

FILED
STATE OF SOUTH CAROLINA Horry COUNTY)
COUNTY OF HORRY 2013 OCT 17 AM 10:35

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2005-CP-26-2805

MELANIE HUGGINS-WARD
CLERK OF COURT
Randall M. Green and Ann Green)

Plaintiffs,)

vs.)

Wayne B. Bauerle, M.D., and Wayne B.)
Bauerle, M.D., P.C.,)

Defendants.)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS
WAYNE B. BAUERLE, MD, AND
WAYNE B. BAUERLE, MD, PC'S
MOTION FOR SET OFF**

FACTS

This medical malpractice case was tried before a jury during the week of September 9, 2013, with the Honorable Steven H. John presiding. The jury found for Randall M. Green, under a medical malpractice theory, in the amount of \$2.3 million and Ann Green, under a loss of consortium theory, in the amount of \$550,000.

Prior to trial, Defendant Grand Strand Regional Medical Center, LLC ("Grand Strand") settled with the Plaintiffs for \$2 million. The ambulance company, Carolinas Medical Response, Inc., settled with the Plaintiffs for \$25,000.00. In addition, Mr. Green settled with the at-fault driver for \$100,000.00, and he received \$150,000.00 in settlement of his underinsured motorist claim. Likewise, Mrs. Green received \$100,000.00 in settlement with the at-fault driver and an additional \$75,000.00 in settlement of her underinsured motorist claim. Finally, the Medical University of South Carolina (MUSC) settled with the Plaintiffs for \$160,000 for medical negligence stemming from allegations that a sponge was left in Mr. Green's leg by staff at MUSC.

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SC Court of Appeals

Following the trial, the Defendants moved to off set the verdict with the amounts paid in settlement on behalf of Grand Strand, Carolinas Medical Response, the at-fault driver (including the underinsured motorist payments), and MUSC.

For the below reasons, the Defendants' Motion for Set Off is granted in part and denied in part. The Court grants a set-off for the amounts paid in settlement on behalf of Grand Strand and Carolina Medical Response, and denies a set-off for the amounts paid in settlement on behalf of the Medical University of South Carolina and the at-fault driver including the underinsured motorist payments.

LAW AND ANALYSIS

I. SET-OFF

"When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death: (1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater." S.C. Code Ann. § 15-38-50.

"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, 113, 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,

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471-72, 724 S.E.2d 188, 190 (Ct. App. 2012) (citing Hawkins v. Pathology Associates of Greenville, PA, 330 S.C. 92, 113, 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, 397 S.C. at 472, 724 S.E.2d at 190 (citing Ellis v. Oliver, 335 S.C. 106, 113, 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, 473, 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. Section 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." Ellis, 335 S.C. at 113, 515 S.E.2d at 272.

In the case at bar, this Court finds that the Plaintiffs' settlements with Grand Strand and Carolinas Medical Response were for the same injury, that being Mr. Green's paralysis and the loss of consortium by Mrs. Green, as was litigated against Dr. Bauerle and for which the jury returned its verdict against Dr. Bauerle.¹ The Court disagrees with the Plaintiffs' claim that they suffered different injuries. Likewise, the Court rejects the Plaintiffs' argument that their settlements were for different causes of action.² In accordance with Ellis v. Oliver and Smith v.

¹ For ease of discussion, the Defendants Wayne B. Bauerle, M.D., and Wayne B. Bauerle, M.D., P.C. shall be referred to collectively as "Dr. Bauerle."

² In opposing the Defendants' Motion for Set Off, the Plaintiffs argue that their settlement with Grand Strand and the verdict against Dr. Bauerle resulted from different causes of action. This Court disagrees. In making this argument, the Plaintiffs cite to the Order filed May 1, 2013, where Judge Larry Hyman granted partial summary judgment to Grand Strand on the causes of action for vicarious liability and negligent hiring, supervision and training. Nonetheless, Judge Hyman did not dismiss the Plaintiffs' negligence cause of action which was the

Widener, supra, the settlements from Grand Strand and Carolinas Medical Response shall be set-off because they concerned the same injury as the jury verdict against Dr. Bauerle.

However, the Court further concludes that the settlements on behalf of the at-fault driver (including the underinsured motorist payments) and MUSC concerned different injuries than the injury for which the jury found Dr. Bauerle liable. Specifically, the settlement with MUSC concerned an injury to Mr. Green's leg, which the Court finds to be a separate injury from Mr. Green's paralysis. In addition, the Court finds that the settlement with the at-fault driver concerning events occurring prior to Mr. Green's paralysis do not concern the same injury. Because those settlements involved different injuries, this Court rules those settlements are not subject to a set-off.

