UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Georgeanna Benjamin, as Guardian ad Litem for Curtis Dolford, Plaintiff,	Civil Action No.: 4:15-cv-05110-RBH
v.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**
Adrian Shaw, Defendant.	

Plaintiff Georgeanna Benjamin brings this negligence action on behalf of her son, Curtis Dolford, against Defendant Adrian Shaw seeking actual and punitive damages for injuries that Mr. Dolford sustained in a motor vehicle accident. The matter is before the Court following a bench trial held on June 27, 2017.[1] The sole evidence presented at trial was the testimony of Ms. Benjamin and nine stipulated exhibits. Defendant[2] did not dispute liability,[3] but did dispute the amount of actual

[1] The parties filed a stipulation to a nonjury trial on May 31, 2017. *See* ECF No. 52.

[2] Defendant Shaw was not present at trial and did not offer any evidence.

[3] At the outset of this bench trial, the Court reiterated its understanding and belief that the only issues in dispute were the extent and amount of actual/compensatory damages and any entitlement to or amount of punitive damages. No one brought to the Court's attention anything otherwise. This understanding is supported by ECF Nos. 26-2 and 30-1, which are emails by defense counsel to Plaintiff's counsel that were filed regarding a scheduling order and response in opposition to Defendant's motion for summary judgment. *See also* Pl.'s Resp. in Opp. [ECF No. 30] at 2 ("From the outset of litigation, Defendant has not disputed liability."). Additionally, the Court's order denying summary judgment states at pages 3–4 that "Defendant Shaw filed an answer admitting liability . . . ." ECF No. 44. There was no request for reconsideration regarding this statement.

Somewhat confusing is page 3 of ECF No. 60 (which is Defendant's brief in support of his motion for directed verdict and setoff), wherein Defendant states he did not admit liability and denied the allegations of negligence in all subparts and denied his action justified an award of damages, whether actual or punitive. The Court believes Defendant's limited statement in ECF No. 60 is intended to be an argument in the context of any entitlement or proof justifying an award of punitive damages. To the extent it is not, Defendant's statement seems somewhat disingenuous in light of the above paragraph in this Footnote; and regardless, the pleadings filed by Defendant admit that Mr. Dolford was driving south and Defendant was driving north, that Mr. Dolford was driving lawfully in his lane, that Defendant crossed the centerline into Mr. Dolford's lane of travel; but Defendant also alleges he swerved to avoid a vehicle when he crossed the centerline. No testimony or evidence was offered either by Plaintiff or Defendant regarding the specific facts of the accident, and the Court is simply left with the pleadings filed. Simply put, there was no evidence offered regarding a sudden emergency or otherwise to counter Defendant's admissions that he crossed the centerline into Mr. Dolford's lane of travel and that Mr. Dolford was injured as a direct and

damages and Plaintiff's entitlement to punitive damages. Having considered the evidence and the parties' arguments, the Court issues the following Findings of Fact and Conclusions of Law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure. To the extent that any findings of fact constitute conclusions of law, or vice-versa, they shall be so regarded.

Initially, the Court notes that after Plaintiff rested her case, Defendant moved for nonsuit and directed verdict.[4] First, Defendant moved for judgment based on the same grounds argued in his summary judgment motion and also based on the Eighth Defense raised in his answer, which asserted res judicata/estoppel by prior judgment. The Court denies this motion for the same reasons explained in its order denying Defendant's motion for summary judgment. *See* ECF No. 44. That order thoroughly summarizes the procedural history of this case, Defendant's arguments, and the Court's legal conclusions.[5]

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proximate result of Defendant's vehicle striking the Dolford vehicle. *See Lucas v. Burnley*, 879 F.2d 1240, 1242 (4th Cir. 1989) ("[A] party is bound by the admissions of his pleadings."); *Phipps v. Robinson*, 858 F.2d 965, 971 (4th Cir. 1988) ("Admissions in pleadings are competent evidence . . . ."). Clearly, as explained below, there are common law and statutory motor vehicle duties applicable to Defendant which were breached when he crossed the centerline into Mr. Dolford's lane of travel resulting in damages left for the Court to determine.

[4] The Court construes Defendant's motions as ones for judgment on partial findings pursuant to Federal Rule of Civil Procedure 52(c). *See generally Carter v. Ball*, 33 F.3d 450, 457 (4th Cir. 1994) ("A district court sitting without a jury may enter judgment as a matter of law against a party on any claim once the party has had a full opportunity to present evidence on that claim. Fed. R. Civ. P. 52(c)."); *Cadence Bank, N.A. v. Horry Properties, LLC*, No. 4:10-CV-2717-RBH, 2012 WL 1110089, at *1 n.1 (D.S.C. Apr. 2, 2012) ("A motion for judgment as a matter of law is made under Federal Rule of Civil Procedure 50, which applies in jury trials. The proper motion in a non-jury trial is a Rule 52(c) motion for judgment on partial findings, and the Court will construe Defendants' Motions as such."). Defendant used the terminology "nonsuit" and "directed verdict," but there are no such motions in the Federal Rules of Civil Procedure. The Court understands Defendant's motions as ones for judgment on partial findings pursuant to Rule 52(c). The Court took the motions under advisement and allowed the parties to submit supplemental briefs. *See* ECF Nos. 60 & 61.

[5] In addition to the reasons outlined in the Court's prior order, the Court provides the following additional supplemental authority: *Rookard v. Atlanta & C. Air Line Ry. Co.*, 65 S.E. 1047, 1047 (S.C. 1909) ("A judgment on the merits in favor of the agent is a bar to an action against the principal for the same cause, because the principal's liability is predicated upon that of the agent. But a judgment against the agent is not conclusive in an action against the principal. **A judgment against the principal would not conclude the agent, unless the agent had been vouched, or given notice and an opportunity to defend.**" (emphasis added)); *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006) (indicating *Rookard* is still good law); *Causey v. Burgess*, 236 F. Supp.

