THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED
Oct 15 2025
S.C. SUPREME COURT

---

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

---

Supreme Court Case No. 2025-000563

---

| | | |
|---|---|---|
| Rita Pratt, Individually and as the Personal Representative of the Estate of William Pratt, deceased, | …….. | Respondent, |
| | v. | |
| Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center; Jaleesa Heyward, RN; South Carolina Emergency Physicians, LLC; Jonas Varaly, DO; Rock Hill Radiology Associates, LLC; and Geoffrey T. Gilleland, MD, | ……. | Defendants, |
| Of which Rock Hill Radiology Associates LLC and Geoffrey T. Gilleland, MD are the | ……. | Petitioners. |

---

# RESPONDENT'S BRIEF

---

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

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### Case Law

South Carolina

**Other Jurisdictions**



**Statutes**



**Court Rules**

## STATEMENT OF THE CASE

The trial of Respondent Rita Pratt's medical malpractice suit presented evidence of three medical errors leading her husband William "Bill" Pratt to endure unnecessary suffering and contributing to his untimely death. The first was an error of basic radiology. Petitioner Rock Hill Radiology Associates LLC, exclusive radiology provider for Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center ("Amisub"), procured the services of a virtual radiologist who read Mr. Pratt's chest CT scan as effectively normal even though he had nine broken ribs. (R. p. 26 ¶¶ 7-8; R. p. 181). The second error arose when the first one came to light. Within hours of the initial inaccurate read, Petitioner Geoffrey T. Gilleland, MD (a Rock Hill Radiology employee) read the chest CT a second time, spotted the broken ribs, and noted them in his report. Id. Yet, in violation of Amisub policy and the standard of care, Dr. Gilleland chose not to notify the emergency room that the initial radiology report was wrong. (R. pp. 187, 196-97).

Amisub emergency room personnel (Jonas Varaly, DO and Jaleesa Heyward, RN) relied on that initial inaccurate report when they committed the third error by making a substandard assessment and unreasonably discharging Mr. Pratt without treatment. (R. pp. 251-52, 256). For his part, Dr. Gilleland testified that he did not think it necessary to report the inaccurate initial radiology report to the emergency room because he knew the clinical significance of that information better than Mr. Pratt's treatment providers and because he did not think Mr. Pratt was going to live much longer anyway. (R. pp. 675-76, 680). What followed was a progressive decline in Mr. Pratt's condition and pneumonia that, according to experts, contributed to his death a few weeks later. (R. p. 269, 384-85). The jury would ultimately be asked to consider three claims: (1) a survival claim for Mr. Pratt's unnecessary suffering following these medical errors; (2) a loss of

consortium claim for damage to the Pratts' marriage; and (3) a wrongful death claim for what Ms. Pratt and Mr. Pratt's children have lost in his absence. (R. pp. 28-29).

During the February 3-10, 2020, trial in the York County Court of Common Pleas, Ms. Pratt's case-in-chief included testimony from Ms. Pratt, Mr. Pratt's daughter Pary Hart, as well as experts in the fields of radiology, emergency medicine/nursing, and internal medicine. Midway through the trial, attorneys for Ms. Pratt and Amisub/Nurse Heyward agreed to a settlement. (R. p. 565). The settlement was not immediately reduced to writing but was placed on the record just before Dr. Gilleland took the witness stand. Since Petitioners' appeal focuses so heavily on this settlement announcement, the relevant portion of the trial transcript is reprinted here in full:

| | |
|---|---|
| MR. GUNN:<br>(Amisub attorney) | We have reached a settlement with the plaintiff. I don't know at this time Your Honor – I don't know if you just put it on the record. |
| THE COURT: | I am happy to let you all put that on the record at this time. |
| MR. MCGOWAN:<br>(Pratt attorney) | Yes, sir. Your Honor, the deal is that Amisub will pay $250,000. We will release Ms. Jaleesa Heyward with prejudice. No payment on her behalf. Any legal machination we need to go through to ensure we are not releasing any other party, the ER doc and the radiologist. Attorney fees at 40 percent. |
| THE COURT: | And certainly not on the record we will have an approval hearing in front of me sometime in the next few days, I assume. |
| MR. GUNN: | Yes, sir. Mr. McGowan has accurately stated the terms of the agreement. We will prepare a dismissal with prejudice as to Ms. Heyward and Amisub. |
| THE COURT: | All right. Thank you. Anything else we need to put on the record? Let me give you about ten minutes to regroup. |
| MR. MCGOWAN: | The only issue is what you tell the jury, if anything. Obviously, we don't want to prejudice |

anybody.

THE COURT: I will just say that Amisub and Jaleesa Heyward are no longer involved in the case and Mr. Gunn and his client are no longer present. That is all I am going to say.

(R. pp. 565-66).

The trial continued on for an additional 160 pages. The Amisub settlement was never mentioned again. Neither the word "allocation" nor the concept of allocation exists anywhere in the 600-page trial transcript.

