Attachment 1

(July 29, 2019 Order)

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG	)	IN THE COURT OF COMMON PLEAS
	)	Case No. 2016-CP-38-01152
Brandon Glover,	)	
Plaintiff,	)	
v.	)	**ORDER**
David Hill, JHOC, Inc., and Willie Glover,	)	
Defendants.	)	

THIS MATTER came before the Court on Defendants JHOC, Inc.'s ("JHOC") and David Hill's ("Hill") (collectively "Defendants") seven (7) post-trial motions filed May 6, 2019. Present before the Court were Mitch Brown, Christian Stegmaier, and Robert Shannon for the Defendants. Also present before the Court were David Williams representing Willie Glover and Mark Tinsley representing Brandon Glover. The Defendants filed the following motions for the Court's consideration:

1.) Motion for a Judgment Not Withstanding the Verdict (JNOV)
2.) Motion for a New Trial Absolute
3.) Motion for Remittitur – One to One Ratio
4.) Motion for Remittitur – Three Times Actuals
5.) Motion for a New Trial Pursuant to the Thirteenth (13th) Juror Doctrine
6.) In Re: Brandon Glover – Motion for a New Trial NISI Remittitur
7.) In Re: Willie Glover – Motion for a New Trial NISI Remittitur

After considering all written submissions presented by the parties and the arguments of counsel presented at the hearing, for the reasons stated herein, this Court denies all seven (7) motions.

Abbreviated Summary

This case is about a motor vehicle wreck that happened on August 4, 2015 in heavy traffic on Interstate 26 in Orangeburg County. Defendant David Hill was driving a tractor-trailer. Hill was working as a truck driver for defendant JHOC at the time of the wreck. He rear-ended a commercial van driven by defendant Willie Glover (hereafter referred to as "Willie"). Plaintiff Brandon Glover (hereafter referred to as "Brandon") was a passenger in the van. Brandon is

Willie's son. The van belonged to Willie was used for the landscaping business he owned. Brandon was twenty-three (23) years old and had recently begun working in that business.

The wreck happened when Willie was following behind another vehicle (a U.S. Food truck) in the interstate's right lane in heavy traffic. That vehicle quickly braked. At trial, Hill and JHOC attempted to dispute that the wreck happened this way; however, this was contradicted by stipulated testimony and by Hill's own prior statements about how the wreck occurred.

Nobody disputes a different vehicle in front of the U.S. Food truck was stopped partially on the right shoulder and partially in the road. Earl Cuff was named as a defendant and alleged in the pleadings to have been responsible for the vehicle stopped partially on the road, however, there was no evidence at trial of who owned the vehicle or who parked it partially on the road. After Willie quickly braked to avoid striking the U.S. Food truck, Hill's tractor-trailer rear-ended Willie's van. Willie's van left the roadway to the right and collided with a tree.

Litigation began in September of 2016, when Brandon sued Willie, Hill, and JHOC (as Hill's employer). Brandon alleged varying acts of negligence against Willie and against Hill including driving too fast for conditions and following other vehicles too closely. Willie lodged a cross-claim against Hill, alleging the wreck was entirely Hill's fault. Hill and JHOC claimed the wreck was Brandon and Willie's fault, Cuff's fault, or both. Brandon and Willie then added Cuff as a defendant.

The case was tried over five (5) days in Orangeburg in April of 2019.[1] After all parties rested on their respective claims and cross-claims, the Court directed a verdict in Cuff's favor. Put simply, nobody presented evidence that Cuff had committed any malfeasance or negligence. It was also not established that he owned or operated the disabled vehicle parked partially on the road. The parties instead disputed (and presented evidence addressing) whether the other drivers—specifically, Willie and Hill—were negligent and would have avoided the wreck if they had been properly accounting for the heavy traffic, a hazard in the road, and that a vehicle in front of them might make a sudden stop.

At the conclusion of trial, the jury returned verdicts in Brandon's favor and Willie's favor.

The jury found Hill and JHOC were 90% at fault for the wreck and that Willie was 10% at fault. The jury awarded Brandon $4 million in compensatory damages, $16 million in punitive damages against Hill and JHOC, and $1 million in punitive damages against Willie.

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[1] April 22, 2019, April 23, 2019, April 24, 2019, April 25, 2019, and April 25, 2019.

As to Willie, the jury awarded $4 million in compensatory damages and $10 million in punitive damages. That award is reduced by the finding that Willie is 10% at fault.

First Motion – JNOV

a. Negligent supervision.

JHOC argues there is no evidence supporting a claim for negligent supervision.

Brandon and Willie pled claims against JHOC for negligent supervision, but they also pled general negligence—that Hill caused the wreck and that JHOC was vicariously liable for the wreck as Hill's employer. The jury rendered a general verdict asking only whether the jury found negligence by Hill, Willie, neither, or both.

Still, as to negligent supervision, there was evidence that JHOC's truck was equipped with GPS tracking and other on-board computer devices that would allow JHOC to monitor things like a truck's rate of speed and hours of service violations. There was also evidence that Hill was violating the hours of service rules at the time of the crash. Further, there was testimony under the federal regulations a motor carrier is "liable" or responsible for this sort of violation even if it was not actually monitoring a driver.

This Court must deny a motion for judgment notwithstanding the verdict if the evidence created a jury question on at least one of the causes of action. *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 287 S.C. 190, 193, 336 S.E.2d 472, 474 (1985). As noted above, the parties disputed whether Willie and Hill were negligent in operating their vehicles. That was a jury question.

b. Sudden emergency doctrine.

JHOC and Hill argue the only evidence is that Willie braked suddenly to avoid the disabled vehicle parked partially on the road, that Hill's truck "tapped" Willie's vehicle as they all tried to avoid the disabled vehicle, and that Hill's actions were reasonable as a matter of law.

First, this is not an accurate description of the witness testimony. The testimony was that the U.S. Food truck braked, that Willie braked to avoid hitting the U.S. Food truck, and that Hill's tractor-trailer then hit Willie's van. The disabled vehicle was significantly beyond where Hill's tractor-trailer and Willie's van came to rest after the wreck. Hill and Willie said they did not see the disabled vehicle *until after the wreck*. This, too, was quintessentially a jury question. The jury was presented with evidence that Hill was following too closely and driving too fast for the conditions.

The motion for JNOV admits that the sudden emergency doctrine ordinarily presents a jury question but claims this case is different because "the facts show no actionable negligence." Again, the court respectfully disagrees. There plainly was some evidence Hill was negligent.

c. Causation.

JHOC and Hill argue there was no evidence Hill contributed to Willie's van hitting the tree. Put differently, Hill and JHOC point to their counsel's argument that Willie was driving his van 65 mph before the wreck and they claim Willie's vehicle would have hit the tree anyway, regardless of whether Hill's tractor-trailer struck Willie's vehicle. There was no actual evidence that this was the case. Hill and JHOC did not call an accident reconstruction expert to testify. Brandon and Willie also did not call an accident reconstruction expert to testify. The parties were content to rely on the testimony of the eyewitnesses which were Hill and Willie.

