IN THE SUPREME COURT
STATE OF GEORGIA

THOMAS LEIGH, M.D., WILLIAM SHIRLEY, M.D., and OB/GYN SPECIALISTS, LLP, Cross-Appellants, v. CHARLES CLARK, Individually, and APRIL D. CLARK, as Administrator of the Estate of April S. Clark, Deceased, Cross-Appellees.	Appeal No.: S26X0350 Related Appeal: S26A0349 Lower Court Case No.: 20SCCV091967 (Bibb State Court)

APPELLEES' PRINCIPAL BRIEF

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This medical malpractice case arises from the near-complete mismanagement of the post-surgical course for Ms. April Clark. Ms. Clark had an elective laparoscopic procedure to remove an ovarian cyst; her surgeons included Appellee **Thomas B. Leigh, M.D.**; later, her care would be managed by Leigh's partner, **William Shirley, M.D.**[1]

The procedure was supposed to be an outpatient surgery; it ultimately ended in Ms. Clark's death. The surgery itself resulted in a perforation in Ms. Clark's bowel, a well-known potential complication of such a surgery. Indeed, Clark soon developed **classic** signs of a surgical perforation – a distended abdomen, fever, pain, and an elevated heart rate. All of those symptoms develop because the perforation allowed foreign material to escape normal body environs, creating a perfect environment for infection. Drs. Leigh and Shirley, informed of those classic symptoms, failed to act until far too late.

When Clark's perilous condition was recognized and she was taken back to the operative suite to address the unmistakable signs of septic shock (*e.g.*, a bloodborne infection caused by the bowel perforation during the earlier surgery). Clark coded on the operating table. She died about a month later, never having regained consciousness.

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[1] Both Leigh and Shirley were agents of the remaining Appellee, **OB/GYN Specialists, LLP**.

That summarized evidence is what convinced a jury, despite a thoroughly comprehensive defense, to find in Clark's favor. After new counsel appeared and raised even more arguments, the trial court ultimately denied an Amended Motion for New Trial. This appeal followed.

None of the claims of error, one of which was not even raised below in post-trial proceedings, have merit. This Court should affirm the verdict, the Judgment, the post-trial rulings, and the underlying findings.[2]

STATEMENT OF THE CASE

A. The Underlying Medicine, and Events

April Clark was 50 years old when she underwent a laparoscopic surgery to remove an ovarian cyst. V22-63 (initial referral to Dr. Leigh was for cyst). Clark had undergone other abdominal procedures before, and as is common as a result of such procedures, her anatomy was now marked with "adhesions" (internal scar tissue) in the area of her cyst. V22-64.

Her surgeons on that day (May 23, 2019) were Defendant **Dr. Thomas B. Leigh** and Dr. John Williams. V22-64/65, 158/59. Williams dealt with the

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[2] This, as the Case Number gives away, is a cross-appeal, in tandem with *Charles Clark et al. v. Thomas B. Leigh, M.D., et al.*, Case No. S26A0349. The vast majority of the relevant record citations are included within the primary appeal record, and will be cited as simply "V" along with page references. For citations to the lonely single volume in this appeal, the identifier "XV" will be used. This method tracks the one used by the Defendants.

adhesions robotically; Leigh performed his part of the procedure – the removal of the cyst – and then departed, leaving Williams to complete the surgery.

Though scheduled to be an outpatient procedure, V23-39/40, Ms. Clark did not recover as expected following the surgery and was held at former Defendant **Coliseum Medical Center** overnight for observation. V22-100/01; V23-41. The following morning did not improve her outlook; Clark was still suffering abdominal pain, so the decision was made to keep her hospitalized. V22-183/84; V23-41/42. However, and saliently, her IV line was removed, such that Clark was no longer receiving any fluids or fluid resuscitation. V22-185/86 (violation of standard of care). This was significant and ultimately portentous, because it meant that hospital staff did not have ready access to her veins if (and, as it turned out, when) she needed immediate fluids to bolster her blood pressure or IV medication. *Id.*

Later on the afternoon of the 24th—one day post-op—Clark exhibited a sustained high heart rate (tachycardia)[3] and her pain continued despite

[3] A sustained high heart rate after surgery, especially one continuing a full day post-op, is presumed to be a bowel leak until proven otherwise. V22-153 (plaintiff's expert; tachycardia + pain required "high level of [suspicion of bowel leak] regardless of anything else").

multiple medications to address it.[4] Her abdomen also became distended—an ominous sign of a bowel perforation. V22-162/63.

Dr. Leigh rounded that afternoon. V22-66/67. He knew that a potential bowel injury "is one of the most serious postsurgical complications a patient can have after a surgery like" the one he had helped perform on Ms. Clark, the day before. V2-68. The dangers, especially the most obvious ones, are that the patient with such a leak "almost always" develops an infection, which can spiral into sepsis, shock, and death. V22-69. Accordingly, Dr. Leigh's differential diagnosis included a bowel leak. V22-73. Though Clark was tachycardic, displayed abdominal distention, and had uncontrolled pain—all signs of a bowel leak—Leigh merely tweaked her pain medications and then left for the Memorial Day Holiday. V22-74, 95/96; *Id.* at 157, 178-79; *see id.* at 166/67 (Clark had pain, tachycardia, distention).[5]

Less than two hours later, Leigh received a call updating him that, despite the medication upgrades, Clark's pain was now "ten out of ten." V22-79. Leigh would ultimately admit on cross examination that such a change warranted re-evaluation, which he did not do. V2-80/81 (impeachment with

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[4] Uncontrolled and worsening post-surgical pain is another harbinger of bowel leak. V22-162:4-20.

[5] Dr. Leigh's exit necessitated him signing over his patients' care to one of his partners, Dr. William Shirley. V22-81, 87 (Shirley on call for Memorial Day); V23-211 (Dr. Leigh signed out in favor of Dr. Shirley). Shirley's role became prominent just hours later.

prior deposition testimony). At no point did Leigh order any sort of fluid resuscitation or imaging that might rule in (or out) a perforation, a well-known risk of the type of surgery that Clark had undergone, despite her tachycardia, distension and increasing pain.

Throughout the evening of the 24th, Clark's condition did not improve; she became more tachycardic and she was still experiencing significant pain V22-172 ("incredibly worrisome" pain portends something "catastrophic"; pain worsens after 5 pm phone call to Dr. Leigh).

In the early morning hours of May 25th, Coliseum nurse Connie Simmons reached out to Appellee **Dr. William Shirley**, who was the OB-GYN on call. Shirley also knew that post-surgical patients like Clark were at risk for bowel leaks, which are always serious and potentially life-threatening. V22-98/99. And along the same lines, Shirley knew that the signs of a bowel leak include tachycardia, pain uncontrolled by medication, and abdominal distention. V22-99/100.

