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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARION COUNTY
The Honorable R. Ferrell Cothran, Jr.
The Honorable H. Steven DeBerry, IV

Appellate Case No. 2025-000434
Case No. 2022-CP-33-0362

Demetrice Utley, Individually and as Personal Representative of the
Estate of Taylor Danielle Price, ... Respondent,

v.

McLeod Physician Associates II and Charles A. Trant, M.D., ... Appellants.

RECORD ON APPEAL - VOLUME I
(pp. 1-374)

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF MARION	)	FOR THE TWELFTH JUDICIAL CIRCUIT
	)	
Demetrice Utley, Individually and as	)	
Personal Representative of the Estate of	)	Case No.: 2022-CP-33-00362
Taylor Danielle Price,	)	
	)	
Plaintiff,	)	ORDER APPROVING WRONGFUL
vs.	)	DEATH SETTLEMENT
	)	
McLeod Physician Associates II, Charles A.	)	<u>(DOES NOT END CASE)</u>
Trant, MD, Marion County School District,	)	
Defendants.	)	
	)	
	)	
	)	
	)	

THIS MATTER comes before the Court upon the Petition to Approve Wrongful Death Settlement (“Petition”) filed by Plaintiff/Petitioner, Demetrice Utley, Individually and as Personal Representative of the Estate of Taylor Danielle Price, deceased, pursuant to §15-51-42 of the *Code of Laws of South Carolina (1976, as amended)*, for an Order approving the wrongful death settlement as detailed in the Petition. The court conducted a hearing on September 10, 2024, and the Court confirmed that all parties were properly represented and before the Court.

On December 17, 2021, Taylor Danielle Price collapsed at Mullins High School (the “Incident”). Taylor Danielle Price tragically passed away as a result of the Incident.

The South Carolina School Board Insurance Trust (“SCSBIT”) issued a policy of liability insurance to Defendant Marion County School District (“MCSD” or “Defendant”). The MCSD SCSBIT policy was in full force and effect on December 17, 2021.

The parties reached a settlement agreement, subject to approval by the Court, whereby SCSBIT has offered to pay One Hundred Thirty Thousand and 00/100 Dollars (\$130,000.00) as outlined in the Petition. In exchange for the \$130,000.00 to be paid by SCSBIT,

Plaintiff/Petitioner shall sign a Release and Settlement Agreement in favor of MCSD and its employees and agents.

Petitioner proposes to distribute the settlement proceeds as follows:

Total Settlement Amount	\$	130,000.00
Attorney Fees (40%)	\$	52,000.00
Attorney Expenses	\$	37,363.58

Petitioner is ordered to hold the entirety of the settlement proceeds remaining after the payment of attorney's fees and expenses outlined above, **\$40,636.42**, in trust in the IOLTA trust account of Lesemann & Associates LLC until there is a final order from the Marion County Probate Court regarding the proper statutory beneficiaries of the Estate of Taylor Danielle Price.

Upon careful consideration, it appears under the conditions set forth in the Petition that said offer is a fair, just, and equitable offer of settlement and one which should be approved by this Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that the settlement agreement as detailed in the Petition is in the best interest of the Estate of Taylor Danielle Price and it hereby is, approved. It is,

FURTHER ORDERED, ADJUDGED AND DECREED, that upon such settlement being made, SCSBIT, and the law firm of Boykin and Davis, LLC. shall not be responsible for the disbursement or expenditure of said funds.

AND IT IS SO ORDERED.



Marion Common Pleas

Case Caption: Demetrice Utley VS Charles A Trant , defendant, et al

Case Number: 2022CP3300362

Type: Order/Approval Of Settlement

H. Steven DeBerry, IV

Circuit Court Judge 2771

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF MARION) FOR THE TWELFTH JUDICIAL CIRCUIT

Demetrice Utley, Individually and as)
Personal Representative of the Estate of)
Taylor Danielle Price,)

Case No.: 2022-CP-33-00362

Plaintiff,)

vs.)

**ORDER DENYING DEFENDANTS'
MOTION FOR CHANGE OF VENUE**

McLeod Physician Associates II, Charles A.)
Trant, MD, Marion County School District,)

Defendants.)

This matter is before the court upon motion of defendants McLeod Physician Associates, II (MPAII) and Charles A. Trant, M.D. (Trant) for a change of venue. For the reasons stated below, the motion is denied.

This action was scheduled for a day-certain for trial in Marion County on September 9, 2024. Plaintiff, defendant MPAII, defendant Trant, and then-defendant Marion County School District (the school district) all participated in jury selection. After the jury was selected and seated in the jury box, plaintiff's attorneys advised the court that they had reached a settlement agreement with the school district. Trant and MPAII immediately moved for a change of venue to Florence County under S.C. Code Ann. §15-7-30. They also moved for a mistrial on the grounds that the school district tainted the jury selection process by participating in it under false pretenses that it

would be a party at trial but knowing that it had a settlement agreement and that it would not be a party at trial.¹

It was obvious to the court and not disputed by plaintiff or the school district that the settlement agreement between them was reached before jury selection began. Trant and MPAIL agree that plaintiffs and the school district can settle if they choose and do not need their consent. However, the appropriate course of action would have been for the school district attorney to not participate in the jury selection process with the attorneys for Trant and MPAIL. Participation was evident. Trant and MPAIL contend this made the jury selection process unfair and prejudicial to them. The court agrees.

To remedy the unfair and prejudicial jury selection process, the court dismissed the jury and the trial was continued. This made the motion for mistrial moot. The settlement between plaintiff and Marion County School District was put on the record and approved by the court. Trant and MPAIL then renewed their motion to transfer venue pursuant to S.C. Code Ann §15-7-30 contending that the school district was no longer a party and, therefore, venue was now proper only in Florence County where Trant resides, where the incident of alleged malpractice occurred, and where MPAIL has its principal place of business.

LEGAL STANDARD

After an action has been properly instituted in a proper forum county, the Court may change the place of trial if: (i) there is reason to believe that a fair and impartial trial cannot be had there;

¹ The school district, Trant and MPAIL were at the same table for the jury roll call, statutory qualification questions, and voir dire. They were in the same room discussing challenges for cause and peremptory strikes. At least some degree of input to the jury selection process was given by the school district attorney and considered by the attorneys for Trant and MPAIL. Trant and MPAIL maintain that had they known the school district had settled, they would not have allowed the school district to participate in the jury selection process with them and would have requested that the 4 preemptory strikes and 1 alternate strike allotted for all defendants be theirs alone instead of shared with the school district.

or (ii) the convenience of witnesses and the ends of justice would be promoted by the change. *See* S.C. Code Ann. § 15-7-100(A). Where an action is properly commenced in any one of two or more venues and is properly brought in one of such venues, it is removable to the other proper venue only if there exists some statutory ground for removal other than the bringing of suit in the wrong venue. *See Jeter v. S.C. Dep't of Transp.*, 369 S.C. 433, 440, 633 S.E.2d 143, 147 (2006). If the moving party “makes a *prima facie* showing [that] a venue change will serve both the convenience of the witnesses and the ends of justice, the burden shifts to the party resisting the motion to overcome at least one of these requirements.” *McKissick v. J.F. Cleckley & Co.*, 325 S.C. 327, 336, 479 S.E.2d 67, 71 (Ct. App. 1996).

FINDINGS OF FACT

This action was brought in Marion County against three (3) defendants: (i) McLeod Physician Associates, II; (ii) Charles A. Trant, MD; and (iii) Marion County School District. The decedent, Taylor Danielle Price, was a lifelong resident of Marion County and suffered a sudden cardiac death in Marion County. Defendant McLeod Physician Associates II (“MPA II”) owns property, employs physicians and employees, sees patients and conducts business in Marion County. Specifically, “McLeod Family Medicine Marion” is located at 3032 East Highway 76, in Mullins, Marion County, South Carolina, which is owned and operated by MPA II.

Defendant Charles A. Trant, MD (“Dr. Trant”) is a resident of Florence County, a neighboring county. Dr. Trant served as the pediatric cardiologist for the thirteen (13) counties of the Pee Dee Region, including Marion County. *See Dep. of Def. Charles Trant, MD*, p. 16:9-10. Dr. Trant was on staff at multiple hospitals across the Pee Dee Region and received referrals from

Marion County. *Id.*, at pp. 7:25-8:2. Dr. Trant regularly saw and treated patients throughout the region, including patients from Marion County such as Taylor Danielle Price, whose death occurred in Marion County.

At least four (4) witnesses were prepared to appear and to testify at trial: (i) Plaintiff Demetrice Utley, the decedent's mother; (ii) Emerson Hunt, the decedent's stepfather; (iii) Linda Scott, a retired teacher; and (iv) Thuy Tran, a records custodian for multiple medical providers that were involved in the underlying circumstances of the case. Each of these witnesses reside or work in Marion County. Conversely, two (2) witnesses work or reside in Florence County, Dr. Trant and Christina Stewart. The expert witnesses in this case are from neither Marion County nor Florence County. Plaintiff's expert (Anthony Chang, MD) is from Irvine, California. The two expert witnesses being called by the Medical Defendants are either from Charleston (Nicole Cain, MD) or Columbia (Claudius Shuler, MD). As noted above, the matter is at the top of the docket in Marion County and is ready for trial. The parties are fully ready to proceed. Any potential transfer of the case to another venue, particularly to a county with a busy docket, would likely result in delay of trial.

ANALYSIS AND CONCLUSIONS

For the reasons below, the Court finds that the Medical Defendants have not presented a sufficient legal basis for transfer of this case to Florence County. As the Medical Defendants concede that a fair and impartial trial is available in Marion County, but fail to demonstrate how the ends of justice or the convenience of the witnesses would be promoted by changing venue, the Motion for Change of Venue is **DENIED**.

I. BECAUSE THE ACTION WAS COMMENCED IN A PROPER VENUE WHEN FILED, THE RESIDENCY PROVISIONS OF S.C. CODE § 15-7-30 DO NOT PROVIDE A BASIS FOR TRANSFERRING VENUE

As noted above, this action was commenced in Marion County against multiple defendants, including a defendant that was resident in Marion County. South Carolina law is clear that, where there are multiple defendants in an action who reside in different counties, the plaintiff may properly bring the action in the county where any one of the defendants resides at the time of the commencement of the action. *Jeter*, 369 S.C. at 442, 633 S.E.2d at 148. In a case where more than one venue is proper, “the plaintiff ordinarily has the right of election as to the county in which an action will be brought.” *Id.* Our Supreme Court has recognized that an action properly commenced in any one of two or more venues, and properly brought in one such venue, “is removable to the other proper venue only if there exists some statutory ground for removal **other than** the bringing of suit in the wrong venue.” *Jeter*, 369 S.C. at 442, 633 S.E.2d at 148 (emphasis added). A plaintiff’s choice of forum “should rarely be disturbed.” See *Braten Apparel Corp. v. Bankers Tr. Co.*, 273 S.C. 663, 668, 259 S.E.2d 110, 113 (1979).

In their Memorandum, the Medical Defendants argue that Florence County is the proper venue since Marion County School District has been released as a party. The Medical Defendants cite to the South Carolina Supreme Court’s holding that “when motion to change venue is brought pursuant to S.C. Code § 15–7–30 and the facts concerning the defendant’s residence are uncontradicted, the trial court must change the venue to the county where the defendant resides.” See *Chestnut v. Reid*, 299 S.C. 305, 307, 384 S.E.2d 713, 714 (1989). However, the Medical Defendants’ reliance on *Chestnut* is misplaced. In *Chestnut*, the plaintiff initiated an action in Horry County relating to an automobile accident that occurred in Horry County. The sole defendant in that action was a resident of York County, which causes *Chestnut* to be entirely

distinguishable and inapplicable to the situation presented here. *Id.* at 306, 384 S.E.2d at 714. This action was instituted against multiple defendants and was instituted in a proper venue.

The Court finds that, because this action was properly commenced in Marion County, venue can only be changed at this stage of the litigation for a reason other than the bringing of suit in the wrong venue. *See Jeter*, 369 S.C. at 442, 633 S.E.2d at 148. It is undisputed that this action was properly commenced in Marion County in which one of the defendants resided at the time of the commencement of the action. *See* S.C. Code §15-7-30. Therefore, the Medical Defendants are not entitled to a transfer of venue on the basis of the residency provisions of S.C. Code 15-7-30.

II. THE MEDICAL DEFENDANTS HAVE NOT SHOWN THAT A CHANGE IN VENUE WILL SERVE BOTH THE CONVENIENCE OF WITNESSES AND THE ENDS OF JUSTICE

After a plaintiff brings his/her action in a proper venue, South Carolina law provides that venue may **only** be changed if: (1) “there is reason to believe that a fair and impartial trial cannot be had there; or” (2) both “the convenience of witnesses and the ends of justice would be promoted by the change.” *See* S.C. Code § 15-7-100; *see also* S.C. Code § 15-7-110 (allowing a party to request to transfer venue if supported by affidavit proving that a fair and impartial trial cannot be had).² The Court finds that the Medical Defendants have failed to make the necessary showing to support the requested change in venue from Marion County to Florence County, as neither of the statutory tests have been met.

With respect to the first factor, the Court finds that the Medical Defendants have failed to demonstrate that a fair and impartial trial cannot be had in Marion County. The Medical

² During the hearing of the Motion, counsel for the Medical Defendants agreed that a fair and impartial trial could be had in Marion County. Accordingly, the Court finds that the Medical Defendants have failed to make the necessary showing that “there is reason to believe that a fair and impartial trial cannot be had” in Marion County. *See* S.C. Code § 15-7-100.

Defendants did not move at any time prior to the commencement of trial in this case for a transfer of venue due to the alleged inability of this Court to provide a fair and impartial trial, the interests of justice, or any inconvenience of witnesses in this case. Furthermore, the Medical Defendants have not presented evidence or affidavits to support a finding that the convenience of witnesses and the ends of justice require a transfer of venue. *See Mixson v. Agric. Helicopters, Inc.*, 260 S.C. 532, 535, 197 S.E.2d 663, 664 (1973) (recognizing that a party moving to change venue cannot rely merely on the beliefs, opinions, and conclusions of the witnesses).

For the Motion to be granted, the Medical Defendants must provide competent and adequate evidence that establishes both: (a) how the ends of justice will be promoted by a change from Marion County to Florence County; and (b) how the witnesses will be inconvenienced if the trial is held in Marion County rather than Florence County *See* S.C. Code §15-7-100(3). The burden of proof lies with the party who is seeking to change venue. *See, e.g., Whaley v. CSX Transp., Inc.*, 362 S.C. 456, 476, 609 S.E.2d 286, 296 (2005). Any statements provided from witnesses (which were not provided here) must extend beyond mere conclusions to provide probative value in determining convenience. *Id.* at 477, 609 S.E.2d at 297; *see also Sample v. Bedenbaugh*, 158 S.C. 496, 155 S.E. 828, 830 (1930) (“[i]t is essential to the support of a motion to change the place of trial, based upon the grounds just stated, to establish by competent evidence the existence of both conditions. [...] It has likewise been determined that the movant in such motions cannot rely merely on the beliefs, opinions, and conclusions of the witnesses offered in support of the motion without a disclosure of the evidence relied on.”).

As discussed above, the decedent was a lifelong resident of Marion County and suffered a sudden cardiac death in Marion County. MPA II owns property, employs physicians and employees, sees patients and conducts business in Marion County. Dr. Trant regularly treated

patients throughout the Pee Dee Region, including Marion County, and received referrals from Marion County. Dr. Trant served as the pediatric cardiologist for the thirteen (13) counties of the Pee Dee Region, including Marion County. There are at least four (4) witnesses who will testify at the trial who work or reside in Marion County. In view of these facts, trial in Marion County appears to be both convenient for the witnesses and conducive to the ends of justice.

The Court finds that the Medical Defendants have failed to show that the ends of justice would be promoted by changing venue to Florence County. *See Garrett v. Packet Motor Exp. Co., Inc.*, 263 S.C. 463, 210 S.E.2d 912 (1975) (finding that the trial court could have properly denied the motion on the ground that there was no showing that the ends of justice would be promoted by the requested change where the affidavits made no reference to the ends of justice). Although two (2) witnesses are from Florence County, applicable law indicates that the short travel distance to a neighboring county would, absent extenuating circumstances, not create such an inconvenience to witnesses and subvert the ends of justice so as to override a plaintiff's choice of venue. *Mixson*, 260 S.C. at 535, 197 S.E.2d at 664 (finding that, due to the quick facility of modern transportation, witnesses would not be inconvenienced by having to testify in one county versus its neighboring county).³ For these reasons, the Court finds that the Medical Defendants have not shown sufficient grounds under S.C. Code § 15-7-100 or S.C. Code § 15-7-110 for venue to be transferred.

³ Numerous trial court decisions resolving similar motions are in accord. *See, e.g., Sherman v. Lex. Cnty. Health Servs. Dist.*, No. 2019-CP-02-00067 (Oct. 2, 2019) (denying motion to change venue where venue was proper at the time the action was filed); *Barber v. Lex. Health Servs. Dist.*, 2017-CP-40-0003 (May 23, 2017) (same); *Braxton v. Coastal Vascular & Vein Center, P.A.*, 2020-CP-08-00159 (Aug. 10, 2020) (same); *Spurlock v. SC Internal Med. Associates, et al.*, 2017-CP-40-04832 (Dec. 4, 2017) (denying motion to change venue to neighboring county where defendants failed to meet burden of showing competent evidence as to how material witnesses would be inconvenienced by the venue that plaintiff had properly selected or how a venue change would advance the ends of justice).

CONCLUSION

As the Medical Defendants do not dispute that a fair and impartial trial can be had in Marion County and have not shown that the convenience of witnesses and ends of justice require a change in venue, the Medical Defendants' Motion for Change of Venue is **DENIED**, as the residency provisions of S.C. Code 15-7-30 do not support a transfer of venue in an action that was instituted in a proper venue at the time of filing.

IT IS SO ORDERED.

The Honorable H. Steven DeBerry, IV
Presiding Judge
Marion County Court of Common Pleas

September ____, 2024

_____, South Carolina



Marion Common Pleas

Case Caption: Demetrice Utley VS Charles A Trant , defendant, et al

Case Number: 2022CP3300362

Type: Order/Change of Venue

H. Steven DeBerry, IV

Circuit Court Judge 2771

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF MARION	)	FOR THE TWELFTH JUDICIAL CIRCUIT
	)	
	)	
DEMETRICE UTLEY, individually and as	)	Case No.: 2022-CP-33-00362
Personal Representative of the ESTATE OF	)	
TAYLOR DANIELLE PRICE,	)	
	)	ORDER ON POST-TRIAL MOTIONS
Plaintiff,	)	
vs.	)	
	)	
MCLEOD PHYSICIAN ASSOCIATES II	)	
and CHARLES A. TRANT, MD,	)	
	)	
Defendants.	)	
	)	

This case ended in a jury verdict following a weeklong trial in favor of Plaintiff Demetrice Utley, individually and as the Personal Representative of the Estate of Taylor Danielle Price (“Plaintiff”) against Defendants McLeod Physician Associates II (“MPA II”) and Charles A. Trant, MD’s (“Trant”) (“collectively “Defendants”). Both parties timely filed post-trial motions. Defendants filed: (i) a Motion for Judgment Notwithstanding the Verdict; a Motion for New Trial Absolute; and (iii) a Motion for Reduction of the Jury’s Verdict to \$1.2 Million. Plaintiff filed: (i) a Motion for Confirmation of Two Occurrences; and (ii) a Motion for Award of Offer of Judgment Interest.

This Court has carefully considered all of the arguments raised in the parties’ post-trial briefings¹, as well as all of the evidence and the arguments presented by counsel for the parties

¹ In their post-trial briefing, Defendants relied on the legislative history of the Solicitation of Charitable Funds Act. Defendants presented extensive briefing and oral arguments regarding the legislative intent in support of their post-trial motions. This Court carefully considered all of these arguments but respectfully disagrees with the arguments raised by Defendants relating to the legislative history and legislative intent specific to the Solicitation of Charitable Funds Act, for the reasons provided in this Order.

during the trial that concluded with a jury verdict on November 8, 2024. Full consideration has also been given to the arguments presented by counsel during a three-hour hearing on the post-trial motions, which was held November 25, 2024. Defendants requested the opportunity to make additional filings after the hearing, which was permitted, and the supplemental filings, including a letter from Defendants' appellate counsel addressing issues in the initial proposed post-trial order, were reviewed.

Following this thorough review, and as set forth more fully below, this Court holds: (1) Defendants' Motion for JNOV is denied; (2) Defendants' Motion for New Trial Absolute is denied; (3) Defendants' Motion for Set-Off is denied as moot based on the stipulation and agreement of the parties; (4) Defendants' Motion for Reduction of the Judgment is granted in part and denied in part; (5) Plaintiff's Motion for Confirmation of Two Occurrences is denied as moot in light of the Court's decisions on Defendants' post-trial motions; and (6) Plaintiff's Motion for Award of Offer of Judgment Interest is granted in part and denied in part.

LEGAL STANDARD

Judgment Notwithstanding the Verdict

When considering a motion for judgment notwithstanding the verdict, the trial judge must view the evidence and all inferences therefrom in the light most favorable to the non-moving party. *See Horry Cnty. v. Laychur*, 315 S.C. 364, 367, 434 S.E.2d 259, 261 (1993). If the evidence is susceptible of more than one reasonable inference, the case should be submitted to the jury. *Id.* A court considering a JNOV does not have authority to decide credibility issues or to resolve conflicts in the testimony or the evidence. *See Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003). The trial judge, when considering a JNOV motion, is concerned with the existence of evidence, not its weight. A JNOV motion must be denied when the evidence yields

more than one inference or its inferences are in doubt. *See Jinks v. Richland Cnty.*, 355 S.C. 341, 585 S.E.2d 281 (2003).

A trial judge's authority to grant a judgment notwithstanding the verdict is therefore extremely limited. "The jury's verdict must be upheld unless no evidence reasonably supports the jury's findings." *Curcio*, 355 S.C. at 320, 585 S.E.2d at 274 (reversing trial court's grant of JNOV on basis that "trial judge improperly weighed evidence rather than merely considering its existence"). A motion for JNOV is the renewal of a directed verdict motion and cannot raise grounds beyond those stated in the earlier motion. *See Roland v. Palmetto Hills*, 308 S.C. 283, 286, 417 S.E.2d 626, 628 (Ct. App. 1992).

New Trial Absolute

While a trial judge also has the power to grant a new trial absolute, that authority is likewise circumscribed and should be exercised "only when the verdict is shockingly disproportionate to the injuries suffered and thus indicates that passion, caprice, prejudice, or other considerations not reflected by the evidence affected the amount awarded." *Welch v. Epstein*, 342 S.C. 279, 302, 536 S.E.2d 408, 420 (Ct. App. 2000) (affirming trial court's denial of new trial absolute in medical malpractice action). A motion for new trial absolute based on the amount of a jury verdict may be granted if the verdict amount is "so grossly . . . excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, corruption, or some other improper motives." *Brinkley v. S.C. Dep't of Corrections*, 386 S.C. 182, 185, 687 S.E.2d 54, 56 (Ct. App. 2009). "In other words, to warrant a new trial absolute, the verdict reached must be so 'grossly excessive' as to clearly indicate the influence of an improper motive on the jury." *Welch*, 342 S.C. at 302, 536 S.E.2d at 420.

Disagreement with the Amount of the Jury Verdict

A jury's determination of damages is entitled to "substantial deference." *Jolly v. Fisher Controls Int'l, LLC*, 443 S.C. 511, 524, 905 S.E.2d 380, 387 (2024). The foundation for this deference arises from Article I, Section 14 of the South Carolina Constitution, which states that "[t]he right of trial by jury shall be preserved inviolate." See S.C. Const. art. I, § 14. Thus, every party to a civil jury trial "is entitled to the constitutional privilege of the fair judgment of a jury" and a court must "not interfere with the verdict of a jury simply because it is greater [or less] than its own estimate." See *Brabham v. S. Asphalt Haulers, Inc.*, 223 S.C. 421, 430, 76 S.E.2d 301, 306 (1953). Only "compelling reasons" justify upending the principle that "trial courts must honor the sanctity of a jury's verdict." *Jolly*, 443 S.C. at 524, 905 S.E.2d at 387. Accordingly, cognizant of the constraints on the court's power to alter the verdict of the jury, the post-trial motions are resolved below.

FINDINGS AND CONCLUSIONS

I. DEFENDANTS' MOTION FOR JNOV IS DENIED.

Defendants seek a judgment notwithstanding the verdict based on their allegation that Dr. Trant was not grossly negligent as a matter of law, there was only one (1) occurrence, and there was no evidence showing proximate cause. The court is convinced that the evidence, taken as a whole and viewed through the appropriate lens—in the light most favorable to Plaintiff—amply supports the jury's verdict, contrary to the contention of Defendants that no such evidence exists. Therefore, Defendants' JNOV motion must be denied.

A. There is Evidence in the Record to Support the Jury's Conclusion That Dr. Trant Was Grossly Negligent.

Evidence supports the jury's conclusion that Dr. Trant was grossly negligent, and therefore, Defendants' JNOV motion on this ground fails. *Bass v. S.C. Dep't of Soc. Servs.*, 414 S.C. 558,

780 S.E.2d 252 (2015) (upholding trial court's order denying motion for JNOV on gross negligence, as "trial judge is concerned with the existence of evidence, not its weight").

Gross negligence is defined as "the intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do," *Bass v. S.C. Dep't of Soc. Servs.*, 414 S.C. 558, 571, 780 S.E.2d 252, 258-59 (2015), and has also been referred to as a "relative term" meaning "the absence of care that is necessary under the circumstances" or "the failure to exercise slight care." *Etheredge v. Richland Sch. Dist. One*, 341 S.C. 307, 310, 534 S.E.2d 275, 277 (2000). The issue of gross negligence "is a mixed question of law and fact" that should generally be resolved by a jury. *Id.*, 341 S.C. at 310, 534 S.E.2d at 277. Evidence of gross negligence can take many forms. *See, e.g., Cole v. S.C. Elec. & Gas, Inc.*, 335 S.C. 183, 193, 584 S.E.2d 405, 411 (Ct. App. 2003) (holding that a jury determining gross negligence may consider statutory and regulatory violations as well as "other facts and circumstances surrounding the event"). A violation of operational policies can be strong evidence of gross negligence. *See Proctor v. Dep't of Health & Env't Control*, 368 S.C. 279, 297, 628 S.E.2d 496, 506 (Ct. App. 2006) (finding jury question on gross negligence where state agency's conduct was against what "was its policy to do"); *see also Clark v. S.C. Dep't of Public Safety*, 362 S.C. 377, 384-85, 608 S.E.2d 573, 577-78 (2005) (holding that trial court properly submitted gross negligence to jury based in part on an expert description of department policy).

Dr. Trant, a specialist, did not order a single test for Taylor Price, who presented with multiple episodes of exercise-induced "syncope" or "near syncope."² Plaintiff presented the electronic medical records to the jury that were admitted as evidence during the trial and argued

² As established at trial, "syncope" is a loss of consciousness whereas "near syncope" is a near loss of consciousness.

that these records indicated that Dr. Trant did not even review the referral order for Taylor that was sent to his office prior to Taylor's visit, which specifically stated she was being referred due to a diagnosis of "syncope and collapse." This jury heard testimony from Plaintiff's duly qualified expert witness, Anthony Christopher Chang, M.D., M.B.A., M.P.H., M.S. Dr. Chang is board certified by the American Board of Pediatrics in pediatric cardiology, has served as the medical director of pediatric cardiac intensive care programs throughout the United States, and is the chief editor of medical textbooks on pediatric cardiac intensive care and heart failure in children and young adults. Dr. Chang testified relating to Dr. Trant's treatment of Taylor Price. Dr. Chang confirmed that even one episode of exercise-induced syncope, much less multiple instances, is a "red flag" for a pediatric cardiologist that requires testing and follow-up. The jury also heard testimony by Dr. Chang that the standard of care required a cardiac workup to include, at a minimum, a stress test and an echocardiogram to rule out life threatening conditions, and if those tests were inconclusive, the standard of care required a cardiac MRI, a testing protocol that he opined would have diagnosed Taylor's condition of arrhythmogenic right ventricular dysplasia (ARVC).

Dr. Chang further testified that the failure of Dr. Trant to follow the minimum guidelines necessary when performing a preparticipation sports physical as stated in "PPE Preparticipation Physical Evaluation, Fourth Edition" published by the American Academy of Pediatrics violated the standard of care required under the circumstances. This widely accepted publication that was acknowledged to provide evidence relating to the standard of care confirms that:

Athletes identified with cardiovascular symptoms such as **exertional syncope or near-syncope**, chest pain, palpitations, or excessive exertional dyspnea **require a careful and thorough cardiovascular evaluation to exclude underlying heart disease** before allowing an athlete to return to sport. **Syncopal episodes during exercise are an ominous sign and warrants a high index of suspicion for underlying cardiac disease.** The diagnostic workup of exertional syncope is

usually performed in consultation with a cardiologist and may include ECG, echocardiogram, stress ECG, and possibly advanced cardiac imaging (such as MRI or CT) to rule out rare structural abnormalities such as **ARVC** or congenital coronary artery anomalies.

PPE Preparticipation Physical Evaluation, Fourth Edition, at p. 51 (emphases added). Pointedly, Dr. Chang testified that Dr. Trant's deliberate choice to not do what was required under the circumstances was "grossly inadequate" and "significantly inadequate."

Dr. Chang's testimony made it clear that the failure of Dr. Trant to do any testing whatsoever as well as Dr. Trant's decision to sign off on Taylor Price's return to sports were not merely deviations from the standard of care, but were "grossly inadequate" and "significantly inadequate." Dr. Chang testified that both of these decisions were a proximate cause of Taylor Price's death.

In addition to the expert testimony, Dr. Trant's own testimony supports the jury's finding of gross negligence. Significantly, Trant testified that he could have ordered an echocardiogram, a stress test, or a cardiac MRI if he wanted to. In other words, Trant admitted it was not an accidental oversight to order an echocardiogram, a stress test, or a cardiac MRI, but that he chose not to order any of those tests. He conceded that this omission was a conscious and knowing choice. Contrary to Chang's testimony, Trant testified that such tests were not necessary notwithstanding the clear diagnosis stated in the referral order, thus setting up a quintessential jury issue. The conflicting evidence required that the issue be presented to the jury for resolution, and because the jury's decision is supported by the evidence, Defendants' JNOV motion on this ground is denied. *Bass*, 414 S.C. at 573-74, 780 S.E.2d at 260 (confirming **existence** of evidence in the record supporting jury's finding of gross negligence despite evidence of "slight care" and reversing decision by court of appeals premised improper **weighing** of evidence).

B. The Jury's Finding That There Was More Than One Occurrence Is Supported By The Evidence.

This court is convinced that the number of occurrences in this particular case was a matter for the jury to decide. Factual issues were presented that support a finding of more than one occurrence, including specific testimony and other evidence that identified and described two occurrences. Plaintiff alleged, argued, and the jury ultimately concluded that there were two distinct occurrences that led to the death of 16-year-old-Taylor Price: (i) Dr. Trant's failure to order any tests which led to the grossly inadequate cardiac workup of Taylor; and (ii) Dr. Trant's signing the return to sports clearance for Taylor. The separate and distinct nature of the two occurrences is supported by the expert testimony presented at trial. Dr. Chang, Plaintiff's pediatric cardiologist expert (who has substantial clinical experience specifically with ARVC) testified that in his expert opinion, there were two separate and distinct failures, and that these two failures were deviations from the standard of care. Dr. Chang further testified that, to a reasonable degree of medical certainty, these two deviations from the standard of care constituted two separate and distinct reasons that led to the death of Taylor Price.

Having heard and received this evidence, which came in without objection, the jury found that there were multiple occurrences. Additionally, the jury made this finding using the verdict form that was drafted by counsel for Defendants as to the issue of occurrences. Defendants never requested nor submitted any proposed jury charge relating to occurrences. Moreover, Defendants never raised any objection to the jury charge submitted by Plaintiff on this issue that was ultimately utilized by the Court.

In the Court's view, the question of whether or not there were two distinct occurrences presented a jury issue, as evidence was presented and admitted that could support the finding of

multiple occurrences. For the same reasons that the Motion for Directed Verdict made by Defendants at trial was denied, the Motion for JNOV is now denied.³

C. The Jury's Finding Of Proximate Cause Is Supported By The Evidence.

The jury was presented with ample evidence that Defendants' negligence proximately caused the wrongful death of Taylor Price. The existence of such evidence is the pivotal concern of the trial court in deciding a motion for JNOV. *See Curcio*, 355 S.C. at 320, 585 S.E.2d at 274 (stating that in deciding a motion for JNOV, "the trial judge is concerned with the existence of evidence, not its weight").

As discussed above, the jury was presented with expert testimony as to Dr. Trant's multiple deviations from the standard of care required under the circumstances, deviations which proximately caused the death of Taylor Price. Further, Dr. Chang stated to a reasonable degree of medical certainty that Taylor died as a result of Dr. Trant's negligence. The jury was also presented with expert testimony from Dr. Ellen Riemer, MD, JD, the board-certified forensic pathologist who performed the autopsy on Taylor at MUSC in Charleston. Dr. Riemer testified that she was "as certain as a gunshot wound to the head" that ARVC was the cause of Taylor's death, and that there was no evidence detected in her autopsy that could support any other contributing cause of death. This testimony alone created a factual issue for the jury to resolve. Because the jury's decision on proximate cause is supported by the evidence, Defendants' JNOV motion on this ground is denied.

II. THE COURT DENIES DEFENDANTS' MOTION FOR A NEW TRIAL ABSOLUTE.

A. Motion For New Trial Absolute Based On Change In Venue Is Denied.

³ Because the Court determines there is factual evidence in the record that multiple occurrences have occurred, a jury question was presented. Because the jury found two occurrences, the damages award against Defendant MPA II is subject to two statutory caps.

Defendants' change of venue motion was originally brought before Judge DeBerry, who denied the motion. Judge DeBerry's ruling was still in place when Defendants' motion was again argued before this Court, and there were no new circumstances presented; therefore, this motion is denied again. *Rice v. Doe*, 442 S.C. 160, 165, 898 S.E.2d 127, 129 (2024) ("If the prior ruling addresses a substantive point of law, or if nothing of significance has changed, the second judge should consider the previous judge's ruling to be final."). Even if another circuit court judge had not already ruled on this issue, this court would deny the motion for a new trial on this basis.

B. The Motion for New Trial Absolute Based on the Gross Negligence Jury Charge is Denied.

Defendants seek a new trial absolute based on one sentence contained in the gross negligence jury charge, which correctly recites existing South Carolina law. In addition, Defendants request a new trial absolute on the ground that the jury should have been charged with an edited portion of the South Carolina Solicitation of Charitable Funds Act. As set forth below, Defendants are not entitled to a new trial absolute on these grounds.

This Court charged the current law on gross negligence, and therefore, Defendants' argument that the charge is erroneous or should be modified by an appellate court is denied. A jury charge that is substantially correct and covers the existing law does not provide a basis for a new trial. *See Keaton ex rel. Foster v. Greenville Hosp. Sys.*, 334 S.C. 488, 496, 514 S.E.2d 570, 574 (1999). A trial judge does not have the power to change settled law by predicting what an appellate court may do in the future. Here, this Court used the charge provided in the current trial judge's bench book, which is also the same charge presented in Judge Anderson's South Carolina Requests to Charge – Civil, 2nd Edition. Additionally, the language that Defendants contend is erroneous—that gross negligence is the absence of care that is necessary under the circumstances—has been repeatedly cited by our appellate courts in defining gross negligence. *See, e.g., Hollins v. Richland*

Cnty. Sch. Dist. One, 310 S.C. 486, 490, 427 S.E.2d 654, 656 (1993); *Jinks*, 355 S.C. at 348, 585 S.E.2d at 285; *see also Hamilton v. Reg'l Med. Ctr.*, 440 S.C. 605, 627, 891 S.E.2d 682, 694 (Ct. App. 2023), *reh'g denied* (Sept. 21, 2023), *cert. denied* (May 1, 2024).

Moreover, even if this Court had the power and the inclination to depart from settled law on this issue, this single sentence in the gross negligence charge would not justify the grant of a new trial. It is well settled that when a charge, read as a whole, is correct, a single line does not require reversal. *See, e.g., Keaton ex rel. Foster v. Greenville Hosp. Sys.*, 334 S.C. 488, 497, 514 S.E.2d 570, 575 (1999) (finding a jury charge should be reviewed as a whole, and if the charges are reasonably free from error, isolated portions that might be misleading do not constitute reversible error); *Priest v. Scott*, 266 S.C. 321, 324, 223 S.E.2d 36, 38 (1976) (finding an alleged error in a jury charge must be prejudicial to warrant a new trial); *Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 414, 717 S.E.2d 765, 770–71 (Ct. App. 2011) (finding defendants were not prejudiced by trial court's initial language which misstated the law on negligence).

Accordingly, apart from the fact that this court is required to charge the existing law, and that the statement Defendants complain about is supported by our jurisprudence, focusing on this single line ignores the charge as a whole. A review of the substance of the charge, as set forth below, convinces this court that even assuming *arguendo* that the single line was improper, the charge as a whole is correct:

Gross negligence is the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. Negligence is the failure to exercise due care, while gross negligence is the failure to exercise even the slightest care. Gross negligence is a relative term, and means the absence of care that is necessary under the circumstances.

Gross negligence connotes the failure to exercise a slight degree of care. Gross negligence involves an intentional, conscious failure to do something which one ought to do or the doing of something one ought not to do. A defendant is guilty of

gross negligence if he is so indifferent to the consequences of his conduct as not to give slight care of what he is doing.

The absence of due care necessary under the circumstances language cannot be read in isolation. Rather, when reading the charge as a whole, even if the line which Defendants single out is arguably misleading, a new trial is not warranted. Defendants have failed to demonstrate prejudice from the inclusion of this one sentence in the gross negligence charge. In their argument, Defendants rely solely on a 72-year-old case, *Hicks v. McCandlish*, 221 S.C. 410, 70 S.E.2d 629 (1952). However, they fail to acknowledge the litany of cases that have followed which established the law on gross negligence. The jury charge is correct under the law and any possible error from the single line to which Defendants object does not warrant setting aside this weeklong trial and the jury's verdict. Accordingly, Defendants' motion on this ground is denied.

C. The Court Did Not Err in Declining to Charge Defendants' Requested Charge on the South Carolina Solicitation of Charitable Funds Act.

Prior to trial, the parties stipulated that MPA II was a charitable entity, as defined and governed by the South Carolina Solicitation of Charitable Funds Act. The parties further stipulated that Dr. Trant was at all times an employee of MPA II and, for all purposes in this matter, was acting in the course and scope of his employment. This stipulation was placed on the record on the first day of trial. Defendants benefitted from this stipulation because as result, it was not necessary for Defendants to call any witnesses or enter any exhibits into evidence that would have otherwise been required to prove the viability of their affirmative defense based on the South Carolina Solicitation of Charitable Funds Act. Despite the jury having been presented with no evidence or context relating to the South Carolina Solicitation of Charitable Funds Act, Defendants proposed a jury charge that included selectively edited portions of S.C. Code § 33-56-180, entitled "Limitation of liability for injury or death caused by employee of charitable organization."

Plaintiff responded that if the Court were inclined to charge Section 33-56-180, then it should charge the statute in its entirety, including the reference to the limitations on liability imposed by the South Carolina Tort Claims Act; however, Defendants objected to Plaintiff's proposal. Given those circumstances, the Court decided not to charge a selectively edited portion of the South Carolina Solicitation of Charitable Funds Act without the context of the remaining language in the subsection.

Jury instructions should be confined to the issues raised and supported by the evidence presented at trial. *See Stephens v. CSX Transp., Inc.*, 415 S.C. 182, 197, 781 S.E.2d 534, 542 (2015). Defendants have not demonstrated that the decision not to charge the jury with a selectively edited portion of the South Carolina Solicitation of Charitable Funds Act was prejudicial. *See Pittman v. Stevens*, 364 S.C. 337, 340, 613 S.E.2d 378, 380 (2005) ("A trial court's refusal to give a properly requested charge is reversible error only when the requesting party can demonstrate prejudice from the refusal"). Thus, a new trial absolute is not warranted on this ground.

III. THIS COURT DISAGREES WITH DEFENDANTS THAT THE SIZE OF THE JURY'S DAMAGES AWARD REQUIRES A NEW TRIAL.

Defendants' challenge to the size of the verdict was limited to a new trial absolute and a new trial based on the thirteenth juror doctrine. Defendants did not move for a new trial *nisi remittitur*. Thus, Defendants intentionally did not ask this Court to reduce the amount of the verdict. Nor have they suggested what amount would have been appropriate for this tragic case of the loss of a young life. Their argument at trial was that a defense verdict was the only proper outcome. After receiving the evidence, the jury disagreed. Because the Court finds that evidence supports the jury's damages award, and its verdict is not grossly excessive, Defendants' motion for a new trial is denied.

The jury's determination of damages is entitled to "substantial deference." *Todd*, 385 S.C. at 517, 686 S.E.2d at 618. The loss to a parent from the untimely death of a devoted child is not to be minimized. *Lucht v. Youngblood*, 266 S.C. 127, 137, 221 S.E.2d 854, 859 (1976). When a child is lost to a parent, those losses "are intangibles, the value of which cannot be determined by any fixed yardstick." *Id.* They "must be estimated by the jury in the exercise of their sound judgment under all of the facts and circumstances of the case." *Id.* Given the evidence presented, the jury awarded Plaintiff damages for the wrongful death of her daughter Taylor in an amount that this Court does not believe should be disturbed in light of applicable law and the decision by Defendants to forego any request for *remittitur*.

It is within the province of the jury to determine the amount of damages awarded, and a verdict should not be disturbed unless it is so flagrantly excessive as to raise a presumption that it was the result of passion and prejudice rather than sober, reflective judgment. *Lucht* at 137–38, 221 S.E.2d at 859. A "grossly excessive" verdict is one "deemed the result of a disregard of the facts and of the court's instructions, and to be due to passion and prejudice rather than reason." *King v. Daniel Int'l Corp.*, 278 S.C. 350, 355, 296 S.E.2d 335, 338 (1982). However, a "verdict which may be supported by any rational view of the evidence, or as to which reasonable and disinterested men might draw different inferences, is not of this class." *Mickle v. Blackmon*, 252 S.C. 202, 248, 166 S.E.2d 173, 194 (1969) (affirming the denial of a new trial absolute of what the court referred to at the time as "probably the highest verdict in a personal injury case in the history of this State"). In determining whether the verdict is excessive, the facts must be viewed in the light most favorable to Plaintiff and this determination is addressed to the sound discretion of the trial judge. See *Watson v. Wilkinson Trucking Co.*, 244 S.C. 217, 224, 136 S.E.2d 286, 289 (1964); *Riley v. Ford Motor Co.*, 414 S.C. 185, 192, 777 S.E.2d 824, 828 (2015).

The record in this case cuts squarely against the argument that the jury's damages award was motivated by improper means. The jury awarded Plaintiff damages for the devastating and preventable loss of her 16-year-old daughter, Taylor. Plaintiff's testimony was particularly poignant. She testified that the loss of her teenage child left her "broken" for life and no longer the same woman she was before her daughter's death. Ms. Utley also testified that she encouraged her only remaining child, Taylor's older sister Serenity Hunt, to join the United States Air Force and move away from Marion, primarily because she knew she had nothing to offer her as a parent because of Ms. Utley's broken state. The testimony of Emerson Hunt, who helped raise Taylor and treated her as his own daughter, underscored the deep loss and impact of Taylor's death on her mother. The jury, having heard the evidence during the course of the weeklong trial, performed its duty to assign a dollar figure to the loss suffered by Plaintiff after confirming the presence of gross negligence and multiple occurrences.⁴ Their verdict is entitled to substantial deference and was not, under the circumstances, the result of improper means or considerations.

⁴ Defendants assert that Plaintiff's closing argument contained improper comments designed to impassion the jury in its determination of damages. This Court disagrees for two reasons. First, Defendants never objected during closing argument, so this Court will not allow Defendants to belatedly bootstrap arguments challenging statements made at trial without a contemporaneous objection by way of a post-trial challenge to the size of the verdict. *See, e.g., State v. Lynn*, 277 S.C. 222, 284 S.E.2d 786 (1981) (finding that a failure to make the required contemporaneous objection may not be "bootstrapped" by a subsequent motion or request). Secondly, the Court also finds Defendants' arguments fail on the merits. The statements of Plaintiff's counsel cited in the Motion for New Trial Absolute are neither improper nor objectionable, much less "vicious and inflammatory." As the transcript of the closing argument reflects, Plaintiff's counsel argued that the jury's verdict should be loud enough to be heard by the medical community throughout South Carolina for the purpose of protecting society from preventable deaths. This "message" aligns with the fundamental purpose and function of tort law in South Carolina, which seeks to protect safety interests and is rooted in the concept of protecting society as a whole from physical harm to person or property. *See Sapp v. Ford Motor Co.*, 386 S.C. 143, 147, 687 S.E.2d 47, 49 (2009). Plaintiff's counsel argued that the standards of care are applicable to every patient. No statement or argument was made during trial to suggest that Defendants acted as they did due to race or socioeconomic conditions. And, as noted above, no contemporaneous objection was made.

Defendants also contend the relative length of deliberations demonstrate the amount of the verdict necessitates a new trial, but this Court disagrees. While the jury deliberated for less than an hour, the Court finds the jury properly executed its responsibility to reach a just verdict. This Court observed the jury paying close attention to the testimony and evidence presented during all phases of this trial up to and including closing arguments. Also, during the direct examination of Plaintiff's expert witness, Dr. Chang, this Court observed the jury watching closely when Dr. Chang stepped down from the witness stand to draw a diagram of a human heart on a whiteboard and proceeded to explain how the heart functioned and how Taylor's ARVC would have presented and should have been diagnosed. This Court observed the jury's close attention to the testimony of other witnesses as well.

Further, the length of a jury's deliberations alone is not a sufficient basis on which to grant a new trial. *See State v. Holland*, 261 S.C. 488, 499, 201 S.E.2d 118, 123 (1973) ("There is no prescribed length of time for a jury to reach a verdict"). Given Dr. Chang's expert testimony and the admissions of Dr. Trant that he did not recall reading the referral order, performed no tests and conducted no follow up, confirming liability was not particularly difficult in this case. Moreover, having determined that Dr. Trant was grossly negligence in his treatment of Taylor, the amount of damages sufficient to compensate her family for the loss of her young life was peculiarly a matter for the jury to decide. The jury weighed the evidence when determining the wrongful death damages awarded to Plaintiff resulting from the tragic and preventable death of her 16-year-old daughter, Taylor. The verdict was supported by ample evidence and compelling testimony from Plaintiff relating to the unimaginable pain and trauma she has suffered as a result of the Defendants'

negligence.⁵ This Court has no hesitation in concluding that the verdict is “supported by any rational view of the evidence and bears a reasonable relationship to the character and extent of the injury and damage sustained.” *See King v. Daniel Int’l Corp.*, 278 S.C. 350, 355, 296 S.E.2d 335, 338 (1982).⁶ Accordingly, Defendants’ challenges to amount of the jury’s verdict under the new trial absolute and thirteenth juror doctrine are denied.⁷

IV. PLAINTIFF’S MOTION FOR REDUCTION OF THE TOTAL JUDGMENT IS GRANTED IN PART AND DENIED IN PART.

A. Motion for Reduction of the Judgment Against Defendant MPA II to the Statutory Cap is Granted.

The parties stipulated and this Court finds that Defendant MPA II is a charitable entity, as defined and governed by the South Carolina Solicitation of Charitable Funds Act. Defendant MPA II is entitled to the statutory limitation on damages which provides that a person sustaining an injury or dying by reason of the tortious act of commission or omission of an employee of a charitable organization, when the employee is acting within the scope of his employment, may recover in an action brought against the charitable organization only the actual damages sustained

⁵ Further, the jury verdict reflected the minimum requested by plaintiff’s counsel during opening statements and closing arguments. While counsel’s statements are not evidence, the Court finds it relevant that the jury returned the minimum amount argued by plaintiff’s counsel.

⁶ Further, as Defendants have not moved for a new trial nisi remittitur, this Court declines to do so *sua sponte* as the verdict is not unduly liberal.

⁷ The parties agree and this Court finds that Defendant Trant is entitled to a \$130,000.00 set off against the jury’s verdict of \$30,000,000.00 based on a settlement reached by Plaintiffs and the Marion County School District.

in an amount not exceeding the limitations on liability imposed in the South Carolina Tort Claims Act in Chapter 78 of Title 15.⁸ See S.C. Code Ann. § 33-56-180(A).

Plaintiff's recovery from Defendant MPA II is limited to \$1.2 Million in actual damages for each occurrence of liability. As there was factual evidence in the record that supports multiple occurrences, the determination of the number of occurrences was properly submitted to the jury. The jury received a charge regarding the statutory definition of "occurrence" as stated in South Carolina Tort Claims Act in Chapter 78 of Title 15 and was further charged that Plaintiff has the burden of proving that each occurrence was separate and independent. The jury found that Plaintiff had met her burden in proving multiple occurrences in this matter. Additionally, Plaintiff stipulated that only two occurrences were alleged and being sought in this matter. As a result of the jury's determination that there were multiple occurrences and the applicability of the statutory cap to Defendant MPA II, the judgment against Defendant MPA II shall be modified to \$2,400,000.00, plus offer of judgment interest in the amount of \$380,843.84 as confirmed and calculated below, resulting in an amended judgment amount of \$2,780,843.84 against Defendant MPA II.

B. Motion for Reduction of the Judgment Against Defendant Trant to the Statutory Cap is Denied.

Defendants also seek a reduction of the total judgment of \$30,000,000.00 as to Defendant Trant to the statutory limitation on damages as stated in Section 33-56-180(A) of the South Carolina Solicitation of Charitable Funds Act. This Court respectfully denies Defendants' Motion

⁸ The South Carolina Tort Claims Act in Chapter 78 of Title 15 provides that 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. See S.C. Code Ann. § 15-78-120(a)(4).

based on the unambiguous language of S.C. Code Ann. § 33-56-180(A) coupled with the jury's finding of multiple occurrences of gross negligence as to Defendant Trant.

Placing any limitation on the judgment that a tort victim is entitled to receive against a charitable entity (or its employee) is in derogation of the common law. Several years before the South Carolina Solicitation of Charitable Funds Act ("SCFA") was passed, the South Carolina Supreme Court expressly abolished the doctrine of charitable immunity, stating:

The doctrine of charitable immunity has no place in today's society. We hold a charitable institution is subject to liability for its tortious conduct the same as any other person or corporation. **The doctrine of charitable immunity is abolished in its entirety** and the case is reversed and remanded for trial.

Fitzer v. Greater Greenville South Carolina Young Men's Christian Ass'n, 277 S.C. 1, 282 S.E.2d 230 (1981) (emphasis added). Notably, four years before *Fitzer*, in *Brown v. Anderson County Hosp. Association*, the Supreme Court significantly limited the doctrine of charitable immunity by holding that a hospital could be held liable when a plaintiff proved "the injuries occurred because of the hospital's heedlessness and reckless disregard of the plaintiff's rights." *Id.* 268 S.C. 479, 487, 234 S.E.2d 873, 876 (1977).

Thus, based on *Fitzer* (and in part on *Brown* as well), there was no charitable immunity of any sort under our state's common law and, as such, the provisions of the SCFA (passed in 1994) are in derogation of the common law and must be strictly construed. *See Epstein v. Coastal Timber Co.*, 393 S.C. 276, 285, 711 S.E.2d 912, 917 (2011) (nothing that statutes in derogation of the common law are to be strictly construed). "Under this rule, a statute restricting the common law will 'not be extended beyond the clear intent of the legislature'" and this strict construction includes statutes which "limit a claimant's right to bring suit." *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 536, 725 S.E.2d 693, 696 (2012), *quoting Crosby v. Glasscock Trucking Co.*, 340 S.C. 626, 628, 532 S.E.2d 856, 857 (2000) and *citing* 82 C.J.S. Statutes § 535. Thus, if a statute can be

reasonably construed in a manner that would not be in derogation of a plaintiff's right at common law right to have the jury's verdict entered without limitation, this Court should construe the statute strictly to maintain the common law rights.

The statute at issue, S.C. Code § 33-56-180(A), reads as follows:

An action against the charitable organization pursuant to this section constitutes a complete bar to any recovery by the claimant, by reason of the same subject matter, against the employee of the charitable organization whose act or omission gave rise to the claim ***unless it is alleged and proved in the action that the employee acted in a reckless, wilful, or grossly negligent manner, and the employee must be joined properly as a party defendant. A judgment against an employee of a charitable organization*** may not be returned ***unless*** a specific finding is made that the employee acted in a reckless, wilful, or grossly negligent manner.

(emphasis added). The plain language of the SCFA specifically provides that if the jury determines that an employee of a charitable entity acted in a grossly negligent manner, he can be held individually liable and a judgment rendered against him. Thus, as a result of the jury's finding of gross negligence against Defendant Trant, he is no longer entitled to receive protections set forth in the SCFA, and, consequently, there is no limitation on the amount of the judgment under the SCFA that Plaintiff can recover against him personally.

This principle has been repeatedly addressed by our appellate courts. In *James v. Lister*, the South Carolina Court of Appeals stated:

[The SCFA] provides a mechanism for seeking damages in excess of the charitable limitation, through an action against a charitable organization's employees. In such instances, the statute specifically requires joinder of the employee as a party, and a special finding by the jury that the employee was proved guilty of gross negligence as a proximate cause of the injury.

331 S.C. 277, 284, 500 S.E.2d 198, 202 (Ct. App. 1998) (emphasis added). Although the *James* case involved S.C. Code § 33-55-210(A), which was part of the prior version of the SCFA, the

operative language is the same as in the current version of the SCFA, as found at S.C. Code § 33-56-180(A).

Defendants argue the legislative history of the SCFA demonstrates that the General Assembly intended to cap the amount of damages that may be awarded against an employee of a charitable organization, but the Court disagrees. As an initial matter, legislative history is only relevant when a statute is ambiguous, which the Court does not find to be the case. *Smith v. Tiffany*, 419 S.C. 548, 553, 555, 799 S.E.2d 479, 482-83 (2017) (“It is axiomatic that statutory interpretation begins (and often ends) with the text of the statute in question” and noting the court “must honor legislative intent as clearly expressed in the Act, lest we run afoul of separation of powers”); *Id.* at 555, 799 S.E.2d at 483 (“If a statute is clear and explicit in its language, then there is no need to resort to statutory interpretation or legislative intent to determine its meaning.”) (quoting *Timmons v. S.C. Tricentennial Com*, 254 S.C. 378, 401, 175 S.E.2d 805, 817 (1970)). The first sentence of section 33-56-180(A) expressly limits recover to only against the charitable organization and only for actual damages. The next sentence prohibits recovery against an employee “unless it is alleged and proved in the action that the employee acted in a reckless, wilful, or grossly negligent manner.” The statute does not contain any other limitation on recovery against an employee, and this Court will not rewrite the statute to do so.

But even if the legislative history is considered, this Court finds subsequent appellate court decisions instructive. Following the *James* decision, in *Chastain v. AnMed Health*, the Supreme Court stated that employees of a charitable organization could be held “individually liable” for conduct rising to the level of gross negligence. 388 S.C. 170, 172, 694 S.E.2d 541, 542 (2010) (noting “employee of charitable organization *individually liable* only for gross negligence”) (citing S.C. Code Ann. § 33-56-180(A)) (emphasis added). Similarly, in *Myat v. Tuomey Regional*

Medical Center, the Court of Appeals held that pursuing a gross negligence claim against an employee of a charitable entity provides a manner for a plaintiff “to avoid the statutory cap.” 427 S.C. 601, 607-08, 832 S.E.2d 306, 309 (Ct. App. 2019). In 2020, the Court of Appeals reaffirmed the holding in *James* that the charitable statute provides for a mechanism for seeking damages in excess of the charitable limitation, through an action against a charitable organization’s employees. *See Garrison v. Target Corp.*, 429 S.C. 324, 363, 838 S.E.2d 18, 38-39 (Ct. App. 2020), *aff’d in part as modified, rev’d in part*, 435 S.C. 566, 869 S.E.2d 797 (2022). Therefore, Defendants’ Motion to reduce the \$30,000,000.00 judgment against Dr. Trant is denied for the reasons stated above.

V. PLAINTIFF’S MOTION FOR OFFER OF JUDGMENT INTEREST IS GRANTED IN PART AND DENIED IN PART.

Plaintiff served an Offer of Judgment on Defendant MPA II on November 12, 2022 for \$1,199,999.00. Defendant MPA II took the position that Section 15-35-400 and Rule 68(b), SCRPC, on which the Plaintiff’s motion is based, are not applicable to charitable organizations such as MPA II. MPA II cited to both Section 18 of Act No. 32 and Section 15-78-220 as the bases for that argument. This Court disagrees with Defendants’ argument that charitable organizations, such as MPA II, are not subject to offer of judgment interest under S.C. Code § 15-35-400 or Rule 68, SCRPC. Because this Court concludes the judgment against MPA II is \$2,400,000.00, Plaintiff is entitled to interest on the refused offer of judgment. *See* S.C. Code § 15-35-400(B); *see also* Rule 68(b), SCRPC.

This Court finds that Defendant MPA II is required to pay offer of judgment interest from the time of Plaintiff’s offer of judgment to the verdict, but the amount of interest should be calculated on the Amended Judgment of \$2,400,00.00 against MPA II, rather than the full, original

amount of the jury's verdict.⁹¹⁰ Accordingly, the Amended Judgment against MPA II is \$2,780,843.84, including the offer of judgment interest due by law.¹¹ The Court declines to impose offer of judgment interest on the verdict against Dr. Trant because Plaintiff did not serve its Offer of Judgment on Dr. Trant nor did Plaintiff direct the Offer of Judgment to him.

CONCLUSION

For the reasons fully set forth above: (1) Defendants' Motion for JNOV is denied; (2) Defendants' Motion for New Trial Absolute is denied; (3) Defendants' Motion for Set-Off is denied as moot based on the agreement of the parties; (4) Defendants' Motion for Reduction of the Total Judgment is Granted in Part and Denied in Part; (5) Plaintiff's Motion for Confirmation of Two Occurrences is denied as moot in light of the Court's decisions on Defendants' post-trial motions; and (6) Plaintiff's Motion for Award of Offer of Judgment Interest is granted in part and denied in part.

⁹ Plaintiff argued that she was entitled to Offer of Judgment interest against Defendant MPA II on the entire amount of the verdict from the date of the offer to the entry of the judgment, which would have resulted in an additional \$4,760,547.95 and an amended judgment against Defendant MPA II of \$7,160,547.95. In support of this argument Plaintiff relied upon *Garrison v. Target Corp.*, 435 S.C. 566, 586, 869 S.E.2d 797, 808 (2022). The Court respectfully disagrees with this argument.

¹⁰ Defendants argued that any calculation of Offer of Judgment Interest against Defendant MPA II must be calculated on the amount of the judgment after the Court reduced the judgment pursuant to the Solicitation of Charitable Funds Act. In support of their argument Defendants relied upon *O'Shields v. Columbia Auto., LLC*, 435 S.C. 319, 867 S.E.2d 446 (Ct. App. 2021), *aff'd*, 443 S.C. 29, 902 S.E.2d 375 (2024). The Court agrees that this is the proper method to calculate Offer of Judgment Interest.

¹¹ Plaintiff served her Offer of Judgment on Defendant MPA II on November 15, 2022. It was 724 days later when the jury returned its verdict (November 8, 2024). Using the applicable rate (8% simple interest annually), the accrued interest is \$380,843.84, based on a *per diem* amount of $\$526.03 \times 724 \text{ days} = \$380,843.84$.

Confirming the resulting amounts of the amended judgments, the Court confirms that the \$130,000.00 court-approved settlement with Marion County School District should be applied as a set-off from the jury's verdict, thereby reducing the \$30,000,000.00 jury verdict to \$29,870,000.00 after applying the set-off. Moreover, in light of the provisions of S.C. Code 33-56-180(A) and the jury's confirmation of multiple occurrences, an amended judgment against Defendant MPA II is hereby entered in the amount of \$2,780,843.84,¹² which includes the offer of judgment interest that is due under applicable law, and an amended judgment against Defendant Trant is hereby entered in the amount of \$27,470,000.00.¹³

Accordingly, it is **ORDERED** that the Amended Judgment against Defendant MPA II is \$2,780,843.84.

It is further **ORDERED** that the Amended Judgment against Defendant Trant is \$27,470,000.00.

IT IS SO ORDERED.

The Honorable R. Ferrell Cothran, Jr.
Presiding Judge
Marion County Court of Common Pleas

¹² Defendants MPA II and Trant are jointly and severally liable for \$2,400,000.00 of the \$2,780,843.84 amended judgment entered against Defendant MPA II. Defendant MPA II is solely responsible for the remainder of the amended judgment entered against it.

¹³ Defendants MPA II and Trant are jointly and severally liable for \$2,400,000.00 of the \$29,870,000.00 amended judgment entered against Defendant Trant. Defendant Trant is solely responsible for the remainder of the amended judgment entered against him.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF MARION	)	FOR THE TWELFTH JUDICIAL CIRCUIT
	)	
	)	
DEMETRICE UTLEY, individually and as	)	Case No.: 2022-CP-33-00362
Personal Representative of the ESTATE OF	)	
TAYLOR DANIELLE PRICE,	)	
	)	ORDER ON POST-TRIAL MOTIONS
Plaintiff,	)	
vs.	)	
	)	
MCLEOD PHYSICIAN ASSOCIATES II	)	
and CHARLES A. TRANT, MD,	)	
	)	
Defendants.	)	
	)	

This case ended in a jury verdict following a weeklong trial in favor of Plaintiff Demetrice Utley, individually and as the Personal Representative of the Estate of Taylor Danielle Price (“Plaintiff”) against Defendants McLeod Physician Associates II (“MPA II”) and Charles A. Trant, MD’s (“Trant”) (“collectively “Defendants”). Both parties timely filed post-trial motions. Defendants filed: (i) a Motion for Judgment Notwithstanding the Verdict; a Motion for New Trial Absolute; and (iii) a Motion for Reduction of the Jury’s Verdict to \$1.2 Million. Plaintiff filed: (i) a Motion for Confirmation of Two Occurrences; and (ii) a Motion for Award of Offer of Judgment Interest.

This Court has carefully considered all of the arguments raised in the parties’ post-trial briefings¹, as well as all of the evidence and the arguments presented by counsel for the parties

¹ In their post-trial briefing, Defendants relied on the legislative history of the Solicitation of Charitable Funds Act. Defendants presented extensive briefing and oral arguments regarding the legislative intent in support of their post-trial motions. This Court carefully considered all of these arguments but respectfully disagrees with the arguments raised by Defendants relating to the legislative history and legislative intent specific to the Solicitation of Charitable Funds Act, for the reasons provided in this Order.

during the trial that concluded with a jury verdict on November 8, 2024. Full consideration has also been given to the arguments presented by counsel during a three-hour hearing on the post-trial motions, which was held November 25, 2024. Defendants requested the opportunity to make additional filings after the hearing, which was permitted, and the supplemental filings, including a letter from Defendants' appellate counsel addressing issues in the initial proposed post-trial order, were reviewed.

Following this thorough review, and as set forth more fully below, this Court holds: (1) Defendants' Motion for JNOV is denied; (2) Defendants' Motion for New Trial Absolute is denied; (3) Defendants' Motion for Set-Off is denied as moot based on the stipulation and agreement of the parties; (4) Defendants' Motion for Reduction of the Judgment is granted in part and denied in part; (5) Plaintiff's Motion for Confirmation of Two Occurrences is denied as moot in light of the Court's decisions on Defendants' post-trial motions; and (6) Plaintiff's Motion for Award of Offer of Judgment Interest is granted in part and denied in part.

LEGAL STANDARD

Judgment Notwithstanding the Verdict

When considering a motion for judgment notwithstanding the verdict, the trial judge must view the evidence and all inferences therefrom in the light most favorable to the non-moving party. *See Horry Cnty. v. Laychur*, 315 S.C. 364, 367, 434 S.E.2d 259, 261 (1993). If the evidence is susceptible of more than one reasonable inference, the case should be submitted to the jury. *Id.* A court considering a JNOV does not have authority to decide credibility issues or to resolve conflicts in the testimony or the evidence. *See Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003). The trial judge, when considering a JNOV motion, is concerned with the existence of evidence, not its weight. A JNOV motion must be denied when the evidence yields

more than one inference or its inferences are in doubt. *See Jinks v. Richland Cnty.*, 355 S.C. 341, 585 S.E.2d 281 (2003).

A trial judge's authority to grant a judgment notwithstanding the verdict is therefore extremely limited. "The jury's verdict must be upheld unless no evidence reasonably supports the jury's findings." *Curcio*, 355 S.C. at 320, 585 S.E.2d at 274 (reversing trial court's grant of JNOV on basis that "trial judge improperly weighed evidence rather than merely considering its existence"). A motion for JNOV is the renewal of a directed verdict motion and cannot raise grounds beyond those stated in the earlier motion. *See Roland v. Palmetto Hills*, 308 S.C. 283, 286, 417 S.E.2d 626, 628 (Ct. App. 1992).

New Trial Absolute

While a trial judge also has the power to grant a new trial absolute, that authority is likewise circumscribed and should be exercised "only when the verdict is shockingly disproportionate to the injuries suffered and thus indicates that passion, caprice, prejudice, or other considerations not reflected by the evidence affected the amount awarded." *Welch v. Epstein*, 342 S.C. 279, 302, 536 S.E.2d 408, 420 (Ct. App. 2000) (affirming trial court's denial of new trial absolute in medical malpractice action). A motion for new trial absolute based on the amount of a jury verdict may be granted if the verdict amount is "so grossly . . . excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, corruption, or some other improper motives." *Brinkley v. S.C. Dep't of Corrections*, 386 S.C. 182, 185, 687 S.E.2d 54, 56 (Ct. App. 2009). "In other words, to warrant a new trial absolute, the verdict reached must be so 'grossly excessive' as to clearly indicate the influence of an improper motive on the jury." *Welch*, 342 S.C. at 302, 536 S.E.2d at 420.

Disagreement with the Amount of the Jury Verdict

A jury's determination of damages is entitled to "substantial deference." *Jolly v. Fisher Controls Int'l, LLC*, 443 S.C. 511, 524, 905 S.E.2d 380, 387 (2024). The foundation for this deference arises from Article I, Section 14 of the South Carolina Constitution, which states that "[t]he right of trial by jury shall be preserved inviolate." See S.C. Const. art. I, § 14. Thus, every party to a civil jury trial "is entitled to the constitutional privilege of the fair judgment of a jury" and a court must "not interfere with the verdict of a jury simply because it is greater [or less] than its own estimate." See *Brabham v. S. Asphalt Haulers, Inc.*, 223 S.C. 421, 430, 76 S.E.2d 301, 306 (1953). Only "compelling reasons" justify upending the principle that "trial courts must honor the sanctity of a jury's verdict." *Jolly*, 443 S.C. at 524, 905 S.E.2d at 387. Accordingly, cognizant of the constraints on the court's power to alter the verdict of the jury, the post-trial motions are resolved below.

FINDINGS AND CONCLUSIONS

I. DEFENDANTS' MOTION FOR JNOV IS DENIED.

Defendants seek a judgment notwithstanding the verdict based on their allegation that Dr. Trant was not grossly negligent as a matter of law, there was only one (1) occurrence, and there was no evidence showing proximate cause. The court is convinced that the evidence, taken as a whole and viewed through the appropriate lens—in the light most favorable to Plaintiff—amply supports the jury's verdict, contrary to the contention of Defendants that no such evidence exists. Therefore, Defendants' JNOV motion must be denied.

A. There is Evidence in the Record to Support the Jury's Conclusion That Dr. Trant Was Grossly Negligent.

Evidence supports the jury's conclusion that Dr. Trant was grossly negligent, and therefore, Defendants' JNOV motion on this ground fails. *Bass v. S.C. Dep't of Soc. Servs.*, 414 S.C. 558,

780 S.E.2d 252 (2015) (upholding trial court's order denying motion for JNOV on gross negligence, as "trial judge is concerned with the existence of evidence, not its weight").

Gross negligence is defined as "the intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do," *Bass v. S.C. Dep't of Soc. Servs.*, 414 S.C. 558, 571, 780 S.E.2d 252, 258-59 (2015), and has also been referred to as a "relative term" meaning "the absence of care that is necessary under the circumstances" or "the failure to exercise slight care." *Etheredge v. Richland Sch. Dist. One*, 341 S.C. 307, 310, 534 S.E.2d 275, 277 (2000). The issue of gross negligence "is a mixed question of law and fact" that should generally be resolved by a jury. *Id.*, 341 S.C. at 310, 534 S.E.2d at 277. Evidence of gross negligence can take many forms. *See, e.g., Cole v. S.C. Elec. & Gas, Inc.*, 335 S.C. 183, 193, 584 S.E.2d 405, 411 (Ct. App. 2003) (holding that a jury determining gross negligence may consider statutory and regulatory violations as well as "other facts and circumstances surrounding the event"). A violation of operational policies can be strong evidence of gross negligence. *See Proctor v. Dep't of Health & Env't Control*, 368 S.C. 279, 297, 628 S.E.2d 496, 506 (Ct. App. 2006) (finding jury question on gross negligence where state agency's conduct was against what "was its policy to do"); *see also Clark v. S.C. Dep't of Public Safety*, 362 S.C. 377, 384-85, 608 S.E.2d 573, 577-78 (2005) (holding that trial court properly submitted gross negligence to jury based in part on an expert description of department policy).

Dr. Trant, a specialist, did not order a single test for Taylor Price, who presented with multiple episodes of exercise-induced "syncope" or "near syncope."² Plaintiff presented the electronic medical records to the jury that were admitted as evidence during the trial and argued

² As established at trial, "syncope" is a loss of consciousness whereas "near syncope" is a near loss of consciousness.

that these records indicated that Dr. Trant did not even review the referral order for Taylor that was sent to his office prior to Taylor's visit, which specifically stated she was being referred due to a diagnosis of "syncope and collapse." This jury heard testimony from Plaintiff's duly qualified expert witness, Anthony Christopher Chang, M.D., M.B.A., M.P.H., M.S. Dr. Chang is board certified by the American Board of Pediatrics in pediatric cardiology, has served as the medical director of pediatric cardiac intensive care programs throughout the United States, and is the chief editor of medical textbooks on pediatric cardiac intensive care and heart failure in children and young adults. Dr. Chang testified relating to Dr. Trant's treatment of Taylor Price. Dr. Chang confirmed that even one episode of exercise-induced syncope, much less multiple instances, is a "red flag" for a pediatric cardiologist that requires testing and follow-up. The jury also heard testimony by Dr. Chang that the standard of care required a cardiac workup to include, at a minimum, a stress test and an echocardiogram to rule out life threatening conditions, and if those tests were inconclusive, the standard of care required a cardiac MRI, a testing protocol that he opined would have diagnosed Taylor's condition of arrhythmogenic right ventricular dysplasia (ARVC).

Dr. Chang further testified that the failure of Dr. Trant to follow the minimum guidelines necessary when performing a preparticipation sports physical as stated in "PPE Preparticipation Physical Evaluation, Fourth Edition" published by the American Academy of Pediatrics violated the standard of care required under the circumstances. This widely accepted publication that was acknowledged to provide evidence relating to the standard of care confirms that:

Athletes identified with cardiovascular symptoms such as **exertional syncope or near-syncope**, chest pain, palpitations, or excessive exertional dyspnea **require a careful and thorough cardiovascular evaluation to exclude underlying heart disease** before allowing an athlete to return to sport. **Syncope occurring during exercise is an ominous sign and warrants a high index of suspicion for underlying cardiac disease.** The diagnostic workup of exertional syncope is

usually performed in consultation with a cardiologist and may include ECG, echocardiogram, stress ECG, and possibly advanced cardiac imaging (such as MRI or CT) to rule out rare structural abnormalities such as **ARVC** or congenital coronary artery anomalies.

PPE Preparticipation Physical Evaluation, Fourth Edition, at p. 51 (emphases added). Pointedly, Dr. Chang testified that Dr. Trant's deliberate choice to not do what was required under the circumstances was "grossly inadequate" and "significantly inadequate."

Dr. Chang's testimony made it clear that the failure of Dr. Trant to do any testing whatsoever as well as Dr. Trant's decision to sign off on Taylor Price's return to sports were not merely deviations from the standard of care, but were "grossly inadequate" and "significantly inadequate." Dr. Chang testified that both of these decisions were a proximate cause of Taylor Price's death.

In addition to the expert testimony, Dr. Trant's own testimony supports the jury's finding of gross negligence. Significantly, Trant testified that he could have ordered an echocardiogram, a stress test, or a cardiac MRI if he wanted to. In other words, Trant admitted it was not an accidental oversight to order an echocardiogram, a stress test, or a cardiac MRI, but that he chose not to order any of those tests. He conceded that this omission was a conscious and knowing choice. Contrary to Chang's testimony, Trant testified that such tests were not necessary notwithstanding the clear diagnosis stated in the referral order, thus setting up a quintessential jury issue. The conflicting evidence required that the issue be presented to the jury for resolution, and because the jury's decision is supported by the evidence, Defendants' JNOV motion on this ground is denied. *Bass*, 414 S.C. at 573-74, 780 S.E.2d at 260 (confirming **existence** of evidence in the record supporting jury's finding of gross negligence despite evidence of "slight care" and reversing decision by court of appeals premised improper **weighing** of evidence).

