STATE OF SOUTH CAROLINA COUNTY OF YORK	IN THE COURT OF COMMON PLEAS FOR THE SIXTEENTH JUDICIAL CIRCUIT
STEPHEN R. EDWARDS, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF STEVEN REDFEARN STEWART, Plaintiff, v. **SCAPA WAYCROSS, INC.** Defendant.	**C/A No.: 2013-CP-46-00368** **ORDER RE: POST-TRIAL MOTIONS**

The above-captioned case came before this Court pursuant to Plaintiff's Second Amended Complaint asserting causes of action for survival and wrongful death against Defendant Scapa Waycross, Inc. ("Scapa"), and requesting awards of damages against Scapa based on claims of its negligence, strict products liability, and breach of implied warranty. A jury trial commenced January 24, 2018. After receiving myriad testimony and evidence over several days, on February 9, 2018 the jury returned a verdict in favor of the Plaintiff on claims of negligence and breach of implied warranty. The jury's awarded Plaintiff $600,000 in compensatory damages on the survival cause of action and $100,000 in compensatory damages for wrongful death. Both parties sought certain relief from the jury's verdict, with the Plaintiff filing a Motion for New Trial *Nisi Additur*, and Scapa filing motions for Judgment Notwithstanding the Verdict, Discovery of Settlements, Setoff, and Reallocation of Plaintiff's Settlement Proceeds. For the reasons set forth below, Plaintiff's Motion for New Trial *Nisi Additur* is GRANTED in part and denied in part, Defendant's Motions for Judgment Notwithstanding the Verdict, Discovery of Settlements, and Reallocation of Plaintiff's Settlement Proceeds are each DENIED; and Defendant's Motion for Set-off under

S.C. Code § 15-38-50 is GRANTED.

I. Plaintiff's Motion for New Trial *Nisi Additur*

a. Legal Standard

The consideration of a motion for a new trial *nisi additur* requires the court to consider the adequacy of the verdict in light of the evidence presented. *Proctor v. Dep't of Health & Envtl. Control,* 368 S.C. 279, 320, 628 S.E.2d 496, 518 (Ct. App. 2006); *Waring v. Johnson,* 341 S.C. 248, 257, 533 S.E.2d 906, 911 (Ct. App. 2000); *Vinson v. Hartley,* 324 S.C. 389, 405, 477 S.E.2d 715, 723 (Ct. App. 1996). A trial court may grant a new trial *nisi additur* when it finds the amount of the verdict to be "merely inadequate". *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); *Green*, 356 S.C. at 570, 590 S.E.2d at 41; *Vinson* 324 S.C. at 406, 477 S.E.2d at 723. A trial court may grant *additur* upon finding inadequate that the portion of the award reasonably attributable to non-economic damages. *See Riley v. Ford Motor Co.*, 414 S.C. 185, 188, 777 S.E.2d 824, 826 (2015)(upholding trial court's granting of *nisi additur* in the (additional) amount of $600,000 in product liability action with $228,000 in economic damages); *Graham v. Whitaker*, 282 S.C. 393, 405, 321 S.E.2d 40, 45 (1984) (upholding new trial *nisi additur* of several times the jury verdict, increasing actual damages from $10,000 to $67,500). Our Supreme Court has clarified that *additur* may be appropriate even when the jury has awarded some amount for noneconomic damages. *Riley*, 414 S.C. at 194, 777 S.E.2d at 829-30.

When considering a new trial *nisi* or *nisi additur*, it is proper to compare the jury's verdict to damages awards in comparable cases. See *Lucht v. Youngblood*, 266 S.C. 127, 136, 221 S.E.2d 854, 858 (1976); see also *Kapuschinsky v. US.*, 259 F. Supp. 1, 8 (D.S.C. 1966) ("Admittedly not controlling, but worthy of note are treatments of verdicts from all over this country").

