59 is substantially the Federal Rule.” Rule 59, SCACR, Note to unamended Rule.

The Court can easily correct these repeated problems by stating that regardless of how much other discussion is in an order, *Morris* and *Horton* are not satisfied by orders that do not explain how they reached the result, and that despite the substantial identity of the content of the State and Federal Rule 59s, the South Carolina Rule is interpreted much more broadly than the Fourth Circuit and the District of South Carolina interpret the Federal Rule.

## BACKGROUND

Petitioners Rita and Jim Greenawalt (“Consumers”) prevailed on each of the four statutory claims they brought against Respondent Nissan North America, Inc. (“Manufacturer”), stemming from their purchase of one of Manufacturer’s automobiles. (R. pp. 32-36).<sup>1</sup> Each Act allows or mandates an assessment of attorneys’ fees for a prevailing consumer. Each requires the assessment be for a reasonable amount. Two of these laws explicitly require that any assessment be “based on actual time expended.”<sup>2</sup> Two of these laws make fee assessments for prevailing consumers mandatory.

The circuit court’s involvement was limited to determining whether to assess fees and assessing the amount. The parties had stipulated that “The Greenawalts are considered the prevailing parties as to all claims.” (R. pp. 6-7) (Order pp. 1-2). They had also stipulated to costs. (*Id.*). The stipulations, on April 5, 2023 (*id.*), came approximately two-and-a-half years after the complaint was filed on November 13, 2020 (R. p. 25), and almost three years after representation of the Greenawalts began on May 14, 2020 (R. p. 550).

### The Order on Attorney’s Fees

The Order Regarding Plaintiffs’ Motion For Attorney’s Fees issued June 12, 2023. (R. pp. 6-21). It held that “In South Carolina, there are six factors to consider in determining an award of attorney’s fees” (R. p. 10-11) (citing *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997), and that all these factors weigh in favor of Consumers (R. 12-16).

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<sup>1</sup> The claims are under the Magnuson-Moss Warranty Act, 15 U.S.C. 2301-12; and the South Carolina Unfair Trade Practices Act (“UTPA”), S.C. Code Ann. § 39-5-10 to -180; Enforcement of Motor Vehicle Express Warranties Act (“Lemon Law”), S.C. Code Ann. §§ 56-28-10 to -110; and Regulation of Manufacturers, Distributors and Dealers Act (“Dealers Act”), S.C. Code Ann. § 56-15-10 to -600.

<sup>2</sup> Magnuson-Moss Warranty Act, 15 U.S.C. § 2310(d)(2); South Carolina Lemon Law, S.C. Code Ann. § 56-28-50(D).

This factor weighs in Plaintiffs' favor. .....	[First factor]
This factor weighs in Plaintiffs' favor. .....	[Second factor]
This factor weighs in favor of Plaintiffs. .....	[Third factor]
This factor weighs in favor of Plaintiffs. .....	[Fourth factor]
This factor weighs in favor of Plaintiffs. .....	[Fifth factor]
This factor weighs in favor of Plaintiffs.	[Sixth factor]

(R. pp. 13-16). The order further “finds \$450.00 per hour to be a reasonable fee.” (R. p. 16).

Then it lops off 43%.

It does so on its final page, after four pages about how each factor supports the Greenawalts, and another three about Manufacturer’s arguments and improprieties in Manufacturer’s litigation tactics (R. pp. 16-19). It then lists most but not all of the fee requests (R. p. 19) (Order 14). It fails to note one request. It then totals the requests at 126,765.00. (*Id.*). It states that with a 1.5 multiplier, the request seems “too much.” (R. p. 20) (“Plaintiffs’ total attorney’s fee request comes in at around \$195,000. (\$126,000 multiplied by a 1.5 multiplier). This seems ‘too much’ . . .”).

