Exhibit A

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 AUG 13 PM 3 00

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Demetria Orange, as Next Friend of Ja'Qulynne B[redacted] a minor Plaintiff, v. Greenville Hospital System and Greenville Hospital System Partners in Health, Defendants.	C.A. No.: 2011-CP-23-6665 **Order Granting New Trial Nisi Additur**

RECEIVED
OCT 15 2014
SC Court of Appeals

Plaintiff Demetria Orange, as the adoptive mother and Next Friend of Ja'Qulynne B[redacted] a minor, tried this medical negligence case to a jury verdict. The jury awarded her $337,500.00 in actual damages against Defendant Greenville Hospital System ("GHS").[1]

The evidence at trial showed that in 2004 GHS physicians breached the standard of care in Ja'Qulynne's birth and delivery. Ja'Qulynne's mother experienced a protracted labor, and an ob-gyn medical emergency arose during Ja'Qulynne's delivery. The doctors attempted various procedures so the normal birth process could resume. When these proved unsuccessful, they applied traction. There was expert testimony that the traction used was excessive, tearing out the peripheral nerves and tissue from Ja'Qulynne's right shoulder, resulting in a permanent, debilitating and disfiguring brachial plexus injury, commonly known as "shoulder dystocia."

There was ample evidence that Ja'Qulynne's traumatic injury could only have been caused by malpractice.

[1] The jury found for Defendant Greenville Hospital System Partners in Health.

At the time of trial, Ja'Qulynne was ten years old. She had already endured two surgeries, the first of which allowed her to recover a reasonable amount of function in her right, dominant hand. Nevertheless, she still suffers from severe shoulder deformity and disability. She can only rotate her right arm 80 degrees; 180 degrees is normal. Her right arm visibly droops, and she can only raise it about halfway. Plaintiff now moves for this court to grant a new trial or, alternatively, a new trial nisi additur.

I. Motion for New Trial

The verdict was not so grossly inadequate as to be the result of passion, caprice, prejudice or other extraneous influence. The court finds no error occurred during voir dire or jury selection, and reaffirms its rulings made on the record. Plaintiff's claims regarding the jurors' alleged use of its own standard of care so as to require intentional conduct lack evidentiary support. The court has no proof of juror misconduct of any type.

Viewing the evidence in the light most favorable to GHS, there was sufficient evidence to send the issue of breach of duty and causation to the jury. While Dr. Ernst's opinion may well have been dubious—and was rejected by the jury—credibility cannot be decided by the court at the directed verdict stage. Instead, credibility must be presumed.

II. Motion for New Trial Nisi Additur

A. The Legal Standard

If the trial court, which had the opportunity to view the evidence as it was presented at trial, finds that the verdict did not adequately compensate Plaintiff for her injuries, the trial court may offer the Defendant a choice of either accepting an increased verdict amount or a new trial. The additur suggests an appropriate settlement amount. Vinson v. Hartley, 324 S.C. 389, 406,

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477 S.E.2d 715, 723 (Ct. App. 1996). This power was first approved by our supreme court in Graham v. Whitaker, 282 S.C. 393, 321 S.E.2d 40 (1984) and has been repeatedly reaffirmed:

> While the trial judge may not impose his will on a party by substituting his judgment for that of the jury, he may give the party an option in the way of additur or remittitur, or, in the alternative, a new trial. Jones v. Ingles Supermarkets, Inc., 293 S.C. 490, 361 S.E.2d 775 (Ct.App.1987). The consideration of a motion for a new trial nisi additur requires the trial judge to consider the adequacy of the verdict in light of the evidence presented. Patterson v. Reid, 318 S.C. 183, 456 S.E.2d 436 (Ct.App.1995). The trial judge who heard the evidence and is more familiar with the evidentiary atmosphere at trial possesses a better-informed view of the damages than this Court. Rush v. Blanchard, 310 S.C. 375, 426 S.E.2d 802 (1993). Accordingly, great deference is given to the trial judge. Id.
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> When a party moves 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 (1993). Therefore, on appeal of the denial of a motion for a new trial nisi, this Court will reverse when the verdict is grossly inadequate or excessive requiring the granting of a new trial absolute. O'Neal, supra.