Ms. Pratt's claims were submitted to the jury on February 10, 2020. In light of the evidence summarized above, the jury returned a verdict against Petitioners. (R. pp. 3-5).[1] Each was found to have acted with recklessness or gross negligence and proximately caused much of the damages sought in Ms. Pratt's claims. (R. pp. 3-4). Although Ms. Pratt's attorneys sought $ 5 million in damages (R. p. 167), the jury awarded a total of $ 1 million with $ 360,000 allocated to the survival claim and $ 640,000 to compensate Ms. Pratt for her loss of consortium. (R. p. 4). In a second deliberation, the jury declined to award punitive damages. (R. p. 5).

The circuit court (Judge Daniel D. Hall) held an approval hearing for the Amisub settlement on February 20, 2025, with attorneys for Ms. Pratt, Amisub, and Petitioners all present. (R. p. 901). Ms. Pratt's attorney presented a written petition for settlement approval and stated on the record the settlement amount and lien status. (R. pp. 902-03). Then, for the first time anywhere in the record, Ms. Pratt's attorney proposed an allocation of the Amisub settlement among Ms. Pratt's survival, loss of consortium, and wrongful death claims.

MR. MCGOWAN: I guess really the only issue is the allocation and what we're asking the Court to do is a third, third, third. The reason for that is that we believe it was

[1] The jury rendered a defense verdict on Ms. Pratt's claims against Dr. Varaly. (R. p. 3).

objectively reasonable at the time which I think is probably the issue for Your Honor.

A wrongful death, survival, and loss of consortium. That's the way we wrote it in the petition and the order. Obviously it's up to Your Honor how that gets allocated and whatever you believe to be fair and equitable under the circumstances.

We would ask that you approve it under those terms.

(Tr. 903, lines 12-23).

Judge Hall then asked counsel for Amisub (i.e. the settling party) to offer any comment on the settlement terms and proposed allocation. Counsel confirmed the terms Ms. Pratt's attorney recited and expressly offered no objection to Ms. Pratt's proposed allocation:

MR. GUNN: As to the allocation we really – with it being equitable in nature the offset of the Welch case, Your Honor, has discretion to allocate as the Court sees fit. So we take no position on that. I think there's evidence to support any reasonable allocation.

(Tr. 905, lines 3-8).

Petitioners' counsel was given a full and fair opportunity to object. Counsel first argued the proposed allocation was inequitable because an allocation of 90% to loss of consortium and 5% each to survival and wrongful death was "announced" at the time the settlement was put on the record during trial. (Tr. 905, lines 15-19). The transcript reprinted above shows that argument was based on a false factual premise. Petitioners' counsel then argued that, since the jury ultimately awarded no wrongful death damages in its verdict, it would be unfair to allocate any portion of the mid-trial Amisub settlement to the wrongful death claim. (Tr. 906, lines 11-22). Ms. Pratt's counsel argued on reply the reasonableness of the proposed allocation should be judged from the time the

settlement was entered, at which point there was potential jeopardy to Amisub on the wrongful death claim. (Tr. 907, lines 6-9).

The circuit court ultimately decided to accept the allocation Ms. Pratt proposed and to which Amisub did not object. Judge Hall explained his ruling as follows:

> THE COURT: I note your position, [Petitioners' counsel] However, it appears at the time the settlement was agreed upon during the course of the trial that was made as part of the record. It's also clear to the Court that at that time there was an understanding between the attorneys and the particular parties that there would be a more formal hearing at the time to approve that settlement and the details of that settlement some time after trial, so that's what bring[s] us here today. So I will approve the settlement and I will approve it in the way it's structured as stated by Mr. McGow[a]n. I'll sign an order.

(Tr. 907, lines 10-21). The Order Approving Settlement with the 33/33/33% allocation was entered that same day. (R. pp. 7-11). In its order denying Petitioners' post-trial motions, the circuit court granted Petitioners a setoff of $ 83,333.33 each for the loss of consortium and survival claims. (R. p. 12).

The court of appeals affirmed in full. Pratt v. Amisub of S.C., Inc., 445 S.C. 199, 912 S.E.2d 268 (Ct. App. 2025). Regarding the setoff, the court of appeals concluded the circuit court properly exercised its discretion. The circuit court's ruling on allocation was the product of a "well-reasoned" consideration of all parties' positions argued during the post-trial hearing. Id. at 232, 912 S.E.2d at 286.