But as for reduction from the baseline figure, i.e., without a multiplier, the only “reason” the order provides is, “This Court finds that a fee of \$75,000 is reasonable and necessary to achieve the outcome and 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. At the same time, an assessment of \$75,000 is a lot less than the amount Plaintiffs claim, but it is still reasonable and generous and should send a message to *auto dealers* to resolve these cases sooner rather than later.” (R. p. 20) (emphasis added).<sup>3</sup>

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<sup>3</sup> Improper litigation conduct by Manufacturer, if anything, are reasons to increase the award, not

But there are no automotive dealers in this case. The Lemon Law places obligations on manufacturers, not dealers. In fact, automobile dealers are explicitly excluded from the Lemon Law. SC Code Ann. §56-28-80. Nor is there more than one Defendant. It makes no sense to say the award will deter auto dealers. Perhaps more important for present purposes, the order makes no other attempt to explain why limiting the assessment to roughly half the requested amount is “reasonable,” “necessary,” or “generous,” no explication of the thought process behind the significant cut. Did the lower court decide that the professional standing of counsel did not justify a rate of \$450, and thus contradict its findings on factors three (finding Counsel has “a good reputation in the legal profession”) and six (“The Court finds \$450.00 per hour to be a reasonable fee”)? Did he decide that \$450 is a reasonable rate on paper, and then change it in his mind? Did he decide that car cases just are not worth much, and thus contradict the legislature’s policy in the Dealers Act and Lemon Law? It does not say. Is he equating an assessment of attorney’s fees as statutory fee-shifting with an assessment of attorney’s fees as sanctions for litigation misconduct? The order does not say.

If the circuit court was going to reduce the request, why not reduce it by three percent, as the Court did in *Layman? Layman v. State*, 376 S.C. 434, 460, 658 S.E.2d 320, 334 (2008) (so doing); *id.* (favorably citing *Edmonds v. United States*, 658 F. Supp. 1126, 1135 n.18, 1147 n.4 (D.S.C. 1987) as having done similarly). Is there anything more than whim behind the selection of seventy-five thousand dollars instead of fifty or one hundred thousand? The order does not say.

The order also errs in overlooking 9.9 requested hours.<sup>4</sup>

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reasons to reduce it.

<sup>4</sup> (R. p. 19) (Order p. 14) (listing requests “through and including April 30, 2023”) (overlooking request filed May 23, 2023) (R. pp. 732-35). When the overlooked 9.9 hours are added to the \$126,000 the judge considered at the \$450 hourly rate he ordered (R. p. 16) (Order p. 11), the unmultiplied fee request was \$131,220. The \$75,000 award denies 42.84 percent of that.

## The Order Denying Rule 59 Relief

Consumers moved under Rule 59, SCRCP, to alter or amend the judgment. (R. pp. 743-50). Consumers did not object to the denial of the request for a multiplier. But they did ask that the circuit court address the 9.9 overlooked hours; reconsider its assessment; and provide a rationale under South Carolina law for the 41% or 43% reduction of the base assessment. (Mot. 6, 7, R. pp. 748-49). Defendants opposed all Rule 59 relief. (R. p. 756) (arguing “there is no justification . . . for this Court to alter or amend its June 12 Order.”).

The Order Denying Plaintiff’s Rule 59 Motion to Alter or Amend held the circuit lacked ability to grant any of the requested relief.

Filed July 25, 2023 (R. pp. 22-23), its second sentence states, “For the reasons set forth below, the motion to reconsider is DENIED.” The only reason the order “set[s] forth below” [or above] is that the court lacks authority to properly grant any of the relief requested. For this, the order cites several federal cases interpreting the federal Rule 59. It reasons that because *Elam* held, “Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical” (R. p. 22, n.1) (Order, p. 1 n.1) (quoting *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004), interpretations of the federal rule are suitable guides. Quoting this federal case law, the circuit court finds itself without power to grant any of the Greenawalts’ requests.

Motions for reconsideration will not be granted absent “highly unusual circumstances.” . . . 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.” Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues . . .

