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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

MARY B. BRUMFIELD, et al.,	)	CASE NO. 1:05 CV 847
	)	
Plaintiffs,	)	JUDGE DONALD C. NUGENT
	)	
v.	)	MEMORANDUM OPINION
	)	AND ORDER
TYSON FOODS, INC., et al.,	)	
	)	
Defendants.	)	

This matter is before the Court on Defendants' Motion for Remittitur and/or New Trial (ECF #170) and Defendants' Amended/Supplemental Motion for Remittitur (ECF #206). In their first Motion, Defendants request that the jury verdict in favor of Plaintiff for \$6 million on Plaintiff's wrongful death claim be remitted or, in the alternative, a new trial ordered. In their Amended/Supplemental Motion Defendants move to include the \$1,000,000 survivorship award in their Motion for Remittitur and/or New Trial. For the reasons that follow, Defendants' Motions are denied.

**FACTUAL AND PROCEDURAL BACKGROUND**

This action was precipitated by a car/truck collision that occurred on May 29, 2004. On that date, Daniel Brumfield, driving in the correct lane on State Route 30, was struck head on by a Freightliner tractor-trailer driven by Dale Friesen, an employee of Tyson Foods. Mr. Friesen was driving in the wrong lane at time of the collision. It should be noted that the section of State Route 30 on which the collision occurred was a no pass zone. Mr. Brumfield saw the truck coming at him and had stopped his vehicle prior to impact. Mr. Brumfield was killed in the collision. Daniel Brumfield's mother, Mary R. Brumfield, individually, as Administrator of the

Estate of Daniel J. Brumfield. and on behalf of the survivors, heirs, and beneficiaries of Daniel J. Brumfield. brought this action against Tyson Foods, Inc. and Dale R. Friesen, alleging wrongful death in violation of Ohio Rev. Code § 2125.01 *et seq.* and a survival action pursuant to Ohio Rev. Code § 2305.21 alleging negligent infliction of emotional distress.<sup>1</sup>

After a five day trial, the jury found in favor of the Plaintiff on the survivorship claim and awarded One Million dollars for Daniel Brumfield's serious emotional distress plus \$22,000 dollars for property damage on the survivorship claim. Before the Jury was charged, the parties stipulated that Plaintiff was entitled to Judgment in her favor on the wrongful death claim and that the matter would go to the jury for a determination of damages. At that time the Court entered Judgment in favor of Plaintiff on the wrongful death claim. The Jury awarded Six Million dollars in compensatory damages to Daniel Brumfield's mother, father and brother and \$6,687 for funeral and burial expenses on the wrongful death claim. The Court entered Judgment in accordance with the Jury's verdicts.

#### STANDARD OF REVIEW

It is well settled that a jury's verdict is presumptively valid. *Brooks v. Toyotomi Co.*, 86 F.3d 582 (6<sup>th</sup> Cir. 1996). In rendering its verdict, a jury is presumed to have followed the court's instructions to leave emotion and sympathy at the door and to decide the case based on the evidence, uninfluenced by passion or prejudice. *Caldwell v. Ohio Power Co.*, 710 F.Supp. 194

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Plaintiff alleged that Tyson was both vicariously liable for Mr. Friesen's negligent conduct and independently liable for its own negligence in hiring, training, supervising and retaining Mr. Friesen. The parties stipulated that Tyson was vicariously liable for Mr. Friesen's negligence and the Court granted Defendants' Rule 50 motion at the close of Plaintiff's case on Plaintiff's direct claim of negligence against Tyson.

(N.D. Ohio 1989). Although a district court is generally required to presume that a jury verdict is valid, Fed. Civ. R. 59 does provide a means by which the court may grant a party a new trial on all or some of the issues raised, or by which the court may alter or amend a judgment.

Rule 59(a) provides in pertinent part:

A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States...

Rule 59 does not permit a court to set aside a jury verdict "simply because different inferences and conclusions could have been drawn or because some other results are more reasonable." *J.C. Wyckoff & Assoc., v. Standard Fire Insurance Co.*, 936 F.2d 1474, 1487 (6<sup>th</sup> Cir. 1991). A new trial may be granted only if it is clear that the jury reached a "seriously erroneous result." *Brooks v. Toyotomi Co.*, 86 F.3d 582 (6<sup>th</sup> Cir. 1996). The Sixth Circuit has stated that a jury reaches a "seriously erroneous result" if (1) the verdict is against the weight of the evidence; (2) the damages are excessive; or (3) the trial was unfair in some fashion such that the proceedings were influenced by prejudice or bias. *Holmes v. City of Massillon, Ohio*, 78 F.3d 1041 (6<sup>th</sup> Cir. 1996).