As with the issues discussed above, this was a jury question. Willie testified Hill's tractor-trailer was following him extremely closely before the wreck, almost as if the tractor-trailer was "pushing" Willie's van down the road. There was evidence Hill's tractor-trailer was traveling roughly 60 mph with 100% throttle 2 seconds before the wreck and that the impact of Hill's tractor-trailer sent Willie's van down onto the shoulder and off the roadway where it came to rest against a tree. With no expert opinion offered that striking the tree was inevitable, it is not faithful to the evidence to say that such a finding is the most likely or only possible conclusion. Exhibit 4.5 shows the final resting position of Willie's vehicle, Hill/JHOC's truck, and the disabled vehicle. Both Willie Glover's truck and the Hill/JHOC truck came to rest without reaching the disabled vehicle. Willie testified that but for his vehicle being struck in the rear he would have stayed in his lane. There was also stipulated testimony that Hill told an independent adjuster the impact knocked Willie's vehicle off the road and into the tree. Also, Hill gave a recorded statement in which Hill told the adjuster he ran into Willie and that there was nothing Willie could have done.

d. Punitive damages for negligent entrustment/supervision.

JHOC argues there is no evidence that any negligent supervision of Hill was willful or wanton. This argument relies on assertions that Hill had a "clean" driving record and was not ticketed in the wreck. As noted earlier, the jury returned a general verdict and there were more claims to this case than claims for negligent entrustment/supervision. Thus, accepting the argument as true, the motion for JNOV would still be denied. There was plainly a jury question on Hill's

negligence.

There was also testimony that JHOC's technology "allows [JHOC] to keep [its] promises by keeping track of [its] fleet." There was expert testimony that trucking companies are supposed to monitor DDEC reports like Exhibit 12 which was introduced at trial and showed this JHOC truck was speeding in excess of 600 times during the three weeks leading up to this collision. Additionally, expert testimony was provided that if JHOC had properly monitored this report they would have observed characteristics of driving that showed Hill to be an unsafe driver.

Hill testified JHOC knew of his medical conditions and it was clear from evidence JHOC had independent knowledge of Hill's injuries. JHOC's current safety director testified at trial that he knew nothing about this truck, he did not perform a root-cause analysis of the wreck, he only reviewed what he was given by counsel to review, and that he had only been given Hill's pre-employment drug screens. This conflicted with Hill's prior deposition testimony that he was given a post-collision drug test where JHOC's then- safety director, the president of the company, and a medical doctor watched Hill submit a urine sample for the drug test.

In his trial testimony, Hill acknowledged he took a random drug test in addition to the pre-employment drug test. It was also established through Hill's testimony and the current safety director's testimony that a random drug test involving the safety director, another corporate representative, and a doctor is the procedure for a reasonable suspicion drug test, not a random drug test. JHOC's safety director also testified JHOC did not perform "random" drug tests.

The safety director testified that all of the data including any drug tests prior to the day of this collision and after the day of this collision would be included in the accident file. He also testified the accident file would include a logbook that would either corroborate or contradict the DDEC report showing Mr. Hill was beyond his hours of service. The safety director testified he did not look at the accident file and did not know what these reports would show. The accident file was not produced in discovery in its entirety.

e. Alleged drug use.

Hill and JHOC argue there is no reasonable inference Hill "was on drugs" at the time of the wreck and that merely taking a drug test after the wreck, which they dispute, would not create an inference of drug use.

First, and has been noted already, this would not constitute grounds for JNOV. Like a

motion for a directed verdict, a motion for JNOV may be granted only when no reasonable jury could return a verdict in the non-moving party's favor. *Burns v. Universal Health Servs.*, 361 S.C. 221, 232, 603 S.E.2d 605, 611 (Ct. App. 2004). JNOV must be denied as long as it is possible to draw conflicting inferences from the evidence. *Id.* At trial, the parties very much disputed who was negligent—Willie, Hill, both, or neither. Assuming for the purpose of argument that there was no inference Hill was under the influence of drugs at the time of the wreck, JNOV would nevertheless be improper due to the evidence Hill was driving dangerously or aggressively before the wreck.

Second, there *was* evidence of drug use. Hill testified that he had a history of physical problems for which he had been prescribed and took narcotic medication. He had undergone knee surgery in November of 2014 and took narcotics after that surgery. He also testified that he had taken narcotics for long-standing shoulder pain, for which he had surgery in 2018. When he was deposed in March of 2018, before his surgery, he was limited to lifting no more than 10 pounds and was restricted by a doctor from driving for long periods of time. Hill testified that he had been taking narcotics the entire time he had knee and shoulder problems, both of which predated the wreck. He additionally testified his shoulder problem continued until 2018. On cross examination by his lawyer he testified that he misspoke, that he was off the narcotics when he was driving, and that he did not intend to testify that he was taking narcotics at the time of the collision. Combined with the testimony that Hill either took a post-collision drug test or test based on reasonable suspicion of drug use, there was evidence from which a jury could conclude Hill had taken a narcotic at the time of the collision in violation of the Federal Motor Carrier Safety Regulations and South Carolina Law.

There was the additional fact that Hill's deposition testimony described a drug test done in Georgia. The jury might have found this persuasive when combined with other testimony that JHOC would have normally done a drug test in North Carolina, not Georgia, if it was anything other than a reasonable suspicion test. The testimony was also that a reasonable suspicion test only occurred after two JHOC representatives independently find a driver appeared to be under the influence of alcohol, drugs, or both. As noted before, this testimony suggested the drug test Hill described in his deposition was based on reasonable suspicion of drug use.

The jury was also presented with other evidence attacking Hill's credibility and showing

his state of mind at the time of the wreck. Hill's time line leading up to the wreck was, at best, difficult to explain. Hill claimed he had been driving for only six hours before the wreck and that he had been averaging 65 mph. Yet, Hill also claimed to have traveled only 85 miles—the distance from where he said he stopped driving and slept to the place where the wreck occurred—in that six hours of driving. Hill also claimed he slept for 13 hours when he stopped. Ultimately, Hill conceded it was impossible for these events to have happened as he described it. The DDEC report showed Hill had been steadily driving for nearly nine hours before the wreck

There was also testimony that Hill did not look in the accident file during his deposition and that he misstated numerous facts. Hill also took a break during his deposition, discussed the case with his defense attorney, and then refused to testify as to the contents of his conversations based on his attorney's advice.

The jury might have considered all of this and concluded it was unlikely that Hill was mistaken about a drug test in Georgia, rejected Hill's testimony as not believable, or even found his implausible story exhibitive of someone under the influence of drugs. This Court makes this finding, for those reasons. The jury was not required to overlook conflicts in the evidence and accept at face value the explanations Hill and JHOC were propounding. Respectfully, those explanations were simply implausible.

f. Corporate Complicity Rule.

JHOC argues for JNOV on the claims for punitive damages because it says an award of punitive damages may not be imposed on a principal for an agent's actions unless the principal authorized or ratified the agent's actions, the agent was unfit, the principal was reckless in employing the agent, or the agent was employed in a managerial capacity.

