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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Honorable R. Keith Kelly, Circuit Court Judge

Case No. 2014-CP-04-1426 *consolidated with* Case No. 2015-CP-04-2206

Supreme Court Case No. 2020-000523
Court of Appeals Case No. 2017-000267

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

v.

Target Corporation, ...Respondent/Petitioner.

BRIEF OF PETITIONERS/RESPONDENTS

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

John B. Howell, III (MS Bar #102655)
Jackson, Tullos & Rogers, PLLC
P.O. Box 15517
Hattiesburg, Mississippi 39404
Tel: (601) 264-3309
jhowell@jacksonfirm.com
(admitted *pro hac vice*)

Attorneys for Petitioners/Respondents

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STATEMENT OF PETITIONERS' ISSUES

1. Does Rule 68's offer-of-judgment rule limit pre-judgment interest to compensatory damages, or may plaintiffs recover pre-judgment interest on a punitive verdict?

2. If reached, are South Carolina's punitive-damage caps constitutional?

STATEMENT OF THE CASE

This is a premises-liability case, in which Denise Garrison was stuck by a needle and severely injured in Target's Anderson County parking lot in May 2014. (App. pp. 770-817). The case was tried to a jury in September 2016. (App. pp. 349-350). At trial, the jury heard voluminous 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 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 instructions for Denise to bring her medical bills to Target. (App. pp. 410-828). In light of the evidence, the jury awarded Denise and her husband over $4.6 million dollars in damages, approximately $4.5 million of which were designated as punitives. (App. pp. 370-374).

Given 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. 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[.]" Rule 68(b), SCRCP.

Through a post-trial motion, the Garrisons requested an order reflecting their 8% pre-judgment interest on the jury's verdict as stated in Rule 68 *SCRCP*. (App. pp. 1061-1072; pp. 1098-1100). 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 the $108,500.00 compensatory-damages award. (App. pp. 351-363; pp. 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. *Garrison v. Target Corp.*, 429 S.C. 324, 343-49, 838 S.E.2d 18, 28-31 (Ct. App. Jan. 15, 2020). That holding brought the Garrisons' entitlement to pre-judgment interest on punitive damages back into play. *Garrison*, 429 S.C. at 376-79, 838 S.E.2d at 46-47.

Despite there being no textual limitation in Rule 68, and despite contrary holdings from every other court that has considered the same issue, the Court of Appeals held that plaintiffs cannot recover pre-judgment interest on punitive damages. *Id*. The Garrisons petitioned for re-hearing on this issue, but the Court of Appeals denied the request on February 20, 2020.

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. Because the Court of Appeals 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.

Both parties filed certiorari petitions, and both petitions were granted. This Court did not limit the issues for consideration in its order granting the petitions.

STANDARD OF REVIEW

Offer of Judgment. South Carolina's offer-of-judgment rule is found in both Rule 68 of the Rules of Civil Procedure and in Section 15-35-400 of the South Carolina Code. This Court applies the same interpretative method to both rules and statutes. *Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003). Both are subject to *de novo* review, meaning this Court is "free to [interpret them] without any deference to the" Court of Appeals' decision. *S.C. Dep't of Soc. Servs. v. Boulware*, 422 S.C. 1, 6, 809 S.E.2d 223, 226 (2018) (cleaned up).

Constitutionality of the Caps. The Court of Appeals held that Target waived the punitive-damages caps, so the question of constitutionality was never considered. This Court should not reach the issue either, but there is no deference to give the Court of Appeals if this Court does.

SUMMARY OF THE ARGUMENT

Strategic decisions have consequences. One of the many poor decisions Target made in this case was rejecting a nominal offer of judgment that Denise made because she only wanted to have her medical bills paid. By being unreasonable, Target forced Denise to endure prolonged discovery, a full trial, and what now is nearly four years of appellate proceedings.

But Target's decision came with a cost to the company as well – namely, a monetary penalty. Under both the South Carolina Code and the Rules of Civil Procedure, plaintiffs are entitled to 8% interest "on the amount of the verdict or award from the date of the offer to the entry of judgment[.]" What that means for Denise is that she is entitled to 8% interest on her ultimate award for the time period of February 13, 2015 to September 8, 2016.

Target disputes Denise's entitlement to this money, arguing that the statute and rule do not really mean what they say. Despite the text containing no carve out for punitive damages, Target's position is that Denise only gets the 8% interest on compensatory damages.

