THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
R. Keith Kelly, Circuit Court Judge

Case No. 2020-000523

CARLA DENISE GARRISON AND CLINT GARRISON,

Petitioners-Respondents,

v.

TARGET CORPORATION,

Respondent-Petitioner.

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STATEMENT OF ISSUES ON APPEAL[1]

1. Thirty years ago, this Court held that the South Carolina Tort Claims Act's cap on damages did not violate the constitutional right to a jury trial. *See Wright v. Colleton County School District*, 301 S.C. 282, 391 S.E.2d 564 (1990). If it reaches the issue, should the Court follow the rationale of its decision in *Wright* and hold that South Carolina's cap on punitive awards, *see* South Carolina Code § 15-32-530, does not violate the right to a jury trial?

2. This Court has explained that prejudgment interest compensates litigants for the lost time value of money. On the other hand, it has consistently held that punitive damages serve to punish the defendant and deter future bad conduct. If it reaches the issue, should the Court hold that Rule 68 of the South Carolina Rules of Civil Procedure does not allow a plaintiff to collect prejudgment interest on punitive damages awarded after a rejected offer of judgment?

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[1] Target includes its Statement of Issues on Appeal and Statement of the Case pursuant to Rule 208(b)(2), SCAR.

STATEMENT OF THE CASE

Target outlined the full background of this case in the opening brief on its cross-petition, *see* Target's Br. at 5–18, and recites only facts relevant to the Garrisons' petition here.

On the evening of May 21, 2014, Denise Garrison drove to Target's Anderson County store with her eight-year-old daughter. (App. 763, line 20.) After exiting the car, Denise's daughter picked up a discarded syringe in the parking lot. (App. 764, lines 4-8, 18-19.) She showed it to her mother, who then swatted it away, suffering a minor puncture wound in the process. (App. 768, lines 21-22.) Ms. Garrison sought prophylactic treatment for communicable diseases, but acquired none. (App. 773, lines 12-15; App. 775, lines 2-3; App. 776, line 11–437, line 2.)

On June 27, 2014, Denise alone sued Target in the Court of Common Pleas for Anderson County, for negligence.[2] (App. 370–376.) Several months later, on February 13, 2015, she extended an offer of judgment under Rule 68 of the South Carolina Rules of Civil Procedure, seeking $12,000. (App. 1054.) Reading South Carolina's settled law on premises liability to forbid recovery under the circumstances, Target did not respond to the offer. About a year later, Denise filed a second complaint against Target, incorporating the same

[2] Denise also alleged unfair trade practices, but she abandoned that claim at trial. (App. 848, line 4–850, line 7.)

claims as the 2014 suit and adding claims on behalf of her husband, Clint. (App. 382–388.) The case proceeded to trial and the jury returned a verdict awarding the Garrisons compensatory damages of $108,000 and punitive damages of $4.51 million. (App. 364–367.)

After trial, the Garrisons filed a motion seeking prejudgment interest, post-judgment interest, and costs. (App. 1055–1087.) A day later, Target sought judgment as a matter of law and a new trial. (App. 1095.) In its motion, Target challenged the sufficiency of the Garrisons' evidence on the underlying question of liability and punitive damages, and sought to remit the punitive damages award because it violated Target's constitutional due process rights and exceeded statutory limits. (App. 1095.) The trial court upheld the jury's liability finding, but struck the punitive damages award in its entirety. (App. 345–346, 351.) With respect to the Garrisons' motion for interest and costs, the court allowed only post-judgment interest drawn on the compensatory awards. (App. 355.) On February 9, 2017, it awarded the Garrisons their costs, prejudgment interest as to Denise's $100,000 compensatory award, and post-judgment interest as to the couple's combined $108,500 compensatory awards. (App. 358–363.) The Garrisons appealed, and Target cross-appealed. (App. 1267–1316.)

On January 15, 2020, the Court of Appeals issued an opinion affirming the trial court's denial of Target's request for judgment as a matter of law as

to liability and reversing the trial court's vacatur of the jury's punitive damages award. (App. 44.) The panel then concluded that South Carolina Code section 15-32-530 constituted an affirmative defense that Target waived by not pleading, affirmed the trial court's conclusion that the punitive damages award violated due process, remanded for remittitur of the award, and affirmed denial of Target's new trial motion and the Garrisons' prejudgment interest arguments. (App. 44.)

