THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2025-000801

Daniel O'Shields And Roger W. Whitley,
A Partnership d/b/a O&W Cars, Appellants,

v.

Columbia Automotive Company, LLC
d/b/a Midlands Honda, Respondent.

INITIAL BRIEF OF APPELLANTS

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Harvard Law School, *The Antonin Scalia Lecture Series: A Dialogue with Justice Elena Kagan on the Reading of Statutes* (Nov. 25, 2015) https://www.youtube.com/watch?v=dpEtszFT0Tg.

STATEMENT OF THE ISSUES

I. The circuit court's denial of all attorney fees incurred after September 14, 2016 was affirmed, based on a post-verdict settlement offer made on that date. On remand, the circuit denied all fees incurred after the end of trial on April 22, 2016, without any explanation for why the cutoff date was moved.

   A. Did the circuit court exceed its mandate by moving the cutoff date?

   B. If not, did the circuit court err substantively in choosing that cut-off date?

   C. If not, in applying the April cutoff date, did the circuit court rely on an unsupported factual conclusion?

   D. Did it err in making and declining to correct a math error where it "deducted" more for fees during a period than had been requested for that period?

   E. In terminating fees after April 22, 2016, the circuit court revoked assessments previously made for the period between April 23, 2016, and September 14, 2016. Did the circuit court err in revoking assessments previously made?

   F. If not, does the lack of explanation for why the cutoff date is moved, which resulted in a 79% reduction of the requested amount, constitute an abuse of discretion?

II. In the alternative, does the fees order otherwise err in denying 79 percent of the fees incurred through September 14, 2016?

   A. Does assessing only $63,921 for attorneys' fees for more than five years of work in this case conflict with the governing substantive law of North Carolina?

   B. Is the assessment substantially too low under the South Carolina standard of review?

III. Post-Judgment Interest Issues

   A. Did the circuit court err in holding that post-judgment interest would not begin until almost a year after the verdicts?

   B. Where the now 85-year old Appellants were defrauded fifteen years ago, did the circuit court err in granting Respondent's motion to deposit uncontested funds into the court and terminate the statutory post-judgment interest charges on the uncontested funds, without requiring the funds to be paid promptly to Appellants?

IV. Should the Court correct the errors, rather than remand for additional discretionary rulings?

OVERVIEW

This is the second appeal of the attorneys' fee award in this case. *See O'Shields v. Columbia Auto., LLC* (*O'Shields I*), Op. No. 5845, 435 S.C. 319, 867 S.E.2d 446 (Ct. App. 2021), *aff'd*, 443 S.C. 29, 902 S.E.2d 375 (2024).

The circuit court initially denied what it called "the vast majority" of requested fees incurred from June 29, 2011 through July 20, 2016. It did so based on a misconception of North Carolina law. *O'Shields I* corrected that misconception. *O'Shields I* also reversed the denial of travel time, but it affirmed the lower court's cutoff of fees after September 14, 2016, which was based on a peculiarity of North Carolina law.[1] *O'Shields I* further reversed the lower court's holding that Appellants could not receive both attorneys' fees and punitive damages, but affirmed the reduction of the punitive award.

On remand, the circuit court again denies "the vast majority" of the requested fees for work before September 14, 2016. It does so based on another misconception of North Carolina law. It "deducts" all fees incurred after the April 22, 2016, end of trial. North Carolina law does not countenance termination of fees simply because trial ended. The order cites no legal authority for this drastic reduction, which reduces even the fees incurred before September 14 by a whopping 79.25%. This otherwise-unexplained "deduction" violates the laws of both North Carolina and South Carolina.

The circuit court also erroneously ordered a delay of eleven and a half months after the verdicts before post-judgment interest may begin accruing, and erroneously allowed Respondent

[1] North Carolina law requires an "unwarranted refusal" by a defendant to settle the case for a plaintiff to recover attorney fees. The circuit court held that the unwarranted refusal ended when Respondent made a settlement offer on September 14, 2016. *O'Shields I* affirmed that holding.

to deposit uncontested funds with the clerk of court and deny the 85-year old Appellants, who were defrauded 15 years ago, statutory interest on those funds as well as the funds themselves.

Finally, as this is the second appeal of this case, the Court should consider correcting the errors itself.

STATEMENT OF THE CASE

Pre-Trial

Fifteen years ago, Respondent defrauded two elderly gentlemen, the Appellants. So found the jury in its verdicts of April 21 and 22, 2016. The fraud occurred on April 1, 2010, when Respondent sold the elderly men an "automobile" that was two halves of previously-wrecked Honda Civics. The two half-cars were improperly welded together.

The fraud took place via an auction in North Carolina. Appellants, then in their seventies, operated a small used car dealership. (R. p. 583, line 10; p. 587, line 6-p. 588, line 16). They are now in their mid-80s, and worry they may receive no compensation while they still live. (Email of 3/20/25; Appellant's proposed order of 3/20/25).

Respondent is a franchise dealership with a full service department. (199:5-16). It knowingly sold the clipped "Civic" for $5,200 to Appellants, who were unaware of the car's true nature. next para – dino does not think it makes the point strongly. Why does it matter

The initial complaint was filed January 17, 2013, alleging violations of South Carolina law. (R. pp. -). Respondent moved to dismiss on grounds that North Carolina rather than South Carolina law applied. (R. pp. -). An amended complaint issued on May 9, 2013, alleging violations of North Carolina law (R. pp. 67-77), and a second amended complaint issued on September 13, 2016 (R. pp. 92-100). The final complaint claimed breach of contract, negligent misrepresentation, negligence, fraud, and violation of the North Carolina Unfair Trade Practices

Act (NCUTPA), N.C.G.S. § 75-1.1 to -89. It sought actual damages, punitive damages, and attorney's fees, the fee claim being under the NCUTPA. The fee-shifting provision of the NCUTPA, § 75-16.1,[2] contains an unusual element which ended up putting a wrinkle in the case: A prevailing plaintiff may not be entitled to attorneys' fees unless "there was an unwarranted refusal" by the defendant "to fully resolve the matter."

Respondent denied all liability and raised sixteen defenses.

Trial

A bifurcated five-day trial from April 18 to 22, 2016 took place in Columbia, South Carolina. Appellant Roger Whitley testified that he was a retired North Carolina police academy instructor (362:12-18), 76 years old at the time of trial, and his partner, Daniel O'Shields, a retired store manager, "lived a similar background." (R. p. 583, line 10; p. 588, lines 8-16). Roger testified (R. p. 587, line 15-p. 588, line 2), that he and Dan started selling cars from a small lot to help friends, young people, single moms, those that were struggling to get a car.

Undisputed expert testimony was the "car" is so dangerous it should not be on the road (R. p. 513, lines 16-17)—not just because it is two half-cars welded together, but also because the welding was very poorly done (R. 477:5-514:8), and the fuel and

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[2] The statute provides,

> In any suit instituted by a person who alleges that the defendant violated G.S. 75-1.1, the presiding judge may, in his discretion, allow a reasonable attorney fee to the duly licensed attorney representing the prevailing party, such attorney fee to be taxed as a part of the court costs and payable by the losing party, upon a finding by the presiding judge that:
>
> (1) The party charged with the violation has willfully engaged in the act or practice, and there was an unwarranted refusal by such party to fully resolve the matter which constitutes the basis of such suit; or
>
> (2) The party instituting the action knew, or should have known, the action was frivolous and malicious.

N.C. Gen. Stat. Ann. § 75-16.1

brake lines were cut and simply spliced back together with plastic (R. 512:8-14).

Videotaped testimony from a deposition taken in Des Plaines, Illinois, was played to the jury. Charles Ecklund testified he had been a National Guardsman when he told Respondent he needed something safe and reliable to commute to his new posting in Alabama, and Respondent sold him he same car (R. p. 105, line 21-p.106, line 15). Respondent represented the two half-cars to him as "Honda-certified" (R. 133:20; 955) with "all the original parts" (R. p. 107, line 16). When he found out the truth, Respondent "swapped" him into a different car (R. p. 133:3-p. 135:15; p. 137:3-12). Documents were provided to support his testimony. (R. p. 954-989).

Four causes of action went to the jury.[3] These were contract, negligent misrepresentation, fraud, and violation of the NCUTPA. On each, the jury awarded all the actual damages requested, $6,645. It did so on April 21, 2016 (R. p. 878, line 15-p. 879, line 23). On April 22, the jury rendered a punitive award of $2,381,888. (R. p. 933, line 15-p. 934, line 6; R. p. 1061).

Post-trial

All five verdicts were entered as a judgment of the court on April 22, 2016, the final day of trial. (Form 4 Order).

Extensive post-trial briefings from both sides included 27 motions, memoranda, responses and replies, spanning 916 pages of the Record on Appeal that had to be mastered. A post-trial motions hearing was held in Manning on July 27, 2016. (R. p. 1).

Each parties' post-trial filings cited North Carolina authorities stating that NCUTPA attorneys' fees assessments are based on a multi-factor test that includes hours worked and a reasonable rate. (R. pp. 1324-25; 1573-74). No party suggested the assessment here be a

[3] The negligence cause of action was dismissed, as the judge felt North Carolina's economic loss doctrine precluded a negligence claim stemming from a contract. (R. at 709:11-14).

percentage of the recovery. The trial court nevertheless announced an assessment of attorneys' fees that was 40% of the damages. (The court directed Appellants to choose between their fraud verdict, with punitive damages, totaling $53,160, and the NCUTPA verdict with $21,264 in fees. The $21,264 fee award is exactly 40% of the $53,160).

These rulings were announced via an email from the judge's clerk on August 29, 2016. (R. p. 1731). The email also announced reduction of the punitive award to $46,515, and a requirement that Appellants elect between their punitive award and their statutory attorneys' fees under the NCUTPA. The email directed Respondent to draft the order.

The order was filed December 2, 2016. (R. p. 1). It found the NCUTPA violation was willful and that Respondent had unwarrantedly refused to resolve the whole matter, as the amount Respondent had offered was only enough to resolve one claim but not "to fully resolve the matter which constitutes the basis of [this] suit," as the statute requires. (R. p. 12).

Rather than stating the fee assessment was based on a percentage of the recovery, it stated, "the vast majority of the effort expended in this case was devoted to the recovery of a large punitive damages award and not the pursuit of a claim under the NCUTPA." (R. p. 13). It stated that "After a thorough review of the materials submitted, the Court has identified [only] approximately 218 hours of entries that contain or *could contain* time spent on the NCUTPA claim." (R. p. 16) (emphasis added). Even the remaining 218 hours were further reduced because some entries "relate to large blocks of time, only some of which are attributable to the NCUTPA cause of action," or "are unrelated in any way to the NCUTPA claim."(*Id*.) The order also eliminated "a significant portion of the travel time." (R. p. 13). It stated that only 54.525 hours were properly compensable. (R. p. 17). At the uncontested hourly rate of $390, 54.525 hours made for exactly the amount the email had stated, $21,264. This was for five years of work from June 29, 2011 through July 20,

2016, travel to Des Plaines, Illinois and Charlotte for depositions, a five-day trial, and much of the extensive post-trial briefing. The order did not mention Mr. Fudenberg, nor specify whether any amount was for his work, but he had worked 56.1 hours from April 22 through July 20, 2016 (R. pp. 1544-48) in addition to the 605.9 worked by Mr. Moskos from June 29 of 2011 through July 20, 2016 (R. pp. 1343-56, 1537-40). At the $390 rate, the requests totaled $258,180.