First, the Court believes this argument is untimely. None of the directed verdict motions at the close of the plaintiff's case concerned punitive damages, and the directed verdict motions at the close all evidence did not involve the "corporate complicity rule." There, the only argument was that no evidence supported claims for negligent entrustment or negligent supervision. A directed verdict motion is a prerequisite to a motion for JNOV. Rule 50(b), SCRCP. There was no directed verdict motion at all with respect to Willie's claims.

Notwithstanding untimeliness, the Court does not believe the corporate complicity rule is faithful to existing South Carolina law. See, e.g., *Fairchild v. S.C. Dep't of Transp.*, 398 S.C. 90,

727 S.E.2d 407 (2012). Precedent explains an employer may be held liable for punitive damages due to the reckless acts of an employee and that this may be true even when the employee's actions were contrary to the employer's instructions. *Beauchamp v. Winnsboro Granite Corp.*, 113 S.C. 522, 101 S.E. 856 (1920). This is also supported by the Non-Economic Damages Act, which "caps" punitive damages at three times the amount of compensatory damages *unless* the wrongful conduct was motivated by unreasonable financial gain and the dangerous nature of the conduct and high likelihood of injury was known or approved by a "managing agent, director, officer, or the person responsible for making policy decisions." S.C. Code Ann. § 15-32-530(B)(1). The statute explains a *higher* award of punitive damages is allowed in the case of complicity. This suggests complicity is not required for a punitive award at the original, lower threshold.

And even if complicity *is* required for any punitive award, there was sufficient evidence to establish JHOC was complicit. The company tracked the trucks and knew or should have known Hill was over his hours of service and speeding. There is also the evidence of a drug test based on reasonable suspicion of drug use. JHOC knew Hill's medical issues existed. Yet, JHOC continued to employ Hill as a driver. This constitutes evidence Hill was unfit and that employing him was reckless.

g. Due Process.

JHOC additionally argues that any award of punitive damages would violate due process because the "corporate complicity rule" has not been expressly rejected in South Carolina. As noted above, this rule appears to be contrary to long-standing precedent and to statutory law. JHOC does not cite any authority for the proposition that it would violate due process to impose punitive damages without a prior, explicit rejection of the corporate complicity rule.

Also, and as with the argument about the rule itself, JHOC made no due process argument in its directed verdict motions. See Rule 50(b), SCRCP; see also *Taylor v. Bridgebuilders, Inc.*, 275 S.C. 236, 238, 269 S.E.2d 337, 339 (1980) (motion for JNOV relates back to the motion for directed verdict and is limited to the previously presented grounds).

h. Proof of punitive damages.

Hill and JHOC argue there was no proof of punitive damages by clear and convincing evidence.

First, there was no directed verdict motion on punitive damages at the close of Brandon's

case in chief or Willie's case in chief. This argument is untimely. Also, as already noted, there was evidence Hill was driving his tractor-trailer at a high rate of speed, in heavy traffic, and was extremely close to Willie's van moments before the wreck. Willie testified it was almost as if the tractor-trailer was "pushing" the van down the road.

There was also evidence Hill was driving in violation of the limits on hours of service. Hill claimed to have stopped driving and slept for thirteen (13) hours before he began driving again and that he had driven without stopping until the wreck. Hill testified it took him six (6) hours to drive eighty-five (85) miles, traveling at a speed of sixty-five (65) mph. He admitted on cross-examination that this was "impossible."

As noted above, the DDEC report showed Hill had been continuously driving for close to nine (9) hours. Further, there was testimony that truck drivers are required to maintain driving logs to ensure they do not exceed the hours of service requirement, that Hill maintained such a log, and that Hill gave his log to JHOC following the wreck. However, no such log was produced in discovery. The "black box" download from Hill's truck was admitted into evidence and showed that Hill had driven the vehicle continuously for 8.62 hours before the wreck, in violation of the 8 hour rule, which requires a 30 minute break during the first 8 hours of service.

Hill and other witnesses testified about the hazards of operating a tractor-trailer in an unsafe manner. If the jury found Hill was driving aggressively and violating these rules, the jury would necessarily have found Hill and JHOC clearly knew he was putting other motorists in serious danger. Cf. *Fairchild*, 398 S.C. at 101, 727 S.E.2d at 413 (evidence of recklessly driving tractor-trailer sufficient to submit punitive damages case to jury). Hill himself testified that if he was driving the tractor-trailer in excess of the limits on hours of service or had been driving with narcotics in his system he would have known he was being reckless and endangering people. Hill also testified driving over his hours of service is "fatigued" driving, which is a form of impaired driving. In short, JHOC knew it had an impaired driver on the roadway. JHOC could track Hill's driving.

Finally, there is ample evidence for a jury to conclude that Hill was driving while taking narcotic medication. As already explained, Hill described a drug test that was performed in a procedure consistent with a reasonable suspicion test and the results of that test were not produced in discovery.

i. Pleading punitive damages.

Hill and JHOC's final argument for JNOV is that Brandon failed to specifically plead punitive damages as required by section 15-32-510 of the South Carolina Code. This specific argument, like many others here, was not raised in opposition to Brandon's motion to amend his complaint to correct the omission of the word "punitive" from Brandon's prayer for relief.

Brandon's original complaint, his amended complaint, and his second amended complaint alleged the defendants were "negligent, careless, reckless, grossly negligent, willful, and wanton[.]" This language is commonly associated with a prayer for punitive damages. *Camp v. Components, Inc.*, 285 S.C. 443, 444, 330 S.E.2d 315, 316 (Ct. App. 1985) (A plaintiff is entitled to punitive damages if the wrongful conduct is willful, wanton or reckless).

Also, Hill and JHOC's answer to Brandon's original complaint included a specific defense that an award of punitive damages would violate the U.S. and South Carolina Constitutions. The Court respectfully rejects the argument that a claim for punitive damages was improperly "injected" in this case at the last minute. Cf. *Stanley v. Kirkpatrick*, 357 S.C. 169, 174, 592 S.E.2d 296, 298 (2004) ("prejudice" in the context of allowing an amendment to a complaint is a lack of notice about the issue and a lack of opportunity to refute it). Hill and JHOC plainly knew there was a claim for punitive damages. They raised a defense to it.

Second Motion - New Trial Absolute

a. Directed verdict for Cuff and his exclusion from the verdict form.

Hill and JHOC argue Cuff was a contributing cause of the wreck and that the Court erred in directing a verdict in Cuff's favor and in failing to include Cuff on the verdict form.

