

South Carolina Contribution Among Tortfeasors Act Set-Offs: When They Must Be Made

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The South Carolina Contribution Among Tortfeasors Act (the Act), as we now know it, is nearing the fifteenth year of its infancy, and its application continues to require careful analysis and thoughtful refinement. Most recently, the South Carolina Supreme Court applied the Act, specifically, §15-38-50 that provides:

When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for *the same injury*...1) it does not discharge the other tortfeasors from liability ...unless its terms so provide, but it reduces the claim against the other to the extent of any amount stipulated by the release or the covenant, or in the amount of consideration paid, whichever is greater; and 2) it discharges the tortfeasor to whom it is given from liability for contribution to any other tortfeasor. (emphasis added).

Randall M. Green and Ann Green v. Wayne B. Bauerle, M.D. and Wayne B. Bauerle, M.D. P.C., 2019 WL 2289678, (May 29, 2019).

Randall and Ann Green were both injured in a two-vehicle accident that resulted from the negligence of the other driver. Both were transported to Grand Strand Medical Center (Grand Strand) where Mr. Green went into cardiac arrest, resulting in paralysis from the waist down. After initial treatment at Grand Strand, Carolina Medical Response (CMR), a medical transport company, transported Mr. Green to the Medical University of South Carolina. The Greens initiated suit against Bauerle, Grand Strand and CMR; Mr. Green for negligence and Mrs. Green for loss of consortium.

Prior to trial, Mr. and Mrs. Green were each paid \$100,000 on behalf of the at-fault driver, in exchange for which they signed separate releases. The claim against CMR was resolved for a total payment of \$25,000, in exchange for which it appeared the Greens signed a joint release. Grand Strand and the Greens resolved that portion of the action for a total payment of \$2 million that was not allocated between Mr. and Mrs. Green. The medical malpractice action against Bauerle and his practice proceeded to trial as a result of which Mr. Green was awarded \$2.3 million and Mrs.

Green was awarded \$500,000. Upon Bauerle's motion to set-off each of the settlements against the jury verdicts, the trial court granted set-off as to the Grand Strand and CMR settlements as they were for the same injury. In applying the set-off, the trial court used an equation based upon the percentage of the total verdict to each Plaintiff to apportion the settlements between them. As to the settlements with the at-fault driver, the trial court denied Bauerle's motion for set-off. Bauerle and the Greens both appealed and the court of appeals affirmed. Both then filed petitions for writs of certiorari pursuant to which the South Carolina Supreme Court issued its opinion.^[1]

As to Buerle's petition, the previous rulings of the trial court and the court of appeals were affirmed. Relying upon §15-38-50, the court found the settlement on behalf of the at-fault driver represented resolution for different injuries than those for which Bauerle was found responsible.

As to Green's petition, the court affirmed the set-off from the jury verdict for the amount paid on behalf of Grand Strand. Relying on well-established authority, the court found the set-off proper. A non-settling defendant is entitled to credit for amounts paid for the same cause of action by other defendants. Such set-off prevents a double recovery to the injured, and exists by operation of law; the court has no discretion in applying the set-off.

Having established the overall appropriateness of the set-offs, the court turned its focus to the method of applying the set-off employed by the trial court, finding it was arbitrary, as it was based completely upon ratios of the verdicts to the whole. While ratios may be considered in the ultimate determination of a set-off, they should not be the sole basis therefor. Rather, set-offs should be determined based upon all relevant factors. Thus, this portion of the case was remanded to the trial court for further consideration, taking into account all relevant circumstances.

Perhaps the most critical take away from the Green court is the significance of the language of §15-38-50 that addresses the manner in which the court must handle funds paid to a plaintiff from one or other tortfeasors for *the same injury*. If a plaintiff has received monies to compensate on a claim for the same injury, the court must reduce the amount of any verdict against the remaining defendant(s) before entering judgment. Going a step farther, *Green* demonstrates the court's willingness to engage in considered analysis as to the source of a plaintiff's injury.

^[1] *This opinion has no precedential value and should not be cited or relied upon except as provided by Rule 268(d)(2), SCACR.*

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