## STANDARD OF REVIEW

Petitioners incorrectly ask the court to conduct a *de novo* review. (Pet'rs Br. at 4). Petitioners challenge the circuit court's ruling during the settlement approval hearing on the allocation of settlement funds for purposes of calculating a setoff. Setoff and allocation issues are consistently reviewed for abuse of discretion. Palmetto Pointe at Peas Island Condo. Prop. Owners Ass'n, Inc. v. Island Pointe, LLC, ___ S.C. ___, 915 S.E.2d 501, 550 (2025) (citing Jolly v. Fisher Controls Int'l, LLC, 443 S.C. 511, 534, 905 S.E.2d 380, 393 (2024) ("Appellate courts review the reasonableness of the trial court's allocation under an abuse of discretion standard")). Petitioners err in suggesting the legal standard is changed because setoff is governed by statute. (Pet'rs Br. at 4) (citing S.C. Code Ann. § 15-38-50). Palmetto Pointe and Jolly reaffirmed and applied the abuse of discretion standard even in the context of section 15-38-50. There are no grounds for revisiting the legal standard for setoff issues the Court has applied for more than a hundred years. In re Wells, 43 S.C. 477, 21 S.E. 334, 337 (1895) (finding jurisdiction for setting one judgment against another is "addressed to the sound discretion of the court").

## ARGUMENT

The "Question Presented" in this appeal is not a question this case actually presents. Petitioners argue it is contrary to court rules and precedent to deviate from "allocations announced to the trial court" when applying setoff of a mid-trial settlement to a verdict against a nonsettling defendant. (Pet'rs Br. at 1). But, Petitioners cannot identify any time in the trial where allocation of Ms. Pratt's settlement with Amisub was ever announced. The on-the-record statement of the settlement terms makes no reference to allocation. Without that, Petitioners' cannot support claims that Ms. Pratt reneged on a deal or that the lower courts failed to enforce a binding allocation agreement. Additionally, when the settlement was formally approved in a post-trial proceeding, even Amisub's counsel admitted the evidence supported Ms. Pratt's proposal of equal allocation of the settlement among her three claims. Therefore, the circuit court reasonably accepted the proposal, and the court of appeals correctly affirmed the resulting setoff amounts. In short, while there are scenarios where a settling party's intra-trial commitments could raise legal and equitable concerns about a post-trial allocation ruling, this is not one of those cases. Petitioners are prosecuting an appeal unsupported by the facts through unpreserved arguments all in hopes of altering an entirely reasonable allocation of the Amisub settlement.

### 1. Petitioners' entire argument is based on an unsupported allegation of "allocations announced to the trial court."

Petitioners' single argument for reversal challenges the circuit court's allocation ruling as (1) inconsistent with Jolly (Pet'rs Br. at 6-7); (2) at odds with Rule 43(k), SCRCP or S.C. Code Ann. § 15-38-50 (Pet'rs Br. at 7-8); and (3) generally unfair and inequitable. (Pet'rs Br. at 8-9). All three points depend on the notion that publishing the Amisub settlement included "allocations announced to the trial court." (Pet'rs Br. at 5). In their five-page argument, Amisub refer to this

supposed announcement more than ten times.[2] However, Petitioners can point to no portion of the trial transcript where this alleged announcement was made. There is simply no record of Ms. Pratt's attorney, Amisub's counsel, or any other trial participant announcing a proposed allocation of the Amisub settlement funds among Ms. Pratt's survival, loss of consortium, and wrongful death claims.

Day 5 of the trial transcript began with Amisub's attorney advising the circuit court of a settlement with Ms. Pratt (R. p. 565, lines 5-7). At Judge Hall's invitation, Ms. Pratt's attorney published the settlement's key terms:

- Amisub agreed to pay $ 250,000;
- While the settlement funds were provided only by Amisub, Ms. Pratt agreed to include Amisub employee Jaleesa Heyward in the release;
- The settlement would not affect Ms. Pratt's claims against Petitioners or Dr. Varaly, the emergency room physician who cared for Mr. Pratt; and
- Ms. Pratt's attorneys would collect 40% of the settlement funds as an attorney fee.

(R. p. 565, lines 10-15). Amisub's attorney confirmed these terms, adding only that he would be responsible for preparing a legal filing for formally dismissing Ms. Pratt's claims against Amisub and Nurse Heyward. (R. p. 565, lines 19-21). Judge Hall then recessed court and, after the break, conferred with the lawyers on the precise verbiage for how Amisub's sudden absence would be

[2] (Pet'rs Br. at 5) (claiming in argument heading that lower courts erred in "failing to grant a set-off . . . based on the allocations announced to the trial court"); Id. at 6 (referring to "allocation that had been conveyed to the trial court and placed on the record in open court during the trial"); Id. ("stipulated allocation"); Id. at 7 (lower courts allowed Ms. Pratt to "alter that agreed-upon allocation after the verdict was returned"); Id. ("agreed-upon allocation . . . was placed on the record during trial"); Id. ("allocation of that settlement amount to the three claims tried, was placed on the record in open court during trial"); Id. at 8 (arguing Rule 43(k), SCRCP applies to "settlement agreement as placed on the record in open court, including the allocation of the settlement); Id. (distinguishing Jolly because "unlike the present case, there was no 'stipulated amount' among the settling parties"); Id. at 9 ("stipulated amount" of allocation "placed on the record in open court"); Id. ("stipulated amount" of allocation "placed on the record in open court so as to eliminate any uncertainty"); Id. (arguing Ms. Pratt "should be bound by that allocation" that was "placed on the record in open court").

explained to jurors. (R. p. 565, line 22 – p. 567, line 5). The jury entered the courtroom, Judge Hall provided a short explanation for Amisub's absence, and Dr. Varaly's counsel called his next witness. (R. p. 567, lines 8-21). These three pages are the only references to the Amisub settlement in the trial transcript. The transcript includes no discussion on allocation of the Amisub settlement funds.