First, and as noted at the beginning of this order, the reason the Court granted a directed verdict in Cuff's favor was because no one presented any evidence that Cuff had committed malfeasance at all. The evidence was that the U.S. Food truck braked quickly, that Willie braked quickly, and that Hill's tractor-trailer hit Willie's van almost immediately after Willie braked. The evidence at trial addressed whether the drivers—Willie and Hill—were negligent and would have avoided the wreck if they had been properly accounting for the heavy traffic, a hazard in the road, or the fact a vehicle in front of them might make a sudden stop. There was no evidence about what caused the disabled vehicle to be on the side of the roadway, what efforts the driver of that vehicle made to remove his vehicle from the road, or that the failure to completely remove his

vehicle from the road was negligent. Given the complete absence of any evidence Cuff did anything wrong and was a proximate cause of the wreck the Court had no choice but to grant a directed verdict.

More already noted, Hill offered a different version of the wreck than the stipulated testimony from another defense witness and from Hill's prior testimony. If the jury accepted Hill's new testimony that Willie had been driving in the left lane and pulled in front of Hill causing Hill to slam on brakes, this would make any contribution to the wreck by Cuff even more speculative.

The Contribution Among Tortfeasors Act requires a separate assessment of each defendant's fault after a jury returns a verdict against two or more defendants for the same indivisible injury. S.C. Code Ann. § 15-38-15(B)(3). The Act recognizes all potential tortfeasors may not be defendants. *Smith v. Tiffany*, 419 S.C. 548, 558, 799 S.E.2d 479, 485 (2017) (noting section 15-38-15(D) discusses "potential tortfeasors" who are not parties). The Act preserves a defendant's right to argue that a non-party caused the plaintiff's injury. *Id.* Again, the court directed a verdict for Cuff because nobody presented evidence of a damages claim against him. After the directed verdict, Cuff was not a defendant. The Court believes it properly denied the request to include Cuff on the verdict form.

The Court declines to address the arguments that failing to include a non-party on the verdict form violates due process and equal protection. There were no constitutional arguments raised in the discussion of this issue at trial.

b. Expert testimony.

Hill and JHOC make several arguments about the expert testimony Brandon Glover presented in support of his case.

First, they argue that testimony from Brandon's vocational rehabilitation expert/psychologist, life care planner, and economist should have been excluded because these opinions were supposedly ultimately grounded on unreliable data, undisclosed testing, and questionable methods. They argue that at best, Brandon was making only between $15,000 and $28,000 at his father's landscaping business. They note that these figures are lower than the values assigned by Brandon's experts, and they further allege there is no evidence supporting the expert opinions on Brandon's future earnings and earning capacity. Hill and JHOC additionally claim that the vocational expert needed to base his opinion about Brandon's future employability on

medical evidence. Hill and JHOC also argue the opinions about Brandon's psychological injuries and need for additional care were formed after the expert's deposition and disclosed shortly before trial.

Dealing first with the argument that there was insufficient evidence Brandon would be unable to work in the future, there was expert testimony from Dr. Poletti that Brandon would have significant physical restrictions. These restrictions applied regardless of whether Brandon's surgery was ultimately "successful" in terms of helping to control Brandon's significant pain. Brandon testified that he did not think he could not work. Willie and Brandon's mother gave similar testimony.

The Court believes it is significant that the major criticisms of the vocational expert's opinions during pre-trial motions *in limine* were essentially that there was no medical evidence to support them. As noted above, there was medical evidence from Dr. Poletti regarding Brandon's permanent physical restrictions and there was a functional capacity evaluation that had been performed on Brandon. The vocational expert explained that these supported his conclusions about Brandon's future employability and he explained that he used other things including his clinical interview and medical records in order to form his opinions.

Hill and JHOC argue the vocational expert testified that Brandon was not employable and could not be a reliable worker even in a sedentary job. The Court does not believe that is an accurate description of the testimony. Rather, the vocational expert testified that he thought Brandon would most probably be able to do some light sedentary work eventually. This was an alteration of the expert's original opinion in a way that was favorable to Hill and JHOC.

As previously discussed, Hill and JHOC argue it was error to allow the vocational expert's testimony since it was merely based on the assumption that Brandon's surgery would not prove successful. Brandon's surgeon, Dr. Poletti, testified that Brandon's physical restrictions were permanent regardless of whether Brandon's pain may ultimately lessen from the surgery. Dr. Poletti testified Brandon would never be able to do most of the things he was required to do in his former employment, regardless of Brandon's surgical outcome.

The Court believes the attacks made against the vocational expert's testimony, like all disputes on the strength of opinion testimony, go to the weight of the testimony, not its admissibility. Hill and JHOC vigorously cross-examined the vocational expert, were allowed to

present contrary evidence, and emphasized the applicable burden of proof. All of these are the traditional and appropriate means of attacking evidence that is debatable, but nevertheless admissible. The ultimate soundness of the expert's analysis and the correctness of the expert's conclusions are to be determined by the trier of fact. The Court believes the vocational expert was qualified to give the opinions he gave as a licensed psychologist and a certified rehabilitation counselor specializing in vocational rehabilitation. The Court further believes the opinions were fully supported by evidence in the record, were relevant, were helpful to the jury's evaluation of the evidence, and were properly admitted.

c. Testimony about Brandon's economic loss.

Hill and JHOC argue Brandon never produced financial information for lost wages and did not produce tax returns until the eleventh hour. They also say eleventh hour was the first time Brandon identified an expert to testify about lost wages, produced pay stubs, and filed tax returns for the years 2015 to 2018.

First, Brandon claimed a loss in earning capacity as a result of his injuries. There was not a substantial claim for past economic loss. Brandon's experts explained to the jury why past wages were not necessary to the analysis. Brandon never used or sought to introduce pay stubs or tax returns. Instead, it was Hill and JHOC who offered the documents into evidence. With respect to the argument that an expert was identified at the eleventh hour, the Court does not believe that argument is accurate. The expert was identified on September 13, 2018. This was four (4) months after Brandon had his surgery in May of 2018 and became unemployed.

On this same issue, Hill and JHOC say Brandon's expert on future earnings provided opinions were defective because she did not get any information about Brandon's pre-accident earnings until the eve of trial, she did not interview Willie, and because she relied exclusively on the opinion from Brandon's functional capacity expert/psychologist. Again, this argument is not accurate. Tricia Yount was qualified as an expert in forensic accounting and testified to the present day value of the numbers opined to by the vocational expert and the life care planner.

d. Allocation of jury strikes.

Hill and JHOC argue Brandon and Willie "appeared to be in league with one another" and "teamed up" to deprive Hill and JHOC of jury strikes.

Empaneling a jury in civil court is controlled by section 14-7-1050 of the South Carolina

Code. The statute requires the clerk to furnish the parties with a list of twenty jurors and explains that the parties shall alternatively strike until 12 jurors remain. The Supreme Court has held that this statute divides strikes evenly between "each side" of a case, not between "each party." *Moore v. Jenkins*, 304 S.C. 544, 547, 405 S.E.2d 833, 835 (1991). *Moore* also instructs that irregularities in the empaneling process do not require reversal unless the complaining party can demonstrate prejudice.

