

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

MAR 23 2012

S.C. Supreme Court

William D. Curtis,

Respondent,

v.

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

Petitioner.

---

**BRIEF OF THE PETITIONER**

---

Thomas J. Keaveny, II, Esquire  
Amy B. Rothschild, Esquire  
KEAVENY LAW FIRM LLC  
1634 Ashley River Road  
Charleston, South Carolina 29407  
Telephone: 843.225.2820  
Telecopier: 843.225.2823  
*Attorneys for the Petitioner*

# TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS .....	ii
TABLE OF AUTHORITIES .....	iv
I. STATEMENT OF ISSUES ON CERTIORARI APPEAL.....	1
A. Was The Jury's Verdict Against The Overwhelming Weight Of The Evidence Presented At Trial? .....	1
B. Was The Jury's Verdict The Result Of Passion, Prejudice, Bias, Or Other Consideration Not Based On The Evidence? .....	1
C. Did The Circuit Court Improperly Deny The Petitioner's Post-Trial Motion By Not Granting A New Trial? .....	1
D. Did The Jury Conduct Premature Deliberations Or Hasten Through Its Deliberations Without Giving Adequate Consideration To The Evidence? .....	1
E. Did The Circuit Court Improperly Deny The Petitioner's Post-Trial Motion By Failing To Grant A New Trial Under The Thirteenth Juror Doctrine? .....	1
II. STATEMENT OF THE CASE.....	2
III. STATEMENT OF THE FACTS.....	3
A. The Accident.....	3
B. Mr. Curtis' Medical Treatment.....	4
1. No Initial Treatment.....	4
2. The ER Visit.....	5
3. The Chiropractor - Dr. Campbell.....	6

4.	The Spine Physician – Dr. Nivens.....	8
C.	Mr. Curtis’ Injuries/Damages .....	10
IV.	ARGUMENT AND CITATION OF AUTHORITY .....	11
A.	The Court Of Appeals Incorrectly Concluded Mr. Blake Was Not Entitled To A New Trial Absolute Or New Trial <i>Nisi</i> Remittitur Since Mr. Blake Could Not Show “Compelling Reasons” For A New Trial .....	11
1.	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 .....	13
B.	The Court Of Appeals Incorrectly Concluded Mr. Blake Was Not Entitled To A New Trial Due To The Jury’s Abbreviated Deliberations.....	28
C.	The Court Of Appeals Incorrectly Affirmed The Trial Court’s Denial Of A New Trial For Mr. Blake Under The Thirteenth Juror Doctrine.....	30
V.	CONCLUSION.....	32

## TABLE OF AUTHORITIES

Page

### CASE DECISIONS

<u>Boozer v. Boozer</u> , 300 S.C. 282, 387 S.E.2d 674 (Ct.App. 2008) .....	12
<u>Botsford v. Ideal Trucking Co.</u> , 417 F.2d 681 (2 <sup>nd</sup> Cir. 1969).....	22
<u>Brinkley v. South Carolina Department of Corrections</u> , 386 S.C. 182, 687 S.E.2d 54 (Ct.App. 2009).....	20, 21
<u>Butler v. Gamma Nu Chapter of Sigma Chi</u> , 314 S.C. 477, 445 S.E.2d 468 (Ct.App. 1994) .....	12
<u>Caruso v. Canal Insurance Co.</u> , 858 So.2d 31 (La.App. 5 <sup>th</sup> Cir. 2003).....	22, 23, 24, 25
<u>Curtis v. Blake</u> , 381 S.C. 189, 672 S.E.2d 576 (2009) .....	3
<u>Curtis v. Blake</u> , 392 S.C. 494, 710 S.E.2d 79 (Ct.App. 2011) .....	3, 13, 27, 28, 29, 32
<u>Dillon v. Frazer</u> , 383 S.C. 59, 678 S.E.2d 251 (2009) .....	12, 19
<u>Edwards v. Lawton</u> , 244 S.C. 276, 244 S.E.2d 541 (1964) .....	19
<u>Fishburne v. ATI Systems International</u> , 384 S.C. 76, 681 S.E.2d 595 (Ct.App. 2009).....	13, 27
<u>Ford Motor Co. v. Mahone</u> , 205 F.2d 267 (4 <sup>th</sup> Cir. 1953) .....	22
<u>Graham v. Whitaker</u> , 282 S.C. 393, 321 S.E.2d 40 (1984) .....	30

