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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Diane S. Goodstein, Circuit Court Judge

Case No. 2025-000175

Ronnie D. Tyson,.....Respondent,

v.

The Regional Medical Center of Orangeburg and Calhoun Counties,.....Appellant.

RECORD ON APPEAL

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Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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Attorney for Appellant

STATE OF SOUTH CAROLINA)) COUNTY OF ORANGEBURG)	IN THE COURT OF COMMON PLEAS FIRST JUDICIAL CIRCUIT
RONNIE D. TYSON and **JUANITA TYSON,** Plaintiffs, vs. **THE COUNTY OF ORANGEBURG,** d/b/a The Regional Medical Center of Orangeburg and Calhoun Counties; **THE COUNTY OF CALHOUN,** dba The Regional Medical Center of Orangeburg and Calhoun Counties; **THOMAS T. CHOW, M.D.,** individually and as an agent/or employee of The Regional Medical Center of Orangeburg and Calhoun Counties; **MAURICIO BASSANTE, M.D.,** individually and as an agent/or employee of The Regional Medical Center of Orangeburg and Calhoun Counties; **DANIEL A. REIDMAN, M.D.,** individually and as an agent/or employee of The Regional Medical Center of Orangeburg and Calhoun Counties; **PALMETTO SURGICAL GROUP,** an unincorporated entity; **RACHAEL GROSS, D.O.;** and **GROSS FAMILY PRACTICE, LLC,** Defendants.	Case No.: 2019-~~CP~~NI-38-12 **NOTICE OF INTENT TO FILE SUIT** (Medical Malpractice)

The Plaintiffs do hereby submit this Notice of Intent to File Suit pursuant to S.C. Code § 15-79-125. Plaintiff alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is a citizen and resident of the County of Orangeburg, State of South Carolina, now and at all times relevant to this lawsuit.
2. The Defendants County of Orangeburg and County of Calhoun are political subdivisions of the State of South Carolina and they are jointly doing business as The Regional Medical Center of Orangeburg and Calhoun (hereinafter "Regional Medical Center"). Both counties own the Regional Medical Center.
3. The Regional Medical Center ("RMC") is a non-profit medical facility located in Orangeburg, South Carolina. The Regional Medical Center is governed by a 17-member Board of Trustees representing both counties. For this reason, each county is named as a separate defendant.
4. Palmetto Surgical Group is an un-incorporated entity that performs surgery on behalf of RMC.
5. Upon information and belief, Defendant Thomas T. Chow, M.D. ("Chow") is a citizen and resident of an unknown county within the State of South Carolina. At all times relevant to this action, Chow was a member of Defendant Palmetto Medical Group as an employee or agent, working in the capacity as a surgeon.
6. Upon information and belief, Mauricio Bassante, M.D. ("Bassante") is a citizen and resident of an unknown county within the State of South Carolina. At all times relevant to this action, Bassante was a member of Defendant Palmetto Medical Group as an employee or agent, working in the capacity as a surgeon.
7. Upon information and belief, Daniel A. Reidman, M.D./D.O. ("Reidman") is a citizen and resident of an unknown county within the State of South Carolina. At all times

relevant to this action, Reidman was either an independent contractor or an employee or agent for RMC, working in the capacity as a radiologist. If it is determined later that Dr. Reidman is an employee of RMC, he will be removed as a named defendant and liability will be asserted vicariously against RMC for his conduct.

8. Upon information and belief, Rachael Gross ("Gross") is a citizen and resident of an unknown county within the State of South Carolina. At all times relevant to this action, Gross was a member of Gross Family Medicine, LLC as an employee or agent.

9. Defendant Gross Family Medicine, LLC is a limited liability company formed under the laws of the State of South Carolina. Vicarious liability is asserted against Defendant Gross Family Medicine, LLC as a result of the alleged acts of Dr. Gross.

10. Venue is proper in this matter because at least one or more of the Defendants is a resident of the County of Orangeburg, State of South Carolina, and the principal place of business for the Defendants is the County of Orangeburg, State of South Carolina.

CAUSE OF ACTION TO BE ASSERTED:
(Gross Negligence—Medical Malpractice)
(Against All Defendants)

11. On March 26, 2018, Plaintiff (hereinafter referred to as "R. Tyson") was treated by Dr. Gross and the Gross Family Practice. He complained of chest wall pains, nausea, right lower quadrant abdominal pain, a change of bowels habits, pain in his thoracic spine, chronic pain, among other complaints.

12. Three months later, on June 26, 2016, R. Tyson was treated again by Dr. Gross where he presented with basically the same clinical manifestations, including lower quadrant abdominal pain. The records from Dr. Gross do not show that R. Tyson has improved since the first visit. Dr. Gross referred R. Tyson to Dr. Franga for a colonoscopy; however, Dr. Gross did not order any other medical procedures, such as x-rays, MRI's or CT scans.

13. On August 3, 2018, R. Tyson presented himself to the Regional Medical Center Emergency Room. His chief complaints were abdominal pain. Michael B. Carothers, PA sent him for a CT scan, and he was diagnosed with sigmoid diverticulitis with three non-communicating abscesses. He was admitted to the hospital where his care was assumed by Dr. Thomas T. Chow.

14. On August 8, 2018, Dr. Chow performed surgery on R. Tyson to address the sigmoid colon issue and to repair and evaluate the bladder for leakage (hereinafter referred to as "Surgery Number 1"). Dr. Mauricio Bassante was the co-surgeon for the operation, and the following registered nurses participated in the procedure: Laura Grimsley, Latricia Meyers, and Virginia Pinckney.

15. On August 10, 2018, Dr. Daniel A. Reidman, DO, performed a post-surgical x-ray on R. Tyson. At 4:11 pm, Dr. Reidman's final report note, in part states: "suspicious finding for retained sponge. *See, Enclosure "A" to the Attached Affidavit of Dr. Stephen Cohen.* Nothing in Dr. Reidman's report indicates that Dr. Reidman communicated this horrifying finding to the surgical team that had performed surgery on R. Tyson—other than preparation of the final report. Nor is there any other

medical record documentation to show that such findings were communicated to the surgical team.

16. On August 17, 2018, R. Tyson was discharged from RMC with orders to return on August 23, 2018. Dr. Chow released R. Tyson on this date even though a CT Cystogram Post Op, Accession No. CT-18-13744, read by Dr. Amit K. Sanghi, suggested that R. Tyson had bladder leakage.

17. R. Tyson's medical issues continued after he was released from RMC on August 17, 2018.

18. It cannot be determined whether R. Tyson returned for his first ordered follow-up visit with Dr. Chow.

19. On August 24, 2018, a cystogram (79192) showed that R. Tyson had unspecified urinary incontinence.

20. R. Tyson had a post-op follow-up with Dr. Chow at RMC on September 7, 2018. He was presented with depression and abdominal pain. A follow-up colonoscopy was scheduled.

21. On September 10, 2018, R. Tyson saw Dr. Gross and complained of generally the same issues he had complained to her on the previous two visits, including right lower quadrant abdominal pain, chronic pain, fatigue, nausea, chest wall pain, and change in bowel habits.

22. On October 12, 2018, R. Tyson presented himself to the emergency room at RMC. It appears that Dr. Gross referred him. He was admitted midepigrastic pain and other symptoms. The pain was severe. Dr. Chow ordered a CT scan of the abdomen-pelvis. I did not see the report for this CT scan. However, a handwritten note on Dr.

Chow's clinical note states that at 2:45 pm the "CT shows foreign body" in the right hemiabdomen which was leading to obstruction. Exploratory surgery was planned. *See, Final Report, Enclosure "B, page 4. Attached Affidavit of Dr. Stephen Cohen.*

23. On October 12, 2018, Dr. Chow performed exploratory laparotomy on R. Tyson and removed a foreign body from R. Tyson's peritoneal cavity (hereinafter sometimes referred to as "Surgery No. 2"). Dr. Chow also drained the abscesses and removed a portion of R. Tyson's small intestine. The foreign body removed from R. Tyson during the procedure was analyzed by RMC's pathology department. *See, Surgical Pathology Final Report, Accession Number SP-18-03205, Enclosure "C" to* Attached *Affidavit of Dr. Stephen Cohen.*

24. Dr. Chow's Post Procedure Notes confirm that he removed a Retained Foreign Body from R. Tyson during the exploratory laparotomy. *See, Post Procedure Notes, Enclosure "D" to Attached Affidavit of Dr. Stephen Cohen.*

25. The Retained Foreign Body or Retained Foreign Item ("RFI")[i] that Dr. Chow removed from R. Tyson was a medical lap sponge measuring 34 cm x 33 x 0.4 cm. *See, Surgical Pathology Final Report, Accession Number SP-18-03205, Enclosure "C", page 1, Attached Affidavit of Dr. Stephen Cohen.*

26. R. Tyson was discharged from RMC on October 20, 2018.

27. R. Tyson continued to have medical issues after his discharge from RMC on October 20, 2018. On November 8, 2018, he presented to RMC Emergency Room for shortness of breath. On November 30, 2018, he presented to Dr. Gross with lower quadrant abdominal pain, and he was referred for physical therapy. On January 28,

2019, he presented to Dr. Gross who diagnosed him with major depression, pain, and generalized anxiety disorder.

OPINIONS FROM THE AFFIDAVIT OF DR. STEPHEN M. COHEN, ATTACHED

Taken verbatim from the Affidavit

28. It is my opinion, to a reasonable degree of medical certainty, that Dr. Gross deviated from the standard of care in failing to initially diagnose R. Tyson's abscess of the sigmoid colon due to diverticulitis. Dr. Gross deviated from the standard of care in this respect by failing to order an x-ray, MRI, or CT scan after R. Tyson presented himself to her for the second time on June 26, 2018 complaining of nausea, right lower quadrant abdominal pain, and a change of bowel habits.

29. It is my opinion, to a reasonable degree of medical certainty, that Dr. Gross deviated from the standard of care in failing to diagnose R. Tyson with the Retained Foreign Item that resulted from Surgery Number 1. Dr. Gross deviated from the standard of care in this respect by failing to order an x-ray, MRI, or CT scan after R. Tyson presented himself to her on two occasions after Surgery Number 1 on September 10, 2018 and September 21, 2018 complaining of nausea, right lower quadrant abdominal pain, and a change of bowel habits. A CT scan on October 12, 2018 discovered the RFI. Had Dr. Gross ordered the CT scan earlier, the RFI would have been discovered earlier and R. Tyson would have been spared a lot of ensuing suffering.

30. It is my opinion, to a reasonable degree of medical certainty, that Doctors Chow and Bassante deviated from the standard of care in leaving of RFI (lab sponge) in R. Tyson's peritoneal cavity after Surgery Number 1. They deviated from the standard of care by in one or more ways, to wit: (a) by failing to have the participating nurses

during Surgery Number 1 to account for all medical items used during the before and after the surgery; (b) by failing to maintain situational awareness during and after the surgery; (c) by failing to communicate with the nurses before closing the body cavity to ensure that all foreign items were accounted for; (d) by failing to follow the medical procedures outlined by the Joint Commission and others entities for preventing foreign items from being left in a patient; (e) by failing to review the post-surgery x-ray of Dr. Reidman which showed suspicion of the RFI; (g) by failing to implement an effective counting system before and after surgery, and (h) by leaving the RFI in R. Tyson's cavity.

31. I understand that Doctors Chow and Bassante are members of the Palmetto Surgical Group. I impute their acts to the surgical group and or the hospital if for some reason they are agents of the hospital. I further understand that Dr. Gross practices with Gross Family Medicine, LLC. I impute all acts committed by Dr. Gross to the limited liability company.

32. It is my opinion, to a reasonable degree of medical certainty, that the named counties, dba Regional Medical Center, as a result of the acts of its nurses (Grimsley, Meyers, Pinckey) deviated from the standard of care in leaving the RFI (lab sponge) in R. Tyson's peritoneal cavity after Surgery Number 1. The nurses deviated from the standard of care in one or more ways, to wit: (a) by failing to maintain situational awareness during and after the surgery; (b) by failing to communicate effectively with the surgeons before closing the body cavity to ensure that all foreign items were accounted for; (c) by failing to follow the medical procedures outlined by the Joint Commission and other entities for preventing foreign items from being left in a

patient; (d) by failing to implement an effective counting system before and after surgery.

33. It is my opinion, to a reasonable degree of medical certainty, that Dr. Daniel A. Reidman deviated from the standard of care by failing to communicate his post-surgery "suspicion findings for retained sponge" to Drs. Chow and Bassante. Dr. Reidman's findings, which proved to be true, were so horrifying and consequential, he had a duty to ensure that the surgeons were aware of his findings. I conclude, to a reasonable degree of medical certainty, that Dr. Reidman could not have communicated these results because the RFI was not located by Dr. Chow on October 12, 2018 as a result of a CT scan, and his failure to make such communication is a reckless deviation from the standard of care that governs under this scenario.

34. As a direct and proximate result of the Defendants deviation from the standard of care, R. Tyson was severely injured, including, but not limited to suffering from severe anxiety, had to undergo a second surgery, pain and suffering and other emotional and consequential damages emanating from the Defendants careless and reckless conduct.

35. The care provided by the Defendants fell significantly below an acceptable standard of care and constituted gross negligence.

36. These gross violations of the standard of care as discussed above proximately caused injuries and damages to R. Tyson.

37. That as a direct and proximate result of the breach of the applicable standard of medical care by Defendants, as heretofore alleged, Plaintiffs suffered substantial damages, in the form of conscious pain and suffering in the past and will

suffer conscious pain and suffering into the future; incurred medical bills in the past, present, and future; suffered permanent damages all in an amount to be proved at the trial of this case. Plaintiffs also suffered a substantial sum as loss of income, past, present and future. Plaintiff Juanita Tyson suffered a loss of consortium as the law so recognizes.

38. That all the injuries and damages sustained by the Plaintiff R. Tyson were the direct and proximate result of the grossly negligent actions of Defendants.

39. At all times relevant to this lawsuit, Plaintiff R. Tyson and the Defendants enjoyed patient-doctor relationship.

40. Defendant Counties are vicariously liable for the acts of their employees or agents while they were acting within the scope of their employment and agency on behalf of Defendant Counties. Therefore, the Defendant Counties are vicariously liable for the damages suffered by the Plaintiffs.

ADDITIONAL INFORMATION

41. An affidavit of an expert witness, subject to the affidavit requirements established in S.C. Code § 15-36-100 is attached hereto as **EXHIBIT A.**

42. That by reason of and in consequence of the aforesaid negligence of the Defendants and as a direct and proximate result thereof, Plaintiff suffered damages, including but not limited to medical expenses, pain and suffering, humiliation, degradation, stigmatization, embarrassment, physical pain and suffer, all damages to be suffered in the past, present, and future.