Second, Defendant moved for judgment on the issue of punitive damages. The Court took this matter under advisement and now denies the motion, as explained below in the Conclusions of Law section.

Findings of Fact

I. Parties

1. Plaintiff Georgeanna Benjamin ("Ms. Benjamin" or "Plaintiff") is a citizen and resident of Darlington County, South Carolina. [Amended Complaint (ECF No. 23) at ¶ 1; Answer (ECF No. 24) at ¶ 1]

2. Curtis Dolford ("Mr. Dolford") is a citizen and resident of Darlington County, South Carolina, and is legally incompetent, thereby necessitating the appointment of a guardian ad litem. [Am. Compl. at ¶ 2; Answer at ¶ 2; Order on Petition to Appoint Guardian ad Litem (ECF No. 19)]

3. Ms. Benjamin was appointed as the guardian ad litem for Mr. Dolford. [Am. Compl. at ¶ 3; Answer at ¶ 3; Order on Petition to Appoint Guardian ad Litem][6]

4. Defendant Adrian Shaw ("Defendant Shaw" or "Defendant") is a citizen and resident of North Carolina. [Am. Compl. at ¶ 4; Answer at ¶ 4]

326, 327 (E.D.S.C. 1964) ("The law is well established in South Carolina that (1) Where one acting as agent for another, within the scope of his agency, commits a tort, both the principal and the agent are joint tort feasors; and (2) the injured party is not obliged to join both tort feasors in his action, but he may sue either singly." (internal quotation marks and ellipsis omitted)); *E.A. Prince & Son, Inc. v. Selective Ins. Co. of Se.*, 818 F. Supp. 910, 915–17 (D.S.C. 1993) (citing *Rookard* and *Causey* and holding a plaintiff can sue the principal and agent in separate actions and recover separate judgments).

[6] Mr. Dolford, who was previously the named plaintiff in this case, filed a Motion to Appoint Guardian ad Litem. *See* ECF No. 17. This motion indicates Mr. Dolford was rendered legally incompetent due to the collision, and in a previous state court suit regarding the same accident, a state court judge appointed Ms. Benjamin as guardian ad litem due to Mr. Dolford's legal incompetence. *See* ECF No. 17-2 at 6. The Court in the present action entered an order also appointing Ms. Benjamin as guardian ad litem because Mr. Dolford had been declared legally incompetent in a prior proceeding. *See* ECF No. 19. Subsequently, this Court issued an order granting a consent motion to amend the complaint to substitute Ms. Benjamin as the plaintiff due to Mr. Dolford's incompetence. *See* ECF Nos. 21 & 22. No request for reconsideration of these orders has ever been made or suggested.

II. Underlying Accident

5. The automobile collision that is the subject of this action occurred in Darlington County, South Carolina. [Am. Compl. at ¶ 5; Answer at ¶ 5]

6. On January 31, 2013, Defendant Shaw was driving north on U.S. Highway 17 in a 1999 Mack dump truck with VIN #1M2AD62C3XW007692 and North Carolina License Plate #LR9702. [Am. Compl. at ¶ 7; Answer at ¶ 7].

7. On January 31, 2013, Mr. Dolford was lawfully traveling south on U.S. Highway 17 in a 1989 Lincoln Sedan driven and owned by Brent O'Neal. [Am. Compl. at ¶ 8; Answer at ¶ 8]

8. On January 31, 2013, while traveling on U.S. Highway 17, Defendant Shaw swerved to avoid a vehicle, crossed the centerline, and struck the vehicle carrying Mr. Dolford. [Am. Compl. at ¶ 9; Answer at ¶¶ 9, 11].

9. Mr. Dolford was injured as a direct and proximate result of Defendant Shaw's vehicle striking the vehicle carrying Mr. Dolford. [Am. Compl. at ¶¶ 11–14; Answer at ¶¶ 11–12]

II. Stipulated Exhibits

10. The parties stipulated to the admission of nine exhibits, which consist of (1) a medical bill from Palmetto Health Richland, (2) a medical bill for air ambulance services provided by Air Methods Corporation, (3) Mr. Dolford's state identification card, and (4) six photos of the Lincoln Sedan and Mack truck involved in the accident. [*See* Exhibits 1–9]

    A. The bill from Palmetto Health Richland is for a total amount of $742,327.27. The bill itemizes various medical charges for intensive care, pharmacy/drugs, multiple operating room services, medical imaging (X-rays, CT scans, and an MRI), physical and occupational therapy, speech pathology, and other medical services. The bill indicates

Mr. Dolford was admitted to Palmetto Health Richland (located in Columbia, South Carolina) on January 31, 2013, and was discharged on June 10, 2013. [Exhibit 1]

B. The bill for the air ambulance is for a total amount of $33,104.60 for services provided on January 31, 2013. [Exhibit 2]

C. Mr. Dolford's state identification card indicates he was born on December 21, 1975. [Exhibit 3]. Thus, he was thirty-seven years old at the time of the accident, and currently is currently forty-one years old.