<u>Hoffman v. All Star Insurance Co.</u> , 288 So.2d 388 (La.App. 4 <sup>th</sup> Cir. 1974) .....	22
<u>Howard v. Roberson</u> , 376 S.C. 143, 654 S.E.2d 877 (Ct.App. 2007) .....	30
<u>Hunt v. Methodist Hospital</u> , 240 Neb. 838, 485 N.W.2d 737 (1976) .....	29
<u>Kimberlin v. DeLong</u> , 637 N.E.2d 121 (Ind. 1994) .....	26, 27
<u>Lail v. South Carolina State Highway Department</u> , 244 S.C. 237, 136 S.E.2d 306 (1964) .....	14, 27
<u>Lapidus v. Hahn</u> , 115 Ill.App.3d 795, 450 N.E.2d 824 (1983) .....	26, 27
<u>Legette v. Piggly Wiggly, Inc.</u> , 368 S.C. 576, 629 S.E.2d 375 (Ct.App. 2006) .....	14, 27
<u>Mason v. Underwood</u> , 48 N.D. 230, 283 N.W.529 (1921) .....	21, 22
<u>Mauer v. Claussen Distributing Company</u> , 275 Mont. 229, 912 P.2d 195 (1996) .....	22
<u>Meyer v. Caterpillar Tractor Company</u> , 179 Ill.App.3d 268, 533 N.E.2d 386 (1988), <i>reversed on other grounds</i> , 135 Ill.2d I, 552 N.E.2d 719 (1990) .....	25, 26, 27
<u>Norton v. Norfolk Southern Railway Co.</u> , 350 S.C. 473, 567 S.E.2d 851 (2002) .....	30
<u>Patterson v. I. H. Services, Inc.</u> , 295 S.C. 300, 368 S.E.2d 215 (Ct.App. 1988) .....	14, 27
<u>Pool v. C., B. &amp; Q. Railroad Co.</u> , 6 F. 844 (1881) .....	29
<u>Sullivan v. Davis</u> , 317 S.C. 462, 454 S.E.2d 907 (Ct.App. 1995) .....	19-20

<u>Todd v. Owen Industrial Products, Inc.</u> , 315 S.C. 34, 431 S.E.2d 596 (Ct.App. 1993) .....	30
<u>Toole v. Toole</u> , 260 S.C. 235, 195 S.E.2d 389 (1973) .....	12
<u>Welch v. Epstein</u> , 342 S.C. 279, 536 S.E.2d 408 (Ct.App. 2000) .....	19
<u>Youmans ex rel. Elmore v. South Carolina Department of Transportation</u> , 380 S.C. 263, 670 S.E.2d 1 (Ct.App. 2008) .....	29, 30

**STATUTES, REGULATIONS, AND COURT RULES**

Rule 59(e), <u>SCRCP</u> .....	3
--------------------------------	---

**I. STATEMENT OF ISSUES ON CERTIORARI APPEAL**

- A. Was The Jury's Verdict Against The Overwhelming Weight Of The Evidence Presented At Trial?
- B. Was The Jury's Verdict The Result Of Passion, Prejudice, Bias, Or Considerations Other Than The Evidence?
- C. Did The Circuit Court Improperly Deny The Petitioner'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?
- F. Did The Circuit Court Improperly Deny The Petitioner's Post-Trial Motion By Failing To Grant A New Trial Under The Thirteenth Juror Doctrine?

## II. STATEMENT OF THE CASE

On 17 February 2004, the Respondent, William D. Curtis ("Mr. Curtis"), sued Brandon T. Blake ("Mr. Blake"),<sup>1</sup> 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.p.8). Mr. Blake denied the material allegations (R.p.10, paras. 1, 4-5) and asserted 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, D.C. ("Dr. Campbell") (R.p.55, line 3 – R.p.78, line 8); (b) the video testimony of his treating physician, Charles J. Nivens, M.D. ("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 own 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 a verdict for actual damages in the amount of \$450,000.00. (R.p.192, line 8 – R.p.195, line 3).<sup>2</sup> Mr. Blake subsequently filed a

---

<sup>1</sup> Mr. Blake passed away during the pendency of this matter from causes unrelated to the accident. Petitioner, Sandra Morris Blake, as the Personal Representative of the Estate of Brandon Blake was substituted as the real-party-in-interest during the appeal. Petitioner Sandra Morris Blake is Mr. Blake's mother.

<sup>2</sup> 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

*Motion for New Trial Absolute Under Rule 59(e), SCRCivP, New Trial Based On Thirteenth Juror Doctrine or, Alternatively a New Trial Nisi Remittitur.*<sup>3</sup> (R.pp.25-41), which the Trial Court denied. (R.pp.1-7). This appeal followed. (Appx.50-171).

The Court of Appeals issued its decision on 16 February 2011, affirming the Trial Court in all respects. (Appx.1-15).<sup>4</sup> Mr. Blake filed a Petition for Rehearing with Suggestion for Rehearing *En Banc* on 1 March 2011. (Appx.16-45). The Court of Appeals denied the petition by orders dated and filed 22 April 2011. (Appx.47-49). Mr. Blake then filed his Petition for Writ of Certiorari which this Supreme Court granted by order dated 24 February 2012.

## II. STATEMENT OF THE FACTS

### A. The Accident

On Tuesday, March 25, 2003, Mr. Curtis was driving his T800 Kenworth semi-tractor 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)<sup>5</sup> heading “up to a section of woods in between Wagener, South Carolina and Columbia, South Carolina.” (R.p.135, lines 4-5).<sup>6</sup> Sometime

---

trial and continue the proceedings the next day. (R.p.171, lines 2-21). The jury, apparently, decided to conclude that very evening. (R.p.171, lines 7-11).

<sup>3</sup> 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).

<sup>4</sup> See *Curtis v. Blake*, 392 S.C. 494, 710 S.E.2d 79 (Ct.App. 2011). This case was previously appealed on other grounds. See *Curtis v. Blake*, 381 S.C. 189, 672 S.E.2d 576 (2000).

<sup>5</sup> 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).

<sup>6</sup> 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;

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).