Concerned about the tachycardia, Shirley ordered an EKG—which would soon come back abnormal—and labs, also significantly abnormal, especially for blood acidity. V22-103 (EKG); 105/06 (labs). Despite the fact that Shirley was in the hospital this entire time, he never came to see Ms. Clark, V2-113, nor did he order imaging that likely would have identified her

growing abdominal crisis; he also failed to order any fluid resuscitation. V22-118/19.

The mismanagement continued during the early hours of May 25. Clark complained of feeling hot—another bellwether of a post-surgical infection—but no nurse even bothered to take a temperature reading. V23-18, 41-42, 148/49. And, again, Clark's tachycardia went ignored—no nurse, despite an ongoing order, reached out to inform any physician about Clark's plight. V22-111. Other troubling "vital" signs seemingly were in play: Clark's temperature, blood pressure, heart rate and oxygen saturations should all have been closely monitored (and reported, if abnormal); that did not happen. V22-119 (Dr. Shirley; "Q: All right. And no time between 1 o'clock, 1:30 up until 10:00 had you done anything with respect to this patient you had responsibility for, right? A. No").

Around 8:40 on the morning of the 25th, former Defendant **Dr. Thomas Woodyard**, an on-call surgeon at Coliseum, rounded on Ms. Clark. V23-182. By now, the warning signs were altogether obvious: Clark was tachycardic (still); complained of abdominal pain (still); reported feeling hot (again); and now had a distended abdomen. Woodyard did little—ordering no interventions, imaging, or treatment.

Valuable hours later, Dr. Shirley **re-encountered** his patient, who was clearly in septic shock by that time (around 10:20 am). V22-97, 119. Dr.

Shirley would testify at trial that upon seeing Ms. Clark in the ten o'clock hour on the morning of May 25, he could see she was "ill appearing" and was septic. V22-119/20. Pointedly,

> Q: When [you, Dr. Shirley] walk in the door between 10:15 and 10:30, you **knew she was septic and probably in shock**, right?
>
> A: Yes.
>
> Q: You knew she had low blood pressure and probably was not perfusing her organs, including her brain?
>
> A: Yes.
>
> Q: And you believed she had a bowel injury?
>
> A: Yes.
>
> Q: All right. You knew she needed fluid, right?
>
> A: Yes.

V22-127/28 (emphasis added).

Shirley left the room anyway, without giving any orders[6] or even tasking a nurse to monitor Ms. Clark while he was gone. Shirley by happenstance ran into an internal medicine specialist who was walking in the hall, who did not know Ms. Clark or anything about her, who agreed to

[6] For example, ordering confirmatory imaging, an immediate surgical consult, STAT fluid resuscitation, or any other intervention.

see this critically ill patient after his other patients were addressed. V22-121/22.

While Shirley was still absent, around 10:40 am, Clark was using the restroom (assisted by her husband – not a nurse) when she lost consciousness and became unresponsive. V23-42/43. A response team intervened, finding Clark both hypotensive (low blood pressure) and hypothermic (low core body temperature). Her blood pressure was so low that responders couldn't even register a pressure and her skin was so cold that getting proper oxygen saturation readings was impossible. V22-124/25 (recounting Code Sheet findings).

As part of her immediate transfer to the Intensive Care Unit, a STAT CT image revealed that Clark had "free air" and fluid in her retroperitoneal cavity—obvious signs of a bowel leak. Clark was taken to surgery, which confirmed what the imaging had indicated: she had perforations in her colon and bowel, which meant that waste material had passed outside of the gastrointestinal tract into her abdominal space, a perfect storm for infection. Clark coded while on the table, but survived. V22-186/87. To be clear, **Clark's heart stopped before any meaningful surgical intervention occurred**. V22-82.

Clark's May 25th surgery was good for one thing, at least: it identified what was the issue. But because so much infectious material had been loosed

from the leak into the abdomen, the surgery site could not be "closed"—that is, her abdomen was left open. V22-84/85. Several subsequent surgeries did not ultimately prove helpful. V23-45. Clark never regained consciousness. V23-33, 45. She slowly declined, her body and organs weakening, for just over a month. She died on June 27, 2019. V23-46; V22-86 (Dr. Leigh; Clark died from complications of profound septic shock; identifying "root cause").

B. <u>The Litigation and Trial</u>

Litigation began in 2020, and after many of the former Defendants, including Coliseum and Dr. Woodyard, settled, trial convened on July 22, 2024. The remaining Defendants at that point were Drs. Leigh and Shirley, and their practice group. *See generally* V21-1 (Day 1 of Trial).

Plaintiffs' allegations of negligence centered **solely** on the Defendants' **conduct in the aftermath** of Clark's initial surgery on May 23. Plaintiffs contended that the Defendants' failure to timely recognize, appreciate the import of, and properly respond to Clark's presentation of the classic symptoms of a bowel perforation in the hours after the May 23 surgery constituted violations of the standard of care, which proximately caused unnecessary suffering and, ultimately, Clark's death.

The trial was relatively unremarkable. As many medical malpractice cases go, expert testimony was required, and heavily emphasized by both sides. Helpfully, both Defendants made significant concessions, given the

known chronology, and medical records. *E.g.*, V22-70 (Dr. Leigh; standard of care requires repeated monitoring for potential bowel perforation); 73 (even early post-op, bowel perforation was on Leigh's differential diagnosis), 82 (conceding "root cause" of death was septic shock), V22-119 (Dr. Shirley; Clark demonstrated hours and hours of symptoms, but Shirley did nothing).

Perhaps most salient to this appeal was the additional testimony of Dr. Jose Trevino, a surgical expert who held both standard of care and causation opinions. V22-133. Without objection, Dr. Trevino testified as to multiple violations of the standard of care as to Drs. Leigh V22-168/70, 192 (failed to order labs; failed to order imaging; failed to give antibiotics; filed to transfer to ICU; failed to give fluid resuscitation) and Shirley V22-173/85, 192 (negligent in responding as he did, and not ordering fluid resuscitation, antibiotics, transfer to ICU, and imaging).

Trevino also gave straightforward testimony that those violations of the standard of care caused Clark's decline, and death. V22-192/95.

During Trevino's cross examination, there was a lengthy discussion, after an objection by the plaintiff, about whether Dr. Trevino had changed his opinion after deposition, or whether his testimony at trial was consistent. V22-254/65. Because of a misunderstanding at his deposition, Trevino initially blamed not only the trial defendants (Leigh and Shirley) but also

nonparty physicians Williams and Woodyard, for their respective roles in Clark's death.