D. The six photos depict the 1989 Lincoln Sedan (in which Mr. Dolford was a passenger) and the 1999 Mack truck (that Defendant Shaw drove). [Exhibits 4–9] The Lincoln Sedan is demolished: the hood is crumpled, the engine is exposed, the front wheels are twisted, the roof is crushed-in, the doors are broken, and the interior passenger compartment is exposed. [Exhibits 4–8] The Mack truck appears relatively undamaged. [Exhibit 9]

III. Ms. Benjamin's Testimony

11. Ms. Benjamin was the sole witness at trial. The Court observed her demeanor and finds her testimony wholly credible and believable.

12. Ms. Benjamin testified she is Mr. Dolford's mother and legal guardian, now provides care for him, and now handles all of his financial and legal affairs.

13. Ms. Benjamin testified she first learned about the accident from her cousin while she was keeping her grandchildren. She arrived at the accident scene just as Mr. Dolford was being airlifted via helicopter to the hospital.[7] Mr. Dolford was in a coma for five weeks while in the

[7] Ms. Benjamin testified she did not actually see the accident scene.

hospital in Columbia, South Carolina.

14. Ms. Benjamin testified about her personal knowledge and observations of Mr. Dolford's physical and mental condition before and after the accident, and her testimony can be summarized as follows:

A. ***Before the accident***, Mr. Dolford was active, played basketball and football, and was never still. He would sometimes work and sometimes be out of work; he was not working at the time of the accident, but his most recent job was as a forklift operator at Darlington Mill. He lived with his aunt and would visit Ms. Benjamin almost every day, and he attended (and still attends) Hartsville Bible Baptist Church with Ms. Benjamin. Mr. Dolford has a six-year old son that he would visit before the accident.

B. ***After the accident***, Mr. Dolford had to move in with Ms. Benjamin—who also lives with her son (Brent O'Neal) and her daughter-in-law—because he could not take care of himself. When Mr. Dolford left the hospital, he complained about his back, leg, and hip hurting; currently, he complains about his hip, head, and back hurting. Ms. Benjamin testified Mr. Dolford has been basically the same since leaving the hospital and has improved only slightly since then. Ms. Benjamin cooks his meals and helps him clean; Mr. Dolford can dress himself, but his clothes are not straight when he does. He is mostly confined to a wheelchair, but he can walk short distances holding onto something and sometimes uses his wheelchair as a walker and pushes it with his right hand for short distances. He sometimes gets stuck in the dirt driveway and needs assistance. Mr. Dolford cannot walk without holding onto something, and he cannot make his bed. He can no longer play any sports or travel on his own. When he travels

in the car with Ms. Benjamin and her family, they have to frequently stop every twenty to twenty-five minutes for him. Sometimes Mr. Dolford stays up all night. Sometimes he gets very upset and will not allow Ms. Benjamin or others touch him. Ms. Benjamin helps Mr. Dolford stretch his arm and leg. He has a visible scar on top of his head and a pin in his left leg. He does not have much use of the left side of his body, and he cannot bear weight on that side. Anything physically is done with the right side of his body. He can remember his childhood but now he has no short-term memory. Ms. Benjamin testified she does not think Mr. Dolford will get any better.

15. Ms. Benjamin testified that since the accident Mr. Dolford has regularly seen Dr. Crickman every three months for checkups, and that her daughter-in-law takes him to these visits. Ms. Benjamin has looked into hiring a home health nurse, but she cannot pay twenty dollars per hour for a nurse. For a period of time, Ms. Benjamin's daughter-in-law was able to take Mr. Dolford to physical therapy appointments, which cost forty dollars each time, but Ms. Benjamin cannot afford this cost. The last time Mr. Dolford went to physical therapy was in 2013.

16. Ms. Benjamin testified that she is seventy-seven years old and that she would like Mr. Dolford to receive regular physical therapy and have someone come to the house to help care for him.

IV. Other Relevant Facts

17. During the trial, the Court had the opportunity to observe Mr. Dolford. He was seated in a wheelchair and was looking down much of the time.

18. Mr. Dolford's statistical life expectancy is 37.39 years based on his current age of 41 according to the South Carolina Life Expectancy Tables. *See* S.C. Code Ann. § 19–1–150 (2014).

19. The Court finds Plaintiff has met her burden of proof regarding entitlement to a substantial

award of actual/compensatory damages. The Court finds Mr. Dolford has incurred necessary and substantial past medical expenses exceeding $775,000 as a result of the injuries received during this accident due to Defendant Shaw's negligence. The Court further finds Mr. Dolford suffered both physical and mental injuries and limitations. The Court further finds that some of his injuries are permanent in nature based on his mother's testimony; that he has suffered **past** physical and mental pain, disfigurement, mental anguish, mental and physical impairment, past loss of capacity to work, and past loss of enjoyment of life; and that he is entitled to compensation for those **past** injuries from the date of the accident (January 31, 2013) through the date of trial (June 27, 2017). The Court finds that as a result of this accident, Plaintiff was appointed as Mr. Dolford's guardian ad litem due to his mental incompetence resulting from this accident, and that there has never been any dispute or contest regarding the necessity of her being appointed. The Court finds that Plaintiff has had to regularly assist her son with his physical needs and care, that he relies on her and other family members for his care, and that Plaintiff reasonably anticipates having to continue with that since she is unable to afford home health nursing assistance for him. The Court finds Plaintiff is entitled to an award for Mr. Dolford's past medical expenses of $775,431.87. The Court further finds that Plaintiff is entitled to and has met her burden of proof regarding an award of additional damages for Mr. Dolford's **past** injuries and damages set forth above. As to future damages, the Court believes and finds Plaintiff has met her burden of proof regarding entitlement to **some** consideration of future damages, as explained herein. Regarding future damages, the Court notes it has limited evidence—as no doctor testified—consisting of two medical bills and Ms. Benjamin's testimony. Mr. Dolford has a scar on his head and a pin in his left leg, which are relevant to