The decision to grant a new trial *nisi additur* will not be disturbed on appeal unless the trial judge's findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law. *Proctor*, 368 S.C. at 320, 628 S.E.2d at 518; *Waring*, 341 S.C. at 256, 533 S.E.2d at 910. Great deference is given to the trial judge because "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 [the appellate court]." *Rush v. Blanchard*, 310 S.C. 375, 381, 426 S.E.2d 802, 806 (1993).

b. Evidence and Analysis

The primary issues of dispute at trial were the extent of Decedent Steven R. Stewart's exposure to asbestos from dryer felts manufactured by Defendant Scapa Waycross, Inc. ("Scapa"), and the causation of his malignant mesothelioma from that exposure. The jury resolved those issues in Plaintiff's favor, finding that Scapa was negligent, and that Scapa's wrongful conduct was a substantial factor in causing Mr. Stewart's mesothelioma. While liability was fiercely contested, the evidence of the Mr. Stewart's economic damages was not disputed in any way. Plaintiff and Scapa stipulated as to economic damages by way of Mr. Stewart's medical expenses. Scapa did not offer any evidence tending to contradict economic damages, nor did Scapa contradict Plaintiff's evidence of non-economic damages consisting of Mr. Stewart's pain and suffering, loss of enjoyment of life, and mental anguish.

Economic damages were unequivocally established at $241,000 (the stipulated amount of of Mr. Stewart's medical expenses). The Plaintiff introduced extensive evidence as proof for non-economic damages, resulting in a well-developed record detailing the physical pain Mr. Stewart lived in for over one-year, including how he endured multiple chemotherapy treatments, thoracenteses, a major invasive surgery, and ultimately died a very painful death from

mesothelioma.

The undisputed evidence shows the rapid deterioration and ultimate death of a 69-year-old previously active man. Mr. Stewart's life was torn apart by mesothelioma. Mr. Stewart was diagnosed with mesothelioma on October 24, 2012. Prior to getting sick, he was enjoying retirement, traveling, gardening, and spending time with his children and grandchildren. He lost a substantial amount of weight. The severe pain and limitations of his disease prevented Mr. Stewart from doing the things he loved. He even had to give up his beloved dog "Buddy" because he was no longer able to adequately care for his canine companion.

When asked about the effect of mesothelioma on his life and interaction with his family, Mr. Stewart described how he was just too exhausted to do things like drive to meet his family; he became emotional and could only say: "I never imagined that my life would come to what it is." Trial Depo. 67:9-24. In the midst of such terrible anguish, Mr. Stewart was determined to delay his impending death. He suffered greatly through multiple rounds of chemotherapy, He opted to undergo a pleurectomy, which his surgeon, Dr. David Harpole, described as a "maximally invasive" procedure which involved removing his rib and scraping out the tumor.

Unfortunately, Mr. Stewart was not able to get that extra time he hoped for; despite undergoing the pleurectomy he ultimately succumbed to mesothelioma within one year of diagnosis.

After the close of evidence, the jury was charged and instructed to consider Plaintiff's claims of negligence, strict products liability, and breach of implied warranty. The jury was instructed that "[a]ctual damages are designed to compensate a party for their loss and to make that party as whole as near as money can do and to put him or her in the same position they were in before the incident or accident occurred. Actual damages would be the actual losses and

expenses the plaintiffs have incurred." The jury was instructed on four categories of actual damages—medical expenses, pain and suffering, loss of enjoyment of life, and mental anguish. The evidence supported damages in each of these categories, and accounting for over a decade of life Mr. Stewart never got to experience. Despite returning a verdict for the Plaintiff on the negligence and breach of implied warranty claims, the jury only awarded $600,000 in compensatory damages for the survival cause of action and $100,000 in compensatory damages for the wrongful death cause of action.