But in actuality as was pointed out during trial, Trevino had withdrawn that opinion **during his original deposition** after the underlying facts were clarified. A lengthy discussion was held on the record where Trevino's deposition testimony was explored, and the Court ultimately allowed the defense a full cross examination on this point. V22-270/72 (cross-examination of Trevino with his expert disclosures), 273, 275/77 (same, as to deposition testimony).

For purposes of this appeal, that really was the extent of the germane evidence. At the charge conference, there was some discussion of whether or not a "preexisting condition" charge was warranted. The trial court correctly set out Plaintiff's theory – that the presenting "condition" of Ms. Clark was a post-surgical patient with a suspected bowel perforation:

> I tend to agree with [plaintiff's counsel] on this, that what this Jury is going to be asked to decide, nobody has ever claimed that the fact that there was a bowel perforation was malpractice. That's a known risk. It happened. The failure to -- of any or all of the nurses, Williams, Woodyard, Leigh, or Shirley to timely recognize that and treat it, there's no doubt that there was going to be a second surgery because that's the way you – but to keep the sepsis and all the other bad things from happening was the failure to recognize by the nurses, by Dr. Williams, Dr. Woodyard, Dr. Shirley, Dr. Leigh, whatever, you know, and who bears what percentage of responsibility for that, if any.

V24-181/82.

In a more detailed discussion of the preexisting condition charge, the court again correctly noted that "the issue here for this Jury is failure to timely diagnose sepsis or bowel obstruction, bowel leak, bowel perforation before it got to sepsis." *Id.* at 187; *see id.* at 189 (plaintiff's counsel; "they cannot get up here and argue that because she had a bowel hole that we didn't cause that, therefore, nothing we did matters, nothing we do -- we can't be liable at all. They can be liable"); *see also id.* at 210/11 (the court; "I think the argument is what sent her into septic shock was not appropriately monitoring, assessing, and treating her between the time she started showing symptoms, whatever the Jury finds that to be, and the time that her condition was actually appreciated by a medical professional. Now, clearly, the evidence shows that medical professional was Dr. Shirley, but I think what Plaintiff is going to argue is that, yeah, you got a hole in your bowel. Yes, you're going to have surgery; but that because of the negligence of the nurses, the negligence of the general surgeons, and what this Jury has to decide is the negligence of your clients, did all of that allow her to get so depleted").

As is likely obvious at this point, the court ultimately decided to give a "pre-existing condition" charge.

The parties also sparred about splitting the claims of liability for apportionment purposes – that is, separate determinations of "fault" for the

Estate claim as to pain and suffering, as well as a different apportionment determination for the wrongful death claims.

The trial court ultimately concluded that the evidence did not warrant going down that unsupported pathway. V24-232/33 (counsel's argument as to lack of evidence; "And so that's what you're talking about the, I guess, continuum of care is that six hours. And, your Honor, I don't think—I think it would be very confusing to the Jury to give—and run the risk that we're going to have inconsistent verdicts because with respect to the apportionment of fault, there's no way to apportion that fault differently, your Honor").

The trial court ultimately and correctly ruled on the apportionment issue that **damages** categories should be split out, but that **liability** allocation was not to be so fragmented. *Id.* at 233 ("THE COURT. . . . So I am going to leave the apportionment of fault as one item; but the damages, I will separate").

After deliberation, the jury ultimately awarded substantial damages befitting the value of the life of a vibrant 50-year old woman:

- Medical Expenses: $ 1,715,176
- Pain and Suffering: $ 2,500,000
- Full Value of Life: $ 29,250,000

The apportionment verdict was also nuanced:

- Defendant Dr. Leigh/group: 40%
- Defendant Dr. Shirley/group: 35%
- Nonparty Dr. Williams: 0%

- Nonparty Dr. Woodyard: 15%
- Nonparty Coliseum: 10%

After a reduction based upon apportionment, the trial court entered Judgment just north of $25,000,000.

C. Post-Trial Contentions

Post-Judgment, the Defendants filed a Motion for New Trial, and, after completion and filing of the Trial Transcript, Volumes 21-25, an Amended Motion.[7] Clark naturally enough opposed both of those distinct requests for relief.

The parties convened for a post-Judgment hearing. *See generally* V27. During that proceeding, there was no question that the defense strenuously informed the trial court that it could review the evidence, including weighing credibility of witnesses, especially in the causation arena. V27-18/19; *see id* at 20 ("Dr. Trevino's testimony; and his credibility, therefore, is front and center for this Court now to evaluate, to determine did the jury get this right, did -- was the evidence – was the weight of the evidence -- and that's an important distinction, it's the weight of the evidence here – was the weight of the

[7] The Defendants also filed a Motion to Remit the Judgment, based upon general excessiveness challenges but also under O.C.G.A. § 51-13-1, the long-moribund "cap" on noneconomic damages in medical malpractice cases. Those arguments, which the trial court credited, are the basis for the appeal in Case Number S26A0349.

evidence supportive of the jury's apparent conclusion that the trial Defendants likely caused Ms. Clark's death").

And Clark **agreed** and informed the trial court of as much. V27-33 ("And this is while, **of course**, you as the thirteenth juror do have ample discretion to look at credibility issues and rather than look on [DV] or something like that") (emphasis added). The credibility issues were front and center. V27-34 ("There's no question that there was a bit of kerfuffle about Dr. Trevino's testimony. Of course, there is. As [defense counsel] put it, it was a significant issue").

The trial court ultimately denied the Amended New Trial Motion, after each side had the opportunity to submit competing proposed orders. XV1-6/15 (Order as entered); V26-163/203 (as proposed by Plaintiff).

The trial court's Order denying the motion for new trial is obviously important. As to the "Thirteenth Juror" concepts, the court noted that one of the defense challenges was under "classic 'general grounds' principles, that **the weight of the evidence** did not establish causation for Ms. Clark's death." V26-7 (emphasis added). Along the way, the court cited the proper statutes, V26-11, and expressly noted that it had the discretion to weigh the evidence, evaluate credibility, and otherwise exercise substantial discretion – but, of course, tempered with respect for the jury's findings. V26-11/13.

The court's Order, after several pages of review of the evidence, charges, and arguments involved, concluded that the entire tableau was "sufficient to uphold the verdict," **and** that "[t]he same is true of the jury's ultimate conclusion, based upon the clash in evidence." V26-13. The court's recitation of the evidence and its observations about certain conflicts therein – particularly as to Dr. Trevino's opinions – makes clear that the trial court evaluated the evidence and trial presentation, not only for its sufficiency as a legal matter but also from the court's perspective as a "Thirteenth Juror."