43. Responses to standard interrogatories responses are attached hereto as **EXHIBIT B.**

LAW OFFICE OF GLENN WALTERS, P. A.

s/Glenn Walters, Sr.
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s/Michael Culler
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Email: mrcullerlaw@yahoo.com

Orangeburg, South Carolina
Date: 6/21/2019

Exhibits:-A: Expert's Affidavit
-B: Responses to Standard Interrogatories

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[i]Several medical terms are used to describe a foreign item left in a body as a result of surgery. Such items are also call unintended retention of foreign objects (URFOs) – also called retained surgical items (RSIs). Retained foreign objects are most commonly detected immediately post-procedure; by X-ray; during routine follow-up visits; or from the patient's report of pain or discomfort. URFOs refer to any item or foreign object related to any operative or invasive procedure that is left inside a patient. Objects most commonly left behind after a procedure are:

- Soft goods, such as sponges and towels
- Small miscellaneous items, including unretrieved device components or fragments (such as broken parts of instruments), stapler components, parts of laparoscopic trocars, guidewires, catheters, and pieces of drains
- Needles and other sharps
- Instruments, most commonly malleable retractors

STATE OF SOUTH CAROLINA)) COUNTY OF ORANGEBURG)	IN THE COURT OF COMMON PLEAS FIRST JUDICIAL CIRCUIT
RONNIE D. TYSON and **JUANITA TYSON,** Plaintiffs, vs. **THE COUNTY OF ORANGEBURG,** dba The Regional Medical Center of Orangeburg and Calhoun Counties; **THE COUNTY OF CALHOUN,** dba The Regional Medical Center of Orangeburg and Calhoun Counties; **THOMAS T. CHOW, M.D.,** individually and as an agent/or employee of The Regional Medical Center of Orangeburg and Calhoun Counties; **MAURICIO BASSANTE, M.D.,** individually and as an agent/or employee of The Regional Medical Center of Orangeburg and Calhoun Counties; **DANIEL A. REIDMAN, M.D.,** individually and as an agent/or employee of The Regional Medical Center of Orangeburg and Calhoun Counties; **PALMETTO SURGICAL GROUP,** an unincorporated entity; **RACHAEL GROSS, D.O.;** and **GROSS FAMILY PRACTICE, LLC,** Defendants.	Case No.: 2019-CP-38-_____ **S U M M O N S** **(Jury Trial Requested)**

TO: THE ABOVE – NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in

this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint on the undersigned Attorney for the Plaintiffs, at Post Office Box 1346, Orangeburg, SC 29116, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiffs in this action will apply to the Court for the relief demanded in this Complaint

At Orangeburg, SC

Dated: September 24, 2019

s/Glenn Walters
GLENN WALTERS, Esquire
1910 Russell Street (29115)
Post Office Box 1346
Orangeburg, SC 29116
Ph: 803 531-8844
Fax: 803 531-3628
SC Bar No.: 13198

Attorney for Plaintiffs

STATE OF SOUTH CAROLINA)) COUNTY OF ORANGEBURG)	IN THE COURT OF COMMON PLEAS FIRST JUDICIAL CIRCUIT
RONNIE D. TYSON and **JUANITA TYSON,** Plaintiffs, vs. **THE COUNTY OF ORANGEBURG,** dba The Regional Medical Center of Orangeburg and Calhoun Counties; **THE COUNTY OF CALHOUN,** dba The Regional Medical Center of Orangeburg and Calhoun Counties; **THOMAS T. CHOW, M.D.,** individually and as an agent/or employee of The Regional Medical Center of Orangeburg and Calhoun Counties; **MAURICIO BASSANTE, M.D.,** individually and as an agent/or employee of The Regional Medical Center of Orangeburg and Calhoun Counties; **DANIEL A. REIDMAN, M.D.,** individually and as an agent/or employee of The Regional Medical Center of Orangeburg and Calhoun Counties; **PALMETTO SURGICAL GROUP,** an unincorporated entity; **RACHAEL GROSS, D.O.;** and **GROSS FAMILY PRACTICE, LLC,** Defendants.	Case No.: 2019-CP-38-_____ **COMPLAINT** (Jury Trial)

NOW COME PLAINTIFFS, by and through the undersigned attorney, complaining of the Defendants as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiffs are citizens and residents of the County of Orangeburg, State of South Carolina, now and at all times relevant to this lawsuit.
2. The Defendants County of Orangeburg and County of Calhoun are political subdivisions of the State of South Carolina and they are jointly doing business as The Regional Medical Center of Orangeburg and Calhoun (hereinafter "Regional Medical Center"). Both counties own the Regional Medical Center.
3. The Regional Medical Center ("RMC") is a non-profit medical facility located in Orangeburg, South Carolina. The Regional Medical Center is governed by a 17-member Board of Trustees representing both counties. For this reason, each county is named as a separate defendant.
4. Palmetto Surgical Group is an un-incorporated entity that performs surgery on behalf of RMC.
5. Upon information and belief, Defendant Thomas T. Chow, M.D. ("Chow") is a citizen and resident of an unknown county within the State of South Carolina. At all times relevant to this action, Chow was a member Defendant Palmetto Medical Group as an employee or agent, working in the capacity as a surgeon.
6. Upon information and belief, Mauricio Bassante, M.D. ("Bassante") is a citizen and resident of an unknown county within the State of South Carolina. At all times relevant to this action, Bassante was a member Defendant Palmetto Medical Group as an employee or agent, working in the capacity as a surgeon.

7. Upon information and belief, Daniel A. Reidman, M.D./D.O. ("Reidman") is a citizen and resident of an unknown county within the State of South Carolina. At all times relevant to this action, Reidman was either an independent contractor or an employee or agent for RMC, working in the capacity as a radiologist. If it is determined later that Dr. Reidman is an employee of RMC, he will be removed as a named defendant and liability will be asserted vicariously against RMC for his conduct.
8. Upon information and belief, Rachael Gross ("Gross") is a citizen and resident of an unknown county within the State of South Carolina. At all times relevant to this action, Group was a member of Gross Family Medicine, LLC as an employee or agent, working in the capacity as a surgeon.
9. Defendant Gross Family Medicine, LLC is a limited liability company formed under the laws of the State of South Carolina. Vicarious liability is asserted against Defendant Gross Family Medicine, LLC as a result of the alleged acts of Dr. Gross.
10. Venue is proper in this matter because at least one or more of the Defendants is a resident of the County of Orangeburg, State of South Carolina, and the County of Orangeburg is a principal place of business for the Defendant County.

FIRST CLAIM FOR RELIEF:
(Gross Negligence—Medical Malpractice)
(Against All Defendants)

11. Plaintiffs incorporate by reference the allegations contained in paragraphs one through ten within this First claim for Relief as if fully setout herein.

12. On March 26, 2018, Plaintiff Ronnie Tyson (hereinafter referred to as "R. Tyson") was treated by Dr. Gross and the Gross Family Practice. He complained of chest wall pains, nausea, right lower quadrant abdominal pain, a change of bowels habits, pain in his sporadic spine, chronic pain, among other complaints.

13. Three months later, on June 26, 2016, R. Tyson was treated again by Dr. Gross where he presented with basically the same clinical manifestations, including lower quadrant abdominal pain. The records from Dr. Gross do not show that R. Tyson had improved since the first visit. Dr. Gross referred R. Tyson to Dr. Franga for a colonoscopy; however, Dr. Gross did not order any other medical procedures, such as x-rays, MRI's or CT scans.

14. On August 3, 2018, R. Tyson presented himself to the Regional Medical Center Emergency Room. His chief complaints were abdominal pain. Michael B. Carothers, PA sent him for a CT scan, and he was diagnosed with sigmoid diverticulitis with three non-communicating abscesses. He was admitted to the hospital where his care was assumed by Dr. Thomas T. Chow.

15. On August 8, 2018, Dr. Chow performed surgery on R. Tyson to address the sigmoid colon issue and to repair and evaluate the bladder for leakage (hereinafter referred to as "Surgery Number 1"). Dr. Mauricio Bassante was the co-surgeon for the operation, and the following registered nurses participated in the procedure: Laura Grimsley, Latricia Meyers, and Virginia Pinckney.

16. On August 10, 2018, Dr. Daniel A. Reidman, DO, performed a post-surgical x-ray on R. Tyson. At 4:11 pm, Dr. Reidman's final report noted, in part, "suspicious finding for retained sponge". *See, Enclosure "A" to the Attached Affidavit of Dr. Stephen Cohen.* Nothing in Dr. Reidman's report indicates that he communicated this horrifying finding to the surgical team that had performed surgery on R. Tyson—other than preparation of the final report. Nor is there any other medical record documentation to show that such findings were communicated to the surgical team.
17. On August 17, 2018, R. Tyson was discharged from RMC with orders to return on August 23, 2018. Dr. Chow released R. Tyson on this date even though a CT Cystogram Post Op, Accession No. CT-18-13744, read by Dr. Amit K. Sanghi, suggested that R. had bladder leakage.
18. R. Tyson medical issues continued after he was released from RMC on August 17, 2018.
19. It cannot be determined whether R. Tyson returned for his first ordered follow-up visit with Dr. Chow.
20. On August 24, 2018, a cystogram (79192) showed that R. Tyson had unspecified urinary incontinence.
21. R. Tyson had a post-op follow-up with Dr. Chow at RMC on September 7, 2018. He was presented with depression and abdominal pain. A follow-up colonoscopy was scheduled.
22. On September 10, 2018, R. Tyson saw Dr. Gross and complained of generally the same issues he had complained to her on the previous two visits, including

right lower quadrant abdominal pain, chronic pain, fatigue, nausea, chest wall pain, and change in bowel habits.

23. On October 12, 2018, R. Tyson presented himself to the emergency room at RMC. It appears that Dr. Gross referred him. He was admitted for midpigastric pain and other symptoms. The pain was severe. Dr. Chow ordered a CT scan of the abdomen-pelvis. This CT scan report is not in the medical files. However, a handwritten not on Dr. Chow's clinical note states that at 2:45 pm the "CT shows foreign body" in the right hem-abdomen which was leading to obstruction. Exploratory surgery was planned. *See, Final Report, Enclosure "B, page 4. Attached Affidavit of Dr. Stephen Cohen.*

24. On October 12, 2018, Dr. Chow performed exploratory laparotomy on R. Tyson and removed a foreign body from R. Tyson's peritoneal cavity (hereinafter sometimes referred to as "Surgery No. 2"). Dr. Chow also drained the abscesses and removed a portion of R. Tyson's small intestine. The foreign body removed from R. Tyson during the procedure was analyzed by RMC's pathology department. *See, Surgical Pathology Final Report, Accession Number SP-18-03205, Enclosure "C" to* Attached *Affidavit of Dr. Stephen Cohen.*

25. Dr. Chow's Post Procedure Notes confirm that he removed a Retained Foreign Body from R. Tyson during the exploratory laparotomy. *See, Post Procedure Notes, Enclosure "D" to Attached Affidavit of Dr. Stephen Cohen.*

26. The Retained Foreign Body or Retained Foreign Item ("RFI")[1] that Dr. Chow removed from R. Tyson was a medical lap sponge measuring 34 cm x 33 x 0.4

cm. *See, Surgical Pathology Final Report, Accession Number SP-18-03205, Enclosure "C", page 1, Attached Affidavit of Dr. Stephen Cohen.*

27. R. Tyson was discharged from RMC on October 20, 2018.

28. R. Tyson continued to have medical issues after his discharge from RMC on October 20, 2018. On November 8, 2018, he presented to RMC Emergency Room for shortness of breath. On November 30, 2018, he presented to Dr. Gross with lower quadrant abdominal pain, and he was referred for physical therapy. On January 28, 2019, he presented to Dr. Gross who diagnosed him with major depression, pain, and generalized anxiety disorder

29. At all times relevant to this lawsuit, all of the Defendants had a doctor-patient relationship with Plaintiff R. Tyson.

30. As outlined below in the opinion of the Plaintiffs' expert, the Defendant breached the duty of owed to Plaintiff R. Tyson as stated in the experts words as follow:

OPINIONS FROM THE AFFIDAVIT OF DR. STEPHEN M. COHEN, ATTACHED

Taken verbatim from the Affidavit

31. It is my opinion, to a reasonable degree of medical certainty, that Dr. Gross deviated from the standard of care in failing to initially diagnose R. Tyson's abscess of the sigmoid colon due to diverticulitis. Dr. Gross deviated from the standard of care in this respect by failing to order an x-ray, MRI, or CT scan after R. Tyson presented himself to her for the second time on June 26, 2018 complaining of nausea, right lower quadrant abdominal pay, and a change of bowel habits.

32. It is my opinion, to a reasonable degree of medical certainty, that Dr. Gross deviated from the standard of care in failing to diagnose R. Tyson with the Retained Foreign Item that resulted from Surgery Number 1. Dr. Gross deviated from the standard of care in this respect by failing to order an x-ray, MRI, or CT scan after R. Tyson presented himself to her on two occasions after Surgery Number 1 on September 10, 2018 and September 21, 2018 complaining of nausea, right lower quadrant abdominal pay, and a change of bowel habits. A CT scan on October 12, 2018 discovered the RFI. Had Dr. Gross ordered the CT scan earlier, the RFI would have been discovered earlier and R. Tyson would have been spared a lot of ensuing suffering.

33. It is my opinion, to a reasonable degree of medical certainty, that Doctors Chow and Bassante deviated from the standard of care in leaving the RFI (lab sponge) in R. Tyson's peritoneal cavity after Surgery Number 1. They deviated from the standard of care by in one or more ways, to wit: (a) by failing to have the participating nurses during Surgery Number 1 to account for all medical items used during the before and after the surgery; (b) by failing to maintain situational awareness during and after the surgery; (c) by failing to communicate with the nurses before closing the body cavity to ensure that all foreign items were accounted for; (d) by failing to follow the medical procedures outlined by the Joint Commission and others entities for preventing foreign items from being left in a patient; (e) by failing to review the post-surgery x-ray of Dr. Reidman which showed suspicion the RFI; (g)

by failing to implement an effective counting system before and after surgery, and (h) by leaving the RFI in R. Tyson's cavity.

34. I understand that Doctors Chow and Bassante are members of the Palmetto Surgical Group. I impute their acts to the surgical group and or the hospital if for some reason they are agents of the hospital. I further understand that Dr. Gross practices with Gross Family Medicine, LLC. I impute all acts committed by Dr. Gross to the limited liability company.

35. It is my opinion, to a reasonable degree of medical certainty, that the named counties, dba Regional Medical Center, as a result of the acts of its nurses (Grimsley, Meyers, Pinckey) deviated from the standard of care in leaving the RFI (lab sponge) in R. Tyson's peritoneal cavity after Surgery Number 1. The nurses deviated from the standard of care in one or more ways, to wit: (a) by failing to maintain situational awareness during and after the surgery; (b) by failing to communicate effectively with the surgeons before closing the body cavity to ensure that all foreign items were accounted for; (c) by failing to follow the medical procedures outlined by the Joint Commission and others entities for preventing foreign items from being left in a patient; (d) by failing to implement an effectiive counting system before and after surgery.

36. It is my opinion, to a reasonable degree of medical certainty, that Dr. Daniel A. Reidman deviated from the standard of care by failing to communicate his post-surgery "suspicion findings for retained sponge" to Drs. Chow and Bassante. Dr. Reidman's findings, which proved to be true, were so horrifying and consequential, he had a duty to ensure that the surgeons were

aware of his findings. I conclude, to a reasonable degree of medical certainty, that Dr. Reidman could not have communicated these results because the RFI was not located by Dr. Chow and October 12, 2018 as a result of a CT scan, and his failure to make such communication is a reckless deviation from the standard of care that governs under this scenario.