Since the trial transcript contains no "allocations announced to the trial court," Petitioners cannot support the factual premise of their sole argument for reversal.

**2. Petitioners' Rule 43(k) argument is not preserved for review or supported by the record.**

Petitioners go on to portray the supposed allocation announcement as an "Agreement of Counsel" made binding by Rule 43(k), SCRCP. Petitioners have not preserved this argument for review, but, even if they had, Petitioners cannot meet the requirements to invoke Rule 43(k).

Petitioners failed to preserve any Rule 43(k) argument for this Court's review. Appellate courts are courts of review, "not of first view," and an aggrieved party must present and receive a ruling on an argument to later cite it as a legal error in the appellate courts. State v. Williams, 439 S.C. 620, 623, 889 S.E.2d 562, 563 (2023) (quoting Cutter v. Wilkinson, 544 U.S. 709, 718 n. 7 (2005)). Then, once the case reaches the appellate courts, the appellant must act again to affirmatively raise and argue the disputed point of law. S.C. Dep't of Transp. v. M&T Enters. of Mt. Pleasant, LLC, 379 S.C. 645, 659, 667 S.E.2d 7, 15 (2008) ("even if an issue is preserved at the trial court level, it must still be properly raised and argued to the appellate court"). Petitioners mentioned Rule 43(k) in passing during post-trial motions briefing (R. pp. 122-23), but the rule was not part of the court of appeals proceedings at all. Petitioners did not apply, cite, or even allude to Rule 43(k) in their Appellants' Brief or Reply Brief. Thus, even if arguments related to the rule were initially preserved for appellate review, they were abandoned once the matter arrived at the

court of appeals. Fields v. Fields, 342 S.C. 182, 191, 536 S.E.2d 684, 689 (Ct. App. 2000) (stating "issues not argued in the brief are deemed abandoned and will not be considered on appeal").

Because Rule 43(k) was not part of the court of appeals' briefing, Petitioners could not include it in their Petition for Rehearing or Petition for Writ of Certiorari. Rule 242(d)(1), SCACR ("Only those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court"). The reality is that Rule 43(k) was once referenced in a post-trial motion filing in the circuit court in April 2020 and then not mentioned again until a Supreme Court brief filed in October 2025. Petitioners should not be permitted to revive an argument they abandoned long ago.

Petitioners perhaps gave up on their Rule 43(k) argument because they cannot meet its requirements to prove Ms. Pratt entered a binding mid-trial agreement on allocation of the Amisub settlement. The rule mainly covers *written* agreements between attorneys. Rule 43(k), SCRCP (referring to agreements "reduced to the form of a consent order," "written stipulation," or "reduced to writing and signed by the parties and their counsel"). Petitioners do not argue there is or ever was a written agreement on allocation of the Amisub settlement during the trial. (Pet'rs Br. at 7-8). Rule 43(k) also makes binding some oral agreements but only if they are "made in open court and noted upon the record."

Petitioners rely on this portion of the rule, arguing Ms. Pratt must be bound by "the settlement agreement as placed on the record in open court." (Pet'rs Br. at 7). But that argument both misses the point and falls short of Petitioners' evidentiary burden. Ms. Pratt acknowledges and fully executed on "the settlement agreement as placed on the record in open court." In exchange for Amisub's $ 250,000 payment, Ms. Pratt dismissed all claims arising from her husband's death against Amisub and Nurse Heyward. Whether the mid-trial announcement of the

"settlement agreement" is binding is not really the issue here. Rule 43(k) could only help Petitioners if they showed there was "made in open court and noted upon the record" an agreement regarding *allocation* of the settlement funds among Ms. Pratt's three causes of action. Petitioners cannot make this showing, and they have not really attempted to do so.

The only document Petitioners have ever cited in support of the supposed mid-trial announcement of an allocation agreement was a line from Ms. Pratt's post-trial motion response. (Pet'rs Br. at 5) (citing R. p. 97). With the trial transcript still in production and relying solely on trial counsel's memory of events, Ms. Pratt's response noted only that the settling parties "suggested the settlement funds might be allocated with 90% apportioned to the loss of consortium claim and 5% allocated respectively to the survival and wrongful death claim." (R. p. 97). The Court of Appeals noted this statement in its opinion. Pratt, 445 S.C. at 231, 912 S.E.2d at 285.

