DIVISION ONE
FILED: 09/23/2010
RUTH WILLINGHAM, ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JEANNE M. STEVEN, individually and on behalf of THOMAS J. STEVEN, II, MCRAE M. STEVEN, ZACHARY A. STEVEN, NATHAN J. STEVEN, ANNIE-MARIE STEVEN, ALISE M. STEVEN, AMY L. STEVEN, JACOB M. STEVEN, JOSEPH P. STEVEN, and ESTHER S. STEVEN; GLENNN P. STEVEN, individually; and JACOB M. STEVEN, individually, Plaintiffs/Appellees, v. SWIFT TRANSPORTATION COMPANY, INC., an Arizona corporation, Defendant/Appellant.	No. 1 CA-CV 08-0505 DEPARTMENT B **MEMORANDUM DECISION** (Not for Publication - Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Maricopa County

Cause No. CV 2004-013847

The Honorable Richard J. Trujillo, Judge (Retired)

AFFIRMED IN PART; REVERSED IN PART; REMANDED

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D O W N I E, Judge

¶1 Swift Transportation Company, Inc. appeals from the verdicts and judgment entered in favor of members of the Steven family (collectively, "plaintiffs") on their claims for wrongful death and personal injuries. For the following reasons, we affirm in part, reverse in part, and remand for a new trial.

FACTS & PROCEDURAL HISTORY

¶2 On April 4, 2004, Swift employee Kevin Jones was driving an eighteen-wheel tractor-trailer rig in Kansas when he ran a stop sign and struck a vehicle driven by Thomas Steven ("Thomas"). Thomas was killed instantly. His son, Jacob, and his nephew, Glenn, were seriously injured.

¶3 Thomas's widow and eight children sued Swift for wrongful death in Maricopa County Superior Court. Jacob and Glenn also brought claims for personal injuries sustained in the accident. Before trial, Swift admitted that Jones was negligent in causing the accident and that he was acting in the course and scope of his employment for Swift.

¶4 Trial began on October 30, 2007. The jury returned verdicts on November 30 as follows: (1) Glenn Steven was awarded $67,395.50 for hospital, doctor, and medical expenses and $3,500,000 for non-economic loss arising from his personal injury claim;[1] (2) Jacob Steven was awarded $182,852.97 for hospital, doctor, and medical expenses and $1,944,000 for non-economic loss for his personal injury claim;[2] (3) Jeanne Steven (Thomas's wife) was awarded $10,027,999 for economic loss and $4000 for funeral and burial expenses; and (4) each of the eight Steven children received an award of $1,000,000 for economic loss.[3] The jury awarded $13,875,000 in punitive damages against Swift and found no comparative fault attributable to Thomas.

¶5 After the trial court denied Swift's renewed motion for judgment as a matter of law ("JMOL") and its motion for new trial, this timely appeal followed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-120.21(A)(1) (2003) and -2101(B)(F)(1) (2003).

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[1] Because Kansas law governed Glenn's personal injury claim, his non-economic damages were capped at $250,000. He was awarded $310,395.50 in the final judgment. Plaintiffs have not challenged this amount, though it appears to be less than the total of Glenn's economic and statutorily capped non-economic losses ($67,395.50 + $250,000 = $317,395.50).

[2] Applying Kansas damage caps to Jacob's injury claims resulted in a judgment amount of $432,852.97 ($182,852.97 + $250,000).

[3] Under Kansas law, Thomas's parents, Joseph and Esther Steven, were not entitled to compensatory damages, and the final judgment dismissed them as plaintiffs.

DISCUSSION

¶6 Swift has identified the following issues for our review:

1. Whether the trial court erred by applying Arizona law to the request for punitive damages.
2. Whether the court erred in its rulings regarding plaintiffs' negligent retention claim.
3. Whether the jury should have been allowed to consider punitive damages.
4. Whether the court erred by giving an adverse inference jury instruction or in admitting evidence about spoliation and discovery-related matters.
5. Whether the wrongful death compensatory damage awards should be set aside based on legal error or insufficiency of the evidence.[4]
6. Whether the trial court erred by allowing plaintiffs' expert to opine about the ultimate issue regarding punitive damages.
7. Whether the court improperly excluded evidence about the accident history and redesign of the roadway.
8. Whether the verdicts should be set aside due to

[4] Swift is not appealing the damage awards to Glenn and Jacob on their personal injury claims.

passion and prejudice.