B. The Jury's Finding That There Was More Than One Occurrence Is Supported By The Evidence.

This court is convinced that the number of occurrences in this particular case was a matter for the jury to decide. Factual issues were presented that support a finding of more than one occurrence, including specific testimony and other evidence that identified and described two occurrences. Plaintiff alleged, argued, and the jury ultimately concluded that there were two distinct occurrences that led to the death of 16-year-old-Taylor Price: (i) Dr. Trant's failure to order any tests which led to the grossly inadequate cardiac workup of Taylor; and (ii) Dr. Trant's signing the return to sports clearance for Taylor. The separate and distinct nature of the two occurrences is supported by the expert testimony presented at trial. Dr. Chang, Plaintiff's pediatric cardiologist expert (who has substantial clinical experience specifically with ARVC) testified that in his expert opinion, there were two separate and distinct failures, and that these two failures were deviations from the standard of care. Dr. Chang further testified that, to a reasonable degree of medical certainty, these two deviations from the standard of care constituted two separate and distinct reasons that led to the death of Taylor Price.

Having heard and received this evidence, which came in without objection, the jury found that there were multiple occurrences. Additionally, the jury made this finding using the verdict form that was drafted by counsel for Defendants as to the issue of occurrences. Defendants never requested nor submitted any proposed jury charge relating to occurrences. Moreover, Defendants never raised any objection to the jury charge submitted by Plaintiff on this issue that was ultimately utilized by the Court.

In the Court's view, the question of whether or not there were two distinct occurrences presented a jury issue, as evidence was presented and admitted that could support the finding of

multiple occurrences. For the same reasons that the Motion for Directed Verdict made by Defendants at trial was denied, the Motion for JNOV is now denied.³

C. The Jury's Finding Of Proximate Cause Is Supported By The Evidence.

The jury was presented with ample evidence that Defendants' negligence proximately caused the wrongful death of Taylor Price. The existence of such evidence is the pivotal concern of the trial court in deciding a motion for JNOV. *See Curcio*, 355 S.C. at 320, 585 S.E.2d at 274 (stating that in deciding a motion for JNOV, "the trial judge is concerned with the existence of evidence, not its weight").

As discussed above, the jury was presented with expert testimony as to Dr. Trant's multiple deviations from the standard of care required under the circumstances, deviations which proximately caused the death of Taylor Price. Further, Dr. Chang stated to a reasonable degree of medical certainty that Taylor died as a result of Dr. Trant's negligence. The jury was also presented with expert testimony from Dr. Ellen Riemer, MD, JD, the board-certified forensic pathologist who performed the autopsy on Taylor at MUSC in Charleston. Dr. Riemer testified that she was "as certain as a gunshot wound to the head" that ARVC was the cause of Taylor's death, and that there was no evidence detected in her autopsy that could support any other contributing cause of death. This testimony alone created a factual issue for the jury to resolve. Because the jury's decision on proximate cause is supported by the evidence, Defendants' JNOV motion on this ground is denied.

II. THE COURT DENIES DEFENDANTS' MOTION FOR A NEW TRIAL ABSOLUTE.

A. Motion For New Trial Absolute Based On Change In Venue Is Denied.

³ Because the Court determines there is factual evidence in the record that multiple occurrences have occurred, a jury question was presented. Because the jury found two occurrences, the damages award against Defendant MPA II is subject to two statutory caps.

Defendants' change of venue motion was originally brought before Judge DeBerry, who denied the motion. Judge DeBerry's ruling was still in place when Defendants' motion was again argued before this Court, and there were no new circumstances presented; therefore, this motion is denied again. *Rice v. Doe*, 442 S.C. 160, 165, 898 S.E.2d 127, 129 (2024) ("If the prior ruling addresses a substantive point of law, or if nothing of significance has changed, the second judge should consider the previous judge's ruling to be final."). Even if another circuit court judge had not already ruled on this issue, this court would deny the motion for a new trial on this basis.

B. The Motion for New Trial Absolute Based on the Gross Negligence Jury Charge is Denied.

Defendants seek a new trial absolute based on one sentence contained in the gross negligence jury charge, which correctly recites existing South Carolina law. In addition, Defendants request a new trial absolute on the ground that the jury should have been charged with an edited portion of the South Carolina Solicitation of Charitable Funds Act. As set forth below, Defendants are not entitled to a new trial absolute on these grounds.

This Court charged the current law on gross negligence, and therefore, Defendants' argument that the charge is erroneous or should be modified by an appellate court is denied. A jury charge that is substantially correct and covers the existing law does not provide a basis for a new trial. *See Keaton ex rel. Foster v. Greenville Hosp. Sys.*, 334 S.C. 488, 496, 514 S.E.2d 570, 574 (1999). A trial judge does not have the power to change settled law by predicting what an appellate court may do in the future. Here, this Court used the charge provided in the current trial judge's bench book, which is also the same charge presented in Judge Anderson's South Carolina Requests to Charge – Civil, 2nd Edition. Additionally, the language that Defendants contend is erroneous—that gross negligence is the absence of care that is necessary under the circumstances—has been repeatedly cited by our appellate courts in defining gross negligence. *See, e.g., Hollins v. Richland*

Cnty. Sch. Dist. One, 310 S.C. 486, 490, 427 S.E.2d 654, 656 (1993); *Jinks*, 355 S.C. at 348, 585 S.E.2d at 285; *see also Hamilton v. Reg'l Med. Ctr.*, 440 S.C. 605, 627, 891 S.E.2d 682, 694 (Ct. App. 2023), *reh'g denied* (Sept. 21, 2023), *cert. denied* (May 1, 2024).

Moreover, even if this Court had the power and the inclination to depart from settled law on this issue, this single sentence in the gross negligence charge would not justify the grant of a new trial. It is well settled that when a charge, read as a whole, is correct, a single line does not require reversal. *See, e.g., Keaton ex rel. Foster v. Greenville Hosp. Sys.*, 334 S.C. 488, 497, 514 S.E.2d 570, 575 (1999) (finding a jury charge should be reviewed as a whole, and if the charges are reasonably free from error, isolated portions that might be misleading do not constitute reversible error); *Priest v. Scott*, 266 S.C. 321, 324, 223 S.E.2d 36, 38 (1976) (finding an alleged error in a jury charge must be prejudicial to warrant a new trial); *Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 414, 717 S.E.2d 765, 770–71 (Ct. App. 2011) (finding defendants were not prejudiced by trial court's initial language which misstated the law on negligence).

Accordingly, apart from the fact that this court is required to charge the existing law, and that the statement Defendants complain about is supported by our jurisprudence, focusing on this single line ignores the charge as a whole. A review of the substance of the charge, as set forth below, convinces this court that even assuming *arguendo* that the single line was improper, the charge as a whole is correct:

Gross negligence is the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. Negligence is the failure to exercise due care, while gross negligence is the failure to exercise even the slightest care. Gross negligence is a relative term, and means the absence of care that is necessary under the circumstances.

Gross negligence connotes the failure to exercise a slight degree of care. Gross negligence involves an intentional, conscious failure to do something which one ought to do or the doing of something one ought not to do. A defendant is guilty of

gross negligence if he is so indifferent to the consequences of his conduct as not to give slight care of what he is doing.

The absence of due care necessary under the circumstances language cannot be read in isolation. Rather, when reading the charge as a whole, even if the line which Defendants single out is arguably misleading, a new trial is not warranted. Defendants have failed to demonstrate prejudice from the inclusion of this one sentence in the gross negligence charge. In their argument, Defendants rely solely on a 72-year-old case, *Hicks v. McCandlish*, 221 S.C. 410, 70 S.E.2d 629 (1952). However, they fail to acknowledge the litany of cases that have followed which established the law on gross negligence. The jury charge is correct under the law and any possible error from the single line to which Defendants object does not warrant setting aside this weeklong trial and the jury's verdict. Accordingly, Defendants' motion on this ground is denied.

C. The Court Did Not Err in Declining to Charge Defendants' Requested Charge on the South Carolina Solicitation of Charitable Funds Act.

Prior to trial, the parties stipulated that MPA II was a charitable entity, as defined and governed by the South Carolina Solicitation of Charitable Funds Act. The parties further stipulated that Dr. Trant was at all times an employee of MPA II and, for all purposes in this matter, was acting in the course and scope of his employment. This stipulation was placed on the record on the first day of trial. Defendants benefitted from this stipulation because as result, it was not necessary for Defendants to call any witnesses or enter any exhibits into evidence that would have otherwise been required to prove the viability of their affirmative defense based on the South Carolina Solicitation of Charitable Funds Act. Despite the jury having been presented with no evidence or context relating to the South Carolina Solicitation of Charitable Funds Act, Defendants proposed a jury charge that included selectively edited portions of S.C. Code § 33-56-180, entitled "Limitation of liability for injury or death caused by employee of charitable organization."

Plaintiff responded that if the Court were inclined to charge Section 33-56-180, then it should charge the statute in its entirety, including the reference to the limitations on liability imposed by the South Carolina Tort Claims Act; however, Defendants objected to Plaintiff's proposal. Given those circumstances, the Court decided not to charge a selectively edited portion of the South Carolina Solicitation of Charitable Funds Act without the context of the remaining language in the subsection.

Jury instructions should be confined to the issues raised and supported by the evidence presented at trial. *See Stephens v. CSX Transp., Inc.*, 415 S.C. 182, 197, 781 S.E.2d 534, 542 (2015). Defendants have not demonstrated that the decision not to charge the jury with a selectively edited portion of the South Carolina Solicitation of Charitable Funds Act was prejudicial. *See Pittman v. Stevens*, 364 S.C. 337, 340, 613 S.E.2d 378, 380 (2005) ("A trial court's refusal to give a properly requested charge is reversible error only when the requesting party can demonstrate prejudice from the refusal"). Thus, a new trial absolute is not warranted on this ground.

III. THIS COURT DISAGREES WITH DEFENDANTS THAT THE SIZE OF THE JURY'S DAMAGES AWARD REQUIRES A NEW TRIAL.

Defendants' challenge to the size of the verdict was limited to a new trial absolute and a new trial based on the thirteenth juror doctrine. Defendants did not move for a new trial *nisi remittitur*. Thus, Defendants intentionally did not ask this Court to reduce the amount of the verdict. Nor have they suggested what amount would have been appropriate for this tragic case of the loss of a young life. Their argument at trial was that a defense verdict was the only proper outcome. After receiving the evidence, the jury disagreed. Because the Court finds that evidence supports the jury's damages award, and its verdict is not grossly excessive, Defendants' motion for a new trial is denied.

The jury's determination of damages is entitled to "substantial deference." *Todd*, 385 S.C. at 517, 686 S.E.2d at 618. The loss to a parent from the untimely death of a devoted child is not to be minimized. *Lucht v. Youngblood*, 266 S.C. 127, 137, 221 S.E.2d 854, 859 (1976). When a child is lost to a parent, those losses "are intangibles, the value of which cannot be determined by any fixed yardstick." *Id.* They "must be estimated by the jury in the exercise of their sound judgment under all of the facts and circumstances of the case." *Id.* Given the evidence presented, the jury awarded Plaintiff damages for the wrongful death of her daughter Taylor in an amount that this Court does not believe should be disturbed in light of applicable law and the decision by Defendants to forego any request for *remittitur*.

It is within the province of the jury to determine the amount of damages awarded, and a verdict should not be disturbed unless it is so flagrantly excessive as to raise a presumption that it was the result of passion and prejudice rather than sober, reflective judgment. *Lucht* at 137–38, 221 S.E.2d at 859. A "grossly excessive" verdict is one "deemed the result of a disregard of the facts and of the court's instructions, and to be due to passion and prejudice rather than reason." *King v. Daniel Int'l Corp.*, 278 S.C. 350, 355, 296 S.E.2d 335, 338 (1982). However, a "verdict which may be supported by any rational view of the evidence, or as to which reasonable and disinterested men might draw different inferences, is not of this class." *Mickle v. Blackmon*, 252 S.C. 202, 248, 166 S.E.2d 173, 194 (1969) (affirming the denial of a new trial absolute of what the court referred to at the time as "probably the highest verdict in a personal injury case in the history of this State"). In determining whether the verdict is excessive, the facts must be viewed in the light most favorable to Plaintiff and this determination is addressed to the sound discretion of the trial judge. *See Watson v. Wilkinson Trucking Co.*, 244 S.C. 217, 224, 136 S.E.2d 286, 289 (1964); *Riley v. Ford Motor Co.*, 414 S.C. 185, 192, 777 S.E.2d 824, 828 (2015).

The record in this case cuts squarely against the argument that the jury's damages award was motivated by improper means. The jury awarded Plaintiff damages for the devastating and preventable loss of her 16-year-old daughter, Taylor. Plaintiff's testimony was particularly poignant. She testified that the loss of her teenage child left her "broken" for life and no longer the same woman she was before her daughter's death. Ms. Utley also testified that she encouraged her only remaining child, Taylor's older sister Serenity Hunt, to join the United States Air Force and move away from Marion, primarily because she knew she had nothing to offer her as a parent because of Ms. Utley's broken state. The testimony of Emerson Hunt, who helped raise Taylor and treated her as his own daughter, underscored the deep loss and impact of Taylor's death on her mother. The jury, having heard the evidence during the course of the weeklong trial, performed its duty to assign a dollar figure to the loss suffered by Plaintiff after confirming the presence of gross negligence and multiple occurrences.⁴ Their verdict is entitled to substantial deference and was not, under the circumstances, the result of improper means or considerations.

⁴ Defendants assert that Plaintiff's closing argument contained improper comments designed to impassion the jury in its determination of damages. This Court disagrees for two reasons. First, Defendants never objected during closing argument, so this Court will not allow Defendants to belatedly bootstrap arguments challenging statements made at trial without a contemporaneous objection by way of a post-trial challenge to the size of the verdict. *See, e.g., State v. Lynn*, 277 S.C. 222, 284 S.E.2d 786 (1981) (finding that a failure to make the required contemporaneous objection may not be "bootstrapped" by a subsequent motion or request). Secondly, the Court also finds Defendants' arguments fail on the merits. The statements of Plaintiff's counsel cited in the Motion for New Trial Absolute are neither improper nor objectionable, much less "vicious and inflammatory." As the transcript of the closing argument reflects, Plaintiff's counsel argued that the jury's verdict should be loud enough to be heard by the medical community throughout South Carolina for the purpose of protecting society from preventable deaths. This "message" aligns with the fundamental purpose and function of tort law in South Carolina, which seeks to protect safety interests and is rooted in the concept of protecting society as a whole from physical harm to person or property. *See Sapp v. Ford Motor Co.*, 386 S.C. 143, 147, 687 S.E.2d 47, 49 (2009). Plaintiff's counsel argued that the standards of care are applicable to every patient. No statement or argument was made during trial to suggest that Defendants acted as they did due to race or socioeconomic conditions. And, as noted above, no contemporaneous objection was made.

Defendants also contend the relative length of deliberations demonstrate the amount of the verdict necessitates a new trial, but this Court disagrees. While the jury deliberated for less than an hour, the Court finds the jury properly executed its responsibility to reach a just verdict. This Court observed the jury paying close attention to the testimony and evidence presented during all phases of this trial up to and including closing arguments. Also, during the direct examination of Plaintiff's expert witness, Dr. Chang, this Court observed the jury watching closely when Dr. Chang stepped down from the witness stand to draw a diagram of a human heart on a whiteboard and proceeded to explain how the heart functioned and how Taylor's ARVC would have presented and should have been diagnosed. This Court observed the jury's close attention to the testimony of other witnesses as well.

Further, the length of a jury's deliberations alone is not a sufficient basis on which to grant a new trial. *See State v. Holland*, 261 S.C. 488, 499, 201 S.E.2d 118, 123 (1973) ("There is no prescribed length of time for a jury to reach a verdict"). Given Dr. Chang's expert testimony and the admissions of Dr. Trant that he did not recall reading the referral order, performed no tests and conducted no follow up, confirming liability was not particularly difficult in this case. Moreover, having determined that Dr. Trant was grossly negligence in his treatment of Taylor, the amount of damages sufficient to compensate her family for the loss of her young life was peculiarly a matter for the jury to decide. The jury weighed the evidence when determining the wrongful death damages awarded to Plaintiff resulting from the tragic and preventable death of her 16-year-old daughter, Taylor. The verdict was supported by ample evidence and compelling testimony from Plaintiff relating to the unimaginable pain and trauma she has suffered as a result of the Defendants'

negligence.⁵ This Court has no hesitation in concluding that the verdict is “supported by any rational view of the evidence and bears a reasonable relationship to the character and extent of the injury and damage sustained.” *See King v. Daniel Int’l Corp.*, 278 S.C. 350, 355, 296 S.E.2d 335, 338 (1982).⁶ Accordingly, Defendants’ challenges to amount of the jury’s verdict under the new trial absolute and thirteenth juror doctrine are denied.⁷

IV. PLAINTIFF’S MOTION FOR REDUCTION OF THE TOTAL JUDGMENT IS GRANTED IN PART AND DENIED IN PART.

A. Motion for Reduction of the Judgment Against Defendant MPA II to the Statutory Cap is Granted.

The parties stipulated and this Court finds that Defendant MPA II is a charitable entity, as defined and governed by the South Carolina Solicitation of Charitable Funds Act. Defendant MPA II is entitled to the statutory limitation on damages which provides that a person sustaining an injury or dying by reason of the tortious act of commission or omission of an employee of a charitable organization, when the employee is acting within the scope of his employment, may recover in an action brought against the charitable organization only the actual damages sustained

⁵ Further, the jury verdict reflected the minimum requested by plaintiff’s counsel during opening statements and closing arguments. While counsel’s statements are not evidence, the Court finds it relevant that the jury returned the minimum amount argued by plaintiff’s counsel.

⁶ Further, as Defendants have not moved for a new trial nisi remittitur, this Court declines to do so *sua sponte* as the verdict is not unduly liberal.

⁷ The parties agree and this Court finds that Defendant Trant is entitled to a \$130,000.00 set off against the jury’s verdict of \$30,000,000.00 based on a settlement reached by Plaintiffs and the Marion County School District.

in an amount not exceeding the limitations on liability imposed in the South Carolina Tort Claims Act in Chapter 78 of Title 15.⁸ *See* S.C. Code Ann. § 33-56-180(A).

Plaintiff's recovery from Defendant MPA II is limited to \$1.2 Million in actual damages for each occurrence of liability. As there was factual evidence in the record that supports multiple occurrences, the determination of the number of occurrences was properly submitted to the jury. The jury received a charge regarding the statutory definition of "occurrence" as stated in South Carolina Tort Claims Act in Chapter 78 of Title 15 and was further charged that Plaintiff has the burden of proving that each occurrence was separate and independent. The jury found that Plaintiff had met her burden in proving multiple occurrences in this matter. Additionally, Plaintiff stipulated that only two occurrences were alleged and being sought in this matter. As a result of the jury's determination that there were multiple occurrences and the applicability of the statutory cap to Defendant MPA II, the judgment against Defendant MPA II shall be modified to \$2,400,000.00, plus offer of judgment interest in the amount of \$380,843.84 as confirmed and calculated below, resulting in an amended judgment amount of \$2,780,843.84 against Defendant MPA II.

B. Motion for Reduction of the Judgment Against Defendant Trant to the Statutory Cap is Denied.

Defendants also seek a reduction of the total judgment of \$30,000,000.00 as to Defendant Trant to the statutory limitation on damages as stated in Section 33-56-180(A) of the South Carolina Solicitation of Charitable Funds Act. This Court respectfully denies Defendants' Motion

⁸ The South Carolina Tort Claims Act in Chapter 78 of Title 15 provides that 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. *See* S.C. Code Ann. § 15-78-120(a)(4).

based on the unambiguous language of S.C. Code Ann. § 33-56-180(A) coupled with the jury's finding of multiple occurrences of gross negligence as to Defendant Trant.

Placing any limitation on the judgment that a tort victim is entitled to receive against a charitable entity (or its employee) is in derogation of the common law. Several years before the South Carolina Solicitation of Charitable Funds Act ("SCFA") was passed, the South Carolina Supreme Court expressly abolished the doctrine of charitable immunity, stating:

The doctrine of charitable immunity has no place in today's society. We hold a charitable institution is subject to liability for its tortious conduct the same as any other person or corporation. **The doctrine of charitable immunity is abolished in its entirety** and the case is reversed and remanded for trial.

Fitzer v. Greater Greenville South Carolina Young Men's Christian Ass'n, 277 S.C. 1, 282 S.E.2d 230 (1981) (emphasis added). Notably, four years before *Fitzer*, in *Brown v. Anderson County Hosp. Association*, the Supreme Court significantly limited the doctrine of charitable immunity by holding that a hospital could be held liable when a plaintiff proved "the injuries occurred because of the hospital's heedlessness and reckless disregard of the plaintiff's rights." *Id.* 268 S.C. 479, 487, 234 S.E.2d 873, 876 (1977).

Thus, based on *Fitzer* (and in part on *Brown* as well), there was no charitable immunity of any sort under our state's common law and, as such, the provisions of the SCFA (passed in 1994) are in derogation of the common law and must be strictly construed. *See Epstein v. Coastal Timber Co.*, 393 S.C. 276, 285, 711 S.E.2d 912, 917 (2011) (nothing that statutes in derogation of the common law are to be strictly construed). "Under this rule, a statute restricting the common law will 'not be extended beyond the clear intent of the legislature'" and this strict construction includes statutes which "limit a claimant's right to bring suit." *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 536, 725 S.E.2d 693, 696 (2012), *quoting Crosby v. Glasscock Trucking Co.*, 340 S.C. 626, 628, 532 S.E.2d 856, 857 (2000) and *citing* 82 C.J.S. Statutes § 535. Thus, if a statute can be

reasonably construed in a manner that would not be in derogation of a plaintiff's right at common law right to have the jury's verdict entered without limitation, this Court should construe the statute strictly to maintain the common law rights.

The statute at issue, S.C. Code § 33-56-180(A), reads as follows:

An action against the charitable organization pursuant to this section constitutes a complete bar to any recovery by the claimant, by reason of the same subject matter, against the employee of the charitable organization whose act or omission gave rise to the claim ***unless it is alleged and proved in the action that the employee acted in a reckless, wilful, or grossly negligent manner, and the employee must be joined properly as a party defendant. A judgment against an employee of a charitable organization*** may not be returned ***unless*** a specific finding is made that the employee acted in a reckless, wilful, or grossly negligent manner.

(emphasis added). The plain language of the SCFA specifically provides that if the jury determines that an employee of a charitable entity acted in a grossly negligent manner, he can be held individually liable and a judgment rendered against him. Thus, as a result of the jury's finding of gross negligence against Defendant Trant, he is no longer entitled to receive protections set forth in the SCFA, and, consequently, there is no limitation on the amount of the judgment under the SCFA that Plaintiff can recover against him personally.

This principle has been repeatedly addressed by our appellate courts. In *James v. Lister*, the South Carolina Court of Appeals stated:

[The SCFA] provides a mechanism for seeking damages in excess of the charitable limitation, through an action against a charitable organization's employees. In such instances, the statute specifically requires joinder of the employee as a party, and a special finding by the jury that the employee was proved guilty of gross negligence as a proximate cause of the injury.

331 S.C. 277, 284, 500 S.E.2d 198, 202 (Ct. App. 1998) (emphasis added). Although the *James* case involved S.C. Code § 33-55-210(A), which was part of the prior version of the SCFA, the

operative language is the same as in the current version of the SCFA, as found at S.C. Code § 33-56-180(A).

Defendants argue the legislative history of the SCFA demonstrates that the General Assembly intended to cap the amount of damages that may be awarded against an employee of a charitable organization, but the Court disagrees. As an initial matter, legislative history is only relevant when a statute is ambiguous, which the Court does not find to be the case. *Smith v. Tiffany*, 419 S.C. 548, 553, 555, 799 S.E.2d 479, 482-83 (2017) (“It is axiomatic that statutory interpretation begins (and often ends) with the text of the statute in question” and noting the court “must honor legislative intent as clearly expressed in the Act, lest we run afoul of separation of powers”); *Id.* at 555, 799 S.E.2d at 483 (“If a statute is clear and explicit in its language, then there is no need to resort to statutory interpretation or legislative intent to determine its meaning.”) (quoting *Timmons v. S.C. Tricentennial Com*, 254 S.C. 378, 401, 175 S.E.2d 805, 817 (1970)). The first sentence of section 33-56-180(A) expressly limits recover to only against the charitable organization and only for actual damages. The next sentence prohibits recovery against an employee “unless it is alleged and proved in the action that the employee acted in a reckless, wilful, or grossly negligent manner.” The statute does not contain any other limitation on recovery against an employee, and this Court will not rewrite the statute to do so.

But even if the legislative history is considered, this Court finds subsequent appellate court decisions instructive. Following the *James* decision, in *Chastain v. AnMed Health*, the Supreme Court stated that employees of a charitable organization could be held “individually liable” for conduct rising to the level of gross negligence. 388 S.C. 170, 172, 694 S.E.2d 541, 542 (2010) (noting “employee of charitable organization *individually liable* only for gross negligence”) (citing S.C. Code Ann. § 33-56-180(A)) (emphasis added). Similarly, in *Myat v. Tuomey Regional*

Medical Center, the Court of Appeals held that pursuing a gross negligence claim against an employee of a charitable entity provides a manner for a plaintiff “to avoid the statutory cap.” 427 S.C. 601, 607-08, 832 S.E.2d 306, 309 (Ct. App. 2019). In 2020, the Court of Appeals reaffirmed the holding in *James* that the charitable statute provides for a mechanism for seeking damages in excess of the charitable limitation, through an action against a charitable organization’s employees. *See Garrison v. Target Corp.*, 429 S.C. 324, 363, 838 S.E.2d 18, 38-39 (Ct. App. 2020), *aff’d in part as modified, rev’d in part*, 435 S.C. 566, 869 S.E.2d 797 (2022). Therefore, Defendants’ Motion to reduce the \$30,000,000.00 judgment against Dr. Trant is denied for the reasons stated above.

V. PLAINTIFF’S MOTION FOR OFFER OF JUDGMENT INTEREST IS GRANTED IN PART AND DENIED IN PART.

Plaintiff served an Offer of Judgment on Defendant MPA II on November 12, 2022 for \$1,199,999.00. Defendant MPA II took the position that Section 15-35-400 and Rule 68(b), SCRPC, on which the Plaintiff’s motion is based, are not applicable to charitable organizations such as MPA II. MPA II cited to both Section 18 of Act No. 32 and Section 15-78-220 as the bases for that argument. This Court disagrees with Defendants’ argument that charitable organizations, such as MPA II, are not subject to offer of judgment interest under S.C. Code § 15-35-400 or Rule 68, SCRPC. Because this Court concludes the judgment against MPA II is \$2,400,000.00, Plaintiff is entitled to interest on the refused offer of judgment. *See* S.C. Code § 15-35-400(B); *see also* Rule 68(b), SCRPC.

This Court finds that Defendant MPA II is required to pay offer of judgment interest from the time of Plaintiff’s offer of judgment to the verdict, but the amount of interest should be calculated on the Amended Judgment of \$2,400,00.00 against MPA II, rather than the full, original

amount of the jury's verdict.⁹¹⁰ Accordingly, the Amended Judgment against MPA II is \$2,780,843.84, including the offer of judgment interest due by law.¹¹ The Court declines to impose offer of judgment interest on the verdict against Dr. Trant because Plaintiff did not serve its Offer of Judgment on Dr. Trant nor did Plaintiff direct the Offer of Judgment to him.

CONCLUSION

For the reasons fully set forth above: (1) Defendants' Motion for JNOV is denied; (2) Defendants' Motion for New Trial Absolute is denied; (3) Defendants' Motion for Set-Off is denied as moot based on the agreement of the parties; (4) Defendants' Motion for Reduction of the Total Judgment is Granted in Part and Denied in Part; (5) Plaintiff's Motion for Confirmation of Two Occurrences is denied as moot in light of the Court's decisions on Defendants' post-trial motions; and (6) Plaintiff's Motion for Award of Offer of Judgment Interest is granted in part and denied in part.

⁹ Plaintiff argued that she was entitled to Offer of Judgment interest against Defendant MPA II on the entire amount of the verdict from the date of the offer to the entry of the judgment, which would have resulted in an additional \$4,760,547.95 and an amended judgment against Defendant MPA II of \$7,160,547.95. In support of this argument Plaintiff relied upon *Garrison v. Target Corp.*, 435 S.C. 566, 586, 869 S.E.2d 797, 808 (2022). The Court respectfully disagrees with this argument.

¹⁰ Defendants argued that any calculation of Offer of Judgment Interest against Defendant MPA II must be calculated on the amount of the judgment after the Court reduced the judgment pursuant to the Solicitation of Charitable Funds Act. In support of their argument Defendants relied upon *O'Shields v. Columbia Auto., LLC*, 435 S.C. 319, 867 S.E.2d 446 (Ct. App. 2021), *aff'd*, 443 S.C. 29, 902 S.E.2d 375 (2024). The Court agrees that this is the proper method to calculate Offer of Judgment Interest.

¹¹ Plaintiff served her Offer of Judgment on Defendant MPA II on November 15, 2022. It was 724 days later when the jury returned its verdict (November 8, 2024). Using the applicable rate (8% simple interest annually), the accrued interest is \$380,843.84, based on a *per diem* amount of $\$526.03 \times 724 \text{ days} = \$380,843.84$.

Confirming the resulting amounts of the amended judgments, the Court confirms that the \$130,000.00 court-approved settlement with Marion County School District should be applied as a set-off from the jury's verdict, thereby reducing the \$30,000,000.00 jury verdict to \$29,870,000.00 after applying the set-off. Moreover, in light of the provisions of S.C. Code 33-56-180(A) and the jury's confirmation of multiple occurrences, an amended judgment against Defendant MPA II is hereby entered in the amount of \$2,780,843.84,¹² which includes the offer of judgment interest that is due under applicable law, and an amended judgment against Defendant Trant is hereby entered in the amount of \$27,470,000.00.¹³

Accordingly, it is **ORDERED** that the Amended Judgment against Defendant MPA II is \$2,780,843.84.

It is further **ORDERED** that the Amended Judgment against Defendant Trant is \$27,470,000.00.

IT IS SO ORDERED.

The Honorable R. Ferrell Cothran, Jr.
Presiding Judge
Marion County Court of Common Pleas

¹² Defendants MPA II and Trant are jointly and severally liable for \$2,400,000.00 of the \$2,780,843.84 amended judgment entered against Defendant MPA II. Defendant MPA II is solely responsible for the remainder of the amended judgment entered against it.

¹³ Defendants MPA II and Trant are jointly and severally liable for \$2,400,000.00 of the \$27,470,000.00 amended judgment entered against Defendant Trant. Defendant Trant is solely responsible for the remainder of the amended judgment entered against him.



Marion Common Pleas

Case Caption: Demetrice Utley VS Charles A Trant , defendant, et al

Case Number: 2022CP3300362

Type: Order/Other

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARION	)	
Demetrice Utley, Individually and as	)	
Personal Representative of the	)	Civil Action No. 2022-CP-33-0362
Estate of Taylor Danielle Price,	)	
	)	
Plaintiff,	)	
	)	ORDER DENYING MOTION TO
v.	)	ALTER OR AMEND
	)	
	)	
McLeod Physician Associates II and	)	
Charles A. Trant, M.D.,	)	
	)	
Defendants.	)	

This matter is before the Court pursuant to Rule 59 (e) SCRPC. The Defendant seeks an Order of this Court amending or altering its Order of February 5, 2024.

Pursuant to Rule 59 (f) SCRPC, this Court determines that the motion to alter or amend may be decided on briefs filed by the parties and without oral argument.

Having duly considered the motion to alter or amend of the Defendant, this Court has determined that its original Order dated February, 5, 2024 is fully supported by the law and the evidence and is hereby ratified and reconfirmed. The motion to alter or amend the earlier Order is therefore DENIED.

AND IT IS SO ORDERED.

Manning, South Carolina

March 3, 2025

R. Ferrell Cothran, Jr.
Judge, Third Judicial Circuit



Marion Common Pleas

Case Caption: Demetrice Utley VS Charles A Trant , defendant, et al

Case Number: 2022CP3300362

Type: Order/Other

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF MARION	)	
	)	Case No.: 2022-CP-33-00362
Demetrice Utley, Individually and as	)	
Personal Representative of the Estate of	)	
Taylor Danielle Prince,	)	
	)	
Plaintiff,	)	ORDER GRANTING INTERIM STAY
	)	OF EXECUTION OF JUDGMENTS
vs.	)	PENDING APPEAL AND REQUIRING
	)	SUPERSEDEAS BONDS
McLeod Physicians Associates, II and	)	
Charles A. Trant, M.D.,	)	
	)	
Defendants.	)	
	)	

This matter comes before the Court on Defendants' Motion for Stay of Execution of Judgments, which was filed on February 13, 2025. Plaintiff's Opposition to the Motion was filed on March 5, 2025.

The Court has reviewed the Motion, Plaintiff's Opposition, and applicable law. Defendants have requested that the Court grant an unsecured stay of enforcement of the judgments or, in the alternative, a reduced amount of bond. In response, Plaintiff has indicated that she does not object to the granting of an interim stay of enforcement provided that security is provided in the form of supersedeas bonds in the maximum amounts allowed under S.C. Code § 18-9-130(A).

As confirmed by this Court's Order dated February 5, 2025, a monetary judgment has been entered against MPA II in the amount of \$2,780,843.84, and a monetary judgment against Dr. Trant has been entered in the amount of \$27,470,000.00. As MPA II is a business entity that employs more than 50 persons and had gross revenues exceeding five million dollars for the previous tax year, the provisions of S.C. Code § 18-9-130(A)(1)(a) permit a supersedeas bond of up to \$25,000,000.00 or the amount of the applicable judgment, whichever is less, to provide

security to Plaintiff. For Dr. Trant, an individual defendant and judgment debtor, the maximum amount of the supersedeas bond for this same purpose under S.C. Code § 18-9-130(A)(1)(b) is \$1,000,000.00.

Having considered the record and the circumstances, the Court believes that Plaintiff is entitled to security in the form of supersedeas bonds if a stay of enforcement of the judgments is to be granted pending appeal. Defendants have not shown cause to justify an unsecured stay. Furthermore, the Court is unconvinced that the amount of the supersedeas bonds should be limited to or reduced by the amount of liability insurance coverage that is represented to exist in Defendants' Motion. The coverage limits on applicable insurance policies are irrelevant to the judgment amounts that Plaintiff has the right to collect. As Defendants are seeking a stay of enforcement of judgments that together equal \$30,250,843.80, it would also be inappropriate to reduce the amount of the required supersedeas bonds based on potential liability insurance coverage. Whatever liability insurance coverage exists does not constitute security to Plaintiff for purposes of S.C. Code 18-9-130(A) and Rule 62(d), SCRPC. Rather, it is an amount that may (or may not) be available to Defendants. As a result, the maximum supersedeas bond amounts allowed will be required, as even these maximum amounts secure only a portion of pending judgments.

The requirement of supersedeas bonds in connection with the granting of any stay of enforcement is consistent with the provisions of Rule 62(d), SCRPC, which provide as follows:

(d) Stay Upon Appeal. When an appeal is taken, a party, by giving a supersedeas bond, may obtain a stay subject to the exceptions contained in subdivision (a) of this rule and the South Carolina Appellate Court Rules. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the supersedeas as the case may be. The stay is effective when the supersedeas bond is approved by the court.

Reading the provisions of S.C. Code 18-9-130(A) and Rule 62(d), SCRPC, together, the Court believes that supersedeas bonds in the maximum statutory amounts are necessary and appropriate.

The Court is informed that the parties agreed, by consent, to a 30-day stay of enforcement of the judgments from the date of the Court's March 3, 2025 Order, which denied Defendants' Motion to Alter or Amend. The Court will therefore use this agreed-upon period to set the deadline for Defendants to obtain and file their required supersedeas bonds with the Court.

Accordingly, IT IS ORDERED that an interim stay of enforcement of the judgments shall be entered in this case pending the outcome of the appeal is granted as of the date of this Order, contingent upon the timely filing of the following supersedeas bonds by Defendants:

- **Defendant McLeod Physician Associates II shall file a supersedeas bond in the amount of \$2,780,843.84 on or before April 3, 2025;**
- If the required supersedeas bond is not filed by or on behalf of MPA II with the Court on or before April 3, 2025 in the required amount, Plaintiff may proceed with the enforcement and execution of her judgment against MPA II;
- **Defendant Charles A. Trant, MD shall file a supersedeas bond in the amount of \$1,000,000.00 on or before April 3, 2025; and**
- If the required supersedeas bond is not filed by on or behalf of Dr. Trant with the Court by on or before April 3, 2025 in the required amount, Plaintiff may proceed with the enforcement and execution of her judgment against Dr. Trant.

IT IS SO ORDERED.

The Honorable R. Ferrell Cothran, Jr.
Presiding Judge
Marion County Court of Common Pleas



Marion Common Pleas

Case Caption: Demetrice Utley VS Charles A Trant , defendant, et al

Case Number: 2022CP3300362

Type: Order/Other

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

Electronically signed on 2025-03-07 11:58:47 page 4 of 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF MARION	)	FOR THE TWELTH JUDICIAL CIRCUIT
	)	
Demetrice Utley, Individually and as	)	
Personal Representative of the Estate of	)	Case No.: 2022-CP-33-_____
Taylor Danielle Price,	)	
	)	
Plaintiff,	)	COMPLAINT
vs.	)	(Wrongful Death, Survival, Negligence, Gross
	)	Negligence, & Medical Malpractice)
McLeod Physician Associates II., Charles	)	
A. Trant, MD, Marion County School	)	(Jury Trial Demanded)
District,	)	
Defendants.	)	
	)	

COMES NOW Plaintiff Demetrice Utley ("Plaintiff"), Individually and as Personal Representative of the Estate of Taylor Danielle Price ("Decedent"), by and through her undersigned attorneys, and states her Complaint against Defendants Charles A. Trant, M.D. ("Dr. Trant"), McLeod Physician Associates II ("MPA II"), and Marion County School District (Collectively referred to as "Defendants"), as follows:

PARTIES

1. Plaintiff is a citizen and resident of Marion County, South Carolina. Plaintiff, as the duly appointed Personal Representative of the Estate of Taylor Danielle Price ("Decedent"), has the right and authority to bring this wrongful death action on behalf of Decedent's beneficiaries under the South Carolina Wrongful Death Act, S.C. Code § 15-51-10 *et seq.*, this survival action for Personal Injury on behalf of Decedent's Estate under S.C. Code § 15-5-90 *et seq.*, and this civil action for negligence, gross negligence, and medical malpractice.

2. Taylor Price was a citizen and resident of Marion County, South Carolina at the time of her death, and the Estate of Taylor Danielle Price is pending in the Marion County Probate Court.

3. Decedent was sixteen (16) years old when she died intestate and her statutory beneficiaries under both S.C. Code § 15-51-10 *et seq.* and S.C. Code § 15-5-90 *et seq.* are her parents, who are both citizens and residents of Marion County, South Carolina (“Beneficiaries”).

4. At all times relevant to Plaintiff’s Complaint, Dr. Trant was a physician licensed by the State of South Carolina. At all times mentioned herein, Dr. Trant was an employee of MPA II, specializing in pediatric cardiology and practicing at McLeod Children’s Hospital and had a doctor-patient relationship with Decedent.

5. McLeod Physician Associates II (“MPA II”) is a non-profit corporation organized and existing pursuant to the laws of the State of South Carolina which employs physicians, including, upon information and belief, Charles A. Trant, MD, at all times relevant to this action, to provide pediatric cardiology services to patients at McLeod Pediatric Subspecialties, located at 101 William H. Johnson Street Suite 400, Florence, SC 29506. MPA II has a non-delegable duty of care to ensure that its physicians, assistants, nurses, and other employees supplied professional treatment to Taylor D. Price within the standard of care.

6. Marion County School District is a governmental entity existing under the laws of the State of South Carolina, within the meaning of the State of South Carolina Tort Claims Act, S.C. Code § 15-78-10, *et seq.*, which was created for the purpose of operating and providing administration for public schools within Marion County, South Carolina. The allegations of negligence and gross negligence against it are not medical malpractice in nature, but the acts and

omissions of Marion County School District contributed to and exacerbated the injuries and wrongful death of Taylor Danielle Price.

JURISDICTION AND VENUE

7. Venue is proper in this court because some of the alleged acts or omissions giving rise to Plaintiff's claims occurred in Marion County. Not only is venue proper in Marion County, but pursuant to S.C. Code Ann. § 15-78-100(b) venue must be Marion County, as Marion County School District is a Defendant.

JOINT AND SEVERAL LIABILITY

8. Defendants are jointly and severally liable as to all damages alleged herein since their negligent, grossly negligent, reckless and wanton acts and omissions, singularly or in a combination, are the direct and proximate cause of Plaintiff's damages, injuries, and losses.

PRE-SUIT PROCEDURES

9. On March 17, 2022, a Notice of Intent to File Suit (with attached expert affidavit), and Plaintiff's Answers to Standard Interrogatories, were filed with the Clerk of Court of Marion County, and given Civil Action Number 2022-NI-33-00001.

10. All parties were subsequently served with the documents described in the preceding paragraph.

11. This case was mediated via Zoom on June 6, 2022, by Karl A. Folkens, Esq. of Folkens Law Firm, P.A., but the parties were unable to reach a settlement during the pre-suit mediation.

12. Based on the foregoing, Plaintiff has met all statutory and procedural requirements for filing suit.

STATEMENT OF FACTS

13. Plaintiff and her daughter ("Decedent") were residents of Marion County, South Carolina, at all times relevant to the allegations contained herein. Plaintiff still resides in Marion County.

14. On January 24, 2018, while playing for the Palmetto Middle School girls basketball team, Taylor Price fell to the ground and indicated she could not breath and that her arm and face were tingling (First Documented Syncope/Near Syncope Event). Plaintiff immediately took Taylor Price to the Emergency Department at CHS – Florence. Taylor Price was admitted at 7:33 PM and was seen by Steve Halus, MD. Dr. Halus discharged Taylor Price home with a diagnosis of hyperventilation syndrome.

Basic Information

Time seen: Initial Time Seen

Time Initially Seen: 01/24/2018 21:27 by HALUS, STEVE MCDONELL MD

Additional information: Chief Complaint from Nursing Triage Note : Chief Complaint

1/24/2018 19:48 EST Chief Complaint at a basketball game
and mom states she fell to the ground saying she couldn't breath and that
her arm and face were tingling. .

History of Present Illness

The patient presents with difficulty breathing and Complaint asthma became short of breath then appeared to have some carpal pedal spasm. The course/duration of symptoms is improving. Degree at onset moderate. Degree at present none. The Exacerbating factors is exertion. The Relieving factors is rest. Risk factors consist of none. Prior episodes: none. Therapy today: Deep breathing and Gatorade. Associated symptoms: denies chest pain and denies fever.

15. On February 1, 2018, Taylor Price followed up with her primary care physician, Mark Bahan, MD, and indicated that her chief complaint was passing out, blurred vision, thirsty, and sweating. Taylor Price also indicated that she has had two episodes of syncope after basketball practice (Second Documented Syncope/Near Syncope Event).

Encounter Date: 02/01/2018

Patient

Name	PRICE, TAYLOR (12yo, F) ID# 132707	Appt. Date/Time	02/01/2018 09:45AM
DOB	[REDACTED]	Service Dept.	PEED_PEE DEE PEDIATRICS RHC
Provider	MARC BAHAN, MD		
Insurance	Med Primary: SELECT HEALTH (MEDICAID REPLACEMENT - HMO) Insurance # : 51165448 Prescription: check now		

Chief Complaint

stomach ache, vomiting

PASSING OUT, BLURRED VISION, THIRSTY, SWEATING

patient with symptoms of syncope x2 after basketball practice patient with poor feeding during the day for hydration mom concerned about diabetes or hypoglycemia, patient with improvement of symptoms when drinking juice after symptoms began.

16. On December 12, 2018, while playing for the Palmetto Middle School girls basketball team, Taylor Price experienced shortness of breath and chest pain/tightness, stated that she suddenly felt hot, and vomited once (Third Documented Syncope/Near Syncope Event). Plaintiff immediately took Taylor Price to the Emergency Department at CHS – Florence. Taylor Price was admitted at 7:07 PM and was seen by Lorrie Dianne Peyton, LPN who ordered an Electrocardiogram. Steve Halus, MD discharged Taylor Price home with a diagnosis of chest wall pain.

History of Present Illness

The patient presents with chest pain. The onset was just prior to arrival. The course/duration of symptoms is resolved. Location: Anterior chest. Radiating pain: none. The character of symptoms is sharp.

The degree at onset was moderate. The degree at maximum was moderate. The degree at present is none. The exacerbating factor is none. The relieving factor is rest. Risk factors consist of not hypertension, not diabetes mellitus, not smoking, not obesity, not pulmonary embolism and not deep vein thrombosis. Prior episodes: none. Associated symptoms: denies shortness of breath, denies nausea, denies vomiting, denies diaphoresis, denies anxiety and denies palpitations. Additional history: Per mom, child was playing in a basketball game at school when she suddenly felt hot, had some chest pain/tightness and vomited once. Mom states child continued to complain of being hot but did not feel hot to touch. Symptoms had completely resolved by the time they got to the emergency room..

The Interpretive Statements regarding the Electrocardiogram that was ordered by Lorrie Dianne

Peyton, LPN contained a finding of Internal Right Bundle Branch Block (IRBBB).

Interpretive Statements

** * Pediatric ECG analysis * **

Normal sinus rhythm

IRBBB

Otherwise normal ECG

Electronically Signed On 12-13-2018 9:16:36 EST_confirmed by Scott Wolery

17. On January 14, 2019, Plaintiff left a message with Marc Bahan, MD's office seeking a referral to a pediatric cardiologist for Taylor Price.

Source	CAREGIVER
Date	01/14/2019
Provider	mbahan
Department	PEED_PEE DEE PEDIATRICS RHC
Outside Provider/Lab/Pharmacy	WALGREENS DRUG STORE 09761
Person to Call	
Desired Callback Number	home - (843) 260-0643
Subject	peds cardio referral
Case Description	
Orders/Prescriptions created	PEDIATRIC CARDIOLOGY REFERRAL

18. On January 14, 2019, Marc Bahan, MD ordered a pediatric cardiology referral, and listed syncope and collapse as the reason for the referral.

1. Syncope

- R55: Syncope and collapse
- PEDIATRIC CARDIOLOGY REFERRAL - Schedule Within: provider's discretion

Return to Office
None recorded.

Order Group on 01/14/2019 by PEED_BAHAN

19. On January 24, 2019, Taylor Price was evaluated by Charles A. Trant, MD in his office, after being referred by her primary care physician, Marc Bahan, MD. The stated reason for this appointment was NEAR SYNCOPAL EPISODES (EKG). The records indicate that at her

last baseball game, Taylor Price experienced shortness of breath, felt unsteady, and felt hot as if she was going to faint (Fourth Documented Syncope/Near Syncope Event). .

Reason for Appointment

1. NEAR SYNCOPAL EPISODES (EKG)

History of Present Illness

Pediatric Cardiology:

Thank you for referring your patient for evaluation of shortness of breath and near syncope. Lately, she has had no difficulty with basketball practice, including doing suicides, but at the last baseball game, she became short of breath and felt unsteady. She also felt hot, as if she was going to faint. Spell lasted for a few minutes and then she recovered. Otherwise she reported no other issues or concerns. Family history is negative for congenital heart disease.

20. Dr. Trant performed zero clinical evaluation or testing of Taylor Price. He did not order an electrocardiogram (even though the reason for her referral was NEAR SYNCOPAL EPISODES EKG), nor did he order an echocardiogram, a cardiac MRI, a Halter monitor, a stress test, or a cardiac catheterization.

21. Dr. Trant diagnosed Taylor Price with a combination of hyperventilation and hyper vagotonia, and recommended that she change her breathing pattern, breath into a paper bag, and hydrate better in the future.

22. The records do not indicate that Dr. Trant reviewed Taylor Price's December 18, 2018 electrocardiogram or the interpretive statements showing a finding of internal right bundle branch block.

Treatment

1. Hyperventilation syndrome

Notes: She is currently stable. Her symptoms are most consistent with a combination of hyperventilation and hyper vagotonia. Both of which are related to all the changes related to puberty. We spent several minutes discussing both including the usual treatments. I recommended changing her breathing pattern during the spells to avoid panting. We also discussed the use of a paper bag. I also recommended super hydration and added salt as needed. I invited him to call should the symptoms persist or not respond as expected.

Finally, Dr. Trant signed a document that cleared Taylor Price to engage in sports, physical education, and cheerleading.

Date: 1-24-19

Taylor Price has been cleared for sports /
physical education / cheer squad.



Charles Trant, M.D.
Pediatric Cardiologist

23. On December 17, 2021, Taylor Price became short of breath and thirsty after playing multiple games of pickup basketball with her ROTC classmates at Mullins High School.

24. For reasons currently unknown to the Plaintiff, all of the water fountains at Mullins High School had been shut off for an extended period of time. Taylor Price asked for and was given permission to leave the gym at Mullins High School to go find a vending machine to purchase a drink.

25. At some point after she left the gym to go find a vending machine to purchase a drink, Taylor Price was found unresponsive on the ground near the rear entrance to the gym, which was locked and could not be opened from the outside.

26. Surveillance footage from Mullins High School shows that Taylor Price went to her knees and then fell to the ground immediately after she exited the gym, where she laid undetected for twenty-four (24) minutes until she was found by a visitor to Mullins High School.

27. The visitor to Mullins High School who found Taylor Price on the ground outside of the gym was an off-duty Mullins Firefighter, and he was still able to detect a pulse on Taylor Price, even after she had been left on the ground for twenty-four minutes.

28. The Mullins Police Officer who was working as the school resource officer at Mullins High School initiated CPR on Taylor Price. CPR was continued by EMS when they arrived and until they arrived at the Emergency Department at CHS – Marion.

29. Ultimately, at 3:01 PM Taylor Price was declared deceased by her attending physician at CHS – Marion.

30. After lifesaving measures were stopped and Taylor Price was declared deceased, her attending physician met with Plaintiff and her husband, and asked them whether or not there had ever been any follow up on an abnormal electrocardiogram that he saw in

Taylor Price's medical records. This was the first time that Plaintiff (a practicing LPN) was ever even made aware that her daughter had received an electrocardiogram.

31. An autopsy was performed on Taylor Price at MUSC's department of Pathology in Charleston, South Carolina on December 22, 2021. Taylor Price's cause of death was Arrhythmogenic right ventricle dysplasia (ARVD).

Cause of Death
Arrhythmogenic right ventricular dysplasia (ARVD)

Manner of Death
Natural

Final Autopsy Diagnoses

I. Arrhythmogenic right ventricular dysplasia (ARVD), also known as Arrhythmogenic right ventricular cardiomyopathy (ARVC)

A. Extensive fatty infiltration and replacement of right ventricle of heart, with variable degrees of right ventricular wall thinning (wall thickness ranging from 0.1 cm to 0.4 cm)

B. Areas of increased interstitial fibrosis of left ventricle of heart

CARDIOVASCULAR SYSTEM: The heart weighs 300 grams. The pericardial and epicardial surfaces are smooth, glistening and unremarkable; 30 ml of serous fluid is in the pericardial sac. The coronary arteries arise normally, follow the usual distribution and are patent, without evidence of significant atherosclerosis or thrombosis. The chambers and valves bear the usual size-position relationships and are unremarkable except for moderate right ventricular dilation. The left ventricular myocardium is dark red-brown, firm, and unremarkable; the right ventricular myocardium is variably thinned and appears pale with prominent replacement of the myocardium by adipose tissue in multiple areas, most notably within the anterior right ventricular wall. The atrial and ventricular septa are intact. The left ventricular thickness = 1.2 cm, right ventricular thickness ranges from 0.1-0.4 cm in thickness, and the interventricular septum = 1.3 cm. The aorta and its major branches arise normally, follow the usual course and are patent, free of significant atherosclerosis and other abnormality. The venae cavae and their major tributaries return to the heart in the usual distribution and are free of thrombi.

Microscopic Description

Sections of the right ventricle of the heart show areas of extensive adipose tissue replacement in conjunction thinning of the myocardium. Sections of the left ventricle shows areas of increased interstitial fibrosis. Lungs and liver show no significant pathologic abnormalities although generalized vascular congestion is present.

32. Because of Defendants' actions and inactions, Taylor Price lost the chance of ever growing into adulthood and having a family of her own. Plaintiff experienced one of the greatest losses – the loss of a child, and her siblings lost their sister and best friend.

33. Plaintiff has suffered and continues to suffer as a result of the breaches of the standard of care by Defendants as well as the negligence, gross negligence, recklessness, and wanton conduct of Defendants.

DAMAGES RECOVERABLE AS TO EACH DEFENDANT

34. MPA II claims to be a charitable entity, which would entitle it to the limitation of liability provided by the South Carolina Solicitation of Charitable Funds Act ("SCSCFA") as stated in S.C. Code Ann. § 33-56-180.

35. The SCSCFA references the South Carolina Tort Claims Act as the predicate statutory authority for the number of caps and amount of damages to be imposed by any person or entity against a SCSCFA entity.

36. In relevant part, regarding limitations of liability under the South Carolina Tort Claims Act ("SCTCA"), S.C. Code Ann. § 15-78-120, provides as follows:

- A. For any action or claim for damages brought under the provisions of this chapter, the liability shall not exceed the following limits:
 - 1) Except as provided in Section 15-78-120(a)(3), no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved.
 - 2) Except as provided in Section 15-78-120(a)(4), the total sum recovered hereunder arising out of a single occurrence shall not exceed six hundred thousand dollars regardless of the number of agencies or political subdivisions or claims or actions involved.
 - 3) No 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.

37. The SCTCA pursuant to S.C. Code Ann. § 15-78-30(g): “Occurrence” is defined as “an unfolding sequence of events which proximately flow from a single act of negligence.”

38. Each act of negligence, gross negligence, recklessness, and/or willful and wanton conduct by Dr. Trant and MPA II, and/or their nurses, employees, and/or other agents as detailed in this Complaint, or that is discovered during the pendency of this litigation, is a separate and distinct act or occurrence pursuant to the SCSCFA and the SCTCA.

39. As the allegations against MPA II all relate to the negligence, gross negligence, reckless or willful action and inactions of Dr. Trant, the limitation of liability as to MPA II is \$1,200,000.00, **PER OCCURRENCE**.

40. There are multiple breaches of the standard of care in this case and upon information and belief, each breach (or occurrence) can be stacked to create a number of different “caps” (depending on what a jury ultimately decides).

41. Dr. Trant is not entitled to the limitation of liability provided by the SCSCFA.

42. Both Dr. Trant and MPA II are entitled to the non-economic damages limit provided by the South Carolina Noneconomic Damage Awards Act of 2005, S.C. Code Ann. § 15-32-220 which states in relevant part:

- B. In an action on a medical malpractice claim when final judgment is rendered against a single health care institution, the limit of civil liability for noneconomic damages is limited to an amount not to exceed **three hundred fifty thousand dollars for each claimant**, regardless of the number of separate causes of action on which the claim is based, except as provided in subsection (E).
- C. In an action on a medical malpractice claim when final judgment is rendered against more than one health care institution, or more than one health care provider, or any combination thereof, the limit of civil liability for noneconomic damages for each

health care institution and each health care provider is limited to an amount not to exceed **three hundred fifty thousand dollars for each claimant**, and the limit of civil liability for noneconomic damages for all health care institutions and health care providers is limited to an amount not to exceed **one million fifty thousand dollars for each claimant**, except as provided in subsection (E).

- E. The **limitations for noneconomic damages** rendered against any health care provider or health care institution **do not apply if the jury or court determines that the defendant was grossly negligent, wilful, wanton, or reckless**, and such conduct was the proximate cause of the claimant's noneconomic damages.
- F. At the end of each calendar year, the Revenue and Fiscal Affairs Office, Board of Economic Advisors must determine the increase or decrease in the ratio of the Consumer Price Index to the index as of December 31 of the previous year, and the limitation on compensation for noneconomic damages pursuant to subsection (A), (B), or (C) must be increased or decreased accordingly.

43. Punitive damages are not recoverable from MPA II pursuant to the language of the SCSCFA while allows for only the recovery of actual damages. Punitive damages are recoverable from Dr. Trant, subject to the limitations provided by S.C. Code Ann. § 15-32-530 which states in relevant part:

- A. Except as provided in subsections (B) and (C), an award of punitive damages may not exceed the greater of three times the amount of compensatory damages awarded to each claimant entitled thereto or the sum of five hundred thousand dollars.
- D. At the end of each calendar year, the Revenue and Fiscal Affairs Office must determine the increase or decrease in the ratio of the Consumer Price Index to the index as of December thirty-one of the previous year, and the maximum amount recoverable for punitive damages pursuant to subsection (A) must be increased or decreased accordingly.

44. In this action there are **three claimants**, The Estate of Taylor Danielle Price, and the statutory beneficiaries of Taylor Price, her parents. *See* USDC order of Sol Blott, Jr. in *Boyle v. United States*, 948 F. Supp. 2d 577 (D.S.C. 2012), Order dated August 7, 2012 and Order of South Carolina Circuit Court Judge John C. Hayes, III *Wilson v. Amisub of South Carolina, Inc., et al.*, Civil Action No. 06–CP–46–2891, Order dated March 25, 2009.

45. As of the date of this filing, the South Carolina Revenue and Fiscal Affairs Office has increased the amount of noneconomic damages that each claimant may recover against any single Health Care Institution or Health Care Provider to **\$512,773.00**.

46. Each claimant is entitled to recover two noneconomic damages caps (one as to Dr. Trant and one as to MPA II) for a total of **\$1,025,546.00** in recoverable noneconomic damages per claimant, and a total of **\$3,076,638.00** in total recoverable noneconomic damages for this matter.

47. As of the date of this filing, the South Carolina Revenue and Fiscal Affairs Office has increased the amount of punitive damages that each claimant may recover to **\$636,014.00** or three times the amount of compensatory damages awarded to each claimant.

48. Each claimant is entitled to recover up to either **\$636,014.00** in punitive damages from Dr. Trant, and a total of **\$1,908,042.00** in recoverable punitive damages from Dr. Trant, or three times the amount of compensatory damages awarded should that figure be greater.

49. Additionally, Plaintiff is alleging that Dr. Trant and MPA II, and their physicians, nurses, agents, and/or employees, committed reckless and grossly negligent acts which breached the standard of medical care for which caps do not exist. Thus, there are certain negligent, grossly negligent, reckless, willful, and wanton actions (and/or inactions) which have an unlimited amount of actual damages recoverable as to Dr. Trant.

50. Each act of negligence, gross negligence, recklessness, and/or willful and wanton conduct by Marion County School District and/or their employees, and/or other agents as detailed in this Complaint, or that is discovered during the pendency of this litigation, is a separate and distinct act or occurrence pursuant to the South Carolina Tort Claims Act S.C. Code Ann. Section 15-78-30(g).

51. Plaintiff is entitled to recover \$600,000.00 from Marion County School District for each and every separate and distinct occurrence that the jury will find.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence - Medical Malpractice as to Dr. Trant and MPA II)

52. Plaintiff realleges and reincorporates the above paragraphs as if fully set forth herein verbatim.

53. At all times material hereto, Dr. Trant was an employee or agent of MPA II and was acting within the scope and course of his employment or agency.

54. MPA II is liable for the negligent, grossly negligent, and reckless actions and omissions of Dr. Trant pursuant to the doctrine of *respondeat superior* and the law of agency.

55. As an employer, MPA II was also independently negligent in training and supervising Dr. Trant, and in either failing to have policies and procedures in place for how a pediatric cardiologist is supposed to treat a patient who has been referred for evaluation following multiple documented syncope/near syncope events, or in failing to ensure that such policies and procedures are followed by its employees and agents, and for otherwise failing to act as a reasonable and prudent employer of pediatric cardiologist(s) under the same or similar circumstances.

56. Dr. Trant and MPA II undertook the duty to render medical care to Taylor Price in accordance with the generally recognized medical practices and procedures which would be exercised by medical providers under the same or similar circumstances.

57. Dr. Trant and MPA II had a duty to use the reasonable care, skill, and learning in regard to the medical care provided to Taylor Price that a prudent medical care provider would use in like circumstances.

58. While Taylor Price was under their care, Dr. Trant and MPA II deviated from the prevailing professional standards of care and treatment of Taylor Price and were thereby negligent, careless, grossly negligent, reckless, and acted in violation of the duties owed to Taylor Price.

59. Dr. Trant and MPA II, and/or their nurses, employees, and/or other agents departed from prevailing acceptable standards of care and treatment as described above. These medical providers did not appropriately treat Taylor Price considering her documented, observable, objective symptoms and repeated subjective complaints. For all practical purposes, they allowed Taylor Price to suffer an entirely preventable agonizing death while they stood “idly by.” Dr. Trant and MPA II were negligent and/or grossly negligent, willful, wanton, and/or reckless and acted in violation of the duties owed to Taylor Price. As such they committed one or more of the following acts of omission or commission, any of which were departures from the prevailing acceptable standards of care:

- a) Failing to fully evaluate the complete medical history of Taylor Price;
- b) Failing to recognize abnormalities in Taylor Price’s December 18, 2018 electrocardiogram that would have required immediate follow up testing;
- c) Discharging Taylor Price improperly from their care with authorization to participate in physical education, sports, and cheerleading;
- d) Failing to follow the standard of care required of a board-certified cardiologist when a patient with multiple documented syncope/near syncope events is referred for evaluation;
- e) Failing to refer Taylor Price for follow up testing;
- f) Misdiagnosing Taylor Price with hyperventilation and hyper vagotonia;
- g) Making presumptive diagnoses of Taylor Price without actually performing any treatment or evaluation of her and without reviewing her full medical records; and,
- h) In such other particulars as will be discovered through discovery.

60. As confirmed through the Affidavit of Frank A. Cuoco, Jr., M.D., M.B.A., M.S., these actions and omissions on the part of Dr. Trant, while acting in the course and scope of his employment with MPA II, constitute negligence. The Affidavit of Dr. Cuoco is attached hereto as Exhibit A.

61. Dr. Trant and MPA II are jointly and severally liable as they were acting by and through their agents, servants, and/or employees including but not limited to Dr. Trant.

62. That as a direct and proximate result of the willful, wanton, reckless, grossly negligent, and negligent acts and omissions by Dr. Trant and MPA II as set out above, Taylor Price's Wrongful Death Beneficiaries, as represented by Plaintiff, have suffered injuries, which have caused, and in the future will cause, her Beneficiaries to suffer one or more of the following elements of damage as to the wrongful death claim: (a) pecuniary loss; (b) mental shock and suffering; (c) wounded feelings; (d) grief and sorrow; (e) loss of companionship; and (f) deprivation of use and comfort of Taylor Price's society, including loss of her experience, knowledge, and judgment in managing the affairs of herself and her Beneficiaries.

63. In addition, as a direct and proximate result of the willful, wanton, reckless, grossly negligent, and negligent acts and omissions by Dr. Trant and MPA II as set out above, Taylor Price suffered catastrophic injuries and great physical pain as she experienced heart failure and slowly died, as well as the following particulars:

- A. Pain and suffering;
- B. Past medical expenses;
- C. Injuries to her person;
- D. Mental anguish, worry, and stress;
- E. Miscellaneous expenses and costs; and,

F. In such other and further ways as the evidence will show at trial.

FOR A SECOND CAUSE OF ACTION

(Negligence/Gross Negligence/ Recklessness – Marion County School District)

64. Plaintiff realleges and reincorporates the above paragraphs as if fully set forth herein verbatim.

65. Marion County School District owed a duty of care to Taylor Price to maintain a reasonable, safe environment for the students of Mullins High School.

66. Marion County School District breached this duty and was therefore negligent, reckless, and grossly negligent in the following particulars:

- A. Disabling all of the water fountains at Mullins High School;
- B. Failing to exercise slight care to maintain a safe environment at Mullins High School;
- C. Failing to exercise slight care to procure immediate medical attention for Taylor Price;
- D. Failing to exercise slight care in the supervision of Taylor Price;
- E. Failing to exercise slight care in not replacing expired pads on the Automated External Defibrillator (AED) at Mullins High School.
- F. Failing to use the degree of care and caution that a reasonable, prudent person would have used under the same or similar circumstances;
- G. Failing to exercise slight care in the hiring, retention, and supervision of coaching staff; and,
- H. In such other particulars as will be discovered through discovery.

67. That as a direct and proximate result of the willful, wanton, reckless, grossly negligent, and negligent acts and omissions by Marion County School District and/or their employees, and/or other agents as set out above, Taylor Price's Wrongful Death Beneficiaries, as represented by Plaintiff, have suffered injuries, which have caused, and in the future will cause,

her Beneficiaries to suffer one or more of the following elements of damage as to the wrongful death claim: (a) pecuniary loss; (b) mental shock and suffering; (c) wounded feelings; (d) grief and sorrow; (e) loss of companionship; and (f) deprivation of use and comfort of Taylor Price's society, including loss of her experience, knowledge, and judgment in managing the affairs of herself and her Beneficiaries.

68. In addition, as a direct and proximate result of the willful, wanton, reckless, grossly negligent, and negligent acts and omissions by Marion County School District and/or their employees, and/or other agents as set out above, Taylor Price suffered catastrophic injuries and great physical pain as she experienced heart failure and slowly died, as well as the following particulars:

- A. Pain and suffering;
- B. Past medical expenses;
- C. Injuries to her person;
- D. Mental anguish, worry, and stress;
- E. Miscellaneous expenses and costs; and
- F. In such other and further ways as the evidence will show at trial.

WHEREFORE, having stated her factual allegations and causes of action against Defendants Charles A. Trant, M.D., McLeod Physician Associates II, and Marion County School District, Plaintiff Demetrice Utley, Individually and as Personal Representative of the Estate of Taylor Danielle Price, prays for the following:

- i. A trial by jury;
- ii. Judgment against Defendant Charles A. Trant, M.D. for actual and punitive damages pled herein in an amount to be determined by the jury;

- iii. Judgment against Defendant McLeod Physician Associates II for actual damages pled herein in an amount to be determined by the jury;
- iv. Judgment against Defendant Marion County School District for actual damages pled herein in an amount to be determined by the jury;
- v. For the costs of this action; and,
- vi. For such other and further relief as this court deems just and proper

Respectfully submitted,

By: s/J. Taylor Powell

Ellis R. Lesemann (SC Bar No. 15315)

erl@lalawsc.com

J. Taylor Powell (SC Bar No. 100211)

jtp@lalawsc.com

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Attorneys for Plaintiff

July 13, 2022

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF MARION

Demetrice Utley, Individually and as
Personal Representative of the Estate of
Taylor Danielle Price,

Plaintiff,

vs.

McLeod Physician Associates II., Charles
A. Trant, MD, Marion County School
District,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE TWELTH JUDICIAL CIRCUIT

Case No.: 2022-NI-33-_____

**AFFIDAVIT OF EXPERT WITNESS IN
MEDICAL MALPRACTICE CASE**

(SC Code Ann. §§ 15-36-100 & 15-79-125)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Frank A. Cuoco, Jr., M.D., M.B.A., M.S. being duly sworn, deposes and says:

1. I am a licensed physician and, since my graduation from medical school at Georgetown University School of Medicine in 2001 have been engaged in the active, clinical practice of medicine. For the past 18 years years, I have worked in the field of cardiology and am presently employed with HCA Physician Services Group – Charleston Heart Specialists as the director of cardiovascular outreach and the director of electrophysiology research which I joined in 2018. My qualifications are more fully set forth in my *curriculum vitae*, a copy of which is attached hereto.

2. Based on my education, training and experience as a physician working in the field of cardiology, I am knowledgeable and familiar with the standard of care required of what a reasonably prudent cardiologist would do or not do in caring for a patient like Taylor Price. I am also familiar with the potential complications that derive from an improper evaluation and failing to intervene appropriately.

3. I have reviewed the medical records of Taylor Price which included records from MUSC Florence f/k/a CHS - Florence, including December 18, 2018 ECG, MUSC Marion f/k/a CHS – Marion, MUSC Marion f/k/a Pee Dee Pediatrics, McLeod Physician Associates II, autopsy results from MUSC, and death certificate. The records I have reviewed are the type of

documents which I would consider in rendering an expert opinion in this case.

4. It is my opinion to a reasonable degree of medical certainty that the Defendants and/or their employees, nurses, or agents breached the standard of care in their treatment of Taylor Price and committed negligent, grossly negligent, and /or reckless acts or omissions. Without intending to limit the scope of my opinion some of the specific breaches of the standard of care I have identified as being committed by the Defendants are as follows:

- a. Failing to fully evaluate the complete medical history of Taylor Price;
- b. Failing to recognize abnormalities in Taylor Price's December 18, 2018 electrocardiogram that would have required immediate follow up testing.
- c. Discharging Taylor Price improperly from their care with authorization to participate in physical education, sports, and cheerleading;
- d. Failing to follow the standard of care required of a board-certified cardiologist when a patient with multiple documented exercised induced syncope/near syncope events is referred for evaluation;
- e. Failing to refer Taylor Price for follow up testing;
- f. Misdiagnosing Taylor Price with hyperventilation and hyper vagotonia; and,
- g. Making presumptive diagnoses of Taylor Price without actually performing any treatment or evaluation of her and without reviewing her full medical records.

5. Further, it is my opinion to a reasonable degree of medical certainty, more likely than not, that the deviations from the standard of care by the Defendants, contributed to Taylor Price's overall decline, injuries, damages, and death.

6. The factual basis for my opinion stated above at this time is based on the available evidence from the aforementioned medical records. I reserve the right to amend my opinion once I review additional records or additional evidence.

7. This affidavit is given in compliance with SC Code Ann. §§ 15-36-100 & 15-79-125 which do not require me to state all negligent acts or omissions by any defendant.

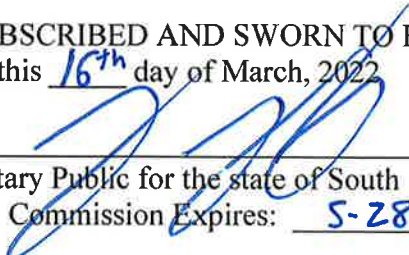
(Signature on Following Page)



Frank A. Cuoco, Jr., M.D., M.B.A., M.S.

FURTHER AFFIANT SAYETH NOT.

SUBSCRIBED AND SWORN TO BEFORE ME
on this 16th day of March, 2022



Notary Public for the state of South Carolina
My Commission Expires: 5-28-24

FRANK A CUOCO JR, MD/MBA/MS

Work: 9313 Medical Plaza Dr., Suite 305, Charleston, SC 29406

Home: 153 Captains Island Dr, Daniel Island, SC 29492

Cell: (843) 819-8538 • Work: (843) 566-4724

Email: frankcuoco@mac.com, frank.cuoco@hcahealthcare.com**PROFESSIONAL EXPERIENCE**

HCA PHYSICIAN SERVICES GROUP – CHARLESTON HEART SPECIALISTS**Charleston, SC****Partner, Director of Cardiovascular Outreach, Director of Electrophysiology Research**

April 2018 - Present

- Primary investigator in multiple clinical trials including WAVECREST, AMAZE, DIAMOND AF, STELLAR

MEDICAL UNIVERSITY OF SOUTH CAROLINA**Charleston, SC****Associate Professor of Medicine, Division of Cardiology, Cardiac Electrophysiology**

July 2009 – April 2018

- Leadership positions held:
 - Director & Section Chief, Cardiac Electrophysiology
 - Director of Cardiac Electrophysiology Lab & Operations
- Clinical role includes specialization procedures including radiofrequency and cryo-ablation of supraventricular and ventricular arrhythmias (including atrial fibrillation and ventricular tachycardia) and implantation of permanent pacemakers, ICDs and cardiac resynchronization therapy devices.
- Other procedural interests include structural heart disease applications in arrhythmia management, especially left atrial appendage occlusion and ligation for stroke prevention in AF. Was primary investigator for ACP trial for left atrial appendage occlusion.
- Established first and only center in SC performing renal denervation for arrhythmia suppression in the setting of NIH-sponsored trials (FIB)
- Investigator on numerous multicenter and single center clinical trials, including emerging technologies in device and ablation therapy as well as renal denervation for . Current active trials include REMARQABLE (Primary Investigator), TOCCASTAR CAP (Primary Investigator), ADAPTRRESPONSE (Primary Investigator), NAVIGATE, TORAY HOTBALLOON.
- Was largest single center/operator enroller in HEARTLIGHT clinical trial investigating novel visually guided laser balloon catheter for AF ablation. Recently presented clinical results at Heart Rhythm Scientific Sessions 2015, Boston, MA.
- Received Faculty/Teacher of the Year Award for the Division of Cardiology, 2010.
- Roles as Director of EP Lab and Operations include:
 - Organizing monthly EP operations meetings with EP faculty, fellows and staff in order to facilitate daily operations and improve staff and physician relationships and satisfaction.
 - Manage efforts with hospital Service Line administration to improve lab utilization, reduce procedural costs, and enhance lab throughput, turnaround and scheduling.
 - Enhance communication with staff, anesthesia and ECHO, regarding physician and staff case coverage
 - Analyze impact, educate staff and set up operations for novel EP procedures and technologies as they become available.
 - Consolidate requests and assess need for capital budgeting for EP lab.
 - Participate in formulation of annual budget and EP Service business plan
- Committees served:
 - EP Operations – 2011 to present
 - HVSL Quality – 2013 to present
 - Heart Rhythm Society – Quality Improvement (QI) Subcommittee – May 2016-present
 - Heart Rhythm Society – Membership Committee – May 2013-May 2015
- MUSC Faculty Senator – 2015 to present

THE ARRHYTHMIA CENTER at CHARLOTTE HEART & VASCULAR INSTITUTE**Port Charlotte, FL****Associate Physician, Cardiac Electrophysiology**

July 2008 – June 2009

- Started first atrial fibrillation ablation program in Charlotte County, FL.
- Co-investigator on numerous clinical trials with the CHVI Research Institute

EDUCATION & TRAINING

MEDICAL UNIVERSITY OF SOUTH CAROLINA**Charleston, SC****Division of Cardiology, Electrophysiology Fellow**

July 2006 – June 2008

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- Specialized training in procedures including radiofrequency and cryo-ablation of supraventricular and ventricular arrhythmias (including atrial fibrillation and ventricular tachycardia) and implantation of permanent pacemakers, ICDs and cardiac resynchronization therapy devices.