II. APPORTIONMENT OF THE SET-OFF

At trial, the jury found for Randall M. Green in the amount of \$2.3 million and Ann Green in the amount of \$550,000. Grand Strand settled with the Plaintiffs for \$2 million and Carolinas Medical Response settled for \$25,000 prior to trial. Those settlements did not provide for a specific allocation of the settlement amounts between Mr. Green and Mrs. Green. In making an equitable allocation of those settlement amounts between Mr. Green and Mrs. Green, the Court finds that it is reasonable, fair, and just to utilize the jury's verdict as to the Plaintiffs' claims. As a result, this Court will apply the percentage of the total verdict given to each Plaintiff by the jury to apportion the settlements between Mr. Green's claim for medical malpractice and Mrs. Green's claim for loss of consortium.

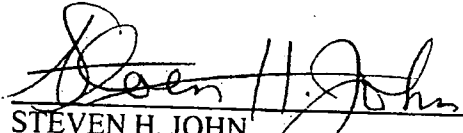
first cause of action in the Fourth Amended Complaint where the very same allegations of negligence were alleged against all Defendants including Grand Strand and Dr. Bauerle. Moreover, the settlement with Grand Strand occurred before any appeal rights were extinguished. The Plaintiffs still had the right until thirty days after final judgment was entered to appeal the grant of partial summary judgment by Judge Hyman, and the Plaintiffs' settlement with Grand Strand was intended to and did extinguish all claims against Grand Strand.

The South Carolina Supreme Court has specifically authorized the equitable *reallocation* of settlements in cases where the settling parties had agreed to a certain allocation between claims. See e.g., Rutland v. South Carolina Department of Transportation, 400 S.C. 209, 734 S.E.2d 142 (2012). Therefore, it logically follows that a court may make an equitable *allocation* in a case where the settling parties did not even agree to any particular allocation between claims.

In the case at bar, the jury found for Mr. and Mrs. Green for a combined verdict of \$2.85 million against the Defendants. The jury awarded Mr. Green \$2.3 million of the total \$2.85 million verdict, or 80.70% of the total verdict. The jury awarded Mrs. Green \$550,000 or 19.30% of the total verdict. Using that allocation, this Court rules that the \$2 million settlement with Grand Strand shall off set the verdict for Mr. Green in the amount of \$1,614,035.09 and the verdict for Mrs. Green in the amount of \$385,694.91. Likewise, the settlement between Plaintiffs and Carolinas Medical Response shall off set the verdict for Mr. Green in the amount of \$20,175.44 and the verdict for Mrs. Green in the amount of \$4,824.56.

The total amount to be set off is \$1,634,210.53 for Mr. Green's medical malpractice claim and \$390,519.47 for Mrs. Green's loss of consortium claim. Therefore, after applying these set-offs, the judgment against Defendants shall be reduced to \$665,789.47 for Mr. Green and \$159,480.53 for Mrs. Green. It is therefore

ORDERED that the Defendants' Motion for Set Off is granted in part and denied in part as set forth above. The Clerk of Court is directed to enter judgment in the amount of \$665,789.47 in favor of the Plaintiff Randall M. Green against the Defendants and to enter judgment in the amount of \$159,480.53 in favor of the Plaintiff Ann Green against the Defendants.

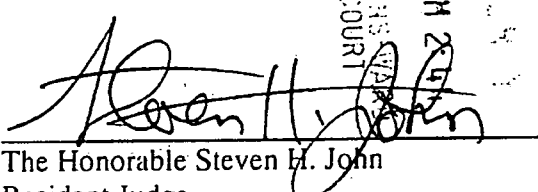

STEVEN H. JOHN
Resident Circuit Court Judge
Fifteenth Judicial Circuit

October 16, 2013
Conway, SC

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY)	FIFTEENTH JUDICIAL CIRCUIT
)	
RANDALL M. GREEN AND ANN GREEN,)	C/A # 2011-CP-26-7403
)	
Plaintiff,)	
)	
v.)	ORDER DENYING DEFENDANT'S
)	MOTION TO ALTER OR AMEND
)	ORDER GRANTING PARTIAL
)	SET-OFF
WAYNE B. BAUERLE, MD, and WAYNE B.)	
BAUERLE, MD, PC,)	
)	
Defendants.)	

This matter came before the Court on Defendant's Motion dated November 7, 2013, to Alter or Amend the Court's Order Granting Partial Set-Off. The Court has considered Defendant's Motion and all other matters in the Clerk of Court's file. The Court believes it addressed the matters in its previous Order. The Court finds that oral arguments would not assist it in this matter and that any additional arguments would be redundant and unnecessary. It is therefore

ORDERED that Defendant's Motion to Alter or Amend the Court's Order Granting Partial Set-Off is denied and the previous Order is reaffirmed in toto.

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 CLERK OF COURT

 The Honorable Steven H. John
 Resident Judge
 Fifteenth Judicial Circuit

February 13, 2014
 Conway, South Carolina

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