Trial counsel's memory of events very well may have been inaccurate as the completed trial transcript includes no mention of allocation. But, even if this line from Ms. Pratt's memorandum was precisely what happened during trial, Petitioners still would not have the evidence needed to invoke Rule 43(k). Their duty is to show an agreement on allocation was "made in open court and noted upon the record." The "record" of the trial is the trial transcript, and the transcript "noted" nothing about allocation. Petitioners cannot even use the line from Ms. Pratt's memorandum to show an "agreement" was "made." At best for Petitioners, Ms. Pratt's counsel merely "suggested" how the settlement funds "might be allocated." Any discussions between Ms. Pratt's attorneys and Amisub's counsel on allocation were so preliminary that any specifics could only be called a suggestion and anyone articulating them would have to hedge by saying they "might" be the proposed allocations. Even the circuit court understood the allocation issue was still to be determined when the settlement was placed on the record at trial. (R. p. 907) ("It is also

clear to the Court that at that time there was an understanding between the attorneys and the particular parties that there would be a more formal hearing at the time to approve the settlement and the details of that settlement some time after trial.").

Additionally, policy wise, this is just not how Rule 43(k) is meant to be deployed. The rule language requires either a written confirmation of counsel's agreement or at least that an oral pact be "noted on the record" specifically because this Court worried about "disputes as to the existence and terms" of an alleged oral agreement. Ashfort Corp. v. Palmetto Constr. Group, Inc., 318 S.C. 492, 494-95, 458 S.E.2d 533, 534 (1995) (citing Ex parte Pearson, 79 S.C. 302, 60 S.E. 706 (1908)). The evidentiary requirements are high because to lower them would open the door to interminable disputes over a disputed agreement's provisions that would consume courts' time while remaining nearly impossible to unravel. Ashfort Corp., 318 S.C. at 495, 458 S.E.2d at 535 (quoting 83 C.J.S. *Stipulations* § 4 (1953) (holding that rule language requiring written proof of alleged oral agreements is important to "relieve the court of the necessity of determining such disputes, which it has been said are often more perplexing than the case itself"); see also S.C. Human Affairs Comm'n v. Zeyi Chen, 430 S.C. 509, 521, 846 S.E.2d 861, 867 (2020) (finding "substantial compliance" is not enough to meet the Rule 43(k) evidentiary requirements). Thus, even if the Court found this issue preserved, it fails on the merits because Petitioners have not provided a writing or record notation of any alleged intra-trial allocation agreement.

For similar reasons, Petitioners err in arguing this illusory mid-trial allocation agreement counts as an "amount stipulated" from the settlement to apply towards Ms. Pratt's loss of consortium, survival, and wrongful death claims. (Pet'rs Br. at 8-9) (citing S.C. Code Ann. § 15-38-50(1)). Like a Rule 43(k) agreement, any "stipulation" must be established by a threshold level of evidence so as to permit a court to both interpret and enforce it. Crossman Cmtys. of N.C., Inc.

v. Harleysville Mut. Ins. Co., 411 S.C. 506, 520-21, 769 S.E.2d 453, 461 (Ct. App. 2015) (quoting Suddeth v. Knight, 280 S.C. 540, 544-45, 314 S.E.2d 11, 14 (Ct. App. 1984) ("A stipulation will not be enforced" where "there is a disagreement as to what was intended to be included therein"). To effectuate a proposed stipulation, the evidence before the court must plainly show both that the parties reached an agreement and what their agreement entailed. Suddeth, 280 S.C. at 544, 314 S.E.2d at 14 (finding that a purported stipulation cannot be used for "the waiver of a right not plainly intended to be relinquished"). Petitioners cannot point to anything in the trial transcript or anywhere else in the record to show the formation and terms of a stipulation on allocation.

In short, Petitioners' Rule 43(k) argument should be dismissed as unpreserved or abandoned because it was not presented to the court of appeals. Rule 43(k) is also inapplicable here because there was no agreement on allocation noted in the trial court record.

**3. The circuit court followed the proper procedure in addressing Petitioners' setoff motion and made a reasonable allocation of the Amisub settlement funds.**

Starting from the unsupported premise that an allocation of the Amisub settlement was agreed to and announced during trial, Petitioners go on to argue the circuit court was required to accept this supposed allocation agreement or, alternatively, had to consider it presumptively reasonable when addressing Petitioners' setoff motion. (Pet'rs. Br at 9) (arguing supposed allocation agreement "should be binding on [Ms. Pratt] as a settling party"); Id. at 7 (faulting trial court for failure to "mak[e] any finding that the settling parties' agreement was not reasonable or bonafide"). These arguments stand directly at odds with recent precedent.