1. Punitive Damages

¶7 Before trial, Swift sought a ruling that Kansas law would apply to all of plaintiffs' claims. Unlike Arizona, Kansas caps personal injury and wrongful death non-economic damages. Kan. Stat. Ann. ("K.S.A.") §§ 60-1901 (1963), -1903(a) (1998). As we discuss in more depth *infra,* Kansas also limits an employer's liability for punitive damages.

¶8 The trial court ruled that Kansas law would apply to plaintiffs' compensatory damage claims, but Arizona law would govern punitive damages, reasoning:

> [U]nder the facts of this case, to allow the Plaintiffs' [sic] to benefit from the more liberal Arizona laws on compensatory damages would simply foster and promote "forum shopping" as argued by the Defendant Corporation in its reply.
>
> On the other hand, the State having primary and paramount interest in ensuring the safe operation of the commercial trucks emanating from the State of Arizona, i.e., requiring full compliance with the state and federal safety laws, is the State of Arizona. Further, it is in this State's responsibility to protect innocent victims, wherever they may reside, from the kind of conduct which would support a punitive damages award, as alleged in this case.

¶9 During oral argument before this court, Swift clarified that its challenge to the punitive damage award is based solely on constitutional grounds and not on choice of law

principles, such as those found in the Restatement (Second) of Conflict of Laws (1971).[5] Constitutional claims raise questions of law that we review *de novo*. *Chaurasia v. Gen. Motors Corp.*, 212 Ariz. 18, 28, ¶ 35, 126 P.3d 165, 175 (App. 2006).

¶10 According to Swift, once the trial court directed a verdict against plaintiffs on their negligent retention claim, it was constitutionally impermissible to apply Arizona law to punitive damages. To place this issue in perspective, we first examine the nature and evolution of plaintiffs' claims.

¶11 Plaintiffs originally alleged two liability theories against Swift: (1) *respondeat superior* liability based on Jones's conduct; and (2) "direct liability for Swift's own acts and omissions in hiring, retaining and promoting Jones despite an on-going history of serious legal violations." Before trial, plaintiffs withdrew their negligent hiring claim, but they proceeded to trial on the negligent retention theory. At the close of plaintiffs' case-in-chief, Swift moved for JMOL on the negligent retention claim. The court granted that motion.[6] Swift then renewed its argument that Kansas law should apply to punitive damages. The trial court again disagreed.

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[5] Although we confine our analysis to the constitutional arguments framed by Swift, we note that application of the choice of law principles found in Restatement (Second) of Conflict of Laws §§ 6, 145, 171, and 178 would also favor Kansas law.

[6] Plaintiffs have not appealed the dismissal of their negligent retention claim.

¶12 Once the negligent retention claim was dismissed, the sole remaining basis for Swift's liability was vicarious in nature. *See Warner v. Sw. Desert Images, LLC,* 218 Ariz. 121, 129, 131, ¶¶ 17 & 27, 180 P.3d 986, 994, 996 (App. 2008) (*respondeat superior* liability is vicarious liability; it is based on the employee's actions, not the employer's). With vicarious liability, only the principal's relationship to the tortfeasor is relevant, not the negligence of the principal itself. *Id.* at 129, ¶ 17, 180 P.3d at 994; *see also Wiggs v. City of Phoenix,* 198 Ariz. 367, 371, ¶ 13, 10 P.3d 625, 629 (2000) ("[T]hose whose liability is only vicarious are fault free - someone else's fault is imputed to them by operation of law."); 2 Dan B. Dobbs, *The Law of Torts,* § 333, at 906 (2001) ("Vicarious liability is not based upon the defendant's own fault. Rather, it is based upon the principle that he must stand good for the wrong of another person.").

¶13 By the time this case was submitted to the jury, punitive damages could only be based on Jones's conduct in Kansas. We agree with Swift that Arizona may not punish that extra-territorial conduct through application of its law on punitive damages.

