NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

HOLLY ANN KUCHWARA AND ROBERT J. KUCHWARA,

Appellees

v.

THEODUS WILLIAMS AND VALVANO CONSTRUCTION, INC.,

Appellants

DOREEN MAZUR AND STEPHEN MAZUR, HUSBAND AND WIFE, AND AZURE MAZUR,

Appellees

v.

THEODUS WILLIAMS AND VALVANO CONSTRUCTION, INC.,

Appellants

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 494 MDA 2013

Appeal from the Judgment Entered February 19, 2013
in the Court of Common Pleas of Luzerne County
Civil Division at No.: 7040-2010

BEFORE: PANELLA, J., OLSON, J., and PLATT, J.*

MEMORANDUM BY PLATT, J. **FILED MAY 12, 2014**

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* Retired Senior Judge assigned to the Superior Court.

Appellant, Valvano Construction, Inc., appeals from the judgment entered following the denial of its motions for post-trial relief, new trial, and remittitur, and the grant of delay damages to Appellees Holly Ann Kuchwara and Robert J. Kuchwara. We affirm.

On May 7, 2010, Holly Ann Kuchwara was injured in a motor vehicle accident in Scranton, Pennsylvania, involving Appellant's dump truck and a third vehicle driven by Doreen and Steven Mazur.[1] Theodus Williams was driving Appellant's truck when he became lost, the brakes failed, and the truck barreled down a hill in excess of forty-five miles per hour, striking the Mazurs, who rear-ended Mrs. Kuchwara. Mrs. Kuchwara sustained numerous injuries, including lacerations to her face and fractures to her leg, ankle, and back. She has since undergone multiple surgeries and has been left with pain, permanent, visible scars, and an altered gait and significant limp. (***See*** Trial Court Opinion, 1/31/13, at 11-12).

A month-long jury trial commenced on August 27, 2012, where it was established that, at the time of the accident, Appellant had been operating the truck without the certifications required by the Public Utilities Commission (PUC) and the Federal Motor Carrier Safety Regulations. ***See***

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[1] The Mazurs' litigation was initially consolidated with this action, but they ultimately reached a settlement agreement with Appellant and Theodus Williams. (***See*** Appellant's Brief, at 7 n.1). Mr. Williams has separately appealed the underlying judgment at No. 508 MDA 2013.

66 Pa.C.S.A. § 1101; 52 Pa. Code § 31.32. The truck's faulty brakes had not been properly inspected and only three out of eight brakes were functioning, it was not operating with a tag axle as required, the steering wheel had at least seven and a half inches of play, and its speedometer and many of the safety alarms were inoperable, among other maintenance issues. (***See*** Amended Complaint, 9/10/11, at 9-14). On September 21, 2012, the jury returned a verdict in favor of Appellees, awarding them $9,100,000.00 in compensatory damages and $1,025,000 in punitive damages. Appellant filed motions for post-trial relief, and Appellees filed a motion for delay damages. On January 31, 2013, the court denied Appellant's post-trial motions and granted Appellees' motion for delay damages in the amount of $386,717.98, and filed an opinion. The trial court entered final judgment on February 19, 2013. Appellant timely appealed.[2]

Appellant raises five questions for our review:

> 1. Whether [Appellant] is entitled to a new trial or remittitur as a result of the trial court's prejudicial and erroneous decision to bifurcate the trial into compensatory and punitive damages phases—without telling the jury—where that decision resulted in the jury entering a "compensatory" damages award inflated with punitive damages[?]
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> 2. Whether [Appellant] is entitled to a new trial or remittitur as a result of the trial court permitting [Appellees'] counsel to tell the jury, still unaware of the punitive damages phase of trial, to send [Appellant] a message with its compensatory damages

[2] The trial court did not order Appellant to file a concise statement of errors, and did not file an additional opinion pursuant to Pa.R.A.P. 1925(a)-(b).

