Keaveny Law Firm LLC

Attorneys and Counselors at Law

Amy B. Rothschild, Esquire
Telephone: 843.225.2820
Email: arothschild@keavenylawfirm.com

18 May, 2012

VIA USPS
Hon. Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

Re: ***William D. Curtis v. Sandra Morris, as Personal Representative of the Estate of Brandon T. Blake***
South Carolina Court of Appeals Op. 4792
(392 S.C. 494, 709 S.E.2d 79 (Ct.App. 2011))
SCt. Tracking No.: 2011191906
Claims No.: 8671 9730 2008
Our File No.: 632-201

Dear Mr. Shearouse:

It was brought to our attention that some of the pages of the original Appendix had been inadvertently omitted. To that end, enclosed please find the following documents for filing with the Supreme Court in the above-referenced matter:

a. The original and 13 copies of the **Amended Appendix** (the original copy has not been bound and is contained in a separate white envelope); and

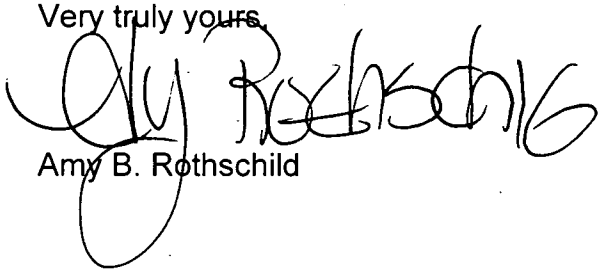
b. The original and one copy of a Proof of Service for the **Amended Appendix**.

I would appreciate you kindly filing these documents with the Supreme Court and returning one file stamped copy to my attention in the enclosed, prepaid, self-addressed, stamped envelope.

If I may of any further assistance, please feel free to contact me at your convenience.

With kindest regards, I am

Very truly yours,



Amy B. Rothschild

Enclosures

cc: C. Bradley Hutto, Esquire (via USPS w/enclosures)
Mark B. Tinsley, Esquire (via USPS w/enclosures)
Robert N. Hill, Esquire (via USPS w/enclosures)

The Supreme Court of South Carolina

William D. Curtis, Respondent,

v.

Sandra Morris Blake, as
Personal Representative of the
Estate of Brandon T. Blake, Petitioner.

The Honorable J. Derham Cole
Orangeburg County
Trial Court Case No. 2004-CP-38-00222

ORDER

For good cause having been shown, the time for serving and filing the Brief of Respondent in the above entitled matter is hereby extended until May 22, 2012.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY Brenda J. Skeely
Clerk
Chief Deputy

Columbia, South Carolina

April 19, 2012

cc: Thomas J. Keaveny, II, Esquire
Amy B. Rothschild, Esquire
C. Bradley Hutto, Esquire
Mark Brandon Tinsley, Esquire
Robert Norris Hill, Esquire

LAW OFFICES OF ROBERT HILL

1819 MCHARDY STREET
P.O. BOX 51
NEWBERRY, SOUTH CAROLINA 29108

ROBERT N. HILL
ATTORNEY AT LAW

TELEPHONE
803-405-1629

FACSIMILE
803-276-4181

EMAIL
attorneyhill@att.net

April 18, 2012

Linda Allen
South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

Via Facsimile and
First Class Mail

RE: *William D. Curtis v. Sandra Morris, as Personal Representative of the Estate of Brandon T. Blake,*
Case # 2004-CP-38-022 (Orangeburg Cty.)
First Request for an Extension

Dear Ms. Allen:

Thank you for letting me know that you received my first request for a 30-day extension of time to file the Respondents' brief.

We need the extension because I will be preparing the brief and until yesterday was consumed with preparing for oral argument before this Court in Adoptive Couple v. Baby Girl. I will also be arguing in the Court of Appeals later this month.

Please let me know if you need any more information.

Respectfully,

Robert Hill

cc: Amy B. Rothschild, Esq.
Mark B. Tinsley, Esq.
C. Bradley Hutto, Esq.

LAW OFFICES OF ROBERT HILL

1819 McHARDY STREET
P.O. BOX 51
NEWBERRY, SOUTH CAROLINA 29108

ROBERT N. HILL
ATTORNEY AT LAW

TELEPHONE
803-405-1629

FACSIMILE
803-276-4181

EMAIL
attorneyhill@att.net

April 16, 2012

Daniel E. Shearouse
Clerk of Court for the
South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

RE: *William D. Curtis v. Sandra Morris, as Personal Representative of the Estate of Brandon T. Blake,*
Case # 2004-CP-38-022 (Orangeburg Cty.)

First Request for an Extension

Dear Clerk of Court:

The Respondents' Brief is due Monday, April 23, 2012. We request a 30 day extension of time to file and serve the brief, making it due May 22, 2012.

This is our first request for an extension. The $ 25.00 filing fee is enclosed.

Respectfully,

Robert Hill

cc: Amy B. Rothschild, Esq.
Mark B. Tinsley, Esq.
C. Bradley Hutto, Esq.

Check #1338
$25.00

Keaveny Law Firm LLC

Attorneys and Counselors at Law

Amy B. Rothschild, Esquire
Telephone: 843.225.2820
Email: arothschild@keavenylawfirm.com

March 22, 2012

VIA USPS OVERNIGHT DELIVERY
Hon. Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

Re: ***William D. Curtis v. Sandra Morris, as Personal Representative of the Estate of Brandon T. Blake***
South Carolina Court of Appeals Op. 4792
(392 S.C. 494, 709 S.E.2d 79 (Ct.App. 2011))
SCt. Tracking No.: 2011191906
Claims No.: 8671 9730 2008
Our File No.: 632-201

Dear Mr. Shearouse:

Enclosed please find the following documents for filing with the Supreme Court in the above-referenced matter:

a. The original and 15 copies of the **Brief of the Petitioner** (the original copy has not been bound and is contained in a separate white envelope);

b. The original and one copy of a Proof of Service for **Brief of the Petitioner**;

c. The original and 13 copies of the **Appendix** (the original copy has not been bound and is contained in a separate white envelope); and

d. The original and one copy of a Proof of Service for the **Appendix**.

I would appreciate you kindly filing these documents with the Supreme Court and returning one file stamped copy to my attention in the enclosed, prepaid, self-addressed, stamped envelope.

If I may of any further assistance, please feel free to contact me at your convenience.

With kindest regards, I am

Very truly yours,

Amy B. Rothschild

Enclosures

cc: C. Bradley Hutto, Esquire (via USPS Overnight w/enclosures)
Mark B. Tinsley, Esquire (via USPS Overnight w/enclosures)
Robert N. Hill, Esquire (via USPS Overnight w/enclosures)

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

February 24, 2012

Thomas J. Keaveny, II, Esquire
Amy B. Rothschild, Esquire
Keaveny Law Firm, LLC
445 Folly Road
Charleston, SC 29412

Re: Curtis, William v. Blake, Sandra

Dear Counsel:

Enclosed is the Order granting your Petition for Writ of Certiorari in the above entitled matter.

It will be necessary for you to furnish this office with an additional thirteen (13) copies of the appendix within thirty (30) days from the date of this letter.

Brief of Petitioner should be served and filed on or before March 26, 2012. The brief is not properly filed until we have proof of service.

Brief of Respondent should be served and filed within thirty (30) days after petitioner's brief is filed. We must have proof of service. Any reply brief should be served and filed within ten (10) days after filing of respondent's brief.

Very truly yours,

Daniel E. Shearouse BS

CLERK

DES/lda

cc: C. Bradley Hutto, Esquire
Mark Brandon Tinsley, Esquire
Robert Norris Hill, Esquire
The Honorable Tanya Gee

The Supreme Court of South Carolina

William D. Curtis, Respondent,

v.

Sandra Morris Blake, as Personal Representative of the Estate of Brandon T. Blake, Petitioner.

ORDER

We grant the petition for a writ of certiorari to review the Court of Appeals' decision in *Curtis v. Blake*, 392 S.C. 494, 709 S.E.2d 79 (Ct. App. 2011). The parties shall proceed to serve and file the appendix and briefs as provided by Rule 242(i), SCACR.

C. J.

J.

Columbia, South Carolina

February 24, 2012

STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT

Appeal from the Court of Common Pleas
For Orangeburg County
Honorable J. Derham Cole, Circuit Judge
Civil Action No.: 2004-CP-38-222
South Carolina Court Of Appeals
Opinion No. 4792

William D. Curtis,

Respondent,

v.

Sandra Morris Blake, as Personal Representative
Of the Estate of Brandon T. Blake,

Petitioner.

PETITION FOR WRIT OF CERTIORARI

Thomas J. Keaveny, II, Esquire
Amy B. Rothschild, Esquire
KEAVENY LAW FIRM, LLC
445 Folly Road
Charleston, South Carolina 29412
Telephone: 843.225.2820
Telecopier: 843.225.2823

Attorneys for the Petitioner

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C. Did The Circuit Court Improperly Deny The Appellant's Post-Trial Motion By Not Granting A New Trial?

D. Did The Jury Conduct Premature Deliberations Or Hasten Through Its Deliberations Without Giving Adequate Consideration To The Evidence?

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II. STATEMENT OF THE CASE

On 17 February 2004, the Respondent, William D. Curtis ("Mr. Curtis"), sued the Petitioner, Sandra Morris Blake, as the Personal Representative of the Estate of Brandon T. Blake ("Mr. Blake"), for negligence arising out of a motor vehicle accident. (R.pp.8-9, paras. 3-5). Mr. Curtis sought unspecified actual and punitive damages and litigation costs. (R.8). Mr. Blake denied the material allegations (R.p.10, paras. 1, 4-5) and asserting several affirmative defenses. (R.pp.11-12, paras. 7, 9, 11, 13, 15, 17, 19).

The matter was eventually tried before a jury on 31 October 2005, with the Honorable J. Derham Cole, Circuit Court Judge, presiding. (R.p.42). Mr. Blake admitted liability (R.p.47, line 6 – R.p.48, line 9), and the trial proceeded only on monetary damages. (R.p.48, line 10 – R.p.49, line 2). During the trial, Mr. Curtis presented (a) the deposition of his chiropractor, David D. Campbell, DC ("Dr. Campbell") (R.p.55, line 3 – R.p.78, line 8); (b) the video testimony of his treating physician, Charles J. Nivens ("Dr. Nivens") (R.p.78, line 21 – R.p.116, line 14); (c) the testimony of his wife, Michele Curtis ("Mrs. Curtis") (R.p.106, line 21 – R.p.132, line 14); and his testimony. (R.p.132, line 20 – R.p.152, line 14).