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 the 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 great “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).<sup>7</sup>

## **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

---

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).

<sup>7</sup> 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).

nervous and [had] an anxious feeling.” (R.p.142, lines 2-4; R.p.154, line 9 – R.p.155, line 1).<sup>8</sup> 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).

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).<sup>9</sup>

## 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-medicated himself through the use of 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

---

<sup>8</sup> 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).

<sup>9</sup> 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.p.210-213). He did not miss any other time from work.

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).<sup>10</sup> After Mr. and Mrs. Curtis stayed at the ER for a couple of hours; Mr. Curtis was ultimately 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). Mr. Curtis was both given and 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).<sup>11</sup> Mr. Curtis admitted, however, that he decided not to 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).<sup>12</sup>

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

Within a couple of weeks after his ER visit (R.p.158, lines 10-13), Mr. Curtis went to see Dr. Campbell – the chiropractor.<sup>13</sup> (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). Dr. Campbell recalled Mr. Curtis complained that the “base

---

<sup>10</sup> 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. Curtis did not get 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).

<sup>11</sup> The ER physician did not perform any diagnostic testing during Mr. Curtis' visit. (R.p.157, lines 16-23).

<sup>12</sup> 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).

<sup>13</sup> Dr. Campbell recalled that the law office of Bill Green, Esquire referred Mr. Curtis for treatment. (R.p.56, lines 4-7). On the other hand, Mr. Curtis recalled that a friend had referred him to Dr. Campbell. (R.p.145, lines 2-8).

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; R.p.158, lines 7-9).**14** 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).**15** 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).**16** 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).**17**

---

**14** 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).

**15** 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).

**16** 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).

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

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 had declared he had "no pain" (R.p.160, lines 6-8), Mr. Curtis stated he did not believe Dr. Campbell's treatments had helped him. (R.p.145, lines 2-10; R.p.146, lines 10-14).**18** Mr. Curtis, however, never told Dr. Campbell he disagreed with the treatment or that he did not feel he was 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.**19** (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).**20** Mr. Curtis stated he was, at the time, experiencing some "neck and low back pain . . . ." (R.p.82, lines 18-21).**21**

---

**18** 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).

**19** 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).

**20** Other than occasionally taking some Tylenol or Aleve (R.p.147, lines 11-24), Mr. Curtis did not receive any other "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) allegedly some "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, the record shows Mr. Curtis was actually driving about **800** miles per day. (R.p.165, line 11 – R.p.166, line 4). Moreover, Mr. Curtis was not working under any medical restrictions. (R.p.163, lines 6-8).

**21** 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,

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 . . . .” (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.<sup>22</sup> (R.p.90, lines 6-18). 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).<sup>23</sup> He also admitted Dr. Nivens’ treatments helped with the pain he was experiencing. (R.p.161, lines 6-7).

---

lines 9-19). Mr. Curtis admittedly sometimes worked 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, such as Mr. Curtis, generally had 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).

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

**23** 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.

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).<sup>24</sup>

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).<sup>25</sup> 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).<sup>26</sup>

### **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

---

(R.p.102, lines 8-14). In turn, there was a great likelihood he would also experience similar problems.

<sup>24</sup> 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).

<sup>25</sup> 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).

<sup>26</sup> 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).

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).**27**

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).**28**

#### **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 neither agreed nor conceded Mr. Curtis had actually been injured in the wreck. Consequently, under well-established South Carolina law, Mr. Curtis had the responsibility and burden to prove he was injured in the accident and, once that

---

**27** . 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 that Mr. Curtis had recovered from his injuries as of 14 May 2003 (Dr. Campbell), and as of 14 January 2004 (Dr. Nivens).

**28** 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).

was done, to show his damages in a non-speculative manner. Therefore, the jury had to ultimately determine from the evidence (a) whether Mr. Curtis was injured in the accident, (b) the degree of Mr. Curtis' injuries if he had been injured, and (c) the appropriate monetary relief, if any, to which Mr. Curtis was entitled because of his alleged injuries.

Unfortunately, instead of rationally considering the evidence, the jury, apparently in a hurry to celebrate Halloween, "tricked" the judicial process and "treated" Mr. Curtis to a \$450,000.00 gift. This award should not and cannot be justified in view of Mr. Curtis' demonstrated medical expenses and actual lost wages, as well as the evidence from Drs. Campbell and Nivens who objectively noted Mr. Curtis' successful recovery from his injuries long before trial.

Motions for new trial on the ground of excessiveness are addressed to the sound discretion of the Trial Court.<sup>29</sup> Nevertheless, such discretion is not absolute and it is the duty of an appellate court to both fully review the relevant evidence<sup>30</sup> and to determine if the extent and character of the injury supports the verdict. In situations like this one, where the verdict is unsupported, the Trial Court's failure to grant a new trial is an abuse of discretion which amounts to an error of law. Consequently, such an erroneous decision must, as a matter of law, be reversed and a new trial granted. In some respects, this amounts to, in

---

<sup>29</sup> 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).

<sup>30</sup> 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.'").

essence, almost a quasi-*de novo* review. Given the reasonable and rational disconnect between the majority of Mr. Curtis' testimonial evidence and the more objective medical and physical evidence, there is, and 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.