consideration of future damages for permanent injuries. The pin in Mr. Dolford's left leg would also corroborate Ms. Benjamin's testimony that he now cannot bear much weight on his left side, has limited mobility, and needs some type of assistance to ambulate. Based on this, some consideration is appropriate toward future damages as to those physical injuries and disfigurement. The Court further notes there has not been any **medical** testimony regarding the permanency of Mr. Dolford's mental competency or incompetency, and the Court is left to speculate about the future aspects concerning that condition. Again, no one has disputed or asked for reconsideration of prior orders appointing Ms. Benjamin as guardian ad litem due to Mr. Dolford's incompetence, thus justifying an award for Plaintiff's "past" mental injuries from the date of the accident to the date of trial. However, Plaintiff also has the burden of proof regarding Mr. Dolford's future mental condition and prognosis, and the Court has no medical testimony regarding that. Ms. Benjamin's lay opinion testimony regarding the physical aspects of Mr. Dolford's injuries are proper, but the mental aspects are more suitably presented from medical experts to this fact-finder and to meet her burden of proof. Other future damages and future medical expenses are too speculative in the fact-finder's view without additional medical testimony. Because of the limited testimony on future damages, the bulk of this Court's award—aside from the medical bills incurred—is for Mr. Dolford's **past** injuries from 2013 to the date of trial, which included Mr. Dolford being in a coma for weeks and hospitalized for months.

20. In conclusion, the Court finds Plaintiff is entitled to an award of actual/compensatory damages in the amount of $3,775,431.87.

21. The Court finds Plaintiff has not met her burden of proving entitlement to punitive damages by

clear and convincing evidence.

Conclusions of Law

I. Jurisdiction, Venue & Applicable Law

The court has subject matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1332(a)(1) based on diversity of citizenship. Thus, South Carolina substantive law governs this action. *See generally Gasperini v. Ctr. for Humanities, Inc.*, 518 U.S. 415, 427 (1996) ("Under the *Erie* doctrine, federal courts sitting in diversity apply state substantive law and federal procedural law."). Pursuant to 28 U.S.C. § 1391(b)(2) and Local Civil Rule 3.01(A)(1) (D.S.C.), venue is proper in this Court because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in the Florence Division of the United States District Court for the District of South Carolina.

II. Plaintiff's Claims

Plaintiff's sole cause of action is negligence. "To prove a cause of action for negligence, a plaintiff must show: (1) the defendant owes a duty of care to the plaintiff; (2) the defendant breached that duty by a negligent act or omission; (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) the plaintiff suffered an injury or damages." *Roddey v. Wal-Mart Stores E., LP*, 415 S.C. 580, 589, 784 S.E.2d 670, 675 (2016).

"An essential element in a cause of action for negligence is the existence of a legal duty of care owed by the defendant to the plaintiff." *Thomasko v. Poole*, 349 S.C. 7, 11, 561 S.E.2d 597, 599 (2002). "In a negligence action, the court must determine, as a matter of law, whether the defendant owed a duty of care to the plaintiff." *Huggins v. Citibank, N.A.*, 355 S.C. 329, 332, 585 S.E.2d 275, 276 (2003). In South Carolina, a motorist has a common law "duty to keep a reasonable lookout to avoid hazards on the highway." *Thomasko*, 349 S.C. at 12, 561 S.E.2d at 599. A motorist also has a statutory

duty to stay within his lane and not change lanes unless he can do so safely, *see* S.C. Code Ann. § 56–5–1900(a) (2006), and a statutory duty to yield the right-of-way to vehicles traveling in the proper direction. *See id.* § 56–5–1810(a)(2.). Clearly, Defendant Shaw owed Mr. Dolford a legal duty of care to operate his vehicle in a reasonable manner and in conformity with applicable motor vehicle statutes and the common law.

Regarding breach and proximate cause, Defendant Shaw admits he was driving north in his lane on U.S. Highway 17; admits Mr. Dolford was lawfully traveling south in his lane; "admits that on or about January 31, 2013, while traveling on US Highway 17, [he] swerved to avoid a vehicle, crossed the centerline, and struck the vehicle carrying Curtis Dolford"; "admits that a collision resulted from Defendant's vehicle crossing the center line on or about January 31, 2013"; and "admits that as a direct and proximate result of Defendant's vehicle striking the vehicle carrying Curtis Dolford, that Curtis Dolford was injured." Answer at ¶¶ 7–8, 11–12. Thus, Defendant Shaw does not dispute that Mr. Dolford was lawfully traveling in the proper direction, that Defendant Shaw crossed the centerline into Mr. Dolford's lane of travel, or that Mr. Dolford was injured as a direct and proximate result of the collision. No testimony was received regarding the specific facts of the accident or Defendant's claim of sudden emergency. In accordance with Footnote #3, the Court did not believe liability was contested, and the issue was merely the amount of actual/compensatory damages and entitlement to any punitive damages. Again, regardless, based on his admissions in the pleadings, Defendant owed Mr. Dolford a duty of care (under both the common law and motor vehicle statutes) and breached that duty, which resulted in damages to Mr. Dolford.

Although Plaintiff presented no expert testimony, clearly, Plaintiff has met the burden of proof by a preponderance of the evidence regarding the injuries that Mr. Dolford suffered from this accident.