> verdict, particularly given the jury ultimately "sent" that message in the form of a "compensatory" damages award infected with punitive damages[?]
>
> 3. Whether [Appellant] is entitled to a new trial or remittitur as a result of the trial court erroneously permitting [Appellees'] expert psychologist to testify that [Appellee] Holly Kuchwara was allegedly attacked by another . . . truck [owned by Appellant], months after the accident in question, given that this highly prejudicial testimony contributed to the inflated "compensatory" damages award[?]
>
> 4. Whether [Appellant] is entitled to a new trial or remittitur as a result of the trial court's erroneous decision to permit [Appellees'] expert and lay witnesses, during the compensatory damages phase of trial, to offer prejudicial opinion testimony on the legal question of whether [Appellant]'s conduct constituted reckless indifference[?]
>
> 5. Whether [Appellant] is entitled to remittitur given that the jury awarded duplicative loss of consortium damages as part of its inflated "compensatory" damages award[?]

(Appellant's Brief, at 5-6).

Appellant claims that it is entitled to a new trial or remittitur. Our standards of review of these challenges are well-settled:

> Our review of the trial court's denial of a new trial is limited to determining whether the trial court acted capriciously, abused its discretion, or committed an error of law that controlled the outcome of the case. In making this determination, we must consider whether, viewing the evidence in the light most favorable to the verdict winner, a new trial would produce a different verdict. Consequently, if there is any support in the record for the trial court's decision to deny a new trial, that decision must be affirmed.

Grossi v. Travelers Pers. Ins. Co., 79 A.3d 1141, 1148 (Pa. Super. 2013) (citation omitted).

> Our standard of review from the denial of a remittitur is "circumspect" and judicial reduction of a jury award is appropriate only when the award is plainly excessive and

> exorbitant. The question is whether the award of damages falls within the uncertain limits of fair and reasonable compensation or whether the verdict so shocks the sense of justice as to suggest that the jury was influenced by partiality, prejudice, mistake, or corruption. Furthermore, [t]he decision to grant or deny remittitur is within the sole discretion of the trial court, and proper appellate review dictates this Court reverse such an Order only if the trial court abused its discretion or committed an error of law in evaluating a party's request for remittitur.

Renna v. Schadt, 64 A.3d 658, 671 (Pa. Super. 2013) (citations and some quotation marks omitted).

In its first issue, Appellant argues that it is entitled to a new trial because, by bifurcating the trial between compensatory and punitive damages phases, "[t]he trial court committed reversible error by allowing the 'compensatory' damages phase to become a punitive damages trial, even though [Appellant] had stipulated to negligence before trial." (Appellant's Brief, at 18). We disagree.

> The court's decision to bifurcate a trial will not be disturbed absent an abuse of discretion. Before ordering the separate adjudication of issues, the court should carefully consider the issues raised and the evidence to be presented to determine whether the issues . . . are interwoven. Bifurcation is discouraged in those cases in which evidence relevant to both issues would be excluded in one portion of the trial and would result in prejudice to the objecting party. However, bifurcation is strongly encouraged and represents a reasonable exercise of discretion where the separation of issues facilitates the orderly presentation of evidence and judicial economy, or avoids prejudice.

Coleman v. Philadelphia Newspapers, Inc., 570 A.2d 552, 555 (Pa. Super. 1990) (citations omitted). "So long as the trial judge assembles adequate information, thoughtfully studies this information, and then

explains his decision regarding bifurcation, we defer to his discretion." ***Prall v. Prall***, 698 A.2d 1338, 1340 (Pa. Super. 1997) (citation omitted).

