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| **STATE OF SOUTH CAROLINA** | ) | **IN THE COURT OF COMMON PLEAS** |
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| **COUNTY OF FAIRFIELD** | ) | |
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| Billy Larson, | ) | |
| | ) | Civil Action No. 2019-CP-20-0241 |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | **ORDER GRANTING** |
| | ) | **MOTION FOR REMITTITUR** |
| South Carolina Department of Corrections, | ) | |
| | ) | |
| Defendant. | ) | |
| | ) | |



This matter is before this Court on the parties' post-trial motions which include a Motion for Remittitur Pursuant to Tort Claims Act filed by the Defendant South Carolina Department of Corrections ("SCDC"). A hearing was held on December 2, 2021, with all counsel of record present. After a review of the testimony and evidence presented at trial, the written submissions by the parties, and the oral arguments of counsel, the Court grants the Motion for Remittitur Pursuant to Tort Claims Act for the reasons discussed below.

## Introduction

The Plaintiff Billy Larson is a former SCDC inmate. On September 22, 2016, the Plaintiff was sentenced by Judge R. Markley Dennis to two years suspended to eighteen months probation for Criminal Domestic Violence, Second Degree. Thereafter, on July 27, 2017, Judge Kristi Harrington revoked the Plaintiff's probation and sentenced him to serve the remainder of his sentence in SCDC custody. The Form 9 Order signed by Judge Harrington identified the original two-year sentence, but Judge Harrington wrote "5" in the blank and circled "years" thereby indicating that the "above named defendant be required to serve 5 years." The Plaintiff

alleges that the Form 9 Order created an ambiguity that should have been recognized by SCDC personnel and clarification of that sentence should have been sought from the Circuit Court. Based upon the Plaintiff's original sentence, his max-out date should have been May 24, 2018. However, the error in the Form 9 Order was not realized until after the max-out date, and the Plaintiff was not released from SCDC custody until July 30, 2018. The Plaintiff thus served 67 days in SCDC custody beyond his max-out date.

On July 3, 2019, the Plaintiff filed an action pursuant to the South Carolina Tort Claims Act against the Defendant SCDC. The Plaintiff alleged causes of action for gross negligence and false imprisonment. This case came to trial before this Court and a jury on September 20, 2021. After completing his case-in-chief, the Plaintiff consented to a directed verdict on the false imprisonment claim. The Defendant's directed verdict motions on the gross negligence claim were denied. On September 23, 2021, the jury returned a verdict of $4 million in actual damages in favor of the Plaintiff. On the verdict form, the jury also stated the total number of occurrences to be fifteen, but the jury did not provide a description of each occurrence found nor identify the "loss," if any, that arose from each occurrence found.

**Legal Analysis**

As one of numerous grounds raised in its post-trial motions, the Defendant SCDC asserts that the jury's verdict should be reduced to $300,000 pursuant to the South Carolina Tort Claims Act. This Court agrees.

Section 15-78-120 of the Tort Claims Act establishes the monetary caps or limits on a governmental entity's liability for money damages. Section 15-78-120(a) provides that "no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence." S.C. Code Ann. § 15-78-

120(a). The Tort Claims Act must be liberally construed to limit the liability of the state and its political subdivisions. S.C. Code Ann. § 15-78-20(f). *See, Faile v. South Carolina Department of Juvenile Justice*, 350 S.C. 315, 566 S.E.2d 536, 540 (2002) ("[p]rovisions establishing limitations on liability must be liberally construed in the State's favor").

In *Parker v. Spartanburg Sanitary Sewer District*, 362 S.C. 276, 607 S.E.2d 711 (Ct. App. 2005), our Court of Appeals, using mandatory language, states: "We conclude that the monetary statutory cap is self-executing and the court is required to apply the monetary statutory cap to any jury verdict exceeding $300,000." 607 S.E.2d at 716. (Emphasis added). Thus, the application of the monetary caps is a self-executing duty imposed on the trial court where, as here, the jury's verdict exceeds $300,000.

In order to fulfill that duty, the Court must also consider whether the Plaintiff has pled and proven multiple "occurrences" such that the judgment entered may exceed $300,000. The term "occurrence" means "an unfolding sequence of events which proximately flow from a single act of negligence." S.C. Code Ann. § 15-78-30(g). The statutory definition of "occurrence" is complex and nuanced. Indeed, even the South Carolina appellate courts that have addressed that definition have struggled with its meaning and application. *See, Boiter v. South Carolina Department of Transportation*, 393 S.C. 123, 712 S.E.2d 401 (2011)*; Chastain v. Anmed Health Foundation*, 388 S.C. 170, 694 S.E.2d 541 (2010).