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Excluding the overlooked hours, the reduction in the fees order is still 41% of the requested amount.

(R. pp. 22-23) (Order pp. 1-2) (footnote omitted) (quoting *U.S. ex rel. Becker v. Washington Savannah River Co.*, 305 F.3d 284, 290 (4th Cir. 2002); *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993); and citing *Dash v. Mayweather*, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, \*2 (D.S.C. Sept. 13, 2010) (citing *Exxon Shipping Co. v. Baker*, 554 U.S. 471, n.5 (2008)).

This is, of course, entirely contrary to South Carolina standards. “[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*, 361 S.C. at 22, 602 S.E.2d at 779 (alteration in original). *See also id.* at 21-22, 602 S.E.2d at 778-79 (discussing South Carolina’s broad view of Rule 59(e)).

The order continues with state and federal decisions standing for the proposition, not relevant here, that parties may not use Rule 59 motions to raise issues that should have been raised before the judgment, and then more authority for the proposition that giving the lower court the opportunity to correct their own errors is not a proper use of Rule 59.<sup>5</sup> (R. p. 23) (Rule 59 Order p. 2). The remainder is simply a single sentence, “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.” *Id.*

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<sup>5</sup> The order states,

In other words, “[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does “[a] party’s mere disagreement with the court’s ruling . . . warrant a Rule 59(e) motion.” *In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig.*, 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also Lyons v. Fid. Nat’l Title Ins. Co.*, 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

(R. p. 23) (Rule 59 Order p. 2).

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The Court of Appeals affirmed. 2025 WL 1517016 (2025). Consumers petitioned for rehearing en banc. The petition was denied on August 22, 2025.

## **ARGUMENT**

This case can be resolved solely by *Morris*. The main order does not explain why it concludes a reduction of 40+% is reasonable; and the second order explains only the erroneous reasons the circuit court thought Rule 59(e) does not provide discretion to explain prior rulings, consider overlooked hours, or reconsider arguments.

### **I. GOVERNING LAW**

#### **A. Standard Of Review**

Consumers do not contest the Court of Appeals' holding that the standard of review is the discretionary standard. But the Court has explained what that means. "We publish this decision to clarify that no court is entitled to the deference associated with the discretion standard of review until that court has earned deference by fulfilling the responsibility of exercising its discretion according to law." *Morris v. BB&T Corp.*, 438 S.C. 582, 885 S.E.2d 394. *Id.* at 585-86, 885 S.E.2d at 396. *Morris* then specified certain requirements for discretionary decisions to withstand review, *id.* at 585-88, 885 S.E.2d at 396-398, as described below.

#### **1. Discretion Is Not Inclination or Whim.**

Discretion is not "inclination" but judgment guided by legal principles. *Morris*, *id.* at 587, 885 S.E.2d at 397 (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.' " (alteration in original))

(quoting *Jordan v. Hartford Fin. Grp., Inc.*, 435 S.C. 501, 868 S.E.2d 400 (Ct. App. 2021)).  
“Discretion is not whim . . . .” *Jordan*, 435 S.C. at 505, 868 S.E.2d at 402.<sup>6</sup>

## **2. The Court Must Recognize It Has Discretion.**

*Morris* explained the “essential” requirement that a judge recognize he has discretion, and the result if he does not.

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. . . . [O]ne of the “essential” considerations for reviewing a discretionary decision is “[w]hether the trial court . . . correctly perceived the issue as one of discretion” . . . .

*Morris*, 438 S.C. at 587, 885 S.E.2d at 397 (second alteration and second omission in original).

“[R]eversal should follow if . . . the trial court did not recognize its capacity to exercise discretion . . . .” *Id.* (alteration and omission in original). *See also id.* n. 2 (quoting authorities).

## **3. The Order Must Show the Relevant Analysis.**

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.