Furthermore, a judgment may only be altered through remittitur under similarly limited circumstances. As a general rule, the Sixth Circuit has held that "a jury verdict will not be set aside or reduced as excessive unless it is beyond the maximum damages that the jury could find to be compensatory for a party's loss." *American Trim, L.L.C. v. Oracle Corp.*, 383 F.3d 462, 475 (6<sup>th</sup> Cir. 2004). This occurs only if "after reviewing all of the evidence in the light most favorable to the prevailing party, [the court] is convinced that the verdict is clearly excessive:

resulted from passion, bias, or prejudice, or is so excessive or inadequate as to shock the conscience of the court." *Id.*, quoting *Farber v. Massillon Bd. Of Educ.*, 917 F.2d 1391 (6<sup>th</sup> Cir. 1990).

#### DISCUSSION

Defendants argue the verdicts should be remitted or a new trial granted because the Jury's \$6,000,000 wrongful death verdict was "seriously erroneous" because it was excessive. It was excessive Defendants contend because the Court failed to bifurcate punitive damages thus permitting the Jury to hear evidence of alleged malicious conduct and pleas from Plaintiff's counsel to punish. The Jury's verdict was also excessive according to Defendants because the Jury was permitted to hear the testimony of one of Plaintiff's experts, Peter Philbrick regarding criticisms of Tyson's safety program, when that testimony should have been excluded pursuant to Fed. R. Evid. 702. Finally, Defendants contend that the verdict was excessive because it was disproportionately higher than similar wrongful death verdicts in Ohio. Defendants further contend that the \$1 million survivorship verdict was so large as to shock the conscience of the Court and must be remitted.

Prior to trial Defendants filed a motion pursuant to Fed. R. Civ. P. 42(b) to bifurcate Plaintiff's claim for compensatory liability and damages from her claim for punitive damages. Plaintiff opposed the motion on the ground that the facts of the accident were intertwined and interwoven in the wrongful death claim and that evidence regarding Tyson's role in the supervision of Mr. Friesen up to the time of the accident was relevant and should be considered with respect to the family's grief and sorrow as a result of the violent death of their son and brother. Plaintiff claimed that the fact that Tyson allegedly ignored facts that should have

resulted in Mr. Friesen being taken off the road affects the suffering of the surviving heirs. Further, separation of claims would not expedite trial. Finding separation of claims to be unnecessary in this case and knowing that appropriate jury instructions would avoid any possible prejudice to Defendants, the Court denied Defendants' motion to bifurcate. Rule 42(b) gives a district court wide discretion in deciding whether bifurcation of a trial is appropriate. See *Gafford v. General Electric Co.*, 997 F.2d 150, 172 (6<sup>th</sup> Cir. 1993). The denial of Defendants' bifurcation motion was appropriate given the facts and circumstances in this case.

Regardless of whether the Court's refusal to bifurcate was erroneous, the gravamen of Defendants' complaint is that as a result of that decision, Plaintiff's evidence in support of punitive damages was admitted. Specifically, Defendants complain that Plaintiff was permitted to illicit testimony that Mr. Friesen placed himself in a hazardous situation by the operation of his tractor trailer at the time of the crash and that Plaintiff's counsel argued in closing that Mr. Friesen's conduct was callous and that he chose to impose the risks consequent to his own behavior on other motorists. Plaintiff's counsel urged the Jury to find that Mr. Friesen acted with actual malice and a conscious disregard to the safety of others and award punitive damages against the Defendants.

Though ultimately liability was undisputed, the facts and circumstances surrounding the collision required the Court to charge the Jury on Plaintiff's claim for punitive damages.<sup>2</sup> Thus, in allowing that claim to go the Jury, this Court determined that there was sufficient evidence,

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Defendants denied liability in their answer but indicated by various statements that liability was not seriously contested. Nevertheless, Defendants did not "officially" stipulate to liability until the close of Plaintiff's case.

that if believed, could allow a reasonable jury to award punitive damages. Not the least of that evidence was the conduct of Mr. Friesen prior to the collision and his driving history. While Defendants contend that no evidence that supports liability should have been admitted since Defendants conceded liability, the evidence surrounding what happened immediately before and after the accident is relevant to the family's mental and emotional pain and suffering and the compensatory damages resulting from that suffering.