37. As a direct and proximate result of the Defendants' deviation from the standard of care, R. Tyson was severely injured, including, but not limited to suffering from severe anxiety, had to undergo a second surgery, pain and suffering and other emotional and consequential damages emanating from the Defendants' careless and reckless conduct.

38. The care provided by the Defendants fell significantly below an acceptable standard of care and constituted gross negligence.

39. These gross violations of the standard of care as discussed above proximately caused injuries and damages to R. Tyson.

40. That as a direct and proximate result of the breach of the applicable standard of medical care by Defendants, as heretofore alleged, Plaintiffs suffered substantial damages, in the form of conscious pain and suffering in the past and will suffer conscious pain and suffering into the future incurred medical bills in the past, present, and future; emotional distress; loss of sleep; among other intangible damages, to include mental anguish, all in an amount to be proved at the trial of this case. Plaintiffs also suffered a substantial sum as loss of income, past, present and future.

41. That all the injuries and damages sustained by the Plaintiffs were the direct

and proximate result of the grossly negligent actions of the Defendants. Further, the Defendants acted reckless, wanton, or in a manner that totally disregards the rights of Plaintiff R. Tyson; therefore, the Plaintiffs are entitled to an award of punitive damages against those Defendants for whom the law will allow such punitive damages.

42. Defendant Counties are vicariously liable for the acts of their employees or agents while they were acting within the scope of their employment and agency on behalf of Defendant Counties. Therefore, the Defendant Counties are vicariously liable for the damages suffered by the Plaintiffs.

SECOND CLAIM FOR RELIEF
(Loss of Consortium)
(For Plaintiff Juanita Tyson Only)
(Against All Defendants)

43. Plaintiffs incorporate by reference the allegations contained in paragraphs one through forty-two within this Second Claim for Relief as if fully setout herein.
44. Plaintiffs R. Tyson and J. Tyson are husband and wife and enjoyed the companion of each other before the negligent acts of the Defendants.
45. Defendants tortuously violated Plaintiff J. Tyson's right to the companionship, aid, society and services of her spouse, R. Tyson.
46. As a direct and proximate result of Defendants' tortious conduct as heretofore alleged, Plaintiff J. Tyson suffered substantial damages in the form of loss of consortium, all in an amount to be proved at trial.
47. Further, the Defendants acted reckless, wanton, or in a manner that totally disregards the rights of Plaintiff R. Tyson; therefore, the Plaintiff J. Tyson is entitled to an award of punitive damages against those Defendants for whom

the law will allow such punitive damages.

ADDITIONAL INFORMATION

48. An affidavit of an expert witness, subject to the affidavit requirements established in S.C. Code § 15-36-100 is attached hereto as **EXHIBIT A to this Complaint.**

WHEREFORE, having stated her cause of action against the Defendants and after proving the same by as the law requires, Plaintiffs request the following relief:

a. For a judgement of actual and punitive damages against the Defendant, jointly and severally, in an amount to be proved at trial.

b. For such further relief the Court deems just and proper.

Plaintiff requests a jury trial.

[Only the signature block is contained on this page]

At Orangeburg, SC

Dated: September 24, 2019

s/Glenn Walters
GLENN WALTERS, Esquire
1910 Russell Street (29115)
Post Office Box 1346
Orangeburg, SC 29116
Phone: (803) 531-8844
Fax: (803) 531-3628
Email:

glennwalterspa@gmail.com

SC Bar No.: 13198

Attorney for Plaintiffs

[1]Several medical terms are used to describe a foreign item left in a body as a result of surgery. Such items are also call unintended retention of foreign objects (URFOs) – also called retained surgical items (RSIs). Retained foreign objects are most commonly detected immediately post-procedure; by X-ray; during routine follow-up visits; or from the patient's report of pain or discomfort. URFOs refer to any item or foreign object related to any operative or invasive procedure that is left inside a patient. Objects most commonly left behind after a procedure are:

- Soft goods, such as sponges and towels
- Small miscellaneous items, including unretrieved device components or fragments (such as broken parts of instruments), stapler components, parts of laparoscopic trocars, guidewires, catheters, and pieces of drains
- Needles and other sharps
- Instruments, most commonly malleable retractors.

STATE OF SOUTH CAROLINA) COUNTY OF ORANGEBURG	)	IN THE COURT OF COMMON PLEAS FIRST JUDICIAL CIRCUIT
Ronnie D. Tyson and Juanita Tyson, Plaintiff, -vs- The County of Orangeburg, d/b/a The Regional Medical Center of Orangeburg and Calhoun Counties; The County of Calhoun, d/b/a The Regional Medical Center of Orangeburg and Calhoun Counties; Thomas T. Chow, M.D., individually and as an agent/or employee of The Regional Medical Center of Orangeburg and Calhoun Counties; Mauricio Bassante, M.D., individually and as an agent /or employee of The Regional Medical Center of Orangeburg and Calhoun Counties; Daniel A. Reidman, M.D., individually and as an agent/or employee of The Regional Medical Center of Orangeburg and Calhoun Counties; Palmetto Surgical Group, an unincorporated entity; Rachael Gross, D.O.; and Gross Family Practice, LLC Defendants.	)	C/A No.: 2019-CP-38-01314 ANSWER OF DEFENDANT REGIONAL MEDICAL CENTER OF ORANGEBURG AND CALHOUN COUNTIES, THOMAS T. CHOW, M.D., MAURICIO BASSANTE, M.D., DANIEL A. REIDMAN, M.D., AND PALMETTO SURGICAL

The Defendant, The Regional Medical Center Of Orangeburg and Calhoun Counties, Thomas T. Chow, M.D., Mauricio Bassante, M.D., Daniel A. Redman, M.D., and Palmetto Surgical (improperly named) (hereinafter TRMC defendants), answer the Complaint of plaintiff as follows:

1. TRMC defendant denies all allegations contained in the Complaint unless specifically admitted, qualified, or explained.

2. TRMC defendant admits the allegations contained in paragraphs 1 and 2 of the Complaint.

3. As to the allegations contained in paragraph 3 of the Complaint, TRMC is the proper party

as it is a governmental healthcare facility.

4. TRMC defendant admits the allegations contained in paragraph 4 of the Complaint inasmuch as the proper party is TRMC.

5. As to the allegations contained in paragraphs 5, 6, and 7 of the Complaint, Thomas T. Chow, M.D., Mauricio Bassante, M.D., and Daniel A. Reidman, M.D. were employees of TRMC and were acting within the course and scope of their employment during the time of their interactions with the plaintiffs. They should be dismissed pursuant to the Tort Claims Act. The Regional Medical Center (TRMC) is the proper party.

6. The allegations contained in paragraph 8 and 9 of the Complaint are not directed toward this defendant and are denied.

7. The allegations contained in paragraph 10 of the Complaint contain a legal conclusion to which no response is required. Defendant denies a deviation from the standard of care by its employees.

8. Defendant denies the allegations contained in paragraph 11 of the Complaint and demands strict proof thereof.

9. As to the allegations contained in paragraphs 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29 of the Complaint the TRMC defendant craves reference to the medical records and denies any deviation from the standard of care. The defendant demands strict proof thereof.

10. Defendant denies the allegations contained in paragraphs 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, and 48 of the Complaint and demands strict proof thereof.

FOR A SECOND DEFENSE

11. The defendants reiterate and reallege the allegations of paragraphs 1 through 10 above

as if repeated herein verbatim.

12. Defendants assert that all times relevant to the Complaint its employees were in compliance with the applicable standard of care and defendants assert its employees did not deviate at any time from the standard of care and the treatment of plaintiff. Defendants further asserts that all supervision, staffing, training and medical equipment available to staff fully conformed to and was in full compliance with the applicable standard of care. Therefore, plaintiff is barred from recovery against the defendants for the allegations contained in the Complaint.

FOR A THIRD DEFENSE

13. Defendants reiterate and realleges the allegations contained in paragraphs 1 through 12 of this Answer as if realleged herein verbatim.

14. Defendants, who are employees of TRMC, assert it is a governmental entity as contemplated by the South Carolina Tort Claims Act, and it hereby asserts all defenses afforded it by the South Carolina Tort Claims Act, §15-78-10, et seq., Code of Laws of South Carolina, whether or not specifically or separately pleaded herein, including §15-78-60 and all subparts.

FOR A FOURTH DEFENSE

15. Defendants reiterate and reallege the allegations contained in paragraphs 1 through 14 of this Answer as if realleged herein verbatim.

16. Defendants assert it is not liable for any conduct constituting the exercise of judgement or discretion, pursuant to §15-78-60(5) Code of Laws of South Carolina.

FOR A FIFTH DEFENSE

17. Defendants reiterate and reallege the allegations contained in paragraphs 1 through 16 of this Answer as if realleged herein verbatim.

18. Defendants assert it is entitled to an Order of this Court limiting plaintiff's recovery, if

any, to those actual damages set forth in §15-78-120(a)(1), Code of Laws of South Carolina. Plaintiff is not entitled to punitive damages as to this defendant.

FOR A SIXTH DEFENSE

19. Defendants reiterate and reallege the allegations contained in paragraphs 1 through 18 of this Answer as if realleged herein verbatim.

20. Defendants assert that plaintiff's injuries and damages were proximately caused by the sole negligence of the plaintiff, including; failing to give a proper medical history, failure to exercise due care, failing to follow medical/health advice and in other acts proven through discovery, which serves as a complete bar to recovery in this action.

FOR A SEVENTH DEFENSE

21. Defendants reiterate and reallege the allegations contained in paragraphs 1 through 20 of this Answer as if realleged herein verbatim.

22. Defendants assert any injuries or damages sustained by the plaintiff, which are denied, were a direct and proximate result of the negligence, gross negligence, recklessness, wilfulness, and wantonness of the plaintiff, which is greater than any negligence of the defendants (which is specifically denied). Defendants assert that if it was equally or more negligent than plaintiff, which is denied, the amount of damages, if any, must be reduced in proportion to the amount of plaintiff's negligence.

FOR AN EIGHTH DEFENSE

23. Defendants reiterate and reallege the allegations contained in paragraphs 1 through 22 of this Answer as if realleged herein verbatim.

24. Plaintiff is barred from recovery for the responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate,

or client of any governmental entity pursuant to S. C. Code Ann. §15-78-60 (25).

FOR A NINTH DEFENSE

25. Defendants reiterate and reallege the allegations contained in paragraphs 1 through 24 of this Answer as if realleged herein verbatim

26. Defendants assert plaintiff's injuries, if any, were the direct and proximate result of the natural disease process and defendants, therefore, are not liable to plaintiff.

FOR A TENTH DEFENSE

27. Defendants reiterate and reallege the allegations contained in paragraphs 1 through 26 of this Answer as if realleged herein verbatim.

28. Defendants are not liable for the actions of a non-employee pursuant to S. C. Code Ann. §15-78-60 (20).

FOR AN ELEVENTH DEFENSE

29. Defendants reiterate and reallege the allegations contained in paragraphs 1 through 28 of this Answer as if realleged herein verbatim.

30. Defendants assert to the extent plaintiff suffered a compensable injury from a course of medical treatment that was in any way negligent, that Plaintiff was at least equally negligent as Defendants, which is denied and as such is barred from recovery under the doctrine of comparative negligence.

FOR A TWELFTH DEFENSE

31. Defendants reiterate and reallege the allegations contained in paragraphs 1 through 30 of this Answer as if realleged herein verbatim.

32. Plaintiff asserts that in his complaint that third parties, not under the control of the defendants, TRMC, caused plaintiffs' injuries. To the extent plaintiff may prove this negligence

at trial, defendant asserts it cannot be liable for any negligence of the third party not under its control.

FOR A THIRTEENTH DEFENSE

33. Defendants reiterate and reallege the allegations contained in paragraphs 1 through 32 of this Answer as if realleged herein verbatim.

34. Defendant TRMC asserts it is entitled to a special verdict pursuant to S.C. Code of Laws Ann. § 15-78-100 (c).

FOR A FOURTEENTH DEFENSE

35. Defendants reiterate and reallege the allegations contained in paragraphs 1 through 34 of this Answer as if realleged herein verbatim.

36. Defendant asserts plaintiff's claims are barred by the defenses of intervening cause and superseding cause not under the control of defendant TRMC.

FOR A FIFTEENTH DEFENSE

37. Defendants reiterate and reallege the allegations contained in paragraphs 1 through 36 of this Answer as if realleged herein verbatim.

38. Defendant TRMC denies liability based upon a lack of foreseeabilty.

FOR A SIXTEENTH DEFENSE

39. Defendants reiterate and reallege the allegations contained in paragraphs 1 through 38 of this Answer as if realleged herein verbatim.

40. Defendant TRMC denies liability to plaintiff in this action. Plaintiff has also made allegations against third parties not under the control or direction of TRMC. Defendant TRMC, while asserting it is not at any fault in this matter, asserts it is less than fifty (50%) fault if determined by the apportioning jury. Defendant TRMC asserts it is not subject to joint and several

liability. Defendant TRMC asserts it is entitled to all remedies, special verdicts and rights as contained in S.C. Code of Laws. Ann. Section 15-38-10, et. seq., specifically including Section 15-38-15.

FOR A SEVENTEENTH DEFENSE

41. Defendants reiterate and reallege the allegations contained in paragraphs 1 through 40 of this Answer as if realleged herein verbatim.

42. Defendants Daniel A. Reidman, M.D., Mauricio Bassante, M.D., Thomas T. Chow, M.D., and Palmetto Surgical should be dismissed pursuant to the Tort claims Act and TRMC should be substituted as the party defendant.

WHEREFORE, defendants request the Court inquire into the matters herein, dismiss plaintiff's Complaint with prejudice and with costs and grant such other and further relief as this Court may deem just and proper.

MICHAEL C. TANNER, L. L.C.

By: *s/Michael C. Tanner*

Michael C. Tanner. SC Bar 12424
P.O. Box 1061
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Attorney for defendant TRMC
michaelctannerllc@bellsouth.net

Bamberg, S.C.

October 8, 2019

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG	)	IN THE COURT OF COMMON PLEAS FIRST JUDICIAL CIRCUIT
RONALD D. TYSON and JUANITA TYSON, Plaintiffs, Vs. THE COUNTY OF ORANGEBURG, dba The Regional Medical Center of Orangeburg and Calhoun Counties; THE COUNTY OF CALHOUN, dba The Regional Medical Center of Orangeburg and Calhoun Counties; THOMAS T. CHOW, M.D., individually and as an agent/or employee of The Regional Medical Center of Orangeburg and Calhoun Counties; MAURICIO BASSANTE, M.D., individually and as an agent/or employee of The Regional Medical Center of Orangeburg and Calhoun Counties; DANIEL A. REIDMAN, M.D. individually and as an agent/or employee of The Regional Medical Center of Orangeburg and Calhoun Counties; PALMETTO SURGICAL GROUP, as unincorporated entity; RACHEL GROSS D.O.; and GROSS FAMILY PRACTICE, LLC, Defendants.	)	CONSENT ORDER TO RESTORE CASE TO THE DOCKET Civil Action No: 2019-CP-3801314

IT IS ORDERED that with the consent of the Plaintiff, by and through his attorney Glenn Walters, Sr., and Michael Tanner for the Defendant, that the above captioned case be restored to the docket pursuant to the South Carolina Rules of Civil Procedure, Rule 40 (j).