**1. 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).<sup>31</sup> 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).<sup>32</sup> Regardless of the law, the jury rendered a completely unreasonable verdict which, according to the Court of Appeals, was none-the-less proper.<sup>33</sup> The record demonstrates, however, the objective evidence, both medical and otherwise, clearly contradicted Mr. Curtis' testimony of his injuries and damages.<sup>34</sup> Consequently, the jury could not have "followed the law" in

---

<sup>31</sup> The Circuit Court charged the jury Mr. Curtis had the burden to prove he "suffered some injury or sustained some loss and that any injury or loss he claim[ed] to have sustained was . . . proximately caused by [Mr. Blake's] negligence." (R.p.178, lines 7-10).

<sup>32</sup> The Circuit Court charged the jury that Mr. Curtis had to "put forth sufficient evidence [of his damages] as would enable [the jury] to arrive at an appropriate and fair amount of damages without having to resort to speculation or conjecture in order to arrive at an appropriate and fair amount. (R.p.188, lines 13-17).

<sup>33</sup> Curtis v. Blake, 392 S.C. 494, 710 S.E.2d 79.

<sup>34</sup> 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.");

adherence to these legal principles and, in turn, rendered the verdict it did. 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 more than half (\$2,830.00) solely involved the MRI and its interpretation. (R.pp.202, 206-207).**35**
2. Mr. Curtis' lost wages totaled \$2,615.76 (R.p.163, line 12 – R.p.165, line 18; R.p.212) even though 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).
3. While Mr. Curtis' reported 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).
4. Mr. Curtis believed he earned about \$20,000.00 in 2004. (R.p.169, lines 15-17).
5. Mr. Curtis admitted when the accident happened, he "didn't realize [he had] been hit . . . ." (R.p.153, lines 3-5).
6. Mr. Curtis conceded he did not feel any pain on the day of the accident, 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 neither received nor requested any medical treatment at the scene of the accident 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).

---

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.")).

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

8. 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 off at a welding shop for accident-related repairs. (R.p.118, lines 12-24; R.p.125, lines 8-18; R.p.142, lines 5-16).
9. Mr. Curtis only 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).
10. Mr. Curtis did not seek medical attention until late April, 2003 (about a month after the accident), when he finally 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).
11. 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).
12. At the ER, Mr. Curtis 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), 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).
13. 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).
14. 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.p.210-213).
15. 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).
16. Dr. Campbell believed Mr. Curtis “had recovered from his complaints” as of that date. (Tr.57, lines 15-24; Tr.59, lines 12-20).
17. 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).

18. 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).
19. 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).
20. 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).
21. 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).
22. Dr. Nivens eventually saw Mr. Curtis on four separate occasions. (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).
23. Dr. Nivens 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).
24. Unlike with the ER prescribed medicine, Mr. Curtis actually took the *Naprosyn* and the *Medrol*. (R.p.161, lines 8-18).
25. Mr. Curtis admitted Dr. Nivens' treatments helped him with the pain he was experiencing. (R.p.161, lines 6-7).
26. 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).
27. 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).
28. Mr. Curtis' "last" visit to Dr. Nivens coincidentally took place approximately 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).
29. 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 he was experiencing was not debilitating.
30. Dr. Nivens stated that, at this time, Mr. Curtis "[n]eurologically . . . seemed to be fine." (R.p.92, line 24 – R.p.93, line 7; R.p.108, lines 1-19).

31. 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).
32. 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).
33. Mr. Curtis has not required any surgery or other invasive action as a result of the injuries he sustained in the accident. (R.p.133, line 3 – R.p.170, line 14).
34. Mr. Curtis has not had any medical restrictions placed upon his work as a truck driver as a result of the accident. (R.p.133, line 3 – R.p.170, line 14).
35. 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).
36. Mr. Curtis 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).**36**
37. 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).
38. Dr. Nivens 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).
39. Mr. Curtis’ family had a history of back problems. (R.p.101, lines 8-14).
40. Mr. Curtis was only out of work for eight days because his log trailer was being repaired due to the accident. (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).

---

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

41. Mr. Curtis only missed five and one-half days for doctor visits due to the accident. (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).
42. 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 as a result of the accident. (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).
43. There was no evidence showing Mr. Curtis was entitled to future medical expenses as a result of the accident. (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).
44. There was no evidence showing Mr. Curtis was entitled to damages for a loss of future earnings capacity as a result of the accident. (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).
45. The jury rendered its verdict in less than 25 minutes on Halloween night. (R.p.192, line 8 – R.p.195, line 3).
46. 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).
47. The verdict was over 27 times his Mr. Curtis' 2003 adjusted gross income. (R.p.169, lines 15-17; R.p.192, line 8 – R.p.195, line 3; R.p.214).
48. The verdict was over 22 times Mr. Curtis' 2004 estimated income. (R.p.169, lines 15-17; R.p.192, line 8 – R.p.195, line 3; R.p.214).**37**

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

---

**37** 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.

affected the amount awarded."**38** 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.**39**

Notwithstanding the law, the jury's verdict in this case simply 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 and the evidence of Mr. Curtis' medical expenses and lost wages.