GEORGETOWN UNIVERSITY - WASHINGTON HOSPITAL CENTER**Division of Cardiology, Fellow****Washington, DC**

July 2004 – June 2006

- General cardiology training, including COCATS Level 2 echocardiography and completion of over 300 cardiac catheterizations.

GEORGETOWN UNIVERSITY MEDICAL CENTER**Department of Internal Medicine, Resident****Washington, DC**

June 2001 – June 2004

- *United States Medical Licensing Exam Step 1, 2, & 3: 251, 243, 244*
- *String of Pearls Award: April 2004, For Excellence in Medical Student Teaching*

GEORGETOWN UNIVERSITY, SCHOOL OF MEDICINE**Doctor of Medicine, *Magna Cum Laude*****Washington, DC**

May 2001

- *Alpha Omega Alpha*, Member, October 2000
- *William P. Argy Award in Internal Medicine*
- *Research Assistant, Department of Plastic Surgery*, March 2000 – May 2001

GEORGETOWN UNIVERSITY, McDONOUGH SCHOOL OF BUSINESS**Master of Business Administration****Washington, DC**

May 2001

- *Beta Gamma Sigma*, National Honor Society for Business, Member, April 2001
- Georgetown Business in Medicine Club – Vice President, Entrepreneurs Club, Finance Club

CASE WESTERN RESERVE UNIVERSITY**Master of Science, Biomedical Engineering, *Summa Cum Laude*****Cleveland, OH**

August 1996

- Whitaker Foundation Graduate Fellowship Recipient
- IEEE Student Research Finalist, 1996 IEEE Conference on Biomedical Engineering, Amsterdam, Netherlands

BOSTON UNIVERSITY**Bachelor of Science, Biomedical Engineering, *Summa Cum Laude*****Boston, MA**

May 1994

- *Adam M. Miller Scholar in Biomedical Engineering*, “In Honor of Superior Efforts to Enhance the Reputation and Prestige of the Biomedical Engineering Department”
- *Tau Beta Pi*, National Engineering Honor Society
- Biomedical Engineering Honor Society
- Varsity Golf Team, Tau Kappa Epsilon Fraternity President

MEDICAL LICENSURES & SOCIETY MEMBERSHIPS

MEDICAL LICENSURES

- State of South Carolina: 28932, Issued 6/15/2007
- District of Columbia: MD33923, Issued 9/20/2002 - Inactive
- Commonwealth of Virginia: 0101233311, Issued 9/4/2002 - Inactive
- State of Florida: ME10141, Issue 4/10/2008 - Inactive

BOARD CERTIFICATION

- American Board of Internal Medicine, Internal Medicine, Diplomate Number: 224109, August 24, 2004
- American Board of Internal Medicine, Cardiovascular Disease, October 31, 2007
- American Board of Internal Medicine, Clinical Cardiac Electrophysiology, November 11, 2008

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Email: frankcuoco@mac.com, frank.cuoco@hcahealthcare.com**MEDICAL SOCIETIES**

- **American Medical Association, Member**, May 2002 – present
- **American College of Cardiology**, Fellow, April 2009 – present
- **Heart Rhythm Society**, Fellow, July 2008 – present

OTHER PROFESSIONAL EXPERIENCE

McKINSEY CONSULTING & THE WASHINGTON HOME (TWH)**Washington, DC****Consultant, Project Leader**

October 1998 - May 1999

- Led team of MD/MBA students, in conjunction with a McKinsey consultants, in the benchmarking of TWH's clinical and financial performance against other top businesses in health care. Presented recommendations to board of trustees and board of managing directors at TWH's annual strategy retreat.

APPLIED NEURAL CONTROL LABORATORY, CWRU**Cleveland, OH****Research Assistant, Department of Biomedical Engineering**

August 1994 - July 1996

- Led research and design of a new peripheral nerve cuff electrode intended to restore function and minimize neuron damage in patients suffering from muscle paralysis. Developed a new method of measuring external pressures exerted by peripheral nerve electrodes, designed to quantify neuronal damage caused by electrode prostheses.
- Constructed and submitted research and fellowship grants for project funding. Served on committee responsible for attracting \$2M Whitaker grant for CWRU Department of Biomedical Engineering.

BRIGHAM AND WOMEN'S HOSPITAL, MASSACHUSETTES GENERAL HOSPITAL**Boston, MA****Project Manager, Department of Clinical Engineering**

September 1993 - May 1994

- Coordinated design team to adapt medical instrumentation to work in conjunction with new open-magnet surgical MRI unit. Final circuit design was adopted by Valleylab Corporation in their production of an electrosurgery unit.

SKILLS & INTERESTS

MARTIAL ARTS - GOSHIN JU JUTSU, COMBAT JIU JITSU**Cleveland, OH****Instructor, Military and Law Enforcement Training (MALET) Team**

August 1994 – June 2001

- Training of United States Army Special Forces, United States Military Police, local law enforcement, and corporate security and executives in combat techniques and self-defense.

OTHER PERSONAL INTERESTS

- Tennis and Snowboarding
- Cooking, Food and Wine Enthusiast

INVITED LECTURES & PRESENTATIONS (LOCAL/REGIONAL - SELECTED)

Novel Technologies for Stroke Prevention in Atrial Fibrillation, North Carolina-South Carolina Chapters of the American College of Cardiology Annual Joint Meeting, Kiawah Island, SC, September 2013

Left Atrial Appendage Occlusion for Stroke Prevention in Atrial Fibrillation, North Carolina-South Carolina Chapters of the American College of Cardiology Annual Joint Meeting, Kiawah Island, SC, September 2014

Transition to Practice: Finding the Right Job, Fellows in Training Day: North Carolina-South Carolina Chapters of the American College of Cardiology Annual Joint Meeting, Kiawah Island, SC, September 2014

Percutaneous Left Atrial Appendage Intervention: Today & Tomorrow, North Carolina-South Carolina Chapters of the American College of Cardiology Annual Joint Meeting, Pinehurst, NC, September 2015

Transition to Practice: Finding the Right Job, Fellows in Training Day: North Carolina-South Carolina Chapters of the American College of Cardiology Annual Joint Meeting, Pinehurst, NC, September 2015

Challenging Cases in AF Management, Augusta Cardiology Update, Kiawah, SC July 2017

Techniques for Stroke Reduction in Atrial Fibrillation, Southeast EP Society Fellows Conference, Nashville, TN, February 2014

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Anticoagulation for Atrial Fibrillation, Annual Cardiology Update, Charleston, SC, May 2011
Supraventricular Arrhythmias for Primary Care Physicians, Annual Cardiology Update, Charleston, SC, May 2012
Novel Therapies for Atrial Fibrillation, Annual Cardiology Update, Charleston, SC, May 2013
Stroke Reduction in Atrial Fibrillation, Annual Cardiology Update, Charleston, SC, May 2014
Strategies for Stroke Prevention in Atrial Fibrillation, Annual Cardiology Update, Charleston, SC, May 2015
Mechanical Stroke Prophylaxis for Atrial Fibrillation, Annual Cardiology Update, Charleston, SC, May 2016
Stroke Prevention in Atrial Fibrillation, Annual Cardiology Update, Charleston, SC, May 2017

Advanced Therapies for Atrial Fibrillation, Savannah-Memorial Health: Heart & Vascular Disease Update, Savannah, GA March 2012

Management of Ventricular Arrhythmias in Structural Heart Disease, MUSC Cardiology Grand Rounds, September 2010
Hemodynamic Monitoring for Congestive Heart Failure, MUSC Cardiology Grand Rounds, June 2011

Management of Atrial Fibrillation: A Decade of Progress, MUSC Medicine Grand Rounds, August 2010
Stroke Reduction in Atrial Fibrillation, MUSC Medicine Grand Rounds, September 2014

INVITED LECTURES & PRESENTATIONS (NATIONAL/INTERNATIONAL - SELECTED)

Finding the Right Job: Academics vs. Private Practice, Heart Rhythm Society: Emerging Electrophysiology, Chicago 2010 & 2011
Cardiac Resynchronization Therapy Optimization in Atrial Fibrillation, Heart Rhythm Society - Annual Scientific Sessions, Boston, MA, May 2010
Ergonomics and Lead Reduction in the Electrophysiology Lab, Heart Rhythm Society - Annual Scientific Sessions, Boston, MA, May 2010
Cardiac Resynchronization Therapy: Maximizing Patient Response with Left Ventricular Lead Placement, Heart Rhythm Society - Annual Scientific Sessions, Boston, MA, May 2012
Ergonomics and Lead Reduction in the Electrophysiology Lab, Heart Rhythm Society - Annual Scientific Sessions, San Francisco, CA, May 2013
Substrate Based Ventricular Tachycardia Ablation in Ischemic Heart Disease, Heart Rhythm Society, Annual Scientific Sessions, Denver, CO, May 2014
Challenging Cases in Arrhythmia Management, Vail EP Conference, Vail, CO, February 2016
Practical Atrioventricular Nodal Anatomy, Heart Rhythm Society - Annual Scientific Sessions, Boston, MA, May 2015
Chair and Program Director, Southeast EP Society Annual Meeting, Charleston, SC, February 2017

PUBLICATIONS**JOURNAL ARTICLES (PEER REVIEWED)**

F Cuoco, DM Durand. Measurement of External Pressures Exerted by Nerve Cuff Electrodes. *IEEE Trans Rehabil Eng.* 2000 Mar;8(1):35-41.

Spear SL, Ducic I, Low M, Cuoco F. The Effect of Radiation on Pedicled TRAM Flap Breast Reconstruction – Outcomes and Implications. *Plast Reconstr Surg.* 2005 Jan;115(1):84-95.

Ducic I, Spear SL, Cuoco F, Hannan C. Safety and risk factors for breast reconstruction with pedicled transverse rectus abdominis musculocutaneous flaps: a 10-year analysis. *Ann Plast Surg.* 2005 Dec;55(6):559-64.

Ducic I, Spear SL, Cuoco F, Hannan C. The Effect of Smoking on Flap and Donor-Site Complications in Pedicled TRAM Breast Reconstruction. *Plast Reconstr Surg.* 2005 Dec;116(7):1873-80.

Cuoco FA, Singh SN. Nonsustained ventricular tachycardia in dilated cardiomyopathy. *Current Cardiology Reports.* 2005 Sep; 7(5): 368-75.

Wijetunga M, Cuoco F, Ravi ND, Fuisz T, Strickberger SA. Characterization of the coronary sinus ostium by cardiac magnetic resonance imaging. *Am J Cardiol.* 2006 Nov 15;98(10):1400-2.

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Cuoco FA, Spencer WH, Fernandes VL, Nielsen CD, Nagueh S, Sturdivant JL, Leman RB, Wharton JM, Gold MR. Implantable cardioverter-defibrillator therapy for primary prevention of sudden death after alcohol septal ablation of hypertrophic cardiomyopathy. *J Am Coll Cardiol* 2008;52:1718-1723.

Cuoco FA, Gold MR. The Timing of CRT: AV and VV Optimization. Techniques, Benefits, and Limitations. Device Therapy for Heart Failure 2009;2(3):70-7.

Cuoco FA, Sturdivant JL, Leman RB, Wharton JM, Gold MR. Simplifying CRT implantation: delivery of downsized left ventricular leads via coronary vein subselection catheters - a case study. *The Journal of Innovations in Cardiac Rhythm Management*, September 2010:17-21.

Reynolds CR, Nikolski V, Sturdivant JL, Leman RB, **Cuoco FA**, Wharton JM, Gold MR. Randomized comparison of defibrillation thresholds from the right ventricular apex and outflow tract. *Heart Rhythm* 2010;7:1561-1566.

Quin EM, **Cuoco FA**, Forcina MS, Coker JB, Yoe RH, Spencer WH, Fernandes VL, Nielsen CD, Sturdivant JL, Leman RB, Wharton JM, and Gold MR. Defibrillation thresholds in hypertrophic cardiomyopathy. *J Cardiovasc Electrophysiol* 2011;22:569-572.

Cuoco FA, Gold MR. Cardiac resynchronization therapy in mild-moderate heart failure: realizing the benefits of primary prevention. *The Journal of Innovations in Cardiac Rhythm Management*, 1(2011), 135-137.

Cuoco FA, Gold MR. Optimization of cardiac resynchronization therapy: importance of programmed parameters. *J Cardiovasc Electrophysiol*. 2012 Jan;23(1):110-8.

Bernard M, Gold MR, **Cuoco F**. Pheochromocytoma presenting as recurrent stress cardiomyopathy with multiple monomorphic ventricular tachycardia. *The Journal of Innovations in Cardiac Rhythm Management* 2012;3:1-5.

Gold MR, Val-Mejias J, **Cuoco F**, Siddiqui M. Comparison of fixed tilt and tuned defibrillation waveforms: the PROMISE study. *J Cardiovasc Electrophysiol* 2013;24:323-327.

Rowley CP, Bernard ML, Brabham WW, Netzler PC, Sidney DS, **Cuoco F**, Sturdivant JL, Leman RB, Wharton JM, Gold MR. Safety of continuous anticoagulation with dabigatran during implantation of cardiac rhythm devices. *Am J Cardiol*. 2013 Apr 15;111(8):1118-8.

Quin EM, **Cuoco FA**, Sturdivant JL, Gold MR, Wharton JM. Utility of Routine Pulmonary Angiography Prior to Ablation of Atrial Fibrillation: a Controlled Randomized Study. *The Journal of Innovations in Cardiac Rhythm Management*, 5 (2014), 1494-1497.

Dukkipati SR, **Cuoco F**, Kutinsky I, Aryana A, Bahnson T, Lakkireddy D, Woolett I, Issa ZF, Natale A, Reddy VY. Pulmonary Vein Isolation Using the Visually Guided Laser Balloon: A Prospective, Multicenter, and Randomized Comparison to Standard Radiofrequency Ablation. *J Am Coll Cardiol* 2015;66:1350-60.

Daly DD, Maran A, Hyer JM, Funke F, Waring A, **Cuoco FA**, Sturdivant JL, Leman RB, Gold MR. The effect of chronic kidney disease on mortality with cardiac resynchronization therapy. *PACE* 2016;39:863-869.

Venkataraman G, Strickberger SA, Doshi S, Ellis CR, Lakkireddy D, Whalen SP, **Cuoco F**. Short-term safety and efficacy of left atrial appendage closure with the WATCHMAN device in patients with small left atrial appendage ostia. *J Cardiovasc Electrophysiol*. 2018 Jan;29(1):17-21

BOOK CHAPTERS

Cuoco FA, Gold MR. The Implantable Cardioverter Defibrillator. In: Ellenbogen KA, Wood MA, editors. Cardiac Pacing and ICDs, 5th Edition. Blackwell Publishing, Oxford, UK. 2008. P382-416.

Cuoco FA, Gold MR. Defibrillation threshold testing: who doesn't get it? *Card Electrophysiol Clin* 4 (2012);135-141.

Cuoco FA, Gold MR. Novel Applications of Pacemakers. In: Zipes DP, Jalife J, editors. Cardiac Electrophysiology: From Cell to Bedside, 6th edition. Elsevier Saunders, Philadelphia, PA, 2014. P 1191-1198.

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Cuoco FA, Gold MR. Subcutaneous and epicardial defibrillators Publication pending in Ellenbogun et al: Clinical Cardiac Pacing, Defibrillation, and Resynchronization Therapy, 5th Edition. Elsevier Saunders, Philadelphia, PA, 2015.

ABSTRACTS

Wijetunga M, **Cuoco F**, Ravi ND, Fuisz T, Strickberger SA. Analysis of coronary sinus ostial anatomy characterized by cardiac magnetic resonance imaging. *Heart Rhythm*, Vol. 3, Issue 5, S145

Cuoco, FA, Colley J, Spencer WH, Burke SW, Sayar SN, Kusmirek SL, Nielsen CD, Sturdivant JL, Leman RB, Wharton JM, *Gold MR*. Microvolt T-wave alternans does not predict appropriate implantable defibrillator discharges or correlate with traditional risk factors for sudden cardiac death in patients with hypertrophic obstructive cardiomyopathy. *JACC* 2007;49:9:30A.

Cuoco FA, Colley BJ, Spencer WH, Burke SW, Sayar SN, Kusmirek SL, Nielsen CD, Sturdivant JL, Leman RB, Wharton JM, *Gold MR*. Shock-free survival in patients with hypertrophic obstructive cardiomyopathy and implantable defibrillators following alcohol septal ablation. *J Am Coll Cardiol* 2007;49:9:40A.

Colley BJ, Maran A, Funcke F, **Cuoco FA**, Sturdivant JL, Leman R, Wharton M, *Gold MR*. Defibrillation thresholds and safety profiles with cardiac resynchronization therapy devices are similar to standard implantable cardiac defibrillators. *J Am Coll Cardiol* 2007;49:9:34A.

Cuoco FA, Colley BJ, Kusmirek SL, Sayar SN, Knick BJ, Lawhon BA, Walling JR, Sturdivant JL, Leman RB, *Gold MR*. Electrophysiologic properties of pulmonary vein extrasystoles in paroxysmal and persistent atrial fibrillation. *Heart Rhythm* 2007;4:5S:S16.

Colley BJ, Maran A, **Cuoco FA**, Funke F, Sayar SN, Kusmirek SL, Sturdivant JL, Leman RB, Wharton JM, *Gold MR*. Racial disparity in defibrillation thresholds. *Heart Rhythm* 2007;4:5S:S222.

Cuoco F, Fernandes V, Nielsen CD, Sturdivant JL, Leman RB, Wharton JM, Spencer WH, *Gold MR*. Comparison of microvolt T-wave alternans with invasive and non-invasive risk stratifiers for sudden cardiac death in hypertrophic cardiomyopathy. *J Am Coll Cardiol* 2008;51:10:A31.

Cuoco FA, Leslie DL, Luff M, Maran A, Klein MH, Forcina MS, Leman RB, Sturdivant JL, Wharton JM, *Gold MR*. Elevated defibrillation thresholds in CRT-D & ICD patients: comparisons & predictors. *Heart Rhythm* 2008;5:5S:S-237.

Cuoco FA, Krauthammer YS, Luff M, Leslie DL, Leman RB, Sturdivant JL, Wharton JM, *Gold MR*. The incidence and clinical predictors of Fidelis lead failures. *Heart Rhythm* 2008;5:5S:S-242.

Maran A, **Cuoco F**, Funke F, Sturdivant JL, Leman RB, Wharton JM, *Gold MR*. Impact of renal function on ventricular defibrillation thresholds. *Heart Rhythm* 2008;5:5S:S-387.

Forcina MS, Luff M, Amin A, **Cuoco FA**, Klein MH, Lawhon BA, Knick BJ, Sturdivant JL, Leman RB, Gold MR, Wharton JM. Predictors of hypocalcemia after wide area circumferential ablation of atrial fibrillation. *Circulation* 2008;118:18(2):5686.

Klein M, Krauthammer Y, **Cuoco FA**, Quin EM, Goebel J, Vest R, Sturdivant JL, Leman RB, Wharton JM, Gold, MR. Comparison of complication rates with downsized Medtronic versus St. Jude defibrillation leads. *Heart Rhythm* 2010;7:5S:PO5-156.

Funke FW, Maran A, Klein MH, Quin Em, Vest RN, Sturdivan JL, Leman RB, **Cuoco F**, Wharton JM, Gold MR. The impact of renal function on survival following CRT implantation. *Heart Rhythm* 2010;7:5S:PO6-159.

Brabham W, Goebel JA, Maran A, Funke FW, **Cuoco FA**, Leman RB, Sturdivant JL, Wharton JM, Gold MR. Is defibrillation testing needed for right pectoral ICD implants? *J Am Coll Cardiol* 2011;57:14.

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Brabham WW, Khalil SN, Maran A, Funke FW, Cave C, Sidney DS, Vest RN, Bernard ML, Leman RB, **Cuoco FA**, Sturdivant JL, Wharton JM, Gold MR. Comparison of right and left sided ICD defibrillation efficacy and mortality. *Heart Rhythm* 2011;8(5S):S220.

Bernard ML, **Cuoco FA**, Rowley C, Netzler P, Vest R, Sidney D, Leman RB, Sturdivant JL, Gold MR, Wharton JM. Effect of body mass index on extra-pulmonary vein triggers and ablation in paroxysmal and persistent atrial fibrillation. *Heart Rhythm* 2011;8(5S):S475.

Rowley CP, Bradford NS, Bernard ML, Sidney DS, Brabham WW, Netzler PC, Leman RB, Sturdivant JL, **Cuoco F**, Gold MR. Complications of atrial fibrillation ablation in patients anticoagulated with dabigatran compared to warfarin. *Heart Rhythm* 2012;9(5S):S201.

Bernard M, Brabham W, Netzler P, Rowley C, Gold MR, Leman R, Sturdivant J, Wharton JM, **Cuoco F**. Comparison of atrial fibrillation ablation bleeding and thrombotic complications with dabigatran, rivaroxaban and warfarin. *J Am Coll Cardiol* 2013;61(10):1107-52;A68.

Neuzil P, Dukkipati S, **Cuoco F**, Mansour MM, Natale AN, Marchilinski FM, Packer DP, Lamber HL, Bouvier JB, Reddy VY. Contact force sensing – the changing paradigm for RF ablation. *Europace*. 2013;15(S2):S104.

Netzler P, **Cuoco F**, George A, Leman R, Rajendra A, Rowley C, Sturdivant J, Wharton JM, Gold MR. The effect of left ventricular sensing electrode position on electrical delay in cardiac resynchronization therapy. *J Am Coll Cardiol* 2014;63(12):1255-100;A111.

Netzler PC, **Cuoco F**, George A, Leman R, Rajendra A, Rowley C, Wharton M, Gold MR. The effect of left ventricular sensing electrode position on electrical delay in cardiac resynchronization therapy. *Heart Rhythm* 2014;11(5S):S486.

Cuoco F, Michaud G, Shah DC, Horton RP, Kuck KH, Petru J, Walczack S, Harari D, Yulzari A, Reddy VY. Steerable Sheath Promotes Improved Contact Force Parameters During Pulmonary Vein Isolation. *Heart Rhythm* 2014;11(5S):S518.

Senfield J, Smith J, **Cuoco F**, Sturdivant JL, Leman RB, Rajendra A, George A, Lewis GF, Hyer M, Nietart P, Gold MR. Differences in defibrillation thresholds in single vs dual coil leads: is there still a role for dft testing in current practice? *Heart Rhythm* 2015;12(5S):S11.

Reddy VY, Neuzil P, Dukkipati S, Michaud GF, Kuck KH, Sailba WI, Lambert H, Van Zaen J, Mahapatra S, Harari D, **Cuoco F**. Deflectable sheath reduces intermittent catheter contact force associated with ineffective lesions and arrhythmia recurrence. *Heart Rhythm* 2015;12(5S):S444.

Reddy VY, Dukkipati SR, **Cuoco F**, Kutinski I, Aryana A, Bahnson TD, Lakkireddy DR, Woolet I, Issa Z, Natale A. Visually-Guided Lasso Balloon (VGBL) Pulmonary Vein Isolation for the Treatment of Paroxysmal Atrial Fibrillation (PAF): The Results of the Prospective Multicenter Randomized Hearlight Study. *Heart Rhythm* 2015;Late Breaking Clinical Trials II.

Daly DD, Maran A, Waring A, **Cuoco F**, Sturdivant JL, Leman RB, Gold MR. The Impact of Chronic Kidney Disease on Survival in Patients with Cardiac Resynchronization Therapy. *Circulation* 2015;132:A18385.

Senfield J, Smith J, **Cuoco F**, Sturdivant JL, Leman RB, George A, Lewis G, Gold MR. Predictors of High DFT in Single and Dual Coil Leads: Is There Still a Role for DFT Testing in Current Practice? *Circulation* 2015;132:A17550.

Afzal MR, Lee R, Nagaraj H, Tschopp D, Gidney B, Ellis C, Kar S, Gadiyaram V, Evonich R, Rasekh A, Cheng J, **Cuoco F**, Chandhok S, Gunda S, Iskandar S, Reddy M, Atkins D, Bommana S, Cuculich P, Gibson D, Nath J, Earnes M, Wilber D, Lakkireddy D. Experience of Percutaneous Left Atrial Appendage Suture Ligation: Results from a United States Multicenter Evaluation. *J Am Coll Cardiol* 2016;67(13_S):718.

Senfield S, Smith J, **Cuoco F**, Sturdivant JL, Leman RB, Lewis GF, Gold MR. Racial Disparity in Defibrillation Thresholds. *Heart Rhythm* 2012;5S:PO01-27.

Cuoco F, Sturdivant JL, Wharton M, Gold MR. Delayed Formation of an Atrial Bronchial Fistula Following Cryoballoon Ablation for Atrial Fibrillation. *Heart Rhythm* 2012;5S:PO01-150.

ELECTRONICALLY FILED - 2022 MAR 17 10:24 AM MARION - COMMON PLEAS - CASE#2022NI3300001
ELECTRONICALLY FILED 2022 JUN 13 2:49 PM - MARION - COMMON PLEAS - CASE#2022CP3300362

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Lewis GF, Cobb D, **Cuoco F**, Leman RB, Senfield J, Sturdivant JL, Wharton M, Gold MR. Quadripolar Leads Increase Interventricular Delay with CRT. *Heart Rhythm* 12;5S:PO04-17.

Cuoco F, Sturdivant JL, Wharton M, Gold MR. Incidence and Time Course of Bronchial Injury Following Cryoablation for Atrial Fibrillation. *Heart Rhythm* 12;5S:PO05-139.

Afzal MR, Lee RJ, Tschopp DR, Gidney BA, Ellis CR, Kar S, Badhwar N, Sanchez JM, Gadiyaram VK, Evonich RF, Rasekh A, Cheng **Cuoco F**, Chandhok S, Reddy M, Atkins D, Bommana S, Cuculich P, Gibson DN, Nath J, Ferrell R, Earnest M, Wilber DJ, Lakkireddy DR. Acute and Longterm Outcomes of Percutaneous Left Atrial Appendage Suture Ligation: Results from a United States Multicenter Evaluation. *Heart Rhythm* 12;5S:AB13-04

Cuoco F. Winterfield J, Sturdivant JL, Wharton MW, Gold MR. Effect of Minimal Irrigation on Esophageal Temperature During RF Ablation for Atrial Fibrillation. Presented at HR Scientific Sessions May 2017.

OTHER ORAL PRESENTATIONS/ABSTRACTS

F Cuoco, DM Durand. Measurement of External Pressures Exerted by Nerve Cuff Electrodes. Oral and Poster Presentations, *IEEE Conference on Biomedical Engineering*, September 1996, & *National Applied Neural Control Research Seminar*, May 1996.

F Cuoco, DM Durand. A Minimal Contact Cuff Electrode (McCuff) for Peripheral Nerve Stimulation. *National Applied Neural Control Research Seminar* and *CWRU Biomedical Engineering Conference*, Oral and Poster Presentation, May 1995.

F Cuoco, SM Boyd, D Raemer. Modification of an Electrosurgery Unit (ESU) for Compatibility with Open Magnet Magnetic Resonance Imaging (MRI) Unit. *Boston University Biomedical Engineering Invitational Seminar*, Oral Presentation, May 1994.

JOURNAL ARTICLES (SUBMITTED FOR PUBLICATION)

Cuoco FA, Nielsen CD, Fernandes, VL, Sturdivant JL, Leman RB, Wharton JM, Gold MR. Role of Microvolt T-wave Alternans and Electrophysiology Study for Risk Stratification of Sudden Cardiac Death in Hypertrophic Cardiomyopathy. Submitted for publication to *Journal of Cardiac Electrophysiology*

ELECTRONICALLY FILED 2022 Mar 11 10:24 AM - MARION - COMMON PLEAS - CASE#2022NI3800001
ELECTRONICALLY FILED 2022 Mar 11 3:42 PM - MARION - COMMON PLEAS - CASE#2022CP3500362

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF MARION	)	C/A NO.: 2022-CP-33-00362
Demetrice Utley, Individually and	)	
as Personal Representative of	)	
the Estate of Taylor Danielle	)	
Price,	)	
	)	
	)	ANSWER TO COMPLAINT
	)	ON BEHALF OF DEFENDANTS
vs.	)	MCLEOD PHYSICIAN ASSOCIATES II
	)	AND CHARLES A. TRANT, MD
McLeod Physician Associates, II,	)	
Charles A. Trant, M.D.,	)	
Marion County School District,	)	
	)	
Defendants.	)	

The Defendants, McLeod Physician Associates II and Charles A. Trant, M.D. ("McLeod Defendants"), answering the Complaint herein, respectfully allege:

The McLeod Defendants deny each and every allegation of the Plaintiff's Complaint not specifically addressed herein. These Defendants allege and say as follows:

FOR A FIRST DEFENSE

1. Answering Paragraph 1: The McLeod Defendants admit, upon information and belief, that the Plaintiff is the duly appointed Personal Representative of the Estate of Taylor Danielle Price ("Decedent"); the McLeod Defendants further admit that the Plaintiff has alleged causes of action pursuant to § 15-51-10, *et seq.*, and § 15-5-90, *et seq.*, of the South Carolina Code; the McLeod Defendants deny the remaining allegations set forth in Paragraph 1 of the Complaint and specifically deny the allegations of negligence, gross negligence, and medical malpractice.

2. Answering Paragraph 2: The McLeod Defendants admit, upon information and belief, the allegations contained in Paragraph 2 of the Complaint.

3. Answering Paragraph 3: The McLeod Defendants admit, upon information and belief, the allegations contained in Paragraph 3 of the Complaint.

4. Answering Paragraph 4: The McLeod Defendants admit the allegations contained in Paragraph 4 of the Complaint. Dr. Trant saw Taylor Danielle Price one time on January 24, 2019. Dr. Trant invited Taylor Price and her family to return if symptoms persisted or did not respond as requested. Tragically, Taylor Price died almost two years later.

5. Answering Paragraph 5: The McLeod Defendants admit that McLeod Physician Associates II ("MPA II") is a not-for-profit corporation organized and existing pursuant to the laws of the State of South Carolina, which employs physicians, including Charles A. Trant, M.D.; the McLeod Defendants further admit that Dr. Trant, currently retired, was a pediatric cardiologist and was an employee of MPA II; except as herein admitted, the remaining allegations contained in Paragraph 5 of the Complaint are denied.

6. Answering Paragraph 6: The McLeod Defendants are without information and belief as to the allegations contained in Paragraph 6 of the Complaint.

AS TO JURISDICTION AND VENUE

7. Answering Paragraph 7: Paragraph 7 calls for a legal conclusion to which a response is not required. The McLeod Defendants reserve the right to file a Motion for a Change of Venue should circumstances change.

AS TO JOINT AND SEVERAL LIABILITY

8. Answering Paragraph 8: The McLeod Defendants deny the allegations contained in Paragraph 8 of the Complaint.

AS TO PRE-SUIT PROCEDURES

9. Answering Paragraph 9: The McLeod Defendants admit that on March 17, 2022, a Notice of Intent to File Suit, with an attached expert affidavit, and Plaintiff's Answers to Standard Interrogatories, were filed with the Clerk of Court for Marion County, South Carolina, and given Civil Action Number 2022-NI-33-00001. The McLeod Defendants deny the substantive allegations set forth in the Plaintiff's expert affidavit.

10. Answering Paragraph 10: The McLeod Defendants admit the allegations contained in Paragraph 10 of the Complaint.

11. Answering Paragraph 11: The McLeod Defendants admit the allegations contained in Paragraph 11 of the Complaint.

12. Answering Paragraph 12: The McLeod Defendants admit the allegations contained in Paragraph 12 of the Complaint.

AS TO THE STATEMENT OF FACTS

13. Answering Paragraph 13: The McLeod Defendants admit the allegations contained in Paragraph 13 of the Complaint.

14. Answering Paragraph 14: The McLeod Defendants crave reference to the medical records related to the care and treatment rendered and to the testimony of the various healthcare providers of Taylor Danielle Price for a complete and accurate recitation of the care rendered to her.

15. Answering Paragraph 15: The McLeod Defendants crave reference to the medical records related to the care and treatment rendered and to the testimony of the various healthcare providers of Taylor Danielle Price for a complete and accurate recitation of the care rendered to her.

16. Answering Paragraph 16: The McLeod Defendants crave reference to the medical records related to the care and treatment rendered and to the testimony of the various healthcare providers of Taylor Danielle Price for a complete and accurate recitation of the care rendered to her.

17. Answering Paragraph 17: The McLeod Defendants crave reference to the medical records related to the care and treatment rendered and to the testimony of the various healthcare providers of Taylor Danielle Price for a complete and accurate recitation of the care rendered to her.

18. Answering Paragraph 18: The McLeod Defendants crave reference to the medical records related to the care and treatment rendered and to the testimony of the various healthcare providers of Taylor Danielle Price for a complete and accurate recitation of the care rendered to her.

19. Answering Paragraph 19: The McLeod Defendants admit that Taylor Price's primary care physician, Marc Bahan, M.D., referred her to Dr. Trant, a pediatric cardiologist, and further that Dr. Trant evaluated Taylor Price January 24, 2019. On this date, Dr. Trant performed the appropriate type and level of evaluation per the standard of care for pediatric cardiologists; he evaluated the chief complaint, history of present illness, past medical history, family history, social history, and review of symptoms, as provided by the patient, family, and the available medical record that Dr. Trant had. Dr. Trant completed the physical examination and reviewed the EKG, and concluded that the symptoms of Taylor Price were most consistent with a combination of hyperventilation and hyper vagotonia, both of which are related to changes during puberty.

20. Answering Paragraph 20: The McLeod Defendants admit that on January 24, 2019, Dr. Trant performed the appropriate type and level of evaluation per the standard of care for pediatric cardiologists; he evaluated the chief complaint, history of present illness, past medical history, family history, social history, and review of symptoms, as provided by the patient, family, and the available medical record. He completed his physical examination and reviewed the EKG. Pursuant to the history of present illness and examination, the standard of care did not require anything other than what was done by Dr. Trant.

21. Answering Paragraph 21: The McLeod Defendants admit the allegations contained in Paragraph 21 of the Complaint, and further state that the diagnosis of Dr. Trant was also the opinion of Dr. Halus.

22. Answering Paragraph 22: The McLeod Defendants crave reference to the medical records related to the care and treatment rendered and to the testimony of the various healthcare providers of Taylor Danielle Price for a complete and accurate recitation of the care rendered to her. Dr. Trant does not have any record of a visit or an EKG from December 18, 2018. The EKG in the record was done December 12, 2018, interpreted by Dr. Scott Wolery, an adult cardiologist, and per the interpretation of Dr. Wolery, and the interpretation of Dr. Trant, the EKG was normal. IRBBB on the EKG is a common non-pathological finding in teenagers. Dr. Trant admits that he cleared Taylor Price for P.E. through the Spring semester of the 2018 – 2019 school year, because there was no evidence of a problem. Dr. Trant is without information and belief as to who cleared Taylor Price for the 2019 - 2020 school year, and again for the 2020 – 2021 school year.

23. Answering Paragraph 23: The McLeod Defendants are without information and belief as to the allegations contained in Paragraph 23 of the Complaint.

24. Answering Paragraph 24: The McLeod Defendants are without information and belief as to the allegations contained in Paragraph 24 of the Complaint.

25. Answering Paragraph 25: The McLeod Defendants are without information and belief as to the allegations contained in Paragraph 25 of the Complaint.

26. Answering Paragraph 26: The McLeod Defendants are without information and belief as to the allegations contained in Paragraph 26 of the Complaint.

27. Answering Paragraph 27: The McLeod Defendants are without information and belief as to the allegations contained in Paragraph 27 of the Complaint.

28. Answering Paragraph 28: The McLeod Defendants are without information and belief as to the allegations contained in Paragraph 28 of the Complaint.

29. Answering Paragraph 29: The McLeod Defendants crave reference to the medical records related to the care and treatment rendered and to the testimony of the various healthcare providers of Taylor Danielle Price for a complete and accurate recitation of the care rendered to her.

30. Answering Paragraph 30: The McLeod Defendants admit that tragically Taylor Price died on December 17, 2021, but they are without information and belief as to the remaining allegations contained in Paragraph 30 of the Complaint, and therefore deny the same. The McLeod Defendants do not have any information about the alleged conference among the Plaintiff, the Plaintiff's husband, and an attending physician.

31. Answering Paragraph 31: The McLeod Defendants crave reference to the medical records related to the care and treatment rendered and to the testimony of the various healthcare providers of Taylor Danielle Price for a complete and accurate recitation of the care rendered to her.

32. Answering Paragraph 32: The McLeod Defendants deny the allegations contained in Paragraph 32 of the Complaint.

33. Answering Paragraph 33: The McLeod Defendants deny the allegations contained in Paragraph 33 of the Complaint.

AS TO DAMAGES RECOVERABLE AS TO EACH DEFENDANT

34. Answering Paragraph 34: MPA II states that it is a charitable organization as defined by Chapter 56 of Title 33 of the *South Carolina Code of Laws* (1976 as amended) and pursuant to said statutory scheme, recovery against this Defendant for any tortious act or omission is specifically limited to actual damages in a specified amount. MPA II admits it is entitled to all protections set forth in the South Carolina Solicitation of Charitable Funds Act.

35. Answering Paragraph 35: The McLeod Defendants admit that SCSCFA references the South Carolina Tort Claims Act.

36. Answering Paragraph 36: The McLeod Defendants admit that the Plaintiff has correctly cited S.C. Code Ann. § 15-78-120.

37. Answering Paragraph 37: The McLeod Defendants admit the allegations contained in Paragraph 37 of the Complaint.

38. Answering Paragraph 38: The McLeod Defendants deny the allegations contained in Paragraph 38 of the Complaint.

39. Answering Paragraph 39: The McLeod Defendants admit that the statutory cap of Dr. Trant pursuant to S.C. Code Ann. § 15-78-120 is \$1,200,000.00.

40. Answering Paragraph 40: The McLeod Defendants deny the allegations contained in Paragraph 40 of the Complaint.

41. Answering Paragraph 41: The McLeod Defendants deny the allegations contained in Paragraph 41 of the Complaint. The McLeod Defendants state that Dr. Trant is indeed entitled to the limitation of liability provided by the SCSCFA.

42. Answering Paragraph 42: The South Carolina Solicitation of Charitable Funds Act is the appropriate statutory authority for this case. The McLeod Defendants do admit that the Plaintiff has correctly cited certain portions of S.C. Code Ann. § 15-32-220. The South Carolina Noneconomic Damage Awards Act of 2005 is not applicable to this action since MPA II is a not-for-profit corporation, organized and existing pursuant to the laws of the State of South Carolina, and Dr. Trant is an employee of MPA II.

43. Answering Paragraph 43: The McLeod Defendants deny the allegations contained in Paragraph 43 of the Complaint. Pursuant to S.C. Code Ann. § 15-78-120, no award under that chapter shall include punitive or exemplary damages or interest prior to judgment.

44. Answering Paragraph 44: The McLeod Defendants deny the allegations contained in Paragraph 44 of the Complaint.

45. Answering Paragraph 45: The McLeod Defendants admit that by statute there is a cap for noneconomic damages in a case in which noneconomic damages are appropriate. This case is governed by the South Carolina Solicitation of Charitable Funds Act.

46. Answering Paragraph 46: The McLeod Defendants deny the allegations contained in Paragraph 46 of the Complaint.

47. Answering Paragraph 47: The McLeod Defendants deny the allegations contained in Paragraph 47 of the Complaint.

48. Answering Paragraph 48: The McLeod Defendants deny the allegations contained in Paragraph 48 of the Complaint.

49. Answering Paragraph 49: The McLeod Defendants deny the allegations contained in Paragraph 48 of the Complaint.

50. Answering Paragraph 50: The McLeod Defendants deny the allegations contained in Paragraph 50 of the Complaint.

51. Answering Paragraph 51: The McLeod Defendants deny the allegations contained in Paragraph 51 of the Complaint.

FOR A DEFENSE TO THE FIRST CAUSE OF ACTION
(Negligence/Gross Negligence – Medical Malpractice as to Dr. Trant and MPA II)

52. Answering Paragraph 52: These Defendants deny Paragraph 52 of the Complaint.

53. Answering Paragraph 53: The McLeod Defendants admit the allegations contained in Paragraph 53 of the Complaint.

54. Answering Paragraph 54: The McLeod Defendants acknowledge the doctrine of *respondeat superior*; except as herein admitted, the remaining allegations contained in Paragraph 54 of the Complaint are denied.

55. Answering Paragraph 55: The McLeod Defendants deny the allegations contained in Paragraph 55 of the Complaint.

56. Answering Paragraph 56: MPA II does not practice medicine. The McLeod Defendants admit that Dr. Trant had a duty to practice medicine pursuant to appropriate standards of care, and the McLeod Defendants further state that Dr. Trant honored this duty.

57. Answering Paragraph 57: MPA II does not practice medicine. The McLeod Defendants admit that Dr. Trant had a duty to practice medicine pursuant to appropriate standards of care, and the McLeod Defendants further state that Dr. Trant honored this duty.

58. Answering Paragraph 58: The McLeod Defendants deny the allegations contained in Paragraph 58 of the Complaint.

59. Answering Paragraph 59: The McLeod Defendants deny the allegations contained in Paragraph 59 of the Complaint, including all subparagraphs.

60. Answering Paragraph 60: The McLeod Defendants are in receipt of the Affidavit of Frank A. Cuoco, Jr., M.D., an adult cardiologist, but deny the substantive allegations set forth in Dr. Cuoco's Affidavit.

61. Answering Paragraph 61: The McLeod Defendants deny the allegations contained in Paragraph 61 of the Complaint.

62. Answering Paragraph 62: The McLeod Defendants deny the allegations contained in Paragraph 62 of the Complaint.

63. Answering Paragraph 63: The McLeod Defendants deny the allegations contained in Paragraph 63 of the Complaint, including all subparagraphs.

FOR A DEFENSE TO THE SECOND CAUSE OF ACTION
(Negligence/Gross Negligence/Recklessness – Marion County School District)

64. Answering Paragraph 64: These Defendants deny Paragraph 64 of the Complaint.

65. Answering Paragraphs 65, 66, 67, and 68: The McLeod Defendants are without information and belief as to the allegations contained in Paragraphs 65, 66, 67, and 68 of the Complaint.

FOR A SECOND DEFENSE

66. MPA II states that it is a 501(c)(3) corporation which operates exclusively for benevolent, educational, scientific and charitable purposes.

FOR A THIRD DEFENSE

67. MPA II would show that it is a charitable organization as defined by Chapter 56 of Title 33 of the *South Carolina Code of Laws* (1976 as amended) and pursuant to said statutory scheme, recovery against this Defendant for any tortious act or omission is specifically limited to actual damages in a specified amount and this Defendant pleads said statutory scheme as a bar and/or limitation to recovery by the Plaintiff in this action.

FOR A FOURTH DEFENSE

68. MPA II is entitled to the protection set forth in § 33-56-180(A) of the *1976 Code of Laws of South Carolina*, as amended, which limits recovery against MPA II, and exempts it from a claim of punitive damages under the allegations in the Plaintiff's Complaint.

FOR A FIFTH DEFENSE

69. The Defendant Dr. Trant was an "employee" or "agent" of MPA II as that term is defined within *S.C. Code Ann.* Section 33-56-170. Accordingly, Dr. Trant is entitled to the protections set forth in *S.C. Code Ann.* Section 15-78-10, *et seq.*, which limits recovery against employee/agent of a charitable organization and exempts such an employee/agent from a claim of punitive damages as claimed within the Complaint. Further, an employee of a charitable organization is immune from liability unless a specific finding is made that the employee acted in a reckless, willful, or grossly negligent manner.

FOR A SIXTH DEFENSE

70. As an employee of a charitable corporation, Dr. Trant is entitled to immunity from being personally sued in a lawsuit. All claims against him fail to state a claim for which relief should be granted and he is entitled to be dismissed from this lawsuit.

FOR A SEVENTH DEFENSE

71. Dr. Trant is an improper party Defendant to this lawsuit under the doctrine of charitable immunity.

FOR AN EIGHTH DEFENSE

72. The Complaint fails to state facts sufficient to constitute a cause of action against Dr. Trant.

FOR A NINTH DEFENSE

73. That the care and treatment rendered by Dr. Trant conformed to and was in full compliance with the standard of care. All care and treatment administered by Dr. Trant was within acceptable medical standards and methods, and, at no time pertinent thereto did Dr. Trant deviate from any medical standard while caring for or tending to Taylor Danielle Price. Consequently, the Plaintiff is barred from recovery against this Defendant.

FOR A TENTH DEFENSE

74. That, even if Dr. Trant were negligent, as alleged in the Complaint, which is specifically denied, the negligence of this Defendant was not the direct or proximate cause of any injury alleged by the Plaintiff and therefore this Defendant is not liable for any damages allegedly sustained.

FOR AN ELEVENTH DEFENSE

75. The McLeod Defendants allege that their employees and personnel properly followed proper standards recognized and practiced by physician offices and employers. The McLeod Defendants further allege that their employees and personnel practiced that degree of knowledge, care, and skill equal to that of similarly-qualified employees and personnel and that they acted in accordance with standards recognized and practiced by hospital personnel, physician offices and employers. As such, Plaintiff is barred from recovery against the McLeod Defendants.

FOR A TWELFTH DEFENSE

76. The McLeod Defendants allege, upon information and belief, that any alleged injuries and/or damages sustained by Taylor Danielle Price were due to, caused, and occasioned by a natural disease process over which these Defendants had no control and, as such, plead such natural disease process as a complete bar to this action.

FOR A THIRTEENTH DEFENSE

77. Whatever injuries the Plaintiff sustained, which are specifically denied herein, were the result of Taylor Danielle Price's predisposition to medical conditions, whether disclosed or undisclosed, and were not related to the incidents complained of in the Complaint.

FOR A FOURTEENTH DEFENSE

78. All damages sought by Plaintiff are limited in an amount under South Carolina law due to Dr. Trant's status as an employee of a charitable institution.

FOR A FIFTEENTH DEFENSE

79. The Defendants allege that an award of punitive damages in this case would violate the 5th, 6th and 14th amendments to the United States Constitution and Article One, Section 3 of the South Carolina Constitution in that:

- a) The unfettered power to award punitive damages in any manner is wholly devoid of a meaningful standard and is inconsistent with due process guarantees; and,
- b) Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness.

FOR A SIXTEENTH DEFENSE

80. These Defendants expressly deny that facts and circumstances exist sufficient to entitle Plaintiff to an award of punitive damages. Nevertheless, these Defendants plead the terms, conditions, procedures, standards, and limitations of Sections 15-32-510 through 15-32-540, *South Carolina Code of Laws*, 1976, as amended, in response to Plaintiff's claims for punitive damages.

WHEREFORE, having fully answered the Complaint herein, the McLeod Defendants pray that the Plaintiff's Complaint be dismissed, with costs, and for such further relief as may be just and proper.

By: s/J. Boone Aiken, III
J. BOONE AIKEN, III
 SC Bar No. 307
 AIKEN BRIDGES
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ATTORNEYS FOR THE DEFENDANTS,
MCLEOD PHYSICIAN ASSOCIATES II AND
CHARLES A. TRANT, MD

August 24, 2022

Florence, South Carolina

(36409)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF MARION	)	FOR THE TWELFTH JUDICIAL CIRCUIT
	)	
Demetrice Utley, Individually and as	)	
Personal Representative of the Estate of	)	Case No.: 2022-CP-33-00362
Taylor Danielle Price,	)	
	)	
Plaintiff,	)	OFFER OF JUDGMENT TO
vs.	)	DEFENDANT
	)	MCLEOD PHYSICIAN ASSOCIATES II
McLeod Physician Associates II, Charles A.	)	
Trant, MD, Marion County School District,	)	
	)	
Defendants.	)	
	)	

TO: J. BOONE AIKEN, ESQ., COUNSEL FOR DEFENDANTS MCLEOD PHYSICIAN ASSOCIATES II AND CHARLES A. TRANT:

Pursuant to S.C. Code Ann. § 15-35-400 and Rule 68, SCRCPP, Plaintiff hereby makes the following Offer of Judgment to Defendant McLeod Physician Associates II and MAG Mutual Insurance Company:

In consideration of a judgment against Defendant McLeod Physician Associates II ("MPA II") in the amount of One Million One Hundred Ninety-Nine Thousand Nine Hundred and Ninety-Nine and 00/100 Dollars (\$1,199,999.00) Plaintiff will discharge any and all claims against Defendants MPA II and Charles A. Trant, MD ("Trant") for the damages allegedly sustained by Plaintiff arising out of the circumstances described in Plaintiff's Complaint.

An acceptance of this Offer of Judgment would result in the payment of \$1,199,999.00 to Plaintiff by MAG Mutual Insurance Company, the entity providing professional liability coverage to MPA II and Trant with a shared policy limit of \$1,200,000.00. If this Offer of Judgment is not accepted within twenty (20) days after notification of this offer or prior to or on the tenth day before the actual trial date, whichever date occurs first, this offer shall be considered rejected.

However, Plaintiff reserves the right to withdraw this Offer of Judgment prior to its acceptance or prior to the date on which it would be considered rejected by giving notice to you or your client in accordance with the service rules for motions and other pleadings outlined in the South Carolina Rules of Civil Procedure. Pursuant to S.C. Code Ann. § 15-35-400(B) and SCRCP 68, if Defendant MPA II does not accept this Offer of Judgment and Plaintiff obtains a verdict or determination at least as favorable as this offer, Plaintiff shall seek to recover from MPA II: (1) any administrative, filing, or other court costs from the date of this offer until judgment; and (2) eight percent annual interest computed on the amount of the verdict or award from the date of this offer. However, by making this Offer of Judgment, Plaintiff does not waive her right to seek any greater remedies that may be available to it than those set forth in S.C. Code Ann. § 15-35-400 and SCRCP 68 including, without limitation, her right to seek a recovery of pre-judgment interest at a rate greater than eight percent per annum.

Within twenty (20) days after notification, or at least ten (10) days prior to the trial date, whichever date is earlier, Defendant MPA II or their attorney, J. Boone Aiken, may file with the Clerk of Court a written acceptance of this Offer of Judgment and serve it upon Plaintiff in accordance with the South Carolina Rules of Civil Procedure.

(Signature on Following Page)

Respectfully submitted,

By: s/J. Taylor Powell

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Attorneys for Plaintiff

November 15, 2022
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF MARION	)	C/A NO.: 2022-CP-33-00362

Demetrice Utley, Individually and)
as Personal Representative of)
the Estate of Taylor Danielle)
Price,)

**MOTION FOR CHANGE
OF VENUE**

vs.)

McLeod Physician Associates, II,)
Charles A. Trant, M.D.,)
Defendants.)

The Defendant, Charles A. Trant, M.D., hereby moves for a change of venue from the County of Marion to the County of Florence, State of South Carolina.

This action was originally filed against McLeod Physician Associates II, Charles A. Trant, M.D., and Marion County School District on July 13, 2022.

Paragraph 7 of the Complaint alleges that venue was proper in Marion County because some of the alleged acts or omissions giving rise to Plaintiff's claims occurred in Marion County. The Plaintiff further stated in Paragraph 7 that not only is venue proper in Marion County, but pursuant to S.C. Code Ann. § 15-78-100(b), venue must be in Marion County as Marion County School District is a Defendant. This is no longer the case. Marion County School District has been released from this litigation by an Order from the Honorable H. Steven DeBerry, IV, granting Summary Judgment in favor of Marion County School District.

Therefore, venue is now only proper in Florence County.

Pursuant to S.C. Code § 15-7-30(C) a civil action tried pursuant to this section against

a resident individual defendant must be brought and tried in the county in which the: (1) defendant resides at the time the cause of action arose; or (2) the most substantial part of the alleged act or omission giving rise to the cause of action occurred.

Dr. Trant is a citizen and resident of Florence County. Dr. Trant does not own property or transact business in Marion County. At the time the cause of action arose, Dr. Trant was a citizen and resident of Florence County, and all of the alleged acts or omissions of Dr. Trant giving rise to Plaintiff's alleged claims occurred in Florence County. The right of a defendant to be tried in a county of his/her residence is a substantial right.

WHEREFORE, Dr. Trant respectfully requests an Order changing the venue from Marion County to Florence County. McLeod Physician Associates II consents to this Motion.

Respectfully submitted,

By: s/J. Boone Aiken, III
J. BOONE AIKEN, III
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ATTORNEYS FOR THE DEFENDANTS,
 MCLEOD PHYSICIAN ASSOCIATES II AND
 CHARLES A. TRANT, MD

September 9, 2024

Florence, South Carolina

(36409)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF MARION	)	C/A NO.: 2022-CP-33-00362

Demetrice Utley, Individually and)
as Personal Representative of)
the Estate of Taylor Danielle)
Price,)

**AMENDED
MOTION FOR CHANGE
OF VENUE**

vs.)

McLeod Physician Associates, II,)
Charles A. Trant, M.D.,)
Defendants.)

The Defendant, Charles A. Trant, M.D., withdraws the Motion for Change of Venue filed earlier today with the Court and respectfully asks the Court to substitute this Amended Motion in its place. Dr. Trant hereby moves for a change of venue from the County of Marion to the County of Florence, State of South Carolina.

This action was originally filed against McLeod Physician Associates II, Charles A. Trant, M.D., and Marion County School District on July 13, 2022.

Paragraph 7 of the Complaint alleges that venue was proper in Marion County because some of the alleged acts or omissions giving rise to Plaintiff's claims occurred in Marion County. The Plaintiff further stated in Paragraph 7 that not only is venue proper in Marion County, but pursuant to S.C. Code Ann. § 15-78-100(b), venue must be in Marion County as Marion County School District is a Defendant.

Attorneys for the Plaintiff advised the Court today after the jury had been drawn that the Plaintiff had reached an agreement with Marion County School District. Therefore, it is anticipated that the Court will release Marion County School District from this litigation.

Thus, venue is now only proper in Florence County.

Pursuant to S.C. Code § 15-7-30(C) a civil action tried pursuant to this section against a resident individual defendant must be brought and tried in the county in which the: (1) defendant resides at the time the cause of action arose; or (2) the most substantial part of the alleged act or omission giving rise to the cause of action occurred.

Dr. Trant is a citizen and resident of Florence County. Dr. Trant does not own property or transact business in Marion County. At the time the cause of action arose, Dr. Trant was a citizen and resident of Florence County, and all of the alleged acts or omissions of Dr. Trant giving rise to Plaintiff's alleged claims occurred in Florence County. The right of a defendant to be tried in a county of his/her residence is a substantial right.

WHEREFORE, Dr. Trant respectfully requests an Order changing the venue from Marion County to Florence County. McLeod Physician Associates II consents to this Motion.

Respectfully submitted,

By: s/J. Boone Aiken, III
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ATTORNEYS FOR THE DEFENDANTS,
 MCLEOD PHYSICIAN ASSOCIATES II AND
 CHARLES A. TRANT, MD

September 9, 2024

Florence, South Carolina

(36409)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF MARION	)	C/A NO.: 2022-CP-33-00362
Demetrice Utley, Individually and	)	
as Personal Representative of	)	
the Estate of Taylor Danielle	)	
Price,	)	
vs.	)	MEMORANDUM OF LAW
	)	IN SUPPORT OF
	)	MOTION TO CHANGE VENUE ,
McLeod Physician Associates, II,	)	
Charles A. Trant, M.D.,	)	
Marion County School District,	)	
	)	
Defendants.	)	
	)	

"Where an action is properly commenced in any one of two or more venues and is properly brought in one of such venues, it is removable to the other proper venue only if there exists some statutory ground for removal other than the bringing of suit in the wrong venue." [citations omitted]. " Jeter v SCDOT, 369 S.C. 433 *; 633 S.E.2d 143 (2006). There are statutory grounds for transferring venue to Florence County:

S.C. Code Ann. §15-7-30(C) addresses proper venue against Dr. Trant.

A civil action tried pursuant to this section against a resident individual defendant must be brought and tried in the county in which the:

- (1) defendant resides at the time the cause of action arose; or
- (2) most substantial part of the alleged act or omission giving rise to the cause of action occurred.

"Resident individual" means a person who is domiciled in this State." S.C. Code Ann. §57-3-30(A)(11).

S.C. Code Ann. §15-7-30(E) addresses proper venue against MPA II.

A civil action tried pursuant to this section against a domestic corporation, domestic limited partnership, domestic limited liability

company, or domestic limited liability partnership, must be brought and tried in the county in which the:

- (1) corporation, limited partnership, limited liability company, or limited liability partnership has its principal place of business at the time the cause of action arose; or
- (2) most substantial part of the alleged act or omission giving rise to the cause of action occurred

S.C. Code Ann. §15-7-30 provides that “[p]rincipal place of business” means:

- (a) the corporation's home office location within the State from which the corporation's officers direct, control, or coordinate its activities;
- (b) the location of the corporation's manufacturing, sales, or purchasing facility within the State if the corporation does not have a home office within the State; or
- (c) the location at which the majority of corporate activity takes place if the corporation has multiple offices, centers of manufacturing, sales, or purchasing located within the State if the corporation does not have a home office within the State and has more than one manufacturing, sales, or purchasing facility within the State. The following factors may be considered when determining the location at which the majority of corporate activity takes place:
 - (i) the number of employees located in any one county;
 - (ii) the authority of the employees located in any one county; or
 - (iii) the tangible corporate assets that exist in any one county.

Marion County has 1 MPA practice that is staffed with 1 physician and 2 full-time advance practice providers (APPs). Florence County has 30 practices with 229 physicians and APPs. MPAll’s principal place of business is Florence County.

Florence County is the correct venue for this action against Dr. Trant and MPAll since Marion County Schol District is no longer a party. Dr. Trant and MPAll could not move for a change of venue before now. “The right of a defendant to have a case tried against him in the county in which he resides is a substantial right.” Chestnut v Reid, 299 S.C.305, 384 S.E.2d 713 (1989). This is a matter of law rather than a matter of discretion.

“[W]hen a motion to change venue is brought pursuant to § 15-7-30 and the facts concerning the defendant's residence are uncontradicted, the trial court must change the venue to the county where the defendant resides. If the plaintiff then wishes to change venue based on the convenience of witnesses and the promotion of justice, he may make such a motion to the trial judge in the county of the defendant's residence. This motion brought pursuant to § 15-7-100 would be addressed to the discretion of the Court.: Chestnut v Reid, *supra*.

If this is a matter of discretion, there is additional statutory grounds for change of venue. The court may change the place of trial if:

- (1)
- (2) there is reason to believe that a fair and impartial trial cannot be had there; or
- (2) the convenience of witnesses and the ends of justice would be promoted by the change.

Simply put, jury selection was not fair. This makes the trial unfair and contrary to the ends of justice. Input to the jury selection process was given by the school district attorney and considered by the attorneys for Dr. Trant and MPAll. Had Dr. Trant and MPAll known the school district had settled, their attorney would not have been invited to participate in the jury selection process and Dr. Trant and MPAll would have had the benefit io 4 strikes to themselves. Plaintiffs and the school district can settle if they choose and do not need the permission or consent of Dr. Trant or MPAll. However, this settlement has crossed the line and has caused substantial prejudice to Dr. Trant and MPAll.

s/ Joseph P. McLean

By: _____

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ATTORNEYS FOR THE DEFENDANTS,
MCLEOD PHYSICIAN ASSOCIATES II AND
CHARLES A. TRANT, MD

September 9, 2024

Florence, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF MARION) FOR THE TWELFTH JUDICIAL CIRCUIT

Demetrice Utley, Individually and as)
 Personal Representative of the Estate of)
 Taylor Danielle Price,)

Case No.: 2022-CP-33-00362

Plaintiff,)

vs.)

**PLAINTIFF'S OPPOSITION TO
 DEFENDANTS' MOTION TO CHANGE
 VENUE**

McLeod Physician Associates II, Charles A.)
 Trant, MD, Marion County School District,)
)
 Defendants.)

In violation of applicable and binding precedent, Defendants McLeod Physician Associates II and Charles A. Trant, MD have asked the Court to cancel a trial after it has already begun based upon a meritless argument that venue is improper. The sole ground for the Motion to Transfer Venue is that Dr. Trant resides in Florence County, South Carolina,¹ which Defendants argue allows him to cancel this trial under S.C Code § 15-7-300. Applicable law is clear: Once an action has been properly instituted, a request to change venue based on residency is no longer applicable. Defendants must argue other grounds, which they have not presented. Any arguments that have been raised are unsupported by evidence. For these reasons, the Motion must be denied.

¹ Defendant McLeod Physician Associates II owns property, employs physicians and employees, sees patients and conducts business in Marion County. Specifically, McLeod Family Medicine Marion is located at 3032 East Highway 76, in Mullins, SC 29574. This facility is owned by Defendant McLeod Physician Associates:

https://npidb.org/organizations/allopathic_osteopathic_physicians/family-medicine_207q00000x/1255435848.aspx.

See also Listing of Locations of McLeod Health Providers (attached as Exhibit A). Also, the decedent was a lifelong resident of Marion County and suffered a sudden cardiac death in Marion County due to the negligence and gross negligence of Defendant Charles Trant and Defendant McLeod Physician Associates II. It is impossible to credibly argue that the Court of Common Pleas for Marion County is incapable of conducting a fair and just trial in this case.

I. S.C. Code 15-7-300 Does Not Allow For Later Transfer of a Case that Was in a Proper Venue When Filed

This case was instituted with multiple defendants: (i) McLeod Physician Associates, II; (ii) Charles A. Trant, MD; and (iii) Marion County School District. It is undisputed that the action was appropriately filed in the Court of Common Pleas. In such instances, South Carolina law is clear:

Where there are multiple defendants residing in different counties, the plaintiff may properly bring the action in the county where any one of the defendants resides at the time of the commencement of the action. In such a case, the plaintiff ordinarily has the right of election as to the county in which an action will be brought. *Mack v. Nationwide Mut. Ins. Co.*, 245 S.C. 619, 623–24, 142 S.E.2d 50, 53 (1965); *Rankin Lumber Co. v. Graveley*, 112 S.C. 128, 99 S.E. 349 (1919).

Jeter v. S.C. Dep't of Transp., 369 S.C. 433, 442, 633 S.E.2d 143, 148 (2006). As a result, this action was properly instituted in Marion County under S.C. Code § 15-7-300, which is dispositive of Defendants' Motion to Change Venue.

When our venue statute creates two or more options where a lawsuit may be brought, South Carolina law establishes that a plaintiff has the right to choose the venue in which his case will be tried. *Jeter v. S.C. Dep't of Trans.*, 369 S.C. 433, 442, 633 S.E.2d 143, 148 (2004) (citing *Mack v. Nationwide Mut. Ins. Co.*, 245 S.C. 619, 623-24, 142 S.E.2d 50, 53 (1919)). To this point, the South Carolina Supreme Court has stated:

Where an action is properly commenced in any one of two or more venues and is properly brought in one of such venues, it is removable to the other proper venue **only** if there exists some statutory ground for removal other than the bringing of suit in the wrong venue.

Jeter at 440, 633 S.E.2d at 147 (*emphasis added*). In a case where more than one venue is proper, “the plaintiff ordinarily has the right of election as to the county in which an action will be brought.” *Id.* at 442-43, 633 S.E.2d at 148. Our Supreme Court has also recognized that if actions were properly instituted in the forum county, “a defendant ha[s] no right to request a change of venue to

the county of her residence.” *Id.* “**The plaintiff’s choice of forum should rarely be disturbed.**” *Braten Apparel Corp. v. Bankers Tr. Co.*, 273 S.C. 663, 668, 259 S.E.2d 110, 113 (1979) (emphasis added).

At this stage, venue can only be changed for a reason other than the residence of a defendant under S.C. Code § 15-7-300, which was the sole ground for Defendants’ Motion. The case law is clear: “Where an action is properly commenced in any one of two or more venues and is properly brought in one of such venues, it is removable to the other proper venue only if there exists some statutory ground for removal other than the bringing of suit in the wrong venue.” *Jeter*, 369 S.C. at 442, 633 S.E.2d at 143 (emphasis added), citing 92A C.J.S. *Venue* § 157 (2000); see also 77 Am.Jur.2d *Venue* § 67 (1997); *Slattery v. Iowa Dist. Ct. for Johnson County*, 442 N.W.2d 82 (Iowa 1989); *Kahn v. Gill Hotels Co.*, 610 So.2d 1374 (Fla.App.1992). “The general rule is that where an action is properly instituted in a county other than that of the defendant’s residence, a defendant has no right to request a change of venue to the county of his or her residence on the ground that the action was not brought in a proper county, even if the action could also have been commenced in the county where the defendant resides.” *Id.*, 369 S.C. at 442, 633 S.E.2d at 143

When our venue statute creates two or more options where a lawsuit may be brought, South Carolina law establishes that a plaintiff has the right to choose the venue in which his case will be tried. *Jeter v. S.C. Dep’t of Trans.*, 369 S.C. 433, 442, 633 S.E.2d 143, 148 (2004) (citing *Mack v. Nationwide Mut. Ins. Co.*, 245 S.C. 619, 623-24, 142 S.E.2d 50, 53 (1919)). To this point, the South Carolina Supreme Court has stated:

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Jeter at 440, 633 S.E.2d at 147 (*emphasis added*). In a case where more than one venue is proper,

“the plaintiff ordinarily has the right of election as to the county in which an action will be brought.” *Id.* at 442-43, 633 S.E.2d at 148. Our Supreme Court has also recognized that if actions were properly instituted in the forum county, “a defendant ha[s] no right to request a change of venue to the county of her residence.” *Id.* “**The plaintiff’s choice of forum should rarely be disturbed.**” *Braten Apparel Corp. v. Bankers Tr. Co.*, 273 S.C. 663, 668, 259 S.E.2d 110, 113 (1979).^{92A} C.J.S. *Venue* 163; *see also* *Tribolet v. Fowler*, 77 Ariz. 59, 266 P.2d 1088 (1954).

II. Defendants Fail to Argue, Much Less Demonstrate to the Required Level of Proof, Any Valid Ground for Cancellation of the Trial

After a plaintiff brings his/her action in a proper venue, South Carolina law provides that venue may *only* be changed if: (1) there is reason to believe that a fair and impartial trial cannot be had there; or (2) both “the convenience of witnesses and the ends of justice would be promoted by the change.” *See* S.C. Code §15-7-100; *see also* S.C. Code 15-7-110 (allowing a party to request to transfer venue if supported by affidavit proving that a fair and impartial trial cannot be had).

In order to make the *prima facie* showing necessary to transfer this action to Florence County, Defendants must provide competent and adequate evidence that establishes both: (a) how the witnesses will be inconvenienced if the trial is held in Marion County rather than Florence County; and (b) how the ends of justice will be promoted by a change from Marion to Florence. S.C. Code §15-7-100(3). Neither of these arguments have been raised by Defendants and no evidence has been presented.

Even if Defendants attempt to raise these arguments in subsequent briefings, there is still no basis for the ongoing trial in Marion County to be cancelled. First, any such arguments would be untimely because Defendants have already started the trial. Defendants did not move for a transfer of venue due to the alleged inability of this Court to provide Defendants with a fair and

impartial trial, alleged interests of justice, or alleged inconvenience of witnesses. Any potential evidence or arguments relating to such issues could and should have been raised prior to trial. They were not raised. Furthermore, even as trial has already started, Defendants present zero evidence that this Court cannot provide them with a fair and impartial trial.

The burden of showing how the convenience of witnesses and the ends of justice would be promoted by a venue change rests upon the movant seeking to transfer venue. *See Whaley v. CSX Transp., Inc.*, 362 S.C. 456, 476, 609 S.E.2d 286, 296 (2005). A party moving to change venue cannot rely merely on the beliefs, opinions, and conclusions of the witnesses.” *Mixson v. Agric. Helicopters, Inc.*, 260 S.C. 532, 535, 197 S.E.2d 663, 664 (1973). Furthermore, Defendants are unable to show how the ends of justice would be served by moving the case from Marion County to Florence County.

Trial has already started and all of the parties and witnesses are prepared to appear. It has not required significant travel or inconvenience for the parties, the witnesses and counsel to appear. The expert witnesses in this case are neither from Florence County or Marion County. Plaintiff’s expert (Anthony Chang, MD) is from Irvine, California and is already en route to Marion County for the trial. The two expert witnesses being called by Defendants are from Charleston (Nicole Cain, MD) and Columbia (Claudius Shuler, MD). Defendant Charles Trant is from a neighboring county, but is not inconvenienced by traveling to Marion County for trial. Furthermore, Dr. Trant testified in his deposition that he served as “the pediatric cardiologist for the thirteen (13) counties of the Pee Dee Region,” which includes Marion County. *See Dep. of Def. Charles Trant, MD*, at p. 16:9-10. Dr. Trant “was on staff at multiple hospitals across the Pee Dee Region for reading EKGs, reading echos...[.] *Id.*, at pp. 7:25-8:2. He received referrals from Marion County. As such, Dr. Trant regularly saw and treated patients throughout the region, including patients from Marion County such as Taylor Danielle Price, who died in Marion County

as a result of Dr. Trant's negligence

Furthermore, there are four (4) witnesses scheduled to testify who reside or work in Marion County: (i) Plaintiff Demetrice Utley, the decedent's mother; (ii) Emerson Hunt, the decedent's stepfather; (iii) Linda Scott, a retired teacher; and (iv) Thuy Tran, a records custodian. Each of these witnesses is prepared to appear and testify in this ongoing trial.

No affidavits or evidence have been submitted in support of Defendants' Motion. For this reason, it is not possible for Defendants to have met their burden to cancel the existing trial and move the case to another county in violation of South Carolina law. The statements of the witnesses must extend beyond mere conclusions to provide any probative value in determining convenience. *Whaley v. CSX Transp., Inc.*, 362 S.C. 456, 477, 609 S.E.2d 286, 297 (2005); *Mixson* at 535, 197 S.E.2d at 664. This burden upon the moving party is well recognized and well settled. *See e.g., Sample v. Bedenbaugh*, 158 S.C. 496, 155 S.E. 828, 830 (1930) ("It is essential to the support of a motion to change the place of trial, based upon the grounds just stated, to establish by competent evidence the existence of both conditions. [...] It has likewise been determined that the movant in such motions cannot rely merely on the beliefs, opinions, and conclusions of the witnesses offered in support of the motion without a disclosure of the evidence relied on.").

As Defendants did not demonstrate how the ends of justice would be promoted by changing venue to Florence County, their motion may be denied on this basis alone. *See Garrett v. Packet Motor Exp. Co., Inc.*, 263 S.C. 463, 210 S.E.2d 912 (1975) ("None of the affidavits refer to the 'ends of justice' being promoted by the change of venue. We conclude that the trial court could have properly denied the motion upon the ground that there was no showing that the ends of justice would be promoted by the requested change."). In short, Defendants have neither made a sufficient showing that material witnesses to the case will be inconvenienced by keeping

the action in Marion County nor shown how the ends of justice would be served changing venue to Florence. Accordingly, the motion fails.

III. Plaintiffs Have Rebutted Any Possible Basis for Cancellation of the Trial and Transfer of Venue, Which Requires Denial of the Motion.

If the moving party “makes a *prima facie* showing [that] a venue change will serve both the convenience of the witnesses and the ends of justice, the burden shifts to the party resisting the motion to overcome at least one of these requirements.” McKissick v. J.F. Cleckley & Co., 325 S.C. 327, 336, 479 S.E.2d 67, 71 (Ct. App. 1996). Assuming, *arguendo*, that Defendants had made the requisite *prima facie* showing of both factors, Plaintiff has, nonetheless, rebutted at least one of the requirements, thereby requiring the Motion be denied.

Trial has already begun. All parties, witnesses, and counsel have appeared or have already made arrangements to appear. At least four (4) witnesses who will testify in this case reside or work in Marion County. Our Courts have noted that the ends of justice are promoted by having the credibility of a witness judged by jurors of the same vicinage in which the witness resides. *King v. Moore*, 231 S.C. 421, 98 S.E.2d 849 (1957). Only one (1) witness works or resides in Florence County. The South Carolina Supreme Court has rejected the argument that the short distance to a neighboring county would, absence extenuating circumstances, create such an inconvenience to witnesses and subvert the ends of justice so as to override a plaintiff’s choice of venue. *See Mixson*, at 535, 197 S.E.2d at 664 (finding that, due to the quick facility of modern transportation, witnesses would not be inconvenienced by having to testify in one county versus its neighboring county). Cancelling the trial and transferring venue would create inconvenience, burden and expense rather than allegedly resolving them. Furthermore, it is likely that the predominance of McLeod Physician Associates, McLeod Regional Medical Center, and other entities under common ownership and control would actually make Florence County an unfair

forum in this case. Defendants have neither met their burden of showing how material witnesses would be inconvenienced by completing the trial that has already started nor how the ends of justice would be promoted by cancelling the trial and transferring venue to Florence County.