PRESIDING JUDGE
1ST JUDICIAL CIRCUIT

Orangeburg County, South Carolina
This _____ day of August, 2023

I CONSENT:

s/Michael Tanner (w/permission)
Michael Tanner
Attorney for the Defendants
PO Box 1061
Bamberg, SC 29003
803-245-915
michaelctannerllc@bellsouth.net

I SO MOVE:

s/Glenn Walters, Sr
Glenn Walters, Sr.
Attorney for the Plaintiffs
PO Box 1346
Orangeburg, SC 29116
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glennwalterspa@gmail.com

Orangeburg Common Pleas

Case Caption: Ronnie D. Tyson , plaintiff, et al VS County Of Orangeburg , defendant, et al

Case Number: 2019CP3801314

Type: Order/Restore Case To Active Docket

IT IS SO ORDERED.

Heath P. Taylor

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG Ronnie D. Tyson and Juanita Tyson Plaintiff, v. The Regional Medical Center, d/b/a The Regional Medical Center of Orangeburg and Calhoun Counties; The County of Calhoun, d/b/a The Regional Medical Center of Orangeburg and Calhoun Counties Defendant.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2023-CP-38-01240 **VERDICT FORM**

WE, THE JURY, UNANIMOUSLY FIND AS FOLLOWS:

Please fill out below:

1. **With regards to the medical malpractice cause of action, we, the Jury, unanimously find for the Plaintiff, Ronnie D. Tyson**
   $3,000,000 Three million dollars **dollars actual damages.**

The foreperson, acting on behalf of the unanimous jury, must sign and date this verdict form below:

2/15/24
DATE

PRESIDING JUROR

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	CIVIL ACTION NO.: 2023-CP-38-01240
Ronnie D. Tyson and Juanita Tyson Plaintiff, v. The Regional Medical Center, d/b/a The Regional Medical Center of Orangeburg and Calhoun Counties; The County of Calhoun, d/b/a The Regional Medical Center of Orangeburg and Calhoun Counties Defendant.	)	**VERDICT FORM**

WE, THE JURY, UNANIMOUSLY FIND AS FOLLOWS:

Please fill out one of the two options below:

With regards to the cause of action for loss of consortium:

1. **We, the Jury, unanimously find for the Plaintiff, Juanita Tyson $_____ dollars actual damages.**

OR

2. MH **We, the Jury, unanimously find for the Defendant, The Regional Medical Center.**

The foreperson, acting on behalf of the unanimous jury, must sign and date this verdict form below:

2/15/24
DATE

Myra Williams
PRESIDING JUROR

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023-CP-38-01240

RONNIE TYSON

JUANITA TYSON

PLAINTIFF(S)

THE REGIONAL MEDICAL CENER OF ORANGEBURG AND CALOUN COUNTIES

DEFENDANT(S)

Submitted by:	**Attorney for:** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☒ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: The Defendant requested 10 days in which to make post trial motions which request was granted.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled (List amount(s) below)**
Ronnie Tyson	The Regional Medical Center of Orangeburg and Calhoun Counties	The jury's verdict for the wrongful death action was three (3) million dollars. The Court is unaware of any setoff. The Court is aware of S.C. Code Ann. § 15-78-120. Judgment at this time is for the amount of the jury's verdict, however, may be

		amended to reflect setoff and/or S.C. Code Ann. § 15-78-120.
Juanita Tyson	The Regional Medical Center of Orangeburg and Calhoun Counties	With regards to the loss of consortium action, the jury found for the Defendant.
		$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on the 15th day of February 2024 and a copy mailed first class or placed in the appropriate attorney's box on this 15th day of February 2024 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

****

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

Orangeburg Common Pleas

Case Caption: Ronnie D. Tyson , plaintiff, et al VS County Of Orangeburg , defendant, et al

Case Number: 2023CP3801240

Type: Order/Judgment and Form 4

It is so Ordered!

s/Diane S. Goodstein

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY COURT OF COMMON PLEAS

Honorable Diane S. Goodstein, Circuit Court Judge

Case No. 2023-CP-38-01240

Ronnie D. Tyson and Juanita Tyson,..... Respondent

v.

The Regional Medical Center of Orangeburg and Calhoun Counties,.....,Appellant

NOTICE OF APPEAL

Appellant, The Regional Medical Center of Orangeburg and Calhoun Counties, hereby appeals the attached Order and judgment entered and filed on January 2, 2025, and Order Granting Post-Judgment Interest, issued by the Honorable Diane S. Goodstein, dated and filed on Janaury 2, 2025. Appellant received a written notice of entry on the date of filing. The Appellant also appeals from all pre-trial rulings, trial rulings, and post-trial rulings issued by the Circuit Court Diane S. Goodstein.

MICHAEL C. TANNER, LLC

BY: *s/Michael C. Tanner*

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Morgan Long #102765
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Email: michaelctannerllc@bellsouth.net
Attorneys for Appellant The Regional Medical Center of Orangeburg and Calhoun Counties

January 29, 2025

Other Counsel of Record:

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Attorney for Respondents Ronnie D. Tyson and Juanita Tyson

Michael R. Culler, Jr. #13012
CULLER LAW FIRM
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Attorney for Respondents Ronnie D. Tyson and Juanita Tyson

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
	)	
Ronnic D. Tyson and Juanita Tyson,	)	
	)	C/A no. 2023-CP-38-01240
	)	
	)	**DEFENDANT THE REGIONAL MEDICAL CENTER'S NOTICE OF MOTION AND MOTION FOR JNOV OR JUDGMENT AS A MATTER OF LAW, IN THE ALTERNATIVE, FOR REMITTUR OF VERDICT PURSUANT TO TORT CLAIMS ACT**
Plaintiff,	)	
v.	)	
The Regional Medical Center of Orangeburg and Calhoun;	)	
Defendants.	)	

TO: THE HONORABLE DIANE GOODSTEIN AND

GLENN WALTERS, MICHAEL CULLER , ATTORNEYS FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that Defendant The Regional Medical Center ("TRMC"), by and through its undersigned counsel, shall at such time and place as the Court may direct, move for an Order pursuant to Rule 50(b), SCRCP, granting judgment as a matter of law in favor of the Defendant notwithstanding the jury's verdict. Alternatively, the Defendant moves for a new trial absolute pursuant to Rule 59(a), SCRCP and pursuant to the thirteenth juror doctrine. If the foregoing motions are denied, the Defendant moves that the verdict in favor of the Plaintiff Ronnie D. Tyson be reduced to the aggregate of $1,200,000 in accordance with S.C. Code Ann. § 15-78-120(a)(3).

The grounds for the Defendant's post-trial motions are as follows:

1. **TRMC believes a new trial nisi remittur is appropriate because the Jury verdict was excessive.**

The Court should grant a new trial nisi remittitur because the jury rendered an excessive verdict compared to the evidence offered by Plaintiff. When a verdict "is so grossly excessive … that the amount awarded is so shockingly disproportionate to the injuries as to indicate that the jury was moved or actuated by passion, caprice, prejudice, or other considerations not found in the evidence, it becomes the duty of the trial judge … to set aside the verdict absolutely." Allstate Ins. Co. v. Durham, 314 S.C. 529, 531, 431S.E.2d 557, 558 (1993), citing Easler v. Hejaz Temple, 285 S.C. 348, 329 S.E.2d 753, 758(1985); Vinson v. Hartley, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (Ct. App. 1996) (stating a "trial judge must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives").

A trial court may grant a new trial absolute on the ground that the verdict is excessive or inadequate. Howard v. Roberson, 376 S.C. 143, 154 (Ct. App. 2007) citing Stevens v. Allen, 336 S.C. 439, 447, 520 S.E.2d 625, 629 (Ct. App. 1999) [***14] aff'd by 342 S.C. 47, 536 S.E.2d 663 (2000) (citing Vinson v. Hartley, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (Ct. App. 1996)). Additionally, a new trial is warranted if the verdict is inconsistent. See Rush v. Blanchard, 310 S.C. 375, 426 S.E.2d 802 (1993). The jury's determination of damages, however, is entitled to substantial deference. Id. The trial judge must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives. See Cock-n-Bull Steak House, Inc. v. Generali Ins. Co., 321 S.C. 1, 466 S.E.2d 727 (1996); McCourt by and Through McCourt v. Abernathy, 318 S.C. 301, 457

S.E.2d 603 (1995); Allstate Ins. Co. v. Durham, 314 S.C. 529, 431 S.E.2d 557 (1993). The failure of the trial judge to grant a new trial absolute in this situation amounts to an abuse of discretion and on appeal this court will grant a new trial absolute. Stevens, 336 S.C. at 452, 520 S.E.2d at 631.

Here, the jury's verdict of $3 million dollars for the medical negligence claim was grossly

excessive because Defendant TRMC asserts Plaintiff Ronnie Tyson failed to prove substantial damages. The jury verdict of $3 million is more than thirty-three (33) times higher than Plaintiff's economic damages. See Sanders v. Prince, 304 S.C. 236, 403, S.E. 2d 640 (1991)(holding that the size of the verdict as compared to the evidence of damages, in conjunction with the jury's question, demanded a new trial.)

In Sanders, the appellant was a member of a school board who held a press conference for public attention for a mismanagement of district funds within the respondent's administration. As a result, the respondent sued the appellant for defamation where the jury asked a question if it could force the appellant to resign from the board. The jury ultimately returned a verdict for the respondent, awarding her $1.25 million in actual damages and $750,000 in ***punitive*** damages.[1] [2] The appeal was followed and the Supreme Court held that the verdict was arbitrarily capricious, and so grossly excessive as to indicate passion, prejudice, or other improper motive. Id at 239, 403 S.E. 2d.at 642. The Supreme Court reasoned in Sanders that the respondent had been re-elected to the board as the chairperson and, therefore, could not have suffered millions of dollars in damage to her reputation. Id at. 238.

[1] 1.25 million U.S. dollars in 1991 would be equal to $2.83 million in 2024, per the inflation rate calculated by officialdata.org

[2] Similarly, $750,000 U.S. dollars in 1999 would be equal to approximately $1.70 million in 2024.

In the current case, Plaintiff offered no evidence of lost wages or future medical needs related to this matter or any permanent impairment rating. Similar to Sanders, Plaintiff Ronnie D. Tyson did not suffer millions of dollars in damages. He conceded that he has never sought mental health treatment, and has never undergone any surgery since June 2019. He is not currently receiving treatment related to his August 8, 2018, surgery, and finally, he conceded that he was able to continue his regular pharmacist employment, and that he is able to drive. The Defendant TRMC believes that the verdict of $3 million dollars is grossly excessive to the extent that it seems to constitute **punitive damages**. As punitive damages are not recoverable against a governmental entity under South Carolina Law, the Defendant TRMC requests a new trial nisi *remittur*. See §15-78-120(B); Spring Valley Homeowners' Ass'n v. Richland County Gov't, 2020 S.C. C.P. LEXIS 391, *1.

Plaintiff, Ronnie D. Tyson, was admitted to TRMC was on August 3, 2018. He was then admitted under the service of Dr. Thomas Chow ("Dr. Chow") who is a hospital employee and who performed a sigmoid colon surgery on Plaintiff on August 8, 2018, while unintentionally leaving a sponge in his body. Testimony reveal that Plaintiff Mr. Tyson did come back to Dr. Chow on four subsequent times, respectively on August 24, 2018, as an outpatient; on September 7, 2018, also as an outpatient; on September 21, 2018, for his colonoscopy surgery performed by Dr. Chow; and on October 12, 2018, to the emergency department for the purpose of removing the sponge inside his body in the right quadrant area of the abdomen found by the CT scan on the same day. TRMC showed to the jury that Mr. Tyson's first two visits were the routine ones for a follow up treatment after his from his hospital admission between August 3 to 17, 2018. Plaintiff did not argue or assert that his colonoscopy surgery, which has also been performed by Dr. Chow, was caused by the failure to remove the sponge.

While the October visit was the result of complications from the first visit, Plaintiff testified that he has incurred a total of $90,141.89 in expenses from his hospital stay in October. Plaintiff testified that he had to undergo hernia surgery after the October 12, 2018, surgery. Plaintiff also asserted that he has suffered an "excruciating pain" during the 60-day period. However, TRMC asserts that Plaintiff failed to prove how his "excruciating pain" justifies a $3 million verdict as he conceded that he was able to move despite with a temporary pain during this time. As opposed to the Plaintiff's argument that Dr. Chow recklessly and intentionally left the sponge in Mr. Ronnie Tyson's body for sixty days and refused to take an action, the evidence and testimony, including Plaintiff's expert witness Dr. Stephen Cohen, proved that the negligence was not intentional. Dr. Chow testified that he would have removed the sponge immediately had he known about it. Moreover, the sponge was successfully removed on October 12, 2018, by Dr. Chow after he had the CT scan results. TRMC further believes the verdict is inconsistent. Dr. Cohen testified he did not believe Dr. Chow intentionally left the sponge in Mr. Tyson. It was his opinion no surgeon would do such a thing.

TRMC believes that Plaintiff's a questioning of Dr. Chow that he intentionally left the sponge in Plaintiff Mr. Tyson's body, and recklessly disregarded his complaints, resulted in the jury to have unreasonable passion, caprice, prejudice, partiality. Despite Plaintiffs' overreaching argument that both Mr. and Ms. Tyson's lives were "ruined by the sponge," Plaintiff Ronnie Tyson conceded by his trial testimony that his life has eventually turned back to normal as (1) he has had frequent pharmacist jobs around the country in States such as Florida, Alabama, and even in the U.S. Virgin Islands; (2) meanwhile he has earned in between $49.00 to $55.00 dollars an hour and testified he never had any surgery after June 2019; (3) he currently has a valid driver's license with no driving restrictions; (4) he has no physical restrictions prescribed by a

physician for his mobility, and (5) he testified that he has never sought a mental health treatment after his October 2018 visit. Moreover, while plaintiff Juanita Tyson testified that Ronnie Tyson "can't go to the upstairs room because of lack of mobility," it appears that Plaintiff was able to walk the stairs of the court room and get to the second floor on four straight days without any aid or help.