¶14 "Punitive damages may properly be imposed to further a State's legitimate interests in punishing unlawful conduct and deterring its repetition." *BMW of N. Am., Inc. v. Gore*, 517

U.S. 559, 568 (1996). "Compensation of an injured plaintiff is primarily a concern of the state in which plaintiff is domiciled." *Bryant v. Silverman,* 146 Ariz. 41, 45, 703 P.2d 1190, 1194 (1985).

¶15 In *BMW*, the plaintiff purchased a new BMW that had been damaged and repainted without disclosure, in violation of Alabama law. 517 U.S. at 563-64. A jury awarded Gore $4000 in compensatory damages and $4,000,000 (later reduced to $2,000,000) in punitive damages for fraud. *Id.* at 565, 567. Noting that other states did not mandate disclosure under similar circumstances, the Court held that Alabama could not punish BMW for out-of-state conduct "that was lawful where it occurred and that had no impact on Alabama or its residents." *Id.* at 573. The Court declined to address "whether one State may properly attempt to change a tortfeasor's *unlawful* conduct in another State."[7] *Id.* at 574 n.20.

¶16 The Court revisited this unresolved issue in *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003). In that case, a jury awarded the plaintiff $2.6 million (later reduced to $1 million) in compensatory damages and $145 million (later reduced to $25 million) in punitive damages based on the defendant's nationwide practice of limiting insurance

[7] Swift does not contend that Jones's tortious conduct was lawful in Kansas, Arizona, or any other state.

pay-outs. *Id.* at 415. In striking down the punitive damage award, the Court noted the "general rule" that a State does not have "a legitimate concern in imposing punitive damages to punish a defendant for *unlawful* acts committed outside of the State's jurisdiction." *Id.* at 421 (emphasis added). The Court explained that a central tenet of federalism is that "each State alone can determine what measure of punishment, if any, to impose on a defendant who acts within its jurisdiction." *Id.* at 422.

¶17 Even before *State Farm* clarified the issue, courts were reading *BMW* as prohibiting punitive damages based on extra-territorial tortious conduct. In *Continental Trend Resources, Inc. v. OKY USA Inc.,* 101 F.3d 634 (10th Cir. 1996), for example, the Tenth Circuit stated:

> First, the punitive damages award must relate to conduct occurring within the state – here, Oklahoma. A state may not sanction a tortfeasor "with the intent of changing the tortfeasor's lawful conduct in other States." Thus, any penalty must be supported by Oklahoma's "interest in protecting its own consumers and its own economy." Of course, unlike in *BMW,* OXY's conduct in the case before us would be tortious in any state. The *BMW* Court goes on to state that it "need not consider whether one State may properly attempt to change a tortfeasor's unlawful conduct in another State." Despite this comment we read the opinion to prohibit reliance upon inhibiting unlawful conduct in other states.

Id. at 636-37 (citations omitted); *see also White v. Ford Motor*

Co., 312 F.3d 998, 1017 (9th Cir. 2002) ("The logic and language of *BMW* suggest that if the Court were to 'consider whether one State may properly attempt to change a tortfeasor's *unlawful* conduct in another state,' the answer would have to be 'No.'").

¶18 Not surprisingly, after the decision in *State Farm,* more courts have specifically held that states may not punish extraterritorial tortious conduct. In *Sand Hill Energy, Inc. v. Smith,* 142 S.W.3d 153 (Ky. 2004), the court vacated a punitive damage award, in part because the jury instructions "failed to include a limiting instruction concerning extraterritorial punishment." *Id.* at 156. On remand, the trial court was directed to give an instruction providing for a "safeguard from extraterritorial punishment." *Id.* at 166. The Kentucky Supreme Court suggested the following language:

> Evidence of Ford Motor Company's conduct occurring outside Kentucky may be considered only in determining whether Ford Motor Company's conduct occurring in Kentucky was reprehensible, and if so, the degree of reprehensibility. However, you must not use out-of-state evidence to award the [plaintiff] punitive damages against Ford Motor Company for conduct that occurred outside Kentucky.

Id. at 167; *see also Hampton v. Dillard Dep't Stores, Inc.,* 18 F. Supp. 2d 1256, 1276 (D. Kan. 1998) (A punitive damage award "must relate to conduct occurring within the state."); Sheila B. Scheuerman and Anthony J. Franze, *Instructing Juries on Punitive*

Damages: Due Process Revisited After Philip Morris v. Williams, 10 U Pa. J. Const. L. 1147, 1192-95 (noting that, after *State Farm,* many jurisdictions have added extra-territorial limitations to their punitive damage instructions).

