

# EXHIBIT A

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

Heather Anne Bundy,

Plaintiff,

CIVIL ACTION NO: 2015-CP-28-00852

vs.

**RECEIVED**

Thomas Elroy Jett and Haier America  
Research & Development Co., LTD,

OCT 05 2018

Defendants,

**SC Court of Appeals**

W. H. Bundy, Jr.,

Plaintiff,

CIVIL ACTION NO: 2016-CP-28-00758

vs.

**ORDER DENYING PLAINTIFF'S  
POST-TRIAL MOTIONS**

Thomas Elroy Jett and Haier America  
Research & Development Co., LTD,

Defendants,

This matter came before the Court through Plaintiff's Post-Trial Motions, which were filed with the Court on February 2, 2018. Oral arguments on those motions were heard on July 26, 2018. A Form 4 Order denying the Plaintiff's Post-Trial Motions was filed on August 1, 2018, and this formal order supplements that prior Form 4 Order (attached as Exhibit A).

These cases were tried before a Kershaw County jury in a trial which began on January 16, 2018 and concluded on January 23, 2018 when the jury found in favor of the Defendants as to all causes of action (Verdict Form attached as Exhibit B).

In the present motion, the Plaintiffs move for an Order from this Court for JNOV, a new trial, and/or an Order altering and amending the Judgment entered for the Defendant on January 23, 2018, citing seven separate grounds for relief. Each of these grounds was previously ruled on by the Court during Motions in Limine or during the course of the trial. Each of the grounds raised in the Plaintiff's Motion were either properly ruled on by the Court or waived. After

careful reconsideration of each of these grounds, thorough review of the written memoranda provided by both the Plaintiffs and Defendants, and after hearing oral arguments from both the Plaintiffs and the Defendants, the Plaintiffs' Motion for JNOV, Motion for a New Trial, and Motion to Alter or Amend the Judgment Entered in Favor of the Defendants are DENIED as to each of the following grounds:

1. **Exhibit 13: Defendant Jett's diagram**

The Plaintiff alleges Defendant Jett's diagram prepared by him following the motor vehicle accident which is the subject of this litigation is inadmissible hearsay and was improperly admitted into evidence. The Court disagrees. Defendant Jett's diagram, which he prepared immediately after the accident, was admissible based on Rules 701 and 803. Under Rule 701, "if the witness does not testify as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions and inferences which are: (a) rationally based on the perception of the witness." Defendant Jett testified that he drew a diagram and gave a brief statement of how the accident happened after the accident. The Court concludes that Jett's diagram and statement explaining the diagram was "rationally based on his perception as a witness to the accident" and therefore admissible under Rule 701.

The Court also finds the diagram was properly admitted under Rule 803(6) as a memorandum or record made at or near the time, by a person with knowledge, and kept in the ordinary course of business through Defendant Haier's regular practice in the investigation of the accident.

2. **Failure to Grant Plaintiff's Motion for Directed Verdict on the Issue of Liability**

The issue of liability was a jury question that hinged on the credibility of the Plaintiff and the Defendant. The most important issue on liability boiled down to which party was in the

median first: Mrs. Bundy or Mr. Jett. The Plaintiff claimed she was in the median first, and the Defendant claimed he was in the median first. At the directed verdict stage, the Court must view all of the evidence and testimony in the light most favorable to the non-moving party, the Defendant. Based on the testimony and evidence provided by the Plaintiffs, the Defendants, the investigating officer, and multiple experts, there was a clear question of fact for the jury to determine liability. Liability was clearly a jury issue, which was properly decided based on the testimony and evidence submitted.

**3. Testimony of Expert Brian Boggess**

Prior to Brian Boggess's testimony, the Court allowed a proffer of his testimony and extensive cross-examination by the Plaintiff. The Court found that Mr. Boggess's testimony complied with State v. Council, 515 S.E.2d 508 (1999). Pursuant to State v. Council, Boggess testified regarding his publications and peer review of his technique: prior application of the method to the type of evidence involved in a case; quality control procedures to ensure reliability; and consistency of his method with recognized scientific laws and procedures.