Plaintiff cannot claim that his preexisting conditions, such as lack of sexual relations, or alcohol use, or smoking, aggravated into the damage as the jury found for TRMC as to Plaintiff Juanita Tyson's loss of consortium claim. Plaintiffs also failed to provide any hospital bill other than what is submitted to the Court for his October visit, which amounts to $90,141.89. Dr. Cohen has not offered opinion or testified that the sponge being left in Plaintiff caused permanent damage to Plaintiff or that it decreased Plaintiff's life expectancy to the extent that he should be awarded a verdict of $3 million. Hence, TRMC believes the verdict of $3 million shocks the conscience because it is thirty-three (33) times higher than the economic damages. Moreover, Mr. Tyson failed to prove that leaving the sponge affected his life expectancy. Mr. Tyson continues to his life without any substantial work restrictions. He offered no proof that he incurred future medical needs related to this matter or had a permanent impairment rating. Mr. Tyson's assertions of intentional neglect are refuted by his own expert witness, Dr. Cohen, who testified no surgeon intentionally leaves a sponge in a patient's body.

Therefore, TRMC asserts that for the reasons hereinabove, that the jury was moved or actuated by passion, caprice, and/or prejudice, hence came back with $3 million verdict, which should be reduced or in the alternative, a new trial absolute should be granted.

2. **The Defendant is entitled to a new trial absolute based upon the thirteenth juror doctrine.**

A trial court has the authority to grant a new trial absolute when the trial court finds that the evidence does not justify the verdict. Folkens v. Hunt, 300 S.C. 251, 387 S.E.2d 265, 267 (1990); Ex parte Travelers Home & Marine Ins. Co., 427 S.C. 238, 830 S.E.2d 718, 721 (Ct. App. 2019); Trivelas v. South Carolina Dept. of Transportation, 357 S.C. 545, 553, 593 S.E.2d 504, 508 (Ct. App. 2004). See also, Johnson v. Hoechst Celanese Corp., 317 S.C. 415, 422, 453 S.E.2d 908, 912 (Ct. App. 1995) (stating a new trial absolute pursuant to the thirteenth juror doctrine may also be granted "if the verdict is inconsistent and reflects the jury's confusion"). Commonly referred to as the thirteenth juror doctrine, the doctrine serves as a vehicle for the trial court to serve as a thirteenth juror and "hang" the jury as if the jury failed to reach a verdict and a new trial is ordered. Id. The trial judge is not required to give reasons for invoking the thirteenth juror doctrine, just as a jury is not required to give reasons why it was unable to reach a verdict. Id. The Defendant TRMC asserts it is entitled to a new trial absolute as allowed by the thirteenth juror doctrine.

As discussed above, the evidence does not justify a $3 million verdict and it is inconsistent with the damages Ronnie Tyson has suffered. As discussed above, the amount is shockingly disproportionate to the Plaintiff's injuries. Hence, TRMC asserts that as the verdict is grossly excessive and shocks the conscience, the Defendant's motion for a new trial absolute should be granted.

3. **TRMC is a governmental entity subject to the South Carolina Tort Claims Act ("TCA")**

TCA "governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity . . . " Smith v. Reg'l Med. Ctr., 394

S.C. 110, 114-115, 713 S.E.2d 656, 659, (Ct. App. 2011) citing Flateau v. Harrelson, 355 S.C. 197, 203, 584 S.E.2d 413, 416 (Ct. App. 2003). TRMC is a governmentally funded hospital that is statutorily governed by the TCA. Id.

§15-78-120 of the TCA establishes the monetary caps or limits on a governmental entity's liability for money damages. §15-78-120 (a)(3) provides that " [n]o person may recover in any action or claim brought hereunder against any governmental entity and caused by the tort of any licensed physician or dentist, employed by a governmental entity and acting within the scope of his profession, a sum exceeding *one million two hundred thousand* dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved." S.C. Code Ann. § 15-78-120(a)(3).[3] (Emphasis added). The Tort Claims Act must be liberally construed to limit the liability of the state and its political subdivisions. S.C. Code Ann. § 15-78-20(f).[4]

See also Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 281(Ct. App. 2005) *citing* Oliver v. South Carolina Dep't of Hwys. & Pub. Transp., 309 S.C. 313, 316, 422 S.E.2d 128, 130 (1992) ("The jury awarded Oliver damages in the amount of $3,250,000.00," which the judge reduced to $250,000, "pursuant to the statutory cap" provided in the Tort Claims Act); Jeter v. South Carolina Dep't of Transp., 358 S.C. 528, 532, 595 S.E.2d 827, 829 (Ct. App.

[3] Additionally, Section 15-78-120(a)(4) establishes an aggregate cap of $1.2 million for multiple claims as follows: "The total sum recovered hereunder arising out of a single occurrence of liability of any governmental entity for any tort caused by any licensed physician or dentist, employed by a governmental entity and acting within the scope of his profession, may not exceed one million two hundred thousand dollars regardless of the number of agencies or political subdivisions or claims or actions involved." S.C. Code Ann. § 15-78-120(a)(4).

[4] See, Faile v. South Carolina Department of Juvenile Justice, 350 S.C. 315, 566 S.E.2d 536, 540 (2002) ("[p]rovisions establishing limitations on liability must be liberally construed in the State's favor"). See also, Baker v. Sanders, 301 S.C. 170, 391 S.E.2d 229 (1990); Bayle v. South Carolina Department of Transportation, 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001).

2004) ("By consent order, the trial court reduced the verdicts in accordance with the statutory caps set forth in the [Tort Claims] Act."); Clark v. South Carolina Dep't of Pub. Safety, 353 S.C. 291, 298, 578 S.E.2d 16, 19 (Ct. App. 2002) ("the trial court reduced the verdict against the Department in accordance with the limit imposed by the Tort Claims Act.")

In Parker v. Spartanburg Sanitary Sewer District, 362 S.C. 276, 607 S.E.2d 711 (Ct. App. 2005), the South Carolina Court of Appeals, using mandatory language, states: "We conclude that the monetary statutory cap is self-executing and the court is required to apply the monetary statutory cap to any jury verdict exceeding $300,000." 607 S.E.2d at 716. The same is true with respect to the statutory cap for torts committed by a physician pursuant to §15-78-120(a)(3). Thus, the application of the monetary caps is a self-executing duty imposed on the trial court where, as here, the jury's verdict exceeds $1.2 million. Notably, in Campbell v. City of North Charleston, 431 S.C. 454, 848 S.E.2d 788 (Ct. App. 2020), the Court of Appeals reaffirmed that "the plain meaning of the statute indicates this cap must be executed" and that "under the plain meaning of section 15-78-120(a), courts must apply the statutory cap to actions brought pursuant to the Act." 848 S.E.2d at 793-794. The Court of Appeals also emphasized that "the application of the cap is mandatory and self-executing." 848 S.E.2d at 793. As the italicized language above shows, Section 15-78-120(a)(3) caps a judgment at $1.2 million "because of loss arising from a single occurrence." S.C. Code Ann. § 15-78-120(a)(3). The term "occurrence," which is part of the court's analysis in applying the caps, is defined in the Tort Claims Act as "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. Code Ann. § 15-78-30(g). Here, he application of the monetary caps is a mandatory and self-executing duty imposed on the trial court – and not the jury -- where, as here, the jury's verdict exceeds $1.2 million with one occurrence. TRMC believes and is informed that the jury verdict of $3 million

for the medical negligence claim shall be reduced to $1.2 million pursuant to §15-78-120(a)(3) of the TCA.

Respectfully submitted,

MICHAEL C. TANNER, LLC

s/ Michael C. Tanner
MICHAEL C. TANNER #12424
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Emre.tannerlaw@gmail.com

Bamberg, S.C.
February 22, 2024

ORAL ARGUMENT REQUESTED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
Ronnie D. Tyson and Juanita Tyson,	)	C/A no. 2023-CP-38-01240
Plaintiff,	)	**ORDER DENYING DEFENDANT TRMC'S MOTION FOR JNOV OR JUDGMENT AS A MATTER OF LAW AND GRANTING NISI *REMITTUR* PURSUANT TO THE SOUTH CAROLINA TORT CLAIMS ACT**
v.	)	
The Regional Medical Center of Orangeburg and Calhoun;	)	
Defendants.	)	

This matter was before the Court on April 3, 2024, for a hearing on the post-trial motions of the Defendant The Regional Medical Center of Orangeburg and Calhoun (hereinafter referred to as "The Defendant TRMC.") The Defendant TRMC argued in its post-trial motion that the verdict of $3 million is so grossly excessive and the amount awarded is so shockingly disproportionate to the injuries as to indicate that the jury was moved or actuated by passion, caprice, prejudice, or other considerations not found in the evidence, therefore, it requested the trial judge to set aside the verdict absolutely. TRMC contended it believed the verdict of $3 million was grossly excessive to the extent that it seems to constitute punitive damages.

In their counter argument, Plaintiffs contended that finding a sponge in Plaintiff, Ronnie Tyson's body more than sixty (60) days after his surgery was negligent of TRMC and caused serious injuries to Ronnie Tyson. Plaintiffs finally contend that as a result, Ronnie Tyson sustained permanent injuries and that he should be compensated for his pain and suffering.

I. New Trial

The Defendant TRMC asserts that the Court should grant a new trial nisi remittitur because the jury rendered an excessive verdict compared to the evidence offered by Plaintiff. The jury's determination of damages, however, is entitled to substantial deference. Rush v. Blanchard, 310 S.C. 375, 426 S.E.2d 802 (1993). The trial judge must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives. Id.

I find that the jury's verdict is not grossly excessive. Three (3) physicians testified in this case and it is undisputed that a sponge stayed in Plaintiff Ronnie Tyson's body for more than sixty (60) days. In the current case, Plaintiff Ronnie Tyson testified about his physical pain and mental anguish. He also testified about going through an unnecessary second surgery to remove the sponge from his body. Plaintiff's expert witness testified that as a result of the second surgery, Plaintiff Ronnie Tyson had developed a hernia and has a permanent scar as a result of the procedure. I find that there was evidence from which the jury could reasonably conclude that, but for the sponge being left inside of Plaintiff Ronnie Tyson's body, he would not have had suffered these damages. Plaintiff Ronnie Tyson further testified that his relationship with his children was never the same after the surgery. Based on this evidence presented at trial, I find that there was sufficient evidence for a jury to make a determination that $3 million is reasonable for Plaintiff Ronnie Tyson's pain and suffering, mental anguish, and anxiety claims. Therefore, I conclude that the verdict is not excessive, nor does it shock the conscience and the motion for a new trial is respectfully denied.

II. Thirteenth Juror Doctrine

A trial court has the authority "to grant a new trial absolute when the trial court finds that the evidence does not justify the verdict." Folkens v. Hunt, 300 S.C. 251, 387 S.E.2d 265, 267 (1990). Commonly referred to as the thirteenth juror doctrine, the doctrine serves as a vehicle for the trial court to serve as a thirteenth juror and "hang" the jury as if the jury failed to reach a verdict and a new trial is ordered. Id. The trial judge is not required to give reasons for invoking the thirteenth juror doctrine, just as a jury is not required to give reasons why it was unable to reach a verdict. Id.

The Defendant TRMC asserts it is entitled to a new trial absolute as allowed by the thirteenth juror doctrine. However, I find that based on the testimony and evidence, there was sufficient evidence presented to the jury for the jury to find that Plaintiff Ronnie Tyson experienced pain and suffering, mental anguish, and anxiety, and that his life has changed after the surgery. Therefore, Defendant's request to invoke the thirteenth juror doctrine is denied.

III. Statutory Remittur

South Carolina Tort Claims Act (TCA) "governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity . . ." Smith v. Reg'l Med. Ctr. of Orangeburg & Calhoun Ctys., 394 S.C. 110, 713 S.E.2d 656 (Ct. App. 2011) citing Flateau v. Harrelson, 355 S.C. 197, 203, 584 S.E.2d 413, 416 (Ct. App. 2003). TRMC is a governmentally funded hospital that is statutorily governed by the TCA. Id. S.C. Code Ann. §15-78-120 of the TCA establishes the monetary caps or limits on a governmental entity's liability for money damages. §15-78-120 (a)(3) provides that:

> "[n]o person may recover in any action or claim brought hereunder against any governmental entity and caused by the tort of any licensed physician or dentist, employed by a

> governmental entity and acting within the scope of his profession, a sum exceeding *one million two hundred thousand* dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved." S.C. Code Ann. § 15-78-120(a)(3). (Emphasis added).

Plaintiffs pled two separate causes actions with each having one occurrence in this matter. The jury found for the Plaintiff Ronnie Tyson for medical negligence and found for the Defendant TRMC on Juanita Tyson's loss of consortium claim.

Dr. Reidman's trial deposition was taken on February 6, 2024, and he testified he was a TRMC employee on August 10, 2018, and that he was working as a radiologist at TRMC. Moreover, the pleadings show that both the Plaintiffs and the Defendant have stipulated that physicians Thomas T. Chow M.D. ("Dr. Chow,") Mauricio Bassante M.D. ("Dr. Bassante,") and Dr. Reidman were all employees of the defendant the Regional Medical Center ("TRMC,") and therefore, TRMC was substituted as a party defendant as the employer of the above-mentioned physicians. The stipulation was electronically filed on February 25, 2020. Based on the stipulation and testimony of Dr. Reidman above, there is no dispute that in August 2018, Dr. Reidman was an employee of TRMC, which was a governmental hospital. The South Carolina Tort Claims Act ("TCA") states and the Supreme Court of South Carolina affirmed "section 15-78-200 of the Act requires us to construe the provisions of the Act in a manner that limits the liability of the governmental entity" Gore v. Dorchester Cnty. Sheriff's Off., 442 S.C. 438, 900 S.E.2d 423 (2024).

For the reasons hereinabove, I find that the application of the statutory monetary caps is a mandatory and self-executing duty imposed on the trial court – and not the jury – where, as here, the jury's verdict exceeds $1.2 million with one occurrence of negligence. I therefore conclude that the jury verdict of $3 million for the medical negligence claim shall be reduced to $1.2 million pursuant to §15-78-120(a)(3) of the Tort Claims Act.

IT IS SO ORDERED.

_____
Diane S. Goodstein
Presiding Judge, First Judicial Circuit

_____ South Carolina

_____, 2024

Orangeburg Common Pleas

Case Caption: Ronnie D. Tyson , plaintiff, et al VS TRMC of Orangeburg and Calhoun Counties , defendant, et al

Case Number: 2023CP3801240

Type: Order/JNOV

It is so Ordered!

s/Diane S. Goodstein

STATE OF SOUTH CAROLINA) **)** **COUNTY OF ORANGEBURG)**	**IN THE COURT OF COMMON PLEAS** **FIRST JUDICIAL CIRCUIT**
RONNIE D. TYSON and JUANITA TYSON, Plaintiffs, vs. **THE COUNTY OF ORANGEBURG,** dba The Regional Medical Center of Orangeburg and Calhoun Counties; **THE COUNTY OF CALHOUN,** dba The Regional Medical Center of Orangeburg and Calhoun Counties; Defendants.	**Case No.: 2023-CP-38-01240** **NOTICE OF MOTION AND MOTION FOR POST JUDGMENT INTEREST AND FOR ATTORNEY FEES**

YOU WILL PLEASE TAKE NOTICE that **PLAINTIFF RONNIE D. TYSON**, by and through the undersigned attorney, will move before the presiding Judge of the above-captioned court, not earlier than ten days (10) after service of this Notice and Motion, or at a time scheduled by the Court hearing in this matter, pursuant to *S.C. Code Sections § 34-31-10 and 15-78-120(5)(b)* for an order allowing the Clerk of Court of Orangeburg County to add post-judgment interest to the judgment that was obtained by the Plaintiff on February 20, 2024.