After deliberating for about 22 minutes (R.p.31, para. 20; R.p.191, line 17 – R.p.192, line 9), the jury returned an actual damages verdict of $450,000.00. (R.p.192, line 8 – R.p.195, line 3).**1** Mr. Blake subsequently filed a *Motion for New*

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1 The jury began deliberations at 5:15 p.m. on Halloween night (R.p.191, line 20 – R.p.192, line 2) and returned at 5:40 p.m. (R.p.192, lines 3-9). Earlier, at approximately 4:00 p.m., the Trial Judge, recognizing that it was Halloween, offered the jury the opportunity to stop the trial and continue it the next day. (R.p.171, lines 2-21). Nevertheless, the jury decided to conclude that evening. (R.p.171, lines 7-11).

Trial Absolute Under Rule 59(e), SCRCP, New Trial Based On Thirteenth Juror Doctrine or, Alternatively a New Trial Nisi Remittitur.[2] (R.pp.25-41), which the Trial Court denied. (R.pp.1-7). This appeal followed.

The Court of Appeals issued its decision on 16 February 2011, affirming the Trial Court.[3]

II. STATEMENT OF THE FACTS

A. The Accident

On Tuesday, March 25, 2003, Mr. Curtis was driving his T800 Kenworth semi pulling an empty log trailer (R.p.134, lines 1-2, 17-22; R.p.135, lines 6-8; R.p.152, lines 1-10)[4] heading "up to a section of woods in between Wagener, South Carolina and Columbia, South Carolina." (R.p.135, lines 4-5).[5] Sometime between 8:00 a.m. and 8:30 a.m., he was traveling on South Carolina Highway 3 "going into the Town of Blackville." (R.p.135, lines 9-10; R.p.136, lines 5-8; R.p.196).

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[2] Mr. Blake sought a remittitur from the jury's verdict of $450,000.00 down to between $65,000.00 and $72,000.00. (R.p.35, p.11).

[3] *See* Curtis v. Blake, ___ S.C. ___, ___ S.E.2d ___ (Ct.App. 2011) (2011 WL 669110, filed 16 February 2011). This case was previously appealed on other grounds. *See* Curtis v. Blake, 381 S.C. 189, 672 S.E.2d 576 (2000). Mr. Blake filed a Petition for Rehearing with Suggestion for Rehearing *En Banc* on 1 March 2011. The Court of Appeals denied the petition by orders dated and filed 22 April 2011.

[4] Mr. Curtis is a semi truck driver. (R.p.100, lines 15-22; R.p.133, lines 12-15; R.p.133, line 23 - R.p.134, line 5; R.p.151, lines 22-25). He has been doing so for over 15 years. (R.p.133, lines 16-18).

[5] Mr. Curtis worked for Fat Cat Trucking (R.p.118, lines 12-17; R.p.124, lines 2-8; R.p.164, line 22 - R.p.165, line 5), owned by his wife's brother - Earl Gill. (R.p.124, lines 7-10; R.p.153, line 24 - R.p.154, line 8). This was Mr. Curtis' regular daily hauling back-and-forth route. (R.p.165, lines 9-15). The run was approximately 200 miles round trip and Mr. Curtis made from three to four trips per day for upwards of 800 miles per day. (R.p.165, line 22 - R.p.166, line 4). Mr. Curtis was only paid when his trailer was loaded and received no compensation for driving with an unloaded trailer. (R.p.166, lines 5-14).

At the same time, unbeknownst to Mr. Curtis, Mr. Blake was traveling on Whitetail Drive and heading towards Highway 3. (R.p.135, lines 12-18). A *STOP* sign controls the intersection of Highway 3 and Whitetail Lane. (R.p.137, lines 11-21). Unfortunately, at the same time Mr. Curtis was traveling through the intersection, Mr. Blake also entered the intersection. (R.p.141, line 10 – R.p.142, line 1). Mr. Blake's vehicle struck Mr. Curtis' empty log trailer near the rear trailer wheels. (R.p.138, lines 14-22; R.p.152, lines 15-18; R.p.153, lines 16-21; R.p.196). Despite the alleged severity of the collision, Mr. Curtis maintained control of his vehicle and maneuvered it over to the side of the road. (R.p.137, line 22 – R.p.138, line 6; R.p.152, lines 19-23; R.p.153, lines 6-12).[6]

B. Mr. Curtis' Medical Treatment

1. *No Initial Treatment*

When the accident occurred, Mr. Curtis stated he "felt a sudden jar, and [his] head and [his] arms . . . [and he] run up against the side of the [semi's] door." (R.p.138, lines 1-3). He also said he "felt [his] truck just shaking real hard . . . ." (R.p.138, lines 3-4). Nevertheless, Mr. Curtis did not feel any pain, but "was just nervous and [had] an anxious feeling." (R.p.142, lines 2-4; R.p.154, line 9 – R.p.155, line 1).[7] Mr. Curtis did not seek any medical treatment at the accident scene or at any time later the same day at either a physician's office or an emergency room. (R.p.124, line 24 – R.p.126, line 6; R.p.155, lines 8-15).

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[6] Mr. Curtis admitted when the accident happened, he "didn't realize [he had] been hit [but, in any case,] knew something was wrong." (R.p.153, lines 3-5).

[7] Mr. Curtis drove his semi-truck home after taking the damaged trailer to a local welding shop for repairs. (R.p.118, lines 12-24; R.p.125, lines 8-18; R.p.142, lines 5-16).

Mr. Curtis testified he "was very stiff" and his "neck and [his] back was hurting" the next morning. (R.p.142, lines 17-19). He also noted it felt like "somebody [was] sticking a needle in [his] right arm." (R.p.142, lines 20-21). Nevertheless, Mr. Curtis chose ***not*** to consult with a doctor or go to an emergency room, but simply took *Tylenol* for his pain. (R.p.144, line 23 – R.p.145, line 1; R.p.155, line 25 – R.p.156, line 3). Moreover, even though he asserted he was somewhat in pain, Mr. Curtis continued to work as a truck driver. (R.p.56, lines 17-20; R.p.81, lines 13-15; R.p.81, lines 2-17; R.p.143, line 21 – R.p.144, line 1; R.p.156, lines 4-11).[8]

2. ***The ER Visit***

Mr. Curtis did not initially seek medical attention (R.p.124, line 24 – R.p.125, line 7), but simply self-administered over-the-counter medicines (*i.e.*; *Tylenol*). (R.p.121, line 22 – R.p.122, line 2, R.p.122, lines 8-11; R.p.125, line 23 – R.p.127, line 6; R.p.144, line 23 – R.p.136, line 1; R.p.155, line 25 – R.p.156, line 3). Approximately ***one month after*** the accident Mr. Curtis, at his wife's insistence (R.p.120, line 16 – R.p.121, line 2; R.p.126, lines 7-15), went to the Hampton General Hospital ER. (R.p.77, lines 4-8; R.p.82, lines 2-17; R.p.98, lines 15–25; R.p.120, line 16 – R.p.121, line 2; R.p.125, line 19 – R.p.126, line 6; R.p.144, lines 10-17; R.p.155, lines 16-24).[9] Mr. and Mrs. Curtis stayed at the ER for a couple of

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[8] Mr. Curtis was out of work for approximately eight days when his log trailer was being repaired. (R.p.121, lines 10-18; R.p.124, lines 11-23; R.p.143, lines 6-20; R.p.156, lines 4-11; R.p.166, line 18 - R.p.167, line 5). He missed another five or so days making visits to doctors. (R.p.121, lines 10-18; R.p.124, lines 11-23; R.p.143, lines 6-20; R.p.158, line 14 - R.p.159, line 7; R.p.166, line 18 - R.p.168, line 17; R.pp.210-213). He did not miss any other time from work.

[9] Mr. Curtis worked most of the day he finally went to seek medical attention. (R.p.120, lines 16-24; R.p.126, line 16 - R.p.127, line 7; R.p.156, line 15 - R.p.157, line 10). Mr.

hours; he was diagnosed with a concussion and/or post-concussion symptoms (R.p.77, line 9 – R.p.79, line 2; R.p.156, lines 12-14; R.p.157, lines 8-12), he was given/prescribed certain medicine, and discharged. (R.p.127, line 11 – R.p.128, line 2; R.p.144, lines 10-17; R.p.156, lines 12-14; R.p.157. lines 13-25).**10** Mr. Curtis admitted he did not take the prescribed medicine. (R.p.127, line 21 – R.p.128, line 1; R.p.144, lines 18-19; R.p.158, lines 1-3).**11**

3. ***The Chiropractor – Dr. Campbell***

Mr. Curtis then went to see Dr. Campbell – the chiropractor,**12** (R.p.55, lines 4-24; R.p.76, line 24 – R.p.77, line 3; R.p.82, lines 2-17; R.p.97, line 22 – R.p.98, line 3; R.p.145, lines 2-8; R.p.158, lines 4-6) within a couple of weeks after his ER visit. (R.p.158, lines 10-13). Dr. Campbell noted Mr. Curtis complained that the "base of [his] neck hurts, gets stiff [and his] lower back hurts constantly." (R.p.158, lines 10-13). Dr. Campbell examined Mr. Curtis and diagnosed a "lumbosacral sprain, cervical sprain with disk involvement." (R.p.58, lines10-13). He treated Mr. Curtis with "physical therapy involving electrical stim[ulation] and heat[,] as well as chiropractic manipulation [adjustments]" (R.p.61, line 20 – R.p.62, line 7) on four separate occasions. (R.p.62, lines 8-15; R.p.128, line 17 – R.p.129, line 10;

Curtis did not got to the ER until approximately 6:00 p.m. after cleaning up and having dinner at home. (R.p.120, lines 16-24; R.p.126, line 16 - R.p.127, line 7; R.p.156, line 15 - R.p.157, line 10).