Damages awards for pain and suffering in comparable mesothelioma cases range from $1.5 million to more than $20 million. See, e.g., *Keene v. CNA Holdings, LLC*, No. 2013-CP-42-03915 (S.C. Ct. Comm. Pleas Jan. 8, 2016) (upholding award of $2 million in survival damages, $5 million in loss of consortium damages, and $5 million in wrongful death damages); *Garvin v. Agco Corp.*, No. 2012-CP-40-6675 (S.C. Ct Comm. Pleas Nov. 14, 2014) (remitting the jury verdict to award $1.5 million for the plaintiff's pain and suffering and upholding the loss of consortium award of $1 million); see also *Bobo v. Tennessee Valley Authority*, 855 F.3d 1294 (11th Cir. 2017) (affirming in relevant part the district court's award of $3 million in pain and suffering damages for woman with asbestos-related mesothelioma); *Romano v. Metropolitan Life Ins. Co.*, 221 So.3d 176 (La. Ct. App. 2017)(increasing pain and suffering award from $500,000 to $1.5 million in mesothelioma case where plaintiff had endured invasive surgery and was expected to die from his disease); *John Crane, Inc. v. Linkus*, 190 Md. App. 217, 988 A.2d 511 (Md. Ct. App. 2010) (upholding $15,335,274 verdict for living shipyard worker diagnosed with mesothelioma at the age of 70, of which $335,000 was medical expenses and $15 million was noneconomic loss); *In re New York City Asbestos Litigation* (Re D'Ulisse), 16 Misc.3d 945, 842 N.Y.S.2d 333 (N.Y. Sup. Ct. 2007) (denying motion to reduce award of $20 million in past and future pain and suffering to

mesothelioma victim and $5 million to his wife of 51 years); *Williams v. CSX Transp., Inc.*, 176 N.C.App. 330, 626 S.E.2d 716 (N.C. Ct. App. 2006) (affirming verdict in which railroad worker with mesothelioma was awarded $7.5 million in pain and suffering damages); *Goede v. Aerojet Gen. Corp.*, 143 S.W.3d 14, 17, 27-28 (Mo. Ct. App. 2004) (upholding award of $2 million for pre-death pain, suffering and emotional distress where 43-year-old had survived one year with mesothelioma).

The South Carolina Supreme Court has held that the goal of compensatory damages is "to restore the injured party, as nearly as possible through the payment of money, to the same position he or she was in before the wrongful injury occurred." *Clark v. Cantrell*, 339 S.C. 369, 378-379, 529 S.E.2d 528, 533 (2000). In the court's opinion, the jury's award of damages was insufficient for this purpose.

It is fair to read the jury's $600,000 survival damages verdict as awarding the stipulated medical damages of $241,000 plus about $359,000 for non-economic damages. That is both inadequate and unduly conservative. The jury heard substantial, compelling evidence that Mr. Stewart's pain and suffering was severe and extensive. $359,000 is an inadequate award of damages for just pain and suffering. Regardless of how the jury may have arrived at such a sum, their total survival damages award of $600,000 fails to accord with the evidence and falls inexplicably short of providing fitting compensation for the magnitude of Mr. Stewart's losses.

What additional amount is required to make the award adequate? As Plaintiff points out, damages awards in similar cases have involved a 10-times multiplier to medical damages. See, e.g. *Jolly v. General Electric, et al.*, No. 2016-CP-42-1592 (S.C. Ct. Comm. Pleas) a mesothelioma case tried in Spartanburg County, the court determined it appropriate to multiply medical damages by a factor of 10 to arrive at a fair non-economic damages award. Order Denying Defendant's

Post-Trial Motions and Granting Plaintiff's Motion for New Trial *Nisi Additur*, at p. 9, *Jolly v. General Electric, et al.*, No. 2016-CP-42-1592 (S.C. Ct. Comm. Pleas). Employing a 10-times multiplier here would yield a total survival damages award of $2,410,000. The court declines to adopt such a multiplier in this case. Instead, the court finds it necessary and appropriate to increase non-economic damages by $400,000 so as to reach a total survival damages award of $1,000,000.

The jury awarded $100,000 for wrongful death, which Plaintiff submits is inadequate to compensate Mr. Stewart's family for their loss. The general elements of damages recoverable for wrongful death 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, at 251, 387 S.E. 2d 713, at 714, (Ct App. 1993). The court instructed the jury as to damages for loss of companionship and the jury heard evidence as to how Mr. Stewart's mesothelioma prevented him from spending time with his children and grandchildren before he passed away at the age of 69. The jury heard how Mr. Stewart was collecting retirement, actively involved in his children and grandchildren's lives, including both his time and financial support, and was absolved of any contributory negligence regarding his untimely and painful death. The record shows that Mr. Stewart's children suffered substantial losses. Indeed, the evidence in the record would reasonably support a significantly greater compensatory damages award for wrongful death. However, while the award is certainly conservative, this trial judge does not see sufficient reason to disturb it.

c. Ruling

For the reasons discussed above, the court GRANTS Plaintiff's Motion for New Trial *Nisi Additur* in part, increasing the survival damages award from $600,000 to $1,000,000 but leaving

the jury's $100,000 wrongful death damages award undisturbed.