The trial court also rejected any claim of error as to the verdict form on several grounds. V26-9/11. The court cited to the plain language of the apportionment statute, first and foremost, as well as to the lack of record evidence that would support the hairsplitting distinction the Defendants championed. V27-26/27 (emphasizing how the trial testimony did not indicate there were other causative factors in play, after Ms. Clark coded on the operating table on May 25th). Finally, the court noted that if indeed there were an "apportionment" error, the proper remedy would be a highly-limited retrial, only on the apportionment issues complained of. *Id.*

This appeal and its companion followed.

ARGUMENT AND CITATION TO AUTHORITIES

On direct appeal, the Defendants raise three claims of error, with the lattermost being something of an afterthought. Those contentions are that:

- the verdict form needed to allow "apportionment" of fault as to each primary cause of action, Defense NT Brief at 19-30;

- a jury charge on "preexisting health conditions" was unwarranted, *id.* at 30-37; and

- the trial court used the wrong legal standard in exercising its "Thirteenth Juror" powers, *id.* at 37-40.

None of these claimed errors has any merit.

A. The Verdict Form Was Proper

Defendants' first claim of error is in the "special" verdict form, although that form resembles pretty much every verdict form in tort cases since 2005 (that is, accounting for apportionment as to fault, and including line items for categories of damages).[8]

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[8] The verdict form cannot be viewed in isolation, but must be considered along with the evidence presented at trial and the Court's charges to the jury. *Rowland v. State,* 306 Ga. 59, 67-68 (2019) ("In deciding whether a verdict form accurately presented the law and properly guided the jury, we review the form's language **in conjunction with** the rest of the trial court's jury instructions."); *Ga. CVS Pharmacy, LLC v. Carmichael*, 316 Ga. 718, 719 (2023) (verdict considered in conjunction with jury instructions); *R. C. Acres, Inc. v. Mommies Props., LLC*, 338 Ga. App. 569, 579 (2016) (construing jury's special verdict form in conjunction with the evidence presented at trial to determine jury's intent).

The format of a special verdict form does not erase (or even impact) "the presumption that qualified jurors, in the absence of clear evidence to the contrary, **followed the instructions** of the trial court." *Mayo v. State*, 319 Ga. 34, 44 (2024) (emphasis added); *Howell v. State*, 307 Ga. 865, 875 (2020) ("We ordinarily presume that jurors follow their instructions"). Thus, where the evidence supports the jury's award and the jury is adequately charged on all components of liability and damages, the absence of certain line items from a special verdict form cannot be used to claim the jury did not adequately consider all issues. *See Hewitt Assocs., LLC v. Rollins, Inc.,* 308

Defendants' argument is that the verdict form should have been markedly more complicated, allowing the jury to consider the Defendants' fault separately, and to apportion damages separately, for each of Plaintiffs' claims. V25-139/40 ("And just for the record, the reason we're objecting to the proposed verdict form is we requested that it segregate out the estate and wrongful death claim[s], which we believe are separate, distinct claims, which both apportionment and damages would be – should be assessed."). Almost every complex case has separate "claims," but no apportionment-per-claim framework exists, for good reason.

It is, of course, true, as Defendants note, that there are two Plaintiffs here – one statutory wrongful death claimant (Ms. Clark's surviving spouse) and an Estate Administrator (Ms. Clark's like-named daughter). But the fact that there is more than a single claimant, bringing separate wrongful death/Estate claims,[9] is of no consequence with respect to the determination

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Ga. App. 848, 852 (2011) (rejecting argument that verdict form should have required the jury to identify the date of the breach of contract "…because the trial court charged the jury on Hewitt's limitations defense, there is no basis for Hewitt's contention that the jury ignored that issue."); *Bristol Consulting Grp., Inc. v. D2 Prop. Grp., LLC*, 366 Ga. App. 843, 854 (2023) (where facts in evidence supported the jury's allocation of liability among defendants, the court refused to "substitute [its] judgment based upon a cold record for that of enlightened jurors who heard the evidence and saw the witnesses.") (internal citations omitted).

[9] As the Court will likely read a substantial amount about in the various wrongful death medical malpractice "cap" cases before it, including the

of fault or the apportionment of damages. For all their bluster on this issue, Defendants actually offer no compelling argument to the contrary.[10]

First, a review of some facts established by the evidence. Defendant Dr. Leigh ordered and performed Ms. Clark's surgery and was primarily responsible for her operative and post-operative care. V22-63:18-7; 67:24-68:7; 70:16-18 (Leigh was her primary admitting doctor). Dr. Shirley was an OB-GYN and surgeon who was responsible for Ms. Clark's post-operative care. *Id.* at 97:24-98:12. Both doctors were responsible for diagnosing and treating post-operative complications. *Id.* at 68:3-7; 70:1-15; 98:21-99:7.

The evidence also showed that both doctors were aware that a bowel leak is a life-threatening complication of surgery, and that they were aware that Ms. Clark showed many symptoms consistent with a bowel leak. V22-68:8-11; 69:17-25 (bowel leak almost always leads to infection, which can turn into sepsis and cause death); 99:10-16 (bowel leak is life threatening if not recognized and treated); 72:15-73:12; 99:17-100:4;102:19-25 (Ms. Clark had

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companion appeal and others, "wrongful death" is not really a standalone claim, but merely a derivative claim that is brought by a decedent's survivor.

[10] Notably, the standard of review weighs against the Defendants here, as our law recognizes that "[t]he form of a verdict and the submission of a special verdict are within the discretion of the trial court, and, absent an abuse of that discretion, the court's choice will not be overturned." *Certain Underwriters at Lloyd's of London v. Rucker Constr.,* 285 Ga. App. 844, 851-852 (2007) (citations, punctuation and footnote omitted); *see also* OCGA § 9-11-49.

uncontrolled pain, tachycardia, and a distended abdomen, all of which are signs of bowel leaks). The evidence of what needed to be done was the same for both the pain and suffering and the wrongful death – earlier surgery was necessary. The evidence supported a jury finding that neither doctor appropriately or timely intervened to repair the bowel leak, which caused Ms. Clark's pain, suffering, and eventual death. In short, given that Ms. Clark coded on the operating table, the "death" precursors were squarely with Drs. Shirley and Leigh.

Next, the relevant law. The analysis begins, of course, with the plain language of the operative statute. The baseline rules are well-established.