Appellants moved to reconsider. (R. pp. 1884-98). They argued that North Carolina law did not allow apportioning fees among interconnected causes of action as the circuit court had done here. (R. pp. 1887-93). Were the court to retain the apportioning, Appellants asked to see the markup that ostensibly eliminated all but 218 hours of the 662 hours requested. (R. pp. 1888-89, 1897, 2043), to enable them to challenge that determination. (R. 1889-90). They also asked for an assessment for fees incurred after their previous fee requests were filed. (R. pp. 1894, 1896).

The order on the motion to reconsider, filed March 16, 2017, "denied without further discussion" Appellants' request to see which entries had been denied as going to the punitive damages claim. (Ord. p. 2).[4] It denied their request to undo the apportioning.

It made additional assessments for each attorney. It did so in two stages, first for work the week of the hearing, to which it again applied apportioning, and separately for work between July 28 and September 13, 2016. (R. pp. 26-27.) It thus awarded $4,153.50 for Mr. Fudenberg's work in that first period, and another $663 for his work in the second period, totaling $4,816.50. (*See id.*). The remainder of the $10,140 assessment (R. p. 28) was for Mr. Moskos' work, again awarded for two different stages (R. pp. 26-27).

The order further held no fees would be assessed for work after September 14, 2016. It

[4] The trial court had again instructed Respondent to draft the order. (R. p. 2029).

reasoned that Respondent had made an offer on that date and so was no longer "unwarranted[ly] refus[ing] . . . to fully resolve the matter," as required by the NCUTPA's fee-shifting provision, N.C. Gen. Stat. § 75-16.1. (Order pp. 4, 6). Fees incurred through that date totaled $308,061. (Figure 1).[5]

Appellants filed a final fees motion which was also denied.[6]

Their fees from June 29, 2011 through June 28, 2017, total $441,480 (Jan 2025 Order). *See*

[5] The unmultiplied fee requests for work through September 14, 2016 were:

Figure 1

Fee Requests for Work through September 14, 2016

Hours			**R. pp.**
452.1	Mr. Moskos 5 years 6/29/2011 through 5/1/2016	$176,319	1343-1356
153.8	Mr. Moskos 5/2 - 7/20/2016	$59,982	1537-40
104.9	Mr. Moskos 7/21 - 9/14/2016	$40,911	1960-**66**
710.8	**Moskos Amounts**	**$277,212**	
56.1	Mr. Fudenberg 4/22 - 7/20/2016	$21,879	1544-48
23	Mr. Fudenberg 7/21 - 9/14/2016	$8,970	1981-85
79.1	**Fudenberg Amounts**	**$30,849**	
789.9	**<= Combined Totals =>**	**$308,061**	

[6] After filing their final fees motion, Appellants filed a notice of appeal, and explained they did not expect a ruling on that final motion until the remand, but wished to avoid any dispute over whether they had waived their claim by waiting on the appeal to file it. (R. pp. _-_). Yet the lower court decided to rule on the motion before the appeal concluded, and did so, denying all requested relief. (R. p. 2087) (email from Judge's clerk stating Judge's decision to deny the motion and directing Respondent to draft the order); (R. pp. 30-35) (adopting Respondent's proposed order).

also Figure 2.[7]. The awards, combined, totaled $31,404. This includes the December 2016 assessment for the work of both Mr. Fudenberg and Mr. Moskos, and the two separate assessments for Mr. Moskos and the two for Mr. Fudenberg in the March 2017 order.

The First Appeal

Appellants noticed their first appeal on April 13, 2017. On August 11, 2021, this Court issued its decision. It reversed the requirement that Appellants elect between their statutory fees and their punitive award, but affirmed the reduction of the punitive damages verdict. *Id*. at 340, 344, 867 S.E.2d at 457, 460. It held that the "apportionment" that had accounted for "the vast majority" of the reduction of the initial request (Dec. Order p. 13) misconceived North Carolina law. 435 S.C. at 335-36, 867 S.E.2d at 455.

It also held the lower court should eliminate any redundant fees, improper cost, and paralegal fees, and that the circuit court "may—or may not" reduce the award if it found a lack of success on Plaintiffs' part, but that any such analysis should be impacted by Appellants' success on the election of remedies issue. *Id*. at 340, 867 S.E.2d at 457. It further directed the circuit court

[7]

Figure 2
Fee Requests for Work After September 14, 2016

Hours	**C. Steven Moskos**		**R. pp.**
62.5	9/15/2016 - 12/15/2016	$24,375	1966-1970
43.6	12/19/2016 - 3/28/2017	$17,004	2065-2068
34.1	3/29/2017 - 6/28/2017	$13,299	2146-2148
140.2	**Moskos Amounts**	**$54,678**	
	Brooks R. Fudenberg		**R. pp.**
49.2	9/15/2016 - 12/14/2016	$19,188	1985-1990
99	12/15/2016 - 3/29-2017	$38,610	2070-2081
53.7	3/30/2017 - 6/28/2017	$20,943	2137-2142
201.9	**Fudenberg Amounts**	**$78,741**	
342.1	**Total**	**$133,419**	

to award fees for counsel's travel time, *id*., because "The circuit court excluded [travel] hours, with no legal citation for its decision," *id.* at 337, 867 S.E.2d at 456.

It held that the lower court may exclude fees incurred after September 14, 2016:

> O&W appeals the trial court's ruling that Midlands had no longer refused to fully resolve the matter when it made a settlement offer to O&W on September 14, 2016. The NCUTPA only provides for attorney's fees when "there was an unwarranted refusal . . . to fully resolve the matter which constitutes the basis of such suit."

435 S.C. at 336, 867 S.E.2d at 455 (quoting N.C. Gen. Stat. § 75-16.1) (omission in original). ["T]he circuit court did not abuse its discretion in concluding Midlands was no longer unwilling to fully resolve the matter at that point." *Id.* at 337, 867 S.E.2d at 456. "The circuit court may exclude fees incurred after the date of the September 2016 settlement offer." *Id.* at 340, 867 S.E.2d at 457. It thus affirmed the lower court's implicit denial of the $133,419.00 Appellants had incurred after that date. (Figure 2).

On May 22, 2024, the Supreme Court affirmed.

On Remand

On remand, the lower court issued four orders. This appeal centrally challenges two.

Fees

The first post-remand order, filed January 7, 2025, deducts *$377,559* as having been incurred after *the end of trial* on *April 22*, 2016 (Op.). It provides no legal citation for its implicit holding that the NCUTPA allows fees to terminate because trial has ended. It cites nothing in the appellate opinion authorizing an end-of-trial cut-off date. It deducts more for fees incurred after April 22 than had actually been requested for work after that date. It assesses an additional $42,657 for work before April 22, but revokes $10,140 previously awarded for work after April 22, making a total of $63,921 for more than 5 years' work and a five day trial when all fee awards are

combined. Like the original order in 2016, it again denies the vast majority of the fee request.

The entire reduction/deduction is due to excluding fees as being incurred after April 22, 2016.[8] 79% of all fees incurred from 2011through September 14, 2016 are "deducted."

The order's paragraph dealing with fees states,

> The original amount of attorney's fees sought by the Plaintiff is $441,480. This court first deducts $109,590 from the original amount for all of Brooks R. Fundenberg' s submitted timesheets because, per Mr. Moskos breakdown, Mr. Fundenberg was not involved in this matter prior to or during the trial. Mr. Fundenberg was retained merely in preparation of posttrial motions and appeals. This court also deducts $267,969 for C. Steven Moskos' time after April 22, 2016 because it was posttrial. Lastly $21,264; reflecting the amount previously rewarded to plaintiff for attorneys fees, is subtracted from the total amount. After all deductions, the total amount for attorneys fees to be awarded totals $42,657.

It thus "deducts" $377,559 ($109,590+$267,969) in fees as having been incurred after April 22, 2016. This Court had authorized excluding $133,419 as incurred after September 14, 2016. The order deducts $244,140 more. (Figure 1). Appellants seek a supplemental assessment of that $244,140

Additionally, those "deductions" for work after April 22, 2016, are more than the total requested for work after that date. Appellants requested $282,399 for the intensive work of their

[8] The circuit court found nothing to deduct for lack of success, redundancy, or improper costs.

two attorneys from the April 2016 end of trial through June 28 of the next year. (Figure 3).[9] The order "deducts" $377,559 from the request for that period. It deducts 968.1 hours for a period for which Appellants only requested 701.1 hours.

The net result is a "deduction" not only of all the time *after* September 14, 2016, but a 79.25 percent "deduction" of all the time incurred *before* that date. From June of 2011through the September 14, 2016 cutoff date, Appellants had incurred 789.9 hours of attorney time ($308,061). (Figure 1). The circuit court assessed only 163.9 hours ($63,921) for all that work.[10] It "deducts" more than three-quarters (79.25 percent[11]). (The order also assessed $2,772.06 in expenses.)

[9]

Figure 3

Fee Requests After Trial

Hours	**C. Steven Moskos**		**R. p.**
44.2	4/23/2016 - 5/1/2016	$17,238	1355-1356
153.8	5/2/2016 - 7/20/2016	$59,982	1537-1540
167.4	7/21/2016 - 12/15/2016	$65,286	1960-1970
43.6	12/19/2016 - 3/28/2017	$17,004	2065-2068
34.1	3/29/2017 - 6/28/2017	$13,299	2146-2148
443.1	**Moskos Amounts 4/23/16 to end**	**$172,809.00**	
Hours	**Brooks R. Fudenberg**		**R. p.**
56.1	4/22/2016 - 7/20/2016	$21,879	1544-1548
23.0	7/212016 - 9/14 2016	$8,970	1981-1991
49.2	9/15/2016 - 12/14/2016	$19,188	1985-1990
99	12/15/2016 - 3/29/2017	$38,610	2070-2081
53.7	3/30/2017 - 6/28/2017	$20,943	2137-2142
258	**Fudenberg Amounts**	**$109,590**	
701.1	**Total**	**$282,399**	

[10] The December 2016 order assessed 54.525 hours. (R. p. 17). The March 2017 order assessed 26 additional hours. (R. pp. 26-27). That made a total of 80.525 hours assessed before the first appeal of this case. The additional $42,657 assessed post-remand, after adjustment for the revoked earlier awards, works out to only 83.377 additional hours.

[11] 163.9 divided by 789.9 yields 20.75%. That is the total from all the orders combined. . The amount deducted is thus 79.25%.