Vinson v. Hartley, 324 S.C. 389, 406, 477 S.E.2d 715, 724 (Ct. App. 1996).

After Graham, our court of appeals in several decisions engrafted without explanation a requirement that the trial judge's findings that a verdict was inadequate must be "compelling." In 1993 the supreme court decided what is arguably the leading case on new trial nisi, O'Neal v. Bowles, 314 S.C. 525, 431 S.E.2d 555 (1993), which harmonized the case law and overruled several formulations of the court of appeals. O'Neal never addressed or mentioned the "compelling" requirement. Nevertheless, it silently resurfaced. Pelican Bldg. Ctrs. v. Dutton, 311 S.C. 56, 61, 427 S.E.2d 673, 676 (1993); Bailey v. Peacock, 318 S.C. 13, 455 S.E.2d 690 (1995). This gloss is tautological, for the trial court's finding of adequacy is already subject to reversal if it exceeds discretion, which includes being unsupported by the evidence. Our cases

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do not define "compelling"; instead the concept appears to be malleable and driven by subjective factors, as is commonly the case with such discretionary remedies. But the requirement sets additur curiously apart from the other tools a court may use to set aside a jury verdict it finds to be against the weight of the evidence: a trial court can order a new trial absolute if it finds the verdict amount shockingly inadequate, and need not give reasons for such a conclusion, much less compelling ones, and a judge acting as the Thirteenth juror can "hang" the jury without any explanation whatsoever. Compare Elam v. South Carolina Department of Transportation, 361 S.C. 9, 602 S.E.2d 772 (2004) (new trial absolute) with Folkens v. Hunt, 300 S.C. 251, 387 S.E.2d 265 (1990) (Thirteenth juror doctrine).

The discretion of trial courts to grant additur under similar circumstances has been upheld. In Graham, the trial court ordered a new trial nisi additur of several times the jury verdict, increasing actual damages from $10,000 to $67,500. In finding no abuse of discretion in the trial judge's order, the court noted "it cannot seriously be argued that plaintiff herein was adequately compensated or even nearly so, for the injuries she sustained." Id. at 405. In Waring v. Johnson, 341 S.C. 248, 533 S.E.2d 906 (Ct. App. 2000), the court of appeals affirmed the trial court's grant of a new trial nisi additur, noting "[t]he jury failed to consider Waring's pain and suffering in reaching its verdict." Id. at 960, 533 S.E.2d at 913. In Waring, the jury made an award to Plaintiff of his medical bills. The trial court granted Plaintiff's motion for new trial nisi additur and awarded nearly double what the jury awarded to adequately compensate Plaintiff for pain and suffering. The court of appeals noted that Waring "visited numerous doctors for years after the accident," "underwent surgery for a condition... aggravated by the wreck," and "found herself unable to continue her previous active lifestyle." Id. The court ultimately concluded, "indubitably, Waring is entitled to an award for pain and suffering." Id.

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When the damages evidence at trial has been "hotly contested" or disputed and the jury award is less than Plaintiff's medical bills, an order granting additur may be reversed if the sole ground supporting it is the trial judge's belief that the verdict should have included all of Plaintiff's medical costs. See Luchok v. Vena, 391 S.C. 262, 705 S.E.2d 71 (Ct. App. 2010) (improper for trial judge in case where damages were disputed to conclude Plaintiff's medical costs were "reasonable and necessary" and should have been included in full in jury award); Green v. Fritz, 356 S.C. 566, 571, 590 S.E.2d 39, 41 (2003) ("Where, as here, the evidence of damages is disputed, the mere listing of Green's claimed damages by the trial judge in his order does not constitute compelling reasons for invading the jury's province. The order offers no reasons upon which we can review the appropriateness of usurping the jury's decision on damages."). On the other hand, an additur that increased the jury award to slightly exceed the medical bills has been upheld as well within discretion. Patterson v. Reid, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995).