In an analogous situation, albeit the reversed case, this Supreme Court, in *Dillon v. Frazer*,**40** overturned the Trial Court's decision not to grant a new trial based upon an allegedly inadequate jury verdict.**41** The injured plaintiff had presented undisputed actual damages of \$30,026.00 and the jury awarded only \$6,000.00 in an admitted liability automobile negligence case.**42** This Supreme Court found "the jury verdict of \$6,000[.00] irreconcilably inconsistent with the unchallenged evidence presented at trial. The disparity between the award and the admitted damages goes beyond a merely conservative award and suggests that the jurors were motivated by improper considerations."**43**

---

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

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

**40** *Dillon v. Frazer*, 383 S.C. 59, 678 S.E.2d 251 (2009).

**41** *Dillon v. Frazer*, 383 S.C. 59, 61, 678 S.E.2d 251, 252.

**42** *Dillon v. Frazer*, 383 S.C. 59, 61, 678 S.E.2d 251, 252.

**43** *Dillon v. Frazer*, 383 S.C. 59, 61, 678 S.E.2d 251, 252. *See also Sullivan v. Davis*, 317 S.C. 462, 466-467, 454 S.E.2d 907, 910-911 (Ct.App. 1995) (Award of \$20,000.00 reversed with

In Brinkley v. South Carolina Department of Corrections,<sup>44</sup> the Court of Appeals affirmed the Trial Court decision to grant the State a new trial absolute based on the excessiveness of the jury's verdict.<sup>45</sup> Mr. Brinkley, a Corrections Department inmate, obtained a \$600,000.00 verdict against the Department arising from an assault he sustained at the hands, feet, *etc.* of Department employees.<sup>46</sup> The Department moved, post-trial, "requesting judgment notwithstanding the verdict, and, alternatively, a new trial based on the excessiveness of the verdict or the thirteenth juror doctrine, or new trial *nisi remittitur*," which the Trial Court granted.<sup>47</sup>

On appeal, the Court of Appeals affirmed, looking to the following "evidence":

[T]he [C]ircuit [C]ourt determined little or no evidence substantiated [Mr.] Brinkley's claims for damages outside of his own testimony and that of two other inmates who claimed to have witnessed the assault. The [Circuit] [C]ourt noted [Mr.] Brinkley failed to introduce any medical records supporting the testimony of injuries, while the testimony of Department's doctor, who claims to have seen [Mr.] Brinkley some four days following the alleged assault, testified [Mr.]

---

evidence of \$130,000.00 in medical expenses). It appears South Carolina courts will willingly grant new trials in cases where the jury has not rendered a "sufficient" verdict, but rarely follow the same principles when the verdict is attacked as "excessive".

<sup>44</sup> Brinkley v. South Carolina Department of Corrections, 386 S.C. 182, 687 S.E.2d 54 (Ct.App. 2009).

<sup>45</sup> Brinkley v. South Carolina Department of Corrections, 386 S.C. 182, 185, 687 S.E.2d 54, 56.

<sup>46</sup> Brinkley v. South Carolina Department of Corrections, 386 S.C. 182, 185, 687 S.E.2d 54, 56.

<sup>47</sup> Brinkley v. South Carolina Department of Corrections, 386 S.C. 182, 185, 687 S.E.2d 54, 56.

Brinkley neither exhibited signs or symptoms of an assault, nor complained to him that he had been assaulted. Moreover, the [Circuit] [C]ourt noted [Mr.] Brinkley himself testified he had no permanent scars or other marks resulting from the alleged assault.<sup>48</sup>

The Court of Appeals concluded that it could not “say the [C]ircuit [C]ourt abused its discretion in granting [the] Department’s motion for a new trial absolute.”<sup>49</sup>

The same rationale this Supreme Court used in *Dillon v. Frazer* and the Court of Appeals used in *Brinkley v. South Carolina Department of Corrections* works equally well in this case – even though it is admittedly the reversed situation. Moreover, a number a cases from around the country also demonstrate the proposition that an excessive verdict, unsupported by the objective and reasonable evidence, should be reversed, or at the least, significantly reduced.

For example, the Supreme Court of North Dakota, in *Mason v. Underwood*,<sup>50</sup> 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.<sup>51</sup> The North Dakota Court reversed the verdict and ordered a new trial on evidentiary grounds.<sup>52</sup> Chief Justice Robinson,

---

<sup>48</sup> *Brinkley v. South Carolina Department of Corrections*, 386 S.C. 182, 186, 687 S.E.2d 54, 57.

<sup>49</sup> *Brinkley v. South Carolina Department of Corrections*, 386 S.C. 182, 188, 687 S.E.2d 54, 57.

<sup>50</sup> *Mason v. Underwood*, 48 N.D. 130, 183 N.W. 529 (1921).

<sup>51</sup> *Mason v. Underwood*, 48 N.D. 130, 131, 183 N.W. 529,529.

<sup>52</sup> *Mason v. Underwood*, 48 N.D. 130, 131, 183 N.W. 529, 530.

concurring specifically, 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.”<sup>53</sup>

In Mauer v. Claussen Distributing Co.,<sup>54</sup> 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.<sup>55</sup> 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.”<sup>56</sup>

The Court of Appeal of Louisiana, Fifth Circuit, in Caruso v. Canal Insurance Company,<sup>57</sup> addressed a situation where the claimant was involved in an automobile accident when the at-fault driver backed into Mr. Caruso’s vehicle.<sup>58</sup> Neither the police nor EMS were called and the drivers merely

---

<sup>53</sup> Mason v. Underwood, 48 N.D. 130, 132, 183 N.W. 529, 530 (Robinson, C.J., concurring specially) (Emphasis added). See also Ford Motor Co. v. Mahone, 205 F.2d 267 (4<sup>th</sup> Cir. 1953) (\$234,330.00 jury award reversed and new trial granted when the evidence did not support the award).