The post-remand fees order also revokes assessments previously made. Fees had been assessed against Respondent for the work of both Mr. Moskos and Mr. Fudenberg undertaken after April 23 and before September 14, 2016 (Mar 2017 Order pp. 3-4). The January 2025 order implicitly revokes those awards. No party had asked the court to revoke any awards. The remand did not authorize the revocation of prior awards.

The order said nothing about how it had determined that April 22, 2016, was the proper cutoff date, nor about how it had concluded that Appellants had requested $109,590 for Mr. Fudenberg's work or $267,969 for Mr. Moskos' post-trial work.

In sum, the remand authorized fees to terminate after September 14, 2016, thereby disallowing the subsequent fees, $133,419 of the $441,480 requested. The circuit court terminated fees after April 22, 2016, disallowing $377,559 on that basis. The difference between what the circuit court was authorized to deny as incurred after the September 14 offer and what it did deny as ostensibly incurred after the April 22 end of trial is $244,140. Appellants seek a supplemental award of that $244,140.

Figure 4

Summary of Fee Requests and Assessments

First Assessment from 6/29/2011 through 7/20/2016

	Request Through	Request Amount	Assessment before First Appeal	Additional On Remand (order of 1/7/25) All Time Assessed is Pre Verdict	Total (pre- and post-remand)	Difference between request and assessment
CSM	5/1/2016	$176,319	?*	$42,657	$63,921	$112,398
	7/20/2016	$59,982	?*	$0	$0	$59,982
BRF	7/20/2016	$21,879	?*	$0	$0	$21,879
			$21,264			
		$258,180				**$194,259**

Second Assessment 7/20/2016 through 9/14/2016 (Order Issued 3/17/2017)

CSM	12/15/2016	$40,911.00	$5,323.50**	-$5,235.50	$0	$40,911
BRF	12/14/2016	$8,970.00	$4,816.50**	-$4,816.50	$0	$ 8,970
					Total	**$49,881**
					Unassessed Fees	**$244,140**

* The first assessment did not state the amounts for the individual attorney's work.

** The remaining assessments reduced time requested from July 21, 2016 through July 27, 2016 by half, and stated hours for each attorney from July 28, 2016 through September 13, 2016. The figures above reflect the math.

Post-Judgment Interest

Appellants filed a motion to reconsider on January 7, 2025. (R. pp. -). Respondent's return was filed February 24, 2025 (R. pp. _-_). The resulting order, filed March 25, 2025 (Order), clarifies that the January 2025 fee assessment was in addition to, not instead of, the $21,264 assessed in 2016 (p. 2); includes the amount of the punitive award as Appellants had requested (*id.*, *see* Pls.' Mot. to Conform); and denies the remainder of Appellants' motion. (R. pp._-_).

But the order largely concerns a motion made on the Return's last page. Citing Rule 67, SCRCP, the motion requested "leave of Court to deposit with the Court the judgment amounts against it plus accrued interest," and that "upon deposit with the Clerk of the judgment amounts

plus accrued interest, or any portion thereof, the post-judgment rate of interest shall cease to accrue as to the amount deposited." Respondent's motion totaled those uncontested amounts, exclusive of interest thereon, at $122,605.27.[12] (R. p. _). Citing S.C. Code Ann. § 34–31–20(B) (2025), Appellants responded that they had a statutory right to post-judgment interest at the statutory rate set each year by the Supreme Court and that any undisputed amounts on which that interest were to cease should be made available to Appellants. (Return and Motion).

Appellants proposed ways to meet both Respondent's desire to avoid further interest charges on those funds and Appellants' desire not to be denied statutory interest on funds unavailable to them. Appellants proposed directing the clerk to promptly transfer the funds upon deposit to Appellants, directing Respondent to pay the undisputed amounts directly to Appellants, or entering separate orders, one on attorneys' fees and one on the other "judgment amounts" listed in Respondent's motion. (Mot. Deposit; Pls.' Resp. 2-3, 5-7).

The parties submitted proposed orders. Appellants provided three that would serve Respondent's stated goal of avoiding future statutory interest without prejudicing Appellants. (Proposed orders of 3-6, 3-7, and 3-20 2025). Respondent submitted a proposed order that would deny statutory interest to Appellants while also denying Appellants access to the admittedly owed funds. (R's Prop. Order). The circuit court adopted virtually verbatim Respondent's proposed order. It allowed interest to cease without giving Appellants access to the funds.[13]

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[12] Respondent listed those amounts as Actual Damages of $6,645, Punitive Damages of $46,515, Attorney's Fees of $63,921, Costs of $529.07, Travel Expenses of $2,772.06, and Prejudgment Interest (through entry of March 17, 2017 of $2,222.60). (R. p. _).

[13] The only significant change is that the filed order filled in a missing figure from Respondent's proposed order with a figure from Respondent's motion, and replaced Respondent's slightly erroneous total of Respondent's figures with a different erroneous total. *See* next footnote.

That March 2025 order also holds that post-judgment interest had not begun until almost eleven months after the verdicts were rendered. All verdicts were rendered by April 22, 2016, but the order holds interest began only on March 16, 2017. It rests its holding solely on *Calhoun v. Calhoun,* 339 S.C. 96, 102, 529 S.E.2d 14, 18 (2000) (Order 2), implicitly rejecting Appellants' argument that under this Court's interpretation of *Calhoun* in *Hunting v. Elders*, 359 S.C. 217, 229, 597 S.E.2d 803, 809 (Ct. App. 2004), interest runs "from the date of the rendition of the verdict." (Pls' Resp. p. 4).

Respondent filed proof of deposit with the Court on April 30, 2025.

Appellants seek holdings that post-judgment interest at the statutory rate began when all verdicts were rendered, April 22, 2016, and has not ceased.

The Math Errors

On April 10, 2025, Appellants moved to correct two math errors, with an amended motion filed April 13. (Mot. Math, Am. Mot Math). The final two orders relate to this motion. The first, filed May 6, 2025, denied, without explanation, Appellants' request that the circuit court fix one math error, a correction which would have benefitted Appellants, while granting, without explanation, Appellants' request that it correct another math error, a correction benefitting Respondent.[14] (5/6/25 order, p. 2). The second, filed May 21, 2025, denied Appellants' request (Mot. Recon.) that the reasoning of the May 6 order be explained. (5/21 order). It also denied

[14] One math error consisted of the circuit court having "deducted" from the fee request more in attorneys' fees after April 22, 2016, than had been requested for that work. This was a $95,160 error. The other error was that the lower court had incorrectly totaled the amount of its awards. It took the figures from Respondent's Motion to Deposit, but added them incorrectly. (March 2025 Order p. 2). Respondent's Motion to Deposit had presented those figures, and also incorrectly totaled them. (R. p. _). This was an error in Petitioners' favor of $303. (Am. Rule 60 Mot. p. 2 (pointing out the errors), (May 6 Order p. 2) (correcting the latter error).

Appellants' request that the result be changed and instead it "ratified and reconfirmed" the May 6 order.[15]

Appellants ask the Court to correct the math if it does not moot the issue by reversing the holding that fees stopped on April 22, 2016.

Appellants noticed appeal of the January and March, 2025, orders on April 24, 2025, and noticed appeal of the two May 2025 orders on June 20, 2025. The amount of fees in issue is $244,140, representing 626 hours. The amount involved in the post-judgment interest is currently unknown, as it depends in part upon the date the funds are released to Appellants or their estate(s), as all agree they ultimately will be.

ARGUMENT

I. IN MOVING THE CUTOFF DATE FOR ATTORNEYS' FEES, THE CIRCUIT COURT ERRED IN CONCEPT AND EXECUTION.

In moving the cutoff date for attorneys' fees, the lower court erred in concept, because the move was outside the scope of the remand and is forbidden by substantive law, and in execution, as the figures are unsupported and the order offers no explanation for why it chose to terminate fees at the end of trial.

The September 14, 2016 cutoff date the appellate courts allowed excludes 342.1 hours of

[15] The ratification and reconfirmation is presumably because the lower court lacked jurisdiction to issue the May 6 order, as noted in Appellants' motion to withdraw or reconsider that order. (R. pp. _). Appellants had emailed the lower court the day they noticed appeal of the January and March 2025 orders, alerting the lower court to the appeal and that they would move the Court of Appeals to grant the lower court jurisdiction to rule on the outstanding motion to correct the mathematical errors. (Email of 4/24). At the time of the May 6 order, the Court of Appeals had not yet granted the lower court jurisdiction to rule on that motion. On May 8, 2025, Appellants reminded the lower court of the jurisdictional issue. (R. p._). The Court of Appeals granted a limited remand on May 15, 2025. The lower court then ratified and reconfirmed the May 6 order.

attorney time or $133,419.00. (Figure 2). The circuit court on remand imposed an April 22, 2016 cut off date that excludes $377,559. It improperly deducts an extra $244,140. The Court should return the cutoff date to what the Court already ruled it should be, September 14, 2016, and hold that a supplemental award of $244,140 is to be made.

A. In Moving The Cutoff Date, The Circuit Court Erred.

Two of the errors here are subject to de novo review. The others are subject to discretionary review. The matters subject to de novo review are addressed first.

1. In Moving the Cutoff Date, the Circuit Court Erred as a Matter of Law. These Errors Are Subject to De Novo Review.

In moving the cutoff date for attorneys' fees, the January 2025 order errs as a matter of law in two distinct ways. It violates the terms of the remand, and it violates North Carolina substantive law by terminating fees merely because a verdict was reached.

The Standard of Review Is De Novo.[16]

De novo is the proper review for exceeding the terms of a remand, as these are jurisdictional errors, *Prince v. Beaufort Mem'l Hosp.*, 392 S.C. 599, 605, 709 S.E.2d 122, 125 (Ct. App. 2011); and jurisdictional errors are subject to de novo review, *see Nix v. Columbia Staffing, Inc.*, 322 S.C. 277, 281, 471 S.E.2d 718, 720 (Ct. App. 1996) (jurisdictional question receiving de novo review), *U.S. Bank Nat'l Ass'n as Tr. to U.S. Bank Tr. Nat'l Ass'n v. Mack*, 445 S.C. 103, 107, 912 S.E.2d 236, 238 (2025) (same).

De novo is also the proper standard for the alleged error of law in moving the cutoff date, as it hinges on the interpretation of a statute, i.e., whether N.C. Gen. Stat. § 75-16.1 anticipates

[16] "[T]he South Carolina standard of review will apply to the consideration of the attorney's fee award." *O'Shields I,* 435 S.C. at 335, 867 S.E.2d at 454.

fees being terminated merely because trial ended. While the amount of an attorney's fee award is in the discretion of the lower court and is typically subject to an abuse of discretion standard, a de novo review is proper when the discretionary error is informed by an error of law. *Layman v. State*, 376 S.C. 434, 444, 658 S.E.2d 320, 325 (2008). "In this case, however, the issue of the amount of attorneys' fees awarded *hinges on the Court's interpretation of 'reasonable' attorneys' fees as contained in the* state action *statute*. The interpretation of a statute is a question of law, which this Court reviews de novo." *Id*. (emphasis added).

a. Governing Law

i. Trial Courts Must Follow the Terms of a Remand.