10 The ER physician did not perform any diagnostic testing during Mr. Curtis' visit. (R.p.157, lines 16-23).

11 Dr. Nivens noted a patient's failure to take prescribed medicines "can make [the patient's symptoms/conditions] worse or certainly make them continue [longer than they should have lasted]." (R.p.99, lines 4-25; R.p.110, lines 9-21).

12 Dr. Campbell recalled that the law office of Bill Green, Esquire referred Mr. Curtis for treatment. (R.p.56, lines 4-7). Mr. Curtis recalled that a friend had referred him to Dr. Campbell. (R.p.145, lines 2-8).

R.p.158, lines 7-9).**13** Mr. Curtis last visited Dr. Campbell on 14 May 2003, for an orthopedic exam and was released from treatment. (R.p.63, lines 2-11; R.p.65, line 24 – R.p.66, line 3; R.p.66, line 25 – R.p.67, line 3; R.p.159, line 25 – R.p.160, line 5).**14** Dr. Campbell released Mr. Curtis from further treatment based on the negative orthopedic tests (R.p.64, lines 9-11; R.p.68, lines 12-20; R.p.159, line 25 – R.p.160, line 14).**15** Furthermore, Dr. Campbell stated on 14 May 2003, Mr. Curtis was "demonstrating full painless range of motion which [indicated] to [him] the patient [Mr. Curtis] had recovered from his complaints." (R.p.66, lines 15-24; R.p.68, lines 12-20). Mr. Curtis told Dr. Campbell the same day he was not suffering from any pain. (R.p.160, lines 6-8).**16**

Even though Dr. Campbell's evaluation showed Mr. Curtis had fully recovered (R.p.66, lines 15-24; R.p.68, lines 12-20), and Mr. Curtis declared he had "no pain" (R.p.160, lines 6-8), Mr. Curtis did not believe Dr. Campbell's treatments had helped him. (R.p.145, lines 2-10; R.p.146, lines 10-14).**17** Mr. Curtis, however, never told Dr. Campbell he disagreed with the treatment or he did not feel he was

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13 Mr. Curtis saw Dr. Campbell on 25 April 2003; 28 April 2003; 2 May 2003; and 9 May 2003. (R.p.62, lines 8-15; R.p.159, line 8 - R.p.160, line 2; R.pp.210-213). The treatments lasted between 30 to 45 minutes each. (R.p.62, line 22 - R.p.63, line 1).

14 Dr. Campbell performed the same orthopedic exam on Mr. Curtis on 14 May 2003, as he had on 25 April 2003, when Mr. Curtis first visited him. (R.p.63, lines 7-21).

15 Dr. Campbell stated, on 14 May 2003, Mr. Curtis "presented with negative orthopedic exams and showed general good range of motion with a lack of pain." (R.p.63, lines 22-25). Dr. Campbell opined that "if [patients] have a negative [orthopedic] test, it means that, by and large, that [they are] within normal limits." (R.p.64, lines 1-8).

16 Mr. Curtis testified that his statement of "no pain" to Dr. Campbell was not truthful. (R.p.160, lines 6-8).

17 Mrs. Curtis stated her husband complained to her "[t]he very first day" that Dr. Campbell was not helping him. (R.p.129, lines 11-22). Mrs. Curtis did not, however, encourage Mr. Curtis to seek medical attention elsewhere. (R.p.130, lines 2-5).

making any improvement. (R.p.67, lines 8-22; R.p.160, lines 6-14). Had Mr. Curtis done so, Dr. Campbell would have referred him "to a medical doctor for more traditional care." (R.p.67, line 19 – R.p.68, line 6).

4. ***The Spine Physician - Dr. Nivens***

On 19 November 2003, some six months after last seeing Dr. Campbell, and some eight months after the accident (R.p.97, lines 5-11; R.p.160, lines 22-24), Mr. Curtis went to see Dr. Nivens – the spine physician.**18** (R.p.81, lines 10-15; R.p.130, lines 6-12; R.p.147, lines 16-20; R.p.160, lines 19-21; R.p.160, line 25 – R.p.161, line 3).**19** Mr. Curtis stated he was experiencing some "neck and low back pain . . . ." (R.p.82, lines 18-21). Dr. Nivens conducted a "musculoskeletal and an orthopedic-type evaluation and neurological evaluation [on Mr. Curtis]" (R.p.83, lines 4-6). The evaluation showed he had "some pain with range of motion of his neck[,] as well as tenderness in the musculature of his neck and shoulder girdle." (R.p.83, lines 8-10; R.p.103, lines 7-19). He also "had some tenderness or pain with range of motion of his lumbar spine . . . ."

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18 During this interim time period, Mr. Curtis' only "medical treatment" consisted on his taking Tylenol and/or Aleve for his pain. (R.p.147, lines 11-24).

19 Other than taking some more Tylenol, Mr. Curtis did not receive any medical attention during the many months between his last visit to Dr. Campbell and his first visit to Dr. Nivens. (R.p.130, lines 13-15). He continued to drive his semi-truck five or six days per week (R.p.130, line 16 - R.p.;131, line 1; R.p.161, line 19 - R.p.162, line 2; R.p.170, lines 11-14) and driving "500 or more" miles per day. (Tr.153, line 24 - Tr.154, line 5; Tr.155, lines 13-21; Tr.156, line 11 - Tr.157, line 4). In fact, Mr. Curtis was driving about 800 miles per day. (R.p.165, line 11 - R.p.166, line 4). He was not working under any medical restrictions. (R.p.163, lines 6-8). Dr. Nivens stated Mr. Curtis, by driving his semi-truck 300+ miles per day or 12 to 13 hours per day, would likely put a great deal of stress on his back and/or spine. (R.p.101, lines 9-19). Mr. Curtis would sometimes work between 15 and 16 hours per day (Tr.156, lines 6-8), five or six days a week. (R.p.170, lines 11-14). Dr. Nivens also noted truck drivers generally have many more physical problems than non-truck drivers. (R.p.101, line 23 - R.p.102, line 7; R.p.110, line 23 - R.p.111, line 7).

(R.p.83, lines 10-12; R.p.103, lines 7-19). Dr. Nivens suggested Mr. Curtis undergo an MRI and prescribed the anti-inflammatory medicine – *Naprosyn*. (R.p.85, line 1 – R.p.76, line 2; R.p.161, lines 3-5).

Mr. Curtis underwent the MRI on 2 December 2003, and it showed he exhibited "three levels of disk protrusion in the cervical spine, the neck." (R.p.86, lines 6-18; R.p.161, lines 3-5). There was also "a disk protrusion [on the lumbar spine]." (R.p.90, lines 1-4). Due to the MRI, Dr. Nivens continued Mr. Curtis on the *Naprosyn* and added a *Medrol* dose pack – a steroid treatment. (R.p.90, lines 6-18).**20** Mr. Curtis did not report any cervical spasms, problems sleeping, headaches, or anything of a similar nature to Dr. Nivens that day. (R.p.106, line 17 – R.p.107, line 5).**21** He also admitted Dr. Nivens' treatments helped with the pain he was experiencing. (R.p.161, lines 6-7).

By Mr. Curtis' next visit – on 14 January 2004 – he indicated to Dr. Nivens "that the pain had essentially gone away . . . ." (R.p.92, lines 2-8; R.p.107, lines 6-11). For all practical purposes, Dr. Nivens effectively released Mr. Curtis from treatment that day, noting Mr. Curtis was on an "as needed to be seen" basis with "[no]thing solid as far as follow-up." (R.p.107, lines 12-22).**22**

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20 Unlike the medications prescribed by the ER physician, Mr. Curtis took both the Naprosyn and the Medrol. (R.p.161, lines 8-18).

21 Coupled with the inherent physical problems attendant to working as a truck driver (R.p.101, line 23 - R.p.102, line 7), Mr. Curtis' family had a history of back problems. (R.p.102, lines 8-14). In turn, there was a great likelihood he would also experience similar problems.

22 Mr. Curtis saw Dr. Nivens on four occasions - 19 November 2003 (R.p.81, lines 13-15; R.p.97, lines 5-8; R.p.162, lines 5-9); 2 December 2003 (R.p.106, lines 19-19; R.p.162, lines 5-9); 14 January 2004 (R.p.92, lines 2-4; R.p.107, lines 6-8; R.p.162, lines 5-9); and, almost 15 months later, on 11 April 2005. (R.p.92, line 25 - R.p.93, line 1; R.p.107, lines 23-25; R.p.162, lines 5-9; R.p.162, lines 13-17).

Dr. Nivens saw Mr. Curtis for the final time on 11 April 2005, some 15 months after his last visit. (R.p.107, lines 23-25; R.p.162, lines 13-17).**23** Mr. Curtis indicated he was still having some pain. (R.p.92, line 21 – R.p.93, line 3; R.p.107, lines 23-25). Even though the pain that existed was not debilitating and Mr. Curtis "[n]eurologically. . . seemed to be fine", Dr. Nivens suggested he take *Aleve* twice daily. (R.p.92, line 24 – R.p.93, line 7; R.p.108, lines 1-19).**24**

C. Mr. Curtis' Injuries/Damages

Mr. Curtis allegedly sustained neck and back injuries from the accident. (R.p.142, lines 17-21). He stated he experienced restlessness, irritability, mood swings, some lack of concentration (R.p.145, line 11 – R.p.146, line 9) and some driving paranoia. (R.p.146, line 22 – R.p.147, line 10). Mr. Curtis allegedly can no longer "change tires . . . play with [his] children . . . ride a bicycle" like he could do before 25 March 2003. (R.p.149, line 2 – R.p.150, line 4). Mr. Curtis testified he "ha[s] pain every day" (R.p.146, lines 18-21) and continued to have problems as of the time of trial. (r.p.148, line 12 – R.p.149, line 1).**25**

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23 Coincidentally, this was a little over two months before Mr. Curtis went to trial on his claims against Mr. Blake. (R.p.42; R.p.107, lines 23-25; R.p.162, lines 13-17).

24 Without consulting the America Medical Association guides (R.p.108, line 20 - R.p.109, line 7), Dr. Nivens gave Mr. Curtis a self-described "spur-of-the-moment" (R.p.109, lines 5-6) "impairment rating somewhere around 10 percent for the neck and low back, the whole body essentially." (R.p.94, lines 1-5; R.p.108, lines 20-23).