II. Defendant's Motion for Judgment Notwithstanding the Verdict

a. Issues Raised

As grounds for it motion for judgment notwithstanding the verdict, Scapa alleges that Plaintiff failed to show actionable exposure to asbestos and that Plaintiff's expert testimony regarding cumulative exposure is not reliable. The Court denies Scapa's motion on both grounds.

b. Legal Standard

In ruling on a JNOV motion, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the non-moving party. *Law v. S.C. Dept. of Corrections*, 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006); *Swicegood v. Lott*, 379 S.C. 346, 351, 665 S.E.2d 211, 213 (Ct. App. 2008); *Israel v. Carolina Bar-B-Que, Inc.*, 292 S.C. 282, 287, 356 S.E.2d 123, 127 (Ct. App. 1987). The court must deny the motion for JNOV when the evidence yields more than one inference, or its inference is in doubt. *Id.*; *Steinke v. South Carolina Dep't of Labor, Licensing, & Regulation*, 336 S.C. 373, 386, 520 S.E.2d 142, 148 (1999). The jury's verdict may not be overturned if *any evidence* sustains the factual findings implicit in its decision. *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.W.2d 408, 419 (Ct. App. 2000); *Smalls v. South Carolina Dep't of Educ.*, 339 S.C. 208, 215, 528 S.E.2d 682, 686 (Ct. App. 2000).

c. Evidence and Analysis

The primary issues disputed at trial were the extent of Decedent Steven R. Stewart's exposure to asbestos from dryer felts manufactured by Scapa Waycross, Inc. ("Scapa"), and the

causation of his malignant mesothelioma from that exposure. The jury resolved those issues in Plaintiff's favor, finding that Scapa was negligent, and that Scapa's wrongful conduct was a substantial factor in causing Mr. Stewart's mesothelioma.

A plaintiff in an asbestos case may defeat summary judgment with evidence of "actionable exposure" to a defendant's asbestos product. *Henderson v. Allied Signal, Inc.*, 373 S.C. 179, 185, 644 S.E.2d 724, 727 (2007). To determine whether exposure is actionable, South Carolina courts apply the "frequency, regularity and proximity" factors set forth in *Lohrmann v. Pittsburgh Corning Corp.*, 782 F.2d 1156 (4th Cir. 1986). *Id.* Therefore,"' [t]o support a reasonable inference of substantial causation from circumstantial evidence, there must be evidence of exposure to a specific product on a regular basis over some extended period of time in proximity to where the plaintiff actually worked.'" *Id.* (quoting *Lohrmann*, 782 F.2d at 1162). The Court finds that the *Henderson* causation standard is satisfied by the evidence presented at trial.

Both circumstantial and direct evidence was introduced tending to show asbestos-containing dryer felts manufactured by Scapa were regularly and frequently used on the machines which Mr. Stewart worked on and around during the time he worked on said machines. Mr. Stewart identified Scapa products via their shipping boxes. Mr. Steele identified Scapa as well. Scapa admitted that there were at least 23 asbestos-containing Scapa felts. Scapa corporate representative Harry Merk testified that he could not verify all sales were recorded due to document destruction that occurred in 1974.

Mr. Stewart and his co-workers explained how each of the various job on Paper Machine Number 1 would regularly expose the workers to asbestos. Mr. Stewart testified that he worked each of the jobs that involved relatively more frequent, closer proximity and/or regular exposure to activities releasing respirable asbestos, which Mr. Steele and other coworkers confirmed.