Exceeding the mandate of the remand is reversible error.

> [A] trial court has no authority to exceed the mandate of the appellate court on remand. The mandate of the appellate court is jurisdictional. The trial court has a duty to follow the appellate court's directions.
>
> . . . .
>
> When we remand a case, the trial court has only the jurisdiction and authority mandated by this court.

Prince, 392 S.C. at 605, 709 S.E.2d at 125 (citations omitted) (quotation marks omitted).

This rule applies to changes of time periods for fee awards. "The parties and this Court are bound by *Sloan I*, which clearly limits the time period for which Sloan would be entitled to an award of attorney's fees." *Sloan v. Friends of Hunley, Inc*. (*Sloan II*), 393 S.C. 152, 158–59, 711 S.E.2d 895, 898 (2011).[17]

[17] Federal law is similar. *See* 18B Charles Alan Wright, et al., FEDERAL PRACTICE AND PROCEDURE § 4478 (2d ed. 2017).

ii. Governing Law Does Not Allow Fees to Be Terminated Simply Because a Verdict Has Been Reached.

North Carolina law does not countenance terminating fees because a verdict has been reached. "We also note that plaintiff's attorneys are entitled to fees for post-trial motions and this appeal." *United Labs. v. Kuykendall*, 403 S.E. 2d 104, 111 (N.C. App. 1991) (interpreting the fee-shifting provision here), *aff'd*, 437 S.E.2d 374 (N.C. 1993). "[W]e remand this cause for entry of findings of fact consistent with this opinion on the attorneys' fee award including an award of attorneys' fees for post-trial motions and this appeal." *Id.* at 112. *City Fin. Co. v. Boykin*, 358 S.E.2d 83, 85 (N.C. App. 1987) (similar).

South Carolina law is similar. E.g., *McDowell v. South Carolina Department of Soc. Services*, 304 S.C. 539, 405 S.E.2d 830 (1991) (reversible error to deny post-trial fees under statute providing for attorneys' fees).[18] There is "no reason" to terminate attorney fees at the end of trial. *Renaissance Enters., Inc. v. Ocean Resorts, Inc.*, 326 S.C. 460, 469, 483 S.E.2d 796, 801 (Ct. App. 1997), *rev'd on other grounds*, 334 S.C. 324, 513 S.E.2d 617 (1999) (citing *McDowell*).

Neither party has found a case holding otherwise in either jurisdiction. Nor does the order cite any authority for terminating fees when it did.

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[18] In *Renaissance Enters.,* the Court held,

> We find no reason that the agreement would not encompass fees incurred in this supplemental proceeding, brought in order to determine the amount due from the underlying proceeding. *See McDowell v. South Carolina Department of Social Services*, 304 S.C. 539, 405 S.E.2d 830 (1991) (wherein the Supreme Court found, where party was entitled to attorney's fees in underlying action pursuant to statute, that party was likewise entitled to attorney's fees for subsequent litigation over such fees incurred in supplemental proceeding). Accordingly, we find no error.

326 S.C. at 469, 483 S.E.2d at 801. *See also Austin v. Stokes-Craven Holding Corp.* (*Austin II*), 406 S.C. 187, 201, 750 S.E.2d 78, 85 (2013) ("appellate and post-appellate fees" are proper under the Dealers Act); *Layman*, 376 S.C. at 463-64 & n.3, 658 S.E.2d at 336 & n.3 (Supreme Court directly awarding statutory fees for work undertaken well after the merits had been settled).

b. Procedural Facts

"Midlands . . . made a settlement offer to O&W on September 14, 2016." *O'Shields I,* 435 S.C. at 336, 867 S.E.2d at 455. The Court held, "The circuit court may exclude fees incurred after the date of the September 2016 settlement offer," *id.* at 340, 867 S.E.2d at 457.

The rationale was that "[u]nder the NCUTPA, the circuit court has the discretion to award attorney's fees [only] if . . . 'there was an unwarranted refusal by [the party charged with the violation] to fully resolve the matter which constitutes the basis of such suit." *Id.* at 335, 867 S.E.2d at 455 (quoting N.C. Gen. Stat. § 75-16.1(1), and the offer meant "Midlands was no longer unwilling to fully resolve the matter at that point." *Id.* at 337, 867 S.E.2d at 456. "Consequently, we affirm the circuit court's finding that attorney's fees accrued after this date would be excluded from the circuit court's calculation of fees." *Id*. On remand, the circuit court instead excluded all fees after the April 2016 conclusion of trial. In so doing, it excluded $377,559, the equivalent of 968.1 hours, $244,140 or 626.0 hours more than the remand authorized.

> This court first deducts $109,590 from the original amount for all of Brooks R. Fundenberg' s submitted timesheets *because*. . . Mr. Fundenberg was *not* involved in this matter *prior to or during the trial*. . . . This court also deducts $267,969 for C. Steven Moskos' time *after April 22, 2016 because it was posttrial*.

(R. p. _) (emphasis added).

In so doing, it revokes the awards previously made to Mr. Moskos and Mr. Fudenberg for work undertaken between April 23 and September 13, 2016. (R. pp. 26-28). The remand did not authorize the lower court to *revoke* any awards.

Neither did any party ask that the cutoff deadline be moved or that prior awards be revoked. Nor does the order provide any authority supporting a cutoff of fees in April or revoking prior awards.

c. Application: The January 2025 Order Errs as a Matter of Law Because It Violates the Terms of the Remand and Holds Contrary to North Carolina Law.

The lower court errs as a matter of law in cutting off fees at an earlier date than this Court authorized. *Prince*, 392 S.C. at 605, 709 S.E.2d at 125 (a lower court lacks jurisdiction to exceed the terms of the remand). The remand did not authorize an April 22 cutoff of fees. Referring to "*a settlement offer* to O&W on September 14, 2016," 435 S.C. at 340, 867 S.E.2d at 457, this Court held that "The circuit court may exclude fees incurred after *the date of the September 2016 settlement offer*," *id*. (emphasis added), not "the date of the April verdict." The rationale was that "Midlands was no longer unwilling to fully resolve the matter" once it made the September settlement offer. *Id.* at 337, 867 S.E.2d at 456. Terminating fees before the offer, i.e., while Midlands was still unwilling to fully resolve the matter, is contrary to the remand.

Changing the time period contradicts the holding of *Sloan II*: "The parties and this Court are bound by [*O'Shields*] *I*, which clearly limits the time period for which [Appellants] would [not] be entitled to an award of attorney's fees." 393 S.C. at 158–59, 711 S.E.2d at 898.

The January 2025 order similarly exceeds the terms of the remand in revoking fee awards previously made. The remand did not authorize that. *Prince; Sloan II*.

Even had the lower court been writing on a blank slate, without the framework established by the Court's opinion in this case, the move of the cutoff date would still be reversible error. North Carolina law rejects terminating fees for no reason other than that the trial has ended. *Kuykendall*, 403 S.E. 2d at 111, 112; *Boykin*, 358 S.E.2d at 85. The order cites no authority to authorize this ground for terminating fees; neither party has found a case supporting the practice; the Supreme Courts of both states have reversed the practice; and this Court has condemned it as nonsensical. *Renaissance Enters., Inc*, 326 S.C. at 469, 483 S.E.2d at 801.

Because the reduction exceeds the remand and violates controlling substantive law, this Court should reverse the reduction.

2. In Moving the Cutoff Date, the Lower Court Also Abused Its Discretion.

The circuit court's imposition of an April 22 cutoff also constitutes an abuse of discretion in failing to explain its reasoning and in relying on an unsupported factual conclusion

The Standard of Review Is Abuse of Discretion.

The amount of an attorney fee award is typically left to the trial court's discretion. *Layman*, 376 S.C. at 444, 658 S.E.2d at 325. An abuse of discretion occurs when a reduction from the requested amount of an attorney's fee award is based on unsupported factual conclusions. "Although the circuit court has discretion in deciding [the amount of a fee award], its decision must not be 'based on unsupported factual conclusions.' " *Horton v. Jasper County Sch. District*, 423 S.C. 325, 331, 815 S.E.2d 442, 445 (2018) (quoting *Sloan II*, 393 S.C. at 156, 711 S.E.2d at 897). More generally, *see 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 either controlled by an error of law or are based on unsupported factual conclusions").

Even an award that has some factual support is an abuse of discretion if it lacks sufficient factual support. *See State v. Corey D.*, 339 S.C. 107, 118, 529 S.E.2d 20, 26 (2000) (emphasis added) ("The term 'abuse of discretion' has no opprobrious implication and may be found if the conclusions reached by the lower court are *without reasonable factual support.*").

Moreover, "[T]he 'discretion' standard . . . requires the analysis be explained." *Morris v. BB&T Corp.*, 438 S.C. 582, 588, 885 S.E.2d 394, 398 (2023). *Horton* applied similar reasoning to reverse an order that markedly reduced an attorney fee award from the requested amount. The lower court there had simply announced a lower hourly rate without stating why. That was

reversible error.

> [T]he circuit court awarded attorneys' fees at a rate of $100 per hour, rather than the hourly rate presented by Horton—$295 for Twombley and $250 for Campbell. *The court provided no explanation* and cited no evidence in the record to support its conclusion that $100 per hour was reasonable. . . . [T]he circuit court "should have explained her reasoning in a more comprehensive way.". . . *In the absence of any evidence to support the rate, we find the circuit court abused its discretion*.

423 S.C. at 331, 815 S.E.2d at 445 (emphasis added). Such a large reduction must be "adequately explained with specific findings—as the law requires." *Id.*

a. Procedural Facts

The circuit court provides no explanation for why it moves the cutoff date to the end of trial nor any support for the figures it announces. (R. p.). (The order's mention of a "Moskos breakdown" (*id*.) might lead one to suppose the figures are based on a breakdown provided by Mr. Moskos. But Mr. Moskos never filed anything with the $267,969 figure. Nor did any party. The first time that figure appears in the record is in the post-remand fees order.)

b. The Circuit Court Abused Its Discretion in Failing to Explain Its Reasoning and in Relying on an Unsupported Factual Conclusion.

In applying the erroneous cutoff date, the circuit court relied on an unsupported factual conclusion about the amount of fees requested for work after April 22, 2016. It "deducts" a total of $377,559 as having been requested during that period. The circuit court provides no support for those amounts that total $95,000 more than the total requested for work after that date, $282,399. The order is based on unsupported factual conclusions and must be reversed under *Horton, Sloan II,* and *Carson,* as well as being a math error and reversible on that ground as well. (*See* Amended Rule 60 Mot.; May 6 Order p. 2; Pls' Mot. Recon. p. 2 (requesting explanation of the reasoning in the May 6 Order); May 21 Order (denying the Mot. Recon)).

The order must also be reversed because it provides no explanation—none—for why it chose the end of trial as the cutoff date. This is error under *Morris v. BB&T* (the analysis must be explained); and *Horton* (reversing a reduction of a fee award as inadequately explained where the circuit court had simply announced a lower hourly rate without stating why, much as the circuit court here simply announced a new cutoff date without stating why).