25 These continuing pain complaints are contrary to both Dr. Campbell's (R.p.63, lines 22-25; R.p.64, lines 9-11; R.p.66, lines 15-24; R.p.68, lines 12-20) and Dr. Nivens' (R.p.92, lines 2-8; R.p.92, line 24 - R.p.93, line 7; R.p.107, lines 6-22; R.p.108, lines 1-19) conclusions Mr. Curtis had recovered from his injuries as of 14 May 2003 (Dr. Campbell), and as of 14 January 2004 (Dr. Nivens).

Mr. Curtis testified he lost about $2,000.00 in wages. (R.p.150, line 8 – R.p.151, line 1; R.p.163, lines 9-11; R.p.210-213). The actual amount was $2,615.76. (R.p.163, line 12 – R.p.165, line 18; R.p.212). Mr. Curtis incurred $4,530.98 in medical expenses. (R.p.202).[26]

IV. ARGUMENT AND CITATION OF AUTHORITY

A. The Court Of Appeals Incorrectly Concluded Mr. Blake Was Not Entitled To A New Trial Absolute Or New Trial *Nisi* Remittitur Since Mr. Blake Could Not Show "Compelling Reasons" For A New Trial

Mr. Curtis asserted he was injured in the accident with Mr. Blake. Nevertheless, even though Mr. Blake conceded his liability for the accident and went to trial on Mr. Curtis' alleged damages alone (R.p.47, line 6 – R.p.49, line 2), Mr. Blake never agreed nor conceded Mr. Curtis was actually injured. Consequently, under well-established South Carolina law, Mr. Curtis had the responsibility and burden to prove he was injured and, once that was done, to show his damages in a non-speculative manner. Therefore, the jury had to ultimately determine form the evidence (a) whether Mr. Curtis was injured in the accident, (b) the level of Mr. Curtis' injuries if he had been injured, and (c) the appropriate monetary relief, if any, to which he was entitled because of his alleged injuries.

Unfortunately, instead of rationally considering the evidence, the jury, apparently in a hurry to celebrate Halloween, treated Mr. Curtis to a $450,000.00 gift. This award should not and cannot be justified in view of Mr. Curtis'

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26 For 2003, Mr. Curtis' adjusted gross income was $16,462.00 (R.p.168, line 17 – R.p.169, line 4; R.p.169, lines 10-13; R.p.214, line 34). His actual earnings were $17,260.00. (R.p.169, lines 5-9; R.p.214, line 22). Mr. Curtis could not recall how much he earned in 2004, but estimated it was $20,000.00. (R.p.169, lines 15-17).

demonstrated medical expenses and actual lost wages, as well as the evidence from Drs. Campbell and Nivens indicating Mr. Curtis' successful recovery from his injuries.

Moreover, as this Supreme Court is aware, motions for new trial on the ground of excessiveness are addressed to the sound discretion of the Trial Court.[27] Nevertheless, such discretion is not absolute and it is the duty of an appellate court to fully review the relevant evidence[28] and, in turn, determine if the extent and character of the injury supports the verdict. If it does not then the Trial Court's failure, as herein, to grant a new trial is an abuse of discretion which amounts to an error of law which must, as a matter of law, be reversed and a new trial granted. In some respects, this amounts to, in essence, almost a quasi-*de novo* review. Given the rational disconnect between the majority of Mr. Curtis' testimonial evidence and the more objective medical and physical evidence, there is, indeed must be, a serious question as to the relevance of Mr. Curtis' characterizations of his injuries and damages when viewed alongside his own medical experts' testimony.

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27 *See generally* Dillon v. Frazer, 383 S.C. 59, 63, 678 S.E.2d 251, 253 (2009) (*citing* Toole v. Toole, 260 S.C. 235, 239, 195 S.E.2d 389, 390 (1973)); Boozer v. Boozer, 300 S.C. 282, 283, 387 S.E.2d 674, 675 (Ct.App. 1988).

28 *See* Butler v. Gamma Nu Chapter of Sigma Chi, 314 S.C. 477, 480, 445 S.E.2d 468, 470 (Ct.App. 1994) ("For evidence to be admissible, there must be a logical or rational connection between the fact sought to be presented and a matter of fact in issue at trial. [Additionally,] '[e]vidence is relevant if it tends to establish or make more or less probable some matter at issue upon which it directly or indirectly bears.' ").

B. The Jury's Verdict Of $450,000.00 Fails To Bear Any Reasonable Relationship To The Extent And Character Of Mr. Curtis' Injuries And Damages

The jury was required to follow the law as charged. (R.p.177, lines 4-19). Mr. Curtis had the burden to prove he was damaged by Mr. Blake's negligence. (R.p.178, lines 7-10). Mr. Curtis had to prove his damages without requiring the jury to speculate or use conjecture for its verdict. (R.p.188, lines 13-17). Regardless of the law, the jury rendered a completely unreasonable verdict which, according to the Court of Appeals, was none-the-less proper. Nevertheless, the objective evidence, medical and otherwise, clearly contradicted Mr. Curtis' testimony of his injuries and damages.**29**

This Supreme Court should grant *certiorari* in order to grant Mr. Blake a new trial. Mr. Blake is entitled to a new trial – regardless of whether it is granted as a new trial absolute or a new trial *nisi* remittitur. The evidence, even viewed in a light most favorable to Mr. Curtis, among other things, showed the following:

1. Mr. Curtis' demonstrated medical expenses totaled $4,530.98 (R.p.202), of which $2,830.00 involved the MRI and its interpretation. (R.pp.202, 206-207).**30**
2. Mr. Curtis' lost wages totaled $2,615.76 (R.p.163, line 12 – R.p.165, line 18; R.p.212) and his best guesstimate was only $2,000.00. (R.p.150, line 8 – R.p.151, line 1; R.p.163, lines 9-11; R.p.210-213).

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29 *See generally* Fishburne v. ATI Systems International, 384 S.C. 76, 87-88, 681 S.E.2d 595, 601 (Ct.App. 2009) ("The objective medical evidence also does not support Fishburne's claim that she suffers from a serious medical condition that entitles her to permanent total disability."); Legette v. Piggly Wiggly, Inc., 368 S.C. 576, 580, 629 S.E.2d 375, 377 (Ct.App. 2006) (*citing* Patterson v. I.H. Services, Inc., 295 S.C. 300, 304, 368 S.E.2d 215, 218 (Ct.App. 1988) (*citing* Lail v. South Carolina State Highway Department, 244 S.C. 237, 136 S.E.2d 306 (1964) ("Testimony that contradicts undisputed physical evidence generally lacks probative value.").

30 The MRI and its interpretation are diagnostic procedures which do not constitute direct treatment of Mr. Curtis' pain.

3. Mr. Curtis' adjusted gross income for 2003 was $16,462.00. (R.p.168, line 17 – R.p.169, line 4; R.p.169, lines 10-13; R.p.214, line 34). He actually earned $17,260.00. (R.p.169; R.p.214, line 22). Mr. Curtis believed he earned about $20,000.00 in 2004. (R.p.169, lines 15-17).

4. Mr. Curtis admitted when the accident happened, he "didn't realize [he had] been hit . . . ." (R.p.153, lines 3-5). Mr. Curtis did not feel any pain on the day of the accident, he "was just nervous and [had] an anxious feeling." (R.p.142, lines 2-4; R.p.154, line 9 – R.p.155, line 1).

5. Mr. Curtis received no medical treatment at the scene even though EMS personnel were present and treating Mr. Blake. (R.p.124, line 24 – R.p.126, line 6; R.p.155, lines 8-15).

6. Mr. Curtis waited at the accident scene for about 90 minutes (R.p.153, lines 22-23) and then drove his semi-truck home after dropping his log trailer at a welding shop for repairs. (R.p.118, lines 12-24; R.p.125, lines 8-18; R.p.142, lines 5-16).

7. Mr. Curtis took *Tylenol* to control his pain. (R.p.144, line 23 – R.p.145, line 1; R.p.155, line 25 – R.p.156, line 3).

8. Mr. Curtis did not seek medical attention until late April, 2003, when he went to the ER. (R.p.77, lines 4-8; R.p.82, lines 2-17; R.p.98, lines 15–25; R.p.120, line 16 – R.p.121, line 2; R.p.125, line 19 – R.p.126, line 6; R.p.144, lines 10-17; R.p.155, lines 16-24).

9. Mr. Curtis worked most of that day, came home, showered, and had dinner before finally going to the hospital ER. (R.p.120, lines 16-24; R.p.126, line 16 – R.p.127, line 7; R.p.156, line 15 – R.p.157, line 10).

10. Mr. Curtis was diagnosed at the ER with a concussion and/or post-concussion symptoms (R.p.77, line 9 – R.p.79, line 2; R.p.156, lines 12-14; R.p.157, lines 8-12), prescribed some medicine, and discharged. (R.p.127, line 11 – R.p.128, line 2; R.p.144, lines 10-17; R.p.156, lines 12-14; R.p.157. lines 13-25). Mr. Curtis admitted he did not take the prescribed medicine. (R.p.127, line 21 – R.p.128, line 1; R.p.144, lines 18-19; R.p.158, lines 1-3).

11. On 25 April 2003, Mr. Curtis went to see Dr. Campbell (R.p.55, lines 4-24; R.p.76, line 24 – R.p.77, line 3; R.p.82, lines 2-17; R.p.97, line 22 – R.p.98, line 3; R.p.145, lines 2-8; R.p.158, lines 4-6), who treated him on four occasions. (R.p.62, lines 8-15; R.p.159, line 8 – R.p.160, line 2; R.pp.210-213).

12. Dr. Campbell released Mr. Curtis from treatment on 14 May 2003, noting Mr. Curtis had "negative orthopedic exams and showed general good range of motion with a lack of pain." (R.p.63, lines 22-25). He believed Mr. Curtis "had recovered from his complaints" as of that date. (Tr.57, lines 15-24; Tr.59, lines 12-20).

13. Mr. Curtis lied to Dr. Campbell on 14 May 2003, when he told the doctor he was free from any pain. (Tr.151, lines 6-8). Mr. Curtis never told Dr. Campbell he disagreed with the treatment or that he did not feel he was making any improvement. (R.p.66, lines 15-24; R.p.68, lines 12-20).