Moreover, the Court found that Mr. Boggess is a licensed professional engineer who completed Traffic Accident Reconstruction Course I and II at Northwestern University, authored 25 peer-reviewed technical papers over the last ten years, and testified approximately 7 times as an expert in accident reconstruction and biomechanics in state courts in South Carolina. The Court properly qualified Boggess as an expert in the field of accident reconstruction and biomechanics. It is clear from Boggess's testimony he was properly allowed to testify in the fields of biomechanics and accident reconstruction. Any issues the Plaintiffs raised as to his methods and opinions went to the weight of his testimony and not its admissibility, and the Plaintiffs cross-examined Boggess on those issues before the jury.

4. **Plaintiff's Motion for Directed Verdict on the Issue of Damages for Medical Bills**

Again, at the directed verdict stage, the Court must view all of the evidence and testimony in the light most favorable to the non-moving party, the Defendant. Based on the testimony and evidence provided by the Plaintiffs, the Defendants, the investigating officer, and multiple experts, there was a clear question of fact for the jury to determine as to causation of the Plaintiffs' alleged injuries. What damages the Plaintiff suffered, if any, was clearly a jury issue, which was properly decided based on the testimony and evidence submitted.

The jury was presented with evidence that the Plaintiff's medical bills and life care plan were not proximately caused by her accident with the Defendant. Plaintiff admitted to prior treatment for neck and back pain; her chiropractor admitted that Plaintiff had chronic and severe neck and back pain in 2008 and for years prior; expert testimony revealed Plaintiff's neck and back pain existed for 20-30 years; and Defendants' biomechanical and accident reconstruction expert testified that the nature of the impact was very minor. The Camden Police photos, admitted into evidence by consent, also showed the minor nature of the impact. All of this evidence raised a question of whether the Plaintiff's medical treatment and life care plan was proximately caused by this accident and not her prior and extensive history of neck and back pain. That question of fact was solely the province of the jury.

5. **Request for Production of the Truck**

The Court properly ruled that the Plaintiff's discovery request for production of the Defendant's truck was not proper evidence for the jury. Testimony was provided to the Court that the Plaintiffs sought to inspect the vehicle. After argument, the Court concluded that issue of the inspection of the truck should have been addressed by the Plaintiff in a Motion to Compel, which the Plaintiff admittedly did not file against the Defendants.

If there was a discovery dispute or scheduling problem regarding Plaintiffs' inspection of the truck, the issue was waived by the Plaintiffs by not filing a Motion to Compel. This discovery issue was not proper evidence for the jury as the Court determined.

Further, the Plaintiffs were allowed and presented to the jury, through the direct examination of his expert and on closing argument that their expert was not allowed to view the Defendant's vehicle after a request was made by the Plaintiffs to inspect that vehicle.

**6. Jury Charges**

The Plaintiffs submitted their jury charges to the Court without objection from the Defendants. Oral arguments on this motion confirmed the Plaintiff had no objection to the charges issued to the jury. The court finds its version of the charges, and the charges the Court selected to use based on the recommendations of counsel, were proper. Further, any objections to the Court's charges were not properly raised at trial.

**7. The Jury Verdict was Contrary to the Evidence**

The jury was faced with significant questions of liability and proximate cause of the Plaintiff's injuries. The main issue as to liability was who got into the median first. The jury heard a week of testimony and evidence, including photos taken immediately after the accident before the vehicles were moved from the scene. There was evidence for a jury to conclude that the Defendant's tractor trailer was in the median first based on his testimony, the testimony of both experts, and the photos of the scene and vehicles. Moreover, the jury heard testimony from the Plaintiff, her treating doctors, and the Defendant's experts which presented questions of fact as to the causation of the Plaintiff's injuries.

The Plaintiff had the burden to prove the Defendants were negligent by a preponderance of the evidence. The Plaintiff also had the burden to prove her injuries were proximately caused

by this motor vehicle accident. The jury decided these issues based on the evidence and testimony and determined the credibility of the parties. These questions were solely within the province of the jury and properly decided based on the evidence presented.

Therefore, the Plaintiffs' Motion for JNOV, Motion for a New Trial, and Motion to Alter or Amend the Judgment entered in favor of the Defendants are DENIED. It is so ORDERED.

JUDGE'S ELECTRONIC SIGNATURE TO FOLLOW.

Columbia, South Carolina  
August \_\_, 2018



Kershaw Common Pleas

**Case Caption:** Heather Anne Bundy VS Thomas Elroy Jett , defendant, et al  
**Case Number:** 2015CP2800852  
**Type:** Order/Other

So Ordered

s/DeAndrea Gist Benjamin, #2161