B. In the Alternative, the Result Is An Award that Is Impermissibly Low.

Even were the move of the cutoff date otherwise permissible, the resulting amount of the award is erroneous. Here, too, various errors are subject to both discretionary and de novo review.

1. The Limited Amount of the Award Errs as a Matter of Law.

The Standard of Review for this Section Is De Novo.

Where, as here, the amount of a fee award turns on the interpretation of the word "reasonable" as used in a statute, review is de novo. Amounts of attorneys' fees awards generally will not be disturbed without an abuse of that discretion, but errors of law are reviewed de novo. *Layman*, 376 S.C. at 444, 658 S.E.2d at 325. "In this case, however, the issue of the amount of attorneys' fees awarded *hinges on the Court's interpretation of 'reasonable' attorneys' fees as contained in [the] statute*. The interpretation of a statute is a question of law, which this Court reviews de novo." *Id.* (emphasis added) (citing *Catawba Indian Tribe v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007); *Bruning & Federle Mfg. Co. v. Mills,* 647 S.E.2d 672, 674 (N.C. App. 2007) (similar).

The North Carolina statute here, N.C. Gen. Stat. § 75-16.1, provides for a "reasonable" attorney fee. Whether the award comports with the North Carolina appellate courts' interpretation is a matter for de novo review.

a. Governing Law

North Carolina law requires the fee-shifting provision here to be liberally applied. "N.C.G.S. § 75–16.1 should be construed and applied liberally in order to [provide] an additional award of attorney's fees . . . ." *Boykin*, 358 S.E.2d at 85 (citing *Hicks v. Albertson*, 200 S.E.2d 40 (N.C. 1973)).

North Carolina law also requires awards under N.C.G.S. § 75-16.1 to be "reasonable," N.C. Gen. Stat. § 75-16; *Custom Molders, Inc. v. Am. Yard Prod., Inc.*, 463 S.E.2d 199, 204 (N.C. 1995); *Morris v. Bailey*, 358 S.E.2d 120, 125 (N.C. App 1987); and its appellate courts interpret a "reasonable" award under N.C.G.S. § 75-16.1 to mean an award sufficient "to 'encourage private enforcement' of Chapter 75." *United Labs., Inc. v. Kuykendall*, 437 S.E.2d 374, 380 (N.C. 1993) (quoting *Marshall v. Miller*, 276 S.E.2d 397, 404 (N.C. 1981); *id*. at 379 (similar). *Winston Realty Co. v. G.H.G., Inc*., 331 S.E.2d 677, 680 (N.C. 1985) (similar).

> Had they not been awarded attorney's fees, it would not have been economically feasible for them to [bring their claim]. Likewise, *without an additional award of attorney's fees* for time expended in defense of plaintiff's motion, *it was not economically feasible* [to continue the case].

Boykin, 358 S.E.2d at 85 (emphasis added) (citing *Hicks*). *See also Cotton v. Stanley*, 380 S.E.2d 419, 421 (N.C. App. 1989) (similar).

If the award is not sufficient to encourage private enforcement of the Act, it is erroneously small. The inquiry therefore includes the de novo issue of whether the circuit court assessed sufficient fees to make prosecuting such cases "economically feasible."

b. Facts

In the five-plus years, from June 29, 2011, through September 14, 2016, for which fees are properly awarded, Appellants' counsel had to travel to Des Plaines, Illinois to depose Respondent's

first victim. He had to travel to Charlotte, North Carolina to depose the auction where Respondent's fraud took place. He had to travel to Manning for various hearings and to Columbia for trial. He had to find, engage, and communicate with an auto body repair expert; research North Carolina law as Respondent insisted South Carolina law would not suffice; prosecute a five-day trial opposed by two defense attorneys, and then, now joined by co-counsel for the post-trial motions, vigorously litigate after the verdicts, as Respondent was arguing that the verdicts should be nullified, that attorney fees should not be awarded, that Appellants must elect between their statutory fees and their punitive award, and other issues.[19]

c. Application

The order's implicit interpretation of a "reasonable" attorney fee under N.C.G.S. § 75–16.1 conflicts with the views of the North Carolina appellate courts.

The circuit court erred as a matter of law in providing an award so small that it will discourage rather than encourage private enforcement of the NCUTPA. Seventy-nine percent reductions in fees will not encourage first-rate attorneys to take these cases. If attorneys considering the next UTPA case understand they can try to identify deceptive and unfair acts that risk the safety of the public, and prove it, by hiring an expert and taking out-of-state depositions, and obtain all the actual damages sought (and a great punitive verdict as icing on the cake), achieve precisely what the statute wants to achieve—discouragement of unfair trade practices and

[19] While fees incurred after September 14 may not be awardable, Appellants' counsel could not ethically recommend to their clients that they accept the $53,160 the trial judge announced in 2016. At the time, Appellants had $14,866.62 in expenses just through April 2016. (Ex. 7 to May 2, 2016 filing, p. 2). At any reasonable hourly rate, the fees would consume the $38,293 remaining, leaving nothing for Appellants. In fact, fees would still be owed by Appellants simply because they enforced their rights which resulted in a verdict over $2.3 million. The statute encourages them sue and vigorously prosecute their rights. They did that.

protection of the public—and have their hours cut by seventy-nine percent, and expenses largely uncompensated, even fewer attorneys than now will take on the multi-year burden these cases entail.[20]

2. The Limited Amount of the Award Is Unreasonably Low.

The Standard of Review for this Section Is Abuse of Discretion.

A lower court abuses its discretion when its fee award is "substantial[ly]" too small. *Rish v. Rish By & Through Barry*, 296 S.C. 14, 15-16, 370 S.E.2d 102, 103 (Ct. App. 1988). Where the award was arguably adequate, "we hold that the trial judge abused his discretion in failing to allow a *more adequate* fee to counsel." *Id.* (emphasis added). "Counsel for the Wife argues that the court abused its discretion in failing to order a more adequate fee. We agree." *Id.* "We hold that the court abused its discretion in awarding attorney's fees in an amount less than actually incurred." *Johnson v. Johnson*, 296 S.C. 289, 303-04, 372 S.E.2d 107, 115 (Ct. App. 1988).

Application

Even without the North Carolina directive that fees under N.C.G.S. § 75-16.1 are to be adequate to encourage consumers to bring these cases, the award is unreasonably small. *Rish* was a family law case. Unlike here, the award there was not backed by a Supreme Court directive to

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[20] It would be even more inadequate were one to consider the additional time necessitated by the circuit court's errors that mandated appeal. June 29, 2026 will mark fifteen years from the start of representation.
Appellants had $14,866.62 in expenses just through April 2016. (Ex. 7 to May 2, 2016 filing, p. 2). Only $3,301.13 are charged to Defendants. (March order p. 2) (listing $2,772.06 as expenses and $529.07 as costs). The combined awards for fees, costs, and expenses total $67,222.13. After the unreimbursed expenses are deducted, the award is $52,355.51. Given Mr. Moskos' fifteen-year involvement and Mr. Fudenberg's ten, that is barely two thousand dollars per attorney per year ($2,094.22).
If the intent is to send a message that "You should not take these kinds of cases," the trial court's message greatly succeeds.

encourage litigation. Even there, where the award was arguably adequate, "the trial judge abused his discretion in failing to allow a *more adequate* fee to counsel." 296 S.C. at 15-16, 370 S.E.2d at 103 (emphasis added). Even more so here. The $63,921 for more than five years work and two attorneys, one mainly for trial and one mainly for post-trial, extensive travel, several hearings, a five-day trial, and extensive post-trial work is insufficient. It is substantially less than it should be and therefore is reversible error.

Conclusion to Part I

Because the "vast majority" of the pre-appeal reduction was for improper reasons, one might reasonably expect at least a majority, if not the vast majority, of the reduction to be restored on remand. Instead, the lower court reduced the request by 79%, improperly moved the cutoff date with not a word of explanation as to why, revoked awards previously made, relied on a clearly erroneous and unsupported factual conclusion, exceeded the remand's allowance, and misinterpreted the North Carolina statute. The reduction should be reversed. A supplemental award of $244,140 should be issued by this Court. [21]

[21] If the Court has any concerns, it could follow *Layman v. State*, 376 S.C. 434, 658 S.E.2d 320, (2008), and in an abundance of caution reduce the award by two to three percent. "Only in an abundance of caution, however, do we reduce the number of total hours expended by three percent (3%), rounded down to the nearest tenth . . . ." *Id*. at 460, 658 S.E.2d at 334 (favorably citing *Edmonds v. United States*, 658 F. Supp. 1126, 1135 n.18, 1147 n.4 (D.S.C. 1987) for "adjusting the time devoted to litigating the underlying case by two to three percent in order to account for the fact that 'some hours may not be properly compensable.'"). That would produce a total fee award of $298,819.17 to $301,899.78. A supplemental assessment between $234,898.17 and $237,978.78 would thus be added to the $63,921 total fees awarded by the circuit court. As argued later, the Court should make this determination rather than remand the issue again to the lower court.

II. POST-JUDGMENT INTEREST ERRORS

The second post-remand order issued March 25, 2025. In addition to including the punitive award, as requested by Appellants, it erroneously delays the start of post-judgment interest and erroneously ceases post-judgment interest.

A. Interest Began On The Date Of The Verdict. Respondent Should Not Be Enabled To Delay Interest By Almost A Year.

Standard of Review

The order errs as a matter of law in delaying the start of post-judgment interest until almost a year after the verdicts. This is subject to de novo review. *Layman*, 376 S.C. at 444, 658 S.E.2d at 325 (interpretation of a statute is reviewed de novo), *Ex parte Travelers Home & Marine Ins. Co. v. Stringfellow*, 427 S.C. 238, 241, 830 S.E.2d 718, 720 (Ct. App. 2019) (interpretation of a rule is reviewed de novo). In the alternative, the circuit court abused its discretion in allowing Respondent's gamesmanship to delay the start of post-judgment interest.

1. Procedural Facts

All verdicts were reached by April 22, 2016. (R. pp. _- _).[22]

The circuit court announced the amounts of the damages and attorneys' fees awards on August 29, 2016, by email from the judge's clerk. (R. p. 1731). The email directed Respondent to draft the order. (*Id*.). Respondent did not submit its proposed order until October 17, 2016. (R. pp. 1855-78). The order was not filed until December 2, 2016. (R. pp. 1, 23).

The court's August 29 email implicitly expressed the judge's intent to grant certain post-

[22] The punitive verdict was rendered on April 22, 2016. (Verdict). The actual damages verdicts were rendered a day earlier. (Verdicts). Appellants have no objection to using the later date for all verdicts.

trial motions. The others were denied by implication.[23] But Respondent, while happy to read the email's silence as to Appellants' requests as indicating denial of the unmentioned requests, decided to read the email's silence as to one of its own motions as a way to prevent judgment on the others. Respondent wrote in its proposed order, "Entry of final judgment shall take place after the Court rules on Defendant's motion for setoff" (final page), and the judge signed it (R. p. 23). Having thus re-inserted its motion into the proceedings, and having used that to delay judgment on Appellants' awards—Respondent then withdrew its motion the next year. (2d. Order p. 1, R. p. 24).