The Court of Appeals adopted Target's position, but that holding must be reversed. It is incompatible with the command that texts must be interpreted as they are written, not as judges or litigants think they ought to have been written. Every court that has interpreted similar language in the offer-of-judgment context has disagreed with the Court of Appeals' conclusion. And the United States Supreme Court issued a decision less than five months ago that likewise supports Denise's interpretation.

Target's policy arguments have no place in the debate, but they are feeble in any event. Pre-judgment interest in the offer-of-judgment context is not, like in the contract's context, solely about compensating the victim. It is about encouraging settlement and punishing a party who acts unreasonably. Denise's interpretation is both within the letter and the spirit of the rule.

This Court should reverse the Court of Appeals' offer-of-judgment holding, and this Court should not reach the constitutionality of the punitive-damage caps. The Court of Appeals correctly held that Target waived any benefit it could receive from the caps, but, if this Court holds otherwise, then this Court should declare the caps unconstitutional just as the Missouri Supreme Court did in 2014.

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). Their modest offer of judgment underscores the reasonableness of their actions throughout. Nevertheless, Target has made the Garrisons endure over six years of litigation, nearly four 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. This Court accepted certiorari over two issues of first impression raised in the Garrisons' petition.

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 in any cases interpreting a similar rule, provide 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." *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 the 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 has the power to narrow Rule 68 in a

manner that includes compensatory damages alone.[1] *See Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1724-25 (June 8, 2020) (unanimously holding that "[t]his case begins, and pretty much ends, with the text").[2]

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[.]" 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 pre-judgment interest on her punitive damages award. It came to that conclusion by relying on cases from Alaska and

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[1] Target has previously urged this Court to focus on what the company believes is "[t]he purpose of Rule 68," *see* Target's Return at p.8 (emphasis added), but "[p]urposivism has been out of fashion for a long time." *Williams v. Seidenbach*, 958 F.3d 341, 363 (5th Cir. May 4, 2020) (en banc) (Oldham, J., dissenting in a different context). Any principled interpretive method focuses on "[t]he words of [the] governing text" and not "an assumption about the legal drafter's desires." *See* A. Scalia & B. Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS § 2, p.56. This Court has specifically rejected Target's atextual approach: "If it were true courts have the authority to interpret statutes according to a sense of justice and right, then courts would have the power to rewrite statutes to suit their own personal preferences[.]" *Buchanan v. S.C. Prop. & Cas. Ins. Guar. Ass'n*, 424 S.C. 542, 553, 819 S.E.2d 124, 130 (2018) (Few, J., concurring).

[2] In *Lomax*, the Court addressed statutory language found in 28 U.S.C. § 1915(g), specifically the phrase "dismissed on the grounds that it . . . fail[ed] to state a claim upon which relief may be granted[.]" *See* 140 S. Ct. at 1724. The question was "whether a suit dismissed for failure to state a claim counts as a strike when the dismissal was without prejudice." *Id* at 1723. The Court unanimously held "that it does [because] [t]he text of Section 1915(g)'s three-strikes provision refers to any dismissal for failure to state a claim, whether with prejudice or without." *Id.* It was explained that the statute's "broad language covers all [ ] dismissals" because "this Court may not narrow a provision's reach by inserting words Congress chose to omit." *Id* at 1724. So too here.

Nevada, even though neither case had anything to do with offers of judgment. *See Garrison*, 429 S.C. at 343-49, 838 S.E.2d at 28-31 (discussing *Haskins v. Shelden*, 558 P.2d 487 (Alaska 1976) and *Ramada Inns, Inc. v. Sharp*, 711 P.2d 1 (Nev. 1985)). 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.[3]

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, 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

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[3] Target previously relied on *Butler Contracting, Inc. v. Court Street, LLC*, 369 S.C. 121, 133, 631 S.E.2d 252, 259 (2006), but Denise does not dispute the general principle from *Butler Contracting, Inc.* that "[p]rejudgment interest is not allowed on an unliquidated claim in the absence of an agreement or statute." The point here is that there **is** a legislative source for obtaining pre-judgment interest on punitive damages. Both Rule 68 and Section 15-35-400 of the South Carolina Code tie pre-judgment interest to "the amount of the verdict or award[,]" without limitation to a particular category of damages.

punitive damages is a necessary penalty in the offer-of-judgment context "to encourage pretrial settlement and avoid delays." *Id.*

The facts of this very case underscore the point. Denise 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 six 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. For over 140 years, this Court has interpreted South Carolina law in a manner that encourages compromise between parties. *See, e.g., Chandler v. Geraty*, 10 S. C. 304 (1878). The Court of Appeals' decision runs counter to this theme, and, if allowed to stand, will dilute the usefulness of Rule 68 as a settlement tool. It should be reversed.