Here, over Appellant's objection, the trial court granted Appellees' motion to bifurcate the trial into compensatory and punitive damages phases. (***See*** Motion to Bifurcate, 8/14/12, at 3-6; N.T. Motions in Limine, 8/20/12, at 21-22). Specifically, Appellant stipulated to negligence shortly before trial and in counsel's opening statement. (***See*** N.T. Motions in Limine, 8/20/12, at 6; N.T. Trial, 8/24/12, at 10-13, 203-04). Thus, the jury was asked to determine whether Appellant and Williams's conduct constituted reckless indifference and to calculate compensatory damages in the first phase. If the jury decided Appellant and Williams's conduct was recklessly indifferent, it would determine punitive damages in a second phase. (***See*** Motion to Bifurcate, 8/14/12, at 4-5; N.T. Trial, 8/29/12, at 203-04).

The trial court agreed with Appellees' rationale supporting bifurcation in this manner because, while the issues of compensatory and reckless indifference were intertwined and required the same witnesses, it "[didn't] know any reason why a jury should consider punitive damages while making a decision as to compensatory damages[,]" (N.T. Motions in Limine,

8/20/12, at 22), a conclusion with which counsel for Appellant agreed. (***Id.***).[3]

At the conclusion of trial, the trial court instructed the jury:

> [S]ince you are instructed that one of the defendants has admitted it is liable to the plaintiffs, you must find an amount of money damages you believe will fairly and adequately . . . compensate the plaintiff [sic] completely for damages sustained in the past as well as the damages the plaintiff will sustain in the future. The primary function of compensatory damages is to shift the loss from an innocent party to the one who is legally responsible for the injury.

(N.T. Trial, 9/21/12, at 1520; ***see id.*** at 1520-21 (describing recoverable damages as "[o]ne, future medical expenses; two, past, present, and future pain and suffering; three, past and future embarrassment and humiliation; four, past and future loss of the ability to enjoy the pleasures of life; five, disfigurement; six, consortium; seven, loss of future earnings capacity.")).

The court specifically stated that "[d]amages for pain and suffering are compensatory in nature, and may not be—and I repeat—may not be arbitrary, speculative, or punitive, and must be reasonable." (***Id.*** at 1526;

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[3] [P]unitive damages are in no sense intended as compensation to the injured plaintiff. They are, rather, a penalty, imposed to punish the defendant and to deter him and others from "outrageous" conduct. The function of compensatory damages, on the other hand, is primarily to shift the loss from a wholly innocent party to one who is at fault.

Colodonato v. Consol. Rail Corp., 453 A.2d 987, 988 (Pa. Super. 1982), *affirmed*, 470 A.2d 475 (Pa. 1983) (citations and some quotation marks omitted).

see id. at 1538-39 (instructing jury on calculation of compensatory damages)). Then, only after the jury returned a verdict that Appellant and Williams were negligent and their conduct recklessly indifferent to the safety and well-being of Mrs. Kuchwara, did the court instruct the jury on punitive damages and directed them to determine whether and in what amount to award them. (***See id.*** at 1674-78).

Appellant argues that this procedure "severely prejudiced [it] and created an inflated 'compensatory' award that was tainted with punitive damages." (Appellant's Brief, at 18). However, as observed by the trial court, "[Appellees'] experts testified future medical expenses would be between $3,564,000 and $4,037,344 but the jury awarded $2,000,000. Likewise, future lost wages were estimated between $1,491,004 and $1,705,421 but the jury award was only $624,000. Significantly neither of those calculations were contested by expert testimony from either Defendant." (Trial Ct. Op., 1/31/13, at 5-6). "In Pennsylvania, [t]he law presumes that the jury will follow the instructions of the court." ***Commonwealth v. Huggins***, 68 A.3d 962, 973 (Pa. Super. 2013), *appeal denied*, 80 A.3d 775 (Pa. 2013) (citations and quotation marks omitted).