The grounds for this Motion are as follows:

1. On February 20, 2024, Plaintiff Ronnie D. Tyson obtained a judgment by jury verdict against Defendant Regional Medical Center for $3,000,000.00 [hereinafter referred to as "the verdict"].

2. As a result of post-trial motions, the verdict was reduced to $1.2 million as required by the SC Torts Claims Act by order of the Court dated July 08, 2024 [hereinafter referred to as the "reduced verdict'].
3. The time to file an appeal has expired, and the reduced verdict is now payable to the Plaintiff.
4. Pursuant to *S.C. Code Sections § 34-31-10 and 15-78-120(5)(b),* Plaintiff Tyson is entitled to post-judgment interest on the post-judgment interest on the reduced verdict as the prevailing interest rate of 12.50%. Defendant is refusing to pay post-judgment interest on the reduced verdict.
5. Adding post-judgment interest is a ministerial act to be performed by the Clerk of Court for the County of Orangeburg. Post-judgment interest is not disallowed under the S.C. Tort Claim Act—only prejudgment interest is prohibited under such act under *S.C. 15-78-120(5)(b).*
6. Counsel for Defendant has no reasonable or good faith belief to withhold the post-judgment interest in this case. To that end, Plaintiff requests that the Court award him a reasonable sum as attorney's fees for having to bring this motion to accomplish something that is a ministerial act.
7. Plaintiff will also request that this Motion be expedited for hearing, even if the hearing is heard out of county.

WHEREFORE, the Plaintiff requests the Court to issue an order requiring the Clerk to add the post-judgment interest to the reduced verdict from date the initial verdict was granted until the date that the Defendant pays the reduced verdict.

[Only the signature block is contained on this page].

At Orangeburg, SC

Dated: September 30, 2024

/s/ *Glenn Walters, Sr.*
GLENN WALTERS, Esquire
1910 Russell Street (29115)
Post Office Box 1346
Orangeburg, SC 29116
Ph: 803 531-8844
Fax: 803 531-3628

Attorney for Plaintiff
Ronnie D. Tyson

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	FIRST JUDICIAL CIRCUIT
Ronnie D. Tyson	)	CIVIL ACTION NO.: 2023-CP-38-01240
Plaintiffs,	)	**RETURN TO MOTION AS TO DEFENDANT TRMC**
v.	)	
The Regional Medical Center, d/b/a The Regional Medical Center of Orangeburg and Calhoun Counties;	)	
Defendant.	)	

PERSONALLY appeared before me Michael C. Tanner, Attorney at Law, who, being duly sworn, states as follows:

1. That I am the attorney for the Defendant in the above-entitled action.

2. That I was admitted to the South Carolina Bar in 1998 and I have my own firm of Michael C. Tanner, LLC, with one (1) associate, and one part-time lawyer Of Counsel.

3. After the entry of the Post Trial motion's Order, discussions begun with Plaintiff's attorneys about a resolution to this case. Phone discussions were conducted with both of Plaintiff's attorneys.

4. Most of the discussions were with Attorney Michael Culler.

5. An offer of $600,000 to settle this was made to Attorney Culler. This was memorialized by email on July 18, 2024. (Ex. 1)

6. A response was provided that Plaintiff Ronnie Tyson wanted the reduced verdict, $1.2 Million dollars, and a demand of $1.2 million was made by Mr. Culler on his client's behalf.

7. Additional settlement discussions via phone calls and emails were conducted between the parties.

8. At all times communicated by his counsel, Mr. Tyson did not reduce his demand of $1.2 Million dollars, which was the Tort Claims Act liability cap.

9. Additional emails were exchanged regarding offers. A reply of August 2, 2024, reflected, "Mr. Tyson says no thanks to anything less [than the TCA $1.2 Million cap] (Ex. 2)

10. In all discussions and emails, there was never any demand by Plaintiff through his attorneys for any post-judgment interest or any figure greater than $1.2 Million dollars.

11. Plaintiff never reduced his demand of $1.2 Million dollars.

12. Defendant's insurer, The South Carolina Insurance Reserve Fund decided to settle the matter for the demand. An email and required form to order the settlement check was sent to Attorney Culler on August 12, 2024. (Ex. 3) Payment instructions were also requested and were provided to the undersigned the next day. (Ex. 4)

13. The required form to order the settlement check was also received from Plaintiff. (Ex. 5). This form contains the signature of "Ronnie Tyson" and is dated August 12, 2024. This was provided to the S.C. IRF with a request for the settlement check.

14. Again, thee was never any demand for anything other than $1.2 Million dollars and no demand for post-judgment interest by either of Plaintiff's attorney's.

15. For the first time on September 1, 2024, Glenn Walters made a demand for post-judgment interest. This was some nineteen (19) days after this matter was settled and Ronnie Tyson executed the Medicare form.

16. The undersigned responded, "We agreed to pay the 1.2. Will not be paying any interest." (Ex. 6)

17. The settlement draft and Release has been provided to Plaintiff's attorney's. An executed Release has not been returned, nor has the Satisfaction of Judgment.

18. That I pray the Court will require the Plaintiff to return the executed Release and Stipulation of Dismissal to the undersigned to conclude this matter and deny Plaintiff the relief requested.

[Following is the signature page]

SWORN to before me this)
)
12 day of November, 2024.)
)
_____(L.S.))
Notary Public for S. C.)
_____)
Name of the Notary

MY COMMISSION EXPIRES: _____

_____
Michael C. Tanner
Attorney for TRMC

From: Michael Tanner michaelctannerllc@bellsouth.net
Subject: Tyson
Date: Jul 18, 2024 at 11:28:10 AM
To: Michael Culler mrculllerlaw@yahoo.com
Cc: G. Walters glennwalterspa@gmail.com

Any response you or offer of $600k? Will see adjuster next week so will have her ear.
Sent from my iPad

From: Michael Tanner michaelctannerllc@bellsouth.net
Subject: Re: Tyson
Date: Jul 19, 2024 at 10:14:42 AM
To: Michael Culler mrcullerlaw@yahoo.com

Wow cannot imagine having to go that far for work.

I have a meeting with adjuster end of next week on another case so I am
Sure she will ask for an update.

Have a good weekend.
Sent from my iPhone

> On Jul 19, 2024, at 10:09 AM, Michael Culler <mrcullerlaw@yahoo.com> wrote:
>
> He is in Arizona working- I have spoken to Mrs. Tyson and they are to set a time to talk this weekend.
>
> Michael R. Culler Jr
> Attorney At Law
> 1540 Russell St. Ste 103
> Orangeburg SC, 29115
> 803-536-5055 (Office)
> 803-878-8955 (Fax)
>
> On Thursday, July 18, 2024 at 11:28:27 AM EDT, Michael Tanner <michaelctannerllc@bellsouth.net> wrote:
>
> Any response you or offer of $600k? Will see adjuster next week so will have her ear
> Sent from my iPad

From: Michael Tanner michaelctannerllc@bellsouth.net
Subject: Re: TYSON
Date: Aug 2, 2024 at 3:19:53 PM
To: Michael Culler mrcullerlaw@yahoo.com

He won't move at all? I really think they would like to try to settle it between now and Wednesday, but he hast to do something. Can you get him to at least move 25 or 50,000 and see what my crowd does?
Sent from my iPhone

> On Aug 2, 2024, at 3:02 PM, Michael Culler <mrcullerlaw@yahoo.com> wrote:
>
> Michael
> Mr. Tyson says no thanks to anything less.
>
> MRC
>
> Michael R. Culler Jr
> Attorney At Law
> 1540 Russell St. Ste 103
> Orangeburg SC, 29115
> 803-536-5055 (Office)
> 803-878-8955 (Fax)

Exh. 4

From: michaelctannerllc@gmail.com
Subject: Re: Tyson
Date: Aug 12, 2024 at 12:02:44 PM
To: Michael Culler mrcullerlaw@yahoo.com

Yes saying he does not have Medicare. Or y'all can complete and send me how to make check payable. So you and Glenn get paid.
Sent from my iPhone

> On Aug 12, 2024, at 12:01 PM, Michael Culler <mrcullerlaw@yahoo.com> wrote:
>
> Is this for Tyson to complete?
>
> Michael R. Culler Jr
> Attorney At Law
> 1540 Russell St. Ste 103
> Orangeburg SC, 29115
> 803-536-5055 (Office)
> 803-878-8955 (Fax)
>
> On Monday, August 12, 2024 at 11:05:14 AM EDT, michaelctannerllc@gmail.com <michaelctannerllc@gmail.com> wrote:
>
> Please fil out so I can order your check.
>
> Thanks
>
> Sent from my iPhone

Exh. 2

From: michaelctannerllc@gmail.com
Subject: Re: Check
Date: Aug 13, 2024 at 5:20:18 PM
To: Michael Culler mrcullerlaw@yahoo.com

Will order in the am.
Sent from my iPhone

> On Aug 13, 2024, at 5:01 PM, Michael Culler <mrcullerlaw@yahoo.com> wrote:
>
> Send it to Glenn Walters Sr for the benefit of Ronnie Tyson
> ID 58-2314704
>
> Michael R. Culler Jr
> Attorney At Law
> 1540 Russell St, Ste 100
> Orangeburg SC, 29115
> 803-536-7055 (Office)
> 803-878-8955 (Fax)
>
> On Tuesday, August 13, 2024 at 03:49:35 PM EDT, <michaelctannerllc@gmail.com> wrote:
>
> Think they can only issue a check to one firm. There is some issue with the Treasurer. Also need a taxpayer ID for whichever firm.
>
> But yes let me know which one and since the Mrs got a zero verdict can just do one firm and Mr. Tyson.
>
> Michael
> Sent from my iPhone
>
> > On Aug 13, 2024, at 3:44 PM, Michael Culler <mrcullerlaw@yahoo.com> wrote:
> >
> > Can you have 1 bill made out to
> >
> > Glenn Walters, Sr and Michael R. Culler, Jr

5 of 4

for the benefit of Ronnie Tyson

Michael H. Culler Jr.
Attorney At Law
1540 Russell St. Ste 103
Orangeburg SC. 29115
803 536-2055 (Office)
803-878-8955 (Fax)

MEDICARE INSURANCE VERIFICATION FORM

Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA), a new federal law that became effective January 1, 2009, requires insurers to report specific information about Medicare beneficiaries who have other insurance coverage. This reporting is to assist Centers for Medicare & Medicaid Services (CMS) and other insurance plans to properly coordinate payment of benefits among plans so that your claims are paid promptly and correctly.

We are asking you to answer the questions below so that we may comply with this law.

Please review this picture of the Medicare card to determine if you have, or have ever had, a similar Medicare card.

Section I

Are you presently, or have you ever been enrolled in Medicare Part A or Part B ? ☑ **NO** - Proceed to Section II ☐ **YES** - Complete Section I + II

Full Name: (Please print the name exactly as it appears on your SSN or Medicare Card if available)
Ronnie Darrell Tyson

Medicare Claim Number: _____ Date of Birth: (Mo/Day/Year) _____

Social Security Number: _____ Gender: ☐ Female ☐ Male

Section II

I understand that the information requested is to assist the SC Insurance Reserve Fund to accurately coordinate benefits with Medicare and to meet its mandatory reporting obligation under the Medicare law.

Ronnie Darrell Tyson
Claimant Name (Please Print)

IRF Claim Number (IRF use only)

Name of Person Completing This Form If Claimant Is Unable (Please Print)

Ronnie Darrell Tyson 08/12/2024
Signature of Person Completing This Form Date

If you have completed Sections I and II above, stop here.
If you are refusing to provide the requested information in Sections I and II, complete Section III.

Section III

Claimant Name (Please Print) IRF Claim Number (IRF use only)

For the reason(s) listed below, I have not provided the information requested. I understand that if I am a Medicare beneficiary and I do not provide the requested information, I may be violating obligations as a beneficiary to assist Medicare in coordinating benefits to pay my claims correctly and promptly.

Reason(s) for Refusal to Provide Requested Information:

Signature of Person Completing This Form

Ex. 5

From: Michael Tanner michaelctannerllc@bellsouth.net
Subject: Re: TYSON
Date: Sep 1, 2024 at 1:25:23 PM
To: Glenn Walters glennwalterspa@gmail.com

We agreed to pay the 1.2. Will not be paying any interest.
Sent from my iPhone

> On Sep 1, 2024, at 12:38 PM, Glenn Walters <glennwalterspa@gmail.com> wrote:
>
> Dear Atty. Tanner:
>
> Please see attached.
>
> Sincerely,
>
> Debi Finken/Paralegal
>
> --
> Law Office of Glenn Walters, PA
> 1910 Russell Street (29115)
> Post Office Box 1346
> Orangeburg, SC 29116
> 803.531.8844 (office)
> 803.531.3628 (facsimile)
> E-Mail: glennwalterspa@gmail.com
>
> **This e-mail and the information transmitted contains PRIVILEGED and CONFIDENTIAL information and is the property of the sender. If you are not the intended recipient, or**

the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this information, or the taking of any action in reliance on the content of this information, is strictly prohibited. If you have received this e-mail in error, please immediately contact the sender, as referenced, at The Law Office of Glenn Walters, PA at (803) 531-8844 and please delete the original transmittal of this information.

<ltr to tanner.judgement interest.pdf>

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG
SOUTH CAROLINA CIRCUIT COURT 1
DOCKET NO. 2023-CP-38-01240

RONNIE TYSON

PLAINTIFF,

vs.

TRMC OF ORANGEBURG

DEFENDANT.

H E A R I N G

BEFORE THE HONORABLE DIANE S. GOODSTEIN

DATE:	July 11, 2024
LOCATION:	SOUTH CAROLINA CIRCUIT COURT 1
REPORTER:	Jennifer Jaeger

LEGAL EAGLE
Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

APPEARANCES:

GLENN WALTERS, SR., ESQUIRE
Glenn Walters & Associates, PA
P.O. Box 1346
Orangeburg, South Carolina 29116

ATTORNEY FOR THE PLAINTIFF,

MICHAEL C. TANNER, ESQUIRE
Michael C. Tanner, LLC
P.O. Box 1061
Bamberg, South Carolina 29003

ATTORNEY FOR THE DEFENDANT.

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EXHIBITS

(NONE MARKED)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

THE COURT: Hello? Hello, hello. Glenn?

UNIDENTIFIED MALE SPEAKER: There we go.

MR. WALTERS: Yes, ma'am.

THE COURT: Hi.

MR. WALTERS: How are you?

THE COURT: I'm good. Are y'all together?

MR. WALTERS: Attorney Tanner is here.

THE COURT: Hey, Michael. Glenn.

MR. TANNER: [inaudible].

THE COURT: Hi. Oh, my God, the who -- the whole crowd. So, Orangeburg is trying to float away. I got kicked out of the courthouse.

MR. TANNER: We did too.