On the prejudgment interest issue, the Court of Appeals rejected the Garrisons' invitation to compute prejudgment interest on the verdict amount, agreeing with Target that the plain language of Rule 68(b) directs the trial court to compute prejudgment interest on the final judgment amount—after resolving all post-trial motions. (App. 41.) It also rejected the Garrisons' argument that punitive damages awards should factor into prejudgment interest calculations. (App. 42–44.) The Court of Appeals found persuasive the Alaska Supreme Court's reasoning that taxing prejudgment interest on punitive awards would "risk . . . a double recovery." (App. 42 (discussing *Haskins v. Shelden*, 558 P.2d 487, 495 (Alaska 1976)).) It also recited the Nevada Supreme Court's explanation that "[b]ecause the amount of punitive damages to be awarded is not known until the judgment is rendered, . . . prejudgment interest may not be granted by a trial court on punitive damage awards." (App. 42 (quoting *Ramada Inns, Inc. v. Sharp*, 711 P.2d 1, 2 (Nev.

1985)).) Finally, the Court of Appeals declined to follow a decision from the Connecticut Court of Appeals, noting the unique language in Connecticut's offer-of-judgment statute. (App. 43–44 (discussing *Kregos v. Stone*, 872 A.2d 901 (Conn. App. Ct. 2005)).)

After the Court of Appeals denied rehearing, (App. 49), both parties timely petitioned for a writ of certiorari. This Court granted both petitions on October 19, 2020.

ARGUMENTS

For several decades, this Court has articulated strict rules governing premises liability in cases where a plaintiff claims to have suffered injury based on a condition the premises owner did not create. In these cases, the plaintiff must show that the owner knew about the hazard by proving actual or constructive knowledge. This Court's precedent, like that of the majority of jurisdictions, imposes strict requirements on plaintiffs like the Garrisons choosing the constructive-knowledge path. *See, e.g.*, *Wintersteen v. Food Lion, Inc. ("Wintersteen II"),* 344 S.C. 32, 542 S.E.2d 728 (2001); *Anderson v. WinnDixie Greenville, Inc.*, 257 S.C. 75, 77, 184 S.E.2d 77, 77 (1971); *Wimberly v. Winn-Dixie Greenville, Inc.*, 252 S.C. 117, 122, 165 S.E.2d 627, 629 (1969). In light of this case law and the circumstances surrounding the

accident—and contrary to the distorted picture the Garrisons paint in their brief—Target *reasonably* rejected Denise's offer of judgment.[3]

Because the Garrisons' evidence failed to show that Target possessed actual or constructive knowledge of the syringe prior to the incident, it cannot sustain a liability finding. This Court should reverse the Court of Appeals' contrary holding, thereby affirming South Carolina's settled law on foreign-substance premises liability.

If the Court disagrees, however, and gets so far as concluding that this case warrants a punitive damages award, South Carolina Code § 15-32-530 caps that award at $500,000. That limit is constitutional. Moreover, should the Court reach the issue of prejudgment interest under Rule 68, such interest should be taxed only on Denise's compensatory award. The Garrisons' contrary interpretation is untenable—imposing such interest on a punitive award would graft a compensatory windfall onto a retributive remedy.

[3] The Garrisons also repeatedly accuse Target of "unreasonably . . . extending litigation for . . . more than six years." Garrisons' Brief at 9; *id.* at 4, 5. Target is, of course, entitled to seek vindication of its position through the appellate process. But the Garrisons neglect to mention that they, too, have "extend[ed] litigation" by independently appealing every decision in this case—filing before Target at each level.

I. South Carolina Code § 15-32-530(A) is constitutional and, if implicated here, caps the jury's punitive damages award at $500,000.