*Id.*

“*This ‘thought process’ requires analysis, and the ‘discretion’ standard we employ for reviewing the commission’s analysis requires the analysis be explained.*” *Id.* at 588, 885 S.E.2d at 398 (emphasis added).

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<sup>6</sup> Many other decisions support this position. E.g., *Daufuskie Island Util. Co. v. S.C. Off. of Regul. Staff*, 427 S.C. 458, 832 S.E.2d 572 (2019 (A decision “is arbitrary ‘if it is . . . without adequate determining principles, or is governed by no fixed rules or standards.’ ”)); *Hatcher v. S.C. Dist. Council of Assemblies of God, Inc.*, 267 S.C. 107, 117, 226 S.E.2d 253, 258 (1976) (similar); *Turbeville v. Morris*, 203 S.C. 287, 315, 26 S.E.2d 821, 832 (1943) (similar).

To state what may be obvious, “I have secret reasons,” “It seems good to me,” or the like, is not adequate explanation. Similarly, it does not suffice for a reviewing court to hold, “We are sure the lower court had good, unexplained, reasons.” Litigants are entitled to rationales that can be put to the test of appellate review.

This necessarily applies not merely to findings but to conclusions based on those findings. *See, e.g., Heater of Seabrook, Inc. v. Pub. Serv. Comm'n of S.C.*, 332 S.C. 20, 26, 503 S.E.2d 739, 742 (1998) (citing *Able Commc'ns, Inc. v. South Carolina PSC*, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986)) (an order must “enable the reviewing court to determine” whether the result shows a proper application of any findings). Implicit is that even detailed analysis is insufficient if it does not explain the result. *See Johnson v. Johnson*, 296 S.C. 289, 292, 304, 372 S.E.2d 107, 109, 115 (Ct. App. 1988) (even “an unusually detailed order” is insufficient if it does not properly explain why it “refused to award full fees.”).

The Court has provided guidance in the specific context here, the context of attorneys’ fee assessments that are markedly less than requested. *Horton v. Jasper County School District*, 423 S.C. 325, 815 S.E.2d 442 (2018). In *Horton*, as here, “every finding the circuit court made appears to support [Plaintiffs].” *Id.* at 331, 815 S.E.2d at 445 The circuit court offered nothing to explain the reduction but its implicit conclusion that the reduced amount was reasonable. This Court reversed, holding the lower court must “support its conclusion that [the reduction] was reasonable.” *Id.* “[T]he circuit court’s reduction” must be “adequately explained with specific findings—as the law requires— . . . .” *Id.*<sup>7</sup>

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<sup>7</sup> *Horton* further makes clear that there must be “specific findings” supporting the reduction. Findings supporting a full assessment do not suffice to reduce an award.

When a trial court's decision is made on a sound evidentiary basis and is adequately explained with specific findings—as the law requires—we defer to the trial court's discretion. Here, however, there is no evidence in the record that supports the circuit

This just makes sense. To take on a statutory case, prove it, request the fees the statute promises to encourage the suits to be pursued, and then be told, “I think that’s far too much”—with no explanation as to why it is far too much, is unfair.

**B. Other Governing Law**

In South Carolina, the amounts of statutory attorneys’ fees assessments are usually governed by six factors. *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997) (listing the factors); *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 384, 377 S.E.2d 296, 297 (1989) (listing substantially the same factors in different order).

**II. THE CIRCUIT COURT’S ORDERS FAIL TO MEET THESE STANDARDS.**

**A. The Lower Court’s Order Regarding Plaintiffs’ Motion For Attorney’s Fees Fails To Meet The Standard For Discretionary Review.**

When all factors are found in Plaintiffs’ favor, something more than whim is required to reduce the assessment by half. *Horton*. The order below offers nothing more than the unsupported conclusion that the lower court considers the assessment generous. That is not enough. *Morris*. *Horton* (applying these principles to an attorneys’ fees assessment).

