THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS

The Honorable R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2017-000267
Op. No. 5711 (S.C. Ct. App. filed Jan. 15, 2020)

Carla Denise Garrison and Clint Garrison.....Petitioners,

v.

Target Corporation.....Respondent.

PETITION FOR WRIT OF CERTIORARI

Joshua T. Hawkins, SC Bar #78470
Helena LeeAnn Jedziniak, SC Bar #100825
Hawkins & Jedziniak, LLC
1225 South Church Street
Greenville, South Carolina 29605
Tel: (864) 275-8142
Fax. (864)752-0911
josh@hjllcsc.com
helena@hjllcsc.com

Attorneys for Petitioners

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CERTIFICATE OF COUNSEL

The Court of Appeals issued its decision on January 15, 2020. (App.p.1) Petitioners Carla "Denise" Garrison and Clint Garrison filed a petition for rehearing on January 28, 2020, and it was denied on February 20, 2020 (App.pp.50-54, 85).

QUESTIONS PRESENTED

1. Did the Court of Appeals err in holding that Rule 68's offer-of-judgment rule does not allow plaintiffs to recover pre-judgment interest on an award of punitive damages?

2. If this Court grants certiorari to determine whether Respondent Target Corporation waived application of the punitive damages caps, should this Court also determine whether the punitive damages caps are constitutional in the first place?[1]

STATEMENT OF THE CASE

This is a premises-liability case, in which Denise Garrison was stuck by a needle and severely[2] injured in Target's Anderson, South Carolina parking lot in May 2014 (App.pp.769-770, 549, 579, 679-680, 774). The case was tried to a jury in September 2016 (App.pp.410-955). At trial, the jury heard a mountain of evidence regarding Target's reckless conduct, including the store's knowledge of their duty to protect customers, the store's lack of policies and procedures to keep the parking lot safe, the store's failure to clean and inspect the parking lot, the store's

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[1] Denise Garrison does not believe that this issue need be raised by way of a certiorari petition to preserve it for this Court's review, but she nonetheless does so out of an abundance of caution. It is hornbook law that "[a] prevailing party need not cross-petition for certiorari to defend a judgment on any ground properly raised below[.]" 5 AM. JUR. 2D APPELLATE REVIEW § 333 (2d ed. 2020). Denise Garrison challenged the constitutionality of the caps in the Court of Appeals, but the Court of Appeals did not reach the issue because Target was held to have waived application of the caps.

[2] After discussing the blood that emerged from Denise's palm on the night of the incident, the Court of Appeals detailed her subsequent injuries as follows: "The next day, Denise visited the local hospital emergency room, where a nurse referred Denise to an infectious disease specialist, Dr. Potts, at AnMed Health Specialty Clinic. The clinic collected a blood sample to have it tested for HIV and hepatitis, and Dr. Potts prescribed several medications targeted at preventing HIV and hepatitis. The medications caused Denise to feel dizzy and lose her balance. They also upset her stomach, put her into a 'zombie-like state,' and caused her to have night terrors. Clint testified that Denise was bedridden during this time. Clint had to take unpaid leave from work to care for Denise, and Clint's mother had to help care for the Garrisons' four children. Further Denise had to have her blood tested every three months for approximately one year (App.p.3)."

pattern and practice of dangerous objects remaining in the parking lot for long periods of time, the store's focus on profits over safety, the store's falsification of a business record, the store's lie about the regularity of a supposed third-party cleaning company, the store's spoliation of evidence, and the store's false promise to pay for Denise's medical bills (App.pp.410-955). The jury ultimately awarded Denise and her husband over $4.6 million dollars in damages, over $4.5 million of which were designated as punitives (App.pp.1081-1084).

In light of the jury's punitive damages award, an offer of judgment made by the Garrisons early on in the case became a focal point of the post-trial proceedings (App.p.1060). In particular, because Denise never wanted to file this lawsuit to begin with and only wanted Target to pay her medical bills, the Garrisons served Target with a $12,000.00 offer of judgment in February 2015 (App.p.1060). When the case later went to trial and a jury awarded far more than that amount in September 2016, Rule 68(b)'s pre-judgment interest provision was triggered. It provides that a plaintiff is entitled to 8% interest "on the amount of the verdict or award from the date of the offer to the entry of judgment[.]" *See* Rule 68(b), SCRCP.

Through a post-trial motion, the Garrisons requested an order reflecting their 8% pre-judgment interest on the entirety of the jury's verdict. (App.pp.1061-1093, 1230-1271). The trial court granted a separate JNOV motion from Target on the issue of punitive damages, however, so the trial court ruled that the Garrisons could receive prejudgment interest only on $108,500.00. (App.pp.351-363, 364-369). On appeal, the Court of Appeals correctly reinstated the jury's punitive damages award in light of the abundant evidence of Target's recklessness (App.p.38, 44). That holding brought the Garrisons' entitlement to pre-judgment interest on punitive damages back into play (App.pp.41-43).