**a. The circuit court followed the recognized procedure for determining a reasonable allocation.**

Petitioners were entitled by operation of law to a setoff in some amount. Riley v. Ford Motor Co., 414 S.C. 185, 195, 777 S.E.2d 824, 830 (2015); Smith v. Widener, 397 S.C. 468, 472,

724 S.E.2d 188, 190 (Ct. App. 2012). The Amisub settlement satisfied a portion of the loss related to Ms. Pratt's three claims, and she is entitled to only a single satisfaction for the injuries suffered. Rutland v. S.C. Dep't of Transp., 400 S.C. 209, 216, 734 S.E.2d 142, 145 (2012). At the same time, however, Petitioners could only seek setoff for payments made on the legal claims for which judgment was entered against them. S.C. Code Ann. § 15-38-50; Jolly, 443 S.C. at 531-32, 905 S.E.2d at 391 ("the statute applies when the pretrial settlement and the jury verdict arise from the same claim"). What Ms. Pratt recovered from Amisub on her wrongful death claim could not be included in the setoff because the verdict and resulting judgment against Petitioners was only for the survival and loss of consortium claims. Thus, the amount of Petitioners' setoff required a determination of that portion of the Amisub settlement paid in exchange for Ms. Pratt to release her wrongful death claim. Both at common law and in the modern statutory framework, allocating settlement proceeds among the various claims pled against the settling defendant(s) is a "difficult" but essential question in resolving a setoff motion. Jolly, 443 S.C. at 532, 905 S.E.2d at 391.

Luckily, the Court has provided guiding principles for the allocation question that address and reject all the arguments Petitioners raise here. Most of those principles relate to the trial court's indispensable role in the allocation process. The trial court's task begins in earnest once trial ends. Jolly, 443 S.C. at 533, 905 S.E.2d at 392 (finding that a defendant's "right to setoff did not arise until after the jury verdict"). In his/her role as "setoff judge," the trial court has the duty to "make a reasonable allocation of settlement funds as a predicate to a setoff ruling." Id. at 532, 905 S.E.2d at 391. A "reasonable allocation" is one that "fairly approximates the value the settling defendants paid in exchange for a release of the several claims." Id. Most importantly for this case, the Court has also held settling parties cannot through their settlement agreement bypass or reduce the setoff judge's role in the allocation process. Even if the settling parties explicitly agree on a proposed

allocation and even if that settlement (with its proposed allocation) receives circuit court approval, "it remain[s] the responsibility of the setoff judge to make a reasonable allocation." Id. at 533, 905 S.E.2d at 392 (citing Rutland, 400 S.C. at 216, 734 S.E.2d at 145).

The circuit court's hearing on setoff and allocation here preceded Jolly by four years but aligns with its key principles in all material respects. Judge Hall presided over a settlement approval hearing one week after the verdict was entered. He questioned Ms. Pratt to make the required determination that the settlement was fair and reasonable. (R. pp. 903-04); S.C. Code Ann. § 15-51-42(C)(2). Judge Hall also moved methodically through the process of making what Jolly calls a "reasonable allocation" of the Amisub settlement among Ms. Pratt's survival, loss of consortium, and wrongful death claims. He first received a proposal from Ms. Pratt's attorney, who argued equal allocation among the claims was an "objectively reasonable" way for Amisub to have evaluated the relative value of the three claims at the time the settlement was entered. (R. p. 903, lines 12-16). Ms. Pratt's attorney then acknowledged that, despite his proposal, it was ultimately the court's decision as to what was fair and equitable. (R. p. 903, lines 19-21).

Judge Hall then turned to Amisub, the other settling party, to receive its perspective on the proposed allocation. Amisub's attorney concurred with Ms. Pratt's attorney on the settlement's substantive terms and offered no objection to the proposed allocation. (R. p. 905, lines 2-8). In Amisub's view, there was "evidence to support any reasonable allocation." Id. Next, Judge Hall turned to Petitioners' counsel, realizing as Jolly would later hold that Petitioners' right to a setoff afforded them a right to be heard on allocation. 443 S.C. at 534, 905 S.E.2d at 392 ("it was necessary that the setoff judge hear [party seeking setoff]'s arguments on what should be the final allocation"). Petitioners' counsel argued an allocation of 90% to loss of consortium, 5% to wrongful death, and 5% to survival was "announced" when the settlement was placed on the record

at trial. (R. p. 905, lines 15-19) As detailed above, the trial transcript does not support that assertion. Petitioners' counsel argued this so-called "announced" allocation should be applied because any other allocation would be "inequitable," "unfair," and "prejudicial" to Petitioners. (R. p. 906, lines 4-10). Petitioners then went a step further, arguing it was unfair to allocate *any* of the Amisub settlement to wrongful death given the jury's choice not to award Ms. Pratt any wrongful death damages. (R. p. 906, lines 11-22).

Finally, having heard from all interested parties, Judge Hall announced his reasoning and ruling on allocation. As the trial judge, he was perfectly positioned to rule on the matter. He had read the parties' pretrial submissions, observed their actions through several days of trial proceedings, and listened to all the witness testimony that preceded Ms. Pratt and Amisub's decision to settle their dispute. With this extensive background information and the parties' arguments from the hearing, Judge Hall found the equal allocation proposal reasonable and approved the settlement. (R. p. 907, lines 10-21). Judge Hall did not ignore Petitioners' argument about earlier allocation discussions but concluded it was always understood settlement details like allocation would be determined at a post-trial hearing. Id.