14. Mr. Curtis did not seek any additional medical treatment for the next six months until he went to see Dr. Nivens. (R.p.130, lines 13-15). Mr. Curtis' only "medical treatment" between 14 May 2003, and 19 November 2003, was taking *Tylenol* and/or *Aleve* for his pain. (R.p.147, lines 11-24).

15. On 19 November 2003, Mr. Curtis went to see Dr. Nivens (R.p.81, lines 10-15; R.p.130, lines 6-12; R.p.147, lines 16-20; R.p.160, lines 19-21; R.p.160, line 25 – R.p.161, line 3) who saw him four times. (R.p.81, lines 13-15; R.p.92, lines 2-4; R.p.92, line 25 – R.p.93, line 1; R.p.97, lines 5-9; R.p.106, lines 19-19; R.p.107, lines 6-8; R.p.162, lines 5-9). He had Mr. Curtis undergo an MRI and prescribed *Naprosyn* (R.p.85, line 1 – R.p.76, line 2; R.p.161, lines 3-5) and *Medrol.* (R.p.90, lines 6-18). Mr. Curtis actually took the *Naprosyn* and the *Medrol.* (R.p.161, lines 8-18).

16. Mr. Curtis admitted Dr. Nivens' treatments helped him with the pain he was experiencing. (R.p.161, lines 6-7). On 15 January 2004, Mr. Curtis told Dr. Nivens "that the pain had essentially gone away . . . ." (R.p.92, lines 2-8; R.p.107, lines 6-11).

17. Mr. Curtis' next visited Dr. Nivens on 11 April 2005, some 15 months after his last visit. (R.p.107, lines 23-25; R.p.162, lines 13-17). Mr. Curtis advised Dr. Nivens he was still having some pain (R.p.92, line 21 – R.p.93, line 3; R.p.107, lines 23-25), but noted the pain was not debilitating and, according to Dr. Nivens, Mr. Curtis "[n]eurologically . . . seemed to be fine." (R.p.92, line 24 – R.p.93, line 7; R.p.108, lines 1-19).

18. Without consulting the AMA guides, Dr. Nivens gave Mr. Curtis an admittedly "spur-of-the-moment" (R.p.108, line 20 – R.p.109, line 7) "impairment rating somewhere around 10 percent . . . ." (R.p.94, lines 1-5; R.p.108, lines 20-23).

19. Mr. Curtis has not had any medical treatment after his 11 April 2005, visit with Dr. Nivens. (R.p.133, line 3 – R.p.170, line 14). He has not required any surgery or other invasive action. (R.p.133, line 3 – R.p.170, line 14). Mr. Curtis has not had any medical restrictions placed upon his work as a truck driver. (R.p.133, line 3 – R.p.170, line 14).

20. Mr. Curtis continued to work as a truck driver even though he was somewhat in pain. (R.p.56, lines 17-20; R.p.81, lines 2-17; R.p.143, line 21 – R.p.144, line 1; R.p.156, lines 4-11). He often worked between 15 and 16 hours per day (R.p.156, lines 6-8), driving his semi-truck five or six days per week (R.p.130, line 16 – R.p.131, line 1; R.p.161, line 19 – R.p.162, line 2; R.p.170, lines 11-14) for "500 or more" miles per day. (R.p.162, line 24 – R.p.163, line 5; R.p.164, lines 13-21; R.p.165, line 11 – R.p.166, line 4).**31**

21. Dr. Nivens admitted Mr. Curtis' driving his semi-truck 300+ miles per day and/or for 12 to 13 hours per day would likely put a great deal of stress on Mr. Curtis' back and/or spine. (R.p.101, lines 9-19). He also noted truck drivers generally have many more physical problems than non-truck drivers. (R.p.101, line 23 – R.p.102, line 7; R.p.110, line 23 – R.p.111, line 7). Mr. Curtis' family had a history of back problems. (R.p.101, lines 8-14).

22. Mr. Curtis was only out of work for eight days because his log trailer was being repaired. (R.p.121, lines 10-18; R.p.124, lines 11-23; R.p.143, lines 6-20; R.p.156, lines 4-11; R.p.166, line 18 – R.p.167, line 5). He missed five and one-half days for doctor visits. (R.p.121, lines 10-18; R.p.124, lines 11-23; R.p.143, lines 6-20; R.p.158, line 14 – R.p.159, line 7; R.p.166, line 18 – R.p.168, line 17; R.pp.210-213).

23. There was no evidence showing Mr. Curtis was unable to work, should not work, or that there are any restrictions upon his ability to drive a semi-truck. (R.p.55, line 3 – R.p.78, line 8; R.p.78, line 21 – R.p.116, line 14; R.p.116, line 21 – R.p.132, line 14; R.p.132, line 20 – R.p.152, line 14).

24. There was no evidence showing Mr. Curtis was entitled to future medical expenses (R.p.55, line 3 – R.p.78, line 8; R.p.78, line 21 – R.p.116, line 14; R.p.116, line 21 – R.p.132, line 14; R.p.132, line 20 – R.p.152, line 14), or to a loss of

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31 Mr. Curtis was actually driving approximately 800 miles per day, not 500 miles. (R.p.165, line 11 - R.p.166, line 4).

future earnings capacity. (R.p.55, line 3 – R.p.78, line 8; R.p.78, line 21 – R.p.116, line 14; R.p.116, line 21 – R.p.132, line 14; R.p.132, line 20 – R.p.152, line 14).

25. The jury rendered its verdict in less than 25 minutes on Halloween night. (R.p.192, line 8 – R.p.195, line 3).

26. The verdict was almost 100 times Mr. Curtis' medical treatment expenses and lost wages (R.p.163, line 12 – R.p.164, line 18; R.p.192, line 8 – R.p.195, line 3; R.pp.202-212) and over 27 times his 2003 adjusted gross income and over 22 times his 2004 estimated income. (R.p.169, lines 15-17; R.p.192, line 8 – R.p.195, line 3; R.p.214).**32**

As this Supreme Court is aware, an appellate "court must set aside a [jury's] verdict . . . when it is shockingly disproportionate to the injuries suffered and thus indicates that passion, caprice, prejudice, or other considerations not reflected by the evidence affected the amount awarded."**33** Furthermore, even though pain and suffering is a material element for the recovery of damages, a jury's assessment must rest in its sound discretion and the award is always subject to correction based on an abuse of the jury's discretion.**34**

Notwithstanding the law, the jury's verdict in this case did not bear any reasonable relationship to Mr. Curtis' evidence, particularly when viewed in the context of the disparity between the objective medical and physical evidence and Mr. and Mrs. Curtis' self-serving in-trial testimony, as well as the disparity between the verdict the evidence of Mr. Curtis' medical expenses and lost wages.

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32 At the time of trial, Mr. Curtis was 34 years old (R.p.133, lines 19-20) and had a life expectancy of 44 years. (R.p.35). Based upon his 2004 estimated salary (R.p.169, lines 15-17; R.p.192, line 8 - R.p.195, line 3; R.p.214), the verdict effectively paid his annual salary for, at least, the next 22 years.

33 Welch v. Epstein, 342 S.C. 279, 302, 536 S.E.2d 408, 420 (Ct.App. 2000).

34 *See* Edwards v. Lawton, 244 S.C. 276, 244 S.E.2d 541 (1964).

The Supreme Court of North Dakota, in *Mason v. Underwood*,**35** reversed the jury's verdict for the plaintiff of approximately 100 times his actual damages. The plaintiff had been arrested for alleged "illegal possession" of a $15.00 tent and, after the charges were dropped, he sued the police magistrate and the jury awarded him $1,200.00.**36** The Court reversed the verdict and ordered a new trial on evidentiary grounds.**37** Chief Justice Robinson, concurring specially, noted that "[s]ome people are so liberal with the money of others. In [this] case the verdict was for about 100 times the actual damages. However, ***it is said the verdict is not so excessive as to shock the conscience; but, as I think, that can only be true where there is little or no conscience to be shocked***."**38**

In *Mauer v. Claussen Distributing Co.*,**39** the Supreme Court of Montana reversed a $500,000.00 jury verdict for loss of established course of life when the plaintiff's evidence only supported a $90,000.00 award.**40** The Montana Court acknowledged that "an award [of damages to a litigant] must be reduced when it substantially exceeds that which the evidence can sustain."**41**

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35 Mason v. Underwood, 48 N.D. 130, 183 N.W. 529 (1921).

36 Mason v. Underwood, 48 N.D. 130, ___, 183 N.W.529, 529.

37 Mason v. Underwood, 48 N.D. 130, ___, 183 N.W.529, 529-530.

38 Mason v. Underwood, 48 N.D. 130, ___, 183 N.W.529, 530 (Robinson, C.J., concurring specially) (Emphasis added).

39 Mauer v. Claussen Distributing Co., 275 Mont. 229, 912 P.2d 195 (1996).

40 Mauer v. Claussen Distributing Co., 275 Mont. 229, 236-237, 912 P.2d 195, 199.

41 Mauer v. Claussen Distributing Co., 275 Mont. 229, 237, 912 P.2d 195, 199.

In *Meyer v. Caterpillar Tractor Co.*,**42** the Appellate Court of Illinois, First District, Fifth Division, approved a jury verdict of $900,000.00 for a plaintiff injured at a construction site even though the medical expenses were only $7,622.98.**43** The plaintiff had requested present and future lost wages of $546,031.68, pain and suffering of $50,000.00, future pain and suffering of $100,000.00 annually, $200,000.00 for disfigurement and disability, and the medical expenses.**44** The court affirmed based on the evidence of the plaintiff's several operations, his permanent disfigurement, his inability to do his former millwright job, and his quantified lost wages and future lost wages.**45** Nevertheless, the appellate court reversed and remanded the case for a new trial on evidentiary grounds.**46**

Likewise, in *Lapidus v. Hahn*,**47** the Appellate Court of Illinois, First District, Fourth Division, affirmed an award of $350,000.00 to an injured tenant who slipped on accumulated ice outside her residence even though her medical expenses totaled only $3,695.00.**48** The Illinois court approved the award based upon the plaintiff's evidence of "the deformity [she sustained] which has totally

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42 Meyer v. Caterpillar Tractor Co., 179 Ill.App.3d 268, 533 N.E.2d 386 (1988), *reversed on statutory interpretation grounds*, 135 Ill.2d I, 552 N.E.2d 719 (1990).