Messrs. Stewart, Steele, Ward and Hegler all testified with particularity that when a worker occupied the position of utility—which all of them did as an entry-level position—that they were in the basement receiving the felts at the end of the paper-manufacturing process. The testimony indicated that at this point the felts were in the dry part of the process, by which time the felts were dry and contained about five percent moisture content, much like the paper itself did at that dry part of the process. They testified that they had to manhandle these felts, that they did not do that while the machines were running, but rather, they shut off the machines and the felts would sometimes be frayed off of the cans and the various loops and configurations they went through at the dry end of the process and push them down an opening into the basement. And when they were in the basement, they were folded up and manhandled to get them in a manageable position, then placed on pallets and stacked in a corner. Often, in order to get them out to disposal, they were quite often cut up with a knife and that cutting threw a lot of dust into the atmosphere, quite apart from the dust that was in the atmosphere from blowing dust with an air hose on the floor, but just the process of handling these felts threw a lot of dust in the air. All of the workers also testified as to the process for blowing on these felts when they were still running on the machines. They also testified as how they would shut the machine off and use the air hoses to blow directly on the felts to try to dislodge debris and paper and so forth and that all kinds of dust would go into the atmosphere from the felts and from the material that was being blown off of the felts. The record included extensive expert testimony from Drs. Millette and DePasquale which, in part, stated that the process of handling the felts and blowing off the felts put respirable asbestos into the air.

Scapa offered a lot of testimony about the use of resin coatings on many of their asbestos yarns. Regardless of how effectively the resin may have encapsulated the asbestos, common sense

would certainly dictate that the resin would wear off over time with the felts constantly spinning around. Indeed, Scapa acknowledged that their dryer felts deteriorate over time.

The evidence was certainly sufficient for the jury to conclude that Mr. Stewart had frequent, regular, and proximate exposure to asbestos from Scapa dryer felts and to support the jury's determination that Mr. Stewart's mesothelioma was caused by his exposure to Scapa's asbestos products for which they are responsible.

The parties each presented voluminous conflicting expert testimony on the element of causation. Defendant's experts contended that chrysotile asbestos cannot cause mesothelioma in general, and more particularly questioned whether it was possible for asbestos from their products to have contributed to Mr. Stewart's contacting mesothelioma. Notwithstanding, Plaintiff offered convincing evidence that chrysotile asbestos can cause mesothelioma, that Mr. Stewart had a vast amount of plaques in his lungs, and that that plaque by his respiration of asbestos fibers.

The parties also offered conflicting expert testimony concerning whether and what other sources of asbestos Mr. Stewart may have been exposed to, with a good deal of testimony concerning the extent thermal pipe insulation may have been used at Bowater, what such insulation may have been made of, whether and how it may have been a contributing factor to Mr. Stewart's mesothelioma relative to Scapa's asbestos-containing dryer felts.

Scapa contests the admissibility of certain expert testimony regarding causation. The admissibility of expert testimony is governed by South Carolina Rule of Evidence 702. That rule provides that "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." S.C. R. Evid. 702. Courts evaluating the admissibility of scientific expert evidence

"must find the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable." *State v. Council*, 335 S.C. 1, 20,515 S.E.2d 508 (S.C. 1999). The reliability of scientific evidence is evaluated based on several factors, including: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures. *State v. White*, 382 S.C. 265,274,676 S.E.2d 684 (S.C. 2009) (citing *Council*, 335 S.C. at 19).

"[C]ross-examination, presentation of contrary evidence, and careful instruction on the burden of proof" are the ordinary means to attack an opposing expert. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 596 (1993). Courts should not exercise their gatekeeping responsibility by excluding expert testimony that falls within the range of matters on which reasonable experts can disagree. See *Milward v. Acuity Specialty Prods. Group, Inc.*, 639 F.3d 11, 22 (1st Cir. 2011). While the trial court may look at the reliability of the expert's methodology, it is for the jury to determine the soundness of the facts underlying the expert's opinion and the correctness of the expert's conclusions. See *Id.* 22.

Plaintiff's experts testified that mesothelioma can be caused by brief or low-level cumulative exposures. They should be permitted to rely on this basic medical fact in reaching their opinion in. That does not mean that they concluded that "each and every exposure" that Mr. Stewart had was a substantial factor in causing his disease. This distinction was recently explained by the Pennsylvania Supreme Court in an opinion upholding the admissibility of Dr. Frank's causation opinions. See *Rost v. Ford Motor Co.*, 151 A.3d 1032, 1045-46 (Pa. 2016). The court found his testimony to be entirely compatible with the substantial factor causation standard. *Rost v. Ford Motor Co.*, 151 A.3d 1032, 1045-46 (Pa. 2016). The Eleventh Circuit has held the same. In *Bobo*

v. Tennessee Valley Auth., 855 F.3d 1294 (11th Cir. Apr. 26, 2017), the court noted that expert testimony that "there is no evidence that there is a threshold level of exposure below which there is zero risk of mesothelioma," and that "all 'significant' exposures to asbestos 'contribute to cause mesothelioma,'" is not the same thing as saying that each and every exposure is causative. *Id.* The expert's causation opinion was admissible because it was based on the exposure facts in the case and was supported by scientific literature, including the Helsinki Criteria. *Id*