> A statute draws its meaning from its text. When we consider the meaning of a statute, we must presume that the General Assembly meant what it said and said what it meant, and so, we must read the statutory text in its most natural and reasonable way, as an ordinary speaker of the English language would. The common and customary usages of the words are important, but so is their context. For context, we may look to other provisions of the same statute, the structure and history of the whole statute, and the other law — constitutional, statutory, and common law alike — that forms the legal background of the statutory provision in question.

Zaldivar v. Prickett, 297 Ga. 589, 591 (2015) (cleaned up).

The plain text of the apportionment statute does not support Defendants' request to apportion fault separately "per claim." O.C.G.A. § 51-12-33(b) provides that "[w]here **an** action is brought against one or more persons for injury to person or property, the trier of fact, in its determination

of the **total amount** of damages to be awarded, if any, shall after a reduction of damages pursuant to subsection (a) of this Code section, if any, apportion its award of damages among the person or persons who are liable according to the percentage of fault of each person." (Emphasis added.) The statute thus comprehends "an" action for "injury to person," within the context of the "total amount of damages to be awarded," without any subdivision of the "injury" as to which "fault" is assigned. *See Johns v. Suzuki Motor of Am., Inc.*, 310 Ga. 159, 162 (2020) ("[B]y its plain terms, the statute governs actions 'for injury to person,' **without in any way distinguishing** between the theories upon which those claims are premised.") (emphasis added). Simply, there is no statutory mechanism to apportion fault among different claims within a single personal injury action.

In addition, as noted by the trial court, the Defendants have offered not a single case in which their creative theory of apportionment has been adopted. *See* XV1-9/10 ("Defendants have simply cited no precedent at all for their request to have segregated the distinct claims on the verdict form."). And as the trial court surmised, this is likely "because the apportionment statute already requires the jury to assess fault for the entirety of a damages award, which by necessity would include an assessment of a given Defendant's fault, based upon chronology, authority, causation, or any number of factors."

> Indeed, as the trial court properly instructed the jury:
>
> If you believe that the Plaintiffs are entitled to recover and further find the damages sustained by Plaintiffs were caused by persons or entities who are not parties to this action, you shall consider the fault of all persons or entities whose negligence contributed to the injury or damage. In determining the total amount of damages, you should not make any reduction because of the negligence, if any, of any nonparty to this action. The Court will enter a judgment based on your verdict; and if you find that a nonparty was negligent in any degree and that such negligence caused or contributed to Ms. Clark's injuries, then the Court will reduce the total amount of damages awarded by the percentage of negligence which you attribute to any such nonparty.

V25-133.

In giving this instruction, in combination with the other standard proximate cause charges, the court informed the jury that in determining **fault**, it had to bundle in considerations of duty, breach and causation. So the notion that a particular defendant might have greater liability for a particular claim is already baked into the apportionment calculus turned over to the jury, independent of the damages categories or verdict amounts. O.C.G.A. § 51-12-33(b).[11]

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[11] As the trial court correctly noted,

> Precedent supports the notion that when a jury is properly charged on liability and apportionment principles, the absence of certain line items from a special verdict form cannot be used to claim the jury did not adequately consider all issues. *Hewitt Assocs., LLC v. Rollins, Inc.*, 308 Ga. App. 848, 852 (2011) (rejecting argument that verdict form should have required the jury to identify the date of the breach of contract "…because the trial court charged the jury on Hewitt's limitations defense, there is no basis for Hewitt's contention that the jury ignored

To sum up: the trial court instructed the jury properly, and the evidence can certainly be construed in favor of the jury's ultimate verdict. The verdict form conformed to Georgia law, and the evidence. There was no error.

Independently, and setting all of that aside for a moment: Even if there had been an error in the verdict form, Defendants' remedy would not be an entirely new trial, but a limited new trial on the issue supposedly handled incorrectly: apportionment within the Estate and Wrongful Death claims. This Court has previously explained the Indivisible Judgment Rule – that is, when

> a judgment is entire and indivisible, it can not be affirmed in part and reversed in part, but the whole must be set aside if there [is] reversible error therein. But where a judgment appealed from can be segregated, so that the correct portions can be separated from the erroneous, the court will not set aside the entire judgment, but only that portion which is erroneous.

Martin v. Six Flags Over Ga. II, L.P., 301 Ga. 323, 338 (2017). As this Court continued, in applying that rule in the apportionment context:

> that issue."); *Bristol Consulting Grp., Inc. v. D2 Prop. Grp., LLC*, 366 Ga. App. 843, 854 (2023) (where facts in evidence supported the jury's allocation of liability among defendants, the court refused to "substitute [its] judgment based upon a cold record for that of enlightened jurors who heard the evidence and saw the witnesses.") (internal citations omitted).

XV1-10.

> This general principle is readily adaptable to the apportionment context. The apportionment statute requires that, once liability has been established and the damages sustained by the plaintiff have been calculated, the trier of fact must then assess the relative fault of all those who contributed to the plaintiff's injury — including the plaintiff himself — and apportion the damages based on this assessment of relative fault. O.C.G.A. § 51-12-33 (a)-(c). In other words, the jury must take the total amount of damages sustained by the plaintiff, identify the persons who are at fault, and award damages according to each person's percentage of fault. Thus, once liability has been established, the calculation of total damages sustained by the plaintiff is the first step, and the allocation of relative fault and award of damages according to that allocation is a distinct second step. There is no reason these two steps cannot be segregated for purposes of retrial.

Id. at 338-39 (cleaned up).

The trial court **expressly** ruled on the Indivisible Judgment Rule in this case, holding that if any new trial were to be had, it would be a limited one that would not include the amount of damages. XV1-10/11. The Defendants have not enumerated that ruling as error, so it is waived for purposes of further proceedings. *Black v. Hardin*, 255 Ga. 239, 240 (1985) ("[F]ailure to enumerate as error on appeal **any** alleged error or deficiency stands on like footing with a failure to make timely objection in the trial court -- that is, the same shall be waived"). Thus, even if the trial court did err—which it did not—the remedy is a new trial only as to apportionment, and not as to liability or the amount of damages.

B. <u>The Jury Charge on Pre-Existing Conditions Was Proper.</u>

The Defendants next challenge the giving of a jury charge – functionally a pattern, no less – on "preexisting conditions." The argument is that Ms. Clark really didn't have a preexisting condition until her initial surgery, which resulted in her bowel perforation – and since the Defendants were "involved" with that surgery, there is something inappropriate about the charge.

