

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR NEW CASTLE COUNTY**

VIRGINIA L. PORTER, Individually, and )	)	
In Her Capacities as Surviving Spouse Of )	)	
Michael A. Porter, As Administratrix For )	)	
The Estate of Michael A. Porter, Deceased, )	)	
And As Guardian Ad Litem and Next )	)	
Friend of KIMBERLY M. PORTER, )	)	
a Minor, and JOHN R. PORTER, )	)	
	)	
Plaintiffs, )	)	C.A. No. 99C-08-258 RRC
	)	
v. )	)	
	)	
WAYNE H. MURPHY and )	)	
BOULDEN BUSES, INC., )	)	
a Delaware Corporation, )	)	
	)	
Defendants. )	)	

Submitted: July 11, 2001  
Decided: October 2, 2001

**Upon Defendants’ “Motion for Remittitur or, in the  
Alternative, for a New Trial.” DENIED.**

This 2nd day of October, 2001, upon consideration of the submissions of the parties, it appears to this Court that:

1. This opinion incorporates additional facts set forth in the memorandum opinion issued this same day denying Plaintiffs’ Motion for a New Trial.<sup>1</sup>

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<sup>1</sup> Two other post-trial motions were filed in this case. Plaintiffs filed a Motion for a New Trial, which this court has denied. Porter v. Murphy, Del. Super., C.A. No. 99C-08-258, Cooch, J. (October 2, 2001)(Mem. Op.). Plaintiffs filed a Bill of Costs, which the Court has accepted in part and rejected in part. Porter v. Murphy, Del. Super., C.A. No. 99C-08-258, Cooch, J. (October 2, 2001)(ORDER).

2. Testimony at trial showed that after the collision of Defendants' bus with decedent's automobile, decedent suffered neck and lower back pain as well as mild restriction of motion. Decedent's family members also testified that decedent became depressed following the accident and that decedent was unable to participate in many of the life activities he had theretofore enjoyed. This testimony was supported by Plaintiffs' expert, Dr. Constance Dancu (who was however primarily called as a witness to support Plaintiffs' claim that decedent's suicide was the result of the physical injuries caused by Defendants' negligence). Decedent committed suicide one year and 12 days after the date of the accident.

3. No medical bills or lost earnings were claimed. The only claim was for pain and suffering. A jury returned a verdict for \$60,000 for the injuries decedent suffered from the date of the accident, September 26, 1997, until the date of decedent's death, October 7, 1998. However, the jury found that Defendants' negligence was not the proximate cause of decedent's suicide, and thus no damages were awarded for the wrongful death claim.

4. Defendant filed a "Motion for a Remittitur, or, in the Alternative, a New Trial." Defendant contends that an award of \$60,000 for one year of pain and suffering for a soft tissue injury is "excessive and

should shock the conscience of the Court.”<sup>2</sup> Plaintiffs oppose Defendant’s Motion.

5. When considering a motion for a new trial, the jury’s verdict is presumed to be correct.<sup>3</sup> When considering a motion for a new trial, the Court must determine whether the jury’s verdict is against the great weight of the evidence.<sup>4</sup> A jury’s verdict should not be disturbed unless it is manifest that it was the result of passion, prejudice, partiality or corruption, or that it was clearly in disregard of the evidence or applicable rules of law.<sup>5</sup> The verdict must be manifestly and palpably against the great weight of the evidence or for some reason, or a combination of reasons, justice would miscarry if it were allowed to stand.<sup>6</sup> Enormous deference is given to jury verdicts under Delaware law.<sup>7</sup> A jury’s award is presumed correct and just unless so grossly out of proportion to the injuries suffered as to shock the

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<sup>2</sup> Plts.’ Mot. ¶ 5.

<sup>3</sup> Lacey v. Beck, Del. Super., 161 A.2d 579, 580 (1960).

<sup>4</sup> James v. Glazer, Del. Supr., 570 A.2d 1150, 1156 (1990).

<sup>5</sup> Storey v. Camper, Del. Supr., 401 A.2d 458, 465 (1979).

<sup>6</sup> McCloskey v. McKelvey, Del. Super., 174 A.2d 691 (1961).

<sup>7</sup> Young v. Frase, Del. Supr., 702 A.2d 1234, 1236 (1997) (citing the Delaware Constitution which provides that “on appeal from a verdict of a jury, the findings of the jury, if supported by the evidence, shall be conclusive.” DEL. CONST., art. IV, § 11(1)(a)).

Court's conscience and sense of justice.<sup>8</sup> In reality, there is no standard for determining what will shock the conscience of the Court except the conscience of the Court.<sup>9</sup> Before exercising discretion to grant remittitur, the trial court must be satisfied that the verdict is excessive as a matter of law.<sup>10</sup>

6. Defendants cite case law that is factually distinguishable. Stewart v. Storm's Shoes, Inc., Del. Supr., 426 A.2d 839 (1981), largely concerns litigation of the applicable interest rate following plaintiff's acceptance of remittitur. Bloom v. Smales, Del. Super., C.A. No. 97C-12-003, Witham, J. (May 4, 2000)(ORDER), concerned an appeal of an arbitration award to the Superior Court, where that award was reduced because plaintiff was still capable of working as a home builder and was unable to demonstrate such a drastic change of lifestyle as to justify sustaining the jury verdict. Murphy v. Thomas, Del. Super., C.A. No. 96C-01-272, Quillen, J. (July 9, 1999)(Letter Op.), involved the granting of defendants' motion for remittitur based on the procedural irregularities of, among other things, a substituted expert whom defendants were not prepared

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<sup>8</sup> Storey v. Castner, Del. Supr., 314 A.2d 187, 193 (1973)

<sup>9</sup> Lacey, 161 A.2d at 581.

<sup>10</sup> Carney v. Preston, Del. Super., 683 A.2d 47, 55 (1996)

to encounter at trial, and whom grossly inflated the value of plaintiff's injuries. Finally, Patterson v. Mayer, Del. Super., C.A. No.96C-02-003, Toliver, J. (July 24, 1997)(Letter Op.), involved a plaintiff whose physical restrictions were largely self-imposed and a spouse who was unable to affirmatively show an inability to provide for his family or otherwise pursue his occupation following his wife's automobile accident.

7. In this case, the jury heard and evaluated the testimony of Plaintiffs' family members and Plaintiffs' expert and thereafter found that decedent suffered injuries that seriously interfered with his then-existing lifestyle and that decedent suffered depression resulting from these changes. Decedent was placed in physical therapy as a result of the accident. Decedent sought attention from his workplace physician several times in connection with problems stemming from the automobile accident. While decedent lived only one year and 12 days with the injuries resulting from the accident which is the subject of this case, the jury found that decedent should be compensated for those injuries in the amount of \$60,000. While the verdict was somewhat high, this Court does not find that this award was so high as to shock the conscience of the Court, and finds that the facts introduced at trial did not unfairly incite passion or prejudice in the jurors

while making their determination. Accordingly, the Court will not disturb the amount of the verdict returned by the jury.

8. For the above stated reasons, Defendants' Motion for a Remittitur, or, in the Alternative, a New Trial is **DENIED**.

**IT IS SO ORDERED.**

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cc: Prothonotary  
Ben T. Castle, Esquire, Attorney for Plaintiffs  
Stephen C. Casarino, Esquire, Attorney for Defendants