Here, Brandon Glover was the sole plaintiff. He had claims for damages against Willie, Hill and JHOC, and Cuff. Willie had a cross-claim against Hill and JHOC. Hill and JHOC cross-claimed against Cuff. Brandon exercised all four strikes allotted to the "plaintiff's" side. Willie exercised two strikes allocated to the defense, while Hill and JHOC exercised one and Cuff exercised one.

As in *Moore*, this case presented a situation where there were multiple parties, several of whom had claims against each other. The Court believes its allocation was appropriate. Brandon was the only plaintiff and the only party without a claim for damages against him. He was also the only party who had a claim for damages against *everyone* else.

Also, there is no evidence Hill and JHOC were prejudiced and that the jury was not fair and impartial. There was no argument at the time of jury selection that the strike allocation violated anyone's right to select an impartial jury. Further, as it relates to the strikes allocated for alternate jurors, Hill and JHOC actually utilized one strike that should have been allocated to Willie. This alternate juror selected by Hill and JHOC, was actually seated on the jury.

e. Alleged use of racial bias in jury strikes.

Hill and JHOC argue that Willie's explanation of striking a white juror who was an engineer was pretextual and discriminatory. They claim Willie's explanation that he struck the juror based on the juror's profession as an engineer was false because there were no engineering concepts at issue in the case.

After Willie's counsel articulated the race-neutral reason for this strike, the burden shifted to Hill and JHOC to show that this reason was pretextual. Pretext is generally shown if a similarly situated member of another race was seated on the jury, but there are some circumstances where the race-neutral reason is "so fundamentally implausible" that the court can determine the race-neutral reason is obviously pretextual. *State v. Haigler*, 334 S.C. 623, 629, 515 S.E.2d 88, 90-91

(1999) Employment "is a well-understood and recognized consideration in the exercise of peremptory challenges." *State v. Williams*, 379 S.C. 399, 402-403, 665 S.E.2d 228, 230 (Ct. App. 2008). The explanation that the juror in question was struck based on his profession is not fundamentally implausible. There is no evidence the juror was struck based on race. The burden was on Hill and JHOC to establish that the strike was pretextual. They did not carry this burden. Thus, the motion was properly denied.

f. Questioning on spoliation.

Hill and JHOC argue it was improper to allow the JHOC company representative, Randall Vernon, to be questioned on spoliation of evidence. This came after Vernon testified drug test results would be in the accident file and that he had not looked in the accident file for these results. The question was then asked whether he was aware of correspondence requesting copies of the drug test results. Vernon was called by Hill and JHOC to testify that JHOC only performs drug tests in accordance with the applicable federal regulations and that no drug test was performed in this case because those regulations were not implicated in this case. Hill and JHOC claim there had been no discovery related to drug tests and that any reference to spoliation improperly "implanted" in the jury's mind that spoliation had occurred.

First, the jury was not instructed on spoliation. When an objection was raised regarding Willie's counsel's use of the word spoliation when asking Vernon whether he was aware of correspondence requesting a copy of the drug test Hill previously described, the Court instructed the jury to disregard the word. There was no further objection and there was no argument that the instruction was insufficient.

Second, the Court believes it was fair and appropriate for the parties to attack the things calling into question the credibility of the story Hill and JHOC were telling. Hill previously testified under oath that he had been given a drug test following the wreck and then changed that testimony, explaining his detailed memory of the test had been mistaken. On cross examination Hill admitted the test he described in his deposition was not the test he took before he began employment with JHOC. The jury also heard testimony that certain documents were required to be retained while a claim related to a trucking wreck is pending, and the jury heard testimony calling into question whether those documents had not been produced in discovery. The Court is not aware of any principle of law that prevents a party from challenging the credibility of an

opponent's story. It is common and acceptable for parties to suggest there are serious inconsistencies in a witness's testimony and to argue that those inconsistencies show the witness is not being truthful.

g. Motion to strike punitive damages.

As with their motion for JNOV, Hill and JHOC again argue there was no evidence of willful, wanton, or reckless conduct. They claim the most a jury could conclude is that the wreck was caused by Hill's negligence in following too closely. Again, there was no directed verdict motion as to punitive damages.

As noted earlier, there was evidence Hill was consciously indifferent and willfully disregarded the safe stopping distances he knew he had to maintain. There was also evidence Hill was driving aggressively, that he was driving too fast for the conditions, and that he was driving in excess of the limitations on continuous hours of service. See also *Fairchild*, 398 S.C. at 101, 727 S.E.2d at 413(evidence of recklessly driving tractor-trailer sufficient to submit punitive damages to the jury). Finally, there was substantial testimony concerning Hill's drug use, JHOC's knowledge of the same, and testimony suggesting Hill was impaired at the time of the wreck.

h. Exclusion of medical expert.

Hill and JHOC argue that the Court erred in excluding Dr. Neil Negrin from testifying. Hill and JHOC argue the circumstances required them to hire a new medical expert, that there was time to depose this expert during trial, and that the exclusion of this expert left them unable to rebut the testimony of Dr. Poletti.

Hill and JHOC identified Dr. Negrin as a witness on Monday, April 15th. The trial began the following Monday. Their disclosure did not identify the subject matter of his testimony.

On the first day of trial, during pre-trial motions, Hill and JHOC disclosed that this witness was going to testify that Dr. Polletti performed unnecessary surgery on Brandon and that Brandon was basically in "good health." At that point, Hill and JHOC also disclosed that they had been working with Dr. Negrin for a few months and had intentionally waited to disclose him. The Court considered the factors outlined in *Barnette v. Adams Bros. Logging*, 355 S.C. 588, 592, 586 S.E.2d 572, 574 (2003) on the record. In the exercise of the Court's discretion, the Court excluded this expert for three reasons.

The first reason was the timing and manner of Dr. Negrin's identification. The Court placed

great weight on its view that there was no sensible explanation for the late identification of this witness given the acknowledgment that Hill and JHOC had deliberately delayed the disclosure.

The second reason for the exclusion was clear prejudice to the opposing parties. When the witness was disclosed the week before trial there was no explanation of the witness's testimony. The Court believed admitting this witness's testimony would have been an unfair surprise given the lack of any notice to Brandon that Hill and JHOC would be claiming his back surgery was completely unnecessary.

The third reason for exclusion was the lack of prejudice to Hill and JHOC. Hill and JHOC had previously disclosed other physicians as experts. Those physicians had been deposed and had given testimony about Brandon's prior treatment and the results of his prior treatment. Hill and JHOC had the opportunity to use these witnesses, who they listed on their witness list, and other witnesses (including Dr. Poletti) who they subpoenaed to use at trial but chose not to do so.

i. Jury charge on liability to third parties.

Hill and JHOC claim a new trial is required because the Court declined to give jury charges that Hill and JHOC could not be liable for the negligence of third parties and that the chain of causation may be broken by the intervening negligence of another person.

As already noted, no one presented any evidence pointing to a third party as being liable for the wreck. Both Willie and Hill testified that they never saw the disabled vehicle until after the collision. The evidence centered on whether Willie, Hill, neither, or both had been driving too fast, following too close, or otherwise driving unsafely given the traffic conditions on the interstate.