43 Meyer v. Caterpillar Tractor Co., 179 Ill.App.3d 268, 284, 533 N.E.2d 386, 396.

44 Meyer v. Caterpillar Tractor Co., 179 Ill.App.3d 268, 284, 533 N.E.2d 386, 396.

45 Meyer v. Caterpillar Tractor Co., 179 Ill.App.3d 268, 282-283, 533 N.E.2d 386, 395-396.

46 Meyer v. Caterpillar Tractor Co., 179 Ill.App.3d 268, 282-283, 533 N.E.2d 386, 395-396.

47 Lapidus v. Hahn, 115 Ill.App.3d 795, 450 N.E.2d 824 (1983).

48 Lapidus v. Hahn, 115 Ill.App.3d 795, 802, 450 N.E.2d 824, 829.

destroyed plaintiff's lifestyle and the extreme pain which she suffered."[49] This "lifestyle destruction" included, among other things, her inability to (a) regularly go outside her home, (b) to drive, (c) to carry any weighty objects, (d) to have any degree of surgical success due to the nature of her injuries, and (e) to take prescription drugs for any length of time due to possibilities of addiction.[50]

In *Kimberlin v. DeLong*,[51] the Indiana Supreme Court affirmed a jury verdict for a deceased man who, along with his wife, had been severely injured in a bomb blast four years earlier.[52] The Indiana court concluded the claimant had presented sufficient evidence of the decedent's severe injuries, lost prospective income, significant medical expenses, as well as pain and suffering and loss of life enjoyment.[53]

In *Mauer v. Claussen Distributing Co.*, *Lapidus v. Hahn*, *Kimberlin v. DeLong*, and *Meyer v. Caterpillar Tractor Co.*, the claimants all presented substantial evidence of physical disfigurement, death, permanent debilitating injuries, the inability to work and/or work at the same job, and significant lost wages and/or prospective future lost wages. Unlike any of those cases, Mr. Curtis completely failed to present such evidence in this case. While Mr. Curtis alleged he was injured in the accident to some extent, his claims of continuing

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49 Lapidus v. Hahn, 115 Ill.App.3d 795, 803, 450 N.E.2d 824, 829.

50 Lapidus v. Hahn, 115 Ill.App.3d 795, 797-798, 450 N.E.2d 824, 825-827.

51 Kimberlin v. DeLong, 637 N.E.2d 121 (Ind. 1994).

52 Kimberlin v. DeLong, 637 N.E.2d 121, 123-124.

53 Kimberlin v. DeLong, 637 N.E.2d 121, 129-130.

and permanent pain were not credible[54] given the facts both of his treating physicians objectively concluded he had recovered from his injuries, Mr. Curtis told them both he was feeling no pain, and Mr. Curtis continued to work long hours and drive hundreds and hundreds of miles each day. While the jury may have considered Mr. Curtis' actions admirable in allegedly facing his continuing pain stoically, Mr. Curtis' own actions belied the extent of the pain and the real reason for its continuation. The Court of Appeals ignored the law by sustaining a verdict given Mr. Curtis' clearly inconsistent and contradictory evidence.

It is axiomatic that a jury's verdict must correspond to the evidence in a rational and reasonable manner. The verdict must align with the evidence be supportable. That did not occur in this case. A verdict cannot, as was the case herein, simply be used as a reward. This Supreme Court should grant Mr. Blake's Petition for Writ of Certiorari, reverse the Court of Appeals' decision, and remand this matter for a new trial.

C. The Court Of Appeals Incorrectly Concluded Mr. Blake Was Not Entitled To A New Trial Due To The Jury's Abbreviated Deliberations.

The jury in this case deliberated for no more than 25 minutes before awarding Mr. Curtis $450,000.00 on best-case medical expenses of $4,530.98 (R.p.202) and lost wages of $2,615.76. (R.p.163, line 12 – R.p.165, line 18; R.p.212). At a minimum, given the very quick turnaround and in light of the Trial

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[54] *See generally* Fishburne v. ATI Systems International, 384 S.C. 76, 87-88, 681 S.E.2d 595, 601; Legette v. Piggly Wiggly, Inc., 368 S.C. 576, 580, 629 S.E.2d 375, 377; Patterson v. I.H. Services, Inc., 295 S.C. 300, 304, 368 S.E.2d 215, 218; Lail v. South Carolina State Highway Department, 244 S.C. 237, 136 S.E.2d 306.

Court's earlier offer to adjourn until the next day (R.p.171, lines 2-21), the only reasonable inference is that the jurors must have already made up their minds before entering the jury room or were more concerned with getting deliberations over as quickly as possible regardless of fairness or the effect on the judicial process. The Court of Appeals, however, concluded the new trial denial was correct. This decision was incorrect.

Sometime between the charge and the jury's commencement of its deliberations, the Trial Court informed the jurors if they completed deliberations that evening they would not need to return either the next day (R.p.170, line 23 – R.p.171, line 23), or for the remainder of the week. (R.p.31, para. 20).**55** Not unsurprisingly, the jurors chose to complete their deliberations that afternoon and evening. (R.p.172, lines 15-23).**56**

The Court of Appeals concluded there was nothing wrong either with the jury's lightening-quick deliberations or their ultimate verdict. While the Court of Appeals stated that "brief jury deliberations alone [are] not . . . a sufficient basis for the grant of a new trial"**57** the length of the deliberations in this case coupled with

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55 In fact, the Trial Court gave the jury the "option" of coming back the next day to finish (R.p.170, line 23 - R.p.171, line 23), - given the fact it was Halloween (R.p.171, lines 2-4) and many of the jurors likely had children who would be anxiously awaiting their return in order to go trick-or-treating.

56 The Nebraska Supreme Court once held " '[t]here is no right more sacred [to litigants] than the right to a fair trial. There is no wrong more grievous [to either side] than the negation of that right. An unfair trial adds a deadly pang to the bitterness of defeat.' " Hunt v. Methodist Hospital, 240 Neb. 838, 846-847, 485 N.W.2d 737, 743 (1976) (*quoting* Pool v. C., B. & Q. Railroad Co., 6 F. 844, 850 (1881)). A rushed and hasty verdict is, by its very nature, unfair.

57 Curtis v. Blake, ___ S.C. ___, ___, ___ S.E.2d ___, ___ (2011 WL 669110 *5 (*citing* Youmans v. S.C. Dept. of Transp., 380 S.C. 263, 282, 670 S.E.2d 1, 10 (Ct.App. 2008), *certiorari dismissed as improvidently granted*, 386 S.C. 640, 690 S.E.2d 582 (2010)).

the disparity between the objective medical and physical evidence and Mr. and Mrs. Curtis' self-serving in-trial testimony is a proper basis for the grant of a new trial. Looking at the matter in this way demonstrates " 'the evidence does not justify the verdict' and these are considerations which are "based solely on the facts.' "[58]

Either the jury had already made up its collective mind prior to going into the jury room or rushed through "deliberations" in order to vacate the courthouse as quickly as could be accomplished. Either way, the "deliberations" could not have been very deliberate or very thoughtful. Consequently, this Supreme Court should grant Mr. Blake certiorari in that Mr. Blake is entitled to a new trial with a fair jury – not one ignoring the clear evidence and simply rushing to get out of the courtroom's doors and into the night.[59]

D. The Court Of Appeals Incorrectly Affirmed The Trial Court's Denial Of A New Trial For Mr. Blake Under The Thirteenth Juror Doctrine.

In this State, a "trial judge, sitting as the [13th] juror charged with the duty of seeing that justice is done, has the authority to grant new trials when he [or she] is convinced that a new trial is necessitated on the basis of the facts in the case."[60] Moreover, our "circuit court judges [traditionally] have the authority to

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[58] Curtis v. Blake, ___ S.C. ___, ___, ___ S.E.2d ___, ___ (2011 WL 669110 *5 (*citing* Youmans v. S.C. Dept. of Transp., 380 S.C. 263, 282, 670 S.E.2d 1, 10).

[59] Youmans *ex rel.* Elmore v. South Carolina Department of Transportation, 380 S.C. 263, 280-288, 670 S.E.2d 1, 9-13.

[60] Youmans *ex rel.* Elmore v. South Carolina Department of Transportation, 380 S.C. 263, 272, 670 S.E.2d 1, 5 (*citing* Graham v. Whitaker, 282 S.C. 393, 321 S.E.2d 40 (1984)).

grant a new trial upon the judge's finding that justice has [simply] not prevailed" or "the evidence does not justify the verdict . . . ."[61]

Trial judges sitting as the "thirteenth jurors" would likely not be justified in granting a new trials in cases where the claimants and/or their representatives present substantial evidence of, among other things, (a) some type of physical disfigurement, (b) death, (c) permanent injuries, (d) debilitating injuries, (e) the inability to work any longer, (f) the inability to work at the same job held prior to an accident, (g) significant actual lost wages, (h) demonstrable prospective future lost wages, and (i) significant medical expenses. Unlike those situations, the Trial Judge herein should have granted a new trial via the thirteenth juror doctrine since Mr. Curtis completely failed to present such evidence in this case.

While Mr. Curtis alleged he was injured in the accident to some extent, his claims of continuing and permanent pain were not credible given the facts both of his treating physicians objectively concluded he had recovered from his injuries, Mr. Curtis told them both he was feeling no pain, and Mr. Curtis continued to work long hours and drive hundreds of miles each day. The jury may have considered Mr. Curtis' actions admirable in allegedly facing his continuing pain stoically, but Mr. Curtis' own actions belie the extent of the pain and the real reason for its continuation.

A jury's verdict must correspond to the evidence in a rational and reasonable manner. The verdict must align with the evidence to be supportable. That clearly did not occur in this case as the objective evidence did not

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61 Youmans *ex rel.* Elmore v. South Carolina Department of Transportation, 380 S.C. 263, 287-288, 670 S.E.2d 1, 5, 13.

correspond to Mr. and Mrs. Curtis' testimony. The Trial Judge should have granted a new trial based upon the thirteenth juror doctrine.

The Court of Appeals incorrectly affirmed the denial of a new trial. This Supreme Court should grant Mr. Blake his Petition for Writ of Certiorari, reverse the Court of Appeals' opinion, reverse the jury's verdict, and remand this matter for a new trial.

