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Re: ***Smith v. Williams***
C.A. No. 96C-08-127-JRJ
On Plaintiffs' Motion for New Trial - GRANTED

Dear Counsel:

Maureen and Thomas Smith ("Plaintiffs") have filed a Motion for New Trial pursuant to Delaware Superior Court Civil Rule 59. This case involves an automobile collision that occurred on July 13, 1995. Plaintiff Maureen Smith alleges she sustained personal injuries when the front of her vehicle struck the side of defendant's vehicle. The force of the collision caused Mrs. Smith's airbag to deploy. Mr. Smith alleges a loss of consortium as a result of his wife's injuries. This case has been tried before a jury twice. The first trial resulted in a "zero damage" verdict and the Court granted Plaintiffs' Motion for a New Trial.[1] The matter was again tried to a jury in June 2001. As in the first trial, the defendant admitted fault for the accident and thus the only issues for the jury to decide were proximate cause and damages. On June 13, 2001, after three days of trial, the jury returned a verdict finding that the accident did

[1]*Smith v. Williams*, Del. Super., C.A. No. 96C–08-127-JOH, Herlihy, J. (April 5, 2000).

not proximately cause damage to Plaintiffs. Plaintiffs' Motion for New Trial challenges this verdict on the ground that it is "inadequate and unacceptable as a matter of law." For the reasons that follow, Plaintiffs' Motion for New Trial is GRANTED.

As in the first trial, during the second trial, Plaintiffs presented evidence that Mrs. Smith suffered bruises and burns on her arms and face as a result of the air bag deployment.[2] Plaintiffs introduced into evidence a photograph of Mrs. Smith's left arm depicting fairly significant bruising and burns (Plaintiffs' Exhibit 4). Mr. and Mrs. Smith both testified that Mrs. Smith's right arm bore similar injuries to those depicted in Plaintiffs' Exhibit 4. Mrs. Smith described these injuries during her testimony and they were confirmed in the medical records of the hospital emergency room where she sought treatment after the accident. Defendant never questioned whether these injuries were, in fact, sustained, or whether they were caused by the air bag deployment. There was absolutely no evidence presented to rebut Plaintiffs' evidence indicating that these injuries were proximately caused by defendant's negligence. Accordingly, Plaintiffs correctly observe in their motion that the jury was presented with incontrovertible evidence that Mrs. Smith sustained some injury as a proximate result of the accident.

During trial, Plaintiffs presented the testimony of two medical experts on the issues of

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[2]The trial judge in the first trial noted, "Mrs. Smith received objective injuries from that [airbag] deployment." *Smith v. Williams*, Del. Supr., C.A. No. 96C-08-127-JOH, Herlihy, J. (April 5, 2000) (Letter Op. at 1).

proximate cause and damages. Dr. Joseph Arminio, a hand specialist, testified to a reasonable degree of medical probability that Mrs. Smith suffered bilateral ulnar neuropathies and related muscle problems in her right arm as a result of the collision and that the damage to the ulnar nerve was permanent. Dr. Stephen Hershey, an orthopedist, testified to a reasonable degree of medical probability that Mrs. Smith suffered permanent cervical and shoulder soft tissue injuries as a result of the collision. The defendant cross examined Dr. Arminio and Dr. Hershey extensively (and effectively) with respect to the extent of Mrs. Smith's ulnar nerve and cervical and shoulder soft tissue injuries, during which the subjective nature of Mrs. Smith's complaints of pain were emphasized, and a significant lapse in treatment was emphasized with respect to Dr. Hershey's treatment.

Defendant presented the expert testimony of Dr. John B. Townsend, III, a neurologist. Dr. Townsend testified that when he conducted a defense examination of Mrs. Smith in 1996, she had a chronic cervical strain/sprain, positive Tinel signs in both arms and a positive Adson's maneuver in both arms. However, Dr. Townsend did not opine that these findings were proximately related to the July 13, 1995 accident, and in fact, stated that he did not believe they were related. Dr. Townsend did not address the injuries Ms. Smith claimed she sustained as a result of the airbag deployment.