¶19 In the case at bar, plaintiffs' injuries and damages occurred in Kansas. Neither Jones nor plaintiffs are Arizona residents. Swift is an Arizona corporation, but its residency is incidental when, as here, liability is purely vicarious. Perhaps most importantly, Arizona and Kansas have significantly different policies regarding the recovery of damages. Kansas does not impose liability on an employer for an employee's conduct unless the employer has specifically ratified or authorized such conduct. *See* K.S.A. § 60-3702(d)(1) (1992). Kansas also limits the amount of punitive damages that may be awarded against an employer. K.S.A. § 60-3702(e) and (f). Arizona has no such employer protections.

¶20 The policy differences between Arizona and Kansas are legally significant. In *White*, the court vacated a punitive damage award based on nationwide consumer fraud perpetrated by Ford 312 F.3d at 1020. It noted that states like Alaska cap punitive damages, thus adopting "a less risk-averse approach friendlier to innovation." *Id.* at 1018. By imposing Nevada law, particularly when the conduct had no impact on the state or its residents, the jury effectively supplanted Alaska's policy

choices in violation of its sovereignty. Relying on *BMW,* the court stated:

> The Court in *BMW* imposed a territorial limitation on punitive damages in the interest of federalism. This federalism includes the flexibility for a state to have whatever policy it chooses, subject to constitutional and congressional limits. For that flexibility to exist, no state can be permitted to impose its policies on other states.

Id. at 1013.

¶21 Once plaintiffs' negligent retention count was dismissed, Swift could only be vicariously liable for Jones's conduct. There was no conduct occurring within Arizona to punish. The trial court should have applied Kansas law to plaintiffs' punitive damage claim. We thus vacate the punitive damage award.

2. Motion for JMOL Regarding Punitive Damages

¶22 Swift argues that the trial court erred by denying its motion for JMOL regarding punitive damages. Because we vacate the award of punitive damages and find that Kansas law governs, we need not address Arizona law regarding punitive damages. Based on the record and the briefing before us, we cannot determine whether the evidence would be sufficient to permit consideration of punitive damages under Kansas law. That issue must be addressed on remand.

3. Expert Testimony Regarding Punitive Damages

¶23 We also need not resolve Swift's contention that plaintiffs' trucking expert, Matthew Meyerhoff, offered inappropriate opinions regarding the ultimate issue relevant to punitive damages. This precise issue is unlikely to recur on remand. The parties agree on the proper legal standard. They merely disagree on its application and whether, in context, Meyerhoff's testimony went too far.[8]

4. Negligent Retention, Adverse Inference Instruction, and Spoliation

¶24 Swift contends that the trial court erred in admitting spoliation evidence[9] and in giving an adverse inference jury instruction. Swift also argues it was "unfairly and irreversibly prejudiced" by admission of extensive evidence relating solely to plaintiffs' negligent retention claim. We discuss these contentions together.[10]

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[8] It is arguable that the challenged testimony related to the severity of Jones's conduct with regard to Swift's disciplinary policies, not Jones's mental state in running the stop sign.

[9] "Spoliation" is defined as "[t]he intentional destruction of evidence. . . . The destruction, or the significant and meaningful alteration of a document or instrument." *Smyser v. City of Peoria,* 215 Ariz. 428, 438 n.11, ¶ 32, 160 P.3d 1186, 1196 n.11 (App. 2007) (quoting Black's Law Dictionary 1257 (6th ed. 1990)).

[10] The record does not support Swift's claim that it was deprived of a pretrial ruling on its motion for partial summary judgment regarding negligent retention. Swift filed a "Motion for Partial Summary Judgment Re Negligent Retention" on July 18, 2007. At the final pretrial management conference on October 29, 2007, the court heard argument on this motion (and others).

¶25 Much of plaintiffs' case-in-chief related to negligent retention and spoliation. The spoliation issue arose because Swift was able to produce Jones's driving logs for only four days--April 1, 2, 3, and 4, 2004. Swift could not locate earlier logs.