IV. Trial Courts Have Routinely Rejected Similar Arguments in Other Cases.

Based on the binding precedent set by *Mixon* and *Jeter*, our circuit courts regularly deny motions to change venue where one of the defendants resided in the county in which the action was initially filed. See *Sherman v. Lex. Cnty. Health Servs. Dist.*, No. 2019-CP-02-00067 (Oct. 2, 2019) (attached as **Exhibit B**) (applying *Jeter* and denying motion to change venue because venue was proper at the time the action was filed); *Banks v. SCDOT*, 2013-CP-03-0098 (Dec. 3, 2015) (attached as **Exhibit C**); *Barber v. Lex. Health Servs. Dist.*, 2017-CP-40-0003 (May 23, 2017) (attached as **Exhibit D**) (denying motion to change venue where defendants asked to be able to choose venue in an action that was already properly filed); *Braxton v. Coastal Vascular & Vein Center, P.A.*, 2020-CP-08-00159 (Aug. 10, 2020) (attached as **Exhibit E**) (applying *Jeter* and denying motion to change venue because venue was proper at the time the action was filed); *Spurlock v. SC Internal Med. Associates, et al.*, 2017-CP-40-04832 (Dec. 4, 2017) (attached as **Exhibit F**) (denying motion to change venue to neighboring county because defendants failed to meet their burden of showing competent evidence as to how material witnesses would be inconvenienced by the venue that plaintiff had properly selected or how a venue change would advance the ends of justice);

CONCLUSION

Defendants have failed to present any basis for the cancellation of this trial or the transfer of venue. As demonstrated above, this action was filed in a proper venue when instituted, which precludes a transfer of venue on the basis of residency under S.C. Code 15-7-300. This was the only argument presented, which is inapplicable and under applicable precedent would constitute

an abuse of discretion if granted. Defendants also fail to meet their burden to prove any other basis by competent evidence. Finally, any arguments or evidence that might be presented by Defendants are outweighed by the grounds stated in this Opposition as to why this trial should be completed and venue should remain in Marion County.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

September 9, 2024
Marion, South Carolina

EXHIBIT A

Evidence of McLeod Physician Associate II's Operations and Activities in Marion County

MCLEOD FAMILY MEDICINE - MARION COUNTY

LBN (Legal business name) MCLEOD PHYSICIAN ASSOCIATES II

Family Medicine

Family Medicine is the medical specialty which is concerned with the total health care of the individual and the family. It is the specialty in breadth which integrates the biological, clinical, and behavioral sciences. The scope of family medicine is not limited by age, sex, organ system, or disease entity. Note: The American Osteopathic Board of Family Physicians certification includes extensive use of Osteopathic Manipulative Treatment (OMT), which integrates the biological, clinical, and behavioral sciences. Board certification for Medical Doctors (MDs) is provided by the American Board of Family Medicine. Board certification for Doctors of Osteopathy (DOs) is provided by the American Osteopathic Board of Family Physicians or the American Board of Family Medicine.

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Contact Information

MCLEOD FAMILY MEDICINE - MARION COUNTY

LBN (Legal Business Name) MCLEOD PHYSICIAN ASSOCIATES II

3032 E HIGHWAY 76
MULLINS, SC 29574-7396

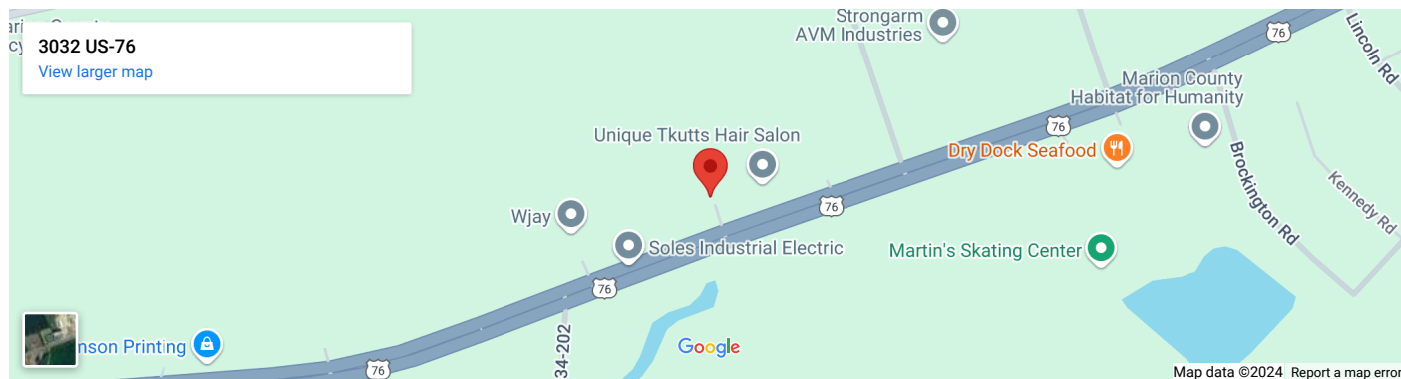
Phone: 843-292-7300

Fax: 843-292-7324

Website:

Specialty	Taxonomy Code	Specialty Code	Provider Type
★ Family Medicine (/doctors/allopathic_osteopathic_physicians/family-medicine_207q00000x/sc/)	207Q00000X (/taxonomy/207Q00000X/)	08	Physician/Family Practice
Family (/doctors/physician_assistants/family_363lf0000x/sc/)	363LF0000X (/taxonomy/363LF0000X/)	50	Nurse Practitioner
Rural Health (/organizations/ambulatory_health_care/rural-health_261qr1300x/sc/)	261QR1300X (/taxonomy/261QR1300X/)	B4[14]	Rural Health Clinic

★ Indicates primary specialty



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NPI Profile & details for MCLEOD FAMILY MEDICINE - MARION COUNTY

NPI #	1255435848
LBN Legal business name	MCLEOD PHYSICIAN ASSOCIATES II
DBA Doing business as	MCLEOD FAMILY MEDICINE - MARION COUNTY
Authorized official	JEFF MURRELL - (REGIONAL PRACTICE MANAGER/AVP)
Entity	Organization
Organization subpart ¹	Yes
Enumeration date	09/12/2006
Last updated	03/27/2009 - About 15 years ago
Identifiers	SC Medicaid GP1648 SC Medicaid RHC094 SC Medicaid RHC169

¹ Some organization health care providers are made up of components that furnish different types of health care or have separate physical locations where health care is furnished. These components and physical locations are not themselves legal entities, but are part of the organization health care provider (which is a legal entity). A covered organization provider may decide that its subparts (if it has any) should have their own NPI numbers. If a subpart conducts any HIPAA (Health Insurance Portability and Accountability Act) standard transactions on its own (e.g., separately from its parent), it must obtain its own NPI number.

Court Record: 4 Sources Found

Updated: 2024.

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IRIS MARIE F NORRIS, MD (/doctors/allopathic_osteopathic_physicians/family-medicine_207q00000x/1033138904.aspx)
2835 EAST HIGHWAY 76
MULLINS, SC

OLIVIA P MILLER (/doctors/allopathic_osteopathic_physicians/dermatology_207n00000x/1023639853.aspx)
705 NTH 8TH AVE
DILLON, SC

REGINA F HOLMES, APRN (/doctors/physician_assistants/family_363lf0000x/1124347604.aspx)
AGAPE SENIOR PRIMARY CARE INC DBA MAIN STREET PHYSICIAN
LORIS, SC

ANDREW J SEJAN, MD (/doctors/allopathic_osteopathic_physicians/family-medicine_207q00000x/1144311812.aspx)
3418 CASEY ST
LORIS, SC

CONWAY HOSPITAL, INC. (/organizations/allopathic_osteopathic_physicians/family-medicine_207q00000x/1043809569.aspx)
4300 HIGHWAY 90
CONWAY, SC

DIANA L TAYLOR, DNP, CPNP (/doctors/physician_assistants/pediatrics_363lp0200x/1104220433.aspx)
140 PROFESSIONAL PARK DRIVE
CONWAY, SC

JOHNSONVILLE ADULT DAY CENTER (/organizations/ambulatory_health_care/adult-day-care_261qa0600x/1073802633.aspx)
351 S. MIDWAY HIGHWAY
JOHNSONVILLE, SC

LOWER FLORENCE COUNTY HOSPITAL (/organizations/allopathic_osteopathic_physicians/family-medicine_207q00000x/1083815799.aspx)
625 S GEORGETOWN HWY
JOHNSONVILLE, SC

FLORENCE COUNTY SCHOOL DISTRICT FIVE (/organizations/ambulatory_health_care/rural-health_261qr1300x/1114006897.aspx)
237 S. GEORGETOWN HWY
JOHNSONVILLE, SC

KAREN ARTIS BACOTE, FNP-BC (/doctors/physician_assistants/nurse-practitioner_363lf00000x/1083156350.aspx)
3835 SUSAN DR
FLORENCE, SC

 [View all Doctors & Physicians \(/doctors/allopathic_osteopathic_physicians/family-medicine_207q00000x/sc/\)](/doctors/allopathic_osteopathic_physicians/family-medicine_207q00000x/sc/)

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EXHIBIT B

Judge Addy Order Denying Motion to Change Venue

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019 CP-02-00067

CONNIE SHERMAN, ET AL

LEXINGTON COUNTY HEALTH

PLAINTIFF(S)

SERVICES DISTRICT, ET AL

DEFENDANT(S)

Submitted by: COURT

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:

This matter came before the Court on September 24, 2019 on Defendant Stephan Grant's (hereafter "Dr. Grant") Motion to Substitute and Defendant Lexington Health Services District, Inc.'s (hereafter "LCHSD") Motion to Change Venue. Plaintiff opposes Defendants' motions. Having reviewed the applicable law and considered the arguments of counsel, the Court denies Defendants' motions. The Court finds as follows:

This matter arise out of a medical malpractice following Connie Sherman's visit to Urgent Care LMC-Lexington which is owned and operated by LCHSD. Connie Sherman was seen by Dr. Grant and Plaintiff alleges her treatment fell below the standard of care. Plaintiff also alleges Dr. Grant acted outside the scope of his employment by subsequently amending Connie Sherman's medical records in an effort to cover up his failure to admit her.

Plaintiffs' are suing for medical malpractice, loss of consortium, breach of fiduciary duty, fraudulent misrepresentation, constructive fraud, intentional infliction of emotional distress, and civil conspiracy.

Dr. Grant practices medicine at Urgent Care in Lexington County. However, he is a resident of Aiken County.

Dr. Grant argues that as an employee of LCHSD, he fails under the definitions of “agency,” “governmental entity,” “State,” and/or “political subdivision” set forth in S.C. Code Ann. §§ 15-78-30(a), (d), (e), and (h). He claims that LCHSD is the proper defendant pursuant to S.C. Code Ann. § 15-78-70(c).

LCHSD argues that proper venue is in Lexington County, not Aiken County, pursuant to Section 15-78-100(b) of the South Carolina Code of Laws. LCHSD maintains that all actions complained of by Plaintiff were done in Lexington County.

The Court is aware of the provisions referenced by the Defendants found in the South Carolina Tort Claims Act. However, Plaintiff alleges torts committed by Dr. Grant which were outside the scope of his employment. Therefore, LCHSD will not be substituted for Dr. Grant.

Concerning the venue issue, where there are multiple defendants residing in different counties, the plaintiff has the right to bring the action in the county where any one of the defendants residents at the time of the commencement of the action as referenced in Jeter v. S.C. Dep't of Transp., 369 S.C. 433, 633 S.E.2d 143 (2006). Certainly, venue would have been proper in Lexington pursuant to Section 15-78-100(b); however, venue is also proper in Aiken County pursuant to Section 15-7-30(B). Plaintiff has the right to bring this action in any county where venue is proper, and Plaintiff has alleged individual torts committed by Dr. Grant, an Aiken resident, which do not arise out of his employment. Accordingly, the Plaintiffs properly brought suit in a county in which a defendant resides, and venue is proper in Aiken.

Therefore, the Court denies Defendants’ motions, and this case shall proceed in Aiken County. This order is without prejudice with regard to any subsequent motion to change venue pursuant to Section 15-7-100(A)(3).

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

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)
		\$
		\$
		\$
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.

s/Frank R. Addy, Jr.

Circuit Court Judge

2159

Judge Code

Oct. 2, 2019

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or
placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or
to parties (when appearing pro se) as follows:

Francis M. Hinson, IV, Esq.

William R. Padget, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kay Gaffney Crowe, Esq.

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:



Aiken Common Pleas

Case Caption: Connie Sherman , plaintiff, et al VS Lexington County Health
Services District , defendant, et al
Case Number: 2019CP0200067
Type: Order/Form 4

So Ordered

s/Frank R. Addy, Jr., 2159

Electronically signed on 2019-10-02 13:56:16 page 4 of 4

ELECTRONICALLY FILED - 2019 Oct 02 2:05 PM - AIKEN - COMMON PLEAS - CASE#2019CP0200067
ELECTRONICALLY FILED - 2024 Sep 09 6:05 PM - MARION - COMMON PLEAS - CASE#2022CP3300362

EXHIBIT C

Judge Buckner Order Denying Motion to Change Venue

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ALLENDALE	)	C/A NO. 13-CP-03-098
	)	
Sedrick Banks,	)	
	)	
Plaintiff,	)	
	)	
vs	)	<u>ORDER</u>
	)	
South Carolina Department of	)	
Transportation and Constance	)	
Forrester,	)	
	)	
Defendant.	)	

#1
PMB

Defendant South Carolina Department of Transportation's Motion to Amend, Motion to Change Venue, Motion to Bifurcate, and Motion for Misjoinder of a Party came before the court for hearing on November 18, 2015. Christy Scott appeared on behalf of Defendant SCDOT. Mark B. Tinsley appeared on behalf of Plaintiff Sedrick Banks. Grahame E. Holmes appeared on behalf of Defendant Constance Forrester.

Plaintiff was the passenger in a vehicle being driven by Defendant Constance Forrester and traveling through Beaufort County on July 9, 2011. Plaintiff alleges he was injured when Defendant Forrester drove into water on the roadway and lost control of the vehicle and crashed into the median.

Plaintiff filed suit against SCDOT and Constance Forrester on May 23, 2013 in the Allendale County Court of Common Pleas. Defendant Forrester then filed a cross claim against Defendant SCDOT for injuries she allegedly sustained in the collision.

MOTION TO AMEND

Defendant SCDOT seeks to abandon defenses of sole, comparative and third party negligence, to abandon contribution under §15-78-100(c) and other Tort Claims Act defenses¹ and to admit to the presence of water on the roadway to these two claimants only, thus trying the case on damages only. Counsel for the Plaintiff and Defendant Forrester consented to the amendment with the exception of the inclusion of the defense of venue.² The Defendant seeks to make such amendment regardless of the Court's rulings on its other motions. This Court finds no prejudice to any party and grants Defendant SCDOT the right to amend its Answers in these matters. The Amended Answers shall be filed and served upon the parties within thirty (30) days of the entry of this Order.

MOTION TO CHANGE VENUE

#2
PMB Plaintiff argues venue is proper in Allendale County because Defendant Forrester was a resident of Allendale County at the time the cause of action arose. S.C. Code Ann. § 15-7-30. S.C. Code Ann. § 15-7-30 provides:

- (C) A civil action tried pursuant to this section against a resident individual defendant must be brought and tried in the county in which the:
- (1) defendant resides at the time the cause of action arose; or
 - (2) most substantial part of the alleged act or omission giving rise to the cause of action occurred.

Defendant SCDOT argues venue is only proper in Beaufort County, the place of the collision. S.C. Code Ann. § 15-78-100(b). § 15-78-100(b) is titled "When and where to institute action[s]" pursuant to the South Carolina Tort Claims Act. It states "Jurisdiction for any action brought under this chapter is in the circuit court and brought in the county in which the act or

¹ Defendant expressly preserves the Tort Claims Act limits of liability.

² Counsel for Ms. Forrester imposed that objection. Counsel for SCDOT seeks inclusion of that defense for purposes of preserving grounds for appeal.

omission occurred.” *Id.* Thus, Defendant SCDOT argues that Defendant Forrester’s residence is not to be considered for venue purposes and that § 15-78-100 controls over § 15-7-30.

However, the plaintiff contends that S.C. Code Ann. 15-7-30 specifically addresses this situation:

“In cases not provided for in . . . Section 15-78-100, the action must be tried in the county where it properly may be brought and tried against *the defendant* according to the provisions of this section. *If there is more than one defendant, the action may be tried in any county where the action properly may be maintained against one of the defendants pursuant to this section.*”

S.C. Code Ann. 15-7-30(B). Therefore if there are multiple defendants, the case is properly brought where it could be maintained against any one of the defendants.

This issue was addressed in Jeter v. S.C.DOT, 358 S.C. 528, 595 S.E.2d 827 (Ct.App. 2004) and Jeter v. S.C.DOT, 369 S.C. 433, 633 S.E.2d 143 (2006). In addressing 15-78-100(b), the South Carolina Court of Appeals stated “nothing in [15-78-100(b)] can be read to require that a case arising under the Act must be ‘heard’ or ‘tried’ in ‘the county in which the act or omission occurred.’” Jeter v. S.C.DOT, 358 S.C. 528, 595 S.E.2d 827 (Ct.App. 2004).

#3
PMB

The South Carolina Supreme Court affirmed the Court of Appeals construction of 15-78-100(b) as not providing exclusive jurisdiction to hear cases brought under the Tort Claims Act to the circuit court of the county in which the act or omission occurred. Jeter v. S.C.DOT, 369 S.C. 433, 633 S.E.2d 143 (2006). The Supreme Court also held: “where there are multiple defendants residing in different counties, the plaintiff may properly bring the action in the county where any one of the defendants resides . . .” *Id.* Further, “where an action is commenced in any one of two or more venues and is properly brought in one of such venues, it is removable only if there exists some statutory grounds for removal other than the bringing of the case in the wrong venue.” *Id.*

Therefore, under Jeter, because Defendant Forrester was a resident of Allendale County at the time this cause of action arose, this action was properly instituted pursuant to S.C. Code Ann. § 15-7-30(C) in Allendale County. While this action could have been brought in Beaufort County, pursuant to 15-78-100, there is no statutory ground to transfer venue to Beaufort County. Therefore, Defendant SCDOT's Motion to Transfer Venue is denied.

MOTION TO BIFURCATE

Defendant SCDOT's contends that the court's ruling on the SCDOT's Motion to Change Venue was outcome determinative of SCDOT's Motion to Bifurcate. As stated above, SCDOT's Motion to Change Venue is denied. Therefore, SCDOT's Motion to Bifurcate is hereby denied.

MOTION FOR MISJOINDER OF A PARTY

#4
PMB
"Rule 21 deals with situations in which the absence of necessary parties or the misjoinder of parties in the action would warrant dismissing the suit." Mendelsohn v. Whitfield, 312 S.C. 17, 21, 430 S.E.2d 524, 527 (1994). Misjoinder refers to the joinder of parties that do not meet the requirements of Rule 20. Under Rule 20(a) "all persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action."

Here, all the Plaintiffs claims stem from a single accident. Therefore, pursuant to SCRCP 21, the Plaintiff's claims against Defendants SCDOT and Forrester were properly joined. The Defendant's Motion for Misjoinder is hereby denied.

For the reasons discussed above, Defendants' Motion to Amend is GRANTED and Defendant's Motion to Change Venue, Motion to Bifurcate, and Motion for Misjoinder are hereby DENIED.

IT IS SO ORDERED.

Dec. 3, 2015
Walterboro, SC


Perry M. Buckner,
Presiding Circuit Court Judge

#5

EXHIBIT D

Judge Hood Order Denying Motion to Change Venue (Barker Case)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO.: 2017-CP-40-0003
	)	
DEEDIE F. BARBER, Individually	)	
and as Personal Representative	)	
of the ESTATE OF LEROY	)	
MILES BARBER JR.,	)	
	)	
Plaintiff,	)	ORDER DENYING MOTION
	)	TO CHANGE VENUE
vs.	)	
	)	
LEXINGTON HEALTH	)	
SERVICES DISTRICT, INC. and	)	
THE UNIVERSITY OF SOUTH	)	
CAROLINA SCHOOL OF	)	
MEDICINE,	)	
	)	
Defendants,	)	

RICHLAND COUNTY
FILED
2017 MAY 24 AM 8:47
JEANETTE S. JONES
CLERK

This case came before the Court on April 26, 2017 to hear the Defendant Lexington Health Services District, Inc.'s January 23, 2017 Motion to Change Venue. Present at the hearing were Robert Ransom, Esq. on behalf of the Plaintiff; James E. Parham, Jr., Esq., on behalf of the Defendant Lexington Health Services District, Inc ("Lexington Health"); and Matthew G. Gerald, Esq., for the Defendant University of South Carolina School of Medicine ("USC"). Based upon the materials and argument submitted for consideration, the court determines the motion should be DENIED.

DISCUSSION

Because this medical malpractice action is brought against two "governmental healthcare facilities," it is controlled by the South Carolina Tort Claims Act ("the Act"), S.C. Code Ann. §15-78-10 *et seq.* (Code 1976, as amended). The Act contains the following venue provision:

Jurisdiction for any action brought under this chapter is in the circuit court and brought in the county in which the act or omission occurred.

S.C. Code Ann. §15-78-100(b)(Code 1976, as amended)(emphasis added). Relying upon this statutory provision, Lexington Health seeks to have this action transferred to Lexington County; or in the alternative, to have the claims against Lexington Health dismissed.

1. The Pleadings

This action had its genesis in a Notice of Intent to File Suit, Civil Action No. 2016-NI-40-0015, to which are attached a number of the decedent's medical records detailing the facts giving rise to the Plaintiff's claims. Those medical records reflect a series of interactions with the decedent occurring at Lexington Medical Center - Irmo, Palmetto Health Richland Hospital, and Providence Hospital.

The Tenth Defense alleged in Lexington Health's Answer to the Amended Complaint nevertheless avers that venue of this action is "improper" in Richland County. No factual basis for this averment is set forth either in Lexington Health's Answer to the Amended Complaint or in its separately filed Motion to Change Venue.

2. Lexington Health's Argument

At the April 26, 2017 hearing, Mr. Parham did not dispute that this action is properly filed against USC in Richland County. Mr. Parham further conceded that he could not cite the court to any statutory provision, reported appellate decision, or other controlling authority mandating the transfer of this action to Lexington County. Instead, Mr. Parham argued that in a case such as this – involving conduct by employees of two governmental healthcare facilities occurring in different counties – the Defendants should have the right to select the county where the action against them proceeds. Mr.

Parham represented to the court that USC consents to this action being transferred to Lexington County. Mr. Gerald did not disagree.

In regard to relief, Mr. Parham asked the court to either transfer this entire case to Lexington County; or dismiss the claims against Lexington Health and allow the Plaintiff to re-file them in a separate action brought in Lexington County, with the result that the Plaintiff would have to maintain two separate actions: one against Lexington Health in Lexington County and the other against USC in Richland County. Mr. Parham could not point the court to any authority entitling Lexington Health to such relief.¹

3. The Plaintiff's Argument

Mr. Ransom indicated that the case arises out of separate yet intertwined acts and omissions by the Defendants' agents occurring in both Richland and Lexington Counties. The gravamen of the case is that several medical care providers were aware of important radiological findings but none of them informed the decedent. This is consistent with the allegations of the Amended Complaint and also consistent with the underlying Notice of Intent, in which employees of Lexington Health

¹ The court notes that Rule 21, SCRCP, addresses misjoinder of parties and states, "Misjoinder of parties is not grounds for dismissal of an action." In Duncan v. S.C. Health and Human Services, 297 S.C. 1, 374 S.E.2d 510 (Ct. App. 1988), the Court of Appeals commented that Rule 21 addresses a situation in which a defendant "does not need to be a named party." That circumstance does not obtain here because the Plaintiff has *prima facie* valid claims against both Lexington Health and USC. Additionally, Rule 20, SCRCP addresses permissive joinder of parties and states, "All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action." The Amended Complaint raises the issue of who, amongst the Defendants' employees, had the primary obligation to inform the decedent of certain radiological findings. Joinder of the Defendants in this one action is therefore appropriate under Rule 21. In any event, Lexington Health's motion does not raise any issue of misjoinder and the court will not grant Lexington Health's requested relief on the basis of an argument it has not raised.

(Dr. Winn) and USC (Dr. Fant) are named as individual defendants.

According to Mr. Ransom, following a failed pre-suit mediation, and with the agreement of counsel for Lexington Health and USC, Dr. Winn and Dr. Fant were not named as individual Defendants in either the Complaint or the Amended Complaint because S.C. CODE ANN. §15-78-70(c) requires that "the agency or political subdivision for which the employee was acting must be substituted as the party defendant." Counsel for the Defendants did not dispute Mr. Ransom's characterization of the procedural history of this action, which the court therefore accepts as true for purposes of Lexington Health's motion.

Mr. Ransom cited the court to Jeter v. South Carolina Department of Transportation, 369 S.C. 433, 633 S.E.2d 143 (2006) in which the South Carolina Supreme Court construed the provisions of §15-78-100(b). Admittedly there are factual disparities between the instant action and Jeter, which did not involve two defendants subject to the Act. Nevertheless, the Supreme Court made the following observations:

[W]here there are multiple defendants residing in different counties, the plaintiff may properly bring the action in the county where any one of the defendants resides at the time of the commencement of the action. In such case, the plaintiff ordinarily has the right of election as to the county in which the action will be brought.

* * *

The general rule is that where an action is properly instituted in a county other than that of the defendant's residence, a defendant has no right to request a change of venue to the county of his or her residence on the ground that the action was not brought in a proper county, even if the action could also have been commenced in the county where the defendant resides.

369 S.C. at 442, 633 S.E.2d at 148 (emphasis added). The Court recognizes that these comments focus on the residence of a defendant rather than the locus of the conduct giving rise to the claim, the latter being the appropriate determiner of venue according to the express language of §15-78-

100(b).

Nevertheless, it is clear from the Jeter court's comments that §15-78-100(b) should be read consistent with the traditional rule, of longstanding duration, that when a case involves multiple defendants, so that venue properly lies in more than one county, the plaintiff is allowed to elect the county where the action is brought. Which is to say, nothing in Jeter or the express language of §15-78-100(b) evinces any judicial or legislative intent to alter or subvert the traditional rule by shifting the power of venue selection in a multi-defendant case from the plaintiff to the defendant(s).

In reply, Mr. Parham sought to distinguish Jeter by pointing to footnote 9 of the opinion, which by way of *dicta* observes that a party can bring a motion to change venue for the convenience of witnesses and in the interests of justice pursuant to S.C. CODE ANN. §15-7-100 (Code 1976, as amended). This *dicta* does not undermine the import of the Jeter opinion's comments about §15-78-100(b). That Lexington Health might have brought a different motion does not convince the court that its present motion should be granted. In any event, the transfer of venue pursuant to §15-7-100 is within a trial court's sound discretion. The court declines to exercise that discretion in Lexington Health's favor because Lexington Health has made no showing that the convenience of witnesses or the interests of justice would be served by transferring this case to Lexington County; or by requiring the Plaintiff to maintain two separate actions in different counties.

CONCLUSION

The commencement of this action in Richland County meets the requirements of §15-78-100(b) because USC's underlying acts and omissions occurred in Richland County. Under the principles espoused by the South Carolina Supreme Court in Jeter, *supra*, Lexington Health is not entitled to have this action brought in Lexington County at its exclusive election. Nothing in §15-78-

100(b) or in Jeter alters the traditional rule that cases with multiple defendants may be filed in the county of the plaintiff's choice. There is no legal basis for the court to sever the claims against Lexington Health and require the Plaintiff to re-file them in a separate action in Lexington County. No showing has been made that this case should be transferred to Lexington County for the convenience of witnesses in the interests of justice.

Lexington Health's motion to change venue is therefore DENIED.

IT IS SO ORDERED.

Dated: _____

5/23/17

Columbia, South Carolina

By: _____

ReHood

Hon. Robert E. Hood
Presiding Judge for the Richland
County Court of Common Pleas

EXHIBIT E

Judge Van Slambrook Order Denying Motion to Change Venue

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Mary Braxton, both as the personal representative of the Estate of Miranda Braxton for the survival claim and on behalf of Miranda Braxton's statutory beneficiaries for the wrongful death claim,

Civil Action No.: 2020-CP-08-01159

Plaintiff,

VS.

Coastal Vascular & Vein Center, P.A., Adam
Keefer, M.D., Edward Morrison, M.D.,
and Plantation Pediatrics, LLC,

Defendants.

**ORDER
DENYING DEFENDANTS'
MOTION TO CHANGE VENUE**

This matter comes before the Court on Defendant Plantation Pediatrics, LLC's Motion to Change Venue, which was joined by Defendants Edward Morrison, M.D., Coastal Vascular & Vein Center, P.A., and Adam Keefer, M.D. For the reasons set forth herein, Defendants' Motion to Change Venue is hereby **DENIED**.

This suit arises out of a surgical procedure performed on Miranda Braxton in 2017. Defendant Adam Keefer, M.D., was the attending surgeon. Plaintiff alleges that the operation was performed negligently and that there was subsequent negligence relating to an alleged failure to timely recognize and treat the surgical error. Mirada Braxton died on February 7, 2017. It is undisputed that Defendant Keefer was a resident of Berkeley County at the time of the events giving rise to this action and that he resides in Berkeley County still today.

The South Carolina Code provides a plaintiff two options for selecting venue, stating that a civil action must be brought and tried in the county in which the:

(1) defendant resides at the time the cause of action arose; **or** (2) most substantial part of the alleged act or omission giving rise to the cause of action occurred.

S.C. Code § 15-7-30(C) (emphasis added).

Anticipating situations/actions with multiple defendants having differing counties of residence, our Code also provides as follows:

If there is more than one defendant, the action may be tried in any county where the action properly may be maintained against one of the defendants pursuant to this section.

S.C. Code § 15-7-30(B).

When application of our venue statute to a case’s factual scenario and the residence of the defendants returns a result where two or more counties would be proper venues for a lawsuit to be brought, our law establishes that a plaintiff has the right to choose the venue in which his/her case will be tried. Jeter v. S.C. Dep’t of Trans., 369 S.C. 433, 442, 633 S.E.2d 143, 148 (2004) (citing Mack v. Nationwide Mut. Ins. Co., 245 S.C. 619, 623-24, 142 S.E.2d 50, 53 (1919)). To this point, the South Carolina Supreme Court has stated:

Where an action is properly commenced in any one of two or more venues and is properly brought in one of such venues, it is removable to the other proper venue only if there exists some statutory ground for removal other than the bringing of suit in the wrong venue.

Jeter at 440, 633 S.E.2d at 147. In a case where more than one venue is proper, “the plaintiff ordinarily has the right of election as to the county in which an action will be brought.” Id. at 442-43, 633 S.E.2d at 148. Our Supreme Court has also recognized that an action is properly instituted in the forum county, “a defendant ha[s] no right to request a change of venue to the county of her residence.” Id. “The plaintiff’s choice of forum should rarely be disturbed.” Braten Apparel Corp. v. Bankers Tr. Co., 273 S.C. 663, 668, 259 S.E.2d 110, 113 (1979). When venue is proper in more than one county, a plaintiff has the right to elect which of the proper counties his/her action will be brought and tried. Id. “[I]f there is more than one defendant, the action may be tried in any county in which one or more of the defendants to such action resides at the time of the

commencement of the action; this is ordinarily at the election of the plaintiff.” Carroll v. Guess, 302 S.C. 175, 177, 394 S.E.2d 707, 708 (1990).

Although the most substantial part of the alleged acts or omissions giving rise to the cause of action may have occurred in Charleston County, based upon Defendant Keefer’s residence at the time this action arose, Plaintiff has appropriately elected Berkeley County as the venue for this case to be tried. Based on the residence of Defendant Keefer, S.C. Code § 15-7-30 establishes Plaintiff’s right to select Berkeley County as the venue for this action.

After a plaintiff brings his/her action in a proper venue, our law provides that venue may only be changed if: (1) there is reason to believe that a fair and impartial trial cannot be had there; or (2) both “the convenience of witnesses and the ends of justice would be promoted by the change.” S.C. Code §15-7-100. Defendants have not made a claim that an impartial trial cannot be held in Berkeley County. Thus, Defendants’ request to transfer venue from Berkeley County to Charleston County is based upon a contention that the convenience of witnesses and the ends of justice would be furthered by relocating the action to Charleston County.

The Court finds that Defendants have not presented competent and/or sufficient evidence to establish that both the convenience of witnesses and the ends of justice would be promoted by a venue change to Charleston County. As discussed in more detail below, Defendants contentions as to inconvenience and the ends of justice rely almost entirely on conclusory statements. As such, Defendants have failed to advance an argument demonstrating a valid cause to transfer venue.

The burden of showing how the convenience of witnesses and the ends of justice would be promoted by a venue change rests upon the movant seeking to transfer venue. Whaley v. CSX Transp., Inc., 362 S.C. 456, 476, 609 S.E.2d 286, 296 (2005). A party moving to change venue “cannot rely merely on the beliefs, opinions, and conclusions of the witnesses.” Mixson v. Agric.

Helicopters, Inc., 260 S.C. 532, 535, 197 S.E.2d 663, 664 (1973). Affidavits submitted in support of the motion that merely state relatively small differences in distances and conclusory, non-explanatory statements that one county would be more convenient than another do not satisfy the burden required for change of venue. Id.

The South Carolina Supreme Court has rejected the argument that the short distance to a neighboring county would, absence extenuating circumstances, create such an inconvenience to witnesses and subvert the ends of justice so as to override a plaintiff's choice of venue. See Mixson, at 535, 197 S.E.2d at 664 (finding that, due to the quick facility of modern transportation, witnesses would not be inconvenienced by having to testify in one county versus its neighboring county). In order to make the *prima facie* showing necessary to transfer this action to Charleston County, Defendants must provide competent and adequate evidence that establishes both: (a) how the witnesses will be inconvenienced if the trial is held in Berkeley County rather than Charleston County; and (b) how the ends of justice will be promoted by a change from Berkeley to Charleston. S.C. Code §15-7-100(3).

Defendants have failed to present competent and sufficient evidence to demonstrate that maintaining venue in Berkeley County would inconvenience witnesses in a sufficient manner to require a change of venue. In support of their motion that venue should be transferred to Charleston County, Defendants have presented only three affidavits, which come from Defendant Keefer, Defendant Morrison, and Dr. McGaha (an employee and owner of Defendant Plantation Pediatrics). These affidavits, however, provide non-specific and conclusory descriptions as to how the affiant would allegedly be inconvenienced if the case were to be tried in Berkeley County. Defendants' affidavits mention "personal preference," "convenience," and make general assertions that a trial in Berkeley County (compared to one in Charleston County) would be a

burden but never specifically explain how this would be so. Only the affidavit from Dr. McGaha makes any specific mention of driving times or distances, but he describes a relatively small difference between traveling to one courthouse versus the other. He never explains how this how this slight difference would cause inconvenience or promote the ends of justice. The affidavit of Defendant Keefer states: “Upon information and belief, the majority of witnesses and other parties to the case who provided care to Miranda Braxton are located in Charleston County.” Dr. Keefer’s statement does not describe who these people are, how their testimony would be material to this case, how far they would have to travel to the Berkeley County Courthouse compared to the Charleston County Courthouse, or how this modest difference in travel would cause an inconvenience to these unidentified individuals. These affidavits contain the same beliefs, opinions an conclusions that Mixson and Whaley hold are insufficient to support a change of venue.

Furthermore, Defendants are unable to show how the ends of justice would be served by moving the case from Berkeley County to Charleston County. Because Defendants did not demonstrate how the ends of justice would be promoted by changing venue to Charleston County, their motion may be denied on this basis alone. See Garrett v. Packet Motor Exp. Co., Inc., 263 S.C. 463, 210 S.E.2d 912 (1975) (“None of the affidavits refer to the ‘ends of justice’ being promoted by the change of venue. We conclude that the trial court could have properly denied the motion upon the ground that there was no showing that the ends of justice would be promoted by the requested change.”).

In short, Defendants have neither made a sufficient showing that material witnesses to the case will be inconvenienced by keeping the action in Berkeley County nor shown how the ends of justice would be served changing venue to Charleston. Accordingly, Defendants’ motion fails.

If the moving party “makes a *prima facie* showing [that] a venue change will serve both the convenience of the witnesses and the ends of justice, the burden shifts to the party resisting the motion to overcome at least one of these requirements.” McKissick v. J.F. Cleckley & Co., 325 S.C. 327, 336, 479 S.E.2d 67, 71 (Ct. App. 1996). Assuming, *arguendo*, that Defendants had made the requisite *prima facie* showing of both factors, Plaintiff has, nonetheless, rebutted at least one of the requirements, thereby causing Defendants’ motion to fail.

Plaintiff presents this Court with affidavits from fourteen (14) witnesses that explain how their testimony would be relevant/material to this case and that describe how the convenience of these witnesses would be served by venue remaining in Berkeley County. In contrast to the three affidavits produced by Defendants, each of Plaintiff’s affidavits demonstrates how Charleston County would be an inconvenient venue for the witness, with reasons and explanations such as childcare problems, issues with taking and picking up children from school, concerns regarding frequent traffic jams when entering or leaving downtown Charleston during rush hour, longer travel times that are described with home addresses and specificity as the options and routes of travel available, and, with regard to one witness who will turn 80 years old later this month, concern with driving in Charleston’s heavy traffic, which is not insignificant compared to the much lighter traffic of Moncks Corner.

Our Courts have noted that the ends of justice are promoted by having the credibility of a witness judged by jurors of the same vicinage in which the witness resides. King v. Moore, 231 S.C. 421, 98 S.E.2d 849 (1957). As indicated in Plaintiff’s affidavits, a number of the witnesses are Berkeley County residents and several were Berkeley County residents until only very recently. Additionally, Defendant Keefer was a Berkeley County resident at the time this cause of action accrued and remains a Berkeley County resident to this day. Plaintiff also points out that it is

generally quicker to obtain a trial date in Berkeley County than in Charleston County, and that the ends of justice will be promoted by the higher likelihood of a speedy trial in Berkeley County. See In re Atwater, 397 S.C. 518, 528, 725 S.E.2d 686, 691 (2012) (noting that although the phrase “justice delayed is justice denied” is typically used in the context of criminal cases, it is no less applicable in civil actions). Though not dispositive in and of itself, the Court concludes that the higher likelihood of a speedy trial in Berkeley County tips the scales of this factor towards keeping the trial in Berkeley County. Plaintiff also has produced statistics documenting the very high number of Charleston County citizens employed in the medical profession and has called into question the difficulty of seating a fair and impartial jury in Charleston County, and contends that this, too, is a consideration in the ends of justice question. While the Court is not making a finding that a fair and impartial jury could not be seated in Charleston County, the higher likelihood of seating a jury in Charleston County with medical providers or relatives of medical providers is yet another factor that tips the scales towards keeping this trial in Berkeley County. In conclusion, the Plaintiff has demonstrated that the ends of justice are promoted by maintaining venue in Berkeley County.

Plaintiff has the statutory right to bring this action in Berkeley County, as that was the county where Defendant Keefer resided at the time of the events giving rise to this lawsuit. Defendants have neither met their burden of showing how material witnesses would be inconvenienced by testifying in Berkeley County nor how the ends of justice would be promoted by transferring venue to Charleston County. Although Defendants failed to make their *prima facie* case as required by South Carolina law, and Plaintiff therefore bears no burden to defeat Defendants’ motion, Plaintiff has nonetheless provided ample and sufficient evidence to support

their contention that both the convenience of the witnesses and the ends of justice are served by this case remaining in and being tried in Berkeley County.

NOW THEREFORE, for the foregoing reasons, Defendants' Motion to Change Venue is hereby **DENIED**. This matter shall remain in Berkeley County and the trial of this matter shall be in Berkeley County.

IT IS SO ORDERED.

August 5, 2020
Moncks Corner, South Carolina

The Honorable Dale E. Van Slambrook
Ninth Judicial Circuit



Berkeley Common Pleas

Case Caption: Mary Braxton VS Coastal Vascular And Vein Center, Pa , defendant,
et al
Case Number: 2020CP0801159
Type: Order/Change of Venue

AND IT IS SO ORDERED!

Special Circuit Court Judge s/Dale E. Van
Slambrook (3079)

Electronically signed on 2020-08-10 10:39:21 page 9 of 9

EXHIBIT F

Judge Hood Order Denying Motion to Change Venue (Spurlock Case)

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2017-CP-40-04832

Claude D. Spurlock, III, both as the Personal)
Representative of the Estate of Sherry)
Spurlock and in his own right and capacity,)

Plaintiff,)

vs.)

South Carolina Internal Medicine Associates)
and Rehabilitation, LLC; Surbjinder S.)
Guram, M.D.; Sam's East, Inc., d/b/a Sam's)
Club Pharmacy; Gwendolyn G. Gullede;)
Dana K. Pompey-Powell; Kimberly P.)
Bristow; and Gary L. Hill;)

Defendants.)

**ORDER
DENYING DEFENDANTS'
MOTIONS TO CHANGE VENUE**

RICHLAND COUNTY
FILED
2017 DEC -4 AM 11:22
JANETTE W. HOBBS
C.C.P. & G.S.

This matter comes before the Court on two motions, filed on behalf of the various Defendants, seeking to transfer the venue of this action from Richland County to Lexington County. It is undisputed that Defendant Dana Pompey-Powell and Defendant Gary Hill both resided in Richland County at the time this action arose.

The parties dispute whether the most substantial part of the action occurred in Richland or Lexington County. However, the Court need not determine where the most substantial part of the action occurred, as venue is nonetheless proper as a result of Richland County being the residence of at least one of the Defendants.

S.C. Code § 15-7-30(C) provides that this civil action "must be brought and tried in the county in which the: (1) defendant resides at the time the cause of action arose; or (2) most substantial part of the alleged act or omission giving rise to the cause of action occurred."

"[W]here there are multiple defendants residing in different counties, the plaintiff may properly bring the action in the county where any one of the defendants resides at the time of the commencement of the action. In such a case, the plaintiff ordinarily has the right of election as to

the county in which an action will be brought.” Jeter v. S.C. Dep’t. of Trans., 369 S.C. 433, 442, 633 S.E.2d 143, 148 (2006). Stated differently, “if there is more than one defendant, the action may be tried in any county in which one or more of the defendants to such action resides at the time of the commencement of the action; this is ordinarily at the election of the plaintiff.” Carroll v. Guess, 302 S.C. 175, 177, 394 S.E.2d 707, 708 (1990).

As Defendants Pompey-Powell and Hill resided in Richland County at the time this action arose, Plaintiff has appropriately elected Richland County as the venue in which the case will be tried.

“Where an action is properly commenced in any one of two or more venues and is properly brought in one of such venues, it is removable to the other proper venue only if there exists some statutory ground for removal other than the bringing of suit in the wrong venue.” Jeter, at 433, 442, 633 S.E.2d at 148. Once a Plaintiff has brought his/her action in an appropriate venue, S.C. Code § 15-7-100(3) provides that venue can only be changed if: (1) there is reason to believe that a fair and impartial trial cannot be had there; or (2) if both “the convenience of witnesses and the ends of justice would be promoted by the change.” Defendants have not advanced an argument that an impartial trial cannot be had in Richland County but argue that the convenience of witnesses and ends of justice would be furthered by transferring this case to Lexington County.

Although both the requirements (convenience of witnesses and the ends of justice) must be met, “a showing of the convenience of the witnesses can, depending on the facts of the case, bear on the issue of promotion of justice.” McKissick v. J.F. Cleckley & Co., 325 S.C. 327, 335, 479 S.E.2d 67, 71 (Ct. App. 1996). The burden of showing how the convenience of witnesses and the ends of justice would be promoted by venue change rests upon the movant seeking to transfer venue. Whaley v. CSX Transp., Inc., 362 S.C. 456, 476, 609 S.E.2d 286, 296 (2005).

“It is essential to the support of a motion for a change of venue, based upon the [grounds regarding the convenience to the witnesses], to establish by competent evidence the existence of both conditions; and the movant cannot rely merely on the beliefs, opinions, and conclusions of the witnesses.” Mixson v. Agric. Helicopters, Inc., 260 S.C. 532, 535, 197 S.E.2d 663, 664 (1973).

The Richland County Courthouse and Lexington County Courthouse are less than a 13-mile drive from one another. With such a short distance between the two courthouses, it would be unlikely that the convenience of witnesses and the ends of justice would be promoted by a change in venue. *See Mixson v. Agric. Helicopters, Inc.*, 260 S.C. 532, 197 S.E.2d 663 (1976) (finding that given the quick facility of modern travel, the mere statement of the witnesses, without further explanation, that it would be more convenient for them to testify in one county’s courthouse verses another courthouse, only 16 miles away, amounts to nothing more than a conclusion of the witnesses and is of no probative value in determining the issue regarding convenience of venue). Further, many of the witnesses identified in discovery live and/or work in Richland County and are considerably closer to the Richland County Courthouse than they are to the Lexington County Courthouse.

Defendants stress that five out of the seven Defendants are in Lexington. That the majority of the Defendants are in Lexington is not determinative. Defendants Pompey-Powell and Hill both resided in Richland County at the time this action arose, and S.C. Code § 15-7-30(C) provides Plaintiff with the right to elect Richland County as the venue for this action (barring movants establishing one of the reasons for transfer as set forth in § 15-7-100(3)).

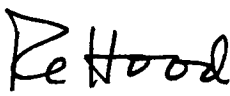
Defendants have failed to meet their burden of showing that the convenience of the witnesses and ends of justice require a change of venue to Lexington County. No affidavits or other evidence has been offered to create a *prima facie* showing of inconvenience of witnesses.

Defendants have merely submitted the unsubstantiated opinions and conclusions of counsel that Lexington County would be more convenient. No competent evidence has been presented to show how it would be more convenient to the witnesses to have this case tried in Lexington County or how the ends of justice require the requested transfer of venue.

NOW THEREFORE, for the foregoing reasons, Defendants' Motions for Transfer of Venue are hereby **DENIED**. This matter shall remain in Richland County.

IT IS SO ORDERED.

December 4, 2017
Columbia, South Carolina



Honorable Robert E. Hood
Judge, Fifth Judicial Circuit

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

CASE NUMBER: **2017CP4004832**

Claude D Spurlock III

S C Internal Medicine Assoc and Rehabilitation LLC

Sherry Spurlock

Surbjinder S Guram M D

PLAINTIFF(S)

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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ 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 : _____

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
		\$
		\$
		\$

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.**

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 5 day of Dec, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Francis M. Hinson IV

Kelli Lister Sullivan

Randi Lynn Roberts

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

STATE OF SOUTH CAROLINA

COUNTY OF MARION

Demetrice Utley, Individually and as
Personal Representative of the Estate of
Taylor Danielle Price,

Plaintiff,

v.

McLeod Physician Associates II, Charles A.
Trant, MD, Marion County School District,

Defendants.

IN THE COURT OF COMMON PLEAS FOR
THE TWELFTH JUDICIAL CIRCUIT

Case No. 2022-CP-33-00362

**STIPULATION OF DISMISSAL
AS TO DEFENDANT MARION COUNTY
SCHOOL DISTRICT**

(DOES NOT END CASE)

PURSUANT TO RULE 41(a)(1), S.C.R.C.P., and by and through their respective undersigned counsel, Demetrice Utley, Individually and as Personal Representative of the Estate of Taylor Danielle Price, and Defendant Marion County School District and hereby stipulate to dismiss all causes of action with prejudice, with each party to bear its own attorney's fees, costs and expenses.

PLAINTIFF SO STIPULATES:

LESEMANN & ASSOCIATES, LLC

s/J. Taylor Powell

Ellis R. Lesemann (SC Bar #15315)

J. Taylor Powell (SC Bar #100211)

418 King Street, Suite
Charleston, SC 29403
Telephone: (843) 724-5155

Attorneys for Plaintiff

September 25, 2024
Columbia, South Carolina

DEFENDANT SO STIPULATES:

BOYKIN & DAVIS, LLC

s/Tierney F. Goodwyn

Charles J. Boykin (SC Bar #65149)

Kenneth A. Davis (SC Bar #66416)

Tierney F. Goodwyn (SC Bar # 102035)

P.O. Box 11844
Columbia, SC 29211
Telephone: (803) 254-0707
Facsimile: (803) 254-5609

Attorneys for Defendant

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF MARION) FOR THE TWELFTH JUDICIAL CIRCUIT

DEMETRICE UTLEY, Individually and as)
Personal Representative of THE ESTATE)
OF TAYLOR DANIELLE PRICE,)

Case No.: 2022-CP-33-00362

Plaintiff,

vs.

**PLAINTIFF'S POST-TRIAL MOTION
FOR CONFIRMATION OF TWO
OCCURRENCES**

MCLEOD PHYSICIAN ASSOCIATES II)
and CHARLES A. TRANT, MD,)
Defendants.)

Plaintiff Demetrice Utley, in accordance with the South Carolina Rules of Civil Procedure and the South Carolina Solicitation of Charitable Funds Act, S.C. Code § 33-56-10, *et seq.*, requests formal confirmation of the jury's finding of two (2) occurrences in this case, as defined by the South Carolina Tort Claims Act, S.C. Code § 15-78-30(g) and as applied and interpreted under South Carolina law. The confirmation of two (2) occurrences results in two (2) applications of the maximum monetary cap/limit on liability stated in S.C. Code § 33-56-180(a).

PROCEDURAL BACKGROUND RELATING TO OCCURRENCES

The case was tried by jury before the Honorable R. Ferrell Cothran, Jr. Trial commenced on Monday, November 4, 2024 and concluded on Friday, November 8, 2024. During trial, Plaintiff presented evidence and expert witness testimony in support of her claims that there were two separate and distinct occurrences that caused the wrongful death of her 16-year-old daughter, Taylor Price. At the close of Plaintiff's case-in-chief, Defendants McLeod Physician Associates II and Charles A. Trant made a motion for directed verdict on the alleged basis that there was no evidence or reasonable inference that could support a finding of more than one occurrence. The Court, in denying Defendants' Motion for Directed Verdict, found that evidence had been

presented to the jury that there were two separate and distinct occurrences, and due to the existence of this evidence, the issue was one that must be resolved by the jury.

Defendants renewed their motion for directed verdict at the close of their case in chief. The Court denied the renewed motion and found that competing evidence had been presented by both Plaintiff and Defendants, which required the jury to make a factual determination on the issue after they were charged on the law. Defendants objected to the proposed verdict form submitted by Plaintiff that listed the two occurrences and instead requested language that would ask the jury to find whether there were “multiple” occurrences.

After discussion in chambers, a compromise was reached among the parties, which the Court accepted. Plaintiff consented to submitting the alternative verdict form as proposed by the Defendants, provided that the order of questions 3 and 4 were switched. After questions 3 and 4 were renumbered and re-sequenced, and no other changes were made to the verdict form proposed by Defendants. This resulted in the verdict form that was submitted to the jury by consent. Plaintiff’s counsel stipulated in chambers that Plaintiff was only alleging that there had been two (2) occurrences. Based on the discussion and stipulation, the Court indicated that should the jury answer question 3 regarding multiple occurrences by checking “yes,” the Court would find that there were two occurrences, consistent with the stipulation of the parties.

Following closing arguments, the Court read the following charge to the Jury to instruct them on the issue of occurrences:

OCCURRENCES

“OCCURRENCE” MEANS AN UNFOLDING SEQUENCE OF EVENTS WHICH PROXIMATELY FLOW FROM A SINGLE ACT OF NEGLIGENCE.

THE PLAINTIFF HAS ALLEGED MULTIPLE OCCURRENCES OF NEGLIGENCE IN THIS CASE. WHERE THERE ARE MULTIPLE OCCURRENCES OF NEGLIGENCE, A PLAINTIFF MAY RECOVER

DAMAGES FOR EACH OCCURRENCE OF NEGLIGENCE. THE PLAINTIFF HAS THE BURDEN OF PROVING THAT EACH ACT OF NEGLIGENCE WAS SEPARATE AND INDEPENDENT IN ORDER FOR YOU TO FIND THAT MORE THAN ONE OCCURRENCE OCCURRED.

After having been properly charged on the definition of occurrence exactly as it appears in the definitions of the South Carolina Tort Claims Act, the jury answered that there was more than one occurrence in this case, as shown on the verdict form, in relevant part, below:

3. Having been instructed by the judge on the definition of an occurrence, do you find there was more than one occurrence?

☒ YES

☐ NO

See Signed Verdict Form, attached as Exhibit A.

The separate and distinct nature of the two occurrences that Plaintiff alleged, and which the jury agreed with, were argued throughout the case. Plaintiff alleged, argued, and ultimately proved that there were two occurrences in this case that led to the death of 16-year-old-Taylor Price: (i) Dr. Trant's grossly inadequate cardiac workup of Taylor; and (ii) Dr. Trant's signing the return to sports clearance for Taylor.

CONCLUSION

For these reasons, Plaintiff respectfully requests a judicial confirmation of two occurrences in accordance with the jury's verdict, which is supported by evidence.

(Signature on Following Page)

Respectfully submitted,

By: s/J. Taylor Powell

Ellis R. Lesemann (SC Bar No. 15315)

erl@lalawsc.com

J. Taylor Powell (SC Bar No. 100211)

jtp@lalawsc.com

LESEMAN & ASSOCIATES LLC

418 King Street, Suite 301

Charleston, SC 29403

Phone: (843) 724-5155

Brad C. Richardson (SC Bar No. 68305)

brad@bradrichardsonlawfirm.com

Law Office of Brad C. Richardson, LLC

1200 Main Street, Suite A

Conway, SC 29526

Attorneys for Plaintiff

November 15, 2024

Charleston, South Carolina

Exhibit A

Signed Verdict Form

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

) TWELFTH JUDICIAL CIRCUIT

COUNTY OF MARION

) C/A NO. 2022-CP-33-00362

Demetrice Utley, Individually and as
 Personal Representative of the Estate of
 Taylor Danielle Price

Plaintiff,

vs.

McLeod Physician Associates II and
 Charles A. Trant, M.D.

Defendant.

JURY VERDICT FORM**WE, THE JURY, FIND UNANIMOUSLY AS FOLLOWS:**

1. Do you find that the Defendants were negligent?

☒ YES

☐ NO

If your answer in Question 1 is NO, your deliberations are complete. Do not proceed to the additional questions. The foreperson should sign and date this form on page 2, knock on the door, and notify the bailiff you have reached a verdict.

If your answer in Question 1 is YES, move on to Question 2.

2. Do you find that the negligence of the Defendants proximately caused damages to the Plaintiff?

☒ YES

☐ NO

If your answer in Question 2 is NO, your deliberations are complete. Do not proceed to the additional questions. The foreperson should sign and date this form on page 2, knock on the door, and notify the bailiff you have reached a verdict.

If your answer in Question 2 is YES, move on to Questions 3, 4, and 5

3. Having been instructed by the judge on the definition of an occurrence, do you find there was more than one occurrence?

☒ YES

☐ NO

4. Having been instructed by the Judge on the definition of gross negligence, do you find Dr. Trant was grossly negligent?

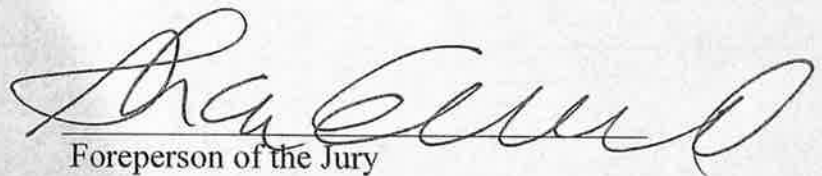
☒ YES

☐ NO

5. Having been instructed by the judge on the damages recoverable for wrongful death, please state the amount of damages you award.

\$ 30 million

November 8, 2024


Foreperson of the Jury

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF MARION) FOR THE TWELFTH JUDICIAL CIRCUIT

DEMETRICE UTLEY, Individually and as)
Personal Representative of THE ESTATE)
OF TAYLOR DANIELLE PRICE,)

Case No.: 2022-CP-33-362

Plaintiff,
vs.

**PLAINTIFF’S MOTION FOR AWARD OF
OFFER OF JUDGMENT INTEREST**

MCLEOD PHYSICIAN ASSOCIATES II)
and CHARLES A. TRANT, MD,)
Defendants.)

After enduring the preventable death of her child and twenty-eight months of litigation, Plaintiff Demetrice Utley recently obtained a jury verdict against Defendants in the amount of Thirty Million Dollars (\$30,000,000.00). On November 15, 2022, two years ago today, Plaintiff filed served an Offer of Judgment upon Defendant McLeod Physician Associates II (“MPA II”) in the amount of One Million One Hundred and Ninety-Nine Thousand Nine Hundred and Ninety-Nine Dollars (\$1,199,999.00). Defendant MPA II refused the Offer of Judgment. Due to the refusal, and because the jury verdict is higher than the Offer of Judgment that was rejected, Plaintiff is entitled by rule and by statute to an award of 8% interest on the amount of the verdict accruing from November 15, 2022 up through the date of entry of judgment.

Specifically, pursuant to S.C. Code § 15-35-400 and Rule 68 of the South Carolina Rules of Civil Procedure, an award of interest at the rate of eight percent (8%) per year “shall be allowed” on the “amount of the verdict” (\$30,000,000.00) from the date that the Offer of Judgment was filed until the entry of judgment. As of the date of this Motion, interest has accrued in the amount of \$4,806,575.34. Plaintiff requests an award of the interest that has accrued in accordance with applicable law.

PROCEDURAL BACKGROUND

This is a wrongful death action that was initially filed on July 13, 2022. On November 15, 2022, Plaintiff filed an Offer of Judgment to allow Defendant McLeod Physician Associates II (“MPA II”) to resolve the case by agreeing to a judgment in favor of Plaintiff in the amount of \$1,199,999.00. See Plaintiff’s Offer of Judgment, attached as Exhibit A. The Offer of Judgment stated that if accepted, “Plaintiff will discharge any and all claims against Defendants MPA II and Charles A. Trant, MD (“Trant”) for the damages allegedly sustained by Plaintiff arising out of the circumstances described in Plaintiff’s Complaint.” *Id.*, p. 1. MPA II refused the Offer of Judgment, which lapsed on December 5, 2022, twenty (20) days after it was filed.

Prior to trial, Defendants canceled the court-ordered mediation in this case due to their insurance carrier’s belief that Plaintiff’s case was worthless. The case was tried by jury before the Honorable R. Ferrell Cothran, Jr. Trial commenced on Monday, November 4, 2024 and concluded on Friday, November 8, 2024. At the conclusion of trial, the jury rendered a verdict in favor of Plaintiff finding both Defendants liable for negligence and awarding \$30,000,000.00 in actual damages. As stated on the stipulated verdict form, the jury found *multiple occurrences* and that Defendant Trant was *grossly negligent*. The jury’s verdict exceeded the amount of the Offer of Judgment that MPA II that refused. As a result, Plaintiff is entitled to an award of interest for the reasons discussed more fully below.

LEGAL STANDARD

South Carolina law provides that “[i]f an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall be allowed to recover from the offeree [...] eight percent interest computed on the amount of the verdict or award from the date of the offer[.]” See S.C. Code § 15-35-400(B); see also Rule 68(b),

SCRCP (“If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall recover from the offeree: [...] (2) if the offeror is a plaintiff, eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of judgment”). Rule 68, SCRCP, is intended to encourage settlement and reduce litigation. *See Wells v. Vetech, LLC*, 437 S.C. 428, 433, 879 S.E.2d 6, 8 (Ct. App. 2022).

ARGUMENT

I. PLAINTIFF IS ENTITLED TO AN AWARD OF INTEREST DUE AS A RESULT OF MPA II’S NONACCEPTANCE OF THE OFFER OF JUDGMENT

South Carolina courts recognized that an offer of judgment under Rule 68, SCRCP, “is intended to encourage settlements and avoid prolonged litigation.” *Black*, at 227, 433 S.E.2d at 24. The plain language and intent behind Rule 68 were codified by the General Assembly through the enactment of S.C. Code § 15-35-400.

While MPA II was not required to accept the Offer of Judgment, its nonacceptance has consequences. The “Tort Reform Act of 2005 Relating to Medical Malpractice,” signed by Governor Mark Sanford on April 4, 2005, was meant to amend the Code of Laws “by adding section 15-35-400, so as to provide for offers of judgment after commencement of a civil action based on contract or seeking the recovery of money damages and to **provide for consequences of nonacceptance**[.]” *See* 2005 S.C. Acts 32 (emphasis added). As a consequence of MPA II’s rejection of the Offer of Judgment, Plaintiff is entitled to an award of interest and costs pursuant to Rule 68(b), SCRCP and S.C. Code § 15-35-400.¹

¹ Plaintiff is also entitled to recover “administrative, filing, or other court costs” as provided in Rule 68, SCRCP, from November 15, 2022, to present. Because Plaintiff settled all claims against Defendant Marion County School District on September 10, 2024, Plaintiff has elected not to seek to recover any “administrative, filing, or other court costs” to avoid any confusion in the record.

II. THE INTEREST CALCULATION IS BASED ON THE AMOUNT OF THE “VERDICT”

Both Rule 68(b) and S.C. Code § 15-35-400 expressly provide for a party to recover eight percent (8%) on the entire amount of a verdict from the date of the offer to the entry of the judgment. *See Garrison v. Target Corp.*, 435 S.C. 566, 586, 869 S.E.2d 797, 808 (2022) (holding that the plaintiff was entitled to eight percent interest on the entirety of her damages award, including punitive damages, pursuant to Rule 68, SCRPC). Neither the rule nor the statute provides any exception to the mandatory consequences for rejecting an offer of judgment.

The Offer of Judgment Statute, which was created after the South Carolina Solicitation of Charitable Funds Act, does not address non-profit or charitable entities much less make an exemption for entities that fall under the South Carolina Solicitation of Charitable Funds Act. There is a basic presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects. *See Whitner v. State*, 328 S.C. 1, 6, 492 S.E.2d 777, 779 (1997). When statutory terms are clear and unambiguous, there is no room for construction and courts are required to apply them according to their literal meaning. *Carolina Power & Light Co. v. City of Bennettsville*, 314 S.C. 137, 139, 442 S.E.2d 177, 179 (1994); *see also Hodges v. Rainey*, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000) (“When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature’s language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning”). As a result, the interest calculation is based on the amount of verdict, as given by the jury, as opposed to being based upon reductions or discounts that are not referenced anywhere in the statute or the rule.

The South Carolina Supreme Court has confirmed that both Rule 68, SCRPC, and S.C. Code § 15-35-400, which govern the award of interest in the offer of judgment context, specifically

state that the plaintiff is entitled to eight percent interest “**on the amount of the verdict or award**” from the date of the offer to the entry of judgment. *See Garrison*, at 585, 869 S.E.2d at 808. In *Garrison*, the court found the language of both the rule and the statute clearly and unambiguously provides that the plaintiff was entitled to eight percent interest on the entire amount of the verdict, including punitive damages. *Id.* (“Indeed, we do not perceive any restriction in the rule or statute which prohibits the award of interest on punitive damages, and we refuse to impose such limitation here.”). *Id.* at 586, 869 S.E.2d at 808.

Any offset or reduction due to statutory cap on damages or offsets from the settling co-defendants does not affect the Plaintiff’s right to Offer of Judgment interest “on the amount of the verdict.” *See* Rule 68(b) SCRCP.² Plaintiff’s Offer of Judgment to Defendant MPA II was filed on November 15, 2022, and expired on December 5, 2022. The settlement with Marion County School District did not occur until September 10, 2024. At the time the Offer of Judgment expired, Defendant MPA II did not know that there would ever be a set off and could not have factored the setoff into its decision to reject the Offer of judgment. Plaintiff is entitled to an award of Offer of Judgment interest on the entire amount of the verdict. *See Butler Contracting, Inc. v. Ct. St., LLC*, 369 S.C. 121, 133–34, 631 S.E.2d 252, 259 (2006) (holding that the right of a party to prejudgment interest is not affected by rights of discount or offset claimed by the opposing party).

Plaintiff is entitled to an award of eight percent (8%) interest on the “amount of the verdict,” from November 15, 2022 through the date of the entry of judgment. As of today’s date, interest has accrued in the amount of **Four Million Eight Hundred Six Thousand Five Hundred Seventy-Five and 34/100 Dollars (\$4,806,575.34)**, as calculated below:

² This language mirrors the language of S.C. Code §15-35-400(B).

Starting Amount (PV)?:	\$30,000,000.00
Annual Interest Rate?:	8.0000%
Days (-9,999 < # < 47,482)?:	731
Start Date (year > 1969)?:	11/15/2022
End Date (year < 2100)?:	11/15/2024
Compounding?:	Exact/Simple
Days In Year?:	365
Interest Earned:	\$4,806,575.34
Future Value (FV):	\$34,806,575.34
Annual Percentage Yield (APY):	7.7025%
Daily Interest Rate:	0.0219%

See Interest Calculation through November 15, 2024 (<https://accuratecalculators.com/interest-calculator>), copy attached as Exhibit B.

Additionally, for each day after today's date that lapses until to the entry of judgment, *per diem* interest in the amount of \$6,575.34 per day should be added to the total award. See *Per Diem Interest Calculation*, copy attached as Exhibit C.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that Offer of Judgment interest of \$4,806,575.34, plus \$6,575.34 in *per diem* interest for each day that elapses after November 15, 2024 until the entry of judgment, as required under Rule 68, SCRCP and S.C. Code §15-35-400 due to the failure of Defendant MPA II to accept Plaintiff's Offer of Judgment.

Respectfully submitted,

By: s/J. Taylor Powell
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Conway, SC 29526

Attorneys for Plaintiff

November 15, 2024
Charleston, South Carolina

Exhibit A

Plaintiff's Offer of Judgment filed November 15, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF MARION	)	FOR THE TWELFTH JUDICIAL CIRCUIT
	)	
Demetrice Utley, Individually and as	)	
Personal Representative of the Estate of	)	Case No.: 2022-CP-33-00362
Taylor Danielle Price,	)	
	)	
Plaintiff,	)	OFFER OF JUDGMENT TO
vs.	)	DEFENDANT
	)	MCLEOD PHYSICIAN ASSOCIATES II
McLeod Physician Associates II, Charles A.	)	
Trant, MD, Marion County School District,	)	
	)	
Defendants.	)	
	)	

TO: J. BOONE AIKEN, ESQ., COUNSEL FOR DEFENDANTS MCLEOD PHYSICIAN ASSOCIATES II AND CHARLES A. TRANT:

Pursuant to S.C. Code Ann. § 15-35-400 and Rule 68, SCRCF, Plaintiff hereby makes the following Offer of Judgment to Defendant McLeod Physician Associates II and MAG Mutual Insurance Company:

In consideration of a judgment against Defendant McLeod Physician Associates II (“MPA II”) in the amount of One Million One Hundred Ninety-Nine Thousand Nine Hundred and Ninety-Nine and 00/100 Dollars (\$1,199,999.00) Plaintiff will discharge any and all claims against Defendants MPA II and Charles A. Trant, MD (“Trant”) for the damages allegedly sustained by Plaintiff arising out of the circumstances described in Plaintiff’s Complaint.

An acceptance of this Offer of Judgment would result in the payment of \$1,199,999.00 to Plaintiff by MAG Mutual Insurance Company, the entity providing professional liability coverage to MPA II and Trant with a shared policy limit of \$1,200,000.00. If this Offer of Judgment is not accepted within twenty (20) days after notification of this offer or prior to or on the tenth day before the actual trial date, whichever date occurs first, this offer shall be considered rejected.

However, Plaintiff reserves the right to withdraw this Offer of Judgment prior to its acceptance or prior to the date on which it would be considered rejected by giving notice to you or your client in accordance with the service rules for motions and other pleadings outlined in the South Carolina Rules of Civil Procedure. Pursuant to S.C. Code Ann. § 15-35-400(B) and SCRCP 68, if Defendant MPA II does not accept this Offer of Judgment and Plaintiff obtains a verdict or determination at least as favorable as this offer, Plaintiff shall seek to recover from MPA II: (1) any administrative, filing, or other court costs from the date of this offer until judgment; and (2) eight percent annual interest computed on the amount of the verdict or award from the date of this offer. However, by making this Offer of Judgment, Plaintiff does not waive her right to seek any greater remedies that may be available to it than those set forth in S.C. Code Ann. § 15-35-400 and SCRCP 68 including, without limitation, her right to seek a recovery of pre-judgment interest at a rate greater than eight percent per annum.

Within twenty (20) days after notification, or at least ten (10) days prior to the trial date, whichever date is earlier, Defendant MPA II or their attorney, J. Boone Aiken, may file with the Clerk of Court a written acceptance of this Offer of Judgment and serve it upon Plaintiff in accordance with the South Carolina Rules of Civil Procedure.

(Signature on Following Page)

Respectfully submitted,

By: s/J. Taylor Powell

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Attorneys for Plaintiff

November 15, 2022
Charleston, South Carolina

Exhibit B

Interest Calculation to November 15, 2024

Starting Amount (PV)?:	\$30,000,000.00
Annual Interest Rate?:	8.0000%
Days (-9,999 < # < 47,482)?:	731
Start Date (year > 1969)?:	11/15/2022
End Date (year < 2100)?:	11/15/2024
Compounding?:	Exact/Simple
Days In Year?:	365
Interest Earned:	\$4,806,575.34
Future Value (FV):	\$34,806,575.34
Annual Percentage Yield (APY):	7.7025%
Daily Interest Rate:	0.0219%

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Exhibit C

Per Diem Interest Calculation

Starting Amount (PV)?:	\$30,000,000.00
Annual Interest Rate?:	8.0000%
Days (-9,999 < # < 47,482)?:	1
Start Date (year > 1969)?:	11/15/2022
End Date (year < 2100)?:	11/16/2022
Compounding?:	Exact/Simple
Days In Year?:	365
Interest Earned:	\$6,575.34
Future Value (FV):	\$30,006,575.34
Annual Percentage Yield (APY):	8.3277%
Daily Interest Rate:	0.0219%

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF MARION	)	C/A NO. 2022-CP-33-00362
Demetrice Utley, individually and as Personal Representative of the estate of Taylor Danielle Price,	)	
Plaintiff,	)	DEFENDANTS' MOTION FOR JNOV OR, IN THE ALTERNATIVE, FOR A NEW TRIAL ABSOLUTE OR, IN THE ALTERNATIVE, FOR REDUCTION OF VERDICTS AND SUPPORTING MEMORANDUM OF LAW [HEARING REQUESTED]
vs.	)	
McLeod Physicians Associates, II and Charles A Trant, M.D.,	)	
Defendant.	)	

PLEASE TAKE NOTICE that the Defendants McLeod Physician Associates II and Charles A. Trant, M.D. hereby respectfully move before the Honorable R. Ferrell Cothran, Jr. at the Marion County Judicial Center, Marion, South Carolina, at such time and place as may be set by the Court, for an Order pursuant to Rule 50(b), SCRCPP, granting judgment as a matter of law in favor of the Defendants notwithstanding the jury's verdict. Alternatively, the Defendants move for a new trial absolute pursuant to Rule 59(a), SCRCPP and pursuant to the thirteenth juror doctrine. If the foregoing motions are denied, the Defendants move that the verdict in favor of the Plaintiff be reduced to the monetary cap of \$1.2 million in accordance with S.C. Code Ann. § 15-78-120(a)(1) and that the Court apply the set-off under the common law and S.C. Code Ann. § 15-38-50 for the \$130,000 in settlement funds received by the Plaintiff from other settling party. The Defendants reserve the right to supplement this motion and memorandum of law with a supplemental and/or reply memorandum of law and also respectfully request oral argument.

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

I. Judgment Notwithstanding the Verdict (JNOV)

Under Rule 50(b), SCRCP, a party who moved for a directed verdict may move for judgment notwithstanding the verdict (JNOV) in order to have the verdict set aside. The verdict in this case should be set aside because there was no gross negligence as a matter of law, lack of proximate cause, and only one “occurrence” as a matter of law.

A. Dr. Trant was not grossly negligent as a matter of law.

Gross negligence is the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. Negligence is the failure to exercise due care, while gross negligence is the failure to exercise even the slightest care. Therefore, the key inquiry is whether the conduct at issue constitutes carelessness or mere inadvertence which is the hallmark of simple negligence, as opposed to willfulness and recklessness that qualifies as gross negligence. *See, Sturken v. Richland Oil Co.*, 248 S.C. 355, 150 S.E.2d 341, 343 (1966). *See also, Powell v. Shore*, 242 S.C. 403, 131 S.E.2d 155, 159 (1963) (Supreme Court describes "mere inadvertence" as "simple negligence"); *Jumper v. Goodwin*, 239 S.C. 508, 123 S.E.2d 857, 861 (1962) (same). A finding of gross negligence requires more than proof of an error or mistake. *See, Pilot Industries v. Southern Bell Telephone & Telegraph Co.*, 495 F.Supp. 356, 362 (D.S.C. 1979) (“[p]roof of error or mistake alone has been held to be insufficient to make out a case of gross negligence”). As the Supreme Court has explained, the conduct required to demonstrate gross negligence requires a consciousness of wrongdoing. *Rogers v. Florence Printing Co.*, 233 S.C. 567, 106 S.E.2d 258, 264 (1958). In sum, a defendant is guilty of gross negligence if he is so indifferent to the consequences of his conduct as not to give slight care to what he is doing. *See, Clyburn v. Sumter County School District 17*, 317 S.C. 50, 451

S.E.2d 885 (1994); *Etheridge v. Richland County School District Two*, 341 S.C. 307, 534 S.E.2d 275 (2000).

In *Clyburn*, the Supreme Court upheld summary judgment for a school district in its handling of the dispute between a student and a non-student where the non-student attacked the student on a school bus with a knife. In finding that school district not grossly negligent as a matter of law, the court noted that after hearing of the initial altercation on the bus, the school bus administrator called the student and the non-student's sister into the office to discuss the situation, warned the sister that the non-student would face criminal charges if she boarded the bus again, and attempted to contact the parents. The bus driver watched for the non-student and stated she would not stop the bus if she saw the non-student. The court found that the school district exercised at the very least "slight care." *Clyburn*, 451 S.E.2d at 888.