The standard of review here is *de novo*. "To authorize a requested jury instruction, there need only be **slight evidence supporting the theory** of the charge. It is a question of law whether the evidence presented is sufficient to authorize the giving of a particular charge. In reviewing a challenge to the trial court's jury instruction, [this Court] view[s] the charge **as a whole** to determine whether the jury was fully and fairly instructed on the law of the case." *Morris v. State*, 301 Ga. 702, 705 (2017) (cleaned up; emphasis added).

The best place to start with a jury instruction challenge is the charges themselves. First, the trial court charged that:

> There can be no recovery for any injury or disability that was not proximally caused by a Defendant's negligence. However, **if you find** that the Plaintiff already had **an injury** or preexisting condition **prior to the time of the malpractice alleged** but that the malpractice exacerbated her condition, or made it **worse** or more long lasting, then Plaintiff is entitled to recover damages to the extent that her condition was worsened or prolonged. The Defendants take . . . the Plaintiff as they find her and the fact that the Plaintiff has already had a preexisting condition and may have been more vulnerable or

> susceptible to injury does not relieve the Defendants from liability for any aggravation of that condition.

V25-128/29 (emphasis added).

> Relatedly, the trial court also instructed the jury that:
>
> No Plaintiff may recover for injuries or disabilities that are not connected with the act or omissions of the Defendant in this case. There can be no recovery for a particular Plaintiff for any injury or disability that was not proximally caused by the incident in question. If you should find that at the time of the incident April S. Clark had any physical condition, ailment, or disease that **was becoming apparent** or was dormant and if you should find that **Ms. Clark received an injury and/or dies as a result of the negligence of one or more of the Defendants and that her injury and/or death resulted from an aggravation of a condition already pending**, then Plaintiffs could recover damages against the negligent Defendant or Defendants for aggravation of Ms. Clark's preexisting condition.

V25-130/31 (emphasis added).

There is nothing wrong with those charges, especially on this record and in light of the less-than-crystal-clear pattern charges juries routinely receive on proximate cause. At base, April Clark had a prior injury – a perforated bowel – that the Defendants' malpractice caused to dramatically worsen into septic shock and death. The injury predated the "time of the malpractice alleged"; the Defendants' "malpractice exacerbated her condition," and Clark's survivors were "entitled to recover damages [because] Clark's condition was worsened." In short, the Defendants had to take Clark as they found her. The charge was a correct statement of the law, adjusted to

the evidence, and appropriate.[12] There was no error. *See Stitts v. State*, No. S25A1205, 2025 LEXIS 419249, at *10 n.7 (Nov. 4, 2025) ("slight evidence" all that is required to support requested jury charge).

One significant problem with Defendants' argument is in the framing. From the very outset of opening, to the closings, this dispute was about the 19 hours **after** Ms. Clark developed classic signs and symptoms of a surgical bowel injury. It did not matter that Dr. Clark, or Dr. Shirley, or some other provider created that "preexisting" condition; the trial was about the response to a post-surgical presentation. V25-23 ("[W]hen I started this case, I talked about that this case is about those 19 hours between the time when Dr. Leigh first saw the patient at 3:30 in the afternoon and the time that the rapid response code was called, that 19 hours") (referencing opening); *id.* 25 (discussing post-operative presentation; "[W]hat the evidence we put up proves that in those 19 hours these Defendants breached the standard of

[12] More generically, the trial court was careful to instruct the jury to consider the charge as a whole, without emphasis as to one portion or another. V25-116:16-19. In addition, the court gave "pattern" charges on proximate cause, V25-127-28, as well as some additional language on the subject. *Id.* at 128 ("To hold a Defendant liable, the Plaintiffs must introduce sufficient evidence to allow you to find that more likely than not that Defendant's conduct was a factor, although not necessarily the only factor, in producing Plaintiff's damages . . . No Plaintiff may recover for injuries or disabilities that are not connected with the act or omission of the Defendant from whom recovery is sought.").

care"); *id.* at 42 ("What responsibility did these doctors owe to the patient. To monitor for **postsurgical** complications, everybody agreed; and to create a differential diagnosis. Every single one of them agreed, that's their job, have to monitor for **postsurgical** complications . . . . So the next question you're going to have to decide is: Did they meet that standard of care or did they breach it. That's the next question. So let's talk about it. Did Dr. Leigh breach the standard of care? What's the evidence? **Bowel leak** was on his differential, undisputed. Everybody agrees. Dr. Leigh admitted. Dr. Leigh ordered no tests. He ordered no scans. He ordered nothing to rule out a bowel leak. Dr. Leigh admitted that") (emphasis added).[13]

To make that distinction clear – a predicate of the entire **defense** at trial was that the initial surgical perforation was **not** negligence:

> Ladies and Gentlemen, there's no dispute, the perforation had occurred -- that was going to occur, that's not negligence. That's not anybody's fault. She was going to need a second surgery. That's not negligence. That's not anybody's fault. So what we're arguing about is when did she get back to surgery, as to Dr. Leigh and Shirley, because that's all they can do is send her back in those few hours sooner.

V25-72. But that nuance makes the instruction now complained of not just proper, but important. A jury might well wonder why Dr. Leigh – who helped

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[13] The Defendants did everything they could at trial, to **increase** the time frame between surgical injury (not actionable) and post-surgical mismanagement (entirely actionable). *E.g.*, V25-68 ("And so the timeline of involvement here, first procedure to second procedure, that's approximately 48 hours").

perform the initial cyst surgery, which resulted in the perforation – was not being sued for that end result. But perforations are a very well-known complication of an abdominal surgery. All that means is (1) a suit for an initial perforation is unlikely to be successful but (2) the risk of such an injury requires a high degree of observation and assessment, in the hours and days post-surgery.

And the takeaway is that the Defendants' argument is almost fundamentally wrong. Ms. Clark **did** have a pre-existing condition that the Defendants' negligence worsened – a bowel perforation that needed to be addressed immediately. Whether or not the Defendants created that initial "condition" or injury is irrelevant – the allegations of negligence were for the mismanagement of an already bowel-perforated patient.[14] *See*, *e.g.*, *Geary v. Estate of Tapley*, 373 Ga. App. 561, 565 (2024) (preexisting condition charge in surgical mismanagement case appropriate, since Plaintiff was **not** suing for perforated bladder, but for subsequent failure to recognize that condition); *United Obstetrics & Gynecology, P.C. v. Robinson*, 376 Ga. App. 198, 200

[14] The Defendants essentially admit as much, recognizing that "[w]hen they sued various defendants for medical malpractice, Plaintiffs Charles Clark (Clark's husband and April D. Clark (her daughter) **targeted only** the 19-hour span during which Drs. Leigh and Shirley were involved." Defense NT Brief at 1 (emphasis added). Of course, those 19 hours were well after Ms. Clark sustained her bowel perforation that represented her then-current (and thus, "preexisting") condition.