**B. The Lower Court’s Order On The Rule 59 Motion Fails To Meet These Standards.**

The circuit judge did not recognize he had discretion to grant the relief sought by the Rule 59 motion. (R. pp. 22-23) (Order pp. 1-2) (limiting Rule 59 to “highly unusual circumstances” and listing acceptable circumstances). Reversal should follow. *Morris*, 438 S.C. at 587, 885 S.E.2d at 397 (cleaned) (“Reversal should follow if the trial court did not recognize its capacity to exercise

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court's reduction of the hourly rate. Thus, we find a remand unnecessary.  
423 S.C. at 331-32, 815 S.E.2d at 445.

discretion . . . .”). *See also id.* n.2 (quoting authorities).<sup>8</sup>

Reversal should also follow because it is improper to follow federal decisions over conflicting South Carolina appellate decisions on a matter of South Carolina law. *See generally* Rule 244, SCACR; *Johnson v. Fankell*, 520 U.S. 911, 916, 117 S. Ct. 1800, 1803–04 (1997).

### **III. THE COURT OF APPEALS’ OPINION SHOULD BE REVERSED AS IT CONTRADICTS SUPREME COURT HOLDINGS.**

#### **A. The Holding On The Fees Order Conflicts With *Morris*, *Horton*, And Other Supreme Court Decisions.**

Perhaps the Court of Appeals was led astray by the detail in the order’s discussion of the *Jackson* factors. But evaluation, detailed or not, is obviously insufficient if it does not support the conclusion. When the Court held that the analysis must be explained, *Morris*, it did not mean “some of the analysis must be explained, but it is permissible to omit major portions.” *See also Heater of Seabrook, Inc.* (analysis is insufficient if it does not explain the application (citing *Able Commc’ns, Inc.*)).

Where, as here, “every finding the circuit court made appears to support” the party seeking fees, “the circuit court’s reduction” must be “adequately explained . . . as the law requires . . . .” *Horton*, 423 S.C. at 331, 815 S.E.2d at 445. It must “support its conclusion that [the reduction] was reasonable.” *Id.*

The Court of Appeals’ opinion here repeats, and cites many authorities to support, the propositions that the amount of a fee assessment is in the discretion of the circuit court, and that an assessment must be reasonable; and Consumers agree with these propositions. (Along the way,

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<sup>8</sup> Reversal should also follow because the rulings are based on an error of law. *Carson v. CSX Transp., Inc.*, 400 S.C. 221, 229, 734 S.E.2d 148, 152 (2012) (“An abuse of discretion occurs when the conclusions of the circuit court are . . . controlled by an error of law”).

the opinion mis-states Consumers’ position,<sup>9</sup> but this is beside the point.) But neither of those points obviates the requirement that the analysis be explained. The Court of Appeals actually cites *Horton*, but clearly misconstrues the Court’s opinion there. Here, the Court of Appeals holds that the detailed findings supporting a full assessment are overcome by the lower court’s discretion, and its “overall sense of [the] suit,” based on “the history of the case, the ultimate outcome, and the purpose of the statutes . . . .” *Horton* is actually contrary to allowing these things to shape the result without explanation. Where “every finding the circuit court made appears to support” the party seeking fees, a significant reduction must be “adequately explained with specific findings . . . .” 423 S.C. at 331, 815 S.E.2d at 445. It is not enough to conclude that a reduced amount is

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<sup>9</sup> The opinion states, 2025 WL 1517016, at \*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, “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.* p. 8) (“Appellants agree that no statute mandates an amount or requires trial courts to award all fees sought.”).

Consumers’ actual argument is much more sensible. The Lemon Law and the Magnuson-Moss Warranty Act each require an assessment of fees to be “based on” actual time expended. Consumers’ position is just that: Any assessments 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. *Horton*. These statutes explicitly state the assessments are based on hours to ensure the attorney is properly compensated and judges not get misled by the relatively small sum recovered.

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

Again in the alternative, Consumers maintain the six *Jackson v. Speed* factors should 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).