In addition, Defendants object to the denial of their motion in limine seeking to exclude the testimony of Plaintiff's expert, Peter Philbrick under Fed. R. Evid. 702. Defendants contend that Mr. Philbrick should not have been permitted to testify because he was unable to quantify the relationship between any alleged deficiency with Tyson's safety program and the cause of the accident. Thus, Defendants argue that they were prejudiced because the Jury was permitted to hear Mr. Philbrick's criticism of Tyson's safety program and operations that had no causal connection to the accident. Mr. Philbrick testified regarding trucking industry standards of care in terms of a company's duties to monitor its drivers. He discussed what a company's responsibilities were under the trucking industry's standard of care, reviewed some of the violations and problems in Mr. Friesen's driving history with Tyson and offered an opinion that Tyson had not met the industry standard of care in auditing and investigating the driving history of Mr. Friesen.

Mr. Friesen's testimony was clearly admissible under Fed. R. Evid. 702. Rule 702 provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill,

experience, training or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

A court undertakes a two tiered inquiry when determining if expert testimony is admissible. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589 (1983). First, the court must determine whether the reasoning or methodology underlying the expert's testimony is scientifically valid. Secondly, the court should determine whether that reasoning or methodology could be properly applied to the facts at issue to aid the trier of fact. *Id.* In this case Defendants do not dispute that Mr. Philbrick satisfied the first inquiry, rather they contend that Mr. Philbrick's testimony did not link Tyson's safety program as a proximate cause of the accident, thus, it did not aid the trier of fact. Moreover, Defendants contend that Mr. Philbrick's testimony only confused the Jury. Defendants point to the fact that the Jury asked a question during deliberations regarding the number of points Mr. Friesen had accumulated as a driver for Tyson. Based on that question, Defendants speculate that the Jury was considering evidence of Tyson's safety program and Mr. Friesen's driving history despite the fact that the evidence had nothing to do with the issues the Jury was charged to consider.

Defendants' argument fails. Plaintiff argued that the accident could have been prevented if Tyson had adequately monitored, supervised and disciplined its drivers, consistently with industry standards. Mr. Philbrick testified regarding the industry standards and offered his opinion that Tyson failed to meet the industry standards in their auditing and monitoring of Mr. Friesen's driving history. Thus, his opinion, while not stating that Tyson's failure to meet industry standards was a proximate cause of the accident, aided the jury in defining the industry

standards and whether Tyson met them. From these first few steps, a reasonable person could decide if Tyson's failure to meet industry standards was a proximate cause of the accident. Accordingly, the testimony was admissible under Fed. R. Evid. 702.

Moreover, the fact that the Jury asked a question about Mr. Friesen's points does not mean it was considering evidence that had nothing to do with the issues it was charged to consider. The Jury was charged with determining the amount of compensatory damages that should be awarded to Plaintiff on the wrongful death claim. Further, they were charged with determining whether Plaintiff had established a survivorship claim for negligent infliction of serious emotional distress; and finally, the Jury was charged with considering whether Plaintiff was entitled to punitive damages on the wrongful death claim. As part of their deliberations the Jury was required to review the evidence presented by the parties. Mr. Philbrik's testimony and the evidence concerning Tyson's safety program, or lack thereof, would have been relevant to the question of whether to impose punitive damages. In any event, the Court will not speculate on why the Jury asked the question or which issue the Jury was considering when they asked the question and will not further extrapolate that the jury must have somehow been confused. However they reached their decision, the Jury's review of the properly admitted evidence led them to reject Plaintiff's claim for punitive damages.

Ultimately, Defendants argue the failure to bifurcate punitive damages and bar Mr. Philbrik's testimony created a hostile atmosphere and that the Jury's excessive verdicts were clearly the result of the resulting prejudice against Defendants. Defendants posit that there could be no other reason than prejudice for the Jury to have returned a \$6,000,000 verdict on Plaintiff's wrongful death claim based on the death of a single adult male with no children, no lost earnings



claim, virtually no medical bills and minimal out of pocket losses.

Defendants appear to have always under valued this case. Every case must be judged on its own merits. Defendants' computation of likely damages is based solely on impersonal factors—age, marital status, occupation, number of dependents. It does not take into account the intangibles that were present in the parties in this case. At trial the Jury met a family who was extraordinarily close and happy with each other. Their lives were closely intertwined. They worked together, ate together, planned events together. The testimony of each member of this hard working family was sincere and devastating. Daniel Brumfield was the oldest son, a United States Marine and a best friend to his brother. He worked with his father and brother in a family construction business. The family members relived the pain and grief and anger that Daniel's death brought to each one of them and how their lives have been affected.