(2025) (approving preexisting condition charge, when newly-born infants were in "vulnerable" state that made susceptibility to further injury due to delayed diagnosis and treatment more likely).[15]

The Defendants' base criticism, then, is simply wrong. However Ms. Clark arrived in the Defendants' care (trauma, disease, prior medical error) is irrelevant – there was indisputably a condition that pre-dated the allegations of negligence – and the jury was charged on alleged negligence after that presentation, and whether or not deviations from the standard of care made Clark's condition worse.

The Defendants decry the trial court's actions as "a dramatic expansion of the historical use of this charge," Defense NT Br. at 36, which should seemingly indicate that there might be a case or two (perhaps even three) that demonstrate the "intent" of or empirical limits on this pattern instruction; but there are no cases outlining the supposed "limited" use of the pattern charge.

Defendants "historical" cases don't help, at all. The forerunner, *Bray v. Latham*, 81 Ga. 640, 644 (1888) (cited Defense NT at 31), merely reiterates the rule that a tortfeasor takes the plaintiff as he or she exists once the

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[15] The *Geary* case involved the same defense lawyers and same trial judge as in this matter. Also in the "small world" category is the other case cited by Defendants, *Robinson* another "preexisting condition" charge case involving the same lawyers as in this appeal.

allegations of negligence attach. *Id.* ("Where the subject of a tort is already diseased, the question should be how much, if any, the tort contributed to aggravate or protract the disorder. . . . To cause sickness wrongfully, or to aggravate or protract it, is an injury to health for which damages are recoverable").

Likewise as to *City of Atlanta v. Hampton*, 139 Ga. 389, 395 (1913). Cited for the proposition that the charge concerned "some preexisting infirmity," *Hampton* is just another typical case – someone with an illness tripped on a sidewalk fixture, and was allowed to seek damages for aggravation of her physical condition. *Id.* All of the Defendants' cases merely present fact patterns where a plaintiff has a previously-diagnosed historical condition, nothing more.[16] Those are not precedent for a thoroughly hazy and impossible to delineate rule that the "preexisting" condition must be entirely unrelated to care rendered by a given set of Defendants – even if the negligence alleged relates to conduct occurring after the initial care.

It really is quite simple: the Defendants argue that "[t]he Court can avoid this problem entirely by restricting the charge's use to the aggravation

[16] Basically, the Defendants have searched for terms like "prior" and "already" and, well, "preexisting" and called that the historical rule. But none of those cases say anything like "the preexisting condition can't be caused by a defendant" or "misdiagnosis cases can't use the 'preexisting condition' charge."

of conditions which fully predate the negligence at issue." Defense NT Br. at 37. But that is exactly what happened, here. **No one** suggested the initial bowel perforation was negligent; it is, in a common term, a "risk of the procedure." V22-36 (defense opening; "The surgery on May 23rd, 2019, was entirely appropriate. Dr. Leigh had a minor part of that. He was tasked with removing her ovarian cysts, and Ms. Clark experienced a recognized bowel complication as you've heard"); V24-181/82 (the trial court, recognizing that Clark's initial surgery had injured her, and that some surgery to address that injury was inevitable, but the negligence alleged was failing to recognize that need in time); V27-27 (post-trial hearing, explanation of Plaintiff's position that there was no negligence in initial cyst surgery, but negligence attached in post-surgical setting).

Instead, Clark had a preexisting condition (a bowel-perforation that posed an imminent risk of leakage and development of sepsis). Had that been recognized by either Defendant in earlier fashion – that risk was on both doctor's differential diagnosis, given the classic symptomatic presentation – then an emergency surgery, administration of fluids, massive antibiotics – all could have been effectuated earlier, and for the better. The trial court's charges on this issue were necessary and proper.

C. The Trial Court's Thirteenth Juror Approach Was Appropriate.

Lastly, the Defendants contend that the trial court applied an incorrect standard in analyzing the "Thirteenth Juror" challenge raised under O.C.G.A. § 5-5-21, the "general grounds" Code section. That argument fails on a number of levels, including the straightforward language of the trial court's own order denying a new trial on those "general" grounds.

The standards here are well known. Under Code Section 5-5-21, a trial court has the discretion to grant a new trial if the verdict is "decidedly and strongly against the weight of the evidence." In making that call, the trial court can consider the credibility of witnesses, conflicts in the evidence, and the weight of particular testimony or documents. *White v. State*, 293 Ga. 523 (2013).

But in exercising that discretion, the hyper-technical level of specificity imagined by the Defendants for any resultant new trial order is, well, just that. "[I]t is well established that this Court must presume that the trial judge knew the rule as to the necessity of exercising his discretion, and that he did exercise it. **We can not assume, in the absence of positive evidence to the contrary, that the judge knowingly declined to exercise his discretion.**" *Butts v. State*, 297 Ga. 766, 772 (2015) (cleaned up; emphasis added). That presumption is so strong that even in a case in

which the statutory framework (O.C.G.A. §§ 5-5-20, -21) is merely **called to the attention** of the trial court, the presumption of adherence to the discretionary standards attaches. 297 Ga. at 772; *Allen v. State*, 296 Ga. 738, 741 (2015) (same).[17]

Put just slightly differently, "the trial court **need not explicitly speak** of its discretion with respect to the general grounds, and unless the record shows otherwise, we must presume that the trial court understood the nature of its discretion and exercised it." *Wilson v. State*, 302 Ga. 106, 108 (2017) (emphasis added). Here, there is nothing approximating an abdication of the Thirteenth Juror role by the trial court. The trial court was informed of the correct standard in briefing by both sides; was reminded at length of that discretion by both sides during argument; cited the correct standard multiple times in the Order denying a New Trial, and actually went through the key evidence as part of that Order. The Defendants' position is simply meritless.

The trial court unequivocally recognized and traveled under the correct standard – though you would not know it from the Defendants' merits Brief. For one, the trial court **cited** the correct framework of analysis:

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[17] The cases involving a "failure to exercise" discretion as a Thirteenth Juror invariably involve a trial court order that disclaims any right to assess credibility or weigh the evidence, or purports to concede lack of authority to grant a new trial, even though the court disagreed with the verdict. *Butts*, 297 Ga. at 772 (collecting other cases from this Court). Neither scenario is present, here.