Judge Robreno of the federal asbestos MDL has similarly found that a "cumulative exposure" opinion is not the same as the "each and every exposure" opinion. The court agreed with the plaintiff that the "cumulative exposure" opinion is different "in substance and by definition" from the "any exposure" opinion. *Mortimer v. A.O. Smith Corp.*, 2015 WL 12533103, at *8 (E.D. Pa. Oct. 23, 2015). The court therefore rejected the defendant's argument that the experts' opinions were inadmissible on grounds that they are the same as the "any exposure" opinion. *Id.*

As recognized by these other distinguished courts, which have all admitted the causation testimony of Dr. Frank and/or Dr. Brody, it is not proper to evaluate the experts' medical opinions with reference to only one narrow part of the basis for the opinion. In reaching their opinions, Drs. Frank and Brody both relied on their many years of experience in the area of asbestos-related diseases, as well as a broad range of evidence including epidemiology and other scientific literature, the dose-response relationship, the science regarding the low levels of exposure that can cause mesothelioma, the exposure levels documented from working with dryer felts, and the facts surrounding Mr. Stewart's exposure to visible dust from Scapa's felts.

The specific causation opinions of Drs. Frank and Brody were firmly grounded in the exposure evidence presented at trial. Dr. Frank testified that he had reviewed Mr. Stewart's medical records, the deposition transcripts of Mr. Stewart and his co-workers and other case-

specific materials. Dr. Millette and DePasquale explained how Mr. Stewart's exposures were many orders of magnitude above background levels. In stating his causation opinion, Dr. Frank relied on a summary of the exposure facts proven to the jury.

The trial testimony of Plaintiff's experts demonstrates that their causation opinions are based on the record of Mr. Stewart's s repeated exposures to asbestos from Scapa asbestos-containing dryer felts for during the majority of his career at Bowater, as well as the scientific literature. The methodology and approach used is exactly the same as that approved by Judge Hill in. *Garvin* and by Judge Toal in *Jolly.*

The Court finds that the causation testimony of Plaintiff's experts is admissible. It is supported by the scientific literature as well as the facts of this case and was relevant and helpful to the jury.

d. Ruling

For the reasons discussed above, Defendant Scapa's Motion for Judgment Notwithstanding the Verdict is DENIED.

III. Defendant's Motion for Production of Plaintiff's Settlements and Payments with all Third-Party Tortfeasors

Defendants argue that they are entitled to disclosure of Plaintiffs' confidential settlement documents because they are "relevant" to set-off. The Court does not find a compelling reason to require disclosure of the confidential releases. The only matter of relevance is the amount of the settlements, and that information has been disclosed. The Court reviewed the releases *in camera* and verified that Plaintiff's pre-trial settlements are in the amount of $1,036,000.

Defendant's motion for production of settlement documents is DENIED.

IV. Defendant's Motion for Setoff

In general, defendants are entitled to a set-off in the amount of Plaintiffs' settlements with other defendants in this case. S.C. Code Ann. § 15-38-50 provides that, "[w]hen a release ... is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death: (I) ... 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.

Scapa correctly asserts that Plaintiff has received settlement money from other defendants in this case and that they are entitled to setoff for such funds. Plaintiff does not argue Scapa should be precluded from setoff; Plaintiff merely argues that while subject to setoff, the settlement allocation between the two causes of action should not be disturbed (see below).

Trial defendants are only entitled to "credit for the amount paid by another defendant who settles for the same cause of action." *Rutland v. S.C. Dep't of Transp.*, 400 S.C. 209, 216, 734 S.E.2d 142, 145 (2012) (emphasis added). Survival and wrongful death causes of action are different claims for different injuries. *Smith v. Widener,* 397 S.C. 468, 481 n.1, 724 S.E.2d 188, 195 n.1 (Ct. App. 2012).