The family was appalled by the fact that Mr. Friesen pulled his tractor-trailer out of his lane without a clear line of sight in a no pass zone; that he barreled on at over 60 miles an hour, not seeing Daniel's pick-up truck and not even braking until after he hit Daniel's truck which Daniel had brought to a stop in a futile effort to avoid the collision. They had questions about what Tyson knew about Mr. Friesen's driving record and whether Tyson could have prevented Daniel's death if they had followed industry safety standards. This family had obviously lived through hell and were still suffering. To them Daniel's life had infinite value that money could not measure. The Jury listened to their testimony about their lives with Daniel and their lives without Daniel and heard their pain and suffering. The Jury was charged with putting some monetary value on the family's pain and suffering and returned a verdict awarding them compensatory damages of \$6,000,000. which was less than half of what Plaintiff's counsel

requested in closing argument and \$5,000,000 more than Defendants' counsel suggested in closing. Although this Court concluded that Plaintiff had presented sufficient evidence to submit the issue of punitive damages to the Jury, the Jury concluded that Plaintiff failed to establish that Defendants' conduct rose to the level of maliciousness such that punitive damages should be awarded. Contrary to Defendants' suggestion, this fact-- that Jury listened to the Court's instructions and considered the evidence and found that Plaintiff failed to prove that she was entitled to punitive damages by clear and convincing evidence-- bolsters the argument that the Jury's verdicts were the result of careful, thoughtful and accurate analysis of the evidence and the law and were not excessive and the result of improper passion or bias. The Jury heeded the Court's instructions not to be influenced by bias or sympathy and returned verdicts that were supported by the evidence.

Finally, as additional evidence that the wrongful death verdict was excessive, Defendants assert that it was disproportionately higher than similar wrongful death verdicts in Ohio. Defendants assert that the average wrongful death verdict was approximately \$2,000,000 and attached a table of Ohio verdicts within the last two years. Plaintiff responds with a table of wrongful death verdicts from Ohio going back at least ten years that greatly exceed \$6,000,000. What is clear from this evidence is that these verdicts are individual and entirely the product of the parties and the facts of each case. Just because this verdict is higher than some Ohio verdicts but lower than others, does not mean it is excessive or improper. This verdict was based upon testimony and evidence properly before the Jury. The wrongful death award was not seriously erroneous or influenced by prejudice and bias. Accordingly, Defendants' Motion for a New Trial on the wrongful death claim is denied. Moreover, after reviewing all of the evidence in a light

most favorable to the Plaintiff, the non-moving party, the Court finds that the wrongful death award was not clearly excessive, the result of passion, bias or prejudice or is so excessive as to shock the conscious of the Court. Thus, Defendants' Motion for Remittitur of the \$6,000,000 verdict is denied.

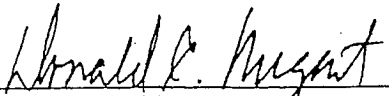
Similarly, Defendants argue that the Jury's verdict of \$1,000,000 on Plaintiff's survivorship claim was excessive and should be remitted. Defendants argue that the only evidence of Daniel Brumfield's pre-impact suffering is the testimony of expert Dale Dent who testified that Daniel was aware of the truck bearing down on him for 4 to 6.5 seconds during which time Daniel brought his truck to a stop or near stop. The evidence also showed that the tractor-trailer was moving at least 60 miles an hour as it bore down on Daniel and that Mr. Friesen never hit the brakes until after impact. From this information, the Jury estimated that Daniel suffered mental and emotional distress while waiting helplessly for impact and awarded Plaintiff \$1,000,000 in compensation for the infliction of this severe emotional distress. This amounts to between \$153,000 - \$250,000 per second of suffering. While this verdict may seem high, the Court will not second guess the Jury's analysis of the evidence as a jury verdict should not be set aside "if there is any credible evidence to support [it]." *American Trim, L.L.C. v. Oracle Corp.*, 383 F.3d 462, 475 (6<sup>th</sup> Cir. 2004). Accordingly, Defendants' Amended/Supplemental Motion for Remittitur of the survivorship verdict is denied.

#### CONCLUSION

For the reasons set forth above, Defendants' Motion for a New Trial on the wrongful death damages (ECF #170) is denied because the damages awarded by the Jury were not excessive and the trial was not unfair in some fashion such that the proceedings were influenced

by prejudice or bias. Further, Defendants' Motion for a Remittitur of the \$6,000,000 wrongful death verdict is denied. In addition, Defendants' Amended/Supplemental Motion for Remittitur of the \$1,000,000 survivorship verdict (ECF #206) is denied.

IT IS SO ORDERED.

  
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Judge Donald C. Nugent  
UNITED STATES DISTRICT COURT

DATED: October 10, 2007