<sup>54</sup> Mauer v. Claussen Distributing Co., 275 Mont. 229, 912 P.2d 195 (1996).

<sup>55</sup> Mauer v. Claussen Distributing Co., 275 Mont. 229, 236-237, 912 P.2d 195, 199.

<sup>56</sup> Mauer v. Claussen Distributing Co., 275 Mont. 229, 237, 912 P.2d 195, 199. See also generally Hoffman v. All Star Insurance Co., 288 So.2d 388 (La.App. 4<sup>th</sup> Cir. 1974) (Certain jury damages awards significantly reduced when the evidence of claimants’ post-accident circumstances failed to support the awards); Botsford v. Ideal Trucking Co., 417 F.2d 681 (2<sup>nd</sup> Cir. 1969) (same - \$15,000.00 reduced to \$7,500.00 or new trial).

<sup>57</sup> Caruso v. Canal Insurance Co., 858 So.2d 31 (La.App. 5<sup>th</sup> Cir. 2003).

<sup>58</sup> Caruso v. Canal Insurance Co., 858 So.2d 31, 32.

exchanged insurance information and departed.<sup>59</sup> After the claimant began suffering headaches and neck pain and stiffness, he settled his claim with the at-fault driver for \$10,000.00 and then initiated a UIM claim in which he was awarded \$25,000.00.<sup>60</sup> On appeal, the Louisiana appellate court reduced the award to \$8,795.00<sup>61</sup> on the grounds that the objective medical evidence did not support the award, especially in light of the prior \$10,000.00 recovery from the at-fault driver.<sup>62</sup> In an evidentiary situation eerily similar to Mr. Curtis' medical treatment chronology in this case, the Louisiana Court of Appeals considered the following operative facts:

Medical records show that three days following the accident, [Mr. Caruso] sought medical treatment for his injuries from Stewart E. Altman, M.D. Dr. Altman diagnosed [Mr. Caruso] with post traumatic headaches and cervical musculoskeletal strain casually related to the accident. [Mr. Caruso] visited Dr. Altman's office a total of five times from late January to July of 2000. The treatment consisted of conservative care (hot and cold packs, transcutaneous nerve stimulation, ultrasound therapy) and prescribed medication for pain.

In July, 2000, [Mr. Caruso] had again been examined by Dr. Altman and plaintiff reported that he still suffered occasional migraine headaches and neck problems. The medical records show that [Mr. Caruso] was discharged without further appointment to see Dr. Altman.

An MRI scan performed on [Mr. Caruso's] cervical spine in August, 2000 revealed a "probable muscle spasm" and cervical scoliosis, but the cervical spine otherwise appeared unremarkable or normal.

---

**59** Caruso v. Canal Insurance Co., 858 So.2d 31, 32.

**60** Caruso v. Canal Insurance Co., 858 So.2d 31, 32.

**61** Caruso v. Canal Insurance Co., 858 So.2d 31, 34-35.

**62** Caruso v. Canal Insurance Co., 858 So.2d 31, 34-35.

[Mr. Caruso] also sought treatment from a neurologist, John D. Olson, M.D. Dr. Olson's medical records indicate that [Mr. Caruso] made office visits on February 13, 2001 and May 3, 2001. [Mr. Caruso] reported similar symptoms of headaches and neck pain, which Dr. Olson attributed to the accident from a year earlier. [Mr. Caruso] was prescribed medication for pain, but no other treatment is indicated from the records.

[Mr. Caruso] also testified that on January 11, 2002, he went to the emergency room at Ochsner Hospital because he had been suffering with a migraine headache for an entire week. The trial record only contains a discharge sheet from the Ochsner Hospital Emergency Department indicating that [Mr. Caruso] was released from the emergency room the same day with prescriptions for *Naprosyn* and *Vicodin* to relieve symptoms of pain and a recurrent cough. [Mr. Caruso] was further instructed to apply ice to his neck to relieve spasms and contact his primary physician for follow up care. There was no evidence presented that [Mr. Caruso] sought follow up treatment from his primary physician soon after the emergency room visit.

In all, the records submitted into evidence show that [Mr. Caruso's] medical bills associated with the accident total \$1,295.00. Despite the above-discussed treatment, [Mr. Caruso] testified that he continued to suffer headaches and neck pain as of the day of trial. [Mr. Caruso] stated that he was no longer taking prescription medication but relied instead on over-the-counter drugs such as "Tylenol" to relieve pain symptoms. **63**

The Louisiana appellate court further noted:

This Court's examination of the trial record leads us to conclude that, at best, this is a case of soft tissue injuries and resultant headaches stemming from a low impact collision. The medical records indicate that [Mr. Caruso] was treated conservatively for approximately [16] months. [Mr. Caruso] testified that he continues to suffer headaches and discomfort in his neck, but there was nothing in the medical records to support the ongoing nature of his injuries. Instead, the medical records reveal an absence of any such complaints whenever he was treated by physicians other