Should it consider the constitutionality of South Carolina's punitive damages cap, the Court should reject the Garrisons' conclusory argument that the cap infringes on the constitutional right to a jury trial. Although this Court has not specifically considered the constitutionality of § 15-32-530, it addressed the substance of the Garrisons' argument in *Wright v. Colleton County School District*, 301 S.C. 282, 391 S.E.2d 564 (1990). In that case the Court upheld the statutory limitation on the amount of damages recoverable under the South Carolina Tort Claims Act, rejecting an argument nearly identical to the one the Garrisons raise here—that "the limitation on damages infringes upon the right to have damages determined by a jury and therefore, the right of trial by jury." *Id.* at 290, 391 S.E.2d at 569. As the *Wright* Court explained,

> the limitation on recovery as set forth in the Tort Claims Act does nothing more than establish the outer limits of a remedy provided by the legislature. A remedy is a matter of law, not a matter of fact. Although a party has the right to have a jury assess his damages, he has no right to have a jury dictate through an award, the legal consequences of its assessments. Accordingly, we find that the fundamental right to a trial by jury has not been infringed upon.

Id. at 290–91, 391 S.E.2d at 569–70. *Cf. Cooper Indus., Inc. v. Leatherman Tool Grp.*, 532 U.S. 424, 437 (2001) ("Unlike the measure of actual damages

suffered . . . the level of punitive damages is not really a 'fact' 'tried' by the jury." (quoting *Gasperini v. Ctr. for Humanities, Inc.*, 518 U.S. 415, 459 (1996) (Scalia, J., dissenting))).

Just like the statutory cap in *Wright*, section 15-32-530 simply sets the outer limits of the punitive remedy available to all plaintiffs who bring actions in South Carolina. In doing so, the cap reflects the considered judgment of the legislature in defining the legal consequences of facts found by the jury. Thus, the imposition of the punitive damages cap does not violate the Garrisons' constitutional right to a jury trial.

Without confronting *Wright*'s reasoning head on, the Garrisons attempt to undercut the case by observing that it addressed a liability limitation applicable to government entities, as opposed to private parties, under the Tort Claims Act. Garrisons' Br. at 10–11. But that distinction did not factor into the *Wright* Court's analysis, and thus fails to dampen the Court's clear rejection of the Garrisons' constitutional argument. *See Wright*, 301 S.C. at 290–91, 391 S.E.2d at 569–70. As the Court explained—without qualification—damages limitations "[do] not restrain the fact-finding province of the jury or prevent a jury from assessing [the] plaintiff's damages." *Wright*, 301 S.C. at 290, 391 S.E.2d at 569. And while the Garrisons attack the *Wright* decision's vintage, Garrisons' Br. at 11, they fail

to cite a single South Carolina case before or after contradicting its rejection of the right-to-a-jury-trial argument.

With no support in South Carolina law, the Garrisons turn to decisions from other jurisdictions, relying primarily on *Lewellen v. Franklin*, 441 S.W.3d 136 (Mo. 2014). But the Missouri Supreme Court's holding in *Lewellen* rests on a detailed, state-specific (and in Target's opinion, flawed) analysis of the scope of Missouri common law "as it existed [in 1820] at the time the Missouri Constitution was adopted." *Id.* at 143. The Garrisons do not even attempt to marshal that kind of historical evidence in the context of South Carolina law—and an attempt to engage that expansive inquiry would bear no fruit in any event because South Carolina courts have never left the final word on punitive damages awards to juries.[4] *See, e.g.*, Edith Guild Henderson, *The Background of the Seventh Amendment*, 80 HARV. L. REV. 289, 318 (1966) (detailing various legal controls early South Carolina courts imposed on the fact-finding authority of civil juries, and identifying no

[4] The Garrisons cite *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 144, 638 S.E.2d 650, 661 (2006), for the proposition that assessing punitive damages inheres in the jury's fact-finding role. Garrisons' Br. at 11–12. But that opinion never even mentions punitive damages. Instead, the opinion addresses "gross negligence," which the Garrisons swap out for "punitive damages" in their parenthetical quotation. This misleading substitution collapses the dispositive distinction that the *Wright* Court drew between *factual* findings and *legal* remedies. *See Wright*, 301 S.C. at 290–91, 391 S.E.2d at 569–70.

substantive limitations on the legislature's ability to define causes of action and damages).