**b. Petitioners' arguments would dramatically alter the settlement allocation process established in precedent.**

Petitioners suggest several flaws in the settlement allocation process and result but none can be squared with precedent. First, Petitioners argue section 15-38-50 demands allocation at settlement formation and, absent that, requires the entire settlement value be used in a setoff. (Pet'rs Br. at 8) (citing Jolly, 443 S.C. at 540, 905 S.E.2d at 395-96) (Kittredge, C.J., dissenting)). But, that approach would grant Petitioners credit for money Amisub paid Ms. Pratt for her husband's wrongful death, a claim for which there is no judgment against Petitioners. That is directly at odds with section 15-38-50's dictate that setoff be limited to payments "for the same

injury or the same wrongful death." Jolly, 443 S.C. at 534, 905 S.E.2d at 393; Palmetto Pointe, 915 S.E.2d at 551-52 (citing Jolly). Petitioners' proposal would also be unfair because the equitable core of the setoff rule is fear of double recovery, and setting off the entire Amisub settlement would effectively reduce Ms. Pratt's recovery, not just prevent her from doubling it. Jolly, 443 S.C. at 535, 905 S.E.2d at 393 ("there is no double recovery where the pretrial settlement and the jury verdict arise out of different claims for different injuries").

Second, Petitioners contend the so-called "announced" Amisub settlement allocation from trial should be "binding" on Ms. Pratt. (Pet'rs Br. at 9). That argument should fail for multiple reasons. As discussed in Argument 1 above, Petitioners cannot show a proposed allocation was ever announced during trial. Beyond this evidentiary failing there is a larger legal hurdle. Petitioners' argument assumes a settlement agreement's proposed allocation is inalterable, an assumption that effectively sidelines the setoff judge from the allocation process. Jolly expressly rejected this argument. 443 S.C. at 533, 905 S.E.2d at 392 (citing Rutland). The settling parties in Rutland agreed in writing on a settlement and allocation that was then approved in a pre-trial settlement approval hearing. 400 S.C. at 212, 734 S.E.2d at 143. Even so, the setoff judge reviewed the evidence and awarded a setoff based on a different allocation than what was in the settlement agreement. Id. This Court affirmed, holding that

> despite the pretrial settlement agreement purporting to allocate funds between the several claims, and despite the approval of that agreement by another circuit judge, it remained the responsibility of the setoff judge to make a reasonable allocation that fairly approximated the value the settling defendants actually paid to settle the wrongful death claim.

Jolly, 443 S.C. at 533, 905 S.E.2d at 392 (citing Rutland, 400 S.C. at 216, 734 S.E.2d at 145). If an explicit allocation in a settlement agreement did not place the allocation question beyond the setoff judge's reach in Rutland, then there is no reason to conclude Ms. Pratt is "bound" by even

the most Petitioner-friendly interpretation of the Amisub settlement announcement. At best for Petitioners, Ms. Pratt's attorney offered a suggestion on how the settlement might be allocated. Whatever Ms. Pratt's attorney may have said, Jolly and Rutland show "it remained the responsibility of" Judge Hall to make a reasonable allocation during the post-trial proceedings.

Third, Petitioners' alternative argument seems to be that, if the circuit court was not bound by this so-called allocation agreement from the Amisub settlement announcement, Judge Hall was at least required to presume it was reasonable. (Pet'rs Br. at 7) (faulting trial court for failing to "mak[e] any finding that the settling parties' agreement was not reasonable or bonafide"). However, Jolly does not call for a setoff judge to offer deference to any particular type of allocation proposal. Whether the proposal stems from the settling parties' memorialized bilateral agreement, another circuit judge's order approving the settlement, or the plaintiff's unilateral internal allocation, "the setoff judge may accept that allocation only if the judge determines it is reasonable." Jolly, 443 S.C. at 532, 905 S.E.2d at 391 (barring trial courts from "blindly accept[ing] a party's allocation . . . whether the allocation was unilateral . . . or bilateral in an approved settlement agreement").[3]

Rather than encouraging deference to prior agreements, Jolly calls on a setoff judge to consider all relevant factors. That is precisely what Judge Hall did here. He acknowledged and considered Petitioners' argument about an "announced" allocation but explained that, in his view, nothing said about allocation during the trial was meant to be final. (R. p. 907, lines 13-19). So, to

[3] Riley does not suggest otherwise. See Pet'rs Br. at 6-7 (arguing Riley held that a trial court "should give effect to the settling parties' agreement if that agreement is bona fide and reasonable"). Riley held only that a trial court should not be swayed into rejecting any proposed allocation solely on the grounds that its effects are more advantageous to the plaintiff than the party seeking setoff. 414 S.C. 185, 196, 777 S.E.2d 824, 830-31 (rejecting "proportionately reasonable" as an absolute standard for making a reasonable allocation).

the extent Petitioners argue the circuit court was required to explain why he did not blindly accept the so-called announced allocation, Judge Hall did so on the record. Since Petitioners can point to no evidence challenging that interpretation, Judge Hall complied with precedent in conducting the allocation hearing and acted within his discretion in reaching his conclusion.[4]