His injuries immediately followed the accident and resulted in his immediate medevac by helicopter, remaining in a coma for five weeks, and being hospitalized for many months according to the lay testimony of his mother. This is permissible under South Carolina law:

> "Expert testimony is not required to prove proximate cause if the common knowledge or experience of a layperson is extensive enough." *O'Leary-Payne v. R.R. Hilton Head, II, Inc.*, 371 S.C. 340, 349, 638 S.E.2d 96, 101 (Ct. App. 2006). "[W]here physical injury is coincident with or immediately follows an accident and is naturally and directly connected with it lay testimony may be sufficient to carry to the triers of the facts the issue of whether or not the accident proximately caused it . . . ." *Roscoe v. Grubb*, 237 S.C. 590, 596, 118 S.E.2d 337, 340 (1961); *see Armstrong v. Weiland*, 267 S.C. 12, 16, 225 S.E.2d 851, 853 (1976) ("When the testimony of an expert witness is not relied upon to establish proximate cause, it is sufficient for plaintiff to put forth some evidence which rises above mere speculation or conjecture . . . .").

Wilder v. Blue Ribbon Taxicab Corp., 396 S.C. 139, 147, 719 S.E.2d 703, 707 (Ct. App. 2011). *See also Howle v. PYA/Monarch, Inc.*, 288 S.C. 586, 596, 344 S.E.2d 157, 162 (Ct. App. 1986) (citing *Ballenger v. Southern Worsted Corp.*, 209 S.C. 463, 40 S.E.2d 681 (1946), and *Gambrell v. Burleson*, 252 S.C. 98, 165 S.E.2d 622 (1969)).

Plaintiff seeks actual and punitive damages. "An action in tort for damages is an action at law. In a law case, the credibility and weight to be accorded evidence is solely for the fact finder to determine." *Wilder*, 396 S.C. at 146–47, 719 S.E.2d at 707 (internal quotation marks and citation omitted). "The amount of damages suffered in a personal injury action is a question for the fact-finder." *Id.* at 148, 719 S.E.2d at 708; *see also Baker v. Kroger Co.*, 784 F.2d 1172, 1175 (4th Cir. 1986) (recognizing state law governs issues relating to damages in a diversity action).

A. Actual Damages

Plaintiff claims actual damages for Mr. Dolford's past, present, and future injuries. *See* Am.

Compl. at pp. 3–5. Specifically, she seeks recovery of his past medical expenses of $775,431.87 (the combined total of his two medical bills described above, *see* Exhibits 1 & 2). She also seeks damages for his future medical expenses, physical pain and suffering, mental and emotional suffering, permanent physical and mental impairment, disfigurement, loss of earning capacity, and loss of enjoyment of life.

"The purpose of actual or compensatory damages is to compensate a party for injuries suffered or losses sustained. The goal is to restore the injured party, as nearly as possible through the payment of money, to the same position he or she was in before the wrongful injury occurred." *Clark v. Cantrell*, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000). "Actual or compensatory damages include compensation for all injuries which are naturally the proximate result of the alleged wrongful conduct of the defendant." *Mellen v. Lane*, 377 S.C. 261, 287, 659 S.E.2d 236, 250 (Ct. App. 2008). "Generally, in order for damages to be recoverable, the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy." *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 43, 691 S.E.2d 135, 146 (2010). "While neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation, proof with mathematical certainty of the amount of loss or damage is not required." *Id.* The plaintiff bears the burden of proving by a preponderance of the evidence that she is entitled to actual damages. *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 240, 246 S.E.2d 880, 881 (1978). A "preponderance of the evidence" means "evidence which convinces as to its truth." *Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 346, 415 S.E.2d 384, 388 (1992).

"In a personal injury action, the plaintiff must recover for all injuries, past and prospective, which arose and will arise from the defendant's tortious activity." *Haltiwanger v. Barr*, 258 S.C. 27, 32, 186 S.E.2d 819, 821 (1972). "Thus, recovery must be had for future pain and suffering, and for the

reasonable value of medical services and impaired earning capacity, to the extent that these injuries are reasonably certain to result in the future from the injury complained of." *Id.*; *see also Watson v. Wilkinson Trucking Co.*, 244 S.C. 217, 228, 136 S.E.2d 286, 291 (1964) (stating a plaintiff is "entitled to recover all damages proximately resulting from the negligent acts of the defendant," including "his loss of earning power, pain and suffering, and medical expenses, including any future damages resulting from permanent injuries"). The monetary value to assign a plaintiff's damages is "a matter resting within the sound judgment of the" fact-finder. *Id.*

"An award for pain and suffering compensates the injured person for the physical discomfort and the emotional response to the sensation of pain caused by the injury itself." *Boan v. Blackwell*, 343 S.C. 498, 501–02, 541 S.E.2d 242, 244 (2001). "Pain and suffering have no market price. They are not capable of being exactly and accurately determined, and there is no fixed rule or standard whereby damages for them can be measured." *Harper v. Bolton*, 239 S.C. 541, 548, 124 S.E.2d 54, 57 (1962). "Separate damages are given for mental anguish where the evidence shows, for example, that the injured person suffered shock, fright, emotional upset, and/or humiliation as the result of the defendant's negligence." *Boan*, 343 S.C. at 501–02, 541 S.E.2d at 244.

"[D]amages for 'loss of enjoyment of life' compensate for the limitations, resulting from the defendant's negligence, on the injured person's ability to participate in and derive pleasure from the normal activities of daily life, or for the individual's inability to pursue his talents, recreational interests, hobbies, or avocations." *Id.* at 502, 541 S.E.2d at 244.

"Loss or impairment of earning capacity resulting from personal injuries is a proper element of compensation and the fact that the injured party was unemployed at the time of the injury complained of does not deprive him of the right to receive damages for such impairment." *Doremus v. Atl. Coast*

Line R. Co., 242 S.C. 123, 148, 130 S.E.2d 370, 382 (1963).