That is why the March 2025 order says post-judgment interest began only on March 16, 2017, almost a year after the verdicts. (Order p. 2).

2. Law

Where there is a verdict, interest runs from its rendition.

> South Carolina Code Ann. 34–31–20(B) (Supp. 2003) states that money decrees and judgments of courts enrolled or entered shall draw interest. [A] claimant is entitled to *interest from the date of the rendition of the verdict*, or post-judgment interest, *as a matter of course.*

Hunting v. Elders, 359 S.C. 217, 229, 597 S.E.2d 803, 809 (Ct. App. 2004) (emphasis added)

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[23] The text of the 8/29/16 email was (R. p. _) (emphasis in original),

> Gentlemen,
> Judge Cothran has made a decision regarding the verdict awarded in this case. Judge Cothran directs the plaintiff to elect from either of the following awards: 1. *Treble Damages and attorney's fees for the N.C. Unfair Trade Practices Cause of Action:* $6,645(actuals) X 3=$19,935 plus an award of attorney's fees of $21,264 for a total of **$41,199.** OR
> 2. *Actual and Punitive damages for the fraud cause of action:* $6,645(actuals) plus $46,515 in punitive damages for a total of ***$53,160.***
> Judge Cothran has given the plaintiff a 10 day deadline to make the election of award. Judge Cothran asks, that upon the election of award by the plaintiff, that defense counsel submit a proposed order on this issue within a reasonable time. Please contact me if you have any questions or concerns regarding this email or any other matters involving this case.
> Thanks,

(citing *Calhoun v. Calhoun,* 339 S.C. 96, 102, 529 S.E.2d 14, 18 (2000)).

One should not benefit from one's own gamesmanship. *See MRI at Belfair, LLC v. S.C. Dep't of Health & Env't Control*, 392 S.C. 314, 322, 709 S.E.2d 626, 630 (2011) (decrying gamesmanship). It is "inherently unfair" to allow a "trial court's timeliness in granting or denying a Rule 59(e) motion to result in prejudice to the moving party." *Se. Hous. Found. v. Smith,* 380 S.C. 621, 640–41, 670 S.E.2d 680, 690–91 (Ct. App. 2008).

3. Application

The order relies solely on *Calhoun* for its holding that interest did not begin until eleven months after the verdicts. But this Court has already interpreted *Calhoun* to mean interest begins on the date of the verdicts. The lower court erred in contradicting controlling precedent of this Court. This Court should so hold.

As a less-preferred alternative, the Court should hold the circuit court abused its discretion by allowing Respondent to delay judgment from August 29, 2016, the date the lower court announced its decision, to the March 16, 2017 date at which it held post-judgment interest began. Respondent should not benefit from its gamesmanship. *See MRI at Belfair, LLC; Se. Hous. Found*. It is unfair to deny Appellants interest on funds that rightfully belong to them but of which possession by Appellants is delayed. *Casey v. Casey*, 311 S.C. 243, 245, 428 S.E.2d 714, 716 (1993), *W. Virginia v. United States*, 479 U.S. 305, 311 n.2, 107 S. Ct. 702, 706 n.2, 93 L. Ed. 2d 639 (1987).

The Court should hold that post-judgment interest runs from April 22, 2016.

B. The Circuit Court Erred In Ordering Post-Judgment Interest To Cease on Uncontested Funds.[24]

The March 25, 2025 order also errs in granting leave for Respondent to deposit *uncontested* funds with the clerk of court and holding that statutory interest would cease on the deposited funds well before the funds are in the possession of Appellants.

1. Procedural Facts

Listing the judgment amounts Respondent acknowledged, "Actual Damages of $6,645, Punitive Damages of $46,515, Attorney's Fees of $63,921, Costs of $529.07, Travel Expenses of $2,772.06, and Prejudgment Interest (through entry of March 17, 2017 of $2,222.60)," Respondent moved on February 24, 2025 for "leave of Court to deposit with the Court the judgment amounts against it plus accrued interest," and that "upon deposit with the Clerk of the judgment amounts plus accrued interest, or any portion thereof, the post-judgment rate of interest shall cease to accrue as to the amount deposited." (R. p. _).

Respondent totaled those judgment amounts at $122,605.27, conceded post-judgment interest was also owed on these amounts through the date of deposit. but sought to stop future interest from accruing. (*Id*.)

Respondent did not say why it desired this relief, but as the emails, proposed orders, letters, motions, and responses (R. pp. _-_) make clear, Respondent sought (1) to cease incurring future interest on the amount it no longer disputed, (2) to deny Appellants use of the money; and (3) to deny Appellants further post-judgment interest on these funds. Appellants maintained (A) that it would be unfair to deny them both use of the money and interest on the funds; and (B) if the trial

[24] Appellants claim errors of law in subsection 3 below and abuse of discretion in subsection 4. The standards of review are discussed within each subsection.

court were to allow interest to cease, any amounts on which interest were to cease should be made available to Appellants at the time of the transfer or soon thereafter.

Appellants suggested several ways Respondent's desire to limit its post-judgment interest obligation and Appellants' desire not to be deprived of interest on funds whose receipt was delayed could both be met, such as by granting leave to deposit, while directing that any deposited funds be transferred promptly to Appellant. (E.g., Pls' Resp. p. 6 ; Pls' Proposed Orders of March 6, 2025; March 7, 2025, and March 20, 2025.)

The amounts transferred could be all the "judgment amounts" Respondent listed in its Motion (Pls' Resp. p. 6); or the "Undisputed Amounts" Respondent provided on March 6, which excluded the fee award (Respondent's 3/6 email; Appellants' email and Proposed Order of 3/7). Again in the alternative, the Court could enter separate judgments, one on the other "judgment amounts" and a separate judgment on the disputed fee award, allowing Appellants to collect at least something while the elderly Appellants are still alive. Alternatively, the Court could simply enter separate judgments, one on the disputed fee award and another on the undisputed judgment amounts. (Pls' Resp. p. 6; Pls' Proposed Orders of March 6, 2025; March 7, 2025, and March 20, 2025).

Appellants pointed out they are elderly and would like to see some recompense while they could still use it. (Proposed order of 3/20/25, pp. 1-2; email of 3/20/25). Respondent opposed allowing Appellants access to funds on which interest would cease. (March 7, 2025 1:25:21 PM email to court). Respondent also wished to be free to decide how much to deposit. (*Id.*). The circuit court granted Respondent's requests. It adopted Respondent's proposed order virtually verbatim.[25]

[25] The only changes from Respondent's proposed order (R's prop.) to the entered order (order) are that the entered order filled in a figure missing from Respondent's proposed order with the figure

The order cites only one case in support of allowing deposit, ending statutory interest, and denying Appellants access to those funds, *Russo v. Sutton*, 317 S.C. 441, 454 S.E.2d 895 (1995). (March 2025 Order pp. 2-3).[26]

2. Law

a. The Statute Clearly and Unambiguously Mandates Interest.

South Carolina Code Ann. § 34–31–20(B) (2025) creates a legal duty on the part of a judgment-debtor to pay post-judgment interest to a judgment-creditor for the time the funds are withheld from the creditor. It states in pertinent part, "A money decree or judgment of a court enrolled or entered must draw interest according to law." The word "must" creates a statutory mandate. "[U]se of words such as 'shall' or 'must' indicates the legislature's intent to enact a mandatory requirement." *Henderson v. Summerville Ford-Mercury Inc.*, 405 S.C. 440, 454, 748 S.E.2d 221, 228 (2013). It clearly and unambiguously states awards "must" draw interest, leaving courts no discretion to deny it.

The Supreme Courts of South Carolina and the United States have explained the sound policy behind the statute. "An amount of money determined to represent an equitable division in 1983 would not constitute the same division if payable in 1988 and, therefore, would no longer be equitable without the imposition of post-judgment interest to compensate for the decrease in value

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from Respondent's motion, and replaced Respondent's slightly erroneous total of its figures with a different erroneous total. *See* note 13.

[26] The order requires that the funds be placed "in an interest-bearing account," without specifying to whom that interest will ultimately be paid, instead leaving the question open for "further order of this Court, or agreement of the parties." (Post-J. Int. Order, p. 3). Even if the lower court, in its discretion, eventually decides that interest goes to Appellants, no one is pretending the tiny interest rate clerks of court receive on such accounts is anything near the statutory rate. As of June 23, 2025, the Richland Clerk currently receives 0.01% annual interest on those funds. The rate of 0.01% is not to be confused with 1.00%. In a hundred years, interest would total 1%.

of the award." *Casey*, 311 S.C. at 245, 428 S.E.2d at 716. "[I]nterest serves to compensate for the loss of use of money," *W. Virginia v. United States*, 479 U.S. at 311 n.2, 107 S. Ct. at 706 n.2, 93 L. Ed. 2d 639. *See also Fetter v. UNUM Life Ins. Co. of Am.*, No. 2:05-CV-02200-DCN, 2008 WL 11474877, at *14 (D.S.C. Mar. 21, 2008) (citing *Quesinberry v. Life Ins. Co. of N. Amer.*, 987 F.2d 1017, 1030-31 (4th Cir. 1993) (en banc)) (similar).

The statute says nothing about interest ceasing on deposited funds.

b. The Discretionary Rule States Nothing About Interest.

Rule 67, SCRCP, states not a word about interest.[27]

Rule 67 is a discretionary rule. It states that funds may be deposited only "by leave of court." It is clear and unambiguous.

Its obvious purpose is to create a safe haven for disputed funds. For example, where a bond company recognizes its liability for the amount of a bond, but there are competing claimants, and the company does not want to be liable if it pays one claimant too much and another too little.

c. Case Law (Dicta)

"[A] judgment debtor's deposit of funds into the court pending his own appeal prevents further accrual of interest. Such a rule encourages the debtor to pay the judgment and assures the

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[27] The Rule states in full,

> In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing. Money paid into the court under this rule shall be deposited as directed by the court in any bank or institution authorized to receive public funds, and shall be withdrawn only upon the check of the clerk of court in favor of the party to whom the order of the court directs.

Rule 67, SCRCP.

judgment creditor the funds will be available at the conclusion of the appeal." *Russo v. Sutton*, 317 S.C. 441, 444, 454 S.E.2d 895, 896 (1995) (dicta) (reversing denial of post-judgment interest). *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 369 S.C. 150, 154-56, 631 S.E.2d 533, 536-37 (2006) (reversing denial of post-judgment interest) (acknowledging in dicta that Rule 67 as interpreted in *Russo* allows cessation of interest pending appeal, but holding the plain meaning of a statute trumped) (implicitly overruling *Russo*'s rationale).

d. Case Law (Holdings)

(i) "[A] later decision in conflict with prior ones ha[s] the effect to overrule them, whether mentioned and commented on or not." *Asher v. State of Texas*, 128 U.S. 129, 132, 9 S. Ct. 1, 2, 32 L. Ed. 368 (1888).