In *Etheridge*, the Supreme Court reversed the Court of Appeals and reinstated summary judgment in favor of a school district in a case in which one student shot and killed another at a school. The facts showed the students were high school age, and the school district had no direct knowledge or notice of the animosity between them. "The only reasonable inference that can be drawn is that the school district, at the very least, exercised 'slight care' to ensure the safety of its students." *Etheridge*, 534 S.E.2d at 278. The principal, assistant principal, and the two security monitors constantly monitored the hallways and were in constant contact with each other by walkie-talkies. The teachers stood in their doorways to watch students during the change of class. Some of the doors were locked to limit the flow of traffic. A list of suspended students was circulated daily. There was an intervention system set up to help resolve conflicts between students. At the very least, "slight care" was taken. Further, the fact that the school district might have done more does not negate the fact that it exercised "slight care."

The undisputed evidence in this case shows that Dr. Trant exercised at least slight care. Dr. Trant testified that his standard practice was to review any and all medical records that were available to him. He testified “[g]etting medical records is always a struggle, and we did the best we could to get everything we could in a timely manner.” During Taylor’s appointment with Dr. Trant, he asked Taylor and her mother about family medical history and Taylor’s medical history. He reviewed Taylor’s symptoms with her and asked about any limitations on physical activities such as playing basketball and running suicides. He correctly read a recent EKG as normal. He listened to Taylor’s heart with a stethoscope. After his evaluation he made a diagnosis of hyperventilation syndrome and a vagal reaction, neither of which are cardiac related. He discussed treatments including breathing patterns to avoid panting, breathing into a paper bag, super hydration, and adding salt to Taylor’s diet. He invited Taylor and her mother to call back if the symptoms persist or do not respond as expected.

It is true that Dr. Trant could have ordered more tests, even though he did not believe any new tests were clinically indicated. It is also true that he could have declined to give Taylor a written authorization to participate in sports, physical education, or cheering. The fact that he could have done more does not negate the fact that he exercised at least slight care as a matter of law.

B. There was only one “occurrence” as a matter of law.

As discussed at length below, the Defendants dispute that the statutory definition of “occurrence” under the Tort Claims Act applies to charitable organizations and its employees. However, if this Court concluded that a “per occurrence” scheme applies to claims brought pursuant to the South Carolina Solicitation of Charitable Funds Act, the Court should find that there was only a single “occurrence” as a matter of law. The term “occurrence” means “an

unfolding sequence of events which proximately flow from a single act of negligence.” S.C. Code Ann. § 15-78-30(g).

The statutory definition of “occurrence” is complex and nuanced and frankly not one that can be easily understood or applied by a jury. Even the South Carolina appellate courts that have addressed that definition have struggled with its meaning and application. *See, Boiter v. South Carolina Department of Transportation*, 393 S.C. 123, 712 S.E.2d 401 (2011); *Chastain v. Anmed Health Foundation*, 388 S.C. 170, 694 S.E.2d 541 (2010). Accordingly, the statutory definition of “occurrence” presents an issue of statutory construction, and that is an issue of law for the court to decide. The cardinal rule of statutory construction is to ascertain the intent of the legislature, and the determination of legislative intent is a matter of law. *Georgia-Carolina Bail Bonds, Inc. v County of Aiken*, 354 S.C.18, 579 S.E.2d 334 (Ct. App. 2003). The Tort Claims Act clearly expresses legislative intent that it must be liberally construed in favor of limiting the liability of the state. S.C. Code Ann. § 15-78-20(f). To the extent that the Solicitation of Charitable Funds Act adopts the limitations on liability imposed in the Tort Claims Act, it must likewise be strictly construed to limit the liability of a charitable organization and its employees. *See*, S.C. Code Ann. § 33-56-180(A).

The jury concluded there was more than one occurrence. *See*, Jury Verdict Form attached as Exhibit 1. Respectfully, that is an incorrect conclusion as a matter of law under the facts of this case. It is not clear under current South Carolina law if the number of occurrences is determined by the number of negligent acts, the number of injuries, the number of proximate causes, or the number of events. In *Boiter, supra*, the Court of Appeals concluded that the court erred in tying the number of occurrences to the number of injuries under *the peculiar facts of this case* but refused to adopt a bright-line test for future cases. *See, Boiter*, 712 S.E.2d at 406 (“we do not adopt a bright-

line test based on the existence of multiple acts of negligence”). The Court need not untangle this conundrum in this case because under the facts of this case, however the number of “occurrences” is judged, there was only one “occurrence” as a matter of law.

If the Court concludes there were two separate acts of negligence by Dr. Trant – (1) failure to order more tests, and, (2) giving Taylor clearance to return to sports, physical education, and cheering – those acts were unfolding or evolving from the failure to diagnose ARVD. Had Dr. Trant suspected ARVD, he would have ordered more tests and would not have cleared Taylor for physical activity until those tests came back. In other words, the same “unfolding sequence of events” flowed from two acts of negligence by the same physician but there was only but a single “occurrence.”

If the number of “occurrences” is judged by the number of injuries, the only injuries were for wrongful death to Taylor’s statutory beneficiaries. The plaintiff abandoned her cause of action for survival damages to the estate.

If the number of “occurrences” is judged by the number of proximate causes, there was a single proximate cause. Under South Carolina law, “[a] negligent act or omission is a proximate cause of injury if, in a natural and continuous sequence of events, it produces the injury, and without it, the injury would not have occurred.” *Hurd v. Williamsburg County*, 353 S.C. 596, 579 S.E.2d 136, 144 (Ct. App. 2003). Consequently, in order to prove proximate cause (which is of course a critical element of a negligence cause of action), the Plaintiff was required to show a “natural and continuous sequence of events” connecting the negligent act (i.e., the breach of duty) and the damages. Here, as stated earlier, the Plaintiff cannot show separate, distinct damages were proximately caused by the separate breaches of duty as alleged. The same damages, therefore, proximately flowed through a “natural and continuous sequence of events” from any successive and concurrent acts of negligence. There was but one

"unfolding sequence of events" and hence a single "occurrence." In effect, as discussed above, the two breaches, as claimed by the Plaintiff, are truly one and the same – the alleged failure to diagnose ARVD. Because there is truly a single proximate cause, there is, at most, a single "occurrence."

Finally, if the number of "occurrences" is judged by the number of events, there was only one event. This approach fits the statutory definition of an occurrence best. An occurrence is an "unfolding sequence of events." The event (or occurrence) in this case was Taylor's tragic death. Even if her death was the result of multiple acts of negligence they flow into that singular event, i.e., they combined and concurred to proximately cause her death.

For each of these reasons, the Court should rule as a matter of law that there is, at most, a single "occurrence."¹

C. Lack of Proximate Cause

Ordinarily, proximate cause is a question for the jury, but when the evidence is susceptible to only one inference, it becomes a matter of law for the court. *Platt v. CSX Transp., Inc.*, 379 S.C. 249, 665 S.E.2d 631, 640 (Ct. App. 2008).

The jury found that the negligence of the Defendants proximately caused damage to the Plaintiff. It is not disputed that Taylor died 34 months after her only visit with Dr. Trant, and that Taylor and her mother were told by Dr. Trant to call back if the symptoms persist or do not respond as expected. They never called back or returned.

¹ The Plaintiff has filed a Post-Trial Motion for Confirmation of Two Occurrences where she argues that the facts and law support a finding of two occurrences. The Defendants incorporate herein the arguments made in opposition to the Plaintiff's motion.

Further, Taylor received at least one medical clearance to participate in sports after the medical clearance provided by Dr. Trant (See Medical Clearance dated 7/16/19, attached as Exhibit 2). Therefore, she was not participating in basketball on the day she died under Dr. Trant's sports clearance.

The undisputed evidence shows passage of time (34 months) and intervening acts (subsequent medical clearance). Together, they break the causal chain. In *McKnight v South Carolina Dept. of Corrections*, 385 S.C. 380, 684 S.E.2d 566 (Ct. App. 2009), deficient mental health treatment to incarcerated inmate in prison hospital was found too attenuated from the inmate's suicide a year after his release from the prison hospital to have proximately caused it. This was especially true because after this release from the hospital, the inmate returned to prison with no further treatment from the hospital. The *McKnight* opinion cites *Tolton v. American Biodyne, Inc.*, 48 F.3d 937, 944 (6th Cir. 1995), which held that when the decedent committed suicide more than one month after his last visit to the hospital and received treatment from two other hospitals during that one-month period, the plaintiffs could not prove damages because of the time lapse and intervening medical treatment.

The Defendants are, therefore, entitled to a JNOV based on the lack of proximate cause and the existence of an intervening cause that broke the causal chain.

II. New Trial Absolute After Change of Venue

Under Rule 59, SCRCP, a party may move for a new trial absolute "for any of the reasons for which new trials have heretofore been granted..." In *Whaley v CSX*, 362 S.C. 456, 609 S.E.2d 286 (2005), the Supreme Court reversed the trial court's ruling denying a motion to change venue from Hampton County to Greenwood County and remanded the case for a new trial in Greenwood County. In this case, the Defendants moved to transfer venue from Marion County to Florence

County. That motion was denied before trial by Judge H. Steven DeBerry, IV, but the trial judge was Judge R. Ferrell Cothran, Jr. Judge DeBerry's ruling on venue was "the law of the case" when it was tried, and Judge Cothran may not have authority under the two-judge rule to order a new trial absolute due to Judge DeBerry's ruling. Nevertheless, it is raised again herein to avoid an argument that the Defendants have somehow waived their objection to venue in Marion County. For brevity, the Defendants' position is more fully set forth in its proposed order to transfer venue requested by the judge who denied the motion attached as Exhibit 3, and the arguments therein are incorporated here by reference.

III. New Trial Absolute Based on Errors of Law

The Defendants have also moved for a new trial under Rule 59, SCRCF, based on erroneous and prejudicial jury charges. If the requested charge states a sound principle of law that is applicable to the case, and not otherwise covered by the charge, refusal to charge it is error and requires a new trial. *Burns v. South Carolina Commission for the Blind*, 323 S.C. 77, 448 S.E.2d 589 (Ct. App. 1994), *citing*, *Sanders v. Western Auto Supply Co.*, 256 S.C. 490, 183 S.E.2d 321 (1971).

A. Gross Negligence Jury Charge

The Court erred in charging the jury that "[g]ross negligence is a relative term and means the absence of care that is necessary under the circumstances." *See*, Jury Charge 21-1 attached as Exhibit 4. The Defendants recognize that that particular definition of "gross negligence" has been often cited by this State's appellate courts, but when carefully examined, that definition is actually a definition of *simple or ordinary* negligence and not *gross* negligence. It is a lack of due care or "the absence of care that is necessary under the circumstances" that characterizes

simple negligence. In other words, the definition at issue equates with the "absence of due care" and not the absence of slight care.

Because the Court charged the jury that "gross negligence" is "the absence of care that is necessary under the circumstances" as well as the correct definitions of the term not once but twice after a question from the jury about the difference between negligence and gross negligence, the jury was provided confusing and conflicting definitions, and it is just as probable that the jury applied the definition for simple negligence rather than the definition of gross negligence. This is particularly true because the Court also declined to charge the jury as to the difference between simple negligence and gross negligence, thereby denying the jury critical information by which they could distinguish the two levels of culpability.

The Defendants' position on this issue is fully supported by an analysis of the origins of that erroneous definition. Specifically, that definition has its origins in the case of *Hicks v. McCandlish*, 221 S.C. 410, 70 S.E.2d 629 (1952), where the Supreme Court wrote:

Gross negligence is a relative term, and means the absence of care that is necessary under the circumstances, but the absence of this care alone, *whether called 'gross' or 'ordinary' negligence*, does not authorize the jury to give exemplary damages. We have held in many cases that *exemplary damages should not be awarded for mere gross negligence*, and that the element that distinguishes actionable negligence from wilful tort is inadvertence.

70 S.E.2d at 631. (Emphasis added). The definition does not pre-date *Hicks*, and *Hicks* is the case that has been routinely cited in many Tort Claims Act cases for this erroneous definition. This definition represents a misreading of *Hicks* as is evident when the definition is read in the context of that case. In actuality, that definition describes simple or ordinary negligence, which is the absence of due care, i.e., "the care that is necessary under the circumstances." Importantly, in *Hicks*, the Supreme Court was commenting on the type of negligence that did not support an award

of punitive damages. The Supreme Court explained that regardless of its name, gross negligence or ordinary negligence, the "absence of care that is necessary under the circumstances" will not support an award of punitive (or exemplary) damages. In fact, the Supreme Court explicitly stated that "exemplary damages should not be awarded for mere gross negligence." 70 S.E.2d at 631. As such, it is clear that the Supreme Court was describing what is today recognized as simple or ordinary negligence because, under today's law, gross negligence will support an award of punitive damages but simple negligence will not. See, *Cohen v. Allendale Coca-Cola Bottling Co.*, 291 S.C. 35, 351 S.E.2d 897, 900 (Ct. App. 1986) ("[s]imple negligence affords no basis for an award of punitive damages"); *Carter v. R.L. Jordan Oil Co., Inc.* 301 S.C. 84, 390 S.E.2d 367 (Ct. App. 1990) (same).

In short, the *Hicks* definition of "gross negligence" is not accurate in current jurisprudence. The "absence of care that is necessary under the circumstances" -- which *Hicks* states will not support an award of punitive damages -- is a definition of simple or ordinary negligence but certainly not gross negligence as those terms are currently used and understood. To reiterate, the *Hicks* definition is not a fair or reasonable explanation of gross negligence for it creates absolutely no clear distinction or demarcation between gross negligence and simple negligence. This definition causes jury confusion and should not have been part of the court's jury charge on gross negligence. Hence, for this reason, a new trial absolute is warranted.

Additionally, the Defendants requested that the Court clearly and distinctly provide the jury with a charge that draws the distinctions between simple negligence and gross negligence so that the jury could understand the differences between the two levels of culpability. The Defendants requested that the Court charge the jury that "negligence is the failure to exercise due care, while gross negligence is the failure to exercise a slight degree of care." See, Defendants'

alternate Requests to Charge on gross negligence attached as Exhibit 5. By failing to charge the jury with a clear explanation of both types of negligence, it is not possible for the jury to have comprehended and then applied the differences between the two, which was a critical and dispositive issue for Dr. Trant in this case. Without dispute, Dr. Trant is entitled to absolute immunity for any acts of simple negligence under Section 33-56-180. Thus, the Court did not provide the jury with the necessary tools with which to make this most critical factual determination as to Dr. Trant's liability, and for this additional reason, a new trial absolute is warranted.

B. Charitable Immunity Charge

The parties stipulated that the Defendant McLeod Physician Associates II is a charitable organization and Dr. Charles Trant was an employee of McLeod Physician Associates II acting within the course and scope of his employment. The jury should have been charged on what that means. The Defendants made a request to charge portions of the charitable immunity statute which the Court declined to do. See, Defendants' Request to Charge #10, attached as Exhibit 6. In fact, the jury charges make no mention whatsoever of the charitable immunity statute. Charitable immunity is an important principle of law that applies to this case, and the court committed an error by not charging it. In *Burns v. South Carolina Commission for the Blind*, *supra*, the court held that the failure to charge premises liability as limited by the Tort Claims Act was prejudicial error, and when general instructions to the jury are insufficient to enable the jury to understand fully the law of the case and issues involved, a refusal to give a requested charge is reversible error. This error requires a new trial absolute.

In closing, the Plaintiff's counsel urged the jury to check "yes" to every answer on the verdict form. The jury may have thought that it had to find Dr. Trant grossly negligent for the Plaintiff to

recover. That is not the law, and giving the charitable immunity statute charge requested by the Defendants could have prevented any such confusion. The Court's error in this regard was further compounded by its erroneous charge on gross negligence as discussed above and by then not charging the jury on the definitions of the words "reckless" and "willful" contained in the statute as requested by the Defendants. See, Defendants' Requested Charge no. 22-1, attached as Exhibit 7. These errors further warrant the grant of a new trial absolute.

IV. New Trial Absolute Based Excessiveness of Verdict

The Defendants also request that the Court grant a new trial absolute because the verdict of \$30 million is unsupported by the evidence and is 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.

As the Supreme Court has explained, "[w]hen a party moved for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice." *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 431 S.E.2d 557, 558 (1993). "[W]hen the 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." *Id.*, citing *Easler v. Hejaz Temple*, 285 S.C. 348, 329 S.E.2d 753, 758 (1985).

"Under the South Carolina wrongful death statute, the question of damages is not directed toward the value of the human life that was lost, but rather the damages sustained by the

beneficiaries as a result of the death.” *Hawkins v. Pathology Associates of Greenville, P.A.*, 330 S.C. 92, 498 S.E.2d 395, 407 (Ct. App. 1998). *See also, Zorn v. Crawford*, 252 S.C. 127, 165 S.E.2d 640, 645 (1969) (finding the measure of damages recoverable is the injury to the beneficiaries, not the social or intrinsic value of the life of the decedent); *Singletary v. Shuler*, 33 S.C. 600, 861 S.E.2d 591, 596 (Ct. App. 2021) (same). The general elements of damages recoverable are: (1) pecuniary loss, (2) mental shock and suffering, (3) wounded feelings, (4) grief and sorrow, (5) loss of companionship, and (6) deprivation of the use and comfort of the intestate's society, including the loss of his experience, knowledge, and judgment in managing of the affairs of himself and of his beneficiaries. *Self v. Goodrich*, 300 S.C. 349, 387 S.E.2d 713, 714 (Ct. App. 1993).

The decedent Taylor Price died having two statutory beneficiaries, her biological mother (Demetrice Utley) and her biological father (Derrie Price). Taylor’s stepfather is not a statutory beneficiary. The Plaintiff presented no evidence of any pecuniary loss. Taylor was 16 years old at the time of her death and did not provide any financial support or benefit to the statutory beneficiaries. The loss to the statutory beneficiaries accordingly consists entirely of the subjective components of wrongful death damages. Critically, there was no evidence of any loss sustained by the biological father, Derrie Price. He did not testify at trial, and the damages witnesses offered no evidence of any impact of Taylor’s death on him nor any evidence of his relationship, if any, with Taylor while she was alive. Thus, any damages payable for the loss to Derrie Price are entirely speculative. As for Demetrice Utley, the evidence simply does not support the unprecedented award of \$30 million in actual damages for emotional loss, including grief, sorrow, wounded feelings, and loss of companionship. Her damages, while significant, do not rise to the level of the \$30 million award.

Clearly, the sheer magnitude of the verdict demonstrates that the jury was moved or actuated by passion, caprice, prejudice, or other considerations not found in the evidence. This most probably resulted from the Plaintiff's counsel injection of race and socioeconomic disparities into the case in the closing argument. The Plaintiff's counsel stated in his closing as follows: "The standards of care we've talked about, they're there to protect all patients, rich or poor, black or white, it doesn't matter who you are; they're there to protect each of the patients." See, Transcript of Closing Argument, p. 6:3-5, attached as Exhibit 8. Later, in his closing, the Plaintiff's counsel again injected race, socioeconomic inequalities, and other inappropriate considerations when he stated:

Those standards of care, folks, there a hundred percent equal opportunity, a hundred percent color blind, because they have to be. It doesn't matter if you're black, you're white, if you live in a mansion, or a three-bedroom house, or an apartment. It doesn't matter if you're a millionaire or on Medicaid. Those standards of care, they're in effect for each and every patient.

See, Transcript of Closing Argument, p. 16:4-10, attached as Exhibit 8.

The Plaintiffs' counsel also argued that the verdict should be large enough to have a deterrent effect, i.e. to "send a message" not just to the Defendants, but to other doctors throughout the state. Counsel even called for a message to be sent to other non-party physicians by name. Counsel argued as follows:

But whatever you do, whatever you do, it's got to be loud. It's got to be loud enough to be heard in Charleston, South Carolina, so that Dr. Cain can hear it. It needs to be loud enough in Columbia, South Carolina, so Dr. Shuler can hear it. And it certainly needs to be loud enough to be heard over in Florence at McLeod. Across the Pee Dee, they need to hear it and take notice so that when a doctor is making a decision on whether or not a patient can receive the testing that they remember this, that those patients can get the proper care. You can be the conscience of the community. They need to hear that message.

See, Transcript of Closing Argument, pp. 26:22-27:7, attached as Exhibit 9. Under South Carolina law, actual damages are not awarded to have a deterrent effect or to “send a message”; instead they are awarded only to make a plaintiff whole. They are purely compensatory in nature. *See, Mellen v. Lane*, 377 S.C. 261, 659 S.E.2d 236, 250 (Ct. App. 2008) (“[a]ctual damages are properly called compensatory damages, meaning to compensate, to make the injured party whole, to put him in the same position he was in prior to the damages received insofar as this is monetarily possible”). Damages which serve as a deterrent or to “send a message” are solely the role of punitive damages; however, the Plaintiff did not seek punitive damages from the jury, nor are punitive damages recoverable under Section 33-56-180 against the Defendants. Thus, in light of the Plaintiff’s closing argument and the ultimate verdict, it is most probable that the jury heeded the Plaintiff’s call and, after deliberating only little more than 30 minutes, returned a verdict that was intended not to compensate the statutory beneficiaries for their loss but primarily to “send a message.”

In sum, the verdict of \$30 million is not supported by the evidence presented. That alone demonstrates that the verdict is grossly excessive. However, the sheer and unprecedented size of the verdict, together with the Plaintiff’s call to “send a message” during closing argument and the unsupported injection of race and socioeconomic inequalities, further demonstrates that the jury was moved or actuated by passion, caprice, prejudice, or other considerations not found in the evidence. For these additional reasons, the Defendants are entitled to a new trial absolute.

V. Thirteenth Juror Doctrine

The Defendants move for a new trial absolute as well based upon the Thirteenth Juror doctrine. "Under the 'thirteenth juror' doctrine, a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict. This ruling has also been termed a granting of a

new trial upon the facts." *Vinson v. Hartley*, 324 S.C. 389, 477 S.E.2d 715, 722 (Ct. App. 1996). "[T]he trial judge is the thirteenth juror, possessing the veto power to the Nth degree." *Id.* "The trial judge, sitting as the thirteenth juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts in the case." *Id.* As discussed above, the evidence presented in this case does not support the jury's verdict. Therefore, even if a JNOV is not granted, the Court should exercise its discretion and grant a new trial absolute for the reasons discussed herein.

VI. Set-Off of Settlement Amount Paid by Settling Defendant

South Carolina law recognizes that a trial court possesses "jurisdiction to set off one judgment against another is equitable in nature and should be exercised when necessary to provide justice between the parties." *Smalls v. South Carolina Department of Education*, 339 S.C. 208, 528 S.E.2d 682, 688 (Ct. App. 2000). The South Carolina Court of Appeals has explained that "the reason for allowing such a credit is to prevent an injured person from obtaining a second recovery of that part of the amount of damages sustained which has already been paid him. Or differently stated, it is almost universally held that there can be only one satisfaction for an injury or wrong." *Id.* The Court of Appeals in *Smalls* concluded:

Equity dictates Department be given a credit for the amount paid by the settling parties and thus, a double recovery is avoided. The settlement amount represents, in effect, the portion of total damages attributable to [the settling defendant].

528 S.E.2d at 688-689. *See also, Rutland v. South Carolina Department of Transportation*, 390 S.C. 78, 700 S.E.2d 451 (Ct. App. 2010).

It is well established that "[a] nonsettling defendant is entitled to credit for the amount paid by another defendant who settles." *Hawkins v. Pathology Associates of Greenville, P.A.*, 330 S.C.

92, 498 S.E.2d 395, 406 (Ct. App. 1998), citing *Powers v. Temple*, 250 S.C. 149, 156 S.E.2d 759 (1967); *Vaughn v. City of Anderson*, 300 S.C. 55, 386 S.E.2d 297 (Ct. App. 1989). "Therefore, before entering judgment on a jury verdict, the court must reduce the amount of the verdict to account for any funds previously paid by a settling defendant, so long as the settlement funds were paid to compensate the same plaintiff on a claim for the same injury." *Smith v. Widener*, 397 S.C. 468, 724 S.E.2d 188, 190 (Ct. App. 2012), citing *Hawkins v. Pathology Associates of Greenville, P.A.*, 330 S.C. 92, 498 S.E.2d 395, 406 (Ct. App. 1998). "When the settlement is for the same injury, the nonsettling defendant's right to a setoff arises by operation of law." *Smith*, 724 S.E.2d at 190, citing *Ellis v. Oliver*, 335 S.C. 106, 515 S.E.2d 268, 271-72 (Ct. App. 1999). "Therefore, a plaintiff's claim for actual and punitive damages arising from the same injury is the same claim for purposes of setoff under section 15-38-50(1)." *Smith v. Widener*, 397 S.C. 468, 724 S.E.2d 188, 191 (Ct. App. 2012).

In *Ellis v. Oliver*, 335 S.C. 106, 515 S.E.2d 268 (Ct. App. 1999), the Court of Appeals explained that "[a]pplication of the settlement credit was statutorily mandated in this case. S.C. Code Ann. § 15-38-50 grants the court no discretion in determining the equities involved in applying a set-off once a release has been executed in good faith between a plaintiff and one of several joint tortfeasors." 515 S.E.2d at 272.

The Plaintiff settled her claims against the Defendant Marion County School District for the sum of \$130,000. In application of South Carolina law, the Defendants McLeod Physician Associates II and Dr Trant are entitled to a set-off under the common law and S.C. Code Ann. § 15-38-50 for the sum of the settlement received by the Plaintiff from the settling Defendant School District.

VII. Reduction to Statutory Cap of \$1.2 Million

A. **The total judgment of \$30 million should be reduced to \$1.2 million total against both Defendants in accordance with the South Carolina Solicitation of Charitable Funds Act.**

The total judgment of \$30 million actual damages against the Defendants should be reduced to \$1.2 million in accordance with the South Carolina Solicitation of Charitable Funds Act. Section 33-56-180(A) of that Act provides in pertinent part as follows:

A person sustaining an injury or dying by reason of the tortious act of commission or omission of an employee of a charitable organization, when the employee is acting within the scope of his employment, may recover in an action brought against the charitable organization only the actual damages he sustains in *an amount not exceeding the limitations on liability imposed in the South Carolina Tort Claims Act in Chapter 78 of Title 15.*

S.C. Code Ann. § 33-56-180(A). (Emphasis added). Prior to its amendment in 2000, the reference to the Tort Claims Act, as italicized above, did not exist. Instead, the limit on liability in Section 33-56-180(A) was the specific sum of \$250,000. *See*, 1994 Act No. 461. The statutory monetary caps imposed in the Tort Claims Act are set forth in Section 15-78-120. Section 15-78-120(a)(3) provides that "no 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). In adopting the statutory caps set forth in the Tort Claims Act, the General Assembly did not expressly adopt any other provision of the Tort Claims Act.

When it enacted the South Carolina Solicitation of Charitable Funds Act in 1994, the General Assembly expressly intended to "stipulat[e] the amount that a person may recover and

from whom as a result of an injury by reason of certain tortious acts of an employee of the charitable organization." 1994 Act No. 461. At that time, the monetary cap on liability was established as \$250,000.

Later, in 2000, the General Assembly amended the Solicitation of Charitable Funds Act and at that time adopted the Tort Claims Act limits of liability. There was not, however, an intent to dramatically alter or increase the potential liability of charitable organizations. In fact, the title to Act No. 336 of 2000 states:

AN ACT TO AMEND CHAPTER 56, TITLE 33, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SOLICITATION OF CHARITABLE FUNDS ACT, SO AS TO REVISE THE CONTENT BY, INTER ALIA, ADDING CERTAIN DISCLOSURE REQUIREMENTS, DEFINITIONS OF AFFECTED SOLICITORS, CRIMINAL AND OTHER PENALTIES FOR VIOLATIONS, AND TECHNICAL CHANGES.

2000 Act No. 336. Notably, the title to the Act does not reflect any intent by the General Assembly to dramatically increase the potential liability of charitable organizations. The title does not even expressly describe the increase in the limits but rather refers to that as a "technical change."² Therefore, the General Assembly's reference to the Tort Claims Act caps in the 2000 Act does not evince an intent to create what would be an extreme and unprecedented level of monetary liability in cases such as this one. Certainly, that would not constitute a mere "technical change."

The only appellate decision addressing the 2000 amendment to the monetary caps under the Solicitation of Charitable Funds Act is *Chastain v. AnMed Health Foundation*, 388 S.C. 170, 694 S.E.2d 541 (2010). In *Chastain*, the trial court reduced a \$1.54 million verdict to \$300,000

² See, *Joytime Distribution & Amusement v. State of South Carolina*, 338 S.C. 634, 528 S.E.2d 647, 655 (1999) ("it is proper to consider the title or caption of an act in aid of construction to show the intent of the legislature").

based on two alternative grounds. In the Supreme Court opinion, the two grounds are described as follows:

The trial judge reasoned the intent of the CFA was to limit the amount of damages recoverable from a charitable organization, and that to read the term “ ‘occurrence’ to include every incident where the defendant nurses violated the applicable standard of care would clearly defeat the legislature's [intent]....” Alternatively, the judge held that based on the jury charge and verdict form, it was impossible to determine the number of negligent acts or negligent nurses found by the jury and thus only one recovery was appropriate.

694 S.E.2d at 543. While the appellant in *Chastain* appealed both grounds, the Supreme Court addressed only the alternative position finding “it necessary to uphold only one ground in order to affirm the trial judge’s decision to reduce the verdict.” *Id.* Consequently, the Supreme Court, nor any appellate court, have addressed the trial court’s first basis for reducing the verdict to \$300,000.

The Defendants in the case at bar re-assert that basis for reducing the \$30 million to a single \$1.2 million cap under the Solicitation of Charitable Funds Act. A fair reading of the Charitable Funds Act shows that the legislature’s intent is to limit the amount of damages recoverable against a charitable organization and its employees. Importantly, like the Tort Claims Act with respect to its impact on sovereign immunity, the Charitable Funds Act, which results in a partial waiver of charitable immunity, is in derogation of the common law, and accordingly, must be strictly construed in favor of limiting the liability of charitable organizations and their employees. *See, Eades v. Palmetto Cardiovascular and Thoracic, P.A.*, 422 S.C. 196, 810 S.E.2d 848, 850 (2018) (“[s]tatutes in derogation of the common law are to be strictly construed”). Certainly, Section 33-56-180(A) does not mention the word “occurrence” or otherwise indicate that a plaintiff may be able to recover a separate cap on monetary relief for each separate “occurrence.” As such, the Charitable Funds Act cannot be construed as adopting any other provision of the Tort Claims Act, including the definition of “occurrence,” particularly when that intent is not explicitly stated in the

title to 2000 Act No. 336 nor any other legislative history. The legislative intent was simply to borrow the alternative monetary caps of \$300,000 and \$1.2 million from the Tort Claims Act in place of the existing \$250,000. There was no intent to adopt any “per occurrence” scheme where the charitable organizations and their employees would be subject to essentially unlimited liability, such as the \$30 million verdict at issue in this case.

The *Chastain* case presents such a scenario. In that case, the plaintiff alleged that AnMed’s nurses deviated from the standard of care on 2,372 separate occasions. To accept Chastain’s interpretation of Section 33-56-180 would allow a recovery of up to \$300,000 for each deviation from the standard of care leading to potential liability of over \$600 million in damages against AnMed, a charitable organization. As the trial judge in *Chastain* recognized, the General Assembly did not intend to create such unprecedented and tremendously expanded exposure for charitable organizations and their employees with the adoption of a “technical change” in 2000 to the Solicitation of Charitable Funds Act. Any suggestion to the contrary is really hard to fathom – it certainly renders the concept of “technical changes” to a statute to an absurd meaning. Clearly, the General Assembly did not intend to create such unprecedented exposure for charitable organizations and their employees with the adoption of a “technical change” to the Solicitation of Charitable Funds Act. Therefore, with proper consideration of the 2000 Act and the legislative history, the change to Section 33-56-180(A) to reference “*an amount not exceeding the limitations on liability imposed in the South Carolina Tort Claims Act in Chapter 78 of Title 15*” in place of a specific monetary amount should not be interpreted to allow for a separate amount of monetary recovery for each separate occurrence as defined in the Tort Claims Act but not in the Charitable Funds Act. Instead, the General Assembly intended that the monetary liability of charitable organizations and their employees be capped at \$300,000 for non-physician torts and \$1.2 million

for physician-torts. In sum, there was no intent – and certainly no explicit and clearly expressed intent as required where the statute is in derogation of the common law – to adopt any “per occurrence” monetary scheme.³ Accordingly, the monetary liability of the Defendants is capped at \$1.2 million, and the \$30 million verdict should be reduced by operation of law to \$1.2 million.

B. The monetary liability of the Defendant Charles Trant pursuant to the Solicitation of Charitable Funds Act is not unlimited or unqualified as the Plaintiff argues. His liability is subject to the same cap as the Defendant McLeod Physicians Associates II.

In addition, even assuming that the jury correctly found gross negligence on the part of the Defendant Charles Trant, the joint and several liability of Dr. Trant, as an employee of a charitable organization, is also capped at \$1.2 million, just as the liability is capped at that amount for the Defendant McLeod Physicians Associates II. Alternatively, even if this Court were to apply the “per occurrence” scheme and finds two separate occurrences, as urged by the Plaintiff, then Dr. Trant’s liability is capped at a maximum of \$2.4 million, as is the liability of the charitable organization. The reason for that is quite simply that the Solicitation of Charitable Funds Act does not explicitly and clearly state that an employee’s liability is unlimited and unqualified where he/she is found to have acted with gross negligence. Section 33-56-180(A) of that Act provides in pertinent part as follows:

A person sustaining an injury or dying by reason of the tortious act of commission or omission of an employee of a charitable organization, when the employee is acting within the scope of his employment, may recover in an action brought against the charitable organization only the actual damages he sustains in an amount not exceeding the limitations on liability imposed in the South Carolina Tort Claims Act in Chapter 78 of Title 15. *An action against the*

³ See, *Sandel v. State*, 126 S.C. 1, 119 S.E. 776, 793 (1922) (recognizing that “[s]tatutes in derogation of the sovereignty of the state must be strictly construed, and a waiver of immunity from liability must be clearly expressed”).

charitable organization pursuant to this section constitutes a complete bar to any recovery by the claimant, by reason of the same subject matter, against the employee of the charitable organization whose act or omission gave rise to the claim unless it is alleged and proved in the action that the employee acted in a reckless, wilful, or grossly negligent manner, and the employee must be joined properly as a party defendant. A judgment against an employee of a charitable organization may not be returned unless a specific finding is made that the employee acted in a reckless, wilful, or grossly negligent manner.

S.C. Code Ann. § 33-56-180(A). (Emphasis added). The italicized provisions above address specifically the immunity possessed by employees of a charitable organization and how and under what limited circumstances a judgment may be entered against an employee. That italicized language was adopted as part of Act No. 461 of 1994, and the title to that Act states in pertinent part as follows:

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 56 TO TITLE 33 SO AS TO ENACT THE “SOUTH CAROLINA SOLICITATION OF CHARITABLE FUNDS ACT” WHICH INCLUDES ... PROVISIONS STIPULATING THE AMOUNT THAT A PERSON MAY RECOVER AND FROM WHOM AS A RESULT OF AN INJURY BY REASON OF CERTAIN TORTIOUS ACTS OF AN EMPLOYEE OF THE CHARITABLE ORGANIZATION.

See, 1994 Act No. 461. Thus, the legislative history states that the General Assembly was intending to “stipulate[e] the amount that a person may recover and from whom as a result of an injury by reason of certain tortious acts of an employee of the charitable organization.” *Id.* That legislative history says nothing to indicate that the amount recoverable from an employee differs in any respect from the amount recoverable from the charitable organization, and more importantly, it says nothing to suggest that the damages recoverable from an employee are unlimited and unqualified, even with a showing of gross negligence, willfulness, or recklessness. Instead, Section 33-56-180(A) simply provides that the employee may be included on the

judgment as a judgment debtor where he/she acts “in a reckless, willful, or grossly negligent manner.”

To recap from the discussion above, the Solicitation of Charitable Funds Act, which results in a partial waiver of charitable immunity for charitable organizations and their employees, is in derogation of the common law, and accordingly, must be strictly construed in favor of limiting the liability of charitable organizations and their employees, meaning that any change in the common law must be explicit and clearly expressed in the statute. However, Section 33-56-180(A) makes no explicit and clearly expressed reference to any unlimited or unqualified liability for employees, nor does it include any explicit and clearly expressed provision or statement that an employee’s liability may be greater than that of the charitable organization. Instead, the Act merely states that an employee is not immune and *may be included on the judgment* if that employee is “joined properly as a party defendant” and “a specific finding is made that the employee acted in a reckless, willful, or grossly negligent manner.” S.C. Code Ann. § 33-56-180(A).

In *James v. Lister*, 331 S.C. 277, 500 S.E.2d 198 (Ct. App. 1998), the South Carolina Court of Appeals examined a predecessor statute, Section 33-55-210(A), and stated in what is clearly *dicta*,⁴ that “Section 33-55-210(A) provides a mechanism for seeking damages in excess of the charitable limitation, through an action against a charitable organization’s employees.” 500 S.E.2d at 201. In stating this *dicta*, the Court of Appeals obviously did not closely scrutinize the 1988

⁴ See, *Drummond v. Beasley*, 331 S.C. 559, 503 S.E.2d 455 (1998) (characterizing as dicta certain language in a case concerning a subject not within the question before the court); *Hampton v. Richland County*, 296 S.C. 72, 370 S.E.2d 714, 714 (1988) (concluding discussion of a legal principle in an opinion was dicta where it was “clearly unnecessary to a resolution of the issue before the court”); *Dennis v. South Carolina National Bank*, 299 S.C. 34, 382 S.E.2d 237, 240 (Ct. App. 1988) (construing language in a case as dicta because it was “an expression or statement by the court on a matter not necessarily involved in the case nor necessary to a decision thereof”).

amendment to Section 33-55-210 and the legislative history. Act No. 674 of 1988 made significant changes to Section 33-55-210, including adding subsection (A) for the following purpose derived from the title to the Act:

AN ACT TO AMEND SECTION 33-55-210, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE RECOVERY AGAINST CHARITABLE ORGANIZATIONS AND LIABILITY OF A HEALTH CARE PROVIDER FOR SERVICES RENDERED VOLUNTARILY AND WITHOUT COMPENSATION, SO AS TO PROVIDE THAT AN ACTION AGAINST THE CHARITABLE ORGANIZATION, RATHER THAN THE JUDGMENT IN AN ACTION, UNDER SECTIONS 33-55-210 THROUGH 33-55-230 CONSTITUTES A COMPLETE BAR TO ANY RECOVERY, RATHER THAN A COMPLETE BAR TO ANY ACTION, BY THE CLAIMANT, BY REASON OF THE SAME SUBJECT MATTER, AGAINST THE EMPLOYEE OF THE CHARITABLE ORGANIZATION WHOSE ACT OR OMISSION GAVE RISE TO THE CLAIM UNLESS IT IS ALLEGED AND PROVED IN THE ACTION THAT THE EMPLOYEE ACTED IN A RECKLESS, WILFUL, OR GROSSLY NEGLIGENT MANNER, PROVIDE THAT, IN SUCH A CASE, THE EMPLOYEE MUST BE PROPERLY JOINED AS A PARTY DEFENDANT, PROVIDE THAT NO JUDGMENT AGAINST AN EMPLOYEE OF A CHARITABLE ORGANIZATION MAY BE RETURNED EXCEPT UNDER SPECIFIC CONDITIONS.

See, 1988 Act No. 674. As with the current statute, Section 33-55-210(A), as adopted in 1988, included no explicit and clearly expressed reference to any unlimited or unqualified liability for employees of a charitable organization, nor does it include any explicit and clearly expressed provision or statement that an employee's liability may be greater than that of the charitable organization. Instead, the Act merely states that an employee is not immune and may be included on the judgment if that employee is "properly joined as a party defendant" and "a specific finding is made that the employee acted in a reckless, willful, or grossly negligent manner." S.C. Code Ann. § 33-55-210(A) (repealed in 1994). More importantly to the case at bar, 1988 Act No. 674 also repealed Section 33-55-220, which until that time stated that "the bar to any action against the

employee shall not apply where the employee is adjudged to have acted recklessly, wantonly, or gross negligent.” S.C. Code Ann. § 33-55-220 (repealed in 1988). The title to 1988 Act No. 674 explicitly states the legislative intent “TO REPEAL SECTION 33-55-220 RELATING TO THE PROVISION THAT THE BAR TO ANY ACTION AGAINST THE EMPLOYEE DOES NOT APPLY WHERE THE EMPLOYEE IS ADJUDGED TO HAVE ACTED RECKLESSLY OR WANTONLY OR WITH GROSS NEGLIGENCE.” See, 1988 Act No. 674. Hence, in 1988, the General Assembly fully intended to and did repeal express language stating that the “bar to any action” does not apply to employees of a charitable organization who acted with gross negligence. That repeal was maintained in 1994, when the Solicitation of Charitable Funds Act was enacted. A reading of the *James* decision shows that the Court of Appeals did not consider the legislative history of Section 33-55-210(A) and the repeal of Section 33-55-220 when it suggested in *dicta* that a recovery in excess of the \$200,000 cap could be made against an employee of a charitable organization.

In sum, when the Solicitation of Charitable Funds Act and specifically the pertinent language in Section 33-56-180 is strictly construed, as it should be, there is no legislative intent that a claimant may recover more than the charitable monetary limit against an employee of a charitable organization, even where that employee acts with gross negligence. Instead, with a finding of gross negligence, the employee is not immune and *may be included on the judgment*, that is if that employee is “joined properly as a party defendant” and “a specific finding is made that the employee acted in a reckless, willful, or grossly negligent manner.” S.C. Code Ann. § 33-56-180(A). In this case, even with the jury’s finding of gross negligence, Dr. Trant is not liable for an unlimited or unqualified amount of actual damages, such as the \$30 million verdict. Instead, his liability, like the charitable organization, is capped by the monetary limit stated in Section 33-

56-180, which would be \$1.2 million (or \$2.4 million if the Plaintiff is correct on her claim of two occurrences).

CONCLUSION

There is ample uncontradicted evidence of at least slight care by Dr. Trant. The fact that he might have done more does not negate the fact that he exercised “slight care.” Therefore, Dr. Trant was not grossly negligent. However, even if Dr. Trant was grossly negligent there was only a single “occurrence” whether analyzed by the number of negligent acts, the number of injuries, the number of proximate causes, or the number of events. Moreover, there was lack of proximate cause due to passage of time and the intervening acts.

Alternatively, the Defendants are entitled to a new trial absolute in Florence County with proper charges on gross negligence and charitable immunity. Finally, if the motion for JNOV and motion for new trial are denied, the verdict should be reduced to \$1.2 million in accordance with the South Carolina Solicitation of Charitable Funds Act.

The Defendants request oral argument on these post-trial motions.

Respectfully submitted,

AIKEN, BRIDGES, ELLIOTT, TYLER, AND
SALEEBY, P.A.

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s/ Joseph P. McLean

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Counsel for Defendants

November 18, 2024

ORAL ARGUMENT REQUESTED

EXHIBIT 1

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

) TWELFTH JUDICIAL CIRCUIT

COUNTY OF MARION

) C/A NO. 2022-CP-33-00362

Demetrice Utley, Individually and as
 Personal Representative of the Estate of
 Taylor Danielle Price

Plaintiff,

vs.

McLeod Physician Associates II and
 Charles A. Trant, M.D.

Defendant.

JURY VERDICT FORM**WE, THE JURY, FIND UNANIMOUSLY AS FOLLOWS:**

1. Do you find that the Defendants were negligent?

☒ YES

☐ NO

If your answer in Question 1 is NO, your deliberations are complete. Do not proceed to the additional questions. The foreperson should sign and date this form on page 2, knock on the door, and notify the bailiff you have reached a verdict.

If your answer in Question 1 is YES, move on to Question 2.

2. Do you find that the negligence of the Defendants proximately caused damages to the Plaintiff?

☒ YES

☐ NO

If your answer in Question 2 is NO, your deliberations are complete. Do not proceed to the additional questions. The foreperson should sign and date this form on page 2, knock on the door, and notify the bailiff you have reached a verdict.

If your answer in Question 2 is YES, move on to Questions 3, 4, and 5

3. Having been instructed by the judge on the definition of an occurrence, do you find there was more than one occurrence?

☒ YES

☐ NO

4. Having been instructed by the Judge on the definition of gross negligence, do you find Dr. Trant was grossly negligent?

☒ YES

☐ NO

5. Having been instructed by the judge on the damages recoverable for wrongful death, please state the amount of damages you award.

\$ 30 million

November 8, 2024


Foreperson of the Jury

EXHIBIT 2

Student's Name: Taylor Price Date of Birth: [REDACTED] Sport(s): cheerleading
Height: [REDACTED] Weight: [REDACTED] Vision R/20: [REDACTED] Corrected: [REDACTED]
Pulse: [REDACTED] BP (R arm) seated: [REDACTED] BP Re-Check (R arm) seated: [REDACTED]

This section to be completed by Physician

Medical

Appearance

- Marfan Stigmata (kyphoscoliosis, high-arched palate, pectus excavatum, arachnodactyly, arm span > height, hyperlaxity, myopia, MVP, aortic insufficiency)

Eyes/ears/nose/throat

- Pupils equal
- Hearing

Lymph Nodes

Heart^a

- Murmurs (auscultation standing, supine, +/- Valsalva)
- Location of point of maximal impulse (PMI)

Pulses

- Simultaneous femoral and radial pulses

Lungs

Abdomen

Genitourinary (males only)^b

Skin

- HSV, lesions suggestive of MRSA, tinea corporis, etc.

Neurologic^c

Musculoskeletal

Neck

Back

Shoulder/arm

Elbow/forearm

Wrist/hand/fingers

Hip/thigh

Knee

Leg/ankle

Foot/toes

Functional Movement

^a Consider ECG, echo, and referral to cardiology for abnormal cardiac history or exam. ^b Consider GU exam in private setting with third party. ^c Consider cognitive evaluation or testing if significant concussion history

☒ Cleared for all sports without restriction

☐ Cleared for all sports without restriction with recommendations for further evaluation or treatment for

☐ NOT cleared → ☐ Pending further evaluation ☐ For any sports ☐ For certain sports

Reason:

Recommendations:

I have examined the above-named student and completed the pre-participation physical evaluation. The student does not present apparent clinical contraindications to practice and participate in the sport(s) outlined above. If conditions arise after the student has been cleared for participation, the physician may rescind the clearance until the problem is resolved and the potential consequences are explained to the student (and parents/guardians) and parents/guardians have had the opportunity to ask questions.

Name of Physician (print/type) Kathy Thompkins, NP Palmetto Medical Care, LLC Date 7-16-19
Address 1002 S Main Street
Mullins, SC 29574 Phone [REDACTED]
Signature of physician [Signature] 843-464-8205 MD/DO/NP/PA

I have reviewed and answered each question on the previous page, and assure that all responses are accurate.

Signature of Student: Taylor Price Date: 7-16-19

Signature of Parent/Guardian: [Signature] Date: 7-16-19

Plaintiff 000598

EXHIBIT 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF MARION	)	C/A NO. 2022 -CP- 33- 00362

Demetrice Utley, Individually and
as Personal Representative of
the Estate of Taylor Danielle
Price,

Plaintiff,

vs.

McLeod Physician Associates, II,
Charles A. Trant, M.D.,

Defendants.

ORDER TO TRANSFER VENUE

This matter is before the court upon motion of defendants McLeod Physician Associates, II (MPAII) and Charles A. Trant, M.D. (Trant) for a change of venue. For the reasons stated below, the motion is **GRANTED**.

JURY SELECTION

This action was scheduled for a day-certain for trial in Marion County on September 9, 2024. Plaintiff, defendant MPAII, defendant Trant, and then-defendant Marion County School District (the school district) all participated in jury selection. After the jury was selected and seated in the jury box, plaintiff's attorneys advised the court that they had reached a settlement agreement with the school district. Trant and MPAII immediately moved for a change of venue to Florence County under S.C. Code Ann. §15-7-30. They also moved for a mistrial on the grounds that the school district tainted the jury selection process by participating in it under false pretenses that it would be a

party at trial but knowing that it had a settlement agreement and that it would not be a party at trial.¹

It was obvious to the court and not disputed by plaintiff or the school district that the settlement agreement between them was reached before jury selection began. Trant and MPAll agree that plaintiffs and the school district can settle if they choose and do not need their consent. However, the appropriate course of action would have been for the school district attorney to not participate in the jury selection process with the attorneys for Trant and MPAll. She did participate. Trant and MPAll contend this made the jury selection process unfair and prejudicial to them. The court agrees.

To remedy the unfair and prejudicial jury selection process, the court dismissed the jury and the trial was continued. This made the motion for mistrial moot. The settlement between plaintiff and Marion County School District was put on the record and approved by the court. Trant and MPAll then renewed their motion to transfer venue pursuant to S.C. Code Ann §15-7-30 contending that the school district was no longer a party and, therefore, venue was now proper only in Florence County where Trant resides, where the incident of alleged malpractice occurred, and where MPAll has its principal place of business.

CHANGE OF VENUE

When this action was filed, venue was proper in Marion County under §15-78-100(b) of the Tort Claims Act because the school district is a governmental entity and its

¹ The school district, Trant and MPAll were at the same table for the jury roll call, statutory qualification questions, and voir dire. They were in the same room discussing challenges for cause and peremptory strikes. At least some degree of input to the jury selection process was given by the school district attorney and considered by the attorneys for Trant and MPAll. Trant and MPAll maintain that had they known the school district had settled, they would not have allowed the school district to participate in the jury selection process with them and would have requested that the 4 preemptory strikes and 1 alternate strike allotted for all defendants be theirs alone instead of shared with the school district.

alleged acts or omission of negligence occurred there. See Complaint ¶ 7. Had the school district not been a defendant, venue would have been proper in Florence County under S.C. Code Ann. §15-7-30(C) and (E). In paragraph 7 of their Answer, Trant and MPAll reserved their right to file a motion for a change of venue “should circumstances change.” Circumstances have changed. The school district has settled with plaintiff and is no longer a defendant. The reasons that venue was proper in Marion County no longer exist. Trant has no connection to Marion County. MPAll has a small presence in Marion County, but the court takes judicial notice that its principal place of business is in Florence County. See, S.C. Code Ann. §15-7-30(A)(10)(a) for the definition of “principal place of business” for determination of venue.

“The right of a defendant to have a case tried against him in the county in which he resides is a substantial right.” Chestnut v Reid, 299 S.C.305, 307, 384 S.E.2d 713 (1989). “[W]hen the motion to change venue is based on the ground that a particular county is the residence of the defendant, then a question of law is presented, rather than a matter of discretion.” *Id.* “[W]hen a motion to change venue is brought pursuant to § 15-7-30 and the facts concerning the defendant's residence are uncontradicted, the trial court must change the venue to the county where the defendant resides. If the plaintiff then wishes to change venue based on the convenience of witnesses and the promotion of justice, he may make such a motion to the trial judge in the county of the defendant's residence. This motion brought pursuant to §15-7-100 would be addressed to the discretion of the court.” *Id.*

The holding in Chestnut is clear. Sections 15-7-30 and 15-7-100 should not be read to allow one court to take all relevant factors into consideration at one time. Venue must be transferred to Florence County under §15-7-30 as a matter of law and then the

factors under §15-7-100 may be considered as a matter of discretion in a subsequent motion.

Trant and MPAll conceded at oral argument they could receive a fair trial in Marion, even though the proceedings during jury selection on September 9, 2024, were not fair. In theory, they could receive a fair trial in any county, including Florence. However, that is not the proper inquiry of the court at this juncture of the case. The court's decision is controlled by the Chestnut decision.

Plaintiff relies on Jeter v SCDOT, 369 S.C. 433, 633 S.E.2d 143 (2006) for the proposition that because the action was properly commenced in Marion County, a request to change venue based on residency may not be made by Trant and MPAll. In Jeter, an action was filed against SCDOT in Union County. SCDOT filed a third-party complaint against a resident of Fairfield County. The Union County court transferred venue to Fairfield County based on residency. The supreme court held that the change of venue was in error because SCDOT is a governmental entity, its alleged acts or omission occurred in Union County. See, S.C. Code Ann. §15-78-100(b).

The presence of SCDOT as a governmental defendant in Jeter made venue proper in Union County. That situation no longer exists in this case. The school district is no longer a party. The Jeter decision does not prevent a change of venue under §15-7-30. Therefore, venue of this action is transferred to Florence County as a matter of right under the authority of Chestnut v Reid, *supra*.

This order does not preclude plaintiffs from bringing a motion in Florence County to transfer venue back to Marion County based on the factors in §15-7-100.

[E-SIGNATURE OF JUDGE TO FOLLOW]

EXHIBIT 4

Anderson, S.C. Requests to Charge - Civil, 21-1

Anderson's South Carolina Requests to Charge - Civil | 2016 Revised and Updated 2nd Edition

Part II. Substantive Charges

Chapter 21 Gross Negligence

Ralph King Anderson, Jr.

§ 21-1 Gross Negligence - Defined

Gross negligence is the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. Negligence is the failure to exercise due care, while gross negligence is the failure to exercise even the slightest care. Gross negligence is a relative term, and means the absence of care that is necessary under the circumstances.

Gross negligence connotes the failure to exercise a slight degree of care. Gross negligence involves an intentional, conscious failure to do something which one ought to do or the doing of something one ought not to do. A defendant is guilty of gross negligence if he is so indifferent to the consequences of his conduct as not to give slight care to what he is doing.

• See *Clark v. South Carolina Dep't of Safety*, 362 S.C. 377, 608 S.E.2d 573 (2005); *Jinks v. Richland County*, 355 S.C. 341, 585 S.E.2d 281 (2003); *Faile v. South Carolina Dep't of Juvenile Justice*, 350 S.C. 315, 566 S.E.2d 536 (2002) (in most cases, gross negligence is a factually controlled concept whose determination best rests with the jury); *Etheredge v. Richland Sch. Dist. One*, 341 S.C. 307, 534 S.E.2d 275 (2000); *Steinke v. South Carolina Dep't of Labor, Licensing and Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999); *Clyburn v. Sumter County Sch. Dist. #17*, 317 S.C. 50, 451 S.E.2d 885 (1994) (gross negligence ordinarily is mixed question of law and fact); *Hollins v. Richland County Sch. Dist. One*, 310 S.C. 486, 427 S.E.2d 654 (1993); *Richardson v. Hambricht*, 296 S.C. 504, 374 S.E.2d 296 (1988); *Hicks v. McCandlish*, 221 S.C. 410, 70 S.E.2d 629 (1952); *Anderson v. Ballenger*, 166 S.C. 44, 164 S.E. 313 (1932); *Proctor v. Dep't of Health & Env'tl. Control*, 368 S.C. 279, 628 S.E.2d 496 (Ct. App. 2006); *Marietta Garage, Inc. v. South Carolina Dep't of Pub. Safety*, 337 S.C. 133, 522 S.E.2d 605 (Ct. App. 1999) (South Carolina courts define gross negligence as intentional, conscious failure to do something which one ought to do or doing of something one ought not to do; a relative term which means absence of care that is necessary under the circumstances; failure to exercise slight degree of care; and where a person is so indifferent to consequences of his conduct as not to give slight care to what he is doing); *Brooks v. Northwood Little League, Inc.*, 327 S.C. 400, 489 S.E.2d 647 (Ct. App. 1997); *Moore v. Berkeley County Sch. Dist.*, 326 S.C. 584, 486 S.E.2d 9 (Ct. App. 1997); *Rice v. School Dist. of Fairfield*, 317 S.C. 87, 452 S.E.2d 352 (Ct. App. 1994); *Jackson v. South Carolina Dep't of Corrections*, 301 S.C. 125, 390 S.E.2d 467 (Ct. App. 1989), *aff'd*, 302 S.C. 519, 397 S.E.2d 377 (1990).

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EXHIBIT 5

§ 21-1 Gross Negligence - Defined

Gross negligence is the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. Negligence is the failure to exercise due care, while gross negligence is the failure to exercise even the slightest care.

Gross negligence connotes the failure to exercise a slight degree of care. Gross negligence involves an intentional, conscious failure to do something which one ought to do or the doing of something one ought not to do. A defendant is guilty of gross negligence if he is so indifferent to the consequences of his conduct as not to give slight care to what he is doing. *(Citation Omitted.)*

§ 23-1 Comparative Negligence - General Verdict Charge

Comparative negligence is the law in South Carolina. Under the doctrine of comparative negligence, the plaintiff's negligence does not automatically bar recovery unless such negligence exceeds that of the defendant. A plaintiff in a negligence action may recover damages if his negligence is not greater than that of the defendant. The amount of the plaintiff's recovery shall be reduced in proportion to the amount of his negligence.

You, the jury, must apportion fault between the plaintiff and defendant in a negligence action. The plaintiff may recover damages when his negligence is not greater than that of the defendant. The plaintiff's damages, however, are reduced in proportion to the amount of his negligence.

DEFENDANT'S REQUEST TO CHARGE NO. _____

Gross Negligence

Negligence is the failure to exercise due care, while gross negligence is the failure to exercise a slight degree of care. Gross negligence involves an intentional, conscious failure to do something which one ought to do or the doing of something one ought not to do. A defendant is guilty of gross negligence if he is so indifferent to the consequences of his conduct as not to give slight care to what he is doing.

Gross negligence means the failure to exercise "slight care". Simple negligence is not sufficient. The Plaintiff must prove the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. See *Cockrell v. Lexington County District One*, 2011 WL 5554811 (S.C.D.C. Nov. 15, 2011); *Steinke v. South Carolina Department of Labor, Licensing and Regulation*, 336 S.C. 373, 395, 520 S.E. 2d 142, 153 (1999).

EXHIBIT 6

DEFENDANTS' REQUEST TO CHARGE # 10

It is stipulated and agreed that MPA II is a charitable organization and that Dr. Trant was an employee of MPAAII acting at all times within the scope of his employment

A person sustaining an injury or dying by reason of the tortious act of commission or omission of an employee of a charitable organization, when the employee is acting within the scope of his employment, may recover in an action brought against the charitable organization only the actual damages he sustains.

An action against the charitable organization constitutes a complete bar to any recovery by the claimant, by reason of the same subject matter, against the employee of the charitable organization whose act or omission gave rise to the claim unless it is alleged and proved in the action that the employee acted in a reckless, wilful, or grossly negligent manner.

A judgment against an employee of a charitable organization may not be returned unless a specific finding is made that the employee acted in a reckless, wilful, or grossly negligent manner.

SECTION 33-56-180. Limitation of liability for injury or death caused by employee of charitable organization.

EXHIBIT 7

greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. The proof as to circumstantial evidence is sufficient if shown by the preponderance of the evidence or the greater weight of the evidence. Both types of evidence are accepted as reasonable methods of proof and each is respected for such convincing force as it may carry.

In a civil case such as this, proof of circumstances warranting a given inference is sufficient because proof of a certainty is not required in a civil suit. In civil actions, every other reasonable conclusion need not be excluded. But the circumstances established, if any, in the minds of the jury must have sufficient probative force to produce a reasonable and probable conclusion and not a mere conjecture. The conclusion reached must be in the minds of the jury the most probable and reasonable one. So, if there are several reasonable inferences that may be drawn from all the circumstances and evidence, it is for you, the jury, to say which is established by the greater weight of the evidence. *(Citation omitted.)*

§ 22-1 Recklessness, Willfulness and Wantonness - Defined

The words recklessness, willfulness and wantonness are synonymous. The terms are used to describe a conscious failure to exercise and observe reasonable or due care.

Recklessness implies the doing of a negligent act knowingly. When a person acts negligently and he realizes that he is acting negligently, the law says he is reckless, willful, and/or wanton, whichever term you prefer, they all mean the same thing, that is, the conscious failure to exercise due care.

Recklessness is distinguished from negligence. Negligence is the failure to use due care. Negligence is carelessness. Negligence is failure by omission or commission to exercise due care as a person of ordinary reason and prudence would exercise in the same circumstances.

Recklessness is a higher degree of culpability and responsibility. Recklessness signifies a conscious failure to exercise due care. Recklessness is a conscious indifference to the rights of the plaintiff, or a reckless disregard of the rights of the plaintiff. Recklessness is an awareness of wrongful conduct and a continuation to act regardless of consequences.

In other words, while a negligent person is one who acts carelessly, a person whose behavior is reckless, willful and/or wanton is not only careless in his actions, but is also aware that he is careless. The test for determining whether a tort may be deemed reckless, willful or wanton is whether it has been committed in such a manner and under such circumstances that a person of ordinary reason or prudence would have been conscious of it as an invasion of the rights of the injured party. *(Citation Omitted.)*

EXHIBIT 8

UTLEY V. MPA II AND TRANT - 2022-CP-33-00362
CLOSING BY RICHARDSON

6

1 care, or even the slightest care in this case, and that
2 failure, that negligence results in death, only a jury such as
3 yourselves can hold them accountable. The standards of care
4 we've talked about, they're there to protect all patients,
5 rich or poor, black or white, it doesn't matter who you are;
6 they're there to protect each of the patients.

7 They failed her time and again. Without the slightest of
8 care, they failed Taylor. And that failure, their gross
9 negligence that resulted in a preventable death, from a
10 disease that's both diagnosable and treatable. She could've
11 lived a long normal life. And that's gross negligence, folks.
12 And these defendants must answer for their gross negligence.
13 They need to answer for it, because that gross negligence has
14 ripped this family's life apart. You saw the home. Even in
15 the beginning of this case, you saw the home, you heard it
16 described, a home full of love, and hope, where dreams were
17 shared. That was the home that Metri Utley shared with her
18 daughters. That was the home where Serenity Hunt would gladly
19 return at Christmas break from Converse, and one that Taylor
20 Price should've returned to after her freshman semester at
21 college just this past December, but that didn't happen. All
22 of that was taken away, all of that was lost back on December
23 17th, 2021. All of that was taken because of the defendants'
24 failure, their gross negligence, failure to use the slightest
25 care. They failed Taylor Price. Failed Taylor Price, when

UTLEY V. MPA II AND TRANT - 2022-CP-33-00362
CLOSING BY RICHARDSON

16

1 going on, signed off on the sports clearance letter. And
2 again, that was Dr. Chang's opinion, and Dr. Trant has no
3 disagreement with anything else Dr. Chang said on the stand.

4 Those standards of care, folks, there a hundred percent
5 equal opportunity, a hundred percent color blind, because they
6 have to be. It doesn't matter if you're black, you're white,
7 if you live in a mansion, or a three-bedroom house, or an
8 apartment. It doesn't matter if you're a millionaire or on
9 Medicaid. Those standards of care, they're in effect for each
10 and every patient.

11 Like Dr. Chang said, the care that Taylor Price received
12 from these defendants was well below the standard of care.
13 That it was grossly inadequate.

14 The defendants spent a lot of time talking about this
15 thorough examination of Taylor Price by Dr. Trant. That he
16 wrote a thorough detailed progress note with all this
17 information. It'll be back in there in the jury room. Y'all
18 can look at it.

19 Folks, as he testified and has been brought out, he wrote
20 the progress note almost three -- or actually three hours and
21 one minute after he released Taylor Price from his office,
22 after that 13-minute visit. He says he wrote it down from his
23 notes, but he refers to Taylor as a he, and talks about Taylor
24 playing baseball. Through the testimony, you know that he
25 didn't do the thorough examination; it was a nurse. Metri

EXHIBIT 9

UTLEY V. MPA II AND TRANT - 2022-CP-33-00362
CLOSING BY RICHARDSON

26

1 all that's lost. It's gonna be your solemn duty to set that
2 value.

3 This whole family, they'd much rather be anywhere than
4 here today; anywhere but here today. To go home and find out
5 it was a dream. They would give everything they have or would
6 have to see Taylor Price walk through that door. But again, I
7 don't have that power. You don't have that power. We know
8 the value she placed on her daughter. She was willing to
9 trade her life if God would just grant that prayer.

10 Sixty-five years taken from Taylor. Thirty-six years
11 lost to Metri, stolen because of the defendants' failure to do
12 their job, failure to use the proper care. Their gross
13 negligence, what's the value of that grief, that pain, that
14 anguish every day, every hour, every waking moment, in her
15 dreams for the rest of her life. Is it a million a year? Is
16 that fair? More? Less? A million a year for every year
17 lost, every year stolen?

18 You all need to discuss that back in your jury room. If
19 you believe it's more or less, you need to discuss it back in
20 there, because it's gonna be your responsibility, your awesome
21 duty to set that value for what was lost and what was taken.
22 But whatever you do, whatever you do, it's got to be loud.
23 It's got to be loud enough to be heard in Charleston, South
24 Carolina, so that Dr. Cain can hear it. It needs to be loud
25 enough in Columbia, South Carolina, so Dr. Shuler can hear it.

UTLEY V. MPA II AND TRANT - 2022-CP-33-00362
CLOSING BY RICHARDSON

27

1 And it certainly needs to be loud enough to be heard over in
2 Florence at McLeod. Across the Pee Dee, they need to hear it
3 and take notice so that when a doctor is making a decision on
4 whether or not a patient can receive the testing that they
5 remember this, that those patients can get the proper care.
6 You can be the conscience of the community. They need to hear
7 that message.

8 Nothing will ever make this momma whole again. But you
9 have to set the value for the pain, for what was lost and what
10 was taken. And all I ask is that you get it right, get it
11 right. I told you, we've been in this case for almost three
12 years. We gladly took it on. But we're gonna give it to you,
13 and once you return your verdict, when we're done here, I'm
14 tired, but we're gonna load up those boxes, and we're gonna
15 take them over to my office, drop them off. And I'm not gonna
16 look at those things tonight. I'm gonna drive home. I'm
17 gonna take this jacket off, and I'm gonna sit down. My dog is
18 missing me, so I'm gonna spend some time with her, with the
19 family. Mr. Lesemann, Mr. Powell, I assume they're gonna do
20 about the same thing. Come Monday, we'll be back at our
21 desks, helping clients. But for Metri Utley, for Metri Utley,
22 this is her one shot at full justice for Taylor Price, one
23 shot at full justice, justice for what was lost and what was
24 taken. Their rights were tossed aside by the defendants.
25 Tossed aside because they ignored those safety rules, when

STATE OF SOUTH CAROLINA)
COUNTY OF MARION)

IN THE COURT OF COMMON PLEAS

Demetrice Utley, Individually and as)
Personal Representative of the)
Estate of Taylor Danielle Price,)
Plaintiff,)

Civil Action No. 2022-CP-33-0362

v.)

**MEMORANDUM IN OPPOSITION TO
PLAINTIFF’S MOTION FOR AWARD OF
OFFER OF JUDGMENT INTEREST**

McLeod Physician Associates II and)
Charles A. Trant, M.D.,)
Defendants.)

On November 15, 2024, the Plaintiff filed a post-trial motion seeking an award of “offer of judgment interest” pursuant to S.C. Code Ann. § 15-35-400 and Rule 68, SCRCP. The Plaintiff’s motion is based upon an Offer of Judgment that was served on November 15, 2022. The Offer of Judgment was served on and directed against the Defendant McLeod Physician Associates II *and* MAG Mutual Insurance Company. The Offer of Judgment was never served on or directed against the Defendant Charles A. Trant, II. Therefore, the current motion seeking “offer of judgment interest” in the amount of \$4,806,575.34 is not against Dr. Trant nor can that amount be awarded against Dr. Trant. The Defendant McLeod Physician Associates II opposes the Plaintiff’s motion for several procedural and substantive reasons as discussed below.

First, the Offer of Judgment, as served on November 15, 2022, is procedurally invalid because there is no basis in law for the Offer of Judgment to be directed against a non-party such as MAG Mutual Insurance Company. South Carolina law does not allow a direct action against

an insurer, and likewise, there is no authority allowing a party to make an offer of judgment on a non-party insurer. In *Trancik v. USAA Ins. Co.*, 354 S.C. 549, 581 S.E.2d 858 (Ct. App. 2003), the Court of Appeals explained that “[u]nder the common law, no privity of contract exists between an injured person and the tortfeasor’s liability insurer, and the injured person has no right of action at law against the insurer.” Similarly, in *Thibault v. Cleland*, 294 S.C. 138, 363 S.E.2d 114 (Ct. App. 1987), the Court of Appeals affirmed the trial court’s grant of a motion to dismiss on a direct action brought against an insurer. The Court explained that “no right to maintain a lawsuit directly against an insurer exists absent privity of contract between the claimant and the insurer, and because direct actions against insurers contravene the common law, such right must be expressly sanctioned by the legislature.” 363 S.E.2d at 115. Hence, MAG Mutual Insurance Company is not and cannot be a party to this case, and for that reason, the Offer of Judgment directed against a non-party insurer is procedurally invalid *ab initio*.

Second, S.C. Code Ann. § 15-35-400 and Rule 68(b), SCRCP, on which the Plaintiff’s motion is based, are not applicable to charitable organizations such as McLeod Physician Associates II. The Plaintiff claims in her motion that the “Offer of Judgment Statute, which was created after the South Carolina Solicitation of Charitable Funds Act, does not address non-profit or charitable entities much less make an exemption for entities that fall under the South Carolina Solicitation of Charitable Funds Act.” *See*, Plaintiff’s Motion, p. 4. The Plaintiff’s position is mistaken and contrary to express provisions contained in the very legislation that enacted S.C. Code Ann. § 15-35-400.

By way of background, S.C. Code Ann. § 15-35-400 was enacted as part of Act No. 32 of 2005, a point actually agreed to by the Plaintiff. Section 18 of Act No. 32 reads: “The provisions of this act do not affect any right, privilege, or provision of the South Carolina Tort

Claims Act contained in Chapter 78, Title 15 of the 1976 Code or the South Carolina Solicitation of Charitable Funds Act as contained in Chapter 56 of Title 33.” Section 18 was then codified in S.C. Code Ann. § 15-78-220, which provides verbatim that: “The provisions of Act No. 32 of 2005 do not affect any right, privilege, or provision of the South Carolina Tort Claims Act contained in Chapter 78, Title 15 of the 1976 Code or the South Carolina Solicitation of Charitable Funds Act as contained in Chapter 56 of Title 33.” *See*, S.C. Code Ann. § 15-78-220. In sum, contrary to the Plaintiff’s position, the provisions of Act No. 32, including S.C. Code Ann. § 15-35-400, are explicitly inapplicable to cases brought pursuant to the South Carolina Solicitation of Charitable Funds Act, including the present case.

Additionally, Rule 68, SCRCF, was amended in 2006 to adopt certain language and provisions from S.C. Code Ann. § 15-35-400. Rule 68(b), however, is not and cannot be construed as applicable to charitable organizations sued under the South Carolina Solicitation of Charitable Funds Act. Otherwise, Rule 68(b) would be unconstitutional.¹ Section 4 of Article V of the South Carolina Constitution requires that procedural rules must be subordinate to statutory law. That constitutional provision states: “The Supreme Court shall make rules governing the administration of all the courts of the State. Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts.” *See*, S.C. Const., art. V, § 4. (Emphasis added). In construing this provision, the Supreme Court in *Stokes v. Denmark Emergency Medical Services*, 315 S.C. 263, 433 S.E.2d 850 (1993), explained that “[t]he clause ‘subject to the statutory law’ establishes the intent to

¹ The Note to the 2006 Amendment for Rule 68 provides: “This amendment makes this provision consistent with S.C. Code Ann. § 15-35-400, which became effective July 1, 2005.” The intent, therefore, was not to make Rule 68(b) broader in scope or application than S.C. Code Ann. § 15-35-400. If S.C. Code Ann. § 15-35-400 is not applicable to a particular case, then Rule 68(b) is also not applicable to that case.

subordinate to the General Assembly the Court's rulemaking power in regard to practice and procedure.” 433 S.E.2d at 852. *See also, Marichris v. Derrick*, 384 S.C. 345, 682 S.E.2d 301, 305 (Ct. App. 2009) (“[a] rule of civil procedure may not limit the provisions of a statute”). Consequently, Rule 68(b) cannot be read as creating liability for pre-judgment interest or “offer of judgment interest” where the General Assembly has expressly provided that S.C. Code Ann. § 15-35-400 is not applicable to charitable organizations sued under the South Carolina Solicitation of Charitable Funds Act. Therefore, in order to be constitutional, Rule 68(b) must be read as being inapplicable to Charitable Funds Act cases, including the present case.

Nonetheless, even if this Court does still find it appropriate to award “offer of judgment interest” in spite of the clear dictates of Section 18 of Act No. 32, the Defendant submits that the Plaintiff improperly bases the calculation of the “offer of judgment interest” on the verdict of \$30 million, as opposed to the reduced judgment amount as may be entered after this Court applies the monetary cap on liability under S.C. Code Ann. § 33-56-180(A). That is in contravention to what the Court of Appeals and the Supreme Court ruled in *O’Shields v. Columbia Auto., LLC*, 435 S.C. 319, 867 S.E.2d 446 (Ct. App. 2021), *aff’d*, 443 S.C. 29, 902 S.E.2d 375 (2024). In that case, the Court of Appeals held that “the final, posttrial award was the proper amount for computing offer of judgment interest.” 867 S.E.2d at 459. The Court of Appeals then concluded that the “analysis [of the offer of judgment interest] should have been performed using the posttrial award as opposed to the jury’s verdict.” 867 S.E.2d at 459-460. Importantly, in *O’Shields*, the Supreme Court granted a writ of certiorari and then affirmed the Court of Appeals *in its entirety*. In fact, as to the issue regarding the computation of offer of judgment interest, the Supreme Court explained that it “affirms the balance of the court of appeals’ decision pursuant to Rule 220, SCACR.” 902 S.E.2d at 376, n.1.