The opinion similarly states, “It is evident the circuit court considered the hours expended,” which is incorrect, as the Court of Appeals’ opinion recognizes unmultiplied fee requests of \$131,000, 2025 WL 1517016, at \*1, while the order recognizes \$126,765. (R. p. 19) (Order p. 14). The Court of Appeals’ figure obviously reflects more hours.

reasonable; it must “support its conclusion that [the reduced amount] was reasonable.” *Id.* *Horton* accepts that “the circuit court has discretion in deciding the ‘specific amount of . . . reasonable attorneys’ fees,” *id.* (alteration in original), but makes clear that reducing statutory fees by unexplained exercises of discretion is unacceptable. In misreading *Horton* as its opposite, the Court of Appeals effectively contradicts that opinion.

Of course these factors can, *if properly explained*, shape the result. But what is it about the *history of the case* that justifies the result? Manufacturer’s “playing whack-a-mole” (R. p. 19) (Order p. 14) and engaging in other wrongful litigation practices? (R. pp. 6-10, 16-17, 20) (Order pp. 1-5, 11-12, 15). Those would seem to increase the assessment, not reduce it. Is the *ultimate outcome*—complete victory on the Lemon Law and Magnuson-Moss Acts—disfavored by the circuit court judge? The *purpose of the statutes* is to provide a new form of relief for consumers and to encourage compliance with the new laws by Manufacturers (not car dealers), by making it economically feasible to engage an attorney to pursue any violation of the laws. As remedial measures, these laws are to be enforced in favor of consumers. *Allen v. Union Oil & Mfg. Co.*, 59 S.C. 571, 577, 38 S.E. 274, 276 (1901); *see also Ducworth v. Neely*, 319 S.C. 158, 163, 459 S.E.2d 896, 899 (Ct. App. 1995). How does any of that justify a reduction? Neither the circuit court nor Court of Appeals has an explanation.

The opinion speculates that the circuit court must have had reasons for finding the partial assessment reasonable and generous. This is so far from

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

*Morris*, 438 S.C. at 587, 885 S.E.2d at 397, that it contradicts *Morris*.

This is not a one-time error by the Court of Appeals. The same panel, in a case where

another consumer was represented by the same counsel as here, similarly misinterpreted the discretion standard, and a petition for writ of certiorari is pending in that case as well. *West v. American Honda Motor Co.*, Case No. 2025-001600.

**B. The Court Of Appeals’ Holding On The Rule 59 Motion Contradicts *Morris*.**

The Order Denying Plaintiffs’ Rule 59 Motion should have been reversed under *Morris*. The circuit court clearly did not understand it could properly grant Consumers’ requests under the discretion granted to it by Rule 59(e), SCRPC (Rule 59 Order, pp. 1-2); although it properly had that discretion, *see, e.g., Elam*, 361 S.C. at 21-22, 602 S.E. 2d at 778-79. Reversal “should follow” because the circuit court “did not recognize its capacity to exercise discretion . . .” *Morris*, 438 S.C.at 587, 885 S.E.2d at 397. *See also* authorities cited there.

The Court of Appeals’ opinion makes a bad situation worse. The order “expressly noted that the court considered the issues in Appellants’ motion,” the opinion states. 2025 WL 1517016, at \*2. That is obviously true. But if one accepts that the judge believes what he wrote, that the standards for Rule 59 motion do not allow him to grant any of the requested relief, he considered each issue under the wrong standard, and determined each was outside the bounds of Rule 59. The order consists of almost nothing more than ways case law supposedly bars this relief.