In light of the fact that the jury's compensatory damages award was more modest than the estimates of Appellees' experts, we may presume that the jury did not inflate the award with punitive damages after being instructed on the specific nature of what their award should consider. ***See id.*** Thus, the record does not support Appellant's contention that it was

prejudiced by the decision to bifurcate. ***Cf. Grossi***, ***supra*** at 1148. Accordingly, the trial court did not abuse its discretion by bifurcating the trial into two phases where evidence of reckless indifference and compensatory damages were intertwined, and the evidence admissible to prove punitive damages was entirely separate. ***See Coleman***, ***supra*** at 555; ***Colodonato***, ***supra*** at 988. Appellant's first issue lacks merit.

In its second issue, Appellant claims that "the trial court committed a fatal error by permitting [Appellees'] counsel to request that the jury send [Appellant] a message with its compensatory damages award." (Appellant's Brief, at 22). We disagree.

> Our review of a trial court's decision to grant or deny a new trial is deferential: the power to grant or deny a new trial lies inherently with the trial court, and we will not reverse its decision absent a clear abuse of discretion or error of law which controlled the outcome of the case.
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> * * *
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> . . . It is improper for counsel to present facts to the jury which are not in evidence and which are prejudicial to the opposing party; counsel may not comment on evidence to the effect that it removes an issue of credibility from the jury. Further, whether remarks by counsel warrant a new trial requires a determination based upon an assessment of the circumstances under which the statements were made and the precaution taken by the court and counsel to prevent such remarks from having a prejudicial effect. It is the duty of the trial judge to take affirmative steps to attempt to cure harm, once an offensive remark has been objected to.

Young v. Washington Hosp., 761 A.2d 559, 561-62 (Pa. Super. 2000), *appeal denied*, 782 A.2d 548 (Pa. 2001) (citations and footnote omitted).

Here, in the context of arguing that Appellant's conduct constituted reckless indifference, counsel for Appellees stated:

> For this entire period of time that [Appellant] chose to do this hauling work, [it] ignored the requirements to have a PUC number. And as Mr. Guntharp[, Appellees' expert witness,] said, they ignored the requirement to be registered with the Federal Government Safety Commission to, in fact, assure that they would be monitored, that they would keep a record of what kind of incidents they had. And they deliberately chose not to do that so that we have no record.
>
> And when you ask them for the records with regard to the maintenance of the vehicles, we have none. When you ask them for the records of any kind of periodic inspections, we have none. These were deliberate conscious choices they made. We're not going to do anything until we're caught, and then we'll pay as part of the cost of doing business. That was the attitude.
>
> And it's you and only you who could say, we're not going to allow that kind of attitude. And in fact, it's you and only you who can say to the good trucking companies and to the good truck drivers—and there are so many of them—that you're doing the right thing. It's important that they get that understanding and that message.
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> [Counsel for Appellant]: Your Honor, objection to the send the message issue.
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> [Counsel for Appellees]: I'm not saying to send the message at all.
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> [Counsel for Appellant]: I apologize. But I heard send the message—
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> The Court: I heard the remark. Move on.
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> [Counsel for Appellees]: It's important that by your verdict you acknowledge the importance of people complying with regulations and doing the right thing. . . .

(N.T. Trial, 9/20/12, at 1391-92). Counsel then concluded his argument on reckless indifference, and suggested that "it might be a convenient time [for

a break] because I'm going to switch gears if you don't mind." (***Id.*** at 1395). The trial court called a twenty-minute recess. (***Id.*** at 1397). After the parties returned, counsel for Appellees resumed his argument, stating, "before I proceed to talk to you about damages . . . ." (***Id.***).