In her motion, the Plaintiff appears to suggest that the Supreme Court ruled in *Garrison v. Target Corp.*, 435 S.C. 566, 869 S.E.2d 797 (2022), that “offer of judgment interest” should be calculated based on the verdict and not on any capped liability after post-trial motions are decided. The Supreme Court did no such thing. Clearly, the *Garrison* case involved a premises liability claim against a non-governmental and non-charitable entity (Target) and was not decided under the Tort Claims Act or the Charitable Funds Act. The verdict against Target was not subject to any monetary caps on liability, as are at issue in the case at bar.

Indeed, the issue that the Supreme Court addressed in *Garrison* is succinctly stated in the subheading to the section of the opinion which states “Award of Interest on Punitive Damages Under Rule 68, SCRCP.” The issue there was whether an award of interest should be limited to actual damages or otherwise include punitive damages as well. The Supreme Court indicated that the punitive damages award is included in the interest calculation. The Supreme Court did not address the impact of a monetary cap on liability, as under the Tort Claims Act or the Charitable Funds Act, has on the calculation of “offer of judgment interest.”

Importantly, the Supreme Court in *Garrison* makes no *specific* mention of the issue presented here, which is whether the verdict or the final, post-trial award is the basis for calculation of the pre-judgment interest under S.C. Code Ann. § 15-35-400(B). The Supreme Court did not overrule or even mention the discussion by the Court of Appeals in *O’Shields* – of course, it did not need to based on its ruling that punitive damages must be considered in the computation. Finally, long after issuing its decision in *Garrison*, the Supreme Court explicitly affirmed the *entirety* of the Court of Appeals’ decision in *O’Shields*.

In short, *O’Shields* rather than *Garrison* is the controlling authority. The Plaintiff did not cite *O’Shields* nor make any attempt to refute or distinguish that dispositive decision. To

reiterate, the present case does not involve a punitive damages award, and *Garrison* is inapposite on the issue presented in this case. It also makes logical sense that an “offer of judgment interest” award should not be based on an amount that by law the Plaintiff cannot recover due to the Charitable Funds Act caps. Otherwise, using this case as a prime example, a charitable organization would be liable for an interest award that *far exceeds* the total judgment recoverable. The Plaintiff offers no explanation how that absurd result could have been intended by the General Assembly, to say nothing about how such a result would even remotely satisfy basic notions of due process and fundamental fairness. *See, Kiriakides v. United Artists Communications, Inc.*, 312 S.C. 271, 440 S.E.2d 364, 366 (1994) (“However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention”). Therefore, if this Court concludes that “offer of judgment interest” is recoverable against a charitable organization such as the Defendant McLeod Physician Associates II, the interest calculation must be made using the post-trial award as opposed to the jury’s verdict.

Based on the foregoing discussion, the Defendant McLeod Physician Associates II respectfully requests that the Court deny the Plaintiff’s motion for an award of “offer of judgment interest” pursuant to S.C. Code Ann. § 15-35-400 and Rule 68(b), SCRPC.

Respectfully submitted,

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November 20, 2024

STATE OF SOUTH CAROLINA)
COUNTY OF MARION)

IN THE COURT OF COMMON PLEAS

Demetrice Utley, Individually and as)
Personal Representative of the)
Estate of Taylor Danielle Price,)
Plaintiff,)

Civil Action No. 2022-CP-33-0362

v.)

McLeod Physician Associates II and)
Charles A. Trant, M.D.,)
Defendants.)

**MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S POST-TRIAL MOTION
FOR CONFIRMATION OF TWO
OCCURRENCES**

On November 15, 2024, the Plaintiff filed a post-trial motion requesting that the Court “confirm” the existence of two “occurrences” which are identified in the motion as “(i) Dr. Trant’s grossly inadequate cardiac workup of Taylor; and (ii) Dr. Trant’s signing the return to sports clearance for Taylor.” The Defendants oppose the finding of two “occurrences” for the reasons addressed in the Defendants’ post-trial motions. In sum, that opposition is two-fold. First, the Defendants contend that the South Carolina Solicitation of Charitable Funds Act did not adopt the “per occurrence” monetary scheme from the Tort Claims Act and only adopted the sum of \$1.2 million as the cap on physician-torts. Second, if the Court finds that the “per occurrence” language was also adopted as part of Charitable Funds Act, then the two alleged findings of negligence or gross negligence against the Defendants do not give rise to separate “occurrences,” and the verdict should be reduced to \$1.2 million.

The first ground is addressed in detail in the Defendants’ post-trial motions. To recap, with proper consideration of the Act No. 336 of 2000 and the legislative history, the change to Section 33-56-180(A) to reference “*an amount not exceeding the limitations on liability imposed in the*

South Carolina Tort Claims Act in Chapter 78 of Title 15” in place of a specific monetary amount should not be interpreted to allow for a separate amount of monetary recovery for each separate “occurrence” as defined in the Tort Claims Act but not in the Charitable Funds Act. In other words, the Charitable Funds Act cannot be construed as adopting any other provision of the Tort Claims Act, including the definition of “occurrence,” particularly when that intent is not explicitly stated in the title to 2000 Act No. 336 nor any other legislative history. The legislative intent was simply to borrow the alternative monetary caps of \$300,000 and \$1.2 million from the Tort Claims Act in place of the then existing \$250,000. Accordingly, there was no intent – and certainly no explicit and clearly expressed intent as required where the statute is in derogation of the common law – to adopt any “per occurrence” monetary scheme.

As for the second ground, even if the General Assembly intended in 2000 to adopt a “per occurrence” limit on liability as a “technical change” to the Charitable Funds Act (which seems unlikely), the evidence in this case does not support the finding of two “occurrences.” If adopted in full as part of the Charitable Funds Act, Section 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).

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). The statutory definition of “occurrence” is complex

and nuanced and frankly not one that can be easily understood or applied by a jury. Indeed, even the South Carolina appellate courts that have addressed that definition have struggled with its meaning and application. See, *Boiter v. South Carolina Department of Transportation*, 393 S.C. 123, 712 S.E.2d 401 (2011); *Chastain v. AnMed Health Foundation*, 388 S.C. 170, 694 S.E.2d 541 (2010).

The “occurrence” issue presents a mixed question of law and fact. See, *Charleston County Parks & Recreation Comm’n v Somers*, 319 S.C. 65, 459 S.E.2d 841 (1995) (questions of statutory construction are a matter of law). Notably, in *Boiter*, the South Carolina Supreme Court made the determination that the facts as found by the jury gave rise to multiple occurrences. The jury in *Boiter* did not make that determination; the jury only determined that both defendants committed acts of negligence. The Defendants’ position that the number of occurrences presents an issue of law for the court is further supported by reference to the related context of insurance coverage where the Supreme Court treated as an issue of law whether a particular factual scenario gives rise to a single occurrence or multiple occurrences. See e.g., *Owners Ins. Co. v. Salmonsens*, 366 S.C. 336, 622 S.E.2d 525, 526 (2005) (Supreme Court determined as matter of law that “placing a defective product into the stream of commerce is one occurrence” rather than multiple occurrences); *Beaufort County School District v. United National Ins. Co.*, 392 S.C. 506, 709 S.E.2d 85 (2011) (Supreme Court determined as matter of law that the sexual molestation of multiple victims constituted multiple occurrences).

The leading case on the application of the term "occurrence" under the Tort Claims Act is the Supreme Court's decision in *Boiter v. South Carolina Department of Transportation*, 393 S.C. 123, 712 S.E.2d 401 (2011). In that case, the Supreme Court concluded that there were separate "occurrences" by two state agencies that resulted in a motor vehicle accident. By way of factual background, the Boiters' vehicle and another vehicle collided when both vehicles entered an intersection at the same time. At the time of the accident the red signal light bulbs in the traffic

signal for other vehicle's direction of travel had burned out. The Boiters brought suit against the South Carolina Department of Transportation (SCDOT) alleging negligence in failing to have a relamping policy in place. The Boiters also brought suit against the South Carolina Department of Public Safety (SCDPS) alleging negligence in failing to send a trooper to direct traffic at the intersection after being notified that the red lights were out. In a 4-1 decision, the Supreme Court found that the negligence committed by SCDOT constituted one "occurrence" and the negligence by SCDPS constituted a separate "occurrence." In other words, the Supreme Court concluded that there were "independent and separate acts of negligence" by the two state agencies. Importantly, the Supreme Court expressly decided the issue "based solely on the peculiar facts of this case" and further states that no "bright-line test" was being adopted by the Court. 712 S.E.2d at 406. The Supreme Court did, in fact, acknowledge that "[i]n many situations, negligent acts from more than one entity would still equal but one occurrence." 712 S.E.2d at 407. But, based on what it described as "peculiar facts," the Supreme Court found that "there were two separate entities which committed two separate and independent acts of negligence, and we do not believe the General Assembly's intent was to limit recovery in such situations based on there being only one occurrence." *Id.*

The present case is readily distinguishable from *Boiter* in that this case involves a single charitable entity, with allegations involving a single employee or physician tortfeasor, namely Dr. Trant, who allegedly committed two acts of negligence or gross negligence. The Supreme Court in *Boiter* offers considerable insight as to how a case with those characteristics should be adjudicated. The Supreme Court points out that "[c]ases from other jurisdictions are similarly inapposite because they involve a single governmental entity which committed multiple acts of negligence, a completely different situation than the one before us." *Boiter*, 712 S.E.2d at 406. The Supreme Court then cites favorably two cases from other jurisdictions that are instructive in

the present case. Those cases are factually similar to the present case where, unlike in *Boiter*, there is a single governmental entity that allegedly committed multiple acts of negligence.

The most comparable of those cases is *Folz v. State*, 110 N.M. 457, 797 P.2d 246 (1990), which the South Carolina Supreme Court described as holding that the "negligence by [the] highway department which resulted in a truck striking five separate vehicles in [a] collision was only one occurrence under [the applicable] statute." *Id.* In *Folz*, a personal injury suit was brought against the state highway department after a runaway truck successively struck five vehicles in a mountainous construction site. The plaintiffs alleged that the highway department committed two acts of negligence described as "negligen[ce] in failing to design and implement an appropriate traffic-control plan for the project." 797 P.2d at 249. The court concluded that "[t]he Department committed at least two negligent acts or omissions (planning and implementation) that, although committed successively, combined concurrently with the negligence of the other tortfeasors to proximately cause indivisible harm to each of multiple persons facing the singular risk of a runaway truck." 797 P.2d at 252. The court further explained "while a 'series' of acts or omissions on the part of the Department created an undue risk of injury, these acts contributed to a unitary risk, and only one triggering event occurred giving rise to liability." 797 P.2d at 254. The New Mexico court found that there was a "single occurrence" under that state's Tort Claims Act.

Importantly, in *Boiter*, the South Carolina Supreme Court recognized that "[i]n many situations, negligent acts from more than one entity would still equal but one occurrence." 712 S.E.2d at 407. This would likewise be true where there are multiple acts of negligence committed by the same entity, particularly where those acts are the same or similar and result in a continuous "unfolding sequence of events." To reiterate, in *Boiter*, the Supreme Court found two occurrences when the facts revealed that two governmental defendants each committed a separate and distinct wrongful act that did not combine or "unfold" to cause each plaintiff's injury. Here, the facts as

found by the jury reveal that one employee of a charitable organization committed the same or at least similar or closely related breaches of the standard of care that combined or “unfolded” to allegedly resulted in the Plaintiff’s decedent being allowed to play sports on the date of her death which was approximately 34 months after the office visit with Dr. Trant.

Critically, the number of “occurrences” is not determined by the number of acts of negligence (or in this case the number of breaches of the standard of care). *Boiter*, 712 S.E.2d at 406 (“we do not adopt a bright-line test based on the existence of multiple acts of negligence”). Rather, an “occurrence” is an “unfolding sequence of events.” Given the jury’s verdict, the Court must now apply the statutory definition of “occurrence,” and analyze whether the two breaches of the standard of care, as presumably found by the jury, gave rise to or proximately caused different “unfolding sequences of events.” If the two breaches of the standard of care each give rise to a new “sequence of events” so as not to be “unfolding” or “evolving” from past events, only then is there a new and separate “occurrence.” In other words, if the same “unfolding sequence of events” proximately flows from multiple acts of negligence (or in this case breaches of the standard of care since the jury did not find acts of negligence), there is but a single occurrence, as the Supreme Court in *Boiter* readily explains.

As addition insight on this issue, the Defendants call the Court’s attention to the case of *Larson v. South Carolina Department of Corrections*, Civil Action No. 2019-CP-20-0241, which is a fairly recent state court case where a similar “multiple occurrence” issue was adjudicated by Judge Donald Hocker in a Tort Claims Act case.¹ In *Larson*, the jury returned a verdict for \$4

¹ The Defendants fully acknowledge that trial court decisions in South Carolina are not precedent. *See, Ford v. Beaufort County Assessor*, 398 S.C. 508, 730 S.E.2d 335, 339, n.1 (Ct. App. 2012) (“[t]rial or inferior court decisions are not precedents binding other courts, including appellate courts or other judges of the same trial court”). However, Judge Hocker’s decision, while not precedent, is instructive particularly in light of relatively scant appellate case law there is on this issue.

million in actual damages with a finding of “fifteen occurrences.” In adjudicating post-trial motions, Judge Hocker in an Order filed February 10, 2022, ruled as follows:

In this case, there was a single event which proximately flowed from the alleged multiple acts of gross negligence committed by the same entity, that being the Plaintiff's holdover in custody beyond his May 24, 2018 max-out date. The alleged multiple acts of gross negligence flow into that singular event, i.e., they combined and concurred to proximately cause that single occurrence. As stated, if the same "unfolding sequence of events" proximately flows from multiple acts of gross negligence by the same entity, there is still but a single occurrence. That is the scenario the Plaintiff has presented in the case at bar. The evidence does not support a finding of new or different "unfolding sequences of events." Therefore, on that basis, the Court concludes that the Plaintiff has proven a single occurrence and, accordingly, the verdict must be reduced to a single statutory cap of \$300,000 in accordance with the mandates of S.C. Code Ann. § 15-78-120(a).

See, Order Granting Motion for Remittitur, filed February 10, 2022. (Copy attached as exhibit).

That same reasoning by Judge Hocker is equally applicable to the present case.

In sum, in the present case, as there was in *Larson*, there was a single event which proximately flowed from the two breaches of the standard of care as found by the jury, both of which occurred as part of and a consequence of a single office visit with Dr. Trant. The two alleged breaches of the standard of care flow into that singular event, i.e., they combined and concurred to proximately cause at most a single occurrence – the unfolding sequence of events that ended with the decedent's death. That is the scenario the Plaintiff has presented here. The Plaintiff has not pled nor proven multiple “unfolding sequence of events.” Moreover, the evidence does not support a finding of new or different "unfolding sequences of events."

In conclusion, for both of the reasons discussed herein, the Plaintiff's Post-Trial Motion for Confirmation of Two Occurrences should be denied, and the verdict should, at the very least, be reduced to the statutory cap of \$1.2 million in accordance with the mandates of Section 15-78-120(a)(3).

Respectfully submitted,

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November 22, 2024

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD	)	
 Billy Larson,	)	
	)	Civil Action No. 2019-CP-20-0241
Plaintiff,	)	
	)	
v.	)	ORDER GRANTING
	)	MOTION FOR REMITTITUR
South Carolina Department of Corrections,	)	
	)	
Defendant.	)	
_____	)	

This matter is before this Court on the parties' post-trial motions which include a Motion for Remittitur Pursuant to Tort Claims Act filed by the Defendant South Carolina Department of Corrections ("SCDC"). A hearing was held on December 2, 2021, with all counsel of record present. After a review of the testimony and evidence presented at trial, the written submissions by the parties, and the oral arguments of counsel, the Court grants the Motion for Remittitur Pursuant to Tort Claims Act for the reasons discussed below.

Introduction

The Plaintiff Billy Larson is a former SCDC inmate. On September 22, 2016, the Plaintiff was sentenced by Judge R. Markley Dennis to two years suspended to eighteen months probation for Criminal Domestic Violence, Second Degree. Thereafter, on July 27, 2017, Judge Kristi Harrington revoked the Plaintiff's probation and sentenced him to serve the remainder of his sentence in SCDC custody. The Form 9 Order signed by Judge Harrington identified the original two-year sentence, but Judge Harrington wrote "5" in the blank and circled "years" thereby indicating that the "above named defendant be required to serve 5 years." The Plaintiff

alleges that the Form 9 Order created an ambiguity that should have been recognized by SCDC personnel and clarification of that sentence should have been sought from the Circuit Court. Based upon the Plaintiff's original sentence, his max-out date should have been May 24, 2018. However, the error in the Form 9 Order was not realized until after the max-out date, and the Plaintiff was not released from SCDC custody until July 30, 2018. The Plaintiff thus served 67 days in SCDC custody beyond his max-out date.

On July 3, 2019, the Plaintiff filed an action pursuant to the South Carolina Tort Claims Act against the Defendant SCDC. The Plaintiff alleged causes of action for gross negligence and false imprisonment. This case came to trial before this Court and a jury on September 20, 2021. After completing his case-in-chief, the Plaintiff consented to a directed verdict on the false imprisonment claim. The Defendant's directed verdict motions on the gross negligence claim were denied. On September 23, 2021, the jury returned a verdict of \$4 million in actual damages in favor of the Plaintiff. On the verdict form, the jury also stated the total number of occurrences to be fifteen, but the jury did not provide a description of each occurrence found nor identify the "loss," if any, that arose from each occurrence found.

Legal Analysis

As one of numerous grounds raised in its post-trial motions, the Defendant SCDC asserts that the jury's verdict should be reduced to \$300,000 pursuant to the South Carolina Tort Claims Act. This Court agrees.

Section 15-78-120 of the Tort Claims Act establishes the monetary caps or limits on a governmental entity's liability for money damages. Section 15-78-120(a) provides that "no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence." S.C. Code Ann. § 15-78-

120(a). 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). *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").

In *Parker v. Spartanburg Sanitary Sewer District*, 362 S.C. 276, 607 S.E.2d 711 (Ct. App. 2005), our 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. (Emphasis added). 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 \$300,000.

In order to fulfill that duty, the Court must also consider whether the Plaintiff has pled and proven multiple "occurrences" such that the judgment entered may exceed \$300,000. The term "occurrence" means "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. Code Ann. § 15-78-30(g). The statutory definition of "occurrence" is complex and nuanced. Indeed, even the South Carolina appellate courts that have addressed that definition have struggled with its meaning and application. *See, Boiter v. South Carolina Department of Transportation*, 393 S.C. 123, 712 S.E.2d 401 (2011); *Chastain v. Anmed Health Foundation*, 388 S.C. 170, 694 S.E.2d 541 (2010).

Accordingly, the statutory definition of "occurrence" presents an issue of statutory construction, and that is an issue of law for the court to apply post-verdict after the jury has made its factual findings. In essence, the "occurrence" issue presents a mixed question of law and fact. *See, Charleston County Parks & Recreation Comm'n v Somers*, 319 S.C. 65, 459 S.E.2d 841 (1995) (questions of statutory construction are a matter of law).

The leading case on the application of the term "occurrence" under the Tort Claims Act is the Supreme Court's decision in *Boiter v. South Carolina Department of Transportation*, 393 S.C. 123, 712 S.E.2d 401 (2011). In that case, the Supreme Court concluded that there were separate "occurrences" by two state agencies that resulted in a motor vehicle accident. By way of factual background, the Boiters' vehicle and another vehicle collided when both vehicles entered an intersection at the same time. At the time of the accident the red signal light bulbs in the traffic signal for other vehicle's direction of travel had burned out. The Boiters brought suit against the South Carolina Department of Transportation (SCDOT) alleging negligence in failing to have a relamping policy in place. The Boiters also brought suit against the South Carolina Department of Public Safety (SCDPS) alleging negligence in failing to send a trooper to direct traffic at the intersection after being notified that the red lights were out. In a 4-1 decision, the Supreme Court found that the negligence committed by SCDOT constituted one "occurrence" and the negligence by SCDPS constituted a separate "occurrence." In other words, the Supreme Court concluded that there were "independent and separate acts of negligence" by the two state agencies. Importantly, the Supreme Court expressly decided the issue "based solely on the peculiar facts of this case" and further states that no "bright-line test" was being adopted by the Court. 712 S.E.2d at 406. But, based on those "peculiar facts," the Supreme Court found that "there were two separate entities which committed two separate and independent acts of negligence, and we do not believe the General Assembly's intent was to limit recovery in such situations based on there being only one occurrence." *Id.*

The present case is readily distinguishable from *Boiter* in that this case involves a single governmental entity that allegedly committed multiple acts of gross negligence. The Supreme Court in *Boiter* points out that "[c]ases from other jurisdictions are similarly inapposite because they

involve a single governmental entity which committed multiple acts of negligence, a completely different situation than the one before us." *Boiter*, 712 S.E.2d at 406.

Importantly, in *Boiter*, our Supreme Court recognized as well that "[i]n many situations, negligent acts from more than one entity would still equal but one occurrence." *Boiter*, 712 S.E.2d at 407. This would likewise be true where there are multiple acts of gross negligence committed by the same entity, particularly where those acts are the same or similar or repetitive and result in a continuous "unfolding sequence of events." To reiterate, in *Boiter*, the Supreme Court found two occurrences when the facts revealed that two governmental defendants each committed a separate and distinct wrongful act that did not combine or "unfold" to cause the plaintiff's injury. Here, the facts viewed in the light most favorable to Plaintiff reveal that one governmental defendant committed the same, similar, related, and repetitive wrongful acts or omissions that combined or "unfolded" to result in the Defendant SCDC failing to recognize that the Plaintiff's sentencing sheet as issued by the Court of General Sessions was in error.

Critically, the number of "occurrences" is not determined by the number of acts of negligence or gross negligence. *Boiter*, 712 S.E.2d at 406 ("we do not adopt a bright-line test based on the existence of multiple acts of negligence"). Rather an "occurrence," by statutory definition, is an "unfolding sequence of events." Given the jury's verdict, the Court must apply that definition of "occurrence," and analyze whether the evidence supports the jury's verdict that there were multiple acts of gross negligence giving rise to or proximately causing a different "unfolding sequence of events." If those acts of gross negligence each give rise to a new "sequence of events" so as not to be "unfolding" or "evolving" from past events, only then is there a new and separate "occurrence." In other words, if the same "unfolding sequence of events" proximately

flows from multiple acts of gross negligence by the same entity, there is but a single occurrence, as the Supreme Court in *Boiter* explains.

In this case, there was a single event which proximately flowed from the alleged multiple acts of gross negligence committed by the same entity, that being the Plaintiff's holdover in custody beyond his May 24, 2018 max-out date. The alleged multiple acts of gross negligence flow into that singular event, i.e., they combined and concurred to proximately cause that single occurrence. As stated, if the same "unfolding sequence of events" proximately flows from multiple acts of gross negligence by the same entity, there is still but a single occurrence. That is the scenario the Plaintiff has presented in the case at bar. The evidence does not support a finding of new or different "unfolding sequences of events." Therefore, on that basis, the Court concludes that the Plaintiff has proven a single occurrence and, accordingly, the verdict must be reduced to a single statutory cap of \$300,000 in accordance with the mandates of S.C. Code Ann. § 15-78-120(a).

Additionally, it is the Plaintiff's burden of proving each "occurrence" as pled. In *Chastain v. AnMed Health Foundation*, 388 S.C. 170, 694 S.E.2d 541 (2010), our Supreme Court ruled that "[i]f [plaintiff] alleges multiple occurrences, that is, that there was more than a single act of negligence from which proximately flowed an unfolding sequence of events, she bears the burden of proving each occurrence." 694 S.E.2d at 544. In the case at bar, however, the Plaintiff has not satisfied his burden of proof in demonstrating that there were multiple occurrences or the amount of the "loss," if any, attributable to each occurrence. As was the case in *Chastain*, the jury was not asked for the type of information that this Court needs to apply the monetary caps for multiple occurrences. This does not make the verdict form inconsistent, as the Plaintiff contends in an attempt to argue that the discharge of the jury waived any inconsistencies with the verdict form. Instead, as in *Chastain*, the verdict form simply does not furnish the needed

information. As the Supreme Court made clear in *Chastain*, it is the Plaintiff's responsibility to provide a verdict form bearing the information necessary to prove his case and support the judgment, if he seeks a judgment in excess of the \$300,000 cap. The Defendant has no responsibility to make sure the verdict form proves the Plaintiff's case – that burden lies with the Plaintiff. Thus, the Court must reject the Plaintiff's attempts to shift the burden to the Defendant to make certain there is an adequate verdict form to prove entitlement to multiple occurrences and a judgment in excess of the \$300,000 cap, just as a similar position taken by the plaintiff in *Chastain* to blame the defendant hospital for the inadequacy of the verdict form was rejected by the trial judge and the Supreme Court.

Clearly, a trial judge may not speculate as to the jury's verdict, particularly on questions that jury was never asked to answer on the verdict form. *Chastain* makes that clear as well. In this case, the jury was asked to return a general verdict and to state a number of occurrences. The jury did not tell this Court – because it was not asked to do so – what each occurrence was and, even more importantly, what was the "loss," if any, that arose from each occurrence found. The specific language of Section 15-78-120(a) requires this Court to determine the award for the "loss arising from" each occurrence and then to reduce any such award that exceeds \$300,000 to the statutory cap. Based on the absence of that needed information from the jury, the Court cannot award more than one cap of \$300,000, just as the trial court in *Chastain* was compelled to reduce the verdict to one cap of \$300,000 under similar circumstances.¹

¹ The Defendant SCDC has also filed a Motion for New Trial Absolute on the basis that the jury's \$4 million verdict was grossly excessive and unsupported by the evidence. Because the Court has reduced the verdict to \$300,000 representing one statutory cap, it is not necessary for the Court to reach that issue. The Court finds that a verdict of \$300,000 is not grossly excessive under the evidence presented. Moreover, the Court declines to grant a new trial absolute pursuant to the Thirteenth Juror Doctrine because the evidence supports a finding

IT IS, THEREFORE, ORDERED that the Motion for Remittitur Pursuant to Tort Claims Act as filed by the Defendant SCDC is hereby granted and the \$4 million judgment in the Plaintiff's favor is reduced to \$300,000, and judgment in that amount is hereby entered.

AND IT IS SO ORDERED.

DONALD B. HOCKER
Presiding Judge,
Sixth Judicial Circuit

that the Defendant SCDC was grossly negligent in causing the Plaintiff's over incarceration beyond his max-out date.



Fairfield Common Pleas

Case Caption: Billy Larson VS South Carolina Department Of Corrections ,
defendant, et al
Case Number: 2019CP2000241
Type: Order/Other

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167

Electronically signed on 2022-02-09 17:22:14 page 9 of 9

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF MARION) FOR THE TWELFTH JUDICIAL CIRCUIT

Demetrice Utley, Individually and as)
Personal Representative of the Estate of)
Taylor Danielle Price,)

Case No.: 2022-CP-33-00362

Plaintiff,)
vs.)

**PLAINTIFF’S OPPOSITION TO
DEFENDANTS’ MOTIONS FOR
JUDGMENT NOTWITHSTANDING THE
VERDICT, OR IN THE ALTERNATIVE,
FOR A NEW TRIAL**

McLeod Physician Associates II and)
Charles A. Trant, MD,)
Defendants.)

Plaintiff Demetrice Utley, individually and as the Personal Representative of the Estate of Taylor Danielle Price (“Plaintiff”), by and through her undersigned counsel, respectfully submits this Consolidated Memorandum in Opposition to Defendants McLeod Physician Associates II (“MPA II”) and Charles A. Trant, MD’s (“Trant”) (“collectively “Defendants”) post-trial Motion For Judgment Notwithstanding the Verdict, New trial Absolute, and Reduction of the Jury’s Verdict to \$1.2 Million.¹

Having failed at every stage of this case, with Defendants’ arguments being rejected by this Court at directed verdict and upon the jury’s consideration of the evidence at trial, Defendants’ latest attempt to set aside the verdict of twelve reasonable jurors is equally deficient. Through a regurgitation of previously rejected arguments, Defendants’ post-trial motions fall even flatter because they are wrought with material misrepresentations of the facts in evidence, statements of counsel, the charging instructions, and even the issues, several of which are not properly preserved

¹ Plaintiff incorporates by reference all arguments, memoranda, responses to motions, and motions made prior to and during trial.

for review. In addition, Defendants' requested relief entirely disregards the highly deferential standard of review from which these motions must be evaluated—a standard which, in this case, overwhelmingly requires the court to affirm the jury's carefully considered verdict.

For these reasons and those that follow, Plaintiff respectfully requests that the Court deny Defendants' Motions for JNOV, New Trial Absolute, and Reduction of the jury's verdict to \$1.2 Million, and affirm the just and reasoned verdict of the jury.²

LEGAL STANDARD

When considering a motion for directed verdict or judgment *non obstante verdicto*, the trial judge must view the evidence and all inferences therefrom in the light most favorable to the non-moving party. *Horry Cnty. v. Laychur*, 315 S.C. 364, 367, 434 S.E.2d 259, 261 (1993). If the evidence is susceptible of more than one reasonable inference, the case should be submitted to the jury. *Id.* A court considering a JNOV does not have authority to decide credibility issues or to resolve conflicts in the testimony or the evidence. *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003). The trial judge, when considering a JNOV motion, is concerned with the existence of evidence, not its weight. A JNOV motion must be denied when the evidence yields more than one inference or its inferences are in doubt. *Jinks v. Richland Cnty.*, 355 S.C. 341, 585 S.E.2d 281 (2003).

The jury's verdict must be upheld unless no evidence reasonably supports the jury's findings." *Curcio*, 355 S.C. at 320, 585 S.E.2d at 274. An appellate court will reverse the trial court's ruling on a JNOV motion only when there is no evidence to support the ruling or where the ruling is controlled by an error of law. *Burns v. Universal Health Servs., Inc.*, 361 S.C. 221,

² For purposes of brevity, Plaintiff relies on the facts set forth in the excerpts from the trial transcript included as exhibits to this memorandum and as recounted herein in the arguments below.

232, 603 S.E.2d 605, 611 (Ct. App. 2004). Furthermore, a motion for JNOV is the renewal of a directed verdict motion and cannot raise grounds beyond those stated in the earlier motion. *See Roland v. Palmetto Hills*, 308 S.C. 283, 286, 417 S.E.2d 626, 628 (Ct. App. 1992).

A trial judge also has the power to grant a new trial absolute. However, this power may be exercised only when the verdict “is shockingly disproportionate to the injuries suffered and thus indicates that passion, caprice, prejudice, or other considerations not reflected by the evidence affected the amount awarded.” *Becker v. Wal-Mart Stores, Inc.*, 339 S.C. 629, 635, 529 S.E.2d 758, 761 (2000). A motion for new trial absolute based on the amount of a jury verdict may be granted only if the verdict amount is “so grossly . . . excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, corruption, or some other improper motives.” *Brinkley v. S.C. Dep’t of Corrections*, 386 S.C. 182, 185, 687 S.E.2d 54, 56 (Ct. App. 2009). Indeed, this standard requires a finding that the jury award was clearly reached as a result of passion, caprice, prejudice, partiality, corruption, or some other improper motives. *Id.*

A jury’s determination of damages is entitled to “substantial deference.” *Todd v. Joyner*, 385 S.C. 509, 517, 685 S.E.2d 613, 618 (Ct. App. 2008), *aff’d*, 385 S.C. 421, 685 S.E.2d 595 (2009). The necessity of giving this deference arises from Article I, Section 14 of the South Carolina Constitution, which states that “[t]he right of trial by jury shall be preserved inviolate.” *See* S.C. Const. art. I, § 14. Thus, every party to a civil jury trial “is entitled to the constitutional privilege of the fair judgment of a jury” and a court must “not interfere with the verdict of a jury simply because it is greater [or less] than its own estimate.” *See Brabham v. S. Asphalt Haulers, Inc.*, 223 S.C. 421, 430, 76 S.E.2d 301, 306 (1953). A “trial court must justify its ruling by giving

‘compelling reasons’ for invading the jury’s province.” See *Jolly v. Fisher Controls Int’l, LLC*, 443 S.C. 511, 524, 905 S.E.2d 380, 387 (2024) (emphasis added).

ARGUMENT

Defendants’ kitchen sink approach to challenging the jury’s carefully considered verdict boils down to a central fallible theme: that despite the jury’s determination of what the evidence showed, Defendants’ version of the facts and perception of the value of this case should override the findings of this Court and twelve reasonable jurors. This is precisely what the law counsels against. The extraordinary relief of setting aside the verdict and granting a new trial absolute is not warranted unless (1) there is no evidence to support directed verdict, (2) the jury’s verdict is unsupported by the evidence or based on some prejudicial trial event, or (3) the jury’s award of damages is shockingly disproportionate to the injuries suffered.

Defendants present this Court with no compelling reason to justify invading the jury’s province and disregarding the jury’s measured and fair determination of wrongful death damages appropriately awarded to Ms. Utley resulting from the preventable death of her 16-year-old daughter, Taylor. Moreover, there is no basis to suggest this jury’s damages award was somehow motivated by any improper consideration. The facts and the evidence more than support the just and reasonable award of damages for the most extreme loss that a parent can experience, the death of their 16-year-old child.

On the merits, Defendants ask this Court to weigh in on the evidence and invalidate the jury’s unanimous findings that: (i) Defendants’ negligence proximately caused the death of 16-year-old Taylor Price; (ii) there were multiple occurrences; (iii) there was grossly negligent conduct by Defendant Trant; and (iv) Plaintiff is entitled to wrongful death damages in the amount of \$30 Million in wrongful death damages. As the record reflects, there is no basis for Defendants’

request to invade the jury's province and disregard the jury's determination of damages appropriately awarded to Ms. Utley. There is ample evidence to support the jury's verdict and award of damages. The trial court's role is not to parse the evidence but to determine whether there is evidence to support the jury's findings.

While Defendants raise a variety of issues through post-trial motions, they failed to raise these issues during trial. It is well-settled that a party may not make an argument for the first time in a post-trial motion. *See, e.g., S.C. Dep't of Transp. v. First Carolina Corp.* of S.C., 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) ("It is well settled that an issue may not be raised for the first time in a post-trial motion"). Defendants' challenges to expert testimony, the verdict form, and the closing argument and rebuttal argument of Plaintiff's counsel share the same critical flaw. Having failed to make contemporaneous objections at the proper time during trial, Defendants have waived these arguments. To the extent they had been preserved, Defendants' arguments also lack merit.

As discussed below, Defendants' post-trial motions should be denied.

I. THE MOTION FOR JNOV SHOULD BE DENIED BASED ON THE AMPLE EVIDENCE SUPPORTING THE JURY'S VERDICT

It is well-settled that a trial judge, when considering a JNOV motion, is concerned with the existence of evidence, not its weight. *See Bass v. S.C. Dep't of Soc. Servs.*, 414 S.C. 558, 780 S.E.2d 252 (2015) (upholding trial court's order denying motion for JNOV on gross negligence, as "trial judge is concerned with the existence of evidence, not its weight"). A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict. *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998).

Defendants seek a judgment notwithstanding the verdict on the alleged basis that Dr. Trant was not grossly negligent as a matter of law, there was only one occurrence, and lack of proximate

cause. *See* Defs.’ Mot., pp. 2 – 8. When analyzed under the proper standard, Defendants’ arguments must be rejected. The evidence as a whole, when taken in a light most favorable to Plaintiff, supports the verdict returned by the jury.

A. Witness Testimony and Materials Presented at Trial Support the Jury’s Finding that Dr. Trant was Grossly Negligent.

The evidence presented to the jury supports a finding of gross negligence on the part of Dr. Trant, and the existence of the evidence establishing Dr. Trant’s gross negligence is sufficient to warrant denying the Motion for JNOV.

Gross negligence is a “relative term” meaning “the absence of care that is necessary under the circumstances” or “the failure to exercise slight care.” *Jinks*, 355 S.C. at 345, 585 S.E.2d at 283. The issue of gross negligence “is a mixed question of law and fact” that should generally be resolved by a jury. *Etheredge v. Richland Sch. Dist. One*, 341 S.C. 307, 310, 534 S.E.2d 275, 277 (2000). South Carolina courts recognize a number of factors that may be considered in determining whether a defendant’s conduct rises from ordinary to gross negligence. *See, e.g., Cole v. S.C. Elec. & Gas, Inc.*, 335 S.C. 183, 193, 584 S.E.2d 405, 411 (Ct. App. 2003) (holding that a jury determining gross negligence may consider statutory and regulatory violations as well as “other facts and circumstances surrounding the event”). A violation of operational policies can be strong evidence of gross negligence. *See Proctor v. Dep’t of Health & Env’t Control*, 368 S.C. 279, 297, 628 S.E.2d 496, 506 (Ct. App. 2006) (finding jury question on gross negligence where state agency’s conduct was against what “was its policy to do”); *see also Clark v. S.C. Dep’t of Public Safety*, 362 S.C. 377, 384-85, 608 S.E.2d 573 (2005) (holding that trial court properly submitted gross negligence to jury based in part on an expert description of department policy).

At the trial of this case, the jury heard testimony from Plaintiff’s expert witness, Anthony Christopher Chang, M.D., M.B.A., M.P.H., M.S. Dr. Chang is board certified by the American

Board of Pediatrics in pediatric cardiology. He has served as the medical director of pediatric cardiac intensive care programs throughout the United States. Dr. Chang is the chief editor of medical textbooks on pediatric cardiac intensive care and heart failure in children and young adults. At trial, Dr. Chang provided expert testimony relating to Dr. Trant's treatment of Taylor Price and the deviations from the applicable standard of care. Specifically, Dr. Chang testified that Dr. Trant's deliberate choice to not do what was required under the circumstances was "grossly inadequate" and "significantly inadequate." *See* excerpt of trial testimony of Dr. Anthony Chang attached as Exhibit 1 at pg. 24.

In addition to the expert testimony, the jury also heard testimony from Dr. Trant himself. As indicated by the excerpt of trial testimony set forth below, Dr. Trant's testimony provides further evidence to support the jury's finding that Dr. Trant acted in a grossly negligent manner:

Dr. Trant, you did not accidentally forget to order an echocardiogram on Taylor, did you?

A: No.

Q: Yes, sir. You did not accidentally forget to order a stress test or an exercise test on Taylor Price on January 24th, 2019, did you?

A: I did not forget to do it because it was not indicated.

Q: And you did not accidentally forget to order a cardiac MRI for Taylor at that visit either, did you?

A: No, because it wasn't indicated.

Q: And that choice you made and the context and the explanation you just gave, based on your extensive education and training, that choice you made was one you made consciously, correct?

A: Yes.

Q: And knowingly?

A: Yes.

Q: Okay. You knew you could order those tests if you desired to, correct?

A: Yes, but ordering tests that are not indicated and charging people money for tests that I know are not indicated, I find that unethical.

See excerpt of trial testimony of Dr. Charles Trant attached as Exhibit 2 at pg. 46-48.

Defendants were given the opportunity to present evidence to show that Dr. Trant acted with slight care. Having heard the evidence presented at trial, the jury found in favor of Plaintiff. Defendants are not entitled to a directed verdict/JNOV on gross negligence by merely offering evidence of slight care. *Bass*, 414 S.C. at 573-74, 780 S.E.2d at 260 (finding ample evidence in the record for jury's finding of gross negligence even though evidence of slight care had been presented). The witness testimony and ample evidence in the record support the jury's finding that Dr. Trant's conduct constituted gross negligence. Defendants even concede that Dr. Trant could have ordered more tests (Post-trial Motion at 4). This concession and the evidence presented at trial, including from Dr. Chang, presented quintessential factual issues for the jury to decide. The existence of such evidence requires that Defendants' Motion for JNOV be denied.

B. The Jury's Finding That There Was More Than One Occurrence is Supported by the Evidence Presented at Trial.

Defendants raise the argument, for the first time in their Motion for JNOV, that the statutory definition of occurrence under the Tort Claims Act does not apply to charitable organizations and its employees. Defendants did not present this argument when their Motion for Directed Verdict was argued during trial. The argument now raised by way of Defendants' post-trial motions is, in fact, a direct contradiction of Defendants' position during trial in seeking a directed verdict:

punitive damages against Dr. Trant. The immunity under the Charitable Immunity Act, 15-78-30(g) -- let me find it -- adopts in its entirety the Tort Claims Act.

MR. MCLEAN: We contend that it does, that the Charitable Immunity Act does incorporate the Tort Claims Act in its entirety. It cites Tort Claims Act, Chapter 78 of Title 15 as

See excerpt of trial transcript – Directed Verdict Arguments attached as Exhibit 3 at pg. 29-30. Defendants' failure to preserve this argument warrants denial of the Motion for JNOV.

Furthermore, the occurrence issue is a question of fact for the jury. Defendants argue that the occurrence issue is question of law for the Court, not the jury. See *Boggero v. S.C. Dep't of Revenue*, 414 S.C. 277, 280, 777 S.E.2d 842, 843 (Ct. App. 2015) ("[W]hether the facts of a case were correctly applied to a statute is a question of fact" (quoting *Hopper v. Terry Hunt Constr.*, 373 S.C. 475, 749, 646 S.E.2d 162, 165 (Ct. App. 2007))); S.C. Code Ann. § 15-78-30(g) (2005) ("'Occurrence' means an unfolding sequence of events which proximately flow from a single act of negligence."). The words of William H. Davidson, a longtime law partner of Defendants' counsel, Mr. Lindemann, belies their position. Mr. Davidson, who is an officer of the court with a

duty of candor to the tribunal, acknowledged that the occurrence issue is a question of fact during a hearing before the Honorable Kristi Curtis:

Judge, I've been practicing law 42 years. I have tried more SCDC cases probably than anybody in the state. I'm not scared to try this case. I'm not scared to raise the occurrence issue. I know it's a question of fact. I'm also not worried,

See Transcript of November 10, 2020 hearing before Judge Kristi Curtis attached as Exhibit 4.

To the extent this Court were to consider Defendants' unreserved argument, the evidence in the record supports the jury's finding. Plaintiff alleged, argued, and ultimately proved that there were two occurrences in this case that led to the death of 16-year-old Taylor Price, *i.e.*, (i) Dr. Trant's grossly inadequate cardiac workup of Taylor, and (ii) Dr. Trant's signing the return to sports clearance for Taylor. The separate and distinct nature of the two occurrences is supported by the expert testimony at trial. The jury heard expert testimony from Dr. Chang, Plaintiff's pediatric cardiology expert, as to his belief and opinion that there were two separate and distinct failures on the part of Dr. Trant. Dr. Chang testified that these two failures were deviations from the standard of care and that, to a reasonable degree of medical certainty, these two deviations from the standard of care were the reason that Taylor Price died. See Exhibit 1 at 16-17, 22-24.

Based on the evidence in the record, the jury found that there was more than one occurrence. The jury made this finding using the verdict form drafted by Defense Counsel, and Defendants never submitted any proposed jury charge relating to occurrences. Defendants cannot now complain of a purported error of their own making. See *Erickson v. Jones St. Publishers, LLC*,

368 S.C. 444, 476, 629 S.E.2d 653, 670 (2006) ("[A] party may not complain on appeal of error or object to a trial procedure which his own conduct has induced."); *McKissick v. J.F. Cleckley & Co.*, 325 S.C. 327, 350, 479 S.E.2d 67, 79 (Ct. App. 1996) (holding a party may not complain on appeal when it receives what it asked for at trial). Further, Defendants never raised an objection to the jury charge submitted by Plaintiff and ultimately used by the Court. On this basis, the Court read the following charge to the jury to instruct them on the issue of occurrences:

OCCURRENCES

“OCCURRENCE” MEANS AN UNFOLDING SEQUENCE OF EVENTS WHICH PROXIMATELY FLOW FROM A SINGLE ACT OF NEGLIGENCE.

THE PLAINTIFF HAS ALLEGED MULTIPLE OCCURRENCES OF NEGLIGENCE IN THIS CASE. WHERE THERE ARE MULTIPLE OCCURRENCES OF NEGLIGENCE, A PLAINTIFF MAY RECOVER DAMAGES FOR EACH OCCURRENCE OF NEGLIGENCE. THE PLAINTIFF HAS THE BURDEN OF PROVING THAT EACH ACT OF NEGLIGENCE WAS SEPARATE AND INDEPENDENT IN ORDER FOR YOU TO FIND THAT MORE THAN ONE OCCURRENCE OCCURRED.

After having been properly charged on the definition of occurrence exactly as it appears in the definitions of the South Carolina Tort Claims Act, the jury answered in the affirmative that there was more than one occurrence in this case. As indicated on the verdict form, the jury found in relevant part as follows:

3. Having been instructed by the judge on the definition of an occurrence, do you find there was more than one occurrence?

☒ YES
☐ NO

See Signed Verdict Form, created by Defendants, attached as Exhibit 5.

The jury determined that the Plaintiff had proved that there were multiple occurrences after having been charged on the law. Defendants' Motion for Directed Verdict was properly denied, and for the same reasons, the Motion for JNOV must now be denied.

C. The Evidence Presented at Trial Provides Ample Support for the Jury's Finding of Proximate Cause.

As discussed above, the jury heard expert testimony as to Dr. Trant's multiple deviations from the standard of care that was required of him, which proximately caused the death of Taylor Price. The existence of such evidence is the appropriate concern of the trial court in deciding a motion for JNOV. *See Curcio*, 355 S.C. at 320, 585 S.E.2d at 274 (recognizing that, in deciding a motion for JNOV, "the trial judge is concerned with the existence of evidence, not its weight").

The jury gave appropriate weight to Dr. Chang's expert testimony, including, but not limited to, the following:

Should Taylor have been returned to sports without a thorough comprehensive workup?

A: No.

Q: Was it a deviation of the standard of care for Dr. Trant to send her right back without any of those tests?

A: Yes.

Q: And was it a deviation of the standard of care for him not to perform those tests?

A: Yes.

Q: And do you believe to a reasonable degree of medical certainty that that's why Taylor died?

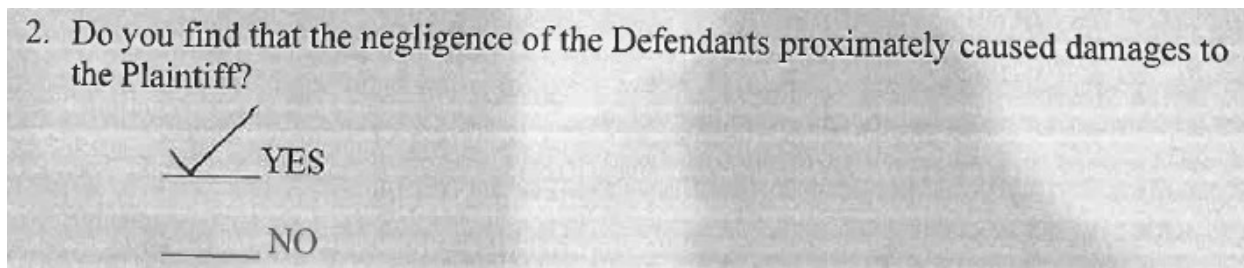
A: Yes.

Q: And do you also believe to a reasonable degree of medical certainty if she had received proper care that she'd be with us today?

A: Yes; she would be alive today.

See Exhibit 1 at pg. 24.

Having heard witness testimony and been properly charged on the law as it relates to proximate cause, the jury found that the negligence of Defendants proximately caused Plaintiff's damages, as shown on the verdict form, in relevant part, below:



2. Do you find that the negligence of the Defendants proximately caused damages to the Plaintiff?

☒ YES

☐ NO

See Exhibit 5.

The existence of any evidence that could support the jury's finding that the Defendants' negligence was the proximate cause of Taylor Price's death requires that Defendants' Motion for JNOV be denied.

II. THE MOTION FOR NEW TRIAL ABSOLUTE BASED ON JUDGE DEBERRY'S ORDER SHOULD BE DENIED

Judge DeBerry properly denied Defendants' Motion to Change Venue and went to great lengths to explain his findings of fact and conclusions of law in his Order dated September 19, 2024. Marion County was a proper venue for the trial of this matter for all of the reasons provided in Judge DeBerry's Order Denying Defendants' Motion to Change Venue. Defendants provide no competent argument as to why they would be entitled to a New Trial Absolute based upon Judge DeBerry's factually and legally correct analysis.

III. THE MOTION FOR NEW TRIAL ABSOLUTE BASED ON THE JURY CHARGES SHOULD BE DENIED

Defendants seek a new trial absolute based on one sentence contained in the gross negligence jury charge, which correctly recites South Carolina law. Defendants also request a new trial absolute on the alleged basis that the jury should have been charged with a selectively edited portion of the South Carolina Solicitation of Charitable Funds Act. As set forth below, Defendants are not entitled to a new trial absolute on the grounds raised in their post-trial motions or otherwise.

In reviewing an alleged error in jury instructions, an appellate court will not reverse the trial court's decision absent an abuse of discretion. *See Cole v. Raut*, 378 S.C. 398, 404, 663 S.E.2d 30, 33 (2008) (applying an abuse of discretion standard of review to an alleged error in jury instructions). An appellate court will review the charge as a whole. If, as a whole, the charges are reasonably free from error, isolated portions which might be misleading do not constitute reversible error. *See Keaton ex rel. Foster v. Greenville Hosp. Sys.*, 334 S.C. 488, 497, 514 S.E.2d 570, 575 (1999) (finding a jury charge should be reviewed as a whole, and if the charges are reasonably free from error, isolated portions that might be misleading do not constitute reversible error). A jury charge that is substantially correct and covers the law does not require reversal. *Id.* at 496, 514 S.E.2d at 574.

A. The Court's Jury Charge on the Definition of Gross Negligence was Proper.

As the record reflects, Defendants submitted a proposed jury charge on gross negligence for the Court's consideration. Defendants' proposed jury charge was a word for word excerpt from Judge Anderson's South Carolina Requests to Charge – Civil, 2nd Edition, with the exception of one sentence that Defendants selectively sought to remove, highlighted below:

§ 21-1 Gross Negligence - Defined

Gross negligence is the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. Negligence is the failure to exercise due care, while gross negligence is the failure to exercise even the slightest care. Gross negligence is a relative term, and means the absence of care that is necessary under the circumstances.

Gross negligence connotes the failure to exercise a slight degree of care. Gross negligence involves an intentional, conscious failure to do something which one ought to do or the doing of something one ought not to do. A defendant is guilty of gross negligence if he is so indifferent to the consequences of his conduct as not to give slight care to what he is doing.

See § 21-1 Gross Negligence - Defined, Anderson, S.C. Requests to Charge - Civil, 21-1.

The Court properly charged the jury with the full, complete definition of gross negligence, which included the sentence that Defendants sought to remove. The Court committed no reversible error, as the jury charge provided the correct definitions and adequately covers the law of South Carolina as to gross negligence. South Carolina law recognizes that gross negligence is “a relative term, and means the absence of care that is necessary under the circumstances.” *See, e.g., Hollins v. Richland Cnty. Sch. Dist. One*, 310 S.C. 486, 490, 427 S.E.2d 654, 656 (1993). Under South Carolina law, gross negligence is the absence of care necessary under the circumstances. *See Jinks*, 355 S.C. at 348, 585 S.E.2d at 285; *see also Hamilton v. Reg’l Med. Ctr.*, 440 S.C. 605, 627, 891 S.E.2d 682, 694 (Ct. App. 2023), reh’g denied (Sept. 21, 2023), cert. denied (May 1, 2024). Although Defendants rely solely on a 72-year old case in *Hicks v. McCandlish*, 221 S.C. 410, 70 S.E.2d 629 (1952), they fail to acknowledge the litany of cases that have followed to establish the law on gross negligence.

The Court defined gross negligence in accordance with South Carolina law. The substance of the law is what must be instructed to the jury, not any particular verbiage.” *State v. Smith*, 315 S.C. 547, 554, 446 S.E.2d 411, 415 (1994). The record reflects that the jury understood and appreciated that gross negligence is distinct from ordinary negligence. Even if the Court’s initial language in instructing the jury had been a misstatement of law, a new trial would not be warranted.

See e.g., Priest v. Scott, 266 S.C. 321, 324, 223 S.E.2d 36, 38 (1976) (finding an alleged error in a jury charge must be prejudicial to warrant a new trial); *Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 414, 717 S.E.2d 765, 770–71 (Ct. App. 2011) (finding defendants were not prejudiced by trial court’s initial language which misstated the law on negligence). The jury charge is correct and free from error.

Therefore, there is no reversible error as to the jury charge on gross negligence.

B. The Court’s Decision not to Charge Defendants’ Revised Excerpt from the South Carolina Solicitation of Charitable Funds Act was Proper.

Prior to trial, the parties stipulated that MPA II was, at all times relevant to Plaintiff’s claims, a charitable entity, as defined and governed by the South Carolina Solicitation of Charitable Funds Act. The parties further stipulated that Dr. Trant was, at all times relevant to Plaintiff’s claims, an employee of MPA II and, for all purposes of this matter, was acting in the course and scope of his employment. This stipulation was placed on the record on the first day of trial. As a result of this stipulation, it was not necessary for Defendants to call any witnesses or enter any exhibits into evidence that would have otherwise been required to prove that their affirmative defense based on the South Carolina Solicitation of Charitable Funds Act.

Despite the jury having been presented with no evidence or context relating to the South Carolina Solicitation of Charitable Funds Act, Defendants proposed a jury charge that included selectively edited portions of Section 33-56-180 of the South Carolina Solicitation of Charitable Funds Act, entitled “Limitation of liability for injury or death caused by employee of charitable organization.” *See* S.C. Code § 33-56-180. Counsel for Plaintiff did not object to charging the jury on Section 33-56-180 (“Limitation of liability for injury or death caused by employee of charitable organization”). Plaintiff’s counsel requested, however, that if the Court were inclined to charge Section 33-56-180, then it should charge the statute in its entirety, including the reference to the

limitations on liability imposed by the South Carolina Tort Claims Act. Plaintiff's counsel argued that, because the jury had not been presented with any evidence relating to charitable entities during the week-long trial, charging the jury on Section 33-56-180 in isolation would have been confusing and inappropriately out of context. If the full statute was to be charged, including the reference to the Tort Claim Act's limitation on damages, then Plaintiff was entitled to argue all of the implications of that in closing statement. Having heard the arguments of counsel, the Court properly decided not to charge a selectively edited portion of the South Carolina Solicitation of Charitable Funds Act.

Jury instructions should be confined to the issues made by the pleadings and supported by the evidence. *See Stephens v. CSX Transp., Inc.*, 415 S.C. 182, 197, 781 S.E.2d 534, 542 (2015). The jury's findings as to Defendants' negligence were reasonable and supported by the evidence of the deviations from the standard of care. Defendants have not demonstrated that the decision not to charge the jury with a selectively edited portion of the South Carolina Solicitation of Charitable Funds Act was prejudicial. *See Pittman v. Stevens*, 364 S.C. 337, 340, 613 S.E.2d 378, 380 (2005) ("A trial court's refusal to give a properly requested charge is reversible error only when the requesting party can demonstrate prejudice from the refusal").

The new trial absolute is not warranted.

IV. THE JURY'S VERDICT IS APPROPRIATE AND SUPPORTED BY THE EVIDENCE

The jury awarded Plaintiff damages for the harms and losses suffered as a result of the preventable death of her 16-year-old daughter, Taylor. The jury heard testimony from Plaintiff, who described the particular losses she has suffered by the tragic death of her daughter. Plaintiff testified that the loss of her daughter has left her "broken," and no longer the same woman she had been before her daughter's death. The jury, having heard the evidence during the course of the

weeklong trial, dutifully performed the difficult task of assigning a dollar figure to the loss suffered by Plaintiff.

The jury's determination of damages is entitled to substantial deference. *Todd*, 385 S.C. at 517, 686 S.E.2d at 618. Defendants' estimation as to the excessiveness of the wrongful death damages awarded by the jury is not entitled to this same deference. The loss to parents from the untimely death of a devoted child is not to be minimized. *Lucht v. Youngblood*, 266 S.C. 127, 137, 221 S.E.2d 854, 859 (1976). When a child is lost to a parent, those losses "are intangibles, the value of which cannot be determined by any fixed yardstick." *Id.* They "must be estimated by the jury in the exercise of their sound judgment under all of the facts and circumstances of the case." *Id.* The Defendants cannot insert their own judgment in place of the jury's because they argue the damages awarded are too much. Such an invasion into the jury's decision would not be proper as "[p]ain and suffering have no market price." *Harper v. Bolton*, 239 S.C. 541, 548, 124 S.E.2d 54, 57 (1962). Therefore, these categories of damages "must be left to the judgment of the jury," *id.* at 548, 124 S.E.2d at 57, because "[t]he amount of damages a jury may award for physical pain and suffering and for mental pain and suffering is incapable of exact measurement." *Mims v. Florence Cnty. Ambulance Serv. Comm'n*, 296 S.C. 4, 7, 370 S.E.2d 96, 99 (Ct. App. 1988) (citations omitted). In this case, the jury properly awarded Plaintiff damages for the wrongful death of her daughter Taylor in the amount of \$30 million.

It is in the province of the jury to determine amounts to be allowed and a verdict should not be disturbed unless it is so flagrantly excessive as to raise a presumption that it was the result of passion and prejudice, and not of sober, reflective judgment. *Lucht* at 137–38, 221 S.E.2d at 859. The record before the Court demonstrates that no such presumption is warranted in this case. Defendants provide only an unsupported assessment that "the evidence simply does not support

the unprecedented award.” *Defs. ’ Mot.*, p. 14. The South Carolina Supreme Court has cautioned against overreliance on comparison to prior verdicts when judging for excessiveness. *Lucht* at 136, 221 S.E.2d at 858 (“[E]ach case must be evaluated as an individual one, within the framework of its distinctive facts”).

A “grossly excessive” verdict is one “deemed the result of a disregard of the facts and of the court’s instructions, and to be due to passion and prejudice rather than reason.” *King v. Daniel Int’l Corp.*, 278 S.C. 350, 355, 296 S.E.2d 335, 338 (1982). However, a “verdict which may be supported by any rational view of the evidence, or as to which reasonable and disinterested men might draw different inferences, is not of this class.” *Mickle v. Blackmon*, 252 S.C. 202, 248, 166 S.E.2d 173, 194 (1969) (affirming the denial of a new trial absolute of what the court referred to at the time as “probably the highest verdict in a personal injury case in the history of this State”). In determining whether the verdict is excessive, the facts must be viewed in the light most favorable to Plaintiff and are addressed in the sound discretion of the trial judge. *See Watson v. Wilkinson Trucking Co.*, 244 S.C. 217, 224, 136 S.E.2d 286, 289 (1964); *Riley v. Ford Motor Co.*, 414 S.C. 185, 192, 777 S.E.2d 824, 828 (2015). At trial, the jury heard arguments and statements from Plaintiff’s counsel as to the suggested amount that the jury could consider awarding if they found that Plaintiff had proved every element necessary in her case. The jury’s verdict of \$30 Million is the amount discussed by Plaintiff’s counsel in both opening statement and again in rebuttal argument. The verdict was not the result passion or prejudice or any other improper motive that could justify a finding of excessiveness.

Furthermore, Defendants have waived the argument raised for the first time in the Motion for New Trial Absolute relating to statements made in closing argument. Counsel for Defendants failed to make a contemporaneous objection during Plaintiff’s closing argument. Defendants’

counsel also failed to raise the issue on rebuttal. Having failed to make an appropriate and timely objection, Defendants now take issue with statements made in closing argument in post-trial motions. This basis alone warrants the denial of Defendants' Motion. *See Bunch v. Charleston & WC. Ry. Co.*, 91 S.C. 139, 74 S.E. 363 (1912) (noting because the failure to object is a waiver, an improper argument of counsel that is not objected to at the time cannot be complained of later); *see also State v. Lynn*, 277 S.C. 222, 284 S.E.2d 786 (1981) (finding that a failure to make the required contemporaneous objection may not be "bootstrapped" by a subsequent motion or request).

South Carolina law recognizes the general rule that a party must make a contemporaneous objection to an improper argument, or the objection is waived. *See Dial v. Niggel Assocs., Inc.*, 333 S.C. 253, 256–57, 509 S.E.2d 269, 271 (1998). The South Carolina Supreme Court recognizes a "narrow exception to this general rule" in flagrant cases where a vicious, inflammatory argument results in clear prejudice. *See Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 263, 442 S.E.2d 611, 615 (1994). Even in such narrow exception, the failure to make contemporaneous objection to an inflammatory argument is excused only where challenged argument constitutes abuse of a party or witness. *Dial*, at 260, 509 S.E.2d 272. The statements by Plaintiff's counsel in closing argument do not meet the "narrow exception" to justify Defendants' failure to make a timely objection.

The statements of Plaintiff's counsel cited in the Motion for New Trial Absolute are neither improper nor objectionable. As the transcript of the closing argument reflects, Plaintiff's counsel argued that the jury's verdict should be loud enough to be heard by the medical community throughout South Carolina for the purpose of protecting society from preventable deaths. This "message" aligns with the fundamental purpose and function of tort law in South Carolina, which

seeks to protect safety interests and is rooted in the concept of protecting society as a whole from physical harm to person or property. *See Sapp v. Ford Motor Co.*, 386 S.C. 143, 147, 687 S.E.2d 47, 49 (2009). Plaintiff's counsel argued that the standards of care are applicable to every patient. No statement or argument was made at any time during trial that would suggest that Defendants failed to meet the standard of care on the basis of race or socioeconomic condition.³

As an additional argument for new trial absolute, Defendants take issue with the amount of time the jury spent in deliberation. The jury deliberated for 53 minutes, during which time they specifically requested that the Court explain to them the difference between negligence and gross negligence. Defendants take issue with the alleged brevity of the jury's deliberation being "little more than 30 minutes," a statement that is not factually accurate. The brevity of a jury's deliberations does not provide sufficient grounds to warrant a new trial. *See State v. Holland*, 261 S.C. 488, 499, 201 S.E.2d 118, 123 (1973) ("There is no prescribed length of time for a jury to reach a verdict"). The verdict was supported by ample evidence and compelling testimony from Plaintiff relating to the unimaginable pain and trauma she has suffered as a result of the Defendants' negligence. The jury properly weighed this evidence when determining the wrongful death damages awarded to Plaintiff resulting from the tragic and preventable death of her 16-year-old daughter, Taylor. The verdict is "supported by any rational view of the evidence and bears a reasonable relationship to the character and extent of the injury and damage sustained." *See King v. Daniel Int'l Corp.*, 278 S.C. 350, 355, 296 S.E.2d 335, 338 (1982).

Accordingly, Defendants' challenges to amount of the jury's verdict should be rejected and the Motion for New Trial Absolute should be denied.

³ Evidence was admitted without objection as to the fact that Taylor Price was on Medicaid at the time of her death. Dr. Trant himself testified that it would have been difficult to obtain permission from Medicaid to perform testing.

V. THE THIRTEENTH JUROR DOCTRINE SHOULD NOT BE INVOKED TO SET ASIDE A REASONABLE AND SUPPORTED JURY VERDICT

The Thirteenth Juror doctrine empowers the trial judge with discretion to effectively veto a jury's verdict and order a new trial. *See Howard v. Roberson*, 376 S.C. 143, 654 S.E.2d 877 (Ct. App. 2007). The Thirteenth Juror doctrine, however, may not be invoked if the trial judge simply believes the verdict was "unduly liberal." *Id.*, 376 S.C. at 154, 654 S.E.2d at 882-83. Defendants invite this Court to invoke the Thirteenth Juror doctrine to set aside the jury's verdict based on Defendants' unsupported assurance that "the evidence presented in this case does not support the jury's verdict." *See* Defs.' Mot., p. 17. The Court should decline to do so, as the overwhelming evidence and testimony presented at trial supports the jury's verdict.

Accordingly, Defendants' Motion for a new trial absolute on the basis of the Thirteenth Juror doctrine should be denied.

VI. DEFENDANTS ARE ENTITLED TO A \$1,000.00 SET-OFF AGAINST THE JURY'S \$30 MILLION VERDICT FOR WRONGFUL DEATH DAMAGES

Defendants seek a set-off based on Plaintiff's \$130,000.00 settlement with Marion County School District that was placed on the record with Counsel for the Defendants present on September 10, 2024, at the Marion County Courthouse. The parties dispute how a potential set-off should apply based on the manner in which the Marion County School District settlement funds were apportioned among between Plaintiff's claims for survival damages and her claims for wrongful death damages. When the settlement was announced to the Court and placed on the record, Plaintiff's counsel made it clear that the settlement funds would be allocated with \$129,000.00 apportioned to Plaintiff's claims seeking survival damages and \$1,000.00 apportioned to Plaintiff's wrongful death claim. The specific allocation that was announced on the record in open court with Defendants' counsel present was memorialized in the Settlement

Agreement and General Release that Plaintiff and Marion County School District entered into. A copy of the executed Settlement Agreement and Release that Plaintiff and Marion County School District entered in to can be provided to the Court for an en camera review if the Court determines that is necessary, or should the Court Order the production of the agreement then it can be shared with counsel for the Defendants to confirm these allocations of the \$130,000.00 settlement.

A set-off belongs to the inherent power of a court in the exercise of its equitable jurisdiction. *See W. M. Kirkland, Inc. v. Providence Washington Ins. Co.*, 264 S.C. 573, 580, 216 S.E.2d 518, 521 (1975). Based upon the allocation that was not objected to by counsel for Defendants at the time it was announced in open court and placed on the record, and the law of South Carolina, Defendants are entitled to a set-off in the amount of \$1,000.00 against the Jury's Verdict of \$30 Million.

VII. THE MOTION FOR REDUCTION OF THE VERDICT BASED UPON THE SOUTH CAROLINA SOLICITATION OF CHARITABLE FUNDS ACT MUST BE DENIED

Defendants seek a reduction of the jury's verdict, which Defendants allege is "in accordance with the South Carolina Solicitation of Charitable Funds Act," S.C. Code §§ 33-56-10, *et seq.* Defendants devote a significant portion of their post-trial motion to an unnecessary and tortured interpretation of what Defendants view as the legislative history of the South Carolina Solicitation of Charitable Funds Act. Defendants' efforts to create an illusion of uncertainty as to the cap of liability under the South Carolina Solicitation of Charitable Funds Act can easily be dispelled by a reading of the plain language of the statute, as well as the decision by South Carolina courts confirming the same.

Section 35-56-180 of the South Carolina Solicitation of Charitable Funds Act, entitled “Limitation of liability for the injury or death caused by employee of charitable organization,” provides in pertinent part as follows:

An action against the charitable organization pursuant to this section constitutes a complete bar to any recovery by the claimant, by reason of the same subject matter, against the employee of the charitable organization whose act or omission gave rise to the claim **unless it is alleged and proved in the action that the employee acted in a reckless, willful, or grossly negligent manner, and the employee must be joined properly as a party defendant.** A judgment against an employee of a charitable organization may not be returned unless a specific finding is made that the employee acted in a reckless, willful, or grossly negligent manner.

See S.C. Code § 33-56-180(A) (emphasis added). Indeed, Section 35-56-180 provides a mechanism for seeking damages in excess of the charitable limitation through an action against a charitable organization’s employee, who is joined properly as a defendant, and a special finding that the employee acted in a grossly negligent manner.

The South Carolina Court of Appeals has detailed the manner in which an employee of a charitable organization could be liable for damages in excess of the charitable limitation. *See James v. Lister*, 331 S.C. 277, 282, 500 S.E.2d 198, 201 (Ct. App. 1998) (finding that charitable statute provides a mechanism for seeking damages in excess of the charitable limitation, through an action against a charitable organization’s employees). In *James*, our Court of Appeals addressed the availability of damages against an employee of charitable organization in excess of the statutory cap under the prior version of the Solicitation of Charitable Funds Act, which was \$200,000. The prior version is identical to the current statute in all other respects. *Id.* In such instances, the statute specifically requires joinder of the employee as a party, and a special finding by the jury that the employee was proved guilty of gross negligence as a proximate cause of the injury. *Id.*

In 2010, the South Carolina Supreme Court confirmed that individual employees of a charitable organization could be held individually liable. *See Chastain v. AnMed Health Found.*, 388 S.C. 170, 172, 694 S.E.2d 541, 542 (2010) (finding that, because the jury found none of the nurses guilty of “reckless, wilful, or grossly negligent” care, they were not found individually liable under S.C. Code § 33-56-180(A)). The South Carolina Court of Appeals has also confirmed that the statutory cap can be avoided through an action against a charitable organization’s employees. *See Myat v. Tuomey Reg’l Med. Ctr.*, 427 S.C. 601, 608, 832 S.E.2d 306, 309 (Ct. App. 2019) (finding that “the statute of limitations had run against potential individual defendants, *i.e.*, the employee(s) that created the dangerous condition that [plaintiff] could have pursued to avoid the statutory cap). In 2020, the Court of Appeals discussed and affirmed the holding in *James* that the Charitable Statute provides for a mechanism for seeking damages in excess of the charitable limitation, through an action against a charitable organization’s employees. *See Garrison v. Target Corp.*, 429 S.C. 324, 838 S.E.2d 18 (Ct. App. 2020), *aff’d in part as modified, rev’d in part*, 435 S.C. 566, 869 S.E.2d 797 (2022). The Court of Appeals held the statutory cap on punitive damages pursuant to Section 15-32-530 constituted an affirmative defense that must be pled or else waived, and because Target failed to plead the cap, the lower court held its application was waived. *Id.* at 373, 838 S.E.2d at 44. The Supreme Court reversed the Court of Appeals’ holding on this issue. In doing so, the Supreme Court noted the distinction between the punitive damages cap and the charitable cap by find that, “[u]nlike the additional procedural requirements at issue in *James*—a special finding of gross negligence by the jury and joinder of additional parties—which fundamentally affected both the parties and the proof at trial, no such requirements are involved here.” *Garrison v. Target Corp.*, 435 S.C. 566, 582–83, 869 S.E.2d 797, 806 (2022).

Dr. Trant was joined as an individual defendant because of the grossly negligence manner in which he treated Taylor Price. Plaintiff alleged and ultimately proved that Dr. Trant had in fact acted in a grossly negligent manner. The jury made a specific finding that Dr. Trant's conduct constituted gross negligence. On this basis, Plaintiff is entitled to recover damages in excess of the charitable cap pursuant to Section 33-56-180. MPA II is a large, sophisticated nonprofit healthcare entity with 1,770 employees. MPA II and its counsel know, or at least should know, that the attempt to reduce the jury's \$30 million verdict to \$1.2 million on the alleged basis of the charitable cap is without merit. For example, Prisma Health, a large sophisticated nonprofit healthcare entity that employs 5,429 doctors and clinicians⁴, specifically advises its physician in writing that the statutory cap on liability provided under the South Carolina Solicitation of Charitable Funds Act no longer exists if there is a finding of gross negligence, and that because of that possibility Prisma Health maintains an excess medical professional liability policy of a minimum of \$5 Million.

9. PROFESSIONAL LIABILITY INSURANCE IR (IV.B.2.F)

All employees, including residents/fellows, are covered for Medical Professional Liability as follows: Prisma Health is self-insured for medical professional liability insurance up to \$1.2M per claim. Prisma Health also purchases a "claims-made" excess medical professional liability policy from National Fire & Marine Insurance Company, a Berkshire Hathaway company. Excess medical professional liability coverage will be provided at a minimum limit of \$5M.

Document Ref: [REDACTED]

Page 2 of 5

Liability amounts are capped under the South Carolina Solicitation of Charitable Funds Act (Section 33-56-180 of the South Carolina Code, et. seq.) unless the acts are deemed to be willful, reckless, or grossly negligent. An award for damages when a determination that the acts are willful, reckless or grossly negligent would then trigger the excess medical professional liability coverage.

See Redacted copy of Physician employment agreement/contract with Prisma Health attached as Exhibit 6 pg. 2-3.

Accordingly, the Motion to Reduce the Verdict should be denied.

⁴ <https://prismahealth.org/about-prisma-health#:~:text=The%20company%20has%2029%2C309%20team,clinically%20integrated%20inVio%20Health%20Network>

CONCLUSION

For these reasons, Plaintiff Demetrice Utley, individually and as the Personal Representative of the Estate of Taylor Danielle Price, respectfully requests that the Court deny the Post-Trial Motions by Defendants McLeod Physician Associates II and Charles A. Trant, MD, and enter judgment in keeping with the jury's verdict, and Plaintiff's post-trial motions.

Respectfully submitted,

By: s/Ellis R. Lesemann

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Conway, SC 29526

Attorneys for Plaintiff

November 22, 2024
Charleston, South Carolina

EXHIBIT 4

Excerpt of Attorney Will Davidson's 10.10.2020 Motion Hearing Regarding Occurrences

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF LEE)

JACQUELINE GUERRY)

PLAINTIFF,)

v.)

TRANSCRIPT OF RECORD
18-CP-31-152
WEBEX HEARING

SOUTH CAROLINA DEPARTMENT,)
OF CORRECTIONS,

DEFENDANT.)