V. CONCLUSION

Based upon the foregoing arguments and citation of authority, the Petitioner, Brandon T. Blake, respectfully requests this Supreme Court to grant his Petition for Writ of Certiorari, reverse the Court of Appeals' decision, reverse the jury verdict, and remand this matter back to the Circuit Court for a new trial.

Respectfully submitted:

KEAVENY LAW FIRM, LLC

By: _____

Thomas J. Keaveny, II, Esquire
Amy B. Rothschild, Esquire
445 Folly Road
Charleston, South Carolina 29412
Telephone: 843.225.2820
Telecopier: 843.225.2823
Attorneys for the Petitioner

Charleston, South Carolina
18 May 2011

STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT

Appeal from the Court of Common Pleas
For Orangeburg County
Honorable J. Derham Cole, Circuit Judge
Civil Action No.: 2004-CP-38-222
South Carolina Court Of Appeals
Opinion No. 4792

RECEIVED
MAY 19 2011
S.C. Supreme Court

William D. Curtis,

Respondent,

v.

Sandra Morris Blake, as Personal Representative
Of the Estate of Brandon T. Blake,

Petitioner.

PROOF OF SERVICE
For The
PETITION FOR WRIT OF CERTIORARI
And
APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Thomas J. Keaveny, II, Esquire
Amy B. Rothschild, Esquire
KEAVENY LAW FIRM, LLC
445 Folly Road
Charleston, South Carolina 29412
Telephone: 843.225.2820
Telecopier: 843.225.2823

Attorneys for the Petitioner

I, Amy B. Rothschild, Esquire, hereby certify that on 18 May 2011, I served one copy each of the ***Petition for Writ of Certiorari*** and the ***Appendix to the Petition for Writ of Certiorari*** submitted by the Petitioner on the following counsel for the Respondent via pre-paid Federal Express overnight delivery, and addressed as follows:

C. Bradley Hutto, Esquire
WILLIAMS & WILLIAMS
Post Office Box 1084
Orangeburg, South Carolina 29115

Mark B. Tinsley, Esquire
GOODING & GOODING, P.A.
Post Office Box 1000
Allendale, South Carolina 29810

Robert N. Hill, Esquire
LAW OFFICES OF ROBERT N. HILL
Post Office Box 51
Newberry, SC 29108

Attorneys for the Respondent

I, Amy B. Rothschild, also hereby certify that on 18 May 2011, I served one copy of the ***Petition for Writ of Certiorari*** and ***Proof of Service*** submitted by Petitioner on the Office of the Clerk of Court for the South Carolina Court of Appeals via the United States Mail, postage pre-paid, and addressed as follows:

The Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29202

Amy B. Rothschild, Esquire

Charleston, South Carolina
18 May 2011

Original

RECEIVED
JUN 08 2011
S.C. SUPREME COURT

The State of South Carolina
In the Supreme Court

Appeal from Orangeburg County
Court of Common Pleas

J. Durham Cole, Circuit Court Judge

Case No. 2004-CP-38-0222

William D. Curtis..... Respondent,

vs.

Sandra Morris Blake, as the Personal Representative
of the Estate of Brandon T. Blake..... Appellant

Return to Petition for a Writ of Certiorari

In March 2003, Brandon Blake broad-sided Billy Curtis's 29,000 pound tractor-trailer truck hard enough to knock it up into the air and drop it on the other side of the road. Blake admitted liability - and presented no evidence - at Curtis's later trial for damages. At the trial's end, Curtis argued without objection that he was entitled to over $ 500,000. The jury, however, returned a verdict for $ 450,000. Blake claimed that even this is excessive and moved for a new trial.

Judge Cole denied the motion, concluding that the evidence wholly supported the verdict because of Curtis's 44-year life expectancy

and because of the evidence on his permanent physical and mental injuries.[1] The Court of Appeals reviewed the evidence and affirmed unanimously. Blake's petition for rehearing and rehearing en banc was denied unanimously.

Argument

All of the issues that Blake raises turn on his claim that the verdict is excessive enough to warrant a new trial. But the trial court and the Court of Appeals reviewed the evidence and concluded that it supports the jury verdict. A third review of the facts is unwarranted.

1. Blake misstates the standard of review.

Blake wrongly argues that the Court applies "almost a quasi-*de novo* review" on appeal from a trial court's decision to respect a jury verdict. In actions at law, however, this Court does not review facts when a jury verdict is not set aside. S.C. Const. art. V, § 5. It only corrects errors of law - and a jury verdict's size does not create an error of law unless it is shocking enough to show that the jury was motivated by caprice, passion, or other improper influence outside the evidence. *O'Neal v. Bowles*, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993).

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[1]ROA 3-6, 46-48, 136-139, 152, 173-175, 192-193.

This Court thus does not interfere with a jury verdict that is merely excessive or more than the Justices would have awarded as jurors.[2] Nor will the Court undertake the jury's job of weighing evidence and judging credibility.[3] Its sole concern is instead whether any evidence sustains the amount of damages, with the evidence and all reasonable inferences viewed most favorably to the verdict. *Buzhardt v. Cromer*, 272 S.C. 159, 162 S.E.2d 898, 899 (1978).

This any evidence standard pays "substantial deference" to the jury's view of the damages - and "great deference to the trial judge, especially in the area of intangible elements of damages, as were presented in this case." *Rush v. Blanchard*, 310 S.C. 375, 381, 426 S.E.2d 802, 806 (1993). This great deference is warranted because pain and suffering, mental anguish, and loss of enjoyment of life lack a market value. Compensation must thus "rest in the sound discretion of the jury, controlled by the discretionary power of the trial Judge."

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[2] *Easler v. Hejaz Temple*, 285 S.C. 348, 356, 329 S.C. 753, 758 (1985)("This Court will not set aside a verdict for its possibly undue liberality."); *Brabham v. Southern Asphalt Haulers, Inc.*, 223 S.C. 421, 430, 76 S.E.2d 301, 305-306 (1953)("this Court will not interfere with the verdict of a jury simply because it is greater than its own estimate.").

[3] *Haltiwanger v. Barr*, 258 S.C. 27, 30, 186 S.E.2d 819, 820 (1972)("In determining whether the amount of the verdict resulted from prejudice and caprice we keep in mind that it is the duty of the jury to weigh the evidence and judge the credibility of the witnesses.").

Bruno v. Pendleton Realty Co., 240 S.C. 46, 55, 124 S.E.2d 580, 584 (1962).

2. The evidence amply supports the verdict.

Did Judge Cole abuse his discretion in honoring the jury verdict? The Court of Appeals throughly reviewed the evidence and correctly held "no." From the wreck in March 2003 until his expected death in the year 2049, Curtis has suffered and will suffer:

- four permanent disc protrusions (as revealed by a MRI)
- loss of cervical lordosis (the neck's natural curvature)
- degenerative disc disease
- daily pain that is so bad that he does not sleep well, is moody and irritable with his family, and must take an hour each morning to loosen up
- continual loss of enjoyment of life from being unable to play with his children and performing other activities that he once enjoyed
- continual paranoia whenever he, a truck driver by trade, drives by cars that are approaching an intersection.

Dr. Campbell and Dr. Nivens opined that the wreck most probably caused these problems, and Curtis and his wife confirmed

that he never had problems with his neck or back before the wreck.[4]

a. Blake's rejected jury arguments remain unpersuasive.

Blake either ignores the evidence supporting the verdict, argues that it is not credible, or contends that it is outweighed by other evidence. This is triply flawed. It first fails to overcome the great deference that this Court pays to Judge Cole as the trial court judge who saw and heard the testimony on Curtis's pain and suffering, mental anguish, and loss of enjoyment of life. It secondly asks this Court to undertake the jury's job of judging credibility and weighing evidence. It lastly paints a skewed view of the evidence submitted.

This skewed view of the evidence says little or nothing about the evidence supporting the verdict. Blake earlier argued, for example, that the jury was swayed by Mrs. Curtis's "tearful and emotional plea to the jury 'explaining' her husband's plight since the accident, the pain he continues to suffer, the changes she has seen in him, and on and on and on." Appellant's Final Brief, p. 28. Blake has now dropped any challenge to Mrs. Curtis's testimony and barely mentions it. It alone supports the verdict. ROA 117-132.

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[4]ROA 69, 70, 86-87, 90-96, 104-106, 110-112, 117-123, 131-132, 134, 145-151.

Blake also mangles the record by arguing that Dr. Nivens and Dr. Campbell testified that Curtis "had recovered" from his pain. Dr. Nivens actually testified that Curtis's periods without pain are a "window of time" and that his four disc protrusions are indeed permanent. ROA 86-87, 92-94, 108. He added that Curtis's disc disease is degenerative and "just gets worse as time goes by." ROA 88. As for the chiropractor, Dr. Campbell said at one point that Curtis had recovered from his pain yet also admitted that Curtis could have instead been hiding his pain. ROA 65-66. Curtis and his wife explained that he was hiding his pain from Dr. Campbell and stopped treatment because the chiropractor did not help. ROA 129, 145-146, 160.

Curtis and his wife likewise addressed Blake's remaining points on the gaps in the medical treatment, the continued work, and the over-the-counter medication. They testified that the gaps in the treatment exist because Curtis could not afford to miss work and pay doctors for treatments that do not help. He also continues to work - despite the pain - because he is the only one to put food on the table. And this will grow increasingly difficult as time goes by - Dr. Nivens opined that Curtis's disc disease from the wreck is degenerative and that it is not unreasonable to expect that he will ultimately need spinal epidural

injections for his injuries.[5]

b. Blake wants to alter the law to link intangible damages to pecuniary losses.

Blake not only skews the evidence supporting the jury verdict. He also emphasizes that the verdict is almost 100 times Curtis's out of pocket losses. But what does this have to do with the severity of Curtis's continual pain and suffering, mental anguish, and loss of enjoyment of life? In this State, such intangible damages are not linked to each other - much less to a tort victim's pecuniary losses. *Boan v. Blackwell*, 3443 S.C. 498, 541 S.E.2d 242 (2001).

Blake also waived this argument because the jury was never charged that pecuniary losses cap compensation for pain and suffering or loss of enjoyment of life. The jury was instructed without objection that these damages have "no fixed rule or standard," and that an award "must be left to the sound discretion of you 12 jurors in consideration of your own life experiences and in the exercise of good judgment and common sense." ROA 186-187. Blake is thus not entitled to a do-over based on his belated view of the law.