---

**63** Caruso v. Canal Insurance Co., 858 So.2d 31, 33.

than Dr. Altman or Dr. Olson during the time period that he complains of pain. [Mr. Caruso] also readily admitted at trial that his injuries did not cause him to miss any work or prevent him from fully performing work activities.<sup>64</sup>

In view of the evidence, the Louisiana appellate court significantly reduced Mr. Caruso's \$25,000.00 underinsured motorists insurance award noting the "even under the most deferential standard of review, the amount of damages awarded [to Mr. Caruso] cannot reasonably be reconciled with the minor nature of the collision involved and the modest injuries sustained by [Mr. Caruso]."<sup>65</sup>

Conversely, courts have upheld significant damage, even in the absence of substantial medical expenses, when there are other important factors and/or circumstances at play. There is no evidence of such important factors being present in this case.

For example, in *Meyer v. Caterpillar Tractor Co.*,<sup>66</sup> 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.<sup>67</sup> 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.<sup>68</sup> The Illinois intermediate appellate court affirmed based on

---

<sup>64</sup> *Caruso v. Canal Insurance Co.*, 858 So.2d 31, 34.

<sup>65</sup> *Caruso v. Canal Insurance Co.*, 858 So.2d 31, 34.

<sup>66</sup> *Meyer v. Caterpillar Tractor Co.*, 179 Ill.App.3d 268, 533 N.E.2d 386 (1988), *reversed on statutory interpretation grounds*, 135 Ill.2d 1, 552 N.E.2d 719 (1990).

<sup>67</sup> *Meyer v. Caterpillar Tractor Co.*, 179 Ill.App.3d 268, 284, 533 N.E.2d 386, 396.

<sup>68</sup> *Meyer v. Caterpillar Tractor Co.*, 179 Ill.App.3d 268, 284, 533 N.E.2d 386, 396.

the evidence of the plaintiff's several operations, his permanent disfigurement, his inability to perform his former millwright job, and his quantified lost wages and future lost wages.<sup>69</sup>

Likewise, in Lapidus v. Hahn,<sup>70</sup> 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.<sup>71</sup> The Illinois court approved the award based upon the plaintiff's evidence of "the deformity [she sustained] which has totally destroyed plaintiff's lifestyle and the extreme pain which she suffered."<sup>72</sup> 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.<sup>73</sup>

In Kimberlin v. DeLong,<sup>74</sup> 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.<sup>75</sup> The Indiana court concluded the claimant had

---

<sup>69</sup> Meyer v. Caterpillar Tractor Co., 179 Ill.App.3d 268, 282-283, 533 N.E.2d 386, 395-396. The Illinois Supreme Court, nevertheless, reversed and remanded the case on unrelated evidentiary grounds. See Meyer v. Caterpillar Tractor Co., 135 Ill.2d 1, 552 N.E.2d 719 (1990).

<sup>70</sup> Lapidus v. Hahn, 115 Ill.App.3d 795, 450 N.E.2d 824 (1983).

<sup>71</sup> Lapidus v. Hahn, 115 Ill.App.3d 795, 802, 450 N.E.2d 824, 829.

<sup>72</sup> Lapidus v. Hahn, 115 Ill.App.3d 795, 803, 450 N.E.2d 824, 829.

<sup>73</sup> Lapidus v. Hahn, 115 Ill.App.3d 795, 797-798, 450 N.E.2d 824, 825-827.

<sup>74</sup> Kimberlin v. DeLong, 637 N.E.2d 121 (Ind. 1994).

<sup>75</sup> Kimberlin v. DeLong, 637 N.E.2d 121, 123-124.

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.<sup>76</sup>

In Lapidus v. Hahn, Kimberlin v. DeLong, and Meyer v. Caterpillar Tractor Co., all of the claimants presented substantial evidence of physical disfigurement, death, permanent debilitating injuries, the inability to work outright and/or the inability to 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 any 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<sup>77</sup> given the facts (a) both of his treating physicians objectively concluded Mr. Curtis had recovered from his injuries, (b) Mr. Curtis told both treating physicians he was feeling no pain, and (c) 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 stoically facing his allegedly continuing pain, Mr. Curtis' own actions belied the extent of his pain and the real reasons for its continuation. The Court of Appeals ignored the law supporting a reversal of the verdict below in light of Mr. Curtis' clearly inconsistent, as well as contradictory evidence.<sup>78</sup>

---

<sup>76</sup> Kimberlin v. DeLong, 637 N.E.2d 121, 129-130.

<sup>77</sup> 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.

<sup>78</sup> Curtis v. Blake, 392 S.C. 494, 501-502, 709 S.E.2d 79, 82-83.

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 herein, simply be used as a reward. This Supreme Court should reverse the Court of Appeals' decision and remand this matter for a new trial.

**B. 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 his "best-case" evidence of 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 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 lack of fairness or the negative effect on the judicial process. The Court of Appeals, however, concluded the new trial denial was correct.<sup>79</sup> This decision was incorrect

Sometime between the charge and the jury's commencement of its deliberations, the Trial Court informed the jurors that if they completed their deliberations that evening they would not be required 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). In fact, the Trial Court gave the jury the "option" of coming back the

---

<sup>79</sup> Curtis v. Blake, 392 S.C. 494, 503-504, 709 S.E.2d 79, 84.