As discussed above, the court examined the Plaintiff's settlement agreements *in camera* and verified that the Plaintiff reached pre-trial settlements totaling $1,036,000.00. The court further confirmed that Plaintiff internally allocated 20% of each settlement to the survival cause of action and 80% to the wrongful death cause of action. For purposes of calculating setoff amounts, the corresponding settlement totals equal $207,200 and $828,800 for survival and wrongful death, respectively.

Pursuant to § 15-38-50, the $1,000,000 survival award is reduced by $207,200 to a balance of $792,800; in turn, the wrongful death award is negated by application of the setoff rules, as the

applicable setoff amount, $828,800, is greater than the wrongful death damage award amount. Accordingly, after setoff, the balance of the damages awards due to Plaintiff from Scapa equals $792,800.

V. Defendant's Motion to Reallocate Settlement Proceeds

Scapa now requests the Court issue "an Order reallocating all settlement proceeds received by Plaintiff to date" so that 90% would be allocated to the survival claim and 10% to the wrongful death claim.

In support of their request, Scapa correctly points out that Plaintiff's counsel have consistently proposed award amounts weighted in favor of survival damages over wrongful death. Scapa essentially argues that argues that because both the jury and the trial judge saw fit to award damages in similar proportions weighted in favor of survival, that such proportionality is inherently reasonable. Indeed, the resulting proportions of both were certainly reasonable given the manner and substance of Plaintiff's case as presented to the jury. Perhaps if Plaintiff had presented their case differently Plaintiff may have received damages awards resulting in different relative proportions but, of course, it is impossible to determine whether one resulting proportion is any more or less reasonable than the other based solely on their relative proportionality.

The Supreme Court has noted that "[s]ettling parties are naturally going to allocate settlement proceeds in a manner that serves their best interests. That fact alone is insufficient to justify... reapportionment for the sole purpose of benefitting [non-settling defendants]." *Riley*, 414 S.C. at 196-97, 777 S.E.2d at 830-31 (2015). As discussed above, should the court deny Scapa's request to reallocate for purposes of setoff, Scapa owes a balance of $792,800. However, if the court grants Scapa's request and reallocate 90% to survival and 10% to wrongful death, would only owe a balance $67,600 (a substantial savings). Scapa does not contend—or is there any

evidence--that Plaintiff acted in bad faith concerning the allocations. Plaintiff has not obtained a double recovery by virtue of additur nor will it as a consequence of denying reallocation. The Court finds and concludes that the internal allocation of settlement proceeds received by Plaintiff is reasonable.

VI. Conclusion

The Court GRANTS Plaintiff's Motion for New Trial *Nisi Additur* in part and raises the verdict to $1,000,000 for survival damages while leaving the $100,000 wrongful death damages undisturbed. The Court

The Court DENIES Defendant's Motions for Judgment Notwithstanding the Verdict, Discovery of Settlements, and Reallocation of Plaintiff's Settlement Proceeds.

The Court GRANTS Defendant's Motion for Set-off under S.C. Code § 15-38-50, and reduces the $1,000,000 additted survival damages award by $207,200 (i.e. ten percent of Plaintiff's pre-trial settlements), resulting in Scapa owing the balance of $792,800. The wrongful death damages award is likewise reduced by $828,000, which exceeds the jury's wrongful death damages award. Judgment will therefore be entered against Defendant Scapa Waycross, Inc. in the amount of $792,800.00. Scapa may, of course, reject the additur, and a new trial will be scheduled.

Defendant's remaining post-trial motions are DENIED.

IT IS SO ORDERED.

JEAN H. TOAL, Chief Justice of the Supreme Court of South Carolina (Retired), acting as Circuit Court Judge

January _____, 2019

Columbia, South Carolina

York Common Pleas

Case Caption:	Steven Redfearn Stewart , plaintiff, et al VS Albany International Corp , defendant, et al
Case Number:	2013CP4600368
Type:	Order/Other

IT IS SO ORDERED.

s/ Jean H. Toal #2758