¶26 Meyerhoff testified during three of the thirteen trial days when evidence was presented. He testified extensively about Jones's history with Swift dating back to June 2001, including his log and hour of service violations since July 2001. Meyerhoff also discussed Swift's failure to include certain log violations in federally mandated reports. He told the jury about citations issued to Jones beginning in 2001 and disciplinary actions Swift imposed against him over the years. Meyerhoff further testified regarding Swift's duty to maintain logs for six months and monthly hours of service reports and certain back-up information for at least three years. Meyerhoff opined that Swift should have terminated Jones in November 2001. He also testified that Swift failed to follow its own disciplinary policies regarding Jones.

¶27 As we have previously discussed, the court directed a

It took the matter under advisement. In a minute entry dated October 30, the court denied Swift's motion. Although plaintiffs had suggested that any ruling be deferred "until the court has [the] opportunity to hear the evidence during trial," the trial court clearly denied the motion.

verdict against plaintiffs on their negligent retention claim. At the time the final jury instructions were given, Swift had conceded that Jones was negligent, that he caused the accident, and that Swift was legally responsible for his actions.

¶28 The missing logs and faulty documentation were not relevant to compensatory damages. Plaintiffs' punitive damage theory was that Jones either intentionally ran the stop sign or that he was fatigued from driving too many hours, in violation of federal safety regulations. They claimed that the missing records were necessary to establish fatigue. According to plaintiffs, "If the examination [of the missing records] showed Jones was driving in excess of the '11/14/70 rules' at the time of the collision . . . then the jury could have inferred he was too fatigued and satisfied the Arizona standard for punitive damages."

¶29 Even under plaintiffs' theory, once the negligent retention claim was dismissed, only documentation pre-dating the accident by eight days would be relevant.[11] As we have noted, Meyerhoff testified about significantly more because the negligent retention claim was still viable at the time of his testimony. Before deliberations, the court gave the jury an adverse inference instruction, stating:

[11] Meyerhoff testified that, to determine whether Jones violated the 70-hour rule, it would be necessary to review eight consecutive days of logs.

> If you conclude that Swift Transportation lost, concealed, destroyed or failed to preserve evidence, you may infer that the evidence lost, concealed, destroyed or not preserved was adverse to Swift Transportation. You may not award separate damages for that loss of, concealment of, destruction of or failure to preserve evidence.

¶30 Assuming *arguendo* that the missing driver logs for the eight days preceding the accident were relevant to punitive damages (i.e., to support plaintiffs' theory of driver fatigue), the trial court did not advise the jury it could only draw adverse inferences as to those limited documents and only in conjunction with punitive damages. The instruction as given could have led reasonable jurors to conclude they could consider *all* evidence of missing records and Swift's failure to preserve documents for virtually any purpose, other than the imposition of "separate damages." *See State v. Sierra-Cervantes,* 201 Ariz. 459, 462, ¶ 16, 37 P.3d 432, 435 (App. 2001) (holding that when a party alleges error in jury instructions, we consider the language of the instructions from the perspective of how a reasonable juror could have construed them). The curative instruction regarding negligent retention did not sufficiently clarify matters. It read:

Negligent Retention

> At the beginning of this trial, you were instructed that the issues for you to decide included whether defendant Swift negligently

> retained its driver, Kevin Jones. During the course of this trial, you have heard evidence on whether Swift should have fired him before the accident.
>
> I have dismissed the plaintiffs' claim of negligent retention of Kevin Jones [sic] Do not concern yourselves with the reason for my ruling on this issue. However, in light of my ruling, I am instructing you to disregard evidence as it pertains to the retention of Kevin Jones as a driver.

The jury was not given any guidance as to what evidence or categories of evidence "pertain[ed] to the retention of Kevin Jones as a driver."

