SUPERIOR COURT
OF THE
STATE OF DELAWARE

FRED S. SILVERMAN
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 North King Street, Suite 10400
Wilmington, DE 19801-3733
Telephone (302) 255-0669

October 24, 2008

Matthew Bartkowski, Esquire
Kimmel, Carter, Roman & Peltz, P.A.
56 W. Main Street, Plaza 273
Newark, DE 19702

Maria J. Poehner, Esquire
Bifferato Gentilotti, LLC
800 N. King Street
P.O. Box 2165
Wilmington, DE 19899

RE: *Bobby B. Coleman and Phoebe Coleman v. Matthew White and Joyce White*
C.A. No. 05C-06-290 MMJ/FSS

Upon Plaintiffs' Motion for New Trial or, in the Alternative, For Additur – GRANTED
Upon Plaintiffs' Motion for Costs – GRANTED

Dear Counsel:

After a jury awarded Mr. Coleman $9,546.00 in damages following an automobile collision, Plaintiffs filed motions for a new trial, or in the alternative, for additur, and for costs. Plaintiffs contend the award was grossly inadequate because the jury failed to award pain and suffering damages. Plaintiffs argue that "an award which equates to the amount of the medical expenses without an allowance for pain

and suffering is against the weight of the evidence." Defendants counter that the jury, as the sole fact finder, could have found "that no appreciable injury or pain and suffering occurred" after the accident. Thus, Defendants apparently agree with Plaintiffs that the jury awarded nothing for pain and suffering.

Defendants admitted liability, therefore, the trial focused on damages. The parties stipulated that post-PIP medical bills were $19,092.08. Coleman had a history of back and neck problems, so the main contention at trial was the extent to which the accident exacerbated those problems. As to that, the parties argued over the extent that Plaintiff's post-PIP medical bills were attributed to the accident.

Plaintiffs' expert, Dr. Beneck, testified that the bills were entirely related to the neck, and half of that was related to the accident. In addition, Defendant's expert, Dr. Fink, testified that half of Coleman's current back and neck problems resulted from the accident. Taking the testimony into account, the jury awarded Coleman $9,546.00, exactly half of the outstanding medical bills. The jury seemingly accepted that half the medical bills were attributable to the accident.

It goes without citation that a jury's verdict is given great deference. Accordingly, a jury verdict should be set aside only where it is clear that the award is so grossly out of proportion to the injuries suffered that it shocks the court's conscious and sense of justice.[1] "When supported by sufficient evidence, a jury's verdict will not be disturbed by granting additur or a new trial."[2] If a jury's verdict is divorced from the evidence presented, the court may, in its discretion, correct the error.[3] An adjustment in the verdict, however, will "not usurp the providence of

---

[1] *Young v. Frase*, 702 A.2d 1234, 1236 (Del. 1997).

[2] *Lyon v. Cline*, 2005 WL 628030 (Del. Super. March 16, 2005).

[3] *Bradshaw v. Trover*, 1999 WL 1427770 (Del. Super. Oct. 27, 1999).

a jury so much as when [the court] sets aside a verdict and directs a new trial...."[4]

Obviously, Coleman proved some damages. The only logical way to read the verdict, taking the evidence into account, is that the jury accepted the expert testimony that half the medical bills resulted from the collision. And, as suggested above, the jury awarded nothing for pain and suffering. The fact that the jury awarded medical damages implies at least some pain and suffering.[5] Therefore, the court must adjust the jury's verdict and grant Plaintiffs' motion for additur for pain and suffering, or grant a new trial.

The court has previously granted additur for general damages in matters where only portions of medical bills were awarded.[6] In considering an amount for additur, the court must grant every reasonable, factual inference to the defendant and award the lowest amount possible.[7] The general precedent is granting additur by a factor of one.[8] Here, that means additur in the amount of $9,500 for a total award of $19,046. Defendants have 10 days from this letter's date to accept, in writing, the grant of additur. If Defendants fail to respond or accept additur, a new trial will be held.

Plaintiffs also filed a motion for costs pursuant to Superior Court Civil Rule 54. Plaintiffs received a favorable verdict and were not limited by an offer of

---

[4] *Carney v. Preston*, 683 A.2d 47 (Del. Super. 1996).

[5] *See, e.g.*, *Di Gioia v. Schetrompf*, 251 A.2d 569 (Del. Super. 1969); *Dorsey v. Service America Corp.*, 1997 WL 127974 (Del. Super. Feb. 25, 1997).

[6] *See Lyon*, 2005 WL 628030; *Dorsey*, 1997 WL 127974; *cf. Mitchell v. Haldar*, 2004 WL 1790121 (Del. Super. Aug. 4, 2004) (additur denied, mainly due to contested liability and damages), *aff'd*, 883 A.2d 32 (Del. 2005).

[7] *Petrova v. Stephenson*, 2002 WL 31818518 (Del. Super. Nov. 26, 2002).

[8] *Id.*

judgment. Therefore, contingent upon Defendants' acceptance of additur, Plaintiffs are entitled to costs in the amount requested, $2,487.50. That figure is reasonable and unopposed. If a new trial is held, the court will re-visit costs.

IT IS SO ORDERED

Very truly yours,

/s/ Fred S. Silverman

oc: Prothonotary (Civil)