Despite there being no textual limitation in Rule 68, and despite contrary holdings from the only other States that have addressed the same issue, the Court of Appeals held that plaintiffs

cannot recover pre-judgment interest on punitive damages (App.pp.41-43). The Garrisons petitioned for re-hearing on this issue, but the Court of Appeals denied the request on February 20, 2020 (App.p.85).

The Court of Appeals likewise denied a re-hearing petition filed by Target that, in part, challenged the Court of Appeals' holding that Target waived application of the punitive damages caps found in Section 15-32-530 of the South Carolina Code by not asserting the caps as a defense at any time prior to the jury's verdict (App.pp.55-84). Because the Court of Appeals of concluded that Target waived the caps, the Court of Appeals never reached the Garrisons' alternative argument that the caps were unconstitutional, as the Missouri Supreme Court had recently held.

ARGUMENT

The evidence at trial showed that the Garrisons never wanted to file this lawsuit at all and instead only wanted Target to pay for the medical treatment the company caused (App.pp.792-794). The Garrisons' modest offer of judgment likewise underscores the reasonableness of their actions throughout (App.p.1060). Nevertheless, Target has made the Garrisons endure over five years of litigation, nearly three of which has persisted even after a unanimous jury in one of this State's most conservative venues sent an unmistakable message about the egregiousness of the company's conduct. Anticipating that Target will yet again prolong this litigation with a certiorari petition, the Garrisons raise two issues of first impression for this Court's consideration.

I. THE COURT OF APPEALS SHOULD HAVE HELD THAT DENISE GARRISON IS ENTITLED TO 8% PRE-JUDGMENT INTEREST ON THE ENTIRETY OF HER DAMAGES, INCLUDING PUNITIVES.

The command of Rule 68(b) is crystal clear: If a defendant rejects an offer of judgment and the plaintiff later obtains an amount greater than the offer of judgment that was made, then

the plaintiff is entitled to 8% interest "on the amount of the verdict or award from the date of the offer to the entry of judgment[.]" Nothing in the text of the rule, or any in case interpreting a similar rule, provides an exception for punitive damages. Accordingly, the Court of Appeals holding on this point was wrong.

Rule 68's plain language makes this issue straightforward. This Court recently reiterated that, when a text is unambiguous, courts have "no right to impose another meaning." *See Commissioners of Public Works of the City of Laurens v. City of Fountain Inn*, 428 S.C. 209, 214, 833 S.E. 2d 834, 836 (2019). The late Justice Scalia made this same point in a treatise he co-authored with Bryan Garner, writing that courts should not "elaborate unprovided-for exceptions to a text" because, "'[i]f the Congress had intended to provide additional exceptions, it would have done so in clear language.'" *See* A. Scalia & B. Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS § 8, p. 93 (2012) (cleaned up). Since Rule 68 ties pre-judgment interest – without limitation – to "the amount of the verdict or award[,]" only the Legislature[3] has the power to narrow Rule 68 in a manner that includes compensatory damages alone.

Case law reinforces what Rule 68's plain language makes clear. In *Kregos v. Stone*, 872 A.2d 901, 906 (Conn. App. Ct. 2005), the court addressed a nearly identically worded Connecticut statute. *Compare* Conn. General Statutes § 52-192a *with* S.C. Code §15-35-400. *Kregos* held that the "proper[ ] interpret[ation of] the word 'recovered' [ ] include[s] the entire verdict, both punitive and compensatory damages[.]" *See* 872 A.2d at 906.

Despite Rule 68's plain language, and despite the holding from *Kregos*, the Court of Appeals refused to award Denise Garrison pre-judgment interest on her punitive damages award. It came to that conclusion by relying on cases from Alaska and Nevada, even though neither case

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[3] Rule 68's language appears in S.C. Code §15-35-400 as well.

had anything to do with offers of judgments (*See Garrison*, discussing *Haskins v. Shelden*, 558 P.2d 487 (Alaska 1976) and *Ramada Inns, Inc. v. Sharp*, 711 P.2d 1 (Nev. 1985)) (App.pp.42-44). Each of these cases merely reflects the non-controversial idea that one of the purposes served by prejudgment interest is to compensate a plaintiff for the loss of money he or she is entitled to before judgment. *See Haskins*, 558 P.2d at 494-96; *Sharp*, 711 P.2d at 2.