"Future damages are generally recoverable in personal injury actions as long as the damages are reasonably certain to result in the future from the injury." *Wilder*, 396 S.C. at 148, 719 S.E.2d at 708; *see also Campbell v. Paschal*, 290 S.C. 1, 15, 347 S.E.2d 892, 901 (Ct. App. 1986) ("To recover for future medical expenses, the expenses must be established with reasonable certainty."). "Future damages in personal injury cases need not be proved to a mathematical certainty. Oftentimes a verdict involving future damages must be approximated. A wide latitude is allowed the [fact-finder]." *Wilder*, 396 S.C. at 148, 719 S.E.2d at 708. Future damages may include medical expenses, future pain and suffering, and future damages resulting from permanent injuries. *See Haltiwanger* and *Watson*, *supra*. "The fact that difficulty may be involved in determining future damages does not prevent the granting of such relief where damages with reasonable certainty and probability will follow." *Id.* (alteration removed). A fact-finder may properly consider the South Carolina Life Expectancy Tables[8] in a personal injury action where there is evidence of permanent injury. *Abofreka v. Alston Tobacco Co.*, 288 S.C. 122, 126, 341 S.E.2d 622, 625 (1986); *Johnston v. Aiken Auto Parts*, 311 S.C. 285, 288, 428 S.E.2d 737, 739 (Ct. App. 1993).

A plaintiff may recover damages for permanent physical scarring and disfigurement. *See Doremus*, 242 S.C. at 145, 130 S.E.2d at 380 (facial disfigurement); *Howle*, 288 S.C. at 601, 344 S.E.2d at 165 (scarring).

Having carefully considered the evidence in this case, the Court finds Plaintiff has met her

[8] *See* S.C. Code Ann. § 19–1–150 (2014).

burden of proving by a preponderance of the evidence of entitlement to the actual damages.[9] Accordingly, based on the evidence presented and proved by a preponderance of the evidence, the Court will award Plaintiff total actual damages of $3,775,431.87.

B. Punitive Damages

1. Defendant's Motion for Judgment on Partial Findings

As noted above, Defendant moved for judgment on partial findings as to the issue of punitive damages after Plaintiff rested her case, arguing Plaintiff offered no proof of punitive damages.[10] The

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[9] The Court is cognizant that Plaintiff did not offer any medical testimony regarding Mr. Dolford's diagnosis or prognosis, medical reports, or expert testimony from a life care planner or economist. However, Mr. Dolford's age and life expectancy, Ms. Benjamin's testimony, the two substantial medical bills and description of services thereon, the extent of time Mr. Dolford was hospitalized and in a coma, and the pictures of the vehicles involved in the accident (namely, the photos depicting the demolished Lincoln Sedan) are sufficient to support the Court's award of actual damages. In particular (and as contemplated by the Court's prior order on Defendant's motion in limine, *see* ECF No. 47), Ms. Benjamin properly testified as a lay witness about her personal knowledge, observations, and memories of Mr. Dolford's general mental and physical abilities before and after the accident, and about her personal knowledge of Mr. Dolford's current past medical and daily needs/expenses. *See Lord & Taylor, LLC v. White Flint, L.P.*, 849 F.3d 567, 575 (4th Cir. 2017) ("Federal Rule of Evidence 701 permits a lay witness—with no need for expert qualification—to give opinion testimony that is 'rationally based on the witness's perception' and helpful to determining a fact in issue, so long as it is not based on the same 'scientific, technical, or other specialized knowledge' covered by Rule 702. . . . [T]he key to Rule 701 lay opinion testimony is that it must arise from the personal knowledge or firsthand perception of the witness."). Ms. Benjamin's belief that she does not think Mr. Dolford will get any better is a proper lay opinion concerning his **physical** limitations, given that Mr. Dolford has lived with her since leaving the hospital and that she interacts with him on a daily basis and was familiar with his physical condition before the accident and after the accident and has observed him for three-and-a-half years post-accident. *See Winant v. Bostic*, 5 F.3d 767, 772 (4th Cir. 1993) (stating a lay witness can testify "to inferences that could have been rationally drawn from facts of which the witnesses had personal knowledge"); *MCI Telecommunications Corp. v. Wanzer*, 897 F.2d 703, 706 (4th Cir. 1990) ("A lay witness in a federal court proceeding is permitted under Fed. R. Evid. 701 to offer an opinion on the basis of relevant historical or narrative facts that the witness has perceived."); *see, e.g.*, *Gallimore v. Newman Mach. Co.*, 301 F. Supp. 2d 431, 438 (M.D.N.C. 2004) (finding admissible a lay witness's testimony about her "perceptions of her husband's physical limitations"). *See also Roche v. Young Bros., of Florence*, 332 S.C. 75, 86, 504 S.E.2d 311, 317 (1998) ("Generally, an ordinary observer who has had the opportunity for observation may state the health or physical condition of another, who has been injured, to enable the fact finder to draw a correct inference. 32 C.J.S. *Evidence* § 552 (1996). . . . We find that [the plaintiff]'s testimony involved her ordinary observations of her husband's physical condition following the accident."); *Johnston v. Aiken Auto Parts*, 311 S.C. 285, 288–89, 428 S.E.2d 737, 739 (Ct. App. 1993) (finding expert medical testimony regarding permanency was not necessary and holding it was proper for the fact-finder to consider the South Carolina Life Expectancy Tables when the plaintiff testified without objection about his permanent knee injury (citing *Hall v. Palmetto Enterprises II, Inc.*, 282 S.C. 87, 93, 317 S.E.2d 140, 144 (Ct. App. 1984))).