November 10, 2020
Bishopville, South Carolina

B E F O R E :

THE HONORABLE KRISTI F. CURTIS, JUDGE

A P P E A R A N C E S:

R. KNOX MCMAHON, ESQ.
Special prosecutor for the Third Circuit

JAMES B. MOORE, III, ESQ.
SCOTT C. EVANS, ESQ.
Attorneys for the Plaintiff

WILLIAM H. DAVIDSON, II, ESQ.
SAMUEL F. ARTHUR, III, ESQ.
Attorneys for the Defendant

FRANCES B. RAY, RPR
Circuit Court Reporter

1 Judge, I've been practicing law 42 years. I have
2 tried more SCDC cases probably than anybody in the
3 state. I'm not scared to try this case. I'm not
4 scared to raise the occurrence issue. I know it's
5 a question of fact. I'm also not worried,
6 concerned about whether we depose people or not.
7 We may, in fact, have to depose their expert. Now
8 inmates, that's another thing. That'll be a
9 decision Mr. Arthur and I will make. But there is
10 no delaying tactic by the Department, for the
11 Department. And Mr. Moore and those can bounce
12 their heads up and down all they want to you; but
13 if they don't want us to pursue criminal charges
14 against these individuals, then fine, have their
15 victims all sign notices that they have no desire
16 to try criminal charges against these individuals
17 and we'll present it to Crayton and let the grand
18 jury decide whether or not they want to proceed
19 with trying to prosecute any of these individuals
20 that either had stabbed people multiple times or
21 murdered people. I would assume some of these
22 victims would like to have the individuals that
23 perpetrated the crime convicted of it. But if
24 they don't, write me a letter, tell me their
25 client does not wish to pursue criminal charges or

EXHIBIT 5

Signed Verdict Form

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

) TWELFTH JUDICIAL CIRCUIT

COUNTY OF MARION

) C/A NO. 2022-CP-33-00362

Demetrice Utley, Individually and as
 Personal Representative of the Estate of
 Taylor Danielle Price

Plaintiff,

vs.

McLeod Physician Associates II and
 Charles A. Trant, M.D.

Defendant.

JURY VERDICT FORM**WE, THE JURY, FIND UNANIMOUSLY AS FOLLOWS:**

1. Do you find that the Defendants were negligent?

☒ YES☐ NO

If your answer in Question 1 is NO, your deliberations are complete. Do not proceed to the additional questions. The foreperson should sign and date this form on page 2, knock on the door, and notify the bailiff you have reached a verdict.

If your answer in Question 1 is YES, move on to Question 2.

2. Do you find that the negligence of the Defendants proximately caused damages to the Plaintiff?

☒ YES☐ NO

If your answer in Question 2 is NO, your deliberations are complete. Do not proceed to the additional questions. The foreperson should sign and date this form on page 2, knock on the door, and notify the bailiff you have reached a verdict.

If your answer in Question 2 is YES, move on to Questions 3, 4, and 5

3. Having been instructed by the judge on the definition of an occurrence, do you find there was more than one occurrence?

☒ YES

☐ NO

4. Having been instructed by the Judge on the definition of gross negligence, do you find Dr. Trant was grossly negligent?

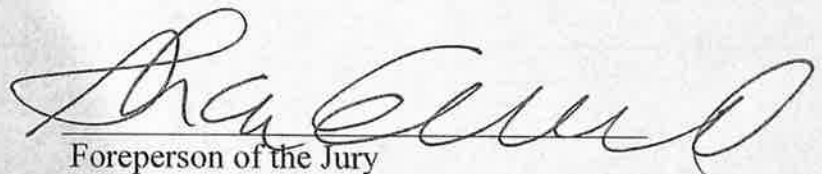
☒ YES

☐ NO

5. Having been instructed by the judge on the damages recoverable for wrongful death, please state the amount of damages you award.

\$ 30 million

November 8, 2024


Foreperson of the Jury

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF MARION)

Demetrice Utley, Individually and as)
 Personal Representative of the) Civil Action No. 2022-CP-33-0362
 Estate of Taylor Danielle Price,)
)
 Plaintiff,)
)
 v.) **NOTICE OF MOTION AND**
) **MOTION FOR STAY OF**
) **EXECUTION OF JUDGMENTS**
 McLeod Physician Associates II and)
 Charles A. Trant, M.D.,)
)
 Defendants.)
)

TO: THE HONORABLE R. FERRELL COTHRAN, JR.

ELLIS R. LESEMAN, J. TAYLOR POWELL, AND BRAD C. RICHARDSON,
 COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Defendants McLeod Physician Associates II and Charles A. Trant, M.D. will move before Circuit Court Judge R. Ferrell Cothran, Jr., at such time and place as may be set by the Court, for an Order, pursuant to Rules 62(b) and (d), SCRCP, and S.C. Code Ann. § 18-9-130, granting a stay of execution of the judgments during the pendency of remaining post-trial motions and ultimately during the pendency of the appeal to be filed.

The Defendants' motion is based upon the following grounds:

1. By the Order on Post-Trial Motions filed on February 3, 2025 and again on February 5, 2025, the Court entered judgments against the Defendant McLeod Physician Associates II in the amount of \$2,780,843.84 and against Charles A. Trant, M.D. in the amount of \$27,470,000.00, with the liability of \$2.4 million of both of those amounts being joint and several.

2. Pursuant to Rule 62(b), SCRCP, the Defendants seek a stay of execution of those judgments during the pendency of post-trial motions in the Circuit Court, including the Rule 59(e) motion filed by the Defendants on February 13, 2025.

3. Once the Court rules on that Rule 59(e) motion, the Defendants intend to file an appeal to the South Carolina Court of Appeals. The Defendants further seek a stay of execution of those judgments during the pendency of the appeal pursuant to Rule 62(d), SCRCP.

4. The Defendants request that the Court order a stay of execution without the issuance of a supersedeas or appeal bond. After consultation prior to the filing of this motion, the Plaintiff, through her counsel, has conveyed a willingness to consent to a stay of execution for a period of thirty days from the date of the Order on Post-Trial Motion without the posting of any bond or security. Under Rule 62(b), SCRCP, the Court is authorized to issue a stay of execution “[i]n its discretion and on such conditions for the security of the adverse party as are proper.” Rule 62 (b), SCRCP.

5. The Defendants further request that the Court order a stay of execution during the pendency of the appeal to be filed. Rule 42(d), SCRCP, states: When an appeal is taken, a party, by giving a supersedeas bond, may obtain a stay of execution.” Rule 42(d), SCRCP. S.C. Code Ann. § 18-9-130(A)(1) further states:

A notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grants a stay of execution. If the presiding judge grants a stay of execution and requires a bond or other surety to guarantee the payment of the judgment pending the appeal, the amount of the bond or other surety may not exceed the amount of the judgment or:

(a) twenty-five million dollars, whichever is less, for a business entity that employs more than fifty persons and has gross revenues exceeding five million dollars for the previous tax year; or

(b) one million dollars, whichever is less, for all other entities or individuals.

S.C. Code Ann. § 18-9-130(A)(1). Therefore, S.C. Code Ann. § 18-9-130(A)(1) provides the Court with discretion to require or waive a bond or other surety to guarantee the payment of the judgment pending the appeal, or to require a bond in an amount less than the maximum amount set forth by statute. Based on that discretion, the Court is requested to require no supersedeas or appeal bonds for the Defendants during the pendency of the appeal, particularly given the existence of \$1.2 million in insurance coverage jointly for the Defendants. However, if the Court does require supersedeas or appeal bonds for the Defendants, the Court is asked to reduce the amount of the bonds required under S.C. Code Ann. § 18-9-130(A)(1) by the \$1.2 million in insurance coverage.

6. After consultation prior to the filing of this motion, the Plaintiff, through her counsel, has conveyed a willingness to consent to a stay of execution during appeal upon the posting of supersedeas bonds in the maximum amounts allowed under S.C. Code Ann. § 18-9-130(A)(1), which would be a bond in the amount of \$1 million for the Defendant Trant and a bond in the amount of \$2,780,843.84 for the Defendant McLeod Physician Associates II.

The Defendants' motion is based upon the pleadings filed in this case; a supporting memorandum and affidavits as may be filed; the rules of court; and such other matters as may be properly presented to the Court at the time of the hearing.

As discussed herein, counsel for the Defendants have consulted with opposing counsel prior to the filing of this motion.

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*Counsel for Defendants McLeod Physicians
Associates, II and Charles A. Trant, M.D.*

February 13, 2025

STATE OF SOUTH CAROLINA)
)
 COUNTY OF MARION)

IN THE COURT OF COMMON PLEAS

Demetrice Utley, Individually and as
 Personal Representative of the
 Estate of Taylor Danielle Price,

Civil Action No. 2022-CP-33-0362

Plaintiff,

v.

McLeod Physician Associates II and
 Charles A. Trant, M.D.,

Defendants.

NOTICE OF MOTION AND
 MOTION TO ALTER OR AMEND ORDER
 AND/OR MOTION TO RECONSIDER

TO: THE HONORABLE R. FERRELL COTHRAN, JR.

ELLIS R. LESEMAN, J. TAYLOR POWELL, AND BRAD C. RICHARDSON,
 COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Defendants McLeod Physician Associates II and Charles A. Trant, M.D. will move before Circuit Court Judge R. Ferrell Cothran, Jr., at such time and place as may be set by the Court, for an Order, pursuant to Rule 59(e), SCRCF, altering, amending, and reconsidering the Order on Post-Trial Motions, filed February 3, 2025 and February 5, 2025. The Defendants' counsel received written notice of entry of these Orders on those same dates.

The Defendants' motion is based upon the following grounds:

In *Elam v. South Carolina Dept. of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004), the Supreme Court explained that "[i]ssues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court." 602 S.E.2d at 779-780. "Error

preservation requirements are intended 'to enable the lower court to *rule properly* after it has considered all relevant facts, law, and arguments.'" *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 594 S.E.2d 485, 498 (Ct. App. 2004), *citing I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716, 724 (2000). (Emphasis added). "It is well settled that an appellate court cannot address an issue unless it was raised to, *and ruled upon by*, the trial court." *Id.* (Emphasis in original).

The Order on Post-Trial Motions does not address the Defendants' arguments contained in Section VII.A of the Defendants' Post-Trial Motions filed November 18, 2024, where the Defendants relied on the legislative history of the Solicitation of Charitable Funds Act to show that the General Assembly did not adopt the "occurrence" language from the Tort Claims Act and incorporate it into the Solicitation of Charitable Funds Act. As the Defendants argued, the title to Act No. 336 of 2000 does not expressly describe the increase in the statutory cap but rather refers to that as a "technical change." Accordingly, the General Assembly's reference to the Tort Claims Act caps in the 2000 Act does not evidence an intent to create what would be an extreme and unprecedented level of monetary liability in cases such as this one. Certainly, that would not constitute a mere "technical change." Based on that argument, the Defendants contend that the cap *for both Defendants* is \$1.2 million.

The Order on Post-Trial Motions does not address the merits of that argument. In footnote one, the Court writes:

In their post-trial briefing, Defendants relied on the legislative history of the Solicitation of Charitable Funds Act. Defendants presented extensive briefing and oral arguments regarding the legislative intent in support of their post-trial motions. This Court carefully considered all of these arguments but respectfully disagrees with the arguments raised by Defendants relating to the legislative history and legislative intent specific to the Solicitation of Charitable Funds Act, for the reasons provided in this Order.

See, Order on Post-Trial Motions, p.1, n.1. In essence, the Court relegated the arguments contained in Section VII.A of the Defendants' Post-Trial Motions filed November 18, 2024, to a footnote

that addresses the arguments by stating only that the Court “respectfully disagrees with the arguments raised by the Defendants.” The Defendants submit that simply saying that the Court “disagrees” without providing any analysis of the issue or giving the basis for the “disagreement” is not a “proper ruling” that allows for meaningful appellate review. The footnote proceeds to state “for the reasons provided in this Order,” but a review of the remainder of the Order does not reflect any additional consideration or discussion of the Section VII.A arguments. The Defendants therefore respectfully ask the Court to provide the Court’s analysis of those arguments to provide for a “proper ruling” as contemplated by Supreme Court case law.

The Defendant MPA has the same issue with the Court’s decision of the Plaintiff’s entitlement to offer of judgment interest. In the Defendants’ Memorandum in Opposition to Plaintiff’s Motion for Award of Offer of Judgment Interest filed November 21, 2024, the Defendant MPA took the position that Section 15-35-400 and Rule 68(b), SCRCP, on which the Plaintiff’s motion is based, are not even applicable to charitable organizations such as MPA. MPA cited to both Section 18 of Act No. 32 and Section 15-78-220 as the bases for that argument. The Order on Post-Trial Motions does not address that issue. Instead, the Court acknowledges the issue was raised and again simply states that “this Court disagrees.” *See*, Order on Post-Trial Motions, p. 22. The Defendant MPA submits that simply saying that the Court “disagrees” without providing any analysis of the issue or giving the basis for the “disagreement” is not a “proper ruling” that allows for meaningful appellate review. The Defendant MPA therefore respectfully asks the Court to provide the Court’s analysis of those arguments to provide for a “proper ruling” as contemplated by Supreme Court case law.

The Defendants’ motion is based upon the pleadings filed in this case; the Order on Post-Trial Motions, filed February 3, 2025 and February 5, 2025; the Defendants’ Post-Trial Motions and memoranda as previously filed; the January 22, 2025 letter to the Court with comments on

proposed order (attached); the rules of court; and such other matters as may be properly presented to the Court at the time of the hearing.

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February 13, 2025



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**Also Admitted in North Carolina*

January 22, 2025

Via Email Only

The Honorable R. Ferrell Cothran, Jr.

Circuit Court Judge

Email: rcothranj@sccourts.org and rcothranlc@sccourts.org

RE: Demetrice Utley, Individually and as Personal Representative of the Estate of Taylor Danielle Price v. McLeod Physician Associates II and Charles A. Trant, M.D.

Civil Action Number: 2022-CP-33-0362

Claim Number: 88258

Our File Number: 79.20776

Dear Judge Cothran:

Thank you for the opportunity to provide the Court with the Defendants' comments on the proposed Order on Post-Trial Motions that was submitted by Plaintiff's counsel. This letter is being provided pursuant to Rule 5(b)(3), SCRCP, and the comments thereto. The Defendants certainly reserve their rights with respect to all of the motions and issues raised during trial and post-trial and continue to rely on the memoranda submitted to the Court. The purpose of this letter is not to re-litigate each issue but to provide the Court with comments regarding specific aspects of the proposed order.

First, the Defendants question whether this proposed order was prepared consistent with the bullet-points that the Court provided by the email dated December 30, 2024. In particular, with respect to the first bullet-point under Plaintiff's Motion: Motion for Award of Judgment Interest, the "post-trial award" is stated to be 2.4 million dollars. Then, in the last of the bullet-points titled Reduction of Verdict to Statutory Cap, the Court concluded that "the cap is 2.4 million." In that last bullet-point, the Court did not distinguish between the two Defendants, and accordingly, we understood that to state that the Court was reducing the verdict to \$2.4 million for both Defendants, and not just the Defendant McLeod Physician Associates II ("MPA"). The proposed order is drafted to cap the verdict at \$2.4 million for MPA but not for Dr. Trant. As indicated, the bullet-points do not specify that the reduction to the statutory cap is applicable only to MPA, but that is how the proposed order is drafted.

On this point (and perhaps others), it may be helpful to the parties, and certainly to the Defendants, for the Court to schedule a conference call or status conference to address this point (and others as needed). If this first point is clarified such that the total verdict, jointly and severally, against MPA and Dr. Trant is \$2.4 million, that will also resolve a number of the additional comments included below.

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The Honorable R. Ferrell Cothran, Jr.
 January 22, 2025
 Page Two

Second, and as a corollary to the first point, the proposed order does not fully address the Dr. Trant's arguments contained in Section VII.B of the Defendants' Post-Trial Motions filed November 18, 2024. The proposed order does not mention, let alone address, the legislative history cited by Dr. Trant for his position that Section 33-56-180(A) was never intended to recognize that the amount recoverable from a charitable employee differs in any respect from the amount recoverable from the charitable organization, and more importantly, that the General Assembly intended that the damages recoverable from a charitable employee would be unlimited and unqualified, even with a showing of gross negligence, willfulness, or recklessness. Without even addressing that legislative history, the proposed order focuses only on the *dicta* from *James v. Lister*, 331 S.C. 277, 500 S.E.2d 198 (Ct. App. 1998). On that point, the proposed order does not discuss whether the citation to *James* is *dicta* or the holding of the court in that case (which it is not). Furthermore on page 21, the proposed order misstates the case of *Chastain v. Anmed Health Foundation*, 388 S.C. 170, 694 S.E.2d 541 (2010), where the Supreme Court did not address whether the liability of a charitable employee is unlimited or uncapped under the Solicitation of Charitable Funds Act. In addition, it is incorrect to state that the references to *James* in the *Myat* and *Garrison* decisions are "reaffirming" a "holding" from *James*. That is a clear misreading of those opinions. Therefore, we would ask the Court to take a close look at the analysis of this issue as contained in the proposed order, and to reiterate from above, to let the parties know if the Court did not intend to rule for Dr. Trant on this issue and reduce the total verdict against both Defendants, jointly and severally, to \$2.4 million.

Third, there is also a significant issue as to how the proposed order addresses the judgments to be entered post-trial. The Plaintiff's proposed order has judgment being entered against the Defendant MPA in the amount of \$2,780,845.72, and the judgment being entered against Dr. Trant in the amount of \$29,870,000. Thus, if this proposed order is entered, the Plaintiff will receive total judgments of **\$32,650,845.70**. That sum far exceeds the jury's verdict of \$30 million. That will definitely need to be corrected. Assuming the Court intended to cap the verdict for both Defendants, as we read your bullet-points, that would resolve this issue. The judgment against both Defendants would be \$2.4 million with MPA being responsible for the additional \$380,845.72 in offer of judgment interest.

Fourth, the proposed order does not address the Defendants' arguments contained in Section VII.A of the Defendants' Post-Trial Motions filed November 18, 2024, where the Defendants relied on the legislative history of the Solicitation of Charitable Funds Act to show that the General Assembly did not adopt the "occurrence" language from the Tort Claims Act and incorporate it into the Solicitation of Charitable Funds Act. As we pointed out, the title to Act No. 336 of 2000 does not expressly describe the increase in the statutory cap but rather refers to that as a "technical change." Accordingly, the General Assembly's reference to the Tort Claims Act caps in the 2000 Act does not evidence an intent to create what would be an extreme and unprecedented level of monetary liability in cases such as this one. Certainly, that would not

The Honorable R. Ferrell Cothran, Jr.
 January 22, 2025
 Page Three

constitute a mere “technical change.” Based on that argument, the Defendants contend that the cap is \$1.2 million. The proposed order all but ignores that argument. The only remote reference to this issue is on page 7 of the proposed order where it is pointed out that this issue may not be “preserved” because Defendants’ counsel argued at the directed verdict stage that the Tort Claims Act was adopted as part of the Solicitation of Charitable Funds Act. We have several comments on that point. First, preservation is not an issue for the trial court as the proposed order actually acknowledges (“while the preservation of this issue is a matter for the appellate courts to determine”). Second, the issue as to the application of the monetary caps is not an issue to be decided at the directed verdict stage for obvious reasons: there is no verdict to be reduced at that stage. The issue only becomes ripe for consideration during post-trial proceedings once there is a verdict exceeding the \$1.2 million cap. Thus, the Defendants raised this argument at the appropriate time and stage of the litigation. Third, while the Defendants argued at directed verdict that the Solicitation of Charitable Funds Act “adopts in its entirety the Tort Claims Act” (Directed Verdict Transcript, p. 29, l. 21), that was immediately disputed by Plaintiff’s counsel who stated: “No sir. That’s an incorrect representation of the law. There is no adoption in the charitable statute adopting in its entirety the Tort Claims Act. That simply does not exist.” (Directed Verdict Transcript, p. 29, ll. 22-25). Importantly, there was no ruling by the Court on this issue, and hence, there was no “law of the case” established. To the contrary, a few pages later in the transcript, counsel for both parties agreed the discussion was premature. Mr. Powell stated: “To be determined, Your Honor. It all depends on what the verdict is,” and Mr. McLean agreed that his motion “may be premature.” (Directed Verdict Transcript, p. 33). The Court appeared to be in agreement. Hence, it is entirely incorrect to find that the Defendants could not change their position to agree with the Plaintiff that the Tort Claims Act was not adopted in the Solicitation of Charitable Funds Act. There was no “law of the case” established, nor any waiver or estoppel. The Defendants are not precluded during the course of the trial from changing its position on the applicable law or from taking alternative positions, and certainly the parties agreed that any challenges to the verdict were premature at the directed verdict stage. Therefore, the Defendants respectfully request that the Court address the merits of its legislative intent argument that the adoption of the “occurrence” framework from the Tort Claims Act would not be a “technical change.” The Court is reminded that a similar issue was decided in the defense’s favor by Judge Alison Lee in the *Anmed v. Chastain* case, but the Supreme Court did not find it necessary to reach that issue. The Supreme Court certainly did not reject the argument. That is fully discussed in the Defendants’ Post-Trial Motions. With all due respect, it is not sufficient (and is also clear error) to reject this argument as untimely raised, which is how the Plaintiff’s counsel has addressed it in the proposed order. The Defendants deserve to be heard on the merits of this issue.

Fifth, as to the award of “offer of judgment interest” in Section V of the proposed order, the Plaintiff’s counsel includes no analysis of the issue regarding the calculation including relevant cites to the case law or any explanation as to why the Court is not awarding offer of judgment interest against Dr. Trant. That issue was contested at the hearing, and it seems that for purposes

The Honorable R. Ferrell Cothran, Jr.
January 22, 2025
Page Four

of judicial review, that section should include the Court's legal analysis including reference to the controlling case law, specifically *O'Shields v. Columbia Auto., LLC*, 435 S.C. 319, 867 S.E.2d 446 (Ct. App. 2021), *aff'd*, 443 S.C. 29, 902 S.E.2d 375 (2024).

Sixth, as outlined in detail in the Defendants' Memorandum in Opposition to Plaintiff's Motion for Award of Offer of Judgment Interest filed November 21, 2024, the Defendant MPA took the position that Section 15-35-400 and Rule 68(b), SCRCP, on which the Plaintiff's motion is based, are not even applicable to charitable organizations such as MPA. MPA cited to both Section 18 of Act No. 32 and Section 15-78-220 as the bases for that argument. The proposed order does not address that issue, which will require the Defendant MPA to file a Rule 59(e) motion to preserve that issue for appeal.

Seventh, in Section V of the proposed order, and specifically, footnote number 8, there are two different monetary amounts listed for the offer of judgment interest awarded against MPA.

The Defendants further reserve all arguments as to the other sections of the proposed order that are not commented on in this letter. As indicated, the purpose of this letter is primarily to seek clarification and to request that the Court address all issues, arguments, and defenses, which the proposed order currently does not do. It should not be construed as a waiver of any issues as may be raised by a formal Rule 59(e) motion or on appeal.

As one final point, the Defendants' counsel stands willing to submit a counter proposed order for the Court's consideration in the next few days. That may assist the Court in identifying and correcting the deficiencies in the proposed order submitted by Plaintiff's counsel.

Thank you again for allowing the Defendants the opportunity to provide these comments and for your continued assistance with this litigation.

Sincerely,

LINDEMANN LAW FIRM, P.A.



Andrew F. Lindemann

AFL/

The Honorable R. Ferrell Cothran, Jr.
January 22, 2025
Page Five

cc: Ellis R. Lesemann, Esquire *(Via Email Only)*
J. Taylor Powell, Esquire *(Via Email Only)*
Brad C. Richardson, Esquire *(Via Email Only)*
J. Boone Aiken, III, Esquire *(Via Email Only)*
Saunders M. Bridges, Jr., Esquire *(Via Email Only)*
Joseph P. McLean, Esquire *(Via Email Only)*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF MARION	)	
	)	Case No.: 2022-CP-33-00362
Demetrice Utley, Individually and as	)	
Personal Representative of the Estate of	)	
Taylor Danielle Prince,	)	
	)	
Plaintiff,	)	PLAINTIFF'S RESPONSE TO
	)	DEFENDANTS' MOTION TO STAY
vs.	)	EXECUTION OF JUDGMENT
	)	
McLeod Physicians Associates, II and	)	
Charles A. Trant, M.D.,	)	
	)	
Defendants.	)	
	)	

TO: HON. R. FERRELL COTHRAN, JR., DEFENDANTS MCLEOD PHYSICIAN ASSOCIATES II AND CHARLES A. TRANT, MD AND THEIR ATTORNEYS, J. BOONE AIKEN, III, ESQ. AND JOSEPH P. MCLEAN, ESQ.

Defendants have failed to present a compelling basis for the Court to grant them extraordinary relief in the form of an unsecured or under-secured stay of the execution of the monetary judgments entered against them. For this reason, Plaintiff Demetrice Utley respectfully requests that the Court apply Rule 62(d), SCRCP and S.C. Code § 18-9-130(A) to require supersedeas bonds in the following amounts if a stay of execution is granted during appeal:

- (i) A supersedeas bond filed by or on behalf of **Defendant McLeod Physician Associates, II ("MPA II")** in the amount of **\$2,780,843.84**, which is equal to the amount of the amended judgment, in accordance with the applicable provisions of S.C. Code § 18-9-130(A)(1)(a) for a business entity that employs more than 50 persons and has gross revenues exceeding five million dollars for the previous tax year; and
- (ii) A supersedeas bond filed by or on behalf of **Defendant Charles A. Trant, MD ("Trant")** in the amount of **\$1,000,000.00**, which is significantly less than the amended judgment amount of **\$27,470,000.00**, but equal to the **\$1,000,000.00** cap established by the applicable provisions of S.C. Code § 18-9-130(A)(1)(b) for a judgment against an individual.

For the reasons stated herein, Plaintiff would consent to a stay of execution through the appeal if Defendants post supersedeas bonds in the requested amounts stated above, which was communicated to counsel for Defendants. Although the requested bond amounts are equal to the maximum amounts allowed under S.C. Code § 18-9-130(A), they only secure about eleven percent (11%) of the outstanding judgments that Defendants owe Plaintiff. Defendants refused Plaintiff's offer and, instead, are asking the Court to waive or unduly limit the required security.

This case was tried in November 2024 resulting in a jury verdict in favor of Plaintiff. The Court largely denied Defendants' post-trial motions and entered judgment against Defendant MPA II for \$2,780,843.84 and against Defendant Trant for \$27,470,000.00. On March 3, 2025, the Court denied the Motion to Alter or Amend filed by Defendants, as the Court was able to confirm that its Original Order dated February 5, 2025 was fully supported by the law and the evidence, allowing the Court to ratify and reconfirm the Original Order.

Defendants fail to provide a valid reason for the Court to waive bond or to deviate from the framework provided under S.C. Code § 18-9-130(A). In support of their Motion, Defendants argue that the amount of the supersedeas bond should be limited to the amount of liability insurance that counsel for Defendants claim is available. However, the amount of liability insurance coverage has no impact on the judgment amounts that Ms. Utley is entitled to collect. Defendants are seeking a stay of enforcement of *judgments* totaling \$30,250,843.80, not including post-judgment interest, as opposed to a stay of insurance coverage. South Carolina law clearly reflects a policy that a stay of execution be secured by a supersedeas bond. There are no facts or arguments presented by Defendants that would justify a deviation from this policy in order to grant an unsecured or under-secured stay of execution. As the judgment amounts far exceed the maximum bond amount allowed, the maximum bond amount should be required. Because Defendants must

post a bond, and the availability of insurance (the amount of which is subject to pending litigation)¹ does not warrant reducing the amount of the bond, this Court should require Defendants to post a bond for the maximum amount permitted by Section 18-9-130(A).

I. RULE 62(D) REQUIRES DEFENDANTS TO POST A BOND TO STAY EXECUTION ON APPEAL

While Rule 62(a) imposes a short ten-day stay following entry of the judgment, all other stays are discretionary with varying requirements based on the type of judgment entered. *See Haselden v. Haselden*, 347 S.C. 48, 63, 552 S.E.2d 329, 337 (Ct. App. 2001) (“Although further stays are available under the subdivisions of Rule 62, they are not automatic and must be ordered by the court.”). However, in cases of money judgments, Rule 62(d) provides that a stay may be issued only “by giving a supersedeas bond.” *See* Rule 62(d), SCRCF. The rule includes no language about “such conditions ... as are proper” or that security may be by “bond or otherwise” unlike subsections (b) or (c) of Rule 62, which relate to other types of judgments. Rather, subsection (d) simply requires a bond as a condition precedent to any stay entered by this Court:

(d) Stay Upon Appeal. When an appeal is taken, a party, by giving a supersedeas bond, may obtain a stay subject to the exceptions contained in subdivision (a) of this rule and the South Carolina Appellate Court Rules. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the supersedeas as the case may be. The stay is effective when the supersedeas bond is approved by the court.

Because Defendants also request a stay based on their expected appeal following the Court’s recent resolution of their Rule 59(e) motion, the Court must require the posting of a supersedeas bond pursuant to Rule 62(d). Otherwise, Defendants cannot obtain a stay.

¹ Trant recently filed a lawsuit against MPA II and MagMutual Insurance Company indicating a dispute as to the amount of insurance coverage available and other issues relating to this litigation and bad faith conduct of the liability insurance carrier. A copy is attached as Exhibit A.

Defendants contend the Court has discretion to waive the posting of a supersedeas bond under Section 18-9-130(A)(1). *See* S.C. Code § 18-9-130(A)(1) (“If the presiding judge grants a stay of execution and requires a bond or other surety to guarantee the payment of the judgment pending the appeal, the amount of the bond or other surety may not exceed the amount of the judgment”). However, Section 18-9-130 does not create an exception to the bond requirement of Rule 62(d). To the contrary, the only purpose of the provision is to set forth the maximum amount of the bond to be set. Put simply, in contrast to the assertion by Defendants that the statute was intended to vest further discretion with this Court that the South Carolina Rules of Civil Procedure do not provide, the limited purpose and effect of the statute is to set limits on the maximum amounts of the bond in such cases, as here, where the underlying conduct by judgment debtors resulted in significant judgments, including cases involving gross negligence and wrongful death. Further, nothing in the statute indicates that the Court may issue a stay absent a bond. Rather, it reinforces that the Court must “require a bond or other surety to guarantee the payment.”

The rule and the statute are not in conflict and must be read together. *Mims v. Babcock Ctr., Inc.*, 399 S.C. 341, 346, 732 S.E.2d 395, 397 (2012) (reading a statute and rule governing service of a complaint together). Read together, Rule 62(d) specifically contemplates that the posting of the bond and the entry of a stay are two separate events with the latter being dependent on the appellant posting the bond. Section 18-9-130(A)(1) merely recognizes this procedure, and its provisions governing the maximum amount of the bond cannot be read as granting the Court discretion to limit or waive the amount of bond based on the amount of insurance available. This interpretation of Rule 62(d) and Section 18-9-130 harmonizes the two provisions, unlike Defendants’ view, which requires the Court to disregard Rule 62(d).

II. DEFENDANTS FAIL TO MEET THEIR BURDEN OF PROVING WHY THE COURT SHOULD DEVIATE FROM REQUIRING THE MAXIMUM BOND AMOUNT

While Rule 62(d) requires Defendants to post a bond to stay execution of the judgment on appeal, the Court does have discretion in determining the amount of the bond. Rule 62, SCRCF is drawn from the federal rule. The purpose of a supersedeas bond is to preserve the status quo while also protecting the non-appealing party's rights during an appeal. *See, e.g., Poplar Grove Planting & Ref. Co. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1190 (5th Cir. 1979). A bond protects the judgment debtor (the losing party below) by preserving the debtor's assets while an appeal is pending. A bond also protects the judgment creditor by guaranteeing the judgment can be satisfied if it is upheld. As the Fifth Circuit has stated, the burden is on the judgment debtor(s) to justify a waiver of a bond or to allow for an inadequate bond, as the existence of the right to avoid enforcement by posting an adequate bond is itself a "privilege:"

If a court chooses to depart from the usual requirement of a full security supersedeas bond to suspend the operation of an unconditional money judgment, it should place the burden on the moving party to objectively demonstrate the reasons for such a departure. It is not the burden of the judgment creditor to initiate contrary proof. Such a supersedeas bond is a privilege extended the judgment debtor as a price of interdicting the validity of an order to pay money.

Id. at 1191. The policies in favor of the bond requirement have also been articulated in decisions of the United States District Court for the District of South Carolina, in which bonds in the amount of 125% of the judgment are typically required:

Accordingly, because 'the philosophy underlying Rule 62(d) is that a plaintiff who has won in the trial court should not be put to the expense of defending his judgment on appeal unless the defendant takes reasonable steps to assure that the judgment will be paid if it is affirmed,' the court declines to waive the bond requirement in favor of Defendants. Rather, in an effort to act both to preserve the status quo and to protect Plaintiffs' rights, the court concludes that Defendants must comply with Local Rule 62.01, which provides that "[t]he *Appellant* shall not be entitled to a stay of execution of the judgment pending appeal unless the *appellant* executes a

bond with good and sufficient sureties ...” in the amount of 125% of the judgment.
Local Rule 62.01 (emphasis in original).

See Southeast Booksellers Ass’n v. McMaster, 233 F.R.D. 456, 460 (D.S.C. 2006). Although Plaintiff understands that the requirement that the bond be 125% of the judgment is inapplicable in this state court proceeding, the underlying policy and philosophy requiring a legally sufficient security to obtain a stay of execution pending appeal is applicable in all of our courts.

Defendants fail to provide a justification for why the Court should excuse the normal requirement of posting a supersedeas bond for the maximum amount provided in Section 18-9-130. Defendants’ sole basis for waiving the requirement to post a bond, which is not permitted pursuant to Rule 62(d), or for reducing the bond amount is based on the alleged amount of liability insurance coverage that exists, which is not only irrelevant but also disputed. Nevertheless, Section 18-9-130 is silent as to the relevance of liability insurance. Taken to its illogical conclusion, the argument presented by Defendants would relieve Trant from having to post *any* bond, which would violate Rule 62(d) and public policy for the reasons discussed above. Further, the judgment against Trant is for \$27,470,000.00, which far exceeds the amount of liability insurance coverage that counsel for Defendants claims to exist in this case. The Court should reject Defendants’ request to make Plaintiff’s ability to collect the judgments awarded to her far more insecure than the law allows.

CONCLUSION

The Court should not prejudice Plaintiff or reward Defendants by waiving or reducing the amount of the required bond to obtain a stay of execution of the monetary judgments entered in this case, particularly when no compelling grounds exist to justify providing Defendants with extraordinary relief. Accordingly, the Court should require the maximum bond amounts to stay execution of both judgments as follows:

- (i) A supersedeas bond filed by or on behalf of MPA II in the amount of \$2,780,843.84; and
- (ii) A supersedeas bond filed by or on behalf of Trant in the amount of \$1,000,000.00.

Respectfully submitted,

s/J. Taylor Powell

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1200 Main Street, Suite A

Conway, SC 29526

Attorneys for Plaintiff Demetrice Utley

March 4, 2025

Charleston, South Carolina

EXHIBIT A

Summons and Complaint in the Matter of
Charles A. Trant, M.D. v. MagMutual Insurance Company and McLeod Physician Associates II,
2025-CP-33-00076

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF MARION	TWELFTH JUDICIAL CIRCUIT
	2025-CP-34-_____
Charles A. Trant, M.D.,	
Plaintiff,	
vs.	SUMMONS FOR RELIEF
	COMPLAINT SERVED
	(Jury Trial Demanded)
Mag Mutual Insurance Company and	
McLeod Physician Associates, II,	
Defendants.	

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is hereby served upon you, and to serve a copy of your answer to the said Complaint on the subscribers at their offices at 403 Second Loop Road, Florence, S.C. 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 Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you.

WUKELA LAW FIRM

BY: s/Patrick J. McLaughlin
 PATRICK J. McLAUGHLIN
 SC BAR NO. 73675
 STEPHEN J. WUKELA
 SC BAR NO. 68351
 ATTORNEY FOR PLAINTIFF
 PO BOX 13057
 FLORENCE SC 29504
 843-669-5634
 Email: patrick@wukelalaw.com
stephen@wukelalaw.com

DATED: February 10, 2025

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF MARION	TWELFTH JUDICIAL CIRCUIT
	2025-CP-34-_____
Charles A. Trant, M.D.,	
Plaintiff,	
vs.	COMPLAINT
Mag Mutual Insurance Company and	(Jury Trial Demanded)
McLeod Physician Associates, II,	
Defendants.	

TO THE DEFENDANTS ABOVE NAMED:

The Plaintiff, by and through undersigned counsel, hereby makes the following claims and allegations:

PRELIMINARY STATEMENT

1. Plaintiff, Charles A. Trant, M.D., seeks relief due to the Defendants' failure to honor their obligations under contracts, including the covenant of good faith and fair dealing implied in those contracts.

PARTIES

2. That the Plaintiff, Charles A. Trant, M.D., (hereinafter "Dr. Trant"), at all times material and relevant to this action, was a citizen and resident of the County of Florence, State of South Carolina.
3. That the Plaintiff is informed and believes that the Defendant, Mag Mutual Insurance, (hereinafter "Mag Mutual"), is an insurance company incorporated in the State of Georgia.

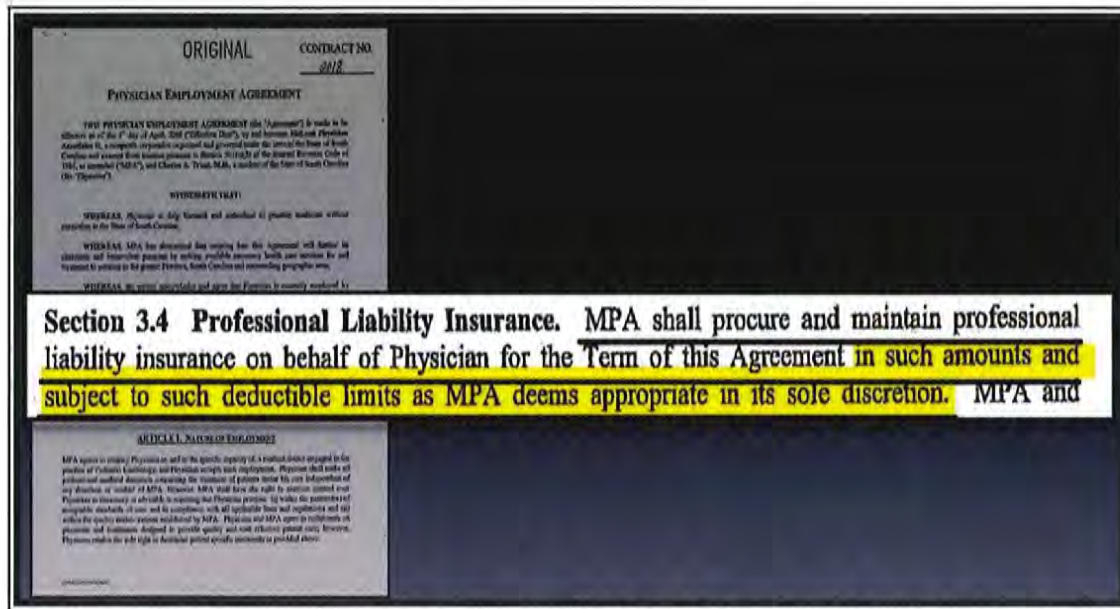
4. That the Plaintiff is informed and believes that the Defendant, McLeod Physician Associates, II, (hereinafter referred to alternatively as “MPA”, “MPA II”, or “McLeod”), is incorporated in the State of South Carolina.

JURISDICTION AND VENUE

5. That venue is properly laid in this Court pursuant to §§15-7-70, 15-7-30 of the South Carolina Code of Laws Annotated.
6. That this Court has personal jurisdiction over Defendants Mag Mutual and MPA, as a substantial part of the acts and/or omissions giving rise to Plaintiff’s claims occurred in this jurisdiction and litigation in this forum does not offend the traditional notions of fair play and substantial justice. Further, the Defendants’ conduct substantial business in South Carolina, and the insurance contract at issue is subject to S.C. Code §38-61-10 and insured a risk located in Marion County, South Carolina.

FACTUAL ALLEGATIONS

7. That at all relevant times, Dr. Trant was a physician employed by the Defendant, McLeod Physician Associates, II (“MPA”) to practice medicine in the field of pediatric cardiology.
8. That, at all relevant times, Dr. Trant’s employment agreement with MPA, provided, among other things:



(Physician Employment Agreement, 04/01/2018, Section 3.4, Professional Liability Insurance).

9. That Defendant MPA exercised “its sole discretion” to purchase a malpractice liability policy from Defendant Mag Mutual; insuring Dr. Trant and MPA with liability limits of \$1.2 Million Dollars per loss.
10. That on March 17, 2022, the Estate of Taylor Price, (hereinafter “Estate”), filed and served Dr. Trant and MPA with a Notice of Intention (“NOI”) to file suit in a medical malpractice action, pursuant to S.C. Code §15-79-125. *See* 2022-NI-33-0001 filed in Marion County Court of Common Pleas.
11. That the NOI alleged that, on or about January 24, 2019, Dr. Trant performed a cardiac evaluation of, then 13-year-old, Taylor Price after she suffered near syncopal episodes during a basketball game; and, that, at the conclusion of the office visit, Dr. Trant cleared Taylor to engage in sports.
12. That the NOI further alleged that on December 17, 2021, Taylor Price died from a cardiac condition, shortly after playing basketball at Mullins High School.

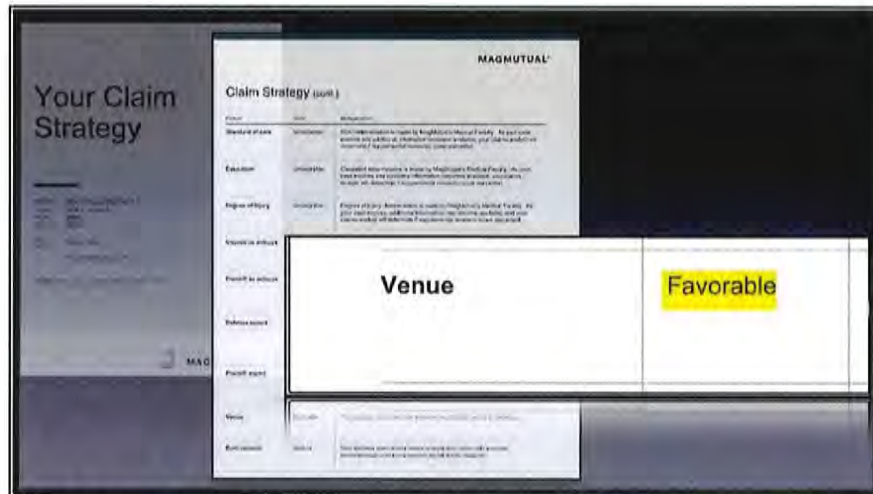
13. That, upon receiving notice of the Price action, Mag Mutual, retained Attorney J. Boone Aiken, III, (hereinafter “Aiken”), to represent Dr. Trant and MPA in the Price action.¹
14. That, pursuant to S.C. Code §15-79-125, a pre-litigation mediation was conducted on June 6, 2022, before Mediator Karl Folkens, with Attorney J. Taylor Powell representing the Plaintiff and Attorneys J. Boone Aiken, III and Peter E. Keup representing the Defendants and their insurance carriers; which impassed.
15. That on July 13, 2022, the Estate of Taylor Price subsequently filed a medical malpractice action captioned: Demetrice Utley, Individually and as Personal Representative of The Estate of Taylor Danielle Price v. McLeod Physician Associates, II, Charles A. Trant, MD, and Marion County School District.
16. That Mr. Aiken investigated the claim through written discovery and depositions, retained defense experts, and reported his evaluations to Mag Mutual, Dr. Trant, and MPA.
17. That on September 14, 2022, Mag Mutual provided their claim evaluation to Dr. Trant via a five (5) page report titled “Your Claim Strategy.”
18. That Mag Mutual’s September 14, 2022 evaluation and “claim strategy” for Dr. Trant included an “Assessment Summary” which Mag Mutual claimed utilized “proprietary technology” to compare the claim being made against Dr. Trant “against decades of historical data and analyzes it based on nine factors we’ve determined have the greatest influence on it.” Mag Mutual then explained to Dr. Trant “that helps us predict and plan for the most likely outcome for your case.”

¹ The NOI and the subsequent Complaint, also named the Marion County School District as a Defendant. The District settled with the Estate prior to jury trial.

19. That among the nine (9) factors that Mag Mutual evaluated in that September 14, 2022 report, Mag Mutual’s proprietary technology evaluated three (3) critical factors as unfavorable to Dr. Trant:

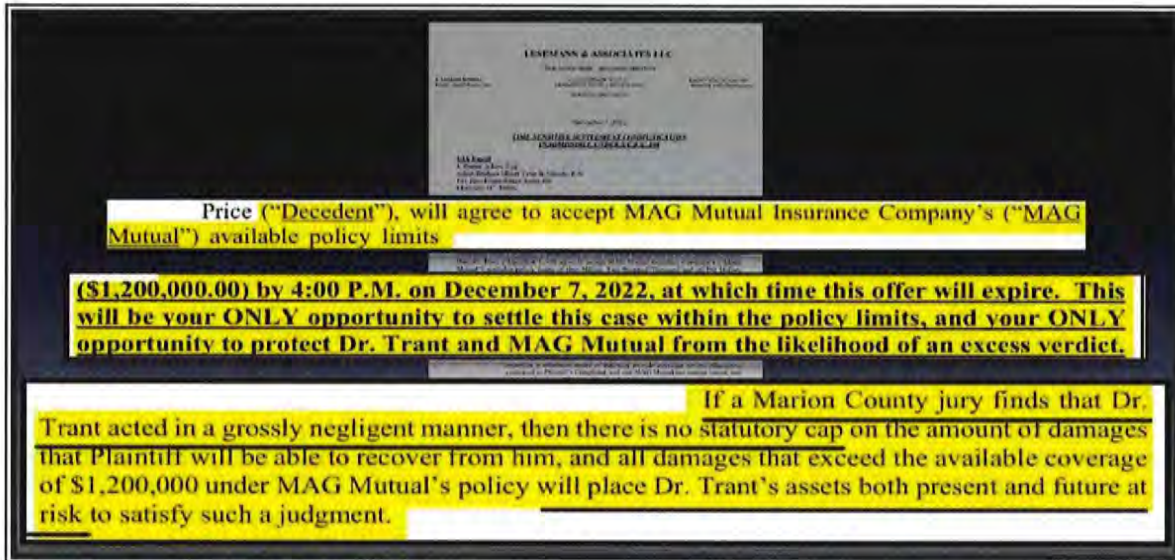
Claim Strategy (cont.)	
Factors	Score
Standard of care	Unfavorable
Causation	Unfavorable
Degree of injury	Unfavorable

- (Mag Mutual, 09/14/2022, “Your Claim Strategy”).
20. That for all three (3) of those critical factors Mag Mutual evaluated and reported as “unfavorable”, Mag Mutual explained to Dr. Trant that determination was “made by Mag Mutual’s Medical Faculty.”
 21. That of the remaining six (6) factors, Mag Mutual only evaluated two (2) as favorable.
 22. That of the factors Mag Mutual considered “favorable”, one was Dr. Trant, himself, as a witness.
 23. That, inexplicably, the only other factor Mag Mutual evaluated and reported to Dr. Trant as “favorable”, was the trial venue: Marion County, South Carolina:



(Mag Mutual, 09/14/2022, “Your Claim Strategy”).

24. That contrary to Mag Mutual’s “proprietary technology” supported analysis, Mr. Aiken warned Mag Mutual, early and often, that Marion County was an unfavorable venue; specifically expressing “grave concerns” about trying the case to verdict in Marion County.
25. That on November 7, 2022, counsel for the Price Estate, Attorney J. Taylor Powell (hereinafter “Powell”), wrote Mag Mutual, through Attorney Aiken, with a settlement offer to resolve the case against Dr. Trant and MPA in exchange for the Mag Mutual one occurrence policy limits of \$1.2 million. That offer specifically discussed the Estate’s intention to pursue a gross negligence finding against Dr. Trant, a finding that would expose Dr. Trant to personal liability outside the statutory cap limits imposed by S.C. Code §33-56-180 (hereinafter “Charitable cap”):



(Powell Ltr. 11/07/2022).

26. That Powell's November 7, 2022 letter indicated that the offer to settle the claim within the one occurrence policy limit would expire, and be revoked, if not accepted by Mag Mutual by 4:00 P.M. on December 7, 2022.
27. That coinciding with the November 7, 2022 offer to settle via letter, the Estate filed a corresponding *Offer of Judgment* on November 15, 2022 pursuant to S.C. Code §15-35-400 and Rule 68 SCRPC. The amount of that *Offer of Judgment* similarly was within the one occurrence policy limits of \$1.2 million and specifically stated that in consideration of acceptance of that judgment, the Estate would "discharge any and all claims against Defendants MPA and Charles A. Trant, MD..." Pursuant to statute and rule, if not accepted within twenty (20) days, the offer shall be considered rejected, setting up a similar deadline to respond as the November 7, 2022 letter.
28. That Mag Mutual did not accept either offer, nor did they make any responsive offers at all, and the deadlines on both offers passed.

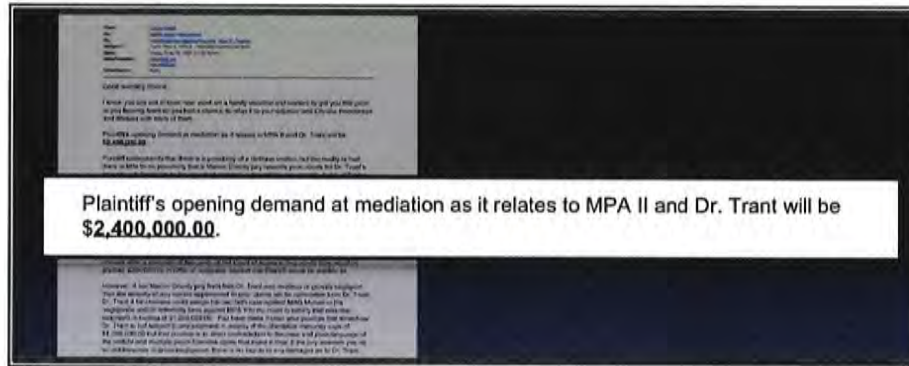
29. That Mag Mutual's decisions not to accept either offer, or attempt to negotiate a settlement, resulted in the Estate revoking their offers to settle for the one occurrence policy limit; exposing Dr. Trant to the risk of an excess verdict.
30. That Mag Mutual's decision not to respond to the offer made by the Estate of Taylor Price to settle the case within the policy limits was the result of Mag Mutual's conscious decision to place their interests ahead of those of their insured, Dr. Trant.
31. That Mag Mutual made the conscious decision to ignore the Estate's settlement offers and not engage in any settlement discussions despite the fact that their "Your Claim Strategy" report analysis to Dr. Trant on September 14, 2022 had determined (even with the erroneous evaluation that Marion County was a favorable venue) "the likelihood of making an indemnity payment in your case" was forty-four (44%) percent:



(Mag Mutual, 09/14/2022, "Your Claim Strategy").

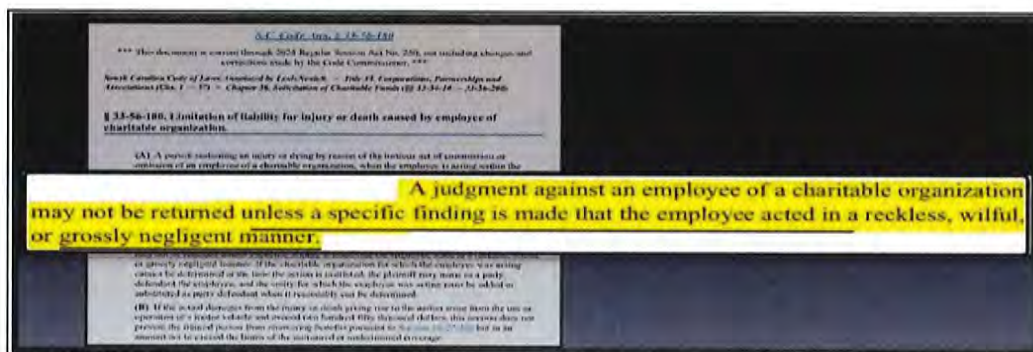
32. That, thereafter, the Price litigation continued for another two (2) years; during which time, Mag Mutual made no offer to settle the case whatsoever and Dr. Trant suffered severe emotional distress and anxiety which manifested itself with physical symptoms.
33. That, ultimately, the Price action was scheduled for another mediation on July 1, 2024.

34. That on June 14, 2024, before that second mediation, Mr. Powell wrote Mr. Aiken via email:



(Powell email, 06/14/24).

35. That, in his June 14, 2024, pre-mediation offer email, as he had in his November 7, 2022 offer letter, Mr. Powell argued that, while the South Carolina Solicitation of Charitable Funds Act, S.C. Code §33-56-180, provided a \$1.2 Million Dollar liability cap (“charitable cap”) for MPA, that cap would not apply to and protect Dr. Trant in the event of a finding of gross negligence.
36. That, in particular, Mr. Powell noted that S.C. Code §33-56-180 specifically provides:

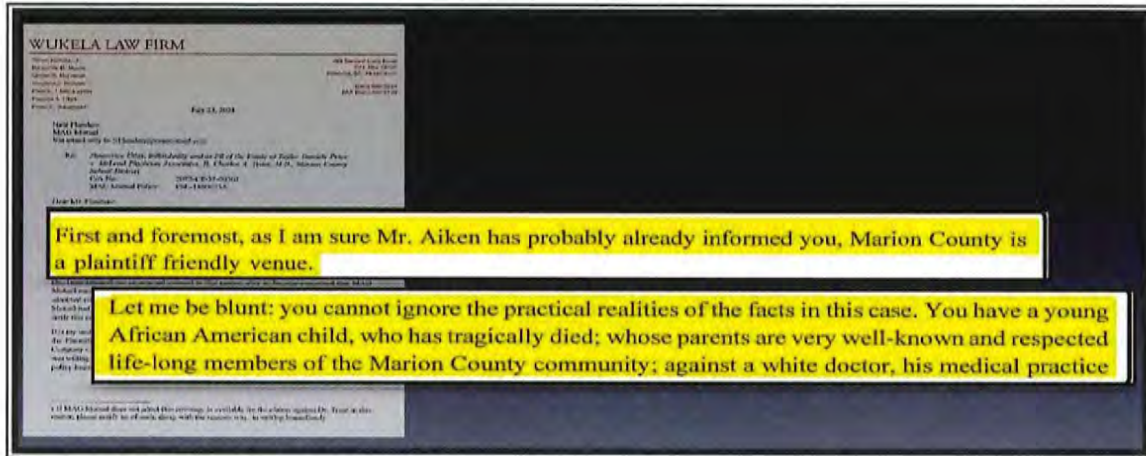


(S.C. Code §33-56-180, in pertinent part).

37. That, by email of June 30, 2024, Mr. Powell cited and attached case law from the S.C. Supreme Court and S.C. Court of Appeals; in support of his position that the “charitable

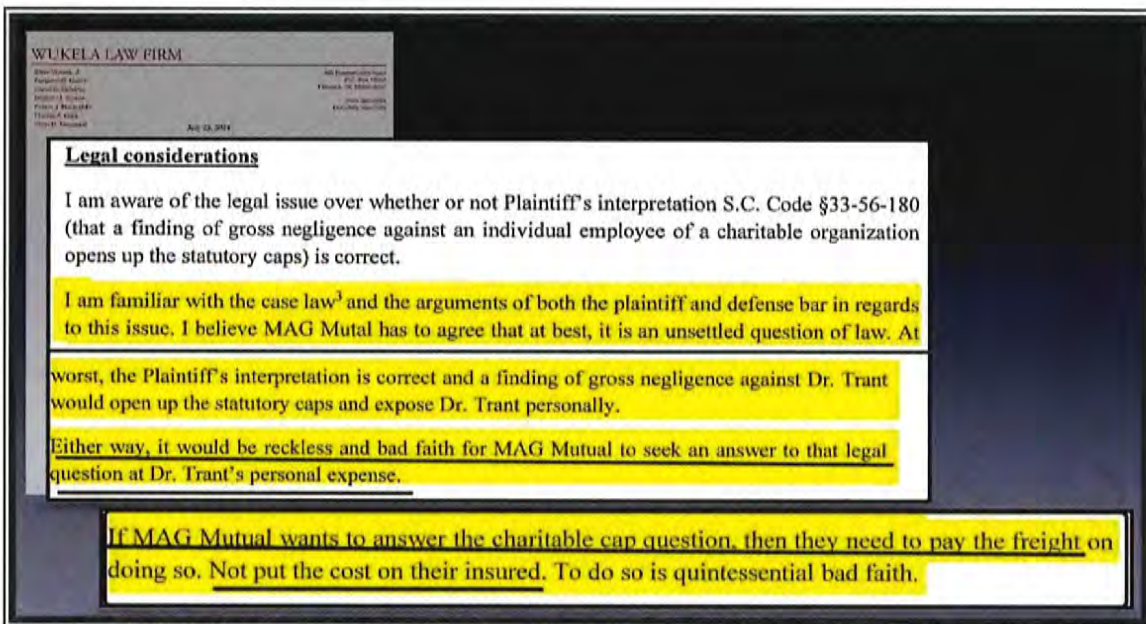
cap” does not protect individual employees, such as Dr. Trant, upon a finding of gross negligence.

38. That Mr. Powell made these same legal arguments, with the same citations, in a brief filed March 30, 2023, (over a year before the scheduled July 1, 2024 mediation), in support of the Estate’s Motion to Compel the Production of Dr. Trant’s personal financial information; a motion which the Court, ultimately, granted.
39. That, nevertheless, on Thursday, June 27, 2024, Mag Mutual advised Mr. Aiken, that Mag Mutual was not willing to offer any amount at all to settle the Price case and directed Mr. Aiken to cancel the mediation scheduled for July 1, 2024, and try the case to verdict.
40. That Mag Mutual’s decision to not participate in the July 1, 2024 scheduled mediation; but, instead, to try the Price action without making any offer to settle was against the advice of their attorney, Mr. Aiken, and against the advice and warnings of McLeod’s in-house counsel, Mrs. Christie Wise Henderson.
41. That having no authority from Mag Mutual to offer any amount at mediation, Mr. Aiken, at Mag Mutual’s direction, cancelled the July 1, 2024 mediation.
42. That Mag Mutual made the decision to not participate in the July 1, 2024 mediation and instruct Mr. Aiken to try the case to verdict unilaterally, without consulting Dr. Trant.
43. That, immediately thereafter, Mr. Aiken advised his client, Dr. Trant, of Mag Mutual’s decision not to provide any settlement authority, to cancel mediation, and of their instruction to try the Price case to verdict without making any attempt to settle the case.
44. That, when informed of Mag Mutual’s unilateral decisions, Dr. Trant expressed his concern to Mr. Aiken about Mag Mutual’s handling of his claim and his disbelief that, against Mr.



(McLaughlin Ltr., 07/23/2024).

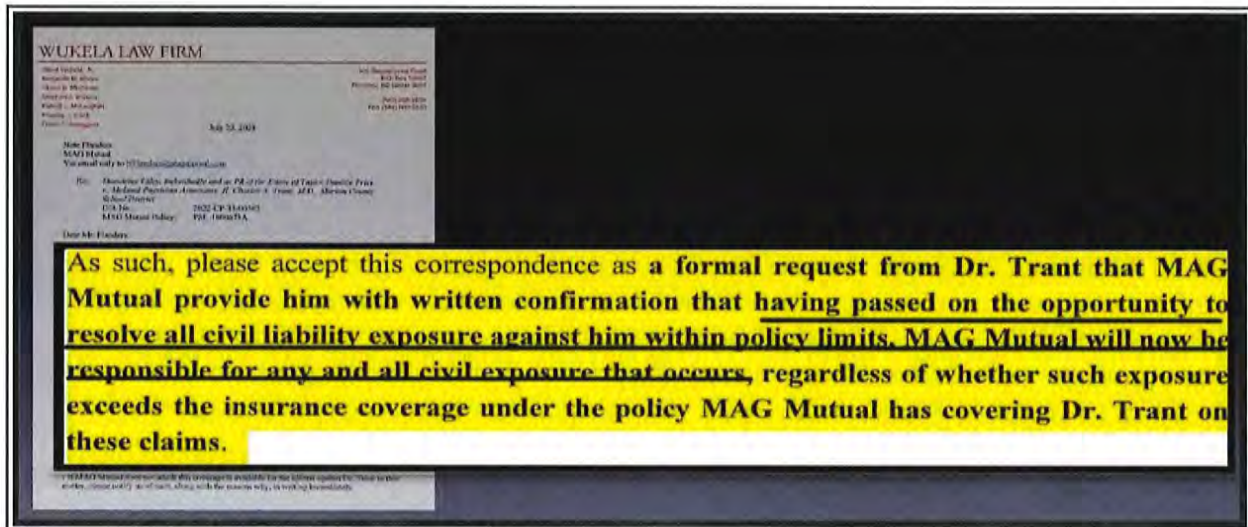
49. That, through undersigned counsel's July 23, 2024 letter, Dr. Trant specifically notified Mag Mutual of the risk that a potential finding of gross negligence would expose him personally, and complained that Mag Mutual's refusal to attempt to protect him from that risk was "quintessential bad faith":



(McLaughlin Ltr., 07/23/2024).

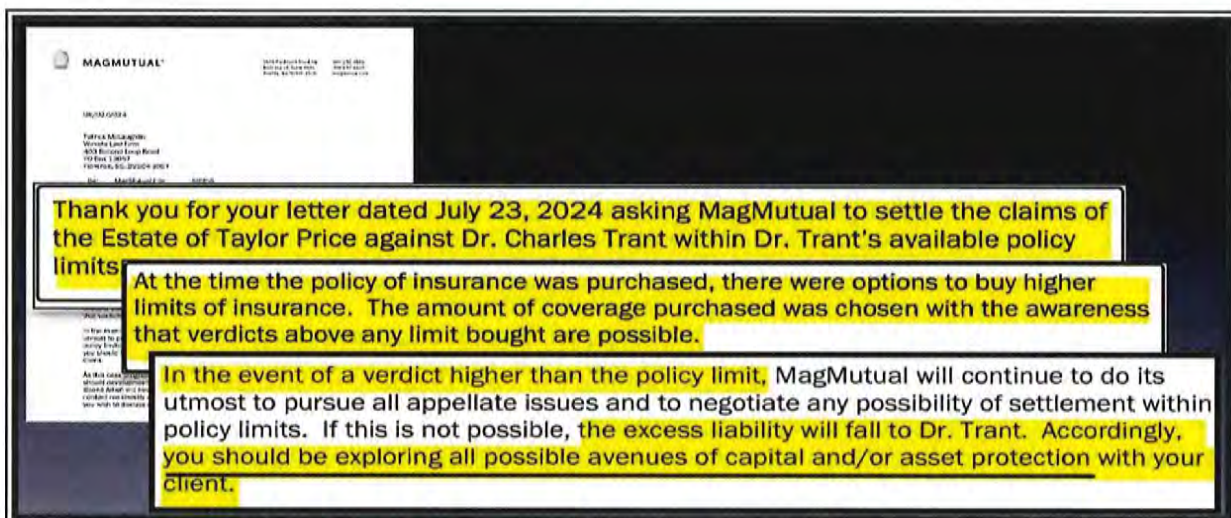
50. That, through undersigned counsel's July 23, 2024 letter, Dr. Trant specifically requested that, given Mag Mutual's decisions not to engage in any settlement negotiations and to

cancel mediation, Mag Mutual, at a minimum, provide Dr. Trant with written confirmation that they would be responsible for any and all civil exposure, regardless of whether that exposure exceeded the insurance coverage under the Mag Mutual policy covering Dr. Trant (a.k.a. “Blue Sky assurance”):



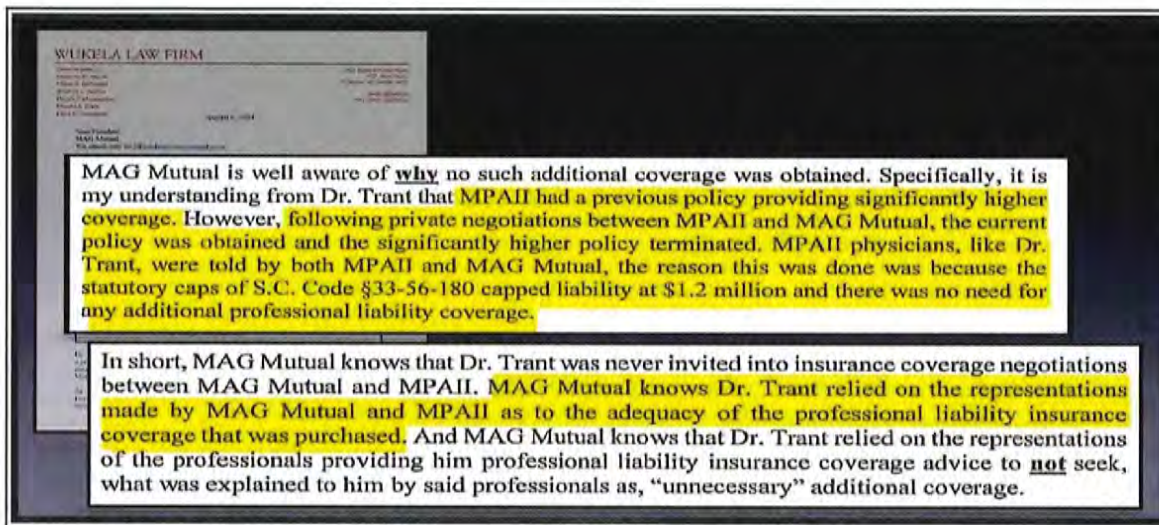
(McLaughlin Ltr., 07/23/2024).

51. That, via letter dated August 2, 2024, Mag Mutual responded; refusing to give Dr. Trant any Blue Sky assurances; and, instead, directed Dr. Trant to “explor[e] all possible avenues of capital and/or asset protection...”



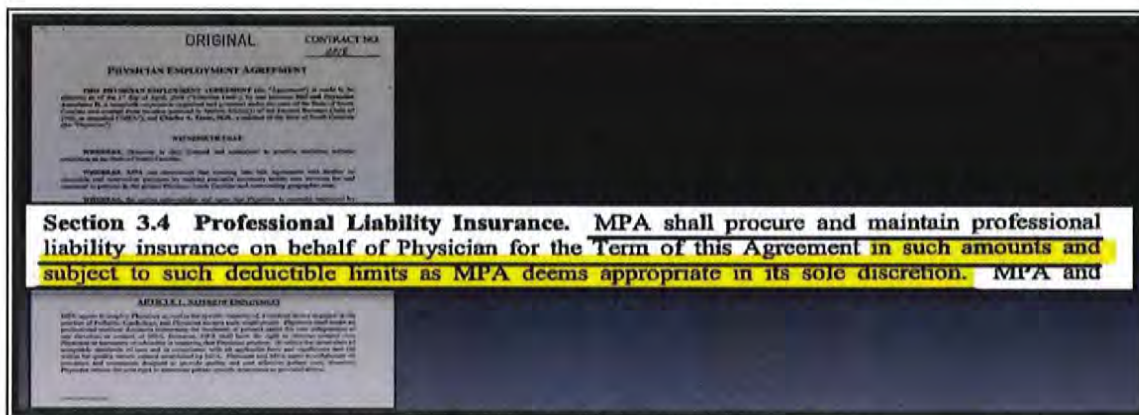
(Mag Mutual Ltr., 08/2/2024).

52. That, on August 6, 2024, in response to Mag Mutual's August 2, 2024 representation that "At the time the policy of insurance was purchased, there were options to buy higher limits of insurance. The amount of coverage purchased was chosen with the awareness that verdicts above any limit bought were possible", Dr. Trant, through undersigned counsel, responded:

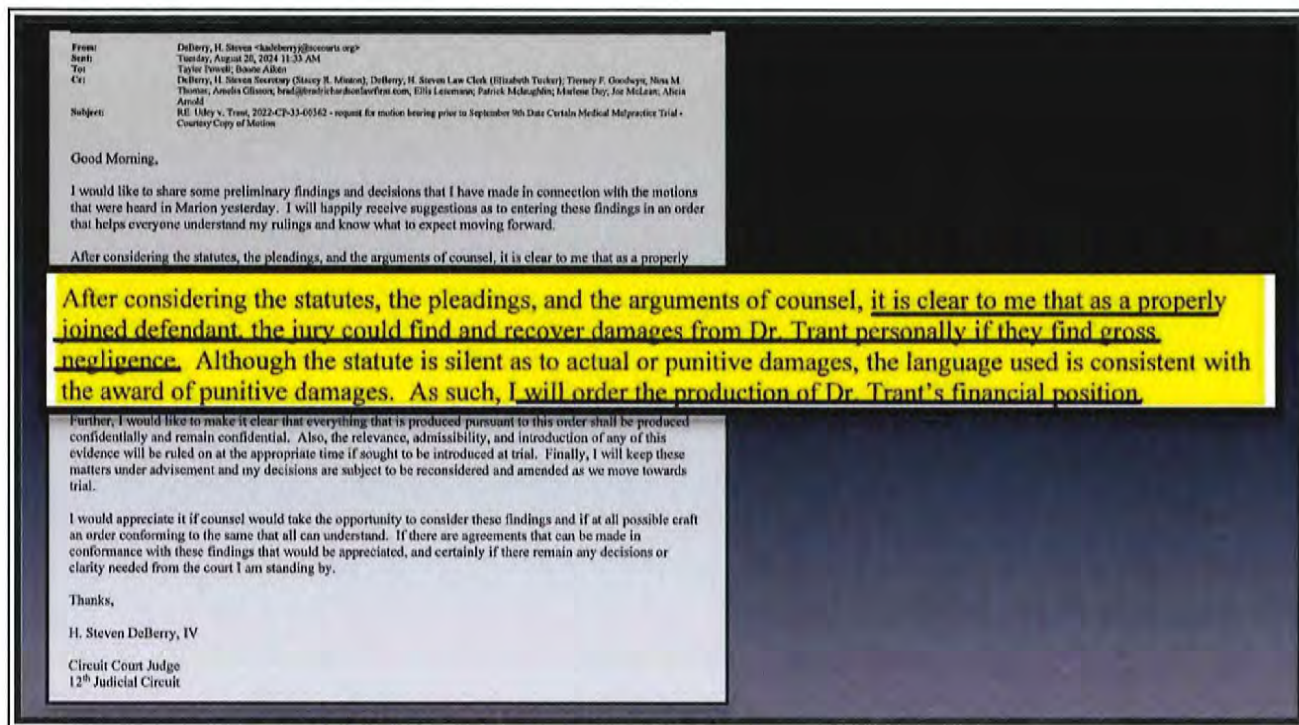


(McLaughlin Ltr., 08/6/2024).

53. That, in fact, the policy with limits which Mag Mutual indicated in its August 2, 2024 letter were "chosen with the awareness that verdicts above any limit bought are possible" was procured by MPA, with limits selected by MPA, in MPA's "sole discretion":

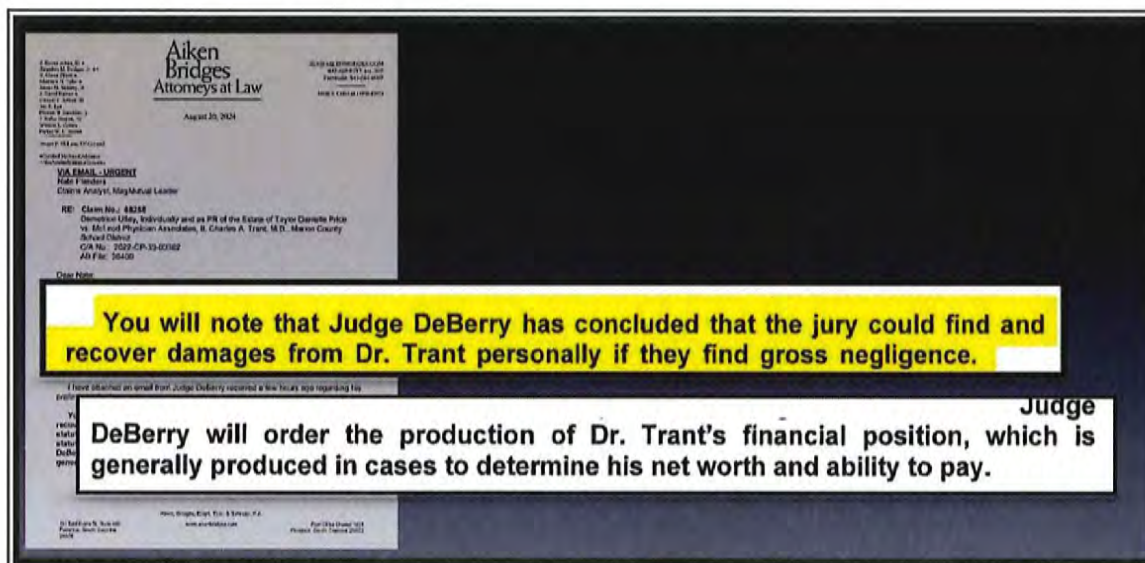


(Physician Employment Agreement, 04/01/2008, Section 3.4).



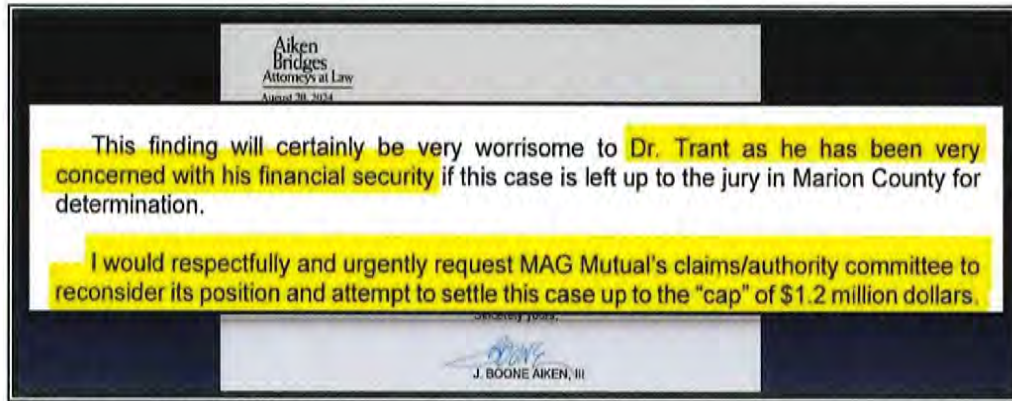
(Hon. H. Steven DeBerry email, 08/20/2024).