Riley v. Ford Motor Company, 408 S.C. 1, 757 S.E.2d 422 (2014) was a wrongful death case where the decedent's estate had presented $238,801 in economic damages. After a jury award of $300,000 in actual damages to the estate, the trial court granted additur finding the verdict inadequate in light of the evidence of the extent of noneconomic loss to the estate's beneficiaries. The court of appeals reversed, surmising that the jury had awarded $61,199 for noneconomic loss, and the trial court's "mere disagreement" with this portion of the award did not constitute a compelling reason warranting additur. The court distinguished the case "from those in which our court has affirmed the granting of additur when the jury altogether failed to award noneconomic damages. See, e.g., Waring v. Johnson, 341 S.C. 248, 255, 261, 533 S.E.2d 906, 910, 913 (Ct.App.2000) (finding "[t]he jury failed to make any award for other damages

such as pain and suffering," which amounted to "compelling reasons...justifying the grant of the nisi additur"); Williams v. Robertson Gilchrist Constr. Co., 301 S.C. 153, 155–56, 390 S.E.2d 483, 484–85 (Ct.App.1990), overruled on other grounds by O'Neal v. Bowles, 314 S.C. 525, 431 S.E.2d 555 (1993) (finding the trial court's reason for granting additur—the jury disregarded the testimony about the funeral bill and noneconomic losses—was compelling); Jones v. Ingles Supermarkets, Inc., 293 S.C. 490, 493-494, 361 S.E.2d 775, 777 (Ct.App.1987) (affirming the granting of additur where the jury's award of actual damages equaled the exact amount of the plaintiff's economic loss, but no damages for proven noneconomic loss)." Riley, 408 S.C. at 20 n. 10. The verdict here fits this category, as the jury failed to award Plaintiff noneconomic damages.

Although one could read Riley as suggesting that a trial court that does not agree with a jury's calculation of damages could never find a "compelling" reason for doing so, the touchstone for whether additur is permitted remains Graham's focus of whether the award adequately compensates the injured party. Although discussing remittitur, a famous decision by Judge Medina drives home the point: "[t]he very nature of the problem counsels restraint. Just as the trial judge is not called upon to say whether the amount is higher than he personally would have awarded, so are we appellate judges not to decide whether we would have set aside the verdict if we were presiding at the trial, but whether the amount is so high that it would be a denial of justice to permit it to stand." Dagnello v. Long Island R. Co., 289 F.2d 797, 806 (2d Cir. 1961).

B. The Trial Evidence

The jury awarded damages just below Ja'Qulynne's projected economic loss. This did not adequately compensate her given the damages evidence, which included undisputed proof of physical pain and suffering, permanent disability and injury to her right arm and shoulder,

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disfigurement and emotional pain and suffering by a child. A jury award that fails to make any award for these damages where a child has lost the use of her arm for the rest of her life cannot stand.

Several experts testified and wrote reports that were admitted as exhibits about the effect of Ja'Qulynne's injury on her future earning capacity. Ja'Qulynne's Vocational Rehabilitation Expert, Dr. Charles J. Vander Kolk, testified that but for Ja'Qulynne's disability, she most probably would complete high school and have a good chance to complete up to two years of technical school or a community college. She would not have physical or psychological factors that would likely interfere with her development and progress in a school setting. Dr. Vander Kolk opined she most probably would have entered the workforce earning $9.00 to $10.00 per hour in 2012 dollars. In five to seven years, she most probably would have earned in the range of $25,000 to $34,000 per year, and received normal increases in income during her work life.