[10] Defendant also briefed this argument in its post-trial supplemental brief. *See* ECF No. 60 at 3–5.

Court took the motion under advisement and now denies it.

Under South Carolina law, "violation of a statute constitutes negligence per se, and negligence per se is some evidence of recklessness and willfulness that requires submission of the issue of punitive damages to the" finder of fact.[11] *Fairchild v. S.C. Dep't of Transp.*, 398 S.C. 90, 97, 727 S.E.2d 407, 411 (2012). "There must be some inference of a causal link between the statutory violation and the injury to warrant submitting the issue of punitive damages to the" finder of fact. *Id.* at 100, 727 S.E.2d at 412.

Section 56–5–1900 of the South Carolina Code provides that "[w]henever any roadway has been divided into two or more clearly marked lanes for traffic[,] . . . [a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that such movement can be made with safety." S.C. Code Ann. § 56–5–1900(a) (2006). Moreover, section 56–5–1810 provides that "a vehicle shall be driven upon the right half of the roadway," and that "[w]hen an obstruction exists making it necessary to drive to the left of the center of the highway[,] [a]ny person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance so as not to constitute an immediate hazard." *Id.* § 56–5–1810(a)(2.).

In his answer, Defendant Shaw admits he was traveling north on U.S. Highway 17, admits Mr. Dolford was lawfully traveling south, and "admits that on or about January 31, 2013, while traveling on US Highway 17, [he] swerved to avoid a vehicle, crossed the centerline, and struck the vehicle carrying Curtis Dolford." Answer at ¶ 9. This admission constitutes some evidence that Defendant

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[11] As explained below, while violation of a statute constitutes negligence per se, it "does not constitute recklessness, willfulness, and wantonness *per se*"; instead, it is simply "some evidence that the defendant acted recklessly, willfully, and wantonly." *Wise v. Broadway*, 315 S.C. 273, 276, 433 S.E.2d 857, 859 (1993).

Shaw might have violated section 56–5–1900 and/or section 56–5–1810, and therefore Plaintiff's claim for punitive damages remains a question of fact to be decided by the Court. Accordingly, the Court denies Defendant Shaw's motion for nonsuit/directed verdict (judgment on partial findings) as to punitive damages.

2. Whether Plaintiff Is Entitled to Punitive Damages

"In any civil action where punitive damages are claimed, the plaintiff has the burden of proving such damages by clear and convincing evidence," S.C. Code Ann. § 15-33-135 (2005), which is "the highest burden of proof known to the civil law." *Mellen*, 377 S.C. at 290, 659 S.E.2d at 251. "Clear and convincing evidence is that degree of proof which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established." *In re Dickey*, 395 S.C. 336, 354, 718 S.E.2d 739, 748 (2011). "Such measure of proof is intermediate, more than a mere preponderance but less that is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal." *Id.*

"To receive an award of punitive damages, the plaintiff has the burden of proving by clear and convincing evidence the defendant's misconduct was willful, wanton, or in reckless disregard of the plaintiff's rights." *Solanki v. Wal-Mart*, 410 S.C. 229, 236, 763 S.E.2d 615, 618 (Ct. App. 2014). "Recklessness is the doing of a negligent act knowingly; it is a conscious failure to exercise due care, and the element distinguishing actionable negligence from a willful tort is inadvertence." *Fairchild*, 398 S.C. at 99, 727 S.E.2d at 412. "The terms 'willful' and 'wanton' when pled in a negligence action are synonymous with 'reckless' and import a greater degree of culpability than mere negligence." *Id.*

"The purposes of punitive damages are to punish the wrongdoer and deter the wrongdoer and others from engaging in similar reckless, willful, wanton, or malicious conduct in the future." *Clark*, 339 S.C. at 378, 529 S.E.2d at 533. "Punitive damages also serve to vindicate a private right of the

injured party by requiring the wrongdoer to pay money to the injured party." *Id.* at 378–79, 529 S.E.2d at 533.

> There is no formula or standard to be used as a measure for assessing punitive damages. However, factors relevant to consideration of punitive damages are: (1) the character of the defendant's acts; (2) the nature and extent of the harm to plaintiff which defendant caused or intended to cause; (3) defendant's degree of culpability; (4) the punishment that should be imposed; (5) duration of the conduct; (6) defendant's awareness or concealment; (7) the existence of similar past conduct; (8) likelihood the award will deter the defendant or others from like conduct; (9) whether the award is reasonably related to the harm likely to result from such conduct; and (10) defendant's wealth or ability to pay.

Mellen, 377 S.C. at 290, 659 S.E.2d at 251–52 (citing *Gamble v. Stevenson*, 305 S.C. 104, 111–12, 406 S.E.2d 350, 354 (1991)).

Here, Plaintiff has requested punitive damages in addition to actual damages. *See* Am. Compl. at p. 5. However, while the accident appears to have been one that was horrific in nature (as depicted by the photographs showing the Lincoln Sedan in which Mr. Dolford was a passenger) and while Plaintiff has met her burden of proof regarding simple negligence, the Court finds Plaintiff has not met her burden of proving entitlement to punitive damages by clear and convincing evidence. Specifically, there is not clear and convincing evidence of willfulness, wantonness, or recklessness. Ms. Benjamin—Plaintiff's sole witness—testified about the injuries sustained by Mr. Dolford as well as his condition before and after the accident. However, Plaintiff did not present any evidence regarding the actual circumstances of the accident aside from the photographs depicting the vehicles involved and the two medical bills.