**c. The circuit court's allocation was reasonable because substantial evidence linked Petitioners' errors to Mr. Pratt's death.**

Finally, the Court should find the circuit court's allocation of the Amisub settlement was reasonable because it is supported by substantial evidence in the record. As discussed above, reasonableness is the guiding principle for allocations, and a circuit court judge's goal is to divvy up the settlement proceeds in a manner that "fairly approximates" how the settling defendant valued the claims when it agreed to settle. Jolly, 443 S.C. at 533, 905 S.E.2d at 392. Judge Hall reasonably allocated 33% of the Amisub settlement to Ms. Pratt's wrongful death claim because Ms. Pratt presented substantial evidence linking Mr. Pratt's death to the negligent medical care he received in Amisub's facility.

By the time the Amisub settlement was formed, Ms. Pratt had already called a number of expert and fact witnesses showing Amisub medical providers violated the standard of care and contributed to Mr. Pratt's death. Dr. Michael Chansky, an emergency medicine expert, testified that Nurse Heyward falsely identified Mr. Pratt as ambulatory when he was in fact confined to a bed. (R. pp. 255-56). In that condition, it was unreasonable for Nurse Heyward to simply stand by and watch Mr. Pratt be discharged home. (R. p. 256). This and other errors by Amisub personnel

[4] Petitioners fail to account for one other governing principle on allocation of settlement funds. As a nonsettling party, that process is not designed to work to their advantage. Riley, 414 S.C. at 197, 777 S.E.2d at 831 ("[s]ettlements are not designed to benefit nonsettling third parties" and "[i]f the position of a nonsettling defendant is worsened by the terms of a settlement, this is the consequence of a refusal to settle."). Petitioners were not entitled to a favorable allocation, and as discussed below, the evidence shows the circuit court made a reasonable allocation.

that night were "well below the standard of care for emergency medicine." (R. p. 317). Moreover, Dr. Chansky testified these errors had a devastating effect on Mr. Pratt's ultimate outcome. The complications of Mr. Pratt's broken ribs that led to his death likely would have been avoided had he been admitted and treated rather than discharged from the emergency room. (R. p. 269).

Internal medicine expert Dr. Hiren Shah then testified inpatient treatment for a patient with broken ribs would have offered Mr. Pratt a host of interventions (supplemental oxygen, cough assist device, nebulizers, etc.) designed to prevent breathing-related complications including pneumonia. (R. pp. 369-70). Dr. Shah's testimony on Mr. Pratt's cause of death was unequivocal:

> So, his cause of death ultimately was this whole process. Was the pneumonia that began because he didn't get the care he should have on the 2nd, by doing the things that we talked about. Giving oxygen, nebulizers, breathing machine. And for two days, all of this was brewing and brewing and brewing.

(R. p. 384, lines 9-14). So, while it was true that Mr. Pratt had comorbidities and a preexisting cancer diagnosis, "pneumonia is what ultimately killed him." (R. p. 385, lines 10-11). This was the context in which Amisub agreed to settle Ms. Pratt's survival, wrongful death, and loss of consortium claims. Given the expert testimony summarized above, it was reasonable to conclude a substantial portion of the $ 250,000 Amisub agreed to pay was to end Ms. Pratt's wrongful death cause of action.

Petitioners do not offer any evidence or argument to contest Judge Hall's finding that a 33% allocation of the Amisub settlement to the wrongful death claim "fairly approximated the value [Amisub] actually paid to settle" that claim. In fact, Petitioners' brief does not address the matter at all. During the circuit court proceedings, Petitioners argued the allocation could not be reasonable because the jury ultimately awarded Ms. Pratt no wrongful death damages. (R. pp. 64, 906). That argument confuses the issue the circuit court considers when ruling on allocation. As

Jolly observed, "The question is whether—at the time the parties were negotiating the settlement—there was a potential wrongful death claim for which the settling defendants reasonably sought to obtain—and thus had good reason to pay for—a release." 443 S.C. at 536, 905 S.E.2d at 393. Here, Amisub had good reason to fear a possible plaintiff's verdict on wrongful death, and it was wholly reasonable for the circuit court to conclude 33% of the Amisub settlement was to obtain from Ms. Pratt a release for that claim.

## CONCLUSION

Based on the arguments above, Ms. Pratt respectfully requests the Court affirm the court of appeals' ruling. Petitioners' entire argument depends on a supposed allocation agreement that appears nowhere in the trial transcript. Petitioners' claim that this supposed agreement must be enforced as a Rule 43(k) agreement of counsel is neither preserved for review nor supported by the record. Moreover, there is no merit to Petitioners' argument that the circuit court either failed to conduct the proper hearing to perform a settlement allocation or that the circuit court abused its discretion in the percentage of the Amisub settlement allocated to Ms. Pratt's wrongful death claim.

Respectfully submitted,

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

Attorneys for Respondent

October 15, 2025
Rock Hill, SC