II. THIS COURT SHOULD NOT REACH THE QUESTION OF THE CONSTITUTIONALITY 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.

The Court of Appeals correctly held that Target waived application of the punitive damage caps, and that holding should be affirmed. But if this Court were to overturn that decision, then a corollary question must be answered: whether the caps are even constitutional to begin with?

The South Carolina Legislature, like other States, has enacted caps on punitive damages. 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. *Compare* S.C. CONST ART. I, § 14 ("The right of trial by jury shall be preserved inviolate.").

Target has relied on *Wright v. Colleton County School District*, 301 S.C. 282, 391 S.E.2d 564 (1990) as its best case but has never acknowledged a fundamental distinction: *Wright* involved a liability limitation applicable to governmental entities under the Tort Claims Act while this case involves private parties. Significantly, governmental entities possess sovereign immunity, except to the extent that the Legislature has waived such immunity through the Tort Claims Act. *See, e.g., Hawkins v. City of Greenville*, 358 S.C. 280, 292-93, 594 S.E.2d 557, 563-64 (Ct. App. 2004). It makes perfect sense, then, that the Legislature possesses the

constitutional authority to protect governmental entities with damage limitations when governmental entities are only subject to suit to begin with because the Legislature has waived their sovereign immunity. *Id.* The statute at issue in *Wright* and the statute at issue in this case are apples and oranges.

What's more is that *Wright* was decided in 1990 and contained only three paragraphs of analysis. Since 1990, the law regarding the constitutionality of punitive-damages caps has developed dramatically. Again, the most recent case decided on this issue is the Missouri Supreme Court's decision in *Lewellen*, which struck down a punitive damages cap that is nearly identical to South Carolina's cap.

While Target has claimed that a "majority of courts" disagree with *Lewellen*, *see* Target's Return at p.12, it is far from clear that Target's math can be trusted. Many courts have held that damage caps are inconsistent with the notion that "the right to a jury trial shall be preserved inviolate." *Cf. Atlanta Oculoplastic Surgery, P.C. v. Nestlehutt*, 691 S.E.2d 218 (Ga. 2010) (striking down a cap as inconsistent with the "inviolate" right to a jury trial); *Lakin v. Senco Products, Inc.*, 987 P.2d 463 (Or. 1999) (same); *Moore v. Mobile Infirmary Ass'n*, 592 So. 2d 156, 158 (Ala. 1991) (same); *Sofie v. Fibreboard Corp.*, 771 P.2d 711 (Wash. 1989) (same).

The bottom line is that the word "inviolate" has special legal significance. This constitutional watchword "does not merely imply that the right of jury trial shall not be abolished or wholly denied, but that it shall not be impaired." *See, e.g., Flint River Steamboat Co. v. Roberts*, 2 Fla. 102, 113 (1848) (emphasis in original). A jury's obligation is to determine the facts, including the assessment of punitive

damages. *See Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 144, 638 S.E.2d 650, 661 (2006) (explaining that punitive damages are "a factually controlled concept whose determination best rests with the jury"). If this Court disagrees with the Court of Appeals' waiver holding, then this Court should hold that the Legislature exceeded its authority under the due-process clause.

CONCLUSION

Only by torturing the plain language of Rule 68 can a punitive-damages limitation be engrafted into the offer-of-judgment rule. This Court should apply the rule as written, not how Target wishes it was written. The Court of Appeals wrongly accepted an argument that no other court ever has and, by extension, created a split in authority with Connecticut and Wisconsin. Reversal is required on the offer-of-judgment issue.

This Court need not reach the constitutionality of the punitive-damage caps because the Court of Appeals correctly held that Target failed to timely invoke them. If reached, however, this Court should strike the caps down. "The right of trial by jury shall be preserved inviolate." S.C. CONST ART. I, § 14.

Dated: November 18, 2020.

Respectfully submitted,

BY: s/ John B. Howell III

John B. Howell III, MS Bar #102655
Jackson, Tullos & Rogers, PLLC

P.O. Box 15517
Hattiesburg, Mississippi 39404
Tel: (601) 264-3309
jhowell@jacksonfirm.com
(admitted *pro hac vice*)

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/Respondents