Accordingly, the statutory definition of "occurrence" presents an issue of statutory construction, and that is an issue of law for the court to apply post-verdict after the jury has made its factual findings. In essence, the "occurrence" issue presents a mixed question of law and fact. *See, Charleston County Parks & Recreation Comm'n v Somers,* 319 S.C. 65, 459 S.E.2d 841 (1995) (questions of statutory construction are a matter of law).

The leading case on the application of the term "occurrence" under the Tort Claims Act is the Supreme Court's decision in *Boiter v. South Carolina Department of Transportation*, 393 S.C. 123, 712 S.E.2d 401 (2011). In that case, the Supreme Court concluded that there were separate "occurrences" by two state agencies that resulted in a motor vehicle accident. By way of factual background, the Boiters' vehicle and another vehicle collided when both vehicles entered an intersection at the same time. At the time of the accident the red signal light bulbs in the traffic signal for other vehicle's direction of travel had burned out. The Boiters brought suit against the South Carolina Department of Transportation (SCDOT) alleging negligence in failing to have a relamping policy in place. The Boiters also brought suit against the South Carolina Department of Public Safety (SCDPS) alleging negligence in failing to send a trooper to direct traffic at the intersection after being notified that the red lights were out. In a 4-1 decision, the Supreme Court found that the negligence committed by SCDOT constituted one "occurrence" and the negligence by SCDPS constituted a separate "occurrence." In other words, the Supreme Court concluded that there were "independent and separate acts of negligence" by the two state agencies. Importantly, the Supreme Court expressly decided the issue "based solely on the peculiar facts of this case" and further states that no "bright-line test" was being adopted by the Court. 712 S.E.2d at 406. But, based on those "peculiar facts," the Supreme Court found that "there were two separate entities which committed two separate and independent acts of negligence, and we do not believe the General Assembly's intent was to limit recovery in such situations based on there being only one occurrence." *Id*.

The present case is readily distinguishable from *Boiter* in that this case involves a single governmental entity that allegedly committed multiple acts of gross negligence. The Supreme Court in *Boiter* points out that "[c]ases from other jurisdictions are similarly inapposite because they

involve a single governmental entity which committed multiple acts of negligence, a completely different situation than the one before us." *Boiter*, 712 S.E.2d at 406.

Importantly, in *Boiter*, our Supreme Court recognized as well that "[i]n many situations, negligent acts from more than one entity would still equal but one occurrence." *Boiter*, 712 S.E.2d at 407. This would likewise be true where there are multiple acts of gross negligence committed by the same entity, particularly where those acts are the same or similar or repetitive and result in a continuous "unfolding sequence of events." To reiterate, in *Boiter*, the Supreme Court found two occurrences when the facts revealed that two governmental defendants each committed a separate and distinct wrongful act that did not combine or "unfold" to cause the plaintiff's injury. Here, the facts viewed in the light most favorable to Plaintiff reveal that one governmental defendant committed the same, similar, related, and repetitive wrongful acts or omissions that combined or "unfolded" to result in the Defendant SCDC failing to recognize that the Plaintiff's sentencing sheet as issued by the Court of General Sessions was in error.

Critically, the number of "occurrences" is not determined by the number of acts of negligence or gross negligence. *Boiter*, 712 S.E.2d at 406 ("we do not adopt a bright-line test based on the existence of multiple acts of negligence"). Rather an "occurrence," by statutory definition, is an "unfolding sequence of events." Given the jury's verdict, the Court must apply that definition of "occurrence," and analyze whether the evidence supports the jury's verdict that there were multiple acts of gross negligence giving rise to or proximately causing a different "unfolding sequence of events." If those acts of gross negligence each give rise to a new "sequence of events" so as not to be "unfolding" or "evolving" from past events, only then is there a new and separate "occurrence." In other words, if the same "unfolding sequence of events" proximately

flows from multiple acts of gross negligence by the same entity, there is but a single occurrence, as the Supreme Court in *Boiter* explains.

