

June 14, 2002

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RE: **Kristina M. Juliano v. Thomas M. Lenhard**  
**C.A. No. 98C-11-180 WCC**

Submitted: May 22, 2002  
Decided: June 14, 2002

On Plaintiff's Motion for New trial.

Dear Counsel:

It is disappointing that you have not been able to convince your clients of the benefits of finding a middle ground based upon the jury deliberation information provided by the Court. I appreciate Mr. Componovo's letter indicating all efforts have been fully explored and a resolution is not possible. I have delayed deciding this motion hoping reasonable minds would prevail. Since that does not appear to be the case, the Court will grant a new trial, but only as it relates to the issue of damages. The liability verdict will remain as decided by the jury.

There is no controversy between the parties that the plaintiffs sustained some injury in the accident. While the extent and nature of that injury was contested, there was no medical evidence presented that would support a finding of zero damages. Consistent

with the Supreme Court opinion in *Maier v. Santucci*,<sup>1</sup> a jury may not ignore facts that are uncontroverted and against the weight of undisputed medical testimony. The only verdict that would be consistent with the evidence would be the awarding of some monetary award. Since this did not occur, the Court believes the only fair way to resolve this error is to allow a new trial limited to the issue of damages.

While in some cases the Court may correct the error of zero damages by way of an additur, the Court declines to resolve the issue by that manner in this case. First, there is no motion requesting such action and secondly, this is simply not a case where the jury clearly provided a grossly inadequate compensation which can be made just by adding dollars to the verdict.<sup>2</sup> What is the appropriate damage award is still in question except to the degree that a zero award is inappropriate. The Court does not believe this is an appropriate case to substitute its judgment as to damages and remove from the jury their fundamental role in deciding what is fair and just reviewing the facts of the case. Only in an unusual case should an additur be rendered by the Court, and this simply is not one of those cases.

Since the case will be limited to damages, I am suggesting that we attempt to schedule the case for this upcoming fall. The best date for the Court would be November 25, 2002. Please let me know your availability.

IT IS SO ORDERED.

Sincerely yours,

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Judge William C. Carpenter, Jr.

WCCjr:twp

cc: Christina Yeager - Case Manager

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<sup>1</sup> Del. Supr. 697 A.2d 747 (1997)

<sup>2</sup> *Mills v. Telenczak*, 345 A.2d 424 (Del. 1975). *Storey v. Camper*, 401 A.2d 458 (Del. 1979).