Appellate Case No. 2025-001716

EXHIBIT A

to

Amended Notice of Appeal

September 25, 2025
Order denying Motion to Alter or Amend Judgment regarding prejudgment interest

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STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT
Andrea Allen, as Personal Representative of the Estate of Albert Charles Jefferies, deceased, Plaintiff, vs. Chi Hun Lim, M.D., Megan Nicholas, PA, and Carolina Orthopaedic and Neurosurgical Associates, P.A., Defendants.	)	Civil Action No.: 2020-CP-42-2169 **ORDER DENYING MOTION TO ALTER OR AMEND JUDGMENT REGARDING PREJUDGMENT INTEREST**

This matter was before the Court for a hearing on Friday, September 15, 2025, upon Defendant Carolina Orthopaedic & Neurosurgical Associates, P.A.'s Motion to Alter or Amend Judgment Regarding Prejudgment Interest filed on August 7, 2025, and Dr. Lim's and Ms. Nicholas's Joinder in that Motion, also filed on August 7, 2025. Present at the hearing for the Plaintiff were Gerald D. Jowers, Jr. and Luther J. Battiste, III. Adam Bach was present at the hearing for Carolina Orthopaedic & Neurosurgical Associates, PA. Present for Defendants Dr. Lim and Ms. Nicholas were Ashby Davis and Ryan Ginty. The hearing was conducted virtually and recorded by the WebEx record function with consent of all counsel.

The Court acknowledges the amount of research and preparation for the hearing by all counsel. After careful consideration of the record before me and the arguments of counsel at the hearing, for the reasons set forth below, the Court respectfully **DENIES** Carolina Orthopaedic & Neurosurgical, P.A.'s Motion to Alter or Amend Judgment Regarding Prejudgment Interest.

I. Procedural History

This medical negligence action began, as to the remaining Defendants, with a Notice of Intent to Sue filed on May 24, 2021. The Notice of Intent to Sue, on its face, asserted allegations of medical negligence against Dr. Lim, an orthopedic spine surgeon, and Megan Nicholas, a Physician Assistant, and vicarious liability, under the doctrine of *respondeat superior*, against their employer, a medical practice group. Following the mandatory pre-suit mediation, the Second Amended Complaint was filed on June 29, 2021. Defendants answered the Second Amended Complaint on August 30, 2021. Thereafter, the parties engaged in extensive discovery and trial preparation over the course of nearly four years.

On April 25, 2024, Plaintiff filed an Offer of Judgment directed to Defendants Dr. Lim, Ms. Nicholas, and Carolina Orthopaedic & Neurological Associates, ASC, LLC, pursuant to Rule 68, SCRCP, and S.C. Code § 15-35-400. Defendants did not respond to the offer and, as such, the offer was deemed rejected. This action proceeded to a jury trial that began on June 2, 2025, and ended on June 6, 2025, with a jury verdict in favor of the Plaintiff.

Following the jury's verdict, on June 16, 2025, Plaintiff filed a Motion for Assessment of Prejudgment Interest Pursuant to Rule 68, SCRCP. Defendants did not file a memorandum in opposition to Plaintiff's Motion for Prejudgment Interest. This Court held a hearing on all pending post-trial motions on July 2, 2025, that was conducted virtually and recorded by the WebEx record function with consent of all counsel.

Following the hearing, the Court entered an Order on July 26, 2025, denying the contested post-trial motions and assessing prejudgment interest in the amount of $540,489.66. The present Motion to Alter or Amend followed on August 7, 2025, filed by CONA PA's new

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counsel, Gregory Brown, Louise Aponte, and Adam Bach. Defendants Dr. Lim and Ms. Nicholas join in this motion, in part.

II. CONA PA's Motion to Alter or Amend Judgment Regarding Prejudgment Interest

This motion is based upon virtually the same issue, and arguments, as CONA PA raised in its Motions to Intervene and to Set Aside Order. Namely, CONA PA asserts that it should not be financially responsible for the prejudgment interest because the Offer of Judgment was directed to "Carolina Orthopaedic & Neurological Associates, ASC, LLC" rather than "Carolina Orthopaedic & Neurosurgical Associates, P.A." This Court addressed the background relating to that issue extensively in its Order of September 22, 2025, denying CONA PA's Motions to Intervene and to Set Aside Order. For purposes of this motion, the Court incorporates its September 22nd Order herein by reference.