There was no evidence supporting an argument that any injuries were caused by the intervening negligence of someone else. Hill and Glover both specifically testified that they anticipated the traffic on the interstate could stop suddenly for a variety of reasons, including a disabled vehicle.

j. Denial of a continuance.

Hill and JHOC sought multiple continuances in the weeks leading up to trial, claiming principally that they asked to conduct depositions of expert witnesses in January 2019 and were not able to depose the witnesses until March.

Hill and JHOC also say there were "ambushed repeatedly" by documents and opinions that had only been produced immediately before trial. They specifically cite pay stubs and tax

information as well as opinions on Brandon's future earning capacity, his functional capacity evaluation, and his additional medical treatment

First, the Court was provided with several e-mails showing experts were offered for depositions earlier than the depositions occurred. It is often difficult to coordinate schedules between lawyers and witnesses, especially in cases where there are multiple parties. The experts in question had been identified for more than six months.

The Court also notes the trial in this case was originally set to occur any time after May 2018 according to the case's scheduling order and that even though the trial was later ordered to occur in March of 2019, it was continued until April 22, 2019 for the purpose of giving Hill and JHOC more time. This was done with the consent of all parties and with the understanding the trial was set for a date certain.

Additionally, all of the experts were deposed. The Court cannot discern any prejudice arising out of expert depositions being conducted up to and including the month before trial.

Regarding the supplemental discovery, the Court is unable to discern any unfairness or prejudice related to additional discovery responses, much of which were provided weeks before trial. Hill and JHOC specifically reference pay stubs and tax information, yet, they used this information at trial. Hill and JHOC used this evidence from Brandon's brief history in the workforce to cross-examine witnesses about Brandon's future earning capacity. Brandon did not use these documents.

Similar reasons cause the Court to respectfully disagree with Hill's and JHOC's argument about the supplemental report from Brandon's functional capacity expert. This expert's supplemental report contained downward revisions from the expert's original report.The original report was based on the expert's opinion that Brandon was totally disabled. In the supplemental report, this expert opined Brandon would most likely be able to do some light sedentary work in the future. This change was in Hill and JHOC's favor. Further, this expert testified that the results of the functional capacity evaluation supported his prior opinions regarding Brandon. As above, the Court is unable to discern any prejudice.

The driving force behind the value of Brandon's case was that Brandon was extremely young—23 years old—at the time of the wreck and he had just begun working for his father. He did not have a lengthy earning history, but it was obvious because of his age that there would be

significant harm to his future earning capacity if he was significantly disabled.

It does not appear as though there was any material change to Brandon's expert testimony leading up to trial. The testimony was generally that there would be a large amount of damage to Brandon's earning capacity if he was totally disabled. The supplemental opinions reduced the projected damage to Brandon's future earning capacity. The Court respectfully disagrees with the argument that this reduction constitutes prejudice.

Finally, it is in this Court's opinion that the defense attempted to force a continuance with the appointment with an additional attorney the week before trial. This is an important fact because the original trial judge had a conflict with the newly appointed attorney's firm. This conflict is a well-known fact in the First Circuit and undoubtedly in the State of South Carolina. This Court, in the interest of justice, decided it was in the best interest of all parties involved to switch court sessions so that the case could go forward as scheduled.

k. Whether the verdict is grossly excessive.

Hill and JHOC argue the verdicts are grossly excessive because Brandon has less than $300,000 in past medical expenses, his "worst-case" future medical expenses are $2.1 million, and those do not justify an award of $20 million in damages. As to Willie, they note he had $131,000 in past medicals, approximately $65,000 in lost income, and $195,000 in projected future medical expenses; making an award of $14 million "disproportionate and absurd."

First, the Court notes that these comparisons are incomplete. They do not account for any non-economic damages. Hill and JHOC's description of Brandon's award does not account for any loss of future earning capacity. Hill and JHOC have also compared the amount of Willie and Brandon's economic damages to the total damages the jury awarded even though the jury's total award includes significant punitive damages.

Second, the Court notes that at this stage it must view the facts in the light that is most-favorable to the plaintiff. *Watson v. Wilkinson Trucking Co.*, 244 S.C. 217, 224, 136 S.E.2d 286, 289 (1964). The jury awarded Brandon $4 million in compensatory damages. The Court does not believe this award is liberal or excessive, let alone grossly excessive, for a plaintiff who is now 26-years old and who has $300,000 in past medical bills, over $2 million in future medical expenses, and a remaining life expectancy of 52 years. Non-economic components of damage like pain, suffering, and loss of enjoyment of life are incapable of exact measurement and are generally

entrusted to the jury. See, e.g., *Mims v. Florence County Ambulance Serv. Comm'n*, 296 S.C. 4, 7, 370 S.E.2d 96, 99 (Ct. App. 1988) and *Edwards v. Lawton*, 244 S.C. 276, 281, 136 S.E.2d 708, 710-711 (1964). And, as already noted, there was evidence that Brandon suffered significant damage to his future earning capacity having gone from an able-bodied 23 year old to a 26 year old who does not have a college degree and who had a spinal fusion. The jury awarded the same amount of compensatory damages to Willie—$4 million. Here as well, the Court does not believe this award is liberal or excessive, let alone grossly excessive.

The Court is required to view the evidence in Willie's favor. There was evidence Willie's economic loss had the potential to be as large as Brandon's. Hill and JHOC spent a significant amount of time cross-examining Willie with evidence that his actual earnings dwarfed the earnings he reported to the federal government. While there was evidence Willie had returned to work, there was evidence his work was declining and he was losing long-time business relationships. There was also evidence Willie has to rely more heavily on unreliable labor to handle tasks he was previously able handle himself. There was also evidence that Willie would need a second surgery and that his injury would cause him to work less or retire prematurely. Willie's surgeon explained Willie's medical condition is best described as being similar to someone who has cerebral palsy. The surgeon explained to the jury that things as simple as reaching into a pocket to grab change is difficult or impossible.

This wreck involved significant injuries. There was a substantial amount of past medical expenses, there was a substantial amount of future medical expenses, there was evidence of serious damage to future earning capacity, and there was evidence Willie and Brandon will spend the remainder of their lives experiencing chronic pain and with significant limitations on their activities of daily living. In short, there was ample evidence meriting a significant award of compensatory damages. The Court will address the punitive awards later in this order.

l. Testimony about Willie's economic loss.

Hill and JHOC argue that a new trial is required because the tax returns Willie produced in discovery did not have any information about the contracts he claimed to have with Love's Truck Stop or with CVS Pharmacy and that his testimony at trial about his earnings from those contracts was unreliable, preventing a jury from accurately assessing Willie's economic loss.

As already noted, Hill and JHOC extensively cross-examined Willie with his tax returns.

That examination was appropriate. The jury was free to believe or disbelieve Willie's testimony, as it is free to do with the testimony of any witness.

m. Testimony about circumstances of the wreck.

Hill and JHOC argue one of Brandon's experts impermissibly opined Hill was following Willie too closely and that this expert is not qualified to opine on accident reconstruction.