At the close of Plaintiffs' case, Plaintiffs moved for judgment as a matter of law that the cervical and soft shoulder soft tissue injuries were proximately caused by the accident. The Court denied this motion determining that the jury could have reasonably concluded that these injuries were pre-existing based on the thorough cross examination of Plaintiffs' experts by

defense counsel and the opinions of Dr. Townsend, the defense expert. Plaintiffs did not move for a judgment as a matter of law on the burns and bruising to Mrs. Smith's arms and face caused by the air bag deployment.

At the close of evidence, the Court read several jury instructions which emphasized the jury's role in determining the credibility of witnesses and assessing damages. On the issue of proximate cause, the Court instructed the jury that proximate cause means "a cause which, in a direct sequence, brings about a result, and without which would not have happened but for negligence." The Court further instructed the jury that it should determine what amount, if any to award Plaintiffs for damages proximately caused by the accident and that damages must be proven to a reasonable degree of medical probability. The jury deliberated for only one hour before returning a verdict for defendant.

When considering a motion for new trial under Rule 59, the jury's verdict is presumed to be correct and sustainable unless it is so grossly disproportionate to the injuries suffered so as to shock the Court's conscience and sense of justice.[3] A jury verdict should not be disturbed unless it is against the great weight of the evidence.[4]

Defendant opposes Plaintiffs' motion for new trial claiming that because defendant's expert offered no testimony linking any of Mrs. Smith's injuries to the accident, and there was

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[3] *Storey v. Camper*, Del. Supr., 401 A.2d 458, 465 (1979).

no concession by the defense that Mrs. Smith suffered any injury as a result of the accident, the jury's finding of no proximate cause is "completely sustainable" and "unassailable."

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[4]*James v. Glazer*, Del. Supr., 570 A.2d 1150, 1156 (1990).

While much of the Plaintiff's damages presentation was hotly disputed by defendant, there was no contest offered with respect to the injuries Mrs. Smith sustained which were apparent in Plaintiff's Exhibit 4. Nor did defendant dispute that Ms. Smith suffered injuries similar to those depicted in Plaintiff's Exhibit 4 on her right arm as well. These injuries were incontrovertibly linked to the automobile accident. Thus, contrary to the jury's determination that Mrs. Smith sustained no injuries as a proximate result of the accident, the evidence clearly revealed that Mrs. Smith did sustain some injuries in the accident. "A jury cannot totally ignore facts which are uncontroverted and against which no inference lies."[5] The Supreme Court recently held that "[e]vidence that is unrebutted when presented by one side but left uncontradicted by the other party should... absent unusual circumstances, be considered 'conclusive'."[6] Because the jury's determination with respect to proximate cause cannot be reconciled with any reasonable view of the evidence presented at trial, it is against the great weight of the evidence. The jury's misapplication of the important legal principle of proximate cause with respect to Mrs. Smith's uncontested visible airbag injuries raises credible and substantial doubt as to whether the jury properly applied the Court's instruction on proximate cause to the evidence presented regarding Mrs. Smith's other injuries. A new trial is the only remedy to address the lack of rational process associated with the jury's verdict in this case.[7]

Based on the foregoing, Plaintiffs' Motion for New Trial is GRANTED.

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[5]*Maier v. Santucci*, Del. Supr., 697 A.2d 747, 749 (1997) (*quoting* Haas v. Pendleton, Del. Super., 272 A.2d 109, 110 (1970).)

[6]*Amalfitano v. Baker*, Del. Supr., C.A. No. 594, 2000, Steele, J. (October 16, 2001).

[7]See *Bateman v. Lada*, Del. Supr., C.A. No. 99C-07-285-JRS, Slights, J. (July 2, 2001) (Letter Op. at 11).

IT SO ORDERED.

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Judge Jan R. Jurden