Moreover, in contrast to *Lewellen*—and consistent with *Wright*—the large majority of courts that have considered constitutional challenges to damages caps have upheld them. *See, e.g.*, *Horton v. Oregon Health & Sci. Univ.*, 376 P.3d 998, 1044 (Or. 2016) ("Neither the text nor the history of the jury trial right suggests that it was intended to place a substantive limitation on the legislature's authority to alter or adjust a party's rights and remedies."); *State v. Doe*, 987 N.E.2d 1066, 1071 (Ind. 2013) ("[T]he jury's determination of the amount of punitive damages is not the sort of 'finding of fact' that implicates the right to jury trial under our state constitution."); *Arbino v. Johnson & Johnson*, 880 N.E.2d 420, 441 (Ohio 2007) ("[R]egulation of punitive damages is discretionary and . . . states may regulate and limit them as a matter of law without violating the right to a trial by jury."); *Rhyne v. K-Mart Corp.*, 594 S.E.2d 1, 14 (N.C. 2004) (holding that a punitive damages cap "in no way infringes upon plaintiffs' right to trial by jury as guaranteed by our state Constitution"); *Evans ex rel. Kutch v. State*, 56 P.3d 1046, 1051 (Alaska 2002) ("[T]he jury has the power to determine the plaintiff's damages, but the legislature may alter the permissible recovery available under the law by placing a cap on the award available to the plaintiff."); *Murphy v. Edmonds*, 601 A.2d 102, 107–18 (Md. 1992) (upholding

statutory damages cap under state constitution); *Etheridge v. Med. Ctr. Hosps.*, 376 S.E.2d 525, 528–34 (Va. 1989) (upholding statutory damages cap under state and federal constitutions); *Robinson v. Charleston Area Med. Ctr., Inc.*, 414 S.E.2d 877, 886–88 (W. Va. 1991) (upholding statutory damages cap under state constitution); *see also Learmonth v. Sears, Roebuck & Co.*, 710 F.3d 249, 253 (5th Cir. 2013) (upholding Mississippi damages cap against state constitutional challenge); *Smith v. Botsford Gen. Hosp.*, 419 F.3d 513, 519–20 (6th Cir. 2005) (upholding Michigan damages cap against federal constitutional challenge); *Boyd v. Bulala*, 877 F.2d 1191, 1195–97 (4th Cir. 1989) (upholding Virginia damages cap against federal constitutional challenge).

The Garrisons question "Target's math" on this proposition, citing four cases from Georgia, Oregon, Alabama, and Washington that addressed noneconomic damages. Garrisons' Br. at 11. One of those cases, *Lakin v. Senco Products, Inc.*, 987 P.2d 463 (Or. 1999), has been overruled. *See Horton*, 376 P.3d at 1044. But, in any event, the Court need not rely on Target's tabulation alone. The Oregon Supreme Court recently confirmed that "a considerable majority [of] the jurisdictions that have considered whether damage caps violate the right to a jury trial have held that they do not." *Id.* Specifically, that Court found that "[s]eventeen of [twenty-two

jurisdictions] have held that a damages cap does not violate either the state or federal constitutional right to a jury trial." *Id.* at 1043.

If the Court reaches this question, it should reject the Garrisons' constitutional argument consistent with *Wright* and the "considerable majority" of jurisdictions that have weighed this issue.

II. Rule 68 prejudgment interest, if implicated at all, applies only to Denise's actual damages award of $100,000.

The Garrisons also argue that prejudgment interest under Rule 68 (and the identically-worded Code § 15-35-400) runs on an award of punitive damages. But that provision, read in conjunction with related South Carolina cases, demonstrates that prejudgment interest applies only to Denise's compensatory damages award. Thus, if it reaches this issue, the Court should limit the prejudgment interest calculated on any award to Denise's actual damages.

Rule 68 allows either party to file "a written offer of judgment . . . to take judgment in the offeror's favor . . . for a sum stated therein." Rule 68(a), SCRCP; *see also* S.C. Code Ann. § 15-35-400(a). Relevant here, if the plaintiff's offer is rejected and the plaintiff prevails, then the defendant must compensate the plaintiff in an amount equal to "eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of judgment." Rule 68(b), SCRCP; *see also* S.C. Code Ann. § 15-35-

400(b). Although Rule 68 differs from its federal counterpart in some respects—for example, by allowing the plaintiff to extend an offer (the federal rule allows only defense offers) and imposing prejudgment interest (the federal rule imposes only the costs incurred after the extension of an offer)—both are "intended to encourage settlements and avoid protracted litigation." *Black v. Roche Biochemical Labs.*, 315 S.C. 223, 227, 433 S.E.2d 21, 24 (Ct. App. 1993) (citing 12 Wright & Miller, Fed. Prac. & Proc. § 3001 (1973)).