The Court respectfully disagrees with this characterization of the expert's testimony. David Dorrity was qualified as an expert in trucking safety, defensive driving, and motor carrier management. He testified that the standard of care required a commercial truck driver to remain a considerable distance behind vehicles in front of the driver, particularly at speeds exceeding 40 mph. He also testified that accepting as true Hill's testimony that Hill was 350 feet behind Willie's van Hill would still be violating that standard of care.

First, the Court remains convinced the expert was properly qualified as an expert and that this opinion was appropriate. Mr. Dorrity's testimony was not accident reconstruction but rather properly in the field of trucking safety, defensive driving, and motor carrier management.

Second, the opinion that Hill was following Willie's van too closely was cumulative to other testimony including Willie's testimony and Hill's own admission that if he was traveling more than 40 or 45 mph before the wreck he would not have been driving safely given the conditions. Hill's own statement was that he was so close he could not stop.

n. Testimony about post-wreck interview with Hill.

Hill and JHOC argue a new trial should be granted based on the admission into evidence of testimony related to a document describing communications between Hill and an adjuster hired by JHOC because that memo was protected work product. Even though this document was produced in discovery by Hill and JHOC's prior counsel, Hill and JHOC say it should have been "clawed back" and deemed privileged.

This document was not admitted as an exhibit and was largely cumulative to a recorded statement Hill gave two weeks after the wreck to another adjuster for the insurance company, and there was no attempt to "claw back" that second statement. At trial, Hill admitted he had given the recorded statement and that he described in the statement that he was following Willie's van so close he was not able to slow down before his tractor-trailer struck the van.

o. Document productions and discovery.

Hill and JHOC argue that they were not given discovery in time to prepare for trial and that the denial of a continuance left them "with little to no notice of critical information[.]" This argument is repetitive of the argument regarding the denial of a continuance and is rejected for the reasons already given.

Additionally, the Court does not see how Hill and JHOC were in any way "ambushed." Hill and JHOC made particularly extensive use of tax returns for impeachment. There were no "new" experts called at trial, and any "new opinions" that were introduced at trial contained revisions that decreased Brandon's damages or did not constitute any substantial change in the evidence.

p. Cumulative error.

The Court rejects the argument that Hill and JHOC were denied a fair trial. This trial may not have been perfect—few trials are—but the parties capably presented their arguments and the case was properly presented to the jury.

Third and Fourth Motions - New Trial Nisi Remittitur

If the amount of the jury's verdict is "unduly liberal" (rather than grossly excessive), the trial court is empowered to reduce the verdict by granting a new trial nisi remittitur. *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 531, 431 S.E.2d 557, 558 (1993). Even so, a jury's determination of damages is entitled to substantial deference. *McCourt v. Abernathy*, 318 S.C. 301, 309, 457 S.E.2d 603, 608 (1995). The maximum amount which a jury might properly award as damages under the evidence in a personal injury case cannot be determined with any degree of certainty and must be largely a matter of judgment. *Cabler v. L.V Hart, Inc.*, 251 S.C. 576, 581, 164 S.E.2d 574, 577 (1968).

The Court heard all of the evidence presented during the trial and does not believe, as mentioned before, that the compensatory verdicts are excessive or liberal. There was evidence of significant economic and non-economic damages. The possibility of a sizeable award was apparent due to factors including Brandon's young age at the time of the wreck, the serious injuries, and the possibility that the jury would conclude various parts of Hill's story were not credible. Notably, Hill and JHOC's counsel made comments in his opening statement discussing awards of $10 million. While a verdict of that size was certainly not a foregone conclusion, the Court believes it

is appropriate to defer to the jury's assessment of damages. This Court also believes that the statement of award possibility opened the door for the jurors to consider such an amount if not more, should they find the defendants at fault.

Fifth Motion - New Trial (13th Juror Doctrine)

The 13th juror doctrine allows the trial judge to grant a new trial "based on the facts" if the judge believes that the facts do not justify the verdict. *Folkens v. Hunt*, 300 S.C. 251, 254-55, 387 S.E.2d 265, 267-68 (1990).

Having presided over this trial, having heard and seen the witnesses testify, and having considered the parties' arguments, the Court determines that this is not a case where the verdict is contrary to the facts.

Sixth and Seventh Motion - Remit and Cap Punitive Damages

a. Constitutional ratio.

The ratio of Willie's compensatory damages to his punitive damages is 1 to 2.5. For Brandon, the ratio is 1 to 4 as to Hill and JHOC and 1 to .25 as to Willie. This is a constitutional, reasonable ratio between the actual and potential harm suffered and the punitive damages awarded.

> [A] court, when determining the reasonableness of a particular ratio of actual or potential harm to a punitive damages award, may consider: [1] the likelihood that the award will deter the defendant from like conduct; [2] whether the award is reasonably related to the harm likely to result from such conduct; and [3] the defendant's ability to pay.

Mitchell v. Fortis Ins. Co., 385 S.C. 570, 588, 686 S.E.2d 176, 185 (2011). In conducting its post-verdict analysis of punitive damages the court may compare the punitive damages to the actual damages or to the potential harm. *Id.* at 590, 686 S.E.2d at 187.

As to the first factor, punitive damages awards of $10 million and $14 million are likely to deter future reckless disregard to the safety of the general motoring public. *See Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 54, 691 S.E.2d 135, 151 (2010) (finding an award with a ratio of 8.21 "will inevitably serve as a deterrent to Stokes-Craven from engaging in future misconduct"). At trial, evidence showed JHOC put Hill back behind the wheel a week after the wreck and that Hill ran that truck, fully loaded, through a traffic circle. The jury could reasonably

conclude a large verdict was needed to stop this type of behavior.

As to the second factor, the punitive damages award is reasonably related to the harm likely to result from this reckless conduct. The potential harm from such conduct obviously includes permanent and severe injuries up to and including death. The punitive damage awards are reasonably related to the severity and gravity of the harm likely to result from commercial truck drivers being under the influence of narcotics, from bullying smaller vehicles on the roadway, from driving too closely, and from driving while impaired due to fatigue from exceeding their hours of service.

Hill and JHOC argue that it is not permissible for the ratio to exceed 1 to 1 because the compensatory damages are substantial. The Court respectfully disagrees. "[T]here are no rigid benchmarks that a punitive damages award may not surpass, so long as the measurement of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and the general damages recovered." *Mitchell*, 385 S.C. at 588, 686 S.E.2d at 185; see also *Duncan v. Ford Motor Co.*, 385 S.C. 119, 145, 682 S.E.2d 877, 891 (Ct. App. 2009) ("The reasonableness of a punitive damages award cannot be determined simply by examining the relationship between the punitive damages award and the actual damages award."). In this case, Willie and Brandon have significant medical and future care expenses. These damages are in addition to damages for pain and suffering, loss of enjoyment of life, and lost income. The ratios are reasonable and proportionate to the harm suffered, and they are also proportional given the ultimate harm of death that could have resulted from JHOC and Hill's conduct. See *TXO Prod. Corp. v. Alliance Res. Corp.*, 509 U.S. 443, 460 (1993) ("It is appropriate to consider the magnitude of the potential harm that the defendant's conduct would have caused . . . as well as the possible harm to other victims that might have resulted if similar future behavior were not deterred.") (cited with approval in *Mitchell*, 385 S.C. at 591, 686 S.E.2d at 187).