59. That, on that same day, August 20, 2024, Mr. Aiken wrote Mag Mutual, advising them of Judge DeBerry's ruling:



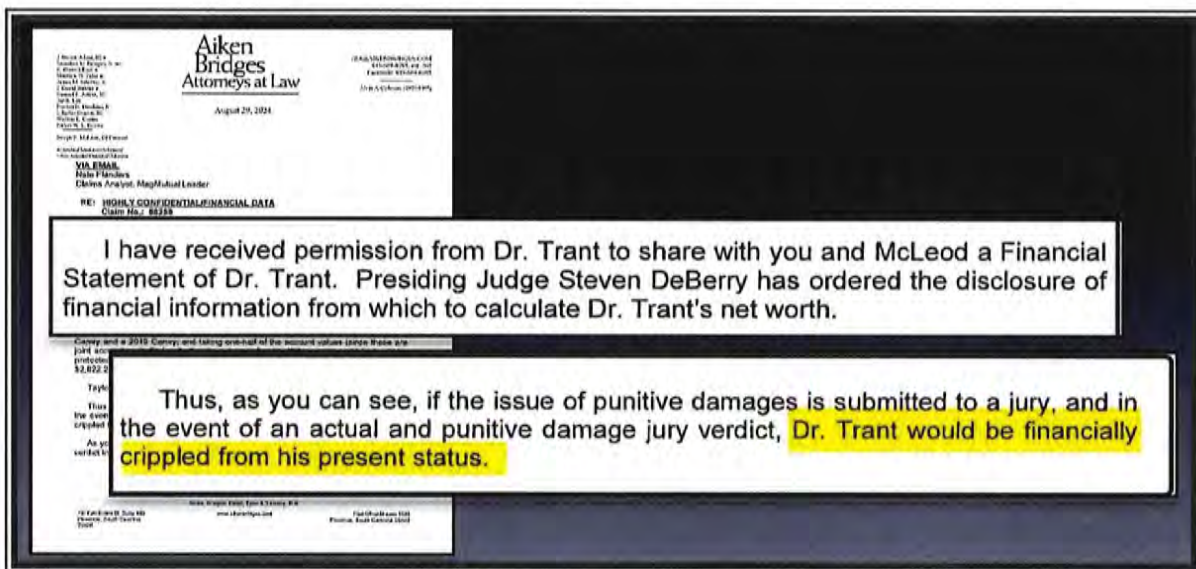
(Aiken Ltr., 08/20/2024).

60. That Mr. Aiken, like Dr. Trant, urged Mag Mutual to protect Dr. Trant's financial security and reconsider their refusal to make any offer to settle the case against Dr. Trant:



(Aiken Ltr., 08/20/2024).

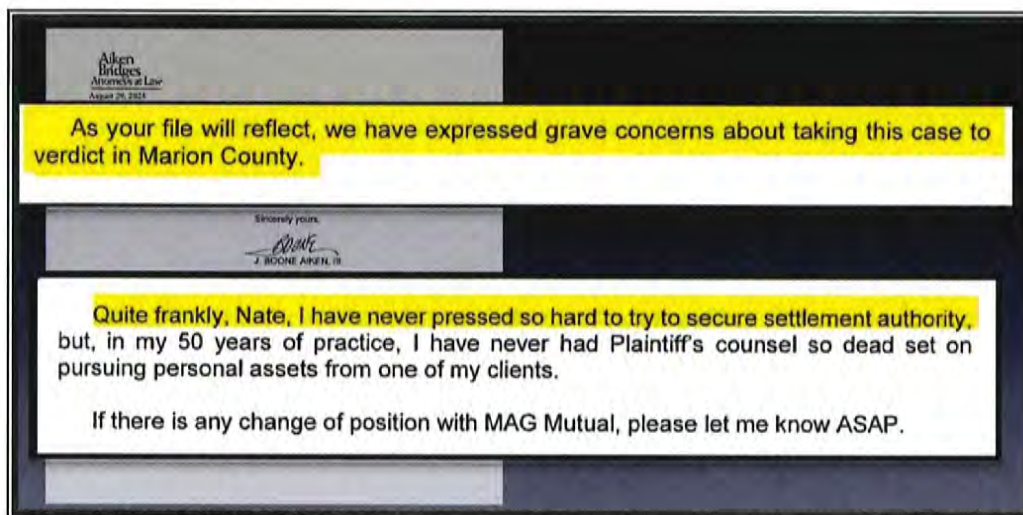
61. That, in spite of Mr. Aiken's request, Mag Mutual still refused to make any offer whatsoever to settle the case against Dr. Trant.
62. That again, on August 29, 2024, Mr. Aiken wrote Mag Mutual warning "Dr. Trant would be financially crippled" from a potential jury verdict.



(Aiken Ltr., 08/26/2024).

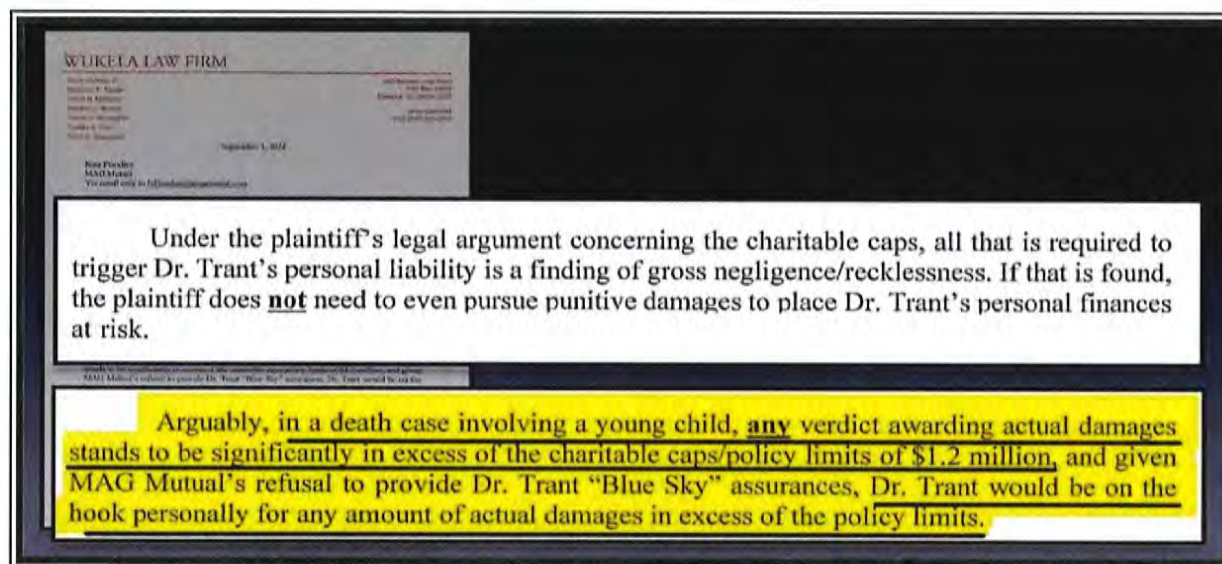
63. That, by letter of August 29, 2024, Mr. Aiken, a respected member of the trial bar, who has been practicing law for 50 years and has defended McLeod Health and countless others in

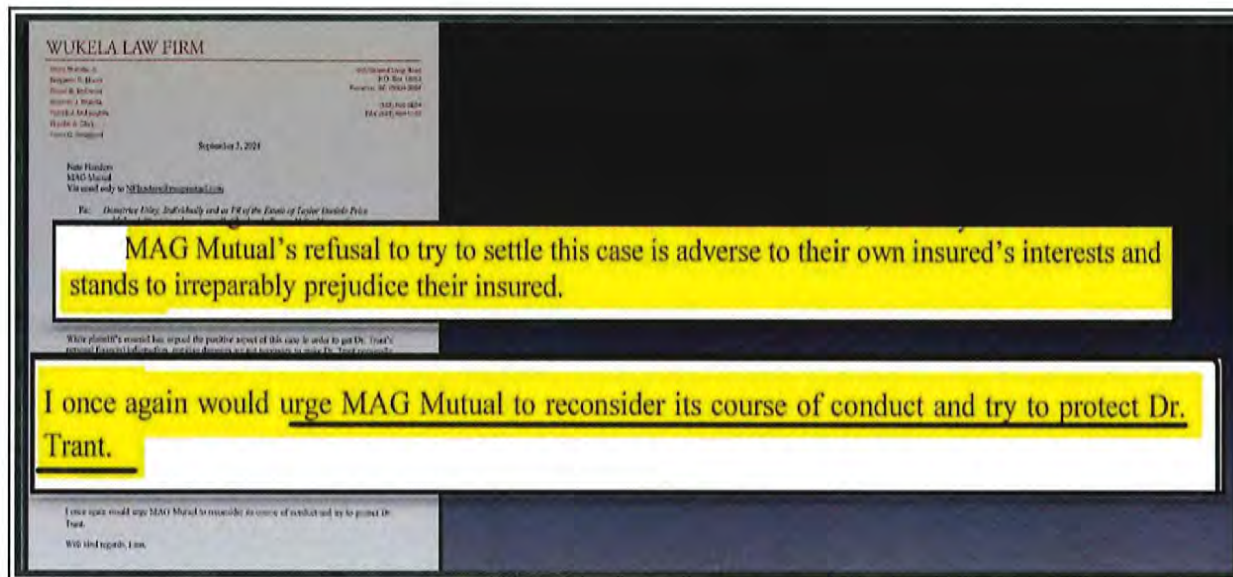
medical malpractice actions, pleaded with Mag Mutual to protect Dr. Trant by giving him settlement authority:



(Aiken Ltr., 08/29/2024).

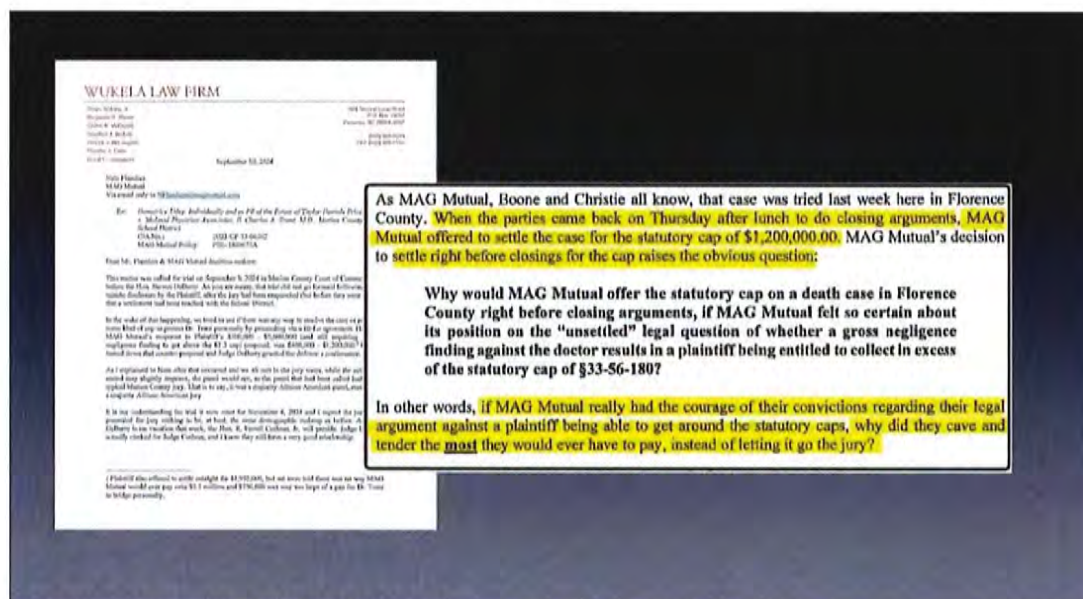
64. That, in spite of Mr. Aiken's repeated requests and warnings, Mag Mutual still continued in its refusal to offer any amount at all to settle the Price Estate's case against Dr. Trant.
65. That with trial looming in the Price action, on September 3, 2024, Dr. Trant, though undesignated counsel, again pled with Mag Mutual to negotiate in good faith with the Estate, warning:





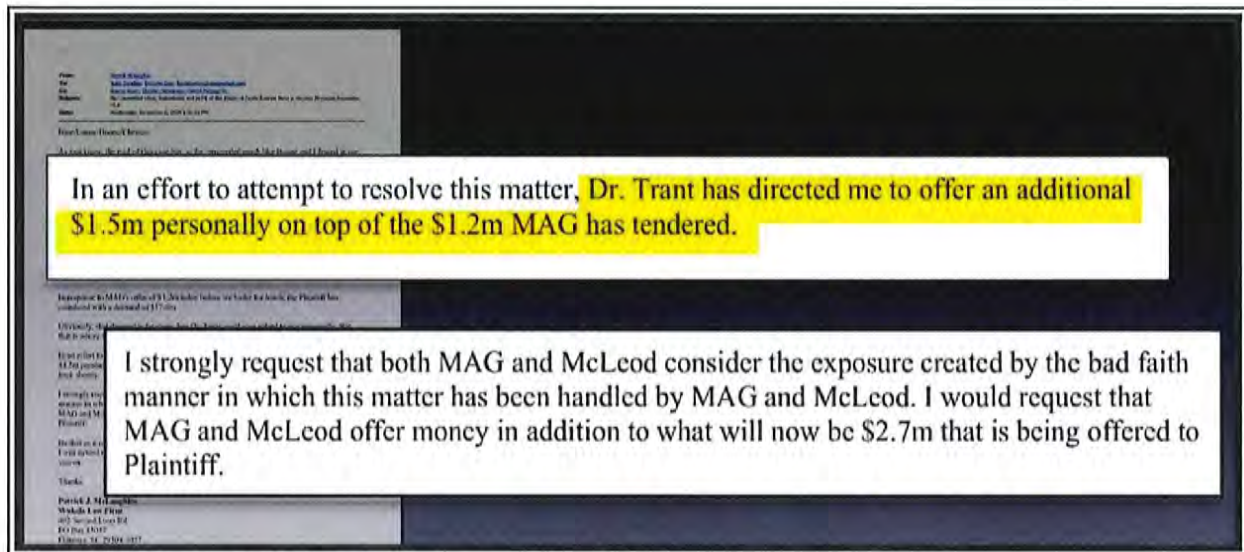
(McLaughlin Ltr., 09/03/2024).

66. That, in spite of Dr. Trant's requests, Mag Mutual still refused to offer any amount or make any attempt whatsoever to settle the Estate's case against Dr. Trant.
67. That, through undersigned counsel, via letter dated September 30, 2024, Dr. Trant expressed bewilderment at why Mag Mutual had offered the \$1.2 million cap in a recent Florence County jury trial just before closing arguments, and not in the Price case:



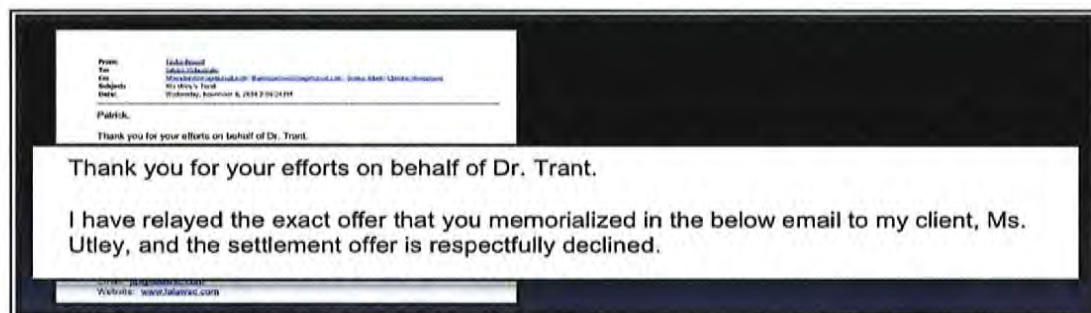
(McLaughlin Ltr., 09/30/2024).

68. That September 30, 2024 letter from Dr. Trant predicted that, as in the recent Florence case, the verdict form for the Price trial would include a special interrogatory asking whether the jury found gross negligence; and, once again, Dr. Trant urged Mag Mutual to reconsider its course of conduct and protect Dr. Trant personally.
69. That, in spite of Dr. Trant's requests, Mag Mutual still refused to offer any amount or make any attempt whatsoever to settle the Estate's case against Dr. Trant, or to provide Dr. Trant any protection against an excess personal verdict.
70. That the Price action was called to trial beginning Monday, November 4, 2024, in Marion, South Carolina.
71. That, as of the beginning of trial, on November 4, 2024, contrary to the pleas and warnings of their counsel, Mr. Aiken, of Dr. Trant and of McLeod, Mag Mutual had refused offers from the Estate of \$1.2 million (within the policy limit for one occurrence), and refused to participate in mediation where the Estate's opening offer was \$2.4 million (within the policy limit for two occurrences).
72. That, as of the beginning of trial on November 4, 2024, MagMutal had offered nothing at all, at any point, to settle the Estate's case against Dr. Trant.
73. That, by the third day, November 6, 2024, when the trial was, as predicted, going very badly for Dr. Trant and MPA; Mag Mutual, belatedly, offered the Estate \$1.2 Million to settle the case, (the same amount the Estate offered to accept two years previous, on November 7, 2022).



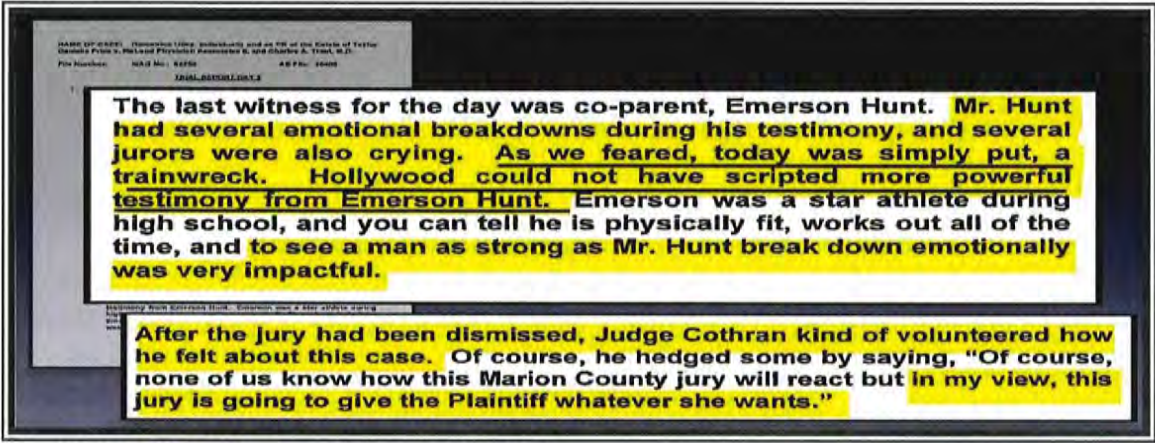
(McLaughlin email, 11/06/2024, 1:31 p.m.).

77. That following that November 6, 2024, email, both Mag Mutual and MPA refused to give any consideration to the offer of contribution made by Dr. Trant, or to offer anything additional at all.
78. That, nevertheless, as undersigned counsel had indicated in that November 6th 1:31 p.m. email, Dr. Trant offered \$1.5 million himself, in addition to Mag Mutual's belated offer of \$1.2 million.
79. That, shortly after that total offer of \$2.7 million was made, Mr. Powell, on behalf of the Estate, declined the offer:



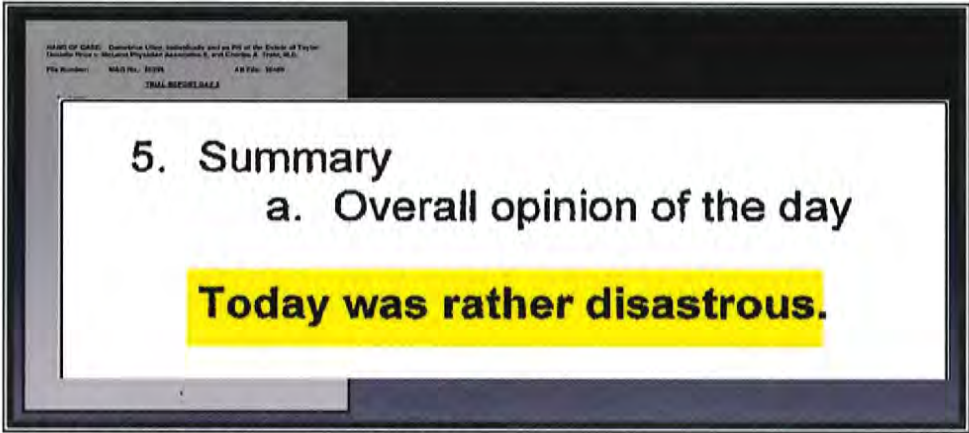
(Powell email, 11/06/2024, 2:06 p.m.).

80. That, on that same day, November 6, 2024, after trial recessed, Mr. Aiken delivered a trial report to Mag Mutual; wherein, he candidly noted:



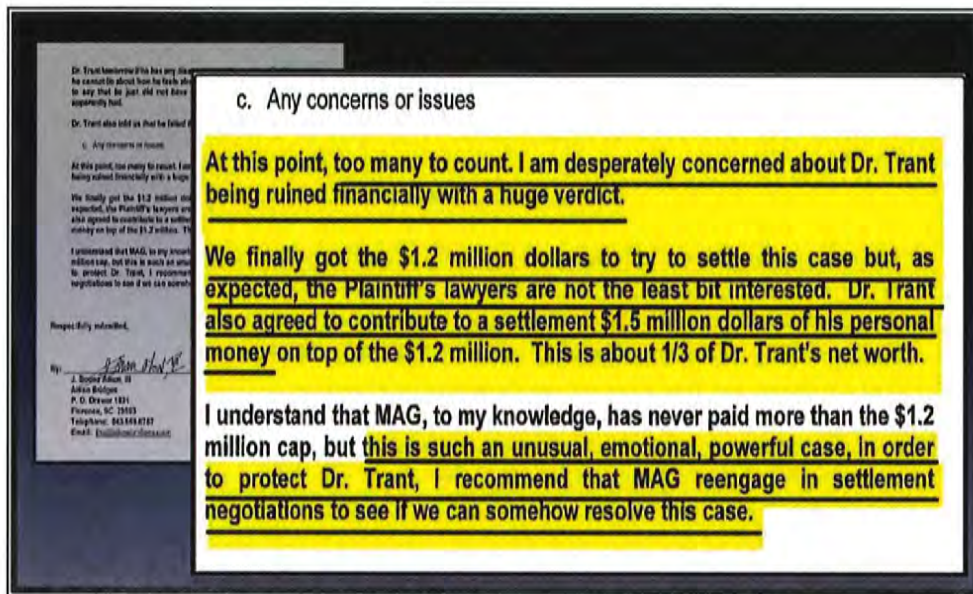
(Aiken Trial Report, Day 3, 11/6/2024).

81. That Mr. Aiken's Day 3 Trial Report, summarized the day bluntly:



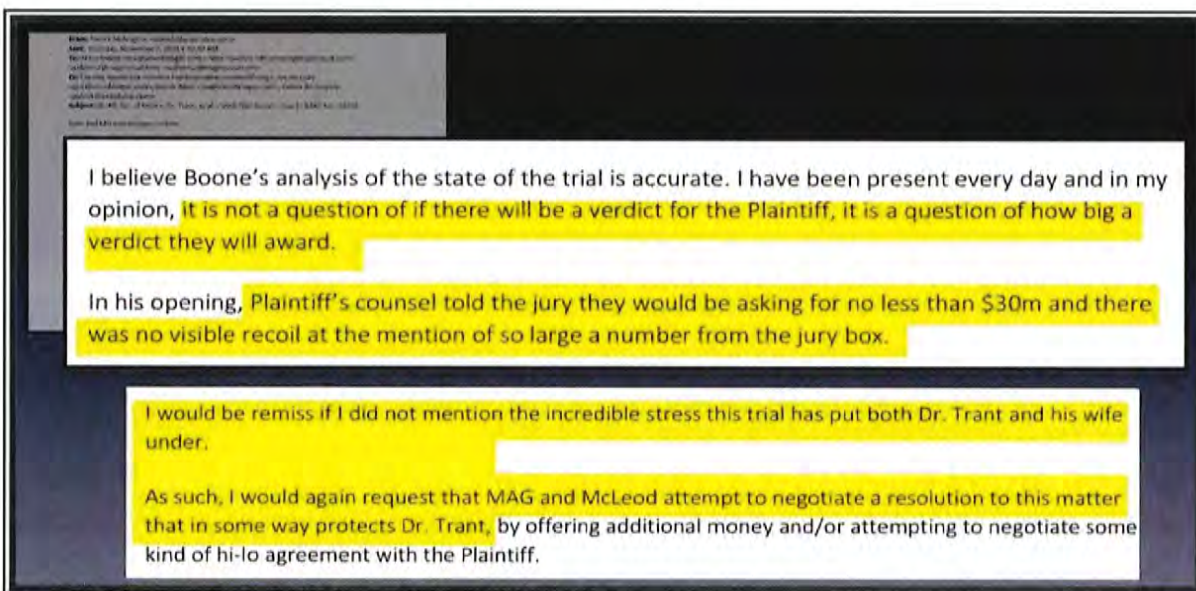
(Aiken Trial Report, Day 3, 11/6/2024).

82. That Mr. Aiken concluded his Day 3 Trial report, urgently concerned about his client, Dr. Trant, with an earnest plea that Mag Mutual reconsider their long-held position to never pay more than the \$1.2 million cap and "reengage in settlement negotiations" to protect Dr. Trant:



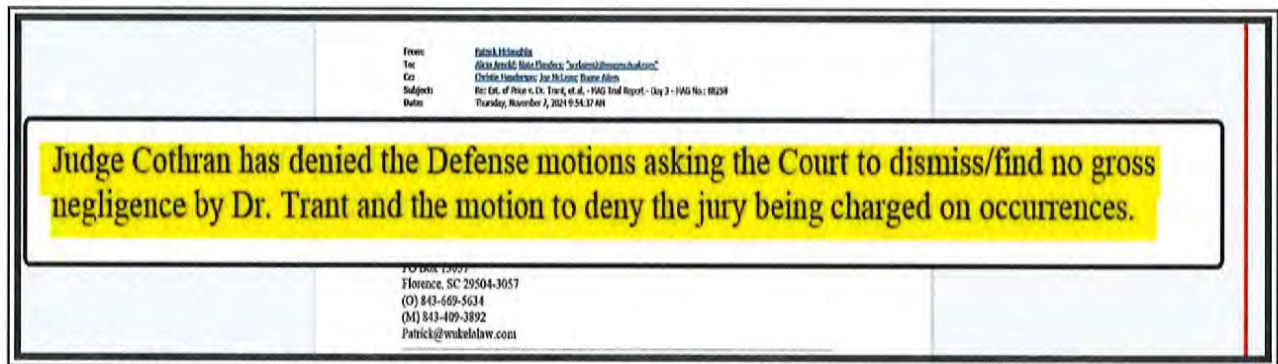
(Aiken Trial Report, Day 3, 11/6/2024).

83. That, notwithstanding his report, Mag Mutual again ignored Mr. Aiken's recommendations, warnings and pleas.
84. That, the next morning, November 7, 2024, at 7:53 a.m., as the fourth day of trial was about to begin, Dr. Trant, through his undesigned personal counsel, hopelessly wrote his own insurance carrier and former employer, seeking protection from financial disaster:



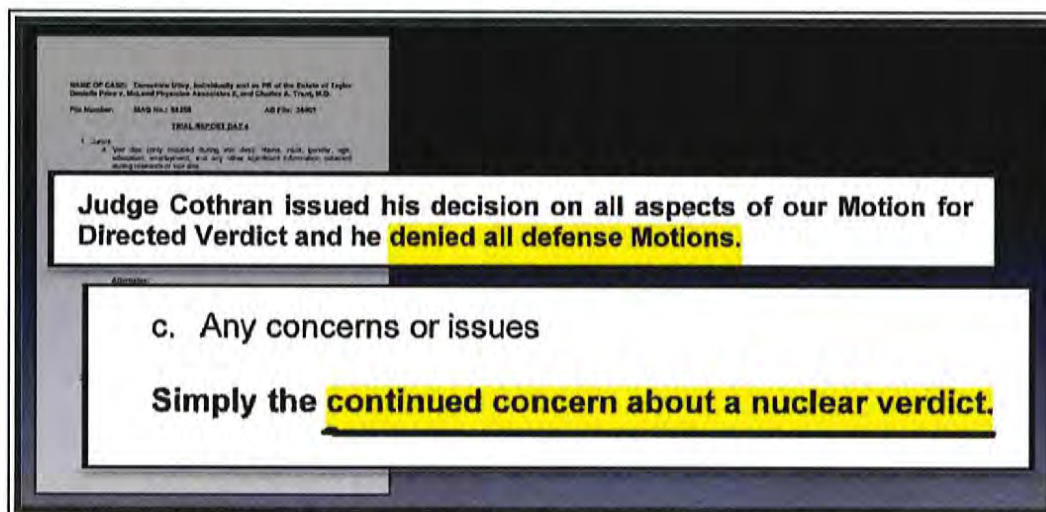
(McLaughlin email, 11/07/2024, 7:53 a.m.).

85. That, again, Mag Mutual and MPA ignored Dr. Trant's pleas.
86. That at the conclusion of the Estate's case on day 4 of trial, the Defense moved for directed verdict, to dismiss the cause of action of gross negligence against Dr. Trant, and to refuse to charge the jury on occurrences.
87. That, on November 7, 2024, Dr. Trant's personal counsel notified Mag Mutual the Defense motions had been denied:



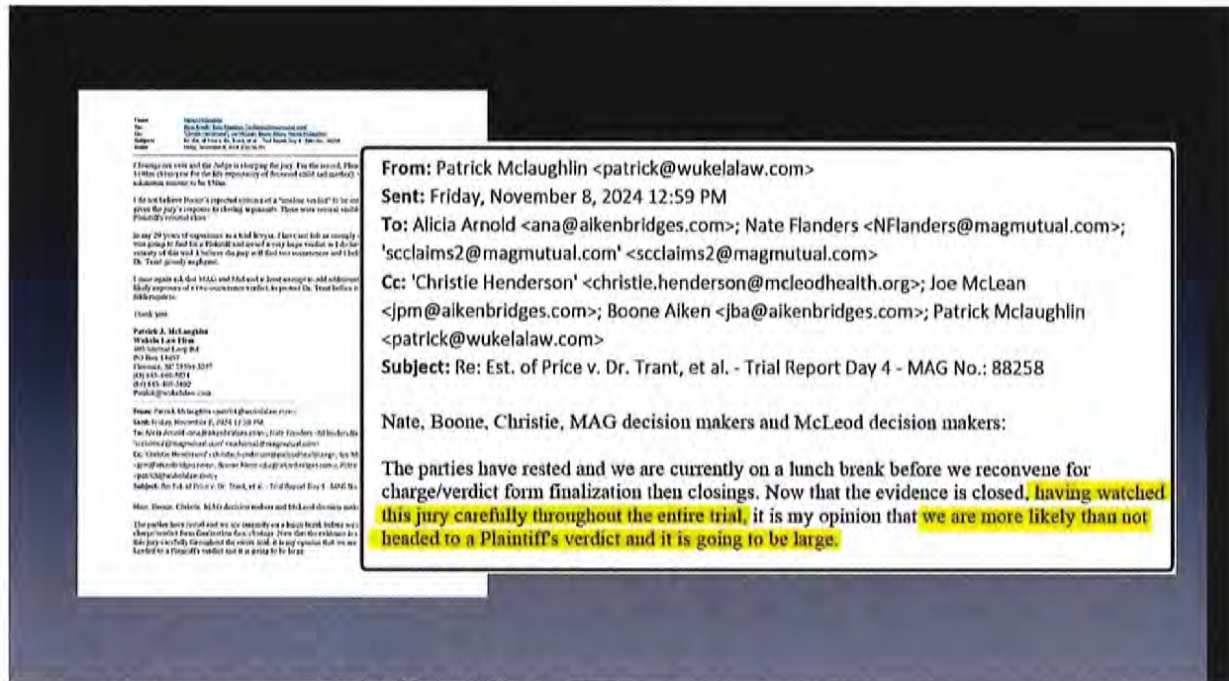
(McLaughlin email, 11/07/2024, 9:54 a.m.).

88. That, after the trial's recess on day 4, Mr. Aiken candidly reported to Mag Mutual he was concerned about a "nuclear verdict":



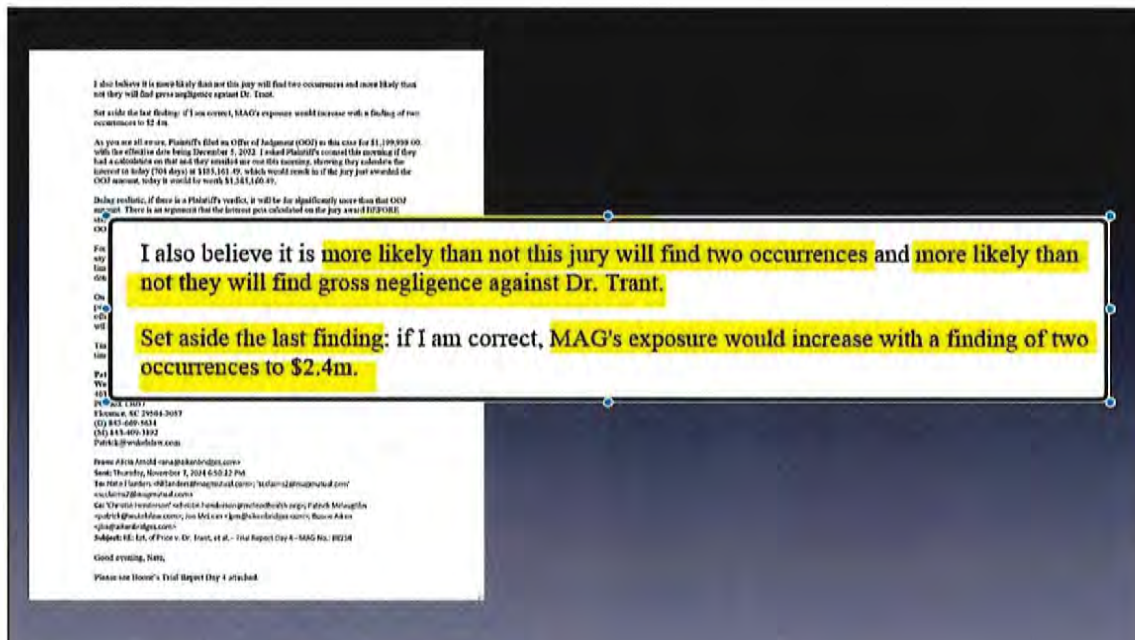
(Aiken Trial Report, Day 4, 11/7/2024).

89. That, on November 8, 2024, day 5 of trial, after both sides had rested and during the lunch break before closings, Dr. Trant's personal counsel, once again, emailed Mag Mutual and MPA; noting that "having watched the jury carefully through the entire trial, it is my opinion that we are more likely than not headed to a Plaintiff's verdict and it is going to be large":



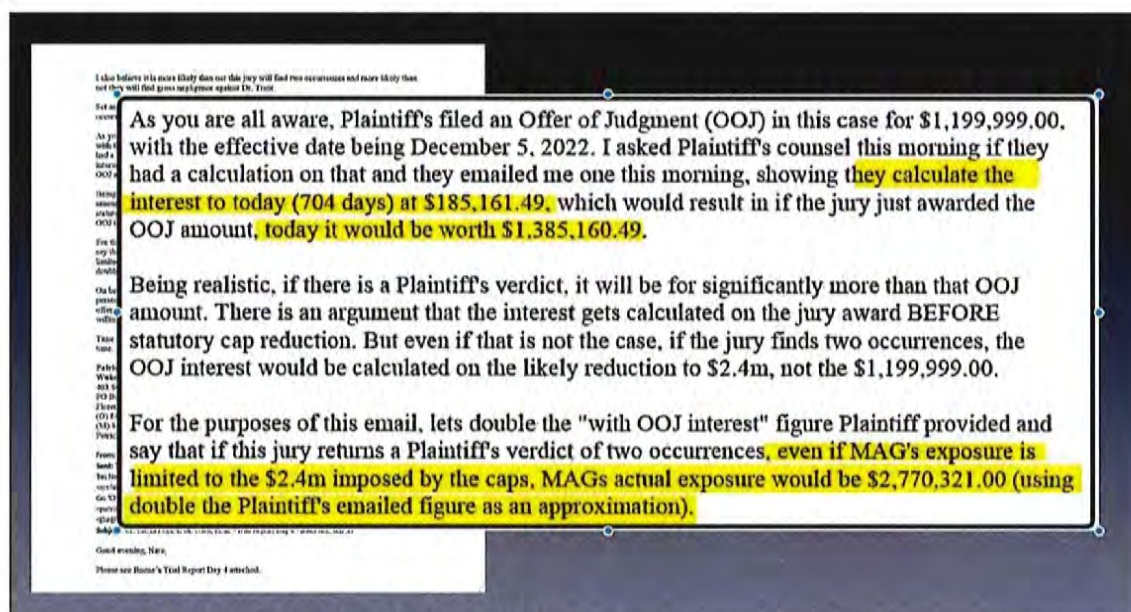
(McLaughlin email, 11/08/2024, 12:59 p.m.).

90. That, the Day 5, 12:59 p.m., email from Dr. Trant's personal counsel further warned Mag Mutual and MPA that, setting aside the gross negligence/charitable cap arguments, the likely finding of two occurrences by the jury would expose Mag Mutual to two caps, i.e., \$2.4 million:

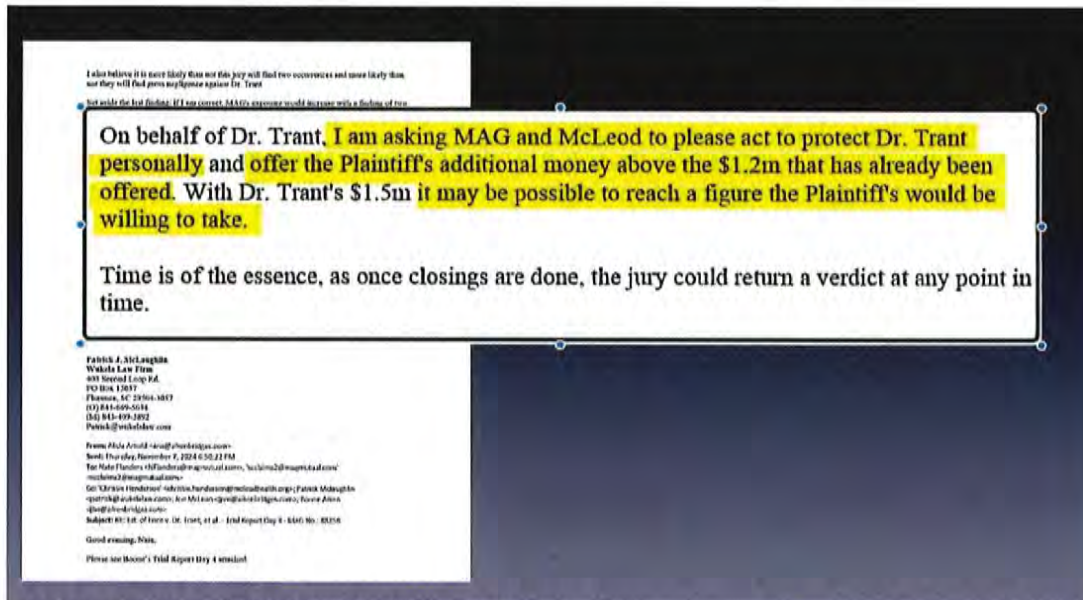


(McLaughlin email, 11/08/2024, 12:59 p.m.).

91. That, the Day 5, 12:59, p.m. email from Dr. Trant's personal counsel further warned Mag Mutual and MPA that given the likely size of a jury verdict exceeding the *Offer of Judgment* amount, accounting for OOJ interest on two occurrences, Mag Mutual's likely exposure in on a jury verdict would be \$2,770,321.00:

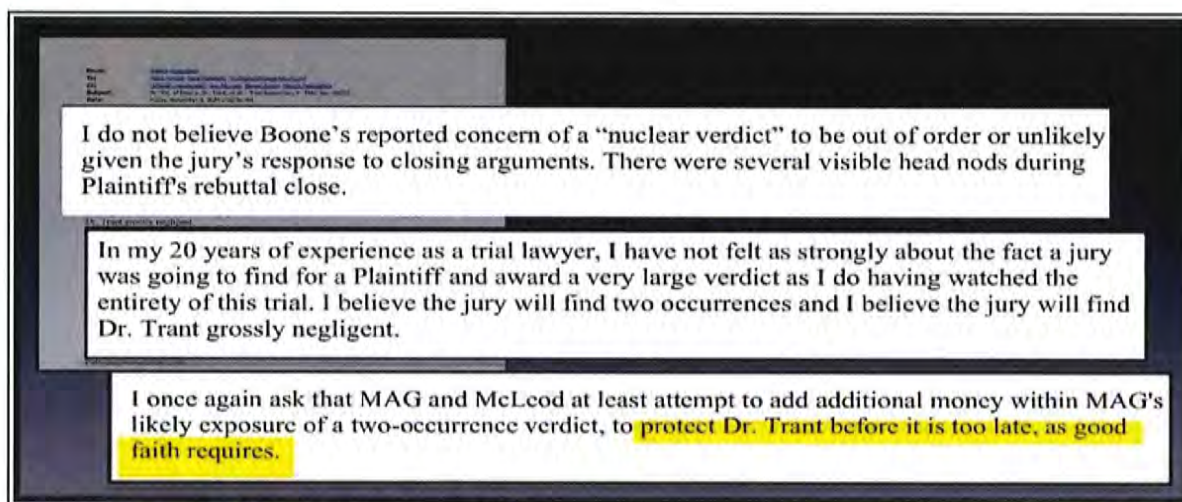


92. That, the Day 5, 12:59 p.m., email, on behalf of Dr. Trant, pleaded:



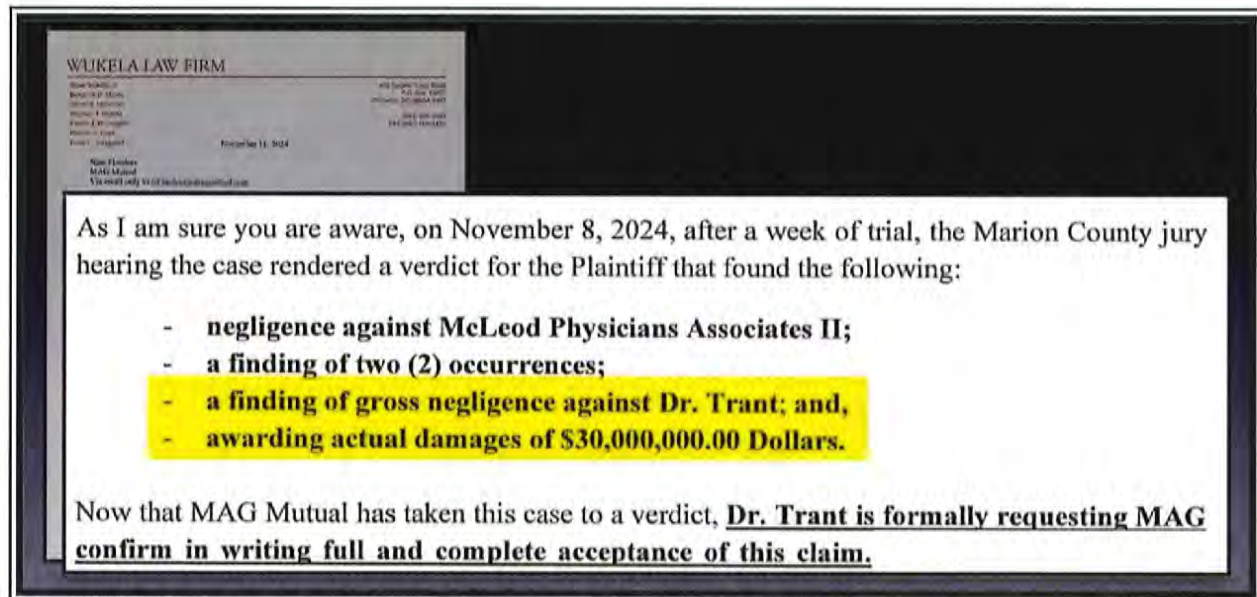
(McLaughlin email, 11/08/2024, 12:59 p.m.).

93. That after closing arguments on Day 5 of trial, Friday November 8, 2024, Dr. Trant's personal counsel (who had been present the entire trial), made one last Sisyphean attempt to convince Mag Mutual and MPA to make some attempt to salvage the consequences of their bad faith failures towards Dr. Trant, by asking them to at least attempt to add additional money within Mag Mutual's likely exposure from a two-occurrence verdict:



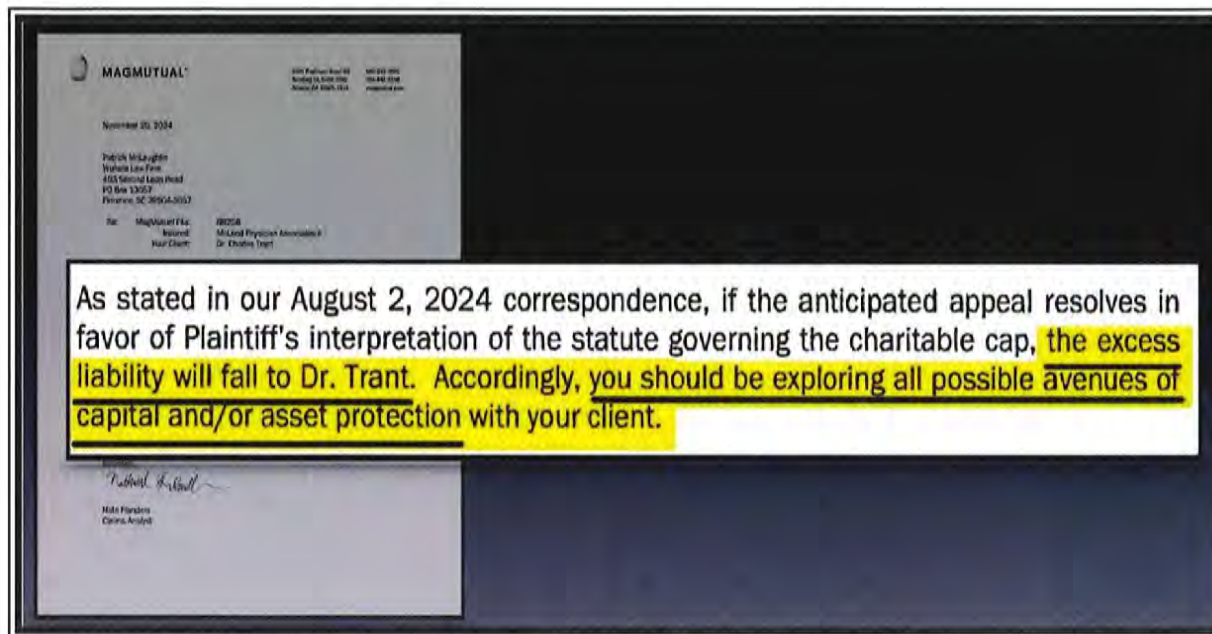
(McLaughlin email, 11/08/2024, 3:26 p.m.).

94. That Dr. Trant received no response from Mag Mutual to his final pleas on that last day of trial.
95. That, on November 8, 2024, the Marion County jury hearing the Price case returned a verdict of negligence against MPA; a finding of two (2) occurrences; a finding of gross negligence against Dr. Trant; and an award of actual damages in the amount of \$30 million Dollars.
96. That, on November 11, 2024, the Monday after trial, Dr. Trant, through undersigned counsel, wrote Mag Mutual:



(McLaughlin Ltr., 11/11/2024).

97. That, Mag Mutual responded to Dr. Trant, their insured, nine (9) days later:



(Mag Mutual Ltr., 11/20/2024).

98. That after trial, Mag Mutual retained new counsel, Attorney Andrew F. Lindemann (hereinafter "Lindemann"), to argue post-trial motions and handle the appeal.
99. That on November 25, 2024, a WebEx virtual hearing on post-trial motions was held before the Hon. R. Ferrell Cothran, Jr., with Attorney Powell arguing on behalf of the Estate, and Attorney Lindemann arguing on behalf of the Defendants, including Dr. Trant.
100. During the post-trial arguments, Mr. Lindemann urged the Court to find, as a matter of law, that there were not multiple occurrences; an argument which placed Mag Mutual's interest ahead of Dr. Trant's interests; an argument which, if successful, would increase Dr. Trant's personal exposure by \$1.2 million Dollars, while decreasing Mag Mutual's liability by the same amount. That argument was made while **not** arguing for a new trial *nisi remittitur*.
101. That, Mr. Lindemann did not consult either Dr. Trant, or his personal counsel, prior to making the occurrence argument; nor were any of the Defenses' post-trial motions shared with Dr. Trant or his personal counsel prior to being submitted to the Court.

102. That after post-trial motions, the Court entered Judgment against Dr. Trant in the amount of Twenty-Nine Million Eight Hundred Seventy Thousand (\$29,870,000.00) Dollars.
103. That Dr. Trant, through counsel, has requested that Mag Mutual post an appellate bond so as to stay enforcement of the judgment against him during appeal, and Mag Mutual to date has refused to do so and/or confirm in writing that they would post such bond.
104. That Mag Mutual ignored multiple opportunities to settle the Price action against Dr. Trant in exchange for their policy limits.
105. That Mag Mutual made no efforts to settle and made no settlement offers whatsoever to the Price Estate before trial, even after Dr. Trant, and Mr. Aiken, Mag Mutual's counsel, expressly requested that his insurance company take steps to protect him from potential personal financial exposure.
106. That the trial was a disaster for Dr. Trant, and the jury returned a verdict against Dr. Trant for the minor plaintiff's death, and ultimately judgment was entered against him in the amount of Twenty-Nine Million Eight Hundred Seventy Thousand and 00/100 (\$29,870,000.00) Dollars, and post judgment interest is accruing on the judgment at the rate of 11.5%, or approximately Two Hundred Eighty-Six Thousand Two Hundred Fifty-Four and 00/100 (\$286,254.00) Dollars per month. That subsequent to the entry of judgment, in light of the substantial verdict, Mag Mutual has not made any reasonably good faith efforts to resolve the claim and has refused to post the appeals bond to protect Dr. Trant from collection efforts and/or confirm in writing they would post such bond.²

² Defendant MPA II and Trant are jointly and severally liable for \$2,400,000.00 of the \$29,870,000.00 amended judgment entered against Defendant Trant. Defendant Trant is solely responsible for the remainder of the amended judgment against him.

**FOR A FIRST CAUSE OF ACTION
(Breach of Contract against Defendant Mag Mutual)**

107. That the Plaintiff re-alleges the above paragraphs by reference as if recounted at length herein.
108. That, at all times material hereto, a binding insurance policy (“the Policy”) existed between Plaintiff Dr. Trant, and Defendant Mag Mutual.
109. That the Defendant Mag Mutual owed Dr. Trant a duty under the Policy to attempt in good faith to effect prompt, fair and equitable settlement of claims.
110. That under well-settled South Carolina law³ Defendant Mag Mutual may not conduct settlement negotiations with an eye solely to its own interests and in disregard of its insured’s rights and interests.
111. That Defendant Mag Mutual is bound, under its contract of indemnity and in good faith, to sacrifice its own interests in favor of those of its insured.
112. That Defendant Mag Mutual breached the implied contractual duty of good faith and fair dealing and acted unreasonably and in bad faith in the following particulars, to-wit:
 - (a) in ignoring multiple opportunities to settle the Price action against Dr. Trant in exchange for their policy limits and in failing to make any settlement offer before the third day of trial despite Dr. Trant’s multiple requests to settle the case and reasonable concerns about a verdict exceeding the limits of his malpractice coverage;
 - (b) in failing to acknowledge that, by reason of the severity of the damages, including the death of a child, any verdict in the Price

³ See Tyger River Pine Co. v. Maryland Casualty Co., 170 S.C. 286, 170 S.E.346 (1933); Andrews v. Central Sur. Ins. Co., 271 F.Supp. 814 (D.S.C. 1967); Nichols v. State Farm, 279 S.C. 336 (S.C. 1983); Jefferson v. Allstate Insurance Co., 673 F. Supp 1401 (D.S.C. 1987); Myers v. State Farm, 950 F.Supp 148 (D.S.C. 1997); Tadlock Painting Co. v. Maryland Casualty, 322 S.C. 498 (1996); Ocean Winds v. Auto-Owners, 241 F.Supp.2d 572 (D.S.C. 2002).

action was likely to be greatly in excess of the policy limit;

- (c) in failing to give due regard; and, in fact, in repeatedly rejecting, the recommendations of Mag Mutual's retained trial counsel, Mr. Aiken;
- (d) in failing to give due regard; and, in fact, in repeatedly rejecting, the insured's demands that Mag Mutual settle the Price action;
- (e) in failing to give due consideration to the offer of contribution made by the insured, himself;
- (f) in repeatedly ignoring and refusing settlement offers proffered by the Price Estate within policy limits;
- (g) by refusing to participate in a scheduled mediation;
- (h) by unreasonably delaying and refusing to even attempt to effect a prompt, fair, and equitable settlement of the claim in disregard of the insured's contractual rights, his reputation, his financial position, and his emotional and physical well-being;
- (i) in failing to make reasonable efforts after judgment to resolve the claim and by refusing to post the full amount of the appeal bond; leaving Plaintiff exposed to collection efforts during the pendency of the appeal;
- (j) in placing its own interests above those of their insured's

113. That these acts and omissions by Defendant Mag Mutual constitute a breach of the covenant of good faith and fair dealing that arises in every contract, including the Policy issued to the Plaintiff by Defendant, and were willful, wanton, and in reckless disregard of its obligations to the Plaintiff, Dr. Trant.

114. That, as a direct and proximate result of Defendant Mag Mutual's actions and omissions, the Plaintiff has suffered the damages set out herein.

**FOR A SECOND CAUSE OF ACTION
(Bad Faith; Negligence; Gross Negligence; Recklessness; Willful and Wanton Conduct;
Intentional Infliction of Emotional Distress / Outrage against Defendant Mag Mutual)**

115. That the Plaintiff re-alleges the above paragraphs by reference as if recounted at length herein.
116. That at all times material hereto, a binding insurance policy (“the Policy”) existed between Plaintiff Dr. Trant, and Defendant Mag Mutual.
117. That, under the Policy, Defendant Mag Mutual had the exclusive authority and control over whether, or not, to offer the Price Estate any amount to settle the Estate’s claim against Dr. Trant; and, thus, Mag Mutual had actual authority over Dr. Trant with the power to affect Dr. Trant’s interest.
118. That the Defendant Mag Mutual owed Dr. Trant a duty under the Policy to attempt in good faith to effect prompt, fair and equitable settlement of claims.
119. That under well-settled South Carolina law⁴ Defendant Mag Mutual may not conduct settlement negotiations with an eye solely to its own interests and in disregard of its insured’s rights and interests.
120. That Defendant Mag Mutual is bound, under its contract to act in good faith, and to sacrifice its own interests in favor of those of its insured.
121. That Defendant Mag Mutual breached the implied contractual duty of good faith and fair dealing and acted unreasonably and in bad faith; and, moreover, Mag Mutual’s conduct was reckless and intentional, extreme and outrageous, exceeded all possible bounds of

⁴ See fn.3.

decency, and must be regarded as atrocious and utterly intolerable in a civilized community, in the following particulars, to-wit:

- a. in ignoring multiple opportunities to settle the Price action against Dr. Trant in exchange for their policy limits and in failing to make any settlement offer before the third day of trial despite Dr. Trant's multiple requests to settle the case and reasonable concerns about a verdict exceeding the limits of his malpractice coverage;
 - b. in failing to acknowledge that, by reason of the severity of the damages, including the death of a child, any verdict in the Price action was likely to be greatly in excess of the policy limit;
 - c. in failing to give due regard; and, in fact, in repeatedly rejecting, the recommendations of Mag Mutual's retained trial counsel, Mr. Aiken;
 - d. in failing to give due regard; and, in fact, in repeatedly rejecting, the insured's demands that Mag Mutual settle the Price action;
 - e. in failing to give due consideration to the offer of contribution made by the insured, himself;
 - f. in repeatedly ignoring and refusing settlement offers proffered by the Price Estate within policy limits;
 - g. by refusing to participate in a scheduled mediation;
 - h. by unreasonably delaying and refusing to even attempt to effect a prompt, fair, and equitable settlement of the claim in disregard of the insured's contractual rights, his reputation, his financial position, and his emotional and physical well-being;
 - i. in failing to make reasonable efforts after judgment to resolve the claim and by refusing to post the full amount of the appeal bond; leaving Plaintiff exposed to collection efforts during the pendency of the appeal;
 - j. in placing its own interests above those of their insured's
122. That these acts and omissions by Defendant Mag Mutual constitute a breach of the covenant of good faith and fair dealing that arises in every contract, including the Policy issued to the Plaintiff by Defendant, were willful, wanton, and in reckless disregard of its

obligations to the Plaintiff, Dr. Trant, and they calculatedly inflicted suffering and heedlessly and contemptuously disregarded Dr. Trant's emotional suffering.

123. That, as a direct and proximate result of Defendant Mag Mutual's actions and omissions, the Plaintiff has suffered the damages set out herein; specifically, Mag Mutual's intentional and reckless conduct inflicted severe emotional distress that no reasonable man could be expected to endure; to which Mag Mutual was aware he was susceptible; and which Mag Mutual was substantially certain would result from their conduct.

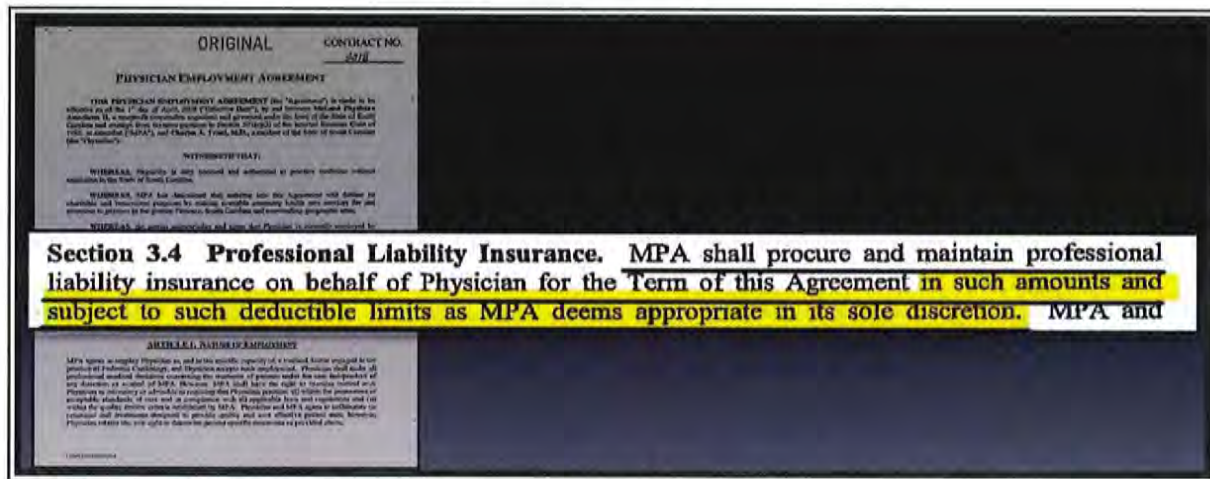
**FOR A THIRD CAUSE OF ACTION
(Statutory Bad Faith Violations against Defendant Mag Mutual)**

124. That the Plaintiff re-alleges the above paragraphs by reference as if recounted at length herein.
125. That Defendant Mag Mutual acted in bad faith in its failure to honor its obligations to Plaintiff under the Policy.
126. That Defendant Mag Mutual violated S.C. Code §38-29-20.
127. That, specifically, the Plaintiff is informed and believes that:
- (a) that there exists a mutually binding contract of insurance between Plaintiff and Defendant;
 - (b) that Plaintiff requested that Defendant make a settlement offer on behalf of Plaintiff;
 - (c) that the Defendant refused to make reasonable settlement offers before the third day of trial;
 - (d) that Defendant's refusal is the result of the insurer's bad faith or unreasonable action in breach of an implied covenant of good faith and fair dealing in the contract; and,
 - (e) that the refusal has caused damaged to the Plaintiff, the insured.

128. That, as a direct and proximate result of Defendant Mag Mutual's actions and omissions, the Plaintiff has suffered the damages set out herein.

**FOR A FOURTH CAUSE OF ACTION
(Breach of Contract against Defendant MPA)**

129. That the Plaintiff re-alleges the above paragraphs by reference as if recounted at length herein.
130. That, at all relevant times, the Plaintiff, Dr. Trant, and Defendant MPA were parties to an employment contract, entitled "Physician Employment Agreement" (hereinafter "contract"); wherein, in exchange for good and valuable consideration, MPA contracted to employ Dr. Trant to practice medicine in the field of pediatric cardiology.
131. That, the employment contract provided, among other things, that:



(Physician Employment Agreement, 4/1/2008, Section 3.4).

132. That the contract, like every contract entered into in South Carolina, contained an implied covenant of good faith and fair dealing.⁵

⁵ See Road, LLC v. Beaufort Cnty., 443 S.C. 11, 25 (2024).

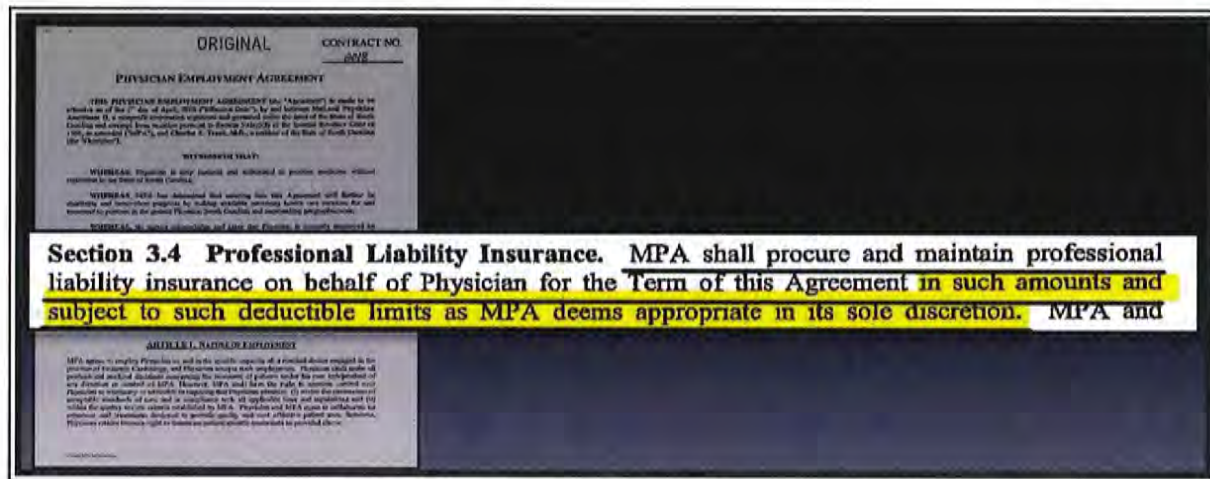
133. That the covenant of good faith and fair dealing governed the manner in which the parties to the contract carried out their contractual duties. Id.
134. That the contract's express terms gave MPA the power and the duty to "procure and maintain professional liability insurance on behalf of [Dr. Trant]..."
135. That the contract's express terms gave MPA the "sole discretion" to procure professional liability coverage in such amounts "as MPA deems appropriate."
136. That, by operation of law, the contract contained the implied covenant that MPA would exercise its "sole discretion" reasonably and in good faith for the purposes for which that discretion was vested in them; that is, to protect Dr. Trant from professional liability.
137. That, MPA purchased professional liability coverage from Defendant Mag Mutual (hereinafter "policy") with limits of \$1.2 million per loss; an amount sufficient to cover the limit to which MPA's own liability was capped by statute.
138. That, MPA failed to purchase professional liability in an amount sufficient to protect Dr. Trant from personal liability in the event a jury returned a verdict of gross negligence against him.
139. That, at the time the policy was purchased, there were options for Defendant MPA to procure higher limits of professional liability coverage.
140. That, at the time MPA procured the policy, they knew, or should have known with the exercise of reasonable diligence, that judgements against Dr. Trant, individually, in excess of the \$1.2 million statutory limits of MPA's liability, were possible in the event that a jury found Dr. Trant grossly negligent.
141. That, MPA breached its contractual duty of good faith and fair dealing by procuring only enough professional liability coverage to cover their own statutorily capped liability of \$1.2

million dollars per loss, and insufficient coverage to cover Dr. Trant for any liability in excess of that amount.

142. That, MPA failed to warn Dr. Trant that they had procured only enough professional liability coverage to cover their own statutorily capped liability of \$1.2 million dollars per loss, and insufficient coverage to cover Dr. Trant for any liability in excess of that amount.
143. That, Dr. Trant reasonably relied upon MPA to exercise their contractual discretion in good faith.
144. That, on February 3, 2025, the Court of Common Pleas, Twelfth Judicial Circuit entered judgment in the Price action against MPA of Two Million Seven Hundred Eighty-Thousand Eight Hundred Forty-Three and 84/100 (\$2,780,843.84) Dollars an amount covered by the Mag Mutual policy procured by MPA.
145. That, on February 3, 2025, the Court of Common Pleas, Twelfth Judicial Circuit, in the same action, entered judgment against Dr. Trant in the amount of Twenty-Nine Million Eight Hundred Seventy Thousand and 00/100 (\$29,870,000.00) Dollars, an amount far in excess of the \$1.2 million per loss coverage that MPA procured, effectively covering only their own liability.
146. That, as a direct and proximate result of Defendant MPA's actions and omissions, the Plaintiff has suffered the damages set out herein.

**FOR A FIFTH CAUSE OF ACTION
(Bad Faith; Negligence; Gross Negligence; Recklessness; Willful and Wanton Conduct;
Intentional Infliction of Emotional Distress / Outrage against Defendant MPA)**

147. That the Plaintiff re-alleges the above paragraphs by reference as if recounted at length herein.
148. That, at all relevant times, the Plaintiff, Dr. Trant, and Defendant MPA were parties to an employment contract, entitled “Physician Employment Agreement” (hereinafter “contract”); wherein, in exchange for good and valuable consideration, MPA contracted to employ Dr. Trant to practice medicine in the field of pediatric cardiology.
149. That, the employment contract provided, among other things, that:



(Physician Employment Agreement, 4/1/2008, Section 3.4).

150. That, under the contract, Defendant MPA had the exclusive authority and control to procure liability insurance covering Dr. Trant “in such amounts and subject to such deductible limits as MPA deems appropriate in its sole discretion”; and, thus, MPA had actual authority over Dr. Trant with the power to affect Dr. Trant’s interest.

151. That the contract, like every contract entered into in South Carolina, contained an implied covenant of good faith and fair dealing.⁶
152. That the covenant of good faith and fair dealing governed the manner in which the parties to the contract carried out their contractual duties. Id.
153. That the contract's express terms gave MPA the power and the duty to "procure and maintain professional liability insurance on behalf of [Dr. Trant]..."
154. That the contract's express terms gave MPA the "sole discretion" to procure professional liability coverage in such amounts "as MPA deems appropriate."
155. That, by operation of law, the contract contained the implied covenant that MPA would exercise its "sole discretion" reasonably and in good faith for the purposes for which that discretion was vested in them; that is, to protect Dr. Trant from professional liability.
156. That, MPA purchased professional liability coverage from Defendant Mag Mutual (hereinafter "policy") with limits of \$1.2 million per loss; an amount sufficient to cover the limit to which MPA's own liability was capped by statute.
157. That, MPA failed to purchase professional liability in an amount sufficient to protect Dr. Trant from personal liability in the event a jury returned a verdict of gross negligence against him.
158. That, at the time the policy was purchased, there were options for Defendant MPA to procure higher limits of professional liability coverage.
159. That, at the time MPA procured the policy, they knew, or should have known with the exercise of reasonable diligence, that judgements against Dr. Trant, individually, in

⁶ See Road, LLC v. Beaufort Cnty., 443 S.C. 11, 25 (2024).

excess of the \$1.2 million statutory limits of MPA's liability, were possible in the event that a jury found Dr. Trant grossly negligent.

160. That, MPA breached its contractual duty of good faith and fair dealing, and acted unreasonably, in bad faith, and with willful, wanton, and reckless disregard of its obligations to Dr. Trant, by procuring only enough professional liability coverage to cover their own statutorily capped liability of \$1.2 million dollars per loss, and insufficient coverage to cover Dr. Trant for any liability in excess of that amount.
161. That, MPA failed to warn Dr. Trant that they had procured only enough professional liability coverage to cover their own statutorily capped liability of \$1.2 million dollars per loss, and insufficient coverage to cover Dr. Trant for any liability in excess of that amount.
162. That, Dr. Trant reasonably relied upon MPA to exercise their contractual discretion in good faith.
163. That, on February 3, 2025 the Court of Common Pleas, Twelfth Judicial Circuit, entered judgment in the Price action against MPA of Two Million Seven Hundred Eighty Thousand Eight Hundred Forty-Three and 84/100 (\$2,780,843.84), an amount covered by the Mag Mutual policy procured by MPA.
164. That, on February 3, 2025, the Court of Common Pleas, Twelfth Judicial Circuit, in the same action, entered judgment against Dr. Trant in the amount of Twenty-Nine Million Eight Hundred Seventy Thousand and 00/100 (\$29,870,000.00) Dollars, an amount far in excess of the \$1.2 million per loss coverage that MPA procured, effectively covering only their own liability.

165. That these acts and omissions by Defendant MPA constitute a breach of the covenant of good faith and fair dealing that arises in every contract, including the contract between MPA and Dr. Trant, were willful, wanton, and in reckless disregard of its obligations to the Plaintiff, Dr. Trant, and they calculatedly inflicted suffering and heedlessly and contemptuously disregarded Dr. Trant's emotional suffering.
166. That, as a direct and proximate result of Defendant MPA's actions and omissions, the Plaintiff has suffered the damages set out herein; specifically, MPA's intentional and reckless conduct inflicted severe emotional distress that no reasonable man could be expected to endure; to which MPA was aware he was susceptible; and which MPA were substantially certain would result from their conduct.

DAMAGES

167. That the Plaintiff re-alleges the above paragraphs by reference as if recounted at length herein.
168. That as a direct and proximate result of the above set out acts and omissions of the Defendants, the Plaintiff was damaged in the following particulars:
- a. actual and consequential damages, to-wit:
 - i. loss of Mag Mutual policy benefits;
 - ii. loss of MPA contractual benefits;
 - iii. liability for excess judgment;
 - iv. interest post offer of judgment;
 - v. loss of reputation personally and professionally;
 - vi. economic loss due to the pendency of the Price action, and the excess judgment;

- vii. emotional distress and anxiety;
- viii. physical manifestation of emotional distress and anxiety;
- ix. attorney's fees and costs, pursuant to S.C. Code §38-59-40.

169. That Mag Mutual unreasonably delayed and refused to make any attempt at all to effect a prompt, fair, and equitable settlement of the Price action in disregard of Dr. Trant's contractual rights, his reputation, his financial position, and his emotional and physical well-being.
170. That Mag Mutual's delay and refusal lasted, at a minimum, from November 7, 2022, on which date the Price Estate offered to settle the Price action for the \$1.2 Million per occurrence policy limit, for two years, through November 6, 2024; when on the third day of trial, Mag Mutual made a belated offer of the \$1.2 Million per occurrence policy limit, which was rejected by the Estate.
171. That, in addition to proximately causing Dr. Trant's liability for the excess verdict, Mag Mutual's unreasonable delay and refusal to offer any amount to settle the Price action for, at a minimum, two years from November 7, 2022 to November 6, 2024, proximately caused damage to Dr. Trant's personal and professional reputation, impaired his financial position, and severely damaged his emotional well-being to such a degree that he has suffered physical manifestations of his severe emotional distress; moreover, such damages would have resulted from Mag Mutual's unreasonable delay to attempt to effect a settlement for two years, even if the Estate had accepted Mag Mutual's offer on November 6, 2024.
172. That MPA's acts and omissions, including but not limited to their intentional choice to procure sufficient liability coverage from Defendant Mag Mutual to cover the limit to

which their own liability was capped by statute, but no coverage whatsoever to cover Dr. Trant in the event he was sued individually and a jury returned a verdict of gross negligence against him, proximately caused Dr. Trant's liability for the excess verdict, and also proximately caused damage to Dr. Trant's personal and professional reputation, impaired his financial position, and severely damaged his emotional well-being to such a degree that he has suffered physical manifestations of his severe emotional distress; moreover, such damages would have resulted from MPA's acts and omissions, even if the Estate had accepted Mag Mutual's offer on November 6, 2024.

173. That, in addition, the Plaintiff is informed and believes that he is entitled to an award of punitive damages in an amount to be determined by a jury.

WHEREFORE, the Plaintiff prays judgment against Defendants, Mag Mutual Insurance Company and McLeod Physicians Associates, II for actual, consequential, and punitive damages against the Defendants in an amount to be determined by a jury, along with the attorney's fees, pursuant to S.C. Code §38-59-40.

WUKELA LAW FIRM

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Florence, SC
 February 9, 2025