(ii) "[W]hen a money judgment is finalized, whether in a lower court or in an appellate court, the *interest . . . runs from the date of the original judgment. To the extent this new rule is inconsistent with prior case law, that case law is overruled*." *Calhoun*, 339 S.C. at 104, 529 S.E.2d at 19 (emphasis added). This is a "bright line rule." *Id. See Merrian-Webster* (defining "bright-line" as "providing an unambiguous criterion or guideline especially in law."), https://www.merriam-webster.com/dictionary/bright-line.

(iii) In recent years, especially, the Supreme Court has made clear it is not the courts' place to read words into statutes or rules. E.g., in 2024, it held,

> The legislature did not include these words in the statute either expressly or by implication. . . . "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. . . . *[T]he court has no right to impose another meaning.*"

Grungo-Smith v. Grungo, 444 S.C. 556, 566–67, 910 S.E.2d 455, 461 (2024) (emphasis added).

In 2022, it similarly held, quoting its own opinion in *Sonoco Prods. Co. v. S.C. Dep't of*

Revenue, 378 S.C. 385, 391, 662 S.E.2d 599, 602 (2008), "The court should give words their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute's operation." *Garrison v. Target Corp.*, 435 S.C. 566, 586, 869 S.E.2d 797, 808 (2022). It added,

> Indeed, *we do not perceive any restriction in the rule or statute which prohibits the award of interest on punitive damages, and we refuse to impose such limitation here*. *See Hodges v. Rainey*, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000) ("When the language of a statute is clear and explicit, *a court cannot* rewrite the statute and *inject matters into it which are not in the legislature's language*, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning."); *id.* at 85, 533 S.E.2d at 581 ("Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute.").

Id. (emphasis added).

The Supreme Court held similarly in 2012. *Fairchild v. South Carolina Dep't of Transportation*, 398 S.C. 90, 107–08, 727 S.E.2d 407, 416 (2012). "[T]the same rules of construction" that apply to statutes apply to the South Carolina Rules of Civil Procedure; so "where the language of a court rule is clear and unambiguous, the court is obligated to follow its plain and ordinary meaning without resort to forced construction to limit or expand the rule." It did so in 2011. *Edwards v. State Law Enforcement Div. v. State Law Enforcement Division,* 395 S.C. 571, 575, 720 S.E.2d 462, 465 (2011) (citing *Miller v. Aiken*, 364 S.C. 303, 307, 613 S.E.2d 364, 366 (2005)).

The Supreme Court of South Carolina's insistence that "it is not the court's place . . . to limit or expand" the operation of a statute or rule concurs with a nationwide retreat from judicial activism in favor of a more faithful adherence to the text of statutes. "We're all textualists now,"

as United States Supreme Court Justices have observed,[28] and that Court has accordingly overruled significant precedent that does not survive textual analysis, such as the *Chevron* doctrine.[29]

(iv) "This is a fundamental distinction . . . a discretionary rule cannot eliminate a statutory mandate." *Austin v. Stokes-Craven Holding Corp*. (*Austin II*), 406 S.C. 187, 199–200, 750 S.E.2d 78, 84 (2013).

(v) "Rule 67 may not be used as a means of altering the legal duties of the parties." *Bakala v. Bakala*, 352 S.C. 612, 632, 576 S.E.2d 156, 167 (2003).

(vi) "The deposit of uncontested funds with the court does nothing but delay payment of funds that are legally due. This is not the intent of Rule 67." *Id.* at 632-33, 576 S.E.2d at 167. *See also BCD, LLC v. BMW Mfg. Co., LLC*, No. 6:05-CV-02152-GRA, 2008 WL 11456137, at *1 (D.S.C. June 5, 2008) (citation omitted) ("The purpose of Rule 67 is 'to relieve the depositor of responsibility for a fund in dispute . . '."); *id.* ("In this case, Plaintiffs seek to deposit funds that are not 'in dispute'. Rather, they seek to deposit the judgment for the costs awarded to Defendant in this case."); *id.* *2 ("IT IS THEREFORE ORDERED that Plaintiffs Motion to Deposit Funds is DENIED.").

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[28] "[Justice Scalia] appreciated that *stare decisis* is not a rule of 'if I thought it yesterday, I must think it tomorrow.' . . . The answer . . . [is] a demand that all return to a more faithful adherence to the written law. . . . . '[W]e're all textualists now.'" *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 443 & n.6, 144 S. Ct. 2244, 2291, 219 L. Ed. 2d 832 (2024) (Gorsuch, J., concurring). "Today it is even said that we judges are, to one degree or another, all textualists now." *Kisor v. Wilkie*, 588 U.S. 558, 622, 139 S. Ct. 2400, 2442, 204 L. Ed. 2d 841 (2019) (Gorsuch, J. concurring, joined by Thomas and Kavanaugh, JJ.) (internal quotation marks omitted). Justice Kagan stated, "We're all textualists now." Harvard Law School, *The Antonin Scalia Lecture Series: A Dialogue with Justice Elena Kagan on the Reading of Statutes* (Nov. 25, 2015) https://www.youtube.com/watch?v=dpEtszFT0Tg.

[29] *Loper Bright Enterprises*, 603 U.S. 369, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024).

3. The Circuit Court Erred as a Matter of Law in Ordering that Interest Cease.

Standard of Review

The standard of review for this section 3 is de novo. *Layman v. State*, 376 S.C. at 444, 658 S.E.2d at 325 (questions of law are reviewed de novo).

Application

The holdings in (d)(ii) through (vi) above were each decided between 2000 and 2024. They are each later than the 1995 *Russo* opinion on which the order below relies. They trump *Russo* and would do so even if the language the order relies on was *Russo*'s holding rather than dicta.

The Supreme Court has been clear, especially in recent years, that it is error to read words into statutes or rules of civil procedure. The ability to cease interest is nowhere in the language of Rule 67. An exception to the mandate for interest is nowhere in the language of Code § 34–31–20. The order errs in reading words into both the statute and the rule. *Grungo-Smith*, *Edwards* (similar); *Garrison* (similar); *Sonoco Prods. Co*. (similar); *First Carolina Corp. of S.C.* (similar); *Fairchild* (similar). So too here. The lower court errs in both expanding the rule and limiting the statute, each of which the Supreme Court repeatedly prohibits as outside every court's power.

Garrison is very on point, as it concerns interpreting a rule *and* a statute, like here, and the denial of interest, again like here. "Indeed, we do not perceive any restriction in the rule or statute which prohibits the award of interest on punitive damages, and . . . . it is not the court's place to change the meaning . . . ." 435 S.C. at 586, 869 S.E.2d at 808. So too here. The order errs in holding to the contrary.

The order conflicts with the "fundamental distinction" that "a discretionary rule cannot eliminate a statutory mandate." *Austin II*, 406 S.C. at 199–200, 750 S.E.2d at 84; *Henderson*, 405 S.C. at 454, 748 S.E.2d at 228. Thus, even were there something in the rule that authorized denial

of interest—there is not; the rule does not mention interest; but if there were—the mandatory statutory language to the contrary would trump.[30] The order errs in allowing the discretionary rule to trump the statutory mandate in violation of the fundamental distinction between the two.

The order's approach would transform the "bright line rule for the accrual of interest" under *Calhoun* into a mess.

Respondent has a legal duty to pay post-judgment interest to Appellants. S.C. Code Ann. § 34–31–20(B). "Rule 67 may not be used as a means of altering the legal duties of the parties." *Bakala*, 352 S.C. at 632, 576 S.E.2d at 167. The order errs in using Rule 67 to alter the legal duties of the parties.

It is error to even allow the deposit of these *uncontested* funds, irrespective of whether post-judgment interest ceases. "The deposit of uncontested funds . . . . is not the intent of Rule 67." *Id. BCD, LLC*, 2008 WL 11456137, at *1-2 (similar).

These more recent *holdings* trump *Russo*'s *dicta.* The circuit court here erred as a matter of law in allowing *uncontested* funds to be deposited with the clerk of court against the wishes of the sole claimant, and in ordering statutory interest to cease on adjudged amounts that are not made available to the claimant, when neither statute nor rule allows prohibition of such interest, and in altering the legal duties of the parties by violating the fundamental distinction that the statutory mandate cannot be trumped by the discretionary rule. The lower court should be reversed.[31]

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[30] *First Carolina Corp.* notes in dicta that *Russo*'s dicta allows interest to cease, but its *holding* and *rationale*—interest does not cease, because the mandatory language a statute trumps, which is consistent with modern jurisprudence --effectively overrules *Russo*'s dicta.

[31] To be clear, Appellants do not ask the Court to "overrule" *Russo*'s dicta. They realize that dicta cannot be overruled. If it could, and if *Russo's* dicta remains in effect, the Supreme Court should be the Court to do so. Appellants simply ask this Court to recognize that *Russo*'s dicta has been limited, contradicted, and/or overruled by later binding holdings of the Supreme Court.

4. If the Circuit Court Had Discretion, It Was Abused.

Any discretion the circuit court may have had was abused (a) by not explaining the discretionary decision in the way required by the Supreme Court and (b) by the content of the decision.

Standard of Review

The standard of review for this section 4 is the discretion standard. As discussed below, the discretion standard of review has at least four elements: (a) the lower court must recognize it has discretion, (b) it must recognize that "discretion" is not "inclination," (c) it must explain its analysis, and (d) the content must be such that the reviewing court is not strongly opposed.

Morris v. BB&T Corp., touched on above, extensively explained that standard. To ensure compliance, the Supreme Court published its reversal of the unpublished Court of Appeals decision. "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." 438 S.C. at 585–86, 885 S.E.2d at 396.

a. The Circuit Court Must Recognize that It Has discretion.

"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." *Id*. at 587, 885 S.E.2d at 397. "[R]eversal should follow if . . . the trial court did not recognize its capacity to exercise discretion . . . ." *Id.* (alteration and omissions in original). *See also id.* at 587 & n.2, 885 S.E.2d at 397 & n.2 (quoting authorities).

b. Discretion Is More than Inclination.

The trial court must also recognize that discretion is not inclination, but judgment guided by sound legal principles. *Id*. at 587, 885 S.E.2d at 397.

> The exercise of discretion is then to follow a thought process that begins with the trial court's clear understanding of the applicable law, continues with the court's sound analysis of the situation before it in light of the law, and ends with the trial court's ruling that follows the law and is supported by the facts and circumstances.

"The American tradition of rule of law has recognized from its earliest days that *a 'motion to [a court's] discretion is a motion, not to its inclination, but to its judgment; and its judgment is to be guided by sound legal principles.*' " *Id.* (emphasis added) (quoting *Jordan v. Hartford Fin. Grp., Inc.*, 435 S.C. 501, 505, 868 S.E.2d 400, 402 (Ct. App. 2021)). "The trial court's recognition of its responsibility to exercise discretion will be apparent when the record indicates the court followed such a thought process." "Discretion is not whim . . . ." *Jordan,* 435 S.C. at 505, 868 S.E.2d at 402.

c. The Analysis Must Be Explained.

