

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

**HENRY duPONT RIDGELY**  
PRESIDENT JUDGE

**KENT COUNTY COURT HOUSE  
38 THE GREEN  
DOVER, DELAWARE 19901**

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Re: ***Downs v. Knight***  
**C.A. No. 02C-01-024 HDR**

**Submitted: April 8, 2003**  
**Decided: April 14, 2003**

**Upon Plaintiff's Motion for New Trial  
and/or Additur - DENIED**

Counsel:

This is a civil action arising from a collision in a parking lot on November 27, 2000. The jury found each party to be 50% negligent and awarded zero dollars in damages to Plaintiff. Plaintiff has moved for a new trial or additur.

A jury verdict is presumed to be correct and just.<sup>1</sup> The Court has the authority to grant a new trial if the verdict is out of proportion to the injury so as to shock the Court's conscience and sense of justice, or if the verdict is based upon passion, partiality, prejudice, or mistake on the part of the jury.<sup>2</sup>

The damages claimed in this case were based upon Plaintiff's subjective

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<sup>1</sup> *Mills v. Telenczak*, 345 A.2d 424 (Del. 1975).

<sup>2</sup> *Storey v. Castner*, 314 A.2d 187 (Del. 1973); *McCloskey v. McKelvey*, 174 A.2d 691 (Del. Super. 1961).

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complaints supported by the testimony of a chiropractor who first saw Plaintiff one week after the accident. Plaintiff's credibility was contested and he was shown to have been working while claiming total disability benefits under his PIP coverage. Based upon the evidence presented, a reasonable jury could have found that Plaintiff was not entitled to any award of damages.<sup>3</sup>

Accordingly, Plaintiff's motion for new trial or additur is ***DENIED***.

**IT IS SO ORDERED.**

Very truly yours,

/s/ Henry duPont Ridgely

cmh

oc: Prothonotary

xc: Order distribution

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<sup>3</sup> *Kossol v. Duffy*, 765 A.2d 952 (Del. 2000); *Walker v. Patrick*, 2002 Del. Super. LEXIS 276 (Del. Super. 2002); *Hayes v. Bartoli*, 2001 WL 1456472 (Del. Super. 2001).