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.<sup>80</sup> Not unsurprisingly, the jurors chose to complete their deliberations that afternoon and evening. (R.p.172, lines 15-23).<sup>81</sup>

The Court of Appeals concluded there was nothing wrong either with the jury’s lightning-quick deliberations or their ultimate verdict.<sup>82</sup> While the Court of Appeals stated that “brief jury deliberations alone [are] not . . . a sufficient basis for the grant of a new trial”<sup>83</sup> the length of the deliberations in this case coupled with 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.’”<sup>84</sup>

---

<sup>80</sup> Curtis v. Blake, 392 S.C. 494, 505, 709 S.E.2d 79, 84.

<sup>81</sup> 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.

<sup>82</sup> Curtis v. Blake, 392 S.C. 494, 504-505, 709 S.E.2d 79, 84.

<sup>83</sup> Curtis v. Blake, 392 S.C. 494, 504, 709 S.E.2d 79, 84 (citing Youmans v. South Carolina Department of Transportation, 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)).

<sup>84</sup> Curtis v. Blake, 392 S.C. 494, 504, 709 S.E.2d 79, 84 (quoting Youmans v. South Carolina Department of Transportation, 380 S.C. 263, 282, 670 S.E.2d 1, 10) (Emphasis in original).

Either the jury had already made up its “collective mind” prior to it going into the jury room or, in the alternative, rushed through its “deliberations” in order to vacate the courthouse as quickly as could be accomplished. Either way, the jury’s hasty “deliberations” could not have been either very deliberate or very thoughtful. Mr. Blake was entitled to a fair 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.<sup>85</sup>

This Supreme Court should reverse the Court of Appeals and award Mr. Blake a new trial.

**C. 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 [13] 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.”<sup>86</sup> Moreover, our “circuit court judges [traditionally] have the authority to grant a new trial upon the judge's finding that justice has [simply] not prevailed” or “the evidence does not justify the verdict . . . .”<sup>87</sup>

---

<sup>85</sup> Youmans ex rel. Elmore v. South Carolina Department of Transportation, 380 S.C. 263, 280-288, 670 S.E.2d 1, 9-13.

<sup>86</sup> 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)).

<sup>87</sup> Youmans ex rel. Elmore v. South Carolina Department of Transportation, 380 S.C. 263, 287-288, 670 S.E.2d 1, 5, 13 (citing Todd v. Owen Industrial Products, Inc., 315 S.C. 34, 431 S.E.2d 596 (Ct.App. 1993); Howard v. Roberson, 376 S.C. 143, 153, 654 S.E.2d 877, 882 (Ct.App. 2007); Norton v. Norfolk Southern Railway Co., 350 S.C. 473, 478, 567 S.E.2d 851, 854 (2002)).

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 correspond to Mr. and 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.<sup>88</sup> This Supreme Court should 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 reverse the decision of the Court of Appeals, 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  
1634 Ashley River Road  
Charleston, South Carolina 29407  
Telephone: 843.225.2820  
Telecopier: 843.225.2823

*Attorneys for the Petitioner*

Charleston, South Carolina  
22 March 2012

---

<sup>88</sup> Curtis v. Blake, 392 S.C. 494, 505-506, 709 S.E.2d 79, 84-85.

**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**

MAR 23 2012

**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  
BRIEF OF THE PETITIONER**

---

Thomas J. Keaveny, II, Esquire  
Amy B. Rothschild, Esquire  
KEAVENY LAW FIRM LLC  
1634 Ashley River Road  
Charleston, South Carolina 29407  
Telephone: 843.225.2820  
Telecopier: 843.225.2823

*Attorneys for the Petitioner*

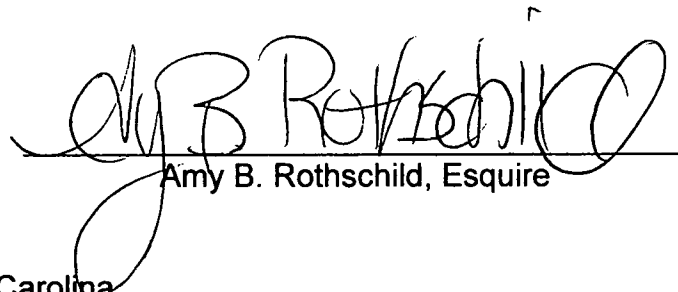
I, Amy B. Rothschild, Esquire, hereby certify that on 22 March 2012, I served one copy of the **Brief of the Petitioner** submitted by the Petitioner on the following counsel for the Respondent via pre-paid USPS overnight delivery, and addressed as follows:

C. Bradley Hutto, Esquire  
**WILLIAMS & WILLIAMS**  
1281 Russell Street  
Orangeburg, South Carolina 29115

Mark B. Tinsley, Esquire  
**GOODING & GOODING, P.A.**  
265 Barnwell Highway  
Allendale, South Carolina 29810

Robert N. Hill, Esquire  
**LAW OFFICES OF ROBERT N. HILL**  
1819 McHardy Street  
Newberry, SC 29108

*Attorneys for the Respondent*



Amy B. Rothschild, Esquire

Charleston, South Carolina

22 March 2012