The Court of Appeals instead attempts to read the circuit judge’s mind, and concludes he did not mean what he wrote. The Court of Appeals “do[es] not wish to minimize the error of applying an incorrect standard,” but “[w]e have no doubt that the highly experienced and extremely capable circuit court judge felt free to modify the award if he believed a modification was warranted . . . .” *Id.* The order consists almost entirely of reasons the circuit court could not grant the requested relief even if it wanted to. The remainder is simply a short opening paragraph stating the name of the motion and denying it “[f]or the reasons stated below;” and a final sentence stating

that “After considering the issues raised in Plaintiffs’ motion,” presumably under the standards he had just explained, he denies the motion. The only fair reading of the order is that the circuit judge “considered” the issues, “recognized” he was forbidden by federal case law to address them, and “[f]or the reasons set forth below”—i.e., the federal case law—“DENIE[D]” the motion. The circuit judge here has held identically about the limits of South Carolina Rule 59 in other cases. It makes little sense to say he repeatedly says he secretly believes his authority under that rule is broader than he repeatedly holds in this case (R. p. 22-23) and in other cases. *See* Order Denying Motion for Reconsideration Pursuant to Rule 59(e), *Clemons v. Home Telecom Co.*, No. 2021-CP-08-02709 2022 S.C. C.P. LEXIS 1062 (Berkeley Co. Sep. 20, 2022); Order Denying Motion to Reconsider, *Moran v. Locklear*, No. 2019-CP-08-02639 (Berkeley Co. Jan. 4, 2021).

Further, the opinion’s mind reading runs afoul of *Morris*. The analysis must be explained, not held back in the judge’s mind.

Because the circuit court judge erroneously thought he lacked discretion to grant the requested relief, reversal should follow under *Morris*. Even if the Court of Appeals were correct that the circuit court judge had unexplained reasons for his holding, reversal under *Morris* should still follow. The Court of Appeals’ opinion doubly-conflicts with *Morris* and should be REVERSED.

### **C. The Importance Of A Ruling From This Court On The Affirmance Of The Motion To Reconsider.**

As noted above, the lower court judge has ruled identically before. *Clemons, Moran*.<sup>10</sup>

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<sup>10</sup> Each of these orders, including the order here, consists 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 identical to the case law in the order here, including the proposition that *Elam* says the state and federal rules are “substantially the same,” and a final one-sentence paragraph stating, “After consideration of the issues raised in” “Plaintiff’s motion” or “the parties’ memorandums,” the motion is denied.

Consumers are aware of these three orders only because *Clemons* was cited by Respondent in this case, and the other two are from cases in which Brooks R. Fudenberg was involved in the appeal. Undoubtedly there are others. Each of Judge Young's three known orders are based on the observation that "Rule 59 is substantially the same as the Federal Rule," for which he quotes *Elam*.

Other jurists have been similarly led astray. In yet another case in which Mr. Fudenberg was involved in the appeal, the lower court held,

[T]he first sentence in the notes to Rule 59(e), SCRCF, states that South Carolina's Rule 59(e) "is substantially the Federal Rule." Rule 59, SCRCF (Notes). South Carolina courts look to federal law to interpret state rules of civil procedure that track the language of a corresponding federal rule. *Gardner v. Newsome Chevrolet-Buick*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991).

Supplemental Order, *Carter v. Eagles Landing Restaurants, LLC*, No. 2016-CP-21-702, at 3 (Berkeley Co. May 28, 2010).

Because of interests of finality and conservation of judicial resources, Rule 59(e) motions should be granted sparingly.

The Fourth Circuit has similarly said of Rule 59(e) motions that "[i]n general reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." *Pacific Ins. Co. v. American Nat'l Fire Assoc.*, 148 F.3d 396, 403 (4th Cir. 1998) (citations omitted). The Fourth Circuit, applying South Carolina law, established three grounds for revisiting a settled matter under Rule 59(e): (1) to accommodate an intervening change in the law; (2) to account for new evidence not previously available; and (3) to correct a clear error of law or prevent manifest injustice. *Dockins v. Benchmark Commc'ns*, 180 F.R.D. 294, 295 (D.S.C. 1998), *aff'd*, 176 F.3d 745 (4th Cir. 1999); *see also E.E.O.C. v. Lockheed Martin Corp., Aero & Naval Sys.*, 116 F.3d 110, 112 (4th Cir. 1997). A Rule 59(e) motion may not be used to relitigate old matters. *Pacific Ins. Co.*, 148 F.3d at 403.