Appellant argues that the trial court ignored its objection to Appellee's argument that the verdict "send a message" to Appellant. (Appellant's Brief, at 22). However, the record supports the trial court's conclusion that this single remark, in the context of Appellees' more than three-hour closing argument, "is without question a systemic attack on the issue of reckless indifference." (Trial Ct. Op., at 10). Preliminarily, the actual phrase to which Appellant now objects, that the verdict "send the message", was in fact made by Appellant's own counsel. (N.T. Trial, 9/20/12, at 1392). Furthermore, at the time of the remark, counsel for Appellees was discussing Appellant's failure to comply with regulatory standards, which he argued supported a finding of reckless indifference, not a damages calculation. (***See id.*** at 1391-92). Despite the twenty-minute recess, Appellant never renewed the objection nor requested a curative instruction, and on return, Appellees' counsel made it clear that only then would the discussion turn to damages. (***See id.*** at 1393, 1397). Finally, as previously discussed, the trial court specifically instructed the jury as to what considerations were permitted in awarding compensatory damages and that they "may not be arbitrary, speculative, or punitive[.]" (N.T. Trial, 9/21/12, at 1526); ***see also Huggins***, ***supra*** at 973. Appellant has not shown any prejudice

arising from counsel's remarks. Thus, the trial court did not abuse its discretion or commit an error of law by permitting the statement by Appellees' counsel to stand.[4] Appellant's second issue lacks merit.

Third, Appellant argues that "the trial court erroneously allowed shocking, post-accident evidence suggesting that [Appellant] almost killed Mrs. Kuchwara months after the accident at issue." (Appellant's Brief, at 31). Appellant argues that this was impermissible testimony about "[p]ost-accident conduct" which was proffered "for the sole purpose of inciting anger among the jurors, so that later, when they were asked to send a message to [Appellant], they would." (***Id.*** at 31). We disagree.

> When we review a trial court ruling on admission of evidence, we must acknowledge that decisions on admissibility are within the sound discretion of the trial court and will not be overturned absent an abuse of discretion or misapplication of law. In addition, for a ruling on evidence to constitute reversible error, it must have been harmful or prejudicial to the complaining party.

Stumpf v. Nye, 950 A.2d 1032, 1035-36 (Pa. Super. 2008), *appeal denied*, 962 A.2d 1198 (Pa. 2008) (citation omitted).

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[4] We observe that the cases cited by Appellant for the proposition that it is entitled to a new trial on the basis of allegedly prejudicial remarks are from federal and out-of-state courts, none of which are binding on this Court. (***See*** Appellant's Brief, at 26-30); ***see also Campbell v. Eitak, Inc.***, 893 A.2d 749, 751 (Pa. Super. 2006) (observing that decisions from other jurisdictions are not binding on this Court). ***See*** Pa.R.A.P. 2119(a), (b).

Preliminarily, we observe that Appellant fails to support this argument with pertinent case law. ***See*** Pa.R.A.P. 2119(a). "Citations of authorities must set forth the principle for which they are cited." Pa.R.A.P. 2119(b). Appellant, without elaborating, cites ***Caln Nether Co., L.P. v. Bd. of Supervisors***, 840 A.2d 484, 495 (Pa. Commw. 2004), *appeal denied*, 856 A.2d 835 (Pa. 2004), a Commonwealth Court case which is not binding on this Court and makes only passing reference to "evidence [which] is analogous to exclusion of evidence of post-accident repairs." ***Id.*** Similarly, Appellant cites without explanation ***Duchess v. Langston Corp.***, 769 A.2d 1131, 1141 (Pa. 2001), which involves a strict liability action, not at issue here. (***See*** Appellant's Brief, at 32). The only relevant authority cited by Appellant is a passing reference to ***Smith v. Barker***, 534 A.2d 533, 536 (Pa. Super. 1987), *appeal denied*, 549 A.2d 137 (Pa. 1988), for a blanket proposition that "[p]ost-accident conduct is irrelevant and inadmissible at trial." (Appellant's Brief, at 32). However, this generalized assertion is neither factually nor legally correct in the instant case. ***See*** Pa.R.A.P. 2119(b).