Morever, while Defendant Shaw does not dispute liability, he does deny Plaintiff's claim for punitive damages, thus leaving the burden of proof on Plaintiff to establish an entitlement to an award

of punitive damages by clear and convincing evidence. Paragraph nine of Plaintiff's amended complaint alleges, "That on or about January 31, 2013, Defendant, while distracted and traveling too fast for conditions, swerved to avoid a vehicle lawfully slowing in front of him, crossed the center line of US Highway 17, and did violently strike Dolford's vehicle head-on." Am. Compl. at ¶ 9. Defendant Shaw answers this allegation as follows: "Defendant admits that on or about January 31, 2013, while traveling on US Highway 17, [he] swerved to avoid a vehicle, crossed the centerline, and struck the vehicle carrying Curtis Dolford. **Defendant denies the remaining allegations contained in Paragraph 9**." Answer at ¶ 9 (emphasis added); *see also id.* at ¶ 22 (denying Plaintiff's claim for punitive damages). While Plaintiff is correct that evidence of violation of a motor vehicle statute is some evidence of recklessness and willfulness, such violation "***does not*** constitute recklessness, willfulness, and wantonness *per se*"; instead, it is simply "***some evidence*** that the defendant acted recklessly, willfully, and wantonly." *Wise*, 315 S.C. at 276, 433 S.E.2d at 859 (first and third emphasis added). On this limited record, the Court does not find Plaintiff has met her burden of proving punitive damages by clear and convincing evidence. Accordingly, the Court declines to award punitive damages.

Conclusion

Based on the foregoing Findings of Fact and Conclusions of Law, the Court hereby **ORDERS** the Clerk to enter judgment in favor of Plaintiff Georgeanna Benjamin, as Guardian as Litem for Curtis Dolford, against Defendant Adrian Shaw for actual damages in the amount of $3,775,431.87.[12]

[12] Defendant Shaw cites section 15–38–50 of the South Carolina Code and argues Plaintiff's "damage claim is limited to $2.5 million and a setoff exists to the extent of $2.5 million." ECF No. 60 at 8–9. Defendant Shaw is referring to the confession of judgment entered in Mr. Dolford's favor in the amount of $2.5 million dollars in the prior case, *Dolford v. Willard Locklear Trucking, LLC*, No. 4:14-cv-00062-RBH (D.S.C.) ("*Dolford*"). As the Court explained in its prior order denying Defendant Shaw's motion for summary judgment (ECF No. 44), the covenant not to execute attached to the confession of judgment specifies "that once the bad faith lawsuit is resolved, dismissed or a final judgment is entered, this covenant not to execute in favor of [Locklear Trucking] will become permanent and the Judgment ***will be marked satisfied***." *Dolford* at ECF No. 39-2 ¶ 17 (emphasis added). Thus, the plain terms

IT IS SO ORDERED.

Florence, South Carolina
July 28, 2017

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge

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of the covenant not to execute contemplate satisfaction of the judgment against ***only*** Locklear Trucking and ***only*** when the bad faith lawsuit is "resolved, dismissed or a final judgment" entered. There is no indication whether the bad faith lawsuit has been resolved, dismissed, or had final judgment entered. Thus, Defendant Shaw's setoff argument is premature and not yet ripe for judicial review, i.e., there can be no setoff until the bad faith lawsuit is resolved, dismissed, or had final judgment entered. Additionally, generally, "before entering judgment on a [] verdict, the court must reduce the amount of the verdict to account for any funds previously paid by a settling defendant, so long as the settlement funds were paid to compensate the same plaintiff on a claim for the same injury." *Smith v. Widener*, 397 S.C. 468, 472, 724 S.E.2d 188, 190 (Ct. App. 2012) (citing *Ellis v. Oliver*, 335 S.C. 106, 112, 515 S.E.2d 268, 271–72 (Ct. App. 1999)). Regarding setoff in the present case, there is no evidence or other indication that Plaintiff has received payment or that the bad faith lawsuit been resolved. Therefore, any setoff is premature.

To the extent Defendant Shaw argues Plaintiff's damages are capped at $2.5 million dollars, section 15–38–50 simply "*reduces*" Plaintiff's claim against Defendant Shaw by $2.5 million dollars—it does not cap or set a ceiling on Plaintiff's damages. *See* S.C. Code Ann. § 15–38–50(1) (2005) (emphasis added). Morever, the plain language of section 15–38–50 "*does not discharge*" Defendant Shaw's liability. *See id.* (emphasis added). As the Court explained in its prior order, the confession of judgment does ***not*** name Defendant Shaw and does ***not*** evidence an intent to make a general release of all parties who might be liable. In fact, it states, "***This agreement shall in no way affect Plaintiff's right or ability to seek recovery from any other persons or entities***." *Dolford* at ECF No. 39-1 (emphasis added). Additionally, the confession of judgment incorporates an "Assignment, Covenant Not to Execute and Agreement to Cooperate in Litigation" that references *only* Locklear Trucking as the "Judgment Debtor." *Dolford* at ECF No. 39-1 ¶ 1. Finally, the "Assignment, Covenant Not to Execute and Agreement to Cooperate in Litigation" releases Willard and Betty Locklear individually ("so long as they reasonably cooperate in the prosecution of the bad faith action"), but it does not specifically release anyone else. *See id.* ¶ 23. *See also E.A. Prince & Son*, 818 F. Supp. at 916–17 (noting South Carolina law "allows the recovery of multiple judgments" against a principal and agent "but allows only one satisfaction of the damages assessed in those judgments"; and recognizing that if the defendant tortfeasor "has not alleged a complete satisfaction and has not presented evidence of such a satisfaction, the prior judgments are not a bar to" a subsequent action).