¶31 The likelihood of juror confusion was compounded by plaintiffs' closing argument. *See State v. Bruggeman,* 161 Ariz. 508, 510, 779 P.2d 823, 825 (App. 1989) (closing arguments of counsel may be taken into account when assessing the adequacy of jury instructions). Although the negligent retention claim had been dismissed, during closing argument, plaintiffs discussed federal regulations requiring Swift to keep driver logs "on a rolling basis for six months," the fact that these missing logs would have enabled plaintiffs to "determine if there's a pattern of practice [sic] of violating hours of service," Swift's duty to audit driver logs, Swift "intentionally suspend[ing] their obligation to comply with Federal Motor Carrier Safety Administration regulations regarding logs," and Swift's "non-

compliance" in monitoring Jones's logs.[12]

¶32 We recognize that the amount of damages "is a question particularly within the province of the jury." *Frontier Motors, Inc. v. Horrall*, 17 Ariz. App. 198, 200, 496 P.2d 624, 626 (1972). "[A] jury's verdict ought not to be vacated or the amount thereof reduced except for the most cogent reasons. The rule here and elsewhere is that the verdict will be left undisturbed if reasonably supported by the evidence, *when the trial is free from error.*" *Young Candy & Tobacco Co. v. Montoya,* 91 Ariz. 363, 370, 372 P.2d 703, 707 (1962) (quoting *Ross v. Clark,* 35 Ariz. 60, 67, 274 P. 639, 641 (1929) (emphasis added)). Considered together, however, the adverse inference instruction, the extensive evidence relevant only to negligent retention, the last-minute withdrawal of the non-economic damage claims, the incorrect verdict form (see discussion *infra* ¶ 34), and plaintiffs' closing arguments give rise to great uncertainty about whether the jury realistically could have understood what it could and could not consider in determining compensatory damages.[13]

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[12] Although the court instructed the jury that closing arguments by counsel were not "evidence," plaintiffs' arguments exacerbated the potential for confusion over exactly what the jury could and could not consider.

[13] We have not addressed the spoliation evidence in depth. At the new trial, there will be no negligent retention claim. Most of the spoliation evidence related to that issue. We do not, however, foreclose the possibility that some spoliation

¶33 Even properly instructed, it would have required Herculean efforts by jurors to compartmentalize the evidence they could consider for certain purposes and to ignore literally days of testimony about now-irrelevant matters. In such a case, we cannot simply revert to the appellate mantra that we presume jurors follow their instructions. *Cf. Bruton v. United States,* 391 U.S. 123, 135 (1968) (noting that the "practical and human limitations of the jury system cannot be ignored"). Because a strong likelihood exists that trial errors fatally infected consideration of the wrongful death compensatory damages, we vacate those awards as well.[14]

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evidence may be admissible under Kansas law. We also have not addressed Swift's claim that the court erred in admitting evidence about discovery matters. If admissible, such evidence would relate solely to punitive damages, and Kansas law on this issue has not been briefed.

[14] After the close of evidence, the wrongful death plaintiffs withdrew their claims for non-economic damages. Swift objected because extensive evidence (including testimony by twelve family members) had been introduced about the relationships between Thomas and the plaintiffs, including their grief and pain over his loss. During closing argument, plaintiffs' counsel told the jury, "Jeanne and her children have made a decision in this case, and they've asked and authorized me to tell you that you don't have to put anything on the line for their pain, sorrow, grief for the loss of Tom. . . . Trying to fathom that pain and deal with it and come to a figure, they're not going to ask you to do that."

The jury awarded $0 to the wrongful death plaintiffs for non-economic damages and wrote on the verdict form, "see jury note," which stated, "In the matter of non-economic loss of Jeanne Steven and the children, we the jurors have chosen to honor the wishes of Jeanne Steven and family." Standing alone, we might conclude the court's admonition that the jury not be "influenced by sympathy" was adequate. However, in assessing

5. Other Compensatory Damage Issues

¶34 We agree with Swift that the verdict form used for the wrongful death claims did not comply with Kansas law. Pursuant to K.S.A. § 60-1905 (1963), the jury in a wrongful death case may award only a *net* damage amount. The trial judge then apportions those damages after a hearing "in proportion to the loss sustained by each of the heirs."[15] *Id.*

¶35 As for the wrongful death plaintiffs' economic damages, Swift challenges, *inter alia,* calculations based on Thomas's work-life expectancy. At the time of his death, Thomas was fifty-seven years old. Scott Stuart, plaintiffs' expert, presented a chart of Thomas's "Lost Earnings Capacity through age 80." Stuart did not testify that Thomas would work until age 80. Rather, he presented the chart to give the jury various scenarios for lost income based on *its* determination of Thomas's likely retirement age. Swift also argues that Stuart improperly included loans Thomas received from his company as income, despite the fact that those loans were repaid.