The Garrisons argue that courts must base prejudgment interest on the entire award, including any punitive damages. *See* Garrisons' Br. at 6–9. But their theory is wrong. Prejudgment interest should not be awarded for punitive damages, because prejudgment interest serves to compensate the plaintiff, while punitive damages serve to punish the defendant.

As this Court has explained, prejudgment interest is compensatory, making the plaintiff whole for the lost time value of the money to which she was individually entitled. *See Butler Contracting, Inc. v. Court Street, LLC*, 369 S.C. 121, 134, 631 S.E.2d 252, 258 (2006); *Sears v. Fowler*, 293 S.C. 43, 45–46, 358 S.E.2d 574, 575 (1987); *see also Ancrum v. Slone*, 29 S.C.L. (2 Speers) 594, 598 (S.C. App. L. 1844) (recognizing prejudgment interest as "a stated compensation for the use of money," which "cannot be separated, even in idea, from debt"). Taxing prejudgment interest on the award of compensatory damages "restore[s] the injured party, as nearly as possible

through the payment of money, to the same position he was in before the wrongful injury occurred." *Vaught v. A.O. Hardee & Sons, Inc.*, 366 S.C. 475, 480, 623 S.E.2d 373, 375–76 (2005).

Punitive damages, in contrast, are retributive and deter future bad conduct. Rather than merely compensating for loss or injury, they "punish the wrongdoer and . . . deter him and others from engaging in similar misconduct." *Barnwell v. Barber-Colman Co.*, 301 S.C. 534, 537, 393 S.E.2d 162, 163 (1989); *Nesbitt v. Lewis*, 335 S.C. 441, 448, 517 S.E.2d 11, 15 (Ct. App. 1999) ("Actual damages compensate for loss or injury sustained while punitive damages punish the wrongdoer in order to deter such conduct."); *see also Cooper Indus.*, 532 U.S. at 432 ("Although compensatory damages and punitive damages are typically awarded at the same time by the same decisionmaker, they serve distinct purposes."). Thus, punitive damages "further a state's legitimate interests in punishing unlawful conduct and deterring its repetition." *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 584, 686 S.E.2d 176, 183 (2009) (quoting *BMW of North America v. Gore*, 517 U.S. 559, 568 (1996)).

Although this Court has not squarely faced the issue of prejudgment interest on punitive awards, its statements on prejudgment interest and punitive damages overlap with the reasoning of other courts holding that prejudgment interest should exclude punitive damages. *See, e.g.*, *Lakin v.*

Watkins Associated Indus., 863 P.2d 179, 191–92 (Cal. 1993) (holding that, under similar offer-of-judgment rule, prejudgment interest consequence does not apply to punitive damages awards)[5]; *see also, e.g.*, *Casto v. Arkansas-Louisiana Gas Co.*, 562 F.2d 622, 625 (10th Cir. 1977) (applying Oklahoma law) (concluding that prejudgment interest may not be assessed against punitive damages awards); *Haskins v. Shelden*, 558 P.2d 487, 495 (Alaska 1976) (same); *Seaward Const. Co. v. Bradley*, 817 P.2d 971, 975–76 (Colo. 1991) (same); *McEvoy Travel Bureau, Inc. v. Norton Co.*, 563 N.E.2d 188, 196 (Mass. 1990) (same); *Ramada Inns, Inc. v. Sharp*, 711 P.2d 1, 2 (Nev. 1985) (same). And leading authorities on prejudgment interest confirm that excluding punitive damages from the base used to calculate punitive damages represents the general rule across the country. *See* Restatement (Second) of Torts § 913 cmt. d (1979) ("Interest is not allowable as an element in punitive damages."); *Right to prejudgment interest on punitive or multiple damages awards*, 9 A.L.R. 5th 63 (1993) ("[P]rejudgment interest on punitive and statutory multiple damages . . . has generally been denied by the courts."). Consistent with this general rule, and the Court's own prior reasoning on

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[5] The California Supreme Court's refusal to authorize prejudgment interest on punitive damages pursuant to an offer-of-judgment statute contradicts the Garrisons' repeated assertion that "every other court" considering this issue has agreed with their position. *See* Garrisons' Br. at 2, 4.

prejudgment interest, the Court should hold that prejudgment interest under Rule 68(b) may not be taxed against punitive awards.