THE COURT: Yeah. They probably wouldn't let y'all in, right? So, all right. So, I have your motion. Now, y'all know I do not have a court reporter, right? But we do have the WebEx recording.

MR. TANNER: Right.

THE COURT: I thi -- I think. Supposed to. Okay. Let me just look. As far as I know, it is being recorded. As far as I know. Kate (phonetic) just stepped out. When she comes back, I'll just double check to make sure is that -- if that's okay. Don't want to wait till she gets back. Y'all want to go ahead and we'll re -- we'll circle back around if

we need to.

MR. WALTERS: I will follow the direction of the Court.

THE COURT: I -- it is -- it's y'all's choice. Michael, you want to?

MR. TANNER: If you want to start and then we can figure it out.

THE COURT: Yeah.

MR. WALTERS: Yeah.

THE COURT: If we need to go and turn circle back around, we just put on the -- on the recording what we did. Okay?

MR. WALTERS: Okay.

THE COURT: If it's not recording because I don't -- unfortunately, I'm not sure how to tell if it is or not. All right. So, notice of motion and motion for post-judgment interest and for attorney -- attorney's fees. Okay. I'm listening.

MR. WALTERS: May it please the court, Your Honor?

THE COURT: Yeah.

MR. WALTERS: I believe that Your Honor presided over reducing the verdict in this case. The verdict was returned on February 20th of 2024, and it was a judgment for $3 million. There was a post trial

motion that Your Honor heard on July 8th of 2024, and it was reduced to the statutory cap of the 1.2. At that time, when the 1.2 was then entered into the record, of course, a ministerial duty kicked into play. And that was with regards to the payment of post-judgment interest with regards to this matter. And, of course, we found a motion to compel the payment of the 1.2 plus the post-judgment interest. And, of course, the period for the appeal has passed. And in this particular case, I believe I'll start with the -- and certainly Attorney Tanner is well-equipped to argue his case, and I simply want to address with his return to our motion.

THE COURT: Okay.

MR. WALTERS: I first bring to the court's attention Rule 43(k). And it simply requires that if there's an agreement between the parties, it has to be reduced to the form of a consent order. We do not have that in this particular case. Number 2. The other alternative is a written stipulation signed by counsel. We do not have that in this case, and it must be entered into the record. We do not have that in this case. And, of course, the other option is, it can be made an open court and noted upon the record and that was not done in this case, or it has

to be reduced to writing and signed by the parties. But we do not have that in this case, and it was not signed by counsel.

So, the first issue I would address is the return to the motion filed by my distinguished colleague, Mis -- Attorney Tanner. And if we look at the motion that he filed as far as the return, it first starts off in paragraph 7 saying there were phone calls and emails. That's what he refers to. He then continues in his reply to state in paragraph 9. There were emails that were exchanged with regards to offers, and then it says a reply was done. And in paragraph 10, it goes on to state there were further discussions and emails. And, of course, in paragraph 12, this is where he informs the court that the South Carolina Insurance Reserve Fund decided to settle the matter for the demand. Of course, there's no agreement with -- with Mr. Culler or my office with regards to settling the matter. He simply stated that the Insurance Reserve Fund decided to settle the matter.

Now, what I believe is -- is misleading is -- is paragraph 13 of his return. It said the required form to order the settlement check was also received from the plaintiff. That required form that he's

referring to is not a settlement with regards to the litigation. What he's referring to is, and Your Honor is well aware of this, they're required to make sure that if CMS, Medicare or Medicaid has to be paid to find out if there are any outstanding liens with regards to a payment that's being made, especially with -- with -- with state tax dollars. So, under the circumstances, I believe they failed to meet the requirements of 43(k). And in this particular case, there is no meeting of the reducing it to a form of a consent order. There's no written stipulation. There's nothing signed by counsel. And it wasn't entered into -- it wasn't entered into the record. It wasn't made in open court. And there's no document that's been signed by the parties or counsel in this case.

In our motion, of course, we followed up with a letter that he refers to here where we stated that there was a demand for post-judgment interest. And in this particular case, we informed him that it was $410.95 per day from the date of the judgment and to the present date. And this is post-judgment interest in this particular case. So, under the circumstances, what we're asking for is simply that the rules that have been delegated be followed.

Number one, that they pay the $1.2 million. And in addition to that, the $410 per day from the date of the judgment was entered. And, of course, that ministerial duty is carried on by the clerk of court. And whatever that amount is, it's a little over 80, 90, maybe $100,000 now. That also has to be paid. But, of course, when we de -- it -- it's -- it's running at this time. But I believe that the defendants are before the court and they have not met any of the requirements of 43(k).

And we're simply asking for our money plus the post-judgment interest in this case. We went on to ask for attorney's fees. And -- and, of course, that's a lot of fluster that comes from lawyers about what they're entitled to. But we want to resolve this matter. And we're simply asking that the defendant in this particular case comply with the statute. And that's the payment of the $1.2. And there's no negotiating with regards to post-judgment interest. The clerk will enter that amount. It being a ministerial act by the clerk with regards to the judgment. So, what we're asking for is the judgment and, in addition to that, the post-judgment interest.

THE COURT: Thank you. Mr. Tanner.

MR. TANNER: May it please the court?

THE COURT: Yeah.

MR. TANNER: Your Honor, because I -- I really can't believe that -- that we're having to argue this and I -- with lawyers that I've known and practiced with for over 25 years, never in my mind did I think I would have to do this. Mr. Tyson is extremely greedy. Mr. Culler and I had a number of conversations and emails. $1.2 million was always the number. There was never anything about post-judgment interest. You know, it -- it's nonsensical for them to have paid post-judgment interest because that would exceed the cap. And so, I guess maybe in retrospect, in a vacuum, I could have been a little more precise in my emails. But never did I imagine I would need to.

When Mr. Culler always gave me, Mr. Tyson says $1.2. And then at one point, I think I s -- I attached my emails. He said he's -- he'll take nothing less than the cap which is what we had talked about. I sent him the forms that it's a little more complicated than that. You cannot get a check until you complete that Medicare verification form. There's emails back and forth about how to make that payment. There was no point in time anything from

any of the plaintiff's counsel saying more than 1.2 million. It was always that was the number. You know, why my client negotiated, kept throwing numbers against themselves, I -- I can't explain that, but we got it. I sent it to them. They had Mr. Tyson sign it back. And then I guess it was about 19 days later for the first time that I got Mr. Walters' letter saying, "Hey, what about the interest?" And again, I have no idea what happened in that intervening time with Mr. Tyson. But there was -- there was no meeting of the minds as to post-judgment interest. They've got the $1.2 million. They've had it. They've had it with a release and a satisfaction.

And for Mr. Tyson to take the position that somehow that he gets extra money that was not negotiated, now I can't do anything. I'm stuck. So, I -- I can't appeal it now. I -- I've tendered the money based on his representation through his counsel that $1.2 was the number and now he's trying to take a contrary position. And I just -- like I said, it -- it -- I -- I can't believe I'm having to argue this kind of motion with lawyers that I've known for this long. But I get it. You've got to do what your client says. But I think it would be a manifest, unjust privilege prejudice for somehow Mr. Tyson to

get an even bigger windfall than he's already getting. But I guess that was the decision that was made. But, again, it was always made with his demand of $1.2 million. It was never any figure in excess of $1.2. And for Mr. Tyson to now somehow say there's no meeting of the minds 19 days later, it is pretty rich, in my opinion.

THE COURT: Okay. So, it -- did y'all settle it? Or -- or is this just the judgment?

MR. TANNER: This is a se -- I thought we settled it, Your Honor, when -- when I sent the email to Mr. Culler and said, "Send me the form to order the check." It was my understanding that the case was settled. And then, 19 days later, I -- I get this -- this letter that Mr. Tyson now says, "Where is his interest?"

THE COURT: Okay. So -- okay. So, what it -- it -- if at the reduction at the time of the reduction from the $3 million, what was -- what was the -- just to refresh my recollection? What was the amount that the -- that the judgment of the jury was reduced to? It was reduced to the cap?

MR. TANNER: The cap of $1.2. Yes, ma'am. And then ---

THE COURT: Okay.

MR. TANNER: --- and then there was ---

THE COURT: I got you.

MR. TANNER: --- extensive negotiation before any appeal would have been filed to settle it and Mr. Tyson's demand consistently every time was 1.2, 1.2. So, that's what they said they were going to do. Finally, I sent those documents to Mr. Culler. Mr. Tyson exchanged them. And then, again, 19 days later. Now, it's a, "Wait a minute. You owe me more money."

THE COURT: Got it. Got it. So, let me ask this question. So, what was the consideration? What -- what is the -- what is the defendant's position regarding the consideration and what was the settlement? No. I guess the other way around, right? What was the settlement and what was ---

MR. TANNER: The settlement -- I'm sorry. I didn't mean to speak over. The settlement was ---

THE COURT: I still ---

MR. TANNER: --- $1.2 million and we won't file an appeal. And so now, I can't file an appeal because time has passed. And then again, after that point, Mr. Tyson pops up after the settlement and says, "I'm entitled to interest." When again, if -- if he thought he was entitled to interest, then his

demand should have been 1.2, whatever, plus post-judgment interest. But it was always 1.2. There was never anything on a figure north or south of 1.2. So, 1.2 was to conclude the matter. And then, Mr. Tyson then says, "Well, that's not enough." And now, now -- now I have no quantity.

THE COURT: Got it. And -- and as I understand, let me see if I'm hearing correctly. It -- the -- the consideration was -- the consideration for the 1.2, even though that was the amount of the judgment, the consideration was -- was to the -- the forbearance, if you will, from the filing of an appeal.

MR. TANNER: All right. We're going to file an appeal. That would have tied his money up. That -- you know, who knows what -- what ---

THE COURT: Yeah.

MR. TANNER: --- [inaudible] it got ---

THE COURT: Right. I -- well, 100 percent, I get that. In other words, so -- so, the position of -- of the hospital is that it was the forbea -- the -- it was the -- the consideration was the forbearance. And under 43(k), there -- I don't have it in front of me. I can certainly get it. But the language that says you got to have something

signed by both parties, that's the third one. Read me -- you read them -- Mr. Walters, read me the third one under 43(k). Because it used ---

MR. WALTERS: All right.

THE COURT: --- to be as, you know, it used to be had to either be an agreement signed by all the parties, or it had to be announced in open court. But then they added the third one, which is?

MR. WALTERS: It must be reduced to writing and signed by the parties and their counsel. And ---

THE COURT: Okay.

MR. WALTERS: --- in this particular case, Mr. Tyson, and I -- I don't -- I disagree with the representation that's being made. Mr. Tyson never signed any agreement. He signed a form that said, "You could find out what I owe Medicare and Medicaid." But he never signed an agreement with regards to being paid $1.2 million and foregoing an appeal. So, under the circumstances, number three, where it just simply requires that it has to be reduced to writing and signed by the parties and their counsel. That documentation is not before the court, and it's never been executed. So, there is no agreement. We know for a fact that the state, in any case, with the State Torts Claim Act, they always

tell you, "You better get me that Medicare and Medicaid form because you're going to be responsible for paying for the liens." That is an additional issue outside of the settlement negotiations if you don't know how much the lien is.

And, of course, every case I settle with the State Insurance Reserve Fund, they turn around and say, "We need to know what we've got on the table with regards to Medicare and Medicaid because if we're going to negotiate, we need to know how much money you're actually going to receive and what you're obligated to pay that particular governmental entity. But in this case, there is no written agreement signed by the parties or the attorneys, and under the circumstances, we don't believe none of the requirements from 43(k) were met. The only thing that's been done here is, as he states in his motion, there were emails and discussions and phone calls.

MR. TANNER: And, again, Your Honor, certainly you can bind your client by your actions and, you know, for Mr. Tyson to -- to make representations through his lawyers that 1.2 is the amount, and then that you -- after the fact, we settle this and we change it and come to the court and say that he's entitled to more money. Frankly, I think it's

unclean hands, and I think he's bound by his lawyer, and there was no question, any of these three lawyers here, that 1.2 was the number, and that would settle the matter. And so, for him now to say, "Hey, I want more money, it -- I really -- this leaves a bad taste in my mouth. And, again, the purpose of the Medicare verification form is not about a lien. It's the state is required, like any other insurance carrier, to make a quarterly report to Medicare for any amounts paid and -- and -- and will not issue a settlement check before that.

So, again, if Mr. Tyson at that point in time, back in August, had any question, instead of signing the form, that's when he should have said, "Hey, wait a minute, where's my post-judgment interest?" Instead, he signed the form. There was nothing communicated by his counsel saying any different amount. And then, like I said, shockingly, I get the letter from Mr. Walters that he wants all this extra money, and that's when I responded that, again, the agreement was 1.2 between counsel. And so, I -- I just -- I think for -- for Mr. Tyson to somehow win -- get a profit from the representations made by his lawyer, I -- I -- I just think that's manifestly unjust and -- and certainly prejudices me because

like I said, I can't file an appeal now. They have no jurisdiction.

THE COURT: So, let me ask a -- a -- a couple of -- of questions. When -- when was the check -- for the 1.2, when was that actually sent?

MR. TANNER: It was sent to the state on the next day. And then, they have a process where, I think it was -- they -- they returned the documents to me August 12th. I sent the request the next day when I got their final payment instructions, and there's emails on that. And then, the process, as I understand it, is it goes from the Insurance Reserve Fund to the South Carolina State Treasurer. They cut a check. They then send it back to the -- the rep, and then they send it to me. And because of the -- I haven't been able to physically get in my office today, so I've been in Orangeburg all day because of the flooding. But --

THE COURT: Yeah.

MR. TANNER: --- if I know I mailed the check, or I think we might have actually hand carried it in all the documents to Mr. Walters at some point in time before they filed their motion.

THE COURT: I gotcha. So ---

MR. TANNER: They've got ---

THE COURT: --- the email ---

MR. TANNER: --- they've got my money, and they've had my money.

THE COURT: When did -- got it. When did you get the money, Mr. Walters?

MR. WALTERS: Your Honor, I could -- I could go get the envelope, go over and get it in my office, it's here. What I'd like to say about that is -- is, number one, a picture's being painted that Mr. Tyson is greedy, and that he wanted to backdoor someone on a deal. The only thing that happened here was, is that there was negotiations with regards to the case itself and what the verdict was, and we knew it was reduced to the 1.2. There was an offer made by the state that said, "Will he take $600,000?" And, of course, we said, "Well, it's -- it's not negotiable." I mean, right now you've got a judgment, so you're not negotiating. All right? So, this picture that's being painted that somehow something was being negotiated, you had a judgment, and there -- there is no negotiation after you get the 1.2 judgment.

The next step was there's a picture that's being painted that somehow Ronnie Tyson was involved in negotiating the 1.2, and he was going to settle for that, and then he signed a CMS form to find out what

was owed. The only thing that occurred there was is they said, "Well, we need to verify exactly what he's been paid with regards to any of these government benefits." There's nothing in writing that says that we waive the interest. There's nothing in writing that says that we have settled the case. There's a picture that's being painted here that says we settled the case. The only thing that's come out before the court is, is that they made a decision that they wanted to pay the 1.2. There's nothing in writing that says we accept the 1.2 and we waive the interest. 43(k) simply says what? It has to be written in a consent order and signed by the parties and the lawyers.