Dr. Vander Kolk explained that physical impairment of one upper extremity is considered a severe disability. Ja'Qulynne will have little to no use of the right upper extremity in performing job tasks. Over 90% of jobs in the U.S. economy require good use of both upper extremities in order to be productive, and thus Ja'Qulynne will be extremely restricted in terms of access to the labor market. She will have great difficulty in finding and keeping an appropriate job. While her limitations may not exclude her from the labor force, her disability significantly reduces her opportunities and earning capacity. Ja'Qulynne's loss of earning capacity would most probably be in the range of 36% to 58%. However, considering her ambition, mental ability and support of her custodial parents, Dr. Vander Kolk surmised that the loss will most likely be in the range of 25% to 45% over her work life. Furthermore, psychological factors could impact Ja'Qulynne's earning capacity and reduce the above earning ability because she will

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most probably experience a mild psychological impairment as a result of the physical disability beginning in her teenage years.

Dr. Oliver Wood testified as an economic expert in the evaluation of economic loss in personal injury cases. He testified that over the course of her life, Ja'Qulynne would have earned $3.229 million, which results in a present cash value of $564,191.00. Dr. Wood opined that by working at a job that can accommodate her disability, she will offset 65% of that loss, or $366,718.00, resulting in a net loss in earning capacity of $197,463.00. Based on a Life Care Plan developed by Ms. Karen Shelton, RN, Dr. Wood calculated the present value of Ja'Qulynne's future medical care costs from the age eighteen until age 80.84, her life expectancy. Dr. Wood computed the costs of physicians, equipment, evaluations, therapy, home modifications, and other assistance and allowances and found the total future medical care costs, or cost of her life care plan after age eighteen, to be $162,833.00. Dr. Wood testified that this amount does not include past costs or costs incurred before Ja'Qulynne's eighteenth birthday. Furthermore, the amount does not include the cost of recommended future surgeries. Finally, the amount does not include any noneconomic damages, such as pain and suffering, disfigurement, or loss of enjoyment of life. By adding the net loss in earning capacity ($197,463.00) and the future medical care costs ($162,833.00), Dr. Wood concluded that Ja'Qulynne's total financial loss will be $360,296.00.

No testimony or other evidence was offered by defense counsel to refute any of Plaintiff's economic damages. No testimony was presented by anyone on behalf of the defense to question any of the future treatment, care or cost figures in the life care plan or lost earnings. In this light, the verdict of $337,500 appears even more inadequate because it is less than the Plaintiff's evidence of economic damages, and makes no award for noneconomic damages.

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The jury could have discounted the economics damages entirely, and awarded the curious figure of $337,500.00 for pain and suffering, permanent disfigurement, loss of enjoyment of life and mental distress. But this is unlikely, and the very nature of a general verdict prevents the parsing out of various elements of damages. Perhaps the jury did reject Plaintiff's economic damages wholesale, but that would mean the jury believed a person with a traumatic limitation of an arm will suffer no impairment of earning ability over her lifetime, a conclusion so at odds with reason and experience that no court could approve it. The essence of Defendant's cross examination of Dr. Wood and Dr. Vander Kolk was that Ja'Qulynne could possibly overcome her physical condition and other limitations and outperform her own expert's expectations. Yet in law such possibilities are called speculation, and cannot form the factual basis for the serious and important findings of a jury. If the tables were turned, and the jury had awarded economic damages exceeding the expert's calculation, the Defendant would be certain to claim the verdict bore no rational basis to the evidence. For example, suppose Plaintiff's expert had testified that Ja'Qulynne's economic damages were $100,000.00, but the expert also stated it was "possible" that she would suffer more than $100,000.00 in economic loss. If the ensuing economic loss award exceeded $100,000.00, then Defendant would surely maintain the jury's unilateral increase was driven by unwarranted speculation. Defendant would likely view such a result not simply as a jury exercising its prerogative to decide credibility, but as a runaway award fueled by rank guesswork.

The jury could also possibly have awarded the lost earnings but subtracted out the cost of future medical care. Yet they could not simultaneously ignore the obvious disfigurement and other noneconomic damages that Ja'Qulynne has suffered and will continue to suffer for the next 70 years.