Here, Appellant objects to testimony by Appellees' psychological expert, Dr. Cynthia Edwards-Hawver, that Mrs. Kuchwara had reported a "near miss" with one of Appellant's trucks several months after the accident. (Appellant's Brief, at 33; ***see id.*** at 32-33). It claims that "[Appellees] wanted to introduce testimony that [Appellant] had 'actually' sent a second

truck to further injure [Mrs. Kuchwara]." (***Id.*** at 33). However, the record completely contradicts this allegation:

> A. If they have any type of trigger that brings them back to what happened to them with the post-traumatic stress disorder or anything related to, like in Holly's case, the accident, then they are back at square one; and you're trying to start all over again with helping them believe that they can overcome this.
>
> Q. In that regard, I'm going to skip ahead. . . . Is it your understanding that Holly had just started driving again around the end of August, the beginning of September?
>
> A. Yes.
>
> Q. And can you indicate what [Mrs. Kuchwara's treating psychologist, Kathryn] Vennie noted in terms of what occurred on September 19th at 2010?
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> [Counsel for Appellant]: Your Honor—
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> The Court: Ladies and gentlemen, the introduction of this evidence is not for purposes of indicating negligence on the part of [Appellant]. **It is only being introduced to show the psychological impact consistent with one of the criteria within the post-traumatic stress syndrome.** Does everybody understand the limited purpose of this submission? Okay. It's just what that impact had on her in relationship to the post-traumatic stress syndrome.
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> [Counsel for Appellant]: Just note my objection for the record, Your Honor.
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> The Court: Your objection is noted. I believe I have a curative instruction to the jury. . . .

(N.T. Trial, 9/17/12, at 557-58 (emphasis added)).

Appellant baselessly claims that the trial court's limiting instruction is a "canard" because it "came **before** the testimony was proffered," but cites no authority to support such a proposition. (Appellant's Brief, at 34 (emphasis in original)). Actually, by instructing the jury before allowing the testimony,

the trial court prevented unfair prejudice to Appellant by ensuring that the testimony was heard only in the relevant context. ***See*** Pa.R.E. 403. The record does not support Appellant's allegations. Accordingly, the trial court did not err or abuse its discretion in admitting highly relevant evidence for the purpose of establishing Appellees' claim that Mrs. Kuchwara was suffering from post-traumatic stress disorder. ***See Stumpf***, ***supra*** at 1035-36. Appellant's third issue lacks merit.

Fourth, Appellant claims that "the trial court erred when permitting [Appellees] and lay witnesses to conclude for the jury that [Appellant] acted with reckless indifference." (Appellant's Brief, at 35). Appellant argues that "[e]xpert opinion on a question of law is inadmissible" and that the trial court erred in permitting "hotly contested legal opinion by a continuum of witnesses." (***Id.*** at 35, 40). Specifically, Appellant asserts that testimony on legal opinions and conclusions are prohibited at trial, and that the trial court erred in permitting witnesses to state that its conduct constituted "reckless indifference." (***Id.*** at 36-37). We disagree.

At the time of trial, Pennsylvania Rule of Evidence 704 provided: "[T]estimony in the form of an opinion or inference otherwise admissible is

not objectionable because it embraces an ultimate issue to be decided by the trier of fact." Pa.R.E. 704.[5]

"Pennsylvania law allows expert opinion testimony on the ultimate issue. As with lay opinions, the trial judge has discretion to admit or exclude expert opinions on the ultimate issue depending on the helpfulness of the testimony versus its potential to cause confusion or prejudice." ***McManamon v. Washko***, 906 A.2d 1259, 1278-79 (Pa. Super. 2006), *appeal denied*, 921 A.2d 497 (Pa. 2007) (citations omitted); ***see also*** Pa.R.E. 701(b) (providing that lay witnesses may give opinions "helpful to clearly understanding the witness's testimony or to determining a fact in issue"). "Therefore, the trial court will not be reversed in ruling upon the admissibility of testimony to the ultimate issue in the case unless the trial court clearly abused its discretion and actual prejudice occurred." ***Houdeshell v. Rice***, 939 A.2d 981, 986 (Pa. Super. 2007) (case citations and internal quotation marks omitted).