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all of the circumstances bearing on the compensatory damage award, we have considered this factor. We recognize that Kansas defines economic damages more broadly than Arizona and includes categories such as loss of services, attention, marital care, parental care, advice, counsel, and protection.

[15] As with the last minute waiver of non-economic damages, this issue, standing alone, might not warrant setting aside the damage awards. We cannot know whether a jury that renders a net damage award for nine beneficiaries is likely to award less than a jury that apportions damages among the claimants, as Swift seems to suggest.

¶36 We review the admission of expert testimony for an abuse of discretion. *State v. Hummer,* 184 Ariz. 603, 607, 911 P.2d 609, 613 (App. 1995). The alleged deficiencies in Stuart's testimony might affect its weight, but not its admissibility. *See, e.g., Logerquist v. McVey,* 196 Ariz. 470, 489-90, ¶ 58, 1 P.3d 113, 132-33 (2000) ("[V]igorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence."). We find no abuse of discretion. Stuart testified that he complied with "recognized nationwide standard accounting, financial, economic and business principles." Swift cross-examined Stuart and presented its own economic expert. The jury was properly instructed about how to evaluate expert testimony, including its ability to "accept it or reject it, in whole or in part, and [to] give it as much weight as you think it deserves, considering the witness' qualifications and experience, the reasons given for the opinions, and all other evidence in the case."

¶37 We also find no reversible error based on plaintiffs' closing argument about the value of Thomas's lost household services. Lawyers have wide latitude in closing argument to comment on the evidence and to argue all reasonable inferences from it. *State v. Moody,* 208 Ariz. 424, 465, ¶ 180, 94 P.3d 1119, 1160 (2004). Perhaps some of the damage calculations

pressed the outer bounds of "reasonable inferences," but their admission does not constitute reversible error.

6. Evidence of Accident History and Roadway Redesign

¶38 Swift contends that the trial court erred in precluding evidence about the accident history and redesign of the intersection where the collision occurred. Swift sought to introduce such evidence to show that Jones did not intentionally run the stop sign because other drivers had also failed to stop at that same intersection.

¶39 A trial court has considerable discretion in determining relevancy and admissibility of evidence. *City of Phoenix v. Boggs,* 1 Ariz. App. 370, 373, 403 P.2d 305, 308 (1965). "The trial court's ruling on the admission or preclusion of evidence will be affirmed, absent a clear abuse of discretion and a showing of prejudice." *Catchings v. City of Glendale*, 154 Ariz. 420, 426, 743 P.2d 400, 406 (App. 1987).

¶40 We find no abuse of discretion. The trial court granted plaintiffs' motion in limine to preclude evidence of accident history and redesign, though it stated it would revisit the issue if Swift laid sufficient foundation for such evidence at trial. The record supports plaintiffs' contention that Swift failed to do so.

¶41 Swift did not demonstrate that any of the prior collisions were factually similar and recent in time. It

appears that none involved a tractor-trailer rig, and few involved a northbound vehicle (the direction Jones was traveling) running the same stop sign. There was no evidence (including from Jones) that the intersection was dangerous or that its design caused the collision.[16] Finally, we are not persuaded that plaintiffs opened the door to such evidence.

7. Forum *Non Conveniens*

¶42 Because we are ordering a new trial, Swift asks us to require plaintiffs to refile their claims in Kansas. We decline to do so. Our ruling, though, is without prejudice to Swift's ability to file a renewed motion in the superior court based on forum *non conveniens*.

CONCLUSION

¶43 For the reasons stated, we affirm the personal injury verdicts and judgment issued in favor of Glenn Steven and Jacob Steven. We further affirm the jury's determination that Jones was solely responsible for the accident. We reverse both the

[16] In a trial memorandum, Swift stated that a Kansas sergeant had testified "this intersection is one of three or four bad intersections we have." There was, however, no offer of proof made on this point.

compensatory and punitive damage awards on the wrongful death claims and remand for further proceedings consistent with this decision.

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
ANN A. SCOTT TIMMER, Chief Judge

/s/
SHELDON H. WEISBERG, Judge