In this case, there was a single event which proximately flowed from the alleged multiple acts of gross negligence committed by the same entity, that being the Plaintiff's holdover in custody beyond his May 24, 2018 max-out date. The alleged multiple acts of gross negligence flow into that singular event, i.e., they combined and concurred to proximately cause that single occurrence. As stated, if the same "unfolding sequence of events" proximately flows from multiple acts of gross negligence by the same entity, there is still but a single occurrence. That is the scenario the Plaintiff has presented in the case at bar. The evidence does not support a finding of new or different "unfolding sequences of events." Therefore, on that basis, the Court concludes that the Plaintiff has proven a single occurrence and, accordingly, the verdict must be reduced to a single statutory cap of $300,000 in accordance with the mandates of S.C. Code Ann. § 15-78-120(a).

Additionally, it is the Plaintiff's burden of proving each "occurrence" as pled. In *Chastain v. AnMed Health Foundation*, 388 S.C. 170, 694 S.E.2d 541 (2010), our Supreme Court ruled that "[i]f [plaintiff] alleges multiple occurrences, that is, that there was more than a single act of negligence from which proximately flowed an unfolding sequence of events, she bears the burden of proving each occurrence." 694 S.E.2d at 544. In the case at bar, however, the Plaintiff has not satisfied his burden of proof in demonstrating that there were multiple occurrences or the amount of the "loss," if any, attributable to each occurrence. As was the case in *Chastain*, the jury was not asked for the type of information that this Court needs to apply the monetary caps for multiple occurrences. This does not make the verdict form inconsistent, as the Plaintiff contends in an attempt to argue that the discharge of the jury waived any inconsistencies with the verdict form. Instead, as in *Chastain*, the verdict form simply does not furnish the needed

information. As the Supreme Court made clear in *Chastain*, it is the Plaintiff's responsibility to provide a verdict form bearing the information necessary to prove his case and support the judgment, if he seeks a judgment in excess of the $300,000 cap. The Defendant has no responsibility to make sure the verdict form proves the Plaintiff's case – that burden lies with the Plaintiff. Thus, the Court must reject the Plaintiff's attempts to shift the burden to the Defendant to make certain there is an adequate verdict form to prove entitlement to multiple occurrences and a judgment in excess of the $300,000 cap, just as a similar position taken by the plaintiff in *Chastain* to blame the defendant hospital for the inadequacy of the verdict form was rejected by the trial judge and the Supreme Court.

Clearly, a trial judge may not speculate as to the jury's verdict, particularly on questions that jury was never asked to answer on the verdict form. *Chastain* makes that clear as well. In this case, the jury was asked to return a general verdict and to state a number of occurrences. The jury did not tell this Court – because it was not asked to do so – what each occurrence was and, even more importantly, what was the "loss," if any, that arose from each occurrence found. The specific language of Section 15-78-120(a) requires this Court to determine the award for the "loss arising from" each occurrence and then to reduce any such award that exceeds $300,000 to the statutory cap. Based on the absence of that needed information from the jury, the Court cannot award more than one cap of $300,000, just as the trial court in *Chastain* was compelled to reduce the verdict to one cap of $300,000 under similar circumstances.[1]

[1] The Defendant SCDC has also filed a Motion for New Trial Absolute on the basis that the jury's $4 million verdict was grossly excessive and unsupported by the evidence. Because the Court has reduced the verdict to $300,000 representing one statutory cap, it is not necessary for the Court to reach that issue. The Court finds that a verdict of $300,000 is not grossly excessive under the evidence presented. Moreover, the Court declines to grant a new trial absolute pursuant to the Thirteenth Juror Doctrine because the evidence supports a finding

IT IS, THEREFORE, ORDERED that the Motion for Remittitur Pursuant to Tort Claims Act as filed by the Defendant SCDC is hereby granted and the $4 million judgment in the Plaintiff's favor is reduced to $300,000, and judgment in that amount is hereby entered.

AND IT IS SO ORDERED.

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DONALD B. HOCKER
Presiding Judge,
Sixth Judicial Circuit

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that the Defendant SCDC was grossly negligent in causing the Plaintiff's over incarceration beyond his max-out date.

Fairfield Common Pleas

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| **Case Caption:** | Billy Larson VS South Carolina Department Of Corrections , defendant, et al |
| **Case Number:** | 2019CP2000241 |
| **Type:** | Order/Other |

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167