> The Defendants also challenge the sufficiency of the evidence on causation. This argument is an uphill one; the Defendants must prove that the verdict was "contrary to evidence and the principles of justice," O.C.G.A. § 5-5-20, or "decidedly and strongly against the weight of the evidence," O.C.G.A. § 5-5-21.

XV1-11. That is about as far from affirmative evidence that the trial court abdicated its discretion as can be framed.

The trial court's order continued, again reiterating the correct standard:

> These "general grounds" for a new trial "require the trial judge to exercise a 'broad discretion to sit as a thirteenth juror." The Court can consider several factors that might not be appropriate in summary judgment disputes – **conflicts, credibility, and weight**, for example —but the court's discretion "is not boundless"; rather the Georgia Supreme Court has cautioned that the Thirteenth Juror authority "'should be exercised with caution and invoked only in exceptional cases in which the evidence preponderates heavily against the verdict."

V26-11 (emphasis added) (citing *White v. State*, 293 Ga. 523, 524–25 (2013), which was quoting *Alvelo v. State*, 288 Ga. 437, 438 (2011)).

Those were not the only of this Court's precedent that the trial court relied upon – **all of which** set out the correct framework of analysis. *E.g.* V26-11 n.8 (citing *Ricketts v. Williams*, 242 Ga. 303, 304 (1978) and *Willis v. State*, 263 Ga. 597, 598 (1993)). In other words, the trial court not only cited the correct Code section and analytical framework, but also cited several cases from this Court on the precise issue. *White*, 293 Ga. at 525 (reiterating that the trial court must actually exercise discretion when in Thirteenth

Juror mode)); *Alvelo*, 288 Ga. at 438 (granting new trial only when court "explicitly declined to consider the credibility of witnesses, stating that it is solely within the purview of the jury to weigh conflicting evidence and judge credibility of witnesses") (cleaned up); *Ricketts*, 242 Ga. at 304 ("On a motion for new trial, however, the power of the court is much broader. It may weigh the evidence and **consider the credibility of witnesses**. If the court reaches the conclusion that the verdict is contrary to the weight of the evidence and that a miscarriage of justice may have resulted, the verdict may be set aside and a new trial granted. It has been said that on such a motion the court sits as a thirteenth juror. The motion, however, is addressed to the discretion of the court, which should be exercised with caution, and the power to grant a new trial on this ground should be invoked only in exceptional cases in which the evidence preponderates heavily against the verdict."); *Willis*, 263 Ga. at 598 ("When the trial court makes a determination on whether to grant a new trial, the trial judge sits as a "thirteenth juror" and in "exceptional cases" may grant a new trial").

And as noted earlier, there is zero question that, as in this Court's example from the *Butts* case, that the trial court was repeatedly reminded by both sides of the "v" as to the discretion involved. V27-18/19, 20 (defense arguments to court, during new trial hearing); *id.* at 33 (Plaintiff's argument, also noting the correct standard).

And the trial court actually **did** evaluate witness credibility, even on the face of the dispositive Order. V26-11/12 (discussion of testimony of Dr. Trevino, which according to the defense was a "flip-flop" and contradictory); *id.* at 13 (noting "clash in evidence" on key causation issues). "[I]n the absence of explicit factual and credibility findings by the trial court, we presume implicit findings were made supporting the trial court's decision." *Davis v. State*, 306 Ga. 430, 432-33 (2019); *see Alexander v. State*, 348 Ga. App. 859, 866-67 (2019) (no Thirteenth Juror abdication when trial court's oral ruling was that "the evidence against the defendant is very substantial. So as a matter of legalese the verdict is not against the weight of the evidence. The evidence supports the verdict, and the verdict is not contrary to the evidence," as "[t]his statement demonstrates that the trial court understood its discretion under OCGA §§ 5-5-20 and 5-5-21 and declined to exercise it").

Where a trial court on motion for new trial details the relevant trial testimony with specificity, assesses its credibility, and concludes that a new trial is not warranted, it has fulfilled its role as the Thirteenth Juror.

> And as we have previously explained, in interpreting the language of an order overruling a motion for a new trial, it **must** be presumed that the trial judge knew the rule as to the obligation thus devolving upon him, and that in overruling the motion he did exercise this discretion, unless **the language of the order indicates to the contrary and** that the trial judge agreed to the verdict against his own judgment **and** against the dictates of his own conscience, merely because he did not

> feel that he had the duty or authority to override the findings of the jury upon disputed issues of fact.

Davis v. State, 350 Ga. App. 69, 71 (2019) (emphasis in original).

The trial court knew it had to "reach[] the conclusion that the verdict is contrary to the weight of the evidence and that a miscarriage of justice may have resulted" before pulling the trigger on a new trial. XV1-11 n.8; XV1-13 (court's Order, concluding that based upon all the evidence, its conclusion was that the record was "sufficient to uphold the verdict," **and** that the "same is true of **the jury's** ultimate conclusion, based upon the clash in evidence." V26-13 (emphasis added). Simply, the trial court evaluated the evidence and trial presentation and concluded both that the evidence was legally sufficient and that the verdict was consistent with the weight of that evidence, as well as principles of equity and justice. O.C.G.A. §§ 5-5-20, -21. *See generally* V27 (new trial hearing, replete with references to proper Thirteenth Juror standard). That the court did not exercise its discretion to grant a new trial, especially given this Court's admonition that the Thirteenth Juror power is to be used sparingly, and only in "exceptional" cases, is not evidence that the trial court was unaware of, or abdicated, its discretionary powers. This enumeration of error has no merit.

CONCLUSION

The trial of this matter was hard-fought, but fair, and that is all the law requires. This Court should affirm the verdict and Judgment.[18]

This submission does not exceed the word-count limit imposed by Rule 20(1).

Respectfully submitted, this 8th day of December, 2025.

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[18] The Court granted an extension of time to Appellee for filing of her Principal Brief. A copy of that Court's Order is attached as Exhibit A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day filed a PDF copy of the foregoing via filing on the Court's SCED system, making it available to the Court, Clerk, and all counsel or parties registered with that platform. In addition, I have served via email PDF copies of the foregoing to the following counsel of record at the noted e-mail addresses, given the existence of a prior agreement that such mode of service will suffice to comply with this Court's Rule 14:

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Respectfully submitted, this 8th day of December, 2025.

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Exhibit A

SUPREME COURT OF GEORGIA
Case No. S26X0350

November 18, 2025

THOMAS B. LEIGH, M.D. et al. v. CHARLES CLARK et al.

Your request for an extension of time to file the brief of appellee in the above case is granted until December 08, 2025.

A copy of this order **MUST** be attached as an exhibit to the document for which the appellee received this extension.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

, Clerk