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[5]ROA 87-88, 95-96, 104-105, 117, 121, 127-128, 131-133, 143-144, 150, 168-169.

This view of the law is lastly incredibly bad public policy. This Court has affirmed substantial awards for mental anguish where the tort victims lacked any pecuniary losses.[6] Blake would, however, forbid such tort victims any compensation for their pain and suffering, mental anguish, and loss of enjoyment of life. A low-wage earner's pain, distress, and inability to play with his or her children would also be worth less simply because he or she earns less. This disparate treatment is not, and should not, be the law.

3. The length of jury deliberations does not warrant a new trial.

Trying to link damages for pain and suffering to pecuniary losses is not the only issue that Blake failed to preserve. Blake also failed to timely challenge the jury's purported haste in reaching its verdict. After the jury was polled but before it was discharged, Blake responded "no sir" to Judge Cole's inquiry if there were any other matters to address with the jury present. ROA 195. This waived his belated attack on the jury's deliberations. *Bensch v. Davidson*, 354 S.C.

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[6] *See Knoke v. South Carolina Dept. of Parks, Recreation and Tourism*, 324 S.C. 136, 478 S.E.2d 256 (1996)(affirming a $ 3 million award for mental injuries absent any pecuniary loss from the death); *Lynch v. Alexander*, 242 S.C. 208, 120 S.E.2d 563 (1963)(affirming a $ 40,000 award for mental injuries absent any pecuniary loss from the death).

173, 179, 580 S.E.2d 128, 131 (2003)(holding that challenges to a jury's deliberations must be raised before the jury's discharge).

Nonetheless, the length of jury deliberations does not by itself warrant a new trial. *See Youmans v. South Carolina Dept. of Transp.,* 380 S.C. 263, 282-283, 670 S.E.2d 1, 10-11 (Ct.App. 2008), *cert. dismissed as improvidently granted* 286 S.C. 640, 690 S.E.2d 582 (2010)(discussing and applying decisions holding that brevity alone does not warrant a new trial).

Blake tries to distinguish *Youmans* and the cases cited in *Youmans* by arguing for a purported disparity between the medical evidence and Curtis's and his wife's "self-serving" trial testimony. This again mangles the record. The MRI - the gold standard of objective medical evidence - reveals that the wreck caused four permanent disc protrusions, the loss of cervical lordosis, and a degenerative disc disease from the wreck that "just gets worse as time goes by." ROA 86-94, 104-105. The objective medical evidence is thus fully consistent with the testimony on Curtis's continual pain and suffering and loss of enjoyment of life.

Conclusion

Blake went into trial admitting liability and with his eyes wide open to the severity and permanency of Curtis's injuries. Dr. Nivens's testimony on the severity and permanency of Curtis's various physical ailments was presented by a videotape deposition. ROA 78. Blake thus knew the in and outs of Dr. Niven's testimony before trial - and chose not to present any contrary medical evidence. Blake did not even bother to have Curtis examined by another doctor. ROA 151.

Blake likewise knew long before trial that Curtis was claiming and would testify about his pain and suffering, mental anguish, and loss of enjoyment of life. ROA 8 ¶ 4, 14. He also expected, and admitted that "it can hardly be reasonably disputed," that Curtis's wife would testify too. Appellant's Brief, p. 39.

Despite the forewarning, Blake thought that he could convince the jury to award Curtis little or nothing for the physical injuries and the pain and suffering, mental anguish, and loss of enjoyment of life that Curtis has suffered since March 2003 and will continue to suffer until his expected death in the year 2049. He was wrong. The verdict was commensurate to the injuries - and less than Curtis requested.

This Court concluded in a earlier case, "It was for the jury to

weigh the evidence, determine witness credibility and reach a verdict. A search of the entire record reveals nothing to suggest that any party failed to receive a fair and impartial trial." *Easler*, 285 S.C. at 358, 329 S.E.2d at 759. So too here. The Court of Appeals properly held that Judge Cole did not abuse his discretion.

By: _____

Robert N. Hill, Esq.
Law Offices of Robert Hill
P.O. Box 51
Newberry, South Carolina 29108
(803) 405-1629

Mark B. Tinsley, Esq.
Gooding & Gooding, P.A.
P.O. Box 1000
Allendale, SC 29810
(803) 584-7676

C. Bradley Hutto, Esq.
Williams & Williams
P.O. Box 1084
Orangeburg, SC 29116
(803) 534-5218

Co-counsel for the Respondent
William D. Curtis

The State of South Carolina
In the Supreme Court

Appeal from Orangeburg County
Court of Common Pleas

J. Durham Cole, Circuit Court Judge

Case No. 2004-CP-38-0222

William D. Curtis..... Respondent,

vs.

Sandra Morris Blake, as the Personal Representative
of the Estate of Brandon T. Blake..... Appellant

Respondent's Certificate of Service

I on June 6, 2011 served a copy of the Return to the Petition for a Writ of Certiorari on the Petitioner by first class mail addressed to: Amy B. Rothschild, Esq., Keaveny Law Firm, LLC, 445 Folly Road, Charleston, SC 29412.

June 9, 2011

Newberry, SC

Robert N. Hill, Esq.

Law Offices of Robert Hill
P.O. Box 51
Newberry, South Carolina 29108
(803) 405-1629

LAW OFFICES OF ROBERT HILL

1819 MCHARDY STREET
P.O. BOX 51
NEWBERRY, SOUTH CAROLINA 29108

ROBERT N. HILL
ATTORNEY AT LAW

TELEPHONE
803-405-1629

FACSIMILE
803-276-4181

EMAIL
attorneyhill@att.net

June 9, 2011

Linda Allen
South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

RE: *William D. Curtis v. Brandon T. Blake,*
Case # 2004-CP-38-022

Dear Ms. Allen:

Enclosed for filing is the certificate of service showing when I served the Return to the Petition for a Writ of Certiorari. Please forgive me for not including it earlier.

Counsel of record have been served the certificate by copy of this letter.

Respectfully,

Robert Hill

cc: Amy B. Rothschild, Esq.
Mark B. Tinsley, Esq.
C. Bradley Hutto, Esq.

LAW OFFICES OF ROBERT HILL

1819 MCHARDY STREET
P.O. BOX 51
NEWBERRY, SOUTH CAROLINA 29108

ROBERT N. HILL
ATTORNEY AT LAW

TELEPHONE
803-405-1629

FACSIMILE
803-276-4181

EMAIL
attorneyhill@att.net

June 6, 2011

Daniel E. Shearouse
Clerk of Court for the
South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

RE: *William D. Curtis v. Brandon T. Blake,*
Case # 2004-CP-38-022

Dear Mr. Shearouse:

The original and six copies of the Respondent's Return to the Petition for a Writ of Certiorari is enclosed for filing.

Counsel of record have been served by copy of this letter.

Respectfully,

Robert Hill

cc: Amy B. Rothschild, Esq.
Mark B. Tinsley, Esq.
C. Bradley Hutto, Esq.

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

May 20, 2011

Thomas J. Keaveny, II, Esquire
Amy B. Rothschild, Esquire
Keaveny Law Firm, LLC
445 Folly Road
Charleston, SC 29412

Re: Curtis, William v. Blake, Sandra
Case Tracking No. 20119-191906

Dear Counsel:

This office has received your Petition for Writ of Certiorari and Appendix in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

Daniel E. Shearouse
DS

CLERK

DES/lda

Enclosure

cc: C. Bradley Hutto, Esquire
Mark Brandon Tinsley, Esquire
Robert Norris Hill, Esquire
The Honorable Tanya Gee

Keaveny Law Firm LLC

Attorneys and Counselors at Law

Amy B. Rothschild, Esquire
Telephone: 843.225.2820
Email: arothschild@keavenylawfirm.com

May 18, 2011

Via Federal Express Overnight 8755 8183 7875
The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, South Carolina 29202

Re: William D. Curtis v. Sandra Morris Blake, as Personal Representative Of the Estate of Brandon T. Blake
Appeal From: Orangeburg County Court of Common Pleas
Civil Action No.: 2004-CP-38-222
Ct. App. No.: Opinion No. 4792 (Heard 0915/10 – Filed 02/16/11)
Our File No.: 632-201

Dear Mr. Shearouse:

On behalf of the Petitioner, Sandra Morris Blake, as Personal Representative Of the Estate of Brandon T. Blake, and pursuant to Rules 240 and 242 of the *South Carolina Appellate Court Rules*, please find enclosed the following documents for filing in the above-referenced appellate matter:

1. Original and seven (7) copies of a ***Petition for Writ of Certiorari***, and
2. Original and two (2) copies of the ***Appendix to Petition for Writ of Certiorari.***

I also enclose the original and two (2) copies of a ***Proof of Service*** showing service of the ***Petition for Writ of Certiorari*** and ***Appendix to Petition for Writ of Certiorari***, upon counsel for the Respondent, William D. Curtis:

Check #5792
$100.00

Robert N. Hill, Esquire; C. Bradley Hutto, Esquire and Mark B. Tinsley, Esquire. Finally, I also enclose our firm check in the amount of $100.00 to cover the applicable filing fee for the ***Petition for Writ of Certiorari***

I would appreciate you kindly filing the ***Petition for Writ of Certiorari.*** the ***Appendix to Petition for Writ of Certiorari*** and the ***Proof of Service*** with the South Carolina Supreme Court and returning a stamped copy of each to me in the enclosed self addressed and stamped envelope.

If you need anything else or if I may otherwise may be of any assistance to you or to the Court of Appeals, please feel free to contact either of us at your convenience. My direct telephone number is 843.225.2811, and the e-mail address is arothschild@keavenylawfirm.com.

With kindest regards, I am

Very truly yours,

Amy B. Rothschild

Enclosures

cc: Ms. Sally Carmody (via e-mail only w/attachments)
Robert N. Hill, Esquire (Fed. Ex. 8755 8183 8003 w/enclosures)
C. Bradley Hutto, Esquire (Fed. Ex. 8755 8183 8025 w/enclosures)
Mark B. Tinsley, Esquire (Fed. Ex. 8755 8183 8014 w/enclosures)