Stated briefly, the medical practice group that does business as "Carolina Orthopaedic & Neurosurgical Associates" and uses the acronym "CONA" does not use its corporate name on its medical records, on its letterhead, on its website, or in its social media accounts. Even its CEO, Kelly Roper, does not use the corporate name in her email signature block. As a result, the practice group's corporate name is not readily ascertainable from the information available in the public domain. Further complicating matters, there are several similarly named corporate entities associated with CONA that share the same registered agent, address, owners, and/or members. The result is a situation that is ripe for confusion for all involved.

The record before me shows that throughout the extensive history of this case, from its inception through the verdict, the parties used the following names interchangeably when referring to the medical practice involved: CONA, Carolina Orthopaedic & Neurosurgical Associates, P.A., and Carolina Orthopaedic & Neurosurgical Associates, ASC, LLC. Regardless

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of which name was used, it is evident that the parties were always referring to the medical practice that employed Dr. Lim and Ms. Nicholas. It is equally clear from the record that defense counsel, Ashby Davis and Ryan Ginty, both of Davis & Synder, PA, were defending Dr. Lim's and Ms. Nicholas's employer in this action, on the merits, regardless of which name was used.

It was only after the verdict, on or about June 12, 2025, that defense counsel was informed that CONA PA and CONA ASC, LLC were not one in the same, and that CONA ASC, LLC has no employees, conducts no business, and was not involved in Mr. Jefferies' medical care. This is the opposite of the representations made about CONA ASC, LLC in this case and in others. Indeed, in discovery, Plaintiff was informed that CONA ASC, LLC was a medical practice, that it followed the guidelines of the North American Spine Society, and it produced the personnel files of Dr. Lim and Ms. Nicholas, as if it were their employer, and the medical records of Mr. Jefferies, as if it were responsible for his care. In other cases, cited in this Court's September 22nd Order, CONA ASC, LLC filed answers admitting allegations that it was a medical practice that employed the defendant healthcare providers.

Defendant CONA PA now seeks relief from the Order assessing prejudgment interest because the Offer of Judgment was addressed to Carolina Orthopaedic & Neurological Associates, ASC, LLC rather than CONA PA. In other words, the business entity that, either intentionally or negligently, misled its own counsel and the Plaintiff as to the nature of CONA ASC, LLC, in this case and in others, argues that it should be relieved from prejudgment interest on the basis of the confusion it created. Such a result would result in a clear injustice to the Plaintiff, Dr. Lim, and Ms. Nicholas.

Again, the record in this case shows that the parties used several different names interchangeably when referring to the medical practice that employed Dr. Lim and Ms. Nicholas.

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The Offer of Judgment was made to a business entity that represented itself to be a medical practice. At the time defense counsel received the Offer of Judgment, he believed CONA PA and CONA ASC, LLC to be one in the same.

In considering the issue, the Court is mindful of our Supreme Court's instruction that, "the corporate fiction and rules surrounding it have been of inestimable service in the affairs of business, but they must be applied in a manner to promote justice, not to hinder it." *Long v. Carolina Baking Co*., 190 S.C. 367, 3 S.E.2d 46 (1939).

There are multiple reasons to deny this motion. First, as described above, the parties used several names interchangeably when referring to the medical practice that does business as CONA. Even if the Offer of Judgment were addressed to an entity that was later shown to be incorrectly named, at the time it was made, everyone involved understood that it was directed to the medical practice that employed Dr. Lim and Ms. Nicholas. Defendants did not raise this issue then, nor at any time before the verdict.

Second, the purported error in the Offer of Judgment is simply a carryover from a misnomer in the Notice of Intent to Sue and Second Amended Complaint. South Carolina law regarding misnomer of a corporate name is longstanding and clear. The misnomer of a corporation in a notice, summons, **or other step in the judicial process** is immaterial if it appears that the corporation could not have been, or was not, misled. (emphasis added) *Griffin v. Capital Cash*, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct. App. 1992), *Tunstall v. Lerner Shops*, 160 S.C. 557, 159 S.E. 2d. 386, 388 (1931); *McCall v. Ikon*, 363 S.C. 646, 653, 611 SE.2d 315, 318 (Ct. App. 2005). A misnomer in the corporate name can be corrected at any time, including after judgment has been entered. See *Tri-County Ice and Fuel Co. v. Palmetto Ice Co*., 303 S.C. 237, 399 S.E.2d 779 (1990) (default judgment amended to substitute corporate name to correct

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misnomer). The record shows that the corporation, CONA PA, was not misled by the Notice of Intent to Sue, the Second Amended Complaint, nor by the Offer of Judgment. It certainly cannot claim prejudice when it represented, in discovery, that CONA ASC, LLC was a medical practice.