Here, Appellant objects to expert testimony by Michael Pepe and Walter Guntharp. (***See*** Appellant's Brief, at 37). Michael Pepe, an expert witness in the field of accident reconstruction, testified that the non-functioning condition of the brakes on the truck would have been evident to

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[5] Rule 704 was rescinded and replaced, effective March 18, 2013, to provide: "An opinion is not objectionable just because it embraces an ultimate issue." Pa.R.E. 704.

the driver, Theodus Williams, and therefore it was his opinion that "the choice to drive out of the yard of [Appellant] and . . . the choice to drive this truck with the brakes in that condition" constituted reckless indifference. (N.T. Trial, 9/10/12, at 1344; ***see id.*** at 1339-53). Similarly, Walter Guntharp was admitted as an expert witness in safety practices, compliance with state and federal regulations, maintenance programs, and operation of vehicles similar to Appellant's. (***See*** N.T. Trial, 9/06/12, at 596-97). In light of evidence that Theodus Williams and Appellant failed to comply with commercial driver's license requirements, he testified:

> The very fundamental foundation of a safe operation is the qualification of the drivers and making sure that you hire safe, qualified drivers. The only way to do that is to go through the qualification process we just talked about with the background checks and everything else. A company that fails to do that clearly is showing a reckless indifference for safety because they are just putting virtually anybody with a driver's license behind the wheel.

(***Id.*** at 708-09).

"A legal conclusion is a statement of a legal duty without stating the facts from which the duty arises." ***Mellon Bank, N.A. v. Nat'l Union Ins. Co. of Pittsburgh, PA***, 768 A.2d 865, 869 n.1 (Pa. Super. 2001) (citation omitted). Here, the trial court determined that "because this case involved the operation of a 1979 Mack Tri Axle dump truck with self (driver) adjusting brakes," opinion testimony was probative in determining the ultimate issue of whether Appellant's conduct rose to the level of reckless indifference. (Trial Ct. Op., at 6). In furtherance of this goal, the court required the

witnesses to develop the factual basis for their opinions. (***See*** N.T. Trial, 9/10/12, at 1343). Thus, the trial court did not abuse its discretion in permitting expert witnesses to opine on the ultimate issue. ***See Houdeshell***, ***supra*** at 986.

Furthermore, the record supports the trial court's observation that Appellant was not prejudiced by this testimony. (***See*** Trial Ct. Op., at 6). Appellant's own witness, John Valvano, Jr. conceded that "the company was indifferent to the safety of the vehicles[.]" (N.T. Trial, 8/30/12, at 544). Appellant's employee, Anthony Tunis, agreed that knowing failure to keep vehicle reports, certify the trucks with the PUC, or to inspect vehicles was "indifferen[t] to the safety" of the vehicles and the motoring public. (N.T. Trial, 9/05/12, at 505; ***see id.*** at 504-09, 518-20). Thus, where Appellant's own witnesses conceded the level of indifference exhibited by its agents, it failed to prove that "actual prejudice occurred" by expert testimony on the ultimate issue of reckless indifference. ***Houdeshell***, ***supra*** at 986. Appellant's fourth issue does not merit relief.

Finally, Appellant claims that "[t]he jury's duplicative award of consortium damages was erroneous and further demonstrates the inflated nature of the 'compensatory' award." (Appellant's Brief, at 40). Specifically, it argues that Robert Kuchwara was twice compensated for "loss of services . . . [b]y permitting the jury to enter an award for consortium, which includes loss of services, and then permitting the jury to enter **another** award for loss of services." (***Id.*** at 41 (emphasis in original)). This issue is waived.