There's no documentation that's a written consent order here. What we have is emails and discussions and a Medicare and Medicaid release form that says, "Tell us how much money was spent by the government on this person." Those -- that's what you have before you. So, this picture that's being painted by counsel that there's a settlement somewhere, and I relied on that settlement, and it waived my right to appeal. There's no documentation before this court that says that there was any settlement. The letter was sent to us, and it's

dated September 30th. And it says, "Please find and close a settlement draft release and satisfaction of judgment." And, of course, it says, "Hold the -- this check in." And we didn't cash the check. We said, "Wait a minute. That's not what we agreed to." Under the circumstances, and -- and please, I've known attorney Tanner for over 20 years. "Could you please produce 1 document that says that we had a written consent order with regards to all of these issues?" And is there a document that Mr. Tyson sign that -- Mr. Cu -- Attorney Cu -- Attorney Culler and I signed with regards to this particular issue?

There is no written agreement between the parties. What we have is a bigger back and forth and exchange between the parties as to what was supposed to be paid. My letter that's dated right here, it says that, "You're supposed to pay $410.95 for interest." Is there any documentation that says, "I weighed the interest."? I know that you and Attorney Culler were back and forth with the emails, but there's no email that says we have an agreement. There's no documentation that signed. The only thing that Ronnie has signed is that he said, "You can go find out how much money I owe the federal government." But other than that, he signed nothing.

We've signed nothing, but there is an exchange of emails and phone calls and discussions.

MR. TANNER: That -- that -- and -- and again, Judge, this -- this sort of defies logic that, you know, if I can't -- base my practice on representations made to me by Mr. Tyson's lawyers. I don't know how I can do my job. I can't ethically speak to Mr. Tyson. So, when Mr. Culler tells me repeatedly that $1.2 million is the number. And then, we say we -- we're going to pay that and I communicate that in the writing. The -- did I ever think I would need a consent order with someone that I've practiced with in this fashion, in this part of the state for all these years? No. I guess now I better do one in every case if that's what the ruling is going to be.

But there is no doubt in my mind that everyone in this room knows that $1.2 million was what it would take to get this case settled. I did everything I had to do that cause those funds to be made. And then 19 days after that fact, Mr. Tyson pops up and says, "Wait a minute. I want more money." And -- and I ju -- I have a massive problem with that because that is not any representation that he made through his counsel.

THE COURT: Okay. So, let -- let me just share with you what my concerns are. My concern or -- or -- he -- here they are. Number one, 43(k) in -- in the case law talks about the fact that it is a -- it is a difficult rule. It is a tough rule and that while negotiations between lawyers, while it's certainly encouraged and -- and important to the practice of law and the resolution of cases, 43(k) is -- is -- is just one of those lines in the sand that is a top and throughout the case I'll talk about that it's -- it's -- it is a difficult rule for lawyers. And -- and so -- so, that's -- that -- that is my first observation.

And I note that the decision, the -- the reduction, of course, was on July the 8th. And when the, you know -- the check arrives or the letter it -- is dated, I gather -- it probably arrived in -- it pro -- probably September the 30th or a day later probably. The appellate time would have been July, August, September. It would have passed by the time that the -- the check made its -- made its way to the plaintiff. So, even at the time that the check made its way to -- to the plaintiff's counsel, the -- the appellate time was over. And so, you know, that is of concern.

Unless the case law regarding 43(k), unless it has changed, it is a harsh rule. And the case I'll talk about it being a harsh rule. And so here's -- here's what concerns me. I want to -- I think I want to go off with you guys for just a few moments because I want to -- I just want to check the -- the case law and see if it has changed. I know that the rule has changed because the -- the third ability -- it used to be -- it used to be either that it had to be an open court and enter on the record or that it had to be signed by all parties. But I think that -- that -- I want to just take a look. I want to put my eyes on the rule and I -- and -- and I have not done that and I want to do that. So, let me step away. Let me take a look at that. I want to take a few moments. So, y'all give me about 15 minutes. Cool?

MR. WALTERS: Yes.

THE COURT: And I'm going to jump off and I'll be right back.

MR. TANNER: Sure.

(OFF THE RECORD)

THE COURT: All right. I am back. Are -- are y'all there?

MR. TANNER: Yes, ma'am.

MR. WALTERS: Yes, ma'am.

THE COURT: Okay.

UNIDENTIFIED MALE SPEAKER: Yeah.

THE COURT: This is the case that I was looking for. It says -- it -- it's a court of appeals decision. Is -- that there are -- there are number of them? And -- but I just for -- for purposes of our discussion. Cite Motley versus Williams, it's a 2007 case, 374 S.C. 107, 647 S.E.2d 244. And even though that's a 2007 case. There have been cases that have looked at it, but the cle -- the only one that the -- the case law just continues to -- to be consistent. And here's the policy behind it. It says, "The rule" -- it's coming at 43(k), "The rule requiring agreements between counsel to be entered into the courts records or acknowledged in open court and noted on the record is intended to prevent disputes as to the existence in terms of agreements regarding pending litigation."

And note that this is before the -- the third option signed by counsel in the parties was -- was amended and added. But the -- I -- policy is that. Here it is. And I'd also cite to you Vista Antiques and Persian Rugs, Inc. versus Noaha, LLC is a court of appeals decision from 09425 S.C. 413, 823, S.E.2D 179 that says this, "The purpose of civil procedure

rule requiring the parties to reduce the agreements to writing is to prevent obviously fraudulent claims of oral stipulations which" -- I would say -- I don't -- that's not the important language, but -- but it goes on to say, "And to prevent disputes as to the existence in terms of agreements and to relieve the court of the necessity of determining such disputes which has been said are often more perplexing than the case itself."

And that's the reason -- the policy reason why it is -- is -- is strict as it is 43(k). There was a very recent decision where the -- where they talked about do -- do the lawyers and the parties have to sign. And there was -- there -- what the case said was the fact that the -- one of the parties had participated in mediation by telephone and when they reached an agreement at mediation signed by the attorneys and signed by one of the parties and the other party the -- was -- had participated in the mediation, but that the party wasn't present to signed the agreement. The mediate with the terms in -- in mediation.

And the -- what -- the parties attorney signed for the party, and in parentheses, it said with permission. And so, what the court there said was

this party had participated -- have participated in the mediation. And that the attorney had the ability to sign the document on behalf of the party and was indi -- the permission to sign the party's name was indicated and, of course, the -- the attorney was the party's agent with the ability to actually sign the document on behalf of the party. Not enter into and bind the party, but sign on behalf of the party which really reiterates my understanding of 43(k) which is very specific. And the reason at the end of the day is to keep the court out of the position of having to resolve agreements of counsel regarding settlements.

Lawyers do it all the time. They fall apart. They come to court with motions to enforce a settlement. And my -- my first question is, "Are you in compliance with 43(k)?" And a lot of the time they are not. Some of the time they are, but a lot of the time they are not. In the decisions of the court -- the Court of Appeals and Supreme Court, as I understand it is if you're not in strict compliance, app -- applying the terms, the -- the rules of construction, not in compliance with 43(k), it is unenforceable.

I do not see and y'all point -- point it to me if -- if -- if -- if I've missed it, I do not see an

agreement signed by counsel and the parties where it says that the amount of judgment is limited to 1.2 million. I don't see that and I see emails go -- going back and forth, but what I don't see is I don't see compliance with 43(k). It is a harsh rule. I'll gi -- give it to you, but it keeps the court out of having to resolve disputes. You know, obviously this was -- the 1.2 million was -- was an agreement -- wasn't an agreement, it was a judgment in about the court and at the time that it was entered into post-judgment interest would have begun to accumulate. And the -- if there was an agreement, otherwise then it would need to have been reduced to writing signed by the parties, signed by the attorneys for the parties or entered on -- in open court on the record or had to be a consent order. So, I get it, it -- rhese are always very difficult, especially when the negotiations, the lawyers feel as though that they have dealt with each other. But 43(k) is -- it is -- if you will, it is a -- it is a rule intended to keep everybody out of the situations, particularly the court. So, I'd -- I would ask for an order from the plaintiff.

MR. TANNER: Thank you, Your Honor.

MR. WALTERS: Thank you, Your Honor.

THE COURT: Thank y'all. Thank y'all. Be safe out there. Orangeburg is a mess.

MR. WALTERS: Yes, ma'am.

THE COURT: Be careful.

MR. TANNER: Thank you, Your Honor.

THE COURT: Careful, careful. Thank you guys.

(THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED)

CERTIFICATE OF TRANSCRIBER

State of South Carolina

County of Orangeburg

I, JENNIFER JAEGER, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in South Carolina Circuit Court 1, Orangeburg County, South Carolina, on the 11th day of July, 2024.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

July 23, 2025

Jennifer Jaeger

Jennifer Jaeger, Transcriber

Notary Public for S.C.

Commission Expires: 10/28/2032

STATE OF SOUTH CAROLINA) **)** **COUNTY OF ORANGEBURG)**	**IN THE COURT OF COMMON PLEAS** **FIRST JUDICIAL CIRCUIT**
RONNIE D. TYSON and **JUANITA TYSON,** Plaintiffs, vs. **THE COUNTY OF ORANGEBURG,** dba The Regional Medical Center of Orangeburg and Calhoun Counties; **THE COUNTY OF CALHOUN,** dba The Regional Medical Center of Orangeburg and Calhoun Counties; Defendants.	**Case No.: 2023-CP-38-01240** **ORDER GRANTING MOTION FOR POST JUDGMENT INTEREST**

THIS MATTER CAME BEFORE the Honorable Diane S. Goodstein, Circuit Court Judge for the First Judicial Circuit, County of Orangeburg, State of South Carolina, on November 7, 2024, on Plaintiff Ronnie D. Tyson's Notice of Motion and Motion for Post Judgment Interest (the payment of the $1.2 million was received, however, the payment of interest is outstanding) and Attorney's fees, which was filed in this matter on October 01, 2024 seeking post judgment interest and attorney's fees pursuant to *S.C. Code Sections § 34-31-10 and 15-78-120(5)(b)* with a request for an order allowing the Clerk of Court of Orangeburg County to add post-judgment interest to the judgment that the Plaintiff obtained on February 20, 2024.

The Plaintiff was represented at the hearing by his record attorneys-of-record, Glenn Walters, Sr., Esquire, along with Michael Culler, Esquire, both of the Orangeburg County Bar. Defendant, The Regional Medical Center of Orangeburg and Calhoun counties [hereinafter "Defendant RMC"] was represented by Michael C. Tanner, Esquire, its attorney of record, of the

Bamberg Bar. The Hearing was held via a remote videoconference of the parties. After considering the parties' memoranda or return to the motion and after hearing arguments from both counsels, the undersigned judge **GRANTS** Plaintiff Motion for post-judgment interest and **DENIES** the Plaintiff's Motion for attorneys' fees.

THEREFORE, based upon a thorough review of the pleadings in this matter and after considering counsels' arguments, the Court makes the following findings of fact:

FINDINGS OF FACT

1. On February 20, 2024, Plaintiff Ronnie D. Tyson obtained a judgment by jury verdict against Defendant Regional Medical Center for $3,000,000.00 [hereinafter referred to as "the verdict"].
2. The RMC is a state agency subject to the S.C. Tort Claims act.
3. As a result of post-trial motions, the verdict was reduced to $1.2 million as required by the SC Torts Claims Act by order of the Court dated July 08, 2024 [hereinafter referred to as the "reduced verdict'].
4. The time to file an appeal has expired, and the reduced verdict is now payable to the Plaintiff.
5. After the time that all the post-trial motions had been resolved by the Court and after the time to file an appeal had expired, the parties' attorneys had certain discussions concerning the payment of the judgment in this matter.
6. The Defendant is subject to the state's Tort Claim Act. Therefore, the judgment at issue in this case must be paid by the State Reserve Fund, which requires certain payment work to be complete to obtain the judgment check.

7. Counsel for Plaintiff initiated the paperwork to acquire the judgment check from the State Reserve Fund, and counsel for the Defendant contends that "settlement discussions" ensued between the parties.

8. The Court does not find that such discussions were settlement discussions because the case had been resolved by the jury and the Court's resolution of the post-trial motions. Therefore, the case was not in a procedural posture for settlement discussion. However, the characterization of the discussion is unnecessary because regardless of the true nature of the discussion, no agreement was reduced to writing and placed on the record of the case. To that end, I find that no discussions between the parties at this juncture could impact on the proceedings unless such discussion were placed on the records as required by the law cited below.

CONCLUSIONS OF LAW

a. As a state agency, the RMC is liable for its torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability, exemptions, and damages as contained in the provisions of the S.C. State Torts Claim Act. *See, Baker v. Sanders*, 301 S.C. 170, 172-173 (S.C. 1990).

b. Adding post-judgment interest is a ministerial act to be performed by the Clerk of Court for the County of Orangeburg.

c. Post-judgment interest is not disallowed under the S.C. Tort Claim Act—only prejudgment interest is prohibited under such act under *S.C. 15-78-120(5)(b).*

d. *Section 15-78-120* merely limits the amount of money recoverable in an action under the Tort Claims Act and limits punitive or exemplary damages and prejudgment interest. None of these limitations preclude the Plaintiff from obtaining post-judgment interest on a jury verdict.

e. *Rule 43(k), SCRCP*, provides that "[n]o agreement . . . in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record.

f. A money decree or judgment of a court enrolled or entered must draw interest according to law. *S.C. Code 34-31-20(B).*

g. *Rule 43(k)* "is intended to prevent disputes as to the existence and terms of agreements regarding pending litigation" and "to relieve the court of the necessity of determining such disputes." *See, Kinghorn v. Sakakini*, 426 S.C. 147, 153 (Ct. App. 2019).

h. *Rule 43(k)* identifies the prerequisites that must be met in order for "agreements of counsel" to be binding. *Rule 43(k), SCRCP.*

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

a. Plaintiff's motion for post-judgment interest is **GRANTED.** The Plaintiff is entitled to post-judgment interest that commenced thirty days after the post-judgments motions were decided by this Court and continues until the date this order is filed, unless footnote number one is satisfied by the Defendant. The Clerk of Court for Orangeburg County shall add post-judgment interest to the final judgment as the law requires.

b. Any alleged agreement between the parties is hereby rejected by this Court because it does not comply with the requirements of *Rule 43(k), SCRCP*

c. Plaintiff's Motion for attorney fees is **DENIED**.

d. Any appeal of this Order shall not prevent the disbursement of the tendered proceeds because the time to file an appeal on the judgment has expired.

SO ORDERED!

Dated: _____ 2024

_____
Honorable Diane S. Goodstein
Presiding Judge of the 1st Circuit Court

Orangeburg Common Pleas

Case Caption:	Ronnie D. Tyson , plaintiff, et al VS TRMC of Orangeburg and Calhoun Counties , defendant, et al
Case Number:	2023CP3801240
Type:	Order/Other

It is so Ordered!

s/Diane S. Goodstein