In the offer of judgment context, there is an additional purpose: to punish a defendant who has been unreasonable in settlement negotiations. *See Boulevard Associates v. Sovereign Hotels, Inc.*, 861 F.Supp. 1132, 1141 (D. Conn. 1994) (explaining that Connecticut's offer-of-judgment statute was "punitive in nature"). The Court of Appeals acknowledged that it was parting ways with Connecticut courts on this issue (App. P. 43-33), but in doing so, it parted ways with, Wisconsin too. *See Majorowicz v. Allied Mut. Ins. Co.*, 569 N.W.2d 472, 481 (Wis. Ct. App. 1997) (analyzing Wisconsin offer-of-judgment statute that provided for "12% [interest] on the amount recovered from the date of the offer of settlement until the amount is paid"). *Majorowicz*, like *Kregos*, explains that awarding pre-judgment interest on punitive damages is a necessary penalty in the offer-of-judgment "to encourage pretrial settlement and avoid delays." *Id.*

The facts of this very case underscore the point. Denise Garrison was willing to end this litigation for far less than she deserved when she made a $12,000.00 offer of judgment early in the case. Target acted unreasonably by rejecting the offer and extending litigation for what is now more than five years later. Such conduct is precisely what Rule 68's penalty provision addresses.

The bottom line is that the Court of Appeals erred in creating a judicial exception to Rule 68. Neither the plain language of the text nor case law from any other jurisdiction supports the

conclusion that pre-judgment interest does not apply to a punitive damages award. This Court should accept certiorari on this issue of first impression and reverse.

II. THIS COURT SHOULD NOT ACCEPT CERTORARI ON TARGET'S WAIVER OF THE PUNITIVE DAMAGES CAPS, BUT, IF THIS COURT DOES CONSIDER THAT QUESTION, THEN THIS COURT SHOULD HOLD THAT THE PUNITIVE DAMAGES CAPS ARE UNCONSTITUTIONAL.

It is expected that Target will file a certiorari petition on the Court of Appeals' holding that Target waived application of the punitive damage caps. This Court should not accept certiorari over that issue, but, if certiorari is granted, then this Court also should decide a corollary question: whether the caps are even constitutional to begin with. (This petition is being served on the Attorney General, since it raises a constitutional challenge to a statute.).

The South Carolina Legislature, like other States, has enacted caps on punitive damages. *See* S.C. Code § 15-32-510 et seq. This Court has never adjudicated the constitutionality of the South Carolina caps, but States such as Missouri have rightly held them to violate a plaintiff's constitutional right to a jury trial. *See Lewellen v. Franklin*, 441 S.W.3d 136 (Mo. 2014) (en banc).

Similar to Section 15-32-530(A) of the South Carolina Code, Missouri's Legislature capped punitive damages "at $500,000 or five times the judgment amount[.]" *Id.* at 144. The problem with the cap, reasoned the court, was that it failed to take into account "the facts and circumstances of the particular case." *Id.* The court grounded its conclusion in the Missouri Constitution, which provides that the right to jury trial "shall remain inviolate." *Id.* at 143. The South Carolina Constitution says the same thing, so this Court should reach the same result. *See* S.C. CONST ART. I, § 14 ("The right of trial by jury shall be preserved inviolate.").

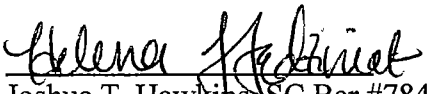
CONCLUSION

For these reasons, Denise Garrison asks the Court to grant her petition for a writ of certiorari.

Dated: March 20, 2020.

Respectfully submitted,

Hawkins & Jedziniak, LLC



Joshua T. Hawkins, SC Bar #78470
Helena LeeAnn Jedziniak, SC Bar #100825
1225 South Church Street
Greenville, South Carolina 29605
Tel. (864) 275-8142
Fax. (864)752-0911
josh@hjllcsc.com
helena@hjllcsc.com

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PROOF OF SERVICE

I certify that I have served the PETITION FOR WRIT OF CERTIORARI on the Respondent's counsel of record and the Clerk of the South Carolina Court of Appeals by U.S. Mail, first-class as indicated below. Additionally, six copies and one original of the PETITION FOR WRIT OF CERTIORARI, along with one bound and one unbound copy of the APPENDIX were sent via U.S. Mail, with proper postage affixed, to the Clerk of the Supreme Court of South Carolina on March 20, 2020.

Knox L. Haynsworth, III
Brown, Massey, Evans, McLeod & Haynsworth, LLC
P.O. Box 2464
Greenville, South Carolina 29602

Lewis F. Powell, III
George P. Sibley, III
Hunton Andrews Kurth, LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219

The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
1220 Senate Street
Columbia SC 29201-3769

The Honorable Daniel E. Shearouse, Clerk
Supreme Court Building
Supreme Court of South Carolina
1231 Gervais Street
Columbia SC 29201-3206

The Honorable Alan Wilson
South Carolina Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201

Hawkins & Jedziniak, LLC

Joshua T. Hawkins, SC Bar #78470
Helena LeeAnn Jedziniak, SC Bar #100825
1225 South Church Street
Greenville, South Carolina 29605
Tel. (864) 275-8142
Fax. (864)752-0911
josh@hjllcsc.com
helena@hjllcsc.com

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