Preliminarily, we observe that Appellant relies exclusively on a single citation to ***Linebaugh v. Lehr***, 505 A.2d 303, 304 (Pa. Super. 1986) to claim that "Pennsylvania law forbid[s] a double recovery." (Appellant's Brief, at 41). However, ***Linebaugh*** was a wrongful death claim, in which this Court determined that, pursuant to the Wrongful Death Statute at 42 Pa.C.S.A. § 8301, "a surviving spouse cannot maintain a separate cause of action for loss of consortium resulting from the death of a spouse but must instead recover damages for loss of the deceased spouse's society in an action for wrongful death." ***Linebaugh***, ***supra*** at 305. Thus, ***Linebaugh*** is inapposite to the instant action, and Appellant cites no controlling authority for its position that loss of consortium and loss of household services is duplicative. ***See*** Pa.R.A.P. 2119(a), (b); ***see also J.J. Deluca Co. v. Toll Naval Assocs.***, 56 A.3d 402, 411 (Pa. Super. 2012) (finding that failure to develop an argument waives claim). Thus, Appellant has waived the issue.

Moreover, our standard of review of jury verdicts is clear:

> The Court is not warranted in setting aside, reducing, or modifying verdicts for personal injuries unless unfairness, mistake, partiality, prejudice, or corruption is shown, or the damages appear to be grossly exorbitant. The verdict must be clearly and immoderately excessive to justify the granting of a new trial. The amount must not only be greater than that which the court would have awarded, but so excessive as to offend the conscience and judgment of the Court.

Renna, ***supra*** at 670 (citation omitted).

At the conclusion of trial, the court instructed the jury:

> Members of the jury, a plaintiff's spouse is entitled to be compensated for the past, present, and future loss of the injured

> party's services to him and the past, present, and future loss of companionship. Consortium claims are losses arising out of the marital relationship and include a loss of support, comfort, assistance, association, companionship and the loss of ability to engage in sexual relations. There is no fixed, infallible, or objective standard with which to measure the damages for the loss of Mrs. Kuchwara's service, society, and comfort. Rather, you are to be guided by your good judgment in calculating an award that will fully compensate Robert J. Kuchwara for these losses.

(N.T. Trial, 9/21/12, at 1532).

> The duty of assessing damages is within the province of the jury and should not be interfered with by the court, unless it clearly appears that the amount awarded resulted from caprice, prejudice, partiality, corruption or some other improper influence. In reviewing the award of damages, the appellate courts should give deference to the decisions of the trier of fact who is usually in a superior position to appraise and weigh the evidence. If the verdict bears a reasonable resemblance to the damages proven, we will not upset it merely because we might have awarded different damages.

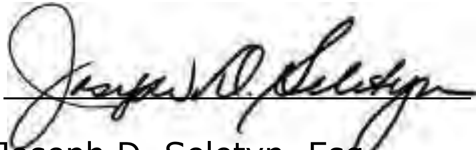
Hatwood v. Hosp. of the Univ. of Pa., 55 A.3d 1229, 1240-41 (Pa. Super. 2012), *appeal denied*, 65 A.3d 414 (Pa. 2013) (citation omitted).

Here, Appellees' expert witness on wage loss, incapacity of earning ability and associated medical costs, Andrew Verzilli, estimated that, prior to the accident, Mrs. Kuchwara had provided nearly $700,000 in household services, valued at sixteen to twenty dollars per hour, twenty hours per week. (***See*** N.T. Trial, 9/14/12, at 306-78). Mrs. Kuchwara testified that, since the accident, Robert does "everything," and that her trauma has caused "strain and stress in the marriage[.]" (N.T. Trial, 9/18/12, at 797-98). Ultimately, the jury awarded Robert Kuchwara $400,000 for loss of consortium and $1,065,000 for loss of household services of his wife. (***See***

N.T. Trial, 9/21/12, at 1647-48). Thus, the verdict bears a reasonable resemblance to the damages proven, and we will not upset it. ***See Hatwood***, ***supra*** at 1240-41. This issue would not merit relief, and Appellant's claims for a new trial and remittitur lack merit.

Judgment affirmed. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 5/12/2014