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This court is acutely mindful that jury verdicts are entitled to substantial deference and may not be disturbed if they can be logically reconciled with the evidence.[2] Try as it might, this court cannot tie the verdict amount to any logical anchor. Efforts of courts to divine the murky workings of juries are often clumsy and almost always futile, and we would do well to remember Kant's injunction that when considering human behavior "we can never, even by the strictest examination, get behind the secret springs of action." It is true that the jury alone is entitled to weigh the evidence and gauge credibility; indeed a jury is not even required to accept uncontradicted testimony. But these abstract principles surely do not mean the judge who tried the case –and who "alone has the power to grant a new trial nisi when he finds the amount of the verdict to be merely inadequate or excessive," Vinson v. Hartley, supra (emphasis added) – is forbidden from doing what the law expressly empowers him to do when he finds the remedy fails to adequately compensate an injured party.

The jury's prerogative to find the facts is not immune from review. Black v. Hodge, 306 S.C. 196, 410 S.E.2d 595 (Ct. App. 1991) and other cases emphasize that a jury is free to reject undisputed testimony as part of its role in determining credibility. But this reasoning, carried to its logical ends, would effectively abolish the new trial and new trial nisi doctrines. No one would contend that the jury could have found, for instance, that Ja'Qulynne's arm and shoulder were not damaged, or that she had proven no pain and suffering, disability, or future economic loss. Cf. Collins v. Bisson Moving & Storage, Inc., 332 S.C. 290, 301, 504 S.E.2d 347, 353 (Ct. App. 1998) (principle of Black v. Hodge inapplicable where damages evidence admits of only one reasonable inference). Verdicts often pose imponderables, but when an award is conspicuously inadequate it is not enough for the court to throw up its hands and claim

[2] This court has never before granted a new trial nisi additur.

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powerlessness. Jury trials are not journeys into metaphysics; they are supposed to be attempts to achieve justice.

It is enough to say that an award of $337,500.00 on this record is not adequate. This finding is based on the compelling reason that it does not reasonably compensate a 10-year-old child for her grievous, life-altering injuries and make her whole, to the extent money damages can. The award was less than her economic damages, and made no apparent provision for her substantial noneconomic damages. This is more than a mere disagreement with the jury's verdict. It is the firm conclusion of this court—which saw and heard the witnesses, watched Ja'Qulynne demonstrate her deformity to the jury, scrutinized the exhibits, and observed the trial unfold over many days—that the jury's award failed to account for the profound magnitude of her loss.

IT IS THEREFORE ORDERED:

1. The court grants Plaintiff's motion for new trial nisi additur and increases the verdict to $650,000.00. GHS of course can refuse to accept this suggested settlement figure, and a new trial will be promptly scheduled.

IT IS SO ORDERED.

D. Garrison Hill
Circuit Judge

August 13, 2014
Greenville, South Carolina

A Certified Copy
Paul B. Williamson
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 8/13/14

Exhibit B.

FORM 4

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

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL E. HARRISON
2014 SEP 2 AM 11 02

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP236665

PLAINTIFF(S)	DEFENDANT(S)
Demetria Orange	**Greenville Hospital System** **Greenville Hospital System Partners in Health**
Submitted by:	**Attorney for:** ☐ Plaintiff ☐ Defendant ☐ 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: _____

☐ **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:

Defendants' Motion to Alter or Amend is respectfully denied. In addition, the August 18, 2014 Order Granting New Trial Nisi Additur only applies to Defendant Greenville Hospital System, as it was the only Defendant against whom the jury found.

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.**

Circuit Court Judge	2138	8/28/2014
	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on 9/2/14, and a copy mailed first class or placed in the appropriate attorney's box on 9/2/14, to attorneys of record or to parties (when appearing pro se) as follows:

Edward L. Graham, Esq. P.O. Box 550 Florence, SC 29503	J. Ben Alexander, Esq. ONE North Main, 2nd Floor Greenville, SC 29601
ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**

Court Reporter	Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

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

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