> "[T]he 'discretion' standard . . . requires the analysis be explained."
>
> —*Morris v. BB&T Corp.*, 438 S.C. 5 at 588, 885 S.E.2d at 398.[32]

A discretionary ruling must be "adequately explained with specific findings—as the law requires . . . ." *Horton*, 423 S.C. at 331, 815 S.E.2d at 445. This is the most important point for present purposes, that the analysis must be explained.[33]

d. The Result Must Be Proper.

In addition to being adequately explained, the discretionary decision must be one the appellate court does not substantially disagree with. *Rish*.

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[32] More fully, *Morris* held, "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.

[33] North Carolina law is similar. "Here, the trial court simply awarded plaintiff an attorney fee of one-third of the total award of $ 21,925.83, or $ 7,308.61." *Morris v. Bailey*, 358 S.E.2d 120, 126 (N.C. App. 1987) (holding the explanation to be insufficient).

Application

a. Application of the Order to the Standard of Review

The order's treatment of post-judgment interest fails to meet the standards for a discretionary ruling. If the trial judge thought he was required to allow deposit and cause interest to cease, reversal should follow. *Morris*, 438 S.C. at 587, 885 S.E.2d at 397, and authorities cited there. If he thought he had discretion, he failed to provide any weighing of Respondent's interest against Appellants', which is the core discretionary issue here if discretion exists. The motion was not to the trial court's inclination but to its judgment, *id.* and the order fails to explain why, in its judgment, Respondent's desire to end its obligation to pay interest and its desire to delay Appellants' receipt of the uncontested funds outweighs the justified longing of the 85-year-old fraud victims to obtain some recompense while they still live. The Supreme Court has taken pains to remind lower courts that the analysis behind a discretionary decision must be explained. "We publish this decision to clarify," *Morris*, 438 S.C. at 585, 885 S.E.2d at 396, that a discretionary decision "requires analysis, and . . . requires the analysis be explained," *id.* at 588, 885 S.E.2d at 398.

Because the order fails to meet these standards, it should be reversed.

b. Application of the Order to the Substantive Law

What is the interest of Respondent in denying Appellants access to those uncontested funds, once the funds are out of Respondent's hands? If Respondent deposits admittedly owed money, why does it care whether Appellants can use it? The order does not say, but Respondent's apparent desire is either simply to harm the opposing party, which is not a legitimate interest,[34] or to gain a

[34] Cf. *Gordon v. Busbee*, 397 S.C. 119, 136, 723 S.E.2d 822, 831 (Ct. App. 2012) (recognizing that

superior bargaining position for any settlement discussions that might occur during the present appeal, which is also an illegitimate interest.[35]

As the Supreme Court already held, there is no legitimate interest: "The deposit of *uncontested* funds with the court *does nothing* but delay[.]" *Bakala*, 352 S.C. at 632-33, 576 S.E.2d at 167 (emphasis added).

As the Supreme Courts of South Carolina and the United States have also held, it is a matter of fairness and economic sense that one receive interest on delayed receipt of funds. It "would no longer be equitable without the imposition of post-judgment interest to compensate for the decrease in value of the award." *Casey*, 311 S.C. at 245, 428 S.E.2d at 716*; W. Virginia v. United States*, 479 U.S. 305, 107 S. Ct. 702 (similar). It is unjust to deny 85-year old fraud victims both their funds and interest on the withholding of the funds.

There is simply no good reason to have the uncontested funds out of the hands of both parties and drawing no interest. (Or 0.01% interest, which is effectively the same).

If the circuit court thought it lacked discretion to adopt one of the options Appellants offered to serve both parties' legitimate interests, it should simply have denied the motion for leave to deposit.

On the merits, there is no reason to prefer Respondent's interest in denying compensation to Appellants over Appellants' interest in being paid for the time the funds are not available to them. The circuit court provides no reason to do so. Its order granting leave for that to happen

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a desire to cause harm to another is the opposite of a legitimate interest).

[35] The present appeal is largely about an award under N.C. Gen. Stat. § 75-16.1, a central purpose of which is to *prevent* wrongdoing businesses from having a superior bargaining position in settlement negotiations. *Boykin*, 358 S.E.2d at 85 (citing *Hicks v. Albertson*, 200 S.E.2d 40 (N.C. 1973)).

should be reversed. The Court should hold that the statutory interest never stopped.

III. THE COURT SHOULD CORRECT THESE ERRORS RATHER THAN REMAND FOR ADDITIONAL DISCRETIONARY RULINGS BY THE CIRCUIT COURT.

Standard of Review

Whether to direct the lower court to provide specific relief or to instead remand for additional proceedings is in the appellate court's discretion.

"[W]e find a remand unnecessary" where "there is no evidence in the record that supports the circuit court's reduction" of the attorneys' fees request. *Horton*, 423 S.C. at 331-32, 815 S.E.2d at 445. *See also id.* (describing and quoting *Sloan II*, 393 S.C. at 158-59, 711 S.E.2d at 898 as "reversing the circuit court's award of attorneys' fees under the FOIA and modifying the fee award '[r]ather than delay the matter further by remand' ") (alteration in original); *Layman*, 376 S.C. at 463, 658 S.E.2d at 336 ("in the interest of fairness and in ending this litigation without further accrual of fees by either side," declining to remand for additional discretionary rulings re attorneys' fees[36]); *Austin v. Stokes-Craven Holding Corp.* (*Austin I*), 387 S.C. 22, 57, 691 S.E.2d 135, 153 (2010) (awarding the full fee request where "it would be difficult to dissect Austin's counsel's fee affidavit . . . . [and] to award Austin his claim in its entirety would be consistent with the precedent of this Court.").

[36] More fully, *Layman* stated, 376 S.C. at 463, 658 S.E.2d at 336 (emphasis added),

> *While the matter could be remanded* at this juncture *for a calculation of attorneys' fees* in accordance with the methodology outlined in *Layman II*, *in the interest of fairness and in ending this litigation without further accrual of fees by either side, we* modify our original award of attorneys' fees to *include this additional time expended by counsel*.

Procedural Facts

Having denied "the vast majority" of requested attorney's fees incurred before September 14, 2016, based on an erroneous reading of North Carolina law that no party had advocated, the lower court on remand again denies the vast majority of those fees via yet another erroneous reading of North Carolina law that no party had advocated. To reach that erroneous new holding, that fees stopped accruing on April 22, when trial ended, the circuit court also exceeded the jurisdiction this Court had granted it on remand. *O'Shields I* chides the lower court for having "excluded some hours, with no legal citation for its decision," 435 S.C. at 337, 867 S.E.2d at 456; the post-remand fees order provides no legal citation for anything. while excluding many more hours.

The circuit judge has stated he does not want this case. "Next time y'all have a North Carolina case give it to Judge Benjamin or somebody." (Trial Tr. 593:1-2). He repeatedly asserts he does not know North Carolina law,[37] and the judge has insufficiently attempted to master it.[38] He seemingly does not want to sufficiently explain his reasoning.[39]

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[37] "I am not familiar with North Carolina law at all. . . ." (Trial Tr. 39:21-40:9). "The only thing I know about North Carolina law is a guy dressed up like a woman can't go to the bathroom in the women's bathroom. Other than that, I don't know North Carolina law." (85:16-19). "The problem is you're asking me to try it with North Carolina law. I know absolutely nothing other than as I said earlier what I heard on the news lately . . ." (481:23-24). "[I]t's been difficult because I hadn't had any prior notice that I'm dealing with North Carolina law that I am totally unfamiliar with ---" (509:17-19).

[38] For example, both parties informed the trial judge that North Carolina does not allow percentage-of-the-recovery awards under its NCUTPA, requiring courts instead to consider several factors. (R. pp. 1324-25; 1573-74). Yet he then issued a fee award that was 40% of the recovery.
When Appellants explained that his second approach, of apportioning the vast majority of the fees to the fraud cause of action, also ran afoul of North Carolina law, first by email before the proposed order was signed (R. p. 1882), and then in their Motion to Reconsider (R. p. 1888), he rejected their analysis and provided no explanation (Order on Mot. Recon _).
The judge's most recent attempt to end all fees at the end of trial similarly indicates an insufficient investigation into North Carolina law and a disinclination to call for briefing by the parties.

[39] No reasoning was provided in the August 2016 email announcing the awards.

Application

A remand for another award in the discretion of the circuit court would be for a third evaluation—a fourth, if one counts the initial percentage of the recovery award–to a retired judge who does not want the case. The Court should simply direct that the award be increased to include the hours improperly cut, that post-judgment interest began on the April 22, 2016 date of the verdict, and that fraudsters may not use judicial discretion to deny interest to their 85-year-old victims while denying them access to those funds.

Conclusion

The Court should restore the fees improperly "deducted" for work before September 14, 2016, and thus direct that a supplemental award of $244,140 be made. It should order that any funds on deposit with the lower court be released to Appellants for credit against amounts owed, and that statutory post-judgment interest runs from the April 22, 2016 verdict and has not stopped.

The December 2016 order declared the "vast majority" of the time was cut because a "thorough analysis" had shown that no more than a small minority of the fees could relate to the statutory claim. Appellants repeatedly asked to see the markup of the timesheets or other analysis that supported this central point (Rule 59 Mot. 5-6; Reply Supp. Mot. Rule 59 Mot. 7). Their request was "denied without further discussion." (March 2017 Order on Pls.' Mot. Pursuant to Rule 59 p. 2).

Appellants' request for explanation as to how Mr. Fudenberg's initial time was considered, as the total hours the Court acknowledged in its first post-trial order were only Mr. Moskos' hours (Reply Supp. Mot. Rule 59 Mot. 4), was denied. (Mar 2017 order 2).

Appellants pointed out the need for more explanation of the January 2015 order. (Pls.' Mot. to Reconsider, Alter, or Amend J., filed January 7, 2025, p. 2). Their request was denied. (March 2015 Order). Appellants pointed out two math errors in the March 2015 order. (Am. Mot. Correct Math). The resulting order corrected one, so as to benefit Respondent, but not the other, the one that correcting would benefit Appellants, with no explanation for why it was correcting or not correcting either error. (May 6, 2025 order). (The May 6 order on the math errors repeated verbatim the March 2025 order on depositing funds, added a new caption, and replaced one sum with the correct number. It made no other changes to the March order.) Appellants' Rule 59 motion asked that the judge explain his reasoning re the math errors. (Mot. re Jurisdiction and to Reconsider, p. 2). He declined to do so. (Order on Mot. Recon. filed May 21, 2025).

It should reverse the termination of mandatory, statutory, post-judgment interest, and not allow the perpetrator of a fraud, in violation of modern jurisprudence, to deny its elderly victims both interest on their funds and access to those funds.

Respectfully submitted,

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