

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

PAUL GILL AND DIANE GILL, H/W	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
EXXON MOBIL CORPORATION	:	
	:	
Appellant	:	No. 2811 EDA 2024

Appeal from the Order Entered September 23, 2024
In the Court of Common Pleas of Philadelphia County Civil Division at
No(s): 200501803

BEFORE: KUNSELMAN, J., NICHOLS, J., and SULLIVAN, J.

CONCURRING/DISSENTING STATEMENT BY SULLIVAN, J.:

FILED OCTOBER 15, 2026

I respectfully disagree with the majority's suggestion that Appellant, Exxon Mobil Corporation ("Exxon"), did not properly argue its claims that the trial court abused its discretion when denying a new trial or remittitur of the \$725 million award¹ in favor of Paul Gill ("Gill") for purely non-economic damages. **See** Majority Memorandum at 25-26.

The majority determines that Exxon did not explicitly frame its appellate arguments based on the deferential standards of review of the trial court decision to not award a new trial or remittitur. **See id.** The majority correctly

¹ As noted below, the total \$725 million award was composed of the jury's findings on specific items of damages, which included: (1) \$435 million for past, present, and future pain and suffering; (2) \$18.125 million for embarrassment and humiliation; (3) \$253.750 million for loss of enjoyment of life; and (4) \$18.125 million for disfigurement. **See** N.T., 5/9/24, at 20-22. Additionally, the jury awarded \$500,000 for Gill's wife's loss of consortium. **See id.** at 22.

notes that portions of Exxon's argument implicate a request for a *de novo* reweighing of the evidence by this Court. **See id.** Nevertheless, I would not conclude Exxon's failure to employ the term "abuse of discretion," or related phrases, in the argument portion of its brief was fatal to its request for, or this Court's ability to conduct, meaningful appellate review.

In my view, Exxon has stated a colorable argument that the trial court's denial of its post-trial motions on damages constituted an abuse of discretion. Exxon, for example, has asserted the trial court's reasoning was unreasonable based on the court's application of the standards for reviewing the excessiveness of damages. **See** Exxon's Brief at 41-42. Moreover, Exxon has consistently argued that specific items in the jury's award, including the \$18-plus million for Gill's disfigurement, were not supported by the evidence. **See id.** at 43; ***Smalls v. Pittsburgh-Corning Corp.***, 843 A.2d 410, 415 (Pa. Super. 2004) (concluding the trial court abused its discretion where the evidence adduced at trial did not support an award).²

² Exxon's post-trial motion preserved its claim that specific items in the jury's award, including disfigurement, were excessive because they lacked support in the record. **See** Exxon's Post Trial Motion, 5/17/24, at ¶¶ 19, 142, 171, 174; **see also** Exxon's Brief in Support of Post Trial Motion, 5/20/24, at 53-54; N.T., 8/26/24, at 22; Exxon's Brief at 43. With respect to disfigurement, Exxon cited the following portion of the trial record:

The oldest scar would be where his first port was, and they removed that a couple years ago, and they put the second port in this year.

(Footnote Continued Next Page)

For these reasons, I conclude there is a proper basis for this Court to have engaged in a substantive merits review of the trial court's exercise of discretion when denying post-trial relief. **See *Smalls***, 843 A.2d at 415.³

From the colon cancer, they did it laparoscopically, so I think he has four of the smaller scars where they put the instruments through, and then to bring the tumor out, they had to cut across the bottom of his stomach, and I think that incision is about five inches long.

N.T., 5/3/24, at 13; **see also** Exxon's Brief in Support of Post Trial Motion, 5/20/24, at 53 (citing record); Exxon's Brief at 43 (same). There is no indication the jury saw Gill's scar. Gill responded there was evidence that he was "riddled with scars" from his various procedures but cited no additional testimony or documentary evidence presented at trial. Appellees' Memorandum of Law in Opposition to Exxon's Motion for Post Trial Relief, 7/1/24, at 116; Appellees' Brief at 52. In its order summarily denying Exxon's post-trial motion, the trial court did not address the specific claim regarding disfigurement.

Further, although Exxon's Pa.R.A.P. 1925(b) statement principally challenged the aggregate \$725 million award, the issue, as stated, incorporated Exxon's subsidiary arguments raised in the trial court concerning individual items of damages in this case. **See** Pa.R.A.P. 1925(b)(4)(v) (providing that "[e]ach error identified in the Statement will be deemed to include every subsidiary issue that was raised in the trial court"); Exxon's Rule 1925(b) Statement, 11/4/24, at ¶ 3 (stating, "The court erred in not granting a new trial or, in the alternative, remittitur when the excessiveness of the \$725 million verdict was against the weight of evidence, shocking to the conscience, vastly out of line with other pain and suffering awards, and so unrelated to . . . Gill's injuries as to be arbitrary and the product of bias and prejudice"). Unfortunately, the trial court's Rule 1925(a) opinion did not address the subsidiary claim that the \$18-plus million award for disfigurement was not supported by the evidence.

³ In ***Smalls***, this Court addressed analogous arguments that an award for was excessive based on the evidence at trial that the plaintiff's symptoms of asbestosis were not severe, the plaintiff had other ailments unrelated to asbestos exposure, and the plaintiff's impairments and pain and suffering did not rise to the level of cases involving comparable awards. **See *Smalls***, 843 A.2d at 415-17. The ***Smalls*** Court remanded for a new trial on damages. **See id.** at 418.

Accordingly, I cannot join the majority's decision to "dismiss," as misplaced or unpersuasive, the entirety of Exxon's argument with respect to the trial court's decision to uphold the jury's award. Majority Memorandum at 29. Therefore, I dissent from that portion of the majority's memorandum.