The Garrisons argue that Rule 68(b)'s silence on punitive damages demonstrates that its drafters intended the prejudgment interest provision to encompass punitive amounts. *See* Garrisons' Br. at 6. They have it backwards—that neither Rule 68(b) nor Code § 15-35-400 addresses the question indicates that neither the Court nor the legislature intended to create an exception to the default rule.

"It is always appropriate to assume that our elected representatives, like other citizens, know the law." *Cannon v. Univ. of Chicago*, 441 U.S. 677, 696–97 (1979); c*f. Merck & Co. v. Reynolds*, 559 U.S. 633, 648 (2010) ("We normally assume that, when Congress enacts statutes, it is aware of relevant judicial precedent."); *Fox v. Union-Buffalo Mills*, 226 S.C. 561, 566, 86 S.E.2d 253, 255 (1955) (recognizing that "judicial precedent" informs the meaning of a statute). So, when the legislature enacted section 15-35-400 in 2005 and approved amendments to Rule 68(b) most recently in 2006, it was presumably aware of this Court's consistent treatment of prejudgment interest as compensatory. The absence of specific statutory language providing that prejudgment interest would run on the punitive award indicates that the legislature did not mean to deviate from the default rule. *See Seaward Const.*, 817 P.2d at 978 (holding that "[a]bsent an express

indication of legislative intent to deviate from the principle that prejudgment interest is compensatory," the court would "limit the base upon which prejudgment interest is to be calculated to . . . compensatory damages"); *Lakin*, 863 P.2d at 192 ("Had the Legislature meant [the offer-of-judgment statute] to authorize prejudgment interest on punitive damages, it could easily have used explicit language to that effect."). Thus, far from supporting the Garrisons' plain language theory, the legislature's silence demonstrates that it did not intend to break with the uniform precedent from this Court—not to mention near-unanimous holdings from across the country—stressing the disparate functions of prejudgment interest and punitive damages.

Unsurprisingly, courts in other jurisdictions that have addressed this question in the face of general statutory language have consistently declined the invitation to run prejudgment interest on punitive awards. In *Ramada Inns*, for example, the Nevada Supreme Court interpreted a statute providing only that "*the judgment* draws interest at the rate of 12 percent per annum from the time of service of the summons and complaint until satisfied." 711 P.2d at 2 n.1 (emphasis added) (quoting Nev. Rev. Stat. Ann. § 17.130(2)). Despite that general statutory language, the court held that because "the amount of punitive damages to be awarded is not known until the judgment is rendered," "prejudgment interest may not be granted by a trial court on punitive damage awards." *Id.* at. 2. Similarly, interpreting an offer-of-

judgment statute in *Lakin*, the California Supreme Court rejected an argument that the phrase "the *judgment* shall bear interest" covered "both compensatory and punitive damages." 863 P.2d at 191 (emphasis original) (discussing Cal. Civ. Code § 3291). And in *Seaward Const.*, the Colorado Supreme Court limited prejudgment interest to compensatory damages when a statute did not "expressly include punitive damages in, or exclude punitive damages from, its scope." 817 P.2d at 974. To reach that conclusion, the Court emphasized that punitive and compensatory damages "are awarded for different purposes." *Id.* The same reasoning applies here.

The Court of Appeals correctly rejected the Garrisons' prejudgment interest theory. If the Court reaches this issue, it should not hesitate to uphold that decision.

CONCLUSION

If the Court determines that Target's conduct warranted a punitive sanction, it should limit Denise's award according to South Carolina Code § 15-32-530(A). That limit is constitutional. Moreover, if the Court considers prejudgment interest under Rule 68, it should refuse the Garrisons' invitation to tax interest on the punitive award.

Respectfully submitted,

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