*Id.* at 4.

Because both the notes to South Carolina's Rule 59 and *Elam* say that South Carolina's Rule 59 is substantially the federal Rule 59, it may not be especially surprising that lower court jurists become confused. The Court should make clear that it is not only what a rule or statute

states, but how it is interpreted, that counts, that state Supreme Courts are entitled to interpret state rules, regulations, statutes, and constitutional provisions in ways that conflict with identical federal provisions as interpreted by federal courts, and that South Carolina interprets the State Rule 59 more broadly than the Fourth Circuit and the District of South Carolina interpret the Federal Rule.

#### **D. Other Matters**

If remanding the case, the Court should make clear that it was error by the Circuit Court to overlook 9.9 hours in the first order; error to fail to substantively address the error in response to the Rule 59 motion; error to refuse to explain the reasoning of the first motion as requested by the Rule 59 motion; and error to fail to assess any fees for work on that motion, as it was undoubtedly reasonable for Consumers to seek correction of the math error and explanation of the reasoning. Or, since Consumers already asked for that explanation, Manufacturer opposed it, and the lower court refused to provide it, the Court should simply declare that the full request be assessed, as it did in similar circumstances in *Horton*, 423 S.C. at 331-32, 815 S.E.2d at 445, and direct that a supplemental assessment be issued in the amount of \$89,610.

#### **Conclusion**

The Greenawalts prevailed on *all* their claims. The circuit court properly found *all* the factors are in their favor. The claims were *all* against a single manufacturer. But the circuit court concluded that a markedly reduced assessment sufficed to achieve the outcome and deter car dealers from their litigation conduct. Other than that, there is no explanation for why the assessment was reduced by almost half. The circuit court declined Consumer's requests to explain its reasoning and to recognize overlooked hours, reasoning that Rule 59, SCACR, did not allow him discretion to do so.

The Court should grant certiorari so that after reviewing the Court of Appeals decision here

it can remind courts to provide sufficient explanation to enable proper appellate review of the circuit court's reasoning.

It should also grant the Petition to explicitly draw attention to the divergence between what the Federal Rule 59 may allow and what South Carolina Rule 59 allows.

The Court should grant this Petition and review the decision of the Court of Appeals.

Respectfully submitted,

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September 22, 2025

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM BERKELY COUNTY

Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

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Appellate Case No. 2023-001124  
Opinion No. 2025-UP-173 Filed May 28, 2025  
Lower Court Case No. 2020-CP-08-02455

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Rita R. Greenawalt and  
James M. Greenawalt,

Petitioners,

v.

Nissan North America, Inc.,

Respondent.

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Proof of Service

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I certify that I served James and Rita Greenawalt's Petition for Writ of Certiorari on Nissan North America, Inc., the Respondent in this matter, via email to its counsel of record, Sarah Eibling, Esq. at [sarah.eibling@nelsonmullins.com](mailto:sarah.eibling@nelsonmullins.com).

A copy of the email is attached.

September 22, 2025

s/ Brooks R. Fudenberg  
Brooks R. Fudenberg  
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Attorney for Petitioners

**From:** [Brooks R. Fudenberg](#)  
**To:** ["Blake Williams"; "Sarah Eibling"](#)  
**Cc:** ["Steve Moskos"](#)  
**Subject:** Greenawalts v. Nissan, Appellate Case No. 2023-001124  
**Date:** Monday, September 22, 2025 11:24:08 PM  
**Attachments:** [Greenawalts" Pet. Cert.pdf](#)

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Hi Sarah, Blake,

Please find attached a copy of my clients' petition for writ of certiorari, which I hereby serve upon you.

Feel free to contact me with any questions or concerns.

Thanks,

Brooks R. Fudenberg  
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