South Carolina courts have affirmed several punitive damages awards that were larger than 10 times the compensatory damages. See *Hundley v. Rite Aid of S.C., Inc.*, 339 S.C. 285, 529 S.E.2d 45 (Ct. App. 2000) (affirming a jury verdict for $20,000 actual damages and $1,000,000 punitive damages, where the court found the award "reflective of the potential harm in this case and in future cases involving similar conduct" of misfilled prescriptions); *Lister v. NationsBank of Delaware, N.A.*, 329 S.C. 133, 494 S.E.2d 449 (Ct. App. 1997) (affirming a default judgment

award of $8,605.08 actual damages and $200,000 punitive damages, 23.24 times the actual damages, in a case involving economic damages due to an unauthorized credit card charge); *Gamble v. Stevenson*, 305 S.C. 104, 112, 406 S.E.2d 350, 355 (1991) (affirming a jury verdict for $5,000 actual damages, reduced by the court to $2,500, and $87,500 punitive damages, 17.5 times the actual damages, in a case arising out of a motor vehicle accident). The Fourth Circuit affirmed a punitive damages award 80 times greater than an actual damage award in a case involving violations of the Fair Credit Reporting Act because, "a smaller award would not serve as a meaningful deterrent." *Saunders v. Branch Banking & Trust Co.*, 526 F.3d 142, 154 (4th Cir. 2008). The evidence in this case supports the jury's determination that a substantial award is necessary to punish and deter these defendants from a pattern of reprehensible conduct.

South Carolina courts have imposed awards on the outer-edge of the single-digit ratio that did not involve physical injury but the potential harm of physical injury. *See Austin*, 387 S.C. at 53-54, 691 S.E.2d at 151 (affirming an 8.21 ratio where a misrepresentation that a used truck had been wrecked resulted in "a potential for Austin or his passengers to be subjected to serious injury"); *Mitchell*, 385 S.C. at 591-94, 686 S.E.2d at 187-88 (reducing the ratio from 13.9 to 9.2 where defendant's conduct in denying health insurance "would have *potentially* resulted in a great deal of harm.") (emphasis added). Brandon and Willie actually suffered severe injuries, and Hill and JHOC's conduct put them and the general public at risk of severe or deadly physical injuries.

As to the third factor, there was evidence JHOC has the ability to pay the punitive awards. And while there is evidence of the ability to pay, even the absence of evidence of ability to pay punitive damages does not preclude an award of punitive damages if the trial court's findings on other relevant factors are sufficient to uphold the award. *Magnolia North Prop. Owners' Ass'n v. Heritage Cmtys., Inc.*, 397 S.C. 348, 378, 725 S.E.2d 112, 128 (Ct. App. 2012).

b. Other *Fortis* factors—reprehensibility and comparison to other penalties.

The Supreme Court has explained that a trial court's post-verdict review of punitive damages focuses on three general considerations: Reprehensibility, ratio, and comparative penalty awards. *Mitchell*, 385 S.C. at 587-589, 686 S.E.2d at 185-186.

Ratio is discussed above. Reprehensibility is also discussed above as much of the Court's observations regarding deterrence demonstrate the reprehensible conduct involved. As to the difference between the punitive damages awarded by the jury and the civil penalties authorized or

imposed in comparable cases, the Court notes South Carolina has a strong interest in enforcing all traffic regulations and in deterring driving under the influence of drugs. Verdicts in similar cases demonstrate that the conduct in this case supports these punitive awards.

The Legislature recently enacted a statute instructing that a larger punitive damages verdict is warranted in a case involving a defendant who was under the influence of drugs. Section 15-32-530 caps punitive damages at three times the amount of compensatory damages but also says that there is no cap in a case where "the defendant acted or failed to act while *under the influence of drugs*." § 15-32-530(C)(3) (emphasis added). This statute supports argument that Hill's conduct in driving while under the influence of drugs warrants the punitive damages amount determined by the jury.

b. Statutory ratio.

As already noted, section 15-32-530(A) caps an award at three times the compensatory damages or $500,000, whichever is greater. The statute also lists several exceptions to this cap. The Court is responsible for determining whether any of these exceptions apply. Subsection(C)(3) explains there is no cap on punitive damages if the defendant acted while under the influence of alcohol or drugs (other than lawfully prescribed drugs) to the degree the defendant's judgment is substantially impaired. The Court finds this subsection applies to this case.

There was testimony that a commercial truck driver cannot ingest any narcotic medication, whether prescribed or not, and be lawfully operating a commercial truck consistent with federal motor carrier safety regulations. There was also testimony consistent with Hill being given a test based on JHOC determining there was a reasonable suspicion of drug use and the fact that those test results were not disclosed. Then, there was Hill's testimony about his actions in the hours leading up to the wreck. This testimony was obviously implausible. Finally, a fair interpretation of Hill's testimony is that he was doing several things he knew he should not do. Based on all of this, the Court believes his testimony that he was taking narcotic medication and that he was substantially impaired.

Subsection (B)(1) of section 15-32-530 explains punitive damages are capped at four (4) times the compensatory damages if the wrongful conduct was motivated primarily by financial gain and the dangerous nature of the conduct and high risk of injury was known by someone with managerial authority.

This Court finds that this subsection applies as well. There was ample testimony at trial that the chief purpose of federal motor safety regulations is avoiding serious injury to the motoring public. There was also the testimony noted earlier that JHOC's truck was equipped with GPS tracking and other on-board computer devices that would allow JHOC to monitor things like a truck's rate of speed and hours of service violations. Also, there was testimony that this truck was speeding in excess of 600 times during the three weeks leading up to this collision and that if JHOC had properly monitored this report they would have observed characteristics of driving that showed Hill to be a negligent driver. Financial gain is the only reason a trucking company would fail to keep track of hours of service violations and repeated speeding.

Conclusion

The sum and substance of this case is that the jury listened very attentively to all of the testimony, followed the Court's instructions, particularly as to the credibility and believability of the witnesses, and considered the arguments of counsel. After due deliberation, the jurors rendered a reasoned and valid verdict based upon the testimony and evidence presented at trial. This Court will not overturn, modify, or disturb the jury's verdict. Accordingly, for the foregoing reasons,

IT IS THEREFORE ORDERED that all post-trial motions be, and hereby are, DENIED.

AND IT IS SO ORDERED.

_____
Judge Edgar W. Dickson

Orangeburg, South Carolina

Orangeburg Common Pleas

Case Caption: Brandon Glover VS David Hill , defendant, et al

Case Number: 2016CP3801152

Type: Order/Other

So Ordered

s/ Edgar W. Dickson #2153