Third, at the July 2nd hearing on Plaintiff's Motion for Prejudgment Interest, Defendants did not raise this argument. In fact, as described in this Court's Order of July 28th, Defendants did not contest that the Offer of Judgment was made and rejected, nor did they contest the calculations made by Plaintiff. Instead, Defendants elected to rely on their post-trial motions arguing that the verdict was excessive and/or not supported by the evidence.

Lastly, at the July 2nd hearing, the parties stipulated to substitute CONA PA for CONA ASC, LLC as a party Defendant in this action. That stipulation was reflected in this Court's Orders of July 3, 2025, and July 28, 2025. The stipulation was appropriate and consistent with the conduct of the parties throughout the extensive history of this case.

III. Dr. Lim's and Ms. Nicholas's Joinder in Motion

Dr. Lim and Ms. Nicholas join in this motion on different, and limited grounds. Dr. Lim and Ms. Nicholas seek relief from the Order awarding prejudgment interest on the basis of the Offer of Judgment having been made jointly to all three orthopedic Defendants. As stated earlier, on April 25, 2024, Plaintiff filed an Offer of Judgment directed to Defendants Dr. Lim, Ms. Nicholas, and Carolina Orthopaedic & Neurological Associates, ASC, LLC, pursuant to Rule 68, SCRCP, and S.C. Code § 15-35-400. Defendants now argue that this joint Offer of Judgment was inappropriate and, as such, should be declared unenforceable.

Defendants have not identified any provision within Rule 68, SCRCP, or the applicable statute, that prohibits a party from making an offer of judgment to multiple adverse parties as a

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single offer. Defendants have not identified any caselaw in South Carolina that prohibits such a practice. Defendants did not raise this objection at the time the offer was made nor at the hearing held on July 2nd. In support of their argument, Defendants rely on two cases from other jurisdictions.

The first is *Tocwish v. Jablon*, 183, F.R.D. 239 (N.D. Ill. 1998). This is a federal district court opinion from the Northern District of Illinois. In this case, a defendant made an offer of judgment on multiple plaintiffs. The offer of judgment was conditioned upon the plaintiffs' unanimous acceptance. The offer contained a contractual provision that specified, in part, "[t]his offer must be jointly accepted by all Plaintiffs against all Defendants." Only three of the seven plaintiffs accepted the offer and, as such, according to the terms of the offer, it was deemed rejected. In its analysis, the court noted the unfairness in applying the Rule's penalty provisions to the plaintiffs who accepted the offer. The district court held that in that specific case, the conditional offer was invalid for purposes of Rule 68's penalty provision.

The second is *Attorneys' Title Ins. Fund, Inc. v. Gorka*, 36 So.3d 646 (Fla. 2010), a case from the Supreme Court of Florida. In this case, defendant made an offer of judgment to two plaintiffs that contained a provision that specifically conditioned the offer upon acceptance by both of them. The question before the court was whether a joint offer of judgment that was conditioned on the mutual acceptance of all of the joint offerees was valid and enforceable. The Florida Supreme Court held that it was not because such an offer is conditioned such that neither offeree can independently evaluate or settle his or her respective claim.

The Court is not persuaded by these cases. The Offer of Judgment made in this case was not conditioned upon acceptance by all offerees, nor did it preclude Defendants from independently evaluating their share of the liability. The Offer of Judgment was made to Dr.

Lim, Ms. Nicholas, and CONA in the amount of $500,000. All three could have accepted the offer and divided the total amount of $500,000 however they deemed appropriate. One of them could have agreed to pay the entire amount of the offer and all three would have secured a dismissal. Two of them could have agreed to pay the entire amount, divided it however they deemed appropriate, and all three would have secured a dismissal.

The Offer of Judgment made in this case provided for a dismissal of all three defendants upon agreement to pay a total of $500,000 by any one of them, or any combination of them. It is evident that Plaintiff's concern was the total amount of money to be paid, not unanimous acceptance, nor which defendant would pay what share of the total amount. Neither Rule 68, nor any reported case in South Carolina, prohibits such an offer and this Court is not inclined to do so here.

Accordingly, CONA PA's Motion to Alter or Amend Judgment Regarding Prejudgment Interest and Dr. Lim's and Ms. Nicholas's Joinder thereto are **DENIED**.

IT IS SO ORDERED.

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Grace G. Knie, Judge
Seventh Judicial Circuit

This _______ day of September, 2025.

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Spartanburg Common Pleas

Case Caption: Andrea Allen , plaintiff, et al VS Spartanburg Regional Health Services District, Inc. , defendant, et al

Case Number: 2020CP4202169

Type: Order/Other

IT IS SO ORDERED.

S/GRACE GILCHRIST KNIE - 2760

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